

BENCH CONDUCT FOR TEMPORARY JUDGES

PARTICIPANT MATERIALS

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BENCH CONDUCT FOR TEMPORARY JUDGES

Contents

<u>Title</u>	<u>Page No.</u>
1. Watson Transcript	1
2. Demeanor Hypos	6
3. Unifying Principles of Judicial Ethics	7
4. Active Listening Checklist	12
5. Body Language Checklist	13
6. Constructive Feedback Checklist	14
7. Practical Tips: Self-Represented Litigants	15
8. Proposed Best Practices for SRLs	18
9. Form MC-410 – Request for Accommodations (last revised 2010)	23
10. Rule of Court 1-100 (2012)	24
11. Bench Card on Providing Accommodations	28
12. The Ten Commandments – Mental Health Disability	30
13. Ten Tips for Communicating with People with Disabilities	32
14. Ten Tips for Interacting with People Who Are Blind	33
15. Ten Tips for Talking to People with a Hearing Loss	34
16. Disability Terminology Chart	35
17. Service Animals (DOJ-2011)	36
18. Disability Accommodation Laws Overview Sheet	39
19. Disability Symbols Quiz	43
20. Disability Symbols Quiz - Answers	45

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Transcript from *Watson Case*

Transcript

Narrator: The following is from the transcript of an actual case during a hearing in which a party was seeking a permanent injunction in a dispute between neighbors. There had previously been a nuisance lawsuit that resulted in a settlement creating reciprocal temporary restraining orders, but, in spite of this settlement, one of the parties wanted a full evidentiary hearing seeking a permanent injunction against the other.

The hearing was fiercely contested, and consumed more than one day with numerous witnesses. Reading of the transcript took up most of the time of the hearing.

Mr./Ms. Cross represented Mr./Ms. Pardo, and Mr./Ms. Good represented Ms. Hill. Although the following excerpts from the transcript of proceedings are not complete and some have been summarized, it reflects what took place during this hearing.

The Court: You know, counsel, both of you, what I am leading up to, what I am intimating, what I am implying, is maybe this case is no big deal.

The people obviously are willing to devote a lot of their psychic energy and some of their money to doing this, but the end result, and I don't intend to get to the bottom of it if I don't have to, I would love to spend the rest of the day listening to these people calling each other names, but if it is to stay away from each other, to not be rude or something to each other, they have no reason to communicate, no surveillance, there is no reason for any of that. So far I haven't heard one thing that is out of line.

Why don't we just draft an order that fits them both and I don't have to figure out who is doing what?

Mr./Ms. Cross: [Mr./Ms. Pardo will not agree to a restraining order, and wishes to proceed to prove that Ms. Hill's claims of a surveillance camera and of my client's use of his vehicle as a weapon were fabrications.]

The Court: It is clear to me you intend to spend a lot of money on this for some --

Mr./Ms. Cross: It is not the money. It is the principle.

The Court: Could I finish my remarks.

Intends to spend a lot of money on this to feel gratified, “ I got her” or whatever. Like it proves something, and it doesn’t prove anything.

I don’t feel like spending the afternoon listening to it. I probably will. When you two guys look me in the eye at the rates you are charging and say “we object to your ordering both parties to act with good manners and leave here,” that that won’t work for you. That is not good enough. We want to fight some more.

...

I am irritated at this. I do not think this is good sense or good use of these resources that I govern. We have people that have real problems. People that get killed.

Mr./Ms. Cross: [The parties had attempted but failed to settle the case without the court’s assistance. They had been ordered back for an adversary hearing, and Mr./Ms. Pardo was concerned about the safety of his children.]

The Court: [There should be a mutual restraining order.]

Mr./Ms. Cross: All I am saying ...

The Court: You can call every witness you want. I think this is a great way to spend time and money....

I don’t like to be an accessory to it. I think it is a waste of time. These are the kind of lawsuits that make people mad when they get on jury service. Dumb cases in court.

Mr./Ms. Cross: If the court wants to pass the matter to hear these other matters, it is fine with me.

The Court: The other matters are just as bad as this one. It is the same thing. The only thing I tell myself, the only reason I can sleep is that the only thing I accomplish is they probably don’t kill each other in the street.

Mr./Ms. Pardo, are you having a good time?

Mr./Ms. Pardo: No.

The Court: You look like it. You have a big smile on your face.

Now we will get to call each other names. I wish I had a sandbox.

Narrator: During testimony of a police officer, Mr. Cross said he wished to read from the officer's deposition on an issue.

The Court: ... believe me, the last thing in the world I would look at unless somebody points a gun at my head is a deposition in this case. I don't even want to hear this case, let alone read depositions.

This is just kid's day at the beach. People like to come to court and throw mud at each other.

Mr./Ms. Good: Your honor my next witness will be a priest.

The Court: Oh, he is. He is maybe praying for your salvation.

Narrator: During the testimony of a witness concerning Mr. Pardo's driving habits, Mr./Ms. Good objected to the comedy he thought was taking place in the courtroom between the Court and Mr./Ms. Cross.

Mr./Ms. Good: I want the record to show I don't consider this comical and I am not happy to be here.

The Court: I don't consider it comical either. I consider the fact that we are doing it comedy. I think it is a serious misuse of public funds. It costs \$10,000 a day to keep this courtroom going, and to devote it to this sort of egotism is a terrible thing. But we all try to stay sane in our own way, counsel.

...

Narrator: The testimony and colloquy between the Court and counsel, along with similar comments continued for some time. Another example is the following:

Mr./Ms. Cross: Your Honor, I just want to point out, put on the record I am just trying to put on my case, and that I'm just trying to elicit testimony from my client, and I would ask the court to be patient, dignified, courteous to my client. That's all I'm asking.

The Court: Well, let's talk about that.

Do you think I've done something this morning that's been discourteous or impatient or unprofessional to your client?

Mr./Ms. Cross: Not this morning.

Checklist

1. **Noticing the emotion.** Identify the irritant/event/annoyance/conduct of others/etc. that caused Watson to react.
2. **Translating the emotion into information.** What do you think the irritant/emotion, etc., is telling you as to how it is bothering the judge?
3. **Describing the response.** Characterize in your own words the nature of Watson's response.
4. **Why the response is not productive:** Describe in what ways this response was or was not productive in achieving the objectives—overall and particular— listed on the SmartBoard.
5. **After reflection, describe what you think a productive response would be:** You have, so far, noticed the “irritant”, and you have described above the one or more ways Watson's response was not productive. SO NOW DESCRIBE, VERBALIZE, the one or more *appropriate responses* to the irritant *and why it is appropriate.*

Appropriate means a response that is lawful and also advances proper objectives of the proceedings over which the judge is presiding.

Bench Conduct for Temporary Judges

Demeanor Small Group Exercises

HYP0 1

A judge has a rule that counsel are to stand when they make objections. The lawyer failed to do so twice. The second time, the judge called the lawyer to the side bar, and, angrily swearing in a loud voice, scolded the attorney at length.

What is the appropriate response?

HYP0 2

During trial, the judge learned that the prosecutor spoke to a defendant who was represented by counsel. The judge made the prosecutor call a supervisor and remain in court until the supervisor arrived. The judge accused the lawyer of unethical conduct, of being a disgrace to the profession, and threatened to report him to the State Bar. It turned out there was no improper conduct.

What is the appropriate response?

HYP0 3

The Court of Appeal reversed a case and remanded it to the trial judge for further hearing. The judge believed the appellate ruling to be wrong and at the hearing made angry remarks to that effect. When counsel suggested concern that the judge was prejudging and may lack impartiality, the judge angrily said, "Let the Court of Appeal reverse."

What is the appropriate response?

David Rothman’s Unifying Principles of Judicial Ethics

I. The Central Principle of Being a Judge

The Code of Judicial Ethics is not some arcane set of fussy and preachy rules that are, at best, a nuisance for judges. The Code, in fact, sets out the basic ideas and ideals of what being a judge is all about, whether we are talking about rules related to what goes on in the courthouse or in private life. Although there are over 120 rules in the Code, there is really one overarching idea that is the common thread that connects not only the rules of the Code of Judicial Ethics, but all the provisions of the law that govern what judges do in proceedings as well. ALL the rules and aspirations in the code are aimed at achieving one idea:

To ensure the integrity and honesty of the process of judicial decisionmaking and of judicial decisions.¹

This is what it means to be a judge.

