

COURT OF APPEAL
FIRST CIRCUIT
STATE OF LOUISIANA

NO.

LANDLORD

Applicant/Respondent

VERSUS

XXX XXX,

Defendant/Applicant

ON APPLICATION FROM 2ND WARD JUSTICE OF THE PEACE COURT,
PARISH OF ST. HELENA, CASE # 2020-XX

THE HON. JUSTICE OF THE PEACE THELMA HAMLER-WILLIAMS

APPLICATION FOR EMERGENCY SUPERVISORY AND REMEDIAL
WRITS

WITH REQUEST FOR EXPEDITED CONSIDERATION AND STAY

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Rule 4-3	The Justice of the Peace did not sign the return date order, as such, no signed order is attached.		
Rule 4-5 (C)(7)	There were no reasons for judgment.		
Rule 4-5 (C)(9)	There was no opposition filed in the Justice of the Peace court.		
Rule 4-5 (C)(10)	There are no minute entries as the Justice of Peace Court is not a court of record.		

REQUEST FOR EXPEDITED CONSIDERATION AND STAY

Defendant XXX XXX seeks to defend his eviction, but cannot safely attend an in-person court proceeding due to his disabilities. Mr. XXX has been summoned to court for an eviction hearing on June 25, 2020 for 5:00 PM at the Second Ward Justice of the Peace Court for St. Helena Parish. Mr. XXX and his life partner, YYY YYY, are both seniors with underlying comorbid health conditions that the Centers for Disease Control and Prevention have identified as increasing the risk of severe illness or death if infected with COVID-19. Mr. XXX and Ms. YYY's doctors have ordered them to stay home. As a reasonable accommodation for their disabilities under the Americans with Disabilities Act ("ADA"), Mr. XXX requested that their eviction proceeding be conducted through remote videoconference with real-time transcription service or another auxiliary aid to accommodate Mr. XXX's hearing impairment. Medical verification was provided to the Justice of the Peace.

On June 23, 2020, Justice of the Peace Thelma Hamler-Williams denied the reasonable accommodation request in an email, stating "[i]f the defendants cannot attend, counsels can represent the parties." Exhibit D. Justice of the Peace Hamler-Williams' response results in Mr. XXX's landlord having the right to participate in the court proceeding because he is a person without disabilities, while Mr. XXX has been constructively barred from participation due to his physical and communication disabilities. In so doing, the Justice of the Peace's denial represents a clear violation of the ADA, constitutional due process, and state law.

Because the eviction has not gone to trial in Justice of the Peace court and no judgment has been issued, there is not yet a right to trial *de novo* in parish court under La. Code Civ. P. art. 4924. As explained more fully in the Jurisdictional

Statement, principles of judicial efficiency and fairness to the parties, as well as the threat of irreparable harm, counsel in favor of this Court's review of the denial at this juncture. Moreover, federal courts will abstain from enjoining a state court eviction proceeding after it commences through filing. *See, generally, Younger v. Harris*, 401 U.S. 37 (1971); *Tex. Ass'n of Bus. v. Earle*, 388 F.3d 515, 518 (5th Cir. 2004). As such, Mr. XXX's only available avenue for relief is this Court's supervisory review.

Should this Court not grant expedited consideration, accept supervisory jurisdiction, and grant a stay of proceedings until such time that a decision is rendered, Mr. XXX and Ms. YYY will likely be evicted on June 25, 2020, and physically removed from their home as early as June 26, 2020, because they will not be able to attend their eviction hearing in person to testify and present evidence in their defense. In addition to violating federal and state law, the Justice of the Peace's proposal that Mr. XXX's attorney appear on his behalf without him is inadequate to protect his interests, as she cannot testify on his behalf. As such, Mr. XXX will be severely prejudiced at trial if the hearing is allowed to proceed without him solely because court is not accessible to him due to his disability.

As briefed herein, the Justice of the Peace is legally obligated to accommodate Applicants' disabilities under the ADA. Applicants ask this Court to accept supervisory jurisdiction and order the Justice of the Peace court to comply with its civil rights obligations, so that Applicants can defend their eviction.

AFFIDAVIT OF COUNSEL

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared,
HANNAH ADAMS, who being duly sworn, deposed said:

She is an attorney for XXX XXX, applicant in the foregoing for emergency supervisory and remedial writs. She has read the application and affirmed that all of the allegations contained therein are true and correct to the best of her information and belief. On June 24, 2020, a copy of this application was served upon Justice of the Peace Thelma Hamler-Williams by electronic mail, as this writ application is being electronically filed with the court, per Rule 4-4(c). She called the landlord Yen Landlord twice to obtain an email address for service, but the phone just rang and then there was a busy signal. Therefore there was no way to leave a voicemail. As such, she uploaded the writ application to Google Drive and text messaged the landlord a link, so that they can immediately view it. A courtesy copy was also mailed to the addresses below by certified mail on the same day. In addition she called both the Justice of the Peace and the landlord.

