

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001501

James John Todd Kincannon,

Appellant,

v.

Ashely Suzanne Griffith,
Moore Taylor Law Firm, P.A.,
Vance Stricklin, and Amber
Fulmer,

Respondents.

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JAN 27 2020
SC Court of Appeals

**REQUEST FOR RULING ON APPLICABILITY OF FILING FEE TO
REASONABLE ACCOMODATION REQUESTS SUBMITTED TO THE
COURT BY DISABLED PERSONS PURSUANT TO THE AMERICANS
WITH DISABILITY ACT**

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Appellant Pro Se

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INTRODUCTION

A disagreement exists between Appellant and the Clerk of Court as to whether filing fees are required for reasonable accommodation requests submitted to the Court by disabled persons pursuant to the Americans with Disabilities Act (“ADA”). Appellant submitted a reasonable accommodation request pursuant to the ADA on January 6, 2020 requesting the Court modify the deadline for filing the appellant’s initial brief and designation of matter due to Appellant’s psychiatric disabilities. The Clerk responded by letter dated January 13, 2020 stating that Appellant was obligated to pay a filing fee in order to have the ADA reasonable accommodation request considered by the Court.

Appellant respectfully disagrees with the Clerk of Court’s position that filing fees are required for reasonable accommodation requests submitted to the Court pursuant to the ADA. As explained below, Appellant contends that the ADA does not permit state agencies, or any other entities covered by the ADA, to charge disabled persons any form of “filing fee” with respect to reasonable accommodations request because doing so would constitute discrimination against disabled persons in violation of the ADA, a federal law with supersedes state law which might otherwise require the payment of filing fees in such cases.

Appellant respectfully requests the Court decide the disagreement between Appellant and the Clerk of Court as to whether or not filing fees are required for

reasonable accommodation requests submitted to the Court by disabled persons pursuant to the ADA pursuant to the relevant provisions of the South Carolina Clerk of Court Manual promulgated by the South Carolina Supreme Court.¹ The relevant portion of Chapter 6, Section 6.3.1.C. of the Clerk of Court Manual states as follows:

Motion Fee Disputes: When there is a motion fee dispute between the attorney and the clerk, the judge is to make the final decision as to whether the fee should be assessed.

See Clerk of Court Manual, Chapter 6, Section 6.3.1.C.

APPELLANT'S POSITION

Appellant's position is that the ADA does not permit state agencies or any other covered entities to require disabled persons to tender filing fees in order to submit a reasonable accommodation request to the entity. Appellant also contends that South Carolina courts already have a policy, perhaps unwritten, of not charging filing fees for ADA reasonable accommodation requests, and that deviation from that policy with respect to Appellant would violate Appellant's equal protection and due process rights secured by both the United States Constitution and the South Carolina Constitution.

¹ Available at <https://www.sccourts.org/clerkOfCourtManual/displaychapter.cfm?chapter=6#6.3.1> (last accessed January 23, 2020).

Appellant acknowledges that the Clerk of Court Manual is principally addressed to county clerks of court, but Appellant understands that the clerks of the appellate courts customarily follow the same procedures as the county clerks of court in a *mutatis mutandis* fashion as required by both common sense, constitutional equal protection, and principles of uniformity required by the unified nature of South Carolina's judicial system as established by Article V of the South Carolina Constitution.

1. *The ADA does not permit covered entities to charge fees for reasonable accommodation requests because doing so would constitute unlawful discrimination against disabled persons.*

The ADA is a federal law which generally bars discrimination against persons with disabilities and requires that covered entities—which includes state court systems and other state agencies per Title II of the ADA—make reasonable accommodations for persons with disabilities upon request. This is a very broad requirement which encompasses all sorts of accommodation requests where state court systems are concerned, including physical accommodations such as wheelchair access to courthouse facilities and accommodations for psychiatric disabilities, such as reasonable modification of deadline rules by persons like Appellant with psychiatric disabilities which prevent them from completing work within the usual deadlines. With respect to state court systems, such requests may be made by parties, such as Appellant, by non-party participants such as lawyers or witnesses, by courthouse staff such as judges or clerks or janitors or the like, by members of the general public such as reporters and spectators, and by any other conceivable participant in a state court proceeding or person wishing to personally appear at a state courthouse for any lawful purpose.

The ADA does not permit covered entities, including state court systems covered by Title II, to charge filing fees or processing fees or any other types of fees with respect to reasonable accommodation requests because doing so constitutes unlawful discrimination against disabled persons. And because Appellant is an indigent in addition to being disabled, the harm would be even greater than the usual case—Appellant would be completely barred from the

South Carolina court system because Appellant cannot possibly afford a \$50 or \$25 filing fee for every conceivable accommodation request Appellant might need to make at some point in litigation. Appellant suffers from attention deficit disorder, bipolar disorder, and other psychiatric disorders with symptoms which greatly inhibit Appellant's ability to prepare court filings and, sometimes, appear at court dates within the usual time frame.

As this Honorable Court is surely aware, litigation is filled with deadlines. A single court case that makes its way to the appellate courts can involve dozens if not hundreds of individual deadlines for all sorts of things. Answer deadlines, discovery deadlines, motion filing deadlines, counteraffidavit filing deadlines, response and reply filing deadlines, mediation deadlines, reconsideration deadlines, brief filing deadlines, designation of matter deadlines, and on and on and on. Requiring a disabled litigant who has the sort of psychiatric disabilities that Appellant suffers from to pay a filing fee each time a deadline extension request is necessary would require Appellant to pay many hundreds and probably thousands of dollars more than a non-disabled litigant who does not need accommodation with respect to filing deadlines in light of South Carolina's motion filing fee requirements of \$50 in appellate courts and \$25 in lower courts. This is patently discriminatory to persons with psychiatric disabilities like those of Appellant, and Appellant respectfully requests the Court determine that the ADA, a federal law which supersedes any contrary state laws, does not permit the assessment of a filing fee or processing fee in this case.

