From: Brandy Beltas <brandybeltasesq@gmail.com>
Sent: Monday, August 21, 2023 10:56 AM
To: rulecomments
Subject: Judicial Accommodations under ADA

Categories: ADA

Good morning Mr. Nocenti,

I do not think this is a good idea. If a party wants an accommodation, the other parties should know about this so they can object, if they feel that the accommodation is unnecessary. I feel that when a request is made ex-parte, there is a risk of it being abused. I have practiced in NY for around 10 years, and it is very rare that a firm objects to an accommodation.

Please feel free to reach out to me on my cell phone if you have any questions 323-240-1974.

Respectfully,

--

Brandy A. Beltas, Esq.
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NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

M E M O R A N D U M

To: David Nocenti, Counsel
John J. Sullivan, ADA Coordinator

From: Janet R. Fink, Counsel, Family Court Advisory and Rules Committee

Date: October 24, 2023

RE: Comments of the Family Court Advisory and Rules Committee on the Proposed Court Rules Regarding Requests for Accommodations under the *Americans with Disabilities Act*

I am writing on behalf of the Family Court Advisory and Rules Committee, chaired by Hon. Michelle Pirro Bailey, Acting Supreme Court Justice and Judge of the Family Court, Onondaga County (Ret.), and Hon. Peter J. Passidomo, Judge of the Family Court, Bronx County, to convey comments of the Committee with respect to the proposed court rule regarding requests for *Americans with Disabilities Act* accommodations.

Like the Supreme Court, the Family Court has jurisdiction over child custody and visitation cases and, in addition, proceedings regarding child abuse and neglect, termination of parental rights, guardianship and related cases. The existence of a disability in each of these case categories may be inextricably linked to the determination that must be made by the Family Court regarding the best interests of the child who is the subject of the proceedings – not that the disability indicates unfitness *per se* but simply that it must be explored. For these reasons, the Committee has concluded that notice must be given to adversary parties, as well as the Attorney for the Child, that a request for an accommodation has been made and, concomitantly, that the party requesting the accommodation must be notified in advance of the request that such disclosure may be made. The Committee thus joins the Matrimonial Practice Advisory and Rules Committee (MPARC) in its recommended amendment to the proposed court rule that is set forth in the memorandum, dated October 20, 2023, from Hon. Jeffrey Sunshine, Chair of the MPARC and Coordinating Judge for Matrimonial Matters.

Thank you for the opportunity to comment on the proposed rule. We would be happy to answer any questions you may have.

cc: Hon Michele Pirro Bailey
Hon. Peter J. Passidomo
Hon. Jeffrey Sunshine

From: Julie Ann Ashcraft <julie.ann.ashcraft@gmail.com>
Sent: Monday, October 23, 2023 11:58 PM
To: rulecomments
Subject: Fwd: "Comment on Adopting New Rule to Facilitate Requests...under ADA"

Categories: ADA

So I just speed read the eight pages and gather that the general idea is to protect privacy (ala Hippa) of disabled persons where the disability is not physically obvious....and so forth. Sounds good in general. I'm trying to submit this before the deadline. Would like a few more days to read it more carefully and look up the legalese terms.

Julile Ashcraft

---------- Forwarded message ---------
From: **Julie Ann Ashcraft** <julie.ann.ashcraft@gmail.com>
Date: Mon, Oct 23, 2023 at 11:46 PM
Subject: "Comment on Adopting New Rule to Facilitate Requests...under ADA"
To: <rulecomments@nycourts.gov>

Hello

I am Disabled and have been making the same ADA request of the NYC courts for a fragrance-free policy for years--after nearly dying in court due to anaphylactic shock triggered by fragrance.

I have worked as a Judge Appointed GAL in Housing Court, and have represented myself in that court and in NY State Supreme Court. Please extend the deadline a couple more days so that I have the chance to read this proposal instead of just skimming it. And so that I have a chance to make a cogent comment.

I just stumbled across the eight page proposal titled:
August 17, 2023: Request for Public Comment on Adopting a New Rule to Facilitate Requests for Judicial Accommodations under the ADA

Description of Proposal
Email to: rulecomments@nycourts.gov
by October 2, 2023
Deadline for comment extended to October 23, 2023

Sincerely,

Julie Ann Ashcraft

October 23, 2023

VIA ELECTRONIC MAIL:
David Nocenti, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 10thFloor
New York, NY 10004
rulecomments@nycourts.gov

Re: Civil Court Committee Comments on Proposed Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act

Dear Mr. Nocenti:

The New York City Bar Civil Court Committee greatly appreciates the opportunity to comment on the proposed adoption of 22 N.Y.C.R.R. §52, a rule aimed at minimizing the public disclosure of personal information regarding disabilities in requests for accommodations under the Americans with Disabilities Act ("ADA") requiring judicial approval in cases filed in civil matters (the "Proposed Rule") in the New York City Civil Court.

We commend the efforts of the Chief Judge's Advisory Committee on Access for People with Disabilities ("Advisory Committee") to promote "access to justice for individuals with invisible disabilities" in a way that "balances confidentiality against the due process and ethical concerns implicated." However, we believe the Proposed Rule as written would not accomplish these goals if implemented because it fails to adequately address the problems with the accommodations process in civil courts, and that the Proposed Rule, as written, would not make it easier for all court users to have equal access to the courts. The City Bar has concerns about the Proposed Rule as written and provides the comments and suggestions below.

REASONS FOR OPPOSITION TO THE PROPOSED RULES IN ITS CURRENT FORM

The New York City Bar Civil Court Committee has joined the New York City Bar Disability Law Committee in commenting on a number of issues with the proposed rule, including: (1) the bifurcated accommodations process for judicial versus administrative requests resulting in inconsistent outcomes for litigants; (2) the rule requiring disclosure of information beyond the requirements of the Americans with Disabilities Act; (3) the judge deciding the merits of the case having the power to determine whether to grant the accommodation request; (4) the rule providing overbroad exceptions to confidentiality; and (5) the lack of an appeal or grievance procedure in the event an accommodation request is denied. For a more detailed explanation of these issues, please refer to the Comment submitted by the Disability Law Committee.

The Civil Court Committee writes to supplement the above-reference comment by providing considerations that are specific to the New York City Civil Court, in particular cases dealing with consumer debt collection, which make up a large percentage of the Civil Court case filings.

The bifurcated accommodations process does not take into account the reality of the Civil Court which lacks the Individual Assignment System (IAS). As a result, a particular judge is not assigned to a litigants case, and a litigant, especially pro se litigant has no way of knowing who the assigned judge is in advance of the appearance to make such a request or learn of the result of the request. Additionally, because of the frequent rotation of judges in the Civil Court, litigants often have to re-submit their

requests to a new judge. This is burdensome for pro se litigants and has the potential to lead to inconsistent results.

Furthermore, a large percentage of litigants in Civil Court is unrepresented, particularly those litigants in the Consumer Transaction Part. As a result, many of these pro se litigants would likely have difficulties properly submitting written judicial accommodation requests as the proposed rules required. More importantly, litigants with disabilities would also struggle to submit requests for accommodations themselves, and many would not have an attorney to file such requests on their behalf.

RECOMMENDATIONS

In addition to the above, the Committee makes the following recommendations:

- A provision allowing disclosure upon consent of the litigant making the accommodation request should be written into the rule;
- Allow third parties aside from attorneys to make requests;
- Allow oral requests;
- If the bifurcated process continues, a mechanism to identify and route requests submitted incorrectly;
- If the bifurcated process continues, a manner to identify the assigned judge in advance such that litigants may have a point of contact in advance of court appearances;
- Guidance for decision makers to avoid different standards/decisions

CONCLUSION

The Committee appreciates the opportunity to comment on the Proposed Rule, and we thank you for the opportunity to provide testimony on the Advisory Committee's Proposed Rule.

Sincerely,

The Civil Court Committee of the New York City Bar Association

To: The New York State Administrative Board of the Courts

From: The New York City Mayor's Office to End Domestic and Gender-Based Violence, the New York City Mayor's Office for People with Disabilities, the New York City Commission on Human Rights, and the New York City Administration for`Children's Services

Re: Public Comment on Adopting a New Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act

Date: October 23, 2023

The New York City Mayor's Office to End Domestic and Gender-Based Violence (ENDGBV), the New York City Mayor's Office for People with Disabilities, the New York City Commission on Human Rights, and the New York City Administration for Children's Services (collectively "the agencies") submit this comment in response to the Chief Judge's Advisory Committee's proposed rule for judicial accommodation under the Americans with Disabilities Act.

The agencies support the proposed rule with amendments that reflect the principles in this comment. The proposed rule would expand access to justice for people with disabilities and survivors of domestic and gender-based violence engaged in legal systems. Survivors of domestic and gender-based violence can experience a range of physical and mental health effects. Survivors of domestic and gender-based violence are at an increased risk for posttraumatic stress disorder (PTSD).[1] Common physical symptoms for survivors include chronic pain, gastrointestinal symptoms, headaches, and insomnia.[2] Domestic and gender-based violence can exacerbate previously existing disabilities – whether visible or invisible - or be the

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[1] World Health Organization, Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and nonpartner sexual violence. 2023. https://bit.ly/48o2eAJ

[2] Ibid.

cause of such disabilities.[3] Allowing accommodations for people with disabilities, including allowing remote court appearances, extended filing deadlines, adjournments, and other supports and accommodations as requested by litigants will result in more just outcomes for survivors, litigants, and attorneys.

With the goal of reducing unintended negative impacts, the agencies request a few clarifications to the proposed rule and/or any corresponding training or informational materials related to the rule:

Single Point of Entry

(1) The agencies recommend that courts provide attorneys and litigants seeking accommodation with one point of entry (or form) for both administrative and judicial accommodations. A bifurcated process in which an administrative accommodation must be made separately from a judicial accommodation can create unnecessary barriers for individuals seeking accommodations. With a single entry point for both administrative and judicial accommodations, court staff can route the form to the correct path for processing.

Confidentiality and Unconscious Bias

(2) To preserve confidentiality and address the unconscious bias of the judge adjudicating the underlying proceeding, the agencies recommend that a neutral, ex parte adjudicator, akin to a magistrate, review and either issue or recommend orders related to accommodation applications. This could be a single adjudicator in each courthouse, which would support a consistent, baseline approach to granting judicial accommodations across all cases. Given the broad discretion granted to jurists, the agencies are concerned that attorneys and litigants will be deterred from seeking

[3] Ibid.

accommodations if the same jurist hearing the underlying proceeding is also making determinations regarding accommodation applications and the confidentiality of those applications.

(3) Regarding the first exception to confidentiality in which the Court may disclose the existence of an application and information from the application that the Court deems "germane and necessary to the Court to consider in determining the merits of the underlying matter," the agencies are concerned about the use of this exception in child custody and visitation cases. The mental and physical well-being of a parent is one of the many factors a court can consider when making a custody or visitation determination. The agencies seek clarity within the rule or within related training materials about whether accommodation applications and their contents will be routinely disclosed in cases where the mental or physical well-being of a party is relevant to the underlying matter. Such routine disclosures could jeopardize the safety and well-being of survivors of domestic and gender-based violence and deter survivors from seeking the accommodations they need.

Other Procedural Matters

(4) The proposed rule is silent on the timing of an accommodation application. The agencies hope this silence indicates that parties or attorneys can make an accommodation request at any time during a proceeding. If this is true, the agencies recommend emphasizing this in the rule or related training and informational materials.

(5) The proposed rule is silent on whether requests for accommodation will be determined without prejudice. The agencies recommend that the rule and/or related training and informational materials are clear that denials of accommodations will be made without

prejudice. This will allow litigants and attorneys to renew a request for accommodation with additional information or evidence in compliance with CPLR 2217(b).

Training

(6) The agencies wish to stress that it is vital that judges, court staff, attorneys, and litigants receive uniform training and information about how best to implement the rule, exercise judicial discretion, and address potential biases related to visible disabilities, invisible disabilities, and mental health. The agencies urge OCA to work with trainers who have an in-depth knowledge of visible and invisible disabilities and their impacts on individuals' daily lives. In addition, the agencies recommend that OCA designate a person or persons who can provide guidance to adjudicators regarding applications for accommodation.

(7) The agencies also recommend that judges, court staff, and attorneys receive training about maintaining the confidential aspects of accommodation applications and orders. Such training should relate to both physical records and e-filing systems.

NEW YORK CITY BAR

October 23, 2023

David Nocenti, Esq., Counsel
Office of Court Administration
New York State Unified Court System
25 Beaver St., 10th Floor
New York, NY 10004

Re: Request for Public Comment on Adopting a New Rule to Facilitate Requests for Judicial Accommodations under the ADA

Dear Mr. Nocenti:

Thank you for the opportunity to submit comments on this important proposal and for allowing us additional time to respond. The committees represented on this letter are comprised of a wide range of practitioners in New York State Courts and bring a variety of perspectives. After discussion, we are united in our view that the proposed rule is problematic and requires more deliberation and discussion between interested stakeholders and the Office of Court Administration. We did agree on a few general principles which we believe can guide future discussions, i.e., that there should be a presumption in favor of a requested accommodation, that there should be a right to appeal to the relevant Administrative Judge, and that judges and court staff should receive robust training on the laws, rules and regulations relevant to accommodations. However, one major point of contention among committees is whether the request process should be centralized or decentralized. There are reasonable views on both sides, and we would welcome the opportunity to discuss them with you. We also thought it might be helpful to attach a memorandum from the City Bar's Disability Law Committee, which provides further comments from the perspective of that committee.

If you would like to meet with us via Zoom to discuss the proposal, please reach out to Dionie Kuprel, dkuprel@nycbar.org, the City Bar's Administrative Assistant, and she can help with scheduling and other arrangements.

Continued on next page

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Thank you very much for your consideration.

Respectfully,

Fran R. Hoffinger, Chair
Council on Judicial Administration

Rebecca Juliet Rodgers, Chair
Disability Law Committee

Seth D. Allen, Chair
Litigation Committee

Amy D. Carlin, Chair
State Courts of Superior Jurisdiction Committee

CC: Maria Cilenti, Senior Policy Counsel, New York City Bar Association

TO: **David Nocenti, Esq.**

FROM: **Disability Law Committee, New York City Bar Association**

DATE: **October 23, 2023**

RE: **Request for Public Comment on Adopting a New Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act**

Thank you for the opportunity to comment upon the proposed new Rule of the Chief Judge that would authorize trial judges to consider certain requests for disability accommodations *ex parte*. As described in the City Bar's October 23, 2023 cover letter signed by multiple committees, this memorandum is submitted specifically by the Disability Law Committee and is meant to provide feedback from the committee's perspective.

The Committee supports the intent of the proposed rule in providing equal access to justice for attorneys, litigants, and witnesses with disabilities. Providing an *ex parte* procedure for requesting accommodations can permit people with disabilities to avoid unnecessary disclosure and subsequent bias during the litigation process, thus improving our access to the courts. However, we oppose the proposed rule in its current form because (1) it establishes a bifurcated process that is likely to result in inconsistent outcomes from courtroom to courtroom, (2) it requires disclosure of information about disability that goes beyond the requirements of the Americans with Disabilities Act, (3) it gives the judge who will determine the merits of the case the power to determine whether to grant an accommodation, (4) it provides overbroad exceptions to confidentiality, and (5) it does not provide for any appeal or grievance if the judge denies a request for an accommodation.

First, the proposed rule draws a distinction between administrative accommodations, which can be addressed by court staff, and judicial accommodations, which can only be addressed by the actions of individual judges. In our experience, decentralized procedures for requesting accommodations often lead to inconsistent outcomes and introduces individual bias into the procedure. For instance, in many academic settings, individual professors have the power to grant or deny requests for classroom and testing accommodations. The result is a patchwork where certain professors are more likely to grant accommodations, but others are more likely to deny them. A similar patchwork arises when individual judges evaluate requests for litigation accommodations. Moreover, distinguishing administrative and judicial accommodations creates a confusing process for litigants, especially *pro se* litigants, who do not know whom to turn to or

what process to follow when seeking accommodations in court. A centralized process for requesting accommodations from court administrators is necessary to both facilitate confidence in the consistency of accommodations procedures and promote judicial efficiency.

Second, Section (a)(2) of the proposed rule requires litigants to explain how their disability limits their ability to meaningfully participate in court proceedings. This requirement goes beyond the disclosure that is necessary under the Americans with Disabilities Act (ADA) to evaluate an accommodation request. Under the ADA, the appropriate inquiry is whether the requested accommodation will permit someone to participate in the programs, services, and activities of the court system, and whether it can reasonably be provided by the court system. Section (a)(3) of the proposed rule gives the court sufficient information to consider the accommodation by requiring someone requesting an accommodation to "state the accommodation sought and explain why the accommodation is needed." By adding an additional inquiry into how the individual's disability limits their ability to meaningfully participate in the proceeding, the proposed rule improperly invites the unnecessary disclosure of medical information about disability and has the potential to encourage judges to request supporting documentation concerning whether an individual is sufficiently disabled to seek an accommodation. Such a focus on an individual's disability is discouraged by the ADA and increases inefficiency in the court process. *See* 28 C.F.R. § 35.101(b) ("The primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability.").

Third, the proposed rule gives the judge who will hear the merits of the case the authority to decide whether to grant or deny requests for accommodations. As a result, attorneys and litigants who need accommodations to fully participate in the judicial process may be discouraged from seeking those accommodations out of concern that an accommodations request will introduce bias from the judge who will decide the merits of the case. The proposed rule also has the potential to create the appearance of bias, as attorneys or litigants may believe that their request for an accommodation or their adversary's request for an accommodation was a motivating factor in the determination of the merits. A centralized accommodations process would eliminate the potential for bias or the appearance of bias that results from accommodations requests being heard by the judge who will decide the merits of the case.

Fourth, the two exceptions to confidentiality in sections (d)(1) and (d)(2) of the proposed rule are overbroad and have the potential to lead to unnecessary disclosure of an applicant's disability. Section (d)(1) permits the judge to disclose information about an applicant's disability if they consider the information to be "germane to and necessary for the Court to consider in determining the merits of the underlying matter before it." Section (d)(2) also permits disclosure that an accommodation request has been made "[i]f the Court reasonably believes that granting the requested accommodation will be prejudicial . . . ." Both of these exceptions could permit a judge to disclose information about an applicant's disability or requested accommodation in virtually any circumstance, which will further discourage litigants from disclosing their disabilities and seeking necessary accommodations.

Finally, the proposed rule does not provide any appeal or grievance process if a judge denies a requested accommodation or improperly discloses information about an applicant's

disability. The lack of an appeal process will further result in inconsistent application of accommodation procedures from courtroom to courtroom.

Thank you for your consideration. We hope you find these comments helpful and stand ready to engage in any further discussions related to this proposal.

