

Bench Conduct for Temporary Judges

PARTICIPANT MATERIALS

JUNE 2016



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR JUDICIAL EDUCATION AND RESEARCH

BENCH CONDUCT FOR TEMPORARY JUDGES

Contents

<u>Title</u>	<u>Page No.</u>
<i>Watson</i> Transcript	1
Internal Dialogue Checklist	5
Demeanor Hypos	6
Rothman’s Eight Pillars of Judicial Ethics	7
Active Listening Checklist.....	10
Body Language Checklist.....	11
Constructive Feedback Checklist.....	12
Practical Tips for Working with Self-Represented Litigants.....	13
Proposed Best Practices for SRLs.....	16
Social Cognition and the Law	21
Form MC-410	25
California Rule of Court 1.000	26
Bench Card on Providing Accommodations.....	28
The Ten Commandments – Mental Health Disability	30
Ten Tips for Communicating with People with Disabilities	32
Tips for Interacting with People Who are Blind.....	33
Tips for Talking to People with a Hearing Loss	34
Disability Terminology Chart	35
U.S. Dept. of Justice FAQs on Service Animals (July 20, 2015).....	36
Disability Accommodation Laws Overview Sheet.....	44
Disability Symbols Quiz	48
Disability Symbols Quiz – Answers	50

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.

Internal Dialogue 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

HYPO 1

A family law litigant petitioned the court to reduce his monthly child support payments. The judge looked at the petitioner and said, "You look like you could stand to lose a few pounds." The judge then asked, "How much money do you spend on food?"

What is the appropriate response?

HYPO 2

After hearing that an attorney had made an unflattering remark about the judge, when the attorney next appeared, the judge said, "I heard you think I don't know my posterior from a hole in the ground." As the attorney attempted to stammer out her reply, the judge interjected, "I'm not going to allow you to appear today, so you should just leave my courtroom."

What is the appropriate response?

HYPO 3

In a debtor examination, the judge openly doubted the truthfulness of the judgment debtor. The judge instructed the judgment debtor to hand over his wallet. The judge then preceded to take the cash out of the judgment debtor's wallet and hand it to the judgment creditor.

What is the appropriate response?

THE CENTRAL PRINCIPLE OF BEING A JUDGE

“The basic function of an independent, impartial, and honorable judiciary is to maintain the utmost integrity in decision making....”¹

This principle applies to everything that a judge does, whether it is conducting judicial proceedings, off bench activities in the courthouse, or judicial administration. It applies as well to the ethics obligations of judges in the courthouse and in private life. All of what a judge does must ensure the integrity of the process of decision making and the decision itself.

The Eight Pillars of Being a Judge

The following Eight Pillars of Being a Judge are some of the qualities and thinking processes that will help a judge remain focused on what judging is about and to ensure the “utmost integrity of decision making.”²

PILLAR I — Awareness of Being a Judge

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

As you go about your lives, have the awareness, running in the background like an antivirus program, that you are a “judge.” It may take time for this awareness to become automatic, so that, ultimately, as information, events or perceptions reach you, the idea will filter through that *you are a judge*, a public figure, who is seen as a symbol of the justice system. You bear the burden of expectations about how judges should behave and react.

As a judge you have committed to uphold the integrity and independence of the judiciary, to avoid impropriety and the appearance of impropriety in both the public and non-public aspects of your lives, to respect and comply with the law, to promote confidence in the integrity and impartiality of the judiciary, to assure that bias and prejudice are not countenanced in public or private life, and to be fair and diligent.

PILLAR II—Mindfulness in the Courtroom

Mindfulness and awareness in court involve consistency of focus on your mission as a judge in court proceedings. This means being conscious of what you do and say, and being attentive to what others do and say. Always notice your own reactions, feelings and thoughts in regard to what is taking place.

