

**A MEANINGFUL OPPORTUNITY
TO PARTICIPATE**

***A HANDBOOK FOR GEORGIA COURT
OFFICIALS ON COURTROOM ACCESSIBILITY FOR
INDIVIDUALS WITH DISABILITIES***

**Georgia Commission on Access
and Fairness in the Courts**

Administrative Office of the Courts

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Introduction

Georgia courts have an affirmative obligation to take proactive steps to remove barriers to accessibility for people with disabilities. Over 1.4 million Georgians have some kind of disability. This handbook is designed to help Georgia courts identify and remove barriers to access to Georgia's courts for people with disabilities.

Disability is a natural part of life. There are over 1.4 million Georgians with some kind of disability. Some Georgians acquire disabilities at birth, such as cerebral palsy, while others acquire them later in life, such as a spinal cord injury. Some people have obvious disabilities, such as blindness, while others experience disabilities coined as "hidden," such as diabetes, deafness, HIV infection and epilepsy. Some individuals undergoing cancer treatment experience disability on a temporary basis, while others have permanently disabling conditions that may be progressive in nature. As a result of disabilities, many Georgians are significantly restricted in their ability to hear, see, think, breathe, walk or conduct many other life activities.

Citizens with disabilities play an important role in all Georgia's communities and families. At any given time, these citizens may come into contact with our court system. Citizens with disabilities may serve as jurors, may appear as parties or witnesses in a trial, or may choose to attend a hearing as observers. More and more frequently, people with disabilities will be serving as lawyers, clerks, court reporters, and judges in the Georgia court system.

While some individuals with disabilities are able to take part in various court processes and activities without difficulty, for many others their disabilities combined with environmental obstacles impose significant barriers to an equal opportunity to participate. Therefore, Georgia courts have an affirmative obligation to identify and remove barriers for people with disabilities so they 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

Our Challenge

Disability presents two related, yet distinct, challenges for Georgia courts. The first challenge involves developing and implementing a comprehensive plan to address *general* accessibility concerns for Georgians with disabilities, including but not limited to removing architectural barriers in courthouses, installing assistive listening systems in courtrooms, providing materials in alternative formats and making court websites accessible for people who use assistive technology. These actions improve access to the courts for many people.

The second challenge involves interacting with people with disabilities as *individuals*, and not just as members of a group. No two people with disabilities are alike; each individual has unique skills, aptitudes, and capacities. Under certain circumstances, it may be necessary to provide an individualized accommodation, such as a sign language interpreter for a person who is deaf, to ensure an equal opportunity to be heard in the administration of justice. Moreover, an accommodation that works well for one individual with a disability may not work as well for someone else with a similar disability. Thus, courts must evaluate on a case-by-case basis each request for a reasonable accommodation by a person with a disability.

Our Approach

This handbook is designed to accomplish two tasks: (1) to provide accurate, up-to-date information about the rights of people with disabilities in clear, easy-to-understand language; and (2) to build the capacity of judges, bailiffs, clerks, and other courthouse personnel to effectively identify and remove the barriers to full participation that individuals with disabilities encounter in Georgia courtrooms.

To address these challenges, this handbook follows the framework established in the Americans with Disabilities Act of 1990 (ADA).

On May 17, 2004, in *Tennessee v. Lane*, the U.S. Supreme Court ruled that a State is not immune from an ADA lawsuit brought regarding the accessibility of a county courthouse. The Court determined that Congress had the Constitutional authority to pass the ADA to enforce the due process and equal protection clause of the Fourteenth Amendment to combat unfair discrimination in the administration of justice. The Supreme Court's decision in *Lane* reaffirms the ongoing responsibility of Georgia courts to accommodate individuals with disabilities under Title II of the ADA. The *Lane* decision does not impose any new accessibility requirements on courts. Instead, *Lane* reinforces the need for courts to have greater awareness and understanding about the current requirements of the ADA.

The ADA only sets minimum standards for accessibility and accommodations. Given the scope of the challenges that courts face in addressing disability-related issues, courts must recognize and remember that the ADA was designed to protect the *civil rights* of people with disabilities. When courts are asked to take steps to ensure that people with disabilities have equal access to court programs, services, and activities, it is important to view such requests in the context of the civil rights of an individual with a disability, instead of seeing ADA compliance as an unwanted mandate.

This handbook is not intended as a complete ADA compliance manual; it is a resource for Georgia courts. The U.S. Department of Justice (DOJ) maintains an ADA technical assistance manual for Title II entities at: <http://www.usdoj.gov/crt/ada/taman2.html>. Also, *Appendix E* contains additional reference information for judges and court administrators on federal and state law applicable to courts.

The Benefits

The benefits of providing disability-related accommodations greatly outweigh the associated costs. These benefits include:

Ensuring due process, equal protection, and civil rights of individuals with disabilities;

Empowering Georgia's citizens with disabilities to fully participate in the judicial system by exercising the rights and responsibilities expected of all citizens, such as jury service;

Increasing the capacity of Georgia's courts to respond to accommodation requests and the specific needs of individuals with disabilities; and

Enhancing the usability and accessibility of Georgia's courts for a broad range of people with and without disabilities.

PART I

An Overview of the Americans with Disabilities Act of 1990 (ADA)

Ordinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with a meaningful right of access to the courts. Judged against this backdrop, Title II's affirmative obligation to accommodate persons with disabilities in the administration of justice cannot be said to be so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior. It is, rather, a reasonable prophylactic measure, reasonably targeted to a legitimate end.

Justice John Paul Stevens, *Tennessee v. Lane*, May 17th, 2004

Courts must provide equal access to all Georgians with disabilities in an integrated setting, and must make reasonable accommodations when necessary, unless doing so constitutes an undue administrative or financial burden, or fundamentally alters the nature of court programs, services and activities. Georgia courts must be aware of the basic minimum requirements for accessibility under the ADA, which include many different courtroom activities.

The Americans with Disabilities Act (ADA)

Congress passed the ADA in 1990 to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The ADA is the world's first comprehensive, national law protecting the civil rights of individuals with disabilities. At the time the ADA was passed, over 43 million Americans experienced some form of disability. 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 nonproductivity.

Equal Opportunity

The goal of the ADA is to provide equal opportunity for people with disabilities. In the administration of justice, Georgia courts must provide an equally effective *opportunity* for people with disabilities to participate in the programs the court offers to citizens. The general principle underlying a court's obligations under the ADA is protecting the civil rights of people with disabilities to enjoy and benefit from the services, programs and activities provided to all people by the court system.

Defining Disability Under the ADA

Under the ADA, an individual with a disability is 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. Under the first prong of the definition, 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. A *mental impairment* is defined as any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Not all physical or mental impairments constitute disabilities under the ADA. For a physical or mental impairment to be defined as a disability, the impairment or a combination of impairments must *substantially limit one or more major life activities*. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and participating in community activities. Whether an individual has a disabling impairment depends on the particular facts of each individual case.

To determine if an impairment substantially limits a major life activity, the following factors should be considered: the nature and severity of the impairment; the permanent or long-term impact of the impairment; and the duration of the impairment. Thus, temporary, nonchronic impairments that do not last a long time and have little or no long-term impact, such as broken limbs, sprained joints, concussions, appendicitis, and influenza, usually are not viewed as disabilities. For example, a broken leg, which is an impairment of relatively brief duration, would not be considered a disability. However, the residual impact of an improperly healed broken leg might be considered a disability. Likewise, a temporary psychological impairment is not considered a disability under the ADA, while a long-term or permanent impairment may be a disability.

In three cases decided in 1999, the United States Supreme Court resolved the issue of whether mitigating measures should be considered when determining whether an impairment substantially limits a major life activity.¹ The Court narrowed the parameters of who is covered under the ADA, ruling that mitigating measures, such as eyeglasses and medication, must be considered when deciding whether an individual is substantially limited in a major life activity, and therefore protected under the ADA. The Court held that when mitigating measures are available, a person is not disabled unless the medical condition substantially limits a major life activity in the condition's *corrected* state.

The second prong of the ADA definition of disability covers individuals who have a record of such 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, noting the gap in employment, may not hire that individual even though the individual is currently not impaired in any way. 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 such an impairment by a covered entity. This prong covers (1) individuals who are believed to have substantially limiting impairments they do not have or (2) 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 may be viewed as substantially limited in some way when, in fact, there is no limitation.

¹ *Sutton v. United Air Lines* 527 U.S. 471 (1999); *Murphy v. United Parcel Service* 527 U.S. 516 (1999); *Albertson's, Inc. v. Kirkingburg* 527 U.S. 555 (1999).

Congress specified numerous conditions that are excluded from the definition of disability, including: sexual disorders, compulsive gambling, kleptomania, pyromania, and disorders resulting from current illegal drug use. In addition, the ADA does not protect individuals who would create an imminent and substantial danger to themselves or others when there is no reasonable accommodation that would remove the danger.

Qualified Individual with a Disability

Under the ADA, *qualified* individuals with disabilities must have equal access to court programs, services and activities. An individual is *qualified* when he or she meets the essential eligibility requirements for participation.

When determining whether someone is qualified, courts must (1) make reasonable modifications to their policies, practices and procedures; or (2) furnish auxiliary aids or services when *necessary* to ensure an equally effective opportunity to participate. However, a court is not required to take any action that would constitute an undue financial or administrative burden or fundamentally alter the nature of the program, service or activity.

For example, a court may have a policy against bringing animals into a courtroom. If a woman who is blind is called as a potential juror and would need to bring her guide dog into the jury box, the court should make a reasonable modification of that policy and allow the juror to bring her guide dog. However, such a request could be a *fundamental alteration* in some instances. For example, if one party in a civil case has an extreme fear of dogs or has an attorney who objects to the presence of dogs on religious grounds, a court could find that the presence of the dog would fundamentally alter the court proceeding by infringing on the rights of an indispensable party or attorney in this case. Thus, a court may arrange to have the juror serve in another courtroom for another case, or excuse the juror.