II. The Eight Pillars of Being a Judge

PILLAR I—Awareness of Being a Judge

Always be mindful that you are a judge—whether on the bench, at a party, or on Facebook.

As you go about your life, constantly running in the background—like an anti virus program—is the awareness that you are a “judge.” This awareness needs to be developed over time, automatically kicking in when information, events or perceptions reach you. *You are a judge, a public figure*, who is seen as a symbol of the system of justice.

As a symbol of the judicial institution you bear the burden of expectations about what one does or says, and how one behaves or reacts.

Judges must commit to upholding the integrity and independence of the judiciary, avoid impropriety and the appearance of impropriety in both the public and non-public aspects of their lives, respect and comply with the law, promote confidence in the integrity and impartiality of the judiciary, assure that bias and prejudice are not countenanced in public and private life, and fairness and diligence are encompassed in judicial proceedings and administration. These fundamental ideas are expressed in the first three canons of the California Code of Judicial Ethics.

¹ See Advisory Committee Commentary to Canon 1 of the Code of Judicial Ethics

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David Rothman’s Unifying Principles of Judicial Ethics

PILLAR II—Awareness in the Courtroom

Always be mindful that you are a judge and act consistently with your mission as a judge. Always be conscious of what you do and say and be attentive to what others do and say in court proceedings. Never fail to notice reactions, feelings and thoughts in regard to what is taking place.

Mindful of the things you are supposed to be doing in regard to the proceeding.

Always remain focused on the task before you, including both

The particular elements of the task, and

The qualities judges must exhibit in all proceedings (e.g., patience, dignity, fairness, impartiality, honesty in decision making).

Stay focused. If what you are doing and saying is not serving to accomplish the particular task before you, notice this, and get back on track. The people before the court (parties, lawyers, jurors, witnesses, observers) expect a judge to pay attention to the matter before a him or her. You are there to accomplish the task before you.

A court proceeding is not supposed to afford you an opportunity to berate the lawyers for wasting your time, entertain an “audience” with your wit and/or wisdom, lead a rally for the 49ers, and so on.

Developing the habit of “noticing” and finding productive responses to events in court. Notice the reactions of people and what is taking place both in the courtroom and in yourself (feelings, emotions, anger, sympathy, or annoyance). Your reactions are signals. If you miss these signals, you increase the probability of unproductive actions based on these emotions (e.g., acting based on anger, prejudice, mistakes, errors) rather than productive responses based on reflection and thought. This is true in or out of court.

Finding self-awareness. Remember the instances of people you have seen who were NOT self-aware, did not see themselves (like the person who dominates conversation at a dinner party, or behaves like the judge in *In the Matter Concerning Judge John M. Watson*, Commission on Judicial Performance, 2008. Try to see the clues that your emotions may be getting in the way of your objectivity by observing yourself, as well as how others in the courtroom are reacting to you (facial expressions, body language, etc.).

David Rothman’s Unifying Principles of Judicial Ethics

PILLAR III—The Rule of Law

Actions and decisions in court must be within the law.

Judges do not make things up as they go along. Observing the *rule of law* involves the fair application of the constitution, statutes, case law and rules of court, ensuring the constitutional rights of all before the court, including unrepresented persons, and demonstrating attentiveness to the ethical obligations of a judge.

PILLAR IV—Do Not Make Assumptions

Challenge assumptions and engage in no prejudging.

It is natural for humans to make assumptions, to take mental shortcuts through the woods in order to quickly arrive at conclusions. But, once a conclusion enters your thinking it becomes difficult to either reject or challenge it. A judge is a person who renders honest decisions, not decisions based on bias or prejudgment. “Keeping an open mind” may be the most important and most difficult of judicial tasks—do not take this task lightly. Mitigating the impact of assumptions requires constant awareness of what you are thinking and why.

PILLAR V—Professional Distance

Do not take things personally, becoming embroiled or being an advocate.

You are no longer a lawyer, and your only stake in a case is that justice be administered fairly, impartially, honestly, and without fear or favor. If you lose your objectivity, your professional distance, you will have abandoned being a judge. Once a judge becomes embroiled (gets involved *personally*) fairness, impartiality and the integrity of the decision disappear.

Taking things personally, for whatever reason, is often the cause of judicial misconduct in court proceedings (see, for example, the *Watson* case). Loss of self-control, loss of control of the courtroom, frustration that produces anger, acting in a way that favors one side in a matter, assuming the role of a prosecutor or defense attorney, and coercing pleas or a settlement, and other conduct are all examples of loss of professional distance.

David Rothman’s Unifying Principles of Judicial Ethics

Pillar VI—Honesty and Integrity

Ensure honesty and integrity in the process of making decisions and in the decision.

Ensuring the honesty and integrity in the process of making decisions and in the decisions encompasses both the *reality* and *public perception* of the integrity of the process and decisions of courts. All the rules that govern what you do as a judge, including the Code of Civil Procedure, the Penal Code, the Rules of Court, the Code of Judicial Ethics, etc., focus on one ultimate objective: ensuring the honesty and integrity of the process of making decisions and the decisions that you ultimately make. Not only does a judge do what is right according to law, he or she must also be perceived to be doing so.

Pillar VII—Righteousness and Courage

Do what is right according to law and work to have the courage to do so.

Canon 3A(2) provides that “(a) judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.

In her book *Freedom from Fear and Other Writings*, Aung San Suu Kyi said “It is not power that corrupts but fear. Fear of losing power corrupts those who wield it and fear of the scourge of power corrupts those who are subject to it. . . . Fearlessness may be a gift but perhaps more precious is the courage acquired through endeavor, courage that comes from cultivating the habit of refusing to let fear dictate one’s action”

Judicial integrity is tested by the challenge of overcoming fear to do what is right. Only the judge knows if his or her decisions are true or are not determined by fear of criticism, of losing the next election, or other actions that delay or avoid what should be done.

Pillar VIII—Accountability

Accept and ensure judicial accountability.

Humility. Recognizing that you are accountable involves the humility to accept that you can be wrong. This is also the essence of the meaning of having an open mind.

David Rothman's Unifying Principles of Judicial Ethics

Acceptance of accountability. As a judge you are part of the judicial institution in which public confidence in the judiciary is essential to the rule of law. Being a judge involves seeing that justice is done and accepting the obligations that go with being a judge, including not only your own accountability, but that of all who serve with you.

Judicial Demeanor

Active Listening Checklist

- Acknowledge and focus on both the speaker and the message.
 - Be attentive and receptive (speak directly and personally to speaker)
 - Demonstrate your attentiveness and receptiveness
 - Create a conducive listening environment
 - Examples: eye contact, a nod, upright posture, slight forward lean

- Draw out the message as necessary for complete understanding.
 - Customize question you ask as it will impact the answer
 - Appropriate closed or open questioning as needed
 - Stop talking if speaker appears to have something to say
 - Modulate vocal inflections

- Communicate your understanding of the message.
 - Paraphrase
 - Appropriate tone of voice

- Encourage confirmation or clarification of the meaning
 - Allow speaker to verify or clarify your interpretation
 - Repeat your understanding of speaker.

