

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL DEUSCHEL — PETITIONER

VS.

USC FACULTY DENTAL PRACTICE, ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE CALIFORNIA COURT OF APPEAL, SECOND DISTRICT

PETITION FOR WRIT OF CERTIORARI

Michael Deuschele

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Questions Presented for Review

Whether the trial court denials of ADA requests for accommodation from *in forma pauperis pro se* Petitioner with multiple disabilities, receiving multiple surgeries, and the trial court's failure to provide a court reporter for the hearings, publication of an inaccurate electronic docket, and failure to include designated minute orders in the record on appeal, violated his right to due process?

Whether the denial of Petitioner's appellate ADA request to reschedule Oral Argument due to medical incapacitation, and subsequent appellate rulings that his trial requests for accommodation did not qualify as ADA requests and he forfeited his appeal due to a deficient record, subverted constitutional assurances of equal and full access to judicial services for persons with disabilities?

Parties to the Proceeding

The following list provides the names of all parties to the proceedings below:

Petitioner is Michael Deuschel, an individual with disabilities.

Defendants are the University of Southern California (USC) Dental Faculty Practice, et al, a corporation and private educational institution located in Los Angeles, California.at if

Table of Content

Motion for Leave to Proceed *In Forma Pauperis* and Supporting Affidavit

Questions Presented	i
Parties to the Proceeding	ii
Table of Content	iii
Index of Appendices	vi
Table of Authorities	vii
Daily Prayer	xi
I. Opinions Below	1
II. Jurisdiction	2
III. Constitutional and Statutory Provisions Involved	
A. The Supremacy Clause of the United States Constitution	2
B. The Fifth and Fourteenth Amendment to the U.S. Constitution	2
C. The Americans with Disabilities Act	4
IV. Introduction	6
V. Case Statement: Appellate and Trial Courts' Inconsistent Decisions Conflict with Appellate and Supreme Court Case Law as well as Federal and State Statutory Law	
A. The Appellate Court Violated Petitioner's Right to Due Process by Denying His ADA Request for Accommodation, by Denying His Trial Requests for Accommodation Constituted ADA Requests, by Holding Him and Not the Trial Court Accountable for a Deficient Record	7
B. The Trial Court Violated Petitioner's Right to Due Process by denying his ADA Requests for Accommodation, by Failing to Provide a Court Reporter, by Failing to Maintain a Complete Electronic Docket And by Omitting Designated Records from the Record on Appeal	8

C. Frequency of Exclusion in the Underlying Case	8
D. Extraordinary Inconsistencies in the Trial Courts' Rulings on ADA Requests for Accommodation	9
VI. REASONS FOR GRANTING THE PETITION: INCLUSION	
A. Appellate and Trial Court Decisions Conflict with State Statutory Law That Establish ADA Rights to Accommodation	
1. California Constitution, Art VI, §6(d)	11
2. California Rule of Court, rule 1.100	
a. Rule 1.100 Non-Exclusive List of Accommodations	12
b. Applicants are Evaluated on a Case-By-Case Basis	13
3. Government Code Section 11135	14
B. Appellate and Trial Court Decisions Conflict with State Case Law That Establish ADA Rights to Accommodation	
1. Tension within the Trilogy of Appellate Decisions	15
2. Application of Confidential ADA Accommodation	18
3. Adjudication on Merit Outweighs Procedural Expediency	19
4. Judicial Balance Mandates an Official Record	20
5. Right to Due Process	20
C. Appellate and Trial Court Decisions Conflict with Federal Statutory Law That Establish ADA Rights to Accommodation	
1. Federal Rehabilitation Act	21
2. Title II of the ADA (42 U.S.C. §§ 12131–12165)	22

D. Appellate and Trial Court Decisions Conflict with Federal Case Law That Establish ADA Rights to Accommodation	22
E. Summary	
1. The Court of Appeal Violated Petitioner's ADA and Due Process Rights	23
2. The National Importance of ADA Accommodation	25
VII. Underlying Litigation: Trial Court Judges Ignored Notices of Disability	
A. The Underlying Facts of the Complaint	27
B. The Underlying Notices of Disability and Medical Incapacitation	
1. Petitioner's 2013 - 2014 Notices of Disability	28
2. Petitioner's 2015 Notices of Disability and Surgeries	31
VIII. Conclusion	39

Index of Appendix

Appendix A April 26, 2018, Opinion of State Court of Appeals

Appendix B December 15, 2015, Decision of State Court

Appendix C July 11, 2018, Order of State Supreme Court Denying Review

Appendix D February 19, 2015, Decision of State Court Reducing ADA Request

Appendix E May 19, 2015, Decision of State Court Denying ADA Request

Appendix F September 9, 2015, Decision of State Court Denying ADA Request

Appendix G September 29, 2015, Decision of State Court Denying ADA Request

Appendix H October 21, 2015, Emails between Petitioner and LASC court clerk,
with Defendants copied

Appendix I October 22, 2015, Decision of State Court Denying ADA Request

Appendix J September 24, 2015, Decision of the LASC Dept. 17, Granting
Petitioner's ADA Request for Accommodation

Appendix K September 28, 2015, Ruling of the U.S. Federal Court Granting
Indefinite Stay in response to Petitioner's ADA Request

Appendix L October 1, 2015, Decision of the LASC Dept. 17, Granting Petitioner's
ADA Request for Accommodation

Appendix M April 1, 2016, Notice Designating the Record on Appeal

Table of Cited Authorities

State Case Law

<i>Alexander v. Choate</i> , 469 U.S. 287 (1985)	6
<i>Bahl v. Bank of America</i> (2001) 89 Cal.App.4th 389, 398-399	19
<i>Bi-Metallic Investment Co. v. State Board of Equalization</i> , 239 U.S. 441 (1915) ...	3
<i>Biscaro v. Stern</i> , 181 Cal.App.4th 702, 707 (2010)	16, 18
<i>California Teachers Ass'n v. State of California</i> (1999) 20 Cal.4 th 327, 335 [84 Cal.Rptr.2d 425, 975 P.2d 622]	20
<i>Claudio v. Regents of University of Calif.</i> (2005) 134 Cal.App.4 th 224, 242-244	18
<i>Cordova v. Vons Grocery Co.</i> (1987) 196 Cal.App.3d 1526	19
<i>Hernandez v. Sup. Ct.</i> 2004 115 Cal. App.4 th 1242, 1247-1248	19
<i>In re Marriage of James & Christine C.</i> , 158 Cal.App.4th 1261 (2008)	15, 16, 19, 24, 26
<i>Jameson v. Desta</i> , S230899 (2018)	7, 8
<i>Murphy v. Krumm</i> , 21 Cal.2d 846, 849 (1943)	11
<i>Oliveros v. County of Los Angeles</i> (2004) 120 Cal.App.4th 1389	19
<i>People v. Wright</i> , 30 Cal.3d 705, 712 (1982)	11
<i>Randolph v. Rodgers</i> , 170 F.3d 850, 858 (8th Cir. 1999)	5
<i>Sara M. v. Superior Court</i> , 36 Cal.4th 998, 1011 (2005)	11
<i>Serrano v. Stafan Merli Plastering Co.</i> (2208) 162 Cal.App4th 1014, 1034-1036 [76 Cal.Rptr.3d 559]	21
<i>Silverbrand v. County of Los Angeles</i> , 46 Cal.4th 106, 125 (2009)	11
<i>Wysinger v. Automobile Club of So. Calif.</i> (2007) 157 Cal.App.4 th 413	18

<i>Zukle v. Regents of the University of California</i> , 166 F.3d 1041, 1045 n. 11 (9th Cir. 1999)	5
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Federal Case Law

<i>Boddie v. Connecticut</i> (1971) 401 U.S. 371, 377 [91 S.Ct 780, 28 L.Ed.2d 113]	20
<i>Crowder v. Kitagawa</i> , 81 F.3d 1480, 1486 (9th Cir. 1996) (ADA)	21
<i>Chalk v. United States Dist. Ct.</i> , 840 F.2d 701, 705 (9th Cir.1988) (Rehabilitation Act)	21
<i>Goldberg v. Kelly</i> (1970) 397 U.S. 254, 267, 268-269 9 [90 S.Ct 1011, 25LEd.2d 287]	20
<i>PGA Tour, Inc. v. Martin</i> , 532 U.S. 661, 688 (2001)	21
<i>Tennessee v. Lane</i> , 124 S. Ct. 1978; 158 L. Ed. 2d 820 (2004)	22
<i>Vinson v. Thomas</i> (9 th Cir. 2002) 288 F.3d 1145, 1154)	18

