



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

May 13, 2021

VIA CERTIFIED MAIL

Heather Hays Lockerman
Senior Assistant Attorney General/Section Chief
Office of the Attorney General
202 North 9th Street
Richmond, VA 23219

Re: *Notice of Findings*
[REDACTED] v. *Chesterfield Cir. Ct. (20-OCR-0962)*

Dear Ms. Hays Lockerman:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of your client, the Chesterfield Circuit Court (Court), in connection with the administrative Complaint that [REDACTED] (Complainant) filed against the Court. In her Complaint, the Complainant alleged that the Court discriminated against her based on disability in regard to her request for reasonable accommodations.

The OCR has completed our review of the documentation provided by both the Court and the Complainant and has determined that there is insufficient evidence of a violation of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and the DOJ implementing regulations at 28 C.F.R. pt. 35; pt. 42, subpt. G. Our findings are set forth below for your review.

I. Factual Background

A. The Complainant's Allegations

The Complainant alleged the following:

The Complainant is a party to two civil actions pending in the Chesterfield Circuit Court (Court). The Complainant is a [REDACTED]

[REDACTED] According to the Complainant, the effects [REDACTED]

[REDACTED]

The Complainant also states that her hearing loss results in difficulty in perceiving sound at low volumes, reacting to sounds, and understanding speech.

Sometime in 2019, the Complainant called the Court to inquire about the process for requesting accommodations from the Court under the ADA. The Complainant cannot recall with whom she spoke, but this individual told her that the Court does not have any accommodation forms for her to complete and that the Court is unable to provide legal advice. Subsequent to that phone call, the Complainant called the Supreme Court of Virginia, Office of the Executive Secretary (OES) and spoke with the ADA Coordinator for the Virginia judicial system. The ADA Coordinator provided the Complainant with the Virginia judicial system's *Request for Accommodation under the Americans with Disabilities Act* form, which instructed individuals to file the completed form with the clerk of the court where the individual's case is pending.

On [REDACTED], the judicial assistant for the judge assigned to the Complainant's cases sent the Complainant and the other parties an email indicating that the Court has scheduled a trial in the two above-referenced civil cases for [REDACTED]. On [REDACTED], the Complainant filed a memorandum with the clerk of court stating that she did not agree to the trial date and would be filing a motion for continuance. In that memorandum, the Complainant stated that the Court does not maintain the accommodations that she requires and that she understands that she must provide accommodations at her own expense, but that this requires consultation and preparation.

When the Complainant did not receive a response to her [REDACTED] memorandum, on [REDACTED], she faxed and mailed to the Court a typed "Notice of Motion, Emergency Motion for Continuance, Proposed Order" in which she requested a continuance of the scheduled [REDACTED], trial date. In this motion, the Complainant stated that she is a medically retired disabled American veteran and requires certain accommodations to be present and prepared for trial. She said that she understands that the Court can provide only a few accommodations and that most accommodations will be at her expense, but that this will still require proper and professional consultation. The Complainant stated that the [REDACTED] trial date will not provide her with enough time to obtain her accommodations, and that it is a simple accommodation for the Court to provide her with an extension of time. The Complainant said that if the Court needs to hold a hearing on the Motion for Continuance, it will have to be conducted via teleconference.

As an exhibit to the Motion for Continuance, the Complainant attached a completed *Request for Accommodation under the Americans with Disabilities Act* form. On this form, the Complainant stated that she is requesting the following accommodations: "(Continuance of time from [REDACTED]), Short breaks for water and when concentration declines and onset of symptoms etc. Recall: Allow digital laptop, auxiliary aids of hearing aid (earplug prevent noise distraction and individual for Support Services (I already understand this will be at my expense) (See attached statement)[.]" The Complainant attached to this form a printout of a page from her account on the Department of Veteran's Affairs/Department of Defense eBenefits website, generally indicating that the Complainant has a seventy percent final degree of disability.