- Develop calming techniques
 - Slow down
 - Appropriate tone of voice
 - Closely observe reactions

- Withhold judgment until you have heard everything and maintain a professional distance

Judicial Demeanor

Body Language Checklist

Good:

- Be aware of eye contact (judge looking at computer instead of litigant)
- Modulate voice tone (confident v. arrogant)
- Use body language to prompt SRL response (nods, eyebrows, smile)
- Use posture as a cue (upright, turn towards speaker)
- Take notes
- Use open hand gestures
- Be aware of cultural sensitivities (e.g. an open hand gesture can be interpreted as an aggressive gesture in some Middle Eastern cultures)

Avoid:

- Lack of eye contact
- Eyebrows drawn down strongly
- Booming voice
- Cutting tone of voice
- Tight mouth or frown
- Leaning away from and or body not turned toward the other person
- Head tilted strongly backward or strongly downward
- Pointing

Judicial Demeanor

Constructive Feedback Checklist

- Begin with a positive statement (overall, you are doing well)
- Be specific (you went to two treatment group meetings)
- Be honest and tactful
- Personalize your comments (use listener's name and use "I" to describe yourself)
- Emphasize positive consequences
- Emphasize a problem solving approach to any negative consequences.
- End with a positive statement

Bench Conduct for Temporary Judges

Practical Tips for Working with Self-Represented Litigants

1. Giving people an opportunity to tell their story. How can you do that, given the press of time?
 - **TIP:** Be sure to have the litigants tell you what the case is about. It helps to let the litigants know that you've actually read the file and that the work they put into preparing the papers was not wasted. Identify what will and won't be discussed at the hearing.
 - a. Manage the calendar efficiently.
 - Be familiar with all files on calendar;
 - Roll call: Eliminate all cases that cannot be heard that day (owing to problems such as lack of service), and assign them to support staff (if available in the courtroom) to explain procedural requirements;
 - Take stipulations first; if parties have come up with an agreement, take them first; and
 - Try to allow sufficient time for contested matters.
 - b. Review the file beforehand. Write some short notes about what the case is about. Start the hearing by restating those notes. Examples:
 - "Good morning, Mr. Jones and Ms. Lopez. I've had the opportunity to review your file and see that we're here today to discuss your children, James, who's 3, and Teresa who's 2." Or "...regarding an accident at the 7-11" Or "...regarding a traffic ticket."
 - "I've read the pleadings and it appears that these...are the issues. Is that right?"
2. Letting self-represented litigants know when they are off track
 - **TIP:** If a litigant is discussing an issue at length that is irrelevant to the legal issues, you can manage your courtroom by stating that you heard the information being conveyed, and you acknowledge the importance to the litigant, but you must stress that it is not the issue to be discussed today. For example, say, "It must have been really difficult to have lost your job and then got this traffic ticket. But it does appear that you were speeding, and the law doesn't allow that as an exception."

3. Using scripts to orient self-represented litigants

- **TIP:** Consider a short script at the beginning of the calendar that will set the tone of the courtroom. You might say that you know that this is a difficult time for people, that there are a lot of folks in court, and that you won't have as much time as you'd like for all of them. It allows you to set out your rules for the day and gives everyone the opportunity to calm down and get some general information. If attorneys are present in the courtroom, you may want to note that you are a lawyer yourself, and you will disqualify yourself if you realize you feel any bias toward or against an attorney coming before you. Today you are acting as a judge, and you want to assure all those in your courtroom of your impartiality.

4. Explaining your decision to increase compliance

- **TIP:** When presenting a decision, explain it by reference to rules and legal principles, demonstrating that your decision is not based on personal prejudice or bias.
 - a. Self-represented litigants often do not know the law, so it is often helpful to offer some information about why the decision was made and how you must follow the law. For example, say, "Based on the evidence that you've presented and the law in this type of case, my decision is — — — — —"
 - b. Sometimes you need to consider the testimony of the litigants, review the law or the filings, and need to take the matter under consideration. At other times, you may believe that it would be difficult to control the courtroom if you issued your decision from the bench. Let the litigants know that you will be considering the case based on the evidence presented and the law and that you will prepare a written decision that will be mailed to them. You may want to compliment them for presenting their case thoughtfully (if true).
 - c. Communicate evidence that people's concerns were listened to and taken seriously. If possible, acknowledge valid issues that were raised. Making a decision understandable and making clear that, in the process of deciding, a person's side of the story was heard—even if it was not accepted—communicates respect for that person.

- **TIP:** Explain in practical terms how the court works, what the litigant should do, and what will happen next.
 - a. One of your key roles as a lawyer is to let your clients know how the process will work, what steps they need to take, and what they can reasonably expect will happen. Self-represented litigants often come to court with minimal or confused knowledge of how things will work or what is likely to happen. When you're on the bench, the skills you have developed in explaining things to clients will be helpful in providing basic explanations to self-represented litigants.
 - b. Make appropriate referrals for litigants to get more help..

5. Treating people respectfully

- **TIP:** Start by welcoming the litigants to the courtroom. Smile at them. Greet them respectfully by using their last name.
 - a. Litigants will be watching your body language carefully, and it's often more important to them than the words you use.
 - b. You may well have to look at a file during part of the proceeding-this is often interpreted as not listening or not paying attention.

Proposed Best Practices for Cases Involving Self-Represented Litigants

These practices are helpful in all cases, and not just those involving self-represented litigants.

The ideas in these best practices are based on *Reaching Out or Overreaching: Judicial Ethics and the Self-Represented Litigant*; on the "Proposed Protocol to Be Used by Judicial Officers During Hearings Involving Pro Se Litigants" from the ProSe Implementation Committee of the Minnesota Conference of Chief Judges; on the November 2004 draft of "Judicial Guidelines for Hearings Involving Self-Represented Litigants" proposed by the Subcommittee on Judicial Guidelines of the Massachusetts Supreme Court Steering Committee on Self-Represented Litigants;" on "Judicial Techniques for Cases Involving Self- Represented Litigants" by Rebecca Albrecht, John Greacen, Bonnie Hough, and Richard Zorza, published in the winter 2003 *Judges' Journal*; and on "Self-Represented Litigants: Learning from Ten Years of Experience in Family Courts" by John Greacen, published in the winter 2005 *Judges' Journal*.

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GENERAL

1. When a litigant appears without an attorney, verify that the litigant understands that he or she is entitled to be represented by attorney give information on pro bono or lawyer referral resources. Explain that self representation is difficult, you as judge cannot act as an advocate for either side, and the other party's attorney will not provide assistance or advice. • If an unrepresented litigant appears to be mentally disabled, take additional steps to involve counsel and other support services. • The difficulty of self-representation should be emphasized in cases that are particularly complex, cases where the stakes are very high, and jury cases.

- Once it is clear a litigant does not intend to get an attorney, do not harp on pro se status or make negative comments that suggest prejudice or disapproval.

2. Direct the litigant to the resources available for self-represented litigants.

- Inform a self-represented litigant that he or she has the responsibility to become familiar with and attempt to comply with the rules of procedure.
- Repeat information regarding resources at every stage in the process.

3. Be generous in granting extensions of time to self-represented litigants (and others) to prepare for a hearing, obtain counsel, or comply with other requirements as long as the litigant appears to be acting in good faith, making an effort, and giving notice to the other side.

4. Ensure that court interpreters are available for all court proceedings (including settlement discussions) involving self-represented litigants (and others) who have language barriers.

5. Give a basic introduction to courtroom protocol, for example, the importance of timeliness, checking in with the clerk (if that is necessary), who sits where, directing arguments to you, not other parties or attorneys, rising when you enter, and other matters you consider important (attire, gum chewing, reading while court is in session, etc.).

6. Explain the prohibition on ex parte communications (you cannot talk to one side without the other side being present and litigants cannot file any papers with the court that are not served on the other side).

7. Actively manage and schedule cases involving self-represented litigants.

8. Insofar as possible, monitor counsel to ensure that a self-represented litigant is not being misled.

A COURTEOUS COURTROOM

9. Start court on time (required in all cases); if delay is unavoidable, apologize and offer a brief explanation.

10. Explain to self-represented litigants that the rude conduct displayed on television shows like *Judge Judy* is not acceptable in a real courtroom, either from them or directed to them.

11. Treat self-represented litigants with patience, dignity, and courtesy (required toward all participants in all court proceedings).

- Do not make comments or use a tone and manner that are rude, intimidating, harsh, threatening, angry, sarcastic, discouraging, belittling, humiliating, or disdainful.
- Do not interrupt self-represented litigants unless necessary to control proceedings or prevent discourtesy.
- Do not engage in protracted dialogues or make off-hand, negative comments regarding their pro se status.
- Address self-represented litigants with titles comparable to those used for counsel.
- Avoid over-familiar conduct toward attorneys (for example, using first names, sharing in-jokes, referring to other proceedings or bar events, inviting attorneys into chambers, chatting casually before or after court proceedings).

12. Require court staff and attorneys to treat self-represented litigants (and everyone else) with patience, dignity, and courtesy.