State Statutes

Cal. Const., Art. I § VI (6)	11
Cal. R. Ct. 1.100	12, 13, 15
Cal. Rs. Ct. 1.3	11
Cal. R. Ct. 3.122(c)(3)	19
Cal. R. Ct. 10.1(b)(4)	11
Cal. Gov. Code § 11135	14
Cal. Gov. Code § 12940(n)	18
Cal. Code Civ. Proc. § 128(a)(5)(a)(2), (3), (5), (8)	21

Constitutional and Federal Statutes

The Supremacy Clause of the United States Constitution	2
The Fifth Amendment	2, 3
The Fourteenth Amendment	2, 3
Section 504 of the Rehabilitation Act of 1973	5, 22
29 U.S.C. § 794(a)	23
Title II of The Americans with Disabilities Act of 1990	
42 U.S.C. § 12101	4, 12, 13
42 U.S.C. § 12112 – Discrimination	5
42 U.S.C. §§ 12131–12134	4, 5, 22, 23
Title III of The Americans with Disabilities Act of 1990	
42 U.S.C. § 12181(7)(J)	4
42 U.S.C. § 12182(a)	4
Title IV of The Americans with Disabilities Act of 1990	
42 U.S.C. § 12203(a)	4
Code of Federal Regulation	
28 C.F.R. § 35.130(b)(1)(iii), (vii)	6
28 C.F.R. § 35.160(2)	18
28 C.F.R. § 35.164	18

Other:

Cal. Legislative Bill A.B. 677, Persons with Disabilities Stats.2001, c.708 (A.B. 677), § 1	14
Stats, 1997, c. 972, p. 2942, § 1	14
Stats.1992, c.913 A.B.1077, § 18	14

Daily,
I pray to God
My Lord Christ
My Father and Friend
For the Spirit to carry Me
Beyond Contrived Barriers.
For You to give me Strength
To be your just Servant.
Throughout and Within
By Life's Challenges
Your Infinite Breadth
You make me Strong.
With much Ahead
By Your Mercy
We call Upon
You Spirit
To Bring
Us All
Home

IN THE
SUPREME COURT OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO
THE CALIFORNIA COURT OF APPEAL, SECOND DISTRICT

I. Opinions Below

The Opinion of the California Court of Appeal, Second District, entitled, *Michael Deuschel v. USC Faculty Dental Practice, et al.*, No. B270403, decided on April 26, 2018, is not published. This Opinion affirmed the Summary Judgement entered by the Los Angeles Superior Court (LASC) and is included in the appendix attached hereto as Appendix A.

The Decision of the LASC granting Summary Judgment represented by the Notice of Entry by Defendants on December 15, 2015, dismissed the case, included in the appendix attached hereto as Appendix B.

The Order of the State Supreme Court, denying Petitioner's Motion for Review on July 11, 2018, is included in appendix attached hereto as Appendix C.

The Decision of the LASC, on February 19, 2015, ignoring Petitioner's ADA Request for Accommodation, is included in appendix attached hereto, Appendix D.

The Decision of the LASC, on May 19, 2015, denying Petitioner's ADA Request for Accommodation, is included in appendix attached hereto, Appendix E.

The Decision of the LASC, on September 9, 2015, denying Petitioner's ADA Request for Accommodation, is included in appendix attached hereto, Appendix F.

The Decision of the LASC, on September 29, 2015, denying Petitioner's ADA Request for Accommodation, is included in appendix attached hereto, Appendix G.

The Decision of the LASC, on October 22, 2015, denying Petitioner's ADA Request for Accommodation, is included in appendix attached hereto, Appendix I.

The Decision of the LASC, on September 24, 2015, granting Petitioner's ADA Request for Accommodation, is included in appendix attached hereto, Appendix J.

The Ruling of the U.S. Federal Court, on September 28, 2015, granting indefinite stay to allow for surgeries and recovery in response to Petitioner's ADA Request for Accommodation, is included in appendix attached hereto, Appendix K.

The Decision of the LASC, on October 1, 2015, granting Petitioner's ADA Request for Accommodation, is included in appendix attached hereto, Appendix L.

II. Jurisdiction

- (i) Date of Judgment: April 26, 2018
- (iii) Date of Order Denying State Supreme Court Review: July 11, 2018
- (iv) Jurisdiction for the United States Supreme Court to review on a writ of certiorari the judgment in question is invoked pursuant 28 U.S.C. § 1257(a).

III. Constitutional and Statutory Provisions Involved: Please see the Addendum for the verbatim portions of cited constitutional and statutory provisions.

A. The Supremacy Clause of the United States Constitution

The Supremacy Clause of the U.S. Constitution, art VI, cl. 2, states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

B. The Fifth and Fourteenth Amendment to the U.S. Constitution

The United States Constitution states only one command twice. The Fifth and Fourteenth Amendments each contain a Due Process Clause. Due process deals with the administration of justice and acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law.

The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words establish the United States Government's central promise that all levels of American government must operate within the law ("legality") and provide fair procedures. (*Add—4*)

Likewise, the Fourteenth Amendment is a protection of substantive due process and as protection for individuals from state legislation and judicial action that infringes upon their privileges and immunities under the constitution as well as those not mentioned in the constitution. (*Add—4*)

Together, they repeat the promise of legality and fair procedure.

Simply, the government must operate in accordance with the law. Before depriving a citizen of life, liberty or property, government must follow fair procedures. Thus, it is not always enough for the government just to act in accordance with whatever law there may happen to be. Citizens may also be entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting.

Action denying the process that is "due" is unconstitutional.

For example, each case must be assessed upon individual grounds when some characteristic unique to the citizen is involved. *Bi-Metallic Investment Co. v. State Board of Equalization* (1915). Of course, as herein, there may be many citizens affected, even entire classes of citizens, such as Americans with disabilities.

When an individual is unmistakably acted against on individual grounds, there can be a question whether the state has “deprive[d]” him of “life, liberty or property.” Importantly, assessment is to be made concretely and holistically. It is not a matter of approving this or that particular element of a procedural matrix in isolation, but of assessing the suitability of the ensemble in context.

C. The Americans with Disabilities Act (*Add—4, 10, 11*)

The Americans with Disabilities Act (ADA) is a comprehensive civil rights law enacted, “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). The ADA gives Federal civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age and religion.

The ADA contains four sub-parts. The first three sections of the statute, Titles I, II and III, bar discrimination of the basis of disability in different areas of public life. Title II of the ADA prohibits discrimination on the basis of disability by “public entities,” which results in the denial of access to programs, services and activities operated by state and local governments. 42 U.S.C. §§ 12131(1), 12132.¹

¹ Title I bars disability discrimination by an “employer, employment agency, labor organization, or joint labor management committee.” 42 U.S.C. §§ 12111(2), 12112. Title III bars disability discrimination in public accommodations, defined to include places of education including post-graduate private schools, and bars disability discrimination by “any person who owns, leases (or leases to), or operates a place of public accommodation.” §§ 12181(7)(J), 12182. Title IV forbids retaliation against anyone for opposing actions made unlawful under the ADA or for participating in a charge under the ADA. § 12203(a). It also forbids coercion or intimidation against anyone exercising his or her rights under the statute. § 12203(b). (*Add—xxx*)

Title II is an outgrowth of the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973 (RA). However, the potential application of Title II is even broader than the RA, as it imposes federal mandates on the day-to-day operations of local governments, regardless of whether the entity is a recipient of federal funds, and regardless of the size of the entity.²

Title II, at issue in this case, provides that, “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, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. (*Add—5*)

Title II does not simply prohibit outright denial of services; it also prohibits unequal participation in such services. As defined by title II’s implementing regulation, a public entity may not deny a qualified individual with a disability, “an opportunity to participate that is not equal to that afforded others,” nor may it, “otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity” enjoyed by others receiving the services. 28 C.F.R. § 35.130(b)(1)(iii), (vii). (*Add—12*)

If a requested modification is needed to ensure full and equal enjoyment by a person with a disability, then the modification is necessary to prevent

² “The ADA and the RA are “similar in substance” and, with the exception of the RA’s federal funding requirement, “cases interpreting either are applicable and interchangeable.” 42 U.S.C. § 12112(b)(5)(A); see also *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999). The elements of ADA and RA claims do not differ in any material respect. (See e.g., *Zukle v. Regents of the University of California*, 166 F.3d 1041, 1045 n. 11 (9th Cir. 1999).) (*Add—8*)

discrimination on the basis of disability. 42 U.S.C. § 35.130(b)(7) (*Add—12*)

Protection for this class of persons is necessary because discrimination against a person with disabilities is not limited to blatant, intentional acts of discrimination. In *Alexander v. Choate*, 469 U.S. 287 (1985), the Supreme Court observed discrimination on a basis of disability is, “Most often the product, not of invidious animus, but rather of thoughtlessness and indifference, of benign neglect.”

