

Supreme Court No. 95079-2

(Court of Appeals No. 74979-01)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARK AND JULIE DAVISCOURT,

Petitioner.

v.

QUALITY LOAN SERVICES et. al.,

Respondent.

RECEIVED

SEP 20 2017

WASHINGTON STATE
SUPREME COURT

MOTION FOR DISCRETIONARY REVIEW

MARK DAVISCOURT
6314 NE 151ST Street
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(pro se)

FILED
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WASHINGTON STATE
SUPREME COURT

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A. Identity of Petitioner(s):

Petitioner Mark Davis court is representing both himself and his wife Julie Davis court. Both are natural persons residing in the State of Washington.

B. Petitioners seek a Discretionary Review of the Decision in our case # 74979-0-1:

The Court of Appeals of the State of Washington filed a Decision in our case on August 21, 2017. On or about August 29, 2017, The Court of Appeals granted the defendants motion to publish an opinion regarding its decision.

Exhibit 1: The Court of Appeals of the State of Washington Decision dated August 21, 2017.

C. Issues Presented for Review:

Mr. Davis court became permanently disabled as a result of responding to the terrorist attacks of 9/11 arriving on-site at Ground Zero in New York on 9/13/2001. He remained on-site for several months in his capacities as a senior manager representing World Trade Center Properties Ltd. insurance carriers and Marriott International regarding the total loss of the Marriot World Trade Center Hotel (WTC 3) including his duties as a volunteer. In addition to his job duties, Mr. Davis court agreed to the request by forensic engineers and government officials to volunteer his services by entering the World Trade Center and Marriott Hotel structures below-grade with team members comprising of forensic engineers, geological engineers, members of the FBI Anti-Terrorist Task Force, military personnel and Urban Search and Rescue personnel. City of New York Firefighters (FDNY) were taking unacceptable risk to initially rescue any people that may have survived. Rescue efforts evolved into cadaver and body part recovery. During this initial response phase, unknown structural conditions below-grade prevented the placement of cranes and heavy equipment. The objective that non-military and government team members were tasked with was to attempt to understand why the perimeter (slurry) walls were in a state of cascading structural failure, find the source(s) of water that were entering the World Trade Center Subway Station and determine structural values of the below-grade debris to enable crane and heavy equipment placement. The disabilities that Mr. Davis court sustained were caused by exposures to toxic gasses below-grade and toxic substances including mercury, arsenic, asbestos and pulverized glass causing him permanent respiratory damage.

In addition, Mr. Daviscourt came in direct contact with body parts below-grade. Above - grade, he was tasked with assisting structural engineers to determine how Urban Search and Rescue personnel may safely access the remaining structure of the Marriott World Trade Center Hotel. From a liability standpoint, our clients World Trade Center Properties Ltd. and Marriott needed to determine where the body parts originated regarding potential wrongful death litigation: The Towers or the Hotel. Mr. Daviscourt's participation in the recovery operations at the Marriott World Trade Center Hotel were voluntary. Exposure to the horrors and human tragedies that he volunteered his services caused him to be disabled from severe PTSD. Exposure to gasses below-grade caused additional neurological damage.

Mr. Daviscourt has been designated by the US Centers of Disease Control as a New York City Responder and due to my consulting activities at the Pentagon in Washington D.C; the CDC also designated me a Pentagon / Shanksville PA. Responder.

Mr. Daviscourt is a Qualified Individual with a Disability.

Mr. Scott Stafne, the Daviscourts former attorney, agreed to represent them on a contingency fee basis. We signed a contingency Fee Agreement with one of Mr. Stafne's former law firms; Stafne Trumbull in 2014.

Mr. Stafne sent the Daviscourt's a letter dated May, 13, 2017 informing them that he was closing a law firm by the name of "Stafne Law Firm" on May 31, 2017; six (6) days before oral arguments in our case that was scheduled for June 7, 2017. Stafne Law Firm is an entity that we had never heard of nor did we have any contractual relationship with of any type.

Attached to Mr. Stafne's letter dated May 13, 2017 was an Invoice from "Stafne Law Firm" dated 05/15/2017 for \$82,026.05 – Payable Upon Receipt. Mr. Stafne's letter dated May 13, 2017 informed us that in order for him to continue to represent us, we were required to either pay Stafne Law Firm \$ 82,026.05 in full or begin payments until paid in full and sign a Fee Agreement with another of Mr. Stafne's unknown to us entities; Stafne Law Advocacy and Consulting no later than June 1, 2017, or he would no longer represent us.

Exhibit 2: Stafne Law Firm letter dated May 13, 2017. Stafne Law Firm Invoice # 155 for \$82,026.05. Stafne Law Advocacy & Consulting – Attorney Services and Fee Agreement; Matter Number: 00841. Email dated May 25, 2017 from Mr. Daviscourt to Mr. Stafne.

