

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Access and Fairness Advisory Committee
Hon. James R. Lambden, Chair
Donna Clay-Conti, Committee Counsel, 415-865-7911
Linda McCulloh, Staff to the Subcommittee on Access for Persons
With Disabilities, 415-865-7746
donna.clay-conti@jud.ca.gov; linda.mcculloh@jud.ca.gov

DATE: October 21, 2005

SUBJECT: Request for Accommodations by Persons With Disabilities (amend
Cal. Rules of Court, rule 989.3; revise optional form MC-410)
(Action Required)

Issue Statement

Rule 989.3 of the California Rules of Court, adopted January 1, 1996, describes the process by which persons with disabilities may request an accommodation to access a court's programs, services, or activities. In 2001, California law broadened the definition of "an individual with a disability." In addition, that same year, the Access and Fairness Advisory Committee conducted a survey to determine the effectiveness of the rule and its application. Due to the change in California law and the survey results, the advisory committee determined that certain provisions of the rule should be clarified to improve the effectiveness of its application. Optional form MC-410, which may be used to request an accommodation, should be revised to conform to the proposed amendments to rule 989.3.

Recommendation

The Access and Fairness Advisory Committee recommends that the Judicial Council, effective January 1, 2006, adopt the proposed amendments to rule 989.3 and approve the proposed revisions to optional form MC-410. The text of the amended rule is attached at pages 7–10. The text of the proposed form revision is attached at page 11. The comment chart is attached at pages 12–22.

Rationale for Recommendation

The proposed amendments to rule 989.3 would conform the rule to statutory changes in California law that occurred since the rule was adopted in 1996. Under the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.), a “qualified individual [with a disability]” is defined as a person who has an impairment that *substantially* limits a major life activity. California law previously mirrored the ADA, but in 2001 a statutory change broadened the definition of *an individual with a disability*. The change eliminated the *substantial* limitation requirement for a major life activity. California law requires only a limitation of a major life activity and does not use the term “qualified individual.” (Assem. Bill 2222; Civ. Code, §§ 51, 51.5, 54; Gov. Code, § 12926.1.) The proposed amendments to this rule would reflect this change.

Additionally, in 2001 the Subcommittee on Access for Persons With Disabilities of the Access and Fairness Advisory Committee conducted a study to determine what, if any, amendments or changes should be made to rule 989.3 based on the courts’ experiences with implementing the rule since its adoption. The survey was distributed to judges, court staff, and ADA or access coordinators (persons designated by the court to handle accommodation requests). The survey results indicated that, while the rule is effective in providing access for people with disabilities, clarification in certain areas would improve the uniformity of the rule’s application. The portions of the rule needing clarification include the definitions, the process, permitted communications, and notice of the disposition of the request.

The proposed rule amendments would:

- Change “individuals” to “persons” and “applications” to “requests” where appropriate.
- Clarify the rule’s definition of a covered person and delete “qualified” before “persons with disabilities” to conform to California law.
- Clarify the definition of accommodation to mean “actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities.”
- Clarify that examples such as providing certified sign language interpreters for persons with hearing impairments (which may be required for parties, witnesses, and jurors under Evidence Code section 754(f) and (h) and Code of Civil Procedure 224) and an alteration of an existing facility by the responsible entity may each be considered an accommodation.

- Clarify that a request may be made in *any* “written format,” or on optional form MC-410, or orally.
- Clarify that requests for accommodations must be forwarded to the ADA or access coordinator or designee so as not to delay the handling of the request.
- Eliminate the requirement that the court seal the requester’s confidential information, because some accommodation requests may be oral and therefore cannot be sealed.
- Clarify that the court is required to maintain the confidentiality of information in the accommodation request unless a written waiver is obtained or disclosure is required by law. In practice, some courts maintain the confidentiality of the accommodation information in a confidential envelope, while others place the information in color-coded file folders.
- Clarify that the type of permitted communication between the requester and the court must relate only to the accommodation request and not to the subject matter or the merits of the proceedings before the court, so as not to constitute an improper ex parte communication.
- Clarify that the court’s disposition of the request for accommodation must be in writing and in an alternative format, such as large print, if appropriate.
- Require that the court indicate the duration of the granted accommodation on the notice of the court’s disposition.

