

**CIVIL RIGHTS DIVISION
UNITED STATES DEPARTMENT OF JUSTICE**

SELENE ALVERIO,

Complainant,

v.

**BERNALILLO COUNTY
METROPOLITAN COURT and
JUDGE DANIEL RAMCZYK,**

Respondents.

**COMPLAINT- VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT AND SECTION 504**

INTRODUCTION

This is a complaint of disability discrimination and failure to accommodate in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. The complainant is Selene Alverio, a deaf individual who experienced discrimination by the Bernalillo County Metropolitan Court (“Metropolitan Court”) and Judge Daniel Ramczyk. In November of 2018, Ms. Alverio required an American Sign Language interpreter to participate in a Metropolitan Court hearing before Judge Ramczyk. She made several requests for such an interpreter and the staff of the Metropolitan Court and Judge Ramczyk denied all of her requests, forcing her to participate in the hearing without the requested accommodation.

STATEMENT OF FACTS

Selene Alverio began to lose her hearing in both ears at age three as a result of auditory nerve damage. The hearing loss became progressively worse over the years. At age sixteen, Ms. Alverio learned American Sign Language (“ASL”). By age twenty-five, she was completely deaf. Ms. Alverio received a cochlear implant in her right ear in 2007 and one in her left ear in

2009. With the assistance of the cochlear implants combined with lip-reading, she is able to understand *some* spoken language under certain circumstances. Her preferred form of communication depends on several factors, including where the individual with whom she is speaking is situated (in front of her versus next to her); the distance between herself and the person with whom she is speaking; whether the individual with whom she is speaking has an accent; and the level of background noise in the area where the conversation is taking place. In a setting such as a courtroom, Ms. Alverio prefers to utilize a combination of spoken English and ASL via an interpreter because of the significant amount of background noise, including noise from the vents in the courtroom, the clicking on keyboards by court staff, and the voices of people engaging in side conversations in the courtroom gallery.

On October 22, 2018, Ms. Alverio's property rental company sued her for restitution, claiming that she owed \$765 in unpaid rent. A hearing was set on the matter for November 6, 2018, at the Bernalillo County Metropolitan Court in Albuquerque, New Mexico before Judge Daniel Ramczyk.

Pursuant to the ADA Accommodations policy¹ posted on the Metropolitan Court website, a person who requires an accommodation for a disability should contact the Court's ADA Coordinator no later than forty-eight hours before the individual's scheduled court appearance. In compliance with this policy, approximately two weeks before her November 6th hearing, Ms. Alverio went to the Metropolitan Court to arrange for an ASL interpreter. She visited the information desk on the first floor of the court where a court employee informed her that her request was too late and would be denied. This, despite the request being submitted well within the requisite forty-eight hours before the hearing date. Ms. Alverio then asked if the hearing

¹ Bernalillo County Metropolitan Court, ADA Accommodations, <https://metro.nmcourts.gov/ada-accommodations.aspx>.

could be postponed until a time when an ASL interpreter would be available. Ms. Alverio's understanding of the response of the court employee was that unless either the rental company or the judge in the case sought a continuance, the hearing could not be postponed. She further understood the court employee to say that because it was the rental company that filed the lawsuit, the rental company was the entity that needed to request the interpreter. Per these instructions, Ms. Alverio subsequently asked the rental company – the entity that sued her – to request an interpreter for the hearing on her behalf. Unsurprisingly, the company failed to do so.

When Ms. Alverio arrived to the court on November 6, 2018, she learned that an ASL interpreter would not be available for her hearing. Upon learning this, she immediately visited the courtroom clerk to request that the hearing be postponed until a time when an ASL interpreter would be available. In response, the clerk told her that it was her responsibility to request an interpreter and that she should have already done so. Ms. Alverio explained that she had tried to do so weeks earlier. The clerk then instructed her to visit the “interpretation services” office where she could request an “emergency interpreter.” Upon doing so, a woman who identified herself as the supervisor informed Ms. Alverio that the court did not have an ASL interpreter available at that time. The supervisor did not offer to intervene in the hearing to request that that the Court postpone the proceeding until an ASL interpreter was available. Ms. Alverio returned to the courtroom and asked the clerk to inform the judge that she would like to request that the hearing be postponed because she needed an ASL interpreter. The clerk stated that she would inform the judge but the hearing proceeded as scheduled.

