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Emotional Support Animal or Service Animal for ADA and Vermont's Public Accommodations Law Purposes: Does It Make a Difference?

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Introduction

Federal and Vermont anti-discrimination laws do not differentiate between physical and mental disabilities. The purpose of these laws is to eliminate discrimination of individuals with disabilities, whether physical or psychiatric in nature. While most of us are familiar with the use of seeing-eye dogs for those with vision impairments, service animals provide assistance in a variety of ways to persons who use wheelchairs, persons with hearing loss, the deaf, the elderly, and persons with medically-diagnosed psychiatric disabilities.

Increasingly, emotional support animals have been shown to be beneficial to persons with mental disabilities, such as depression.^(fn1) Though unquestionably a potentially disabling condition in its own right, depression is also a major co-factor with, and/or side effect of, other medically-determined disabilities, such as Alzheimer's, and chronic conditions such as cancer. For instance, one study reported that persons living with AIDS who suffered from depression benefited from owning a pet.^(fn2)

The question then becomes when is an emotional support animal also a service animal to an individual with a disability, which would require an exception to a no-pets policy in places of public accommodation as a reasonable accommodation?

Overview of Disability Access Law and Service Animals

Title III of the Americans with Disabilities Act of 1990 (the "ADA") establishes that "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 ... "^(fn3) The ADA defines "discrimination" as, among other things, "a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities ... "^(fn4) The ADA is silent on the issue of the use of a service animal as a reasonable accommodation; however, the Department of Justice, which promulgated the

regulations enforcing the provisions of the ADA, interpreted the ADA to require a place of public accommodation to "modify [its] policies, practices, or procedures to permit the use of a service animal by an individual with a disability."(fn5)

Similarly, Vermont's Fair Housing and Public Accommodations Act ("VFHPA") establishes that "no individual with a disability shall be excluded from participation in or be denied the benefits of the services, facilities, goods, privileges, advantages, benefits, or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability ..."(fn6)

Like the ADA, it further requires a place of public accommodation to "make reasonable modifications in policies, practices or procedures when those modifications are necessary to offer goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities ... "(fn7) With regard to service animals in particular, VFHPA explicitly provides that 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 ... [a]n individual with a disability accompanied by a service animal."(fn8)

The fair housing component of VFHPA provides, among other things, that it shall be unlawful for "any person ... to refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the ... handicap of a person ... "(fn9) It also prohibits, among other things, "any person ... to discriminate against, or harass any person in the terms, conditions or privileges of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, because of the ... handicap of a person ..."(fn10)

The resemblance between the ADA and VFHPA was intentional. In passing VFHPA, the Vermont legislature specifically stated that VFHPA was "intended to implement and to be construed so as to be consistent with the [federal] Americans with Disabilities Act and rules adopted thereunder ..."(fn11)

The United States Congress also passed amendments to housing legislation designed to provide further protection to individuals with disabilities. The Fair Housing Amendments Act of 1988 (the "FHA") protects the rights of persons with disabilities to keep service animals, even when their landlord has a policy or lease terms explicitly prohibiting pets. Discrimination under the FHA includes, among other things, "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person with a disability] an equal opportunity to use and enjoy a dwelling."(fn12)

Finally, the other federal law besides Title II to the ADA(fn13) that provides similar protections is Section 504 of the Rehabilitation Act of 1973 (" 504"), which provides in pertinent part that "[n]o otherwise qualified individual with a disability in the United States ... 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 ..."(fn14) By passing 504, the first time the nation recognized the rights of people with disabilities, Congress intended to prohibit recipients of federal financial assistance from discriminating on the basis of disability in employment, education, architectural barriers, health, welfare and social services. Amendments to 504 in 1992 further

required that the head of each federal executive agency to promulgate regulations needed to carry out the purposes of the Act.(fn15) One of Congress' stated purposes in passing 504 was to "firmly establish the rights of [disabled] Americans to dignity and self-respect as equal and contributing members of society, *and to end the virtual isolation of millions of children and adults from society.*"(fn16)

Statutory Definition of Disability

To qualify for a reasonable accommodation under the ADA, VFHPA, FHA and/or 504, the person requesting or needing the reasonable accommodation must meet the statutory definition of having a "disability." There are three broad categories of disabilities under each of these statutes: (1) a physical or mental impairment that substantially limits one or more *major* life activities (such as walking, seeing, learning, and performing manual tasks); (2) a record of having such an impairment; or (3) being *regarded* as having such an impairment.(fn17)

