
**Americans with Disabilities Act of 1990,
the ADA Amendments Act of 2008, and
28 CFR Part 35**

**Title II Guidelines
for the
State Courts System of Florida**

*Prepared by
Office of the State Courts Administrator
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399-1900
850-922-5081
www.flcourts.org*

Revised: February 2020

CONTENTS

Introduction.....	4
Section I: Overview	5
Public Services Regulated.....	5
Who Is Protected by Title II?.....	5
Who Is Not Protected by Title II?.....	5
Who Is an Individual with a “Disability?”.....	6
Who Is a “Qualified Individual” with a Disability?.....	6
What Is a “Physical or Mental Impairment?”	6
Section II: General Requirements	7
Section III: Program Accessibility, Modification of Policies, and Auxiliary Aids and Services..	8
What Accommodations Are Required by Title II?.....	8
Accommodations Provided by the Courts	9
How Does One Determine What Is a Reasonable Auxiliary Aid or Service?.....	10
Documentation of the Need for Auxiliary Aids and Services	10
Accommodations in the Jury Deliberation Room.....	11
Notices to Persons with Disabilities	11
Service Animals	12
Facilities	12
Section IV: Courtesies for Interacting with Persons Who Have Disabilities	14
General Hints	14
Reception Hints.....	14
Section V: Enforcement and Remedies	15
Designating a Responsible Employee.....	15
Grievance Procedures	15
Glossary	17
"Auxiliary Aids and Services"	17
“Effective Communication”.....	17
"Fundamental Alteration"	17
"Major Life Activities"	17
"Primary Consideration"	18
"Public Entity"	18
"Record of a Substantially Limiting Condition".....	18
"Regarded as Substantially Limited"	18
"Substantially Limits"	19
"Undue Burden"	19

Appendix A: Recognizing Physical or Mental Impairments	21
Examples of “Physical and Mental Impairments”	21
Examples of "Substantially Limits"	21
Examples of "Record of a Substantially Limiting Condition"	22
Examples of "Regarded as Substantially Limited"	22
Appendix B: Mental Illness, Intellectual Disability, and Autism	23
Appendix C: Examples of Auxiliary Aids and Services.....	24
Accessible Electronic Documents.....	24
Assistive Listening Devices	24
Audio Tapes/Talking Books	24
Braille Printer.....	24
Real-Time Transcription Services / Communication Access Realtime Translation (CART) ..	24
Infra-Red Assistive Listening Systems.....	24
Optical Scanners and Optical Character Recognition (OCR).....	25
Large Print Materials	25
Open and Closed Captioning	25
Oral Interpreter.....	25
Qualified Interpreter.....	25
TDD/TTY/Text Phone	26
Video Phone.....	26
Wireless FM System.....	26
Appendix D: More Examples of Courtesies	27
Persons with Mobility Aids	27
Persons with Visual Disabilities	27
Persons with Speech Impediments.....	28
Individuals Who Are Deaf or Hard of Hearing	28
Persons with Learning Disabilities	29
Appendix E: Sample Grievance Procedure.....	30
Appendix F: Policy on Court Real-Time Transcription Services for Persons Who Are Deaf or Hard of Hearing	35
Appendix G: Guidelines for Provision of Interpreters for Persons Who Are Deaf or Hard of Hearing.....	37
Standard	37
Obtaining Interpreter Services	37
Verification of Qualifications	38
Florida Statutory Provisions	39
Appendix H: Florida State Courts System Guidelines on the Provision of Real-Time Court Reporting Services for Attorneys with Disabilities	41

INTRODUCTION

The Americans with Disabilities Act (ADA) of 1990 was enacted to ensure that all qualified individuals with disabilities enjoy the same opportunities that are available to persons without disabilities. The ADA Amendments Act of 2008 makes important changes to the definition of the term "disability." United States Department of Justice is responsible for issuing ADA regulation for state and local governments (28 Code of Federal Regulation, Part 35). These federal laws and regulations are collectively referred to as "the ADA" in these guidelines.

Equalizing opportunities is of paramount importance to the everyday operations of the judiciary. The Florida State Courts System attempts to make reasonable modifications in policies, practices, and procedures; furnish auxiliary aids and services; and afford program accessibility through the provision of accessible facilities, the relocation of services or programs, or the provision of services at alternative sites, as appropriate and necessary. However, the ADA does not require the court system to take any action that would fundamentally alter the nature of court programs, services, or activities, or that would impose an undue financial or administrative burden on the courts.

