

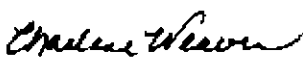
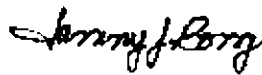


Date: 08/08/2013		AGENDA ITEM		Item: 13
<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Budget Resolution	<input checked="" type="checkbox"/> Other	
Department: Legal Department				
Division: Legal				
Subject: Settlement of litigation: Ross v. County.				
Daniel D. Eckert Director Legal Department 		Legal Arthur Graham County Attorney 	County Manager's Office Charlene Weaver, CPA, CFO Deputy County Manager 	
	Tammy Bong Director Management and Budget 	Approved as to Form and Legality		
	Approved as to Budget Requirements			
Council Action:				
Modification:				
Fund Number(s):	Description:	Amount:		
521 Risk Management	settlement	\$88,000.00		
Total Item Budget: \$88,000.00				
Staff Contact(s)		Phone:	Ext.	
Arthur Graham		386 736 5950	13241	
Summary/Highlights: Theodore Ross, deaf from birth, sued the county and alleged that he was denied effective communication while obtaining services from human services, and while he was in the jail, and subsequently on probation. His claim included allegations that he was inadequately able to communicate with jail staff, including medical personnel; and failure to post ADA rights and the identity of an ADA coordinator. Those matters have since been addressed. Mr. Ross will be paid \$88,000.00, of which \$55,000.00 will be reimbursed by \$27,500 payments by two county providers: Corizon Health, Inc., corrections medical services; and Judicial Services, Inc., probation services. As part of the settlement, the county will implement training addressing the rights of the deaf and hearing impaired community, and assistance that is available to help that community, including live interpreters, interpreter services via video-conferencing, and similar technologies. The corrections and human services divisions, and the probation services provider, will be required to maintain records of requests for interpretation services, with any denials, and to provide notice of any denials of service to plaintiff's counsel on a quarterly basis while the court maintains jurisdiction. Staff recommends the settlement, inclusive of attorney's fees and costs, and acceptance of the provider participation.				
Recommended Motion: Approval.				

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

THEADORE ROSS,
Plaintiff,

vs.

Case No.: 6:12-cv-01195-RBD-KRS

VOLUSIA COUNTY,
Defendant.

_____ /

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by Plaintiff, Theodore Ross ("Plaintiff"), and Defendant, Volusia County ("Defendant" or "County"). All parties may be collectively referred to as the "Parties". This Agreement shall be effective on the date that its execution is completed by all Parties and approved by The Volusia County Council (the "Effective Date").

RECITALS

WHEREAS, there is currently pending in the United States District Court for the Middle District of Florida an action entitled *Theodore Ross v. Volusia County*, Case No. 6:12-cv-01195-RBD-KRS (the "Action");

WHEREAS, Plaintiff filed this Action against Defendant for alleged violations of: (a) Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131, *et seq.* ("ADA"), and (b) § 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701, *et seq.* ("Rehabilitation Act"), pursuant to which Plaintiff sought injunctive relief, compensatory damages, attorneys' fees, costs, and further relief against the Defendant;

WHEREAS, Defendant has denied and continues to deny that it violated any law or any public policy whatsoever and has denied and continues to deny that it has any liability to Plaintiff on his claims; and

WHEREAS, the aforementioned Parties desire to avoid further expense, time, effort and uncertainty in regard to this Action;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree to the following terms and conditions in full and final settlement of this Action:

Recitals: The Parties acknowledge that all of the "Whereas" clauses in the preceding paragraphs are incorporated as material parts of this Agreement.

SETTLEMENT OF INJUNCTIVE RELIEF

1. This Agreement shall be a full, complete, and final disposition and settlement of Plaintiff's claims against the Defendant for injunctive relief and damages that have arisen out of this Action. The Parties agree that there has been no admission or finding of liability or violation of the ADA and/or Rehab Act, and this Agreement should not be construed as such.

