

INVESTIGATIVE REPORT
VHRC Case PA14-0028

Complainants: Richard & Eleanor Smith

Respondents: White River Junction District Court¹,
Windsor County Sheriff's Dept. &
State of Vermont Judiciary

Charge: Public Accommodations/disability – service animal

Summary of Charge: On June 2, 2014, Mrs. and Mr. Smith filed a complaint with the Vermont Human Rights Commission (VHRC) alleging that the respondents discriminated against them. Specifically, they allege that the Windsor County Sheriff Department and the staff at the Windsor County courthouse refused to allow Mrs. Smith to enter the courthouse with her service animal.

Summary of Responses:

Windsor County Sheriff's Department - On June 25, 2014, the Windsor County Sheriff's Department responded to the complaint. It denied that its deputies discriminated against the Smiths or made any inquiries as to Mrs. Smith's condition. It admitted that it would not allow Mrs. Smith to bring her dog into the courthouse.

State of Vermont Judiciary – On July 24, 2014, the State responded to the complaint. It denied that it had discriminated against the Smiths. It stated that it had no knowledge of Mrs. Smith's medical condition nor whether the dog was a service animal.

Preliminary Recommendation: This investigation makes a preliminary recommendation that the Commissioners find there are **reasonable grounds** to believe that the respondents illegally discriminated against Mrs. and Mr. Smith in violation of 9 V.S.A. § 4502 (b) when staff at the Windsor County Superior Courthouse

¹ After reorganization of Vermont's court system the "District Court" became a division in the Superior Court.

refused to allow Mrs. Smith to enter into the courthouse with her service animal and when staff asked her questions regarding her disability and her service animal that are in violation of the Vermont's Public Accommodation Act.

Interviews:

10/13/14 – Daniel Stephens, Mr. Smith's attorney
10/13/14 - Lynda Gordon, friend of the Smiths
10/30/14 – Christine Berry, a juror for the trial
11/19/14 – Robert Brittner, Windsor County Deputy Sheriff (now retired)
11/19/14 – Robert North, Windsor County Deputy Sheriff
11/21/14 – Theresa Scott, Superior Court Clerk for Windsor County
12/02/14 – Eleanor Smith
12/02/14 – Richard Smith
12/03/14 – John Offensend, friend of the Smiths
12/03/14 – Jane Ammel, Windsor Superior Court Operations Manager
12/03/14 – Ashley Perry, Docket Clerk B
12/30/14 - Debra Monroe, service animal trainer
1/16//15 – Michael Smith, the Smiths' adult son

Documents:

6/1/14 - Complaint
6/25/14 - Windsor County Sheriff Department's response
7/24/14 - State of Vermont Judiciary's response
6/18/14 - Accommodation/ disability verification letters
3/21/14 - Service Dog certification
5/27/14 - Letter of apology from Theresa (Tari) Scott, Superior Court Clerk
8/18/14 - Smiths' response to Respondents' responses
9/8/14 - Additional response from the Smiths

Applicable law

Title 9 VSA § 4500. Legislative intent

- (a) The provisions of this chapter establishing legal standards, duties and requirements with respect to persons with disabilities in places of public accommodation as defined herein, except those provisions relating to remedies, ***are intended to implement and to be construed so as to be***

consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and rules adopted thereunder, and are not intended to impose additional or higher standards, duties or requirements than that act. (emphasis added)

Title 9 VSA § 4502 Public accommodations

- (b) An owner or operator of a place of public accommodation or his or her employee or agent shall not prohibit from entering a place of public accommodation:
 - (1) An individual with a disability accompanied by a service animal.
 - (2) An individual who is training an animal to perform as a service animal for an individual with a disability.

Elements of prima facie case for §4502 (b):

- 1. Mrs. Smith is a person with a disability
- 2. Mrs. Smith sought to bring her service animal into a public building
- 3. Mrs. Smith indicated to the staff at the public building that her dog was a service animal
- 4. Staff at the public building refused her entry to the building with her service animal and/or made unlawful inquiries

Undisputed Facts

Mrs. Smith is a person with a disability. She has Multiple Sclerosis. Mrs. Smith owns a dog² that she uses as a service dog. On May 21, 2014, she attended a trial at the Windsor County Courthouse involving her husband Richard Smith. She was a witness at the trial on that day. She did not bring her dog with her on May 21, 2014.

² This investigative report is using the term “dog” rather than “service dog” because this designation needs to be determined as part of the investigation.

