



**STATE OF CONNECTICUT
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Memo to: Joseph J. Del Ciampo, Director, Legal Services

Subject: Proposed Revisions to Sections 16-4(a) and 42-5 of the Practice Book

Date: October 15, 2019

This is in response to your request that I review Judge Keller's proposal to amend Sections 16-4 (a) and 42-5 of the Practice Book to determine whether the recommended amendment is consistent with, or violates, the ADA. Judge Keller suggests that both rules should be amended to state "except that no person shall be disqualified on the basis of deafness or being hard of hearing if his or her hearing disability can be reasonably accommodated such that his or her capacity to serve as a juror will not be impaired."

Background

The mandate for making jury service accessible goes far beyond the ADA, deriving from prior federal law and constitutional law. See K. Bleyer, et al, "[Into the Jury Box: A Disability Accommodation Guide for State Courts](#)," American Bar Association, State Justice Institute (1994). This mandate is based on Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, predecessor to the ADA, which prohibits discrimination on the basis of disability in "any program or activity receiving federal financial assistance." Regulations issued under the Rehabilitation Act clarify that the operations of federal and state courts fall within the purview of the Rehabilitation Act because courts are considered instrumentalities of state or local governments. See 28 C.F.R. §§ 42.501-505.

On July 26, 1990, Congress enacted the Americans with Disabilities Act (ADA) "to provide a comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101 (b) (1). The ADA extended the mandate of the Rehabilitation Act and eliminated the federal funding nexus. Title II of the ADA, which specifically covers government entities, including courts, requires public entities to provide individuals with disabilities equal access to state and local government services, programs, and facilities, including state court programs and jury service. Title II states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of

the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

The principle of juror access is also rooted in constitutional law. The right to a fair trial includes the right that a jury be drawn from a representative cross-section of the community, which should include people with disabilities. The courts, however, must balance the right of defendants and litigants to a fair and impartial jury with the competing right of individuals to serve as jurors. In weighing these rights, a court’s determination of juror competency must be based on an individual’s ability to evaluate the evidence in a particular case.

Connecticut Statutes Regarding Jurors who are Deaf or Hard of Hearing

General Statutes § 51-217 (a), which sets forth the qualifications of jurors, states, in relevant part, that “[a] person shall be disqualified to serve as a juror if such person: (1) Is found by a judge of the Superior Court to exhibit any quality which will impair the capacity of such person to serve as a juror, except that no person shall be disqualified because the person is deaf or hard of hearing,...” [Emphasis supplied.]

General Statutes § 51-245 (d) provides that “if any juror is deaf or hard of hearing, such juror shall have the assistance of a qualified interpreter who shall be present throughout the proceeding and when the jury assembles for deliberation. Such interpreter shall be subject to rules adopted pursuant to section 51-245a.”

General Statutes § 51-245a states: “In accordance with the provisions of section 51-14, the judges of the Superior Court shall make such rules as they deem necessary concerning the qualification of interpreters to assist jurors who are deaf or hard of hearing pursuant to subsection (d) of section 51-245. Such rules shall ensure that such interpreters are unbiased and will not unduly influence the jury.”

Comments

My primary concern with this proposal is that it seeks to modify the disqualification of jurors who are deaf or hard of hearing by rule, rather than by statute. Conn. Gen. Stat. § 51-217 (a) prohibits juror disqualification solely on grounds that a person is deaf or hard of hearing and Practice Book §§ 16-4 (a) and 42-5 mirror this statutory language. The qualifying language in the proposal adds a requirement for deaf persons and for those who are hard of hearing that is not found in Conn. Gen. Stat. § 51-217 (a). In fact, I believe that the proposal, as currently drafted, may have the unintended consequence of disqualifying a person who is hard of hearing and who requires no court accommodation (i.e., such as those with cochlear implants and hearing aids).

I am also concerned that the DOJ may find the limiting language inconsistent with the ADA’s requirement that a court must ensure that its communications with individuals with disabilities are as effective as communications with others, and must make available appropriate auxiliary aids and services where necessary. As drafted, the amended rule may make it far easier to excuse a juror for lack of a reasonable accommodation.

Judge Keller, however, raises valid concerns regarding jurors who do not know how to sign or

refuse to use their hearing aids. See Judge Keller’s email dated July 22, 2019. In these situations, judges should be permitted to determine, in light of the specific evidence to be presented, whether any reasonable and effective accommodation can be made to enable the juror to serve. In lieu of a rule change, an amendment to the statutory grounds for disqualification to allow for judicial discretion may be more appropriate. I found that at least one other jurisdiction, Texas, permits this type of judicial consideration in its statutory framework. In [Texas Government Code Chapter 62, § 62.1041 \(b\)](#), “[a] deaf or hard of hearing person is disqualified to serve as a juror if, in the opinion of the court, his hearing loss renders him unfit to serve as a juror in that particular case.”

Finally, in reviewing the relevant statutes and rules (i.e., Conn. Gen. Stat. §§ 51-245 and 51-245a and Practice Book §§ 16-1 and 42-10), I noticed that only one type of accommodation is identified for jurors who are deaf or hard of hearing and that is the use of an interpreter. The ADA does not limit the type of reasonable accommodation that can be provided to assist people who are deaf or hard of hearing. Depending on the needs of the individual and the nature of the impairment, an accommodation may involve: allowing the person to sit where he or she can hear or, for lip-readers, see better; allowing a telecommunication system to communicate; providing a qualified sign interpreter appointed by the court; or providing an assistive listening system or computer-aided transcription device. With the advancement of technology, it may be helpful to consider expanding the statutory list of accommodations available to include that “any other auxiliary aid as appropriate” may be provided.