

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
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Access and Fairness Advisory Committee
Hon. James R. Lambden, Chair
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DATE: September 8, 2009

SUBJECT: Requests for Accommodations (amend Cal. Rules of Court, rule 1.100 and
revise *Request for Accommodations by Persons with Disabilities and
Response* (form MC-410)) (Action Required)

Issue Statement

Rule 1.100 of the California Rules of Court establishes the procedures for persons with disabilities to request that a court make accommodations so that those persons can access the court's services, programs, or activities. Under the current rule language, it may not be clear when the court's response to an accommodation request must be in writing. In addition, it may not be clear when the 10-day period for seeking review of an accommodation decision begins or, if the request for accommodations is acted on by a judicial officer in the Court of Appeal, whether review should be sought by filing a petition for writ of mandate or a petition for review. Finally, current optional form MC-410, which persons with disabilities may submit to request accommodations, does not reflect that an alternative accommodation granted under rule 1.100 is a denial of the original request.

Recommendation

The Access and Fairness and Appellate Advisory Committees recommend that the Judicial Council, effective January 1, 2010:

1. Amend California Rules of Court, rule 1.100 to:

- a. Clarify that the denial of an accommodation request, in whole or in part, must be in writing;
 - b. Provide that the court's response to an accommodation request must include the date the response was delivered in person or sent to the applicant;
 - c. Clarify that a petition for a writ of mandate in the appropriate reviewing court is the method for seeking review of an accommodation determination made by a judicial officer;
 - d. Specify that only those participants in the proceeding who were notified by the court of an accommodation decision are considered real parties in interest in a writ proceeding concerning that decision;
 - e. Clarify that the requirement to maintain the confidentiality of all information of the applicant concerning the request for accommodation also applies during any review process; and
 - f. Make other nonsubstantive, clarifying changes.
2. Revise the response section of *Request for Accommodations by Persons with Disabilities and Response* (optional form MC-410) to:
 - a. Clarify that the denial section covers denials in whole or in part;
 - b. Move the paragraph concerning alternative accommodations to the section of the form addressing denials; and
 - c. Include a space for the date the response is delivered in person or sent to the applicant.

The text of the amended rule and revised form is attached at pages 8–10.

Rationale for Recommendation

Response to accommodation request

Currently, rule 1.100(e)(2) provides that a court “must inform the applicant in writing, as may be appropriate, and if applicable, in an alternative format . . . that the request for accommodation is granted, denied, in whole or in part . . . or that an alternative accommodation is granted.” Under this language, it may not be clear when an accommodation determination must be in writing. The current language may suggest that if the court grants the applicant an alternative accommodation or grants any portion of the request, it is not necessary for the response to be in writing. Under the Americans With Disabilities Act (42 U.S.C. § 12101, et. seq (28 C.F.R. §§ 35.164, 35.150(a)(3)), any

denial of a request for an accommodation must be in writing. This proposal would amend 1.100(e)(2) to clarify that a court must provide a written response to an applicant if it denies the request for accommodation *in whole or in part*, not merely if the request is denied in its entirety. In addition, optional form MC-410 would be modified to reflect this clarification by moving the box at the bottom of the form indicating that the court will provide an alternative accommodation to the denial portion of the form.

Currently, rule 1.100(e)(2) does not indicate a time frame within which a court must respond to a request for accommodation. This proposal would amend the rule to provide that a court must “promptly” inform the applicant of its decision to grant or deny the request for accommodation. The committees concluded that this language appropriately balanced applicants’ interest in obtaining a quick response to an accommodation request with the courts’ interest in having the flexibility to respond appropriately given the range of different accommodation requests that might be made. The term “promptly” is often used in the rules of court to indicate that a court or relevant party should act as soon as possible, without imposing a specific deadline.

Review procedure

Rule 1.100(g) currently provides that the applicant or any participant in the proceeding may seek review of an accommodation decision “within 10 days of the date of the response” to the accommodation request. It may not be clear under this provision whether the 10-day period begins to run on the date the response is issued, the date it is personally delivered or sent to the applicant, or the date it is received by the applicant. This proposal would provide that the 10-day period begins to run on the date the response is delivered in person or sent to the applicant. To ensure that the applicant knows when the response was delivered or sent, this proposal would amend the rule to require that the court’s response include this date. It would also revise optional form MC-410, *Request for Accommodations by Persons with Disabilities and Response* to include a space for this date.

