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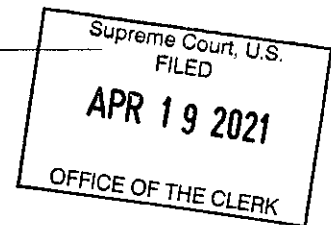
ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

EDUARDO FLORES
Petitioner

v.

PETER M. HOAGLAND et al.
Respondents



PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA
COURT OF APPEAL, FOURTH APPELLATE DISTRICT

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Self-Represented

QUESTION PRESENTED (Rule 14.1(a))

Whether the Superior Court of the State of California, San Diego County and the California Court of Appeal, Fourth Appellate District violated the 14th Amendment of the United States Constitution and the American with Disabilities Act of 1990 by failing to provide Mr. Flores, a disabled self-represented litigant, with meaningful accommodation and equal access to the court.

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EDUARDO FLORES, Petitioner

v.

PETER HOAGLAND et al., Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA
COURT OF APPEAL, FOURTH APPELLATE DISTRICT

Petitioner, Eduardo Flores, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the California Court of Appeal, Fourth Appellate District, filed on **September 30, 2020**.

OPINION BELOW

The opinion of the California Court of Appeal, which was **unpublished**, was issued on **September 30, 2020** and is attached as Appendix A. The California Court of Appeal's one page order denying rehearing is attached as Appendix B. The California

Supreme Court's one-page order denying review is attached as Appendix C. The transcript of the trial court decision is attached as Appendix D.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the California Court of Appeal for which petitioner seeks review was issued on September 30, 2020. The decision of the California Court of Appeal on Petitioner's request for rehearing was issued on October 9, 2020. The California Supreme Court order denying petitioner's timely petition for discretionary review was filed on January 20, 2021. This petition is filed within 90 days of the California Supreme Court's denial of discretionary review, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment 14 provides, in relevant part:

No state . . . shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title II of the Americans with Disabilities Act sections 35.149 and 35.150 provide in relevant part:

Except as otherwise provided in section 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, 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 public entity... This paragraph does not—...

Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

42 U.S.C. § 12101(b)(1) (2012)

The California statutory provisions and court rules that are relevant to this petition, California Rules of Court, Rule 1.100, are reprinted in Appendix E.

STATEMENT OF CASE

On May 4, 2018, the California Trial Court denied dismissed Mr. Flores malpractice action determining that his case was time-barred because Mr. Flores did not file his action within three years of the injury.

In September of 2017, Mr. Flores filed a medical malpractice claim alleging Peter Hoagland, M.D. was negligent in providing preoperative cardiac consultation and as a result, Mr. Flores suffered injuries related to a neurosurgery performed in June of 2014. Mr. Flores, being disabled from a traumatic brain injury, was granted leave to amend the complaint several times over the course of the litigation.

After filing the Second Amended Complaint, Mr. Flores met with Defendants' counsel on February 16, 2018. Both parties agreed prior to their meeting, as also stated during the last court hearing by the trial court, that Mr. Flores would file a third amended complaint to allege fraud and concealment. On or about March 28, 2018, Defendant filed a demurrer to Mr. Flores's Second Amended Complaint because the complaint did not allege fraud and concealment, which would toll the three-year statute of limitation pursuant to CCP § 340.5.

On April 16th and 30th of 2018, Mr. Flores filed a Third Amended Complaint with the trial court. Despite filing the Third Amended Complaint, the trial court subsequently cancelled Mr. Flores' the Third Amended Complaint. On May 4, 2018, the trial court sustained without leave to amend a demurrer filed by defendants Dr. Hoagland

and San Diego Cardiac Center Medical Group, Inc. on the basis that Mr. Flores' complaint was time barred by the three-year statute of limitations set forth in California Code of Civil Procedure section 340.5. The trial court cited the case dismissal as of May 4, 2018 as the reason for cancelling Mr. Flores' third amended complaint. The trial court entered judgment on May 18, 2018 and the Defendants filed notice of entry of judgment on May 24, 2018.

Due to the trial court's failure to review Mr. Flores's Third Amended Complaint, Mr. Flores began filing post-judgment motions. Mr. Flores filed numerous motions and ex parte applications with the trial court asking the court to reconsider the demurrer ruling and to accept his filing of a Third Amended Complaint.

On May 30, 2018, Mr. Flores filed ex parte application asking the court to review a proposed Third Amended Complaint. On June 18, 2018 motion for reconsideration of the dismissal asking the court to review a Third Amended Complaint. The court denied the motion stating it did not have jurisdiction to entertain a reconsideration motion after entry of the judgment.

