

Americans with Disabilities Act
Title II Guidelines
State Courts System of Florida

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Office of the State Courts Administrator
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Table of Contents

Introduction	3
Section I - Overview	4
Section II - General Requirements	7
Section III - Program Accessibility & Auxiliary Aids or Services	8
Section IV - Courtesies for Effective Communication	11
Section V - Enforcement and Remedies	13
Glossary	15
Appendix A - Recognizing Physical or Mental Impairments	18
Appendix B - Mental Illness and Mental Retardation	20
Appendix C - Examples of Auxiliary Aids and Services	21
Appendix D - More Examples of Courtesies	23
Appendix E - Sample Grievance Procedure	26
Appendix F - Policy on Court Real-Time Transcription Services for Persons Who Are Deaf or Hard of Hearing	31
Appendix G - Proposed Guidelines for Provision of Interpreters for Persons with Hearing Impairments	33
Appendix H – Florida State Courts System Guidelines on the Provision of Real-Time Court Reporting Services for Attorneys with Disabilities	36

Introduction

The Americans with Disabilities Act (ADA) of 1990 was enacted to ensure that all qualified individuals with disabilities enjoy the same opportunities that are available to persons without disabilities. Equalizing opportunities is of paramount importance to the everyday operations of the judiciary.

Courthouses are traditionally designed to instill reverence for justice. This is often reflected in large columns, heavy doors, many steps, and other features that may impede accessibility. The Supreme Court of Florida has produced these guidelines to assist judicial officers and courthouse personnel in understanding the public entity provisions of the ADA (Title II) and to assist them in ensuring that architectural or communication barriers do not obstruct any person's access to the courts. Included are a practical summary of Title II of the ADA and an overview of accessibility requirements. Additionally, this guide contains information pertaining to recognizing and accommodating individuals with disabilities. The Supreme Court of Florida recommends that each district court and judicial circuit educate its employees on important ADA requirements.

The Statewide ADA Coordinator for the State Courts System is Ms. Debbie Howells, in the Office of the State Courts Administrator; telephone: (850)922-4370; e-mail: ada@flcourts.org; fax: (850)488-0156. Ms. Howells is available to provide technical assistance to judicial officers and court employees. In addition, each district and circuit court has designated a local Court ADA Coordinator to assist judges as well as individuals with disabilities who need access to court services and programs. Local Court ADA Coordinators can be contacted through the marshals' offices in the appellate courts or the trial court administrators' offices in the circuit courts.

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Upon request by a person with a disability, this document will be made available in audiotape, braille, large print, or electronic file on computer disk. To order this document in one of these alternate formats, please contact the ADA coordinator, Office of the State Courts Administrator, 500 S. Duval Street, Tallahassee, Florida 32399-1900, (850)922-4370.

Section I - Overview

Note: All underlined words are defined in the Glossary

The Americans with Disabilities Act of 1990 provided a national mandate to end discrimination against individuals with disabilities. Under Title II of the Act, no qualified individual with a disability shall be discriminated against, or excluded from participation in or benefits of the services, programs, or activities of a public entity. The Act directly affects state courts as providers of public programs and services.

Public Services Regulated

- All activities of executive agencies
- All activities of the legislative branch
- All activities of the judicial branch
- All governmental activities of public entities even if performed by a contractor
- All services, programs, and activities involving general contact with the public as an everyday occurrence (telephone services, walk-in services, etc.)

Who Is Protected by Title II?

- All qualified persons with disabilities
- All qualified individuals with a record of a disability
- All qualified individuals who are regarded as having a disability
- All qualified individuals who have an association or relationship with an individual who has a disability

Who Is Not Protected by Title II?

People suffering from temporary, non-chronic impairments or conditions of short duration with little or no permanent impact are not covered by Title II. Some examples include:

- Broken limbs
- Pregnancy
- Sprained joints
- Concussions
- Appendicitis
- Influenza

Additionally, some permanent conditions are not covered by Title II, including:

- Physical characteristics, such as eye or hair color, left-handedness, strength, height or weight (within normal range)
- Common personality traits, such as quick temper or poor judgment (excluding those personality traits which are symptoms of psychological disorder)
- Environmental, cultural, or economic characteristics (poverty, lack of education, illiteracy, or prison record)

Who Is an Individual with a Disability?

A person who has a physical or mental impairment that **substantially limits a major life activity**, has a record of such an impairment, or is regarded as having such an impairment is an individual with a disability.

Who Is a Qualified Individual with a Disability?

A person with a disability who, with or without auxiliary aids or services, meets the essential eligibility requirements for receiving services or participating in programs or activities provided by a public entity.

What Is a Physical or Mental Impairment?

A physical impairment is any physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

- neurological
- musculoskeletal
- special sense organs
- skin
- cardiovascular
- endocrine (hormonal)
- reproductive
- digestive
- genito-urinary
- respiratory (including speech organs)
- hemic and lymphatic (bloodstream)

A few examples of physical and mental impairments are:

- visual impairments
- epilepsy
- heart disease

- psychological disorders
- mental retardation
- HIV infection/AIDS
- speech and hearing impairments
- cancer
- learning disabilities
- diabetes
- mobility impairments

For further examples, see Appendix A.

A mental impairment is any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. While retardation is not a mental illness, it is possible for an individual who is mentally retarded to also have a mental illness. For more information on distinguishing mental retardation from mental illness, see Appendix B.

Section II - General Requirements

Note: All underlined words are defined in the Glossary

A **public entity** is required to provide necessary **auxiliary aids and services** for **qualified individuals with disabilities** to ensure effective communication and participation in its services, programs, and activities. Qualified individuals with disabilities should have the same quality of opportunity offered to persons without disabilities in the most integrated setting possible. An entity may not charge a fee or surcharge on an individual with a disability (or group of persons with a particular disability) to cover the costs of making the program or service accessible.

