



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE



JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

M E M O R A N D U M

June 17, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso

From: John W. McConnell 
Nancy Barry 

Subject: New Procedures for ADA Accommodation Requests

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Chief Administrative Judge Lawrence K. Marks recently approved for distribution a set of revised procedures for handling requests for accommodations of disabilities made by parties, attorneys, witnesses, and other court visitors in the trial courts of the Unified Court System (Exh. A). Developed under the supervision of the Chief Judge's Advisory Committee on Access for People with Disabilities, these procedures are intended to simplify the application process and facilitate swifter provision of appropriate accommodations to court users. In short, the revised guidelines provide that

- Accommodation requests, whether made in advance of, or on the day of a court appearance, and whether in-person, oral or written, should be forwarded to the Chief Clerk (in New York City) or the District Executive (outside New York City) for handling.

(An optional, online accommodation request form will be available for use by requestors later this year to facilitate advance notice requests.)

- Following receipt of an accommodation request, the Chief Clerk/District Executive will assess whether it addresses a judicial issue (e.g., an adjournment, additional time to submit papers, appearance by phone, trial breaks, etc.) or administrative accommodation (e.g., provision of assistive listening devices, use of Sign language interpreter, or relocation to a physically accessible courtroom, etc.). Judicial accommodations will be forwarded to the appropriate judge for resolution; administrative accommodations will be handled by the Chief Clerk/District Executive or their designee.

- If a judge receives an accommodation request by a court user appearing before her, and the request addresses a purely judicial accommodation, the judge should determine the request without referring it to the Chief Clerk or District Executive. Any aspect of a request made directly to the judge that involves an administrative accommodation should be referred to the Chief Clerk/District Executive for consideration and appropriate action.
- Chief Clerks and District Executives **must** consult with the Statewide ADA Coordinator before denying an accommodation request. When denying a request, a written Denial of Accommodation Form (web link) must be issued, with a copy sent to the Statewide ADA Coordinator. An administrative denial is subject to review within 10 days by the Statewide ADA Coordinator.

Further information on this procedure, as well as substantial additional information about the court system's commitment to assuring access to all, may be found at <http://ww2.nycourts.gov/Accessibility/index.shtml>.

Please note that each courthouse should have informational ADA posters, prominently displayed near courthouse entrances and on each floor, directing court users seeking accommodations to the Chief Clerk's office for assistance. If a courthouse within your jurisdiction does not have such signage, please notify the ADA Office.

Please distribute this memorandum and attachment to all persons who interact with the public and may be called upon to assist or provide information about accommodation procedures. Questions about the new procedure may be addressed to John Sullivan, Statewide ADA Coordinator (ajsullivan@nycourts.gov). And as always, thank you for your kind assistance in implementing this important court policy.

Attachment

c: Administrative Judges
 Hon. Rosalyn Richter
 Scott Murphy
 Linda Dunlap-Miller
 District Executives
 NYC Chief Clerks
 Chief Michael Magliano
 Carolyn Grimaldi
 Lucian Chalfen
 John Sullivan
 Barbara Zahler-Gringer

Guidelines for Handling Requests for Disability Accommodations (June 2020)

I. Categories of Disability Accommodation Requests

Requests for disability accommodations fall into three categories: judicial, administrative, or a combination of judicial and administrative. Identifying the type of request is important in order to determine how the request should be handled.

A. *Judicial requests* are for accommodations that only a judge – not a court manager – can grant or deny. Judicial requests typically seek an accommodation that involves the judge exercising authority over:

- the parties (e.g., to adjourn a case, or to appear by phone or video, or for more time to submit motion papers), or
- courtroom practices (e.g., to have someone other than an attorney sit beside a party; to take frequent breaks during the proceeding; to schedule the matter in the afternoon, rather than the morning), or
- the substance of the proceedings (e.g., a motion to be permitted to forego cross-examination, or to re-write a jury instruction).

B. *Administrative requests* are for accommodations that don't involve the judge's authority over the case and the parties. These types of requests usually involve:

- providing auxiliary equipment or services (e.g., sign language interpreters; assistive listening devices; CART reporting; or large print or Braille format documents), or
- asking court managers to vary usual court procedures (e.g., relocate a proceeding from an inaccessible courtroom to an accessible courtroom; permit the entry of a service animal into the courthouse; or assist with filling out forms).

C. In some cases, a person may be asking for a *combination of judicial and administrative accommodations*. In those instances, the judge (and only the judge) can determine whether to grant or deny the judicial accommodation requests, but the judge should not be asked to address the administrative accommodation request portion. In other words, responsibility for addressing these types of hybrid requests will be divided between the judge and non-judicial personnel.

II. Receipt of Disability Accommodation Requests

An accommodation request can be made orally or in writing. It can be communicated via e-mail, fax, phone, or in person. Although we ask people to bring their requests to our attention in advance of their court dates, sometimes the request isn't received until the person appears in court. Sometimes, non-judicial personnel are the first to receive the request, and sometimes the request isn't made until the court user is in front of the judge.