On the following day, May 22, 2014, Mrs. Smith again accompanied her husband to the courthouse and brought her dog with her. May 22, 2014 was the day the jury was to announce its verdict in the case involving Mr. Smith. When Mrs. Smith attempted to enter the courthouse with her dog she was stopped by Deputy Sheriff Bittner during the court security screening process.

The policy of the court is that no dogs are allowed in the courtroom.³ Deputy Bittner told Mrs. Smith she could not bring the dog into the courthouse. He engaged in conversation with her regarding the dog entering the courthouse. Because Mrs. Smith told him this was a service animal and she had a right to bring the dog into the courthouse, Deputy Bittner sought advice from other courthouse staff, including the judge.

After Deputy Bittner spoke with other courthouse staff he reiterated to Mrs. Smith that she was not allowed to enter the courthouse with her dog. Mrs. Smith left and returned the dog to the car. Sometime during that same day the Smith's attempted to file a complaint with the courthouse staff about what transpired and how they were treated by Deputy Bittner. Even though the Smiths wanted to make a complaint in person that day they were told by courthouse staff that they had to make a written complaint. On May 27, 2014, Ms. Scott, Windsor County Superior Clerk, sent the Smith's a letter of apology. The letter stated that the matter could have been handled better and they were working on providing staff with the correct information regarding service animals.

³ It is also a fact that there had been no training for the deputies or the courthouse staff regarding service animals.

Statement by Mrs. Smith

Mrs. Smith stated that she is a person with a disability i.e. Multiple Sclerosis (MS).⁴ Mrs. Smith explained that she was at the Windsor County Superior Court on both 5/21/14 and 5/22/14. On 5/21/14, she did not attempt to enter the courthouse with her service animal. She stated that her symptoms for MS vary from day-to-day depending on her stress levels. She stated that on 5/22/14 when she attempted to enter the courthouse with her service dog, she had a badge identifying her as a person needing a service animal and a certificate stating that her dog was a service animal in hand when she attempted to enter the courthouse.⁵ Her dog wore a service animal vest and was on a leash.

Mrs. Smith recalled that at the check-in area Deputy Brittner told her to "get that dog out of here." Mrs. Smith responded by telling him it was a service animal. Allegedly, Deputy Brittner then said, "I don't care what he is, get him out of here." Mrs. Smith stated that she tried to give him the service animal certification but he would not accept it. She said he further insulted her by asking her twice what her condition was. She did not answer the first time because she was so shocked that he asked this. The second time she told him she had MS and he allegedly stated, "You don't look like you have MS."

Mrs. Smith further stated that after being ordered to leave with the dog Deputy Brittner made her go under a chain to exit the courthouse. She returned to the car with the dog and took medication

⁴ Mrs. Smith provided letters from her medical care providers at Dartmouth Hitchcock Medical Center. These letters confirm that she is a person diagnosed with MS. The providers support her need for a service animal. A place of public accommodation cannot ask for proof of a person's disability. However, an investigation can ask for this evidence.

⁵ It should be noted that these certificates are available on line for a fee and in response to the purchaser's response to some qualifying questions. However, a person using a service animal is not required to have a certification or papers confirming that they need a service animal or that the dog is a service animal.

to calm down because she was so upset. Later in the day, she and her husband went to the courthouse office to complain about what happened earlier. They were told to write a letter.

Mrs. Smith told this investigation that she had been a veterinarian technician for 21 years and had trained their dogs. None of the other dogs were service animals. She stated that before the dog was two-years-old she contacted Donna Monroe, a professional trainer in New Hampshire, to have her evaluate whether her dog had a good temperament to be a service animal. Mrs. Smith met with Ms. Monroe two times. The second time they took the dog to a Walmart to observe how he behaved in public. Mrs. Smith said the Ms. Monroe concluded that the dog had the perfect temperament to be a service dog. The dog was very calm and compliant and she had started training the dog when he was three months old. She did not keep a log of the training.⁶

The first time this investigation spoke to Mrs. Smith she stated that the dog helped her with her stress. At the interview when this investigation asked what the dog was trained to do Mrs. Smith stated that the dog retrieves her phone if she falls down. This investigation then asked if she could have the dog demonstrate this.

Her phone was in her purse and the purse was set on a row of chairs about 15 feet from where Mrs. Smith was sitting. The dog had been lying quietly at her feet under the table during the interview. (For this demonstration, Mrs. Smith did not lay on the ground to mimic not being able to get up.) She told the dog to get her phone. She did have to ask the dog a number of times over a two-minute period to get her phone. The dog did eventually go to her purse and at first it

⁶ This investigation asked this because one advocacy organization suggested that persons with disabilities who self-train their service animals might want to keep a log of the training in order to provide proof of training, though this is not an ADA requirement.

picked up her wallet. After another minute the dog did pick up her phone and took it back under the table where he had been laying down. At that point, I told Mrs. Smith we would try it again later.

