

Barriers to Justice

An Analysis of the ADA Liaison Program
in New York City Courts



Disability and Aging Rights Project
MFY LEGAL SERVICES, INC.

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I. Introduction

Navigating the court system can pose challenges for anyone, but for individuals with disabilities simply accessing the court system can be very difficult. This should not be the case. Disability rights laws, including the Americans with Disabilities Act of 1990 (“ADA”), require courts to make their programs and services accessible to people with disabilities. Courthouses must not only be physically accessible, they also must provide reasonable accommodations to people with disabilities.¹ Courts must also effectively communicate with people with disabilities, such as through alternative format documents for individuals with visual impairments or sign-language interpreters for individuals who are Deaf.²

Under the leadership of former Chief Judge Jonathan Lippman, New York courts made access to justice a priority.³ New York has implemented a number of new programs, such as the Pro Bono Scholars Program, in order to help close the justice gap and ensure that legal services are within reach of all New Yorkers.⁴ Consistent with these important improvements to our state’s justice system, improvements can be made to the way our courts accommodate people with disabilities.

II. Summary of Findings

To comply with its obligations under federal law and achieve the goal of access to justice for all, the New York Unified Court System (“UCS”) - the judicial branch of the state of New York - has designated at least one employee at each courthouse throughout the state to be an “ADA Liaison.”⁵ ADA Liaisons are responsible for providing information to people with disabilities and facilitating reasonable accommodations.⁶ As such, they have the potential to be a tremendous resource.

MFY Legal Services, Inc. (“MFY”) analyzed the ADA Liaison program in New York City⁷ and found that its potential is largely untapped, because of:

- Lack of awareness of the program among the public and court staff;
- Inaccurate contact information listed for ADA Liaisons online;
- Insufficient training for ADA Liaisons, court staff and judges;
- Inadequate guidance on how to make a reasonable accommodation request; and
- Inadequate procedures for grieving non-compliance with the ADA.

MFY also analyzed ADA Liaison procedures for specific types of reasonable accommodations and found the following flaws:

- Unreasonable denials of requests to appear remotely from people whose disabilities prevent them from getting to court; and
- Inappropriate appointment of Guardians ad Litem for people whose disabilities prevent them from getting to court but do not prevent them from advocating for themselves remotely.

To combat these shortcomings and help ensure that all New Yorkers have equal access to justice, MFY makes recommendations in Section V.

III. Background on Disability Rights Law

The rights of individuals with disabilities to access courts are mainly protected by federal law. In particular, Title II of the ADA prohibits discrimination against people with disabilities by public entities, including state courts.⁸ The New York state court system receives federal grants and is therefore also covered by the Rehabilitation Act, which prohibits discrimination against people with disabilities by any program or activity receiving federal funds.⁹ Because the protections of the Rehabilitation Act are similar to those under the ADA, this paper will focus only on the ADA.¹⁰

The ADA's protections extend to all people who are court users with disabilities, including litigants, attorneys, witnesses, jurors, and spectators.¹¹ A person has a disability under the ADA if he or she has "a physical or mental impairment that substantially limits one or more major life activities," a record of that impairment, or is "regarded as" having that impairment.¹² This definition is to be read broadly so that people with all types of disabilities, including episodic and invisible disabilities, receive the law's protection.¹³

Under the ADA, courts must eliminate the barriers that people with disabilities face in accessing justice. Courts must make reasonable accommodations to their rules, policies, and procedures so that people with disabilities can participate in the court's services, programs, and activities on an equal basis as people without disabilities.¹⁴ Courts



*The "Physically Challenged Entrance" for the New York County Supreme Court at 60 Centre Street.
Photo: Matthew Longobardi.*

must also take steps to ensure that communications with people with disabilities are as effective as communications with others.¹⁵ Finally, courthouses are required to be physically accessible, either through alterations or relocation of services.¹⁶ An analysis of whether New York courts are physically accessible is outside the scope of this paper.¹⁷

In addition to federal law, New York City and State laws also prohibit courts from discriminating against people with disabilities. For example, New York Civil Rights Law § 47 requires public buildings, including those maintained by the state, to accommodate individuals who use guide dogs.¹⁸ Judiciary Law § 390 requires a court to appoint an interpreter at state expense for Deaf litigants.¹⁹

IV. Flaws in the ADA Liaison Program

In an attempt to comply with the requirements of the ADA, UCS has designated an “ADA Liaison” at each courthouse throughout the state.²⁰ UCS’s website states that people with disabilities should contact their local ADA Liaison to request reasonable accommodations or information about the courthouse’s accessibility.²¹ People in need of reasonable accommodations are told to make requests to the ADA Liaison in advance of their court appearance, if possible.²² Such a request may be made in person, in writing, or over the phone.²³ People are directed to provide specific information about their request and the nature of their court appearance.²⁴

Although the ADA Liaison facilitates the request, she does not have the authority to deny it.²⁵ Requests that an ADA Liaison determines are “unclear or present novel concerns” are instead to be resolved by the court’s Chief Clerk and the court system’s Division of Professional and Court Services.²⁶ Additionally, the ADA Liaison is supposed to be a resource for judges who may receive requests for accommodations during court proceedings.²⁷

With the ability to receive requests for assistance from people with disabilities and facilitate reasonable accommodations, ADA Liaisons have the potential to be a tremendous resource. MFY has uncovered significant flaws, however, with the ADA Liaison program in New York City that instead make it an untapped resource. This section describes those problems.