Until [REDACTED], the Complainant never received any type of response from the Court regarding her Motion for Continuance or request for reasonable accommodation. Accordingly, the Complainant believed that the Court was working to respond to her requests. The Complainant did not go to the Court on [REDACTED]. In early [REDACTED], the Complainant received at her home a Judgment Order dated [REDACTED], and signed by the judge. The Judgment Order indicated that the Complainant failed to appear at a scheduled [REDACTED], trial, and that on that day the opposing party appeared and argued the matter. The Judgment Order stated that the Complainant filed a Motion for Continuance on [REDACTED], but that pursuant to Rule 4:15 of the Rules of the Virginia Supreme Court, the Complainant did not timely file it, did not comply with motions practice, and has exhibited a pattern of seeking unreasonable continuance. The Order held that therefore, the Complainant's Motion for Continuance is denied. The Order further held that the opposing party shall recover judgment against the Complainant.

The Court's Judgment Order did not reference or address the Complainant's requests for accommodations, and at no time did the Court attempt to engage in any dialogue with the Complainant to discuss her requested accommodations or otherwise evaluate her need for accommodations. The Complainant told the OCR that the accommodations that she listed on the *Request for Accommodation under the Americans with Disabilities Act* form would help prevent or alleviate the symptoms of her disabilities and allow her to fully participate in a trial or other Court proceeding, such as by providing her with necessary breaks, [REDACTED] and listening devices to provide amplification and reduce background noise.

B. The Court's Response

On [REDACTED], the OCR notified the Court of the Complainant's allegations and requested that it provide a response to a Data Request. The Court provided a response on or about [REDACTED], and responded to the OCR's follow up inquiries on [REDACTED].

In its response, the Court indicated that it takes access to justice by all citizens with the highest degree of concern, and that it endeavors to reasonably accommodate all who request accommodations. The Court said that it will grant an accommodation request if it can be made without impacting the Court's neutrality, unfairly disadvantaging or advantaging one party's case over another, or stripping away the dignity of the proceedings. According to the Court, if a specific request cannot be met, the presiding judge will sometimes offer an alternative solution to the requester. For individuals with hearing impairments, the Court said there are assistive listening devices in all courtrooms, and that the Court also provides in-person sign language interpreters and communications access real-time translation (CART) services. As for individuals with PTSD and other mental health disabilities, the Court indicated that accommodations could include, but are not limited to, permitting the requester to have a trusted individual or emotional support person sit near them in the courtroom; permitting the requester to use a service animal; admonishing counsel to avoid aggressive cross-examination; allowing the requester to sit where they are comfortable and feel safe; allowing more frequent breaks; moving the proceedings to a smaller or quieter courtroom; allowing the requester to have food or beverages at counsel's table; and arranging for the person to access recordings of proceedings.

The Court said that when requesting an accommodation under the ADA, individuals should follow the Virginia Judicial System's *Process for Requesting an Accommodation Under the Americans with Disabilities Act (ADA)*, which is publicly available on the Virginia Judicial System's website at www.vacourts.gov/courts/ada/home.html. These procedures instruct individuals to submit their requests in writing to the clerk of court as soon as possible but no later than five business days before the scheduled event for which assistance is needed. The procedures note that the court may, in its discretion, waive this requirement. The procedures indicate that individuals should identify in their request any specific accommodation the individual is seeking, and that the individual may be asked to supply supporting documentation or records. The procedures encourage individuals to use the Virginia Judicial System's *Request for Accommodation under the Americans with Disabilities Act* form when submitting their written request, which is also available on the Virginia Judicial System's website.

The Court stated that when an individual makes a request for an accommodation directly to a judge in open court, the judge will work with court staff and the clerk's office to facilitate the accommodation. The Court stated that the OES has no supervisory authority over the Court's clerk or judges, and provides technical assistance to the Court regarding the provision of reasonable accommodations upon request.

In regard to the Complainant's allegations, the Court provided documentation demonstrating that the two civil actions pending before the Court and which are the subject of this Complaint stem from the Complainant's [REDACTED], appeal of a decision rendered by the Chesterfield General District Court. The Court said that neither employees of the judge's chambers nor the clerk's office recall discussing accommodations with the Complainant. The Court stated that the clerk received the Complainant's memorandum objecting to the trial date on [REDACTED], and that the clerk forwarded it to the judge's chamber. According to the information submitted by the Court, the Complainant faxed her Motion for Continuance, including the accommodation request as an exhibit, to the Court on [REDACTED]. However, the Court said that pursuant to the Court's published docketing procedures at <http://www.courts.state.va.us/courts/circuit/Chesterfield/docketing.pdf>, "[f]ilings are accepted by the Clerk's Office via mail, courier, and hand delivery. The Court does not accept case related filings via the Internet, email, or fax." Accordingly, the Court said that it does not consider faxed motions to be "filed." The Court noted that the Complainant included excerpts of the Court's published docketing procedures as an appendix to her motion, and asserted that therefore the Complainant is well aware of the Court's procedures. The Court said that it received the mailed hardcopy of the Complainant's Motion for Continuance on [REDACTED], and stamped it "received and filed" on that date.