Form MC-410, *Request for Accommodations by Persons With Disabilities and Response*, is an optional form. The committee recommends revision of the form to conform to the proposed rule amendments, as follows:

- The phrase “Applicant’s Information to Be Kept Confidential” would be added to the top of the form, and “ Form to Be Kept Confidential (if box checked)” would be deleted to conform to rule 989.3(c)(4) (note that subdivision (c)(4) allows the confidentiality provision to be waived in writing).
- The heading “Order” would be replaced with “Response” to conform to rule 989.3(g)(1), which allows nonjudicial court personnel (e.g., court executive officers and ADA or access coordinators) to respond to the request for accommodation.

- Item 2, “Proceedings to be covered,” would add the examples of “family, probate, juvenile.”
- Item 7, “I request that my identity be kept CONFIDENTIAL NOT be kept CONFIDENTIAL,” would be deleted to conform to rule 989.3(c)(4).
- New item under “Response” would clarify whether the requested accommodation was granted, in whole or in part, or an alternative accommodation, and the duration of the accommodation in conformance with rule 989.3(h).
- New item under “Response” would provide space for explaining the reason for the denial of an accommodation request, in conformance with rule 989.3(e)(2). It would also provide notice of the review procedure set forth in subsection (g) of the rule.
- The phrase “JUDGE” in the signature line would be deleted to conform to rule 989.3(g)(1), which allows nonjudicial court personnel (e.g., court executive officers or ADA or access coordinators) to respond to the request for accommodation.
- The phrase “ SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE” would be added for responses that exceed one page.
- The lower left footer would be revised to conform to Judicial Council specifications and to correct an error: although the form always has been optional, it was inadvertently labeled as “adopted,” rather than “approved.”

Alternative Actions Considered

None. The committee determined that there is no effective alternative.

Comments From Interested Parties

The proposed amendments to the rule and the form were circulated for comment as SPR05-01 during the spring 2005 comment cycle (from April 21 through June 20). The committee received 25 comments. Most commentators do not advocate changes to the substantive content of the proposed rule or revised form, as noted in the attached comment chart.

Of the comments received, 15, or 60 percent, of the commentators agree with the proposed changes. The Superior Court of Alameda County, Access and Fairness Committee unanimously supports the proposal. Two commentators specifically support the proposal to maintain the confidentiality of the documents submitted

with form MC-410.¹ The State Bar Committee on Legal Professionals With Disabilities supports the rule and suggests that the committee consider expanding the definition of “court proceedings” to include discovery proceedings.² The proposed rule does not expand the definition because “discovery proceedings” are generally outside the court’s administrative responsibilities and such proceedings are regulated by statute. Other commentators do not believe it is necessary to identify the type of proceeding or proceedings to be covered on form MC-410.³ Two commentators propose adding more examples to the types of proceedings.⁴ The proposed revision to form MC-410 adds “family, probate, juvenile” to the list of examples for the types of proceedings.

Nine commentators, or 36 percent, agree with the proposed changes, only if the rule or form is modified. The committee reviewed and responded to comments that affected the substance of the rule or form. One commentator from the Superior Court of Glenn County advocates deleting the requirement that the court use certified sign language interpreters because of the shortage of such interpreters.⁵ Although the committee agrees that there is a lack of certified interpreters in some counties, statutory provisions require the use of certified interpreters for certain court users. (Evid. Code, § 754(f), (h); Code of Civ. Proc., § 224.) The current rule refers to a “qualified” interpreter. However, a qualified interpreter is an interpreter who is certified as competent to interpret court proceedings by an entity approved by the Judicial Council. (Evid. Code, § 754(f), (h); Cal. Rules of Court, rule 984.1.) A “qualified” sign language interpreter must be certified by having a specialist certificate issued by the Registry of Interpreters for the Deaf or by the California Coalition of Agencies Serving the Deaf and Hard of Hearing. Essentially, a qualified interpreter is someone who is certified, and the amendment to the examples of accommodation in the rule reflects this clarification without setting out a new requirement.

Another commentator, from the Court of Appeal, expresses concern that an “oral” request could be misinterpreted and therefore believes all requests should be in writing.⁶ The committee disagrees and believes that requiring all requests to be in writing—for example, requests for assistive listening systems—would be too burdensome to the court staff and judges who receive oral requests for accommodations. Several commentators propose that, in addition to the ADA or access coordinator, a person designated by the court should be able to receive and

¹ See comments 8 at p. 13, 2 at p. 17.

² See comment 11 at p. 14.