IV. Introduction:

This Court should grant this Petition for a Writ of Certiorari to resolve a split of authority amongst California’s Courts of Appeal regarding ADA Accommodation and to resolve disparate rulings amongst the California Trial Courts on the same critical subject of law: Exclude or include persons with disabilities?

This Court should grant this Petition for a Writ of Certiorari to resolve a split of authority between California’s Courts of Appeal and State Supreme Court regarding the right of a litigant granted a fee waiver to be provided a court reporter.

The Appellate and Trial Court’s discriminatory denials raise questions about constitutional and federal law of national importance and have a broad and deleterious real-world impact upon the disabled. They misused the principles of accommodation to cull the unwanted plaintiff with disabilities requiring too much time from *their* fast-tracked courthouse. The Trial Court failed to provide a court reporter to an *in forma pauperis* litigant granted a fee waiver and then omitted designated records, and thereby obstructed his appeal of their unjust actions.

V. Case Statement: Appellate and Trial Courts' Inconsistent Decisions Conflict with Appellate and Supreme Court Case Law as well as State and Federal Statutory Law

A. The Appellate Court Violated Petitioner's Right to Due Process By Denying His ADA Request for Accommodation, by denying His Trial Requests for Accommodation Constituted ADA Requests and by Holding Him and Not the Trial Court Accountable for a Deficient Record.

April 26, 2018, *Michael Deuschel v. USC Faculty Dental Practice*, #B269341, the California Court of Appeal, Second District, Division Five, wrongfully denied Petitioner's ADA request for accommodation to reschedule Oral Arguments due to escalating medical incapacitation and thereby discriminated against him and violated his ADA Title II and due process rights, contrary to *In Marriage of Janes and Christine C*, 158 Cal.App.4th 1261 (2008), as discussed below. (App—A)

Also, the Court wrongfully ruled Petitioner forfeited his right to appeal by providing a deficient record on appeal. Yet, the Court did not preemptively instruct him to address the deficiency in his brief and he could not redress because the Court denied his ADA request to reschedule Oral Argument. Fatally, the LASC failed to provide a court reporter and omitted designated minutes orders, thereby denying the means to appeal, a violation of due process that must be reversed upon appeal as indicated by the State Supreme Court ruling in *Jameson v. Desta*, S230899 (2018), as discussed below.

The Court of Appeal also wrongfully ruled Petitioner's underlying trial court requests for accommodation did not constitute ADA requests for accommodation and thereby abused their discretion and violated his ADA and due process rights.

**B. The Trial Court Violated Petitioner's Right to Due Process
By Denying his ADA Requests for Accommodation, and
By Failing to Provide a Court Reporter, and
By Failing to Maintain a Complete Electronic Docket, and
By Omitting Designated Records from the Record on Appeal**

Throughout 2015, the LASC Judges in *Michael Deusel v. USC Faculty Dental Practice*, #BC496864, wrongfully reduced, ignored and denied Petitioner's meritorious ADA requests for accommodation to stay matters to allow him to receive and recover from eight surgeries, a violation of his ADA and due process rights that must be reversed upon appeal in accordance with *In Marriage of James and Christine C*, 158 Cal.App.4th 1261 (2008), as discussed below.

From December 6, 2012 through December 15, 2015, the LASC failed to provide a court reporter to the indigent pro se Petitioner granted a fee waiver and thereby violated his right to due process, in conflict with *Jameson v. Desta*, S230899 (2018), as discussed below.

April 2016, the LASC provided an inaccurate and incomplete electronic docket upon which disabled Appellant depended to compile his Notice Designating the Record on Appeal and thereby violated his right to due process.

October 24, 2016, the LASC Civil Appeals Unit failed to provide records, namely minute orders, Petitioner designated in his notice designating the record on appeal in accordance with their direction by listing the "proceedings," with their assurance they would "pull," them, and thereby violated his right to due process. (App—M)

C. Frequency of Exclusion in the Underlying Case

Seven judges, Khan (Dept. 51), Hogue (Dept. 92), Beaudent (Dept. 97), Kleinfield (Dept. 53), Beckloff, (Dept. 51), Kalin and Raphael (Dept. 51), clerks, ADA Coordinators and Civil Administrative staff (in her absence) had the duty to provide ADA assistance and protection to Appellant but failed.

The *first* exclusion: Judge Kleinfield's February 19, 2015 decision to reduce Petitioner's requested accommodation for six months of recovery by 50% to three months, without explanation. (denied Augment, #11-12) (*App—D*)

The *second* exclusion: Judge Beckloff's May 19, 2015, decision to hold the hearing and to discuss Petitioner's health while he was absent due to medical incapacitated. (4 CT, p.799-801) (denied Augment, #13) (*App—E*)

The *third* exclusion: Judge Kalin's September 9, 2015, action to deny Petitioner's next request for accommodation but not make any mention of it in the ruling. (4 CT, p. 836-837) (denied Augment, #14-15) (*App—F*)

The *fourth* exclusion: Judge Raphael's September 29, 2015, action to deny Petitioner's request for reconsideration. (denied Augment, #16) (*App—G*)

The *fifth* exclusion—Judge Raphael's October 22, 2015, action to pretermitt Petitioner's request and to hold the hearing while Appellant was on the operating table. (denied Augment, #18-20) (*App—I*)

The *sixth* exclusion: December 15, 2015, Judge Raphael's decision to grant Defendants' Summary Judgment—eight days after Petitioner's eighth surgery of the year. (6 CT p. 1369-1386) (denied Augment, #21) (*App—B*)

D. Extraordinary Inconsistencies in the Trial Courts' Rulings on ADA Requests for Accommodation

While these underlying trial judges wrongfully reduced, ignored and denied Petitioner's ADA requests, other LASC judges presiding over his other cases granted the same contemporaneous ADA Requests for Accommodation.

September 24, 2015, in his other case, *Deuschel v Michelman & Robinson*, #BC471655, Petitioner reserved his appearance by telephone but was unable to attend the Ex Parte hearing due to his escalating debilitation. Yet, Judge Rico stayed matters to January 8, 2016, as Petitioner requested. (*App—J*)

September 28, 2015, in *Deuschel v Smith et al.*, #2:15-cv-01174-SVW-MRW, the Federal Court Judge indefinitely stayed the case due to Petitioner's disabilities. (*App—K*)

October 1, 2015, in his other case, *Deuschel v Newkirk*, #BC574947, Judge Rico stayed matters to January 8, 2016. (6 CT p.1217-1232) (*App—L*)

Petitioner informed the trial judge of the underlying case of the departmental inconsistency in his October 19, 2015, Request. (6 CT, p.1205)

Yet, even those four other LASC judges for six more cases, wrongfully denied Petitioner's subsequent ADA requests for accommodation to stay matters due to medical incapacitation and wrongfully dismissed his six other cases.

September 2016, during three of those additional cases, Petitioner pro per filed Petitions for Writ of Mandate. The Court of Appeal denied them.

In total, all seven of his superior court cases were wrongfully dismissed.

Then, Petitioner filed seven appeals. This is the first of those seven appeals.

With each subsequent act of discrimination, ADA coordinators, judges, court attorneys and presiding judge grew emboldened in their exclusion of persons with disabilities, to facilitate court calendars, so, too, the Justices of the Court of Appeal.

