

## Memorandum in Support

NYSBA #9

May 17, 2013

A. 5788  
S. 4317

By: M or A Benedetto  
By: Senator Marcellino

Assembly Committee: Governmental Operations  
Senate Committee: Governmental Operations  
Effective Date: Immediately

AN ACT to amend the executive law, the civil rights law, the agriculture and markets law, the transportation law and the public housing law, in relation to service animals, guide dogs, hearing dogs or service dogs; and to repeal certain provisions of the executive law relating thereto

### THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The New York State Bar Association **SUPPORTS** the passage of A.5788/S.4317. The Bill would clarify and harmonize New York law with respect to the use of guide, hearing and service dogs, by repealing certain provisions of the Executive Law that are inconsistent with requirements under the Americans with Disabilities Act (ADA) and by harmonizing definitions across other existing laws. The ultimate goal of the Bill is to clarify the rights of individuals with disabilities who rely on service animals.

#### AMERICANS WITH DISABILITIES ACT (ADA)

Under the ADA, all that is required is that a “service animal” be “individually trained to do work or perform tasks for the benefit of an individual with a disability.” 28 C.F.R. § 35.104 and § 36.104.<sup>1</sup> A “private entity ... may not insist on proof of State certification before permitting the entry of a service animal to a place of public accommodation.” Department of Justice Technical Assistance Manual for Title III of the ADA, III-4.2300. Justice Department regulations effective March 15, 2011, make clear:

Inquiries. A public accommodation shall not ask about the nature or extent of a person’s disability, but may make two inquiries to determine whether an

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<sup>1</sup> See the Justice Department’s revised regulations under ADA Titles II and III, effective March 15, 2011, including the same wording in the definition of “service animal”, available at [http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm) and [http://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm) (Last visited March 13, 2013).

"[I]ndividuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are permitted to go." This is a matter of nondiscrimination, beyond reasonable accommodation. 28 C.F.R. §36.302(c)(7); see also 28 C.F.R. § 35.136 and N.Y. Civil Rts. L. § 47-b(1).

animal qualifies as a service animal. A public accommodation 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 accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public accommodation 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).<sup>2</sup>

Thus, an inquiry that might appear to be authorized by inconsistent State law would be in violation of the ADA.<sup>3</sup> The intent underlying the federal provisions is:

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, including movie theaters, restaurants, hotels, retail stores, hospitals, and nursing homes ....<sup>4</sup>

Similarly, federal law requires an employer to permit people with disabilities to use service animals at their workplaces.<sup>5</sup> Federal law also prohibits housing discrimination against a person with a disability for use of a service animal.<sup>6</sup>

Notably, both the Bush and Obama Justice Departments explicitly have rejected calls for formal training and certification requirements for service animals. In its "Section-by-Section

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<sup>2</sup> 28 C.F.R. § 36.302 (c) (6), available at [http://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm). See, for public entities, § 35.136 (f), available at [http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm) (Last visited March 13, 2013).

<sup>3</sup> Compliance with "state or local laws" that would limit use of service animals otherwise permitted by the ADA is a violation of the ADA. "The ADA provides greater protection for individuals with disabilities and so it takes priority over local or state laws or regulations." "Commonly Asked Questions about Service Animals in Places of Business" and accompanying letter from United States Department of Justice, Civil Rights Division, and National Association of Attorneys General (including New York's), available at <http://www.ada.gov/archive/animal.htm> (Last visited March 13, 2013).

<sup>4</sup> 28 C.F.R. Pt. 36, App. B (Section-by-Section Analysis); see 28 C.F.R. §36.302(c), 42 U.S.C. §12182(b)(2)(A)(ii); Disability Rights Section, U.S. Dep't of Justice, The ADA and City Governments: Common Problems, available at <http://www.usdoj.gov/crt/ada/comprob.htm> (Last visited March 13, 2013).

<sup>5</sup> See 29 C.F.R. § 1630.16, Appendix to Part 1630--Interpretive Guidance on Title I of the Americans with Disabilities Act, Section 1630.2(o) Reasonable accommodation, available at <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi> (Last visited March 13, 2013); see also N.Y. Civil Rts. L. § 47-b(1).