Stafne Law Firm letter dated May 13, 2017 (In part):

- Page 2, paragraph 1, sentence 1: "Attached is a new fee agreement that you need to sign if you would like to transition your case to the new business".
- Page 2, paragraph 2: "Enclosed you will find your final invoice from Stafne Law Firm and we ask that you pay it in full or contact us to make regular monthly payments. You will continue to receive invoices from Stafne Law Firm until the balance is paid in full".
- SLAC Fee Agreement, page 2, Cost Advance: (In part) "Payment for service shall be made as follows: an initial fee of \$ 100.00 shall be made upon agreement to cover the administration cost of initial set-up of the matter in the various systems. In addition, a retainer in the amount of \$XXXX.00 which shall be placed in the trust account, shall be paid prior to any work being initiated on your matter".
- Monthly Statements: (In part) "Once the balance in the trust account is below \$ 1,000.00 Client shall either replenish the account to its original deposit balance, OR client may pay the balance in full monthly. Should the balance due on an invoice ever reach \$ 3,000.00 the client will then be required to accelerate payments until the balance is less than \$ 1,000.00. SLAC will not carry a balance of over \$ 3,000.00 and continue to work on the matter unless a regular payment plan is agreed to in writing".

The Daviscourt's were shocked and caught off-guard at the \$ 82,000.00 bill provided to them just 3 weeks prior to Oral Arguments. Mr. Daviscourt attempted to resolve this matter by scheduling meetings with Mr. Stafne. Mr. Stafne refused to meet with Mr. Daviscourt by canceling two meetings arranged with his staff regarding this matter. The Daviscourt's terminated Mr. Stafne for attorney misconduct. Because of Mr. Daviscourt's disabilities, he was unable to understand his rights regarding Rules of Professional Conduct and fiduciary duties of his counsel.

The Daviscourts were left with no choice other than to have Mr. Daviscourt represent them pro se. The Daviscourts were not in possession of any of their court documents or case files.

Mr. Daviscourt requested that the Washington State Court of Appeals provide him an accommodation for a continuance based on Mr. Stafne's termination two weeks prior to Oral Arguments in his Request for Accommodation for Persons with Disabilities utilizing a Washington State General Rule 33 request for accommodation dated May 28, 2017.

Mr. Daviscourt's GR 33 was denied on June 5, 2017, two days prior to Oral Arguments, in addition to the Court's denial, the Court excluded him from participating in this critical phase of his case; without cause.

D. Statement of the Case:

Mr. Davis court applied to the Washington State Supreme Court for Court General Rule 33 accommodations in his application dated September 15, 2017. Attached to his GR 33 application form are questions numbers 6 and 7. Mr. Davis court provided a cover letter regarding his responses to these questions in his letter to the Court dated September 15, 2017 written to Ms. Susan Carlson; Clerk of the Washington State Supreme Court. I contacted the Clerk's Office and was informed that the person to address my GR 33 request was Ms. Carlson.

Exhibit 3: Letter referenced above dated September 15, 2017.

Pages 2 of 3 (In part):

"I request accommodations regarding the following Rules of Appellate Procedure:

Rules of Appellate Procedure 1.2 Interpretation and Waiver of Rules by Court.

RAP 1.2: Interpretation. "These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance except in circumstances where justice demands, subject to the restrictions in rule 18.8 (b).

*I request the accommodation that the Court provides latitude with me regarding my Motion for Discretionary Review, other Motions and Briefs.

Rules of Appellate Procedure 9.1 Composition of Record on Review.

RAP 9.1 (d) Avoid Duplication. Material appearing in one part of the record on review should not be duplicated in another part of the record on review.

There are RAP's that require that I provide specific details regarding my positions. This is Rule that I have a difficult time understanding in that if I do not provide clarity, my positions will be diluted or disregarded.

*I request the accommodation that the Court provides latitude with me regarding RAP 9.1 (d).

Rules of Appellate Procedure 10.4: Preparation and Filing of Brief by Party.

RAP 10.4 (a), (a)(1), (a)(2); (b), (c), (d), (e), (f) and (g).

RAP 10.4 (b) contains instructions that are of critical significance to my request for accommodation as my Motion For Reconsideration contains material that was not included in our former court proceedings. In addition, at times it takes me several hours to type a single page, I request the accommodation to provide as Exhibits, positions that persons without disabilities may be capable of writing into the text of a Motion For Reconsideration. I am attaching this letter as an Exhibit in my Motion For Reconsideration to have Court personnel and Washington State Supreme Court Justices respectfully consider why my Motion For Reconsideration contains the volume of documents that it does.

*I request the accommodation that the Court provides patience and latitude with me regarding RAP 10.4.

Court General Rule 14: Format for Pleadings and Other Papers

GR 14 (a), (b), (c) and (d).

*I request the accommodation that the Court provides patience and latitude with me regarding Court General Rules 14 (a), (b), (c) and (d)".

