

# Raising the Bar: Best Practices for Legal Advocacy for People with Disabilities

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# Who is Disability Independence Group?

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# Disability Independence Group, Inc. (DIG)

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- DIG's mission: to expand opportunities for participation, education, employment and acceptance of persons with disabilities through advocacy, litigation, education, and training.

# What is the ADA? How Can It Be Used to Advocate for Clients with Disabilities in Legal Settings?

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# Obligations of State or Administrative Courts

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- Title II of the Americans with Disabilities Act provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132.
- Cannot deny a reasonable accommodation that helps them participate equally.

# Obligations of State or Administrative Courts (2)

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- Cannot deny auxiliary aids or services to provide information in a format that is accessible to a person with a disability.
- Cannot be treated differently in the terms, conditions, or provisions of services because of a disability.
- Only exception: if the accommodation would be an undue burden or fundamental alteration of services/ purpose.

# Full and Equal Opportunity to Participate

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- People with disabilities must be provided the same opportunities to benefit from or participate in a court's programs, services, and activities as individuals without disabilities.
- This may require the aids and services that are different from those provided to others.

# Full and Equal Opportunity to Participate (2)

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- Programs, services, and activities include the entire program which the Court is part of:
  - ✓ Family law – parenting classes, counseling, and visitation
  - ✓ Dependency – reunification programs and services
  - ✓ Traffic – driving classes, testing issues
  - ✓ Court proceedings – mediation, accessible documents, effective communication



# Attorneys and Private Entities' Obligations

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- A private lawyer or a private entity must not discriminate against persons with disabilities when providing services.
- Attorney may need to modify his or her policies and practices to accommodate a person with a disability, even if another accommodation is not readily achievable.
- Readily achievable = easily accomplishable and can be carried out without much difficulty or expense.

# Attorneys and Private Entities Obligations: Examples

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- Ex. 1 – not readily achievable to remove an architectural barrier
  - Lawyer could meet a client who uses a wheelchair at the client's home, or at a different, accessible location.
- Ex. 2 – an undue financial burden in the scope of a lawyer's entire practice to obtain a sign language interpreter
  - A discussion can be held between the lawyer and client to find some alternate method to provide effective communication, such as placing items in an electronic format for the Blind, or using the video relay system for a Deaf client.

# Federal Programs and Services

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- Similar to state and local courts, Federal Courts must have internal policies to ensure accommodations are provided to persons with disabilities.
- Federal agencies, and entities that receive federal money (like courts) are subject to Section 504 of the Rehabilitation Act, and may not discriminate.
- The interpretation of the Rehabilitation Act and the ADA are identical.

# Question #1:

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**Is there a limit of the accommodations that can be provided to a person with a disability in the Justice System?**

**Answer in the chat box!**

# Determining What Accommodations to Request for Your Client with a Disability

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# Rule 1 – You Knows His or Her Disability and Needs

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- *Always* speak to your client about his or her disability and to find out what accommodations he or she usually has.
- DO NOT rely on parents, family or friend to determine what the preferences are of a person with a disability.
- DO NOT speak to a parent, family member or friend in lieu of the person with a disability.

# Rule 1 – Your Client Knows His or Her Disability and Needs (2)

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- The goal is to ensure that your client:
  - Is empowered; and
  - Has an equal opportunity to benefit from the programs and services as people without disabilities.
- Lessening your client's input is taking self-determination away from the client.

# Rule 1 – Your Client Knows His or Her Disability and Needs (3)

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- Sometimes there may be several accommodations that are available and will address the disability-related need.
- If your client is unfamiliar with the accommodation or it is not their proposed accommodation, it may be ineffective for your client.
- The person knows what he or she needs.



# Questions about Accommodations

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- Persons with disabilities have different needs depending on:
  - their disability
  - history of accommodations
  - level of independence, and
  - many other factors.
- Each person is unique.
- The discussion with a client involves barriers, and responses to questions regarding what accommodations would be needed for that individual.

# Rule 2 – You Should Determine the Barriers in the Program or Service

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- After learning about your client's disability, review the court process / legal program to determine the barriers your client might face.
- In addition, review the policies and procedures in your practice to ensure that the barriers to your services are removed as well.

