

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

CASE NO.

WALTER JOSEPH BECKMAN,

Plaintiff,

v.

ESCAMBIA COUNTY, FLORIDA,

Defendant.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW Plaintiff Walter Joseph Beckman (“Plaintiff), by and through his undersigned counsel, and hereby sues Defendant the Escambia County (“Defendant”) for declaratory and injunctive relief, attorney’s fees and costs (including, but not limited to, court costs and expert fees) pursuant to Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12131 et. seq. (“ADA”) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”) and alleges as follows:

INTRODUCTION

1. “Il n'y a que deux puissances au monde, le sabre et l'esprit: à la longue, le sabre est toujours vaincu par l'esprit¹”, and one must be informed to understand their peril. Florida began its tradition of openness back in 1909 with the passage of Chapter 119 of the Florida Statutes². This statute requires that any records made or received by any public agency in the course of its official business are available for inspection.

¹ There are only two powers in the world, the sword and the spirit: in the long run, the sword is always defeated by the spirit. Napoleon Ier (1789-1821)

² Public Records Law

2. This is an action under Title II of the Americans with Disabilities Act of 1990 and under Section 505 of the Rehabilitation Act of 1973 through which Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”) is enforced to redress unlawful disability-based practices and to make Plaintiff Walter Joseph Beckman whole.

3. Escambia County (“Defendant”) is a public entity which has provided the website URL myescambia.com as an information portal (“Portal” or “website”) to the Escambia County government for the general public (to anyone who accesses the Portal). The general public is able to access Escambia County government’s online content, which constitutes programs, services, and activities. Much of that content is provided in portable document format (“PDF”).

4. In order to meaningfully access PDF documents (also referenced as electronic documents), blind and visually impaired individuals require that electronic documents be saved in an accessible format. Much of the content provided in electronic (PDF) format within Defendant’s Website is not accessible by persons who are visually impaired and who utilize screen readers.

5. Because Defendant’s online electronic document content is not available for persons who are blind or low sighted, Defendant has denied Plaintiff Walter Joseph Beckman access to that electronic (PDF) content. As such, Defendant has denied access to Plaintiff based on Plaintiff’s disability (being low sighted and/or blind). In so doing, Defendant has denied Plaintiff his fundamental right to observe and participate in the democratic process of self-government. A citizen’s right to meaningful participation in the political process and to access publicly available information needed to participate in the process is a fundamental right requiring heightened scrutiny. *Johnny Reininger, Jr. v. State of Oklahoma*, Case No.: 5:16-cv-012141 (November 9, 2017) and *Natl Association*

of the Deaf (NAD) v State of Florida 18-cv-21232-UU [DE #28] (June 18, 2018).

6. Plaintiff brings this action against the Defendant to enforce the requirement of Section 504 of the Rehabilitation Act that a public entity receiving or distributing federal financial assistance (which Defendant receives and distributes each year) must not deny persons with disabilities the benefits of its programs, services and activities.

7. By failing to provide electronic documents in accessible format, Defendant has deprived blind and visually impaired individuals of the benefits of its online content, which benefit is afforded to sighted (non-disabled) individuals. As such, Defendant has increased the sense of isolation and stigma that the ADA and Section 504 were meant to redress for individuals with disabilities.

8. Defendant's denial of much of its publicly available online content to blind and visually impaired individuals violates Section 504 of the Rehabilitation Act and Title II of the ADA.

9. Accordingly, Plaintiff seeks injunctive and declaratory relief to ensure that blind and visually impaired individuals have equal, effective and timely access to Defendant's publicly available online content (consisting of electronic documents).

JURISDICTION AND VENUE

10. Plaintiff is expressly authorized to bring this action pursuant to Title II of the Americans With Disabilities Act, 42 U.S.C. §§ 12131-12133 ("ADA"), incorporating by reference the remedies, procedures and rights under Sections 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 794, 794(a) ("Section 504"), incorporating the remedies, rights and procedures set forth in §717 of the Civil Rights Act of 1964, including the application of §§ 706(f) through 706(k), 42 U.S.C. § 2000e-5(f)-(k).

11. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and

42 U.S.C. § 12188. This Court's jurisdiction is proper under 28 U.S.C. Section 451, 1331, 1337, and 1343.

12. Plaintiff has met all conditions precedent to bring this action.

PARTIES

Walter Joseph Beckman

13. Plaintiff Walter Joseph Beckman is a resident of the State of Florida, is disabled and a qualified individual as defined by the ADA,

14. Plaintiff is legally blind and a member of a protected class under the ADA, 42 U.S.C. § 12102(1)-(2) and the regulations implementing the ADA and as set forth at 29 USC §705(20). Plaintiff suffered optic nerve damage as a result of arteriovenous malformations, and now is substantially limited in performing one or more major life activities, including (but not limited to) accurately visualizing his world and adequately traversing obstacles. Plaintiff's disability is defined in 28 C.F.R. §35.108, as Plaintiff is substantially limited in the major life activity of seeing, specifically 28 C.F.R. § 35.108(c)(1).

15. Plaintiff is a veteran of the U.S. armed forces, is an athlete who travels for his athletic running endeavors (where he runs with the assistance of a guide), and also is an advocate for the rights of blind and wheelchair bound disabled individuals.