On May 27, 2017, after Mr. Stafne refused to rescind his Stafne Law Firm Invoice for \$ 82,000.00, the Daviscourt's terminated their attorney / client relationship with him. Mr. Daviscourt advised Mr. Stafne that he would contact the Washington State Court of Appeals and apply for a GR 33 request for accommodation in an email to Mr. Stafne dated May 26, 2017. Reference final paragraph and second to last sentence of this email dated May 26, 2017: Exhibit 4.

On May 30, 2017 at 7:27 AM, Mr. Daviscourt received an unsolicited email from Mr. Stafne; Subject: Please call me to discuss *your* request to the Court of Appeals for an advocate. (emphasis added). A two-sentence message was contained in this email: "Pam, We also need to find out the name of the ADA coordinator for that court. Avery, please follow up and find a time slot we can talk to Mark today". Mr. Daviscourt did not request that Mr. Stafne provide him an "advocate" and did not respond to this email. Exhibit 4.

On May 30, 2017 at 10:44 AM, Mr. Daviscourt received an unsolicited email from one of Mr. Stafne's advocates; Ms. Pam Miller, promoting information that Mr. Daviscourt did not request regarding a GR 33. Ms. Miller stated in the last sentence of her email; "please let me know if you need anything further or if you have difficulty with the documents". Mr. Daviscourt did not respond to this email. Exhibit 4.

On May 30, 2017 without the Daviscourt's knowledge or permission Mr. Stafne sent the Court of Appeals a Motion for Continuance representing Stafne Law Firm. Exhibit 4.

On May 31, 2017 at 10:08 AM, Mr. Davis court received an unsolicited email from an advocate employed by Stafne Law & Advocacy that our former attorney Mr. Stafne had without our knowledge or permission requested a Motion for Continuance dated May 30, 2017 to the Court of Appeals. Exhibit 4

On May 31, 2017 at 5:08 PM, Mr. Stafne sent Mr. Davis court an unsolicited email informing him that his unauthorized Motion For Continuance existed and was ruled against by the Court of Appeals. This email from Mr. Stafne contained a single sentence: "*Mark, Please call me asap*". (emphasis added). This email included an attached ruling from the Court of Appeals dated May 31, 2017. Exhibit 4.

On May 31, 2017, at 9: 18 PM, Mr. Stafne sent Mr. Davis court an unsolicited email; Subject: Oral Argument.

Paragraph 1: "Under the circumstances I recommend that *you seek legal counsel to advise you of your options with regard to oral argument*. Please show him or her all the correspondence between us which has led to this current situation. Please show the attorney the court order we received today as well as John Glowney's response to the motion to continue the oral argument". (emphasis added).

Paragraph 4: "I am sorry that you do not feel we can communicate under these circumstances. Accordingly, please bring this matter to the attention of an attorney who can advise you of your various options under these circumstances. Exhibit 4.

Mr. Davis court's GR 33 Request for Accommodation to the Washington State Court of Appeals dated May, 28, 2017.

Note: With the exception of this Exhibit 5 Cover Sheet; Exhibit 5 is sealed. Reference the attached; Sealed Medical and Health Information Cover Sheet Under GR 33 (SMHI). Exhibit 5.

On June 1, 2017, Richard Johnson, the ADA coordinator for Division 1 of the Washington State Court of Appeals received Mr. Davis court's GR 33 Request for Accommodation based on his documented disabilities: (*reference: Sealed Medical and Health Information (Cover Sheet)*): Exhibit 5.

Mr. Davis court's GR 33 included documentation regarding attorney misconduct perpetrated against the Davis court's by their former attorney Mr. Stafne: (*reference: Letter dated May 28, 2017, from Mr. Davis court to Mr. Johnson Court of Appeals ADA coordinator, pages 1-4; Stafne Law Firm letter dated May 13, 2017; Stafne Law Firm Invoice # 155 dated 05/15/2017, Amount due upon receipt \$ 82,026.05; STAFNE LAW Advocacy & Consulting – Attorney Services and Fee Agreement, Matter Number 00841; Letter dated May 31, 2017, from Mr. Davis court to Mr. Johnson Court of Appeals ADA coordinator that included Mr. Stafne's post-termination unauthorized Motion For Continuance as an attachment.* Exhibit 5.

Mr. Daviscourt's GR 33 included documentation that Mr. Stafne was terminated by the Daviscourt's for attorney misconduct: (reference: Letter dated May 28, 2017, from Mr. Daviscourt to Mr. Johnson, Court of Appeals ADA coordinator: Page 5, paragraphs 1 and 2, and letter dated May 31, 2017 from Mr. Daviscourt to Mr. Johnson Court of Appeals ADA coordinator: Page 1: paragraphs 1 and 3 and Page 2: Paragraph 1). Exhibit 5.

