

DEPARTMENT OF JUSTICE

GENERAL COUNSEL DIVISION

November 12, 1998

Kingsley W. Click
State Court Administrator
Supreme Court Building
1163 State St.
Salem, OR 97310-0260

Re: Opinion Request OP 1998-7

Dear Ms. Click:

You have asked for advice regarding the handling of requests received by the Oregon Judicial Department under the Americans with Disabilities Act (ADA) for "process interpreters" to assist individuals with cognitive disabilities who are involved in a court proceeding.⁽¹⁾ We set forth your questions and our short answers below, followed by a discussion.

1. To respond to a request for a "process interpreter," may the court request a represented party to file a motion and hold a hearing on the motion?

Uniform Trial Court Rule (UTCRC) 7.060 provides a mechanism for a party to a court proceeding to request special accommodation for an individual. Any additional factfinding necessary to permit the court to respond to a request for any accommodation is within the court's discretion.

2. What criteria should the court use to determine that a cognitive disability actually exists and that accommodation using outside assistance such as a "process interpreter" is necessary for proper accommodation?

A list of inquiries that may be used in making such a determination is contained in the Appendix of this opinion.

3. Does the court have qualitative decision-making authority to determine whether providing a process interpreter (either generally or a particular person) would be a meaningful accommodation? Must the court pay for assistance that is not, in its opinion, a meaningful or necessary accommodation to provide ADA access?

The court has authority to determine whether a process interpreter would be a meaningful accommodation. If specific facts and findings support the court's conclusion that a process interpreter is not a meaningful or necessary accommodation, the court would not need to pay for such assistance.

4. In determining whether a "process interpreter" accommodation is required, may the court consider whether the party is represented by counsel in the matter?

Depending on the facts related to a requested accommodation, legal counsel may suffice as a reasonable accommodation.

5. Should any different criteria be used if the request is to provide a "process interpreter" in a court-connected setting outside of the courtroom (e.g., arbitration, mediation, pretrial release, indigence verification, Citizen Review Board hearings, public counter) instead of in a courtroom proceeding? In other words, is there a higher threshold or standard to meet for a courtroom proceeding?

No. The same criteria apply, although the application of the criteria may be affected by the facts related to the disability and the nature of the court's activity, service or program.

6. If the Judicial Department is required to provide "process interpreters" for individuals with cognitive disabilities at state expense, how would the courts determine who is qualified to serve in this role?

The court may make case-by-case determinations or develop standards.

Discussion

The ADA, 42 USC § 12101 et seq., protects qualified individuals with disabilities from discrimination on the basis of a disability.⁽²⁾ Title II of the ADA covers discrimination in state and local government services, programs and activities. Title II coverage is not limited to "executive agencies," but includes activities of the judicial branches of state and local governments. 28 CFR § 35.102.

Title II prohibits discrimination on the basis of disability, stating:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 USC § 12132. The United States Department of Justice (US DOJ) has issued rules implementing the requirements of Title II in 28 CFR Part 35, including additional commentary contained in Appendix A of Part 35. The ADA and implementing regulations require state and local government entities, including state courts, to modify policies, practices and procedures to prevent disability discrimination, to remove communication barriers, and to provide accessible services.

1. Requiring a Motion and Hearing

You first ask whether, in order to properly respond to a request for a "process interpreter," the court may request a represented party to file a motion and hold a hearing on the motion for a process interpreter. Unless a person identifies himself or herself as having a disability and requests an accommodation, a court has no obligation under the ADA. A represented party seeking a "process interpreter" or "cognition assistant" is requesting an accommodation based on the ADA. UTCR 7.060 provides the following procedure for requesting accommodations:

(1) If special accommodation under the ADA is needed for an individual in a court proceeding, the party needing accommodation for the individual must notify the court as soon as possible, but no later than two judicial days in advance of the proceeding. For good cause shown, the court may waive the two-day advance notice.

(2) Notification to the court must provide:

(a) the name of the person needing accommodation;

- (b) the person's status in the proceeding;
- (c) the type of disability needing accommodation; and
- (d) the type of accommodation, aural interpreter, or auxiliary aid needed or preferred.

This rule is comparable to requirements in other states.⁽³⁾

The notification process described in UTCR 7.060 appears to provide a reasonable means by which a court can be apprised of a request for an accommodation and obtain initial information to determine the suitability of a requested accommodation. A request for a "process interpreter" or "cognition assistant" should be handled the same as a request for other accommodation under the rule. Because the rule is silent about how the court should handle a request, a trial court has some discretion in determining whether additional information is necessary to respond to the notification and, if so, the manner in which the court will obtain that information. Consequently, a trial court could conclude that some kind of factfinding may be appropriate, including requiring the requesting party to file a motion and holding a hearing, before determining the necessity of a requested accommodation.

2. Criteria to Determine Whether Disability Exists and Whether Accommodation Is Necessary

You next ask what criteria the court should use to determine that a cognitive disability actually exists and that an accommodation using outside assistance, such as a "process interpreter" is necessary for proper accommodation. We analyze this issue by focusing first on the fact that the ADA applies only to individuals with a "disability" who are "qualified" to participate in the services, programs, or activities of the public body.

A. Determining Whether Disability Exists

For purposes of the ADA, an individual with a disability is a person who:

Has a physical or mental impairment that substantially limits one or more major life activities;

Has a record of such an impairment; or

Is regarded as having such an impairment.

28 CFR § 35.104.

A "cognitive disability," referred to in your questions, is not specifically mentioned in either the ADA or the federal regulations implementing Title II of the ADA. The ADA and its implementing regulations broadly define "mental impairment," however, as "any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."⁽⁴⁾ 28 CFR § 35.104.

The American Bar Association's Commission on Mental and Physical Disability Law has discussed cognitive communication disorders, stating:

Cognitive communication disorders are impairments that affect individuals' abilities to receive or impart information. The most prominent cognitive communication disorders are learning disabilities, which involve "difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning or mathematical abilities," wrote Smith and Luckasson, in *Introduction to Special Education* (1992).

