

Invitation to Comment**SPR09-08**

Title	Appellate Procedure: Time for Review of Decisions Regarding Request for Accommodations (amend Cal. Rules of Court, rule 1.100 and revise <i>Request for Accommodations by Persons With Disabilities and Response</i> (optional form MC-410))
Summary	This proposal would make several changes to rule 1.100 of the California Rules of Court and optional form MC-410 relating to requests for accommodations for persons with disabilities, including: (1) clarifying that the denial of an accommodation request , in whole or in part, must be in writing; (2) providing that the grant or denial of an accommodation request must include the date the response was given or sent to the applicant and revising the form to include a space for this information; (3) clarifying that a petition for an extraordinary writ (writ of mandate) in the appropriate reviewing court is the method for seeking review of an accommodation determination made by a judicial officer; (4) specifying that only those parties to the underlying action who were also notified by the court of an accommodation determination are considered real parties in interest in a writ proceeding concerning the determination; and (5) providing that the requirement to maintain the confidentiality of all information of the applicant concerning the request for accommodation also applies during any review process.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair Access and Fairness Advisory Committee Hon. James R. Lambden, Chair
Staff	Heather Anderson, Appellate Advisory Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov Donna Clay-Conti, Access and Fairness Advisory Committee Counsel, 415-865-7911, donna.clay-conti@jud.ca.gov; Linda McCulloh, Access and Fairness Advisory Committee Subcommittee on Access for Persons with Disabilities staff, 415-865-7746, linda.mcculloh@jud.ca.gov
Discussion	Rule 1.100 establishes the procedures for a person with disabilities to request that a court make accommodations so that the court’s services, programs, or activities are accessible to and usable by the person. 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” of its determination to grant or deny an

accommodation request. Under this language, it may not be clear *when* an accommodation determination must be in writing. Under the American With Disabilities Act (42 U.S.C. § 12101, et. seq (28 C.F.R. §§ 35.164, 35.150(a)(3)), the denial of a request for an accommodation must be in writing. This proposal would amend 1.100(e)(2) to clarify that a denial of an accommodation request, *in whole or in part*, must be in writing.

Rule 1.100(g) currently provides that the applicant or any participant in the proceeding may seek review of an accommodation determination “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 given 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 given or sent to the applicant. To ensure that the applicant knows when the response was given or sent, this proposal would amend the rule to require that the 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 determination was made by a presiding judge or other judicial officer, the applicant or any participant in the proceeding may seek review of that determination “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 the Court of Appeal and superior court. Thus, under rule 1.100(g), when the request for accommodations is made in the Court of Appeal and acted on by a Court of Appeal justice, 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 rules 8.485 et seq.

Under the current language of rule 1.100, however, some rule users could be confused as to 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. when a Court of Appeal justice makes a determination concerning a request for accommodation. Because there are different deadlines and procedures for petitions for extraordinary

writs and petitions for review filed in the Supreme Court, confusion over which type of petition to file could cause problems for both litigants and the court. To eliminate this potential confusion, this proposal would amend rule 1.100 to clarify that 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) is the correct way to seek review of a judge's or justice's determination concerning a request for accommodations for a person with a disability. 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."

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)). However, other parties in a proceeding do not normally receive a copy of an accommodation request or of the court's determination 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 specify that only those parties to the underlying action who were notified by the court of an accommodation determination are considered real parties in interest in a writ proceeding concerning that determination and thus need to 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).

This proposal would also make other nonsubstantive, clarifying changes to rule 1.100.

The proposed rule text and revised form are attached on pages 4–6.

Attachment

Rule 1.100 of the California Rules of Court would be amended and *Request for Accommodations by Persons With Disabilities and Response* (optional form MC-410) would be revised, effective January 1, 2009, to read:

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

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3 (a)–(d) * * *

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5 (e) **Response to Determination whether to grant accommodation request**

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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 appropriate alternative accommodation, the court must consider, but is not limited by, California Civil Code section 51 et seq., the provisions of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), and other applicable state and federal laws in determining whether to provide an accommodation or an appropriate alternative accommodation.
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16 (2) The court must promptly inform the applicant in writing, as may be appropriate, and if applicable, of the determination to grant or deny an accommodation request. If the accommodation request is denied in whole or in part, the response must be in writing. The court may also provide additional response in an alternative format, of the following on request of the applicant. The response to the applicant must indicate:
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23 (A) That Whether the request for accommodation is granted, or denied, in whole or in part, and or an alternative accommodation granted;
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26 (B) If the request for accommodation is denied, in whole or in part, the reason therefor; or that an alternative accommodation is granted;
- 27
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 given or sent to the applicant.

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35
36 (f) * * *

1 (g) **Review procedure**
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- 3 (1) If the determination to grant or deny a request for accommodation is made by
4 nonjudicial court personnel, an 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 given 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, an 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) of determination
19 by filing a petition for extraordinary relief in a court of superior jurisdiction
20 was given or sent to the petitioner. For purposes of this rule, only those parties
21 to the underlying action who were also notified by the court of the
22 determination to grant or deny the request for accommodation are considered
23 real parties in interest in a writ proceeding under this subdivision. The petition
24 for the writ must be served only on the judge who is the respondent and any
25 real party in interest as defined in this subdivision.
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) * * *
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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>DRAFT Not approved by the Judicial Council</p> <p>v2 04.07.09</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
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

The accommodation is **DENIED** 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.]

Date response given or sent to applicant: _____

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

SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE.

Item SPR09-08 Response Form

Title: **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))

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.