



HARRIS COUNTY, TEXAS

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David Kester, Director

October 8, 2013

To: County Judge Emmett and
Commissioners Lee, Morman,
Radack and Cagle

Fm: David E. Kester *H. A. for David E. Kester*

Re: Effective Communications Policy for Harris County Courts

Transmitted for your approval is an amendment to the Effective Communications Policy for Harris County Courts as mandated by the Americans with Disabilities Act (ADA). The Department of Justice requested and approved the policy to establish that the County makes every reasonable effort to ensure that individuals with disabilities receive the same effective communications as those individuals who do not have disabilities.

Harris County and all county courts and state district courts within the county are required to abide by this policy.

Thank you for your consideration.

| Vote of the Court: | | | |
|--------------------|-------------------------------------|--------------------------|--------------------------|
| | Yes | No | Abstain |
| Judge Emmett | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Lee | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Morman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Radack | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comm. Cagle | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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- Ad. copy*
- All JP's - copy*
- Dist Clerk - copy*
- EM - copy*
- Dist Courts - copy*
- Co Courts - copy*
- Co Clerk (Lawa, Danny) - copy*
- CCCL (Joe) - copy*
- Probate (Jackie) - copy*

Presented to Commissioner's Court
 OCT 08 2013
 APPROVE LIC
 Recorded Vol. _____ Page _____

HARRIS COUNTY
POLICY FOR ENSURING EFFECTIVE COMMUNICATIONS
INDIVIDUALS WITH DISABILITIES AS IT APPLIES IN COURTROOMS

1.0 PREFACE

1.1. The Americans with Disabilities Act applies to Harris County (the County) and all county courts and state district courts within the County. *See* 42 U.S.C. §§ 12131(1). The Act mandates that “no qualified individual with a disability 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. Accordingly, the County makes every reasonable effort to ensure that communications with people with disabilities are as effective as communications with individuals who do not have disabilities. In rare cases, the County will be excused from this requirement if it shows that providing effective communication would fundamentally alter the nature of the court’s service or program in question or would result in an undue financial and administrative burden.

1.2. The County provides the county courts and state district courts with courtrooms and with the resources to ensure that communications with individuals with disabilities are as effective as communications with individuals without disabilities. These resources must be consistent with the requirements and regulations implementing Title II of the Americans with Disabilities Act (ADA) and for government entities receiving federal funding. *See* 42 U.S.C. §§ 12131 – 12134; 28 C.F.R. pt. 35; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and 28 C.F.R. Part 42, Subpart G.

1.3. To meet this obligation, the County will, whenever necessary, provide, free of charge, appropriate auxiliary aids and services to ensure that individuals with disabilities, including spectators, witnesses, jurors, parties to legal proceedings and their companions, have an equal opportunity to participate in, and benefit from any programs, services or activities in a courtroom. *See* 28 C.F.R. §§ 35.130(f), 35.160(b)(1).

2.0 DEFINITIONS:

2.1. *Auxiliary Aids and Services.* Auxiliary aids and services means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted

by the County and all county courts and district courts within the County. See 28 C.F.R. §§35.104, 35.160.

- 2.2. *Disability.* An individual with an ADA defined disability who meets the essential eligibility requirements for participation in a program, service, or activity provided by a court cannot be excluded on the basis of that disability. With respect to an individual, disability means:
- 2.2.1. physical or mental impairment that substantially limits one or more of the major life activities of such individual;
 - 2.2.2. a record of such an impairment; or
 - 2.2.3. being regarded as having such an impairment. See 42 U.S.C. §12102(2).
- 2.3. *Effective Communication.* The phrase "effective communication" means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities. See 28 C.F.R. §35.160(b)(1).
- 2.4. *Primary Consideration.* The phrase "primary consideration" means that the County will reasonably defer to the qualified individual's choice of auxiliary aid or services. See 4.5.1.
- 2.5. *Qualified Individual.* A "qualified individual" is an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. § 12131(2).
- 2.6. *Qualified Interpreter.*¹ The term "qualified interpreter" includes "sign language interpreters," "oral interpreters," or other "interpreters," such as oral transliterators and cued-language transliterators. Qualified interpreters are able to interpret effectively, accurately, and impartially, both receptively and expressively, and should be able to use any specialized terminology necessary for effective communication with an individual

¹ Not all interpreters are qualified for all situations. Each case should be considered individually. For example, an interpreter who knows tactile interpreting may be the only interpreter who is qualified to provide services for impaired individuals who are both deaf and blind. Depending on the situation, a certified interpreter is not necessarily "qualified" to serve as an interpreter. Similarly, certification is not always required in order for an interpreter to be "qualified." See 28 C.F.R. § 104.

who is deaf or hard of hearing or who has a speech impairment, given that individual's language skills and education. See 28 C.F.R. § 35.104.

