



DISABILITY ACCESS IN THE COURTS FOR JUDGES

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PRESENTERS

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TOPICS




- Legal framework
- Procedures for accessibility or accommodation requests
- Types of disability and accommodations
- 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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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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KEY LEGAL REQUIREMENTS



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


- Public entities **must provide effective communication**



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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 individual's 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: 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 and support persons
 - Limitations on remote hearings
 - Calendaring or scheduling

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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 sources as of 9-23-20, <https://www.palmetto.com/prod/info.asp?number=2844>.


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



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NC JUDICIAL BRANCH PROCEDURES FOR ACCOMMODATIONS

[DISABILITY ACCESS BASICS](#)
[CHECKLIST FOR RESPONDING TO A REQUEST](#)



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STEPS TO RECEIVE & RESPOND TO REQUESTS


- Request made by phone, in-person, or online form. Delivered to DAC.
- DAC confirms receipt and explains status of request to the requester. DAC asks clarifying questions if needed.
- DAC processes request by coordinating requested accommodation, consults judicial authority when necessary.**
- DAC informs requester of whether and how the disability accommodation or modification will be granted. If denied, provide explanation and invite discussion to identify an appropriate alternative.



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WHEN & WHY A DAC CONSULTS WITH A JUDGE


- Upon receipt of any accommodation request that is *beyond the DAC's authority*.
 - The judicial authority must instruct the DAC how to respond so that the requester can be informed prior to the court event.
- Certain accommodation requests for modification of a policy or practice fall exclusively under the presiding judge's authority, *inter alia*:
 - Remote proceedings
 - Breaks during a proceeding
 - Proceeding schedule changes
 - Personal aides / support person (sitting at table with them)
 - Use of cell phone or other technology
 - Recording (used for taking notes)



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TIME FRAME FOR RESPONSE

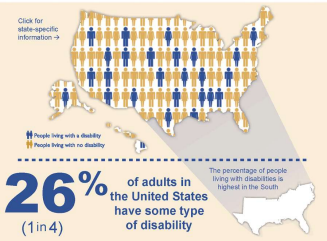
- We recommend responding to accommodation requests **at least 3 business days prior** to the hearing.
 - This will give assurance to the requestor who is likely anxious about the proceeding.
 - If an accommodation cannot be granted it provides time to engage in a discussion about alternative accommodations.
- While ADA does not have a specific time frame for responding, waiting until the hearing to respond to the accommodation request could be an effective denial.
 - This is a litigation risk
 - This often results in continuances and further adds to court backlogs



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TYPES OF DISABILITIES AND ACCOMMODATIONS

61 million adults in the United States live with a disability



26% of adults in the United States have some type of disability (1 in 4)


The percentage of people living with disabilities is highest in the South



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TYPES OF DISABILITY: FUNCTIONAL

13.7% MOBILITY Serious difficulty walking or climbing stairs	10.8% COGNITION Serious difficulty concentrating, remembering, or making decisions	6.8% INDEPENDENT LIVING Difficulty being able to live alone	5.9% HEARING Deafness or serious difficulty hearing	4.6% VISION Blindness or serious difficulty seeing	3.7% SELF-CARE Difficulty dressing or bathing
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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.

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


Mental Health First Aid class reviews major diagnosis and how to respond if someone is in crisis. <https://www.mentalhealthfirstaid.org/>

- National Suicide Hotline 800-273-TALK (8255) Coming June 2022: 988




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NAVIGATING ACCOMMODATION REQUESTS




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



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KEY POINTS

- Disability is interpreted broadly.
- The legal standard for denying accommodations is high.
 - 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 requesting the court include disability information in the court record.**
 - If disability information is included in the record, you may want to consider sealings it consistent with the First Amendment and NC Constitution's Open Courts provision.
- Need to respond to accommodation requests **quickly**, and **before (preferably 3 or more days prior to) the proceeding** for which the accommodation is requested.