Rebecca Juliet Rodgers, Chair
Disability Law Committee, New York City Bar Association

Contact
Maria Cilenti, Senior Policy Counsel | 212.382.6655 | mcilenti@nycbar.org

October 23, 2023

VIA EMAIL
David Nocenti, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 10th Fl.
New York, NY 10004
rulecomments@nycourts.gov

Re: Proposed Rule of the Chief Judge (Part 52, 22 NYCRR § 52) to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act

Dear Mr. Nocenti:

New Economy Project appreciates the opportunity to comment on the Office of Court Administration's (OCA) proposed Rule of the Chief Judge, Part 52, 22 NYCRR § 52, to facilitate requests for judicial accommodations under the Americans with Disabilities Act (ADA).

New Economy Project's mission is to build an economy that works for all, based on racial and social justice, cooperation, neighborhood equity, and ecological sustainability. We work with community groups to fight systemic discrimination and wealth extraction from Black, brown, and immigrant communities and to promote cooperative, community-led development, through coalition organizing, legal and policy advocacy, community education, applied research, and other strategies. For nearly two decades, we have operated the NYC Financial Justice Hotline, through which we provide free limited-scope legal assistance to low-income New York City residents facing a wide range of financial justice issues, including debt collection lawsuits brought in New York City Civil Court.

Most of the callers to our hotline who face debt collection lawsuits navigate Civil Court without the benefit of legal representation. Those callers with disabilities or serious medical conditions have struggled to get accommodations from the Civil Court, largely because the Civil Court lacks clear, uniform procedures for processing accommodation requests and letting people know the status and outcome of their requests in a timely manner.

Although the proposed rule is a helpful start to codifying procedures that would improve low-income New Yorkers' access to the courts, we urge the OCA to make critical changes to address our concerns about the proposed rule, as discussed below, and about the Civil Court's current accommodations process overall.

1. **As a threshold matter, the proposed rule overlooks the fact that it is often impracticable for court users in Civil Court to direct judicial accommodation requests to a judge.**

The New York State Unified Court System's (UCS) website states that "[i]f you are sure that your accommodation request is the kind that needs to be decided by the judge, you can make your request directly to the judge in your case," and directs the court user to "[c]ontact the judge's chambers before you come to court, or ask the judge when you get to court."[1] The most common type of accommodation that our hotline callers with disabilities or severe health issues need is the ability to appear virtually on their court date, which the UCS website indicates is the kind of request that needs to be decided by a judge. In New York City Civil Court, no single judge is assigned to a case for the life of the case; our hotline callers therefore seldom know in advance the name of the judge who will preside over their case on a given court date and so cannot contact that judge's chambers "before [they] come to court." Nor does it make sense to require a person who cannot appear in court in person because of a disability or severe health issue to "ask the judge when [they] get to court."

As a threshold matter, the OCA should ensure that the Civil Court adopt a single clear, uniform procedure that court users may use to make both judicial and administrative accommodation requests, so that court users do not bear the burden of having to figure out where to direct their request. For example, the Civil Court could provide court users with a standard court form for this purpose, which they would fill out and submit to the clerk's office.

The Civil Court should also establish clear internal procedures for directing judicial accommodation requests to the appropriate judge, ensuring that judges decide the requests in a timely manner, and notifying people who made the requests of the judges' decisions in a timely manner. The OCA should also require courts and court clerks' offices to explain to *pro se* litigants in easy-to-understand terms, in person and on the courts' website, the steps *pro se* litigants should take if they wish to request a judicial or administrative accommodation.

Moreover, to the extent that the proposed rule would continue to require court users—as the current instructions on the UCS website do[2]—to direct judicial accommodation requests to the judge presiding over their case, as opposed to any judge or judicial officer, this requirement could have a chilling effect on accommodation requests. People with disabilities might not wish to raise accommodation requests out of fear that these requests would negatively affect the judge's perception of them or of the merits of their case. For example, they might not wish to be seen as delaying court proceedings, or they might not wish to disclose the highly personal information required of an accommodation request to the person presiding over the case. Decisions on requests for accommodation should be made by removed third parties, not by the

[1] *See* NYCourts.gov, *ADA Accommodation Request Process* (last accessed Oct. 23, 2023), https://ww2.nycourts.gov/ada-accommodation-request-process-32956.
[2] *See id.*

judge—or judges, as the case would be in Civil Court—from whom the court user must request legal and procedural relief throughout the case. For example, a judge who was unlikely to preside over cases in a particular part of the court could be assigned to review accommodation requests submitted by parties to those cases.

2. **In accordance with ADA standards, the proposed rule should focus the judge's inquiry on the accommodation requested instead of on the person's disability.**

Section (a)(2) of the proposed rule would require accommodation requests to "state the disability and explain how it limits the person's ability to meaningfully participate in the proceeding." This requirement goes beyond ADA standards, which focus the inquiry on (1) whether the requested accommodation will permit the person to participate in the programs, services, and activities of the court system, and (2) whether the court can reasonably provide the accommodation.[3] Under the proposed rule, judges would improperly focus their inquiry on the nature and extent of the requesting person's disability and could demand unnecessary supporting documents, rather than focusing the inquiry on the accommodation requested and the court's ability to provide that accommodation. The proposed rule should conform to these ADA standards.

3. **The proposed rule should guard against unwarranted disclosures by judges of confidential information included in accommodation requests.**

Section (d) of the proposed rule raises multiple concerns with respect to confidentiality:

The listed exceptions to confidentiality are vague and overbroad. Section (d) lacks specific criteria and guidance limiting when a judge may disclose confidential information. Section (d)(1) would allow disclosure if the judge deems the information "germane to and necessary for . . . determining the merits of the underlying matter" and the information is unlikely to be part of the record. This vague and overly broad standard risks unnecessary disclosure of confidential information. Section (d)(2) would permit disclosure if granting the accommodation could "prejudice the rights of another party to a fair or timely resolution of the matter." This exception is also vague and overly broad. Because a judicial accommodation request by its nature requires "balancing . . . the rights of the parties,"[4] many accommodations may arguably prejudice another party's rights. Section (d)(3) would permit disclosure if the applicant waived confidentiality in whole or in part, but does not clarify what establishes waiver or what extent of disclosure is permitted after a partial waiver.

The proposed rule does not define or limit disclosure. Section (d) does not specify the nature of the disclosure the proposed rule would permit—for example, whether courts could include documents from an accommodation request in the public record, make those documents available for parties' review, or orally convey the information contained in those documents. Nor

[3] *See* 42 U.S.C. § 12132; 28 CFR § 35.130(b)(7)(i).
[4] *See ADA Accommodation Request Process*, *supra* note 1.

does Section (d) restrict what other parties could do with the documents or information outside of the court proceedings. To the extent that the proposed rule would allow judges to disclose confidential information contained in an accommodation request, the proposed rule should strictly circumscribe and specify in detail the type and extent of disclosure permitted.

The proposed rule would not provide people requesting an accommodation any recourse in the event of an unwarranted disclosure of their confidential information. Section (d) would permit judges to disclose confidential information under the given circumstances absolutely and unilaterally, without giving the person requesting the accommodation notice of and an opportunity to challenge the judge's determination or an opportunity to withdraw the request to avoid disclosure. This lack of recourse could have a chilling effect on accommodation requests, as people with disabilities may be reluctant to submit requests that could or could not—they would have no way of knowing—be kept confidential.

4. **To ensure a uniform, transparent, and accountable process, the proposed rule should set forth specific criteria and guidelines for deciding accommodation requests, including a concrete timeline for deciding requests.**

The proposed rule fails to require judges to apply specific criteria or to adhere to specific guidelines when deciding whether to grant an accommodation request. By leaving the decision entirely to judges' discretion, the proposed rule could lead to widely varied and potentially arbitrary outcomes on accommodation requests, depending simply on the identity of the judge deciding the request. One of our low-income hotline callers, whose multiple sclerosis severely restricted his mobility and sometimes even his ability to speak, was unable to go to court to answer a lawsuit brought against him, so he mailed in his answer with a request that he be permitted to appear virtually on his court date. He later learned from the court clerk that his request had been denied, but was not given any reason for the denial. His wife emailed the court's ADA-specific address to ask why the court had denied his request, but never received a response.

In addition to providing specific criteria and guidelines for judges to apply, the proposed rule should require courts to make these criteria and guidelines publicly available so that court users are not left in the dark as to what factors the judge will weigh in deciding an accommodation request. We support the proposed rule's requirement that decisions be memorialized in a written order, including the reasons for denial if an application is denied, but information on criteria at the outset will help court users to ensure that their accommodation requests contain pertinent information.

5. **The proposed rule should provide for a mechanism to administratively appeal or review an accommodation request denial.**

The proposed rule does not provide for an administrative process for court users to appeal the denial of their judicial accommodation request. The proposed rule should provide people with

disabilities a straightforward way to challenge the denial of a reasonable accommodation request, such as that in place for administrative accommodations.

6. **The proposed rule unduly limits who may make a request.**

Section (b) of the proposed rule would not permit guardians ad litem and others assisting people with disabilities to make accommodation requests on those people's behalf. It is also unclear from the proposed rule whether limited-scope legal providers would be able to assist with accommodation requests. Low-income New Yorkers who contact our hotline, whom we assist on a limited-scope basis, often proceed through their cases without legal representation and navigate the courts with the help of family or a trusted community member. Permitting only parties or their attorneys to request accommodations could compel court users with disabilities to forgo the accommodation request process altogether and prevent them from being able to meaningfully participate in court proceedings.

Thank you for the opportunity to comment. Please feel free to contact me at raquel@neweconomynyc.org with any questions.

Sincerely,

/s/ Raquel E. Villagra, Staff Attorney

October 23, 2023

David Nocenti, Esq.
Counsel, Office of Court Administration
New York State Unified Court System
25 Beaver Street, 10th Fl.
New York, New York, 10004
Via email to: rulecomments@nycourts.gov

Hon. Edwina Richardson-Mendelson
Deputy Chief Administrative Judge
Office for Justice Initiatives
New York State Unified Court System
111 Centre Street
New York, NY 10013
Via email to: DCAJ-OJI@nycourts.gov

Re: Request for Public Comments on Adopting a New Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act

Dear Mr. Nocenti and Hon. Richardson-Mendelson:

We write as legal services lawyers whose organizations provide free representation and limited-scope legal services to indigent clients throughout New York City facing debt collection through the Civil Courts. Our work as consumer law advocates includes both representing litigants in proceedings and providing advice and limited scope assistance to others who appear *pro se*. Over the years, and more acutely during the pandemic, we have struggled to ensure that people with disabilities have meaningful access to the courts by securing accommodations that would allow their full participation in cases.

Accommodations are crucial in New York City Civil Courts, which handle debt collection cases, which disproportionately impact low-income New Yorkers. In recent years, over 20% of the nation identifies as having a disability, with over half having mobility impairments. People with disabilities have a poverty rate of 21.6%, compared to about 10% of the population without disabilities.[1] A significant contributing factor is the low employment rate of workers with disabilities

[1] Rebecca Vallas et al., *Commentary: 7 Facts About the Economic Crisis Facing People with Disabilities in the United States*, The Century Foundation, Apr. 21, 2022. https://tcf.org/content/commentary/7-facts-about-the-economic-crisis-facing-people-with-disabilities-in-the-united-states/ [last accessed Sept. 21, 2023].

– 21.3% versus 65.4% for workers without disabilities in 2022.[2] We echo observations made by members of the Chief Judge's Advisory Committee on Access for People with Disabilities and emphasize that issues of access to justice are also racial justice issues, as Black and Latinx individuals are more likely to have both disabilities requiring accommodations and to experience poverty as a result of systemic racist practices in healthcare, housing, and financial services industries.[3] Based on our many years of experience defending people with low income and low wealth in consumer debt cases, we have seen that many people with disabilities who are sued in New York Civil Courts default because of an inability to participate.

Given the critical need for accommodations for people with disabilities to access the Court system, we applaud the New York State Unified Court System for undertaking an effort to improve the current inadequate system for addressing accommodation requests. However, we believe the Proposed Rule fails to comport with the Americans with Disabilities Act (ADA) and fails to account for the experiences of unrepresented litigants defending against consumer debt collection matters in the Civil Courts. In particular we believe the Proposed Rule is deficient in the following ways:

- The Proposed Rule does not eliminate, and in fact exacerbates existing problems resulting from the confusing accommodation process for "judicial" and "administrative" accommodations. The current accommodation process subjects court users with disabilities to two different accommodation processes depending on their need for an accommodation. Each process has different rules and standards for granting accommodations, even though the standard should be the same under the Americans with Disabilities Act. This process creates barriers for many litigants who cannot afford to retain counsel and struggle to decipher various court procedures which are entirely unfamiliar to them.
- The Proposed Rule continues to refer requests for "judicial accommodations" to the judge assigned to the person's case. The Proposed Rule provides no procedure to address the reality of New York City Civil Court cases, which lacks the Individual Assignment System (IAS) system. Even in the limited instances when a litigant does somehow know the assigned judge in advance of their appearance, there is no procedure in these cases to contact

[2] Bureau of Labor Statistics, https://www.bls.gov/news.release/disabl.nr0.htm [last accessed Sept. 21, 2023]
[3] Report from the Special Adviser on Equal Justice in the New York State Courts, Oct. 1, 2020, https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf; Alexis Iwanisziw & Sarah Ludwig, *They're Banks, Right?*, New Economy Project, Feb. 23, 2023, https://www.neweconomynyc.org/2018/02/8137/ [last accessed Sept. 29, 2023].

the judge directly until the date of the court hearing, which is likely the event for which they need accommodations to be able to access. The Proposed Rule fails to address this issue.

- In our experience, the existing judicial accommodations process has resulted in many inconsistencies, with some judges granting accommodations for a disability while others deny them for the same disability. These inconsistencies are exacerbated in consumer debt collection matters where judges frequently rotate, which is particularly challenging for unrepresented litigants. As discussed in more detail below, the frequent rotation of judges often requires resubmission of the accommodation request. This creates additional barriers for every single court appearance expected of litigants in these cases.
- Section (a)(2) of the Proposed Rule requires applications for accommodations to "state the disability and explain how it limits the person's ability to meaningfully participate in the proceeding." In New York City Civil Courts, this standard asks judges who often face dozens of cases per calendar call to quickly make a qualitative assessment about the personal lived experience of an individual with a disability. Further, this standard improperly deviates from the ADA standard, which is whether the requested accommodation will permit the person to participate in the programs, services, and activities of the Court system and can reasonably be provided by the Court system.
- Section (b) of the proposed rule allows attorneys to make accommodation requests, but few defendants in New York City Civil Courts have the benefit of attorney representation. In 2022, attorneys filed answers in only 2.6% of consumer credit actions. To the detriment of the vast majority of defendants in New York City Civil Courts who are unrepresented, the Proposed Rule does not address these circumstances. Judges are left to guess whether it is appropriate to acknowledge an accommodation request and what alternatives are available to the tens of thousands of litigants who cannot afford or otherwise secure representation by an attorney in the cases against them. Without legal representation, many of our clients rely upon caseworkers, family members, and others to help them navigate the court process, and the rule should address what other third parties may submit a request on behalf of someone unable to do so themselves.
- The exception to confidentiality in Section (d)(1) of the Proposed Rule is an invitation to the judge to consider and disclose to opposing parties any confidential information from the accommodation request if the judge decides it is "germane and necessary" to decide the

merits of the case. But the Proposed Rule fails to specify a standard for how judges are to make this determination, which risks leading to inconsistent results.

- The exception to confidentiality in Section (d)(2) of the Proposed Rule undermines the purpose of the ex parte rule by allowing a judge, rather than the litigant with a disability, to decide whether to disclose the information to opposing parties. In New York City Civil Court cases, opposing parties who become privy to this information may be the same entities that are causing adverse experiences for people with disabilities attempting to access financial services.[4] This deprives individuals with disabilities of the option to make an informed decision about to whom and how their highly personal and medical information will be disclosed. Further, it allows for judges to make this exception to confidentiality where the judge determines "that the person for whom the accommodation is sought has a qualifying disability, and the accommodation being sought is an extension of time to submit papers, an adjournment, permission to participate remotely, or any other accommodations that, if granted, could potentially prejudice the rights of another party to a fair or timely resolution of the matter" but also fails to specify a standard for how judges are to make this determination, which again risks leading to inconsistent and improper results. In addition, the Proposed Rule as written fails to identify adequate safeguards to potential abuses of this process by opposing parties in these adversarial proceedings.

In light of the issues with the current Proposed Rule, we urge the Court system to decline adopting it in its current format.

Suggestions and Context for Future Rulemaking

In principle, and informed by our work with vulnerable litigants, to achieve equal access, we believe the Court Administration's rule for considering accommodations under the ADA should have the following characteristics:

(1) Be widely disseminated;
(2) Be easy to use;
(3) Grant requests in a timely manner;
(4) Be applied in a consistent manner for all litigants;

[4] National Disability Institute, *Information Brief: Access to Credit for Adults with Disabilities*, June 2018, https://www.nationaldisabilityinstitute.org/wp-content/uploads/2018/12/access-credit-brief.pdf [last accessed Sept. 29, 2023] (describing limited access to financial services for people with disabilities for reasons including "[m]isperceptions, misunderstandings, and lack of basic disability etiquette among lenders").

(5) Remain in place for the duration of the case;
(6) Provide access to case documents;
(7) Include a mechanism for public feedback on this process; and
(8) Include collection of relevant data on the process, ongoing monitoring, and evaluation of the rule.

We therefore propose the following suggestions for how to achieve these goals, and provide some information and context about our experiences with the process as it stands.

Making the ADA Accommodation Process Known

In our experience, litigants often do not know how to or even that they can make a request for ADA accommodation. Under existing law (CPLR § 306-d), plaintiffs in consumer credit transactions must provide an additional notice to defendants, which is sent by clerks. In order for individuals who need accommodations to be able to participate in proceedings, we believe there should be information about the ADA accommodation process included in that notice. This would enable litigants to seek accommodations as early as possible. We often receive calls from people who do not know how to proceed on their own because they cannot access the Court.

The signage in the courthouses also could be increased. For example, in the Bronx Civil Courthouse, signs about ADA accessibility do not appear outside the building, but instead are found in places like the top of the staircase leading to the small claims court, presumably a last barrier to entering that room. People with mobility impairments should be able to know in advance which areas they can reach and how they can get there.

Finally, the New York State Unified Court System's website should use accessibility features and translation capacity, especially in the portions concerning disability access, so that it can be used by the broadest number of people who might seek accommodations.

