STATE OF VERMONT

# SUPERIOR COURT FAMILY DIVISION

**( )Unit Docket No.**

**Plaintiff Vs.**

**Defendant**

# MOTION TO APPOINT A COMMUNICATION SPECIALIST

Now comes *(Name of person requesting VCSP assistance)* and moves the Court to appoint a Communication Specialist through the Vermont Communication Support Project (VCSP), 141 Main Street, Montpelier, Vermont, (802) 244-8867, to assist me in overcoming disability-related barriers to communication for proceedings in the above referenced matter. I state the following in support of this request and also attach the following Memorandum of Law to support this request:

1. I have a disability that affects my ability to communicate. (State the name of the disability and how you think it will prevent you from communicating effectively at the proceeding, examples include having *“a severe learning disability that affects my ability to process information and read written documentation or PTSD that causes me to be unable to process and respond to*

*information when I am placed under pressure.”).*

1. Based on conversation with (either or both) the VCSP and my service providers, I believe the assistance of a Communication Specialist will allow me to participate in these proceedings more effectively than if I did not have such assistance. (*provide example of what the CSS can do to assist, or attach the form from the provider that includes that information and say “see attached VCSP form executed by my service provider.*)
2. I request that the Court appoint me a Communication Specialist for all proceedings in this matter so that I am not unfairly prejudiced due to my disability.
3. It is highly unlikely that I can meaningfully participate in any legal proceedings, without the assistance of a Communication Specialist.
4. The cost of the Communication Specialist a reasonable hourly rate ($25/hour for direct service and $15/hour for travel time), plus mileage.
5. As a public entity, the state court system should assume the cost of providing modifications necessary under Title II of the Americans with Disabilities Act (ADA). 42 U.S.C. §12101 et seq. The ADA mandates that people with disabilities be “furnish[ed] with appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate…” in state court systems. 28 C.F.R. §35.160. The cost of furnishing such aids and services should be paid for by the Court and not the person with a disability. 28 C.F.R. § 35.130(f).

WHEREFORE, I request that this Court to appoint a Communication Specialist through the Vermont Communication Support Project to aid me in preparation and during hearings in this matter and that the Court pay the cost for that service.

Dated at Vermont, this day of , 2021. In the County of ( ) – State of Vermont.

Signed: Print Name:

# MEMORANDUM OF LAW

Title II of the Americans with Disabilities Act provides 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.

As defined by Title II and its implementing regulations, a “public entity” includes “any state or local government” or “any department, agency, special purpose district, or other

instrumentality of a State or States or local government.” 42 U.S.C. § 12131(1); 28 C.F.R. §

35.104. Courts are considered public entities within the meaning of Title II. Galloway v.

Superior Court of District of Columbia, 816 F.Supp. 12, 19 (1993). See ABA/SJI, Opening the

Courthouse Door: An ADA Access Guide for State Courts (1992) (“Opening the Courthouse

Door”).

Persons with (***State the disability for example:*** *Cognitive Processing Disorders, and Severe Learning Disabilities, Low IQ*), are considered disabled within the meaning of Title II. “Disability” is defined as a “physical or mental impairment that substantially limits one or more major life

activities.” 42 U.S.C. § 12102(2); 28 C.F.R. § 35.104. A “mental impairment” is “[a]ny mental or psychological disorder such as mental retardation.” 28 C.F.R. § 35.104. “Communication” is a “major life activity.” Id.

For Title II purposes, a "qualified individual with a disability" is

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices . . . meets the essential eligibility requirements for receipt of services or the participation in programs or activities provided by a public entity. (Emphasis supplied).

42 U.S.C. § 12131(2).

28C.F.R. § 35.130 sets forth the discriminatory practices prohibited under the ADA by public entities. In pertinent part, this provision provides that

(b)(1) A public entity, in providing any aid, benefit, or service, may not...on the basis of disability--

1. Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.
2. Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
3. Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

28 C.F.R. § 35.130.

Title II also imposes certain affirmative obligations on public entities. Specifically,

[A] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

28 C.F.R. § 35.130(b)(7). Title II explicitly requires reasonable modifications in “policies, practices and procedures” to avoid discrimination on the basis of disability, placing the burden on the public entity to demonstrate that modifications would “fundamentally alter the nature of

the program.” Id. Modifications are reasonable unless they constitute “a fundamental alteration

in the nature of a program.” Alexander v. Choate, 469 U.S. 287, 300 (1985) (citation omitted).

Within the meaning of Title II and its implementing regulations, the Vermont Superior Court, Family Division/**or relevant court** is a “public entity,” and I am a qualified “individual with a disability” because I am eligible to participate in the proceedings noted above.

As public entities, state court systems are mandated by the ADA to address the needs of people with functional limitations and provide them with equal access to justice. Wood & Dooley, ‘Program Accessibility’: How Courts Can Accommodate People with Disabilities, 76

Judicature 250 (1993). Furthermore, states can be held liable for damages for failing to do so.

See Tennessee v. Lane, 541 U.S. 509 (2004) (upholding the ADA's abrogation of sovereign

immunity as applied to Title II violations involving access to courts).

As a public entity, the state court system should assume the cost of providing modification necessary under Title II. The ADA mandates that people with disabilities be “furnish[ed] with appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate…” in state court systems. 28 C.F.R. §

35.160. Furthermore, one’s right to Due Process in civil cases is violated if obstacles exist which restrict the person from a “meaningful opportunity to be heard.” *Boddie v. Connecticut*, 401 U.S.

371, 379 (1971). The cost of furnishing such aids and services shall not fall on the disabled person’s shoulders: “No surcharge allowed for services to cover costs of auxiliary aids or program accessibility.” 28 C.F.R. § 35.130(f). Charging the disabled individual for an equal opportunity to participate in the court system amounts to discrimination and violates Title II of the Americans with Disabilities Act.

WHEREFORE, based on the forgoing information and legal authority I request that the Court provide me with a Communication Support Specialist as a reasonable accommodation.

**Signed: Dated this day of , 2021**