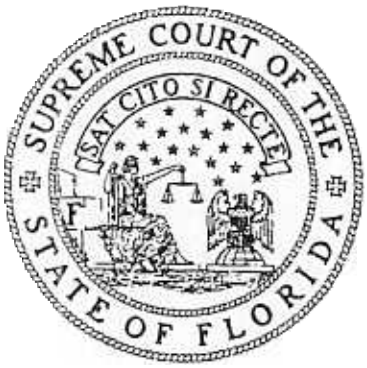
ACTION PLAN
OF THE

SUPREME COURT OF FLORIDA

COMMITTEE ON COURT-RELATED NEEDS OF THE ELDERLY
AND
PERSONS WITH DISABILITIES



January 1, 1994

ACTION PLAN
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Supreme Court of Florida
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Introduction:

This Action Plan was authored by the Supreme Court of Florida Committee on Court-Related Needs of the Elderly and Persons with Disabilities (hereinafter referred to as the Supreme Court Committee). It is in response to the American Bar Association's National Conference on the Court-Related Needs of the Elderly and Persons with Disabilities, held in Reno, Nevada, on February 20-23, 1991. This ABA conference was held to address, in part, the Americans with Disabilities Act of 1990 (ADA).

How to Use this Document

This Action Plan contains passages from the ABA's recommendations published in its *Court-Related Needs of the Elderly and Persons with Disabilities: Recommendations of the February 1991 Conference*, which may be obtained from the American Bar Association.

The major headings of the Supreme Court Committee's recommendations in this Action Plan are labeled by Roman numerals according to the ABA recommendations to which they apply. (Only the headings with Roman numerals correspond in this way.) All Supreme Court Committee recommendations in this document are printed in bold-face.

The commentary passages contained in this Action Plan, printed in italics, are made by the Supreme Court Committee, not by the ABA.

Meeting minutes of the Supreme Court Committee are part of the public record and may be obtained from Florida's Supreme Court Library, 500 South Duval Street, Tallahassee, Florida 32399-1900.

Education

The Supreme Court Committee emphasizes that education of the judiciary, court personnel, and the public-at-large is *the* critical issue in servicing the elderly and persons with disabilities. Part VIII of this Action Plan addresses education specifically, but it is the Supreme Court Committee's intent that this Action Plan be considered in its entirety for the purpose of curriculum development. Education recommendations are not limited to part VIII.

Adequate Funding for Access

For persons with functional limitations, the world may present barriers and obstacles unseen by non-disabled persons. The court's access issue is one of major concern for all persons, not just those with functional disabilities. While the elderly and persons with disabilities may physically gain access to the courts, once inside they may be confronted with programmatic or operational problems, or they may experience difficulties with communicating their needs to others, or in grasping what is required of them.

Article I., Section 21, Florida Constitution, clearly addresses persons with functional disabilities in that all individuals are guaranteed a right to access the courts. Therefore, every effort must be made by the legal and judicial community to uphold that basic right.

In determining accountability and responsibility for providing access to the legal system and the courts, it must be understood that the Supreme Court Committee views the legal community and the judiciary as two separate and distinct entities. While the courts may require a commitment for pro bono services, the Bar must remain attentive and make its own commitment to those clients and potential clients with functional limitations and/or special needs. The courts should assist with providing accommodation for all participants with varying functional impairment(s).

The constitutional mandate guaranteeing access for all persons requires substantial resources, both in funding and facilities. While funding is largely the responsibility of the Legislature, local municipalities are all too often forced to bear the additional expenses associated with special needs. Since ideally the Supreme Court should require consistency throughout all courts under its jurisdiction, and in light of the anomalies of the urban and rural courts, careful consideration must be given when making requests at the local level for funds associated with bringing state courts into compliance.

With respect to court access, the courts and the legal community must begin to assess the programs and services they render. The courts and the legal community should begin to evaluate the availability of their resources in more non-traditional ways. Adhering to this agenda would ensure removal of any and all barriers and ensure that access is afforded to all those in need. Further, the Supreme Court should adequately address the needs of those with functional limitations by maximizing its physical resources and exploring ways in which to expand court programs to encompass those with special needs. This would foster the establishment of public-private partnerships to meet this challenge. Through the cooperation of intercourt and intracourt programs and projects, accompanied by a renewed sense of awareness, the courts can minimize the full financial impact of meeting the needs of the elderly and persons with disabilities, whether through advocacy for disability rights, advocacy organizations, or by tapping the resources of volunteer, community, and in-kind resources.

With respect to funding, the Supreme Court Committee's recommendations include but are not limited to, staying mindful of the relationship between the local judiciary and its county government; requiring greater involvement of the local bar; exploring ways in which to generate revenue; drawing on pro bono services from other professions, e.g., court reporters, court interpreters, and paralegals; and providing local government relief by funding all Article V costs.

Supreme Court of Florida

IN RE: COMMITTEE ON COURT-RELATED NEEDS OF CHILDREN*, THE ELDERLY, AND PERSONS WITH DISABILITIES

ADMINISTRATIVE ORDER

WHEREAS, the goal of the Florida State Courts System is to assure equity, fairness, and full participation in the Florida judicial system for children, the elderly, and persons with disabilities; and

WHEREAS, an estimated eighteen percent of Floridians have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing; and

WHEREAS, Florida's population of senior citizens will grow to represent greater than 30 percent of the state population during the first quarter of the next century; and

WHEREAS, 22 percent of Floridians are under the age of eighteen years old; and

WHEREAS, persons with disabilities, children, and the elderly have historically encountered various forms of discrimination such as architectural barriers; relegation to lesser services, programs, activities, and benefits; and

WHEREAS, Congress passed the Americans with Disabilities Act of 1990 which provides a comprehensive national mandate to eliminate discrimination against persons with disabilities; and

WHEREAS, the intent of the State Courts System is to fully comply with the Americans with Disabilities Act of 1990; and

WHEREAS, the American Bar Association, the National Judicial College, and the State Justice Institute held the Conference on Court-Related Needs of the Elderly and Persons with Disabilities, February 20-21, 1991, and issued recommendations calling for a judicial system that meets the needs of all persons;

IT IS ORDERED that a committee on court-related needs of children, the elderly, and persons with disabilities be established to complete the following tasks:

*The Supreme Court Committee's original charge included the issue of accommodating the needs of children in the court system, as well as those of the elderly and persons with disabilities. However, the issue of the needs of children was later removed from the Supreme Court Committee's charge.

1. Provide advice and guidance to the Chief Justice and elements of the State Courts System regarding access to the courts as envisioned by title II of the Americans with Disabilities Act of 1990 including:

   a. Providing critical input on self-evaluation procedures and survey instruments,
   b. Conducting supplemental surveys and community forums, and
   c. Reviewing trial and appellate court plans and proposals for ensuring access to the courts as envisioned by title II of the Americans with Disabilities Act of 1990.

2. Review those elements of the recommendations of the National Conference on the Court-Related Needs of the Elderly and Persons with Disabilities which may be unrelated to the technical requirements of title II of the Americans with Disabilities Act of 1990. Where appropriate, offer additional recommendations and develop a proposed plan of action to resolve the needs of this targeted group into the next century. This should include consideration of the conference recommendations pertaining to:

   a. Guardianship law, including determinations of capacity and surrogate decision-making;
   b. Screening, referral and alternative dispute resolution;
   c. Judicial process and judicial administration, including pro se litigants;
   d. Victim and witness assistance;
   e. Avoidance of stereotyping in the judicial system;
   f. Linking the state judicial system with aging and disability networks; and
   g. Judicial education.

3. Expand consideration of the American Bar Association recommendations to include the court-related needs of children.

The following persons are appointed to serve as members of the Committee on Court-Related Needs of Children, the Elderly, and Persons with Disabilities:

1. Frank Bosak, Registered Architect, Bradenton, (Member, Board of Building Codes and Standards, Florida Department of Community Affairs, Tallahassee);
2. Laura Brock, Legislative Director, Florida Department of Health and Rehabilitative Services, Tallahassee;
3. Robert Collins, Tallahassee, American Association of Retired Persons;
4. Deborah Crumbley, Esquire, Thompson, Sizemore and Gonzalez, Tampa, (Member, Labor and Employment Law Section, The Florida Bar, Tallahassee);
5. The Honorable Karleen De Blaker, Clerk of the Circuit Court, Pinellas County;
6. Susan Ferrante, Trial Court Administrator, Fifteenth Judicial Circuit;
7. The Honorable Gary Formet, Ninth Judicial Circuit;
8. The Honorable Norman Gerstein, Eleventh Judicial Circuit;
9. Linda Knopf, Assistant Director, Division of Vocational Rehabilitation, Florida Department of Labor and Employment Security, Tallahassee;
10. Jack Levine, Executive Director, Florida Center for Children & Youth, Inc., Tallahassee;

11. Emily Moore, Esquire, Tallahassee, (General Counsel, Florida Department of Elder Affairs, Tallahassee);
12. The Honorable Frank Orlando, Youth Policy Center, Shephard Broad Law Center, Nova University, Fort Lauderdale;
13. The Honorable John Parnham, Chief Judge, First Judicial Circuit;
14. Kenneth Potter, Marshal, Third District Court of Appeal, Miami;
15. Peggy Schmidt, Program Administrator, Florida Council for the Hearing Impaired, Tallahassee;
16. Peter Sleasman, Esquire, Florida Institutional Legal Services, Gainesville, (Member, Disability Law Committee, Public Interest Law Section, The Florida Bar, Tallahassee); and
17. Parker Thomson, Esquire, Thomson, Muraro, et al., Miami, (Chair of the Board, The Advocacy Center for Persons with Disabilities, Inc., Tallahassee).

