

**GUIDELINES FOR ACCOMMODATING PERSONS
WHO ARE DEAF OR HARD OF HEARING IN THE COURTS**
(Revised May 2010)

	I. Basic Legal Requirements and Definitions	
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General: The legal requirements governing accommodations for persons who are deaf or hard of hearing arise from two primary sources:

1. Chapter 8B of the North Carolina General Statutes, and
2. Title II of the federal Americans with Disabilities Act (ADA).

Chapter 8B: Chapter 8B requires the court to appoint a qualified (licensed) interpreter for any deaf or hard of hearing party or witness in any civil or criminal proceeding, including juvenile proceedings, special proceedings, and proceedings before a magistrate. Thus, Chapter 8B focuses on providing interpreters for *parties and witnesses*, in all court *proceedings*.

ADA: Title II of the ADA is much broader than Chapter 8B. It requires the Judicial Branch to provide accommodations for all court *services, programs and activities*. Accordingly, the ADA

- extends to persons in addition to just parties and witnesses (for example, jurors);
- applies to court activities in addition to just court hearings or proceedings (for example, filing documents in the clerk's office); and
- contemplates an accommodation that best meets the person's needs, which may mean an accommodation other than a sign language interpreter (for example, a realtime court reporter).

Rule of Thumb for Compliance: To ensure compliance with Chapter 8B and the ADA, court officials should, to the extent possible, provide the same services to a deaf or hard of hearing person that they would provide to any other person. Court officials should not restrict the services they would normally provide simply because one of the persons involved is deaf or hard of hearing. A practical approach is, first, to consider what would be done for or with respect to a person who does *not* have a disability. Then, for a person with a disability, the question is what reasonable accommodation can be provided to enable equal participation. For example, consider an assistant district attorney who is prosecuting a case involving a child victim. Under normal circumstances, the district attorney would meet with the victim and her parents prior to trial to discuss the nature of the proceeding and what to expect. If the parents are deaf or hard of hearing, the district attorney should still involve them in the meeting. In this instance, however, the court system will provide an interpreter or other appropriate accommodation for the parents.

Definitions: The Division of Services for the Deaf and the Hard of Hearing (DSDHH) of the NC Department of Health and Human Services (DHHS) has explained that an individual is **deaf** if he or she has a "complete or partial loss of the sense of hearing." This loss may be congenital or acquired later in life, and may be permanent or temporary. A person is **hard of hearing** if he or she has a hearing loss that "interferes with but does not totally preclude auditory and vocal communication." (Note: N.C.G.S. § 8B-1(2) defines a "deaf person" as "a person whose hearing impairment is so significant that the individual is impaired in processing linguistic information through hearing, with or without amplification." The basic definition of a disability for the ADA is "a physical or mental impairment that substantially limits one or more of the major life activities." 35 C.F.R. 35.104. Hearing is just one example of a "major life activity.")

II. Accommodations for Deaf or Hard of Hearing Persons

General Rule: The National Center for State Courts has explained that “[t]he type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with [1] the length and complexity of the communication involved and [2] the individual’s specific disability and preferred mode of communication.”

Nature of the Activity: As noted above, the appropriate accommodation for a deaf or heard of hearing person will vary with “the length and complexity of the communication involved.” For a relatively short, non-complex matter (for example, paying a fine to the cashier), using handwritten notes may suffice. However, for more complex matters (for example, a formal court appearance), a sign language interpreter may be necessary.

Needs of the Deaf or Hard of Hearing Person: Also as noted above, the appropriate accommodation will vary depending on the needs of the person who is deaf or hard of hearing. For example, a sign language interpreter will not be helpful if the person does not understand American Sign Language. Accordingly, ADA regulations and commentary (35 C.F.R. 35.160) explain that “[i]n determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities” and “shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required [under the ADA].” (A specific accommodation would not be required if it would result in a fundamental alteration in the nature of the activity or an undue financial or administrative burden. An available alternative accommodation would still be required.)