Remain focused. Always remain focused on the judicial task before you. This includes both the particular elements of the task and the qualities judges must exhibit in judicial proceedings (e.g., patience, dignity, fairness, impartiality, honesty in decision making, etc.). If what you are doing and saying is not serving to accomplish the particular task before you, learn to notice and be aware when this takes place, and

¹ Rothman, *Cal. Jud. Cond. Handbook*, 1990, 1st ed., Calif. Judges Assoc., p. xxxi, California Code of Judicial Ethics, canon 1, *Advisory Committee Commentary*, 1995 – present. Discussed in sections 1.20 to 1.25 of the *Cal. Jud. Cond. Handbook*, 2007, 3rd ed., and Appendix 3, 2013 Supplement to the *Cal. Jud. Cond. Handbook*.

² The Eight Pillars were prepared by David Rothman with the assistance of the Center for Judicial Education and Research (CJER), the New Judge Orientation Working Group, and the CJER staff in 2011 to 2013. Comments are welcome. rothmand@aol.com.

get yourself back on track. People before the court (parties, lawyers, jurors, witnesses, observers) expect a judge to pay attention to the matter before the judge.

A court proceeding is not a place 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.

Develop the habit of “noticing” and finding productive responses to events in court. Notice your feelings, emotions, anger, sympathy, impatience, or annoyance in response to what is taking place in the courtroom. Your reactions are signals. If you miss these signals, you increase the probability of unproductive actions based on these emotions (e.g., actions based on anger, prejudice, mistakes, errors, etc.) rather than productive responses based on reflection and thought. Whether in or out of court, a judge needs to develop and use strong self-observation skills.

Become self-aware. Try to see the clues when your emotions may be getting in the way of your objectivity by observing yourself, as well as how others are reacting to you in the courtroom (facial expressions, body language, etc.).

PILLAR III—The Rule of Law

Actions and decisions in court must be within the law.

Judges are not there to make up the rules 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—No Assumptions

Keep an open mind, challenge assumptions and do not prejudge.

It is natural for humans to make assumptions, to take mental shortcuts in order to quickly arrive at conclusions. But it is also a part of our nature that once a conclusion enters our mind (whether based on a bias, an assumption or “fact” heard in a trial), it is difficult either to reject or to challenge it. “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 the actions you are taking.

PILLAR V—Professional Distance

Do not take things personally, become embroiled or be 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. *Embroidment* is the process by which a judge surrenders the role of impartial arbiter and dispenser of justice, and joins the fray, becoming involved rather than maintaining a professional distance. Once a judge becomes embroiled fairness, impartiality and the integrity of decisions leave the courtroom.

Embroidment is a frequent cause of judicial misconduct in court proceedings. 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, coercing pleas or a settlement, and other like conduct are examples of loss of professional distance.

Pillar VI—Ensure Both the Reality and Public Perception of Honesty and Integrity

Ensure your own honesty in decisions and in your judicial and private life actions.

Ensuring honesty and integrity in the process of making decisions and in the decisions themselves encompasses both the *reality* as well as the *public perception* of integrity. 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, and so on, focus on one ultimate objective: ensuring the honesty and integrity of decision making. Not only does a judge do what is right according to law, he or she must also be perceived to be doing so. Ensuring honesty and integrity in private life actions is essential to the public perception of integrity of judicial actions.

“[H]onesty is the minimum qualification for every judge. . . . If the essential quality of veracity is lacking, other positive qualities of the person cannot redeem or compensate for the missing fundamental.”³

Pillar VII—Courage to Do the Right Thing

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

Canon 3B(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 that: “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 the judge’s decision is honest and true.

Pillar VIII—Accountability and Humility

Accept and ensure judicial accountability.

Humility. Recognizing that you are accountable means having the humility to accept that you can be wrong and, possibly, the most difficult of judicial burdens, the ability to keep an open mind.

Acceptance of accountability. Accountability includes a variety of informal and formal systems, including open public proceedings and maintenance of a record, appellate review, judicial elections, monitoring the conduct of judges in the courthouse, and through the judicial disciplinary system

Accountability not only involves that of the individual judge, but includes the judge’s duty to see to it that other judges are also held accountable. But, by far, a judge’s accountability is to herself or himself. You are the one person who actually knows whether the process of decision making you have engaged in and the decisions you have made are honest and impartial.