VI. REASONS FOR GRANTING THE PETITION: INCLUSION

A. Appellate and Trial Court Decisions Conflict with State Statutory Law That Establish ADA Rights to Accommodation

1. California Constitution, Art VI, §6(d) (Add—18, 26, 28)

Among other responsibilities, Article VI, section 6(d) of the California Constitution empowers the Judicial Council to adopt statewide “rules for court administration, practice and procedure,” so long as those rules are “not . . . inconsistent with statute.” Cal. Const., art. VI, § 6(d); see also *People v. Wright*, 30 Cal.3d 705, 712 (1982) (“The constitutional provision empowers the council without further legislative authorization to ‘adopt rules for court administration, practice and procedure, not inconsistent with statute’”); Cal. Rs. Ct. 1.3 (Rules of Court “are adopted under the authority of Article VI section 6, of the California Constitution); 10.1(b)(4) (Judicial Council’s constitutional duties include “Adopting rules for court administration and rules of practice and procedure that are not inconsistent with statute”). These rules of court, “have the force of statute to the extent that they are not inconsistent with legislative enactments and constitutional provisions.”” *Silverbrand v. County of Los Angeles*, 46 Cal.4th 106, 125 (2009) (quoting *Sara M. v. Superior Court*, 36 Cal.4th 998, 1011 (2005)); see also *Murphy v. Krumm*, 21 Cal.2d 846, 849 (1943) (“the force of positive law” and must be followed).

2. California Rule of Court, rule 1.100 (*Add—20*)

a. Rule 1.100 Provides A Non-Exclusive List of Accommodations California Courts May Provide to Individuals with Disabilities.

California Rule of Court 1.100 establishes the policy of courts to ensure that “persons with disabilities” have “equal and full access to the judicial system.” Cal. R. Ct. 1.100(b).³ It obligates each superior and appellate court in California, upon request, to provide “accommodations” designed to make “court services, programs, or activities . . . readily accessible to and usable by persons with disabilities.” Cal. R. Ct. 1.100(a)(3). These accommodations may include, among other things:

Making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Id.

Disabled individuals may apply for Rule 1.100 accommodations on an ex parte basis by using Judicial Council Form MC-410, or another written format, or orally. Cal. Rs. Ct. 1.100(c)(1) & (c)(3). The applications must include “a description of the accommodation being sought,” as well as identify “the impairment that necessitates the accommodation.” Cal. R. Ct. 1.100(c)(2).

A court, in its discretion, may require the applicant to provide additional information about the impairment. Id. [Emphasis added.]

³ The term “persons with disabilities” means “individuals covered by California Civil Code section 51 et seq.; the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); or other applicable state and federal laws. This definition includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such an impairment, or are regarded as having such an impairment.” Cal. R. Ct. 1.100(a)(1).

Court rulings are to be informed by the provisions of California's Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq., the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., "and other applicable state and federal laws." Cal. R. Ct. 1.100(e)(1). If an application is denied in whole or in part, the court's ruling must be in writing, Cal. R. Ct. 1.100(e)(2), and must provide the following information:

(A) Whether the request for accommodation is granted or denied, in whole or in part, or an alternative accommodation is granted; (B) If the request for accommodation is denied, in whole or in part, the reason therefor; (C) The nature of any accommodation to be provided; (D) The duration of any accommodation to be provided; and (E) If the response is in writing, the date the response was delivered in person or sent to the applicant. Cal. R. Ct. 1.100(e)(2).

Decisions by judicial officers granting or denying Rule 1.100 accommodation requests can be reviewed by California's appellate courts pursuant to a special writ of mandate. See Cal. Rs. Ct. 1.100(g)(2), 8.485–8.493, 8.930–8.936.

b. Applications for Accommodation pursuant Rule 1.100 Are Evaluated On A Case-By-Case Basis, And Can Only Be Denied in Limited Circumstances.

Rule 1.100 is not to be construed "to impose limitations or to invalidate the remedies, rights and procedures accorded to persons with disabilities under state or federal law." Cal. R. Ct. 1.100(b). Hence, an application must be granted unless the court makes at least one of the following three findings: (Cal. R. Ct. 1.100(f)(1)-(3).)

- (1) The applicant has failed to satisfy the requirements of this rule;
- (2) The requested accommodation would create an undue financial or administrative burden on the court; or
- (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity.

California Rule of Court 1.100 enunciates the policy of California Courts to accommodate individuals with disabilities as necessary to provide full and equal access to the judicial system. California courts must apply a case-by-case inquiry in ruling on Rule 1.100 accommodation applications.

3. California Government Code Section 11135 (*Add—28*)

Government Code section 11135 was enacted in 1977 to prohibit discrimination, including disability discrimination, by recipients of state funding. (Stats. 1997, c. 972, p. 2942, § 1.) In 1992, the legislation was amended to, *inter alia*, incorporate the standards of Title II of the ADA as a minimum floor of protection, with state law governing where stronger. (Stats. 1992, c. 913 (A.B.1077), § 18.) In 2001, the Legislation amended the law to regulate programs and activities operated directly by the State, and to incorporate a broad definition of “disability.” (Stats.2001, c.708 (A.B. 677), § 1). The Superior Court, funded by the State, falls plainly within § 11135.

Government Code section 11135 prohibit discrimination in the Superior and Appellate Courts. Section 11135(a) provides, in pertinent part, “[n]o person in the State of California shall, on the basis of ... age, physical disability, mental disability ... be unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”

B. Appellate and Trial Court Decisions Conflict with State Case Law That Establish ADA Rights to Accommodation

1. *Tension within the Trilogy of Appellate Decisions*

In re Marriage of James & Christine C., 158 Cal.App.4th 1261 (2008), the Justices decided courts have “no choice but to grant [a] request for an accommodation” unless they determine the request should be denied for one of the three reasons listed in Rule 1.100(f)). The Court upheld the clause that there are only three grounds to deny a request for an accommodation based on disability: (1) undue burden on the court; (2) alteration of the nature of judicial services; or (3) failure to satisfy the requirements of the rule.

Christine C., the self-represented applicant, had a history of physical and mental disabilities and was granted a high number of pretrial continuances as accommodation on occasions she was unable to proceed. On the second day of trial, she requested a trial continuance because she was hospitalized due to her bipolar disability.

The trial court denied the disabled defendants’ request, reasoning in part that a mid-trial continuance would fundamentally alter the court’s programs and services. *Id.* at 1270. Yet, the Court of Appeal ruled the superior court denied this request in error, and the entire judgment was reversed, holding that the requested continuance would not have fundamentally altered the court’s services, and that “none of the grounds listed in California Rules of Court, rule 1.100(f) for denying an ADA request for accommodation” had been established. *Id.* at 1277.

Biscaro v. Stern (2010) 181 Cal.App.4th at p. 702, Mr. Stern, the defendant in a family court case, asked the court to provide a neuropsychologist to assist him while in court. The superior court was found on appeal to have a mandatory duty, imposed by rule CRC rule 1.100 (reinforced by *In re Marriage of James M. and Christine C.*), to adjudicate requests for accommodation under the Americans with Disabilities Act. The court's failure in this case to rule on the defendant's request for accommodation of his disability was found to be a structural error requiring reversal of the judgment.

In *Vesco v. Superior Court of Ventura* (2013) 221 Cal.App.4th 275, the defendant in a civil action requested a trial continuance as an accommodation for her disability. The trial court granted the request without involving Mr. Vesco, the plaintiff. The Court of Appeal found Mr. Vesco to be a person involved in the accommodation process. Therefore, he must be given notice and an opportunity to view the request and medical records.

Yet, the court must protect the disabled applicant's privacy. Hence, ten years ago, in 2008, case law for the right to accommodation and confidentiality of the application, including the right to several accommodations as continuances for medical incapacitation, emanated from a Family Law case in which estranged spouses were contesting their dissolution and subsequent redistribution of assets.

Five years later in 2013, the underlying case that led to the revocation of confidentiality also emanated from a Family Law case. There, the owner of a

house, Mr. Vesco, contested the delay in proceedings in which he fought for the return of the house. He accused his estranged partner of abusing the ADA accommodation policies to extend the conflict and continue sole use of the residential property, while he paid the monthly costs of the property.

Now, the California Court of Appeal is divided. Some Districts utilize this ruling in a manner that fails to distinguish between the nuances of “Interested parties.” Instead, they assert *all* defendants—even those who are not financing contested real estate—are interested parties.

