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## Disability advocates seek rule change to promote consistency

By Jan Pudlow

Senior Editor

Even though he is deaf, when Scott Harrison was an assistant public defender in Pensacola, he successfully defended clients at trial, thanks to accommodating judges and courtrooms wired for real-time court reporting.

But when he moved to Orlando and went into private practice, he was told he'd have to pay for CART (communication access real-time translating) out of his own pocket. So he has sued in federal court for relief.

In another situation, a deaf couple was having a heated argument — with animated "shouting" in sign language — prompting a police officer to arrest them for domestic violence because he thought they were hitting each other. No interpreter was afforded the couple, and communication was done in writing. In the confusion, the couple mistakenly believed their case had been dismissed. When they didn't show up for pretrial services, they were thrown in jail for two days.

Matthew Dietz, a Miami lawyer who chairs the Disability Independence Group, and is incoming chair-elect of the Equal Opportunities Law Section, brought those two real-life examples to the Rules of Judicial Administration Committee meeting June 28 in Orlando at the Bar's Annual Convention.

His passionate pitch was that Florida's existing Rule 2.540 (Notices to Persons with Disabilities) is inadequate and should be changed to closely model California's Rule of Court 989.3 (See April 1 *Bar News*). Dietz listed the following shortcomings of Florida's rule: no standard statewide procedures, accommodations are limited to persons *compelled* to attend court, and accommodations for disabled lawyers must be paid by their employers.

"One of the greatest issues that we have found is that there is no consistency within the courts, with regard to asking for accommodations, obtaining accommodations, and there is no grievance procedure. These issues are required under Title II of the ADA. After the Supreme Court came out with *Tennessee v. Lane* [541 U.S. 509 (2004)] it mandated the courts are under the ADA," Dietz said.

"We did it in such a way that there would be uniformity across the different circuits of the state. It's a very comprehensive rule and is needed in order to comply with the ADA.

"In addition, I also sit on the Accessibility Committee of the Supreme Court, a subcommittee of Fairness and Diversity. That committee only addresses the physical barriers to access at courthouses. It does not address policies and procedures. This rule — this existing rule — does not ensure compliance with Title II of the ADA at all. And it leads to denial of access to courts."

The proposed rule change must be blessed by the Rules of Judicial Administration Committee, chaired by Gary Fox, in order to go forward.

It was close to stalling out. But after brief debate, the committee decided to allow

18th Circuit Judge Lisa Davidson — chair of a subcommittee that originally voted 5-2 against the rule change — to reconstitute the subcommittee as a work group with more members, including the Equal Opportunities Law Section and persons with disabilities.

"I think the subcommittee is composed of people, to the best of my knowledge, who don't have disabilities. I think sometimes it is easy to dismiss an issue because we are not faced with it," Judge Davidson told the whole committee. "We need to have more equal representation."

Those at the meeting who volunteered to serve on the work group were Duval County Judge Pauline Drayton, Dade County Judge Shelley Kravitz, Office of the State Courts Administrator General Counsel Laura Rush, Osceola County Judge Jon Morgan, Stuart lawyer Richard Levenstein, Sixth Judicial Circuit Court Counsel Elaine New, and Ronnie Fernandez, a blind lawyer at Greenberg Traurig in Miami and a member of the Equal Opportunities Law Section and DIG.

The work group will meet September 6 at the Tampa Airport Marriott, on the same day as the Rules of Judicial Administration Committee meeting, at the Bar's General Meeting.

During debate, Margaret Steinbeck, a circuit judge in Ft. Myers, said, "My comment is that court administration might view this rule favorably in that it gives them guidelines and allows an administrative appeals process, which is favorable, in my personal view, to going to federal court."

New said she "strongly disagrees" — especially with the part of the new rule that would provide accommodations to spectators.

"The law is not clear on certain categories of people," New said. "I think this committee should be extremely cautious about moving in substantively to a new rule, when substantive law is not clear at all."

Rush said: "OSCA itself has a process for intaking complaints about failures to provide accommodations to spectators in judicial proceedings. But we act in an advisory capacity, and all circuits have procedures which mimic ours to a great extent."

David Arthur Jones, of Orlando, said: "So there is a framework in place in each of the circuits already for dealing with perceived erroneous ad hoc denial by somebody at the ground level? That is what I'm hearing. My second question is the definition of 'applicant' in here really troubles me. The quote 'or other persons with an interest in attending any proceeding'— that is awfully broad and every courthouse has its courtroom junkie gadflies who just kind of hang out and roam from courtroom to courtroom. I am troubled by the breadth of that."

Dietz replied: "Why would you allow somebody who is able-bodied to be a gadfly and not allow somebody with a disability to be a gadfly?"

Jones continued: "I am just raising the issue. The question is one of cost. Does the public have an obligation to support, in effect, a hobby of someone, as opposed to someone with a vested interest in the proceeding, be that as a professional court reporter, lawyer, or as a party or a witness or as a juror?"

Dietz answered: "If it's a public service open to the public, then there should be no reason to distinguish between one and another."

Outside the meeting room, Dietz said, "I feel like I'm teaching the same lesson to a different audience. And hopefully, if I teach the same lesson enough and enough, more people will become aware. . . . Once you teach somebody there is no difference, there is really no substantial cost. And even if there was a substantial cost, you are guaranteeing a person's right to be involved in the courts. That is essential. That's why we have courts. That's why Justice Lewis has this issue with physical accessibility with the courts. And you cannot have physical accessibility without accessibility in policies and procedures."

Reggie Clyne, immediate past chair of the Equal Opportunities Law Section, said: "What was interesting to me is you had a roomful of judges from different circuits and none of them knew what to do if someone wanted to appeal an issue about being denied access to a courthouse. They realize, well, you can go appeal to appellate courts or maybe file a federal lawsuit. And then one of the court administrators said, 'In our circuit, we have a little procedure.' But that doesn't mean the procedure is statewide. And if the judges don't know the procedure, then what good is it?"

Fernandez, the blind lawyer, said: "It's just another step in the right direction to educate and give exposure to this issue."

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