Magna Carta Presents: At Their Majesties' Service

Presented on November 19, 2019

CLE Materials:

Rules:
Florida Rules of Professional Responsibility 4-3.1
Florida Rules of Professional Responsibility 4-2.1

Statutes:
Fla. Stat. § 413.081
Proposed Statutory Changes and Proposed New Statute: Fla Stat. § 760.27
Fla. Stat. § 413.08
Proposed Statutory Changes to Fla. Stat. § 413.08
42 U.S.C. § 12101

Other:
Litigation of Assistance Animal Access Cases, 147 Am. Jur. Trials 181
WHEN PIGS FLY, THEY GO FIRST CLASS: SERVICE ANIMALS IN THE TWENTY-FIRST CENTURY, 3 Barry L. Rev. 39
ADA infosheet https://www.ada.gov/service_animals_2010.pdf
https://www.animalhealthfoundation.net/blog/2017/08/10-signs-that-a-service-dog-is-actually-a-fake/

4-1.4. The lawyer should assess whether the client is likely to cooperate in voluntary discovery and discuss that process with the client. See rules 4-1.1 and 4-1.2. The lawyer should also advise the client that the collaborative law process will terminate if any party initiates litigation or other court intervention in the matter after signing a collaborative law agreement. *Id.* The lawyer should discuss with the client the fact that the collaborative law process is voluntary and any party to a collaborative law agreement may terminate the process at any time. *Id.* The lawyer must provide the client with information about costs the client can reasonably expect to incur, including fees and costs of all professionals involved. See rules 4-1.4 and 4-1.5.

An agreement between a lawyer and client to engage in the collaborative law process is a form of limited representation which must comply with all requirements of limited scope representations, including the requirement that the client must give informed consent in writing. See rule 4-1.2(c). The agreement between lawyer and client should include the nature and scope of the matter to be resolved through the collaborative law process, the material benefits and risks to participating in the collaborative law process, and the limitations on the lawyer's representation.

If a client agrees to participate in the collaborative law process and then terminates the process or initiates litigation regarding the dispute, the lawyer should terminate the representation. See rule 4-1.16.

Added May 18, 2017, effective July 1, 2017 (SC16-1685); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

4-2. COUNSELOR
RULE 4-2.1 ADVISER

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

Comment

Scope of advice

A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral adviser as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as adviser may include indicating that more may be involved than strictly legal considerations.

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering advice

In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under rule 4-1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under rule 4-1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-2.2 OPEN/VACANT

Formerly amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Deleted March 23, 2006, effective May 22, 2006 (SC04-2246).

RULE 4-2.3 EVALUATION FOR USE BY THIRD PERSONS

(a) When Lawyer May Provide Evaluation. A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if:

(1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(2) the client gives informed consent.

(b) Limitation on Scope of Evaluation. In reporting the evaluation, the lawyer shall indicate any material limitations that were imposed on the scope of the inquiry or on the disclosure of information.

third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association, or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and Association for Conflict Resolution. A Florida Bar member who is a certified or court-appointed mediator is governed by the applicable law and rules relating to certified or court-appointed mediators.

Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, subdivision (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this subdivision will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute resolution process selected.

A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in rule 4-1.12.

Added March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); Amended November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a); amended July 7, 2011, effective October 1, 2011 (SC10-1968); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

4-3. ADVOCATE
RULE 4-3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always

clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law.

The lawyer's obligations under this rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this rule.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-3.2 EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL

(a) False Evidence; Duty to Disclose. A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

West's Florida Statutes Annotated
Title XXX. Social Welfare (Chapters 409-434)
Chapter 413. Employment and Related Services for Persons with Disabilities (Refs & Annos)
Part I. Blind Services Program

West's F.S.A. § 413.081

413.081. Interference with or injury to a service animal; penalties; restitution

Effective: July 1, 2005
Currentness

(1) A person who, with reckless disregard, interferes with, or permits a dog that he or she owns or is in the immediate control of to interfere with, the use of a service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the service animal or its user commits a misdemeanor of the second degree for the first offense and a misdemeanor of the first degree for each subsequent offense, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who, with reckless disregard, injures or kills, or permits a dog that he or she owns or is in the immediate control of to injure or kill, a service animal commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who intentionally injures or kills, or permits a dog that he or she owns or is in the immediate control of to injure or kill, a service animal commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) A person who is convicted of a violation of this section, in addition to any other penalty, must make full restitution for all damages that arise out of or are related to the offense, including incidental and consequential damages incurred by the service animal's user.

(b) Restitution includes the value of the service animal; replacement and training or retraining expenses for the service animal and the user; veterinary and other medical and boarding expenses for the service animal; medical expenses for the user; and lost wages or income incurred by the user during any period that the user is without the services of the service animal.

Credits
Added by Laws 2002, c. 2002-176, § 2, eff. July 1, 2002. Amended by Laws 2005, c. 2005-63, § 2, eff. July 1, 2005.

Notes of Decisions (1)

West's F. S. A. § 413.081, FL ST § 413.081
Current through the 2019 First Regular Session of the 26th Legislature.

End of Document

A bill to be entitled

An act relating to emotional support animals; creating s. 760.27, F.S.; providing definitions; prohibiting discrimination in the rental of a dwelling to a person with a disability or disability-related need who has an emotional support animal; prohibiting a landlord from requiring such person to pay extra compensation for such animal; providing an exception; authorizing a landlord to request certain written documentation under certain circumstances; authorizing the Department of Health to adopt rules; prohibiting the falsification of written documentation or other misrepresentation regarding the use of an emotional support animal; providing penalties; specifying that a person with a disability or disability-related need is liable for certain damage done by her or his emotional support animal; providing applicability; amending s. 413.08, F.S.; providing applicability; amending s. 760.22, F.S.; revising the definition of the term "handicap"; amending ss. 419.001, 760.23, 760.24, 760.25, 760.29, and 760.31, F.S.; revising the term "handicap" to "disability" to conform to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 760.27, Florida Statutes, is created to read:

760.27 Prohibited discrimination in the rental of housing to persons with a disability or disability-related need who use an emotional support animal.—

(1) As used in this section, the term:

(a) "Emotional support animal" means an animal that does not require training to do specific work or perform special tasks for a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person's disability.

(b) "Landlord" means the owner or lessor of a dwelling.

(2) To the extent required by federal law, rule, or regulation, it is unlawful to discriminate in the rental of a dwelling to a person with a disability or disability-related need who has or obtains an emotional support animal. A person with a disability or a disability-related need must, upon request, be allowed to keep such animal in the dwelling as a reasonable accommodation in housing, and such person may not be required to pay extra compensation for such animal.

(3) Unless otherwise prohibited by federal law, rule, or regulation, a landlord may:

(a) Prohibit an emotional support animal if such animal poses a direct threat to the safety or health of others or poses

a direct threat of physical damage to the property of others which cannot be reduced or eliminated by another reasonable accommodation.

(b) If a person's disability or disability-related need is not readily apparent, request written documentation prepared by a health care practitioner, as defined in s. 456.001, which verifies that the person has a disability or a disability-related need and has been under the practitioner's care or treatment for such disability or need, and the animal provides support to alleviate one or more identified symptoms or effects of the person's disability or disability-related need. If a person requests to keep more than one emotional support animal, the landlord may request such written documentation establishing the need for each animal. The written documentation must be prepared in a format prescribed by the Department of Health in rule and may not be prepared by a health care practitioner whose exclusive service to the person with a disability is preparation of the written documentation in exchange for a fee. The department may adopt rules to administer this paragraph.

(c) Require proof of compliance with state and local requirements for licensing and vaccination of an emotional support animal.

(4) A person who falsifies written documentation, as described in subsection (3), for an emotional support animal or otherwise knowingly and willfully misrepresents herself or

himself, through conduct or verbal or written notice, as having a disability or disability-related need and being qualified to use an emotional support animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must perform 30 hours of community service for an organization that serves persons with disabilities, or for another entity or organization at the discretion of the court, to be completed within 6 months after conviction.

(5)(a) A person with a disability or disability-related need is liable for any damage done to the premises or to another person on the premises by her or his emotional support animal.

(b) A landlord is not liable for any damage done to the premises or to any person on the premises by an emotional support animal that is authorized as a reasonable accommodation for a person with a disability or disability-related need under this section, the federal Fair Housing Act, s. 504 of the Rehabilitation Act of 1973, or any other federal, state, or local law.

(6) This section does not apply to a service animal as defined in s. 413.08.

Section 2. Paragraph (b) of subsection (6) of section 413.08, Florida Statutes, is amended to read:

413.08 Rights and responsibilities of an individual with a disability; use of a service animal; prohibited discrimination in public employment, public accommodations, and housing

accommodations; penalties.—

(6) An individual with a disability is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(b) An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such individual ~~a person~~ may not be required to pay extra compensation for such animal. However, such individual ~~a person~~ is liable for any damage done to the premises or to another individual ~~person~~ on the premises by the animal. A housing accommodation may request proof of compliance with vaccination requirements. This paragraph does not apply to an emotional support animal as defined in s. 760.27.

Section 3. Paragraph (e) of subsection (1) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—

(1) For the purposes of this section, the term:

(e) "Resident" means any of the following: a frail elder as defined in s. 429.65; a person who has a disability ~~handicap~~ as defined in s. 760.22(3)(a) ~~s. 760.22(7)(a)~~; a person who has a developmental disability as defined in s. 393.063; a

nondangerous person who has a mental illness as defined in s. 394.455; or a child who is found to be dependent as defined in s. 39.01 or s. 984.03, or a child in need of services as defined in s. 984.03 or s. 985.03.

Section 4. Subsections (3) through (6) of section 760.22, Florida Statutes, are renumbered as subsections (4) through (7), respectively, and present subsection (7) of that section is amended to read:

760.22 Definitions.—As used in ss. 760.20-760.37, the term:

(3) ~~(7)~~ "Disability" ~~"Handicap"~~ means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in s. 393.063.

Section 5. Section 760.23, Florida Statutes, is amended to read:

760.23 Discrimination in the sale or rental of housing and other prohibited practices.—

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin,

sex, disability ~~handicap~~, familial status, or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, disability ~~handicap~~, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

(6) The protections afforded under ss. 760.20-760.37

against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability ~~handicap~~ of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(8) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability ~~handicap~~ of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

(a) A refusal to permit, at the expense of the ~~handicapped~~ person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such

modifications may be necessary to afford such person full enjoyment of the premises; or

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(10) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by ~~handicapped~~ persons with disabilities.

(b) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.

(c) All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling.

2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

3. Reinforcements in bathroom walls to allow later

installation of grab bars.

4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for persons with a physical disability ~~physically handicapped people~~, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of paragraph (c).

State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

Section 6. Section 760.24, Florida Statutes, is amended to read:

760.24 Discrimination in the provision of brokerage services.—It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, sex,

disability ~~handicap~~, familial status, or religion.

Section 7. Subsection (1) and paragraph (a) of subsection (2) of section 760.25, Florida Statutes, are amended to read:

760.25 Discrimination in the financing of housing or in residential real estate transactions.—

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, disability ~~handicap~~, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, disability ~~handicap~~, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)(a) It is unlawful for any person or entity whose

business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 8. Paragraph (a) of subsection (1) and paragraph (a) of subsection (5) of section 760.29, Florida Statutes, are amended to read:

760.29 Exemptions.—

(1)(a) Nothing in ss. 760.23, ~~and~~ 760.25, and 760.27 applies to:

1. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the

application of ss. 760.20-760.37 only if the house is sold or rented:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate licensee or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such licensee or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of s. 760.23(3).

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(5) Nothing in ss. 760.20-760.37:

(a) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 9. Subsection (5) of section 760.31, Florida Statutes, is amended to read:

760.31 Powers and duties of commission.—The commission shall:

(5) Adopt rules necessary to implement ss. 760.20-760.37 and govern the proceedings of the commission in accordance with chapter 120. Commission rules shall clarify terms used with regard to ~~handicapped~~ accessibility for persons with disabilities, exceptions from accessibility requirements based on terrain or site characteristics, and requirements related to housing for older persons. Commission rules shall specify the fee and the forms and procedures to be used for the registration required by s. 760.29(4)(e).

Section 10. This act shall take effect July 1, 2020.

West's Florida Statutes Annotated
Title XXX. Social Welfare (Chapters 409-434)
Chapter 413. Employment and Related Services for Persons with Disabilities (Refs & Annos)
Part I. Blind Services Program

West's F.S.A. § 413.08

413.08. Rights and responsibilities of an individual with a disability; use of a service animal; prohibited discrimination in public employment, public accommodations, and housing accommodations; penalties

Effective: July 1, 2015
Currentness

(1) As used in this section and s. 413.081, the term:

(a) “Housing accommodation” means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(b) “Individual with a disability” means a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual. As used in this paragraph, the term:

1. “Major life activity” means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

2. “Physical or mental impairment” means:

a. A physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; or

b. A mental or psychological disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, such as an intellectual or developmental disability, organic brain syndrome, traumatic brain injury, posttraumatic stress disorder, or an emotional or mental illness.

(c) “Public accommodation” means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging establishment as defined in s. 509.013; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. The term does not include air carriers covered by the Air Carrier Access Act of 1986, 49 U.S.C. s. 41705, and by regulations adopted by the United States Department of Transportation to implement such act.

(d) “Service animal” means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to, guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks. A service animal is not a pet. For purposes of subsections (2), (3), and (4), the term “service animal” is limited to a dog or miniature horse. The crime-deterrent effect of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.

(2) An individual with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges in all public accommodations. A public accommodation must modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability. This section does not require any person, firm, business, or corporation, or any agent thereof, to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.

(3) An individual with a disability has the right to be accompanied by a service animal in all areas of a public accommodation that the public or customers are normally permitted to occupy.

(a) The service animal must be under the control of its handler and must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control by means of voice control, signals, or other effective means.

(b) Documentation that the service animal is trained is not a precondition for providing service to an individual accompanied by a service animal. A public accommodation may not ask about the nature or extent of an individual's disability. To determine the difference between a service animal and a pet, a public accommodation may ask if an animal is a service animal required because of a disability and what work or tasks the animal has been trained to perform.

(c) A public accommodation may not impose a deposit or surcharge on an individual with a disability as a precondition to permitting a service animal to accompany the individual with a disability, even if a deposit is routinely required for pets.

(d) An individual with a disability is liable for damage caused by a service animal if it is the regular policy and practice of the public accommodation to charge nondisabled persons for damages caused by their pets.

(e) The care or supervision of a service animal is the responsibility of the individual owner. A public accommodation is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement.

(f) A public accommodation may exclude or remove any animal from the premises, including a service animal, if the animal is out of control and the animal's handler does not take effective action to control it, the animal is not housebroken, or the animal's

behavior poses a direct threat to the health and safety of others. Allergies and fear of animals are not valid reasons for denying access or refusing service to an individual with a service animal. If a service animal is excluded or removed for being a direct threat to others, the public accommodation must provide the individual with a disability the option of continuing access to the public accommodation without having the service animal on the premises.

(4) Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with admittance to, or enjoyment of, a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of such an animal pursuant to subsection (8), commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

(5) It is the policy of this state that an individual with a disability be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and an employer may not refuse employment to such a person on the basis of the disability alone, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

(6) An individual with a disability is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(a) This section does not require any person renting, leasing, or otherwise providing real property for compensation to modify her or his property in any way or provide a higher degree of care for an individual with a disability than for a person who is not disabled.

(b) An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such a person may not be required to pay extra compensation for such animal. However, such a person is liable for any damage done to the premises or to another person on the premises by the animal. A housing accommodation may request proof of compliance with vaccination requirements.

(c) This subsection does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals.

(7) An employer covered under subsection (5) who discriminates against an individual with a disability in employment, unless it is shown that the particular disability prevents the satisfactory performance of the work involved, or any person, firm, or corporation, or the agent of any person, firm, or corporation, providing housing accommodations as provided in subsection (6) who discriminates against an individual with a disability, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Any trainer of a service animal, while engaged in the training of such an animal, has the same rights and privileges with respect to access to public facilities and the same liability for damage as is provided for those persons described in subsection (3) accompanied by service animals.

(9) A person who knowingly and willfully misrepresents herself or himself, through conduct or verbal or written notice, as using a service animal and being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

Credits

Laws 1949, c. 25268, § 1; Laws 1961, c. 61-217, § 1; Laws 1971, c. 71-136, § 361; Laws 1971, c. 71-276, § 1; Laws 1973, c. 73-110, § 1; Laws 1974, c. 74-286, § 1; Laws 1977, c. 77-174, § 1; Laws 1977, c. 77-259, § 19; Laws 1979, c. 79-400, § 178; Laws 1982, c. 82-111, § 1; Laws 1983, c. 83-218, § 73; Laws 1985, c. 85-81, § 60; Laws 1987, c. 87-312, § 1; Laws 1989, c. 89-317, § 1; Laws 1990, c. 90-8, § 1; Laws 1991, c. 91-94, § 1; Laws 1993, c. 93-18, § 1; Laws 1997, c. 97-103, § 57. Amended by Laws 1998, c. 98-19, § 1, eff. July 1, 1998; Laws 2002, c. 2002-176, § 3, eff. July 1, 2002; Laws 2005, c. 2005-63, § 1, eff. July 1, 2005; Laws 2015, c. 2015-131, § 1, eff. July 1, 2015.

Notes of Decisions (10)

West's F. S. A. § 413.08, FL ST § 413.08
Current through the 2019 First Regular Session of the 26th Legislature.

End of Document

A bill to be entitled

An act relating to emotional support animals; amending s. 413.08, F.S.; providing a definition; providing that an individual with a disability who has an emotional support animal or obtains an emotional support animal is entitled to full and equal access to all housing accommodations; providing an exception; prohibiting a housing accommodation from requiring such individual to pay extra compensation for such animal; authorizing a housing accommodation to request certain written documentation under certain circumstances; authorizing the Department of Health to adopt rules; specifying that an individual with a disability is liable for certain damage done by her or his emotional support animal; prohibiting the falsification of written documentation or other misrepresentation regarding the use of an emotional support animal; providing penalties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) through (d) of subsection (1) of section 413.08, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, paragraph (b) of subsection (6)

is amended, a new paragraph (a) is added to subsection (1), and subsection (10) is added to that section, to read:

413.08 Rights and responsibilities of an individual with a disability; use of a service animal or an emotional support animal; prohibited discrimination in public employment, public accommodations, and housing accommodations; penalties.—

(1) As used in this section and s. 413.081, the term:

(a) "Emotional support animal" means an animal that does not require training to do specific work or perform special tasks for an individual with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of an individual's disability.

(6) An individual with a disability is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(b)1. An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such individual ~~a person~~ may not be required to pay extra compensation for such animal. This subparagraph does not apply to an emotional support animal.

2.a. An individual with a disability who has an emotional support animal or who obtains an emotional support animal is entitled to full and equal access to all housing accommodations provided for in this section, unless the specific animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others which cannot be reduced or eliminated by another reasonable accommodation, and such individual may not be required to pay extra compensation for such animal. If an individual's disability or disability-related need is not readily apparent to a housing accommodation, the housing accommodation may request written documentation prepared by a health care practitioner, as defined in s. 456.001, or a similarly licensed health care practitioner in another state, which verifies that the individual has a disability or a disability-related need and has been under the practitioner's care or treatment for such disability or need, and the animal provides support to alleviate one or more identified symptoms or effects of the individual's disability or disability-related need.

b. The written documentation, as described in sub-subparagraph a., must be prepared in a format prescribed by the Department of Health in rule and may not be prepared by a health care practitioner whose exclusive service to the individual with a disability is preparation of the written documentation in

exchange for a fee. The Department of Health may adopt rules to administer this sub-subparagraph.

c. This subparagraph does not apply to a service animal.

3. An individual with a disability ~~However, such a person~~ is liable for any damage done to the premises or to another person on the premises by her or his service ~~the~~ animal or emotional support animal. A housing accommodation may request proof of compliance with vaccination requirements.

(10) A person who falsifies written documentation, as described in sub-subparagraph (6)(b)2.a., for an emotional support animal or otherwise knowingly and willfully misrepresents herself or himself, through conduct or verbal or written notice, as using an emotional support animal and being qualified to use an emotional support animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed within 6 months after conviction.

Section 2. This act shall take effect July 1, 2020.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

42 U.S.C.A. § 12101

§ 12101. Findings and purpose

Effective: January 1, 2009
Currentness

(a) Findings

The Congress finds that--

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter--

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

CREDIT(S)

(Pub.L. 101-336, § 2, July 26, 1990, 104 Stat. 328; Pub.L. 110-325, § 3, Sept. 25, 2008, 122 Stat. 3554.)

Notes of Decisions (193)

42 U.S.C.A. § 12101, 42 USCA § 12101
Current through P.L. 116-68.

End of Document

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Trials

Adam P. Karp, J.D., M.S. *

Litigation of Assistance Animal Access Cases

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ARTICLE OUTLINE

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I. Introduction

§ 1. Role of service animals in United States

The United States Department of Labor Bureau of Labor Statistics uses a Standard Occupational Classification (SOC) system to classify workers into 840 occupational categories for a variety of regulatory purposes. Many Americans overassociate identity with a vocation, answering the metaphysical question, "Who are you?" with a job description. In such a workaholic culture, it should surprise none that nonhuman animals domesticated to live in close habitation with people have been similarly classified by what they do for a living—or more particularly, what they do for human beings. Though not nearly as numerous as the SOC, a legal nomenclature of animal classification exists. For purposes of this article, the ones worth discussing include *service* animals, *emotional support* animals, *therapy* animals, *comfort* animals, and *companion* animals (or *pets*).

As with occupations requiring specialized training or bona fides confer limited access to certain situations and locales, the animal's legal pedigree will literally open doors to different environments such as housing (rental units, condominiums, and mansions), public agencies, and transportation (courtrooms, public libraries, schools, post offices, airports, mass transit), places of public accommodation (movie theaters, supermarkets, cruise ships, hospitals), airplanes, and their handler's workplaces. Generally, the greatest clearances are given to service animals, then emotional support animals, then therapy animals, then animal companions.

Those animals who achieve the title of "service animal" enjoy red carpet access to virtually every place a human may go with a few critical provisos: (1) they must be with a disabled human chaperone at all times (i.e., providing service to the handler); (2) they generally cannot access areas where food is being prepared for public consumption; [1] (3) they may not behave like a bull in a china shop but must remain decorous and nonthreatening; (4) they generally cannot enter areas if their presence would fundamentally alter the essential nature of the facility or accommodation; and (5) places of worship are typically exempt from the reach of federal law. Notwithstanding abundant evidence [2] proving the therapeutic benefits that companion animals (or pets) confer upon their guardians, [3] such does not transform them into *service* animals protected under such federal laws as the Americans with Disabilities Act ("ADA"), Rehabilitation Act of 1973, [4] Fair Housing Act ("FHA"), Air Carrier Access Act ("ACAA"), and state antidiscrimination laws. Animal classifications vary by law, as described below.

This article will examine the formation of a service animal under the Americans with Disabilities Act, [5] Rehabilitation Act of 1973, [6] Fair Housing Act, [7] Air Carrier Access Act, [8] Individuals with Disabilities Education Act, [9] state antidiscrimination laws [10] and will provide additional commentary about service animals, [11] emotional support animals [12] and courtroom therapy dogs. [13] It also discusses permissible interrogation as balanced against the need for privacy [14] and as it pertains specifically to the ADA, [15] Rehabilitation Act of 1973, Section 504, and Fair Housing Act [16] and Air Carrier Access Act. [17] Direct threat and undue hardship considerations are addressed as well, regarding the ADA, [18] Rehabilitation Act, [19] Fair Housing Act [20] and

Air Carrier Access Act.[21] Burden of proof considerations[22] regarding the ADA,[23] Rehabilitation Act and Section 504,[24] Fair Housing Act,[25] Air Carrier Access Act[26] and for a service animal accommodation[27] are also discussed. Ante litem requirements, exhaustion and preclusion are addressed generally,[28] and as regards the ADA,[29] Rehabilitation Act[30] and Fair Housing Act.[31] This article also reviews selection of parties,[32] statute of limitations[33] and remedies,[34] particularly under the ADA,[35] Section 504 of the Rehabilitation Act[36] and Fair Housing Act.[37] Considerations of mootness[38] and preemption and supremacy[39] are also addressed. Finally, sample discovery materials are provided for a Title II[40] and Title III ADA case.[41]

Note:

A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed.

II. Making of Service Animal (and Individual with Disability)

§ 2. Americans with Disabilities Act

The Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, codified at 42 U.S.C.A. §§ 12101 to 12213, prohibits discrimination based on disability, including the use of a service animal or guide dog. It extends to places of employment (Title I), access to public services (Title II), and places of public accommodation (Title III).[1] States are not immune from the ADA under the Eleventh Amendment.[2] Subchapter I, 42 U.S.C.A. §§ 12111 to 12117, pertains to discrimination in the occupational setting and compels "meaningful access" and "comparable" services to nondisabled counterparts.[3] Subchapter II, Part A, 42 U.S.C.A. §§ 12131 to 12132, addresses discrimination by exclusion of qualifying individuals with disabilities from participation in or denial of benefits of any public service, program, or activity of a public entity, or discrimination by that entity. It applies to public entities, including those that provide housing and housing at state universities. Subchapter II, Part B, 42 U.S.C.A. §§ 12141 to 12165, regulates discrimination on public transportation other than by aircraft or certain rail operations, as well as by intercity and commuter rail. Subchapter III, 42 U.S.C.A. §§ 12181 to 12189 prohibits discrimination in places of public accommodation and services operated by private entities. Places of "public accommodation" are too numerous to list but include such places as inns, hotels, motels, restaurants, and bars; movie theaters, concert halls, stadiums, auditoriums, convention centers, lecture halls, bakeries, grocery stores, clothing stores, supermarkets, shipping malls, amusement parks, laundromats, barber shops, offices of an accountant, lawyer, health care provider, or hospital, museum, library, park, zoo, amusement park, schools K-12, colleges, day cares, homeless shelters, gymnasiums, spas, bowling alleys, and terminals, depots, or stations used for specified public transportation (which does not include aircraft), and cruise ships that contain public facilities.[4] Certain private clubs and religious organizations are exempt.[5]

While Titles II and III speak to participation in, enjoyment of, and access to public services and places of public accommodation (42 U.S.C.A. § 12132 (Title II) and 42 U.S.C.A. § 12182 (Title III)), the federal statute itself does not use the word "animal" anywhere within. Implementing regulations, established by the Department of Justice, however, define "service animal." In 2011, the final rule of the Civil Rights Division of the Department of Justice, entitled Nondiscrimination on the Basis of

Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56236-01, narrowed the definition of "service animal" in 28 C.F.R. § 36.104 (applicable to Title III) and 28 C.F.R. § 36.104 (applicable to Title II) from:

> Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

To:

> Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.[6] Contrary to lay perception, federal law does not require training by a certified professional (self-training may suffice), nor registration of the service animal with a governmental or nongovernmental agency, nor performance of an enumerated task or function (instead, it offers illustrative examples), nor a specific degree of service—whether measured by intensity, duration, frequency, or proportion of daily activities. Rather, the question is whether the animal responds (i.e., works or performs tasks or functions) to the individual's needs in a way distinguishing it as a service animal.[7] And while the law never did prohibit recognition and protection of mental health service dogs, the days of proprietors, employers, and government agencies giving respect only to the patently obvious working dogs (e.g., seeing-eye) were hopefully ended by the Final Rule's explicit embrace of psychiatric service dogs, who may perform tasks to "include reminding the handler to take medicine, providing safety checks or room searches for people with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations."[8] To be clear, however, emotional support animals—owing either to lack of individualized training or not engaging in qualified "work"—do not qualify as service animals. "The difference between an emotional support animal and a psychiatric service animal is the work or tasks that the animal performs," adding that "emotional support, well-being, comfort, or companionship … do[es] not constitute work or tasks for the purposes of this definition."[9]

Notably, the 2011 amendment restricted the status of "service animal" to canines, excluding felines, reptiles, rabbits, ferrets, amphibians, rodents, and farm animals (including all horses, ponies, pigs, and goats).[10] It also refused to endorse breed discrimination by stating that "if an individual uses a breed of dog that is perceived to be aggressive because of breed reputation, stereotype, or the history or experience the observer may have with other dogs, but the dog is under the control of the individual with a disability and does not exhibit aggressive behavior, the public accommodation cannot exclude the individual or the animal from the place of public accommodation."[11] The Department believed that a canine-centric focus would "provide greater predictability" for state and local government entities as well as "added assurance of access for individuals with disabilities

who use dogs as service animals." [12] Exotic animals also were excluded. Though the Department gave serious consideration to capuchin monkeys, it rejected them due to their risk of zoonotic transmission and unpredictable, potentially aggressive behavior. [13] Oddly, among the menagerie of all creation, this Final Rule allows the miniature horse to trot alongside the service dog. [14]

Be mindful that the foregoing definition of service animal applies under Titles II and III of the ADA, not Title I (pertaining to employment discrimination, and which evaluates the issue of animal access as one of "reasonable accommodation"). Arguably, a more relaxed definition of "service animal" (to encompass untrained emotional support animals) would apply in the workplace, akin to the definitions found in the Rehabilitation Act of 1973, Section 503, and the Federal Fair Housing Act. [15]

Whether an animal qualifies as a service animal depends not only on her *abilities* but on the *disabilities* of the person relying upon her. Accordingly, the legal status of the animal vitally turns on the legal status of a human being as possessing a qualifying disability. Thus, a seeing-eye dog may have received superlative training for sight-impaired individuals, but if she enters a department store without a blind handler whom she is actively guiding, she may be ejected and not regarded as a *service animal* at that place and time.

An ADA-protected disabled person has a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or is perceived as having such impairment (whether she does or not). [16] Major life activities include such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning. Merely irritating, transient, or minimal impairments do not substantially limit such an activity; instead they must render the person unable to perform the major life activity that an average person could perform, or impose a significant restriction as to condition, manner, or duration under which the major life activity may be performed relative to the average person. The ADA Amendments Act of 2008 broadened the definition of "disability" to disregard the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (except ordinary eyeglasses or contacts), prosthetics, hearing aids or implants, mobility devices, or oxygen therapy equipment and supplies; the use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. [17]

Rose v. Springfield-Greene County Health Dept., 668 F. Supp. 2d 1206, 253 Ed. Law Rep. 330 (W.D. Mo. 2009), aff'd, 377 Fed. Appx. 573 (8th Cir. 2010), decided before the 2011 amendment to the definition of service animal, rejected a claim of disability by plaintiff Debby Rose, who claimed to suffer from agoraphobia and anxiety but made no complaints of disability, nor was diagnosed with a disability for more than 30 years over the period that she claimed impairment. The court also denied that her Bonnet Macaque monkey named Richard, whom she allegedly self-trained in "break[ing] the spell," "break[ing] off the focus," "crowd control," "chang[ing] the mood," "designat[ing] when [she] ha[s] a change in [her] heart rate and blood pressure," and "keep[ing] control of what [she's] doing," but whose primary task was described by her physician as sitting with her as a comfort, was a service animal. While no codified thresholds existed as to the quantum or type of training required, nor is certification by any governmental or nongovernmental entity required, the court concluded that Richard had no such individualized training; the "vast majority of these 'tasks' involve[d] nothing more than the monkey providing comfort." Merely providing comfort or "reassurance is equivalent to a household pet, and does not qualify as a service animal under the ADA." [18]

Gladys Cordoves went shopping at the Dadeland Mall with Shiloh, a strollered toy poodle, when a security guard advised her to leave as dogs were prohibited. Cordoves was arrested and escorted off the premises, despite her contention that Shiloh was a service animal who prealerted to help her cope with PTSD attacks; the dog detected impending panic and ran to Cordoves, jumped in her lap, and applied pressurized, massage-like licking patterns to the left side of her body. He also would paw at her, nudge her chin, and yelp to get her attention. Cordoves sued under Title III of the ADA, Section 1983, assault and battery, false imprisonment, and negligent infliction of emotional distress in Cordoves v. Miami-Dade County, 92 F. Supp. 3d 1221, 1225 (S.D. Fla. 2015). Granting summary judgment on the Section 1983, assault and battery, and derivative claim, the court allowed the ADA claim to proceed. In preparation for trial, defendants moved to strike the testimony of Louis Androuin, relied

upon by Cordoves to prove Shiloh's legal status, to testify to the ADA regulatory scheme governing interaction with individuals accompanied by service animals, and the adequacy of training of personnel involved in the incident respecting service animal compliance. Qualifying him as an expert, the district court still struck the entirety of his testimony in Cordoves v. Miami-Dade County, 104 F. Supp. 3d 1350 (S.D. Fla. 2015).

Applying Fed. R. Evid. 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469, 27 U.S.P.Q.2d 1200, Prod. Liab. Rep. (CCH) ¶ 13494, 37 Fed. R. Evid. Serv. 1, 23 Envtl. L. Rep. 20979 (1993), the district court held that Androuin lacked qualifications to testify as to whether Shiloh was a service animal given his deposition testimony that he was not an animal trainer and had never trained a service animal; however, and despite his limited experience as a trainer and consultant on ADA *service-animal* compliance (he had significant experience on other ADA regulatory compliance matters), that he did assist in remediation following settlement of service-animal cases and obtain ADA training through seminars and webinars, he could testify to the adequacy of training of personnel to ensure ADA service-animal compliance. [19] The lack of possessing ADA certification proved insignificant to the court, since no such certifications exist. [20]

Nor did the fact that he had never been found qualified by a court to testify as an expert before matter, for an expert "must be so designated a first time." [21]

Though permitted to testify, the court nonetheless struck his testimony in its entirety as proving unreliable and unhelpful given that the "critical cracks in Androuin's factual foundation due to this failure to consider other relevant record evidence," such as Cordoves and her daughter's depositions and their sworn statements, Cordoves's prescribing physician's deposition, Cordoves's medical records, and failure to evaluate Shiloh performing the alleged "prealert" task, which Androuin described as, "It's a little yelp. He does a little paw, a little lick, a little circular movement." [22]

Nor did the court find Androuin's testimony to be based on reliable methodology, particularly his conclusion that that "self-training" contributed to Shiloh's prealert training. [23]

Indeed, the court critiqued Androuin for offering testimony that was "no more than *ipse dixit* and parroting of lay witness testimony—certainly not a reliable methodology." [24]

Furthermore, his discussion of the ADA service-animal regulatory scheme was deemed unhelpful as it merely presented impermissible legal standard testimony, along with impermissible legal conclusions. [25]

For a contrary evidentiary ruling on expert testimony, see Davis v. Ma, 848 F. Supp. 2d 1105, 75 A.L.R. Fed. 2d 665 (C.D. Cal. 2012), aff'd, 568 Fed. Appx. 488 (9th Cir. 2014), which overruled Al Davis's objection to testimony from a Field Services Representative of the Department of Animal Care and Services for the City of Rancho Cucamonga and a service dog trainer, concluding that Davis's puppy did not constitute a trained service animal and that Davis lacked credentials or competency to train a puppy as a balance service dog. Davis entered Burger King with his 13-week-old Great Dane puppy, purportedly in training for his degenerative back disabilities but who was not, in fact, able to provide any service to Davis due to his size and age, and was told to remove the dog per the "no dogs" policy. While a jury may have concluded that Davis's back problems interfered with at least one major life activity (i.e., sleeping or walking) and, thus, had a qualifying disability, the puppy did not meet the definition of "service animal" notwithstanding Davis's production of service dog tags (given by animal control on the "honor system" and owner affidavit, not independent testing by the agency). [26]

Failing on the qualifying disability prong resulted in conviction of Em Satterwhite for third-degree criminal trespass, and a 30-day jail sentence, when she refused to remove her dog from Hastings, a book and video store, in Auburn, Ala. [27]

Per customer complaints, Sattherwhite's dog had urinated in the store and smelled. When an officer asked if the dog were a service animal, Satterwhite responded affirmatively, but when pressed as to whether she had any disabilities with which the dog would assist her, she stared and did not respond, except to say, "You can't ask me that." After about an hour of begging and pleading for her to leave, Satterwhite was handcuffed and removed from the store. Only after placed under arrest and transported did she claim to be disabled. On cross-examination, one of the officers testified that he did not detect any odor from the dog or smell urine or observe any threatening or disturbing behavior from the canine. Satterwhite testified that she had arthritis, fibromyalgia, and diffused pain syndrome, making it difficult for her to get up and sit down and walk freely. She claimed that Dingo aided her mobility and even told some customers not to pet him, for he was a service dog, not a pet. After the jury began deliberating, it asked the court, "Does dog or ADA factor into this decision?" The trial court answered in the negative, stating that Satterwhite failed to present "evidence at all of what the ADA says" and that she did not bring "any kind of expert to testify about the divisions of [the] ADA that might have prevented a criminal trespass from being a legal charge in this case." Satterwhite's counsel objected, asserting that the ADA was "the crux of our defense" that she did not "disobey a lawful order," and that "we would not need an expert in this case because that's the federal law." [28]

In affirming the trial court's refusal to instruct the jury on Title III of the ADA, the appellate court held that while Hastings was a public accommodation, Satterwhite failed to present evidence that her disabilities substantially and significantly restricted her ability to ambulate and that she needed Dingo for assistance. [29] Specifically, testimony that she had trouble "getting around" did not "provide any details as to exactly how her impairment substantially limited her mobility," and "moderate difficulty experienced while walking does not rise to the level of a disability." [30] That she received federal disability benefits or that her doctor told her she could no longer work or go to school also did not mean she had a qualifying ADA disability. [31]

§ 3. Rehabilitation Act of 1973

In 1973, Congress enacted the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394, codified at 29 U.S.C.A. §§ 701 et seq., to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society … [and] to ensure that the federal government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living. [1] Organizations receiving federal funding violate Section 504 of the Rehabilitation Act, [2] if denying a qualified disabled individual a reasonable accommodation to enjoy meaningful access to the benefits of public services. [3]

Section 503 of the Act, [4] requires nondiscrimination in employment by federal government contracts and subcontractors with contracts of more than $10,000. Section 501 of the Act, [5] also guards against discrimination in employment by federal agencies of the executive branch.

The 2011 definition of "service animal" applicable to Titles II and III of the ADA does not apply to Sections 501, 503, or 504. [6] In 2013, HUD issued an FHEO Notice 2013-01 titled Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs (confirming that the Title II and III amendments to the definition of service animal did not apply to the Rehabilitation Act). [7]

"Disability" under Section 504 has the same meaning given in the ADA. [8]

§ 4. Fair Housing Act

[Cumulative Supplement]

The Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73, codified at 42 U.S.C.A. §§ 3601 to 3619, is also known as the Fair Housing Act, and served to extend the protections of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241. The Fair Housing Act makes it unlawful to discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, due to a person's handicap. [1]

The FHA does not apply to hotels and motels lodging transient guests. [2] However, the ADA does cover "places of lodging," and thus a "place of public accommodation." [3] Apartments and condominium units are not "public accommodations" under the ADA. [4] Accordingly, hotels and motels typically must permit guests to bring their service animals at no additional charge. Emotional support animals do not enjoy the same pass, nor do companion animals. Yet many chains promote the amenity of pet-friendly accommodations, such as Holiday Inn, Quality Inn, La Quinta, Motel 6, Extended Stay America, Comfort Inn, and Best Western. Nightly turndown and daily housekeeping service requires access to the room sometimes more than once a day, a distinct feature of transient lodging not offered in rented dwellings; indeed, most landlord-tenant laws prohibit entry without 48 hours' notice. While guests may consent to more or less frequent access by the innkeeper or staff, a question emerges as to what liability the hotel faces should the guest's companion animal escape or suffer grievous harm while on premises.

Incarcerated individuals can spend their entire lives behind bars. Having been stripped of many of their rights as free persons, do they also lose the liberty to cohabit with nonhumans of their choosing? Putting aside the obvious security concerns, such as the potential use of animals as weapons or the fundamental alteration of the prison environment arising from management of, and interference from, animal incarcerees, and also for the moment suspending concerns about the morality of forcing imprisonment on a guiltless animal merely by association with a convict, could a disabled inmate who relies upon a service animal demand access under the ADA or FHA? At least one court has held that prison cells are dwellings for purposes of the FHA. [5] But no known case to date has addressed whether an inmate with a qualifying disability may obtain a service animal as a reasonable accommodation while jailed.

Failing to reasonably accommodate a disabled individual by permitting an emotional support animal as an exception to rules, policies, practices, or services, when such accommodation is necessary to afford the handicapped person equal opportunity to use and enjoyment of a dwelling, violates 42 U.S.C.A. § 3604(f)(3)(B). In 2008, the United States Department of Housing and Urban Development ("HUD") [6] enacted a clarifying Final Rule entitled Pet Ownership for the Elderly and Persons with Disabilities. [7] It provided that untrained animal companions who by mere presence ameliorate disabling conditions must be accommodated under the FHA. This publication does an excellent job setting the parameters of access and protection furnished by the FHA and ADA. For instance, it responds to the comment, "Proposed elimination of training component is inconsistent with the regulations implementing the Americans with Disabilities Act" as follows:

> *HUD Response*: … There is a valid distinction between the functions animals provide to persons with disabilities in the public arena, i.e., performing tasks enabling individuals to use public services and public accommodations, as compared to how an assistance animal might be used in the home. For example, emotional support animals provide very private functions for persons with mental and emotional disabilities. Specifically, emotional support animals by their very nature, and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress. Conversely, persons with disabilities who use emotional support animals may not need to take them into public spaces covered by the ADA.

