

**ACCESS TO THE COURTS
FOR
PERSONS WITH DISABILITIES:**

RENEWING THE JUDICIAL BRANCH COMMITMENT



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Office of the State Courts Administrator
500 S. Duval Street
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ACCESS TO THE COURTS FOR PERSONS WITH DISABILITIES: *RENEWING THE JUDICIAL BRANCH COMMITMENT*

Objective: To build a coalition of the judiciary, clerks of court, counties, persons with disabilities, and other interested persons, and engage them in a collaborative effort designed to facilitate practical enhancements to court facilities that will increase compliance with the Americans with Disabilities Act of 1990 and the Florida Accessibility Code for Building Construction. The focus of the project will be to ensure access to courts by persons with disabilities pursuant to Title II of the ADA, with emphasis on structural accessibility.

INTRODUCTION

County courthouses in this nation have historically served as the central point of contact by which the citizenry accesses their government. State and local government services frequently available at the courthouse include:

- Access to the courts as a litigant, victim, witness, or juror;
- Access to the democratic process through registering to vote, speaking at county commission meetings, or serving on councils or commissions; and
- Access to other governmental functions or requirements such as paying taxes, obtaining licenses and permits, recording documents, and obtaining information.

Persons with disabilities have the same right to access the services and programs of their state and local governments as do persons without disabilities.

OVERVIEW OF THE ADA

Former President George H.W. Bush signed the Americans with Disabilities Act into law on July 26, 1990. Passage of the Act marked an epoch in the disability rights movement and has served as a catalyst for a remarkable change in the way our nation responds to persons with disabilities.



According to the U.S. Census Bureau, approximately one in five Americans has some kind of disability, and one in ten has a severe disability. Extrapolating from the national data, one could infer that 3.2 million Floridians have some sort of disability and 1.6 million have a severe disability. However, the occurrence of disability in this state is even higher.¹

Although the likelihood of having a disability increases with age, disability is no respecter of age, sex, or race. Even among children ages 6 to 14, for instance, about one in eight has some type of disability. There are also differences by race and ethnicity. For example, within the 55 to 64-year old group, the proportion with a severe disability is 20% among Whites, 35% among Blacks, and 28% among Hispanics. Additionally, in 1997 women made up the majority of individuals with disabilities, including persons with severe disabilities and those needing personal assistance.

As with some other groups who have experienced historical discrimination, certain legal protections have been afforded to persons with disabilities. The Americans with Disabilities Act (ADA) was enacted by Congress in 1990 to protect individuals with disabilities from discrimination in access to employment, governmental services and programs, public accommodations, transportation, and telecommunications. As stated in the law, the ADA is "an Act to establish a clear and comprehensive prohibition of discrimination on the basis of disability." The ADA is a milestone in our nation's quest to guarantee the civil rights of all citizens.

The Act has five titles, each of which defines and prohibits discrimination on the basis of disability within a specific arena:

"Individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society."

Congressional Findings,
Americans with Disabilities Act of
1990 (42 U.S.C. §12101(a)(7)).

- Title I applies to employment and provides protection for qualified applicants and employees, including judges and court staff.
- Title II applies to programs and services of state and local governments, including the judicial branch. Title II provides that "subject to the provisions of this title, 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 subjected to discrimination by any such entity."

¹ The percentage of individuals with a disability in the United States is 19.3%; for the State of Florida, the percentage is 22.2%. Additionally, in cities with over 100,000 people, at 29.4% Miami has the second highest percentage of individuals with disabilities in the nation. These percentages reflect the number of individuals with some form of disability who are five years of age and older in the United States. This information is based on the U.S. Census 2000; see www.census.gov.

- Title III applies to public accommodations and services operated by private entities. Examples include attorneys, mediators, physicians, hotels, transportation services, restaurants, stores, airlines, and shopping malls.
- Title IV applies to telecommunications.
- Title V contains miscellaneous provisions.

TITLE I: EMPLOYMENT

“Disability is a natural part of the human experience and in no way diminishes the right of individuals to live independently; enjoy self-determination and make choices; benefit from an education; pursue meaningful careers; and enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of society in the United States.”