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VIDEO REMOTE INTERPRETING (VRI)

- On-demand sign language interpreters (ASL) through vendor Telelanguage, Inc
- No minimum time requirement -- charged for minutes used only
- Use for
 - Courthouse business interactions
 - Non-evidentiary matters
- Go to <https://video.telelanguage.com/>
 - Use authorized email address and password from your local Disability Access Coordinator (DAC)




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SCENARIOS




- Cellphone
- Time of day
- Virtual hearing
- Mobility
- Deaf or Hard of Hearing



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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)
- Even when faced with members of the public not acting in good faith, remember that following procedures protects the disabled community in the future.
- 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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THANK YOU

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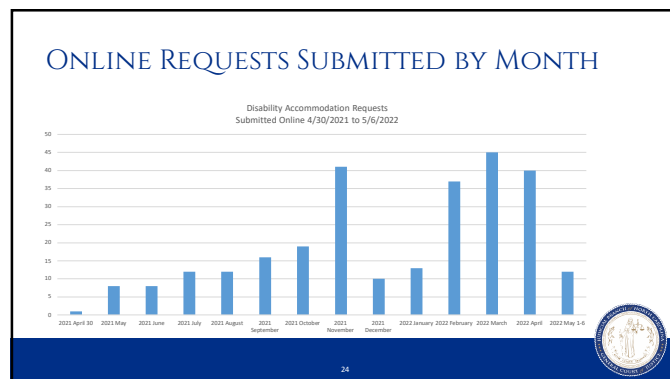
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ONLINE REQUESTS SUBMITTED BY COUNTY

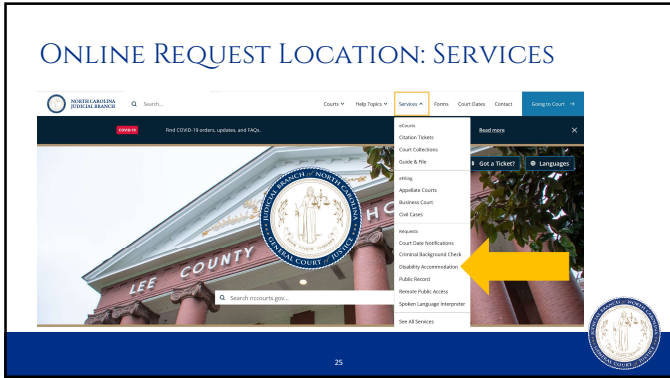
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• Beaufort	• Cleveland	• Franklin	• Martin	• Person	• Wake
• Bladen	• Craven	• Gaston	• Mecklenburg	• Randolph	• Warren
• Brunswick	• Cumberland	• Guilford	• Moore	• Robeson	• Washington
• Buncombe	• Currituck	• Harnett	• Nash	• Rockingham	• Wayne
• Burke	• Dare	• Hertford	• New Hanover	• Rowan	• Wilkes
• Cabarrus	• Davidson	• Iredell	• Onslow	• Rutherford	• Wilson
• Carteret	• Davie	• Johnston	• Orange	• Stanly	
• Catawba	• Durham	• Lenoir	• Pamlico	• Surry	



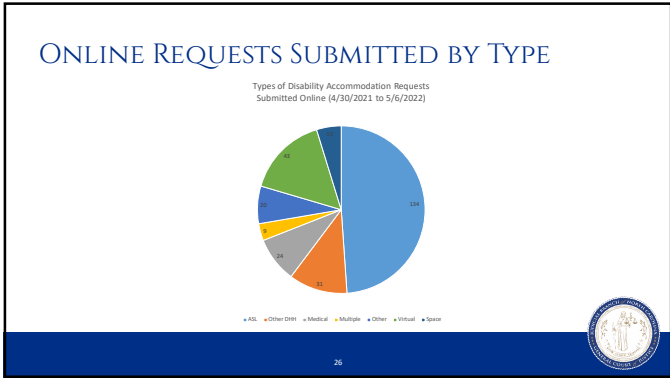
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