

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO
POLICY AND PROCEDURE**

Title: ADA Requests for Accommodation

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Approved 
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Court Executive Officer

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Summary:

This document is designed to provide uniformity to court procedures in conjunction with the Americans with Disabilities Act, Judicial Council guidelines and California Rules of Court 1.100, in order to ensure qualified individuals with disabilities equal access to the judicial system. It is also designed as a guide to court employees in administering the policies and procedures that relate to accommodations.

This document contains a Table of Contents; six sections that include three procedures and three related policies; and eight attachments:

- Sections I, II and III are Procedures
- Sections IV, V and VI are Policies and Guidelines relating to those procedures.
- Attachments 1, 2, and 3 are documents referenced specifically in the procedures. The remaining attachments are related code sections and informational literature.

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SECTION I:
**GENERAL REQUESTS FOR ACCOMMODATION
PROCEDURE**

Responsibility:
COURT EMPLOYEES:

Action:
If a person requests assistance due to a disability and the requested assistance cannot be provided immediately by the court employee, provide the applicant with Judicial Council **Form MC-410: Request for Accommodations by Persons with Disabilities and Order:** (See Attachment 2).

Upon receipt of a completed form, the court employee shall perform an initial review for completeness and obtain a phone number where the applicant or a contact person can be reached. The applicant should be advised that the application will be submitted to the court for consideration and he/she will be contacted. The court employee must then immediately submit the written request to his/her supervisor.

Responsibility:
SUPERVISOR:

Action
The supervisor shall promptly review and submit Requests for Accommodation, along with relevant information, to the ADA Coordinator and the Presiding Judge. Thereafter, the supervisor should follow up to ensure the matter was resolved.

Responsibility:
ADA COORDINATOR:

Action:
Upon receipt of a written Request for Accommodation, the ADA Coordinator shall review and contact the Presiding Judge, or his/her designee, to discuss a recommendation based upon operational needs and the availability of personnel and/or equipment and services.

Responsibility:
PRESIDING JUDGE/OR DESIGNEE:

Action:
Review and consider application and recommendation. Provide ADA Coordinator with signed order, including specific direction on nature and extent of accommodation approved.

Responsibility:
ADA COORDINATOR:

Action:
Once the order is signed, the ADA Coordinator shall contact the affected department and supervisor to discuss the nature and extent of the accommodations ordered. The ADA

Coordinator shall send the original signed order to the submitting Supervisor for filing and keep one copy on file in the Human Resources Department.

Responsibility:
SUPERVISOR:

Action:
Upon receipt of the signed order from the ADA Coordinator, the supervisor shall assign a court employee to make appropriate arrangements; to file the order and send a copy of the order to the applicant (**CRC 1.100(e)(2)**).

Responsibility:
COURT EMPLOYEE:

Action:
At the direction of the ADA Coordinator and/or supervisor, the court employee shall file the order and send a copy of the order to the applicant. The court employee shall also make all necessary arrangements needed to properly accommodate the applicant as ordered, including arrangements for any future hearings or appearances that are anticipated.

If the applicant is a party to a case, the original order shall be placed on the left-hand side of the file folder. If the applicant has checked “be kept confidential,” under item 7 on the order, place the order either under the “restricted” sheet in criminal files, or in a sealed envelope marked “confidential” for civil files (**CRC 1.100(5)**). If the applicant is not a party to an existing court case, a copy will only be kept by the ADA Coordinator in the Human Resources Department.

SECTION II

HEARING IMPAIRED OR DEAF INDIVIDUALS – GENERAL PROCEDURE:

Responsibility:
COURT EMPLOYEE

Action:

If a hearing impaired person can be accommodated with an assistive listening device, the court employee should contact Jury Assembly Room (the department who is in charge of the device) to procure the necessary equipment and accommodate the person. No written request for accommodation is required.

If an assistive listening device will not adequately accommodate the hearing impaired person, or the individual is deaf, the court employee shall request that the individual complete a written Request for Accommodation.

Upon receipt of a written Request for Accommodation, the court employee shall perform an initial review for completeness and obtain a phone number where the applicant or a contact person for the applicant can be reached. The Court employee should then immediately submit the Request and relevant information to his/her supervisor.

Responsibility:
SUPERVISOR:

Action

The supervisor shall promptly submit Requests for Accommodation and any relevant information to the ADA Coordinator and the Presiding Judge.