³ See comments 12 at p. 14, 15 at p. 16.

⁴ See comments 14 at pp. 14–16, 1 at p. 22.

⁵ See comment 1 at p. 16.

⁶ See comment 3 at p. 18.

act on requests.⁷ The committee agrees and added “or designee” to the rule in addition to the ADA or access coordinator.

A number of commentators express concern that maintaining confidentiality of the documents will be burdensome for the courts.⁸ The committee disagrees, because neither the existing rule nor the proposed amendment specifies the manner in which courts maintain confidentiality.⁹ The rule allows flexibility so that the courts can determine the method by which they will maintain confidentiality of the documents and may follow the method already in use for confidential case documents. For example, as currently practiced, some courts place the confidential information in a separate envelope, marked “CONFIDENTIAL,” in the case file or maintain a color-coded file folder system.

Another commentator believes that opposing parties should be able to access the confidential documents.¹⁰ The committee disagrees because the accommodation process is not an issue in the case but rather is a matter of court administration. Therefore, unless otherwise permitted by law, the opposing party or other applicants cannot obtain or examine the confidential documents.

One commentator disagrees with the proposed changes, believing that the requirement that the court respond to each request in writing is burdensome.¹¹ The committee believes, however, that written responses provide a record of the court’s action and access to statistical data for future evaluation of the effectiveness of the court’s application of the rule, and thus should be required.

Implementation Requirements and Costs

There is no implementation requirement. The courts will incur some standard costs in reproducing the forms.

Attachments

⁷ See comments 14 at pp. 14–16, 5 at p. 19.

⁸ See comments 5 at p. 19, 6 at pp. 19–21.

⁹ The sentence “Nothing in this rule limits or precludes discovery, as provided by law, of information relating to the request for accommodation(s)” within the confidentiality section, subdivision (c)(4), did not receive any comment. This sentence is deleted from the final proposed rule as being repetitive because the policy provision in subdivision (a) provides that this rule is not intended to limit or invalidate the remedies, rights, and procedures under state or federal law.

¹⁰ See comment 9 at p. 21.

¹¹ See comment 1 at p. 22.

Rule 989.3 of the California Rules of Court would be amended, effective January 1, 2006, to read:

Rule 989.3. Requests for accommodations by persons with disabilities

(a) **[Policy]** ~~It shall be~~ is the policy of the courts of this state to ~~assure~~ ensure that ~~qualified individuals~~ persons with disabilities have equal and full access to the judicial system. To ensure access to the courts for persons with disabilities, each superior and appellate court must designate at least one person to be the ADA coordinator, also known as the access coordinator, or designee to address requests for accommodations. ~~Nothing in this rule shall be construed~~ This rule is not intended to impose limitations or to invalidate the remedies, rights, and procedures accorded to ~~any qualified individuals~~ persons with disabilities under state or federal law.

(b) **[Definitions]** The following definitions ~~shall~~ apply under this rule:

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

(2) “Applicant” means any lawyer, party, witness, juror, or ~~any~~ other individual person with an interest in attending any proceeding before any court of this state.

(3) “Accommodations(s)” means 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 the ~~qualified individuals~~ persons with disabilities, auxiliary aids and services, ~~which are not limited to~~ equipment, devices, materials in alternative formats, and qualified interpreters or 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. ~~and making each service, program, or activity, when~~

1 viewed in its entirety, readily accessible to and usable by qualified
2 individuals with disabilities requesting accommodations. While not
3 requiring that each existing facility be accessible, this standard, known as
4 “program accessibility,” must be provided by methods including
5 alteration of existing facilities, acquisition or construction of additional
6 facilities, relocation of a service or program to an accessible facility, or
7 provision of services at alternate sites.
8

9 (4) The “Rule” means this rule regarding requests for accommodations in any
10 state courts by ~~qualified individuals~~ persons with disabilities.

