

APPENDIX A

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

San Diego County Superior Court - Main
P.O. Box 120128
San Diego, CA 92112

RE: EDUARDO FLORES,
Plaintiff and Appellant,
v.
PETER M. HOAGLAND et al.,
Defendants and Respondents;
THE SUPERIOR COURT OF SAN DIEGO COUNTY,
Respondent.
D075480
San Diego County Super. Ct. No. 37-2017-00033989-CU-MM-CTL

* * * **REMITTITUR** * * *

I, Kevin J. Lane, Clerk of the Court of Appeal of the State of California, for the Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on September 30, 2020, and that this opinion or decision has now become final.

_____ Appellant _____ Respondent to recover costs.
_____ Each party to bear own costs.
☒ Other (See Below)

Respondents shall recover their costs on appeal.

Witness my hand and the seal of the Court affixed this January 25, 2021

KEVIN J. LANE, Clerk

By: Alissa Galvez, Deputy Clerk

cc: All Parties (Copy of remittitur only, Cal. Rules of Court, rule 8.272(d).)



Filed 9/30/20

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

EDUARDO FLORES,

Plaintiff and Appellant,

v.

PETER M. HOAGLAND et al.,

Defendants and Respondents;

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent.

D075480

(Super. Ct. No. 37-2017-
00033989-CU-MM-CTL)

APPEAL from an order of the Superior Court of San Diego County,
Joel R. Wohlfeil, Judge. Affirmed.

Eduardo Flores, in pro. per. for Plaintiff and Appellant.

Davis, Grass, Goldstein & Finlay and Jeffery W. Grass for Defendants
and Respondents Peter M. Hoagland and San Diego Cardiac Center Medical
Group, Inc.

No appearance for Respondent.

I

INTRODUCTION

This appeal arises from a medical malpractice action filed by Eduardo Flores in September 2017 alleging Peter Hoagland, M.D., was negligent in providing preoperative cardiac consultation and, as a result, Flores suffered injuries related to a neurosurgical procedure in June 2014. 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 Flores's action was barred by the three-year statute of limitations set forth in Code of Civil Procedure section 340.5. The court entered a judgment of dismissal on May 4, 2018.

Instead of timely appealing the judgment, Flores filed numerous motions and ex parte applications with the trial court asking the court to reconsider its demurrer ruling and to accept the filing of a third amended complaint. Eventually, the court entered an order on December 21, 2018, declaring Flores to be a vexatious litigant and imposing a pre-filing order requiring him to obtain leave of court for any future filings. (Code Civ. Proc., §§ 391, subd. (b)(2); 397.1, subd. (a).)

Flores filed a notice of appeal from the vexatious litigant order. However, his opening brief only challenged the merits of the judgment against him; it did not raise any issue with the prefiling order. Because Flores did not timely appeal the judgment, we have no jurisdiction to consider the issues he raises on appeal. Although a prefiling order is appealable, Flores abandoned any issues related to that order by failing to properly raise them in his briefs. Therefore, we affirm the order.

II BACKGROUND¹

Eduardo Flores filed a medical malpractice action in September 2017 contending Dr. Hoagland misdiagnosed him during pre-operative cardiac consultation for brain surgery.

According to a second amended complaint, Dr. Hoagland evaluated Flores in February, March, and April 2014. Dr. Hoagland cleared Flores for neurosurgery during the April evaluation. Flores alleged, “The neurosurgery proceeded on June 9, 2014 and the result was disastrous.” He alleged he experienced respiratory arrest leading to a hemorrhagic stroke requiring additional surgeries and hospitalization. He alleged he had cognitive impairments and did not become aware of Dr. Hoagland’s negligence until November 2016 when he obtained his medical records from the medical group with which Dr. Hoagland practices, San Diego Cardiac Center.

