

**IN THE SUPREME COURT OF FLORIDA**

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

**Case No. SC09-1487**

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**RESPONSE OF THE RULES OF JUDICIAL ADMINISTRATION  
COMMITTEE TO COMMENTS REGARDING PENDING  
AMENDMENTS TO FLORIDA RULE OF JUDICIAL  
ADMINISTRATION 2.540**

The Honorable Lisa Davidson, Chair of the Florida Rules of Judicial Administration Committee (“RJA Committee”), Matthew Dietz, former Chair of the Equal Opportunities Law Section of The Florida Bar, and John F. Harkness, Jr., Executive Director of The Florida Bar, respectfully respond to the Comments submitted by the Judicial Administrative Committee of the Conference of Circuit Judges dated October 28, 2009, the Comments of the Sixth Judicial Circuit dated November 3, 2009, and the Comment of Manuel Menendez, Jr., Chief Judge of the Thirteenth Judicial Circuit, dated November 2, 2009, filed in this proceeding, and state as follows:

The issue presented by the comments is whether it would be an undue burden to the Florida court system to require courts to notify in writing every person with a disability when a request for an accommodation is granted or denied. The RJA Committee and the Equal Opportunities Law Section, as proponents of this rule change, assert that this minimal burden on the courts is necessary to ensure that all persons have access to the courts to participate in the legal process, as guaranteed by both the Florida and United States Constitutions. The RJA Committee voted 21 to 3 to approve this response on November 20, 2009.

In the comments submitted by the Judicial Administrative Committee of the Conference of Circuit Judges, the following statement was made:

The Trial Court Administrator in Dade County says he currently receives about 900 requests per month in English for ADA [Americans with Disabilities] 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.

Immediately following receipt of this statement, Matthew Dietz, one of the original proponents of the proposal that is now before the Court, made a public records request and inspected the documents underlying the 11,000 ADA requests. Mr. Dietz also received a letter dated November 5, 2009, attached hereto as Exhibit "A," and phone logs for the entire year, attached hereto as Exhibit "B." Mr. Dietz furnished this information to the RJA Committee in connection with this response. Because the Eleventh Judicial Circuit has the highest number of persons with disabilities of any circuit in Florida, its records are particularly useful in assessing the exact burden on the courts if required to provide written denials to accommodation requests.

From September 2008 through October 2009, there were 16,793 calls noted. Of those 16,793 calls, only 1,390 were returned (approximately 8%). (Exhibit "A"). The majority of the 1,390 calls were not regarding an accommodation at all, but rather inquiries as to the statutory requirements for excusing a person from jury duty because of a disability, which are set forth in section 40.013, Florida Statutes (2009). When such a call is received, the ADA coordinator instructs the caller on how to check the requisite box (7a) on the summons and to return the summons to the jury pool. Such calls are currently handled by the ADA coordinator in Miami-

Dade County, but could also be handled by adequately trained personnel in the jury pool department.

The most frequent accommodation request out of the 1,390 calls was for sign language interpreters for the deaf, which numbered a total of 35 calls. Twenty-six calls were about requests or information regarding other accommodations; for example, access with service animals or rescheduling a hearing or changing venue due to a disability. According to Maria Mihiac, the Eleventh Circuit ADA coordinator, while there are many calls for information or jury excusals, there are approximately 40 requests per month for ADA accommodations, and practically none is denied. *See* Appendix A, page 4. Due to the limited number of denials, there is a minimal burden to send written notice as to these denials.

**Access to Courts and Denials:**

There is no legal definition of a denial — it is merely when someone makes a request and that request is refused. In the context of a request for an accommodation for a person with a disability, an ADA coordinator may not believe that such accommodation is required under the ADA. In fact, many of the circuit web pages contain language such as:

***What services can the Court's ADA Coordinator obtain for persons with disabilities who need to access a court service or program?***

Accommodations may include:

- Assistive listening devices;
- Sign language interpreters;
- Oral interpreters;
- Providing materials in large print, braille, diskette, or audio tapes;
- Reader services;
- Real-time transcription services (under special conditions).

***What services is the Court not required to provide under the ADA?***

- Transportation to and from the courthouse;
- Legal counsel or advice;
- Personal devices such as wheelchairs;
- Personal services such as medical or attendant care;
- A modification of a service, policy or an auxiliary aid that would result in a fundamental alteration in the nature of the program or service, or would result in an undue burden.

[http://www.jud11.flcourts.org/about\\_the\\_court/ada.htm](http://www.jud11.flcourts.org/about_the_court/ada.htm). Out of the 1,390 calls that were made, several persons requested wheelchairs and there were over 28 requests for transportation. As noted above, because the Court's ADA coordinator does not believe such requests are covered by the ADA, these denials are not deemed to be official denials under the ADA. While these requests for accommodations are not required to be granted under the Americans with Disabilities Act under all circumstances, it does not in any way make these requests not worthy of being officially denied and grievance options offered.

