

July 30, 1999

**LEGAL BULLETIN NO. 99-6**

**SUBJECT: Service Dogs and the Americans With Disabilities Act**

An issue has recently arisen concerning the use of a service dog by a disabled individual. The issue involves a disabled individual wanting to take his or her service dog into a restaurant and the restaurant refusing to allow the dog to come into the restaurant. In these situations, the police are normally called and the owner or the manager of the restaurant wants to file a trespassing charge.

On June 1, 1999, the Missouri Court of Appeals for the Western District dealt with this issue.<sup>1</sup> The Court held that under the Missouri Human Rights Act a disabled person has a right to have a guide dog or service dog with them in a restaurant. This case did not involve the police but simply set the standard for service dogs.

There is also a case dealing with the Americans With Disabilities Act and interpreting the guide dog or service dog provision from a Federal standpoint.<sup>2</sup> In that case, an individual with a disability was asked to leave restaurant premises because she had a service dog with her. She sued the restaurant, police officers who were involved in the arrest and the Board of Police Commissioners of St. Louis, Missouri. The case was filed under the Americans With Disabilities Act and the Missouri Human Rights Act. The Federal Court indicated that the Plaintiff did have a right to have a service dog or guide dog in a restaurant. The Court found that police officers who asked customers to leave were not liable under the Americans With Disabilities Act barring discrimination by the owner, lessor or operator of the place of public employment and that the customer was not entitled to relief against members of the city's police board.

Based upon the status of the law, officers should not become involved in forcibly removing an individual from a restaurant or other public business simply because that individual has a service or guide dog. This should be the position of the Department regardless of whether the owner of the business or manager of the

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<sup>1</sup> See Missouri Commission on Human Rights v. Red Dragon Restaurant, Inc., 991 S.W.2d 161 (Mo. App. W.D. 1999).

<sup>2</sup> See Pona v. Cecil Whitaker's, Inc., 155 F.3d 1034 (8th Cir. 1998).

business wants to file a trespassing complaint. If there are other reasons for requesting the removal of the individual, such as disturbances or even disturbances by the service dog, that is acceptable for filing a trespassing complaint. Simply having the dog in the restaurant or other public place is not a violation of law. Under these conditions, officers should not participate in trespass arrests.



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