Guidelines

- Offer qualified individuals with disabilities equal opportunities that provide the same quality result as that provided to others.
- Opportunities offered to individuals with disabilities should be essentially the same as those offered to others. If an auxiliary aid or service is necessary to provide individuals with disabilities with the full benefit of the service, the auxiliary aid or service should be offered in the most integrated setting possible.
- Adopt policies that do not automatically disqualify individuals with disabilities. (For example, making a driver's license the only acceptable means for identification discriminates against individuals whose disabilities prevent them from driving.)

A public entity should give **primary consideration** to the auxiliary aid or service requested by the individual with the disability:

- Always consult the person with the disability as the first step in evaluating the need for auxiliary aids and services.
- Work with the person with a disability to identify appropriate auxiliary aids and services and in considering alternatives. Often, by inquiring about what auxiliary aid or service is most effective for that person, one may learn a simple, inexpensive method of accommodation.
- Consider the preference of the individual with a disability and select the auxiliary aid or service that best serves the needs of the individual and fulfills the purpose of the service or program.
- Ensure that equal benefit or enjoyment of the program can be obtained when the auxiliary aid or service is provided.
- Ensure that effective communication occurs.
- Realize individuals may decline a special accommodation and choose to participate in the opportunity in the same manner as the general public.

Section III - Program Accessibility & Auxiliary Aids or Services

Note: All underlined words are defined in the Glossary

Whether a public program or service is accessible to persons with disabilities does not always turn on whether the person can physically enter the building. In courthouses, heavy doors and long stairways are not the only barriers for persons with disabilities. Some barriers one may encounter in a courthouse are:

- Too little parking for persons with disabilities
- Narrow hallways and doorways
- Witness box inaccessible to wheelchairs
- Judge's bench too high to be accessible for persons using wheelchairs
- Poor lighting that inhibits participation for persons who are deaf or hard of hearing and rely on information they can see
- Public information counters too high for persons using wheelchairs
- Microphones too difficult to reach or manipulate for persons with disabilities

Methods of Compliance

- Architecturally renovating facilities to make them readily accessible to and usable by an individual with disabilities
- Relocating a service to enable a person with a disability to participate
- Obtaining or modifying equipment or devices (including TDDs, FM receivers, videotext displays, and publishing materials in Braille and large print)
- Providing qualified readers and interpreters
- Providing reserved parking for a person with a mobility impairment
- Allowing a person with a disability to provide equipment or devices that the public entity is not required to provide

When Are We Required to Provide Auxiliary Aids and Services?

When services, programs, or activities are available to others and inaccessible to a person with a disability who is otherwise qualified, a public entity must provide appropriate auxiliary aids and services to ensure effective communication and participation by that person. The person with a disability will generally request an auxiliary aid or service if needed. All requests must be documented and maintained in a separate and confidential file by the designated ADA coordinator. If physical access to a court facility is not feasible administratively or financially, however, the entity may comply with the ADA by making its services available in another fashion. For some examples of auxiliary aids and services, see Appendix C.

There may be a few situations in which a court will not be required to provide a requested auxiliary aid or service. If a judicial officer or court personnel believe the requested auxiliary aid or service would result in a **fundamental alteration** in the nature of the program or service, or that an **undue burden** would result, the ADA coordinator should be notified immediately. The head of the entity (the chief judge or the chief judge's designee) has the responsibility to prove either fundamental alteration or undue burden. This determination shall be made in writing after considering factors such as: substantial disruption, extensive financial hardship, and fundamental change in the nature of the service. Since state government is such a large public entity, proving the defense of undue burden may be very difficult. Even after determining that a particular auxiliary aid or service would result in a fundamental alteration or undue burden, the public entity remains obligated to take any other action that will not result in the alteration or burden, but will nevertheless ensure that a person with a disability receives the benefit or service offered.

How Do You Determine What Is a Reasonable Auxiliary Aid or Service?

When determining whether requested auxiliary aids and services are reasonable, let common sense be your guide. In evaluating a request for an auxiliary aid or service, the first step should always be to consult the individual with the disability. Work with that person to identify appropriate auxiliary aids or services. If you have thoughtfully considered and discussed all the options, chances are you will come up with an appropriate solution. Nevertheless, when a request for an auxiliary aid or service is made, you should notify the ADA coordinator of your court. When necessary, the ADA coordinator will consult resource materials, talk to disability experts, and prepare a recommendation for approval by the presiding judge.

Documentation of Need for Auxiliary Aids and Services

You may request documentation of functional limitations to support the individual's request for auxiliary aids and services. Copies of requests for auxiliary aids and services, approvals or disapprovals, and a description of any auxiliary aids and services provided should be given to the local ADA coordinator.

Facilities

For ADA compliance purposes, any facility where construction commenced after January 26, 1992 is considered "new" or "post-ADA." Post-ADA facilities must comply with the ADA Standards for Accessible Design (ADA Standards) and be "readily accessible to and usable by" persons with disabilities. The ADA Standards are regulations issued by the U.S. Department of Justice (28 C.F.R. Part 36) and have the force of law.

Facilities built before January 26, 1992, are referred to as “pre-ADA” facilities. A public entity must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible. A State or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. If pre-ADA structures have accessibility problems, the Act provides state and local government with two options: (1) remove the barriers using the ADA Standards, or (2) make the program, service, or activity located within the building accessible by providing “program access.” Exceptions may be made in the case of undue burdens or altering historical properties.

If only part of a building is renovated, or an addition is built to an existing building, only the new or renovated part must conform to the ADA Standards (as well as the Florida Accessibility Code for Building Construction, where the Florida code is more stringent). However, there must also be an accessible entrance to the building and the route to the new or renovated section must also be ADA compliant. Altering (renovating) a building means making a change in the usability of the altered item. Examples of changes in usability include: changing a low pile carpet to a thick pile carpet, moving walls, installing new toilets, or adding more parking spaces to a parking lot. Any state or local government facility that was altered after January 26, 1992, was required to be altered in compliance with the ADA Standards.