Public trust and confidence in the courts is essential to the rule of law. As a guardian of the system of justice, a judge needs to recognize that accountability is not an unfair and noisome intrusion, but an appropriate and fundamental obligation of this calling. Acceptance of this accountability and humility is to understand the central principle of being a judge.

David Rothman, June 2015©

³ *Inquiry Concerning Judge Kevin Ross, Cal. Com. on Jud. Performance* (2005).

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

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*.

© American Judicature Society. Reprinted with permission

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.

Social Cognition and the Law

Professor Jack Glaser, Goldman School of Public Policy, UC Berkeley (2002)

Summary of Concepts and Research

Social psychology is the study of the mental processes (e.g., thoughts, feelings, motivations) that give rise to social behavior (e.g., friendliness, communality, hostility, discrimination) and, conversely, the situations and environments that can give rise to those mental states. In particular, social psychology places emphasis on *situational* determinants of behavior, understanding that a lot of what we do is determined by what we've experienced in the past and what social norms dictate about how we should behave.

A great deal of emphasis has been placed by social psychologists on the study of intergroup biases; stereotyping, prejudice, and discrimination. Over the past century, we have learned a lot about these processes and much of this knowledge will be summarized in this course.

First and foremost, psychologists have determined that intergroup biases for the most part arise from normal mental processes. Although it is tempting to pathologize prejudice, bias is typically the result of our strong, innate tendencies to: 1) *categorize objects and people into groups*; 2) *prefer things (and people) that (who) are familiar and similar to us*; 3) *simplify a very complex world (e.g., with stereotypes)*; and 4) *rationalize inequities*. Furthermore, in more recent decades psychologists have found that most of our biases can operate outside of our conscious awareness, nevertheless distorting our judgments, and making them in some ways all the more inevitable and destructive. Following is a summary of these basic tenets of psychological research on intergroup bias, with conclusions about how it is relevant to judicial processes and prescriptions for minimizing the influence of bias.

Categorization: People are strongly inclined to categorize objects, concepts, and people into groups. This probably derives from prehistoric needs to identify edible foods, dangerous predators, and our own kin. In the present it often translates into *social categorization*—identifying people as belonging to racial, ethnic, gender, and other types of groups. Research first demonstrated this with basic objects and has extended it to humans. A corollary of categorization is that we tend to accentuate differences between groups and underestimate differences within groups (especially groups to which we don't belong, hence: "They all look/act alike."). Furthermore, we tend to engage in group overexclusion whereby we set a high threshold for determining that someone belongs to our group. Perhaps this evolved to ensure that we did not waste our time or resources on people who did not belong to our clan and could therefore pass on our genetic code, but the inclination has stuck around.

Ingroup Favoritism/Outgroup Derogation: Perhaps social categorization in and of itself wouldn't be such a bad thing except that we also have a tendency to favor our own groups

(again, the evolutionary implications are obvious) and discriminate against (e.g., allocate fewer resources to, behave aggressively toward) groups to which we do not belong. Research on this ingroup favoritism has shown, strikingly, that people will give up the chance to maximize their own rewards in favor of ensuring that their group does better than an outgroup. In other words, people prefer a relative benefit to an absolute benefit, as long as their group comes out on top.

Stereotypes as Heuristics: Not unrelated to the process of categorization (itself a simplification strategy), people have a tendency to try to simplify their social environments, which tend to be very complex. Rather than trying to make determinations about the attributes of each individual we meet, we rely on heuristics, or mental shortcuts such as stereotypes. Stereotypes are beliefs we have about the traits or attributes that are typical of particular groups. For example, some stereotypes hold that Jews are intelligent and greedy, women are nurturing and dependent, and African Americans are athletic and aggressive. In social-cognitive terms, stereotypes are mental associations between groups and attributes. Stereotypes can be positive or negative and, like other beliefs, they can vary in their degree of accuracy. However, even an “accurate” stereotype, which may reflect a real difference in averages between groups, is unlikely to be a reliable basis for making a judgment about an individual. Recall that we tend to overestimate similarities within groups and differences between groups. In reality, there are usually more differences within than between human groups on any given trait.