This Rule has been recently relied upon by federal courts, who grant considerable deference to HUD interpretations of the FHA. HUD's guidance contained in the commentary to the 2008 final rule reflects HUD's fair housing enforcement stance on emotional support and service animals, and at least one federal court has found HUD's guidance persuasive, holding that animals for disabilities in housing need not be trained, and HUD and DOH are actively pursuing enforcement actions based on this position.

When neighbors in a mutual housing corporation complained about a disturbing dog barking emanating from Vickie Spencer's dwelling, Overlook Mutual Homes warned her that she was violating their "no pet" rule. Spencer removed the dog but then requested a reasonable accommodation to keep the dog, named Scooby, as a "companion/service dog" to facilitate the treatment of the Spencers' daughter Lynsey. Dr. Hoefflin, Lynsey's psychologist, provided a statement in support. Overlook's attorney demanded access to Lynsey's psychological and medical records, cautioning that if signed releases were not returned, he would get the records through litigation. Though the Spencers' counsel proposed instead that the attorneys have a conference call with Hoefflin where questions could be asked as to why Lynsey needed the dog to afford her an equal opportunity to enjoy the unit, instead Overlook sued the Spencers, who counterclaimed under the FHA, the Ohio Fair Housing Act, and on grounds of common law negligence. They asserted that Overlook failed to grant a reasonable accommodation and coerced, intimidated, and interfered with the Spencers due to their advocacy of disability rights. [8] Finding that Overlook "unilaterally chose to disregard" the opportunity to consult with Hoefflin by conference call, the court denied summary judgment to Overlook on whether the information it sought from Lynsey was necessary. [9]

The Court also denied summary judgment to Overlook on the question of whether Scooby had to be trained to meet the definition of "service animal," distinguishing the ADA from the FHA in this crisp illustration:

> Simply stated, there is a difference between not requiring the owner of a movie theater to allow a customer to bring her emotional support dog, which is not a service animal, into the theater to watch a two-hour movie, an ADA-type issue, on one hand, and permitting the provider of housing to refuse to allow a renter to keep such an animal in her apartment in order to provide emotional support to her and to assist her to cope with her depression, an FHA-type issue, on the other. [10] That HUD and DOJ notices supported the Spencers' position assisted the court's thought-process. [11]

In so doing, it parted from the holdings of *In re Kenna Homes Co-op. Corp.*, [12] and *Prindable v. Association of Apartment Owners of 2987 Kalakaua*. [13] After the West Virginia Supreme Court decided *Kenna Homes,* the DOJ and HUD sued Kenna Homes, alleging it violated the FHA by implementing a rule that allowed for dogs trained and certified for a particular disability, a rule that effectively denied mentally impaired residents from keeping animals who provide emotional support. [14] The parties entered into a consent decree permitting disabled residents to keep service animals or emotional support animals. While the *Prindable* court entered summary judgment in favor of the defendant because the dog was not individually trained, and while the Ninth Circuit affirmed, noting that one of the elements of a claim under 42 U.S.C.A. § 3604(f)(3)(B) was that the defendant refused to grant the plaintiff's request for a reasonable accommodation, since the two had moved out of the unit and the association had not previously required the dog to leave, the Ninth Circuit concluded that the plaintiffs could not establish that essential element of their claim. In addition, the Ninth Circuit explicitly held that it was *not addressing* the question of "whether the plaintiffs must prove that [the dog] is an individually trained service animal." [15]

The issue of whether the FHA extends to emotional support animals was again visited by Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor, 892 F. Supp. 2d 1268 (D. Haw. 2012). Joel Taylor bought an apartment in the Liliuokalani Gardens condominium project in 2011 on the condition that he could keep Nell as an accommodation for his mental disability. The Association asked his physician to complete a questionnaire so it could evaluate whether the accommodation he sought in Nell was necessary. Dr. Torres indicated that Taylor suffered from agoraphobia and social phobia and when asked, "What major life activity or activities are the subject of Patient's disability or record of disability?", Torres stated, "Neuro-science report establishes a brain chemistry imbalance. Epinephrine is very low, dopamine is optimal, serotonin is very low. Very low levels of serotonin promote agoraphobia [sic] and social phobia. 'Caring for oneself' is possible with his service dog." [16] Torres also stated that "[i]t would provide a safe haven from outside stress and allowing [sic] a refuge from the outside world." Taylor explained that Nell "must be quartered with me so as to be on call when I am required to engage with the general public to care for myself…. I refer you to the training required to act as an 'emotionally supportive' Service Dog. There is none

other than being a calming support in stressful situations." [17] Unmoved by the Torres questionnaire and Taylor's explanations, the Association sued for declaratory judgment that he did not suffer from a handicap or disability for purposes of the FHA and Hawaii Fair Housing Act.

Taylor moved for partial summary judgment, claiming that *Prindable* and the cases it relied upon, Bronk v. Ineichen, 54 F.3d 425, 10 A.D.D. 143 (7th Cir. 1995), Green v. Housing Authority of Clackamas County, 994 F. Supp. 1253 (D. Or. 1998), and In re Kenna Homes Co-op. Corp., 210 W. Va. 380, 557 S.E.2d 787 (2001), had subsequently been disavowed and no longer stated the law of emotional support animals. The Association cross-moved for partial summary judgment. In support of Taylor's position, he cited to Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp. 2d 850 (S.D. Ohio 2009) and Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc., 778 F. Supp. 2d 1028, 66 A.L.R. Fed. 2d 687 (D.N.D. 2011) (agreeing with *Overlook* and adopting DOJ rule that ADA "service animal" definition does not apply to FHA reasonable accommodations standard). *Taylor* concluded that "the FHA has evolved to recognize 'assistance animals,' including 'emotional support animals,' as reasonable accommodations." [18] In retiring the precedential force of *Prindable* on the grounds that "the law has changed," the court also noted that Prindable and DuBois presented a different question from that raised by Taylor. In *Prindable,* the court examined the averment that Einstein was individually trained to provide emotional support and to alert, quite foreseeably prompting Judge Kay to invoke the "service animal" definition, while in *Taylor,* the court was tasked with determining whether Nell was an "assistance animal" who, by her very presence, ameliorated Taylor's disability. [19] In denying the cross-motions, the court held that it could not state, summarily, that an untrained emotional support animal unequivocally was or was not a reasonable accommodation under the FHA; such inquiry turned, rather, on a case-by-case determination. [20] However, it did conclude that the Association "cannot categorically deny a reasonable accommodation request for an emotional support animal merely because the animal has not received specialized training." [21]

The nonprofit organization Fair Housing of the Dakotas sued Goldmark Property Management, Inc. for its sweeping nonrefundable fee and monthly pet charge for "nonspecially trained" assistance animals in "no pets" buildings, which Goldmark claimed was necessary to recoup such costs as "steam cleaning, carpet replacement, subfloor resealing, baseboard damage, sheet rock damage, vinyl damage, blind replacement, damage to grounds and shrubbery, common area cleaning, odor removal, and labor for feces pickup, and the 'nonquantifiable aesthetic loss due to discolored snow and grounds by common sidewalks and exterior common areas.' " [22] Sued under the disparate treatment, disparate impact, and accommodation sections of the FHA, Management moved for summary judgment dismissal, asserting that it had no duty to waive its legitimate fees for untrained emotional support animals. Following *Overlook,* the district court adopted the DOJ and HUD interpretations to protect all assistance animals regardless of training, including those who ameliorate mental disabilities. [23] In granting partial summary judgment on the disparate treatment claim, the court found no evidence of discriminatory intent, whether direct or indirect, but merely an impact on members of a protected minority subgroup (those with mental disabilities who benefit from animals that, while not specially trained, confer health benefits) resulting from a facially neutral policy or practice applied to all assistance animals. [24] Goldmark offered a nondiscriminatory objective for waiving the fee for trained assistance animals —i.e., "to recoup costs associated with having animals living at the property." Yet, it failed to present evidence to support distinguishing nonspecially trained assistance animals from those receiving such training *as it pertained* to such recoupment. [25] On the accommodation claim, Goldmark contended that the waiver amounted to a *financial* accommodation, not a *disability* accommodation, but the court rejected the distinction, stating that, "The additional fees imposed for nonspecially trained assistance animals treats a class of disabled persons differently than other disabled persons. The requested accommodation is not solely aimed at alleviating a financial hardship, as Goldmark contends." [26] Providing additional support, the court cited to the 2004 Joint Statement of HUD-DOJ Reasonable Accommodations Under the Fair Housing Act [27] and 24 C.F.R. § 960.705(a), both of which prohibit housing providers from imposing added fees and deposits as a condition to grant an accommodation. [28]

In 2010, the federal government amended the regulatory preamble to Title II of the ADA, explaining that law's relationship to other laws, such as the FHA and the Air Carrier Access Act, stating, "emotional support animals that do not qualify as service

animals under the Department's title II regulation may nonetheless qualify as permitted reasonable accommodations for persons with disabilities under the FHA[ ] and the ACAA." [29]

The FHA defines "handicap," or disability, as "a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of such an impairment; or being regarded as having such an impairment." [30] "Major life activities" mean functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. [31] This list is illustrative, not exhaustive. Indeed, at least one circuit has also found that sleeping and thinking are major life activities. [32]

For an illustration of proof problems regarding protected status under the FHA, consider the appeal from an eviction action, Mazzini v. Strathman, 140 So. 3d 253 (La. Ct. App. 4th Cir. 2014). Elena Mazzini initiated proceedings to remove Karen Strathman for violating the no-pet clause of the lease. Strathman responded that her dog constituted an emotional support animal protected by the FHA and ADA. The day of the eviction hearing, Strathman offered a letter from Nancy Timm, Strathman's social worker, stating that "[d]ue to emotional issues/illness … [Strathman] has certain limitations coping with stress/anxiety, etc." and that "[i]n order to help alleviate these difficulties, and to enhance her ability to live independently and to fully use and enjoy the dwelling," she requires an emotional support animal. The trial court excluded the Timm Affidavit on grounds of hearsay, ruled in favor of Mazzini, and explicitly rejected the claim that she had a disability for which the landlord needed to make a special accommodation. Strathman claimed that the "tiny little dog," whom the court permitted to enter with her, helped her get outdoors and detract attention, ostensibly to mitigate the effects of her severe anxiety, but not her severe allergies, which she claimed caused nausea and anaphylaxis. [33] Although Mazzini had permitted Strathman to have two cats, Strathman maintained that the cats were not emotional support animals because they did not "require her to go outside." [34]

Though Strathman may have suffered from an actual disability, that did not make her "disabled" for purposes of the FHA, for she needed to prove that the ailment placed "a substantial limit on the major life activity." The court also took issue with the lack of medical evidence to support her self-serving assertions. [35]

Additionally, Strathman could not prove that Mazzini knew or should have known of her disabilities, the second prong in the test to prove lack of reasonable accommodation. Indeed, Strathman admitted that the first Mazzini learned of her purported need for an emotional support animal and alleged disability was "on the morning of the [eviction] hearing." [36]

Michael and Deborah Sanzaro owned a home in the Ardiente development. Deborah required the use of a walker and leg brace and suffered chronic physical pain. Angel, her Chihuahua, helped reduce discomfort when sitting in Deborah's lap. Angel also retrieved the walker, cell phone, and dropped keys. Shortly after acquiring Angel, the Association Community Manager ordered Deborah to remove Angel from the clubhouse when she allegedly failed to respond to questions as to the tasks or functions she provided, or documentation of disability and proof that Angel was a service animal. Thereafter, the Association held a hearing at which Deborah failed to attend, resulting in a fine but proposal to retract it if she stopped bringing Angel to the clubhouse or furnished evidence that Deborah needed Angel to enjoy that common area. The Sanzaros thereafter mailed letters from two physicians, a veterinarian, and Deborah attempting to justify Angel's presence. Roughly one year later, the manager again ordered Deborah and Angel out of the clubhouse, to the point police were summoned. About six months thereafter, a third incident arose where the new manager denied Deborah access to the library in the clubhouse. Thereafter, the Sanzaros brought 102 causes of action in tort and contract, including under the ADA and FHA. The trial court initially dismissed the entire suit. The Ninth Circuit Court of Appeals held that the HOA clubhouse was a place of public accommodation under the ADA and vacated dismissal of the ADA and FHA claims. On remand, the parties brought cross-motions for partial summary judgment on the FHA claims. [37]

Initially, the court found as a matter of law that Deborah was handicapped per the FHA at the time of all three incidents based on "significant mobility problems," and the evidence in the light most favorable to the defendants demonstrated that they were aware of Deborah's disability, if only by visual observation of her walker and brace. [38]

The defendants urged the court to deny relief to the Sanzaros on the basis that questions of fact existed as to whether Angel truly qualified as an assistance animal—whether trained or not—and was, therefore, necessary to aid Deborah in overcoming the major life impediments she faced from her disabilities. In rejecting the holdings of *Prindable* and *Kenna Homes,* and siding with *Overlook, Fair Housing of the Dakotas,* and *Green,* the trial court concluded that the FHA protects trained service animals, untrained emotional support animals, and (a subtle point that requires careful attention) untrained *physical* support animals. [39]

In denying summary judgment to the Sanzaros, the court articulated why the four letters given to the Association did not eliminate the factual controversy over *why* Angel was needed by Deborah:

> Viewing the facts in the light most favorable to Defendants on Plaintiffs' Motion, a reasonable jury could find the HOA was justified in asking how Angel assisted Mrs. Sanzaro in enjoying the clubhouse. Although Mrs. Sanzaro's disability is apparent, a reasonable jury could find that it was not apparent how Angel, a small Chihuahua, assisted Mrs. Sanzaro with her mobility-related handicap. A reasonable jury could find Mrs. Sanzaro's introduction of Angel as a service animal, as well as her display of the patch, did not indicate how Angel aids or benefits Mrs. Sanzaro, or why Mrs. Sanzaro needs such assistance in the clubhouse. A reasonable jury could also find the letter from a doctor requesting that Angel be authorized to be registered as a service animal does not establish that Angel is Mrs. Sanzaro's service animal, as it does not state that Angel is trained to assist Mrs. Sanzaro with her disability-related needs. Further, a reasonable jury could find the veterinarian's statement indicates only that Angel has received all of the necessary shots and vaccinations and that Angel will not be a threat to the public, and not how Angel has been trained to assist Mrs. Sanzaro with her disability-related needs. Mrs. Sanzaro's letter explaining Angel's training and how it benefits her disability, without a letter from a medical professional corroborating such training or how the animal provides a service or benefit related to the disability, is insufficient for the Court to rule in Plaintiffs' favor as a matter of law. See Bronk v. Ineichen, 54 F.3d 425, 431, 10 A.D.D. 143 (7th Cir. 1995); HUD Handbook 4350.3 at 3-77 (housing provider may require "documentation of the disability and the need for the animal from an appropriate third party, such as a medical provider, mental health provider, or other professional"). The Court therefore will deny Plaintiffs' Motion. [40]

Paul Oras, a 48-year-old paraplegic, obtained a reversal from the trial court's summary judgment dismissal of his FHA case in Oras v. Housing Authority Of City Of Bayonne, 373 N.J. Super. 302, 861 A.2d 194 (App. Div. 2004). When he was 38, he rented an apartment from the Authority subject to a rule that did not allow dogs exceeding 20 pounds in weight. He did not apply for a permit or pay a refundable damage deposit for Jesse, his Labrador. When Jesse died, he obtained a 47-pound dog named Peaches. She could retrieve keys from the floor and pull Oras back from the supermarket when his arms ladened with groceries could not operate his manual wheelchair. The Authority issued Oras a notice to remove the over-weight limit dog. He responded with two letters from his doctors describing Peaches's medical necessity, but was compelled to remove her. Finding that the pet policy restrictions were appended to the lease that Oras signed (even though Oras denied seeing it), the trial court dismissed his lawsuit. Regardless of whether the policy were viewed by Oras before he moved in, the appellate court held that the trial court erred in granting summary judgment by "fail[ing] to give consideration to plaintiff's needs" in examining whether the Association had justification to refuse to deviate from the 20-pound limit. On remand, the trial court was instructed to examine "(1) the extent plaintiff's ability to function is facilitated by the accommodation; (2) the training the animal received; and (3) the Authority's existing policy of permitting certain tenants to have dogs, so long as they were under a specific weight. Simply put, whether plaintiff should be permitted to keep the dog requires a 'cost-benefit balancing that takes both parties' needs into account.' " [41]

Janush v. Charities Housing Development Corp., 169 F. Supp. 2d 1133 (N.D. Cal. 2000), relied upon by *Oras,* denied the landlord's motion to dismiss (under Fed. R. Civ. P. 12(b)(6), 56) an FHA action where the Housing failed to waive the "no pets" rental agreement clause so Brenda Janush could keep her two birds and two cats who, per her psychiatrist, alleviated symptoms of a "severe mental health disability." In so holding, it rejected Housing's position that California's dog-only definition of "service dog" should set a bright-line rule that "accommodation of animals other than service dogs is per se unreasonable," citing Cal. Civ. Code § 54.1(b)(6)(C)(iii).[42] Finding no reason to embrace state law when 28 C.F.R. § 36.104 specifically contemplated animals other than dogs, the district court went a step further by stating that even if Janush could not prove that her avians and felines were service animals, "defendants have not established that there is no duty to reasonably accommodate nonservice animals."[43]

Alisha Bronk and Monica Jay leased a townhouse from Bernard Ineichen in 1992. When asked if he would allow Pierre, an uncertified "hearing dog" trained by Bronk's amateur brother, Ineichen refused to alter the "no pets" policy. A jury found that Ineichen had not discriminated against Bronk and Jay in violation of the FHA, prompting an appeal and reversal in Bronk v. Ineichen, 54 F.3d 425, 10 A.D.D. 143 (7th Cir. 1995). Strongly debated were Pierre's credentials, such that Bronk and/or Jay needed his presence to fully enjoy the habitation. "Other than their own protestations and self-serving affidavits which were undermined at trial, plaintiffs offered no evidence that Pierre had ever had any discernible skills." A jury could thus find that "[i]f Pierre was not necessary as a hearing dog, then his presence in the townhouse was not necessarily a reasonable accommodation."[44] Such deference aside, where the instruction to the jury muddled and impermissibly intertwined federal and state law, a new trial was warranted, the court concluded. The objectionable part of the jury instruction was as follows:

> It is not discriminatory or unreasonable for a landlord to require a tenant wishing to keep a hearing dog to show the landlord training credentials from a school. Also, it is not discriminatory or unreasonable for the landlord to request the tenant to accept liability for sanitation with respect to the dog and liability for damages to the premises caused by the dog. However, a landlord cannot require an additional security deposit for a hearing dog that has credentials issued by an accredited training school.[45]

Instead of directing the jury as to the contours of reasonableness, the trial court should have left that determination completely to the jury, the Seventh Circuit continued, "which is free to consider all of the evidence—the defendant's costs, the plaintiffs' benefits, the credibility of parties' assertions as to each—in reaching a decision."[46] The jury instructions thus implied that as a matter of law it was reasonable for Ineichen to demand Pierre's training credentials from a school, or to make Pierre's residence contingent on plaintiffs' accepting responsibility for damages caused by their dog. A jury could logically infer from this that without school training, a dog cannot be a reasonable accommodation.[47] As no certification or professional training is required under federal law, the Seventh Circuit found the instruction erroneous, and the damage crystallized by Ineichen's closing argument (which referenced the instruction and stated that it was not unreasonable for Ineichen to demand training credentials from a school) required reversal and remand.[48]

Raising claims under Title II of the ADA, the FHA, and Section 504 of the Rehabilitation Act, Sherry Green and her son Jeremy Welch sued the Housing Authority of Clackamas County in Green v. Housing Authority of Clackamas County, 994 F. Supp. 1253 (D. Or. 1998). Welch was deaf in both ears, so Green notified the Authority of her desire to buy a hearing assistance dog even though the lease banned pets. After denying the request for a waiver, the Authority filed a forcible eviction and detainer action. To avoid displacement, they delivered the dog—who could alert Welch to knocks at the door, sounding of a smoke detector, the phone ringing, or cars driving up—to the humane society and sued. Granting summary judgment to the plaintiffs, the district court rejected the view that the dog was not a reasonable accommodation because they could not produce "verification" that the dog was "certified" as a trained hearing ear dog. Professional training and certification were not statutorily required.[49] Observing that the defendant suffered no undue burden from making this exception, it held that the dog was protected under the FHA as a matter of law. Or. Rev. Stat. Ann. § 346.640(2), requiring that hearing ear dogs must be on an orange leash, was held preempted by Title II.[50]

CUMULATIVE SUPPLEMENT

Cases:

A reasonable accommodation under the Fair Housing Act may include the use of an emotional support animal in one's own home, despite the existence of a rule, policy or law prohibiting such an animal, but a housing provider may contest whether the accommodation is reasonable. Revock v. Cowpet Bay West Condominium Association, 853 F.3d 96 (3d Cir. 2017).

Tenant's requested accommodation of keeping her cat in her apartment as an emotional support animal was "reasonable," as required to support tenant's failure to accommodate claims under the Fair Housing Act (FHA); cat was neutered, vaccinated, and housebroken, tenant was willing to pay a pet deposit, apartment's managers had permitted emotional support animals in the past, and managers' general concerns about health and safety were insufficient to demonstrate that the accommodation was not reasonable, absent any evidence specifically related to tenant's cat. 42 U.S.C.A. § 3604(f)(3)(B). Castellano v. Access Premier Realty, Inc., 181 F. Supp. 3d 798 (E.D. Cal. 2016).

Allowing owner of pit bull dog to keep dog in his house as an emotional support animal, despite city's dangerous dog ordinance banning certain breeds of dogs, was a reasonable accommodation under Fair Housing Act (FHA), where nothing indicated that dog had been dangerous in the past or posed a direct threat to others, city could have required owner to license dog, and ordinance had an exception for dogs licensed prior to effective date of ordinance. 42 U.S.C.A. § 3604(f)(3)(B). Wilkison v. City of Arapahoe, 302 Neb. 968, 926 N.W.2d 441 (2019).

Fact that prospective tenants' dog did not qualify as service animal did not bar their disability discrimination claim against landlord and its principal under Fair Housing Act (FHA) and Oregon's fair housing law, despite landlord's and principal's contention that alleged disparate treatment was based solely on tenants' status as dog owners, where landlord and principal operated under assumption that tenants owned service animal. 42 U.S.C.A. § 3604(f)(1); Or. Rev. Stat. § 659A.145. Sanders v. SWS Hilltop, LLC, 309 F. Supp. 3d 877 (D. Or. 2018)(applying Oregon law).

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[END OF SUPPLEMENT]

§ 5. Air Carrier Access Act

The Air Carrier Access Act of 1986, 49 U.S.C.A. § 41705, stems commercial airline discrimination against qualifying disabled passengers. Enacted after U.S. Dept. of Transp. v. Paralyzed Veterans of America, 477 U.S. 597, 106 S. Ct. 2705, 91 L. Ed. 2d 494, 1 A.D.D. 293, 40 Empl. Prac. Dec. (CCH) ¶ 36194 (1986), which held that the Rehabilitation Act did not apply to private air carriers since they were “indirect recipients” of federal funding, the ACAA has virtually the same mandate and definitions as the ADA, including what constitutes a disabled person. [1] Love v. Delta Air Lines, 310 F.3d 1347, 1350 n1 (11th Cir. 2002) discusses the legislative history of the ACAA. A 2003 guidance expanded the definition of service animal to explicitly exclude any requirement of state or local governmental certification, and to include emotional support animals (with suitable documentation). [2]

The animal may sit anywhere the disabled person does so long as no aisles are obstructed and emergency evacuation remains possible; alternative seating in the same class should be provided without charge for facilities, equipment, or services required for the accommodation (if animal placed in cargo). Cleaning charges for damage, if assessed against nondisabled passengers, is permitted. Seizure alert and emotional support animals may assist a qualifying individual with a disability without individualized

training due to innate ability. Formal training ("schools") is not required so long as a reasonable explanation can be provided as to functions.

§ 6. Individuals with Disabilities in Education Act

The United States Department of Education enforces the Individuals with Disabilities in Education Act of 1990 ("IDEA"), 20 U.S.C.A. §§ 1400 et seq. It applies to those states and local agencies accepting federal funding and requires that they offer all disabled children a "free appropriate public education" ("FAPE"), with emphasis on special education and related services to prepare them for further education, employment, and independent living.[1] While IDEA itself does not have an antidiscrimination component, it creates a framework for adjudication of any disputes under the Rehabilitation Act or the ADA, both of which apply in the public school context. Cave v. East Meadow Union Free School Dist., 514 F.3d 240, 229 Ed. Law Rep. 349 (2d Cir. 2008), involved a hearing-impaired student who sought to bring Simba, his service dog, to high school in order to alert him to emergency bells, people calling his name, sounds of car engines in the street, and to enhance his socialization skills.[2] His parents described Simba as an "independent life tool," akin to his cochlear implants. In denying the request, the school officials determined that Simba's presence would disrupt his overall individual education program ("IEP") under which he had already functioned satisfactorily. Because the parents failed to request and attend a due process hearing to present complaints concerning the IEP, the Second Circuit held that they failed to exhaust administrative remedies imposed by IDEA,[3] and could not file suit.[4] The court reached this outcome despite the parents urging the court not "to treat John, Jr. … as a *student* who is being deprived of an appropriate public education, but as a *person* who is being denied access to a public facility by reason of his disability and his noneducational need for a service dog." It reasoned that at least in part, the parents were challenging the adequacy of John's IEP because it excluded Simba, and the IDEA encompassed "more than simply academics."[5] The court further rejected the claim that exhaustion would have proved futile, a recognized exception to the exhaustion requirement, noting that the alleged mistreatment of Cave did not reflect a system-wide violation of IDEA mandates, a district-wide policy of discrimination against hearing-impaired students, or structural contamination in the administrative process.

Sullivan By and Through Sullivan v. Vallejo City Unified School Dist., 731 F. Supp. 947, 59 Ed. Law Rep. 73 (E.D. Cal. 1990) granted a preliminary injunction to Christine Sullivan, a wheelchair-bound child with cerebral palsy, learning disabilities, and partial deafness to require her school district to permit her service dog to accompany her at school based on a clear probability of success on her Section 504 claim. It specifically rejected the contention that space and health concerns compelled exclusion of her dog or that she should ask other people to retrieve dropped objects for her. Furthermore, it concluded that the decision to create an IEP that precluded her from having a service dog likely violated Section 504, as well.[6]

§ 7. State antidiscrimination laws

Almost every state has its own service animal accommodation law, which operates concurrently with the federal laws described above. By and large, many state definitions resemble the "service animal" definition under the implementing regulations for Titles II and III of the ADA,[1] with variations as to types of disabilities protected (e.g., physical only[2] or physical and mental)[3] species (e.g., dogs and miniature horses only,[4] or any animal),[5] need for certification by a school or training facility,[6] need for what amounts to a prescription by a health care provider,[7] and whether it includes service animals-in-training.[8]

Kansas recognizes "professional therapy dogs" as deserving of access when using conveyances of public transportation and public accommodations for lodging.[9] Washington's Law Against Discrimination has been interpreted to require proof that the dog has been individually trained in a manner that sets him apart from an ordinary pet.[10]

Various tiers of antidiscrimination regulation apply to rental housing disputes, from federal through local. Consider, for example, the Iowa Civil Rights Act of 1965 ("ICRA"), Ch. 216 Iowa Code, and Iowa Code Ann. § 216.8A(3)(C)(2), which provides

that landlords must make reasonable accommodations to "afford the person equal opportunity to use and enjoy a dwelling." A woman previously victimized by domestic violence, who obtained a Doberman for protection, invoked the ICRA in State, ex rel. Henderson v. Des Moines Mun. Housing Agency, 791 N.W.2d 710 (Iowa Ct. App. 2010). Carol Henderson leased a duplex unit with her daughter. The pet policy permitted one, under-20 pound animal subject to a permit granted by the Agency. Months after commencing tenancy, her duplex faced two attempted break-ins. Ms. Henderson hid until the police arrived. The incident dredged up memories of abuse by her ex-husband and prompted her to obtain a Doberman Pinscher named Sam. Her daughter acquired a dog named Otis. Both dogs weighed more than ninety pounds. Three years later, the Agency gave Henderson a 14-day notice to comply or vacate for violating the pet policy. She identified Sam and Otis as her service animals, for they tempered her traumatic distress and allowed her to leave the unit to work or simply be outside. She also obtained a letter from her physician stating that she needed the dogs "for safety reasons & protections secondary to PTSD." The matter escalated with the Agency rejecting her contention that the dogs met the definition of service animal and threatening her with eviction. Another physician and the Iowa Division of Persons with Disabilities came to her aid. Dr. Lundberg stated that her patient had "self trained a service dog to assist her with tasks around the home such as turning on the lights when she enters a room and retrieving her light instrument as well as acknowledging suspicious persons on the property. She has had one circumstance already in which her service dog has chased away a potential offender."

The Agency nonetheless rejected the request for a reasonable accommodation, and then filed a forcible entry and detainer action. It settled by Henderson agreeing to remove Otis and the City working to expedite her Section 8 housing application so she could avoid an eviction on her record, which would render her homeless and prevent her from obtaining future public housing. The State then sued the Agency for violation of Henderson's civil rights under Ch. 216 IC. The district court granted summary judgment to the Agency, though the Court of Appeals reversed, stating that the trial court "improperly considered whether Henderson met the requirements of the pet policy given that she was requesting a waiver of that pet policy as a reasonable accommodation for her disability," and that "reasonable minds could differ as to whether Henderson's requested accommodation of a service animal was reasonable in light of her claimed mental illness." On remand, the matter was tried to a jury. However, the trial court directed verdict for the defendants. The second appeal again favored Henderson. Though brought under the Iowa Code, the court recognized the parallels to the FHA and ADA and relied upon federal case interpretations. Its recitation of legal standards and persuasive precedents from other jurisdictions offer the reader a helpful overview of the body of emotional support and service animal antidiscrimination law in America. After detailed analysis, the appellate court remanded for a new trial to allow the jury to resolve the genuine issues of material fact as to whether the requested accommodation was reasonable and necessary, Henderson's psychiatric impairment entitled her to protection, and whether she waived her claim by settling the unlawful detainer matter and removing Sam from the premises.

In Shumate v. Drake University, 846 N.W.2d 503, 29 A.D. Cas. (BNA) 1349 (Iowa 2014), first-year law student Nicole Shumate, a nondisabled service dog trainer who founded Iowa's first service dog training nonprofit corporation Paws and Effect, sued Drake University under the Iowa antidiscrimination law, Ch. 216C Iowa Code, [11] when told she could not bring a service dog-in-training, with whom she was working, into a law school classroom and event. Violating the law constituted a misdemeanor, but provided no explicit civil remedy. The Iowa Supreme Court held that Shumate had no implied private right of action to enforce access rights under the law even though she was a member of the class the statute sought to benefit, [12] since to hold otherwise would "evade the comprehensive procedures set forth in chapter 216" for state agency enforcement. Storms v. Fred Meyer Stores, Inc., 129 Wash. App. 820, 120 P.3d 126 (Div. 1 2005) invoked the Washington Law Against Discrimination to define service animal as individually trained in a way that sets her "apart" from an "ordinary pet." Sherry Storms had psychiatric disabilities, making it difficult for her to venture out in public. Brandy, a Rottweiler, acquired at the recommendation of her doctor, underwent temperament evaluation, basic and intermediate obedience training, and additional training including "circling" and "blocking." Fred Meyer, a place of public accommodation, told Storms to leave with Brandy. The Court of Appeals held that Brandy's "training" sufficiently distinguished her from a common companion canine and was predicated on more than just her bald assertions. This decision followed Timberlane Mobile Home Park v. Washington State Human Rights Com'n, 122 Wash. App. 896, 95 P.3d 1288 (Div. 2 2004), which also confirmed that "there must be some evidence to set the service animal apart from the ordinary pet." [13]

In *Timberlane*, the Commission sought an administrative determination that the park discriminated against a migraine-suffering tenant, Candida Campbell, claiming that her pet Pomeranian named "Spicey" was a service animal who would respond by "freak[ing] out" to get another's attention so that such person could aid the tenant by "taking her to the bathroom, getting her pain and nausea medication, or bringing her ice pack and cold cloths." [14]

After a hearing, the administrative law judge found that although the tenant's dog was not specifically trained to alert others to her owner's migraines, " '[n]ot much [training] is required' of an alert dog, that Spicey had a 'propensity' to alert others to Candida's needs, and that Spicey 'achieves what she wants—attention to Ms. Campbell—[which] is in itself positive reinforcement of desired behavior and thus a form of training.' " [15]

Accordingly, the judge concluded that the Spicey was a service animal and concluded that the mobile home park discriminated. In reversing, the Court of Appeals reasoned that the ALJ's conclusions "would make any family pet into a service animal." [16]

§ 8. Closer examination of what sets service animal apart

[Cumulative Supplement]

One must distinguish a companion animal's ability to provide companionship from a service animal's ability to provide, for instance, visual or aural guidance, seizure alerting and assistance, and mobility support. While there may be moments of levity during training, the immense sacrifice of energy and time, which a disabled handler may not have in great abundance, must not be trivialized. Anybody who has tried to train a dog to perform basic obedience tasks will understand the predominant periods of frustration and exhaustion punctuated by infrequent, little victories. Imagine training a dog not just to heel or sit, commands of slight consequence to the average dog guardian, but to do the following, all of which a disabled individual must spend time training, tailoring, and revising:

Basic Obedience Skills All Service Dogs Typically Learn

1. Sit
2. Down
3. Stand
4. Stay—in all positions (sitting, lying down, standing)
5. Come when called
6. Walk at heel
7. Come to heel position from either side
8. Leave it
9. Should know voice commands and hand signals for all skills

Other Skills Service Dogs Learn

1. Reliable off-leash and distance work
2. Vocabulary for objects (phone, shoe, etc.)
3. Retrieve objects on demand and as needed (notice when things fall; without command)
4. Tuck (tail and feet) to stay out of the way
5. Tug (to help take off clothes, close doors, turn on lights, etc.)

6. Wait (before coming out of car, getting off bus, etc.)—basically a stay command but the dog does not have to be given the command each time
7. Back up (walk backwards)—useful in narrow aisles
8. Ignore food even if dropped/placed on face or paws
9. Drop (fast, instant down)—useful if someone is scared of dog, or if another dog is stalking, or if dog is upset during alert, etc.
10. Hup (jump up on something)
11. Corner (curl into corner out of the way)
12. Under (go under table or chair and lie down)
13. Drag (retrieve large objects, help bring in groceries, etc.)
14. Wave and bow—"ambassador" skills to show how well dog is trained; useful when store owners try to kick dog out, or when kids ask to pet the dog but are not allowed
15. Paws Up (put paws on counter, bed, or if little dog, up on leg to give object to owner)
16. "Working" and "Off Duty" commands for when people want to pet the dog, or if dog is allowed to greet a friend but must then ignore
17. Laundry (put clothes in or out of hamper, separate into piles)
18. Tidy (pick up things on floor and put them in basket)
19. Others specific to your client's service animal

Basic Socialization Skills All Service Dogs Typically Learn:

Synchronicity in heeling. Dog must walk politely at "heel" at all times. If in a narrow space, the dog falls behind the owner and then catches up. The dog must modify her pace to match the owner at all times.

Reactive coping with extraordinary phenomena (multisensory). The dog must learn to cope with loud noises, including sudden, booming, sustained, high-pitched, and percussive (such as applause and drums, which may actually cause great discomfort). She must cope with sudden frights, like an umbrella opening in her face, or a child flapping a coat. Service dogs may need to attend fireworks displays, manage reactions to strange, threatening objects, like crutches and wheelchairs, motorcycles, kids on skateboards, children throwing items. They must properly react to strange sensations, like a bus blowing by, gum landing on her fur, or the uncomfortable flooring or table base that she must lie on in restaurant. The service dog must handle crowds, people stepping on her paws, petting her as they pass, grabbing her (especially her tail), holding strange objects at her eye level. She must be prepared to ignore stares and with be present around loud or angry conversations.

Mobility coping. Service animals must learn to traverse uneven surfaces, such as slippery tile, street grates, crackly plastic, hot tarmac; to pass through puddles without trying to jump over, over sharp gravel, as well as on stairs, ramps, and tunnels. They must negotiate moving surfaces or containments, such as elevators, escalators, airport walkways, trains, planes, and boats. Mobilizing through tight quarters is also a must, like a cramped store or on a bus, and must settle in without panicking, even if being squashed into a cab. They must enter and exit through doorways, including automatic, revolving, and those that close quickly and loudly behind them. They must not lag or forge ahead.

Ignoring stimuli. Service animals must practice ignoring other animals, such as police horses, other dogs, squirrels, or animals in captivity. Balancing being an affable dog who keeps strangers at ease while maintaining focus on the disabled handler means disregarding people who coo, offer food, whistle, and click. She must learn only to respond to the handler's voice, and to

overlook balls and other moving toys, sources of fun, and playing children. She must decline food, even if offered or dropped directly on her.

Etiquette. The service dog must not scratch or lick in public, especially when they have allergies.

Advanced retrieval in social settings. Retrieving items off the kitchen counter or out of the trashcan, but only when asked, requires advanced training so as not to inhibit the retrieval drive.

Sign language. He must learn a variety of hand signals in case a command must be given in a quiet place such as at a play or in a hospital.

Potty training. Service animals learn to relieve themselves on command; only in certain areas, such as grass or mulch so he does not get confused in an open mall, fairground, or zoo that feels like "outside" but is not a potty place.

Wear clothes such as a cape, backpack, booties for hot or icy weather, sun visor or sunglasses for bright sun, and other clothes for "ambassador" purposes, i.e., to make the dog appealing to the public and reduce access difficulties.

Ongoing stay. Service dogs must learn to stay for hours at a time without forgetting the "stay" command. Many nonservice dogs doze off, awakening only forget and rise. Service dogs remember.

On/off-duty comprehension. Like a switch, service dogs know when they are on-duty and off-duty. While they need play and rest times, service dogs are always available for work and must flip from playing to working states immediately when asked.

Seizure-assist. They learn how to behave if the handler falls unconscious, typically by lying quietly beside or on top of handler. She learns to recognize EMTs and police officers, whom she must permit to remove her from an unconscious/injured owner, and not try to protect.

Constant refining, rehabilitation, and testing. Service animals must be constantly encouraged and rewarded, even after formal training has finished. Yet, in fact, service dog never truly is "done." If the handler needs something in particular, but the dog has not yet mastered that vocabulary, the handler should be able to keep asking and the dog should keep bringing anything she can find until matching the request. She should always be willing and confident to work, which requires constant monitoring to ensure the job remains nontedious and invigorating. The handler must check constantly for developing problems (e.g., if the dog is startled by a loud noise such as a bus's airbrakes, she must return to the bus stop several times to defuse the traumatic fear response).

Creative disobedience. Many service dogs develop this skill, which should be encouraged. One watches for opportunities to train. For instance, a dog must use his own judgment in the handler's best interest, even if it countermands a direct order. The author's client's service dogs both learned to break a "stay" if they saw her sit or lie down, or if they thought she was getting sick. Both developed a behavior of not allowing her to stand up after a seizure, until they thought she was no longer seizing or she was well enough to get up. Both would lie across her and alert again if attempted to get up before they thought she was okay.

How long would it take the average person to train a dog to perform one-tenth of the foregoing? And what if your very freedom to leave the house, drive a car, go for a stroll along the beach, buy groceries, visit a friend, go out on a date, get dressed, do your laundry, or pick up things you accidentally dropped, was completely dependent on these skills—and to a level of reliability that was virtually unquestionable?

"Down Time" versus "Up Time." Plaintiffs may still train even when prostrate or not exposing the animal to outdoor stimuli. One's disability may only permit at most six to eight hours of "up time" before she has to lay down. Even so, the dog may retrieve items such as slippers, a remote control, books, socks, or get the phone. In the beginning, the service animal may only

understand how to retrieve items pointed to; it may take additional training to teach him to recover items from other rooms to which the plaintiff could not point, like the telephone, a critical tool for emergencies when she cannot crawl to, or otherwise reach, the cord. While lying down, the disabled handler may also teach the service animal to jump up on the bed with retrieved items and to find items lost in couch cushions. From this position, she may train him in down-stay and vocabulary acquisition.

Customization Training. Any service animal trainer will tell you that service dogs are not "ready for use out of the box" upon sale or delivery to the service animal user. The "customization" or "synchronization" or "individuation" period of training personalized to the idiosyncrasies of the user is undeniable. To fully replace a service animal, one must consider all the expenditures invested in training him not just as a generic service animal, but as a unique service animal further customized to serve the handler's disabilities, preferences, and needs. Occasionally, after the death of a service animal, the disabled must immediately start training a new one to restore some modicum of normalcy previously enjoyed with the fully trained and "bombproofed" service animal. In so doing, she mitigates damages. Yet even after formal training and over a year of personalization and refinement, the new dog may still not perfectly replace the old one, discrepancies for which the court will likely account.

Considerable effort and time involves establishing synchronicity. A plaintiff's schedule may include a lot of "heel-work" (the service animal matches his pace with hers while she slows to look at something, always watching to make sure he was keeping up), using escalators, crossing sidewalk grates, and ignoring public response to the "cute dog," which involves a lot of tail-grabbing. Trips out may take nearly twice as long because of devoting so much attention to assuring and educating the new dog. While learning how to cope with new situations, the new dog may interfere with your client's dates to comedy clubs or ice-skating.