Making the ADA Accommodation Process Easy to Access and Timely

Once litigants know that they can request accommodations, the request should be easy to access at the start of the case, with one point of entry and clear notice of what the process entails. The requestor should be given proof that they have made the request and a clear understanding of when and whether their request is granted or denied. Now, people who send in accommodation requests are generally not given a receipt or any idea of whether or when they will receive a response confirming their accommodations. The current notices also exist only in English on the website and in the courthouse signs about contacting the ADA coordinator. This does not serve litigants with limited vision or limited English proficiency.

In order for a litigant who has requested accommodation to be prepared for Court, we suggest that the Court provide a response at least two weeks before an appearance. This allows those denied their request some time to secure other resources to ensure access to a proceeding. For example, many people with disabilities whom we serve need advanced notice to book Access-a-Ride.

Consistent Application Across Litigants and Throughout the Case

Responses to requests for accommodations should be applied in a consistent manner. In Civil Court cases, judges now are making the determinations, but judges change during the duration of the case. If there were a single decision maker, the accommodation could be applied consistently and remain in force through the full case.

Once an accommodation has been granted, either the judge should keep the case, or the accommodation should move with the case without additional review by subsequent judges.

The current system, as we have experienced it, is much different. Litigants who are able to obtain information about how to request accommodations are permitted to submit a request either online, by email, or by phone, and then they must confirm approval with the judge before the court date. The NY Courts website advises on multiple pages of its website that these requests first should be made by contacting the judge's chambers before a scheduled appearance or by asking the judge directly. As stated previously, because Civil Court, including consumer credit, cases are not part of the IAS system, those litigants do not know which judge will be presiding over their next appearance in Civil Court and cannot obtain this confirmation. Similarly, The Legal Aid Society and people who have received advice from the Society have tried to contact the Courts for the information, and receive responses that include: "Please check-in with the judge's staff directly. Only the judge hearing the matter can consider remote appearance requests." In all of these cases, not knowing which judge will be assigned to an appearance has been a prohibitive barrier to obtaining ADA accommodations when needed.

The existing request form, available online, is similarly unreliable. Litigants who follow the instructions provided on the New York Courts website and submit the online request form receive an automatically generated email response noting that the court cannot guarantee requests made fewer than five days before the court date. No instructions are provided for when a court date is within the next five days. The email response also states, "If you do not get an e-mail response to your request before you come to court, please visit the Chief Clerk's Office for assistance, and a bring a copy of

this email with you." However, this procedure is not only burdensome, it is also ineffective if the requesting litigant is seeking an accommodation based on a disability that prevents them from traveling to the courthouse.

Finally, the Court's current system sometimes, but not always, can lead to the requesting litigant being asked for medical proof of their disability. We are unaware of how such sensitive medical information is being treated, and the requests make no reference to the Health Insurance Portability and Accountability Act (HIPAA) privacy rules and do not seem to consistently comply with them. For example, Court clerks have sometimes responded to ADA requests by The Legal Aid Society and clients advised by The Legal Aid Society with an instruction to email proof of the medical condition to the Court, with a note that the clerk's office would have to call the doctor to confirm the existence of the disability. However, this does not comply with HIPAA. To the extent that the Court is collecting litigants' sensitive medical information or records, the Court must adopt measures to safeguard this information, or explain what steps a litigant must take to request to file this information under seal.

Provide Documents

Just as litigants might need accommodations to attend Court, they might need the Court record provided to them so they can fully participate from home. Those records should be provided early enough for people to prepare themselves for future appearances.

We are aware that the Civil Courts have been making efforts to scan more documents and make the scans accessible to litigants. Cases where someone has been granted an accommodation should take priority and copies of the records should be mailed to people who are participating in cases remotely or emailed upon request of the litigant.

Feedback Mechanisms and Collection of Relevant Data

As the Court develops an ADA accommodation policy, it also needs to remain open to feedback to ensure that the policy works and is meeting the needs of litigants with disabilities. We appreciate the opportunity to comment on the Proposed Rule, but many of our clients with disabilities, those most impacted by this policy, are unaware of or unable to submit comments. Accordingly, the Court should develop mechanisms for litigants, especially unrepresented litigants, to weigh in on their experience, awareness of the policy and the efficacy of the policy. For example, Courts could conduct surveys of litigants that asks if they were aware of ADA accommodations

policy, if so, had they attempted to use it, and if not, would they have accessed it if they had known about it.

In New York City Civil Court cases, it is challenging for advocates and the public to ascertain the broader efficacy of existing procedures due to the paucity of data available for these cases.[5] FOIL requests about accommodation requests result in limited or no data about to whom and how often accommodations are provided. We write based on our experiences serving, collectively, hundreds of litigants who describe to us the many barriers they face to participating in cases against them in New York City Civil Courts. However, greater transparency into the numbers of litigants able to request and obtain accommodations will help us serve both litigants in New York City Civil Court cases, and the Court system, more effectively.

We appreciate the opportunity to comment on the Committee's Proposed Rule and hope our feedback and recommendations will be useful in improving the Proposed Rule.

Sincerely,

Anthe Maria Bova, General Counsel and Director of Pro Bono Programs, New York County Lawyers Association

Dora Galacatos, Esq., Executive Director, Fordham Law School, Feerick Center for Social Justice

Tashi Lhewa, Esq., Director of the Economic Equities Project, The Legal Aid Society

Ellen McCormick, Esq., Staff Attorney, Consumer Law Practice, The Legal Aid Society

Mary McCune, Consumer Attorney, Manhattan Legal Services

Claire Mooney, Esq., DV-Consumer Staff Attorney, The Legal Aid Society

Anne Nacinovich, Senior Staff Attorney, Bronx Legal Services

Johanna Ocaña, Senior Coordinating Attorney for Pro Bono Initiatives, Fordham Law School, Feerick Center for Social Justice

Tedmund Wan, Supervising Attorney, TakeRoot Justice

[5] Unlike most other cases in New York State Courts, New York City Civil Court cases do not provide public access to records of proceedings and filings on NYSCEF. Court files are often incomplete, unavailable to judges and litigants on court dates, or sometimes even impossible to locate for months at a time.

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LSC America's Partner for Equal Justice
LEGAL SERVICES CORPORATION

Request for Public Comment on Adopting a New Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations under the ADA

Legal Services of the Hudson Valley provides free legal services to low-income New Yorkers where basic human needs are at stake. The proposed rule would improve access to justice and protect the dignity of litigants with disabilities. However, we are concerned that: (1) litigants won't be aware of this option; and (2) may struggle with formulating the written request.

We practice in many high-volume courts, where there are not enough lawyers to represent more than a small fraction of respondents. It is well-documented that the majority of tenants in housing court are unrepresented. Even in the parts of our service area where we have the most capacity, we cannot represent most of the tenants facing eviction proceedings and we observe the challenges they face. In consumer matters, our resources are so limited that we generally can only provide advice or brief service. The bulk of consumer matters are brought in county Supreme courts, where litigants face deadlines to file written answers, oppositions to motions, and responses to discovery demands before there is a court date and they meet any court personnel.

Currently, the proposed rule is silent on the bifurcated accommodation process which divides accommodations by their nature, either judicial and administrative. The divide results in two separate processes for applicants seeking accommodations.

The judicial accommodations process requires additional assessment. Applications are granted and denied without a set criteria, resulting in inconsistencies across judicial jurisdictions. Further complications arise from the inability to administratively appeal a denial of a judicial accommodation under the proposed rule.

Further, the proposed rule would be more effective if there were a mechanism for pro se litigants to be made aware of its existence and a form with instructions.

A form with prompts for the information required by the proposed rule would assist pro se litigants and the Courts in efficiently submitting and reviewing accommodations. Including applicable definitions within the form or the instructions would be helpful. Including examples of language that constitutes

reference to the subject matter or merits of the proceeding would prevent pro se litigants from mistakenly including such information.

Additionally, the proposed rule would better serve the purpose of ADA guidance if it required the pro se litigant to focus their application more on how the accommodation will permit the pro se litigant to participate in court proceedings and activities. At present, Section (a)(2) of the proposed rule requires applications to state the disability and explain how it limits the person's ability to meaningfully participate in court proceedings and activities. Using language that requires applicant to prove their need for the accommodation as opposed to show how the accommodation will assist them is different and ultimately adds another burden to the applicant.

We recommend adding a notice to be issued by the clerk for all types of cases in all courts. While court rules provide for helpful additional notices in certain types of cases where defendants or respondents are often pro se, there are many types of civil cases that do not fall under those rules. For example, in consumer credit matters, there is an additional notice required by 202.27 of the civil rules of the supreme and county courts, 210.14 of the civil rules for the city courts outside of New York City, many litigants are sued by former landlords in these courts in cases that are not designated as consumer credit.

As a last recommendation, we encourage you to consider the exception to confidentiality in Section (d)(1) and Section (d)(2) of the proposed rule. In order to preserve dignity and true confidentiality, these exceptions would benefit from placing the authority to disclose information in the applicant and not an outside party.

Thank you for your consideration.

Marcie Kobak, Esq., Litigation Director
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From: Hon. Lisa Headley
Sent: Tuesday, October 17, 2023 2:55 PM
To: rulecomments
Subject: Judicial Determinations on ADA requests

Categories: ADA

After reading the rule as proposed, I believe from a judicial standpoint, that the rule more than sufficiently balances the needs of the person requesting the disability accommodation with the needs of other parties involved in the case.

Legal Services NYC
DEMAND JUSTICE

LEGAL SERVICES NYC COMMENT LETTER IN RESPONSE TO THE ADMINISTRATIVE BOARD OF THE COURTS' REQUEST FOR PUBLIC COMMENT:

Proposed Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans With Disabilities Act

October 3, 2023

Legal Services NYC | 40 Worth Street, Suite 606, New York, NY 10013
Phone: 646-442-3600 | Fax: 646-442-3601 | www.LegalServicesNYC.org
Raun J. Rasmussen, Executive Director | **William T. Russell, Jr.**, Board Chair

INTRODUCTION

Legal Services NYC ("LSNYC") hereby submits comments to the Administrative Board of the Courts' request for public comment on the Proposed Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act (hereinafter the "Proposed Rule").

LSNYC is the largest civil legal services provider in the country. LSNYC continues its 50-year tradition of fighting for racial, social, and economic justice by providing advice and legal representation to more than 110,000 low-income New Yorkers every year in regards to housing, disability, education, consumer, employment, family stability, public benefits, HIV, LGBTQ+, veterans, and immigration rights.

Our 600+ staff across the five boroughs regularly advocate for people living with disabilities before federal, state and city courts, as well as numerous administrative agencies. Both through our disability advocacy project and our other practice areas, our advocates represent thousands of individuals and families every year to uphold their rights under the Americans with Disabilities Act and associated federal, state, and city anti-discrimination laws.

DISCUSSION

Our organization thanks the Administrative Board of the Courts for allowing us to comment on the Proposed Rule governing judicial accommodation requests by litigants and their attorneys. To that end, we would like to address the following points on this letter:

- The bifurcated procedure for "judicial" versus "administrative" accommodation requests is unduly complex, burdensome, and inefficient, and does not support access to the court system for people with disabilities.
- The bifurcated procedure subjects individuals with invisible disabilities to heightened requirements, standards, and burdens.

- The Proposed Rule fails to promote the consistent handling of accommodation requests, in that it entrusts thousands of individual judges across the system with near-unbound discretion to resolve accommodation requests.

- The lack of an administrative appeal process forces individuals with invisible disabilities to undergo complicated interlocutory appeal procedures as the only means to have an accommodation denial reviewed.

- The Proposed Rule fails to allow guardians to request accommodations on behalf of their wards.

- The Proposed Rule's provisions allowing other parties to contest a requested accommodation, § (d)(2), are ripe for abuse in the adversarial process.

- The Proposed Rule's requirements for a written order granting or denying a requested accommodation, § (g), do not adequately protect the privacy of the requestor because, as written, they permit disclosure of the requestor's identity and the fact that the requestor has a disability.

The preamble to the Proposed Rule distinguishes between what the court system deems to be "administrative" accommodation requests, which lie outside of the scope of the Proposed Rule, and "judicial" requests, which involve the exercise of the court's inherent authority over the courtroom and, as such, "are by their nature beyond the power of court administrators to grant or deny." We see a number of problems with this bifurcated operation for evaluating accommodation requests.

1) THE BIFURCATED ACCOMMODATION PROCESS IS UNDULY COMPLEX, BURDENSOME, AND INEFFICIENT.

The current and proposed processes, which require separate channels for administrative and judicial accommodations, are unduly complex and burdensome on people with disabilities, as well as inefficient, leading to redundancies and wastes of resources.

Because of the artificial distinction between categories of accommodations, individuals often have to make multiple requests for similar or even identical accommodations. For example, the LSNYC housing practice assisted a person who was the full-time caregiver for his mother, the respondent in a nonpayment eviction case. Because the client's mother was homebound and could not safely be left alone, neither she nor her son could go in person to the clerk's office to file an

answer and avoid being defaulted and potentially evicted. The clerk's office initially refused to permit the son to file an answer on his mother's behalf telephonically. Finally, with MLS's assistance, the clerk allowed the telephonic answer. However, the son then had to file a separate accommodation request for a virtual appearance, even though his and his mother's need for the telephonic answer and remote appearance arose from the same disabilities and are similar accommodations.

Further, in forums such as New York County Civil Court where judges rotate frequently and rarely hear the same case twice, this Proposed Rule will likely force litigants to make multiple accommodation requests, which is extremely burdensome. Further, as discussed *infra*, p. 4, judges' views on appropriate accommodations and necessary documentation may vary greatly, which will lead to inconsistency in the granting and denial of accommodations.

2) <u>THE PROPOSED RULE DISPROPORTIONATELY SUBJECTS INDIVIDUALS WITH INVISIBLE DISABILITIES TO ITS PROCEDURES.</u>

The Proposed Rule disproportionately subjects individuals with invisible disabilities to the procedures established therein, which includes disclosing their disability to the judge overseeing their own case and potentially to other parties, including adversaries. On the other hand, individuals with visible disabilities—requiring accommodations such as mobility assistance, sign language interpreters, assistive listening devices, or Braille materials—may present their requests to non-judicial staff without the need to involve either the judge overseeing the case or other parties.

While we understand that certain accommodation requests—*e.g.*, adjournment requests or extensions of time to submit papers—may inconvenience adverse parties by delaying the proceeding, individuals with invisible disabilities should not be subjected to a more onerous and invasive procedure in order to receive the accommodations to which they are legally entitled. Disability laws do not make such a distinction between individuals with visible versus invisible disabilities, and neither should the Proposed Rule.

3) <u>THE PROPOSED RULE WILL HAVE A CHILLING EFFECT ON REQUESTS FOR JUDICIAL ACCOMMODATIONS.</u>

According to the Proposed Rule, individuals presenting judicial accommodation requests—again, predominantly those with invisible disabilities—will have their request heard by the judge overseeing their own case. This will inevitably have a chilling effect on people who may choose to not request an accommodation out of fear of having their disability prejudice the court's ultimate decision on the matter. This fear is grounded in reality: we note the disturbing report in the comment submitted by our colleagues at Disability Rights New York (DRNY), The Legal Aid Society (LAS), Mobilization for Justice (MFJ), and New York Lawyers for the Public Interest (NYLPI) that "[a]t judicial trainings about accommodations that MFJ and DRNY have provided, judges have explicitly stated that they would use information obtained from a reasonable accommodation request in their fact-finding on the merits of cases before them."[1]

4) <u>THE PROPOSED RULE PROMOTES A LACK OF CONSISTENCY AND UNFETTERED DISCRETION OVER ACCOMMODATION REQUESTS.</u>

It will be near-impossible for the court system to implement consistency in the handling of judicial accommodation requests where these are handled by thousands of judges across the court system and the Proposed Rule does little to guide the discretion of such judges. For example, section (c) of the Proposed Rule states that "in its discretion and only as may be reasonably necessary to determine the application, the Court may require the applicant to provide the Court with additional information about the person's disability and how it limits participation in the proceeding." Whereas, section (d) leaves it up to individual judges to decide whether an accommodation request is "germane to and necessary for the Court to consider in determining the merits of the underlying matter before it" such that disclosure to the other side is required.

[1] Letter to David Nocenti, Esq., from Maureen Belluscio (NYLPI), Anne K. Callagy (LAS), Jennifer Monthie (DRNY), and Daniel A. Ross (MFJ), October 2, 2023, p. 3, ¶ 4.

It is not difficult to imagine that judges may have vastly divergent views on how much "additional information" is required to justify a request, or which type of disability is "germane to…determining the merits" of the case. The same exact request may be handled differently judge-by-judge, even requests made by the same individual in two different cases. The experience of one LSNYC advocate illustrates this inconsistency, which the Proposed Rule's provisions will not prevent from reoccurring:

> *At first, it was very difficult to determine the proper procedure for each Part. I'd send an email to the court, the court attorney, clerk and opposing counsel and get no response. When a central email address for ADA requests was shared, I'd submit my request and hear nothing in return, forcing me to follow up individually with each Part.*[2]

Ultimately, "[a]fter numerous stressful experiences," this advocate "gave up and stopped requesting ADA accommodations."[3]

Without a unified process to handle all accommodation requests consistently and without interference by the judges overseeing cases, the risks outlined above are far too likely to materialize.

5) <u>THE PROPOSED RULE LACKS AN APPEAL MECHANISM.</u>

The risks discussed above are exacerbated by the fact that the Proposed Rule does not provide for an internal appeal system as required by the ADA and its implementing regulations. 42 U.S.C. §§ 12131, 12134, and 12205a; 28 C.F.R. § 35.107. Federal law mandates,

> *A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under [the ADA and its associated regulations], including any investigation of any complaint communicated to it alleging its noncompliance…or alleging any actions that would be prohibited….A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by [the ADA and its associated regulations].*

[2] Email from LSNYC advocate to drafter, September 29, 2023.
[3] *Id.*

28 C.F.R. § 35.107. Instead, a person who is denied an accommodation by a judge must file an interlocutory appeal through regular judicial channels.

In addition to violating the ADA, interlocutory appeals in this context may prove too complicated and burdensome for individuals with disabilities, in particular pro se litigants and litigants with intellectual disabilities. They also force individuals with disabilities—again, predominantly those with invisible disabilities—to spend time, effort, and resources navigating appellate procedures just to receive accommodations to which they are legally entitled and which will allow them to participate fully in the judicial process. This is a burden that non-disabled parties do not have to face.

Further, issuance and review of accommodation denials is not within the purview of most judges at any level, particularly given the sprawling and varied nature of the Unified Court System. A state or local government entity may deny an accommodation request that "would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." 28 C.F.R. § 35.164. However,

> *The decision…must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.*

Id. An individual judge, whether at the trial or appellate level, is not in a position to know whether a particular accommodation would impose an undue burden on the state court system as a whole.

