

ADA

AMERICANS WITH DISABILITIES ACT *and the* COURTS



NEW YORK STATE UNIFIED COURT SYSTEM



ENSURING PEOPLE WITH DISABILITIES FULL AND EQUAL ACCESS TO THE COURTS A GUIDE FOR JUDGES AND COURT PERSONNEL

The New York State Unified Court System is committed to ensuring that all persons have access to and can fully participate in court proceedings, regardless of disabilities.

WHAT IS THE ADA?

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against qualified individuals with disabilities. 42 UCS 12101, et seq. Title II of the ADA applies to the programs, services, and activities of state and local governments, including the judicial branch.

A person is considered disabled for purposes of the ADA if he or she has a physical or mental impairment that substantially limits a major life activity. "Major life activities" include, but are not limited to: performing manual tasks, seeing, hearing, walking, standing, sitting, speaking, breathing, reading, communicating, and the operation of a major bodily function. 28 CFR 35.108(c)(1)(i, ii). "Substantially limits" is to be construed broadly and is not intended to be a demanding standard. 28 CFR 35.108(d)(1)(i).

The ADA also protects people who have a record of such an impairment or who are regarded as having such an impairment, if being perceived as having a disability results in discrimination.

It is important to remember that not all disabilities are obvious. "**Invisible disabilities,**" such as certain chronic illnesses, or psychological or cognitive conditions, can substantially limit a person's ability to engage in major life activities.

WHAT ACCOMMODATIONS ARE AVAILABLE?

Under the ADA, courts must provide "**reasonable accommodations**" to enable a qualified person with a disability to fully participate in or benefit from a program or service. There are a wide range of accommodations that the court system may provide, including modifications in practices and procedures, or furnishing auxiliary aids, services, equipment, devices, or materials.

The appropriate accommodation depends on the circumstances of each case. Among the common accommodations are:

- Assistive listening devices, sign language interpreters, or real time computer-aided transcription services (CART) for persons who are deaf or hard of hearing
- Audio recordings, Braille or large-print materials, magnification software, or a reader for persons who are blind or visually impaired
- Assistance with filling out forms for persons who have manual impairments
- Use of a service animal
- Relocation of a proceeding to an accessible courtroom
- Modification of court procedures, such as allowing remote appearances and extensions of time for filing papers

An accommodation must meet the specific needs of the particular disabled person. Therefore, it is important to be flexible and creative

in determining what accommodation is appropriate. Always consult the individual seeking the accommodation, and give first consideration to that person's preference.

WHAT TYPE OF ACCOMMODATIONS MUST BE ORDERED BY A JUDGE AND WHAT TYPES MAY BE MADE ADMINISTRATIVELY?

Certain types of accommodations can only be ordered by the judge or judicial officer presiding in a case, while others can be provided under the direction of court administrators and managers.

Judicial accommodations:

Only the judge or judicial officer presiding in a pending case may order an accommodation that would implicate the rights of parties to the proceeding or the judge's inherent power to manage the courtroom and proceeding. Such "judicial accommodations" may include, for example, extensions of time for the filing of papers, taking frequent breaks during court proceedings, and remote appearances. While only a judge may order such an accommodation, non-judicial court personnel may be called upon to facilitate the accommodation.

Administrative accommodations:

In contrast, accommodations that do not involve the judge's authority over the case and the parties may be arranged by non-judicial court personnel. Such "administrative accommodations" include, for example, providing sign language interpreters, assistive listening

devices or CART reporting, and arranging for a court service to be provided in an accessible location.

WHO CAN REQUEST AN ADA ACCOMMODATION?

Any individual with an interest in participating in or attending any proceeding before any court of this state may make a request for ADA accommodations. This includes jurors, parties, attorneys, witnesses, and spectators.

HOW CAN ADA REQUESTS BE MADE?

Requests can be made in any form, including orally, in writing, by telephone, e-mail, or fax.

WHAT IS THE PROCESS FOR HANDLING ADA ACCOMMODATION REQUESTS?

Court users are asked to make accommodation requests in advance, if possible, and to direct those requests to either the Chief Clerk (in NYC courts) or the District Executive (in courts outside NYC). The Chief Clerk or District Executive assesses whether the request is for an administrative or a judicial accommodation. If the request is for a judicial accommodation, the request is forwarded to the judge presiding over the proceeding for determination; if administrative in nature, the Chief Clerk or District Executive (or their designees) addresses it. If a request seeks both administrative and judicial accommodations, each portion is separately handled.

In some cases, however, a court user may not request an accommodation until they come to court. Non-judicial court personnel who become aware of a court user's need for an accommodation should direct the person to the court's Clerk's Office. The request can then be directed to

the Chief Clerk or District Executive. If the request is made during a proceeding, the Judge can determine the request to the extent it involves a purely judicial accommodation, and should refer any request for an administrative accommodation to the Chief Clerk or District Executive.

HOW ARE ACCOMMODATION REQUESTS RESOLVED, AND HOW IS A DENIAL APPEALED?

While many requests can be resolved quickly, further dialogue with the requestor may be necessary if, for example, it is not clear that the person qualifies for an ADA accommodation, or a better understanding of the person's limitations and how they affect the ability to participate is needed, or it is unclear what the best and most reasonable accommodation might be.

The court should not make overly intrusive inquiries nor request medical information that is not relevant to the need for an accommodation. Dialogue about a person's disabilities should be handled in a sensitive manner that protects individual privacy as much as possible.

When an accommodation request is granted, a judge may wish to memorialize it on the record. A Chief Clerk or District Executive may also wish to keep a record of accommodations that are granted, to help guide future resource distribution.

The denial of a request for a judicial accommodation should be placed on the record or be in written form sufficient to permit appropriate judicial review. The denial of a judicial accommodation is not subject to administrative review. Review of the denial must be sought through the regular process of judicial review.

A request for an administrative accommodation may be denied only by a Chief Clerk (NYC courts), or a District Executive (courts outside

NYC) in consultation with the ADA Coordinator. The administrative denial must be in writing, and on a Denial of Accommodation Form. The denial of an administrative accommodation can be appealed by submitting a [Request for Reconsideration Form](#) or other written statement to the Statewide ADA Coordinator within the ten (10 days of the written denial). The Statewide Coordinator may extend the filing deadline for good cause, and may permit an alternative means of filing, such as via an audio format, upon request. Additional relevant information or documents may be submitted with the Request for Reconsideration. The Statewide Coordinator will issue a decision in writing, or, as appropriate, in a format accessible to the person requesting reconsideration, within 30 days.

WHAT IS THE ROLE OF THE ADA OFFICE AND THE STATEWIDE ADA COORDINATOR?

The ADA Office within OCA's Division of Professional and Court Services was established to assist courts in complying with the ADA and to ensure that all persons with disabilities have full and equal access to the courts. Among the services provided by the ADA Office are advice on fashioning appropriate accommodations in particular cases, assistance in obtaining auxiliary aids and devices, and training for court personnel and judges. In addition, as explained above, appeals of denials of an administrative accommodation are made to the Statewide ADA Coordinator. The ADA Office may be contacted at:

**25 Beaver Street, 8th Floor
New York, NY 10004
(212) 428-2760
ADA@nycourts.gov**

For more information on ADA and the Courts, please visit the ADA website:
<http://inside-ucs.org/oca/professional-ct-services/ADA/index.shtml>



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