Hon. Justice of the Peace Thelma Hamler-Williams
St. Helena Parish Ward 2 Justice of the Peace Court
4962 Hwy 1043
Greensburg, LA 70441
(225) 485-4004
tayjrbray@gmail.com

Landlord
Address
Phone

HANNAH ADAMS

Sworn to and subscribed before me this ____ day of June, 2020.

Printed: _____ (LSBA# _____)
NOTARY PUBLIC

JURISDICTIONAL STATEMENT

This Honorable Court has jurisdiction over this matter pursuant to Article 5, Section 10 of the Louisiana Constitution of 1974, Article 2201 of the Louisiana Code of Civil Procedure, and URCA Rule 4-1 *et seq.* “A court of appeal has plenary power to exercise supervisory jurisdiction over district courts and may do so at any time, according to the discretion of the court.” *Herlitz Constr. Co. v. Hotel Inv’rs of New Iberia*, 396 So.2d 878, 878 (La. 1981).

I. The writ application is timely.

On June 12, 2020, counsel for Mr. XXX submitted a request for reasonable accommodation under the Americans with Disabilities Act (“ADA”) by motion, seeking an eviction proceeding by videoconference, and a continuance until a reasonable accommodation to allow Mr. XXX’s participation was arranged. Exhibit A.¹ Justice of the Peace Hamler-Williams failed to respond to the request. On June 22, 2020, Mr. XXX submitted a supplemental request by motion, restating his original request and in addition requesting auxiliary communication aids to assist him since he is hard of hearing. Exhibit B. On June 23, 2020, Justice of the Peace Hamler-Williams denied the reasonable accommodation request by stating, “[i]f the defendants cannot attend, counsels can represent the parties” and reiterating that the hearing would be held in-person on June 25 at 5:00 PM despite the accessibility issues. Exhibit C.

Also on June 22, 2020, Southeast Louisiana Legal Services (“SLLS”) filed a Notice of Intent to Apply for Supervisory Writ and Request for Stay, requesting a

¹ Justice of the Peace Hamler-Williams does not have a clerk or formal filing system, but requested that all submissions to the court be made by electronic mail.

return date in accordance with Uniform Rule 4-2. Exhibit D. Justice of the Peace Hamler-Williams has not responded to the Notice or set a return date. In the absence of a return date, this writ application is filed on an emergency basis prior to the scheduled eviction hearing set for 5:00 PM on June 25, 2020. Because the filing is less than thirty days from the date of the original denial of the accommodation request, it is timely.

II. Direct appeal of the interlocutory decision- the denial of ADA accommodations- is not available.

Effective January 1, 2006, the Code of Civil Procedure was amended to permit direct appeal of interlocutory judgments only when “expressly provided by law.” La. Code Civ. P. art. 2083. Review of “other interlocutory judgments - even those which cause irreparable injury - must be sought through supervisory writs under La. Code Civ. P. art. 2201.” *Alex v. Rayne Concrete Serv.*, 2005-1457 p. __ (La. 01/26/07); 951 So.2d 138, 144. The denial or constructive denial of a pre-trial, *ex parte*, motion for reasonable accommodation under the ADA, is not an interlocutory judgment designated as appealable. As such, direct appeal is not available.

III. Judicial efficiency and fundamental fairness to the parties weighs in favor of supervisory review.

Final judgment from a Justice of the Peace is appealable by trial *de novo* at the parish court. La. Code Civ. P. art. 4924. However, “[i]n the interests of judicial efficiency and fairness to the parties, an appellate court in its discretion may review an interlocutory or final judgment pursuant to its supervisory jurisdiction, even though the judgment also could be reviewed pursuant to an appeal.” Uniform Rules of the Courts of Appeal, Rule 4-3, Revision Comment. Similarly, “. . . judicial efficiency and fundamental fairness to the litigants dictates that the merits

of the application for supervisory writs should be decided in an attempt to avoid the waste of time and expense of a possibly useless future trial on the merits.” *Herlitz*, 396 So.2d at 878. The *Herlitz* court outlined certain factors which justify supervisory review even where relief is available on appeal. While the *Herlitz* factors have no application here because reversal will not terminate the litigation, the justification for their adoption does. Namely, the Courts of Appeal should exercise their supervisory jurisdiction *even in cases where appeal may be available* if judicial efficiency and fairness to the parties so dictates.

