

7 May the court suggest alternative accommodations?

Yes. As discussed in question 4 above, nothing prohibits the courts from suggesting other means of accommodation to the applicant as alternatives to the requested one. In offering an alternative accommodation, the court should first determine the applicant's ability to use the accommodation provided.

For example, if a juror is blind and requests that written material introduced at trial be transcribed in Braille, the court may also consider whether providing a reader or tape-recorded transcripts of the written material would be an effective alternative. The courts are required to provide an accommodation that will allow a court user to effectively participate in the court proceedings. The court is not required to provide the user's first or preferred choice.

8 If a request for accommodation seems too intrusive on court time and management, may the court summarily deny the request?

No. It is a violation of the rule to ignore or to summarily deny requests for accommodation. Rule 1.100(f) states: "A request for an accommodation may be denied only when the court determines that: (1) The applicant has failed to satisfy the requirements of this rule; or (2) The requested accommodation would create an undue financial or administrative burden on the court; or (3) The requested accommodation would fundamentally alter the nature of a service, program, or activity." The court is not obligated to provide personal devices (e.g., wheelchairs, prescription eyeglasses, hearing aids) to individuals with disabilities. Nor is it obligated to provide them with services of a personal nature (e.g., assistance in eating, toileting, dressing). The court may appropriately deny a request for accommodation based on other limitations on the court's duty to accommodate.

An applicant who disagrees with a decision made by the court's ADA coordinator may submit a request to have that decision reviewed by the presiding judge or other designated judicial officer. An applicant who disagrees with a decision made by a

judicial officer may seek immediate review from the appropriate reviewing court by extraordinary writ to compel consideration of the accommodation request, and may bring an action for injunctive relief and damages in state or federal court.*

9 What happens if, when a case is set for trial, it turns out that a party or the party's attorney uses a wheelchair, but the courthouse has no restrooms suitable for a wheelchair user?

The case should not proceed until facilities are made available. For example, the court may offer the use of alternate, accessible restroom facilities available within the courthouse such as in jury rooms, court chambers, or other administrative areas of the court. Or it could transfer the case to another courthouse or branch that has suitable facilities. If alternative accessible restrooms are made available to parties or attorneys who use wheelchairs, the court should also provide longer trial breaks and rest periods to allow people enough time to travel between these restrooms and the courtroom.

10 Should proceedings stop if a witness is called who needs an accommodation that is not available?

No. The court is not prohibited from proceeding with other witnesses or matters until the needed accommodation is available. The court maintains its authority to set the order of witnesses and otherwise administer trials and proceedings. As a practical matter, unexpected needs for witness accommodations can be avoided by questioning attorneys and parties about whether they will be calling witnesses with disabilities who may need accommodations.

The court is, however, responsible for providing all accommodations needed by individuals, including witnesses and jurors, who use court facilities and services. For example, all courts should have lists of certified interpreters for persons with a hearing loss and of readers for the blind. Technological equipment should be available, such as assistive listening systems, printed matter in Braille, tape recordings, computer discs, real-time captioning, and other enhanced communications methods.

**Tennessee v. Lane* (2004) 541 U.S. 509.

RESOURCES AVAILABLE

U.S. DEPARTMENT OF JUSTICE

The full text of the Americans With Disabilities Act (ADA) (42 U.S.C., § 12101 et seq.) is located at www.usdoj.gov/pubslada.txt.

AMERICANS WITH DISABILITIES ACT (ADA) HOME PAGE

The ADA home page (a part of the U.S. Department of Justice site) is located at www.ada.gov.

QUESTIONS

Additional questions are welcome. They may be submitted to Linda McCulloh, Attorney, Administrative Office of the Courts, and State-wide ADA Resources Coordinator, by e-mail to linda.mcculloh@jud.ca.gov, or by fax to 415-865-4335.

This publication is available exclusively to judicial branch employees on the Serranus Web site at serranus.courtinfo.ca.gov/reference.

Copyright © 2007 by Judicial Council of California/ Administrative Office of the Courts. All rights reserved.

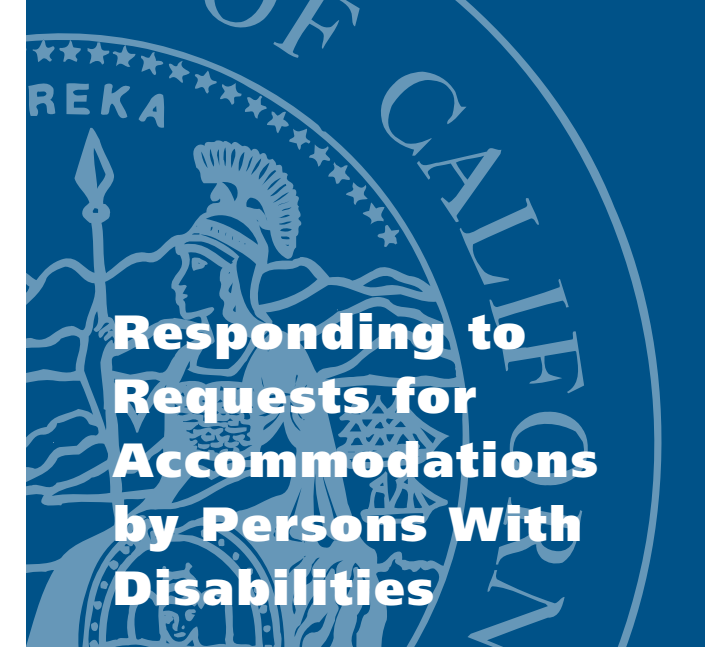
PLEASE NOTE

These questions and answers are a 2007 revision prepared to inform court personnel about rule 1.100, which the Judicial Council adopted as rule 989.3 effective January 1, 1996, amended effective January 1, 2006, and renumbered effective January 1, 2007, and about Request for Accommodations by Persons With Disabilities and Response (form MC-410), which was revised January 1, 2006.

