

SERVICE ANIMALS IN TRAINING

By Steven John Fellman
Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C.

Several weeks ago NATO received an inquiry from the owner of a company that trained service animals. The letter stated that the company had sent one of their trainers together with a dog that was being trained as a Seeing Eye dog to a movie theatre. The theatre staff recognized that the trainer was not a person with a disability and indicated that the theatre had a policy for admitting service animals to assist persons with disabilities but that in this case it appeared that the person with the service animal was not disabled.

The trainer explained that in fact he was not disabled. Further, the dog in question was not a registered service animal but was a dog that was being trained to be a service animal. He claimed that under the law of the state in question, a movie theatre had to admit service animals in training.

The theatre staff responded that the theatre was not a training facility. The theatre was a place of public accommodation, but only had to admit service animals that were in fact assisting persons with disabilities. Who was right?

Under the ADA there is no specific requirement that the operator of a public accommodation, such as the motion picture theatre, permit the theatre to be used as a training ground for service animals. There is no specific language in the ADA or the regulations that permits a trainer of a service animal to take a dog that is in training into the theatre. In fact, the Department of Justice wrote a letter to a member of Congress confirming that the ADA has no statutory

language that requires service animals in training to be admitted into public facilities. But that is not the end of this story.

Several states have passed specific legislation that deals with the service animal in training issue. As an example, in Indiana, Virginia, and Maryland, theatre operators are now required by state statute to admit service animals in training. The service animal does not have to be accompanied by a disabled person. If a trainer brings a service animal to a theatre in one of these states, the theatre staff is required to admit the trainer and the service animal provided that the trainer buys a ticket and pays for his/her admission. In some state's statutes, there are provisions that protect the theatre operator by obligating the trainer to pay for any damages or cleaning expenses caused by an animal in training which misbehaves. However, if the states in which your company operates have statutes, which require that you admit a service animal in training into your theatre, you must obey the statute or face a substantial fine.

Although the requirements of the federal Americans With Disabilities Act apply in all of the United States, each state has the right to enact disability protection legislation that is broader in scope than the federal statute. As an example, the ADA may only require that you have four wheelchair spaces in a theatre auditorium with 300 seats or under. A state's statute could require double that number of wheelchair spaces. We recommend that every theatre owner review the disability rights legislation in each of the states in which it does business.