The plaintiff may sacrifice meeting friends in restaurants for fear of a lack of preparedness. She may have to teach the new dog to walk through the mall without slipping on tile floors or getting distracted by shoppers. She may abstain from trips because of classes, or make an appointment at Toys 'R' Us to teach the dog to accept children groping, or to the local skate park to grow inured to whizzing objects and sudden noises. The plaintiff may end up taking many more medications due to stress and lack of rest. For those without life-altering disabilities, it may be hard to comprehend how much is expended to "connect with" a new service animal and, thereby, approximate the bond and aptitude of the old dog's caliber. Consider something as simple as going grocery shopping in this hypothetical of Jane Doe:

> With concerted effort, Jane Doe eventually succeeded in completing a task or errand while she trained him, resulting in a doubling of time. For instance, the New Dog would stick his nose on an avocado, exploring as dogs are wont to do. This action required Jane's correction, to teach him the proper response to an avocado, her purchase of that avocado and those adjacent, and her apologizing to anyone who saw him sniff the fruits and vegetables. She might then go to the pasta aisle, where he would nose a package of spaghetti, forcing her to drop what she was holding, correct him, load the pasta into her cart, and again apologize to those staring at her from the aisle. With much more fine-tuning, she and the New Dog reached the level where her hands could be full and she could completely trust his judgment around food, including the meat section. The supermarket assistance gold standard, which he practically achieved, is walking politely next to her cart, falling behind when there is not room, and then catching back up to a heel position, standing dead-still while she takes items off the shelves, ignoring the inevitable petting from strangers, picking up items she drops while disregarding others items on the floor, and helping her walk when she gets wobbly. As you can see, a trip to the grocery store might be the single chore Jane would attempt in a day, missing out on other activities she would have been able to enjoy or complete with the old dog's assistance.

In addition to the arduous routine, the plaintiff may experience unnecessary emotional distress, manifested by increasing her medications and becoming ill with greater frequency while training the new and managing the stress of losing the old. The

withdrawal of the old dog's support may exacerbate disabilities and cause the plaintiff to experience substantial mental anguish and bouts of extreme exhaustion for several months.

CUMULATIVE SUPPLEMENT

Cases:

Stepfather of customer with limited mental capacity was not authorized to train customer's dog as a service dog, as required for dog to have been taken into store 'for the purpose of training her' within meaning of the Disabled Persons Act, even assuming that stepfather had entered store to train dog rather than to purchase food, absent evidence regarding stepfather's education or experience as a trainer of service animals, or that his methods as a trainer of service animals were consistent with protocols and practices accepted within the service-dog-training industry or community. Cal. Civ. Code §§ 54.1(c), 54.2(b). Miller v. Fortune Commercial Corporaton, 15 Cal. App. 5th 214, 2017 WL 4003420 (2d Dist. 2017)(applying California law).

[Top of Section]

[END OF SUPPLEMENT]

§ 9. Comment on emotional support animals

As discussed above, service animal status is time-, place-, and person-dependent. Similarly, an animal achieves the station of emotional support animal (as opposed to companion animal, or pet) only when ameliorating the qualifying mental disabilities of the handler with whom she resides (per the FHA) or accompanies on an airplane (per the ACAA). While proof of beneficial nexus between animal and disabled handler applies to service and emotional support animals alike, a key distinction between those two classes of animal is training. By definition, all mental health service animals are emotional support animals. The inverse is not always true. Individualized training sets apart the service animal from all peers, having been inculcated a task or function that ameliorates the disabling condition beyond just being present and through training that sets apart the animal from an ordinary animal companion. Such drills may prove taxing and costly to handler and animal alike, but they open doors to locations other than the owner's abode.

§ 10. Courtroom therapy dogs

Animals perform a psycholegal role in open court, though their presence invites staunch debate between prosecutors and the criminal defense bar. Though not technically a claim based on Title II of the ADA or Section 504 of the Rehabilitation Act, dogs who calm crime victims may find sanctuary under general rules of evidence and the plenary power of the judge to control her courtroom. For instance, in State v. Carlson, 159 Wash. App. 1036, 2011 WL 198633 (Div. 1 2011), William Carlson was convicted on two counts of child molestation involving nephew C.C. (seven at time of trial). Ariah, an in-court therapy dog, accompanied C.C. during his testimony. Though counsel did not challenge the presence of Ariah in the courtroom, [1] the court took note of C.C.'s reduced attention span by the courtroom environment, including that “he left the witness chair to play with therapy dog Ariah” and at trial, “played and talked to therapy dog Ariah.” The trial judge even remarked, “[Y]ou may want to take away all the distractions.” Nonetheless, the court found C.C.'s answers generally responsive to both prosecutor and defense questioning.

And in State v. Dye, 170 Wash. App. 340, 283 P.3d 1130 (Div. 1 2012), aff'd, 178 Wash. 2d 541, 309 P.3d 1192 (2013), Ellie, the prosecuting attorney's office dog, aided in the conviction of a residential burglar by sitting next to the developmentally disabled “vulnerable victim.” On appeal, Dye complained that Ellie lent an aura of credibility to the victim that cast an unfairly prejudicial taint upon him. In exonerating Ellie and affirming Dye's conviction, the appellate court noted that Wash. Evid. R. 611 allows the court to control the courtroom, including allowing particularly fearful witnesses in need of protection to hold

dolls or rely on comfort canines. It rejected the assertion that Ellie impeded Dye's right to cross-examination, distinguishing it from Dye's right to face-to-face confrontation, and adding that unless Ellie sat in the witness's lap, no such right is impinged upon. Nor did Ellie's reaction to the witness's stress constitute "testimony from an unsworn witness that the victim is upset because he or she is telling the truth," a form of oath-helping. A child or impaired witness's need for emotional support often outweighs the possibility of prejudice to the defendant occasioned by holding a comfort item or having a dog present, provided the court explicitly balances such concerns as obtrusiveness, distraction, necessity, and, yes, allergies. [2]

III. Permissible Interrogation

§ 11. Courtroom therapy dogs—Balanced against need for privacy

How does a landlord, proprietor, government official, or airline steward confirm whether the animal seeking to gain access to a dwelling, place of public accommodation, public facility or airplane meets a protected class definition? Questioning parameters exist to balance the need to know against the right to privacy.

§ 12. Courtroom therapy dogs—Americans with Disabilities Act

Subsection (f) of the Title II rule 28 C.F.R. § 35.136 (*Service animals*) explains what inquiries a public entity may ask of a putative disabled person seeking entry with a service animal. A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). [1] Subsection (c)(6) of the Title III rule 28 C.F.R. § 36.302 is identical to 28 C.F.R. § 35.136(f) except for switching the word "entity" with "accommodation." In July 2015, the Department of Justice prepared an FAQ about Service Animals and the ADA. [2]

Asserting that the guidances were contradictory and that a private membership club's creation of an animal access policy based on them violated Title III, consider Grill v. Costco Wholesale Corp., 312 F. Supp. 2d 1349 (W.D. Wash. 2004), which clarified the proper scope of interrogation by a vendor of a disabled handler. Susan Grill, a member of Costco since 2000, attempted to enter a Costco warehouse with her service dog Charlie. Its written policy admits animals if "visually identifiable as a service animal by the presence of an apparel item, apparatus or other visual evidence that the animal is a service animal," or, if lacking, then "the member of guest must be prepared to reasonably establish that the animal does, in fact, perform a function or task that the member or guest cannot otherwise perform." [3]

Costco personnel should then "inquire of the animal's owner what tasks or functions the animal [so] perform[s]." The 1996 Commonly Asked Questionsguidance permits asking if the animal "is a service animal required because of a disability," [4] while the 2002 *Business Brief* contends that the business may ask "what tasks the animal has been trained to perform, but cannot require special ID cards for the animal or ask about the person's disability." [5]

Grill rejected the argument that the task-based inquiry indirectly compels disclosure of a person's disability, particularly invisible ones, since an individual may respond without divulging specifics, such as by stating, "the animal is trained to alert me when a medical condition is about to occur" or "the animal is trained to pick up items off the floor for me." [6]

Although not codified in the C.F.R.s, the court gave deference to these Justice Department interpretations, as well as the DOT guidance for implementation of the Air Carrier Access Act, permitting airline personnel to obtain "credible verbal assurances" from passengers, including specifically "[w]hat tasks or functions does the animal perform for you."

Three years later, the same court decided in Dilorenzo v. Costco Wholesale Corp., 515 F. Supp. 2d 1187 (W.D. Wash. 2007). Rebecca DiLorenzo entered Costco with her 12-week-old Pug named Dilo, stating he was in the process of being trained as a service animal. She showed an employee a letter from her psychologist, briefly describing her disabilities and confirming her suitability to own a service animal. About three months later, DiLorenzo returned with Dilo and her husband. He wore a handmade vest stating "service dog in training." Holding him to avoid injury from passing carts, DiLorenzo made her way to the checkout line when the manager asked her for whom he served as a service animal and what task he performed. She responded that he "alert[ed] [her] to-for spells." After they checked out, two managers spoke to her, claiming that the vest was not "regulation" and that the dog appeared to belong to her husband, who brought Dilo to the warehouse previously. She was told to keep Dilo in her car on future visits. Thereafter, the parties attempted to continue a dialogue, including through Costco's attorney, who requested that DiLorenzo identify the tasks or functions Dilo performed so that Costco could make an informed decision. DiLorenzo never responded, considering it harassment. In dismissing her Title III ADA claim, the court noted that DiLorenzo was admitted on every occasion in question and that the thrust of her complaint related to denial of "full and equal enjoyment" of the facility, as well as improper questioning. That Costco may have failed to comply with its own service animal policy (i.e., no further scrutiny permitted if dog is visually identifiable as a service animal, and without distinguishing those "in-training") did not mean it violated the ADA. As Costco's employees (and its attorney) did not exceed the bounds of permissible inquiry (they never asked her to state her disability or demand proof of special training), it was entirely legitimate to ask for additional information.

The EEOC has not established regulations outlining the appropriate scope of questioning in a Title I employment discrimination case, though the general practice is to follow the two-question rules for Titles II and III.

§ 13. Courtroom therapy dogs—Rehabilitation Act of 1973, Section 504, and Fair Housing Act

Where the individual does not have a readily apparent disability, a housing provider may request reliable documentation of a disability and the disability-related need for the animal in question. However, a demand for actual medical records or disclosure of actual disability is not permitted. Green v. Housing Authority of Clackamas County, 994 F. Supp. 1253, 1256 (D. Or. 1998) describes what elements are germane to the federal requirements for classifying a service animal, to include whether the animal is individually trained and works to benefit the individual with a disability. The U.S. Department of Housing and Urban Development has provided guidance.

> A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed[,] [1] which restricts the landlord to asking for information necessary to verify that the plaintiff satisfies the definition of disability, that articulates the needed accommodation, and shows the relationship between both.

In Lucas v. Riverside Park Condominiums Unit Owners Ass'n, 2009 ND 217, 776 N.W.2d 801 (N.D. 2009), condo unit owner A. William Lucas sued the association under the federal Fair Housing Act and State Housing Discrimination Act, N.D. Cent. Code § 14-02-.5-06 et seq., alleging failure to reasonably accommodate his therapy dog. Additionally, he pleaded intentional infliction of emotional distress. On appeal from summary judgment dismissal with costs and fees, the North Dakota Supreme Court reversed and affirmed in part. The saga began when Lucas's ex-wife would bring a dog to his unit periodically. The Association sued Lucas for violating the restriction barring domestic animals on premises. Though counterclaiming, he expressly did not request a reasonable accommodation but reserved that right should the court refuse to invalidate the restriction. Holding that he voluntarily waived any Fair Housing Act claim, the court noted the "Association need not honor a future request by Lucas for an accommodation under the Act, unless there is a significant change in Lucas's health (disability status)." The Supreme Court affirmed that decision in Riverside Park Condominiums Unit Owners Ass'n v. Lucas, 2005 ND 26, 691 N.W.2d 862 (N.D. 2005).

While *Lucas I* pended, in 2004, Lucas requested a reasonable accommodation for an "assistive therapeutic companion animal (dog)." In support, he produced a letter from a licensed clinical psychologist "prescribing for him a therapeutic pet … as a medically needed part of his treatment." As this letter did not signal a significant change in his mental health profile, the Association refused the request—three times (again in 2005 and in 2007). In 2007, Lucas sued the Association for violating his rights under the FHA and Housing Discrimination Act. The Association moved to dismiss and sought Rule 11 sanctions. A few months after filing "Lucas II," Lucas made a fourth accommodation request, including two forms titled "Certification of Status as an Individual with a Disability," dated May 8 and 11, 2007, with identical statements from two physicians, noting a significant change in his health status. In response, the Association attorney asked for additional information. Lucas attempted to comply but imposed conditions on receipt of that information, which the Association attorney declined to follow, and, pursuant to Lucas's instructions, returned the medical information in the sealed envelope. Thereafter, the court dismissed the case and awarded over $22,000 in sanctions.

The North Dakota Supreme Court, in passing on *Lucas II*, offered the following clarifications: (1) a plaintiff's failure to respond to a reasonable request for additional information by a defendant can lead to dismissal on the basis that the latter cannot know the plaintiff's disability and need for a service animal, and that awaiting additional information is not, in fact, a denial of the request for reasonable accommodation; (2) the 2007 Certifications failed to sufficiently raise genuine issues of material fact due to their conclusory and ambiguous nature; (3) the defendant reasonably rejected Lucas's added conditions for review of the legitimately sought clarifying medical information given the agreement to ensure the confidentiality of his medical information. As to the IIED claim, premised on some Association members having "verbally and physically threatened" him, no liability arose as a matter of law due to lack of extremity; (4) the sanctions of $16,597.21, pertaining to the fourth request for accommodation, were untenable and reversed.

An overweight limit case, Bhogaita v. Altamonte Heights Condominium Ass'n, Inc., 765 F.3d 1277 (11th Cir. 2014) reined in the invasive scope of questioning by condominium associations determining whether to grant the reasonable accommodation of an emotional support animal. Air Force veteran Ajit Bhogaita suffered from PTSD. Kane, a dog weighing more than 25 pounds,

improved his psychiatric symptoms to the point he formally requested that the Association grant an exception to the weight restriction. Over the next six months, the Association made three highly detailed requests for information about Bhogaita's disabilities, medications, psychiatric sessions, and why a smaller dog would not suffice—but it never formally rejected his request. He cooperated at each step until receiving the third request that ended ominously with a threat to file for Arbitration and the admonition to "PLEASE GOVERN YOURSELF ACCORDINGLY."

Acting on his complaint, HUD found cause against the Association, which then allowed Bhogaita to keep Kane. Thereafter, Bhogaita sued under 42 U.S.C.A. § 3604(f)(2), (f)(3). A jury found for Bhogaita, awarding $5,000 in compensatory damages. The district court awarded $127,512 in attorney's fees, and the Association appealed. Affirming, the circuit court held that while a housing provider need not immediately decide whether to grant an accommodation, failure to timely make a determination constitutes constructive denial. Here, the Association had all the information it desired from three doctor's letters previously provided by Bhogaita. Refusing to use his silence against him (by not responding to the third request), thecourt found that the Association did not undertake meaningful review, particularly where its final letter made queries exceeding the scope of its entitlement—viz., whether Bhogaita had a qualifying disability, and whether Kane's presence ameliorated the disorder. While the question of whether a welterweight canid would do the same job as the heftier counterpart might have been germane to the question of whether the accommodation was "reasonable" (i.e., both efficacious and proportional to the costs to implement it), a point not raised by the Association, it bore no relevance to whether the accommodation sought to be afforded Bhogaita was "necessary" (i.e., mitigates effects of the disability) for him to equally use and enjoy the dwelling. Finally, addressing an issue most commonly disputed in criminal cases where a child victim or vulnerable adult takes the stand with a courtroom dog present to offer comfort and assurance, the circuit court found no abuse of discretion in the district court allowing Kane to sit by Bhogaita's side when he testified.

§ 14. Courtroom therapy dogs—Air Carrier Access Act

14 C.F.R. § 382.117 describes when an air carrier may interrogate a passenger about the status of the animal as a service, emotional support, or psychiatric service animal. "Credible verbal assurances" alone should be accepted as evidence of service animal status, in addition to the presence of harnesses, tags, ID cards, or other documentation. [1] Only if uncertainty remains should staff follow with questions on what tasks the animal performs. [2] In the absence of credible verbal assurances, documentation may be required. Subsection (e) explains:

> **(e)** If a passenger seeks to travel with an animal that is used as an emotional support or psychiatric service animal, you are not required to accept the animal for transportation in the cabin unless the passenger provides you current documentation (i.e., no older than one year from the date of the passenger's scheduled initial flight) on the letterhead of a licensed mental health professional (e.g., psychiatrist, psychologist, licensed clinical social worker, including a medical doctor specifically treating the passenger's mental or emotional disability) stating the following:
>
> **(1)** The passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders—Fourth Edition (DSM IV);
>
> **(2)** The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger's destination;
>
> **(3)** The individual providing the assessment is a licensed mental health professional, and the passenger is under his or her professional care; and
>
> **(4)** The date and type of the mental health professional's license and the state or other jurisdiction in which it was issued. [3]

IV. Bad Behavior (Direct Threat and Undue Hardship)

§ 15. Americans with Disabilities Act

Public entities and accommodations need not suffer gladly animals behaving badly. Where animals present a "direct threat," or an accommodation or modification for the same causes "undue hardship," or an animal is out of control, discrimination may be deemed necessary and lawful.

§ 16. Americans with Disabilities Act—Direct threat

Where a "significant risk to the health or safety of others … cannot be eliminated by reasonable accommodation," the defendant agency or proprietor may raise the "direct threat" defense to a claim of failure to accommodate. 42 U.S.C.A. § 12111(3) defines "direct threat" for purposes of Title I, with further clarification in 29 C.F.R. § 1630.2(r), setting forth four factors by which to ascertain the existence of a "direct threat" in the employment context—viz., (1) duration of risk; (2) nature and severity of potential harm; (3) likelihood that potential harm will occur; and (4) imminence of potential harm. Of note is 29 C.F.R. § 1630.2(r)'s addition of the words "the individual or" before "others," thereby extending the "direct threat" defense to situations where the disabled individual endangers herself.

Title II's "direct threat" defense mostly mimics Title I's 29 C.F.R. § 1630.2(r) by outlining factors that govern the assessment of whether the individual (or more appropriately, the individual's service animal) presents same. Those factors are (1) nature, duration, and severity of risk; (2) probability that potential injury will actually occur; (3) whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. Unlike 29 C.F.R. § 1630.2(r), 28 C.F.R. § 35.104, and 28 C.F.R. § 35.139 offer no direct "threat to self" defense. Interestingly, the ADA itself does not codify a "direct threat" defense under Title II, yet the ADA Title II Technical Assistance Manual, II-2.8000, describes it as a basis to deem a plaintiff not a qualified individual with a disability.

Title III codifies a "direct threat" defense to a claim of failure to accommodate by describing the existence of a "significant risk" that "cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services." [1] 28 C.F.R. § 36.208 is virtually identical to 28 C.F.R. § 35.139. [2]

In a case out of Oregon, [3] Jane Roe used crutches due to severe neurological illness and relied upon Cretia, a service animal to retrieve dropped items and steady her as she sat and stood. On many occasions, Roe took Cretia to the Providence Health System-Oregon hospital, sometimes for several days at a time. On over 100 occasions, she had been admitted and, while the hospital never denied admission of Roe or Cretia, the relationship became untenable when Roe demanded that Cretia remain in her room 24 hours a day. Though bathed weekly, many witnesses claimed that Cretia's presence caused a putrid odor to permeate the entire floor, displacing some patients, and triggering staff allergic reactions. Installation of a HEPA filter and closing the door to Roe's room resulted in complaints from Roe of claustrophobia and noise. Cretia also interfered with the ability of staff to treat Roe, by growling at a nurse who tried to rouse Roe, and creating a physical obstacle. As Roe was bedridden and her husband not present all the time, hospital staff found themselves taking Cretia outside to relieve herself. Finally, the hospital's epidemiologist worried that Cretia's presence would increase the risk of infection; indeed, veterinary records proved that Cretia had her own infections while staying at the hospital. In dismissing the Title III ADA accommodation claim, the district court recognized that the thrust of Roe's complaint was not denial of access, but how she was treated during the admissions, and that the hospital was merely attempting to balance the needs of Roe, other patients, visitors, and staff. Alternatively, the court found that the hospital satisfied the direct threat defense of 42 U.S.C.A. § 12182(b)(3) per the epidemiologist's testimony or risk of infectious disease and, further, that the direct threat could not be eliminated by modifying its policies, practices, or procedures because Roe refused to keep the door closed or to permit the HEPA filter. [4] The court then enjoined the Roes from bringing

Cretia or any other service animal, into any Providence Health System facility. She could personally seek treatment but only without an animal. [5]

Lockett v. Catalina Channel Exp., Inc., 496 F.3d 1061, 19 A.D. Cas. (BNA) 970, 2007 A.M.C. 1862 (9th Cir. 2007), addressed a first impression issue of whether ferry operator Catalina Channel Express's one-time refusal to allow Tricia Lockett, a blind passenger, to take her guide dog into a dander-free Commodore Lounge area violated Title III of the ADA. Though two weeks after their interaction, Catalina changed its policy, Lockett nonetheless sued. Holding that it exercised reasonable judgment under 28 C.F.R. § 36.208 while it investigated the competing interests of Lockett and its allergic passengers who might face a direct threat from the dog's dander, the Ninth Circuit affirmed summary judgment dismissal in favor of Catalina.

§ 17. Americans with Disabilities Act—Undue hardship/fundamental alteration

Under Title I, employers need not make reasonable accommodations if it would "impose an undue hardship." [1] 29 C.F.R. § 1630.2(p) sets forth a five-factor test to determine whether an accommodation would impose an undue hardship on a covered entity, to include:

(i) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type, and location of its facilities;

(iv) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

Under Title II, a public entity shall make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination based on disability, "unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." [2]

Under Title III, where the modification requested of the proprietor creates an undue administrative or financial burden, forcing a fundamental alteration in the way business is done, the service animal need not be accommodated. 42 U.S.C.A. § 12182(b)(2)(A)(ii) and 28 C.F.R. § 36.302(a) provide that a public accommodation need only make reasonable modifications "unless [it] can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations." Johnson v. Gambrinus Company/Spoetzl Brewery, 116 F.3d 1052, 1059, 1061 n 6–7, 22 A.D.D. 669, 7 A.D. Cas. (BNA) 837 (5th Cir. 1997); Staron v. McDonald's Corp., 51 F.3d 353, 356, 9 A.D.D. 481, 4 A.D. Cas. (BNA) 353 (2d Cir. 1995) (citing Rehabilitation Act precedent). Fundamental alteration is merely a particular type of undue hardship. [3] *Johnson* ruled in favor of a blind plaintiff denied the right to bring his guide dog on a brewery tour, which began at the wort-viewing area in the grant, then to the brewkettle where tourists could peer over the wort as it boiled. The brewery defended its position by citing 21 C.F.R. § 110.35(c) and the alleged risk of food contamination (i.e., dog hair in beer). The Fifth Circuit found the five "critical control points" on tour to have a virtually impossible likelihood of contamination by a guide dog, particularly given the filtering process and the relative risk of 5,800 tourists annually—who were not forced to wear hair nets and beard coverings. In finding for Johnson, the court found that the brewery failed to meet its burden to show that the proposed modification would fundamentally alter the nature of the accommodation or jeopardize public safety.

Access to areas populated by debilitated individuals present direct threat/fundamental alteration challenges. Where service dogs might conceivably endanger other ill patients, access may prove unreasonable. In Pool v. Riverside Health Services, Inc., 12 A.D.D. 143 (D. Kan. 1995), a wheelchair-bound plaintiff relied on an Abraham, her 85 pound Golden Retriever who had been trained to pull her wheelchair. When attempting to visit her fiancé, who was being treated in the emergency treating area posted with a sign saying "Patients Only Beyond This Point," the hospital refused her admission with Abraham. Although she experienced pain to provide her own locomotion, as well as embarrassment, the court found no Title III violation. Sparse on analysis, the court concluded that qualifying individuals with disabilities do not enjoy unlimited access, particularly given concerns of "infection control, cross exposure, allergic reactions, patient dignity and confidentiality, [and] unpredictable behavior of the patient and the animal." Similarly, Perino v. St. Vincent's Medical Center of Staten Island, 132 Misc. 2d 20, 502 N.Y.S.2d 921 (Sup 1986), found that a guide dog could not enter a hospital delivery room during childbirth, according to New York Civil Rights Law. Albert v. Solimon, 252 A.D.2d 139, 684 N.Y.S.2d 375 (4th Dep't 1998), order aff'd, 94 N.Y.2d 771, 699 N.Y.S.2d 1, 721 N.E.2d 17 (1999), determined that a physician's examination room was not a public facility under a New York Civil Rights Law barring discrimination against persons using service dogs. [4]

Quadiplegic Kathleen Lentini and her service Shih Tzu/Poodle named Jazz attended several concerts at the California Center for the Arts in Escondido, Calif. On two nights, Jazz yipped during intermission, but none complained. When she returned for the performance of Tango Buenos Aires, the house manager told Lentini she could not enter with Jazz on account of prior barking, and she refused to leave him in her car due to the cold weather and due to disruption of "the bond that was created between them as a result of Jazz's training." Law enforcement arrived, and the manager indicated his intention to sign a citizen arrest form and have her removed from the premises. At that point, Lentini left in exchange for a refund of her tickets. The federal district court found for Lentini, ordering the Center to modify its policies to confer "broadest feasible access" and not to exclude a service animal who made a noise on a previous occasion, even if disruptive, if made and intended to serve as means of communication for the benefit of the disabled owner or if otherwise acceptable to the Center if engaged by humans. [5]

The Center argued that the compelled modifications were neither reasonable nor necessary as Lentini had a human companion to assist her, as well as special ushers, but the Ninth Circuit overruled the objection. Nor did the appellate court find that the modification fundamentally altered the nature of the services or facility provided by the Center, adding that it did not meet its burden to prove this affirmative defense. [6]

§ 18. Americans with Disabilities Act—Lack of control

Title II's 28 C.F.R. § 35.136(b) and Title III's 28 C.F.R. § 36.302(c)(2) provide that a public entity and place of public accommodation may ask an individual with a disability to remove a service animal from the premises if (1) the animal acts out of control and the handler does not take effective action to control him or her, or (2) the animal is not housebroken. To be "under handler's control" means to:

> have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.,* voice control, signals, or other effective means). [1]

§ 19. Rehabilitation Act

29 C.F.R. § 1614.203(b) applies 29 C.F.R. Pt. 1630 and Titles I and V standards of the ADA, relative to employment, to determine if there has been a violation of Section 501 of the Rehabilitation Act. 29 C.F.R. § 60-741.2(y), applicable to Section

503, discusses the "direct threat" defense, which resembles that developed under ADA Title I. As for Section 504 of the Act, each federal agency has its own Section 504 regulations. For instance, the Department of Education implemented 34 C.F.R. § 104.12(a), (c) to discuss when an undue hardship exists relative to making a reasonable accommodation to a known physical or mental limitation of an otherwise qualified handicapped applicant or employee, in the context of a recipient of federal financial assistance from the Department of Education and to the program or activity receiving such assistance.

In Crossroads Apartments Associates v. LeBoo, 152 Misc. 2d 830, 578 N.Y.S.2d 1004 (N.Y. City Ct. 1991), in a matter of first impression, the court concluded that Kenneth LeBoo could invoke § 504 of the Rehabilitation Act of 1973, [1] since the landlord accepted federal funds under Section 8 of the Housing Act of 1937, [2] notwithstanding New York's position that a "no-pet clause" was enforceable, even selectively. Finding him to be a "handicapped person" due to mental illness, and that he was an "otherwise qualified person for tenancy except for the pet," the court nonetheless refused to grant either of the cross-motions for summary judgment as to liability under the Rehabilitation Act given the factual question of whether Mr. LeBoo's disability made the cat necessary to his use and enjoyment of the apartment. The tenant introduced affidavits from his treating psychiatrist, his clinical social worker, and a certified pet-assisted therapist, confirming the benefits received from the cat in helping him cope with the day-to-day mental illness. Crossroads countered with a psychiatrist claiming "no significant clinical evidence that the cat is necessary or required for LeBoo to be able to fully use and enjoy his apartment," adding that he filled a prescription for Prozac at about the time he acquired the cat, so the drug, not the cat, should be credited with mitigation of disability. For another reason, the court refused summary judgment: Letting LeBoo keep the cat might place "undue financial and administrative burdens" on Crossroads, including health problems for other tenants.

§ 20. Fair Housing Act

In addition to Section 504 regulations that may apply to landlords receiving federal funding through HUD, the Fair Housing Act excludes from coverage those with disabilities "whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." [1] The "direct threat" assessment cannot be based on fear, speculation, or stereotype but requires reliable objective evidence and such considerations as (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. [2] Douglas v. Kriegsfeld Corp., 884 A.2d 1109, 1121 n. 19 (D.C. 2005) held that the Joint Statement is entitled to substantial deference.

Although "undue hardship" and "fundamental alteration" defenses are not codified in the Fair Housing Act, courts have invoked them as part of the analysis of whether the accommodation request of the tenant is unreasonable. "A 'reasonable accommodation' is one which would not impose an undue hardship or burden on the entity making the accommodation." [3] In addition, housing providers are not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others. Thus, if the particular animal requested by the individual with a disability has a history of dangerous behavior, the housing provider does not have to accept the animal into the housing. Moreover, a housing provider is not required to make a reasonable accommodation if the presence of the assistance animal would (1) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation; (2) pose an undue financial and administrative burden; or (3) fundamentally alter the nature of the provider's operations. [4]

Dr. Vassal, a psychiatrist, diagnosed Paul Warren with Severe Major Depression Disorder and PTSD and "strongly recommended" that the Delvista Towers Condominium Association reasonably accommodate Warren by making an exception to its "no pet" policy so he could live with Amir, an assistance animal. Delvista argued that the requested accommodation was *per se* unreasonable because Miami-Dade County banned pit bulls by ordinance and Amir was allegedly a pit bull. In finding for Warren, the court in Warren v. Delvista Towers Condominium Ass'n, Inc., 49 F. Supp. 3d 1082 (S.D. Fla. 2014), first defined what makes a reasonable accommodation *unreasonable,* viz., "(1) it would impose an undue financial and administrative burden on the housing provider or (2) it would fundamentally alter the nature of the provider's operations." Since Delvista did not allege

that allowing Warren to keep an emotional support animal generally would impose such a burden or fundamental alteration, the court concluded that an emotional support animal was a reasonable accommodation.[5] As to Amir, specifically, the court began by affirming that to earn protection under the FHA, no special training was required, citing part of the *Final Rule* described in the preceding paragraph as it pertained to animals who "by their very nature, and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress." Noting that the HUD Rule allows for denial of a reasonable accommodation in the form of allowing an emotional support animal if the "animal's behavior poses a direct threat and its owner takes no effective action to control the animal's behavior so that the threat is mitigated or eliminated," and that such threat must be a "significant" one, "not a remote or speculative risk," the court further examined the directive that the covered entity must engage in a case-by-case examination of the threat profile of "the specific assistance animal in question."[6] Additionally, the HUD rule imposed yet another layer of accommodation in the case where the specific assistance animal might pose a direct threat or cause substantial physical damage—i.e., the animal need not be accommodated where its behavior still "cannot be reduced or eliminated by *another* reasonable accommodation."[7] In other words, even rowdy emotional support animals may be entitled to further rule-bending before they are excluded from the premises. On the question of the Miami-Dade County breed-discriminatory legislation, the court found preemption by the FHA, citing 42 U.S.C.A. § 3615 ("but any law of a state, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid."), the foregoing HUD rule (which prohibits breed, height, or weight restrictions to assistance animals), and U.S. Const. Art. VI, cl. 2.[8] Finding that the breed ban "stands as an obstacle" to Congress's objectives in passing the FHA, it declared preempted as a matter of law the discriminatory ordinance.[9]

§ 21. Air Carrier Access Act

Service animals may be excluded from the cabin who present a "direct threat" to health or safety or cause "significant disruption," but not mere inconvenience to other passengers. "Certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) pose unavoidable safety and/or public health concerns and [carriers] are not required to transport them." Other animals, such as "miniature horses, pigs and monkeys should be evaluated on a case-by-case basis by U.S. carriers."[1] 14 C.F.R. § 382.21 provides that an air carrier may refuse to transport the passenger, delay the passenger's transportation, impose conditions, restrictions or requirements not imposed on other passengers, or require the passenger to provide a medical certificate if the passenger poses a direct threat. 14 C.F.R. § 382.19(c) sets forth the factors that inform the individualized assessment, one based on reasonable judgment relying on current medical knowledge or the best available objective evidence, looking at the (1) nature, duration, and severity of the risk; (2) probability that the potential harm to the health and safety of others will actually occur; and (3) whether reasonable modifications of policies, practices, or procedures will mitigate the risk. Where a direct threat is found, the carrier "must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others."[2]

V. Prima Facie Case and Mens Rea

§ 22. Burden on litigant asserting right

Litigants asserting violations of their rights as disabled individuals relying upon service and emotional support animals have the initial burden of proving a prima faciecase. Failure to accommodate claims predominate in the service animal access subset of federal disability discrimination cases. Reasonable accommodation claims require no showing of discriminatory intent or disability-based animus; rather, they sound in strict liability.[1]

Occasionally an accommodation claim will double as a retaliation claim by interpreting the request as a protected activity.

§ 23. Americans with Disabilities Act

[Cumulative Supplement]

Title I makes it unlawful for a covered entity to discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. [1] 42 U.S.C.A. § 12112(b)(5)(A) makes it illegal to discriminate against a qualified individual on the basis of disability, which is defined to include "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." Another type of failure to accommodate claim arises under 42 U.S.C.A. § 12112(b)(5)(B), defining discrimination as "denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant." Less commonly, adverse actions following a request for a reasonable accommodation are styled as retaliation claims. To prove retaliation under Title I of the ADA, 42 U.S.C.A. § 12203, for instance, requires proof that (1) the plaintiff engaged in protected activity, (2) she was subjected to an adverse employment action after the protected activity, and (3) a causal connection between the protected activity and the adverse action. [2]

Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." [3] A "qualified individual with a disability" is one "who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." [4] To bring a Title II accommodation claim, a plaintiff must prove (1) he has a disability, (2) he is otherwise qualified to receive the benefits of the public service, program, or activity, and (3) the defendants excluded him from participation in or denied him the benefits of such service, program, or activity or otherwise discriminated against him because of his disability. [5]

The ADA protects arrestees with service animals, as exemplified in the case of Richard Pena, who suffered a significant stroke in 1998, causing him to rely on Prissy, an Akita to aid his mobility. While at the Bexar County Courthouse to research his adoption, a security officer refused him and Prissy entry, stating "dogs are not allowed in this building." After explaining that she was his service animal, the officer summoned a supervisor. Over the 15 minute delay, the officer forced Pena to stand for an "absolutely interminable" period due to his ataxic condition. On arrival, the supervisor demanded proof that Prissy was a service animal and interrogated Pena as to his specific disability. Though no such proof is required by federal law and questions seeking disclosure beyond mere tasks and functions that the animal performs is unlawful, Pena produced a Social Security Administration document verifying his disability and that he had a service dog. Allowed onto the third floor, he proceeded to conduct his research. [6]

About half an hour later, codefendant Brian Stanford allegedly told Pena to leave, claiming that only seeing-eye dogs were permitted in the courthouse. Pena stood his ground. Stanford threatened to arrest him and then forcibly grabbed him by the hand and cuffed him with the aid of another deputy Humberto Hernandez. The two deputies then carried him down the hallway, causing him "excruciating pain." As Pena would not release Prissy's leash, she was choked. Charges against Pena for resisting arrest, criminal trespass, and cruelty to animals were dismissed. Pena thereafter sued under Title II of the ADA and Section 1983. The Defendants did not dispute Pena had a qualifying disability. [7]

While Title II and its regulations did not explicitly address service animals, and while Title III expressly does not apply to public entities, Title III's regulations and DOJ interpretations have been interpreted to impose upon public entities the duty to make reasonable accommodations for those with service animals. [8]

Unlike Section 1983 jurisprudence, *respondeat superior* does apply to ADA violations and does not require a policy, custom, or practice of discrimination by the public entity to establish fault. [9]

Finding that neither party adequately addressed the ADA's application to what happened on the third floor, the court denied summary judgment on the Title II count. Citing Lollar v. Baker, 196 F.3d 603 (5th Cir. 1999), the court further held that Pena could not sue the individual defendants for violations of Title II under Section 1983 because Congress had intended that ADA serve as the exclusive enforcement mechanism for deprivation of his rights as a disabled person. After independent analysis, the court also dismissed the Fourth and Fourteenth Amendment claims against the individual officers and the County. [10]

Title III sets forth the general nondiscrimination rule at 42 U.S.C.A. § 12182(a): "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." Places of public accommodation must make reasonable modifications in policies, practices, or procedures when necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities. [11] Title III arguably does not require proof that the plaintiff is otherwise "qualified," since it protects all "individuals." [12]

CUMULATIVE SUPPLEMENT

Cases:

Condominium building was not public accommodation, and thus condominium association was exempt from ADA, for purposes of condominium owner's action alleging that she was denied accommodation of emotional support dog for her anxiety disorder; association's bylaws stated that units shall be used for residences only, and single advertisement in which resident put his unit up for temporary rental did not establish that other owners were likely to rent out units for public use. Americans with Disabilities Act of 1990 § 301, 42 U.S.C.A. § 12181(7). Kromenhoek v. Cowpet Bay West Condominium Association, 77 F. Supp. 3d 462 (D.V.I. 2014).

Dog that accompanied patron with visual impairment and other disabilities, and patron's husband, during visit to grocery store was service animal under control of its handler, under ADA and federal regulation requiring such animal to be under control of its handler, regardless of fact that dog was under husband's control during visit; regulation did not limit term handler to individual with disability, and rule that defined service animal was amended to state that animal's tasks had to relate to individual's disability, rather than specific handler's disability. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.; 28 C.F.R. §§ 36.104, 36.302(c)(4). Johnson v. Oregon Bureau of Labor and Industries, 290 Or. App. 335, 415 P.3d 1071 (2018).

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[END OF SUPPLEMENT]

§ 24. Rehabilitation Act, Section 504

Until 1988, the protections of the Rehabilitation Act only applied to federally funded or operated housing projects; with passage of the 1988 amendments to the Civil Rights Act of 1968 (also known as the Fair Housing Act), which sought to "[p]rovide, within

constitutional limitations, for fair housing throughout the United States,"[1] antidiscrimination provisions based on disability and use of a service animal or guide applied to almost[2] every other landlord. Two years later, the Americans with Disabilities Act of 1990, 42 U.S.C.A. §§ 12101 et seq. nationally mandated the comprehensive elimination of discrimination against individuals with disabilities complete with enforceable standards, including in housing.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794(a), states, in relevant part, "No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." The Act has incorporated by reference the definition of "individual with a disability" as found in the ADA.[3] In relation to employment discrimination by federal employers or recipients of federal funding, Title I and select Title IV ADA standards apply.[4] To prevail on a Section 504 claim, a plaintiff "must establish that (1) he is a 'qualified individual' with a disability, as that term is defined in the Rehabilitation Act, (2) he is 'otherwise qualified' to participate in the offered program or activity or to enjoy the services or benefits offered, (3) he is being denied the opportunity to participate in or benefit from the defendants' services, programs or activities, or was otherwise discriminated against by the defendants by reason of his disability, and (4) the defendants, or the entity they represent, receive federal financial assistance so as to be subject to the Rehabilitation Act."[5]

§ 25. Fair Housing Act

To prevail on a reasonable accommodation claim under Section 3604(f)(3)(B) of the FHA[1] the plaintiff "must prove the following: (1) that she is handicapped under 42 U.S.C.A. § 3602(h); (2) that the Defendants knew or should reasonably be expected to know of the handicap; (3) that accommodation of the handicap may be necessary to afford her an equal opportunity to use and enjoy the dwelling; (4) that the accommodation is reasonable; and (5) that Defendants refused to make the requested accommodation."[2] The Eleventh Circuit discards the second prong.[3] And the Sixth Circuit has effectively modified the language of the third element from "may be" to "is."[4] Unlike disparate treatment claims, "Denial of reasonable accommodation claims do not require that the Plaintiff show intent."[5] "[T]he plaintiff need only show that an accommodation 'seems reasonable on its face, i.e., ordinarily or in the run of cases.' Once the plaintiff has made this showing, the burden shifts to the defendant to demonstrate that the accommodation would cause undue hardship in the particular circumstances."[6] The burdens on defendants are balanced against the benefits to plaintiffs by any accommodation.[7] In the Ninth Circuit, the interactive process is mandatory.[8]

Customarily, the unit owner seeks the "reasonable accommodation" of a waiver from a blanket "no pet" rule, so he is permitted to reside with a psychiatric service animal in his private dwelling. In Stevens v. Hollywood Towers and Condominium Ass'n, 836 F. Supp. 2d 800 (N.D. Ill. 2011), however, the dispute concerned allowing the Stevenses dog "unrestricted access" to all common areas, instead of being compelled to use a limited-hours service elevator of alternative entrances or to keep the dog in a carrier. Accommodation (42 U.S.C.A. § 3604(f)), interference or intimidation (42 U.S.C.A. § 3617), a state humane rights act accommodation claim, and the common law claims of private nuisance, outrage, and constructive eviction were lodged after the Spencers sold their condo due to the foregoing violations. Finding that the Association was not required to capitulate to the Spencers' request for unrestricted access of Mrs. Spencer's dog, the court nonetheless explained the "problematic aspect" of determining where to draw the line:

> A key issue, which cannot be resolved at this stage of the case, is whether Mary Jo was required to have her service animal with her at all times. *If* Mary Jo was required to have her service animal with her at all times (or nearly all the time), *if* it was impossible to keep the dog in a carrier, and *if* Mary Jo was at times prevented or discouraged from entering or leaving her residence because of the restrictions that were in place, then it is possible

> that Defendants' accommodations did not go far enough. The question of whether an accommodation is reasonable is a question of fact "determined by a close examination of the particular circumstances …."