Learning disabilities include conditions such as dyslexia, attention deficit hyperactivity disorder, hyperactivity, hypoactivity, and developmental aphasia. The causes of most learning disabilities are unclear, although they seem to be related to organic brain dysfunctions. Learning problems primarily attributed to visual, hearing, or motor impairments, mental retardation or emotional disturbance, or environmental, cultural, or economic disadvantages are not considered learning disabilities.

There are other cognitive communicative disorders, in addition to learning disabilities, that affect speech, hearing, and language. These arise from birth defects, brain dysfunctions, illness, strokes, trauma or diseases affecting the central nervous system, and head injuries.

Parry, American Bar Association Commission on Mental and Physical Disability Law, *Mental Disabilities and the Americans with Disabilities Act*, Appendix A at 155 (2nd ed 1997) [*hereinafter* *Mental Disabilities and the ADA*]. Consequently, there may be cognitive impairments that would qualify as mental impairments under the ADA.

Having a mental impairment, however, is not enough by itself to meet the definition of a disability under the ADA. "Under the ADA, the principle interpretive concern -- and also limitation -- is whether the mental characteristic at issue substantially limits a major life activity." *Id.* at 9. The term "substantial limitation" is defined by the US DOJ as follows:

A person is considered an individual with a disability * * * when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed *in comparison to most people*. A person with a minor, trivial impairment, such as a simple infected finger, is not impaired in a major life activity. A person who can walk for 10 miles continuously is not substantially limited in walking merely because, on the eleventh mile, he or she begins to experience pain, because most people would not be able to walk eleven miles without experiencing some discomfort.

28 CFR Part 35 Appendix A (emphasis added). *See also cases cited in Price v. National Board of Medical Examiners*, 966 F Supp 419, 422 (SD W Va 1997). The court in *Price* was not persuaded that medical students with learning disabilities required accommodations for the licensing examination since the students had histories of significant scholastic achievement in comparison with average students. The court noted:

The "comparison to most people" approach has practical advantages as well. Courts are ill-suited for determining whether a particular medical diagnosis is accurate. Courts are better able to determine whether a disability limits an individual's ability in comparison to most people. Additionally, this functional approach is manageable and, over time, will promote a uniform and predictable application of the ADA.

Id. at 427.

Short-term or transitory illnesses are not covered by the ADA if they do not place substantial limitations on a person's major life activities. The Ninth Circuit concluded that a temporary cancer-related psychological disorder was not a disability because it was a nonchronic impairment of three and a half months duration with only minimal long-term impact. *Sanders v. Arneson Products, Inc.*, 91 F3d 1351 (9th Cir 1996), *cert denied* 117 S Ct 1247, 137 L Ed2d 329 (1997).

Analyzing the same definition of "substantial limitation" in the context of Title I of the ADA (related to employment), the EEOC's Technical Assistance Manual indicates that individuals with stress-related

conditions associated with common family or employment problems are not covered under the ADA. This type of mental condition is neither a recognized impairment nor the type of impairment that would substantially limit the individual's ability to function. Mental Disabilities and the ADA, *supra*, at 10 (citing U.S. Equal Employment Opportunity Commission, *A Technical Assistance Manual on the Employment Provisions of the Americans with Disabilities Act* (1992) at II-3).

In some cases, an individual's inability to understand judicial proceedings may be the result of factors that are not disabilities. For example, a person who is illiterate or who has limited English language knowledge may have difficulty understanding written material, but that difficulty is not the effect of a disability. Physical or mental impairment does not include simple physical characteristics, nor does it include environmental, cultural or economic disadvantages. Similarly, the definition does not include common personality traits, such as poor judgment or quick tempers when these characteristics are not symptoms of a physical or mental impairment. 28 CFR Part 35 App. A. To the extent that an individual's inability to understand is based on one of these non-disability factors, the ADA does not apply.⁽⁵⁾

Because of the possibility that a person's inability to understand the judicial process may not be based on a disability that substantially limits a major life activity, when a person claims to have a cognitive impairment and requests an accommodation, it is appropriate for the court to seek a factual confirmation. This may be done by answering the following questions:

1. Does the requestor have a perceived or diagnosed mental impairment (present or past) and, if so, what is the nature and severity of the impairment; and
2. Does the perceived or diagnosed mental impairment substantially limit a major life activity in comparison to most people in the general population?

(A list of these and the other suggested inquiries discussed in this opinion is provided in the Appendix attached hereto). The importance of obtaining an individualized assessment of the requestor's mental impairment and the extent to which it limits major life activities is heightened because the definition of "disability" includes persons who are "regarded as having" a mental impairment.⁽⁶⁾ It is important that the courts *not* treat people as having a mental disability without an objective individualized assessment of the nature and severity of the mental impairment.

The ADA permits the courts to require a person requesting accommodation to provide, at his or her own expense,⁽⁷⁾ current documentation from a qualified professional concerning the disability. *Guckenberger v. Boston University*, 974 F Supp 106, 135 (D Mass 1997). Nevertheless, the court cannot impose documentation requirements that unnecessarily screen out or tend to screen out the truly disabled. 42 USC § 12182(b)(2)(i). This could occur if the court required burdensome documentation related to the diagnosis or specified qualifications of persons making the diagnosis or recommending accommodations without being able to demonstrate the necessity for those requirements. *Guckenberger*, 974 F Supp at 135-140. Documentation requests from the court to the person requesting accommodation should identify the essential functions of participating in the particular judicial proceeding and may ask the professional evaluator to address the types of questions listed in Appendix Section A and B.

B. Determining Whether Person Is a "Qualified Individual with a Disability" Who Can Participate Without Accommodation or Auxiliary Aids

Assuming that the requestor is a person with a disability, the next question is whether that person is

"qualified." The requirements of the ADA apply only to individuals with a disability who are "qualified" to participate in the Title II service, activity or program. Title II defines the term "qualified individual with a disability," as

an individual with a disability who, *with or without reasonable modifications* to rules, policies, or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services, *meets the essential eligibility requirements for the receipt of services or the participation in programs or activities* provided by a public entity.