If you believe any area or section of your facility does not comply with the ADA, please inform your ADA coordinator.

Section IV - Courtesies for Effective Communication

At times, communicating with or accommodating a person with a disability may place one in unfamiliar territory. As we do not all share the same life experiences, it may sometimes be difficult to discern the needs, concerns, or sensitivities of an individual with a disability. Most importantly, one should give attention to the *person*, not the disability. For additional examples of courtesies, see Appendix D.

General Hints

- Avoid catch-all phrases such as "the disabled," "the blind," or "the deaf."
- Use people first language, such as "individual with a disability," "person who uses a wheelchair," "person who is deaf."
- Avoid using inappropriate emotional descriptors such as "unfortunate" or "pitiful."
- Do not ask how the person became disabled.
- Do not ask about the nature/severity of the disability (unless such inquiry relates to your discussions with the person about an appropriate auxiliary aid or service).
- Relax. Do not be embarrassed if you unintentionally happen to use common expressions, such as "see you later" or "got to be running along," that seem to relate to a person's disability.
- In order to facilitate conversation, be prepared to offer a visual cue to a person who is deaf or hard of hearing, or an aural cue to a person who is visually impaired, especially when more than one person is speaking.

Reception Hints

- Know where accessible restrooms, drinking fountains, and telephones/TDDs are located. If such facilities are not available, be ready to offer an alternative (e.g., other restrooms, a glass of water, your desk phone).
- When introduced to a person with a disability, it is appropriate to offer to shake hands.
 - Shaking a left hand is appropriate.
 - For those who cannot shake hands, touch them on the shoulder or arm to acknowledge their presence.
- Never patronize persons using wheelchairs by patting them on the head or shoulder.
- When addressing a person who uses a wheelchair, never lean on the person's wheelchair. The chair is a part of the space that belongs to that person.
- When talking with a person who has a disability, look at and speak directly to the person, rather than looking at or speaking to a companion or interpreter.
- Offer assistance in a dignified manner with sensitivity and respect. Be

prepared to have the offer declined. Do not proceed to assist if your offer to assist is declined. If the offer is accepted, listen to or ask for instructions.

Section V - Enforcement and Remedies

Designating a Responsible Employee

The Americans with Disabilities Act requires every public entity with fifty or more employees to designate a responsible employee to serve as the ADA coordinator and to adopt formal grievance procedures. Though some courts do not have fifty employees, designating such a coordinator facilitates implementation of the ADA statewide. The name, work address, and work phone number of the designated employee should be available to all interested persons.

The court ADA coordinator's duties include:

- Coordinating efforts to comply with and carry out the entity's responsibilities under the Americans with Disabilities Act
- Acting as an advisor to whom other employees may direct questions regarding compliance with the Act
- Maintaining information on resources in the community that can be used to accommodate persons with disabilities
- Investigating complaints alleging non-compliance with the Act
- Distributing information regarding compliance with the Act

Adopting Grievance Procedures

Adopting and publishing grievance procedures to resolve complaints advances understanding of the Act throughout the State Courts System. Establishing grievance procedures in each court equips courts with a mechanism to resolve complaints at the local level without resorting to federal complaint procedures. There is an additional requirement to publish adopted grievance procedures for prompt and equitable resolution of all complaints alleging a violation of Title II. The ADA requires that a "complete complaint" be submitted to properly file a grievance. A complete complaint includes:

- Complainant's name and address
- A detailed description of the alleged violation
- Date of the alleged violation
- The desired remedy or solution
- Names of any witnesses who can provide relevant information
- Any other information relevant to an investigation of the alleged violation

For an example of such grievance procedures, see Appendix D.

All persons have a right to pursue complaints of discrimination through the State Courts System's internal complaint procedure or with the United States Department of Justice. To file a formal complaint for an alleged Title II violation, write or call:

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
Post Office Box 66118
Washington, D.C. 20035-6118
(202) 307-2222 (voice)
(202) 307-2678 (TDD)

The ADA recommends resolving disputes on a local level if possible. Individuals who unsuccessfully pursue local remedies are not prevented from later seeking relief through the U.S. Department of Justice.

The ADA coordinator for the State Courts System is available to assist you in answering questions concerning Title II of the ADA. In addition, your local ADA coordinator has access to a variety of resources that can be used in implementing the ADA.

Glossary

"Auxiliary Aids and Services"

Any device or aid that is designed to provide effective communication and participation for individuals with disabilities is an auxiliary aid or service. An example of an auxiliary aid or service is a TDD, but the term also includes services such as a sign language interpreter or removing an item from a high shelf for a person with a disability. For further examples of auxiliary aids and services, see Appendix C.

"Fundamental Alteration"

Public entities are required to make reasonable accommodations and provide auxiliary aids and services to any qualified individual who needs them. In rare cases, a certain accommodation will so drastically change the service, program, or activity that the public entity may not be required to make the accommodation. This defense is only available after the chief judge of chief judge's designee has formally concluded in writing that the accommodation would fundamentally change the nature of the service, program, or activity. Financial hardship alone will not relieve a public entity from the responsibility to comply with the ADA. Before refusing a request, the entity must demonstrate the impracticability and hardship of making the accommodation or providing the auxiliary aid or service.

"Major Life Activities"

Under the ADA, an impairment is a "disability" only if it substantially limits one or more major life activities, such as:

- Walking
- Seeing
- Speaking
- Hearing
- Breathing
- Learning
- Performing manual tasks
- Caring for oneself
- Interacting with others
- Working

"Primary Consideration"

Primary consideration should be given to the auxiliary aid or service requested by the individual with the disability. A public entity should endeavor to obtain the requested method of accommodation unless the court can demonstrate that another equally effective

accommodation is available or that the means chosen would result in a fundamental alteration in the nature of the service, program, or activity.