The second time the dog again had to be asked several times but in less than two minutes, he found the phone in Mrs. Smith's purse and brought it to her. There is no doubt that the dog needed coaching, but also that the dog was able to eventually get the phone and at a minimum drop it very close to Mrs. Smith. It was clear to this investigation that the dog had received training to retrieve Mrs. Smith's phone.

Statement of Mr. Smith

Mr. Smith stated that he and his wife and her "service animal" went to the courthouse on 5/22/14. The dog had on a service vest and was on a leash. Mr. Smith said the Deputy Brittner saw the dog and told his wife to get "that damn dog out of here." He said his wife told the deputy that the dog was her service dog and then attempted to present the deputy with the service animal certification papers. The deputy said he did not have to read anything. Then he asked his wife "what is wrong with you anyway?" The first time his wife did not answer but then Deputy Brittner said, "I asked you what is your medical condition?" At that point, Mrs. Smith told the deputy that she had MS. Mr. Smith said Deputy Brittner responded by saying, "You don't look like you have MS."

Mr. Smith recalled that the deputy then made a phone call and after the call told his wife to get the dog out of there. At some point during this exchange Mr. Smith recalled that the deputy asked his wife why she did not have the dog the day before. She told him the dog had been sick with diarrhea. Mr. Smith alleged that the deputy made

his wife go under the chain/rope rather than opening it for her. He said the whole incident was very upsetting.

Mr. Smith said that during their lunch break he went out to the car to let the dog out. When he returned he got into another disagreement with Deputy Brittner. He said that the deputy was very rude with him. Mr. Smith recalled that he brought the service animal ID card with him and asked Deputy Brittner to read it. Mr. Smith alleged that the deputy threw it back to him and said he did not have to read it. Mr. Smith stated that he and his wife went to the courthouse office because they wanted to file a complaint regarding the way they had been treated and even though he explained that he wanted to resolve the matter that afternoon he was told to write a letter.

Mr. Smith told this investigation that his wife was a "vet tech" for many years and trained the dog herself. He thought it took about 2 months to train the dog and that the dog was very smart. He stated that he applied for the service animal certification on line. He recalled filling out a questionnaire, but did not recall the specific questions.

Statements of Deputy Robert Brittner

Deputy Brittner worked for the Windsor County Sherriff's Department for 7 years. He retired a couple days after the incident that is the subject of this complaint. (His retirement and the incident are not related.)

The deputy stated that Mrs. Smith accompanied her husband to court on both 5/21/14 and 5/22/14. The first day he believed that she was a witness and did not come with the dog. On 5/22/14, she came to court with the dog. He said when he saw the dog he told her that no dogs were allowed and that she said it was a service dog. He said

he explained that the policy was "no dogs." He told this investigation that the "No dogs" policy came directly from the head of security - - "no dogs – no animals allowed." He stated that Mrs. Smith was persistent so he called the office and spoke with Jane Ammel. Ms. Ammel said she would ask the judge. He thought it was taking a long time to get an answer so he asked, "Jane what was up? We don't know what to do." Ms. Ammel said the judge wanted to know what kind of a dog it was. Deputy Brittner said because he did not know he went back to ask the Mrs. Smith but she had left. Mr. Smith told him she had taken the dog to the car. He relayed this information to Ms. Ammel.

Deputy Brittner admitted that Mrs. Smith had told him the dog was a service animal. This investigation asked him if there was a policy regarding service animals and he said the policy was "no dogs." He then added that a couple of years back they got a new policy book and that he was told directly by the head of security "no animals of any kind." Deputy Brittner stated that there were two reasons for this policy 1) liability for the State and 2) if the dogs started barking it affected the hearing and the judges get angry. He thought there was no written policy stating this.

He shared another incident regarding a dog. The Deputy stated that a couple of years ago a State trooper tried to come into the courthouse with his dog but they told him he could not bring it into the courthouse. He said that the trooper explained that it was too hot to leave the dog in the car. They told the trooper "it's the rule!" The trooper took the dog to the car.⁷

⁷ If the officer's dog was as a service animal under §4502(k) then the deputy's refusal to allow the officer's dog into the court house would have also violated Vermont's Public Accommodation Act., "A police officer, a firefighter, or a member of

Statement by Deputy Robert North

Deputy North has been with the Windsor County Sheriff's department for 6 years. He stated that Mrs. Smith appeared at the courthouse with her dog on the second day of a trial involving her husband. He recalled that Deputy Brittner was coming back from using the restroom and saw Mrs. Smith with her dog. Deputy Brittner told Mrs. Smith she could not bring the dog into the courthouse.