Delaying this Court’s supervisory review defies principles of judicial efficiency and fairness to the parties. Two trials will need to be convened (one at Justice of the Peace court and one at parish court) instead of one, at a time when the COVID-19 pandemic necessitates minimizing in-person contact. This represents an inefficient use of judicial resources, and is imprudent from a public health perspective. Delaying review is unfair to the tenant, who must experience an act of discrimination in order to reach a second court where his legal rights *may* be properly enforced. It is also unfair to the landlord, who may endure substantial delays to obtaining possession of his property and may suffer related financial losses, while the trial *de novo* is pending. Here, judicial efficiency and fundamental fairness clearly counsel in favor of supervisory review at this juncture.

IV. Supervisory review is warranted because Mr. XXX will experience irreparable harm should this Court decline review.

This Court may exercise its supervisory jurisdiction to review an interlocutory judgment when the interlocutory decision causes “irreparable harm.” *Blow v. OneBeacon Am. Ins. Co.*, 2016-0301, p. 2 (La. App. 4 Cir. 04/20/16); 193 So. 3d 244, 247 (“In exercising our discretion whether to grant

supervisory review in civil cases, we are especially influenced by a relator's showing that the interlocutory ruling complained of should be immediately corrected either because the ruling likely would cause 'irreparable harm' or the well-known *Herlitz* factors are present.") Irreparable injury is "that for which an injured party cannot be compensated adequately in money damages, or for which damages cannot be measured by a pecuniary standard." *Nat'l Pac. Corp. v. Am. Commonwealth Fin. Corp.*, 348 So.2d 735, 736 (La. App. 1 Cir. 1977) (in the context of preliminary injunction).

If this Court fails to exercise supervisory jurisdiction at this juncture and issue a stay of proceedings, Applicant is condemned to experience discrimination based on his disability and a violation of his constitutional rights. Even if an eviction judgment could hypothetically be reversed at trial *de novo*, no monetary compensation can cure the harm caused by the discriminatory and unconstitutional treatment. Courts have held that forcing a disabled individual to go through an experience where he will experience discrimination under the ADA *in and of itself* causes irreparable harm, regardless of the outcome. In *Elder v. Nat'l Conference of Bar Exam 'rs*, a California federal district court granted a preliminary injunction based on its conclusion that "[t]aking the [bar] exam without a computer equipped with JAWS [special software to render the exam accessible] would force Elder to take the exam under discriminatory circumstances- a result that, **in and of itself would cause plaintiff irreparable harm.**" *Elder v. Nat'l Conference of Bar Exam 'rs*, No. C 11-00199 SI, 2011 U.S. Dist. LEXIS 15787, at *30 (N.D. Cal. Feb. 16, 2011) (citing *Chalk v. United States Dist. Court Cent. Dist.*, 840 F.2d 701 (9th Cir. 1988)) (emphasis added). Here, being forced to go through the eviction proceeding scheduled for June 25, 2020 at 5:00 PM without accommodations,

which will result in Mr. XXX and Ms. YYY's inability to attend and testify in their defense, will result in irreparable harm in and of itself.

Similarly, the denial of procedural due process rights has been held to cause irreparable harm in the context of a preliminary injunction. In *Jessen v. Lyndon Station*, the court held that a due process violation constituted an irreparable injury. 519 F. Supp. 1183, 1189 (W.D. Wis. 1981). In that case, a police chief was convicted of felony misconduct in public office. *Id.* at 1184. He brought a lawsuit seeking a "preliminary injunction enjoining defendants from causing plaintiff's employment to be terminated without a pre-termination hearing." *Id.* The court granted the injunction and stated, "even if plaintiff can prevail ultimately in this case, he still will have lost his constitutional right to a pre-termination hearing, and **there is no adequate means of restoring that right once the loss is suffered.**" *Id.* at 1189, citing Wright & Miller, Federal Practice and Procedure: Civil § 2948 at 440 (emphasis added). The denial of due process rights is a harm in and of itself that is not reparable.

If supervisory review is denied, Mr. XXX will be unable to access court to defend his eviction due to his disability. Mr. XXX requested that his eviction hearing be conducted through remote videoconference because his doctor has warned him to stay home due to his disabilities and the risk of COVID-19 infection. Mr. XXX further requested that auxiliary aids be provided because he is hard of hearing. The Justice of the Peace court denied these requests, suggesting that his attendance *at his own eviction hearing* was not necessary.

Currently the eviction hearing is set for June 25, 2020 at 5:00 PM. If Mr. XXX is not able to physically go to court to testify on his behalf, he will be at a severe disadvantage in defending his eviction. Should he lose the case as a result of

his inability to testify in his defense, he may receive as little as 24 hours to vacate. Mr. XXX and his partner, YYY YYY, are both seniors with disabilities that make them more vulnerable to serious illness if infected with COVID-19. Eviction and the housing instability that would inevitably follow would increase Mr. XXX and Ms. YYY's chance of contracting COVID-19, and thus their risk of serious illness or death. As such, irreparable harm is likely to result if this Court does not exercise its supervisory jurisdiction.