Eligibility criteria for access to court programs, services and activities which tend to exclude persons with disabilities must not be based on stereotype, speculation or arbitrary basis. Instead this determination must be made on a case by case basis. For example a potential juror who is blind may not be qualified to serve on a jury requiring visual perception such as at a trial for forgery, but may be qualified to serve as a juror in other cases if provided with reasonable accommodations, i.e. written evidence could be provided in alternate format or by the provision of a reader.

A court may reject an accommodation request where the individual with a disability is not otherwise *qualified*. For example, a court would not be required to provide a sign language interpreter for a potential juror if that juror who did not meet the essential eligibility requirement of residency.

Activities Covered by The ADA

Almost every activity conducted by a Georgia court is covered by Title II's mandate that state and local courts ensure that qualified individuals with physical or mental disabilities are afforded an equal opportunity to participate in court programs, services or activities. Title II covers the juror selection system, trials, hearings, courthouse security procedures and access to libraries, publications, Internet sites, dispute resolution programs, and seminars offered by the court. Even if a trial or hearing is closed to the public, Title II applies if one of the participants has a disability. Title II also applies to the physical accessibility of courtrooms and courthouse structures.

The U.S. Supreme Court has broadly applied the "program access" requirement of Title II. In *Pennsylvania v. Yeskey*, 524 U.S. 206 (1998), the U.S. Supreme Court applied the ADA's use of the terms "services, programs, and activities" liberally to include a "motivational boot camp" offered for state prisoners. The Court held that state prisons were clearly subject to the ADA and that the boot camp was an ADA-protected, voluntary program by virtue of its definition in a Pennsylvania statute.

Certain internal administrative functions of the court which are not open to the public, such as regular staff meetings for courthouse personnel, are not covered under Title II. However, a court may have to provide reasonable accommodations to court employees with disabilities under the employment provisions of the ADA.

Integrated Settings

Court programs, services and activities must be provided to people with disabilities in the most integrated setting to the maximum extent feasible. The ADA's "integration mandate" provides that segregation and isolation are forms of discrimination and should be avoided to achieve equal opportunity. Sometimes, it may be necessary to provide access in an alternative manner. For example, a court may construct a fully accessible courtroom in a courthouse to accommodate people with disabilities. However, the court must ensure that this effort does not result in unnecessary segregation, i.e. the court must not reserve the accessible courtroom solely for cases involving people with disabilities.

PART II

Interacting With Persons With Disabilities

General Considerations

The most important thing Georgia 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 you afford everyone else*. There is no need to be nervous or apprehensive in talking and working with people with disabilities.

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 to simple accommodation requests or requests for information. Eliminating these attitudinal barriers can help ensure that people with disabilities have full access to Georgia courts.

The Commission on Access and Fairness in the Courts has developed a reference guide for court officials when interacting with people with disabilities. Some tips from the guide are:

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 anxious 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 always 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 greatly appreciated as long as you are clear of the path of travel.

Familiarize yourself with the court's accessibility features and accommodation protocol. When people with disabilities ask for accommodations, they are not complaining. Rather, 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 promptly direct the request to appropriate personnel who can assist.

Not all disabilities are apparent. Because of the stigma 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, do not ask them if they have a disability. Instead, ask in a respectful way if there is an alternative method for facilitating communication.

Special Considerations for Judges 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 citizens.

Judges should carefully evaluate requests for accommodation made by people with disabilities 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 disabilities. The individuals have experience and information regarding their disabilities and are usually able to suggest the best way to accommodate their needs.

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 your staff, including the bailiffs, to be sensitive to the needs of people with disabilities. Patience and flexibility are important because, just as with most other citizens, many people with disabilities will not be familiar with the procedures and practices of your court.

Using Person-First Language

In verbal and written communication, use person-first language consistently. Person-first language recognizes that a person's disability is not the most important part of that person's identity.

Using person-first language is an effort to be polite and sensitive and not an attempt to restrict the use of language.

Put the person ahead of the identifier of the disability in a given sentence. For example, saying "people with disabilities" is more appropriate, thoughtful and sensitive than saying "disabled people."

Avoid language that is insulting or dehumanizing. Words like "crippled," "deaf-mute" and "deformed" while once commonly used are now considered offensive when applied to individuals with disabilities.

To avoid repetitive usage in long documents, switch around the order of words that appear frequently on one page. For example, consider using "Georgians with disabilities" or "juror with a disability" but keep the person-first pattern consistent.

Interacting with People Who Are Deaf or Hard of Hearing

There is a broad spectrum of hearing loss among Georgians, ranging from mild hearing loss to profound deafness. Most Georgians with hearing loss can be accommodated in court when assistive listening devices are available. However, in certain situations, more individualized accommodations, such as Communication Access Realtime Translations (CART) or sign language interpreters, are necessary to facilitate *effective* communication with the court.

When interacting with people who are deaf or hard of hearing, consider the following tips:

There are a wide range of hearing losses and communication preferences. If you do not know the individual's preferred communication method, ask.

Make direct eye contact. Natural facial expressions and gestures will provide important information to your conversation. Keep your face and mouth visible when speaking.

Before speaking to a person who is deaf or hard of hearing, get the person's attention. To get a person's attention, call 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 people who do not share a common language. Therefore, interpreters should not participate or be included in the communication outside of that role and function.

Good lighting is important to facilitate clear communication.

Range of deafness and hard of hearing:

Individuals who are hard of hearing or late deafened (those who became deaf after acquiring speech and language skills) may use hearing aids, cochlear implants, and/or assistive listening devices to support their residual hearing or they may not use any augmentative devices at all. They may use lip reading skills to facilitate one-on-one communication and may use sign language or oral interpreters in group settings. Individuals who are hard of hearing or late-deafened 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 (also called partial sight) that cannot be satisfactorily corrected with glasses, contacts or surgery. They aren't necessarily profoundly deaf and totally blind; they may have "tunnel vision" and be hard of hearing. To communicate, they may use tactile sign language, fingerspelling or print-in-palm. They 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, a system of raised dots to represent letters. Depending on the type of vision loss they have and if they communicate using sign language, these individuals may or may not have special requirements to accommodate their visual field and language needs.

Some individuals who are deaf may have had only limited exposure to formal language (spoken or signed) and consequently are not 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. Therefore, 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 (CDI).

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 misarticulations 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, mental retardation, drug abuse, cleft lip or palate and vocal abuse or misuse. Frequently, however, the cause is unknown.

Speech problems affect how the communication message sounds. There is a speech problem when so many speech sounds are distorted that the speaker cannot be understood, when there is no source of sound because the vocal cords have been surgically 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.

Language disorders are the impaired comprehension and/or use of spoken, written and/or other symbol systems. 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 what situations. A person who cannot understand the language code has a receptive language problem. A person who is not using enough language rules to share thoughts, ideas, and feelings completely and appropriately has an expressive language problem. One type of problem can exist without the other, but often they occur together in children and adults.

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, ask the person to repeat the statement. If, after trying, you still cannot understand, ask the person to write it down or suggest another way of facilitating communication.

If necessary, 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 Visually Impaired

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 daily tasks without specialized adaptations. Vision impairment may be caused by a loss of visual acuity where the eye does not see objects as clearly as usual. It may also be caused by a loss of visual field where the eye cannot see as wide an area as usual without moving the eyes or turning the head.

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 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.

It is appropriate to ask, "Would you like me to guide you?" If your offer is accepted, let the person take your arm just above the elbow.

Offer to read written information.

Provide all standard printed information available to the public concerning court policies, practices and procedures in an alternate format such as Braille, audio tape, electronic format or large print. Efforts should also be made to provide information at kiosks or posted signage in an audible format.

If the individual has a guide dog, walk on the side opposite the dog. As you are walking, describe the setting, noting any obstacles such as stairs ("up" or "down") and objects protruding from the wall at head level.

Never pet a guide dog (or any other service animal) before getting permission from its handler to do so. The dog is working and must concentrate.

If you need to leave a person alone, inform the person first and make sure there is a rail, wall or something else he or she can touch.

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 Limitations

A mobility impairment involves the partial or complete loss of use of any of an individual's limbs. Mobility impairment refers to a broad range of disabilities which include orthopedic, neuromuscular, cardiovascular and pulmonary disorders. Many things can cause mobility impairment including disease (polio), spinal cord trauma (a motor vehicle accident) and disorders occurring at or before birth (cerebral palsy).

Many disabilities which cause mobility impairment are visible because individuals may rely upon assistive devices such as wheelchairs, scooters, crutches and canes. Other disabilities that cause mobility impairments, such as arthritis, are invisible but need to be taken equally seriously.

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. 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.

Provide a chair for someone who has difficulty standing for an extended time.

People who are not visibly mobility-impaired may have medical needs that impact their ability to get around the court house. For example, a person with a heart condition may have trouble walking quickly or long distances and may need chairs or benches to sit and rest on.

Interacting With People Who Have Cognitive Disabilities

The wide variance among the mental capabilities of those with cognitive disabilities (any disability affecting mental processes) complicates matters in the court house because a person with mental retardation will not have the same needs as a person who has attention deficit disorder or autism. A person with profound cognitive disabilities will need assistance with nearly every aspect of daily living. Someone with a minor learning disorder, however, may be able to function adequately despite the disorder, perhaps even to the extent that the disorder is never discovered or diagnosed. It is important, however, not to approach an individual with any preconceived notions as to his or her specific capabilities. Not everyone who is slow speaking is cognitively impaired.

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, ask, "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.

