

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Chambers of
Ellen Lipton Hollander
District Court Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-0742

June 1, 2012

MEMORANDUM TO COUNSEL

Re: *Joette Paulone v. City of Frederick, et al.*
Civil Action No. ELH-09-2007

Dear Counsel:

This letter will memorialize the results of the hearing conducted today, June 1, 2012.

For the reasons stated on the record, and based on the undisputed evidence presented as to grant-based federal funding received by the Sheriff of Frederick County, contained in defendant's answers to interrogatories (Plaintiff's Hearing Exhibit 1) and the Sheriff's 2008 Annual Report (Defendant's Hearing Exhibit 1), the Court found that the Sheriff received "Federal financial assistance" within the meaning of the Rehabilitation Act at the times relevant to this case, so as to subject defendant to potential Rehabilitation Act liability. This is so, despite the fact that all of the grant or subsidy based federal funding received by the Sheriff is directed to the Sheriff's Law Enforcement Bureau, rather than the Corrections Bureau (which operates the detention facility at issue in this case). Because it is the Sheriff, rather than any of the bureaus of his office, that is an "instrumentality of [the] State" within the meaning of the Rehabilitation Act, "all of the operations" of the Sheriff are subject to Rehabilitation Act liability so long as the Sheriff or "any part" of his office "is extended Federal financial assistance." 29 U.S.C. § 794(b); *see also Haybarger v. Lawrence County Adult Probation & Parole*, 551 F.3d 193 (3d Cir. 2008); *Huber v. Howard County*, 849 F. Supp. 407 (D. Md. 1994). I also found that the amount of federal funding received by the Sheriff was neither so great as to be "coercive" under applicable case law, nor so small as to qualify for any hypothetical *de minimis* exception to liability that might exist.

In light of the Court's ruling as to Rehabilitation Act liability, plaintiff voluntarily withdrew Count I of her First Amended Complaint (ECF 123), alleging a violation of Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.* The case will proceed to trial only as to Count II, alleging a violation of § 504 of the Rehabilitation Act, 29 U.S.C. § 794. Because the ADA claim was withdrawn, it was not necessary for me to resolve defendant's motion (ECF 101) contending that it is entitled to Eleventh Amendment immunity as to the ADA claim. Therefore, ECF 101 is DENIED AS MOOT.

The defense's motion contending that plaintiff failed to allege sufficient injury to invoke the ADA's protections (ECF 102) is DENIED. In this regard, I refer to my ruling in *Paulone v. City of Frederick*, 787 F. Supp. 2d 360, 388-92 & n.36 (D. Md. 2011) (ECF 72), and the Fourth

Circuit's subsequent decision in *Seremeth v. Board of County Commissioners of Frederick County*, 673 F.3d 333, 337-38 (4th Cir. 2012).

In addition, plaintiff voluntarily withdrew her motion in limine (ECF 91). And, the Court granted defendant's motion (ECF 128) for leave to file an answer to the First Amended Complaint.

As previously scheduled, trial (jury, 3 days) will commence August 13, 2012. Counsel are directed to report to chambers at 9:30 a.m. on that date. The pretrial conference will be held in chambers on July 31, 2012, at 4:00 p.m. The Court received proposed jury instructions, *voir dire*, and a proposed pre-trial order in connection with the earlier pretrial conference, but if the parties wish to supplement or substitute any material, the submissions should be made no later than July 12, 2012. In addition to filing the documents via CM/ECF, please submit copies in Microsoft Word format via email to MDD_ELHChambers@mdd.uscourts.gov.

Despite the informal nature of this Memorandum, it is an Order of the Court, and the Clerk is directed to docket it as such.

Very truly yours,

/s/

Ellen Lipton Hollander
United States District Judge