For the reasons outlined herein, exercise of supervisory jurisdiction over the interlocutory judgment on the reasonable accommodation request is warranted.

STATEMENT OF THE CASE

This writ application concerns only the Justice of the Peace court's pre-trial denial of Applicant's request for accommodation under the ADA. On June 2, 2020, Respondent landlord filed a Petition of Eviction against Applicants alleging nonpayment of rent. Exhibit E. The hearing was initially set for June 11, 2020, however it was reset due to the Governor's order suspending evictions until after June 15, 2020. *Id.* On June 12, 2020 counsel for Applicants filed a Motion to Continue and Accommodate Disabilities Through Remote Proceedings. Exhibit A.² The motion was filed by electronic mail, as Justice of the Peace Hamler-Williams' stated that this was her preferred method of communication and document submission. The motion stated that Mr. XXX and Ms. YYY are both over the age of 65 and have underlying health conditions that have been identified by the Centers for Disease Control and Prevention ("CDC") as those that increase the likelihood of severe illness or death if exposed to COVID-19. As such, Ms.

² The motions contain a typographical error in the caption, stating "1st Ward" rather than "2nd Ward." This error was immaterial to the Justice of the Peace Court's consideration and denial of the motions.

YYY's doctor ordered them to stay home for disability-related reasons. Judge Hamler-Williams failed to respond to the motion.

Mr. XXX was served with a new hearing date June 25, 2020 at 5:00 PM. Exhibit G. On June 22, 2020, Mr. XXX, through counsel, submitted a Supplemental Motion to Continue and Accommodate Disabilities Through Remote Proceedings, re-stating the original request and, in addition, requesting auxiliary communication aids for Mr. XXX since he is hard of hearing. Exhibit B. Counsel also submitted medical verifications for both Mr. XXX and Ms. YYY.

On June 23, 2020, Justice of the Peace Hamler-Williams submitted an email response denying the request. The email stated, "[i]f the defendants cannot attend, counsels can represent the parties" and that the eviction was still set for an in-person hearing on June 25, 2020 at 5:00 PM. Exhibit C. For the reasons outlined herein, the Justice of the Peace court erred in denying the Reasonable Accommodation request in violation of the ADA, Constitution, and state law.

ISSUE PRESENTED

Did the Justice of the Peace Court err in denying Mr. XXX's reasonable accommodation request to conduct his eviction hearing by remote video conference with auxiliary aids, and continue the matter until remote conferencing could be set up given that the trial is now set for tomorrow?

ASSIGNMENT OF ERROR

The Justice of the Peace Court violated the ADA and due process by denying Mr. XXX's reasonable accommodation request to conduct his eviction hearing by remote videoconference with auxiliary aids, and to continue the matter until remote conferencing could be set up.

ARGUMENT

The Justice of the Peace Court violated the Supreme Court’s COVID-19 order, the Americans with Disabilities Act, the 14th Amendment’s guarantee of due process, and state law, by denying Mr. XXX’s reasonable accommodation request to conduct his eviction hearing by remote video conference, to provide auxiliary aids, and to continue the matter until said accommodations can be made.

I. Standard of Review

Assuming this court accepts supervisory jurisdiction, questions of law are subject to *de novo* review. *La. Workers' Comp. Corp. v. La. Demolition, Inc.*, 93 So. 3d 765, 767 (La. App. 1 Cir. 2012). This writ application concerns a question of law, and as such should be subject to *de novo* review. As a practical matter, Applicant necessarily filed his two Motions to Continue and Accommodate Disabilities Through Remote Proceedings *ex parte*, and there was no hearing on the matter, factual findings, or record created. Therefore, *de novo* review is appropriate.

II. Applicant’s request for a remote hearing is in line with Louisiana Supreme Court’s guidance.

Mr. XXX’s request for a remote hearing as a reasonable accommodation for his disability is in line with the June 5, 2020 order of the Louisiana Supreme Court. The Court therein stated, “All matters should continue to be conducted with the use of video and telephone conferencing whenever possible.”³ The denial was in error because the Justice of the Peace’s denial of the request for remote proceedings runs counter to the safety recommendations of the Supreme Court during the COVID-19 pandemic.

III. The Justice of the Peace violated the Americans with Disabilities Act by denying the reasonable accommodation request.