The Florida State Courts System has produced these guidelines to assist judicial officers and courthouse personnel in understanding the public entity provisions of the ADA (Title II) and to assist them in ensuring that architectural or communication barriers do not obstruct any person's access to the courts. Included are a practical summary of Title II of the ADA and an overview of accessibility requirements. Additionally, this guide contains information pertaining to recognizing and accommodating individuals with disabilities. The State Courts System recommends that each district court and judicial circuit educate its employees on the requirements of the ADA.

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

Upon request by a qualified person with a disability, this document will be made available in alternate formats such as audiotape, Braille, large print, or electronic file on computer disk. To order this document in an alternate format, please contact the ADA Coordinator, Office of the State Courts Administrator, 500 S. Duval Street, Tallahassee, Florida 32399-1900, (850)922-4370 or ada@flcourts.org.

SECTION I: OVERVIEW

Note: All terms including the designation of (gl⁵) are defined in the Glossary

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

Public Services Regulated

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

Who Is Protected by Title II?

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

Who Is Not Protected by Title II?

- Individuals who currently use drugs illegally or abuse drugs and/or alcohol.
- Homosexual or bisexual individuals (homosexuality and bisexuality are not considered impairments.)
- Individuals with other sexual or behavioral anomalies including transvestism; transsexualism; pedophilia; voyeurism; gender identity disorders not associated with physical impairment; compulsive gambling, kleptomania, or pyromania; and psychoactive substance use disorders resulting from current illegal use of drugs.

Who Is an Individual with a “Disability?”

A person who:

- Has a physical or mental impairment that “*substantially limits*”(gl^s) one or more “*major life activities*”(gl^s) of that individual
- Has a “*record of a substantially limiting condition*”(gl^s)
- Is “*regarded as having a substantially limiting impairment*”(gl^s)

Who Is a “Qualified Individual” with a Disability?

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

What Is a “Physical or Mental Impairment?”

Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

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

A mental impairment is any mental or psychological disorder, such as a developmental disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(For information on distinguishing an intellectual disability from mental illness, see Appendix B.)

While it is not possible to provide an exhaustive list, examples of physical and mental impairments include:

- paralysis, amputation, and other mobility impairments
- blindness and low vision
- deaf, hard of hearing, and deaf-blind
- schizophrenia, bipolar disorder, and personality disorders
- intellectual disability, traumatic brain injury, Alzheimer’s disease, and organic brain syndrome, and other cognitive impairments
- autism spectrum disorders

- specific learning disabilities such as dyslexia (reading and related language-based learning disabilities); dyscalculia (mathematical disability); and dysgraphia (writing or fine motor skills deficit)
- cerebral palsy
- multiple sclerosis
- speech impairments
- epilepsy
- heart disease
- cancer
- diabetes

For further examples of physical and mental impairments, see Appendix A.

General Requirements

The general prohibitions against discrimination in the federal regulations indicate that, among other things, a public entity may not:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from the service;
- Afford a qualified individual with a disability a service or an opportunity to participate that is not equal to that afforded others;
- Provide a qualified individual with a disability with a service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or reach the same level of achievement as that provided to others;
- Provide different or separate services to individual with disabilities or any class of individuals with disabilities than is provided to others (except under specific circumstances); or
- Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the service.

When necessary to provide access for a qualified individual with a disability, a Title II entity is required to 1) Make reasonable modifications to policies and practices; 2) Remove architectural, communication, or transportation barriers; and 3) Provide “*auxiliary aids and services*”(g1^s). A public entity should give “*primary consideration*”(g1^s) to the auxiliary aid or service requested by the individual with the disability.

SECTION II: PROGRAM ACCESSIBILITY, MODIFICATION OF POLICIES, AND AUXILIARY AIDS AND SERVICES

Note: All terms including the designation of (gl^s) are defined in the Glossary

As required by the ADA, the determination of whether an individual has a disability and the accommodation appropriate to a particular situation is an individualized inquiry and each decision is therefore made on a case-by-case basis. Accommodations that are granted by the state courts are made at no cost to qualified individuals with disabilities. Examples of Title II accommodations include:

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

What Accommodations Are Required by Title II?

