

GENERAL ORDER No. 56
AMERICANS WITH DISABILITIES ACT ACCESS LITIGATION

In any action which asserts denial of a right of access protected by Titles II or III of the Americans with Disabilities Act, 42 USC §§ 12131-89, pursuant to Federal Rule of Civil Procedure 16, the Court ORDERS that the following shall apply:

1. Service. Pursuant to Federal Rule of Civil Procedure 4(m), plaintiff shall promptly complete service on all defendants. A plaintiff who is unable to complete service on all defendants within 60 days may, prior to the expiration of that period, file a Motion for Administrative Relief pursuant to Civil Local Rule 7-11 requesting an extension of the schedule required by this Order.

2. Responsive Pleading. Within the time allowed for responsive pleading under Federal Rule of Civil Procedure 12, a defendant may either (a) answer or (b) file a motion under Rule 12(b). Filing a motion under Rule 12(b) does not automatically relieve the parties of the requirements of this Order.

3. Stay of Proceedings and Relief from Requirements of this Order. All discovery, motion practice (except for motions under Rule 12(b) and motions to appear pro hac vice), and other proceedings are STAYED unless the assigned judge orders otherwise. Requests to lift the stay to conduct specific discovery, to file any other motion, to be relieved of any of the requirements of this Order, or to enforce any of the requirements of this Order may be made by stipulation and proposed order under Civil Local Rule 7-12 or by filing a Motion for Administrative Relief under Civil Local Rule 7-11.

4. Initial Disclosures and Production of Documents.

a) Initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) shall be completed no later than 7 days prior to the joint site inspection required by Paragraph 7. Examples of what the initial disclosures must contain include:

- Each party shall disclose all information in that party's possession or control that may be used to support its claims or defenses regarding the accessibility of the premises, transportation service, examination, course, program, service, activity, website, mobile software application, or other technology.
- Defendant shall disclose all information in defendant's possession or control regarding the construction or alteration history of the subject premises if defendant intends to dispute liability on that basis.
- In a Title II action, defendant shall disclose all information in defendant's possession or control regarding programmatic compliance, a transition plan, or a self-evaluation plan if defendant intends to dispute liability on that basis.

- If plaintiff claims damages, plaintiff shall set forth the damages computation required by Rule 26(a)(1)(A)(iii) but need not include attorneys' fees and costs.
- Plaintiff shall disclose the day, month, and year of all dates on which plaintiff claims to have sought access to the premises, transportation service, examination, course, program, service, activity, website, mobile software application, or other technology and shall disclose any documentary evidence regarding the alleged access efforts and barriers plaintiff encountered.
- If a defendant claims the injunctive relief sought is not readily achievable, that defendant shall disclose all information in its possession or control supporting that defense, including information pertaining to the factors stated in 42 U.S.C. § 12181(9) and to any alternative methods that are used to provide access.

These examples are illustrative of the type of information initial disclosures must contain and do not restrict any obligation imposed by Federal Rule of Civil Procedure 26(a).

b) Notwithstanding the stay imposed by Paragraph 3, upon request, a party promptly shall provide to the requesting party any documents identified in the initial disclosures.

5. Settlement Discussions.

a) The parties are encouraged to discuss settlement at their earliest opportunity. In those discussions, plaintiff is not required to make a monetary demand until the parties agree on the resolution of claims for injunctive relief and all other material terms, conditioned only on resolution of claims for damages, attorneys' fees, and costs. Once they come to such an agreement in principle, plaintiff promptly shall make a demand for settlement of the case in its entirety. The demand shall specify separately the amount sought as damages, the amount sought as attorneys' fees, and the amount sought as costs. Plaintiff shall not require execution of a written agreement as a precondition to making a monetary demand. If a monetary demand would facilitate discussions, plaintiff is not precluded by this Order from discussing claims for injunctive and monetary relief at the same time. Nothing in this Order is intended to preclude or to determine the effect of an offer of judgment under Federal Rule of Civil Procedure 68.

b) Whenever plaintiff makes a monetary demand, defendant may request and plaintiff then promptly shall provide an itemization of costs, an overall summary of the major categories of work performed, the total number of hours each time keeper spent on each category of work, and each time keeper's billing rate. If plaintiff prefers, plaintiff may instead provide complete, detailed time records (redacted, if necessary, for attorney-client privilege and work product).

