



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

July 18, 2023

Steven Vasconcellos
State Court Administrator
Colorado Judicial Branch
1300 Broadway, Suite 1200
Denver, CO 80203

Re: [REDACTED] v. Colorado Judicial Department (22-OCR-0718)

Dear Mr. Vasconcellos:

On November 29, 2022, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) notified you of the above referenced administrative complaint (Complaint) filed against the Colorado Judicial Department (Respondent). [REDACTED] (Complainant), a defendant in a criminal proceeding at the [REDACTED], Colorado, alleged that the Respondent discriminated against her on the basis of disability. Specifically, the Complainant alleged that she was improperly denied her disability-based request to make virtual appearances for hearings and her trial.

After careful review of the information obtained during this investigation, the OCR has determined that the Respondent's actions were either sufficiently responsive to the Complainant's requests or that the Respondent has since taken actions sufficient to eliminate any harm to the Complainant and there is no further relief the OCR can provide to the Complainant. The relevant facts gathered, and analysis, are set forth below.

The Respondent is a unified court system and receives DOJ funding through the OJP. Specifically, the OCR has identified the Respondent as a current recipient of the following DOJ awards:

1. 15PBJA-21-GG-04150-MUMU (Bureau of Justice Assistance (BJA) FY 21 Adult Drug Court and Veterans Treatment Discretionary Grant Program);
2. 15JDP-21-GG-02822-DGCT (Office of Juvenile Justice and Delinquency Prevention (OJJDP) FY 2021 Juvenile Drug Treatment Court Program);
3. 2018-DC-BX-0040 (OJJDP FY 18 Drug Treatment Courts Program);

4. 2019-VC-BX-0092 (BJA FY 19 Adult Drug Court Discretionary Grant Program);
5. 15PBJA-22-GG-03932-DGCT (BJA FY 22 Adult Drug Court Discretionary Grant Program);
6. 2020-DC-BX-0024 (OJJDP FY 20 Family Drug Court Program); and
7. 2020-VC-BX-0122 (BJA FY 20 Adult Drug Court and Veterans Treatment Court Discretionary Grant Program).

As a state entity and recipient of federal financial assistance, the Respondent is subject to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (ADA), and their implementing regulations. Specifically, Section 504 provides that, “no otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). Similarly, under the ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity.” 42 U.S.C. § 12132. A qualified individual with a disability is, “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2); *see also* 28 C.F.R 42.540 (l).¹

According to documents submitted by the Respondent, on June 18, 2004, the Office of the Chief Justice of the Supreme Court of Colorado issued Directive 04-07, “Access to Court Services and Programs for People with Disabilities”, which states:

the local administrative authority, with the assistance of the ADA coordinator, shall determine what reasonable accommodation will be made. Consultation shall occur with the individual to explore his or her limitations and the options available for accommodating the disability. Primary consideration shall be given to the requested accommodation; however, alternative accommodation may be offered if equally effective. The court or probation department is not required to make modifications that would fundamentally alter the service or program or cause undue financial or administrative burden.

The Complainant, during the relevant period of review, was a defendant in a criminal proceeding at the [REDACTED]. The Complainant asserts that she has a number of disabilities that, among other things, impair her ability to move and travel outside the home.

The Colorado Rules of Criminal Procedure, at Rule 43, “Presence of the Defendant”, states, at section (a), that “[t]he defendant shall be present . . . at every stage of the trial . . . except as otherwise provided by this rule.” Section (b), “Continued Presence Not Required” and Section

¹ The Respondent refers to “accommodations” periodically throughout documents and records reviewed by the OCR. The OCR understands and interprets this term, as used, to encompass these obligations under Section 504 and the ADA. For consistency, the OCR also uses this term within this letter in the same manner.