In the case of *Toyota Manufacturing, Kentucky, Inc. v. Williams*,(fn18) the U. S. Supreme Court has recently interpreted the requirement that in order to be considered a person with a disability that person must be *substantially* limited in a major life activity. In that case the Supreme Court ruled that an employee with a mild case of carpal tunnel syndrome was *not* disabled as defined by the ADA. Even though the impairment prevented the employee from doing her job at Toyota, because it did not substantially limit her ability to engage in at least one major life activity, the Court concluded the employee did not meet the statutory definition of a person with a disability. The Court held that the correct inquiry was *not* whether the employee can perform the tasks specifically associated with her job, but whether the employee can perform the tasks "central to most people's daily lives."(fn19) Because the employee could do such things as wash her face, brush her teeth, garden, do laundry, and clean her house, the Court determined that she was not *substantially* limited in the major life activity of performing manual tasks.

Establishing the ___Need for the Service Animal___

A critical component in any disability discrimination claim is establishing that the requested accommodation is necessary in order for the person with a disability to have access to and effectively use a place of public accommodation. Courts that have analyzed this necessity requirement have generally held that the person requesting the accommodation must demonstrate a relationship between his or her disability and the need for the accommodation.(fn20)

For example, in the case of *Bronk v. Ineichen*,(fn21) wherein deaf tenants alleged that their landlord discriminated against them in violation of the FHA by refusing to allow them to keep a hearing assistance dog in their rented townhouse, the seventh circuit court of appeals required a showing of a "nexus" between the disability alleged and the service the animal provided.

Specifically, the Court held that the "concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff's life by ameliorating the effects of the disability."(fn22) In other words, "[i]f the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be 'necessary.'"(fn23)

If the requested accommodation is unreasonable, the owner or operator of a place of public accommodation may propose a substitute accommodation. However, according to the Department of Justice, which enforces the ADA, "[i]t is important to consult with the individual to determine the

most appropriate auxiliary aid or service, because the individual with the disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective."(fn24) Extending that logic, a person with a psychiatric disability is uniquely qualified to judge the necessity for an emotional support animal to aid them in accessing public places and services.

For example, if a landlord suggests an alternative accommodation, the disabled tenant can reject it if he or she feels it is inadequate. In the case of *Green v. Housing Authority of Clackamas County* ,(fn25) an Oregon court rejected the landlord's proposed substitution of a flashing smoke alarm and doorbell for a hearing assistance dog. In rejecting the landlord's proposed substitute, the court found that the flashing smoke alarm and doorbell were less effective in ameliorating the effects of the tenant's hearing impairment than a hearing assistance dog that could alert the tenant to cars in the driveway, visitors, and smoke alarms, among other things, no matter where the tenant was in the house.

Defense of Undue Burden _____ or Fundamental Alteration _____

In assessing a request for a reasonable accommodation under Title III of the ADA the owner or operator of a place of public accommodation may consider the administrative, financial, or programmatic impact of allowing a service animal onto its premises, including the disturbance to others. The failure to modify its services, facilities, programs and accommodations would not constitute discrimination where the entity "can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages or accommodations ..."(fn26)

Accordingly, courts that have assessed this defense have generally held that the *only* way a place of public accommodation can avoid providing access to service animals is if it can prove "the animal fundamentally alters the nature of the program or if the defendant suffers undue financial and administrative burdens."(fn27) The courts have generally held as well that the assessment of what constitutes a reasonable modification "is highly fact-specific, requiring case-by-case inquiry."(fn28) Disabling conditions and their impact vary widely with each individual and this is particularly true of persons with psychiatric disabilities. For instance, some psychiatric disabilities are such that the disabled individual is literally unable to leave his or her home unless accompanied by the emotional support animal. What people in the field have learned is that emotional support animals give certain individuals with psychiatric disabilities the confidence and security they need finally to access the outside world.(fn29)

Furthermore, the courts have made this assessment in the context of what the Department of Justice has stated in its appendix to its ADA regulations- that the regulations are intended to be interpreted to provide "the broadest feasible access ... to service animals in *all* places of public accommodations, including movie theaters, restaurants, hotels, retail stores, hospitals and nursing homes ..."(fn30) "Accordingly, a necessary accommodation will typically be considered reasonable 'when it poses no undue financial or administrative hardships on the defendant ... and when it does not undermine the basic purpose of the [challenged] requirement.'"(fn31)

