

Access to Justice for People with Disabilities:

A Guide for Oklahoma Courts

2020



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**Developmental Disabilities
Council of Oklahoma**

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Acknowledgements for 2019 Edition

Special thanks is given to the Georgia Access, Fairness, Public Trust and Confidence Committee And Judicial Council of Georgia, which provided permission to use its *Access to Justice for People with Disabilities: A Handbook for Georgia Courts*, (2017) in developing these materials. We followed much of the Georgia Guide's structure, topics, and ideas in this handbook.

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Funding for this document was provided by the Oklahoma Advisory Task Force on Child Abuse and Neglect.

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Introduction

Including individuals with disabilities among people who count in composing "We the People," Congress understood in shaping the ADA, would sometimes require not blindfolded equality, but responsiveness to difference; not indifference, but accommodation.

- Justice Ruth Bader Ginsburg,
concurring in Tennessee v. Lane,
May 17, 2004^[1]

Dispensing justice fairly, efficiently and accurately is a cornerstone of the judiciary. Policies and practices that deny individuals with disabilities meaningful access to courts undermine that cornerstone. Equal access is fundamental to ensuring due process, equal protection, and civil rights – and to empowering people with disabilities to fully participate in the judicial system through access to all activities afforded to the public.

Disability is a natural part of life. Some people acquire disabilities at birth, such as cerebral palsy, while others acquire them later in life, such as severe arthritis or low vision. Some people have obvious disabilities, such as blindness, while others experience “hidden” disabilities, such as diabetes, deafness, HIV infection, and epilepsy. Some individuals experience disability on a temporary basis, such as during cancer treatment, while others have permanent or progressive disabilities.

At any time, people with disabilities may come into contact with our court system as jurors, parties, witnesses, observers, or community members. More and more frequently, people with disabilities are serving as lawyers, clerks, court reporters, mediators and judges in state court systems.

Some individuals with disabilities are able to take part in various court processes and activities without difficulty. For many others, a disability, combined with environmental obstacles, imposes significant barriers to an equal opportunity to participate. The courts have an affirmative obligation to identify and remove these barriers so that people with disabilities can access court programs and services, including judicial proceedings, jury service, and courthouse meetings.

Common barriers to access include:

- Lack of awareness or unintended insensitivity to disability-related concerns;
- Lack of effective auxiliary aids and services for individuals with communication disabilities;
- Inaccessible court facilities for individuals with mobility impairments;
- Inflexible court policies, practices, and procedures that fail to address disability-related issues.

The Americans with Disabilities Act (ADA) was designed to protect the civil rights of people with disabilities. It is important to view participation by people with disabilities in court activities and services in the context of the civil rights of those individuals. But as to disability discrimination, implementing those rights will not always mean simply equal treatment; as Justice Ginsburg suggested, doing so will at times require affirmative steps to accommodate the needs of individuals with disabilities.

This guide is intended to help state and local courts in the State of Oklahoma understand and comply with their responsibilities under Title II of the ADA. It is not intended as a complete ADA compliance manual; instead it is a resource for courts.^[2] Within the constraints of the ADA and state law, judges have discretion as to the proceedings over which they preside. The guide is meant to assist them in exercising their discretion and to assist court managers and staff with approaches to common issues and compliance.

Part I of the guide presents an overview of the ADA and a related law, Section 504 of the Rehabilitation Act. The guide then discusses common barriers to full access to judicial services (Parts II through IV) and offers tips for interacting with people with various disabilities (Part V). Part VI suggests steps for developing an accommodation protocol.

Some of the principles set out in the body of the guide are illustrated with selected cases and settlement agreements, in Appendices A through F. The appendices also include sample forms, procedures, and notices. Appendix E includes Oklahoma-specific statutes and resources. Appendices G and H offer resources related to accessible websites, and Appendix I contains resources related to sign language interpreters.

Accessibility Contacts

Administrative Office of the Courts
Judicial Center
2100 North Lincoln Boulevard, Suite 3
Oklahoma City, OK 73106
405.556.9300

Court Buildings and Facilities Issues

Local County Board of Commissioners

District Courts (other than building or facility issues)

In Tulsa County District Court, contact the Court Administrator, Vicki Cox at
vicki.cox@oscn.net

All Other District Courts:

the Clerk of Court, the Judge presiding over a pending case (if applicable), or
the Chief Judge of the District, In Oklahoma County District, you can also contact the Court
Administrator, Renee Troxell

For technical assistance and consultation on disability issues contact:

The Office of Disability Concerns supports individuals with all types of disabilities, working to

1. Identify the needs of people with disabilities on a continuing basis and to attempt to meet those needs.
2. Serve as a referral and information source for people with disabilities seeking services and for agencies seeking assistance in their provision of services.
3. Assist agencies in complying with federal laws.

<https://www.ok.gov/odc/>

Sooner SUCCESS supports parents with a disability, providing

1. Serve as a referral and information source and assistance with navigating the service system if they are raising a child who also has a disability.
2. Assistance in accessing competency-based assessments of parental capacity and adaptive equipment and
3. Assistance in accessing a Communication Support Specialist to assist the individual with a disability before, during, and after court appearances and group child welfare meetings pertaining to their case.

To learn more about Communication Support Specialists, view this short video produced by the Vermont Communication Support Project at:

https://www.youtube.com/watch?v=5sTE8_pmlM

To request a Communication Support Specialist an individual, their attorney, their case worker or the judge can contact Sooner SUCCESS at sooner-successpwd@ouhsc.edu. Service is provided as an ADA accommodation. Eligibility determination and specialist assignment takes approximately 7-10 days.

Other Online Resources:

Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act https://www.ada.gov/doj_hhs_ta/child_welfare_ta.html

Sooner SUCCESS resource guide for supporting parents with disabilities (PDF)

<https://soonersuccess.ouhsc.edu/Services-Programs/Supporting-Parents-with-Disabilities>

The New Frontier of Disability Rights: Introduction to Child-Custody Rights of Parents with Disabilities (1.5 hours)

<http://ilru.mediasite.com/mediasite/Play/2132c0797d7d4225929200d0f7f9f24e1d>

PowerPoint Presentation and Additional Resources on Disability Law available at:

<http://www.ilru.org/training/new-frontier-disability-rights-introduction-child-custody-rights-parents-with-disabilities>

PART I: An Overview of the Americans with Disabilities Act of 1990

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State and local courts have an affirmative obligation to take proactive steps to remove barriers to access for people with disabilities. This handbook is designed to help courts in Oklahoma identify and remove those barriers.

The Americans with Disabilities Act and Section 504 of the Rehabilitation Act

Congress passed the Americans with Disabilities Act (ADA) in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."^[3] The ADA is the world's most comprehensive national law protecting the civil rights of individuals with disabilities. At the time the ADA was passed, about 20% of Americans experienced some form of disability; the same is true today. In its lengthy findings about the necessity of the ADA, Congress stated that "the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity."^[4]

In 2008, Congress passed the ADA Amendments Act,^[5] which broadened the definitions of disability under the original law, enabling a greater number of individuals with disabilities to seek protection under the law. These amendments went into effect January 1, 2009.

Additionally, Section 504 of the Rehabilitation Act of 1973^[6] prohibits discrimination on the basis of disability by recipients of federal financial assistance. Because most state and local courts receive federal funding, they are also covered by Section 504. Its requirements are very similar to those of the ADA.

The ADA prohibits discrimination on the basis of disability in many aspects of our society. Title II of the ADA applies to activities of state and local governments, including state and local courts and activities related to them.^[7] In the administration of justice, courts must provide an equal opportunity for people with disabilities to participate in all the programs the courts offer. Courts may not exclude people with disabilities, deny them the benefits of participation, or provide them different, unequal, or separate benefits. Courts may not implement eligibility criteria for program participation, licensing, or certification, or contracting that discriminate on the basis of disability. The facilities in which programs and services are carried out must be accessible to and usable by people with disabilities. Courts must make reasonable modifications in policies, practices, and procedures when necessary to avoid discrimination and ensure effective communication with people who have hearing, speech, or vision disabilities.

The U.S. Department of Justice (DOJ) enforces Title II of the ADA, issues the regulations that apply to state and local courts, and provides significant technical assistance. You should consult DOJ's website, www.ada.gov, for the regulations and other helpful materials. The original

regulations for Title II were adopted in 1991, but amendments to the regulations were effective as of March 15, 2011. Pay close attention to the changes made by the 2010 regulations, particularly as they affect courthouse design, construction standards, effective communication, and service animals.

Defining Disability under the ADA

The ADA defines an individual with a disability as a person who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a "record of" such an impairment; or is (3) "regarded as" having such an impairment.^[8]

A physical impairment is defined as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.^[9] A mental impairment is defined as any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.^[10]

Major life activities are defined by the law to include such activities as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.^[11] Major life activities also include the operation of major bodily functions, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.^[12]

Prior to the ADA Amendments Act, much ADA litigation focused on the definition of disability and whether particular individuals were substantially limited in a major life activity. The ADA Amendments Act was intended to clarify that the definition of disability is to be construed broadly in order to provide maximum coverage. Therefore, courts and other covered entities should not focus on questioning whether a person is legally protected, but rather on avoiding discriminatory actions.

The first of the three prongs of the definition applies to anyone who actually has a substantial limitation. The second prong covers individuals who have a "record of" an impairment although they are currently not impaired in any way. For example, an individual with cancer may have taken significant time off from work for chemotherapy. Years later, a potential employer, noticing the gap in employment, may decide not to hire that individual even though the individual is currently not impaired in any way. If the decision not to hire the individual was based on the individual's medical history, the individual would be covered by the ADA because of the past "record of" a disability.

The third prong of the ADA definition of disability covers individuals who are "regarded as" having an impairment by a covered entity. This prong covers (1) individuals who are believed to have impairments that they do not have or (2) individuals who are believed to have

substantially limiting impairments when, in fact, the impairments are not so limiting. For example, a person with severe burn scars who is not substantially limited in any way may be treated as having substantial limitations.

Individuals Protected by the ADA

The ADA protects qualified individuals with disabilities. An individual is qualified (e.g., to be a witness, juror, or other participant) when he or she meets the essential eligibility requirements for participation.^[13] Eligibility requirements for participation in court programs must not unnecessarily exclude persons with disabilities and must not be based on stereotypes, speculation, or arbitrary bases. Instead, the determination of whether a person with a disability is qualified must be made on a case by case basis. When determining whether someone is qualified, courts must take into account whether he or she is qualified with or without (1) reasonable modifications to their policies, practices, and procedures, (2) provision of auxiliary aids or services, and/or (3) removal of architectural and communication barriers. For example, a potential juror who is blind or deaf will be qualified to serve if reasonable modifications or auxiliary aids (such as large print, a reader, or a sign language interpreter) are provided.

The ADA also provides protections against discrimination for individuals who have a known relationship or association with persons who have disabilities. For example, a woman who does not have a disability is a defendant in a criminal proceeding; she seeks the presence of her husband at the trial, so that he can be informed about the proceeding and support her. Her husband, who is deaf and uses an oral interpreter as his preferred means of communication, requests and is denied an interpreter. Both the husband, who has a disability, and the woman, who is associated with a person with a disability, would be individuals protected by the ADA in this instance.^[14]

Activities Covered by the ADA

All services, programs, and activities of a court are covered by Title II's nondiscrimination mandate. These activities include the juror selection process,^[15] trials, hearings, mediations,^[16] meetings, courthouse security procedures, detention, courthouse weddings,^[17] and access to information, libraries, publications, websites, dispute resolution programs, and seminars offered by the court. The ADA protects all participants, including parties, witnesses, jurors, observers,^[18] attendees at events, and attorneys.^[19] Title II applies both to participation in the programs of the court and to the physical accessibility of courtrooms and courthouse structures. It applies to activities carried out by entities with which courts contract for services, such as security, transcription, and record retention.

The reach of Section 504 and the ADA is at least as broad as that of Title VI of the Civil Rights Act of 1964,^[20] which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. For example, the State of Georgia's rule on interpreters has specifically set out other court-managed functions subject to Title VI, such as information counters, intake or filing offices, cashiers, records rooms, *pro se* clinics, and detention facilities.

Title II does not reach certain internal administrative functions of the court that are not open to the public, such as regular meetings for courthouse personnel. However, a court may have to provide reasonable accommodations to court employees with disabilities under the employment (Title I) provisions of the ADA.

Reasonable Modification of Policies

Courts must modify their general policies, practices, and procedures when necessary to allow a person with a disability to participate equally in court activities. A court may need to modify policies, rules, prohibitions, requirements, and procedures to accommodate a person's disability, even if "this is the way we've always done it." Changes are required as long as they are necessary and reasonable and do not fundamentally alter the court program. Fundamental alterations are those that are so significant that they alter the essential nature of the program, service, or activity being provided. The court bears the burden of establishing that a fundamental alteration would result.

Many policy modifications affect so many people with disabilities that policy changes and plans for accommodation should be made in advance of a request. Policies that commonly need to be modified include:

- Security screening methods, to accommodate mobility devices (wheelchairs, crutches), communication disabilities, or medical devices such as pacemakers;
- Policies banning animals, to allow service animals;
- Policies prohibiting food, liquids, or medication, to allow a person with a disability that requires him or her to take medication or eat/drink to do so while in court;
- Policies requiring in-person attendance at hearings or meetings for a person who, because of a disability, cannot physically come to court;
- Hearing schedules or briefing schedules, which may need to be adjusted to accommodate the needs of a person with a disability, if the need for adjustment is related to the disability;^[24]
- Policies banning electronic devices in a facility, to allow an individual who needs an accommodation involving such a device to keep it.

Other modifications can be carried out on request, as appropriate to the particular needs of an individual with a disability. However, it is important to have procedures to consider such requests, to train staff to recognize a request, and to inform people with disabilities how best to make requests.

See Part VI, Developing an Accommodation Protocol.

Effective Communication

Courts must ensure that their communications with participants with disabilities are as effective as their communications with others. This requirement applies to all communication-related court activities and information including: hearings, jury deliberations, websites, electronic communications such as forms and documents, announcements, court decisions and orders, signage, and others. In order to accomplish this obligation, courts must be prepared to

provide auxiliary aids and services for people with communication-related disabilities, including vision, hearing, and speech disabilities.

Auxiliary aids and services for people with hearing disabilities include qualified sign language and oral interpreters, note-takers, written materials or notes, amplification, assistive listening systems, real-time captions, and open or closed captioning on videos (including those on websites).

Auxiliary aids and services for people with vision disabilities include qualified readers, audio texts, Braille, screen reader software, and large print. Accessible electronic and information technology, such as accessible websites, tactile keys, and audio output on kiosks, and electronic documents in accessible formats are also auxiliary aids.

Auxiliary aids and services for people with speech disabilities may include the provision of pens, pencils, and note paper to write notes; a computer available to type back and forth; flashcards; alphabet boards; communication boards; or other communication aids.

Auxiliary aids are not one-size-fits-all. Thus, a sign language interpreter will not achieve effective communication for a person who is hard of hearing and does not know sign language. Courts need to respond to requests and give primary consideration to the individual's choice of auxiliary aid. However, courts need to be prepared to provide auxiliary aids, for example, by having procedures for requesting auxiliary aids and by having contracts in place for sign language interpretation and Braille. Moreover, some communication accessibility must be done in advance, for example by building accessibility into websites and other methods of information dissemination.

The court does not have to provide auxiliary aids or services that would impose an undue financial or administrative burden or result in a fundamental alteration to its program. (See discussion above.) For example, it would be an undue burden (and probably not necessary) to have a sign language interpreter available at all times to assist walk-in participants. But upon request, or once it becomes apparent that an interpreter is necessary, the court should arrange for an interpreter to be available at a specific time.

See Part III – Removing Communication Barriers.

Integrated Settings

Court programs, services, and activities must be provided to people with disabilities in the most integrated setting appropriate to each person's needs. The ADA's "integration mandate"^[22] provides that segregation and isolation are forms of discrimination and should be avoided to achieve equal opportunity. For example, if a court held a hearing in an inaccessible room and offered to broadcast it by closed circuit television in an accessible space for participants or observers with mobility disabilities, this would be considered a form of discrimination, as it would unnecessarily segregate people with disabilities. An appropriate solution would be to move the hearing to a location that is accessible to everyone.

Physical Accessibility

Courts cannot allow physical accessibility barriers to prevent participation by people with disabilities, such as mobility impairments, in court activities. Physical accessibility changes must be made to existing buildings as needed to ensure that the programs provided in the facility are accessible when viewed in their entirety, unless, doing so would fundamentally alter the program or pose an undue burden on the court system. This does not necessarily require accessibility in every building, every room, or every area. However, it does require enough accessibility for individuals with disabilities to equally participate in the court's programs and services.

Buildings constructed since the effective date of the law must be fully accessible in accordance with federal accessibility standards and Oklahoma accessibility standards. In buildings that have been altered since the effective date of the relevant law (ADA or Rehabilitation Act of 1973, or Oklahoma law), the altered areas are required to be accessible to the maximum extent feasible. In addition, the path of travel to the altered area must be made accessible to the extent the costs are not disproportionate to the cost of the alteration. Accessibility costs over 20% of the cost of the alteration are considered disproportionate.

See Part IV, Program Access – Removing Common Barriers to Physical Access.

PART II: Removing Common Barriers to Access to Court Programs

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General Considerations

The most important thing court officials can do in their day-to-day interactions with people with disabilities is to treat individuals with disabilities with the same courtesy, dignity, and respect that they afford everyone else.

A person with a disability may be able to access every feature in a courtroom but, may be left out of court activities if court personnel exhibit negative or unhelpful attitudes toward accommodation requests or requests for information. Eliminating these attitudinal barriers can help ensure that people with disabilities have full access to courts. There is no need to be nervous or apprehensive in talking and working with people with disabilities.

Court officials should consider the following tips when interacting with people with disabilities:

- Don't make assumptions about the person or the disability.
- Always speak directly to the person with a disability, not to a companion, assistant, or sign language interpreter. Speak in your normal tone and do not raise your voice unless requested.
- If the person doesn't understand you, try again. Don't become uneasy if you have to make repeated attempts at listening or speaking to ensure effective communication.
- Do not assume that a person with a disability needs help. If someone looks in need of help, it is appropriate to offer assistance with sensitivity. If your offer to assist is accepted, listen or ask for instructions before you act. Do not let it bother you if someone refuses your offer of assistance.
- Generally, assistance with doors is appreciated as long as you are clear of the area through which a person is traveling.
- Familiarize yourself with the court's accessibility features and accommodation protocol. When people with disabilities ask for accommodations, they are asking for what they believe necessary to fully and equally participate in that particular court activity, service or program.
- Respond courteously to all accommodation requests and be sure to direct the request promptly to appropriate personnel who can assist.
- Not all disabilities are apparent. Due to stigmas associated with certain disabilities, people may be reluctant to disclose a disability or ask for an accommodation. If someone looks as though he or she may not understand you, ask in a respectful way if there is an alternative method for facilitating communication with him or her.

For more information, see Part V – Working and Interacting with People with Particular Disabilities.

Interaction in the Courtroom

Judges are the embodiment of justice. Everyone looks to the court to ensure full and effective participation for people with disabilities. Top-level leadership and commitment are essential in

developing an environment where access is not only a requirement but an expectation for all individuals.

- Judges or other decision makers should carefully evaluate requests for accommodation made by people with disabilities who are appearing in the courtroom. Although the court makes the final decision regarding the most appropriate accommodation for each particular situation, allow yourself to be educated by people about their individual disabilities. The individuals have experience and information regarding their disabilities and are usually able to suggest the best way to accommodate their needs.
- Avoid calling unnecessary attention to any disability-related modifications being provided. To the extent possible, allow requests for modifications, auxiliary aids, or physical access changes to be made and resolved privately and off the record.
- Use person-first language. Put the person ahead of the disability in order to communicate your recognition that the person's disability is not the most important part of the person's identity. For example, it is more polite to say "the juror with a disability" than "the disabled juror" or "the handicapped juror."
- Train staff, including security personnel, to be sensitive to the needs of people with disabilities. Patience and flexibility are important because, just as with most other individuals, many people with disabilities will not be familiar with the procedures and practices of your court.

Accommodating Individuals Who Use Service Animals

For some individuals with disabilities, service animals are essential to navigating the environment, maintaining their stability or balance, or being kept aware of sounds and other aspects of the environment. Under the ADA, it is discriminatory to deny access to a person who uses a service animal in most circumstances. Individuals should not be separated from their service animals.

A court should modify any policy that excludes all animals from a building or program to permit people who use service animals to enter the building with their animals. In addition, courts should train staff about the legal requirements, as well as how to interact with people and their service animals. Also, staff should have refresher training on a regular basis (perhaps once a year).

The DOJ's 2010 revisions to the ADA regulations address service animals in much more detail than the original regulations and limit service animals to dogs. But service dogs are not limited to what we may have traditionally thought of as guide dogs, accompanying an individual who is blind and having a vest or other indication that the dog is a service animal. A service animal is any guide dog, signal dog, or other dog individually trained to work or perform tasks for the benefit of an individual with a disability. Not only can service animals guide individuals with vision disabilities, they can also help people with other physical and sensory disabilities, as well as those with psychiatric, intellectual, or other disabilities.

Among the types of work they can do, service animals can:

- Pull a wheelchair,

- Provide physical stability or balance for people with mobility disabilities,
- Alert individuals who are deaf or hard of hearing to another person's presence or sounds,
- Provide non-violent protection or rescue work,
- Retrieve items, such as medicine or telephones,
- Alert people with epilepsy and other disorders to an oncoming seizure,
- Alert individuals to the presence of allergens, and
- Help persons with psychiatric or neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

A person with a disability who uses a service animal cannot be required to provide certification, identification cards, licenses, special equipment such as vests, or proof of professional training. A service animal should, however, have a harness, leash, or other tether (unless the handler's disability or the nature of the task performed by the animal would prevent using one, in which case the animal must be under the handler's control through voice control or other means).

You may ask an individual only whether an animal is required because of a disability, and what work or tasks the animal is trained to perform. However, you should not ask these questions if the answers are readily apparent, and you cannot ask about the person's disability. If the answers to these questions reveal that an animal has been trained to provide assistance to a person with a disability, that person should be able to access all services and facilities while accompanied by the service animal.

You may ask an individual to remove a service animal from your building if the handler is not controlling the animal, it is not housebroken, its presence fundamentally alters the nature of your service, or it poses a direct threat to the health or safety of others that cannot be eliminated by reasonable modifications. The individual is responsible for caring for his or her service animal.

Although they are not considered service animals, miniature horses that assist people with disabilities must sometimes be admitted as well. Miniature horses have longer life spans than dogs and can be viable alternatives to dogs for people with allergies or whose religious beliefs preclude the use of dogs. The DOJ's 2010 revisions to the ADA rules require a state or local government to admit a person with a miniature horse if it has been individually trained to perform tasks for an individual with a disability and its admission is otherwise reasonable under the circumstances. Factors to be considered when deciding whether admitting a miniature horse is reasonable include the horse's type, size, and weight; the handler's control of it; whether it is housebroken; and whether it compromises safety.

In addition, there may be local laws that require courts to allow animals that accompany individuals with disabilities, with fewer restrictions on the types of animals and the purposes they serve.

The Department of Justice has issued two technical assistance documents that explain the service animal provisions of the 2010 amendments to the ADA regulations in a user-friendly way, with specific examples of their application.

See **Frequently Asked Questions about Service Animals and the ADA | PDF** (2015) https://www.ada.gov/regs2010/service_animal_qa.pdf and **Revised ADA Requirements: Service Animals | PDF** (2010), www.ada.gov/service_animals_2010.htm.

There is more explanation of the service animal provisions of the Title II regulations (found in section 35.136) in the DOJ analysis of the 2010 revisions.

See www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm.

Some courts are using courthouse facility dogs to provide support for crime victims, witnesses and others during legal proceedings. These dogs are not limited to working with people with disabilities and therefore are not covered by federal laws protecting the use of service animals.

Typical work done by courthouse facility dogs in the courtroom includes:

- Greeting children and parents who have come into a child advocacy center to initiate investigation of child sexual abuse;
- Accompanying a child during a forensic interview, where the child explains to a trained interviewer the details of an incident of sexual abuse or a crime of violence;
- Accompanying a child during the various phases of the investigation and prosecution of crime, including a defense interview, a competency hearing, and a courtroom trial;
- Attending drug court, mental health court, and other restorative judicial proceedings to provide an element of calm to people with disabilities and individuals in drug withdrawal;
- Accompanying vulnerable adult crime victims, including rape victims, developmentally delayed adults, and the elderly during court proceedings;
- Providing emotional comfort to family members of homicide victims during the trial and sentencing of the offender; and
- Providing a sense of normalcy during juvenile and family court proceedings.

For more information on courthouse dog programs visit: <https://courthousedogs.org/getting-started/best-practices/>

Accommodating Individuals with Cognitive Disabilities

Courts must accommodate persons with intellectual disabilities or cognitive impairments in a variety of settings. This guide does not address applications of the criminal laws' disability-related concepts (e.g., mens rea, intent, competence, diminished capacity, or insanity). What follows are basic tips and other information for courts in their efforts to ensure that people with cognitive disabilities have equal access to the justice system.

Cognitive disabilities include a wide variety of conditions affecting the ability to perform mental tasks.^[23] People with these impairments may have trouble learning new things, making generalizations from one situation to another, inferring information from social cues and body language, and/or expressing themselves through spoken or written language. Cognitive

disabilities vary widely in degree and type of limitation. Cognitive disabilities include learning disabilities, intellectual disabilities (formerly called “mental retardation”), autism, traumatic brain injury, and dementia.

The wide variance among the capabilities of individuals with cognitive disabilities complicates matters in the courthouse because a person with a significant intellectual disability will not have the same needs as a person who has attention deficit disorder or autism.

Many legal or courtroom-related terms and concepts are complex and may be difficult to understand. People with some form of cognitive disability, however, may be reluctant to disclose their disability or to disclose that they do not understand the information being presented. If you suspect that someone may be struggling to understand, you might say, “This is very complicated. May I explain this in a different way that may make it easier to understand?” The use of simple, easily understood language will benefit all participants – not only people with disabilities.

In some cases, courts must first determine whether an individual is a “qualified individual with a disability” under the ADA. In some situations, such as those involving a person with a cognitive disability appearing as a witness or as a potential juror, the court must determine whether or not that individual can carry out his or her duties in a courtroom. For example, if an individual is unable to understand testimony as a juror because of an intellectual disability, and no reasonable modifications are available to enable participation, he or she may not be “qualified” and can be excluded from serving. However, it is important to remember that individuals with cognitive disabilities will not generally be unqualified to serve as witnesses, spectators, or jurors. Courts cannot rely on generalizations, assumptions, or stereotypes and must conduct an individualized inquiry to determine whether an individual is “qualified.”

Courts must also provide reasonable modifications for individuals with cognitive disabilities unless they fundamentally alter the court’s programs and services. Keep in mind that many people with cognitive impairments may not be able to request accommodations effectively on their own and may need assistance in constructing appropriate accommodation requests, whether from the court or from their legal representatives. Examples of modifications may include the ability to take notes during a trial for a juror with a cognitive disability, or physically guiding an individual with a disability to a certain location in the courthouse because he or she would not understand verbal directions as to how to get to the specific location.

Accommodating Individuals with Mental Health Disabilities

Mental illnesses are medical conditions that disrupt a person's thinking, feeling, mood, ability to relate to others and/or daily functioning.^[24] Mental illnesses vary widely in terms of severity and type of impact on the individual. Serious mental illnesses include major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder, panic disorder, post-traumatic stress disorder, and borderline personality disorder.

As with other disabilities, courts must not exclude or limit participation of qualified individuals with mental illnesses. In determining whether an individual with a mental illness is qualified to fulfill the role of witness, juror, or other participant in a court program, the court needs to conduct an individualized analysis of the particular person in the particular situation and provide any necessary reasonable modifications. Most people with mental illnesses are capable of fulfilling their role and a court must not exclude them on the basis of generalizations, assumptions, or stereotypes.

In rare cases, a person with a mental health disability may pose a "direct threat" to the health or safety of others in the court. A person can be excluded from participation on this basis only if he or she creates a significant risk of substantial harm. The ADA requires courts to make a knowing, individualized determination – not based on myth, fear or stereotype – of whether an individual poses a threat, and to consider any possible available modifications to reduce or eliminate the threat. Courts may choose to exclude individuals who pose a threat but only in a manner consistent with their civil rights and other protections. (Note that Title II and the DOJ regulations omit any reference to the individual's actions that may constitute a direct threat to self.)

Accommodating Individuals Who Use Mobility Devices

The 2010 DOJ regulations, for the first time, address the circumstances under which state and local governments are obligated to accommodate various mobility devices. They are divided into two different categories:

- **Wheelchairs and other manually-powered mobility aids.** These include walkers, crutches, canes, braces, or similar devices. People using devices such as these must be permitted in any areas open to pedestrians.
- **Other power-driven mobility devices.** These include golf carts, electronic personal assistance mobility devices (EPAMDs), such as Segways, all-terrain vehicles, and any other mobility devices designed to operate in areas without defined pedestrian routes, but that are not wheelchairs. The 2010 regulation requires that, under the reasonable modification provision of the ADA, courts and other public entities must permit the use of these devices unless the entity can demonstrate that the class of mobility device cannot be operated in accordance with legitimate safety requirements that the entity has adopted.

The DOJ set out these new requirements because the choices of mobility devices available to individuals with disabilities have increased dramatically. Many devices, such as Segways, offer increased mobility and other benefits to people with disabilities, even though they were not necessarily designed for that purpose. The DOJ recognized that this fact complicates these issues and in the regulation gives public entities guidance to follow in assessing whether reasonable modifications can be made through the use of assessment factors such as the device's type, size, weight, dimensions, and speed; the facility's volume of pedestrian traffic; the facility's design and operational characteristics; whether the device conflicts with legitimate

safety requirements; and whether the device poses a substantial risk of serious harm to the immediate environment or natural or cultural resources. Public entities are encouraged to develop a policy so that they can be ready to handle any requests for use of other power-driven mobility devices. The DOJ gives this example of a type of policy that it suggests would be acceptable:

A county courthouse has developed a policy whereby EPAMDs may be operated in the pedestrian areas of the courthouse if the operator of the device agrees not to operate the device faster than pedestrians are walking; to yield to pedestrians; to provide a rack or stand so that the device can stand upright; and to use the device only in courtrooms that are large enough to accommodate such devices. If the individual is selected for jury duty in one of the smaller courtrooms, the county's policy indicates that if it is not possible for the individual with the disability to park the device and walk into the courtroom, the location of the trial will be moved to a larger courtroom.^[25]

Support Service Providers or Aides

Support service providers (or support persons) are often used by individuals who are deaf-blind and those who have intellectual disabilities or other cognitive disabilities, and may be relied upon by these individuals in the court context. Both the DOJ and advocacy groups have offered helpful guidance regarding support service providers (SSPs) and how they work with people with disabilities.

In its 2014 technical assistance document explaining the effective communication requirements of the 2010 ADA regulations, the DOJ first mentioned SSPs, explaining that

Many deaf-blind individuals use support service providers (SSPs) to assist them in accessing the world around them. SSPs are not ‘aids and services’ under the ADA. However, they provide mobility, orientation, and informal communication services for deaf-blind individuals and are a critically important link enabling them to independently access the community at large.^[26]

The American Association of the Deaf-Blind has described a support service provider as any person, volunteer or professional, trained to act as a link between persons who are deaf-blind and their environment. Typically working with a single individual, and acting as a guide and communication facilitator – i.e., the eyes and ears of the person who is deaf-blind – they serve two key functions: (1) providing access to the community by making transportation available and serving as a human guide while walking, and (2) relaying visual and environmental information that may not be heard or seen by the person who is deaf-blind. This is done in the person’s preferred language and communication mode.^[27]

According to the Arc of the United States (the Arc)^[28], people who serve as SSPs for individuals with intellectual disabilities may assist them with court appearances in several ways:

On the day of the hearing or trial, the victim may experience great stress and fear about testifying. In order to help the person gain confidence in testifying, a support person should be permitted to sit near the witness during the testimony. If the witness does want a support person, the prosecutor should be told before the court date so arrangements can be made. A program in Vermont uses a “Communication Specialist” (similar to an ASL interpreter for someone who is deaf) which allows the person with a disability to communicate effectively with the attorney, judge, court staff and others in the judicial system.^[29]

In addition to helping to reduce the anxiety of court proceedings for a person with cognitive or intellectual disabilities, a support person may also assist the person by explaining court proceedings in simple terms, explaining paperwork or follow-up obligations, or identifying signs of confusion or misunderstanding.^[30]

Generally, the courts should allow SSPs to accompany and assist individuals who are deaf-blind, have intellectual disabilities, or have other cognitive disabilities such as traumatic brain injury, as an appropriate reasonable accommodation or means of facilitating communication. The presence of a support person during attorney-client communications may have an impact on privilege in some circumstances.