The Court cautions, however, that Plaintiffs will have to provide evidence to show that Mary Jo was disabled, that she needed the dog to treat her disability, and that her disability made it necessary for her to travel through the complex by the path of her choosing. [9] On the intimidation claim, Mrs. Spencer needed to prove (1) she was a protected individual under the FHA; (2) she was engaged in the exercise of her fair housing rights; (3) the Association threatened, coerced, intimidated, or interfered with her on account of her protected activity under the FHA; and (4) the Association was motivated by a desire to discriminate. [10] "Interference" required more than an "isolated act of discrimination," but needed to reveal an invidiously motivated pattern. [11] Finding that the failure to accommodate Mrs. Spencer, if driven by discriminatory animus, would suffice—but not the other allegations of being monitored by staff or failing to notify residents of the presence of an assistance dog—the Spencers were permitted to pursue this claim.

In Kromenhoek v. Cowpet Bay West Condominium Association, 77 F. Supp. 3d 462 (D.V.I. 2014), Judith Kromenhoek, a unit owner, sued the Cowpet Bay West Condominium Association, its Board, and others for violating the FHA and ADA when the Association at one time fined her for keeping an emotional support animal in contravention of the "no pet" rule. Though undisputedly disabled, and while her psychologist Stansford Sutherland drafted a letter stating that "he has prescribed the use of an emotional support animal, dog, or other, to alleviate [Kromenhoek's] symptoms and that such emotional support animal was necessary," Kromenhoek did not submit that letter to the Board and, in fact, prohibited Cowpet's office manager (whom she gave the letter in 2011) from sharing it with them. The Board held a meeting in late 2011 to discuss the issue of service dogs, and the details of that dialogue (including specifically Kromenhoek's dog Oliver) were posted on the Cowpet Bay Blog. In January 2012, the Board fined Kromenhoek $50 a day for violating the "no pet" policy. In March 2012, Kromenhoek submitted a request for a reasonable accommodation, and in April, it was granted. Notwithstanding the foregoing, Kromenhoek initiated suit. In granting summary judgment to the Association, the court found that Kromenhoek foundered on a key element of her FHA claim—i.e., to request a specific reasonable accommodation. Even assuming that her initial request was submitted in 2011, the court found no constructive denial of reasonable accommodation by delay in responding in the affirmative or negative. Indeed, such delay "does not constitute denial where the denial does not deprive the disabled person of the accommodation." [12] Kromenhoek "was not evicted, or threatened with eviction, and Oliver was at no time forced to leave the premises," and while she was admonished that she would be fined daily, "she was also informed that all fines would be held in abeyance until the resolution of her request for accommodation." [13] As such, the delay did not constitute accommodation refusal and her claim failed.

§ 26. Air Carrier Access Act

No private right of action exists under the ACAA. [1] Adler v. WestJet Airlines, Ltd., 31 F. Supp. 3d 1381 (S.D. Fla. 2014), involved the ejection of a married couple and their service dog from a Fort Lauderdale-Toronto flight before take-off. Though they did not bring an ACAA claim, WestJet unsuccessfully argued that it preempted their negligence claim even though it might prove germane to the duty of care in a negligence action. [2] In the cabin of a plane at an altitude of 30,000 feet, Title III of the ADA does not apply. Grievances under the ACAA must be lodged with the Aviation Consumer Protection and Enforcement Division of the Department of Transportation.

§ 27. Reasonable accommodation for service animal

[Cumulative Supplement]

Instructive for claims brought under federal or state antidiscrimination law is McDonald v. Department of Environmental Quality, 2009 MT 209, 351 Mont. 243, 214 P.3d 749, 21 A.D. Cas. (BNA) 1848 (2009), which determined whether an employer must reasonably accommodate a service animal's special needs in the course of assisting a disabled employee. Ms. McDonald

filed a disability discrimination complaint against the Montana Department of Environmental Quality for failure to provide nonskid floor coverings so her service dog, Bess, an Australian Shepherd, could maintain traction on tile floors. Bess helped with bracing and tactile stimulation during a dissociative episode—increasing mobility and alleviating barriers to personal interaction. Bess had a history of slipping, falling, and hitting her chin on the floor, causing limping and soft-tissue injuries. DEQ argued that it need not accommodate the user of a "poorly performing assistive device," analogizing Bess to a defective wheelchair. The Montana Supreme Court found that nonskid floor coverings served as an accommodation for McDonald, not Bess. Though questions of functionality were not immaterial, they were "simply misplaced here, since the functional capability of McDonald's assistive device relates to the reasonableness of the necessary accommodation, not whether DEQ had a duty to provide one in the first place." [1] Of interest is the concurrence/dissent of Justice Patricia O. Cotter, who disputed DEQ's argument that the value of Bess (a dog who can no longer perform services as a service animal) is essentially nothing and that Bess "was nearly three-fourths finished with her service life" when she had to be retired, such that McDonald was therefore only entitled to one-fourth of the replacement fee of $500, the amount charged by CARES, the corporation that provided McDonald with Bess at the outset.

CUMULATIVE SUPPLEMENT

Cases:

Allegation of parents of child who suffered from epilepsy, that child was disabled, that a shopping mall was a place of public accommodation, that parents were told by a security guard that the mall did not allow animals, that parents twice contacted the mall and requested an accommodation for child's service dog, which was necessary for child to access the mail, and that security guard continued to refuse access to the mail, sufficiently alleged a discriminatory practice or policy, as required to support parent's Americans with Disabilities Act (ADA) claims against owner of a shopping mall and provider of security services. Santiago Ortiz v. Caparra Center Associates, LLC, 261 F. Supp. 3d 240 (D.P.R. 2016).

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[END OF SUPPLEMENT]

VI. Ante Litem Requirements, Exhaustion, Preclusion

§ 28. Generally

In 1964, Congress passed the Civil Rights Act, Pub. L. No. 88-352, 78 Stat. 241, codified at 42 U.S.C.A. § 1981 to 2000h-6. The Act outlawed race, color, religion, sex, and national origin discrimination in, *inter alia,* voter registration requirements (Title I), places of public accommodation (Title II), public facilities (Title III), in federally assisted programs (Title VI), and in employment (Title VII). With an extensive procedural framework in place, as well as codified remedies, the Act provided a ready reference point for the suite of disability discrimination laws that followed. Accordingly, Title I of the ADA and Section 501 of the Rehabilitation Act apply the remedies and procedures set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e-4, e-5, e-6, e-8, e-9. 42 U.S.C.A. § 12117(a) (Title I ADA); 29 U.S.C.A. § 791(f) (Section 501). Aggrieved individuals must exhaust all administrative remedies before initiating civil action under the Rehabilitation Act of 1973. 29 U.S.C.A. § 794a(a)(1). Title II of the ADA and Section 504 are subject to the "remedies, procedures, and rights" found in Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d. [1]

Title III of the ADA applies the remedies and procedures of *part* of Title II of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000a-3(a). [2] Where legal and factual issues germane to the federal antidiscrimination law claims have already been litigated in a prior criminal or civil proceeding, *res judicata* or collateral estoppel doctrines may also apply.

§ 29. Presuit complaint process

The processes regarding the ADA, Rehabilitation Act, and Fair Housing Act are addressed below.

§ 30. Presuit complaint process—Americans with Disabilities Act

Complaints under Title I should be lodged with the EEOC within 180 days of the date of discrimination, or 300 days if filed with a designated state or local fair employment practice agency. As the ADA adopts the procedures set forth in the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e-4 to e-9, an individual may generally only sue under Title I within 90 days after receiving a right-to-sue letter from the EEOC. [1] N.B.: Federal employees must follow additional, faster time requirements. See § 31 below concerning the Rehabilitation Act, which is the exclusive remedy for disability discrimination claims lodged by federal employees. [2]

If elected by the aggrieved party, Title II complaints must be lodged with the appropriate agency within 180 days of the act of discrimination by a public entity. [3] No deadline applies to filing ADA Title III complaints with the Department of Justice. State and local agencies may impose their own time limitations. This means that a plaintiff need not first file a complaint with a federal agency but may elect to file suit at any time before the statute of limitations runs. [4] Circuits have split as to whether a private right exists to sue for violating the implementing regulations of Title II. [5] No *ante litem* requirement exists. [6] No *ante litem* requirement exists. [7]

Title II complaints must be in writing; should contain the name and address of the individual or the representative filing the complaint; should describe the public entity's alleged discriminatory action in sufficient detail to inform the federal agency of the nature and date of the alleged violation; must be signed by the complainant or by someone authorized to do so on his or her behalf; and those filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination. [8] Such complaints may be filed, at the grievant's option, with the federal agency providing financial assistance to the state or local program in which the alleged discrimination occurred; with the EEOC, if the state or local government is also subject to Title I of the ADA; or with the federal agency designated in the Title II regulation to investigate complaints in the type of program in which alleged discrimination took place. [9] Presently, eight federal agencies have been designated to receive such complaints—Department of Agriculture, Department of Education, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, and Department of Transportation.

Title III complaints may be filed online or otherwise sent to the Department of Justice complete with the complainant's full name, address, and telephone number; the name of the party discriminated against; the name of the business, organization, or institution that the complainant believes has discriminated; a description of the act or acts of discrimination, the date or dates of the discriminatory acts, and the name or names of the individuals who the complainant believes discriminated; and other information that the complainant believes necessary to support his or her complaint. [10]

§ 31. Presuit complaint process—Rehabilitation Act

Complaints under Section 504 should be lodged with the appropriate federal agency within 180 days of the date of discrimination. As noted above, however, since the Act shares the same procedural pedigree as Title VI of the Civil Rights Act, [1] an administrative grievance is not a prerequisite to initiating a private civil action. The eight federal agencies processing Title II ADA complaints may also receive Section 504 complaints.

Claims under Section 501 of the Rehabilitation Act[2] are treated like Title I ADA and Title VII Civil Rights Act employment discrimination cases, for which administrative complaints must precede any private action.

Federal sector employees, however, have additional prelitigation duties, for they must initiate a precomplaint with the EEOC counselor within 45 days or risk losing the opportunity to file a private action. In Miller v. Runyon, 77 F.3d 189, 191, 15 A.D.D. 330, 5 A.D. Cas. (BNA) 415, 151 L.R.R.M. (BNA) 2833 (7th Cir. 1996), the court held time-barred a Rehabilitation Act suit by John Miller, a Postal Service employee who failed to timely file his precomplaint as required by the applicable regulation that required him to notify an equal employment opportunity counselor within 30 days.[3]

The Counselor will then inform the employee of the right to lodge a formal complaint with the agency that allegedly discriminated against the employee within 15 days. "One administrative remedy federal employees must pursue is the filing of a formal [administrative] complaint of discrimination [with the agency] within 15 days of receiving notice of the right to do so."[4] Failing to either timely lodge a precomplaint or a formal complaint will be considered a failure to exhaust administrative remedies and time-bar any federal suit under Section 501.[5]

In relation to ADA Title I claims, Beason v. Bower, 22 A.D.D. 408 (N.D. Ill. 1996), held that the 45-day precomplaint duty applies given the Appendix to Part 1630.[6]

§ 32. Presuit complaint process—Fair Housing Act

42 U.S.C.A. § 3610(a)(1)(A)(i) provides that an aggrieved person may, within one year of the alleged discriminatory housing practice, file a complaint with HUD alleging a discriminatory housing practice. Within 100 days of the filing of the complaint, HUD shall make a reasonable cause determination or provide written reasons for not doing so to the complainant and respondent.[1] If HUD (or the certified State or local fair housing agency) issues a charge of discrimination, the complainant, respondent, or aggrieved person on whose behalf the complaint was filed, may have the claims asserted in that charge in a civil action in lieu of an administrative hearing. Election must be made within 20 days after receipt by the electing person of service of the charge.[2]

Filing a complaint, however, is not a prerequisite to initiative civil action by private persons.[3] Note that state fair housing acts may impose administrative exhaustion requirements. When a claim is referred to a "substantially equivalent" agency, however, the state's laws may govern, contradicting the federal law's elimination of any exhaustion requirement.[4]

State, Dept. of Legal Affairs, Office of Atty. Gen. v. Leisure Village, Inc. of Stuart, 166 So. 3d 838 (Fla. 4th DCA 2015), concerned a dispute between a tenant who entered into a settlement stipulation with the landlord to keep a pet she had at the time provided she would not get another animal once that dog passed away. She also agreed to move from Leisure Village if she ever got another pet. When her dog died in 2010, she was diagnosed with chronic depression. Her psychiatrist prescribed an emotional support dog to help with her treatment. The tenant then requested a reasonable accommodation for the support dog, which Leisure Village denied. Nonetheless, she acquired another dog a month later. Leisure Village asked the trial court to enforce the stipulation, prompting the tenant to file a HUD complaint for violating her rights under the Florida FHA. Fla. Stat. Ann. §§ 760.34, 760.35 required that a complaint be filed before initiating suit, notwithstanding the use of the word "may" in the context of whether the aggrieved party may file a complaint.[5] HUD transferred the complaint to the Human Rights Commission. Before the Commission made a finding, the trial court ordered her to remove the dog. When the Commission did find reasonable cause, the tenant unsuccessfully filed a claim in federal court and then in the trial court, which dismissed her case, finding that her claim for an alleged FHA violation was barred by collateral estoppel and the law of the case. Holding that the trial court lacked subject matter jurisdiction over the tenant's FHA claim, for the reason that at the time of the ruling

she had not exhausted her administrative remedies (i.e., the Commission had not ruled until three months after the court's order compelling her to remove her emotional support animal), the appellate court reversed and remanded. [6]

How do courts handle posthumous antidiscrimination claims? Peklun v. Tierra Del Mar Condominium Association, 119 F. Supp. 3d 1361 (S.D. Fla. 2015), offers some insight. Sergey Peklun killed himself on February 12, 2015. In the years preceding his death, he lived in the Tierra Del Mar ("TDM") community with his wife, Victoria Peklun. Peklun suffered from many medical and psychological conditions, including heart disease, lung disease, high blood pressure, kidney disease, sleep disturbance, apnea, anxiety, and depression. [7]

In 2011, he adopted a Morkie named Julia, a dog "essential to his physical and emotional well-being, his will to live, and his enjoyment and use of his dwelling." Shortly afterward, he sought a reasonable accommodation from TDM to keep Julia as an emotional support animal protected under the FHA. In Fall 2011, the TDM board granted the accommodation orally. On November 26, 2012, however, he received a *Notice of Violation* accusing him of violating the no-pet rule and demanding that he recertify the earlier accommodation in 2013.

Peklun filed a complaint with the Palm Beach County Office of Equal Opportunity ("OEO") alleging TDM's failure to provide a reasonable accommodation. Around the same time, Frank Speciale, another condo owner, sued the Pekluns, seeking a preliminary injunction to evict Julia. The trial court granted the preliminary injunction on March 11, 2014, relying in part on a declaration from Maria Verduce (who served on the TDM Board of Directors) claiming that the Pekluns kept Julia in their unit without TDM approval. On May 5, 2014, the OEO issued a determination of reasonable grounds of discrimination. On December 4, 2014, Speciale filed a motion for contempt against Peklun. Three months later, Mr. Peklun was dead. His estate and widow sued TDM and Verduce under the federal Fair Housing Act, Florida Fair Housing Act, Florida Wrongful Death Act, and Florida Survival Statute.

Defendants moved for summary judgment dismissal. On the claim that the defendants negligently caused Peklun's suicide, plaintiffs alleged their failing to maintain proper records; failing to advise other TDM residents that Mr. Peklun received a reasonable accommodation in 2011; and preparing documents that incorrectly inferred that none was given, including one that contributed to the granting of the injunction, all causing Mr. Peklun's humiliation and fatal despondency. [8] Even assuming Verduce's knowledge that Julia was integral to Peklun's "will to live," the trial court found that at most this connected her actions to his suicide "only in the most general way," and was wholly insufficient to create a legal duty as a matter of law. Accordingly, the court granted Verduce's Fed. R. Civ. P. 12(b)(6) motion to dismiss the negligence claims. For the same reasons, it also granted TDM's motion for summary judgment on the claim of negligence.

Next, defendants urged dismissal of Peklun's FHA claim, arguing that because Florida law substitutes a wrongful death action for a personal injury action, which would otherwise survive under the Florida Survival Statute, his suicide extinguished the FHA claim. The Florida Wrongful Death Act allows survivors to recover their general damages and loss of the deceased's earnings, as well as medical and funeral expenses, but does not provide a cause of action for the pain and suffering of the decedent. [9] Thus, were Florida law to govern, Peklun's claim for emotional distress would abate with his death. Holding that application of Florida survivorship law would not prove inconsistent with the FHA, the court dismissed his general damages claim. However, it allowed his widow to maintain a claim for her mental anguish under the FHA, and for his estate to recoup its economic damages.

§ 33. Exhaustion of administrative remedies

With the exception of a Title I ADA and Section 501 of the Rehabilitation Act claim, a citizen may elect to file a complaint with the appropriate entity in lieu of (or in addition to) a privately initiated civil suit. On occasion, state and local authorities will investigate and adjudicate such matters. Generally, a complaint alleging disability discrimination investigated by the government will provide expense-free discovery and an independent witness (i.e., the agency investigator) to admissions by party opponents. Furthermore, if the complaint is deemed unfounded (i.e., "no reasonable cause"), it is unlikely to carry any adverse preclusive

effect against the individual alleging discrimination, *unless* the finding is appealed and affirmed by a state court. The Full Faith and Credit statute, [1] requires federal courts to "give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged." [2] Federal common law frequently also imposes preclusive effect unless Congress has expressed a contrary intention. [3] Finding a Congressional rejection of preclusive effect, the high court has held that a complainant enjoys a trial *de novo* in federal court on all Title VII discrimination and ADEA claims, even where an unappealed state administrative order held against them. [4] The right to bring a civil action survives even an adverse final decision by the federal agency reviewing a discrimination claim, as when the EEOC examined a Title VII claim. [5] While no administrative estoppel would apply in such a circumstance, the agency's factual determinations may be admissible as evidence and "are certainly probative." [6] Since *Tennessee,* however, the Eighth and Ninth Circuits have extended its holding beyond giving preclusive effect to fact finding of state administrative tribunals to forbid relitigation of legal questions where the state proceeding satisfied the fairness requirements outlined in U.S. v. Utah Const. & Min. Co., 384 U.S. 394, 422, 86 S. Ct. 1545, 16 L. Ed. 2d 642 (1966). [7]

Whether the *Elliott-Solimino* line of cases extends to the ADA, Rehabilitation Act, and FHA context is in development. Lower courts have extended *Elliott* and *Solimino* to the ADA. [8]

Note that preclusive effect *may arise* in a 42 U.S.C.A. § 1983 action, depending on the law of collateral estoppel under the law of the state where the action commenced. [9]

However, several lower courts have refused to apply *Elliott-Solimino* to the FHA. U.S. v. East River Housing Corp., 90 F. Supp. 3d 118 (S.D. N.Y. 2015), while finding "logical force to the Government's argument," declined to reach the question, instead finding that the complainant, Stephanie Aaron, a lessee seeking a reasonable accommodation for her emotional support animal, was not in privity with the Government, so any adverse determination against the Government by the state agency could not bar any of her claims. Courts that have found preclusive effect in "appropriate" FHA cases include Ward v. Harte, 794 F. Supp. 109, 113 (S.D. N.Y. 1992); U.S. v. Town of Garner, North Carolina, 720 F. Supp. 2d 721, 730 n3 (E.D. N.C. 2010); Telesca v. Long Island Housing Partnership, Inc., 443 F. Supp. 2d 397, 405 (E.D. N.Y. 2006), however, reached the opposite conclusion.

Title VI does not require exhaustion of administrative remedies before filing suit, compared to such requirement under Title VII of the Civil Rights Act. Lack of exhaustion, accordingly, makes claims under Title II of the ADA and Section 504 analogous to Section 1983 claims, which were barred on *res judicata* grounds in *Elliott*. "By pursuing administrative relief, and then allowing the administrative decision to go unreviewed, Plaintiff hazards a *res judicata* bar to what is now, in essence, a collateral civil action." [10]

Title III claims have no exhaustion requirement. [11]

42 U.S.C.A. § 12188(a)(1) incorporates only part of Title II of the Civil Rights Act, viz., 42 U.S.C.A. § 2000a-3(a), not 42 U.S.C.A. § 2000a-3(c). Only (c) contains the exhaustion requirement.

Where no administrative adjudication occurs because the agency has refused to issue a charge at the outset, no preclusive effect exists—if only because the key collateral estoppel element of "final judgment" cannot be satisfied. [12]

§ 34. Res judicata and collateral estoppel

Housing Rights Center v. Sterling, 404 F. Supp. 2d 1179, 1188–1189 (C.D. Cal. 2004) refused to give *res judicata* effect to an unlawful detainer action premised on nonpayment of rent, thereby permitting the plaintiff to bring a subsequent FHA lawsuit in federal court for racial discrimination premised on his mistreatment while a tenant. Rooker v. Fidelity Trust Co., 263 U.S. 413,

44 S. Ct. 149, 68 L. Ed. 362 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983), collectively stating the *Rooker-Feldman* doctrine, preclude lower federal courts from exercising appellate jurisdiction over final state-court judgments. Fayyumi v. City of Hickory Hills, 18 F. Supp. 2d 909, 917–20 (N.D. Ill. 1998) barred FHA claims for racial animus brought in federal court after a state court eviction proceeding compelled the plaintiffs to vacate. The trial court invoked the *Rooker-Feldman* doctrine, stating, "the injury was only complete when the state court issued its ruling," and that the FHA claim was "inextricably intertwined" with the state court judgment. *Rooker-Feldman* holds that a defendant who has lost in state court and sues in federal court does not assert an injury at the hands of his adversary, but, rather, at the hands of the court, and thus the second suit is an impermissible effort to obtain collateral review, for which the court lacks jurisdiction. [1]

Ingrid Anderson acquired a miniature horse for C.A., her disabled minor daughter, who suffered from autism, seizures, ADHD, developmental delay, chronic lung disease, and several other conditions that make it hard for her to maintain her balance independently. She could not use her own backyard for recreation and exercise without assistance. Her physician prescribed "hippotherapy," i.e., therapy from an equine such as a miniature horse, who came to live with the Andersons. Complaints from neighbors about property devaluation due to "health issues" and noisome odors so severe as to prevent their children from playing outside were brought to the attention of the City. Anderson refused to obey the command by the City to remove the horse and, in fact, housed a second one, with support from another physician supporting 'the housing of two miniature horses' for C.A.'s therapy. [2]

Indeed, the Anderson menagerie included five dogs, goats, chickens, and pigs, in addition to the two miniature horses. Faced with a City Council decision that the horses were "clearly not service animals," the Andersons moved and replaced the equines with Ellie, whom they trained to assist C.A. while navigating the backyard. Five months later, the City enacted Ord. 2013-1 "to prohibit keeping of farm animals at residences within the city" except as permitted by local, state, or federal law. As the criminal case concerned the same horse and same residence at issue, the federal appeals court took a hard look at whether the criminal proceeding estopped Anderson in the civil case, looking to Ohio state law of preclusion to ascertain "whether the burdens of proof, discovery rules, evidentiary rules, procedure, or constitutional safeguards effective at the criminal stage could have affected that party's willingness or ability to pursue the argument at issue in a way that no longer obtained at the civil stage." [3]

Holding that her ability to pursue her ADA and FHA claims was "qualitatively different" in the criminal case than in the civil one, and that she had less motivation to fully litigate them in municipal court, particularly where "drawn involuntarily into those proceedings by the City's citations, [where she] faced only a small fine, and where the court had no authority to order the City to let her keep her horse at home," her claims were not barred by *res judicata*. [4]

Be mindful, however, that some state antidiscrimination laws impose an administrative finding requirement to any civil suit against a place of public accommodation. Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 1205, 19 A.D. Cas. (BNA) 1634 (11th Cir. 2007) held that Florida's Civil Rights Act barred any civil suit unless the aggrieved person sought an administrative hearing within 35 days after a decision of no reasonable cause by the Commission. As Sheely failed to either furnish more information to the Commission within 10 days or to request such a hearing, her suit under the Act was precluded. Gutman v. Quest Diagnostics Clinical Laboratories, Inc., 707 F. Supp. 2d 1327 (S.D. Fla. 2010), interpreted Florida's service animal statute as requiring wheelchair-bound Ilana Gutman, a minor suffering from various disabilities, including cerebral palsy, to submit a presuit notice prior to having filed suit against Quest Diagnostics when it effectively expelled her from the facility and compelled her to submit to a blood draw in the cramped and unsterile environment of a parked car. While her ADA claim remained, the negligent supervision and training claims against the laboratory under Fla. Stat. Ann. § 413.08, as well as claims for outrage and negligence were dismissed per Fla. Stat. Ann. § 766.106, Florida's medical malpractice statute, which requires notice 90 days before filing claims for any claims "arising out of the rendering of, or the failure to render, medical care or services," including those based on malpractice or negligence. [5]

VII. Proper Parties

§ 35. Generally

[Cumulative Supplement]

Individuals engaging in discriminatory housing practices, including their agents, may be sued. This includes, but is not limited to dwelling owners, landlords, property managers, housing associations, and appraisers. [1] Disabled persons, and spouses or relatives of the disabled person who have suffered a cognizable injury and otherwise satisfy the Article III "injury-in-fact" standing requirements, may bring such claims. However, federal courts may not erect prudential barriers to standing in an FHA case, per Havens Realty Corp. v. Coleman, 455 U.S. 363, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982). "[T]he sole requirement for standing to sue under [the Fair Housing Act] is the Art. III minima of injury in fact …." [2] Hence, fair housing testers, developers, apartment owners, and fair housing groups may have standing to sue on their own behalves and of other alleged victims. [3]

ADA Titles II and III follow the similar standing rubric of the FHA, such that both disabled persons and nondisabled relatives of such individuals may be considered aggrieved for purposes of standing. [4] Associational standing principles, to benefit nonprofit advocacy organizations for those with disabilities, for instance, also apply. [5] Proper Title III defendants include owners, lessors, lessees, or operators of places of public accommodation. Even if the landlord enjoys exemption from Title III requirements, a tenant operating a place of public accommodation in leased space may still be held liable. [6]

Stevens v. Hollywood Towers and Condominium Ass'n, 836 F. Supp. 2d 800 (N.D. Ill. 2011), examined whether the spouse of a disabled woman could claim his own violation of the FHA. While concerned bystanders may not have standing to sue under the Act, "any person associated with [a disabled] buyer or renter" who has been subject to discriminatory housing practices does. [7] Though opaque, the "distinct and palpable injury" necessary to warrant a claim by an associated plaintiff did exist here since the Association's refusal to provide a reasonable accommodation to Mrs. Spencer also affected Mr. Spencer.

Chavez v. Aber, 122 F. Supp. 3d 581 (W.D. Tex. 2015), held that the mother of a mentally impaired child suffered "distinct and palpable injuries" to establish standing to sue. In this emotional support animal case, [8] Chavez's stake in the litigation included her paying out-of-pocket for increased rent at the new home to which she relocated, as well as moving costs, resulting from the defendants' refusal to reasonably accommodate her son and the subsequent harassment her family endured. Accordingly, Article III injury-in-fact was established. [9] Applying standard tort agency principles, *Chavez* also held that Dick Aber, the owner, director, and manager of Fairview Court, LLC, which owned the duplex that Chavez leased, was a proper defendant because he personally assisted Fairview in the alleged discriminatory conduct. In rejecting Aber's contention that the FHA "imposes liability upon the corporation for the acts of its officers or owners, not the other way around," the court explained that such assertion "finds no support in the law" and cited to courts that have imposed individual liability for discriminatory actions by directors, employees, and shareholders for ratifying, participating in, or authorizing fair housing torts. [10]

When Henry Valder appeared in court on a drug charge, Judge Debbie Kleven told him to keep his alleged service dog outside the courtroom. He then sued Judge Kleven under Title I-III of the ADA and Section 504 of the Rehabilitation Act. In dismissing the suit against Judge Klevin, Valder v. City of Grand Forks, 217 F.R.D. 491 (D.N.D. 2003) held that the Title II and III of the ADA and Section 504 of the Rehabilitation Act of 1973 do not permit suits against individuals in their individual (as opposed to official) capacities, citing Alsbrook v. City of Maumelle, 184 F.3d 999, 1005 n8, 9 A.D. Cas. (BNA) 897 (8th Cir. 1999) and Lollar v. Baker, 196 F.3d 603, 609 (5th Cir. 1999). Further, as the judge did not employ Valder, Title I did not apply.

CUMULATIVE SUPPLEMENT

Cases:

Blind person had standing to sue limited liability company (LLC) under Disabled Persons Act (DPA) after LLC's guard dog attacked service dog on sidewalk along LLC, although blind person was not LLC's customer, where blind person presented himself at public sidewalk with intent of using it in manner it was typically offered to public. Cal. Civ. Code § 54.3. Ruiz v. Musclewood Investment Properties, LLC, 28 Cal. App. 5th 15, 2018 WL 4846336 (2d Dist. 2018).

[Top of Section]

[END OF SUPPLEMENT]

VIII. Statute of Limitations

§ 36. Generally

A litigant bringing a Title I ADA or Section 501 Rehabilitation Act action must initiate a civil action within 90 days after receiving a right-to-sue letter from the EEOC. [1] Because the right-to-sue letter can only be generated after the mandatory filing of an administrative complaint with the EEOC within the 180 (or 300)-day periods described above, [2] the date when most actions will be filed is practically less than two years from the date of discrimination, giving the average processing time of a grievance by the reviewing agency. No right-to-sue letter is required for suits brought under Titles II and III of the ADA, Section 504 of the Rehabilitation Act, or the FHA.

The statute of limitations on a Title II and III ADA case, as well as a Section 504 of the Rehabilitation Act case, is presumptively the state's personal injury statute of limitations. [3] However, 28 U.S.C.A. § 1658 applies a four-year catchall statute of limitations for actions arising under federal statutes enacted after December 1, 1990. The ADAAA went into effect in January 2009. Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 124 S. Ct. 1836, 158 L. Ed. 2d 645, 93 Fair Empl. Prac. Cas. (BNA) 993, 85 Empl. Prac. Dec. (CCH) ¶ 41634 (2004) held that the plaintiff had four years to file (as opposed to two years under the Illinois personal injury statute) with respect to claims "made possible by a post-1990 enactment" or "whenever a post-1990 enactment creates a new right." [4]

Actions under Section 504 follow the state personal injury statute of limitations.

An aggrieved party has two years after the occurrence or termination of an alleged discriminatory housing practice or breach of a conciliation agreement entered into under the FHA to file a civil action in federal or state court. [5] However, once an administrative law judge has commenced a hearing on the record with respect to a charge, it is too late to initiate a private suit. [6]

Mental illness may toll the statute of limitations if the illness in fact prevents the grievant from managing his affairs and understanding his legal rights so as to act upon them. [7]

IX. Remedies

§ 37. Generally

Title I of the ADA [1] and Section 501 of the Rehabilitation Act [2] apply the remedies and procedures set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e-4, e-5, e-6, e-8, e-9. Aggrieved individuals must exhaust all administrative remedies before initiating civil action under the Rehabilitation Act of 1973. [3] Title II of the ADA and Section 504 are subject to the "remedies, procedures, and rights" found in Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d. [4]

§ 38. Americans with Disabilities Act Title I and Section 501 of Rehabilitation Act

Title I of the ADA and Section 501 of the Rehabilitation Act adopt the remedies of Title VII of the Civil Rights Act. [1]

42 U.S.C.A. § 1981a(a)(2) provides that complaining parties proving unlawful *intentional* discrimination (not disparate impact) or failure to grant a reasonable accommodation under Title I of the ADA or Section 501 of the Rehabilitation Act may recover compensatory and punitive damages as allowed in 42 U.S.C.A. § 1981a(b), subject to a statutory cap on "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages" in proportion to a covered entity's number of employees—$50,000 (15-100 employees); $100,000 (101-200 employees); $200,000 (201-500 employees); $300,000 (more than 500 employees). [2] This cap does not restrict recovery of back pay, interest on back pay, or other types of relief authorized under 42 U.S.C.A. § 2000e-5(g). [3] Where compensatory damages are permitted, emotional harm may be proved absent medical evidence. [4]

Note that where the discriminatory practice involves providing a reasonable accommodation under Title I or Section 501, no compensatory damages may be awarded "where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business." [5]

Because some courts do not allow recovery of compensatory damages in retaliation cases, there has been some dispute over whether to characterize an accommodation claim (for which compensatory damages are recoverable) or a retaliation claim (for which they may not be). In Brown v. Unified School Dist. No. 500, Kansas City, KS, 338 F. Supp. 2d 1229, 1232, 192 Ed. Law Rep. 784 (D. Kan. 2004), the trial court explained that accommodation requests may be classified as protected activity for purposes of a retaliation claim, where the plaintiff had a good faith belief that she was entitled to the requested accommodation. [6]

It then held that compensatory damages are not recoverable for violations of the retaliation portion of Title I of the ADA, 42 U.S.C.A. § 12203. Circuits have split, however, as to whether a retaliation claim permits recovery of compensatory damages. [7]

Appropriate claims under Title I of the ADA and Section 501 of the Rehabilitation Act of 1973 entitle a prevailing plaintiff to back pay. [8] She may recover overtime, shift differentials, commissions, merit and cost-of-living increases, tips, and raises due to promotion upon sufficient proof. [9]

If proven with reasonable certainty, a plaintiff may also receive compensation for fringe benefits, including vacation pay, pension, and retirement benefits, savings plan contributions, stock options, and bonuses, profit-sharing benefits, and medical and life insurance benefits. [10] Prejudgment interest is also commonly a viable element of recovery for back pay. [11]

Should a lump sum payment have negative tax implications, the plaintiff may receive additional back pay to compensate for that liability. [12]

Where reinstatement is not possible due to lack of an available position, an antagonistic working relationship, or history of employer resistance to antidiscrimination efforts, front pay may be awarded. [13] Equitable relief in the form of an injunction to end unlawful employment practices is available under the ADA and Rehabilitation Act [14] and to make-whole the plaintiff as nearly as possible to the position she would have held absent discrimination. [15] Such remedies include reinstatement, transfer,

promotion, retroactive seniority, tenure, benefit restoration, salary adjustment, expungement of adverse documentation from personnel files, letters of commendation, and reasonable accommodation. [16]

Monetary damages are capped under Title I.

The prevailing plaintiff recovers reasonable attorney's fees when succeeding on a "significant issue" and obtaining some affirmative relief that "materially alters the legal relationship between the parties." [17] Prevailing defendants obtain reasonable attorney's fees only if plaintiff's claim was frivolous, unreasonable, or without foundation, even if not brought in bad faith or where the plaintiff "continued to litigate after it clearly became so." [18]

§ 39. Americans with Disabilities Act Title II

Title II of the ADA adopts the remedial provisions of Section 505 of the Rehabilitation Act of 1973, [1] which, in turn, incorporates those of Title VI of the Civil Rights Act of 1964. [2] Such remedies include compensatory and injunctive relief; however, damages only are permitted in the case of intentional discrimination. [3] Punitive damages are not available in a Title II case. [4] Intentional conduct giving rise to an award of compensatory damages requires proof of conduct resulting from deliberate indifference to the rights of the disabled person or motivated by discriminatory animus or ill will due to disability. [5] The deliberate indifference standard requires proof of (1) knowledge that harm to a federally protected right is substantially likely, and (2) failure to act upon that likelihood by an official with authority to address the alleged discrimination. Evidence that the public entity knew that an accommodation was required meets the first prong. Where the public entity fails to act with an element of deliberateness (not mere negligence), the second prong is satisfied. [6]

§ 40. Americans with Disabilities Act Title III

In private suits, Title III of the ADA applies the remedies and procedures of Title II of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000a-3(a). [1] Title II of the Civil Rights Act permits *private* suit for injunctive relief and reasonable attorney's fees only; no compensatory damages are permitted. [2] Actions by the Attorney General allow for monetary damages and civil penalties. [3] No punitive damages are permitted under Title III. [4] Although federal law will not allow a private plaintiff to recover damages under Title III of the ADA, she may acquire them under applicable state antidiscrimination laws, such as California's Unruh Civil Rights Act, Cal. Civ. Code § 51(f), which states, "A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section," and § 52(a), which provides that whoever discriminates contrary to § 51 "is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than $4,000, and any attorney's fees that may be determined by the court in addition thereto[.]" Munson v. Del Taco, Inc., 46 Cal. 4th 661, 670, 94 Cal. Rptr. 3d 685, 208 P.3d 623, 21 A.D. Cas. (BNA) 1761 (2009) held that an Unruh Civil Rights Act plaintiff relying on § 51(f) may obtain damages for denial of full access to a business establishment in violation of the ADA and the Unruh Civil Rights Act without proof the denial involved intentional discrimination. [5]

The court in O'Connor v. Scottsdale Healthcare Corp., 871 F. Supp. 2d 900 (D. Ariz. 2012), adhered to on reconsideration, 2012 WL 2106365 (D. Ariz. 2012), aff'd, 582 Fed. Appx. 695 (9th Cir. 2014) and aff'd, 582 Fed. Appx. 695 (9th Cir. 2014), dismissed Kimberly O'Connor's ADA Title III case against Scottsdale Healthcare Corp. when the hospital security guard insisted that Peaches, O'Connor's leashed dog donning a blue cape with two patches reading "Service Dog," be registered before allowing O'Connor to visit her mother, who had been admitted for atrial fibrillation. After being escorted from the premises, supervisors spoke to O'Connor and asked her if Peaches were a service animal and if she were disabled. O'Connor's affirmative responses resulted in the head of security immediately permitting entrance without registration. On arriving agitated at her mother's room, O'Connor's mother had a stroke. At no time thereafter did the hospital require O'Connor to register Peaches or delay her entry.

In dismissing her claim of constructive denial of public accommodation, the court held that brief delay and a very unpleasant interaction with a security guard did not confer standing under the ADA because the injury was too *de minimis*. [6] Alternatively, since monetary damages were not available to a private Title III ADA plaintiff, O'Connor could only obtain injunctive relief. Since she never had another encounter, her subjective, unsubstantiated fears of a possible incident did not suffice to establish standing. [7]

§ 41. Section 504 of Rehabilitation Act

Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 19 A.D. Cas. (BNA) 1634 (11th Cir. 2007) determined a matter of first impression in all of the federal circuit courts of appeals, viz., whether a Section 504 plaintiff may recover noneconomic damages for intentional discrimination. Section 505(a)(2) of the Rehabilitation Act adopts the remedies set forth in title VI of the Civil Rights Act of 1964, which in turn does not explicitly provide for a private right of action or delineate specific judicial remedies. [1]

The United States Supreme Court found an implied right of action in Barnes v. Gorman, 536 U.S. 181, 185, 189, 122 S. Ct. 2097, 153 L. Ed. 2d 230, 13 A.D. Cas. (BNA) 193 (2002), and held that "federal courts may use any available remedy to make good the wrong done." Citing Restatement Second, Contractsto apply a contract metaphor, and actual contractual terms, the court found that a victim's emotional distress was a probable result of a funding recipient's intentional breach of a promise not to discriminate and that breach of contracts personal in nature would be so coupled with matters of mental concern or solicitude or the sensibilities of that party that it should be known to the parties that mental suffering will result, integrally and inseparably, from the breach. [2] Bell v. Hood, 327 U.S. 678, 66 S. Ct. 773, 90 L. Ed. 939, 13 A.L.R.2d 383 (1946), further endorsed this holding. [3]

§ 42. Fair Housing Act

The FHA permits recovery of standard tort remedies, including economic and noneconomic damages resulting from the discriminatory practice. [1] These may include research and relocation costs, moving expenses, costs of interim lodging, additional costs for a more expensive dwelling than that which plaintiff was denied, storage, commuting costs, and medical expenses. [2]

General damages for pain, suffering, humiliation, and mental anguish caused by the discriminatory act are also recoverable. [3]

Punitive damages are also recoverable for intentional and overt discriminatory acts. In 1988, the FHA was amended to eliminate the $1,000 cap on punitive damages. The court may also award the prevailing party, except the United States, a reasonable attorney's fees and costs. [4]

Be mindful that the prevailing party may also recover fees under a lease or rental agreement, independent of the FHA, as occurred in Mazzini v. Strathman, 140 So. 3d 253 (La. Ct. App. 4th Cir. 2014).