Therefore, the Proposed Rule should provide for a straightforward internal review process so that all individuals with disabilities—no matter what the disability—can have a denied request reviewed quickly and efficiently. Such an internal appeal process already exists for administrative accommodations, and we invite the court system to think through a mechanism to afford the same type of procedural rights to individuals with disabilities requesting judicial accommodations.

6) THE PROPOSED RULE DOES NOT PERMIT GUARDIANS AD LITEM TO REQUEST ACCOMMODATIONS ON BEHALF OF WARDS.

The Proposed Rule allows attorneys to present accommodation requests on behalf of their clients, but it does not allow guardians ad litem to do the same on behalf of their wards. Guardians are appointed by the court precisely to protect the rights of vulnerable litigants. Oftentimes, such litigants are individuals with disabilities who may not have the ability to request an accommodation themselves. There is a high risk of qualifying individuals not being able to uphold their rights under disability laws if the Proposed Rule disallows guardians from presenting accommodation requests on their behalf.

7) THE PROVISIONS ALLOWING OTHER PARTIES TO CONTEST A REQUESTED ACCOMMODATION ARE RIPE FOR ABUSE IN THE ADVERSARIAL PROCESS.

Section (d)(2) of the proposed Proposed Rule invites third parties into the accommodation process and not just permits but mandates disclosure of personal information:

> *If the Court reasonably believes that granting the requested accommodation will be prejudicial, the Court **shall** disclose only the fact that an ex parte ADA accommodation application has been made and the particular accommodation the application seeks.*

[emphasis added] The standard for this required disclosure is low, merely that the requested accommodation be "prejudicial." Using the preamble's examples of "adjournments, extended time to submit papers, [and] schedule changes," p. 1, ¶ 2, as judicial accommodations, it is foreseeable that an adversary would claim prejudice due to delay: arguably, any delay in litigation is prejudicial to a party who does not benefit from that delay. It is also foreseeable that an adversary might inappropriately use the accommodation as a negotiating tactic: *e.g.*, offering consent to the accommodation in exchange for a concession from the requestor.

We note that, while § (d)(2) limits the information that can be disclosed to "the fact that an ex parte ADA accommodation application has been made and the particular accommodation the application seeks," this disclosure nevertheless reveals confidential information: namely, the

existence of the disability. Further, depending on the makeup of the case, the requestor's identity may be obvious: for example, if a *pro se* defendant in a consumer-credit case brought by a large corporation requests an accommodation, the disclosure mandated by the Proposed Rule *de facto* reveals the existence of the defendant's disability to the corporation's attorney. Such disclosure would be even more harmful if, for example, a Family Court judge revealed the existence of a *pro se* plaintiff's disability in an order-of-protection proceeding against the plaintiff's abuser or stalker.

As for the impact of this disclosure on counsel: in the world of litigation, disclosure of any perceived weakness—which, in our ableist society, includes disabilities—places an attorney at a disadvantage, particularly if the attorney is already a member of one or more marginalized groups. A LSNYC advocate who was forced to reveal the existence of a disability to opposing counsel as part of an accommodation request felt self-consciousness and additional stress, particularly after being required to ask opposing counsel to consent to the accommodation as though it were a favor such as email service. Disability accommodations are not favors or privileges, but rather legal entitlements whose purpose is to "ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity" in question. 28 C.F.R. § 35.164.

8) <u>THE PROPOSED RULE'S REQUIREMENTS FOR A WRITTEN ORDER ARE INSUFFICIENT.</u>

A) The required written order does not adequately protect the privacy of the requestor because it reveals the existence of a disability.

Section (g) of the Proposed Rule requires that a judge's "decision to grant or deny, in whole or in part, the ex parte application shall be issued promptly and memorialized in a written order." The judge must give copies of the written order to all parties, with any information about the requestor's "disability or limitations it imposes…redacted." § (g)(2). Unfortunately, this requirement, like that discussed in the preceding paragraph, does not adequately protect the requestor.

The Proposed Rule does not say whether it must include or omit the requestor's identity. However, as discussed in 7) above, even an order that does not state a litigant's name may disclose that person's identity and the fact that they have a disability by simple process of elimination.

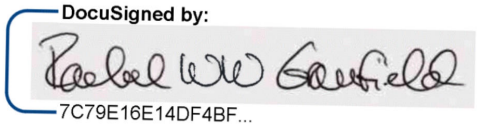
B) The required written order does not comply with the ADA.

As discussed in 5) above, the denial of an accommodation request because it "would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens," 28 C.F.R. § 35.164, requires extensive consideration by a senior official. The decision must be made by "the head of the public entity or his or her designee," which in practice would likely be the appropriate Administrative Judge or Supervising Judge. The decision must be made "after considering all resources available for use in the funding and operation of the service, program, or activity," a consideration not within the purview of an individual trial judge. However, the Proposed Rule specifically and only contemplates that the decision will be made by the trial judge.

CONCLUSION

Once again, we thank the Administrative Board of the Courts for the opportunity to provide the above commentary. Please feel free to contact the undersigned if you wish to discuss any of our organization's comments further.

Dated: October 3, 2023

By: 

Rachel W. W. Granfield

LEGAL SERVICES NYC
Rachel W. W. Granfield
Luis A. Henriquez Carrero

Meenan & Associates, LLC
Attorneys At Law

BY EMAIL rulecomments@nycourts.gov

October 4, 2023

To: Daniel Nocenti, Esq.
Office of Court Administration

From: Colleen M. Meenan, JD

I write to offer my comments on the proposed new rule that would authorize trial court judges to entertain, on an *ex parte basis*, certain requests for disability accommodations made pursuant to the American with Disabilities Act (ADA).

As an initial matter, I commend the Administrative Board of the Courts and the Chief Judge's Advisory Committee on Access for People with Disabilities on its efforts and considerations in formulating this thoughtful and necessary rule for judicial accommodations. I believe it provides a meaningful process for providing these accommodations by respecting confidentiality with limited exceptions.

I offer the following comments on the proposed rule.

I. Definition of Disability is Under Inclusive

The proposed rule offers the opportunity for judicial accommodations for disabilities as defined by the Americans with Disabilities Act (ADA), a federal law. This law defines disability in a much different way than how it is defined under State and City law. Therefore, I believe by using the federal law as the benchmark for defining disability has the potential to be under inclusive and confusing. It is under inclusive because a person may be disabled, but not as defined under the ADA, thus excluded from coverage under this rule. Also, it may create a confusing situation for a judge handling a disability request which is not one fitting the ADA definition.

For example, under federal law, disability is defined as (1) a physical or mental impairment that substantially limits one or more major life activities or (2) a record of such impairment or (3) being regarded as having such an impairment. 42 USC § 12102(1). A reasonable accommodation is one that does not cause an undue hardship, and in the employment context, the employer bears the burden of proof of hardship. 42 USC §§12111(10), 12112(b)(5)(A).

By contrast, the State HRL does not require a plaintiff to show substantial limitations in major life activities to quality as disabled. Disability is defined merely as any of the following: (1) a mental or medical impairment resulting from anatomical, psychological, genetic or neurological conditions that (a) prevents the exercise of a normal bodily function or (b) is demonstrable by medically accepted clinical or laboratory diagnostic techniques; or (2) a record of such an impairment; or (3) a

condition regarded by others as such an impairment. NY Exec. L. §§ 292 (21-e), 296(3)(b).

The City HRL is even more expansive and defines disability purely in terms of physical, medical, mental or psychological impairment or a history of such impairment. NYC Admin. Code §§ 8-102(16).

While greater protections exist under the City HRL, the City of New York does not have the power to waive the State's sovereign immunity and thus, the anti-discrimination code provision is not applicable to instrumentalities of the State, such as the courts (see, e.g. *Jattan v. Queens Coll. Of City of N.Y*, 64 AD3d 540 [2d Dept 2009]). As noted in *Jattan*, the State legislature waived sovereign immunity when it passed the New York State Human Rights law and made its provisions application to the State.

Accordingly, and since the purpose of the rule is "critical to promoting access to justice for individuals with invisible disabilities," I ask that the Advisory Committee consider eliminating the reference to the Americans With Disabilities Act as the sole source for the definition of disability in the proposed rule. Disability should be as defined under either federal or state law.

II. Exceptions as Contained in Section (d)(1)

The above noted exception does not define what "pertinent information" the Court can disclose which suggests that the Court could disclose the nature of the disability, including a general description of or any details about the disability and the limitations is imposes in the appropriate circumstances. If that is the intended implication, I believe the Rule should so state.

If not the intended implication, I think the Rule should define what "pertinent information" the Court may reveal in this circumstance to avoid confusion and unnecessary embarrassment, as unintended as it may be.

From: S Lee <sleeny27@gmail.com>
Sent: Monday, October 2, 2023 11:59 PM
To: rulecomments
Subject: Comments on Judicial Accommodations Under the Americans with Disabilities Act

Categories: ADA

Dear Mr. Nocenti,

My comments on the proposal mainly center around making sure people who work in the court are aware of disability rights and this accommodations process. That includes judges, help center personnel, clerks, court officers, and other court staff. Also, all court personnel should be educated and trained in respectfully, and in a caring, helpful manner, directing those with disabilities to court staffers who are knowledgeable about how to request accommodations. The process for disability accommodations should also be something easy to do and not create a bureaucratic hurdle for those with disabilities.

I will speak from personal experience: The judges for my case historically just spoke to me one-on-one, personally, to help accommodate me. Judge Douglas McKeon had said it was fine if I had to bring a friend, social worker, or family member to help read something to him. My disability social worker, who is wheelchair-bound, actually accompanied me to a few conferences with Judge McKeon in the past to help read documents to Judge McKeon and advocate for me, and that was arranged one-on-one with me without any formal application process. Judge George Silver did the same and was accommodating by speaking with me one-on-one. I also had a meeting with Judge Alice Schlesinger through accommodations by just speaking to her one-on-one.

Because of these past experiences, it was very jarring and disappointing for me to be treated in such a demeaning manner by the current judge for my case -- Judge Erika Edwards -- who basically cuts me off while I try to start speaking, doesn't listen to what I am saying, is falsely accusatory toward me without knowing the facts, or flat out does not allow me to speak or respond at all. People with disabilities should not be treated in this demeaning and abusive manner.

I had informed Judge Edwards's clerk about my disabilities prior to the first conference with the judge, but this clerk made no attempt to accommodate me nor was she aware of the procedure or if there is one. I had worked hard on preparing a supplemental affidavit for in camera review that is critical for the motion decision, and I asked how to submit that to the judge. I had asked the clerk if I needed to speak to the judge (like I had in the past) to make sure the judge knew that I would be needing an assistant during the conference and also regarding how she wanted the supplemental affidavit to be submitted, but the clerk did not want to talk to me and kept saying that the judge said they could not have ex parte communications. She was very closed and treated me as if I was doing something improper when I was merely asking for clarification on important matters regarding my case and disability accommodations. The judge and her clerk basically did not want to speak to me and tried to make it appear as if I was having ex parte communications when I was asking critical administrative questions regarding how to submit the supplemental affidavit to the judge and how to go about speaking to the judge about disability accommodations.

Ultimately, I was left without any guidance on the matter, and then the day of the conference arrived. In the middle of that first conference, I mentioned that my ADA assistant was with me to help read a supplemental affidavit to her, but the judge was dismissive towards me, refused to accept the supplemental affidavit that I had worked hard on to prepare, and did not allow my ADA assistant to help read it to her. The judge brought up whether I had applied for accommodations mid-way through the conference at which point I asked the judge how to "apply" and she did not know the process either. How can she ask me if I applied for something she herself does not know about the process either and for which no one else in the court is aware of?

I would welcome open constructive dialogue with you, Mr. Nocenti, about how to help people with disabilities navigate the court system which is very intimidating and, currently, not disability-friendly. Please reach out to me at your earliest convenience. I would be happy to speak with you and try to improve the current conditions within our courts.

Thank you. I hope to hear from you.

Sincerely and respectfully,
Susan Lee

NYLAG
New York Legal Assistance Group

October 2, 2023

David Nocenti, Esq.
Counsel
Office of Court Administration
25 Beaver Street, 10th Floor
New York, New York 10004
rulecomments@nycourts.gov
via email

Re: Comments on Proposed Amendments to Part 55, 22 N.Y.C.R.R. § 52

Dear David Nocenti,

The New York Legal Assistance Group ("NYLAG") appreciates the opportunity to submit comments on the Chief Judge's Advisory Committee on Access for People with Disabilities ("Advisory Committee")'s new rule proposal to allow litigants with disabilities to request judicial accommodations through an *ex parte* application. We praise the Advisory Committee's efforts to create a new rule that would improve accessibility for people with disabilities. Based on our experience working with many individuals needing accommodation, we offer additional suggestions we believe would further improve accessibility for litigants with disabilities.

NYLAG is a leading civil legal services organization combatting economic, racial, and social injustice by advocating for people experiencing poverty or in crisis. We provide comprehensive, free civil legal services to immigrants, veterans, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, people with disabilities, patients with chronic illness or disease, as well as others in need of free legal services. NYLAG regularly represents individuals with disabilities in the New York State courts and has long raised concerns about procedures for litigants receiving and processing requests for reasonable accommodations under the American with Disabilities Act ("ADA"), particularly in New York City Civil Court.

NYLAG is committed to combatting racial injustice through our work, and we note that the individuals and communities we serve who would be directly affected by the proposed rule—litigants in Housing, Civil, and Family Court in New York City—are predominantly and disproportionately Black, Indigenous, People of Color (BIPOC). For example, 44.3% of Bronx County residents (a borough where NYLAG regularly practices) self-identify as Black and 56.6% as Hispanic/Latinx.[1]

[1] https://www.census.gov/quickfacts/fact/table/bronxcountynewyork/RHI125222#RHI125222
Further, according to the Division of Technology and Court Research, from January 1, 2023 through September 25, 2023, OCA processed 35,447 eviction cases against Bronx residents. The Bronx Borough Health Equity Report indicates that 24.6 percent of the population have a disability. According to the Health Equity report 5.6% of the population have cognitive difficulty, 7.0% have ambulatory difficulty, 3.4% have

First, the proposed rule does not take into consideration that many courts do not have a judge assigned initially, before the first appearance, to each individual case. Currently, the proposed rule requires a litigant to submit an accommodation request to a judge or judicial officer. ¶ (a). But, certain courts do not assign a judge when the case is initiated. Instead judge assignments are rotation-based. For example, in New York City Civil Court, judges are not assigned to a case in a specific part but instead rotate into a part on any given day. This means that for litigants who are not assigned a judge, there is no designated individual to whom to make the request for accommodation. The rule does not provide any mechanism to direct litigants without individually assigned judges to a specific judge for adjudication. For example, in the consumer part where cases are never assigned to a specific judge, an individual seeking accommodation can spend hours trying to navigate their case, only to learn first that there is no judge assigned to their cases and then that there is no one available to take their request. This leaves litigants with the option of appearing in court (which they cannot) or defaulting on their case. NYLAG recommends clarifying the rule so that in cases where the Individual Assignment System is not utilized, an assignment judge should be designated to consider judicial accommodation requests prior to a scheduled court appearance. This would ensure that requests are timely made and eliminate the undue hardship of requiring individuals with disabilities to physically appear in court, a process which undermines the very goal of the proposed rule itself.

Second, under the proposed rule a litigant who wishes to make an *ex parte* judicial application for a reasonable accommodation under the ADA must do so in writing. ¶ (a)(1). Imposing a requirement for written requests ignores the accessibility issues that litigants might face which would prevent them from being able to appear in court in the first place. As an example of how this issue can play out in practice, NYLAG's office was contacted by a *pro se* litigant who was served with a non-payment petition. Because she was homebound due to medical issues, NYLAG contacted the Housing Court on her behalf. The court staff informed NYLAG that filing an answer by phone was not a possibility, and the litigant could mail a notarized answer—an impractical and unnecessary burden for this homebound litigant. First, we recommend that the proposed rule make explicit that litigants can make telephonic reasonable accommodation requests. While the proposed rule states that individuals who, because of a disability, are unable to put their request in writing "may obtain help in doing so from court personnel," ¶ (b), it does not assign any specific court personnel to which they should go to seek help, nor does it obligate any specific court personnel to assist them. This means that a litigant who is already facing the challenges of a disability such as a hearing deficit, must navigate an unknown system to track down the appropriate court personnel to assist them with this written request. In the past, NYLAG clients have reported being unable to locate court personnel willing to assist them, let alone who are aware of the ADA accommodation procedure. Specifically allowing telephonic requests to an assignment or other previously identified and designated judge considering accommodations would eliminate the undue hardship of requiring individuals with physical or chronic disabilities to appear in court. This provision should be added to the proposed

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vision difficulty and 1.7 have hearing difficulty.
https://www.health.ny.gov/statistics/community/minority/docs/mcd_reports_2021/bronx_county_bronx_borough.pdf.

rule so the full effect of the rule and its goals can be realized. Additionally, as provided the rule does not contemplate *how* litigants should submit written accommodation requests. The Advisory Committee should allow requests by email and fax and should consider creating a web portal or similar online system that litigants can use to submit requests.

Third, we are concerned that the proposed rule's requirement that litigants state their disability and "how it limits the person's ability to meaningfully participate in the proceeding," ¶ (a)(2), goes much farther than what the ADA requires and has possible detrimental effects on litigants. Specifically, the ADA provides "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…" 42 U.S.C. § 12132. But the ADA does not contemplate that a qualified individual demonstrate *how* they are limited. Individuals who require reasonable accommodations and have a right to access public spaces need only demonstrate that without the reasonable "modification" or accommodation they would be prevented from accessing public benefits, programs, or activities. We encourage that the proposed rule be revised to align with the ADA's standard and this requirement to show "how" the disability limits participation be eliminated.

We are particularly concerned that this provision would have especially detrimental effects on BIPOC litigants, who already face discrimination and barriers to justice, as they are already more likely to be disbelieved by the judicial system because of racialized beliefs, stereotypes, and implicit racial bias about their untrustworthiness[2] Requiring BIPOC litigants, who already experience discrimination, to prove how their disability limits their ability to participate in court proceedings invites judges to doubt whether their accommodation request is legitimate. Eliminating this requirement from the proposed rule may prevent BIPOC litigants from being further scrutinized because of their race.

Fourth, an *ex parte* application may only be made by a party to the proceeding or the party's attorney. ¶ (b). This rule fails to account for the important role that social workers, advocates and organizers, guardian ad litems, and others play in the lives of differently-abled litigants who require judicial accommodation. In many circumstances, such as NYLAG's efforts to assist a *pro se* litigant with an accommodation request described above, a litigant has a representative precisely because they are unable to complete these tasks on their own in the first place. Requiring them to do so without the assistance of their designated assistant only highlights, not ameliorates, this challenge. We urge that proposed rule include language that would allow individuals other than the party to make a request on their behalf.