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

Speak clearly and slowly and keep sentences short.

Break complicated information or instructions down into shorter, distinct parts and avoid complex terms.

If possible, use symbols, pictures or actions to help convey meaning.

Ask concrete, open-ended questions. Avoid yes-no answers.

Allow for additional time to speak with participants and for them to respond.

When necessary, repeat information using different wording or a different communication approach. Allow time for the information to be fully understood.

Provide material on audiotape rather than in written form.

Service Animals

In addition to people who are blind and may use guide dogs, other people with disabilities may use animals to assist them. For example, some individuals with limited manual dexterity may have a service animal retrieve or pick up objects for them.

When interacting with people who use service animals, consider the following tips:

Avoid petting or touching a service animal while the animal is working.

Do not feed a service animal or distract a service animal in any way.

Do not separate an individual with a disability from his or her service animal.

If the service animal misbehaves, or becomes out of the control of the person with the disability, that person is obligated to control the animal.

The U.S. Department of Justice authored a brochure about service animals that may be helpful in answering questions regarding service animals in Georgia courts. It is available online at: <http://www.usdoj.gov/crt/ada/animal.htm>.

PART III

Establishing a Disability/Accommodation Protocol

Developing a protocol to handle disability accommodation requests is necessary to ensure that all Georgians have an equal opportunity to participate in court activities. A disability protocol in each court should establish a single point of contact for requests as well as guidance for providing accommodations in a timely manner.

To ensure a truly equal opportunity for individuals with disabilities to participate in court proceedings, it is necessary to acknowledge and address particular barriers they often face. Consider someone who is blind and wants to visit a court system's website for information concerning a particular case. If the website is not designed to properly interface with that individual's own assistive technology, there is no meaningful opportunity to utilize that court service. Likewise, an individual who is deaf may need a sign language interpreter or alternative method to *effectively* communicate during a particular proceeding. Without the appropriate accommodation, the opportunity to fully and equally participate in any genuine way will have been denied.

Accordingly, it is sometimes necessary to take additional steps, such as developing an accessible court website or provide a sign language interpreter for that proceeding, to ensure a *truly meaningful equal opportunity* to participate. Making a web site available, like structurally altering a building or installing an assistive listening system to improve accessibility, creates accessibility for significant numbers of people with varying disabilities. Moreover, once accomplished, these types of actions generally only require periodic maintenance of their accessible features.

Conversely, providing a sign language interpreter, like other individualized accommodation requests, involves a case-by-case assessment to determine the appropriate course of action. *Under the ADA, only qualified individuals with ADA disabilities are eligible for individualized accommodations when necessary to ensure an equal opportunity to participate. If a particular accommodation is indeed necessary, the court cannot pass any associated cost on to the individual.*

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;
- 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.

Developing the Accommodation Protocol

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 perhaps the most important step towards achieving compliance with the law. Counties and municipalities 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 while larger court systems should consider appointing their own contact person. 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 citizens 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 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.

A well-drafted accommodation procedure should:

evaluate cases and circumstances on an individualized, case-by-case basis as expeditiously as possible;

be flexible and eliminate unnecessary levels of review where possible. 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.

Appendix B contains a model form courts may utilize to process accommodation requests.

Step 4: Educate all courtroom personnel on the court's accessibility features and accommodation protocol.**Step 5: Notify the public regarding 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 summons 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.

Step 6: Implement a Grievance Procedure

Courts must adopt and publish a grievance procedure for the prompt and equitable resolution of ADA-related complaints. 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 a sample grievance procedure.

PART IV

Removing Common Barriers to Access

Equal I y Effective Communication

Because so much of court business involves communicating information, effective communication is one of the most important and challenging responsibilities for Georgia Courts. 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. Georgia courts should be aware of the types of disabilities that impact effective communication as well as the auxiliary aids and services that are often necessary to ensure effective communication.

To ensure an equal opportunity for individuals with disabilities to participate in the courtroom, it is necessary to acknowledge and remove the communication barriers people with disabilities often face. Disabilities that may affect an individual's ability to effectively communicate with the court include:

- Hearing
- Speech
- Vision
- Cognition

The court should assess each situation on an individualized, case-by-case basis, to determine if the court needs to provide *auxiliary aids and services* to ensure effective communication with people with disabilities. Examples of auxiliary aids and services used to accommodate people with disabilities are:

- Assistive listening devices
- Communication Access Realtime Translation (CART)
- Qualified sign language interpreters
- Telecommunications relay services
- Alternate formats for printed materials
- Accessible Internet sites

In selecting an auxiliary aid or service, courts should:

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.

Allow people the opportunity to use their 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.

Consider the context in which the communication is taking place and its importance:

- If a plaintiff who is deaf requests a sign language interpreter for a scheduling hearing, it may be possible to provide effective communication through written notes, provided the plaintiff understands written English, the hearing is brief, the plaintiff is represented by counsel and the plaintiff is able to participate effectively in the hearing.
- However, when the information being communicated is complex or lengthy, (for example a hearing to determine child custody), and the plaintiff who is deaf uses sign language to communicate, a qualified sign language interpreter is necessary for effective communication.

A court is not required to provide the *requested* aid or service if there is another equally effective means of communication available, or if the requested aid or service would result in a fundamental alteration in the service, program, or activity, or in undue financial or administrative burdens.

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.

Auxiliary Aids and Services

Assistive Listening Systems

Assistive Listening Systems (ALS) are binoculars for the ears. They increase the loudness of specific sounds and bring sounds directly into the ear. In addition, ALS stretch hearing aids and cochlear implants by improving their effectiveness in environments that are noisy, have poor acoustics, and when there is a big distance from the speaker. ALS can utilize FM, infrared, or inductive loop technologies. All three technologies are considered good, and each one has advantages and disadvantages.

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.

Like all ALS, each infrared system has at least three components: a microphone, a transmission technology, and a device for receiving the signal and bringing the sound to the ear. New Access Board ADA standards require receivers to have a jack to plug in a neckloop 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. 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, thereby simplifying running cables around the courtroom. However, if security is an issue, wireless microphones are not secure.

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 attorneys for a private conversation.

Communication Access Real time Translation (CART) Services

Communication Access Realtime Translation (CART) is a word-for-word speech-to-text service for people who require communication access. People who are deaf, late-deafened, hard of hearing or who have cochlear implants benefit from CART because it provides a text display of speech that occurs in the courtroom. A CART provider uses a steno machine, notebook computer and Realtime software to render instant speech-to-text translation on a computer monitor or other display media for an individual or group.

The National Court Reporters Association provides recommended procedures regarding the provision of CART in courts. These recommended best practice procedures can be reviewed online at: <http://www.ncraonline.org/foundation/research/CARTguidelines.shtml>.

Sign Language Interpreters

If it is necessary to utilize a sign language interpreter to facilitate effective communication, the ADA requires that the interpreter must be *qualified*. Being able to sign does not equate to being able 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.

Since there are a number of 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 an interpreter is required, state and local courts should provide a qualified interpreter who is able to equivalently interpret using the same sign system as the individual who is deaf.

A qualified interpreter must be able to interpret both receptively and expressively in sign language and in spoken English and must do so effectively, accurately and impartially, using any specialized vocabulary necessary. Additionally, Georgia law requires that a sign language interpreter be certified by the Registry of Interpreters for the Deaf, Inc. in particular proceedings. *See Appendix D* for the Sign Language Interpreter's Code of Ethics from The Registry of Interpreters for the Deaf, Inc.

Under the ADA, it is the responsibility of state and local courts to provide a qualified interpreter. State and local courts may not require individuals who are deaf or hard of hearing to provide their own interpreters. The obligation to provide impartial interpreting services requires that, upon request, state and local courts provide an interpreter who does not have a personal relationship to the individual who is deaf or hard of hearing. In most situations, allowing friends or family members to interpret is inappropriate because their presence may violate the right to confidentiality or because a friend or family member may have an interest in the proceeding that is different from that of the individual who is deaf or hard of hearing.

It is often necessary to employ more than one interpreter during proceedings that are lengthy or complex. See *Appendix D, Sign Language Interpreters in the Courtroom*, for additional information for Georgia courts.

Text Telephone (TTY)

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 and visual displays for callers and receiving parties who are connected over standard telephone lines.

A call from one text telephone can only be received by another--and compatible--text telephone. The devices, however, can be used by and between both hearing and non-hearing persons. Two-way communications between individuals who use text telephones and those who do not is accomplished through 24-hour operator-assisted telecommunications relay services.

A court purchasing a TTY should include the dedicated TTY phone number on all court publications where the court's main telephone number is listed. If a court provides public telephone service, it should consider purchasing a TTY device for public use. If the court does not provide a public TTY, it should provide people with disabilities access to the court's TTY device on request.

The U.S. Access Board has a helpful, on-line guide on using a TTY: <http://www.access-board.gov/publications/usingATTY/a2.html>.

Tel ecommunications Rel ay Services (TRS)

Georgia courts can communicate with people who have difficulty using a telephone by using Telecommunications Relay Services (TRS). TRS enables standard voice telephone users to talk to people who have difficulty hearing or speaking on the telephone. TRS uses operators, called communications assistants, to facilitate the making of telephone calls by people who have difficulty hearing or speaking and who use assistive technology devices such as text telephones (TTY). Relay services are managed by the Georgia Relay program, administered under the Public Service Commission.

There are several types of TRS available. Any of these may be initiated by an individual with a hearing or speech disability, or by a conventional telephone user:

Text to Voice TRS - A person using a TTY dials 7-1-1 to access an operator who places the call. The operator then 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. 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. 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.

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 calling 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) ü 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 (ASL), and for people who cannot type on a TTY easily.

Georgia Relay also provides for people to make relay calls over the Internet through its website at <http://www.georgiarelay.org/>.