Sign Language Interpreting Services: Where the proper accommodation is a sign language interpreter, Chapter 8B requires that the court appoint a “qualified interpreter.” N.C.G.S. § 8B-1(3) defines a “qualified interpreter” as one who is licensed by the North Carolina Interpreter and Transliterator Licensing Board under Chapter 90D of the General Statutes. **Accordingly, court officials should, if at all possible, appoint a sign language interpreter who is licensed by the North Carolina Interpreter and Transliterator Licensing Board.** Ideally, this should be a licensed interpreter who has the “SC:L” legal certification, indicating specialized knowledge for interpreting in a legal environment (but there are few interpreters with that certification at present). (Note: Chapter 90D provides for a “provisional license.” The certifications that qualify an interpreter to hold a provisional license are not on a par with the certifications traditionally viewed as necessary for court interpreting. Accordingly, a “provisional licensee” under Chapter 90D ordinarily should not be used by the courts.)

DSDHH Directory: To assist with locating licensed sign language interpreters, DSDHH has prepared a statewide interpreter directory. Pursuant to N.C.G.S. § 8B-6, DSDHH must distribute a copy of this directory to all 100 clerks’ offices. Any clerk’s office that does not have a copy of the directory may contact the AOC or DSDHH to obtain a copy. The directory is also available on the DSDHH website: <http://www.ncdhhs.gov/dsdhh/interpreter/interpreter.htm> (This web page has three principal links: “Tips,” with useful information; a link to the Sign Language Interpreter/Transliterator Directory, explained below; and a link to Interpreter Service Agencies which hold themselves out as employing licensed interpreters.)

Content of the DSDHH Directory: The interpreter directory is divided into regions of the state that correspond to the areas covered by the DSDHH Regional Resource Centers (see Section VI below). There is also a directory of Legal Certified Interpreters statewide (but there are few of these at present). Within each region, the directory lists licensed interpreters by the type of certification they hold, with those who have the legal certification listed first. Please try to choose an interpreter with the SC:L (legal) certification, and try to choose an interpreter within the closest proximity to the courthouse. Avoid contacting agencies that send interpreters from far away, thereby incurring unnecessary travel expenses, when a closer and possibly more qualified interpreter is available if contacted directly.

Realtime Court Reporters (CART or CAN): For deaf or hard of hearing persons who are proficient in, and comfortable reading, written English, an appropriate accommodation may be a realtime court reporter who in effect close-captions the proceeding for the person. "CART" refers to realtime, verbatim reporting. "CAN" refers to computer assisted note taking, which is similar, but where just key points (notes) are typed and displayed, as opposed to verbatim captioning. *Court reporters employed by the courts can provide these services at much less cost than a private individual or firm.* To arrange for a realtime court reporter, please contact the NCAOC Court Reporting Manager at (919) 831-5974.

Sound Systems: Each county has the duty to provide an adequate court facility, which includes making it accessible to people with disabilities. This includes the duty to make courtrooms accessible to persons with hearing disabilities, and that may mean installing a sound system for persons who are hard of hearing. When a courtroom is not equipped, portable systems --such as FM or infrared-- may be an adequate accommodation for persons who are hard of hearing. These systems broadcast signals from microphones positioned around the courtroom to a receiver held by the person who is hard of hearing. The person listens to the proceeding using earphones that are plugged into the receiver. Your county may have a portable system available, perhaps one used for various county functions, like Commissioner meetings. If the court facility is inadequate, however, and the county does not rectify the situation in a timely manner, court officials may contact the AOC for help arranging use of a portable system (the AOC has had one system available for loan, and systems have been available through a service provided by the N.C. Assistive Technology Program within DHHS). For help making such arrangements, please contact Brooke Bogue, manager of the NCAOC's Interpreting Services Program. You may reach Brooke via telephone at (919) 890-1213, or by e-mail at Brooke.A.Bogue@aoc.nccourts.org.

Oral Interpreters: A deaf or hard of hearing person who prefers to read lips may need an "oral interpreter" who is licensed under Chapter 90D. This is an individual who has been trained to use clear mouth movements to make it easier for the person to read lips. Contact the DSDHH Regional Resource Center serving your county for assistance with locating an oral interpreter (for contact information, see Section VI below).