42 USC § 12131(2) (emphasis added). In *Galloway v. Superior Court of District of Columbia*, 816 F Supp 12, 16 (D DC 1993), the court characterized the "qualified individual" inquiry in the context of a judicial proceeding as having two parts:

1. What are the essential functions of participation in the particular judicial proceeding; and
2. Can this individual with a disability meet these requirements?

A determination that a person has a disability that substantially limits a major life activity is neither descriptive nor conclusive about how the individual actually functions. Once the court has determined the essential functions of participation in the particular judicial proceeding, the individual's abilities and disability-related limitations must be assessed.

Practical guidance in determining whether a disability will impair the requestor's ability to participate in judicial proceedings can be gained by examining the manner and means by which the individual with a disability conducts his or her everyday life. *See e.g., Galloway*, 816 F Supp at 18; *People v. Caldwell*, 603 NYS2d 713, 715 (NY City Crim Ct 1993). The court can look to the requestor's daily activities to determine whether the impairment is actually a barrier to the requestor's understanding of or participation in the judicial proceeding. Equally significant is establishing whether the requestor relies on the requested accommodation, such as a "process interpreter" or "cognition assistant," for ordinary activities.

Many lay people have a difficult time understanding adjudications and the judicial system, regardless of whether they have a disability. Conversely, not all people with disabilities have difficulty participating in the judicial process. For example, an individual who has a disability related to infertility may have a disability that substantially limits a major life activity, while being fully capable of participating in the judicial activities without the provision of any assistance related to the disability. The stress of being involved in the underlying cause of the judicial proceeding or the judicial proceeding itself will not be sufficient to meet the definition of mental disability under the ADA. The ADA applies when the disability substantially limits the individual's ability to participate in the services,

programs or activities of the court in comparison to most people.

Thus, the court should determine if there is a nexus between the nature and severity of the disability and its effect on the individual's ability to participate in the judicial proceedings with or without the provision of interpreters or the modification of court policies and procedures. If the individual with a disability is qualified to participate without assistance, the court may deny a request for assistance.

C. Determining Whether a Reasonable Accommodation Will Make the Individual with a Disability "Qualified" to Participate and Whether a Requested Accommodation Is Appropriate

Even if the individual with a mental impairment does not initially appear to be "qualified," the court must

then determine whether any of the following would make the individual "qualified":

1. Reasonable modifications to rules, policies or practices;
2. Removal of communication barriers; or
3. Provision of auxiliary aids and services.

42 USC 12131(2). Collectively, these three elements are referred to as reasonable accommodation.⁽⁸⁾ "An accommodation is generally any change in the work [or court] environment or in the way things are customarily done that enables an individual with a disability to enjoy equal opportunities." *Thomas v. Davidson Academy*, 846 F Supp 611, 618 (MD Tenn 1994); accord *Burch v. Coca-Cola Co.*, 119 F3d 305, 314-15 (5th Cir 1997) ("In all cases a reasonable accommodation will involve a change in the status quo, for it is the status quo that presents the very obstacle that the ADA's reasonable accommodation provision attempts to address.").

The following analysis can be used to determine whether a request for a "process interpreter," "cognition assistant" or other accommodation is required to permit an individual with a disability to be "qualified" to participate in the judicial proceeding. A court's decision to approve a requested accommodation must depend on the specific factual context of the individual requestor and the nature of his or her participation in the judicial proceeding, rather than generalizations or stereotypes about the effects of a particular disability or the effectiveness of a particular accommodation.

(1) Is the requested accommodation a "personal service" that the ADA does not require the court to provide?

The court is *not* required to provide "personal services" to a person with a disability. 28 CFR § 35.135 provides:

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; *or services of a personal nature* including assistance in eating, toileting or dressing.

(Emphasis added.) The federal commentary states that the personal services exception under Title II "parallels an analogous provision" in US DOJ's regulations for Title III (public accommodations operated by private entities). 28 CFR Part 35 App A. The commentary to the Title III regulations explains "personal services" as follows:

The Department wishes to clarify that measures taken as alternatives to barrier removal, such as retrieving items from shelves or providing curb service or home delivery, are not to be considered as personal services. Similarly, minimal actions that may be required as modifications in policies, practices or procedures under § 36.302, such as a waiter's removing the cover from a customer's straw, a kitchen's cutting up food into smaller pieces, or a bank's filling out a deposit slip, are not services of a personal nature within the meaning of § 36.306. (Of course, such modifications may be required under § 36.302 only if they are "reasonable.") Similarly, this section does not preclude the short-term loan of personal receivers that are part of an assistive listening system.

Of course, if personal services are customarily provided to the customers or clients of a public accommodation, e.g., in a hospital or senior citizen center, then these personal services should also be

provided to persons with disabilities using the public accommodation.

28 CFR Part 36 Appendix B. As the rule and commentary illustrate, the ADA does not require the courts to provide highly personalized attention or services to individuals with disabilities. In *McCauley v. Winegarden*, 60 F3d 766 (11th Cir 1995), the court held that a defendant's request that the trial court create a "filtered environment" ("life support systems," "required medical aids" and "additional medical aids") to accommodate a person with multiple chemical sensitivities was equivalent to requiring the court to provide "personal devices," which was not required by the ADA.

Depending on the facts, the requested use of a "process interpreter" may really be a personal service in the nature of an attendant, and not fundamentally different than an attendant employed for the purpose of aiding with eating or toileting. Under those circumstances, a court could conclude that the ADA does not require it to provide a "process interpreter" or "cognition assistant" any more than the courts are required to provide a personal attendant for judicial proceedings.

(2) Is the requested accommodation a reasonable modification of judicial policies, practices or procedures?

The court may consider whether the request is for a modification of the court's policies and procedures. The ADA rule requiring reasonable modifications is itself qualified, as follows:

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

28 CFR § 35.130(b)(7) (emphasis added).

Many policies and procedures, while seemingly neutral, can have an adverse impact on people with disabilities by preventing them from participating equally in a program or service. For example, a courthouse may prohibit animals from entering the building. Legitimate reasons support this policy, but its blanket enforcement would bar individuals who are blind from using their seeing eye dogs in the building. A reasonable modification of this policy would exempt individuals with disabilities who use animals to assist them.