When the hearing commenced, Ms. Alverio immediately informed the judge that she was hard of hearing and required an ASL interpreter. Despite her plea, Judge Ramczyk denied the request. At that point, Ms. Alverio requested that the hearing be recorded and Judge Ramczyk

engaged the recording device. (Pursuant to Metropolitan Court rules, only when a party affirmatively requests it will a hearing be recorded.) The hearing continued. The distance from the judge made it impossible for her to read his lips. This, coupled with the facts that the representative of the rental company had an accent and was situated parallel to her rather than in front of her made it impossible for her to fully understand what was transpiring in the proceeding. Over the course of the hearing Ms. Alverio made several additional requests for an ASL interpreter, all of which Judge Ramczyk denied. With each request, Judge Ramczyk became increasingly hostile towards Ms. Alverio. He accused her of attempting to obstruct and delay the hearing through her requests for an ASL interpreter. He claimed that Ms. Alverio could hear and understand everything and did not need an interpreter. Due to the Court's failure to provide an interpreter, Ms. Alverio missed several critical pieces of testimony that impeded her ability to effectively represent herself in the proceeding. Judge Ramczyk ultimately entered a judgment against her based on the testimony of the representative for the rental company. The following is a true and accurate transcription of the hearing. In order to fully appreciate the hostile tone of the proceedings in relation to her request for an ASL interpreter, Ms. Alverio further requests that the person reviewing this complaint also listen to the recording of the hearing (totaling just over five minutes and provided with this submission as Exhibit A).

Court: This is M & R Investments versus Selene Alverio. This is CV-18-16647. Would you state your name please?

Landlord: [Unintelligible] Rodriguez, property management.

Court: Okay, and would you state your name please?

Ms. Alverio: Sir, you're still proceeding. You're violating my rights by proceeding sir.

Court: Yeah, would you state your name, please?

Ms. Alverio: It's Selene Alverio.

Court: And Ms. Alverio, let me explain something. This isn't a criminal proceeding. This is purely a civil proceeding, and I, the judge, have the right to proceed on the petition that's been filed by the plaintiff. So, I'm going to proceed with this hearing. You have stated that you want some sort of sign interpreter. It is clear to this Court—and I've been doing this many, many years—that you understand me and I understand you, so your request that we get some sort of sign interpreter for you, in my opinion, at this point in time is not necessary and you have no other grounds to delay this proceeding. As I've told you, if you want to leave here and get an attorney, that's your right. Alright? But under the Uniform Owner-Resident Relations Act, I have to move forward so I'm moving forward. So, I'm going to ask you, Ms. Alverio, do you reside on the property?

Ms. Alverio: Sir, your honor, I respect your decisions, just because I can hear you and understand you does not mean I am able to get every single word out of you clearly.

Court: No, and I understand that Ms. Alverio, so I'll ask my question again. Do you...Are you living on the property?

Ms. Alverio: Yes sir.

Court: Okay, and do you have any children living with you?

Ms. Alverio: Yes, I have a special needs child that's eleven...

Court: Fair enough.

Ms. Alverio: ...whose um, with autism and I have a nine-year-old.

Court: Okay. And are you asking for a writ for nonpayment of rent?

Landlord: Yes your honor.

Court: Okay. Alright, so I'm going to indicate that the plaintiff is here. I'm going to indicate that the defendant is here. Is there any subsidized housing or is this not subsidized housing?

Landlord: Not subsidized.

Court: Alright. So I'm going to indicate plaintiff is here by representative, defendant is here in person. If a writ is issued, it would be a seven day writ. What is the monthly rent?

Landlord: Six hundred and seventy-five.

Court: And how much is owed through the end of October?

Landlord: One thousand thirty-one point sixteen.

Ms. Alverio: Sir, that's inaccurate.

Court: I'm talking to her and then I'll talk to you. Have you been to court before?

Ms. Alverio: Yes, sir, I...

Court: Okay then, so you know better, um, so let's all behave. Alright, are you claiming any late fees?

Landlord: Yes sir, fifty dollars.

Court: How much?

Landlord: Fifty dollars.

Court: Is there a written lease?

Landlord: Yes sir.

Court: Has it expired or is it still in effect?

Landlord: Um, for her, um, it's due on, uh, next year, for next year March.

Court: So the lease is in effect until next March?

Landlord: Yes sir.

Court: Alright. So, um, how about utilities?

Landlord: Utilities, um, she owes eighty-nine thirty-four, gas, in...

Court: No, I need a total.

Landlord: Oh okay. So, um, that would be two hundred and eighty-five.

Court: Any court costs?

Landlord: Yes sir, one hundred and seven.

Court: Any other charges?

Landlord: No sir.

Court: Okay, Ms. Alverio, what I have is one thousand seven hundred sixty-five dollars. Let's start with the monthly rent, do you agree it's six hundred seventy-five dollars?

Ms. Alverio: Sir, I paid off nine hundred and ten. I actually paid off the entire rent.

Court: That isn't what I'm asking—hold on—that isn't what I asked you. Is your monthly rent six hundred and seventy-five dollars?

Ms. Alverio: See, that's exactly an example that I missed. I didn't get the numbers.

Court: I didn't ask you that, I just asked you is your monthly rent six hundred and seventy-five dollars.

Ms. Alverio: I would rather proceed with an ASL interpreter.

Court: Alright, so, I'm going to find that six hundred and seventy-five dollars...Um, I'm going to go ahead and enter the judgment. It's clear to this court that Ms. Alverio has no intention of providing evidence to this court but is here instead to delay the proceedings. You can't do that ma'am.

Ms. Alverio: Sir, but I requested...

Court: You can't delay the proceedings...

Ms. Alverio: I requested an interpreter, that's a human rights violation. I can't even see your lips.