Deputy North said that this was his first encounter with a service animal. He recalled that Mrs. Smith showed him the ID badge and the dog had a vest on. He thought that "everything looked very official."

Though he was not sure, he believed that Mrs. Smith told him she had the dog "for stress." He did not know if she told Deputy Brittner that or not. He said it was very busy and he was talking to her while at the same time screening people who wanted to go into the courthouse. When Deputy Brittner returned, he told Mrs. Smith the dog could not come into the courthouse. He was not rude.

Deputy North stated that he has never had any service animal training. He stated that after this incident one of the courthouse staff explained to him the two questions he was allowed to ask. This investigation asked him what those two questions are. He stated "is

a rescue squad, search and rescue squad, first response team, or ambulance corps who is accompanied by a service dog shall be permitted in any place of public accommodation, and the service dog shall be permitted to stay with its master. For the purposes of this subsection, "service dog" means a dog owned, used, or in training by any police or fire department, rescue or first response squad, ambulance corps, or search and rescue organization for the purposes of locating criminals and lost persons, or detecting illegal substances, explosives, cadavers, accelerants, or school or correctional facility contraband.

that a service animal" and "what is the disability?"⁸ He also stated that over the years there had been 5 or 6 people who wanted to enter the courthouse with animals (pets) and he asked them for certification. This investigation asked him if he knew that he could not ask for certification and he replied, "I do now."

Statement of Jane Ammel

Ms. Ammel is the Court Operations Manager and has held that position for five years. Prior to this position, she worked for the Windsor County Court for 20 years. She stated that her duties include managing the staff for the criminal division, scheduling and working with the judges. She said when deputies are working at the courthouse, she supervises them and if they have a question, they come to her.

On 5/22/14, she recalled that Deputy Brittner called her and said that someone wanted to bring a dog into the courthouse. The deputy wondered what the protocol was because previously dogs were not allowed in the courthouse. She said that she then called the judge and the judge had a number of questions. Ms. Ammel stated that she was not sure what the questions were but thought the judge questioned why the dog had not been there the previous day, what kind of dog and what was it for? She said that she told the judge that the deputy had some paper work that showed the dog was a service animal. Ms. Ammel asked the deputy and he told her that it was a service dog and that Mrs. Smith had MS.

I asked Ms. Ammel what her understanding was of the protocol for dogs coming into the courthouse. She said, "I had no

⁸ This investigation corrected his belief regarding the second question. It should be what is it trained to do?

understanding." Ms. Ammel stated that she never got an answer from the judge because Mrs. Smith left to take the dog out to the car.

Ms. Ammel said that later in the day she was approached by a staff member because the Smiths wanted to make a complaint. Ms. Ammel alleged that because the verdict had just come in she told the staff person to tell them to put it in writing. She also confirmed that there has been no staff training on the ADA as it relates to service animals (actually no ADA training at all except maybe for the judges).

This investigation told Ms. Ammel that there was reason to believe that there had been a number of complaints regarding Deputy Brittner's interactions with the public. She responded, "You may be right." This investigation asked her if she had received complaints regarding Deputy Brittner's behavior. She stated that she had not received direct complaints but she overheard people talking about this.

Statements of Theresa (Tari) Scott

Ms. Scott is the Windsor County Superior Court Clerk. She has been in that position since 2010 and prior to that worked for five years as the court manager in White River Junction. Ms. Scott stated that she was not at the courthouse on 5/22/14 when the alleged discrimination occurred. She stated that as a result of the 5/22 events she received a note from Senator's Leahy's office regarding the situation with the Smiths and then she received the VHRC complaint. At that point she spoke with Bill Greky, Chief of Security for Vermont's courthouses, and he gave her an update regarding this complaint.

Ms. Scott said she called Mrs. Smith and was told that the deputy asked inappropriate questions and would not even look at the paper work she had regarding her dog's status. Mrs. Smith told her that she wanted to file a complaint that day but was told to do it in

writing. Mrs. Smith further explained that the situation was embarrassing especially when Deputy Brittner made her go under the rope. Ms. Scott admitted that there had been other complaints about Deputy Brittner treating people rudely.

