IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.540 **SC09-1487**
_____/

COMMENTS OF THE SIXTH JUDICIAL CIRCUIT IN OPPOSITION TO PROPOSED AMENDMENT TO RULE OF JUDICIAL ADMINISTRATION 2.540

Pursuant to the Court's invitation to comment on proposed amendments to Rule of Judicial Administration 2.540, The Honorable J. Thomas McGrady, Chief Judge of the Sixth Judicial Circuit, by and through the undersigned counsel, files these comments in opposition to proposed amendments to Rule of Judicial Administration 2.540(e).

The proposed amendment provides in part:

> (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, as may be appropriate, and if applicable, in an alternative format, 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 therefore; or that an alternative accommodation is granted;
>
> (B) The nature of the accommodation to be provided, if any; and
>
> (C) The duration of the accommodation to be provided.

I. The Proposed Rule Confuses The Function Of A Rule Of Judicial Administration And An Internal Court Policy.

A court rule is defined in Rule of Judicial Administration 2.120 (a) as: "A rule of practice or procedure adopted to facilitate the uniform conduct of litigation applicable to all proceedings, all parties, and all attorneys." This proposed rule goes well beyond that necessary to address the "conduct of litigation." Its scope appears to include access to accommodations by spectators and lawyers.[1] It further establishes procedures for the Administrative Office of the Courts in response to various requests for accommodations, something that is not related to the "conduct of litigation." Such procedures are better addressed by an Administrative Order of the Chief Justice or other internal policy of court operations and not a rule of procedure.

When the Supreme Court determined that there should be a policy on responses to complaints of sexual harassment by judges, the Court did not adopt a Rule of Judicial Administration; rather the Chief Justice issued an administrative order. See SC AO 04-08. Similarly here, the internal procedures for response to requests for accommodation should be by administrative order.

[1] Procedures for responding to requests for accommodations from attorneys were recently adopted as a part of a consent decree in *Harrison v OSCA*, (Middle District of Florida, Case No. 6:06-cv-01878-pcf).

II. The Proposed Rule Imposes Unnecessary, Bureaucratic Requirements.

As noted above, the proposed procedure for responding to a request for accommodation requires "the court [to] inform the individual with a disability in writing, as may be appropriate, and if applicable, in an alternative format, of the following. . . ."

The Rules of Judicial Administration Committee is normally a stickler for precision but the requirements imposed by this proposed paragraph are not clear. This proposed amendment can be read to require that all responses to requests for accommodations to be in writing. If this is the intent, it is an unnecessary and bureaucratic requirement.

Every day in the Sixth Judicial Circuit persons come to the nine courthouses in this circuit. Often requests for accommodation are made on site. The existing ADA notice provided for in Rule of Judicial Administration 2.540 requires two (2) days notice but many persons fail to ask for accommodations in advance and appear at the courthouse and request an accommodation. This is especially true for requests for assisted listening devices. When a person appears at the Criminal Justice Center and requests an assisted listening device, the bailiff will go to the Administrative Office of the Courts, check out an assisted listening device, and provide it to the individual requesting it. The individual does not need to fill out a form, and the bailiff does not give the requestor written notice that their request is

being accommodated. They receive that "notice" when they receive the assisted listening device.

Imposing a requirement to respond in writing when the request is being granted is unnecessary, and is a wasteful use of the court's limited resources. Especially in this time of staff reductions and budget shortfalls, the Court should not impose any requirement that is not absolutely necessary under state or federal law.

This concern and other concerns were brought to the attention of the Committee by Chief Judge Kim Skievaski in August 2008. See Appendix E to the petition. The majority of the committee voted to ignore the existing budgetary constraints on the state courts system and impose this new requirement finding it to be a minor burden. To the contrary it is more than a minor inconvenience, especially when staff has been reduced and those persons responsible for responding to ADA requests are also responsible for human resources, court facilities issues, and have had to be assigned other administrative tasks due to the reduction in court staff.

The Court should adopt the position of the minority report and eliminate any requirement that the court respond in writing when a request for accommodation is granted.

III. Conclusion

For the above stated reasons, this Court should reject proposed Rule of Judicial Administration 2.540(e).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

CERTIFICATE OF COMPLIANCE

Pursuant to Rule of Appellate Procedure 9.100(*l*) I certify that this computer generated response is prepared in Times New Roman 14 point font and complies with the Rule's font requirements.

B. Elaine New