Mr. Daviscourt's GR 33 included documentation regarding attorney misconduct perpetrated against the Washington State Court of Appeals by their former attorney Mr. Stafne: (reference: Letter dated May 28, 2017, from Mr. Daviscourt to Mr. Johnson Court of Appeals ADA coordinator, page 5, paragraphs 1 and 2, and letter dated May 31, 2017, from Mr. Daviscourt to Mr. Johnson Court of Appeals ADA coordinator that included Mr. Stafne's post-termination unauthorized Motion For Continuance as an attachment). Exhibit 5.

To support Mr. Daviscourt's GR 33 request for a continuance he included documentation regarding his current engagement with Ms. Stephanie Pratt, a manager with the Washington State Department of Commerce Office of Crime Victims Advocacy (OCVA). Ms. Pratt assigned Ms. Brigitta Ellwein, King County Victim Service Coordinator for Victim Support Services to Mr. Daviscourt's case. Ms. Ellwein studied Exhibit 5 in detail. Ms. Ellwein contacted Mr. Daviscourt after she reviewed the documents contained in Exhibit 5 and advised him to contact the FBI. Additionally, Ms. Ellwein advised me to obtain No-Contact Orders. (reference: Letter dated May 28, 2017, from Mr. Daviscourt to Mr. Johnson Court of Appeals ADA coordinator, page 5, paragraphs 5 and 6; and page 6, paragraphs 1 and 2 including The Seattle Times documents contained in Exhibit 5). Exhibit 5.

Mr. Daviscourt's GR 33 was specific that he requested the accommodation of a continuance. (reference: Letter dated May 28, 2017, from Mr. Daviscourt to Mr. Johnson Court of Appeals ADA coordinator, page 7, paragraph 2.) Exhibit 5.

Mr. Daviscourt's GR 33 was specific that he required multiple accommodations. (reference: Letter dated May 28, 2017, from Mr. Daviscourt to Mr. Johnson Court of Appeals ADA coordinator, page 7, paragraph 3.) Exhibit 5.

Mr. Daviscourt's GR 33 was specific that he offered to work with the Court of Appeals to develop a reasonable accommodation plan in concert with Ms. Brigitta Ellwein, King County Victim Service Coordinator for Victim Support Services. I also provided Ms. Pratt's and Ms. Ellwein's contact information. (reference: Letter dated May 28, 2017, from Mr. Daviscourt to Mr. Johnson Court of Appeals ADA coordinator, page 5, paragraph 2 and page 8, paragraph 4.) Exhibit 5.

In order to assure what is required of the Court of Appeals and the GR 33 applicant, Mr. Davis court included relevant portions of the WSBA Ensuring Equal Access for People with Disabilities included in his GR 33. After reading page 6 of this guide that references the duty that the Court of Appeals was to legally obligated to undertake a fact-specific investigation to determine what constitutes a reasonable accommodation, Mr. Davis court was assured that the Court would contact him after reviewing his request as stated in his letter dated May 28, 2017 to Mr. Johnson, the Court of Appeals ADA coordinator. *(reference: WSBA Ensuring Equal Access for People with Disabilities page 6.)* Exhibit 5.

To support Mr. Davis court's accommodation request for a continuance, he provided information to the Washington State Court of Appeals in his GR 33 that due to Mr. Stafne's termination for attorney misconduct, the Davis court's did not possess any of their court records or case documents. *(reference: Letter dated May 28, 2017, from Mr. Davis court to Mr. Johnson Court of Appeals ADA coordinator, page 5, paragraphs 1 and 2 paragraph 2, line 6.)* Exhibit 5.

Mr. Davis court's GR 33 contained a letter that was clear and specific regarding his desire to attend Oral Arguments. *(reference: Letter dated May 28, 2017, from Mr. Davis court to Mr. Johnson Court of Appeals ADA coordinator, page 7, paragraphs 2 and 3.)* Exhibit 5.

The Washington State Court of Appeals did not contact Mr. Davis court regarding its legally enforceable obligation to undertake a fact-specific investigation to determine what constitutes a reasonable accommodation.

The Washington State Court of Appeals denied Mr. Davis courts application for GR 33 reasonable accommodations without cause or explanation.

The Washington State Court of Appeals excluded Mr. Davis court from attending Oral Arguments.

The Washington State Court of Appeals did not inform Mr. Davis court that he could attend Oral Arguments without any accommodation as is any citizens right of due process.

On June 2, 2017, Mr. Davis court with the support and approval of Ms. Davis court wrote a letter of complaint to Mr. Johnson, the Court of Appeals ADA coordinator protesting that the Court denied us our 14th Amendment Right of Due Process. Exhibit 6.

On June 5, 2017, the Washington State Court of Appeals made a ruling denying Mr. Daviscourt's GR 33 Request for Accommodations for Persons with Disabilities.