The Court provided the OCR with a [REDACTED], Memorandum from the judge presiding over the Complainant's cases to the Court's Chief Judge, in which the presiding judge responded to the Complainant's allegations. In the Memorandum, the judge stated that he denied the Complainant's Motion for Continuance for the following reasons: (1) the motion was untimely under Rule 4:15 of the Rules of the Supreme Court of Virginia; (2) the motion was defective under Rule 4:15 because it lacked the required certification that the Complainant had conferred with the opposing counsel in an effort to resolve the dispute without Court action; and (3) the

Complainant has exhibited a pattern with the Court of seeking unreasonable continuances.¹ The judge said that unlike many other types of accommodation requests, the request for a continuance implicated Supreme Court of Virginia Rules and acted to prejudice the opposing party.

In response to the OCR's request for clarification on why the motion was untimely, the Court said that according to the Court's published docketing procedures, "[a]ll requests for continuances of a trial date must be made by written notice and as far in advance of the trial date as possible. All requests must be properly filed through the Clerk's Office and properly noticed for a hearing if applicable." The Court stated that as the Complainant's motion was filed on [REDACTED] to continue a scheduled [REDACTED], it was plainly untimely.

According to the Court, because the judge denied the Motion for Continuance for a variety of reasons unrelated to the Complainant's request for accommodation, the Court had no discussions with her regarding her request for accommodations. The Court asserted that all actions by the Court were consistent with the Court's policies and procedures regarding requests for accommodation. The Court said that the presiding judge considered the request for accommodation on an individual basis and considered whether it was reasonable, including whether it could be granted without impacting the tribunal's neutrality, unfairly disadvantaging or advantaging one party over another, or stripping away the dignity of the proceedings.

The Court provided the OCR with documentation showing that on [REDACTED], the Complainant previously submitted a Motion for Continuance to the Court to continue a scheduled [REDACTED], trial date in connection with a different case. Documentation from the Court indicates that after holding a hearing on the motion, the Court denied the Motion for Continuance because the case has been on the docket for a long time. This documentation also demonstrates that at that time, the Court granted the Complainant's accommodation request for her hearing impairment by ordering that the trial occur in a courtroom outfitted with the required technical aids, and also authorized her to have a nurse with her at trial in the event [REDACTED] arise. The Court also provided the OCR with a timeline of actions occurring in the Complainant's cases pending in the Court from [REDACTED] through the present, which shows that the Complaint also contacted the Court via email on [REDACTED], to request a continuance of a hearing scheduled in another one of her cases; based on the information contained in the timeline, it does not appear that the Complainant ever filed a formal Motion for Continuance and the hearing occurred as scheduled.

According to the Court's Data Response, neither the Court nor the OES is aware of any complaints alleging disability discrimination by the Court from January 1, 2018 to the present.

¹ Rule 4:15 of the Rules of the Supreme Court of Virginia relates to Motions Practice. According to Rule 4:15 (a), all civil cases motions will be scheduled and heard by presenting the motion on a day designated for motions hearings, or by contacting designated personnel in the office of the clerk of the court or the judge's chambers. Rule 4:15(b) indicates that absent leave a court, a moving party must serve a civil case motion on all counsel of record at least seven days before a hearing. Rule 4:15(b) further states that the notice must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

II. Policies and Procedures Relevant to the Allegations

The Court provided the OCR with copies of a number of state statutes, rules, regulations and policies regarding providing reasonable accommodations to individuals with disabilities. The relevant state laws include Section 51.5-40 of the Virginians with Disabilities Act, which states that no otherwise qualified person with a disability shall on the basis of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state financial assistance or conducted by a state agency. VA. CODE ANN. § 51.5-40. Section 51.5-44(B) indicates that a person with a disability is entitled to full and equal accommodations and privileges of all places of public accommodation and public services. VA. CODE ANN. § 51.5-44(B).