The Honorable John Parnham will serve as chair of the committee. Members will serve without compensation. Costs for committee meetings and reimbursement of travel expenses for members will be provided through a grant received for that purpose and/or the general revenue fund.

Staff support for the committee will be provided by the Office of the State Courts Administrator.

A preliminary report containing a summary of the recommendations of the committee, including a proposed plan of action, is to be provided to the Chief Justice by December 1, 1993. A final report is to be submitted by January 1, 1994.

DONE AND ORDERED at Tallahassee, Florida this 30th day of September, 1992.

[Signed:] Rosemary Barkett
Chief Justice

ATTEST:

[Signed:] Sid J. White,
Clerk, Supreme Court of Florida

Supreme Court of Florida
Committee on Court-Related Needs of the Elderly and Persons With Disabilities

Name	Discipline/Position	City
Frank Bosak	Architect	Bradenton
Laura Brock	Statewide Health & Human Services Board Liaison, Florida Dept. of Health and Rehabilitative Services	Tallahassee
Robert Collins	American Association of Retired Persons	Tallahassee
Deborah Crumbley	Attorney, Thompson, Sizemore & Gonzalez	Tampa
The Honorable Karleen De Blaker	Clerk of the Circuit Court, Pinellas County	Clearwater
Susan Ferrante	Trial Court Administrator, 15th Judicial Circuit	West Palm Beach
The Honorable Gary Formet	Circuit Judge, 9th Judicial Circuit	Kissimmee
The Honorable Norman Gerstein	Circuit Judge, 11th Judicial Circuit	Miami
Linda Knopf	Assistant Director, Division of Vocational Rehabilitation, Dept. of Labor and Employment Security	Tallahassee
Jack Levine	Executive Director, Florida Center for Children & Youth, Inc.	Tallahassee
Emily Moore	General Counsel, Dept. of Elder Affairs	Tallahassee
The Honorable John Parnham	Circuit Judge, First Judicial Circuit; Committee Chairman	Pensacola
Kenneth Potter	Marshal, Third District Court of Appeal	Miami
Peggy Schmidt	Executive Director, Florida Council for the Hearing Impaired	Tallahassee
Peter Sleasman	Attorney, Florida Institutional Legal Services	Gainesville
Parker Thomson	Attorney, Thomson, Muraro, Razook & Hart	Miami
Committee Staff:		
Rheb Harbison	Office of the State Courts Administrator	Tallahassee
Subcommittee Staff:		
Pat Shafer	Office of the State Courts Administrator	Tallahassee
Gregory Youchock	Office of the State Courts Administrator	Tallahassee

I.

Linkage of the State Judicial Systems with the Aging and Disability Networks

I. ABA Recommendation:
Linkage of the State Judicial Systems with the Aging and Disability Networks

The justice system should work with the aging and disability networks to enhance access to effective legal representation and judicial support services; effect appropriate referrals to related community services; provide knowledgeable people who understand the needs of all; and resolve every dispute in an appropriate forum and in a timely fashion.

A. Interdisciplinary Coordinating Committee

1. The chief justice of each state's highest court should convene an interdisciplinary coordinating committee to identify and address the court-related needs of elderly persons and persons with disabilities.

Supreme Court Committee Recommendation I:

The Supreme Court Committee agrees with the ABA recommendation, in principle, and offers the following modified recommendation:

A. The chief judge of each judicial circuit should consider appointing an interdisciplinary committee within each county composed of professionals and lay people to review court policies and procedures affecting the elderly and persons with disabilities (see Supreme Court Committee Recommendation VI.A-C). The chief judge may wish to use the recommendations set forth in ABA Recommendation I to determine an interdisciplinary committee's charge. However, final determination regarding the scope and depth of an interdisciplinary committee's inquiry should be made by the chief judge based on the unique needs and resources within the respective circuit and/or county.

The Supreme Court Committee recommends, at a minimum, the following county interdisciplinary committee members: the administrative judge of the county; representatives from the public defender's office, state attorney's office, local bar, clerk of the circuit court, law enforcement agencies, local corrections facilities, local victim/witness programs, and appropriate social services agencies. While not a member of the county interdisciplinary committee, the ADA accessibility coordinator within the judicial circuit should establish a networking relationship with each county interdisciplinary committee within the circuit.

Proposed Completion Date: June 30, 1994
Responsibility: Chief Judge of each Judicial Circuit

Commentary:

The Supreme Court Committee on Court-Related Needs of the Elderly and Persons with Disabilities is Florida's interdisciplinary coordinating committee anticipated by the ABA. The Supreme Court Committee's recommendation for county interdisciplinary committees is the result of the members' positive experience in working to resolve many of the issues outlined in the ABA recommendations. The members believe the Supreme Court Committee's success

resulted from the wide range of disciplines represented on the Supreme Court Committee and the harmonious efforts of members to meet the needs of the groups involved. All recommendations in this Action Plan may be used to help local judges and court administrators determine the scope for county interdisciplinary committees. One charge for county committees should be to evaluate this Action Plan. Finally, the Supreme Court Committee recommends county committees because the greater impact on access to the courts will be felt at the local level.

ABA Recommendation I:

C. Single Informational Site

The interdisciplinary coordinating committee in each state should establish a single place where courts, aging and disability groups, consumers, and the general public can receive information and assistance on resources and strategies for resolving specific court-related problems of elderly persons and persons with disabilities.

2. The interdisciplinary coordinating committee should develop a resource directory and/or hotline. Advanced technology should be used when feasible.

Supreme Court Committee Recommendation I:

The Supreme Court Committee agrees with the ABA recommendation and offers the following additional recommendation:

B. Any efforts by the judicial branch to develop a single site for information, a resource directory, and a hotline should be coordinated, and where possible, consolidated at the state level with the efforts of the governor's recently created Florida Coordinating Council on the ADA. The ADA accessibility coordinator of the State Courts System should provide information for any resources that may be established; make referrals to the local level when appropriate; provide technical assistance; maintain records that can identify the problems faced by courts and persons with disabilities; and ensure that local courts are linked together to share solutions.

Proposed Completion Date: Undetermined
Responsibility: State Courts Administrator

Commentary:

The Supreme Court Committee supports the concept of the Florida Coordinating Council on the ADA. However, in the event the Florida Coordinating Council on the ADA becomes defunct, the State Courts System should develop its own data/resource base.

The remainder of ABA Recommendation I is duplicated in subsequent sections; the Supreme Court Committee has addressed the balance of ABA Recommendation I later in this Action Plan.

II.

Access to the Court System

II. ABA Recommendation: Access to the Court System

A. Accessibility Plan

1. In each judicial district, there should be:

   a. An assessment of barriers for persons with disabilities in courthouses and court-related facilities; and

   b. Development of an accessibility plan.

2. The assessment of barriers and the accessibility plan should involve presiding judges, court managers, and others responsible for the provision of legal and judicial services, in cooperation with constituent groups.

3. Each accessibility plan should incorporate design principles that improve access to and effective use of the judicial system by everyone. The accessibility plan should be guided by the principle that compliance with the Americans with Disabilities Act is only one step in a continuing process of barrier removal. The plan should include timelines for compliance.

4. The assessment of barriers and the accessibility plan in each judicial district should be provided to and compiled by the state interdisciplinary coordinating committee, which should report them to the highest court of the state. This court should oversee implementation of the plans and local priority setting based on factors that include: need, cost-effectiveness, degree of current and potential utilization, long-term flexibility, and positive effect on public awareness.

5. The courts in each judicial district should seek adequate funding to implement the accessibility plan.

B. Physical Access

1. The accessibility plan should ensure appropriate, non-stigmatizing access; and should include physical design, use of technology to enhance physical access, social services related to court access, and use of attendant services for persons with physical disabilities.

Supreme Court Committee Recommendation II:

The Supreme Court Committee agrees with the ABA recommendation and offers the following additional recommendation:

A. The county interdisciplinary committee should review the previously-completed self-evaluation of compliance with the ADA for the circuit. The county interdisciplinary committee should fully develop an accessibility plan which ensures non-stigmatizing access and which is appropriate regarding program accessibility as required by the ADA. The court administrator of each judicial circuit should seek funding at both the local and state level to implement his or her respective accessibility plan, once completed.

Proposed Completion Date: December 31, 1994
Responsibility: Local ADA Accessibility Coordinator
Each County Interdisciplinary Committee
Court Administrator of each Judicial Circuit

Commentary:

The Supreme Court Committee interprets "accessibility plan" to mean program accessibility as discussed in the ADA. Accessibility plans have been partially completed as a result of self-evaluations of compliance with the ADA by each judicial circuit and district, and by the Supreme Court of Florida. The Supreme Court should continue to provide recommendations and guidance, as opposed to oversight, to local courts.