Court: Ma'am, just stop. It's clear to this court that...You know, I've had enough. Have a seat right there. Have a seat and you have a seat right there too. Ms. Alverio, you're disrupting this courtroom and I'm tired of it. So have a seat. It is clear to this court from the record and from anyone who is watching this proceeding that Ms. Alverio understands exactly what's going on. She's being obstructionist, she's trying to delay the proceeding and I'm not going to allow it. If you want to get an attorney Ms. Alverio, and I've told you this several times, go get an attorney, have the attorney file an appropriate motion. But it's clear to me that you're here to cause trouble and I don't appreciate it. If you want to get an attorney, get an attorney, bring an attorney back into the courtroom but don't come into my courtroom and disrupt it. And I don't want to hear another word about the interpreter cause it's clear from this record you understood everything that's going on in this case. So, I am entering a judgment in the amount of one thousand seven hundred sixty-five dollars, sixty-six cents. We will get the paperwork to both parties in just a minute, and I've made a decision that I will not find this lady in contempt. I think that she's intentionally

obstructing the court but I think her concern is, um, getting in the way of her good judgment so I'm not going to hold any contempt proceeding at this time and we will move on. Thank you. We'll call you up and give you your paperwork.

November 6, 2018 audio recording of hearing (attached as **Exhibit A**).

LEGAL CLAIM

The Americans with Disabilities Act (“ADA”) prohibits any “public entity” – including state courts – from “exclud[ing]” any “qualified individual with a disability” from its programs, services, or activities, or otherwise “subject[ing]” them to “discrimination.” 42 U.S.C. § 12132. The regulations implementing Title II of the ADA require that public entities such as state courts “take appropriate steps to ensure that communications with...participants...are as effective as communications with others.” Specifically, a public entity “shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities ... an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” 28 C.F.R § 35.160(b)(1). “Auxiliary aids and services” include “[q]ualified interpreters.” 28 C.F.R. § 35.104. In determining what type of auxiliary aid or service is necessary to ensure effective communication, a public entity “shall give primary consideration to the requests of individuals with disabilities.” 28 C.F.R. § 35.160(b)(2). Section 504 of the Rehabilitation Act of 1973 (“Section 504”) similarly requires that recipients of public funding ensure effective communication and provide interpreters to individuals who are deaf and hard of hearing with communication access. 29 U.S.C. § 794; 28 C.F.R. § 42.503(e), (f). The Bernalillo County Metropolitan Court is a public entity and a recipient of federal assistance. It is subject to both the ADA and Section 504.

The regulations also make clear that public entities and recipients of federal financial assistance may not exclude qualified individuals on the basis of disability from participating in or

benefiting from their programs, services and activities, or provide them with an unequal or less effective opportunity to participate. 28 C.F.R. § 35.130(b)(1)(i)-(iii) (“A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability – (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others[.]”); accord 28 C.F.R. § 42.503(b)(1)(i)-(iii).

Ms. Alverio is deaf, which is a disability under the ADA and Section 504. See 42 U.S.C. § 12102(1)(A) & (2)(A) (major life activities include hearing); 28 C.F.R. § 35.108(d)(2)(iii)(A) (“Deafness substantially limits hearing.”). The Bernalillo County Metropolitan Court and Judge Daniel Ramczyk failed to provide an ASL interpreter to ensure adequate and effective communication for Ms. Alverio at her November 6, 2018 court hearing. In doing so, both the Court and Judge Ramczyk violated the prohibitions against discrimination contained in both Title II of the ADA Section 504 of the Rehabilitation Act of 1973 and their implementing regulations. Further, Metropolitan Court’s failure to provide ASL interpreters to individuals who seek them several weeks before their proceedings and in accordance with the Court’s own policy speaks to a broader systemic problem in that courthouse.

PRAYER FOR RELIEF

Complainant Selene Alverio seeks:

- a. A prompt and effective investigation of this important disability discrimination matter;
- b. Training of Judge Ramczyk (who is now a judge in New Mexico's Second Judicial District Court) about his obligations to provide accommodations to disabled parties that appear before him pursuant to the ADA and Section 504. This includes, but is not limited to, the provision of auxiliary aides and services to deaf and hard of hearing individuals that appear in his courtroom;
- c. Training of Bernalillo County Metropolitan Court staff about the requirements for the Court to provide auxiliary aides and services to deaf and hard of hearing individuals who are parties in cases before that Court as well as other deaf and hard of hearing individuals who avail themselves of the services of the Court;
- d. Remedial policies and practices to endure future Metropolitan Court's compliance with the ADA and Section 504; and
- e. Any additional relief deemed appropriate by the Civil Rights Division of the U.S. Department of Justice.

Dated: June 25, 2019

Respectfully submitted,

/s/ Maria Martinez Sanchez

María Martínez Sánchez

Leon Howard

ACLU OF NEW MEXICO

P.O. Box 566

Albuquerque, NM 87103

T: (505) 266-5915 Ext. 1004

F: (505) 266-5916

msanchez@aclu-nm.org

lhoward@aclu-nm.org