X. Mootness

§ 43. Generally

Annette Sheely, a blind woman relying on an 80-pound Labrador retriever guide dog, accompanied her minor son to an imaging facility, "MRN," for an MRI. Told to wait in the "holding area," Sheely asked why she and her guide dog could not go with her son, who asked her to be with him. The receptionist explained that the unwritten no-dogs policy arose from concerns of space, safety, and to prevent metal in the canine's harness from interfering with the equipment. Law enforcement found no

violation of law since the facility was a private business, not a "public" place. Thereafter, Sheely sued the facility in federal court, invoking Title III of the ADA and Section 504 of the Rehabilitation Act, as well as damages under the Florida Civil Rights Act and Florida's service animal statute. After nine months of litigation and eight months of discovery, MRN moved for summary judgment after announcing that, two days earlier, it implemented a written Service Animal Policy rendering all of Sheely's claims moot. The district court agreed, finding that MRN's voluntary cessation of the allegedly wrongful conduct nullified her claims for declaratory and injunctive relief. Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 19 A.D. Cas. (BNA) 1634 (11th Cir. 2007) reversed.

"A defendant's assertion that it has no intention of reinstating the challenged practice 'does not suffice to make a case moot' and is but 'one of the factors to be considered in determining the appropriateness of granting an injunction against the now-discontinued acts.' " [1]

Finding that this was likely not an isolated incident but a continuing discriminatory practice, that MRN likely ceased its behavior to avoid liability rather than to act in accordance with a genuine change of heart, and its failure to acknowledge wrongdoing, the appeals court could not *clearly* find that MRN did not change course simply to deprive the court of jurisdiction. [2]

The district court in Alejandro v. Palm Beach State College, 843 F. Supp. 2d 1263, 282 Ed. Law Rep. 201 (S.D. Fla. 2011), held similarly in finding promises by the College to allow Kyra Alejandro, a special education student, to bring her psychiatric service dog to class did not make "absolutely clear that the alleged wrongful behavior could not reasonably be expected to recur." [3]

Alejandro's dog was trained to "establish eye contact, nip her fingers, or snort when he perceive[d] imminent panic attack," yet the College refused to allow her to bring him to class, even after she submitted to their requests to produce "voluminous documentation" describing her need for a service animal. She defied the College and continuing taking the dog to class until she was escorted off campus and disciplinary proceedings ensued. Aside from suffering from debilitating anxiety and panic attacks, Alejandro missed many classes, resulting in a failing grade. Though eventually permitted back in class, on three separate occasions that followed, staff questioned her regarding whether she could bring her dog on campus, escorted her from the library, and banned her from the writing lab. She then received a letter stating she had not demonstrated a legitimate need for the dog, prompting her to initiate suit under Title II of the ADA and Section 504 of the Rehabilitation Act. Alejandro then sought an injunction in federal court, to which the College responded that the aforementioned letter resulted from internal miscommunication and she would have no further difficulties utilizing campus facilities with her dog. The College urged the court to dismiss the motion as moot. Having found that Alejandro had demonstrated a substantial likelihood of success on the merits and that the College had made such promises before, the court granted injunctive relief.

XI. Preemption/Supremacy—Breed/Species Bans

§ 44. Generally

Municipal or state laws imposing restrictions on the control of certain species having nothing to do with behavior must yield to federal antidiscrimination laws based on preemption and supremacy doctrines. [1] Those ordinances categorically discriminating against the keeping, owning, or possessing of assistance animals of prohibited breeds or species have also increasingly come under close scrutiny. Consider the following illustrative examples.

In Chavez v. Aber, 122 F. Supp. 3d 581 (W.D. Tex. 2015), [2] Yvonne Chavez's son M.C. suffered mental health disabilities for which he desired to keep a mixed-breed pit bull as an emotional support animal in a rented "no pets" duplex managed by Fairview Court, LLC and its director Dick Aber. M.C.'s psychiatrist Dr. Moreira prescribed a support dog for M.C., whereupon the Chavezes adopted Chato, a three-month-old pit bull mix. Despite requesting a reasonable accommodation to keep Chato, Aber would not relent. He issued Chavez a notice to vacate and threatened to have animal control seize Chato from the premises. Under duress, she removed Chato. Two days later, though promising not to file an eviction action if she removed Chato, Aber sued,

claiming she violated the rental agreement by "[k]eeping a potentially dangerous dog (a pit bull-full blood) at the [Duplex]." The Justice of the Peace ruled against Chavez. Thereafter, Chavez made a second accommodation request to allow Chato on the premises, aided by a letter from a veterinarian confirming no signs of aggression. To this, Aber's attorney remarked that the "problem with [Chavez's Second Accommodation Request] is that she has chosen to get a pit bull [and] [t]hat choice of dog is completely unacceptable." [3]

Aber, instead, offered Chavez (1) to find other housing that would allow pets, (2) choose an acceptable breed of dog; or (3) propose a pet that does not run loose in the yard.

A week later, a canine behaviorist evaluated Chato, finding him well-socialized and of calm manner. Chavez then lodged a HUD complaint, which was forwarded to the Texas Workforce Commission Civil Rights Division. Chato returned home, but M.C. perseverated with fear that Aber would remove or harm Chato. Indeed, Aber called animal control to report Chato as unconfined, but no action was taken. Aber then sent a proposed lease renewal and addendum, offering to allow Chato provided she paid an extra $200 a month in rent, a pet deposit for Chato, and barred Chato from the Duplex's shared yard. If she did not sign, Aber warned, he would terminate Chavez's tenancy. [4]

Chavez's attorney responded that the proposed lease violated the FHA and Texas Property Code by charging rent beyond that paid by tenants in units of comparable size, by imposing a pet deposit, and holding her to strict rules than followed by other tenants' dogs. Aber installed a fence to separate the yard shared by Chavez. Then Chavez requested repairs for water damage in the Duplex. Though city inspectors did not deem the premises uninhabitable, Aber gave Chavez a 30-day termination notice to vacate "to allow the landlord to perform essential repairs upon the premises, and make the apartment tenable." Believing it a pretext for retaliation, Chavez did not leave. She then received a three-day notice to vacate and, then, a second eviction lawsuit, which resulted in entry of judgment against her and returned possession to Aber. [5]

Buffeted by such historical treatment, Chavez, M.C., and Chato moved to a dwelling with a rent that was $230 more per month. She then filed a federal action for discrimination under the FHA and the Texas Fair Housing Act.

The court rejected Aber's contention that Chato was, *per se,* a direct threat and unreasonable as an accommodation for M.C.'s disability. Citing to the allegations in the complaint that a veterinarian found that Chato "did not show signs of aggression" and that a behaviorist concluded that he exhibited a "calm manner that is indicative of a dog with no aggression, fear or lack of socialization issues," the court found sufficient basis to deny the defendants' Fed. R. Civ. P. 12(b)(6) motion. [6]

While the court focused on the requirement of a searching inquiry into the specific threat profile of Chato, it also cited to the 2013 HUD notice that states "[b]reed, size, and weight limitations may not be applied to an assistance animal." Accordingly, "it appears that the mere fact that Chato is a mixed breed pit bull is not alone sufficient under the HUD Notice to establish that Chato is per se unreasonable as an accommodating support animal." [7]

Aber also argued that no denial of a reasonable accommodation request occurred and, therefore, no FHA violation existed, because "Plaintiffs actually kept [Chato] while Fairview was attempting to engage [Chavez] in the interactive process." To this the court held that denial can be actual or constructive, as in the case of indeterminate delay having the same effect as outright denial. [8] It also referenced the alleged verbal refusals of the first accommodation request. The court also denied the motion to dismiss the FHA retaliation claim, as Chavez raised adequate allegations that (1) she engaged in activity the FHA protects; (2) she was subjected to an adverse action by the defendants; and (3) a causal connection existed between the protected activity and adverse action. "Protected activities [under the FHA] include the request for a reasonable accommodation for handicapped persons." [9]

Specific acts of retaliation included threatening to have animal control take Chato, issuing notices to vacate, starting eviction proceedings, and refusing to renew the lease on nondiscriminatory terms.

Kristy Pruett, a woman suffering from juvenile onset diabetes and bouts of hypoglycemic disorientation, sought the assistance of a chimpanzee who sat with her when alone, helped her by retrieving candy or beverages with sugar on command, turning on lights, picking up remote controls and phones, sleeping with her, and providing mental stimulation. Interestingly, the court referred to Pruett's ex-husband who "deem[ed] himself Pruett's service animal such that she does not need the assistance of a primate." [10]

It should also be noted that Ms. Pruett could not care for this two-year-old chimpanzee on her own, but relied on her ex to change the diaper, prepare food, and feed. The chimpanzee also suffered severe allergic reactions resulting in anaphylaxis and demanding the use of an epi pen to prevent epileptic shock. Though she previously kept a Tonkean ape for nearly a decade, the Arizona Fish and Game Department ("AFGD") restricted private possession of chimpanzees and refused her an import permit. When she applied for, but did not receive, a USDA exhibitor permit, AFGD told her to export the chimpanzee as unlawfully possessed restricted wildlife. She refused and then filed suit under Title II of the ADA and Section 504 of the Rehabilitation Act. The court found for the State of Arizona, concluding that it did not have to reasonably accommodate her disability by waiving the possession of wildlife restriction because the chimpanzee did not *yet* meet the definition of service animal (though one in-training), nor did the training it did possess specifically ameliorate her disability. Further, she had alternatives available, such as acquiring another Tonkean ape (not banned in Arizona) or implanting a continuous glucose monitor with insulin pump, or strapping a cell phone and glucose gel pack to her belt. Pruett v. Arizona, 606 F. Supp. 2d 1065, 21 A.D. Cas. (BNA) 1520 (D. Ariz. 2009).

Autistic woman Joan Newberger faced a similar outcome to Ms. Pruett. New Orleans police officers and Louisiana Department of Wildlife and Fisheries employees accosted Ms. Newberger on Bourbon Street in the French Quarter of New Orleans as she and her caregiver were strolling four small monkeys festooned in pirate attire. They seized the animals and cited her for cruelty to animals and possession of nonhuman primates in public and without a license, upon which she was convicted. The district court dismissed her ADA lawsuit in Newberger v. Louisiana Dept. of Wildlife and Fisheries, 2012 WL 3579843 (E.D. La. 2012), premised on the notion that the monkeys did not meet the earlier (and broader) definition of service animal, [11] since the plaintiff lacked 'evidence to set a service animal apart from an ordinary pet', notwithstanding that the ADA does not require documentation of individualized training, and finding that the plaintiff's joy in "dressing the monkeys and that they had a calming effect on her" did not suffice. [12]

Another notable Title II case involved Snickers, a part pit bull service dog certified to assist James Sak, a retired law enforcement officer who suffered from a hemorrhagic stroke leaving the right side of his body permanently disabled and confined to a wheelchair. [13] When Sak and his wife moved from Chicago to Aurelia, Iowa, a city of 1,100 people, he was told to remove Snickers or face daily citations for violating the city code prohibiting the keeping, harboring, owning, or possessing a pit bull dog. The code also threatened Sak with confiscation of Snickers. In a detailed opinion, the federal district judge issued a preliminary injunction preventing enforcement of the ordinance against Sak upon payment of a one dollar security. The court noted 28 C.F.R. § 35.130(b)(7) requires a public entity to make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless the entity can show that the changes would fundamentally alter the nature of the service, program, or activity. The court rejected the City's first argument that Sak had no ADA claim because neither he nor Snickers was denied access to any public services or even public places, reasoning that the ADA extended to the regulation of any activity by an ordinance which is, "itself, a program, service, activity or benefit of the City that Title II of the ADA will reach," further citing cases that treat municipal zoning ordinances as public "programs" or "services" the enforcement of which constituted local government "activity." Furthermore, 42 U.S.C.A. § 12132 barred discrimination by the entity, independent of any services, programs, or activities—the focus being disparate administration of the pit bull ban without regard for Sak's disability. [14]

Aside from finding a likelihood to prevail on the merits, the court also considered the irreparable harm to Sak to include degradation in quality of life (e.g., he had fallen from his wheelchair twice without Snickers to assist him with bracing and

reseating and called 911 for assistance). Sak convincingly argued that Snickers was tantamount to a wheelchair. Moreover, replacing Snickers with a nonpit bull service dog would still cause irreparable harm "because Snickers has been individually trained for Sak's individual needs," and would result in considerable lost time and difficulty obtaining and training a substitute animal, while Sak would suffer the loss of security and potential for injury in the interim. In balancing the private interest of Sak against the public interest in protecting health and safety, the court rejected that the former must yield where exceptions could be made to help disabled individuals, as in the case of Crowder v. Kitagawa, 81 F.3d 1480, 1485, 15 A.D.D. 1, 5 A.D. Cas. (BNA) 810 (9th Cir. 1996), finding that Hawaii's rabies quarantine violated Title II as applied to the visually impaired, since Congress did not intend to separate the blind from their guide dogs. [15]

Afflicted with multiple sclerosis and wheelchair-bound, Deborah Fischer resided in the Sabal Palm Condominiums of Pine Island Ridge Association with her service dog Sorenson and husband Laurence. The Association denied her request for a reasonable accommodation to keep Sorensen due to its no-pets policy and sought a declaratory judgment in federal court to ascertain whether the FHA required modification for Sorenson. Fischer counterclaimed with an accommodation claim against the Association, its attorney, and its President of the Board. The skeptical Association regarded Sorenson as a fake, a topic explored before the United States Senate in a background paper, which may be found at http://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/Background% 20Paper% 20for% 20Fake% 20Service% 20Dog%20Hearing% 20-2-14-14% 29.pdf. Despite providing a letter from a regional manager from the Canine Companions for Independence ("CCI") and a medical history form completed by her primary-care doctor as part of the application to CCI, which the court considered to have extinguished any reasonable doubt that Deborah was disabled and Sorenson was specifically trained to assist her disabilities, the Association demanded actual medical records. Again, Deborah acquiesced, but "[t]his still wasn't enough for Sabal Palm." Two months later, the Association commenced the declaratory judgment action and corresponded that the records were insufficient to entitle her to an accommodation, but she could "temporarily keep" Sorenson during the litigation. [16]

In ruling for Fischer, the district court judge called it "a sad commentary on the litigious nature of our society" and a "disservice to people like Deborah who actually are disabled and have a legitimate need for a service dog as an accommodation under the FHA" when the Association "turned to the courts to resolve what should have been an easy decision." [17] Indeed, "Sabal Palm got it exactly—and unreasonably—wrong." [18]

Finding the Association's claim that it was unreasonable to accommodate a dog in excess of 20 pounds both unpersuasive and lacking in common sense, the court held that a dog of Sorenson's size was matched to the height of Deborah's chair, enabling him to better assist by reaching light switches, opening and closing doors, and retrieving items. Moreover, the contention that the Association could propose what it considered a sufficient alternative was a misstatement of the law:

> Sabal Palm's implied argument—that even if a dog is reasonable or necessary for Deborah, a dog 20 pounds or under would suffice—is akin to an argument that an alternative accommodation (here, a dog under 20 pounds), would be equally effective in meeting Deborah's disability related needs as a dog over 20 pounds. The Joint Statement's comments on alternative accommodations proposed by the housing provider are highly persuasive and useful in evaluating this argument.

> There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable …. Since a dog over 20 pounds is a reasonable accommodation, Deborah's (commonsense) belief that a dog over 20 pounds—in particular, a dog of Sorenson's size—is better able to assist her renders the need to evaluate alternative accommodations unnecessary as a matter

> of law. That a blind person may already have a cane or that he or she could use a cane instead of a dog in no way prevents the blind person from also obtaining a seeing-eye dog as a reasonable accommodation under the FHA. A contrary result is absurd. [19]

According to the April 2013 HUD Statement Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, [20] "[b]reed, size, and weight limitations *may not* be applied to an assistance animal." (at 13). While ruling for the Fischers, the court dismissed the case against the Association lawyer, who did not vote or have authority to vote on the decision to sue Deborah, but found that the Board president bore personal liability for violating the FHA.

Anderson v. City of Blue Ash, 798 F.3d 338 (6th Cir. 2015) [21] examined the enforceability of a municipal law banning equines in residential zoned areas. Turning to her ADA Title II claim for reasonable modification, Anderson urged that not only was her daughter C.A. an individual with a disability, but that Ellie, a miniature horse, did meet the ADA regulatory requirements and the assessment factors imposed by 28 C.F.R. § 35.136(i)(1), (2). The City argued that Ellie would not qualify as a reasonable modification if she did not aid C.A. with her daily life activities (inside and outside the home), and where C.A. could walk without the horse. Holding that that a service animal need only be trained to provide specialized assistance at *certain* times and in *certain* places, and remarking that C.A.'s seizure-response dog met the definition of service animal though specifically trained to help her only if she seized while sleeping (but not during the rest of the day), the court sided with the Andersons. [22]

Additionally, lack of service-animal training certification by Ellie's instructor was legally immaterial. Determining that the reasonable modification inquiry is "highly fact-specific" in nature and, thus, largely incompatible with summary judgment adjudication, the court held that factual questions existed as to whether Ellie satisfied the miniature horse "assessment factors" identified in 28 C.F.R. § 35.136(i)(2). [23]

Discerning no intentional discrimination on the part of the City, which merely responded to citizen complaints, the court dismissed the ADA Title II discriminatory intent claim. [24]

Anderson's FHA claims fared well. Noting that no minimum regulatory requirements for animals informed the reasonable accommodation analysis, the court instead focused on whether Ellie was "necessary" and "reasonable" to afford C.A. an "equal opportunity" to enjoy the residential property. Rejecting the City's contention that C.A. could obtain therapy from a horse at a nearby farm or stable and did not need to house the equine at her home, the court referenced Dr. Levin's letter stating that she could not seize the same benefit after traveling and, besides, "the availability of an alternative treatment away from the plaintiff's dwelling is irrelevant to the FHAA, which requires reasonable accommodations necessary for a disabled individual to receive the '*same* enjoyment from the property as a nondisabled person would receive,' … not merely those accommodations that the disabled individual cannot function without or for which no alternative is available away from the dwelling." Furthermore, that C.A. could ambulate without Ellie was legally irrelevant since the FHA required accommodations needed to achieve housing equality, not only those that were absolutely needed for her treatment or basic ability to function. [25]

Unavailing was the City's argument that to allow Ellie would require a fundamental alteration of the City's zoning scheme that sought to manage and order health, aesthetics, and property values. "Requiring public entities to make exceptions to their rules and zoning policies is exactly what the FHAA does. The fact that the City banned horses from residential property does not mean that any modification permitting a horse necessarily amounts to a fundamental alteration." [26]

For the same reason that the ADA disparate intent claim failed, the court affirmed dismissal of the FHA disparate treatment claim. No disparate impact could be proven, either, since Ord. 2013-1 specifically exempted animals protected by the FHA. [27]

A contrary result occurred in the Title II miniature horse case of Access Now, Inc. v. Town of Jasper, Tennessee, 268 F. Supp. 2d 973 (E.D. Tenn. 2003), which refused to enjoin the Town from enforcing an equine ban in a residential neighborhood. Tiffany Masterson, 9, suffering from spina bifida and hydrocephalus, causing occasional grand mal seizures (managed by medication) and incontinence, sought to have a miniature service horse notwithstanding the Town of Jasper's prohibition. Cited by the Town for violating the ordinance, Masterson's mother, Pamela Kitchens, appeared and lost in municipal court, where at no time did she or any other person claim that the horse was Tiffany's service animal protected by the ADA. On appeal to the Marion County Circuit Court, Kitchens invoked the ADA and applied for a permit to keep the horse at her residence indefinitely, adding that the horse would remain in a barn 23 hours per day and spend one hour per day on a fenced half-acre. The Town attorney requested documentation confirming the horse's use by Masterson as a service animal. At no time did Kitchens produce it. Meanwhile, the Circuit Court denied the ADA defense and found Kitchens guilty, ordering her to remove the horse. Less than a month later, Kitchens filed a federal ADA action. Kitchens maintained that Masterson's major life activities of walking, standing, and caring for herself were significantly impaired by her disabilities. She added that the horse, who received some basic socialization training, responded to a lead rope and followed directions to move left or right, walk or stop, and allowed Tiffany to grasp the harness or the mane or back and pull herself to a standing position. She claimed to only use the horse inside the home or the backyard. [28] Given "overwhelming evidence" to the contrary (including medical records and deposition testimony of her own treating physician stating he would not recommend that she use a horse as a service animal), and the "great[] exaggerat[ion] [of] the purported need of Tiffany to use the horse as a service animal under the ADA," the court held that Masterson was not an individual with a disability for ADA purposes because she did not suffer substantial limitations as alleged. Further, the court held that the horse did not perform tasks needed by Tiffany to overcome a disability. [29] It elaborated:

> One fact which clearly demonstrates Tiffany does not need the horse as a service animal is that Tiffany does not utilize the horse when she is traveling, walking and moving around outside the confines of the Kitchens' house and back yard … If the horse was truly a necessary service animal, Tiffany would need to use it on a regular basis in many other places away from Kitchens' residence. [30]

XII. Sample Materials

§ 45. Plaintiff's discovery to defendant in Title II ADA case

INTERROGATORY NO. 1: State the names, last known addresses, and telephone number(s) of all persons having knowledge of any facts regarding liability or damages claimed by plaintiff.

INTERROGATORY NO. 2: State the name and otherwise identify all persons you expect to call as an expert witness at the trial of this action.

INTERROGATORY NO. 3: With respect to each person listed in your answer to Interrogatory Number 2 above, please state:

a. The subject matter on which the expert is expected to testify;

b. The substance of each fact and opinion to which the expert is expected to testify and a summary of the grounds for each opinion.

INTERROGATORY NO. 4: Have you, your agents, your officers, your employees, your investigators, your insurance company adjuster or agent, or attorney had any communication with the plaintiff or any other person regarding any or all of

the incidents alleged in the Complaint? If so, state the substance and date of that communication, and identify the participants by name, address, and phone number.

INTERROGATORY NO. 5: Do you allege that any person or entity, other than the plaintiff, has in any way contributed to or proximately caused the plaintiff's damages? If so, please state the manner in which such entity or person caused or contributed to plaintiff's damages, including all facts in support of such allegation; and the identity of such entity or person.

INTERROGATORY NO. 6: Do you allege that the plaintiff caused, contributed to, or was responsible in any way for any part of her damages? If so, state with specificity any and all facts in support of such allegation.

INTERROGATORY NO. 7: Do you allege that the plaintiff has failed to mitigate her damages? If so, state with specificity any and all facts supporting such allegation.

INTERROGATORY NO. 8: Do you allege any affirmative defenses to plaintiff's claims? If so, please state as to each:

a. All facts upon which you base the affirmative defense;

b. Identify all documents pertaining to, supporting or evidencing the affirmative defense, and identify all custodians thereof.

REQUEST FOR PRODUCTION NO. 1: Please produce all documents identified in response to subsection (b) of the preceding interrogatory.

REQUEST FOR PRODUCTION NO. 2: Please produce all things, lists, papers, reports, items, diagrams, statements, or any other tangible information that in any way depicts, represents, otherwise pertains to, or you intend to introduce as evidence to overcome allegations in plaintiff's complaint that she was denied equal access and services at the your facility as stated in the Complaint, or that substantiate any of the allegations or defenses contained in your answer. This request includes management logs, customer complaint logs, or other incident reports maintained by your employees.

REQUEST FOR PRODUCTION NO. 3: Please produce all emails among your employees concerning allegations in plaintiff's complaint that she was denied equal access and services at your facility as stated in the Complaint, or that substantiate any of the allegations or defenses contained in your answer.

REQUEST FOR PRODUCTION NO. 4: Please produce all video footage or photographs concerning allegations in plaintiff's complaint that she was denied equal access and services at your facility as stated in the Complaint, or that substantiate any of the allegations or defenses contained in your answer.

REQUEST FOR PRODUCTION NO. 5: Please produce a copy of all nonprivileged written statements of any party or witnesses.

REQUEST FOR PRODUCTION NO. 6: Please attach all correspondence with any experts identified herein, as well as any reports, notes, records and any other documents that each expert referred to in previous interrogatories herein will rely upon.

INTERROGATORY NO. 9: Please identify the following for all your employees, including but not limited to Employee A and Employee B, who had contact with Plaintiff over the period of Date of Incident:

a. Full legal name;

b. Position with State of Washington during this contact;

c. Current occupation/position;

d. Phone number and address.

INTERROGATORY NO. 10: Have you ever been party to a lawsuit or administrative action (including but not limited to complaints to a local, state, or federal human rights commission or governmental commission dedicated to evaluating claims of discrimination) pertaining to service animal access at one of your facilities with a date of loss or incident date prior to Date of Incident? If so, identify the lawsuit or administrative action.

INTERROGATORY NO. 11: Of the individuals identified in Interrogatory Nos. 1 and 2 as having had contact with the Plaintiff, have any ever been arrested or charged with a crime? If so, please state:

a. Offense charged or for which arrested;

b. Full and complete resolution, i.e., including all deferred findings, deferred sentences, continuance followed by dismissal upon fulfillment of conditions; deferred prosecution; conviction; or acquittal;

c. Date arrested or charged;

d. Court and cause number;

e. Sentence imposed, if any;

f. Sentence served, if any.

INTERROGATORY NO. 12: Did you have in effect at the time of the incident in question any accident or liability insurance or surety bonds? If so, please identify the insurance company or bonding company, the policy number, and the policy limits.

REQUEST FOR PRODUCTION NO. 7: Please produce the policy and declarations page for the policy referenced in the preceding interrogatory.

INTERROGATORY NO. 13: Do you know of any persons believed or understood by you to be an eyewitness to the incidents alleged in Plaintiff's Complaint? If so, please identify them and their location at the time of the incident.

REQUEST FOR PRODUCTION NO. 8: Please produce a copy of your local office's service animal access policy in place as Date of Incident.

REQUEST FOR PRODUCTION NO. 9: Please produce a copy of your statewide service animal access policy in place as of Date of Incident.

REQUEST FOR PRODUCTION NO. 10: Please produce a copy of your local office's specific service animal access policy in place as of today at all your offices.

REQUEST FOR PRODUCTION NO. 11: Please produce a copy of your statewide service animal access policy in place as of today at all your offices.

§ 46. Defendant's discovery to plaintiff in Title II ADA case

INTERROGATORY NO. 1:

Please state your:

(a) Full legal name and any other name(s) you have used within the last 20 years;

(b) Date of birth; and

(c) Social security number.

INTERROGATORY NO. 2:

Describe your residential history for the last 10 years by stating for each residence the:

(a) Physical address of the residence; and

(b) Dates you resided there.

INTERROGATORY NO. 3:

Describe your marital history, if any, by stating for each marriage the:

(a) Name of spouse;

(b) Date of marriage;

(c) State and county where you were married; and

(d) Date and place of dissolution, if any.

INTERROGATORY NO. 4:

Describe your educational background by stating the:

(a) Name of each high school and posthigh school institution you have attended;

(b) Address of each high school and posthigh school institution you have attended;

(c) Dates you attended each high school and posthigh school institution;

(d) Major area of study; and

(e) Type of degree or certificate earned, if any.

INTERROGATORY NO. 5:

Describe your employment history for the past 10 years by stating the:

(a) Name of each employer;

(b) Address of each employer;

(c) Dates of employment for position held;

(d) Job title for position held; and

(e) Rate of compensation for each position held.

REQUEST FOR PRODUCTION NO. A:

Produce copies of all your income tax returns and attachment for the past five years.

INTERROGATORY NO. 6:

Please describe your health care history by stating:

(a) Names, address and phone numbers for all health care providers (this includes providers from all health care disciplines, including both physical health and mental health) who have treated or examined you in the last 10 years;

(b) Area of expertise of each health care provider who has treated or examined you in the last 10 years;

(c) Dates of treatment or examination;

(d) Condition(s) for which each health care provider treated or examined you; and

(e) Result(s) of the treatment or exam you received.

INTERROGATORY NO. 7:

Please describe your litigation history by stating:

(a) Whether you are currently or have previously been involved in any claims or lawsuits;

(b) Jurisdiction and venue of any previous claims or lawsuits;

(c) Names, addresses and phone numbers of all parties and their attorney(s) involved in the claims or lawsuits; and

(d) Final disposition or current status of the claims or lawsuits.

INTERROGATORY NO. 8:

Describe how the event(s) that form(s) the basis of your Complaint occurred by stating the material facts of the event(s).

INTERROGATORY NO. 9:

Identify each person known to you who witnessed the event(s) that form(s) the basis of your Complaint by stating for each individual their:

(a) Name;

(b) Address;

(c) Phone number;

(d) Relationship to the Plaintiffs; and

(e) Subject matter of their knowledge.

INTERROGATORY NO. 10:

Identify each person known to you to have knowledge or information relevant to the event(s) that form(s) the basis of your Complaint, not previously identified herein, by stating for each individual, their:

(a) Name;

(b) Address;

(c) Phone number;

(d) Relation to Plaintiff; and

(e) Subject matter of their information.

INTERROGATORY NO. 11:

Identify each statement relating to the event(s) that form(s) the basis of your Complaint given by any party or witness, whether written or recorded, that you know to exist by stating:

(a) Who gave the statement;

(b) How the statement was obtained;

(c) When the statement was obtained;

(d) The subject matter of the statement; and

(e) Who currently possesses copies of the statement.

REQUEST FOR PRODUCTION NO. B:

Produce copies of each statement identified by the preceding interrogatory and answer.

INTERROGATORY NO. 12:

Identify any written or recorded material known to you, relating to the event(s) that form(s) the basis of your Complaint, not previously identified herein, by stating:

(a) Name of the document;

(b) Author(s) of the document;

(c) Date the document was created;

(d) Subject matter of the document; and

(e) Who currently possesses copies of the document.

REQUEST FOR PRODUCTION NO. C:

Produce a copy of all written or recorded material identified by the preceding interrogatory and answer.

INTERROGATORY NO. 13:

Please identify all facts that you claim support any violation of any constitutional provisions, statutes, rules, regulations, or common law theories upon which you will rely to support your contention that the State of _____ or its agents are liable for the damages you have plead. Include the constitutional provisions, statute(s), rule, regulation, or common law basis that you believe are related to the facts as identified by you.

INTERROGATORY NO. 14:

Identify each expert witness whom you intend to rely on for testimony at the time of trial by stating for each expert witness the:

(a) Expert's name;

(b) Address;

(c) Subject matter on which they will testify;

(d) Background, experience, and training in the subject matter on which they will testify; and

(e) Substance of the facts and opinions to which each expert is expected to testify and a summary of the grounds for each opinion.

REQUEST FOR PRODUCTION NO. D:

Produce copies of any and all reports of experts identified in your answer to the preceding interrogatory.

INTERROGATORY NO. 15:

Please describe in detail each injury for which you claim the State of _____ is liable as a result of the event(s) that form the basis of your Complaint, by stating for each injury:

(a) Type of injury;

(b) Date injury discovered;

(c) Extent of injury.

INTERROGATORY NO. 16:

For each health care provider who examined or treated you for the injuries you allege in your Complaint, state:

(a) Name and address of the health care provider;

(b) Area of expertise of the health care provider;

(c) Dates of treatment/examination;

(d) Condition treated/examined; and

(e) Result of treatment/examination.

INTERROGATORY NO. 17:

Please identify the medical treatment which you will have in the future for your injuries for which you allege the State of _____ is liable and, for each such treatment, indicate the probable medical expense.

INTERROGATORY NO. 18:

If you lost any wages as a result of the event(s) that form(s) the basis of your Complaint, for each such employment, please state:

(a) identify the employer;

(b) the amount of time you lost from work;

(c) your regular rate of pay or compensation for work;

(d) the total amount of the loss; and

(e) the analysis (or method of calculation) you used to determine the total wage loss.

INTERROGATORY NO. 19:

If you claim that your ability to engage in employment in the future has been affected as a result of the event(s) that form(s) the basis of your Complaint, describe the specific condition that limits your ability to work.

REQUEST FOR PRODUCTION NO. E:

Produce a copy of any and all documentation, relating to your claim for damages, your previous answers to these interrogatories or otherwise pertaining to your claims, for the following:

(a) Past or future medical treatment;

(b) Ability to engage in work;

(c) Activities in your home; and

(d) Ability to engage in recreation.

INTERROGATORY NO. 20:

Please set forth an itemized list of all your expenses and losses for which you claim should be paid by the State of _____. In setting forth this information, please include the date that the expense or loss was incurred, the identity of the person who was entitled to payment, and the amount of each expense or loss.

REQUEST FOR PRODUCTION NO. F:

Produce copies of all documents relating to the expenses and losses you claim should be paid by the State of _____.

INTERROGATORY NO. 21:

Identify your history of claims with the _____ State Human Rights Commission history by stating:

(a) Human Rights Commission claim number;

(b) Date the claim was initiated;

(c) Nature of the claim; and

(d) Current status of the claim.

REQUEST FOR PRODUCTION NO. G:

Produce a complete copy of the _____ State Human Rights Commission Claim File for each claim specified by the preceding interrogatory.

INTERROGATORY NO. 22:

Identify any history of claims with the Equal Employment Opportunity Commission (EEOC), U.S. Office of Civil Rights (OCR), and/or U.S. Department of Justice (DOJ) history by stating:

(a) Any assigned claim number;

(b) Date the claim was initiated;

(c) Nature of the claim; and

(d) Current status of the claim.

REQUEST FOR PRODUCTION NO. H:

Produce a complete copy of Claim File with the EEOC, OCR. or DOJ for each claim specified by the preceding interrogatory.

REQUEST FOR PRODUCTION NO. I:

Produce copies of all electronic or digital documents, including Web sites, in which you have written any information about service animals, your particular service animals or any claims that you may have or have considered related to your service animals.

§ 47. Plaintiff's discovery to defendant in Title III ADA case

INTERROGATORY NO. 1: Please identify by stating the name(s), phone numbers, and addresses of all people who participated in furnishing answers to these discovery requests.

INTERROGATORY NO. 2: Prior to responding to these discovery requests, have you thoroughly researched and identified every document and made inquiry of every employee or agent having knowledge of the information and subject matter sought by these discovery requests with a view to eliciting all information available in this action?

INTERROGATORY NO. 3: Please identify any documents, circulars, memoranda, notices, or records of any form describing Place of Public Accommodation's procedures, policies, or customs concerning access to service animals and their handlers in any of your warehouses since January 1, 2000 to date.

REQUEST FOR PRODUCTION NO. 1: Please produce all documents identified in response to the preceding interrogatory.

INTERROGATORY NO. 4: Describe any of your internal procedures in existence, on or after to January 1, 2000, to investigate, prevent, or determine law or internal policy violations by Place of Public Accommodation's employees or supervisors concerning access by service animals and their handlers to any of your warehouses?

INTERROGATORY NO. 5: Were any of the procedures described in the preceding interrogatory employed in this case? If so, state the results and identify all reports.

REQUEST FOR PRODUCTION NO. 2: Please produce all documents identified in response to the preceding interrogatory.

INTERROGATORY NO. 6: Identify any and all employees or supervisors of Place of Public Accommodation, or any other personnel present at any time during, or having personal knowledge concerning, any of the encounters described in the Complaint or in Plaintiffs' Responses to your first discovery requests.

INTERROGATORY NO. 7: Identify all reports, statements, or documents made or received by any member of Place of Public Accommodation concerning or relating to any and every discrete encounter described in Plaintiffs' Complaint and Plaintiffs' Responses to your first discovery requests.

REQUEST FOR PRODUCTION NO. 3: Please produce all documents identified in response to the preceding interrogatory.

INTERROGATORY NO. 8: Please identify any and all documents of lawsuits or internal or external reviews, investigations, and/or disciplinary actions, complaints, both formal and informal, and results thereof, purporting to question, challenge, evaluate, examine, justify, investigate, understand, review, or determine the extent or existence of any Place of Public Accommodation's employee or supervisor's interaction with and/or providing access to a service animal and its handler to any of your warehouses.

REQUEST FOR PRODUCTION NO. 4: Please produce any documents identified in answer to the preceding interrogatory.

INTERROGATORY NO. 9: Identify and describe all documents or materials distributed, including but not limited to corporate memoranda, documents, circulars, bulletins, manuals, and general orders of any kind, made available or required to be read by Place of Public Accommodation employees and/or supervisors on and after January 1, 2000 concerning guidelines for service animal and handler access to any of your warehouses.

REQUEST FOR PRODUCTION NO. 5: Please produce for inspection and copying all documents identified in response to the preceding interrogatory.

REQUEST FOR PRODUCTION NO. 6: Please produce any of your manuals and/or policies and procedures manual with respect to any of the preceding interrogatories that have not already been identified and requested.

INTERROGATORY NO. 10: Please identify each statement known to you regarding the allegations contained in Plaintiffs' Complaint or the subject matter of this lawsuit, regardless of whether you assert that the statement is discoverable. If you assert that the statement is not discoverable, state your basis for that position.

INTERROGATORY NO. 11: Do you allege any affirmative defenses to plaintiffs' claims? If so, please state as to each:

A. All facts upon which you base the affirmative defense;

B. Identify all documents pertaining to, supporting, or evidencing the affirmative defense, and identify all custodians thereof.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents identified in response to subsection (b) of the preceding interrogatory.

INTERROGATORY NO. 12: Please identify any documents sought by the above requests for production which formerly existed, but which no longer exist, or which were formerly in your possession or were available to you, but which no longer are in your possession or available to you.

INTERROGATORY NO. 13: What procedure is followed when a Place of Public Accommodation employee or supervisor wishes to query a patron on the status of an animal as a service animal in said patron's care, custody, or control, as well as the status of the patron as a disabled handler of said service animal, for purposes of permitting entry into any of your warehouses?

INTERROGATORY NO. 14: Were the procedures referred to in the preceding interrogatory followed for each pertinent encounter identified in Plaintiffs' Complaint and responses to your First Discovery Requests? If not, please specify what procedures were followed.

INTERROGATORY NO. 15: What procedure is followed when a Place of Public Accommodation employee or supervisor encounters a service animal and its handler inside the warehouse after they have already been granted access at the front door?

INTERROGATORY NO. 16: Were the procedures referred to in the preceding interrogatory followed for each pertinent encounter Plaintiffs' Complaint and responses to your First Discovery Requests? If not, please specify what procedures were followed.

REQUEST FOR PRODUCTION NO. 8: Please produce all video footage or still photographs of either Plaintiff or Plaintiff's service animals in your possession, whether captured inside or outside any of your warehouses or property on which those warehouses are situated. You do not need to produce photographs already produced by Plaintiffs in response to your discovery requests.

INTERROGATORY NO. 17: Have any complaints of any nature ever been communicated to you concerning service animal and handler access at any of your warehouses since January 1, 2000? If so, please identify the person making the complaint including their address, phone number, the date of the complaint, nature of the complaint, and resolution of the complaint, if any.

REQUEST FOR PRODUCTION NO. 9: Please produce all records pertaining to the complaints identified in the preceding interrogatory.

INTERROGATORY NO. 18: Please provide the name and position of each employee or supervisor working on the dates and at the locations identified for any and every discrete incident described in the Complaint and Plaintiffs' responses to your First Discovery Requests. Also indicate whether said employee or supervisor is still currently employed by Place of Public Accommodation.

REQUEST FOR PRODUCTION NO. 10: Please produce all payroll records for each employee or supervisor working on the dates and at the locations identified for any and every discrete incident described in the Complaint and Plaintiffs' responses to your First Discovery Requests. You may limit your response to payroll records from those dates or time periods identified for every pertinent incident.

REQUEST FOR PRODUCTION NO. 11: Please produce all photographs of employees working at the stores identified in the Complaint and answers (original and supplemental) to Defendant's Discovery Requests during the times alleged therein. Said photographs may be presented in digital format and should be as contemporaneous with the allegations as possible.

REQUEST FOR PRODUCTION NO. 12: Please produce any log or printout that tracks or reflects the transaction history, purchases, checkouts, membership services inquiries, visits, card renewals, or card swipes of any kind by Plaintiff to any of your warehouses since January 1, 2000.

REQUEST FOR PRODUCTION NO. 13: Please produce your policy(ies) concerning videotape or surveillance monitoring retention at any and all of your warehouses between January 1, 2000 and August 30, 2003.

§ 48. Defendant's discovery to plaintiff in Title III ADA case

INTERROGATORY NO. 1: State your residence addresses for the last 10 years including the following:

(a) street address, city, and state;

(b) length of residence; and

(c) reason for move.

INTERROGATORY NO. 2: State your complete educational background including the following:

(a) name of each educational institution attended;

(b) location;

(c) dates of attendance; and

(d) degrees obtained. Attach a copy of all degrees.

INTERROGATORY NO. 3: Describe Plaintiff's general health condition:

(a) List all conditions, illnesses, injuries, and treatments from 1993 to the present;

(b) If any hospitalizations have occurred since 1993, please state the (i) name of the institution, (ii) dates of treatment, and (iii) diagnosis;

(c) List all medications taken since 1993;

(d) Attach copies of all prescriptions.

INTERROGATORY NO. 4: State the names and addresses of all physicians, psychiatrists, psychologists, or other health care professionals seen by Plaintiff from 1993 to the present and for each list:

(a) reason for treatment;

(b) length of treatment;

(c) whether treatment is ongoing and date of last treatment or visit;

(d) any medication prescribed to you or which you took from 1992 to the present;

(e) attach copies of all documents relating to your answer, including medical reports.

