April 3, 2015

The Honorable Brigham M. Anderson
Lawrence County Prosecuting Attorney
Lawrence County Courthouse
111 South 4th Street
Ironton, Ohio 45638

SYLLABUS: 2015-012

A "reasonable accommodation" under Title I of the Americans with Disabilities Act, 42 U.S.C.A. §§ 12111-12117 (West 2014), may include the use of a rubber stamp facsimile signature by a judge of a court of common pleas who has a neurological condition that leaves him unable to use his arms and hands to sign his name, provided that the judge's employer does not prove that use of a rubber stamp facsimile signature constitutes an "undue hardship" to the employer.

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OPINION NO. 2015-012

The Honorable Brigham M. Anderson
Lawrence County Prosecuting Attorney
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111 South 4th Street
Ironton, Ohio 45638

Dear Prosecutor Anderson:

You have requested an opinion whether a judge of a court of common pleas may use a facsimile signature to sign all court documents because of a neurological condition that affects his ability to sign his name. The judge is requesting to use a rubber stamp facsimile signature in lieu of a handwritten signature as a "reasonable accommodation" under the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.A. §§ 12101-12213 (West 2014). It is our understanding that the judge's condition affects his ability to use his arms and hands. In separate correspondence to our office, the judge has explained that he currently signs his orders with a simple mark. He is concerned that the mark could be forged easily and someone could therefore misuse the court's authority. The court of appeals recommended to the judge that he prepare an order adopting the use of a facsimile signature. The facsimile signature would be a stamp prepared by the judge before he lost the ability to sign his name.

Several Ohio appellate districts have addressed whether a judge may, in general, use a rubber stamp facsimile signature. These courts consistently have concluded that documents bearing a rubber stamp facsimile signature in lieu of a judge's handwritten signature are not final appealable orders and are invalid for appellate purposes. *In re Estate of Weeks*, 5th Dist. No. 2013CA00206, 2014-Ohio-3371, 2014 WL 3811575, at ¶¶20-32 (July 28, 2014); *Boulder Capital Grp., Inc. v. Lawson*, 2d Dist. No. 2012 CA 88, 2013-Ohio-3270, 2013 WL 3934991, at ¶¶10-13 (July 26, 2013); *In re Change of Name of M.W.R.*, 12th Dist. Nos. CA2007-04-105, CA2007-04-106, 2007-Ohio-6169, 2007 WL 4099505, at ¶¶26-27 (Nov. 19, 2007); *City of Bedford Heights v. Williams*, No. 67617, 1995 WL 363859 (Cuyahoga County Ct. App. June 15, 1995); *In re Mitchell*, 93 Ohio App. 3d 153, 154, 637 N.E.2d 989 (Cuyahoga County 1994); *Rescue Temple Church of God v. Jones*, No. 15412, 1992 WL 154076, at *1 (Summit County Ct. App. July 1, 1992). These courts declare, without further discussion or analysis, that a rubber stamp signature does not satisfy Ohio Rule of Civil Procedure 58(A) or Ohio Rule of Criminal Procedure 32(C), both of which address the requirements for entry of judgments. *E.g.*, *Boulder Capital Grp., Inc. v. Lawson*, 2013-Ohio-3270, 2013 WL 3934991, at ¶¶10-13; *In re Mitchell*, 93 Ohio App. 3d at 154; *Rescue Temple Church of God v. Jones*, 1992 WL 154076, at *1. Ohio Rule of Civil Procedure 58(A) states, in part, that upon a jury verdict or a

decision announced, "the court shall promptly cause the judgment to be prepared and, *the court having signed it*, the clerk shall thereupon enter it upon the journal. A judgment is effective only when entered by the clerk upon the journal." (Emphasis added.) Similarly, Ohio Rule of Criminal Procedure 32(C) addresses judgments of conviction and states that "[t]he judge shall sign the judgment." We are not aware of any other current rule or statute that addresses a judge's signature on a particular court document.

