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## Tennessee Judicial Branch Americans with Disabilities Act Policy Regarding Access to Judicial Programs

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## **Appendix**

### *Tennessee Judicial Branch Americans with Disabilities Act Policy Regarding Access to Judicial Programs*

#### **I. Introduction**

The Americans with Disabilities Act, 42 U.S.C. 12131 *et seq.*, prohibits discrimination against any qualified individual with a disability. Pursuant to the provisions of the ADA and 28 C.F.R. 35.130, the Judicial Branch of the State of Tennessee does not permit discrimination against any individual on the basis of physical or mental disability in accessing or participating in its judicial programs. Consistent with this policy, the Judicial Branch for the State of Tennessee shall conduct its services, programs or activities, when viewed in their entirety, in a manner that is readily accessible to and usable by qualified individuals with disabilities. This standard does not require that each existing facility be accessible, but rather ensures “program accessibility” which may be provided by methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate sites. In choosing among available methods for meeting this requirement, the State of Tennessee shall give priority to those methods that offer the services, programs and activities of the Judicial Program in the most integrated setting appropriate. In furtherance of this policy and to ensure that those responsible for the administration of justice have a set of guidelines from which they will be able to execute this policy, the following guidelines and principles are hereby adopted.

## **II. Standards For Access To The Judicial Program Of The State Of Tennessee**

1. The Tennessee Judicial Branch will provide reasonable modifications in its rules, policies, services and practices, when necessary, to provide effective access to a qualified individual with a disability. A “reasonable modification” may include, but is not limited to, making a change in or exception to policies, practices, and procedures; furnishing, at no charge, to the qualified individual with disability auxiliary aids and services, which include but are not limited to equipment, devices, materials in alternative formats, and qualified interpreters or readers; and relocating judicial programs, services or activities to alternate accessible facilities or alternate accessible sites; or making each service, program or activity, when viewed in its entirety, readily accessible to be usable by qualified persons with a disability requesting modifications.

2. In the event that the reasonable modification requires relocation of a judicial program, service or activity to an alternate facility or site, the alternate facility or site shall comply with the requirements of the Americans with Disabilities Act and the Tennessee Public Buildings Accessibility Act. The alternate facility or site shall also comply with Tennessee law concerning the location of county courthouses.

3. The Local Judicial Program ADA Coordinator in a county where the county courthouse is not ADA compliant, shall maintain a list of alternate facilities or sites that may be used for relocation of judicial programs, services and activities. An up to date copy of the alternate facility or site list shall be submitted to the Tennessee Judicial Program ADA Coordinator.

4. The following terms are relevant to the operation of this policy. These definitions are derived from the provisions of 28 C.F.R § 35.104. Other definitions material to the operation of this policy but not otherwise contained herein may be found at 28 C.F.R § 35.104.

(a) Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(b) Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure or equipment is located.

(c) Individual with a disability means a person who has a disability.

(d) Qualified individual with a disability means an individual with a disability who, with or without reasonable modification to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

5. The Tennessee Judicial Branch has Judicial Program ADA Coordinator, employed by the Administrative Office of the Courts (AOC), who oversees the administration of this policy, any complaints associated with issues raised by this policy, and Requests for

Modification under the Americans with Disabilities Act within the Judicial Branch, and will have the ultimate responsibility for compliance with this policy. . . .

6. The Tennessee Judicial Program ADA Coordinator will designate a Local Judicial Program ADA Coordinator for each county in a judicial district, who will be responsible for handling all Requests for Modification to access judicial programs, activities and services within that county. The Local Judicial Program ADA Coordinator should be involved with or familiar with the judicial program of the county.

### **III. Request For Modification For Access To Judicial Programs**

7. Submission of Request. Persons requiring modification to obtain access to judicial programs, services or activities at any facility used for such purposes should contact the Local Judicial Program ADA Coordinator (Coordinator). A written Request for Modification is preferred. However, this request may be made by telephone to the Coordinator. In such instances, the Coordinator shall commit such requests to writing. The Coordinator shall maintain a record of all Requests for Modification. A Request for Modification form is available and may be obtained from the Local Judicial Program ADA Coordinator, the Tennessee Judicial Program ADA Coordinator, any court clerk's office, or online at [www.tsc.state.tn.us](http://www.tsc.state.tn.us). If appropriate or upon request, the Local Judicial Program ADA Coordinator or the Tennessee Judicial Program ADA Coordinator will provide assistance with writing and submitting the written request for Modification. Large print and Braille versions of the Request form are available upon request.

If appropriate, other personnel associated with the judicial program, service or activity may assist the

applicant in the submission of a completed Request for Modification to the Coordinator.