The seventh circuit has also held that to determine whether a requested accommodation is reasonable "requires, among other things, balancing the needs of the parties involved."(fn32) In

the same vein, the seventh circuit also held that under the ADA an employer is not required to make "unreasonable accommodations, in the sense of cost exceeding benefit ..." (fn33) It is hard to imagine, however, how waiving a no-pets rule would fundamentally alter a place of public accommodation's programs or impose much expense to it. If the other requirements are met, there are probably few cases where a court would find waiving a no-pets rule to allow a disabled person access was an unreasonable accommodation. (fn34)

When Is An Emotional Support __Animal Also A Service Animal?__

Neither the VFHPA, nor the ADA, addresses what is required to distinguish a service animal from an ordinary pet. The only definition of a service animal is found in the regulations promulgated to implement Title III of the ADA: 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 sound, providing protection or rescue work, pulling a wheelchair, or fetching dropped items. (fn35)

Of note is the fact that the regulation does not specify the amount or type of training an animal must have had to qualify as a service animal, nor does it specify the amount or type of work a service animal must provide for the disabled person. It does, however, specify that the animal must be trained and that it "do work or perform tasks" for the disabled individual. (fn36)

Furthermore, the regulations specifically state that the list of examples of the kind of tasks a service animal might provide for a disabled individual is not limited. Not surprisingly then, much of the litigation involving the waiver of no-pets policies for individuals with disabilities as a reasonable accommodation involves the skill level of the animal and the tasks it performs for the disabled individual.

The *Green* court, in reviewing the federal definition of service animal, determined that the defendant Housing Authority's requirement that a service animal be trained by a certified trainer, or at least by a highly skilled individual, "has no basis in law or fact." (fn37) Likewise, the *Bronk* court stated that the ADA regulations did not require a service animal to have *professional* training. (fn38) It did conclude, however, that the function the animal serves for the disabled individual is determined by its schooling. (fn39) The *Bronk* court, therefore, held that there must be *some* evidence of individual training in order to set the service animal apart from the ordinary pet. (fn40) Similarly, the court in *In re Kenna Homes Coop Corp.* held that "the burden is on the person claiming the need for a service animal as a reasonable accommodation to show that his or her animal is properly trained." (fn41) Thus, "[palliative] care and ordinary comfort of a pet are not sufficient to justify the request for a service animal ..." (fn42) Therefore, regarding individuals with psychiatric disabilities who rely on the psychological security their service animal provides them, training gets more difficult to define.

Along these lines, in *Prindable v. Association of Apartment Owners of 2987 Kalakaua*, where the plaintiff-tenant had a mental disability that was ameliorated by his dog, the court rejected counsel's argument that "canines (as a species) possess the ability to give unconditional love, which simply makes people feel better," and stated that allowing this "reasoning permits no identifiable stopping point," and would change the test "from 'individually trained to do work or perform tasks' to 'of

some comfort."(fn43) In that case, the court found that there was nothing in the record that would lead a jury to conclude that the tenant's dog was an individually trained service animal.(fn44) Clearly, the *Prindable* court was influenced by counsel's admission that the tenant's service animal was "not individually trained and possess[ed] no abilities unassignable to the breed or to dogs in general."(fn45) The tenant should have presented evidence, if available, that his dog did more than simply provide him with comfort that made him feel better. He needed at a minimum to present evidence that it was the presence of the dog that allowed him full use and enjoyment of his home. The case begs the question, "Is the provision of comfort and security not a 'particular task'?" It is not clear how the *Prindable* Court at least would have decided this question given that it did not have more evidence before it of the tasks the dog performed beyond just being of some comfort to the tenant.

The Vermont Human Rights Commission, which has, among other things, jurisdiction over discrimination in places of public accommodations, has found evidence of discrimination in two cases involving women with psychiatric disabilities who wanted the ability to access places of public accommodation with their service animals. There, too, the Commission had to address the question of the ADA's training requirements. In the case of *Corbeil v. The Music Club*(fn46) the complainant, Ms. Corbeil, filed a charge of discrimination claiming that the respondent, The Music Club, discriminated against her because of her disability. Ms. Corbeil has the psychiatric disabilities of Post-Traumatic Stress Disorder and a panic disorder that makes it difficult for her to leave her home and "participate in social situations."(fn47) Accordingly, on advice of her doctor, Ms. Corbeil acquired a Pomeranian she named Koda to be a service and psychiatric support animal. Ms. Corbeil trained Koda herself, "with the assistance of information from an on-line support group that helps people with disabilities train their own support animals."(fn48) "When she leaves the house, she keeps in physical contact with Koda and pets him, as a way to relieve her panic attack."(fn49) Ms. Corbeil charged that when she attended a wedding rehearsal at The Music Club, the owner of the club told her that she could not be there with her dog, even after Ms. Corbeil made the owner of the club aware that Koda was a service animal. The club owner claimed that Ms. Corbeil did not provide documentation when requested that Koda was a service animal, thus alleging that the club could legitimately deny access to the dog.