On May 4, 2018, the court sustained without leave to amend the demurrer of Dr. Hoagland and San Diego Cardiac Center Medical Group, Inc. to Flores’s second amended complaint because Flores’s action was barred by the three-year statute of limitation set forth in Code of Civil Procedure section 340.5. Quoting *Hills v. Aronsohn* (1984) 152 Cal.App.3d 753, 758, the court explained the three-year statute, “ ‘places an outer limit which

¹ The record designated by Flores contains primarily his own pleadings along with some minute orders and portions of the register of action. We summarize the pertinent procedural background based on the available record.

We deny Flores’s motion to correct or augment the record filed June 28, 2019, which purports to disagree with the certified court reporter’s transcript of the November 20, 2018 and December 21, 2018 proceedings by offering handwritten comments and edits.

terminates all malpractice liability once three years have passed from the date of injury. The only instances in which belated discovery is relevant to the three-year limitations period are those which are specified in the statute. If none of these exceptions apply, the three-year outside limitations period is commenced regardless of a patient's belated discovery of [his or] her injury. [(*Id.* at p. 761)]' " The three-year statute may only be tolled if one can plead and prove fraud, intentional concealment, or the presence of a foreign body. (Code Civ. Proc., § 340.5.) The court determined none of those exceptions applied and Flores's action was barred by the statute of limitations because he did not file his action within three years of the injury he sustained on June 9, 2014.

Having completely disposed of the action, the court entered judgment in favor of the defendants on May 18, 2018. The defendants filed a notice of entry of judgment on May 24, 2018.

Over the next six months, Flores filed the following ex parte applications and motions asking the court to reconsider its prior rulings and allow him to file a third amended complaint:

- May 30, 2018 ex parte application asking the court to review a proposed third amended complaint.
- 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.
- August 3, 2018 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 Code of Civil Procedure section 473, subdivision (b).

- September 19, 2018 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.
- October 29, 2018 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.
- November 16, 2018 ex parte application asking why the court rejected his third amended complaint.

On November 20, 2018, the court denied Flores's latest application to consider a third amended complaint. On its own motion, the court set an order to show cause hearing regarding why Flores should not be declared a vexatious litigant pursuant to Code of Civil Procedure section 391, subdivision (b)(2), for repeatedly relitigating the validity of the determination in favor of the defendants.

At the order to show cause hearing on December 21, 2018, Flores continued to argue the merits of his malpractice case and asked the court to consider his proposed third amended complaint.

The court noted it entered judgment in favor of the defendants in May 2018 and Flores had "asked and re-asked" the court to reconsider its ruling thereafter. The court each time "explained and re-explained the rationale for its ruling sustaining [d]efendants' [d]emurrer and entry of [j]udgment." The court determined Flores's repeated applications asking the court to reconsider its prior rulings had become frivolous. The court issued an order finding Flores to be a vexatious litigant as defined by Code of Civil Procedure

section 391, subdivision (b)(2) and precluding him from filing further papers in this litigation without leave of court. (Code Civ. Proc, § 391.7, subd. (a).)

Flores filed a notice of appeal on January 8, 2019 appealing the December 21, 2018 order.

III

DISCUSSION

A

Lack of Jurisdiction to Consider Judgment

Flores's opening brief challenges only the merits of the court's order sustaining the defendants' demurrer to the second amended complaint based on the statute of limitations. The judgment was entered on May 18, 2018, and the record reflects a notice of entry of judgment was filed shortly thereafter. Flores did not timely appeal the judgment, either within 60 days of the service of the notice of entry of judgment or within 180 days of the entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1).) Therefore, we are precluded from reviewing the merits of the demurrer ruling. (Code Civ. Proc., § 906; *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56 ["The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal."]; *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1315–1316 [" "[i]f a judgment or order is appealable, an aggrieved party must file a timely appeal or forever lose the opportunity to obtain appellate review" ' "].)

B

Vexatious Litigant Order

An order imposing prefiling requirements against a vexatious litigant pursuant to Code of Civil Procedure section 391.7 is effectively an injunction and is, therefore, appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(6). (See *Luckett v. Panos* (2008) 161 Cal.App.4th 77, 85.) The December 21, 2018 order was such an order and, therefore, Flores's appeal was timely as to that order.