Rule 1.100(g) provides that if the accommodation decision was made by a presiding judge or other judicial officer, the applicant or any participant in the proceeding may seek review of that decision “by filing a petition for extraordinary relief in a court of superior jurisdiction.” Typically, a party seeks extraordinary relief by filing a petition for an extraordinary writ—a writ of mandate, prohibition, or certiorari—in the appropriate reviewing court.

Rule 1.100 applies to accommodation requests made in Courts of Appeal and the superior courts. Thus, under rule 1.100(g), when a litigant requests an accommodation in the Court of Appeal and an appellate judicial officer makes the decision concerning the request, the litigant must seek review by way of a petition for extraordinary writ in the California Supreme Court. The procedures relating to this type of writ petition in the Supreme Court are set out in rule 8.485 et seq.

Under the current language of rule 1.100, however, some rule users could be confused about whether to file a petition for a writ of mandate in the Supreme Court under rule

8.485 et seq. or a petition for review under rules 8.500 et seq. Because there are different deadlines and procedures for petitions for extraordinary writs and petitions for review filed in the Supreme Court, it is important for litigants to know which procedure to follow. In addition, when an accommodation decision is made by a superior court judicial officer, it is important for litigants to know whether to file their writ petition in the Court of Appeal or superior court appellate division. For all these reasons, clarification of the review process would be helpful to both potential petitioners and the courts.

This proposal would amend rule 1.100 to clarify that the correct way to seek review of a judicial officer's decision concerning a request for accommodation is by filing a petition for a writ of mandate in the appropriate reviewing court under either rule 8.485 et seq. or rule 8.930 et seq. (the rules relating to petitions for extraordinary writs in the superior court appellate division). It would also clarify which court is the appropriate reviewing court in various circumstances.

Normally, when a party in a case files a petition for an extraordinary writ, all of the other parties in the case are considered real parties in interest and must be served with a copy of the petition (see rules 8.486(e) and 8.931(d)). That is not the case with respect to a decision to grant or deny a request for an accommodation. Other parties in a proceeding do not normally receive a copy of an accommodation request or of the court's response to this request because a request for accommodation is not an adversarial or evidentiary proceeding but rather an administrative one. These requests and determinations are also handled as confidential matters. This proposal would amend the rule to specify that only those participants in the proceeding *who were notified by the court of an accommodation decision* are considered real parties in interest in a writ proceeding concerning that decision and thus must be served with a copy of the petition. This proposal would also clarify that the provisions in rule 1.100(c)(4) concerning the confidentiality of accommodation requests also apply in review proceedings under 1.100(g).

Alternative Actions Considered

The committees considered not recommending any changes to rule 1.100 or form MC-410 at this time but concluded that the proposed changes would make this rule and form easier for court users to understand, thereby eliminating any potential errors relating to the procedures for appellate review of accommodation decisions.

The committee considered requiring that courts respond to accommodation requests within a specific time period, such as 10 days. The committees ultimately concluded, however, that courts need more flexibility in terms of the time frame for responding to these requests. Depending on the nature of the request and the availability of resources, the court's response time necessarily will vary. For example, a court might be able to immediately respond to a request for an assistive listening system, as these are typically readily available. In contrast, it is likely to take much longer for a court to respond to a request for a sign language interpreter, as such interpreters are a scarce resource.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2009 comment cycle. Ten individuals or organizations submitted comments on this proposal. Three commentators indicated that they agreed with the proposal, three indicated that they agreed with the proposal if amended, and four did not indicate a position on the proposal but provided comments. The full text of the comments received and the committees' responses is attached beginning on page 11.

Response to accommodation request

The proposal that was circulated for public comment provided that the court must "promptly" respond to a request for an accommodation. Two commentators suggested that courts be given a time certain for responding to these requests because of the possibility that the applicant might receive a response on the eve of the requested implementation date (i.e., date of the hearing). One commentator also suggested that not requiring the court to respond within a specific time frame creates an imbalance between the applicant and the court, because the applicant must submit his or her request at least 5 days before the requested implementation date and must seek review of an accommodation decision within 10 days after notice of that decision. As discussed above, the committees considered recommending a specific time frame for responding to accommodation requests and concluded that because of the varied nature of the types of accommodations that are requested by court users and jurors, it is important not to set a rigid deadline for responses. The committees also agreed, however, to reexamine this issue during the next rules cycle.