A commonly requested modification is for additional time to perform an activity or for the allotted time to be broken up into increments. See *D'Amico v. New York Board of Bar Examiners*, 813 F Supp 217 (WD NY 1993). In the case of a person having difficulty understanding or processing information, a reasonable modification may include segmenting the proceeding into smaller time periods to minimize confusion. Another reasonable modification might be to permit frequent breaks in a proceeding to allow the person to confer with counsel about the proceedings. In *People v. Caldwell*, 603 NYS2d 713, 714 (NY City Crim Ct 1993), the court identified several accommodations made for a juror who was blind, such as moving the juror to the seat closest to the witness stand, reading all documents into the record, providing a large print version of a transcript, and having the judge give an oral description of certain court documents.

When an individual with a mental impairment requests a "process interpreter," the court will need to determine whether the request constitutes a reasonable modification of judicial policies and procedures or would fundamentally alter the nature of those policies and procedures. The requestor has the initial

burden of proving that "the requested modification is [generally] reasonable," that is, "in the run of cases."⁽⁹⁾ *Johnson v. Gambrinus Co.*, 116 F3d 1052, 1059 (5th Cir 1997). The ADA does not require the court to take any action that it can demonstrate would result in a fundamental alteration of the nature of the service, program or activity. 28 CFR §§ 35.130(b)(7). The nature of judicial proceedings is reasonably well defined and the rules for addressing the competency of witnesses or parties have been established for many years. In its adjudicatory role, the court is providing a forum for resolving disputes and a service of applying the law to factual disputes. Basic qualifications of mental competency are not required to be altered by the ADA. Similarly, a court may issue criminal failure to appear warrants to require a defendant to appear and explain her absences even though the defendant claims that a disability prevented her appearance at court hearings. *Marks v. Supreme Court of Virginia*, 1995 WL 879685, 20 MPDLR 809 (ED Va Mar 25, 1995). The court's function is to adjudicate disputes. The court is not a mental health counseling service, so requiring the court to provide counseling to permit a party to participate could fundamentally alter the nature of the "service, program or activity" offered by the court.

Likewise, the court is not required to permit the use of a "process interpreter" if it would fundamentally alter the nature of the judicial proceeding. Fundamental standards of mental competency or the role of legal counsel need not be altered. *See Motto v. City of Union City*, 177 FRD 308, 310 (D NJ 1998) (allowing a learning disability specialist to paraphrase questions would fundamentally alter defendant's right to cross-examine the plaintiff). The court should maintain a record of any denial of a requested modification of policies or procedures on the basis that the modification would fundamentally alter the judicial proceeding.

(3) Will the requested accommodation remove communication barriers related to the disability?

A public entity must "take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others." 28 CFR § 35.160. Individuals with mental impairments may have difficulty communicating as a result of their mental impairment or because of a separate physical impairment. The requirement of removing communication barriers can refer to the availability of telecommunications that permit a person with a disability to call the courthouse, or providing information and signs about the courthouse facilities. It may also include the provision of "auxiliary aids and services," discussed below.

If the requested accommodation is not related to the barrier imposed by the particular disability, a request for that accommodation may be denied. In *Guckenberger*, 974 F Supp at 147-149, the court upheld a policy denying math course substitutions for specific learning disabled students because the university was able to demonstrate that their disability did not prevent these students from learning math. The *Guckenberger* case addressed, among other things, whether the requested accommodation actually addressed the particular impairment that substantially limited the individual's ability to participate.

In *Motto v. City of Union City*, 177 FRD at 309-10, a federal court found that the assistance of legal counsel was an "equally effective means of communication" when it denied a plaintiff's request for learning disability specialist to paraphrase complex language. The court found it would accommodate plaintiff's condition "simply by asking legal counsel to phrase questions in a manner which renders them more understandable." (We discuss the role of legal counsel in greater detail below in response to Question 4.)

(4) Is the requested accommodation an "auxiliary aid or service" that the ADA requires the court to provide?

Under the ADA, the court must provide those "auxiliary aids and services" necessary to afford individuals with disabilities an equal opportunity to participate in judicial proceedings. 28 CFR § 35.160. The definition of "auxiliary aids and services" describes a variety of communication services and devices for persons with vision or hearing impairments,⁽¹⁰⁾ as well as the catch-all phrase: "Other *similar* services and actions."⁽¹¹⁾ 28 CFR § 35.104(4) (emphasis added). In determining what type of aids and services are necessary, the public entity must "give primary consideration to the requests of the individual with disabilities." 28 CFR § 35.160(b)(2). Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication. The court must honor the individual's choice of an auxiliary aid or service unless the court can demonstrate either: (a) that another effective means of communication exists, or (b) that use of the means chosen would fundamentally alter the nature of the program. 28 CFR § 35.160 and Part 35 App A.

A familiar "auxiliary aid" is an interpreter for the hearing impaired. The Oregon Legislature has recognized the importance of providing interpreters in judicial proceedings in ORS 45.273, which provides:

It is declared to be the policy of this state to secure the constitutional rights and other rights of persons who are unable to readily understand or communicate in the English language because of a non-English speaking cultural background or a disability, and who as a result cannot be fully protected in legal proceedings unless qualified interpreters are available to provide assistance.

ORS 45.285 authorizes a court to appoint a qualified interpreter for criminal or civil proceedings if a "disabled person"⁽¹²⁾ is a party or witness.

Interpreters required by the ADA must be "qualified interpreters." A "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.