13. Pay attention and act like you are paying attention.

- If you take notes or refer to books or information on a computer screen during a proceeding, explain what you are doing so the litigants understand that they have your attention.

14. Construe pleadings liberally.

PLEADINGS

- Look behind the label of a document filed by a self-represented litigant and give effect to the substance, rather than the form or terminology.
- Do not ignore an obvious possible cause of action or defense suggested by the facts alleged in the pleadings even if the litigant does not expressly refer to that theory.
- Consider information in other documents filed by a self-represented litigant.
- Allow amendment freely.

15. Give a self-represented litigant notice of any substantive defect in a pleading and an opportunity to remedy the defect unless it is absolutely clear that no adequate amendment is possible.

16. Read all relevant materials and announce that you have done so before making a ruling.

17. Give the rationale for a decision either in writing or orally on the record.

18. When announcing a decision or entering an order, do not use legal jargon, abbreviations, acronyms, shorthand, or slang.

19. If possible, after each court appearance, provide all litigants with clear written notice of further hearings, referrals, or other obligations.

20. Ensure that all orders (for example, regarding discovery) clearly explain the possible consequences of failure to comply.

21. Follow the principle that cases should be disposed of on the merits, rather than with strict regard to technical rules of procedure.

22. Instruct a self-represented litigant how to accomplish a procedural action he or she is obviously attempting or direct them to resources that will provide such instructions.

- Do not tell a self-represented litigant what tactic to use, but explain how to accomplish the procedure he or she has chosen.

23. If a motion for summary judgment is filed, advise a self-represented litigant that he or she has the right to file counter-affidavits or other responsive material and that failure to respond might result in the entry of judgment against the litigant.

24. Decide all motions filed by a self-represented litigant without undue delay.

SETTLEMENT

25. At a pre-trial or status conference, bring up the possibility of settling the matter or referring it to mediation.

- Encourage, but do not try to coerce, settlement or mediation.

26. If the parties present you with an agreed order settling a case, engage in allocution to determine whether the self-represented litigant understands the agreement and entered into it voluntarily.

- Explain that if an agreement is approved, it becomes an order of the court with which both parties will be required to comply.
- Determine that any waiver of substantive rights is knowing and voluntary.

PRE-HEARING

27. Explain the process and ground rules (e.g., that you will hear from both sides, who goes first, everything said will be recorded, witnesses will be sworn in, witnesses may be cross examined, how to make an objection).

28. Explain the elements and the burden of proof.

29. Explain the kinds of evidence that can be presented and the kinds of evidence that cannot be considered.

- Explain that you will make your decision based only on the evidence presented.
- Encourage the parties to stipulate to uncontested facts and the admission of as much of the documentary evidence as possible.

30. Try to get all parties and counsel to agree to relax technical rules of procedure and evidence so that the hearing can proceed informally with an emphasis on both sides getting a chance to tell their story.

HEARING

31. Ensure that the notice of hearing unambiguously describes in a way a self-represented litigant can understand that a hearing on the merits is being scheduled and the litigant should be prepared with evidence and witnesses to present the case or defense.

32. Allow non-attorneys to sit at counsel table with either party to provide support but do not permit them to argue on behalf of a party or to question witnesses.

33. Before starting, ask both parties whether they understand the process and the procedures.

34. Call breaks where necessary if a litigant is becoming confused or tempers on either side are becoming frayed (or your patience is running low).

35. Question any witness for clarification when the facts are confused, undeveloped, or misleading.

- Explain at the beginning of a hearing that you will ask questions if necessary to make sure you understand the testimony and have the information you need to make a decision.
- Ask the same type of questions of witnesses called by a represented party if warranted.
- Take care that your language and tone when asking questions does not indicate your attitude towards the merits or the credibility of the witness.

36. Follow the rules of evidence that go to reliability but use discretion and overrule objections on technical matters such as establishing a foundation for introducing documents and exhibits, qualifying an expert, and the form of questions or testimony.

- If you relax a rule for a self-represented party, relax it for a represented party as well.
- Require counsel to explain objections in detail.
- If counsel objects, ask if he or she is arguing that the evidence is unreliable.
- Explain rulings on evidence.

37. If necessary to prevent obvious injustice, allow a brief recess or adjourn for the day (or longer) to allow a self-represented litigant (or even a represented litigant) to obtain additional evidence or witnesses.

38. Do not allow counsel to bully or confuse self-represented litigants or their witnesses.

THE DECISION

39. Announce and explain your decision immediately from the bench with both parties present if possible unless the volatility of the proceedings suggests that a written decision would be preferable to prevent outbursts and attempts to re-argue the case.

40. If you decide to take a matter under advisement, inform the parties that you wish to consider their evidence and arguments and will issue a decision shortly.

- If possible, announce a date by which a decision will be reached.

41. Reach a decision promptly (required in all cases).

42. Issue an order in plain English explaining the decision, addressing all material issues raised, resolving contested issues of fact, and announcing conclusions of law.

43. If asked about reconsideration or appeal, refer the litigant to resources for self-represented litigants on this topic.

44. If asked about enforcement of an order or collection of a judgment, refer the litigant to any resources for self-represented litigants on this topic.

APPLICANT (name): APPLICANT is <input type="checkbox"/> Witness <input type="checkbox"/> Juror <input type="checkbox"/> Attorney <input type="checkbox"/> Party <input type="checkbox"/> Other (Specify) Person submitting request (name): APPLICANT'S ADDRESS: TELEPHONE NO.:	FOR COURT USE ONLY
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
JUDGE:	
CASE TITLE:	DEPARTMENT:
REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND RESPONSE	CASE NUMBER:

Applicant requests accommodation under rule 1.100 of the California Rules of Court, as follows:

1. Type of proceeding: Criminal Civil Other:
2. Proceedings to be covered (for example, bail hearing, preliminary hearing, trial, sentencing hearing, family, probate, juvenile):
3. Date or dates needed (specify):
4. Impairment necessitating accommodation (specify):
5. Type or types of accommodation requested (specify):
6. Special requests or anticipated problems (specify):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE)

RESPONSE

The accommodation request is **GRANTED** and the court will provide the
 requested accommodation, in whole
 requested accommodation, in part (specify below):

For the following duration:

- For the above matter or appearance
 From (dates): _____ to _____
 Indefinite period

The accommodation is **DENIED** in whole or in part because it

- fails to satisfy the requirements of rule 1.100.
 creates an undue burden on the court.
 fundamentally alters the nature of the service, program, or activity.

For the following reason (attach additional pages, if necessary): [See Cal. Rules of Court, rule 1.100(g), for the review procedure]

- The court will provide the alternative accommodation as follows:

Date response delivered in person or sent to applicant:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE)

SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE.

Chapter 5. Accommodations

Rule 1.100. Requests for accommodations by persons with disabilities

Rule 1.100. Requests for accommodations by persons with disabilities

(a) Definitions

As used in this rule:

- (1) “Persons with disabilities” means individuals covered by California Civil Code section 51 et seq.; the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); or other applicable state and federal laws. This definition includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such an impairment, or are regarded as having such an impairment.
- (2) “Applicant” means any lawyer, party, witness, juror, or other person with an interest in attending any proceeding before any court of this state.
- (3) “Accommodations” means actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation.

(Subd (a) amended and relettered effective January 1, 2007; adopted as subd (b) effective January 1, 1996; previously amended effective January 1, 2006.)

(b) Policy

It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system. To ensure access to the courts for persons with disabilities, each superior and appellate court must delegate at least one person to be the ADA coordinator, also known as the access coordinator, or designee to address requests for accommodations. This rule is not intended to impose limitations or to invalidate the remedies, rights, and procedures accorded to persons with disabilities under state or federal law.

(Subd (b) adopted effective January 1, 2007.)

(c) Process for requesting accommodations

The process for requesting accommodations is as follows:

- (1) Requests for accommodations under this rule may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally. Requests must be forwarded to the ADA coordinator, also known as the access coordinator, or designee, within the time frame provided in (c)(3).
- (2) Requests for accommodations must include a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment.
- (3) Requests for accommodations must be made as far in advance as possible, and in any event must be made no fewer than 5 court days before the requested implementation date. The court may, in its discretion, waive this requirement.
- (4) The court must keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for accommodation.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(d) Permitted communication

Communications under this rule must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the proceedings before the court.