The Supreme Court Committee believes that non-stigmatizing physical access can only be accomplished if court staff understand the types of methods that have a stigmatizing effect. This is easily achieved by including the elderly and persons with disabilities in plan development, implementation, and evaluation. "Social services related to court access" does not include referrals.

ABA Recommendation II:

C. Communications Access

1. The accessibility plan should address the communication needs of elderly persons and persons with disabilities by providing environments with all necessary technological and physical arrangements. The judicial system should promulgate rules and procedures to accommodate persons with communication impairments and should provide expert assistance and support such as sign language interpreters, readers for persons with visual impairments, and cognitive disability experts.

2. Funding for communications assistance should be sought separately from funding for the judicial system.

Supreme Court Committee Recommendation II:

The Supreme Court Committee agrees with the ABA recommendation and offers the following additional recommendations:

B. The state of Florida should establish a Communications Access Resource Center that will be available to all branches of government. The center should:

1. **Provide consultant and training services with expertise across all disabilities that might need communication accommodations, including expertise in rewriting materials for understanding by persons with cognitive disfunction.**
2. **Have at least two legal specialist certified interpreters for the deaf available to all state courts on an as-needed basis to be determined by the resources of the court unit, the needs of both the court and the individual, as well as resources for obtaining interpreters elsewhere when the local resources are not adequate and/or the needs of the individual require specialized expertise.**
3. **Make real-time captioning services available on an as needed basis to be determined by the resources of the court unit, the needs of both the court and the individual, as well as resources for obtaining services elsewhere when the local resources are not adequate.**
4. **Provide portable devices to make courts accessible that may be needed on such an intermittent or occasional basis that it is not practical for each court unit to purchase their own. (Court units with higher accommodation request rates would be expected to purchase their own.)**
5. **Provide brailling and taping capacity for translation of documents; captioning capability for translation of video materials.**
6. **Seek funding for the training of interpreters for the deaf and real-time captioners.**

Proposed Completion Date: Fiscal Year 1994-95
Responsibility: The Florida Council for the Hearing Impaired

Commentary:

County interdisciplinary committees are cautioned that communication barriers for individuals with visual impairments, hearing impairments, cognitive impairments that affect intelligence (such as mental retardation, or head injury), and impairments that affect emotional responses (such as mental illness or head injury), are very different. As a result, methods for communicating effectively with individuals having any, or a combination, of these types of disabilities will be markedly different from one another.

Please see Supreme Court Committee Recommendation VI.D-E for discussion regarding the promulgation of rules.

C. The Supreme Court Committee proposes the following guidelines for provision of interpreters for persons with hearing impairments be adopted by each court:

PROPOSED GUIDELINES FOR PROVISION OF INTERPRETERS FOR PERSONS WITH HEARING IMPAIRMENTS

STANDARD:

The court will ensure that communications in judicial proceedings, court services, programs, and activities involving persons who are deaf or hard of hearing are as effective as communications with other participants. This requirement applies to defendants, litigants, witnesses, jurors, attorneys, and observers. In those proceedings requiring an interpreter, the services of a qualified interpreter shall be secured. Qualified interpreter is defined as an interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In judicial settings, court programs, services and activities, this may mean the interpreter will need to interpret complex legal terminology.

OBTAINING INTERPRETER SERVICES:

Upon becoming aware of the need of such a participant for an interpreter, the court or its designated representative will take the necessary steps to obtain a qualified interpreter. Before determining the type of interpreter services to be secured, the court or its designated representative will confer with the individual with a disability or the individual's legal counsel regarding his or her mode of communication in order to determine the type of interpreter services required. Types to be considered include, but are not limited to, American Sign Language, signed English, fingerspelling, oral, tactile, and cued speech. Some individuals may have unique needs due to educational, cultural, or additional disability factors which may require creative solutions; examples include an individual who uses "home signs" because of a lack of significant exposure to standard communication modes used by individuals who are deaf; individuals who use a foreign sign language; and individuals with physical disabilities which affect their expressive language.

The court or its designee will then determine the date, time, and place where such services will be required. The court will then secure an interpreter who is capable of providing these services and negotiate payment terms from appropriate budgeted funds.

In selecting the interpreter, the preference is that the interpreter be certified by the National Registry of Interpreters for the Deaf (NRID) except in those cases where the unique communication needs of the individual cannot be met by such nationally certified interpreters. The preferred certification level is CS:L (Certificate of Skills: Legal). The second level preference is CLIP (Certified Legal Interpreter, Provisional). The third level of preference is either CSC (Comprehensive Skills Certification), or CI/CT (Certificate of Interpretation and Certificate of Transliteration); or Oral Skills Certification for individuals requiring an oral interpreter. Individuals holding other certifications issued by NRID may be considered. The court should be aware that it may be necessary to pay travel expenses when such certified interpreters are not locally available. When individuals holding the preferred certifications are not reasonably available, persons who can document

substantial experience as interpreters may be considered. When individuals who do not hold NRID certification are used, the court has a responsibility to ensure that the interpreter clearly understands the role of the interpreter in the judicial setting and to ensure that the communication is effective prior to securing his/her services.

For individuals with unique communication needs (cued speech, "home signs," foreign sign language, physical disabilities which affect expressive communication, etc.), solutions may include recruitment of individuals with those particular skills to serve as interpreters; utilization of interpreter pairs which include both a nationally certified interpreter and an intermediary, an individual with the ability to convey or receive communication in the mode of the person with the disabilities; and consideration of alternate means such as real-time transcription. In all cases, the court has the responsibility to ensure that effective communication can occur.

The court must not require an individual to bring his or her own family member or friends to interpret. If a person who has a hearing impairment brings his or her own interpreter, the procedure for determining whether that individual is a qualified interpreter is described in the next section.

The court should be aware that interpreting requires intense mental concentration. In situations that involve more than two hours of interpreting without significant breaks, two interpreters, who take turns (usually in 20-minute shifts), may be necessary to assure effective communication. Additional interpreters may also be necessary to ensure that participants have an opportunity to confer with legal counsel during a proceeding.

VERIFICATION OF QUALIFICATIONS:

Upon the date, place, and time noted, and prior to continuing with any proceeding, the court or other designated official will inquire of the person with the hearing impairment, through the interpreter, whether the individual is confident that the interpreter's skills will ensure an adequate and accurate interpretation of the proceedings, and whether or not the individual feels that the interpreter is impartial. If either of those questions are answered in the negative, further efforts will be made by the court or its designee to determine if there is a reasonable basis to the objection. The court should exercise caution in evaluating the potential for a conflict of interest or for bias when determining whether a family member, friend, or acquaintance is a qualified interpreter as defined in the standard. If there is such a reasonable basis, the court shall take whatever steps are necessary to acquire a qualified interpreter.

The court will inquire of each interpreter whether he or she will be able to interpret the proceedings. The court may wish to ascertain that the interpreter is qualified through further questions about the interpreter's awareness of the responsibility of the interpreter to accept the assignment using discretion with regard to personal skill, the setting, and the consumers involved. The court may also inquire of the interpreter whether, in his or

her best judgement feels that he or she will be able to interpret effectively, accurately, and impartially in the proceedings.

When a question remains or a question arises as to whether the interpreter is qualified, the court may consider enlisting assistance from one or more persons qualified to evaluate interpreting skills and situations. The proceedings will continue unless the interpreter is unable to satisfy the criteria for a qualified interpreter, at which time a qualified interpreter will be obtained.

In the event the individual brings his or her own interpreter to any proceedings, the court or its designee will ask the individual if the interpreter's skills will ensure an adequate and accurate interpretation of the communication of the proceeding, and whether or not the individual feels the interpreter is impartial. The court will also make inquiries of the interpreter as described in the previous paragraph. Again, the court should exercise caution in evaluating the potential for a conflict of interest or for bias when determining whether a family member or friend is a qualified interpreter. If the court is satisfied that the interpreter is qualified, the court will cover the reasonable cost of interpreting services and the proceedings will continue. Otherwise, the court or its designee will obtain a qualified interpreter.

NOTIFICATION:

The court, by and through the Chief Judge, will cause these procedures to be distributed to all judges and staff of the judiciary and will ensure that notice is given to the public about how to request accommodations including interpreters. Upon request, the coordinator for the Americans with Disabilities Act will be available to answer all inquiries and will obtain sufficient training materials on the requirements for effective communication.

Proposed Completion Date: Immediately
Responsibility: Chief Judge of each Judicial Circuit
Court Administrator of each Judicial Circuit

Commentary:

The Supreme Court Committee believes procedures relating to the provision of qualified interpreters for persons with hearing impairments is one of the most critical and pressing needs of the State Courts System. Accordingly, the Supreme Court Committee feels compelled to recommend detailed guidelines to assist courts in this area.

ABA Recommendation II:

D. Accessibility Coordinator; Ombudsman

1. The interdisciplinary coordinating committee should designate an accessibility coordinator to facilitate effective use of the judicial system throughout the state by elderly persons and persons with disabilities.