28 CFR § 35.104 (emphasis added).

The use of the term "process interpreter" is a misnomer. The word "interpreter" in "process interpreter" may mischaracterize the function and purpose of the "process interpreter" because interpretation may not occur. A comparison between a language or sign language interpreter and a "process interpreter" demonstrates the significant differences between them. A language or sign language interpreter directly translates from one language to another language, subject to standards of accuracy and impartiality. Similarly, transcriptions, written materials, amplifiers, closed caption, videotext displays, brailled material, audio recordings (other forms of auxiliary aids and services besides interpreters) provide accurate and impartial translation or amplification of the actual spoken or written words. Thus, the services required to be provided by a language or sign language interpreter are services that permit accurate and impartial transmittal of spoken or written words.

In contrast to any other authorized auxiliary aid or service, a "process interpreter" or cognition assistant may provide an explanation, commentary or interpretive analysis of what is said in court rather than a translation of the actual words spoken. On occasion, Oregon courts have allowed social workers and mental health professionals to "explain the proceedings" to those they are assisting which is different from interpreting the actual spoken or written words. By no means do such assistants actually provide

verbatim actual and impartial interpretations. By permission of the court, or by self-initiated enthusiasm for the role, an assistant has often taken on the role of advocate, embellishing on the client's statements by giving explanations or characterizations -- functions that would be strictly prohibited for an interpreter. Furthermore, there are no ADA standards by which to assess the qualifications of a "process interpreter" or cognition assistant.

In 1997, the Office of Civil Rights (OCR) of the United States Department of Health and Human Services investigated a complaint that the State Office for Services to Children and Families (SOSCF) had violated the ADA because, among other things, SOSCF caseworkers refused to communicate with the complainant "in a manner which is as effective as communication with others by not providing him a cognitive/psychological interpreter and notetaker so that he could understand." Findings Letter from Floyd Plymouth, OCR Investigator, Region 10 to Gary Weeks, Director, Department of Human Resources, Docket No. 1096000111 (February 5, 1997) (Findings). The complainant was disabled by a somatoform pain disorder, schizotypal personality disorder and traumatic brain injury with a record of impairments, including head trauma, major depression and learning disorder. OCR found that SOSCF took appropriate steps to communicate with the complainant without providing him a cognitive/psychological interpreter, by conversing in normal manners of speaking, using TDD in response to his TDD calls, and providing "hands on" demonstrations rather than solely using verbal instruction. Findings, at 5. OCR further found:

Without knowing what a [cognitive] interpreter is, neither SOSCF nor OCR has an objective, reasonable method of determining whether a person serving as a [cognitive] interpreter does so effectively, accurately, and impartially.

Thus, we determine that SOSCF is not required to provide Mr. Winters a [cognitive/psychological] interpreter in that he has not provided objective information justifying the need for such. Further we conclude that SOSCF has provided Mr. Winters appropriate auxiliary aids.

Findings at 5-6 (brackets in original). Although this OCR investigation lacks the precedential effect of a judicial finding, it provides some indicia that the federal agency charged with investigating civil rights complaints does not consider a request for a "cognitive/psychological interpreter" to equate with other auxiliary aids.

(5) Are there any other accommodations to address the requestor's disability-related limitations?

Finally, the court should consider whether other accommodations (modifications of policies or procedures or removal of communication barriers) would address the requestor's disability-related limitations instead of the requested accommodation. In the process of determining the facts and applying the analysis required by the ADA, the court may conclude that denial of a requested accommodation is appropriate. The denial of a particular accommodation request, however, still requires the court to determine whether an alternative accommodation would be sufficient to permit participation in the judicial proceedings. 28 CFR § 35.164. For example, a court may deny an auxiliary aid or service if it determines that another effective means of communication exists. If the assistance of counsel would be effective to assure communication and participation by the requestor, the court may deny the requested accommodation and "take any other action" to "ensure that, to the maximum extent possible, the individuals with disabilities receive the benefits or services provided by" the court. 28 CFR § 35.164. A California federal court decided that under Title II a transit authority did not have to provide real time computer-aided transcription at its meetings as long as other ADA-approved auxiliary aids or services

were provided for requestors with hearing impairments. *Dobard v. San Francisco Bay Area Rapid Transit Dist.*, No. 92-3563-DLJ (ND Ca Sept 7, 1993), 1993 WL 372256, 18 MPDLR 510, *aff'd* 56 F3d 71 (9th Cir 1995).

In sum, there must be a connection between the provision of an accommodation and the effect of the disability that would permit the requestor to be "qualified" to participate in the judicial proceeding. "[I]f a person is unable to participate in or meet legitimate eligibility requirements for a service, program or activity *with or without reasonable modification due to his or her mental disability*, there can be no discrimination finding under Title II." *Mental Disabilities and the ADA*, *supra*, at 77 (emphasis added). In *Southeastern Community College v. Davis*, 442 US 397, 99 S Ct 2361, 60 L Ed2d 980 (1979), the Court held that a nursing school did not discriminate by denying a request for an interpreter for a woman who was deaf who, notwithstanding the availability of an interpreter, could not benefit from the services of the interpreter because she could never become a nurse. The *Davis* case suggests that unless the provision of a "cognition assistant" or any other accommodation would make the requestor "qualified" to participate in the proceeding, such request may be denied without discrimination.

3. Decision-Making Authority

As the foregoing discussion of accommodation criteria demonstrates, the court has substantial qualitative decision-making authority. Any request for accommodation must be considered in the specific context of both the requestor's impairment and the extent to which the impairment creates a barrier to the requestor's participation in the specific judicial proceedings at issue. One of the policies of the ADA is to foster individualized decision-making that is not based on stereotypes or misunderstandings about individuals with disabilities. UTCR 7.060 provides a reasonable means for apprising the court of a request for an accommodation, but the court has substantial discretion to obtain the information necessary to respond to the request.

Assuming that the requestor is a qualified individual with a disability, the court's discretion in determining whether a process interpreter would be a meaningful accommodation is limited by the following ADA precepts:

1. Although the ADA emphasizes the individualized nature of the accommodation process, the US DOJ rules also require the court to consider the broader context of the accommodation request. Discrimination can occur under the following circumstances identified in 28 CFR § 35.130 if, for example, the court, on the basis of disability:

- (a) Denies a qualified individual with a disability the opportunity to participate in or benefit from the court's programs or services;
- (b) Affords a qualified individual with a disability an opportunity to participate in or benefit from the court's programs or services that is not equal to that afforded others;
- (c) Uses criteria that screen out qualified individuals with disabilities;
- (d) Limits participation in regular programs or activities, even if permissible separate programs are established;
- (e) Limits a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the court programs or services; or

(f) Places a surcharge on services to individuals with disabilities.