"Public Entity"

Public entity refers to any state or local government and all the departments, agencies, or other instrumentalities of that state or local government.

"Reasonable Accommodation"

Any aspect of a program or service that presents a barrier to communication, participation, or accessibility must be modified to ensure a public entity's ability to offer its services or benefits to all members of the public, including persons with disabilities. A reasonable accommodation is a modification or adjustment of a program or service that accomplishes full access to and enjoyment of that program or service. Reasonable accommodations may include anything from providing auxiliary aids and services (such as a qualified interpreter) to modifying existing building structure (i.e. building ramps).

"Regarded as Substantially Limited"

An individual who is **perceived** to have a substantially limiting condition even when this person does not have a substantially limiting impairment.

"Record of a Substantially Limiting Condition"

An individual who has a history of impairment or who has a record of having been misclassified as having an impairment. For example: an individual who has a history of cancer or heart disease whose illness is cured, controlled, or in remission, or an individual who was erroneously classified as having a learning disability.

"Substantially Limits"

Three factors in determining whether a person's impairment substantially limits a major life activity are: (1) nature and severity of the impairment, (2) its duration or expected duration, and (3) its permanent or long-term impact or expected impact.

"Undue Burden"

An undue financial or administrative burden is not clearly defined in the Americans with Disabilities Act. However, language in Title II indicates that Congress intended the undue burden standard to be significantly higher than "readily achievable." Though a Title III term, "readily achievable" is defined as "accomplished without much difficulty or expense." According to the United States Department of Justice, the readily achievable standard is lower than the undue burden standard in terms of the level of effort required,

but the factors used in determining whether an action is readily achievable or an undue burden are identical. Asserting the defense of undue burden will thus require greater showing of hardship than simply that the provision of auxiliary aids or services will be difficult or expensive. If after considering all available resources a determination of "undue burden" is made, the chief judge or chief judge's designee must prepare a written statement explaining such a decision.

Appendix A - Recognizing Physical or Mental Impairments

Examples of Physical or Mental Impairments

- A person who has epilepsy and uses medication to control seizures or a person who walks with an artificial leg is considered to have an impairment, even if the medicine or prosthesis reduces the impact of that impairment.
- Simple physical characteristics such as eye or hair color, left handedness, or height or weight within a normal range are not impairments.
- Personality traits such as poor judgment, quick temper, or irresponsible behavior are not impairments unless they are a symptom of a psychological disorder.
- A person who cannot read due to dyslexia is an individual with an impairment because dyslexia is a learning disability. However, a person who cannot read because he or she dropped out of school is not an individual with a disability. Lack of education is not an impairment.
- A prison record is not an impairment.
- Generally, stress and depression are not considered impairments. However, if a person is diagnosed by a psychiatrist as having an identifiable stress disorder, this is an impairment that may be a disability. A person suffering from general stress because of job or personal life pressures is not considered to have an impairment.
- A person who has a contagious disease may have an impairment. Infection with HIV is an impairment. An individual with tuberculosis which affects the respiratory system has an impairment.

Examples of "Substantially Limits"

- An individual who sustains a back injury that results in considerable pain and restricts the ability to sit, walk, stand, or participate in recreational activities is an individual with a disability. An individual who sustains a back injury, but is not restricted in any major life activity by that injury, is not considered an individual with a disability.
- Temporary, non-chronic impairments that have little or no long-term impact usually are not disabilities covered by the Act.
- Broken limbs, sprains, concussions, appendicitis, common colds, or influenza are not disabilities covered by the Act.

Examples of "Record of a Substantially Limiting Condition"

- A person with a history of cancer, heart disease, or other debilitating illness, whose illness is cured, controlled, or in remission, or who has a history of mental illness.
- A person who has been misclassified or misdiagnosed as having a disability such as a developmental disability or a learning disability.
- Someone who has been labeled mentally retarded.
- Someone who has formerly been a patient at a mental institution and was misdiagnosed, but the misdiagnosis has not been removed from the records.
- Someone who has been hospitalized for cocaine addiction, has been successfully rehabilitated, and has not engaged in the illegal use of drugs since receiving treatment.

Examples of "Regarded as Substantially Limited"

- Someone rumored to have the HIV virus regardless of the truth of the rumor.

Appendix B - Mental Illness and Mental Retardation

Court procedures for an individual with retardation are different than for an individual with a mental illness. Section 916.11(1)3), Florida Statutes, states that if the court suspects a criminal defendant may be mentally retarded, the individual shall be examined by the Developmental Services Program of the Florida Department of Children and Families.

It is important to distinguish between an individual with a mental health diagnosis and an individual with a developmental disability such as retardation, in order to provide the appropriate necessary assistance or auxiliary aids or services. Though not an exclusive list, the following guidelines may assist the courts in making a general assessment of a person's mental disability.

Persons with a Mental Illness

- Can be of any level of intelligence
- May exhibit sporadic, unpredictable, inappropriate behavior
- Sometimes need therapy, medication, or treatment

Persons with Mental Retardation

- Are of sub-average intelligence
- Exhibit non-episodic behavior
- Possess limited vocabulary
- Have difficulty understanding or answering questions
- Say what they think others want to hear or mimic responses or answers
- Conceal inability to read or write
- May not understand their rights
- May fail to appreciate seriousness or consequences of situations
- Seem eager to please

Based on a pamphlet developed by attorney Dolores Norley and funded by the Florida Developmental Disabilities Council and the Florida Department of Children and Families Developmental Services Program.