Responsibility:
ADA COORDINATOR:

Action:

Upon receipt of a written Request for Accommodation, the ADA Coordinator shall contact the Presiding Judge, or his/her designee, to discuss a recommendation based upon operational needs and the availability of personnel and/or equipment and services. The ADA Coordinator will follow up with the affected supervisor and the Interpreter Coordinator to ensure expedited processing of the application and judge's orders.

Responsibility:
PRESIDING JUDGE/OR DESIGNEE:

Action:

Review and consider application and recommendation. Provide ADA Coordinator with signed order, including specific direction on nature and extent of accommodation approved.

Responsibility:
ADA COORDINATOR:

Action

Pursuant to discussion with the Presiding Judge or his/her designee, the ADA Coordinator shall contact the Interpreter Coordinator and discuss the nature and extent of the accommodations ordered. Upon receipt, the ADA Coordinator shall deliver the signed order to the Interpreter Coordinator for filing and keep one copy on file. The ADA Coordinator will notify the reporting supervisor of the outcome of the request for accommodation.

Responsibility
INTERPRETER COORDINATOR:

Action:

Upon notification that an order has been signed, the Interpreter Coordinator shall make arrangements for either one (1) sign language interpreter for all short cause (3 hours or less) matters and two (2) for long cause (3 hours or more) matters, whenever possible. If no interpreter is available, or upon recommendation of the ADA Coordinator, the use of a real time reporter should be arranged.

If the party notifies the court of the need for an Intermediary, Relay or CDI (Certified Deaf Interpreter) the Interpreter Coordinator will make those arrangements consistent with those of the sign language interpreters.

Upon receipt of an original signed order, the Interpreter Coordinator shall file the order and send a copy of the order to the applicant, **(CRC1.100(e)(2))** and any affected court unit or department. If the applicant is a party to a case, the original order shall be placed on the left-hand side of the file folder. If the applicant has checked, "be kept confidential," under item 7 on the Order, place the order either under the "restricted" sheet in criminal files, or in a sealed envelope marked "confidential," for civil files. **(CRC 1.100 (c)(4))**.

REQUESTS BY HEARING IMPAIRED/ DEAF PERSONS MADE IN COURTROOM PROCEEDINGS:

Responsibility:
COURTROOM CLERK

Action:

If an oral request for an accommodation is made in open court by a deaf or hearing impaired defendant, party or witness participating in court proceedings, a written request for accommodation is not required. The courtroom clerk must notify the Interpreter Coordinator by email of the request and any future hearing dates. Inform the party that for any future hearing dates that may be set outside of open court proceedings, (i.e., settlement conference, hearing resulting from an At-Issue filing) the person must contact and notify the Interpreter Coordinator directly.

SECTION III

HEARING IMPAIRED OR DEAF JURORS PROCEDURE:

Responsibility:

JURY ASSEMBLY ROOM:

Action:

When a prospective juror notifies the jury clerk that they are deaf or hearing impaired, the clerk should ascertain the extent of the needs of the juror, i.e., whether they need an Assistive Listening Device, computer aided transcription (Real time reporter) or an Intermediary, Relay Interpreter, and/or an ASL or sign language interpreter.

If the juror needs an Interpreter or Realtime reporter, notify the Interpreter Coordinator of the need and include the name of the juror, badge, group number and date and location of juror's service. **If a scheduling conflict exists, immediately reschedule the juror to an alternate date.**

Responsibility:

INTERPRETER COORDINATOR:

Action:

Immediately upon receipt of a notification from jury services that an interpreter is needed for a deaf or hearing impaired juror, check the interpreter calendar to be sure no other cases are set requiring the services of an ASL or sign language interpreter. If there is a case set on the same date or same week, please inform jury services immediately so the juror can be rescheduled.

If there is no conflict, immediately begin making arrangements to provide **two (2)** ASL or sign language interpreters for **two (2)** days. If two interpreters are not available, contact the Court Supervisor for Court Reporters, to ascertain the availability of a Real Time Court Reporter, who is employed by the court.

If no real time court employee is available, contact private court reporting agencies - Contact List for Court Reporting Realtime Reporter (See Attachment 3).

The Interpreter Coordinator must confirm arrangements for interpreters no less than five (5) court days before the juror's scheduled appearance. If two sign language interpreters, one real time reporter, or a combination of real time and sign language interpreters cannot be confirmed, at least five days prior to the scheduled appearance, notify Jury Services and the Interpreter Services Manager immediately.

Once arrangements are confirmed and the two ASL or sign language interpreter(s) are assigned, notify the Lead Clerk and Supervisor in Jury Services via email.

