

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 18-276

Judges:

Complainant:

ORDER

The complainant alleged two superior court judges were not in compliance with the ADA and improperly dismissed his medical malpractice lawsuit.

The responsibility of the Commission on Judicial Conduct is to impartially determine if a judicial officer engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

The commission does not have jurisdiction to review the legal sufficiency of a judicial officer's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judicial officers did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

Commission member Art Hinshaw did not participate in the consideration of this matter.

Dated: December 12, 2018

Copies of this order were distributed to all appropriate persons on December 12, 2018.

This order may not be used as a basis for disqualification of a judge.

CONFIDENTIAL

State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY**2018-276****COMPLAINT AGAINST A JUDGE**

Name: _____

Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

See Commission on Judicial Conduct, Complaint No. _____ pursuant to _____ Arizona, County _____
filed I dismissed a Complaint Medical Malpractice Claim under A.R.S. § 12-2603 (F). For example,
a.) 42 U.S.C. §§ 1981 and 1982 Racial Discrimination Claims; b.) 42 U.S.C. §§ 1985, 1986 Civil Rights Conspiracy Claims; and
d.) 42 U.S.C. § 1997(c) Rehabilitation Act and Americans with Disabilities Act.
In conjunction with judge _____ under complaint number _____ judge _____ is also responsible
in violating the Federal Disability Statute ("ADA") and Section 504 of the Rehabilitation Act to apply to
(in the _____ of Complaintant's Medical Malpractice claim) I see _____ including, Dr. _____
review of my _____ attached, giving the appearance of impropriety by the Defendants in
and Judges as asserted in _____

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There are several civil rights statutes besides § 1983 that are sometimes invoked by For example:
a. 42 U.S.C. §§ 1981 and 1982 Racial Discrimination Claims; b. 42 U.S.C. §§ 1985, 1986 Civil Rights Conspiracy
Claims; and d. 42 U.S.C. § 1997(a) Rehabilitation Act and Americans with Disabilities Act.
The Federal Disability Statute ("ADA") and Section 504 of the Rehabilitation Act apply to Courts
have heard claims under these statutes, and in some cases granted significant relief, in cases involving
with hearing impairments, visual impairments, mobility impairments, mental illness, alcoholism, drug addiction
that does not involve current use of drugs, arm and shoulder impairments, diabetes, and other disabilities.
Complainant is an currently at the _____
[See Complaint] I, Complainant
initiated this instant pro se action on by filing a and Arizona state law Complaint
against including and [See I Specifically, Complainant asserted: (1) a
42 U.S.C. § 1983 claim of deliberate indifference to his asserted serious ; and (2) an
Arizona state law medical negligence claim concerning his provision of care and treatment for
Complainant asserted that while he qualified for he has
yet been treatment.] Complainant asserted that because he has been denied and delayed
(Specifically,), he has suffered as a result severe and
[See I]

On through counsel, I and the Defendants
sought an Order from Judge declaring expert witness testimony necessary and compelling Complainant to serve
a preliminary expert opinion within of the Court's Order pursuant to A.R.S. § 12-2603(D) or that Com-
plainant's asserted against all named Defendants shall be dismissed with
prejudice pursuant to A.R.S. § 12-2603(F) while denying access to discovery under Rule 26-37, Fed. R. Civ. P., and denying
access to expert witness [See Complainant, [See Defendants] In Support of Motion to Dismiss Plaintiff's
Pursuant to A.R.S. § 12-2603(F) filed: submitted: [See Minute Entry Filed]

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Title II of the ADA, the "public entity" section, provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefit of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity. Section 504 of the Rehabilitation Act provides that "No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency... This means that any agency - including the department - that receives any funding is covered by the Rehabilitation Act for all of its services, programs, and activities. Federal agencies and prisons are subject to the ADA, but they are subject to the Rehabilitation Act. Department of regulations promulgated under the statutes are applicable to the prisons and jails.

Here, to take advantage of the ADA, complainant must be a "qualified individual with a disability." "Disability" under the ADA means: (a) a physical or mental impairment that substantially limits one or more of the major life activities of an individual; (b) a record of such impairment; or (c) being regarded as having such an impairment (as described in the ADA Amendments Act).

This definition is comparable to the definition of "handicap" under the Rehabilitation Act, so Rehabilitation Act case law on this point will be very relevant in ADA cases. is not necessary to establish the existence of a disability.

To qualify disability or impairment must be one that "substantially limits one or more major life activities. Congress broadened the meaning of these terms in the ADA Amendments Act of 2008, effective to overrule restrictive interpretations of these terms by the

The amendments overrule some earlier decisions finding an impairment did not affect a major life activity.

For example, _____ court held that _____ is not a major life activity. However, the amendment specifically include _____ as major life activities, and _____ is enough that Complainant cannot survive without it. The amendment statute also mentions digestive and circulatory functions, to which the liver contributes. So it looks to Complainant like _____ is now a major life activity under the amendment.

_____ does, of course, present a serious medical need, though some courts prefer to look at the specific need presented by a particular _____ in determining seriousness. _____ is diagnosed by a _____ for _____, (as, in Complainant's _____). Complaints about _____ are decided under the same deliberate indifference standard applied to other medical care claims. Several decisions have held that restrictive rules and practices (as, in Complainant's situation) that prevent _____ from receiving treatment for this disease raise substantial Eighth Amendment issues. Because the new _____ are being denied due to non-medical reasons (i.e., cost) despite being the current _____ of _____.

_____ standard of care for _____. The Complainant argues that the Defendants' failure to provide the new drugs constitutes deliberate indifference in violation of the Eighth and Fourteenth Amendments. And also raises claims under the Americans with Disabilities Act and Rehabilitation Act, of the Judge's independence, integrity, and impartiality of the judiciary to avoid impropriety and the appearance of impropriety.

_____ (Further _____ and daily _____ and _____ from _____ lack of treatment for _____ satisfied the physical injury requirement). Further supported by the entire trial and appellate court record, appendix, affidavit, and exhibits under _____ ref. _____ evidence.