<sup>6</sup> See 24 C.F.R. § 100.204, Reasonable accommodations, available at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=da0cb62eed900f3249edbb81af304f1a&rgn=div5&view=text&node=24:1.2.1.1.1&idno=24> (Last visited March 13, 2013).

Analysis and Response to Public Comments” regarding the amendments to its ADA regulations effective March 15, 2011, the Justice Department states:

Training requirement. Certain commenters recommended the adoption of formal training requirements for service animals. The Department has rejected this approach and will not impose any type of formal training requirements or certification process, but will continue to require that service animals be individually trained to do work or perform tasks for the benefit of an individual with a disability. While some groups have urged the Department to modify this position, the Department has determined that such a modification would not serve the full array of individuals with disabilities who use service animals, since individuals with disabilities may be capable of training, and some have trained, their service animal to perform tasks or do work to accommodate their disability. A training and certification requirement would increase the expense of acquiring a service animal and might limit access to service animals for individuals with limited financial resources.<sup>7</sup>

## **NEW YORK CITY HUMAN RIGHTS LAW**

The New York City Human Rights Law (title 8 of the New York City Administrative Code; CHRL) is at least as inclusive as the ADA.

"Reasonable accommodation" requires places of public accommodation to recognize the unitary nature of a handicapped individual and the means s/he chooses to adapt to such handicap. Whenever possible, the place of public accommodation must make any and all such accommodations so as to allow the handicapped individual to function normally, unless the accommodation causes an undue burden or economic hardship.... Especially where, as here, the means employed by the handicapped individual to overcome his/her handicap is commonly utilized and almost universally accepted [guide dog], it is not the prerogative of one who operates a place of public accommodation to substitute a means by which a handicapped person will compensate for his/her impairment....

At times, the assistance of wheelchairs, canes and artificial limbs are not required by their owners. In the same way, guide dogs may occasionally be of little use. However, when such means of accommodation are necessary to overcome the handicap, it would be both unlawful and absurd to withhold

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<sup>7</sup> See [http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm) and [http://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm). (Last visited March 13, 2013). The Bush Administration used similar language. Notice of Proposed Rulemaking to amend 28 CFR Part 36: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities. 73 F.R. 34473 (June 17, 2008).

such form of assistance from the individual person who wishes and needs to rely on it.<sup>8</sup>

Thus, for example, under the ADA throughout New York State, and the CHRL within New York City, an individual with a disability may not be barred from a restaurant because that individual is accompanied by a guide, hearing, or service dog, regardless of who trained the dog. Indeed, it would be a violation of the ADA or of the CHRL for the proprietor or an employee of the restaurant to require State certification of the dog.

## NEW YORK STATE HUMAN RIGHTS LAW

### EXECUTIVE LAW SECTION 292

The State Human Rights Law (SHRL) contains provisions inconsistent with the controlling federal law and should be modified or repealed pursuant to the Bill. The provisions to be repealed define guide, hearing, and service dogs in terms that are both impossible to achieve and in conflict with applicable federal and local law. The subdivisions in question state:

31. The term "guide dog" means any dog that is trained to aid a person who is blind by a recognized guide dog training center or professional guide dog trainer, and is actually used for such purpose.

32. The term "hearing dog" means any dog that is trained to aid a person with a hearing impairment by a recognized hearing dog training center or professional hearing dog trainer, and is actually used for such purpose.

33. The term "service dog" means any dog that is trained to work or perform specific tasks for the benefit of a person with a disability by a recognized service dog training center or professional service dog trainer, and is actually used for such purpose.

New York State does not "recognize" any such "training centers" (even presuming "recognition" is to be by the State, rather than by one who might be accused of discriminatory

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<sup>8</sup> Tartaglia v. Jack LaLanne Fitness Ctrs., Inc., N.Y.C. Comm'n on Human Rights, Complaint No. 04153182-PA, Decision and Order (June 12, 1986), at 18-22 (citations omitted). The City Human Rights Law definition of "reasonable accommodation" (Admin. Code § 8-102(18)):

unlike the state Human Rights Law and the ...ADA ..., allows no category of accommodation to be "excluded from the universe of reasonable accommodation" and, unlike the ADA, there are no accommodations that may be unreasonable under the city Human Rights Law if they do not create undue hardship. Phillips [v. City of New York], 66 A.D. 3d [170] at 182 [(1<sup>st</sup> Dep't 2009)]. Thus, the term "accommodation," though undefined in the law, is "intended to connote any action, modification or forbearance that helps ameliorate at least to some extent a need caused by a disability." Phillips, 66 A.D.3d at 182, n. 12 (original emphasis).