In particular, the court must take "appropriate steps" to ensure that communications with participants with disabilities are "as effective as communications with others," giving primary consideration to the request of the person with disabilities. 28 CFR § 160. Reasons for denial of a requested accommodation must be provided to the requestor in writing. *See* 28 CFR § 35.164.

2. The Judicial Department must provide a "grievance procedure" under 28 CFR § 35.107(b) "providing for prompt and equitable resolution of complaints" under the ADA.⁽¹³⁾ The ADA contains a statutory preference for informal or alternative means of dispute resolution, 42 USC § 12212, which is consistent with the requirement of a grievance procedure.

4. Effect of Representation by Counsel

Depending on the facts related to a request for a "process interpreter," a court may determine that representation by counsel is a reasonable accommodation. The individualized nature of an accommodation request cannot be avoided, however, by adopting a blanket policy of appointing legal counsel in all cases where a "process interpreter" is requested. Moreover, there may be cases in which a party's legal counsel is the person requesting the "process interpreter" to assist the party. Nevertheless, legal counsel's understanding of judicial proceedings and the legal and ethical obligations of attorneys who represent clients with impairments generally makes representation by counsel an important factor in determining reasonable accommodation.

Historically, the appointment of qualified legal counsel has been sufficient to assist individuals in understanding and participating in the judicial proceedings. Counsel serves the function of advising clients about the judicial process. An attorney representing a client with a mental disability has an obligation to attempt to communicate effectively with a client who has special needs in order to determine the client's point of view and desired action. *See* Zuckerman, Charmatz, *Mental Disability Law: A Primer* (4th ed 1992) at 16 [*hereinafter* "Primer"]. Certain institutionalized patients who have a diagnosis of mental illness may also receive legal and protective services through the system created under the Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 USC § 10841.

Attorneys are themselves generally subject to the ADA, either as a Title II public entity if their services are paid under contract or employment with the government or as a public accommodation as defined in Title III of the ADA.⁽¹⁴⁾ *See* 28 CFR Part 36. Under both Title II and Title III of the ADA, an attorney is obligated to provide reasonable accommodations, 28 CFR §§ 35.130(7), 36.302, and to "furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities." 28 CFR 35.160; 28 CFR § 36.303(c). *See e.g., Cooper v. State*, 565 NW2d 27, 31 (Minn App 1997), *review denied* (reviewing effectiveness of assistance of counsel for failure to provide sign language interpreter for meetings with hearing impaired defendant). Consequently, as a part of the attorney's representation of a client with a mental impairment, an attorney subject to the ADA is required to provide necessary accommodations to permit the client to obtain the benefits of legal counsel, at no additional cost to the client. 28 CFR §§ 35.130(f), 36.301(c).⁽¹⁵⁾

In addition, attorneys are subject to ethical constraints in the representation of impaired clients. *See* Primer, *supra*, at 17.⁽¹⁶⁾ The Oregon Code of Professional Responsibility permits an attorney to seek appointment of a guardian or to "take other protective action which is least restrictive with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own

interest * * * because of * * * mental disability." Disciplinary Rule 7-101(C).

Because of the significant role of attorneys in advising clients with mental impairments about judicial proceedings as well as the legal and ethical obligations on attorneys who represent impaired clients, appointment of counsel (at no cost to the unrepresented party) may provide "other effective means of communication," *see Motto v. City of Union City*, 177 FRD at 309-310, or an appropriate "modification of policies and procedures" in cases where the mentally impaired party does not appear to be able to understand the judicial proceedings.

5. Court-Connected Setting Outside of the Courtroom

You have also asked whether any different criteria should be used if the request is to provide a "process interpreter" accommodation to people with cognitive disabilities in court-connected settings outside of the courtroom (e.g., arbitration, mediation, pretrial release, indigence verification, Citizen Review Board hearings, public counter). In other words, is there a higher threshold or standard to meet for a courtroom proceeding?

All of the programs, services, or activities of the Judicial Department are subject to the requirements of Title II of the ADA. Under Title II, even the Judicial Department's activities performed through contractual or other arrangements are subject to the same standards as the courts,⁽¹⁷⁾ and the Judicial Department can be held accountable for the discriminatory conduct of its component entities.⁽¹⁸⁾ 28 CFR § 35.130(b)(1) and (3). Consequently, all contracts should specify that the contractor is responsible for compliance with Title II of the ADA. In addition, the various programs and activities of the Judicial Department should be able to identify the staff responsible for obtaining and scheduling interpreters or other accommodations upon request.

As with adjudicative proceedings, the nature of an accommodation will depend upon factors such as the length and complexity of the proceeding or activity, the particular function the person with a disability has in the activity, and the relationship between the disability and the disabled person's ability to participate in that activity. An arbitration or mediation may be as lengthy and complex as a courtroom trial. In contrast, the public counter staff's contact with a person with a disability generally may be brief and involve relatively simple issues. Nevertheless, the public counter staff are perhaps more likely to have contact with a broader spectrum of people with disabilities than other Judicial Department staff. Counter staff should be trained on how to respond to people with disabilities, how to handle alternative communication devices such as TTY devices, and how to obtain additional assistance if necessary.

Just as the criteria for determining the need for accommodation will remain constant, the Judicial Department may reasonably request persons with disabilities to provide a reasonable notification to the court-related program of the need for the accommodation. In each of the court-related programs or activities, the court should inform participants how to request accommodations, 28 CFR § 35.163; the court may also require an individual to give the program a reasonable period of time to respond to the request. We understand that the Judicial Department posts its Notice of Compliance with ADA outlining its procedures for requesting accommodations and its complaint procedures.

