

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHELLE KOPLITZ
812 L Street, N.E.
Washington, D.C. 20002

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Plaintiff,

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v.

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Case No. _____

THE SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
500 Indiana Avenue, N.W.
Washington, D.C. 20001

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Serve on:

Chief Judge Lee F. Satterfield
500 Indiana Avenue, N.W.
Washington, D.C. 20001

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and

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THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

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Serve on:

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Irvin B. Nathan
Office of the Attorney General
Civil Litigation Division
441 4th Street, N.W.
6th Floor
Washington, D.C. 20001

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Defendants.

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COMPLAINT

Plaintiff Michelle Koplitz, by and through her undersigned counsel, sets forth the following
as her Complaint:

PRELIMINARY STATEMENT

1. Michelle Koplitz, an individual who is deaf, brings this lawsuit against the Superior Court of the District of Columbia and the District of Columbia seeking prospective injunctive relief and damages for Defendants' violation of Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-65 ("ADA"), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504"), and the D.C. Human Rights Act, D.C. Code § 2-1402.31, by refusing to seat Plaintiff as a grand juror solely because she is deaf.

2. Plaintiff brings this lawsuit to compel the Defendants to cease their discriminatory practices and assure that deaf and hard of hearing individuals have an equal opportunity to participate in every type of jury service that is available to hearing individuals. Plaintiff Koplitz seeks declarative relief, injunctive relief, compensatory damages, and reasonable attorneys' fees and costs.

PARTIES

3. Plaintiff Michelle Koplitz is an individual who is deaf. She lives at 812 L Street, N.E. in Washington, D.C. She works for the United States Department of Health and Human Services. Ms. Koplitz earned a bachelor's degree in biotechnology from the Rochester Institute of Technology and a master's degree in public health from Johns Hopkins University. Ms. Koplitz has been summoned previously as a potential petit juror but she has never served on a grand jury.

4. Defendant Superior Court of the District of Columbia is a public entity as defined in 42 U.S.C. § 12131(1)(B) and is a recipient of federal financial assistance within the meaning of 29 U.S.C. § 794. Defendant's agents at all relevant times were acting within the scope of their employment and authority for the Defendant.

5. Defendant The District of Columbia is a municipal corporation of which the Superior Court is a part. The District of Columbia is responsible for all of the actions of the parties and their agents in this action. The District of Columbia courts and related agencies receive federal financial assistance.

JURISDICTION

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343(a) for claims arising under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and Title II of the ADA, 42 U.S.C. §§ 12131-65, and it has supplemental jurisdiction pursuant to 28 U.S.C. §1367 for claims arising under the D.C. Human Rights Act, D.C. Code §2-1402.31.

FACTUAL ALLEGATIONS

6. Plaintiff is an individual who is deaf. Due to her disability, she is substantially limited in the major life activities of hearing and speaking. She uses American Sign Language (“ASL”) as her primary means of communication. She requires an ASL interpreter in order to effectively communicate with individuals who are hearing and do not know ASL or to participate in activities involving both hearing and non-hearing individuals. She is provided with an interpreter whenever she attends meetings during the course of her employment.

7. Defendant Superior Court of the District of Columbia is the local trial court for the District of Columbia. Defendant is a public entity subject to Title II of the ADA. Because Defendant receives federal financial assistance, it is also subject to Section 504 of the Rehabilitation Act.

8. Defendant District of Columbia is a municipal corporation of which the Superior Court is a part.

9. On or about April 14, 2014, Ms. Koplitz received a grand jury summons from the Superior Court of the District of Columbia. Ms. Koplitz was summoned to serve as a grand juror beginning on June 2, 2014. When she discovered that a scheduling conflict would prohibit her from serving during the Grand Jury term, she called D.C. Superior Court Juror's Office to change her dates of service. Her grand jury service date was deferred to July 28, 2014.

10. During the phone conversation, upon discovering that Ms. Koplitz was deaf, Defendants inquired whether she would need interpreting services for the duration of the grand juror service. Defendants then asked her whether she wanted to switch to petit jury service because of the need for interpreters. Ms. Koplitz declined the offer to switch.