(c), "Presence Not Required" identify the basis for which the defendant's absence may be permitted by the court, none of which apply to the Complainant's situation. The rule also separately identifies the circumstances in which a defendant is permitted to appear by interactive audiovisual device; specifically, Rule 43(e)(2) states, "[w]ith the court's approval, the defendant may be present...by the use of an interactive audiovisual device for any proceeding that does not involve a jury."

On [REDACTED], the Complainant submitted a request for accommodations to the personal appearance requirement through the Respondent's ADA Online Request portal. In her submission, she requested "video conferencing in lieu of personal appearance." The Complainant sought this accommodation for four scheduled appearances in [REDACTED]. According to the state's ADA frequently asked questions page on its website, for mobility disabilities, "[d]epending on the needs of the individual and the nature of the disability, accommodation may include... the use of video conferencing technology in lieu of a personal appearance."

On [REDACTED], the Respondent's Administrative Office Specialist, identified by the Respondent as one of its ADA Coordinators, responded to the Complainant via e-mail, stating, "the request cannot be approved as it does not fall under the Americans with Disabilities Act." The response format shows that the Respondent selected, as the basis for denying the request, "It does not meet the requirements for accommodation". The formatting of the Respondent's response identifies other bases as available options for denying an accommodation request, including, "It creates an undue financial or administrative burden on the court" and "It fundamentally alters the nature of the service, program or activity"; these options were not selected as a basis for the denial of the Complainant's accommodations request. At no point is there a record of the Respondent considering or proposing alternatives to the requested accommodation.

According to the Respondent, the Administrative Office Specialist's above stated basis for denying the Complainant's request was incorrect as the Administrative Office Specialist mistakenly thought that, because she did not have the authority, under the Respondent's process, to make a determination that would involve a change to the proceedings of a jury trial, she was obligated to deny the request. Per the Respondent, while an ADA Coordinator does not have the authority to compel a judge, who is a constitutional officer, to implement the requested accommodation within the judge's courtroom, this does not mean the request must be denied.

Review of internal correspondence shows that the Administrative Office Specialist did consult with the state-wide ADA Coordinator and was advised that virtual appearances may be considered reasonable in some circumstances but that the judge would have to make a ruling in this specific instance. The Complainant was also subsequently informed by the ADA Coordinator for the [REDACTED] that, while a request for virtual appearance can be reasonable, the appropriate disposition for this type of request is to file a motion with the presiding judge.

On [REDACTED], Complainant's counsel filed motions with the presiding judge, requesting that the Complainant be allowed to appear virtually for her jury trial. This motion was denied in

the judge's order issued on [REDACTED]. The court relied on Colorado Supreme Court Rule of Criminal Procedure 43(a), described above. The judge further stated that Rule 43(b) provides for the circumstances by which a defendant may be absent for trial but that "such circumstances do not include a defendant's medical conditions." The OCR notes that the order did not address the applicability of the Complainant's request under Rule 43(e). Although the language of Rule 43(e) appears to expressly exclude proceedings that involve a jury, the court's denial does not consider whether an accommodation under the ADA or Section 504 would be appropriate. On March 23, 2022, the Complainant's counsel filed another motion requesting the Complainant be permitted to appear virtually for motions hearings. This motion was granted on [REDACTED]. According to information provided by the Respondent, the Complainant did physically appear for day one of her jury trial on [REDACTED] but made no other appearances as the presiding judge granted a motion to dismiss as filed by the state that same day.

Based on the information reviewed, the OCR has concerns that the Complainant was not fully afforded the opportunity to have her request for accommodations considered consistent with ADA requirements. Specifically, there is no indication that the denial was made after a determination that granting the request would constitute a fundamental alteration or undue burden on the administration of the Respondent's program or activity. The denial of her request did result in the Complainant making an physical appearance. However, because the Complainant's specific matter before the court has been resolved, the OCR considers this allegation moot.