## Rule 2 – You Should Determine the Barriers in the Program or Service (2)

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- If you have any questions, speak to your client.
- Talking to your client:
  - Shows that you are not making assumptions about your client's needs; and
  - Allows the client to participate in the efforts to ensure equal opportunity.
- Ensuring accommodations is part of effective advocacy.

# Questions about Accommodations – Sensory Disabilities

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Blind or low vision -

- What do you need to read documents?
- Do you use a screen reader program?
- How do you prefer I send you documents?
- Do you have any transportation issues or needs?

# Questions about Accommodations – Sensory Disabilities (2)

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Deaf or Hard of Hearing -

- Do you need an interpreter, a CDI (Certified Deaf Interpreter)?
- Do you need me to review the documents with you?

# Questions about Accommodations – Physical, Invisible, or Psychological Disabilities

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- The needs of persons with physical or invisible disabilities are varied, and may require a discussion to determine the type of accommodation the person prefers.
- An accessible environment in compliance with the specifications of the ADA will satisfy the needs of most persons with mobility disabilities.
- For example, accessible parking spaces, doors, bathrooms and accessible paths throughout the facility will make the facility usable for a person who uses a wheelchair.

# Questions about Accommodations – (2)

## Physical, Invisible, or Psychological Disabilities

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- However, many persons with disabilities have other needs that are not easily observed, which may include the following examples:
  - Need for additional breaks to stand or stretch, or to use the bathroom.
  - Inability to leave an institution or a home.
  - Inability to concentrate or exhaustion for proceeding more than a set time.
  - Use of a service animal.
  - Need for plain language documents.

## Question #2:

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What is the most important issue in determining the best, and most effective accommodation for your client?

Please put your answer in the chat box.



# How to Request Accommodations

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# ADA Coordinator vs. Judge

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- Every public entity that employs 50 or more persons have a person who is in charge of ADA compliance – courthouses have an ADA coordinator.
- This is usually the point person for requesting any type of accommodation.
- Each judge controls the procedures in his or her own courtroom. If accommodations involve the proceedings itself, the request needs to be made of the judge.

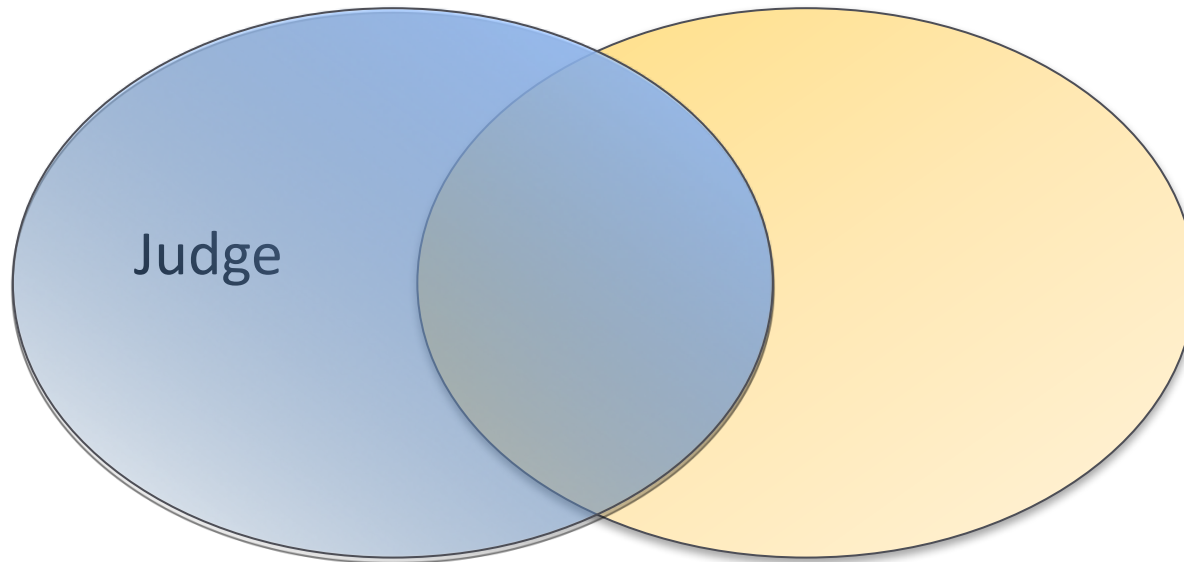
# ADA Coordinator vs. Judge (2)

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- If there is cost involved in securing the accommodation, the ADA coordinator should be involved.
- Because of the overlap, best practice is to ask both the ADA coordinator and the judge.

