

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

GEORGE LANE, BEVERLY JONES, ANN)
MARIE ZAPPOLA, DENNIS CANTREL,)
RALPH E. RAMSEY, Sr., and)
A. RUSSELL LARSON,)

Plaintiffs,)

v.)

STATE OF TENNESSEE and its political)
subdivisions, POLK COUNTY, BLEDSOE)
COUNTY, CANNON COUNTY, CHESTER)
COUNTY, CLAIBORNE COUNTY, CLAY)
COUNTY, COCKE COUNTY, DECATUR)
COUNTY, FAYETTE COUNTY, GRAINGER)
COUNTY, HANCOCK COUNTY, HAWKINS)
COUNTY, HICKMAN COUNTY, HOUSTON)
COUNTY, JACKSON COUNTY, JEFFERSON)
COUNTY, JOHNSON COUNTY, LAKE)
COUNTY, LEWIS COUNTY, MEIGS)
COUNTY, MOORE COUNTY, PERRY)
COUNTY, PICKETT COUNTY, TROUSDALE)
COUNTY, and VAN BUREN COUNTY,)

Defendants.)

No. 3:98 CV 0731
Judge Campbell
Magistrate Judge Griffin
JURY DEMAND

SETTLEMENT AGREEMENT – VAN BUREN COUNTY

This Settlement Agreement (hereinafter "Agreement") is entered into this 23 day of February, 2005, by and between Plaintiffs George Lane, Beverly Jones, Ann Marie Zappola, Dennis Cantrel, Ralph E. Ramsey, Sr., and A. Russell Larson (hereinafter "Plaintiffs") and Defendant Van Buren County (hereinafter "Defendant County").

PARTIES TO THIS AGREEMENT

1. Plaintiffs have alleged they are qualified individuals with disabilities as that term is defined by 42 U.S.C. §12131(2).

2. Defendant County is a Public Entity as that term is defined in 42 U.S.C. §12131(1). Defendant County is subject to Title II of the ADA, 42 U.S.C. §12132, and its implementing regulations, 28 C.F.R. Part 35.

ADDITIONAL DESIGNATIONS

3. As used herein, the State of Tennessee shall refer collectively to the defendant designated as the State of Tennessee in this litigation, all Tennessee Courts exercising jurisdiction under Tennessee law in the courthouse and any other owned or operated facility of the Defendant County, and the AOC (“Administrative Office of the Courts”).

DEFINITIONS

4. Unless otherwise specified in these Definitions, the definitions of terms used in this Agreement shall be the same definitions as are contained in 42 U.S.C. §12131 *et seq.* and 28 C.F.R. Part 35 and 36 and any accompanying explanations as may be contained in the statutes, appendices or regulations associated with those statutes and regulations.

a. “ALTERATION” refers to any modification, improvement, remodeling, renovation or repair to ANY buildings or structures at the SUBJECT FACILITIES.

b. “DEFENDANT COUNTY” as used herein refers to Defendant County and includes any official agency of Defendant County.

c. “EFFECTIVE DATE” means the last date upon which this Agreement was executed by a party.

d. “SUBJECT FACILITIES” refers to any courthouse and/or other buildings owned and/or operated by Defendant County in which judicial programs and services and/or county commission meetings are held.

FACTUAL BACKGROUND

5. Pursuant to the Constitution of the State of Tennessee and state statutes, the State of Tennessee conducts its judicial program in the county courthouses and other facilities of the State. Defendant County is responsible for providing the facilities in which the State’s judicial program is conducted in the Defendant County.

PLAINTIFFS’ RELEASE OF DEFENDANT COUNTY

6. This Agreement constitutes a settlement of all of the Plaintiffs’ claims against the Defendant County, arising out of the alleged inaccessibility of the Van Buren County Courthouse or the Van Buren County Judicial Center, including, but not limited to, all claims for back pay, lost wages, compensatory damages, injuries to person and property, reimbursement of out of pocket expenses, physical or emotional injury and stress, any punitive type damages, attorneys fees, costs, experts’ witness fees and any and all other damages.