11
12 (5) ~~Confidentiality applies to the identity of the applicant in all oral or written~~
13 ~~communications, including all files and documents submitted by an~~
14 ~~applicant as part of the application process.~~

15
16 (c) [Process] The following process for requesting accommodations is
17 established:
18

19 (1) ~~Applications requesting~~ Requests for accommodations(s) pursuant to
20 under this rule may be presented ex parte ~~in writing~~, on a form approved
21 by the Judicial Council, in another written format and provided by the
22 court, or orally as the court may allow. ~~Applications~~ Requests should
23 must be made forwarded at the designated Office of the Clerk, or to the
24 courtroom clerk or judicial assistant where the proceeding will take place,
25 or to the judicial officer who will preside over the proceeding to the ADA
26 coordinator, also known as the access coordinator, or designee, within the
27 time frame provided in subdivision (c)(3).
28

29 (2) ~~All applications~~ Requests for accommodations ~~shall~~ must include a
30 description of the accommodation sought, along with a statement of the
31 impairment that necessitates such accommodation. The court, in its
32 discretion, may require the applicant to provide additional information
33 about the ~~qualifying~~ impairment.
34

35 (3) ~~Applications~~ Requests for accommodations ~~should~~ must be made as far in
36 advance of the requested accommodations implementation date as
37 possible, and in any event ~~should~~ must be made no less fewer than five
38 court days ~~prior to~~ before the requested implementation date. The court
39 may, in its discretion, waive this requirement.
40

41 (4) ~~Upon request,~~ The court shall must place under seal the identity of the
42 applicant as designated on the application form and all other identifying
43 information provided to the court pursuant to the application keep

1 confidential all information of the applicant concerning the request for
2 accommodation, unless confidentiality is waived in writing by the
3 applicant or disclosure is required by law. The applicant's identity and
4 confidential information may not be disclosed to the public or to persons
5 other than those involved in the accommodation process. Confidential
6 information includes all medical information pertaining to the applicant,
7 and all oral or written communication from the applicant concerning the
8 request for accommodation.

9
10 (d) **[Permitted communication]** ~~An applicant may make ex parte~~
11 ~~communications with the court; such~~ Communications under this rule shall
12 must deal address only with the accommodation(s) requested by the applicant's
13 ~~disability requires~~ and shall must not deal address, in any manner, with the
14 subject matter or merits of the proceedings before the court.

15
16 (e) **[Grant of Response to accommodation request]** A court shall must grant
17 respond to a request for an accommodation as follows:

18
19 (1) ~~In determining whether to grant an accommodation and what~~
20 ~~accommodation to grant,~~ The court shall must consider, but is not limited
21 by, California Civil Code section 51 et seq., the provisions of the
22 Americans with Disabilities Act of 1990, and other related applicable
23 state and federal laws in determining whether to provide an
24 accommodation or an appropriate alternative accommodation.

25
26 (2) The court shall must inform the applicant in writing ~~of findings of fact~~
27 ~~and orders,~~ as may be appropriate, and if applicable, in an alternative
28 format, of the following: (a) that the request for accommodations is
29 granted or denied, in whole or in part; and if the request for
30 accommodation is denied, the reason therefor; or that an alternative
31 accommodation is granted; (b) the nature of the accommodations(s) to be
32 provided, if any; and (c) the duration of the accommodation to be
33 provided.

34
35 (f) **[Denial of accommodation request]** ~~An application~~ A request for an
36 accommodation may be denied only if when the court finds determines that:

37
38 (1) The applicant has failed to satisfy the requirements of this rule; or

39
40 (2) The requested accommodations(s) would create an undue financial or
41 administrative burden on the court; or
42

1 (3) The requested accommodations(s) would fundamentally alter the nature
2 of ~~the~~ a service, program, or activity.

3
4 **(g) [Review procedure]**

5
6 (1) An applicant or any participant in the proceeding in which an
7 accommodation request has been denied or granted may seek review of a
8 determination made by nonjudicial court personnel within 10 days of the
9 date of the ~~notice of denial or grant~~ response by submitting, in writing, a
10 request for review to the ~~judicial officer~~ presiding judge or designated
11 judicial officer ~~who will preside over the proceeding or to the presiding~~
12 ~~judge if the matter has not been assigned.~~

13
14 (2) An applicant or any participant in the proceeding in which an
15 accommodation request has been denied or granted may seek review of a
16 determination made by a presiding judge or ~~any~~ another judicial officer ~~of~~
17 ~~a court~~ within 10 days of the date of the notice of ~~denial or grant~~
18 determination by filing a petition for extraordinary relief in a court of
19 superior jurisdiction.

20
21 **(h) [Duration of accommodations]** The accommodations by the court ~~shall~~ must
22 ~~commence~~ be provided for the duration on the date indicated in the ~~notice of~~
23 response to the request for accommodation and ~~shall~~ must remain in effect for
24 the period specified ~~in the notice of accommodation~~. The court may ~~grant~~
25 provide an accommodations for an indefinite periods of time, for a limited
26 period of time, or for a particular matter or appearance.