³ Available at https://www.lasc.org/COVID19/Orders/2020-06-05_LASC_Order.pdf

The Americans with Disabilities Act (ADA) was enacted in 1990 “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. §12101(b)(1). Congress found that “discrimination against individuals with disabilities persists in such critical areas as . . . access to public services.” *Id.* at §§12101(a)(3),(5). Congress also found that “individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of . . . communication barriers, . . . failure to make modifications to existing . . . practices [and] relegation to lesser services, programs, activities, benefits, jobs, or other opportunities” *Id.*

Title II of the ADA provides that “no qualified individual with a disability sXXX, 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, or be subjected to discrimination by any such entity.” 42 U.S.C.A. § 12132.

Title II requires that public entities provide accessible courts. Indeed, one of the priYYY motivations for the ADA’s enactment was that “Congress learned that many individuals, in many States across the country, were being excluded from courthouses and court proceedings by reason of their disabilities.” *Tennessee v. Lane*, 541 U.S. 509, 527 (2004). And while the ADA’s guarantee of accessibility does not override the statutory defense of fundamental alteration or undue burden, “ordinary considerations of cost and convenience alone cannot justify a State’s failure to provide individuals with a meaningful right of access to the courts.” *Id.* at 533. As such, the ability of persons with disabilities to access the courts remains essential in fulfilling the purpose of the ADA.

A. Disability is defined expansively under the ADA.

Disability is defined broadly under the ADA. “The definition of “disability” sXXX be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.” 28 C.F.R. § 35.108(a)(2)(i). One way an individual can fit within the definition of disability is when they have “[a] physical or mental impairment that substantially limits one or more of the major life activities of such individual.” 28 C.F.R. § 35.108(a)(1)(i). A major life activity constitutes both tasks such as caring for oneself, eating, sleeping, interacting with others and the operation of a major bodily function such as the immune system. 28 C.F.R. § 35.108(c)(1).

Here, Mr. XXX is 81 years old and is diagnosed with hypertension, as well as chronic kidney disease. According to his doctor, Mr. XXX’s conditions substantially limit his ability to leave the house because of the increased risk of severe illness if infected with COVID-19. Exhibit B. Furthermore, Mr. XXX has a hearing impairment, which substantially limits the major life activity of communication and hearing. His live-in partner and fact witness in this matter, YYY YYY, is 66 years old and has congestive heart failure, hypertension, and Chronic Obstructive Pulmonary Disorder (“COPD”). According to her doctor, Ms. YYY’s physical impairments substantially limit her ability to work and to leave the house due to increased risk of serious illness if infected with COVID-19. Exhibit B. As such, Applicants have disabilities under the ADA.

B. The Justice of the Peace Court is obligated to reasonably accommodate applicants.

1. The ADA Requires the Justice of the Peace to Modify Her Policies When Necessary To Ensure Meaningful Access to Court

Title II of the ADA imposes on public entities, including courts, an affirmative obligation to make reasonable accommodations and modifications for individuals with disabilities who seek access to a public service or benefit. *Lane*, 541 U.S. at 531-32; *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005).

Public entities must make reasonable modifications to policies when necessary to avoid discrimination on the basis of a disability. 28 C.F.R. § 35.130(b)(7). A public entity is required to make necessary modifications unless the modifications requested are unreasonable – in other words, “unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity,” 28 C.F.R. § 35.130(b)(7), or impose an undue financial or administrative burden. *Choi v. Univ. of Tex. Health Sci. Ctr. at San Antonio*, 633 F. App'x 214, 215-16 (5th Cir. 2015) (adapting the failure-to-accommodate standard from Title I to Title II). The burden is on the public entity to establish that the requested accommodation is not reasonable. 28 C.F.R. § 35.130(b)(7).

2. The Requested Accommodation is Necessary and Reasonable

Courts have recognized that the ADA may be violated when individuals, who have medical conditions that make them particularly vulnerable to conditions imposed by a public entity, are not accommodated. *See Yates v. Collier*, 868 F.3d 354, 366 (5th Cir. 2017) (inmate-Applicants were successful in alleging and class-certifying a class of medically heat-sensitive inmates as having elevated risk of fatality due to underlying medical conditions--including co-morbidities associated with heat related death--and thereby, under the ADA, that the prison must take affirmative measures to mitigate the elevated risks); *Faour Abdallah Fraihat v.*

United States Immigration & Customs Enf't, No. EDCV 19-1546 JGB (SHKx), 2020 U.S. Dist. LEXIS 72015, at *77 (C.D. Cal. Apr. 20, 2020) (finding that Applicants were likely to prevail on the merits because ICE had failed to take adequate measures, such as disability-tracking, of detainees entering their facilities who had an elevated fatality risk associated with COVID-19 infection). For such a class of high-risk individuals, general mitigation efforts that might be adequate for those with ordinary risk are not sufficient. *McCollum v. Livingston*, No. 4:14-CV-3253, 2017 U.S. Dist. LEXIS 19602, at *115-16 (S.D. Tex. Feb. 3, 2017) (finding that Applicant with condition elevating health risk associated with heat exposure “needed something more than what was provided to the general population”).