(Subd (d) amended effective January 1, 2006.)

(e) Response to accommodation request

The court must respond to a request for accommodation as follows:

- (1) In determining whether to grant an accommodation request or provide an appropriate alternative accommodation, the court must consider, but is not limited by, California Civil Code section 51 et seq., the provisions of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), and other applicable state and federal laws.

- (2) The court must promptly inform the applicant of the determination to grant or deny an accommodation request. If the accommodation request is denied in whole or in part, the response must be in writing. On request of the applicant, the court may also provide an additional response in an alternative format. The response to the applicant must indicate:
 - (A) Whether the request for accommodation is granted or denied, in whole or in part, or an alternative accommodation is granted;
 - (B) If the request for accommodation is denied, in whole or in part, the reason therefor;
 - (C) The nature of any accommodation to be provided;
 - (D) The duration of any accommodation to be provided; and
 - (E) If the response is in writing, the date the response was delivered in person or sent to the applicant.

(Subd (e) amended effective January 1, 2010; previously amended effective January 1, 2006, and January 1, 2007.)

(f) Denial of accommodation request

A request for accommodation may be denied only when the court determines that:

- (1) The applicant has failed to satisfy the requirements of this rule;
- (2) The requested accommodation would create an undue financial or administrative burden on the court; or
- (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(g) Review procedure

- (1) If the determination to grant or deny a request for accommodation is made by nonjudicial court personnel, an applicant or any participant in the proceeding may submit a written request for review of that determination to the presiding judge or designated judicial officer. The request for review must be submitted within 10 days of the date the response under (e)(2) was delivered in person or sent.
- (2) If the determination to grant or deny a request for accommodation is made by a presiding judge or another judicial officer, an applicant or any participant in the proceeding may file a petition for a writ of mandate under rules 8.485– 8.493 or

8.930–8.936 in the appropriate reviewing court. The petition must be filed within 10 days of the date the response under (e)(2) was delivered in person or sent to the petitioner. For purposes of this rule, only those participants in the proceeding who were notified by the court of the determination to grant or deny the request for accommodation are considered real parties in interest in a writ proceeding. The petition for the writ must be served on the respondent court and any real party in interest as defined in this rule.

- (3) The confidentiality of all information of the applicant concerning the request for accommodation and review under (g)(1) or (2) must be maintained as required under (c)(4).

(Subd (g) amended effective January 1, 2010; previously amended effective January 1, 2006.)

(h) Duration of accommodations

The accommodation by the court must be provided for the duration indicated in the response to the request for accommodation and must remain in effect for the period specified. The court may provide an accommodation for an indefinite period of time, for a limited period of time, or for a particular matter or appearance.

(Subd (h) amended effective January 1, 2006.)

Rule 1.100 amended effective January 1, 2010; adopted as rule 989.3 effective January 1, 1996; previously amended effective January 1, 2006; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (g)(2). Which court is the “appropriate reviewing court” under this rule depends on the court in which the accommodation decision is made and the nature of the underlying case. If the accommodation decision is made by a superior court judicial officer and the underlying case is a limited civil, misdemeanor, or infraction case, the appropriate reviewing court is the appellate division of the superior court. If the accommodation decision is made by a superior court judicial officer and the case is anything other than a limited civil, misdemeanor, or infraction case, such as a family law, unlimited civil, or felony case, the appropriate reviewing court is the Court of Appeal. If the accommodation decision is made by a judicial officer of the Court of Appeal, the appropriate reviewing court is the California Supreme Court.

California Rules of Court, Rule 1.100 Providing Disability Accommodations While Court Is in Session

The Administrative Office of the Courts, in consultation with the Judicial Council's Access and Fairness Advisory Committee, developed this guide to help judicial officers respond to requests made while court is in session for accommodations under the Americans with Disabilities Act (ADA).

Who should the court contact for assistance?

Every court is required to have an ADA Coordinator to assist in responding to accommodation requests. This court's ADA Coordinator is _____, who can be contacted at _____. If the court's ADA Coordinator is not available, please contact Linda McCulloh, ADA Resources Coordinator of the Administrative Office of the Courts, at 415-865-7746, for assistance.

Question	Answer	Reference
1. Who is entitled to receive an accommodation?	Any person with a disability who has business with the courts—including public observers of court activities or sessions—and has a physical or mental impairment that limits one or more major life activity, has a record of such an impairment, or is regarded as having such an impairment.	Rule 1.100(a)(1), (2)
2. How may the request for accommodation be made?	Requests must be made at least five court days before the requested implementation date, but a court may waive this requirement to allow requests made in court. The process is purely administrative and there is no evidentiary hearing. Requests may be presented ex parte: <ul style="list-style-type: none"> Orally, in chambers, unless confidentiality is waived (see #4 below), By submitting <i>Request for Accommodations by Persons With Disabilities and Response</i> (form MC-410), or In any other written format. 	Rule 1.100(c)(1)
3. What information does the applicant need to include with an accommodation request to the court?	<ul style="list-style-type: none"> A description of the accommodation sought and A description of the impairment that makes the accommodation necessary for the applicant to participate in or observe the proceeding or activity. If necessary, the court may ask for supporting documentation and may need to continue the proceeding for a short time to allow time for the applicant to obtain this documentation. 	Rule 1.100(c)(2)
4. What does the court do once a request for accommodation is made?	<ul style="list-style-type: none"> The court may handle the request while in session or may immediately contact the ADA Coordinator for assistance. (In either case, the court should contact the court's ADA Coordinator to report the request for accommodation for record-keeping purposes.) The court must first ask whether the applicant waives confidentiality and wishes to make the request in open court. Requests for accommodations are not discussed in open court unless the person making the request waives the confidentiality provision in writing. If not, the court should take a brief recess to consider the request in chambers. The court should exercise extreme caution to limit the ex parte communication strictly to the accommodation request and preclude any discussion of the merits of the matter pending before the court. The court MUST respond to and/or take action on the request; failing to respond to a request may result in reversal on appeal. (See <i>Biscaro v. Stern</i> (2010) 181 Cal.App.4th 702, discussed below.) If the court denies the request, in whole or in part, the court must provide a written explanation for the denial, including the date the written denial was provided. 	Rule 1.100(b), (c)(1)–(2) Rule 1.100(c)(4) Rule 1.100(c)(4) Rule 1.100(d) Rule 1.100(e); <i>Biscaro v. Stern</i> Rule 1.100(e)(2)
5. Must the court keep the request confidential?	Yes. The court must keep absolutely confidential all information relating to the request for accommodation unless the applicant chooses to submit a written waiver of confidentiality. Otherwise, no information relating to the accommodation request shall be included in the official case record nor is it to be recorded by a court reporter.	Rule 1.100(c)(4)
6. What kinds of accommodations may the courts provide?	"Accommodations" are "actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities." Accommodations must be reasonable and effective. The court has discretion in selecting services and programs to satisfy this requirement and may provide an alternative accommodation if it deems an applicant's preferred or requested choice of accommodations to be too burdensome, so long as the alternative operates to enable the applicant to access judicial services and programs.	Rule 1.100(a)(3)
7. Are there situations where "reasonable accommodation" may require the court to grant a continuance?	Yes, in some cases, such as when a person with a mental disability is unable to proceed, a continuance may be required as the only reasonable accommodation under the circumstances. (See <i>In re Marriage of James M. & Christine C.</i> (2008) 158 Cal.App.4th 1261, discussed below.)	Rule 1.100(a)(3) <i>In re Marriage of James M. & Christine C.</i>

California Rules of Court, Rule 1.100
Providing Disability Accommodations While Court Is in Session
(continued)

Question	Answer	Reference
8. Can the court deny a request when the accommodation seems too intrusive on court time and management?	Depending on the individual request and circumstances, the court may deny the request if: <ul style="list-style-type: none"> • The applicant fails to satisfy the requirements of this rule, • Accommodating the request would create an undue financial or administrative burden on the court, or • The requested accommodation would fundamentally alter the nature of the service, program, or activity before the court. 	Rule 1.100(f)(1)–(3) <i>In re Marriage of James M. & Christine C.</i>
9. Is the court required to provide an applicant with services or accommodations of a strictly personal nature?	The court is not obligated to provide an individual with accommodations of a personal nature, which may include but are not limited to: <ul style="list-style-type: none"> • A personal care assistant or caregiver • Assistance in eating, toileting, dressing • Free legal counsel • Free medical providers • Hearing aids • Prescription eyeglasses • Wheelchairs 	Rule 1.100(a)(3)
10. What if a party or counsel uses a wheelchair but the court has no restrooms suitable for wheelchair users?	<ul style="list-style-type: none"> • The court may offer the use of alternate accessible restroom facilities elsewhere within the courthouse, such as in jury rooms, court chambers, or other administrative areas. • The court may transfer the case to another courthouse or branch that has suitable facilities. • In either situation, the court should also provide longer breaks and rest periods to allow enough time for the wheelchair user to travel between these restrooms and the courtroom. • The court maintains its authority to set the order of witnesses and otherwise administer trials and proceedings and may proceed with other witnesses or matters until the needed accommodation is available. 	Rule 1.100(a)(3)

What is the ADA?

