



DISABILITY & LANGUAGE ACCESS SERVICES IN NC SUPERIOR COURTS


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DEFINITIONS

- Limited English Proficiency (LEP) Individual: one who speaks a language other than English as his or her primary language and has a limited ability to read, write, speak, or understand English.
 - The need for a court interpreter should not be based upon the individual's ability to converse in basic English.
- ADA: Americans with Disabilities Act; federal law that prohibits discrimination against people with disabilities in several areas including access to state and local government programs and services
- LAC: Language Access Coordinator
- DAC: Disability Access Coordinator; at least two in every county to provide continuous coverage for accommodation requests



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LANGUAGE ACCESS: THE BASICS



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LANGUAGE ACCESS

The North Carolina Judicial Branch must provide meaningful language access for limited English proficiency individuals under Title VI of the Civil Rights Act of 1964 and its implementing regulations.




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WHO HAS THE RIGHT TO AN INTERPRETER?

All Limited English Proficiency individuals who are a:

- Party;
- Victim; or
- Testifying witness

in a criminal or civil case has the right to a court interpreter at no cost.




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PROVIDING LANGUAGE ACCESS FOR FAMILY MEMBERS

Language access is provided for:


- The parents, legal guardians or custodians of a juvenile who is a party, victim, or testifying witness.
- The legal guardians of an adult who is a party, victim, or testifying witness.



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Language access must also be provided for limited English proficiency individuals who call or walk into a courthouse with (non-legal) questions or seeking information.


MEMBERS OF THE PUBLIC



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ASSESSING THE NEED FOR A COURT INTERPRETER

- The language of the courtroom proceeding is far more complex than the linguistic interactions of everyday conversation.
- The level of English proficiency required to **meaningfully** participate in a legal setting requires Cognitive Academic Language Proficiency (CALP) developed through formal education and years of exposure to the language.




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HOW TO EVALUATE THE NEED FOR AN INTERPRETER

If you doubt an individual's English proficiency, determine their fluency through questions.

- When is your birthday?
- How old are you?
- When were you born?
- What kind of work do you do?
- Please describe items you see here in the courtroom.

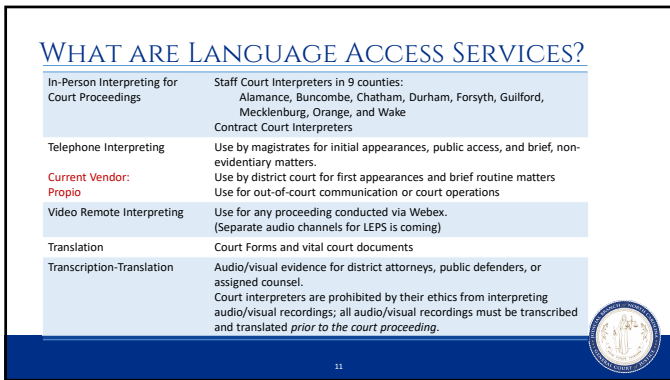
- Be aware that the heightened anxiety diminishes a speaker's ability to comprehend and communicate in the second language.
- Always err on the side of caution and ensure a qualified court interpreter is provided for LEPs in covered court proceedings.



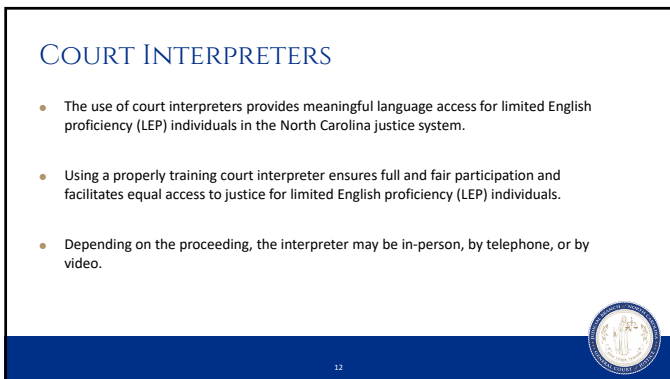
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SPOTLIGHT: TEAM INTERPRETING

Longer proceedings, or proceedings that are complex in nature, will require more than one interpreter. A team of two interpreters should be scheduled for such proceedings.