Since the Applicant is in a similar and particularly high-risk group, he requires more than the accommodation of social distancing. This practice is consistent with guidance from the Centers for Disease Control. Further, as previously explained, the Louisiana Supreme Court’s orders in favor of remote proceedings should suffice to establish that the requested accommodation does not create a fundamental alteration or an undue burden upon the court.

Courts have repeatedly found that modifying proceedings to accommodate individuals with disabilities is reasonable. Examples of modifications to policies considered reasonable under the ADA include conducting hearings remotely, *Hiramanek v. Clark*, No. 5:13-cv-00228-RMW, 2016 U.S. Dist. LEXIS 21351, at *15 (N.D. Cal. Feb. 19, 2016); *see also, Phiffer v. Shirtcliff*, No. CV-10-1120-SU, 2011 U.S. Dist. LEXIS 66011, at *16 (D. Or. Apr. 14, 2011) (denial of request to modify rule requiring Applicants to appear in court in person states a claim for discrimination under the ADA).

C. The Justice of the Peace Court is obligated to provide auxiliary aids to Mr. XXX due to his hearing disability.

The ADA requires that Mr. XXX be provided with the auxiliary aids, which are necessary for effective communication for his upcoming eviction hearing. “A public entity sXXX furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” 28 C.F.R. § 35.160. Furthermore, “[i]n determining what types of auxiliary aids and services are necessary, a public entity sXXX give priYYY consideration to the requests of individuals with disabilities.” *Id.* And while Mr. XXX may sometimes rely on his partner Ms. YYY for assistance, it is unlawful to “...require an individual with a disability to bring another individual to interpret for him or her.” *Id.* The ADA regulations set forth a non-exhaustive list of auxiliary aids that must be provided by a public entity if necessary to effectuate effective communication, including both “video-based communications” and “real-time captioning.” 28 CFR § 35.104. If a hearing-impaired person requires both video-based communication and real time transcription to effectively communicate during the defense of their eviction, the ADA requires that such aids be provided by the court.

Mr. XXX’s hearing impairment is severe and he does not speak American Sign Language. In order for Mr. XXX to communicate effectively at his forthcoming hearing he must be able to see the person talking; as such, he has requested that the remote proceeding be conducted by video conference rather than by telephone, as an accommodation for his hearing disability. Additionally, in order to fully participate in his defense in the previously forthcoming remote

proceeding, Mr. XXX requires auxiliary aids that transcribe spoken words into text for him to read in real-time.

On June 22, 2020, Mr. XXX through counsel submitted a Supplemental motion to Continue and Accommodate Disabilities through Remote Proceedings requesting auxiliary aids. Exhibit B. His request was denied by the Justice of the Peace on June 23, 2020. Exhibit C. The court's refusal to facilitate and issue Mr. XXX's requested auxiliary aids violates the ADA.

D. Applicant has been denied meaningful access to government services and programs on the basis of his disabilities.

The Justice of the Peace Court has discriminated against Applicants by failing to adequately remove barriers to access for individuals who have been medically advised not to attend court due to the potential lethality of COVID-19. The Court's failure to remove these barriers has resulted in the provision of unequal services to Applicants solely on the basis of their disabilities. This has resulted in a lack of meaningful access to the courts.

The denial of equal and meaningful access to a public entity's services or programs to a person on the basis of their disability constitutes discrimination under the ADA. The ADA's regulations affirm this principle by defining discrimination by public entities as, amongst other things, "[providing] a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others..." 28 C.F.R. § 35.130(B)(iii).

In the context of the ADA, equal access means *meaningful* access. "Supreme Court precedent suggests that the denial of 'meaningful access' is equivalent to a

full denial of access under the ADA.” *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669, 672 (5th Cir. 2004); *see also Loye v. Cty. of Dakota*, 625 F.3d 494, 496 (8th Cir. 2010) (“we construe Title II of the ADA as requiring that qualified persons with disabilities receive “meaningful access” to a public entity's services, not merely “limited participation”).

