



October 23, 2023

David Nocenti, Esq., Counsel  
Office of Court Administration  
New York State Unified Court System  
25 Beaver St., 10<sup>th</sup> 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](mailto:dkuprel@nycbar.org), the City Bar's Administrative Assistant, and she can help with scheduling and other arrangements.

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**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

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK  
CITY BAR

**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

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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**

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