The OCR would like to remind the Respondent that the state's Rules of Criminal Procedure must be applied consistent with federal law, notably the ADA and Section 504. The Complainant's request for accommodations can and should have been considered as a request to modify Rule 43. To the extent the Complainant's medical conditions constitute one or more disabilities, her circumstances should have been subject to further analysis before making a decision to grant or deny the requested accommodation. The OCR notes that it has not made a determination as to whether the Respondent had, or would have had, a legitimate basis to deny the request as a fundamental alteration or undue burden, but only that the Respondent has not articulated one to either the Complainant or the OCR.

The OCR's review of the documents and information provided raised additional concerns that the Respondent's practices did not clearly articulate the process for when an ADA Coordinator or judicial officer receives a request for accommodations and how to resolve such requests in a manner consistent with the appropriate standards. However, during the course of the investigation into this Complaint, the Respondent provided the OCR with information that it has proactively taken steps to clarify its policies and procedures as they relate to requests for accommodations.

The OCR reviewed the Respondent's revised ADA Request Form; it now provides notice to requestors that some requests may require consultation with the judicial officer and a ruling on the request for accommodation. The OCR believes that this additional information will reduce the likelihood of future misunderstandings of Respondent processes by both individuals who seek accommodations and those who are designated to respond to requests of this type.

The OCR also reviewed a “flow chart” submitted by the Respondent that outlines the process for non-employee requests for reasonable accommodations. To the extent this chart is used as a reference for the Respondent’s ADA Coordinators or other individuals responsible for parts of the process described therein, the OCR recommends, as a matter of technical assistance, the Respondent include additional information identifying at what point requests that require input, consultation, or decisions by a judicial officer result in steps or action not otherwise outlined in the flow chart. Additionally, the OCR recommends that the process include when and how the Respondent should consider or offer alternatives to the requested accommodation to ensure access to the services, benefits, or activities at issue.

The Respondent also submitted a copy of its ADA Bench Resource Card. This reference card includes information to judicial officers who receive an ADA accommodations request. As a matter of technical assistance, the ADA Bench Resource Card contains a section, “Types of Accommodations that Would Not Be Reasonable”. This language appears to identify requests that are *categorically* unreasonable and can or should be denied without specific consideration of the requestor’s disability needs and whether modification to the rule, policy, or practice at issue would otherwise constitute a fundamental alteration of the program or undue burden. The OCR recommends the Respondent clarify the language of the Resource Card to address this potential confusion. If it is not already incorporated into the ADA Coordinator’s process when providing consultation to a judicial officer, the OCR further recommends the Resource Card clarify when alternative accommodations should be offered.

The OCR recommends additional training or written guidance to specifically identify the relevant standards or criteria for evaluating or denying requests for modifications, alterations, or auxiliary aides and services. While some information may already be presented verbally during periodic trainings, having specific discussion and written reference to the appropriate standards may reduce errors when responding to requests.

The OCR is administratively closing this Complaint at this time. Please be advised that the closure of this Complaint is limited to the specific facts of the matter and does not preclude the DOJ from taking additional appropriate action to evaluate a recipient’s compliance with any of the laws enforced by the DOJ. Additionally, closing this Complaint does not affect the Respondent’s requirement to comply with all applicable federal laws and regulations, provided that the Respondent remains subject to such laws and regulations.

Federal law also protects persons who participated in the OCR’s investigation from retaliation for having provided information not the OCR. The OCR will notify the Complainant about the prohibition against retaliation and the result of this investigation. The OCR will initiate an investigation if it should receive credible evidence of reprisal. The OCR will also share this letter with the Complainant and notify her of her right to file future complaints with the OCR if she experiences retaliation or other discrimination in the future.

22-OCR-0718

July 18, 2023

Page 6 of 6

Based on the foregoing, the OCR is administrative resolving this Complaint. Thank you for your cooperation; specifically to Terri Morrison for their cooperation and prompt attention to this matter.

Sincerely,

X 

Michael L. Alston

Director

Signed by: MICHAEL ALSTON

cc: Terri Morrison (terri.morrison@judicial.state.co.us)