Comm'n on Human Rights ex rel L.D. v. Riverbay Corp., OATH Index No. 1300/11 (Aug. 26, 2011), adopted, Comm'n Dec. & Order (Jan. 9, 2012), at 13, available at [http://archive.citylaw.org/oath/11\\_Cases/11-1300.pdf](http://archive.citylaw.org/oath/11_Cases/11-1300.pdf). (Last visited April 12, 2013).

conduct), nor does the State license “professionals” in such categories. Moreover, even were New York State to accord such “recognition” and/or “professional” licensure, it would make the provisions to be repealed no more worth enforcing since, in virtually all instances, the ADA and the CHRL prohibit discrimination against people with disabilities using service animals. Under the current SHRL, the proprietor or employee of a restaurant, store or other place of public accommodation, or a public employee, might be misled to believe an inquiry as to training or certification is permissible – resulting in a violation of the rights of the person with a disability and a valid complaint under the ADA and/or CHRL against the restaurant or other entity.

The SHRL definitions have other problematic practical implications. For example, the State’s “pooper scooper” law (Public Health Law § 1310) exempts from its requirements “a guide dog, hearing dog or service dog accompanying a person with a disability, as defined in subdivision twenty-one of section two hundred ninety-two of the executive law.” Goshen’s Municipal Code, Art. II, § 6-41(d), contains a similar exclusion, referencing the SHRL definition of “disability”. These exemptions, neither of which relate to any other definition of guide, hearing or service dogs, were enacted before the SHRL dog definitions; since the exemptions each incorporate by reference part of the definitional section of the SHRL, it may be argued they should be construed in light of the 2007 dog definitions, thus effectively eliminating the exemptions.

The SHRL definitions at issue are particularly unfortunate, since discrimination against people with disabilities using service animals in places of public accommodation is one of the most widely reported instances of disability discrimination.<sup>9</sup>

The proposed amendment to Executive Law § 292 (31) replaces the problematic language with a straightforward incorporation by reference of definitions from Civil Rights Law § 47-b, that themselves would be amended by the Bill to avoid conflict with the ADA, as noted further below. Thus the SHRL would be provided with viable definitions of guide, hearing, and service dogs, instead of the current, impossible definitions. For these reasons, we support the amendment of subdivision (31) and the repeal of subdivisions (32) and (33) of section 292 of the Executive Law.

#### EXECUTIVE LAW SECTION 296

The Association also supports Section 2 of the Bill, that amends Executive Law § 296 (14). By way of background, Executive Law §§ 292 (31), (32) and (33) were added by Chapter 133 of the Laws of 2007. The primary purpose of the 2007 law had been to remove from § 296 (14) a requirement for a technical measurement of hearing impairment in connection with use of a hearing dog. However, the language remaining in § 296 (14) may be read to indicate that sight and hearing impairments are not disabilities. Accordingly, § 296 (14) should be amended to read as follows:

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<sup>9</sup> Freedom on Four Legs: Service Animals, Individuals with Disabilities and the Law, Report of the Civil Rights Division, Office of New York State Attorney General, June 2002, p. 3, available at [http://www.oag.state.ny.us/bureaus/civil\\_rights/pdfs/service\\_animal\\_report.pdf](http://www.oag.state.ny.us/bureaus/civil_rights/pdfs/service_animal_report.pdf) (Last visited March 13, 2013); see also Appendix A: Review of Case Law Pertaining to Use of Guide, Hearing and Service Dogs in New York.

14. It shall be an unlawful discriminatory practice for any person engaged in any activity covered by this section to discriminate against a blind person, a hearing impaired person or a person with [a] another disability on the basis of his or her use of a guide dog, hearing dog or service dog.