In light of Mr. Daviscourt's letter dated September 17, 2017 to Ms. Carlson, the Washington State Supreme Court Clerk contained in Exhibit 3 of this Request For Reconsideration regarding his GR 33 request, Mr. Daviscourt is attaching the following two documents that provide specificity regarding Washington State Courts legal duties and obligations in reference to a disabled persons request for accommodation:

1. Ensuring Equal Access For People With Disabilities: A Guide for Washington Courts (In part)
2. Amicus Curiae Brief of Disability Rights Washington In Support of Appellant Case No. 44713-4- II (In part)

See also:

United States Court of Appeals, Ninth Circuit. Duvall v. County of Kitsap:

IV. Paragraph 3: (In part) "A public entity's duty on receiving a request for accommodation is well settled by our case law and by the applicable regulations. It is required to undertake a fact-specific investigation to determine what constitutes a reasonable accommodation, and we have provided the criteria by which to evaluate whether that investigation is adequate. "Mere speculation that a suggested accommodation is not feasible falls short of the reasonable accommodation requirement; the Acts create a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary." Wong, 192 F.3d at 818. Furthermore, the Attorney General's regulations require the public entity to "give primary consideration to the request of the individual with disabilities" when determining what type of auxiliary aid and service is necessary. 28 C.F.R Subsection 35.160(b)(2). Accordingly, a public entity does not "act" by proffering just any accommodation: it must consider the particular individual's need when considering its investigation into what accommodations are reasonable".

Washington State Appeals Court ruling denying Mr. Daviscourt's GR 33 request for accommodation(s) dated June 5, 2017. Exhibit 8

Court of Appeals June 5, 2017 GR 33 ruling:

Page 2, paragraph 1, sentence 4: *"It is now unclear whether appellants counsel of record continues to represent the appellant". (reference: Petition For Reconsideration - Page 7, paragraph 1 and UPS CT OF APPEALS OF THE ST OF WA DIV 1 parcel delivery confirmation dated Fri 02 Jun 2017 10:15 AM re Mr. Daviscourt's GR 33 application: Exhibit 8). Page 9*

The Washington State Court of Appeals received Mr. Daviscourt's GR 33 containing very specific detail regarding the termination of the Daviscourt's former attorney Mr. Stafne on June 2, 2017. The Court of Appeals made its decision to deny my reasonable accommodation on June 5, 2017; while in possession of clear documentation that the Daviscourt's former attorney was terminated. In direct opposition to clear documentation regarding the termination of Mr. Stafne, including why he was terminated, the Court of Appeals statement: *"It is now unclear whether appellants counsel of record continues to represent the appellant"*, is an intentional misrepresentation of fact. The Court of Appeals legal obligation to review my medical records prior to denial of my reasonable accommodations, clearly demonstrating my disabilities that included specificity contained in these records regarding the damage that the Court would cause Mr. Daviscourt; this illegal act, additionally, evidences intentional discrimination against a disabled person.

Washington State Court of Appeals ruling dated June 5, 2017:

Page 2, paragraph 1, sentence 5:

"This ruling represents the written response to the request for accommodation in accordance with the provisions of GR 33 (e)".

*While the statement in the first part of this sentence is factual in that it is a written response to my GR 33 Request for Accommodation, the latter part of this sentence; "in accordance with the provisions of GR 33 (e)", is an intentional misrepresentation of fact that would not be promoted to a person who the court believed to possess cogent thought processing capabilities, therefore, additionally, this sentence evidences intentional discrimination against a disabled person.

GR 33(e) – Order; Sentences 2 and 3: "If the court denies a requested accommodation pursuant to section (d) of this rule, the order shall specify the reasons for the denial. If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court's order shall include a description of": (emphasis added)

*The Washington State Court of Appeals did not as stated, comply with its legal obligation in GR 33(e) to specify in writing the reason that it denied Mr. Daviscourt the accommodations that he requested.

GR 33(4) If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court must offer the applicant the opportunity an alternative accommodation.

*The Washington State Court of Appeals did not offer Mr. Daviscourt an alternative accommodation as was its legally enforceable duty. The Washington State Court of Appeals was required to undertake a fact-specific investigation to determine what constitutes a reasonable accommodation. The Court did not undertake a fact-specific investigation to determine what constitutes a reasonable accommodation specific to Mr. Daviscourt's requested accommodations. The Court did not undertake a fact-specific investigation to determine what constitutes a reasonable accommodation specific to Mr. Daviscourt's disabilities.

Washington State Court Title II Guide for Courts: (Bullet Point # 5):

- "Keep in mind that the individual has the opportunity to decline an accommodation and may choose to participate in the same manner as the general public".

*The Washington State Court of Appeals in direct opposition to this opportunity that Mr. Daviscourt was to be offered by the Court, did not make this opportunity known to him, therefore, deprived him of his 14th Amendment Rights of Due Process.

Mr. Daviscourt was instructed by the Washington State Court of Appeals in their ruling denying his request for reasonable accommodations informed him that he was not to attend the hearing, therefore, denying Mr. Daviscourt of his 14th Amendment Rights of Due Process, violating his civil rights and intentionally discriminating against him as a disabled person due to the Courts specific knowledge of his disabilities.

