

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Florida



EDDIE SIERRA

Plaintiff(s)

v.

LEON COUNTY, FLORIDA

Defendant(s)

Civil Action No. 4:19cv75 — MW/CAS

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Leon County
301 S. Monroe Street
Tallahassee, FL 32301

c/o County Manager

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:

J. Courtney Cunningham, Esq.
8950 SW 74th Court, Suite 2201
Miami, FL 33156

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



s/ Angela Maxwell, deputy Clerk
Signature of Clerk or Deputy Clerk

Date: 02/07/2019

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE CIVIL DIVISION

CIVIL ACTION NO.:

EDDIE I. SIERRA,

Plaintiff,

vs.

LEON COUNTY, FLORIDA

Defendant.

---

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The Plaintiff, EDDIE I. SIERRA, by and through his undersigned counsel, hereby files his Complaint against LEON COUNTY, Florida for declaratory and injunctive relief, and in support states as follows.

**INTRODUCTION**

1. Mahatma Gandhi said, “The true measure of any society can be found in how it treats its most vulnerable members.” Plaintiff Eddie Sierra is deaf. Plaintiff advocates for our society’s most vulnerable, the elderly and persons with disabilities and brings this action to force LEON County to end its discriminatory policies and practices; to provide him with equal access to its services, programs, and activities; and to cease its violation of his fundamental rights under the United States Constitution. This action is brought under Title II of the Americans with Disabilities Act of 1990 and 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. Plaintiff seeks damages and injunctive relief to make him

whole. Defendant LEON COUNTY, Florida (“LEON COUNTY”) is a public entity which denied Eddie I. Sierra both access to Defendant’s archived video for streaming on demand and access to live streaming<sup>1</sup> of Defendant’s County Commission meetings, on the basis of his disability, being hard of hearing and deaf. In so doing, LEON COUNTY denied Eddie I. Sierra a fundamental right to observe and participate in the democratic process of self-government under the United States Constitution. Federal judges in the Tenth and Eleventh Circuit Courts of Appeal have both held that Constitutional rights are implicated when deaf plaintiffs are seeking access to legislative video on public entity websites: “The right to meaningful participation in the political process and right of access to publicly available information needed to participate in the process is a fundamental right, and an infringement of the right should receive heightened scrutiny.” *See Johnny Reininger, Jr. v. State of Oklahoma*, Case No. 5:16-cv-01241-D (W.D. Okla. November 9, 2017) (DE 40). In the Southern District of Florida, Judge Ursula Ungaro held: “Plaintiffs are not seeking just any public information, but rather information that goes to the very heart of the democratic process: the text of legislative proceedings. Accordingly, their fundamental right to participate in the democratic process is implicated.” *National Association of the Deaf et al v. State of Florida et al.*, 318 F. Supp.3d 1338 (S.D. Fla. 2018).

2. LEON COUNTY ’s video and live streaming of online content constitutes “programs, services and activities” that are available to anyone who accesses its website. However, this content is not available for persons who are deaf or hard of hearing due to access barriers, including failure to provide closed captioning. 28 CFR §35.130.

3. Qualified or otherwise qualified individuals who are deaf, require auxiliary aids or services, such as closed captioning services, to meaningfully access the online audiovisual

---

<sup>1</sup> As used herein live streaming means the streaming of a live event, over the internet, as it occurs.

content and audio content. LEON COUNTY's audiovisual content is not closed captioned.

4. Plaintiff brings this action against LEON COUNTY to enforce Section 504 of the Rehabilitation Act which requires that a public entity receiving federal financial assistance, not deny persons with disabilities the benefits of its programs, services and activities.<sup>2</sup> LEON COUNTY's adopted 2018-2019 budget includes federal financial assistance as a revenue source.

5. By failing to provide auxiliary aids or services, LEON COUNTY deprives deaf and hard of hearing individuals the benefits of its online content, a benefit afforded to non-disabled individuals, thereby increasing the sense of isolation and stigma that the ADA and Section 504 were meant to redress for individuals with disabilities.

6. On December 4, 2018 Plaintiff requested that LEON COUNTY provide auxiliary aids and services—closed captions—for its online content in a timely and accurate fashion. LEON COUNTY has not provided closed captions or any other auxiliary aids or services for its online audiovisual content. In six weeks since Plaintiff made the request, LEON COUNTY has not answered Plaintiff's request nor closed captioned any of its video content.

