

**AFFIDAVIT OF  
GEORGE N. NICHOLS**

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

<b>JOSE ERNESTO MARTINEZ,</b>	:	
<b>an individual,</b>	:	<b>Civil Action No.:</b>
	:	<b>3:07-CV-01212 (VLB)</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>FERGUSON LIBRARY,</b>	:	
<b>and</b>	:	
<b>ERNEST DIMATTIA,</b>	:	
	:	<b>November 29, 2007</b>
<b>Defendants.</b>	:	

**AFFIDAVIT OF GEORGE N. NICHOLS  
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS  
FOR LACK OF SUBJECT MATTER JURISDICTION**

George N. Nichols, being duly sworn, does say:

1. I am over the age of eighteen and believe in the obligation of an oath.
2. I am the Director of Human Resources and General Counsel for Defendant Ferguson Library and as such I have personal knowledge of the facts and information as set forth in my affidavit.
3. I make this affidavit in support of Defendants' Motion to Dismiss for lack of subject matter jurisdiction.
4. Plaintiff's Complaint alleges that the following "architectural barriers" deny him access to the services of the Library: (a) an inaccessible Art Gallery; (b) an inaccessible

Stamford Room; (c) inaccessible counters due to their height; (d) inaccessible elevators; (e) inaccessible water fountains; (f) inaccessible restrooms; and (g) inaccessible entrances due to narrow doors.

5. However, items (a) to (g) above, cited by Plaintiff as “architectural barriers,” shall be remedied during a major renovation project at the Library (the “Construction Project”) currently in process. More specifically, the architectural and construction plans provide for the following: (i) with respect to items (a) and (b), the implementation of a lift; (ii) with respect to item (c), desks/counters that will be accessible. In addition, Library personnel have and will continue to be at counters at all times to assist patrons; (iii) with respect to item (d), the current elevators are ADA compliant. In addition, the elevators connect to each floor of the Library; (iv) with respect to item (e), accessible drinking fountains; (v) with respect to item (f), accessible rest rooms. Further, the existing bathroom doors are wide enough for wheelchair access; and (vi) with respect to item (g), the accessible doors that are 32” wide. Additionally, the entrance to the Library is also fully accessible through a side door from a sidewalk on the adjoining street.

6. I attest that Exhibit 1 to this affidavit is a true and current copy of a letter sent to Defendant Ferguson Library, by the architectural firm that has been retained to carry out the project, specifically identifying the “architectural barriers” referred to in Plaintiff’s Complaint and how each of these barriers will be remedied by the Construction Project.

7. Additionally, there are two other affiliate branches of the Library that offer and provide the similar programs and services as the Library and both are completely ADA

compliant. Further, the Library provides access to virtually all the services referred to in the Complaint on some floors or by asking a Librarian for assistance. These services include, but are not limited to: lower counters that are eye level with those that are wheelchair bound; water fountains that are reduced in height; large bathrooms with oversized doors on the second and third floors; and a side entrance into the Library is also fully accessible from a sidewalk on the adjoining street; and the doors to the auditorium are more than 32" wide.

8. Prior to Plaintiff's lawsuit, Defendants have never received any information from Plaintiff regarding any concerns and/or complaints regarding his access to the Library or its services.

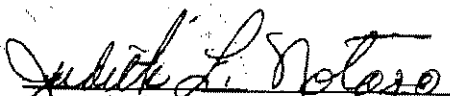
9. Prior to Plaintiff's lawsuit, I am unaware of any complaints about access to the Library services by any disabled individual.

  
George N. Nichols

STATE OF CONNECTICUT )  
COUNTY OF FAIRFIELD )

ss: Stamford

Subscribed and sworn to before me  
this 29<sup>th</sup> day of November, 2007.