"A court exercises its discretion in determining whether a person is a vexatious litigant. [Citation.] We uphold the court's ruling if it is supported by substantial evidence. [Citations.] On appeal, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment." (*Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 219.)

Flores abandoned any challenge to the merits of this prefiling order by failing to raise any such issues in his opening brief. (*County of Riverside v. Public Employment Relations Bd.* (2016) 246 Cal.App.4th 20, 27, fn. 4; *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 538.) We decline to consider belated statements in his reply brief contending the court abused its discretion in entering the order because it did not consider the merits of his case. "We decline to consider the issue ... in deference to the rule that ' "points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before." ' " (*Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894, fn. 10.)

IV
DISPOSITION

The order is affirmed. Respondents shall recover their costs on appeal.

McCONNELL, P. J.

WE CONCUR:

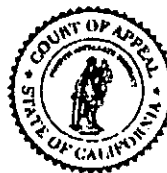
HALLER, J.

IRION, J.

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

09/30/2020



KEVIN J. LANE, CLERK

By

A. Galvez
Deputy Clerk

APPENDIX B

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal
Fourth Appellate District

FILED ELECTRONICALLY

10/16/2020

Kevin J. Lane, Clerk
By: Alissa Galvez

EDUARDO FLORES,

Plaintiff and Appellant,

v.

PETER M. HOAGLAND et al.,

Defendants and Respondents;

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent.

D075480

(Super. Ct. No. 37-2017-
00033989-CU-MM-CTL)

ORDER DENYING REHEARING

THE COURT:

The petition for rehearing is denied.

McCONNELL, P. J.

Copies to: All parties

APPENDIX C

SUPREME COURT
FILED

JAN 20 2021

Court of Appeal, Fourth Appellate District, Division One - No. D075480

Jorge Navarrete Clerk

S265826

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

EDUARDO FLORES, Plaintiff and Appellant,

v.

PETER M. HOAGLAND et al., Defendants and Respondents;

SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent.

Court of Appeal
Fourth Appellate District

FILED ELECTRONICALLY

01/25/2021

Kevin J. Lane, Clerk
By: Alissa Galvez

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

APPENDIX D

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 05/04/2018

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Ryan A Willis

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00033989-CU-MM-CTL** CASE INIT.DATE: 09/14/2017

CASE TITLE: **Flores vs Hoagland [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Medical Malpractice

EVENT TYPE: Demurrer / Motion to Strike

MOVING PARTY: San Diego Cardiac Center Medical Group Inc, Peter M Hoagland MD

CAUSAL DOCUMENT/DATE FILED: Demurrer, 03/29/2018

EVENT TYPE: Civil Case Management Conference

APPEARANCES

Eduardo Flores, self represented Plaintiff, present.

Gabriel M. Benrubi, counsel, present for Defendant(s) telephonically.

Gabriel M. Benrubi, specially appearing for counsel RICHARD V ZAVALA, present for Defendant(s).

Defendant submit(s) on the Court's tentative ruling.

The Court hears oral argument and confirms the tentative ruling as follows:

The general Demurrer (ROA # 38) of Defendants Peter M. Hoagland, M.D. (erroneously named and served as Dr. Peter M. Hoagland), and San Diego Cardiac Center Medical Group, Inc. (erroneously named and served as San Diego Cardiac Center) (collectively "Defendants") to the Second Amended Complaint ("SAC") of Plaintiff EDUARDO FLORES ("Plaintiff"), on the grounds that the SAC is barred by the statute of limitations as set forth within Code of Civil Procedure, Section 340.5, is SUSTAINED without leave to amend.