Citing the *Green* case, the Commission found that Ms. Corbeil's "dog qualifies as a service animal, based on the evidence she provided that she trained the dog herself, using guidance from an on-line group devoted to self-training of service animals ..." (fn50) Also, citing various Department of Justice publications, the Commission found that "documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal."(fn51) Therefore, the Commission held that the club owner violated VFHPA "by asking Ms. Corbeil to remove her dog from the Club, and by asking her to provide documentation of the dog's status as a service animal. [The club owner] could have asked if the dog was a service animal, and what tasks the dog performed, but that is the extent of the information she could have lawfully requested."(fn52) The Commission dismissed the club owner's concern that she would be in violation of Vermont's health regulations if she allowed entrance to the dog. It held that because the health regulations specifically permit the admission of service animals, the dog could remain

on the premises as long as it "remained under control and did not pose a direct threat to the health o[r] safety of others (for example, ... coming in close proximity to food preparation areas.")(fn53) In a subsequent case, *Cornick-Kelly v. Fletcher Allen Health Care*, the Commission once again found that the animal in question qualified as a service animal by the requirements of the regulations to Title III of the ADA.(fn54) Similarly to Ms. Corbeil, Ms. Cornick-Kelly has the psychiatric disabilities of Post-Traumatic Stress Disorder and panic attacks. Her psychologist recommended that she obtain a dog to assist her with her disabilities. Upon his recommendation, because Ms. Cornick-Kelly had raised them in the past, she acquired an American bull terrier, Rudi, from the animal shelter in Homer, Alaska, where she lived at the time. Rudi had been temperament-tested at an animal shelter in Las Vegas, Nevada, and then again at an animal shelter in Homer. He also had a brief period of obedience training.(fn55)

Because she thought she had the background to do so and having worked for many years with her grandfather, who was a veterinarian who boarded cats and dogs, Ms. Cornick-Kelly trained Rudi herself to respond to her when she was having a panic attack or was despondent. In doing so she also consulted with other dog trainers about Rudi's training.(fn56)

After moving to Vermont, Ms. Cornick-Kelly chose Colchester Family Practice ("the Practice") as her primary care provider. The Practice is owned and operated by Fletcher Allen Health Care. From August 2004 to February 2005, Ms. Cornick-Kelly had several appointments at the Practice, and Rudi accompanied her to most of them. At some point a social worker at the Practice requested documentation proving that Rudi was a service animal, to which Ms. Cornick-Kelly replied that the law did not require her to provide such documentation. At a subsequent meeting, the social worker asked if Rudi was a *trained* service animal. Ms. Cornick-Kelly alleged that she told the social worker that she trained Rudi herself.(fn57)

On February 1, 2005, staff told Ms. Cornick-Kelly that the Practice would no longer allow Rudi on the premises. In a letter dated February 2, 2005, Fletcher Allen Health Care's Director of Risk Management, Michael Hawkins, formally notified Ms. Cornick-Kelly that she could not bring Rudi with her to her appointments at the Practice.(fn58) As part of its investigation, a Commission investigator interviewed Mr. Hawkins who said that Rudi did not qualify as a service animal because he did not "perform any particular tasks that would allow [him] to be deemed a service animal."(fn59)

In its decision, the Commission noted that the Department of Justice has not issued any particular guidance regarding the status of emotional support animals as service animals. However, the Commission's investigator had participated in a nationwide teleconference with the Department regarding the topic of service animals. In its decision, the Commission quoted from the Department's attorney who stated in the teleconference, in part, that: The one area I know people will probably have questions about that's a difficult one under the ADA is the issue of animals that provide emotional support and how to distinguish between a pet that you have that does provide you with emotional support, people love their pets, how to distinguish that from an animal that's been trained to perform some task. An emotional support animal is not going to be a service animal under the ADA unless it does meet the training requirement.'(fn60)

The Commission further noted in its decision that later in the same teleconference, an attorney for

the Department of Housing and Urban Development stated that under the FHA "training by the owner is acceptable."(fn61)