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 (Specify) Person submitting request (name): APPLICANT'S ADDRESS: TELEPHONE NO.:</p>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT 19 08-31-05</p> <p style="text-align: center;">Not approved by the Judicial Council</p>
<p>NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:</p>	
<p>JUDGE:</p>	
<p>CASE TITLE</p>	
<p style="text-align: center;">REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES RESPONSE</p>	<p>DEPARTMENT: CASE NUMBER:</p>

AND

Applicant requests accommodation under rule 989.3 of the California Rules of Court, as follows:

1. Type of proceeding: Criminal Civil
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):
 alternative accommodation (specify below):

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

Date:

(TYPE OR PRINT NAME)

The accommodation is **DENIED** because it
 fails to satisfy the requirements of rule 989.3
 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 989.3(g), for the review procedure.]

(SIGNATURE)
 SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE.

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comm ent on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
AGREE WITH THE PROPOSED RULE AND FORM (15 Comments)					
1.	Mr. George Bellgardt, ADA Coordinator, Foltz Criminal Justice Center—Criminal Division, Los Angeles	A	N	Commentator agrees with the proposed changes.	
2.	Hon. Gail Brewster Bereola, Hon. Vernon K. Nakahara, Co-chairs, Access & Fairness Comm., Alameda County Superior Court	A	Y	Commentator agrees with the proposed changes. Commentator notes that the Alameda County Superior Court’s Access and Fairness Committee unanimously agreed with the proposed changes.	
3.	Ms. Cindy Bogle, ADA Trainer, Alameda County Superior Court	A	Y	Commentator agrees with the proposed changes. Commentator notes that the changes adequately address present discrepancies in polices and processes.	
4.	Hon. Roger W. Boren Administrative Presiding Justice, Court of Appeal, Second Appellate	A	N	Commentator agrees with the proposed changes.	

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comm ent on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
	District, Los Angeles				
5.	Hon. Tari L. Cody, Judge, Ventura County Superior Court	A	N	Commentator agrees with the proposed changes.	
6.	Ms. Linda Gorham, Court Manager, San Francisco Superior Court	A	N	Commentator agrees with the proposed changes. Commentator states that the changes add great clarifications.	
7.	Mr. Gerry Gouveia, Facilities Manager, Alameda County Superior Court	A	N	Commentator agrees with the proposed changes.	
8.	Ms. Fang Le Huang	A	Y	Commentator agrees with the proposed changes. Commentator notes that it is important to keep confidential information provided by the person asking for an accommodation because her confidential information was placed in the case file and the opposing attorney used that information against her.	The committee notes that this comment demonstrates the need to maintain the confidentiality of a person’s medical information submitted with the request for accommodation.
9.	Mr. J. Kendrick Kresse, Executive Director California Center for Law and the Deaf, San Leandro	A	Y	Commentator agrees with the proposed changes. Commentator suggests that the committee consider noting Evidence Code section 754 (f) and (h) in the reference to “certified interpreters” to reflect that interpreters are for persons with hearing impairments.	The proposed rule clarifies that “certified interpreters” are “for persons with hearing impairments.”

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comm ent on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
10.	Ms. Arline Lisinski	A	N	Commentator agrees with the proposed changes.	
11.	Mr. Peter S. Meyerhoff, Member, State Bar Committee on Legal Professionals with Disabilities	A	Y	Commentator agrees with the proposed changes. Commentator suggests that the committee broaden the definition of “proceedings” to include the discovery process.	The proposed rule did not include the “discovery process” in the definition of “proceeding.” These proceedings are outside the court’s administrative responsibilities and are regulated by statute.
12.	Ms. Sharon Ngim, Staff Liaison to the State Bar Standing Committee on the Delivery of Legal Services	A	Y	Commentator agrees with the proposed changes. Commentator suggests that the rule specify training for the ADA or access coordinator, judges and court staff who handle requests for accommodations. The commentator also suggests that question one on form MC-410, asking the applicant to identify the type of proceeding, civil or criminal, be eliminated because it is irrelevant.	The AOC will continue to provide ADA/Access training. Proposed form MC-410 will continue to request that applicants identify the “type of proceedings” for data and record-keeping purposes.
13.	Hon. Kathleen R. O’Connor, Judge, Yuba County Superior Court	A	N	Commentator agrees with the proposed changes. Commentator notes that the proposed changes clarify the current form.	
14.	Ms. Paula Pearlman, Director of Litigation, Western Law	A	Y	Commentator agrees with the proposed changes. Commentator suggests that the committee to consider further changes to the rule such that it would permit waiver of the five-day advance notice requirement for applicants, including jurors,	The committee notes the following: that clarification regarding the expertise and where to locate the ADA Coordinator is a training and court administration issue. The rule currently allows the court to waive the 5-day rule. The

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comment on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
	Center for Disability Rights, Los Angeles			<p>clarify the review procedure, state that requests could be made to the access coordinator <i>or the court</i>, state that sign language interpreters must be <i>qualified and certified for a particular assignment</i>, replace “assure” with “ensure,” replace “persons” with “individuals.” With respect to the proposed revisions to form MC-410, the commentator suggests amending the title, using “individuals” rather than “persons,” broadening the types of proceeding to include juvenile and dependency, and explaining the review procedure on the form itself.</p> <p>The commentator also suggests changes relating to court administration or litigation issues. The commentator suggests that the rule should clarify the expertise of the ADA coordinator and how to locate them in the court. Also, the rule should designate at least one <i>qualified</i> person to be the ADA coordinator, state how a court would provide assistance with completing the form, require that local courts to collect and analyze the requests for accommodations, clarify that <i>qualified</i> readers understand the complexities of the materials that they are required to handle, require interpreters to be <i>qualified</i> for <i>specific assignments</i>, clarify that a judge or a clerk must direct requests to the ADA/access coordinator, specify who can obtain discovery of confidential information, clarify the nature and scope of the role of the ADA/access coordinator, and specify at what stage the request is transferred from the ADA/access coordinator to the applicant's representative.</p>	<p>review process is stated under section (g) of the rule, cited on the form. The committee believes the reference to the rule section is sufficient to direct the applicant to the instructions for the review process.</p> <p>The rule will use “ensure” instead of “assure.” “Qualified” and “certified” are statutorily equivalent terms and there is no requirement for a “qualified” reader under the ADA. The rule refers to “persons” rather than “individuals,” where appropriate. The committee has broadened the categories of proceedings on form MC-410.</p>
15.	Ms. Tina Rasnow, Sr. Attorney/	A	Y	Commentator agrees with the proposed changes.	Proposed form MC-410 will continue to request the applicant to identify the type of proceeding

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comm ent on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
	Coordinator, Ventura County Superior Court			Commentator suggests the committee eliminate the distinction between criminal and civil in item one of form MC-410, specify the training of ADA Coordinator, judges, court staff, expressly state how the application request is processed in the court, and clarify when the courts waive the five-day rule.	for data and record-keeping purposes, and the AOC will continue to provide access training to ADA coordinators, judges, and court staff. The AOC will continue, in its training, to encourage each court to provide an explanation to the applicant of how the accommodation request is processed. The proposed rule permits judges and courts the discretion, based on the individual facts of each request, to determine whether to waive the five-day advance notice requirement.
AGREE WITH MODIFICATION (Nine comments)					
1.	Ms. Tina M. Burkhart, Court Executive Officer, Glenn County Superior Court	AM	Y	Commentator agrees with the changes, <i>only if modified</i> . Commentator proposes to eliminate the requirement that courts can use only certified sign language interpreters, or to include some exceptions to that rule because of the lack of certified interpreters in certain parts of Northern California.	The committee disagrees. The use of certified interpreters for certain court users is a statutory requirement. Also, Evidence Code section 754 and Code of Civil Procedure section 224 do not permit exceptions based solely on the difficulty of retaining a certified interpreter.
2.	Ms. Diana Honig, Staff Attorney, Protection &	AM	Y	Commentator agrees with the proposed rule amendment and revision to form MC-410, <i>only if modified</i> .	The committee disagrees. The definition of “disability” in the rule complies with the ADA, FEHA, and Civil Code section 51 et seq.

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comm ent on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
	Advocacy, Inc.			<p>Commentator proposes adding “medical conditions” to the definition of disability; adding more examples to the list of types of accommodations the court may provide, to expressly impose additional duties on court staff to assist persons with disabilities make accommodation requests; adding that the court will waive the 5-day notice requirement if it can expedite the request; and broadening the confidentiality provision by expressly prohibiting the court or a party from serving a request or the court’s response on any person except to the extent necessary to process the request and implement the reasonable accommodations.</p> <p>Commentator proposes to further amend section (d) to state that communications under the rule may include assisting individuals with disabilities by recording oral requests for accommodations; and to insert the text of the appeal procedures onto form MC-410.</p> <p>Commentator also proposes revising MC-410 to state that the form must be submitted to the ADA/access coordinator and substituting “condition” for “impairment.”</p>	<p>The list of accommodations is intended to provide examples, not to be an exhaustive list. Further, the rule currently gives courts the discretion to waive the 5-day advance notice requirement. In most instances, if the 5-day notice requirement is waived, it is, in fact, expedited.</p> <p>The committee disagrees with broadening the confidentiality provision as proposed because a request for an accommodation is not a legal issue in the case; rather it is a matter of court administration.</p> <p>The form references the citation to subsection (g) of the rule, which sets forth the review procedure. The committee believes that while it may be helpful to include the review procedure on the form, space does not permit it.</p>

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comm ent on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
3.	Mr. Kevin Lane, Asst.Clerk/Admin. Court of Appeal, Fourth Appellate District, San Diego	AM	Y	Commentator agrees with the proposed amendment <i>only if modified</i> . Commentator proposes requiring that all requests for accommodations are to be in writing.	The committee disagrees. It would be burdensome to require <i>all</i> applicants to submit written requests. For example, requests for assistive listening systems are normally made orally, are typically granted, and are not difficult to administer. Also, some court users request accommodations by telephone because they are unable to come to the court due to a disability.
4.	Ms. Donelle Long, Deputy Administrator, Merced County Superior Court	AM	Y	Commentator agrees with proposed amendments and modification to MC-410, <i>only if modified</i> . The commentator proposes to eliminate the requirement that courts use <i>certified</i> sign language interpreters, the requirement to keep form MC-410 in a separate file, and to <i>mandate</i> use of form MC-410.	The committee disagrees. California law requires courts to use court-certified sign language interpreters for specified court users. Further, it would be burdensome to require <i>all</i> applicants to submit written requests. For example, requests for assistive listening systems are normally made orally and are simple to administer. These requests are rarely denied. Also, some court users request accommodations by telephone because they are unable to come to the court due to a disability. Finally, the rule does not require the court to place form MC-410 in a separate file; only that the form be kept confidential. The rule is designed to permit each court the flexibility to develop its own procedure for maintaining confidentiality of applicant information.
5.	(Commentator	AM	N	Commentator agrees with the changes, <i>only if modified</i> .	The committee disagrees and notes that while

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comm ent on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
	unknown) Los Angeles Superior Court			The commentator proposes to eliminate the requirement that all requests be submitted to the ADA coordinators because judges also receive and review requests. Commentator also <i>asks</i> about the procedures for keeping and storing confidential information, whether a written response is required in addition to the explanation on the form, and who is responsible for writing and sending the response. Commentator also asks whether the rule would require the court to bring developmentally disabled persons to court if they want to attend a proceeding.	judges and other staff receive requests, the proposed rule would ensure that those requests are forwarded to the ADA/access coordinator or designee. Further, the proposed rule provides flexibility for the courts to determine the process for maintaining confidential information and to designate the person who will respond to the requester. The rule does not require the court to provide duplicate written responses; either a written response or an explanation on the form is sufficient. The proposed rule does not require the court to facilitate a person's transportation to or from the courthouse in connection with a proceeding.
6.	Mr. Stephen V. Love, Executive Officer, San Diego Superior Court	AM	Y	<p>Commentator agrees with the proposed revisions, <i>only if modified.</i></p> <p>The commentator proposes to: eliminate the requirement to keep information in a separate file; expressly state that an applicant can make an oral request for an accommodation, and change "certified interpreters" to "certified interpreters for <i>persons with hearing impairment.</i>" With respect to the proposed revision to form MC-410, the commentator suggests adding "dates;" making confidentiality optional and requested, that the court will seal the information; permitting multiple reasons for denial of a request to be checked; eliminating the need to explain the reasons for the denial; and permitting a notation that each</p>	<p>The committee disagrees with the commentator because the proposed rule does not require that the court keep confidential information in a separate file. The rule allows flexibility for each court to implement its own procedure for maintaining confidentiality.</p> <p>The committee agrees that the proposed rule should refer to "certified interpreters for persons with hearing impairment," to distinguish from foreign language interpreters. The committee also agrees to add "dates" to form MC-410 at item 3. The committee disagrees with the</p>