Rationalization: Another basis of bias is the tendency to need to rationalize inequities in society. This idea stems from research indicating that people don’t like to believe in an unjust world, so if something bad happens to someone, at least a part of us likes to believe they somehow deserved it. In terms of intergroup bias, this translates into believing that groups who are low in status or who are even actively oppressed must possess some trait that is responsible. Recent research shows that such beliefs are often held even by those with low status. They too need to rationalize inequity, and it may be easier to believe that they, or their group, have done something wrong or have some weakness, than to believe that they are the hopeless victims of a discriminatory society. Thus, the stereotypes we possess are often in the service of rationalization. Nevertheless, we can also learn stereotypes first, and they can lead us to create or perpetuate inequities. The causality can flow both ways.

Unconscious Bias: In the past decade or so, social psychologists have drawn on research by cognitive psychologists, who were interested in implicit memory, to study how intergroup bias might operate outside of our conscious awareness or control. Cognitive psychological research on implicit memory has shown that most of what we “remember” (i.e., mental associations we have) is outside of conscious access. This makes sense when we consider how many things we observe every day and how few of them we (think we) remember. Cognitive psychologists developed techniques to tap and measure implicit memories indirectly. Social psychologists have adopted and adapted these methods to measure implicit biases. For example, we can show people words subliminally (i.e., too quickly for them to perceive consciously) that are associated with social groups (e.g., “African” “European”) (we call such stimuli “primes”), and then have them evaluate other words (that they can see) as either good or bad. In these studies, we find that most

White people are faster to judge positive words as good when they are preceded by White-related primes than by Black-related primes, and vice versa for evaluations of negative words. This occurs despite research subjects' claims that they are not biased, and their conscious obliviousness to even the *presence* of the primes, let alone their content.

In part, demonstrations of implicit bias despite subjects' assertions of objectivity may reflect a circumvention of people's discomfort with admitting their true biases. However, implicit biases also reflect stereotypes and prejudices that people truly do not know they have. In this regard, the biases they exhibit on implicit measures are unintended. They are, nevertheless, fully capable of leading to discriminatory deadly behavior.

As a case in point, research has shown that when experimental subjects in a simulated police activity are presented with images of men holding either guns or harmless objects (e.g., cell phones, wallets), that subjects are faster to make a "shooting" response for a gun if the man in the image is Black than if he is White, and faster to make the safe (no shoot) response if the target is White than if he is Black. They are also more likely to erroneously shoot a Black than a White man who is not holding a gun. It is highly unlikely that subjects are intentionally shooting Black men faster and more readily. This is an unintended bias that has deadly implications.

Relevance to the Courtroom: The relevance of psychological research on bias in the courts is especially acute with regard to unconscious or unintentional bias. Courts are designed to minimize bias and maximize fairness. However, when implicit biases are operating, good intention and even effort may be inadequate. Implicit stereotypes may serve to color our interpretations of ambiguous behaviors and evidence. And implicit prejudice (i.e., outgroup derogation) may serve to undermine our motivations to be careful and fair, while leading more directly to punitiveness.

Psychological research had addressed this directly. It has shown repeatedly that, in simulated trials, judicial decision-makers are more likely to convict minority defendants (and give them harsher sentences), even though all else is equal. This supports results from correlational research on real criminal justice data, but conclusively rules out any alternative explanations. Interestingly, with regard to implicit processes, recent research by Somers and Ellsworth indicates that such biases are mitigated when the race of the defendant is made salient. In this case, jurors and judges can, once made aware of the potential for their racial bias, correct for it, or focus more carefully on other aspects of the case.