The Americans with Disabilities Act (ADA) is a federal civil rights statute (42 U.S.C. § 12101 et seq.) that requires all state and local governmental entities, including the courts, to accommodate court participants with disabilities. The ADA also requires the government to modify programs to integrate persons with disabilities, eliminate discriminatory practices or procedures, and provide alternatives for persons with communication limitations. California has amended or adopted legislation that is consistent with the ADA but provides additional accommodations and requires government to fully integrate persons with disabilities into society.

What is rule 1.100?

Rule 1.100 of the California Rules of Court allows court participants with disabilities, including lawyers, parties, witnesses, and jurors, to request reasonable accommodations from the court. *Request for Accommodations by Persons With Disabilities and Response* (form MC-410) is available to make the request. Oral requests in court are also permissible. **The court must address the request without an evidentiary hearing or the use of a court reporter.** The request is not made part of the case file and must be kept strictly confidential under all circumstances unless the applicant waives confidentiality in writing. The court's designated ADA Coordinator can also address requests for accommodation.

***In re Marriage of James M. and Christine C.* (2008) 158 Cal.App.4th 1261.**

In this case, the Court of Appeal upheld the rule 1.100 clause that there are only three grounds to deny a request for an accommodation based on disability: (1) undue burden on the court; (2) alteration of the nature of judicial services; or (3) failure to satisfy the requirements of the rule. Christine C., the self-represented applicant, had a history of physical and mental disabilities and was granted a number of pretrial continuances as accommodation on occasions when she was unable to proceed. On the second day of trial, she requested a trial continuance because she was hospitalized due to her bipolar disability. The superior court denied this request in error, and the entire judgment was reversed on appeal.

***Biscaro v. Stern* (2010) 181 Cal.App.4th 702.**

Mr. Stern, the defendant in a family court case, asked the court to provide a neuropsychologist to assist him while in court. The superior court was found on appeal to have a mandatory duty, imposed by rule 1.100 of the California Rules of Court (and reinforced by *In re Marriage of James M. and Christine C.*), to adjudicate requests for accommodation under the Americans with Disabilities Act. The court's failure in this case to rule on the defendant's request for accommodation of his disability was found to be a structural error requiring reversal of the judgment.

THE TEN COMMANDMENTS OF INTERACTING WITH PEOPLE WITH MENTAL HEALTH DISABILITIES

I. Speak Directly.

Use clear simple communications. Most people, whether or not they have a mental health disability, appreciate it and if someone is having difficulty processing sounds or information, as often occur in psychiatric disorders, your message is more apt to be clearly understood. Speak directly to the person; do not speak through a companion or service provider.

II. Offer to Shake Hands When Introduced

Always use the same good manners in interacting with a person who has a psychiatric disability that you would use in meeting any other person. Shaking hands is a uniformly acceptable and recognized signal of friendliness in American culture. A lack of simple courtesy is unacceptable to most people, and tends to make everyone uncomfortable.

III. Make Eye Contact and Be Aware of Body Language

Like others, people with mental illness sense your discomfort. Look people in the eye when speaking to them. Maintain a relaxed posture.

IV. Listen Attentively

If a person has difficulty speaking, or speaks in a manner that is difficult for you to understand, listen carefully — then *wait for them to finish speaking*. If needed, clarify what they have said. Ask short questions that can be answered by a “yes” or a “no” or by nodding the head. Never pretend to understand. Reflect what you have heard, and let the person respond.

V. Treat Adults as Adults

Always use common courtesy. Do not assume familiarity by using the person’s first name or by touching their shoulder or arm, unless you know the person well enough to do so. Do not patronize, condescend, or threaten. Do not make decisions for the person, or assume their preferences.

VI. Do Not Give Unsolicited Advice or Assistance

If you offer any kind of assistance, wait until the offer is accepted. Then listen to the person’s response and/or ask for suggestions or instructions. *Do not* panic, or summon an ambulance or the police if a person appears to be experiencing a mental health crisis. Calmly ask the person how you can help.

VII. Do Not Blame the Person

A person who has a mental illness has a complex, biomedical condition that is sometimes difficult to control, even with proper treatment. A person who is experiencing a mental illness cannot “just shape up” or “pull himself up by the bootstraps.” It is rule, insensitive, and ineffective to tell or expect the person to do so.

VIII. Question the Accuracy of the Media Stereotypes of Mental Illness

The movies and the media have sensationalized mental illness. In reality, despite the overabundance of “psychotic killers” portrayed in movies and television, studies have shown that people with mental illness are far more likely to be *victims* of crime than to victimize others. Most people with mental illness never experience symptoms which include violent behavior. As with the general public, about 1% - 5% of all people with mental illness are exceptionally easily provoked to violence. (National Alliance for the Mentally Ill, 1990)

IX. Relax!

The most important thing to remember in interacting with people who have mental health disabilities is to BE YOURSELF. Do not be embarrassed if you happen to use common expressions that seem to relate to a mental health disability, such as “I’m CRAZY about him” or “This job is driving me NUTS.” ASK the person how he feels about what you have said. Chances are, you get a flippant remark and a laugh in answer.

X. See the PERSON

Beneath all the symptoms and behaviors someone with a mental illness may exhibit is a PERSON who has many of the same wants, needs, dreams and desires as anyone else. Don’t avoid people with mental health disabilities. If you are fearful or uncomfortable, learn more about mental illness. Kindness, courtesy, and patience usually smooth interactions with all kinds of people, including people who have a mental health disability.

This is the **Last and Greatest Commandment**: Treat people with mental health disabilities as you would wish to be treated yourself.

Adapted by Mary Lee Stocks, MSW, LISW, from the *Ten Commandments of Communicating with People with Disabilities*, originally developed by the National Center for Access Unlimited/Chicago and United Cerebral Palsy Associations/Washington, D.C.; and a video and script developed by Irene M. Ward & Associates/Columbus, Ohio, partially supported through Ohio Development Disabilities Planning Council Grant #92-13 (1993)

TEN TIPS FOR COMMUNICATING WITH PEOPLE WITH DISABILITIES*

1. Speak directly rather than through a companion or the sign language interpreter who may be present.
2. Offer to shake hands when introduced. People with limited hand use or artificial limb can usually shake hands and offering the left hand is an acceptable greeting.
3. Always identify yourself and others who may be with you when meeting someone with a visual disability. When conversing in a group, remember to identify the person to whom you are speaking.

When dining with a friend with a visual disability, ask if you can describe what is on his or her plate using the clock to describe the location of the food, i.e., potato is at 3 o'clock.

4. If you offer assistance, wait until the offer is accepted. Then listen or ask for instructions.
5. Treat adults as adults. Address people with disabilities by their first names only when extending that same familiarity to all others. Never patronize people of short stature or people in wheelchairs by patting them on the head or shoulder.
6. Do not lean against or hang on someone's wheelchair or scooter. Bear in mind that people with disabilities treat their wheelchairs or scooters as extensions of their bodies.

