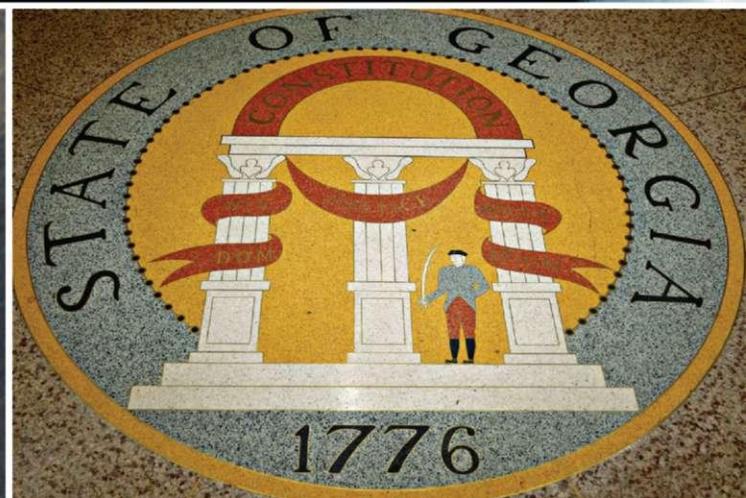


A MEANINGFUL OPPORTUNITY TO PARTICIPATE

A MENTAL ILLNESS AND
COGNITIVE DISABILITIES
COMPANION GUIDE
TO THE HANDBOOK
FOR GEORGIA COURT
OFFICIALS ON COURTROOM
ACCESSIBILITY FOR
INDIVIDUALS WITH
DISABILITIES



Access, Fairness, Public Trust and Confidence Committee
Judicial Council of Georgia
Administrative Office of the Courts

**Mental Illness and Cognitive Disabilities
Companion Guide**

to

***A Meaningful Opportunity to Participate:
A Handbook for Georgia Court Officials on
Courtroom Accessibility for Individuals with
Disabilities***

Access, Fairness, Public Trust and Confidence Committee

Judicial Council of Georgia

Administrative Office of the Courts

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Judicial Council of Georgia

Administrative Office of the Courts

Chief Justice P. Harris Hines
Chair

Cynthia H. Clanton
Director

Judicial Council of Georgia

This position statement is hereby adopted to ensure equal access to and full participation in court and programs conducted by the court by people with disabilities, including but not limited to litigants, defendants, witnesses, victims, jurors, potential jurors, and attorneys. This statement is an effort towards compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (2012) and should be construed in a manner consistent with and in furtherance of that Act.

1. Qualified people with disabilities shall not, by reason of their disability, be discriminated against, or be excluded from participation in or denied the benefits of services and programs conducted by the courts.
2. Upon notification by a person with a disability of the need for accommodation, the court shall, at no charge, provide a reasonable accommodation that will enable the person to access and/or effectively participate in any court or court program. A person with a disability is defined as an individual who has a physical or mental impairment that substantially limits one or more major life activities, or has a record of such impairment.
3. Each court shall identify an ADA point of contact who shall determine what reasonable accommodation will be made. Consultation shall occur with the individual to explore his or her limitations and the options available for accommodating the disability. Primary consideration shall be given to the requested accommodation; however, alternative accommodation may be offered if reasonable. The court is not required to make modifications that would fundamentally alter the service or program or cause undue financial or administrative burden.
4. Local courts shall provide necessary auxiliary aids or services, excluding devices of a personal nature, for the duration of the time period for which accommodation is needed. Examples of auxiliary aids or services of a personal nature not covered by this directive include prescription eyeglasses, hearing aids, wheelchairs, and/or personal medical or attendant care. The individual requesting the accommodation shall not be required to pay for the costs of such accommodation.
5. If accommodation is needed for an individual to serve on jury duty and a time constraint exists related to the availability of an accommodation, the court, at its discretion, may continue an individual's jury summons to allow the court time to provide the accommodation. Any accommodation shall be made for the duration of any jury trial on which the person needing the accommodation serves.

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2018 Mental Illness and Cognitive Disabilities Companion Guide

This is a Mental Illness and Cognitive Disabilities Companion Guide to *Access to Justice for People with Disabilities: A Guide for Georgia Courts ("Access to Justice Guide").*¹ In developing the 2017 edition of the *Access to Justice Guide*, the Judicial Council Access, Fairness, Public Trust and Confidence Committee ("Committee") decided that there were unique issues involved in providing accommodations to people with mental illness and cognitive disabilities that warranted additional attention. This Companion Guide is not meant to be comprehensive but only an addition to the *Access to Justice Guide*. It may be necessary to refer to the *Access to Justice Guide* in providing access to justice to people with mental illness and cognitive disabilities, as the information contained there will not be repeated in this Companion Guide.

Special thanks is given to the Washington State Access to Justice Board's Justice Without Barriers Committee, which provided permission to use its *Ensuring Equal Access for People with Disabilities: A Guide for Washington Administrative Proceedings* (May 2011) in developing these materials. We followed much of the Washington Guide's structure, topics, and ideas in this Companion Guide.

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¹ This supplements the sections entitled: "Accommodating Individuals with Cognitive Disabilities" found at page 22; "Accommodating Individuals with Mental Health Disabilities" found at page 24; "Interacting with People Who Have Cognitive Disabilities" found at page 57; and "Interacting with People with Mental Health Disabilities" found at page 58.

INTRODUCTION

One of the fundamental tenets of our judicial system is "equal justice under the law," which is engraved on the United States Supreme Court building. The purpose of providing accommodations to people with disabilities, including those with mental illness and cognitive disabilities, is to ensure that all those who come in contact with the court system in Georgia have access to equal justice.

Providing accommodations and ensuring access is also the law. As is stated in more detail in the *Access to Justice Guide*, the Americans with Disabilities Act requires reasonable accommodations.²

Due to the unique circumstances related to people with mental illness and cognitive disabilities, accommodations may be different than for others with physical disabilities. Also, it may be more difficult to recognize that an individual has a disability or what accommodations are needed.³ For instance, while it may be immediately apparent that a witness using a wheelchair needs an accommodation to take the witness stand, it may be less obvious that a witness with a low IQ or an anxiety disorder has a disability, and what accommodation may be necessary.