A. Lack of Awareness of the ADA Liaison Program: UCS’s Hidden Accessibility Information Webpage

The U.S. Department of Justice requires that courts make information about the ADA known to people and explain its applicability to the services, programs, or activities of the court.²⁸ Methods for notification include handbooks, manuals, and pamphlets distributed to the public, informative posters in public places, and the broadcast of information by radio or

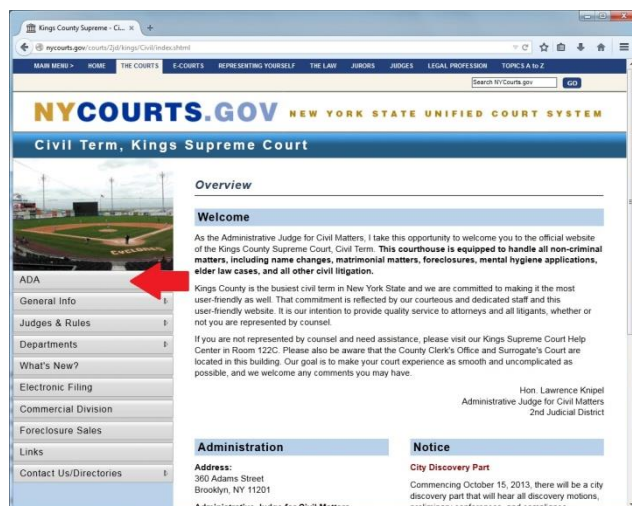
television.²⁹ Yet, many people who are in need of the ADA Liaison program are not aware of its existence.

The Office of Court Administration has responded to Freedom of Information Law (“FOIL”) requests for outreach materials by simply directing MFY to the accessibility information webpage.³⁰



Accessibility, N.Y. State Unified Court System,
<http://www.nycourts.gov/accessibility/index.shtml> (last visited September 30, 2016).

However, the accessibility information webpage is not always highlighted on individual court websites or on other parts of the UCS website. For example, the New York City Housing Court website has information for people with disabilities under a “General Information” drop down menu through a link for “Court Services.”³¹ Other services, such as information about Guardians ad Litem, are displayed more prominently on the main menu of the court’s homepage.³² Only some New York courts – like Kings Supreme Court, Civil Term - provide links to the accessibility information webpage in the main menu of their homepages.³³



New York City Housing Court homepage, on the left, does not provide any link to ADA information from the main menu. The homepage for Kings Supreme Court, Civil Term, on the right, does provide a link to the accessibility information webpage, indicated with an arrow. New York City Courthouses, N.Y.C. Housing Court, N.Y. State Unified Court System, <http://www.nycourts.gov/courts/nyc/housing/index.shtml> (last visited September 30, 2016); Overview, Civil Term, Kings Supreme Court, N.Y. State Unified Court System <http://www.nycourts.gov/COURTS/2jd/KINGS/CIVIL/index.shtml> (last visited September 30, 2016).

B. Lack of Awareness of the ADA Liaison Program: Other Notices

Federal regulations require courts to publicize the ADA's applicability to court services not only online but also in actual courthouses, such as through the use of pamphlets or the display of informative posters.³⁴

MFY has previously argued that UCS's posters in courts are insufficient to adequately notify people with disabilities of the ADA. A 2006 article based on the experiences of MFY attorneys in New York City housing courts discussed the inadequacy of the published notices in Manhattan's Housing Court.³⁵ At the time, the court used posters which stated that accommodations were available and included four symbols - a person in a wheelchair, two hands indicating the availability of sign-language interpreting, an ear with a bar over it indicating services for the Deaf, and a person with a cane.³⁶ The authors observed that the poster did not make clear that accommodations may be available to individuals with mental illness and recommended clearer notices indicating the availability of such accommodations.³⁷ Further, the authors recommended that notices should be posted prominently on every floor of the court, placed on post cards sent to litigants by the Housing Court clerk's office, placed on handouts in the clerk's office, and announced in the Housing Court courtrooms.³⁸



Logo from the UCS accessibility information webpage, which is also used on some court signage. Introduction, Accessibility, N.Y. State Unified Court System, <http://www.nycourts.gov/accessibility/index.shtml> (last visited September 30, 2016).

During the last ten years, not enough has changed. A May 2016 visit to the courthouse at 111 Centre Street in Manhattan, which contains New York Housing Court, New York Supreme Court, and New York Civil Court, documented that accurate notices regarding the ADA were sparse. There were notices on the main floor by the elevators, but these notices simply state that people with disabilities could ask a court officer to direct them to the Chief Clerk's office.³⁹ The signs did not specify where the Chief Clerk's office was located. Further, they included the same insufficient illustrations as on the 2006 sign (these illustrations also appear on the court's website). Although the notices included phone numbers for the ADA Liaisons for Civil Court and Supreme Court, they did not include those for Housing Court, and the names and phone numbers for the ADA Liaisons posted in the courthouse were different from those listed on the court's website.