Courts are using the ADA process in a way that humiliates and intimidate persons with disabilities by demanding they serve the opposing parties with their, “*Confidential*,” ADA requests for accommodation, which invariably contain highly personal information including medical documentation. (*SAUS—1 – 11*)

Yet, some districts are not employing the *Vesco* ruling in this manner and allow persons with disabilities to continue to apply for ADA accommodation *under confidentiality*. Indeed, even within the Second District, there is division. Some divisions protect confidentiality while others do not.

The trays of the scales of justice broke loose and the pendulum swung its arc due to the contentious nature and prevailing premise of law of winning at any cost. Worse, here, two obstructive dynamics aligned: the opposing party’s intent to prevail and the Court’s intend to cull its docket. Due to the profoundly conflicting self-interests at play, Petitioner requests this Court to address the complex strife causing injury and pain to persons with disabilities.

2. Application of Confidential ADA Requests for Accommodation

If a public entity finds that the requested accommodation would clearly result in a fundamental alteration or undue burden, the entity “shall still take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive benefits or services provided by the public entity.” (28 C.F.R. § 35.164 [Emphasis added].) (*Add—17*)

Furthermore, in determining what type of service is necessary, “a public entity shall give primary consideration to the requests of the individual with disabilities.” (28 C.F.R. § 35.160(2)) (*Add—16*)

This means a public entity must engage in an “interactive process” with the disabled individual to identify alternatives if the requested accommodation is denied. (See e.g. *Vinson v. Thomas* (9th Cir. 2002) 288 F.3d 1145, 1154) [discussing the requirement to engage in the interactive process in Rehabilitation Act cases].)

Indeed, in the employment context, it is well established under law that failure to engage in the interactive process is itself a violation of the law (See Gov. Code § 12940(n); *Wysinger v. Automobile Club of So. Calif.* (2007) 157 Cal.App.4th 413; *Claudio v. Regents of University of Calif.* (2005) 134 Cal.App.4th 224, 242-244.)

Biscaro v. Stern (2010) 181 Cal.App.4th 702, established, “[T]he purpose of rule 1.100 is to allow meaningful involvement by all participants in a legal proceeding to the fullest extent practicable,” and the court must “rule on every properly presented request for accommodation.”

There, Mr. Stern, the defendant in a family court case, asked the court to provide a neuropsychologist to assist him while in court. The superior court was found on appeal to have a mandatory duty, imposed by rule 1.100 of the California Rules of Court (and reinforced by *In re Marriage of James M. and Christine C.*), to adjudicate requests for accommodation under the Americans with Disabilities Act. The court's failure to rule on the defendant's request for accommodation of his disability was found to be a structural error requiring reversal of the judgment.

3. Adjudication on Merit Outweighs Procedural Expediency

In *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, the Court decided, "When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency. (Cf. *Cordova v. Vons Grocery Co.* (1987) 196 Cal.App.3d 1526, 1532, 1533, when evaluating dismissal of action for delay in prosecution, policy favoring expeditious administration of justice by compelling prompt and diligent prosecution of actions subordinate to policy favoring trial on merits.)" (*Oliveros*, *supra*, 120 Cal.App.4th at p. 1395, quoting *Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398-399.)

"Accordingly, decisions about whether to grant a continuance or extend discovery "must be made in an atmosphere of substantial justice. " (*Id.* at p. 396, quoting *Hernandez v. Superior Court* (2004) 115 Cal.App.4th 1242, 1246-1247.)

At the least, unavailability because of ... illness ... under normal circumstances should qualify as "Good Cause," pursuant to CRC 3.122(c)(3).

Hernandez v. Sup. Ct. 2004 115 Cal. App.4th 1242, 1247-1248. (Add—26)

4. Judicial Balance Mandates an Official Record

As applied to *in forma pauperis* litigants who are entitled to a waiver of official court reporter fees, the Los Angeles Superior Court's general policy, enforced at the time, of not providing official court reporters in most civil trials while permitting privately retained court reporters for parties who can afford to pay for such reporters is invalid, and an official court reporter, or other valid method to create an official verbatim record for purpose of appeal, must generally be made available to *in forma pauperis* litigants upon request.

Petitioner was statutorily entitled to a waiver of official court reporter attendance fees but did not have a court reporter at his hearings because of LASC's policy, which provided parties to the litigation had to hire and pay for a court reporter. Because no reporter was present at Petitioner's hearings, the court of appeal rejected his appeal on the ground that his legal contentions could not be pursued in the absence of a reporter's transcript. The Court of Appeal erred.

5. The Right to Due Process

"The constitutional right of due process entitles a litigant an opportunity to be heard in a meaningful manner. (*Boddie v. Connecticut* (1971) 401 U.S. 371, 377 [91 S.Ct 780, 28 L.Ed.2d 113]; *Goldberg v. Kelly* (1970) 397 U.S. 254, 267 [90 S.Ct 1011, 25 Led.2d 287]; *California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 335 [84 Cal.Rptr.2d 425, 975 P.2d 622].) That opportunity "must be tailored to the capacities and circumstances of those who are to be heard." (*Goldberg v. Kelly* (1970) 397 U.S. at pp. 268-269 9 (fn. omitted).)" (OB p. 31)

“The trial court has the power and obligation to ensure fairness in all processes and proceedings before it. *Serrano v. Stafan Merli Plastering Co.* (2208) 162 Cal.App4th 1014, 1034-1036 [76 Cal.Rptr.3d 559] citing California Code of Civil Procedure, Section 128, subdivision (a)(5) and finding the court has power “[t]o control in furtherance of justice ... in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.” (OB p. 31)

“Code Civ. Proc. § 128(a)(5)(a)(2), (8), Every court shall have the power to do all of the following: (2) To enforce order in the proceedings before it, or before a persons or persons empowered to conduct a judicial investigation under its authority. ... (8) To amend and control its process and orders so as to make them conform to law and justice.”.” (OB p.31) (*Add—30*)

C. Appellate and Trial Court Decisions Conflict with Federal Statutory Law That Establish ADA Rights to Accommodation

1. Federal Rehabilitation Act

It is settled under the ADA, as well as the federal Rehabilitation Act, that “the determination of what constitutes reasonable modification is highly fact specific, requiring case-by-case inquiry.” *Crowder v. Kitagawa*, 81 F.3d 1480, 1486 (9th Cir. 1996) (ADA); *Chalk v. United States Dist. Ct.*, 840 F.2d 701, 705 (9th Cir.1988) (Rehabilitation Act); see generally *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 688 (2001) (under Title III of the ADA, “an individualized inquiry must be made to determine whether a specific modification for a particular person’s disability would be reasonable under the circumstances as well as necessary for that person, and yet at the same time not work a fundamental alteration”).

2. Title II of the ADA (42 U.S.C. §§ 12131–12134) (Add—10, 11)

Relevant here is title II of the ADA (42 U.S.C. §§ 12131–12134) concerning provision of public services. Under U.S.C. § 12131(1), a state and its departments and agencies are defined as public entities. Title 42 U.S.C. § 12132 states,

“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, or be subjected to discrimination by any such entity.”

D. Appellate and Trial Court Decisions Conflict with Federal Case Law That Establish ADA Rights to Accommodation

In *Tennessee v. Lane*, 124 S. Ct. 1978; 158 L. Ed. 2d 820 (2004), the U.S. Supreme Court held that Title II of the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132, implicated the substantive fundamental right of due process of law is implicated in ADA Title II. The U.S. Supreme Court also held that Title II of the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132, which guarantees disabled individuals access to all activities of public entities, operated to protect disabled persons restrained by physical and procedural barriers in court facilities because such restraints implicated the fundamental Fourteenth Amendment due process right of access to the courts. In so holding (and affirming 315 F.3d 690 (6th Cir. 2003) below), the Court ruled that Congress' enforcement power (Fourteenth Amendment, § 5) trumped the state of Tennessee's defense that Title II of the ADA abrogated its right of Eleventh Amendment sovereign immunity.

In a majority opinion by Justices Stevens, O'Connor, Souter, Ginsburg and Breyer, the Supreme Court noted that "public entities" include state and local

programs or activities and therefore fall under the ambit of ADA protection (42 U.S.C. § 12131(2)). They further observed that enforcement of Title II derives from § 505 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a, which permits damages actions (42 U.S.C. § 12133). They further observed that enforcement of Title II derives from § 505 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a, which permits damages actions (42 U.S.C. § 12133). (*Add—11*)

Justices Souter and Ginsburg separately concurred, noting that this was a fitting end to prior judicial endorsements of "blunt instruments imposing legal handicaps" such as the practice of eugenics in the 1920's. Justice Breyer joined them in recognizing Title II as a "dignity-respecting national solution" ordered by the "People's representatives ... at least as it bears on access to the courts."

