

## **Frequently Asked Questions about the ADA and Courts Wisconsin Court System**

The Wisconsin Court System is committed to providing equal access to court programs consistent with Title II of the American with Disabilities Act 1990 (ADA), as amended (ADAAA), and Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, and their implementing regulations. If you have a disability that restricts your ability to meaningfully participate in court proceedings, you may ask the court to provide you with reasonable and appropriate accommodations.

### **What is the Americans with Disabilities Act?**

Title II of the ADA states that “no qualified individual shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42. U.S.C. §12132. Section 504 prohibits agencies that receive federal financial assistance from discriminating against otherwise qualified individuals on the basis of a disability in programs and activities. 29 U.S.C. § 794.

These laws and regulations are federal civil rights statutes that require state and local governments, including the court system, to accommodate the needs of qualified individuals with disabilities. The ADA benefits people who have an interest in court activities, programs, and services.

### **Who qualifies for accommodations?**

A person with a disability may receive an accommodation if the person has a physical or mental impairment that substantially limits one or more major bodily functions or major life activities, has a record of such impairment, or is regarded as having such an impairment. Major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Examples of disabilities include mobility and motor impairments, psychological and mental illness, vision impairments, deafness and hearing loss, and environmental sensitivities. Temporary disabilities may also qualify.

### **What kinds of accommodations are available?**

Accommodations may include:

- Making reasonable modifications to policies, practices, and procedures (such as alternative time schedules, telephone conferences)
- Alteration of existing facilities or constructing new facilities (wheelchair accessibility)
- Relocation of a service or program to an accessible site
- Providing auxiliary aids and services (assistive listening devices, real-time captioning, qualified interpreters, readers, large print and Braille)
- Accepting Wisconsin relay calls.

Required accommodations do not include:

- Attorney services or legal research and advice

- Personal equipment or services such as hearing aids and attendant care
- Transportation or lodging

### **How do I get an accommodation?**

You must notify the court or program that you need a disability accommodation and suggest the accommodation that best suits your situation. If you do not request an accommodation, the court is not required to provide one. A request for an accommodation may be made at any time, but you should try to notify the court well in advance so arrangements may be made.

Requests for accommodations may be oral or in writing. You may be asked to complete a **Request for Accommodation form** ([form CS-247 for the Supreme Court/Court of Appeals or form GF-153 for the Circuit Courts](#)) so the court can have a full understanding of your request. If you are unable to fill out the form, you may request a clerk or other court personnel to assist you in writing down the information. In most circumstances you will not need to provide additional medical information, but the court may request supporting documents (such as a note from your physician) in order to make a decision.

### **Who do I contact?**

- For circuit court, you begin by contacting the [Clerk of Circuit Court](#) for the county where the case has been filed. The clerk may refer some requests to the judge or other official.
- For proceedings in front of the Supreme Court, contact the Marshal of the Supreme Court at 608-266-0231.
- For proceedings in front of the Court of Appeals, contact the office of the [Presiding Judge](#).
- For accommodations to help you conduct business with court administrative departments, contact the [head of the department](#).
- For state court employment issues, contact the court system Human Resources Office at 608-267-1940.
- For county employment issues, contact the appropriate county office.

### **Will the judge see my request for an accommodation?**

If the Clerk of Court does not have the authority to grant or deny your request for accommodation, the Clerk will refer the request to the judge for determination. Circumstances when the Clerk must refer a request to the judge include when a request will affect the fairness of the proceeding or the other party's constitutional due process guarantees, or if the facts of the case otherwise necessitate it.

Examples of requests that affect the fairness of the proceeding or the other party's constitutional due process guarantees include, but are not limited to, request for extensions of deadlines, frequent breaks, use of video conferencing, or recording the proceedings.

In these cases, the judge may require that you file a motion to request an accommodation or that you file a Request for Accommodation form (GF-153). *Under Wisconsin law, any motion or document filed in the case is a public record unless designated confidential by statute or sealed by a court order. Accordingly, a motion to request an accommodation or a Request for Accommodation form filed in a case by request of a judge is not automatically confidential.*

**Is my request for an accommodation filed in the public court record?**

It is possible the request may be filed in the court record or discussed during a hearing. This may occur if the requested accommodation will directly impact the fairness of the proceeding or constitutional due process guarantees, or if the facts of the case necessitates it. Additionally, it may occur if the requested accommodation relates to the substantive matters of the underlying proceeding and the request constitutes an ex parte communication prohibited by SCR 60.04(1)(g), requiring notification to the other party.

Examples of such requests include, but are not limited to, having a non-lawyer advocate present or act on one's behalf, receiving free transcripts, requesting short breaks as needed, recording proceedings, receiving additional time to process and complete tasks, controlling or limiting the behavior of opposing counsel or parties.