7. LEON COUNTY's denial of its publicly available online content to deaf and hard of hearing persons violates Section 504 of the Rehabilitation Act and Title II of the ADA.

8. Accordingly, Plaintiff seeks injunctive and declaratory relief to ensure that deaf and hard of hearing individuals have equal, effective and timely access to LEON COUNTY's publicly available online content, and other damages as pled *infra*.

#### **JURISDICTION AND VENUE**

9. Plaintiff brings this action under sections 12132 and 12133 of the ADA, 42 U.S.C. §§12132 and 12133 incorporating by reference the remedies, procedures and rights under

---

<sup>2</sup> See 29 USC §794(a)

the Rehabilitation Act, 29 U.S.C. §§794 and 794a(a)(2) and (1)(a), and under section 505 of the Rehabilitation Act, which enforces Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794 and 794a(a)(2) incorporating the remedies, rights and procedures set forth in section Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et. seq.

10. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331, as the claims presented arise under the Constitution and laws of the United States and 42 U.S.C. §12188. This Court's jurisdiction is proper under 28 U.S.C. §§ 451 and 1331.

11. LEON COUNTY's unlawful practices have been occurring since 2002 and continue to occur in the Northern District of Florida.

12. Plaintiff is interested in the workings of local and state government. In that regard, he would like to observe how LEON COUNTY government conducts its business; learn about its legislative history; participate in elder and disability rights advocacy; discover information about the County; explore activities and visitor information for the elderly and disabled; and learn about its disability rights policies as Plaintiff believes that the public-sector disability rights policies inform the basis of other policies. Plaintiff has visited Defendant's website in the past including December 17, 2018 and January 4 and 14, 2019. He intends to continue to visit Defendant's website in the immediate future. Defendant's online content constitutes a "Program and Activity" under the Rehabilitation Act 29 U.S.C. §794(b)(1)(B). However, unless Defendant is required to eliminate the access barriers at issue and required to change its policies so that access barriers do not reoccur on Defendant's website, Plaintiff will continue to be denied full and equal access to the video content on Defendant's website, and its

live streaming.<sup>3</sup>

13. Plaintiff is expressly authorized to bring this action under the Americans with Disabilities Act (ADA) 42 U.S.C. Sections 12132 and 12133, incorporating by reference the remedies and procedures and rights under the Rehabilitation Act, 29 U.S.C. Section 794 and 794a(a)(2) and under Section 505 of the Rehabilitation Act which enforces Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794 and 794a(a)(2) incorporating the remedies, rights and procedures set forth in Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et. seq.*

14. The Twenty-First Century Communications and Video Accessibility Act (CVAA) is not applicable to this action because Defendant is exempt from the closed captioning requirements under the CVAA. *See Sierra v. City of Hallandale Beach*, 904 F.3d 1343, (11<sup>th</sup> Cir. 2018).

#### PARTIES

15. Plaintiff is deaf and is substantially limited in the major life activity of hearing. Plaintiff does not understand or use sign language. He has been deaf since he was five years of age. Plaintiff acts as an advocate for persons with disabilities and the elderly and operates a non-profit organization that addresses the needs of seniors.

16. Plaintiff is an otherwise qualified or qualified individual with a disability in that Plaintiff is qualified to access LEON COUNTY 's video streaming program or service.

17. Due to his disability, the Plaintiff requires auxiliary aids and services, such as closed captioning services, to be able to participate in and receive the benefit of LEON COUNTY's online videos and content.

---

<sup>3</sup> The instant case is not a website accessibility case. The audiovisual content in question is *stored* on Defendant's website. It would be inaccessible if it were on a thumb drive, external drive, DVD or any device capable of storing digital content.

18. LEON COUNTY is a public entity within the meaning of Title II of the Americans with Disabilities Act and at all times relevant has been a recipient of federal funds under the Rehabilitation Act of 1973. LEON COUNTY is a body corporate and political subdivision of the State of Florida.

### **GENERAL ALLEGATIONS**

19. LEON COUNTY provides a live streaming service through its online portal where any interested persons can stream the live meetings of the LEON COUNTY Commission. In these simulcast meetings, the LEON COUNTY Commission is receiving information and statements from the public, negotiating and voting on issues concerning disaster preparation and recovery, procurement, culture, elections, transportation, zoning, taxes, spending, parks the elderly and disabled. However, LEON COUNTY's live streaming is done in a discriminatory manner because it is not closed-captioned.

