

## Municipal Courts To Improve Access For Deaf, Hearing-Impaired Litigants

By Mary P. Gallagher

**D**eaf and hearing-impaired litigants soon should have an easier time dealing with municipal courts, thanks to a plan of action adopted by the state in settlement of a discrimination suit.

The judiciary agreed to take steps to ensure that the hearing impaired have better access. These include training and information for municipal court staff, creation of new stationery displaying an interpreter logo and a request for posting of signs, also carrying the logo, to inform those who need a sign-language interpreter that one will be provided. Each court is also urged to appoint an Americans With Disabilities Act coordinator.

On June 6, when U.S. District Judge John Litland signed an order dismissing the case, *DeRosa v. Boro of South Plainfield*, CV-99-2531, the plaintiffs had reached an understanding with the Administrative Office of the Courts, which was memorialized in a Memorandum of Understanding dated July 31. In a series of settlements in starting in July 2000 and concluding this past May, eight towns charged with discrimination — Clifton, Englewood, Freehold, Nutley, Paramus, Paterson, South Plainfield and Woodbury — agreed to pay a total of \$157,000 in damages.

East Brunswick solo practitioner Clara Smit, who represents the plaintiffs, calls the provision for a sign-language interpreter the most important aspect because it informs deaf parties and witnesses of the right to an interpreter and provides an easy way to request one. All they have to do is point to the sign.

The AOC must request municipal courts to post a sign with the logo. Smit and Senior Deputy Attorney General Douglass Derry, who represents the AOC, say the state cannot compel signage in the local courts. "Our position has been that the municipal courts are separately run," he says. The agreement states that the state will not be responsible if municipal courts do not comply.

Smit says "the AOC has always been on board" but she included it in the case because "what we really wanted was to get some policy in place. The only way to do that was through the AOC."

The agreement provides that the AOC will ask each municipal court to designate an ADA coordinator "to accept and process requests for auxiliary aids or services to accommodate persons who are deaf or hard of hearing." Each state court vicinage has a similar coordinator.

The judiciary also is required to continue to provide training to municipal court judges and staff on state and federal laws barring discrimination against the deaf.

AOC spokeswoman Winnie Comfort calls it "somewhat troubling that ... these services were not provided the way they were supposed to be." The state is reviewing the training it gives municipal court judges to see whether changes are needed, she says.

She points out that state courts have sign-language interpreters and provide

computer-assisted real-time transcription devices where necessary and a handbook on ADA compliance in each courthouse as well as on the Web site.

A press release from the National Association for the Deaf Law Center, based in Silver Spring, Md., calls *DeRosa* the "most comprehensive litigation filed against a court system on behalf of deaf citizens who sought access to the courts." The center's Mary Vargas and Mark Charmatz were Smit's co-counsel.

The suit, filed in 1999 against the towns and the state judiciary, alleged violation of the ADA, section 504 of the Rehabilitation Act and the New Jersey Law Against Discrimination.

The 12 plaintiffs included the New Jersey Association for the Deaf and 11 individuals described as "hard of hearing or profoundly deaf."

In separate alleged incidents in various courts between late 1997 and June 1999, the plaintiffs were denied sign language interpreters, despite repeated requests; wrongfully charged fees for interpreters; made to wait or return on a later date for promised services and humiliated by their inability to follow or participate in court proceedings.

Plaintiff George Boyd allegedly pleaded guilty to an offense out of frustration after several trips to Freehold municipal court without being able to obtain an interpreter to assist his defense.

Charles Pitt allegedly had to hire a lawyer before the Englewood Municipal Court would provide him with an interpreter.

Another plaintiff, Nelsie Galan, allegedly requested an interpreter four times between late 1997 and February 1998 and finally dropped her harassment case when Paterson Municipal Court personnel proposed that the defendant's sister act as interpreter.

Smit says the South Plainfield municipal court judge wrote her stating that the court would not provide an interpreter on a first appearance. That same judge also "mortified" plaintiff Nicole DeRosa by screaming at her in court, on the apparent assumption that he could make himself heard that way, says Smit.

Smit points out that N.J.S.A. 34:1-69.10 requires that certified sign-language interpreters be provided for the hearing impaired. The 1983 law applies to court and grand jury matters, as well as judicial or quasi-judicial proceedings before county or municipal governing bodies, in which a hearing-impaired person is a complainant, defendant, witness, or a parent of a juvenile.

The plaintiffs' position in *DeRosa* was also bolstered in October 1999 by *Soto v. City of Newark*, 72 F.Supp.2d 489 (D.N.J.). Judge Alfred Wolin granted summary judgment in favor of Jorge and Jessica Soto on their ADA claim against Newark for its failure to provide them with a sign-language interpreter during their marriage in Newark Municipal Court. Smit was the lawyer for the Sotos, who eventually settled for \$22,500. Smit says she has encountered problems with obtaining an interpreter not so much in the state



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courts but in ancillary proceedings such as court-ordered divorce mediation.

Though the federal courts are exempt from the ADA, an April 26, 1996, memo from the director of the U.S. Administrative Office of the Courts to chief judges requires interpreters and the appointment of access coordinators.

As the result of similar settlement other parts of the justice system in New Jersey should also soon prove more accessible to the hearing impaired.

Under the April 25, 2001, settlement in *Lugo v. Middlesex County Adult Corrections*, CV-97-4425, the Department of Corrections agreed to provide interpreters, post signs and provide other notice and services to hearing-impaired inmates. The other services include visual fire alarm access to Telecommunication Devices for the Deaf (TDDs) and televisions equipped with closed-captioning in public viewing areas.

The DOC also agreed to provide inmates with a certified interpreter at all stages in judicial or quasi-judicial proceedings and other circumstance when one is determined necessary such as disciplinary and parole hearings.

The settlement also requires ongoing training of personnel at facilities: housing deaf inmates and identify selected prisons where deaf prisoners will be sent: South Woods State Prison in Bridgeton, Garden State Youth Correctional Facility in Yardville, Northern State Prison in Newark and Edna Mahan Correctional Facility for Women in Clinton.

A separate settlement with Middlesex County in *Lugo* requires the county to provide interpreters, signage and training.

Smit also has an appeal pending before the Third Circuit on claims under the ADA, the Rehabilitation Act, sec 1983 and the LAD that the Mercer County Detention Center held a deaf detainee for four days without providing a TDD, an interpreter or closed captioning. District Judge Mary Cooper dismissed the claims against in May 2000 in *Chisolm v. Manimon*, 97 F. Supp. 2d 615. Smit says the appeal was argued a few months ago and she is awaiting a ruling.

AOC figures for July 1996 to June 1997 show that American Sign Language interpreters were requested in state court more than for any other language, except Spanish and Portuguese. The numbers were 40,721 for Spanish, 722 for Portuguese and 594 for sign language, followed by 544 for Polish and lower figures for 42 other languages. ■



**The AOC will request municipal courts to post a sign with the sign-language logo and to appoint an ADA coordinator. But municipal courts march to their own drummer, and the state judiciary can't compel them to comply.**