16. Plaintiff is a qualified and/or otherwise qualified individual with a disability in that Plaintiff is qualified to access Defendant's electronic documents.

17. Due to his disability, the Plaintiff requires that document information be saved in an accessible format such as HTML or an accessible electronic (PDF) format so that he can comprehend (read) that document with screen reader software.

Escambia County

18. Defendant Escambia County is a local government entity, a body corporate and political subdivision of the State of Florida. Escambia County was formed on July 21, 1821 after the United States purchased Florida from Spain. It is the westernmost and oldest county in the U.S. state of Florida.

19. Chapter 125.01 of the Florida Statutes give the Escambia County Board of County Commissioners the ability to create (through a local public hearing ordinance procedure) local laws³. This process is done without having to go to the Florida Legislature to request special legislation to create these laws. The Board of County Commissioners is the governing body of the County. Its members are directly elected by the people of Escambia County. The Board of County Commissioners appoint a County Administrator who implements Escambia County the policy and laws and manages the governmental agencies and departments of Escambia County. The Board of County Commissioners distributes federal financial assistance through its budgetary and legislative process to Escambia County agencies and departments. No person, agency or department is above the Board of County Commissioners.

20. Since Defendant is a public entity it is subject to Title II of the ADA. 42 U.S.C. § 12131(1).

21. On information and belief, Defendant is also a recipient and distributor of federal funds and as such, is also subject to the requirements of Sections 504 of the Rehabilitation Act of 1973.

GENERAL ALLEGATIONS

22. Defendant offers a service through myescambia.com (its online portal) where

³ that are not in conflict with or specifically prohibited by state general law or the Florida Constitution

interested persons can obtain pertinent information regarding the government of Escambia County and living and visiting Escambia County. Plaintiff is such an interested person.

23. Defendant's portal provides pertinent information on living and visiting Escambia County including (but not limited to): a list of animal adoption and service fees⁴, a guide to the safe consumption of fish caught in Florida⁵, a VA pension fact sheet⁶, a guide to appealing a decision on a claim for veterans⁷, and a list of addresses for hurricane shelters in Escambia County⁸. These types of documents are made available by Defendant to generally inform the public of the services provided by Defendant; therefore, this type of electronic documents also referenced herein as "electronic service documents."

24. Defendant's portal also has publications which are embedded in PDF (electronic) format. These publications contain information on a variety of Escambia County issues. A few of the publications provided to the public by Defendant include (but are not limited to): a fact sheet on the environmental quality of the Pensacola Bay system⁹ and an updated Disaster Guide for Escambia County¹⁰. These publications are made available by Defendant to generally inform the public of pertinent information when living and visiting Escambia County and of the services provided by Defendant. Therefore, these types of electronic documents (being publications providing a service to the public) are referenced as "electronic service documents."

⁴ <https://myescambia.com/docs/default-source/animal-services-documents/Animal%20Services%20Forms/animal-services-fees.pdf>

⁵ https://myescambia.com/docs/default-source/sharepoint-natural-resources-management/marine-resources/your-guide-to-eating-fish-caught-in-florida.pdf?sfvrsn=81ac520b_16

⁶ <https://benefits.va.gov/BENEFITS/factsheets/limitedincome/livepension.pdf>

⁷ https://myescambia.com/docs/default-source/sharepoint/Veterans%20Services/applications/understanding-the-appeal-process.pdf?sfvrsn=fe4a2d85_4

⁸ https://myescambia.com/docs/default-source/sharepoint-public-safety/shelter-list.pdf?sfvrsn=b31e2342_20

⁹ https://myescambia.com/docs/default-source/sharepoint-natural-resources-management/Water%20Quality%20Land%20Management/fact-sheet-environmental-quality-of-the-pensacola-bay-system.pdf?sfvrsn=de83746d_2

¹⁰ https://myescambia.com/docs/default-source/sharepoint-public-safety/disaster-guide-2017.pdf?sfvrsn=3400426d_16

25. Defendant's Website also contains electronic documents which provide information on Escambia County policies and positions which affect the public directly. A sampling of those links to electronic documents (which are also referenced as "electronic policy documents") is provided herein below:

- Contract between Escambia County and a private for-profit corporation¹¹, which includes a list of current master term contracts awarded by the Board of County Commissioners.
- Orderly Conduct of Meetings Policy¹²
- Escambia County annual report¹³

26. The Escambia County Commissioner's meetings make up the bulk of Defendant's legislative history. The Escambia Commissioner's meetings have a direct effect on the lives of citizens in the state. Interested persons can become informed about the effect of the Escambia Commissioner's meetings and the resulting policies, budgets, and services online by viewing the electronic documents generated which reflect the decisions made by Escambia County Commissioners through this portal. Interested persons are able to view thousands of documents related to the government of Escambia County (also referenced as "electronic agenda documents") through this portal. An example of electronic agenda documents includes Escambia County proposed budget for the 2018/2019 fiscal year¹⁴ and the Multi-Year Implementation Plan for restoring and preserving local ecosystems¹⁵. Through reviewing the agenda documents, interested persons can ascertain what upcoming projects are being negotiated and voted upon, and