7. Plaintiffs agree to, and hereby do, completely release and discharge Defendant County, including but not limited to, its officials, employees, agents, whether current or former, in all of their official and individual capacities, including, but not limited to, their successors, assigns, servants, agents, attorneys, subsidiaries, affiliates, officers, directors, and representatives, of and from any and all claims, demands, actions, and causes of action of any and every kind and character, known or unknown, that Plaintiffs may have had or may now have against them regarding the alleged inaccessibility of the Van Buren County Courthouse or the Van Buren County Judicial Center whether asserted in this case or otherwise, including, but not limited to, any and all matters asserted in the case, or which may have been asserted.

8. Plaintiffs agree to execute the attached Agreed Order of Dismissal with Prejudice. This Agreement shall be made an Exhibit to the Order of Dismissal.

9. Plaintiffs further agree and acknowledge that the payment described in Paragraph 10 and the Alterations delineated in Appendix A, attached hereto, constitute the entire consideration, both monetary and otherwise, for the complete release provided for herein. The terms set forth herein are intended to be the full and complete settlement of this case. No additional compensation is to be paid and no additional Alterations are to be made by the Defendant County. The parties agree that this Agreement is based upon mutually adequate consideration, and that this Agreement shall not be subject to attack by any party on the grounds of lack of consideration or inadequate consideration.

OBLIGATIONS ASSUMED BY THE DEFENDANT COUNTY

10. Defendant County will pay Plaintiffs in total the amount of Two Thousand Six Hundred Eighty Dollars (\$2,680.00) which reflects Defendant County's pro rata share of the amount of Plaintiffs' attorneys' fees, expenses and costs accrued through December 17, 2004 and not paid by the State. Defendant County will have no further liability for any additional monetary damages or attorneys' fees, expenses and costs.

11. Defendant County will make the Alterations as enumerated in Appendix A, attached hereto. Defendant County will cooperate with the State of Tennessee to implement the State of Tennessee's policies and procedures to ensure that the State's judicial program is in compliance with Title II of the ADA and its implementing regulations.

12. Defendant County has represented that it is not possible to make all the Alterations delineated in Appendix A immediately. Defendant County agrees to make good faith progress toward the completion of the Alterations delineated in Appendix A. All of the Alterations delineated in Appendix A shall be completed within five (5) years of the Effective Date.

13. Notwithstanding any unforeseen future contingencies that might impact the Alterations set forth in Appendix A, Defendant County agrees to refrain from taking any action that will diminish the level of physical accessibility of the judicial program conducted in Defendant County's subject facilities as achieved through the Alterations enumerated in

Appendix A. This paragraph shall not be read to prohibit the curtailment of a judicial program, service, or activity at any of Defendant County's subject facilities for reasons unrelated to compliance with the ADA unless such action eliminates the only such accessible program, service, or activity in Defendant County's subject facilities.

14. Defendant County agrees that all disability access features that are provided for in this Agreement shall be inspected and maintained by the Defendant County hereafter to ensure the accessibility of the judicial program in the subject facilities at all times, except for isolated or temporary interruptions due to necessary maintenance or repairs.

ENFORCEMENT AND MONITORING

15. The United States District Court for the Middle District of Tennessee shall have exclusive jurisdiction and venue to construe and enforce this Agreement, and to resolve any and all disputes arising out of or relating to this Agreement, which shall be governed by and construed in accordance with the laws of the United States and the State of Tennessee. This Agreement shall be made an exhibit to the Dismissal Order.

16. If any party to this Agreement believes that another party is violating its obligations under this Agreement, or believes a dispute has arisen under the Agreement (the "Complaining Party"), then the Complaining Party shall give written detailed notice (the "Notice") to the other party (the "Responding Party"). The Responding Party shall be given thirty (30) days to provide a written response to the Notice. The Complaining and Responding Parties shall attempt within the next thirty (30) days to resolve their differences regarding the issue(s) addressed in the Notice including any issues of attorneys fees, expenses, and costs. No action may be instituted in the United States District Court for the Middle District of Tennessee relating to this Agreement prior to the expiration of the time periods addressed in this Paragraph.