The proposal, as circulated, would have deleted the phrase "in whole or in part" from rule 1.100(e)(2)(A), which currently requires that a response to an accommodation request indicate whether the request for accommodation is granted or denied in whole or in part. Two commentators suggested keeping "in whole or in part" in this part of the rule to ensure that applicants are fully informed of the court's decision if it denies any part of the request. The committees agreed and revised the proposal to keep this phrase in rule 1.100(e)(2)(A). The discussion of this comment also highlighted the fact that current form MC-410 does not reflect that the court can deny an accommodation request "in part." To address this, the committees recommend that the response portion of the form be revised to indicate that a denial may be in whole or in part. In addition, the committees recommend that the paragraph in the current form that describes any alternative accommodation be moved to the denial portion of the form. This more accurately reflects that an alternative accommodation is in fact a denial of the applicant's specific request.

One commentator suggested that requiring judges to provide an explanation for a partial denial of a request for accommodation is burdensome and unnecessary because the court will provide an alternative accommodation. The committees concluded that explanations are necessary because the Americans With Disabilities Act requires a reason to be stated if a request for accommodation is denied in whole or in part.

Review procedure

As circulated for public comment, the proposed amendment to rule 1.100(g)(2) provided that if an accommodation decision was made by a judicial officer, a participant could seek review of that decision by filing a petition for a writ of mandate in “in the appropriate reviewing court.” The invitation to comment specifically sought comments about whether it would be helpful to add an advisory committee comment to clarify the circumstances in which the Supreme Court, Court of Appeal, or superior court appellate division is the “appropriate reviewing court.” Five commentators responded to this request, and all supported adding an advisory committee comment to clarify this. Based on these comments, the committees revised the proposal to add an advisory committee comment clarifying when the Supreme Court, Court of Appeal, or superior court appellate division is the “appropriate reviewing court.”

As circulated for public comment, the proposal provided that any petition for writ of mandate challenging an accommodation decision be served only on those “parties to the underlying action” who were notified by the court of the court’s accommodation decision and the judicial officer who issued the accommodation decision. Two commentators submitted comments on this provision. One commentator noted a discrepancy between the language used in this proposed amendment and the language in current rule 1.100(g)(2), which provides that “any participant in the proceeding” has standing to challenge an accommodation decision. To eliminate this discrepancy, the committees revised the language of the proposed amendment to also refer to “participants in the proceeding.” The other commentator suggested that since accommodation decisions are generally considered administrative decisions, any petition for a writ of mandate challenging the decision should be served not only on the judicial officer who made the decision, but also on the presiding judge or justice or executive officer of the court. The committees concluded that for purposes of service on the court, a writ petition challenging an accommodation decision should be treated like any other writ petition challenging an action of a court and should be served on the respondent court rather than on the particular judicial officer who took the action. The committees therefore revised the proposal to require service on the respondent court.

The proposal that was circulated for public comment provided that the 10-day period for challenging a court’s accommodation decision begins to run on the date the response was “given or sent.” A commentator suggested that this proposed language was not sufficiently clear. The committees therefore revised the proposal to instead provide that the period begins to run on the date the response is “delivered in person or sent.” This should more clearly cover situations in which a response is handed to an applicant, as well as situations in which the response is mailed or faxed to an applicant.

Implementation Requirements and Costs

The clarification of the procedures for seeking review of an accommodation decision made by a judicial officer should reduce court costs associated with answering questions and addressing mistakes made by litigants concerning these procedures. To the extent that courts were not already providing written responses when an accommodation request

was denied in part, there may be some implementation costs associated with providing additional written responses to these requests. There also may be some implementation costs for courts associated with replacing any existing copies of form MC-410 with the revised form. However, the committees' understanding is that courts generally do not keep stockpiles of form MC-410 and, therefore, these costs should be minimal.

Attachments

Rule 1.100 of the California Rules of Court is amended and *Request for Accommodations by Persons with Disabilities and Response* (optional form MC-410) is revised, effective January 1, 2010, to read:

1 **Rule 1.100. Requests for accommodations by persons with disabilities**

2
3 **(a)–(d) * * ***

4
5 **(e) Response to accommodation request**

6
7 The court must respond to a request for accommodation as follows:

8
9 (1) In determining whether to grant an accommodation request or provide an
10 appropriate alternative accommodation, the court must consider, but is not
11 limited by, California Civil Code section 51 et seq., the provisions of the
12 Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), and
13 other applicable state and federal laws in determining whether to provide an
14 accommodation or an appropriate alternative accommodation.