Fifth, the Advisory Committee's rules direct judges to order written applications and supporting documents to be filed under seal *only if* the *ex parte* application complies with the requirements of this rule. ¶ (f). As the Advisory Committee recognizes, people with disabilities may be unwilling to disclose their status for fear of discrimination, among other

[2] Mahzarin R. Banaji, Susan T. Fiske & Douglas S. Massey, *Systemic Racism: Individuals and Interactions, Institutions and Society*, Cognitive Research Journal (December 20, 2021) https://cognitiveresearchjournal.springeropen.com/articles/10.1186/s41235-021-00349-3.

concerns. The rule should be modified to require all accommodation requests to be filed under seal, even when they do not comply with each and every requirement of the rule.

Sixth, the proposed rule requires that a judge issue a decision granting or denying a reasonable accommodation request in whole or in part. ¶ (g). However, the rule does not allow for the possibility of appealing the denial, in whole or in part, of a reasonable accommodation request. We strongly encourage the proposed rule to specify a process for allowing applicants who are denied reasonable accommodations, to request to appeal the decision. This appeal need not necessarily be a formal appeal and could include, for example, expedited review by the chief judge of a court or by a particularly-designated judge specializing in ADA issues. There are a multitude of reasons why a litigant may have failed to convince a judge of an accommodation, such as not having corroborating evidence available at the time, not having supportive services to articulate their disability in a way the judge can understand. For example, one NYLAG client's accommodation request to adjourn a court date due to scheduled heart surgery was denied; without an appeal process, the client had to prioritize her immediate physical health and withdraw the case.

Finally, for years, we have seen litigants have been routinely given incomplete or conflicting information about their rights to request accommodations. This has led to such dire consequences as litigants missing their appearances and defaulting when they are provided with incorrect information. In an Issue Brief, NYLAG shared lessons learned from remote court proceedings during the COVID-19 pandemic and made recommendations for the Unified Court System.[3] We proposed that courts have clear ADA policies available through their websites and at the clerk's office as well as including detailed instructions for requesting accommodations and training clerks, judges, and other relevant staff on procedures concerns requests for accommodations. When this rule is promulgated, we urge OCA to create and widely distribute written policies to court personnel, ADA liaisons, and judges, to create *pro se* DIY forms, and to train relevant staff on the same, to ensure that the rule is applied uniformly throughout the New York State Unified Court System.

Thank you for the opportunity to provide feedback.

Sincerely,

Danielle Tarantolo
Director, Special Litigation Unit
New York Legal Assistance Group
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New York, New York 10004
dtarantolo@nylag.org

[3] NYLAG, *Access to Justice in Virtual Court Proceedings: Lessons from Covid-19 and Recommendations for New York Courts*, https://nylag.org/wp-content/uploads/2021/08/NYLAG_CourtsDuringCovid_WP_FINAL2.pdf.

Legal Services for Elder Justice

JASA

Proud to be the go-to agency for older New Yorkers.

Re: Public Comment on Adopting a New Rule of the Chief Judge to Facilitate requests for Judicial Accommodations Under the Americans with Disabilities Act

Dear Advisory Committee:

This letter is written on behalf of JASA|Legal Services in Elder Justice ("LSEJ"). LSEJ was established in 1981 to provide legal services to low-income and at-risk older adults in fulfillment of JASA's mission of assisting older adults remain independently and with dignity in their homes and communities. LSEJ provides free civil legal services throughout Queens County in the areas of evictions, foreclosures and real property fraud; SSI and Social Security; Medicaid, Medicare, elder abuse and financial exploitation. LSEJ represents clients in state and federal trial and appellate courts and at administrative hearings. As a result of the work we do we see many older adults needing reasonable accommodations from the courts and government agencies in order to access and fully participate in programs, services and court proceedings.

The Chief Judge's Advisory committee proffered adopting a new rule that would authorize trial court judges to entertain, on an *ex parte* basis, certain requests for disability accommodations made pursuant to the ADA. First LSEJ wants to acknowledge that the proposed rules will address some of the issues facing those with disability. Below are LSEJ's comments and suggestions to the proposed rules.

As a preliminary matter a person's entitlement to accommodations because of a disability is broad under the law and should be granted if the accommodations do not fundamentally alter the courts. As a result, LSEJ recommends not having the decision made by the various judges presiding over the cases; but instead, having each court having an ADA office/unit. This office could then process and make all ADA type reasonable accommodations and determinations. This office can include a judge dedicated to reviewing these requests. Otherwise, individuals needing accommodation may feel intimidated or reluctant to approach the very judge who will make the final determination on their case. In addition, individuals needing accommodations may find when appearing before more than one judge/court part that they have inconsistent ADA determinations and accommodations. An ADA office should lead to more consistent ADA determinations and outcomes.

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Funded under contracts with the NYC Department for the Aging as part of the Older Americans Act Program, the New York State Attorney General Homeownership Protection Program and the Unified Court System

Finally, it should be easy for a disabled individual needing an accommodation to make an ADA request-it should be in one place and not split between various court parts, clerks and judges.

LSEJ comments:

The framework in the proposed rules, at various points, seem to focus on the nature of the disability and not on the accommodation for a disability as required by the ADA.

Section (a) "accommodation that can be granted only by a judge or judicial officer…" LSEJ is concerned by the process itself both as allowing the request to be decided by the judge hearing the matter as well as allowing a party who is in direct conflict with the requesting person (opposing party) and is outside the court to have any part in the decision making process. This would place the person requesting the accommodation at a decided disadvantage. Many may simply decide to forgo making the request.

Further, there will be inconsistent determinations if different presiding judges are able to decide who should be granted an accommodation.

Section (a)(1) be in writing … An accommodation should be made in any manner or method the person with the disability is able to present before the court.

Section (a)(2) of the Proposed Rule requires applications for accommodations to "state the disability and explain how it limits the person's ability to meaningfully participate in the proceeding," which is not the standard in the ADA. The key question is whether the requested accommodation will permit the person to participate in the programs, services, and activities of the court system and can reasonably be provided by the court system, as required in Section (a)(3) of the Proposed Rule. As written, the Proposed Rule will incorrectly invite judges to focus on whether the person is "sufficiently" disabled and demand unnecessary medical documentation to support an accommodation request.

This standard is too high and gives the judges too much power. A health care facility or individual recommendation should be sufficient. If more is needed then an attorney affirmation should be added as the attorney has to work with the client and has intimate knowledge of the client's abilities.

Section (b) concludes, "Individuals who, because of a disability, are unable to put their request in written form may obtain help in doing so from court personnel." There may be instances that telephonic or virtual assistance by Court personnel may not be applicable as only a party or an attorney can make an accommodation (not a GAL or Guardian etc.). Further under the ADA individuals need to just make their need known. They do not need to use specific words "reasonable accommodation" or submit

any specific written request. There are also many disabled persons who cannot use the telephone or appear virtually. Someone with a POA should be able to make an application. Additionally, anyone who can demonstrate a relationship with the party and knowledge of the condition should be able to make the application. This would make family members, friends, neighbors, and others able to make the application before making a GAL application.

Section (d)(1), in limited circumstances, authorizes and limits disclosure by the Court to the existence of the application "and the pertinent information" ... Undefined, "pertinent information" is too broad and can be read to allow a judge or judicial hearing officer to reveal disability/medical information the rule otherwise purports to maintain as confidential. Pertinent information should be stricken. The exception to confidentiality in Section (d)(1) should be a concern in all cases. Especially with medical records submitted to the Court solely for ADA Accommodation requests, any disclosure of HIPPA-requested information by the Court to another is legally problematic and should not be permitted.

Further, the exception to confidentiality in **Section (d)(2)** of the Proposed Rule should be removed as it affords no privacy or protection. These determinations should be confidential and other affected parties who are generally in conflict with the requesting party should not be given any opportunity to submit arguments regarding the appropriateness of accommodation by submitting arguments about fairness to themselves. If a party needs an accommodation is told that their abusive spouse and/or harassing landlord will be told about the request and asked to submit arguments this could very well have a chilling effect. Any person who have their own self-interest are in conflict and should not be privy to this discussion or determination.

Section (e)'s last clause ("and not disclosed except as may be provided for in paragraph (1) of subdivision (d), above"). This section appears over broad. Ex parte communications with the Court in these circumstances should remain confidential.

New Section – Appeal –There should be an appeals process. A process that will provide a prompt review and decision.

Conclusion

LSEJ accommodations for persons with disabilities is an essential part of access to justice and equal, fair representation in the courts. Without rules that are far thinking and far reaching those with disabilities will continue to be at a severe disadvantage through no fault of their own. Further they will have no redress and will be denied fair and due process.

National Center for Law and Economic Justice
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Phone: (212) 633-6967
Email: info@nclej.org

October 2, 2023

David Nocenti, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 10th Fl.
New York, NY 10004

Re: Public Comment on Office of Court Administration's Proposed Rule of the Chief Judge to Establish a Judicial Accommodations Request Process

Dear David Nocenti,

The National Center for Law and Economic Justice ("NCLEJ") appreciates the opportunity to submit comments on the Office of Court Administration's ("OCA") proposed Rule of the Chief Judge (Part 52, 22 NYCRR § 52). NCLEJ advances racial, economic, and disability justice for low-income families, individuals, and communities. Our advocacy focuses on preserving and maintaining access to government benefits; advancing the rights of lower wage workers; combatting abusive debt collection and wealth extraction; and advocating for disability justice. For decades, NCLEJ has represented individuals with disabilities and advocated for their due process rights and rights under the Americans with Disabilities Act ("ADA").

Courts have an affirmative duty to remove obstacles to equal participation for people with disabilities. Many such obstacles exist in courtroom settings for disabled parties, and we commend OCA for seeking to create a process for disabled litigants and attorneys to request reasonable accommodations. As the proposal acknowledges, many disabled people choose not to disclose their status as disabled due to stigma and discrimination, among other reasons.

Although the intentions behind the proposed rule are good, the rule itself falls short in numerous important ways and risks perpetuating disability discrimination rather than eliminating it. We are deeply concerned that the proposed "judicial accommodation" process would impose needless obstacles and increase opportunities for discrimination and breach of confidentiality. As the proposal acknowledges, many disabled people choose not to disclose their status as disabled due to stigma and discrimination, among other reasons. We urge OCA not to enact this rule as written, and instead convene with disability rights organizations to create a different, more accessible mechanism for disabled people to request the types of accommodations contemplated by this proposed rule. Below, we detail why we believe this rule may harm parties with disabilities and remind OCA of the ADA's mandates in order to guide the redrafting.

I. Courts' Duty to Ensure Access and Non-Discrimination Under the ADA

a. Broad Definition of Disability and Reach of ADA Protections

The Americans with Disabilities Act ("ADA") was passed in order "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). At the time, Congress noted that "discrimination against individuals with disabilities continues to be a serious and pervasive social problem." *Id.* § 12101(a)(2). Although the ADA was meant to be broad in coverage and scope, numerous Supreme Court rulings after its passing interpreted the ADA's language narrowly. In response to such restrictive interpretation and application by courts, Congress passed the ADA Amendments Act ("ADAAA") in 2008 to "make it easier for people with disabilities to obtain protection under the ADA." 28 CFR § 35.101(b). Per the ADAAA, the term "disability"[1] must be construed broadly so individuals can receive as much protection against discrimination as possible. *Id.* Similarly, the standard for considering whether an impairment is "substantially limit[ing]" is not demanding, nor does it merit extensive analysis. *Id.* § 35.108(d)(1)(i-ii).

Title II of the ADA applies to public entities, including State governments and departments, agencies, and other instrumentalities of a State or local government. *Id.* § 12131. Thus, OCA must comply with the ADA and may not exclude anyone with a disability, by reason of such disability, or deny disabled people "the benefits of the eservices, programs, or activities" of state courts. *Id.* § 12132; 28 CFR § 35.130(b)(1)(i-iii). Unfortunately, the proposed rule does not comport with the broad language and intent of the ADA and ADAAA.

b. Requesting a Reasonable Accommodation

Pursuant to Title II of the ADA, state courts must "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability[.]" 28 CFR § 35.130(b)(7)(i). OCA's proposed rule, at § (a)(2), requires that someone requesting a reasonable accommodation specify how their disability limits them, as opposed to the modification needed in order to enjoy equal access to the courts. This is not the correct standard. The ADA primarily focuses on public entities *eliminating* discriminatory practices and providing reasonable accommodations, not on individuals having to prove they are disabled. *See* 28 CFR § 35.101(b); *see also* 29 C.F.R. § 1630.2(o). We strongly urge OCA to omit this requirement from the final rule and conform to the standard set by federal law.

The proposed rule does not suggest whether the process for requesting reasonable accommodations is interactive, as is the case in Title I employment contexts. Under Title I, a

[1] The ADAAA defines "disability" as "A physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment[.]" 28 CFR § 35.108(a)(1). For a non-comprehensive list of physical and mental impairments, see *id.* (b)(2).

reasonable accommodation is a change "in the way things are customarily done that enables an individual with a disability to enjoy equal … opportunities." 29 CFR § 1630(2)(o). We strongly believe the final rule should contemplate an interactive process, with a requirement for the decisionmaker to affirmatively engage in a collaborative approach with the requester. The rule should also require the court to create and maintain written documentation of any back-and-forth to create a record in case further accommodations are needed or an appeal is necessary. At the same time, the final rule should permit oral requests for accommodations and should ***not*** require that the litigant make accommodation requests in writing, as this itself could impose an unlawful barrier under the ADA, particularly for disabled people who also have limited written English proficiency.

c. Making a Determination

Entities considering requests for reasonable accommodations may request supporting documentation only when a disability and/or the need for accommodation is not obvious or apparent.[2] Further, "[a] public entity may not make unnecessary inquiries into the existence of a disability."[3] However, the proposed rule allows judges to request additional information in their "discretion and only as may be reasonably necessary to determine the application." This conflicts with the ADA's safeguards. Section (c) of the proposed rule places no limit on the type of information that judges may request, nor on when judges may request information to begin with, because "reasonably necessary" is an extraordinarily vague standard. Such an open-ended provision raises serious concerns that different judges will apply different standards and require differing levels of "proof" to establish disability. This risks creating a system where a requester is pressured to demonstrate they are "disabled enough" to warrant receiving an accommodation, in violation of the ADA. *See* 28 CFR § 35.101(b) ("The question of whether an individual meets the definition of disability under this part should not demand extensive analysis.").

The proposed rule also does not require the decisionmaker to offer an alternative to the requested reasonable accommodation should the request be denied or only granted in part. OCA must rectify this oversight in the final rule to ensure people with disabilities have equal access to the courts. Further, the proposed rule does not restrict the decisionmaker from categorically rejecting requests for specific types of reasonable accommodations, such as appointment of an attorney. It is essential that the language of the final rule forbid such categorical exclusions in order to comply with the ADA's individualized determination mandate.

Finally, under the ADA, a decisionmaker may deny a request for a reasonable accommodation for only three reasons: (1) the requester is not a qualified individual with a disability under the ADA; (2) the request would create an undue financial or administrative burden on the court; and (3) the request would fundamentally alter the nature of the service, program, or activity. OCA's proposed rule again strays from the ADA by failing to incorporate these

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[2] Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada (last accessed Sept. 28, 2023).
[3] Title II Technical Assistance Manual, https://archive.ada.gov/taman2.htm (last accessed Sept. 28, 2023).

limitations on denials. The final rule should incorporate limitations on denials, taking into account the principles below:

First, while a decisionmaker may deny a request for a reasonable accommodation if the individual does not meet the definition of disabled under the ADA, such a finding ought to be rare, and investigation into whether an individual is disabled must be limited. The focus of the reasonable accommodations process is not on whether the requester is disabled, but on what modification(s) the entity must make to ensure equal participation.

Second, and of particular concern here, a decisionmaker may deny a request if granting it would create an undue financial or administrational or administrative burden on the court. NCLEJ worries that some courts might rely on this provision to deny requests purely due to staffing constraints, which would create an uneven implementation of the final rule across the state. However, the "undue burden" provision does not create an absolute defense or relieve the court from its obligations to people with disabilities. If a decisionmaker denies a request because it would result in an undue burden, they must still take "any other steps necessary to ensure that individuals with disabilities receive the benefits or services provided by the public entity."[4] The final rule must contain robust safeguards, mirroring the ADA and implementing regulations, to ensure individuals with disabilities can participate "*in all but the most unusual cases*."[5]

II. Accommodation Request Process

a. Bifurcation of Judicial and Administrative Accommodations

We are concerned that the proposed bifurcated request process for reasonable accommodations, where some accommodations can be granted by court staff and others must be approved by a judge, will cause confusion for litigants and increase the difficulty of obtaining the accommodations required for disabled individuals to equally participate in, or receive equal benefits from, the court's proceedings. The proposed rule applies to "accommodation[s] that can be granted only by a judge or judicial officer," but does not delineate the types of accommodations included in this category.[6] "Administrative" accommodations that can be granted by court staff are not covered by the proposed rule.[7] Although OCA's ADA website provides some guidance on the distinction between "judicial" and "administrative" accommodations,[8] the rule itself does not. Litigants are likely to be unsure which process to follow for a given accommodation request, especially *pro se* litigants. This may cause delays in getting accommodations approved or dissuade

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[4] Americans with Disabilities Act Title II Regulations, U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, https://www.ada.gov/law-and-regs/title-ii-2010-regulations/ (last accessed Sept. 7, 2023) (emphasis added).
[5] *Id.* (emphasis added).
[6] New York State Unified Court System Office of Court Administration, Request for Public Comment on Adopting a New Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act (August 17, 2023) (hereinafter "Request for Public Comment"), Exhibit A (Proposed Rule), § (a).
[7] Request for Public Comment; *see Reasonable Accommodations for Court Users*, NEW YORK STATE UNIFIED COURT SYSTEM, https://ww2.nycourts.gov/Accessibility/CourtUsers_Guidelines.shtml (last visited Sept. 28, 2023).
[8] *How to Request an ADA Accommodation*, NEW YORK STATE UNIFIED COURT SYSTEM, https://ww2.nycourts.gov/ada-accommodation-request-process-32956#how1 (last visited Sept. 28, 2023).

litigants from requesting accommodations at all. The accommodations request process should be as simple and streamlined as possible, and having two different processes frustrates that goal.

