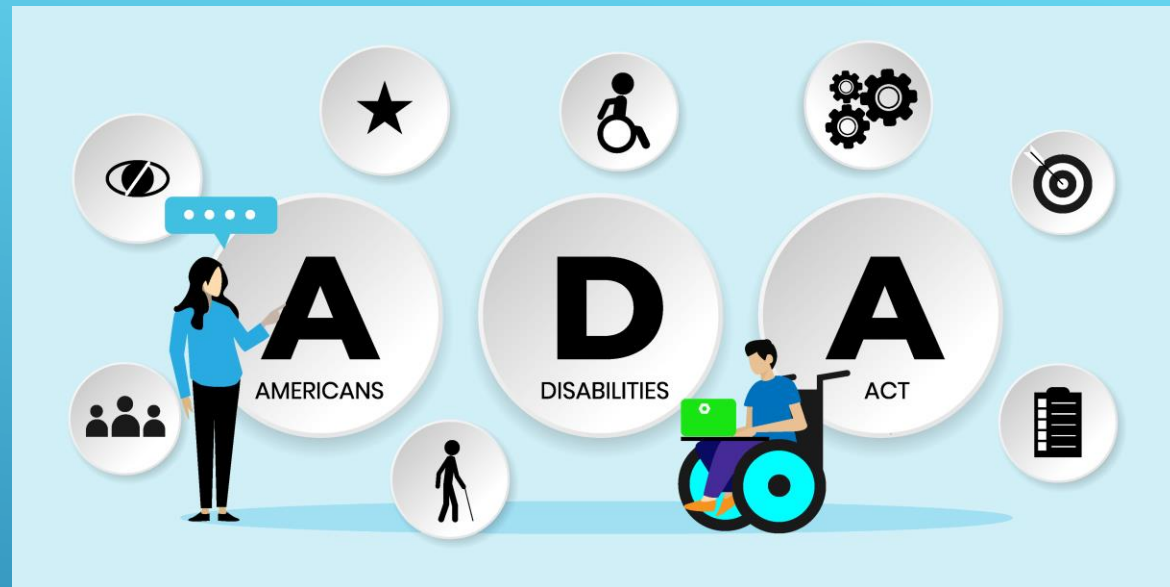




Presents



A Webinar on the  
**Americans with Disabilities Act**  
for Appellate Justices and Staff in California

**Disability Nondiscrimination  
Obligations of California's  
Appellate Courts**

***Sua Sponte* Duties in  
Probate Conservatorships  
and Other Proceedings**



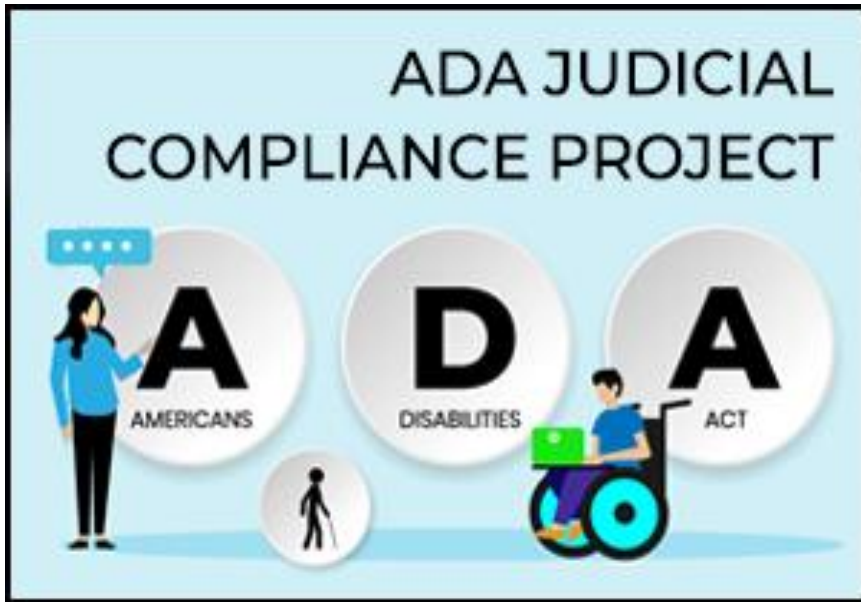
**Minute Video**

**+**

**Page Booklet**

**Statutes, Regulations,  
Court Decisions,  
& Commentaries**

**A Guidebook of Reference Materials**



## The Webinar Explains

- **ADA obligations of appellate courts even without a request**
- **Rights and remedies available to victims of ADA violations**

The webinar should interest the Judicial Council and the appellate projects with whom it contracts to provide legal services for indigents in appeals.