3.0. AUXILIARY AIDS AND SERVICES. The County will offer a wide variety of appropriate aids and services to ensure effective communications with individuals with disabilities in the courtroom. See 28 C.F.R. §§35.104, 35.160.

3.1. **NOTICE OF AUXILIARY AIDS AND SERVICES.** The County will post notices about the availability and location of accessible services, activities, and facilities for individuals with disabilities in public locations and on the HarrisCounty website. Information will also be available in a format accessible to people who are deaf or hard of hearing and those who are blind or have low vision. See 28 C.F.R. §35.163(a).

3.2. **NO COST TO REQUESTOR.** The County will not ask persons with disabilities to pay for the cost of an auxiliary aid or service needed for effective communication, nor may a court assess such costs as court costs. See 28 C.F.R. § 35.130(f).

3.2.1. *Charge for Documents Allowed.* The Harris County District and County Clerks' Offices may charge their standard per page fee for providing a person with a disability a copy of a document; however, they will not charge the costs of converting a print document to a different format for the additional pages that would likely result from a format change. The fee charged for a copy of a document provided in Braille or large print format may not exceed the charge ordinarily imposed for a standard print copy of the same document.

3.3. **VISUAL IMPAIRMENT.** At the request of a court, the County shall provide an individual who is blind or has low vision with appropriate auxiliary aids and services.

3.3.1. These auxiliary aids and services may include, but are not limited to: qualified readers²; printed information and displays provided in Braille, in large print, in electronic format, or through audio recordings; taped text; oral descriptions of action and visual information to ensure the accessibility of proceedings and presentations; optical readers; secondary auditory programs (SAP); note takers; assistance in filling out forms or accessing materials in a computer database; screen reader software or text magnification software to make computer displays accessible; accessible electronic and information

² A "qualified reader" is a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary and in a manner that the person requiring assistance can understand.

technology; an assistant to guide a person to find his or her way to an unfamiliar location or along an unfamiliar route; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision.

3.4. HEARING IMPAIRMENT. At the request of a court, the County shall provide an individual who is deaf, hard of hearing, or has speech impairments with appropriate auxiliary aids and services.

3.4.1. These auxiliary aids and services may include, but are not limited to: qualified oral/sign language interpreters on-site or through video remote interpreting (VRI) services; written material; exchange of written notes; note takers; real-time computer-aided transcription services; telephone handset amplifiers; video text displays; amplified and hearing aid compatible telephones; assistive listening devices and systems; open and closed captioning, including real time captioning and caption decoders; voice, text, and video-based telecommunications products and systems including text telephones (TTYs), videophones, and captioned telephones, or equally effective communications devices; videotext displays; computer terminals equipped for video communication, accessible electronic and information technology; and other effective methods of making aurally delivered information or materials delivered using sound available to individuals who are deaf or hard of hearing.

4.0. PROCEDURES. Once notified of a request, the County will promptly address all requests for auxiliary aids and services in accordance with ADA requirements. The requestor is not required to provide documentation of his/her disability, nor should such documentation be requested.

4.1. ADA COORDINATORS' HANDBOOK. All County departments and all county courts and state district courts within the County have designated ADA Coordinators (ADAC). Harris County's ADA Coordinators' Handbook outlines the procedures and contains the forms for obtaining auxiliary aids and services for persons with disabilities.

4.1.1. *Updating Personnel Information.* Whenever there is a change in a department or a court's designated ADA Coordinator or Alternate ADA Coordinator, the new coordinator shall complete the "Designation of ADA Coordinator/Alternate" form and return it to Harris County's Department of Human Resources and Risk Management (HRRM).

4.1.2. *Familiarity with Procedures and Resources.* Designated ADACs shall review the Handbook and become familiar with the forms, procedures, auxiliary aids and services available in Harris County, and contact information for the ADA Coordinator for Harris County, at the Office of Human Resources and Risk Management (HRRM).

