

***IMPLEMENTING THE AMERICANS WITH  
DISABILITIES ACT IN A TRIAL COURT***

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### **Introduction**

The Americans With Disabilities Act of 1990 is a far-reaching piece of legislation enforced by the U.S. Department of Justice, Civil Rights Division. Signed into law on July 26, 1990 by former President George W. Bush, the Americans With Disabilities Act (ADA) dramatically changed the way courts serve individuals with qualified disabilities. The intent of this landmark legislation is to protect the civil rights of people with disabilities and ensure they have the same opportunities available to persons without disabilities. Courts achieve equity by providing reasonable accommodations to disabled people in order to level the playing field.

The ADA is divided into five sections, Titles I-V. Titles I and II significantly

affect the state courts. The purpose of this paper is to discuss Title II, which addresses access to public services. Title II provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity.” Disabled people have a right to participate in all services offered by the courts.

To allow equitable participation, a court may have to build a ramp so a person in a wheelchair can enter the courthouse, provide a sound amplification headset to someone who has difficulty hearing, or take other action to ensure access. Courts must accommodate people in order to satisfy the requirements of the ADA.

The Eighteenth Judicial Circuit of Florida is comprised of two Central Florida counties, Brevard and Seminole. Incorporating the ADA continually presents challenges. There are 36 judges who serve a total population that exceeds 800,000. The circuit has five courthouses, which are as far as one hundred miles apart. Multiple counties, various courthouses, and geographic separation increase our challenge to implement the requirements of the ADA. This article briefly covers the ADA implementation undertaken in the Eighteenth Judicial Circuit of Florida.

## **Getting Started**

One of the most difficult aspects of compliance is getting started. Unless an official grievance surfaces, it can be tempting to stand still. Additionally, the ADA can be intimidating, causing a court to freeze in its tracks. A proactive approach is preferable to a forced response caused by litigation. Litigation costs and lost staff time can significantly increase the price tag of compliance and possibly tarnish the court’s image. Being proactive is more

productive, less expensive, and provides better customer service. Here are a few suggestions to help your court begin a successful compliance effort. Take time to plan. Invite all the appropriate courthouse players together to discuss concerns and uncertainties. Participants should include individuals from court administration, the local Bar Association, the state prosecutor's office, the public defender's office, the clerk's office, the law library, and the sheriff's office. Be sure to include the entity or entities that are responsible for funding compliance with the ADA. In the case of the Eighteenth Judicial Circuit, those entities are the respective Boards of County Commissioners. Expect participants to ask questions such as:

- What is the ADA?
- How does it affect my operation?
- What is the definition of disability?
- What type of changes might we have to make?

These questions will help you plan a strategy for proactive compliance. A court's strategy plan should include provision for employee education and internal surveys.

Education is a vital front-end activity because the ADA is a mystery to most individuals. The law is complex and difficult to understand, and a working knowledge of the ADA is necessary for compliance. Enlist someone who is thoroughly familiar with the Act to perform the role of instructor. Select key employees from within your organization to attend training, and plan a formal training session. In Florida, the Office of the State Courts Administrator developed and presented training to all of our state courts. During training, discuss the definitions and requirements of the law and make sure that common disabilities and possible accommodations are covered in detail.

For example, hearing impairment is one of the most common disabilities

encountered in the Eighteenth Judicial Circuit. To allow people with hearing difficulties to participate in court services, the Circuit provides several different accommodations, including sound amplification headsets, sign language interpreters, lip reading interpreters, and real time court reporting. Internal surveys are extremely valuable to the planning process by serving as road maps to compliance. A detailed survey instrument will guide a court step by step in its search for areas that require improved access. In Florida, the Office of the State Courts Administrator developed survey forms for use by all our state courts.[\[1\]](#)

Conduct a thorough survey for each facility and every service. Leave no stone unturned. Courts must provide accessibility not only in the courtroom, but also at the clerk's counter, in mediation, in jury assembly, when assisting litigants without attorneys, and in every service provided by the court.

A detailed approach is cumbersome but important to achieve compliance.

For example, related to public telephones our survey asks: (1) Are the public telephones mounted at a height to be accessible to persons who use wheelchairs? (2) Is there at least one public telephone with volume adjustment at each bank of public telephones on each floor? (3) Is there at least one telecommunications device for the deaf (TDD) available for public use? Examine in detail each part of every facility and all court services.

In addition to a survey by court staff, the Eighteenth Judicial Circuit was fortunate to receive the assistance of a local attorney who is disabled and knowledgeable about the ADA. His pro bono review of our facilities and services was very beneficial. The attorney's expertise and first-hand knowledge of the barriers people with disabilities encounter provided a valuable perspective.

## **Implementing the ADA**

After a court completes the education and survey process, it is time to begin the quest for compliance. First, the court should evaluate the survey results, paying particular attention to non-compliant areas. ADA issues can exist in the parking lot, at the building entrance, while using the water fountain, when receiving assistance at a public counter, while participating in a proceeding, and upon visiting a court program.

The most common compliance issues revealed by our survey were a shortage of ramps for entry into elevated areas, absence of Braille signage, and lack of equipment to assist individuals with hearing and vision disabilities. Once deficiencies are known, a court can consider alternate solutions for compliance. The ADA allows the court some flexibility to choose a reasonable method to accommodate individuals with disabilities.

If a public counter is too high for a person in a wheelchair to receive service, the court can lower a section of the counter or provide a lapboard for writing. If a blind individual seeks to get information about the mediation program, the court can record the brochure on audiotape or convert it to Braille. If a deaf litigant is involved in a proceeding, the court can use a sign language interpreter or provide written text through a real time court reporter.

As you look for ways to eliminate barriers, consider long-term costs and the practicality of the solution. When public water fountains are too high for customers in wheelchairs, paper drinking cups and a disposal bin may appear to provide the quickest, most efficient solution. However, with this solution court personnel must maintain a supply of cups, restock cup containers, and empty trash. An angry litigant who decides to kick a disposal bin may add litter control to the cost of this option. In the long run, the least expensive, most effective solution may be to lower the water fountain.

Once solutions are chosen, a court should prioritize the actions it will take to

implement the solutions. In the Eighteenth Judicial Circuit the most common requests for accommodations come from sight and hearing-impaired individuals who want to utilize court services or participate in court proceedings. Therefore, our top priority was to implement solutions that would enable these individuals to fully participate in our services and proceedings. Building alterations, though important, ranked second in priority because most requests related to participation in services.

To facilitate active participation for individuals who have hearing difficulties, we obtained a grant from the Florida Bar Association to study sound amplification options through the use of Assistive Listening Devices (ALDs). As a result of the study, we purchased infrared transmitters and headset receivers. Infrared technology was chosen because infrared does not travel through walls to conflict with ALDs in other locations, and it prohibits eavesdropping outside a specific room.

To assist deaf persons, we worked with local agencies to secure the services of qualified sign language interpreters. We negotiated rates, adopted billing procedures, and developed a procedure to schedule interpreters.

We accommodate sight-impaired persons by working with the Public Library System to convert documents to Braille or audiotape. Sometimes simple solutions are the best. In some instances our accommodation has been to read documents or enlarge them on a photocopier.

Other courts will have different sets of compliance issues, but the process holds true. Get started. Educate your organization. Survey your facilities and services. Evaluate the survey results to determine areas of non-compliance. Consider, choose, prioritize solutions, and implement the solutions.

## **Expect the Unexpected**

A court should expect the unexpected. Over time expect to encounter people with a wide variety of disabilities who require innovative accommodations. Individuals have a broad spectrum of needs, and courts are responsible for providing access by accommodating the needs.

The Eighteenth Circuit has assisted individuals who suffered from agoraphobia and were afraid to leave their homes. Their unique needs were met by sending a court official to their homes, where they were duly sworn and allowed to participate in court proceedings via telephone.

There have been people with extreme chemical sensitivity, who experienced severe allergic reactions to any fragrance. As an accommodation the individuals were allowed to deliver air purifiers a day in advance to purify specific rooms, and staff were instructed not to use fragrant soap, cologne, or scented deodorant on the day of the proceedings.

Other individuals cannot sit for long periods of time. We have allowed them to stand and move around during the proceedings. Occasionally, we have granted a brief recess so the individuals could lie down to rest before resuming proceedings.

Diabetic persons have brought snacks to court events. Individuals with painful ailments have used icepacks during court. Litigants with respiratory problems have used oxygen during mediation. One participant was overly anxious unless given a lap top computer to use for typing notes.

Our courts will be called upon to assist people with a wide variety of disabilities and the accommodations we provide will require careful consideration and innovation. Expect the unexpected.

### **Notice to the Public**

In the spirit of excellent compliance, the Florida Supreme Court issued guidance requiring courts under its jurisdiction to include specific language

on court notices. The verbiage instructs the public how to request an accommodation for a qualified disability and includes the toll free number for the Florida Relay Service, which assists communication by relaying messages between people who use teletypewriters (TTYs) and businesses, agencies, family, or friends who do not have TTYs. (TTYs are also known as TDDs, telecommunication devices for deaf people.)[\[2\]](#)

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### **Going the Extra Mile**

One way the Eighteenth Circuit goes the extra mile is to provide wheelchairs to individuals who have trouble navigating the courthouse on foot. The ADA does not require courts to provide this type of personal device. Going beyond the letter of the ADA may require additional effort, but courts that embrace the spirit of the ADA may find the benefits of improved access far outweigh the costs.

### **Handling Grievances**

No matter how diligent a court is in its compliance efforts, a customer may have a grievance. To handle complaints, a court needs a written grievance procedure. The document should designate the employees who are responsible for coordinating fact finding and responding to the grievance. A court should create a form for a person to file a grievance, establish aggressive time frames to resolve the dispute, and set up records retention guidelines.[\[3\]](#)

For example, the Eighteenth Judicial Circuit in Brevard County received a grievance related to fire alarms in one of our courthouses. The alarms provided audible notification of an emergency, but there was no visual indication that the alarm had been activated. A deaf individual filed a grievance with our ADA Coordinator on our prescribed form. The ADA

Coordinator convened the ADA Grievance Committee, which quickly investigated the concern and recommended alarms that sounded and flashed. The Board of County Commissioners agreed to change the alarms, resolving the issue. A written policy allowed the process to proceed in an organized, expeditious manner.

## **Conclusion**

One in five Americans has a disability. This number will increase as people live longer and develop vision, hearing, and physical disabilities. The ADA is far-reaching, requiring broad accommodation to individuals with qualified disabilities. Courts should deliberately plan to provide for disabled persons the same access that is available to persons without disabilities. It is our responsibility to respond with expert help and humanity. Remember, a proactive approach is preferable to one that is reactive.

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<sup>1</sup> To request a copy of the survey used in the Eighteenth Judicial Circuit write to [mark.vanbever@clerk.co.brevard.fl.us](mailto:mark.vanbever@clerk.co.brevard.fl.us), by email version in Microsoft Word format. You may also contact the National Center for State Courts' library in Williamsburg, Virginia to request *Americans With Disabilities Act Title II Self-Evaluation*, call number KF3469 Z9 A45.

[2] To request by email sample notice language in Microsoft Word format write to [mark.vanbever@clerk.co.brevard.fl.us](mailto:mark.vanbever@clerk.co.brevard.fl.us).

<sup>3</sup> To request by email a sample grievance procedure in Microsoft Word format write to [mark.vanbever@clerk.co.brevard.fl.us](mailto:mark.vanbever@clerk.co.brevard.fl.us).