This pamphlet is the creation and responsibility of the Access and Fairness Advisory Committee of the Judicial Council of California. Points of view expressed herein do not necessarily represent the official positions or policies of the Judicial Council of California or the Administrative Office of the Courts.

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688

OGC0003.07.1



Questions and Answers About
Rule of Court 1.100
for Court Personnel



JUDICIAL COUNCIL
OF CALIFORNIA

ACCESS AND FAIRNESS
ADVISORY COMMITTEE

INTRODUCTION

This pamphlet on rule 1.100 of the California Rules of Court was developed by members of the Judicial Council's Access and Fairness Advisory Committee to respond to the questions that court personnel most frequently ask about the rule. This pamphlet updates an earlier version and focuses on amendments to that rule that became effective January 1, 2006.

The Americans With Disabilities Act (ADA) is a federal civil rights statute (42 U.S.C., § 12101 et seq.) that requires all state and local governmental entities, including the courts, to accommodate the needs of persons with disabilities who participate in court activities, programs, and services. The ADA also requires the government to modify programs to integrate persons with disabilities, eliminate discriminatory practices or procedures, and provide alternatives to communications limitations and differences. Since 1990, when Congress adopted the ADA, California has amended or adopted legislation that further enhances access for persons with disabilities and has expanded the obligations of government, including the courts, to fully integrate persons with disabilities into society.

Rule 1.100 seeks to provide a workable and orderly framework for compliance with the ADA and state laws. The rule provides the mechanism for anyone with disabilities participating in court activities, programs, or services—lawyers, parties, witnesses, jurors, and any other participants—to request accommodations by making a written or oral request to a court's ADA or access coordinator.

1 Who is entitled to receive an accommodation?

According to rule 1.100(a)(1), "persons with disabilities" means "individuals covered by California Civil Code section 51 et seq.; the Americans With Disabilities Act of 1990 (42 U.S.C., § 12101 et seq.); or other applicable state and federal laws. This definition includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such an impairment, or are regarded as having such an impairment."

Anyone with a disability who has business with the courts, including public observers of court activities or sessions, may be entitled to receive an accommodation. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Examples of disabilities include mobility or other motor impairments, psychological and mental illness, vision impairments, hearing impairments, and environmental sensitivities.

2 What kind of showing of the disabling condition must be provided by an applicant seeking an accommodation?

State and federal statutes and regulations do not specify the nature of a showing needed to confirm the existence of a disabling condition that requires an accommodation. Similarly, rule 1.100 does not require a particular showing. However, all requests for accommodations must include a description of the accommodation sought, along with a statement of the impairment that necessitates such accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment. Requests for accommodations may be made orally, on a *Request for Accommodations by Persons With Disabilities and Response* (form MC-410), or in another written format. A judge, an ADA or access coordinator, or court staff, as authorized by the court, may review the request and provide a determination.

3 Does rule 1.100 require an evidentiary hearing on the request for accommodation?

No. The process is purely administrative and does not call for a hearing. Rule 1.100(c)(1) states: "Requests for accommodations under this rule may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally."

The process for requesting accommodations under rule 1.100 is not adversarial. If the request is made by a litigant, by counsel, or by a witness for a party, neither the rule nor federal laws and regulations authorize third parties to object to the request.

4 Do court personnel have to guess about the type and nature of the accommodation required?

No. The courts are obligated to inform the public generally of the availability of accommodations. If no request for an accommodation is made, the court need not provide one. The court is encouraged to ask the person with the disability to suggest an accommodation. Federal regulations state, "In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities." (28 C.F.R., § 35.160(b)(2).) Furthermore, the court may offer an accommodation that is different from the accommodation requested by a person with a disability, so long as the accommodation offered permits the individual to effectively participate in the court's programs, activities, or services.

The court, therefore, is not prohibited from offering an accommodation on its own. It is required to provide not the best accommodation, but rather an *effective* one.

5 What kind of accommodations are the courts be required to provide?

According to rule 1.100(a)(3), "accommodations" is defined as "actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include, but are not limited to, making reasonable modifications in policies, practices, and procedures; furnishing, at no charge to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation."

Accommodations must address diverse disabilities, which can vary in nature and degree from person to person. Accordingly, the type of accommodation granted can vary from person to person. Some examples of the type of accommodations that may be provided include the following:

- Changes in schedules to accommodate accessible public transportation, medication schedules, or other time-sensitive needs;
- Someone to read documents or to write on court forms the information dictated by persons with visual, hearing, manual dexterity, cognitive, or other disabling conditions;
- Hearings by telephone for people who have environmental sensitivities or mobility or other limitations; and
- Assistive listening systems, sign language interpreters, real-time captioning, written material on computer-readable discs, telecommunication devices for the deaf (TTY), reader services, and the like.

6 Is the court responsible for providing forms in Braille or real-time transcriptions, as well as other accommodations?

Yes. The court may not charge persons with disabilities for court services, programs, and activities if persons without disabilities are not charged for those same services. Federal and California law requires courts to provide, upon request by an individual who is hearing impaired, and without charge, a functioning assistive listening system, a computer-aided transcription system, or materials in Braille. However, the court need only provide the mode that permits the court user to effectively participate in the court service, program, or activity.

Federal regulations state, "[a] public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." (28 C.F.R., § 35.160(b)(1)).