6. Experts. This Order does not require any party to engage an expert, including a Certified Access Specialist (CASP). In simpler cases it may be possible for parties to reach agreement regarding corrective actions without engaging experts, or without the preparation of written expert reports. If the parties believe that a case would benefit from expert assistance, the Court encourages them to jointly engage an expert. Before scheduling the joint site inspection

and the settlement meeting required in Paragraphs 7 and 8 of this Order, counsel shall confer regarding the possibility of retaining a joint expert and shall disclose whether they intend to have a separate expert or consultant in attendance. If written expert reports are prepared, they shall be exchanged.

7. Joint Site Inspection.

a) No later than 60 days after service of the complaint, counsel and any unrepresented parties (accompanied by their experts or consultants and the parties themselves, if the parties so elect or if required in order to comply with Section (c) below) shall meet in person at the subject premises to conduct a joint site inspection. If the parties agree that plaintiff alleges only violations unrelated to a physical location (such as programmatic or policy violations), or if the parties already have reached an agreement resolving claims for injunctive relief and all other material terms, conditioned only on resolution of claims for damages, attorneys' fees, and costs, the parties may proceed directly to the required settlement meeting described in Paragraph 8 of this Order, in which case the settlement meeting shall be scheduled within 60 days after service of the Complaint.

b) The parties shall inspect together the portions or aspects of the subject premises, transportation service, examination, course, program, service, activity, website, mobile software application, or other technology that are claimed to violate the Americans with Disabilities Act. Plaintiff shall specify all claimed access violations and, to the extent possible at the site, the corrective actions or policy changes requested of defendant. With respect to each claimed violation, defendant shall specify, to the extent possible at the site, whether defendant is willing to undertake the requested corrective actions or has an alternate proposal. If defendant claims any proposed corrective action is not readily achievable or otherwise is not required by law, defendant shall specify the factual basis for this claim.

c) Each party shall be represented at the joint site inspection by a person with knowledge about the facts of the case and the authority to settle the injunctive relief claims. If a plaintiff asserts claims based on the accessibility of a website or mobile software application, a defendant also shall be represented at the joint site inspection by person(s) with the best possible technical knowledge regarding the website or mobile software application at issue.

8. Settlement Meeting.

a) The joint site inspection shall be followed by an in-person settlement meeting. The settlement meeting may occur at the same time and location as the joint site inspection or may be scheduled separately, but not later than 35 days after the joint site inspection.

b) Participation in the settlement meeting cannot be satisfied by telephone, video conference, or exchanging letters, emails, or texts. The parties themselves and their counsel must be personally present. Governmental entities, corporations, and non-governmental entities must be represented by a person (in addition to counsel of record) who has, to the greatest extent feasible, authority to settle and who is knowledgeable about the facts of the case.

c) Plaintiff shall be prepared at the outset of the settlement meeting to provide defendant with the demand for settlement described in Paragraph 5(a) of this Order.

d) If a party believes that it would be unsafe or otherwise inappropriate for a required individual to appear in person at the settlement meeting, that party may seek relief from the requirement of personal attendance in the manner set forth in Paragraph 3 of this Order.

9. Mediation. Within 42 days from the joint site inspection or settlement meeting, whichever occurs first, the parties shall file either the form Notice of Settlement of ADA Access Case or the form Notice of Need for Mediation and Certification of Counsel, both available on the Court's website. Unless settled, the matter will then be referred automatically to mediation for a session to be scheduled as soon as feasible, and in no event later than 90 days from the date the Notice of Need for Mediation and Certification of Counsel is filed, unless otherwise ordered by the assigned judge. The mediator shall preside over settlement negotiations that address all issues presented by the matter, including requests for injunctive relief, damages, and attorneys' fees. The mediator and the parties shall address the issues in the manner and order set forth in Paragraph 5 of this Order. Should a settlement be reached, counsel shall ensure that the parties make a written record of the essential terms of the settlement sufficient to permit any party to move to enforce the settlement should it not be consummated according to its terms. Should any settlement be conditioned upon future conduct such as remediation, upon submission of an appropriate order of dismissal that includes retention of jurisdiction to enforce the settlement the assigned judge will retain jurisdiction to enforce the settlement.

10. Request for Case Management Conference. If the case does not resolve within 7 days of the mediator's filing of a Certification of ADR Session reporting that the mediation process is concluded and that the case did not settle in its entirety, plaintiff shall file the form Notice Requesting Case Management Conference, available on the Court's website.

ADOPTED: June 21, 2005
AMENDED: February 17, 2009
AMENDED: November 5, 2009
AMENDED: May 29, 2012
AMENDED: April 17, 2013 *nunc pro tunc* May 29, 2012
AMENDED: January 1, 2020

FOR THE COURT:



PHYLLIS J. HAMILTON
CHIEF JUDGE