Strategies for minimizing bias: The Somers and Ellsworth research, along with a tradition of research on judgmental accuracy, suggests some strategies for minimizing bias in the courts:

- *Make categories explicit:* As Somers and Ellsworth have shown, when group status is made salient it is less likely to bias judgments. To some extent, people can adjust for, or perhaps even set aside biases if they are made aware of their potential influence. We like

to believe that we live in a “color-blind” society, and while this may be a utopian ideal, in reality people are acutely and chronically cognizant of race (and ethnicity, and gender, etc.) and these categories shape our judgments. Research indicates that emphasizing group membership leads to less bias than does denying it. Remember, justice is not blind, she is *blindfolded*. In an ideal world, judicial decision makers would not know the race, ethnicity, age, gender, etc. of their defendants, plaintiffs, complainants, experts, and witnesses. In the absence of this possibility, making group membership explicit and salient should serve to mitigate bias in judgments.

- *Increase accountability:* Research also indicates that the more accountable we are (e.g., the more we expect our judgments to be evaluated or second-guessed), the less we rely on stereotypes for making judgments. In this regard, the judicial process is again fairly ideal because jurors are accountable to each other (although “groupthink” is another social psychological process that is perilous in this regard), and juries and judges must consider the possibility of appeal. However, to the extent that appeals are based on procedural problems, rather than findings of fact, this form of accountability may not affect inferences of guilt.
- *Allow ample time for judgments:* Stereotypes are most likely to bias judgments under time pressure. When there is ample time to consider evidence, people rely less on heuristics. This is another area of strength for the courts. However, to the extent that dockets are full and procedures are rushed, this advantage may be undermined.
- *Maintain vigilance from the start:* Once bias creeps into the process it has the potential to cascade and it is difficult to reverse. If a decision maker lets his or her guard down at some point and allows a judgment to be made based on a stereotype, it can contaminate all future judgments. Retrospective corrections for bias are difficult to make or to justify to oneself. It is best to maintain objectivity (using the above strategies) throughout the process.

Despite the seeming inevitability and ubiquity of intergroup bias, and its operation at the unconscious level, there are efforts that can be made to minimize its influence. This, it seems, should be a high priority goal for judicial decision-makers. It is hoped that the knowledge gained from this course will support that goal.

MC-410

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:		
REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND RESPONSE		DEPARTMENT: 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.



California Rules of Court

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.

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, CJER ADA Resources, 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>

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 rude, 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.

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

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



Frequently Asked Questions about Service Animals and the ADA

Many people with disabilities use a service animal in order to fully participate in everyday life. Dogs can be trained to perform many important tasks to assist people with disabilities, such as providing stability for a person who has difficulty walking, picking up items for a person who uses a wheelchair, preventing a child with autism from wandering away, or alerting a person who has hearing loss when someone is approaching from behind.

The Department of Justice continues to receive many questions about how the Americans with Disabilities Act (ADA) applies to service animals. The ADA requires State and local government agencies, businesses, and non-profit organizations (covered entities) that provide goods or services to the public to make “reasonable modifications” in their policies, practices, or procedures when necessary to accommodate people with disabilities. The service animal rules fall under this general principle. Accordingly, entities that have a “no pets” policy generally must modify the policy to allow service animals into their facilities. This publication provides guidance on the ADA’s service animal provisions and should be read in conjunction with the publication *ADA Revised Requirements: Service Animals*.

DEFINITION OF SERVICE ANIMAL

Q1: What is a service animal?

A: Under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person’s disability.

Q2: What does “do work or perform tasks” mean?

A: The dog must be trained to take a specific action when needed to assist the person with a disability. For example, a person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels. A person with depression may have a dog that is trained to remind her to take her medication. Or, a person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure.

Q3: Are emotional support, therapy, comfort, or companion animals considered service animals under the ADA?

A: No. These terms are used to describe animals that provide comfort just by being with a person. Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA. However, some State or local governments have laws that allow people to take emotional support animals into public places. You may check with your State and local government agencies to find out about these laws.