A person with a mental illness or cognitive disability may not recognize or admit that he or she has a disability. He or she may also not be aware that a reasonable accommodation is available or that one could be requested.⁴ For this reason, court personnel should be educated to recognize such impairments and be proactive in promoting and providing or suggesting accommodations. This must be done with care, though, to avoid stigmatizing or unnecessarily drawing attention to the disability. Also, people with mental illness and cognitive disabilities will often wish to keep their impairments private. It is important to maintain confidentiality as much as possible.

Court proceedings can be particularly stressful. The proceedings may exacerbate the impairments of people with mental illness and cognitive disabilities. Accommodations in these circumstances may not only be helpful to the individual with a disability but also to the operation of the court. For instance, if a person experiences anxiety attacks, it may help with the smooth conduct of the proceeding to offer more frequent breaks.

²As stated in more detail in the *Access to Justice Guide*, Title II of the Americans with Disabilities Act applies to local and state courts and activities related to them. Title II and the related federal regulations prohibit discrimination against people with disabilities and require reasonable modifications to policies, practices, and procedures unless such modifications would cause a fundamental alteration to the nature of the entity's service, program, or activity. "Title II Technical Assistance Manual," Section II 3.6000, Civil Rights Division, United States Justice Department, <https://www.ada.gov/taman2.html#II-3.6000> (visited February 12, 2017).

³*Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts ("Ensuring Access Guide")*, p. 12, (Revised May 2011), <http://allianceforequaljustice.org/resources/ensuring-equal-access-people-disabilities-guide-washington-administrative-proceedings/?wpdmdl=392&refresh=5a6955c1338801516852673> (visited January 24, 2018).

⁴ *Ensuring Access Guide* at p. 12.

Sometimes, it may be beneficial to speak with an impartial mental health professional or a treating physician or other specialist regarding possible accommodations. The individual or, when appropriate, family or friends may be able to articulate accommodations that are used in other contexts. Accommodations may also be identified through a confidential dialogue about the impairment and the situation.

The impairments involved in people with mental illness and cognitive disabilities vary greatly - even in people with the same diagnosis. Similarly, the accommodations provided to individuals must vary based on the particular circumstances and unique characteristics of the individual involved.⁵

Terminology and Structure of this Companion Guide

This Companion Guide is divided into a Mental Illness section and a Cognitive Disabilities section. While these two umbrella topics are necessary for organization, disabilities and diagnoses do not always fit neatly into these classifications. Taking this caveat into consideration, these umbrella terms are helpful in dividing up the more common impairments of individuals who interact with the court system.

Mental Illness refers to a wide range of mental health disorders impacting mood, thinking, and behavior. It can include impairments such as depression, bipolar disorder, schizophrenia, eating disorders, and addictive diseases. People at all levels of intelligence and cognitive functioning can have mental illness.⁶ Mental illness may also be referred to as a psychiatric disability, a mental health disability, or a behavioral health disorder (or a combination of these terms).

Cognitive Disability refers to people who have disabilities that impact intellectual functioning as well as disabilities that affect cognitive functioning. It includes people with intellectual disabilities, traumatic brain injuries, learning disabilities, and dementia.⁷ It can also include people with developmental disabilities, although not all people with developmental disabilities have cognitive disabilities.

There are significant differences between a mental illness and a cognitive disability. For instance, a person who has a mental illness will usually not have intellectual deficits. Any assumption that he or she also has an intellectual deficit would be improper. Similarly, it would be improper to assume that a person with a low I.Q. has a mental illness.

As is repeated throughout this Companion Guide, it is essential to consider the actual impairment and the situation involved in providing accommodations, and not simply the diagnosis. This Companion Guide can be used to help understand the different types of disabilities and accommodations that can be considered based on the circumstances involved.

⁵ *Id.*

⁶ "Mental Illness Definition," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/mental-illness/basics/definition/con-20033813> (visited January 22, 2017).

⁷ Ensuring Access Guide at p. 12 (please note that my comment in footnote 3 applies equally to footnote 7).

MENTAL ILLNESS

Mental illness is a common disorder. It impacts one in six adults, according to 2016 data.⁸ The types and severity of mental illness vary widely. Mental illness can impact mood, behavior, judgment, and communication.⁹ The extent of any such impact depends on an individual's impairment. Most people with mental illness are fully capable of participating as litigants, jurors, and witnesses.

The federal regulations presume the following conditions are disabilities covered by the Americans with Disabilities Act because they limit brain function: major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.¹⁰ Other types of mental illness are also covered if they substantially limit a major life activity.¹¹

This section will provide guidance on assessing credibility, the impact of medications, training for courtroom staff, the different types of mental illness, and accommodations that can be considered.

1. Assessing Credibility

In assessing the credibility of a person with mental illness, the individual may have atypical behaviors. For instance, the individual may not directly answer the question, may speak rapidly, or change the topic. Such behaviors on their own should not be determinative of whether what the person is saying is credible.¹²

Even an individual who is experiencing a delusion should not be completely dismissed as lacking all credibility. A person may believe that something not real is happening, but he or she could still be able to recall an actual event that took place.¹³

2. The Effect of Medication

There is often a misconception that if a person with a mental illness was to simply take his or her medicine that the impairment would be well managed. Medication is generally only one part, if at all, of what is necessary for mental health recovery. Many medications also have significant side effects. For instance, medications for individuals with schizophrenia may cause uncontrollable movements, including tics and tremors, drowsiness, dizziness, or restlessness.¹⁴

⁸ An estimated 45 million adults suffer from mental illness in the U.S., according to 2016 data. "Any Mental Illness (AMI) Among U.S. Adults," National Institute of Mental Health, <https://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-us-adults.shtml> (visited February 16, 2017).

⁹ Ensuring Access Guide at p. 13.

¹⁰ 28 CFR § 35.108(d)(2)(iii)(K).

¹¹ 28 CFR § 35.108(a)(1)(i).