The Landlord and Tenant Clerk's Office in New York Housing Court has slightly more signage, but it is of limited help. There is a poster on how to communicate with people who have disabilities. The poster's only advice for people with disabilities, located at the end of the poster in small print, is to e-mail ADA@nycourts.gov or call a number that leads to the "ADA Office" for more information. The ADA Office directs callers to contact their local ADA Liaison. The only other notice in the Landlord and Tenant Clerk's Office is a television screen with the phone number, but no name, for an "ADA Representative." The phone number listed is different than the ones that appear for the ADA Liaisons on the court's website.

Unsurprisingly, the New York City public is largely unaware of the ADA Liaison program or their right to reasonable accommodations. In July 2012, MFY made a Freedom of Information Law inquiry for all reasonable accommodation requests made by individuals to ADA Liaisons or other court officials in all courts in the five boroughs since January 2011.⁴⁰ The Office of Court Administration responded in May 2013 with a list of only eleven reasonable accommodation requests for all courts in the five boroughs for this year and a half period.⁴¹ MFY made a follow up inquiry in December 2014 for all such requests since January 2013.⁴² In October 2015, the Office of Court Administration responded that they have no responsive records.⁴³

C. Incorrect Information on the ADA Liaison Online Directory

UCS's accessibility information webpage provides a brief summary of the ADA along with a directory of ADA Liaisons. People are instructed to consult the directory in order to contact their local ADA Liaison at the listed phone number.⁴⁴ If people with disabilities are able to find the UCS accessibility information webpage and would like to contact an ADA Liaison, they face an additional barrier: incorrect contact information for listed ADA Liaisons.

In May 2016, MFY conducted a phone survey of ADA Liaisons in an attempt to verify the contact information of forty-nine civil court ADA Liaisons listed for the five boroughs of New York City and better understand the procedures for requesting accommodations. At the time of the survey, MFY encountered a problem contacting the listed ADA Liaison more than 65% of the time.⁴⁵ These problems include:

- Twelve of the names and numbers listed were either for retired or former personnel or someone who stated they were not the ADA Liaison.
- Nine phone numbers simply did not reach the corresponding court personnel. Either the phone number was not in service or the call was sent to voicemail, but the system did not allow the caller to leave a message.
- Twelve voicemails placed with listed ADA Liaisons were unreturned after eight business days.

Not surprisingly, MFY attorneys and clients have also encountered difficulty in identifying and contacting the appropriate ADA Liaison. In one instance, an MFY staff attorney referred a client to the ADA Liaison listed in the directory in order to seek an accommodation.⁴⁶ Not only was the phone number in the directory incorrect, but the client was also subsequently forwarded to three additional people and eventually placed on hold for fifteen minutes before being connected to the appropriate court personnel.

D. Lack of Court Personnel Awareness and Training

In addition to the public's lack of awareness of the ADA Liaison program, court personnel themselves seem to lack awareness of its existence. In one instance, an MFY staff attorney called the New York Housing Court Information desk and asked to speak with the ADA Liaison. The court employee who answered the phone lacked any knowledge of an ADA Liaison or its purpose.⁴⁷ Similarly, on more than one occasion during the 2016 phone survey, MFY encountered court staff who were unaware of the court's ADA Liaison or indicated that there was no ADA Liaison at that court. One person stated that she was appointed to the position, but was not the ADA Liaison because she never received any training.⁴⁸

Court staff – including actual ADA Liaisons – seem to be inadequately trained as to how to accommodate the needs of people with disabilities under the ADA. In 2012, MFY requested all training materials provided to ADA Liaisons at courts in the five counties that make up New York City and all documents indicating which Liaisons receive training and how frequently.⁴⁹ In response to that request, the Office of Court Administration (“OCA”) provided only a two-page pamphlet entitled “Communicating with People with Disabilities,” which merely provided quick tips for court staff on communicating with individuals who have different types of disabilities.⁵⁰ OCA further stated that “The Division of Professional and Court Services is available as a resource for the courts and their Liaisons,” but that there were no records regarding which Liaisons received training or how frequently.⁵¹

In a follow up FOIL request in 2014, MFY requested all training material or resources provided to ADA Liaisons about the ADA or reasonable accommodations, or any resources provided to any court personnel about serving individuals with disabilities since January 2012.⁵² In response to this request, OCA indicated that there was no separate training materials, aside from what appears on the accessibility information webpage.⁵³

E. Limited Guidance on Reasonable Accommodations

On the accessibility information webpage, people in need of a reasonable accommodation are told to make the request to their ADA Liaison in person, in writing, or over the phone.⁵⁴ The website tells people to make requests as specific as possible, to state the type of accommodation needed, and to include relevant information regarding the court appearance.⁵⁵

The site contains answers to certain “frequently asked questions,” which provide some guidance about some types of accommodations that the courts are prepared to provide, like medication storage and assistance filling out forms.⁵⁶ A section entitled “How Court Users Can Obtain ADA Accommodations” also discusses possible accommodations, including service animals, assistive listening devices, teleconferencing, and real time transcription.⁵⁷