15
16 (2) The court must promptly inform the applicant in writing, as may be
17 appropriate, and if applicable, of the determination to grant or deny an
18 accommodation request. If the accommodation request is denied in whole or in
19 part, the response must be in writing. On request of the applicant, the court
20 may also provide an additional response in an alternative format of the
21 following. The response to the applicant must indicate:

22
23 (A) ~~That~~ Whether the request for accommodation is granted or denied, in
24 whole or in part, ~~and~~ or an alternative accommodation is granted;

25
26 (B) If the request for accommodation is denied, in whole or in part, the reason
27 therefor; or that an alternative accommodation is granted;

28
29 ~~(B)~~(C) The nature of ~~the~~ any accommodation to be provided, ~~if any; and~~

30
31 ~~(C)~~(D) The duration of ~~the~~ any accommodation to be provided; and

32
33 (E) If the response is in writing, the date the response was delivered in person
34 or sent to the applicant.

35
36 **(f) * * ***

1 (g) **Review procedure**

- 2
- 3 (1) If the determination to grant or deny a request for accommodation is made by
4 nonjudicial court personnel, Aan applicant or any participant in the proceeding
5 in which an accommodation request has been denied or granted may seek
6 review of a determination made by nonjudicial court personnel within 10 days
7 of the date of the response by submitting, in writing, may submit a written
8 request for review of that determination to the presiding judge or designated
9 judicial officer. The request for review must be submitted within 10 days of the
10 date the response under (e)(2) was delivered in person or sent.
- 11
- 12 (2) If the determination to grant or deny a request for accommodation is made by a
13 presiding judge or another judicial officer, Aan applicant or any participant in
14 the proceeding in which an accommodation request has been denied or granted
15 may seek review of a determination made by a presiding judge or another
16 judicial officer may file a petition for a writ of mandate under rules 8.485–
17 8.493 or 8.930–8.936 in the appropriate reviewing court. The petition must be
18 filed within 10 days of the date of the response under (e)(2) notice of
19 determination by filing a petition for extraordinary relief in a court of superior
20 jurisdiction was delivered in person or sent to the petitioner. For purposes of
21 this rule, only those participants in the proceeding who were notified by the
22 court of the determination to grant or deny the request for accommodation are
23 considered real parties in interest in a writ proceeding. The petition for the writ
24 must be served on the respondent court and any real party in interest as defined
25 in this rule.
- 26
- 27 (3) The confidentiality of all information of the applicant concerning the request
28 for accommodation and review under (g)(1) or (2) must be maintained as
29 required under (c)(4).
- 30

31 (h) * * *

32
33 Advisory Committee Comment

34

35 Subdivision (g)(2). Which court is the “appropriate reviewing court” under this rule depends on the court
36 in which the accommodation decision is made and the nature of the underlying case. If the
37 accommodation decision is made by a superior court judicial officer and the underlying case is a limited
38 civil, misdemeanor, or infraction case, the appropriate reviewing court is the appellate division of the
39 superior court. If the accommodation decision is made by a superior court judicial officer and the case is
40 anything other than a limited civil, misdemeanor, or infraction case, such as a family law, unlimited civil,
41 or felony case, the appropriate reviewing court is the Court of Appeal. If the accommodation decision is
42 made by a judicial officer of the Court of Appeal, the appropriate reviewing court is the California
43 Supreme Court.

44

APPLICANT'S INFORMATION TO BE KEPT CONFIDENTIAL

MC-410

<p>APPLICANT (name): APPLICANT is <input type="checkbox"/> Witness <input type="checkbox"/> Juror <input type="checkbox"/> Attorney <input type="checkbox"/> Party <input type="checkbox"/> Other <i>(Specify)</i></p> <p>Person submitting request (name): APPLICANT'S ADDRESS: TELEPHONE NO.:</p>	<p><i>FOR COURT USE ONLY</i></p>
<p>NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:</p>	
<p>JUDGE:</p>	
<p>CASE TITLE:</p>	<p>DEPARTMENT:</p>
<p>REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND RESPONSE</p>	<p>CASE NUMBER:</p>