Ms. Scott stated that after the incident she spoke to her staff about the situation. Ms. Ammel told her that Deputy Brittner wanted to know how to handle the dog so she contacted the judge. The judge asked why the dog had not been there the day before so why that second day? Ms. Scott recalls that Ms. Smith told her "something like the dog was for stress."

Ms. Scott also confirmed that there was no written policy regarding dogs in the courtroom. She stated that the oral tradition was no dogs. She also mentioned that they had turned away small dogs in the past. Ms. Scott said that the staff were now working on a policy regarding service animals but that prior to this incident the staff had not had any ADA training.

Statement of Ashley Perry

Ms. Perry is the docket clerk at the Windsor Superior Court. She has been in that position for seven years. Her duties include waiting on people at the counter and answering phones. She recalled the Smiths coming to the counter and stating that they wanted to file a complaint and that Mrs. Smith was "pretty upset." Ms. Perry stated that she may have told them to write a letter. She also recalled that while dealing with the Smiths the jury's verdict came in so the Smiths left the counter to return to the courtroom.

Ms. Perry stated that she was the court reporter for the trial and she definitely recalled a dog in the courtroom. This investigation

questioned⁹ her further about this statement. Eventually, this investigation asked her if the dog could have been at a subsequent hearing, perhaps the sentencing. Ms. Perry restated that she knew the dog had been in the courtroom at some time. She recalled that the dog was “whinny and moving around.” Ms. Perry also recalled that “somewhere she heard” that the dog was for anxiety and kept Mrs. Smith calm, but she did not recall how she got that impression.

Statement of Christine Berry

Ms. Berry was juror in the case involving Mr. Smith. On 5/22/14 she was in line to enter the courthouse and was three or four people behind the Smiths. Ms. Berry recalled that this incident happened either first thing in the morning or after a break.¹⁰ She recalled that the deputy asked to see “papers” regarding the dog and that Ms. Smith was attempting to explain the situation to the deputy. Ms. Perry confirmed that the deputy would not allow the dog into the courthouse. This interview asked her if she noticed any commotion between Mrs. Smith and the deputy. Ms. Perry stated that there was “no scene.”

Statement of Local Attorney¹¹

This investigation asked this attorney who frequents the Windsor County Superior courthouse about interactions he has had with Deputy Brittner, specifically if he has experienced any problems

⁹ This statement did not reflect what every other witness had told this investigation. Because of this discrepancy, this investigation restated the question several times asking her if she was sure. This investigation later confirmed with Mrs. Smith that the dog had been allowed in to the courtroom for the sentencing hearing.

¹⁰ Ms. Perry like several other witnesses recalled the event involving Ms. Smith attempting to enter the courthouse with her dog. However, several of them were confused about the time of day that the incident actually took place.

¹¹ 9 V.S.A §4555(a) allows VHRC to keep nonparty witnesses’ confidential unless requested by a party to the complaint and no good cause is shown to protect a witness’ identity. This provision is also in the VHRC Rule §33.

with Deputy Brittner. He stated, "Deputy Brittner was uniquely obnoxious."

Statement of Lynda Gordon

Ms. Gordon is a long-time friend of the Smiths. She recalled that after the lunch break¹² Mrs. Smith attempted to bring the dog into the courthouse. She said she had already gone through security and was waiting for Mrs. Smith. Ms. Gordon recalled that the dog had on a vest and that Mrs. Smith told the deputy that the dog was a service dog and that she had papers for show that.

She did not recall the deputy calling anyone on a phone. She did recall him telling Mrs. Smith that he did not care about the papers and she was not coming in with the dog. She recalled that he said "take the dog out." Mrs. Smith then left with the dog.

Ms. Gordon further stated that Mrs. Smith has MS and that she was a nervous wreck. She said the dog knows when she is about to have an attack.

Statement of John Offensend

Mr. Offensend is an "old friend" of the Smiths. He recalled that at 9:00 or 10:00, the second day of the trial Mrs. Smith attempted to come into the courthouse with her dog and the deputy said dogs were not allowed. He stated that she told the deputy it was a service dog and the deputy responded by saying "no, not coming in." He also recalled the deputy saying, "What's the matter, it doesn't look like anything is wrong with you."

Mr. Offensend also said that he thought she wanted to bring the dog in because the dog was for anxiety attacks.

¹² After refreshing her memory, she said that this happened first thing in the morning.

Statement of Michael Smith

Mr. Smith is the Smiths' son. He was attending the court proceeding and ahead of his mother in the security screening line when she attempted to enter the courthouse with her dog. He recalled that the deputy told her she could not bring the dog into the building. He said his mom explained that it was a service dog and gave him the paperwork. The deputy said, "Sorry ma'am dogs are not allowed in the building." She then said, "But it's a service dog." At that point Mr. Smith stated the deputy asked his mother what her "condition" was.