2. The intent of this Agreement is twofold: (1) to provide deaf and hard of hearing persons with an equal opportunity to receive and benefit from the County's programs, services, and activities involving the County jail, the County's Human Services offices, and the County's probation offices; and (2) to facilitate timely and effective communication between County personnel and persons who are deaf or hard of hearing. In pursuit of this shared goal, the County is committed to *implementing* new procedures, practices and policies at the County jail, the County's Human Services

offices, and the County's probation offices -which are set forth below-as part of an ongoing commitment to the needs of persons with disabilities; as well as conducting a self evaluation of its other programs, services, and activities.

3. The County shall furnish all appropriate auxiliary aids and services, at no cost, to persons who are deaf or hearing-impaired, including, but not limited to, live qualified sign language interpreters, or Video Remote Interpreting ("VRI"), and Video Remote Services via Video Relay Service ("VRS") via Sorenson or other recognized provider, when necessary for effective communication. Effective communication exists when there is sufficient communication to provide the disabled individual with the same level of services received by other persons and their companions who are not disabled due to a hearing impairment.

4. Within thirty (30) days of the Effective Date of this Agreement, the County shall adopt a written policy for effective communication ("Written Policy") at the County Jail that will ensure compliance with Title II of the ADA. The Written Policy shall include the following provision: The County jail will affirmatively offer and, if accepted, provide at no charge to inmates or visitors of inmates who are deaf or hearing-impaired, qualified sign language interpreters (VRI or live interpreters when individual circumstances call for it),¹ to assist the deaf or hearing-impaired with communications which are lengthy, complex, or have significant consequences. Examples will include, but are not limited to the following:

A. Orientation and complete explanation of the Inmate Pamphlet and Sexual Violence and Misconduct Brochure;

¹ Circumstances where the use of VRI is not feasible include limitations imposed by inmate/patient positioning and deaf persons with vision impairments that are not compatible with VRI format.

B. Interactions with County jail medical staff that includes discussing an inmate's symptoms and/or medical condition, medications, and medical history; explaining and describing medical conditions, tests, treatment options, medications, and any other procedures; obtaining informed consent or permission for treatment; communication with an inmate during treatment, testing, or other procedures; and providing instructions for medications, post-treatment activities, follow-up treatments, test results, and recovery;

C. Information for court appearances; and

D. Other County jail programs, services, and activities including the rules and procedures related to the library, academic education, counseling/social services, work assignments, recreation, and grievance procedures.

E. It is understood that all obligations of the County Jail shall take into consideration that at times inmates may be classified as security risks, or dangerous, and that said factors shall be taken into account in regards to the provision of live interpreters. Additionally, should an inmate have a readily transmittable communicable disease effective communication will be provided by some other method than a live interpreter.

5. A VRI interpreter will be deemed qualified if the following are provided:

A. real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

B. a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;

C. a clear, audible transmission of voices; and

D. adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

6. The Written Policy shall also include a provision where the County jail will affirmatively provide VRS to enable deaf or hearing-impaired inmates to place outside telephone calls during initial processing and during all other hours of operation for inmate telephones. Nothing herein shall permit a deaf or hearing-impaired inmate to have telephone or visitation privileges that exceed those of other inmates.

7. The Written Policy shall also include the following provision: All requests for qualified sign language interpreters (live or VRI) and the County jail's (appropriate jail personnel and jail medical staff) response to such requests shall be tracked. Any denial of a request for a qualified sign language interpreter shall be documented in a written memorandum stating the reason given for the denial. Each written denial shall be forwarded to the County's designated ADA Coordinator for the area in question (the County will provide a list of names for these designated individuals within thirty (30) days of the Effective Date of this Agreement), who will keep a record of all denials and make them available to Plaintiff's counsel on a quarterly basis.

8. The County shall promptly distribute copies of the Written Policy to all County jail personnel who have contact with deaf or hearing impaired inmates and deaf

or hearing impaired visitors of inmates. The County shall also distribute copies of the Written Policy to any and all new County jail personnel upon hiring who have contact with deaf or hearing impaired inmates and deaf or hearing impaired visitors of inmates. All such new hires, including County jail medical staff, will receive orientation and training on the written policy from the County ADA Coordinator for the County jail, and the County's obligation to provide such orientation and training will also be reflected in the Written Policy for the County jail.