## STATE CIVIL RIGHTS LAW (SCRL)

The 2002 report by the New York State Office of the Attorney General, Freedom on Four Legs related to Article 4-B of the SCRL. SCRL § 47-b (4) defines guide, hearing, and service dogs in a manner somewhat more compatible with the ADA and New York City law, stating: "The term 'guide dog', 'hearing dog' or 'service dog' shall mean a dog which is properly harnessed and has been or is being trained by a qualified person, to aid and guide a person with a disability." The Civil Rights Law does not require any particular "qualification"<sup>10</sup>, nor does it indicate what "harness" might be "proper"<sup>11</sup>. Although SCRL § 47-b(6) states: "Any law, rule, or regulation conflicting with any provision of this article is, to the extent of said conflict only, deemed to be superseded by the provisions of this article", SCRL § 47-b(5) incorporates by reference the definition of "disability" in SHRL § 292 and, since the Legislature would be presumed to have been aware of SCRL § 47-b while enacting the definitions of guide, hearing and service dogs in SHRL §§ 292 (31), (32) and (33), courts are likely to harmonize the undefined phrase "trained by a qualified person" in SCRL § 47-b(4) with the SHRL definitions, thus eviscerating the SCRL provisions. This problem would be alleviated in part by the proposed amendment to the SHRL. However, to avoid confusion, the Bill makes the following amendments to SCRL § 47-b, which we support:

3. [Persons qualified to train dogs] A person engaged in training a dog to [aid and] guide or otherwise aid persons with a disability, while engaged in such training activities, and a person with a disability for whom the dog is being trained, shall have the same rights and privileges set forth for persons with a disability in this article.

4. The term "guide dog", or "hearing dog" [or "service dog"] shall mean a dog [which] that is [properly harnessed] under the control of the person using or training it and has been or is being trained [by a qualified person,] to [aid and] guide or otherwise to aid a person with a disability.

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<sup>10</sup> Recall that the Justice Department, in its Section-by-Section Analysis of its new regulations, recognizes that persons with disabilities can and have trained their own service animals.

<sup>11</sup> The new ADA regulations provide:

Animal under handler's control. A service animal shall be under the control of its handler. A service animal shall 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).

28 C.F.R. § 35.136 (d) and § 36.302 (c)(4), available at [http://www.ada.gov/reg2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/reg2010/titleII_2010/titleII_2010_regulations.htm) and [http://www.ada.gov/reg2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm](http://www.ada.gov/reg2010/titleIII_2010/titleIII_2010_regulations.htm) (Last visited April 4, 2013).

7. “Service dog” means any dog under the control of the person using or training it and that has been or is being individually trained to do work or perform tasks for the benefit of a person with a disability.

## STATE AGRICULTURE AND MARKETS LAW

The State Agriculture and Markets Law (SAML) also contains definitions of guide, hearing and service dogs. For the reasons discussed above, we support the Bill’s proposed amendments to SAML § 108, which would remove the reference to recognized guide dog training centers:

9. "Guide dog" means any dog that is trained to aid a person who is blind and is actually used for such purpose, or any dog [owned by a recognized guide dog training center located within the state] during the period such dog is being trained or bred for such purpose.

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21. "Hearing dog" means any dog that is trained to aid a person with a hearing impairment and is actually used for such purpose, or any dog [owned by a recognized training center located within the state] during the period such dog is being trained or bred for such purpose.

22. "Service dog" means any dog that has been or is being individually trained to do work or perform tasks for the benefit of a person with a disability[, provided that the dog is or will be owned by such person or that person's parent, guardian or other legal representative].

Although therapy dogs are not service animals and those using them do not have the same rights as those using guide, hearing or service dogs, the subdivision of this section defining “therapy dog” properly is amended by the Bill in recognition of the absence of “recognized training centers”, as follows:

26. "Therapy dog" means any dog that is trained to aid the emotional and physical health of patients in hospitals, nursing homes, retirement homes and other settings and is actually used for such purpose, or any dog [owned by a recognized training center located within the state] during the period such dog is being trained or bred for such purpose.