Although Ohio courts have concluded that a judge may not use a rubber stamp facsimile signature in lieu of a handwritten signature, none of the decisions have considered whether a judge may use a rubber stamp signature as a reasonable accommodation under the ADA when a judge is unable to sign his name due to a neurological condition that affects his ability to use his arms and hands. Your question, therefore, requires consideration of Title I of the ADA, 42 U.S.C.A. §§ 12111-12117 (West 2014).[1] Title I addresses employment discrimination and the rights of individuals with disabilities in employment settings. Title I of the ADA applies not only to private employers, but also to state and local government employers.[2] *See* 42 U.S.C.A. § 12111(5) (defining employer); *Minnix v. City of Chillicothe*, No. 98-4285, 2000 WL 191828, at *9 n.4 (6th Cir. Feb. 10, 2000) (Krupansky, J., dissenting) ("[g]enerally, the ADA encompasses non-federal governmental units"); *Nadel v. Shinseki*, No. 12-CV-1902, 2014 WL 5343331, at *4 (S.D.N.Y. Sept. 30, 2014) (noting that the ADA protects against discrimination by state and local government employers).

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[1] For the purpose of this opinion, we assume, without determining, that the judge is entitled to receive a reasonable accommodation under Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C.A. §§ 12111-12117 (West 2014). In order to receive a reasonable accommodation under Title I of the ADA, a person must show that: (1) he is disabled within the meaning of the ADA; (2) he is qualified to perform the essential functions of the position, with or without a reasonable accommodation; (3) his employer knew or had reason to know about his disability; and (4) he requested an accommodation. *See* 42 U.S.C.A. §§ 12102, 12111; 29 C.F.R. § 1630.2; *see also* 42 U.S.C.A. § 12201(h); *Judge v. Landscape Forms, Inc.*, 592 F. App'x 403, 407 (6th Cir. 2014) (setting forth the elements of a prima facie case of a failure to accommodate claim under the ADA); *Henschel v. Clare Cnty. Rd. Comm'n*, 737 F.3d 1017, 1022 (6th Cir. 2014) (same as prior parenthetical). Whether a person is entitled to the protections of the ADA, including a reasonable accommodation, requires an individualized inquiry, which is highly factual in nature. An opinion of the Attorney General cannot determine questions of fact or determine the rights of particular persons. 2014 Op. Att'y Gen. No. 2014-007, at 2-66; 2014 Op. Att'y Gen. No. 2014-001, at 2-4 to 2-5; 2011 Op. Att'y Gen. No. 2011-009, at 2-73; 2002 Op. Att'y Gen. No. 2002-030, at 2-205 n.8.

[2] Title I specifically prohibits disability discrimination by a "covered entity." 42 U.S.C.A. § 12112(a). A "covered entity" is defined as "an employer, employment agency, labor organization, or joint labor-management committee." 42 U.S.C.A. § 12111(2).

Title I of the ADA also applies to elected officials, including a judge of a court of common pleas, as "employees."[3] *See* 42 U.S.C.A. § 12111(4) (defining "employee" as "an individual employed by an employer"); *Parker v. Yuba Cnty. Water Dist.*, No. 02:06-cv-0340-GEB-KJM, 2006 WL 2644899, at *2 n.7 (E.D. Cal. Sept. 14, 2006) (citing legislative history of ADA and noting that an exception for elected officials is not included in the ADA's definition of "employee"); *see also* R.C. 2301.01 (regarding election of judges of courts of common pleas). Although a judge of a court of common pleas is a public officer for state law statutory provisions, *see, e.g.*, 1990 Op. Att'y Gen. No. 90-089, at 2-382; 1988 Op. Att'y Gen. No. 88-055, his status as a public officer for state law purposes does not determine whether he is an "employee" as defined by the ADA nor does it determine whether he is entitled to the protections of the ADA.