9. Within sixty (60) days of the Effective Date of this Agreement, the County shall adopt a written policy for effective communication ("Written Policy") for the County Human Services offices and the County probation offices that will ensure compliance with Title II of the ADA. The Written Policy shall include the following provision: The County will affirmatively offer and, if accepted, provide at no charge to persons/consumers who are deaf or hearing-impaired, qualified sign language interpreters (VRI or live interpreters when individual circumstances call for it), to assist the deaf or hearing-impaired with communications which are lengthy, complex, or have significant consequences. Examples will include, but are not limited to the following:

A. An explanation of the County Human Services document listing all of the available services and benefits that can be applied for along with an explanation of what documents that are required in applying for a particular service or benefit from the County Human Services offices;

B. Assistance with filling out and explaining any and all County Human Services applications or forms that are required based on what particular services or benefits the deaf or hearing impaired consumer is applying for;

C. Explanation and understanding of all course booklets or other course materials related to anger management classes or any other classes related to the County's probation services;

D. Explanation of all monthly probation forms that are required to be filled out; and

E. Explanation of all documents including any receipts and/or financial reports related to the monthly payments made to the County's probation offices.

10. The Written Policy shall also include the following provision: All requests for qualified sign language interpreters (live or VRI) and the County Human Services offices and the County probation offices (appropriate Human Services personnel and probation officers and/or administrators) response to such requests shall be tracked. Any denial of a request for a qualified sign language interpreter shall be documented in a written memorandum stating the reason given for the denial. Each written denial shall be forwarded to the County's designated ADA Coordinator for the area in question (the County will provide a list of names for these designated individuals within 30 days of the Effective Date of this Agreement), who will keep a record of all denials and make them available to Plaintiff's counsel on a quarterly basis.

11. The County shall promptly distribute copies of the Written Policy to all County Human Services personnel and County probation services personnel who have contact with deaf or hearing impaired persons and/or consumers. The County shall also distribute copies of the Written Policy to any and all new Human Services personnel and new County probation services personnel who have contact with deaf or hearing impaired persons and/or consumers. All such new hires will receive orientation and

training on the Written Policy from the County ADA Coordinator(s) for the Human Services offices and County probation offices, and the County's obligation to provide such orientation and training will also be reflected in the Written Policy for the County Human Services offices and County probation offices.

12. Within thirty (30) days of the Effective Date of this Agreement, the County shall post signage of conspicuous size and print at prominent places in the County jail, County Human Services offices, and County probation offices making inmates, consumers, persons, or companions who are deaf or hearing-impaired aware of their rights to effective communication and the provision of qualified sign language interpreters (VRI or live when individual circumstances call for it), consistent with the Written Policies and paragraphs 4 and 9 *supra*.

13. Within sixty (60) days of the Effective Date of this Agreement, the County shall develop and implement an appropriate training program to ensure that all County personnel who have contact with inmates, consumers, persons, or companions who are deaf or hearing-impaired, understand their obligations to comply with the Written Policy for the County jail, County Human Services offices, and County probation offices. Such training shall place an emphasis on making deaf or hearing impaired inmates, consumers, persons, or companions aware of the availability of qualified sign language interpreters (VRI or live when individual circumstances call for it), and giving them the option to request a qualified sign language interpreter under all circumstances described in paragraphs 4 and 9 *supra*. Nothing in this agreement requires the use of VRI, similar technology, or live interpreters when effective communication by other methods is preferred by a deaf or hearing impaired individual.

14. The training shall also place an emphasis on such County personnel to stop relying on other methods of communication (pointing to pictures, passing written notes, and lip reading) rather than the provision of qualified sign language interpreter services under the above described circumstances, unless those methods, or others are the preferred means of effective communication by the individual involved.

15. It is understood by the Parties that if the Plaintiff is ever incarcerated at the Volusia County jail in the future, that he will be provided with either a live qualified sign language interpreter or VRI, and VRS under all of the circumstances described in paragraph paragraphs 4 and 6 *supra*, and subject to the limitation described in paragraph 6 *supra*.

