

GR 33

“Requests for Accommodations by Persons with Disabilities” *



* [General Rule 33](#) of Washington State Court Rules and ADA Guidelines found on the Washington Courts [website](#) are premised on an assumption that an accommodation request must be made in order to trigger the ADA duties of courts and court-appointed agents.

These materials are silent on the duties of courts, and the rights of court users with disabilities, when no request is made but the nature and severity of a disability and its effect on meaningful participation in a court service is known or obvious. In this respect, the judicial branch is mistakenly giving the impression that judges and court-appointed agents only have duties when requests are made and that protected persons in guardianships only have ADA rights when a request is made. As shown by references in the right column, federal law says otherwise.

Any program or activity that is funded by the state shall meet the protections and prohibitions of Title II of the ADA and federal rules and regulations implementing the ADA. (Cal. Gvt. Code Sec. 11135)

A public entity must offer accommodations for *known* physical or mental limitations. (Title II Technical Assistance Manual of DOJ)

Even without a request, an entity has an obligation to provide an accommodation when it knows or reasonably should know that a person has a disability and needs a modification. (DOJ Guidance Memo to Criminal Justice Agencies, January 2017)

Some people with disabilities are not able to make an ADA accommodation request. A public entity’s duty to look into and provide accommodations may be triggered when the need for accommodation is obvious. (*Updike v. Multnomah County* (9th Cir 2017) 870 F.3d 939)

It is the knowledge of a disability and the need for accommodation that gives rise to a legal duty, not a request. (*Pierce v. District of Columbia* (D.D.C. 2015) 128 F.Supp.3d 250)

A request for accommodation is not necessary if a public entity has knowledge that a person has a disability that may require an accommodation in order to participate fully in the services. Sometimes the disability and need are obvious. (*Robertson v. Las Animas* (10th Cir. 2007) 500 F.3d 1185)

The failure to expressly request an accommodation is not fatal to an ADA claim where an entity otherwise had knowledge of an individual’s disability and needs but took no action. (*A.G. v. Paradise Valley* (9th Cir. 2016) 815 F.3d 1195)

The import of the ADA is that a covered entity should provide an accommodation for *known* disabilities. A request is one way, but not the only way, an entity gains such knowledge. To require a request from those who are unable to make a request would eliminate an entire class of disabled persons from the protection of the ADA. (*Brady v. Walmart* (2nd Cir. 2008) 531 F.3d 127)