Mr. Daviscourt received this instruction on his email on June 6, 2017 less than 24 hours prior to the hearing with no time to respond. The court was invited to contact Mr. Daviscourt via his cell phone his letter dated May 28, 2017; from Mr. Daviscourt to Mr. Johnson, Court of Appeals ADA coordinator. This letter is located in Exhibit 5: Page 5 of 8, paragraph 3: "I will accept telephone calls, mail and email at from the Court at your convience for any reason". Mr. Daviscourt stated this in writing in his GR 33 for the reason that should he not be home as he was not on June 5; that the Court could contact him on his cell phone. The court elected not to try to contact Mr. Daviscourt to discuss their denial of his Reasonable Accommodation and offer to or discuss any alternative accommodation. The Washington State Court of Appeals did not offer to or invite Mr. Daviscourt to as stated above: "participate in the same manner as the general public".

GR 33(4)(d) Denial. Except as otherwise set forth in subsection (c)(2) or (c)(3) of this rule, an application for accommodation may be denied only if the court finds that:

- (1) The applicant has failed to satisfy the substantive requirements of this rule;
- (2) The requested accommodation would create undue financial or administrative burden;
- (3) The requested accommodation would fundamentally alter the nature of the court service, program, or activity; or
- (4) Permitting the applicant to participate in the proceeding with the requested accommodation would create a threat to the safety or well-being of the applicant or others.

*The Washington State Court of Appeals did not deny Mr. Daviscourt's request for a reasonable accommodation due to any failure on his part to meet any substantive requirement of GR 33.

*The Washington State Court of Appeals did not deny Mr. Daviscourt's request for a reasonable accommodation due to an undue financial or administrative burden. Should the Court have deemed this to be the case they would have been legally obligated to inform Mr. Daviscourt in writing that the reason that the Court denied him his request for accommodation was due to GR 33(4)(d)(2) and offer him either an alternative accommodation or allow him to preserve his 14th Amendment Rights of Due Process by offering him to attend Oral Arguments in keeping with these rights afforded to "the general public".

*The Washington State Court of Appeals did not deny Mr. Daviscourt's request for a reasonable accommodation due to my requested accommodation that would by permitting the Mr. Daviscourt the opportunity to participate in the proceeding with the requested accommodation that he would create a threat to the safety or well-being of the applicant or others. Should the Court have deemed this to be the case they would have been legally obligated to inform Mr. Daviscourt in writing that the reason that the Court denied him his request for accommodation was due to GR 33(4)(d)(4) and offer him either an alternative accommodation or allow him to preserve his 14th Amendment Rights of Due Process by offering him to attend Oral Arguments via telephone.

The statement that the Washington State Court of Appeals responded "in accordance with the provisions of GR 33 (e)" is not only a patently false intentional misrepresentation that includes intentional discrimination of Mr. Daviscourt due to his specific disabilities; *any attempt by the Court to defend any facet of their rejection of his request to be provided reasonable accommodations fails; permanently.*

Washington State Court of Appeals ruling dated June 5, 2017, page 2, paragraph 2, sentences 2 and 3:

"Deciding the case without oral argument *accommodates* Mr. Daviscourt's concerns about having to appear on June 7. Therefore, the *request for accommodation is granted in part*". (emphasis added)

*These statements are clear intentional misrepresentations of fact. The Court of Appeals made these intentional misrepresentations after its obligatory review of Mr. Daviscourt's medical records, therefore, in addition these statements represent intentional discrimination. Mr. Daviscourt did not in any fashion communicate in his GR 33 request for accommodations that he was fearful of or concerned about attending Oral Arguments. Mr. Daviscourt could not have made his position clearer that he wanted to and needed to appear in his case for Oral Arguments.

Washington State Court of Appeals ruling dated June 5, 2017, page 2, paragraph 2, sentences 4, 5 and 6:

"At the direction of the panel, oral argument is stricken. The case will reset for June 7, 2017, to be decided without oral argument. Counsel for the parties need not appear".

*The Washington State Court of Appeals heard this critical phase of our case while intentionally denying Mr. Daviscourt access in any fashion to attend to his 14th Amendment Rights of Due Process.

On June 5, 2017, our former attorney Scott Stafne promoted to the Court of Appeals that he retained an attorney – client relationship with the Daviscourt's, including his promotion that he represented the Daviscourt's through "STAFNE LAW Advocacy & Consulting". This request for a continuance was for Mr. Stafne via a GR 33 not the Daviscourt's. The Daviscourt's were not aware of Mr. Stafne's second unsolicited request for a continuance. Exhibit 9.