There is nothing in Title II of the ADA or its regulations that precludes transportation to persons who request such services. The court's rationale is that since the court does not provide transportation, it is not a service that is offered to anyone despite their disability. However, while these accommodations are not required, there are alternatives to provide equivalent program accessibility for persons who cannot get transportation or appear at a hearing because of their disability. In fact, the Americans with Disabilities Act requires such an attempt to provide program accessibility. *See* 28 C.F.R. § 35.150.

For example, as aptly noted in the comments submitted by the Judicial Administrative Committee of the Conference of Circuit Judges, there is a tsunami of foreclosure filings. There can be no doubt that many of those foreclosure filings are against homeowners who have disabilities in which they are unable to appear at court. Because of the inability to appear in court or at other courthouse functions, the disabled person's home may be sold without any ability to exercise legal defenses. An alternative would be to allow the person with a disability to appear by telephone. However, when a person is simply advised by an ADA coordinator that transportation is not provided, and no other notice of procedural rights is given, access to the proceedings is effectively denied.

However, in other circumstances, a denial without listing other alternatives may be warranted. For example, there is no accommodation that could be made for a person to participate in jury duty if he or she does not have transportation to jury duty. In any event, even in view of the thousands of calls, the number of denials would still be few, and in no way an undue burden in light of the substantial interests involved.

### **Progress of the Courts**

Since this rule was initially proposed, many of the 20 circuits across the state have published their policies under the Americans with Disabilities Act policies. *See* The Florida Bar's Diversity Disability Court Resources Link page, located at <http://www.floridabar.org/tfb/TFBMember.nsf/840090c16eedaf0085256b61000928dc/049319fcbfa9bd6d852575c5005d7918!OpenDocument>. Three

circuits even have “request for accommodation” forms provided on line.<sup>1</sup> As forms are developed and can be sent electronically to the ADA coordinator by the public, attorneys, and court personnel, such technology will facilitate the ability to request an accommodation and save time and further expense.

Furthermore, there is no question that each ADA Coordinator is a dedicated employee of each circuit and no one denies a person with a disability an accommodation without a belief that he or she legally has cause to do so. However, such coordinators are the first and sometimes only interaction that a person may have with the court system. These employees have the responsibility of interpreting law that is not in any way clear or unambiguous on the subject.

Throughout the meetings of the RJA Committee, the members heard from litigants and activists regarding denials of reasonable accommodations and the failure to have effective grievance procedures following such denials. Requiring courts to issue written notification of denials to requests for accommodation by persons with disabilities is a minimal burden and helps to ensure full and equal access to the courts by all people.

Therefore, the RJA Committee and Mr. Dietz, on behalf of the Equal Opportunities Law Section, respectfully request that the Florida Supreme Court adopt the rule change as proposed, or the compromise recommended by The Honorable Manuel Menendez in his comment. That compromise is found in the comment at pages 2–3 as follows:

Notwithstanding all of the well-intentioned work of the Rule of Judicial Administration Committee and the Equal Opportunities Law Section, I suggest instead of amending Rule

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<sup>1</sup> However, only one court, the Thirteenth Circuit, has a form that is accessible for the blind, pursuant to the Accessibility of Information and Technology Act (§§ 282.601 *et seq.*, Fla. Stat. (2009)).

2.540(e)(2) as proposed by the committee, the Court should consider amending this rule as follows:

(2) The court must inform the individual with a disability 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; 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.

If the request for accommodation is granted in its entirety, the court shall respond to the individual with a disability by any appropriate method. If the request is denied or granted only in part or if an alternative accommodation is granted, the court must respond to the individual with a disability in writing, as may be appropriate, and if applicable, in an alternative format.

The RJA Committee and Mr. Dietz feel that this compromise would also address the concerns raised in the comment filed by The Honorable J. Thomas McGrady, Chief Judge of the Sixth Judicial Circuit.

Respectfully submitted this 23rd day of November, 2009.

/s/ Lisa Davidson

The Honorable Lisa Davidson  
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## CERTIFICATION OF FONT COMPLIANCE

I certify that this report was prepared in 14-point Times New Roman font.

## CERTIFICATE OF SERVICE

I certify that copies hereof have been furnished by U.S. Mail this 23rd day of November, 2009, to:

**Reginald Clyne**, 2600 South Douglas Road, Suite 1100, Coral Gables, FL 33134-6143

**George Richards**, 2075 West 1st Street, Suite 203, Fort Myers, FL 33901-3100

**The Honorable Robert W. Lee**, 201 S.E. 6th Street, Fort Lauderdale, FL 33301-3302

**The Honorable Kim A. Skievaski**, M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, FL 32502-5795

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**The Honorable Lee E. Haworth**, 2002 Ringling Blvd., Sarasota, FL 34237-7002

**The Honorable Manuel Menendez, Jr.**, 13th Judicial Circuit, 800 East Twiggs Street, Suite 601 Tampa, FL 33602

**The Honorable J. Thomas McGrady**, 501 1st Avenue N., Suite 1000, St. Petersburg, FL 33701

/s/ J. Craig Shaw

J. Craig Shaw

Staff Liaison to RJA Committee

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