Congressional Findings,
Assistive Technology Act of
1998 (29 U.S.C. s. 3004).

The purpose of Title I of the ADA is to ensure that all qualified individuals with disabilities enjoy the same employment opportunities available to persons without disabilities. Generally speaking, Title I provides that no covered entity shall discriminate against a qualified individual with a disability, because of the disability of such individual, in regard to the job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, and privileges of employment.

A “qualified individual with a disability” is an applicant or employee with a disability (as defined by the Act) who satisfies the requisite skills, experience, and education requirements of the position the person holds or desires

to hold, and who, with or without reasonable accommodation, can perform the essential functions of the position. Essential functions are the primary job duties intrinsic to the job. A reasonable accommodation is any modification or adjustment to a job, employment practice, or the work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity. Reasonable accommodation is required in three areas: the application process; performance of the essential functions of the job; and enjoyment of equal benefits and privileges of employment. An employer is not required to provide an accommodation that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

The State Courts System honors its Title I obligations by providing accommodations for judicial officers and court employees. Examples include the provision of assistive technology for a judge; modification of a work schedule to allow a court employee to go to doctor appointments; or assignment to an accessible parking space.

TITLE II: ACCESS TO STATE AND LOCAL GOVERNMENT SERVICES AND PROGRAMS

Title II of the ADA applies to programs and services of state and local governments, including the judicial branch. Because more than 3.5 million cases are filed in Florida courts each year, Title II by far accounts for the greatest number of ADA requests received by the court system.²

To be an individual protected by Title II, the individual with a disability³ must meet the essential eligibility requirements for receipt of services or participation in a public entity's program, activities, or services, with or without: (1) reasonable modifications to a public entity's rules, policies, or practices; (2) removal of architectural, communication, or transportation barriers; or (3) provision of auxiliary aids and services. Title II entities are not required to take any action that would result in a fundamental alteration in the nature of a service, program, or activity, or take action that would result in undue financial and administrative burdens. Public entities may not charge a fee or surcharge to the individual to cover the costs of making its programs or services accessible.

The Florida State Courts System honors its Title II obligations by modifying policies, modifying architectural or communication barriers, and providing auxiliary aids and services for parties, jurors, spectators, and others, as required by the Act. An example of modifying a policy is that although animals are prohibited in the courthouse, the courts would allow an individual with a disability to be accompanied by a service animal. Removal of a communication barrier might involve providing court forms in large print, Braille, on diskette, or another accessible format. A recent example of an auxiliary aid or service was the provision of a qualified American Sign Language interpreter for a juror who is deaf and served on a four-week asbestos trial in south Florida. Architectural barriers are addressed in the following section.

ACCESSIBILITY OF FLORIDA COURT FACILITIES

As indicated above, the ADA requires the removal of architectural barriers. In 2004, the Act's requirements regarding the removal of architectural and programmatic barriers to access to the courts was reinforced by the United States Supreme Court in Tennessee vs. Lane. Examples of addressing architectural barriers in the court setting include such items as the installation of ramps, elevators, and/or lifts; inclusion of integrated accessible seating in the courtroom; and modification of seating arrangements for jurors.

"[The Title II] 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."

Tennessee vs. Lane,
541 US 509 (2004)

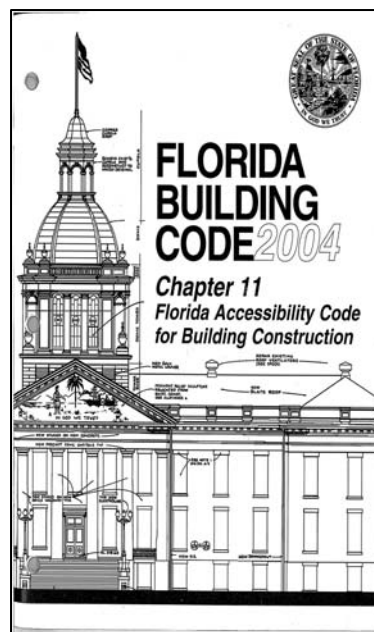
² In addition to legal proceedings before the court, Title II also applies to judicial branch contracting, procurement, site selection, licensing/certification, and other administrative matters.