¹¹ https://myescambia.com/docs/default-source/Purchasing/ContinuingContracts/13-14-095.pdf?sfvrsn=453abb72_0

¹² https://myescambia.com/docs/default-source/sharepoint-root/Commission%20Meeting%20Documents/orderly-conduct-of-meetings-policy.pdf?sfvrsn=9af166c6_3

¹³ <https://myescambia.com/docs/default-source/default-document-library/2017-escambia-county-annual-report.pdf>

¹⁴ https://myescambia.com/docs/default-source/budget/proposed-18-19-budget-book765d72f015a36cfab4b5ff0000ad5567.pdf?sfvrsn=9bfe1e6d_0

¹⁵ https://myescambia.com/docs/default-source/restore/myip-pdfs/2016-2017-myip-final.pdf?sfvrsn=3af296d_0

can find out the direction that Escambia County is moving related to issues such as tax (assessments), spending (budgets), and legislative policy (affecting the environment, schools, and open spaces).

27. Through perusing the archived agenda documents, interested persons can ascertain what past legislation and projects on which the Escambia County Commissioners have voted regarding important social, growth, and environmental issues which (while voted upon in the past) have a direct effect on current and future events in Escambia County.

28. Defendant's electronic documents contain a plethora of information regarding matters which affect the public directly such as related veteran services, environmental resources management, and pet adoption fees and information.

29. Through Defendant's portal, interested persons can read Defendant's electronic documents on demand.

30. However, blind and/or visually impaired persons require screen reader software to read/comprehend (Defendant's) electronic documents.

31. Online "on-demand" viewing of the Defendant's electronic documents is not an option available to persons with vision disabilities due to the fact that those documents are provided solely in a *PDF flat surface* format and do not interface with screen reader software as used by blind and visually impaired individuals. Plaintiff (who is legally blind) is such an interested person.

32. As an active and social Florida resident, Plaintiff is interested in the quality of life level of environmental concern with interest in response to disaster conditions (preparation and aftermath), safe consumption of locally caught fish, pet adoption policies and fees, and veterans' protections which would make Escambia County a viable visiting

and living option. Furthermore, Plaintiff is interested in investigating County budgeting choices and strategies, and how the county responds to environmental disasters and concerns (such as the BP oil spill) in Escambia County.

33. Therefore, in May 2018, Plaintiff visited Defendant's Website with the intent of educating himself about the quality of life and governmental functioning in Escambia County. Plaintiff also wanted to find out more about programs, services and activities available to visitors and residents of Escambia County

34. Because Defendant's electronic documents are not in an accessible format for the blind and visually impaired and are not provided in accessible HTML or PDF format, Plaintiff was prevented from becoming informed about Escambia County's governmental functioning, policies, programs, services and activities as Defendant offers to the public because of his vision disability. This exclusion resulted in Plaintiff suffering from feelings of segregation, rejection, and isolation as Plaintiff was left excluded from participating in the community services, programs and activities offered by Escambia County in a manner equal to that afforded to others who are not similarly disabled.

35. Therefore, on May 15, 2018, Plaintiff wrote a letter to Defendant and informed Defendant that he is legally blind and unable to fully access the electronic documents which Defendant provides to the public with his screen reader software. In that letter, Plaintiff requested Defendant's electronic documents be provided in an accessible format for blind and visually impaired individuals (such as himself). Plaintiff made this request via U.S. mail service. Plaintiff's letter request is attached hereto as Exhibit A.

36. On June 22, 2018, Defendant sent a letter in response to the Plaintiff which stated that it has improved its general Website but did not address the specific electronic documents themselves which are not accessible to Plaintiff. Instead of making those

electronic documents accessible on demand online as available to the sighted public, Defendant requested that Plaintiff contact Defendant and request specific documents and that Defendant would then assist Plaintiff for those specifically requested documents. See Exhibit B. Defendant's response did not state that the electronic documents which it provides to the public were now accessible, as Plaintiff had requested in his request for accommodation letter (Exhibit A).

37. On June 23, 2018, Plaintiff again attempted to access Defendant's electronic documents, but those electronic documents remained inaccessible as he still could not comprehend them with his screen reader software. It is sufficiently obvious that Plaintiff and others who are blind or low sighted need Defendant to properly save its documents so that they are accessible on demand and permit such persons to benefit from the services, programs and activities.

38. By Defendant's failure to make the electronic documents on its Website accessible, Plaintiff has suffered injuries and shame, humiliation, isolation, segregation, experienced emotional suffering, pain and anguish and has been segregated and prohibited from enjoying the programs, services and activities offered by Defendant to the public.

39. Plaintiff continues to desire to participate in the governmental functioning of Escambia County. However, Plaintiff is unable to do so, as he is unable to meaningfully access and comprehend the electronic documents provided by Defendant for the public.

40. Furthermore, Defendant has not provided any other auxiliary aid or service which would assist Plaintiff and/or similarly situated blind or visually impaired constituents to meaningfully access and fully comprehend Defendant's electronic documents in the same manner as Defendant has as made available to the non-disabled

public.