2. *The South Carolina Judicial Department already has a policy, written or*

otherwise, that no filing fee is required for ADA reasonable accommodation requests submitted to the state court system by persons seeking access to court, litigants or otherwise. Requiring Appellant to pay a filing fee even though similarly situated court participants are not required to pay a fee would violate the Equal Protection Clause of the Fourteenth Amendment and the equal protection provisions of the South Carolina Constitution.

Appellant is a member of the South Carolina Bar on incapacity inactive status due to his psychiatric disabilities. Prior to being placed on incapacity inactive status, Appellant practiced law for approximately a decade and was a participant in numerous legal matters prior to that as a public official and in various other capacities. Appellant is quite familiar with the general practices and procedures, both written and unwritten, associated with court proceedings in South Carolina state courts.

Appellant respectfully submits that to the best of his knowledge, the South Carolina Judicial Department presently has, and has had for many years, a policy, written or unwritten, that ADA accommodation requests to state court entities need not be accompanied by filing fees. Appellant has personally witnessed a number of situations over the course of his professional legal practice and other legal proceedings he has been involved in as a public official or otherwise situations where South Carolina state courts did not require any sort of filing fee with respect to a reasonable accommodation request pursuant to the ADA. Appellant has encountered ADA accommodation requests in several proceeding, including, recently, his own, and has never witnessed a South Carolina judicial system entity require payment of a filing fee connected with an ADA accommodation request, presumably because it is generally understood within the

South Carolina Judicial Department that requiring filing fees of ADA accommodations requests would be a violation of the ADA itself.

Whatever the reason for the written or unwritten policy, Appellant respectfully submits that it plainly does exist, as numerous disabled persons request accommodations from South Carolina state court entities on a regular basis and there does not appear to be any record, as far as Appellant has been able to locate, of such persons being required to pay filing fees to clerks of court in connection with such requests. Perhaps this is because the average disabled litigant is not a member of the Bar like Appellant and therefore makes accommodation requests in a less formal way than Appellant did, such as by letter or email rather than by a formal captioned filing with the Court, but whatever the reason, Appellant's request cannot be treated differently than other types of ADA accommodation requests without violating the equal protection clauses of the federal and state constitutions.

Accordingly, even if the ADA does technically permit state court systems to charge filing fees from disabled persons seeking reasonable accommodation, Appellant respectfully contends, based on his knowledge of how such matters have been processed in other litigation he has been involved in, that the South Carolina Judicial Department has a policy, written or unwritten, that disabled persons are not to be charged for ADA accommodation requests. Appellant respectfully requests the Court accordingly find that even if the ADA does permit the charging of filing fees, which Appellant strenuously disputes, South Carolina state court entities have a policy that such fees are not to be assessed from

litigants and other court participants similarly situated to Appellant and, therefore, that Appellant's constitutional equal protection rights would be denied if he were required to pay a filing fee for the ADA accommodation request at issue.

THE CLERK'S POSITION

Appellant does not know why the Clerk takes the position that filing fees are required for ADA accommodation requests. Appellant respectfully requests the Court direct the Clerk to file a return to this filing if the Clerk continues to dispute Appellant's position that the ADA does not permit state agencies to require filing fees for reasonable accommodation requests by disabled persons. Appellant will then file a reply to whatever arguments are proffered by the Clerk.

Appellant respectfully submits that if the Clerk does not contest this filing, then the South Carolina Constitution requires the Court to grant Appellant's requested relief and determine that no filing fee is required in the matter because Appellant will have submitted a request for relief unopposed by the opposing party, which in this situation is the Clerk of Court.

NOTE RE FEDERAL COURT AND OTHER ADA AUTHORITIES

Appellant has not had an opportunity between the receipt of the Clerk's letter dated January 13, 2020, which Appellant received on January 18, 2020, and the production of this submission to perform a comprehensive analysis of federal court ADA precedents and other court precedents and federal regulations promulgated under the ADA with respect to the filing fee issue. Appellant has made reasonable efforts to do so but searches of caselaw return numerous false


positives because the words “filing fee” routinely appear in ADA cases for reasons entirely unrelated to a covered entity’s assessment of filing fees for reasonable accommodation request. Appellant will continue to look for court precedent or federal regulatory guidance regarding this specific matter and advise the Court if any is located. Nonetheless, Appellant is confident of his position that the ADA does not permit the assessment of filing fees for reasonable accommodation requests, as it is entirely analogous to various other prohibited discrimination situations in ADA law.

CONCLUSION

Appellant respectfully requests the Court make the final determination with respect to the dispute between Appellant and the Clerk of Court as to whether a filing fee is required with respect to Appellant’s ADA accommodation request. In the event the Court determines that a filing fee is due, Appellant respectfully requests the Court permit Appellant ten days from the date Appellant receives written notice of the entry of the order to provide the filing fee.

Respectfully submitted,

January 23, 2020


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Appellant Pro Se

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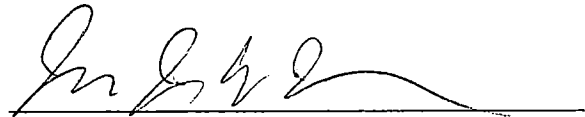
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CERTIFICATE OF SERVICE

The undersigned Appellant hereby certifies that he has, on the date below, properly served the foregoing on opposing counsel at the address submitted by opposing counsel to the Court for service in this case.

January 23, 2020



James John Todd Kincannon
Appellant Pro Se

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Clerk's Office

P.O. Box 11629

Columbia SC 29211

