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# Deaf Drivers Sue Police Over Lack of Sign Language Interpreting

Charles Toutant, New Jersey Law Journal

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The New Jersey Attorney General and two local police departments are accused in Trenton, N.J., federal court of violating the Americans With Disabilities Act for failing to provide sign language interpreting for deaf motorists during traffic stops.

In a suit filed July 16, plaintiff John Buccieri Jr. claims the Toms River Police Department and the Ocean County Jail violated his civil rights by failing to provide sign language interpretation after a police officer pulled him over.

The suit comes about nine months after the Old Bridge Police Department and the Attorney General were named in a similar suit filed by Ernest Guidice, a deaf driver who was arrested after his car was stopped by police.

That suit, filed in October 2013, claims the Attorney General is in violation of the ADA for failing to provide sign language interpretation of a form routinely provided to people suspected of drunken driving, which explains legal consequences of refusing to take a breath test. The Attorney General provides a website with written and audio versions of that form online in 10 languages, but its failure to provide a video version of the form in American Sign Language violates the rights of deaf persons, the suit says.

In both cases, minor traffic stops led to arrests because police had no mechanism to help them communicate with deaf drivers at the roadside and in police headquarters, said Clara Smit, the East Brunswick, N.J., solo who represents both plaintiffs.

Relatively inexpensive systems have been adopted in some police departments to provide sign language interpretation in the field on tablet computers or smartphones, she said. The two cases also show that the police officers involved need training on how to interact with disabled people, Smit said.

In the Toms River case, Buccieri was pulled over on Dec. 12, 2012. Buccieri tried to explain to the officer that he was deaf and needed a sign language interpreter to communicate, the suit says. After the officer issued him a ticket, Buccieri tried to exit the vehicle, but the officer “confronted him

in an aggressive manner,” then placed him under arrest, the suit alleges.

At the police station, Buccieri again asked for a sign language interpreter but was not given one, the suit says. He was also unable to contact his family or a lawyer because there was no videophone, the suit says. He was later transferred to the Ocean County Jail, where he was held overnight.

Buccieri was charged with assault and resisting arrest. He pleaded guilty to the resisting charge and was sentenced to probation.

Guidice, the plaintiff suing Old Bridge, has spastic cerebral palsy, which causes rocking and tremors and gives him an unsteady gait and sagging knees, according to his suit. On Jan. 1, 2013, an officer pulled him over, asked him to get out of his vehicle, and began to issue a field sobriety test, which Guidice was unable to perform.

The officer wrote in the report that, due to Guidice’s physical disability and unwillingness to attempt the tests, he was placed under arrest for suspicion of drunken driving. The officer also wrote that Guidice “started to act as if he didn’t understand anything I was saying or asking him to do,” according to the suit.

At the police station, after refusing to take a breath test, Guidice was handed the refusal form but he could not read it because he did not have his reading glasses and because his English proficiency is limited. Because American Sign Language is linguistically related to French, many people who use it are not fluent in English, Smit said.

Guidice was charged with drunken driving, refusing to take a breath test and reckless driving, but the charges were later dismissed by the prosecutor.

Both suits claim violations of the ADA, the Rehabilitation Act and the New Jersey Law Against Discrimination.

In the Guidice case, the state and Old Bridge have filed motions to dismiss. The state says the claims against it are barred by the Eleventh Amendment. The state also says there is no clearly established right to a sign language interpreter of the refusal form for a person suspected of drunken driving.

“The state defendants’ failure to have an American Sign Language video translation of the refusal form on the resources website for the use of police departments for the rare instance where a hearing-impaired individual driver is pulled over for suspected driving while intoxicated and is unable to read the written refusal form due to his failure to have his reading glasses does not shock the conscience,” Deputy Attorney General Susan Scott wrote in the brief in support of the motion to dismiss.

Scott also said Guidice’s claims should be dismissed because he was “not denied meaningful access to any program, benefit or service.”

Smit called the state’s position “absurd,” adding that “it doesn’t matter if it happens once every 10 years.”

She added that the parties in the Guidice case are working toward a settlement that would call for

training of police officers in how to deal with deaf people and to establish a system that would facilitate communication between police and deaf drivers.

Anthony Merlino, Toms River's assistant township attorney, declined to comment on the Buccieri suit. Ocean County Counsel John Sahradnik said the county had not been served in that case and he could not comment.

Lori Dvorak of Dvorak & Associates in New Brunswick, N.J., who represents Old Bridge in the Guidice case, did not return a call. A spokesman for the Attorney General's office, Lee Moore, declined to comment on the Guidice case.

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