On May 31, 2017, 5 days after the Daviscourt's terminated their relationship with Mr. Stafne, he sent Mr. Daviscourt an unsolicited email dated May 31, 2017. Subject: Oral Argument; informing the Daviscourt's that they needed to obtain legal counsel; other than Mr. Stafne. (reference, Page 6, paragraphs 3 and 4 of this Motion For Reconsideration. This email is located in Exhibit 4)

Mr. Stafne's GR 33 request for a continuance arrived at the Court of Appeals after the Court processed, reviewed and understood the contents of Mr. Daviscourt's GR 33 request that informed the Court with specificity that Mr. Stafne had been terminated

The Court of Appeals of the State of Washington ruling regarding Mr. Stafne's GR 33 request for a continuance ruling dated June 6, 2017: Exhibit 9

Court of Appeals ruling dated June 6, 2017:

Page 2 of 2, paragraph 1:

On June 5 2017 *Counsel for Appellant Scott Stafne* filed a second request for accommodation on behalf of Mark Davis court. The ruling entered on June 5, 2017 granting the request for accommodation in part and striking oral argument stands, and no additional action will be taken on the request filed by *counsel for the appellant* on behalf of Mr. Davis court. (emphasis added)

*The Court of Appeals continued to allow a discharged attorney to file on the record without sanctions.

*The Court of Appeals continued intentional misrepresentations contained in paragraph 1 of page 2 of the Court's ruling denying Mr. Stafne's GR 33 request for a continuance that Mr. Stafne retained his position as the Davis court's legal representative: "*Counsel for Appellant Scott Stafne*"; "*counsel for the appellant*". These intentional misrepresentations of fact were made after the Court of Appeals receipt of the Davis court's letter dated June 2, 2017: *On June 2, 2017, Mr. Davis court with the support and approval of Ms. Davis court wrote a letter of complaint to Mr. Johnson, the Court of Appeals ADA coordinator protesting that the Court denied us our 14th Amendment Right of Due Process. (reference: Page 8, final paragraph of this Motion For Reconsideration; the June 2, 2017 letter to the Court of Appeals referenced above is located in Exhibit-6.)*

The UPS Proof of Delivery receipts of the June 2, 2017 dated 06/05/2017. Exhibit 9

*The Court of Appeals intentional misrepresentations in the June 6, 2017 ruling that included intentional discrimination of a disabled person stating their discharged attorney, Mr. Stafne retained his position as the Davis court's counsel were made to threaten and intimidate the Davis court's in retaliation for protesting that the Court of Appeals denied us our 14th Amendment Right of Due Process. The Court's retaliation against the Davis court's, in written form, contained in a Court of Appeals ruling, sent the Davis court's a clear message that the Court of Appeals held the power to commit acts of further retaliation against them, should the Davis court's assert their rights by making a complaint to the proper authorities outside of the Court of Appeals, by informing a separate entity that the Court violated the civil rights of both Mr. and Mrs. Davis court by retaliating against them for making a complaint. (reference: 28 CFR 35.134(a) and (b); 28 CFR 35.130 et seq.; Title 42 Chapter 126 – Subsection 1203(a) and (b); Title 18 USC Section 241 – Conspiracy of Rights; Title 18 USC Section 242 – Deprivation of Rights Under Color of Law and Title 18 USC Section 245 – Federally Protected Activities).

Ms. Daviscourt's civil rights protections were violated:

United States Court of Appeals, Ninth Circuit.

*Susan Lee Barker, Plaintiff – Appellant, v. Riverside County Office of Education, Defendant
– Appellee.*

No. 07-56313.

III. Discussion

A. Section 504 of the Rehabilitation Act of 1973 (In part)

Paragraphs 4, 5, 6 and 7: 4: "29 USC Section 794(a) (codifying Section 504). Section 504 incorporates the anti-retaliation provisions of Title VI of the Civil Rights Act of 1964 by providing that:". 5: "The remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance". 6: "29 USC Section 794a (2) (emphasis added). The anti-retaliation provision of Title V of the Civil Rights Act incorporated by Section 504 states:". 7: "No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right secured by Section 601 of [the Civil Rights] Act or this part, or because he has made a complaint, testified, or participated in any manner in an investigation, proceeding, or hearing under this part.

Paragraph 8 (In part): "34 CFR Section 104.6 .In other words the anti-retaliation provision in Title VI of the Civil Rights Act has been incorporated by the Rehabilitation Act so as to extend protections to "any individual" who has been intimidated, threatened, coerced, or discriminated against 'for the purpose of interfering with [protected rights] under Title VI of the Civil Rights Act or the Rehabilitation Act".

Paragraph 9 (In part): Contrary to the Riverside County Office of Education arguments, the broad statutory language in Section 504 and its corresponding anti-retaliation provisions in Title VI of the Civil Rights Act does not demonstrate that Congress intended to limit standing under section 504 only to those with disabilities. Section 504 and its anti-retaliation provisions use the all-inclusive phrases "any person aggrieved" and "any individual" and no further language further limits who "any person aggrieved" or "any individual" may be".

B. Title II of the Americans with Disabilities Act

Paragraph 6 (In part); Sentence 5: " As we recognized in our rehabilitation Act analysis, it appears that in formulating the language in Title II's anti-retaliation provisions, Congress recognized that disabled individuals may require assistance from others to defend their rights".

Paragraph 7 (In part):

Sentence 2: "Clause (a) of Section 3514 protects "any individual" who "has opposed" any act or practice made unlawful by this part)".

Sentence 4: "Furthermore, clause (b) protects "any individual" from being "coerce[d], intimidate[d], or interfered with" by a "public entity" on account of her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act."

D. Argument

- I. The Washington State Court of Appeals did not comply with its legally enforceable duties and obligations required of them in violation of Title 42 USC Section 12101 et seq, contained in the Americans with Disabilities Act of 1990.
- II. Title II of the ADA prohibits discrimination in public services, including courts, and mandates that persons eligible for receipt for services not, because of disability, be excluded from participation or from the benefits, services or activities of a public entity. The Washington State Court of Appeals Intentional discrimination against Mr. Davis court by denying his civil rights as a disabled person to attend his hearing due to his disabilities.
- III. The Washington State Court of Appeals was required to undertake a fact-specific investigation to determine what constitutes a reasonable accommodation. Mr. Davis court provided extensive documentation supporting his request for reasonable accommodations. The Court did not undertake a fact-specific investigation to determine what constitutes a reasonable accommodation specific to Mr. Davis court's requested accommodations. The Court did not undertake a fact-specific investigation to determine what constitutes a reasonable accommodation specific to Mr. Davis court's disabilities.
- IV. The Washington State Court of Appeals intentionally prevented Mr. Davis court from attending his Oral Argument hearing due to his disabilities, with, or without an accommodation, therefore, intentionally violating Mr. Davis court's 14th Amendment Rights of Due Process.
- V. The Washington State Court of Appeals did not in any fashion conform with its legally enforceable duties and obligations regarding Mr. Davis court's GR 33 request.
- VI. The Washington State Court of Appeals ruling dated June 5, 2017 represented that: *"This ruling represents the written response to the request for accommodation in accordance with the provisions of GR 33 (e)".* The Washington State Court of Appeals statement was an intentional misrepresentation of fact and, therefore, an intentional act of discrimination specific to Mr. Davis court's disabilities.

- VII. The Washington State Court of Appeals has violated the Washington Law Against Discrimination.
- VIII. The Washington State Court of Appeals was legally obligated to review Mr. Davis's medical records that were submitted to the Court in his GR 33 request for accommodations to determine if he was a Qualified Individual with a Disability. After review of his medical records the Court was made fully aware of the disabilities that Mr. Davis sustained as a result of his response to the terrorist attacks of 9-11. Mr. Davis's medical records informed the Court with specificity of the damaging effects that he would suffer as a result of intentional abuse and discrimination. The Court knew in advance that denying Mr. Davis's request for accommodation including the Court's denial of any access to his hearing would create substantial harm to his ability to attend to his legal matters, including substantial harm to his person. The Court was made fully aware that the Davis's did not possess any of their court or case documents. The Court knew, or should have known that denial of Mr. Davis's attendance in oral arguments would cause harm to the Davis's case by denying Mr. Davis the ability to counter the respondent's arguments. The Court knew, or should have known that the Court's denial of Mr. Davis's request for a GR 33 related continuance would cause additional harm to the Davis's case should they choose to apply to the Washington State Supreme Court in a Motion For Discretionary Review, especially in light of the 30-day tolling period, post decision.
- IX. The Washington State Court of Appeals violated the following Code of Judicial Conduct. Rules: 1.1, 2.3(b), 2.6(a) and 2.6[1], 2.12(a) and 2.12[1].
- X. Due to flagrant injustice, the Davis's home of 30 years is now under foreclosure.

RAP 2.5(a)(3)

Under RAP 2.5(a)(3), an appellate court may refuse to review any claim of error which was not raised in the trial court, but there are exceptions to this general rule. One exception is that a party may raise manifest error affecting his/her constitutional right for the first time in appellate review. This exception recognizes that constitutional errors are treated specially because they often result in serious injustice.

A petitioner must make a showing that satisfies requirements under RAP 2.5(a)(3). For a claim of error to qualify as a claim of manifest error affecting a constitutional right, a petitioner must identify the constitutional error and show that it affected his or her rights. The petitioner must make a plausible showing that the error resulted in actual prejudice, which means that the claimed error had practical and identifiable consequences to the case.

The constitutional error that occurred is presumed prejudicial, and the State bears the burden of showing that it was harmless beyond a reasonable doubt. State v. Lynch.

Mr. Davis court has met the standards regarding his responsibilities to the Court to demonstrate manifest error in reference to RAP 2.5(a)(3).

E. Prayer for Relief

The petitioners respectfully request that the Court vacates the Washington State Court of Appeals decision in our case dated August 21, 2017 due to the Courts violations of our 14th Amendment Right of Due Process that include the Courts violations of Mr. Davis court's civil rights.

Dated this 19th day of April 2017

Respectfully submitted,



Mark Davis court