A team of interpreters consists of an active interpreter and a support interpreter. The active interpreter interprets the proceeding for all LEP parties and witnesses, while the support interpreter is available to assist the active interpreter with research, vocabulary, equipment or other issues.

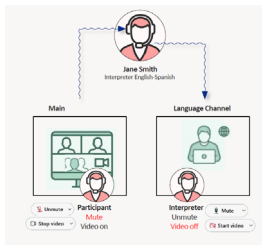
The active interpreter and the support interpreter will alternate roles every 20-30 minutes to minimize interpreter fatigue.



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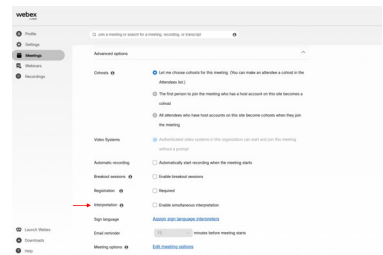
SPOTLIGHT: VIDEO REMOTE INTERPRETING



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WEBEX SIMULTANEOUS INTERPRETING FEATURE



Webex Simultaneous Interpreting feature must be enabled at the time of scheduling.

- www.Webex.com
- Sign in with your nccourts.org email address
- Click on Advanced Options



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WEBEX SIMULTANEOUS INTERPRETING FEATURE

When enabled, participants can select different audio channels.

Screenshots of the Webex SI feature.

LEPs can select the language and the balance volume.

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LANGUAGE ACCESS: THE ROLE OF THE INTERPRETER

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THE ROLE OF THE COURT INTERPRETER

To provide equal access to justice and court proceedings by linguistically placing the LEP individual on equal footing as an English speaker.

- Equal access does not mean better access.

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WHAT IS THE COURT INTERPRETER'S JOB?

- To render everything said in court from the source language into the target language
 - Accurately without distorting the meaning
 - Without omissions
 - Without additions
 - Without changes to style of speech (registry)
 - With as little delay or interference as possible
 - While speaking and listening for the next chunk of language
 - Monitoring their own output



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INTERPRETERS IN THE COURTROOM



Three Modes of Court Interpreting

- **Simultaneous**- Appropriate form of interpreting for most court situations. The interpreter listens in the source language while simultaneously interpreting into the target language.
- **Consecutive**- Appropriate form of interpreting for question and answering situations, such as if there is an LEP on the witness stand.
- **Sight Translation**- Appropriate for short documents where the interpreter reads the document in the source language while interpreting out loud in the target language.



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USING INDIVIDUALS TO INTERPRET

Magistrates, **judges**, attorneys, bailiffs, family members, or friends cannot be used to interpret court proceedings in place of a court interpreter.

Only authorized court interpreters can interpret court proceedings. An authorized court interpreter is a certified, conditionally qualified, or minimally qualified court interpreter approved by OLAS to work as a staff court interpreter or an independent contract interpreter and listed on a court interpreter registry maintained by OLAS.




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TRAINED COURT INTERPRETERS


- Attend Orientation
- Pass English Written Exam (an NCSC exam)
- Attend a Skill-Building Workshop
- Pass North Carolina Court Interpreter Certification Exam* (an NCSC exam)
- Provide 4 Letters of Recommendation
- Pass a background check

*exam is only available in 16 languages. Interpreters are encouraged to pass an OPI for languages where the NCCICE is not available.



UNQUALIFIED INTERPRETERS

murderer LCP witness JUDGE




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COURT INTERPRETER ETHICS

Court Interpreters must abide by the Code of Professional Responsibility for Court Interpreter.

- Canon 1: Accuracy and Completeness
- Canon 2: Representation of Qualifications
- Canon 3: Impartiality and Avoidance of Conflict of Interest or Appearance of Conflict of Interest
- Canon 4: Professional Demeanor
- Canon 5: Confidentiality
- Canon 6: Restriction of Public Comment
- Canon 7: Scope of Practice
- Canon 8: Assessing and Reporting Impediments to Performance
- Canon 9: Duty to Report Ethical Violations
- Canon 10: Professional Development



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THE INTERPRETER ETHICALLY CANNOT...