When necessary to provide access for a qualified individual with a disability, a Title II entity is required to 1) Make reasonable modifications to policies and practices; 2) Remove architectural, communication, or transportation barriers; and 3) Provide auxiliary aids and services.

The Florida State Courts System must make reasonable modifications to policies and programs to afford qualified individuals who have disabilities with an equal opportunity to enjoy court programs, services, and activities. For example, service animals are allowed in court facilities, even though pets are prohibited.

There are many ways to make a program, service, or activity accessible other than through architectural modifications. If physical access to a court facility is not feasible administratively or financially, the entity may comply with the ADA by making its services available in another fashion. Program access allows the court to move the program to an accessible location, or use some way other than making all architectural changes to make the program, service, or activity readily accessible to and usable by individuals with disabilities.

A “**public entity**” (gl^s) is required to provide necessary “**auxiliary aids and services**” (gl^s) for qualified individuals with disabilities to ensure “**effective communication**” (gl^s) and participation in its services, programs, and activities. The person with a disability will generally request an auxiliary aid or service if needed. All requests should be documented and maintained in a separate file by the designated ADA coordinator. Examples of auxiliary aids and services are included in Appendix C.

There may be a few situations in which a court will not be required to provide a requested accommodation. The ADA does not require the court system to take any action that would fundamentally alter the nature of court programs, services, or activities, or that would impose an undue financial or administrative burden. If a judicial officer or court personnel believe the requested accommodation would result in a “*fundamental alteration*”(g1^s) in the nature of the program or service, or that an “*undue burden*”(g1^s) would result, the ADA coordinator should be notified immediately.

Accommodations Provided by the Courts

The Florida State Courts System will generally, upon request, attempt to provide appropriate aids and services to afford “*effective communication*”(g1^s) for qualified persons with disabilities to participate equally in court programs, services, and activities. The Florida State Courts System cannot place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids and services or reasonable modifications of policies.

Examples of auxiliary aids or services that the State Courts System may provide for qualified individuals with disabilities include:

- Assistive listening devices
- Qualified sign language interpreters and oral interpreters
- Real-time transcription services
- Accessible formats such as large print, Braille, electronic document on diskette, or audio tapes
- Qualified readers

Examples of aids or services the State Courts System is *not* required to provide under Title II of the ADA include:

- Transportation to the courthouse
- Legal counsel or advice
- An official court transcript
- Personal devices such as wheelchairs, hearing aids, or prescription eyeglasses
- Personal services such as medical or attendant care
- Readers for personal use or study

Additionally, courts cannot administratively grant, as an ADA accommodation, requests that impact court procedures within a specific case. Requests for an extension of time, a change of venue, or participation in court proceedings by telephone or videoconferencing must be submitted by written motion to the presiding judge as part of the case. The judge may consider an individual’s disability, along with other relevant factors, in granting or denying the motion.

Furthermore, the court cannot exceed the law in granting a request for an accommodation. For example, the court cannot extend the statute of limitations for filing an action because someone claims that he or she could not make it to the court on time due to a disability, nor can the court modify the terms of agreements among parties as an ADA accommodation.

How Does One Determine What Is a Reasonable Auxiliary Aid or Service?

When determining whether requested auxiliary aids and services are reasonable, let common sense be your guide. Determining the appropriate auxiliary aid or service frequently involves an interactive process:

- Always consult the person with the disability as the first step in evaluating the need for auxiliary aids and services.
- Work with the person with a disability to identify appropriate auxiliary aids and services and in considering alternatives. Often, by inquiring about what auxiliary aid or service is most effective for that person, one may learn a simple, inexpensive method of accommodation.
- Consider the preference of the individual with a disability and select the auxiliary aid or service that best serves the needs of the individual and fulfills the purpose of the service or program.
- Ensure that equal benefit or enjoyment of the program can be obtained when the auxiliary aid or service is provided.
- Ensure that “*effective communication*” (g1⁵) occurs.
- Realize that individuals may decline an accommodation and choose to participate in the court activity in the same manner as the general public.

If you have thoughtfully considered and discussed all the options, chances are you will come up with an appropriate solution. Nevertheless, when a request for an auxiliary aid or service is made, you should notify the ADA coordinator of your court. When necessary, the ADA coordinator will consult resource materials, talk to disability experts, and prepare a recommendation for approval by the presiding judge.