At 4:15 p.m. on the day before the juror is scheduled to report for service, contact the lead clerk in Jury Services to ascertain the reporting instructions to determine what time the interpreter is needed. If the juror is put on phone stand-by, follow up with the lead clerk the next morning at 11:30 a.m. Maintain contact with the assigned interpreter to provide timely reporting instructions.

Responsibility:
JURY ASSEMBLY ROOM

Action:
Maintain close contact with the Interpreter Coordinator in order to report time and location when the interpreter or real time reporter is needed, i.e., when the juror is selected for a department, sworn to a case, anticipated duration of need, or other assignment changes that arise.

Responsibility:
INTERPRETER COORDINATOR:

Action:
Once the juror is sworn to the case, obtain a time estimate from the department the juror is assigned to. Immediately begin making arrangements for continuation of two sign language interpreters for the anticipated duration of the case, including deliberations. The Interpreter Coordinator should make frequent contact with the department in order to ascertain when deliberations are set to begin to assure continued coverage of interpreters through deliberations.

If two sign language interpreters are not available for the deliberations, and one real time reporter is deemed inappropriate due to the individual's inability to effectively communicate orally, an alternative may be the combined use of a sign language interpreter and real time reporter, i.e., the juror reading from the reporter's real time screen and responding through the use of the ASL or sign language interpreter. See **Civil Code Section 54.8(g)(h)**.

SECTION IV

GENERAL REQUESTS FOR ACCOMMODATION

GENERAL GUIDELINES AND POLICIES:

California Rules of Court **1.100** sets forth the court's responsibilities as they relate to requests for accommodations by persons with disabilities. The full text of that rule is attached hereto for easy reference.

Form MC-410 Request for Accommodations by Persons with Disabilities and Order:

Generally, if a court customer orally requests an accommodation outside of the courtroom setting, court employees shall provide the applicant with Judicial Council Form MC-410, Request for Accommodations by Persons with Disabilities and Order, (See Attachment 2) for completion. However, **CRC 1.100** allows the court discretion to waive this requirement if appropriate. Therefore, the court employee should require the application, *unless* the accommodation requested is so minimal in nature that it can be provided immediately by the employee, without causing undue hardship on the employee or court operations.

For example, a person who is blind, or has other physical impairment which prohibits them from writing, may appear at the Clerk's Office or other common area outside of a courtroom, asking for assistance in filling out a short form. In this example, the court employee may be able to easily accommodate this request immediately, without need for an order, by filling out the form with the exact information provided verbally by the customer. In this case, the court employee should indicate on the form that the form was completed by the court employee at the request of the customer, as an accommodation. However, if the party has extensive documentation to complete, or indicates a need for ongoing assistance at future visits to the courthouse, an application and order would be appropriate. If the court employee is unsure whether an order is necessary, contact a supervisor.

Nature of disability and accommodations:

Many customers are concerned about privacy and are uncomfortable discussing the nature of their disability. Therefore, if a customer makes an indirect statement to a court employee that implies they may have some type of disability, the employee should avoid directly asking an individual what his/her disability is. Instead, the employee should ask whether the customer is asking for an accommodation. If the customer replies in the affirmative, the form should be provided, or the employee should inquire what type of accommodations he/she is requesting. If an employee is unsure of how to appropriately address issues of this nature, he/she must immediately and discretely seek supervisory assistance.

While employees should avoid direct inquiries about the underlying disability, once the application is provided, the customer is required to set forth certain information about the disability. California Rule of Court **1.100 (c)(2)** states, "All applications for accommodations shall include a description of the accommodation sought, along with a statement of the impairment that necessitates such accommodation. The court, in its discretion, may require the applicant to provide additional information about the qualifying impairment." Hence, depending

upon the extent and nature of the accommodation being requested, the court in reviewing the application may require a medical statement from the applicant's physician.

CRC 1.100 (c) (2)

The court can offer different or alternative accommodations; however, the person does not have to accept the alternative accommodations. The court is not required to provide the *best* accommodation but must provide an *effective* one. Therefore, the court must find an accommodation that will effectively allow the person to fully participate in the court proceeding. The remedies to an individual who is denied the specific type, or full scope of the accommodation requested are set forth in CRC 1.100 (g) 2007 California Rules of Court.