<https://spectruminstitute.org/>

It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system.

Rule 1.100, California Rules of Court

**Judicial Branch Nondiscrimination Policy**

## Rule 1.100 is Just the Beginning of the Inquiry

This rule is not intended to impose limitations or to invalidate the remedies, rights, and procedures accorded to persons with disabilities under state or federal law.

Rule 1.100, California Rules of Court

**Judicial Branch Nondiscrimination Policy**

**Americans with Disabilities Act – Title II**

**Any Public Entity**



**Government Code Section 11135**

**Any State-Funded Entity**



**Welfare & Institutions Code Section 4502**

**Any Publicly-Funded Entity**



**Other Rights and Remedies**



**Article VI Courts Are:  
Public Entities – Publicly Funded – State Funded**

Supreme Court

District Courts of Appeal

Appellate Division of Superior Courts

**and therefore must comply with:  
ADA Title II • Gvt. Code Sec. 11135 • Welf. & Inst. Code Sec. 4502**

**Constitutionally Created Public Entities**

# Nondiscrimination Laws Apply to All Functions of Appellate Courts

**Administrative Functions:**  
Implementing Policies

**Adjudicative Functions:**  
Deciding Cases

**ADA Title II (directly and via Section 11135) applies to:**

- “all services, programs, and activities provided or made available by public entities.” 28 C.F.R. § 35.102.
- “all programs, services, and regulatory activities relating to . . . the administration of justice, including courts.” DOJ Title II Technical Assistance Manual.

**ADA applies to everything an appellate court does.**



## ADA Title II Duties

The basic obligation “is to acknowledge and address disabilities of people who come before the court, thereby ensuring ‘equal and full access to the judicial system.’ ”

*Biscaro v. Stern* (2010) 18 Cal.App.4th 702

**“acknowledge and address disabilities”**

## ADA Duties Do Not Require a Request

- ★ Any program or activity that is funded by the state shall meet the protections and prohibitions of Title II of the ADA and federal rules and regulations implementing the ADA. (Cal. Gvt. Code Sec. 11135)
- ★ A public entity must offer accommodations for **known** physical or mental limitations. (Title II Technical Assistance Manual of DOJ)
- ★ It is the knowledge of a disability and the need for accommodation that gives rise to a legal duty -- **not a request**. (*Pierce v. District of Columbia* (D.D.C. 2015) 128 F.Supp.3d 250)

***Sua Sponte* ADA Judicial Duties**

## ADA Duties Do Not Require a Request



Some people with disabilities are not able to make an ADA accommodation request. A public entity's duty to look into and provide accommodations may be triggered when the **need for accommodation is obvious**. (*Updike v. Multnomah County* (9th Cir 2017) 870 F.3d 939.)



The failure to expressly request an accommodation is not fatal to an ADA claim where an entity otherwise had **knowledge** of an individual's disability and needs but took no action. (*A.C. v. Paradise Valley* (9th Cir. 2016) 815 F.3d 1195)



To require a request from those who are **unable to make a request** would eliminate an entire class of disabled persons from the protection of the ADA. (*Brady v. Walmart* (2nd Cir. 2008) 531 F.3d 127)

***Sua Sponte* ADA Judicial Duties**

# The ADA Protects Individuals Known, Regarded, or Perceived as having significant disabilities

Appellate courts **know or should know** that conservatees and proposed conservatees who are appellants, respondents, or overview parties to an appeal have significant cognitive or communication disabilities based on:

- The nature of conservatorship proceedings
- The verified allegations of the petition and supporting documents
- The reports of the court investigator or experts
- The rulings of the superior court

*Sua Sponte* ADA Judicial Duties

# Effective Communications

A public entity shall take appropriate steps to ensure that communications with . . . participants . . . with disabilities are as effective as communications with others.

A public entity shall furnish appropriate . . . services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

**28 Code of Federal Regulations, Part 35 -- § 35.160 General.**

***Sua Sponte* ADA Judicial Duties**

# What an Appellate Court's Duties Are

Take reasonable measures to ensure

- **Effective Communication**
- **Meaningful Participation**

In all aspects of the legal proceedings  
for a litigant with cognitive disabilities

***Sua Sponte* ADA Judicial Duties**