Appendix C - Examples of Auxiliary Aids and Services

Assistive Listening Devices

Some individuals who are hard of hearing use hearing aids. Individuals with more severe hearing losses may add an "audio loop." In this system, the speaker talks into a microphone connected to an amplifier. Sound is sent through a cable or "loop" placed around the courtroom. If the listener's device has a telecoil ("T" switch), he or she can sit within the loop area and receive the amplified speech by turning on the "T" switch.

Audio Tapes/Talking Books

Written materials may be put on cassette tapes for persons with visual disabilities.

Braille Printer

After a computer file has been converted through special software, it can be printed in Braille on a Braille printer. The Braille document should be proofread by a person skilled in Braille.

Real-Time Transcription Services

Real-time transcription services involve a specially trained court reporter, transcription machine, computer, and monitor. The court reporter inputs information in shorthand on the keyboard and it is electronically transmitted to a computer that translates the phonetic entries to English, which is then shown on a monitor. Please refer to the guidelines contained in the Florida State Courts System Policy on Court Real-Time Transcription Services for Persons Who Are Deaf or Hard of Hearing (Appendix F) for further information.

Infra-Red Assistive Listening Systems

An infra-red system uses wireless amplifying devices that transmit sound in the form of light waves. The system consists of a transmitter and receiver. The receiver is portable, and the user may sit anywhere in the room. The transmitters can be attached to walls or made portable.

Kurzweil Reading Machine/Optical Scanner

This machine converts written materials into voice transmissions.

Large Print Materials

Converting smaller print into a larger font assists not only people with low vision, but also people with cognitive impairments. The recommended style for large print materials is clear serif typeface in at least 18-point type, using short paragraphs.

Open and Closed Captioning

In open-captioning, a script of the speaker's message always appears at the bottom of a video screen while that person is speaking. In closed-captioning, the script at the bottom of the screen will appear only if a decoder is used. Open-captioning is also beneficial to persons for whom English is a second language.

Oral Interpreter

An oral interpreter silently mouths words spoken to enable a lip-reader to understand what is being said by people who are seated too far away to enable direct lip-reading.

Qualified Interpreter

A qualified interpreter is someone who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. American Sign Language is the most common sign language used by persons who are deaf or hard of hearing. However, persons who are deaf or hard of hearing may use any one or a combination of several sign languages to communicate, including home signs unique to that individual. It is imperative that the sign language interpreter be skilled in the language used by the individual receiving the service. Please refer to the Proposed Guidelines for Provision of Interpreters for Persons with Hearing Impairments (Appendix G) for further information.

TDD/TTY/Text Phone

A "telecommunication device for the deaf" uses graphic communication in the transmission of signals through a wire or radio control system.

Wireless FM System

This system requires that a speaker talk into a special transmitter unit that sends the sounds directly to the listener, who wears a receiver on a neck loop and a hearing aid with a telecoil.

Appendix D - More Examples of Courtesies

Persons with Mobility Aids

- Enable persons who use crutches, canes, or wheelchairs to keep them within reach.
- Be aware that some wheelchair users may choose to transfer themselves out of their wheelchairs into an office chair for the duration of their visit.
- When speaking to a person who uses a wheelchair for more than a few minutes, sit in a chair. Place yourself at that person's eye level to facilitate conversation.
- If the person is accompanied by a service animal, let him or her control the animal. Do not pet or play with the animal.

Persons with Visual Disabilities

- When greeting a person with a visual disability, always identify yourself and introduce anyone else who might be present.
- When conversing in a group, give a vocal cue by announcing the name of the person to whom you are speaking.
- If the person does not extend a hand (to shake hands), extend a verbal welcome.
- When offering seating, place the person's hand on the back or arm of the seat. A verbal clue may be helpful as well.
- Let the person know if you move or need to end the conversation.
- Allow a person with a visual disability to take your arm (at or below the elbow). This will enable you to guide rather than propel or lead the person.
- If the person is accompanied by a service animal, let him or her control the animal. Don't pet or play with the animal.

Persons with Speech Impediments

- Give your undivided attention when talking with a person who has a speech impediment.
- Ask short questions that require short answers or a nod of the head.
- Do not pretend to understand if you do not. Try rephrasing what you wish to communicate, or ask the person to repeat what you do not understand.
- Do not raise your voice. Most people with speech impediments can hear and understand perfectly well.
- Keep your manner encouraging rather than correcting.
- Exercise patience — do not attempt to speak for someone with a speech difficulty.

Individuals Who Are Deaf or Hard of Hearing

- If you need to attract the attention of someone with a hearing disability, touch/tap the person lightly on the shoulder.
- Some individuals who are deaf or hard of hearing read lips. Always look directly at a person and speak clearly at a normal pace.
- Place yourself facing the light source and keep your hands away from your mouth when speaking.
- Shouting does not help and can be detrimental. Only raise your voice when requested. Brief, concise written notes may be helpful in some situations.
- When speaking through an interpreter, speak to and look at the person with the disability, not at the companion or interpreter.
- In the United States, some persons who are deaf or hard of hearing use American Sign Language (ASL), but ASL is not a universal language. ASL is a conceptual language with its own syntax and grammatical structure, which is significantly different from written and spoken English.
- When scheduling a sign language interpreter for a non-English speaking person, be certain to retain an interpreter who speaks and interprets in the language of that person.

Persons with Learning Disabilities

- Specific learning disabilities may vary from one person to another. These problems may mildly, moderately, or severely impair the learning process.
- Offer assistance by writing things down.
- Ask questions requiring short answers. Wait for the individual to respond.
- Give explanations in small steps. Pause between each step of the direction.
- Allow the person to repeat the directions to ensure understanding.