41. Because Defendant has not provided its electronic documents in an accessible format for the blind and visually impaired, Plaintiff has been prevented from becoming informed of Escambia County's governmental functioning, policies, programs, services and activities as offered to the public by Defendant because of his vision disability. As such, Plaintiff was left excluded from participating in Escambia County government and the community services, programs and activities offered by Escambia County in a manner equal to that afforded to others who are not similarly disabled.

42. Plaintiff's inability to access Defendant's electronic documents has resulted in a *virtual barrier* which has impaired, obstructed, hindered, and impeded Plaintiff's ability to become an involved citizen in Escambia County government and learn about the programs, services and activities available to residents and visitors of Escambia County.

43. On information and belief, since May 2018, when Plaintiff first began to attempt to access and learn about Escambia County programs, services, activities and government, Defendant has not made reasonable modifications to its policies and procedures to ensure future compliance with the ADA and/or the Rehabilitation Act. As of this filing, the electronic documents made available by Defendant remain inaccessible to Plaintiff as well as to other blind and visually disabled individuals.

44. Plaintiff continues to desire to become involved in and monitor the Escambia County governmental process. However, Plaintiff is unable to do so, as he is unable to meaningfully access and comprehend the electronic documents provided by Defendant for the public.

45. Plaintiff has concrete plans to read and comprehend (on a weekly basis) the electronic documents supplied by Defendant as a service to the public. However, Plaintiff

is prevented from enjoying the programs, services and activities for residents and visitors of Escambia County due to the unlawful barrier created by Defendant's refusal to make its electronic documents accessible for screen reader software as used by the visually impaired.

46. Plaintiff (and others with vision impairments) will suffer continuous and ongoing harm from the Defendant's omissions, policies, and practices regarding its electronic documents unless enjoined by this Court.

47. Defendant has engaged (and continues to engage) in unlawful practices in violation of Title II of the ADA (42 U.S.C. §12132 and Section 504).

48. Defendant's unlawful practices include (but are not limited to) denying Plaintiff (an individual with a disability) the ability to participate in Escambia County government and to participate in the Escambia County community programs, services and activities by failing to provide Plaintiff the ability to study and review Escambia County's electronic documents in the same manner as provided to the sighted public.

49. Defendant is deliberately indifferent to the provisions of the Rehabilitation Act and Title II of the ADA in regard to the unlawful practices described herein because Defendant is aware of the availability of computer programs which allow Defendant to save electronic documents in an accessible format. Despite the ease of providing accessible electronic documents, Defendant has failed to reasonably modify its policies, processes and procedures for the same.

50. As a result of Defendant's actions, Plaintiff has been damaged and has suffered injuries and shame, humiliation, isolation, segregation, experienced emotional suffering, pain and anguish.

51. For all of the foregoing, Plaintiff has no adequate remedy at law.

52. Plaintiff has retained Scott Dinin P.A. and J. Courtney Cunningham PLLC as his legal counsel in this action and has agreed to pay a reasonable attorney fee.

COUNT I – VIOLATIONS OF TITLE II OF THE ADA

53. The broad mandate of the ADA is to provide an equal opportunity for individuals with disabilities to participate in and benefit from all aspects of American civic and economic life and that mandate extends to public entities including Defendant and the documents that Defendant provides to the public (including those documents provided in electronic document format).

54. The Department of Justice guidelines on the application of Title II of the ADA state:

[T]he Department has taken the position that title II covers Internet Web site access. Public entities that choose to provide services through web-based applications (e.g., renewing library books or driver's licenses) or that communicate with their constituents or provide information through the Internet must ensure that individuals with disabilities have equal access to such services or information, unless doing so would result in an undue financial and administrative burden or a fundamental alteration in the nature of the programs, services, or activities being offered. 28 C.F.R. Pt. 35 app. A.

55. Title II of the ADA mandates that no qualified individual with a disability shall, by reason of such disability, be excluded from full and equal 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.

56. Defendant Escambia County is a political subdivision of the State of Florida and a public entity under Title II of the ADA. A public entity includes any instrumentality of a state or local government therefore, Defendant is subject to Title II of the ADA. 42 U.S.C. §12131(1)(b).

57. As a public entity, Defendant must:

a) Provide full and equal enjoyment of its services, programs, and activities in the most integrated setting appropriate to people with disabilities. 42 U.S.C. §12131, *et. seq.*; 28 C.F.R. §35.130(a).

b) Ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals unless the public entity can demonstrate that taking those steps to modify policies, practices, or procedures would fundamentally alter the nature of the service, program, or activity; 28 C.F.R. §35.130(b)(7).

c) Ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals unless the public entity can demonstrate that legitimate safety requirements are necessary for safe operation. Any safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities; 28 C.F.R. §35.130(h).

58. Defendant's document creation and storage on myescambia.com is a program, service, or activity within the definition of Title II of the ADA. Defendant makes information available in thousands of pages of documents available through its information portal through which the public can access electronic documents.

59. Defendant failed to provide its electronic documents in a format accessible to visually impaired individuals who require screen reader software to comprehend those electronic documents despite the sufficiently obvious need to do so. Therefore, Plaintiff has been effectively denied access to those electronic documents by Defendant.

