



DISABILITY ACCESS BASICS

FOR JUDICIAL AUTHORITIES

MAGISTRATE'S CONFERENCE | ASHEVILLE, NC

MARCH 17, 2022

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TOPICS



- Legal framework
- Types of disabilities and accommodations
- Procedures for accessibility or accommodation requests
- Hypotheticals
- Questions



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RELEVANT LAW

1. N.C. Constitution Article I Sec. 18
2. Americans with Disabilities Act
3. North Carolina Persons with Disabilities Protection Act



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N.C. CONSTITUTION ARTICLE I

Sec. 18. Court shall be open.

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.



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AMERICANS WITH DISABILITIES ACT (ADA)

- **Prohibits a public entity from discriminating against disabled individuals, 42 U.S.C. 12132**
No qualified individual with a disability shall...
 - 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.

- Definition of disability with respect to an individual, 42 U.S.C. 12102 – one or more:
 1. Physical or mental impairment that substantially limits one or more major life activity
 2. Record of such an impairment
 3. Being regarded as having an impairment



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N.C. PERSONS WITH DISABILITIES PROTECTION ACT

- **Prohibits a public entity from discriminating against individuals due to a disability,** N.C.G.S 168A-7
 - Mirrors the federal ADA prohibitions and requirements.
- Definition of a person with a disability mirrors the ADA definition, N.C.G.S. 168A-3(7a)



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KEY LEGAL REQUIREMENTS

- Public entities **must provide equal access**
 - Structural / physical access
 - Policy / procedure access
- Public entities **must provide effective communication**



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EQUAL ACCESS: PHYSICAL / STRUCTURAL ACCESS



Photo source as of 9-21-20, <https://www.compliancesigns.com>; Durham courthouse courtesy of E. Smith

- Some examples of physical or structural access issues:
 - Elevators
 - Curb cut-outs
 - Ramps
 - Wheelchair accessible doorways
 - Signage
 - Hard-wired assistive listening devices
- Counties are legally required to provide adequate court facilities, N.C.G.S. 7A-302, so these issues must be addressed in conjunction with your local county government.



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EQUAL ACCESS: POLICY / PROCEDURE ACCESS

- Examples of policies that can limit access for disabled individuals:
 - Prohibitions on animals
 - Prohibitions on electronic devices
 - Mask requirements
 - Limitations on public attendees
 - Limitations on remote hearings



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EQUAL ACCESS: REASONABLE MODIFICATIONS

- ADA requires that courts make **reasonable modifications** in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.
- **The ADA requires public entities to provide the individuals first choice of requested accommodations.**
 - The individuals knows what they need, not us.
- Reasonable modifications are not required if the modifications would **fundamentally alter** the nature of the service, program, or activity.



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EQUAL ACCESS: EFFECTIVE COMMUNICATION

- A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others unless the steps would:
 - **Fundamentally alter** the nature of a service, program, or activity; or
 - Result in **undue financial and administrative burdens**.
- **Must explain the denial in writing!**
- NOT required to provide personal-use devices such as eyeglasses, hearing aids, wheelchairs, etc.



Photo source as of 9-21-20,
<https://www.pulsetv.com/prodinfo.asp?number=9323>

Source: 28 C.F.R. §§ 35.135, 35.160, 35.164



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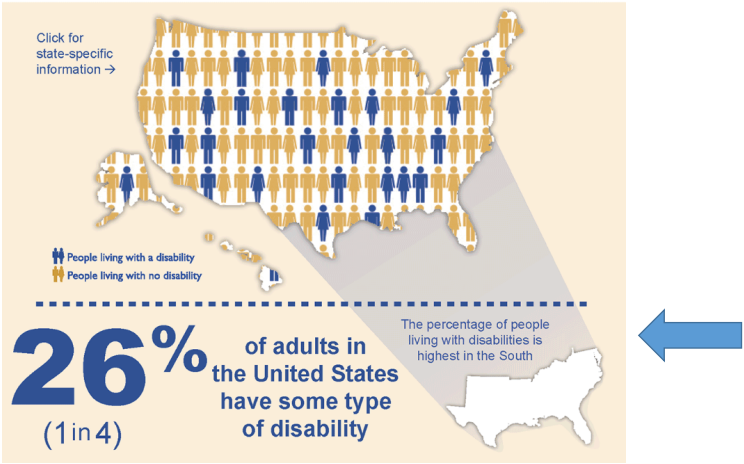
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TYPES OF DISABILITIES AND ACCOMMODATIONS