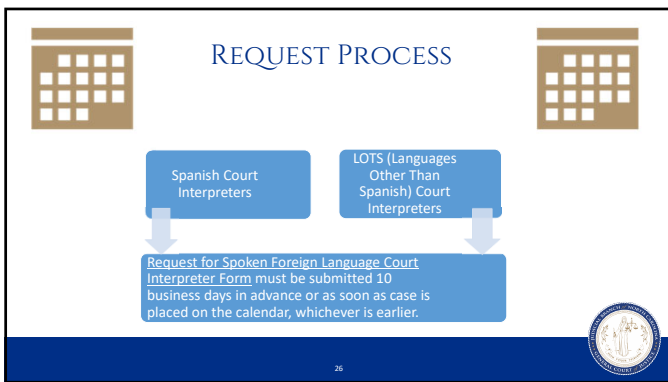
- Explain anything to anyone
- Fill out forms
- Advocate



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WHO SCHEDULES WHAT?

- **LACs schedule Spanish court interpreters** upon receipt and evaluation of a completed Request for Spoken Foreign Language Court Interpreter form.
 - OLAS staff schedule interpreters for superior court jury trials. Two factors impact scheduling of interpreters for jury trials:
 - Submitting the request for multi-day trials with advanced notice.
 - DA's Offices setting their trial schedule for the week.
- **OLAS staff schedules language other than Spanish (LOTS) interpreters.** Many LOTS interpreters must be flown in from out of state, so advance notice is necessary, as is certainty of a trial date.

 **ALL court interpreters MUST be scheduled by the LAC or OLAS in order TO BE PAID for services rendered in AOC covered matters.**

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SCHEDULING CONSIDERATIONS

- Interpreters are reserved for:
 - Two hours for a single case
 - Three hours for a single morning or single afternoon session
 - All-day
- Frequently, interpreters are blamed as the reason for continuances when they've been waiting in court for a case to be called.
- Interpreter cases should be called quickly so they can be released for other courtrooms.
- The interpreter request form is important so that interpreters can be effectively scheduled.



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BILINGUAL COURT EMPLOYEES

- Bilingual Judicial Officer:
 - Magistrates, Judges, and Clerks of Superior Court
 - cannot act as the court interpreter.
- Bilingual Staff:
 - cannot act as the court interpreter.
 - can be authorized to conduct court operations (out-of-court) with the public after they complete a language assessment with OLAS.



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LANGUAGE ACCESS CONSIDERATIONS



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OUT OF COURT LANGUAGE ACCESS FOR
PRIVATE COUNSEL IN CIVIL AND NON-
INDIGENT CRIMINAL DEFENSE CASES



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- Civil litigants and criminal defendants who have hired privately retained counsel MUST privately retain the services of an interpreter for any out-of-court communication or for any necessary case preparations.
 - This includes settlement conferences which civil attorneys may expect to have before the start of a trial.

Language access services required for all out-of-court communications involving private counsel, including all interviews, investigations, and other aspects of general case preparation, are outside the scope of services provided or funded by the Judicial Branch.

Staff court interpreters are prohibited from providing services out of court.


AOC INTERPRETERS CANNOT PROVIDE THIS SERVICE AT JUDICIAL BRANCH EXPENSE.



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WHAT TO EXPECT WHEN PARTIES HAVE NON-
ENGLISH DOCUMENTS
OR
NON-ENGLISH AUDIO SOURCES



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TRANSLATION SERVICES

In all court proceedings, the parties submitting documents in a language other than English are responsible for obtaining certified translations, at their own expense, except in civil and criminal cases in which the State bears the costs of representation.

District Attorneys Offices, Public Defenders, or Appointed Counsel should contact the Office of Language Access Services to have any written documents in a language other than English translated prior to the proceeding.