20. LEON COUNTY also has archived audiovisual content on its website ranging from 2002 to present which are linked to this complaint. These videos show the County Commission discussing and voting on transportation concerns, procurement contracts, tax rates, cultural activities issues impacting the elderly and people with disabilities <http://www2.leoncountyfl.gov/coadmin/agenda/meetingvideo.asp>. However, none of this programming is available to persons with hearing disabilities. LEON COUNTY also has videos on its Facebook page from 2014 to present. [https://www.facebook.com/pg/LEONCountyGovernment/videos/?ref=page\\_internal](https://www.facebook.com/pg/LEONCountyGovernment/videos/?ref=page_internal). None of these videos are captioned, despite the fact that Facebook has provided tools within the platform to do so.

21. Persons who are not limited in the major life activity of hearing are able to use LEON COUNTY's live streaming and on demand video service to watch and listen to LEON COUNTY's legislative decision-making activities via the live streaming service. They are also able to meaningfully use and benefit from other archived videos from LEON COUNTY.

22. Plaintiff Sierra is prevented from observing and participating in LEON COUNTY's live streamed meetings or using and benefiting from its archived content identified in ¶20 because of his hearing disability.

23. To aid in his advocacy activities, Plaintiff has concrete plans to return to the to the LEON COUNTY website on a monthly basis to use its video archives and live-streaming services of future County Commission and other meetings and activities, but for the unlawful barrier created by LEON COUNTY's refusal to provide closed captioning services for its archived videos and live streaming of its County Commission meetings. Thus, Plaintiff has been effectively barred from access to LEON COUNTY 's online video and live streaming content.

24. On or about December 4, 2018 Plaintiff, in his own right and as an advocate for disabled persons, requested the County Administrator of LEON COUNTY, to provide auxiliary aids and services including but not limited to closed captioning of videos on its website and closed captioning for its live County Commission meetings. Plaintiff requested closed captioning because he does not use or understand sign language.

25. LEON COUNTY has failed to provide Plaintiff with any of the requested auxiliary aids and services for its live streamed and archived content.

26. Plaintiff has been denied access to Defendant's online videos on numerous occasions as stated in ¶12. Plaintiff was denied access to LEON COUNTY's archived videos identified in ¶20. The archived videos remain inaccessible because they are not closed-captioned.



27. LEON COUNTY is a public entity as defined in 42 U.S.C. Section 12131(1) of the ADA, in that it is a local government entity, a body corporate and political subdivision of the State of Florida.

28. 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). (emphasis added).

29. At all times relevant, LEON COUNTY has been a recipient of federal financial assistance.

30. Since at least 2002, LEON COUNTY has engaged in unlawful practices in violation of the ADA Section 12132; 28 C.F.R. 35.130(a)-(b)(1), 28 C.F.R. 35.160(a) and (b)(2)

and in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794. These practices include but are not limited to denying Eddie I. Sierra, an individual with a disability who, with or without reasonable modifications to the rules, policies or practices; the removal of communication barriers; or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services to participate in programs or activities provided by LEON COUNTY including access to the on demand and live streaming video services of LEON COUNTY .

31. For its archived video content, identified above in ¶20, LEON COUNTY has acted with deliberate indifference to the provisions of the Rehabilitation Act and Title II of the ADA regarding the unlawful practices described herein because LEON COUNTY received Sierra's request for auxiliary aids, is aware of the availability of auxiliary aids and services and does not provide closed captioning, for its content identified in ¶¶19 and 20, and has failed to provide such auxiliary aids and services upon notice of Plaintiff's request for the same.

32. The international website standards organization, W3C, has published widely-accepted guidelines ("WCAG 2.0 AA") for making video content accessible to individuals with disabilities. These guidelines have been endorsed by the United States Department of Justice, the Federal Courts and adopted by the United States Access Board, an independent federal agency that promotes equality for people with disabilities, as the standard for the federal government.

33. LEON COUNTY's online video content as referenced in ¶20 does not comply with the WCAG 2.0 AA guidelines. LEON COUNTY's live streamed County Commission meetings referenced in ¶19 herein also fail to follow WCAG 2.0 AA guidelines for real time closed captioning of video content.