60. By denying Plaintiff the opportunity to comprehend and benefit from its electronic documents due to Plaintiff's disability (visual impairment), Defendant has

denied Plaintiff the opportunity to participate in or benefit from the services, programs or activities afforded to non-disabled persons and persons who are not visually impaired.

61. Providing electronic documents in a format that can be recognized by screen reader software and therefore making those electronic documents accessible to the visually impaired would not result in any undue burden to Defendant.

62. Providing electronic documents in a format that can be recognized by screen reader software thereby making those electronic documents accessible to the visually impaired would not fundamentally change the nature of Defendant's services, programs, or activities.

63. Defendant is required to provide full and equal enjoyment of its services, programs, and activities in the most integrated setting appropriate to people with disabilities. 42 U.S.C. §12131, *et. seq.*; 28 C.F.R. Part 35.

64. As a result of the virtual barriers within the electronic documents provided by Defendant, visually impaired individuals are denied the full and equal access to the services, programs, and activities offered by Escambia County and have been denied participation in the government of Escambia County in a manner equal to that afforded to others; in derogation of Title II of the ADA and Section 504.

65. As a public entity, Defendant may not (directly or through contractual or other arrangements) utilize methods of administration that deny individuals with disabilities access to its services, programs, and activities or that perpetuate the discrimination of another public entity; 28 C.F.R. § 35.130(b)(3).

66. As a public entity and pursuant to Title II, Defendant is required to make reasonable modifications in its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity

can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity; 28 C.F.R. § 35.130(b)(7).

67. Defendant is required to present the electronic documents it provides to the public in an accessible format in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

68. Defendant's failure to make its electronic documents accessible impedes Plaintiff (and similarly situated visually impaired individuals) from fully accessing the programs, services, and activities of Escambia County as offered to residents and visitors so that they can participate in the governmental process and affairs of Escambia County, and enjoy the activities, services and programs provided by Escambia County. By such failure, Defendant has discriminated against the visually impaired.

69. Defendant is blatantly discriminating by its failure to provide accessible electronic documents for blind and visually impaired citizens. Defendant has violated Title II of the ADA in numerous ways, including discriminatory action which occurred when the Defendant failed to maintain policies and procedures to ensure compliance with Title II of the ADA by creating barriers for individuals with disabilities who are visually impaired and who require the assistance of interface with screen reader software to comprehend and access Defendant's electronic documents provided within its Website. These violations are ongoing.

70. As a result of Defendant's inadequate creation, development, and administration of Defendant's electronic documents, Plaintiff is entitled to injunctive relief pursuant to 42 U.S.C. §12133 to remedy the discrimination.

COUNT II – VIOLATION OF SECTION 504 OF THE REHABILITATION ACT

71. Plaintiff is legally blind, which substantially limits him in his major life

activity of seeing. Therefore, Plaintiff is an otherwise qualified individual with a disability under Section 504 of the Rehabilitation Act.

72. In *Nat'l Ass'n of Deaf v. State*, No. 18-cv-21232, 2018 WL 3722936, at *5 (S.D. Fla. June 18, 2018) (citing *Cash v. Smith*, 231 F.3d 1301, 1305 (11th Cir. 2000) the court found that “[t]he elements of a Title II claim and a section 504 Rehabilitation Act claim are the same,” and can be addressed together.

73. As an otherwise qualified individual, Plaintiff is expressly authorized under Section 505 of the Rehabilitation Act which enforces Section 504 of the Rehabilitation Act, 29 U.S.C. §§ 794 & 794(a), incorporating the remedies, rights and procedures set forth in Section 717 of the Civil Rights Act of 1964, including the application of §§ 706(f) - (k), 42 U.S.C. §§ 2000e (5)(f) - (k).

74. On information and belief, Defendant is a recipient of federal financial assistance. The Escambia County Board of County Commissioners distributes that federal financial assistance to its agencies and departments through its budgetary and legislative activities. As the distributor of federal financial assistance, all of the operations of Escambia County Board of County Commissioners (including Defendant’s online portal) are subject to the Rehabilitation Act as a covered program or activity. 29 U.S.C. §794(b)(1)(B).

75. Congress enacted the Rehabilitation Act in 1973 to enforce the policy of the United States that all programs, projects, and activities receiving federal assistance “. . . be carried out in a manner consistent with the principles of . . . inclusion, integration, and full participation of the individuals [with disabilities].” 29 U.S.C. §701(c)(3).

76. Section 504 of the Rehabilitation Act prohibits recipients of federal funding from discriminating against disabled persons and requires that programs or activities

operated by a federally-funded entity be readily accessible to persons with disabilities; see 28 C.F.R. §42.520.

77. For the purposes of Rehabilitation Act claims, the term “program or activity” means all of the operations the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government (29 U.S.C. Section 504, §794(b)(1)(B)).

78. Section 504 of the Rehabilitation Act, 29 U.S.C. §794 requires that no otherwise qualified individual with a disability, on the basis of that disability, be excluded from participation in or be denied the benefit of the services, programs, activities, or to otherwise be discriminated against.