INTERROGATORY NO. 5: Describe with specificity all ailments, injuries, or illnesses that Plaintiff suffered from 1993 to the present.

INTERROGATORY NO. 6: State the nature of Plaintiff's alleged disability, including its effects, and state all facts upon which you will rely in support of your allegation that Plaintiff is a disabled person within the meaning of Title III of the Americans with Disabilities Act.

INTERROGATORY NO. 7: State in detail your alleged physical or mental condition on the dates of each of your visits to Place of Public Accommodation's premises, how your condition was made known to Place of Public Accommodation on each such occasion, and identify all individuals to whom you allegedly made known your condition at those times.

INTERROGATORY NO. 8: List and describe all communications between you and Place of Public Accommodation. For each such communication:

(a) state the date, time, and place;

(b) identify the Place of Public Accommodation representative communicated with;

(c) identify any witnesses to the communication;

(d) state the substance of the communication; and

(e) produce all related documents including copies or records of the communications.

INTERROGATORY NO. 9: State whether you have made any other claims, formal or informal, that any other person or entity discriminated against you based on a disability or any other basis and for each such instance identify by name, address, and telephone number the party that you claimed discriminated against you, the circumstances surrounding the claim, whether litigation ensued, and how the claim was resolved.

INTERROGATORY NO. 10: Identify all persons who have knowledge of any facts relating to the allegations in the Complaint, and state the substance of each person's knowledge.

INTERROGATORY NO. 11: For each incident alleged in the Complaint:

(a) identify the time of day at which the incident occurred;

(b) identify all Place of Public Accommodation employees involved in or present for the incident, and state how each was involved;

(c) identify any witnesses to the incident and state what each witnessed.

INTERROGATORY NO. 12: For each incident alleged in the Complaint, identify all persons who accompanied Plaintiff at the Place of Public Accommodation, and identify which service animals were present.

INTERROGATORY NO. 13: For each service animal that Plaintiff uses, please identify and describe the nature of the service provided to Plaintiff, state when the animal was trained, what it was trained to do, how it was trained, and the name(s) of the trainer(s).

INTERROGATORY NO. 14: Describe each incident in which you contend that Place of Public Accommodation treated Plaintiff 2 differently for associating with Plaintiff 1, and for each such incident, specify which Place of Public Accommodation was involved, which employees were involved, the dates on which the alleged incidents occurred, and the specific actions which were allegedly discriminatory.

INTERROGATORY NO. 15: Describe in detail all damages (including dollar amount) that Plaintiff 1 suffered as a result of each incident listed in the Complaint.

INTERROGATORY NO. 16: Describe in detail all damages (including dollar amount) that Plaintiff 2 suffered as a result of each incident listed in the Complaint.

INTERROGATORY NO. 17: Identify any witnesses that you intend or expect to call at trial in this case, and describe the nature of each witness' testimony.

RESEARCH REFERENCES

West's Key Number Digest

- West's Key Number Digest, Civil Rights 1019(2)
- West's Key Number Digest, Civil Rights 1074
- West's Key Number Digest, Civil Rights 1085
- West's Key Number Digest, Civil Rights 1215

Primary Authority

- 20 U.S.C.A. §§ 1400 et seq.
- 29 U.S.C.A. §§ 701 et seq.
- 42 U.S.C.A. §§ 3601 to 3619
- 42 U.S.C.A. §§ 12201 to 12213
- 49 U.S.C.A. § 41705

A.L.R. Library

- A.L.R. Index, Americans With Disabilities Act
- A.L.R. Index, Assistance Animals
- A.L.R. Index, Disabled Persons
- A.L.R. Index, Service Animals
- West's A.L.R. Digest, Civil Rights 1083
- West's A.L.R. Digest, Civil Rights 1046
- West's A.L.R. Digest, Damages 57.38
- West's A.L.R. Digest, Federal Civil Procedure 2491.5
- Effect, As Between Landlord and Tenant, of Lease Clause Restricting Keeping of Pets, 114 A.L.R.5th 443
- What Constitutes 'Service Animal' and Accommodation Thereof, Under Americans with Disabilities Act (ADA), 75 A.L.R. Fed. 2d 49
- Assistance Animals Qualifying as Reasonable Accommodation Under Fair Housing Act, 42 U.S.C.A. § 3604(f), 66 A.L.R. Fed. 2d 209
- Recovery of Punitive Damages Under Americans with Disabilities Act of 1990, 42 U.S.C.A. §§ 12101 et seq., 44 A.L.R. Fed. 2d 31
- What Constitutes Substantial Limitation on Major Life Activity of Sleeping for Purposes of Americans With Disabilities Act (42 U.S.C.A. secs. 12101 to 12213), 12 A.L.R. Fed. 2d 423
- What General or Systemic Diseases or Conditions Constitute Substantial Limitation on Major Life Activity of Walking for Purposes of Americans With Disabilities Act (42 U.S.C.A. secs. 12101 to 12213), 199 A.L.R. Fed. 481
- What Constitutes Substantial Limitation on Major Life Activity of Caring for Oneself for Purposes of Americans With Disabilities Act (42 U.S.C.A. secs. 12101 to 12213), 192 A.L.R. Fed. 483
- Construction and Application of sec. 804(f) of Fair Housing Act (42 U.S.C.A. sec. 3604(f)), Prohibiting Discrimination in Housing Because of Individual's Disability, 148 A.L.R. Fed. 1
- Remedies available under Americans with Disabilities Act (42 U.S.C.A. secs. 12101 et seq.), 136 A.L.R. Fed. 63

- Evidence of discriminatory effect alone as sufficient to prove, or to establish prima facie case of, violation of Fair Housing Act (42 U.S.C.A. secs. 3601 et seq.), 100 A.L.R. Fed. 97

Legal Encyclopedias

- Am. Jur. 2d, Americans with Disabilities Act §§ 315, 370, 690
- C.J.S., Civil Rights § 105
- C.J.S., Public Facilities §§ 1 et seq.

Treatises and Practice Aids

- Americans with Disabilities Practice and Compliance Manual §§ 1:1 et seq.
- Public Accommodations Under the Americans With Disabilities Act Appendix E

Trial Strategy

- Discrimination on the Basis of Handicap Under the Fair Housing Act, 23 Am. Jur. Proof of Facts 3d 499
- Enforcement of Restrictive Covenant or Lease Provision Limiting the Keeping of Animals or Pets on Residential Property, 93 Am. Jur. Trials 193
- Housing Discrimination Litigation, 28 Am. Jur. Trials 1
- Cause of Action for Handicapped Discrimination in Housing in Violation of the Federal Fair Housing Act [42 U.S.C.A. §§ 3601 et seq.] and Related Federal Statutes, 22 Causes of Action 2d 1
- Cause of Action Against Public Accommodation By Individual With Disability For Denial of Full and Equal Enjoyment of, or Participation in, Recreation or Exercise Because of Alleged Threat to Health or Safety of Others, 12 Causes of Action 2d 99

Law Reviews and Other Periodicals

- Burnett and Poliakoff, Prescription Pets®: Medical Necessity or Personal Preference, 36 Nova L. Rev. 451 (2012)
- Huss, Canines on Campus: Companion Animals at Postsecondary Educational Institutions, 77 Mo. L. Rev. 417 (2012)
- Magnuson, Service Animals in Training and the Law: An Imperfect System, 14 Scholar 987 (2012)
- Sandoval, Service, Therapy, and Emotional Support Animals, 44-JUL Colo. Law. 69 (2015)
- Waterlander, Canines in the Classroom: When Schools Must Allow a Service Dog to Accompany a Child with Autism into the Classroom Under Federal and State Laws, 22 Geo. Mason U. Civ. Rts. L.J. 337 (2012)

- Waterlander, Some Tenants Have Tails: When Housing Providers Must Permit Animals to Reside in "No-Pet" Properties, 18 Animal L. 321 (2012)

Footnotes

* Adam P. Karp of Animal Law Offices has practiced animal law for 18 years. He is presently licensed in Washington, Oregon, and Idaho and teaches animal law at the University of Washington, Seattle University, and Edmonds Community College. In 2012, Mr. Karp received the American Bar Association's Excellence in the Advancement of Animal Law award, given by the Tort, Insurance, and Practice Law Section's Animal Law Committee. Mr. Karp founded the Washington and Idaho Animal Law Sections and serves in executive committee positions with the Washington, Oregon, and Idaho State Animal Law Sections and has served as a vice-chair of the American Bar Association's Animal Law Section since 2004.

1 See FDA Food Code §§ 2-403.11, 6-501.115.

2 The American Veterinary Medical Association summarized the findings from a 2006 survey of 50,000 companion animal guardians, which revealed that "[most] people consider their pets to be family members or companions, not property …. The statistics reveal that almost all pet owners feel a strong human-animal bond." Human-Animal Bond Boosts Spending on Veterinary Care, JAVMA News, Jan. 1, 2008, available at https://www.avma.org/News/JAVMANews/Pages/080101a.aspx. According to the survey, 49.7% of guardians viewed their companion animals as "family," while another 48.2% considered them "companions." Human-Animal Bond Boosts Spending on Veterinary Care, JAVMA News, Jan. 1, 2008, available at https://www.avma.org/News/JAVMANews/Pages/080101a.aspx. Only 2.1% of those surveyed viewed their companion animals as property. Human-Animal Bond Boosts Spending on Veterinary Care, JAVMA News, Jan. 1, 2008, available at https://www.avma.org/News/JAVMANews/Pages/080101a.aspx. This change in attitude has developed over the last 30 years, evidencing a major shift in the public's attitude toward companion animals. See Human-Animal Bond Boosts Spending on Veterinary Care, JAVMA News, Jan. 1, 2008, available at https://www.avma.org/News/JAVMANews/Pages/080101a.aspx. There are over 150 million cats and dogs in this country living with humans in homes—one for every two Americans. Human-Animal Bond Boosts Spending on Veterinary Care, JAVMA News, Jan. 1, 2008, available at https://www.avma.org/News/JAVMANews/Pages/080101a.aspx; see also Root, 'Man's Best Friend': Property or Family Member? An Examination of the Legal Classification of Companion Animals and its Impact on Damages recoverable for their Wrongful Death or Injury, 47 Vill. L. Rev. 423 (2002).

Recent studies show that 45% of dog owners take their dogs on vacation; more than half the companion animal owners would prefer a dog or a cat to a human if they were stranded on a deserted island; and 50% of companion animals owners would be "very likely" to risk their lives to save their companion animals, while another 33% would be "somewhat likely" to put their own lives in danger to save their companion animals. Root, 'Man's Best Friend': Property or Family Member? An Examination of the Legal Classification of Companion Animals and its Impact on Damages recoverable for their Wrongful Death or Injury, 47 Vill. L. Rev. 423 (2002). In addition to the personal value of companionship that animals offer, studies over the last two decades have confirmed the health benefits derived from human-animal companion relationships.

Considerable evidence indicates that animal companions prolong life and help reduce the frequency of serious disease. See, e.g., Scoggins, D.V.M., Note, Legislation without Representation: How Veterinary Medicine Has Slipped Through the Cracks of Tort Reform, 1990 U. Ill. L. Rev. 953, 973 (1990), citing to several studies demonstrating the benefits of animals in the treatment of handicapped children, the mentally impaired, and the elderly, and showing that the presence of animals has the effect of lowering blood pressure and heart rates. These data further establish that companion animals provide a compensable benefit and are a unique kind of property whose loss cannot and should not be valued like inanimate items of property. The effects on people interacting with dogs has been well documented. Friedmann et al. reported that children's blood pressures lower while resting with a dog and while reading with a dog Social Interaction

and Blood Pressure: Influence of Animal Companions, in The Journal of Nervous and Mental Disease, Vol 171, No. 8, 1983, and Braun et al. reported similar findings with adults Physiological Effects of Human/Companion Animal Bonding, in Nursing Research, Vol. 33, No. 3, 1984. Friedmann et al. also reported a strong connection with pet ownership and survival one year after a heart attack Animal Companions and One-Year Survival of Patients After Discharge From a Coronary Care Unit, in Public Health Reports, Volume 95, No. 4, 1980.

Several U.S. colleges and universities include study of the human-animal bond in their coursework. Some offer a single course, while others offer a certificate program. All may be found in a variety of disciplines. The surprisingly large number of colleges—including highly respected institutions—reflects a growing acceptance of the key role that animals play in our lives. See http://csu-cvmbs.colostate.edu/vth/diagnostic-and-support/argus/Pages/default.aspx.

In 1999, three organizations (the American Veterinary Medical Association, the American Association of Animal Hospitals, and the Association of American Veterinary Medical Colleges) commissioned an economic study, a significant portion of which addressed the human-animal bond in depth. The study concluded that in veterinary practice, recognition of the human-animal bond is an important determinant of successful practice. (These above examples demonstrate that the bond between a companion animal and a human is real and capable of empirical study and analysis. In addition, the human-animal bond is recognized to have business implications as well as personal emotional influence.)

Research goes further in the study of this bond. We might anticipate and expect that scientists involved in laboratory animal research remain emotionally distant from their subjects, if for no other reason than self-protection. However, the Institute for Laboratory Animal Research Journal in 2002 devoted an entire issue to the subject. Implications of Human-Animal Interactions and Bonds in the Laboratory, ILAR Journal Vol. 43 (1) 2002. Kathryn Bayne, D.V.M., reports in her article Development of the Human-Research Animal Bond and Its Impact on Animal Well-being that the bond between animal and human is based on affection and/or respect:

In the research environment, it is not uncommon for a bond to develop between the investigator, veterinarian, and/or animal care technicians and the animals with which they work…. Circumstances that foster the formation of these bonds include the close and frequent contact between the researchers and their animals, … the dependency of the animals on the animal care staff for their daily needs ….

Dr. Bayne also notes that special bonds can form with certain animals. “A strong contributing factor to the development of a bond is commitment to the animal,” in caring for the animal, recognizing the animal's individuality, training the animal, and talking to the animal (http://ilarjournal.oxfordjournals.org/content/43/1/4.full).

In fact, a 2001 American Animal Hospital Association survey reported that 44% of pet owners would spend $3,000 or more to save their pet's life, and 21% would travel 1,000 miles or more to obtain specialty care for their pet. A Pfizer Animal Health/Gallup Organization Dog Owner survey reports that more than 75% of pet owners say their dog's health is as important to them as their own. These kinds of owner attitudes reflect that owners are willing to demonstrate behaviorally that they believe their relationship with their dog is one-of-a-kind. This relationship between a companion animal and a human animal is bidirectional. Dr. Jerrold Tannenbaum describes this as a relationship that benefits both parties and is mutually voluntary. See Steven Wise, Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal (1998), available at http://www.nabranimallaw.org/wp-content/uploads/2014/08/Wise_RecoveryOfCLDamages1998.pdf. From the time a person brings an animal into his/her household, the two interact with and affect each other. The training that the person provides, caring for the dog's daily needs, taking the dog with her to work and on outings, talking with the dog—all serve to strengthen the bond bidirectionally. The more attention an owner gives to a dog, the more likely that dog is to communicate behaviorally in response. This two-way interaction will mold itself into a personalized, unique relationship, and the relationship has the potential to grow with each communication.

As the bond is strengthened, so is the potential for significant grief when that bond is broken. “During a person's experience with a companion animal, the depth of attachment grows, deepening the experience of loss when the animal dies.” Messam, Zasloff, et al., Grief Following Death of a Companion Animal, in Current Issues and Research in Veterinary Behavioral Medicine 184 (2005).

Grief after pet loss is not as openly acknowledged as grief after the death of a human companion. As a result, the grieving person may receive inadequate support in their grieving and may feel isolated, which can increase the recovery period. See Kristi Lehman, MSW, LGSW, "Healing Through Remembering," available at http://www.mnpets.com/blog/healing-through-remembering. A study performed by the University of California, Davis School of Veterinary Medicine and published in 2005, reports that in highly attached caregivers, 50% were still grieving after one year. Messam, Zasloff, et al., Grief Following Death of a Companion Animal, in Current Issues and Research in Veterinary Behavioral Medicine 184 (2005). There is a wealth of popular books available on the topic of pet loss. In addition, the Association for Death Education and Counseling (ADEC), the National Hospice and Palliative Care Organization (NHPCO), and the Hospice Foundation of America (organizations designed to provide care for humans) all recognize pet loss as a valid form of grief, yet it is still considered disenfranchised grief. In fact, the entire April 2007 issue of ADEC's The Forum was dedicated to pet loss. The Association for Pet Loss and Bereavement provides not only supportive information, but also a referral list of counselors who provide pet loss counseling. Adam P. Karp, Understanding Animal Law (Carolina Academic Press: 2016).

3 This unidirectional focus on benefit to the disabled person, instead of burden to the service animal, begs a critical question: Should the law give consideration to the potentially deleterious effects upon those nonhumans forced to spend their lives laboring on behalf of a highly dependent human being, especially one who may inadvertently harm, neglect, or abuse them? While some animals may thrive in such an exclusive, dyadic relationship, electing to organize and restrict their interactions according to the needs of their disabled handler, they cannot be said to have voluntarily and intelligently elected such an arrangement at the outset. Those who fail out, or create a "direct threat" to others, including the disabled handler herself (as in the case where service primates have injured or killed their users), may be engaging in uncivil self-emancipation, throwing off the mantle of involuntary servitude. That said, the overwhelming majority of service dogs, properly treated, particularly the "working" breeds, probably prefer the nearly constant attention and closeness engendered in the life as an assistance animal, compared to the companion dog left at home most of the day, and sometimes night while his guardian leads her life outside the home.

4 Section 504 of the Act, 29 U.S.C.A. § 794, provides that no otherwise qualified individual with a disability in the United States, shall, solely by reason of disability, be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or any program or activity conducted by any executive agency or United States Postal Service. Analytically, the ADA and Section 504 are identical relative to rights and obligations. Vinson v. Thomas, 288 F.3d 1145, 1152 n7, 13 A.D. Cas. (BNA) 21 (9th Cir. 2002).

5 See § 2.

6 See § 3.

7 See § 4.

8 See § 5.

9 See § 6.

10 See § 7.

11 See § 8.

12 See § 9.

13 See § 10.

14 See § 11.

15 See § 12.

16 See § 13.

17 See § 14.

18 See §§ 15 to 18.

19 See § 19.

20 See § 20.

21 See § 21.

22 See § 22.

23 See § 23.

24 See § 24.

25 See § 25.
26 See § 26.
27 See § 27.
28 See §§ 28, 33, 34.
29 See § 30.
30 See § 31.
31 See § 32.
32 See § 35.
33 See § 36.
34 See § 37.
35 See §§ 38 to 40.
36 See § 41.
37 See § 42.
38 See § 43.
39 See § 44.
40 See §§ 45, 46.
41 See § 48.
1 Subchapter IV pertains to telecommunications. Subchapter V contains miscellaneous provisions, including coverage of federal wilderness areas. Otherwise, the ADA does not apply to federal agencies: however, Section 504 of the Rehabilitation Act does.
2 See 42 U.S.C.A. § 12202.
3 See 42 U.S.C.A. §§ 12132, 12143.
4 42 U.S.C.A. § 12181(7)(A) to (L), (10).
5 42 U.S.C.A. § 12187.
6 75 Fed. Reg. 56250.
7 75 Fed. Reg. 56193.
8 75 Fed. Reg. 56269.
9 75 Fed. Reg. 56250.
10 75 Fed. Reg. 56267.
11 75 Fed. Reg. 56265. Some jurisdictions have taken the position that imposing regulations on keeping certain breeds of service animal, such as leashing, sterilization, microchipping, registration, and muzzling (so as not to interfere with ability to perform), without outright banning same, does not violate the ADA. They contend that a "reasonable accommodation" does not mean the *perfect* accommodation; rather, the concept admits a level of compromise of public and private interests that such laws ostensibly embrace.
12 75 Fed. Reg. 56265.
13 75 Fed. Reg. 56267, 56268.
14 75 Fed. Reg. 56251 (codified at 28 C.F.R. § 36.302(c)(9)); see discussion at 75 Fed. Reg. 56272.
15 See PETER G. MENNEN, COMPLAINANT, v. JOHN E. POTTER, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE, (PACIFIC AREA), AGENCY., EEOC DOC 1A13112, 2002 WL 31232232 (E.E.O.C. 2002) (refusing to determine if "service animal" includes emotional support animal but finding that accommodation of allowing bird to remain in facility if caged and area kept clean was reasonable). But see VICKY ANN STRUTHERS, COMPLAINANT, v. GORDON R. ENGLAND, SECRETARY, DEPARTMENT OF THE NAVY, AGENCY., EEOC DOC 7A40043, 2006 WL 1910528 (E.E.O.C. 2006) (finding that Czar, a 33" tall Borzoi who was initially Struthers's companion animal but later certified as an assistance animal by the Tender Loving Care Service Dog organization did not meet the definition of "service animal" because she could not prove nexus between alleged disability and accommodation request to have Czar by her side).
16 42 U.S.C.A. § 12102(1); 28 C.F.R. §§ 35.104, 36.104.
17 42 U.S.C.A. § 12102(4)(E).
18 Rose v. Springfield-Greene County Health Dept., 668 F. Supp. 2d 1206, 1215, 253 Ed. Law Rep. 330 (W.D. Mo. 2009), aff'd, 377 Fed. Appx. 573 (8th Cir. 2010). See also Lerma v. California Exposition and State

Fair Police, 2014 WL 28810 at *5 (E.D. Cal. 2014) (puppy not service animal since only obedience-trained and to offer emotional support and comfort).

19 Cordoves v. Miami-Dade County, 104 F. Supp. 3d 1350, 1358-1359 (S.D. Fla. 2015).

20 Cordoves v. Miami-Dade County, 104 F. Supp. 3d 1350, 1359 (S.D. Fla. 2015).

21 Cordoves v. Miami-Dade County, 104 F. Supp. 3d 1350, 1360 (S.D. Fla. 2015).

22 Cordoves v. Miami-Dade County, 104 F. Supp. 3d 1350, 1361 (S.D. Fla. 2015).

23 Cordoves v. Miami-Dade County, 104 F. Supp. 3d 1350, 1363 (S.D. Fla. 2015).

24 Cordoves v. Miami-Dade County, 104 F. Supp. 3d 1350, 1363 (S.D. Fla. 2015).

25 Cordoves v. Miami-Dade County, 104 F. Supp. 3d 1350, 1365 (S.D. Fla. 2015).

26 Davis v. Ma, 848 F. Supp. 2d 1105, 1115–1116, 75 A.L.R. Fed. 2d 665 (C.D. Cal. 2012), aff'd, 568 Fed. Appx. 488 (9th Cir. 2014).

27 Satterwhite v. City of Auburn, 945 So. 2d 1076 (Ala. Crim. App. 2006).

28 Satterwhite v. City of Auburn, 945 So. 2d 1076, 1083 (Ala. Crim. App. 2006).

29 Satterwhite v. City of Auburn, 945 So. 2d 1076, 1086 (Ala. Crim. App. 2006).

30 Satterwhite v. City of Auburn, 945 So. 2d 1076, 1087 (Ala. Crim. App. 2006).

31 Satterwhite v. City of Auburn, 945 So. 2d 1076, 1083, 1087–1088 (Ala. Crim. App. 2006).

1 29 U.S.C.A. § 701(b)(1), (2).

2 29 U.S.C.A. § 794.

3 See Ability Center of Greater Toledo v. City of Sandusky, 385 F.3d 901, 908–909, 2004 FED App. 0340P (6th Cir. 2004).

4 29 U.S.C.A. § 793.

5 29 U.S.C.A. § 791.

6 28 C.F.R. § 35.103 (noting inapplicability to Title V of the Rehabilitation Act); Sarah K. Pratt, Deputy Assistant Secretary for Enforcement, New ADA Regulation and Assistance Animals as Reasonable Accommodations (Feb. 17, 2011); Velzen v. Grand Valley State University, 902 F. Supp. 2d 1038, 1047, 291 Ed. Law Rep. 760 (W.D. Mich. 2012) (Section 504 embraces emotional support animals).

7 Available at https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf (accessed April 2016).

8 29 U.S.C.A. § 705(9)(B).

1 42 U.S.C.A. § 3604(f)(2)(A).

2 See Red Bull Associates v. Best Western Intern., Inc., 686 F. Supp. 447 (S.D. N.Y. 1988), order aff'd, 862 F.2d 963 (2d Cir. 1988) (FHA assumed to apply to motel providing long-term lodging to homeless persons).

3 ADA TAM § III-1.2000.

4 Independent Housing Services of San Francisco v. Fillmore Center Associates, 840 F. Supp. 1328, 3 A.D.D. 812, 2 A.D. Cas. (BNA) 1674 (N.D. Cal. 1993).

5 Garcia v. Condarco, 114 F. Supp. 2d 1158 (D.N.M. 2000).

6 Federally funded rental housing for the elderly and disabled must permit "common household pets" subject to reasonable rules, and without impairing the right of landlords to remove those who constitute a nuisance or threat to health and safety of other occupants or persons in the housing community. 12 U.S.C.A. § 1701r-1. See also 24 C.F.R. §§ 5.350 to 5.380 for regulations concerning pet rule violation procedures, rulemaking, pet protection, and lease provisions.

7 73 Fed. Reg. 63834.

8 Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp. 2d 850 (S.D. Ohio 2009).

9 Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp. 2d 850, 855-857 (S.D. Ohio 2009).

10 Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp. 2d 850, 859 (S.D. Ohio 2009).

11 Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp. 2d 850, 859–860 (S.D. Ohio 2009). See also 73 Fed. Reg. 63834 to 63838.

12 In re Kenna Homes Co-op. Corp., 210 W. Va. 380, 392-93, 557 S.E.2d 787 (2001) (reasonable accommodation under FHA applies only to individually trained service animals).

13 Prindable v. Association of Apartment Owners of 2987 Kalakaua, 304 F. Supp. 2d 1245 (D. Haw. 2003), aff'd on other grounds, 453 F.3d 1175 (9th Cir. 2006) (accord).

14 See UNITED STATES OF AMERICA, Plaintiff, v. Kenna Homes Cooperative Corporation, Defendant., 2004 WL 3028183 (S.D. W. Va. 2004) (Complaint of United States).
15 DuBois v. Association of Apartment Owners of 2987 Kalakaua, 453 F.3d 1175, 1179 n. 2 (9th Cir. 2006).
16 Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor, 892 F. Supp. 2d 1268, 1271 (D. Haw. 2012).
17 Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor, 892 F. Supp. 2d 1268, 1271 (D. Haw. 2012).
18 Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor, 892 F. Supp. 2d 1268, 1285 (D. Haw. 2012).
19 Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor, 892 F. Supp. 2d 1268, 1286 (D. Haw. 2012).
20 Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor, 892 F. Supp. 2d 1268, 1287 (D. Haw. 2012).
21 Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor, 892 F. Supp. 2d 1268, 1288 (D. Haw. 2012).
22 Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc., 778 F. Supp. 2d 1028, 1032, 66 A.L.R. Fed. 2d 687 (D.N.D. 2011).
23 Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc., 778 F. Supp. 2d 1028, 1036, 66 A.L.R. Fed. 2d 687 (D.N.D. 2011).
24 Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc., 778 F. Supp. 2d 1028, 1037–1038, 66 A.L.R. Fed. 2d 687 (D.N.D. 2011).
25 Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc., 778 F. Supp. 2d 1028, 1038, 66 A.L.R. Fed. 2d 687 (D.N.D. 2011).
26 Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc., 778 F. Supp. 2d 1028, 1039, 66 A.L.R. Fed. 2d 687 (D.N.D. 2011).
27 Available at http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.
28 Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc., 778 F. Supp. 2d 1028, 1040, 66 A.L.R. Fed. 2d 687 (D.N.D. 2011).
29 See Title II Regulations, Supplementary Information, Relationship to Other Laws (Sept. 15, 2010) available at http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm.
30 42 U.S.C.A. § 3602(h).
31 24 C.F.R. § 100.201(b).
32 Head v. Glacier Northwest Inc., 413 F.3d 1053, 1060-1061, 16 A.D. Cas. (BNA) 1606, 43 A.L.R. Fed. 2d 793 (9th Cir. 2005) (abrogated on other grounds by University of Texas Southwestern Medical Center v. Nassar, 133 S. Ct. 2517, 186 L. Ed. 2d 503, 293 Ed. Law Rep. 644, 118 Fair Empl. Prac. Cas. (BNA) 1504, 97 Empl. Prac. Dec. (CCH) ¶ 44851 (2013)).
33 Mazzini v. Strathman, 140 So. 3d 253, 257 (La. Ct. App. 4th Cir. 2014).
34 Mazzini v. Strathman, 140 So. 3d 253 (La. Ct. App. 4th Cir. 2014).
35 Mazzini v. Strathman, 140 So. 3d 253, 258 (La. Ct. App. 4th Cir. 2014).
36 Mazzini v. Strathman, 140 So. 3d 253, 259 (La. Ct. App. 4th Cir. 2014).
37 Sanzaro v. Ardiente Homeowners Ass'n LLC, 21 F. Supp. 3d 1109 (D. Nev. 2014).
38 Sanzaro v. Ardiente Homeowners Ass'n LLC, 21 F. Supp. 3d 1109, 1115–1116 (D. Nev. 2014).
39 Sanzaro v. Ardiente Homeowners Ass'n LLC, 21 F. Supp. 3d 1109, 1119 (D. Nev. 2014).
40 Sanzaro v. Ardiente Homeowners Ass'n LLC, 21 F. Supp. 3d 1109, 1119 (D. Nev. 2014).
41 Oras v. Housing Authority Of City Of Bayonne, 373 N.J. Super. 302, 317, 861 A.2d 194 (App. Div. 2004) (quoting Bronk v. Ineichen, 54 F.3d 425, 431, 10 A.D.D. 143 (7th Cir. 1995)).
42 Janush v. Charities Housing Development Corp., 169 F. Supp. 2d 1133, 1136 (N.D. Cal. 2000).
43 Janush v. Charities Housing Development Corp., 169 F. Supp. 2d 1133, 1136 (N.D. Cal. 2000).
44 Bronk v. Ineichen, 54 F.3d 425, 429, 10 A.D.D. 143 (7th Cir. 1995).
45 Bronk v. Ineichen, 54 F.3d 425, 430, 10 A.D.D. 143 (7th Cir. 1995).
46 Bronk v. Ineichen, 54 F.3d 425, 430, 10 A.D.D. 143 (7th Cir. 1995).
47 Bronk v. Ineichen, 54 F.3d 425, 430, 10 A.D.D. 143 (7th Cir. 1995).

48 Bronk v. Ineichen, 54 F.3d 425, 431, 10 A.D.D. 143 (7th Cir. 1995).

49 Green v. Housing Authority of Clackamas County, 994 F. Supp. 1253, 1256 (D. Or. 1998) (citing Bronk v. Ineichen, 54 F.3d 425, 430–431, 10 A.D.D. 143 (7th Cir. 1995)).

50 Green v. Housing Authority of Clackamas County, 994 F. Supp. 1253, 1257 (D. Or. 1998).

1 49 U.S.C.A. § 41705(a).

2 See 68 Fed. Reg. 24875, 14 C.F.R. Pt. 382.

1 20 U.S.C.A. § 1400(c)(5)(A)(i).

2 Cave v. East Meadow Union Free School Dist., 514 F.3d 240, 244, 229 Ed. Law Rep. 349 (2d Cir. 2008).

3 20 U.S.C.A. § 1415(l) ("… before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted …")

4 See Hope v. Cortines, 69 F.3d 687, 4 A.D. Cas. (BNA) 1856, 104 Ed. Law Rep. 595 (2d Cir. 1995).

5 Cave v. East Meadow Union Free School Dist., 514 F.3d 240, 248, 229 Ed. Law Rep. 349 (2d Cir. 2008).

6 Sullivan By and Through Sullivan v. Vallejo City Unified School Dist., 731 F. Supp. 947, 960, 59 Ed. Law Rep. 73 (E.D. Cal. 1990).

1 Colo. Rev. Stat. § 24-34-301(6.5) (explicitly adopting ADA regulations); Me. Rev. Stat. Ann. tit. 5, § 4553(9-E)(B) (almost verbatim); Neb. Rev. Stat. § 49-801 (19) (embracing 28 C.F.R. § 36.104); N.J. Stat. Ann. 2C:29-3.2 (accord).

2 Alaska Stat. § 09.65.150 (assisting physically disabled person to function as pedestrian); Idaho Code Ann. 56-701A (physical only); Md. Code Ann., Human Serv. § 7-701 (physical tasks/functions).

3 Ariz. Rev. Stat. § 11-1024; Cal. Civ. Code 54, 54.1 (broadly covers any individual with a disability); Fla. Stat. Ann. § 413.08 (explicitly encompasses sensory, psychiatric, intellectual, or other mental disability, and provides illustrations to include preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack); Haw. Rev. Stat. 347-2.5; Ind. Code 16-32-3-1.5 (explicitly identifies psychiatric service and autism service animals); La. Rev. Stat. Ann. § 46:1952 (autism, traumatic brain injury, PTSD); Minn. Stat. § 343.20 (broadly includes animals trained to assist person with disability); V.A.M.S. 209.150 (including expressly diabetics); N.H. Rev. Stat. Ann. § 167-D:1; S.C. Code Ann. § 47-3-920; Tex. Hum. Res. Code Ann. § 121.002 (includes those with intellectual or developmental disabilities, speech impairment); Utah Code Ann. § 62A-5b-102 (includes expressly psychiatric, neurological disabilities but expressly excludes comfort, companion, and emotional support animals); Wis. Stat. § 951.01.

4 Ariz. Rev. Stat. § 11-1024(e)(5); Mo. Ann. Stat. § 209.200, N.Y. Agric. & Mkts. Law § 108(22); Ohio Rev. Code Ann. § 955.011; R.I. Gen. Laws § 40-9.1-1; Wyo. Stat. Ann. § 35-13-205; N.H. Rev. Stat. Ann. § 167-D:1(IV) (dogs only).

5 Iowa Code Ann. § 216C.11 (includes simian or other animal trained or in process of being trained to assist); Mont. Code Ann. § 49-4-203 (dog or other animal); Nev. Rev. Stat. § 426.097; N.D. Cent. Code § 25-13-01.1; Or. Rev. Stat. Ann. § 659A.143; Wash. Rev. Code § 49.60.040(24).

6 Alaska Stat. § 11.76.130 ("certified service animal" is one trained to assist a physically or mentally challenged person and certified by a school or training facility for service animals); Ariz. Rev. Stat. § 13-2910; Ga. Code Ann. § 16-11-107.1; Ga. Code Ann. § 30-4-2.

7 5 Maine Rev. Stat. 4553(9-E) (requires determination of need by physician, psychologist, physician's assistant, nurse practitioner or licensed social worker).

8 Alaska Stat. § 11.76.133 (also protects animals in "pretraining or "training period as required under a program administered through a school, agency, or other training facility for service animals"); Mont. Code Ann. § 49-4-214; Or. Rev. Stat. Ann. § 659A.143(1)(b) (assistance animal trainee defined); 3 P.S. § 549-102. (service dog includes one in process of being trained); Utah Code Ann. § 62A-5b-102 (includes in training).

9 Kan. Stat. Ann. § 39-1113, 39-1110; see also V.A.M.S. 209.200; Nev. Rev. Stat. § 426.099.

10 Storms v. Fred Meyer Stores, Inc., 129 Wash. App. 820, 825–26 & n. 10, 120 P.3d 126 (Div. 1 2005).

11 I.C.A. § 216C.11.

12 Iowa Code Ann. § 216C.11(2), allowing service dog trainers to be accompanied by a dog in certain locations.

13 Storms v. Fred Meyer Stores, Inc., 129 Wash. App. 820, 901, 120 P.3d 126 (Div. 1 2005).

14 Storms v. Fred Meyer Stores, Inc., 129 Wash. App. 820, 899, 120 P.3d 126 (Div. 1 2005).

15 Storms v. Fred Meyer Stores, Inc., 129 Wash. App. 820, 901, 120 P.3d 126 (Div. 1 2005).

16 Storms v. Fred Meyer Stores, Inc., 129 Wash. App. 820, 902, 120 P.3d 126 (Div. 1 2005).

1 This became an issue of recent debate in New York; see Dan Wiessner, U.S. courtroom dogs spark legal debate, Reuters (Sept. 12, 2011), available at http://www.reuters.com/article/us-usa-courtoom-dogs-idUSTRE78B4KN20110912 (accessed April 2016); see also http://courthousedogs.com/legal_appellate_cases.html.

2 See State v. Coria, 168 Wash. App. 1029, 2012 WL 1977439 (Div. 1 2012), where Ellie makes an appearance on behalf of an 11-year-old boy while testifying about how his father assaulted his mother.

1 28 C.F.R. § 35.136(f).

2 Question Q7 further discusses the proper scope of inquiry. See http://www.ada.gov/regs2010/service_animal_qa.html (last accessed April 2016).

3 Grill v. Costco Wholesale Corp., 312 F. Supp. 2d 1349, 1350 (W.D. Wash. 2004).

4 See Commonly Asked Questions About Service Animals in Places of Business, available at http://www.ada.gov/animal.htm.

5 ADA Business Brief: Service Animals, available at http://www.ada.gov/svcanimb.htm.

6 Grill v. Costco Wholesale Corp., 312 F. Supp. 2d 1349, 1353 (W.D. Wash. 2004).

1 See John Trasviña, Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-*Funded Programs*, Department of Justice FHEO Notice: FHEO-2013-1, at 4, available at http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf:

> Landlords may test bald assertions of disability but in most cases cannot demand actual medical records or engage in overly invasive inquiry. Further, the investigative quest must keep sensitive medical information confidential.

See the USDOJ-HUD Joint Statement on Reasonable Accommodation (May 17, 2004) available at http://www.hud.gov/offices/fheo/library/huddojstatement.pdf (last accessed April 2016).

1 14 C.F.R. § 382.117(d).

2 See 73 Fed. Reg. 27614-01, 27658 to 27660 (also speaking to service animals in training and whether the qualified individual with a disability must accompany the service animal in the cabin).

3 14 C.F.R. § 382.117(e).

1 42 U.S.C.A. § 12182(b)(3).

2 See ADA Title III Technical Assistance Manual III-3.8000.

3 Roe v. Providence Health System-Oregon, 655 F. Supp. 2d 1164, 1167–1168 (D. Or. 2009).

4 Roe v. Providence Health System-Oregon, 655 F. Supp. 2d 1164, 1168 (D. Or. 2009).

5 Roe v. Providence Health System-Oregon, 655 F. Supp. 2d 1164, 1169 (D. Or. 2009).

1 42 U.S.C.A. § 12112(b)(5)(A).

2 28 C.F.R. § 35.130(b)(7).

3 Johnson v. Gambrinus Company/Spoetzl Brewery, 116 F.3d 1052, 1059, 22 A.D.D. 669, 7 A.D. Cas. (BNA) 837 (5th Cir. 1997).

4 See Tamara v. El Camino Hospital, 964 F. Supp. 2d 1077, 28 A.D. Cas. (BNA) 1059 (N.D. Cal. 2013) (granting preliminary injunction to mobility-impaired and bipolar woman relying on service dog while staying in a locked psychiatric ward, finding that hospital did not show how presence of service dog would fundamentally alter nature of facility nor that dog would present a direct threat).

5 Lentini v. California Center for the Arts, Escondido, 370 F.3d 837, 842, 15 A.D. Cas. (BNA) 1125 (9th Cir. 2004).

6 Lentini v. California Center for the Arts, Escondido, 370 F.3d 837, 15 A.D. Cas. (BNA) 1125 (9th Cir. 2004).

1 28 C.F.R. § 35.136(d); 28 C.F.R. § 35.302(c)(4).

1 29 U.S.C.A. § 794.

2 42 U.S.C.A. § 1437f.

1 42 U.S.C.A. § 3604(f)(9).

2 Joint Statement of the Department of HUD and DOJ, Reasonable Accommodations Under the Fair Housing Act, at 4 (May 17, 2004), available at http://www.hud.gov/offices/fheo/library/huddojstatement.pdf (accessed April 2016).

3 Peabody Properties, Inc. v. Sherman, 418 Mass. 603, 608, 638 N.E.2d 906, 6 A.D.D. 464 (1994) (citing Majors v. Housing Authority of DeKalb County Ga., 652 F.2d 454, 457 (5th Cir. 1981)).

4 For an extensive discussion of reasonable accommodation principles, see the "Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act" (HUD/DOJ Joint Statement), available at http://www.hud.gov/offices/fheo/disabilities/index.cfm.
73 Fed. Reg. 63834, 63835.

5 Warren v. Delvista Towers Condominium Ass'n, Inc., 49 F. Supp. 3d 1082, 1086–1087 (S.D. Fla. 2014).

6 Warren v. Delvista Towers Condominium Ass'n, Inc., 49 F. Supp. 3d 1082, 1087–1088 (S.D. Fla. 2014).

7 Warren v. Delvista Towers Condominium Ass'n, Inc., 49 F. Supp. 3d 1082, 1087–1088 (S.D. Fla. 2014).

8 Warren v. Delvista Towers Condominium Ass'n, Inc., 49 F. Supp. 3d 1082, 1088–1089 (S.D. Fla. 2014).

9 Warren v. Delvista Towers Condominium Ass'n, Inc., 49 F. Supp. 3d 1082, 1089 (S.D. Fla. 2014).

1 See 73 Fed. Reg. 27614-01, 27661.

2 14 C.F.R. § 382.19(c)(2).