On August 3, 2018, Mr. Flores filed motion to set aside the judgment and request for the court to consider a Third Amended Complaint. The court denied the motion noting Flores had not provided any argument or evidence to set aside the judgment pursuant to California Code of Civil Procedure section 473, subdivision (b).

On September 19, 2018, Mr. Flores filed an ex parte application seeking clarification of the court's order denying the motion to set aside the judgment and asking if the court considered his Third Amended Complaint. The court denied the application.

On October 30, 2018, Mr. Flores filed ex parte application to file a Third Amended Complaint stating it was lost and the court should have considered it before ruling on the demurrer. On November 16, 2018 ex parte application asking why the court rejected his Third Amended Complaint.

On November 26, 2018, Mr. Flores received a letter from the Honorable Lorna A. Alksne, Assistant Presiding Judge. Judge Aksne informed Mr. Flores that his remedy for the rejection of his Third Amended Complaint "would be the appeal process." On December 21, 2018, the trial court entered an order declaring Mr. Flores to be a vexatious litigant and imposed a pre-filing order requiring him to obtain leave of court for any future filings pursuant to California Code of Civil Procedure §§ 391, subd. (b) (2); 397.1, subd. (a).

In December of 2018, Mr. Flores filed a notice of appeal believing that he was appealing the trial court's decision to dismiss his malpractice case. In the state Court of Appeal, Mr. Flores argued that his case should not have been dismissed because (1) he filed a Third Amended Complaint as agreed upon by Defendant and as instructed by the trial court; (2) his case was not time barred because he was not competent due to his disability caused by the Defendant's actions; (3) the statute of limitations was tolled due

to Mr. Flores' lack of competency. Mr. Flores argued that he should not have been deemed a vexatious litigant in his Reply Brief to the state Court of Appeal.

On September 30, 2020, the California Court of Appeal, Fourth Appellate District, Division One affirmed the trial court's decision to dismiss Mr. Flores' action and the court's order deeming Mr. Flores a vexatious litigant. App. A. The Court reasoned that Mr. Flores appeal of the dismissal of his claim was not timely and that his opening brief did not address the trial court's decision to deem him a vexatious litigant.

Petitioner sought discretionary review of the issue in the California Supreme Court, making the same federal constitutional argument and citing the same basic authorities set forth above. Petition for Review pages 10-15. The California Supreme Court summarily denied review. App. C.

REASONS FOR GRANTING THE PETITION

Accommodating a person's disability is required by federal and state law. The American with Disabilities Act (hereinafter "ADA") require that people with disabilities be afforded equal access to government buildings and services. 42 U.S.C. § 12101(b)(1) (2012). Because access to the judicial process is a fundamental right, the United States Supreme Court has held that Title II of the ADA is constitutionally valid. In *Tennessee v. Lane*, the Court held that "Title II unquestionably is valid...as it applies to the class of cases implicating the accessibility of judicial services [.]” 124 S.Ct. 1978, 1993 (2004). The Court observed that the “duty to accommodate is perfectly consistent with the well-established due process principle that ‘*within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard*’ in its courts.” *Id.* at 1994 (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)) (emphasis added).

This includes equal access to the California court system which provides a path for all Californians to represent themselves in legal proceedings. “[T]he right to represent oneself in civil proceedings conducted in this state, though established by precedent rather than statute, is firmly embedded in California jurisprudence. This right is necessary to protect and ensure the free exercise of express constitutional rights, including the right to acquire and protect property and to access the courts. It is also implicitly recognized by statute. For these reasons, we conclude that the right to represent oneself

in civil proceedings is a general law of this state.” *Baba v. Board of Supervisors* (2004) 124 Cal.App.4th 504, 526.

Californians with disabilities face greater hardships when they appear pro se in legal proceedings. California Rule of Court, Rule 1.100 was designed to alleviate the hardships disabled litigants face when appearing pro se. Whether a cognitive disability limits their understanding of the hearing process or a physical disability prevents them from collecting documents to submit as evidence, disabled self-represented litigants generally require accommodations.

However, in the instant matter Mr. Flores, a disabled man suffering from a traumatic brain injury, was not provided equal access to the California court system because the court did not take any affirmative steps to provide meaningful accommodation.