2. The accessibility plan in each judicial district should designate an ombudsman to assist individuals to gain access to the courthouse and other court-related facilities.

Supreme Court Committee Recommendation II:

The Supreme Court Committee agrees with the ABA recommendation, in principle, and offers the following modified recommendations:

D. ADA accessibility coordinators have been established within the Supreme Court, the district courts of appeal, and all judicial circuits in accordance with the federal regulations implementing the ADA. These coordinators should continue to receive comprehensive training relevant to sensitivity to all types of disabilities and the substantive issues regarding access. The term "sensitivity" should be broadened to include the requirement to provide access. Any other responsibilities assigned to the accessibility coordinator must not detract from the effective and timely performance of his or her ADA duties.

Proposed Completion Date: Ongoing
Responsibility: State Courts Administrator

E. The Supreme Court Committee agrees in principle with the concept of having an ombudsman to assist individuals gain access to court-related facilities. However, the Supreme Court Committee does not believe such an ombudsman should be an employee of the court due to the potential for conflict of interest. Under no circumstances should a single employee of the court be designated to serve as both an accessibility coordinator and ombudsman.

The Supreme Court Committee recommends establishing a "Friend of the Court" program in each county to bolster a "user friendly" courthouse environment. Volunteers should be recruited and well-trained to provide assistance to all individuals as they work their way through the judicial system. Volunteers should be trained by the court and the local bar association to provide assistance, not the unlicensed practice of law.

Proposed Completion Date: March 30, 1995
Responsibility: Chief Judge of each Judicial Circuit
Court Administrator of each Judicial Circuit
Local ADA Accessibility Coordinator

Commentary:

Volunteers could be "on call" or physically present, as may be appropriate for the judicial circuit. High school and community college students should be considered as a resource for volunteers via internship programs offered through the court.

However, the Supreme Court Committee recognizes that under federal wage and hour laws (Fair Labor Standards Act, 29 U.S.C. §201, et seq.), the state courts may be somewhat limited in its use of volunteers without incurring potential overtime liability. More specifically, while that law does allow governmental agencies to use volunteers (see 29 U.S.C. §203(4)(a)), those volunteers may be deemed to be employees in some limited circumstances. Thus, due caution should be exercised to avoid realizing such potential. Further, the Supreme Court Committee recognizes that the court system is not able to shirk its responsibility for compliance with the ADA due to a lack of qualified volunteers. Rather, the obligation continues regardless.

ABA Recommendation II:

E. Americans with Disabilities Act (ADA)

1. In accordance with ADA objectives, and as provided in the accessibility plan, all court operations should afford full and equal access for persons with disabilities including judicial and non-judicial court personnel, job applicants, lawyers, litigants, victims, witnesses, jurors, and members of the public. Such access should include communication technology and services, architectural accessibility, transportation services, alternative hearing sites, and employment opportunities (including "reasonable accommodations" to secure such opportunities).

2. The state interdisciplinary coordinating committee and the accessibility coordinator should assist judicial districts to ensure that the accessibility plans comply with and expand upon the ADA's guarantees and protections.

3. Each state should adopt legislation and policies, and should secure funds to ensure that resources for court access and protection from discrimination within the judicial system are sufficient to achieve statewide compliance with the ADA.

4. A national clearinghouse should be created to encourage education, training, and technical assistance concerning requirements of the ADA, related laws, regulations, and methods of compliance. The clearinghouse should assist with curriculum development, training of faculty, and incorporation of the latest knowledge and developments relevant to ADA compliance by the judicial system.

Commentary:

The Supreme Court Committee does not respond to this particular ABA recommendation in accordance with the Supreme Court Committee's charge (see Administrative Order issued September 30, 1992, on page three of this Action Plan).

III.

Avoidance of Stereotyping in the Judicial System

III. ABA Recommendation:
Avoidance of Stereotyping in the Judicial System

A. Elimination of Stereotyping Behavior

1. To challenge harmful stereotyping of elderly persons and persons with disabilities and to ensure that these persons have meaningful representation and are able to participate fully in the judicial process, the judicial system should eliminate irrelevant and intrusive barriers and unprofessional behaviors.

B. Interdisciplinary Approaches

1. To challenge harmful stereotyping of elderly persons and persons with disabilities, the legal system should provide leadership in integrated and interdisciplinary approaches that empower individuals and protect their rights to independence, self-direction, and inclusion through such efforts as educational programs, development of community resource materials and linkages, and chapters in judicial benchbooks.

C. Publicizing of Judicial Activities

1. The judiciary should publicize its efforts in educational activities to end stereotypes in order to ensure full inclusion of elderly persons and persons with disabilities.

Supreme Court Committee Recommendation III:

The Supreme Court Committee agrees with the ABA recommendation and offers the following recommendations:

A. Judges and court administrators should receive specific training on how to recognize and correct stereotyping conduct, which has no basis in law or fact. Additional efforts should be made to determine appropriate training opportunities, providers, and the effect of the training.

Proposed Completion Date: March 30, 1995
Responsibility: Florida Court Education Council

B. Court personnel, particularly those who interact with the public on a regular basis, should receive sensitivity training on accommodating the special needs of the elderly and persons with disabilities in a non-stigmatizing way in order to correct stereotyping behaviors.

Proposed Completion Date: December 31, 1994
Responsibility: Court Administrator of each Judicial Circuit
Local ADA Accessibility Coordinator

C. The Florida Bar is encouraged to prepare and distribute to its members a guidebook that addresses the elimination of stereotyping behavior and appropriate professional behavior relevant to the elderly and persons with disabilities. The Florida Bar is also encouraged to provide its members with sensitivity training on accommodating the special needs of the elderly and persons with disabilities in a non-stigmatizing way in order to correct stereotyping behaviors.

Proposed Completion Date: December 31, 1994
Responsibility: The Florida Bar

Commentary:

Any efforts to "publicize" the efforts of the judiciary in educational activities should be communicated intrabranch via newsletters and small group discussions. Opportunities should also be sought for appropriate court personnel and judges to participate in conferences and meetings of disability groups and vice versa to encourage communication and cross-training. The Supreme Court Committee does not intend this to suggest that judges should compromise their objectivity or otherwise operate in violation of the Code of Judicial Conduct.

IV.

Determinations of Capacity and Surrogate Decision-Making

IV. ABA Recommendation: Determinations of Capacity and Surrogate Decision-Making

All adults should have the right to make their own life choices and to place themselves or their property, but not others, at risk.

Judicial review of such decisions should be limited to ensuring that the person has decision-specific capacity; that the decision is informed and voluntary; and that the individual is aware of the possible consequences.

A. Decision-Specific Capacity

1. Capacity is not a mater of one-time global assessment. Measures of capacity should reflect the fact that individuals vary enormously in functional ability, and situations demand different levels of capacity. Individuals should be assessed to determine their functional ability for specific tasks, i.e., decision-specific capacity.

B. Uniform Definition and Standards

1 National legal organizations concerned with problems of elderly persons and persons with mental disabilities should develop uniform standards, definitions, and procedures for determining decision-specific capacity.

2. State and federal legislation and regulations should incorporate these standards, definitions, and procedures.

C. Ethical Standards in Determining Capacity

1. Standards defining the ethical responsibility of all persons engaged in the determination or review of incapacity, and those standing in a fiduciary relationship to one who may have an incapacity, should be adopted.

2. The legal community, health care providers, and advocacy groups should cooperate in developing and disseminating these ethical standards.

3. These organizations should individually and jointly establish committees, hold conferences, and develop manuals focusing on these ethical standards.

D. Reducing the Need for Guardianships

1. The interdisciplinary coordinating committees, courts, legislatures, and the aging and disability networks should aggressively develop culturally sensitive, community-based resources and mechanisms that reduce the need for guardianships, yet ensure swift access to the courts in the event of serious dispute or abuse.

2. These entities should encourage the use and mandate recognition of advance directives such as durable powers of attorney (including durable health care powers of attorney) and living wills.

E. Implementing Guardianships

1. Consistent with the doctrine of the least restrictive alternative, legislatures, courts, or the executive branch, as appropriate to that particular jurisdiction, in consultation with the aging and disability networks, should mandate standards and procedures to ensure that:

   a. The guardian files a guardianship plan that includes a statement of the ward's views and preferences, and a plan for restoring or maximizing the ward's mental and physical capacities;

   b. The guardian files annual reports on the personal status of the ward, as well as the status of the estate, and that these reports are reviewed by qualified personnel;

   c. Individuals are designated to investigate the ward's circumstances, including, at a minimum, conducting a personal observation of the ward; verifying that the guardianship plan is in effect and appropriate; determining that the least restrictive alternative is in effect; and making recommendations to the court;

   d. The guardian's responsibilities are enforced through a tickler, notice, and sanctioning process;

   e. The court reviews the guardianship if these monitoring efforts demonstrate a substantial deviation from the guardianship plan or recommendations for change.

F. Judicial Review

1. Courts and legislatures, in consultation with the aging and disability networks, should establish procedures to ensure meaningful access to the court by the ward or anyone with knowledge of a specific decision adversely affecting the ward, to seek court review of the decision.

