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Court orders DCA to accept prisoner's Braille filing

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It doesn't matter if he's a blind guy locked in prison for life with a penchant for papering the court with pro se filings.

He still has the right to equal access to the courts, like anyone else.

In this case, that means the clerk of the Fourth District Court of Appeal should have accepted his letter in Braille, rather than simply writing on a form: "We are unable to accept your Braille correspondence."

That's what a unanimous Florida Supreme Court said in a recent decision in *Demetrio R. Gabriele v. State of Florida* (Case No.: SC09-993) when it held Gabriele was entitled to mandamus relief.

The quietly released unpublished opinion, ending more than three years of litigation, was discovered by Miami disability rights attorney Matthew Dietz while doing research on cases under Florida Rule of Judicial Administration 2.540.

"This was so brand new. I thought, 'Oh, my God! This is great how the court gave it a huge boost by saying this is not only the rule, but also essential to due process. It's something that we should be proud of. All of the [participating] justices put their names on this decision, which gave it more of a directive that the court was not going to tolerate the denial of due process," Dietz said.

At the National Federation of the Blind in Baltimore, Director of Public Relations Christopher Danielsen, said, "I would say it's very unusual for a court to do this, and not something we would demand as a blanket rule."

But with a pro se litigant stuck in prison, Danielsen said, "His reading and writing medium is Braille, and he doesn't have a way to get his pleadings to court in print, then it is a pretty important accommodation."

Gabriele's case was handled pro bono by Stephen Senn and Timothy Kiley of Peterson & Myers in Lakeland.

"Access to the courts is what it's all about," said Senn, a member of The Florida Bar's Appellate Practice Section. "The Florida Supreme Court did what the Fourth DCA should have: They found somebody who could translate the Braille and interpreted it as a writ of mandamus to require the DCA to accept his Braille filings."

At first, the pro bono appellate lawyers met with resistance from the Attorney General's Office, who called

their client a pesky liar who should be disciplined in prison.

"Gabriele has misrepresented his need for accommodations to this court. Gabriele's own hand-written filings have been accepted by the Fourth District Court of Appeal for over 25 years. The Fourth District appropriately rejected Gabriele's attempt to amuse himself and inconvenience the court through the use of Braille filings," Special Counsel Lisa Raleigh wrote in the Attorney General's response.

"Gabriele requires no accommodation to access the courts, and even if he did, the law does not require the exact accommodation requested by Gabriele. It is sufficient that the courts accept his hand-written pleadings."

Raleigh argued "the most appropriate remedy is to both request discipline by the Department of Corrections and to bar further unrepresented litigation."

But, as Senn and Kiley were able to show through DOC records, Gabriele's eyesight had worsened over time to the point he was deemed "legally blind" in 2007 and prescription glasses provide no help. His most effective way to communicate is by using a Braille typewriter, they said.

"Simply because Mr. Gabriele can, with difficulty and using large-lined paper, scrawl out a letter, he is not thereby barred from protection of the ADA," Senn and Kiley wrote in court documents.

The AG's office eventually stipulated that Gabriele is indeed blind.

"Because he is incarcerated in state prison, Mr. Gabriele cannot seek other forms of accommodation, such as voice-recognition computer software or other technological accessories," Senn and Kiley wrote in their amended petition for writ of mandamus.

"His ability to be heard rests substantially upon the Fourth DCA's acceptance without prejudice of his Braille documents."

The Florida Supreme Court agreed.

"The substantive merit or lack of merit in the petitioner's underlying claim does not determine the ADA [Americans with Disabilities Act] analysis," the justices said. "The Fourth District has refused to provide the petitioner with an accommodation as mandated by the ADA and the Florida Rules of Judicial Administration.. . . [T]he petitioner has no remedy available other than to petition this court for relief."

Because the Supreme Court had accepted jurisdiction, it exercised its discretion to also address the substantive merits of Gabriele's post-conviction claims, and denied relief.

"Therefore, we withhold issuance of the writ because we have resolved this case on the merits and trust the Fourth District Court of Appeal will fully comply with the dictates of this order when presented with similar situations in the future," wrote Chief Justice Ricky Polston, with Justices Barbara Pariente, Fred Lewis, Jorge Labarga, and James E.C. Perry concurring.

Kiley, a member of the Bar's Young Lawyers Division, called the ruling fair, but not surprising.

"I don't think it came as a tremendous surprise, given the court's focus on accommodation issues lately. Justice Lewis spent a lot of time talking about this issue. And Florida's courts have shown an interest that persons with disabilities have access, particularly since the move to electronic filing," Kiley said.

"I think the Supreme Court sent a little bit of a message to the courts in Florida — really, any court in Florida — to take these things seriously."

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