Mr. Smith recalled that his mother left with the dog and had to duck under the rope in order to leave.

Statement of Deb Monroe

Ms. Monroe has a small business in New Hampshire that trains service animals and evaluates the temperament of dogs to help determine if the dog can be a good service animal. Ms. Monroe recalled that Mrs. Smith brought her dog to her two times. Ms. Monroe stated that she took Mrs. Smith and the dog to a Walgreens in Walpole, New Hampshire to observe how the dog reacted in a public setting. She said the dog was very well behaved and had been trained to follow the basic commands needed to be a service animal and interact with the public.¹³

¹³ This investigation experienced some resistance from Ms. Monroe during the interview when she was asked for information about what the dog is trained to do. She said that I could not ask those types of questions and that there were only two questions I could ask. I attempted to explain that I was aware of that but that for purposes of investigation I was allowed to ask more questions in order to substantiate Mrs. Smith's allegations. She refused to move beyond that point even when I explained that Mrs. Smith had given me her name as a witness. The conversation ended at this point.

Legal Analysis

Title 9 VSA § 4500. Legislative intent

- (a) The provisions of this chapter establishing legal standards, duties and requirements with respect to persons with disabilities in places of public accommodation as defined herein, except those provisions relating to remedies, ***are intended to implement and to be construed so as to be consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.*** and rules adopted thereunder, and are not intended to impose additional or higher standards, duties or requirements than that act. (emphasis added)

Title 9 VSA § 4502 Public accommodations

- (b) An owner or operator of a place of public accommodation or his or her employee or agent shall not prohibit from entering a place of public accommodation:
- (1) An individual with a disability accompanied by a service animal.
 - (2) An individual who is training an animal to perform as a service animal for an individual with a disability.

Elements of prima facie case for §4502 (b):

1. Mrs. Smith is a person with a disability
2. Mrs. Smith sought to bring her service animal into a public building
3. Mrs. Smith indicated to the staff at the public building that her dog was a service animal
4. Staff at the public building refused her entry to the building with her service animal and/or made unlawful inquiries

Law Regarding the Americans with Disabilities (ADA) and Service Animals

The ADA became law 25 years ago on July 26, 1990. The Americans with Disabilities Act Amended Act (ADAAA) was signed into law on September 25, 2008. Vermont's Public Accommodations Act states that Vermont's Public Accommodation laws are to be "construed so as to be consistent with the Americans with Disability Act . . . and rules adopted thereunder." 9 V.S.A §4500(a). This has been part of Vermont's law for 23 years. The ADA regulations from the U.S. Department of Justice (USDOJ) require that all places of public accommodation and public entities provide modifications in their policies to accommodate the use of service animals. 28 C.F.R. §§ 36.302(c)(1), 35.135(a). Persons using a service animal "shall be permitted to be accompanied by their service animals in all areas of a place of public accommodations where members of the public . . . are allowed to go." 28 C.F.R. §36.302(c)(7).¹⁴ In 2003 Vermont's Supreme court stated that Vermont's Public Accommodation and Fair Housing Act must be construed liberally in order to "suppress the evil and advance the remedy" intended by the legislature." Human Rights Commission v. Benevolent & Protective Order of Elks, 203 VT 104, 176 (2003).

In a 1996 bulletin published by the United States Department of Justice (USDOJ), Civil Rights Division, Disability Rights Section the following question was addressed, "How can I tell if an animal is really a service animal and not just a pet?" The answer then and repeated consistently since has been "If you are not certain that an animal is a

¹⁴ In Vermont Statutes Annotated, at annotation #1 pg. 610, it states that the 1992 amendment to the Public Accommodations Act was intended to make it explicit that government entities are places of public accommodation, consistent with the Americans with Disabilities Act. (See Department of Correction v Human Rights Commission, 2006 VT 134, 181 Vt. 225.)

service animal, you may ask the person who has the animal if it is a service animal required because of a disability.” In recent years this has been clarified to allow a place of public accommodation to ask two questions;

- 1) Is the dog a service animal required because of a disability?
- 2) What work has it been trained to perform?

ADA Requirements – Service Animals, U.S. Department of Justice – Civil Rights Division – Disability Section, (2010).¹⁵

Places of public accommodation may not require or ask to see certification of training. Nor can they ever inquire as the nature or identity of a person’s disability. 28 C.F.R. §§ 36.302(c) (6), 35.136(f).

