

To: The New York State Administrative Board of the Courts

From: The New York City Mayor’s Office to End Domestic and Gender-Based Violence, the New York City Mayor’s Office for People with Disabilities, the New York City Commission on Human Rights, and the New York City Administration for Children’s Services

Re: Public Comment on Adopting a New Rule of the Chief Judge to Facilitate Requests for Judicial Accommodations Under the Americans with Disabilities Act

Date: October 23, 2023

The New York City Mayor’s Office to End Domestic and Gender-Based Violence (ENDGBV), the New York City Mayor’s Office for People with Disabilities, the New York City Commission on Human Rights, and the New York City Administration for Children’s Services (collectively “the agencies”) submit this comment in response to the Chief Judge’s Advisory Committee’s proposed rule for judicial accommodation under the Americans with Disabilities Act.

The agencies support the proposed rule with amendments that reflect the principles in this comment. The proposed rule would expand access to justice for people with disabilities and survivors of domestic and gender-based violence engaged in legal systems. Survivors of domestic and gender-based violence can experience a range of physical and mental health effects. Survivors of domestic and gender-based violence are at an increased risk for posttraumatic stress disorder (PTSD).¹ Common physical symptoms for survivors include chronic pain, gastrointestinal symptoms, headaches, and insomnia.² Domestic and gender-based violence can exacerbate previously existing disabilities – whether visible or invisible - or be the

¹ World Health Organization, Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and nonpartner sexual violence. 2023. <https://bit.ly/48o2eAJ>

² Ibid.

cause of such disabilities.³ Allowing accommodations for people with disabilities, including allowing remote court appearances, extended filing deadlines, adjournments, and other supports and accommodations as requested by litigants will result in more just outcomes for survivors, litigants, and attorneys.

With the goal of reducing unintended negative impacts, the agencies request a few clarifications to the proposed rule and/or any corresponding training or informational materials related to the rule:

Single Point of Entry

- (1) The agencies recommend that courts provide attorneys and litigants seeking accommodation with one point of entry (or form) for both administrative and judicial accommodations. A bifurcated process in which an administrative accommodation must be made separately from a judicial accommodation can create unnecessary barriers for individuals seeking accommodations. With a single entry point for both administrative and judicial accommodations, court staff can route the form to the correct path for processing.

Confidentiality and Unconscious Bias

- (2) To preserve confidentiality and address the unconscious bias of the judge adjudicating the underlying proceeding, the agencies recommend that a neutral, ex parte adjudicator, akin to a magistrate, review and either issue or recommend orders related to accommodation applications. This could be a single adjudicator in each courthouse, which would support a consistent, baseline approach to granting judicial accommodations across all cases. Given the broad discretion granted to jurists, the agencies are concerned that attorneys and litigants will be deterred from seeking

³ Ibid.

accommodations if the same jurist hearing the underlying proceeding is also making determinations regarding accommodation applications and the confidentiality of those applications.

- (3) Regarding the first exception to confidentiality in which the Court may disclose the existence of an application and information from the application that the Court deems “germane and necessary to the Court to consider in determining the merits of the underlying matter,” the agencies are concerned about the use of this exception in child custody and visitation cases. The mental and physical well-being of a parent is one of the many factors a court can consider when making a custody or visitation determination. The agencies seek clarity within the rule or within related training materials about whether accommodation applications and their contents will be routinely disclosed in cases where the mental or physical well-being of a party is relevant to the underlying matter. Such routine disclosures could jeopardize the safety and well-being of survivors of domestic and gender-based violence and deter survivors from seeking the accommodations they need.

Other Procedural Matters

- (4) The proposed rule is silent on the timing of an accommodation application. The agencies hope this silence indicates that parties or attorneys can make an accommodation request at any time during a proceeding. If this is true, the agencies recommend emphasizing this in the rule or related training and informational materials.
- (5) The proposed rule is silent on whether requests for accommodation will be determined without prejudice. The agencies recommend that the rule and/or related training and informational materials are clear that denials of accommodations will be made without

prejudice. This will allow litigants and attorneys to renew a request for accommodation with additional information or evidence in compliance with CPLR 2217(b).

Training

- (6) The agencies wish to stress that it is vital that judges, court staff, attorneys, and litigants receive uniform training and information about how best to implement the rule, exercise judicial discretion, and address potential biases related to visible disabilities, invisible disabilities, and mental health. The agencies urge OCA to work with trainers who have an in-depth knowledge of visible and invisible disabilities and their impacts on individuals' daily lives. In addition, the agencies recommend that OCA designate a person or persons who can provide guidance to adjudicators regarding applications for accommodation.
- (7) The agencies also recommend that judges, court staff, and attorneys receive training about maintaining the confidential aspects of accommodation applications and orders. Such training should relate to both physical records and e-filing systems.