Documentation of the Need for Auxiliary Aids and Services

If an individual has a disability that is not obvious or when it is not readily apparent how a requested accommodation relates to an individual’s impairment, it may be necessary for the court to require the individual to provide documentation from a qualified health care provider in order for the court to fully and fairly evaluate the accommodations request. Requests for documentation shall be limited to documentation that (a) establishes the existence of a disability; (b) identifies the individual’s functional limitations; and (c) describes how the requested accommodation addresses those limitations. Any cost to obtain such documentation is the obligation of the person requesting the accommodation. The court should not make inquiries into or ask for documentation of a person’s physical or mental condition that is unrelated to the impaired function for which the individual seeks accommodation.

Copies of requests for auxiliary aids and services, medical documentation, approvals or disapprovals, and a description of any auxiliary aids and services provided should be given to the ADA coordinator of your court.

Accommodations in the Jury Deliberation Room

If accommodations are required for a juror with a disability, a sign language interpreter, real-time transcriptionist, or personal attendant should be allowed into the jury room during deliberations. The interpreter, transcriptionist, or attendant shall not counsel, advise, attempt to explain terms, or interject personal opinion into the jury deliberations.

The role of a real-time transcriptionist, when in the jury room, is not as a reporter of the official record; therefore, the real-time transcription service of jury deliberations must be deleted immediately upon the conclusion of jury deliberation. Furthermore, the reporter shall not read back the real-time transcription service from the proceeding or jury deliberations without express judicial approval or authorization.

The presiding judge has the discretion to administer an oath of non-involvement, including language stating that the interpreter, transcriptionist, or attendant will not interfere with the deliberations of the jury or reveal the confidences of the jury. See U.S. v. Dempsey, 830 F.2d 1084, 1090 (10th Cir. 1987); Guzman, 76 N.Y. 2d at 6-7 (clarifying that since a “signor” is a neutral figure, associated only with the fellow juror, her presence should not have an adverse impact on jurors). The judge, before the verdict is announced, may inquire whether the interpreter, transcriptionist, or attendant abided by his or her oath to act strictly as an assistant to the juror with a disability. The judge may also question the jurors to the same effect. Dempsey, supra.

Notices to Persons with Disabilities

Rule 2.540, Florida Rules of Judicial Administration, requires that all notices of court proceedings held in a public facility and all process compelling appearance at such proceedings include the following statement:

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] within 2 working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 711.

It is also recommended that notice of the availability of accommodations be provided in accessible formats and modalities at the following locations, as appropriate and applicable to an individual court:

- Posted at the information desk
- Incorporated into jury-orientation videos and materials
- Included in any public service announcements about the courts

- Published on trial and appellate court websites
- Posted in court offices
- Included in court handbooks, publications, activity schedules, and meeting notices
- Announced at court events

Service Animals

A service animal is an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is a working animal, not a pet. An emotional support animal is not a service animal.

The courts will allow people with disabilities to bring their service animals into all areas of the court facility where members of the public are normally allowed to go. Court personnel may ask if an animal is a service animal or ask what tasks the animal has been trained to perform, but cannot require special ID cards for the animal.

A person with a disability cannot be asked to remove the service animal from the court facility unless: (1) the animal is out of control and the owner does not take effective action to control it (for example, a dog that barks repeatedly during a court hearing) or (2) the animal poses a direct threat to the health or safety of others (allergies or the fear of animals are generally not valid reasons for denying access to an individual with a service animal). In those situations where a service animal must be excluded or removed, the court should afford the person with the disability the option to continue participating without having the animal on the premises.

The court is not required to provide care or food for a service animal or provide a special location for it to relieve itself.

Facilities

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

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

Physical barriers may make it difficult for persons with disabilities to participate in court services

or activities. In some courthouses, witness and jury boxes may be inaccessible to persons who use wheelchairs or other mobility devices, or some public information counters may be too high for some individuals. While the 67 individuals counties are financially responsible for maintaining facilities for the trial courts and for ensuring that such facilities are accessible, the Florida State Courts System will generally, upon request, attempt to make arrangements to afford physical access to the courts.

In addition to providing for the architectural renovation of existing facilities when resources are available to make them readily accessible to persons with disabilities, the ADA provides for program accessibility as a means to ensure access to the courts. Program accessibility includes methods such as relocating a service to enable a qualified person with a disability to participate; retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs; or providing alternative seating patterns for jurors, including a juror using a wheelchair, in locations outside the traditional jury box.

