

MOTION INFORMATION STATEMENT

Docket Number(s): 11-2215 Caption [use short title] \_\_\_\_\_

Motion for: Leave to File Supplemental Appendix C.

Set forth below precise, complete statement of relief sought: v.  
New York State and Local Retirement

Leave to file a supplemental appendix containing the  
stenographic minutes of an administrative proceeding of  
which this Court may choose to take judicial notice.

MOVING PARTY: Mary Jo C. OPPOSING PARTY: N.Y. State and Local Retirement System

- Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

MOVING ATTORNEY: William Brooks OPPOSING ATTORNEY: Eric Schneiderman

[name of attorney, with firm, address, phone number and e-mail]

Mental Disability Law Clinic, Touro Law Center New York State Department of Law  
225 Eastview Drive 120 Broadway  
Central Islip, NY 11722 New York, NY 10271  
(631) 761-7086; Williamb@toulaw.edu (212) 416-6279; cecelia.chang@ag.ny.gov

Court-Judge/Agency appealed from: Eastern District of New York (Feuerstein, J.)

Please check appropriate boxes:

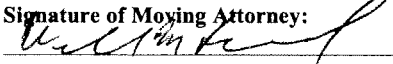
Has movant notified opposing counsel (required by Local Rule 27.1):  
 Yes  No (explain): \_\_\_\_\_

Opposing counsel's position on motion:  
 Unopposed  Opposed  Don't Know

Does opposing counsel intend to file a response:  
 Yes  No  Don't Know

Is oral argument on motion requested?  Yes  No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?  Yes  No If yes, enter date: \_\_\_\_\_

Signature of Moving Attorney:  Date: 9/1/11 Has service been effected?  Yes  No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED**.

FOR THE COURT:  
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: \_\_\_\_\_ By: \_\_\_\_\_

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MOVING PARTY: Mary Jo C. OPPOSING PARTY: Central Islip Public Library

- Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

MOVING ATTORNEY: William Brooks OPPOSING ATTORNEY: Harris Zakarin

[name of attorney, with firm, address, phone number and e-mail]

Mental Disability Law Clinic, Touro Law Center Rivkin Radler LLP  
225 Eastview Drive 926RXR Plaza  
Central Islip, NY 11722 Uniondale, NY 11556  
(631) 761-7086; Williamb@tourolaw.edu (516) 357-3000; harris.zakarin@rivkin.com

Court-Judge/Agency appealed from: Eastern District of New York (Feuerstein, J.)

Please check appropriate boxes:

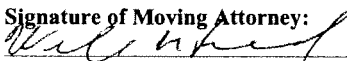
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Opposing counsel's position on motion:  
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Signature of Moving Attorney:  Date: 9/1/11

Has service been effected?  Yes  No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:  
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: \_\_\_\_\_ By: \_\_\_\_\_

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
MARY JO C.

Plaintiff-Appellant,

DECLARATION

-against-

Docket No. 11-2215

NEW YORK STATE AND LOCAL  
RETIREMENT SYSTEM,  
CENTRAL ISLIP PUBLIC LIBRARY,

Defendants-Appellees.

-----x

WILLIAM M. BROOKS, certifies the truth of the  
following pursuant to 28 U.S.C. § 1746:

1. I am the attorney for plaintiff-appellant Mary Jo C. and submit this declaration in support the appellant's motion for leave to file a supplemental appendix consisting of the minutes of a state administrative proceeding relevant to this lawsuit.

2. This appeal is an action under the Americans with Disabilities Act ("ADA"), in which the appellant seeks, *inter alia*, an accommodation in the form of a waiver of the three-month period for filing disability retirement claims.

3. At the court below appellee New York State and Local Retirement System ("NYSLRS") argued that it was protected by Eleventh Amendment immunity. In resolving this issue, the district court applied *United States v.*

*Georgia*, 546 U.S. 151 (2006), which required the district court to determine, *inter alia*, whether NYSLRS violated the ADA. Docket Entry 33 at 13. This in turn required the court to determine whether the appellant was disabled under the ADA. The court held that the appellant was not disabled. *Id.* at 14.

4. As NYSLRS moved pursuant to Rule 12(b)(1), the appellant was entitled to submit documentation beyond the pleadings relating to the issue of disability. See *LeBlanc v. Cleveland*, 198 F.3d 353, 356 (2d Cir. 1999). However, as neither defendant argued below that the plaintiff failed to allege that she was not disabled, the plaintiff did not make any additional factual submissions.

5. However, on this appeal, this Court may consider matters of which it can take judicial notice. *Allen v. Westpoint-Pepperell, Inc.*, 945 F.2d 40, 44 (2d Cir. 1991). Furthermore, authority exists for this Court taking judicial notice of state administrative procedures. *Mack v. South Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9<sup>th</sup> Cir. 1986); *Thomas v. Westchester County Care Corp.*, 232 F. Supp. 2d 273, 276 (S.D.N.Y. 2002).

6. Appellant Mary Jo C. was a party to a state administrative proceeding in which she argued that she was entitled to the accommodation to which she has asserted in

this lawsuit she is entitled, the waiver of the three-month filing period.

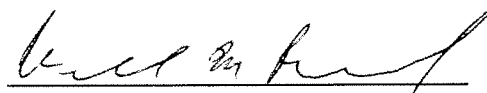
7. Accordingly, the appellant seeks leave to file as a supplemental appendix the minutes of the state administrative proceeding.

8. Leave to file the supplemental appendix will not prejudice the appellees in any way as they remain free, if they choose, to argue that this Court should not consider the material.

9. On the other hand, if this Court chooses to take judicial notice of the administrative hearing, the supplemental appendix simply serves as a mode of convenience for this Court to assess information set forth in the administrative proceeding and to which the appellant referenced in her brief.

WHEREFORE, I respectfully request that this Court grant leave to the appellant to file a supplemental appendix that consists of the minutes of an administrative proceeding of which this Court can, and may choose to, take judicial notice.

Dated: Central Islip, New York  
September 1, 2011

  
WILLIAM M. BROOKS

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
MARY JO C.

Plaintiff-Appellant,

-against-

NEW YORK STATE AND LOCAL  
RETIREMENT SYSTEM,  
CENTRAL ISLIP PUBLIC LIBRARY,

Docket No. 11-2215

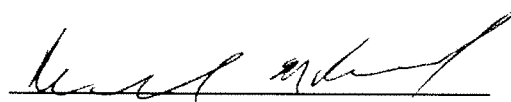
Defendants-Appellees.

-----x  
CERTIFICATE OF SERVICE

I, William Brooks. Certify the truth of the following  
pursuant to 28 U.S.C. § 1746:

On September 1, 2011, I served a copy of the motion for  
leave to file a supplemental appendix on the New York State  
Department of Law, attorney for NYSLRS, by first class mail, by  
affixing proper postage and mailing to 120 Broadway, New York,  
NY 10271, Attn Cecelia Chang. I also served a copy of the  
motion on Rivkin Radler,LLP, attorney for the Central Islip  
Public Library by the same method and mailing to 926 RXR Plaza,  
Uniondale, NY 11566-0926, Attn Harris Zakarin.

Dated: Central Islip, New York  
September 1, 2011

  
WILLIAM M. BROOKS