# ADA Coordinator vs. Judge (3)

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# Avoiding the Adversarial Process

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- Any issue before the court is subject to the adversarial process.
- Attempts should first be made to the ADA Coordinator before requests are made to the Court.
- Any request that involves a party or witness' disability should be requested with notice to the Court as to the rights under the ADA or Section 504.
- There must be a connection between the disability and the request made.

# What Type of Proof is Required?

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- Judges do not receive in depth training in disability issues.
- They may not understand the disability or the requested accommodation.
- The judge may need further explanation as to why an accommodation is necessary, and will not be a fundamental alteration to the Court process.

# What Type of Proof is Required (2)

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- If the disability and the need for accommodation is not obvious:
  - Be prepared to have documentation from an expert to attest to the disability and the need for accommodation.
  - If necessary, the expert may need to present live testimony for the Court.

# Procedural vs. Substantive Accommodations

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- To ensure that a court program or service is accessible for a party with a disability, the Court may need to order additional services. Examples include:
  - Deaf specific victim counseling for a Deaf person
  - Additional home health care to prepare for family reunification
- To ensure participation in a program or service, a procedural change may be required, such as:
  - Participation by telephone at a hearing
  - Special setting or limitation of length of testimony
  - Assistance communicating



# If Accommodations Are Denied.....

## Within a Proceeding/ Case

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- If the failure to accommodate affected the fairness of the proceeding, it needs to be appealed to the appellate court for that jurisdiction.
- The failure to accommodate a person with a disability, where clear or obvious, may be a basis for recusal of that judge (the judge withdrawing from hearing the case)
- The denial may be proof that the party is not receiving a fair trial, or bias or prejudice by the judge.

# If Accommodations are Denied.....

## Outside of the Court Case

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- If the accommodation involves access to the court or the courthouse, and is not material to the specific case, then the matter can be the subject of an ADA claim.
- It will not effect the case.

# Question #3:

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How do you request a sign language interpreter for a court hearing versus requesting a sign language interpreter for a parenting class?

Please put your answer in the chat box.

# How Can You Advocate to Make Systemic Change?

## Supreme Court of Florida

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No. SC09-1487  
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**IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL  
ADMINISTRATION 2.540.**

[May 20, 2010]

PER CURIAM.

The Florida Bar's Rules of Judicial Administration Committee (Committee) has filed an out-of-cycle report proposing amendments to Florida Rule of Judicial Administration 2.540, Notices to Persons with Disabilities. We have jurisdiction.

See art. V, § 2(a), Fla. Const.

# Ensure that Courts Comply with the ADA

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- Each Court system has a procedure to comply with the ADA.
- They must provide notice of rights under the ADA and remedies if such rights are violated.
- Use the ADA coordinator – he or she ensures that accommodations are in place.
- Judges are trained on the requirements to change their practices to accommodate participants who have disabilities.
- Judges are aware that they can order accommodations to ensure equal treatment.

# Ensure that Lawyers Comply with the ADA (2)

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- Effective advocacy demands respect for the rights of others, including persons with disabilities.
- Law offices should ensure that their offices are compliant with standards under the ADA and other applicable disability laws, at a minimum.
- As effective communication is part of an attorney's professional responsibilities, lawyers must ensure that persons receive information in formats that they can understand.

# Systemic Change Outside the Courtroom

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- Local Level
- State Level

# Ensure that the Justice System Includes Persons with Disabilities

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- Approximately 25% of the population has a disability.
- However, there are fewer persons with disabilities as lawyers or in affiliated positions in the justice system.
- The lack of persons with disabilities employed in the justice system results in systemic discrimination to persons with disabilities who participate in the process and difficulties in obtaining equal provisions of programs and services.



## Question #4:

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Do the Rules of Professional Responsibility require a lawyer to provide an accommodation to his or her own clients?

Please put your answer in the chat box.

# Thank you!



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# Questions?



# Thank you!

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Please take a moment to complete our online [survey](#) about this webinar.

Please join us for the next webinar in our 2018 End Abuse of People with Disabilities webinar, on March 20, 2018 from 2-3:30 pm Eastern.

[Register here.](#)