11. On or about April 30, 2014, Ms. Koplitz mailed in her completed and signed official summons Juror Qualification Form, including her request for interpreting services.

12. On or about May 2, 2014, Ms. Koplitz received a letter dated May 1, 2014 from the Juror's Office confirming that her grand juror service had been deferred to the requested start date of July 28, 2014.

13. Notwithstanding her request to keep her grand jury assignment, on or about May 3, 2014, Ms. Koplitz later received a notice in the mail from the Juror's Office that she had been re-assigned to petit jury service.

14. On or about May 6, 2014, Ms. Koplitz received a letter dated May 5, 2014 confirming her petit jury service assignment of Wednesday July 30, 2014.

15. After receiving notice of her reassignment, Ms. Koplitz called the Juror's Office on or about May 27, 2014 to ask why she had been switched to petit jury service. She was told that the switch was because the Defendants would not pay for an ASL interpreter for the grand jury term, but would for a petit jury.

16. Grand jurors and petit jurors play different roles and perform different duties within the Superior Court of the District of Columbia. Grand jurors decide whether there is probable cause to believe that a crime has been committed and that a particular individual committed that crime. Petit jurors serve on either one civil or one criminal trial, where they determine whether the plaintiff in a civil case or the government in a criminal case has proven its allegations to the appropriate burden of proof.

17. Individuals are qualified to serve on a grand jury in the District of Columbia if the individual: is a United States citizen; lives in the District of Columbia; is over eighteen years of age; is capable of reading, writing, speaking, and understanding English; has not been convicted of a felony or is not currently facing a felony charge punishable by more than one year in prison; or has no physical or mental disability that prevents them from jury service.

18. Ms. Koplitz is qualified to serve as a grand jury member because: she is a United States citizen; she resides in the District of Columbia; she is over eighteen years old; she is capable of reading and writing English independently and of speaking and understanding the English language with the use of an ASL interpreter; and she has no past or pending criminal convictions.

19. The sole basis for Defendants refusing to permit Plaintiff to sit as a grand juror is her disability.

COUNT I
TITLE II OF THE AMERICANS WITH DISABILITIES ACT

20. Plaintiff hereby incorporates paragraphs 1 through 19.

21. Plaintiff is an individual with a disability as defined under the ADA, 42 U.S.C. § 12102(2)(A), because she is substantially limited in the major life activities of hearing and speaking.

22. Defendants are public entities.

23. Title II of the ADA states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

24. Under the ADA, a qualified individual with a disability is “an individual with a disability who, with or without reasonable modification to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

25. The ADA defines auxiliary aids and services to include “qualified interpreters or other effective methods of making aurally delivered material available to individuals with hearing impairments.” 42 U.S.C. § 12103(1)(A).

26. Under Department of Justice’s (“DOJ”) regulations implementing Title II of the ADA, “[a] public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, 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).

27. A public entity is defined in §35.104(2) of the DOJ’s regulations as “[a]ny department, agency, special purpose district, or other instrumentality of a State or States or local government.” Because the U.S. Congress established the D.C. Superior Court as the trial court for the District of Columbia in 1970, it is a public entity which is obligated to provide auxiliary aids and services to ensure that its services, programs, or activities are accessible to individuals with disabilities.

28. The District of Columbia is a municipal entity under the ADA and the DOJ regulations.

29. “In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities.” 28 C.F.R. § 35.160(b)(2).

30. The DOJ regulations prohibit public entities from “deny[ing] a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service. . . .” 28 C.F.R. § 35.130(b)(1)(i).

31. The DOJ regulations prohibit public entities from “provid[ing] different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others. . . .” 28 C.F.R. § 35.130(b)(1)(iv).

32. Defendants refused to provide auxiliary aids and services - ASL interpreters - which would have given Ms. Koplitz the equal opportunity to participate in and benefit from grand jury service.