Applicant requests accommodation under rule 1.100 of the California Rules of Court, as follows:

1. Type of proceeding: Criminal Civil Other:
2. Proceedings to be covered (for example, bail hearing, preliminary hearing, trial, sentencing hearing, family, probate, juvenile):
3. Date or dates needed (*specify*):
4. Impairment necessitating accommodation (*specify*):
5. Type or types of accommodation requested (*specify*):
6. Special requests or anticipated problems (*specify*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE)

RESPONSE

The accommodation request is **GRANTED** and the court will provide the
 requested accommodation, in whole
 requested accommodation, in part (*specify below*):

For the following duration:
 For the above matter or appearance
 From (*dates*): _____ to _____
 Indefinite period

The accommodation is **DENIED** in whole or in part because it
 fails to satisfy the requirements of rule 1.100.
 creates an undue burden on the court.
 fundamentally alters the nature of the service, program, or activity.

For the following reason (*attach additional pages, if necessary*): [See Cal. Rules of Court, rule 1.100(g), for the review procedure]
 The court will provide the alternative accommodation as follows:

Date response delivered in person or sent to applicant:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE)

SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE.

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Appellate Procedure: Time for Review of Decisions Regarding Request for Accommodations (amend Cal. Rules of Court, rule 1.100 and revise *Request for Accommodations by Persons with Disabilities and Response* (form MC-410))

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Appellate Court Committee of the San Diego County Bar Association by Matthew C. Mulford, Chair	A	The proposed revisions to California Rules of Court, rule 1.100 and the <i>Request for Accommodations for Persons with Disabilities and Response</i> , form MC 410, appear uncontroversial and unquestionably sound. We commend the Committee’s ongoing efforts to ensure access to the courts for all litigants.	No response required.
2.	California Appellate Court Clerks Association	NI	In answer to the question: The committee would also appreciate comments about whether it would be helpful to add an advisory committee comment to clarify the circumstances in which the Supreme Court, Court of Appeal, or superior court appellate division is the “appropriate reviewing court.” Yes, we think it would be helpful to add comments clarifying which court is appropriate.	Based on this and other comments, the committees have revised the proposal to add an advisory committee comment to clarify the circumstances in which the Supreme Court, Court of Appeal, or superior court appellate division is the appropriate reviewing court.
3.	Committee on Appellate Courts The State Bar of California by Saul Bercovitch, Legislative Counsel	AM	The Committee supports this proposal, subject to the comments below. The proposal would amend rule 1.100(e)(2) to require the court to inform an applicant “promptly” of a decision to grant or deny an accommodation request, but sets no time frame within which a decision must be made. In contrast, subdivision (c)(3) of the rule requires an applicant to make a request for accommodation no fewer than 5 court days before the requested implementation date, and subdivision (g) requires the applicant to seek	When drafting this proposal, the committees considered stating a time certain. However, the committees concluded that it was important to provide flexibility to the courts because of the varied nature of the types of accommodations that are requested by court users and jurors. For example, the courts may provide assistive listening device on a moment’s notice but would need a couple of weeks to find out if a sign language interpreter is available. The committees

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	Commentator	Position	Comment	Committee Response
			<p>review of a court’s determination on an accommodation request within 10 days of the court’s response.</p> <p>Besides creating an imbalance in respective response times, the rule does not address the practical issue of what an applicant must do when faced with the denial of an accommodation request of the eve of the requested implementation date – seek to continue the hearing or proceeding for which the requested accommodation was denied, or appear at the hearing or proceeding, and then seek review or writ of relief after the fact. The Committee suggests that consideration be given to further amending the rule to address this issue.</p> <p>The Appellate Advisory Committee has asked for comments on whether it would be helpful to add an advisory committee comment concerning rule 1.100(g), clarifying the circumstances in which the Supreme Court, Court of Appeal, or superior court appellate division is the “appropriate reviewing court.” Since the rule and the proposed amendments are intended to assist litigants with disabilities, a clarifying comment would be appropriate and helpful.</p> <p>Rule 1.100(g) provides that the applicant or any “participant” in the proceeding may seek review of an accommodation determination. Rule 1.100(g)(2) specifies that only “parties” to the</p>	<p>may consider a specific time period for the court to respond to a request for an accommodation for the next rules cycle.</p> <p>Based on this and other comments, the committees revised the proposal to add an advisory committee comment to clarify the circumstances in which the Supreme Court, Court of Appeal, or superior court appellate division is the appropriate reviewing court.</p> <p>Sometimes an accommodation may affect or impose obligations on other parties to an action. For example, an applicant might be granted a continuance, which could impact both other</p>