³ The ADA defines disability as a mental or physical impairment that substantially limits a major life activity.

The Florida Accessibility Code for Building Construction meets, and in some instances exceeds, the federal standards. Indeed, Florida is one of the few states whose building code has been certified by the United States Department of Justice as meeting or exceeding the requirements of the ADA Accessibility Standards. This means that Florida architects and building managers need only to consult one set of guidelines, rather than two or more.

The ADA did not require that all existing facilities immediately be made accessible. Rather, the law established three levels or standards:

- For **existing structures**, public entities were required to conduct self-evaluations, and develop and implement transition plans. Contrary to a popular misconception, there is no “grandfather provision” for courthouses or any other facility.
- In making **alterations to an existing building**, public entities are required to meet accessibility standards. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992. The regulations require that a proportionate amount of the alteration construction budget be spent toward this goal, and the U.S. Department of Justice has defined that as up to 20% rate of the project budget.
- **New construction** must be readily accessible to and usable by individuals with disabilities. Each facility or part of a facility constructed by, or on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.



A public entity’s services, programs, or activities – when viewed in their entirety – must be readily accessible to and usable by individuals with disabilities. If a court service or program is provided in an older facility that is not yet fully accessible, the court must provide program accessibility. In doing so, priority must be given to the method that results in the most integrated setting. Methods of achieving program accessibility may include aids, equipment, or relocation. For example, if the public information counter is too high for persons who use a wheelchair, a staff person could step out of the booth to speak with the individual. If a jury box is not accessible to a person who uses a wheelchair, the court may seat the entire first row of jurors in front of the jury box. Another example of program accessibility is that the court could move a proceeding to another facility that is accessible, when necessary.

In the 1990s, through the Article V Trust Fund, small counties received state grant-in-aid funding to assist them in modifying their courthouse facilities in compliance with the ADA and other safety requirements. ADA compliance was a priority for the use of the funds and was emphasized by the Office of the State Courts Administrator (OSCA) in the administration of these grant-in-aid agreements. The Florida Legislature has continued to assist small counties with their courthouses, on an intermittent basis. This has been especially beneficial to the more rural areas of the state and has no doubt resulted in increased accessibility of these important government facilities, although much remains to be done in all court facilities.

Court facility accessibility issues in the Florida State Courts System are administratively and legally complex. The state courts are housed in a total of 138 state and local facilities throughout Florida. The State of Florida is responsible for facilities that house the appellate courts. The state constitution and state statutes provide that counties are responsible for the facilities that house the trial courts.⁴ Accordingly, the State Courts System is obligated to make its trial court services accessible, but has limited control over the facilities in which its trial courts are located. The Florida State Courts System must work with the owners of court facilities – be that the state, a county, or a landlord – to ensure safe, healthy, and accessible courts.

Implementation of the Article V funding transition on July 1, 2004, resulted in some changes regarding the fiscal responsibility associated with trial court compliance with the ADA. Prior to the Article V funding transition,⁵ the counties bore much of the financial burden for trial court compliance with the ADA. The Article V funding transition resulted in a more balanced distribution of court-related ADA costs between the state and local government.

For these reasons, it is crucial that court accessibility efforts be coordinated with county units of government and, indeed, the cooperation of all three branches of government at both the state and local levels is necessary for success.

⁴ Article V, section 14(c), Constitution of the State of Florida states that: “Counties shall be required to fund the cost of...construction or lease...of facilities for the trial courts...” Section 29.008, Florida Statutes, implements that constitutional language by stating that “Counties are required...to fund...the cost of construction or lease...of facilities for the circuit and county courts.... The term also includes access to parking for such facilities in connection with such court-related functions.... The office space provided by a county...must include physical modifications and improvements to all facilities as are required for compliance with the [ADA].”

⁵ The 1997 Constitution Revision Commission proposed a revision to Article V, the article of the state constitution that establishes the Judicial Branch. On November 3, 1998, the voters of the State of Florida approved the amendment, which, among other things, placed greater responsibility on the State for funding of the trial courts, by July 1, 2004.