6. Qualifications for "Process Interpreters"

Finally you ask, assuming the Judicial Department is required to provide a "process interpreter" for an individual with a cognitive disability at state expense, how courts should determine who is qualified to

serve in that role.

The term "process interpreter" is not contained in the ADA or the US DOJ rules implementing the ADA. Unlike interpreters for the hearing impaired, there are no certification or formal qualification standards for "process interpreters" or "cognition assistants." The Judicial Department could consult with professionals who are knowledgeable about communication issues affecting individuals with mental impairments to develop qualification standards for "cognition assistants" or "process interpreters." Assuming for the sake of argument that a "cognition assistant" was determined to be a reasonable accommodation in a particular case, the court could make a case-by-case determination about qualifications that are appropriate, perhaps including the use of experts to make that determination.

If the "process interpreter" will be functioning similarly to other kinds of language interpreters, the court could apply standards applicable to language interpreters. The Oregon Supreme Court has promulgated a Code of Professional Responsibility for Interpreters in Oregon Courts (Code). A review of that Code suggests that these standards, while intended for non-English speaking persons or persons who have a hearing or speech impairment could be made to be applicable in the case of "process interpreters," except for the certification standards referenced therein. To the extent that a request for a "process interpreter" requires a deviation from the specific applicability of the Code, the Code authorizes exceptions to address "unique situations."

Sincerely,

Donald C. Arnold
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1. For reasons discussed below, we note that the term "process interpreter" does not accurately reflect the specific function of interpreting; rather, the function appears to involve explaining or assisting the person with a cognitive disability who is involved in the court proceedings. The court may look behind the label to identify the actual function of the requested accommodation. Since the term "interpreter" has a specific meaning that does not apply to the function of explaining, we will use the term "cognition assistant" interchangeably with the term "process interpreter."

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2. The Rehabilitation Act of 1973 (Section 504), 42 USC § 12101(b)(1) and (2), and 29 USC § 701, the predecessor of the ADA, has great substantive similarity to the ADA and these remedial laws are construed similarly. Section 504 "was the first broad federal statute aimed at eradicating discrimination against individuals with disabilities" in programs that received federal funds. ***Helen L. v***

DiDario, 46 F3d 325, 330 (3rd Cir 1995), *cert denied* 516 US 813, 116 S Ct 64 133 L Ed2d 26 (1995). The ADA applies to government entities regardless of their funding source. For purposes of this opinion, we construe the ADA consistently with the prior caselaw and standards developed under the Rehabilitation Act. 42 USC § 12201.

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3. See e.g., Local Rules of the First Judicial District, Rule 9 (Colorado); Rules of the Circuit Court of the Third Judicial Circuit, Rule 55 (Missouri) (written notice within 5 days of receipt of notice of the hearing, both represented and unrepresented). Maryland's Rules of Procedure include a form with a checklist of various kinds of accommodations that the courts may provide, including familiarization with courtroom layout, interpreter, lighting, quiet room, recesses at intervals, scheduling, small room. Rules of Procedure, 1-332 (Maryland).

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4. Alcoholism is defined as a "mental impairment" in the federal regulations implementing Title II of the ADA. 28 CFR § 35.104; see also ORS 430.315. Title II of the ADA, which is applicable to judicial services, does not expressly address the effect of alcoholism. In an employment setting covered by Title I of the ADA, alcoholism is not protected as a disability if it involves on-the-job drinking or working while alcohol-impaired, although a person who is receiving treatment is covered. 42 USC § 12114.

The federal rules implementing Title II expressly address illegal use of drugs in 28 CFR § 35.131. Title II protects persons who participate in or have completed supervised drug rehabilitation program and no longer use drugs illegally, but it does not protect "current" drug users, even if a licensed physician were to conclude that the individual's drug use was due to a disease. 28 CFR § 35.131. "Current" illegal use of drugs means use that occurred recently enough to justify a belief that the person's illegal drug use is a continuing problem. 28 CFR § 35.104. Therefore, when illegal drug use is the cause of the requestor's alleged mental impairment, the ADA does not require the court to provide any accommodation.

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5. In addition, persons who have disabilities that pose a "direct

threat" are not covered by the ADA. 28 CFR Part 35 App A; *cf.* 28 CFR § 36.208. A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services. As for determining whether a person poses a direct threat, the US DOJ notes:

The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. It must be based on an individualized assessment, based on reasonable judgment that relies on current medical evidence, or the best available objective evidence, to determine: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. * * * Making this assessment will not usually require the services of a physician. Sources for medical knowledge include guidance from public health authorities * * * .

28 CFR Part 35 App A.

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6. Appendix A of 28 CFR Part 35 explains:

The perception of the covered entity is a key element of this test. A person who perceives himself or herself to have an impairment, but does not have an impairment, and is not treated as if he or she has an impairment, is not protected under this test.

* * * * *

The rationale for this third test * * * was articulated by the Supreme Court in [*School Board of Naussau County v. Arline*]. The Court noted that although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. * * * The Court concluded that, * * * "Congress acknowledged that society's accumulated myths and fears about disability * * * are as handicapping as are the physical limitations that flow from actual impairment."

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7. Individuals alleging a disability protected by the ADA have the burden of establishing with medical evidence the existence of the alleged disability. See ***Kalekiristos v. CTF Hotel Management Corp.***,

958 F Supp 641, 657 (DDC 1997). After a person has been determined to have a disability and to require accommodation, the United States Department of Justice rules provide that:

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities **to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.**

28 CFR § 35.130(f) (emphasis added). The federal commentary explains:

Such measures may include the provision of auxiliary aids or of modifications required to provide program accessibility.

* * * The Department has already recognized that imposition of the cost of courtroom interpreter services is impermissible under section 504. * * * [W]here a court system has an obligation to provide qualified interpreters, "it has the corresponding responsibility to pay for the services of the interpreters."