The meaningful access requirement affirms that persons with disabilities need not be fully excluded from a public entity’s services or programs in order to be discriminated against. *American Council of the Blind v. Paulson* is instructive in articulating this principle. 525 F.3d 1256 (D.C. Cir. 2008). In this case, the D.C. Court of Appeals found that the United States Treasury acted discriminatorily when it did not provide meaningful access to currency for blind and visually impaired persons. *Id.* Specifically, the facts demonstrated that while blind and sighted people can both physically hold and spend, blind and visually impaired persons’ access to currency was not meaningful because of the inability to distinguish between denominations. *Id.* at 1269. Though the Defendant argued that blind persons used coping mechanisms to effectuate alternate means of participation, the Court disagreed noting that:

[t]he [Defendant’s] argument is analogous to contending that merely because the mobility impaired may be able either to rely on the assistance of strangers or to crawl on all fours in navigating architectural obstacles, *cf. Tennessee v. Lane*, 541 U.S. 509, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004), they are not denied meaningful access to public buildings, *see, e.g., Chaffin v. Kan. State Fair Bd.*, 348 F.3d 850 (10th Cir.2003); *cf. United States v. Edward Rose & Sons*, 384 F.3d 258 (6th Cir.2004).”

Id. On remand, the District Court issued an injunction forcing the Secretary to provide meaningful access to United States currency. *Am. Council of The Blind v. Paulson*, 581 F. Supp. 2d 1, (D.D.C. 2008).

Here, Applicants are denied meaningful access to the Courts because of their disabilities. As illustrated by the *Lane* and *Paulson* Courts, meaningful access is denied when significant barriers to access affecting people with disabilities are not removed. Just as the wheelchair user's rights in *Lane* are violated when he must crawl up courtroom steps or a blind individual's rights are violated when they are unable to distinguish between denominations of currency in *Paulson*, an individual who must risk illness, a term in the Intensive Care Unit or potentially even death to attend court because of their disability is denied meaningful access to Court. While Applicants may be physically able to attend the Justice of the Peace's courtroom, their access to the court is not meaningful because of the potential morbidity or mortality associated with their attendance.⁴

D. The Court's Methods of Administration are Discriminatory.

The Justice of the Peace has used methods of administration that have the effect of substantially limiting Applicant's ability to access the courts. In so doing, the Court has discriminated against Applicants on the basis of their disabilities.

A public entity's decision to administer its services or programs in a manner that has the effect of limiting access to persons with disabilities is discriminatory. The regulations for Title II explain that "[a] public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of

⁴ The Centers for Disease Control and Prevention (CDC) has enumerated various conditions that increase risk of severe illness if infected with COVID-19. The list includes people with chronic kidney disease, serious heart conditions including hypertension, and lung disease. See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

the public entity's program with respect to individuals with disabilities...” 28
C.F.R. § 35.130(3).

Pursuant to this regulatory framework, a discriminatory method of administration may be established when 1) a public entity administers a program or service and 2) the administration of that service has the effect of discriminating against persons with disabilities or substantially impairs the accomplishment of the program or service as it relates to individuals with disabilities. A method of administration can be found discriminatory regardless of the intent of the public entity. *Cota v. Maxwell–Jolly*, 688 F.Supp.2d 980, 995 (N.D.Cal.2010) (Armstrong, J.) (finding discrimination possible in “both blatantly exclusionary policies or practices as well as policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate.”). Further, both the commission and omission of an administrative act can constitute discrimination. *Dunn v. Dunn*, 318 F.R.D. 652, (citing to *Connecticut Office of Protection & Advocacy for Persons with Disabilities v. Connecticut*, 706 F.Supp.2d 266 (D.Conn.2010) and *Kathleen S. v. Dep't of Pub. Welfare of Pa.*, 10 F.Supp.2d 460, 471 (E.D.Pa.1998) (Broderick, J)).

The Justice of the Peace’s administrative policies and practices are having the effect of defeating or substantially impairing the ability of persons with disabilities to access the courtroom. The response that Mr. XXX need not attend the hearing himself but allow his attorney to speak for him is tantamount to a statement that the landlord may participate in the court proceeding because he is not disabled, but Mr. XXX may not participate by reason of his disability. Mr. XXX is receiving differential and discriminatory treatment *simply because he is a person with disabilities*.

The lack of any policy or practice to ensure that individuals with disabilities are able to access the court is directly responsible for the substantially impaired ability of the Applicant to defend his eviction. While individuals without disabilities continue to be able to access the Court, the method of administration used by the Justice of the Peace has the effect of discriminating against Applicant solely based on his disabilities.

IV. The Justice of the Peace violates the due process clause of the 14th Amendment by failing to provide access to the court.