AMERICANS LIVING WITH DISABILITIES

61 million adults in the United States live with a disability



TYPES OF DISABILITY: FUNCTIONAL

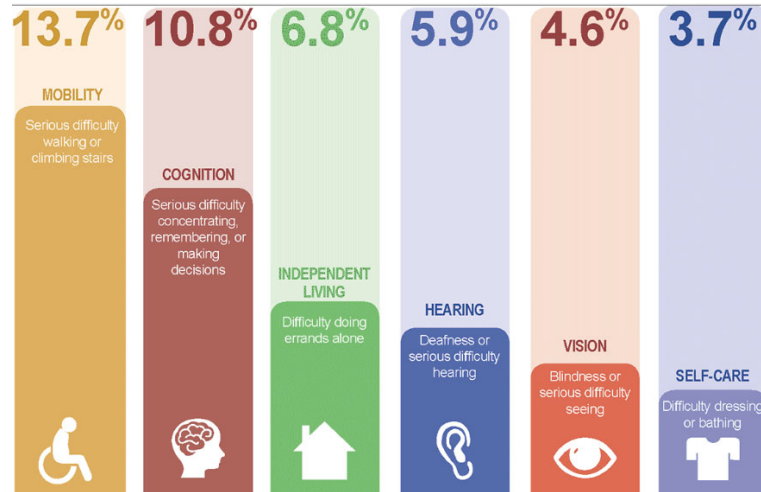


Image source as of 3-7-2022, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>

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MENTAL & PSYCHOLOGICAL DISABILITIES

May qualify as a disability because the emotional and behavioral conditions can have a long-term, substantial effect on major life activities. For example:

- Anxiety disorders, including panic disorder, obsessive-compulsive disorder, and phobias.
- Depression, bipolar disorder, Post-Traumatic Stress Disorder (PTSD), other mood disorders.

Mental Health First Aid class reviews major diagnosis and how to respond if someone is in crisis



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ACCOMMODATIONS SHOULD BE TAILORED

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

- Must provide accommodation or modification in requested format or manner, if possible.
- 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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HOT TOPIC: TECHNOLOGY ACCESSIBILITY

Digital accessibility and technological access are a quickly growing area of interest.

1. Ensure that all information and communications technology (ICT) offerings are accessible
2. Be prepared to provide forms or electronic information in an alternative format.
Example: Optical Character Recognition (OCR) – TIP: test with Cntrl+F to find word

STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice
		<input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
Name Of Plaintiff	CIVIL SUMMONS	
Address	<input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)	
City, State, Zip	O.S. 1A-1, Rules 3 and 4	
VERSUS		Date Original Summons Issued
Name Of Defendant(s)	Date Subsequent Summons Issued	
To Each Of The Defendant(s) Named Below:		
Name And Address Of Defendant 1	Name And Address Of Defendant 2	



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EXAMPLES OF ACCOMMODATION / MODIFICATION

Disability	Possible Accommodation or Modification
Learning Disability (Dyslexia)	Read written information orally
Anxiety Disorder	Allow presence of a companion animal
Sight Impairment	Send paperwork electronically in OCR format so it is accessible through a screen reader
Intellectual Disability	Allow use of a "cognitive interpreter"
Attention Deficit Hyperactive Disorder (ADHD)	Reduce visual and auditory distractions
Back Injury	Provide a reclining chair
Unable to leave home due to Multiple Sclerosis	Conduct hearing using remote technology for a virtual hearing
Deaf	Provide an American Sign Language (ASL) interpreter or captioning (CART=communication access realtime translation, or speech-to-text)



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EXAMPLES OF ACCOMMODATION / MODIFICATION

Disability	Possible Accommodation or Modification
Mobility Impairment	Remove architectural barriers* or conduct hearing in accessible hearing room
Manic Episode during hearing (Bipolar Disorder)	Continue hearing to a different date
Urinary Tract Infection	Provide frequent restroom breaks during hearing
Obsessive-Compulsive Disorder	Allow for a different seating arrangement
Brain Injury	Divide longer questions into a series of shorter ones

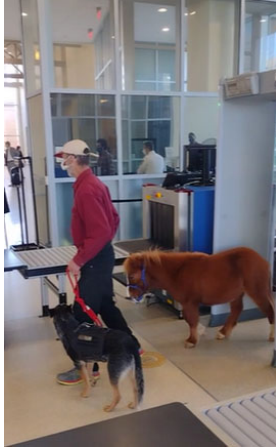
* Courthouse Facility: N.C.G.S. § 7a-302 requires that the local county ensure accessibility of courthouse structures. Contact county manager for facility needs.