34. Plaintiff has retained J. Courtney Cunningham, PLLC as his legal counsel in this

action, and has agreed to pay said law firm reasonable attorneys' fees and costs of litigation.

**COUNT I**  
**VIOLATION OF TITLE II OF THE ADA**

35. Plaintiff adopts the allegations in paragraphs 1 through 34 as if fully set forth herein, and would further state:

36. Defendant's streaming of video content referenced in ¶19, and ¶20 is a service, program or activity within the definition of Title II of the Americans with Disabilities Act.

37. Plaintiff has visited Defendant's website on different occasions as stated in ¶12. Each time, Plaintiff was denied access to Defendant's video content available on Defendant's website described at ¶20.

38. On December 4, 2018, Plaintiff requested that Defendant provide an auxiliary aid and service for use of its archived video and live streaming of its County Commission meetings.

39. Defendant failed to provide an auxiliary aid and service for Plaintiff after receipt of Plaintiff's request for the same and for the archived videos in ¶20.

40. Defendant has denied Plaintiff the opportunity to participate in or benefit from the programs, services and activities afforded to persons who are not hearing-impaired. 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.

41. Defendant has denied Plaintiff these opportunities due to Plaintiff's disability, i.e. his hearing impairment, being deaf.

42. Defendant denied Plaintiff the opportunity to participate in a service, program, or activity due to Plaintiff's disability, being deaf.

43. Defendant has failed to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied participation in a service, program or activity, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services. As a public entity and pursuant to Title II, Defendant must also take appropriate steps to ensure that its communications with individuals with disabilities are as effective as communications with others, and furnish the appropriate auxiliary aids and services, such as closed captioning, to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of its services, programs or activities. 28 C.F.R. §§ 35.160 (a)-(b).

44. Defendant has failed to provide auxiliary aids and services for the video content referenced in ¶20, including *open and closed captioning, including real-time captioning*; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing." 28 C.F.R. § 35.104 (1) (emphasis supplied)

45. Defendant has a multimillion-dollar yearly budget. Providing closed captions as requested or the auxiliary aids and services as stated in paragraph 44 above would not result in any undue burden to Defendant.

46. Providing auxiliary aids and services as stated in paragraph 44 would not fundamentally change the nature of the service, program or activity.

47. 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).

48. As long as Defendant fails to comply with the ADA, its regulations and WCAG 2.0 AA standards, Plaintiff remains unable to equally and fully access the Defendant's video archives as well as live steaming content identified in ¶19, and ¶20.

49. As a direct and proximate result of Defendant's unlawful discrimination, Plaintiff has sustained injuries and damages.

## COUNT II

### VIOLATION OF THE REHABILITATION ACT OF 1973

50. Plaintiff adopts the allegations in paragraphs 1 through 34 as if fully set forth herein.

51. Plaintiff is expressly authorized to bring this action under the Rehabilitation Act of 1973, 29 U.S.C. Section 794 and 794a(a)(2) and (b)(1)(A), and under Section 505 of the Rehabilitation Act which enforces Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794 and 794a incorporating the remedies, rights and procedures set forth in Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et. seq.

52. Defendant's video content identified in ¶19 and ¶20, includes LEON COUNTY's live County Commission meetings, and archived County Commission and other videos. None of the archived video content is closed captioned and the live streamed County Commission meetings are not closed captioned.

53. Congress enacted the Rehabilitation Act of 1973 to enforce the policy of the United

States that all program, projects and activities receiving federal assistance "... be carried out in manner consistent with the principles of ... inclusion, integrations and full participation of the individuals [with disabilities]." 29 U.S.C. § 701(c)(3).

54. LEON COUNTY is a recipient of federal financial assistance bringing LEON COUNTY under the Rehabilitation Act which prohibits discrimination against qualified or otherwise qualified individuals in the recipient's "programs or activities".

55. Section 504 of the Rehabilitation Act prohibits recipients of federal funding from discriminating against disabled persons and requires that facilities, programs or activities operated by a federally-funded entity be readily accessible to persons with disabilities. See 28 C.F.R. § 42.520.