¹² Ensuring Access Guide at p. 13.

¹³ Id.

¹⁴ Id; "Mental Health Medications," National Institute of Mental Health, <https://www.nimh.nih.gov/health/topics/mental-health-medications/index.shtml> (visited February 16, 2017).

Antidepressants can cause nausea, weight gain, and fatigue.¹⁵

In instances in which a medication has either a strong negative side effect or makes a significant positive impact, it may be a necessary accommodation to take the timing of when the medication is taken and when it takes effect into consideration when scheduling testimony or a hearing.

3. Training for Court Personnel

In developing this Companion Guide, a number of Committee members expressed an interest in learning more about how to appropriately interact with people with severe and persistent mental illness who come in contact with court personnel. There is not a specific statewide training that we are aware of precisely tailored to court personnel. However, there are a number of good resources and trainings that can provide broad information or which could possibly be adapted for court personnel. Mental Health First Aid is a course taught throughout the country that helps individuals understand and respond to signs of mental illness and substance disorders.¹⁶ The training provides skills for providing initial help to a person who may be developing a mental illness or substance use disorder or who is experiencing a crisis. Crisis Intervention Training (CIT), which is described more fully in the Georgia resources section of this Companion Guide, is a forty hour training to assist law enforcement personnel to effectively assist individuals with mental illness and other brain disorders who are in crisis. CIT has developed a shorter eight-hour course called "Introduction to Behavioral Health and Addictive Disease," which could be valuable for court personnel.¹⁷

4. Accommodations

Accommodations for people with mental illness will depend on the situation involved and the needs of the individual. Some accommodations that could be considered include: providing breaks; scheduling the timing of court proceedings based on the timing and effects of medication or the impairment; providing information in alternative formats to ensure that it is understood; changing methods of interacting with witnesses or staff in the courtroom; changing courtroom locations; speaking slowly and distinctly; allowing an assistant to help the individual; or allowing the use of a service or comfort animal.¹⁸

One technique for learning about accommodations that work for an individual is to ask what accommodations the person receives at school, work, or in other settings. Additional accommodations are suggested throughout this Companion Guide with descriptions of the common types of impairments.

¹⁵ Id.

¹⁶ "Mental Health First Aid," <https://www.mentalhealthfirstaid.org/cs/> (visited February 26, 2017); "Mental Health First Aid Youth Mental Health First Aid," Mental Health America of Georgia, <http://www.mhageorgia.org/mental-health-first-aid/> (visited February 26, 2017).

¹⁷"Host a Class on Behavioral Health and Addictive Disease for Law Enforcement," NAMI Georgia, <https://namiga.org/class-intro-behavioral-health-addictive-disease-law-enforcement/> (visited February 26, 2017). While this course was created for 2016, Pat Strode who led the training states that it is still available.

¹⁸ More information on service animals can be found on page 20 of the *Access to Justice Guide*.

5. Children

According to the National Institute of Mental Health, half of all people who develop a mental illness begin to experience it by age 14.¹⁹ However, mental illness in children may not be identified or treated. Sometimes, the symptoms may differ from the symptoms in adults. For instance, a child who is experiencing depression may express it through irritability, whereas an adult may be more likely to express it through sadness.²⁰ Warning signs of mental illness in children include: mood changes, intense feelings, behavior changes, difficulty concentrating, unexplained weight loss, physical symptoms such as headaches and stomach aches, physical harm, and substance abuse.²¹

Another difficulty can be in the terminology used by the school system. Children may receive special education at school for a disability that impacts their learning. The special education system classifies a number of disabilities that qualify children for special education, but these classifications do not explicitly include mental illness. Thus, a child who is experiencing mental illness may or may not be included in special education. If he or she is, then the child may be found eligible under the "Other health impairment" category, the "Emotional and behavior disorder" category, or one of the other ten categories.²²

6. Common Impairments

While it can often be helpful to understand the distinguishing features of the common types of mental illness, there is also a danger in labeling a person with a specific diagnosis, including stigma and stereotypes. Just because a person has a specific type of mental illness does not mean that he or she will act in a certain way. A person also should not be defined by his or her mental illness. A man or woman may have a mental illness and be a successful lawyer, professor, teacher, family member, or neighbor. Such individuals should not be thought of solely by their diagnoses, and in most instances, such conditions should not necessarily be revealed or considered relevant.

Still, there are times when a diagnosis is helpful, particularly in determining what accommodations are necessary for a person with a mental illness. The most commonly used manual for diagnosing individuals with disabilities is the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, which is commonly referred to as the DSM-5.

The DSM-5 is the classification and diagnostic tool created by the American Psychiatric Association.

¹⁹ "Treatment of Children with Mental Illness," National Institute of Mental Health, <https://www.nimh.nih.gov/health/publications/treatment-of-children-with-mental-illness-fact-sheet/index.shtml> (visited February 16, 2017) (citing Kessler RC, Chiu WT, Demler O, Merikangas KR, Walters EE. Prevalence, severity, and comorbidity of 12-month DSM-4 disorders in the National Comorbidity Survey Replication. *Arch Gen Psychiatry*. 2005 Jun;62(6):617-27) .

²⁰ "Mental Illness in Children: Know the signs," Mayo Clinic, Mayo Clinic Staff, <http://www.mayoclinic.org/healthy-lifestyle/childrens-health/in-depth/mental-illness-in-children/art-20046577> (visited February 16, 2017).

²¹ Id.

²² Ga. Comp. R. & Regs. 160-4-7-.05(1), <http://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/SBOE%20Rules/160-4-7-.05.pdf> (visited February 16, 2017).