Appendix E - Sample Grievance Procedure

** * * Trial Court Model * * **

Americans with Disabilities Act of 1990

** * **

Designation of Responsible Person

and

Internal Grievance Procedure

for the

_____ Judicial Circuit

I. Authority

Federal regulations implementing the Americans with Disabilities Act of 1990 (ADA) requires public entities with 50 or more employees to designate a responsible employee and adopt grievance procedures providing for prompt and equitable resolution of complaints alleging noncompliance or complaints alleging any actions that would be prohibited under Title II of the ADA. (28 C.F.R. §35.107)

II. Intent and Purpose

It is the intent of the _____ Judicial Circuit to fully comply with the ADA and to assure equity, fairness, and full participation in the judicial system for persons with disabilities.

The purpose of this procedure is to establish a mechanism for resolving complaints without requiring the complainant to resort to federal complaint procedures. However, complainants would not be required to exhaust this grievance procedure before they could file a complaint at the federal level.

It is the intent of the _____ Judicial Circuit that complainants be consulted and advised, and that communications be maintained, at each step of the grievance process. It is further the intent of the _____ Judicial Circuit to engage alternative dispute resolution techniques whenever necessary, and at any point in the grievance process.

III. Definitions

- A. Americans with Disabilities Act (ADA)—Public Law 101-336, the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.

- B. ADA Coordinator—Same as "Responsible Employee."
- C. Disability or Persons with Disabilities—With respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment as defined in Public Law 101-336 and 28 C.F.R. §35.104.
- D. Grievance—A formal complaint made by a person, or on behalf of a person, alleging that he or she has been subjected to unlawful discrimination, or inaccessibility to facilities, programs, services, benefits, or activities on the basis of a disability.
- E. Legal Affairs—Formally called Legal Affairs and Education, one of three operational divisions of the Office of the State Courts Administrator, Supreme Court of Florida, Tallahassee.
- F. Office of the State Courts Administrator (OSCA)—The administrative office of the Supreme Court of Florida, Tallahassee, which serves as the liaison between the Supreme Court and other court entities and other branches of government.
- G. Responsible Employee—An employee designated to coordinate a public entity's efforts to comply with and carry out its responsibilities under Title II of the ADA. These responsibilities include any investigation and/or follow through of any complaint alleging noncompliance or alleging any actions that would be prohibited by Title II of the ADA.
- H. State Courts System—All Florida courts at both appellate and trial levels.
- I. Title II—The second section of the ADA that prohibits discrimination on the basis of disability in state and local government services.

IV. Designation of Responsible Person

The ADA coordinator for the _____ Judicial Circuit is:

Name
 Position Title
 Street Address
 City, Florida Zip
 Telephone

V. Grievances

A complaint shall contain the following minimum information:

- A. Name, address, and telephone number of the complainant on whose behalf the complaint is being made.
- B. The court facility in which the violation is alleged to have occurred.
- C. A complete statement of the grievance and the facts upon which it is based.
- D. The desired remedy or solution requested.
- E. The names of any witnesses who can provide supportive or relative information.

VI. Procedure for Grievances Relating to the _____ Judicial Circuit

A. Filing

- 1. Complaints must be filed with the ADA coordinator no later than one hundred eighty (180) days from the date of the alleged discrimination.
- 2. The filing deadline may be extended upon a show of good cause.

B. Assessment and Determination of Team Members

- 1. The ADA coordinator will determine which function(s) of the court is at issue: facilities, programs, services, benefits, or activities,
- 2. The ADA coordinator will notify the chief judge and the court administrator of the complaint.
- 3. A team consisting of at least three (3) people, one of which must be the ADA coordinator, shall address the complaint. Individual(s) who are charged in the complaint with alleged discriminatory conduct shall not be a member of the team.
- 4. The team will involve representatives from county government entities in the resolution of the complaint when the complaint involves a court facility, program, service, benefit, or activity that is under the authority or provided by county government.

C. Fact Finding

1. The team, or a member of the team, will review the complaint with the complainant.
2. The team, or a member of the team, will interview witnesses who can provide supportive or relative information and complete the fact finding.

D. Test of Legal Sufficiency

1. The team, or a member of the team, shall determine the legal sufficiency of the complaint. In making this determination the team shall consider a consultation with a member of Legal Affairs.

E. Action

1. If a complaint is legally deficient, the complaint shall immediately be brought to closure.
2. If a complaint is legally sufficient, the team will establish a course of action to resolve the complaint.
3. To the extent necessary, the court will make reasonable modifications to its programs, services, benefits, and activities to ensure future compliance with the ADA.
4. When appropriate, and to the extent necessary, the court will work with county government to make reasonable modifications to court facilities, programs, services, benefits, and activities that are under the authority or provided by county government to ensure future compliance with the ADA.
5. The court may invoke the course of action described in the regulations implementing the ADA (28 C.F.R. §35.164) when modifications would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

F. Closure, Notification, and Records Retention

1. The ADA coordinator shall communicate the results of the investigation and the chosen course of action to the complainant not later than thirty (30) working days from the date the complaint was filed.

2. In instances where a grievance against the _____ Judicial Circuit is filed via the ADA coordinator of the State Courts System, the ADA coordinator shall also communicate the results of the investigation and the chosen course of action to the ADA coordinator of the State Courts System not later than thirty (30) working days from the date the complaint was filed.
3. A record of the grievance shall be maintained for three (3) years; the record shall be located with the ADA coordinator.