Q4: If someone's dog calms them when having an anxiety attack, does this qualify it as a service animal?

A: It depends. The ADA makes a distinction between psychiatric service animals and emotional support animals. If the dog has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, that would qualify as a service animal. However, if the dog's mere presence provides comfort, that would not be considered a service animal under the ADA.

Q5: Does the ADA require service animals to be professionally trained?

A: No. People with disabilities have the right to train the dog themselves and are not required to use a professional service dog training program.

Q6: Are service-animals-in-training considered service animals under the ADA?

A: No. Under the ADA, the dog must already be trained before it can be taken into public places. However, some State or local laws cover animals that are still in training.

GENERAL RULES

Q7: What questions can a covered entity's employees ask to determine if a dog is a service animal?

A: In situations where it is not obvious that the dog is a service animal, staff may ask only two specific 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 are not allowed to request any documentation for the dog, require that the dog demonstrate its task, or inquire about the nature of the person's disability.

Q8: Do service animals have to wear a vest or patch or special harness identifying them as service animals?

A: No. The ADA does not require service animals to wear a vest, ID tag, or specific harness.

Q9: Who is responsible for the care and supervision of a service animal?

A: The handler is responsible for caring for and supervising the service animal, which includes toileting, feeding, and grooming and veterinary care. Covered entities are not obligated to supervise or otherwise care for a service animal.

Q10: Can a person bring a service animal with them as they go through a salad bar or other self-service food lines?

A: Yes. Service animals must be allowed to accompany their handlers to and through self-service food lines. Similarly, service animals may not be prohibited from communal food preparation areas, such as are commonly found in shelters or dormitories.

Q11: Can hotels assign designated rooms for guests with service animals, out of consideration for other guests?

A: No. A guest with a disability who uses a service animal must be provided the same opportunity to reserve any available room at the hotel as other guests without disabilities. They may not be restricted to “pet-friendly” rooms.

Q12: Can hotels charge a cleaning fee for guests who have service animals?

A: No. Hotels are not permitted to charge guests for cleaning the hair or dander shed by a service animal. However, if a guest’s service animal causes damages to a guest room, a hotel is permitted to charge the same fee for damages as charged to other guests.

Q13: Can people bring more than one service animal into a public place?

A: Generally, yes. Some people with disabilities may use more than one service animal to perform different tasks. For example, a person who has a visual disability and a seizure disorder may use one service animal to assist with way-finding and another that is trained as a seizure alert dog. Other people may need two service animals for the same task, such as a person who needs two dogs to assist him or her with stability when walking. Staff may ask the two permissible questions (See Question 7) about each of the dogs. If both dogs can be accommodated, both should be allowed in. In some circumstances, however, it may not be possible to accommodate more than one service animal. For example, in a crowded small restaurant, only one dog may be able to fit under the table. The only other place for the second dog would be in the aisle, which would block the space between tables. In this case, staff may request that one of the dogs be left outside.

Q14: Does a hospital have to allow an in-patient with a disability to keep a service animal in his or her room?

A: Generally, yes. Service animals must be allowed in patient rooms and anywhere else in the hospital the public and patients are allowed to go. They cannot be excluded on the grounds that staff can provide the same services.

Q15: What happens if a patient who uses a service animal is admitted to the hospital and is unable to care for or supervise their animal?

A: If the patient is not able to care for the service animal, the patient can make arrangements for a family member or friend to come to the hospital to provide these services, as it is always preferable that the service animal and its handler not to be separated, or to keep the dog during the hospitalization. If the patient is unable to care for the dog and is unable to arrange for someone else to care for the dog, the hospital may place the dog in a boarding facility until the patient is released, or make other appropriate arrangements. However, the hospital must give the patient opportunity to make arrangements for the dog’s care before taking such steps.

Q16: Must a service animal be allowed to ride in an ambulance with its handler?