Rule 1.100. Requests for accommodations by persons with disabilities

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

(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 impairment, or are regarded as having such 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) 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, and other applicable state and federal laws in determining whether to provide an accommodation or an appropriate alternative accommodation.
- (2) The court must inform the applicant in writing, as may be appropriate, and if applicable, in an alternative format, of the following:
 - (A) That the request for accommodation is granted or denied, in whole or in part, and if the request for accommodation is denied, the reason therefore; or that an alternative accommodation is granted;

(B) The nature of the accommodation to be provided, if any; and

(C) The duration of the accommodation to be provided.

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

(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) An applicant or any participant in the proceeding in which an accommodation request has been denied or granted may seek review of a determination made by nonjudicial court personnel within 10 days of the date of the response by submitting, in writing, a request for review to the presiding judge or designated judicial officer.
- (2) An applicant or any participant in the proceeding in which an accommodation request has been denied or granted may seek review of a determination made by a presiding judge or another judicial officer within 10 days of the date of the notice of determination by filing a petition for extraordinary relief in a court of superior jurisdiction.

(Subd (g) 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 and renumbered effective January 1, 2007; adopted as rule 989.3 effective January 1, 1996; previously amended effective January 1, 2006.

(Effective January 1, 2006.) (1) and (2).

Notice and time to respond

The court is not obligated to accommodate immediately upon demand, as not all assistance can be readily provided. If hearings are rescheduled, or special equipment and /or services must be arranged, the court needs sufficient time to comply. In providing a timeframe for court

employees to follow, California Rule of Court **1.100 (c) (3)** states, Requests for Accommodation must be received from the applicant at least 5 days prior to any hearing, or date upon which the party is requesting assistance. The court may waive this requirement.

SECTION V

HEARING IMPAIRED OR DEAF PERSONS

GENERAL GUIDELINES AND POLICIES

Hearing impaired – an individual with a hearing loss, who, with sufficient amplification or a computer-aided transcription system, is able to fully participate in the proceeding, as used in **Civil Code Section 54.8**

Standard Accommodation: Assistive listening device or real time reporter.

Deaf or hearing impaired – individual with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone, but does not include an individual who is hearing impaired provided with, and able to fully participate in the proceedings through the use of, an assistive listening system or computer-aided transcription equipment provided pursuant to Section 54.8 of the Civil Code, as used in **Evidence Code Section 754(a)**

Standard Accommodation: Sign language interpreters or real time reporter.

Interpreter – oral interpreter, a sign language interpreter or a deaf-blind interpreter, as defined in **Evidence Code Section 754(d)**

Intermediary or Relay Interpreter: an individual who is deaf or hearing impaired, or a hearing individual who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language or between American Sign Language and other foreign languages by acting as an intermediary between the individual who is deaf or hearing impaired and the qualified interpreter or American Sign Language, as used in **Evidence Code Sec. 754 (e) (g)**.

Types of Proceedings relating to parties and witnesses:

Pursuant to **Evidence Code Sec. 754 (b)**, in any civil or criminal action, including, but not limited to any action involving a traffic or other infraction, any small claims court proceeding, any juvenile court proceeding, any family court proceeding or service, or any proceeding to determine the mental competency of a person, in any court ordered or court-provided alternative dispute resolution, including mediation and arbitration, or any administrative hearing, where a **party or witness** is an individual who is deaf or hearing impaired and the individual who is deaf or hearing impaired is present and participating, the proceedings shall be interpreted in a language that the individual who is deaf or hearing impaired understands by a **qualified interpreter** appointed by the court or other appointing authority, or as agreed upon.

Qualified interpreter: an interpreter who has been certified as competent to interpret court proceedings by testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for individuals who are deaf or hearing impaired.

Requirement for qualified interpreter for participants in court proceedings:

As outlined in the two preceding paragraphs, **Evidence Code Sec. 754 (b)** mandates the Court to accommodate all hearing impaired or deaf parties and witnesses, who are participants in court proceedings with either a certified language interpreter (oral interpreter, a sign language interpreter or a deaf-blind interpreter) or certified shorthand reporter who provides computer aided transcription (realtime court reporter).

Types of proceedings and participants for hearing impaired accommodations

Pursuant to **Civil Code Sec. 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.

Requirement for application when assistive listening device not effective

Pursuant to **Civil Code 54.8(a)** above, the court does not have the discretion to deny a hearing impaired individual an accommodation if they are requesting *either* an assistive listening system or computer aided transcription. As such, a written application and order for accommodation is not normally required when making accommodations for a hearing impaired person. However, if an assistive listening device or real time reporter will not adequately accommodate the hearing impaired person, or additional time is needed to arrange for a real time reporter, the clerk shall request that the individual complete a written Request for Accommodation on Judicial Council **Form MC 410** and follow the standard procedure so that effective accommodations can be arranged.

