

International Association of Chiefs of Police



Police Psychological Services Section

2014 Supplemental Cases from AELE



**October 25, 2014
Orlando, Florida**

Confidentiality – Psychotherapist Privilege

A Florida appeals court ruled that a sheriff's deputy cannot testify about a conversation he heard between a patient he was guarding and a psychotherapist in a hospital emergency room. The 4th District Court of Appeal ruling said the facts of the case presented a first-of-its kind issue in Florida. The Broward County case stemmed from the arrest of Avery Topps on a felony cruelty-to-animals charge after a dog was stabbed to death. After allegedly stabbing the dog, Topps tried to admit himself to a hospital, and a deputy went to the hospital to arrest him.

An emergency-room doctor acting as a psychotherapist conducted an examination to determine whether Topps should receive a psychiatric commitment or be cleared to go to jail. The deputy was present for security reasons and overheard Topps tell the doctor that he stabbed the dog. A circuit judge ruled that the deputy could not testify about the statement made by Topps, leading prosecutors to appeal. A three-judge panel of the 4th District Court of Appeal upheld the circuit judge's decision.

“Admitting this statement into evidence over objection would effectively mean that an individual in custody must forego his right against self-incrimination to obtain necessary medical diagnosis and treatment,” said the opinion, written by Judge Mark Klingensmith.

“Requiring the relinquishment of this constitutional right as a condition of medical diagnosis and treatment for persons placed under arrest or otherwise in custody would be unconscionable. If the privilege were to be nullified by the mere presence of a law enforcement officer, confidential conversations between psychotherapists and their patients would surely be chilled, particularly when it is obvious that the circumstances giving rise to the need for treatment will probably result in prosecution or litigation. Given these facts, a person in [the] defendant’s position might not receive appropriate treatment, knowing they risked losing their confidentiality by answering questions posed to them by their psychotherapist.”

[State v. Avery Topps](#), #4D13-3256, 142 So.3d 978 (Fla. App. 4th Dist., July 30, 2014).

Psychological Disabilities – Pleading Requirements

Federal court properly dismissed a disability discrimination claim under the Americans with Disability Act arising out of allegations that the city fired her as a police officer because of a psychological disability.

While Title I of ADA covers a public employment discrimination claim, Title II of ADA does not cover disability discrimination in public employment claims.

Title II provides that state and local governments may not exclude eligible disabled persons from “participation in” or “the benefits of” governmental “services, programs, or activities” or otherwise subject an eligible disabled person “to discrimination.” See 42 U.S.C. §12132. Title I, in contrast, specifically prohibits employment discrimination on the basis of disability. See §12112(a).

An employer need not accommodate disability that is irrelevant to employee’s ability to perform essential function of his or her job.

[Brumfield v. City of Chicago](#), #11-2265, 735 F.3d 619 (7th Cir., Nov. 6, 2013).