Cued Speech Translitterators: Cued speech translitterators are trained in the use of hand signals that assist persons who read lips. These individuals should be licensed under Chapter 90D. The DSDHH Directory contains a list of licensed cued speech translitterators.

Signed English Interpreters/Translitterators: Some deaf or hard of hearing persons may communicate through signed English rather than American Sign Language. These persons will need the assistance of a trained individual who translitterates between signed English and spoken English. This individual should be licensed under Chapter 90D. The DSDHH Directory contains a list of licensed translitterators.

III. Arranging and Paying for Services

Contacting an Interpreter: Local court officials should contact the interpreter directly to arrange for services. If possible, the court official should contact the interpreter at least one week prior to the proceeding. The court official should be prepared to discuss (1) the date, time and nature of the proceeding and (2) approximately how long the interpreter will be needed. The interpreter likely will raise a number of issues including hourly rate, travel reimbursement, cancellation notice and a guaranteed minimum payment. These matters are discussed below. Before finalizing the arrangements, the court official may want to contact more than one interpreter in order to compare rates.

Hourly Rate for a Sign Language Interpreter: The appointing judicial official determines the compensation for the interpreter (using form AOC-G-116, discussed below). N.C.G.S. § 8B-8(a) provides that the interpreter “is entitled to a reasonable fee for services, including waiting time, time reserved by the courts for the assignment, and reimbursement for necessary travel and subsistence expenses.” Rates are negotiable. Interpreters may charge higher rates for short-notice requests and after-hour assignments. Interpreters with higher skill levels may charge more per hour. As of 2010, a nationally recognized expert who holds the preferred legal certification (SC:L) charges \$65 per hour. Rates typically vary from between \$35 to \$75 per hour in NC. In negotiating rates, keep in mind that interpreters who do not have licenses indicating an advanced level of skill should not be allowed to charge a higher hourly rate for court work. The higher rate would be justified (or not) depending on the interpreter’s skill level, not the nature of the assignment. Also, avoid emergency fees whenever possible. The person in need of services must give the court reasonable advance notice of the need for an accommodation. There are exceptions, of course, such as when a defendant must be brought before the magistrate on a criminal charge, but for scheduled court appearances, the court should be given reasonable time and opportunity to arrange an accommodation without having to incur unnecessary emergency rates.

Travel Charges: N.C.G.S. 8B-8(a) provides that interpreters are entitled to reimbursement for “necessary travel and subsistence expenses . . . at [the] rates provided by law for State employees generally.” Many interpreters will designate a “service area” within which they will not charge for their travel expenses. Outside this service area, interpreters will charge either their hourly rate for their travel time or will seek reimbursement for mileage. Interpreters should be reimbursed using the same mileage rate that applies to Judicial Branch employees. If it is necessary for an interpreter to remain overnight, he or she will be reimbursed for lodging and meals at the rates that apply to Judicial Branch employees.

Guaranteed Minimum Payment and Cancellation Notice: Some interpreters will require a guaranteed minimum payment. For example, an interpreter may request payment for at least two hours of work even if he or she is actually used only for one-half hour. Similarly, an interpreter might request that a particular lump sum amount be paid if the proceeding is cancelled on short notice. This is because the interpreter may have turned down other work offered to him or her that conflicted with the date and time of the work for the court system and therefore is left without any work when the court proceeding is cancelled. Most interpreters have a 24-hour cancellation policy (some may say 48 hours -- it is negotiable). Always notify the interpreter promptly if the proceeding is continued. Even within the 24-hour cancellation period, notifying the interpreter can save at least unnecessary travel expenses.

Court Calendar Placement: If possible, court officials should place the case involving an interpreter first on the court's calendar. Or, if you know that the case will be called later in the calendar, it may be possible to schedule the interpreter for a later time than the 9:00 a.m. time when court starts. This will help reduce costs since interpreters typically charge for the time they spend waiting in the courtroom as well as the time they are actually interpreting.