The written Request for Modification shall include a description of the person's disability, the role of the person in the judicial proceeding, the Modification sought, the date and time of the Modification requested, and the judicial proceeding for which the Modification is sought. Once a Request for Modification has been granted, the Local Judicial Program ADA Coordinator will advise the applicant of the procedure to be followed with regard to subsequent proceedings associated with the original Request. If necessary, the Local Judicial Program ADA Coordinator may require the applicant to provide additional information about the qualifying disability in order to determine the appropriate Modification to meet the applicant's needs, but only such information that may be required to make such a determination. Under no circumstances will the Local Judicial Program ADA Coordinator be permitted to request information regarding the applicant's disability that is not necessary for the evaluation of the Modification requested.

#### 8. Who Should Submit a Request for Modification.

An application requesting Modification may be submitted by any lawyer, party, witness, juror or other individual with an interest in attending any judicial program, activity or service or another person on behalf of such interested person.

9. When to Submit a Request. The Request for Modification should be submitted with as much advance notice as possible, but in any event should be made no less than five (5) business day prior to the date for which the Modification is sought. An immediate request for Modification should be made when urgent and/or emergency circumstances arise. In criminal cases where a defendant is confined to jail, the Request for Modification

should be made as soon as possible. However, it may be necessary that the Request for Modification may be made contemporaneously with his or her initial court appearance.

10. When There Is No Request. In the event that a person requiring a Modification has not made a timely Request for Modification, the court may, in its discretion, immediately grant such Modification without requiring an advance written request. In such a case, a request for Modification form shall be completed by either the person requesting Modification or court personnel for the court's records. Alternately, the court may, in its discretion, postpone, reschedule or otherwise delay the judicial program, service or activity affected. Under such circumstances, the individual requesting Modification shall be required to immediately submit a written request. If appropriate or upon request, court personnel will provide assistance with writing and submitting the request for Modification.

11. Provision of Reasonable Modification. The Local Judicial Program ADA Coordinator will, as soon as practicable, notify the requesting individual of the Modification to be provided. An alternate Modification may be offered instead of the requested Modification if the Local Judicial Program ADA Coordinator determines that another equally effective Modification is available.

12. Additional Time to Achieve Modifications. If the Local Judicial Program ADA Coordinator determines that additional time may be necessary in order to achieve and/or obtain Modification, the Local Judicial Program ADA Coordinator shall notify the judge presiding over the matter, who will determine an appropriate course of action.

13. Denial of a Request for Modification. A request for Modification may be denied only if the Local Judicial Program ADA Coordinator finds that:

(a) The person making the request is not a qualified individual with a disability; or,

(b) The requested Modification would create an undue financial or administrative burden; or,

(c) The requested Modification would fundamentally alter the nature of the judicial program, service or activity; or,

(d) Some other Modification would be as effective and involve less cost or inconvenience; or,

(e) The applicant has refused to comply with this Policy; or,

(f) The applicant's failure to comply with this Policy makes impossible or impracticable the ability to provide the requested Modification.

14. No employee of the Judicial Branch of the State of Tennessee shall retaliate against any person who exercises his/her rights under the Americans with Disabilities Act or who requests modification pursuant to this policy.

#### **IV. Appeal Of An Adverse Decision As To A Request For Modification**

15. Appeal to Presiding Judge of Judicial District. If a Request for Modification is denied or the offered alternate Modification is unsatisfactory to the applicant, the applicant may appeal the decision of the Local Judicial



Program ADA Coordinator to the presiding judge of the judicial district within ten (10) days of the denial of Modification or offer of alternate Modification. The judge shall rule on the appeal as soon as practicable, and where possible, in advance of the date of the hearing for which the Modification is requested.

16. Appeal to Administrative Office of the Courts. If an applicant is dissatisfied with the ruling of the presiding judge resulting from a request for review, the decision may be appealed to the Director of the Administrative Office of the Courts, or her designee, within ten (10) days of the ruling by the presiding judge on the request for review. A written request must include any reasons for disagreement with the previous determinations, as well as the remedy sought. The Director shall provide a ruling as to the request as expeditiously as possible.

## **V. Public Notice**

17. A public notice shall be posted in visible places throughout each facility where judicial programs, services and/or activities are held, including but not limited to each court clerk's office, that identifies the Local Judicial Program ADA Coordinator and the Tennessee Judicial Program ADA Coordinator. Such public notice shall also provide a website address where a copy of this policy, implementation guidance, and Request for Modification form may be obtained electronically. Should the courthouse facility within which judicial programs, services and/or activities are provided be inaccessible, a public notice shall be posted on the outside of the building or at another such location at or near the building that is readily accessible.

## **VI. Notice On Documents Compelling Court Participation**

18. When a summons, subpoena, juror summons or other pleading, order or document compelling participation in a judicial program, service or activity is issued, said documents shall provide notice of the identity of the Local Judicial Program ADA Coordinator, the Tennessee Judicial Program ADA Coordinator and a specific designation as to how each may be contacted, including telephone numbers and email addresses. Such notice shall also provide information about program accessibility and the procedure for submission of requests for reasonable modifications. Such notice shall also provide a website address where a copy of this policy and Request for Modification request form may be obtained electronically.