1 Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 264, 9 A.D. Cas. (BNA) 1555, 81 Fair Empl. Prac. Cas. (BNA) 161, 76 Empl. Prac. Dec. (CCH) ¶ 46077 (1st Cir. 1999); Rau, No Fault Discrimination?, 27 Ohio St. J. on Disp. Resol. 241, 265-65 (2012); Crowder v. Kitagawa, 81 F.3d 1480, 1483-1484, 15 A.D.D. 1, 5 A.D. Cas. (BNA) 810 (9th Cir. 1996) (Title II ADA claims do not require showing of intentional discrimination); Lentini v. California Center for the Arts, Escondido, 370 F.3d 837, 846–847, 15 A.D. Cas. (BNA) 1125 (9th Cir. 2004) (no "intent" requirement in Title III ADA claim); Independent Living Resources v. Oregon Arena Corp., 1 F. Supp. 2d 1159, 1169 (D. Or. 1998) (Title III ADA claims encompass disparate impact as well as animus).

1 42 U.S.C.A. § 12112(a).

2 Anderson v. Coors Brewing Co., 181 F.3d 1171, 1178, 9 A.D. Cas. (BNA) 835 (10th Cir. 1999).

3 42 U.S.C.A. § 12132.

4 42 U.S.C.A. § 12131(2).

5 Doe v. Bd. of Regents of University of Nebraska, 280 Neb. 492, 525, 788 N.W.2d 264, 23 A.D. Cas. (BNA) 1453, 259 Ed. Law Rep. 875 (2010).

6 Pena v. Bexar County, Texas, 726 F. Supp. 2d 675 (W.D. Tex. 2010).

7 Pena v. Bexar County, Texas, 726 F. Supp. 2d 675 (W.D. Tex. 2010).

8 Pena v. Bexar County, Texas, 726 F. Supp. 2d 675, 685 (W.D. Tex. 2010) (citing Rose v. Springfield-Greene County Health Dept., 668 F. Supp. 2d 1206, 1215, 253 Ed. Law Rep. 330 (W.D. Mo. 2009), aff'd, 377 Fed. Appx. 573 (8th Cir. 2010)).

9 Pena v. Bexar County, Texas, 726 F. Supp. 2d 675, 686 (W.D. Tex. 2010) (quoting Delano-Pyle v. Victoria County, Tex., 302 F.3d 567, 575, 13 A.D. Cas. (BNA) 913 (5th Cir. 2002)).

10 See Sears v. Bradley County Government, 821 F. Supp. 2d 987 (E.D. Tenn. 2011) (dismissing Title II claim against police sergeant who temporarily prevented woman with seizure disorder from entering courtroom with service dog to testify as a witness at her son's friend's trial, the delay occasioned by seeking permission from a judge's court officer and closure of the courthouse over the lunch hour; the court found that his refusal to allow entry was not intentionally motivated by discrimination on account of her disability but by his "genuine bewilderment at how to handle service animals," and his "efforts to seek approval from Judge Randolph, including his forwarding of the papers provided by Plaintiff's husband to Judge Randolph's court officer, indicate he was not attempting to discriminate against Plaintiff"); Valder v. City of Grand Forks, 217 F.R.D. 491 (D.N.D. 2003) (police officer's explanation that he could do nothing to assist pro se plaintiff in gaining access to a mission did not state a claim under Title III or Section 504 of the Rehabilitation Act).

11 42 U.S.C.A. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

12 See Menkowitz v. Pottstown Memorial Medical Center, 154 F.3d 113, 121, 8 A.D. Cas. (BNA) 725 (3d Cir. 1998); Matter of Baby K, 832 F. Supp. 1022, 1028, 2 A.D.D. 1375, 2 A.D. Cas. (BNA) 1244 (E.D. Va. 1993), judgment aff'd, 16 F.3d 590, 43 Soc. Sec. Rep. Serv. 610, 3 A.D. Cas. (BNA) 128 (4th Cir. 1994)

(rejected by, Roberts v. Galen of Virginia, Inc., 111 F.3d 405, 53 Soc. Sec. Rep. Serv. 180, 1997 FED App. 0119P (6th Cir. 1997)) (Title III plaintiff need not prove she is "otherwise qualified").

1 42 U.S.C.A. § 3601.

2 For instance, the FHA does not apply to "Mrs. Murphy" or the granny flat, i.e., a landlord who owns a building with four or fewer units, provided she resides in one of them, does not own more than three single-family homes, does not use a real estate agent or employ any discriminatory advertising or notices, and is not in the business of selling or renting dwellings. 42 U.S.C.A. § 3603(b)(1-2).

3 29 U.S.C.A. § 705(20)(B); see also 29 C.F.R. § 32.4(a).

4 29 U.S.C.A. § 794(d).

5 Mercer v. Champion, 139 Conn. App. 216, 230, 55 A.3d 772, 782 (2012) (quoting Mercer v. Strange, 96 Conn. App. 123, 131 n 9, 899 A.2d 683 (2006)).

1 42 U.S.C.A. § 3604(f)(3)(B).

2 DuBois v. Association of Apartment Owners of 2987 Kalakaua, 453 F.3d 1175, 1179 (9th Cir. 2006).

3 Hawn v. Shoreline Towers Phase 1 Condominium Ass'n, Inc., 347 Fed. Appx. 464, 467 (11th Cir. 2009).

4 Howard v. City of Beavercreek, 276 F.3d 802, 806, 2002 FED App. 0008P (6th Cir. 2002).

5 Howard v. Gutierrez, 405 F. Supp. 2d 13, 15 (D.D.C. 2005).

6 Giebeler v. M & B Associates, 343 F.3d 1143, 1156 (9th Cir. 2003)(citation omitted).

7 See Groner v. Golden Gate Gardens Apartments, 250 F.3d 1039, 1041, 2001 FED App. 0174P (6th Cir. 2001).

8 Zivkovic v. Southern California Edison Co., 302 F.3d 1080, 1089, 13 A.D. Cas. (BNA) 882, 53 Fed. R. Serv. 3d 1179 (9th Cir. 2002).

9 Stevens v. Hollywood Towers and Condominium Ass'n, 836 F. Supp. 2d 800, 810 (N.D. Ill. 2011) (citation omitted; emphasis in original).

10 Stevens v. Hollywood Towers and Condominium Ass'n, 836 F. Supp. 2d 800, 810–811 (N.D. Ill. 2011); Bloch v. Frischholz, 587 F.3d 771, 783 (7th Cir. 2009).

11 Bloch v. Frischholz, 587 F.3d 771, 783 (7th Cir. 2009).

12 Kromenhoek v. Cowpet Bay West Condominium Association, 77 F. Supp. 3d 462, 472 (D.V.I. 2014).

13 Kromenhoek v. Cowpet Bay West Condominium Association, 77 F. Supp. 3d 462, 472 (D.V.I. 2014).

1 See Boswell v. Skywest Airlines, Inc., 361 F.3d 1263 (10th Cir. 2004).

2 See Gilstrap v. United Air Lines, Inc., 709 F.3d 995, 1010–1011, 27 A.D. Cas. (BNA) 1464 (9th Cir. 2013).

1 McDonald v. Department of Environmental Quality, 2009 MT 209, 351 Mont. 243, 264–265, 214 P.3d 749, 21 A.D. Cas. (BNA) 1848 (2009).

1 See 42 U.S.C.A. § 12133, referencing 29 U.S.C.A. § 794a(a)(2) (the Rehabilitation Act).

2 See 42 U.S.C.A. § 12188(a)(1).

1 42 U.S.C.A. § 12117(a), 42 U.S.C.A. § 2000e-5(f)(1), see also Valenzuela v. Kraft, Inc., 801 F.2d 1170, 1174, 41 Fair Empl. Prac. Cas. (BNA) 1849, 41 Empl. Prac. Dec. (CCH) ¶ 36627 (9th Cir. 1986), opinion amended on denial of reh'g on other grounds, 815 F.2d 570, 47 Fair Empl. Prac. Cas. (BNA) 644, 43 Empl. Prac. Dec. (CCH) ¶ 37085 (9th Cir. 1987).

2 Loos v. Napolitano, 665 F. Supp. 2d 1054, 1057–58 (D. Neb. 2009).

3 28 C.F.R. § 35.170.

4 Noland v. Wheatley, 835 F. Supp. 476, 482, 3 A.D.D. 27, 2 A.D. Cas. (BNA) 1445 (N.D. Ind. 1993) (unlike Title I of the ADA, "[c]laims under title II of the ADA do not require exhaustion of administrative remedies"); Barnes v. Gorman, 536 U.S. 181, 185, 122 S. Ct. 2097, 153 L. Ed. 2d 230, 13 A.D. Cas. (BNA) 193 (2002) (Title II of ADA and Section 504 of Rehabilitation Act adopt remedies, procedures, and rights of Title VI of the Civil Rights Act; while Title VI does not mention private right of action, prior decisions have found an *implied* right); 42 U.S.C.A. § 12133 (Title II); 42 U.S.C.A. § 12188(a)(1) (Title III); Tennessee v. Lane, 541 U.S. 509, 517, 124 S. Ct. 1978, 158 L. Ed. 2d 820, 15 A.D. Cas. (BNA) 865 (2004).

5 Fronk, The Scope of Statutory Permissiveness: Private Actions to Enforce Self-Evaluation and Transition Plans under Title II of the Americans with Disabilities Act, 74 U. Chi. L. Rev. 1345 (2007).

6 Fronk, The Scope of Statutory Permissiveness: Private Actions to Enforce Self-Evaluation and Transition Plans under Title II of the Americans with Disabilities Act, 74 U. Chi. L. Rev. 1345 (2007).

7 ADA Title II Technical Assistance II-9.1000; ADA Title III Technical Assistance III-8.1000.

8 ADA Title II Technical Assistance II-9.2000.

9 ADA Title II Technical Assistance II-9.2000.

10 See www.ada.gov/t3compfm.htm; http://www.ada.gov/filing_complaint.htm.

1 See 29 U.S.C.A. § 794a(a)(2).

2 29 U.S.C.A. § 791.

3 See 29 C.F.R. § 1614.105(a)(1) (now providing for 45 days).

4 Ester v. Principi, 250 F.3d 1068, 1071, 85 Fair Empl. Prac. Cas. (BNA) 1109, 80 Empl. Prac. Dec. (CCH) ¶ 40504 (7th Cir. 2001) (citing 29 C.F.R. § 1614.106).

5 Angiulo v. U.S., 867 F. Supp. 2d 990, 997 (N.D. Ill. 2012).

6 29 C.F.R. § 1630 (equating the ADA with Title VII); see also Ellis v. Donahoe, 2014 WL 7335161 (E.D. Mo. 2014) (time-barring Rehabilitation Act claim due to failure to timely file precomplaint, and noting that Rehabilitation Act is exclusive remedy for federal employees claiming disability discrimination, not ADA Title I).

1 42 U.S.C.A. § 3610(g)(1).

2 42 U.S.C.A. § 3612(a).

3 42 U.S.C.A. § 3613(a)(2).

4 See Dorosin and Gilbert, The Exhaustion Requirement as a Barrier to Fair Housing Claims, N.C. State Bar J. 18 (2011), available at http://blogs.law.unc.edu/documents/civilrights/fhaarticle.pdf.

5 Belletete v. Halford, 886 So. 2d 308, 310 (Fla. 4th DCA 2004).

6 State, Dept. of Legal Affairs, Office of Atty. Gen. v. Leisure Village, Inc. of Stuart, 166 So. 3d 838, 840 (Fla. 4th DCA 2015).

7 Peklun v. Tierra Del Mar Condominium Association, 119 F. Supp. 3d 1361 *1 (S.D. Fla. 2015).

8 Peklun v. Tierra Del Mar Condominium Association, 119 F. Supp. 3d 1361 *6 (S.D. Fla. 2015).

9 Peklun v. Tierra Del Mar Condominium Association, 119 F. Supp. 3d 1361 *9 (S.D. Fla. 2015).

1 28 U.S.C.A. § 1738.

2 Kremer v. Chemical Const. Corp., 456 U.S. 461, 466, 102 S. Ct. 1883, 72 L. Ed. 2d 262, 28 Fair Empl. Prac. Cas. (BNA) 1412, 28 Empl. Prac. Dec. (CCH) ¶ 32674 (1982).

3 University of Tennessee v. Elliott, 478 U.S. 788, 794, 797–799, 106 S. Ct. 3220, 92 L. Ed. 2d 635, 32 Ed. Law Rep. 1257, 41 Fair Empl. Prac. Cas. (BNA) 177, 40 Empl. Prac. Dec. (CCH) ¶ 36205 (1986).

4 University of Tennessee v. Elliott, 478 U.S. 788, 106 S. Ct. 3220, 92 L. Ed. 2d 635, 32 Ed. Law Rep. 1257, 41 Fair Empl. Prac. Cas. (BNA) 177, 40 Empl. Prac. Dec. (CCH) ¶ 36205 (1986) (Title VII); Astoria Federal Sav. and Loan Ass'n v. Solimino, 501 U.S. 104, 111 S. Ct. 2166, 115 L. Ed. 2d 96, 55 Fair Empl. Prac. Cas. (BNA) 1503, 56 Empl. Prac. Dec. (CCH) ¶ 40809 (1991) (ADEA).

5 Kremer v. Chemical Const. Corp., 456 U.S. 461, 470 n7, 102 S. Ct. 1883, 72 L. Ed. 2d 262, 28 Fair Empl. Prac. Cas. (BNA) 1412, 28 Empl. Prac. Dec. (CCH) ¶ 32674 (1982).

6 McInnes v. State of Cal., 943 F.2d 1088, 1096, 56 Fair Empl. Prac. Cas. (BNA) 1257, 57 Empl. Prac. Dec. (CCH) ¶ 40946 (9th Cir. 1991); and see Astoria Federal Sav. and Loan Ass'n v. Solimino, 501 U.S. 104, 111 S. Ct. 2166, 2172–2173, 115 L. Ed. 2d 96, 55 Fair Empl. Prac. Cas. (BNA) 1503, 56 Empl. Prac. Dec. (CCH) ¶ 40809 (1991) ("[S]tate administrative findings may be entered into evidence at trial.") (citation omitted).

7 See Miller v. County of Santa Cruz, 39 F.3d 1030, 1032–1033 (9th Cir. 1994), as amended, (Dec. 27, 1994).

8 Smith v. Perkins Bd. of Educ., 708 F.3d 821, 827-28, 27 A.D. Cas. (BNA) 944, 117 Fair Empl. Prac. Cas. (BNA) 658 (6th Cir. 2013) ("[U]sing *Elliott* and *Solimino,* as a guide, we find that common law collateral estoppel principles do not apply to claims brought under the ADA because Congress has demonstrated its intent that unreviewed state administrative findings not have preclusive effect in this statutory context."); Joseph v. Athanasopoulos, 648 F.3d 58, 64 n.6, 112 Fair Empl. Prac. Cas. (BNA) 1703 (2d Cir. 2011), certified question accepted, 17 N.Y.3d 848, 930 N.Y.S.2d 542, 954 N.E.2d 1168 (2011), on reconsideration, certified question declined,18 N.Y.3d 946, 944 N.Y.S.2d 469, 967 N.E.2d 694 (2012) ("no distinction" between ADA and Title VII to justify different outcome regarding preclusion). However, see Alexander v. Pathfinder, Inc., 91 F.3d 59, 62, 17 A.D.D. 782 (8th Cir. 1996) (finding preclusive effect on ADA and Rehabilitation Act claims); and see Roberts v. County of Fairfax, Va., 937 F. Supp. 541, 545, 8 A.D. Cas. (BNA) 919 (E.D. Va. 1996).

9 University of Tennessee v. Elliott, 478 U.S. 788, 796-797, 106 S. Ct. 3220, 92 L. Ed. 2d 635, 32 Ed. Law Rep. 1257, 41 Fair Empl. Prac. Cas. (BNA) 177, 40 Empl. Prac. Dec. (CCH) ¶ 36205 (1986) (unlike Title VII, § 1983 indicated no Congressional intent "to contravene the common-law rules of preclusion"); Lindas v. Cady, 183 Wis. 2d 547, 554, 515 N.W.2d 458, 71 Fair Empl. Prac. Cas. (BNA) 791 (1994).

10 Millay v. Maine, Dept. of Labor, Bureau of Rehabilitation, Div. for Blind and Visually Impaired, 2012 WL 4481926 (D. Me. 2012), report and recommendation adopted, 2012 WL 4471232 (D. Me. 2012) citing Dertz v. City of Chicago, 9 Nat'l Disability Law Rep. P 188, 1997 WL 85169 (N.D. Ill. 1997) (observing that Title II of the ADA and the Rehabilitation Act do not require exhaustion of administrative remedies, which "indicates a Congressional intent that the doctrine of issue preclusion may apply to subsequent claims under these provisions").

11 See Stan v. Wal-Mart Stores, Inc., 111 F. Supp. 2d 119, 10 A.D. Cas. (BNA) 1632 (N.D. N.Y. 2000).

12 In the Title VII context, see Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 660, 684 A.2d 1385, 73 Fair Empl. Prac. Cas. (BNA) 1231 (1996) (EEOC determination in Title VII case is not a "final" judgment or "final agency action"); Williams v. Nashville Network, 132 F.3d 1123, 1129, 47 Fed. R. Evid. Serv. 1433, 1997 FED App. 0357A (6th Cir. 1997) (no favorable impact where EEOC finds cause).

1 See Garry v. Geils, 82 F.3d 1362, 1367 (7th Cir. 1996).

2 Anderson v. City of Blue Ash, 798 F.3d 338, 346-348 (6th Cir. 2015); see also discussion regarding breed banning in *Anderson* at § 44.

3 Anderson v. City of Blue Ash, 798 F.3d 338, 351 (6th Cir. 2015) (quoting 5455 Clarkins Drive, Inc. v. Poole, 384 Fed. Appx. 458, 463 (6th Cir. 2010)).

4 Anderson v. City of Blue Ash, 798 F.3d 338, 353 (6th Cir. 2015).

5 Gutman v. Quest Diagnostics Clinical Laboratories, Inc., 707 F. Supp. 2d 1327, 1331–1332 (S.D. Fla. 2010).

1 See Schwemm, Housing Discrimination: Law and Litigation § 12:9 (2002).

2 Havens Realty Corp. v. Coleman, 455 U.S. 363, 372, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982).

3 See Des Vergnes v. Seekonk Water Dist., 601 F.2d 9, 14 (1st Cir. 1979) (white plaintiff has implied right of action under § 1981 against one who, with racially discriminatory intent, obstructs his right to contract with persons of color); see Havens Realty Corp. v. Coleman, 455 U.S. 363, 374, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982) (discussing black tester having standing).

4 See Johanson v. Huizenga Holdings, Inc., 963 F. Supp. 1175, 23 A.D.D. 485, 6 A.D. Cas. (BNA) 532 (S.D. Fla. 1997) (parent of disabled minor has standing by virtue of relationship).

5 See Independent Living Resources v. Oregon Arena Corp., 982 F. Supp. 698 (D. Or. 1997), opinion supplemented, 1 F. Supp. 2d 1159 (D. Or. 1998).

6 Fiedler v. American Multi-Cinema, Inc., 871 F. Supp. 35, 7 A.D.D. 748, 3 A.D. Cas. (BNA) 1610 (D.D.C. 1994).

7 Stevens v. Hollywood Towers and Condominium Ass'n, 836 F. Supp. 2d 800, 814–815 (N.D. Ill. 2011); 42 U.S.C.A. § 3604(f)(1)(C); Wilson v. Glenwood Intermountain Properties, Inc., 98 F.3d 590, 596, 113 Ed. Law Rep. 551 (10th Cir. 1996) (no bystander).

8 The aspect of the case regarding a ban on the breed of service animal is discussed further at § 44.

9 Chavez v. Aber, 122 F. Supp. 3d 581 *6–7 (W.D. Tex. 2015).

10 Chavez v. Aber, 122 F. Supp. 3d 581 *8 (W.D. Tex. 2015).

1 42 U.S.C.A. § 12117(a), 42 U.S.C.A. § 2000-5(f)(1).

2 See § 30.

3 Ballard v. Rubin, 284 F.3d 957, 12 A.D. Cas. (BNA) 1646 (8th Cir. 2002); Bishop v. Children's Center for Developmental Enrichment, 618 F.3d 533, 536, 260 Ed. Law Rep. 580 (6th Cir. 2010).

4 Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 381–382, 124 S. Ct. 1836, 158 L. Ed. 2d 645, 93 Fair Empl. Prac. Cas. (BNA) 993, 85 Empl. Prac. Dec. (CCH) ¶ 41634 (2004). But see Cordova v. University of Notre Dame Du Lac, 936 F. Supp. 2d 1003, 297 Ed. Law Rep. 231 (N.D. Ind. 2013) (finding that ADAAA does not trigger 28 U.S.C.A. § 1658 as it merely clarifies the ADA, which went into effect on July 6, 1990).

5 42 U.S.C.A. § 3613(a)(1)(A).

6 42 U.S.C.A. § 3613(a)(3).

7 Lawson v. Glover, 957 F.2d 801, 805 (11th Cir. 1987).

1 42 U.S.C.A. § 12117(a).

2 29 U.S.C.A. § 791(f).

3 See 29 U.S.C.A. § 794a(a)(1).

4 See 42 U.S.C.A. § 12133, referencing 29 U.S.C.A. § 794a(a)(2) (the Rehabilitation Act).

1 42 U.S.C.A. § 12117(a) (Title I ADA); 29 U.S.C.A. § 791(f) (Section 501), both adopting 42 U.S.C.A. § 2000e-4, e-5, e-6, e-8, e-9.

2 42 U.S.C.A. § 1981a(b)(3).

3 42 U.S.C.A. § 1981a(b)(2).

4 Moorer v. Baptist Memorial Health Care System, 398 F.3d 469, 16 A.D. Cas. (BNA) 705, 10 Wage & Hour Cas. 2d (BNA) 635, 150 Lab. Cas. (CCH) ¶ 34951, 2005 FED App. 0069P (6th Cir. 2005); E.E.O.C. v. Convergys Customer Management Group, Inc., 491 F.3d 790, 19 A.D. Cas. (BNA) 740 (8th Cir. 2007).

5 42 U.S.C.A. § 1981a(a)(3).

6 See McKenzie v. Renberg's Inc., 94 F.3d 1478, 1486, 3 Wage & Hour Cas. 2d (BNA) 769, 132 Lab. Cas. (CCH) ¶ 33441 (10th Cir. 1996).

7 See Ostrach v. Regents of the University of California, 957 F. Supp. 196, 22 A.D.D. 905, 6 A.D. Cas. (BNA) 900 (E.D. Cal. 1997); Rumler v. Department of Corrections, Florida, 546 F. Supp. 2d 1334 (M.D. Fla. 2008).

8 See Albemarle Paper Co. v. Moody, 422 U.S. 405, 417–418, 95 S. Ct. 2362, 45 L. Ed. 2d 280, 10 Fair Empl. Prac. Cas. (BNA) 1181, 9 Empl. Prac. Dec. (CCH) ¶ 10230 (1975).

9 Cox v. American Cast Iron Pipe Co., 784 F.2d 1546, 1563, 40 Fair Empl. Prac. Cas. (BNA) 678, 40 Empl. Prac. Dec. (CCH) ¶ 36132, 4 Fed. R. Serv. 3d 521 (11th Cir. 1986).

10 Vaughn v. Sabine County, 104 Fed. Appx. 980, 985 (5th Cir. 2004).

11 Loeffler v. Frank, 486 U.S. 549, 557–558, 108 S. Ct. 1965, 100 L. Ed. 2d 549, 46 Fair Empl. Prac. Cas. (BNA) 1659, 46 Empl. Prac. Dec. (CCH) ¶ 38003 (1988).

12 O'Neill v. Sears, Roebuck and Co., 108 F. Supp. 2d 443, 447, 90 Fair Empl. Prac. Cas. (BNA) 201 (E.D. Pa. 2000).

13 See Abuan v. Level 3 Communications, Inc., 353 F.3d 1158, 1179, 93 Fair Empl. Prac. Cas. (BNA) 94 (10th Cir. 2003).

14 See 42 U.S.C.A. § 2000e-5(g), adopted by 42 U.S.C.A. § 12117(a).

15 Albemarle Paper Co. v. Moody, 422 U.S. 405, 418, 95 S. Ct. 2362, 45 L. Ed. 2d 280, 10 Fair Empl. Prac. Cas. (BNA) 1181, 9 Empl. Prac. Dec. (CCH) ¶ 10230 (1975).

16 See Franks v. Bowman Transp. Co., Inc., 424 U.S. 747, 780 n.41, 96 S. Ct. 1251, 47 L. Ed. 2d 444, 12 Fair Empl. Prac. Cas. (BNA) 549 (1976) (retroactive seniority); Malarkey v. Texaco, Inc., 983 F.2d 1204, 214, 61 Fair Empl. Prac. Cas. (BNA) 421, 60 Empl. Prac. Dec. (CCH) ¶ 42044, 37 Fed. R. Evid. Serv. 1198 (2d Cir. 1993) (promotion); Harrison v. Dole, 643 F. Supp. 794, 795, 55 Fair Empl. Prac. Cas. (BNA) 1419 (D.D.C. 1986) (transfer).

17 Farrar v. Hobby, 506 U.S. 103, 104, 113 S. Ct. 566, 121 L. Ed. 2d 494, 60 Fair Empl. Prac. Cas. (BNA) 633, 60 Empl. Prac. Dec. (CCH) ¶ 41881 (1992).

18 Christiansburg Garment Co. v. Equal Employment Opportunity Commission, 434 U.S. 412, 421–422, 98 S. Ct. 694, 54 L. Ed. 2d 648, 16 Fair Empl. Prac. Cas. (BNA) 502, 15 Empl. Prac. Dec. (CCH) ¶ 8041 (1978).

1 29 U.S.C.A. § 794a.

2 42 U.S.C.A. §§ 2000d to 2000d-7.

3 Ferguson v. City of Phoenix, 157 F.3d 668, 8 A.D. Cas. (BNA) 862 (9th Cir. 1998), as amended, (Oct. 8, 1998); Morales v. New York, 22 F. Supp. 3d 256 (S.D. N.Y. 2014) (proof of discriminatory animus or ill will stemming from disability must be shown); Cohen v. City of Culver City, 754 F.3d 690, 29 A.D. Cas. (BNA) 1701 (9th Cir. 2014), for additional opinion, see, 577 Fed. Appx. 745, 29 A.D. Cas. (BNA) 1709 (9th Cir. 2014).

4 Torres v. Junto De Gobierno De Servicio De Emergencia, 91 F. Supp. 3d 243 (D.P.R. 2015).

5 Shariff v. Coombe, 655 F. Supp. 2d 274 (S.D. N.Y. 2009).

6 See Lovell v. Chandler, 303 F.3d 1039, 13 A.D. Cas. (BNA) 918 (9th Cir. 2002).

1 See 42 U.S.C.A. § 12188(a)(1).

2 See 42 U.S.C.A. § 2000a-3(a-b); ADA Technical Assistance Manual III-8.2000; Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 88 S. Ct. 964, 19 L. Ed. 2d 1263, 1 Empl. Prac. Dec. (CCH) ¶ 9834 (1968);

Powell v. National Bd. of Medical Examiners, 364 F.3d 79, 86, 15 A.D. Cas. (BNA) 705, 186 Ed. Law Rep. 653 (2d Cir. 2004), opinion corrected on other grounds, 511 F.3d 238 (2d Cir. 2004).

3 42 U.S.C.A. § 12188(b)(2)(B), (C); 42 U.S.C.A. § 12205.

4 42 U.S.C.A. § 12188(b)(4).

5 See Lentini v. California Center for the Arts, Escondido, 370 F.3d 837, 15 A.D. Cas. (BNA) 1125 (9th Cir. 2004) (allowing damages to patron relying on service animal under state law); Johnson v. Gambrinus Company/Spoetzl Brewery, 116 F.3d 1052, 1065, 22 A.D.D. 669, 7 A.D. Cas. (BNA) 837 (5th Cir. 1997) (Texas law allowed damages); Smith v. Wal-Mart Stores, Inc., 167 F.3d 286, 1999 FED App. 0031P (6th Cir. 1999) (Georgia statute authorized damages for breach of Title III). For a critique of the damage limitations for private Title III suits, see Hill, Enabling the ADA: Why Monetary Damages Should be a Remedy under Title III of the Americans with Disabilities Act, 59 Syracuse L. Rev. 101 (2008).

6 O'Connor v. Scottsdale Healthcare Corp., 871 F. Supp. 2d 900, 904 (D. Ariz. 2012), adhered to on reconsideration, 2012 WL 2106365 (D. Ariz. 2012), aff'd, 582 Fed. Appx. 695 (9th Cir. 2014) and aff'd, 582 Fed. Appx. 695 (9th Cir. 2014).

7 O'Connor v. Scottsdale Healthcare Corp., 871 F. Supp. 2d 900, 904 (D. Ariz. 2012), adhered to on reconsideration, 2012 WL 2106365 (D. Ariz. 2012), aff'd, 582 Fed. Appx. 695 (9th Cir. 2014) and aff'd, 582 Fed. Appx. 695 (9th Cir. 2014).

1 See 29 U.S.C.A. § 794a(a)(2).

2 Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 1199–1202, 19 A.D. Cas. (BNA) 1634 (11th Cir. 2007).

3 Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 1204, 19 A.D. Cas. (BNA) 1634 (11th Cir. 2007).

1 42 U.S.C.A. § 3613(c)(1).

2 See Steele v. Title Realty Co., 478 F.2d 380 (10th Cir.1973); Phillips v. Hunter Trails Community Ass'n, 685 F.2d 184 (7th Cir. 1982); Seaton v. Sky Realty Co., Inc., 372 F. Supp. 1322 (N.D. Ill. 1972), judgment aff'd, 491 F.2d 634 (7th Cir. 1974).

3 See Steele v. Title Realty Co., 478 F.2d 380 (10th Cir. 1973).

4 42 U.S.C.A. § 3613(c)(2).

1 Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 1184, 19 A.D. Cas. (BNA) 1634 (11th Cir. 2007).

2 Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 1185–1189, 19 A.D. Cas. (BNA) 1634 (11th Cir. 2007).

3 Alejandro v. Palm Beach State College, 843 F. Supp. 2d 1263, 1269, 282 Ed. Law Rep. 201 (S.D. Fla. 2011).

1 See, e.g., Green v. Housing Authority of Clackamas County, 994 F. Supp. 1253 (D. Or. 1998) (Or. Rev. Stat. Ann. 346.640(2), requiring that hearing ear dogs must be on an orange leash, preempted by Title II).

2 See the discussion of this case regarding choice of parties at § 35.

3 Chavez v. Aber, 122 F. Supp. 3d 581 *2 (W.D. Tex. 2015).

4 Chavez v. Aber, 122 F. Supp. 3d 581 *3 (W.D. Tex. 2015).

5 Chavez v. Aber, 122 F. Supp. 3d 581 *3 (W.D. Tex. 2015).

6 Chavez v. Aber, 122 F. Supp. 3d 581 *11 (W.D. Tex. 2015).

7 Chavez v. Aber, 122 F. Supp. 3d 581 *11 n7 (W.D. Tex. 2015) (also citing Warren v. Delvista Towers Condominium Ass'n, Inc., 49 F. Supp. 3d 1082, 1089 (S.D. Fla. 2014)).

8 Chavez v. Aber, 122 F. Supp. 3d 581 *12 (W.D. Tex. 2015).

9 Chavez v. Aber, 122 F. Supp. 3d 581 *13 (W.D. Tex. 2015).

10 Pruett v. Arizona, 606 F. Supp. 2d 1065, 1068, 21 A.D. Cas. (BNA) 1520 (D. Ariz. 2009).

11 See 75 Fed. Reg. 56236, 56265, 56266; 28 C.F.R. § 36.104.

12 Newberger v. Louisiana Dept. of Wildlife and Fisheries, 2012 WL 3579843 at *4 (E.D. La. 2012) citing Baugher v. City of Ellensburg, WA, 2007 WL 858627 (E.D. Wash. 2007).

13 Sak v. City of Aurelia, Iowa, 832 F. Supp. 2d 1026 (N.D. Iowa 2011).

14 See Frame v. City of Arlington, 657 F.3d 215, 225, 25 A.D. Cas. (BNA) 556 (5th Cir. 2011) ("services, programs, or activities" have been construed to mean "all of the operations of a local government").

15 See Grider v. City and County of Denver, 2012 WL 1079466 (D. Colo. 2012) (finding that Title II claim against breed-discriminatory legislation barely stated an accommodation claim premised on inability to navigate public areas and use service animals in public; but dismissing disparate impact claim due to failure

to allege facts that evinced a significantly adverse or disproportionate impact upon disabled owners of service pit bulls, given the absence of quantitative or qualitative evidence in the complaint).

16 Sabal Palm Condominiums of Pine Island Ridge Ass'n, Inc. v. Fischer, 6 F. Supp. 3d 1272, 1278 (S.D. Fla. 2014).

17 Sabal Palm Condominiums of Pine Island Ridge Ass'n, Inc. v. Fischer, 6 F. Supp. 3d 1272, 1275 (S.D. Fla. 2014).

18 Sabal Palm Condominiums of Pine Island Ridge Ass'n, Inc. v. Fischer, 6 F. Supp. 3d 1272, 1279 (S.D. Fla. 2014).

19 Sabal Palm Condominiums of Pine Island Ridge Ass'n, Inc. v. Fischer, 6 F. Supp. 3d 1272, 1282–1283 (S.D. Fla. 2014) (citations omitted).

20 Available at http://www.fairhousingnc.org/wp-content/uploads/2013/05/HUD-FHEO-2013-01-Service-Animals-and-Assistance-Animals-PWD-in-Housing-and-HUD-funded-programs.pdf.

21 See discussion of res judicata in *Anderson* further at § 34.

22 Anderson v. City of Blue Ash, 798 F.3d 338, 354 (6th Cir. 2015).

23 Anderson v. City of Blue Ash, 798 F.3d 338, 356 (6th Cir. 2015).

24 Anderson v. City of Blue Ash, 798 F.3d 338, 360 (6th Cir. 2015).

25 Anderson v. City of Blue Ash, 798 F.3d 338, 361–362 (6th Cir. 2015).

26 Anderson v. City of Blue Ash, 798 F.3d 338, 363 (6th Cir. 2015).

27 Anderson v. City of Blue Ash, 798 F.3d 338, 364 (6th Cir. 2015).

28 Access Now, Inc. v. Town of Jasper, Tennessee, 268 F. Supp. 2d 973, 976–977 (E.D. Tenn. 2003).

29 Access Now, Inc. v. Town of Jasper, Tennessee, 268 F. Supp. 2d 973, 977 (E.D. Tenn. 2003).

30 Access Now, Inc. v. Town of Jasper, Tennessee, 268 F. Supp. 2d 973, 980 (E.D. Tenn. 2003).

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Student Comment
Susan D. Semmel [a1]

*39 WHEN PIGS FLY, THEY GO FIRST CLASS: SERVICE ANIMALS IN THE TWENTY-FIRST CENTURY

I. INTRODUCTION

When Maria Tirotta Andrews decided to move from New Jersey to Washington State in October 2000, she booked a first class ticket on a US Airways' nonstop flight from Philadelphia to Seattle. [1] Ms. Andrews notified the airline that she was a qualified person with a disability, a heart condition, and would be traveling with her assistance animal, Charlotte. [2] This may seem like a pretty routine scenario so far. German shepherd seeing-eye dogs for the visually impaired and golden retrievers assisting persons with disabilities who use wheelchairs have become common sights in the United States. However, Charlotte was no ordinary service animal. Charlotte was a 300-pound Vietnamese pot-bellied pig, and pigs fly when the Air Carrier Access Act of 1986 (ACAA) says they do. [3] So, US Airways flew Charlotte and Ms. Andrews to Seattle. [4]

Although Jim Peters, Federal Aviation Administration (FAA) spokesperson, said US Airways "acted in a reasonable and thoughtful manner" in the situation, Charlotte, according to the other first class passengers, did not. [5] Allegedly, Charlotte became distressed upon the aircraft's descent to land, ran around the cabin squealing and attempted to enter the galley and the cockpit of the Boeing 757. [6]

Passengers complained to the FAA, but the FAA defended US Airways, stating that "US Airways acted in a reasonable and thoughtful manner based on a legitimate request to transport a qualified individual with a disability and her service animal." [7] However, US Airways spokesperson David Castelveter insisted, "an incident like this will not happen again." [8] The FAA's advice to other airlines who ***40** might be asked to fly future pigs was to "cross that sty when they come to it." [9] Ms. Andrews continues to defend Charlotte's behavior, saying "my pig did not run around anywhere." [10]

So, how did Ms. Andrews convince US Airways' personnel that Charlotte was a service animal and not a pet or even livestock? Ms. Andrews purportedly had a doctor's note stating that her heart condition was so severe that she required Charlotte's support and companionship to relieve stress. [11] Legally, under the ACAA, she did not even need the note. According to the regulations which enforce the ACAA, all the airline was entitled to was "credible verbal assurances of the qualified individual with a disability using the animal." [12] US Airways' personnel could have declined to fly Ms. Andrews and Charlotte under a subpart of the regulations, which allows them to refuse to provide transportation to any passenger on the basis of safety. [13] But airline ticket agents, who are probably not attorneys, were perhaps fearful of taking an action possibly interpreted as discrimination.

Charlotte's status as a service animal might have afforded her rights under other federal statutes. Under the Americans with Disabilities Act (ADA), she would have been entitled to ride the bus, go to the grocery store, take in a concert if she kept quiet,

live in public housing and accompany Ms. Andrews to work. [14] If Charlotte wanted to live in private housing, the Fair Housing Amendments Act of 1988 (FHAA) might provide for that. [15]

Certainly, Charlotte the flying pig is an amusing story, and an example of an extreme case, but it does illustrate the real problems involved in equal access for service animals: 1) the result of nebulously worded statutes, 2) the increasingly diverse species of animals used by persons with disabilities, and 3) the evolving types of disabilities for which assistance animals are being used.

State and federal laws strive to protect the rights of persons with disabilities accompanied by service animals, but they must also balance those rights against the government's mandate to ensure the health and safety of all citizens. The legitimacy of an animal's status as a service animal must be established to keep pet owners from fraudulently claiming assistance animal status for their pet, and gaining admittance for their pets where none is allowed. [16] Citizens with disabilities who are discriminated against because they use service animals must have an individual cause of action that provides for monetary damages as a remedy. Finally, restitution should be available for losses incurred as a result of an attack on an assistance animal.

This paper will explore the origin and evolution of service animals in the United States and the struggle of those persons who use them for equal access in transportation, housing, places of employment, and public accommodations. Additionally, the paper analyzes state and federal legislation, particularly the ADA and ***41** the ACAA, and examines the case law that evolved before and after these statutes were enacted. Finally, the paper will suggest revisions to the current laws that allow equal access to all legitimate service animals, including those in training, and provide a private cause of action for discrimination under all titles of the ADA, as well as state courts.

II. A BRIEF HISTORY OF SERVICE ANIMALS IN THE UNITED STATES

A. Guide Dogs for the Blind

The first service animals used in the United States were German shepherd dogs used to assist persons with visual impairments known as Seeing Eye dogs. In 1927, Dorothy Eustis, an American ex patriate living in the Swiss Alps, traveled to Potsdam, Germany to visit an animal training school. [17] Mrs. Eustis was a trainer, breeder, and fancier of German shepherds. The German school reportedly trained German shepherds to guide World War I soldiers who had been blinded in battle. [18] Although Mrs. Eustis had seen photographs of German shepherds leading blind persons across busy street intersections, she remained skeptical. [19] However, after visiting the school, Mrs. Eustis was convinced of the program's success and sent her best trainer, Jack Humphrey, to the German school for instruction in the training of the dog and the visually impaired person who would ultimately use the dog. [20]

Following his instruction and training in Potsdam, Mr. Humphrey returned to Switzerland and trained two German shepherds to assist the visually impaired. [21] Concurrent with the ongoing training, Mrs. Eustis wrote an article about Seeing Eye dogs for the Saturday Evening Post magazine. [22] Morris Frank, a visually impaired man from Nashville, Tennessee, became aware of the article and wrote to Mrs. Eustis requesting training in the use of a guide dog. Mrs. Eustis, who had received much correspondence in response to the article, selected Mr. Frank to become the first American to be trained to use a guide dog. [23] Mr. Frank arrived in Switzerland, renamed the female shepherd Buddy, and was trained to use Buddy as a Seeing Eye dog. [24] In 1928, six decades before federal legislation would ensure equal access to transportation for service animals, Mr. Frank and Buddy traveled to the United States on a steamer ship. [25] When the ship docked in New York, anxiously awaiting newspaper reporters who were looking for a story to cover wrote enthusiastically about Buddy, the Seeing Eye dog for the blind, and about Mr. ***42** Frank's and Mrs. Eustis' plans to establish a training school for Seeing Eye dogs in Nashville. [26]

Mrs. Eustis and Mr. Humphrey continued to train dogs in Switzerland. In 1929, they opened the first service animal training center in the United States, "The Seeing Eye," in Nashville. [27] In 1931, Mrs. Eustis moved the "The Seeing Eye" from Nashville to Morristown, New Jersey (where it continues in operation today) because the extreme heat of the Tennessee summers made dog training difficult. [28]

Upon relocation to New Jersey, prominent journalist Booth Tarkington and popular radio personality Alexander Woollcott promoted and popularized the concept of guide dogs for the blind on the radio and in the print media. Publicity countenanced acceptance and most persons using guide dogs encountered relatively few access problems, even though there was little state or local legislation addressing assistance animals. [29]

As the word spread, demand grew and "The Seeing Eye" was followed by "Leader Dogs for the Blind" in Rochester, Michigan, founded in 1939, and "Guide Dogs for the Blind" in San Raphael, California, founded in 1942. [30] By January 2000, the American Council for the Blind listed sixteen guide dog training organizations, many with facilities in multiple states. [31]

B. Other Assistance Dogs

By the 1970s, pioneers in the assistance animal movement, like Canine Companions for Independence in Santa Rosa, California, began to train dogs to aid persons with disabilities other than visual impairments. [32] Service dogs that assist a person whose disability requires the use of a wheelchair are trained to perform a variety of tasks, such as pulling the wheelchair, fetching objects, operating light switches and doors, and barking to alert. [33] Most service dogs are either golden or Labrador retrievers. [34] Hearing dogs are trained to alert to household sounds like telephones and doorbells, and lead their owners to the sound source. [35] These dogs are usually smaller breeds, including mixed breeds, which are selected for their hearing acuity. [36] The most important support afforded by all service animals is the ***43** life affirming independence that they bring to their owners. [37] Therefore, an assistance animal training facility may have as many as four hundred people on its waiting list. [38]

In 1987, the popularity of the assistance animal led to the founding of Assistance Dogs International, a coalition of assistance dog trainers. Assistance Dogs currently lists over forty domestic member-training facilities. [39] In 1996, there were an estimated ten to twelve thousand assistance dogs. [40] There is, however, no nationally recognized certification process for service animals. Like the Guide Dogs before them, service dogs are met with access problems throughout all fifty states, as well as the lack of federal laws that ensure service animals access to public accommodations and transportation. Even as Seeing Eye dogs and Guide Dogs continued to encounter problems with access, new species of animals were about to be used to assist persons with varying disabilities.