Although these are useful services, they do not represent the wide range of accommodations that people with disabilities may need to access the courts. The website does not make clear that other types of accommodations may be requested or offer enough varied examples of types of reasonable accommodations.⁵⁸ Most notably, the website does not provide any information on procedural accommodations that may be available in litigation.⁵⁹ Many people with disabilities that are not physical could require procedural accommodations, like scheduling changes or the ability to seek recesses during a hearing, but may not know that these are available or even possible if they rely solely on the website.⁶⁰

F. Inadequate Accommodation of People Who Need to Appear Remotely

ADA Liaisons must better accommodate people with disabilities that make it physically difficult to access court, such as mobility impairments or agoraphobia. UCS indicates that “telephone conferencing has been used as a way to accommodate people who cannot leave their homes or who will have difficulty accessing the court building.”⁶¹

Some MFY clients, however, have requested such an accommodation only to be denied. For example, Ms. S was sued in New York City Civil Court and contacted the ADA Liaison to request a reasonable accommodation.⁶² Ms. S asked to appear via telephone for an upcoming court date because she

rarely leaves her home due to a medical condition which rendered her incontinent. The court denied Ms. S’s request to appear telephonically “because she lives in the city.”⁶³ Nothing in the law indicates that living in the city should be dispositive as to denying her request.

A 2010 case involving a Brooklyn Housing Court litigant illustrates the issue.⁶⁸ In 2010, Julien Friedman was homebound due to heart failure and a kidney tumor.⁶⁹ Mr. Friedman was served with eviction papers, but was unable to appear at the court in person, either to answer the petition or to appear at a court date.⁷⁰ He contacted the Clerk’s Office and the ADA Liaison, but was denied any reasonable accommodation and eventually referred for the appointment of a GAL.⁷¹ Mr. Friedman sued OCA claiming he did not require a GAL to advocate for his interests - he wanted the court to provide him with a reasonable accommodation so that he could take part in the case and advocate for himself.⁷² He argued that a GAL is only appropriate for protecting the rights of litigants with limited mental capacity and because he did not fit that description, he had a right to access the court.⁷³ The case was ultimately rendered moot when Mr. Friedman died. Had the court simply designated an individual, such as an ADA Liaison, to facilitate telephone conferencing for Mr. Friedman, he likely would have had little reason to sue the OCA in federal court.

The New York State Court Access to Justice Program started an initiative in 2014 to provide support to homebound litigants.⁷⁴ The Court Navigator Homebound Program aims to train caseworkers who make visits to seniors and individuals with disabilities to identify homebound litigants, connect them with court clerks, and assist them with filing court papers.⁷⁵ Although this is a creative way to ensure that homebound litigants are identified and have access to the resources that they need, courts must also grant appropriate reasonable accommodation requests for people who cannot travel to court because of a disability.

Additionally, ADA Liaisons too often respond to such a reasonable accommodation request by appointing a Guardian ad Litem (“GAL”).⁶⁴ A GAL’s responsibility is to assist a litigant if that person cannot advocate for him or herself.⁶⁵ In doing so, the GAL can make recommendations to the judge as to what he or she thinks is in the litigant’s best interest, even if the litigant disagrees with the GAL.⁶⁶ Because people with mobility impairments, incontinence, agoraphobia, or other types of disabilities that prevent them from going to court are generally able to advocate for themselves, the use of a GAL is not always the least restrictive alternative available to accommodate a litigant’s inability to attend court.⁶⁷ The appointment of a GAL in such cases is therefore a violation of the ADA.

G. Insufficient Grievance Procedure for Complaints about ADA Compliance

Regulations implementing the ADA require courts to have a grievance procedure for complaints about compliance with the ADA. The procedure must provide for “prompt and equitable resolution of complaints.”⁷⁶ There is no such grievance procedure published on the UCS website or in the New York Code of Rules and Regulations.⁷⁷

UCS provides information about filing general complaints against employees, judges, or attorneys,⁷⁸ and provides an e-mail address for complaints against court interpreters.⁷⁹ However, the UCS website indicates only that the Office of the Managing Inspector General for Bias can be contacted for complaints relating to general discrimination.⁸⁰ The Inspector General provides a complaint form for discrimination complaints, but it is not designed specifically for disability discrimination.⁸¹ A court official informed MFY that grievances could be sent to the ADA@nycourts.gov mailbox, but that e-mail address is not published on the website as a place to send grievances or complaints.⁸²

Whenever UCS denies a court user’s request for a reasonable accommodation,⁸³ it provides them with a “Denial of Accommodation” form, which includes only a procedure for filing a Request for Administrative Review.⁸⁴ UCS does not appear to have a mechanism for court users to file grievances or complaints about compliance with the ADA - only requests for reconsideration - and only for those whose complaints arise from denials of reasonable accommodations.