The same goes for people with service animals. Never distract a work animal from their job without the owner's permission.

7. Listen attentively when talking with people who have difficulty speaking and wait for them to finish. If necessary, ask short questions that require short answers, or a nod of the head. Never pretend to understand; instead repeat what you have understood and allow the person to respond.
8. Place yourself at eye level when speaking with someone who is of short stature or who is in a wheelchair or on crutches.
9. Tap a person who has a hearing disability on the shoulder or wave your hand to get at his or her attention. Look directly at the person and speak clearly, slowly, and expressively to establish if the person can read your lips. If so, try to face the light source and keep hands, cigarettes and food away from your mouth when speaking.

If a person is wearing a hearing aid, don't assume that they have the ability to discriminate your speaking voice. Do not raise your voice. Speak slowly and clearly in a normal tone of voice.

10. Relax. Don't be embarrassed if you happen to use common expressions such as "See you later" or "Did you hear about this?" that seem to relate to a person's disability.

The United Cerebral Palsy Association, Inc. (UCPA) adopted the ten tips from many sources as a public service. The UCPA's version of the ten tips has been updated by Linda P. McCulloh of the Education Division/CJER of the Administrative Office of the Courts.

TIPS FOR INTERACTING WITH PEOPLE WHO ARE BLIND *

When you meet me do not be ill at ease. It will help both of us if you remember these simple points of courtesy:

1. I'm an ordinary person, just blind. You don't need to raise your voice or address me as if I were a child. Don't ask my spouse what I want – "Cream in the coffee?" – ask me.
2. If I am walking with you, don't grab my arm; let me take yours. I'll keep a half step behind, to anticipate curbs and steps.
3. I want to know who is in the room with me. Speak when you enter. Introduce me to the others. Include children, and tell me if there is a cat or dog. Guide my hand to a chair.
4. The door to a room, cabinet, or to a car left partially open is a hazard to me.
5. At dinner, I will not have trouble with ordinary table skills.
6. Don't avoid words like "see." I use them too. "I'm always glad to see you".
7. I don't want pity. But don't talk about the "wonderful compensations" of blindness. My sense of smell, touch, or hearing did not improve when I became blind. I rely on them more and, therefore, may get more information through those senses than you do – that's all.
8. If I'm your houseguest, show me the bathroom, closet, dresser, window – the light switch too. I would like to know whether the lights are on.
9. I'll discuss blindness with you if you're curious, but it's an old story to me. I have as many other interests as you do.
10. Don't think of me as just a blind person. I'm just a person who happens to be blind.

Note: In all 50 states, the law requires drivers to yield the right of way when they see my extended white cane. Only the blind may carry white canes. You see more blind persons today walking alone. Not because there are more of us, but because we have learned to make our way.

*From the National Federation of the Blind
1800 Johnson Street, Baltimore, Maryland 21230
Phone: 410-659-9314
www.nfb.org

TIPS FOR TALKING TO A PERSON WITH HEARING LOSS

- **FACE the hard of hearing person directly and on the same level whenever possible.**

Do not turn and walk away while still talking. When you walk away, the hard of hearing person can no longer hear you or read your lips.*

- **KEEP your hands away from your face while talking.**
- **SPEAK in a normal fashion, without shouting. Speak clearly and more slowly than usual.**

If a person has difficulty understanding something, find a different way of saying the same thing rather than repeating the original words over and over.

Speak slowly. Sometimes it is difficult for a hard of hearing person to distinguish between background noise and speech.*

- **NEVER talk from another room. Be sure to get the person's attention before you start speaking to him or her.**
- **REDUCE background noises when holding conversations – turn off the radio or TV.**

If you are eating, chewing, smoking, etc, while talking, your speech will be more difficult to understand.

- **MAKE sure that the light is not shining in the person's eyes when you are talking to him or her.**
- **RECOGNIZE that hard of hearing people hear and understand less well when they are tired or ill.**

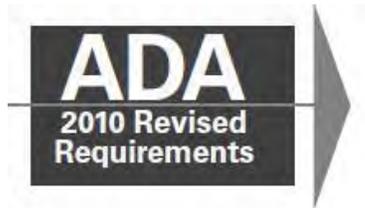
*Comments provided by a hard of hearing person.

FROM THE HEARING AND SPEECH CENTER OF NORTHERN CALIFORNIA
1234 DIVISADERO STREET, SAN FRANCISCO, CA 94115
415-921-7658 VOICE 415-921-8990 TTY

DISABILITY TERMINOLOGY CHART

When referring to people with disabilities, choose words that reflect dignity and respect. Use language that describes the person's disability without defining the individual as his or her disability. The following are just some examples.

INAPPROPRIATE	APPROPRIATE
The disabled, the handicapped	People with disabilities, the disability community
Crippled, suffers from, afflicted with, stricken with, victim of, invalid	Has a disability, is a person with a disability
Normal person, healthy, whole	People without disabilities, person who is able to walk, person who can see, etc.
The blind, the deaf	Person who is blind, person who is deaf or hard of hearing
Wheelchair bound, confined or restricted to a wheelchair	Person who uses a wheelchair, a wheelchair user
Handicap parking	Accessible parking, parking for people with disabilities
Dumb, mute	Person who cannot speak, has difficulty speaking, uses synthetic speech, is non-vocal, non-verbal
Stutterer, tongue-tied	Person with a speech disability or communication disability
CP victim, spastic	Person with cerebral palsy
Crippled, lame, deformed	Person with a disability, walks with a cane, uses leg braces
Epileptic	Person with epilepsy, person who had a seizure
Fit, attack	Seizure, epileptic event or seizure event
Crazy, maniac, lunatic, insane, nuts, deranged, psycho, demented	People with emotional disabilities, mental illness, mental health disability, psychiatric disability
Retard, mentally defective, moron, idiot, slow, imbecile, feeble-minded, Down's person, mongoloid	Person with an intellectual or developmental disability, person with Down's syndrome or person who is brain injured, has traumatic brain injury or a closed head injury
Slow learner, retarded	Person who has a learning disability
Dwarf, midget	Short stature, little person
Paraplegic, quadriplegic	Person with spinal cord injury, man with paraplegia, woman who is paralyzed
Birth defect	Congenital disability
A post-polio, suffered from polio	Has had polio, experienced polio
Homebound	Stay-at-home, hard for the person to get out
Senile, demented	Person with Alzheimer's disease, person who has dementia



Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

This publication provides guidance on the term “service animal” and the service animal provisions in the Department’s new regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

How “Service Animal” Is Defined

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

This definition does not affect or limit the broader definition of “assistance animal” under the Fair Housing Act or the broader definition of “service animal” under the Air Carrier Access Act.

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from the State attorney general’s office.

Where Service Animals Are Allowed

Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally

must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

Service Animals Must Be Under Control

Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.
- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- Staff are not required to provide care or food for a service animal.

Miniature Horses

In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

For more information about the ADA, please visit our website or call our toll-free number.

ADA Website

www.ADA.gov

To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the **link** near the top of the middle column.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)

to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged. July 2011

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last updated: July 12, 2011

AMERICANS WITH DISABILITIES ACT

Title II: State and Local Government Activities

Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g; public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

Note: This summary is from the U.S. Department of Justice publication "A Guide to Disability Rights Laws" at <http://www.ada.gov/cguide.htm>.

California Access Law

Under California law, persons with disabilities are entitled to full and equal access to places of accommodation, transportation carriers, lodging places, recreation and amusement facilities, and other business establishments where the general public is invited. This rule applies to medical facilities, including hospitals, clinics and physicians' offices. Persons with both physical and mental disabilities are protected. (Civ. Code, § 54.1.)

A person with a disability or a trainer of guide, signal or service dogs has the right to be accompanied by a guide dog, signal dog, or service dog without being required to pay an extra charge or to leave a security deposit, although if with a trainer, the dog must be on a leash and tagged as a guide, signal or service dog. (Civ. Code, § 54.1, subd. (b)(6)(A), and § 54.2; Food & Agr. Code, §§ 30850 and 30852.) However, such persons can be liable for any provable damage done to the premises or facility by the dog. (Civ. Code, § 54.1, subd. (c), and § 54.2, subds. (a) and (b).)