The bill would not impact the collection or waiver of licensing fees under the Agriculture and Markets Law. Licensing fees are under the control of local municipalities that are authorized (but not required) to waive fees for guide, hearing, or service dogs.<sup>12</sup> Since the Bill’s new

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<sup>12</sup> Agriculture and Markets Law § 110 provides:

§ 110. License fees. 1. The license fee for dog licenses issued pursuant to subdivision one of section one hundred nine of this article shall be determined by the municipality issuing the license, provided that the total fee for an unspayed or unneutered dog shall be at least five dollars more than the total fee for a spayed or neutered dog. All revenue derived from such fees shall be the sole property of the municipality setting the same and shall be used only for controlling dogs and enforcing this article and any rule, regulation, or local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as

language would include dogs while undergoing training, elimination of the reference to “recognized ... center[s]” would have no practical effect on a municipality’s decision as to whether or not to waive fees. Rather, the amendment would simply eliminate reference to “recognized” dog training centers since they do not exist in New York.

## **STATE TRANSPORTATION LAW**

For the reasons set forth above relating to the SHRL and SCRL, we support the Bill’s conforming amendment of State Transportation Law § 147 as follows:

147. Dogs accompanying persons with a disability. Subject to such rules and regulations as the commissioner may prescribe, all common and contract carriers of passengers by motor vehicle shall permit a guide dog, hearing dog or service dog [properly harnessed,] as defined in section forty-seven-b of the civil rights law accompanying a person with a disability, as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, to [aid and guide] accompany, to guide, or otherwise to aid such person, to ride on all vehicles operated for transportation and no charge shall be made for the transportation of such dog.

## **STATE PUBLIC HOUSING LAW**

As mentioned above, the primary purpose for Chapter 133 of the Laws of 2007 was to remove a requirement from SHRL § 296 (14) pertaining to a technical standard for hearing impairment when use of a hearing dog is involved. A similar requirement remains in § 223-b of the State Public Housing Law and should be removed, as follows:

223-b. Discrimination against a person with a hearing [impaired persons] impairment who [have] has a hearing dog[s]. No [hearing impaired] person who has a hearing impairment [manifested by a speech discrimination score of forty percent or less in the better ear with appropriate correction as certified by a licensed audiologist or otorhinolaryngologist as defined in section seven hundred eighty-one of the general business law, or a physician who has examined such person pursuant to the provisions of section seven hundred eighty-four of such law,] shall be denied occupancy in a dwelling in any project or be subjected to eviction from any such dwelling on the sole ground that such person owns a hearing dog as defined in section forty-seven-b of the civil rights law, provided, however, that if after occupancy a health hazard results on account of such dog, the public health officer

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authorized under section one hundred sixteen of this article used therefor, and subsidizing public humane education programs in responsible dog ownership.

2. Municipalities may exempt from their licensing fees any guide dog, hearing dog, service dog, war dog, working search dog, detection dog, police work dog or therapy dog. Each copy of any license for such dogs shall be conspicuously marked "Guide Dog", "Hearing Dog", "Service Dog", "Working Search Dog", "War Dog", "Detection Dog", "Police Work Dog", or "Therapy Dog", as may be appropriate, by the clerk or authorized dog control officer.



having jurisdiction may take such corrective measures as may be appropriate.

Based on the foregoing, the State Bar Association **SUPPORTS** the enactment of this legislation.

## APPENDIX A

### REVIEW OF CASE LAW PERTAINING TO USE OF GUIDE, HEARING AND SERVICE DOGS IN NEW YORK

There are very few reported cases – even administrative decisions – in this area in New York. The principle that people with disabilities may not be discriminated against due to their use of guide, hearing, or service dogs was established in New York under the State Civil Rights Law and under the City Human Rights Law long before the Americans with Disabilities Act was enacted. The problem with definitions such as those this Bill seeks to eliminate – concerning, for instance, particular training or harnessing requirements for guide dogs – is that their existence in the law serves to confuse public perceptions on a topic that is not in the forefront of most people’s minds.

We start our analysis with the well-founded proposition that there is an ongoing nuisance to those who use – or attempt to use – guide, hearing, or service dogs in places of public accommodation, housing, employment, and elsewhere. This is explored in part in a 2002 report by the New York State Attorney General’s Civil Rights Division, Freedom on Four Legs.<sup>13</sup> The Freedom report (at pp. 3 – 4) sums up the issue in this way:

[O]f the hundreds of disability-related complaints received by the OAG over the last two years, the single largest category of complaints filed centered on the allegation that persons with disabilities were denied equal access to places of public accommodation because they were accompanied by a service animal. The specific factual contexts of these complaints varied, but the experience of being constructively or explicitly denied equal access – and often feeling humiliated in the process – was consistent throughout.