The fifth edition was published in 2013.²³ With each new edition, there have been significant changes in how different impairments are classified and diagnosed.

a. Anxiety Disorder

Anxiety disorders are common. According to the National Institute on Mental Health, almost one in five adults will experience an anxiety disorder in a twelve month period and about one in 25 will experience a severe disorder. Less than half of people with anxiety disorders are receiving treatment.²⁴

The symptoms of an anxiety disorder vary, but symptoms may include: panic, difficulty sleeping, shortness of breath, heart palpitations, nausea, and dizziness.²⁵

If someone experiences a major anxiety episode during a proceeding, accommodations that may be considered include allowing for an extended break, continuing the hearing to another date, or offering a different location for the hearing to reduce the risk of future anxiety attacks.²⁶

b. Post-traumatic Stress Disorder

Post-traumatic Stress Disorder (PTSD) is a serious mental health condition that can be caused when a person witnesses or experiences a traumatic event.²⁷ Symptoms can include flashbacks or reliving the event, nightmares, severe anxiety, and having uncontrollable thoughts about the event. Individuals with PTSD may experience depression, physical symptoms, drug or alcohol abuse, problems with relationships, and problems with employment.²⁸

The number of Americans experiencing PTSD increased significantly after Operation Iraqi Freedom and Operation Enduring Freedom.²⁹

²³ More information about the DSM 5 can be found at "About DSM-5, <http://www.dsm5.org/psychiatrists/practice/dsm> and DSM Library, <http://dsm.psychiatryonline.org/doi/book/10.1176/appi.books.9780890425596> (visited January 22, 2017).

²⁴ "Any Anxiety Disorder Among Adults," National Institute of Mental Health, <https://www.nimh.nih.gov/health/statistics/prevalence/any-anxiety-disorder-among-adults.shtml> (visited January 15, 2017).

²⁵ "Anxiety Disorders," National Institute of Mental Health, <https://www.nimh.nih.gov/health/topics/anxiety-disorders/index.shtml> (visited January 15, 2017).

²⁶ Ensuring Access Guide at p. 13-14.

²⁷ "Post-traumatic stress disorder Definition," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/basics/definition/con-20022540> (visited January 23, 2017).

²⁸ Id.; Post-Traumatic Stress Disorder, Mental Health America, <http://www.mentalhealthamerica.net/conditions/post-traumatic-stress-disorder> (visited January 23, 2017).

²⁹ Accommodating PTSD in our Courts: Enabling Survivors of Violence to Participate as Valued Members of the Judicial System, Center for Legal & Court Technology © 2014, <http://www.legaltechcenter.net/download/whitepapers/Accommodating%20PTSD%20in%20our%20Courts.pdf> (last visited January 8, 2017).

According to one study cited by Mental Health America of Georgia, approximately one in twenty Americans experience PTSD in a given year.³⁰

The Center for Legal & Court Technology created a guide in 2014 for *Accommodating PTSD in our Courts?*³¹ It suggests accommodations to be considered to both court structures and court practices. Examples of physical accommodations include increasing lighting to increase concentration and decrease headaches; or allowing individuals to sit where they can see courtroom doors for individuals who, due to hypervigilance, need to see who is approaching. Examples of alterations to court practices include reducing or avoiding loud sounds such as the banging of gavels and allowing jurors with PTSD who have trouble concentrating to receive instructions in writing and use note taking more liberally.³²

Trauma can have a serious impact on children. Children can experience trauma by suffering or witnessing abuse, neglect, domestic violence, or serious accidents. They can also experience it through the loss or separation of a parent. There may be a variety of signs, or none at all, that a child has experienced trauma. A child may have low self-esteem, have difficulty with relationships, or become highly emotional or hypervigilant. The child may exhibit aggression, self-harm, have sleeping or eating problems, or have problems with substance abuse.³³ Since the courtroom is a particularly stressful environment, it is important to provide children who have experienced serious trauma with accommodations. Such accommodations will depend on the circumstances, but may be similar to the accommodations that should be considered for all children. For instance, accommodations may include allowing support persons to be with the child, allowing the child to have comfort items, prohibiting harassing questions, questioning the child in a separate room from the courtroom, and creating a friendly environment for any proceeding.³⁴

c. Depression

According to the National Institute of Mental Health, depression is a common but serious mental illness that can impact how an individual feels, thinks, and is able to perform common activities such as sleeping, eating, and working.

³⁰ "Post Traumatic Stress Disorder," Mental Health America, <http://www.mentalhealthamerica.net/conditions/post-traumatic-stress-disorder###2> (visited January 15, 2017),

³¹ Accommodating PTSD in our Courts, *ibid*,

³² *Id*,

³³ "Childhood Trauma," Attachment & Trauma Network, Inc, <http://www.attachu.org/trauma-sensitive-schools;http://www.attachu.org/wp-content/uploads/TSS-infographic-updated-8-2016.pdf> © 2015 Attachment and Trauma Network, Inc, (visited February 15, 2017), (please note that the link provided in this footnote does not work, here is an alternative link that may serve useful: <http://www.nctsn.org/trauma-types/early-childhood-trauma/Symptoms-and-Behaviors-Associated-with-Exposure-to-Trauma>),

³⁴ "A Guidebook for Accommodating Children in Court," Child Advocacy Centers of Mississippi, p,3 <http://childadvocacymiss.org/download/Accommodating%20Child%20in%20Court.pdf> (visited February 15, 2017) (please note that this link does not work properly, instead the following link may serve as a useful alternative <http://www.improvechildrep.org/DemonstrationProjects/QICChildRepBestPracticeModel.aspx>).

Signs and symptoms include persistent sadness, hopelessness, feelings of guilt, loss of interest, restlessness, difficulty with sleep, and appetite changes.³⁵ It can lead to thoughts of suicide or suicide attempts. Accommodations for an individual experiencing depression will depend on the individual's circumstances. For instance, a person experiencing significant emotions due to depression may need additional breaks. An individual experiencing fatigue due to depression may need more frequent breaks or shorter court sessions.

d. Substance Use Disorder

Substance use disorder, which is also called addictive disease, refers to overuse, addiction, or dependence on a drug, such as alcohol, cocaine, amphetamines, and opioids. According to the DSM-5, substance use disorder occurs when an individual continues to use a substance despite significant problems arising out of the taking of the substance.³⁶ There is a high percentage of individuals who have co-occurring substance use disorder and mental illness. According to the Substance Abuse and Mental Health Services Administration's 2014 National Survey on Drug Use and Health, 20.2 million adults (8.4% of the population) had a substance use disorder, and of these, 7.9 million people had a co-occurring mental illness.³⁷

e. Bipolar Disorder

Bipolar disorder is a mental illness that involves significant swings in mood between the lows of depression and highs referred to as mania or hypomania. The highs may create feelings of euphoria or elation. An individual often sleeps less during the mania period. The lows of bipolar disorder may create feelings of sadness or hopelessness. Mood swings can occur frequently or infrequently. Bipolar disorder can often be controlled with medication and counseling.³⁸

If an individual with bipolar disorder has periods in which his or her mood is relatively normal between manic and depressed periods, a court may consider rescheduling a hearing to a different time if the individual is in a manic or depressed period.³⁹

f. Schizophrenia

According to the National Institute of Mental Health, schizophrenia is a chronic and serious mental illness. It can impact how a person thinks, feels, and behaves. An individual experiencing schizophrenia may experience delusions, hallucinations, and thought disorders.

³⁵ "Depression," National Institute of Mental Health <https://www.nimh.nih.gov/health/topics/depression/index.shtml> (last visited January 15, 2017).

³⁶"Substance Use Disorder," Diagnostic and Statistical Manual of Mental Disorders (5th ed.) at 483, American Psychiatric Association (2013).

³⁷"Mental and Substance Use Disorders," SAMHSA, <https://www.samhsa.gov/disorders> (visited January 15, 2017).

³⁸ "Bipolar Disorder Definition," National Institute of Mental Health, <https://www.nimh.nih.gov/health/topics/bipolar-disorder/index.shtml> (visited January 22, 2017); "Bipolar Disorder," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/bipolar-disorder/basics/definition/con-20027544> (last visited January 22, 2017).

³⁹Ensuring Access Guide at p. 14.

An individual may also have a flat affect, difficulty completing tasks, poor executive functioning, and trouble paying attention. The symptoms of schizophrenia generally begin between the ages of 16 and 30, although it can develop earlier. The causes of schizophrenia are not known.⁴⁰

Treatment of schizophrenia will generally involve antipsychotic medication. This medication may have significant side effects, including trouble with muscle control, facial tics, and tremors. An individual may be resistant to taking medications due to the real impact of side effects.⁴¹

According to Mental Health America, "Coordinated Specialty Care ("CSC") has been found to be especially effective in improving outcomes for people after they experience their first episode of psychosis . . . CSC often includes a combination of case management, therapy, supported employment and education services, support and education for the family of the individual, and/or medication."⁴²

There can be severe stigma associated with a diagnosis of schizophrenia. Therefore, it is important to protect the privacy and confidentiality of an individual with such a diagnosis as much as possible. It is also important for court personnel to guard against unnecessary judgments and assumptions when learning of such a diagnosis. The vast majority of individuals with schizophrenia are not violent or dangerous. Schizophrenia is not believed to be caused by childhood experiences or poor parenting.⁴³

Accommodations for individuals experiencing schizophrenia will depend on the circumstances of the individual. It is important to understand that a delusion or hallucination will appear real to the person experiencing it.⁴⁴ It will often not be productive in a court setting to challenge a person about the reality of what he or she is experiencing. An individual with schizophrenia should be treated with the dignity and respect that is due every individual interacting with the judicial system. Accommodations may include allowing additional breaks, using simple statements or questions, allowing a family member or friend to assist the individual, and creating a less stressful environment.

g. Obsessive-Compulsive disorder

Obsessive-Compulsive disorder ("OCD") is a mental illness in which an individual experiences uncontrollable obsessions and compulsions. Obsessions are unreasonable thoughts and fears that recur and persist despite attempts to ignore them. Common obsessions include fear of germs or contamination, requiring items or things to be in a specific order or symmetry, and unwanted fears or thoughts about taboo subjects. Compulsions are behaviors that an individual believes he or she must do repeatedly.

⁴⁰ "Schizophrenia," National Institute of Mental Health, <https://www.nimh.nih.gov/health/topics/schizophrenia/index.shtml> (last visited January 22, 2017).

⁴¹ Id.

⁴² "Schizophrenia," Mental Health America, <http://www.mentalhealthamerica.net/conditions/schizophrenia#treatment>

⁴³ Id.

⁴⁴ "Schizophrenia," National Institute of Mental Health.

Common compulsions include excessive handwashing, ordering and arranging items in set patterns, and repeatedly checking that something was completed such as the house being locked.⁴⁵

Treatment for obsessive compulsive disorder, which usually involves psychotherapy and medication, may not result in a cure but it can manage symptoms.⁴⁶ Once again, accommodations for individuals with obsessive-compulsive disorder will vary based on the symptoms and circumstances of the individual.

For instance, an individual who has obsessive thoughts about germs and contamination might be accommodated by allowing hand sanitizers in the courtroom, providing a separate set of materials to the individual, and giving the individual additional and exclusive space.⁴⁷ A person with OCD may be able to articulate a necessary accommodation in a private conversation.

COGNITIVE DISABILITIES

Cognitive disabilities include impairments in intellect, attention, problem solving, judgment, or behavior. This category includes individuals with intellectual disabilities, learning disabilities, traumatic brain injuries, and dementia. The main impediment for individuals with cognitive disabilities will often occur when directions are unnecessarily complicated or when there is ineffective communication.⁴⁸

This section will provide guidance for interacting with people with cognitive disabilities. It also provides suggestions for documents and forms, training for court personnel, and potential accommodations. Finally, it provides information about different types of cognitive disabilities.

1. Independence and Decision Making

Most individuals with cognitive disabilities are capable of and have the right to live independently.⁴⁹ Others can live independently with assistance. Most adults with cognitive disabilities do not have guardians and should not be required to obtain a guardian or have one appointed when not necessary.

The Georgia Rules of Professional Conduct can be a helpful guide in considering how courts and court staff should respect the right of individuals with diminished capacity to make decisions.

⁴⁵ "Obsessive-compulsive disorder, Overview," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/obsessive-compulsive-disorder/home/ovc-20245947> (visited January 22, 2017); "Obsessive-Compulsive Disorder," National Institute of Mental Health, <https://www.nimh.nih.gov/health/topics/obsessive-compulsive-disorder-ocd/index.shtml> (visited January 22, 2017).

⁴⁶ "Obsessive-compulsive disorder, Treatment," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/obsessive-compulsive-disorder/diagnosis-treatment/treatment/txc-20245962> (visited February 16, 2017).

⁴⁷ "Academic Support Strategies," Anxiety and Depression Association of America, <https://www.adaa.org/understanding-anxiety/obsessive-compulsive-disorder/academic-support-strategies> (visited February 27, 2017).

⁴⁸ Ensuring Access Guide at p. 15.

⁴⁹ Id.

Rule 1.14 states that a "lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with" a client with a mental impairment. However, when a lawyer believes a client is at risk of substantial harm and cannot act in his or her own interest, the lawyer can "take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client, and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian."⁵⁰

Family members and others who may support an individual with a cognitive disability may be helpful in assisting an individual in interacting with the court. However, unless the individual with a disability has a guardian, the individual should be consulted first before relying on others.⁵¹ Even when a guardian does exist, the individual with a disability should still be respected and is usually entitled to interact with whoever he or she chooses.

2. Respect

Just like every other person who comes in contact with the court system, individuals with cognitive disabilities are entitled to respect. This includes the language used to discuss a person's impairment. The terms "mental retardation" and "retarded" are offensive and no longer used. While these terms may continue to appear in medical documents and some statutes (most have been changed), the terms should be avoided as much as possible even when referring to such materials. Usually, it will not be necessary to refer to a person's impairment at all. When a description is necessary, the terms "intellectual disability," "cognitive disability," "learning disability," or "developmental disability" can be used.⁵²

3. Documents and Forms

People with cognitive disabilities may need assistance with documents and forms or for the materials to be simplified. Their impairment may impact their ability to read, write, and understand. Forms should be simple and only ask for the information that is necessary.⁵³ When a form is, by its nature, complex, such as a domestic relations financial affidavit, then it should be broken into parts and sections with questions asked as simply as possible. Many word processing programs allow writers to check the readability of a document. This can be an important tool when creating documents that involve directions or multiple paragraphs. Large print should be used for ease of reading. It also may be important to allow individuals to use tablets, laptops, or other assistive technology to complete forms.

⁵⁰ "Client With Diminished Capacity," Rule 1,14, Georgia Rules of Professional Conduct, <https://www.gabar.org/barrules/handbookdetail.cfm?what=rule&id=107> (visited February 26, 2017),

⁵¹ Ensuring Access Guide at p, 15,

⁵² Id,

⁵³ Ensuring Access Guide at p, 15,

4. Training for Court Personnel

It can be beneficial to provide training to court personnel on working with people with cognitive impairments.⁵⁴ Many staff, who are on the front lines, will have questions about what they should do when a person with a cognitive disability requests assistance or comes to a hearing. Organizations such as the Arc of Georgia,⁵⁵ the Georgia Council on Developmental Disabilities,⁵⁶ the Georgia Department of Behavioral Health and Developmental Disabilities,⁵⁷ the Georgia Division of Aging Services,⁵⁸ Georgia's Aging and Disability Resource Connection,⁵⁹ and All About Developmental Disabilities⁶⁰ may be good resources in putting together a training or dialogue about the best ways to accommodate individuals with cognitive impairments.

5. Accommodations

The accommodations necessary for individuals with cognitive disabilities will depend on the needs of the individual and the situation. Such accommodations may include: using simpler language, speaking slowly, using pictures and visual tools rather than written statements, providing another individual or allowing a trusted individual to assist, taking breaks, and repeating information. It is important to make sure that a person with a cognitive disability understands a question and is correctly answering the question.⁶¹ Some individuals with a cognitive disability may answer yes when the person really didn't understand the question. To ensure a person with a cognitive impairment understands the information that is told to him or her, ask the person to tell you in his or her own words what you said to him.

6. Common Impairments

It is important to note in listing the common impairments that the term cognitive disability is being used as a broad category. The impairments listed in this section may have little relation to one another.

a. Intellectual Disability

An intellectual disability is present when an individual has an IQ of 70 or below and has two areas of adaptive functioning scored at 70 or below as well. Adaptive functioning includes, but is not limited to, self-care, communication, home living, self-direction, functional academic skills, and mobility.

⁵⁴ Id,

⁵⁵ The ARC Georgia, <https://ga.thearc.org/> (visited February 26, 2017),

⁵⁶ The Georgia Council on Developmental Disabilities, <http://gcdd.org/> (visited February 26, 2017),

⁵⁷ Department of Behavioral Health and Developmental Disabilities, <https://dbhdd.georgia.gov/> (visited February 26, 2017).

⁵⁸ Division of Aging Services, Department of Human Services, <http://aging.dhs.georgia.gov/> (visited February 26, 2017),

⁵⁹ Georgia's Aging & Disability Resource Connection, <https://www.georgiaadrc.com/> (visited February 26, 2017),

⁶⁰ All About Developmental Disabilities, <http://aadd.org/> (visited February 26, 2017),

⁶¹ Ensuring Access Guide at p, 16,

The disability must begin prior to age 18.⁶² Often, intellectual disability is identified through psychological testing performed when the individual is in school. For older individuals with intellectual disabilities, it may be difficult to prove the diagnosis with documentation because the documents may be lost or no testing may have been done prior to age 18. In many instances, it should not be necessary for a person with an intellectual disability to provide documentation in order to receive an accommodation. Accommodations for people with intellectual disabilities will vary based on the situation, but may include reading forms to an individual, assisting a person in filling out forms, ensuring that the individual understands questions, asking questions in more than one way to make sure questions are understood, and in instances when it is appropriate, working with family members or other trusted individuals in the person's life.

b. Developmental Disability

Developmental disability is an umbrella diagnosis for a variety of disabilities that begin prior to age 22. According to the federal definition, a developmental disability is a physical or cognitive disability or a combination thereof that begins prior to the age of 22, will continue indefinitely, and results in substantial functional limitations in three or more major life activities.

Additionally, the individual needs lifelong or extended supports.⁶³ Examples of developmental disabilities are cerebral palsy, autism, severe epilepsy, Down syndrome, and intellectual disabilities.

It is important to note that many individuals with cerebral palsy, epilepsy and other developmental disabilities do not have intellectual deficits, while some do have such deficits. It is critical not to assume that a person who has a developmental disability also has an intellectual disability.

Since the term "developmental disability" includes a broad range of people, it will depend on the circumstances as to what accommodations are necessary.

c. Traumatic Brain Injury

People with traumatic brain injury (TBI) are often misclassified as having a mental illness or a developmental disability. While some people with TBI also have a diagnosis of a mental illness or developmental disability, TBI is not the same as these other diagnoses. A TBI occurs when an individual experiences a physical trauma to the brain. Moderate or severe TBI can have a profound impact on cognitive ability, motor functioning, and behavior.

⁶² "Provider Manual for Community Developmental Disability Providers for The Department of Behavioral Health & Developmental Disabilities Fiscal Year 2017," p. 6 <http://dbhdd.org/files/Provider-Manual-DD.pdf> (visited February 26, 2017).

⁶³ 42 U.S.C. § 15002(8).

Symptoms can include: seizures, convulsions, loss of consciousness, confusion, agitation, combativeness, and coma.⁶⁴ As a result of the conflicts in Iraq and Afghanistan, there has been a significant rise in the number of TBIs. Accommodations for people with TBI will once again depend on the circumstances.

d. Alzheimer's Disease and Dementia

Dementia is an umbrella term referring to the loss of cognitive ability sufficient to interfere with one's ability to function in daily life. Dementia can impact memory, thinking, personality, planning, and social skills.⁶⁵ Alzheimer's disease is the most common form of dementia. It is a degenerative and progressive brain disease that usually begins in older adults.⁶⁶ Accommodations for people with dementia will often include providing memory aids and other assistance to compensate for losses in memory. Accommodations may also be necessary due to changes in mood and behavior of a person with dementia.

e. Autism Spectrum Disorder

Autism Spectrum Disorder is the name of a series of neurodevelopmental disorders that impair an individual's ability to communicate and interact with others and is characterized by impaired social abilities. There is a wide range of symptoms, skills, and abilities that fall within the Autism Spectrum Disorder diagnosis.

Prior to the DSM-5, Autism Disorder and Asperger's syndrome were separate diagnoses. They were combined as Autism Spectrum Disorder in the DSM-5.⁶⁷ Accommodations will depend on the individual but might include communicating in more than one manner, speaking slowly and clearly, limiting sensory stimulation (avoiding loud noises, strong scents, and flashing lights), and allowing breaks as needed.⁶⁸

⁶⁴ "Traumatic brain injury Definition," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/traumatic-brain-injury/basics/definition/con-20029302> (visited January 21, 2017) and "Traumatic Brain Injury Symptoms," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/traumatic-brain-injury/basics/symptoms/con-20029302> (visited January 21, 2017).

⁶⁵ "Dementia," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/dementia/home/ovc-20198502> (visited January 22, 2017).

⁶⁶ "Alzheimer's Disease Definition," Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/Alzheimer's%20disease> (visited January 22, 2017).

⁶⁷ "Autism Spectrum Disorder," National Institute of Mental Health, <https://www.nimh.nih.gov/health/topics/autism-spectrum-disorders-asd/index.shtml> (visited January 23, 2017); "Autism Spectrum Disorder Definition," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/autism-spectrum-disorder/basics/definition/con-20021148> (visited January 23, 2017).

⁶⁸ "Autistic Access Needs: Notes on Accessibility," The Autistic Self-Advocacy Network, http://www.aucd.org/docs/add/sa_summits/ASAN.pdf (visited February 28, 2017); Whetzel, Melanie, "Accommodation and Compliance Series: Employees with Autism Spectrum Disorder," JAN: Job Accommodation Network, <http://askjan.org/media/ASD.html> (visited February 28, 2017).

f. Learning Disabilities

There are a range of learning disabilities that may impact a person's ability to read, calculate, concentrate, write, and remember. Learning disabilities are different than intellectual and developmental disabilities, although an individual could have more than one such disability.⁶⁹ Accommodations for learning disabilities will depend on the type of learning disability.

i. Dyslexia and Dysgraphia

Dyslexia is a life-long learning disability that impacts a person's ability to read, including word recognition, decoding and spelling.⁷⁰ Dysgraphia is a learning disability that impacts a person's handwriting as well as thinking and writing at the same time.⁷¹ Accommodations may include allowing an individual to use a tablet, laptop, or other assistive communication device. Accommodations may also include allowing the person to have someone read documents to them or assist with mathematical equations.

ii. Attention Deficit Hyperactivity Disorder

Attention Deficit Hyperactivity Disorder (ADHD) is a disorder impacting the brain that includes inattention, hyperactivity, or impulsiveness or a combination of such traits. It can interfere with learning, functioning, or development. It impacts millions of children and will often continue into adulthood.⁷²

Accommodations for individuals with ADHD may include minimizing distractions, organizing materials using color coding or graphs, breaking long or complicated information into chunks, and providing directions or instructions in multiple formats, such as orally, in writing, and using pictures or graphs.⁷³

⁶⁹ "Learning Disabilities: Condition Information," NIH, Eunice Kennedy Shriver National Institute of Child Health and Human Development, <https://www.nichd.nih.gov/health/topics/learning/conditioninfo/default> (visited February 12, 2017).

⁷⁰ "Definition of Dyslexia," International Dyslexia Association, <https://dyslexiaida.org/definition-of-dyslexia/> (visited February 12, 2017); "Dyslexia Definition," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/dyslexia/basics/definition/con-20021904> (visited February 12, 2017).

⁷¹ "Learning Disorders: Know the signs, how to help," Mayo Clinic Staff, Mayo Clinic, <http://www.mayoclinic.org/healthy-lifestyle/childrens-health/in-depth/learning-disorders/art-20046105> (visited February 12, 2017).