28 CFR Part 35 Appendix A (citations omitted). Until the person requesting accommodation has sufficiently demonstrated to the court that he or she is a qualified individual with a disability and the need for accommodation, the court has no obligation under the ADA. Consequently, we do not believe that the court is required by the ADA to bear the costs of obtaining documentation related to the existence of a disability or the need for accommodation.

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8. The court is **not** required to provide "personal services" to a person with a disability. 28 CFR § 35.135 provides:

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting or dressing.

In *McCauley v. Winegarden*, 60 F3d 766 (11th Cir 1995), the court held that a defendant's request that the trial court create a "filtered environment" ("life support systems," "required medical aids" and "additional medical aids") to accommodate a person with multiple chemical sensitivities was equivalent to requiring the court to provide "personal devices," which was not required by the ADA.

Depending on the facts, the requested use of a "process interpreter" may really be a personal service in the nature of an attendant, and not fundamentally different than an attendant employed for the purpose of aiding with eating or toileting. A court could conclude that the ADA does not require it to provide a "process interpreter" or "cognition assistant" any more than the courts are required to provide a personal attendant for judicial proceedings.

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9. One circuit court has held that this burden, at least with regard to modifications in the workplace, is only a "burden of production" and, as such, "is not a heavy one." ***Borkowski v. Valley Cent. School Dist.***, 63 F3d 131, 138 (2nd Cir 1995) (finding that "[i]t is enough for the plaintiff to suggest the existence of a plausible accommodation, the costs of which, facially, do not clearly exceed its benefits").

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10. The ADA defines "auxiliary aids and services" as ***including***:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

42 USC § 12102(1).

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11. Even though the regulations and commentary have limited the concept of "auxiliary aids and services" to aural and visual communication disorders, 28 CFR § 35.104, App A, the American Bar Association Commission (ABA) on Mental and Physical Disability Law historically has advocated for a broader application of that term to include other kinds of communication disabilities. Nonetheless, the ABA acknowledges that "it is more difficult to conceptualize which aids and services would benefit various mental disabilities," Mental

Disabilities and the ADA, *supra*, at 16, and no court to date has expressly endorsed this particular interpretation of the federal regulation.

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12. ORS 45.285 defines "disabled person" as:

a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.

ORS 45.285(4)(b). This definition does not include a person with a mental impairment, although a person with a mental impairment may also have a hearing or other physical impairment that would qualify him or her for a hearing or speaking interpreter.

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13. Your office informs us that the Judicial Department's grievance procedure is posted and available at each court location. This procedure includes contact information for the Department's state-wide ADA coordinator, as well as the ADA coordinator and ADA grievance contact for each court location.

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14. Title III of the ADA only applies to businesses with 15 or more employees, so a small law office may not be subject to Title III. Oregon law prohibits discrimination against disabled persons by places of public accommodation, regardless of size. ORS 659.425(4). Oregon law does not thereby make a small law office subject to the ADA.

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15. Court-appointed counsel may seek reimbursement for accommodations provided to qualified individuals with disabilities. Assuming a court receives such a request, the court should follow the same analysis used in this opinion to determine whether the request should be granted.

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16. For example, the American Bar Association explains that its Model Rules of Professional Conduct

state that "if a client's ability to make adequately considered decisions in connection with the representation is impaired ... because of ... mental disability ... the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." (Rule 1.14) The Comment to the rule states that the lawyer-client relationship is based on the assumption that clients, when properly advised and assisted, are capable of making decisions about important matters. "When the client ... suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects ... Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being." This Rule advises that attorneys "may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes the client cannot adequately act in the client's own interest."

Zuckerman, Charmatz, *Mental Disability Law: A Primer* (4th ed 1992) at 16-17.

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17. This aspect of the ADA is much broader than the interpreter requirements of ORS 45.285, which are limited to "civil or criminal proceedings, including a court-ordered deposition if no other person is responsible for providing an interpreter."

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18. Courts have held that under the ADA, liability may be imposed on a principal for the statutory violations of its agents. See ***Rosen v. Montgomery County Maryland***, 121 F3d 154 n 3 (4th Cir 1997) and cases cited therein.

The ADA regulations require "a public entity that employs 50 or more persons" to designate an ADA coordinator and to establish an ADA grievance procedure. 28 CFR § 35.107. See, e.g., Utah Code of Judicial Administration, Rule 3-417 (appointing ADA coordinator and describing ADA complaint procedure). The State Court Administrator's Office should inform all of the programs sponsored by the courts about the ADA coordinator and any available grievance procedure.

APPENDIX

Suggested Inquiries for Evaluating Whether a Person Has a Disability, Whether that Person Is "Qualified" to Participate and Whether a Reasonable Accommodation Must Be Provided

A. Is there a disability?

1. Does the requestor have a perceived or diagnosed mental impairment (present or past), and if so, what is the nature and severity of the impairment?
2. Does the perceived or diagnosed mental impairment substantially limit the requestor's ability to participate in a major life activity in comparison to most people in the general population?
3. Does the reaction of others to the perceived or diagnosed mental impairment limit the requestor's ability to participate in a major life activity in comparison to most people in the general population?

B. Is the individual a "qualified individual"?

1. What are the essential functions of participating in the particular judicial proceeding?
2. Based upon the person's daily activities, is the impairment a barrier to actually understanding or participating in the judicial proceeding?
3. Does the individual rely upon the requested accommodation, or other accommodations, for ordinary activities?
4. Can this individual with a disability meet the essential functions for participation in the particular judicial proceeding with or without reasonable accommodation?

C. Is a requested accommodation appropriate?

1. Is the requested accommodation a reasonable modification of judicial policies, practices or procedures?
2. How does the requested accommodation address the particular mental impairment or other disability that substantially limits the requestor's ability to participate in the judicial proceeding and, in particular, will a requested accommodation render the requestor qualified to participate?
3. Is the requested accommodation an "auxiliary aid or service" that the ADA requires the court to provide?
4. Is the requested accommodation a "personal" device or service that the court is not required to provide?
5. Are there any other accommodations (modifications of policies or procedures, removal of communication barriers or in some cases, appointment of counsel) that will address the requestor's limitations instead of the requested accommodation?

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