17. Reasonable attorneys' fees, costs and expenses may be sought in any judicial proceeding relating to paragraph 16 of this Agreement by the prevailing party to the extent allowed by law.

18. Defendant County shall provide to Plaintiffs' attorney, William J. Brown, at P.O. Box 1001, Cleveland, TN 37364-1001 a bi-monthly report (no less frequently than every sixty (60) days following the Effective Date) that sets forth its progress in making the Alterations set forth in Appendix A until such time as compliance with the obligations specified therein is achieved. Defendant County agrees to make good faith efforts to complete the Alterations delineated in Appendix A during each sixty (60) day time period. When the Defendant County has completed the alterations in Appendix A, said Defendant County shall submit a certified report, signed by an appropriate representative of the County stating that the Alterations set forth in Appendix A have been completed.

19. If at any time Defendant County wishes to modify any portion of this Agreement because of changed conditions making performance impossible or impractical, Defendant County's designated representative will promptly notify Plaintiffs in writing (at the address for Plaintiffs set forth in Paragraph 18), setting forth the facts and circumstances thought to justify

modification and the substance of the proposed modification, and provide evidence to support their position that such modification is necessary. Until there is written assent or agreement by Plaintiffs to the proposed modification, the proposed modification will not take effect. If the requested modification is not approved within thirty (30) days of the date of written notification of such need, then Defendant County may proceed as a Complaining Party under the provisions of Paragraph 16 of the Agreement.

MISCELLANEOUS PROVISIONS

20. By entering into this Agreement, no party shall be deemed to have waived any claim or defense not otherwise specifically released in writing, until such time as the Court no longer has jurisdiction over the matters raised in this action.

21. By entering into this Agreement, Defendant County does not waive its defense based on Plaintiffs' alleged lack of standing to seek injunctive relief against Defendant County since none of these Plaintiffs has ever attempted to access judicial proceedings that are offered in Van Buren County.

22. This Agreement will be null and void if any court of competent jurisdiction reverses Judge Campbell's Order (Docket Entry No. 319) entered on December 7, 2004, relating to a Plaintiff's standing to seek injunctive relief against Defendant County since none of these Plaintiffs has ever attempted to access judicial proceedings that are offered in Van Buren County.

23. The representatives signing this Agreement on behalf of Defendant County represent that they are authorized to bind Defendant County to the provisions agreed upon herein. Each signatory to this Agreement affirms that he or she has consulted with and been advised by counsel in connection with the execution of this Agreement and that he or she agrees that its terms are fair and reasonable.

24. This Agreement sets forth the entire agreement between Plaintiffs and Defendant County with respect to the subject matters herein, and supersedes all prior oral and written agreements and discussions. No other statement, promise, or agreement concerning the subject matters herein, either written or oral, made by any party or the agents of any party that is not contained in this written Agreement shall be effective. Plaintiffs and Defendant County represent that in entering into this Agreement, none of them has relied upon any statement of any other party to this Agreement except those statements set forth herein.

25. All notices and other correspondence sent by Plaintiffs to the Defendant County shall be sent to the County Mayor and the County Attorney. All notices and other correspondence sent by Defendants shall be sent to the office of Plaintiffs' attorney, William J. Brown.

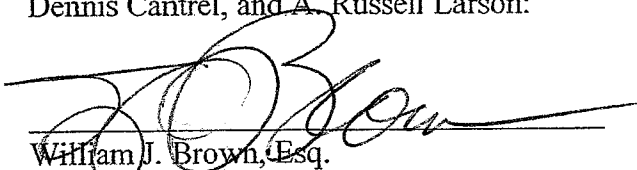
26. This Agreement shall be binding on the parties, and their elected or appointed successors in interest.

27. This Agreement shall become effective once signed by all parties and the effective date will be the date of the last signature affixed hereto.