SETTLEMENT OF MONETARY RELIEF

16. The Defendant shall pay to Plaintiff the total sum of \$88,000.00 (the "Settlement Payment"), which includes damages, all attorneys' fees, litigation expenses, including expert and consultant fees, and costs. The Settlement Payment shall be made payable to Marko & Magolnick, P.A., (Federal Taxpayer Identification Number 65-0492134). The Settlement Payment shall be delivered to Charles D. Ferguson by August 16, 2013. Marko & Magolnick, P.A. will distribute Theadore Ross' share of the Settlement Payment by check made payable to the FND National Pooled Trust. This Settlement Payment also compensates Plaintiff for any and all claims, including but not limited to, personal and physical injury, civil rights violations, emotional distress, and any other form of damages, allegedly sustained by Plaintiff related to this Action up until the Effective Date of this Agreement. The Parties also agree that this Settlement Payment does not include any fees and costs that may be incurred by Plaintiff's counsel

and/or experts related to any motion to enforce the terms of this Agreement as outlined in paragraphs 16 and 17 *infra*.

POST COMPLIANCE

17. Plaintiff's counsel has the right to monitor the written denials described in paragraphs 7 and 10 *supra*, on a quarterly basis during the time period that the Court retains jurisdiction of this Action to enforce the terms and provisions of this Agreement. In the event the Court declines to retain jurisdiction of this Action, Plaintiff's counsel shall still have the right to monitor these denials on a quarterly basis for a period of one (1) year. In the event Plaintiff's counsel concludes that a request has been improperly denied, Plaintiff's counsel must notify the County in writing stating the basis for this conclusion. In so doing, Plaintiffs' counsel will follow the Written Notice provision in paragraph 20 *infra*. The County must respond in writing to Plaintiff's counsel within 30 days stating its position on the denial, or otherwise notifying Plaintiff's counsel in writing that corrective action has been taken. If the County fails to respond or take corrective action within 30 days after receipt of such written notice, then Plaintiff may file a motion to enforce this Agreement and will be entitled to the recovery of reasonable attorney's fees, litigation expenses, and costs pursuant to 42 U.S.C. § 12205 of the ADA, if he is deemed the prevailing party. The County has a continuing duty to lawfully respond to the requests of deaf or hearing impaired inmates, consumers, persons, and/or their companions for a qualified sign language interpreter.

18. In the event Plaintiff's counsel discovers evidence or proof that a request by a deaf or hearing impaired person was improperly denied and not properly documented and included in the tracking system, then Plaintiff may file a motion to enforce this Agreement directly with the Court and without having to comply with the

Written Notice provision in paragraph 21 *infra*, and Plaintiff will be entitled to the recovery of reasonable attorney's fees, litigation expenses, and costs pursuant to 42 U.S.C. § 12205 of the ADA, if he is deemed the prevailing party.

19. The Parties agree that this Agreement will be filed with the Court as an exhibit to a joint stipulation of dismissal with prejudice that will be requesting continuing jurisdiction by the Court as described in paragraph 20 *infra*.

20. The Parties agree that the Court will retain continuing jurisdiction to enforce the terms of this Agreement for a period of one (1) year from the Effective Date of the Agreement.

WRITTEN NOTICE

21. The notice provided for under this Agreement shall be in writing and sent by certified or overnight mail, return receipt requested as follows: If to Plaintiff: Charles D. Ferguson, Marko & Magolnick, P.A., 3001 SW 3rd Avenue, Miami, Florida 33129; If to Defendant: Arthur U. Graham, Assistant County Attorney, 123 W. Indiana Avenue, DeLand, FL 32720.

ENTIRE AGREEMENT

22. This Agreement constitutes the entire agreement between Plaintiff and the Defendant on matters of injunctive relief, damages, and Plaintiff's attorneys' fees, costs, and litigation expenses reasonably incurred in this Action, and no other statement, promise, or agreement, either written or oral, made by the Plaintiff or any agents of the Plaintiff, to the Defendant, or by the Defendant or any agents of the Defendant to the Plaintiff, that is not contained in this written Agreement, shall be enforceable regarding the matters of injunctive relief and Plaintiff's damages, attorneys' fees, costs, and

litigation expenses described herein. This Agreement fully resolves all claims which were or could have been raised by the Parties in this Action.

SIGNATORIES BIND PARTIES

Signatories on behalf of the Parties represent that they are authorized to bind the Parties to this Agreement. This Agreement may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

THEODORE ROSS

DATE

JAMES T. DINNEEN, COUNTY MANAGER

DATE