Again, citing *Green*, the Commission held that Rudi met the ADA definition of service animal because he had been "individually trained by Ms. Cornick-Kelly ..." and because the "training regarded performance of tasks for the benefit of Ms. Cornick-Kelly, a person with disabilities. Those tasks include approaching and touching Ms. Cornick-Kelly in certain ways at certain times. Finally, performance of those tasks serves to assist Ms. Cornick-Kelly to cope with her disabilities."(fn62) Accordingly, the Commission concluded that there were reasonable grounds to believe that Fletcher Allen Health Care illegally discriminated against Ms. Cornick-Kelly because of her disability by prohibiting her service animal access to its facilities.(fn63)

On September 26, 2005, the Court of Appeals of Washington held in *Storms v. Frederick Meyer Stores, Inc.*, that a dog owner with psychiatric disabilities presented sufficient evidence of her dog's training to make out a prima facie case of discrimination.(fn64) In that case, Ms. Storms had multiple psychiatric issues, including Post-Traumatic Stress Disorder and depression. Acting on the recommendation of her doctor, she acquired a Rottweiler named Brandy. Brandy attended a number of obedience training programs and was temperament-tested. She was also trained to put herself between other people and Ms. Storms to help Ms. Storms control her anxiety.(fn65) Ms. Storms filed a lawsuit against Frederick Meyer Stores claiming that, in violation of Title III of the ADA and Washington's public accommodations laws, one of its stores refused to allow her to remain in its store with Brandy. The trial court directed a verdict in favor of Frederick Meyer Stores claiming that Ms. Storms failed to establish that Brandy was a service animal. The appeals court reversed the trial court based on its conclusion that there was sufficient evidence to support a finding that Brandy had individual training that set her "apart from the ordinary pet."(fn66)

Conclusion

If the goal of the ADA and laws like it is truly to end the "unnecessary exclusion of persons" with disabilities from the mainstream of America(fn67) and to provide the "broadest feasible access ... to service animals in all places of public accommodations ...,"(fn68) then it appears entirely reasonable, indeed desirable, to allow persons with psychiatric disabilities access to public places with their emotional support animals. There really should be no need for persons with a psychiatric disability to be subject to such a heightened level of scrutiny regarding their service animal's training than someone with a physical disability whose disability is obvious and visible, such as individuals with vision impairments. While not yet examined by the courts, what may be an "ordinary pet" to most of us, can literally be a life-saver to a person with psychiatric disabilities, *regardless* of the animal's training.

The status of the law to date, however, is that, if challenged, the individual with the psychiatric disability will have to show that the animal received *some* individualized training (even if undertaken by the disabled individual him or herself) by which it performs at a minimum the task of facilitating the disabled person's ability to *access* the outside world. Simply demonstrating that the animal in question provides comfort and security alone will not be enough. Rather, individuals with a psychiatric disability will have to make a case best demonstrated by the statements of their treating physicians that they cannot leave their home and/or participate in social and civic activities

and access services without the company of their service animal. In the rental housing situation, disabled persons will have to show, again through medical testimony, that in order to have full use and enjoyment of their homes they must have the emotional support animal living with them. In essence, then, the service animal is performing the critical task of providing the disabled person with independence and inclusion he or she would not otherwise enjoy.^(fn69) And, is that not the point?

Footnotes:

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1. Rebecca J. Huss, *No Pets Allowed: Housing Issues and Companion Animals*, 11 ANIMAL L. 69, 70-72 (2004) (and references cited therein).
2. *Id.* at 71 (citing J.M. Siegel et al., *AIDS Diagnosis and Depression in the Multicenter AIDS Cohort Study: The Ameliorating Impact of Pet Ownership*, 11 AIDS CARE 157 (1999)).
3. 42 U.S.C. 12182(a).
4. 42 U.S.C. 12182(b)(2)(A)(ii).
5. 28 C.F.R. 36.302(c)(1).
6. 9 V.S.A. 4502(c).
7. 9 V.S.A. 4502(c)(5).
8. 9 V.S.A. 4502(b)(1).
9. 9 V.S.A. 4503(a)(1).
10. 9 V.S.A. 4503(a)(2).
11. 9 V.S.A. 4500 (citation omitted).
12. 42 U.S.C. 3604(f)(3)(B). *See also* Title II of the Americans with Disabilities Act, 42 U.S.C. 12131-12133 (prohibiting state and local governments from discriminating against persons with disabilities in their programs and activities, including public housing).
13. *See supra* note 12.
14. 29 U.S.C. 794(a).
15. *Id.*
16. 118 CONG. REC. 32,310 (1972) (statement of Sen. Williams) (emphasis added); *see also House Report on the FHA*, H.R.Rep. No. 711, 100th Cong., 2d Sess. 18 (declaring that the FHA is a "clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps [sic] from the American mainstream ...").
17. 42 U.S.C. 12102(2); 9 V.S.A. 4501(2); 42 U.S.C. 3608; 29 U.S.C. 705(20)(B).
18. 534 U.S. 184 (2002).
19. 534 U.S. at 201 -202.
20. *See, e.g., Vande Zande v. State of Wisconsin Department of Administration*, 44 F.3d 538 (7th Cir. 1995) (the ADA does not require an employer to make unreasonable accommodations, such