Real Time Reporter (Computer-Aided Transcription)

A Certified Shorthand Reporter who performs real time reporting through computer-aided transcription is an acceptable accommodation for hearing impaired or deaf individuals, when the use of computer aided transcription allows the individual to fully participate in the proceedings: **Civil Code Sec. 54.8 and Evidence Code Sec. 754 (a)**.

While certification is not required, it is the court's policy to use a Certified Shorthand Reporter who has passed the NCRA Certified Realtime Reporter (CRR) test or the court's Local Certification test in arranging real time accommodations for hearing impaired and deaf individuals.

Use of Sign Language Interpreter and Intermediary or Relay Interpreter

Under certain circumstances, a **deaf** person may request an Intermediary or Relay Interpreter **AND** a sign language interpreter. This is necessary for some individuals depending upon the nature of their disability and must be accommodated if requested, pursuant to **Evidence Code Section 754(e) and (g)**.

Team Interpreting

It may be necessary that you provide two sign language interpreters for court sessions lasting more than three hours, whenever operationally feasible. However, this is not a legal requirement. In the event two sign language interpreters are not available, additional rest periods will be provided at reasonable time intervals.

CART : Communication Access Realtime Translation

CART is an alternative assistive technology for persons with communication barriers, such as hearing loss. This service expands the official court reporter's real time computer aided transcription service to include not only the spoken word, but the *spirit* of the proceedings and environmental sounds, i.e., laughing, door opening. As such, the CART reporter may change a spoken word that he/she believes may not translate effectively if taken down verbatim. As such, the alternate word chosen will convey the "spirit" or same intent as the actual word. Consequently, CART reporters do not always provide a verbatim record of the proceedings and disclosure of this fact must be made to the judge and all parties. Additionally, if a CART reporter is used to assist an individual as an accommodation, no official verbatim record is being produced and a second certified court reporter must be present to record the verbatim proceedings for the purpose of making the court's official record.

If hiring two reporters, one CART and one official reporter is not within the court's financial or operational resources, the court may assign an official court reporter to use real time technology, i.e., computer aided transcription, to make the verbatim record instantly available to all participants, including the hearing impaired or deaf individual.

SECTION VI

HEARING IMPAIRED OR DEAF JURORS:

GENERAL GUIDELINES AND POLICIES:

Accommodations for Jurors as opposed to witnesses or parties in court proceedings

Civil Code Sect. 54.8 as outlined in Section V above, sets forth general guidelines for hearing impaired and deaf individuals, which apply equally to **jurors**.

However, **Evidence Code Section 754(b)** requires the use of a “qualified” interpreter for **parties and witnesses** who are participants in a court proceeding. Since jurors are not parties or witnesses, a “qualified” interpreter is not mandated and the court may use non-certified interpreters. Despite this exclusion, you may use *certified* interpreters for deaf and hearing-impaired jurors whenever they are available.

Voir Dire and Deliberations:

Pursuant to **Civil Code Section 54.8 (h)**, a **court reporter** may be present in the jury deliberation 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.

Civil Code Sec. 54.8(j) defines hearing impaired as an individual with a hearing loss, who with sufficient amplification or a computer-aided transcription system is able to fully participate in the proceedings. As such, if sufficient sign language interpreters are unavailable, a real time reporter can be used either alone, or in conjunction with a sign language interpreter, if it will allow the juror to effectively participate in deliberations.

2007 California Rules of Court

Rule 1.100. Requests for accommodations by persons with disabilities

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

(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 impairment, or are regarded as having such 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) 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, and other applicable state and federal laws in determining whether to provide an accommodation or an appropriate alternative accommodation.
- (2) The court must inform the applicant in writing, as may be appropriate, and if applicable, in an alternative format, of the following:
 - (A) That the request for accommodation is granted or denied, in whole or in part, and if the request for accommodation is denied, the reason therefore; or that an alternative accommodation is granted;
 - (B) The nature of the accommodation to be provided, if any; and

(C) The duration of the accommodation to be provided.

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

(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) An applicant or any participant in the proceeding in which an accommodation request has been denied or granted may seek review of a determination made by nonjudicial court personnel within 10 days of the date of the response by submitting, in writing, a request for review to the presiding judge or designated judicial officer.
- (2) An applicant or any participant in the proceeding in which an accommodation request has been denied or granted may seek review of a determination made by a presiding judge or another judicial officer within 10 days of the date of the notice of determination by filing a petition for extraordinary relief in a court of superior jurisdiction.