Even in their lengthy dissents, Justice Rehnquist, Kennedy and Thomas acknowledged the role procedural barriers play in denying "access to the courts," and how they, "cause actual due process violations."

E. Summary

1. Court of Appeal Violated Petitioner's ADA and Due Process Rights

In accordance with CRC rule 1.100(c)(3), the Court of Appeal Justice had the discretion to waive the filing time requirement of five *court* days prior to the requested date of implementation. Instead, he denied accommodation because the request was filed five *calendar* days prior to his request date, the Oral Argument.

Worse, the Justice fabricated a false allegation of personal criticism against Petitioner—a classic ridicule against a person with disabilities physically incapable

of satisfying enabled people—for supposedly failing to provide earlier notice. In fact, Petitioner was responding to unpredictable post-surgical complications and inability to obtain medical treatment prior to the Oral Argument.

The Justice denied Petitioner's request to reschedule Oral Arguments.

Though it may have been inconvenient to the Court, as per *In re Marriage of James & Christine C.*, 158 Cal.App.4th 1261 (2008), discussed above, mid-trial accommodation must be granted. The obvious Appellate equivalent is that an ADA request made five calendar days prior to Oral Argument must be granted if a disabled appellant is to be truly included in Appellate judicial services on an appeal of the trial court's exclusion of a person with disabilities based upon his disability.

Here, On April 9, 2018, the Court of Appeal denied Petitioner's request for accommodation to reschedule the Oral Argument due to severe neurological pain. Instead, the Justice made a nonsensical counter-proposal: The *speech impaired* Petitioner—for whom the Court scheduled computer-assisted communication devise—could use the telephone to appear, or, hire a legal representative to appear on his behalf. Yet, the *in forma Pauperis* Appellant who could not afford a lawyer at the beginning, could not afford a lawyer to attend on April 11, 2018, unprepared.

April 10, 2018, Petitioner emailed the Court medical evidence of his incapacitation but he received no response.

April 11, 2018, Petitioner continued to suffer from severe neurological pain and could not attend Oral Argument. (SAUS, #1 – 11)

2. The National Importance of ADA Accommodation

Without accommodation, persons with disabilities are excluded from judicial services. The LASC Trial Court Judges decisions on Petitioner's ADA requests varied greatly. Here, judges repeatedly denied accommodation, while others granted the same applications contemporaneously submitted for other cases.

For this case, trial judges also failed to provide a court reporter for Petitioner, an indigent litigant granted a fee waiver. Petitioner appealed but LASC Civil Appeals Unit failed to include designated Minute Orders in the record on appeal.

The Court of Appeal denied Petitioner his ADA Request to reschedule Oral Argument due to medical incapacitation and thereby prevented him from redressing their concerns, violating his due process and excluded Petitioner, a person with disabilities, because of his disabilities.

Then the Justices ruled the insufficient record forfeited Petitioner's right to an appeal, when by law, it justified reversal. Then the Justices denied Petitioner's request for a rehearing and subsequent request to recall the remittitur.

Then the California Supreme Court denied his Petition for Review.

Yet, the Court of Appeal's decision conflicts with the State Supreme Court and the U.S. Supreme Court's rulings, the Fifth and Fourteenth Amendment to the Constitution on due process, and Title II of the ADA.

In multiple covert and overt, intentional and negligent ways, the Trial Judges and Appellate Justices obstructed Petitioner's right to due process and denied him ADA accommodations. He was denied by reason of his disabilities.

The higher and lower Court's refusals to accommodate Petitioner while he received and recovered from surgeries is no less of a discriminatory obstruction than a physical barrier. Both effectively exclude persons with disabilities from the court programs and crucial social service of justice, because of their disabilities.

This judicial discrimination must be checked and reversed.

In Marriage of James & Christine C., the Justices' opined, on remand, appointment of counsel might be an appropriate accommodation,

The question remains of what to do to prevent this scenario from recurring, to ensure the parties' justified needs are met, and to resolve the matter justly and expeditiously. One possible solution is to make sure Christine is represented by counsel. The enormous disparity in income and resources between Christine and James is obvious from the record. A pendente lite needs-based attorney fees award to Christine under Family Code section 2030 might be justified under the circumstances. Also, depending on Christine's condition, it might be necessary to address again the issue of appointing a guardian ad litem. These options are not an exclusive list of possible future actions. *Id.* at 1277 (emphasis added). *In re Marriage of James & Christine C.*, 158 Cal.App.4th 1261 (2008)

Yet, Petitioner, a person with disabilities, who, during his underlying case, received thirteen surgeries between May 2014 and December 2015, including brain, spine, pelvic, abdominal and neurosurgeries, was ridiculed for not working hard enough [a favorite affront by the 'enabled'] and refused accommodation, let alone granted any measure of judicial equalization and protection to level, "The enormous disparity in income and resources," and physical and personal vulnerability, which was, "Obvious from the record," here, too, between him and the Defendants, and worse, amplified by the unaccommodating, unkind and unlawful discrimination emanating from the bench.

VII. Underlying Litigation: Trial Court Judges Ignored Notices of Disability

A. The Underlying Facts of the Complaint

In 2009, USC Dental Practice erred and performed excessive dental drilling and caused Petitioner to suffer Tinnitus.

May 2009, Kaiser Permanente performed an MRI to investigate the Tinnitus and administered contraindicated Gadolinium based contrast dye, Magnivest. Petitioner suffered an iatrogenic injury, renal failure and week-long hospitalization. Unfortunately, Kaiser concealed the use of Gadolinium for more than a year as the heavy metal toxin secretly decimated Petitioner's body, in slow motion.

In 2010, USC offered Petitioner compensation for the injuries they caused and proposed the USC Dental Faculty Practice perform restorative oral surgeries and dental work for free. They drafted a contract and required him to sign it prior to commencing with the prescribed oral surgeries. After a few rounds of revision, Petitioner could no longer endure the pain and signed.

By late 2011, Petitioner's injuries from the Gadolinium Toxicity progressed and Kaiser Permanente began to provide surgical treatment.

Early 2012, USC's new oral surgeries caused severe facial nerve damage.

April 2012, Kaiser performed brain surgery, Microvascular Decompression for Trigeminal Neuralgia.

April 2012, when USC faculty learned Petitioner received brain surgery for the nerve damage and terminated medical services, breached contract and left Petitioner with an injured jaw, damaged teeth and facial nerve injuries.

May 2012, Kaiser performed two level cervical spine surgery.

Late 2012, USC's Nephrologist diagnosed Petitioner with Contrast Induced Nephropathy (CIN). Their Pharmacologist diagnosed Gadolinium Toxicity (Gd Tx) and mild Nephrogenic Systemic Fibrosis (NSF). Ironically, he is alive because it was mild. Of all of disorders, Petitioner feels his worst is TD ², Too Dumb To Die.

B. Underlying Notices of Disability and Medical Incapacitation

Petitioner's presents his notices of disability to the Trial Court and Defendants as they are critical to this petition. Throughout, he and his surgeons conflated the term "medical incapacitation," with, "disabled," and, "disability."

1. Petitioner's 2013 - 2014 Notices of Disability

December 6, 2012, Petitioner sued for medical negligence and breach of contract, *Michael DeuscheI vs. USC Dental Faculty Practice*, case no. BC496864, *propria persona*. Weeks later, Social Security assessed him disabled but he was unaware of his new ADA rights as his life of disabilities had just been confirmed.

Late 2012, Social Security assessed Petitioner permanently disabled, retroactive to the time of his application more than a year earlier in 2011 and Petitioner was assigned to Medi-Cal. Since, oral surgeons will not treat Petitioner due to fear of liability. Also, Medi-Cal did not cover dental work for disabled adults.

2012 through 2014, Petitioner informed the trial court judges, court clerks, and the ADA Coordinator and support staff and defendants he is a person with disabilities by his written amended complaints, ADA requests and emails and verbal self-identification at the hearings.