Public Service Announcements

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 a short orientation videotape to prospective jurors. In any multimedia production, courts should consider providing captions for any spoken content so that people who are deaf or hard of hearing can access the content.

There are two different types of captioning available. Open captioning displays the captions directly on the screen where all viewers can readily see the captions. The subtitles on foreign language movies are a form of open captioning. While open captions can be effective for people who are deaf and hard of hearing, the hearing population also relies on the captions in noisy venues such as airports, health clubs and restaurants. However, open captioning can also be distracting for some viewers. Thus, 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 courts work with a production company to create a video, it 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.

Another possible solution for courts without the funding to provide closed captioning is to present the video on a split-screen. The content of the video would be shown on one half of the screen, while a sign-language interpreter would interpret the spoken words on the other half of the screen. While this is a low-cost approach, it may not be as effective as captioning for long videos, or for persons who are hard of hearing and do not understand sign language.

Alternate Document Formats

People with disabilities that affect their ability to read print may request print materials in alternate formats. Common examples of alternate formats include:

Audiotape: Courts should make sure that any audiotape versions of documents are recorded in a way that is clear and understandable.

Braille: Braille uses a system of raised dots to represent letters. Documents in Braille are embossed onto heavy paper and read by touch. 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. Because the majority of people who are blind do not use Braille, however, it should not be the only type of alternate format provided.

Electronic Files: Courts can use either a floppy disk or a CD-ROM to deliver electronic copies of documents depending on the technology needs of the person making the request. Documents should be saved on disk either in text format (.txt extension) or in Microsoft Rich Text Format (.rtf) extension unless the person requests a specific file format.

Large Print: The minimum size for creating large-print documents is 18-point font, which can be easily produced on most word processors. However, a person with low vision may request a larger font. If the document is not available electronically, use the enlarging features on a copier to provide large print.

Accessible Websites

Increasingly, electronic and information technology is the medium for the exchange of information. Many people with disabilities use assistive technology to enable them to use computers and access the Internet. People who are blind and cannot see computer monitors may use screen readers—devices that speak the text that would normally appear on a monitor. 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 it becomes more common to provide public services over the Internet, courts should be aware of potential barriers that people with disabilities face in accessing their Internet sites. Many researchers draw a parallel to the design of accessible buildings and the design of accessible websites. In both instances, making just a few changes can make the building or the website more accessible to people with disabilities. However, the changes that need to be made to an Internet site are less expensive and more easily implemented than installing a ramp or widening a door. 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. Creating accessible Internet sites only appears more complicated because most people are not familiar with the computer code used to create websites.

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 to label the photograph "Photograph of County Courthouse" will allow the blind user to make sense of the image.

Technology offers tremendous potential for Georgia courts to provide more effective services. The U.S. Department of Justice suggests the following voluntary action plan for providing accessible websites:

Establish a policy that your web pages will be accessible and create a process for implementation.

Ensure that all new and modified web pages and content are accessible:

- Check the HTML of all new web pages. Make sure that accessible elements are used, including alt tags, long descriptions, and captions, as needed.
- If images are used, including photos, graphics, scanned images, or image maps, make sure to include alt tags and/or long descriptions for each.
- If you use online forms and tables, make those elements accessible.
- When posting documents on the website, always provide them in HTML or a text-based format (even if you are also providing them in another format, such as Portable Document Format (PDF)).

Develop a plan for making your existing web content more accessible. Describe your plan on an accessible web page. Encourage input on improvements, including which pages should be given high priority for change. Let citizens 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; use this information to increase accessibility.

A U.S. Department of Justice publication, "Accessibility of State and Local Government Websites to People with Disabilities", explains many of the issues involved in creating accessible websites. The publication is available online at the Department of Justice website <http://www.ada.gov/websites2.htm>.

Persons who have Mental or Cognitive Disabilities

One of the most difficult matters Georgia courts face in accommodating persons with disabilities is in the area of mental illness or cognitive disability. Cognition refers to "understanding," the ability to comprehend what you see and hear and the ability to infer information from social cues and "body language." People with these impairments may have trouble learning new things, making generalizations from one situation to another and expressing themselves through spoken or written language. Cognitive limitations of varying degrees can often be found in people who have been classified in school as learning disabled, mentally retarded, autistic or who have been diagnosed as having a head injury or Down Syndrome.

Because the issues facing individuals with mental illness or cognitive disability often touch on basic rights, especially for criminal defendants, it is difficult to address them effectively in the scope of this handbook. What follows are three basic steps Georgia courts can take in their efforts to ensure that people with mental or cognitive disabilities have equal access to justice.

In many cases, courts must first determine whether an individual is a qualified individual with a disability under the ADA. For a criminal defendant, this will usually be a determination of whether the individual is competent to stand trial. In other situations involving a person with a mental 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 mental retardation, or if an individual disrupts the courtroom frequently as a spectator because of behavioral problems or delusions, those individuals are not qualified and can be excluded from the courtroom. However, it is important to remember that mental retardation or a traumatic brain injury will not always leave individuals unqualified to serve as witnesses, spectators or jurors. Courts should conduct an individualized inquiry to determine whether an individual is qualified.

Courts must next determine whether it is possible to provide reasonable accommodations for an individual with mental or cognitive disabilities without a fundamental alteration of court programs and services. Keep in mind that many people with mental or cognitive impairments may not be able to request accommodations effectively and may need assistance in constructing appropriate accommodation requests, whether from the court or from their legal representatives.

The third step is determining whether an individual with a mental or cognitive disability poses a direct threat to himself or others in the courtroom. The ADA requires Georgia 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 accommodations for this threat. Courts may choose to exclude individuals who pose a threat but only in a manner consistent with their civil rights and other protections.

Facility Access

Existing Facilities

If a courthouse is inaccessible, because doorways are too narrow, restroom facilities are inaccessible, 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 services. Title II of the ADA calls on state and local courts to ensure that their programs, services and activities are accessible to people with disabilities, *even if located in older buildings*, unless to do so would fundamentally alter a program, service, or activity or result in undue financial or administrative burdens. This requirement is called **program access**.

Program access may be achieved by a number of methods. While 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.

However, when choosing among available methods of providing program accessibility, the court must *give priority to those methods that offer services, programs, and activities in the most integrated setting appropriate*. 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.

- ü U.S. Department of Justice, ADA Title II Technical Assistance Manual, <http://www.usdoj.gov/crt/ada/taman2.html>

Program access is a workable requirement because it is reasonable. The State of Georgia ADA Coordinator stands ready to assist courts in examining options and determining the most appropriate method(s) for achieving *program access* in a particular court setting.

Setting Priorities

When accessibility-related architectural and structural improvements are planned, court systems must ensure that they meet applicable state and federal requirements, briefly outlined below.

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. This 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.

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 and witness stands, and stations used by clerks, bailiffs, deputy clerks, court reporters, litigants and counsel. This access can include installing assistive listening systems, Braille signage, or fire alarms with visual alerts in one or more courtrooms, or installing an elevator in an inaccessible building;

Supporting facilities: holding cells, restrooms, court floor holding cells, restrooms, 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 cafeteria/snack bars and restrooms. Restroom access includes installing accessible stalls, 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 installing accessible drinking fountains, installing no-slip surfaces where appropriate, providing accessibility to offices not generally used by the public, and installing public telephones with volume control mounted at an accessible height.

Where existing space and cost constraints hamper efforts to ensure full accessibility, courts should take the following simple steps to reduce or eliminate situations that may pose unnecessary barriers:

Utilize the Court's Disability/Accommodation protocol to better anticipate when alternative arrangements or relocation may be necessary 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.

Historic Preservation

Georgia has many historic county courthouses that represent the importance of justice in the state'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. According to a 2002 study on historic Georgia courthouses and city halls (an Executive Summary is available at the Department of Natural Resources' website at: http://hpd.dnr.state.ga.us/assets/documents/cthouse_costestimate_summary.pdf), many of these structures may not meet ADA design standards.

The ADA does not exempt historically significant facilities from coverage. If any alterations are made to a historic courthouse – for example, installing an accessible bathroom or water fountain – a court must follow either the ADA accessibility standards or the Uniform Federal 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.

Under the *program access* requirement, if court services cannot be offered to citizens 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.

The Georgia Historic Preservation Division (<http://hpd.dnr.state.ga.us/>) is a resource for courts seeking technical assistance regarding historic courthouse renovation including ADA projects and the impact they might have on the courthouse's historic significance. Rehabilitation projects, which sensitively incorporate ADA improvements, may also be eligible for Georgia Heritage Grants. These are competitive, matching grants for properties listed in or eligible for listing in the Georgia Register of Historic Places. Local governments or nonprofits may apply for predevelopment or development grants. All projects must meet the Department of Natural Resources *Standards for Rehabilitation*. For information on Georgia Heritage Grants, contact the Historic Preservation Division Grants Coordinator at (404) 656-2840.

New Construction & Alterations

Newly constructed *or* structurally altered court buildings must be designed and constructed in compliance with federal and state accessibility requirements. Courts should be aware that there can be differences between state and federal requirements in their source, their content, and their legal effect.

Standards and Guidelines

Georgia Law: The Georgia Accessibility Code governs the accessibility of newly constructed or remodeled buildings in Georgia. The Construction Document Review Group at the State ADA Coordinator's office reviews construction documents for accessibility on behalf of the State Fire Marshal's Office. Local governing authorities are responsible for the implementation of the Georgia Accessibility Code for all government or public buildings in their jurisdictions. The Georgia Accessibility Code is available online as an Adobe PDF file at: <http://www.inscomm.state.ga.us/DOCUMENTS/120-3-20.pdf>.