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[3] The judge's request for a reasonable accommodation under the ADA shall be submitted to his employer, and the employer in turn shall decide whether to grant that accommodation. We make no determination whether the judge is an employee of the State of Ohio, Lawrence County, or another government entity for that purpose.

As explained in prior opinions, whether a judge of a court of common pleas is a state or county officer or employee depends on the purpose of the classification:

> "[T]he question of whether a common pleas judge may be classified as a state or county officer is not well settled and appears to depend upon the purpose for which such classification is being made." [1987 Op. Att'y Gen. No. 87-021, at 2-141.] The dual character of a common pleas court judge's service is explained as follows in *State ex rel. Justice v. Thomas*, 35 Ohio App. 250, 256, 172 N.E. 397, 398-99 (Marion County 1930): "He is elected in the county in which he resides, and normally serves there, but is vested with state-wide jurisdiction. The state pays by far the greater part of his compensation; so that it is doubtful he is, within the strict interpretation of the law, a county official." [1987 Op. Att'y Gen. No. 87-021], however, concludes that, for purposes of the procurement of life insurance by the board of county commissioners … a judge of a court of common pleas may be considered a county officer, since, among other things, his service is primarily to the county and a portion of his compensation is paid by the county.

1987 Op. Att'y Gen. No. 87-063, at 2-386 (questioned and modified, in part, on other grounds by 2008 Op. Att'y Gen. No. 2008-004 and 2009 Op. Att'y Gen. No. 2009-009); *see also* 1985 Op. Att'y Gen. No. 85-014, at 2-54 ("I am aware that there may be some controversy concerning the classification of a common pleas judge as a county officer for purposes of R.C. 309.09, since the court of common pleas is, in some sense, an instrumentality of the state, and a common pleas judge is considered to be a state officer for certain other purposes"). *See generally Bloom v. Bexar Cnty.*, 130 F.3d 722, 724-26 (5th Cir. 1997) (considering whether the state or county was the employer of a court reporter, and discussing whether the state or county employs a judge of state district court for purposes of ADA). We believe that, in this instance, whether a common pleas judge is an employee of the state or the county for purposes of the ADA is best made by county or state judicial officials.

Generally speaking, the ADA imposes a duty on an employer to provide reasonable accommodations to employees with disabilities. Specifically, under the ADA an employer may not "discriminate against a qualified individual on the basis of disability."[4] 42 U.S.C.A. § 12112(a); *see also* 42 U.S.C.A. § 12111(2) (defining "covered entity"); 42 U.S.C.A. § 12111(5) (defining "employer"). The term "discriminate" includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." 42 U.S.C.A. § 12112(b)(5)(A).

The ADA defines reasonable accommodation as follows:

> The term "reasonable accommodation" may include—
>
> (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
>
> (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the

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[4] Although your request does not refer to state law, we note that Ohio law is very similar to the ADA. *See, e.g., Rector v. Ohio Bureau of Workers' Comp.*, 10th Dist. No. 09AP-812, 2010-Ohio-2104, 2010 WL 1918768, at ¶11 (May 13, 2010) (ADA and its Ohio state law equivalent "are nearly identical"); *Sheridan v. Jackson Twp. Div. of Fire*, 10th Dist. No. 08AP-771, 2009-Ohio-1267, 2009 WL 714081, at ¶4 (Mar. 19, 2009). Like the ADA, Ohio law prohibits an employer from discriminating on the basis of disability and requires an employer to make a reasonable accommodation for an employee with a disability unless the employer can demonstrate that such an accommodation would impose an undue hardship on the conduct of the employer's business. R.C. 4112.02; 10A Ohio Admin. Code 4112-5-08(E)(1); *see also* R.C. 4112.01. Because of the similarities between Ohio law and the ADA, Ohio courts look to cases and regulations interpreting the federal law when deciding cases of federal and state disability discrimination claims. *Canady v. Rekau & Rekau, Inc.*, 10th Dist. No. 09AP-32, 2009-Ohio-4974, 2009 WL 3021764, at ¶32 (Sept. 22, 2009); *see also, e.g., Niles v. Nat'l Vendor Servs., Inc.*, 10th Dist. 10AP-128, 2010-Ohio-4610, 2010 WL 3783426, at ¶26 (Sept. 28, 2010) ("Ohio's statute is modeled after the federal [ADA], and Ohio courts will 'look to the ADA and its interpretation by federal courts for guidance in interpreting the Ohio statute'" (quoting *Pinchot v. Mahoning Cnty. Sheriff's Dep't*, 164 Ohio App. 3d 718, 2005-Ohio-6593, 843 N.E.2d 1238, at ¶13 (Mahoning County))); *Rector v. Ohio Bureau of Workers' Comp.*, 2010-Ohio-2104, 2010 WL 1918768, at ¶11 (the Ohio Supreme Court "has held that we may look to cases and regulations interpreting the ADA when interpreting the Ohio anti-discrimination statutes" (citing *City of Columbus Civil Serv. Comm'n v. McGlone*, 82 Ohio St. 3d 569, 573, 697 N.E.2d 204 (1998)). Therefore, our discussion of the ADA also applies to a request for a reasonable accommodation under state law.

> provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C.A. § 12111(9); *see also* 29 C.F.R. § 1630.2(o)(ii) (reasonable accommodation means, *inter alia*, "modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position"). The statute and the ADA's regulations, however, "define reasonable accommodation only by example." *Cehrs v. Ne. Ohio Alzheimer's Research Ctr.*, 155 F.3d 775, 781 (6th Cir. 1998) (citation omitted). The types of accommodations described, in other words, are not an exclusive or exhaustive list of "reasonable accommodations" that may be provided.

Initially, employers must engage in an informal "interactive process" with the employee to determine the appropriate reasonable accommodation. *Talley v. Family Dollar Stores of Ohio, Inc.*, 542 F.3d 1099, 1110 (6th Cir. 2009) (citing 29 C.F.R. § 1630.2(o)(3)). To determine the appropriate reasonable accommodation, the ADA's regulations state that "it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations." 29 C.F.R. § 1630.2(o)(3). The Sixth Circuit Court of Appeals has concluded that this process "'is mandatory and both parties have a duty to participate in good faith.'" *Talley v. Family Dollar Stores of Ohio, Inc.*, 542 F.3d at 1110 (quoting *Kleiber v Honda of Am. Mfg., Inc.*, 485 F.3d 862, 871 (6th Cir. 2007)). Such a process might be used, for example, by the employer and employee to discuss what accommodations will permit the employee to perform his job without presenting an undue hardship for the employer. *See Talley v. Family Dollar Stores of Ohio, Inc.*, 542 F.3d at 1110. "If properly respected by employer and employee, the interactive process ought to result in a reasonable accommodation." *Kovac v. Superior Dairy, Inc.*, 998 F. Supp. 2d 609, 620 (N.D. Ohio 2014).

An analysis of whether a judge of a court of common pleas is entitled to a particular reasonable accommodation shall consider (1) whether the requested accommodation is objectively reasonable, and (2) whether the requested accommodation will impose an undue hardship on the employer. Resolution of these issues requires resolution of questions of fact. *See, e.g.*, *Henschel v. Clare Cnty. Rd. Comm'n*, 737 F.3d 1017, 1025 (6th Cir. 2014); *Johnson v. Cleveland City Sch. Dist.*, 8th Dist. No. 94214, 2011-Ohio-2778, 2011 WL 2409901, at ¶62 (June 9, 2011); *Harper v. Honda of Am. Mfg., Inc.*, No. C-2-97-0338, 1998 WL 1788072, at *7 (S.D. Ohio Nov. 13, 1998). Although an opinion of the Attorney General cannot determine questions of fact or determine the rights of a particular individual, we are able to explain the standards used by the courts to resolve these issues. *See* 2014 Op. Att'y Gen. No. 2014-007, at 2-66; 2014 Op. Att'y Gen. No. 2014-001, at 2-4 to 2-5; 2011 Op. Att'y Gen. No. 2011-009, at 2-73; 2002 Op. Att'y Gen. No. 2002-030, at 2-205 n.8.