Supreme Court Committee Recommendation IV:

Based on the greater flexibility afforded wards, the statutory focus on the capabilities of persons with disabilities, the concerns of elderly parents of persons with developmental disabilities, and the perception of a much lesser degree of stigma associated with Chapter 393 proceedings, the Supreme Court Committee makes the following recommendations:

A. The Department of Elder Affairs should establish a coalition, to include the Developmental Disabilities Planning Council, the Department of Health and Rehabilitative Services, the

Advocacy Center for Persons with Disabilities, interested sections of The Florida Bar, and other advocates as may be appropriate. The coalition should seek to amend:

1. Florida Statutes, Sections 744.369, Judicial Review of Guardianship Reports, and other indicated sections of Chapter 744, e.g., Sections 744.3675 (Annual Guardianship Plan) and 744.3715 (Petition for Interim Judicial Review). The amendments should make clear that when courts conduct their annual reviews of existing guardianships, they may, where appropriate, conduct hearings to consider establishing limited guardianships, or appointing guardian advocates pursuant to Chapter 393, Florida Statutes.

2. Chapter 393, Florida Statutes, to establish a procedure whereby persons who are parents, guardians, or otherwise charged with the care and custody of a developmentally disabled person, may establish a pre-need or standby guardian advocate, as is provided in Chapter 744, Florida Statutes, however, without a declaration of incapacity for their developmentally disabled dependent. See, Florida Statutes, Sections 744.304, 744.3045 and 744.3046.

Proposed Completion Date: December 31, 1994
Responsibility: Department of Elder Affairs
Department of Health and Rehabilitative Services
Developmental Disabilities Planning Council
Advocacy Center for Persons With Disabilities, Inc.
The Florida Bar
Elder Law Section
Real Property, Probate, and Trust Law Section
Public Interest Law Section
Clearinghouse on Human Services

B. The courts should consider utilizing the procedures available under Chapter 393 for appointment of a guardian advocate for any person diagnosed with a developmental disability in lieu of adjudicating such persons incapacitated under Chapter 744, Florida Statutes.

Proposed Completion Date: Immediately
Responsibility: Probate Judges

C. Each judicial circuit and/or county should designate a person, in addition to a deputy clerk of the court, with specialized training, education, or experience in guardianship law or procedures to assist the courts in their review function, as provided by Section 744.369 (2), Florida Statutes.

Proposed Completion Date: June 30, 1994
Responsibility: Chief Judge of each Judicial Circuit

D. Each judicial circuit should adopt, as dictated by the needs of the circuits or counties, probate and guardianship divisions, limited case loads for judges assigned to probate and guardianship matters, or the use of specialized staff. Appropriate education for all judges or court personnel assigned to probate and guardianship cases should be required.

Proposed Completion Date: December 31, 1994
Responsibility: Chief Judge of each Judicial Circuit

E. Total reliance on videotape training presentations to meet statewide uniform educational requirements for guardians should be proscribed. Waivers, except to professional guardians and corporations, may be allowed by the courts. Educational programs should also be required for court volunteers who may assist in the monitoring of guardianships.

Proposed Completion Date: June 30, 1994
Responsibility: Chief Judge of each Judicial Circuit

F. The Chief Judge should review the educational programs certified for guardianship training to ensure that the program is easily understood by nonlawyer guardians.

Proposed Completion Date: June 30, 1994
Responsibility: Chief Judge of each Judicial Circuit

G. Each judicial circuit should improve its auditing function to ensure that reasonable charges are assessed for services provided by guardians and that requisite services are appropriately provided pursuant to the guardianship plan.

Proposed Completion Date: Immediately
Responsibility: Chief Judge of each Judicial Circuit

H. The Florida Bar should seek amendment of the Durable Power of Attorney law so as to make it more easily enforceable, and to facilitate its service as a more speedy, less complicated, and less costly alternative to guardianship.

Proposed Completion Date: December 31, 1994
Responsibility: The Florida Bar
Real Property Probate and Trust Law Section
Elder Law Section
Business Law Section
Public Interest Law Section

I. The Department of Elder Affairs and The Florida Bar should seek statutory amendments which track the Public Guardianship provisions with regard to visitation by the guardian. The amendments should provide for, as a part of the annual report, certification that the guardian personally visited with the ward at least four times annually, and shall describe the

visit and the ward's condition in such detail as would clearly establish that the guardian is personally aware of the ward's condition. In the event that the guardian is not a natural person, the individual designated to conduct each visit should be a professional staff person, with qualifications equivalent to case workers/case managers as is the practice of the Office of the Public Guardian in the Second Judicial Circuit.

Proposed Completion Date: December 31, 1994
Responsibility: Department of Elder Affairs
The Florida Bar
Elder Law Section
Real Property Probate and Trust Law Section
Public Interest Law Section

J. Each judicial circuit should have a public guardianship program, or its equivalent, to serve indigent, developmentally disabled or functionally incapacitated persons.

Proposed Completion Date: October 1, 1995
Responsibility: The Legislature
The Advocacy Center for Persons with Disabilities
Department of Elder Affairs
Department of Health and Rehabilitative Services
The Florida Bar
The Long-Term Care Ombudsman Program
The Statewide Human Rights Advocacy Committee
The Developmental Disabilities Planning Council

K. The Florida Bar, in particular, the Real Property, Probate and Trust Law and Elder Law sections should seek to increase the access and availability of alternatives to guardianships; including, joint ownership, trusts, and durable powers of attorney, and advance health care directives such as living wills and health care surrogates. Such assistance may be through The Florida Bar Public Education Initiative or statutory revision.

Proposed Completion Date: December 31, 1994
Responsibility: The Florida Bar
Real Property Probate and Trust Law Section
Elder Law Section
Public Interest Law Section
Business Law Section
Florida Hospitals, Patient Education Departments

L. The Supreme Court's Court Statistics and Workload Committee should review the necessity for capturing specific data on litigants and victims who are elderly or are persons with disabilities. The Court Statistics and Workload Committee should review court rules and procedures to determine if expediting such cases through the court system is warranted.

If so, the Court Statistics and Workload Committee should recommend the necessary changes, including statutory revisions or legislative proposals.

Proposed Completion Date: See Supreme Court Committee Recommendation VI.A-C
Responsibility: State Courts Administrator

M. Chapter 744, Florida Statutes should be amended to afford the courts the discretion to remove, as well as appoint guardians, based on the order of preference outlined in Section 744.309, Florida Statutes. Guardians should be appointed and/or removed based on personal needs and relationships of the ward and not solely on the value of the estate or capabilities or absence of wrongdoing by the guardian. See Section 744.474, Florida Statutes.

Proposed Completion Date: December 31, 1994
Responsibility: The Legislature
The Advocacy Center for Persons with Disabilities
Department of Elder Affairs
Department of Health and Rehabilitative Services
The Florida Bar
The Long-Term Care Ombudsman Program
The Statewide Human Rights Advocacy Committee
The Developmental Disabilities Planning Council

N. Uniform guidelines should be established for persons monitoring guardianships. In the event that volunteers are utilized for services as visitors, friends, auditors, records researchers, etc, the AARP project guidelines may be afforded consideration.

Proposed Completion Date: December 31, 1994
Responsibility: Chief Judge of each Judicial Circuit

With regard to education, members of the Supreme Court Committee were gravely concerned about the disparity in judicial treatment and attention afforded guardianship cases, the caseload demands on individual judges, and the failure of many courts to recognize, or to utilize, their statutorily authorized discretion to address the continuing abuses occurring in the guardianship arena. Consequently, the Supreme Court Committee stresses the need for continuous education on the reforms and protections codified in Chapter 744, and on methods and procedures to exercise judicial discretion to best implement legislative intent as follows:

O. Strategies and statutory safeguards are designed to prevent guardians from unreasonably disposing of the ward's property. Where the prognosis of the examining committee indicates that restoration of capacity is likely, the guardian should be prohibited from disposing of the ward's property, at least, within 90 days of appointment, unless such disposition is

necessary to provide for the personal needs, housing, food or medical care and treatment of the ward. The courts should also explore the use of temporary emergency guardianship, as provided in Section 744.3031, Florida Statutes.

Proposed Completion Date: March 31, 1995
Responsibility: Florida Court Education Council

P. Each judicial circuit should actively ensure, consistent with Chapter 744, that members of the examining committee are neither associated with nor related to either the guardian/petitioner or the ward. See Section 744.331(3)(a), Florida Statutes.

Proposed Completion Date: Immediately (Intracircuit Communication)
March 31, 1995 (Education)
Responsibility: Chief Judge of each Judicial Circuit
Florida Court Education Council

Q. The courts should ensure, prior to appointment, that proposed guardians are not employed by any agency or employer whose mission or purpose may be in conflict with the interest or needs of the ward, or that the employment of the proposed guardian is not likely to cause removal of the guardian. See Section 744.309(3) and Section 744.446, Florida Statutes.

Proposed Completion Date: Immediately (Intracircuit Communication)
March 31, 1995 (Education)
Responsibility: Chief Judge of each Judicial Circuit
Florida Court Education Council

R. The courts should monitor guardianship fees to ensure that guardians are assessing fees equitably; e.g., shopping for groceries should not be afforded the same fee as financial management and legal services. Court auditors could be used for this purpose. See Section 744.108, Florida Statutes.

