

Disabilities Project Newsletter

Accommodating Persons with Non-Obvious Limitations in Mobility by J. Kay Felt, Dykema Gossett PLLC

Many persons with limited mobility do not initially appear to have a disability, particularly if they do not use a cane or other assistive device. A disability may become apparent only when a person moves about the court facility with difficulty or when a crowd or rush of people affects the person's balance. Often, people with mobility limitations have not fully recovered from a disabling illness or injury (e.g., stroke or accident), or they may have a condition that is progressively or intermittently disabling (e.g., multiple sclerosis, Parkinson's disease, post polio syndrome, or other neurological condition), or they may simply be in the normal aging process.

Signs of a limitation of mobility include unsteadiness, walking slowly, aberrations in gait, holding back, or requiring unusual time to get around the court facility or follow instructions related to movement.

The biggest risks for people with limited mobility are loss of balance, unanticipated falls, and excessive exertion.

It is problematic for court personnel when limitations are not disclosed, but the individuals involved may also be at a disadvantage in this situation. They may be unaware of the ability to request accommodations; they may deny any limitation; they may not want to call attention to their conditions; or they may not have anticipated the challenges of accessing the particular court facility. Even an attorney, who has never been with the individual in a physically challenging situation, may not be aware of any limitations.

Fortunately, accommodations for such persons usually require no extra court personnel or other additional expense. Most simply involve common sense.

General Accommodations

Some accommodations are helpful to persons with various types of mobility limitations, both obvious and not so obvious. They include:

- Publicize the availability of Form MC 70 to request accommodations. Don't insist on compliance with advance notification requirements when the accommodations do not involve special equipment or personnel. Make accommodations without requiring the form, when requested or when the need is otherwise recognized.

- Ask individuals who inquire about accessibility in advance if they have a cane or other assistive device. Suggest that they bring it even if they do not regularly use it, as this may alert others not to rush or crowd. Accidents most frequently occur when others do not realize there is a mobility issue.
- Provide in advance a complete list of all types of items that are prohibited in the court facility. Encourage security personnel at inspection points to identify all offending items at the initial inspection so that persons do not have to go back to their automobiles multiple times to store prohibited material. (This will please all visitors.)
- Encourage court personnel who observe a possible problem to ask the individual about the need for accommodations and to alert the applicable judge, since the limitations may not be obvious to the judge. If the possible need for accommodations is not recognized until court is in session, have the court personnel speak unobtrusively with the individual at the first recess.

Minimizing the Risk of Falls and Other Loss of Balance

Loss of balance and falling are significant risks to persons of limited mobility in unfamiliar public places. What accommodations are reasonable and helpful to minimize these risks?

- Proactively anticipate and minimize these risks. Conspicuously mark changes in elevation and mark the top of steps or stairs. Don't overly polish floors, and use products that minimize slipperiness. Have consistent and adequate lighting.
- Offer adequate time for breaks when a person with limited mobility is in the courtroom so the person does not have to rush.
- Offer the person access to elevators, when available, and opportunities to sit and remain seated when others are expected to stand.
- Offer alternate restroom facilities if the public facilities are not close to the courtroom involved.
- Avoid risks for an individual who has difficulty climbing even a few steps or accessing positions in a jury box with different elevations either by offering a chair nearby or having a security person extend an arm to help steady the individual. This can be particularly problematic if a prospective juror of limited mobility is excused during voir dire and has to pass other prospective jurors who are seated on the way out.
- Encourage court personnel to recognize and be responsive to mobility limitations, such as by avoiding unnecessary rushing, not walking closely behind a person who is moving slowly, or not passing the person from behind on the right side as opposed to the left side. These and other similar actions can be surprising and can affect a person's balance. Unless the person objects, during crowded times it is helpful for someone to walk a safe distance behind the person and in a position to block others from inadvertent crowding. If the person requests, allow the person to step aside until a crowd passes. Give the person all the time and space needed to move safely.
- Refrain from giving hands-on assistance without first asking – except when a person is in the process of falling. Many people with poor balance are thrown more off balance if someone unexpectedly takes the person's arm, especially if the helper interrupts the person's progress or does not walk at precisely the same gait and speed. It may be safer for the unsteady person to take the helper's arm.

- Ask how best to help a person who has fallen, and don't attempt to assist the person without consent. Falls are inherently unexpected. The person may need time to gather composure, assess whether there is an injury, or use unusual means that work best for that person to get to a standing position. After the person is up, it is helpful to offer a chair and offer water.
- Don't move a person who has fallen and cannot move, does not want to move, or is unconscious. Call an emergency medical service or other trained personnel to minimize further injury. Block off the area until help arrives.

Avoiding Unnecessary Exertion

What seems to others to be normal activity may be overly stressful to a person with limited mobility. How can unnecessary exertion be minimized?

- Have adequate seating when the person has to wait. Some people find it difficult to stand for even a short time.
- Consider the timing of various activities. For example, if such a person is on a jury panel, don't start voir dire just before an anticipated break, especially when the jury box is difficult to access.
- Recognize that exertion may cause thirst. Allow the person to bring a water bottle, or have water conveniently available.
- Re-evaluate handicap parking. All too frequently, handicap spaces are not the closest to the main building entrance. At least some spaces should be near the entrance. If a ramp starts at some distance from the entrance, some handicap spaces should be near the entrance and some near the bottom of the ramp.

Persons with limited mobility easily tire and become discouraged. They appreciate court personnel who are encouraging and who make it their goal to assist with the functions at hand. Defendants and witnesses are in court because they have no choice. Others consider it a right. While some prospective jurors with limitations appreciate the opportunity to request relief from service, others regard jury service as a privilege. They do not want to be excused; they just want reasonable accommodations.

Most of all, persons with limited mobility appreciate being treated with respect and good humor. They are dismayed when, as sometimes happens, it is assumed that limited mobility equates to a cognitive deficit. They appreciate being consulted directly on what accommodations are needed, and not being forced to accept burdensome measures. They are usually the best experts concerning their needs.