An employee must first propose an "objectively reasonable" accommodation. *Talley v. Family Dollar Stores of Ohio, Inc.*, 542 F.3d at 1108. "A reasonable accommodation is one that is objectively reasonable 'in the sense both of efficacious and of proportional to costs.'" *Henschel v. Clare Cnty. Rd. Comm'n*, 737 F.3d at 1024-25 (quoting *Keith v. Cnty. of Oakland*, 703 F.3d 918, 927

(6th Cir. 2013)). To be reasonable, the accommodation "should be necessary in light of the [person's] known physical limitations." *Johnson v. Cleveland City Sch. Dist.*, 344 F. App'x 104, 111 (6th Cir. 2009); *see also Kovac v. Superior Dairy, Inc.*, 998 F. Supp. 2d at 620-21. Here, a common pleas court judge is requesting to use a rubber stamp facsimile signature because of a neurological condition that affects his ability to use his hands and arms and has left him unable to sign his name; rather, he is able to make only his mark. It is our understanding that the judge is able to perform all other aspects of his duties. We believe that this request meets the "objectively reasonable" standard. Use of a rubber stamp facsimile signature is necessary in light of the judge's known physical limitations on the use of his arms and hands. The rubber stamp enables the judge to affix his signature in fulfillment of his judicial duties. A rubber stamp facsimile signature also does not violate the requirement that a requested accommodation be "proportional to costs." *See Henschel v. Clare Cnty. Rd. Comm'n*, 737 F.3d at 1024-25. A rubber stamp is not a costly accommodation, and it is our understanding that such stamps are routinely used by the courts for affixing the judge's "signature" to copies of the court's judgments and orders. Use of a rubber stamp facsimile signature would also be effective. It will permit the judge to affix a signature rather than relying on a simple mark, which might otherwise be forged easily. Finally, the ADA's regulations define "reasonable accommodation" to include modifications or adjustments to "the manner or circumstances under which the position held … is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position." 29 C.F.R. § 1630.2(o)(ii). Use of a rubber stamp facsimile signature is nothing more than a modification of the manner in which a judge customarily "signs" his name to his court documents. Therefore, these factors persuade us that the accommodation here requested is a reasonable one as defined by the courts.

Further, many courts in Ohio have adopted electronic filing systems pursuant to a local rule of court. *See generally* R.C. 1306.22 (use of electronic signatures by courts); Rules of Superintendence for the Courts of Ohio 27 (requiring local rules regarding the use of information technology to be approved the Ohio Supreme Court); The Supreme Court of Ohio, Elec. Signatures Work Grp. of the Standards Subcomm. of the Supreme Court of Ohio Advisory Comm. on Tech. and the Courts, *Authentication Standards for the Use of Electronic Signatures in Electronic Documents* (Jan. 8, 2008), *available at* http://www.supremecourt.ohio.gov/Boards/ACTC/SGR/ESignatures.pdf. These electronic filing systems permit parties to submit documents to the court electronically, including use of an electronic signature by the attorneys and parties involved in the case. Electronic filing systems also permit the court to sign documents electronically. *See, e.g.*, *Huntington Nat'l Bank v. Thompson*, 2d Dist. No. 26265, 2014-Ohio-5168, 2014 WL 6601988, at ¶¶54-58 (Nov. 21, 2014); *State v. Pinkney*, 8th Dist. No. 91861, 2010-Ohio-237, 2010 WL 320485, at ¶¶37-38 (Jan. 28, 2010); The Supreme Court of Ohio, Elec. Signatures Work Grp. of the Standards Subcomm. of the Supreme Court of Ohio Advisory Comm. on Tech. and the Courts, *Authentication Standards for the Use of Electronic Signatures in Electronic Documents* (Jan. 8, 2008), *available at* http://www.supremecourt.ohio.gov/Boards/ACTC/SGR/ESignatures.pdf; Franklin Cnty. Common Pleas Court Div. of Domestic Relations, Admin. Order, *In Re: Electronic Filing of Court Documents*, https://www.franklincountyohio.gov/clerk/docs/Domestic%20Administrative%20eFiling%20Order%20Final%201.pdf (last visited Mar. 30, 2015).