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TRANSCRIPTION-TRANSLATION SERVICES

- Court interpreters are prohibited by their ethics from trying to interpret audio recordings in court because it is impossible to do so accurately, which would threaten the integrity of the evidence.
- The best evidence format for non-English audio is a properly prepared transcription-translation, accompanied by a notarized certificate of accuracy from the lead translator setting forth the lead translator's credentials.
 - This work requires an extremely high level of skill.



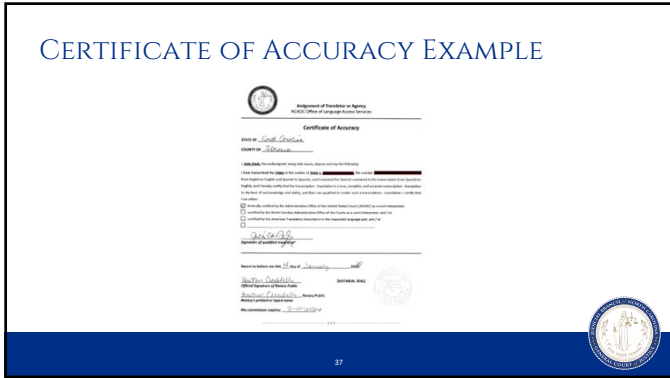
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TRANSCRIPTION-TRANSLATION EXAMPLE

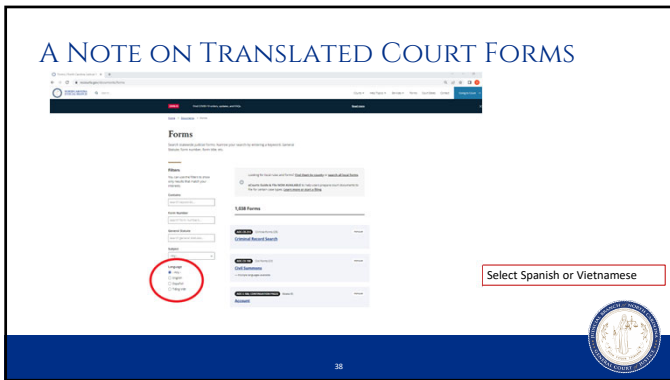
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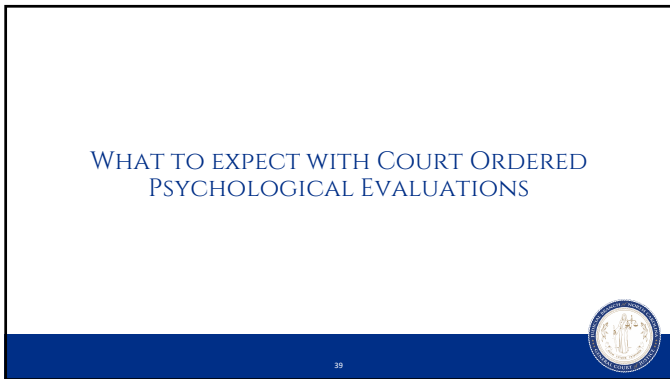
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NCAOC does not provide court interpreters for treatment, classes, counseling, or other similar services whether or not ordered by the court.

- Prior to ordering an LEP individual to undergo treatment, you should consider whether the service provider provides language access services that eliminate barriers to accessing the treatment.

Healthcare providers have their own responsibilities to ensure LEP individuals can access healthcare services.



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THERE IS ONE EXCEPTION...

Court interpreters will be provided for court-ordered psychological evaluations if:

- counsel is assigned or appointed;
- the appointed or assigned counsel made the motion to have their client evaluated; and
- counsel completes the interpreter request for their client if the court ordered psychological evaluation is granted


Then a court interpreter will be provided at IDS expense.



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WHEN USING A COURT INTERPRETER



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PROPER USE OF THE COURT INTERPRETER

- Give instructions to parties and witnesses about the role of the court interpreter as a neutral language conduit
- Be aware that interpreters are ethically prohibited from developing any sort of rapport with the LEP for whom they are interpreting
- Do not ask the interpreter to gauge if they think the LEP individual understands
- Do not allow multiple speakers to talk at the same time or over each other. The interpreter interpret everything that is said, and multiple speakers make it impossible to perform this duty.
- NOTE: Please report any inappropriate interpreter behavior to OLAS, including stepping outside the bounds of their scope of service.