Beginning March 15, 2011, the definition of a service animal was clarified in the 2010 ADAAA regulations is “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. 28 C.F.R. §§ 36.104 (implements Title III), 35.104 (implements Title II). Examples of work include but are not limited to assisting persons who are blind, providing non-violent protection or rescue work, pulling a wheelchair, retrieving items such as medicine or a phone, or providing physical support. 28 C.F.R. pt.36 app. A. Unless a service dog needs to be off leash to perform the task it is trained to do, a service animal shall be on leash when in a place of public accommodation.

An emotional support animal is an animal that provides comfort to a person but it is not trained to perform a specific task. However a dog that is individually trained to perform a task that benefits an individual with a disability and also provides comfort or support may still be considered to be a service animal. “Dogs whose **sole** function

¹⁵ There are some variations on the two questions that can be asked but basically they are 1) is it a service animal and 2) what is it trained to do? Nothing more than that information can be requested.

is to provide comfort or emotional support do not qualify as service animals under the ADA." (emphasis added.) ADA Requirements – Service Animals, U.S. Department of Justice – Civil Rights Division – Disability Section, (2010).¹⁶

Elements of prima facie case for 9 V.S.A. §4502 (b)

Whether Mrs. Smith is a person with a disability?

Mrs. Smith provided this investigation with documentation from two health care providers at Dartmouth Hitchcock Medical Center confirming that she is a person diagnosed with Multiple Sclerosis. The Title II ADA - Technical Assistance Manual lists specific examples of physical impairments that qualify as a disability under the ADA. These include but are not limited to orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Mrs. Smith is a person with a qualifying disability.

Whether Mrs. Smith sought to bring her service animal into a public building?

All the evidence supports the fact that Mrs. Smith attempted to enter the Windsor Superior Courthouse on May 22, 2014 with her "service dog."

¹⁶ Conversely, in part because the ADA is to be construed broadly, a dog that provides its owner with both emotional support and is trained to do a task that ameliorates some aspect of the person's disability is a service animal. The added benefit of emotional support does not negate its status as a service animal.

Whether Mrs. Smith indicated to the staff at the public building that her dog was a service animal?

Everyone interviewed for this investigation, including the deputies, stated that Mrs. Smith said that her dog was a service animal when she attempted to enter the courthouse on May 22, 2014.

Whether the staff at the public building refused her entry to the building with her service animal and/or made unlawful inquiries?

There is no doubt that the deputies refused to let Ms. Smith enter the courthouse with her “service animal.” The deputies stated that the courthouse policy was “no dogs.” (The policy should have been “no dogs except for service animals.”) All of the staff stated that there was no policy regarding service animals and that none of them had received any ADA training regarding service animals.

There are conflicting accounts of what questions various staff asked Mrs. Smith. What is clear is that the deputies and other courthouse staff did not know the only two questions they were allowed to ask under the law.¹⁷ Based on the evidence gathered in all the interviews, this investigation believes that it is more likely than not that Deputy Brittner (perhaps because another court staff person asked him to) asked Mrs. Smith why the dog was not with her the previous day. Additionally based on the interviews and the fact that Deputy Brittner and other staff knew that Mrs. Smith had MS, this investigation believes it is more likely than not that Mrs. Smith was asked what her disability (condition) was. These questions are not permitted under ADA regulations.

¹⁷ The Smiths commented several times that for a place that is specifically there to uphold the law, it was particularly upsetting for the courthouse staff to not know the law about service animals.

Additional Analysis

This investigation determined that all the elements of the prima facie case are met. This analysis begs the question of whether or not the dog that accompanied Mrs. Smith was a service animal (or a service animal in training) under ADA laws and Vermont's public accommodation laws.¹⁸

The Smiths stated and provided evidence of the dog having "certification" that her dog is in fact a service animal. Certification is not required under the law. In fact service animal certifications are readily available on the internet based on properly answering questions and paying a fee. Internet certification does not prove or disapprove that a dog is a service animal.

Mrs. Smith stated, and her witnesses confirmed, that she was under stress and that the dog provided emotional support. Various staff at the courthouse recalled that Mrs. Smith stated to someone, at some point that her dog was for stress¹⁹. A service animal that provides both emotional support and performs a task that is related to the handlers' disability does not lose its "service animal" status merely because it provides both. Mrs. Smith was in a very stressful situation on the second day of her husband's trial. It was probable that the jury would return its verdict on that day. MS is a condition that is exasperated by stress.²⁰ Being stressed increases, the likelihood that Mrs. Smith could experience an MS related incident.²¹

¹⁸ "Service Animal" - - Beginning March 15, 2011, the definition of a service animal was clarified in the 2010 ADA regulations is "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. 28 C.F.R. §§ 36.104 (Implements Title III), 35.104 (Implements Title II).