A: Generally, yes. However, if the space in the ambulance is crowded and the dog's presence would interfere with the emergency medical staff's ability to treat the patient, staff should make other arrangements to have the dog transported to the hospital.

CERTIFICATION AND REGISTRATION

Q17: Does the ADA require that service animals be certified as service animals?

A: No. Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry.

There are individuals and organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA and the Department of Justice does not recognize them as proof that the dog is a service animal.
--

Q18: My city requires all dogs to be vaccinated. Does this apply to my service animal?

A: Yes. Individuals who have service animals are not exempt from local animal control or public health requirements.

Q19: My city requires all dogs to be registered and licensed. Does this apply to my service animal?

A: Yes. Service animals are subject to local dog licensing and registration requirements.

Q20: My city requires me to register my dog as a service animal. Is this legal under the ADA?

A: No. Mandatory registration of service animals is not permissible under the ADA. However, as stated above, service animals are subject to the same licensing and vaccination rules that are applied to all dogs.

Q21: My city / college offers a voluntary registry program for people with disabilities who use service animals and provides a special tag identifying the dogs as service animals. Is this legal under the ADA?

A: Yes. Colleges and other entities, such as local governments, may offer voluntary registries. Many communities maintain a voluntary registry that serves a public purpose, for example, to ensure that emergency staff know to look for service animals during an emergency evacuation process. Some offer a benefit, such as a reduced dog license fee, for individuals who register their service animals. Registries for purposes like this are permitted under the ADA. An entity may not, however, require that a dog be registered as a service animal as a condition of being permitted in public places. This would be a violation of the ADA.

BREEDS

Q22: Can service animals be any breed of dog?

A: Yes. The ADA does not restrict the type of dog breeds that can be service animals.

Q23: Can individuals with disabilities be refused access to a facility based solely on the breed of their service animal?

A: No. A service animal may not be excluded based on assumptions or stereotypes about the animal's breed or how the animal might behave. However, if a particular service animal behaves in a way that poses a direct threat to the health or safety of others, has a history of such behavior, or is not under the control of the handler, that animal may be excluded. If an animal is excluded for such reasons, staff must still offer their goods or services to the person without the animal present.

Q24: If a municipality has an ordinance that bans certain dog breeds, does the ban apply to service animals?

A: No. Municipalities that prohibit specific breeds of dogs must make an exception for a service animal of a prohibited breed, unless the dog poses a direct threat to the health or safety of others. Under the "direct threat" provisions of the ADA, local jurisdictions need to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal's actual behavior or history, but they may not exclude a service animal because of fears or generalizations about how an animal or breed might behave. It is important to note that breed restrictions differ significantly from jurisdiction to jurisdiction. In fact, some jurisdictions have no breed restrictions.

EXCLUSION OF SERVICE ANIMALS

Q25: When can service animals be excluded?

A: The ADA does not require covered entities to modify policies, practices, or procedures if it would "fundamentally alter" the nature of the goods, services, programs, or activities provided to the public. Nor does it overrule legitimate safety requirements. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. In addition, if a particular service animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, that animal may be excluded.

Q26: When might a service dog's presence fundamentally alter the nature of a service or program provided to the public?

A: In most settings, the presence of a service animal will not result in a fundamental alteration. However, there are some exceptions. For example, at a boarding school, service animals could be restricted from a specific area of a dormitory reserved specifically for students with allergies to dog dander. At a zoo, service animals can be restricted from areas where the animals on display are the natural prey or natural predators of dogs, where the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. They cannot be restricted from other areas of the zoo.

Q27: What does under control mean? Do service animals have to be on a leash? Do they have to be quiet and not bark?

A: The ADA requires that service animals be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. In the school (K-12) context and in similar settings, the school or similar entity may need to provide some assistance to enable a particular student to handle his or her service animal. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal. For example, a person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the dog to wander away from her and must maintain control of the dog, even if it is retrieving an item at a distance from her. Or, a returning veteran who has PTSD and has great difficulty entering unfamiliar spaces may have a dog that is trained to enter a space, check to see that no threats are there, and come back and signal that it is safe to enter. The dog must be off leash to do its job, but may be leashed at other times. Under control also means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place. However, if a dog barks just once, or barks because someone has provoked it, this would not mean that the dog is out of control.