The Department of Health and Human Services and the DOJ have recently stated that it may be necessary to “provide an aide or other assistive services” in order for a person with a disability to participate fully in a court event.^[31]

Determining Accommodations for Judicial Activities

The State of Oklahoma’s code and interpreter rules, discussed in detail in Part III below, under “Sign Language and Oral Interpreters,” include specific provisions governing the process of providing interpreters. There are no specific statutes or rules governing the courts’ processes for responding to requests for reasonable modifications, other auxiliary aids, or other modifications relating to judicial activities. This section offers some practical suggestions drawn from other states^[32] and the DOJ guidance. There is additional information in Part VI, Developing an Accommodation Protocol.

The public should be informed that requests are to be made to the ADA Coordinator for the specific court or jurisdiction. Notice of the designated individual and the process should be posted online, at the courthouse, and other locations regarding judicial services. This information should also be included in documents produced by the court for the public or parties, such as jury notices, notices of hearings, and information about mediation.

For issues that may occur regularly and do not relate to individualized needs, a court should ensure that policies in certain areas are in place in advance, without the need for a request. Topics would include service animal access (including circumstances under which a service animal may be excluded), security procedures, and mobility devices. Other on-the-spot or relatively simple accommodations may be made in the regular course of business, as a matter

of customer service, without the need for a procedure. For example, staff should be prepared to assist individuals with manual dexterity disabilities or vision disabilities in filling out a form (while maintaining privacy and confidentiality), or to write notes for simple, brief exchanges (such as picking up or filing a form, asking a question) with people with hearing disabilities who can communicate easily in writing.

In other circumstances, a person with a disability must generally make a request for a reasonable modification, auxiliary aid, or other accommodation.

Typically, courts require five to seven days' notice, but some require only two or three; courts should attempt to accommodate requests submitted within a shorter time frame than the one posted, if possible.

Some changes or accommodations may not require official action by a judge, but could be handled through the ADA Coordinator on a case-by-case basis as an administrative matter (perhaps with consultation with the judge, particularly if the request is related to a specific proceeding), such as large print or other accessible formats such as accessible electronic documents.^[33] Other examples include assistive listening devices for persons with hearing disabilities, readers for people with vision disabilities, and assignment to accessible spaces for people with mobility disabilities.

The court should have a process in place for documenting any denials of the informal requests or those that are handled by the ADA Coordinator, as well as a process for accepting more formal requests, with documentation for grants or denials of those requests.

Some states list in their rules the types of requests that cannot be granted administratively, such as an official transcript of court proceedings, requests that impact court procedures within a specific case (such as an extension of time or continuance,^[34] change of venue, or participation by phone or videoconference). Some states require that these requests be submitted by written motion to the presiding judge, who may consider an individual's disability in determining whether to grant the request.^[35]

The rules of some states explicitly provide that a court cannot extend the statute of limitations for filing an action because the requestor claims to have been delayed due to disability, nor can it provide accommodations that modify the terms of an agreement among parties. Additionally, the court cannot make changes to the law in granting an accommodation.

Some state rules require a statement of the disability necessitating the accommodation, in order to assess the appropriate accommodation. Some also require that medical and other health information be submitted under a cover sheet^[36] created by the court system designating the information as sealed medical and health information, mandating that the information be available only to the court and the person requesting accommodation unless, otherwise expressly ordered. If this process is followed, the court's decision as to whether to grant or deny the accommodation is made in writing or on the record, with the decision

entered in the proceedings file, if any, with a determination of whether or not the decision should be sealed. If there is no proceedings file, the decision is entered in the court's administrative files, with the same determination about filing under seal.^[37]

Activities Carried out by Third Parties, Including Contractors

A public entity must ensure that people with disabilities have an equal opportunity to access programs and services compared to others' opportunity. This obligation extends to all court programs and services, including deferral or diversion programs, other court-ordered treatment programs, and those provided or operated by private entities under contract. To the extent that courts contract with private agencies and providers to conduct court-related activities, they should ensure that in the performance of their contractual duties, contractors (and other third parties, such as any volunteers) comply with the non-discrimination provisions of Title II. In other words, the courts cannot contract away their Title II obligations; the courts are responsible for the actions taken by others as they carry out the court's programs and activities.

Courts referring individuals with disabilities to programs conducted by others should refer individuals with disabilities only to those that operate in ways consistent with the courts' obligations, including the provision of effective communication.^[38] For example:

- If a court has ordered a person with a mobility disability to participate in a group anger-management program, and the program is located in an inaccessible facility, it is not acceptable to offer the program to him individually in an inaccessible location, because the group interaction is a critical component of the program.^[39]
- If a court requires participation in a safe driving program by an individual who is deaf and was arrested for speeding, and the individual uses sign language as his means of communication, it is the court's obligation to ensure that at least some of the programs offered make available a sign language interpreter;^[40] if they do not, the court would be responsible for providing the interpreter.^[41]

This obligation on the court also extends to voluntary programs related to judicial services, even if those programs are not funded by the court or there is no contractual relationship. For example, if a person who is deaf and communicates in sign language wishes to participate in a mediation program for those of modest means, and he qualifies for the program, the court is obligated to pay for the necessary interpreter.^[42]

Similarly, the court is responsible for ensuring that other contractors, such as those providing security at building entrances or elsewhere in a facility, act consistently with the public entity's obligations. For example, guards should be aware of the provisions about service animals and should not exclude an individual with a legitimate service animal or ask unauthorized questions, as provided in the regulations.

PART III: Removing Communication Barriers

PART III: Removing Communication Barriers

One of the court's most important responsibilities involves communicating information effectively. When courts do not communicate effectively with people with disabilities, it can have a serious detrimental effect on the administration of justice.

Communication includes the exchange of information in all forms, including voice, sound, print, and electronic and information technology. Courts should be aware of the types of disabilities that impact communication, such as hearing, speech, and vision disabilities, as well as the auxiliary aids and services that are often necessary to ensure effective communication.

The court should assess each situation on an individualized, case-by-case basis, to determine if auxiliary aids and services are needed to ensure effective communication with people with disabilities. All participants in court proceedings, including parties, attorneys, witnesses, jurors, and even spectators (e.g., the spouse of a criminal defendant) have rights to effective communication under the ADA.

Examples of auxiliary aids and services used to accommodate people with hearing disabilities include:

- Assistive listening devices and systems
- Amplification
- Communication Access Real-time Translation (CART)
- Qualified sign language interpreters
- Qualified oral interpreters
- Note-takers
- Exchange of handwritten notes
- Transcription
- Open or closed captions of videos
- Telecommunications relay services

Examples of auxiliary aids for people with vision impairments include:

- Electronic documents in alternate formats
- Large print text
- Braille materials
- Qualified readers
- Taped texts
- Audio output mechanisms (audio description, audio recordings, etc.)
- Screen reader software
- Magnification
- Optical readers
- Audio description of videos
- Accessible websites
- Other accessible electronic and information technology

Examples of auxiliary aids and services for people with speech disabilities may include:

- Provision of pens, pencils, and note paper to write notes
- Keyboard devices such as a UbiDuo[®] or a computer available to type back and forth
- Flashcards
- Alphabet boards
- Communication boards
- Other communication aids

In selecting an auxiliary aid or service, courts must give primary consideration to the aid or service preferred by the individual because that individual is usually best able to identify the communication barriers that hamper participation.^[43] The court must honor the person's choice unless the court can demonstrate that (1) another equally effective means of communication is available, or (2) the use of the chosen means would result in a fundamental alteration in the service, program, or activity or would create an undue financial and administrative burden. An undue burden means "significant difficulty or expense relative to the operation of a public entity's program."

The public entity has the burden of proving fundamental alteration or undue burdens. Only the head of the entity or his or her designee (for example, a chief circuit judge) can make this decision, after considering all resources available for use in the funding and operation of the service, program, or activity. The decision must be in writing, with reasons for reaching that conclusion. If the person's choice would result in a fundamental alteration or undue burden, the public entity must still provide an alternative aid or service that provides effective communication, if one is available.

For example, an individual may request a document related to a court proceeding that begins in two days, in Braille. If it is impossible or impracticable to obtain the document from the court's contractor within that time, the court may address alternatives. These include providing a recorded version of the document or, if acceptable to the individual, a large print or accessible electronic version of the document. Someone who is totally blind would not, of course, be able to use a large print version, and other people with vision disabilities may not generally use electronic formats or may not have screen reading capabilities. Also, another possibility would be to have an individual employed by the court read the document aloud to the individual, with a Braille version to follow as soon as it is produced.

In considering whether effective communication means other than those requested by the individual are appropriate, it is important to consider the context in which the communication is taking place and its importance:

- For example, if a plaintiff who is deaf requests a sign language interpreter for a simple scheduling meeting, it may be possible to provide effective communication through written notes. This is provided the plaintiff understands written English, the meeting is brief, the note taker is qualified to understand and transcribe the terms used, and the plaintiff is able to participate effectively in the hearing.

- On the other hand, if the information being communicated is complex or lengthy (for example, a hearing to determine child custody), or the plaintiff who is deaf uses sign language to communicate, a qualified sign language interpreter is necessary for effective communication.

Generally, the complexity and high stakes involved in judicial proceedings often weigh in favor of providing the most effective means of communication possible.

Another option is to allow an individual the opportunity to use his or her own assistive technology products to achieve effective communication. For example, a person with cerebral palsy who has difficulty with speech may use an augmentative communication device. Denying a person the opportunity to use such a device would deny effective communication. However, a court is not required to purchase such a device for a person with a disability who does not already have the device.

In order to be effective, auxiliary aids must be provided in a timely manner, and in such a way as to protect the privacy and independence of the individual with the disability.

A court may not pass along to a person with a disability the cost of the aid or service in the form of a surcharge. While auxiliary aids must meet the individual needs of the person with a disability in the particular context involved, courts need to be prepared to provide certain auxiliary aids on a regular or as-needed basis. For example, courts should have procedures for requesting auxiliary aids and have contracts in place to provide qualified sign language interpretation, Braille, or other alternate format materials.

It is the responsibility of the court to provide accommodations related to its own activities, which include court orders, hearings, settlement conferences, and court-sponsored mediation. While in some instances the right to a court-appointed interpreter extends to an individual's preparation for the case and other consultations with their attorneys (for example, if the attorneys are court-appointed), courts are not necessarily required to ensure that individuals receive access to effective communication in activities that the court does not provide, require, or sponsor.^[44] For example, when an individual needs an accommodation to speak with an attorney, it generally is the responsibility of the attorney to ensure the individual is appropriately accommodated.^[45] It is also generally the responsibility of attorneys and their clients to ensure that accommodations are provided for in such non-court related activities as depositions, discovery, written communications, and settlement negotiations. Thus, for example, the party calling for a deposition of a deaf witness should provide an interpreter.

When the court is aware that an interpreter will be involved in the proceeding, the court should allow additional time for the proceeding.

Assistive Listening Systems

Assistive Listening Systems (ALS) are "binoculars for the ears." ALS increase the loudness of specific sounds and bring sounds directly into the ear. In addition, ALS improve the effectiveness of hearing aids and cochlear implants in environments that are noisy, have poor acoustics, and when there is a big distance from the speaker.

There are three types of systems generally used – Frequency Modulated (FM), infrared, or inductive loop technologies – each of which has their advantages and disadvantages.

FM systems are ALSs that use radio broadcast technology. They are often used in educational settings because they are wireless and offer mobility and flexibility when used with portable body-worn transmitters. However, sometimes when several FM based systems are used in the same building, there can be problems with cross over between rooms and channels.

Infrared systems guarantee privacy and are the appropriate choice for situations such as court proceedings that require confidentiality. Infrared systems work by transmitting sound via light waves in a 60-degree cone to receivers worn by users. Thus, the system is restricted to the room in which the equipment is installed. With the exception of high frequency lights and bright sunlight, there are few sources of interference with infrared systems.

Inductive loop systems utilize an electromagnetic field to deliver sound. They offer convenience to groups of t-coil hearing aid users because those users do not require body worn receivers. Loop systems can be used by non-hearing aid users through use of a headphone and inductive loop receiver because those users do not require body worn receivers.

All ALS systems have at least three components: a microphone, a transmitter, and a device for receiving the signal and bringing the sound to the ear. The 2010 ADA Standards for Accessible Design require receivers to have a jack to plug into a neck loop or a cochlear implant patch cord.

If a courtroom already has a microphone and a public address system for hearing people, it should be simple to patch in an infrared system. However, if a courtroom does not have a public address system, consideration should be given to the number of microphones to provide and who will use the microphones. Wireless microphones can be used with any system, by simplify running cables around the courtroom. However, wireless microphones raise security issues.

ALS should also be considered for the jury room. Small, portable infrared systems are available with multiple microphones in addition to a table-mounted conference microphone.

Some microphones should have a mute switch, such as those used on the bench when a judge calls up the attorneys for a private conversation.

Communication Access Real-time Translation (CART) Services

Communication Access Real-time Translation (CART) is a word-for-word speech-to-text service for people who are deaf or hard of hearing. A CART provider uses a steno machine, notebook computer, and Real-time software to provide an instant text display of speech on a screen, computer monitor or other display media for an individual or group. A CART can be provided in person or via an Internet connection.

The National Court Reporters Association provides recommended procedures regarding the provision of CART in courts. These recommended best practice procedures and other CART resources can be reviewed online at:

https://www.ncra.org/home/professionals_resources/professional-advantage/Captioning/captioning-resources-for-providers

Sign Language and Oral Interpreters

Interpreters for individuals who are deaf or hard of hearing fall into two primary categories: sign language interpreters and oral interpreters. When an interpreter is used to facilitate effective communication, the ADA requires that he or she be qualified. For example, being able to sign or finger-spell does not equate to being qualified to interpret. Someone who does not possess all the necessary interpreting skills to process spoken language into equivalent sign language and to process sign language into equivalent spoken language cannot provide effective communication. Therefore, a state or local court employee who can "sign pretty well" is not qualified to provide effective communication.

A qualified sign language interpreter must be able to interpret both receptively and expressively in sign language, in spoken English, and must do so effectively, accurately, and impartially, using any specialized vocabulary necessary. In order to be qualified to interpret in a legal setting, a sign language interpreter must be able to understand and effectively interpret the legal terms and procedures involved.

Another type of interpreter is an oral interpreter. Oral interpreters mouth a speaker's words silently to give higher visibility of the lips for added comprehension for people who are deaf or hard of hearing and use speech reading (usually people who were raised orally and do not know sign language, or who became deaf or hard of hearing as adults). Also, oral interpreters are skilled at pronouncing words clearly by their lips and may also use facial expressions and gestures. Oral interpreters are also skilled in quickly substituting words that are hard to lip read, all while keeping the content and emotion of the speaker's statement intact.

The obligation to provide impartial interpreting services requires that state and local courts provide an interpreter who does not have a personal relationship to anyone involved in the proceeding or a personal or financial stake in the proceeding. In non-emergency situations, allowing or requiring friends, family members, companions, witnesses, or attorneys to interpret is prohibited. There are a number of different sign language systems (Signed English and American Sign Language are the most prevalent) used by individuals who are deaf or hard of hearing, individuals who use a particular system may not communicate effectively through an interpreter using a different system. Therefore, when a sign language interpreter is required, state and local courts should provide a qualified interpreter who is able to effectively interpret using the same sign system as the individual who is deaf.

The presence of a sign language or oral interpreter does not violate legal privileges or confidentiality.

State and local courts may not require individuals who are deaf or hard of hearing to provide their own interpreters.

It is often necessary to employ more than one interpreter. Due to the high level of concentration and complex mental process required of interpreters, at least two interpreters should work in tandem if a proceeding exceeds an hour, so that way they can trade off responsibilities at regular intervals. When there are multiple deaf or hard of hearing persons present at a proceeding or meeting, it may be necessary to have several interpreters present. That way, each interpreter may take on a different role, such as interpreting for a particular person.

The Oklahoma Supreme Court is committed to ensuring equal access to justice for all individuals regardless of their ability to communicate in the spoken English language. Interpreters play an essential role in ensuring due process and helping court proceedings function efficiently and effectively. To further this important goal, the Supreme Court of Oklahoma has approved a credentialing program for interpreters in the Oklahoma courts, as recommended by the Board of Examiners of Certified Courtroom Interpreters. More information about the process as well as registries of current interpreters can be found online at: http://www.oscn.net/static/forms/aoc_forms/interpreter.asp

For languages there is also state wide contract with Universe.

Universe is a member of the American Translators Association, and is a certified Women-Owned Business Enterprise. Available services include:

- *24x7x365 Over-the-Phone Language Interpreters*
- *Document and Web Site Translation*
- *Foreign Language Desktop Publishing*

Universe Technical Translation, Inc.

Attn: Andreas Nordquist

Contract Administrator

9225 Katy Freeway, Suite 400

Houston, TX 77024

713-827-8800 Ext. 137

andreas@universe.us

The Judicial Council/Administrative Office of the Courts has produced a one-sheet bench card for judges, "Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom," summarizing the key points of the law and the rule and providing helpful suggestions for implementing them.^[50]

Two levels of courtroom interpreter certifications for spoken languages are recognized in the Oklahoma courts:

- "Certified Courtroom Interpreters" - the highest level of credential, and
- "Registered Courtroom Interpreters" - the second highest level of credential

A candidate must first become Registered, and then he or she may apply to take the examination to become Certified.

In addition, the Board maintains a list of "Provisional Status Interpreters." Provisional Interpreters do not possess an official certification and have not achieved the higher levels of training and qualifications required of Registered and Certified Interpreters.

Helpful specifications and guidance:

- It is not appropriate to use children, family members, or friends of a DHH individual as interpreters.
- If a DHH individual insists on using a friend or family member, the court is encouraged nonetheless to appoint a qualified interpreter who can monitor the non-licensed interpreter's competency and accuracy.
- Courts should take steps to determine whether a particular interpreter is suited to work in a court setting, by considering the interpreter's prior contact with the participants, his or her education and formal legal training, and prior experience with court proceedings.
- An interpreter should never be asked to participate in any activity other than interpreting for the DHH individual.

Protocol for making requests reportedly varies by judicial circuit.^[52] For example, means for making such a request include a verbal or written request to a judge's law clerk or administrative assistant, District Court Administrator, specified point-person within the circuit, or court's Clerk's office.^[53]

For more information on sign language interpreters, their ethical codes of conduct, and the roles they play in legal proceedings, see Appendix I of this manual.

Communication Support Specialists

Communication Support Specialists (CSS) have training and experience in communicating with persons with cognitive disabilities, learning disabilities, developmental disabilities, intellectual disabilities, traumatic brain injuries, autism spectrum disorders, and some mental illnesses.

The CSS works with the parent and their treatment professionals to determine any accommodations and assistance needed in order for the person to understand and communicate meaningfully in the proceeding and provides the identified accommodations in the either group child welfare meetings, judicial proceedings or both. Communication may include comprehension, ability to express thoughts and feelings, ability to manage behavior in a way that allows for effective communication, ability to understand written documentation, or any other variable involved with imparting or exchanging information in an interactive setting such as a DHS meeting or Court hearing.

Examples of accommodations are:

- requesting that questions and terminology be simplified

- checking in with the person with the disability about their level of understanding
- obtaining breaks when necessary
- and using alternative means of communication such as charts, diagrams and colored calendars when necessary to allow the individual to understand and communicate.

In order for a person requesting the services of a Communication Support Specialist through the Oklahoma Communication Support Project to receive them, the person must demonstrate that: a) they are a person with a disability and b) they need accommodations to effectively communicate and understand the proceedings.

Requests for a Communication Support Specialist can be initiated by the individual, a family member, a DHS case worker, an attorney, or the presiding judge for the case. A communication support Specialist will only be assigned to a person who requests the service. This is a reasonable accommodation and cannot be forced upon a person with a disability

Anyone interested in requesting a Communication Support Specialists should contact the program coordinator at sooner-successpwd@ouhsc.edu

A motion is required to provide the service for court proceedings. A sample motion has been included in this guide.

SAMPLE MOTION: STATE OF OKLAHOMA

SUPERIOR COURT

FAMILY DIVISION

()Unit

Docket No.

Plaintiff

Vs.

Defendant

MOTION TO APPOINT A COMMUNICATION SPECIALIST

Now comes *(Name of person requesting communication support/assistance)* and moves the Court to appoint a Communication Specialist through the Oklahoma Communication Support Project (OCSP), OU Health Sciences Center, Sooner SUCCESS, Nicholson Tower, Suite 3901, 940 N.E. 13th, Oklahoma City, Ok. 73104, 405-271-2710, to assist me in overcoming disability-related barriers to communication for proceedings in the above referenced matter. I state the following in support of this request and also attach the following Memorandum of Law to support this request:

1. I have a disability that affects my ability to communicate. (State the name of the disability and how you think it will prevent you from communicating effectively at the proceeding, examples include having *“a severe learning disability that affects my ability to process*

information and read written documentation or PTSD that causes me to be unable to process and respond to information when I am placed under pressure.”).

2. Based on conversation with (either or both) the OCSP and my service providers, I believe the assistance of a Communication Specialist will allow me to participate in these proceedings more effectively than if I did not have such assistance. *(provide example of what the CSS can do to assist, or attach the form from the provider that includes that information and say “see attached OCSP form executed by my service provider.)*

3. I request that the Court appoint me a Communication Specialist for all proceedings in this matter so that I am not unfairly prejudiced due to my disability.

4. It is highly unlikely that I can meaningfully participate in any legal proceedings, without the assistance of a Communication Specialist.

5. The cost of the Communication Specialist is \$25.00 per hour plus mileage.

6. As a public entity, the state court system should assume the cost of providing modifications necessary under Title II of the Americans with Disabilities Act (ADA). 42 U.S.C. §12101 et seq. The ADA mandates that people with disabilities be “furnish[ed] with appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate...” in state court systems. 28 C.F.R. §35.160. The cost of furnishing such aids and services should be paid for by the Court and not the person with a disability. 28 C.F.R. § 35.130(f).

MEMORANDUM OF LAW

Title II of the Americans with Disabilities Act provides that

no qualified individual with a disability shall, by reason of such disability, be excluded from participation 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.

42 U.S.C. § 12132.

As defined by Title II and its implementing regulations, a “public entity” includes “any state or local government” or “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104. Courts are considered public entities within the meaning of Title II. Galloway v. Superior Court of District of Columbia, 816 F.Supp. 12, 19 (1993). See ABA/SJI, Opening the Courthouse Door: An ADA Access Guide for State Courts (1992) (“Opening the Courthouse Door”).

Persons with (***State the disability*** *Cognitive Processing Disorders, and Severe Learning Disabilities, Low IQ*), are considered disabled within the meaning of Title II. “Disability” is defined as a “physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(2); 28 C.F.R. § 35.104. A “mental impairment” is “[a]ny mental or psychological disorder such as mental retardation.” 28 C.F.R. § 35.104. “Communication” is a “major life activity.” Id.

For Title II purposes, a “qualified individual with a disability” is

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices . . . meets the essential eligibility requirements for receipt of services or the participation in programs or activities provided by a public entity. (Emphasis supplied).

42 U.S.C. § 12131(2).

28C.F.R. § 35.130 sets forth the discriminatory practices prohibited under the ADA by public entities. In pertinent part, this provision provides that

(b)(1) A public entity, in providing any aid, benefit, or service, may not...on the basis of disability--

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

28 C.F.R. § 35.130.

Title II also imposes certain affirmative obligations on public entities. Specifically,

[A] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

28 C.F.R. § 35.130(b)(7). Title II explicitly requires reasonable modifications in “policies, practices and procedures” to avoid discrimination on the basis of disability, placing the burden on the public entity to demonstrate that modifications would “fundamentally alter the nature of the program.” *Id.* Modifications are reasonable unless they constitute “a fundamental alteration in the nature of a program.” Alexander v. Choate, 469 U.S. 287, 300 (1985) (citation omitted).

Within the meaning of Title II and its implementing regulations, the Oklahoma Superior Court, Family Division/**or relevant court** is a “public entity,” and I am a qualified “individual with a disability” because I am eligible to participate in the proceedings noted above.

As public entities, state court systems are mandated by the ADA to address the needs of people with functional limitations and provide them with equal access to justice. Wood & Dooley, ‘Program Accessibility’: How Courts Can Accommodate People with Disabilities, 76 *Judicature* 250 (1993). Furthermore, states can be held liable for damages for failing to do so. See Tennessee v. Lane, 541 U.S. 509 (2004) (upholding the ADA's abrogation of sovereign immunity as applied to Title II violations involving access to courts).

As a public entity, the state court system should assume the cost of providing modification necessary under Title II. The ADA mandates that people with disabilities be “furnish[ed] with appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate...” in state court systems. 28 C.F.R. § 35.160. Furthermore, one’s right to Due Process in civil cases is violated if obstacles exist which restrict the person from a “meaningful opportunity to be heard.” Boddie v. Connecticut, 401 U.S. 371, 379 (1971). The cost of furnishing such aids and services shall not fall on the disabled person’s shoulders: “No surcharge allowed for services to cover costs of auxiliary aids or program accessibility.” 28 C.F.R. § 35.130(f). Charging the disabled individual for an equal opportunity to participate in the court system amounts to discrimination and violates Title II of the Americans with Disabilities Act.

WHEREFORE, based on the forgoing information and legal authority I request that the Court provide me with a Communication Support Specialist as a reasonable accommodation.

Signed: _____

Dated this _____ **day of** _____, **2019**

Text Telephones (TTYs)

“Text telephone” is a generic term for devices that provide access to real-time telephone communications for persons with hearing or speech impairments. Text telephones are also known as TTYs and TDDs (telecommunications devices for deaf persons). Like computers with modems, text telephones provide keyboards for typing conversations, visual displays for callers, and receiving parties who are connected over standard telephone lines. A TTY is required at both ends of the conversation.

Generally, the ADA doesn’t require that a court have a TTY, partly because every state is required by law to have a free telecommunications relay service (TRS). However, some courts have chosen to have a TTY for incoming and outgoing calls, because of the ability to conduct calls more quickly without a third person.

A court that has a TTY should include the dedicated TTY phone number on all court publications where the court's main telephone number is listed. Staff who place or receive TTY calls should be trained on how to recognize the sound of incoming TTY calls and how to handle them. In addition, staff should undergo refresher training periodically.

If a court provides public telephones, it must also provide TTY devices for public use.

In addition to these requirements about effective communication, the installation of text telephones is required under certain conditions. These include construction and alterations of buildings and facilities covered under Title II.

Telecommunications Relay Services

Courts can communicate with people who have difficulty using a telephone by using Telecommunications Relay Services (TRS), a service provided in each state. Oklahoma has developed its own system, called Oklahoma Relay, administered by Sprint. TRS facilitates communication between an individual who uses a TTY with one who does not. It is free, except for any long-distance charges that would apply, and available 24 hours a day by dialing 7-1-1.

There are several types of TRS. Any TRS call may be initiated by an individual with a hearing or speech disability who is not using a “traditional” or conventional telephone, or by a conventional telephone user. These types of TRS use different kinds of technology, but the process for using any of these is similar. If you are using a conventional telephone and want to place a call, you call 7-1-1 and reach a communication assistant (CA). The CA actually places the call and types what you say so the person you are calling can read the words on his or her TTY display. He or she types back a response, and the TRS operator reads aloud for you to hear over the telephone. If a person who is deaf or hard of hearing places a call by TTY, the process is reversed.

Relay callers are not limited in the type, length, or nature of their calls. The TRS operator is bound by a confidentiality requirement not to disclose the content of any TRS call. Courts should train employees who are responsible for making and answering phone calls about the TRS system so they can communicate effectively with people using the system. That way when employees answer the phone and hear, "Hello, this is the relay service. Have you received a relay call before?" the employee should not hang up. They are about to talk to a person who is

deaf, hard-of-hearing, or has a speech disability. The employee should take the time necessary to complete the call. (Because messages are transmitted through a third party, the calls generally take a longer time to complete than do phone-to-phone calls.)

The types of TRS that are generally available include:

- **Text to Voice TRS** — The operator relays the conversation by transmitting the text from the TTY display to the recipient through speech, and by transmitting the voice of the recipient to the TTY caller through text.
- **Voice Carry Over (VCO) TRS** — VCO TRS enables a person who is hard of hearing but, who wants to use his or her own voice, to speak directly to the receiving party and to receive responses in text form through the operator. No typing is required by the caller or the called party. This service is particularly useful to people who have lost their hearing but, who can still speak.
- **Hearing Carry Over (HCO) TRS** — HCO TRS enables a person with a speech disability to type his or her part of the conversation on a TTY. The operator reads these words to the called party and the caller hears responses directly from the other party.
- **Speech-to-Speech Relay (STS)** — With STS, a person with a speech disability uses an operator specially trained in understanding a variety of speech disorders. The operator repeats what the caller says in a manner that makes the caller's words clear and understandable. No special telephone is needed for this option.
- **Video Relay Services (VRS)** — VRS enables individuals who use sign language to make relay calls through operators who can interpret their calls. The caller signs to the operator with the use of video equipment and the operator voices what is signed to the called party and signs back to the caller. This type of relay service is offered on a voluntary basis by certain TRS programs. This option is helpful for people who use American Sign Language, and for people who cannot type on a TTY easily.
- **Internet Protocol Service (IP)** — IP allows individuals with hearing or speech impairments to communicate with an operator without the need for a TTY. With a computer and an internet connection, an individual can connect with an operator through a website and communicate with the operator through text while the operator verbally communicates via telephone with the other party.
- **Spanish Relay Service** — All states also provide relay services in Spanish for interstate calls, and some offer them for calls made within states. This is not a translation service; it provides relay services via TTY, VCO, and HCO from Spanish to Spanish.

In addition, Oklahoma Relay offers a CapTel service, which uses the latest in voice recognition software to display every word the caller says.

Oklahoma Relay Service uses state-of-the-art technology to bring relay services to customers. With Oklahoma Relay, you can:

- Store and refer back to information such as frequently dialed numbers, preferred call type, and long-distance carrier

- Utilize a wide array of technologies, such as teletypewriters (TTYs), Voice Carry-Over (VCO) and Hearing Carry-Over (HCO)
- Retrieve voicemail and answering machine messages
- Redial last number called
- Work with sensitive and well-trained Communication Assistants who handle each call with complete confidentiality

The Relay Service routinely monitors performance to ensure continuously high-quality services.

For more information on the different forms of TRS, see the various fact sheets created by the Federal Communications Commission at: www.fcc.gov/cgb/dro/trs.html.

Video Remote Interpreting

Through video remote interpreting (VRI), a sign language interpreter at another location appears via video conferencing technology on a computer screen or videophone. Although this approach can be useful, especially when it is difficult in a particular area to find interpreters, or there is only short notice of need, it is only effective when properly configured and supported by a high-speed internet connection. The 2010 Title II regulations state that if VRI is used, a public entity must ensure it provides:

1. Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
2. A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; and
3. A clear, audible transmission of voices.

In addition, the entity should provide adequate training to the users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the equipment.

In legal settings where the consequences of miscommunication are high, VRI may not effectively replace in-person sign language interpreters. VRI may not be effective in lengthy or complex proceedings or those that involve substantive rights, cross-examination, or production of evidence. However, for short-notice situations or simple conversations, courts may consider contracting with a VRI service.

Public Service Announcements and Videos

Courts may choose televised public service announcements to transmit messages to local residents. For example, the court may fund a message for broadcast on television stations

about the local Court Appointed Special Advocates (CASA) program or may show an orientation videotape to prospective jurors. One of the best ways to meet the effective communication requirement for media productions that rely on sound is to provide captions for any spoken content. That way, people who are deaf or hard of hearing can access the content.

There are two different types of captioning available. Open captioning (such as the subtitles on foreign language movies) displays the captions directly on the screen where all viewers can readily see the captions. Closed captioning provides coded captions that are embedded in the video. Televisions manufactured after 1993 have a caption decoder chip that decodes the captioned video.

If a court works with a production company to create a video, the video should be captioned. Most production companies have the capability to provide either open or closed captions on request. If the video is to be displayed in the courtroom, the court should be sure that the television where the video is to be displayed is equipped with closed captioning and that courtroom personnel have the training to set closed captioning options on request.

For productions that rely on visual images, audio description can provide access for people with vision disabilities.

Alternative Formats for Print Documents

There are many ways to provide “alternative formats” to traditional print documents. These include formats that are accessible to people who are blind or have low vision (e.g., large print, Braille, electronic format, audio tape, reading aloud). First, keep on hand alternative formats of documents that people are likely to request, or that participants are required to read, such as forms, jury instructions, postings on bulletin boards, and notices. Make other accessible documents available upon request. These could include information for specific sessions or trials, or agendas and materials for meetings. Alternative format documents must be provided in a timely manner. Courts can require individuals to provide notice when they need a document in an accessible format, but should make sure the timing is reasonable, and should make every effort to have the material ready at the time it is needed. All materials provided by the court should state that they are available in alternative formats and give contact information for making such requests.