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DISABILITY ACCESS



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WHO IS COVERED BY THE AMERICANS WITH DISABILITIES ACT?

The ADA states that an individual is disabled if he or she:

- Has a physical or mental impairment that substantially limits one or more of the individual's major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

Equal treatment is a fundamental purpose of the ADA. People with disabilities must not be treated in a different or inferior manner.



ada.gov/resources/title-ii-primer

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KEY POINTS

1. Disability is interpreted broadly.
2. The legal standard for denying accommodations is high and the reason(s) must be provided in writing.
3. Accommodation may be administrative, not judicial in nature.
 - o Judicial immunity would not apply for determinations that are administrative in nature.
 - o Consider whether it is necessary to disclose, or require disclosure of, someone's specific disability status on the record – err on the side of not requiring disclosure.
 - o If disability information is included in the record, the court may consider whether it should be sealed.



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ACCOMMODATION REQUESTS



- Direct all requests to your local DAC; Email address is [CountyName].DAC@nccourts.org
- [Online request form](#) is preferred but not required – includes ASL videos!
 - o Phone, email, in-person
- Requests should be made as far in advance as possible-- at least ten (10) business days before the proceeding
- Requests can be made on behalf of a party, witness, guardian or potential juror



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ACCOMMODATIONS SHOULD BE TAILORED

All disabilities are different and persons with the same or similar disability may require different accommodations.

- o Must provide accommodation or modification in requested format or manner, if possible.
- o What is possible?
 - General accommodation requests – anything that does not **fundamentally alter the nature of the proceeding** or service.
 - Effective communications requests – anything that does not **fundamentally alter the nature of the proceeding** or service or cause an **undue financial or administrative burden**.



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COMMON ACCOMMODATION REQUESTS

- American Sign Language (ASL) interpreter
- ASL and Certified Deaf Interpreter (CDI) team
- Bring a support person
- CART (Communication Access Realtime Translation) services
- Certain time of day for court event
- Different seating arrangement
- Extra Breaks
- Large-print materials
- Remote hearings/recording
- Optical Character Recognition (OCR) - compatible documents
- Sound amplifier such as a Pocket Talker
- Shorter questions
- Tactile American Sign Language (TASL) interpreter
- Use electronic devices for communication purposes




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BEST PRACTICES FOR MEDICAL DOCUMENTATION

- A person requesting an accommodation is not required to disclose their disability or provide supporting medical documentation.
- However, it may be necessary if it is not readily apparent how a requested accommodation relates to the person's disability to fully and fairly evaluate the request.
- Medical documentation should be obtained from a Qualified Licensed Professional and dated within the last 12 months.
- Medical documentation may become part of the public record or court file unless the Court seals those records.

juno.nccourts.org/resources/references/disability-access-what-judicial-employees-need-know-about-public-requests




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AUXILIARY AIDS AND SERVICES

- Communication Access Realtime Translation (CART)
 - Certified captioner who translates what is being said aloud into written text, in real time. This can assist individuals who are Deaf or hard of hearing and do not understand ASL. Most of our Judicial Branch court reporters are not CART-certified and a 3rd party agency will need to be assigned.
- Text-to-Speech devices/apps for individuals with speech disabilities.
- Qualified Reader
- Optical Character Recognition (OCR) documents or providing information with large print or electronically for use with a computer screen-reading program or an audio recording of printed information for people who are blind or have vision loss.
- Video Remote Interpreting Service (VRI) – Acolad (ASL only)

ada.gov/resources/effective-communication




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VIDEO REMOTE INTERPRETING (VRI) FOR ASL

- 3rd party vendor is used for on-demand ASL interpreting service
- It is available 24/7 for brief, non-evidentiary proceedings
- Only should be used when an ASL interpreter is not available onsite
- Video Remote Interpreting (VRI):
 - Go to <https://acoladusa.interpretmanager.com/app/account/sign-in>
 - Use authorized email address and password - local Disability Access Coordinator (DAC) can provide this information
 - Click video icon, select 'American Sign Language' and 'Legal' and click 'Call' to connect with an interpreter

acolad.