Q28: What can my staff do when a service animal is being disruptive?

A: If a service animal is out of control and the handler does not take effective action to control it, staff may request that the animal be removed from the premises.

Q29: Are hotel guests allowed to leave their service animals in their hotel room when they leave the hotel?

A: No, the dog must be under the handler's control at all times.

Q30: What happens if a person thinks a covered entity's staff has discriminated against him or her?

A: Individuals who believe that they have been illegally denied access or service because they use service animals may file a complaint with the U.S. Department of Justice. Individuals also have the right to file a private lawsuit in Federal court charging the entity with discrimination under the ADA.

MISCELLANEOUS

Q31: Are stores required to allow service animals to be placed in a shopping cart?

A: Generally, the dog must stay on the floor, or the person must carry the dog. For example, if a person with diabetes has a glucose alert dog, he may carry the dog in a chest pack so it can be close to his face to allow the dog to smell his breath to alert him of a change in glucose levels.

Q32: Are restaurants, bars, and other places that serve food or drink required to allow service animals to be seated on chairs or allow the animal to be fed at the table?

A: No. Seating, food, and drink are provided for customer use only. The ADA gives a person with a disability the right to be accompanied by his or her service animal, but covered entities are not required to allow an animal to sit or be fed at the table.

Q33: Are gyms, fitness centers, hotels, or municipalities that have swimming pools required to allow a service animal in the pool with its handler?

A: No. The ADA does not override public health rules that prohibit dogs in swimming pools. However, service animals must be allowed on the pool deck and in other areas where the public is allowed to go.

Q34: Are churches, temples, synagogues, mosques, and other places of worship required to allow individuals to bring their service animals into the facility?

A: No. Religious institutions and organizations are specifically exempt from the ADA. However, there may be State laws that apply to religious organizations.

Q35: Do apartments, mobile home parks, and other residential properties have to comply with the ADA?

A: The ADA applies to housing programs administered by state and local governments, such as public housing authorities, and by places of public accommodation, such as public and private universities. In addition, the Fair Housing Act applies to virtually all types of housing, both public and privately-owned, including housing covered by the ADA. Under the Fair Housing Act, housing providers are obligated to permit, as a reasonable accommodation, the use of animals that work, provide assistance, or perform tasks that benefit persons with a disabilities, or provide emotional support to alleviate a symptom or effect of a disability. For information about these Fair Housing Act requirements see HUD's Notice on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-funded Programs.

Q36: Do Federal agencies, such as the U. S. Department of Veterans Affairs, have to comply with the ADA?

A: No. Section 504 of the Rehabilitation Act of 1973 is the Federal law that protects the rights of people with disabilities to participate in Federal programs and services. For information or to file a complaint, contact the agency's equal opportunity office.

Q37: Do commercial airlines have to comply with the ADA?

A: No. The Air Carrier Access Act is the Federal law that protects the rights of people with disabilities in air travel. For information or to file a complaint, contact the U.S. Department of Transportation, Aviation Consumer Protection Division, at 202-366-2220.

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 bottom of the right-hand 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. Calls are confidential.

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

Duplication of this document is encouraged.

July 20, 2015

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.

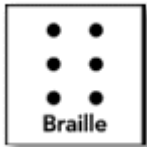
Rule 1.100 seeks to provide a workable and orderly framework for compliance with the ADA and state laws. The rule provides the mechanism for anyone with disabilities participating in court activities, programs, or services—lawyers, parties, witnesses, jurors, and any other participants—to request accommodations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

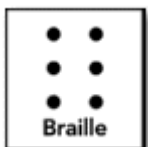
DISABILITY ACCESS SYMBOLS



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 Descriptor 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.