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comment on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
				request is for a specified citation or specific hearing.	<p>comment regarding confidentiality of the MC-410 form. Medical information is typically submitted with a request for accommodation and all medical information is confidential, unless disclosure is waived by the applicant. The committee also believes that requiring confidential information to be sealed is burdensome to the courts. In addition, requests for assistive listening devices are made orally and cannot be sealed. However, the rule does not prohibit the court from sealing the documents, if it chooses to do so.</p> <p>Multiple reasons for the denial <i>can</i> be given. The form is not intended to restrict the number of boxes that can be checked. The “a,” “b,” and “c” designations were eliminated to clarify this issue.</p> <p>The committee disagrees with the comment to delete the explanation of the reason for denial. The ADA requires an entity to notify an applicant of the facts that support the denial of a requested accommodation.</p> <p>The committee believes it is sufficient that the revisions to form MC-410 include the case title, case number, and description of types of proceeding in items 1 and 2. An additional case citation or description of a specific hearing is</p>

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comm ent on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
					redundant.
7.	Ms. Claire Williams, Administrator, San Francisco Superior Court	AM	Y	Commentator agrees with the proposed changes, <i>only if modified</i> . The commentator proposes to direct requests to the ADA or access coordinator or designee.	The committee agrees and “or designee” is added to sections (a) and (c)(1) of the proposed rule amendment.
8.	Ms. Lorraine Woodwark	AM	Y	Commentator agrees with the proposed changes, <i>only if modified</i> . Commentator proposes adding another box to form MC-410 to request an accommodation for discovery, mediation, or arbitration proceedings.	The committee disagrees. These proceedings are outside the court’s administrative responsibilities and are regulated by statute.
9.	Mr. Dean Zipser, President, Orange County Bar Association	AM	Y	Commentator agrees with the proposed changes, <i>only if modified</i> . Commentator proposes that information submitted by the applicant in support of the accommodation request be made available to the parties to the proceeding, at least for the limited purpose of requesting a review of the court’s ruling.	The committee disagrees because a request for accommodation is not a legal issue in the case; rather it is a matter of court administration.
DISAGREE WITH PROPOSED RULE AND FORM (One comment)					

SPR05-01
Request for Accommodations by Persons With Disabilities
(amend Cal. Rules of Court, rule 989.3; revise form MC-410)

	Commentator	Agree	Comm ent on behalf of group ?	Comment	Access and Fairness Advisory Committee Response
1.	Hon. Ronald Lawrence Bauer, Chair, Rules & Forms Committee, Orange County Superior Court	N	Y	The commentator disagrees with the proposed rule amendments and revisions to form MC-410, citing four primary concerns. 1) The ADA Coordinator should not be the only court personnel authorized to receive and respond to requests for accommodations. Commentator suggests that section (c)(1) should permit the ADA Coordinator or a designee to receive the accommodation requests. 2) The court should not be required to place accommodation requests in a separate file because it is burdensome and might confuse clerks who are unaware that an ADA request exists when the review the case file. 3) The rule should allow “greater flexibility during voir dire.” Commentator believes that jury selection may be unnecessarily delayed if an accommodation hearing is held. Commentator also expressed concern as to whether the defendant and defense counsel should be notified of the hearing, which would then violate the confidentiality provisions. 4) The court should not be required to respond in writing to each request, because it is burdensome and some requests are oral. Only verbal requests that are denied should be in writing. 5) Form MC-410, item 1, should list additional types of proceedings.	1) The committee agrees with the commentator and adds “or designee” to the proposed rule. 2) The committee disagrees. The rule does not require the court to keep confidential information or the request form in a separate folder in a separate filing cabinet. The rule permits the court flexibility to implement its own procedure for maintaining confidentiality. Some courts already use a color-coded filing system or place the documents in the case file in a separate envelope, marked “CONFIDENTIAL.” 3) The committee disagrees with the comment referring to unnecessary delays due to accommodation hearings during voir dire and jury selection. The rule does not require a hearing and thus should not delay voir dire or jury selection. 4) The committee disagrees. Written responses facilitate record-keeping and provide statistical data for future use. 5) Additional types of proceedings were included in item 2 of the proposed revised form MC-410.