C. New Millennium, New Species, New Uses

Buddy, the first Seeing Eye dog, died in 1938, and Morris Frank had an additional five "Buddies" in his lifetime. Each new dog required several weeks training. [41] Dogs, especially larger breeds that have a life expectancy of about ten years, may have to retire from assistance duty. [42] Miniature horses can live thirty-five years and they are calm in traffic and have excellent night vision. [43] In 2000, Janet Burleson of Rocky Ford, North Carolina founded the Guide Horse Foundation. [44] Cuddles, the first graduate, who rode on Atlanta's rapid transit system, should be covered under the ADA as long as he is acting as a service animal. [45] Like Buddy seventy years before him, Cuddles' novelty alone may gain him status as a service animal. [46]

Although it may be easier to accept a small horse as a service animal rather than a pet, small dogs and other types of animals may encounter more resistance. This is especially true if the animal's master has a non-obvious disability. Although it may seem

unusual for a monkey to assist a quadriplegic, its status as a service animal should be apparent. In contrast, a tiny hairless Chinese crested dog, trained to prevent diabetic shock by sensing changes in its owner's breath, may ***44** have a more difficult time achieving acceptance as a service animal. [47] Both the dog's small size and the owner's non-obvious disability would account for this.

The battle for service animal acceptance is most hard-fought in the two newest areas of use: therapy for persons with mental disabilities and emotional support for persons with non-obvious physical disabilities. [48] Dogs, cats, and even birds function as service animals rather than pets if they provide comfort and support for persons with mental disabilities, such as depression, panic disorder, and post-traumatic stress syndrome. [49] Charlotte the pig flew first class under the color of a federal statute because she provided emotional support for Ms. Andrews, who suffered from a serious heart condition.

III. SERVICE ANIMALS AND THE AMERICANS WITH DISABILITIES ACT

A. Overview

In 1990, Congress enacted the ADA to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. [50] Title I of the ADA addresses discrimination in the area of employment, [51] Title II deals with public services, including public transportation other than aircraft and some rail operations, [52] and Title III addresses public accommodations and services operated by private entities. [53] Title III of the ADA defines service animal as follows: Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. [54] (emphasis added) Of paramount importance in the subject of access for service animals is the ADA's mandate that reasonable accommodations are provided for persons with disabilities. Again, it is Title III that specifically mandates public accommodations to modify policies, practices, or procedures to permit the use of a service animal by ***45** an individual with a disability. [55] Both the courts and federal agencies charged with enforcing other titles of the ADA have supported the proposition that permitting access to persons with disabilities and their service animals is, in almost all cases, a reasonable accommodation. Additionally, the Department of Justice (DOJ) Interpretive Guidance suggests that the ADA contemplates the broadest feasible access to service animals. [56]

B. Title I - Employment

Title I strives to equalize employment opportunities for persons with disabilities who are otherwise qualified and can perform the essential functions of the job with reasonable accommodations. [57] Title I does not directly address or define service animal either in the statute or in the enforcing regulations promulgated by the Equal Employment Opportunity Commission (EEOC). However, the EEOC Interpretive Guidance cites permitting an individual who is blind to use a guide dog at work as an example of a reasonable accommodation. [58] There are still defenses available to employers who seek to prevent the use of service animals, such as undue hardship and a direct threat to the health and safety of others. [59] Additionally, a service animal will not always ensure that a person with a disability can perform the essential functions of the job.

In the 1999 case, Branson v. West, an Illinois physician, Christine Branson, who was able to use a manual wheelchair with the help of her assistance dog, Nolan, was granted a permanent injunction permitting Nolan to accompany her to work at a Veterans' Hospital. [60] The Federal District Court dismissed the hospital's arguments that Nolan's presence would cause a “logistic nightmare” in the hallways and elevators of the hospital as unfounded. [61] Additionally, the court dismissed the hospital's health concerns regarding patients who have allergies, asthma, or a fear of animals because the facility already permitted Seeing Eye

dogs.[62] Thus, the access enjoyed by Seeing Eye dogs was extended to service dogs. It is still a puzzlement as to why the hospital sought to contest Nolan's presence. One could argue that if Doctor Branson's disability had been a visual impairment, the exact same dog would not have been questioned by the hospital. In fact, the court held that for the purposes of hospital safety, no difference existed between a Seeing Eye dog and a service dog.[63] However, although the court did not speculate as to other species of assistance animals, Nolan may have cleared a path for Cuddles and even Charlotte because the ADA clearly reads dog or other animal.[64] ***46** Hospitals and other employers with sensitive health and safety concerns should be prepared to deal with the next generation of service animals.

Sometimes the legal issue is not the presence of the animal, but rather the capacity of the person with the disability to perform the essential functions of the job even with an assistance animal. In Miller v. Illinois Department of Corrections, the use of a Seeing Eye dog actually affirmed the employer's defense that an employee was not able to perform the essential functions of the job. The Seventh Circuit upheld the termination of a prison guard who had been blinded during her tenure at the job because her duties included standing guard, counting and searching inmates and visitors, and searching for escaped prisoners. The mere presence of the Seeing Eye dog proved that she could not see well enough to perform these essential functions.[65]

Thus, with the ADA affording the broadest feasible access to service animals in the workplace, it is extremely difficult for an employer to successfully keep service animals out of the workplace, nor should they try. An employer is under no duty to provide a service animal or provide care for the service animal of any employee.[66] A service animal is a cost-free, reasonable accommodation for the employer. Also, it is highly unlikely that a trained service animal would ever present a direct threat, such as vicious behavior, in the workplace. The exclusion of a service animal from a workplace should be a very rare occurrence.

C. Title II - Public Services

Title II of the ADA prevents discrimination by public entities and state and local governments, as well as discrimination in designated public transportation.[67] Specifically, Title II reads "no qualified individual with a disability shall be denied the benefits, programs, or activities of a public entity by reason of such disability."[68]

The public entity may defend against a discrimination charge by proving that the accommodation sought would fundamentally alter the nature of the program or cause undue financial and administrative burdens.[69] Discrimination by state and local public entities becomes particularly applicable to service animals in the area of public housing. In addition to Title II of the ADA, persons with disabilities who live in privately owned housing are afforded protection under the FHAA, which prevents, in most circumstances, "discrimination in the sale or rental of a dwelling based on a handicap."[70] For example, in the slightly less than politically correct regulations enforcing the FHAA, the regulation provides that "it is a violation of the act for the owner or manager of an apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog, because without the seeing ***47** eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling."[71]

Assuring access to public transportation is of paramount importance to persons with disabilities, especially those with visual impairments, as public transportation may be their only means of traveling. However, a person with a service animal is likely to encounter resistance in both housing and in public transportation. Even though the ADA emphasizes that a service animal is not a pet, many people do not make that distinction and seek to enforce a "No Pets" policy. Under Title II of the ADA, a public housing authority which refuses to alter its "No Pets" policy is guilty of discrimination.[72] Altering the policy may be deemed a reasonable accommodation and the failure to provide such reasonable accommodation may result in an individual with a disability being denied the benefits of living in public housing.[73]

In Green v. Housing Authority of Clackamas County, Sherry Green sued the county housing authority when it refused to allow her son, Jeremy's hearing assistance dog, Mowie, to remain in their apartment.[74] Ms. Green prevailed and received damages of

twenty-five thousand dollars. [75] Although, in order to avoid eviction, she already removed the dog from her apartment. [76] The housing authority defended on two theories: its own policy requiring an assistance animal to be trained by a certified trainer and Oregon state law, which required hearing dogs to be on an orange leash. [77] The District Court ruled for Ms. Green and rejected both arguments, holding that there is no basis in federal law requiring a service animal to be certified. [78] Therefore, the Oregon statute was unenforceable, as it was more restrictive than the federal statute. The court reasoned that the housing authority would have to show that the hearing dog fundamentally altered the nature of the program and, if so, it caused undue financial and administrative burdens. [79] This was a burden that the housing authority could not meet. Analogous to Nolan, the assistance dog's employment discrimination case, if Mowie had been a Seeing Eye dog, the housing authority would have permitted his presence. Thus, not only was the housing authority discriminating against the animal for not being certified, it was discriminating against Jeremy because he did not have the "right" disability.

Ms. Green was awarded compensatory damages because Title II provides for such remedy in housing cases. However, Title II transportation cases and Title III public accommodation cases do not yield compensatory damages. [80]

The United States Court of Appeals for the Seventh Circuit also rendered a decision regarding certification for assistance animals. Bronk v. Ineichen, a case decided ***48** under the FHAA, involved private rather than public housing. The Seventh Circuit reversed and remanded the decision of the District Court holding as reversible error a jury instruction that implied, as a matter of law, that it was reasonable for the landlord to demand training credentials for the dog. [81] Reasoning that the federal statute does not require credentials, the court further opined that "a deaf individual's need for the accommodation afforded by a hearing dog is, we think, per se reasonable within the meaning of the statute." [82]

Notwithstanding that in both of these cases the plaintiffs with disabilities legally prevailed, the fact that such cases are vigorously defended years after the enactment of the federal statutes, is both surprising and disturbing. In Ms. Green's case, she was forced to take Mowie to the Humane Society to avoid eviction even though Mowie had already been trained to alert Jeremy to danger. Ms. Green, who intends to get another dog for Jeremy, is faced with unnecessarily having to repeat training process. [83] As noted in Bronk, the tenants moved long before the district court's ruling. [84]

Legal victories under these federal laws represent great strides for assistance animal acceptance in comparison to pre-legislation litigation. For example, in 1982, the Appellate Division of the Supreme Court of New York affirmed the lower court's decision holding in the case of Associated Blind Housing Development Fund Corp. v. Schwartz. [85] The court held that a blind tenant had to either remove a dog from his apartment or have it certified as a guide dog. [86] Even though the landlord had waived his "No Pets" policy to allow guide dogs for other blind tenants, the court held that he was under no legal duty to do so for everyone. [87]

Amazingly, the court also held that the tenant's claim that he could not be evicted because he was blind was without merit. [88]

The lack of many recent federal cases contesting assistance animals in public and private housing may indicate an acceptance of the Ninth Circuit's reasoning when it held that assistance animals are a per se reasonable accommodation within the meaning of the statute. [89] There are some controversies that are being settled before they reach the courts. This may be due to landlords and housing authority officials becoming better educated regarding federal laws that mandate the acceptance of service animals in public and private housing.

Title II of the ADA also prevents discrimination against persons with disabilities on public transportation provided by public entities. [90] The statute defines designated public transportation as transportation (excepting commercial air travel, public school transportation and some rail transportation) that provides the general public with general or special service (including charter service) on a regular basis. ***49** [91] Although the ADA provides federal protection for a service animal's use on public

transportation, this is also an area protected by state legislation in all fifty states, albeit only for service dogs in most state statutes. [92] However, in Title II transportation issues, the ADA appears to provide a right without a remedy. It is hard to imagine a bus driver refusing to transport a visually impaired person using a harnessed Seeing Eye dog. If this does occur through the ignorance of the transit company's employees, remedial measures such as modifications to manuals and education of employees may be all that is required to avoid monetary sanctions. In O'Brien v. Werner Bus Lines, the O'Briens who both used Seeing Eye dogs, were denied transportation on a tour bus to Atlantic City. [93] Both the driver and the dispatcher refused to allow the O'Briens and their service animals to board the bus. [94] They doggedly enforced the company's general policy of not transporting animals. The O'Brien's ADA cause of action resulted in summary judgment for the bus company because compensatory damages were not available. The O'Briens only received free tickets and a mea culpa from corporate. Injunctive relief would have been available, but was not appropriate because the O'Briens admitted that they would not use the bus company again (the O'Brien's attorney returned the free tickets to the bus company). [95] The bus company prevailed because it took the necessary measures to ensure that the situation would not occur again. [96] Therefore, when a person using a service animal is discriminated against under Title II in the transportation arena, injunctive relief that requires the company to cease its discrimination, may be the only remedy available. Although the individual may have suffered an inconvenience, the added expense and humiliation suffered by its patrons with disabilities are direct results of the transport company's failure to follow the law. Under the ADA, the individual probably cannot recover for this discrimination. [97]

D. Title III - Public Accommodations

Title III of the ADA [98] prevents discrimination in public accommodations, which are generally defined as private entities whose operations affect commerce and are held open to the public at large. [99] Enumerated extensively both in the statute itself and in its enforcing regulations, some typical examples of public accommodations are stores, restaurants, hotels, theaters, museums, barbers, offices, and hospitals. [100] The Department of Justice (DOJ) regulations enforcing Title III both ***50** define service animal and specifically require a public accommodation to modify its policies, practices, and procedures to permit the use of a service animal by an individual with a disability. [101] The official staff interpretive commentary offers the following insight:

Section 36.302(c)(1) requires that a public accommodation modify its policies, practices or procedures to permit the use of a service animal by an individual with a disability in the area open to the general public. . . . A number of commentators pointed to the difficulty of making the distinction between areas open to the general public and those that are not. The ambiguity and uncertainty surrounding these provisions has led the Department to adopt a single standard for all public accommodations. . . . (T)he final rule now provides that "generally, a public accommodation shall modify policies, practices and procedures to permit the use of a service animal by an individual with a disability." This formulation reflects the general intent of Congress that public accommodations take the necessary steps to accommodate service animals and to ensure that individuals with disabilities are not separated from their service animals. It is intended that the broadest feasible access be provided to service animals in all places of public accommodation. . . . The section also acknowledges, however, that, in rare circumstances, accommodation of service animals may not be required because a fundamental alteration would result in the nature of the goods, services, facilities, privileges, or accommodations offered or provided, or the safe operation of the public accommodation would be jeopardized. . . . (T)he rule does not require a public accommodation to supervise or care for any service animal. If a service animal must be separated from an individual with a disability in order to avoid a fundamental alteration or a threat to safety, it is the responsibility of the individual with the disability to arrange for the care and supervision of the animal during the period of separation. [102] (emphasis added)

Hence, the most unambiguous and definitive language applicable to the right of a person with a disability to enter a public accommodation with her service animal is found, unfortunately, in the non-legally binding commentary. [103] Service animals can enter a public accommodation in areas where the general public is welcome unless admitting them would create a fundamental alteration to the business product or service of the public accommodation, or the animal's presence would present ***51** a threat

to the health and safety of others. [104] Notably, the official staff commentary envisions denying admission to a service animal in very few circumstances. [105]

Successfully asserting that a service animal presents a health or safety threat to others or necessitates a fundamental alteration is a formidable burden for a defendant in a case involving a public accommodation. In Johnson v. Gambrinus/ Spoetzl Brewery, Mr. Johnson attempted to take the brewery's tour with his guide dog. [106] The brewery refused to allow Mr. Johnson's dog to accompany him on the tour because the brewery had a strict "No Animals" policy. [107] Mr. Johnson declined to take the tour without his dog and brought suit against the brewery under the ADA. [108] The brewery defended under another federal statute that governed its operations, the Food, Drug, and Cosmetic Act (FDCA). [109] Claiming the FDCA proscribed animals in its facility, the brewery cited safety and contamination concerns. [110] The brewery claimed that although it could change the tour so that it would not cover some of the sensitive open vat production areas, the change would fundamentally alter the tour. [111] The purpose of the tour, naively suggested by Gambrinus, was to see the beer being brewed. The Fifth Circuit, in upholding the decision of the District Court, dismissed the brewery's affirmative defenses. [112] The brewery failed to show that the likelihood of contamination was any greater because of the animal's presence as compared to the presence of the general public. [113] The court ordered the brewery to revisit and revise its blanket "No Animals" policy. [114] In this case, the court considered the production area open to the general public because of the tours. [115] The brewery's defense that somehow a dog hair might contaminate the beer was unfounded based on the probability of a human hair getting into the beer being much greater because the tourists were permitted to look directly into the open beer vats. However, the actual victim of discrimination, Mr. Johnson, was without remedy under the ADA. Mr. Johnson waited outside with his dog while his friends went on the tour. [116] He likely suffered some stress and humiliation from the situation. His only legal satisfaction is not personal, but rather lies in ensuring that his situation will not be repeated with someone else. Arguably, Mr. Johnson suffered the personal and direct injury. Therefore, legislation should provide for his personal recovery.

An unfortunate consequence of the unavailability of compensatory damages under Title III of the ADA is evidenced by the fact that large national chain stores that repeatedly violate the ADA's regulations by excluding service animals are escaping penalty. After each violation, they insist that they have taken measures to ***52** modify their policies to ensure non-recurrence of the violation. In Stan v. Wal-Mart Stores, Inc., Ms. Stan, who used a service dog due to a visual impairment, filed suit for discrimination against Wal-Mart under Title III of the ADA. [117] Ms. Stan was stopped at the door of two different Wal-Marts and one Sam's Club on several different occasions. [118] She was told she could not enter the store with the dog. [119] On each occasion, she sought out store managers who apologized profusely and promised it would not happen again and that they would educate their employees about service animals. [120] Eventually, Ms. Stan, presumably fed-up with the repetition of these events, filed suit. [121] Wal-Mart exited the lawsuit unscathed, receiving a summary judgment because, once again, monetary relief is not available under Title III. [122] Ironically, injunctive relief was also not available because Ms. Stan stopped patronizing the offending stores. [123]

However, although the person with the disability who brings the lawsuit is precluded from receiving monetary compensation for the discrimination, the attorney who defends him is not. In Fisher v. SJB-P.D. Inc., the Ninth Circuit reversed and remanded the District Court's holding that Mr. Fisher's attorney was not entitled to his fees because the attorney was not the prevailing party. [124] After Mr. Fisher, who uses a service dog, was refused service at a restaurant operated by the defendant, he filed suit under Title III and California state law. The ADA claim was settled prelitigation on a familiar note. The defendant agreed to modify its policies and practices and to educate its employees regarding service animals. The Ninth Circuit held that the District Court had erred by finding that Mr. Fisher was not the prevailing party because he had achieved the injunctive relief he sought against the defendant, albeit out of court. Although Mr. Fisher's attorney may not receive the thirtyeight thousand dollars he sought, the Ninth Circuit suggested compensation at the prevailing market rate. [125]

The ADA limits the remedies available to private parties who have suffered discrimination. Usually, the most plaintiffs can legally win is injunctive relief that hopefully ends the discrimination. Plaintiffs sue in kind to stop future acts of discrimination against the next individual using a service animal that the defendant may encounter. Both Ms. Stan, who was regularly hassled by Wal-Mart greeters, and Mr. Fisher, who was with his parents when the restaurant turned him away, were denied the satisfaction of a monetary victory. Unfortunately, in ADA cases, the financial outlay expended by defendants, most of whom admit to the discrimination and promise amends, goes to attorneys on both sides and not to the individual who suffered the injury.

*53 IV. THE AIR CARRIER ACCESS ACT OF 1986

The Air Carrier Access Act (ACAA) [126] prevents discrimination against persons with disabilities by most airlines providing air transportation. While the ADA sought to incorporate and expand the Rehabilitation Act of 1973 [127] in most areas, air transportation, which was included in the Rehabilitation Act, is excluded from the ADA, and is covered in the ACAA. But there is one important difference in these two federal statutes that address transportation discrimination, and that difference may very well explain how a 300 pound pig wound up on an airplane's first class cabin. The difference is damages. In discrimination suits filed under the ACAA, some courts have awarded damages for emotional distress.

In the landmark discrimination damages case, Tallarico v. Trans World Airlines, Inc., the Eighth Circuit reversed the District Court's judgment notwithstanding the verdict and upheld the jury's award of eighty-thousand dollars in damages for emotional distress. [128] Trans World Airlines refused to transport Polly Tallarico because she has cerebral palsy and was traveling alone. [129] Polly used a wheelchair and communicated through the use of a communication board. [130] At the trial, a witness offered evidence that Polly was crying, upset, and very angry when the airline refused to allow her to board. [131] Additionally, Polly's parents and teachers testified about how withdrawn Polly had become following the incident. [132] The airline defended the damage claim by asserting that the ACAA is an antidiscrimination statute and, as a matter of law, emotional distress damages are not recoverable for violations of the ACAA. [133] The Eighth Circuit disagreed, reasoning that if a statute provides a specific remedial scheme, it is evidence that other remedies are excluded. [134] However, because the ACAA does not have a remedial scheme, evidence of congressional intent to exclude emotional distress damages does not exist. [135] Therefore, such damages are available. [136] Following the decision in Tallarico, it is highly likely that commercial airline management seeking to avoid such awards in the future, carefully instructed their employees not to decline transport to any person with a disability. Therefore, in the case of Charlotte the flying pig, if Ms. Andrews truly needed her pig for emotional support because of her disability, and US Airways declined to transport Charlotte, Ms. Andrews may have prevailed and recovered damages for emotional distress under Tallarico.

It is a huge leap from an individual with a disability traveling alone or an individual with a disability who uses a traditional service dog, to a three hundredpound pig upon whom that person relies for emotional support. However, one airline ***54** organization, the Air Transport Association (ATA), seemed to anticipate such a problem. The ATA sought regulations that in the event a carrier reasonably doubted that an animal was a genuine service animal, that airline could refuse to recognize the animal as such if the animal's user was unable to produce credible documentation of its status as a service animal. The ATA believed that this regulation would be particularly important for non-traditional service animals like monkeys.

However, the ATA was unsuccessful. The Paralyzed Veterans of America (PVA), which is an advocacy group for persons with disabilities, objected to the credential requirement. The PVA felt it was overly burdensome to require an owner to carry an ID card for the animal, and furthermore, there were no universally accepted credentials for service animals. The PVA suggested that the verbal assurances of the people using the animals should be enough. Thus, the language “credible verbal assurances” made its way into the regulations. [137]

Ms. Andrews offered verbal assurances to the airline personnel, but if they chose not to believe they were credible, Ms. Andrews reportedly had a note from her doctor. In the absence of an accepted certification system for service animals, Ms. Andrew's doctor's note was probably as good as anything else. Perhaps the airline personnel who permitted Charlotte to fly knew they were absurdly in compliance with a federal law and sought to make a statement which, by subtext, called for the law's revision.

V. STATE STATUTES

A. More Rights in Damages and for Service Animals in Training

All fifty states have laws requiring access to public accommodations for persons with disabilities using service animals. [138] However, most of the state statutes still use the word “dog” to describe the animal and many list “blind” or “visually impaired” as the disability. [139] Since states can give more, but not less, rights than federal statutes, any state with service animal statutes that are more restrictive than the ADA, would likely find them struck down if challenged in court.

One area in which a state can give more rights is in the area of damages. Since compensatory damages are, for the most part, not available under the ADA, a person with a disability who has experienced discrimination because of a service animal might join a federal ADA claim with a state claim if the state statute allowed for monetary awards. This was the case in Fisher, in which the plaintiff sought preventative relief under federal law and compensatory damages under California state law. [140]

Another situation where some states have given more rights than federal laws is in the area of service animals in training. Many service animal training organizations ***55** use volunteer puppy raisers who take puppies and train and socialize them until they are about eighteen months old. At that time, the dogs are returned to the organization and receive additional training to become a service animal. [141] The Seeing Eye pioneered this concept in the 1940s by allowing 4-H club members to train their dogs. Most guide dog organizations use this method. [142] However, a service animal in training is not assisting a person with a disability and is, therefore, not covered by the ADA. In order for the puppy raisers to get dogs or other service animals accustomed to public places, it is critical that they be allowed access to public accommodations. Some establishments welcome the dogs that wear sashes indicating their training status. However, if Wal-Mart greeters attempt to turn away visually impaired customers with Seeing Eye dogs, it is likely that dogs in training, let alone other non-traditional service animals, will also be turned away unless their access is legally ensured. Some states have legislated this access for service animals in training. In Florida, any trainer of a dog guide, while engaged in the training of such dog, has the same rights and privileges as a disabled person with a guide dog with respect to access to public facilities. [143] Florida also statutorily recognizes non-human primates of the genus Cebus as an assistance animal for persons with paraplegia and quadriplegia. [144] However, the access for a Cebus in training requires the animal to be accompanied by a paid employee of a training organization and not a volunteer animal raiser. [145]

As of 1996, twenty-one states ensured the same access for animals in training as those assisting persons with disabilities. [146] Certainly, this is an area that could benefit from uniform legislation similar to the Florida legislation. Even if the legislation applied only to service dogs, for the most part, it is guide dogs that are trained in this manner.

B. State Legislatures Take the Lead

1. Penalties for Attacks on Assistance Animals and Other Substantive Changes to Law

Bob Mates of Wilkinsburg, Pennsylvania is director of the Pittsburgh Lutheran Center for the Blind. [147] In 1997, while Mr. Mates and Zack, his guide dog, were waiting for a bus which would take them to work, Zack was attacked by a pit bull. Unfortunately for Zack, this was not the first, nor would it be the last time he was attacked. [148] The owner of the attacking dog in the 1997 incident was fined only ***56** three hundred dollars. [149] Both Mr. Mates and Zack suffered injuries as a result

of the attack and both missed a week of work. [150] To many guide dog users and guide dog user organizations, attacks are understandably a greater priority than accommodations. Guide Dog Users, Inc. reports that as of December 2001, sixteen states had enacted legislation regarding attacks on service animals. [151] Now, Pennsylvania legislators are also considering a bill which would impose stricter penalties, including jail time, for attacks on guide dogs. [152]

The most recently enacted law in this area is in Florida. On April 25, 2002, Governor Jeb Bush, witnessed by guide dogs and their persons, signed House Bill 1819, "Scanner's Law," took effect on July 1, 2002. [153] Both Florida Houses unanimously passed the bill, which is named after a guide dog that was attacked. [154] The bill provides for three criminal sanctions if a guide dog is interfered with, injured, or killed by either a person or a dog the person owns or controls. If the person acts with reckless disregard and either the person or a dog that he or she owns or controls interferes with a guide dog or service animal that person is guilty of a second degree misdemeanor for the first offense, and a first degree misdemeanor for subsequent offenses. In the preceding situation, if the dog or service animal is injured or killed, then the person is guilty of a first-degree misdemeanor. If a person acts intentionally, instead of with reckless disregard, and the guide dog or service animal is injured or killed, then the person is guilty of a third degree felony. However, the real bite of this legislation is the availability of statutory damages. Any person who is convicted under the new law must make full restitution for all damages that arise out of, or are related to, the offense. Restitution is defined as: the value of the animal, the replacement and training or retraining of the animal, veterinary expenses for the dog, medical expenses for the person using the dog, and lost wages or income occurring as a result of the attack or interference. [155]

Somewhat hidden in this progressive new law, which primarily deals with guide dog attacks, are other important substantive provisions. For the first time, both "guide dog" and "service animal" are defined. A "guide dog" is a dog "trained for the purpose of guiding blind persons" or "assisting hearing impaired persons." [156] A "service animal" is an animal "trained for the purpose of assisting or accommodating a disabled person's sensory, mental, or physical ability." [157]

Another important addition to the existing legislation is the recognition and addition of epilepsy and seizure disorders as a disability for which a person may use and benefit from an assistance animal. Thus, Florida becomes the first state to specifically ***57** recognize "seizure alert" dogs as assistance animals, which are entitled to the same rights as other guide dogs. [158]

Of note, Florida law continues to recognize only dogs and monkeys of the genus Cebus as acceptable species of assistance animals. Monkeys are recognized only if they are assisting persons with paraplegia or quadriplegia. Additionally, the law remains nebulous in the area of training, requiring the dogs to be capable of being properly identified as being trained at a recognized school for hearing, service or guide dogs. However, the law does not define how a school is recognized or what constitutes a proper identification for the service animal.

VI. A PROPOSAL FOR UNIFORM LAWS

A. How to Classify and Certify Assistance Animals

1. Introduction

Assistance Dogs International, Inc. (ADI), founded in 1987, is a coalition of not-for-profit organizations that train and place service dogs. A watch dog organization setting standards and guidelines for its members, ADI is striving to establish consistent terminology and consistent access laws in every state, albeit just for dogs. [159] To this end, ADI has promulgated a Model Law for assistance dogs. [160]

However, even ADI's efforts fall short of what is needed to achieve effective, reasonable, and consistent laws for the use of assistance animals. Even if the language in the Model Law was changed from "assistance dog" to "service animal," the issue of

access to public accommodations for assistance animals should be addressed by its factors: who is entitled to use an assistance animal, what species of animals are acceptable to be used as assistance animals, and what type of training and credentialing should be required.

2. Who is Entitled to Use an Assistance Animal: User's Disability

The Advocacy Center for Persons with Disabilities, Inc. is Florida's protection and advocacy watch-dog organization.[161] In the Tallahassee office, Christie O'Brien is an advocate for persons with mental illnesses. Ms. O'Brien refers complaints of non-access to the ADA advocate at the Advocacy Center. However, complaints of denied access for service animals to public accommodations are difficult to advocate when the person's disability is a mental illness. The law should be amended to avoid this type of discrimination.[162]

***58** The use of service animals to assist persons with disabilities has been dynamically evolving for more than a century. Persons with visual impairments were the first to utilize animals for assistance with their disability, followed by persons with motor impairments. The most recent recognized uses of service animals are for persons with seizure disorders and for persons with disabilities who require emotional support. The ADA should be the penultimate source in determining what is and what is not a disability. If any person has any condition which is recognized as a disability under the ADA or the case law that interprets the ADA, then that person is entitled to reasonable accommodations which should include the use of an appropriate service animal.

3. Who Is Entitled to Use an Assistance Animal: By the Species of the Animal

But what about Charlotte? Maria Tirotta Andrews most likely had a condition that would have been recognized as a disability under the ADA. Under the previously proffered hypothesis, Ms. Andrews would be entitled to the reasonable accommodation of a service or assistance animal. So, Charlotte has weaved a complicated legal web, assuming a 300-pound pig in an airplane cabin is reasonable under any definition. However, rather than engaging in a legal balancing test which would weigh a 300-pound pig against the comfort and safety of others, perhaps certain species of animals should be enumerated as acceptable. This may be a formidable task that may ultimately evolve to a weight and safety analysis. While dogs and monkeys are specified in some state assistance animal statutes, such as Florida, the ADA does not classify or enumerate acceptable species but rather uses the general, albeit nebulous term, service animal. In addition, dogs, monkeys, cats, horses, and birds have also been effectively used to assist persons with disabilities.

Thus, any state statute which attempts to enforce stricter definitions of assistance animal than the federal statute, is effectively taking away rights, and those state statutes may be void under a supremacy challenge. If Charlotte flew under the protection of the federal law, then it is the ADA definition of assistance animal which should be refined. Perhaps the touchstone for both federal and state legislation may ultimately be the popular legal default-- reasonable.

4. Who Is Entitled to Use an Assistance Animal: A Standardized Credentialing Process

Any animal, regardless of its species, that assists a person with a visual, motor, or auditory disability should be properly trained to be effective. In the case of a service or guide dog that assists individuals with visual and motor disabilities, both the dog and the handler undergo extensive training. In some circumstances, a third party (a “facilitator”) also receives training.[163]

***59** Since dogs have the longest history of use as assistance animals, it is not surprising that ADI is their lobbying organization. ADI's mission includes setting standards and establishing guidelines and ethics for the training of assistance dogs. Its member organizations agree to a program of standards and ethics concerning both the dog and the dog's person. ADI sets training standards for Service Dogs, Hearing Dogs, Guide Dogs, Therapy Dogs, and Dog Partners.[164] Additionally, ADI publishes a

book entitled “Legal Rights of Guide Dogs, Hearing Dogs, and Service Dogs.” Purportedly, the book is pocket-sized so it can be shown to those who are denying access to the service dog, and thus educate them as to the law. [165] Credentials from an organization such as ADI, should suffice as credentials verifying the dog as a bona-fide assistance animal. Trainers of other species of animals should seek to form organizations such as ADI, to privately oversee the level and quality of the training of the animal. Thus, statutes such as Florida's, which requires only that the “guide dog” or “service animal” be “trained for the purpose” would be satisfied.

Uniform credentialing would require changes in federal laws, in addition to state laws. Federal courts in both Green [166] and Bronk, [167] have held that there is no basis in federal law requiring a dog to be certified. This should not be the case. If all trained assistance animals received some type of uniform, nationally recognized certification, then the process of identifying a service animal would be simple; a properly credentialed service animal is a reasonable accommodation, and as such, has a right to be in a public accommodation. However, with this right there must also be remedies available to those who are properly credentialed and improperly declined access or service to public accommodations. These remedies must be more than subsequent remedial measures on the part of the offender. Those who deny access, either through ignorance or intent, should be subject to statutory fines with punitive damages available. Additionally, a credentialing process might make a legal scheme to deal with assistance animal imposters unnecessary. If an animal is certified as an assistance animal, there is no need to rely on the value judgments of airline personnel and Wal-Mart greeters.

Ultimately, the fraud of assistance animal imposters is not as large an issue as the problem of denied access to public accommodations by persons using assistance animals. These persons must have stronger remedies available to them for the denial of their right to use an assistance animal while accessing public accommodations.

VII. RECOMMENDATIONS AND CONCLUSION

The ADA and other federal statutes like the ACAA and the FHAA seek to ensure that a person with a disability who uses a service animal will not be denied access to housing, transportation, public accommodations, and places of employment. ***60** However, these statutes do not address the fraudulent masquerading of a pet or other animal as a service animal. Although these statutes are not intended to protect against fraud, it is certainly in the interest of persons with disabilities to ensure that a groundswell of opposition to the ADA does not develop, especially in conservative times. It is a reasonable assumption that no one wants to fly on an airplane with a pig, so if the airline followed the law, perhaps the law needs to be changed. Even if Ms. Andrews were sincere about her need for Charlotte's companionship, her request was nevertheless unreasonable. Equally unreasonable is the fact that Wal-Mart greeters can continuously harass and embarrass individuals using service dogs and bus drivers can refuse transportation with virtual impunity. Thankfully, there seems to be less litigation under Title I, perhaps because employment presents an ongoing relationship rather than a chance encounter.

The following recommended amendments to federal anti-discrimination laws should be made. First, the ADA should be amended to allow for compensatory and punitive damages in a private cause of action under all of its Titles. Antidiscrimination laws strive to make persons with disabilities equal to the nondisabled. Discrimination causes emotional distress, which is a bona-fide injury, particularly for persons with disabilities and compensatory damages should be permitted by statute. Second, all federal regulations addressing service animals must be uniform and unambiguous as to the definition of a service animal. As there is no official certification process, a legislative sub-committee should be convened to receive testimony from experts in the field of assistance animals. The testimony should be tempered with the expert's recommendations and with common sense, perhaps by establishing exclusions as to weight or even species. A certification process should result. Third, “credible verbal assurances” is not a reasonable standard of proof. There should be federal civil penalties for anyone who attempts to transport or otherwise pass off a pet as a service animal. Fourth, the definition of service animal in the federal statutes should be revised to include those animals that are in training to serve persons with disabilities.

The ADA and other federal anti-discrimination statutes which protect persons who use service animals are good laws in need of revision to keep up with the changing face and increasing use of service animals. Additionally, these laws must provide for adequate remedies.

Footnotes

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3 BARRYLR 39

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

ADA
Requirements

Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

This publication provides guidance on the term "service animal" and the service animal provisions in the Department's revised regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

How "Service Animal" Is Defined

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

(continued, page 2)

This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act.

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from that State's attorney general's office.

Where Service Animals Are Allowed

Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

Service Animals Must Be Under Control

Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.

- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.

- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.

- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.

- Staff are not required to provide care or food for a service animal.

Miniature Horses

In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

For more information about the ADA, please visit our website or call our toll-free number.

ADA Website
www.ADA.gov
To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the link near the top of the middle column.

ADA Information Line
800-514-0301 (Voice) and 800-514-0383 (TTY)
24 hours a day to order publications by mail.
M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)
to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

The Americans with Disabilities Act authorizes the Department of Justice (the Department) to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

This guidance document is not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified in the Department's complete discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent.

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10 Signs That a “Service Dog” is Actually a Fake

from Iheartdogs.com

by Amber Kingon August 14, 2017

You’re out shopping when you turn the corner to find a cute dog browsing the merchandise. Your first instinct tells you it’s someone’s service dog, but then something doesn’t seem right. People posing their pets as fake service dogs has become a widespread problem. Real service dogs can be any breed, their owners don’t always have visible disabilities, and they’re not required to carry any kind of identifying paperwork or distinguishing badge. This makes spotting the fakes exceptionally difficult, but if the dog is showing any of these behaviors, it’s most likely an impostor.

#1 – They’re Being Carried or Pushed in a Cart

Service dogs are trained in countless different kinds of jobs, but no matter what their specialty is, they always need to be alert and ready to work. If the dog is being toted around in a purse or getting a free ride in a shopping cart, they’re unable to perform their duty. There are exceptions, however, if a small dog is being held close to person’s chest. Some small dogs are trained to monitor certain bodily functions and need to be kept close to their owners.

#2 – They’re Not on a Leash

It seems ironic, but you’ll never see a highly trained service dog out in public and not on a leash. They’re more than capable of staying by their owner, but leashes are used to protect the dog. Always using a leash is a basic part of being a responsible dog owner.

#3 – They’re Pulling on the Leash

Because they’re always leashed while they’re working, service dogs have impeccable leash manners. They never pull and always stick close to their owner’s side. Dogs used for mobility and support assistance may lean into their harnesses as part of their job, but they don’t yank their person in different directions as they feel like it.

#4 – They’re Barking or Whining

Some dogs are trained to bark or whine as an alert to warn their owner of an impending medical emergency, like a stroke or panic attack. But besides these infrequent sounds, a service dog would never bark at another dog or whine out of impatience.

5 – They’re Sniffing Everything

All dogs rely on smell more than any other sense, and taking your pet on a walk usually involves a whole lot of sniffing. When a dog has a job to do, those scents are a distraction. Service dogs are trained to stay focused, and they won’t be careening down aisles sniffing everything on the lower shelves.

#6 – They Have Indoor “Accidents”

A dog that isn’t fully house trained should never be taken into an indoor public area. For male dogs especially, indoor accidents are not always accidental, and instead, it’s the dog’s way of marking a new territory. Whether they did it on purpose or not, urinating or defecating indoors is an unacceptable behavior for service dogs.

#7 – They Steal Food

Stealing food—whether it’s off a table, out of someone’s hand, or something they found on the ground—is a hard habit for pets to break, but resisting temptations is one of the first lessons a service dog learns.

#8 – They Look Nervous

Socialization is a major part of service dog training, and if the dog in question is the real deal, they’ll seem calm and confident no matter what’s going on around them. They won’t be spooked by loud noises or big crowds, and they won’t cower or tuck their tails between their legs.

#9 – They Seek Attention

Service dogs know they have a job to do, and they only have eyes for the person on the other end of their leash. They don’t put their noses into other people’s space seeking head pats or belly rubs.

10 – They’re Aggressive

Some service dogs are trained in protection, but that doesn’t mean they lash out at other people or animals without being explicitly told to. A dog that is growling, lunging, or showing other signs of unprovoked aggression is not a real service dog.

Fake service dogs put unfair scrutiny on the people who actually need their animals for medical or emotional purposes, and they’re an insult to the dogs that go through months of intense training to be good at their jobs. The service dog reputation is at stake, and it’s because some pet owners think “no pet” policies shouldn’t apply to them. If you decide to approach someone about their dog, remember to do so politely and realize they have no legal obligation to answer a long list of questions.

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