79. The Rehabilitation Act defines “program or activity” to mean all of the operations of a department, agency, special purpose district, or other instrumentality of a state or of a local government. As Defendant is a local government, Defendant’s creation, storage and providing electronic documents to the public through its Website is a within the meaning of the Rehabilitation Act. For the purposes of this section, the term “program or activity” consists of all of the operations of a department, agency, special purpose district, or other instrumentality of a state or of a local government (29 U.S.C. §794(b)(1)(A)).

80. This denial of access to Defendant’s services, programs and/or activities has subjected Plaintiff to discrimination, excluded Plaintiff from participation in those services, programs and/or activities and denied Plaintiff the benefits of Defendant’s electronic documents.

81. As of this filing, Defendant’s electronic documents within myescambia.com

remain inaccessible to persons with screen readers who are blind and/or low sighted but are accessible to persons without vision disabilities.

82. Specifically, as related to violations of Section 504, blind and visually impaired individuals need to comprehend and access the electronic documents which Defendant provides to the public. Yet, Defendant's electronic documents are not saved in an accessible format which properly interfaces with screen reader software so that blind and visually impaired individuals are able to comprehend those documents.

83. As a distributor/recipient of federal funds and pursuant to Section 504 the Defendant may not deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service; 45 CFR §84.4(b)(1)(i).

84. As a distributor/recipient of federal funds and pursuant to Section 504 the Defendant may not afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; 45 CFR §84.4(b)(1)(ii).

85. As a distributor/recipient of federal funds and pursuant to Section 504 the Defendant may not provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others; 45 CFR §84.4 (b)(1)(iii).

86. As a distributor/recipient of federal funds and pursuant to Section 504 the Defendant may not provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others; 45 CFR §84.4 (b)(1)(iv).

87. Plaintiff has been denied the ability to comprehend electronic documents provided by Defendant which would permit Plaintiff to access the programs, services and

activities of Escambia County as offered to residents and visitors. As a distributor/recipient of federal funds and pursuant to Section 504, Defendant may not otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service; 45 CFR §84.4(b)(1)(vii).

88. As a distributor/recipient of federal funds and pursuant to Section 504, Defendant may not (directly or through contractual or other arrangements) utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State; 45 CFR §84.4(b)(4).

89. As a distributor/recipient of federal funds and pursuant to Section 504, Defendant is required to evaluate (with the assistance of interested persons including handicapped persons or organizations representing handicapped persons) its current policies and practices and the effects thereof that do not or may not meet the requirements of this part; 45 CFR §84.6(c)(1)(i).

90. As a distributor/recipient of federal funds and pursuant to Section 504, Defendant is required to modify, after consultation with interested persons (including handicapped persons or organizations representing handicapped persons), any policies and practices that fail to meet the requirements of this part; 45 CFR §84.6(c)(1)(ii).

91. As a distributor/recipient of federal funds and pursuant to Section 504, Defendant is required to take, after consultation with interested persons (including

handicapped persons or organizations representing handicapped persons), appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices; 45 CFR §84.6(c)(1)(iii).

92. As a distributor/recipient of federal funds and pursuant to Section 504, Defendant is required to designate at least one person to coordinate its efforts to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part; 45 CFR §84.7(a) & (b).

93. Defendant has discriminated against Plaintiff (and other individuals with visual impairments) in the unequal provision of the electronic documents on myescambia.com which Defendant provides to the public. As a result, Plaintiff has experienced exclusion, segregation, mental anguish, and humiliation in violation of his civil rights.

94. Defendant's policies, practices and procedures, particularly the actions and omissions described above have violated Plaintiff's rights under Section 504 by discriminating on the basis of a disability.

95. As a public entity, Defendant knows or should know of the 2003 guidelines provided by the Department of Justice related to providing information to the public in accessible format.

96. Defendant has failed to act on the likelihood of harm each time it has augmented or uploaded new documents on myescambia.com without addressing the accessibility of those electronic documents for blind and visually impaired individuals. Thus, Defendant has demonstrated deliberate indifference to Plaintiff's federally protected

rights in failing to provide equal access to its services, programs and/or activities for blind and visually impaired individuals.

97. Deliberate indifference plainly requires more than gross negligence *Loeffler v Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2nd Cir. 2009) . Deliberate indifference is a deliberate choice *Bozeman v Orum*, 422 F.3d 1265, 1271 (11th Cir. 2005).

98. Defendant clearly has made a choice on a daily basis in failing to provide effective communication (vis-a-vie its electronic documents on myescambia.com). Defendant's deliberate choice has demonstrated deliberate indifference (standard) thus showing intentional discrimination.

99. By Defendant's failure to make electronic documents on myescambia.com accessible or to otherwise respond to Plaintiff's request for accommodation in a meaningful manner (as request was sent via U.S. mail to Defendant on May 15, 2018) Defendant's actions further reflect Defendant's deliberate indifference to the rights of the Plaintiff based on Plaintiff's disability.

100. While in this instance Plaintiff requested accommodation from Defendant, no request for an accommodation is necessary to plead a claim for failure to accommodate where the need for such an accommodation is obvious. See *Wilson v. Broward Cty.*, No. 04-61068, 2006 WL 8431515, at *3 (S.D. Fla. Jan. 13, 2006)(denying a motion to dismiss in a Title II case where plaintiff claimed that his need for accommodation was obvious).

