

February 17, 2005

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Encinitas, CA 92024-2451

Honorable Alberto R. Gonzales  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Re: Request to File Amicus Brief in the U.S. Court of Appeals for the Ninth Circuit, ADA Title II – Access to the Courts (Case No. 04-55769)

Dear Attorney General Gonzales:

#### Purpose

I am writing to request that the U.S. Department of Justice file an amicus brief in the U.S. Court of Appeals for the Ninth Circuit in support of my pro se Petition for Rehearing En Banc. I have been denied access to the California courts due to disability discrimination sanctioned by a facially unconstitutional Rule of Court.

#### Background

I am a former federal fraud, waste, abuse and mismanagement investigator who enforced equal opportunity laws as part of my duties. I am now totally disabled by polio, intractable pain and osteoporosis.

I was both the first disabled person and the first woman who was awarded a coveted Texas State Fellowship in Public Administration by the Governor of Texas in 1968, enabling me to earn a master's degree in public administration from the University of Texas at Austin. The program was supervised by the governor's office, where I successfully learned to apply business efficiency and effectiveness practices to remedy the ill-effects of oppressive government bureaucracy on the citizens of Texas.

#### Introduction

On January 23, 2004, I filed a pro se private attorney general action to enjoin the enforcement of a facially discriminatory California Rule of Court that violates ADA Title II, as applied to court programs, services and activities. I modeled my pleadings to match the DOJ enforcement actions displayed on the Department's website.

Direct evidence of discrimination is substantiated by documents: (See enclosures.)

- The Rule of Court expressly violates ADA Title II regulations promulgated by DOJ. (Complaint, Excerpt of Record 1-41, Rule of Court, ER 108)
- A court executive informed me by letter in 2003 that the court does not provide “access as contemplated by the Americans with Disabilities Act.” (ER 161)
- The Presiding Judge of the San Diego Superior Court stated that his “duties” do not include investigation of disability bias complaints in violation of ADA Title II and his own court’s Local Policy Against Bias. (ER 153)
- I was summoned for jury duty during the federal appeals court briefing process and was denied access due to the court’s refusal to provide “access as contemplated by the Americans with Disabilities Act.” (Supplemental Request for Judicial Notice)

The pleadings also document undisputed circumstantial evidence that the California state court system’s policies, procedures, practices and conduct have denied me access to the courts, as a litigant and prospective juror.

#### Statement of the Case

The California Rule of Court, among its other noncompliance with DOJ regulations, provides no grievance and complaint procedure to request protection from disability discrimination in court programs, services and activities by opposing attorneys, judges and other court staff.

The Court’s failure to comply with 28 C.F.R. 35.107 forced me to file a Motion for Protective Order in state court. Not only did the judge fail to protect me from discrimination by opposing attorneys, he also imposed a \$1119.00 sanction, ruling that requesting relief from disability discrimination is not “substantially justified.”

- The Presiding Justice of the California Appeals Court refused to respond to two requests for accommodation for a filing deadline extension to access her court to compel the judge, opposing attorneys and others to comply with ADA Title II. As I was unable to access the state court system, I filed a civil action in federal court.
- The U.S. District Court for the Southern District of California dismissed the case in its entirety, pursuant to the Rooker-Feldman Doctrine. The district court refused to acknowledge the fact that the State Rule of Court forced disabled persons into a judicial,

adversarial process in order to create a jurisdictional pretext to dismiss ADA Title II lawsuits against the California court system.

- The Ninth Circuit ratified the district court's decision in an unpublished disposition memorandum, which I have requested that the court publish. (See Enclosure.)
- The Ninth Circuit Memorandum ignored ADA Title II requirements enacted by Congress, signed by President George H.W. Bush and successfully enforced by President George W. Bush and Solicitor General Theodore Olson in the U.S. Supreme Court (*Tennessee v. Lane*).

#### Request

On January 25, 2005, I filed a Petition for Rehearing En Banc. (See Enclosure.) I am requesting that the Department of Justice file an amicus brief in support of my petition.

On July 22, 2002, Solicitor General Olsen stated in a Brief to the Supreme Court regarding the Popovich ADA Title II case (Petition Addendum, p. 20):

"...Because of the difficulty and relative novelty of that question, the United States takes no position on the ultimate question of whether Rooker-Feldman bars Popovich's claims..."

The U.S. Supreme Court in *Tennessee v. Lane* affirmed the Sixth Circuit's opinion in Popovich that, as-applied to the courts, Rooker-Feldman does not bar suit to remedy violations of fundamental constitutional rights guaranteed by ADA Title II.

#### Request Justification

I am not a lawyer. I have proceeded pro se to enforce my ADA Title II rights on the assumption that *reductio ad absurdum* can be avoided if federal courts interpret acts of Congress and Supreme Court decisions to mean what they say.

However, the Ninth Circuit neither enforces acts of Congress nor Supreme Court precedent. Judge Alfred Goodwin's presence on my panel produced another "Newdow" decision based upon an unsupportable technicality that dilutes ADA Title II to the point of uselessness and absurdity.

ADA Title II is fast becoming the full-employment act for lawyers. The government's amicus brief will discourage this financial windfall for plaintiffs'

attorneys by advising laymen who are unassisted by trained lawyers that they may enforce ADA regulations to remedy disability discrimination without incurring needless legal costs and expenses.

Moreover, the Ninth Circuit's activism must be deterred. In addition to finding an atheist's constitutional right to delete God from the Pledge of Allegiance, the Ninth Circuit has also confirmed the constitutional right of a San Diego police officer to sell a videotape on Ebay of his masturbation, while wearing his police uniform. (See Enclosure No. 2)

The government's amicus brief will emphasize that acts of Congress and Supreme Court precedent are binding on federal court decisions and that the creation of outrageous constitutional rights is an unlawful waste of judicial resources that is harmful to the security of Americans' fundamental constitutional rights.

#### Conclusion

On February 23, 2004, Mr. Lex Frieden, Chairperson, The National Council on Disability, congratulated you and the President for your support in the Solicitor General's vigorous defense of the ADA in *Tennessee v. Lane* . On May 17, 2004, the Supreme Court responded favorably to that vigorous defense.

Now that President Bush and DOJ have secured my fundamental constitutional right to be free from disability discrimination by the California court system, I, like Mr. Frieden, actively seek the assistance of the President and DOJ in protecting my rights and the rights of all fifty-four million disabled Americans to access the courts.

Thank you very much for your consideration of my request. As I have been rendered powerless by the full force and power of the Ninth Circuit, I appreciate your position that my pleas for help will "...echo powerfully within the Department of Justice."

Respectfully,

Jacquelyn Finney "/S/"  
Telephone/fax (760) 436-0183

Enclosures:

1. Unpublished Memorandum Disposition (Case No. 04-55769)
2. Letter Requesting Memorandum Publication (1/25/2005)

3. Motion to Expedite Petition for Rehearing En Banc
4. Appellant's Petition for Panel Rehearing & Suggestion for Rehearing En Banc
5. Appellant's Opening Brief
6. Appellees' Brief
7. Appellant's Reply Brief
8. Appellant's Request for Judicial Notice
9. Appellant's Supplemental Request for Judicial Notice
10. Appellant's Excerpts of Record