

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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ALFRED D. ESTRADA,	:	
Plaintiff	:	
	:	CIVIL ACTION
vs.	:	
	:	
THE DISCIPLINARY BOARD OF THE	:	
SUPREME COURT OF	:	
PENNSYLVANIA,	:	NO. 00-734
Defendant.	:	
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ORDER AND MEMORANDUM

ORDER

AND NOW, this 2d day of October, 2001, upon consideration of Defendant’s Motion to Dismiss, or, in the Alternative, for More Specific Pleading (Document No. 8, filed May 31, 2001), following a September 28, 2001, conference in open court with plaintiff and defense counsel participating,¹ **IT IS ORDERED** that Defendant’s Motion to Dismiss Plaintiff’s Complaint is **GRANTED**. The entry of this order shall have no effect on any other litigation commenced by plaintiff against other parties.

MEMORANDUM

I. BACKGROUND

On February 10, 2000, Plaintiff Alfred Estrada filed pro se a complaint against Defendant Disciplinary Board of the Supreme Court of Pennsylvania (“Disciplinary Board”). Plaintiff, who is both deaf and mute, did not specify any facts concerning defendant’s conduct in his complaint, nor did he identify any legal claim against defendant. The complaint was actually a compilation

¹ The Court provided two sign language interpreters for U.N.-style interpreting for plaintiff who is deaf and mute.

of documents, most of which were correspondence addressed to plaintiff. The correspondence included letters to plaintiff from the Disciplinary Board, U.S. Rep. Robert Brady, and a representative of the U.S. Department of Justice. Plaintiff did not explain in his complaint the relevance of these documents to his claims against defendant.

Based on a review of plaintiff's submitted documents and correspondence with the parties, the Court has been able to develop the factual history leading to the filing of the instant action. In the Spring of 1998, plaintiff agreed to settle a federal lawsuit against the Pennsylvania Bureau of Workers' Compensation. In that lawsuit, plaintiff was represented by counsel, John J. Jacko, III. The suit was assigned to Judge Reed of this court; settlement negotiations were overseen by Magistrate Judge Angell. The claims centered on the failure of the Bureau of Workers' Compensation to provide interpretive services for hearing-impaired individuals like plaintiff. Upon settlement of the suit, plaintiff received approximately \$6,000. He now claims that the settlement was inadequate.

Because of the claimed inadequate settlement, plaintiff became dissatisfied with Mr. Jacko's representation and filed a disciplinary complaint against Mr. Jacko with the Office of Disciplinary Counsel of the Disciplinary Board.² Plaintiff may have also pursued a state-law legal malpractice action against Mr. Jacko.³ In correspondence dated May 26, 1998, a representative of defendant's Office of Disciplinary Counsel dismissed plaintiff's disciplinary

² The Office of Disciplinary Counsel is the prosecutorial arm of the Disciplinary Board; it accepts disciplinary complaints against members of the Pennsylvania Bar, evaluates those complaints, and, if appropriate, pursues those complaints. For purposes of this Order and Memorandum, the Office of Disciplinary Counsel and the Disciplinary Board will be referred to collectively as "defendant."

³ The Court is unable to determine whether any such malpractice action is still pending.

complaint. The correspondence explained that on the face of plaintiff's disciplinary complaint, it was clear that Mr. Jacko had not violated any of Pennsylvania's Rules of Professional Conduct.

Dissatisfied with defendant's dismissal of his complaint, plaintiff apparently sought assistance from his representative in Congress. Among the documents included in plaintiff's complaint are letters from U.S. Rep. Robert A. Brady on behalf of plaintiff to the U.S. Department of Justice requesting an investigation of alleged violations of the Americans with Disabilities Act ("ADA"). Ultimately, in correspondence dated April 21, 1999, a representative of the Disability Rights Section of the Department of Justice informed plaintiff that the Department could not assist him.