Appendix F - Policy on Court Real-Time Transcription Services for Persons Who Are Deaf or Hard of Hearing¹

It is the policy of the Florida State Courts System that all judges and court staff will abide by the following guidelines in those court proceedings where real-time transcription services are utilized as a reasonable and necessary method of ensuring effective participation by a party, witness, attorney, judge, court employee, juror, or other participant who is deaf or hard of hearing and entitled to auxiliary aids or services pursuant to Title II of the Americans with Disabilities Act of 1990:

1. Real-time transcription services should be performed by a court reporter who is specially trained in this skill.

2. The device selected should display text in a manner that accomplishes full access to the service and should be a non-glare, display-type computer monitor; a large-screen image from a data projection panel and overhead projector; or other device that ensures effective communication. It is recommended that the monitor be 15 inches or larger. The size of the monitor should take into account the number of persons viewing it. The display of the text should be dark letters on a light background, double spaced, with mixed case as appropriate for the context of the proceedings. The display font or type size should be a minimum of 18 points. The real-time transcription service should display not less than four (4) and no more than 17 lines of text at any one time. The display view should be limited to text that relates to the real-time transcription service; no system information should be visible to the user.

3. Text displayed on the monitor should appear within three (3) seconds from the time of steno-type input. This time frame requirement includes time for any and all related spell checks including phonetic translation for untranslates.

4. At the commencement of the proceeding, the court should determine whether effective communication is occurring. The court should instruct the person receiving the service and other participants in the proceeding to alert the court should a translation or other problem occur that impedes the person receiving the service from effectively participating in that person's appropriate role in the proceeding. Furthermore, if the court reporter becomes aware that an unacceptable number of untranslates or other problem is occurring with the real-time transcription service, the court reporter should immediately alert the court. Should the real-time transcription service become ineffective, the court should determine the cause of the problem and implement any corrective action the court deems reasonable or necessary.

¹Adopted on June 28, 1996, by administrative order of the Chief Justice of the Supreme Court of Florida.

5. The reporter, prior to the beginning of the proceeding, should review the case file and build a good client/job dictionary. This same job dictionary should be used at each subsequent proceeding in a particular case. The job dictionary should be updated during the course of the proceeding to include untranslates that may be corrected by any of the parties during the proceedings. Such updates should be operable throughout the remainder of the proceeding's real-time transcription service and carried over to any future proceedings.

6. The real-time transcription service and corrections that were displayed on the screen or monitor during the proceeding must be preserved in a manner to reflect what was actually displayed. Any corrections that were not viewed but that later become a part of the official court record must be maintained separately from the record of displayed text. At the conclusion of any proceeding (other than juror deliberations) in which real-time transcription service has been provided to ensure effective communication for a person who is deaf or hard of hearing, the reporter shall preserve the record of the real-time transcription service in accordance with rule 2.075(e), Florida Rules of Judicial Administration, unless otherwise directed by the court.

7. If real-time transcription services are required for a juror who is deaf or hard of hearing, a court reporter shall be present in the jury room during jury deliberations. The role of the reporter, when in the jury room, is not as a reporter of the official record; therefore the real-time transcription service of jury deliberations must be deleted immediately upon the conclusion of jury deliberation. The reporter shall not counsel, advise, attempt to explain terms, or interject personal opinion. Furthermore, the reporter shall not read back the real-time transcription service from the proceeding or jury deliberations without express judicial approval or authorization.

Appendix G - Proposed Guidelines for Provision of Interpreters for Persons with Hearing Impairments²

Standard

The court will ensure that communications in judicial proceedings, court services, programs, and activities involving persons who are deaf or hard of hearing are as effective as communications with other participants. This requirement applies to defendants, litigants, witnesses, jurors, attorneys, and observers. In those proceedings requiring an interpreter, the services of a qualified interpreter shall be secured. Qualified interpreter is defined as an interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In judicial settings, court programs, services and activities, this may mean that the interpreter will need to interpret complex legal terminology.

Obtaining Interpreter Services

Upon becoming aware of the need of such a participant for an interpreter, the court or its designated representative will take the necessary steps to obtain a qualified interpreter. Before determining the type of interpreter services to be secured, the court or its designated representative will confer with the individual with a disability or the individual's legal counsel regarding his or her mode of communication in order to determine the type of interpreter services required. Types to be considered include, but are not limited to, American Sign Language, signed English, fingerspelling, oral, tactile, and cued speech. Some individuals may have unique needs due to educational, cultural, or additional disability factors which may require creative solutions; examples include an individual who uses "home signs" because of a lack of significant exposure to standard communication modes used by individuals who are deaf; individuals who use a foreign sign language; and individuals with physical disabilities which affect their expressive language.

The court or its designee will then determine the date, time, and place where such services will be required. The court will then secure an interpreter who is capable of providing these services and negotiate payment terms from appropriate budgeted funds.

In selecting the interpreter, the preference is that the interpreter be certified by the National Registry of Interpreters for the Deaf (NRID) except in those cases where the unique communication needs of the individual cannot be met by such nationally certified interpreters. The preferred certification level is CS:L (Certificate of Skills: Legal). The second level preference is CLIP (Certified Legal Interpreter, Provision). The third level of preference is either CSC (Comprehensive Skills Certification), or CI/CT (Certificate of Interpretation and Certificate of Transliteration); or Oral Skills Certification for individuals requiring an oral interpreter. Individuals holding other certifications issued by NRID may be

²The January 1, 1994, Action Plan of the Supreme Court of Florida Committee on Court-Related Needs of the Elderly and Persons with Disabilities proposed that these guidelines be adopted by each court.

considered. The court should be aware that it may be necessary to pay travel expenses when such certified interpreters are not locally available. When individuals holding the preferred certifications are not reasonably available, persons who can document substantial experience as interpreters may be considered. When individuals who do not hold NRID certification are used, the court has a responsibility to ensure that the interpreter clearly understands the role of the interpreter in the judicial setting and to ensure that the communication is effective prior to securing his/her services.

For individuals with unique communication needs (cued speech, "home signs," foreign sign language, physical disabilities which affect expressive communication, etc.), solutions may include recruitment of individuals with those particular skills to serve as interpreters; utilization of interpreter pairs which include both a nationally certified interpreter and an individual with the ability to convey or receive communication in the mode of the person with the disabilities; and consideration of alternate means such as real-time transcription. In all cases, the court has the responsibility to ensure that effective communication can occur.