Proposed Completion Date: Immediately (Intracircuit Communication)
March 31, 1995 (Education)
Responsibility: Chief Judge of each Judicial Circuit
Florida Court Education Council

V.

Screening, Referral, and Alternate Dispute Resolution

V. ABA Recommendation: Screening, Referral, and Alternative Dispute Resolution

A. Provision of Alternative Means of Dispute Resolution

1. The interdisciplinary coordinating committee should work to ensure that each state/local jurisdiction has the means to screen, refer, and provide alternative dispute resolution in appropriate cases involving elderly persons and persons with disabilities, including the availability of specially trained dispute resolution professionals and volunteers. In appropriate cases, judges should be empowered to require litigants to attempt mediation or other relevant alternative dispute resolution options.

B. Support for Alternative Dispute Resolution

1. Appropriate judicial, court administration, bar and aging and disability organizations should adopt resolutions affirming the importance of court-related, agency and community-based alternative dispute resolution efforts in the area of aging and disability issues, and should call upon public, private, and corporate funding sources to support major projects in this area. Special effort should be made by the interdisciplinary coordinating committees and by all these relevant groups to increase understanding of client concerns, empower client groups, and disseminate information through newspaper, radio, television, and other outlets concerning the relevance of alternative dispute resolution for elderly persons and persons with disabilities.

C. National Clearinghouse

1. A national clearinghouse should be established to collect data on issues related to alternative dispute resolution, sponsor research on the effectiveness of such procedures, create ethical standards, and develop training materials for alternative dispute resolution professionals and volunteers.

Supreme Court Committee Recommendation V:

The Supreme Court Committee does not agree with the ABA recommendation. Alternative dispute resolution (ADR) options should be provided to all litigants, regardless of age or the presence of a disability. Any calls to support ADR should be based on the general benefits of the programs to all individuals.

The court must not require anyone to participate in special ADR programs created for persons with disabilities as opposed to other ADR programs. All ADR programs should be made fully accessible to everyone, and special training should be provided to the program operators or managers on accommodating persons with disabilities.

A. The Supreme Court Committee recommends that each judicial circuit publicize its ADR programs — through whatever means possible — as a viable means of conflict resolution. The court should ensure that the communication vehicle chosen succeeds in reaching the target groups, namely the elderly and persons with disabilities

Proposed Completion Date: Ongoing
Responsibility: Court Administrator of each Judicial Circuit

B. The Supreme Court Committee concurs that a national clearinghouse may be helpful to Florida's courts; the National Center for State Courts and/or the American Bar Association should be encouraged to pursue establishing such a clearinghouse.

Proposed Completion Date: June 30, 1994
Responsibility: Chief Justice

Commentary:

Separate screening mechanisms or practices, while well intended, will likely further stigmatize and alienate elderly persons and persons with disabilities who may already feel they have limited access to the judicial system.

VI.

Judicial Administration

VI. ABA Recommendation: Judicial Administration

A. Case Management

1. Case flow management systems should be designed and administered to:

   a. Collect data on the needs of participants who are elderly or have disabilities;

   b. Reduce delay generally; and

   c. Identify at the earliest possible processing point cases involving participants who are elderly or have disabilities that either: (1) require some form of special processing, or (2) should be diverted to an appropriate alternative forum of dispute resolution or referred to an appropriate social service agency for resolution.

2. Judges and court managers, with input from the aging and disability networks and bar groups, should develop methods for early identification of special case processing needs in a given case, such as questionnaires to be completed at the time of filing or answering, comprehensible notices or summons, and early scheduling conferences with parties and/or attorneys.

3. The judicial systems should administer and revise these case flow management systems as necessary in light of the data collected to accommodate the individual needs of participants who are elderly or have disabilities. Scheduling of case events should take into consideration factors such as the likelihood of imminent death or illness, time-of-day considerations, the need to bring persons to assist or interpret, the length of time an individual can remain in court on a given day, the length of time needed for preparation, and other individual needs.

Supreme Court Committee Recommendation VI:

The Supreme Court Committee agrees with the ABA recommendation and offers the following recommendations:

A. The Supreme Court Committee feels that case management goals should be long-term. Accordingly, the State Courts System should determine the court-related needs of the elderly and persons with disabilities through ongoing user- or consumer-based planning and research activities. Case flow management systems and other court practices should be enhanced over the long-term as may be appropriate and in response to the findings.

Proposed Completion Date: December 31, 1995, for initial research; ongoing thereafter.
Responsibility: State Courts Administrator

B. Each judicial circuit should develop policies and procedures for identifying cases requiring reasonable accommodation at the outset of the judicial process. Each county interdisciplinary committee should review such policies and procedures regularly and make appropriate recommendations for improvement when necessary. This review process should include assessment of the court's management of previous cases involving the need for reasonable accommodation. The interdisciplinary committee should be called on to review a case in advance only when the court's current policies and procedures are inadequate.

The Supreme Court Committee recommends the program developed in the First Judicial Circuit as a model for the early identification of individuals whose participation in the courts may require an interpreter or other reasonable accommodation. The First Judicial Circuit's program should be communicated via training activities. (See Appendix.)

Proposed Completion Date: December 31, 1994
Responsibility: Chief Judge of each Judicial Circuit
Court Administrator of each Judicial Circuit

C. The Supreme Court Committee disagrees completely with the recommendation that cases involving the elderly and persons with disabilities should be "channeled" to social agencies or other methods of resolution. Where appropriate, an individual, regardless of age or disability, should receive information about groups that may be of possible assistance relevant to court-related needs. These groups should be identified by the local ADA accessibility coordinator. The individual should clearly understand that the court assumes no liability for the accuracy of the information, nor does the act of providing information constitute a referral or an endorsement of services provided by any agency.

Proposed Completion Date: Undetermined
Responsibility: Local ADA Accessibility Coordinator

Commentary:

Historically, when individuals with disabilities have shared information about their disability, they have been discriminated against. The ADA was intended to ensure access to employment, public services, and public accommodations without knowing the disability of a particular individual. As a result of this discriminatory tradition, many ADA protections are not triggered by individual requests. Because of this history, and the collective experiences of an individual with disabilities, the right of an individual to refuse assistance or to divulge information must be respected. If an individual's decision to refuse assistance has a detrimental impact on said individual, such is the natural consequence of his or her choice, and the court system must avoid falling into the paternalistic trap of helping people against their will in order to save them from themselves.

Regardless, case-specific data collection should be limited to that necessary to ensure accommodation; it must be, to the greatest extent possible, handled confidentiality in a manner similar to that required under Title I of the ADA relating to medical information in the

employment setting. General data collection should also be confidential, and limited to that necessary to identify needs for system change and funding.

ABA Recommendation VI:

B. Court Rules and Procedures

1. The interdisciplinary coordinating committee should ensure that court rules and procedures, statutes, and constitutional provisions are periodically reviewed in order to develop a plan for their revision that would make the judicial process more accessible and understandable to participants generally and to elderly persons and persons with disabilities in particular.

2. The judicial system should develop a mechanism for this review process that would include consultation with legislators, bar groups, and the aging and disability networks so that recommended revisions of the judicial process may be implemented by the appropriate body.

Supreme Court Committee Recommendation VI:

The Supreme Court Committee agrees, in part, with the ABA recommendation and offers the following alternative recommendations:

D. The Florida Bar sections and committees on court rules should evaluate the current rules outside of the four-year review cycle in light of the ADA and this Supreme Court Committee's final recommendations, and make recommendations for changes. Rules are needed to address the following specific issues:

1. **The need for the court to receive "reasonable notice" pursuant to a request for a special accommodation. This issue should receive immediate attention.**
2. **Advance requests for reasonable accommodation, such as morning hearings or trials, telephone hearings or conferences, and the like.**
3. **The potential for mistrials relevant to challenges made regarding reasonable accommodation issues in court proceedings if an unfair advantage is alleged.**
4. **The need to receive "reasonable notice" and the requirement to make reasonable accommodation as may be necessary to ensure effective participation in all out-of-court proceedings and activities, such as but not limited to depositions and discovery.**

Proposed Completion Date: December 31, 1994
Responsibility: The Florida Bar

E. Section 415.114, Florida Statutes, which provides speedy trials for the elderly, should be amended to include persons with life-threatening disabilities, or persons with disabilities that

can be reasonably anticipated to progress to a point which will significantly affect the individuals' ability to participate.

Proposed Completion Date: April 30, 1995
Responsibility: The Florida Bar

ABA Recommendation VI:

C. "User Friendly" Judicial System

1. The judicial process should be made "user friendly" by:

   a. Training court staff and volunteers to explain and "de-mystify" case processing and answer questions about it;

   b. Developing explanatory written, audiovisual, and electronic materials;

   c. Using simplified forms that contain a clear explanation of their purpose; and

   d. Notifying the parties that if they are elderly or have disabilities, they may be entitled to reasonable accommodation and help from various social service agencies, depending on the nature of the proceeding.