Federal Law: The U.S. Architectural and Transportation Barriers Compliance Board (Access Board) develops and maintains accessibility guidelines for buildings and facilities. When the Access Board's guidelines are adopted in the U.S. Department of Justice (DOJ) regulations implementing the ADA, they become enforceable ADA standards.

DOJ has adopted standards for generic spaces and elements (such as entrances, hallways, doorways, toilet facilities, and parking spaces). These standards are enforceable for Courts. However, DOJ has not yet adopted standards for elements and spaces that are unique to judicial facilities, such as jury boxes, witness stands, and holding cells.

The Access Board has developed a new set of guidelines that address both generic spaces and elements as well as those that are unique to different types of facilities. These supersede the previous Access Board guidelines. DOJ intends to consider adoption of the new guidelines as a package, including both the generic and the unique elements. In the interim, courts *must* follow DOJ's standards for generic spaces and may adapt these standards in designing unique element/spaces.

Guidelines for Courtroom Accessibility

The new ADA-ABA guidelines address access to both public and restricted or secured areas of courthouses and judicial facilities, including:

Entrances

The guidelines cover access to public entrances and to entrances that are restricted for use by courthouse personnel and detainees. Features that control use, such as intercommunication devices for controlled entry, are addressed so that they are accessible to people with hearing or vision impairments. These devices, where provided, are required to have audible and visual signals. Certain exemptions are provided for entrances and doors used only by security personnel. In addition, access through or around security screening systems, such as 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 such spaces are elevated, a ramp or platform lift is necessary to provide an accessible route for people unable to use steps. Sufficient space as detailed in the guidelines 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

The guidelines also cover access to judges' benches and courtroom stations used by court personnel or litigants, such as clerk and bailiff stations. Since these spaces are used mainly by employees, the guidelines allow access to be provided on an as-needed basis, provided that 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.

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 to ensure access for people with hearing impairments to court proceedings, whether they are participants or 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.

Jury Rooms and Assembly Areas

The guidelines cover access to rooms and spaces used for jury selection and for deliberations by empanelled 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

Holding cells or rooms within courthouses are required to be accessible. The new ADA-ADA guidelines are written to cover cells individually serving courtrooms as well as central holding facilities within a courthouse. Design criteria are provided for elements that may be provided within cells, such as toilets and benches.

Appendix A

Building Capacity: Resources

Building Capacity: Resources**General****Georgia Administrative Office of the Courts**

Stephanie Chambliss
Program Director
244 Washington Street S.W.
Atlanta, GA 30334-5900
(404) 463-3927
Fax: (404) 651-6449
E-mail: chamblis@gaaoc.us
www.georgiacourts.org

The National Center for State Courts

ADA Resource Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185
(757) 259-7590 Fax: (757) 564-2075
www.ncsconline.org

Georgia State Financing and Investment Commission

State ADA Coordinator's Office
2 Martin Luther King Jr. Drive
Suite 1002
Atlanta, GA 30334
(404) 657-7313 Fax: (404) 657-1741
E-mail: gaada@gsfic.ga.gov
www.state.ga.us/gsfic/ada/index.shtml

U.S. Department of Justice

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

American Bar Association

Commission on Mental and Physical Disability Law
740 15th Street, N.W.
Washington, DC 20005-1019
(202) 662-1000
E-mail: www.cmpdl@abanet.org

Southeast Disability and Business Technical Assistance Center

Georgia Institute of Technology
490 Tenth Street
Atlanta, GA 30318
E-mail: sedbtacproject@catea.org
Fax: 404-385-0641
Phone: 800-949-4232 (v/tty)
www.sedbtac.org

Deaf & Hard of Hearing Community Resources

Georgia Council for the Hearing Impaired, Inc.

1151 Memorial Drive
Suite 103-B
Decatur, Georgia 30032
(800) 541-0710
Rome, GA (706) 378-9058
Augusta, GA (706) 860-1637
Columbus, GA (706) 571-9744

Self Help for Hard of Hearing People, Inc.

7910 Woodmont Avenue, Suite 1200
Bethesda, Maryland 20814
(301) 657-2248 (Voice)
(301) 657-2249 (TTY)
<http://www.shhh.org>

AT&T Relay Services

Dial 711

EduCaption, Inc.

160 Huntcliff Point
Atlanta, GA 30350
and
3965 LaCosta Island Court
Punta Gorda, FL 33950
(770) 639-0563
(678) 557-4354

Interpreting Services

Georgia Interpreting Service Network (GISN)

44 Broad Street, NW
Suite 503
Atlanta, GA 30303
(404) 521-9100 v/tty

Don Clark and Associates

4651 Woodstock Rd, Suite 208
Woodstock, GA 30075
(770) 926-1667
Fax: (770) 926-5974

Eagle Interpreting Services, Inc.

P. O. Box 727
Roswell, GA 30077
(770) 993-3768
(678) 427-7586

Sign Language Interpreting Specialists, Inc. (SLIS)

130-C John Morrow Parkway
Gainesville, GA
(770) 531-0700
(770) 287-9479 (TTY)

Communication Access Network

(843) 763-3890
(out of South Carolina)

Blind Community Resources

American Foundation for the Blind

100 Peachtree St., Ste 620
Atlanta, GA 30303
(404) 525-2303

Braille Production

DRS Braille Production
Laura Turner (404) 669-3447
Sandra Thomas (404) 669-3448
Dick Cannon (404) 464-6393
Bernace Murray (770) 981-7150

Atlanta Braille Volunteers

5065 Vinings Estate Court
Mableton, GA 30126
ABV@brailist.com

Mental Health & Cognitive Disabilities Resources

The Bazelon Center for Mental Health Law

1101 15th Street, NW Suite 1212
Washington, DC 20005
(202) 467-5730 Fax: (202) 223-0409
www.bazelon.org

Governor's Council on Developmental Disabilities

Two Peachtree Street, N.W.
Suite 8- 210, Third Floor
Atlanta, GA 30303-3142
(404) 657-2126 ü Fax (404) 657-2132
(888) 275-4233
www.gcdd.org

Mental Health, Developmental Disabilities and Addictive Diseases Division

Georgia Department of Human Resources
Constituent Services
2 Peachtree Street, NW
Suite 22-205
Atlanta, Georgia 30303
(404) 657-2252
www.state.ga.us/departments/dhr/mhmrsa/

Facility-Related Resources

Georgia Administrative Office of the Courts

Judson Bryant, Architect
1729 Mt. Vernon Rd.
Suite 100
Atlanta, GA 30338
(770) 522-0730 ü Fax: (770) 381-6501
E-mail: jbarchtx@bellsouth.net

Georgia State Financing and Investment Commission

Plan Review/State ADA Coordinator
2 Martin Luther King Jr. Drive
Suite 1002
Atlanta, GA 30334
(404) 657-7313 - Fax: (404) 657-1741
E-mail: gaada@gsfic.ga.gov
www.state.ga.us/gsfic/ada/index.shtml

U.S. Department of Justice

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

U.S. Architectural and Transportation Barriers Compliance Board (Access Board)

331 F Street, NW, Suite 1000
Washington, DC 20004-1111
(800) 872-2253 (v)
(800) 993-2822 (TTY)
(202) 272-0081 (fax)
E-mail:info@access-board.gov
www.access-board.gov

United States Department of Agriculture - Rural Development

Jerry Thomas
Program Director - Community Programs
355 E. Hancock Avenue
Athens, GA 30601
(706) 546-2171
jerry.thomas@ga.usda.gov
(Community Programs administers loan and grant programs designed to develop essential community facilities, including courthouses and court annexes, for public use in rural areas.)

Appendix B

Request for Reasonable Accommodation

STATE OF GEORGIA
[Court System]

**REQUEST FOR REASONABLE ACCOMMODATION
FOR PERSONS WITH DISABILITIES**

If you have a physical or mental impairment and believe you may need an accommodation to fully and equally participate in a particular court proceeding or activity, you may request a reasonable accommodation.

To request a reasonable accommodation, complete the *Request for Reasonable Accommodation Form* and return to [Clerk of Court/Court Officer]. If you need assistance completing this form, contact the [Clerk].

Accommodation requests are granted to any qualified person with a disability for whom such an accommodation is reasonable and necessary under the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act of 1973. These requests ensure full and equal access to the court proceeding or activity in which the person is participating, so long as the accommodation does not pose an undue administrative or financial burden to the court or fundamentally alter the nature of the proceeding or activity for which the accommodation is being requested.

You may be required to provide additional information for [the Court] to properly evaluate your reasonable accommodation request(s). *This information, if required, will be confidentially maintained and will only be used to evaluate your accommodation request(s) unless you request otherwise.*

Generally, [xx] day advance notice is required to review reasonable accommodation requests. However, a response to an immediate need for accommodation will be considered to the fullest extent possible.

STATE OF GEORGIA
[Court]

REQUEST FOR REASONABLE ACCOMMODATION

Please complete this form and return to: [Contact Person]. If you need assistance in completing this form, please contact [Contact Person].

Name: _____

Address: _____

Telephone No.: _____

E-mail: _____

I am participating in a court proceeding/activity as a (check all that apply):

- Party in a Non-Criminal Case Criminal Defendant
- Witness Juror or Prospective Juror
- Court Observer Attorney/Legal Staff
- Judicial Officer Other (please specify):

(continued on reverse side)

Type of proceeding/activity for which accommodation is necessary (list all that apply):

Describe the impairment that necessitates the accommodation(s) (specify):

Describe the accommodation(s) you are requesting and explain how the requested accommodation(s) would be effective.

Are you aware of alternative methods that might effectively accommodate your impairment?

Yes No If yes, specify: _____

List all dates/times the accommodation(s) are needed (specify):

Please identify any potential resources or other suggestions for [court] to consider in responding to your accommodation requests.