Some types of alternative formats include:

- **Electronic files:** Courts can deliver electronic copies of documents (e.g., through a CD, on a USB drive, or by email) depending on the technology needs of the person making the request. Accessible electronic documents are compatible with assistive technology, such as screen reading or magnification software, used by people who are blind or have other print disabilities. Word processing (e.g., Microsoft Word, Adobe, and other document creation programs) generally provides ways to ensure documents are accessible. For ease of use by assistive technology and for migration to HTML format, all documents should be created with styles that clearly indicate the document structure (e.g., Heading 1, Heading 2). It is important to provide written descriptions of any

images that are used in print documents, in a manner that can be read by a person's assistive technology. Guidelines for accessibility from the U.S. Department of Health and Human Services (HHS) are available at: <https://www.hhs.gov/web/section-508/making-files-accessible/index.html>

- **Audio Format:** Courts should make sure that any audio format versions of documents (e.g., CD, DVD, MP3, etc.) are recorded in a way that is clear and understandable for the user.
- **Braille:** Braille uses a system of raised dots to represent letters. Documents in Braille are embossed onto heavy paper and read by touch. Producing materials in Braille usually requires preparation time, training, and special equipment. A court may choose to purchase a Braille embosser and the necessary software to translate electronic documents into Braille, but it may be more convenient to contract this work out to an expert in Braille printing. However, since many people who are blind do not read Braille, it should not be the only type of alternate format provided.
- **Large Print:** Paper documents can sometimes be enlarged on a photocopier at 130%. This is ineffective for materials such as a printed, heavily formatted document, because people who have low vision need consistent font, print size, spacing, etc. A better approach is to create large print documents by formatting in a word processing program. Some guidelines to keep in mind are:
 - Use black text on non-glossy 8½" by 11" paper, preferably off-white.
 - Use Arial or another plain sans serif font in bold 18-point type. Set line spacing at 1.5.
 - Generally, use 1" margins (left-justified), replace tabs with two spaces, and remove italics and underlining.
 - Describe the graphics.
 - More information about large print can be found at:
<https://www.aph.org/accessibility-solutions/>
- **Reading aloud:** At times, it will be acceptable to read information, such as brief instructions, jury information, or directions aloud to an individual.

Websites

Increasingly, electronic and information technology is the medium for the exchange of information. More and more state and local governments, including court systems, are using the internet as a fast and often inexpensive way to inform and interact with the public. Courts use the internet to provide court information, publish opinions, rules, and case documents, accept filings, register for jury service, and more.^[54]

Many people with disabilities use "assistive technology" to enable them to use computers and access the internet. For example, people who are blind and cannot see computer monitors may use screen readers – device that speak the text that would normally appear on a monitor – and keyboard controls instead of a mouse. People who have mobility impairments and experience

difficulty using a computer mouse can use voice recognition software to control their computers with verbal commands. People with other disabilities may use still other kinds of assistive technology.

As more and more public services are provided over the internet, courts should be aware of potential barriers that people with disabilities face in accessing their websites. Designers may not realize how simple features built into a web page will assist someone who, for instance, cannot see a computer monitor or use a mouse. Implementing accessibility features generally is not difficult and will seldom change the layout or appearance of web pages.

An example of a barrier is a photograph of a courthouse on a court's website with no text identifying it. Because screen readers cannot interpret images unless there is text associated with it, a blind person would have no way of knowing whether the image is an unidentified photo or logo, artwork, a link to another page, or something else. Simply adding a line of hidden computer code, often referred to as alt-text, to label the photograph "Photograph of County Courthouse," will allow the user who is blind to make sense of the image. Fillable forms are also common barriers, because the form text and boxes are not presented to a screen reader in the right order and the boxes often do not have labels that a screen reader can understand. Similarly, a video with sound will not be understandable to a person who is deaf, without captions. Without an option for large font and high contrast, some people with low vision cannot use a website.

The Department of Justice has long made it clear that the websites of public entities, such as courts, are generally required to be accessible for people who use assistive technology. Since 2004, the DOJ's settlement agreements with cities and counties^[55] have included commitments by the public entities to ensure accessibility of their websites. Originally the agreements referenced the DOJ's 2003 publication, "Accessibility of State and Local Government Websites to People with Disabilities," which explains many of the issues involved in creating accessible websites.

The publication is available online at the DOJ's website, www.ada.gov/websites2.htm and is reproduced in Appendix G to this guide.

In 2010, the Department of Justice began steps to incorporate accessibility standards for the web and other electronic communications into its Title II regulations. The progress of this rulemaking can be followed at: www.ada.gov/anprm2010/anprm2010.htm.

Even without final (or even proposed) web accessibility standards, the DOJ has consistently required in settlement agreements, as early as 2009, that local government websites follow the Web Content Accessibility Guidelines (WCAG) of the Web Accessibility Initiative for creating and adding accessible web-based information. They are at www.w3.org/WAI/intro/wcag.php. The DOJ currently requires compliance with WCAG 2.0 Level A and Level AA Success Criteria and other Conformance Requirements (WCAG 2.0 AA).^[56]

In addition, the DOJ agreements also now typically require that public entities name a web accessibility coordinator, retain an independent consultant to perform an initial and annual assessment of the website and online services for compliance, train staff, and conduct testing via automated means as well as with people with disabilities.^[57]

The 2003 DOJ publication^[58] suggests the following voluntary action plan for providing accessible websites:

- Establish a policy that web pages will be accessible and create a process for implementation.
- Ensure that all new and modified web pages and content are accessible:
 - Web content is accessible if it can be used and understood by everyone. Generally, this means that the coding underlying a Web-based page must be done in a certain way so that the information being translated through assistive devices (a screen reader for example) is accessible. That coding is often invisible to users who do not have a disability, but for those who do have a disability, it is essential.
- Develop a plan for making existing web content more accessible. Describe the plan on an accessible web page. Encourage input on improvements, including which pages should be given high priority for change. Let people know about the standards or guidelines that are being used. Consider making the more popular web pages a priority.
- Ensure that in-house staff and contractors responsible for web page and content development are properly trained.
- Provide a way for visitors to request accessible information or services by posting a telephone number or e-mail address on your home page. Establish procedures to assure a quick response to users with disabilities who are trying to obtain information or services in this way.
- Periodically enlist disability groups to test your pages for ease of use and employ this information to increase accessibility.

For more information about website accessibility requirements and resources, see Appendix G.

For guidance in performing a preliminary review to check for accessibility, visit www.w3.org/WAI/eval/preliminary.html. This site offers web accessibility evaluation tools (or web checkers) that are software programs or online services that help determine if a website meets accessibility guidelines. In addition, the standards developed by and for the federal government are at www.section508.gov or www.access-board.gov.

Other Electronic and Information Technology

In addition to these approaches, courts should take the following steps:

- Use plain text in e-mails.
- If you send e-newsletters, e-mail blasts, or PDF documents, use an accessible format.

Other forms of electronic and information technology should also be accessible. Some court systems are implementing self-service kiosks for check-in, payments, and information. Such

kiosks often have accessibility barriers, such as touch screens that require vision to operate. These kiosks should be accessible for people who use wheelchairs as well as people with vision and hearing disabilities. The U.S. Access Board has developed standards of accessibility for such equipment. View the final ICT Standards and Guidelines at: [**https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule**](https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule)

Courts should also be aware of the need to ensure access by individuals with disabilities, such as parties and attorneys, to court documents that are filed electronically in the official court record. For example, these documents should be available upon request in an accessible format readable by screen reader technology. See the DOJ settlement agreement with Orange County Clerk of Courts, Florida, App. D.

For more information on the different types of auxiliary aids for people with disabilities and a sample policy for providing such accommodations, scroll to item 4 at: [**https://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/technical-assistance/index.html**](https://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/technical-assistance/index.html)

PART IV: Program Access
– Removing Common
Barriers to Physical
Access

PART IV: Program Access – Removing Common Barriers to Physical Access

Existing Facilities

If a courthouse is inaccessible because doorways are too narrow, restroom facilities are inaccessible (including through lack of accessible signage), courtrooms are not equipped with auxiliary listening systems, or steps are the only way to get to all or portions of a facility, people with mobility, visual, and hearing impairments may not be able to fully participate in jury duty, attend hearings, and gain access to other court services. Title II requires state and local courts to ensure that their programs, services, and activities are accessible to people with disabilities located in existing buildings, unless doing so would fundamentally alter a program, service, or activity or result in undue financial or administrative burdens. This requirement is called *program access*.^[59]

In the years since the ADA took effect, public facilities have become increasingly accessible. In the event that changes still need to be made, there is flexibility in deciding how to meet this obligation. Although in many situations providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method, a court system may pursue alternatives to structural changes in order to achieve the necessary access. The court can:

- relocate the program or activity to an accessible facility;
- provide the activity or service in another manner that meets ADA requirements; or
- make modifications to the building or facility itself to provide accessibility.

The Department of Justice *ADA Title II Technical Assistance Manual* includes the following illustration:

D, a defendant in a civil suit, has a respiratory condition that prevents her from climbing steps. Civil suits are routinely heard in a courtroom on the second floor of the courthouse. The courthouse has no elevator or other means of access to the second floor. The public entity must relocate the proceedings to an accessible ground floor courtroom or take alternative steps, including moving the proceedings to another building, in order to allow D to participate in the civil suit.

...[However], when choosing a method of providing program access, a public entity must give priority to the one that results in the most integrated setting appropriate to encourage interaction among all users, including individuals with disabilities.^[60]

Many older courts have witness stands and jury boxes that are inaccessible to people who use wheelchairs. These courts should determine in advance how to arrange for the people with disabilities to participate. That way, court proceedings do not need to be disrupted or delayed and participants with disabilities do not need to be embarrassed.

Program access is an ongoing obligation and many courts have been covered by Section 504 of the Rehabilitation Act for many years. Therefore, it is important to periodically assess accessibility of court facilities and continue to make accessibility improvements over time.

When a court building is not fully accessible, the court should:

- Utilize the Court's Disability/Reasonable Modification protocol to anticipate how alternative arrangements or relocation may be arranged to ensure that an individual with a disability has the opportunity to fully participate; and
- Regularly maintain the court's existing architectural, mechanical, and physical accessibility features. If accessibility must be disrupted to perform required maintenance, the work should be scheduled during off hours if possible.

Setting Priorities

Accessibility should be proactively addressed by assessing and identifying barriers, planning to remove barriers, and carrying out the plans in a timely manner. When planning accessibility-related architectural and structural improvements, court systems must ensure that they meet applicable state and federal requirements, briefly outlined below. In addition, note that these accessibility features are applicable not only to areas of facilities used by members of the public but those used by detainees as well.^[61]

If a court system cannot renovate or remove all inaccessible barriers, priority should be considered as follows:

- **Parking, Approach, and Entrance:** Access must be provided to the courthouse from parking areas, public sidewalks, or public transportation stops that abut or are located on court property. These can include installing accessible parking spaces, widening entrances, constructing ramps, or repairing sidewalks. If the main entrance to a courthouse cannot be made accessible, signage should be posted to direct visitors to the accessible entrance. If shuttle services, such as by van, are provided from parking areas, these should also be accessible.
- **Public and Program Access:** Access must be provided to and within the rooms and spaces where court programs and activities are conducted, including:
 - **Courtrooms:** jury selection and juror assembly rooms, deliberation rooms, judges' benches, jury boxes, witness stands, stations used by clerks, bailiffs, deputy clerks, court reporters, litigants, and counsel. Accessibility elements may include ramps, platform lifts or elevators, clear floor space large enough for a wheelchair, wider doors, Braille signage, assistive listening systems, visual fire alarms, and others;
 - **Supporting Facilities:** holding cells, restrooms, court floor holding cells, visitation rooms, cubicles and communication devices;
 - **Security Systems:** If metal detectors have been installed, provide an alternate means for people with disabilities who use mobility aids such as wheelchairs to pass through these systems such as the use of wands to conduct searches;
 - **Ancillary Areas and Restrooms:** A court must include access to public use areas serving the buildings, including public, witness, or attorney waiting areas,

cafeteria/snack bars, and restrooms. Restroom access includes installing accessible stalls and sinks, providing insulation for exposed pipes carrying hot water, adjusting the location of coat hooks, or installing grab bars and raised toilet seats.

- **Additional Considerations:** A court must take other necessary measures needed to remove barriers to accessibility. These measures can include providing accessible payment counters and information desks, installing accessible drinking fountains, installing no-slip surfaces where appropriate, providing accessibility to offices used by the public, and installing accessible public telephones.

New Construction and Alterations

Court buildings that are newly constructed or that have been physically altered since the effective date of Section 504 of the Rehabilitation Act or the ADA must be designed and constructed in compliance with federal and state accessibility requirements.

The ADA Standards for Accessible Design apply to buildings and facilities constructed and first occupied after the ADA went into effect. The standards are included as part of the DOJ's ADA regulations, and they address access for people with a variety of disabilities, such as those affecting mobility, hearing, and vision.

For almost 20 years, the original DOJ ADA regulations, issued in 1991, required that new construction and alterations meet the DOJ's ADA Standards or the Uniform Federal Accessibility Standards (UFAS).^[62] Both standards included requirements for generic spaces and elements (such as entrances, hallways, doorways, toilet facilities, and parking spaces), which applied to court facilities. But, they did not include standards for elements and spaces that are unique to judicial facilities, such as jury boxes, witness stands, and holding cells. As a result, these elements were required to comply with general accessibility standards.

The 2010 ADA Standards for Accessible Design, adopted by the DOJ on September 15, 2010, update the original standards and include specific requirements for court facilities, including courtrooms and jury rooms. These standards, rather than the 1991 Standards or UFAS, were made mandatory for state and local courts starting March 15, 2012.

The new standards bring significant changes in areas such as reach ranges, single user toilet rooms, accessible parking, entrances, employee work areas, urinals, and service and sales counters. In addition, the court-specific requirements are intended to balance several factors that, according to the DOJ, should be considered in the design process of a functioning courtroom. These include not only accessibility but the ability of the judge to maintain order; sight lines among the judge, witness, jury, and other participants; and the security of participants. Among other things, clear floor space for a forward approach is required for all courtroom stations (judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, court reporters' stations, and litigants' and counsel stations). Those areas that are likely to be used by the public, such as jury areas, attorney areas, or witness stands, must be on an accessible route. Other specifications for accessible work surface heights and toe and knee clearance also apply.

The DOJ based its decision to adopt the specific provisions about judicial facilities developed by the U.S. Access Board as part of the 2004 ADA Accessibility Guidelines, in part on comments received during the comment period on the new regulations and standards. Virtually all of the commenters who addressed judicial facilities and courtrooms favored adoption of the standards and stated the importance of accessible judicial facilities. This ensures that individuals with disabilities are afforded due process and have an equal opportunity to participate in the judicial process. The DOJ noted that the presence of architectural barriers negatively emphasizes an individual's disability; that the perception generated by makeshift accommodations discredits witnesses and attorneys with disabilities; that by planning ahead, jurisdictions can avoid those situations where it is apparent that someone's disability is the reason why ad hoc arrangements have to be made prior to the beginning of court proceedings; and that both courtroom grandeur and accessibility can be achieved.

The new standards address access to both public and restricted or secured areas of courthouses and judicial facilities and require the following:

- **Entrances.** The standards cover access to entrances that are used by the public as well as those that are restricted for use by courthouse personnel and detainees. Where two-way communication systems are used for controlled entry, they must have audible and visual signals for access by people with hearing or vision impairments. Certain exemptions are provided for entrances and doors used only by security personnel. In addition, access through or around security screening systems, including those with metal detectors is addressed for people who use mobility aids.
- **Courtrooms.**
 - *Jury Boxes and Witness Stands.* Jury boxes and witness stands in each courtroom are required to be accessible. Where these spaces are elevated, an accessible route must be provided for people unable to use steps. Sufficient space, as detailed in the standards, is required for people who use wheelchairs or other mobility devices. Such space is to be located within the defined area of jury boxes and witness stands.
 - *Judges' Benches and Courtroom Stations.* Access to spaces that are used by court personnel, such as judges' benches as well as clerk and bailiff stations can be provided on an as-needed basis, so long as certain conditions are met to facilitate post-construction adaptations. For example, steps to a judge's bench are permitted if wiring and other features to support later installation of a platform lift are included in the design.
 - *Spectator Areas.* Spectator seating in courtrooms is subject to criteria covering assembly areas generally. These provisions specify a minimum number of wheelchair spaces according to the seating capacity. Technical criteria for wheelchair spaces address the minimum size and connection by an accessible route.
 - *Platform Lifts.* Platform lifts are permitted as part of an accessible route to jury boxes; witness stands; raised courtroom stations including judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, and court reporters' stations; and depressed areas such as the well of a court.

- *Assistive Listening Systems.* Assistive listening systems provide access for people who are hard of hearing by enhancing the sound signal of audio amplification systems through a receiver. These systems are required in each courtroom (whether or not audio amplification is otherwise provided), to ensure access for people with hearing impairments to court proceedings, including both participants and observers. Assistive listening systems are generally categorized by their mode of transmission. There are hard-wired systems and three types of wireless systems: induction loop, infrared, and FM radio transmission. Not all technologies may be suitable for courtrooms. For example, infrared technology is typically a better choice than an FM system where confidential transmission is important. The U.S. Access Board has published technical assistance on assistive listening systems and devices at www.access-board.gov/research/completed-research/large-area-assistive-listening-systems/executive-summary.
- **Jury Rooms and Assembly Areas.** The standards cover access to rooms and spaces used for jury selection and for deliberations by empaneled jurors. An accessible route must serve these spaces and certain elements, where provided, such as drinking fountains and refreshment counters, must comply with applicable access criteria.
- **Holding Cells.** Both central and court floor holding cells or rooms are required to be accessible, as are visiting areas. Design criteria are provided for elements that may be provided within cells, such as toilets and benches.

The 2010 DOJ regulations and accessibility standards (2010 regulations or 2010 Standards) are found here: www.ada.gov/2010ADASTandards_index.htm.

The DOJ website has a summary of the changes at: www.ada.gov/regs2010/factsheets/2010_Standards_factsheet.html.

A separate, more detailed, discussion of the changes can be found at: www.ada.gov/regs2010/titleIII_2010/reg3_2010_appendix_b.htm.

Additionally, the Access Board's Courthouse Access Advisory Committee has an excellent guide on accessible courthouse design under the ADA and the ABA. "Justice for All: Designing Accessible Courthouses" (Nov. 15, 2006), available at: www.access-board.gov/attachments/article/432/report.pdf.

Historic Preservation

Many historic courthouses represent the importance of justice in the country's rich history. Courts may face significant challenges in making historic courthouses accessible for people with disabilities while preserving the historic character of these structures.

The ADA does not exempt historically significant facilities from coverage by the new construction and alteration standards. If any alterations are made to a historic courthouse – for example, installing or modifying a restroom or drinking fountain – a court must follow the accessibility standards to the maximum extent feasible. If following these standards would result in damage to the historic significance of the courthouse, alternative standards that

provide "a minimal level of access" may be used. The ADA provides that public entities are not required to make structural changes to historic facilities if doing so would "threaten or destroy" the historical significance of the property. This provision applies only to properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under state or local law. Courts should consult their local historic advisory board or the State Historic Preservation Division regarding such modifications. Members of the community, including people with disabilities, should be invited to participate in whatever process the court uses to make decisions regarding modifications.

Under the program access requirement, if court services cannot be offered to people with disabilities in historically significant structures, then the programs or services conducted in the facility must be offered in an alternative accessible manner or location when needed. For example, a rural county court that holds hearings in an inaccessible county courthouse may move proceedings to an accessible courtroom in a city-owned building.

PART V: Working and Interacting with People with Particular Disabilities

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Communication is central to most court activities. Therefore, in addition to the legal requirements for effective communication, courts that incorporate respect and courtesy toward participants with disabilities will find it easier to accomplish their goals. One guide that has helpful suggestions is the Office of Disability Employment Policy at the U.S. Department of Labor's "Communicating With and About People with Disabilities," available at <https://www.dol.gov/odep/pubs/fact/communicating.htm>.

In addition, consider following these tips:

Using Person-First Language

- Using "people-first" language is not a legal requirement, but facilitates communication by recognizing that a person's disability is not the most important part of that person's identity.
- In verbal and written communication, try to use person-first language consistently. Put the person ahead of the identifier of the disability in a given sentence. For example, saying "people with disabilities" is more appropriate and thoughtful than saying "disabled people" or "the disabled."
- Avoid language that is insulting or dehumanizing. Words like "crippled," "handicapped," "retarded," "deaf-mute," "wheelchair-bound," and "deformed," while once commonly used, are now considered offensive when applied to individuals with disabilities.
- Avoid categorizing people as "victims" of their disabilities or as "suffering from" or "overcoming" their disabilities.

Interacting with People Who Are Deaf or Hard of Hearing

There is a broad spectrum of hearing impairments, ranging from mild hearing loss to profound deafness. In addition to the legal requirements to provide auxiliary aids and services, when interacting with people who are deaf or hard of hearing, consider the following tips:

- There is also a wide range of communication preferences. If you do not know the individual's preferred communication method, ask.
- Make direct eye contact and speak clearly in a normal tone of voice. While speaking, try to keep your face and mouth visible.
- Before speaking to a person who is deaf or hard of hearing, get the person's attention by calling his or her name. If there is no response, lightly touch the person's arm or shoulder.
- If you are asked to repeat yourself several times, try rephrasing your sentence.
- Writing information down may facilitate communication.
- When speaking to a person who lip reads or is hard of hearing, speak clearly. Do not exaggerate your speech. Shouting does not help communication.
- The role of a sign language interpreter is to facilitate communication between the person who is deaf or hard of hearing and others. When speaking with an individual through an interpreter, you should speak directly to and look directly at the individual.

who is deaf, not the interpreter. Interpreters are not actually part of the conversation and, therefore, should not participate or be included in the exchange outside of their interpreting role. You should address yourself directly to the individual, rather than asking the interpreter questions (e.g., ask the individual who is deaf “What do you want?” rather than asking the interpreter “what does the deaf individual want?”)

- Good lighting is important to facilitate clear communication.
- Different people experience different degrees of hearing loss:
 - **Individuals who are hard of hearing** often experienced hearing loss after acquiring speech and language skills. They may use hearing aids, cochlear implants, and/or assistive listening devices to support their residual hearing or they may not use any augmentative devices. They may use lip reading skills to facilitate one-on-one communication and may use oral interpreters in group settings. Individuals who are hard of hearing commonly use spoken English as a method of communicating verbally and may or may not know how to communicate with sign language.
 - **Individuals who are "prelingually" or "culturally" deaf** are those who were born deaf or became deaf prior to acquiring speech and language skills. They most likely will use American Sign Language (ASL) or a form of English sign language to communicate and may or may not have lip reading skills. Some individuals may use hearing aids or cochlear implants to augment residual hearing.
 - **Individuals who are deaf-blind** are those who are deaf or hard of hearing and are also blind or have low vision that cannot be satisfactorily corrected with glasses, contacts, or surgery. They are not necessarily profoundly deaf and totally blind; they may have "tunnel vision" and be hard of hearing. To communicate, they may use tactile sign language (when another individual signs into the deaf-blind individual's hand), fingerspelling (spelling out words in sign language in the person's hand), or print-in-palm (tracing the letters of the alphabet in the person's hand). Individuals who are deaf-blind may also require either close or far proximity for clarity of visual field or they may need an interpreter to sign in a small space. For written communication, individuals who are deaf-blind may rely extensively on Braille. Depending on the type of vision loss they have and if they communicate using sign language, these individuals may or may not have other requirements to accommodate their communication needs.
 - **Some individuals who are deaf may have had only limited exposure to formal language (spoken or signed)** and may not be fluent in ASL or English. They may or may not have an effective gestural communication form that can be used to give or receive information. Providing communication access for individuals who have minimal linguistic competency will be most challenging. This process is most often facilitated by working with a certified hearing interpreter in conjunction with a Certified Deaf Interpreter or a person who is certified by the Registry of Interpreters for the Deaf.

Interacting with People Who Have Speech or Language Disorders

Speech and language disorders are inability of individuals to understand and/or appropriately use the speech and language systems of society. Such disorders may range from simple sound repetitions and occasional misarticulation to the complete absence of the ability to use speech and language for communication. Speech and language problems can exist together or independently. Some causes of speech and language disorders include hearing loss, stroke, brain injury, cleft lip or palate and vocal abuse or misuse. Frequently, however, the cause is unknown.

Speech problems affect how the communication sounds. Problems with speech can occur when speech sounds are distorted and the speaker cannot be understood; when there is no source of sound because an individual's vocal cords have been injured or removed; or when stuttering disrupts the natural rhythm of the oral message. Speech disorders include fluency disorders, motor speech disorders and voice disorders:

- A fluency disorder is an interruption in the flow of speaking characterized by atypical rate, rhythm and repetitions in sounds, syllables, words and phrases. This interruption may be accompanied by excessive tension, struggle behavior, and secondary mannerisms. Stuttering is a type of fluency disorder.
- A motor speech disorder is an impairment of speech arising from damage to the central or peripheral nervous system that can affect a person's speech, voice, and breath support for communication and swallowing. Often, Parkinson's Disease, Huntington's Disease, and Amyotrophic Lateral Sclerosis (ALS) lead to motor speech disorders.
- A voice disorder is characterized by the abnormal production and/or absence of vocal quality, pitch, loudness, resonance and/or duration, given an individual's age and/or sex. Vocal abuse and misuse are the most prevalent causes and preventable types of voice disorders.

Individuals with language disorders experience problems with comprehension (receptive) and/or the use of spoken, written, or other symbol systems (expressive). Language refers to a code made up of a group of rules that cover what words mean, how to make new words, how to combine words, and what word combinations are best in different situations. Receptive and expressive language disabilities often occur together.

When interacting with people who have speech or language disorders, consider the following tips:

- Give the person your full attention. Don't interrupt or finish the person's sentences. Listen patiently and carefully.
- Do not assume that a person with a speech impairment doesn't understand you.
- If you have trouble understanding the individual, ask the person to repeat the statement. If, after trying, you still cannot understand, ask the person if writing it down would be easier or suggest another way of facilitating communication. Don't pretend to understand the person.
- If you're not sure, repeat your understanding of the message in order to clarify or confirm what the person said.

- Provide a quiet environment to make communication easier.

Interacting with People Who Are Blind or Have Low Vision

Blindness is the total or partial inability to see because of a disease or disorder of the eye, optic nerve, or brain. Legal blindness is defined as a visual acuity of 20/200 or worse with the best possible correction. Someone with a visual acuity of 20/200 can see at 20 feet what someone with normal sight can see at 200 feet.

Vision impairment means that a person's eyesight cannot be corrected to a "normal" level. It is a loss of vision that makes it hard or impossible to do visual tasks without specialized adaptations. Vision impairments vary widely and include loss of visual acuity where the eye does not see objects clearly, loss of visual field where the eye cannot see all of the usual field of vision (e.g., tunnel vision or loss of central vision), loss of contrast, or blindness that limits vision to shades of light and dark. Visual acuity alone cannot tell you how much a person's life will be affected by vision loss. It is important to also assess how well a person uses the vision he or she has. Two people may have the same visual acuity, but one may be able to use his or her vision or blindness skills (e.g., orientation and mobility skills) better to do everyday tasks. Many people who are "blind" may have some usable vision that can help them move around in their environment and do things in their daily lives.

When interacting with people who are blind or visually impaired, consider the following tips:

- Identify yourself and address the individual by name so the person will know you are speaking to him or her.
- Speak in a normal tone of voice.
- It is appropriate to ask, "Would you like me to guide you?" Do not attempt to lead the individual without first asking. If your offer is accepted, let the person take your arm just above the elbow and allow the person to hold your arm and control her or his own movements. Be descriptive when giving directions; orally give the person information that is visually obvious to individuals who can see. For example, if you are approaching steps, mention how many steps.
- Offer to read written information.
- If the individual has a guide dog, walk on the side opposite the dog. Never touch or distract a service dog without first asking the owner.
- A person's cane is part of the individual's personal space, so avoid touching it. If the person puts the cane down, don't move it. Let the person know if it is in the way.

Interacting with People Who Have Mobility Impairments

Mobility impairment refers to a broad range of disabilities that include orthopedic, neuromuscular, cardiovascular, and pulmonary disorders. Many things can cause mobility impairment including disease (e.g., multiple sclerosis), spinal cord trauma (e.g., a motor vehicle accident), and disorders occurring at or before birth (e.g., cerebral palsy).

Many mobility disabilities are visible because individuals may rely upon assistive devices such as wheelchairs, scooters, crutches, and canes. However, there are other mobility impairments, such as arthritis, cardiovascular disease, or diabetes, which are less obvious or even invisible.

When interacting with people who have mobility limitations, consider the following tips:

- Avoid touching or leaning on a person's wheelchair, scooter or walking aid without permission. People with disabilities consider their mobility devices as part of their personal space.
- Be aware of an individual's reach limits. When providing materials to the public, whenever possible, place as many items as possible within the grasp of a wheelchair user. If a service counter is too high for a wheelchair user to see over, step around it to provide service. Also, have a clipboard available if filling in forms or providing signatures is expected.
- Sit down and/or position yourself at the same eye contact level when speaking with a wheelchair user for more than a few moments.
- Do not assume a person in a wheelchair wants to be pushed – ask first. If a person with a mobility impairment is having trouble with a door or other obstacle, offer assistance.
- Provide a chair for someone who has difficulty standing for an extended time.
- People with mobility impairments that may not be obvious may have medical needs that impact their ability to get around the courthouse. For example, a person with a heart condition may have trouble walking quickly or long distances and may need chairs or benches for sitting and resting.

Interacting with People Who Have Cognitive Disabilities

Cognitive disabilities (any disability affecting mental processes) vary widely. Cognitive disabilities include impairments in intellect, attention, problem solving, judgment, or behavior. This category includes individuals with intellectual disabilities, learning disabilities, traumatic brain injuries, and dementia. The main impediment for individuals with cognitive disabilities will often occur when directions are unnecessarily complicated or when there is ineffective communication.

A person with an intellectual disability (formerly called “mental retardation”) will not have the same needs as a person with a learning disability or autism. Individuals with minor learning disabilities may be able to function adequately despite the disorder, perhaps even to the extent that the disorder is never recognized; whereas a person with significant intellectual disabilities may need assistance with many aspects of daily living. It is important, however, not to approach an individual with any preconceived notions as to his or her specific capabilities. For example, not everyone who may speak slowly has a cognitive impairment.

When interacting with people who have cognitive disabilities, consider the following tips:

- Allow for additional time to speak with participants and for them to make decisions and respond.
- When necessary, repeat information using different wording or a different communication approach.
- Allow time for the information to be fully understood.
- If needed, move out of noisy, distracting areas to quieter or more private locations.
- Provide material in audio format (e.g., CD, DVD, MP3, etc.) rather than in written form.

This section will provide guidance for interacting with people with cognitive disabilities. It also provides suggestions for documents and forms, training for court personnel, and potential accommodations. Finally, it provides information about different types of cognitive disabilities.

1. Independence and Decision Making

- Most individuals with cognitive disabilities are capable of and have the right to live independently. Others can live independently with assistance. Most adults with cognitive disabilities do not have guardians and should not be required to obtain a guardian or have one appointed when not necessary.
- The Oklahoma Rules of Professional Conduct can be a helpful guide in considering how courts and court staff should respect the right of individuals with diminished capacity to make decisions.
- Rule 1.14 states that a "lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with" a client with a mental impairment. However, when a lawyer believes a client is at risk of substantial harm and cannot act in his or her own interest, the lawyer can "take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client, and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian."
- Family members and others who may support an individual with a cognitive disability may be helpful in assisting an individual in interacting with the court. However, unless the individual with a disability has a guardian, the individual should be consulted first before relying on others. Even when a guardian does exist, the individual with a disability should still be respected and is usually entitled to interact with whoever he or she chooses.

2. Respect

- Just like every other person who comes in contact with the court system, individuals with cognitive disabilities are entitled to respect. This includes the language used to discuss a person's impairment. The terms "mental retardation" and "retarded" are offensive and no longer used. While these terms may continue to appear in medical documents and some statutes (most have been changed), the terms should be avoided as much as possible even when referring to such materials. Usually, it will not be necessary to refer to a person's impairment at all. When a description is necessary, the terms "intellectual disability," "cognitive disability," "learning disability," or "developmental disability" can be used.

3. Documents and Forms

- People with cognitive disabilities may need assistance with documents and forms or for the materials to be simplified. Their impairment may impact their ability to read, write, and understand. Forms should be simple and only ask for the information that is

necessary. When a form is, by its nature, complex, such as a domestic relations financial affidavit, then it should be broken into parts and sections with questions asked as simply as possible. Many word processing programs allow writers to check the readability of a document. This can be an important tool when creating documents that involve directions or multiple paragraphs. Large print should be used for ease of reading. It also may be important to allow individuals to use tablets, laptops, or other assistive technology to complete forms.