Supreme Court Committee Recommendation VI:

F. The Supreme Court Committee agrees with the ABA recommendation. Implementation can be achieved through the previously described ongoing training program (Supreme Court Committee Recommendation II.D-E), "Friend of the Court" volunteer program (Supreme Court Committee Recommendation II.D-E), and the county interdisciplinary committee's review process of the court's reasonable accommodation policies and procedures (Supreme Court Committee Recommendation VI.A-C).

Commentary:

The "user friendliness" of the court system should be increased for the entire population, not just for elderly individuals and individuals with disabilities; it can be assumed that many people are intimidated by interaction with the courts. By accepting that this need exists for all people, and providing information and communication accordingly, the court can also avoid the stigmatizing effect of having "special treatment" for elderly persons and persons with disabilities when the rest of the population needs some degree of the same consideration.

ABA Recommendation VI:

D. Pro Se Litigation

1. Pro se litigants who are elderly or have disabilities should receive assistance when needed with filing, answering, processing, and trying cases.

2. Court staff should provide assistance throughout the life of a case, including captioned video and audio instruction materials, referral to legal assistance programs and other advocacy agencies, and simple instructions on court forms.

3. State and local bar associations, in cooperation with judges, court managers, and members of the aging and disability networks, should develop programs to assist pro se litigants who otherwise cannot obtain representation.

Supreme Court Committee Recommendation VI:

The Supreme Court Committee agrees with the ABA recommendation and offers the following recommendations:

G. Pro se litigants who are elderly or who have a disability that impacts their ability to effectively represent themselves in court should receive whatever assistance is necessary, but only to the extent required to provide reasonable accommodation as mandated under the ADA.

Court staff should provide assistance through the life of a case, but again only to the extent necessary to provide reasonable accommodation as mandated under the ADA. With regard to referrals to legal assistance programs and the like, referrals should be made on a uniform basis so as to avoid the perception of a stereotypical response or improper channeling of an elderly person or a person with a disability. Simplified forms should be developed and made available as part of the court's compliance effort with the ADA.

Proposed Completion Date: Immediately (assistance)
April 30, 1994 (simplified forms)
Responsibility: Chief Judge of each Judicial Circuit
Clerk of each Circuit Court

H. Programs should be developed to assist pro se litigants, but they should not be limited to just those persons who have disabilities or who are elderly. Further, with regard to elderly persons and persons with disabilities securing representation, referrals to outside agencies should only be made on a uniform basis in order to avoid improper channeling of such persons.

Proposed Completion Date: December 31, 1994
Responsibility: Chief Judge of each Judicial Circuit
Local Bar Association

I. The Supreme Court of Florida should consider a more liberal definition of "pro bono" to include legal advice and counsel in addition to legal representation.

Proposed Completion Date: June 30, 1994
Responsibility: Supreme Court of Florida

Commentary:

While the Supreme Court Committee agrees that pro se litigants who are elderly or who have a disability should receive assistance when needed with filing, answering, processing and presenting (as opposed to trying) cases, it believes the assistance should be limited to that necessary to provide reasonable accommodation to those individuals because of their disabilities. Clearly, such accommodation is contemplated under the ADA. However, it is not the role of the clerk's office to engage in any unlicensed practice of law, nor are persons with disabilities to have an advantage over other non-disabled participants merely by virtue of their being disabled. Rather, it is the court's role to provide reasonable accommodation when a showing is made that it is because of the disability that the person is unable to present his or her case.

With regard to the pro se litigant issue in general, the Supreme Court Committee acknowledges that both persons with disabilities and non-disabled persons may have a lack of understanding about the judicial process. However, that issue is beyond the scope of this Supreme Court Committee's charge. The Supreme Court Committee does acknowledge that some of the possible confusion of all pro se litigants may be alleviated as a result of the simplified forms that should be developed as a part of the ADA compliance efforts.

The Supreme Court Committee agrees that programs should be developed to assist all pro se litigants in working their way through the court system. The Supreme Court Committee believes that justice would be well served by having the voluntary bars in the various judicial circuits develop training programs, like the People's Law School program, which would help persons pursue their own claims. Those programs should be fully accessible to persons with disabilities.

Special training should be included as part of such programs on how persons with disabilities can seek accommodation from the court system and the types of accommodations which may be available. All such programs should be fully accessible and the availability of all programs should be publicized to all pro se litigants. The programs should be developed by local voluntary bar associations with, perhaps, some technical assistance provided by the local court administrator's or clerk's office.

Referrals to outside agencies should be made only on a uniform basis. This practice will avert the perception that the court is stereotyping persons with disabilities as unable to represent themselves or shirking its obligation to provide reasonable accommodation under the ADA. Each judicial circuit should consider referring all pro se litigant cases to the circuit's pro bono panel. Consideration may also be given to the appointment of a limited guardian ad litem to assist a pro se litigant. Further, if persons with a disability or elderly persons wish to "go in

on their own," they should certainly be allowed to. Channelling persons simply by deference to their age or disability should be avoided.

With regard to simplified forms, the Supreme Court Committee believes it would be helpful for the clerk of each circuit court to forward a set of his or her court's simplified forms to the Court Services Department of the Office of the State Courts Administrator, thereby creating a central information resource for all courts to access.

ABA Recommendation VI:

E. Court Data

1. Organizations such as the American Bar Association, the National Judicial College and the National Center for State Courts should convene a national committee composed of judges and court managers; elderly persons and persons with disabilities; advocates and self-advocates for elderly persons and persons with disabilities; social, medical and legal service providers; disability consultants; legislators; persons with expertise in cultural diversity; and others deemed necessary by the conveners.

2. The national committee should take the findings of this Conference and decide what court data are useful and necessary to implement the Conference recommendations.

3. The national committee should establish uniform definitions of data elements and determine to whom the definitions and data should be distributed.

4. The national committee, in conjunction with state interdisciplinary coordinating committees, should develop data systems that address confidentiality issues and the relevance, necessity and timeliness of the data. The national committee and state interdisciplinary coordinating committees should conduct periodic reviews of the systems.

5. Each chief justice should implement the recommendations of the national committee and the state interdisciplinary coordinating committees regarding court data.

<u>*Commentary:*</u>

The Supreme Court Committee does not respond to ABA Recommendation VI.E because the recommendation suggests national-level activities among identified organizations.

VII.

Victim/Witness Assistance

VII. ABA Recommendation:
Victim/Witness Assistance

A. Adequately Funded Program

1. Each judicial system should have within its jurisdiction a comprehensive victim/witness assistance program that is responsive to elderly persons and persons with disabilities and is coordinated with specialized advocacy services and appropriate service providers.

2. The interdisciplinary coordinating committee should survey existing programs, analyze the needs and develop a plan to provide victim assistance in each jurisdiction.

3. State and local governments, including the judiciary, the legislature, the administration, and the chief law enforcement officer, should ensure adequate funding and program development to implement the program.

Supreme Court Committee Recommendation VII:

The Supreme Court Committee agrees with the ABA recommendation and offers the following recommendation:

A. Program surveys, needs analysis, program and action plan development are appropriate tasks for the county interdisciplinary committee. Program and funding strategies should be developed in consultation with the Victims Services and Criminal Justice Program within the Florida Department of Legal Affairs.

Proposed Completion Date: June 30, 1995
Responsibility: Each County Interdisciplinary Committee
Chief Judge of each Judicial Circuit

ABA Recommendation VII:

B. Procedures to Provide Assistance

1. Judges, prosecuting attorneys, and law enforcement agencies should establish procedures that support the ability of crime victims and witnesses who are elderly and/or have disabilities to achieve justice. These procedures should:

   a. Recognize early in the process the special needs of victims and witnesses who are elderly or have disabilities;

   b. Accommodate the needs of victims and witnesses, including their ability to testify and participate in the process; and

c. Require thorough investigation and screening of crimes involving victims with special needs.

2. Victims and witnesses who are elderly and/or have disabilities should have access to high quality legal advocacy, personal assistance, and social support networks to facilitate justice.

Supreme Court Committee Recommendation VII:

The Supreme Court Committee agrees with the ABA recommendation and offers the following recommendation:

B. Early identification of special needs which may require reasonable accommodation can be achieved through programs similar to that in the First Judicial Circuit (see Appendix). Accommodation of needs can be effectively handled through each interdisciplinary committee's review of the court's policies and procedures for reasonable accommodation (see Supreme Court Committee Recommendation VI.A-C). While all victims and witnesses are likely to require assistance, it may be necessary to provide special assistance in the form of reasonable accommodation, when requested, to persons with disabilities and the elderly.

Proposed Completion Date: December 31, 1994
Responsibility: Chief Judge of each Judicial Circuit
Court Administrator of each Judicial Circuit

VIII.

Education

VIII. ABA Recommendation: Education

Individual justice for all requires that there be such comfort with and respect for human diversity that questions of access and discrimination are no longer at issue. To achieve this goal, all professions, including the bar and judiciary and the social service and medical communities, as well as the schools and media, should provide comprehensive public and professional education.

A. Program Development

1. Interdisciplinary coordinating committees and/or the judiciary, the aging and disability networks, professional continuing education groups, bar associations, consumers, relevant public agencies, and relevant experts jointly should develop initial and continuing education and materials.