The Court also provided the OCR with a number of Virginia Judicial Branch policies and procedures relating to the ADA which are available to the public at www.vacourts.gov/courts/ada/home.html. As discussed in Section I.B of this Notice of Findings, the Virginia Judicial Branch ADA webpage includes its *Process for Requesting an Accommodation Under the Americans with Disabilities Act (ADA)*, which describes how individuals should submit ADA accommodation requests to the relevant court. This document states that if an individual has difficulty using the Virginia Judicial System website or accessing any Judicial System services, programs, materials, or facilities, the individual may submit his or her written request to the OES' ADA Coordinator and provides the Coordinator's contact information. Also included on the Virginia Judicial System's ADA webpage is an *Accommodations for People who are Deaf, Hard of Hearing or Deafblind* request form that individuals with hearing impairment can complete to specify whether they need an assistive listening device, a sign language interpreter, CART services, or a qualified reader or writer.

The Virginia Judicial System's ADA webpage also includes a *Notice Regarding the Americans with Disabilities Act and Requests for Accommodations for Persons with Disabilities*. This notice states that in accordance with the requirements of the ADA, courts within the Virginia Judicial System will not discriminate on the basis of disability, and that courts will make all reasonable modification to policies and programs to ensure that individuals with disabilities have an equal opportunity to enjoy all of their programs, services, or activities. The Notice explains the procedures for submitting a request for an accommodation to the relevant court, and states that complaints concerning a service or activity of a circuit court clerk's office should be directed to the clerk, and that other complaints will be handled pursuant to the OES' grievance procedures. These grievance procedures, *Grievance Procedure Under the Americans with Disabilities Act*, are also available on the webpage, and direct individuals to file complaints or grievances alleging disability discrimination by submitting the associated grievance form (also on the webpage) to the OES' ADA Coordinator within sixty calendar days after the alleged violation. The grievance procedures also set forth the OES' procedures for responding to complaints.

Additionally, the ADA webpage contains an *ADA Resource Card* that provides information on the ADA along with some examples of types of reasonable accommodations, such as a sign language interpreter, CART services, frequent breaks, and a service animal. The resource card lists some accommodations that have been considered unreasonable, including allowing someone

to request an attorney or allowing someone to record his or her own proceeding. The ADA webpage also contains a list of designated local ADA Coordinators who are available to provide information and resources about the ADA. The designated local ADA Coordinator for the Court is located at the Chesterfield General District Court.

In its Data Response, the Court indicated that the OES arranges for judges, clerks, magistrates, and other judicial system personnel to receive ADA training from qualified individuals. The Court said that this training includes instruction on avoiding disability discrimination. The Court provided the OCR with a number of training presentations that have been given to such individuals since January 1, 2018.

III. Legal Analysis

Title II of the ADA provides that “no qualified individual 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. Additionally, Section 504 prohibits agencies that receive federal financial assistance from discriminating against otherwise qualified individuals on the basis of a disability in their programs and activities. 29 U.S.C. § 794. An individual is considered to have a disability under the ADA and Section 504 if the individual has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having an impairment. 42 U.S.C. § 12102; 29 U.S.C. § 705(9)(B). Since the Court is a public entity and is receiving financial assistance from the DOJ, it is subject to the provisions of both the ADA and Section 504.

In accordance with the DOJ’s regulations implementing the ADA, to comply with the ADA, an agency shall make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of a disability. 28 C.F.R. § 35.130(b)(7).² Agencies are required to provide 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. 28 C.F.R. § 35.160(b)(1). Auxiliary aids and services include a variety of services such as qualified interpreters on-site or through video remote interpreting services, written materials, the exchange of written notes, assisted listening devices, and text telephones. 28 C.F.R. § 35.104.

The OCR has carefully considered all of the information submitted by both the Complainant and the Court, and finds that the evidence is insufficient to demonstrate that the Court’s actions constitute a violation of the ADA or Section 504. As an initial matter, based on the information provided by the Complainant, it appears that her [REDACTED], and hearing impairment are disabilities within the meaning of the ADA and Section 504.