Other states have implemented specific policies for resolving problems regarding their compliance with the ADA and have posted those policies on the same section of their website that provides procedures for requesting accommodations. For example, Rhode Island allows a person to file a written complaint within 10 days of the alleged violation, and states that the complainant should receive a response within 15 days.⁸⁵ Additionally, its policy instructs that the grievance procedure is voluntary and notes that the complainant may have other legal remedies.⁸⁶ This is closer to the localized and quick resolution of complaints envisioned under the ADA’s regulations.

V. Recommendations

The ADA Liaison program could be a powerful tool for people with disabilities to access justice. However, people with disabilities must first know about the program for it to have any power. To increase awareness of the program, MFY offers the following recommendations:

- UCS’s accessibility information webpage should be highlighted on individual court websites;
- All courthouses should have prominent and plentiful posters and signs advertising the program and make it clear that the program is open to people with all types of disabilities;
- Materials advertising the program should be printed and distributed at central locations throughout all the courthouses and in accessible formats; and
- Notice should be provided to all litigants repeatedly, and in different forms, including individual notices. For example, in housing court cases, the standard “Notice of Petition” should notify litigants about the ADA Liaison program, the right to request reasonable accommodations, and should explain what the term “reasonable accommodation” means by providing common examples.

Once people with disabilities know about the ADA Liaison program, they should be able to easily and effectively access a Liaison and request a reasonable accommodation. To increase the ease and efficacy of this program, MFY offers the following recommendations:

- UCS’s online directory of ADA Liaisons should have and maintain current, accurate contact information for each ADA Liaison;
- Staff answering the main line at each courthouse should know who the ADA Liaison is, so they can direct callers with questions about reasonable accommodations to the appropriate person;
- Voicemail should be set up for all ADA Liaisons so that callers can leave messages and ADA Liaisons should be required to return all voicemails within 24 hours;
- All court staff who interact with people should be trained on the rights of individuals with disabilities under the ADA, including the right to reasonable accommodations;
- ADA Liaisons should have detailed training on the ADA, the range of possible reasonable accommodations, their role and responsibilities as the ADA Liaison, and the procedures for processing and granting requests for reasonable accommodations;
- UCS’s written and online materials, including its accessibility information webpage, should include information on the wide range of possible reasonable accommodations, including examples of potential reasonable accommodations;
- Courts should provide people with an optional reasonable accommodation request form or other clear guidance on what to include in a reasonable accommodation request;

- Courts should provide more guidance on where to send reasonable accommodation requests or provide a centralized address or e-mail for such requests; and
- UCS should formulate a policy for handling grievances and publish that policy on its website.

Finally, once a court user contacts an ADA Liaison and makes a reasonable accommodation request, that request should be reviewed in accordance with the rights of individuals with disabilities under the ADA. To achieve that, MFY offers the following suggestions:

- People whose disabilities prevent them from getting to court should have full opportunity to participate in court proceedings. UCS should grant reasonable accommodations to that effect, such as appearing remotely, instead of unnecessarily appointing a GAL to advocate for the person in court.
- Given the wide range of accommodations envisioned by the ADA, court personnel, including ADA Liaisons and judges, should be flexible and creative in responding to requests for reasonable accommodations. Court personnel should be trained on the wide variety of accommodations that may be possible.

VI. Conclusion

MFY Legal Services has analyzed the ADA Liaison program in the New York City and its policies for accommodating people with disabilities. We have made recommendations for what UCS could do better to ensure equal access to the court system for people with disabilities and to more fully comply with the Americans with Disabilities Act.

The ADA Liaison program has the potential to be an excellent resource for people with disabilities. As it stands now, however, few people with disabilities know about the program, those people who do know about the program have a difficult time reaching ADA Liaisons, court staff – including ADA Liaisons – are not adequately trained on the ADA Liaison Program and the rights of people with disabilities, and UCS’s reasonable accommodation policies do not comply with the ADA. The steps outlined in this paper need to be taken so that UCS can ensure effective access to justice for people with disabilities on an equal basis with others.

¹ 28 C.F.R. § 35.130(b)(7).

² 28 C.F.R. § 35.160(a)(1).

³ Chief Judge Jonathan Lippman, *The State of the Judiciary 2015, Access to Justice: Making the Ideal A Reality* (at 1) (Feb. 17, 2015), <http://www.nycourts.gov/ctapps/news/SOJ-2015.pdf> (opening the speech by stating “Access to justice is the defining principle of our court system.”).

⁴ *New York State Courts Access to Justice Program, Providing New Pathways to Legal Services, Assistance and Information, 2014 Report to the Chief Judge and the Chief Administrative Judge of the State of New York* (Jan. 2015), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2014report.pdf.

⁵ NYS Court Local ADA Liaisons Directory, Accessibility, N.Y. State Unified Court System, <http://www.nycourts.gov/accessibility/listbycounty.shtml> (last visited June 7, 2016) (“Each court has a key person – an ADA Liaison – who should be contacted when an individual needs an accommodation for a disability.”).

⁶ *Id.*

⁷ MFY provides free legal assistance to residents of New York City on a wide range of civil legal issues. Because MFY works within New York City and focuses on civil issues, this paper does not explore courts outside of New York City or criminal courts.