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	Commentator	Position	Comment	Committee Response
			<p>underlying action who were notified by the court of an accommodation determination are considered real parties in interest in any writ proceeding concerning that determination and only those parties need be served with a copy of the writ petition. Because other parties in the proceeding do not normally receive a copy of an accommodation request or of the court’s determination, and because under rule 1.100(g)(3) those requests and determinations are treated as confidential matters, it is unclear when a “participant” in a proceeding would be able to seek review of an accommodation determination. Because accommodation requests and determinations are handled as confidential matters, it is unclear when a court would notify other parties or participants or an accommodation determination. Further clarification of this issue would be helpful.</p>	<p>parties and witnesses, or other parties might be asked to provide documents in a larger font size. If an accommodation does affect or impose obligations on others, the court will need to notify those individuals. In such circumstances, those notified of the accommodation decision would have standing to seek review. This comment does highlight, however, that the proposed new language at the end of 1.100(g)(2), which refers to “parties,” is not consistent with the current language of rule 1.100(g)(2), which refers to “any participant in the proceeding.” To address this, the committees have revised the proposed amendment at the end of rule 1.100(g)(2) to similarly refer to “participants in the proceeding.”</p>
4.	<p>Court of Appeal, Second Appellate District by Katherine Lynn, Managing Attorney</p>	<p>NI</p>	<p>In response to the committee’s inquiry, I believe that it would definitely be helpful to add an advisory committee comment to clarify the circumstances in which each of the respective courts is the appropriate reviewing court. Such information will promote ease of use for the applicant and is likely to prevent filings in the wrong court.</p> <p>Rule 1.100(e)(2) adds the word “promptly” to the sentence requiring the court to inform the applicant of its determination. The committee may wish to consider setting a specific time for</p>	<p>Based on this and other comments, the committees have revised the proposal to add an advisory committee comment to clarify the circumstances in which the Supreme Court, Court of Appeal, or superior court appellate division is the appropriate reviewing court.</p> <p>When drafting this proposal, the committees considered stating a time certain. However, the committees concluded that it was important to provide flexibility to the courts because of the</p>

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	Commentator	Position	Comment	Committee Response
			<p>this requirement. In view of the rule permitting the applicant to file his or her request as few as five court days before the hearing (rule 1.100(c)(3)) and the requirement that he or she request review within 10 days of the court’s response (rule 1.100(g)(1)), there is already the possibility that the court date will have passed before a final determination is made. Requiring the court to render its decision within a specified number of days may help to reduce the time. (See SPR09-05, proposed revision to rule 8.122(a)(3), requiring a party to deliver an exhibit to the clerk within 10 days rather than “promptly.”)</p> <p>Rule 1.100(e)(2)(A) deletes the words “in whole or in part.” These words, which have properly been added to (e)(2)(B), should also remain in (e)(2)(A). Granting, denying, or granting an alternative accommodation may not be the only possibilities, for example if the applicant has requested more than one accommodation, and the applicant should be fully informed of the decision.</p>	<p>varied nature of the types of accommodations that are requested by court users and jurors. For example, the courts may provide assistive listening device on a moment’s notice but would need a couple of weeks to find out if a sign language interpreter is available. The committees may consider a specific time period for the court to respond to a request for an accommodation for the next rules cycle.</p> <p>The committees agree with the commentator. The words, “in whole or in part” will be inserted in (e)(2)(A).</p>
5.	Allen L. Lanstra, Jr. Attorney Los Angeles	NI	<p>I generally do not object to the proposed amendments concerning the time for review of decisions regarding requests for disability accommodations under Cal. Rules of Court, rule 1.100, but think there are additional issues that should be addressed.</p> <p><u>First</u>, the proposed amendments would provide that the 10-day period for filing a writ petition</p>	<p>The advisory committees disagree with the commentator. Advisory committees do not draft</p>

