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Rule would provide better court access to the disabled

By Jan Pudlow
Senior Editor

The art of compromise paid off for Matt Dietz, who honed a new rule to make it easier for persons with disabilities to attend court proceedings.

At the close of the Rules of Judicial Administration Committee meeting January 17, Dietz, chair-elect of The Florida Bar's Equal Opportunities Law Section and chair of the Disability Independence Group, smiled triumphantly.

Moments earlier, the committee had voted unanimously not only to approve EOLS' proposal to bolster Rule 2.540, "Notices to Persons with Disabilities" — but to expedite the matter so that it will be heard in the current rules cycle while Fred Lewis is still chief justice, rather than wait until 2012. Now, the new proposed rule is on the way to The Florida Bar Board of Governors for comment and the Supreme Court for approval.

"I am very happy. This is a wonderful experience in developing a process that will ensure that people with disabilities — no matter who they are who need to use the court process — will be able to," Dietz said.

Dietz said he wanted the proposed rule in this year's cycle "as an acknowledgement to Chief Justice Lewis' leadership. It should be noticed that he is the person from the top who actually brought this issue to a place of prominence within the Bar and bench."

Seven months ago, Dietz faced an uphill battle when he first presented the proposed rule to the committee at the Bar's Annual Convention, arguing Florida's existing rule was inadequate because there was no guarantee of standard statewide procedures, accommodations were limited to persons *compelled* to attend court, and accommodations for disabled lawyers must be paid by their employers.

The matter was close to sputtering to a halt, until the committee decided to allow 18th Circuit Judge Lisa Davidson — chair of a subcommittee that originally voted against the rule change — to reconstitute a work group with more members, including EOLS members and persons with disabilities.

During those seven months, the work group members sympathized when deaf attorney Scott Harrison personally appeared to detail why he had sued the state because he was denied real-time court reporting services in criminal trials unless he paid for it himself, an expense he said he couldn't afford. But work group members were uneasy taking on interpretations of substantive law that dangled unsettled in Harrison's pending federal case.

The proposed rule Dietz originally brought to the September meeting, Judge Davidson said, "had not only procedural issues, but policy issues, and substantive

issues.”

Meanwhile, Harrison reached a settlement with the Office of State Courts Administrator granting him the accommodation he sought. Immediately, Chief Justice Lewis approved new statewide guidelines that spell out that attorneys who are deaf or hard of hearing will now be provided with real-time court reporting services at court expense in county and circuit court criminal trials.

Dietz came back with a revised proposed amendment he described as ensuring full compliance with Title II of the ADA and to promote access for persons with disabilities for court programs and services.

In November, the work group met via two teleconferences to hammer out procedural issues, while working to incorporate suggestions contained in memos from Debbie Howells, statewide ADA coordinator of OSCA.

“I am thrilled,” Judge Davidson said, after the unanimous vote January 17 at the Bar’s Midyear Meeting in Miami, on what she described as “99.9 percent” Dietz’s rule.

“It was wonderful working with Matthew Dietz. He was willing to compromise where compromise was needed. He didn’t dig his heels in. He was willing to say, ‘Alright. That makes sense. We want to compromise here; that is important there.’ He was really very, very amenable to compromise and understood what the Rules of Judicial Administration work does, and what our authority is — and that is procedure,” Judge Davidson said.

In a nutshell, Dietz said the proposed rule “will bring more order and less ad hoc decisionmaking on what is a proper accommodation to court programs and services, for any individual with a disability.”

He said the revised proposed rule “adopts grievance procedures similar to that on the Supreme Court’s Web site, but has only been adopted by a few counties.” It gives step-by-step procedures on what notice has to be given, and if the accommodation has not been granted, how the person with disabilities may appeal.

“This does not change any of the requirements of the Americans with Disabilities Act, but facilitates that accommodations are given and justice is given, not only to litigants or parties, but any user of the system,” Dietz said.

At the work group’s September 6 meeting at The Florida Bar’s General Meeting in Tampa, when Harrison detailed his plight as a deaf lawyer, Third District Court of Appeal Judge Alan Schwartz abstained from voting, declaring it not an appropriate issue for a rules committee.

But at the January 17 meeting — after the proposed two-page rule succinctly stuck to procedural matters — Judge Schwartz was the one who moved that the rule be adopted.

“At first, I was very much against it because of the substantive provision of the rule and the issue of whether a lawyer was a ‘participant.’ I didn’t think it was appropriate for us to take a position in rulemaking,” Schwartz told the group.

“Meantime, OSCA in that litigation caved and said what everyone thought should be said — that a lawyer is a participant in litigation and this accommodation will be given to the particular lawyer in that case and any other similar situation.”

Schwartz said he also thought there was no practical need for the amended rule.

"But I believe the rule as proposed has been worked out on a very high plane with both sides: the side dealing with the content of the rule, and Matthew on his side representing the interests of the people he represents. It's a source of a great deal of work and a terrific product, for what it is. Since it is before us and the work is done, I move that it be adopted."

The next step EOLS will take, Dietz said, will be on the legislative front.

"One issue we have with the rule is the problem that these records that may be required, if someone requests accommodation, that they be open for inspection. So the next issue we are going to do is to ask for an exemption to the Sunshine Law for requests for accommodation," Dietz said.

"You never want a request for accommodation to be used as a litigation tool or as a way to invade someone's privacy. The goal for accommodation is to ensure participation in the process. Participation in the process should be without consequences."

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