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

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

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

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

SECTION III: COURTESIES FOR INTERACTING WITH PERSONS WHO HAVE DISABILITIES

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

General Hints

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

Reception Hints

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

Additional examples of courtesies for interaction with persons with disabilities are provided in Appendix D.

SECTION IV: ENFORCEMENT AND REMEDIES

Designating a Responsible Employee

The Americans with Disabilities Act requires every public entity with 50 or more employees to designate a responsible employee to serve as the ADA coordinator and to adopt formal grievance procedures. Though some courts do not have 50 employees, designating such a coordinator facilitates implementation of the ADA statewide. The name, work address, and work phone number of the designated employee should be available to all interested persons.

The court ADA coordinator's duties include:

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

Grievance Procedures

There is a requirement to publish adopted grievance procedures for prompt and equitable resolution of all complaints alleging a violation of Title II. Each trial and appellate court in Florida has established grievance procedures that allow for the resolution of complaints without resorting to federal complaint procedures. A grievance is a formal complaint made by a person, or on behalf of a person, alleging that he or she has been subjected to unlawful discrimination, or inaccessibility to facilities, programs, services, benefits, or activities on the basis of a disability.

The ADA requires that a "complete complaint" be submitted to properly file a grievance. A complete complaint includes:

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

Persons seeking to file a grievance shall follow the established grievance procedures in each trial and appellate court in Florida. For an example of such grievance procedures, see Appendix D.

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

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

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

The ADA coordinator for the State Courts System is available to provide technical assistance to judicial officers and court staff regarding Title II of the ADA. In addition, your local ADA coordinator has access to a variety of resources that can be used in implementing the ADA.

GLOSSARY

"Auxiliary Aids and Services"

Title II of the ADA requires government entities to make appropriate auxiliary aids and services available to ensure effective communication. An auxiliary aid or service is any device or aid that is designed to provide effective communication and participation for individuals with disabilities.

An example of an auxiliary aid or service is an assistive listening system, but the term also includes services such as a sign language interpreter or removing an item from a high shelf for a person with a disability. Generally, the requirement to provide an auxiliary aid or service is triggered when a person with a disability makes a request. For examples of auxiliary aids and services, see Appendix C.

“Effective Communication”

Under Title II of the ADA, all state and local governments are required to take steps to ensure that their communications with people with disabilities are as effective as communications with others. This requirement is referred to as effective communication and it is required except where a state or local government can show that providing effective communication would fundamentally alter the nature of the service or program in question or would result in an undue financial and administrative burden.

What does it mean for communication to be effective? Simply put, effective communication means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities. This is important because some people have disabilities that affect how they communicate.

How is communication with individuals with disabilities different from communication with people without disabilities? For most individuals with disabilities, there is no difference. But people who have disabilities that affect hearing, seeing, speaking, reading, writing, or understanding may use different ways to communicate than people who do not. There are many ways that the courts can provide equal access to communications for people with disabilities. These different ways are provided through auxiliary aids and services.

"Fundamental Alteration"

Public entities are required to make reasonable accommodations and provide reasonable auxiliary aids and services to any qualified individual who needs them. In rare cases, a certain accommodation will so drastically change the service, program, or activity that the public entity may not be required to make the accommodation. This defense is only available after the chief judge or chief judge's designee has formally concluded in writing that the accommodation would fundamentally change the nature of the service, program, or activity.

"Major Life Activities"

Under the ADA, an impairment meets the definition of a "disability" only if the impairment substantially limits one or more major life activities. Examples of major life activities include:

- walking
- speaking
- breathing
- performing manual tasks
- working
- seeing
- hearing
- learning
- caring for oneself
- sleeping
- standing
- lifting
- bending
- reading
- concentrating
- thinking
- communicating

Major life activities can also include major bodily functions, such as the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

"Primary Consideration"

Primary consideration should be given to the auxiliary aid or service requested by the individual with the disability. A public entity should endeavor to obtain the requested method of accommodation unless the court can demonstrate that another equally effective accommodation is available or that the means chosen would result in a fundamental alteration in the nature of the service, program, or activity.