⁸ 42 U.S.C. §§ 12131-34; *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (in upholding the constitutionality of Title II, the Supreme Court held that Title II enforces the constitutional right of “access to the courts”); *see also* About the Americans with Disabilities Act, Accessibility, N.Y. State Unified Court System, <http://www.nycourts.gov/accessibility/index.shtml> (last visited June 7, 2016) (“The New York State Unified Court System is committed to fully complying with the Americans with Disabilities Act by providing services, programs and activities in a way that assures equal and full accessibility for all court users.”).

⁹ 29 U.S.C. § 794; *see also* *New York State Unified Court System Budget Fiscal Year 2014-2015*, <http://www.nycourts.gov/admin/financialops/BGT14-15/2014-15-Budget.pdf>.

¹⁰ *See* Kevin M. Cremin & Gerald Lebovits, *Accommodations and Modifications in the New York City Housing Court for Litigants with Disabilities*, 38 N.Y. Real Prop. L.J. 30, 31 (2010) (“With regard to requests for reasonable accommodations or modifications, the requirements, defenses, and relief available under the Rehabilitation Act are essentially the same as those under ADA Title II.”). Although there are differences between the two Acts, courts often analyze the laws together, unless one of the differences is relevant; *see Brooklyn Ctr. for Independence of Disabled v. Bloomberg*, 980 F. Supp. 2d 588, 639 (S.D.N.Y. 2013) (citing *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003)).

¹¹ Frequently Asked Questions, Accessibility, N.Y. State Unified Court System, <http://www.nycourts.gov/accessibility/faqs.shtml> (last visited June 7, 2016) (“Q. Can the court system provide an accommodation to a spectator of a court proceeding? A. The court, when asked, must provide reasonable accommodations so people with disabilities, including spectators, may take part in our programs, services and activities.”); *see also* *Christopher v. Harbury*, 536 U.S. 403, 412-15 (2002) (citing cases recognizing right of access to the courts for litigants despite inability to pay and without interference from state authorities); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality opinion) (discussing the public’s right of access to criminal prosecutions).

¹² 42 U.S.C. § 12102(1) (the Rehabilitation Act cross-references the ADA’s definition of “disability”; *see* 29 U.S.C. § 705(20)(B) (citing 42 U.S.C. § 12102)).

¹³ 42 U.S.C. § 12102(4).

¹⁴ *See supra* note 1 (“A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”).

¹⁵ *See supra* note 2 (“A public entity shall take appropriate steps to ensure that communications with applicants, members of the public, and companions with disabilities are as effective as communications with others.”).

¹⁶ 42 U.S.C. § 12183 (“[D]iscrimination for purposes of [the ADA] includes . . . a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.”).

¹⁷ A recent report by New York Lawyers for the Public Interest revealed that New York City courts often are not physically accessible to people with disabilities. See New York Lawyers for the Public Interest, *Accessible Justice: Ensuring Equal Access to the Courthouse for People with Disabilities* (2015), <http://www.nylpi.org/wp-content/uploads/2015/03/Accessible-Justice-NYLPI-3-23-15.pdf>.

¹⁸ N.Y. Civ. Rights Law § 47 (Consol. 2015).

¹⁹ N.Y. Jud. Law § 390 (Consol. 2015).

²⁰ Access to the Courts for those with Disabilities, Accessibility, N.Y. State Unified Court System, <http://www.nycourts.gov/accessibility/accessToTheCourts.shtml> (last visited June 7, 2016) (“Each courthouse has an ADA liaison responsible for implementing the Americans with Disabilities Act (ADA).”).

²¹ NYS Court Local ADA Liaisons Directory, *supra* note 5 (“Each court has a key person – an ADA liaison—who should be contacted when an individual needs an accommodation for a disability.”).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* This procedure is in accordance with ADA regulations. See 28 C.F.R. §§ 35.150(a)(3), 35.164 (“The decision that compliance would result in [a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens] must be made by the head of a public entity or his or her designee after considering all resources available for use in 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.”).

²⁶ NYS Court Local ADA Liaisons Directory, *supra* note 5.

²⁷ *Id.*

²⁸ 28 C.F.R. § 35.106 (“A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.”).

²⁹ *Title II Technical Assistance Manual*, II-8.4000 (1993), available at <http://www.ada.gov/taman2.html> (“Methods include the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.”).

³⁰ Letter from Shawn Kerby, Assistant Deputy Counsel, FOIL Officer, Office of Court Administration, to MFY Legal Services, Inc. (May 7, 2013) (FOIL request response); MFY e-mail to Shawn Kerby, July 20, 2012 2:31 p.m. (FOIL request for “any and all outreach materials provided to the public” for NY county); MFY e-mail to Shawn Kerby, Aug. 16, 2012 1:46 p.m. (FOIL request for “any and all outreach materials provided to the public” for Bronx, Kings, Queens, Richmond counties). OCA also provided an ADA brochure; however, the brochure is entitled “Communicating with People with Disabilities” and is directed at court personnel, not at people with disabilities.

³¹ New York City Courthouses, N.Y.C. Housing Court, N.Y. State Unified Court System (last visited August 11, 2016), <http://www.nycourts.gov/courts/nyc/housing/>; see also ADA, Court Services N.Y.C. Housing Court, N.Y. State Unified Court System, <http://www.nycourts.gov/COURTS/nyc/housing/services.shtml> (last visited June 7, 2016).