Additionally, some administrative accommodations may be ineffective if not coupled with accommodations that are currently categorized as "judicial." For example, a litigant can receive an administrative accommodation to receive court documents in an alternative format like Braille or audio, but if it takes time to convert the documents into the necessary format, the litigant may also require an extension of filing deadlines—a judicial accommodation under the proposed rule. The proposed rule does not address these situations. Overall, the bifurcated accommodation request process contemplated by the proposed rule will likely make accommodations less accessible and less effective.

b. Provision of Forms

The final rule should be accompanied by a form or template for accommodation requests in order to make the request process more accessible and streamlined. OCA has created a form for administrative accommodations requests as part of a pilot program in a limited number of courts.[9] Many other states provide a standard form for litigants in all state courts to use to request accommodations.[10] Michigan's form provides a good example of language that is consistent with the proper construction of the ADA discussed in Part I, *supra*, presented in an easy-to-understand format.[11] OCA should make a form available for all kinds of accommodations requests in all courts statewide. The form should be easily accessible on OCA's ADA website and in court buildings.

Without a template, *pro se* litigants in particular may not know what information to include in their request. A form would reduce the administrative burden of requesting accommodations and prevent delays caused by the omission of necessary information. A form also reduces the risk of misunderstanding what the ADA allows in requesting and granting reasonable accommodations. With a form, applicants are less likely to share more information than is necessary, and courts are less likely to violate the process laid out in the ADA, as discussed in Part I, *supra*.

c. Assistance Requesting Accommodations

Section (b) of the proposed rule states that litigants who are "unable to put their request in written form" due to a disability may receive assistance from court staff.[12] This language is unduly restrictive. Litigants who have difficulty drafting a written request should be permitted to receive assistance even if they are not completely "unable" to do so. Assistance drafting a written request can itself be a reasonable accommodation, and accommodations must be provided whenever they

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[9] *Accommodation Request Form*, NEW YORK STATE UNIFIED COURT SYSTEM, https://portal.nycourts.gov/ada-wizard/ (last visited Sept. 28, 2023).
[10] *See, e.g.*, *Request for Reasonable Accommodations and Response*, https://www.courts.michigan.gov/4a5644/siteassets/court-administration/policiesprocedures/mc70.pdf (last visited Sept. 28, 2023).
[11] *Id.*
[12] Request for Public Comment, Exhibit A (Proposed Rule), § (b).

are "necessary to avoid discrimination on the basis of disability,"[13] a significantly broader standard than "inability."[14] Additionally, litigants with disabilities may require assistance submitting accommodations requests for reasons unrelated to their disability, such as low English proficiency or unfamiliarity with court processes; these litigants should also receive the help they need to obtain equal participation in court proceedings. It is also worth noting that Title I of the ADA does not require requests for reasonable accommodations to be in writing; any form of communication suffices.[15] A general statement that people who require assistance compiling an accommodations request may obtain help from court personnel would better address litigants' needs.

d. Notices

Notices should be posted prominently in courthouses and on OCA's ADA website stating that an accommodations request form is available and that court staff can provide parties with assistance in completing it. Notices should also be available describing the process for contesting a decision to deny an accommodation or grant it only in part. Notices and any form or template for accommodations requests should be handed out in the court clerk's office for individuals who appear with questions and should be shared with legal services offices throughout the State. Such notices and forms must also be made available in Braille and online versions must be fully accessible.

e. Affidavit Requirement

The affidavit requirement in § (a)(5) of the proposed rule is also likely to be a barrier for many litigants.[16] The proposed rule requires litigants to follow the process for *ex parte* motions provided for in CPLR 2217(b), which dictates that such motions must be accompanied by a sworn affidavit. Complying with the formalities of an affidavit is highly burdensome for *pro se* and low-income litigants. OCA should consider whether any alternative process could be used.

f. Subsequent Requests for Accommodations

If a litigant's request for an accommodation is granted—whether by a judge or by court staff—and the litigant subsequently asks for additional accommodations in the same matter or another matter in the same court, any final rule should make clear that litigants cannot be required to start from scratch. Litigants should be permitted to rely on previously submitted information and

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[13] 28 C.F.R. § 35.130(b)(7)(i).
[14] *Id.* § 35.108(d)(1)(v) ("An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting."); *id.* § 35.108(d)(ii) ("The primary object of attention in cases brought under title II of the ADA should be whether public entities have complied with their obligations and whether discrimination has occurred, not the extent to which an individual's impairment substantially limits a major life activity."); *see also, e.g.*, *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1134-35 (9th Cir. 2012).
[15] Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada (last accessed Sept. 28, 2023).
[16] Request for Public Comment, Exhibit A (Proposed Rule), § (a)(5).

any prior determinations to support the new request.

g. Contesting a Denial

If an accommodations request made through the proposed *ex parte* process is denied, it appears that the only way to contest this determination is through an appeal under CPLR 5704. Filing an appeal is a daunting prospect for a *pro se* litigant, and disabled parties may experience particular difficulties. OCA should consider an alternative accommodations request scheme that would allow litigants to contest a denial of accommodations in a faster, more accessible way.

III. Confidentiality Concerns

Section (d)(2) of the proposed rule allows judges to disclose information contained in an accommodation request to the opposing party based on their belief that the information is "germane to and necessary for" determination of the merits of the underlying matter.[17] This exception will cause many litigants to be justifiably reluctant to request accommodations out of concern that the request will harm their litigation position. A chilling effect is especially likely in family law matters where parental fitness is at issue. Litigants with disabilities should be able to request accommodations without fear that it will harm their litigation position. The exception to confidentiality contained in § (d)(2) should be eliminated, and any final rule should state that information contained in a request for accommodation cannot be used in the underlying matter or in any future matter.

Again, we thank OCA for the opportunity to comment on this proposed rule, and strongly encourage the Chief Judge's Advisory Committee on Access for People with Disabilities not to adopt this rule as written.

The following organizations also sign on to NCLEJ's comments regarding the proposed rule:

Johns Hopkins University Disability Health Research Center
National Pain Advocacy Center
Tzedek DC

[17] Request for Public Comment, Exhibit A (Proposed Rule), § (d)(2).

DRNY DISABILITY RIGHTS NEW YORK | THE LEGAL AID SOCIETY | MOBILIZATION FOR JUSTICE | NYLPI JUSTICE THROUGH COMMUNITY POWER

October 2, 2023

VIA ELECTRONIC MAIL:
David Nocenti, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 10th Floor
New York, NY 10004
rulecomments@nycourts.gov

Re: Memorandum from David Nocenti re: August 17, 2023, Request for Public Comments on Adopting a New Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act

Dear Mr. Nocenti:

We are advocates from civil legal services providers and civil rights practitioners in New York, including the federally mandated protection and advocacy agency for New Yorkers with disabilities. Each of us is a member of the Chief Judge's Advisory Committee on Access for People with Disabilities ("the Committee") and we write to share our serious concerns about the proposed ex parte rule ("the Proposed Rule"), referenced above.

We are pleased that the New York State Unified Court System ("the Courts") recognize that current rules and practices to consider and respond to reasonable accommodation requests are inadequate, and we appreciate the Courts' implementation of Committee recommendations to improve the "administrative accommodations" process. Similarly, we recognize the good intentions and substantial work that went into drafting the Proposed Rule, to make it easier for all court users to have equal access to the courts. Implementing successful reforms will especially aid litigants with disabilities, particularly in family, housing, lower civil courts, and criminal courts with high case volumes and more unrepresented litigants. In addition, in New York City, where the "overwhelming majority" of litigants in these courts are people of color,[1] how courts handle accommodation requests is also a racial justice issue. As a consequence of systemic racism in housing, employment, and health care, Black and Latinx communities experience higher rates of health-related disabilities,[2] and are more likely to have disabilities that require accommodations.

We disagree with the Committee's Proposed Rule and urge the Courts not to adopt it as written. The Proposed Rule does not properly assign the power to decide "judicial accommodation" requests to the people best suited to make those decisions. The Proposed Rule does not, as the Memorandum describes, "properly balance[] confidentiality against the due process and ethical

[1] Report from the Special Adviser on Equal Justice in the New York State Courts (Oct. 1, 2020) at 3, https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.
[2] U.S. Census Bureau, Racial/Ethnic Disparities in Disability by Health Condition (July 12, 2023), https://www.census.gov/library/stories/2023/07/disparities-in-dsabilities.html.

concerns implicated." The Proposed Rule does not state the proper standard to rule on a "judicial accommodation," or provide judges with guidance as to the proper scope of their inquiry.

Bifurcated Accommodation Request Process

We have long questioned the wisdom of the Courts' bifurcated accommodation request process, which requires court users to navigate a confusing distinction between how to request certain types of accommodations that are granted through so-called "administrative" actions, and how to request others types of accommodations that are granted through "judicial" actions.[3] New York is one of only a few states that has adopted a bifurcated process of judicial and non-judicial accommodation requests. Nothing in the New York State Constitution, or any other law, requires the current bifurcated accommodation request process, and in fact, the decentralized "judicial accommodations" process does not comply with Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 *et seq*. The ADA provides that when a public entity denies an accommodation request based on "a fundamental alteration" or "an undue burden," the "decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion." 28 C.F.R. § 35.164. As such, judges' denials of requests would have to provide detailed information about how they "consider[ed] all resources available for use in the funding and operation of the service, program, or activity." *Id*. Individual trial judges are not in any position to know whether a requested accommodation would impose an undue burden on the Courts as a whole. In our experience, the COVID crisis has made clear that individual judges making decisions about accommodations leads to inconsistent results. Further, we do not believe that educational programs for judges are adequate to address the concerns we raise: training is often voluntary, infrequent, forgotten, and not available for public review.

If the Courts insist on keeping a bifurcated process in violation of federal law, the "judicial accommodations" decision-making should at least be made by a supervising judge or another judge other than the one presiding over the merits of a case. The "judicial accommodation" procedure is even more confusing and prone to inconsistent results in special categories of actions, such as consumer credit transactions in New York City Civil Court, for which the individual assignment system does not apply and thus there is no continuous supervision of actions. The "judicial" and "administrative" accommodation request processes should be uniform from a court user's perspective, and both must offer a grievance process to quickly redress denials of reasonable accommodations. The ADA requires that when a requested accommodation is denied based on "undue burden" or "fundamental alteration," the "public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity." 28 C.F.R. § 35.164. As such, the

[3] The Courts provide a lengthy explanation of how they define "judicial" and "administrative accommodations" on the FAQ page of the Courts' website. See General FAQ's Frequently Asked Questions, https://ww2.nycourts.gov/Accessibility/faqs.shtml#faq8.

proposed rule must direct judges, if denying the original request, to still consider and provide any alternative accommodations that guarantees participation "to the maximum extent possible." *Id*.

Confidentiality Exceptions

We are deeply troubled by the two exceptions to the confidentiality rule, contained in Sections (d)(1) and (d)(2) of the Proposed Rule, which are not as narrow as characterized in the Memorandum. We agree that certain rare situations might require some minimal disclosure of a litigant's disability. But litigants exercising their right to seek an accommodation under federal, state, and local law must maintain their autonomy and be the ones to decide whether to disclose information about their disability, and to whom. Both exceptions leave the decision regarding whether to share confidential information to the discretion of the judge, with only the most general language to guide the judge's exercise of that discretion.

A person with disabilities who follows the instructions for requesting an accommodation, and who provides only the information required to make the ex parte application, has no assurance that by doing so, the court will keep the information confidential. Under the Proposed Rule, the applicant cannot withdraw the request or obtain an appealable decision before the court discloses confidential information. This is wholly unacceptable, and defeats the purpose of a litigant seeking ex parte relief in the first place, given the risk that such relief could be shared with all parties. As lawyers practicing in New York courts, we could not advise clients to request needed accommodations under the Proposed Rule unless they were equally willing to make the request on notice to their opposing party, because there is no mechanism in the Proposed Rule to prevent their ex parte application from being disclosed. Despite the Memorandum's characterization of these exceptions as narrow, there is simply no "judicial accommodation" that every judge would think is neither "germane" to a dispute nor would "potentially prejudice the rights of another party."

Exception (d)(1) does not prevent a judge from misusing information the rule requires applicants to provide. Neither the rule nor other guidance constrains a judge's interpretation of what is "germane and necessary for it to make a determination regarding the merits of the matter before it." At judicial trainings about accommodations that MFJ and DRNY have provided, judges have explicitly stated that they would use information obtained from a reasonable accommodation request in their fact-finding on the merits of cases before them. That is a huge departure from judicial norms, such as when judges review documents or suppressed evidence *in camera*, but do not consider them in determining the merits, regardless of how "germane and necessary" the documents or evidence might be. Requiring the judge in the case to rule on an accommodation request as required by the Proposed Rule will create a chilling effect as litigants seek to avoid having judges draw improper inferences from their disclosures.

Exception (d)(2) poses a similar problem. Although the Proposed Rule restricts the scope of the types of requests an adverse party may weigh in on, it needlessly opens the reasonable accommodation process up to unnecessary parties. The rule must allow the judge to grant or deny the request ex parte and afford the applicant the opportunity to appeal such a decision without disclosure of the application to third parties. The applicant already has the ability to seek

an accommodation outside of an ex parte motion—with notice to third parties—so there is no need to use this rule to provide a mechanism for notice. Exception (d)(2) improperly gives the judge the power to convert an ex parte application into a request to the opposing party.

Ex Parte Application Requirements

The Proposed Rule requires that more information be disclosed by the individual requesting a reasonable accommodation than the Americans with Disabilities Act (ADA) or state and local laws permit. Section (a)(2) should simply require the applicant to state that the person needing the accommodation has a disability. The phrase "meaningfully participate in the proceeding" is significantly narrower than the ADA's assurance of equal participation in, or receipt of equal benefits from, the court system's services, programs, and activities. The focus of an accommodation request must be on the accommodation sought and why it is needed and not be primarily focused on whether the requestor has a disability. *See* 28 C.F.R. § 35.101(b) ("The primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability.") The wording of (a)(2) will give judges the erroneous impression that the decisionmaker ought to focus on the details it demands and encourages judges to request supporting documentation. The Proposed Rule must limit judges' requests for supporting documentation in the same way the court system has instructed decision-makers regarding administrative accommodations. This wording invites the opposite.

The Proposed Rule also should not require that the request be made in writing or that it be accompanied with an affidavit, which under current law,[4] must be notarized, which is more burdensome than what is required under the ADA. In our experience, many *pro se* litigants struggle with drafting written documents because of language and education barriers and disabilities. Although the Proposed Rule provides for assistance from court staff in completing the written ex parte application, we recommend that the Proposed Rule explicitly allow for oral applications and that measures be taken to simplify the application process, including by providing a simple check-off form.

Additional Recommendations

The Proposed Rule should additionally be amended as follows:

- The Proposed Rule should allow additional people to request accommodations. The Proposed Rule only permits litigants or their attorneys to request accommodations on their behalf. Others acting on behalf of a litigant should be permitted to make a request, including but not limited to guardians ad litem, guardians appointed under article 17-A of the Surrogate's Court Procedures Act or Article 81 of the Mental Hygiene Law, agents appointed under a Power of Attorney, and attorneys or paralegals assisting pro se litigants but not offering full representation.

[4] The New York State Legislature passed S.5162/A.5772 this year to amend CPLR 2106 and allow litigants to sign affirmations, which do not require notarization, but the bill is not yet law.

- The Proposed Rule should include a definitions section to improve clarity. The definition section in California's ex parte rule might serve as a helpful example to develop definitions for the Proposed Rule.

- The Proposed Rule should refer to state and local anti-discrimination laws in addition to the ADA, as the Courts are subject to those laws, as well.

- The Proposed Rule should require that "judicial accommodations" be determined on the same time frame as administrative accommodations, rather than "promptly."

- The Proposed Rule should include a mechanism for "administrative accommodations" that are made as ex parte "judicial accommodation" requests to be routed to the appropriate decision-maker of "administrative accommodations."

- The proposed rule should be accompanied by a detailed interpretive guidance document. The guidance document should contain examples of certain situations (with different types of disabilities) that should "almost always" result in accommodations being granted.

The Courts should maintain data on the number of accommodation requests received and the percentage of approvals, partial approvals, and denials to ensure that its accommodation process is consistently meeting the needs of court users. Of course, no personal information would be included in these reports.

We thank our colleagues on the Committee for their work to improve the reasonable accommodation request process, and thank the Chief Judge for considering our suggestions about ways to improve the Proposed Rule.

Sincerely,

Maureen Belluscio
Senior Staff Attorney
New York Lawyers for the Public Interest

Jennifer Monthie
Legal Director
Disability Rights New York

Anne K. Callagy
Director of Government Benefits, Civil Practice
The Legal Aid Society

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25 Beaver Street, 10th Fl.

New York, NY 10004

October 1, 2023

Re: Request for Public Comment: Judicial Accommodations Under the ADA

Dear Mr. Nocenti and the Advisory Committee:

As someone who has represented people with disabilities (PWDs) in the courts in New York and New Jersey, has served as an ADA Advocate for PWDs, and has consulted with PWDs and their attorneys throughout the country, I was pleased to see the Proposed Rule that would authorize trial court judges to entertain, on an ex parte basis, certain requests for disability accommodations made pursuant to the Americans with Disabilities Act.

If adopted, this Rule would begin to put an end to the practice of some judges who have required persons with disabilities (PWDs) to reveal their protected health information to their adversaries – often in open court -- in order to get accommodations for their disabilities and even to litigate against opposing counsel regarding their entitlement to accommodations..

However, the proposed Rule is not ready to be promulgated. There are many questions about it that remain.

Distinguishing Between Administrative and Judicial Accommodations

One difficult issue is how to distinguish between accommodations that may be obtained through administrative action and those that "must be obtained through judicial …action."

The proposed Ex Parte Rule states that there are accommodations "that can be granted only by a judge or judicial officer." But the Proposed Rule does not provide a definition of accommodations that may be obtained through administrative action and those that "must be obtained through judicial …action or a method of distinguishing between them." The Memorandum of August 17, 2023 states:

> "[J]udicial accommodations include adjournments, extended time to submit papers, remote appearances, schedule changes, and the way testimony is given. Requests for these types of accommodations require the exercise of a judge's inherent authority over

the courtroom and the parties to a proceeding. Such requests are by their nature beyond the power of court administrators to grant or deny."

Preliminarily, it should be remembered that requests for ADA accommodations should normally begin with a discussion between the PWD (and/or his/her ADA advocate or attorney) and the court's ADA liaison. The latter has the obligation to try to determine whether the accommodations requested can be allowed. If so, the ADA liaison is empowered to grant them and to advise the court that they have been granted. If not, the ADA liaison is required to work with the PWD in order to determine whether some other accommodation would serve the purpose for which the accommodation was sought. The ADA liaison also must determine whether a particular accommodation is one not within the power of the ADA liaison to grant or deny and therefore must be referred for judicial determination.

