

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.540**

CASE NO: SC09-1487

**COMMENTS OF THE JUDICIAL ADMINISTRATIVE
COMMITTEE OF THE CONFERENCE OF CIRCUIT JUDGES**

The Chair of the Florida Conference of Circuit Judges, Peter D. Blanc, has authorized the Judicial Administrative Committee of the Conference, comprised of the chief judges of the twenty judicial circuits, to offer the following comments in regard to the pending Amendment to Florida Rule of Judicial Administration 2.540.

The comments of the chief judges concern the amendment to rule 2.540(e)(2). In its proposed form it provides:

(e) **Response to Accommodation Request.** The court must respond to a request for accommodation as follows:

* * *

(2) The court must inform the individual with a disability in writing . . . of the following:

(A) That the request for accommodation is granted or denied, in whole or in part, and if the request for accommodation is denied, the reason therefor; * * *

(B) The nature of the accommodation to be provided, if any; and

(C) The duration of the accommodation to be provided.

As proposed, the rule goes beyond what is required by the ADA and its regulations. The Act does not impose a requirement that courts put in writing every decision denying or granting accommodations for the disabled. It requires a written determination only when the court denies an accommodation on the grounds of fundamental alteration or undue burden. We suggest this is an appropriate standard and that it remain the procedure for dealing with accommodation requests.

Additionally, this rule imposes staffing and logistical burdens on a court system that is reeling from drastic reductions in branch funding. Three years of cuts in the trial court budgets have resulted in there being 249 fewer EFT support personnel today than in 2007, this occurring at a time when the work load has increased exponentially due to a tsunami of foreclosure filings.¹ The twenty offices of Trial Court Administrators, which will have the responsibility of complying with the new rule, have borne the brunt of these reductions in force.

Across the state TCAs are struggling to meet the needs of their judges and the consumers of judicial services. The case managers or deputy court administrators needed to efficiently handle additional logistical duties are either non-existent or already over-burdened with multiple responsibilities.

The chief judges raised their concerns on these grounds and others in an August 13, 2008, letter from Judge Kim Skievaski to the RJA Rules

¹ The trial court budget has been reduced by **\$12,813,398** since FY 07-08 (Source: General Appropriations Act).

Committee. The chair of The Florida Bar's Equal Opportunity Committee, Matthew Dietz, replied to this argument in a well reasoned letter of his own to the Committee dated August 29, 2008. [See Report Appendix E, for the exchange of letters.]

The two positions were summarized in the Rules Committee Report at page 4, as follows:

“[M]r. Dietz responded to concerns that the grant or denial of an ADA request had to be in writing. Judge Skievaski felt this was too much of a burden for the court system. Mr. Dietz explained that he had conducted research regarding how many such requests were made, and believed that, based on that research, the proposal's requirement was not particularly burdensome. For instance, his research indicates that Miami-Dade County receives only about 50 requests per month that actually related to the ADA. Mr. Dietz said the real concern was that the failure to put the grant or denial in writing meant there was no record of the accommodation having been made, or, alternatively, meant that there was no record of appeal in the event the accommodation was not made”

In rejecting Judge Skievaski's position, the report concludes that the “slight burden of providing notice was outweighed by the benefit of ensuring access to the court for persons with disabilities.” (*Ibid.* p. 6.) However, two of the largest circuits recently reported more precise data than was available to Mr. Dietz, whose 2008 estimate appears to underestimate the fiscal impact.

The Trial Court Administrator in Dade County says he currently receives about 900 requests per month in English for ADA accommodation, plus another 20 per month in Creole and Spanish. Between 40 to 60 of these

require phone contact to clarify or address questions. In a year this amounts to over 11,000 requests. For FY 2008 – 2009, the TCA in Hillsborough County reports 690 monthly phone calls on the ADA line.

In normal times a healthy judicial system is able to absorb a directive such as the one contemplated by the proposed rule. However, in an era of diminishing resources, with further drastic cuts on the horizon and personnel already spread razor thin, each unfunded mandate imposed by statute or rule increases the danger that unacceptable inefficiencies and embarrassing non-compliance will result.

There are few hands available to manage the trial court's administrative workload today. By necessity, ADA Coordinators are multi-taskers, cross trained to fulfill a number of jobs required by TCAs, but statewide, the circuits have reached their limit.

While the court has no higher duty than to make the justice system open to all Floridians, especially those with disabilities, and while the chief judges strongly support the goals of the ADA, trial judges need the tools that will enable them to adequately meet the high standards set by this court.

Because the support staff of the trial courts is overextended to a critical level, and because the amendment will create significant financial and logistical burdens in several circuits, we respectfully request approval of subparagraph (e)(2) be deferred until such time as the funding of the judicial branch allows the efficient accommodation of additional administrative responsibilities such as those contemplated by the proposed rule.

RESPECTFULLY SUBMITTED,

Lee E. Haworth
Chief Judge, Twelfth Judicial Circuit and
Chair, Florida Conference of Circuit Judges Judicial Administration
Committee

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this comment has been sent this 28th day of October, 2009, by electronic email and by U.S. Mail to The Honorable Lisa Davidson, Chair, Florida Bar Rules of Judicial Administration Committee, 2825 Judge Fran Jamieson Way, Viera, FL 32940-8006; and to the Equal Opportunities Law Section of The Florida Bar, c/o Matthew Dietz, 2990 Southwest 35th Ave., Miami, FL 33133.

CERTIFICATE OF COMPLIANCE

I CERTIFY that this document is submitted in Times New Roman 14-point font, in compliance with rule 9.210(a)(2), Florida Rules of Appellate Procedure.

Lee E. Haworth, Chief Judge,
Twelfth Judicial Circuit and
Chair, Florida Conference of Circuit Judges
Judicial Administration Committee