The increasing use of electronic filing systems indicates that a traditional, handwritten signature may no longer be the *only* acceptable form of signature that a judge may use to sign judgments, orders, and other court documents. Although the courts in Ohio have concluded that a judge must use a handwritten signature to satisfy the signature requirements of Ohio Rule of Civil Procedure 58(A) or Ohio Rule of Criminal Procedure 32(C), these cases were decided before the widespread use of electronic filing systems. *See, e.g.*, *City of Bedford Heights v. Williams*, 1995 WL 363859, at *2 (judgment entry signed with a rubber stamp is not a final appealable order "since it does not bear the *actual signature* of the trial judge" (emphasis added)); *Wilson v. First Fed. Sav. and Loan Ass'n*, No. CA-6358, 1984 WL 3292, at *1 (Stark County Ct. App. May 8, 1984) ("[d]ocuments not bearing the *personal signature* of the trial judge cannot qualify as judgment entries under Civil Rule 58" (emphasis added)). We need not decide whether the conclusions in these cases remain a reasonable interpretation of Ohio law. Rather, we note that the current use of electronic filing systems indicates that at least one type of facsimile signature, the electronic signature, is accepted in lieu of the previous requirement that a judge use only a handwritten signature. *But see State v. Anderson*, 8th Dist. No. 92576, 2010-Ohio-2085, 2010 WL 1910071, at ¶¶53-55 (Sweeney, J., concurring) (comparing use of electronic signature with use of rubber stamp signature and concluding the rubber stamp signature is distinguishable because, unlike an electronic signature that may require use of a password or code, a rubber stamp may be used by anyone).

Accordingly, we believe that a judge's use of a rubber stamp facsimile signature when he is unable to use his arms and hands because of a neurological condition satisfies the requirement that a requested accommodation under the ADA be "objectively reasonable."

We note, however, that the judge's employer may suggest that the judge, at the current time, is capable of performing his duty of signing his orders without an accommodation, or the employer may offer an alternative reasonable accommodation. First, the judge has indicated that he is capable of making a mark on his orders. While this mark no longer looks like his handwritten signature prior to the onset of his neurological condition, it is still a handwritten mark as opposed to a facsimile rubber stamp signature. The judge's employer may assert that the handwritten mark fulfills the judge's duty to "sign" his judgments as required by Ohio Rule of Civil Procedure 58(A) or Ohio Rule of Criminal Procedure 32(C). If an employee is able to perform an essential function of his position without a requested accommodation, the courts may conclude that the requested accommodation is not "objectively reasonable."[5] *See Obnamia v. Shinseki*, No. 2:12-cv-58, 2013 WL 5408267, at **4-7 (S.D. Ohio Sept. 25, 2013).

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[5] We do not determine here whether a judge's handwritten signature on a judgment is, in fact, an "essential function" of his position for purposes of the ADA. *See* 29 C.F.R. § 1630.2(n); *Rorrer v. City of Stow*, 743 F.3d 1025, 1039-40 (6th Cir. 2014); *Keith v. Cnty. of Oakland*, 703 F.3d 918, 925-27 (6th Cir. 2013). That determination "'is evaluated on a case-by-case basis by examining a number of factors.'" *Rorrer v. City of Stow*, 743 F.3d at 1039 (quoting *D'Angelo v.ConAgra Foods, Inc.*, 422 F.3d 1220, 1230 (11th Cir. 2005)); *Keith v. Cnty. of Oakland*, 703 F.3d at 926. An employer may claim that a reasonable accommodation is not necessary.