May 10, August 15, 2013, and April 16 and May 29, 2014, Petitioner filed his first, second, third and fourth proposed amended complaints and included his new classification and thereby informed the Defendants and LASC Judges of his protected status as a person with disabilities. Each time Petitioner stated:

“Defendants ... so negligently and carelessly examined, diagnosed, operated, treated and furnished dental and oral surgeries so to directly and proximately cause permanent and irreparable injury and disability to Plaintiff,” (1 CT, p. 73, 110) (2 CT, p. 361) (3 CT, p. 575, 639, 642) [Emphasis added.]

“Plaintiff is informed and believes and thereon alleges that said injuries will result in some permanent disability.” (1 CT, p. 111) (2 CT, p. 362) (3 CT, p. 528) (3 CT, p. 643) [Emphasis added.]

“The brain surgery failed and Plaintiff suffers from and is disabled by Anesthesia Delorosa and facial nerve damage as well as unrestored and damaged mouth.” (1 CT, p. 115) [Emphasis added.]

August 7, 2013, Defendants were made further aware Appellant was disabled as per his responses to their form interrogatories: [Emphasis added.]

“8.5 Unemployed/disabled.” (2 CT, p. 318)
“8.8 Yes, permanently disabled.” (2 CT, p. 318)

May through October 2014, Petitioner received five complex surgeries including revision abdominal neurosurgery in May 2014, in Los Angeles; revision pelvic fusion surgery in June 2014, in San Francisco; revision brain surgery in July 2014 and two neurostimulator surgeries in September 2014 in San Diego and was therefore frequently unavailable.

He made ADA requests for accommodations to stay matters until he recovered. His requests were granted. He retained a contingency attorney due to his

medical incapacitation but he and the trial court judges grew frustrated with his exacerbated disabilities and surgeries; the lawyer soon withdrew.

July 10, 2014, Petitioner filed a CMC Statement stating he suffers,

“Serious and permanent injuries.” (3 CT, p. 695)

Petitioner used the legal term to denote the nature of damages and his disability, as they share the same definition,

“Physical or mental damages which will restrict the employment and/or other activities of a person for the rest of his/her life.”

July 30, 2014, in their fervor to discredit Petitioner, Defendants furnished documentation from his arbitrations and other cases; Judge Raphael confirmed he read them: [Emphasis added.]

Plaintiff at all times relevant herein is a disabled person. Plaintiff suffers from multiple medical disorders including gadolinium toxicity, renal osteodystrophy, spinal osteoporosis, arthritis with bone and joint pain, sinus bradycardia, neurological disorders including entrapped nerves, cervical radiculopathy, anesthesia dolorosa, and trigeminal and occipital neuralgia.” (6 CT, p. 1186.)

September 24, 2014, Defendants answered Plaintiff’s complaint.

December 2014, Petitioner informed his attorney he required revision cervical spine surgeries and would receive them and recover in San Francisco for six months because UCLA would not accept Medi-Cal. He instructed his counsel to obtain a stay of all matters. Instead, his lawyer demanded to withdraw.

2. Petitioner Pro Per 2015 Notices of Disability, Surgeries, Recovery, And Requests for Accommodation and Denied Stays

January 22, 2015, Petitioner's lawyer withdrew and abandoned him at a difficult time.

February through October 2015, Petitioner routinely verbally self-identified while seeking ADA accommodation from the court clerks and ADA staff and at the hearings for his ADA requests as a person with disabilities.

Early February 2015, Appellant visited LASC Dept. 51 and explained he is disabled and sought accommodation so he may receive surgeries. The court clerks instructed him to visit the Civil Administration Office (Room 109 on the first floor), and ask for the ADA Coordinator.

Petitioner visited with the court administrative staff, twice. Each time, he explained he is disabled and scheduled for surgeries and sought to stay matters.

First, the staff informed him the ADA coordinator was unavailable, there was no assigned substitute and they could not assist him.

Upon his second visit, they advised him to ask the trial judge, Ex Parte.

February 19, 2015, under duress and pain, in accordance with the ADA Coordinator's instructions, Petitioner filed a *public* Ex Parte application to stay all matters due to medical incapacitation and appeared in person. Appellant requested,

"A six month continuance of the trial to about March 22, 2016 and a six month stay of all judicial procedural actions and matters including depositions, discovery and motions to about August 24, 2015."
(4 CT, p. 780-781)

Appellant included medical evidence of his incapacitation from tending UCSF spine surgeon Dr. Bobby Tay (dated January 29, 2015):

"Michael Deuschel is under my care at the UCSF Spine Center. I will be performing revision cervical spine surgery on the patient on February 24, 2015. His recovery post-surgery will be at least 6 months. The patient had a previous cervical spine surgery in 2012. Approximately 3 months after surgery, the patient started having pain again. Since that time in 2012, the patient has been incapacitated. The patient will continue to be incapacitated until the cervical revision surgery is performed and he is healed." [Emphasis added.] (4 CT, p. 785)

The Judge granted partial accommodation without explanation—three of six months— one-half of the prescribed recovery and set a CMC for May 15, 2015. Appellant visited the Civil Administrative Office, office of the ADA Coordinator, seeking remedy. He pled for help and stated, (*App—D*)

"I'm pro per, disabled for a bunch of reasons and I'm scheduled for a bunch of surgeries on my head but the judge refuses to listen to me or acknowledge the obvious." [Emphasis added.]

The acting ADA staff excused themselves. When they returned, they made no effort to assist and responded, "We cannot give legal advice."

February 24, 2015, Petitioner received two revision cervical spine surgeries. He sustained multiple complications for which he received treatment. **May 19, 2015**, the trial judge held a Case Management Conference. Petitioner could not attend; he was receiving treatment for postsurgical complications in San Francisco. Defendants reported in their notice, (*App—E*)

"After a brief discussion of the status of Plaintiff's health, Judge Beckloff ruled as follows: The stay, previously issued in this case shall remain in effect until July 31, 2015." (4 CT, p. 799)

August 2015, Petitioner suffered a severe bacterial infection and cysts formed at the site of his incisions.

August 15, 2015, Petitioner sought UCLA ER care. They refused to treat and denied his critical state. Soon thereafter, the cysts burst.

August 21, 2015, Petitioner provided Defendants the following information by emailing UCSD neurosurgeon Dr. John Alksne's June 23, 2015, letter to them,

"Mr. Michael Deusel is currently under my care and will be scheduled for surgery. Due to multiple medical problems, pain, disability and upcoming surgery I would like to request his arbitration be delayed until December 2015." (6 CT, p. 1287) [Emphasis added.]

Petitioner stated,

"About December 2012, I was assessed disabled and was awarded Medi-Cal." (5 CT, p. 1146, ln 19-20, from August 28, 2015.) [Emphasis added.]

"As a patient disabled and in pain due to cervical spine disorders, not to mention after the original cervical spine surgery had failed due to surgical errors, I was medically incapacitated until I received the revision surgery." (5 CT, p. 1162, ln 22-25, from August 28, 2015) [Emphasis added.]

"I was disadvantaged and unable to perform fully for discovery and hearings while incapacitated by the pre-surgery pain and disability. Likewise, for the prescribed post-surgery six months of recovery. To demand me to perform in a high-demand stressful legal dispute about my spine, while I was least able to do so because of my spine, prejudiced me." (5 CT, p. 1163, ln 5-8, from August 28, 2015.) [Emphasis added.]

August 24, 2015, UCSD Neurosurgery diagnosed extensive internal infection.

Petitioner was profoundly injured. It aggravated his earlier cervical spine surgeries, attacked the implanted hardware, destroyed his surgically implanted neuro-

stimulator, aggravated his cranial nerve disorders, compromised his auto-immune systems, caused Labyrinthitis and injured his vocal cords (speech impairment).

UCSD Neurosurgery postponed their scheduled September 10, 2015, surgery to 'flood,' Petitioner with antibiotics.

September 2, 2015, Petitioner filed his request to Stay and asked,

"Plaintiff is **medically incapacitated due to multiple medical disorders and injuries**. He is scheduled for multiple surgeries.

"These medical conditions cause great pain and adversely impact Plaintiff's physical and cognitive abilities. He is functioning at a diminished capacity until the medical disorders are surgically treated and he fully recovers.

"In the furtherance of justice and to allow Plaintiff to advance his meritorious complaint when he is able to represent himself, Plaintiff respectfully requests the Court to accommodate his medical incapacitation by granting another stay ... [and] provide another Case Management Conference after he is fully recovered in early December 2015." (DR Vol. 4, p. #000818) (4 CT, p. 818-820) [Emphasis added.]

