

REQUESTS FOR ACCOMMODATION BY PERSONS WITH DISABILITIES

(a) Definitions. The following definitions shall apply under this rule:

(1) “Accommodation” means measures to make each court service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability, and may include but is not limited to:

(A) making reasonable modifications in policies, practices, and procedures;

(B) furnishing, at no charge, auxiliary aids and services, including but not limited to equipment, devices, materials in alternative formats, qualified interpreters, or readers; and

(C) as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability.

(2) “Person with a disability” means a person with a sensory, mental, or physical disability as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101-12213), the Washington State Law Against Discrimination (ch. 49.60 RCW), or other similar local, state or federal laws.

(b) Process for Requesting Accommodation.

(1) *Requests.* Requests for aids, modifications, and services will be addressed promptly and in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101-12213) and the Washington State Law Against Discrimination (ch. 49.60 RCW), with the objective of ensuring equal access to courts, court programs, and court proceedings.

(2) *Timing.* Requests should be made in advance whenever possible, to better enable the court to address the needs of the individual.

(3) *Local Procedures Allowed.* Local procedures not inconsistent with this rule are encouraged. Informal practices are appropriate when an accommodation is clearly needed and can be easily provided.

(4) *Procedure.* An application requesting accommodation should be made on a form approved by the Administrative Office of the Courts and may be presented *ex parte* in writing, or orally and reduced to writing, to the presiding judge or officer of the court or their designee.

(5) *Content.* The request shall include a description of the accommodation sought, along with a statement of the disability necessitating the accommodation. The court may require the person requesting accommodation to provide additional information about the qualifying disability to help assess the appropriate accommodation. Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated “SEALED MEDICAL AND HEALTH INFORMATION” and such information shall be accessible only to the court and the person requesting accommodation unless otherwise expressly ordered.

(c) Consideration and Decision.

(1) *Considerations.* In determining whether to grant an accommodation and what accommodation to grant, the court shall:

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101-12231), chapter 49.60 RCW, and other similar local, state, and federal laws;

(B) give primary consideration to the accommodation requested by the applicant; and

(C) make its decision on an individual- and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation.

(2) *Determination.* A request for accommodation may be denied only if:

(A) the person requesting application has failed to satisfy the substantive requirements of this rule; or

(B) the court is unable to provide the requested accommodation on the date of the proceeding and the proceeding cannot be continued without significant prejudice to a party; or

(C) permitting the applicant to participate in the proceedings with the requested accommodation would create a direct threat to the health or well being of the applicant or others.

(D) the requested accommodation would create an undue financial or administrative burden for the court; or would fundamentally alter the nature of the court service, program, or activity under (i) or (ii):

(i) An accommodation may be denied based on a fundamental alteration or undue burden only after considering all resources available for the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(ii) If a fundamental alteration or undue burden would result from fulfilling the request, the court shall nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the court.

(d) Decision. The court shall, in writing or on the record, inform the person requesting an accommodation that the request for accommodation has been granted or denied, in whole or in part, and the nature and scope of the accommodation to be provided, if any. A written decision shall be entered in the proceedings file, if any, in which case the court shall determine whether or not the decision should be sealed. If there are no proceedings filed the decision shall be entered in the court's administrative files, with the same determination about filing under seal.

(e) Denial. If a requested accommodation is denied, the court shall specify the reasons for the denial (including the reasons the proceeding cannot be continued without prejudice to a party). The court shall also ensure the person requesting the accommodation is informed of their right to file a complaint under the Americans with Disabilities Act of 1990 with the United States Department of Justice Civil Rights Division.

Comments

[1] Access to justice for all persons is a fundamental right. It is the policy of the courts of this state to assure that persons with disabilities have equal and meaningful access to the judicial system. Nothing in this rule shall be construed to limit or invalidate the remedies, rights, and procedures accorded to any person with a disability under local, state, or federal law.

[2] Supplemental informal procedures for handling accommodation requests may be less onerous for both applicants and court administration. Courts are strongly encouraged to adopt an informal grievance process for public applicants whose requested accommodation is denied.

[Adopted effective September 1, 2007; Amended effective December 28, 2010;
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