Appointing Multiple Interpreters: For trials or any other matters of more than two hours, it may be necessary to arrange for two interpreters who can periodically relieve each other. This is due to the fatigue that may result from the extensive physical activity and mental concentration associated with sign language interpreting.

Form AOC-G-116: Court officials should use form AOC-G-116 ("Motion, Appointment And Order Authorizing Payment Of Deaf Interpreter Or Other Accommodation") to appoint and compensate the interpreter. Once the appropriate judicial official has signed the payment section of the completed form, a certified copy must be sent to the AOC Financial Services Division for payment.

The motion for an accommodation can be made by the person with the disability or that person's attorney, or as indicated on the form, by the district attorney, public defender, clerk, magistrate or "other" person. For example, it could be most efficient for the motion to be made by a trial court administrator who arranges ADA accommodations for the court, and who has gathered all the relevant information. The form has a place for the judicial official to appoint a specific interpreter (or designate some other accommodation). Therefore, the leg work to identify the person to be appointed should be done in advance.

The judicial official who rules on the motion may be a judge, clerk/assistant clerk or magistrate. Usually, there is no real question about the reasonable accommodation that is needed. However, the judicial official should be given enough factual information to make that finding. If there is doubt, court officials may ask the person with the disability to provide medical documentation relevant to the need for the requested accommodation.

Taxing Costs: The court must not tax the cost of a sign language interpreter or other accommodation to the deaf or hard of hearing person. The State must bear the cost. (Note however: N.C.G.S. § 8B-3 provides that a deaf or hard of hearing person may waive the services of the interpreter offered by the court and provide his or her own interpreter at his or her own expense. This statute requires the waiver to be approved in writing by the person's attorney, or if the person does not have an attorney, by the judicial official who would have appointed an interpreter. The NCAOC recommends that the written approval include a statement that the person has been informed of and waives the right to a state-paid interpreter under both Chapter 8B and the ADA. Also, costs may be assessed against a person who fails to appear without good cause for his or her absence, causing a court to incur unnecessary expense. So long as this rule is applied neutrally to everyone --not just people with disabilities-- costs the court must pay an interpreter for showing up unnecessarily may be charged to the person who requested the accommodation and then failed to appear.)

Different Rules Apply to Foreign Language Interpreters: The legal requirements and the policies and procedures for providing Spanish and other foreign language interpreters are much different from the requirements and procedures summarized here, for interpreters for people who are deaf or hard of hearing. The NCAOC has a program for the registry and certification of foreign language interpreters, and pursuant to statutory authority, has promulgated policies and procedures governing their appointment, compensation and other matters. The policies governing *foreign* language interpreters are on the court web site:

<http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>

Those policies do *not* apply to interpreters for the deaf or hard of hearing.

IV. Other Issues

Correction and Law Enforcement Matters: The Judicial Branch does not bear the cost of sign language interpreters and other accommodations for Department of Correction, Department of Juvenile Justice and Delinquency Prevention, or law enforcement activities such as a meeting with a probation officer or the administration of a chemical analysis to a person suspected of impaired driving.

Depositions Involving a Deaf or Hard of Hearing Party or Witness: A deposition is neither (1) a court proceeding within the meaning of Chapter 8B nor (2) a service, program or activity of the courts within the meaning of the ADA. Accordingly, the party must bear the cost of any sign language interpreter or other accommodation needed for a deposition. (Note however: Where the Judicial Branch is bearing the cost of the representation, such as for the District Attorney or an indigent defendant in a criminal case, the Judicial Branch will bear the cost of a sign language interpreter or other accommodation for a deposition. Costs for the expenses of defense counsel for an indigent person are paid by the Office of Indigent Defense Services, not the NCAOC.)

Other Non-Court Agencies: As indicated above, the Judicial Branch provides interpreters and other accommodations only with respect to court programs, services and activities. Private attorneys and non-court agencies must provide and pay for the accommodations they need, even when their activities are court-related. For example, accommodations for the out of court services and activities of such agencies as the Department of Juvenile Justice and Delinquency Prevention, Department of Correction, sheriffs and other law enforcement agencies, and state or county social service offices must be provided by those agencies.