4. Training for Court Personnel

- It can be beneficial to provide training to court personnel on working with people with cognitive impairments. Many staff, who are on the front lines, will have questions about what they should do when a person with a cognitive disability requests assistance or comes to a hearing. Organizations such as TARC in Tulsa (<http://www.ddadvocacy.net>) the Developmental Disabilities Council of Oklahoma (<http://okddc.ok.gov/>) the Developmental Disabilities Services of Oklahoma (<http://www.okdhs.org/services/Pages/default.aspx>), the Office of Disability Concerns (<https://www.ok.gov/odc/>) and the Center for Learning and Leadership: A University Center for Excellence in Developmental Disabilities (<https://ouhsc.edu/thecenter>) may be good resources in putting together a training or dialogue about the best ways to accommodate individuals with cognitive impairments.

5. Accommodations

- The accommodations necessary for individuals with cognitive disabilities will depend on the needs of the individual and the situation. Such accommodations may include:
 - using simpler language,
 - speaking slowly,
 - using pictures and visual tools rather than written statements,
 - providing another individual or allowing a trusted individual to assist,
 - taking breaks,
 - and repeating information.
- It is important to make sure that a person with a cognitive disability understands a question and is correctly answering the question. Some individuals with a cognitive disability may answer yes when the person really didn't understand the question. To ensure a person with a cognitive impairment understands the information that is told to him or her, ask the person to tell you in his or her own words what you said to him.

6. Common Impairments

It is important to note in listing the common impairments that the term cognitive disability is being used as a broad category. The impairments listed in this section may have little relation to one another.

a. Intellectual Disability

- An intellectual disability is present when an individual has an IQ of 70 or below and has two areas of adaptive functioning scored at 70 or below as well. Adaptive functioning includes, but is not limited to, self-care, communication, home living, self-direction, functional academic skills, and mobility.
- The disability must begin prior to age 18. Often, intellectual disability is identified through psychological testing performed when the individual is in school. For older individuals with intellectual disabilities, it may be difficult to prove the diagnosis with documentation because the documents may be lost or no testing may have been done prior to age 18. In many instances, it should not be necessary for a person with an intellectual disability to provide documentation in order to receive an accommodation. Accommodations for people with intellectual disabilities will vary based on the situation, but may include reading forms to an individual, assisting a person in filling out forms, ensuring that the individual understands questions, asking questions in more than one way to make sure questions are understood, and in instances when it is appropriate, working with family members or other trusted individuals in the person's life.

b. Developmental Disability

- Developmental disability is an umbrella diagnosis for a variety of disabilities that begin prior to age 22. According to the federal definition, a developmental disability is a physical or cognitive disability or a combination thereof that begins prior to the age of 22, will continue indefinitely, and results in substantial functional limitations in three or more major life activities.
- Additionally, the individual needs lifelong or extended supports. Examples of developmental disabilities are cerebral palsy, autism, severe epilepsy, Down syndrome, and intellectual disabilities.
- It is important to note that many individuals with cerebral palsy, epilepsy and other developmental disabilities do not have intellectual deficits, while some do have such deficits. It is critical not to assume that a person who has a developmental disability also has an intellectual disability.
- Since the term "developmental disability" includes a broad range of people, it will depend on the circumstances as to what accommodations are necessary.

c. Traumatic Brain Injury

- People with traumatic brain injury (TBI) are often misclassified as having a mental illness or a developmental disability. While some people with TBI also have a diagnosis of a mental illness or developmental disability, TBI is not the same as these other diagnoses. A TBI occurs when an individual experiences a physical trauma to the brain. Moderate or severe TBI can have a profound impact on cognitive ability, motor functioning, and behavior.

- Symptoms can include: seizures, convulsions, loss of consciousness, confusion, agitation, combativeness, and coma. As a result of the conflicts in Iraq and Afghanistan, there has been a significant rise in the number of TBIs. Accommodations for people with TBI will once again depend on the circumstances.

d. Alzheimer's Disease and Dementia

- Dementia is an umbrella term referring to the loss of cognitive ability sufficient to interfere with one's ability to function in daily life. Dementia can impact memory, thinking, personality, planning, and social skills. Alzheimer's disease is the most common form of dementia. It is a degenerative and progressive brain disease that usually begins in older adults. Accommodations for people with dementia will often include providing memory aids and other assistance to compensate for losses in memory. Accommodations may also be necessary due to changes in mood and behavior of a person with dementia.

e. Autism Spectrum Disorder

- Autism Spectrum Disorder is the name of a series of neurodevelopmental disorders that impair an individual's ability to communicate and interact with others and is characterized by impaired social abilities. There is a wide range of symptoms, skills, and abilities that fall within the Autism Spectrum Disorder diagnosis.
- Prior to the DSM-5, Autism Disorder and Asperger's syndrome were separate diagnoses. They were combined as Autism Spectrum Disorder in the DSM-5. Accommodations will depend on the individual but might include communicating in more than one manner, speaking slowly and clearly, limiting sensory stimulation (avoiding loud noises, strong scents, and flashing lights), and allowing breaks as needed.

f. Learning Disabilities

There are a range of learning disabilities that may impact a person's ability to read, calculate, concentrate, write, and remember. Learning disabilities are different than intellectual and developmental disabilities, although an individual could have more than one such disability. Accommodations for learning disabilities will depend on the type of learning disability.

- **Dyslexia and Dysgraphia**

- I. Dyslexia is a life-long learning disability that impacts a person's ability to read, including word recognition, decoding and spelling.⁷⁰ Dysgraphia is a learning disability that impacts a person's handwriting as well as thinking and writing at the same time.⁷¹ Accommodations may include allowing an individual to use a tablet, laptop, or other assistive communication device. Accommodations may also include allowing the person to have someone read documents to them or assist with mathematical equations.

- **Attention Deficit Hyperactivity Disorder**

- I. Attention Deficit Hyperactivity Disorder (ADHD) is a disorder impacting the brain that includes inattention, hyperactivity, or impulsiveness or a combination of such traits. It can interfere with learning, functioning, or development. It impacts millions of children and will often continue into adulthood.
- II. Accommodations for individuals with ADHD may include minimizing distractions, organizing materials using color coding or graphs, breaking long or complicated information into chunks, and providing directions or instructions in multiple formats, such as orally, in writing, and using pictures or graphs.

Interacting with People with Mental Health Disabilities

There are many different ways in which mental health conditions affect people. Some individuals can be quiet and withdrawn as result of their condition, while others can be hyperactive and disruptive. Other behaviors individuals with psychiatric conditions can exhibit include depression, feelings of hopelessness, sadness, inattention, poor concentration, fatigue, anxiety, constant joking, fantasizing, or extreme fear or panic. As a result, individuals can experience difficulty coping with the tasks and interactions of daily life. Additionally, while many individuals take medication to control their conditions, some medications have side effects that create other difficulties for individuals.

One of the biggest challenges individuals with mental health disabilities face is overcoming the stereotypes or negative attitudes others have about them. With this in mind, some things to remember when working with individuals with mental health disabilities are:

- Provide clear information to the individual in a tone that is calm and respectful.
- If an individual becomes confused or agitated, try to break down the information being provided and, if possible, offer simple step-by-step directions. Do not assume a person who is upset or agitated will become violent.
- Let the individual know you are listening to him or her and care about what is said.
- If a person becomes agitated, try to direct him or her to a quiet location away from any confusion.
- Do not raise your voice or talk down or be patronizing to the individual.

Mental illness is a common disorder. It impacts one in six adults, according to 2016 data. The extent of any such impact depends on an individual's impairment. Most people with mental illness are fully capable of participating as litigants, jurors, and witnesses.

The federal regulations presume the following conditions are disabilities covered by the Americans with Disabilities Act because they limit brain function: major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia. Other types of mental illness are also covered if they substantially limit a major life activity.

This section will provide guidance on assessing credibility, the impact of medications, training for courtroom staff, the different types of mental illness, and accommodations that can be considered.

1. Assessing Credibility

In assessing the credibility of a person with mental illness, the individual may have atypical behaviors. For instance, the individual may not directly answer the question, may speak rapidly, or change the topic. Such behaviors on their own should not be determinative of whether what the person is saying is credible.

Even an individual who is experiencing a delusion should not be completely dismissed as lacking all credibility. A person may believe that something not real is happening, but he or she could still be able to recall an actual event that took place.

2. The Effect of Medication

There is often a misconception that if a person with a mental illness was to simply take his or her medicine that the impairment would be well managed. Medication is generally only one part, if at all, of what is necessary for mental health recovery. Many medications also have significant side effects. For instance, medications for individuals with schizophrenia may cause uncontrollable movements, including tics and tremors, drowsiness, dizziness, or restlessness. Antidepressants can cause nausea, weight gain, and fatigue. In instances in which a medication has either a strong negative side effect or makes a significant positive impact, it may be a necessary accommodation to take the timing of when the medication is taken and when it takes effect into consideration when scheduling testimony or a hearing.

3. Training for Court Personnel

There is not a specific statewide training that we are aware of precisely tailored to court personnel. However, there are a number of good resources and trainings that can provide broad information or which could possibly be adapted for court personnel. Mental Health First Aid is a course taught throughout the country that helps individuals understand and respond to signs of mental illness and substance disorders. The training provides skills for providing initial help to a person who may be developing a mental illness or substance use disorder or who is experiencing a crisis. More information about this training is available at:

[https://www.ok.gov/odmhsas/Prevention /Prevention Initiatives/Mental Health First Aid \(MHFA\)/index.html](https://www.ok.gov/odmhsas/Prevention /Prevention Initiatives/Mental Health First Aid (MHFA)/index.html)

Crisis Intervention Training (CIT) is a forty-hour training to assist law enforcement personnel to effectively assist individuals with mental illness and other brain disorders who are in crisis. CIT has developed a shorter eight-hour course called "Introduction to Behavioral Health and Addictive Disease," which could be valuable for court personnel. More information on this training is available at:

[https://www.ok.gov/odmhsas/Mental Health /Specialized Programs and Services/Correctional and Criminal Justice Programs/Crisis Intervention Team \(CIT\)/](https://www.ok.gov/odmhsas/Mental Health /Specialized Programs and Services/Correctional and Criminal Justice Programs/Crisis Intervention Team (CIT)/)

4. Accommodations

Accommodations for people with mental illness will depend on the situation involved and the needs of the individual. Some accommodations that could be considered include:

- providing breaks;
- scheduling the timing of court proceedings based on the timing and effects of medication or the impairment;
- providing information in alternative formats to ensure that it is understood;
- changing methods of interacting with witnesses or staff in the courtroom;
- changing courtroom locations;
- speaking slowly and distinctly;
- allowing an assistant to help the individual; or
- allowing the use of a service or comfort animal.

One technique for learning about accommodations that work for an individual is to ask what accommodations the person receives at school, work, or in other settings.

5. Children

According to the National Institute of Mental Health, half of all people who develop a mental illness begin to experience it by age 14. However, mental illness in children may not be identified or treated. Sometimes, the symptoms may differ from the symptoms in adults. For instance, a child who is experiencing depression may express it through irritability, whereas an adult may be more likely to express it through sadness. Warning signs of mental illness in children include: mood changes, intense feelings, behavior changes, difficulty concentrating, unexplained weight loss, physical symptoms such as headaches and stomach aches, physical harm, and substance abuse.

Another difficulty can be in the terminology used by the school system. Children may receive special education at school for a disability that impacts their learning. The special education system classifies a number of disabilities that qualify children for special education, but these classifications do not explicitly include mental illness. Thus, a child who is experiencing mental illness may or may not be included in special education. If he or she is, then the child may be found eligible under the "Other health impairment" category, the "Emotional and behavior disorder" category, or one of the other ten categories.

Online information sources:

"Treatment of Children with Mental Illness," National Institute of Mental Health, <https://www.nimh.nih.gov/health/publications/treatment-of-children-with-mental-illness-fact-sheet/index.shtml> (visited August 5, 2019)

Mental Illness in Children: Know the signs," Mayo Clinic <http://www.mayoclinic.org/healthy-lifestyle/childrens-health/in-depth/mental-illness-in-children/art-20046577> (visited August 5, 2019).

6. Common Impairments

While it can often be helpful to understand the distinguishing features of the common types of mental illness, there is also a danger in labeling a person with a specific diagnosis, including stigma and stereotypes. Just because a person has a specific type of mental illness does not mean that he or she will act in a certain way. A person also should not be defined by his or her mental illness. A man or woman may have a mental illness and be a successful lawyer, professor, teacher, family member, or neighbor. Such individuals should not be thought of solely by their diagnoses, and in most instances, such conditions should not necessarily be revealed or considered relevant.

Still, there are times when a diagnosis is helpful, particularly in determining what accommodations are necessary for a person with a mental illness. The most commonly used manual for diagnosing individuals with disabilities is the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, which is commonly referred to as the DSM-5.

The DSM-5 is the classification and diagnostic tool created by the American Psychiatric Association. The fifth edition was published in 2013. With each new edition, there have been significant changes in how different impairments are classified and diagnosed.

a. Anxiety Disorder

Anxiety disorders are common. According to the National Institute on Mental Health, almost one in five adults will experience an anxiety disorder in a twelve-month period and about one in 25 will experience a severe disorder. Less than half of people with anxiety disorders are receiving treatment.

The symptoms of an anxiety disorder vary, but symptoms may include: panic, difficulty sleeping, shortness of breath, heart palpitations, nausea, and dizziness. If someone experiences a major anxiety episode during a proceeding, accommodations that may be considered include allowing for an extended break, continuing the hearing to another date, or offering a different location for the hearing to reduce the risk of future anxiety attacks.²⁶

b. Post-traumatic Stress Disorder

Post-traumatic Stress Disorder (PTSD) is a serious mental health condition that can be caused when a person witnesses or experiences a traumatic event. Symptoms can include flashbacks or reliving the event, nightmares, severe anxiety, and having uncontrollable thoughts about the event. Individuals with PTSD may experience depression, physical symptoms, drug or alcohol abuse, problems with relationships, and problems with employment. The number of Americans experiencing PTSD increased significantly after Operation Iraqi Freedom and Operation Enduring Freedom.

According to one study cited by Mental Health America of Georgia, approximately one in twenty Americans experience PTSD in a given year.

The Center for Legal & Court Technology created a guide in 2014 for *Accommodating PTSD in our Courts?* It suggests accommodations to be considered to both court structures and court practices. Examples of physical accommodations include increasing lighting to increase concentration and decrease headaches; or allowing individuals to sit where they can see courtroom doors for individuals who, due to hypervigilance, need to see who is approaching. Examples of alterations to court practices include reducing or avoiding loud sounds such as the banging of gavels and allowing jurors with PTSD who have trouble concentrating to receive instructions in writing and use note taking more liberally.

Accommodating PTSD in our Courts: Enabling Survivors of Violence to Participate as Valued Members of the Judicial System, Center for Legal & Court Technology 2014
<https://docplayer.net/24696602-Accommodating-ptsd-in-our-courts.html> (last visited August 5, 2019).

Trauma can have a serious impact on children. Children can experience trauma by suffering or witnessing abuse, neglect, domestic violence, or serious accidents. They can also experience it through the loss or separation of a parent. There may be a variety of signs, or none at all, that a child has experienced trauma. A child may have low self-esteem, have difficulty with relationships, or become highly emotional or hypervigilant. The child may exhibit aggression, self-harm, have sleeping or eating problems, or have problems with substance abuse. Since the courtroom is a particularly stressful environment, it is important to provide children who have experienced serious trauma with accommodations. Such accommodations will depend on the circumstances, but may be similar to the accommodations that should be considered for all children. For instance, accommodations may include allowing support persons to be with the child, allowing the child to have comfort items, prohibiting harassing questions, questioning the child in a separate room from the courtroom, and creating a friendly environment for any proceeding.

Early Childhood Trauma

<http://www.nctsn.org/trauma-types/early-childhood-trauma/Symptoms-and-Behaviors-Associated-with-Exposure-to-Trauma>, (visited August 5, 2019)

c. Depression

According to the National Institute of Mental Health, depression is a common but serious mental illness that can impact how an individual feels, thinks, and is able to perform common activities such as sleeping, eating, and working.

Signs and symptoms include persistent sadness, hopelessness, feelings of guilt, loss of interest, restlessness, difficulty with sleep, and appetite changes. It can lead to thoughts of suicide or suicide attempts. Accommodations for an individual experiencing depression will depend on the individual's circumstances. For instance, a person experiencing significant emotions due to depression may need additional breaks. An individual experiencing fatigue due to depression may need more frequent breaks or shorter court sessions.

Depression," National Institute of Mental Health
<https://www.nimh.nih.gov/health/topics/depression/index.shtml> (last visited August 5, 2019).

d. Substance Use Disorder

Substance use disorder, which is also called addictive disease, refers to overuse, addiction, or dependence on a drug, such as alcohol, cocaine, amphetamines, and opioids. According to the DSM-5, substance use disorder occurs when an individual continues to use a substance despite significant problems arising out of the taking of the substance. There is a high percentage of individuals who have co-occurring substance use disorder and mental illness. According to the Substance Abuse and Mental Health Services Administration's 2014 National Survey on Drug Use and Health, 20.2 million adults (8.4% of the population) had a substance use disorder, and of these, 7.9 million people had a co-occurring mental illness.

e. Bipolar Disorder

Bipolar disorder is a mental illness that involves significant swings in mood between the lows of depression and highs referred to as mania or hypomania. The highs may create feelings of euphoria or elation. An individual often sleeps less during the mania period. The lows of bipolar disorder may create feelings of sadness or hopelessness. Mood swings can occur frequently or infrequently. Bipolar disorder can often be controlled with medication and counseling. If an individual with bipolar disorder has periods in which his or her mood is relatively normal between manic and depressed periods, a court may consider rescheduling a hearing to a different time if the individual is in a manic or depressed period.

f. Schizophrenia

According to the National Institute of Mental Health, schizophrenia is a chronic and serious mental illness. It can impact how a person thinks, feels, and behaves. An individual experiencing schizophrenia may experience delusions, hallucinations, and thought disorders. An individual may also have a flat affect, difficulty completing tasks, poor executive functioning, and trouble paying attention. The symptoms of schizophrenia generally begin between the ages of 16 and 30, although it can develop earlier. The causes of schizophrenia are not known.

Treatment of schizophrenia will generally involve antipsychotic medication. This medication may have significant side effects, including trouble with muscle control, facial tics, and tremors. An individual may be resistant to taking medications due to the real impact of side effects. According to Mental Health America, "Coordinated Specialty Care ("CSC") has been found to be especially effective in improving outcomes for people after they experience their first episode of psychosis . . . CSC often includes a combination of case management, therapy, supported employment and education services, support and education for the family of the individual, and/or medication."

There can be severe stigma associated with a diagnosis of schizophrenia. Therefore, it is important to protect the privacy and confidentiality of an individual with such a diagnosis as much as possible. It is also important for court personnel to guard against unnecessary judgments and assumptions when learning of such a diagnosis. The vast majority of individuals

with schizophrenia are not violent or dangerous. Schizophrenia is not believed to be caused by childhood experiences or poor parenting.

Accommodations for individuals experiencing schizophrenia will depend on the circumstances of the individual. It is important to understand that a delusion or hallucination will appear real to the person experiencing it. It will often not be productive in a court setting to challenge a person about the reality of what he or she is experiencing. An individual with schizophrenia should be treated with the dignity and respect that is due every individual interacting with the judicial system. Accommodations may include allowing additional breaks, using simple statements or questions, allowing a family member or friend to assist the individual, and creating a less stressful environment.

g. Obsessive-Compulsive disorder

Obsessive-Compulsive disorder ("OCD") is a mental illness in which an individual experiences uncontrollable obsessions and compulsions. Obsessions are unreasonable thoughts and fears that recur and persist despite attempts to ignore them. Common obsessions include fear of germs or contamination, requiring items or things to be in a specific order or symmetry, and unwanted fears or thoughts about taboo subjects. Compulsions are behaviors that an individual believes he or she must do repeatedly. Common compulsions include excessive handwashing, ordering and arranging items in set patterns, and repeatedly checking that something was completed such as the house being locked.

Treatment for obsessive compulsive disorder, which usually involves psychotherapy and medication, may not result in a cure but it can manage symptoms. Once again, accommodations for individuals with obsessive-compulsive disorder will vary based on the symptoms and circumstances of the individual. For instance, an individual who has obsessive thoughts about germs and contamination might be accommodated by allowing hand sanitizers in the courtroom, providing a separate set of materials to the individual, and giving the individual additional and exclusive space. A person with OCD may be able to articulate a necessary accommodation in a private conversation.

Mental Disorders and Related Topics, National Institute of Mental Health
<https://www.nimh.nih.gov/health/topics/index.shtml> (visited August 5, 2019).

National Association of Mental Illness Oklahoma (NAMI Oklahoma): NAMI Oklahoma is the state chapter of the National Association of Mental Illness. It advocates on behalf of people with mental illness, educates about mental illness, and works to end the stigma of mental illness. <https://www.namioklahoma.org/>

PART VI: Developing an Accommodation Protocol

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Developing a protocol to handle disability-related requests is recommended to ensure that all individuals have an equal opportunity to participate in court activities.

While some accessibility needs can be anticipated and addressed proactively, such as building an accessible website, captioning a video, or ensuring ramps are available to access all public spaces, some requests must be addressed individually on request. For example, providing a sign language interpreter, like other individualized accommodation requests, involves a case-by-case assessment to determine the appropriate course of action. A court can prepare for such requests by having in place contracts for commonly-needed services, such as sign language interpreters; alternative format materials such as accessible electronic documents, large print, and Braille; and real-time captioning.

Court systems should develop and implement a protocol for addressing individualized requests. A protocol enables the court to:

- Utilize resource information for addressing common accommodation requests;
- Ensure that individuals with disabilities know how to make requests in ways that can be effectively addressed by the court;
- Demonstrate to individuals with disabilities that their requests are being considered; and
- Methodically evaluate accommodation requests, without creating unnecessary administrative demands on busy court personnel that often result from unexpected requests.

A protocol should include the following steps:

Step 1: Identify and train a contact person for disability-related matters.

Designating a knowledgeable contact person is a very important step toward achieving compliance with the law. Courts and other government entities that employ 50 or more persons are required to designate a "responsible person" (often referred to as the "ADA Coordinator") to coordinate compliance efforts and investigate any complaints. Courts in smaller cities and counties may consider designating the city or county ADA Coordinator to handle issues involving courts. Even smaller courts can benefit from designating a person to handle ADA compliance issues.

The court's contact person for disability issues performs four important roles:

- **Public Point of Contact:** Provides a single point of contact for people with disabilities who need accommodations to access court services. Identifying the contact person in public notices and publications allows individuals with disabilities to contact one person with the knowledge and responsibility to handle accommodation requests.
- **Information Dissemination:** Serves as a central resource on disability issues for judges, administrators, bailiffs, clerks, other courtroom personnel and people with disabilities. The contact person should be familiar with the court's responsibilities under the law and

should have access to the resources needed to respond to inquiries and accommodation requests.

- **Effective Communication:** Knows how to access auxiliary aids and services to promote effective communication.
- **Support:** Provides training and technical assistance for court employees in responding to requests for accommodation; instructs employees on disability awareness issues.

Step 2: Involve people with disabilities and disability-related organizations in proactively identifying and resolving potential and existing access barriers.

Effective outreach will help educate the disability community on court programs, services, and activities as well as provide feedback to court personnel on ways to improve their customer service.

Step 3: Establish a procedure for evaluating accommodation requests in a timely manner and educate court personnel.

A well-drafted accommodation procedure should:

- Evaluate cases and circumstances on an individualized, case-by-case basis as expeditiously as possible;
- Establish decision-making authority, while being flexible and eliminating unnecessary levels of review. Court employees may receive impromptu requests, such as a request to escort a person who is blind to the appropriate courtroom, and the employees should be empowered to handle these requests;
- Maintain the confidentiality of medical information;
- Track all accommodation requests, including those requests that cannot be fulfilled, and the process used to reach each of those decisions; and
- Maintain a resource and technical support database for disability-related issues that arise.

All staff members who interact with the public should be trained about the court's procedures, as well as the accessibility features of the facilities that house judicial activities.

Appendix B includes links to examples courts may utilize to process accommodation requests. Details about recommended procedures and the state courts' procedures for providing interpreters are set out in Part II above, in the section Determining Accommodations for Judicial Activities, and Part III above, in the section Sign Language and Oral Interpreters.

Step 4: Notify the public about the court's accommodation process.

The court is required to provide information about its ADA-related responsibilities to all interested persons. Courts can disseminate information about their disability accommodation processes, including the name of the contact person, in several ways. For example, a court could provide information about accommodation requests on its website, in its court rules, in juror summonses, in the courthouse, and in information pamphlets. Courts should also provide notice to individuals with disabilities about the ADA's prohibition against discrimination and

their rights under the law. It is also helpful to post ADA notices in public places in the court building. Appendix A includes links to examples of Notices courts may utilize.

Step 5: Implement a grievance procedure

Courts with 50 or more employees must adopt and publish a grievance procedure for the prompt and equitable resolution of ADA-related complaints. Smaller courts can also benefit from adopting a grievance procedure. The grievance procedure may be included in existing grievance procedures adopted by the court for any other purpose. The ADA provides a great deal of latitude in this area, meaning that courts may choose to adopt alternative dispute resolution processes, such as third-party mediation, in their grievance procedures. Appendix C contains sample grievance procedures.

Conclusion

This guide is intended to assist judges and staff of the Oklahoma courts in carrying out their important work in ways consistent with federal laws banning discrimination against people with disabilities. It does not address all types of disabilities – many of which are invisible – or all possible court-related activities, but sets out the concepts of federal law and specific approaches to ensuring access. It is hoped that, equipped with this information and in consultation with people with disabilities, the courts of Oklahoma can continue to advance one of their important goals: to ensure that people with disabilities can enjoy the fundamental right of access to courts and other judicial services.

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Appendix B. Requests for Reasonable Modifications

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Appendix I. Information and Resources Regarding Sign Language Interpreters

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Appendix A: Notices

Appendix A: Notices

A court must provide individuals with disabilities information regarding the provisions of the ADA, its protections against discrimination, and its applicability to the programs, services and activities offered by the court. This sample notice is from the Department of Justice's Toolkit for State and Local Governments and has been included consistently in the DOJ settlement agreements.

Also included within this appendix is a sample notice of a county's intent to accommodate individuals with mobility impairments while undergoing renovations to make its facility physically accessible. Immediately following this notice is the county's procedure for providing access, taken from the settlement agreement the county signed with the DOJ, which resulted in the county accommodating individuals with disabilities.

Notice of Nondiscrimination Sample: From the DOJ's Toolkit for State and Local Governments. This form can be found at: www.ada.gov/pcatoolkit/chap2toolkit.htm

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of title II of the Americans with Disabilities Act of 1990 ("ADA"), the **[name of public entity]** will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Employment: **[name of public entity]** does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under title I of the ADA.

Effective Communication: **[Name of public entity]** will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in **[name of public entity's]** programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: **[Name of public entity]** will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in **[name of public entity]** offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of **[name of public entity]**, should contact the office of **[name and contact information for ADA Coordinator]** as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the **[name of public entity]** to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a program, service, or activity of **[name of public entity]** is not accessible to persons with disabilities should be directed to ***[name and contact information for ADA Coordinator]***.

[Name of public entity] will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

As referenced in Appendix D of this guide, below is the notice Bristol County, Massachusetts created pursuant to its settlement agreement with the DOJ. The notice outlines the county's intent to accommodate individuals with mobility impairments during the time in which its facilities are being renovated to improve physical access. Following the notice are relevant portions of the county's settlement agreement with the DOJ.

The notice form can be found at: www.ada.gov/bristolco.htm#Anchor-NOTICE-35326

NOTICE TO INDIVIDUALS WITH A DISABILITY

[Exhibit 1 to 2004 agreement with Commonwealth of Massachusetts and Bristol County]

The _____ Registry of Deeds is not physically accessible to individuals with mobility impairments. In accordance with the requirements of title II of the Americans with Disabilities Act [ADA], the Registry will make alternative arrangements so that you will have access to the documents you wish to review or services you require.

- We can provide documents and services to individuals who contact us by telephone or by e-mail.
- We can assist you in locating and accessing documents.
- We can meet you outside the building to receive documents for filing.
- If you have access to a computer, we will show you how some or all of your search for land records can be conducted on-line, and help you to access our on-line services.
- Services will be provided for certain title searches for users who are unable to get into the building.

- The Registry will not impose a surcharge to cover the costs for accommodations provided to individuals with a disability.

Any individual with a disability who requires an accommodation, as described in this Notice, or other assistance, should contact the _____ Registry of Deeds at 508- _____. If you are dissatisfied with our services, or believe we can do better, please contact _____, the Registrar of Deeds for _____.

DOJ Agreement with Commonwealth of Massachusetts and Bristol County – Selected Portions (2004) www.ada.gov/bristolco.htm#Anchor-Appendix-3800

PROCEDURE FOR PROVIDING ACCESS PRIOR TO FULL PHYSICAL ACCESSIBILITY OF FALL RIVER REGISTRY OF DEEDS

Upon execution of the Settlement Agreement, the County will institute procedures that will make the services of the Registries accessible to and usable by individuals with disabilities, and continue the use of these procedures until structural changes are completed that will enable individuals with disabilities to enter the buildings.

- A. The Registries will promptly post notices on their web-sites, inside the Registry, and outside the Registry, at or near the foot of the steps, notifying individuals that services are available to individuals with disabilities. The notices will contain, at a minimum, the information set forth in **Exhibit 1**, attached hereto. (see above)
- B. The Registries will provide “curb-side service” for filing documents by meeting an individual with a mobility impairment outside the building, and filing the document while the individual waits. Each Registry will establish procedures for the individual with a disability to contact a clerk. The clerk will initiate service within 10 minutes of arrival and will place the request in the queue for services.
- C. The Registries will permit individuals with mobility impairments who are prevented by the physical barriers from getting into the Registry of Deeds, to have access to the on-line search services at no cost.
- D. The Registries will continue their current practices of providing certain services, such as document retrieval in response to requests received via internet, telephone, fax and mail; readers for visually impaired users; and assistance in carrying or reaching documents.
- E. The Registries will retain at least three professionals, at rates that are mutually acceptable, who will be available to perform title searches, partial title searches and other searches and rundowns for qualified individuals with disabilities. It is understood that the user will select the professional, and that the professional will seek payment from the Registry. This paragraph is not intended to cover individuals with mobility

impairments whose main occupation is to perform title searches.

F. The Registry may charge copying fees for documents at the same cost per page that individuals pay for making their own copies. The Registry will not charge individuals with mobility impairments, who are unable to gain access to the building, for providing documents via facsimile or mail.

Appendix B: Request for Reasonable Modifications

Appendix B: Request for Reasonable Modifications

Below are links to state and county web pages with reasonable modifications policies and forms, including forms for requesting an accommodation.

- ❑ Georgia, Athens-Clarke County Courts: www.athensclarkecounty.com/719/Requests-for-Accommodation-Under-ADA
 - o Includes a form for requests as well as the County's form, Review and Action on Request for Reasonable Accommodation
- ❑ Florida: www.flcourts.org/core/fileparse.php/243/urlt/ADA-Model-Request-Form.pdf
- ❑ Illinois: [Opening the Bench and Bar to People with Disabilities, Manual for Court Disability Coordinators](#), Office of the Illinois Attorney General (2014)
 - o [www.ag.state.il.us/rights/Manual Court Disability Coordinators.pdf](http://www.ag.state.il.us/rights/Manual_Court_Disability_Coordinators.pdf)
 - o See also these appendices:
 - ❑ B. Supreme Court of Illinois Policy on Access for Persons with Disabilities
 - ❑ C. Sample Website Description of Accommodations from Lake County
 - ❑ D. Sample Juror Summons and Request for Accommodation for Jury Service from Cook County
 - ❑ E. Code of Professional Conduct: Interpreters for the Deaf
- ❑ Maryland: www.courts.state.md.us/courtforms/joint/ccdc049.pdf
- ❑ Maine: www.courts.maine.gov/maine_courts/admin/ada/index.shtml
 - o "Accommodation Request Procedure,"
- ❑ Clark County, Washington: Two useful forms created by Clark County are:
 - o A sample notice of accommodation in response to an individual's request for an accommodation. This form can be viewed at: www.clark.wa.gov/sites/all/files/courts/notice_of_accommodation.pdf
 - o Sealed Medical and Health Information Cover Sheet that can be viewed at: www.clark.wa.gov/sites/all/files/courts/ada_policy.pdf
- ❑ New York State Courts has a sample form for denying a request for accommodation. This form can be seen at: http://nycourts.gov/accessibility/PDFs/ADA_DENIAL_ACCOMMODATIONFORM_Sample_2015.pdf
- ❑ Washington State – Court Program Accessibility information including the following:
 - o Accommodation Procedure for Persons Participating in Court Proceedings (General Rule 33) www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr33
 - o Accommodation Request Form and Instructions (General Rule 33) www.courts.wa.gov/forms/?fa=forms.contribute&formID=71
 - o Frequently Requested Accommodations [[Word Document](#)]

Appendix C: Sample Grievance Procedures and Complaint Forms

Appendix C: Sample Grievance Procedures and Complaint Forms

Courts with 50 or more employees must adopt and publish policies and procedures for resolving ADA — related complaints. Smaller courts can also benefit from adopting a grievance procedure. Many states have created grievance procedures as well as complaint forms to streamline this process. Samples of both are below.