The court may not require an individual to bring his or her own family member or friends to interpret. If a person who has a hearing impairment brings his or her own interpreter, the procedure for determining whether that individual is a qualified interpreter is described in the next section.

The court should be aware that interpreting requires intense mental concentration. In situations that involve more than two hours of interpreting without significant breaks, two interpreters, who take turns (usually in 20-minute shifts), may be necessary to assure effective communication. Additional interpreters may also be necessary to ensure that participants have an opportunity to confer with legal counsel during a proceeding.

Verification of Qualifications

Upon the date, place, and time noted, and prior to continuing with any proceeding, the court or other designated official will inquire of the person with hearing impairment, through the interpreter, whether the individual is confident that the interpreter's skills will ensure an adequate and accurate interpretation of the proceedings, and whether or not the individual feels that the interpreter is impartial. If either of those questions are answered in the negative, further efforts will be made by the court or its designee to determine if there is a reasonable basis to the objection. The court should exercise caution in evaluating the potential for a conflict of interest or for bias when determining whether a family member, friend, or acquaintance is a qualified interpreter as defined in the standard. If there is such a reasonable basis, the court shall take whatever steps are necessary to acquire a qualified interpreter.

The court will inquire of each interpreter whether he or she will be able to interpret the proceedings. The court may wish to ascertain that the interpreter is qualified through

further questions about the interpreter's awareness of the responsibility of the interpreter to accept the assignment using discretion with regard to personal skill, the setting, and the consumers involved. The court may also inquire of the interpreter whether, in his or her best judgement feels that he or she will be able to interpret effectively, accurately, and impartially in the proceedings.

When a question remains or a question arises as to whether the interpreter is qualified, the court may consider enlisting assistance from one or more persons qualified to evaluate interpreting skills and situations. The proceedings will continue unless the interpreter is unable to satisfy the criteria for a qualified interpreter, at which time a qualified interpreter will be obtained.

In the event the individual brings his or her own interpreter to any proceedings, the court or its designee will ask the individual if the interpreter's skills will ensure an adequate and accurate interpretation of the communication of the proceeding, and whether or not the individual feels the interpreter is impartial. The court will also make inquiries of the interpreter as described in the previous paragraph. Again, the court should exercise caution in evaluating the potential for a conflict of interest or for bias when determining whether a family member or friend is a qualified interpreter. If the court is satisfied that the interpreter is qualified, the court will cover the reasonable cost of interpreting services and the proceedings will continue. Otherwise, the court or its designee will obtain a qualified interpreter.

Notification

The court, by and through the Chief Judge, will cause these procedures to be distributed to all judges and staff of the judiciary and will ensure that notice is given to the public about how to request accommodations including interpreters. Upon request, the coordinator for the Americans with Disabilities Act will be available to answer all inquiries and will obtain sufficient training materials on the requirements for effective communication.

Appendix H – Florida State Courts System Guidelines on the Provision of Real-Time Court Reporting Services for Attorneys with Disabilities

Real-time court reporting services will be provided at court expense in county and circuit court criminal trials for attorneys who are deaf or hard of hearing. The provision of real-time court reporting services in other county and circuit court criminal proceedings in which the court is already providing court reporting services to comply with constitutional requirements will be considered on a case-by-case basis. These services will be provided in accordance with the Florida State Courts System’s “Policy on Court Real-Time Transcription Services for Persons Who are Deaf or Hard of Hearing” (see Appendix F).^{3, 4}

Request Procedures:

Attorneys should submit requests for real-time court reporting services as follows:

1. Requests should be made as far in advance as possible, but preferably at least five working days before the date of the courtroom proceeding.
2. Requests may be presented either orally or in written format. All requests will be reduced to writing by the ADA coordinator. Requests must include a description of the hearing disability that necessitates provision of real-time court reporting services.⁵
3. Requests should be forwarded to the local court ADA coordinator (contact information for ADA coordinators is available on the Florida Courts

3 Providing accommodations for attorneys with disabilities who appear in the courtroom as part of their employment duties or professional practice is a responsibility that appropriately may be shared by the attorney’s employer and the courts. Title I of the Americans with Disabilities Act (ADA) requires employers of 15 or more employees and Title II of the ADA requires all state and local government employers to provide reasonable accommodations to qualified employees with a disability. In addition, Section 504 of the Rehabilitation Act of 1973, as amended, covers recipients of federal funding, and requires all covered organizations to provide accommodations for their employees. These responsibilities are concomitant with the courts’ responsibility under Title II of the ADA. It is to everyone’s benefit when employers and the court system work together to ensure that reasonable accommodations for attorneys with disabilities are provided in the most efficient and cost effective manner.

4 In accordance with 28 C.F.R. § 35.150, the provision of real-time transcription services or other appropriate auxiliary aids or services is limited to those that do not fundamentally alter the nature of the service, program, or activity, or result in undue financial or administrative burdens.

5 In order to fully and fairly evaluate a request, it may be necessary for the court to require the attorney to provide documentation about his or her disability, including a statement from a qualified health care provider that identifies the attorney’s functional limitations and describes how the requested real-time court reporting services address those limitations.

website, www.flcourts.org). If the request is originally presented to a judge or judge's office, the judge shall confer with the court ADA coordinator.

4. The judge, court ADA coordinator, or other court representative, as appropriate to the circumstances, may engage in an interactive process with the attorney to discuss whether provision of real-time court reporting services is appropriate.
5. After analysis, the judge, court ADA coordinator, or other court representative, as appropriate to the circumstances, will inform the attorney whether the request will be granted.
6. Attorneys may utilize the court's grievance procedure when requests for real-time court reporting services are denied.

Prepared by the Office of the State Courts Administrator
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