

An aerial photograph of a wetland or marsh area. A light-colored, sandy or silty path winds through the darker, water-saturated ground. The background shows a mix of brown, green, and blue tones, suggesting a natural, somewhat desolate landscape. The text is overlaid on the left side of the image.

Ensuring Access to the Court for People With Disabilities

By

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What the Law Requires(1)

Access to courts is a fundamental right under federal and many state's laws.



What the Law Requires (2)

- Americans with Disabilities Act (ADA):
 - Courts must accommodate persons with disabilities unless:
 - accommodation fundamentally alters the activity or program;
 - or constitutes undue administrative or financial burden.
 - Courts, court programs and court services are covered: Tennessee v. Lane, 124 S.Ct. 1978 (2004).

What the Law Requires (3)

- **The United States Constitution:**
 - U.S. Supreme Court held in Tennessee v. Lane:
 - The “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.”

The Legal Definition of “Disability”

- The ADA

- Physical/mental impairment substantially limits life activities.
- Record or perception of such impairment.

Implications for Courts: What is Forbidden



- Under ADA persons eligible for public services may not be excluded from any program, service or activity, or unequally treated.

Implications for Courts: What is Required

“Reasonable accommodation”

- Required for courts, court programs, and court services.
- Required for all participants including jurors, lawyers, parties and witnesses.
- Includes accommodating full and free use of public buildings and facilities.

Implications for Courts: What is Required (cont.)

- Furnish “auxiliary aids and services” where necessary to afford equal opportunity to participate.
- Reasonably modify rules, practices and policies to avoid discrimination.
- Assure communication is as effective for persons with disabilities as others.

Implications for Courts: What is Required (cont.)

- Create a procedure to request accommodation and investigate response (with costs borne by court).
- If more than 50 employed, designate ADA coordinator and publish procedures.



The Consequences of Violation

- Obligation to accommodate enforceable by suit for declaratory/injunctive relief or **money damages**.
- Judges performing judicial functions immune.
- Court staff or judges acting in administrative capacity **not** immune.

Hearing/Communication Disability



- Hearing loss may vary from mild, to moderate, to profound.
- Communication disabilities may stem from medical, developmental, or other conditions.

A Little Illustration of the Problem

- Film clip: “A Fair Hearing”

Guest Speaker:

- Elaine Navratil

“A Fair Hearing”



A Little Illustration of the Problem

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What Can (and Should) Courts and Court Staff Do?

- Be aware that people with hearing loss or other communication disabilities may feel intimidated and distrustful.
- Patience and flexibility are vital
- Never assume one solution will accommodate every person.
- Try to abide by preference of the person needing the accommodation.

Some Solutions to Consider: Sign Language Interpreters



- Court must provide sign language interpreter for person who because of impairment cannot readily understand or communicate.
- [RCW 2.42.120](#)

Some Sign Language Considerations

- There are four methods of interpreting.
- Scheduling is often critical.
- Be aware of physical layout of room.
- Does interpreter have some level of Registry of Interpreters for the Deaf (RID) certification ?
- Ethics.
- Referral services and court education.

Assistive Listening Devices

- FM broadcast (speaker wears transmitter, broadcasting to individual's device).
- Infrared light (signal travels by light).
- Audio induction loop (signal travels electromagnetically).
- Computer Assisted Real Time Transcription (CART); Note-takers.

Other Communication Options

- Teletypewriters – also known as TTYs and TDDs.
- Telecommunications relay service (24-hour free service providing relay operators).
- Videophones.
- Personal hearing aids.

More on Accommodating Hearing and Communication Disabilities



- Train court staff.
- Use writing sparingly.
- Interact directly with the person; make frequent respectful checks.
- Voice volume.
- Your ideas?

Vision Disabilities

- Vary greatly
 - Mild or moderate lack of visual acuity.
 - Tunnel vision.
 - Night or color blindness.
 - Complete lack of sight.



“Kelly McGuire”



KELLY RAY MCGUIRE

Public Hearing, Oct. 20, 1995

“Jury Duty”



Accommodating Vision Disabilities

- Accommodations will vary with the specific nature and level of impairment.
- Consider both communication and physical barriers.

Assistive Techniques

- Special devices: appropriate magnifying glasses, overhead projectors.
- Seating accommodations.
- Documents in Braille or on audiotape
- Provide readers, alternate printing of forms.
- Screen reading software.

Consider Navigation



- Ask if assistance is wanted.
- Walk beside person **without** contact (unless permitted) and give verbal guidance.
- Identify speakers.
- Signal arrival and departure.
- Respect boundaries including dogs.

Dealing With Noise and Documents

- Noise
 - Auditory cues can be very important.
 - Be aware of and correct noisy environments or excessive background noise.
- Documents:
 - Readers.
 - Taped texts.
 - Braille.
 - Assistive software.
 - Large print.
 - Appropriate printing.
 - Alternate formats for standard forms/notices.

YOUR IDEAS?

Mobility Limitations

- May include limitations requiring cane, walker, wheelchair.
- May include limitations such as chronic fatigue syndrome, heart disease, other medical problems.



“A Funny Thing Happened
on the Way to the Forum.”

*A Funny Thing
Happened On The
Way To The Forum*









“Reporting for Duty”



Mobility Accommodations

- ADA mandates “readily achievable” removal of architectural, structural barriers unless accessibility otherwise provided.
- ADA requires that court services and accommodations viewed as a whole are “readily accessible” and usable
- Historic courthouses require creativity and innovation to satisfy ADA.

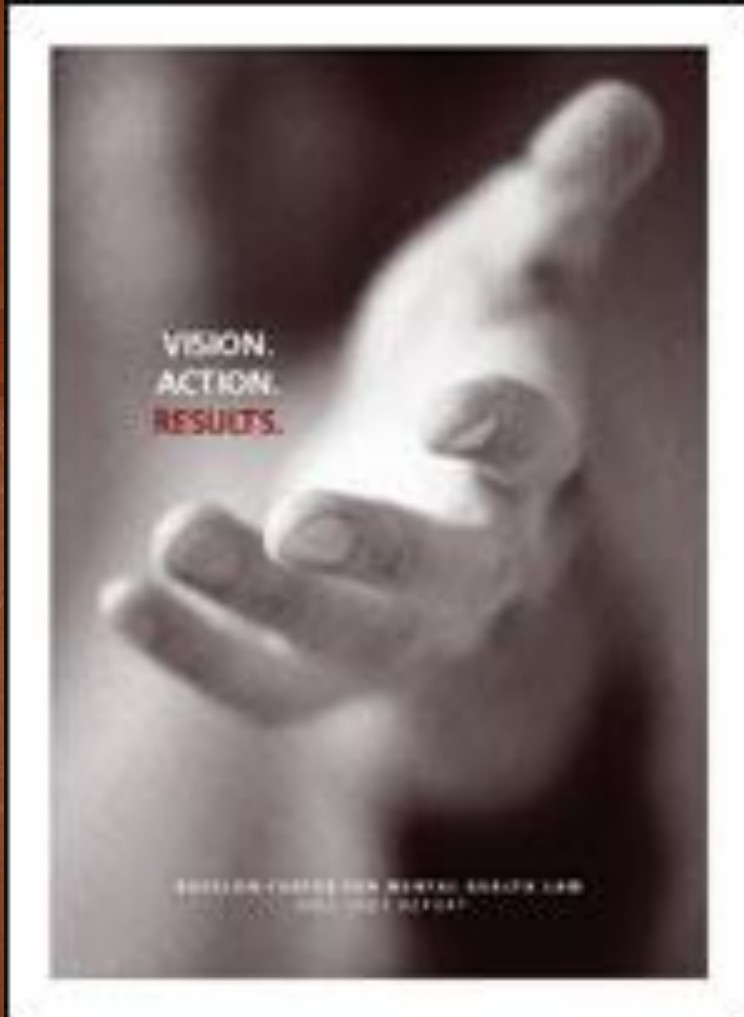
Removing Physical Barriers

- Identify physical barriers with ADA AG (Accessibility Guidelines) at 36 CFR 1191.
- Be alert to elevators, door opening, chair, podium and table height.
- Establish and maintain a clear path of travel e.g. to jury box, witness stand, bench, counsel tables.

Practical Tips to Accommodate

- *Extend time* e.g., for recesses. Allow extended breaks.
- *Wheelchair* is part of person's body: do not touch without permission.
- Sit at person's level.
- *Plan for emergencies*, including evacuating persons with disabilities.
- *Do offer to help*, e.g., with doors, crowds, carrying papers.
- **YOUR IDEAS?**

Mental Disabilities



- Clues to cognitive limitations may be subtle: be sensitive.
- Many conditions can affect learning and decision making including Downs, Autism, Cerebral Palsy, seizure disorders, and mental illness.
- Persons may be of normal or high intelligence.

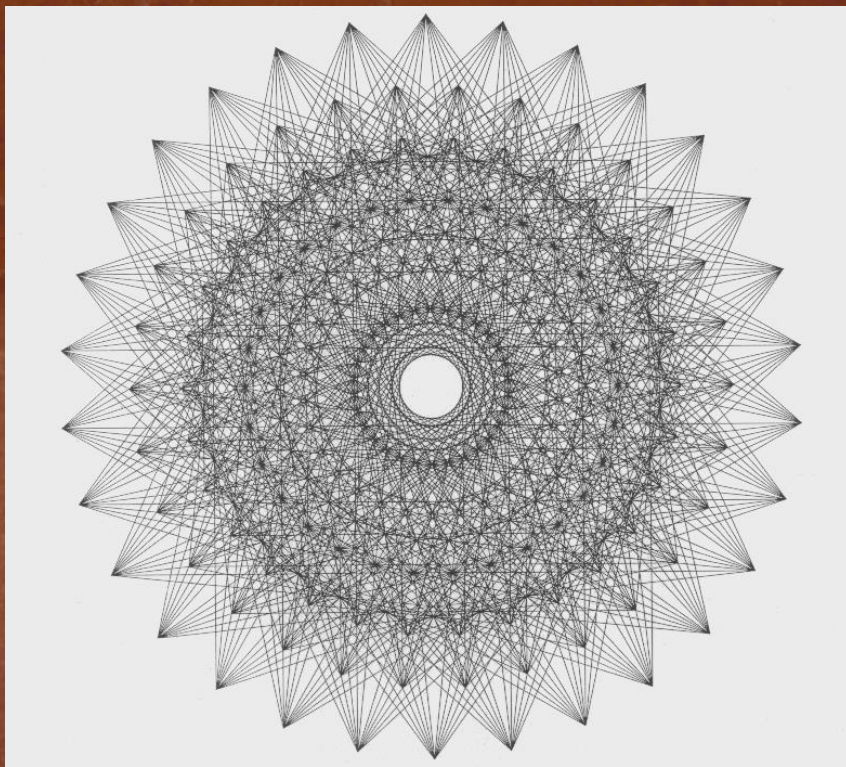
Attitudes are the Biggest Barrier



Important Accommodations

- Greatest barriers are paternalism and stigma: respect independence and consult with the person first.
- Use respectful language. Train court staff to use appropriate terms.
- Eliminate complexity in signage and forms.
- Assist persons in finding their way to and from public transportation.

Documents and Forms



- Reduce unnecessary complexity of court forms.
- Take time to explain.
- Simple, clear signage.
- Lay advocates and support persons.
 - RCW 7.69B

Communication

- Speak slowly and clearly but respectfully.
- Be concrete .
- Short sentences.
- Basic vocabulary; unscramble court jargon.
- Recognize “false positive” answers.
- Open-ended questions are best.
- Repeat where needed.
- Be discreet so person is not embarrassed.

Additional Considerations

- Never ignore the person or use offensive labels like “retarded.”
- Mental illness can be treated; do not assume current symptoms are character traits.
- Judges and court staff are often the only guides to bewildering court etiquette.
- Consider guardian ad litem and appointment of counsel where appropriate.
- Staff needs training on cognitive limitations – that involves people with disabilities.
- **YOUR IDEAS?**

Future Steps: Accommodation Plans

- Review current practices throughout court.
- Train, train, train.
- Adopt accommodation plan.

Accommodation Plans: Included Steps

- Invite persons with disabilities.
- Identify ADA coordinator.
- Identify barriers and solutions.
- Establish a procedure.
- Disseminate information about accommodations.
- Maintain directory of available services to accommodate.
- Review and amend court forms and procedures.
- Keep updating the plan.