Complainants described rude and intrusive questioning (about the nature of the person’s disability, whether the animal was “licensed”, etc.), verbal hostility (“You’re holding up the bus!”), and even being subjected to outright physical force, all because they were accompanied on their daily errands by a service animal. From Buffalo to Binghamton to New York City to Long Island, reports surfaced about shopkeepers, theater ushers, transit workers, wait staff, and even, on occasion, police officers demonstrating a stunning lack of understanding of what service accompaniment is all about, and how the laws protect it. . . .

These problems are longstanding.

When guide, hearing, or service dog users finally reach the point of filing a complaint and lawyers get involved, it almost always results in a settlement, rather than in an administrative or

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<sup>13</sup>Freedom on Four Legs: Service Animals, Individuals with Disabilities and the Law, Report of the Civil Rights Division, Office of New York State Attorney General, June 2002, p. 3, available at [http://www.oag.state.ny.us/bureaus/civil\\_rights/pdfs/service\\_animal\\_report.pdf](http://www.oag.state.ny.us/bureaus/civil_rights/pdfs/service_animal_report.pdf) (Last visited March 13, 2013).

judicial decision. The rare exceptions include Tartaglia v. Jack LaLanne Fitness Ctrs., Inc.<sup>14</sup> and Silver v. Loew's Theater Management Corp., CCHR Complaint No. FH05022388DN (1989). In Tartaglia, a health spa was required to permit a blind patron to use his guide dog throughout its facility, rather than a human companion of his choice, whom the spa offered to admit without charge. Silver resulted in a \$7000 award to a blind woman denied access to a movie theater when she sought to enter with her guide dog. In Blair v. White Top Car Service et al., CHR Decision & Order (Nov. 14, 1991), petitioner, a blind man using a guide dog, was refused transportation by respondent, a car service company. The City Commission awarded petitioner \$5,000 plus 50 free car rides. Following New York City's enactment of the Local Civil Rights Restoration Act, a major housing provider was assessed \$50,150 in compensatory damages (primarily for emotional distress) and a fine of \$40,000 for seeking to evict a resident because of her comfort animal, instead of allowing the animal as a reasonable accommodation under the City Human Rights Law.<sup>15</sup> As shown in the recent case of US v. Larkin, Axelrod et al., even attorneys and law firms can be confused about their obligations not to discriminate against a client using a service dog.<sup>16</sup>

In Degregorio v. Richmond Italian Pavilion, (2009 NY Slip Op 31957 (U) (Aug. 28, 2009), 2010 NY Slip Op 30743 (U) (Mar. 31, 2010) (S. Ct., Richmond Cty.), the plaintiff's service dog was denied entry to a restaurant – a restaurant the plaintiff previously had patronized while using a walker or wheelchair – because the restaurant owner believed service dogs were only permitted entry if they were accompanying a blind person. The case was brought solely under the State Civil Rights Law<sup>17</sup>, where only a \$250 fine (payable to the State) was available. Of further note, a physician's examination room (as opposed to the doctor's office) has been found not to be a "public facility" under State Civil Rights Law § 47<sup>18</sup>, as has a delivery room<sup>19</sup>.

In the 2007 case of Cave v. East Meadow Union Free School District, the parents of a student with a hearing impairment were denied permission for a hearing dog to accompany their son to school. The only purpose for the dog's attendance was to "bond" with the student. The school, based on severe dog allergies of both a teacher and a student with whom the student with the hearing impairment would have to interact substantially for his academic program, declined the request. The ensuing conflict involved the Office of the New York State Attorney General (that has jurisdiction over the State Civil Rights Law), the State Division of Human Rights, as well as both federal and State courts. Among the factual findings of the federal district court was that there was neither assertion nor proof plaintiff had undergone an audiological test then

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<sup>14</sup> Tartaglia v. Jack LaLanne Fitness Ctrs., Inc., N.Y.C. Comm'n on Human Rights, Complaint No. 04153182-PA, Decision and Order (June 12, 1986), at 18-22 (citations omitted).