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	Commentator	Position	Comment	Committee Response
			<p>begins to run on the date the court's response is given or sent to the applicant. This proposal presumes that a court response will be provided. Although perhaps rare, courts sometimes fail to give the applicant a decision, even though rule 1.100 provides that the court "must" provide a decision. The lack of a response from the court effectively works as a "pocket veto" because, without a decision in hand, the court rule does not expressly allow the applicant to seek a writ. Rule 1.100 should address the process an applicant may employ to obtain a writ in the absence of a decision.</p> <p><u>Second</u>, the proposed rule provides that "[t]he court must <i>promptly</i> inform the applicant of the determination to grant or deny an accommodation request." (Emphasis added.) Although it is reasonable administrative policy to decline to set a precise timeline (for example, 10 days), "promptly" may be too indefinite. As long as the applicant makes a timely request, the court should be required to provide a decision in time for the applicant to seek a writ and stay pending review. At a minimum, the court should be required to respond <i>before</i> the next event for which the accommodation is being requested. Applicants should not be forced to prepare for a hearing without knowing whether the accommodation will be afforded. Enclosed is a recent Wisconsin court opinion discussing the inherent unfairness of resolving an accommodation request at the hearing on the underlying substantive motion.</p>	<p>rules with the expectation that courts will not comply with the rules. Therefore, the committees concluded that it is not necessary to provide a process in the rare event that a court fails to respond. The applicants always have the option to follow up with the courts regarding the status of their requests.</p> <p>When drafting this proposal, the committees considered stating a time certain. However, the committees concluded that it was important to provide flexibility to the courts because of the varied nature of the types of accommodations that are requested by court users and jurors. For example, the courts may provide assistive listening device on a moment's notice but would need a couple of weeks to determine if a sign language interpreter is available. The committees may consider a specific time period for the court to respond to a request for an accommodation for the next rules cycle.</p>

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	Commentator	Position	Comment	Committee Response
			<p><u>Third</u>, the proposed changes to Form MC-410 should include either recitation of Rule 1.110(g) or a clear statement about the right to file a petition for a writ of mandate. Lack of knowledge of one's rights to obtain appellate review, particularly within ten days, only exacerbates the challenge to persons with disabilities who are struggling with the legal system. Indeed, some of those who file accommodation requests are seeking the accommodation of assistance of counsel.</p> <p>The above comments are solely my own and do not necessarily represent those of Skadden, Arps, Slate, Meagher & Flom LLP or its clients.</p>	<p>The advisory committees disagree with the commentator. The committees do not believe that including the recitation of rule 1.100(g) is necessary or would provide additional clarity to persons with disabilities who are challenged by the legal system. Form MC-410 already refers to the review procedures under rule 1.100(g).</p>
6.	Orange County Bar Association by Michael G. Yoder, President	AM	<p>Recommend adding an advisory committee comment to clarify which is the “appropriate reviewing court” with which to file a petition for writ of mandate reviewing a judicial officer’s determination on a request for accommodation.</p>	<p>Based on this and other comments, the committees have revised the proposal to add an advisory committee comment to clarify the circumstances in which the Supreme Court, Court of Appeal, or superior court appellate division is the appropriate reviewing court.</p>
7.	Public Counsel Law Center by Lisa Jaskol Directing Attorney Appellate Law Program Los Angeles	A	<p>Public Counsel supports the proposal to “clarify that denial of an accommodation request, in whole or in part, must be in writing.” Public Counsel's Appellate Self-Help Clinic has a disabled customer whose accommodations request was denied without <i>any</i> response –much less a written response -- by the superior court. The Clinic has placed this case with pro bono counsel, who is representing the customer on appeal.</p>	<p>No response required.</p>

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8.	Standing Committee on the Delivery of Legal Services State Bar of California by Sharon Ngim, Staff Liaison	NI	<p>People with disabilities making a request need specific information about the Court’s action on the request to be able to determine whether or not they need to appeal a denial or modification of their accommodation request.</p> <p>Form MC-410 and Rule 1.100(e)(2) are not consistent with (e)(2)(A) with regard to use of the terms “denied in whole or in part” and “an alternative accommodation granted.” The latter language should also be included in (2) as a written response should be required if an alternative accommodation is granted because the alternative could, in essence, be a denial. To avoid confusion by court staff about whether they are denying or granting an alternative, we recommend that (e)(2) be revised to read, “The court must promptly inform the applicant of the determination to grant or deny an accommodation request. If the accommodation request is denied in whole or in part or an alternative accommodation is granted the response must be in writing.”</p> <p>Also, (e)(2)(E) tries to more accurately define the date upon which the applicant was notified of the courts response. The proposed language, “given or sent to the applicant” may need to be changed to more clearly explain the manner by which the written response was provided to the applicant, i.e. personally delivered, mailed, faxed, emailed.</p>	<p>The advisory committee agrees with the commentator. The words, “in whole or in part” will be inserted in (e)(2)(A).</p> <p>The intent to of the committees was to specifically address the very common circumstance in which a written response to an accommodation request, often in the form of a response filled in on the bottom of form MC-410, is handed back to the requesting party. To make this clearer, the committees have revised the proposal to replace the term “given” in the phrase identified by the commentator with the term “personally delivered.”</p>