  
Commissioner of Superior Court/  
Notary Public  
My Commission expires 7-31-2012

**CERTIFICATION**

I hereby certify that I have caused to be served this 29<sup>th</sup> day of November, 2007, a true and correct copy of the foregoing by U.S. mail and U.S. certified mail, return receipt requested, with proper postage prepaid, upon the following counsel and pro se parties of record:

Ioannis A. Kaloidis, Esq.  
Ku & Mussman - CT  
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Waterbury, CT 06722  
[Jkaloidis@moynahanlawfirm.com](mailto:Jkaloidis@moynahanlawfirm.com)

Lou Mussman, Esq.  
Ku & Mussman, P.A.  
11098 Biscayne blvd., Suite 301  
Miami, FL 33161  
*Via Certified Mail*

/s/ \_\_\_\_\_  
Michel Bayonne

# **EXHIBIT 1**

HERBERT S. NEWMAN FAIA

JOSEPH C. SCHIFFER AIA  
MAVIS B. TERRY  
RICHARD G. MUNDAY AIA  
PETER J. NEWMAN

CARL H. WIES AIA  
HOWARD C. HEBEL AIA  
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JOSÉ A. HERNÁNDEZ AIA  
JAMES L. ELMASRY AIA LEED  
TIMOTHY J. CALLAHAN AIA  
ARCHIBALD CURRIE III AIA

MARC C. HOUSTON AIA  
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JEROMY H. POWERS  
VIRGILIO J. GONZALES  
ERIN C. HASTINGS  
ROBERT J. CONNELLY AIA  
JU-YOUNG PARK LEED

November 8, 2007

Nicholas A. Bochicchio  
Director of Administrative Services  
The Ferguson Library  
One Public Library Plaza  
Stamford, CT 06904

Re: **Ferguson Library: ADA Architectural Barriers**

Dear Mr. Bochicchio:

We are writing to provide commentary on the specific barriers that the plaintiff Martinez has referenced in his lawsuit against the Ferguson Library. Our comments are as follows:

GENERAL

**In preparation of the current design and construction drawings for the proposed alterations to the Ferguson Library, all applicable parts of the Connecticut State Building Code, the American National Standards Institute (ANSI) A117.1-1980 Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People, and the Americans With Disabilities Act 190 have been adhered to.**

ISSUES RELATING TO LIBRARY

- A. The third floor Art Gallery is inaccessible as it can only be reached with stairs and there is no policy in place for wheelchair access.
  - a. **Current design and construction drawings call for installation of a wheelchair lift in this area.**
- B. The Stamford Room is inaccessible as it can only be reached with stairs and there is no policy in place for wheelchair access.
  - a. **Current design and construction drawings call for installation of a wheelchair lift in this area.**
- C. Inaccessible counters due to excessive heights at the Information Desk, Registration Desk, Audio Book Computer and Directory Computer.
  - a. **Current design and construction drawings call for all new public service desks to be accessible. Accessible catalog and directory computer desks will be provided.**



- D. Inaccessible elevators
  - a. The elevators were renovated in 2000 by another architect. Our understanding is that the elevators were in compliance with the ADA at that time. The Ferguson Library did not include any ongoing elevator work in our current contract scope.
- E. Inaccessible water fountains.
  - a. Current design and construction drawings call for installation of accessible new drinking fountains as part of new restroom construction.
- F. Inaccessible restrooms due to lack of push side clearance at the entrance door, improper grab bar, door handles, and sink faucets and improperly placed sinks, toilet signage, toilet flush, coat hooks.
  - a. Current design and construction drawings call for construction of accessible public restrooms on the basement, first, second and third floors.
- G. Inaccessible entrances due to narrow double doors which are less than 32" wide.
  - a. Current design and construction drawings call for installation automatic door operators that will open the pair of narrow doors as a single unit and thus yield an entrance that is over 32" wide.

The design elements referenced in the comments above are included in the finished design and construction drawings that are scheduled to go out to bid in 2007.

Sincerely,



Herbert S. Newman FAIA  
*Principal*

**HERBERT S. NEWMAN AND PARTNERS P.C.**  
ARCHITECTURE PLANNING INTERIOR DESIGN

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