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SERVICE ANIMALS

ALWAYS ALLOWED – NO REQUEST NEEDED



Under the ADA, service animals are allowed to accompany people with disabilities in all areas of a facility where the public is allowed to go, including courtrooms and other areas of the courthouse. Service animals are dogs (any breed, any size) and miniature horses.

WE CAN ASK:

1. Is the service animal required because of a disability?
2. What work or task has the animal been trained to perform?

WE CANNOT ASK:

- About the nature of the person's disability
- That the animal demonstrate its ability to perform tasks
- For training or certification documentation
- That animal wear a vest or ID card

The penalty for misrepresenting a service animal under N.C.G.S. 168-4.5 is a Class 3 misdemeanor.



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SERVICE ANIMALS

ALWAYS ALLOWED – NO REQUEST NEEDED

- A person with a disability cannot be asked to remove their service animal from the premises unless:
 - the animal is out of control and the handler does not take effective action to control it (by leash, tether or verbal commands) or
 - the animal is not housebroken.
- Allergies or a fear of dogs are not valid reasons for denying access or refusing service to people using service animals.
- When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.

ada.gov/topics/service-animals



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EMOTIONAL SUPPORT ANIMALS

REQUEST NEEDED

- Therapy and emotional support animals **help with the symptoms of a disability** but have not been individually trained as a service animal. Requests for support animals should be considered as a reasonable modification under the ADA.
- An animal may be denied if
 - (1) the animal exhibits aggressive behavior (growling or biting), disruptive behavior (whimpering, barking, wandering around) or is not housebroken, or
 - (2) the person allows others to pet, feed or attend to the animal, or shifts responsibility of the animal.

3 Types Of Assistance Animals

COMPARISON	Service Animal	Emotional Support Animal	Therapy Animal
Add covered rights to bring animal into public establishments	✓	✗	✗
Needs to behave a wide variety of responses	✓	✓	✗
May live with their disabled person, even if "the best" policy is otherwise	✗	✗	✓
Primary function is to provide immediate response through communication	✗	✗	✓
Specifically trained to assist just one person	✓	✗	✗
Provide emotional support and comfort to many people	✗	✓	✗

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HIDDEN AND UNINTENDED BARRIERS TO JURY SERVICE

- NC Jury Commission oversees the compiling of a master jury list of licensed drivers and/or registered voters. However, many disabled persons do not have a driver's license. Additionally, many disabled persons feel disenfranchised and do not register to vote.
- A jury box that has a step up and/or fixed chairs that take up the whole jury box could bar access to an individual using a wheelchair.
- NC is prohibited from discrimination of potential jurors based on disability. However, if a juror is not struck for cause, there is still the peremptory challenge, which by its very nature can be used for any reason except for discrimination based on race or gender. Disability has not been recognized as a suspect class under *Batson* and *J.E.B.*

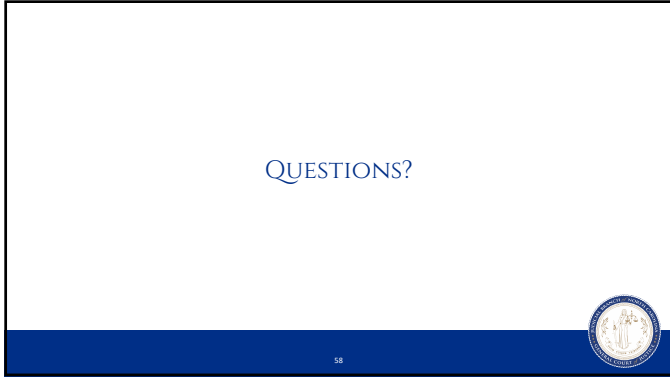
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COMMON MYTHS

- Disabilities are always visible.
- All blind people read braille.
- People who are blind have no vision at all.
- ASL is visual English.
- All persons with a hearing disability can read lips/understand ASL.
- People with a hearing disability cannot speak.
- Permanent wheelchair users are chronically ill.
- People with mental illness are always violent and/or unpredictable.



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