B. Content

1. These educational efforts should promote recognition of individual integrity and potential; foster understanding of the aging process and physical, sensory, and mental disabilities; and challenge professionals to advocate for the autonomy of individuals.

2. All such educational efforts should address, at a minimum:

   a. The aging process and the nature of disabilities;

   b. The requirements of the Americans with Disabilities Act and related case and statutory law, regulations and methods of compliance;

   c. The principles of equal access and accommodation;

   d. The utilization of community resources; and

   e. The avoidance of stereotypes through a focus on people's individual abilities, support needs, and inherent individual value.

3. In addition, as appropriate, such efforts might focus on one or more of the following important topics:

   a. Substantive areas of law concerning the needs of elderly persons and persons with disabilities;

   b. Barriers to physical access and how to overcome them;

c. Communication needs of elderly persons and persons with disabilities, and the technology available to provide full accessibility;

d. Duties and responsibilities of guardians, guardians ad litem, attorneys, and court personnel in guardianship proceedings;

e. Standard definitions and procedures for determining incapacity, standards for surrogate decision-making, and the doctrine of the least restrictive alternative;

f. Improved understanding of the dispute resolution perspective and process generally, how it applies specifically to issues of elderly persons and persons with disabilities, and dispute resolution resources available in the jurisdiction;

g. The impact of victimization, civil and criminal court proceedings, preservation of evidence, and other matters that may assist in the ability to prosecute appropriate criminal cases;

h. Information about successful programs and successful funding efforts for addressing the court-related needs of elderly persons and persons with disabilities.

Commentary:

Education recommendations are not limited to this section. It is the Supreme Court Committee's intent that this Action Plan be considered in its entirety for the purpose of curriculum development.

Supreme Court Committee Recommendation VIII:

A. The Supreme Court Committee agrees with the ABA recommendation, with the understanding that education is the critical issue in servicing the elderly and persons with disabilities. Initial education efforts should be focused on court personnel, as previously discussed (see Supreme Court Committee Recommendation III.A-C). Subsequent community efforts may be handled through the county interdisciplinary committee.

Proposed Completion Date: Ongoing
Responsibility: Local ADA Accessibility Coordinator (court personnel)
Each County Interdisciplinary Committee (community programs)

B. State-level interdisciplinary education initiatives should be consolidated with the efforts of the governor's recently-created Florida Coordinating Council on the ADA.

Proposed Completion Date: Ongoing
Responsibility: State Courts Administrator

Commentary:

The local ADA accessibility coordinator and county interdisciplinary committee are encouraged to review local avenues for educating court and courthouse personnel. The Florida Coordinating Council on the ADA should also be used as a training resource. As well, primary, secondary, and post-secondary educational curricula which address ADA issues such as court access for the elderly and persons with disabilities, are encouraged.

Additional suggestions relevant to content include the need to foster an understanding of disabilities, and the need to understand the differences between disabilities, and between individuals. Education, age at the onset of a disability, and other factors contribute to individual differences. Court personnel should be trained in these areas to avoid trading one set of inaccurate stereotypical beliefs for another set of equally incorrect stereotypical beliefs.

ABA Recommendation VIII:

C. Audiences

1. Educational efforts, as appropriate, should be directed towards:

   a. Judges, court managers, and staff;

   b. The organized bar, legal services providers, law students, prosecuting attorneys, public defenders;

   c. Law enforcement personnel;

   d. Guardians, guardians ad litem, assessment team members, health and service providers;

   e. Aging and disability network members;

   f. Alternative dispute resolution professionals and volunteers;

   g. Legislators, executive branch officials;

   h. Architects, builders, public works departments, technological experts;

   i. Elementary, secondary and college students; and

   j. Consumers, the public.

D. Educational Forums

1. Educational initiatives should use a variety of available forums, including:

   a. Public schools, colleges and universities;

   b. Law school and post-secondary school curricula, including clinical programs on aging and disability issues;

   c. Initial and continuing education and training programs;

   d. Core curricula of judicial education providers;

   e. Desk manuals for lawyers, judges, and court personnel;

   f. Newspapers, organizational newsletters, videos, radio and television;

   g. Conferences at the national, state and local levels, including those sponsored by groups such as the American Bar Association, the American Association of Retired Persons, the National Judicial College, the State Justice Institute, the Conference of Chief Justices, and others.

E. Incorporating Into Existing Legal/Judicial Curricula

1. Existing law school and continuing education programs for judges, attorneys, and court support staff should be required to include information about the needs of elderly persons and persons with disabilities as related to the substantive area of law addressed.

F. Faculty

1. Educational programs should include elderly persons and persons with disabilities as faculty.

G. Funding

Funding will be required. Currently available resources should be reallocated to support some of these educational efforts. Where necessary, grants should be sought from appropriate national, state, and local organizations for implementation and dissemination.

Supreme Court Committee Recommendation VIII:

The Supreme Court Committee agrees with the ABA recommendation and offers the following additional recommendations:

C. **Education of judges in appropriate sensitivity to and accommodating the needs of elderly persons and persons with disabilities is essential. (See Supreme Court Committee Recommendation III.A-C.)**

Proposed Completion Date: March 30, 1995
Responsibility: Florida Court Education Council

D. **The Florida Bar should include courses in its series of continuing legal education on how to effectively represent elderly persons and persons with disabilities in the legal system. Course study should reach beyond the minimum ADA requirement to make reasonable accommodation for persons with disabilities.**

Proposed Completion Date: March 30, 1995
Responsibility: The Florida Bar

E. **The Florida Bar should include courses in its series of continuing legal education that explain an attorney's obligation to comply with Title III of the ADA, including but not limited to an attorney's requirement to accommodate persons with disabilities.**

Proposed Completion Date: March 30, 1995
Responsibility: The Florida Bar

F. **The Supreme Court should include mandatory elderly and disability awareness training as part of the mediator certification process.**

Proposed Completion Date: June 30, 1995
Responsibility: State Courts Administrator

G. **Law schools in the state of Florida should include courses in their curricula on the legal needs and the rights of elderly persons and persons with disabilities.**

Proposed Completion Date: June 30, 1995
Responsibility: Dean of each law school in Florida

Commentary:

The use of the media as an educational forum should be done with great care. Unfortunately, the print and electronic media have been instrumental in perpetuating many of the myths about elderly persons and persons with disabilities. Often, persons with disabilities are portrayed as superhumans, villains, or helpless victims. These images foster stereotypes indicating that individuals with disabilities are people to be pitied or despised. Courts choosing this method as an educational tool should be careful to ensure that the information provided is free from stereotypes and stigma typically associated with media portrayals of elderly persons and persons with disabilities.

Appendix

IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA
Administrative Order No. 92-79

IN RE: INTERPRETER SERVICES FOR THE HEARING IMPAIRED

ORDER

WHEREAS, the Chief Judge is charged by Rule 2.050, Fla.R.Jud.Admin., with general administrative responsibility over all courts within the First Judicial Circuit, and

WHEREAS, Fla.Stat. §90.6063 provides that in all judicial proceedings and sessions of a grand jury wherein a hearing impaired person is a complainant, defendant, or witness, the Court or presiding officer shall appoint a qualified interpreter to interpret the proceedings for the hearing impaired person, and

WHEREAS, the American Disabilities Act requires the elimination of all barriers to all court-related services and processes for persons with disabilities, and

WHEREAS, it is the intent of the First Judicial Circuit to insure that all individuals have equal access to all judicial proceedings regardless of disability or impairment, and

WHEREAS, Escambia County has entered into a contract with the Center for Independent Living to provide qualified interpreters for the hearing impaired, and

WHEREAS, the following procedures have been developed through the efforts and cooperation of Law Enforcement in Escambia County, the Court Administrator's Office, and several hearing impaired interpreters,

NOW, THEREFORE, in consideration of the foregoing, it is hereby

ORDERED AND ADJUDGED:

1. That all law enforcement shall provide interpreters for the hearing impaired pursuant to Florida law. A stamp (provided by the Court Administrator's Office) shall be affixed to all reports developed by Law Enforcement. The stamp shall indicate that an interpreter is required and specify the individual needing the interpreter.

2. The Clerk of the Court, upon receipt of the foregoing report indicating that a qualified interpreter is required, shall immediately contact the Center for Independent Living who shall provide a qualified interpreter as defined in Fla.Stat. §90.6063 for all judicial proceedings.

3. The Clerk of the Court shall clearly mark all court files to reflect that a qualified interpreter is required for this case and to identify the individual by name and role.

4. Pursuant to the contract between the Center for Independent Living and the Board of County Commissioners, the Court Administrator's Office shall receive and review all vouchers for payment.

5. This order shall be effective November 16, 1992.

DONE AND ORDERED at Pensacola, Escambia County, Florida, on this 13th day of November, 1992.

[Signed:] John T. Parnham
Chief Judge

cc: All Judges, First Judicial Circuit
All Clerks, First Judicial Circuit
Mr. Wayne Peacock, Court Administrator
Escambia County Sheriff's Office
Pensacola Police Department
Department of Corrections
Center for Independent Living
Florida Department of Law Enforcement
Florida Highway Patrol
Florida Marine Patrol
Century Police Department
Chairman, Board of County Commissioners
The Summation
Resource Center for Hearing Impaired