Ethics and Professionalism: Persons appointed by the court to assist a deaf or hard of hearing person should

- conduct themselves in a courteous, professional and responsible manner,
- provide a complete and accurate interpretation,
- not attempt to provide additional services such as legal advice,
- remain impartial and notify the court of any possible conflict of interest,
- preserve the confidentiality of any confidential or privileged information, and
- refrain from publicly discussing the matters for which they provided services.

Indigency: The Judicial Branch bears the cost for the accommodation for the deaf or hard of hearing person regardless of whether the proceeding is civil or criminal, and regardless of whether the person is indigent. (Note: Indigency may be relevant, however, where a party is seeking an interpreter for a deposition, as noted above.)

Jurors in Need of Sign Language Interpreters: In light of the ADA, the court may not categorically exclude deaf or hard of hearing jurors from service. Where the court provides an interpreter for a juror, it may be good practice to confirm for the record the parties' agreement to having the non-juror in the deliberation room. The court may also want to instruct the interpreter that he or she must maintain strict confidentiality about and not participate in the deliberations and is present in the jury room only to assist the deaf or hard of hearing juror. The court may want to require the interpreter to take an oath to that effect.

Body Language Restrictions: In addition to hand gestures, sign language interpreting involves the use of facial expressions and other body movements to convey meaning. As a result, the presiding court official should be cautious about limiting the use of body language by the interpreter or the deaf or hard of hearing person.

“Minimally Language Competent” (MLC) Individuals: “Minimally language competent” (MLC) individuals are persons with significant communication deficits. They do not know sign language, cannot read lips and are unable to read or write. The person often is a deaf or hard of hearing person who was born outside the United States. The typical accommodations will likely not be helpful. This is because MLC persons often communicate by using gestures they have created and that only their families and close friends understand. As a result, MLC persons often require the combined assistance of both a licensed hearing interpreter and licensed Certified Deaf Interpreter. If you encounter an MLC individual, contact the DSDHH Regional Resource Center serving your county for assistance with accommodating the person (for contact information see Section VI below).

Non-Licensed Interpreters: N.C.G.S. § 8B-1(3) permits the court to appoint a non-licensed interpreter when the court determines that (1) a licensed interpreter is “not available,” (2) the non-licensed interpreter’s qualifications are “adequate for the present need” and (3) the non-licensed interpreter is able “to communicate effectively with and simultaneously and accurately interpret for the deaf person.” (Note: The person may waive the licensed interpreter offered by the court and retain his or her own interpreter, who need not be licensed. See N.C.G.S. § 8B-3, discussed below.)

Oath for Sign Language Interpreters: Each interpreter must “take an oath or affirmation that he will make a true interpretation in an understandable manner . . . to the person for whom he is appointed and that he will convey the statements of the [deaf or hard of hearing] person in the English language to the best of his skill and judgment.” See N.C.G.S. § 8B-7.

Parents of a Juvenile: N.C.G.S. § 8B-2(e) requires the court to appoint a licensed interpreter for a deaf or hard of hearing parent of a juvenile when the juvenile “is brought before a court for any reason whatsoever.”

Privileged Communications: “If a communication made by the deaf [or hard of hearing] person through an interpreter is privileged, the privilege extends also to the interpreter.” N.C.G.S. § 8B-5.

Removal of an Interpreter: The court “may, on its own motion or on the request of the deaf [or hard of hearing] person, remove an interpreter for inability to communicate.” See N.C.G.S. § 8B-2(g).

Waiver of Offered Accommodation by the Deaf or Hard of Hearing Person: N.C.G.S. § 8B-3 allows the deaf or hard of hearing person to waive the services of the interpreter offered by the court and instead retain his or her own interpreter at his or her own expense. This waiver “must be approved in writing by the person’s attorney.” If the person is acting pro se, then “approval must be made in writing by the appointing authority [court official].” The interpreter retained by the deaf or hard of hearing person need not be licensed. The NCAOC recommends that the written approval include a statement that the person has been informed of and waives the right to a state-paid interpreter under both Chapter 8B and the ADA.