Unfortunately, there has been little attention paid to reasonable accommodations for mental disabilities under the ADA because “after the ADA passed . . . the statute as applied to physical disabilities received the most attention.” *U.S. Comm’n on Civil Rights*, No. 005-907-00594-4, *Sharing the Dream: Is the ADA Accommodating All?* (2000), www.usccr.gov/pubs/ada/ch5.htm. Cognitive disabilities include intellectual disabilities (a type of developmental disability formerly known as “mental retardation”) and certain learning disabilities (such as dyslexia), and can also stem from organic brain

syndrome, Alzheimer's Disease and other dementias, and stroke.
http://www.colemaninstitute.org/article_braddock_1.pdf; <http://www.ct.gov/dss/cwp/view.asp?a=2349&q=304658>. Ensuring access for someone with a psychiatric or cognitive disability is just as important as accommodating a physical or sensory disability. However, the appropriate accommodation is not always obvious and the person with the disability may not know to request it.

Thus, the instant case presents an important issue over which the federal and state courts across the country have not adequately addressed. As the demand grows for reasonable accommodations for individuals with mental disabilities in the judicial system, courts must ensure compliance with federal law. A few court systems, including the federal administrative courts, have started to recognize the importance of making accommodations for individuals with mental disabilities.

First, in *Franco-Gonzales v. Holder*, a California district court held that mental disabilities may impede an individuals' ability to meaningfully access immigration removal proceedings. Thus, the court concluded, individuals with mental disabilities are entitled to a "qualified representative" as a reasonable accommodation under federal disability law. 767 F. Supp. 2d 1034, 1056 (C.D. Cal. 2010). Here, the court concluded that after a "fact-specific individualized analysis of the disabled individual's circumstances and the accommodations that might allow meaningful access to the

program” it was a reasonable accommodation to provide these individuals a qualified representative, an attorney providing services pro bono or at the government’s expense. *Id.* at 1054–58. However, the question remains whether a court must make affirmative steps to accommodate a disabled self-represented litigant and whether court rules such as California Rule of Court, Rule 1.100 adequately address this issue.

Mr. Flores’ experience with the California court system demonstrates the problem with California Rule of Court, Rule 1.100 (b) and California’s response to accommodating disabled self-represented litigants. California Rule of Court, Rule 1.100 (b) provides:

“It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system. To ensure access to the courts for persons with disabilities, each superior and appellate court must delegate at least one person to be the ADA coordinator, also known as the access coordinator, or designee to address requests for accommodations. This rule is not intended to impose limitations or to invalidate the remedies, rights, and procedures accorded to persons with disabilities under state or federal law.”

The rule allows for disabled self-represented litigants to request accommodations but imposes no duty on the court to ask a litigant on the record if they need accommodation. California Rule of Court, Rule 1.100 discriminates against disabled persons with cognitive disabilities who may not know or understand how to request accommodations. The rule is based in the very ableism it seeks to mitigate. The rule does

not provide equal access to the court system in any meaningful way. Moreover, in Mr. Flores case it allowed the trial court and the state Court of Appeals to dismiss Mr. Flores' case on procedural and technical grounds rather than on the merits of the case.

Other courts have interpreted the access requirement under Title II to require provision of an affirmative accommodation to ensure "meaningful access to a public service." *Nunes v. Massachusetts Dept. of Correction*, 766 F.3d 136, 145 (5th Cir. 2014) (quoting *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273–76 (2d Cir. 2003)). Specifically, a public entity must furnish an accommodation "where necessary to afford individuals with disabilities . . . an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity." 28 C.F.R. §35.160(b)(1). The public entity shall give "primary consideration" to the accommodation requested by the individual with a disability, however the administrative authority may decide if an "equally effective" alternative accommodation will be made. 28 C.F.R. § 35.160(b)(2); <https://www.thearc.org/file/ADAresourceguide.pdf> (asserting "the courts are to give primary consideration to the accommodation requested by the person with the disability").