⁷² "Attention-deficit/hyperactivity disorder (ADHD) in children," Mayo Clinic, Mayo Clinic Staff, <http://www.mayoclinic.org/diseases-conditions/adhd/home/ovc-20196177> (visited February 26, 2017).

⁷³ See Morin, Amanda, "At a Glance: Classroom Accommodations for ADHD," Understood for learning & attention issues, <https://www.understood.org/en/school-learning/partnering-with-childs-school/instructional-strategies/at-a-glance-classroom-accommodations-for-adhd> (visited February 26, 2017).

GEORGIA RESOURCES FOR MENTAL ILLNESS AND COGNITIVE DISABILITIES

Georgia Crisis & Access Line: Georgia has funded the Georgia Crisis & Access Line, which provides an emergency toll free line for individuals with mental illness, developmental disabilities, and others in crisis. The phone number is **1-800-715-4225**.

If necessary, it can connect individuals to crisis response teams or law enforcement. It can also connect individuals to possible mental health and other helpful resources. There is also a website on which individuals can find resources in their area at MyGCAL.com.

Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD): In 2009, Governor Sonny Perdue and the General Assembly created this stand-alone state agency to serve people with developmental disabilities, mental illness, and substance use disorders.⁷⁴ DBHDD is also responsible for the state's psychiatric and forensic hospitals. In compliance with a settlement with the United States Justice Department, the state funded substantially more community-related mental health services through DBHDD in order to allow more individuals to receive supports in the community rather than in state hospitals.⁷⁵ DBHDD is also the agency responsible for providing family supports and the NOW and COMP Medicaid Waivers for people with developmental disabilities. The NOW and COMP Waivers provide supports for individuals with developmental disabilities and intellectual disabilities.⁷⁶

Georgia Advocacy Office: The Georgia Advocacy Office is the state's designated and federally mandated Protection and Advocacy Organization for people with disabilities. It has authority to investigate allegations of abuse, neglect, and the violation of rights of people with disabilities, including people with mental illness, developmental disabilities, and traumatic brain injuries. It also provides advocacy, information, and education related to the rights of people with disabilities.⁷⁷

⁷⁴ "New Department of Behavioral Health and Developmental Disabilities launches," July 1, 2009, Department of Behavioral Health and Developmental Disabilities, <http://dbhdd.georgia.gov/press-releases/2009-07-01/new-department-behavioral-health-and-developmental-disabilities-launches> (visited February 26, 2017).

⁷⁵ "Settlement Agreement," Department of Behavioral Health and Developmental Disabilities, <https://dbhdd.georgia.gov/settlement-agreement> (visited February 26, 2017).

⁷⁶ "Waiver Applications," Department of Behavioral Health and Developmental Disabilities, <https://dbhdd.georgia.gov/waiver-applications> (visited February 26, 2017).

⁷⁷ The Georgia Advocacy Office, <http://thegao.org/> (visited February 28, 2017).

Crisis Intervention Teams (CITs) and Training: Georgia law enforcement officers can participate in a 40 hour CIT training to effectively assist individuals with mental illness and other brain disorders who are in crisis.

CIT also developed an eight-hour course called "Introduction to Behavioral Health and Addictive Disease," which is available to court personnel.⁷⁸ The training is sponsored by the Georgia Bureau of Investigation, the Georgia Department of Behavioral Health and Developmental Disabilities, National Association of Mental Illness Georgia, The Georgia Association of Chiefs of Police, Georgia Sheriff's Association, Inc. and Georgia Public Safety Training Center.

Trainings in CIT are held throughout the year. For more information, contact Pat Strode by telephone (770 234-0855) or via email at cit@namiga.org.⁷⁹

National Association of Mental Illness Georgia (NAMI Georgia): NAMI Georgia is the state chapter of the National Association of Mental Illness. It advocates on behalf of people with mental illness, educates about mental illness, and works to end the stigma of mental illness.⁸⁰

Mental Health America of Georgia (MHA of Georgia): MHA of Georgia advocates on behalf of people with mental illness and educates the public about mental illness. MHA of Georgia provides Mental Health First Aid training.⁸¹

Georgia Council on Developmental Disabilities (GCDD): GCDD is a federally funded independent organization that advocates for people with developmental disabilities through public policy, advocacy, and programs.⁸²

⁷⁸ "Host a Class on Behavioral Health and Addictive Disease for Law Enforcement," NAMI Georgia, <https://namiga.org/class-intro-behavioral-health-addictive-disease-law-enforcement/> (visited February 26, 2017). While this course was created for 2016, Pat Strode who led the training states that it is still available.

⁷⁹"Crisis Intervention Team (CIT) Training," Georgia Public Safety Training Center, <https://www.gpstc.org/training-divisions/crisis-intervention-team-cit-training/> (visited February 26, 2017).

⁸⁰"About NAMI Georgia," NAMI Georgia, v (visited February 26, 2017).

⁸¹ Mental Health America of Georgia, <http://www.mhageorgia.org/> (visited February 26, 2017).

⁸² Georgia Council on Developmental Disabilities Frequently Asked Questions, <http://gcdd.org/faqs/about-gcdd.html#FAQ1> (visited February 26, 2017).

GEORGIA TECHNICAL RESOURCES FOR COURT ACCESSIBILITY AND DISABILITY ACCOMMODATIONS

Administrative Office of the Courts: The Administrative Office of the Courts provides expertise to Georgia trial and appellate courts on policy, legislation, court innovation, and court administration.⁸³

State of Georgia ADA Coordinator's Office: The ADA Coordinator's office provides technical resources to state agencies on compliance with Title II of the Americans with Disabilities Act, conducts trainings on the ADA for state agencies, and other services.⁸⁴

⁸³"Administrative Office of the Courts," Judicial Council of Georgia Administrative Office of the Courts, <http://www.georgiacourts.org/aoc> (visited February 26, 2017).

⁸⁴"About the ADA and Our Office," State ADA Coordinator's Office, <https://ada.georgia.gov/about-ada-and-our-office> (visited February 26, 2017).



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