(continued on next page)

I request that all information pertaining to my accommodation request:

- Be kept confidential
- Not be kept confidential

[Oath]

Date: _____

(Print Name)

(Signature)

Review and Action [or Court Order]

Reasonable Accommodation Request Form received from applicant on _____ (Date).

If necessary, Request for Additional Information requested on _____ (Date).

If necessary, Request for Additional Information completed and returned on _____ (Date).

Requested Accommodation granted on _____ (Date).

Requested Accommodation denied on _____ (Date) because:

Other action taken (explain) on _____ (Date).

Notification to applicant concerning action taken on _____ (Date).

(Date)

(Signature of Court Official)

Appendix C

Sample Grievance Procedure

STATE OF GEORGIA
[Agency Name]

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

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.

(continued)

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

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.

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: _____

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.

(continued on next page)

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

COMPLAINT FORM (continued)

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: _____

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.

(continued on next page)

STATE OF GEORGIA

[Agency Name]

**AMERICANS WITH DISABILITIES ACT (ADA) /
SECTION 504 OF THE REHABILITATION ACT****COMPLAINT FORM (continued)**_____
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.

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.

Appendix D

Sign Language Interpreters in the Courtroom

Sign Language Interpreters in the Courtroom

This technical bulletin addresses frequently asked questions about Sign Language Interpreters in the Courtroom.

Are there credentialing and ethics considerations for sign language interpreters?

Yes. According to current Georgia law, the designated sign language interpreter in legal settings should be certified by the Registry of Interpreters for the Deaf, Inc. (RID). RID-certified interpreters are bound by the RID Code of Ethics and the Georgia Code of Professional Responsibility for Court Interpreters. Additionally, The National Center for State Courts' *Model Code of Professional Responsibility for Interpreters in the Judiciary* is used as a guide for interpreter conduct and responsibilities.

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?

This technical handbook contains a list of some of the interpreting services brokers/agencies in Georgia. You can also contact the Administrative Office of the Courts, 404-656-5171, for additional information. The Registry of Interpreters for the Deaf web site at www.rid.org also lists certified members.

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 the mandated Court appearances that must be done 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 the Georgia Commission on Access and Fairness in the Courts 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?

The provision of an interpreter by an agency does not absolve the Court from determining 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 bulletin contains a list of questions to consider when qualifying interpreters. Lastly, 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?

Proceedings interpreters are on duty throughout the proceedings to interpret the proceedings and will function as Officers of the Court.

Counsel table interpreters may also be present during the proceedings. 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 deaf defendant and attorney or a deaf plaintiff/victim and 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.

When the interpreter addresses the Court, the interpreter will speak in third person in order to indicate for the record that it 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.

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.

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?

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.

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. 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.

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.

Sign Language Interpreters Code of Ethics*

The Registry of Interpreters for the Deaf, Inc. has set forth the following principles of ethical behavior to protect and guide interpreters and transliterators and hearing and deaf consumers. Underlying these principles is the desire to ensure for all the right to communicate.

This Code of Ethics applies to all members of the Registry of Interpreters for the Deaf, Inc. and to all certified non-members.

1. Interpreters/translitterators shall keep all assignment-related information strictly confidential.
2. Interpreters/translitterators shall render the message faithfully, always conveying the content and spirit of the speaker using language most readily understood by the person(s) whom they serve.
3. Interpreters/translitterators shall not counsel, advise or interject personal opinions.
4. Interpreters/translitterators shall accept assignments using discretion with regard to skill, setting, and the consumers involved.
5. Interpreters/translitterators shall request compensation for services in a professional and judicious manner.
6. Interpreters/translitterators shall function in a manner appropriate to the situation.
7. Interpreters/translitterators shall strive to further knowledge and skills through participation in workshops, professional meetings, interaction with professional colleagues, and reading of current literature in the field.
8. Interpreters/translitterators, by virtue of membership or certification by the RID, Inc., shall strive to maintain high professional standards in compliance with the Code of Ethics.

* As the National Association of the Deaf and Registry of Interpreters for the Deaf moves to create a new joint generalist interpreting test, the National Council on Interpreting (<http://rid.org/nci.html>) felt it was necessary to undertake a total review of ethical behavior among interpreters in order to create a new code of ethics. In 2002, a committee consisting of RID and NAD members was formed to begin the process of creating a new Code of Ethics for the interpreting profession that would reflect the changes in the field since the creation of the NAD and RID codes. The final draft is not yet completed.

Questions to Consider when Qualifying Sign Language Interpreters

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 Georgia 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.

Suggested Responses to Sign Language Interpreter Questions

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 Registry of Interpreters for the Deaf (RID) membership card.

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 test knowledge of interpreter ethics, history of interpreting, deaf culture, interpreting processes, business processes, etc. Once one passes the written test, he/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 Georgia Code of Professional Responsibility for Court Interpreters.

Interpreters working in judicial settings should also have a working knowledge and understanding of the Georgia Commission on Access and Fairness in the Courts Code of Professional Responsibility for Court 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 it cannot be adequately accessed by interpreters who are hearing. 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 in 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.

Resources for Sign Language Interpreters

Georgia Administrative Office of the Courts

Stephanie Chambliss

Program Director

244 Washington Street S.W.

Atlanta, GA 30334-5900

(404) 463-3927 Fax: (404) 651-6449

E-mail: chamblis@gaaoc.us

www.georgiacourts.org

Registry of Interpreters for the Deaf, Inc.

333 Commerce Street Alexandria, VA 22314

703-838-0030

<http://rid.org/>

The National Center for State Courts

ADA Resource Center for State Courts

300 Newport Avenue

Williamsburg, VA 23185

(757) 259-7590 Fax: (757) 564-2075

www.ncsconline.org

U.S. Department of Justice

Civil Rights Division

Disability Rights Section - NYAV

950 Pennsylvania Avenue, NW

Washington, D.C. 20530

(800) 514-0301 - Fax: (202) 307-1198

www.usdoj.gov/crt/ada

American Bar Association

Commission on Mental and Physical Disability Law

740 15th Street, N.W.

Washington, DC 20005-1019

(202) 662-1000

E-mail: www.cmpdl@abanet.org

Interpreting Services:

Georgia Interpreting Service Network (GISN)

44 Broad Street, NW
Suite 503
Atlanta, GA 30303
(404) 521-9100 v/tty

Don Clark and Associates

4651 Woodstock Rd, Suite 208
Woodstock, GA 30075
(770) 926-1667
Fax: (770) 926-5974

Eagle Interpreting Services, Inc.

P. O. Box 727
Roswell, GA 30077
(770) 993-3768
(678) 427-7586

Sign Language Interpreting Specialists, Inc. (SLIS)

130-C John Morrow Parkway - 114
Gainesville, GA 30501
(770) 531-0700
(770) 287-9479 (TTY)

Communication Access Network

(843) 763-3890
(out of South Carolina)

Appendix E

Law Supplement

Georgia Statutes Affecting People with Disabilities in Courts

Georgia Case Law Regarding People with Disabilities in Courts

Section 504 of the Rehabilitation Act of 1973

The Americans with Disabilities Act of 1990

Selected Case Law

U.S. Department of Justice Settlement Agreements, Letters of Finding and Technical Assistance letters

Georgia Statutes Affecting People with Disabilities in Courts

The State of Georgia has several statutes addressing court access for people with disabilities in a nondiscriminatory manner. This section summarizes the relevant Georgia statutes:

Sign Language Interpreters

An individual seeking a temporary protective order or responding to a temporary protective order hearing shall be provided with a sign language interpreter when necessary. The local victim assistance funds shall pay the reasonable costs of the interpreter. (O.C.G.A. §15-6-77(e)(4))

The policy of the State of Georgia is to provide qualified interpreters for governmental operations, including court sessions. (O.C.G.A. §24-9-100)

Witnesses with Disabilities

A witness cannot be deemed as incapacitated because of a physical disability involving the senses. An interpreter may translate or explain the testimony of such a witness. (O.C.G.A. §24-9-4)

The court shall determine the competency of a witness if a party alleges that the witness is incapacitated due to a mental disability. (O.C.G.A. §24-9-7)

Courtroom Accessibility

All government buildings receiving construction or renovation permits on or after July 1, 1995, shall comply with the minimum state standards for accessibility issued by the Georgia Safety Fire Commissioner, unless full compliance is impractical. (O.C.G.A. §30-3-3)

Jurors with Disabilities

A judge may excuse a potential juror who shows other good cause why he or she should be exempt from jury duty, which can include a disability. A judge may defer the excuse until a later date unless the juror has a permanent mental or physical disability. (O.C.G.A. §15-12-1(a)(1))

In a criminal trial, either the State or the accused may object to the impaneling of a juror who is incompetent to serve because of mental illness or mental retardation. (O.C.G.A. §15-12-163(b)(3))

Juries are selected by jury commissioners from a list provided by the Department of Motor Vehicle Safety, which includes both people who have drivers' licenses and people who have personal identification cards. Personal identification cards are issued to people who are not eligible to operate a motor vehicle for any reason, including disability. (O.C.G.A. §15-12-40(a)(1))

The county board of registrars shall provide the board of jury commissioners with a list of individuals with mental disabilities who have been adjudged mentally incompetent and have had their voting rights removed. (O.C.G.A. §15-12-40.2)

Judges with Disabilities

A superior court judge or a chief judge of a county may make a request for judicial assistance from another court when a judge is unable to preside due to disability. (O.C.G.A. §15-1-9.1(b)(1)(B), 15-1-9.1(b)(2)(B))

If the chief judge of a county is unable to request judicial assistance because of a disability, a majority of the other judges in the county may make such a request for him. If a court is served by only one judge, the Governor may request that the administrative judge for that district assign another judge to serve. (O.C.G.A. § 15-1-9.1(d)(1))