"Public Entity"

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

"Record of a Substantially Limiting Condition"

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

"Regarded as Substantially Limited"

An individual who is perceived to have a substantially limiting condition even when this person does not have a substantially limiting impairment. For example an individual who has high blood pressure which is not substantially limiting, but an employer regards the high blood pressure as disabling or possibly disabling. Individuals will not be regarded as having a substantially limiting impairment if the perceived impairment is transitory (six months or less of actual or expected duration) and minor.

"Substantially Limits"

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

The beneficial effects of medication, medical supplies, equipment or appliances, low-vision devices, prosthetics, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids and services; or learned behavioral or adaptive neurological modifications may not be considered when determining whether an impairment substantially limits a major life activity. However, the beneficial effect of ordinary eyeglasses or contact lenses should be considered in the determination. Furthermore, if an impairment that is episodic or in remission substantially limits a major life activity when active, it may be a disability.

"Undue Burden"

The ADA does not require the court to make any accommodations that place an undue financial or administrative burden on the courts. An undue burden is defined as "significant difficulty or expense." It is evaluated on a case-by-case basis, relative to the state or local government entity's overall resources. Asserting the defense of undue burden requires a greater showing of hardship than simply that the provision of auxiliary aids or services will be difficult or expensive. Further, when a particular communication aid or service would cause an undue burden, the court must provide another communication aid or service that still is effective but is less difficult or costly, if one is available. For example:

It would be an undue burden for a court to have a sign language interpreter available all the time to assist walk-in court users. However, when requested by a litigant or other court participant in advance, the court can arrange for an interpreter to be available at a specified time.

If after considering all available resources a determination of "undue burden" is made, the chief judge or chief judge's designee must prepare a written statement explaining such a decision.

To summarize, decisions on undue burden:

- Must be made by head of public entity or designee.
- Must consider all resources available for use in the funding and operation of the program.
- Must be accompanied by a written statement of the reasons for the conclusion.

- A public entity shall take any other action that would not result in such an alteration or burden.

APPENDIX A: RECOGNIZING PHYSICAL OR MENTAL IMPAIRMENTS

Examples of “Physical and Mental Impairments”

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

Examples of "Substantially Limits"

- Although cerebral palsy frequently significantly restricts major life activities such as speaking, walking, and performing manual tasks, an individual with mild cerebral palsy that only slightly interferes with his or her ability to speak and has no significant impact on other major life activities, is not an individual with a disability under this part of the definition.
- An individual who sustains a back injury that results in considerable pain and that substantially restricts the ability to sit, walk, stand, or participate in recreational activities is an individual with a disability. An individual who sustains a back injury but is able to continue an active life, including recreational sports, is not considered an individual with a disability.

- A person who has a mild form of arthritis in his or her wrists and hands, and a mild form of osteoporosis, is considered to have a disability. Although neither impairment by itself substantially limits a major life activity, these impairments combined significantly restrict the person's ability to lift and perform manual tasks.
- Temporary non-chronic impairments that do not last for a long time and that have little or no long term impact usually are not disabilities. Broken limbs, sprains, concussions, appendicitis, common colds, or influenza generally would not be disabilities.
- If a person suffers a broken leg which takes significantly longer than the normal healing period, and during this period the individual cannot walk, this would be considered a disability. If the leg does not heal properly, and results in permanent impairment, that would be considered a disability.
- If a person has epilepsy that is normally controlled by medication, that person may be disabled if the epilepsy substantially limits one or more major life activities absent medication.
- A person whose hearing is improved by a cochlear implant may be disabled if the impairment, absent the cochlear implant, substantially limits one or more major live activities.

Examples of "Record of a Substantially Limiting Condition"

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

Examples of "Regarded as Substantially Limited"

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

APPENDIX B: MENTAL ILLNESS, INTELLECTUAL DISABILITY, AUTISM

Court procedures for an individual with an intellectual disability or with autism are different than for an individual with a mental illness. Chapter 916, Florida Statutes, provides that when a criminal defendant's suspected mental condition is intellectual disability or autism, the individual shall be evaluated by qualified experts.