³² N.Y.C. Housing Court, N.Y. State Unified Court System, <http://www.nycourts.gov/courts/nyc/housing/> (last visited June 7, 2016).

³³ Overview, Civil Term, Kings Supreme Court, N.Y. State Unified Court System, <http://www.nycourts.gov/COURTS/2jd/KINGS/CIVIL/index.shtml> (last visited June 7, 2016).

³⁴ See *supra* note 29; *Title II Technical Assistance Manual*, II-8.4000 (1993), available at <http://www.ada.gov/taman2.html>.

³⁵ Jeanette Zelhof et al., *Protecting the Rights of Litigants with Diminished Capacity in New York Housing Court*, 3 Cardozo Pub. L. Pol’y & Ethics J. 733, 768-69 (2006).

³⁶ *Id.* at 769.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Photographs are generally prohibited inside New York’s courts, and the Office of Court Administration did not provide reproductions of these posters in response to FOIL requests that sought outreach material.

⁴⁰ MFY e-mail to Shawn Kerby, July 20, 2012 2:31 p.m. (FOIL request for “any and all requests for reasonable accommodations or modifications made by an individual with at least one actual or purported disability that were submitted to an ADA Liaison or other non-judicial court personnel” for NY county); MFY e-mail to Shawn Kerby,

Aug. 16, 2012 1:46 p.m. (FOIL request for “any and all requests for reasonable accommodations or modifications made by an individual with at least one actual or purported disability that were submitted to an or other non-judicial court personnel” for Bronx, Kings, Queens, Richmond counties).

⁴¹ Letter from Shawn Kerby, Assistant Deputy Counsel, FOIL Officer, Office of Court Administration, to MFY (May 7, 2013) (FOIL request response).

⁴² MFY e-mail to Shawn Kerby, Dec. 16, 2014 11:15 p.m. (FOIL request for “any and all requests for reasonable accommodations or modifications implicitly or explicitly made under the Americans with Disabilities Act (ADA) by an individual with at least one actual or purported disability that were submitted to an ADA Liaison or other non-judicial court personnel” at courts in New York City).

⁴³ Letter from Shawn Kerby, Assistant Deputy Counsel, FOIL Officer, Office of Court Administration, to MFY (Oct. 21, 2015) (FOIL request response). Mr. Kerby stated “please be aware that requests for accommodations typically are made verbally, by telephone, at the courthouse, or in the context of a court proceeding, for which no record is prepared.”

⁴⁴ NYS Court Local ADA Liaisons Directory, *supra* note 5.

⁴⁵ MFY Legal Services, Inc., *2016 ADA Liaison Survey* (on file with author). MFY conducted similar surveys in August 2012 and July 2015. In the 2012 survey, MFY had difficulties contacting the ADA Liaison approximately 40% of the time, compared to 55% in 2015. In fact, several of the wrong numbers from 2012 and 2015 remain the same in 2016.

⁴⁶ E-mail from MFY staff attorney, Oct. 3, 2013 4:38 p.m. (on file with author).

⁴⁷ E-mail from MFY staff attorney, Mar. 22, 2013 10:34 a.m. (on file with author).

⁴⁸ MFY Legal Services, Inc., *2016 ADA Liaison Survey* (on file with author).

⁴⁹ MFY e-mail to Shawn Kerby, July 20, 2012 2:31 p.m. (FOIL request for “any and all training materials provided to ADA Liaisons” for NY county “and documents that show which Liaisons receive training and how frequently”); MFY e-mail to Shawn Kerby, Aug. 16, 2012 1:46 p.m. (FOIL request for “any and all training materials provided to ADA Liaisons” for Bronx, Kings, Queens, Richmond counties “and documents that show which Liaisons receive training and how frequently”).

⁵⁰ New York State Unified Court System, *Americans with Disabilities Act and the Courts: Communicating with People with Disabilities*, attachment to letter from Shawn Kerby to MFY (May 7, 2013) (on file with recipient) (FOIL request response).

⁵¹ Letter from Shawn Kerby, Assistant Deputy Counsel, FOIL Officer, Office of Court Administration, to MFY (May 7, 2013) (FOIL request response).

⁵² E-mail from MFY to Shawn Kerby, Oct. 24, 2014 10:31 a.m. (on file with author) (FOIL request for training materials since 2012).

⁵³ Letter from Shawn Kerby, Assistant Deputy Counsel, FOIL Officer, Office of Court Administration, to MFY, December 2, 2014 (on file with recipient) (FOIL response) (“Resource information regarding the ADA is available [on the court’s accessibility information webpage] . . . We have no separate materials concerning ‘training’ since January 1, 2012.”).

⁵⁴ NYS Court Local ADA Liaisons Directory, *supra* note 5 (“The ADA Liaison will accept contacts made in person, in writing or over the telephone.”).