**Will there be a hearing on my request for an accommodation?**

It is possible the judge may hold a hearing on the request or the request may be discussed during a hearing. This may occur if the requested accommodation will directly impact the fairness of the proceeding or constitutional due process guarantees, or if the facts of the case necessitates it. Additionally, it may occur if the requested accommodation relates to the substantive matters of the underlying proceeding and the request constitutes an ex parte communication prohibited by SCR 60.04(1)(g), requiring notification to the other party.

Examples of such requests include, but are not limited to, having a non-lawyer advocate present or act on one's behalf, receiving free transcripts, requesting short breaks as needed, recording proceedings, receiving additional time to process and complete tasks, controlling or limiting the behavior of opposing counsel or parties.

**How do I protect my accommodation request from public disclosure?**

If you want the information you included in an accommodation request and filed with the court protected from public disclosure, you will need to file a motion to seal and the court will determine whether to treat the information or document as confidential. You may file a motion to seal using a Motion to Seal or Redact a Court Record form (GF-246A). Use of GF-246A is not required and you may also submit a motion to seal in a different format. A Confidential Disclosure of Information to be Sealed or Redacted form (GF-245), should be used along with the motion to seal in order to submit the information to the court that you want to be sealed or redacted.

*Documents filed in the court record are presumptively open to the public under Wisconsin law.* If you file a request for the judge to protect your accommodation request from public disclosure, you are responsible for demonstrating, with particularity, that the administration of justice requires that the information be protected. The judge will consider the reasons you provided and will determine whether you have overcome the legislative policy expressed by the court records statute (Wis. Stat. § 59.20(3)) and the public interest favoring open court records. If your request to protect your accommodation request from public disclosure is denied, your accommodation request will be open to the public, subjecting it to review by other parties. It is also possible the judge will partially grant your request, making your accommodation request open to some parties.

**Do I need to provide verification of my disability?**

A government agency may not make unnecessary inquiries into the existence of a disability. However, the court may ask for information if necessary to help determine what accommodations are appropriate. The court may also inquire further if there is conflicting information about the existence or extent of the disability. The ADA Amendments Act of 2008 was intended to reach more kinds and levels of disabilities, and to shift the focus from whether the person has a disability to avoiding discrimination on the basis of disability.

**May the court deny my request for an accommodation?**

The court may deny your request if the request is for personal services or devices (such as hearing aids), if the modification will fundamentally alter the nature of the service, program, or activity (such as providing an attorney for a disabled party when one would not be provided for another party), or if it would pose an undue administrative or financial burden to provide the accommodation (if the proposed accommodation so expensive or time-consuming as to be unreasonable). The court may also deny your request if it would be inappropriate in the course of the litigation.

**If the court suggests a different accommodation, do I have to accept an alternative accommodation?**

The court is required to provide an accommodation that will effectively allow full participation in the court proceedings. Determining an appropriate accommodation requires an interactive process between you and the court. Your input and suggestions are welcome and important during the process of finding an effective accommodation, but the accommodation selected may not be your first choice. For example, if a juror is blind and requests written material introduced at trial to be transcribed in Braille, the court may consider alternatives such as providing a reader or a tape-recorded transcript of the written material.

**What if I have a disability that isn't apparent, like a psychological, emotional, or learning disability?**

Some individuals have disabilities that substantially interfere with their ability to learn, think, communicate, or sleep, among other things. This type of disability is covered by the ADA if it substantially limits a major life activity, even if it can be improved or controlled with medication or learned behaviors. The judge may consider accommodations such as rest breaks, telephone appearances, elimination of distractions, scheduling proceedings in coordination with medication, or presentation of information in an alternative format. The judge cannot permit accommodations that impair the neutrality or functioning of the court, such as continuing matters indefinitely, appointment of an attorney, or appointment of someone to explain legal matters or do legal research.

**May I bring a service animal?**

A person with a disability may be accompanied by a service dog in all areas of a building where court users are normally allowed to go. Service dogs are sometimes used to guide a blind person, alert a deaf person to sounds, assist a person during a seizure, or pick up things for a person with mobility limitations. Under the ADAAA, a dog must be individually trained to perform tasks that relate directly to the disability in order to qualify as a service dog. The provision of emotional

support or comfort is not covered by this definition. With very limited exceptions, only dogs qualify as service animals.

**Who do I contact if I am not satisfied with the accommodation?**

For the Supreme Court, Court of Appeals, and state court administrative offices, the complaint procedure is described [here](#).

For the Circuit Courts, if you have a complaint about denial of your request, the accessibility of the courthouse, or other matters, please direct your complaint to the District Court Administrator for that county. The District Court Administrator may help pursue the matter with the proper officials, who may include the judge, the county ADA coordinator, or the Chief Judge of the Judicial District. Each county also has its own ADA policies and grievance procedures which are applicable to county facilities, staff and services. The Deputy Director of State Courts for Court Operations provides technical assistance and information about accessibility of court services.

**Disclaimer**

This information is not intended to be a full statement of the state and federal laws governing persons with disabilities and is not intended as legal advice.