56. The Rehabilitation Act defines "program or activity" as all of the operations of an entity of state or local government which receives and distributes federal financial assistance. Defendant's publicly available online content and streaming services is a "program or activity" within the meaning of the Rehabilitation Act. 29 U.S.C. Section 794(b)(1)(B).

57. On or about December 4, 2018, Plaintiff requested that LEON COUNTY provide effective communications by granting auxiliary, aids and services--closed captioning of videos on its website--and closed captioning of its live County Commission meetings.

58. LEON COUNTY has failed to provide Plaintiff with the requested auxiliary aids and services.

59. As stated in ¶12, Plaintiff was denied access to LEON COUNTY's archived video content solely by reason of his disability. This denial of access to Defendants "program or activity" subjected Plaintiff to discrimination, excluded Plaintiff from participation in the program or activity and denied Plaintiff the benefits of Defendants live streamed and archived

video streaming service. As of this filing, the video content remains uncaptioned and inaccessible to qualified or otherwise qualified persons.

60. The international website standards organization, W3C, has published widely-accepted guidelines (“WCAG 2.0 AA”) for making video content accessible to individuals with disabilities. These guidelines have been endorsed by the United States Department of Justice and by Federal Courts and the United States Access Board.

61. LEON COUNTY’s live streamed County Commission meetings and archived audiovisual recordings do not comply with the WCAG 2.0 AA guidelines because they are not closed captioned.

62. LEON COUNTY has engaged in unlawful practices in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794 since 2002. These practices include but are not limited to denying Eddie I. Sierra, an individual with a disability who, with or without reasonable modifications to the rules, policies or practices; the removal of communication barriers; or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services to participate in programs or activities provided by LEON COUNTY.

63. LEON COUNTY has acted with deliberate indifference to the provisions of the Rehabilitation Act and Title II of the ADA in regards to the unlawful practices described herein because LEON COUNTY is aware of the availability of auxiliary aids and services and fails to provide any such services, including but not limited to closed captioning for its content identified in ¶19 and ¶20 and has failed to provide such auxiliary aids and services upon notice of Plaintiff’s request for the same.

64. As a direct and proximate result of LEON COUNTY’s unlawful discrimination,

Plaintiff has sustained injuries and damages and has suffered shame, humiliation, isolation, segregation, experienced emotional suffering, pain and anguish and has been segregated and prohibited from participating and observing LEON COUNTY government.

WHEREFORE the Plaintiff requests relief as set forth below:

- A. A Declaratory Judgment finding that, as of the commencement of this action, Defendant was in violation of the specific requirements of Rehabilitation Act and its relevant implementing regulations, in that Defendant took no action that was reasonably calculated to ensure that its video content described herein was fully accessible to, and independently usable by, disabled and hearing-impaired individuals;
- B. A permanent injunction pursuant to 42 U.S.C. §12133; 28 CFR §35.160(a)1 and (b)1 and 29 U.S.C. § 794a(a)(2) which directs Defendant to take all steps necessary to bring its video content into full compliance with the requirements set forth in the ADA, and its implementing regulations, and the Rehabilitation Act of 1973, so that its video and live streaming content is fully accessible to, and independently usable by, hearing-disabled 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;
- C. That Defendant ensure that all employees involved in website video content development be given web accessibility training on a periodic basis calculated to achieve ongoing compliance with WCAG 2.0 AA;
- D. That Defendant create an accessibility policy that will be posted on its website, along



- with an e-mail address and toll-free phone number to report accessibility-related problems.
- E. Damages to Plaintiff as compensation for violating Plaintiff's rights under the Rehabilitation Act of 1973 and Title II of the ADA.
  - F. Payment of costs of suit;
  - G. Payment of reasonable attorneys' fees and costs, pursuant to 29 U.S.C. §794(a)(b) of the Rehabilitation Act and the ADA; and
  - H. Any and all other relief this Court deems necessary and just.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated this 4th day of February 2019.

Respectfully Submitted,

/s/ Juan Courtney Cunningham  
J. Courtney Cunningham, Esq.  
Fla. Bar. No.: 628166  
J. COURTNEY CUNNINGHAM, PLLC  
8950 S.W. 74<sup>TH</sup> Court, Suite 2201  
Miami, FL 33156  
T: 305-351-2014  
F: 305-513-5942  
[cc@cunninghampllc.com](mailto:cc@cunninghampllc.com)