Petitioner included medical evidence from tending UCSD neurosurgeon Dr. John Alksne (dated June 23, 2015) stating,

"Mr. Michael Deuschel is currently under my care and will be scheduled for surgery. Due to multiple medical problems, pain, disability and upcoming surgery I would like to request his arbitration be delayed until December 2015." (4 CT, p. 827) [Emphasis added.]

Appellant included medical evidence from tending UCSD ENT surgeon Dr. Weissbrod confirming three surgeries for September 30th, and from UCSD neurosurgeon Dr. Alksne, (dated August 25, 2015), stating,

"Michael Deuschel is under my care. He had a pre-surgical appointment with me today, Tuesday, August 25, 2015. He was scheduled for surgery Wednesday August 26, 2015, but we have to postpone due to infection. The surgery will be rescheduled promptly."

"Due to his multiple medical problems and complaint of high degree of pain, I advise his legal activities including depositions, discovery, hearings, arbitrations and trials be delayed until December 1, 2015."
(4 CT, p. 831) (4 CT, p. 829) [Emphasis added.]

September 9, 2015, Petitioner attended the hearing by telephone. He explained he was following the ADA Coordinator's instruction, he is **disabled** and pending surgeries. Judge Kalin denied his request for a stay and made no effort to discuss alternative accommodation. (*App—F*)

Contrarily, when Defense Counsel noted a schedule conflict, Judge Kalin rescheduled the hearing from October 1 to October 22, twenty-two days after Petitioner's surgeries and smack dab on the next one. (DR Vol. 4, p. #00837)

September 10, 2015, the case was reassigned to Judge Raphael. (DR Vol. 5., p. #001093)

September 14, 2015, Petitioner received his third surgery, explantation of the grossly infected and destroyed neuro-stimulator.

September 25, 2015, Petitioner filed his request for reconsideration of his request to stay all matters due to his medical incapacitation. Petitioner stated,

"About September 22, the Court kindly agreed to accept this Request prior to the Ex Parte Hearing to accommodate Plaintiff's medical incapacitation. ...

"The Bias of the September 9, 2015 Hearing: On September 9, temporary Judge Kalin ... ignored ... the evidence he would receive three more head and neck surgeries on September 30, and his Neurosurgeon's letter defining recovery ... to early December, 2015.

“In no imaginable reasonable calculation will Plaintiff be recovered from the *four head surgeries* by October 22, 2015.)

“This is an unjust scenario, especially given the latest ruling that places Plaintiff in an untenable position as he is physically and cognitively incapable of performing due to his medical incapacitation which is far beyond his control.”

“Please note, the Defense Counsel has been timely informed of Plaintiff’s medical incapacitation and instead of stipulating to a stay, he is perpetuating the false allegation that Plaintiff has somehow failed to respond while simultaneously claiming to be sympathetic and attempting to induce Plaintiff to respond to discovery while he is compromised.”

“In the furtherance of justice and to allow Plaintiff to advance his meritorious complaint when he is able to represent himself, Plaintiff requests the Court to grant another stay. He also respectfully requests the Court not to sanction him and provide another Case Management Conference after he is fully recovered in early December 2015 or later.” (DR Vol. 5, p. #001092) [Emphasis added.]

Appellant included medical evidence from tending UCSD neurosurgeon Dr. John Alksne (dated September 22, 2015) stating,

“Mr. Michael Deuschel had surgery Thursday, September 10, 2015.”
(5 CT, p. 1097, included post-op photographs.)

September 25, 2015, Defendants motioned for summary judgment.

September 29, 2015, Appellant attended via telephone. Defense Counsel opposed the requested stay, falsely alleging Petitioner misrepresented his medical incapacitation. (DR Vol. 5, p. #001131)

Judge Raphael denied Petitioner’s request for a stay. (Note, the court order was included in the Designated Record as part of Petitioner’s 10/19 application; Petitioner so advised the Appellate Court. (DR Vol. 6, p. 001365) (*App—G*)

September 30, 2015, Appellant received his forth, fifth and sixth surgeries to modify his septum for surgical tools to pass to remove a cyst and vocal cord surgery.

October 15, 2015, Petitioner requested Defendants stipulate to a stay,

"I believe a postponement based upon valid medical incapacitation is a protected right and the Court's denials of my requests were a violation of due process." (6 CT, p. 1296.)

October 19, 2015, Petitioner made his final appeal and requested a stay,

"Plaintiff is entitled to due process and the right to stay all matters based upon medical incapacitation is established to prevent Plaintiff from being subjected to a gross disadvantage as he is suffering diminished physical and cognitive capacities."

"Judge Raphael's remark that this case is in the one percent (1%) category of duration was misguided and prejudicial as he omitted its correspondence that Plaintiff is in the one percent (1%) category of litigants as he has endured about twenty surgeries to survive dental and medical negligence by USC and Kaiser Permanente and continues to suffer injuries requiring surgeries due to their negligence."

"Plaintiff's medical incapacitations are extraordinary circumstances and the law accommodates such extraordinary circumstances" and law suits need not be complete until five years after filing. In the furtherance of justice, the postponement must be granted.

...
This complaint was filed December 6, 2012. It is less than three years old. Plaintiff is far more prejudiced by the denial of a stay than Defendant would be by the stay."

"Defense counsel has referenced an arbitration matter that denied Plaintiff a postponement but he intentionally omitted the Federal Court and two Superior Court cases that granted the stay of all matters to January 2016."

"Alleging Plaintiff's ability to draft his pleas for mercy and justice and to exercise his due process somehow undermines his claim of medical incapacitation is no less abusive than beating a man and alleging his pleas for it to stop are evidence of his ability to fight back." (DR Vol. 6, page #001203-1216) [Emphasis added.]

Appellant included medical evidence from tending UCSD Neurosurgeon Dr. John Alksne (dated October 1, 2015), stating, [Emphasis added.]

“We are awaiting Medi-Cal authorization to promptly replace the neuro-stimulator. Until it is replaced, he continues to suffer the debilitating pain and disability we have been treating since July 2014.

“Due to his medical problems, complaint of high degree of pain and to allow him to recover from the surgeries, I advise his legal activities including depositions, discoveries, hearings arbitrations and trials be delayed until December 10, 2015.” (6 CT, p. 1281)

October 21, 2015, via email, Petitioner informed the court he could not attend the hearing due to surgery. These emails demonstrate Judge Raphael’s awareness and prejudice in his pretermission of Petitioner’s request. The clerk stated she would place the email in the case file. (denied Augment, p. 22-25) (App—H)

October 22, 2015, the day of Petitioner’s revision neurostimulator surgery, Judge Raphael granted Defendants’ terminal motions. (Note, the email, tentative decision and court order were not included in the Designated Record.) He stated,

“Plaintiff instead spent time on September 9 and 29, 2015, litigating an ex parte request to stay matters and a motion for reconsideration of the denial of that request. While Plaintiff may well have serious medical issues, the Court is convinced that any individual who could have litigated the ex parte motion and reconsideration could have directed the same energies toward responding to the 18 requests for admission. Further, plaintiff’s recent medical issues do not begin to explain the failure to respond to the 18 requests between October 2014 and this date.” (App—I)

Actually, they do. Plaintiff received five complex surgeries between May and October 2014, and suffered a complex array of incapacitating disorders through to the next year. Judge Raphael failed to review the case record prior to his ridicule.

October 22, 2015, Appellant received his seventh surgery of the year, implantation of a second neurostimulator to treat his neurological disabilities.

December 7, 2015, Appellant received his eighth surgery of the year to treat further complications of the infected neuro-stimulator and NSF to remove excessive subcutaneous strictures restricting neck movement and triggering his Neuralgias.

December 15, 2015, about a week later, LASC Judge Raphael wrongfully granted summary judgement and dismissed Appellant's case against USC and ordered costs against Appellant for \$5085.00. (DR Vol. 6, p. #001376) (*App—B*)

As Petitioner represented himself, he was unrepresented at the hearings. Thus, by reason of his disability, he was denied full and equal judicial services.

XIII. Conclusion

For the reasons noted herein, Petitioner respectfully prays that a writ of certiorari issue to review the opinion of the California Court of Appeal, Second District, Division Five, entered on April 26, 2018.

Dated: the 8th day of October, 2018



Michael Deuschel, Disabled Petitioner, Pro Per