Alternatively, the employer may offer a different reasonable accommodation. For example, it may be arranged for the judge to use an electronic signature to sign his judgments, orders, and other documents rather than a rubber stamp signature. An employee may not compel his employer to provide a specific accommodation if the employer offers another reasonable accommodation. *Talley v. Family Dollar Stores of Ohio, Inc.*, 542 F.3d at 1108. "Where there is more than one reasonable accommodation, the choice of accommodation is the employer's. '[T]he employer providing the accommodation has the ultimate discretion to choose between effective accommodations.'" *Smith v. Honda of Am. Mfg., Inc.*, 101 F. App'x 20, 25 (6th Cir. 2004) (quoting *Hankins v. The Gap, Inc.*, 84 F.3d 797, 800 (6th Cir. 1996)). Therefore, although it is our opinion that use of a rubber stamp facsimile signature in these circumstances is objectively reasonable, the judge's employer may nevertheless offer an alternative reasonable accommodation that the judge may be required to accept.

Once an employee proposes a reasonable accommodation, if the employer does not want to provide the employer with the requested accommodation, the employer then has the burden of demonstrating that the accommodation imposes an undue hardship on the employer. *Talley v. Family Dollar Stores of Ohio, Inc.*, 542 F.3d at 1108. An "undue hardship" is defined by the ADA as "an action requiring significant difficulty or expense." 42 U.S.C.A. § 12111(10)(A). When evaluating undue hardship, the statute requires consideration of the following factors:

> (i) the nature and cost of the accommodation needed under this chapter;
>
> (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
>
> (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
>
> (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

42 U.S.C.A. § 12111(10)(B). "To prove undue hardship, the employer has to show 'both that the hardship caused by the proposed accommodation would be undue in light of the enumerated factors, and that the proposed accommodation is unreasonable and need not be made.'" *Cehrs v. Ne. Ohio Alzheimer's Research Ctr.*, 155 F.3d at 782 (quoting *Borkowsi v. Valley Cent. Sch. Dist.*, 63 F.3d 131, 139 (2d Cir. 1995)).

Considering these factors, we do not believe use of a rubber stamp facsimile signature by a judge whose neurological condition affects his ability to use his arms and hands constitutes an "undue hardship." The statute requires that the difficulty or expense to the employer be "significant." 42 U.S.C.A. § 12111(10)(A). We do not believe the employer of a judge of a court of common pleas who has a neurological condition that affects his ability to use his arms and hands and requests to use a rubber stamp signature as a reasonable accommodation will be able to meet this high standard. Here,

the "nature" of the proposed accommodation is a simple stamp and, as previously noted, is widely used already by Ohio courts for "signing" copies. In fact, it appears that the judge requesting the accommodation already has a rubber stamp that was made before he lost his ability to sign his name. We also see no significant concerns to the courts in Ohio regarding the financial cost of a rubber stamp facsimile signature. Similarly, the overall "effect on expenses and resources" of the courts should be negligible, particularly where such a rubber stamp has already been created. Additionally, as discussed above, we believe that the request is reasonable and necessary in light of the judge's neurological condition. Therefore, it is unlikely that in this circumstance the judge's employer could meet its burden of showing that the request is "unreasonable and need not be made." *See Cehrs v. Ne. Ohio Alzheimer's Research Ctr.*, 155 F.3d at 782.

Conclusion

For the reasons discussed above, it is my opinion, and you are hereby advised that a "reasonable accommodation" under Title I of the Americans with Disabilities Act, 42 U.S.C.A. §§ 12111-12117 (West 2014), may include the use of a rubber stamp facsimile signature by a judge of a court of common pleas who has a neurological condition that leaves him unable to use his arms and hands to sign his name, provided that the judge's employer does not prove that use of a rubber stamp facsimile signature constitutes an "undue hardship" to the employer.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General