The language quoted above from the Memorandum of August 17, 2023, does not provide a clear method by which the court's ADA liaison, a litigant or the litigant's attorney or ADA Advocate could determine whether a certain requested accommodation should be categorized as judicial or administrative. In fact, some of the examples of accommodations that supposedly require judicial determination do not require judicial determination. For example, the Memorandum states that requests for "remote appearances" require judicial determination; yet, during the COVID emergency, almost all appearances were remote, and even now, some cases in some courts (e.g., child support cases in Family Court) are routinely remote – even the child support trials are remote. Perhaps most court appearances – even trials – could be remote if requested by a PWD (as is sometimes done when a litigant lives a long distance away from the court).

Similarly, a "request for additional time…" should not be subject to judicial determination if the request is not unreasonable. For example, a PWD might ask for a two-week extension of the usual time limits for paperwork to be done. Many disabilities make it difficult for a PWD to finish a task in a short time: e.g., traumatic brain injuries, PTSd, etc. That is why most if not all educational institutions permit students with certain disabilities to have more time to complete exams. Although students who are limited to the length of time set by the teacher might object, claiming the PWDs have an unfair advantage, extension of time for PWD is routinely granted if warranted.

The language quoted above from the Memorandum of August 17, 2023 also implies that there may be additional requests for certain accommodations (not defined) that may be deemed "judicial" in nature. Again, the language of the Proposed Rule does not specify how a litigant, a litigant's attorney, a court's ADA Liaison, or a judge or judicial officer, can determine which accommodations may be provided through administrative action and which will necessitate judicial action. Consequently, it is likely that an ADA Liaison or other court administrator who is asked by a litigant or a litigant's attorney to approve certain accommodations will decide to send many requests for accommodations to a judicial officer when those accommodations could actually be decided by the administrator.

Further thought should be given to this issue of how to distinguish between administrative and judicial accommodations. The revised Proposed Rule should seek to greatly minimize the number of accommodations that will be required to be judicially considered.

Confidentiality of the Ex Parte Application and Material Submitted in Support

The Proposed Rule sets forth a general rule that the ex parte application and material submitted in support shall be kept confidential. That is extremely important, because otherwise PWDs might be reluctant to ask for accommodations because of fear of disclosure.

The Proposed Rule sets forth two exceptions: (1) "if the court believes information submitted in the request is both germane and necessary to the court's determination of the merits and is not otherwise in or likely to become part of the record" and (2) when "the accommodation sought is for more time to submit papers, an adjournment, or any other request that the court reasonably believes could prejudice an adversary's right to a fair and timely resolution of the matter."

Exception Number One

Whether information submitted in a request is "germane and necessary to the court's determination of the merits and is not otherwise in or likely to become part of the record" is difficult to conceptualize without examples. The Memorandum of August 17, 2023 states that in those circumstances, the court "may disclose to other parties the existence of the request and the pertinent information, but such disclosure shall not entitle the other parties to be heard on the accommodation request." It would be helpful if the Advisory Committee would provide examples of when information submitted in a request might fit within the definition of "germane and necessary to the court's determination of the merits and is not otherwise in or likely to become part of the record." Also, the courts should be cautioned that "pertinent" should be as narrowly defined as possible.

Exception Number Two

The second exception to the rule against public disclosure of the disabilities for which the PWD is requiring accommodations (and the fact that an ex parte application has been made) is when "the accommodation sought is for more time to submit papers, an adjournment, or any other request that the court reasonably believes could prejudice an adversary's right to a fair and timely resolution of the matter." In such cases, "notice and an opportunity to be heard should be provided where the court is being asked to grant an accommodation that could reasonably be said to impact another party's procedural rights."

As mentioned above, "more time to submit papers" does not appear to be a good example of an accommodation that would normally "prejudice an adversary's right to a fair and timely resolution of the matter." Although the Memorandum states that the " Advisory Committee does not expect that judges will be likely to come to a reasonable belief that granting a single or several adjournments or extensions will result in sufficient prejudice to trigger this exception," the Memorandum then indicates that a "tipping point" may be "reached following multiple adjournments or extensions." The Memorandum states:

> "The Advisory Committee does not expect that judges will be likely to come to a reasonable belief that granting a single or several adjournments or extensions will result in sufficient prejudice to trigger this exception, and that it is more likely that such a belief would not arise until a tipping-point has been reached following multiple adjournments or extensions."

Limiting my discussion to extensions of time, it seems that it would be appropriate for the court's ADA Liaison to determine that a PWD should be given a short, specifically designated (such as two weeks) extension of time to submit papers unless an opponent objects to a specific extension, in which case the judicial officer might need to decide whether an extension should be given in that particular instance (or limited to a shorter period). In other words, it might be appropriate to have a presumption in favor of extensions of time so that only one consideration of time extensions would normally be needed; then, if granted, it would continue throughout the litigation unless an opponent objected to a specific extension. This would promote judicial efficiency without prejudicing the adversary's right to a fair and timely resolution.

Training of Judges, ADA Liaisons, and other Personnel

Needless to say, training on the revised Proposed Rule will be necessary once it is promulgated. Unfortunately, it has been the experience of the undersigned that most judges know very little about how the ADA affects courts, and the court clerks who answer questions from court users sometimes do not even know who the ADA Liaison for the particular court is. One judge, when asked for accommodations, stated that he did not believe the ADA applied to his court. Fortunately, he listened to my arguments for my disabled client, so the client did get accommodations. Another judge, in a conversation after he retireed, said he had not know the ADA applied to the courts and that there was an ADA Liaison assigned in the court. Even before the revised Proposed Rule is promulgated, training will be necessary.

Conclusion

The Proposed Rule is a huge step in the right direction in terms of compliance with the ADA in the courts. The Advisory Committee should be congratulated for the advances they have made. Clearly, it will not be necessary for the Advisory Committee to start from scratch with regard to these issues, since they have made such great progress in terms of this Proposed Rule. Their work is not quite finished, but they have made great strides toward its completion. I look forward to a revised Proposed Rule.

Respectfully Submitted,

Nancy S. Erickson, Esq.

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October 1, 2023

David Nocenti, Esq.
Counsel, Office of Court Administration 25 Beaver Street, 10th Fl.
New York, NY 10004

Re: Request for Public Comment: Judicial Accommodations Under the ADA

Dear Mr. Nocenti and the Advisory Committee:

I have represented people with disabilities in the courts in New York, California and elsewhere. Mainly I represent people whose disabilities are not apparent, such as those with emotional, psychological or learning disabilities, such as Post Traumatic Stress Syndrome, Attention Deficit Disorder, clinical Depression, or Anxiety.

In 2020, two colleagues and I gave a presentation to the New York City Bar Association's Legal Problems with the Aging, on the ADA process and requests for accommodations. I am credited with creating reforms including the original Statement of Client Rights that creates rights for divorce litigants as legal consumers with their divorce attorneys — the Part 1400 rules. I worked with the late Chief Judge Judith S. Kaye to implement the reforms, first promulgated in 1993. My book Divorced From Justice, (HarperCollins 1996) exposed attorney misconduct in the divorce courts nationwide.

I am opposed to the Proposed Rule in its present form for the following reasons:

I am concerned that judicial discretion will not be informed without the judges having any training on ADA law, types of disabilities, and what kinds of accommodations are usually necessary involving certain disabilities. For example, the last judge to whom I requested accommodations for a client, believed erroneously that the ADA was connected to social security disability law.

Also, judges may start unnecessarily pressuring ADA qualified litigants to give up their confidentiality rights under federal law, for expedients' sake. Under federal Constitutional law, medical records are presumed confidential.

I am also opposed to the Proposed Rile because the exceptions seem to swallow the rule. A reasonable extension of time for a disabled person is not something a judge should be given discretion over. It should be automatic. No one I know has asked for unreasonable extensions of time. This should not be an individual judicial decision. This request should be done administratively — such granting 15 days, and anything over 15 days subject to judicial discretion.

I also believe the Proposed Rule would potentially open the door for scorched earth tactics and opportunities by opponents as a strategic device to harm the ADA qualified litigant. For example, opponents would likely be tempted to automatically contest an accommodation request for a qualified disabled person's request for reasonable delay.

Furthermore, in my opinion, remote court appearances should not be left to an individual judge to decide. There should be a statewide policy in place to promote remote appearances (not necessarily trials) because in person appearances are not necessary in most cases, and remote cases are being done routinely in some courts anyway.

Additionally, the Proposed Rule contains no disclosure of the complaint procedure for disabled litigants whose accommodation requests are denied. And the complaint procedure on the OCA website needs improvement.

Has the Advisory Committee looked at policies already established by other states such as Massachusetts and Wisconsin to see how they balance the rights of the ADA -protected litigants? That would be worthwhile.

Thank you for giving me the opportunity to respond to this Proposed Rule.

Sincerely,

Karen Winner

Karen Winner, Esq..

From: Lissett C. Ferreira <lcf@meenanesqs.com>
Sent: Monday, October 2, 2023 1:34 PM
To: rulecomments
Subject: New Rule to Facilitate Requests for Judicial Accommodations under the ADA

Categories: ADA

Comment:

This rule is necessary and appropriate and achieves a balance between a litigant's need for confidential accommodation and the preclusion against *ex parte* communications. The proposed safeguards -- limited exceptions to confidentiality where the judge intends to rely on the information provided in determining the merits of the case and where the accommodation may prejudice an adversary's procedural rights -- are narrowly tailored to comply with due process and maintain judicial impartiality, while avoiding the unnecessary disclosure of confidential and otherwise protected information.

To ensure pro se's can avail themselves of the rule appropriately, it may be helpful if the rule defines and/or provides examples of which accommodations can be granted only by a judge or judicial officer and specifies where to seek assistance from court personnel in putting the request in written form (Pro se office? County Clerk?).

Best,
Lissett Costa Ferreira

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Treasurer & Chapter Delegate to WBASNY
Co-Chair, Elder Law & Disabilities Committee

RATED BY
Super Lawyers
Lissett Costa Ferreira
SuperLawyers.com

[redacted]

[redacted]

From: Alison Morris <amorris@cuddylawfirm.com>
Sent: Friday, September 29, 2023 4:31 PM
To: David Nocenti [redacted]
Cc: McHargue, Kim <Kmchargue@NYSBA.ORG>; lfaustel@nysba.org; dmiranda@nysba.org
Subject: NYSBA Committee on Disability Rights Comments on the Office of Court Administration Request for Comment on Proposed Rule for Accommodation Requests

Dear Mr. Nocenti,

Please see the Committee on Disability Rights' comments to the proposed OCA rule. Please let us know if you would like to have further discussions regarding anything.

Thank you, we appreciate the ability to comment and look forward to hearing from you.

- The Proposed Rule does not address the concerns the NYSBA raised in its report and recommendation of the Task Force on Mental Health and Trauma Informed Representation, June 2023 https://nysba.org/app/uploads/2023/06/final-report-Task-Force-on-Mental-Health-and-Trauma-Informed-Representation-June-2023.pdf "Court users, lawyers and pro-se litigants with disabilities continue to face barriers obtaining reasonable accommodation when the request is classified as a judicial accommodation…As highlighted by the Pandemic Practices Work Group Report…the accommodation process was not equally applied to each request because each judge was given the discretion to approve or deny the request." (page 123-124).
- The ADA provides that when a public entity denies an accommodation request based on "a fundamental alteration" or "an undue burden," the "decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion." 28 C.F.R. § 35.164. Individual judges are not in any position to know whether a requested accommodation would impose an undue burden on the Courts as a whole. In our experience, judges making decisions about accommodations has led to inconsistent results.

- The ADA's Title II standard should apply to the court system, which is a public entity. And "[w]here Title II applies, an entity must give 'primary consideration' to the kind of aid requested by a person with a communication disability[.]" Vega-Ruiz v. Northwell Health, 992 F.3d 61, 65 (2d Cir. 2021) (emphasis in original). "Giving primary consideration means that a Title II entity must 'honor the person's choice, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden.'" Id. (citation omitted). This is a higher standard than the Title III standard, under which "Title III entities are not obligated to honor an individual's choice of aid." Id. As such, the proposed rule could state that judges must give "primary consideration" to the requests of the individuals and can only deny the request in limited circumstances.
- The ADA requires that if the accommodation request is denied, "public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity." 28 C.F.R. § 35.164. As such, the proposed rule should state that even if judges deny the original request, they must still consider and provide any alternative accommodations that guarantees participation "to the maximum extent possible."
- The Proposed Rule does not protect the confidentiality of those seeking accommodations nor does it “properly balance[] confidentiality against the due process and ethical concerns implicated.” The two exceptions to the confidentiality rule, contained in Sections (d)(1) and (d)(2) are not as narrow as characterized in the Memorandum. Anyone exercising their right to seek an accommodation under federal, state, and local law must maintain their autonomy and be the ones to decide whether to disclose information about their disability, and to whom. Both exceptions leave the decision regarding whether to share confidential information to the discretion of the judge, with only the most general language to guide the judge’s exercise of that discretion.
- Under the Proposed Rule, the applicant cannot withdraw the request or obtain an appealable decision before the court discloses confidential information. This is wholly unacceptable, and defeats the purpose of a litigant seeking ex parte relief in the first place, given the risk that such relief could be shared with all parties.
- Exception (d)(1) does not prevent a judge from misusing information the rule requires applicants to provide. Neither the rule nor other guidance constrains a judge’s interpretation of what “is germane and necessary for it to make a determination regarding the merits of the matter before it.” That is a huge departure from judicial norms, for example in camera review of documents or suppressed evidence that is not considered in determining the merits, regardless of how “germane and necessary” the evidence might be.
- Exception (d)(2) needlessly opens the reasonable accommodation process up to unnecessary parties. The rule must allow the judge to grant or deny the request ex parte with the information supplied by the applicant, and afford the applicant the opportunity to appeal such a decision without disclosure of the application to third parties. Exception (d)(2) essentially and improperly gives the judge the power to convert an ex parte application into a request to the opposing party.
- The Proposed Rule requires that more information be disclosed by the individual requesting a reasonable accommodation than the Americans with Disabilities Act (ADA) or state and local laws permit. Section (a)(2) should simply require the applicant to state that the person needing the accommodation has a disability. The phrase “meaningfully participate in the proceeding” is significantly narrower than the ADA’s assurance of equal participation in, or receipt of equal benefits from, the court system’s services, programs, and activities. The wording of (a)(2) will give judges the erroneous impression that the decisionmaker ought to focus on the details it demands and encourages judges to request supporting documentation.
- The Proposed Rule also should not require that the request be made in writing or that it be accompanied with an affidavit, which under current law, must be notarized, which is more burdensome than what is required under the ADA, state or local laws. The Proposed Rule must explicitly allow for oral applications and for measures be taken to simplify the application process, including by providing a simple check-off form.
- The Proposed Rule only permits litigants or their attorneys to request accommodations on their behalf. Others acting on behalf of a litigant should be permitted to make a request, including but not limited to guardians ad litem, guardians appointed under article 17-A of the Surrogate's Court Procedures Act or Article 81 of the Mental Hygiene Law, agents appointed under a Power of Attorney, and attorneys or paralegals assisting pro se litigants but not offering full representation.
- The Proposed Rule should include a definitions section to improve clarity.

- The Proposed Rule should refer to state and local anti-discrimination laws in addition to the ADA, as the Courts are subject to those laws, as well.
- The Proposed Rule should require that judicial accommodations be determined on the same time frame as administrative accommodations, rather than "promptly."
- The Proposed Rule should permits "appeals" of any denial to a supervising judge.
- A detailed interpretive guidance document accompanying the Proposed Rule. There should be examples of certain situations (with different types of disabilities) that should "almost always" result in accommodations being granted. The rule should also require the court to maintain data on the number of accommodation requests received and the percentage of approvals, partial approvals, and denials (no personal information would be included in these reports). There should also be annual or biannual public reporting on the disability accommodation data.

Sincerely,

Alison Morris
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October 1, 2023

Email to: rulecomments@nycourts.gov
David Nocenti, Esq.
Office of Court Administration
25 Beaver Street, 10th Fl.
New York, New York, 10004

Re: Comments on proposed rule of the Chief Judge regarding *ex parte* requests for disability-related accommodations (Part 52, 22 NYCRR § 52)

Dear Mr. Nocenti,

We direct Cardozo Bet Tzedek Legal Services, a Cardozo Law School clinical program that represents individuals with disabilities and older adults in a wide range of civil matters. We write to comment on the proposed rule for requesting judicial accommodations of courtroom practices and procedures. OCA should be commended for its intent to improve the procedures for requesting court accommodations and to equitably balance the judge's need to manage their courtroom and docket with the rights of individuals with disabilities. We have concerns, however, that some aspects of the proposed rule will increase the burdens on individuals with disabilities, deny them rights under the ADA, and unnecessarily compromise their privacy interests. As a result, it may discourage eligible lawyers and parties from making legitimate accommodations requests. Our comments follow:

- Bifurcated accommodations processes. The rule appears to require individuals needing accommodations to make requests from two sources—the court for "judicial" and the court administrators for "administrative" accommodations. The bifurcated accommodation process potentially subjects court users with disabilities to two different accommodation processes depending on their needs. Further, as currently constructed, each process has different rules and standards for granting accommodations. It would be simpler for litigants to submit one request for all their accommodations needs. One alternative would be for the individual to submit all requests to the court administrator, and have that person interface with the court, without the need for disclosure of information regarding the individual and their disability to the presiding judge or opposing party. Requiring that requests for "judicial accommodations" be made to the judge assigned to the person's case may have a chilling effect on lawyers and litigants seeking an accommodation. Further, the system of judicial accommodations results in inconsistencies within courts with some judges granting accommodations requests and others denying virtually identical requests. The lack of uniformity in decisions is a matter of concern.