101. The ongoing and continuous act of failing to provide effective communication (related to the operation and maintenance of myescambia.com) goes beyond gross negligence. Thus, Defendant is in violation of Section 504 of the Rehabilitation Act. See: *Liese v. Indian River County Hosp. Dist.*, 701 F.3d 334, (11th Cir. 2012).

102. The standard for deliberate indifference as set forth in *Liese v Indian River County Hospital District*, No. 10-15968 (11th Cir. Nov 13, 2012); See: “[D]eliberate indifference defined in the context as occurring when “the defendant knew that harm to a federally protected right was substantially likely and failed to act on that likelihood,” the *Liese* court, quoting from *T.W. ex.rel. Wilson v. Sch. Bd of Seminole Cnty., Fla.*, 610 F.3d at 604 (11th Cir.2010); accord *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2d Cir.2009); *Barber ex rel. Barber v. Colo. Dep't of Revenue*, 562 F.3d 1222, 1228–29 (10th Cir.2009); *Duvall v. Cnty. Of Kitsap*, 260 F.3d 1124, 1139 (9th Cir.2001); see Fig. 1

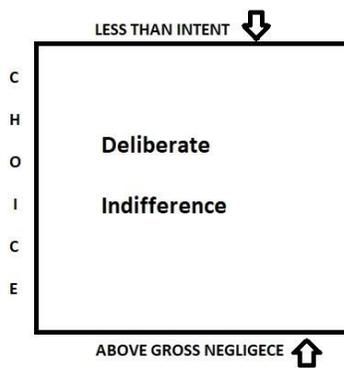


Fig. 1

103. Plaintiff has met the standard for deliberate indifference established in *McCollum v Orlando Reg'l Healthcare Sys., Inc.*, 768 F.3d 1135, 1147 (11th Cir 2014): “a plaintiff must show that the defendant ‘knew that harm to a federally protected right was substantially likely’ and ‘failed to act on that likelihood.’” (emphasis omitted) (quoting *Liese*, 701 F.3d at 344), which standard was instrumental in the 11th Circuit Court of Appeals decision in favor of the deaf defendant Harold Crane to find that Palmetto General Hospital had intentionally discriminated against the plaintiff, reversing summary judgment on plaintiff’s claim of ineffective communication during involuntary commitment proceeding under deliberate indifference standard (*Crane v. Lifemark Hosps., Inc.*, 898 F.3d 1130, 1135-36 (11th Cir. 2018).

104. As a result of Defendant's actions, Plaintiff has been damaged and has suffered injuries and shame, humiliation, isolation, segregation, experienced emotional suffering, pain and anguish and has been segregated and prohibited from enjoying the programs, services and activities offered by Escambia County to residents and visitors (through the knowledge gained from its electronic service documents and through participating in the government of Escambia County).

105. An award of monetary damages under Section 504 requires showing of intentional discrimination/deliberate indifference. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001). "Deliberate indifference requires both knowledge that a harm to a federally protected right is substantially likely [knowledge that an accommodation is required], and a failure to act upon that likelihood." *Id.* at 1139; *Lovell v. Chandler*, 303 F.3d 1039, 1056 (9th Cir. 2002).

106. Plaintiff is entitled to damages pursuant to Section 504 because of Defendant's deliberate indifference to the inaccessibility of the electronic documents it provides to the public, despite Plaintiff's request for accommodation.

107. Plaintiff has been obligated to retain the undersigned counsel for the filing and prosecution of this action. Plaintiff is entitled to have reasonable attorneys' fees, costs and expenses paid by Defendant Escambia County.

108. For all of the foregoing, Plaintiff has no adequate remedy at law

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Walter Joseph Beckman hereby demands judgment against Defendant Escambia County including a declaratory judgment, pursuant to Rule 57 of the FRCP stating that the Defendant's practices, policies, and procedures have subjected Plaintiff to discrimination in violation of Title II of the ADA and Section 504 of the

Rehabilitation Act to permanently enjoin Defendant Escambia County from any practice, policy and/or procedure which will deny Plaintiff equal access to the services, programs and activities offered by Defendant Escambia County to residents and visitors and in participating in the government of Escambia County, as well as:

- a) issue a declaratory judgment that Defendant has violated the Plaintiff's rights as guaranteed by Title II of the ADA and Section 504 of the Rehabilitation Act;
- b) The Court enter an Order requiring Defendant to update all electronic documents made available to the public to remove barriers in order that individuals with visual disabilities can access the electronic documents to the full extent required by Title II of the ADA and Section 504 of the Rehabilitation Act;
- c) enter an Order pursuant to 42 U.S.C. §12188(a)(2) for permanent injunction which directs Defendant to take all steps necessary to bring the electronic documents which it provides on its electronic media into full compliance with the requirements set forth in the ADA, and its implementing regulations, so that all electronic documents are fully accessible to, and independently usable by, blind and low sighted individuals, and which further directs that the Court shall retain jurisdiction for a period to be determined to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law;
- d) Order Defendant to retain a qualified consultant acceptable to Plaintiff ("Mutually Agreed Upon Consultant") who shall assist it in improving the

accessibility of its electronic documents, so they are accessible to individuals with visual disabilities who require those electronic documents to be in accessible format or provided in HTML format;

- e) Order Defendant to engage a (mutually agreed upon) Consultant to perform an automated accessibility audit on a periodic basis to evaluate whether Defendant's electronic documents to be accessible to individuals with visual disabilities who require those documents to be in accessible format or provided in HTML format;
- f) award damages in an amount to be determined at trial;
- g) award Plaintiffs' reasonable litigation expenses and attorneys' fees; and
- h) award such other and further relief as it deems necessary, just and proper.