<sup>15</sup> Comm'n on Human Rights ex rel L.D. v. Riverbay Corp., OATH Index No. 1300/11 (Aug. 26, 2011), adopted, Comm'n Dec. & Order (Jan. 9, 2012), available at [http://archive.citylaw.org/oath/11\\_Cases/11-1300.pdf](http://archive.citylaw.org/oath/11_Cases/11-1300.pdf). (Last visited April 12, 2013).

<sup>16</sup> US v. Larkin, Axelrod, Ingrassia & Tetenbaum, LLP, and John Ingrassia, June 28, 2012, available at <http://www.ada.gov/larkin-cd.htm> (consent decree) (Last visited April 4, 2013).

<sup>17</sup> Specifically, the action was brought under NYS Civil Rights Law 47-b(1) that provides that "Persons with a disability accompanied by guide dogs, hearing dogs or service dogs shall be guaranteed the right to have such dogs in their immediate custody while exercising any of the rights and privileges set forth in this article."

<sup>18</sup> Albert v. Solimon, 252 A.D.2d 139, 684 N.Y.S.2d 375 (4<sup>th</sup> Dept. 1998).

<sup>19</sup> Perino v. St. Vincent's Med. Ctr., 132 Misc.2d 20, 502 N.Y.S.2d 921 (S. Ct., Richmond Ct. 1986).

required for protection under State Human Rights Law § 296 (14). This led to amendment of that section to eliminate the requirement for the test. That same bill (which became Chapter 133 of the Laws of 2007) added to § 292 definitions that the Bill now seeks to amend. Ultimately, the federal district court decision was vacated and the federal case was dismissed because the Second Circuit Court of Appeals determined the action had been brought under the wrong federal law; State law causes of action fell with the federal case.<sup>20</sup> The State Division of Human Rights issued a decision (based on the law as the State Division believed it stood before addition of the definitions at issue now), but the Appellate Division, Second Department, denied enforcement, finding the State Division did not have jurisdiction over the school district.<sup>21</sup> In the end, the parents of the student with the hearing impairment moved their son to another school with some assistance from the defendant district.

A search of the NYSDHR's website revealed three additional 2007 cases which involved guide, hearing or service dog users alleging discriminatory treatment. The first complainant was denied access to a mall because she used a guide dog; it was settled in her favor before a hearing. The latter two cases were "refusal to lease" cases where respondents were found liable for discriminatory conduct.<sup>22</sup>

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<sup>20</sup> Cave v. East Meadow Union Free School District, 480 F.Supp.2d 610 (E.D.N.Y. 2007.), vacated and remanded for dismissal for lack of subject matter jurisdiction 415 F.3d 240 (2d Cir. 2008), dismissed (07 CV 0542 E.D.N.Y. January 29, 2008, Spatt, J.).

<sup>21</sup> New York State Division of Human Rights v. East Meadow Union Free School Dist., Case No. 10115533 (March 10, 2009), annulled sub nom Matter of East Meadow Union Free School Dist. v. New York State Div. of Human Rights, 65 A.D.3d 1342, 886 N.Y.S.2d 211 (2d Dept. 2009), motion for lv. to appeal denied, 14 N.Y.3d 710, 929 N.E.2d 1003, 903 N.Y.S.2d 768 (2010).

<sup>22</sup> Pollack v. Sun Vet Mall, available at [http://www.dhr.ny.gov/doc/nysdhr\\_press\\_release\\_2\\_14\\_2007.pdf](http://www.dhr.ny.gov/doc/nysdhr_press_release_2_14_2007.pdf); Miller v. Dr. Lisa Freudenberger (SDHR Case No. 3506631) available at [http://www.dhr.ny.gov/pdf/Commissioner's%20Orders/miller\\_v\\_freudenberger.pdf](http://www.dhr.ny.gov/pdf/Commissioner's%20Orders/miller_v_freudenberger.pdf); Schatz v. Mahmoud Mozaffari (SDHR Case No. 10108521) available at [http://www.dhr.ny.gov/pdf/Commissioner's%20Orders/schatz\\_v\\_mozaffari.pdf](http://www.dhr.ny.gov/pdf/Commissioner's%20Orders/schatz_v_mozaffari.pdf) (Last visited April 4, 2013).