- that the costs of the accommodation exceed the benefits attained for the person requesting it).
21. 54 F.3d 425 (7th Cir. 1995).
 22. *Id.* at 429.
 23. *Bryant Woods Inn, Inc. v. Howard Count, M.D.*, 124 F.3d 597, 604 (4th Cir. 1997).
 24. Department of Justice ADA Technical Assistance Manual, II-7.1100.
 25. 994 F. Supp. 1253, 1256 (D. Or. 1998).
 26. 42 U.S.C. 121 82(b)(2)(A)(ii).
 27. *Green v. Housing Authority of Clackamas County*, 994 F. Supp. at 1256 (emphasis added).
See also *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 683 n.38 (2001) (The ADA "contemplates three inquiries: whether the requested modification is 'reasonable,' whether it is 'necessary' for the disabled individual, and whether it would fundamentally alter the nature of the [goods, services, etc.]").
 28. See, e.g., *Crowder v. Kitagwa*, 81 F.3d 1480, 1486 (9th Cir. 1996) and cases cited therein.
 29. Patricia Deegan, *Service Dogs Help People Get Back Out Into the Community*, National Empowerment Center, Inc. (1999); Liz, Lipton, *Some Patients Petting Their Way to Mental Health*, PSYCHIATRIC NEWS (Feb. 2, 2001).
 30. 28 C.F.R. Pt. 36, App. B (interpreting 28 C.F.R. 36.302(c)).
 31. *Prindable v. Association of Apartment Owners of 298 Kalakaua*, 304 F. Supp. 2d 1245, 1258 (D. Haw. 2003) (*quoting* *Hubbard v. Samson Management Corp.*, 994 F.Supp.187, 190 (S.D.N.Y. 1998) (alteration in original) (*quoting* *Proviso Association of Retarded Citizens v. Village of Westchester*, 914 F. Supp. 1555, 1562 (N.D. Ill. 1996)).
 32. *U.S. v. Village of Palatine*, 37 F.3d 1230, 1234 (7th Cir. 1994).
 33. See *supra* note 19.
 34. See, e.g., *Bronk*, 54 F.3d at 430 ("Balanced against a landlord's economic or aesthetic concerns as expressed in no-pets policy, a deaf individual's need for the accommodation afforded by a hearing dog ... [is] per se reasonable within the meaning of the [FHA].").
 35. 28 C.F.R. 36.104(5) (emphasis added).
 36. *Id.*
 37. 994 F. Supp. at 1256.
 38. 54 F.3d at 431.
 39. *Id.*
 40. 54 F.3d at 429 n.6.
 41. 557 S.E.2d 787, 798 (W.Va. 2001).
 42. *Id.* at 800.
 43. 304 F. Supp. at 1257 n.25.
 44. *Id.* at 1256.
 45. *Id.* at 1257-1258.
 46. Case No. PA04-0031 (2005).
 47. *Id.* at 2.
 48. *Id.* at 3.
 49. *Ibid.*

50. *Id.* at 10-11.
51. *Id.* at 9-10 (quoting from Department of Justice, *Commonly Asked Questions About Service Animals In Places of Public Accommodation*, www.usdoj.gov/crt/ada/qasrvce.htm (December 2004)).
52. *Id.* at 11.
53. *Id.*
54. Case No. PA05-0035 (2005).
55. *Id.* at 3-4.
56. *Id.* at 4.
57. *Id.* at 5-6.
58. *Id.* at 6.
59. *Id.* at 6 and 11.
60. *Id.* at 15.
61. *Id.* at 16.
62. *Id.* at 16-17.
63. *Id.* at 20.
64. 120 P.3d 126, 127-128 (2005).
65. *Id.*
66. *Id.* at 130.
67. *See supra* note 15.
68. *See supra* note 27.
69. *See also* Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 4-13(b) (1998) (service animals *include* "emotional support animals for persons with chronic mental illness).