"In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or

effect, in the person of the injured person." Code Civ. Proc. 340.5. "...[S]ection 340.5 establishes two hurdles, not one, to the timely maintenance of a medical malpractice claim. Thus, if a malpractice litigant brings her action within three years from the date of injury, she must still satisfy the one-year limitations period or the action is time barred. Conversely, if the action is properly brought within one year of reasonable discovery, the action is nevertheless barred if the three-year period is not also satisfied." Hills v. Aronsohn (1984) 152 Cal. App. 3d 753, 758. "...[S]ection 340.5 now places an outer limit which terminates all malpractice liability once three years have passed from the date of injury. The only instances in which belated discovery is relevant to the three-year limitations period are those which are specified in the statute. If none of these exceptions apply, the three-year outside limitations period is commenced regardless of a patient's belated discovery of her injury." Id. at 761.

As alleged, "Dr. Hoagland evaluated Plaintiff on February 28, 2014 and March 19, 2014." SAC at ¶ 10. Also, "Dr. Hoagland followed up with a very different report on April 25, 2014." SAC at ¶ 11. "The neurosurgery proceeded on June 9, 2014 and the result was disastrous." SAC at ¶ 12. This surgery caused immediate injuries and resulted in several follow-up procedures. Id. Paragraph 13 alleges: "Plaintiff has continued to struggle with the cognitive impairments caused by the surgery through 2014, 2015 and 2016 and continues to be impaired to date. He lost his sense of time and did not become aware of - nor could he have become aware of - the malpractice until November 15, 2016 when he went to San Diego Cardiac Center to get his medical records from defendants." This was the date on which Plaintiff first discovered the negligent evaluation and reports from 2014. SAC at ¶¶ 13 and 15. These acts from 2014 constitute professional negligence. SAC at ¶ 16.

As alleged, the date of injury occurred on June 9, 2014. This action was filed on September 14, 2017, more than three years later. As a result, this action is barred as a matter of law by the "outer limit" of section 340.5. The only way to escape this outer limit is to plead and prove (1) fraud, (2) intentional concealment, or (3) the presence of a foreign body. None of these exceptions are alleged. This Court's ruling on the previous Demurrer (ROA # 23) was sustained on the same basis. The prior ruling expressly referenced the need to plead facts demonstrating fraud or intentional concealment. The amended pleading does not allege these facts, and on this basis leave to amend is not permitted.

This ruling completely disposes of this action and Defendants are entitled to a judgment in their favor.

Civil Case Management Conference

Civil Case Management Conference is vacated in light of the above Court ruling.

Joel R. Wohlfeil

Judge Joel R. Wohlfeil

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 12/21/2018

TIME: 10:45:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Gabriel Hernandez

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00033989-CU-MM-CTL** CASE INIT.DATE: 09/14/2017

CASE TITLE: **Flores vs Hoagland [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Medical Malpractice

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: San Diego Cardiac Center Medical Group Inc, Peter M Hoagland MD

CAUSAL DOCUMENT/DATE FILED: Declaration - Other, 11/19/2018

EVENT TYPE: OSC - Sanctions

APPEARANCES

Eduardo Flores, self represented Plaintiff, present.

RICHARD V ZAVALA, counsel, present for Defendant(s) telephonically.

Plaintiff's request to speak in both English and Spanish when convenient is granted in part. Plaintiff wants to speak in English and use Interpreter if he needed.

Certified Spanish interpreter Maria Flores No. 36605781 is sworn to interpret on behalf of Plaintiff if so requested.

The order to show cause ("OSC") why Plaintiff EDUARDO FLORES ("Plaintiff") should not be declared a vexatious litigant and why sanctions should not be imposed against Plaintiff, is GRANTED IN PART and DENIED IN PART.

At the hearing of Plaintiff's latest ex parte application on November 20, 2018 (ROA # 108, 109), the Court, on its own motion, set "an order to show cause why Plaintiff should not be declared a vexatious litigant for repeatedly litigating after the matter was heard ... (and) why sanctions should not be imposed against (Plaintiff) pursuant to CCP 177.5 and / or 575.2" on 12/21/18 at 10:45 a.m. in Department 73."