(Subd (g) 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 and renumbered effective January 1, 2007; adopted as rule 1.100 effective January 1, 1996; previously amended effective January 1, 2006.

effective January 1, 2006.

Drafter's Notes

1996 - The council adopted this new rule to help implement the Americans with Disabilities Act, which requires public entities, including the courts, to make reasonable modifications in policies, practices, or procedures to avoid discrimination against persons with disabilities.

Public entities are also required to ensure that equally effective communication exists between the entity and persons with disabilities as between the entity and persons without disabilities. The public entity, however, is not required to make any modifications nor take any action that would fundamentally alter the service, activity, or program, or result in undue financial and administrative burdens.

JUDICIAL COUNCIL FORM - MC-410

FORM TO BE KEPT CONFIDENTIAL (if box checked)

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

Applicant requests accommodation under California Rules of Court, rule 989.3, as follows:

1. Type of proceeding: Criminal Civil
2. Proceedings to be covered (e.g., bail hearing, preliminary hearing, particular witnesses at trial, sentencing hearing):
3. Dates accommodations needed (specify):
4. Impairment necessitating accommodations (specify):
5. Type of accommodations (be specific):
6. Special requests or anticipated problems (specify):
7. I request that my identity be kept CONFIDENTIAL NOT be kept CONFIDENTIAL.

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 OF APPLICANT)

ORDER

- | | |
|--|--|
| <input type="checkbox"/> The request for accommodations is GRANTED because
<input type="checkbox"/> the applicant satisfies the requirements of the rule.
<input type="checkbox"/> it does not create an undue burden on the court.
<input type="checkbox"/> it does not fundamentally alter the nature of the service, program, or activity.
<input type="checkbox"/> Alternate accommodations granted (specify): | <input type="checkbox"/> The request for accommodations is DENIED because
<input type="checkbox"/> the applicant does not satisfy the requirements of the rule.
<input type="checkbox"/> it creates an undue burden on the court.
<input type="checkbox"/> it fundamentally alters the nature of the service, program, or activity.
(Specify): |
|--|--|

Date:

_____ JUDGE

Form Adopted by the Judicial Council of California MC-410 [New January 1, 1996]

REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES and ORDER



Cal. Rules of Court, rule 989.3

Contact List for Real Time Reporters

Contact List for Court Reporting Real Time Reporter ADA Accommodation for Hearing Impaired Juror			
Name	Phone Number	Date Contacted / For Whom (Juror Name)	Result

Date Needed

Prospective Juror Name _____

Date: _____

By: _____
Interpreter Coordinator

ADA RELATED CODE SECTIONS**CIVIL CODE SECTION 54.8****Assistive Listening or Computer-Aided Transcription System in Court Proceeding**

(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.

EVIDENCE CODE

SECTION 750-755.5 Interpreters and Translators

750. A person who serves as an interpreter or translator in any action is subject to all the rules of law relating to witnesses.

751. (a) An interpreter shall take an oath that he or she will make a true interpretation to the witness in a language that the witness understands and that he or she will make a true interpretation of the witness' answers to questions to counsel, court, or jury, in the English language, with his or her best skill and judgment.

(b) In any proceeding in which a **deaf or hard-of-hearing person** is testifying under oath, the interpreter certified pursuant to subdivision (f) of Section 754 shall advise the court whenever he or she is unable to comply with his or her oath taken pursuant to subdivision (a).

(c) A translator shall take an oath that he or she will make a true translation in the English language of any writing he or she is to decipher or translate.

(d) An interpreter regularly employed by the court and certified or registered in accordance with Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, or a translator regularly employed by the court, may file an oath as prescribed by this section with the clerk of the court. The filed oath shall serve for all subsequent court proceedings until the appointment is revoked by the court.

752. (a) When a witness is incapable of understanding the English language or is incapable of expressing himself or herself in the English language so as to be understood directly by counsel, court, and jury, an interpreter whom he or she can understand and who can understand him or her shall be sworn to interpret for him or her.

(b) The record shall identify the interpreter who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3.

753. (a) When the written characters in a writing offered in evidence are incapable of being deciphered or understood directly, a translator who can decipher the characters or understand the language shall be sworn to decipher or translate the writing.

(b) The record shall identify the translator who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3.