Georgia Case Law Regarding People with Disabilities in Courts

Witnesses with Disabilities

A trial court acted properly in refusing to strike the testimony of a prosecution witness with disabilities in speech and hearing. The witness testified through a sign language interpreter that he had seen the defendant running from the scene of a shooting. Although there was "some difficulty" in communicating with the witness, the witness was able to answer all questions, leaving to the jury to determine his credibility. (Clark v. Georgia, 271 Ga. 6, 515 S.E.2d 155 (1999))

In a rape trial, a jury properly relied on the testimony of a witness who was blind. Although there were some inconsistencies in the witness's statement, and although she was under the influence of pain medication at trial, the jury could have reasonably relied on her testimony. (Wilson v. Georgia, 2004 Ga. App. Lexis 699 (2004))

Jurors with Disabilities

A trial court acted properly to exclude a juror with a mental disability when the juror acted in a "bizarre" manner before voir dire questioning and answered questions in a "disconnected and rambling" way. The appellant's evidence that a bailiff had never seen a person in a wheelchair in a Bacon County jury was not sufficient to establish that people with disabilities were specifically excluded from jury service. (Sallie v. Georgia, 276 Ga. 506, 578 S.E.2d 444 (2003))

A trial court did not abuse its discretion by refusing defense counsel the opportunity to question the entire jury panel on voir dire regarding whether they had been treated for mental illness. Because mental illness is not a disqualification for jury service, the court could limit the questioning of the entire panel. However, the court could allow an attorney to ask questions about mental illness if concerns arose about the health of an individual juror. (Caldwell v. Georgia, 249 Ga. App. 885, 549 S.E.2d 449 (2001))

A prosecutor was allowed to use a peremptory challenge to exclude a person who was hard of hearing. During voir dire, the juror indicated that she had difficulty hearing the prosecutor even when he raised his voice. The court found that the stated reason for excluding the juror was not a pretext to exclude the juror on the basis of race. (Jones v. Georgia, 249 Ga. App. 327, 548 S.E.2d 75 (2001))

A trial court acted properly in denying a criminal defendant's motion to disqualify a juror who was deaf. The juror's inability to hear is not a disqualification in Georgia, and there was no other evidence to support the disqualification. (Carter v. Georgia, 228 Ga. App. 335, 491 S.E.2d 525 (1997))

Spectators with Disabilities

A trial court did not abuse its discretion by allowing a crime victim with a disability to remain in the courtroom as a spectator during the trial. The victim in this case was comatose and used a wheelchair. The defendant argued that the presence of the victim would prejudice the jury against him. The court found that Georgia law allows victims access to the courtroom, and that her injuries were relevant to the proceeding. (Lewis v. Georgia, 215 Ga. App. 161, 450 S.E.2d 448 (1994))

Section 504 of the Rehabilitation Act of 1973

Section 504 was one of the first federal civil rights laws passed by Congress. Section 504 provides that no individual with a disability shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.^p Because most, if not all, Georgia counties receive federal funding, courts in counties that receive such funding must comply with the nondiscrimination requirements of Section 504. In practice, however, federal courts have generally found that the Section 504 responsibilities of state and county courts are identical with their responsibilities under the Americans with Disabilities Act.

Removing Barriers to Access in the Court Room: Selected ADA Case Law

Defining Disability Cases:

Albertsons v. Kirkingburg, 527 U.S. 555 (1999)

Bragdon v. Abbott, 524 U.S. 624, *on remand*, 163 F.3d 87 (1st Cir. 1998)

Murphy v. United Parcel Service, 527 U.S. 516 (1999)

Sutton v. United Airlines, 527 U.S. 471 (1999)

Toyota Motors Manufacturing v. Williams, 122 S.Ct. 681 (2002)

Selected Title II Cases on Access to Courts:

Tennessee v. Lane, 541 U.S. 509; 124 S. Ct. 1978 (2004)

Involved the constitutionality of Title II of the Americans with Disabilities Act (ADA) which prohibits public entities (state and local governments) from discriminating based on disability. Plaintiffs were wheelchair users who did not have access to courtrooms on the second floors of buildings lacking elevators, and 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 ADA Title II. The state's argument was based on the doctrine of sovereign immunity which says that Congress can only pass a federal law making a state liable for money damages in limited circumstances. The Supreme Court ruled that, at least in cases involving fundamental access to the courts, Congress had acted properly, and Tennessee could be sued for damages under Title II for failing to provide access.

Popovich v. Cuyahoga County Court of Common Pleas, 276 F.3d 808 (6th Cir. 2002) (*en banc*)

An individual with a hearing impairment brought an action against a state court under Title II for failing to provide effective auxiliary aids /services in a child custody case. He obtained a compensatory damage verdict against the state in district court. The state asserted its immunity from suit under the Eleventh Amendment. The Sixth Circuit Court of Appeals (*en banc*) held that the plaintiff's case was barred by the Eleventh Amendment to the extent that the action relied on congressional enforcement of the Equal Protection Clause, but is not barred in so far as it relies on congressional enforcement of the Due Process Clause.

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

An individual with a hearing impairment requested real-time transcription as an accommodation in court proceeding. The county provided alternative accommodations, including a courtroom with better acoustics and permitting plaintiff to relocate to different parts of the courtroom during the proceedings. The Ninth Circuit denied defendant's motion for summary judgment, holding that the record indicated the county should have provided the requested accommodation because the alternative accommodations did not ensure effective communication.

Gregory v. Administrative Office of the Courts, 168 F.Supp. 2d 319 (D.N.J. 2001)
Individual with hearing impairment brought Title II and section 504 action against court system when they refused to provide computer aided realtime translation (yCARTp) of proceedings, at same cost assesses for audio or videotapes. The court held that the Eleventh Amendment did not bar suit under the ADA and the litigant stated a claim under both the ADA and Rehabilitation Act.

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

Deaf individuals married in a civil courtroom asked for but were not provided with a sign-language interpreter for their wedding. The court granted summary judgment for plaintiffs, finding that the wedding was a "service" under Title II and that plaintiffs, as qualified individuals with disabilities, were entitled to the provision of a sign language interpreter and the city was required to provide one.

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

Individual with vision impairment filed Title II action against municipal court, alleging its failure to accommodate her disability. Specifically, plaintiff alleged the municipal court failed to provide a "qualified reader" for pre-trial and trial proceedings. The presiding judge had first assigned a Spanish-language interpreter as reader and then agreed to provide an individual of her choice (with restrictions because the judge had observed this reader, in previous cases, to be disruptive). Plaintiff argued that the court failed to adopt adequate accommodation procedures for addressing accommodation requests and that the offer of a Spanish-language interpreter to assist was not a proper accommodation. The Ninth Circuit held that the services of a court-appointed "reader" would have been sufficient for this case because no special training was necessary. The court also held that a court system's decision to adopt an accommodation procedure different from its self-evaluation plan did not, in itself, violate the ADA.

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

An individual who is blind brought suit challenging the court's categorical exclusion of blind persons from jury service. The District Court held that the exclusion violated Title II of the ADA, Rehabilitation Act, and § 1983.

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

Individual with severe chemical sensitivities brought Title II action against judge, court system and state for failure to provide her with a "filtered environment." including "life support systems," "life-support bubble," "required medical aids," and "additional medical aids" during court proceedings. The 11th Circuit held that this accommodation request was for personal devices and Title II does not require a public entity to provide personal services or devices as accommodations.

Shotz v. Cates 256 F.3d 1077 (8th Cir. 2001)

Individuals with mobility impairments brought ADA Title II action against judge and court system for failure to remove physical barriers to access in the courthouse. The 11th 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.

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

A paraplegic claimed the county failed to make the courthouse wheelchair accessible, violating the ADA, Rehabilitation Act, and Arkansas Civil Rights Act. (The courthouse was listed on the National Registry of Historic Buildings.) The District Court held that: the county violated Title II of the ADA and the Rehabilitation Act by failing to make the courthouse readily accessible to a wheelchair user; discrimination can occur because of intentional acts as well as thoughtlessness or inaction when accommodations are needed; the recovery of compensatory damages under Title II of the ADA is conditioned on showing intentional discrimination; genuine issue of material fact existed on whether the county had intent; jury trial is conditionally available in Title II, ADA cases and Rehabilitation Act cases.

Layton v. Elder, 143 F.3d 469 (8th Cir. 1998)

Disabled veterans filed discrimination suit against county under Title II of the ADA and Section 504, alleging that programs and services offered at the county courthouse were inaccessible to individuals with mobility impairments. The Court of Appeals held that the inaccessibility of programs offered on the second floor of the courthouse was a violation of the ADA and Rehabilitation Act and was not rendered moot when the county voluntarily complied. Injunctive relief was appropriate because the plaintiffs might suffer future irreparable harm and the steps taken by the county to comply with the ADA mandate had not been completed.

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

A wheelchair user with multiple sclerosis brought action against the trial judge for refusing to allow her to enter the courtroom through the door by the judge's bench. Neither the plaintiff nor the judge was aware of any other possible entrances. The Court of Appeals reversed and remanded the case finding that the judge was not entitled to judicial immunity.

Department of Justice ADA Settlements and Consent Agreements

ADA Settlements and Consent Agreements - <http://www.usdoj.gov/crt/ada/settlemt.htm>

Ben Hill County, Georgia - agreement to construct accessible bathrooms and to install an accessible ramp and elevator to allow access to the courthouse for people with disabilities. While these modifications were taking place, the county agreed to relocate court activities when necessary to provide program access for people with disabilities.

