Court Access Under the Americans with Disabilities Act: Recent Developments

by Erica F. Wood*

I. Introduction

Court access is a multifaceted issue encompassing a broad ambit of needs: for instance, the planning of accommodations in new judicial facilities, a ramp for an existing courthouse entrance, court purchase of a "text telephone" for the deaf, revision of court forms, flexible case scheduling, training of judges and court personnel, and restructuring of jury boxes and other courtroom components. It is an issue that has come to the fore with the implementation of the Americans with Disabilities Act (ADA) and the marked growth of the aging and disability populations.¹ It is an issue that uniquely can draw together four diverse segments—the judicial, legal, aging, and disability systems—in creative ways.

Under Title II of the ADA, state and local government services, programs and activities—including the judicial system—must (1) modify policies, practices, and procedures to prevent disability discrimination; (2) remove architectural and communication barriers; and (3) provide accessible services.² To comply with Title II, courts must ensure a continuous, unobstructed route from public transportation and from accessible parking to the areas where court services are conducted. Courts also must assess all judicial services, policies, and practices for accessibility.

This article summarizes recent developments on three fronts: architectural guidelines for new court facilities and alterations; ADA enforcement of Title II regarding existing court facilities and systems; and action by interdisciplinary state court access committees.

II. Architectural Guidelines

Under the ADA, new buildings must meet technical standards for accessible design, and alterations to existing buildings must also meet the standards.³ Under the ADA, new buildings must meet technical standards for accessible design, and alterations to existing buildings must also meet the standards.

ADAAG Section 11, targets courtroom components (jury boxes, witness, stands, judges benches, clerk’s stations, and spectator seating), jury assembly and deliberation areas, electrical outlets and wiring making possible the use of technology to enhance access, and assistive listening devices.

The proposed guidelines require, for example, that "[e]ach jury box and witness stand shall have at least one accessible wheelchair space. . . . Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users. Accessible spaces shall be provided in the defined area of the jury box or witness stand."⁴

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¹ The Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 et seq.

² Id. §§ 12101-12134; 28 C.F.R. pt. 35.

³ The guidelines are issued by the ATBCB and have been adopted by the Department of Justice. 36 C.F.R. § 1191 (ADAAG § 11).

⁴ 36 C.F.R. § 1191 (ADAAG § 11.2(2)).
The ATBCB held hearings on the proposed guidelines in February and March 1992 and currently is reviewing the public comments. Advocates should anticipate the publication of final guidelines and should seek to secure community compliance in the planning and design of new court facilities and alterations to existing facilities.

III. ADA Enforcement

Under Title II, each court program or service “when viewed in its entirety, must be readily accessible.” This “program accessibility” requirement focuses on the availability of the program as a whole, rather than specifically on barrier removal, and invites alternatives and flexible means of achieving access. Recent activities illustrate enforcement of the program accessibility mandate in judicial programs.

In Galloway v. Superior Court of the District of Columbia, the district court ordered the superior court to change its jury rules to permit service by blind jurors. The court ruled that in excluding a blind prospective juror from jury service the superior court violated the ADA, the Rehabilitation Act of 1973, and the Civil Rights Act of 1871. While the superior court had argued that a blind person would be unable adequately to assess a witness’s credibility, the district court found that position was not based on rational, scientific evidence and that such determinations must be made on a case-by-case basis.

In another judicial access case, in March 1993 the Department of Justice settled a Title II complaint alleging that the Paulding County, Ohio, courthouse did not provide physical access to courtroom facilities for persons using wheelchairs. Under the settlement, the Paulding County Board of Commissioners agreed to develop a written policy to relocate courtroom activities to accessible sites upon reasonable notification by an individual with a disability, and to publicize the new policy through dissemination of public notices in local newspapers. The agreement was executed under the ADA’s alternative dispute resolution process, which encourages settlement through informal negotiations.

IV. Court Access Committees

To encourage program accessibility throughout judicial systems, a number of states have formed interdisciplinary task forces on court access. The idea derived from the 1991 National Conference on Court-Related Needs of the Elderly and Persons with Disabilities, sponsored by the American Bar Association and the National Judicial College, which urged: “The chief justice of each state’s highest court should convene an interdisciplinary coordinating committee to develop the court-related needs of elderly persons and persons with disabilities.”

Since 1991, at least eight states have created committees, convened conferences, or bolstered local or regional groups on court access:

- The Arizona Supreme Court spearheaded a two-day interdisciplinary conference on courts and the ADA in early 1992 and followed up later in the year with a teleconference on ADA court compliance.

- In Kansas, a Supreme Court Commission on Access to Justice, created through the Office of Judicial Administration of the Courts and the Kansas Bar Association, held a forum for disability, legal, and judicial representatives in March 1992 and a full day judicial education session in December 1992. It is now planning a series of local community hearings on court access, as well as the development of a Supreme Court rule on access.

- The Wisconsin Supreme Court has convened an interdisciplinary committee to study the accessibility of the court system and to make recommen-

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7 Settlement Agreement Between the United States of Americans and the Paulding County, Ohio, Board of Commissioners, Department of Justice Complaint Number 192-T2-00382; see also “Justice Department Settles ADA

Complaint Filed Against Ohio County,” Department of Justice press release (Mar. 17, 1993).
8 42 U.S.C. § 12212.
Advocates seeking to improve court access might benefit from review of two recent resources. First, the National Center for State Courts, through a grant from the U.S. Department of Justice, has produced detailed ADA checklists for court services and architectural elements. Second, the ABA Commission on Mental and Physical Disability Law and Commission on Legal Problems of the Elderly, with funding from the State Justice Institute, published Opening the Courthouse Door: An ADA Access Guide for State Courts listing practical action steps to overcome barriers and ways to coordinate with community groups.

By working together on access, legal services providers, other aging and disability advocates, courts, bar groups, and service providers can take steps toward a more "user-friendly" judicial system accessible for all.

V. Conclusion

In Florida, the Chief Justice appointed a Committee on Court-Related Needs of the Elderly and Persons with Disabilities, which reviewed the 1991 national recommendations, and is adapting selected portions to the needs and resources of the state. The committee will report to the Chief Justice in late 1993.

Other states also have begun to make inroads on barriers to equal opportunity for justice. In West Virginia, a court access committee is seeking to work with county officials in meeting ADA obligations; in Delaware an October 1992 Judicial Conference session focused on the ADA; in Maryland, an Ad Hoc Committee on the ADA created by the Maryland Judicial Conference recommended that each court facility designate an ADA coordinator; and, in Virginia, a May 1993 conference on "Aging, Disability and the Virginia Courts" drew together Chief Circuit Court judges, and aging and disability representatives.


11 For a copy of this guide, contact the ABA Commission on Mental and Physical Disability Law, 1800 M St. NW, Washington, DC 20036, (202) 331-2240 ($12 plus postage and handling).

▶ This material was posted in electronic form on the LegalAidNet forum, on the HandsNet information and communications network, on September 3, 1993.