754. (a) As used in this section, "individual who is deaf or hearing impaired" means an individual with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone, but does not include an individual who is hearing impaired provided with, and able to fully participate in the proceedings through the use of, an assistive listening system or computer-aided transcription equipment provided pursuant to Section 54.8 of the Civil Code.

(b) In any civil or criminal action, including, but not limited to, any action involving a traffic or other infraction, any small claims court proceeding, any juvenile court proceeding, any family court proceeding or service, or any proceeding to determine the mental competency of a person, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or any administrative hearing, **where a party or witness is an individual who is deaf or hearing impaired and the individual who is deaf or hearing impaired is present and participating, the proceedings shall be interpreted in a language that the individual who is deaf or hearing impaired understands by a qualified interpreter appointed by the court or other appointing authority, or as agreed upon.**

(c) For purposes of this section, "appointing authority" means a court, department, board, commission, agency, licensing or legislative body, or other body for proceedings requiring a qualified interpreter.

(d) **For the purposes of this section, "interpreter" includes, but is not limited to, an oral interpreter, a sign language interpreter, or a deaf-blind interpreter, depending upon the needs of the individual who is deaf or hearing impaired.**

(e) **For purposes of this section, "intermediary interpreter" means an individual who is deaf or hearing impaired, or a hearing individual who is able to assist in providing an accurate interpretation**

between spoken English and sign language or between variants of sign language or between American Sign Language and other foreign languages by acting as an intermediary between the individual who is deaf or hearing impaired and the qualified interpreter.

(f) For purposes of this section, "**qualified interpreter**" means an interpreter who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for individuals who are deaf or hearing impaired.

(g) In the event that the appointed interpreter is not familiar with the use of particular signs by the individual who is **deaf or hearing impaired** or his or her particular variant of sign language, the court or other appointing authority **shall**, in consultation with the individual who is deaf or hearing impaired or his or her representative, appoint an **intermediary** interpreter.

(h) Prior to July 1, 1992, the Judicial Council shall conduct a study to establish the guidelines pursuant to which it shall determine which testing organizations, agencies, or educational institutions will be approved to administer tests for certification of court interpreters for individuals who are deaf or hearing impaired. It is the intent of the Legislature that the study obtain the widest possible input from the public, including, but not limited to, educational institutions, the judiciary, linguists, members of the State Bar, court interpreters, members of professional interpreting organizations, and members of the deaf and hearing-impaired communities. After obtaining public comment and completing its study, the Judicial Council shall publish these guidelines. By January 1, 1997, the Judicial Council shall approve one or more entities to administer testing for court interpreters for individuals who are deaf or hearing impaired. Testing entities may include educational institutions, testing organizations, joint powers agencies, or public agencies.

Commencing July 1, 1997, court interpreters for individuals who are deaf or hearing impaired shall meet the qualifications specified in subdivision (f).

(i) Persons appointed to serve as interpreters under this section shall be paid, in addition to actual travel costs, the prevailing rate paid to persons employed by the court to provide other interpreter services unless such service is considered to be a part of the person's regular duties as an employee of the state, county, or other political subdivision of the state. Payment of the interpreter's fee shall be a charge against the county, or other political subdivision of the state, in which that action is pending. Payment of the interpreter's fee in administrative proceedings shall be a charge against the appointing board or authority.

(j) Whenever a peace officer or any other person having a law enforcement or prosecutorial function in any criminal or quasi-criminal investigation or proceeding questions or otherwise interviews an alleged victim or witness who demonstrates or alleges deafness or hearing impairment, a good faith effort to secure the services of an interpreter shall be made, without any unnecessary delay unless either the individual who is deaf or hearing impaired affirmatively indicates that he or she does not need or cannot use an interpreter, or an interpreter is not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder.

(k) No statement, written or oral, made by an individual who the court finds is deaf or hearing impaired in reply to a question of a peace officer, or any other person having a law enforcement or prosecutorial function in any criminal or quasi-criminal investigation or proceeding, may be used against that individual who is deaf or hearing impaired unless the question was accurately interpreted and the statement was made knowingly, voluntarily, and intelligently and was accurately interpreted, or the court makes special findings that either the individual could not have used an interpreter or an interpreter was not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder and that the statement was made knowingly, voluntarily, and intelligently.

(l) In obtaining services of an interpreter for purposes of subdivision (j) or (k), priority shall be given to first obtaining a qualified interpreter.

(m) Nothing in subdivision (j) or (k) shall be deemed to supersede the requirement of subdivision (b) for use of a qualified interpreter for individuals who are deaf or hearing impaired participating as parties or witnesses in a trial or hearing.

