



## Deaf man sues state courts over denial of interpreter for mediation

Dave Stafford January 14, 2015

A deaf man's federal lawsuit against Indiana courts claiming the state failed to provide a sign language interpreter for mediation in his child custody hearing has survived the state's initial efforts to dismiss.

Dustin A. King brought an Americans with Disabilities Act complaint naming the Marion Circuit and Superior courts, Indianapolis City-County Council, Indiana Supreme Court and Division of State Court Administration as defendants. King claims that he was entitled to modest means mediation assistance provided by the state in his daughter's custody case, but the trial court denied his request to provide an American Sign Language interpreter.

"King was treated unequally because of his disability," according to the complaint in *Dustin King v. Marion County Circuit Court, et al.*, 1:14-CV-01092, which is before Judge Jane Magnus-Stinson in the U.S. District Court for the Southern District of Indiana.

Magistrate Judge Mark J. Dinsmore in November allowed King's litigation to proceed over the state's initial motion to dismiss on a litany of grounds. State courts, represented by the Office of the Indiana Attorney General, unsuccessfully sought to have the case thrown out on the basis of sovereign and judicial immunity, among other arguments.

The state also failed to persuade the court that King lacked standing or that the *Rooker-Feldman* doctrine prohibiting federal courts from hearing losing actions in state courts barred his claim. The state's motion to dismiss King's second amended complaint is fully briefed and awaits a ruling from the court.

Attorneys Andrea Ciobanu and Alex Beeman of Ciobanu Law P.C. in Indianapolis represent King. “This (lawsuit) represents a large group of people who now don’t have equal access to the justice system,” Ciobanu said.

“It’s undisputed that he was eligible for modest means mediation,” Beeman said. Those programs are funded by a \$20 alternative dispute resolution fee collected in many counties in a variety of domestic relations cases.

“Dustin King is obviously not doing this to make a buck,” Beeman said. He noted King has many family members who also are hearing impaired. “They’re concerned about the implications for other deaf people.”



*Attorney Andrea Ciobanu communicates in American Sign Language with client Dustin King, who has filed a federal lawsuit against Indiana courts alleging his rights were violated under the Americans with Disabilities Act. (IL Photo/Eric Learned)*

King ultimately paid out-of-pocket for an interpreter during the mediation, and according to the complaint, the case was successfully resolved. King’s ADA suit seeks damages and awards for emotional distress, fees, and a declaration that denial of an interpreter violates the ADA, 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*

Spokespeople for Attorney General Greg Zoeller and the Indiana Supreme Court declined to comment about the case, referring to the state’s court filings.

The state argues King’s mediation was voluntary – a matter of dispute among the parties – and points to a case entry in which the court noted the basis for denying funding was that no money had been budgeted to provide interpreters during mediation. The court then waived the parties’ obligation to mediate the dispute as required under local rules. “The court was well within its discretion to waive the local rule,” the state contends.

The trial court also denied King’s motion to certify his objection to that ruling for interlocutory appeal to the Indiana Court of Appeals. The state reasserts that King is estopped from raising issues in the federal court that the trial court properly decided.

“Essentially, (King) is seeking an order from this Court to implement a policy choice he prefers,” the state contends. “The proper forum for such a policy determination is in the appropriate state or local legislative body not in a federal district court.”

But Ciobanu and Beeman say the policy is precisely the point. “The policy of the state is to push alternative dispute resolution, especially in domestic relations,” Beeman said. “(King) qualified for modest means mediation. He asked for an interpreter.” The court’s denial was “fundamentally unfair because he’s being treated disproportionately differently because of his disability.”

“We believe it should be the policy to say, ‘If you are serving indigent clients, you have to serve deaf people if they qualify,’” Ciobanu said.

She believes the case is a matter of first impression about whether the state must provide interpreters to those who qualify for assistance when a court orders mediation, as courts do in civil cases in Marion and other counties.

The Marion County parties in the suit, in support of the state's motion to dismiss, argue that King "cannot maintain an ADA claim ... because the facts, taken in the light most favorable to him, establish that he was not denied access to the modest means mediation program by reason of his disability."

"The ADA does not require a governmental agency to provide a disabled Plaintiff with the singular accommodation (of the plaintiff's) demands. The ADA only requires reasonable accommodations to prevent exclusion from a program," Marion County argues.

Bringing the matter to federal court left Ciobanu conflicted, particularly because she has been involved as a consultant to Indiana Supreme Court committees and will chair the Indiana State Bar Association committee on alternative dispute resolution for the next two years.

But as a fluent ASL interpreter herself, Ciobanu perceived an injustice she couldn't ignore. "If someone is not willing to advocate for these kinds of rights, people will continue to get trampled on," she said.

"I take it very seriously. We all deserve to have access to the system no matter what our situation is," Ciobanu said. •