After the filing of plaintiff's complaint in the instant case, counsel for defendant advised the Court that he would meet with plaintiff to discuss plaintiff's claims. Plaintiff met with defense counsel and two sign-language interpreters on March 21, 2001. Counsel for defendant reported that, as a result of that meeting, defendant would reopen its investigation of plaintiff's disciplinary complaint against Mr. Jacko. On April 26, 2001, after reopening the investigation, defendant informed plaintiff that it affirmed its prior decision to dismiss plaintiff's disciplinary complaint against Mr. Jacko.

Defendant thereafter filed a Motion to Dismiss, or, in the Alternative, for More Specific Pleading (Document No. 8, filed May 31, 2001) raising three grounds: (1) process and service of process were insufficient; (2) plaintiff failed to file a complaint conforming with Fed. R. Civ. P. 8(a); and (3) plaintiff failed to state a claim upon which relief could be granted. In its accompanying memorandum of law, defendant asserted that, although it did not understand the nature of plaintiff's claim against it, plaintiff could only have two possible claims: under 42

U.S.C. § 1983 and Title II of the ADA, 42 U.S.C. § 12131 et seq. Both of these claims, defendant argued, would be barred by defendant's sovereign immunity under the Eleventh Amendment to the United States Constitution.

The Court subsequently scheduled a conference on the record with the parties and ordered the presence of two sign language interpreters. That conference with plaintiff, defense counsel, and two sign language interpreters was held in open court on September 28, 2001.

II. DISCUSSION

The purpose of the September 28, 2001, conference with the parties was two-fold: to ensure that plaintiff had a fair opportunity to explain his claims against defendant and to allow the Court to explain to plaintiff the basis for its decision on defendant's Motion to Dismiss. At the conference, it became clear that plaintiff mistakenly believed his claim against defendant to be related to the settlement of his earlier case against the Pennsylvania Bureau of Workers' Compensation – a settlement with which plaintiff is now dissatisfied.⁴ Plaintiff's only dissatisfaction with defendant in the present case was with respect to defendant's dismissal of his disciplinary complaint.

The Court explained to plaintiff that the dismissal of the disciplinary action, without more, was not sufficient to establish liability of defendant in a federal lawsuit. To be sure that plaintiff had no other reason to support a claim against defendant, the Court asked whether plaintiff believed defendant to have violated either Title II of the ADA or 42 U.S.C. § 1983. Specifically, the Court asked plaintiff (1) whether defendant denied plaintiff meaningful access

⁴ Much of the reason for plaintiff's confusion lies in the fact that his earlier case against the Bureau of Workers' Compensation was filed in this Court and assigned to Judge Reed.

to a benefit or service because of a disability as prohibited by Title II of the ADA,⁵ or (2) whether defendant denied plaintiff any rights under the laws of the United States as prohibited by 42 U.S.C. § 1983. Plaintiff answered in the negative to both of the Court's queries. Based on those answers, the Court concluded that plaintiff's complaint failed to state a claim upon which relief could be granted.

After determining that plaintiff understood the differences between the present action and his earlier suit against the Bureau of Workers' Compensation, the Court ended the conference by explaining to plaintiff that defendant's motion to dismiss would be granted.⁶ The Court assured plaintiff that this dismissal would have no effect on any other litigation commenced by plaintiff against any other parties.

III. CONCLUSION

For the foregoing reasons, defendant's motion to dismiss plaintiff's complaint is granted.

BY THE COURT:

JAN E. DUBOIS, J.

⁵ See Peoples v. Nix, 1994 WL 423856, at *3 (E.D. Pa. Aug. 11 1994) (Waldman, J.) (citing Alexander v. Choate, 469 U.S. 287, 301 (1985)) (discussing standard for liability under Title II of the ADA).

⁶ The Court expressed no opinion on defendant's Eleventh Amendment sovereign immunity arguments, nor does it do so in this Order and Memorandum.