4.1.3. *Questions.* All questions regarding the accommodation of a person with a disability should be addressed to the ADA Coordinator for Harris County at HRRM.

4.2. REQUESTS SHOULD BE MADE IN ADVANCE. Whenever possible, requests for aids and services should be made to the court at least three (3) days in advance of any proceedings so that the County will be able to address the individual's needs promptly and avoid inconveniencing the participant and the expenses incurred in delaying the proceedings.

4.2.1. *Oral or Written Requests.* Requests for reasonable accommodations and / or auxiliary aids and services may be made orally or in writing by an individual with a disability or by someone acting on that individual's behalf.

4.2.2. *Forms.* ADACs should consult the Handbook to determine what forms to complete and submit to obtain the necessary auxiliary aids and services.

4.2.3. *Prohibition.* Neither the County nor a court may ask or require the friends or family members of the person with disabilities to interpret, read, or provide other auxiliary aids or services.

4.3. SELECTION OF THE AUXILIARY AID OR SERVICE. The County will provide the individual with an opportunity to ask for the auxiliary aid or service of choice and will give primary consideration to the individual's preference of auxiliary aid or service.

4.4. PROVIDING REASONABLE ACCOMMODATION. If a reasonable accommodation cannot be immediately achieved to allow accessibility to a particular courtroom service, program or activity, the court shall contact the ADAC responsible for the court³.

³ The ADA Court Coordinator for the State District Courts is the Court Administrator. The ADA Court Coordinator for all County Courts, including Justice of the Peace Courts, is the Court Manager of those courts. ("ADA Coordinator")

4.4.1. *ADA Court Coordinator Duties.* The ADAC for the court will promptly help relocate the particular services, program, or activity to a more accessible location, or take whatever steps necessary to achieve accessibility, effective communications, and to ensure that, to the maximum extent possible, individuals with disabilities have an equal opportunity to participate in and benefit from the County and courts' programs, services, and activities.

4.4.2. *Delay of Proceedings.* Court proceedings should not go forward if appropriate auxiliary aids and services needed for effective communication are not in place.

4.5. DENIAL OF REQUESTED AUXILIARY AIDS AND SERVICES. All decisions denying the provision of a requested auxiliary aid or service will be made by the ADA Coordinator for Harris County at HRRM.

4.5.1. *Factors in Denying Requests.* The person with a disability's choice of an auxiliary aid or service does not have to be followed if:

- 4.5.1.1. the County can demonstrate that another equally effective means of communication is available;
- 4.5.1.2. use of the primary choice would result in a fundamental alteration in the service, program, or activity; or
- 4.5.1.3. the means chosen would result in an undue financial and administrative burden on the County.

4.6. RECORD KEEPING. County personnel will maintain records of requests for auxiliary aids and services (records) except for simple requests that can immediately be granted.

4.6.1. *Records of requests for auxiliary aids and services.* The records will contain the following information: date of the request, name of the individual making the request, name of the individual for who the auxiliary aids and services are sought, the auxiliary aids and services requested, the date on which a response to the request was provided, a description of the aids and services provided, and the date on which the aids and services were provided. If the requested auxiliary aids and services are not provided, records must include a description of aids and services that were provided, the date they were provided, the date and reasons for denying the requested aids and services, and the name of the decision maker.

4.6.2. *Confidentiality of Records – Record Keeping.* County personnel and court staff will ensure the confidentiality of this information and will keep it in a secure location separate from the clerk’s records or court files.

4.6.3. *Confidentiality – Dissemination of Information.* Information about an individual’s disability or request for auxiliary aids and services will not be disclosed to anyone except for County personnel and court staff who have a need to know this information.

5.0. QUESTIONS REGARDING THE COUNTY’S ADA POLICY AND PROCEDURES. Any questions should be directed to the ADA Coordinator for Harris County at HRRM.

6.0. GRIEVANCE PROCEDURES. ADA violation complaints regarding a court or any areas associated with the court, including pathways, hallways, bathroom facilities, water fountains or elevators, shall be immediately directed to the ADAC responsible for the court. The court’s ADAC shall acknowledge and take whatever steps necessary to address the complaint. If the complainant is dissatisfied with the court’s ADAC’s response, the complainant shall be directed to contact the ADA Coordinator for Harris County, at HRRM.