¹⁹ The staff did not recall if they heard that from Mrs. Smith or if they heard it second hand from another staff person.

²⁰ A quick internet search of "MS and effects of stress" yields many articles, testimonies and some studies on the negative effect stress has on MS patients. (e.g. "Study shows that stress can lead to MS flare up," "Stressful event, both positive and

This investigation witnessed Mrs. Smith's dog perform a task that was specifically related to her disability, retrieving her phone. This investigation admits that the dog could have done a more impressive job, but that does not invalidate what he was able to do this in the nonemergency demonstration.²² The ADA regulations do not have a requirement as to the amount of or type of training that a service animal must have. Nor do the regulations define the type of work a service animal must provide. Green v Housing Auth. Of Clackamas County, 994 F.Supp. 1253, 1256 (D.Or. 1998).

During this investigation, the respondents suggested that the fact that Mrs. Smith did not bring the dog with her the first day could indicate that the dog is not a service animal. This is not a legitimate defense in this situation for two reasons: 1) persons with disabilities have "good days" and "bad days" which affect their need to use assistive devices including service animals. This is especially true with a disability such as MS. Deciding on any given day to not use one's service animal does not invalidate the need for a service animal or that it is a service animal. There is no requirement that a person who needs any assistive device, including a service animal, must have it with them at all times; 2) The Smiths answered the staff's question (even though it was not one of the questions that can be asked) about why the dog was not with her the day before. The Smiths answered that "the dog was not feeling well, he had diarrhea."

negative can impact the course of MS," Stress plays a major role in MS relapses and strategies need to be developed to minimize the effects of stressful life events.")

²¹ This fact is not needed in order to determine that the dog is a service animal but given the circumstances of that day this it may have been Mrs. Smith overwhelming concern that day.

²² Vermont's Public Accommodation Act also requires that public places allow persons who are training a service animal to be admitted into places of public accommodation. Mrs. Smith's dog is a young dog, about 2 years old. Even though his performance was less than stellar when asked to retrieve Mrs. Smith's phone during the interview this investigation would not hesitate in determining that the dog was still in training.

Additionally this investigation cannot ignore the fact that the courthouse's policy was a blanket "no dogs allowed" and that the deputy (and other courthouse staff) had no idea what questions were allowed to be asked or what to do when a person presented with a service animal. When the deputy denied Mrs. Smith access she explained that the dog was a service animal. At that point the deputy should have asked only one more question "What is the dog trained to do?" Had the deputy known the lawful procedure under the ADA and Vermont's public accommodation laws the outcome of this investigation may have been different depending on Mrs. Smith's response to that second question.

This investigation concludes that Mrs. Smith's dog is a service dog and that the respondents discriminated against her when they did not allow her to enter the courthouse on 5/22/14 with her service dog.

Preliminary Recommendations

This investigation makes a preliminary recommendation that there are **reasonable grounds** to believe that the respondents discriminated against the Smiths in violation of 9 V.S.A. §4502 (b).

Ellen Maxon, Administrative Law Examiner

Date

Approved by:

Karen Richards, Executive Director

Date

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Richard & Eleanor Smith)
)
 v.) HRC Complaint No. PA14-0028
)
)
 White River Junction District Court,)
 Windsor County Sheriff's Depart. &)
 State of Vermont Judiciary)

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

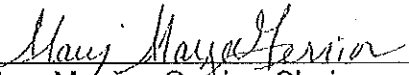
1. The following vote was taken on a motion to find that there are reasonable grounds to believe that White River Junction District Court, Windsor County Sheriff's Dept. & State of Vermont Judiciary, the Respondents, illegally discriminated against Richard & Eleanor Smith, the Complainant, in violation of Vermont's Fair Housing and Public Accommodations Act on the grounds of disability.


Mary Marzec-Gerrior, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Mary Brodsky	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>

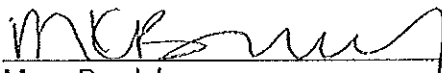
Entry: Reasonable Grounds Motion failed


Dated at Barre, Vermont, this 26, day of March 2015.

BY: HUMAN RIGHTS COMMISSION


Mary Marzec-Gerrior, Chair


Nathan Besio


Mary Brodsky


Donald Vickers (KVR)

Donald Vickers