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

Persons with a Mental Illness

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

Persons with Intellectual Disability

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

Persons with Autism - Autism is not a single disorder, but a spectrum of related disorders with a shared core of symptoms that may occur at different levels and in different combinations. Such symptoms may include:

- Difficulty with social interaction, empathy, communication, and flexible behavior
- Either an underreaction or overreaction to sensory stimuli
- Difficulty regulating emotions or expressing them appropriately
- Autism occurs at all intelligence levels, but persons with autism often have unevenly developed cognitive skills (for example, verbal skills may be weaker than nonverbal skills)

This information was originally based on a pamphlet developed by attorney Dolores Norley and funded by the Florida Developmental Disabilities Council and the Florida Department of Children and Families Developmental Services Program.

APPENDIX C: EXAMPLES OF AUXILIARY AIDS AND SERVICES

Accessible Electronic Documents

Some individuals with disabilities use assistive technology to compensate for their functional limitations. Examples of assistive technology include screen readers, hands-free mouse alternatives, and voice recognition software keyboards. If electronic court information and information technologies are not designed properly, those who use assistive technology as well as other individuals with disabilities may be cut off from important information. Adherence to Section 508 Standards, which are set forth at 36 CFR Part 1194, is a means by which the courts can ensure compliance with the ADA as it relates to effective communication via electronic formats.

Assistive Listening Devices

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

Audio Tapes/Talking Books

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

Braille Printer

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

Real-Time Transcription Services / Communication Access Realtime Translation (CART)

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

Infra-Red Assistive Listening Systems

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

Optical Scanners and Optical Character Recognition (OCR)

The purpose of optical scanners and optical character recognition (OCR) software is to make print materials accessible using synthesized speech. The OCR software takes a picture of text that is on a print page, converts it to computer text, then displays it on a screen. This is done by the optical scanner. Some optical scanners and OCR software used by persons who are blind or severely visually impaired include software that will read the document using a speech synthesizer.

Some OCR packages are stand-alone. They are often called reading machines. These machines do not require a computer to work. A scanner may be connected via a cable or be part of the main reading machine that will store the data, process the data, and provide the speech output. A user operates the machine using a key-pad or keyboard. Today many public libraries have at least one such reading machine for library customers who are blind or visually impaired. Persons with learning disabilities can also benefit from such reading machines. This machine converts written materials into voice transmissions.

Large Print Materials

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

Open and Closed Captioning

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

Oral Interpreter

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

Qualified Interpreter

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

TDD/TTY/Text Phone

A "telecommunication0 device for the deaf" uses graphic communication in the transmission of signals through a wire or radio control system.

Video Phone

Video phones allow people who are deaf and hard or hearing to communicate with others using American Sign Language over a videophone connection. They can contact other deaf people who also have videophones directly, or they can contact hearing people through the Video Relay Service.

Wireless FM System

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

APPENDIX D: MORE EXAMPLES OF COURTESIES

Persons with Mobility Aids

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

Persons with Visual Disabilities

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

Persons with Speech Impediments

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

Individuals Who Are Deaf or Hard of Hearing

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

Persons with Learning Disabilities

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

APPENDIX E: SAMPLE GRIEVANCE PROCEDURE

* * * *Trial Court Model* * * *

Americans with Disabilities Act of 1990

* * *

Designation of Responsible Person
and
Internal Grievance Procedure
for the
_____ Judicial Circuit

I. Authority

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

II. Intent and Purpose

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

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

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

III. Definitions

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

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

IV. Designation of Responsible Person

The ADA coordinator for the _____ Judicial Circuit is:

Name
 Position Title
 Street Address
 City, Florida Zip
 Telephone Number
 Email Address

V. Grievances

A complaint shall contain the following minimum information:

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

VI. Procedure for Grievances Relating to the _____ Judicial Circuit

A. Filing

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

B. Assessment and Determination of Team Members

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

C. Fact Finding

- 1. The team, or a member of the team, will review the complaint with the complainant.

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

D. Test of Legal Sufficiency

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

E. Action

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

F. Closure, Notification, and Records Retention

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

record shall be located with the ADA coordinator.

APPENDIX F: POLICY ON COURT REAL-TIME TRANSCRIPTION SERVICES FOR PERSONS WHO ARE DEAF OR HARD OF HEARING¹

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

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

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

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

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

5. The reporter, prior to the beginning of the proceeding, should review the case file and build a good client/job dictionary. This same job dictionary should be used at each subsequent

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

proceeding in a particular case. The job dictionary should be updated during the course of the proceeding to include untranslates that may be corrected by any of the parties during the proceedings. Such updates should be operable throughout the remainder of the proceeding's real-time transcription service and carried over to any future proceedings.