Dated this 24th day of October, 2018.

Respectfully submitted,

s/Scott Dinin

Scott R. Dinin, Esq.

Scott R. Dinin, P.A.

4200 NW 7th Avenue

Miami, Florida 33127

Tel: (786) 431-1333

Email: inbox@dininlaw.com

s/Juan Courtney Cunningham

Juan Courtney Cunningham, Esq.

J. Courtney Cunningham PLLC

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Miami, Florida 33156

Tel: (305) 351-2014

Email: cc@cunninghampllc.com

Counsel for Plaintiff

EXHIBIT 'A'

WALTER JOSEPH BECKMAN

910 North 70th Avenue
Pensacola, Florida 32506

May 15, 2018

Via US Mail

Escambia County, ADA Coordinator
221 Palafox Place, Suite 410
Pensacola, Florida 32502

Attn: Eric Kleinert, ADA Coordinator

REQUEST FOR ACCOMMODATION

Dear Eric Kleinert, ADA Coordinator;

I was on the site <https://myescambia.com/> today, trying to learn about the governmental functioning of Escambia County through the documents you provide within your site.

I am legally blind, so I depend on a screen reader to help me understand electronic documents. My screen reader would not work with your electronic documents. I was specifically interested in documents related to the budget of Escambia County (electronic documents) for 2018, 2017, 2016 and 2015 and all County Commission agendas and back up material for year 2018, 2017 and 2016. Would you please make these documents accessible in your site so that they will work with screen readers?

Your site has many other electronic documents other than the specific ones which I have asked for above. In addition to the specific documents listed here, can you also make the other electronic documents within your site accessible so that they will work with screen readers so I don't have to take the steps to ask for each document in a mail request?

Please send me a reply via mail as soon as possible.

Thank you,

Walter Joseph Beckman

Walter Joseph Beckman

EXHIBIT 'B'



Board of County Commissioners • Escambia County, Florida

June 22, 2018

Walter Joseph Beckman
910 North 70th Avenue
Pensacola, Florida 32506

Mr. Beckman,

I am in receipt of your correspondence regarding the accessibility of the Escambia County Board of County Commissioners website which was received by my office on June 19, 2018. Thank you for bringing your concerns to my attention, our organization strives to provide equal accessibility to programs, services, and activities to all citizens. One of our accessibility goals is to ensure all digital content is accessible by citizens with visual, auditory, and other physical limitations and disabilities.

Towards attainment of this goal, we have made a series of recent improvements to the accessibility of <https://myescambia.com> and <https://mywfpl.com>. Those improvements include adjusting website colors and color contrasting, tagging, and navigation options. Additionally, we have revisited our efforts with Department Directors on ensure our future web content meets our accessibility standards.

While the ongoing improvements continue to take place, are there specific documents of immediate interest to you? I can work with staff to ensuring those documents are available to you in an accessible format. Your specificity in identifying these documents is appreciated.

In the future, please feel free to contact me directly at eakleinert@myescambia.com or (850) 595-1637. I look forward to hearing from you.

Sincere regards,

A handwritten signature in black ink, appearing to read "E Kleinert".

Eric Kleinert
Human Resources Director

CIVIL COVER SHEET

JS 44 (Rev. 06/17)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Walter Joseph Beckman
(b) County of Residence of First Listed Plaintiff Escambia
(c) Attorneys (Firm Name, Address, and Telephone Number) Juan Courtney Cunningham, Esq.; J. Courtney Cunningham PLLC, 8950 SW 74th Scott R Dinin, Esq.; Scott R Dinin, P.A.; 4200 NW 7th Avenue, Miami Florida 33127; tel 786-431-1333; email: inbox@dininlaw.com

DEFENDANTS
ESCAMBIA COUNTY
County of Residence of First Listed Defendant Escambia
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
REAL PROPERTY
TORTS
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title II of the ADA 42. USC Sec 12131 et seq; Sec 504 of the Rehabilitation Act; 20 USC Sec 794;
Brief description of cause:
Electronic Documents within online content is inaccessible to disabled (blind and visually impaired) individuals

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE
DOCKET NUMBER
DATE 10-24-18
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

WALTER JOSEPH BECKMAN,
Plaintiff,
v.
ESCAMBIA COUNTY,
Defendant.
Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ESCAMBIA COUNTY
c/o: Jack Brown, County Administrator
221 Palafox Place
Pensacola, Florida 32502

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott R. Dinin, Esq.
Law Offices of Scott R. Dinin, P.A.
4200 NW 7th Avenue
Miami, FL 33127
Tel: (786) 431-1333
E-mail: inbox@dininlaw.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk