

Ensuring Access to Justice: Representing Individuals with Disabilities



ADA Unit for Eliminating Barriers to Justice III
October 20, 2016
Atlanta, Georgia

State ADA Coordinator's Office

Session Objectives

- Familiarize participants with barriers to court access commonly faced by individuals with disabilities;
- Identify the legal responsibilities that courts have to address those barriers; and
- Build the capacity of participants to identify and remove barriers to full participation in the courtroom.

Common Barriers to Providing Access for Individuals with Disabilities

- Effective auxiliary aids and services for individuals with communication disabilities;
- Policies, procedures and practices; and
- Physical access to *and* within buildings for individuals with disabilities.

Access to Justice for People with Disabilities: Guide for Georgia Courts

Guide Sections:

- PART I: An Overview of the Americans with Disabilities Act of 1990
- PART II: Removing Common Barriers to Access to Court Programs
- PART III: Removing Communication Barriers
- PART IV: Program Access -- Removing Common Barriers to Physical Access
- PART V: Working and Interacting with People with Particular Disabilities
- PART VI: Developing an Accommodation Protocol

Access to Justice for People with Disabilities: Guide for Georgia Courts, cont.

Appendices:

- Appendix A. Requests for Reasonable Modifications
- Appendix B. Notices
- Appendix C. Sample Grievance Procedures and Complaint Forms
- Appendix D. Department of Justice's ADA Settlements, Technical Assistance Materials, and Other Information
- Appendix E. Georgia Statutes, Rules, Case Law, and Resources
- Appendix F. Selected Federal Cases
- Appendix G. Website Accessibility
- Appendix H. Other Useful Websites and Information
- Appendix I. Information and Resources Regarding Sign Language Interpreters
- Appendix J: Information and Resources Regarding Alternate Document Formats
- Appendix K. Checklist for Identifying Facility-Related Barriers in Existing Courthouses

Structure of the ADA

Five Titles

- Title I: Employment
- Title II: State and Local Governments
- Title III: Private Entities
- Title IV: Telecommunications
- Title V: Miscellaneous



Law Office as a Public Accommodation under Title III of the ADA*

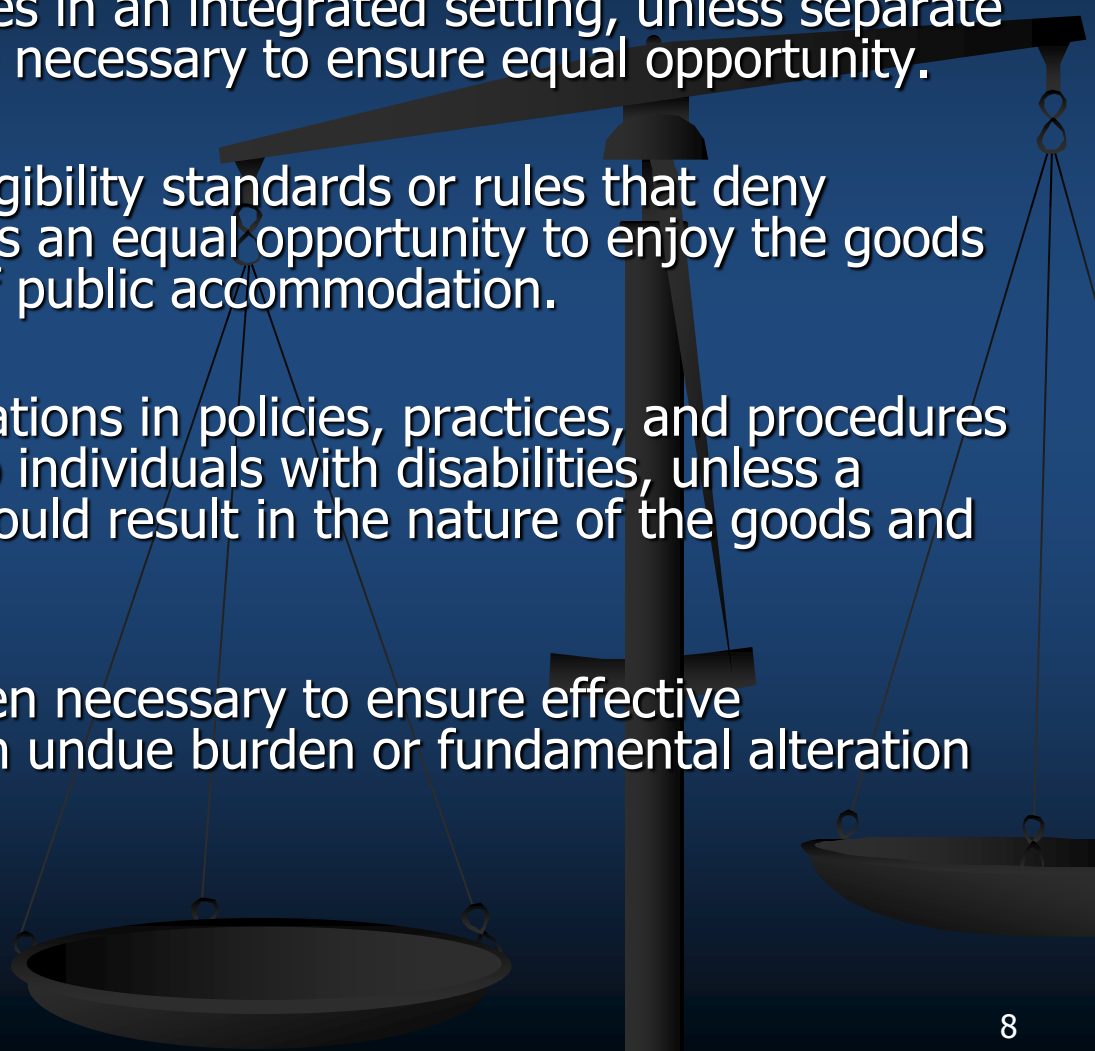
- The Law Office is a public accommodation because it is an entity whose operations affect commerce that owns, operates, leases or leases to a place of public accommodation, i.e., the office of a lawyer or other service establishment.

42 U.S.C. § 12181; 28 C.F.R. § 36.104.

- * State & Local Government Attorneys are responsible under Title II.

Law Offices must:

- Provide goods and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
- Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.
- Make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in the nature of the goods and services provided.
- Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.



Law Offices must (cont.):

- Remove architectural and structural communication barriers in existing facilities where readily achievable.
- Provide readily achievable alternative measures when removal of barriers is not readily achievable.
- Maintain accessible features of facilities and equipment.
- Design and construct new facilities and, when undertaking alterations, alter existing facilities in accordance with the applicable standards.

Equally Effective Communication under the ADA

Communication with individuals with disabilities must be as **effective** as communications with others.

28 C.F.R. 35.160(a)

Effective Communication

People with disabilities that affect communication are entitled to **auxiliary aids and services**, unless the result is a **fundamental alteration, undue burden or undue hardship**.

28 C.F.R. 35.160(b)(1)

Auxiliary Aids and Services

- Auxiliary aids and services **facilitate effective** communication.
- Fees may not be charged for auxiliary aids and services. 28 C.F.R. § 36.301(c).

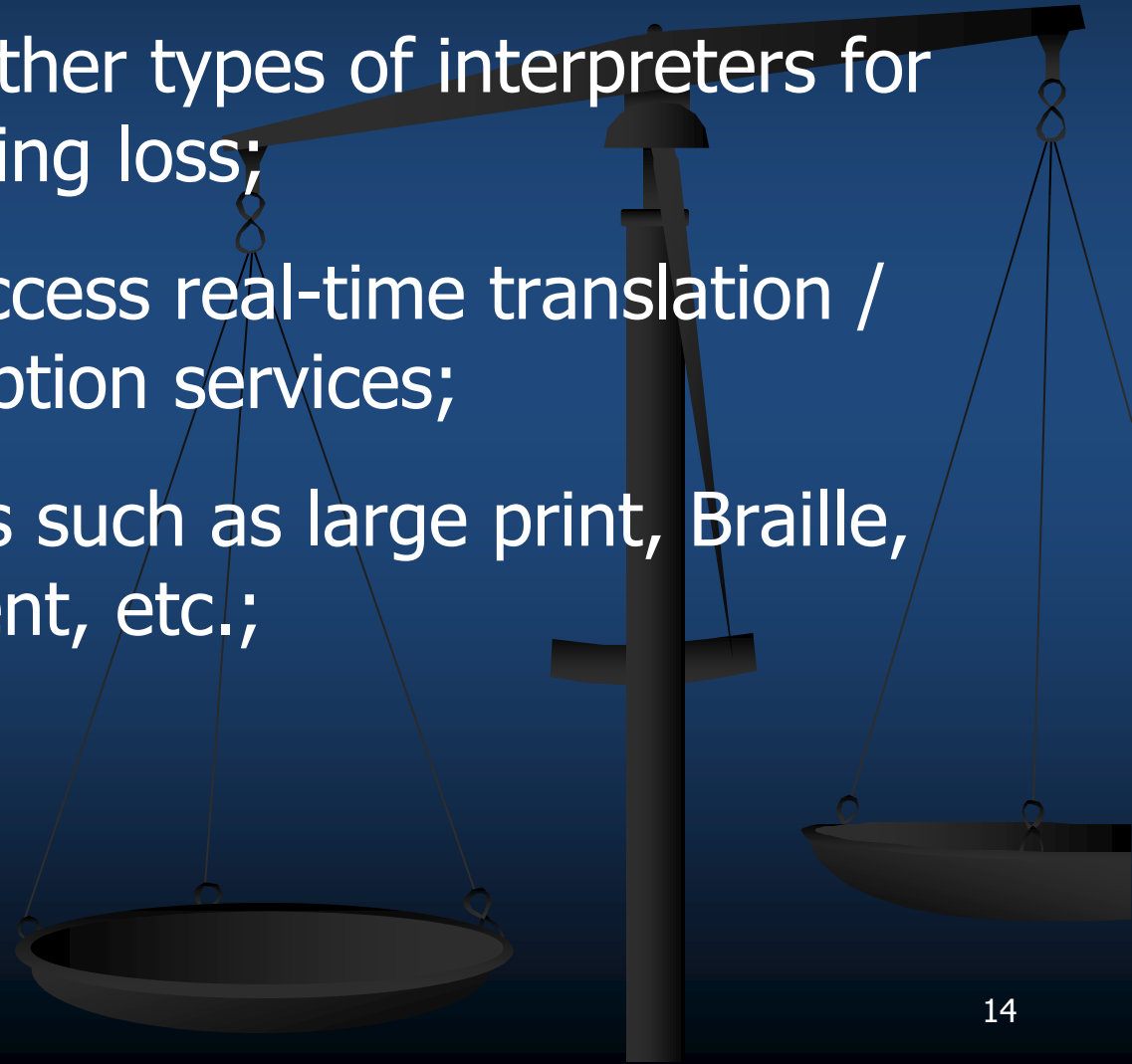
Auxiliary Aids and Services

- Consulting the individual about the choice of auxiliary aid or service is strongly encouraged.
- The law office makes the final decision *but* the auxiliary aid or service must be **effective**.

28 C.F.R. 36.303(c)(ii).

Examples of Auxiliary Aids or Services

- Qualified ASL or other types of interpreters for persons with hearing loss;
- Communication access real-time translation / Real-time transcription services;
- Accessible formats such as large print, Braille, electronic document, etc.;
- Qualified readers.



Sign Language Interpreters



- Appropriate auxiliary aids and services include qualified interpreters. A qualified interpreter is defined by the ADA to mean an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary. 28 C.F.R. § 104.
- Legal transactions may require the use of a qualified interpreter to ensure effective communication because of their length and complexity. See 28 C.F.R. Pt. 36, App. B at 36.303.

Undue Burden Defense

- Undue Burden is a significant difficulty or expense.
- The law office must show that the cost to provide the accommodation would significantly impact their practice and financial resources.

28 C.F.R. 35.160(b)(1)

Georgia Rules of Professional Conduct



Rule 1.4 Communication:

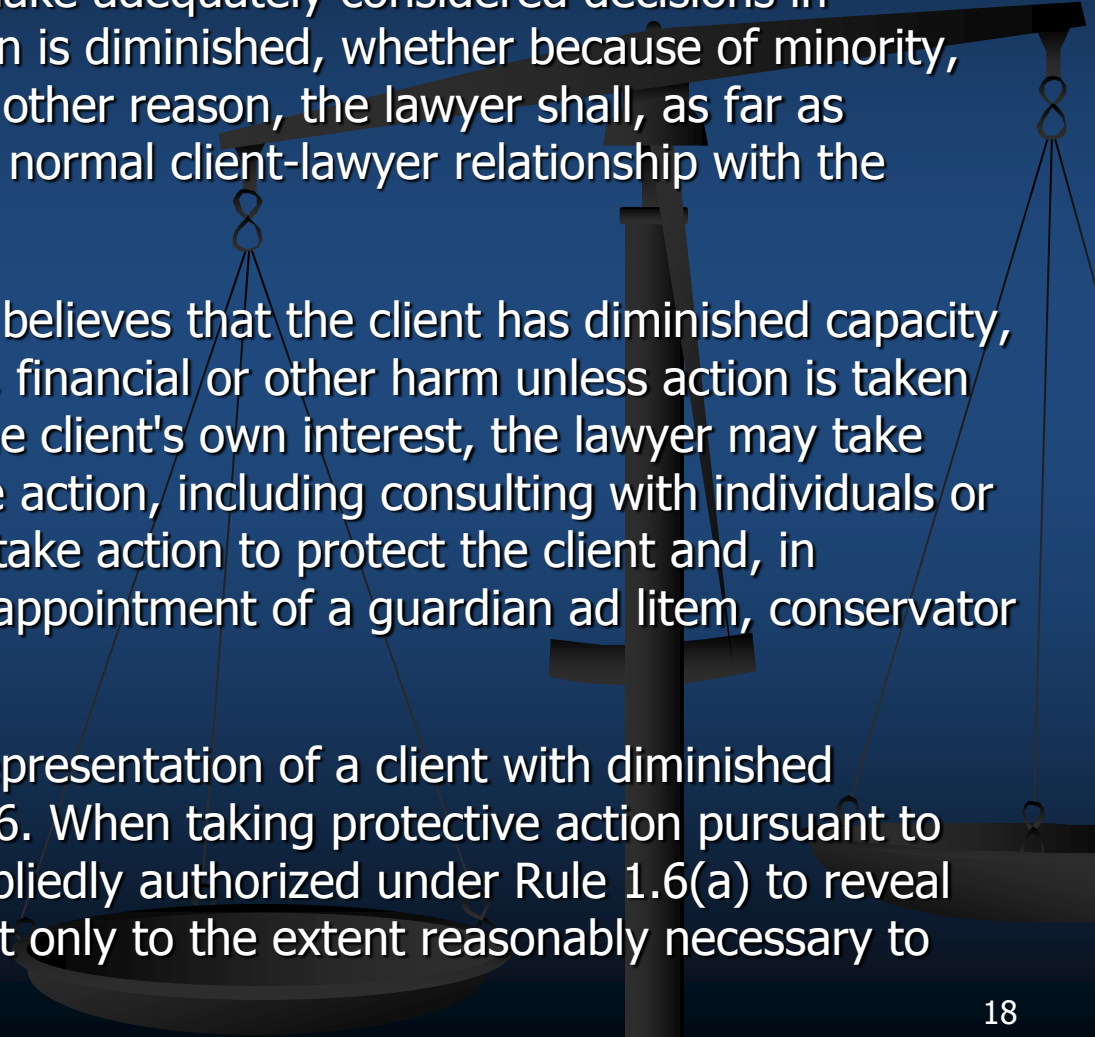
a. A lawyer shall:

1. promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(h), is required by these Rules;
2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;
3. keep the client reasonably informed about the status of the matter;
4. promptly comply with reasonable requests for information; and
5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

b. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Georgia Rules of Professional Conduct

Rule 1.14 Client with Diminished Capacity

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- a. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- b. When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may 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.
- c. Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Existing Facilities: Removal of Barriers under Title III

- Physical barriers to entering and using existing facilities must be removed when "readily achievable."
- Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense."
- What is readily achievable will be determined on a case-by-case basis in light of the resources available.

Existing Facilities: Removal of Barriers (cont.)

Examples of barrier removal measures include --

- Installing ramps
- Making curb cuts at sidewalks and entrances
- Rearranging tables, chairs, vending machines, display racks, and other furniture
- Widening doorways
- Installing grab bars in toilet stalls
- Adding raised letters or braille to elevator control buttons

Existing Facilities: Removal of Barriers (cont.)

- First priority should be given to measures that will enable individuals with disabilities to "get in the front door," followed by measures to provide access to areas providing goods and services.
- Barrier removal measures must comply, when readily achievable, with the alterations requirements of the ADA Accessibility Guidelines. If compliance with the Guidelines is not readily achievable, other safe, readily achievable measures must be taken, such as installation of a slightly narrower door than would be required by the Guidelines.

Priorities for “Readily Achievable” Barrier Removal

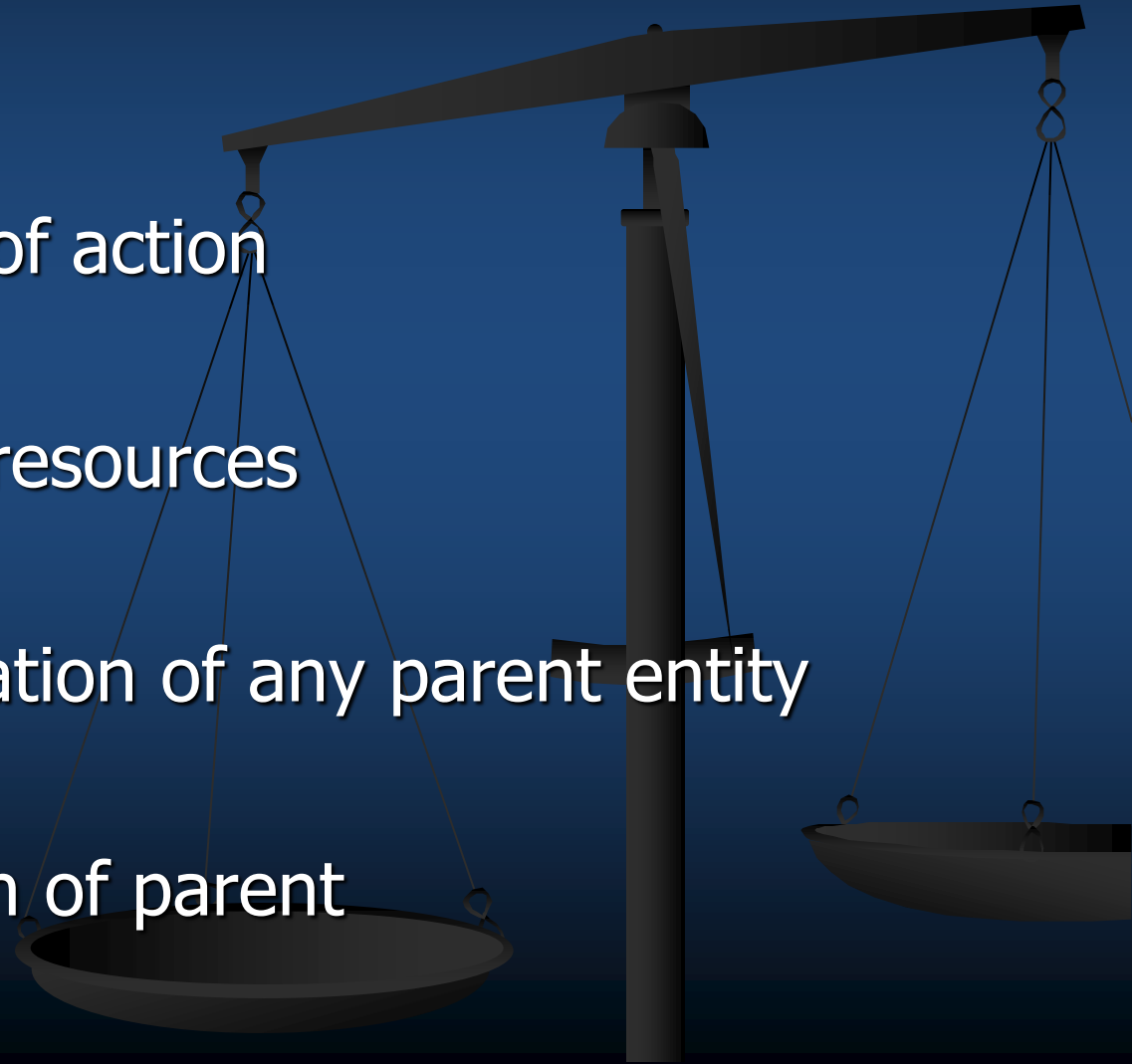
- Entrances
- Goods and services
- Restrooms
- Other measures to improve access



Determining “Readily Achievable”

Criteria include:

- Nature and cost of action
- Overall financial resources
- Relationship, location of any parent entity
- Type of operation of parent

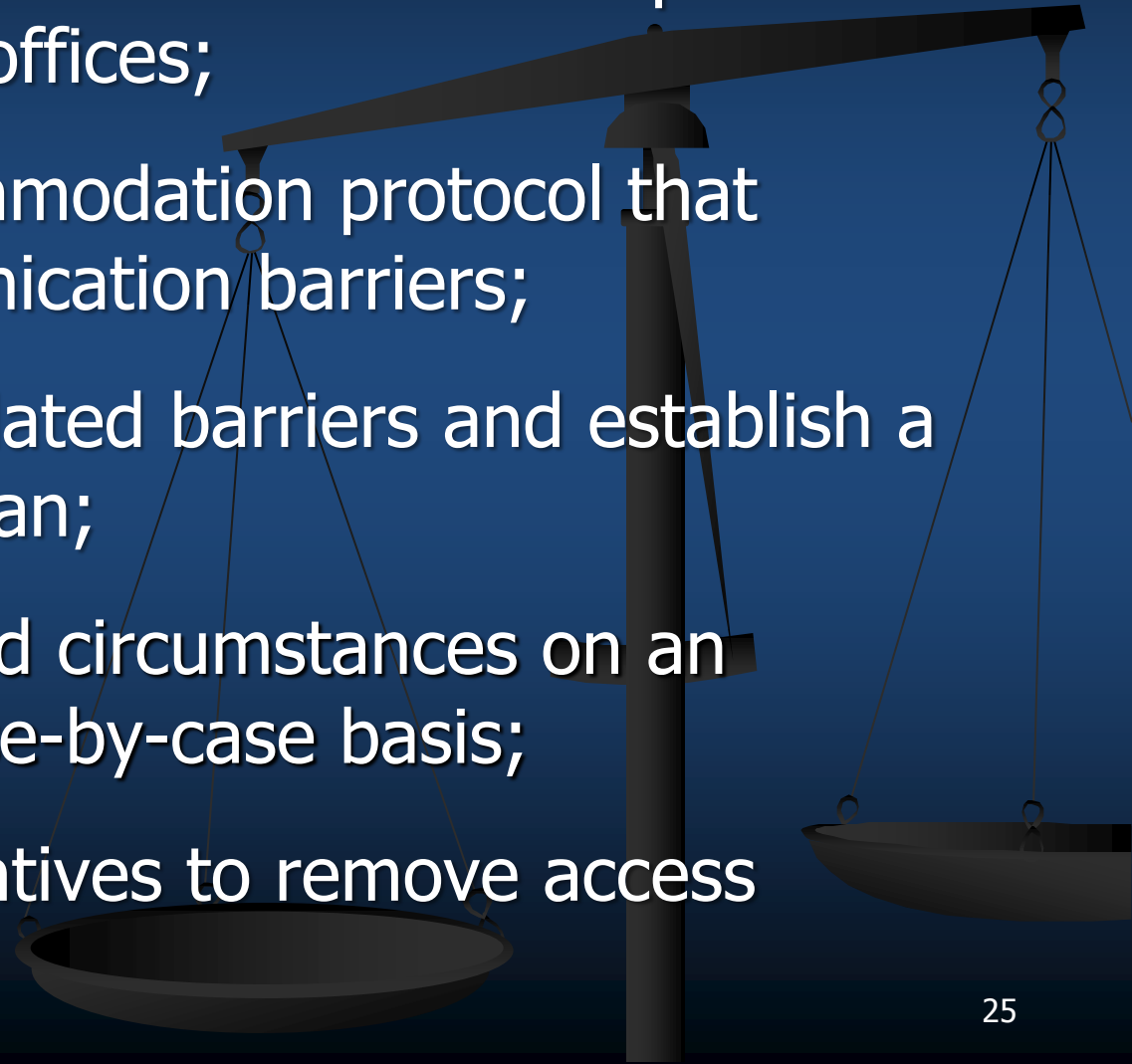


Alternatives to Barrier Removal

- The ADA requires the removal of physical barriers, such as stairs, if it is "readily achievable." However, if removal is not readily achievable, alternative steps must be taken to make goods and services accessible.
- Example of alternative measure includes relocating activities to accessible location.
- Extra charges may not be imposed on individuals with disabilities to cover the costs of measures used as alternatives to barrier removal.

Developing a Proactive Approach

- Familiarize yourself with the ADA's requirements applicable to law offices;
- Develop an accommodation protocol that considers communication barriers;
- Identify facility-related barriers and establish a barrier removal plan;
- Evaluate cases and circumstances on an individualized, case-by-case basis;
- Consider tax incentives to remove access barriers.



Additional Resources for Criminal Law Attorneys



Georgia Appleseed Publications

Justice for Adult Defendants with Mental Retardation - A Handbook for Attorneys Practicing in Georgia:

https://gaappleseed.org/media/docs/atty_handbook_081007.pdf

Finding the Path to Equal Justice – A Handbook for Adult Defendants with Intellectual Disabilities and Their Families:

https://gaappleseed.org/media/docs/family_handbook_081007.pdf



Thank you!

Comments and/or Questions?