



ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

TO: Trial Court Officials
FROM: Office of General Counsel
DATE: June 4, 2020
SUBJECT: The Americans with Disabilities Act and Requests for Reasonable Accommodations to Access Courts During the COVID-19 Pandemic

As courts begin to expand operations, the North Carolina Administrative Office of the Courts (NCAOC) anticipates increased requests for reasonable accommodations under the federal Americans with Disabilities Act (ADA). Specifically, NCAOC expects requests for accommodations that would protect high risk individuals from COVID-19, such as continuances for in-person proceedings and requests to conduct proceedings remotely rather than in-person. Accommodation requests may come from parties, attorneys, family members, or the general public. This memorandum provides a brief summary of the Judicial Branch's obligations to provide reasonable accommodations that allow disabled individuals access to our programs and services. It also provides resources to assist in evaluating requests for reasonable accommodations.

The ADA's Reasonable Accommodation Requirement

Title II of the ADA forbids public entities, include state governments, from excluding disabled individuals from programs, services, or benefits "by reason of" their disabilities. 42 U.S.C. § 12132. Disability means a physical or mental impairment that substantially limits one or more of the major life activities of such individual. 28 C.F.R. § 35.108. Disabilities can include health conditions, including conditions that are known to place an individual at high risk for serious illness from COVID-19, such as diabetes and heart disease. *Id.*

Among other things, Title II imposes an affirmative obligation on public entities to make "reasonable modifications" to policies, practices, or procedures to enable disabled individuals to receive services or participate in programs or activities. 28 C.F.R. § 35.130(b)(7)(i). This is often referred to as a "reasonable accommodation."

In *Tennessee v. Lane*, 541 U.S. 509 (2004), the Supreme Court explained why such accommodations are particularly important when an individual's access to the courts is implicated.

This duty to accommodate is perfectly consistent with the well-established due process principle that, within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard in its courts. . . . [O]rdinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with a



meaningful right of access to the courts. Judged against this backdrop, Title II's affirmative obligation to accommodate persons with disabilities in the administration of justice cannot be said to be so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior.

Id. at 532–33 (internal quotations omitted).

How to Respond to a Reasonable Accommodation Request

An individual with a disability who needs a reasonable accommodation can ask any judicial staff for assistance. Judicial staff should route the individual's request for accommodation to the designated local Disability Access Coordinator (DAC) who can assist in responding to accommodation requests and is familiar with NCAOC's statewide protocol for responding to such requests. Requests should be evaluated and decided upon on a case-by-case basis by the local employee with authority over the policy, practice or procedure for which the modification is requested.

In responding to a request for a reasonable accommodation, judicial staff should not ask about the nature or extent of the individual's disability. 28 C.F.R §§ 35.136(f), 35.137(c). When a disability and the necessary accommodation is not readily apparent the entity may ask for documentation that explains the individual's accommodation needs, but not the individual's diagnosis. The requested accommodation is to be given primary consideration, i.e., the requested accommodation should be provided if possible even if inconvenient to court operations. However, if the public entity can demonstrate that the accommodation would fundamentally alter the nature of its service, program, or activity, then it is not required to provide the accommodation, or it may provide an alternative accommodation. 28 C.F.R. § 35.130(b)(7)(i).

Lori Cole, NCAOC's DAC (Lori.C.Cole@nccourts.org, 919-890-1207) and Corrine Lusic, NCAOC's Assistant Legal Counsel (Corrine.L.Lusic@nccourts.org, 919-890-1315) are available to assist judicial staff with questions about responding to reasonable accommodation requests.

Resources

- NCAOC's [statewide protocol](#) for responding to ADA accommodation requests.
- Each county's local DAC can be found [here](#).
- NCAOC's [Grievance Procedure](#), which individuals may utilize if they are not satisfied with the local resolution to their accommodation request.
- Additional training is available in the Learning Center in the Disability Access 2.0 self-directed online training module.
- NCAOC's website provides disability access information for the public: <https://www.nccourts.gov/help-topics/disability-and-special-needs/disability-access> and <https://www.nccourts.gov/about/about-judicial-branch/disability-access>.