Due process is required prior to eviction. The Supreme Court in *Lindsey v. Normet* articulated that “[b]efore a tenant is forcibly evicted from property the Oregon statute requires a judicial determination that he is not legally entitled to possession.” *Lindsey v. Normet*, 405 U.S. 56, 72 (1972). While the Court did not find the specific statutory provisions at issue invalid under Due Process, the Court noted that “[o]f course, it is possible for [the] specific provision to be applied as to deprive a tenant of a proper hearing in specific situations.” *Id.* at 65. The Court recognized that the statute was intended to “protect tenants as well as landlords” and to “provide[] a speedy, judicially supervised proceeding to settle the possessory issue in a peaceful manner.” *Id.* at 71-72. Louisiana law similarly provides that, except where a tenant abandons a property, a judicial determination is needed to terminate the tenant’s interest in the leasehold or put him or her out. *Bunel of New Orleans, Inc. v. Cigali*, 348 So.2d 993, 995-96 (La. App. 4 Cir. 1977); La. Code Civ. P. art. 4701 *et seq.* This, too, qualifies a leasehold as property interest protected by the due process clause of the Fourteenth Amendment.⁵

⁵ “The XXXmark of property... is an individual entitlement grounded in state law, which cannot be removed except ‘for cause.’” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982)(internal citations omitted).

Mr. XXX has a right to meaningfully participate in his own eviction hearing, despite his disability. As stated by the Supreme Court, “[t]he Due Process Clause ... requires the States to afford certain civil litigants a ‘meaningful opportunity to be heard’ by removing obstacles to their full participation in judicial proceedings.” *Lane*, 541 U.S. at 523 (2004) (citing *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971) (examining the constitutionality of the American with Disabilities Act). In, *Boddie v. Connecticut*, the Supreme Court held that “within the limits of practicability, a State must afford all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause.” *Boddie v. Connecticut* 401 U.S. 371, 379 (1971). The U.S. Fifth Circuit has also recognized access to the courts as being “one of the fundamental rights protected by the Constitution.” *Ryland v. Shapiro*, 708 F.2d 967, 971-72 (5th Cir. 1983).

Appellants in *Boddie v. Connecticut* were welfare recipients seeking divorce who were barred because they were unable to pay the court fees or costs required for service of process. *Boddie*, 401 U.S. at 372. Appellants argued that requiring “payment of court fees and costs for service of process” to commence litigation restricted their access to the courts. *Id.* In finding a violation of due process, the Court emphasized that “resort to the state courts is the only avenue to dissolution of their marriages... Resort to the judicial process by these Applicants is no more voluntary in a realistic sense than that of the *defendant called upon to defend his interests in court.*” *Id.* at 376–77 (emphasis added).

Like the requirements at issue in *Boddie*, the in-person participation barriers at issue in this suit will “foreclose a particular party’s opportunity to be heard.” *Id.* at 380. The Justice of the Peace court’s denial of the reasonable accommodation request forecloses Mr. XXX’s opportunity to be heard in defense of his eviction.

V. The Justice of the Peace violated the Louisiana Interpreter Law by denying Applicant's request for transcription services.

Louisiana requires that hard of hearing individuals be provided transliteration services during any judicial or quasi-judicial proceeding. According to the statute:

Whenever a person who is deaf or hard of hearing is a party or witness at any stage involving direct communication with persons who are deaf or hard of hearing or his legal representative or custodian during any judicial or quasi-judicial proceeding in this state or in its political subdivisions, including but not limited to proceedings of civil and criminal court, grand jury, before a magistrate, juvenile, adoption, mental health commitment, and any proceeding in which a person who is deaf or hard of hearing may be subjected to confinement or criminal sanction, the appointing authority sXXX appoint and pay for a qualified interpreter/transliterater to interpret or transliterate the proceedings to the person who is deaf or hard of hearing and to interpret or transliterate the testimony of the person who is deaf or hard of hearing.

La. R.S. § 46:2364(a). Under this statute, a person who is hard of hearing is defined as “a person who, because of hearing loss, has difficulty understanding the communication occurring.” La. R.S. § 46:2362(3). While a quasi-judicial hearing is defined as “any proceeding of a public administrative office or body which is required to investigate facts, ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action, and to exercise discretion of a judicial nature.” *Id.* at (6).

Mr. XXX is hard of hearing and requested transliteration services in the form of real-time transcription. Justice of the Peace Hamler-Williams’ denial of the requested transliteration services is therefore in clear violation of the Louisiana Interpreters Law.

CONCLUSION

For the reasons outlined herein, Applicant respectfully requests that this Honorable Court grant supervisory review and order the Justice of the Peace to

accommodate his disability by providing for a remote proceeding by video conference with auxiliary aids, in a manner that complies with due process requirements, and by continuing the eviction hearing for whatever period of time is necessary to work out the logistical details of holding a remote hearing.

PRAYER FOR RELIEF

Applicant, XXX XXX, prays that this Court grant the following relief:

1. Stay the eviction proceeding pending its determination of this writ application;
2. Order the trial court to grant Mr. XXX's reasonable accommodation request;
4. Award all other relief as may be just and appropriate; and
5. Permit Applicant to proceed *in forma pauperis*; and
6. Tax the costs of these proceedings to the landlord.

Respectfully submitted:
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