² The DOJ’s regulations implementing the ADA explicitly note that the regulations shall not be construed to apply a lesser standard than the standards applied under Section 504 or the regulations issued by federal agencies implementing Section 504. 28 C.F.R. § 35.103(a). Accordingly, the principles associated with the DOJ’s regulations implementing the ADA apply equally to the Complainant’s allegations of discrimination under Section 504.

The documentation provided by both the Complainant and the Court demonstrates that the Complainant submitted a *Request for Reasonable Accommodation under the Americans with Disabilities Act* form as an exhibit to her Motion for Continuance. In her request form, the Complainant listed a continuance of the [REDACTED], hearing as one of her requested accommodations. The Complainant also requested to be able to take short breaks for water, [REDACTED]; to be able to bring a digital laptop; to be able to bring an assistive listening device; and to be able to have present an individual for support services. While the Complainant faxed the Motion for Continuance and accommodation request form to the Court on [REDACTED], the Court did not receive a hardcopy until [REDACTED], at which time the Court considered the Motion for Continuance to be filed in accordance with its procedures. The evidence indicates that the Complainant was aware of the Court's docketing procedures. The Court indicated that it denied the Complainant's Motion for Continuance on several grounds, including that the motion was untimely and did not comply with the procedural requirements of Rule 4:15 of the Rules of the Supreme Court of Virginia, and because the Court felt that the Complainant has exhibited a pattern of seeking unreasonable continuances. The evidence supports that the Complainant did not comply with all of the requirements of Rule 4:15. Accordingly, the OCR finds that the Court had a legitimate reason for denying the Complainant's Motion for Continuance.

The OCR further finds that the evidence is insufficient to demonstrate that the Complainant required a continuance of the [REDACTED] trial date as a reasonable accommodation for her disabilities. While the Complainant asserted in her correspondence with the Court that she required additional time to arrange for the accommodations she would need at trial, the evidence is insufficient that the approximately two-week period between the time when the trial was scheduled on [REDACTED] until the trial date of [REDACTED] was not enough time for the Complainant to obtain or arrange for any accommodations that she needed. Moreover, the Complainant appealed the Chesterfield General District Court's decisions and initiated her cases with the Court on [REDACTED], and the Complainant had since then to determine and prepare for what accommodations she would need for trial, such as a digital laptop or individual for emotional support.

Despite not receiving a response to her Motion for Continuance, the Complainant did not follow up with the Court nor appear on [REDACTED] for the scheduled trial. Had the Complainant appeared on [REDACTED] she could have brought the accommodations that she referenced in her accommodation request form which she was planning on obtaining herself [REDACTED] and had a discussion with the judge at that time about her need for her listed accommodations. While the Court did not immediately respond to her accommodation request filed on with the Motion for Continuance on [REDACTED], it did not actually deny the Complainant authorization for her requested accommodations. According to the Court, accommodations for individuals with PTSD and other mental health disabilities could include some of the accommodations that the Complainant requested, such as allowing an emotional support individual in the courtroom and allowing more frequent breaks. In fact, the Court has authorized the Complainant to have an emotional support individual in the courtroom and to take frequent breaks in connection with a previous case.

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The Court provided the OCR with information demonstrating that it has a number of policies and procedures in place regarding granting accommodations to individuals with disabilities. Overall, the OCR finds that the evidence is insufficient to demonstrate that the Court discriminated against the Complainant based on disability in violation of the ADA or Section 504. However, the OCR does have concerns regarding the Court's failure to reach out to the Complainant in advance of the [REDACTED] trial once it received her accommodation request form. The Court indicated that because the Court denied the Complainant's Motion for Continuance, it did not have any discussions with her regarding her accommodation requests. The OCR would urge the Court to consider that the Complainant requested accommodations other than the continuance of the trial and, presumably, those additional requests would have applied had the Complainant appeared at her trial date. It may be that the Court presumed that the Complainant would bring the accommodations that she said she would obtain to the trial on [REDACTED], and that the Court and the Complainant would discuss her desired accommodations at that time. In the future, to avoid any confusion or uncertainty, the Court should ensure that it is promptly responding to requests for accommodations in advance of the proceeding for which the accommodation is requested.

Based on the foregoing, the OCR is administratively closing this Complaint. Thank you for your cooperation in this review. If you have any questions, please contact OCR [REDACTED].

Sincerely,

 Recoverable Signature

X 

Michael L. Alston

Director

Signed by: Michael Alston