

Jagger, Robert

From: Clary, John
Sent: Monday, October 29, 2018 8:41 AM
To: Jagger, Robert
Cc: Chisholm, James; Farmer, Thomas S.; Abraham, Robert; Bliss, Patricia; Morris, James
Subject: RE: Eddie Sierra v. City of Daytona Beach
Attachments: One-Sheet CAPTIONING 2018-10-19.pdf

Bob,

Myself and staff have reviewed the proposed settlement agreement.

We are preparing an item seeking City Commission approval to subscribe to a video captioning service being offered by the City's current public meeting video streaming provider.

If the item is approved, we should be able to meet the timeline for captioning video as described in the proposed settlement and in accordance with Web Content Accessibility Guidelines (WCAG) 2.0 success criteria for captioning of live and archived content, as published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C).

Thanks

John Clary
IT Manager
City of Daytona Beach
386-671-7902
ClaryJ@codb.us

From: Jagger, Robert
Sent: Thursday, October 25, 2018 11:51 AM
To: Clary, John <ClaryJohn@codb.us>
Cc: Chisholm, James <ChisholmJames@CODB.US>; Farmer, Thomas S. <tfarmer@codb.us>; Abraham, Robert <AbrahamRobert@CODB.US>; Bliss, Patricia <BlissP@codb.us>; Morris, James <MorrisJames@CODB.US>
Subject: FW: Eddie Sierra v. City of Daytona Beach

John,

Attached please find a proposed settlement agreement in the case against the City for alleged violation of the ADA with regard to closed captioning of public meetings. It's my understanding that staff has determined to move forward with closed captioning of meetings on the City's website. Please review the proposed settlement and let me know if the IT Department is capable of meeting the following stated requirements:

- City Commission meetings occurring after June 30, 2019 that are live streamed on the City's website shall be closed captioned.
- Archived videos of City Commission meetings occurring after June 30, 2019, appearing on the City's website, shall be closed captioned.

- Captions shall meet Web Content Accessibility Guidelines (WCAG) 2.0 success criteria for captioning of live and archived content, as published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C).

Thank you for your attention to this matter.

Robert Jagger

City Attorney
City of Daytona Beach
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From: Abraham, Robert
Sent: Monday, October 15, 2018 11:33 AM
To: Jagger, Robert <JaggerRobert@CODB.US>
Subject: FW: Eddie Sierra v. City of Daytona Beach

Bob,

The referenced lawsuit against the city, which is pending in federal court, is brought under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1972. The plaintiff is a deaf person who alleges that these laws obligate the city to provide him equal access to its online video content, and that he has been denied such access by the lack of closed captioning. This litigation is in its early stages, and there is an opportunity to settle on the terms outlined below in the email from the plaintiff's attorney before it progresses further.

Motions to dismiss similar cases have thus far been unsuccessful, including in a Florida case decided by the Eleventh Circuit Court of Appeals. There are substantive issues that may be raised and litigated. Although numerous cases have been filed, it does not appear that any have gone to trial. We are aware of numerous settlements that have been made.

In a similar case filed against Harvard University by the National Association of the Deaf and others, the U.S. Department of Justice stated the following:

"For more than two decades, federal courts have resolved effective communication claims brought under the ADA and Section 504 in a wide range of contexts, including claims alleging unequal access to goods, benefits and services provided through websites or other electronic media. And the Departments of Justice and Education have routinely required covered entities to ensure equal access to goods, benefits and services, electronic or otherwise, through the provision of captioning or other auxiliary aids or services."

Our case is different in many respects from the Harvard case, and the DOJ statement is generalized. However, this illustrates how the subject matter is being viewed as a general proposition.

A practical consideration in deciding whether to settle now or litigate further relates to the plaintiff's attorney's fee. The fee payable in connection with the proposed settlement, while seemingly substantial, would likely pale in comparison to the fee that ultimately would be awarded by the court if the plaintiff should prevail through litigation.

Bob

Robert Abraham
Assistant City Attorney
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From: Courtney Cunningham [<mailto:cc@cunninghampllc.com>]

Sent: Monday, October 15, 2018 8:45 AM

To: Abraham, Robert <AbrahamRobert@CODB.US>

Subject: RE: Eddie Sierra v. City of Daytona Beach

Robert—

These are the terms we have been using to settle these cases. Please advise if they are acceptable to you.

1. Defendant will close caption it's legislative video content starting 6/30/2019.
2. Defendant will also caption its live streamed legislative meetings starting in 6/30/2019.
3. Defendant agrees that the captions will meet the WCAG 2.0 success criteria for captioning of live and archived content.
4. Defendant shall not be required to caption in arrears.
5. Defendant shall provide captions, on demand, for video content created before 6/30/2019 within 3 business days of the request for captioning.
6. Defendant shall pay attorney's fees, and costs for a total of \$9,000. Defendant shall pay Plaintiff \$1,500 in damages.

I look forward to hearing from you.

Regards,

J. Courtney Cunningham, Esq.

J. COURTNEY CUNNINGHAM, PLLC

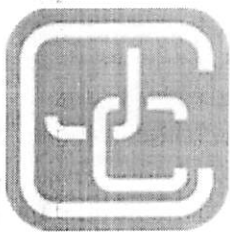
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