In addition to the sample grievance procedure and complaint form from the state of Georgia that are below, other grievance procedures and complaint forms can be found at:

- Florida:
 - Grievance Procedure: www.flcourts.org/core/fileparse.php/243/urlt/Grievance-Procedure.pdf
 - Complaint Form: www.flcourts.org/core/fileparse.php/243/urlt/Grievance-Complaint-Form.pdf
- New Jersey:
 - Grievance Procedure: <https://www.njcourts.gov/public/services/aocada.html?lang=eng>
 - This website also includes useful information on an ADA policy statement, accommodation requests, and effective communication
 - Complaint Form: https://www.njcourts.gov/forms/11507_ada_accom_appeal.pdf?c=FHQ
- The DOJ Toolkit for State and Local Governments:
<https://www.ada.gov/pcatoolkit/toolkitmain.htm>

Grievance Procedure Sample 1: From the State of Georgia, includes complaint form and grievance procedure.

STATE OF GEORGIA

[Agency Name]

**AMERICANS WITH DISABILITIES ACT (ADA) /
SECTION 504 OF THE REHABILITATION ACT**

COMPLAINT FORM

The purpose of the ADA/Section 504 Grievance Procedure is to attempt to promptly and fairly resolve a conflict or dispute when an individual believes that [agency] is not in compliance with its requirements under the Americans with Disabilities Act and [Section 504 of the Rehabilitation Act of 1973] and implementing regulation 28 C.F.R. 35.107.

This Grievance Procedure is *informal*. An individual's participation in this informal process is completely voluntary. Individuals choosing not to utilize this grievance procedure may directly file a formal complaint with the respective enforcement agency as permitted under law.

For those individuals that wish to file a complaint under [agency's] Grievance Procedure, please complete this complaint form and return to [Agency ADA Coordinator/designated Agency representative].

Section I

Name: _____ Home Telephone: _____

Work Telephone: _____

Address: _____ E-mail Address: _____

(continued on next page)

**STATE OF GEORGIA [Agency Name]
AMERICANS WITH DISABILITIES ACT (ADA) /
SECTION 504 OF THE REHABILITATION ACT**

COMPLAINT FORM (continued)

Please indicate the type of complaint:

___ Employment related

___ Access to programs, services or activities of [agency]

If your complaint is employment related, please complete Section II. Otherwise, go to Section III.

Section II

___ I am an employee of [agency]

___ I am not an employee of [agency]

If you are an [agency] employee, **or applicant for employment** please answer the following questions. Otherwise, go to Section III.

Your Department: _____ Supervisor: _____

Job Title: _____ Work Location: _____

Work Phone No.: _____ Work E-Mail Address: _____

Home Phone No: _____

(continued on next page)

**STATE OF GEORGIA [Agency Name]
AMERICANS WITH DISABILITIES ACT (ADA) /
SECTION 504 OF THE REHABILITATION ACT**

COMPLAINT FORM (continued)

Section III

When did the acts that you believe were discriminatory occur? Date(s):

Please describe the act(s) that you believe were discriminatory. Please be specific. Use additional sheets if necessary.

Signature

Date

Please return this completed form to [Agency ADA Coordinator/Human Resources Office]. The [Agency ADA Coordinator/Human Resources Office] will schedule a meeting (in person or via telephone) within [xx] working days after receipt of the completed complaint form. The purpose of the meeting will be to fairly resolve the complaint.

(Continued on next page)

If a satisfactory resolution to the complaint is reached at the meeting, a letter will be forwarded to you that identifies (a) description of the complaint; and (b) how the complaint was resolved.

If the agency is unable to resolve the complaint, you will be notified in writing why the agency was unable to resolve the complaint. Such notification shall include (a) a description of the complaint; (b) a statement concerning the issues which could not be resolved; and (c) the steps necessary to file a formal complaint with the appropriate enforcement agency.

If the agency is unable to resolve the complaint, you may also request a review of the complaint by [department/agency head]. You must request this review within [xx] working days of the time you received written notification that the agency was unable to resolve your complaint.

The review will be completed within [xx] working days after receipt of the written review request. [Department/agency head] will issue a written response to your review request. If [Department/agency head] finds that the complaint can be resolved, s/he will work with the [ADA Coordinator/Human Resources Office] towards a satisfactory resolution to the complaint.

If the [department/agency head] is not able to resolve the complaint, you will be advised of the steps necessary to file a formal complaint with the appropriate enforcement agency.

GRIEVANCE PROCEDURE

The purpose of the ADA/Section 504 Grievance Procedure is to attempt to promptly and fairly resolve a conflict or dispute when an individual believes that [agency] is not in compliance with its requirements under the Americans with Disabilities Act and [Section 504 of the Rehabilitation Act of 1973] and implementing regulation 28 C.F.R. 35.107. If you require a reasonable accommodation to complete this form, or need this form in an alternate format, please contact [contact person].

This Grievance Procedure is *informal*. An individual's participation in this informal process is completely voluntary. Individuals choosing not to utilize this grievance procedure may directly file a formal complaint with the respective enforcement agency as permitted under law.

For those individuals that wish to file a complaint under [agency's] Grievance Procedure, please take the following steps:

1. Complete the complaint form and return to [Agency ADA Coordinator/designated Agency representative].
2. The [Agency ADA Coordinator/designated Agency representative] will schedule a meeting (in person or via telephone) within [xx] working days after receipt of the completed complaint form. The purpose of the meeting will be to explore ways to fairly

resolve the complaint. Upon the mutual agreement of the parties, additional meetings may be scheduled if necessary to reach an equitable resolution of the complaint.

3. If a satisfactory resolution to the complaint is reached at the meeting(s), a letter will be forwarded to you that identifies (a) description of the complaint; and (b) the terms of the agreed upon resolution.

If the agency is unable to resolve the complaint, you will be notified in writing why the agency was unable to resolve the complaint. Such notification shall include (a) a description of the complaint; (b) a statement concerning the issues which could not be resolved; and (c) the steps necessary to file a formal complaint with the appropriate enforcement agency.

GRIEVANCE PROCEDURE

Additional Steps:

4. If the agency is unable to resolve the complaint, you may request a review of the complaint by [department/agency head]. You must request this review within [xx] working days of the time you received written notification that the agency was unable to resolve your complaint.
5. The review will be completed within [xx] working days after receipt of the written review request. [Department/agency head] will issue a written response to your review request. If [Department/agency head] finds that further discussions may lead to an equitable resolution, he/she will work with the [ADA Coordinator/designated Agency representative] to achieve a satisfactory resolution to the complaint.

If the [department/agency head] is not able to resolve the complaint, you will be advised of the steps necessary to file a formal complaint with the appropriate enforcement agency.

Grievance Procedure Sample 2: From DOJ's Toolkit for State and Local Governments. This procedure can be found at: www.ada.gov/pcatoolkit/chap2toolkit.htm

**[Name of public entity]
Grievance Procedure under
the Americans with Disabilities Act**

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the **[name of public entity]**. The **[e.g. State, City, County, Town]**'s Personnel Policy governs employment-related complaints of disability discrimination.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

**[Insert ADA Coordinator's name]
ADA Coordinator [and other title if appropriate]
[Insert ADA Coordinator's mailing address]**

Within 15 calendar days after receipt of the complaint, **[ADA Coordinator's name]** or **[his/her]** designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, **[ADA Coordinator's name]** or **[his/her]** designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the **[name of public entity]** and offer options for substantive resolution of the complaint.

If the response by **[ADA Coordinator's name]** or **[his/her]** designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the **[City Manager/County Commissioner/ other appropriate high-level official]** or **[his/her]** designee.

Within 15 calendar days after receipt of the appeal, the **[City Manager/County Commissioner/ other appropriate high-level official]** or **[his/her]** designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the **[City Manager/County Commissioner/ other appropriate high-level**

official] or **[his/her]** designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by **[name of ADA Coordinator]** or **[his/her]** designee, appeals to the **[City Manager/County Commissioner/ other appropriate high-level official]** or **[his/her]** designee, and responses from these two offices will be retained by the **[public entity]** for at least three years.

**Appendix D: Department
of Justice's ADA
Settlements, Technical
Assistance Materials, and
Other Information**

Appendix D: Department of Justice's ADA Settlements, Technical Assistance Materials, and Other Information

Note: This section is current through November 1, 2015. Depending on the date of the particular matter, some settlements and agreements are based on pre-2010 standards and regulations, and others are based on the 2010 ADA Standards or a combination of those and the earlier ones.

ADA Settlements and Consent Agreements (listed in alphabetical order by state)

The agreements below were selected because their content pertains to accommodating individuals with disabilities in courthouse settings and ensuring individuals have access to all services, programs, and activities of state and local courthouses. Unless otherwise noted, all the Department of Justice (DOJ) agreements can be found at: www.ada.gov/enforce_activities.htm#settlements

Alabama

City of Fort Payne, Alabama (2004) (physical access) – This agreement resolved a complaint that the second floor of the Fort Payne City Hall was inaccessible to individuals with mobility impairments. Under the agreement, the Department reviewed the city's proposed architectural drawings for its new city hall facility, to ensure that it complies with the ADA. Until the new facility is constructed, the city agreed to relocate meetings and court proceedings to accessible areas within the existing city hall building and to make sure that its current procedures for providing alternative access were well publicized and widely disseminated, including attaching a notice to all traffic citations and other court notices. The city also agreed to notify its employees and the public about the requirements of Title II and to publicize public grievance procedures for resolving Title II complaints. Settlement is unavailable.

Arkansas

Van Buren County, Arkansas (1994) (physical access) – The Department found that because of architectural barriers, the activities held in the County's courtroom and other services, activities, and programs located in other areas of the courthouse were inaccessible to and unusable by individuals with mobility disabilities. The Department also found that the County had failed to do a self-evaluation, write a transition plan, issue proper notices required by the ADA, or adopt a grievance procedure as required by the ADA. Under the settlement agreement, the County agreed to develop a self-evaluation and transition plan and to publish notices and a grievance procedure. The County also agreed to develop a written policy providing that whenever an individual with a mobility disability might be required or choose to attend legal and other proceedings that are held in the courtroom located in the County's courthouse, the County would, upon reasonable notice from the individual desiring access, relocate the proceeding to a location that is accessible to and usable by the individual with disability. See the Letter of Findings of November 23, 1993 at: www.justice.gov/sites/default/files/crt/legacy/2010/12/15/tal414.txt

Connecticut

State of Connecticut Judicial Branch, Connecticut (2003) (effective communication) – The State of Connecticut Judicial Branch agreed to resolve a complaint alleging that the state had failed to provide a sign language interpreter for a man who is deaf at three judicial proceedings. Under the agreement the state will furnish appropriate auxiliary aids and services, including qualified sign language and oral interpreters, where necessary to ensure effective communication. Agreement is unavailable.

Florida

Orange County Clerk of Courts, Florida (2014) (electronic access to court records) – The Department reached a settlement with the Orange County Clerk of Courts in Florida to remedy ADA violations regarding access to court documents. The settlement resolves allegations that the Orange County Clerk of Courts failed to provide an attorney who is blind with electronic court documents in an accessible format readable by his screen reader technology, despite repeated requests. Indeed, a motion filed in one of his cases included over 20 exhibits, the majority of which were not provided in an accessible format for over four months.

Under the settlement agreement, the Orange County Clerk of Courts will provide individuals with disabilities with any document in the official court record in an accessible format upon request, and ensure that the Clerk of Courts' website is accessible to individuals with disabilities, including individuals who are blind, in accordance with the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA, available at www.w3.org/TR/WCAG20. The Clerk of Courts will also pay \$10,000 in damages to the complaining attorney and undergo training on the ADA and WCAG 2.0 AA accessibility requirements. www.ada.gov/occ.htm

Georgia

Ben Hill County, Georgia (2001) (physical access) – The County agreed to construct accessible bathrooms and to install an accessible ramp and elevator to allow access to the courthouse for people with mobility disabilities. While these modifications were taking place, the county agreed to relocate court activities when necessary to provide program access for people with disabilities. Settlement is unavailable.

Illinois

Nineteenth Judicial Circuit, Lake County, Illinois (2000) (effective communication) – The Department entered an agreement resolving a complaint alleging that an Illinois court had required a probationer who is deaf to pay the costs of sign language interpreter services at court-ordered counseling sessions. The court agreed to reimburse the complainant for the cost of sign language interpreters he provided at his own expense during his program. The court also adopted written policies and procedures requiring contractors to provide auxiliary aids and services when necessary for effective communication with deaf or hard of hearing individuals. The court agreed to assist contractors in paying for interpreter services and to monitor the contractors' compliance with the auxiliary aids requirements of the ADA. www.justice.gov/crt/foia/readingroom/frequent_requests/ada_settlements/il/illlakecounty.php

Massachusetts

Commonwealth of Massachusetts; Bristol County, Massachusetts (2004) (physical access)

– The Department settled its lawsuit against the State and Bristol County for allegedly violating the ADA by failing to make the services, programs, and activities of the county’s trial courts and registries of deeds accessible to individuals with mobility impairments. The lack of physical accessibility or other alternative arrangements — courtrooms and offices were located up flights of stairs in buildings without ramps or elevators — allegedly prevented the two lawyers with disabilities who were named as plaintiffs, as well other lawyers, parties, witnesses, jurors, spectators, and others with mobility disabilities, from gaining access to the services of five courthouses and three registries of deeds offices. Massachusetts agreed to make structural changes at each courthouse by constructing an elevator or ramp, along with accessible restrooms. The agreement also called for modifications of procedures to ensure that any services or programs located in inaccessible areas in a courthouse would be provided to lawyers, parties, witnesses, juror, and spectators in an accessible area. In addition, Bristol County agreed to make physical changes at its registries of deeds offices by constructing a ramp or elevator, along with accessible restrooms, to enable individuals with disabilities to gain physical access to the registries and their services. Until these changes were completed, the County agreed, among other things, to:

- In two buildings, schedule civil, criminal, and juvenile proceedings in the first-floor accessible courtroom when necessary to accommodate attorneys, parties (except criminal defendants), witnesses, or jurors with mobility disabilities;
- At Attleboro District Court,
 - notify persons with mobility disabilities who are summoned for jury duty that the courthouse is not accessible and reassign those individuals, if they choose, to another district court in the county for jury duty;
 - accommodate anyone with a mobility disability needing access to the services of the small claims clerk or civil transaction county located on the second floor, by providing said services in the District Court Clerk-Magistrate’s office on the first floor; and
 - arraign criminal defendants with mobility disabilities in an accessible courtroom.
- At New Bedford Superior Court, use the accessible room used by a law clerk, when an individual with a disability needed to access the law library services provided to the public on the inaccessible second floor. A computer terminal with access to electronic research material would be located in that room, and provide a telephone for direct contact with the law librarian;
- Schedule proceedings at accessible locations;
- Ensure that each registry of deeds served individuals with mobility disabilities via mail, internet, facsimile, and curbside service. www.ada.gov/bristolco.htm

Michigan

Thirty-Eighth District Court, Eastpointe, Michigan (2007) (physical access) – This settlement agreement resolved a complaint that a courthouse constructed in 1995 was not accessible to persons with disabilities. The Department of Justice found 112 violations of the ADA Standards. The municipality agreed to make structural changes to the courthouse, including converting the

north entrance to an accessible entrance with accessible parking, modifying or replacing exterior routes and curb ramps, installing permanent room identification signs with raised characters and Braille, providing an accessible drinking fountain, installing visual fire alarms, creating accessible routes within the courtroom to features such as the witness stand and judge's bench, installing wheelchair seating areas in the spectator seating area of the courtroom, and modifying several toilet rooms and one holding cell to make them accessible. www.ada.gov/eastpointe.htm

Mississippi

Hancock County, Mississippi (1997) (effective communication) – This agreement resolved a complaint that an individual was disqualified or otherwise excused from serving as a juror for Hancock County Circuit Court because he was deaf. The County established a written policy requiring that the Circuit Court ensure that persons who are deaf or hard of hearing have an equal opportunity to benefit from the programs and services of the Courts, including, but not limited to, participating as jurors, parties, witnesses, and spectators. The policy provides that, when the court has received notice that interpreting services are necessary, the Court will provide, at its expense, the services of qualified interpreters. The County reimbursed the complainant for the interpreting expenses that the complainant incurred when he appeared as a potential juror. www.ada.gov/hancocks.htm

Pennsylvania

Philadelphia Court of Common Pleas, Pennsylvania (1997) (effective communication) – This agreement provides that prospective jurors with disabilities can request accommodations prior to proceedings in open court. The agreement resolved a complaint alleging that an individual was not allowed to serve as a jury member after he disclosed his need for an accommodation related to his disability. The complaint alleged that the only available means for requesting accommodations for a disability was during voir dire in open court. This procedure resulted in the unnecessary public disclosure of information about prospective jurors' disabilities and the unwarranted exclusion of some prospective jurors because of this information. The court agreed to include information about requesting accommodations in the initial jury summons, and to adopt and publish procedures for evaluating requests and maintaining the confidentiality of such requests.

Specifically, the Court agreed to publish a procedure providing for a confidential interview/inquiry of all prospective jurors prior to selection for a jury panel, to determine if the juror anticipates a need for an accommodation should they be selected to serve on a panel; to evaluate the requested accommodation; and if it is reasonable and available, make provisions for the accommodation in the event the potential juror is chosen to serve. The trial judge and the potential juror were to be notified of the availability of the accommodation prior to voir dire. The Court agreed that if the requested accommodation was reasonable, but not immediately available, the Court would inform the prospective juror and reschedule the juror's service for another day when the accommodation could be arranged. www.ada.gov/philcour.htm

South Carolina

Oconee County, South Carolina Courthouse (2010) (physical access) – This agreement resolved a compliance review of the county's courthouse which, when it was built in 2003, did not meet ADA requirements. The agreement requires the county to create accessible parking in lots that had no accessible parking spaces, such as two staff parking areas; create accessible routes into and within the facility including the emergency exit; add wheelchair seating spaces in courtrooms and jury boxes; and make all toilet rooms and common-use break rooms accessible. The County agreed to increase the opening width of the metal detector located at the only designated accessible entrance to the courthouse, provide accessible routes to certain witness stands, and make certain court reporters' stations accessible. www.ada.gov/oconee.htm

Texas

U.S. v. City of Houston, Texas (2000) (effective communication) – As part of a comprehensive agreement to improve the way its municipal courts system, police department, and jail communicate with people who are deaf or hard of hearing, the City of Houston agreed to take numerous actions, including, with regard to its municipal court system, to:

- adopt a new written policy guaranteeing appropriate auxiliary aids and services for participants in court proceedings, including parties, witnesses, jurors, and spectators;
- upon reasonable notice, secure the services of a qualified interpreter(s), provided that, with regard to spectators, such services shall not create an undue financial and administrative burden or result in a fundamental alteration in the nature of the service, program, or activity conducted by the court system. In those circumstances where the court system believed that the services would result in such a burden or alteration, the court system was to take any other action that would not result in such a burden or such an alteration but would nevertheless ensure that, to the fullest extent possible, individuals with disabilities received the benefits or services provided by the court system;
- provide information about these new policies on all official notices of court dates, including tickets, summonses, and other similar notices, and publish notices in legal periodicals that reach the City's legal community;
- provide training on the new policies for every judge and court administrator on an annual basis. www.justice.gov/opa/pr/2000/March/158cr.htm

Virginia

Orange County Circuit Court, Magistrate 16th Judicial District, Virginia Department for the Deaf and Hard of Hearing, and Executive Secretary Virginia Supreme Court (2019) (effective communication) -- re: requires respondent to revise policies and procedures to provide effective communication and appropriate auxiliary aids and services, to appoint an ADA coordinator for each judicial circuit, provide training to staff, and money damages to the complainant. https://www.ada.gov/entities_commonwealth_va_sa.html

The DOJ Agreements reached through Project Civic Access (PCA) (listed in alphabetical order by state)

The following settlement agreements are examples of those reached as part of the Department of Justice's Project Civic Access, a wide-ranging effort, begun in 1999, to ensure that counties, cities, towns, and villages comply with the ADA by eliminating physical and communication barriers that prevent people with disabilities from participating fully in community life. Project Civic Access is dedicated to removing barriers to all aspects of civic life, including courthouses, libraries, polling places, police stations, and parks. The project now includes 218 settlement agreements with 203 localities in all 50 states, the District of Columbia, and Puerto Rico. In most of these matters, the compliance reviews were undertaken on the Department's own initiative under the authority of title II and, in many cases, section 504 of the Rehabilitation Act of 1973. Some matters were undertaken in response to complaints filed against the localities. Many of the resulting agreements, including those listed below as examples, address court facilities, and services. Among other things, the agreements have required modifications to jury seating and deliberation areas, judges' benches, spectator seating, and routes of travel. They have also required that counties, cities, and towns ensure that people who are deaf or hard of hearing receive appropriate auxiliary aids during court proceedings.

California

Merced County, California (2015) (comprehensive review) – Typical of the increased number of agreements the DOJ reached in 2014 and 2015 through Project Civic Access, this agreement resolved a wide-ranging compliance review of the County's programs and activities including courts, office buildings, law enforcement, polling places and other facilities such as shelters, sidewalks, and web-based services and programs. Among other things, the County agreed to bring its superior court in Los Banos into compliance with the ADA by May 2018 (to the 2010 Standards because alterations will occur after the effective date of those standards). However, in one provision of note, the agreement states that in the event that the Superior Court of California is built as planned, and ground is broken by January 1, 2017, Merced County will have no obligation to make physical improvements to the Courthouse in Los Banos since the County will have a new courthouse that must be ADA compliant when built. www.ada.gov/merced_co/merced_sa.html

Georgia

The Department of Justice has reached seven Project Civic Access agreements with cities and counties in Georgia. They are with:

- City of Savannah 1/30/02
- Chatham County 8/05/04
- Glynn County 11/02/09
- City of Atlanta 12/08/09
- Randolph County 7/24/12
- Stewart County 5/9/13
- Lumpkin County 7/29/15

Examples of these agreements, and provisions related to access to court-related services and activities, are listed below.

City of Atlanta (2009) (services, procedures, physical access, effective communication) – The City of Atlanta agreed to numerous actions to resolve a compliance review, including making physical modifications to its facilities; officially recognizing Georgia's telephone relay service and training staff to use the relay service to ensure effective communication for people who are deaf or hard of hearing; implementing a plan to improve the accessibility of city sidewalks; ensuring that the city's official website is accessible to persons with disabilities, including individuals who are blind or have low vision; developing a method for providing information for interested persons with disabilities concerning the existence and location of the city's accessible services, activities and programs; and installing signs at inaccessible entrances to facilities directing persons with disabilities to accessible entrances.

The DOJ found that there were numerous violations in the main courthouse, which was subject to but did not meet the ADA Standards; changes were required, to meet the 2010 Standards. For example, the main entrance had a 1-inch high threshold. Interior doors required more than 5 pounds of force to open, some toilet room signs had no raised or Braille characters. There was no signage informing the public of the availability of an assistive listening system in a court room. A court room sign was mounted on the door and lacked raised or Braille characters. The ramp to the court reporter's stand was inaccessible, with a running slope of 9.7%, and the counsel's table in the court room was inaccessible. Other shortcomings were found in Probation Services, Records Management, Warrant Services, and the Court Detention Unit. www.ada.gov/atlanta_pca/atlanta_sa.htm

Chatham County, Georgia (2004) (services, procedures, websites) – This agreement addressed various services provided by the county, including court services. The county agreed to adopt a grievance procedure for ADA complaints and adopt procedures for providing effective communication for citizens with disabilities. The county also agreed to adopt a policy for county websites, which includes information about the county courts and can be viewed at: <http://www.justice.gov/crt/settlement-agreement-between-united-states-america-and-chatham-county-georgia-under-americans>.

The Chatham County settlement agreement also contained several attachments regarding architectural barriers at county court facilities. The county agreed to fully update its main courthouse facility for accessibility, and agreed to make an annex to the courthouse, yet to be built, fully accessible. The county also agreed to provide accessible parking at its juvenile court building. Finally, the county agreed to make substantial alterations to the historic Legislative Courthouse. Details about these efforts are available at the Department of Justice website at: www.ada.gov/ChathamAttD.htm.

Glynn County, Georgia (2009) (physical access, websites) – As part of an agreement with the Department of Justice after a review of numerous County activities, including its Judicial Center and the services carried out there, the County agreed to make changes to ensure that parking, routes into buildings, entrances, public telephones, restrooms, service counters, and drinking fountains in various buildings were accessible to people with disabilities. The County also agreed to ensure that its official website is accessible to people with disabilities, including

individuals who are blind or have low vision and use a screen reader to access websites. Specifically, it agreed to, within one month of the date of the agreement, and on subsequent anniversaries of that date, distribute to all persons, employees, and contractors who design, develop, maintain, or otherwise have responsibility for content and format of its website(s) or third party websites used by the County, the technical assistance document, "Accessibility of State and Local Government Websites to People with Disabilities" available at: www.ada.gov/websites2.htm and see Appendix G of this guide.

The County also agreed to, within three months, and throughout the life of the agreement, to:

- Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;
- Ensure that all new and modified web pages and content are accessible;
- Develop and implement a plan for making existing web content more accessible;
- Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and
- Periodically (at least annually) enlist people with disabilities to test its pages for ease of use

www.ada.gov/glynn_co_pca/glynnco_sa.htm

City of Savannah, Georgia (2002) (physical access) – This agreement covered a variety of municipal programs and services. The city agreed to make modifications to two accessible bathrooms adjacent to the city Recorder's Court, which is housed in the Chatham County Courthouse Judicial Center. The city agreed to install new signage and make other modifications to the bathrooms to meet ADA standards. www.ada.gov/savannah.htm

Indiana

LaPorte, Indiana (2009) (physical access, web site) – After a review of numerous County services and facilities, including two courthouses and the juvenile services center and the services carried out there, the County agreed to take several steps, including steps intended to increase physical access and web site access. It also agreed to issue a notice and grievance procedure, which are included in the section of this guide with sample policies and notices. www.ada.gov/laporte_pca/laportesa.htm

Missouri

Washington County, Missouri (2015) (comprehensive review) – Although Washington County represented that it had taken actions to comply with the ADA, including modifying the entrance and installing an elevator in the Washington County Courthouse, the Department found violations and listed them in an appendix to the agreement. The agreement also included a provision allowing the County to use certain exceptions in the accessibility standards for historic buildings as it made alterations to fix the problems. Specifically, to the extent that the Courthouse is a qualified historic building or facility as defined by the 2010 Standards, if the County believes that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historical significance of the building or facility,

the specific exceptions for alterations could apply. They are, however, contingent on a determination by the State Historic Preservation Office, after consultation with the County, that compliance with the requirements for a specific element would threaten or destroy the historic significance of the Courthouse. www.ada.gov/washington_county_pca/washington_county_sa.html

New Jersey

Newark, New Jersey (2006) (physical access) – This agreement resolved a compliance review of city programs, activities, and services. Newark agreed to make physical modifications to a wide variety of facilities, including pools and recreation centers, libraries, fire houses, police stations, courts, city hall and other government offices in order to make its activities accessible to people with disabilities.

www.ada.gov/NewarkNJpca.htm

New Mexico

San Juan County, New Mexico (2015) (comprehensive review) – This agreement includes the typical provisions included in agreements resolving comprehensive PCA reviews. The Department cited violations of the ADA Standards in various areas court-related facilities, including a holding cell, jury room, employee toilets, clerk's office, and doors throughout the facilities. In addition, the agreement required the County to ensure that its programs, services, and activities that area operated at facilities owned or controlled by others are, when viewed in their entirety, readily accessible to and usable by persons with mobility impairments. To that end, the **County** is to take certain actions addressing accessibility issues, within a certain time frame, or to submit for review by the Department a plan for providing access for persons with disabilities to the programs, services, and activities housed in the facility.

www.ada.gov/san_juan_co_pca/san_juan_sa.html

Ohio

Highland County, Ohio (2004) (physical access) – The county agreed to correct new construction and alterations problems and to make changes to existing facilities, including court facilities, in order to provide program access for people with mobility disabilities. The program access changes included alterations to doors, toilet rooms, and conference rooms. In the offices of the probate court, the juvenile court, and clerk of court, the county agreed to make changes to its service counters, by providing a lower (maximum 36") counter, providing and auxiliary counter, or providing equivalent facilitation.

www.ada.gov/highlandsa.htm

Pennsylvania

Lancaster County, Pennsylvania (2010) (physical access and effective communication) – The county agreed to make changes to its facilities and to ensure effective communication with any participant with a hearing disability (including jurors, witnesses, judges, clerks, counsel, parties, and members of the public) by, among other things, purchasing and making available a reasonable number of portable assistive listening systems for use at the Courthouse and each of the Magistrates' Offices and training appropriate court personnel in the set-up, use, and

maintenance of the assistive listening system and its receivers. The County's notice can be viewed at: www.ada.gov/lancaster_pca/lancaster_atta.htm and its grievance procedure is at: www.ada.gov/lancaster_pca/lancaster_attb.htm

Monroe County, Pennsylvania (2005) (physical access, effective communication) – To resolve a PCA review, the county agreed to make numerous changes to its facilities and programs. The Department found that in one court building, no assistive listening systems (ALS's) or devices were available for persons who are hard of hearing in courtrooms and other assembly areas. Among other things, the county agreed to provide portable ALS's, including at least two receivers for each ALS that could be circulated among the various assembly areas when requested. The county agreed to provide signage in each meeting room, courtroom, and assembly area indicating the availability of the ALS; to monitor requests for the ALS; and to provide additional ALS's if there was a higher than expected need for this accommodation.

In a new courtroom that had fixed benches but no areas for persons who use wheelchairs, the county agreed to provide at least two wheelchair seating areas complying with the accessibility standards, with companion seating. In the same courtroom, all the chairs in the witness box and the jury box were fixed to the floor, making them inaccessible to persons who use wheelchairs. The county agreed to provide at least one wheelchair seating area at each location, adjoining an accessible route that also serves as a means of egress in case of emergency. The county also agreed to provide, in the same courtroom, handrails on the existing ramp to the witness chair. www.ada.gov/monroecountypa.htm

Virginia

Arlington County, Virginia (2006) (effective communication) – The county agreed to remove architectural barriers in its facilities, including numerous parks and recreation facilities, libraries, community centers, the courthouse, the homeless shelter, a nature center, the animal shelter, the visitors' center, and the building that houses the department of human services. www.ada.gov/arlingsa.htm

Fairfax County, Virginia (2011) (physical access, communication, policies) – The county agreed to remove architectural barriers in numerous facilities, including court facilities. Corrections specific to areas used by the courts included modifying the knee clearance height of the computer in the research and copy center area; correcting an inaccessible Sally Port (with a curb but no curb ramp); and altering parking, elevators, counters, and knee clearance at tables in hearing rooms and courtrooms. The County also agreed to identify sources of qualified sign language and oral interpreters, and real-time transcription services, and to implement and report to the Department its written procedures, with time frames, for fulfilling requests from the public for sign language or oral interpreters, real-time transcription services, and documents in alternate formats (Braille, large print, cassette tapes, and accessible electronic formats such as HTML on compact disk or other electronic storage media). The County also agreed to maintain the accessibility of its programs, activities, services, facilities, and equipment, and to take whatever actions are necessary (such as routine testing of accessibility

equipment and routine accessibility audits of its programs and facilities) to do so. www.ada.gov/fairfax_pca/fairfax_sa.htm

THE DEPARTMENT OF JUSTICE LETTERS OF FINDING (listed in alphabetical order by state)

The Department of Justice issues letters of finding (LOFs) to close some investigations. The following letters are a selection of LOFs related to access to court facilities, programs, and services. They include letters finding both compliance and non-compliance. Generally, the letters of finding of non-compliance also include remedial steps that have been taken or will be taken by the respondent, and the investigation is closed based on those steps. All the letters can be found by their LOF number at: www.justice.gov/crt/americans-disabilities-act-letters-findings

Alaska

Superior Court for the State of Alaska, Anchorage, Alaska (1994) (effective communication) – The court did not violate Title II when it denied complainant's motion to file briefs on audiocassette in place of written briefs, because complainant failed to establish nexus between his impairment and the requested modification to the court's rules. LOF 29.

California

Kings County Superior Court, Hanford, California (1994) (effective communication) – The court purchased sufficient assistive listening systems, including three types of receivers, to provide effective communication for individuals who are hard of hearing. LOF 32.

Indiana

Greene Superior Court, Bloomfield, Indiana (1996) (effective communication) – The complainant alleged that the Court failed to provide him with auxiliary aids or a continuance for his hearing as an accommodation for his illness that caused difficulties hearing and speaking. The DOJ found that the illness was temporary and, in any event, did not affect the individual's hearing or speech to the extent that he could not participate effectively during his court date; it was therefore unlikely that he would be found to be a qualified individual with a disability. Even if he were covered by the ADA, the DOJ found that complainant did not request any auxiliary aids or assert that he could not fully participate in the proceedings during the time of the hearing. The ADA does not require a public entity to provide auxiliary aids or other accommodations absent any notice that an accommodation is needed. LOF 81.

Kentucky

Hardinsburg County Courthouse, Kentucky (1996) (physical access) – An elevator was installed which provides individuals with mobility impairments access from the entrance to the Circuit Court on the third floor. The doors to the restrooms were widened to accommodate wheelchairs and a ramp was installed from the walkway to the building. LOF 55.

Michigan

Osceola County Courthouse, Michigan (1996) (program accessibility) – The Friend of the Court office was moved to an accessible location on the first floor of the Courthouse. The Circuit

Court proceedings are moved to the accessible District or Probate Court rooms when individuals with disabilities request such an accommodation. LOF 74.

Missouri

St. Louis County, Missouri (1993) (effective communication) – In a detailed LOF, the DOJ found that the County's stated policy of not providing assistive listening devices to courtroom spectators violated title II. Although the County had written an outline of steps to be followed in securing a sign language interpreter for hearing impaired individuals who had business before the Court or were interested in employment opportunities, the policy did not make provisions for other members of the public. It also did not provide for hearing impaired individuals who could not understand sign language.

This LOF explains that spectators, including the complainant who had a hearing impairment, are entitled to auxiliary aids even if they have no connection to the proceedings, subject to the statutory provisions concerning fundamental alteration and undue burdens. LOF 82.

New Mexico

Bernalillo County Courthouse, New Mexico (1996) (program accessibility) – Programs, services, and activities have been made accessible by means of an alternate entrance to the courthouse and through the use of a platform lift to the second floor. Although the County restricts the unauthorized use of the platform lift by requiring the use of a key for its operation, it has taken steps to make this lift readily accessible to and usable by persons with disabilities. In a memorandum, the County reminded the Courthouse security personnel of their responsibility either to provide persons who need the platform lift with the key for its operation, or to assist persons in the use of such lift. Additionally, the County has agreed to post a sign at the accessible entrance that provides notice to the public of such policy. LOF 59.

Ohio

Cuyahoga County Court of Common Pleas, Cleveland, Ohio (1994) (effective communication) – The County Court was found in compliance with the Title II requirements for effective communication after it corrected a violation and purchased computerized real-time transcription, as had been requested by an individual who is hard of hearing. LOF 42.

Pennsylvania

Philadelphia Court of Common Pleas, Pennsylvania (1996) (effective communication) – The courts established a written policy for providing interpreters in all civil proceedings in which a participant is deaf and ordered nine TDDs to be installed at the Family Court Building. LOF 57.

Washington

Snohomish County Superior Court, Everett, Washington (1994) (effective communication) – the DOJ found violations concerning effective communication had been corrected after the County Court established a policy requiring consultation with individuals with hearing impairments to identify needed auxiliary aids. The letter recounts in detail a sequence of events showing that shortly after the ADA became effective, the Court had adequate notice that a

wireless FM system — or at least an auxiliary aid — was required for the complainant to participate in its juvenile proceedings; and that for one informational meeting, no auxiliary aid had been provided. Other proceedings were continued so that the Court could obtain auxiliary aids, but they did not provide effective communication. (The complainant had requested a wireless FM system but the Court attempted to use other means of communication, including asking parties to speak loudly and using a different type of auxiliary aid.) The DOJ found that the Court failed to give primary consideration to the request of the complainant, or otherwise provide an effective means of communication but that it had taken several steps to remedy the violation. The County had acquired real-time captioning, issued a written policy for ensuring effective communication, and made several methods available to communicate with individuals with hearing impairments, including video text display (real-time captioning), assistive listening devices, and interpreters. LOF 39.

West Virginia

Circuit Court of Berkeley County and Supreme Court of Appeals, West Virginia (1994)

(practices) – The Circuit Court did not violate Title II when it relieved the bondsman of his responsibility for the bail of an individual with a mental disability because the action was based on a nondiscriminatory reason (the length of time that the charges had been pending) rather than on the individual's disability. The Supreme Court of Appeals did not violate Title II when it denied the individual's appeal. LOF 41.

Department of Justice ADA Technical Assistance Letters and CORE Letters (listed by subject area)

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. Letters assist parties in understanding how the ADA may apply to their particular case. The technical assistance, however, does not constitute a determination by the Department of Justice regarding the parties' rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice. All the technical assistance letters can be located by number through the ADA Technical Assistance Letters Index at: www.justice.gov/crt/americans-disabilities-act-technical-assistance-letters-41. The core letters are available by letter number at: www.justice.gov/crt/core-letters-0.

Auxiliary Aids

Auxiliary aids and court costs (1992) – Regarding payment for certain court costs and provision of auxiliary aids and services necessary to understand court proceedings. TA letter 73.

Auxiliary aids and responsibilities of court and attorney (1995) – Distinguishing between responsibilities of the court under Title II and attorney representing a client under Title III, when the client is a party to a proceeding. TA letter 659.

Sign language interpreters, court costs (1996) – Core letter 211

Renovations and Physical Alterations to a Courthouse

Renovations of a courthouse (1994) – Addressing questions regarding renovations of a municipal court, waivers, and program accessibility. TA letter 552.

Alterations at a courthouse, Pennsylvania (1996) – This letter responded to a judge’s stated concern that the requirements of the ADA for alteration of courtrooms would increase the costs of specific planned alterations and limit the functionality of courtroom design. In its technical assistance letter, the DOJ set out the Title II requirements under the ADA Standards and the Uniform Federal Accessibility Standards and agreed that, as the judge noted, the requirement that some juror and witness seats be level or ramped may alter traditional courtroom design. The Department stated its belief that requiring full accessibility of these areas would have minimal conflict with traditional courtroom design. In addition, the Department noted that full accessibility of court reporters' stations, bailiffs' stations, and counsel and litigants' stations is justified by the more fungible nature of these positions, i.e., more than one person may use these stations, which increases the likelihood that an individual with a disability will need to use the stations. TA letter 688.

The DOJ Informal Settlements and Mediation (listed by year)

The Department of Justice publicized some of its informal settlements and results of its extensive mediation program (which is still active), without specifically identifying the complainant or respondent, from about 2005 to 2009. The following are selected examples relating to access to court facilities, services, or programs. Informal settlements and mediation results are separately listed in order by year. These descriptions are from the Disability Rights Section’s status reports at: www.ada.gov/statrpt.htm. No further information is available on the website.

Informal Settlements

2005

An individual who uses a wheelchair complained that a county courthouse did not have accessible parking and directional signage at the inaccessible entrances. The county agreed to provide a van-accessible parking space for the lot adjacent to the courthouse, accessible directional signage, and an accessible toilet room for the public near the grand jury deliberation room.

An individual with a mobility impairment complained that a Missouri county courthouse was not accessible because stairs were the only means of reaching its upper floors. The county installed an elevator, made all public restrooms accessible, renovated the courtroom, and took steps to ensure that all programs would be held in accessible locations.

Two individuals who use wheelchairs complained that a county courthouse in Missouri was not accessible. The county installed an elevator to provide access to its zoning hearing room and its courtrooms located on the second floor.

2006

A woman with a seizure disorder complained that her service dog was denied access to a New Hampshire court. The State issued a memo on the ADA and service animals to all clerks, registers, and court security staff at State courts. Each court facility also posted a revised public notice informing people about accessibility and the availability of accommodations, and the State posted an “Accessibility Options” link on its website, which links to the public notice as well as to the Justice Department’s ADA Home Page.

An individual who is deaf complained that an Arizona municipal court denied his request for a stenographic interpreter during an upcoming civil trial. The court agreed to reschedule the trial and provide real-time captioning. In addition, the court will remind all its judges about its effective communication policies, including what aids and services are available for use in the courtroom and how to handle requests for auxiliary aids and services.

The parents who are deaf of a juvenile complained that an Iowa county court services office refused to provide effective communication services to them. Their child, who is able to hear, was required to interpret for his parents during his juvenile delinquency intake meeting, a meeting required to determine whether the child would be referred to juvenile court. The State agreed to prepare and implement statewide an effective communication policy for juvenile court services.

2007

An individual who is deaf complained that a Kansas municipality did not provide a sign language interpreter during his court-ordered meetings with a probation officer. The city adopted a policy for providing qualified sign language and oral interpreters on a 24-hour-a-day, as needed, basis and distributed it to its employees.

A couple who is deaf alleged they were denied sign language interpreters for several hearings to which they were a party at a Nebraska courthouse. When the judges became aware of the problem, they implemented procedures to provide interpreters in a timely manner for the remainder of the hearings. In addition, the State administrative office of the courts posted a notice in all State courthouses notifying citizens of the availability of auxiliary aids and services and providing a contact person for these services in each court.

2008

Two individuals who are deaf complained that an Ohio county court charged them for interpreter services needed for a court hearing. The court changed its policy and adopted measures to ensure the provision of auxiliary aids and services to the public at no cost, posted signage in each courtroom and in the clerk’s office indicating that auxiliary aids are provided, and trained court staff to respond to such requests. The complainants were each compensated \$500.

An individual with a mobility disability complained that a New Jersey municipality did not have a transition plan for the removal of architectural barriers at its facilities. Also, it was alleged that a women’s restroom serving a municipal court and police building was not accessible to people

who use wheelchairs. The municipality has agreed to develop a transition plan, designate an ADA Coordinator, and adopt and publicize an ADA grievance procedure. The municipality also agreed to remove barriers in the women's restroom by widening a toilet stall and changing the design of a lavatory to make the faucet hardware more reachable.

A couple who is deaf alleged that a Michigan County Court charged them for a sign language interpreter for a divorce proceeding. The court adopted an effective communication policy regarding provision of auxiliary aids and services and compensated the complainants \$500.

2009

An individual with a mobility disability complained that a Wyoming county court was inaccessible to people who use wheelchairs. The county has installed signage directing people with disabilities to the court's accessible entrance which has an automatic door opener. In addition, signage has been installed directing people to the accessible toilet room. A jury box in one courtroom has been made accessible to individuals who use wheelchairs.

A person with a hearing disability complained that a Michigan court failed to provide a qualified sign language interpreter during crucial proceedings. In mediation, the court agreed to provide a qualified sign language interpreter for the complainant if she or her attorney requests one at least three working days in advance of the date of the proceeding. The court agreed to engage in a process of self-evaluation to determine its level of compliance with all the other provisions of the ADA.

An individual with a mobility disability complained that an Ohio county courthouse was inaccessible. The county has agreed to build an accessible sloped walkway or ramp leading to the main courthouse entrance, add an accessible toilet room on the ground floor, provide directional signage to the accessible toilet room, and install an accessible drinking fountain on the second floor.

Mediation Results

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary manner. Mediation cases are initiated upon referral by the Department when both the complainant and the respondent agree to participate. The program uses professional mediators who are trained in the legal requirements of the ADA and has proven effective in resolving complaints at less cost and in less time than traditional investigations or litigation. Over 78% of all complaints mediated have been resolved successfully.

2007

In Oklahoma, a wheelchair user alleged that a courthouse was inaccessible. The courthouse installed an accessible route from its accessible parking spaces to the entry door, provided training on procedures regarding the ADA to security officers and court staff, gave security officers wands to screen individuals who, because of disability, could not pass through the metal detector, and removed barriers in the corridor between the elevator and the courtroom

door. The county commissioners also appointed an ADA Coordinator to address program access issues throughout the county.

In Texas, a wheelchair user complained that an exterior wheelchair lift used to access a courthouse was continually breaking down, once leaving him stranded inside the lift. He further alleged that when he raised the issue with a court employee, the employee told him that he could be removed from the juror list. The courthouse repaired the wheelchair lift so that it could again be operated independently and installed a buzzer in the lift to alert staff if assistance is needed. In addition, the complainant was assured that he had not been removed from the jury pool.

In New York, an individual with an artificial knee and rheumatoid arthritis alleged that a courthouse failed to allow individuals with mobility impairments to use the elevator reserved for court personnel and attorneys. The courthouse reaffirmed its policy of allowing individuals with disabilities to use the restricted elevator, posted directional signage to the elevator, and retrained all staff regarding the court's policy. The courthouse is under renovation, which will provide an elevator for public use in addition to the existing restricted elevator.

2008

In Georgia, a couple who is deaf alleged that a county court required the complainants' son to interpret for them during a hearing. The court adopted a policy for providing effective communication, including the provision of qualified sign language interpreters, and distributed a memo to staff, directing them to send individuals who need assistance with effective communication to the clerk of the court, who had been trained on the policy. The court also created a list of qualified sign language interpreters and posted signage for individuals with business before the court about the availability of interpreters and how to request one.

In Florida, a parent complained that a court failed to provide effective communication for her son, who is deaf and had requested real-time captioning when he was summoned for jury duty. The court agreed to provide real-time captioning when needed and revised its jury summons to include instructions for individuals with disabilities needing accommodations to call the ADA compliance officer. The court also instructed its information officers to refer individuals with disabilities who need assistance to the court's ADA compliance officer, added captioning to the jury instruction video, produced a written copy of the juror oath, and agreed to review all efforts to improve effective communication on an ongoing basis.

Appendix E: Oklahoma Statutes and Resources

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Oklahoma Civil Rights

Visit Oklahoma Civil Rights Website: http://www.oag.ok.gov/civil-rights?_m=1

Email: hrc@ohrc.state.ok.us

Oklahomans with disabilities are covered by state laws prohibiting discrimination against minorities in employment, public accommodations and housing. These laws are found in Title 25 of the Oklahoma Statutes. The Oklahoma Human Rights Commission (OHRC) investigates alleged violations of these laws.

Oklahoma law also specifically provides that people using assistance dogs have the right to take such animals with them into public places. This law is found in Title 7 of the Oklahoma Statutes. A violation of this law is a misdemeanor. Complaints should be brought with the district attorney in the county where the alleged violation occurred. Title 25 public accommodation provisions offer similar protections, but complaints would be filed with the Human Rights Commission.

Oklahoma Human Rights Commission Jim Thorpe Building

2101 N. Lincoln Boulevard, Room 480

Oklahoma City, OK 73105

Voice: 405-521-2360

Toll Free: 888-456-2558 Oklahoma City area

888-456-2006 Tulsa area

Oklahoma Handicapped Parking

Visit Oklahoma Handicapped Parking Website: <https://www.ok.gov/dps/>

Title 47, Section 15-111

Both state law and local ordinances affect handicapped parking privileges and enforcement. State law provides for disability parking permits, eligibility, and sets the range of fines or penalties for violation of handicapped parking rules. State law also authorizes towns and cities to extend special parking privileges to people with disability parking permits. Local ordinances often set specific fines for violation, and they may address enforcement measures.

State law pertaining to handicapped parking is found in Title 47 of the Oklahoma Statutes, Chapter 15. The Oklahoma Department of Public Safety (DPS) issues official disability parking permits. The law directs DPS to also recognize Veterans Administration and federal military base disability stickers for handicap parking purposes. Permits issued by DPS must be renewed every five years. Temporary, shorter term permits may also be issued. To be eligible for a disability parking permit an individual must have a physical disability such that the person:

- Cannot walk two hundred (200) feet without stopping to rest, or
- Cannot walk without the use of or assistance from a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistant device, or

- Is restricted to such an extent that the person's forced (respiratory) expiratory volume for one (1) second, when measured by spirometry, is less than sixty (60) mm/hg on room air at rest, or
- Must use portable oxygen, or
- Has functional limitations which are classified in severity as class III or class IV according to standards set by the American Heart Association, or
- Is severely limited in his or her ability to walk due to an arthritic, neurological, or orthopedic condition, or
- Is certified legally blind, or
- Is missing one or more limbs which impairs mobility.

www.dps.state.ok.us

Drivers License Services Division

P.O. Box 11415

Oklahoma City, OK 73136

Voice: 405-425-2403

Voice mail: 405-425-2290

Oklahoma Interpreters for the Deaf Act

Title 63, Section 2409 and following.

Establishes requirements for provision of sign language interpreters in administrative, criminal and civil proceedings where a deaf person is a witness, complainant or defendant. Also requires state agencies to provide interpreters in situations where a deaf or hard of hearing person is an applicant, complainant or witness in any agency proceeding. Information on Interpreter Services, certification, fees and legal provisions is available from Services to the Deaf and Hard of Hearing, Department of Rehabilitation Services, 405-917-7700 or 800-833-8973, both TTY and Voice.

Oklahoma Laws on Service Dogs and Emotional Support Animals

Oklahoma law allows some people with disabilities to be accompanied by their service dogs. Under Oklahoma law and the federal Americans with Disabilities Act (ADA), people with disabilities have the right to be accompanied by their service animals in restaurants, hotels, stores, theaters, and other places that are open to the public. The ADA covers people with all types of disabilities, including those who use psychiatric service animals. Oklahoma's service animal law is more limited, in that it covers only those who are blind, deaf or hard of hearing, or have another physical disability. However, businesses and other public accommodations in Oklahoma must comply with both state and federal law. Read on to learn which public accommodations are covered, which animals qualify as service animals, and some rules you may need to follow with your service animal.

What Counts as a Public Accommodation in Oklahoma?

Oklahoma gives people with certain disabilities the right to bring their service dogs into all public accommodations, including all streets, highways, sidewalks, and walkways; all public buildings; all common carriers and modes of transportation (including airplanes, cars, buses, trains, boats, and so on); all motels, hotels, and other lodging places; all college dormitories and other educational facilities; all restaurants and other places where food is sold; and all places of public resort, convenience, amusement, or accommodation to which the general public is invited.

Under the ADA, the definition of public accommodations is also very comprehensive and includes all public places. However, religious entities, such as churches, synagogues, and mosques, are not considered public accommodations under the ADA. This is so even if the religious entity offers secular services, such as a day-care center that admits children whether or not they are members of or affiliated with the religious institution. Private clubs (member-controlled nonprofit groups that are highly selective, charge substantial membership fees, and were not created in order to avoid compliance with civil rights laws) are also not covered by the ADA. However, if a private club makes facilities available to nonmembers, it is subject to the ADA's public accommodation rules as to those facilities.

Which Animals Are Covered in Oklahoma?

Under the ADA, a service animal is a dog that has been individually trained to perform tasks or do work for the benefit of a person with a disability. The tasks or work the animal does must be directly related to the person's disability. In some cases, a miniature horse may also qualify as a service animal. Examples of service animals that must be allowed into public accommodations under the ADA include:

- hearing dogs, which alert their handlers to important sounds, such as alarms, doorbells, and other signals
- guide dogs, which help those who are blind or visually impaired navigate safely
- psychiatric service animals, which help their handlers manage mental and emotional disabilities by, for example, interrupting self-harming behaviors, reminding handlers to take medication, checking spaces for intruders, or providing calming pressure during anxiety or panic attacks
- seizure alert animals, which let their handlers know of impending seizures, and may also guard their handlers during seizure activity, and
- allergen alert animals, which let their handlers know of foods or other substances that could be dangerous (such as peanuts).

Oklahoma law applies only to guide, signal, or service dogs who assist those who are blind, deaf or hard of hearing, or otherwise physically disabled. A service dog must be individually trained to a physically disabled person's requirements. The law doesn't apply to other types of animals, nor to dogs who assist those with other types of disabilities, such as psychiatric or other mental disabilities. Oklahoma businesses still must comply with the ADA, which applies more broadly as noted above.

Neither the ADA nor Oklahoma’s equal rights law covers what some people call “emotional support animals”: animals whose presence provides a sense of safety, companionship, and comfort to those with psychiatric or emotional conditions. Although these animals often have therapeutic benefits, they are not individually trained to perform specific tasks for people with disabilities. Pets are also not covered.

Rules for the Service Animal

Under the ADA, a public accommodation may not ask you questions about your disability or demand to see certification, identification, or other proof of your animal’s training or status. If it is not apparent what your service animal does, the establishment may ask you only whether it is a service animal, and what tasks it performs for you. Oklahoma law states that signal dogs (those that assist deaf or hard of hearing people) must wear an identifying orange collar.

The ADA and Oklahoma law prohibit public accommodations from charging a special admission fee or requiring you to pay any other extra cost to have your service animal with you. However, you may have to pay for any damage your animal causes.

The ADA allows a public accommodation to exclude your service animal if it poses a direct threat to health and safety (for example, if your dog is aggressively barking and snapping at other customers, the facility can kick the dog out). Your animal may also be excluded if it is not housebroken, or if it is out of control and you are unable or unwilling to effectively control it.

Helpful Links

U.S. District Court Northern District of Oklahoma – ADA Accommodations
<https://www.oknd.uscourts.gov/ada-accommodations>

U.S. District Court Eastern District of Oklahoma – ADA Accommodations
<https://www.oked.uscourts.gov/ada-accommodations>

Oklahoma State Court Network – Accessibility Information
<http://www.oscn.net/v4/accessibility/>

Oklahoma Language Access Program
<https://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/Resources-for-Program-Managers/LAP-Map/Oklahoma.aspx>

- Forms: http://www.oscn.net/static/forms/aoc_forms/interpreter.asp

Publication Center – Southwest ADA Center
<http://www.southwestada.org/html/publications/index.html>

Appendix F: Selected Federal Cases

Appendix F: Selected Federal Cases

Below are a select group of federal court cases that examine accommodating people with disabilities with respect to their participation in the programs, services, and activities of courts. Generally, discussion of sovereign immunity, judicial immunity, standing, and other issues not pertaining specifically to the ADA or Section 504 is omitted.

Supreme Court Case

Sovereign immunity, activities covered

Tennessee v. Lane, 541 U.S. 509 (2004)

This case upheld the constitutionality of Title II of the ADA as applied to cases involving access to courts and judicial services.

Plaintiffs were wheelchair users who could not access courtrooms on the second floors of Tennessee state buildings lacking elevators; they sued the state of Tennessee for failing to ensure that courthouses are accessible to individuals with disabilities. Tennessee did not dispute that the courthouses were not accessible or that it had a duty to make its services available to all. Instead, the state argued that the plaintiffs could not sue the state and require it to pay money damages for violations of Title II. The state's argument was based on the doctrine of "sovereign immunity," under which Congress can pass a federal law making a state liable for money damages only in limited circumstances.

The Supreme Court ruled that Congress had acted properly under the Fourteenth Amendment in abrogating immunity for claims under Title II "as it applies to the class of cases implicating the accessibility of judicial services" and the fundamental right of access to the courts. Therefore, the state of Tennessee, as a public entity, could be sued for damages, injunctive relief, and declaratory relief under Title II.

Federal Circuit Court and District Court Cases

Reasonable accommodations

Marks v. Tennessee No. 13-5299, 562 Fed. Appx. 341 (6th Cir. April 4, 2014), *cert. denied*, 135 S. Ct. 197 (2014)

A former attorney alleged that the state of Tennessee, through its Administrative Office of the State Courts, violated his rights under the ADA when implementing its disability accommodation process. He experienced serious medical difficulties as he defended himself in an enforcement action against his

assets, and he had submitted administrative requests to the ADA coordinator that his case be postponed and that hearings be truncated to accommodate his limited physical and cognitive stamina. The coordinator, pursuant to court procedure, forwarded these requests to the trial

judge. The judge substantially accommodated most of the requests but after the first request informed the attorney that he should move for continuances before the court rather than submit administrative requests for postponement, or that the coordinator would consult with the trial judge upon receipt of a request.

Marks sued the Administrative Office, claiming that the handling of his requests violated the ADA in that the court refused to grant his requested reasonable accommodation: that he be permitted to fax requests for postponements rather than filing for a continuance at the courthouse or appearing in person to do so. The district court dismissed his claim. The court of appeals found that dismissal had been proper because the coordinator reasonably implemented the court's policy and ensured that he was effectively able to litigate his case; the coordinator was powerless to grant additional time in light of the longstanding principle that a judge maintains full control of his calendar.

McCauley v. Georgia 466 Fed. Appx. 832, No. 11-11817 (11th Cir., April 12, 2012), *cert. denied*, 133 S. Ct. 2814 (2013), *reh'g denied*, 134 S. Ct. 46 (2013)

An individual with severe lupus erythematosus (who therefore cannot be exposed to odors such as those in everyday hygiene products) filed suit against the state of Georgia and various Georgia state entities and officials including courts, judges, and judicial staff. Among other things, she alleged that they had denied her access to courts with respect to her two underlying state lawsuits, in violation of the ADA. As to one county case specifically, she alleged that the clerk's office did not assign a single ADA contact person, that that office was not adequately responsive to her needs, and that the judge and his clerks did not have the sensitivity training necessary to interact appropriately with her. She conceded that she had been allowed to file documents via email, but she alleged that if court personnel had understood her disability, they would not have held a hearing at which she appeared by telephone while opposing counsel appeared in person. The district court dismissed the complaint.

The Eleventh Circuit affirmed. As to the county case mentioned above, it found that the plaintiff's case had been dismissed for a number of reasons unrelated to her ability to access the courts, and the outcome of the case would not have changed even if there had been a single contact person and better responsiveness and training; thus, the accommodations were not necessary under the ADA. Even accepting the allegations in her complaint as true, she had not stated a claim because she did not allege actual injury.

Phillips v. New Hampshire Circuit Court No. 13-cv-313-JL, 2014 WL 4956562 (D.N.H., Feb. 5, 2014)

The plaintiff, who had been a litigant in a civil action in state court, alleged that the court violated the ADA and Section 504 by denying him a reasonable accommodation for his mental illness and by ordering him not to take prescribed antipsychotic medication during the proceedings, which he asserted hindered his ability to understand the proceedings and defend

himself properly. The court found that he had asserted plausible claims and the case could proceed.

Palacios v. Fresno County Superior Court No. 1:09cv0554, 2009 WL3416173 (E.D. Cal. Oct. 21, 2009), *adopted by* 2009 WL 4507713, E.D.Cal. (Dec. 03, 2009)

Plaintiff was a person with a brain injury that limited her ability to read, write, comprehend, and communicate. She brought a claim under Title II of the ADA alleging that she was denied access to the state courts because she was not allowed to copy documents, check books out of the law library, request permission to apply for a waiver of fees, and access a judge's chambers. The court found that these perceived failures by the state courts did not rise to the level of a deprivation of meaningful access to the courts; they were also more likely based on court-related procedure rather than the plaintiff's disability. Additionally, plaintiff's requested accommodation of assistance comprehending the legal aspects of her case was beyond the requirements of the ADA.

Physical access

Livingston v. Guice, 68 F.3d 460 (4th Cir. 1995) (unpublished opinion)

A wheelchair user with multiple sclerosis brought an action against a trial judge and the state for refusing to allow her to enter the second-floor courtroom through the only door she knew to be accessible from the elevator — the door that was by the judge's bench — during her nephew's criminal trial. Neither the plaintiff nor the judge was aware of any other possible accessible entrances (which led to the jury deliberation room and the jury pool room). The judge became annoyed and made comments about her use of the restricted door, even though he had been told that Livingston had a bladder problem. On the fourth day of the trial, Livingston's sister-in-law, who did not have a disability, left via the restricted door. The judge then issued an edict that "nobody but nobody goes through this door" except court personnel. Defense counsel tried to explain that the woman had departed hastily because she had started vomiting. The judge said that the facilities outside the courtroom and one on the first floor could be used. He immediately called a recess and left the courtroom. Unable to leave by the restricted door, Livingston urinated on herself before being assisted out of court. She sat in the downstairs lobby of the courthouse for the rest of the trial, awaiting information from others.

The district court dismissed her claims on the grounds of judicial immunity.

The Court of Appeals reversed and remanded the case, finding that the judge was not entitled to absolute judicial immunity in this case, in part because no money damages were sought. Because the case against the state was dismissed based on that finding, the case against the state was also allowed to proceed.

Matthews v. Jefferson, 29 F.Supp.2d 525 (W.D.Ark. 1998)

An individual with paraplegia filed suit against a county for failing to make the courthouse (listed on the national Registry of Historic Buildings) accessible. He alleged that when he was a litigant in the courthouse, it did not have an elevator or other means of access to the courtrooms on the second floor. He had to be carried up the stairs to attend hearings on the second floor, from which he was unable to leave to use the restroom facilities or obtain a meal, and no arrangements were made to carry him downstairs at the end of the day.

The District Court held that the county had violated the ADA and Section 504 by failing to make the courthouse readily accessible to the plaintiff and other individuals with disabilities.

Shotz v. Cates, 256 F.3d 1077 (11th Cir. 2001)

Individuals with mobility impairments brought ADA Title II action against judge and the court system for failure to remove physical barriers to access in the courthouse. The Eleventh Circuit held that although both plaintiffs may have alleged facts that, if true, would constitute violations of Title II, neither plaintiff had standing to seek injunctive relief because they had not attempted to return to the courthouse, nor had they alleged to do so in the future.

Effective communication

Vasquez v. Kirkland, 572 F.3d 1029 (9th Cir. 2009), *cert. denied*, 130 S. Ct. 1086 (2010)

A defendant appealed the denial of a writ of habeas corpus on the basis that his conviction was flawed due to the infringement of his Sixth Amendment right to confront a witness. The witness was a woman who was deaf, did not speak, and had never learned a standard form of sign language. She communicated through a combination of signs, gestures, facial expressions, and lip reading; she therefore needed two different interpreters working together to understand and communicate her testimony. When she was asked a question, a certified American Sign Language (ASL) interpreter translated the question into ASL for the intermediary interpreter. The intermediary interpreter, who also was hearing impaired and did not speak, in turn used signs, gestures, and facial expressions to communicate with the witness; the process was reversed when the witness answered.

The Ninth Circuit denied the defendant's writ, finding that the defendant had an opportunity for effective communication and that although challenges were presented during the process of examining the witness, the challenges did not rise to the level of a deprivation of the opportunity for effective cross-examination. Furthermore, the jury was aware of the challenges of the nature of the intermediary interpreting process and was able to observe the witness' demeanor in order to assess her credibility and weigh the value of her testimony accordingly.

Tucker v. State of Tennessee, 539 F.3d 526 (6th Cir. 2009)

Two arrestees and their mother, all of whom were “deaf and mute” (as characterized in the court’s opinion), sued a state court for its alleged failure to provide appropriate auxiliary aids during their initial appearance and subsequent criminal trials. They had made several requests for auxiliary aids, some of which were granted, while others were not. The district court granted the state’s motion for summary judgment, and the individuals appealed.

The court of appeals found that the arrestees had not requested an interpreter for their initial appearance. The judge had independently discerned their impairments, and they were then provided a written card containing their rights. The arrestees wrote “not guilty” on the card but did not ask for an interpreter. The judge set a hearing date; when he learned of a request for an interpreter, he offered a continuance for a few days until an interpreter could be present, but the arrestees declined. On the morning of the scheduled hearing, at which no interpreter would be present, and prior to it, the charges against one arrestee were dismissed and the other was placed in a diversionary program. During this proceeding, the mother of one of the arrestees voluntarily acted as a translator, at the request of the arrestees’ attorney.

The Sixth Circuit determined that the state was not liable for failing to provide a sign language interpreter on a few occasions when the court made good-faith efforts to provide effective communication services and when the provision of those services would not have changed the outcomes of the criminal cases. It was not clear that the arrestees had requested an interpreter for their initial appearance, and the state court provided an alternative (written communication) that allowed for effective communication, consistent with the ADA. As to the dispositional hearing, the mother had served voluntarily as interpreter for the arrestees and not the court, at the request of their attorney. The arrestees chose not to accept the option of a postponement, and the provision of auxiliary aids at that proceeding would not have changed the outcome.

United States v. Bell, 367 F.3d 452 (5th Cir. 2004)

On a convicted defendant’s (Bell) appeal, the Fifth Circuit found that the trial court had not abused its discretion when it allowed the sister of a witness with a disability to interpret his testimony. Bell claimed that the trial court’s actions violated the Court Interpreters Act (which applies to federal proceedings) and deprived him of his confrontation rights. The witness, who was “deaf and mute” (as characterized in the court’s opinion) was “able to effectively communicate through a form of sign language, a system of grunts and gestures,” that was understood by family and friends familiar with him. He testified through interpretation by his sister into Choctaw, which was then translated into English by a “government” [qualified] interpreter.

Bell alleged that the use of the witness’ sister violated the Court Interpreters Act, which mandates the use of only qualified interpreters. Pointing to the exception that applies when no qualified interpreter is available, the court said that the issue is ultimately whether the use of the interpreter “made the trial fundamentally unfair.” It was within the judge’s discretion to allow the sister’s interpretation, because of the unique method used by the witness to

communicate and the lack of other options, and Bell had been able to attack the testimony and interpretation. Therefore there was no violation of the Act.

Similarly, the court found no violation of Bell's confrontation rights because he was able to question and attack the witness, and the jury heard testimony about the sister's allegedly erroneous interpretation; the jurors were allowed to make whatever determinations they believed fair.

Popovich v. Cuyahoga County Court of Common Pleas, 276 F.3d 808 (6th Cir. 2002), *cert. denied*, 537 U.S. 812 (2002)

A father alleged that a state court failed to provide adequate assistance in his child custody case and then retaliated against him, both in violation of the ADA. He had requested assistance in the form of real-time captioning. Instead, the court provided an FM amplification system; but he had difficulty using it and the headphones gave him an ear infection. After he filed an ADA complaint with DOJ, the court presented him with a choice between going forward with his hearing when scheduled and waiving any discrimination claim against the state, or preserving the claim at the risk of a long delay in the proceedings. He refused either option, and then the hearing did not resume for another year and a half. He brought a Title II case against the state court and obtained a verdict in the district court for \$400,000 in compensatory damages, on grounds of inadequate accommodation and retaliation.

On appeal, the court found that a jury question was presented as to both issues and remanded the case for retrial on both. (The remand was due largely to a constitutional question not relevant here.) The court found that the jury, based upon these facts, would be entitled to find that forcing Popovich to choose between going forward with the custody hearings and waiving his disability claim – and then upon his refusal to waive, discontinuing the proceedings for a year and a half – could constitute retaliation in violation of the ADA.

Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001)

An individual who was hard of hearing filed suit against the county for failing to provide real-time transcription services (instantaneous captioning displayed on a screen) as an accommodation during his marriage dissolution proceedings. The plaintiff did not use sign language and his primary mode of receiving communication was through the written word. He wore custom hearing aids but found it extremely difficult to follow a conversation in which he was not a participant, resulting in tinnitus and headaches after about 30 minutes. The County provided alternative accommodations, including a courtroom with better acoustics and permission for him to relocate to different parts of the courtroom during the proceedings; but Duvall claimed that neither accommodation was effective. The District Court granted summary judgment for the county administrators.

The Ninth Circuit reversed, holding that the record indicated the county should have provided the requested accommodation because the alternative accommodations did not ensure

effective communication. The county made no effort to determine whether real-time transcription was available. The County failed to give primary consideration to the request of the individual and to make “a fact-specific investigation” as to what accommodation was reasonable, and Duvall had presented sufficient evidence to create a material issue of fact as to whether the refusal to provide videotext display prevented him from participating equally in the hearings.

Memmer v. Marin County Courts, 169 F.3d 630 (9th Cir.1999)

Carin Memmer, a litigant with a vision impairment in municipal court proceedings, alleged that the court failed to accommodate her disability by providing a qualified reader for pre-trial and trial proceedings. The presiding judge had denied a reader for pre-trial and had first assigned Anthony Calderon, a person who worked with the court as a Spanish-language interpreter, as the reader for trial. Memmer requested that a particular individual, Sanford Gossman, instead serve as her reader. The presiding judge granted the request but limited Gossman’s participation because in previous cases the judge had observed him to be disruptive. The municipal court ruled against Memmer. In her district court action, she argued that the court violated the ADA because it failed to adopt adequate accommodation procedures for addressing accommodation requests, she was denied a reader for pre-trial, and the offer of a Spanish-language interpreter to assist was not a proper accommodation. The court entered summary judgment for the municipal court.

The Ninth Circuit upheld the judgment of the district court. It held first that there were no pretrial activities for which assistance was needed; therefore, no accommodation was necessary. Secondly, the services of the court-appointed reader would have been sufficient for this case because no special training was necessary. Memmer could not point out how the services of Calderon would have been inadequate because she had not even consulted with him; to allow her to refuse outright the services of a court-appointed assistant in favor of one who had been deemed vexatious and disruptive would require a “substantial modification” in the way the municipal court runs its system, a drastic result not mandated by the ADA.

Gregory v. Administrative Office of the Courts, 168 F.Supp.2d 319 (D.N.J. 2001)

A litigant with a hearing impairment (in a case that was administratively pending) brought a Title II and Section 504 action against a state court system when it refused to provide a print-out of the court-reporter’s computer aided real-time transcription (“CART”) of proceedings, at the same \$10 fee routinely assessed for audio or videotapes (which are not produced when CART is used). Because of the difficulty in ensuring that he was properly taking in everything being said, when viewing a scrolling screen, he sought the print-out so that he could review it afterward. The court responded that the litigant could purchase an official transcript at \$1.50 per page, or come to court to review the computer disk in person. The court held that the Eleventh Amendment did not bar suit under the ADA. Noting that the ADA requires deference to the choice of auxiliary aid made by a person with a disability, the court found it conceivable that a jury could conclude that provision of CART alone, without a print-out, in these

circumstances is not “as effective” as the requested accommodation, and the case could proceed.

Jurors with disabilities

Galloway v. Superior Court of the District of Columbia, 816 F. Supp. 12 (D.D.C. 1993)

An individual who was blind brought suit challenging a court's categorical exclusion of blind persons from jury service. Defendants maintained that no blind person is ever "qualified" to serve as a juror, because he or she is not able to assess adequately the veracity or credibility of witnesses or to view physical evidence and thus cannot perform the essential functions of a juror and participate in the fair administration of justice.

The court held that defendants' position violated both Section 504 and the ADA. It found that in addition to evidence presented showing that visual observation is not necessarily an essential function of a juror, the plaintiff had introduced substantial evidence to support his individual qualifications to serve competently on a jury. The court emphasized that blindness alone does not disqualify an individual from serving on many juries and that moreover, with reasonable accommodation, the number of cases for which a blind person could be chosen increases even further. The court denied the defendants' motion for summary judgment and granted the plaintiff's motion for summary judgment.

Participation in activities other than judicial proceedings

King v. Indiana Supreme Court No. 1:14-cv-01092-JMS, 2015 WL 2092848, (S.D. Ind. May 5, 2015)

Plaintiff King was a deaf person who communicated primarily in sign language and was involved in a domestic relations case in a county court. He was initially required to participate in mediation pursuant to the court's rule. He qualified to participate in the county's Modest Means Mediation Program, and moved for an ASL interpreter to be appointed at no expense for him for the mediation. The trial court denied the motion but waived King's obligation to participate, in order to alleviate the need for an interpreter. However, he wanted to participate in mediation and obtained an interpreter at his own expense. After the county court proceeding, he filed suit in federal court against various parties, including the Indiana Supreme Court, the county court, and the administrator of the county court. He charged that they had violated the ADA and Section 504 by refusing to provide auxiliary aids for the mediation, causing him emotional harm, and necessitating that he incur the expense of his own interpreter.

The court found that the mediation program was a “judicial service” covered by the ADA. It was established by state statute and maintained by the county defendants; each county in the state was required to develop a plan to carry out the mediation program and to appoint mediators in cases approved for participation in the program. The state defendants claimed sovereign

immunity on the grounds that mediation is not a court proceeding and does not implicate the fundamental right of access to the courts. Applying the analysis in Lane v. Tennessee, the court found to the contrary, noting that the ADA reaches not just in-court proceedings but “judicial services” and that mediation is a judicial service — a public program created by statute and approved of by the state defendants. However, King did not allege that any entities other than the county took part in the actual decision to deny his request for an interpreter, and the court dismissed the complaint as to all defendants other than the county court. Mr. King's ADA claim against the county was allowed to proceed.

Paulone v. City of Frederick, 787 F.Supp.2d 360 (D. Md. 2011)

A county court sentenced Ms. Paulone to probation before judgment on a charge of driving while impaired by alcohol. As conditions of her probation, she was required to attend Victim Impact Panel meetings presented by Mothers Against Drunk Driving (MADD) and to submit to the Drinking Driving Monitor Program (DDMP) of the state’s parole and probation division. She later filed suit in federal court under the ADA, based on the alleged failure of the state and the board of county commissioners to provide reasonable modifications and auxiliary aids and services.^[63]

Officials had told Paulone that she was responsible for any interpreter at the Victim Impact Panel meeting. She paid the fee, attended the meeting, and was not provided an interpreter; she was unable to understand anything that transpired and instead read a brochure and sat and waited until the meeting was over.

DDMP directed Ms. Paulone to enroll in a state-certified multi-week alcohol education class. DDMP provided Paulone with a list of non-government entities that offered classes. It declined to provide an interpreter and advised her that she was required to make her own arrangements for an interpreter. She tried unsuccessfully to locate a class with an interpreter before her attendance deadline and asked for an extension of time to attend, as an accommodation for her disability. That request was denied, and the Parole Division filed a violation of probation charge against her for failing to enroll. The charge was dropped before her hearing when she found a course taught in sign language that she could attend via videophone.

The court found that it was the state’s responsibility to ensure that the victim impact panels and alcohol education classes were accessible to the plaintiff. It held that the state intentionally denied Paulone the reasonable accommodation of sign language at the MADD panel, a component of state court-ordered probation, in violation of the ADA, and granted the plaintiff’s motion for summary judgment on this issue. As to the alcohol education classes, the court held that a reasonable finder of fact could conclude that DDMP denied a reasonable accommodation and/or that Paulone bears responsibility for her failure to meet the deadline.

Soto v. City of Newark, 72 F.Supp.2d 489 (D.N.J. 1999)

Deaf individuals married in a municipal court were not provided with a sign language interpreter for their wedding despite repeated requests. The parties agreed on the facts, but the defendant municipal court claimed that weddings were not a function or service of the court. The court granted summary judgment for plaintiffs, finding that the wedding was a “service” — an opportunity to marry at the courthouse — and the deaf individuals were qualified individuals with disabilities under Title II; the defendant had not provided a reasonable accommodation or effective communication.

Rights of non-parties/participants

Prakel v. Indiana No. 4:12-cv-00045-SEB-WGH, 2015 WL 1455988 (S.D. Ind. March 30, 2015) Steven Prakel, a deaf individual who used ASL as his primary means of communication, requested a sign language interpreter for hearings in county courts in which his mother was a party. His requests were denied. His mother eventually paid for an interpreter for her son at several hearings.

Prakel and his mother then sued the state of Indiana, three county judges, and others, alleging that the denial of access to a sign language interpreter during his mother’s probation hearing and related hearings violated the ADA and Section 504. They sought reimbursement of the interpreter expenses as part of the lawsuit.

Court officials maintained that Prakel was not entitled to a court-funded interpreter because he was not a party to or a participant in the proceedings.

The court found that the mother had associational standing to pursue her ADA claim against the county defendant, because she has alleged that she herself was injured by her son’s inability to understand the legal situation she was facing and to provide emotional support, and by her payment of the interpreter fees.

The court found that Prakel also had standing to pursue his claim and that it was not barred by the doctrine of sovereign immunity. It rejected defendants’ contention that Tennessee v. Lane did not extend to this case because it implicated the rights of a spectator as opposed to the rights of a party or other participant. The court found that Lane applies, as it included among the “fundamental rights of access to the Courts” the First Amendment right of access to criminal proceedings (including preliminary hearings) by members of the public.

The federal court ruled partially in favor of Prakel and his mother, finding that the defendants had denied Steven Prakel effective communication and the opportunity to enjoy the benefits of the state courts’ services, programs, and activities. They dismissed the claims against the state defendants but permitted the damages claims to proceed against the three county judges.

Mosier v. Kentucky, 675 F.Supp.2d 693 (E.D. Ky. 2009)

A deaf attorney filed a claim under the ADA and Section 504 claiming she was unable to participate fully in court proceedings without appropriate auxiliary aids or services, such as a sign language interpreter. Defendants argued that the court's interpreting services division had a policy that it did not provide interpreting services for attorneys. The court stated that the controlling question was whether the defendants discriminated against the plaintiff based solely on her disability. The court held there was no support for a finding that the plaintiff did not qualify for the statutes' protections simply because she was an attorney and not a juror, witness, or observer. However, it was unable to find, as a matter of law, that defendants' actions, when viewed in their entirety, made court services inaccessible and unusable by individuals such as the plaintiff, or that a reasonable trier of fact must conclude that a violation of the ADA or Section 504 had occurred. These would be issues for the trier of fact in subsequent proceedings.

Smoke-free or chemical-free environment

Leonard v. Rolette County 1999 U.S. App. LEXIS 29732, No. 99-2130 (8th Cir., Nov. 12, 1999)

Plaintiff, an individual who claims an allergy to second-hand smoke, alleged that the county courthouse was in violation of the ADA for not maintaining a smoke-free environment. The district court dismissed the case, finding the plaintiff was not a person with a disability. The Circuit Court upheld this decision and found that second-hand smoke did not limit the plaintiff's access to the courthouse, as she had visited the courthouse more than 2,000 times in the time period during which she claimed it was inaccessible. The court also recognized that the courthouse responded to plaintiff's complaints and adopted a smoke-free policy, but noted a previous decision of the Eighth Circuit holding the ADA does not require irritant-free environments but only reasonable accommodation.

McCauley v. Winegarden, 60 F.3d 766 (11th Cir. 1995)

An individual with alleged severe chemical sensitivities brought a Title II action against a judge, the Georgia court system, and the state for failure to provide her with a "filtered environment," including "life support systems," a "life-support bubble," "required medical aids," and "additional medical aids" during court proceedings. The district court dismissed the complaint based on DOJ's Title II regulation, which states that Title II does not require a public entity to provide personal services or devices as accommodations.

The Eleventh Circuit upheld the district court's decision.

Appendix G: Website Accessibility

Appendix G: Website Accessibility

Useful Websites

- US Access Board: The Architectural and Transportation Compliance Board issued a Notice of Proposed Rulemaking published in the Federal Register on February 27, 2015, on Information and Communication Technology (ICT) Standards and Guidelines. This document will revise and update standards for electronic and information technology developed, procured, maintained or used by federal agencies covered by Section 508 of the Rehabilitation Act of 1973, and its guidelines for telecommunications equipment and customer premises equipment covered by Section 255 of the Communications Act of 1934. www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/proposed-rule
- The DOJ issued an advance notice of proposed rulemaking that establishes requirements for making the services, programs, or activities offered by State and local governments via the Web to be accessible for people with disabilities. The rulemaking notice can be viewed at: www.ada.gov/anprm2010/web%20anprm_2010.htm and includes useful information pertaining to the work already accomplished in this area.
- The Department of Justice published a technical assistance document on the accessibility of websites for individuals with disabilities. The manual is below and can also be found online at: www.ada.gov/websites2.htm
- Section 508.gov provides resources, including laws, policies, and standards to help understand and implement Section 508 of the Rehabilitation Act. www.section508.gov
- Web Accessibility Initiative: www.w3.org/WAI
 - Web Content Accessibility Guidelines established by the World Wide Web Consortium (W3C) Web Accessibility Initiative. The document provides information on how to make the internet accessible to people with disabilities. www.w3.org/TR/WCAG10



**U.S. Department of Justice
Civil Rights Division
Disability Rights
Section**

**Accessibility of State and Local Government Websites
to People with Disabilities**

The Internet is dramatically changing the way that American government serves the public. By taking advantage of new technology, many State and local governments are using the web to offer citizens a host of services including:

- corresponding online with local officials;
- providing information about government services;
- renewing library books or driver's licenses;
- providing tax information and accepting tax returns; and
- applying for jobs or benefits.

These government websites are important because they:

- allow programs and services to be offered in a more dynamic, interactive way, increasing citizen participation;
- increase convenience and speed in obtaining information or services;
- reduce costs in providing programs and information about government services;
- reduce the amount of paperwork; and
- expand the possibilities of reaching new sectors of the community or offering new programs

Local government websites provide important information and services to citizens

When government is constantly being asked to do more with less, the Internet is playing a vital role in allowing government to better serve all of its citizens.

The Americans with Disabilities Act (ADA) and, if the government entities receive Federal funding, the Rehabilitation Act of 1973, generally require that State and local governments provide qualified individuals with disabilities equal access to their programs, services, or activities unless doing so would fundamentally alter the nature of their programs, services, or activities or would impose an undue burden. One way to help meet these requirements is to

ensure that government websites have accessible features for people with disabilities, using the simple steps described in this document. An agency with an inaccessible website may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line. However, these alternatives are unlikely to provide an equal degree of access in terms of hours of operation, the range of options, and the programs available. For example, job announcements and application forms, if posted on an accessible website, would be available to people with disabilities 24 hours a day, 7 days a week.

Online Barriers Faced by People with Disabilities

Many people with disabilities use “assistive technology” to enable them to use computers and access the Internet. Individuals who are blind who cannot see computer monitors may use screen readers – applications that speak the text that would normally appear on a monitor. People who have difficulties using a computer mouse can use voice recognition software to control their computers with verbal commands. People with other types of disabilities may rely on additional assistive technology solutions on the market. New and innovative assistive technologies are being introduced every day.

Poorly designed websites can create unnecessary barriers for people with disabilities, just as poorly designed buildings prevent some individuals from gaining physical access. Designers may not realize how simple features built into a web page can assist someone who, for instance, cannot see a computer monitor or use a mouse.

One example of a barrier would be a photograph of a Mayor on a town website with no text identifying it. Because screen readers cannot interpret images unless there is text associated with it, a blind person would have no way of knowing whether the image is an unidentified photo or logo, artwork, a link to another page, or something else. Simply adding a line of simple hidden computer code to label the photograph “Photograph of Mayor Jane Smith” will allow the individual user who is blind to make sense of the image.

Accessible Design Benefits Everyone

When accessible features are built into web pages, websites are more convenient and more available to everyone – including users with disabilities. Web designers can follow techniques developed by private and government organizations to make even complex web pages more user-friendly for everyone including people with disabilities. For most websites, implementing accessibility features is not difficult and will seldom change the layout or appearance of web pages. These techniques also make web pages more usable both by people using older computers and by people using the latest technologies (e.g., tablets and smartphones).

With the rapid changes in the Internet and in assistive technologies used by people with disabilities accessing computers and electronic devices, private and government organizations have worked to establish flexible guidelines for accessible web pages that permit innovation to continue.

Resources for Web Developers

To make web pages accessible, the web developer needs to know about web page features that can make a web page less accessible or more accessible. Information about such features is easily available and many software developers are adding tools to web development software to make it easier to make web pages accessible.

Two important resources provide guidance for web developers designing accessible web pages. One is the **Section 508 Standards**, which Federal agencies must follow for their own new web pages. To learn more about the Section 508 Standards:

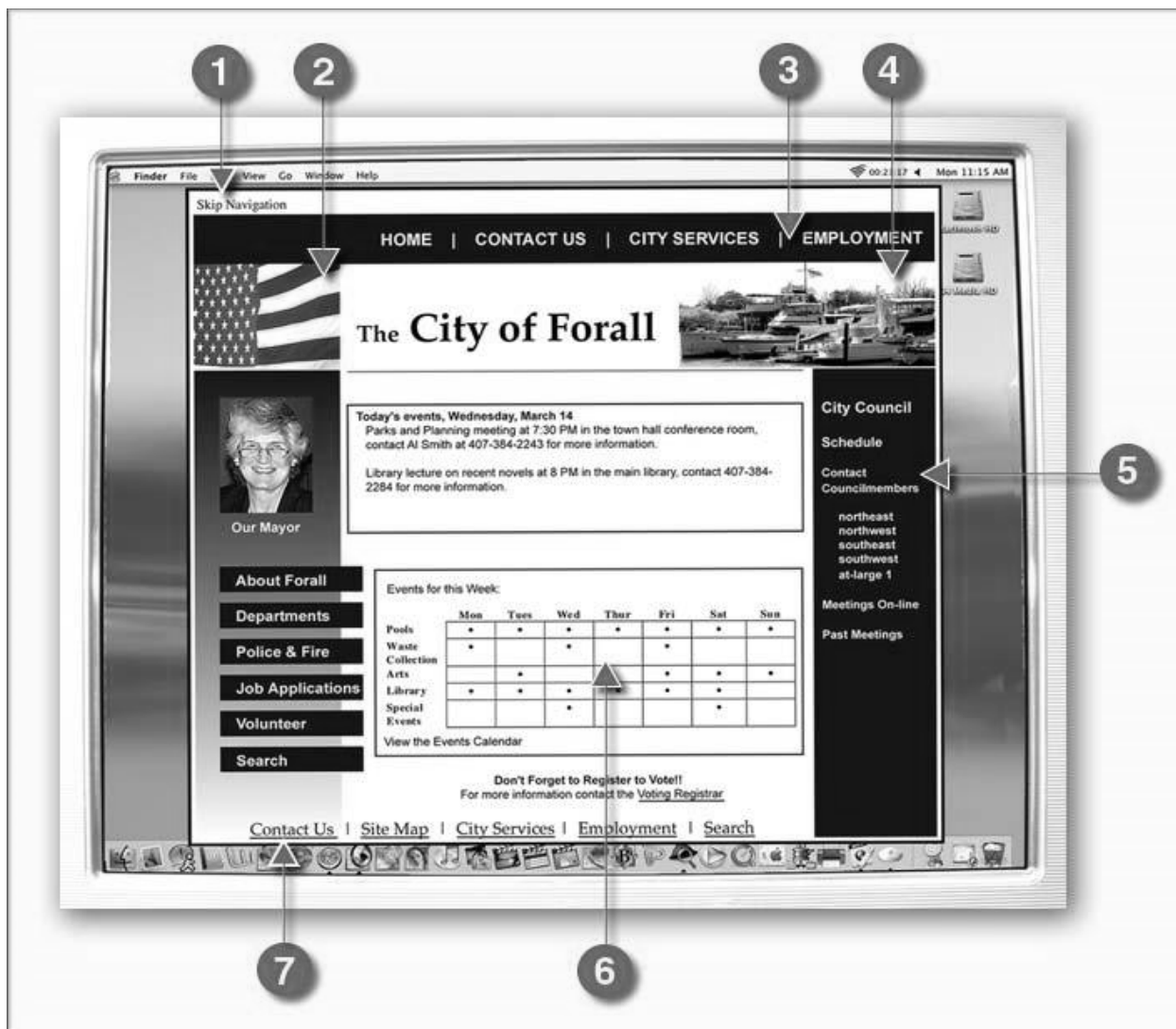
- The Access Board maintains information on its website at www.access-board.gov and has a useful guide for web developers at www.access-board.gov/sec508/guide/1194.22.htm;

The Department of Justice has information about accessible web page design in an April 2000 report to the President. This report is available at <http://www.justice.gov/crt/table-contents-information-technology-and-people-disabilities-current-state-federal>

- The General Services Administration hosts an online course for web developers interested in accessible web design. This program was developed in conjunction with the Access Board, the Department of Justice, and the Department of Education and provides an interactive demonstration of how to build accessible web pages. This course is available at www.section508.gov, which also provides information about the Federal government's initiative to make its electronic and information technology accessible to people with disabilities.

A more comprehensive resource is the **Web Content Accessibility Guidelines** developed by the Web Accessibility Initiative. These guidelines help designers make web pages as accessible as possible to the widest range of users, including users with disabilities. The Web Accessibility Initiative is a subgroup of the World Wide Web Consortium — the same organization that standardizes the programming language followed by all web developers.

- Information for web developers interested in making their web pages as accessible as possible, including the current version of the **Web Content Accessibility Guidelines** (and associated checklists), can be found at <https://www.w3.org/TR/WCAG20/> and
- Information about the Web Accessibility Initiative can be found at <https://www.w3.org/WAI/intro/wcag>.



Notes:

1. Web pages are written using a language called HTML (or “hypertext markup language”). HTML is a “markup language” that tells a computer program (called a “browser”) how information will appear or will be arranged on a computer screen. HTML tags are specific instructions understood by a web browser or screen reader.
2. All images and graphics need to have an alt tag or long description.
3. Use alt tags for image maps and for graphics associated with the image map so that a person using a screen reader will have access to the links and information.
4. Some photos and images contain content that cannot be described with the limited text of an alt tag. Using a long description tag provides a way to have as much text as necessary to explain the image so it is accessible to a person using a screen reader but not visible on the web page.
5. Text links do not require any additional information or description if the text clearly indicates what the link is supposed to do. Links such as “click here” may confuse a user.
6. When tables with header and row identifiers are used to display information or data, the

header and row information should be associated with each data cell by using HTML so a person using a screen reader can understand the information.

7. A link with contact information provides a way for users to request accessible services or to make suggestions.

Information about the ADA

The Department of Justice provides technical assistance to help State and local governments understand and comply with the ADA. An important source of ADA information is the Department's ADA Home Page on the World Wide Web. This extensive website provides access to ADA regulations; all Department ADA technical assistance materials, including newly-released publications; proposed changes in the ADA regulations; and access to Freedom of Information Act materials, including technical assistance letters. The website also provides links to other Federal agencies with ADA responsibilities.

- ADA Home Page: <http://www.ada.gov>

In addition, the Department of Justice operates a toll-free ADA Information Line that provides access to ADA specialists during business hours.

- ADA Information Line:
800-514-0301 (voice)
800-514-0383 (TTY)

Appendix H: Other Useful Websites and Information

Appendix H: Other Useful Websites and Information

National Center for State Courts (NCSC)

ADA Resource Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185
757-259-7590
757-564-2075 Fax

- Online ADA Resource Guide: www.ncsc.org/Topics/Access-and-Fairness/Americans-with-Disabilities-Act-ADA/Resource-Guide.aspx
- NCSC's Court Interpretation Resource Guide: www.ncsc.org/Topics/Access-and-Fairness/Language-Access/Resource-Guide.aspx

Communication Access in State and Local Courts (2008) by National Association of the Deaf: www.nad.org/issues/justice/courts/communication-access-state-and-local-courts

ADA National Network by DBTAC

1-800-949-4232 Voice/TTY
www.adata.org

- Provides information, guidance and training on the Americans with Disabilities Act (ADA), tailored to meet the needs of business, government and individuals at local, regional and national levels. The ADA National Network consists of ten Regional ADA National Network Centers located throughout the United States that provides personalized, local assistance to ensure that the ADA is implemented wherever possible.

U.S. Department of Justice

Civil Rights Division Disability Rights Section - NYAV
950 Pennsylvania Avenue, NW Washington, D.C. 20530
800-514-0301
202-307-1198 Fax
www.ada.gov

United States Access Board

1331 F Street, NW
Suite 1000
Washington, DC 20004-1111
202-272-0080 Voice
800-872-2253 Toll Free Voice
202-272-0082 TTY
800-993-2822 Toll Free TTY
202-272-0081 Fax

info@access-board.gov
www.access-board.gov

- Guide on accessible courthouse design under the ADA and the ABA. "Justice for All: Designing Accessible Courthouses" (Nov. 15, 2006), available at: **www.access-board.gov/attachments/article/432/report.pdf**

American Bar Association

Commission on Mental and Physical Disability Law

740 15th Street, N.W.

Washington, DC 20005-1019

202-662-1000

https://www.americanbar.org/groups/diversity/disabilityrights/
cmpdl@abanet.org

Appendix I: Information and Resources regarding Sign Language Interpreters

Appendix I: Information and Resources regarding Sign Language Interpreters

This appendix contains information regarding sign language interpreters in court proceedings. Included within is:

- (1) Bench Card for Judges when working with deaf and hard of hearing persons and sign language interpreters;
- (2) Frequently Asked Questions about sign language interpreters;
- (3) Code of Professional Conduct for sign language interpreters; and
- (4) Questions to ask when establishing a sign language interpreter's qualifications.



WORKING WITH DEAF OR HARD OF HEARING PERSONS AND SIGN LANGUAGE INTERPRETERS IN THE COURTROOM

— A Bench Card for Judges —

The Law on Sign Language Interpreters for Participants in Court Proceedings

Under the Americans with Disabilities Act (ADA) and state law (O.C.G.A. § 24-6-650 to 658), Georgia courts must provide auxiliary aids or services – such as qualified sign language interpreters – to participants in court proceedings who are deaf or hard of hearing (DHH). They must provide these aids or services when necessary to ensure effective communication by and with DHH participants. DHH participants can include litigants, witnesses, and spectators. Court proceedings include all court services, programs, and activities. DHH participants:

- Cannot be required to arrange or pay for their own interpreters;
- Must be provided an interpreter for any criminal or civil proceeding;
- Can waive their right to an interpreter if the waiver is in writing and it is approved by the court;
- Do not waive their right to an interpreter simply because they do not request an interpreter.

Establishing the Communication Preference of the Participants

The court must ask DHH participants to identify the type of reasonable accommodation needed.¹ If a request for an interpreter is not made, but the participants could benefit from the services of an interpreter, the judge should address the need on the record:

- “Please tell the court your name.”
- “You have the right to participate and understand these proceedings. Tell the court the best way to communicate with you, so you know what is being said.”
- “Do you need an interpreter?”

Finding a Qualified Sign Language Interpreter

The Registry for Interpreters for the Deaf (RID), the national certification organization for all sign language interpreters, has a searchable database of certified members on its website, www.rid.org

Credentials of Sign Language Interpreters

An ability to sign does not equate to being able to interpret. To effectively communicate, the interpreter must possess the necessary skills to process spoken language into equivalent sign language and to process sign language into equivalent spoken language. Family members or friends of DHH participants should never be called upon to interpret court proceedings. Court personnel should not function as interpreters unless they are certified and employed as staff interpreters.

A court official or designee should assess an interpreter's qualifications prior to scheduling the interpreter's appearance in court. To be recognized as qualified in Georgia, an interpreter must hold a current certification from the Registry of Interpreters for the Deaf (RID). For legal proceedings, courts should first try to use certified sign language interpreters who hold this credential:

- SC:L (Specialist Certificate: Legal) *Preferred and recommended credential based on demonstrated specialized knowledge of legal system, language, and settings.*

If an SC:L interpreter cannot be located, interpreters with these RID certifications may also be used. However, it is recommended that they have additional specialized training in legal interpreting:

- NIC (National Interpreter Certification), Master
- NAD V (National Association of the Deaf: Certification – Master)
- CI and CT (Certificate of Interpretation and Certificate of Transliteration)
- CDI (Certified Deaf Interpreter)
- CSC (Comprehensive Skills Certificate)

If the court is unsure of an interpreter's qualifications, the court should *voir dire* the interpreter:

Sample Voir Dire to Assess an Interpreter's Qualifications

- “Are you certified by RID?”
- “What specialized training have you completed?”
- “How long have you been an interpreter?”
- “How many times have you interpreted in court?”
- “Describe the Code of Ethics as it applies to legal interpreters.”
- “How did you learn American Sign Language?”

Additional Considerations When Selecting Sign Language Interpreters

Courts should take additional steps to determine whether a particular interpreter is suited to work in a court setting. Some considerations could include:

- Prior professional and/or social contact or association with the DHH participants.
- Education, professional training, and formal legal training completed by the interpreter.
- The types of court proceedings in which the interpreter has experience.

(A full list of suggested *voir dire* questions, considerations, and acceptable answers may be requested from the Judicial Council/Administrative Office of the Courts.)

Sign Language Interpreter's Ethics

The Registry of Interpreters for the Deaf and the National Association of the Deaf (NAD) together have enacted a Code of Professional Conduct for interpreters that comprises seven ethical tenets:

1. Adhere to standards of confidential communication.
2. Possess the professional skills and knowledge required for the specific interpreting situation.
3. Conduct themselves in a manner appropriate to the specific interpreting situation.
4. Demonstrate respect for consumers.
5. Demonstrate respect for colleagues, interns, and students of the profession.
6. Maintain ethical business practices.
7. Engage in professional development.

The Code applies to RID's certified and associate members and NAD's certified members; is superseded by any local, state, or federal laws and regulations; and applies to both face-to-face and remote interpretations.

Sign Language Interpreter's Oath

Courts should administer an oath to the interpreter prior to the start of court proceedings. Below is an example:

"Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law, follow all official guidelines established by this court for legal interpreting, and discharge all of the solemn duties and obligations of legal interpretation?"

¹ As set out in the final ADA Title II rule, "[t]he type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities." 28 C.F.R. 35.160(b)(2) (analysis).

Best Practices for Interacting with DHH Persons²

- DHH persons experience differing levels of hearing loss and may prefer varying methods of communication. Ask DHH persons which method they prefer.
- When speaking with DHH persons, whether through a sign language interpreter or not, speak directly to them, look directly at them, and maintain eye contact. Natural facial expressions and gestures will be helpful in facilitating your conversation.
- The role of a sign language interpreter is only to facilitate communication between DHH and hearing people. Therefore, the interpreter should *never* be asked to participate in any activity other than interpreter for the DHH individual.