At the hearing, counsel for Defendants Peter M. Hoagland, M.D. and San Diego Cardiac Center Medical Group, Inc. ("Defendants") represented that Defendants had calendared a "request for monetary sanctions is set on 12/21/18 at 10:45 a.m. in Department 73." In reviewing the Court's file, the Court notes that Defendant calendared the hearing - ROA # 106 - but does not appear to have filed any papers. Accordingly, Defendant's Motion is OFF CALENDAR.

CCP 391(b)(2) states, in pertinent part:

"As used in this title, the following terms have the following meanings:(a) "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court. (b) "Vexatious litigant" means a person who does any of the following: ... (2) After a litigation has been finally determined against the person, repeatedly re-litigates or attempts to re-litigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined."

On May 18, 2018, the Court entered Judgment in favor of Defendants and against Plaintiff after sustaining, without leave to amend, Defendants' Demurrer to Plaintiff's Second Amended Complaint ("SAC"). ROA # 54, 55. The Court did so, albeit reluctantly, after making reasonable, if not generous, efforts to accommodate the pro per Plaintiff. Ultimately, the Court was persuaded that, to further accommodate Plaintiff, may be generously fair to Plaintiff, but would be unreasonably and unduly arbitrary and unfair to Defendants. Since entry of Judgment, Plaintiff has asked and re-asked the Court to reconsider its ruling on no less than five times. ROA # 61, 77, 85, 98 and 102. Each time, the Court has explained and re-explained the rationale for its ruling sustaining Defendants' Demurrer and entry of Judgment. Defendants have undoubtedly incurred considerable expense in opposing Plaintiff's multiple applications. It has become apparent, from the Court's perspective, that no amount of judicial resources, much less patience and reasoning on the part of the Court, will dissuade Plaintiff from accepting the trial court's decision and pursuing appellate recourse if Plaintiff wishes to do so. At some point, Plaintiff's refusal to accept the process must yield to the unnecessary consumption of judicial resources and Defendants' expense. That time has come. Plaintiff's repeated applications asking the Court to reconsider its prior ruling have become frivolous. Accordingly, the Court finds that Plaintiff is a vexatious litigant and will be prevented from filing further papers in this litigation at the trial court, without first obtaining leave of Court.

IT IS SO ORDERED.

Joel R. Wohlfeil

Judge Joel R. Wohlfeil

APPENDIX E



California Rules of Court

(Revised January 1, 2021)

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Rule 1.100. Requests for accommodations by persons with disabilities

(a) Definitions

As used in this rule:

- (1) "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 medical condition that limits one or more of the major life activities, have a record of such a condition, or are regarded as having such a condition.
- (2) "Applicant" means any lawyer, party, witness, juror, or other person with an interest in attending any proceeding before any court of this state.
- (3) "Accommodations" means actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include 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 who are deaf or hard-of-hearing; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation.

(Subd (a) amended effective July 1, 2017; adopted as subd (b) effective January 1, 1996; previously amended effective January 1, 2006, amended and relettered effective January 1, 2007.)

(b) Policy

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.

(Subd (b) adopted effective January 1, 2007.)

(c) Process for requesting accommodations

The process for requesting accommodations is as follows:

- (1) Requests for accommodations under this rule may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally. Requests must be forwarded to the ADA coordinator, also known as the access coordinator, or designee, within the time frame provided in (c)(3).
- (2) Requests for accommodations must include a description of the accommodation sought, along with a statement of the medical condition that necessitates the accommodation. The court, in its discretion, may require the applicant to provide additional information about the medical condition.
- (3) Requests for accommodations must be made as far in advance as possible, and in any event must be made no fewer than 5 court days before the requested implementation date. The court may, in its discretion, waive this requirement.
- (4) The court must keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for accommodation.

(Subd (c) amended effective July 1, 2017; previously amended effective January 1, 2006, and January 1, 2007.)

(d) Permitted communication

Communications under this rule must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the proceedings before the court.

(Subd (d) amended effective January 1, 2006.)