33. By reassigning Ms. Koplitz from grand jury services to petit jury services, Defendants attempted to provide Ms. Koplitz a different or separate benefit or service.

34. Defendants intentionally discriminated and continue to discriminate against Plaintiff on the basis of her disability, in violation of Title II of the ADA, by refusing to provide auxiliary aids and services necessary to ensure an equal opportunity for Ms. Koplitz to participate as a grand juror.

35. As a result of Defendants' actions, Plaintiff has been injured and suffered emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

COUNT II
SECTION 504 OF THE REHABILITATION ACT

36. Plaintiff hereby incorporates paragraphs 1 through 35.

37. Plaintiff is substantially limited in the major life activities of hearing and speaking and is therefore a qualified individual with a disability pursuant to Section 504 of the Rehabilitation Act, as amended, 29 U.S.C. § 794.

38. Section 504 provides that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

39. During all relevant times, Defendants Superior Court of the District of Columbia and Defendant The District of Columbia were and are still recipients of federal financial assistance within the meaning of 29 U.S.C. § 794(b)(A)(1).

40. Defendants failed to provide auxiliary aids and services to ensure effective communication with individuals who are deaf or hard of hearing, such as Ms. Koplitz, which has denied Ms. Koplitz meaningful access to service as a juror in a grand jury proceeding.

41. Defendants have discriminated and continue to discriminate against Plaintiff solely on the basis of her disability, in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

42. As a result of Defendants' actions, Plaintiff has been injured and suffered emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

COUNT III
THE DISTRICT OF COLUMBIA HUMAN RIGHTS ACT

43. Plaintiff hereby incorporates paragraphs 1 through 42.

44. Plaintiff is a person with a disability as defined by Section 2-1401.02(5A) of the Code of the District of Columbia.

45. Defendants are persons as defined by Section 2-1401.02(5A) of the Code of the District of Columbia.

46. The D.C. Human Rights Act provides that “[e]very individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the District and to have an equal opportunity to participate in all aspects of life, including, but not limited to “public service. . . .” D.C. Code §2-1402.01.

47. The D.C. Human Rights Act provides that “. . . it shall be an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any facility, service, program, or benefit to any individual on the basis of an individual’s actual or perceived: . . . disability” D.C. Code § 2-1402.73.

48. Defendants failed to provide auxiliary aids and services to ensure effective communication with individuals who are deaf or hard of hearing, such as Ms. Koplitz, which has denied Ms. Koplitz meaningful access to service as a juror in a grand jury proceeding.

49. Defendants have discriminated and continue to discriminate against Plaintiff solely on the basis of her disability, in violation of the D.C. Human Rights Act, D.C. Code § 2-1402.73.

50. As a result of Defendants’ actions, Plaintiff has been injured and suffered emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court provide the following relief:

- a. Issue a declaratory judgment that the Defendants' policies, procedures, and practices subjected Plaintiff to discrimination in violation of Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the D.C. Human Rights Act;
- b. Enjoin Defendants from implementing or enforcing any policy, procedure, or practice that denies individuals who are deaf or hard of hearing, such as Ms. Koplitz, the equal enjoyment of the Defendants' goods, services, facilities, privileges, advantages, and accommodations;
- c. Order Defendants to provide ASL interpreters to ensure effective communication with Ms. Koplitz so that she can participate in grand jury service;
- d. Order Defendants to develop and comply with written policies, procedures, and practices to ensure that Defendants do not discriminate in the future against Plaintiff and other similarly situated individuals who are deaf and hard of hearing;
- e. Order Defendants to train all representatives and employees about Plaintiff's rights and the rights of individuals who are deaf and hard of hearing;
- f. Retain jurisdiction over this matter until implementation of this Court's decree has been completed;
- g. Award Plaintiff compensatory damages;
- h. Award Plaintiff her attorneys' costs and fees; and

- i. Award any and all other further relief that this Court may deem just and proper.

Respectfully Submitted,

/s/ Joseph B. Espo

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Dated: August 22, 2014

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

/s/ Joseph B. Espo

Joseph B. Espo