V. NCAOC Contact Information, and Some Other Resources	
For General Information on Accommodating Deaf or Hard of Hearing Persons	Brooke Bogue (919) 890-1213 Brooke.A.Bogue@aac.nccourts.org OR Courtney Lyman (919) 890-1212 Courtney.J.Lyman@aac.nccourts.org
For Information on ADA Legal Compliance Issues	Rick Kane (919) 890-1277 Rick.S.Kane@aac.nccourts.org
To Arrange for a Realtime Court Reporter	NCAOC Court Reporting Manager (919) 831-5974
AOC Form, AOC-G-116	http://www.nccourts.org/Forms/Documents/1020.pdf
Disabilities Training Video: prepared in cooperation with the NCAOC for the N.C. court system, describes various disabilities and accommodations.	<i>available on the court web site --</i> http://www.nccourts.org/Citizens/SRPlanning/Disability.asp <i>Copies of the DVD are available, contact Rick Kane at the number or email above.</i>
DHHS Division of Services for the Deaf and the Hard of Hearing: links to the regional interpreter directories, and general information (contact information is on the next page).	http://www.ncdhhs.gov/dsdhh/index.htm
North Carolina Interpreters and Transliterators Licensing Board	http://www.ncitlb.org/
National Center for State Courts: court-specific FAQs and articles, links to federal and other ADA sites, and other resources.	http://www.ncsconline.org/wc/CourTopics/overview.asp?topic=AmeDis
Report of the U.S. Access Board, Courthouse Access Advisory Committee (2006): A description of listening systems for courtrooms begins on page 83. Appendix A describes various accommodations, and differences between the various styles of interpreting or transliterating. (The Access Board is an independent, non-regulatory federal agency devoted to accessibility for people with disabilities.)	http://www.access-board.gov/caac/report.pdf

	VI. DHHS Contact Information	
DHHS Division of Services for the Deaf and the Hard of Hearing	Providing general information statewide.	(800) 851-6099 voice/TTY http://www.ncdhhs.gov/dsdhh/index.htm
<u>Asheville</u> Regional Resource Center	Serving Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, Polk, Swain, Transylvania and Yancey Counties.	(800) 681-7998 voice (800) 681-8035 TTY
<u>Charlotte</u> Regional Resource Center	Serving Anson, Cabarrus, Gaston, Lincoln, Mecklenburg, Montgomery, Richmond, Rowan, Stanley and Union Counties.	(800) 835-5302 voice (800) 835-5306 TTY
<u>Greensboro</u> Regional Resource Center	Serving Alamance, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, Stokes, Surry and Yadkin Counties.	(888) 467-3413 voice/TTY
<u>Morganton</u> Regional Resource Center	Serving Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Cleveland, Iredell, McDowell, Rutherford, Watauga and Wilkes Counties.	(800) 999-8915 voice (800) 205-9920 TTY
<u>Raleigh</u> Regional Resource Center	Serving Caswell, Chatham, Cumberland, Durham, Franklin, Granville, Harnett, Hoke, Johnston, Lee, Moore, Nash, Orange, Person, Vance, Wake and Warren Counties.	(800) 851-6099 voice/TTY
<u>Wilmington</u> Regional Resource Center	Serving Bladen, Brunswick, Carteret, Columbus, Duplin, Jones, New Hanover, Onslow, Pender, Robeson, Sampson and Scotland Counties.	(800) 205-9915 voice (800) 205-9916 TTY
<u>Wilson</u> Regional Resource Center	Serving Beaufort, Bertie, Camden, Chowan, Craven, Currituck, Dare, Edgecombe, Gates, Greene, Halifax, Hertford, Hyde, Lenoir, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Pitt, Tyrrell, Washington, Wayne and Wilson Counties.	(800) 999-6828 voice (800) 205-9925 TTY