City of Savannah, Georgia - In 2002, the Department of Justice reached a settlement agreement with the City of Savannah. This agreement was part of the Department's "Project Civic Access" efforts, and 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. The settlement agreement is available at <http://www.usdoj.gov/crt/ada/savannah.htm>.

Chatham County, Georgia - In 2004, the Department of Justice reached a second "Project Civic Access" settlement with Chatham County. The agreement covered 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 include information about the county courts (<http://www.chathamcounty.org/chatcourts.html>). The settlement agreement is available at: <http://www.usdoj.gov/crt/ada/ChathamSA.htm>.

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 a planned annex to the courthouse 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 <http://www.usdoj.gov/crt/ada/ChathamAttD.htm> and <http://www.usdoj.gov/crt/ada/ChathamAttF.htm>.

U.S. v. City of Houston - <http://www.usdoj.gov/opa/pr/2000/March/158cr.htm>

Hancock County, Mississippi - re: persons who are deaf or hard of hearing having an equal opportunity to participate as jurors, parties, witnesses, and spectators of the Courts as required under Title II of the ADA, <http://www.usdoj.gov/crt/ada/hancocks.htm>

Harrison County, Mississippi - re: persons who are deaf or hard of hearing having an equal opportunity to participate as jurors, parties, witnesses, and spectators of the Courts as required under Title II of the ADA, <http://www.usdoj.gov/crt/ada/harriss.htm>

North Kingstown Police Department, North Kingstown, RI - re: auxiliary aids and services and effective communication of a deaf witness as required under Title II of the ADA. <http://www.usdoj.gov/crt/ada/harriss.htm>

Santa Clara County Superior Court, Santa Clara, CA - re: auxiliary aids and services and effective communication to ensure the hard of hearing access to Court's programs, services, and activities as required under Title II of the ADA
<http://www.usdoj.gov/crt/ada/santacl.htm>.

McDowell County, West Virginia - re: program and physical accessibility at County offices and the County Courthouse, <http://www.usdoj.gov/crt/ada/mcdowell.htm>

Outagamie County, Wisconsin - re: accessibility to the Outagamie County Justice Center as required under Title II of the ADA, <http://www.usdoj.gov/crt/ada/outagam.htm>

Philadelphia Court of Common Pleas, Pennsylvania - re reasonable accommodation of potential jurors with disabilities as required under Title II of the ADA,
<http://www.usdoj.gov/crt/ada/philcour.htm>

Department of Justice Letters of Finding

Snohomish County Superior Court - Everett, Washington, November 21, 1994. Compliance. County Court found in compliance with the Title II requirements for effective communication after it established a policy requiring consultation with individuals with hearing impairments to identify needed auxiliary aids.

<http://www.usdoj.gov/crt/foia/lof039.txt>

Kings County Superior Court - Hanford, California, March 14, 1994.

Compliance. Court purchased sufficient assistive listening systems to provide effective communications for individuals who are hard-of-hearing.

<http://www.usdoj.gov/crt/foia/lof032.txt>

Cuyahoga County Court of Common Pleas - Cleveland, Ohio December 23, 1994.

Compliance. County Court found in compliance with the Title II requirements for effective communication after it corrected violation and purchased computerized real-time transcription, as had been requested by individual who is hard of hearing.

<http://www.usdoj.gov/crt/foia/lof042.txt>

Philadelphia Court of Common Pleas July 16, 1996. Providing sign language interpreter and TDD. The Pennsylvania courts established a written policy for providing interpreters in all civil proceedings in which a participant is deaf. The Court has ordered nine TDDs to be installed at the Family Court Building.

<http://www.usdoj.gov/crt/foia/lofc57.txt>

Oakland Municipal Court - Municipal Court of Oakland-Piedmont-Emeryville Judicial District, August 6, 1996. Compliance. Policy clarifies the role of the ADA Coordinator, and the availability of interpreters and other auxiliary aids and services for persons with hearing disabilities. Other features include clear descriptions of how one requests an accommodation, publicizing the procedures in written documents issued by the Court, and new signage in the court building, to help ensure that interested persons with disabilities are able to acquire appropriate auxiliary aids and services.

<http://www.usdoj.gov/crt/foia/lofc58.txt>

Greene Superior Court - Bloomfield, IN, November 14, 1996.

Provisions for auxiliary aids and services in the courts. The ADA does not require a public entity to provide auxiliary aids or other accommodations absent any notice that an accommodation is needed.

<http://www.usdoj.gov/crt/foia/lofc81.txt>

Seventeenth Court - Broward County, FL, September 4, 1996.

Participation in the courts via telephone. The Court did not violate the ADA with respect to the allegations of the complaint.

<http://www.usdoj.gov/crt/foia/lofc64.txt>

Superior Court for the State of Alaska - Anchorage, Alaska, February 3, 1994.

Compliance. Court did not violate Title II when it denied complainant's motion to file audiocassette in place of written briefs because complainant failed to establish nexus between his impairment and the requested modification to the court's rules.

<http://www.usdoj.gov/crt/foia/lofc029.txt>

Circuit Court of Berkeley County and Supreme Court of Appeals - West Virginia December 19, 1994. Compliance. 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. Supreme Court of Appeals did not violate Title II when it denied the individual's appeal.

<http://www.usdoj.gov/crt/foia/lof041.txt>

Bernalillo County Courthouse - Bernalillo, NM August 8, 1996. Access to programs and activities at courthouse and creation of alternative entrance.

<http://www.usdoj.gov/crt/foia/lofc59.txt>

Hardinsburg County Courthouse - Hardinsburg County, KY July 10, 1996.

County courthouse inaccessible. An elevator was installed which provides mobility impaired individuals 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.

<http://www.usdoj.gov/crt/foia/lofc55.txt>

Osceola County Courthouse p MI, November 4, 1996. Accessibility to courthouse for wheelchairs. The Friend of the Court office was moved to the accessible 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.

<http://www.usdoj.gov/crt/foia/lofc74.txt>

Department of Justice ADA Technical Assistance Letters

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.

ADA Technical Assistance Letters Index: <http://www.usdoj.gov/crt/foia/talindex.htm>

Doc #: 73 - date: 05/21/92 ; DOJ File #: 202-PL-00094:

Technical assistance letter regarding payment for certain court costs and provision of auxiliary aids and services necessary to understand court proceedings.

<http://www.usdoj.gov/crt/foia/tal073.txt>

Doc #: 659; date: 12/13/95

Technical assistance letter regarding auxiliary aids/interpreter in the courtroom.

<http://www.usdoj.gov/crt/foia/tal659.txt>

Doc #: 730; date:08/06/97

Technical assistance letter regarding use of fine print in legal documents and concern about the elderly with visual impairments inability to read the documents.

<http://www.usdoj.gov/crt/foia/tal730.txt>

Doc #: 558; date:09/26/94

Technical assistance letter regarding ADA applicability to state judicial proceedings.

<http://www.usdoj.gov/crt/foia/tal558.txt>

Doc #: 406; date: 11/01/93; DOJ File #: 204-012-00049

Technical assistance letter concerning compliance with the Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) under Title II of the Americans with Disabilities Act of 1990 (ADA).

<http://www.usdoj.gov/crt/foia/tal406.txt>

Doc #: 414; date: 11/23/93

Letter of findings was sent to a judge regarding the inaccessibility of the Van Buren County Arkansas courtroom. The Civil Rights Division concluded that the county was not in compliance with Title II and that informal attempts to resolve the matter were unsuccessful. Negotiations would be attempted before referring the case to litigation.

<http://www.usdoj.gov/crt/foia/tal414.txt>

Doc #: 552; date:09/07/94; DOJ File #:202-PL-842

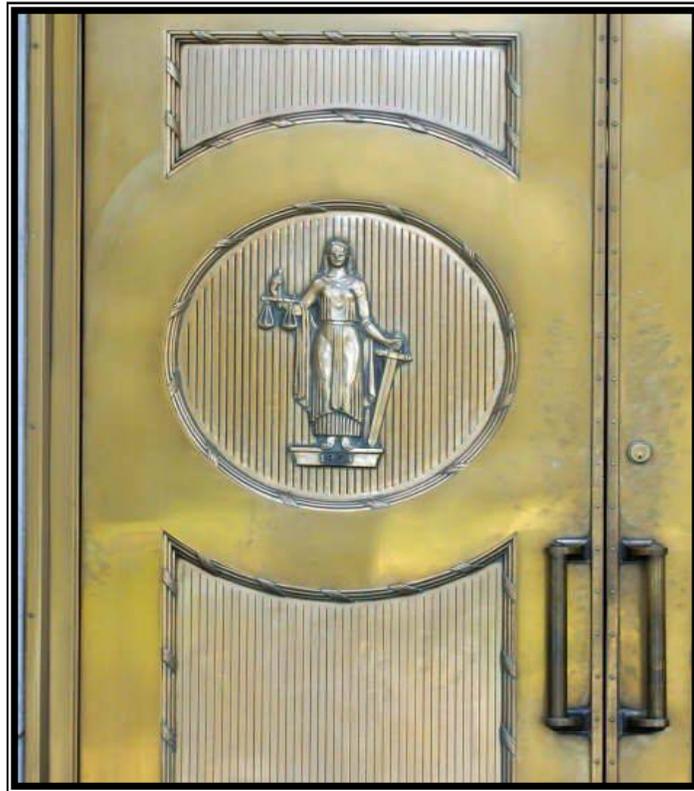
Technical assistance letter addressing questions regarding renovations of a municipal court.

<http://www.usdoj.gov/crt/foia/tal552.txt>

Doc #: 688; date: 04/29/96

Technical assistance letter regarding courtroom alterations and the potential increase of costs of the planned alterations and the functionality of courtroom design.

<http://www.usdoj.gov/crt/foia/tal688.txt>



Georgia Commission on Access and Fairness in the Courts

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