III. Process for Handling Disability Accommodation Requests

With one exception – see III (C), below – Chief Clerks (in New York City) and District Executives (outside New York City) are responsible for managing the court system’s response to disability accommodation requests. The Chief Clerk or District Executive determines whether the request requires a judicial or administrative response (or both), and addresses the request accordingly, as set forth in III (A) and (B), below.

A. Requests Made in Advance of a Court Appearance

All *advance notice* accommodation requests are made:

- In courts within New York City, to the Chief Clerk of the Court;
- In courts outside New York City, to the District Executive.

Upon receipt, the Chief Clerk or District Executive determines whether the disability request is administrative, judicial, or both. The Statewide ADA Office is available for consultation if the answer isn’t clear. If it appears that any delay will be involved, the requestor should be so notified – it is important that court users be kept informed of the status of their requests.)

If the request solely concerns a judicial accommodation:

1. The request is forwarded immediately to the chambers of the judge presiding over the proceeding, indicating to chambers staff that the type of accommodation sought can only be granted or denied by the judge, not administrative personnel.
2. The requestor is informed that the request must be addressed by the judge, and that it has been forwarded to the judge for determination.

If a request is for both administrative and judicial accommodations, that portion that seeks judicial accommodations is referred to the judge, and the requestor so informed. The remaining administrative portion of the request is handled by the court manager, as described below.

If the request is solely administrative in nature, the court manager ensures that it is addressed promptly. The District Executive or Chief Clerk:

1. Handles it on their own, or

2. Designates someone else in their office, or the court involved, to be the point person for ADA requests.

B. Requests Made Without Advance Notice

In some cases, individuals may not request an accommodation until they appear in court. Such no-advance notice, in-person accommodation requests might be directed, in the first instance, to front-facing non-judicial personnel (i.e., the clerk of the court, court officers, counter clerks, part clerks, etc). *Those requests also need to be determined by Chief Clerks and District Executives, as follows.*

All non-judicial court personnel should direct “in-person, day-of” requestors to the court’s Chief Clerk’s Office.

In NYC Supreme and Surrogate’s Courts, the Chief Clerk determines if a judicial response is required and, if so, forwards it to the appropriate judge and informs the requestor that the judge will determine it. If an administrative response is called for, the Chief Clerk (or a designee) provides the appropriate accommodation, if any.

In NYC Civil, Criminal, and Family Courts, the court’s Borough Chief Clerk or Clerk of Court immediately advises the court’s Chief Clerk (citywide) of the accommodation request; the Chief Clerk (citywide) responds as above.

In courts outside NYC, the court’s Chief Clerk immediately advises the District Executive of the accommodation request, and the District Executive determines if a judicial response is required and, if so, forwards it to the appropriate judge and informs the requestor that the judge will determine it. If an administrative response is called for, the District Executive (or a designee) provides the appropriate accommodation, if any.

In all cases, it is important for Chief Clerks and District Executives to follow up to ensure that an accommodation has been provided (if it is appropriate to do so), and that the accommodation is proving effective.

To ensure that requests are addressed in a timely and efficient manner, it is essential that all court personnel who interact with the public know that people with day-of, in-person ADA accommodation requests are to be immediately directed, or escorted, to the Clerk’s Office. (However, in those rare courts that do not have a Clerk’s Office on the premises, the Clerk’s Office should be contacted by phone – the requestor should not be directed to report to another location).

C. Requests Made to Judges

Judges who are asked for *purely judicial* accommodations determine the request, without referring it to the District Executive (outside NYC) or Chief Clerk (inside NYC). Judges who are asked for *administrative* accommodations should refer the request to the District

Executive or Chief Clerk, who will consider the request and make any necessary arrangements, directly or via a designee.

IV. Resolving Accommodation Requests

Granting accommodation Requests: Many requests can be resolved quickly. In some instances, the District Executive or Chief Clerk may need *further conversation* with the requestor if:

1. It is not clear that the individual qualifies for an ADA accommodation, or
2. A better understanding of the individual's limitations and how they might affect participation in court proceedings is needed, or
3. There is uncertainty about the best and most reasonable means of accommodating the individual's disability. Consult with the ADA Office if assistance is needed.

It is important to remember that court managers and staff should never make overly intrusive inquiries or request medical information that is not relevant to the need for an accommodation. Dialogue about a person's disabilities should always be handled in a sensitive and confidential manner that protects individual privacy as much as possible.

When the District Executive or the Chief Clerk, is *granting* an accommodation request, it does not have to be done in writing. However, it might be a best practice to keep a record of the types of accommodations being requested, as that may help ensure an adequate distribution of resources.

Ongoing Accommodation Requests: Where an administrative accommodation is needed on an ongoing basis (e.g. a sign language interpreter, or the relocation of a proceeding to an accessible courtroom), a separate request is not necessary for each court appearance. Court personnel should ensure that the accommodation is in place and ready to go at each anticipated future appearance. Judicial accommodation requests must be renewed whenever the requestor appears before a different judge.

Denial of Accommodation Requests: Chief Clerks and District Executives must consult with the Statewide ADA Coordinator before *denying* an accommodation request. If a request is denied, the Chief Clerk or District Executive must issue a written Denial of Accommodation Form and give it to the requestor, with a copy to the Statewide ADA Coordinator. An administrative denial is subject to review, within 10 days, by the Statewide ADA Coordinator.