

Attorney for the deaf gains three victories

Interpreter services expanded to town courts, prisons, hospitals

By Scott Goldstein

The state's several hundred municipal courts soon will be posting signs in their courtrooms and notices on their letterhead publicizing the availability of American Sign Language interpreters.

The Administrative Office of the Courts (AOC) reportedly is close to settling a lawsuit, in part, by agreeing to post the signs in the 536 municipal courtrooms so deaf and hearing-impaired litigants are fully aware of their rights.

The settlement — which would end a complaint by a group of deaf people who said they were denied interpreters in municipal courts — also requires the courts to adopt clearer protocols for providing interpreters and to assign an Americans With Disabilities Act (ADA) coordinator in each court to ensure compliance.

Clara R. Smit, an East Brunswick lawyer who primarily handles deaf-issue complaints, said she has reached a verbal agreement with the AOC in the federal case, *Derosa v. Boro of South Plainfield*.

She expects the settlement to be finalized soon.

"Many municipal courts were not following the law. They were not providing interpreters when deaf people were plaintiffs or defendants, despite the fact that the AOC has provided staff training and guidance to the courts for many years," said Smit, who is fluent in sign language and whose parents are deaf.

The expected settlement is the latest in a string of successes for Smit and New Jersey's 720,000 deaf and hearing-impaired residents.

She hammered out a similar settlement last month with the Department of Corrections, which agreed to post sign-language interpreter notices in prisons and to establish new protocols.

The agreement on municipal court services for hearing-impaired litigants came several days after a state appeals panel ruled in one of Smit's cases that hospitals should provide sign-language interpreters or related help for patients requiring it.

And on Wednesday, Smit announced she is close to settling a complaint against a Jersey City attorney who acknowledged a failure to communicate with a deaf client during preparations for a slip-and-fall case. The Jersey City lawyer and client communicated through gestures and written notes, even though deaf people often don't communicate effectively through the written word, Smit noted. Under the terms of that proposed settlement, she is prohibited from naming the defendant attorney or the settlement sum.

"Lawyers' offices are required, under the law, to ensure effective communication with all disabled individuals by providing auxiliary aids such as qualified interpreters, when necessary," Smit said.

The Department of Justice regulations state that if legal, financial and medical situations are sufficiently lengthy and complex, a qualified interpreter would be required, she asserted. Further, family members should not be called upon to interpret, even if fluent in American Sign Language, because they most likely will be unable to be impartial.

People who are hearing-impaired or deaf are entitled to interpreters or other reasonable communication aids — closed captioning, telecommunication devices or written words in places like restaurants and shops — in public and private establishments under the Federal Rehabilitation Act (29 U.S.C. 794), Americans With Disabilities Act (42 U.S.C. 12131) and the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1).



Clara R. Smit

"Although the ADA and the Rehabilitation Act specifically require reasonable accommodation, it is only recently that deaf people have begun to feel empowered to start bringing these lawsuits," said Smit.

Complaints

During 10 years of practice, Smit said, she periodically received complaints from litigants and lawyers who claimed people were denied sign-language interpreters in municipal court, which the AOC acknowledges is their right.

Usually, she said, the problem was due to misunderstandings or a court oversight.

But, she said, there have been a few egregious cases in which deaf or hard-of-hearing people were left to fend for themselves in municipal court — often with humiliating results.

She collected eight such cases and filed the *DeRosa* suit. She hopes the proposed settlement with the AOC will send a message to the courts.

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Interpreter services expanded

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The plight of the eight plaintiffs is outlined in her complaint.

Here are three examples:

- In 1998, South Plainfield Municipal Judge Daniel F. Murphy told Cranford resident Nicole DeRosa that his court does not provide interpreters for first appearances for deaf individuals. DeRosa reportedly struggled through the hearing, "humiliated and embarrassed" before a courtroom of people.

- In 1999 in Freehold Township, Trenton resident George Boyd submitted proof of his hearing disability, as requested in advance by the court staff. But the court never arranged for an interpreter. When he appeared a second time, there still was no interpreter. Reportedly out of frustration, Boyd pleaded guilty without having an opportunity to explain or understand the court proceeding.

- Plaintiff Nelsie Galan of Paterson requested an interpreter from the court there on four occasions beginning in late 1997 until February 1998 when she brought charges against another person for harassment. The court failed to provide an interpreter until her final appearance when she was asked to allow the sister of the person against whom she filed charges do the interpreting.

These people "were ignored and humiliated by the defendants," Smit said in her complaint. Instead of understanding courtroom procedures, "they experienced shame, anxiety, emotional distress, fear and discrimination."

In addition to Freehold, South Plainfield and Paterson, the other courts Smit cited were in Paramus, Clifton,

Woodbury, Nutley and Englewood. The state and then-AOC Director James J. Ciancia also were named.

The AOC has been negotiating on behalf of all the defendants, Smit said.

Under the proposed settlement, interpreter signs in municipal courts will be placed next to wheelchair emblems that signify ADA access, she said. And all written correspondence from municipal courts will have the same interpreter logo. The message will state: "If you are deaf or hard of hearing and require a sign-language interpreter to communicate, please let us know."

Prisons

Not all details of the verbal agreement with the AOC have been released, but Smit's recent settlement with the Department of Corrections and the Middlesex County Adult Corrections agency may be a barometer.

Under that April 25 agreement, deaf inmates will be entitled for the first time to sign-language interpreters during disciplinary and parole hearings and medical treatment.

In settling the federal case on behalf of former inmate Edgar Lugo, the Corrections Department in *Lugo v. Middlesex County Adult Corrections* also agreed to designate three facilities in various regions of the state to specifically house deaf inmates and meet their needs, Smit said.

The corrections agencies are required to post signs in prisons informing inmates and staff of deaf inmates' rights to interpreters, closed captioning and telecommunication devices.

Further, the agreement requires the county lock-ups to train staff and make "all possible efforts" to obtain an interpreter for an inmate whenever required.

Lugo, who was unable to communicate with his parole board, medical caretakers and disciplinarians while behind bars on burglary charges for four years, also received undisclosed monetary damages.

Meanwhile, a state appellate panel last Monday gave Smit another victory in *Borngesser v. Jersey Shore Medical Center*. The court held that hospitals also must take strides to communicate with deaf patients.

Hospitals are not specifically required to have sign-language interpreters on staff, but must make "reasonable accommodations" so deaf patients can participate in their treatment, wrote Judge Erminie L. Conley on behalf of Judges

Stephen Skillman and Barbara Byrd Wecker.



A full text of *Borngesser*, Order No. 9734, is available from the NJL Facts-on-Call Service, 800-670-3370. See digest, Page 20.

The ruling results from more than two dozen lawsuits Smit filed against New Jersey hospitals on behalf of deaf patients or their families. Fifteen were settled with agreements similar to those with the DOC and AOC.

Smit's settlements are consent orders, so failure to comply subjects defendants to contempt charges, she noted.

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