⁵⁵ Frequently Asked Questions, Accessibility, *supra* note 11 (“To ensure that the court will be able to make appropriate arrangements, requests should be made, whenever possible, well in advance of the court appearance date. Requests should be as specific as possible. In addition to the type of accommodation needed, please provide relevant information regarding the court appearance (i.e., court facility address, name of the case, name of the judge, part number, date of the appearance(s), and estimated length of the proceeding.”).

⁵⁶ Frequently Asked Questions, Accessibility, *supra* note 11.

⁵⁷ How Court Users Can Obtain ADA Accommodations, Accessibility, N.Y. State Unified Court System http://www.nycourts.gov/accessibility/courtusers_guidelines.shtml (last visited June 7, 2016).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Jeanette Zelfhof et al., *supra* note 35.

⁶¹ Frequently Asked Questions, Accessibility, *supra* note 11.

⁶² E-mail from MFY staff attorney, May 24, 2013 3:58 p.m. (on file with author).

⁶³ The court apparently approved the client’s alternative accommodation of a time certain appearance after a certain date, so the client could book an Access-a-Ride and be accompanied by her daughter.

⁶⁴ *See generally*, Guardian ad Litem Program – NYC Civil Court, Housing Part, Litigants with Diverse Needs, New York State Courts Access to Justice Program, N.Y. State Unified Court System,

<http://www.nycourts.gov/ip/nya2j/diverseneeds/GAL.shtml> (last visited June 7, 2016); Guardian ad Litem Program, New York City Housing Court, N.Y. State Unified Court System, <http://www.nycourts.gov/courts/nyc/housing/GAL.shtml> (last visited June 7, 2016).

⁶⁵ *GAL Litigant Brochure*, http://nycourts.gov/courts/nyc/housing/pdfs/GAL-LitigantBrochure_EN.pdf (“In Housing Court, GALs work to help the person they are appointed to represent solve their Court case.”).

⁶⁶ *Id.* (“While a GAL must think about your wishes before making a recommendation to the Judge, he or she may believe that your wishes are not in your best interest and recommend a solution you may not agree with.”).

⁶⁷ 28 C.F.R. § 35.130(d) (“A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”).

⁶⁸ *See generally*, LS-NYC Files Suit Seeking Equal Access to Courts for New Yorkers with Disabilities (July 27, 2010) http://www.legalservicesnyc.org/index.php?option=com_content&task=view&id=493&Itemid=99.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Complaint, ¶ 1, *Friedman v. Office of Court Administration*, No. 10 Civ. 3433 (E.D.N.Y. July 23, 2010).

⁷⁴ New York State Courts Access to Justice Program, Providing New Pathways to Legal Services, Assistance and Information 2014 (Jan. 2015) (at 49), http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2014report.pdf.

⁷⁵ *Id.*

⁷⁶ 28 C.F.R. § 35.107.

⁷⁷ The only grievance procedures relating to the judiciary are regulations relating to employee grievances, 22 NYCRR 23.1 et. seq., and relating to attorney licensure, e.g., 22 NYCRR 691.4.

⁷⁸ General Questions, Suggestions and Court Information, Contact Us, N.Y. State Unified Court System, <http://www.nycourts.gov/contactus/index.shtml> (last visited June 7, 2016).

⁷⁹ Contact Us, Language Access and Court Interpreters, N.Y. State Unified Court System, <http://www.nycourts.gov/courtinterpreter/contactus.shtml> (last visited June 7, 2016) (stating that complaints about court interpreters may be sent to InterpreterComplaints@nycourts.gov).

⁸⁰ Overview, Office of the Inspector General, N.Y. State Unified Court System, <http://www.nycourts.gov/admin/ig/index.shtml> (last visited June 7, 2016).

⁸¹ New York State Unified Court System Office of the Inspector General, Claim of Discriminatory Treatment, <http://www.nycourts.gov/admin/ig/pdfs/ClaimDiscrimTreatment.pdf>.

⁸² *Compare* e-mail from Monique Taylor to MFY (Dec. 19, 2014 11:44 AM) (on file with author) (“The ADA@nycourts.gov is an inbox for inquiries and/or complaints for the public.”) *with* Access to the Courts for those with Disabilities, Accessibility, *supra* note 20 (“For further information or assistance, e-mail: ADA@nycourts.gov.”).

⁸³ If a court user’s request for a reasonable accommodation is denied by a judge, UCS policy requires that the denial is reviewed through the judicial process. Review of Requests that Have Been Denied, http://www.nycourts.gov/accessibility/CourtUsers_Guidelines.shtml (last visited June 7, 2016).

⁸⁴ Denial of Accommodation Requested by Court User, www.nycourts.gov/accessibility/PDFs/ADA_DENIAL_ACCOMMODATIONFORM_Sample_2015.pdf

⁸⁵ Section 504 Grievance Procedure, Rhode Island Judiciary 2014, <https://www.courts.ri.gov/ADA/Pages/Grievance%20Procedure.aspx> (last visited June 7, 2016).

⁸⁶ *Id.* (describing policy as “voluntary internal grievance procedure providing for prompt and equitable resolution of complaints alleging any discrimination against persons on the basis of disability” and noting that “the complainant may have other remedies, including those relating to federal agencies, such as the EEOC and the United States Department of Justice.”).