Some state court systems recognize the importance of providing accommodations for individuals with mental disabilities. The Washington State Court system has General Rule 33 which provides that reasonable accommodations may include "as to otherwise unrepresented parties to the proceeding, representation by counsel, as appropriate or

necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a qualified person with a disability.” Wash. GR 33. Washington’s General Rule 33 also requires a court to “make its decision on an individual-and-case-specific basis with due regard to the nature of the applicant’s disability and the feasibility of the requested accommodation.” *Id.*

Additionally, some states and advocacy organizations have recognized the importance of non-attorney support persons to assist individuals with disabilities in court proceedings. The Judicial Council of Georgia identifies support service providers, individuals who assist persons who are deaf-blind or those who have intellectual, or other cognitive disabilities with court appearances. *Judicial Council of GA., Access to Justice for People with Disabilities: A Guide for Georgia Courts* (2017). The Judicial Council of Georgia’s ADA Handbook provides that “[i]n addition to helping reduce the anxiety of court proceedings for a person with cognitive or intellectual disabilities, a support person may also assist the person by explaining court proceedings in simple terms, explaining paperwork or follow-up obligations, or identifying signs of confusion or misunderstanding.” *Id.* The Council’s recommendations are based in part on a report by The Arc, the largest national advocacy organization for individuals with cognitive and intellectual disabilities, that discusses different ways that states can support these individuals in judicial proceedings. *The Arc of the U.S., The Arc’s Justice Advocacy Guide: An Advocate’s Guide on Assisting Victims and Suspects with Intellectual*

Disabilities 11–12 (2006) (noting Vermont’s “Communication Specialist” program “that is similar to an ASL interpreter for someone who is deaf which allows the person with a disability to communicate effectively with attorney, judge, court staff and others in the judicial system”).

It is clear in Mr. Flores’ multiple post judgment motions to the trial court, in his appeal to the state Court of Appeals, and his Petition for Review to the state Supreme Court that Mr. Flores wanted to appeal the trial court’s decision to dismiss his case and the trial court’s decision to deem him a vexatious litigant. The trial court waited until after the deadline for submitting notice of appeal to instruct Mr. Flores to file an appeal if he did not agree with the trial court’s decision rather than requesting accommodation and allowing a court professional explain to Mr. Flores the correct procedure. The state Court of Appeals cites Mr. Flores failure to follow procedure as the reason for not only affirming the dismissal of his cause of action but also as the basis for affirming the trial court’s order deeming Mr. Flores’ a vexatious litigant. App. A. page 7. Missing from the state Court of Appeals decision was any reference to how the trial court accommodated Mr. Flores’ disability. There was no mention of the accommodation because the trial court not only failed to accommodate but instead Mr. Flores was treated as if he at least minimally understood the court’s procedure and simply failed to follow it. App. A.

Mr. Flores’ should have been provided with accommodation to avoid the dismissal of his malpractice action due to technicalities and to ensure his case was heard on its

merits. Accommodations for someone like Mr. Flores, not only benefits him by protecting his rights, but also decreases the cost of litigation for an opposing party and preserves the judicial economy.

The trial court's decision to deem Mr. Flores a vexatious litigant violates the ADA and the Fourteenth Amendment of the United States Constitution because the facts show that Mr. Flores being disabled did not understand that his only remedy was an appeal. As soon as the trial court communicated Mr. Flores' sole remedy to him in a clear and straight-forward manner, Mr. Flores follow through with filing an appeal to the state Court of Appeal.

Mr. Flores was denied justice in the most basic sense because he did have his fair day in court. The purpose of our system of justice is still...“the orderly ascertainment of the truth” *Jones v. Superior Court* (1962) 58 Cal.2d 56, 60 and the application of the law to that truth. Just because a court must rely on fallible litigants to present competent evidence does not vitiate the fundamental purpose of the proceeding, which is most assuredly not to have a *contest* but to establish what actually happened. The adversarial system works not because it is a contest to see who has the cleverest lawyer but because allowing two or more sides to present evidence to a neutral decisionmaker is an epistemologically sophisticated way *to get at the truth*. And while certain aspects of the law, namely the fact that there are fixed rules and outcomes, allow it to be analogized to a game, it is most definitely not a spectator sport. *Guardianship of Simpson* (1998) 67

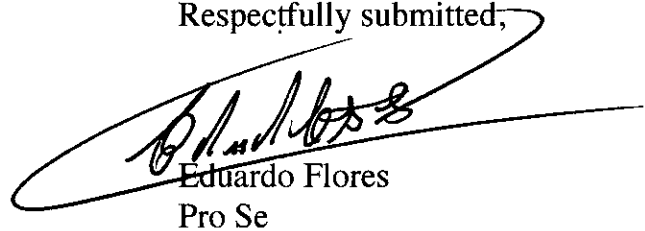
Cal.App.4th 914, 934-935. Mr. Flores needed assistance in the form of an accommodation and instead the trial court treated him as a seasoned attorney.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.

Dated: April 15, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eduardo Flores', is written over a horizontal line. The signature is enclosed within a large, loopy oval shape.

Eduardo Flores
Pro Se