(e) Response to accommodation request

The court must respond to a request for accommodation as follows:

- (1) In determining whether to grant an accommodation request or provide an appropriate alternative accommodation, the court must consider, but is not limited by, California Civil Code section 51 et seq., the provisions of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), and other applicable state and federal laws.
- (2) The court must promptly inform the applicant of the determination to grant or deny an accommodation request. If the accommodation request is denied in whole or in part, the response must be in writing. On request of the applicant, the court may also provide an additional response in an alternative format. The response to the applicant must indicate:
 - (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.

(Subd (e) amended effective January 1, 2010; previously amended effective January 1, 2006, and January 1, 2007.)

(f) Denial of accommodation request

A request for accommodation may be denied only when the court determines that:

- (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.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(g) Review procedure

- (1) If the determination to grant or deny a request for accommodation is made by nonjudicial court personnel, an applicant or any participant in the proceeding may submit a written request for review of that determination to the presiding judge or designated judicial officer. The request for review must be submitted within 10 days of the date the response under (e)(2) was delivered in person or sent.
- (2) If the determination to grant or deny a request for accommodation is made by a presiding judge or another judicial officer, an applicant or any participant in the proceeding may file a petition for a writ of mandate under rules 8.485-8.493 or 8.930-8.936 in the appropriate reviewing court. The petition must be filed within 10 days of the date the response under (e)(2) was delivered in person or sent to the petitioner. For purposes of this rule, only those participants in the proceeding who were notified by the court of the determination to grant or deny the request for accommodation are considered real parties in interest in a writ proceeding. The petition for the writ must be served on the respondent court and any real party in interest as defined in this rule.
- (3) The confidentiality of all information of the applicant concerning the request for accommodation and review under (g)(1) or (2) must be maintained as required under (c)(4).

(Subd (g) amended effective January 1, 2010; previously amended effective January 1, 2006.)

(h) Duration of accommodations

The accommodation by the court must be provided for the duration indicated in the response to the request for accommodation and must remain in effect for the period specified. The court may provide an accommodation for an indefinite period of time, for a limited period of time, or for a particular matter or appearance.

(Subd (h) amended effective January 1, 2006.)

Rule 1.100 amended effective July 1, 2017; adopted as rule 989.3 effective January 1, 1996; previously amended effective January 1, 2006; previously amended and renumbered effective January 1, 2007; previously amended January 1, 2010.

Advisory Committee Comment

Subdivision (g)(2). Which court is the "appropriate reviewing court" under this rule depends on the court in which the accommodation decision is made and the nature of the underlying case. If the accommodation decision is made by a superior court judicial officer and the underlying case is a limited civil, misdemeanor, or infraction case, the appropriate reviewing court is the appellate division of the

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Eduardo Flores — PETITIONER
(Your Name)

VS.

Peter M. HOAGLAND — RESPONDENT(S)

PROOF OF SERVICE

I, Leticia Flores, do swear or declare that on this date, April 19, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

to the CLERK SUPREME COURT OF the
UNITED STATES WASHINGTON
1 FIRST ST, NE WASHINGTON, DC 20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 19, 2021

Leticia Flores
(Signature)

FLORES V PETER M. HORTLAND et al.

1 SUPREME COURT OF CALIFORNIA
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102-4797
CHIEF JUSTICE CANTIL - SAKAUYE

2 COURT OF APPEAL FOURTH APPELLATE DISTRICT
DIVISION ONE
750 B STREET SUITE 300
SAN DIEGO CA. 92101-8196
PRESIDING JUSTICE MCCONELL

3 SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO
HALL OF JUSTICE 330 W BROADWAY
SAN DIEGO CA 92101
JUDGE HON. JOEL R. WOHLEIT

4 DAVIS GRASS, GOLDTAIN & FINLEY
3105 SEDONA COURT ONTARIO CALIFORNIA 91764
RICHARD V. ZAVALA

5 SUSANNE WASHINGTON
P.O. BOX 120128
SAN DIEGO, CALIFORNIA 92112

ATTACHMENT

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