Resources

Georgia Supreme Court Rule on Interpreters

<http://coi.georgiacourts.gov/content/supreme-court-rules>

State of Georgia ADA Coordinator's Office

<http://ada.ga.gov>

Georgia Registry of Interpreters for the Deaf

www.garid.org

Georgia Council for the Hearing Impaired

www.gachi.org

National Association of the Deaf

www.nad.org

Registry of Interpreters for the Deaf/National Assoc.
for the Deaf Code of Professional Conduct
rid.org/UserFiles/File/NAD_RID_ETHICS.pdf

National Association of Judiciary Interpreters & Translators Code of Ethics and Professional Responsibilities

<http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf>

Working with Sign Language Interpreters in Texas: A Bench Card for Judges

<http://www.najit.org/asl/benchcardtexas.pdf>

U.S. Dept. of Justice/Americans with Disabilities Act
www.ada.gov

² Best Practices when Interacting with Persons with Disabilities: A Customer Service Guide for State Government Agencies -- Georgia State Financing and Investment Commission, State ADA Coordinator's Office.
http://ada.georgia.gov/sites/ada.georgia.gov/files/related_files/document/BestPractices%20Handbook%20final%20copy%20with%20Corrins%20M%20Foreward.pdf

Frequently Asked Questions about Sign Language Interpreters in the Courtroom

Are there credentialing and ethics considerations for sign language interpreters?

Yes. According to most states, the Registry of Interpreters for the Deaf, Inc. (RID) should certify the designated sign language interpreter in legal settings. RID certified interpreters are bound by the RID's Code of Professional Conduct. See below for more information on RID's Code of Professional Conduct. Additionally, the National Center for State Courts' (NCSC) "*Model Code of Professional Responsibility for Interpreters in the Judiciary*" is used as a guide for interpreter conduct and responsibilities. This resource can be found at: <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/accessfair&CISOPTR=118>

What is the duty of a certified interpreter?

Sign language interpreters are Officers of the Court who are appointed to provide interpreting services for Court proceedings. The duty of the interpreter is to interpret the spoken and signed proceedings accurately while maintaining the integrity of the communication. The interpreter must execute this role with total absence of bias and must maintain strict confidentiality.

How do I locate a certified interpreter?

The Registry of Interpreters for the Deaf website (www.rid.org) has lists of certified members or you can contact your local RID chapter listed in Appendix E of this manual.

How much lead time do I need to locate a certified and experienced legal interpreter?

The shortage of sign language interpreters for any setting is problematic nationally and the scarcity of those who are actually qualified to work in legal and judicial settings is even more severe. Hence, the more lead time an agency has to secure a qualified legal interpreter, the better the chance of finding one. Given the unpredictability of need in legal and judicial settings, it is imperative that attorneys, clerks, law enforcement, etc. inform the Court of the need for an interpreter as soon as possible. Outside of mandated Court hearings that must be held within a specific time frame, flexibility in scheduling Court appearances, trials, hearings, etc., will increase the chances that a qualified interpreter or team of interpreters will be found.

Why do I need more than one interpreter?

Because of the length or complexity of most legal assignments, a team of two or more interpreters will be necessary in order to ensure the integrity of the Court's record.

How will a team of interpreters work in court?

When working as a team for the proceedings, interpreters will work in teams of two or more. Interpreting is more mentally and physically demanding than most people realize and the first thing to suffer as a result of interpreter fatigue is accuracy. Therefore, when working as a team, the interpreters will engage in a system of monitoring to ensure the quality of the process. This process requires the *support interpreter* to provide the *working interpreter* with small bits of information that may have been missed. However, if a substantive point has been missed, the interpreters will immediately inform the Court of the omission. During the proceedings, the

interpreters will utilize written notes to ensure consistency in the process and to provide feedback to one another. At the end of the proceedings, the interpreters will make these notes available to the Court. The interpreters infrequently may also need clarification or repetition from the Court or may need to confer with one another regarding the process and will inform the Court if the need arises.

Should the Sign Language Interpreters be administered an Oath?

Yes. Sign Language Interpreters should be administered an Interpreter's Oath prior to the start of the proceedings and before counsel make their appearance for the record:

Suggested Interpreter's Oath

Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and in the Code of Professional Responsibility for Court Interpreters, follow all official guidelines established by this Court for legal interpreting, and discharge all of the solemn duties and obligations of legal interpretation?

Does an interpreter need to be qualified for a judicial proceeding?

The provision of an interpreter by an agency does not absolve the Court from the requirement to determine whether an interpreter is qualified. Therefore, qualifying the interpreter at this time will ensure the interpreter's credentials, experience and skills are satisfactory to all parties. This appendix contains a list of questions to consider when qualifying interpreters. During an interpreter's qualification phase, interpreters should disclose for the record any prior professional and/or social contacts with the person who is deaf.

What is American Sign Language (ASL)?

ASL is a naturally occurring language with its own distinct syntax, grammar, and sentential structure. ASL is comparable in complexity and expressiveness to spoken languages. It is not a form of English. Most culturally deaf people regard ASL as their natural language, which reflects their cultural values and keeps their traditions and heritage alive. It is used mainly in North America.

How does the sign language interpreting process work?

There are two types of interpreters in a court setting – proceedings interpreters and counsel table interpreters.

- *Proceedings Interpreters* are on duty throughout the proceedings to interpret the proceedings and function as Officers of the Court. The proceedings interpreters must maintain an appearance of neutrality at all times and avoid unnecessary discussions with counsel, parties, witnesses, and interested parties both inside and outside the courtroom. If others make this problematic for the interpreters, the interpreters will request assistance from the Court regarding possible instructions from the Court to the

parties involved. In light of this requirement, the interpreters may need to have a room or place reserved to retire to during breaks to avoid unnecessary interaction with others.

- *Counsel table interpreters* may be present during a proceeding in addition to proceedings interpreters. Seated between the attorney and client, the counsel table interpreter will interpret all communications between the attorney and client during the proceedings and will interpret as needed for other non-proceeding interchanges. Counsel table interpreters may or may not serve as monitors of the *proceedings interpreters*.

Proceedings interpreters are occasionally requested by the Court to also serve as interpreters for a defendant who is deaf and his or her attorney or a plaintiff/victim who is deaf and the prosecuting attorney. While this is not an ideal situation, interpreters, as officers of the Court, serve at the Court's discretion and will make every effort to accommodate the Court. However, there may be situations where serving in a dual capacity would be inappropriate or would pose a potential conflict of interest. If this is the case, the interpreters will inform the Court of the potential conflict.

How will the interpreters address the Court?

When the interpreter addresses the Court, the interpreter will speak in third person in order to indicate for the record that he or she is the interpreter speaking. When a person who is deaf addresses the Court in sign language, the interpreter will interpret in spoken English and will use first person to indicate for the record that it is the person who is deaf speaking.

It is impossible to sign and speak at the same time when addressing the Court because American Sign Language (ASL) and English are grammatically dissimilar languages. Therefore, if working with a team interpreter, one interpreter will address the Court while the other interpreter will continue interpreting. Depending on the setting, bench conferences may be more appropriate and will be requested as necessary. Courts should hold all bench conferences on the record. If working alone, the interpreter will address the Court without signing. The person who is deaf will have been informed that this situation could occur.

Will any interactions during the proceeding not be interpreted?

At times, there will be information that is not interpreted such as the swearing in of the interpreters, sidebar conversations, and attorney-client discussions.

What are some of the logistical considerations to keep in mind?

- *Positioning of the Interpreter*: Depending on the individual who is deaf and the specific situation, there may be particular linguistic and procedural issues, logistics, positioning, etc. that will need to be addressed with the Court during a brief, pre-trial conference. Sign language interpreters are positioned in the courtroom differently from spoken language interpreters. Because ASL is a visual language, the interpreter must be placed

in front of the person for whom they are interpreting. If a team of two interpreters has been appointed, the second interpreter will need to take a position in the sightline of the first interpreter, preferably behind and slightly to the side of the deaf individual. The interpreters request that they be allowed some time prior to the commencement of the proceedings for appropriate positioning to be determined. In doing so, the interpreters will make every effort to ensure that all sightlines in the well of the Court are preserved.

- **Timing:** As happens when working between spoken languages, occasionally there will be a lack of direct equivalence between English and ASL. Consequently, the interpreter may require a longer period of time to provide an equivalent spoken or signed interpretation. Therefore, if the interpreter is still working after someone has stopped signing or speaking, it is usually a function of this linguistic process. Because of the visual nature of the interpreting process, the interpreters respectfully request that care be given when positioning exhibits or moving about the well of the courtroom to avoid impeding the sightlines.
- When two interpreters are working as a team, the support interpreter will relieve the working interpreter every twenty minutes or so. The interpreters will make every effort to do this during a natural pause and will do so as inconspicuously as possible.

What are the special considerations when interpreting for jury duty?

Interpreters for jury duty are present only to provide interpreting services during preliminary instructions, *voir dire*, and, upon empanelment, judicial proceedings, instructions, and deliberations. The interpreters are not a party in the case, have no interest in the case, and will remain completely neutral.

Interpreters are prohibited from being involved in any manner other than to provide interpreting services as noted above. Interpreters are not allowed to converse with any member of the jury panel outside of the interpreting process. Interpreters are prohibited from engaging in discussions about or commenting on the judicial process or proceedings. All questions will be referred to the appropriate court official.

During deliberations, interpreters are present to carry out their responsibilities and duties as Court Interpreters and Officers of the Court. Consequently, they are only permitted to interpret the conversations and discussions among jurors. They are not permitted to interject their opinions, thoughts, or questions. They are not permitted to speak with any of the jurors on their own behalf. Their sole purpose in being present is to interpret.

Should a Court provide special instructions when working with a sign language interpreter?

While a Court should be mindful not to call attention to an individual with a disability or the accommodation provided to him or her, it may be useful to inform individuals within a proceeding or members of a jury on the role and responsibilities of a sign language interpreter. Some aspects of an interpreter's job that a Court may want to note are the interpreter's role as an officer of the court, the interpreter's confidentiality, and the additional time that may be

needed for an interpreter to interpret accurately and efficiently. Included within “*Ensuring Equal Access for People with Disabilities – A Guide for Washington Courts*”, pages 55-60 are sample scripts for a Court to use when explaining the role of an interpreter in a court proceeding or jury deliberation. This guide can be found at: <https://www.kingcounty.gov/~media/exec/civilrights/documents/WAcourtaccess.ashx?la=en>

Sign Language Interpreter’s Code of Professional Conduct

The Registry of Interpreters for the Deaf, Inc. (RID) worked with the National Association for the Deaf (NAD) to create a Code of Professional Conduct for interpreters. At the center of this code of conduct are seven tenets. These tenets are:

1. Interpreters adhere to standards of confidential communication.
2. Interpreters possess the professional skills and knowledge required for the specific interpreting situation.
3. Interpreters conduct themselves in a manner appropriate to the specific interpreting situation.
4. Interpreters demonstrate respect for consumers.
5. Interpreters demonstrate respect for colleagues, interns, and students of the profession.
6. Interpreters maintain ethical business practices.
7. Interpreters engage in professional development.

In the actual code, each of the seven tenets are followed by guiding principles and illustrations. The code of conduct can be viewed at: www.asli.com/NAD_RID_ETHICS.pdf. Additional information on the Code of Professional Conduct for interpreters is at: www.rid.org/ethics/code-of-professional-conduct

Questions to Consider when Establishing an Interpreter’s Qualifications (Possible Responses are listed on the following page)

1. State your full name and address.
2. Where are you presently employed?
3. What is your educational background?
4. How long have you known sign language?
5. Where did you learn American Sign Language?
6. Can you communicate fluently in American Sign Language (ASL)?
7. Are you certified? By whom? What is your certification called?
8. Please explain the certification process.
9. What formal interpreter training have you undertaken?
10. What formal *legal* interpreter training have you undertaken?
11. What knowledge and skill areas did you study?
12. How many times have you interpreted in court and in what kinds of situations have you interpreted?

13. Please explain the difference between interpreting and transliterating, and between interpreting and translation.
14. Are you active in any professional organizations?
15. What is the RID?
16. What is meant by minimal language skills?
17. How do you determine the language used by a person who is deaf?
18. Have you met the person who is deaf in this matter?
19. Were you able to establish communication?
20. How could you determine that you were being understood and that communication was established?
21. What language does the person who is deaf use?
22. How long will it take you to determine the language the person uses?
23. Would you consider this person to be ASL-English bilingual?
24. Is it possible to sign in ASL at the same time you are speaking in English?
25. As an interpreter, what are significant issues that affect your interpreting in court?
26. Will the interpretation you provide today be verbatim?
27. What process would you use to inform the Court of any errors in your interpretation?
28. Can you explain the difference between simultaneous and consecutive interpretation?
29. Please explain the major tenets of the Registry of Interpreters Code of Professional Responsibility for Court Interpreters.
30. What does the term relay interpreter mean and what function does that person serve?
31. Why might a Certified Deaf Interpreter be more qualified to communicate with this person than you are?
32. Please explain to the Court how you will work with the relay interpreter.

Possible Responses to Sign Language Interpreter Questions

1. & 2. vary by individual

3. What is your educational background?

An interpreter might have attended Interpreter Training Programs, taken sign language classes, studied interpreting/transliterating, American Sign Language, legal interpreting, etc. Degrees in interpreting are rare because of the lack of formal degree programs across the country.

4. How long have you known sign language?

It generally takes five years or more of formal study for a person to become fluent in any language. Fluency is not guaranteed when parents or family members are deaf. After one becomes fluent in American Sign Language, one must study to obtain the skills necessary to interpret. Being able to communicate with a person who is deaf is not equivalent to being able to interpret effectively and equivalently.

5. Where did you learn American Sign Language (ASL)?

Most interpreters have learned ASL through a combination of formal study, professional seminars and workshops, self-study, and interaction with adults who are deaf.

6. Can you communicate fluently in ASL?

Interpreters should be able to answer unequivocally yes.

7. Are you certified? By whom? What is your certification called?

Certified interpreters should be prepared to provide the Court with proof of certification and credentials along with a current membership card issued by Registry of Interpreters for the Deaf (RID).

8. Please explain the certification process.

There are two components to the current RID certification process. The written portion is a knowledge test, consisting of multiple-choice questions that evaluate knowledge of interpreter ethics, history of interpreting, deaf culture, interpreting processes, business processes, etc. Once one passes the written test, he or she is then eligible to stand for a performance test. A videotaped stimulus is used and the candidate's performance is also videotaped. The candidate's tape is then copied and sent to evaluators who rate the performance on a pass-fail basis, following psychometrically valid and reliable criteria.

9. What formal interpreter training have you undertaken?

An interpreter might have taken formal courses on a college or university level without obtaining a degree, since degreed interpreting programs are not widely prevalent.

10. What formal *legal* interpreter training have you undertaken?

Formal legal interpreting training might take the form of seminars from professionals in the field of legal interpreting, self-study, collegial mentoring, court observations, reading, mentoring, study groups, and on-line legal interpreting courses.

11. What knowledge and skill areas did you study?

Legal terminology, how language is used in the courtroom, courtroom protocol, ethics in legal interpreting, how to interpret legal texts, and how people who are deaf use ASL to discuss legal topics might be listed.

12. How many times have you interpreted in court and in what kinds of situations have you interpreted?

An interpreter should have had a variety of work experience in different courts with different cases over several years.

13. Please explain the difference between interpreting and transliterating. Please explain the difference between interpreting and translation.

Interpreting is working between two different languages, such as ASL and English, or Spanish and English. Transliterating is working between different forms of the same language, such as

spoken English and signed English. Translation refers to working with written documents in two different languages, such as a Petition for Temporary Protective Order being translated from written English into ASL.

14. Are you active in any professional organization?

Some of the professional organizations that interpreters might be involved with or be members of include the Registry of Interpreters for the Deaf (RID), the National Association of the Deaf (NAD) and the National Association of Judicial Interpreters and Translators (NAJIT).

15. What is the RID?

The Registry of Interpreters for the Deaf, Inc. (RID) is a national membership organization of professionals who provide sign language interpreting/transliterating services for deaf and hard of hearing persons. Established in 1964 and incorporated in 1972, RID is a tax-exempt, 501(c)(3), non-profit organization. RID advocates for the increased quality, qualifications, and quantity of interpreters through a triad of services: professional certification through a national testing system, professional development through a certification maintenance program and promoting a Code of Ethics through an Ethical Practices System.

16. What is meant by minimal language skills?

Minimal language skills or minimal linguistic competency refers to an individual who is deaf who, for a variety of reasons, has had limited exposure to formal language. He or she has no formal language skills and is not fluent in ASL or English. He or she also does not have an effective gestural communication form that can be used to give or receive information. Oftentimes, the communication skills that he or she has used to get by in society are compromised when contact with those who know that particular communication system, such as family members, is limited.

17. How do you determine the language used by a person who is deaf?

An interpreter should be able to respond with some of the grammatical and linguistic features that are indicative of what language or mode of communication a person who is deaf might use. For example, most interpreters look for linguistic features that would indicate the person uses ASL. Features such as subject-object-verb or time-topic-comment sentential structure; time and tense markers that are at or near the beginning of the utterances; adverbs and other grammar would take place on the face and not in separate signs; complex features such as sentential structure that incorporates topic-comment eyebrow markers; rhetorical question eyebrow markers; relative clause eyebrow and head-tilt markers; verbs would incorporate pronouns; and pronouns would be performed by eye-gaze and not by signs. Linguistic features which indicate whether a person uses a more English-like signing system might include features such as signs that follow English word order, more mouth movements that resemble spoken English and initializing of signs.

18. Have you met the person who is deaf in this matter?

Interpreters must meet the person who is deaf in order to establish communication. If the interpreter has had prior professional or social contact with the person who is deaf, this should

be disclosed on the record and the interpreter questioned as to his or her ability to impartially interpret the proceedings. The interpreter should not disclose or be compelled to disclose details of any prior professional contact. In most situations, interpreters should not interpret for the proceedings *and* for defense and/or prosecution. If an interpreter has been initially and primarily appointed by the Court to interpret the proceedings, the interpreter is deemed an officer of the Court by that appointment. As such, that interpreter cannot interpret for the defense without breaching the privileged relationship between a defendant and his or her attorney. He or she cannot be an officer of the Court and be an agent of the attorney concomitantly. Real or perceived conflict of interest is also inherent in such a case. Additionally, an interpreter may be subject to prior knowledge unconsciously influencing one's interpreting, even though all due care and diligence is taken to not allow that to happen.

19. Were you able to establish communication?

Time must be allowed for the person who is deaf and the interpreter to establish communication and for the interpreter to describe his or her role and function in the Court proceedings. Ascertaining that communication is continuing during an interpreted event is an ongoing task, but communication groundwork must be established before the interpreted event begins.

20. How could you determine that you were being understood and that communication was established?

An interpreter should be able to succinctly explain how he or she makes the determination that communication has indeed been established. For example: When establishing communication, most interpreters follow a standard format by asking open-ended questions on a variety of unrelated topics such as educational background, weather, sports, deaf community events, current events and other neutral content areas. This time of interaction allows the interpreter and person who is deaf to get used to each other's signing and see if they can understand one another. Most interpreters particularly look for congruency in three areas: content, context, and affect. If content, context, and affect are congruent, then that result is indicative that communication has been established.

21. What language does the person who is deaf use?

The majority of interpreters are not linguists, but should be able to respond as to which language or sign system a person who is deaf predominantly uses.

22. How long will it take you to determine the language the person uses?

Interpreters generally cannot be specific concerning the amount of time necessary. If no communication difficulties arise, a reasonable amount of time would be necessary. However, if there were communication difficulties, then a considerable amount of time would be necessary.

23. Would you consider this person to be ASL-English bilingual?

Since most interpreters are not linguists, most interpreters would not and should not give an opinion. If an interpreter were indeed a professional linguist, then the determination of

whether a person who is deaf is ASL-English bilingual would normally require more time and additional resources, including the opportunity to study the written English of the person who is deaf.

24. Is it possible to sign in ASL at the same time you are speaking in English?

No. English and ASL are two different languages and each has a very different syntax. Trying to use both languages simultaneously would be like trying to speak in Spanish and sign in French. It just can't be done. An interpreter should generally not respond to questions from Court personnel in spoken English while signing his or her responses to the person who is deaf.

25. As an interpreter, what are significant issues that affect your interpreting in Court?

Generally, lack of accessibility to the case file in order to prepare is a major issue. Technically, placement, lighting, and acoustics will have a major impact on interpreting. Speed of the spoken discourse, such as when someone reads from a text, could present difficulties. Physical and mental exhaustion will have an impact as well.

26. Will the interpretation you provide today be verbatim?

The question about the interpretation being verbatim usually goes to the question of whether the interpretation will be accurate. Interpreters normally take an oath that attests that they will faithfully and accurately interpret all the proceedings before the court. An interpreter's goal is to preserve the integrity of the record by faithfully and accurately conveying the source message in the target message in an appropriate manner, retaining the mood, tone, nuances, and meaning of the speaker. Actually, there is no such thing as a verbatim or word-for-word interpretation since there are few word-for-word equivalents between any two languages. The differences between the languages require interpreters to find dynamic equivalents. Therefore, there is equivalence in meaning, but it is not verbatim.

27. What process would you use to inform the Court of any errors in your interpretation?

An interpreter should be able to respond that he or she will notify the Court as soon as errors are made or realized, regardless of when that occurs, by addressing the bench either in open court or if deemed necessary by requesting to approach the bench.

28. Can you explain the difference between simultaneous and consecutive interpretation?

Simultaneous interpreting occurs at the same time someone is speaking or signing, i.e. someone is speaking in spoken English and the interpreter is interpreting in ASL at the same time. Thus, two languages are used simultaneously. Consecutive interpreting occurs during consecutive time segments, i.e. the interpreter watches someone signing in ASL and when the person stops signing, the interpreter will begin interpreting in spoken English so that only one language is being used at a time.

29. Please explain the major tenets of the Registry for Interpreters Code of Professional Responsibility for Court Interpreters.

The seven major tenets of RID's code of professional responsibility are listed on a previous page of this appendix. Additionally, interpreters working in judicial settings should have a working

knowledge and understanding of the state specific code of professional responsibility for interpreters.

30. What does the term relay interpreter mean and what function does that person serve?

A relay interpreter might or might not be a Certified Deaf Interpreter (CDI), who is an individual who is deaf or hard of hearing and has been certified by the Registry of Interpreters for the Deaf as an interpreter. However, in addition to excellent general communication skills and general interpreter training, the relay interpreter may also have specialized training and/or experience in use of gesture, mime, props, drawings and other tools to enhance communication. The relay interpreter usually has an extensive knowledge and understanding of deafness, the deaf community, and/or deaf culture which combined with excellent communication skills, can bring added expertise into both routine and uniquely difficult interpreting situations.

31. Why might a Certified Deaf Interpreter be more qualified to communicate with this person than you are?

A Certified Deaf Interpreter might be more qualified when the communication mode of a person who is deaf is so unique that interpreters who are hearing cannot adequately access it. Some such situations may involve individuals who: use idiosyncratic non-standard signs or gestures such as those commonly referred to as home signs which are unique to a family; use a foreign sign language; have minimal or limited communication skills; are deaf-blind or deaf with limited vision; use signs particular to a given region, ethnic or age group; and/or have characteristics reflective of deaf culture not familiar to hearing interpreters.

32. Please explain to the Court how you will work with the relay interpreter.

In the CDI/hearing interpreter team situation, the CDI transmits message content between a deaf consumer and a hearing interpreter; the hearing interpreter transmits message content between the CDI and a hearing consumer. While this process resembles a message relay, it is more than that. Each interpreter receives the message in one communication mode (or language), processes it linguistically and culturally, and then passes it on through the appropriate communication mode. In even more challenging situations, the CDI and hearing interpreter may work together to understand an individual's message, confer with each other to arrive at their best interpretation, and then convey that interpretation to the hearing party.

Appendix J: Information and Resources Regarding Alternate Document Formats

Appendix J: Information and Resources Regarding Alternate Document Formats

Providing Information in Alternative Formats

Introduction to various alternate formats and resources for their creation.

<https://hfcdhcp.org/briefs/brief6a-alt-formats/#sect6>

American Printing House for the Blind, Inc. (APH)

APH is the world's largest nonprofit organization creating educational, workplace, and independent living products and services for people who are visually impaired.

1839 Frankfort Avenue

P.O. Box 6085

Louisville, KY 40206-0085

Phone: 502-895-2405

Toll Free: 1-800-223-1839 (U.S. and Canada)

Fax: 502-899-2284

Website: www.aph.org

Email: info@aph.org

Center for the Visually Impaired (CVI)

The mission of the Center for the Visually Impaired is to empower people impacted by vision loss to live with independence and dignity.

739 West Peachtree Street, N.W.

Atlanta, GA 30308

Phone: 404-875-9011

Fax: 404-607-0062

Contact: Anisio Correia

Appendix K. Checklist for Identifying Facility- Related Barriers in Existing Courthouses

Appendix K. Checklist for Identifying Facility-Related Barriers in Existing Courthouses

ADA Checklist for Existing Facilities
www.ADAchecklist.org.

This checklist was produced by the New England ADA Center, a project of the Institute for Human Centered Design and a member of the ADA National Network. This checklist was developed under a grant from the Department of Education, NIDRR grant number H133A060092-09A. However, the contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.

Questions or comments on the checklist contact the New England ADA Center at 617-695-0085 voice/tty or ADAinfo@NewEnglandADA.org.

^[1] 541 U.S. 509, 536 (2004).

^[2] The guide generally does not address certain legal principles, such as sovereign immunity, or the obligations of judges and court personnel under the American Bar Association’s Model Code of Judicial Conduct, requiring judges, among other things, to perform the duties of judicial office, including administrative duties, without bias or prejudice. Rule 2.3

(a). www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html

^[3] 42 U.S.C. § 12101(b)(1).

^[4] 42 U.S.C. § 12101(a)(8).

^[5] Pub. Law 110-325.

^[6] 29 U.S.C. § 794(a).

^[7] The Supreme Court decided in Tennessee v. Lane in 2004 (above, footnote 1) that states are subject to lawsuits filed in federal court under Title II for money damages, injunctive relief, and declaratory relief; Congress had appropriately abrogated sovereign immunity when it enacted the ADA, specifically as to “judicial services.” See case description, App. F, p. 1.

^[8] 42 USC § 12102(1). A person is also protected if he or she has a relationship or association with a person with a disability.

^[9] 28 C.F.R. § 35.104.

^[10] *Id.*

^[11] 42 U.S.C. § 12102(2)(A).

^[12] 42 U.S.C. § 12102(2)(B).

^[13] A qualified individual with a disability is defined under Title II of the ADA at 42 U.S.C. § 12131(2).

^[14] See Prakel v. Indiana, App. F, p. 10.

^[15] See Galloway v. Superior Court of the District of Columbia, App. F, p. 7.

^[16] See King v. Indiana Supreme Court, App. F, p. 8.

^[17] See Soto v. City of Newark, App. F, p. 9.

^[18] See Prakel v. Indiana, App. F, p. 9.

^[19] See Mosier v. Kentucky, App. F, p. 10.

^[20] 42 U.S.C. § 2000d et seq.

^[21] Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf, issued by DOJ and the Department of Health and Human Services, August 2015, Question 5.

^[22] 28 C.F.R. §35.130(d).

^[23] See WebAIM, www.webaim.org/articles/cognitive.

^[24] For more information see National Alliance on Mental Illness, www.nami.org/Learn-More/Mental-Health-Conditions.

^[25] Supplementary information for Title II regulation, 75 Fed Reg 56164 at 56200, col. 3 (Sept. 15, 2010).

^[26] Revised ADA Requirements: Effective Communication | PDF (2014)www.ada.gov/effective-comm.htm

^[27] Support Service Providers for People who are Deaf-Blind (2006), www.aadb.org/information/ssp/white_paper_ssp.html.

^[28] The Arc is the largest national community-based organization advocating for and serving people with intellectual and developmental disabilities and their families.

^[29] www.thearc.org/document.doc?id=3669 **The Arc's Justice Advocacy Guide: An Advocate's Guide on Assisting Victims and Suspects with Intellectual Disabilities, 2006.**

^[30] The State of Washington formally recognizes the role of support person in criminal proceedings where "dependent persons" are victims or witnesses, allowing dependent persons to be accompanied by an advocate or support person. See the State of Washington's law on the rights of "dependent persons" (one who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life) to be accompanied by such a person, be provided a secure waiting area, and request a preliminary hearing for the purpose of establishing accommodations. WA ST T. 7, Ch. 7.69B.020.

^[31] Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf, issued by DOJ and the Department of Health and Human Services, August 2015, Question 5.

^[32] Florida accommodation form, www.flcourts.org/core/fileparse.php/243/urlt/ADA-Model-Request-Form.pdf; State of Washington's General Court Rule 33, www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr33; California court rules, Cal. Rules of Court, rule 1.100 (2014), www.courts.ca.gov/cms/rules/index.cfm?title=one&linkid=rule1_100

^[33] See DOJ settlement agreement with Orange County Clerk of Courts, Florida, App. D, p. 2.

^[34] See Marks v. Tennessee, App. F, p. 1.

^[35] See In Re McDonough, 457 Mass. 512, 522 (2010), setting out procedural guidelines where resolution of a witness' request for accommodation for a disability is disputed.

^[36] See State of Washington forms: Sealed Medical and Health Information Cover Sheet under GR 33

GR 33 Request, Request for Reasonable

Accommodation www.courts.wa.gov/forms/?fa=forms.contribute&formID=71

^[37] *Id.*

^[38] See Section-by-Section Analysis of Title II rule, Subpart E –

Communication. www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm

^[39] ADA Update: A Primer for State and Local

Governments, http://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html, from DOJ, June 2015.

^[40] See Paulone v. City of Frederick, App. F, p. 8.

^[41] Private entities involved in court activities may also be public accommodations with their own obligations under Title III of the ADA.

^[42] King v. Indiana Supreme Court, App. F, p. 8. See also Paulone v. City of Frederick, App. F, p. 8, where there was no contractual relationship between the city and private entities

participating in alcohol awareness education required for probationers, but Title II claim against city for failing to provide interpreters was allowed to proceed.

^[43] Duvall v. County of Kitsap, App. F, p. 6; Gregory v. Administrative Office of the Courts, App. F, p. 7.

^[44] However, see the discussion in the prior section, Activities other than Judicial Proceedings (Including Those Carried out by Third Parties) about judicial activities that may not be court proceedings and/or that may be carried out by third parties, explaining ADA coverage of these.

^[45] A lawyer's office is considered a place of public accommodation and must accommodate people with disabilities in accordance with Title III or the ADA. 42 USC § 12182.

^[46] See collection of Georgia statutes and rules in App. E.

^[47] See July 3, 2012 Supreme Court Order, App. E.

^[48] *Id.*

^[49] See *Ling v. State*, 288 Ga. 299; 702 S.E.2d 881 (2010); See also *Ramos v. Terry*, 279 Ga. 889, 622 S.E.2d 339 (2005) (holding the use of qualified interpreters is necessary to preserve meaningful access to the legal system for persons who speak and understand only languages other than English); and "Is It Reversible Error? Due Process and Access to Justice for LEP and DHH Individuals," *Georgia Courts Journal*, Jana J. Edmondson-Cooper, Esq., 2015.

^[50] See bench card, App. I, p. 2.

^[51] See Georgia Commission on Interpreters Instructions for Use of Non-Licensed Interpreters, App. E.

^[52] See O.C.G.A. § 24-6-652, App. E, p. 1.

^[53] See https://www.georgiaadvocates.org/library/folder.555579-SESSION_1_Language_Access_Nuts_Bolts_101_Legal_Obligations_and_Practical_C

^[54] See the next section, Other Electronic and Information Technology, as to electronic filing and associated records.

^[55] These agreements are part of DOJ's Project Civic Access, a wide-ranging effort to ensure that counties, cities, towns, and villages comply with the ADA by eliminating physical and communication barriers. DOJ conducts comprehensive reviews of the activities of a public entity and generally resolves the issues through a formal settlement agreement. See, for example, agreement with Monroe County (Pennsylvania), App. D, p. 10.

^[56] See agreements with Atlanta and Glynn County (Georgia), App. D, p. 7.

^[57] See agreement with Galveston County (Texas), 2015, www.ada.gov/galveston_tx_pca/galveston_tx_sa.html.

^[58] See <http://www.ada.gov/websites2.htm>

^[59] See Tennessee v. Lane, App. F, p. 1, Matthews v. Jefferson, App. F, p. 3.

^[60] U.S. Department of Justice, ADA Title II Technical Assistance Manual, www.usdoj.gov/crt/ada/taman2.html, sections II-5.1000 and II-5.2000.

^[61] Appendix K of the electronic version of this guide provides additional information for conducting a self-evaluation and transition plan to meet the ADA's program access requirements.

^[62] www.ada.gov/2010ADAstandards_index.htm.

^[63] The case cited several allegations of violations of the ADA and Section 504 by other defendants, some of which are not relevant here.