- Section (a)(2) of the Proposed Rule requires applications for accommodations to "state the disability and explain how it limits the person's ability to meaningfully participate in the proceeding." This, however, is not the ADA standard. Under the ADA, the essential question is whether the requested accommodation will permit the person to participate in the programs, services, and activities of the court system on an equal basis with others and can reasonably be provided without placing an undue burden on the court system. As written, the Proposed Rule will incorrectly and inappropriately invite judges to focus on whether the person is "sufficiently" disabled and demand unnecessary medical documentation to support an accommodation request.
- Exceptions to Confidentiality:
    - Of great concern, the exception to confidentiality in Section (d)(1) of the Proposed Rule gives the presiding judge too much discretion to consider and disclose to opposing parties any confidential information from the accommodation request that the judge deems "germane and necessary for the court to consider in determining the merits of the case to decide the merits of the case." This is particularly likely to lead to inappropriate disclosures forums like family and housing court, where judges, who may have misconceptions about disability or implicit bias, may use the information in a way that improperly and adversely impacts a litigant who disclosed their disability.
    - Further, exception (d)(2) should employ the "undue burden" standard required under the ADA. The judge should not be denying the accommodations request, nor consulting with the opposing party, unless the judge has made a threshold determination that the granting of the request appears likely to place a undue burden on the operation of the court system. Further, this exception to confidentiality improperly provides that a judge, rather than the litigant with a disability, is the one to decide whether to disclose the information to opposing parties. Even where the court has a good-faith basis for believing that the requested accommodation is likely to place an undue burden on the court system, at a minimum, the litigant should be given the option to appeal the court's determination or withdraw the request, before the court discloses any information about the accommodation request to the opposing party.
- Options for Appealing Denials of Judicial Accommodations: Under the Proposed Rule, "Judicial accommodations" cannot be appealed administratively. There should be an expeditious alternative to an interlocutory appeal to redress a denial of an accommodation request comparable to the appeal process for administrative appeal denials. The administrative or supervising judge of the court could participate in such an appeal process.
- Need to Expand Those Who Can Request Accommodations: Section (b) of the proposed rule limits the persons who can make accommodations requests on a litigant's behalf. The list should be expanded to include GALs, guardians, other involved persons (family members or close friends), etc., as persons who are able to request accommodations on a litigant's behalf.

Thank you for your consideration of these comments.

Sincerely,

Leslie Salzman Rebekah Diller

Leslie Salzman and Rebekah Diller

From: Nina Stoller <ninastoller@awnnetwork.org>
Sent: Thursday, September 21, 2023 1:00 PM
To: rulecomments
Cc: Core Team
Subject: New Rule of the Chief Judge (Part 52, 22 NYCRR § 52)

Categories: ADA

Hello,

I am writing to submit comments, below, regarding the proposed rule to facilitate requests for judicial accommodations under the Americans with Disabilities Act.

Echoing the demands of the organization, Mobilization for Justice:

- "The Proposed Rule does not address the bifurcated accommodation process for "judicial" and "administrative" accommodations. The bifurcated accommodation process subjects court users with disabilities to two different accommodation processes depending on their need for an accommodation. Each process has different rules and standards for granting accommodations.
- The Proposed Rule continues to refer requests for "judicial accommodations" to the judge assigned to the person's case. This process may have a chilling effect on lawyers and litigants seeking an accommodation.
- Judicial accommodations have resulted in many inconsistencies within courts with some judges granting accommodation while others deny them.
- Under the Proposed Rule, "Judicial accommodations" cannot be appealed administratively. There needs to be a quick way to redress the denial of a reasonable accommodation, not simply the usual interlocutory appeal process. (Such a process already exists for "administrative accommodations.")
- Section (a)(2) of the Proposed Rule requires applications for accommodations to "state the disability and explain how it limits the person's ability to meaningfully participate in the proceeding," which is not the standard in the ADA. The key question is whether the requested accommodation will permit the person to participate in the programs, services, and activities of the court system and can reasonably be provided by the court system, as required in Section (a)(3) of the Proposed Rule. As written, the Proposed Rule will incorrectly invite judges to focus on whether the person is "sufficiently" disabled and demand unnecessary medical documentation to support an accommodation request.
- Section (b) of the proposed rule allows attorneys to make accommodation requests on behalf of attorneys, but excludes GALs, guardians, attorneys providing pro se assistance, etc., who should also be able to request accommodations on a litigant's behalf.
- The exception to confidentiality in Section (d)(1) of the Proposed Rule is an invitation to the judge to consider and disclose to opposing parties any confidential information from the accommodation request if the judge decides it is "germane and necessary" to decide the merits of the case. This is of particular concern in family court and housing court proceedings, where judges' misconceptions and implicit bias are likely to adversely affect a litigant who discloses their disability.
- The exception to confidentiality in Section (d)(2) of the Proposed Rule undermines the purpose of the ex parte rule, by allowing a judge, rather than the litigant with a disability, to decide whether to disclose the information to opposing parties."

Thank you,

Nina Stoller (they/them)
Policy Fellow
Autistic Women & Nonbinary Network (AWN)

From: Brandy Beltas <brandybeltasesq@gmail.com>
Sent: Monday, August 21, 2023 10:56 AM
To: rulecomments
Subject: Judicial Accommodations under ADA

Categories: ADA

Good morning Mr. Nocenti,

I do not think this is a good idea. If a party wants an accommodation, the other parties should know about this so they can object, if they feel that the accommodation is unnecessary. I feel that when a request is made ex-parte, there is a risk of it being abused. I have practiced in NY for around 10 years, and it is very rare that a firm objects to an accommodation.

Please feel free to reach out to me on my cell phone if you have any questions 323-240-1974.

Respectfully,

--

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HON. JOSPEH A. ZAYAS
Chief Administrative Judge

HON. NORMAN ST. GEORGE
First Deputy Chief Administrative Judge

JEFFREY S. SUNSHINE
Statewide Coordinating
Judge for Matrimonial Matters

MEMORANDUM

TO: David Nocenti, Counsel, Office of Court Administration

FROM: Hon. Jeffrey S. Sunshine, Statewide Coordinating Judge for Matrimonial Matters and Chair, Matrimonial Practice Advisory and Rules Committee

DATE: October 20, 2023

RE: Response of Matrimonial Practice Advisory and Rules Committee to Request for Public Comment dated August 17, 2023, on Adopting a New Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act

Thank you for the opportunity to provide Public Comment on the proposal for a new Rule of the Chief Judge (Part 52, 22 NYCRR § 52) that would authorize trial court judges to entertain, on an *ex parte* basis, certain requests for disability accommodations made pursuant to the Americans with Disabilities Act ("ADA").

The Matrimonial Practice Advisory and Rules Committee respectfully requests that paragraph (1) of Subdivision (d) of the Proposed New Rule be amended to read as follows (additions underlined):

> (d) The ex parte application and all material submitted in support shall be kept confidential by the Court and not be disclosed by the Court to other participants in the proceeding or the public, except in the following limited circumstances and under the following conditions:

(1) the ex parte application or supporting material contains information about a party's disability that (i) the Court believes is both germane to and necessary for the Court to consider in determining the merits of the underlying matter before it, and (ii) is not otherwise part of, nor likely to become part of, the record before it. In this circumstance, disclosure by the Court shall be limited to the existence of the application and the pertinent information, and shall not entitle any other party to be heard on the accommodation application itself. In the event that the disclosure is likely to have an impact on the ultimate substantive judicial decision or issues the Judge must decide, the Court shall be compelled to notify the other party(s) or their counsel (including any Attorneys for Children) of the request and reason stated once it is made, even if it is later withdrawn. The party or counsel must be given notice of this possible disclosure ***prior*** to making a request in a form and manner approved by the Chief Administrator. Or,

… (as previously stated)

The reason we propose this amendment to the proposed New Rule is that, once Judges who will determine the ultimate issue in the case know of information likely to have an impact on the substantive issues to be decided, they *must* disclose the information to the other side. Therefore, ***before*** a litigant makes an accommodation request, the litigant must be aware of the possibility of disclosure to the other side in the litigation. Our proposal would require that the party or counsel seeking an ADA accommodation be given written notice of the possible disclosure in advance so that the litigant can decide whether to make the request.

Certain disabilities must be considered by a Judge determining the best interests of a child for purposes of deciding custody and visitation of children. Such disabilities include the mental health of the party seeking custody or access, the party's ability to care for the child, and economic issues such as the party's ability to work and support the child(ren).

In a matter involving custody or visitation of children, parties put their own mental health status at issue. With some exceptions where the material is too remote to be relevant, a party waives his/her right to the psychologist-client privilege (and patient-physician privilege) by actively contesting custody, thereby putting the party's mental and emotional well-being into issue. (See *Baecher v. Baecher*, 58 A.D.2d 821, 821, 396 N.Y.S.2d 447 (1977) where the Second Department stated in a matrimonial proceeding involving custody: *"The defendant's assertion of the psychologist-client privilege (see CPLR 4507) is without merit. …in this case the defendant waived his right to the privilege by actively contesting custody, thereby putting his mental and emotional well-being into issue."* See also *Frierson v. Goldston*, 9 A.D.3d 612, 614–15, 779 N.Y.S.2d 670, 673 (2004) where the Third Department stated in a Family Court proceeding involving custody: "*To be sure, petitioner's mental health was clearly a relevant consideration that had been injected into the proceedings by petitioner. By seeking custody or increased visitation, petitioner had effectively waived his privilege regarding such information*

(see Matter of Shepard ****615*** *v. Roll, 278 A.D.2d 755, 757, 717 N.Y.S.2d 783 [2000]; Ace v. State of New York, 207 A.D.2d 813, 814, 616 N.Y.S.2d 640 [1994], affd. 87 N.Y.2d 993, 642 N.Y.S.2d 855, 665 N.E.2d 656 [1996]), thereby rendering any written waiver or consent unnecessary.")*

In addition, we note that the trial judge in a matrimonial action is in the best position to determine the effect of granting the accommodation, not an administrator. For example if one party has been causing delays prior to making their request, or if a child is endangered, or if a party is at risk of being evicted, or if a party is a victim of domestic violence or intimate partner violence or a power imbalance, or if a party is in desperate need of support or facing foreclosure on a marital residence or repossession of an automobile, it is the trial judge familiar with the case, who can best determine whether to grant the accommodation in light of those concerns.

For the above reasons, we request consideration of our proposed amendment to the New Rule. Please let me know if I may be of further assistance.

cc: Hon. Joseph A. Zayas
Hon. Norman St. George
Hon. Edwina G. Mendelson
Hon. Deborah Kaplan
Hon. James P. Murphy
Hon. Toko Serita
Hon. Richard Rivera
Justin Barry
Michelle Smith
Susan Kaufman

From: Dr Alan Bell PhD <docalan21b@gmail.com>
Sent: Sunday, September 24, 2023 9:44 AM
To: rulecomments
Subject: Implementation of ADA in NY City Courts, VERY Deficient
Attachments: thanks2019 (2).jpg; MITbs1963.pdf; JudgeAmyJuvilier.jpg; ADA+Scrbbled.pdf; PolyPhD (2).pdf

Categories: ADA

As an 81 year old Brooklyn Resident, and licensed teacher in NY City for over SIX Decades!! The current implementation of ADA in NY City is TERRIBLE!! The Entire implementation seems to depend on one young, hard working Brooklyn Tech HS Grad named Travis Stallings, who DOES NOT HAVE a PHONE NUMBER!! I am sure he has a cell phone, but it is personal /private and SECRET! Thus a retired Octagenerian MIT, NYU /Poltechnic PhD mut try to call Nichael Gallo at 347 404-9133 and get a message THREE 3 Dozen (36+) times over a month of weekdays! "VoiceMail FULL, transferring .... No Attendant Specified!! This to an old teacher facing eviction in a muti-Year Pandemic!! The Supervising Judge Carolyn Walker Diallo has two clerks Helen and Brooke who do not return calls! (One out of FOUR DOZEN so far!) Hill Dawn Kearse and Alia Raziq the Well Paid Administrators have each hung up on me TWICE after being touched with a EXCELLENT suggestion from a Retired NYU Wagner school Professor with a BS MIT, MA MS Phd NYU Polytechnic! Namely: Put the ADA Accommodation number in the computer WITH ?Attached to the Indrx /Docket Number! This seems obvious to anyone who has spent a week : Let Alone SIXTY TWO YEARS on a Computer! (Back to the old transistor driven IBM 650, 7094 with tapes and punch cards in 1961- 1962! If one doubts my account of events play the recordings of thee conferences and hearings in front of Mi Chua JD and Hon Judge Sergio Jiminez! Jiminez JD in LT 310353 KI-21 !! I hope there are recordings on some hard drive or flash drive! Judge Jiminez thinks that someone with a Federally Financed Clear Caption phone for OLD Citizens, should have to buy a new Thousand dollar laptop to run Microsoft TEAMS on Windows 10 /11! It is a bit like the Kings County Surrogate Court telling me to walk up 71 steps at 2 Adams Street a decade ago for 11 hearings /Conferences over SEVEN 7 YEARS when I was only 67-74 Years old! The ground level door on Schermerhorn Street, with access to the elevators was reserved for 30-50 year old court employees! Challenge: Try those steps in December when there is iced rain or Snow! (Keep Video for U- Tube so I may laugh along with 50 Million other US Seniors!) PS My 91 Year old Uncle Iancu, born in Rumania died in Brooklyn intestate, in 2007 owning a home he worked to pay for with his deceased sister over 40 years in America! Hard to escape those Iron Curtain Countries! (Want more details and suggestions??!! 718 996-6017! Cell 973 632-6578 ! if I am napping or walking the puppy!

ADA085

Civil Court of the City of New York

County of Kings - 0

Part

Index Number 310353-21

Motion Cal. # N/A Motion Seq. # N/A

Musiello

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

Bell et al

Defendant(s)/Respondent(s)

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	
Order to Show Cause and Affidavits Annexed.....	
Answering Affidavits	
Replying Affidavits.....	
Exhibits	
Other.....	

Upon the foregoing cited papers, the Decision/Order on this ~~Motion~~ request for an ADA accomodation is as follows:

The prior accomodation sought is denied. Dr. Bell must interface with the ADA liaison of court in order to manage a connection to ~~teams~~ Microsoft teams as to be able to both visually and aurally appear. The court does grant ~~the~~ virtual appearance but it must include camera capacity on both 8/22 and 9/15. The court explicitly denies solely phone connection. This constitutes the decision/order of the court.

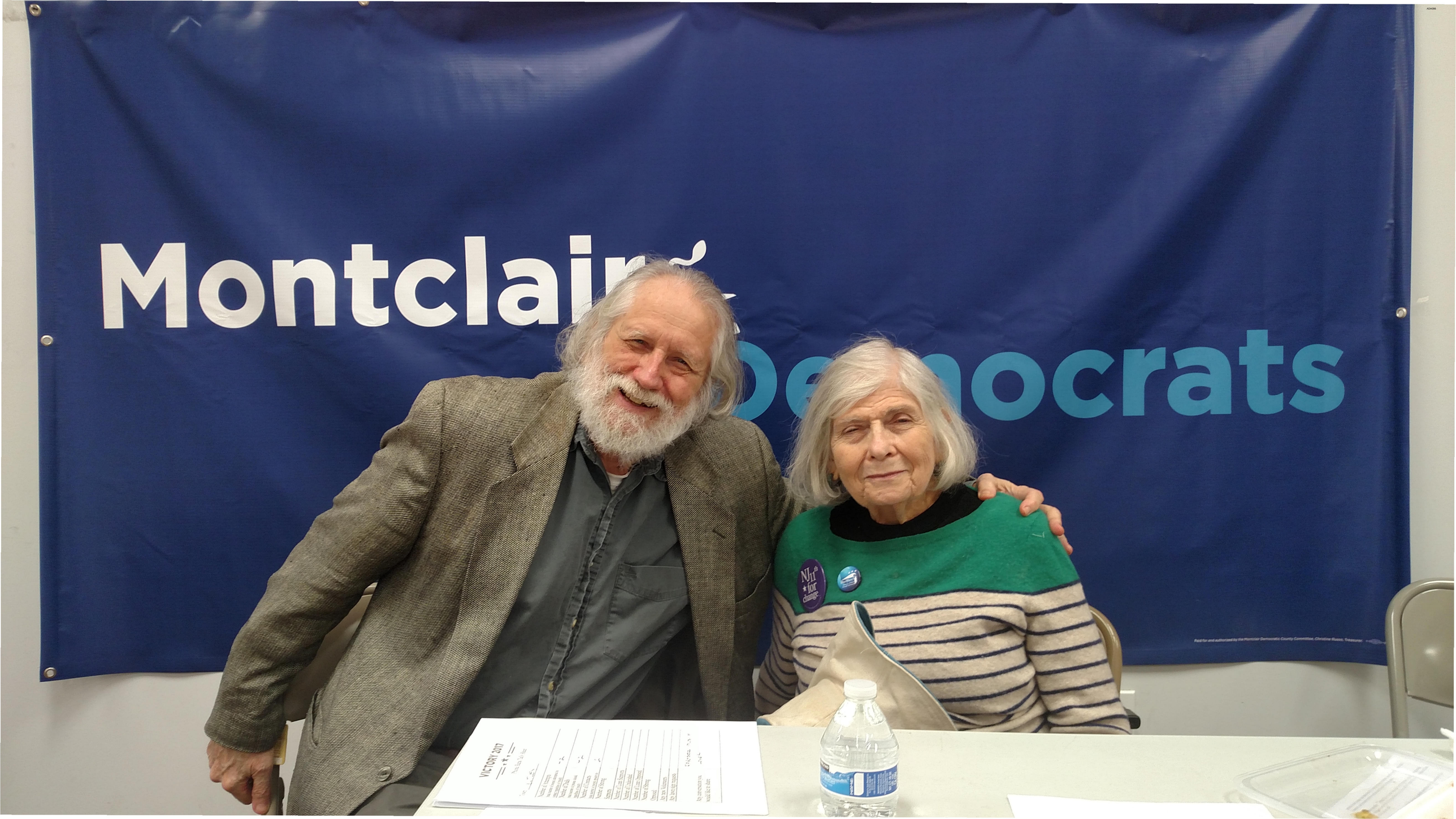
7/26/23

Date

Sergio Jimenez
Judge, Housing Court

Judge, Civil Court

CIV-GP-85 (Revised, September, 1999)


Montclair
Democrats
NJ11 for change
VICTORY 2017

MASSACHUSETTS INSTITUTE OF TECHNOLO

UPON THE RECOMMENDATION OF THE FACULTY
HEREBY CONFERS ON

Alan Bell

THE DEGREE OF

BACHELOR OF SCIENCE

IN

MATHEMATICS

IN RECOGNITION OF HIS PROFICIENCY IN THE GENERAL AND THE SPECIAL STUDIES AND EXERCISES PRESCRIBED BY SAID INSTITUTE FOR SUCH DEGREE GIVEN THIS DAY UNDER THE SEAL OF THE INSTITUTE AT CAMBRIDGE IN THE COMMONWEALTH OF MASSACHUSETTS

JANUARY 29, 1963

J. J. Wilson
SECRETARY

J. A. Stratton
PRESIDENT

by authority of the Regents of the University of the State of N

the Corporation of the Polytechnic University

hereby confers upon

Alan Bell

the degree of

Doctor of Philosophy

Operations Research

with all pertinent rights, honors, privileges, and responsibilities.

In witness, the authorized officers have affixed their names and the corporate seal in the Borough of Brooklyn, City of New York

June 1, 1987

Clarence F. Dilbeck
Chairman of the Corporation

Arthur J. Keeman
Secretary of the Corporation

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