Under this nondiscrimination law, an establishment is not required to make structural modifications in order to facilitate access by persons with physical

disabilities. (*Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal.App3d 881.) However, other laws which mandate structural modification may apply to these establishments.

Civil Code section 54.7 authorizes zoos and wild animal parks to prohibit guide, signal or service dogs from accompanying persons with disabilities in areas where patrons of the park are not separated from zoo or park animals by physical barriers. However, any mode of transportation provided to the general public must be offered free to persons with visual-impairments who would otherwise use a guide dog or persons in wheelchairs who would otherwise use a service dog.

It is a misdemeanor to interfere with the right of a person with a disability to be accompanied by a guide dog, signal dog or service dog in public conveyances or accommodations. (Pen. Code, § 365.5.) It is a misdemeanor to intentionally interfere with the use of a guide dog by harassment or obstruction. (Pen. Code, § 365.6.) It is also a misdemeanor to knowingly or fraudulently represent yourself to be the owner or trainer of a guide, signal or service dog. (Pen. Code, § 365.7.) It is an infraction for any person to permit a dog owned, harbored or controlled by him or her to cause injury or death to any guide, signal or service dog performing its duties. (Pen. Code, § 600.2.)

Note: This summary is from the California Department of Justice publication, "Legal Rights of Persons With Disabilities" at <http://ag.ca.gov/civilrights/reports.php#disability>.

CALIFORNIA CODES CIVIL CODE SECTION 54.8

54.8. (a) In any civil or criminal proceeding, including, but not limited to, traffic, small claims court, family court proceedings and services, and juvenile court proceedings, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or in any administrative hearing of a public agency, where a party, witness, attorney, judicial employee, judge, juror, or other participant who is hearing impaired, the individual who is hearing impaired, upon his or her request, shall be provided with a functioning assistive listening system or a computer-aided transcription system. Any individual requiring this equipment shall give advance notice of his or her need to the appropriate court or agency at the time the hearing is set or not later than five days before the hearing.

(b) Assistive listening systems include, but are not limited to, special devices which transmit amplified speech by means of audio-induction loops, radio frequency systems (AM or FM), or infrared transmission. Personal receivers,

headphones, and neck loops shall be available upon request by individuals who are hearing impaired.

(c) If a computer-aided transcription system is requested, sufficient display terminals shall be provided to allow the individual who is hearing impaired to read the real-time transcript of the proceeding without difficulty.

(d) A sign shall be posted in a prominent place indicating the availability of, and how to request, an assistive listening system and a computer-aided transcription system. Notice of the availability of the systems shall be posted with notice of trials.

(e) Each superior court shall have at least one portable assistive listening system for use in any court facility within the county. When not in use, the system shall be stored in a location determined by the court.

(f) The Judicial Council shall develop and approve official forms for notice of the availability of assistive listening systems and computer-aided transcription systems for individuals who are hearing impaired. The Judicial Council shall also develop and maintain a system to record utilization by the courts of these assistive listening systems and computer-aided transcription systems.

(g) If the individual who is hearing impaired is a juror, the jury deliberation room shall be equipped with an assistive listening system or a computer-aided transcription system upon the request of the juror.

(h) A court reporter may be present in the jury deliberating room during a jury deliberation if the services of a court reporter for the purpose of operating a computer-aided transcription system are required for a juror who is hearing impaired.

(i) In any of the proceedings referred to in subdivision (a), or in any administrative hearing of a public agency, in which the individual who is hearing impaired is a party, witness, attorney, judicial employee, judge, juror, or other participant, and has requested use of an assistive listening system or computer-aided transcription system, the proceedings shall not commence until the system is in place and functioning.

(j) As used in this section, "individual who is hearing impaired" means an individual with a hearing loss, who, with sufficient amplification or a computer-aided transcription system, is able to fully participate in the proceeding.

(k) In no case shall this section be construed to prescribe a lesser standard of accessibility or usability than that provided by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted

pursuant to that act. Leg.H. 1980 ch. 1002, 1992 ch. 913, 1993 ch. 1214, 2001 ch. 824.

CALIFORNIA RULES OF COURT

RULE 1.100

The Judicial Council of California, the policymaking body for the courts, adopted rule 1.100 to implement the federal Americans with Disabilities Act (ADA) and related state law in the courts.

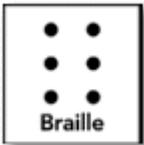
Rule 1.100 seeks to provide a workable and orderly framework for compliance with the ADA and state laws. The rule provides the mechanism for anyone with disabilities participating in court activities, programs, or services—lawyers, parties, witnesses, jurors, and any other participants—to request accommodations by making a written or oral request to a court’s ADA or access coordinator.

DISABILITY ACCESS SYMBOLS QUIZ

These symbols are often used to show that accessibility is available for people with disabilities.



DISABILITY ACCESS SYMBOLS QUIZ



DISABILITY ACCESS SYMBOLS

These symbols are often used to show that accessibility is available for people with disabilities.



International Symbol of Accessibility -- This symbol should only be used to indicate access for individuals with limited mobility, including wheelchair users. For example, the symbol is used to indicate an accessible entrance, bathroom or that a phone is lowered for wheelchair users.



Sign Language Interpreted -- The symbol indicates that Sign Language Interpretation is provided for a public meeting, lecture, tour, performance, conference or other program.



Telephone Typewriter (TTY) -- This symbol indicates that TTY is available. A TTY is a telephone device used with the telephone (and the phone number) for communication between deaf, hard of hearing, speech-disabled and/or hearing persons. In the past TTY has also been called text telephone (TT), or telecommunications device for the deaf (TDD).



Closed Captioned -- This symbol indicates that a television program or videotape is closed captioned for deaf or hard of hearing persons (and others). TV sets that have a built-in or a separate decoder are equipped to display dialogue for programs that are captioned. The Television Decoder Circuitry Act of 1990 requires new TV sets (with screens 13" or larger) to have built-in decoders after July, 1993. Also, videos that are part of exhibitions may be closed captioned using the symbol with instructions to press a button for captioning. The alternative would be open captioning, which translates dialogue and other sounds in print.



Large Print -- This symbol for large print is printed in 18 point or larger text. In addition to indicating that large print versions of books, pamphlets, museum guides and theater programs are available, you may use the symbol on conference or membership forms to indicate that print materials may be provided in large print. Sans serif or modified serif print with good contrast is highly recommended, and special attention should be paid to letter and word spacing. (The smallest type written text that is considered to be "large print" is 14 point type.)

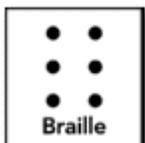
DISABILITY ACCESS SYMBOLS



Assistive Listening Systems or Devices -- These systems transmit sound via hearing aids or headsets. They include infrared, loop and FM systems. Portable systems may be available from the same audiovisual equipment suppliers that service conferences and meetings.



Volume Control Telephone -- This symbol indicates the location of telephones that have handsets with amplified sound and/or adjustable volume controls.



Braille Symbol -- This symbol indicates that printed matter is available in Braille, including exhibition labeling, publications and signage.



Access for Individuals Who are Blind or Have Low Vision (Other Than Print or Braille) -- This symbol may be used to indicate access for people who are blind or have low vision, including a guided tour; a path to a nature trail or a scent garden in a park; and a tactile tour or a museum exhibition that may be touched.



Audio Description for TV, Video and Film -- This service makes television, video, and film more accessible for persons who are blind or have low vision. Description of visual elements is provided by a trained Audio Descriptor through the Secondary Audio Program (SAP) of televisions and monitors equipped with stereo sound. An adapter for non-stereo TVs is available through the American Foundation for the Blind, 800-829-0500.

DISABILITY ACCESS SYMBOLS



Live Audio Description -- A service for people who are blind or have low vision that makes the performing and visual arts more accessible. A trained Audio Describer offers live commentary or narration (via headphones and a small transmitter) consisting of concise, objective descriptions of visual elements (for example, a theater performance or a visual arts exhibition at a museum).



Information -- This symbol may be used on signage or on a floor plan to indicate the location of the information or security desk, where there is more specific information or materials concerning access accommodations and services such as large print materials, tape recordings of materials, or sign interpreted tours.