6. The real-time transcription service and corrections that were displayed on the screen or monitor during the proceeding must be preserved in a manner to reflect what was actually displayed. Any corrections that were not viewed but that later become a part of the official court record must be maintained separately from the record of displayed text. At the conclusion of any proceeding (other than juror deliberations) in which real-time transcription service has been provided to ensure effective communication for a person who is deaf or hard of hearing, the reporter shall preserve the record of the real-time transcription service in accordance with rule 2.440(b), Florida Rules of Judicial Administration, unless otherwise directed by the court.

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

APPENDIX G: GUIDELINES FOR PROVISION OF INTERPRETERS FOR PERSONS WHO ARE DEAF OR HARD OF HEARING

Standard

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

Obtaining Interpreter Services

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

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

In selecting the interpreter, the preference is that the interpreter be certified by the National Registry of Interpreters for the Deaf (RID) except in those cases where the unique communication needs of the individual cannot be met by such nationally certified interpreters. The preferred certification level is SC: L (Specialist Certificate: Legal). Individuals holding other certifications issued by RID may be considered, including: NIC Master (National Interpreter Certification Master), NIC Advanced (National Interpreter Certification Advanced), NIC (National Interpreter Certification), or Oral Skills Certification for individuals requiring an oral interpreter. The court should be aware that it may be necessary to pay travel expenses when such certified interpreters are not locally available. When individuals holding the preferred certifications are not reasonably available, persons who can document substantial experience as

interpreters may be considered. When individuals who do not hold RID certification are used, the court has a responsibility to ensure that the interpreter clearly understands the role of the interpreter in the judicial setting and to ensure that the communication is effective prior to securing his/her services.

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

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

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

Verification of Qualifications

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

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

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

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

Florida Statutory Provisions

Section 90.606, Florida Statutes, provides that:

(1)(a) When a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, an interpreter who is duly qualified to interpret for the witness shall be sworn to do so.

(b) This section is not limited to persons who speak a language other than English, but applies also to the language and descriptions of any person, such as a child or a person who is mentally or developmentally disabled, who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter.

(2) A person who serves in the role of interpreter or translator in any action or proceeding is subject to all the provisions of this chapter relating to witnesses.

(3) An interpreter shall take an oath that he or she will make a true interpretation of the questions asked and the answers given and that the interpreter will make a true translation into English of any writing which he or she is required by his or her duties to decipher or translate.

Further, section 90.6063(7), Florida Statutes, relating to interpreter services for deaf persons, provides that:

(7) Before a qualified interpreter may participate in any proceedings subsequent to an appointment under the provisions of this act, such interpreter shall make an oath or affirmation that he or she will make a true interpretation in an

understandable manner to the deaf person for whom the interpreter is appointed and that he or she will repeat the statements of the deaf person in the English language to the best of his or her skill and judgment. Whenever a deaf person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and the recipient of the communication could not be compelled to testify as to the communication, this privilege shall apply to the interpreter.

APPENDIX H: FLORIDA STATE COURTS SYSTEM GUIDELINES ON THE PROVISION OF REAL-TIME COURT REPORTING SERVICES FOR ATTORNEYS WITH DISABILITIES

Real-time court reporting services will be provided at court expense in county and circuit court criminal trials for attorneys who are deaf or hard of hearing. The provision of real-time court reporting services in other county and circuit court criminal proceedings in which the court is already providing court reporting services to comply with constitutional requirements will be considered on a case-by-case basis. These services will be provided in accordance with the Florida State Courts System’s “Policy on Court Real-Time Transcription Services for Persons Who are Deaf or Hard of Hearing” (see Appendix F).^{2, 3}

Request Procedures:

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

1. Requests should be made as far in advance as possible, but preferably at least five working days before the date of the courtroom proceeding.
2. Requests may be presented either orally or in written format. All requests will be reduced to writing by the ADA coordinator. Requests must include a description of the hearing disability that necessitates provision of real-time court reporting services.⁴
3. Requests should be forwarded to the local court ADA coordinator (contact information for ADA coordinators is available on the Florida Courts website, www.flcourts.org). If the request is originally presented to a judge or judge’s

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

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

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

office, the judge shall confer with the court ADA coordinator.

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