28. This Agreement is contingent on the State of Tennessee executing the Compromise and Settlement Agreement which provides, *inter alia*, that Defendant County will not be responsible for any of Plaintiffs' attorneys' fees, expenses and costs through December 17, 2004, including those relating to Defendant County, with the exception of the amount of Two Thousand Six Hundred Eighty Dollars (\$2,680.00) which reflects Defendant County's pro rata share of the amount of Plaintiffs' expenses and costs accrued through December 17, 2004 and not paid by the State, and the State approving the payments to be made by the State as set out therein. In the event that the Compromise and Settlement Agreement is rejected by the State of Tennessee then the Dismissal shall be set aside and the case shall be placed back on the active docket for disposition.

IN WITNESS WHEREOF, Plaintiffs and Defendant County in the above-captioned action have caused this Agreement to be executed as of the dates subscribed below.


For Plaintiffs George Lane, Beverly Jones, Ann Marie Zappola, Ralph E. Ramsey, Sr., Dennis Cantrel, and A. Russell Larson:



William J. Brown, Esq.
William J. Brown & Associates
23 North Ocoee Street
P.O. Box 1001
Cleveland, TN 37364-1001



Martha M. Lafferty (BPR#19817)
Gary D. Housepian (BPR # 6969)
Tennessee Protection & Advocacy, Inc.
2416 21st Ave South, Suite 100
Nashville, TN 37212
(615) 298-1080



Linda M. Dardarian, admitted Pro Hac Vice
Roberta L. Steele, admitted Pro Hac Vice
GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN
300 Lakeside Drive, Suite 1000
Oakland, CA 94612-3534
(510) 763-9800

Attorneys for Plaintiffs

Date: 2/15/05

For Defendant Van Buren County, Tennessee:



Thomas M. Donnell, Jr.
Stewart, Estes & Donnell
424 Church Street, Suite 1401
Nashville, Tennessee 37219

Date: 2-1-05

For Defendant County:

Van Buren County, Tennessee

By: Carolyn D. Houston

Name: Carolyn D. Houston

Title: Van Buren County Mayor

Date: January 27, 2005

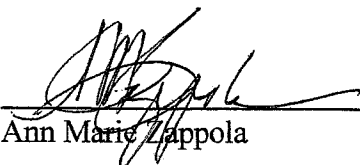
George Lane
George Lane, Plaintiff

Date: 6-1-05

Beverly Jones
Beverly Jones, Plaintiff
Date: 2-1-65

VAN BUREN COUNTY

Plaintiff:



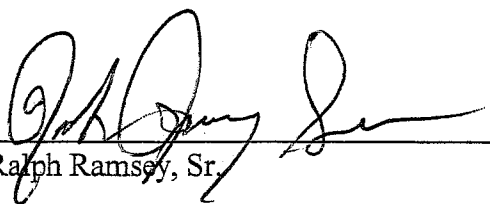
Ann Marie Zappola

2/17/05

Date

VAN BUREN COUNTY

Plaintiff:




Ralph Ramsey, Sr.

2-23-05
Date



Dennis Cantrel, Plaintiff

Date: 2-5-2005


A. Russell Larson, Plaintiff

Date: 2-15-05

**AGREED SETTLEMENT
VAN BUREN COUNTY**

When a person with a mobility disability needs to access the judicial program offered in Van Buren County, the judicial proceeding will be moved to an accessible location for the entire day, not just for the particular proceeding involving that individual.

Van Buren County will pass a resolution concerning use of an accessible public building for judicial proceedings when necessary. Only one location will be chosen by Van Buren County and will be designated the permanent alternate site for the judicial services offered in Van Buren County. The site chosen by Van Buren County will be the most accessible public building in Van Buren County suitable for the relocation of judicial services. Further, a protocol will be established regarding the steps necessary for an individual with a mobility disability to gain access to the judicial program offered in Van Buren County. The protocol will be established by Van Buren County or in cooperation with the State of Tennessee.