RENEWING THE JUDICIAL BRANCH COMMITMENT TO ACCESSIBLE COURT FACILITIES

Following the enactment of the ADA, the state courts conducted branch-wide self-evaluations and developed transition plans. However, greater statewide emphasis over the past decade and a half has been placed on program accessibility and other ADA compliance matters that are more directly under the control of the State Courts System than on accessibility of court facilities. As America celebrates the 16th Anniversary of the enactment of the ADA, it is timely and appropriate for the judicial branch to once again make a comprehensive review of the accessibility of its court facilities and to develop updated transition plans designed to ensure continuing and meaningful progress toward full accessibility of all courts in Florida.

The purpose of this initiative is to build a coalition of the judiciary, clerks of court, counties, persons with disabilities, and other interested persons, and engage them in a collaborative effort designed to facilitate practical enhancements to court facilities that will increase compliance with the Americans with Disabilities Act of 1990 and the Florida Accessibility Code for Building Construction. The focus of the project will be to ensure access to courts by persons with disabilities pursuant to Title II of the ADA, with emphasis on structural accessibility.



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The need for accessible court facilities is tremendous and the impact on individuals with disabilities who have business before the courts is incalculable. This project is a statewide effort affecting all Florida courts and the people they serve. There are over 4,000 State Courts System judicial officers and employees in courts throughout the state. There are also approximately 5,800 employees in the 20 state attorneys' offices and 2,700 employees in the 20 public defenders' offices.⁶ An additional 8,500 employees have been reported as employed in the 67 offices of the clerks of courts.⁷

⁶ Florida Legislature, Office of Program Policy and Government Accountability, Florida Government Accountability Report, 2005.

⁷ Florida Clerks of the Circuit Court Fiscal Year 2004-05 Certified Article V Budgets for Submission to the Florida Legislature, October 15, 2004, Compiled by the Florida Clerks of Court Operations Corporation

Many other Floridians will benefit from improved accessibility of courts, as well. As previously mentioned, more than 3.5 million cases a year are filed in Florida courts. Collectively, those cases involve a multitude of parties, victims, witnesses, jurors, and other interested persons, all of whom will benefit from accessible courts. Numerous other people stand to benefit from this initiative, as well, including attorneys, court interpreters, court reporters, mediators, and other law-related professionals who frequently interact with the courts.

Critical components of the project include surveying the accessibility of all court facilities, developing updated transition plans, and implementing the plans. The self-evaluations and transition plans should be completed by May 2008, while implementation of the transition plans will occur on an ongoing and long-term basis. The Supreme Court Standing Committee on Fairness and Diversity, along with its Court Accessibility Subcommittee, will provide broad oversight and guidance for the initiative. Input from members of the disability community will be sought throughout the process, including a statewide summit to be convened during the planning phase for the purpose of soliciting input from multiple disability organizations on the project design.

Each chief judge will be required to designate a Court Accessibility Team to oversee the project within the respective jurisdiction. The model appellate Court Accessibility Team may include the chief judge or other judge, marshal, clerk, court ADA coordinator, and members of the county disability advisory council(s) or other persons with disabilities. The model Court Accessibility Team at the trial court level may include the chief judge or other judge, trial court administrator, court ADA coordinator, county ADA coordinator(s), county commissioner(s), county administrator(s), clerk(s) of court, and members of the local disability advisory council(s) or other persons with disabilities.

Training will be presented to assist the Court Accessibility Teams in conducting effective self-evaluations and developing successful transition plans. Checklists, survey forms, and model transition plans will be developed and provided. Consultants will be utilized to assist with statewide training sessions for the team, as well as provide onsite technical assistance visits, and develop survey instruments and model transition plans to facilitate courthouse accessibility. Following the initiative, training and technical assistance will continue to be provided on an ongoing basis by staff of the Office of the State Courts Administrator.

Upon request by a person with a disability,
this document will be made available in
audiotape, Braille, large print, or electronic file.
To order this document in one of these
Alternate formats, please contact:

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Persons with speech or hearing impairments
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