(n) In any action or proceeding in which an individual who is deaf or hearing impaired is a participant, the appointing authority shall not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the participating individual who is deaf or hearing impaired.

(o) Each superior court shall maintain a current roster of qualified interpreters certified pursuant to

subdivision (f).

754.5. Whenever an otherwise valid privilege exists between an individual who is deaf or hearing impaired and another person, that privilege is not waived merely because an interpreter was used to facilitate their communication.

755. (a) In any action or proceeding under Division 10 (commencing with Section 6200) of the Family Code, and in any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) or for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code, in which a party does not proficiently speak or understand the English language, and that party is present, an interpreter, as provided in this section, shall be present to interpret the proceedings in a language that the party understands, and to assist communication between the party and his or her attorney. Notwithstanding this requirement, a court may issue an ex parte order pursuant to Sections 2045 and 7710 of, and Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 of the Family Code, without the presence of an interpreter. The interpreter selected shall be certified pursuant to Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, unless the court in its discretion appoints an interpreter who is not certified.

(b) The fees of interpreters utilized under this section shall be paid as provided in subdivision (b) of Section 68092 of the Government Code. However, the fees of an interpreter shall be waived for a party who needs an interpreter and appears in forma pauperis pursuant to Section 68511.3 of the Government Code. The Judicial Council shall amend subdivision (i) of California Rule of Court 985 and revise its forms accordingly by July 1, 1996.

(c) In any civil action in which an interpreter is required under this section, the court shall not commence proceedings until the appointed interpreter is present and situated near the party and his or her attorney. However, this section shall not prohibit the court from doing any of the following:

- (1) Issuing an order when the necessity for the order outweighs the necessity for an interpreter.
- (2) Extending the duration of a previously issued temporary order if an interpreter is not readily available.
- (3) Issuing a permanent order where a party who requires an interpreter fails to make appropriate arrangements for an interpreter after receiving proper notice of the hearing with information about obtaining an interpreter.

(d) This section does not prohibit the presence of any other person to assist a party.

(e) A local public entity may, and the Judicial Council shall, apply to the appropriate state agency that receives federal funds authorized pursuant to the federal Violence Against Women Act (P.L. 103-322) for these federal funds or for funds from sources other than the state to implement this section. A local public entity and the Judicial Council shall comply with the requirements of this section only to the extent that any of these funds are made available.

(f) The Judicial Council shall draft rules and modify forms necessary to implement this section, including those for the petition for a temporary restraining order and related forms, to inform both parties of their right to an interpreter pursuant to this section.

ATTACHMENT 5

CROSS REFERENCE FOR HEARING IMPAIRED/DEAF INDIVIDUAL CODES

HEARING IMPAIRED OR DEAF	CODE/RULE/REFERENCE	PAGE(S)
Applicants defined	CRC 1.100 (s)	14 Attachment 1
Assistive Listening Device or Computer Aided Transcription Accommodations	Civil Code 54.8(a) Evid. Code 754(a)	4, 6, 7, 10, 11, 12
CART	NCRA /AJA Guidelines	Attachment 8
Confidentiality	CRC 1.100(5), 1.100 (c) (4)(5)	3, 5 Attachment 1
Deaf or Hearing Impaired Defined	Evid. Code 754(a) Civil Code 54.8	10
Defendants, parties and witnesses	Evid. Code 754(b)	5, 10, 11
Intermediary or Relay Interpreter	Evid. Code 754(e)(g)	5, 10, 12
ASL/sign language interpreter and/or Real Time Reporter Accommodations	Civil Code 54.8(a) Evid. Code 754(e)(g)	5, 6, 7, 10, 11, 12 Attachment 3
Interpreters – oral, sign language, deaf-blind	Evid. Code 754(d)	5, 10
Judicial Council Form MC –410 Application and Order	CRC 1.100, 1.100(e)(2), 1.100(c) (2) Civil Code 54.8(a)	2, 3, 5, 8, 11, 17 Attachment 2
Jurors	Civil Code 54.8	6, 7, 11, 13
Jury Deliberations	Civil Code 54.8(g)(h)(j)	7, 3 Attachment 3
Nature of Disability and Accommodations	CRC 1.100(3)	14 Attachment 1
Advance Notice of Accommodation	CRC 1.100(3)	9, 11, Attachment 1
Qualified Interpreters	Evid. Code 754(b) and (f)	11, 13
Case Types where accommodation required	Evid. Code 754 (b) Civil Code 54.8(a)	10, 11, 12