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SERVICE ANIMALS



- Service dog is individually trained to assist an individual with his or her disability (Also possible: miniature horse)
- If not immediately recognizable as a service animal, you are allowed to ask
 1. Is it a service animal?
 2. What is it trained to do?
- DO NOT feed, pet, or talk to a working animal without consent from its owner
- Emotional Support Animal (ESA) provides emotional support without being trained to do a disability-related task

Image source as of 3-7-2022, [No horsing around: Man takes service PONY to North Carolina courthouse \(msn.com\) 1/27/22 Buncombe](#)



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PROCEDURES FOR ACCOMMODATIONS

<https://juno.nccourts.org/sites/default/files/files/DAC-checklist-for-responding-to-a-request.pdf>



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STEPS TO RECEIVE & RESPOND TO REQUESTS

1. Request made by phone, in-person, or online form (by person who needs accommodation or attorney or court personnel)
2. DAC receives request and confirms receipt
3. DAC explains status of request to the requester; asks clarifying questions if needed
4. DAC processes request by coordinating requested accommodation; consults judicial authority when necessary
5. At least 3 days prior to the hearing, DAC informs requester about how accommodation will be made or, explains why denied and discusses alternatives



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NAVIGATING ACCOMMODATION REQUESTS

1. **What is the accommodation being requested?**
2. How will it affect the person's disability?
3. **What specific policies, procedures, or practices would need to be amended or altered to allow the accommodation?**
4. What would the proceedings or interactions with Court personnel or processes look like if the accommodation was granted?
5. **What problems, if any, would granting the accommodation request create or exacerbate?**
6. If there are harms, can they be diminished or lessened?



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KEY POINTS

1. Disability is interpreted broadly.
2. The legal standard for denying accommodations is high.
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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HYPOTHETICALS: WHAT WOULD YOU DO?



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CELLPHONE

- Pro se litigant requests use of a cellphone during a hearing.
- The courthouse has a policy that prohibits cell phones in court proceedings.
- Litigant indicates that she is blind and that her phone will allow her to read her notes and filings during the court proceeding.



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TIME OF DAY

- Attorney has a motion scheduled in the morning.
- Litigant requests that the hearing be moved to the afternoon because litigant takes prescribed medication that makes him drowsy in the morning.
- Opposing counsel does not consent.



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VIRTUAL HEARING

- Witness requests to testify virtually.
- Witness indicates that he has severe anxiety and post-traumatic stress disorder and that testifying in person would be debilitating.



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SERVICE ANIMAL



- A party in a small claims matter has a service dog.
- The magistrate that hears small claims has a severe dog allergy.
- There are no other magistrates in the district that hear small claims and none of the other magistrates in the district are trained to or have experience hearing small claims.



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MOBILITY

- Party, attorney, or juror uses a mobility aid and is unable to climb stairs.
- The courthouse elevator is broken.
- Hearing or office for court event is on the third floor.



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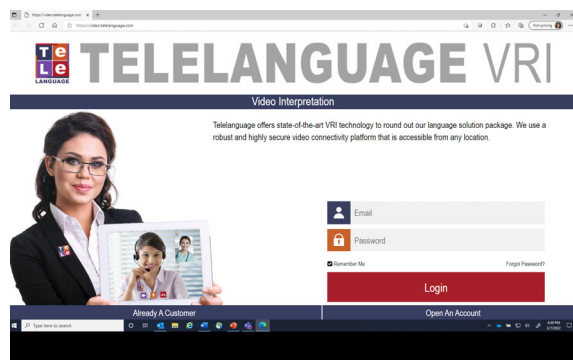
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SIGN LANGUAGE

- A deaf individual is brought before the magistrate for an initial appearance.
- He writes a note that he can communicate in sign language.
- Nobody in the magistrate's office knows sign language.

Video Remote Interpreting (VRI)

1. Go to <https://video.telelanguage.com/>
2. Use authorized email address and password from your local Disability Access Coordinator (DAC)



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FINAL THOUGHTS

- It's normal to be uncomfortable or not know how to handle accommodation issues.
- Open communication, creativity, and flexibility are your best tools.
- Don't be afraid to contact the AOC for help: DAC@nccourts.org; Office of General Counsel for legal questions (corrine.l.lusic@nccourts.org)
- Please try to ensure that all documents produced are accessible – in OCR (optical character recognition enabled) format or otherwise as requested. Contact the AOC with questions.
- Even when faced with members of the public not acting in good faith, remember that following procedures protects the disabled community in the future.
- Remember that it is not just parties who will be disabled. Attorneys, witnesses, jurors observers, judges, and judicial staff can all have disabilities or become disabled.



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