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			<p>In (g)(1), only ten days from the date the response was “given or sent to the applicant” are provided to request review of the court’s response. This time is too short for many people for several reasons. First, people who are homeless do not often receive their mail quickly or have access to their mail in the same way people with fixed addresses can receive their mail. Second, people with disabilities that impact their ability to read, understand and respond (in writing) to a court response need more time for a meaningful opportunity to assert their rights to accommodation. Third, a person who personally received their response from a court clerk will have more time to respond than a person who receives their response by mail. We recommend an additional five days be provided, particularly if the court’s written response is delivered by mail or sent by other means.</p> <p>Finally, on the form under the ”Response” section on the bottom third, right column – there is a 4th reason for accommodation denial, but no check box before the words “For the following reason (attach additional pages, if necessary; [See Cal. Rules...” This is a little confusing and it may not be clear that this area is actually in the “DENIED” section because the box is missing. We suggest adding the box and indenting the text like the other “DENIED” reasons.</p>	<p>The ten-day period for seeking review of an accommodation decision is in current rule 1.100 and the proposal that was circulated for public comment did not propose any change to this time period. Lengthening the time period would therefore be a substantive change to the rule that was not circulated for comment. Under rule 10.22, substantive changes to the Rules of Court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year.</p> <p>The advisory committee disagrees with the commentator. The section that the commentator is referring to is not a “fourth reason” for the denial of the request for accommodation. It is the section where the court must explain the reasons for the denial of the accommodation request.</p>

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9.	Superior Court of Los Angeles County	A	No specific comment.	
10.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	AM	<p>1) This court would greatly appreciate the addition of the proposed advisory comment clarifying which of the various appellate courts would be “the appropriate reviewing court” referenced in the proposed amendments to Rule 1.100(g)(2).</p> <p>2) Under the former rule, judges were only required to provide reasons when an accommodation was denied entirely, not if it was only denied in part. Specifying the reason when an accommodation is denied in part will impose additional burden on judicial officers and it is unclear as to the need since the court will be specifying an alternative accommodation.</p> <p>3) How & who will insert that date the response was "given or sent" to the applicant? The judge will not know when this is done, and the clerk may not know if the response goes out in the mail that same day or a different day. Will the clerk now have to prepare a proof of service for this?</p> <p>4) The proposed rule states that "the writ petition must be served only on the judge who is the respondent and any real party in interest as defined in this subdivision." Our court recommends that the rule specify that the writ petition also be served on the Presiding Judge and/or Executive Officer of the Superior Court,</p>	<p>Based on this and other comments, the committees have revised the proposal to add an advisory committee comment to clarify the circumstances in which the Supreme Court, Court of Appeal, or superior court appellate division is the appropriate reviewing court.</p> <p>The advisory committees disagree with the commentator. Under the Americans With Disabilities Act and the intent of the current rule, a reason is required if there is a denial, in whole or in part, of the request for accommodation. (Current rule 1.100(2)(A).)</p> <p>The rule was drafted with the intent of giving the courts flexibility in processing the requests for accommodations. This flexibility includes how and who the court designates to insert the date on the form that the response was personally delivered or sent to the applicant. The rule does not require any proof of service.</p> <p>Based on this comment and to make service of writ petitions on the court under this rule more consistent with how writ petitions challenging a court action are generally served on a court, the committees have revised the proposal to provide that the writ petition must be served on the court. The committees note, however, that the court</p>

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	Commentator	Position	Comment	Committee Response
			since accommodations are administrative decisions (as recognized in the text describing the proposed revisions.)	must maintain the confidentiality of all information of the applicant concerning the request for accommodation that is under review.