

Service Dogs and the Law

The Iowa Court of Appeals has decided a case demonstrating that service dogs remain an item of legal interest. The plaintiff, Shumate, was a student at Drake University who was denied permission to take into his law school classes a dog being trained as a service dog. Iowa has a state statute that allows persons with a disability to utilize a service dog. It also allows people who are training a service dog to take that dog with them into public places. The Iowa statute makes interference with these rights a criminal misdemeanor, but it does not indicate whether private persons have the right to file a civil lawsuit in such an instance.

Shumate filed a private civil lawsuit against Drake University. The question of the student's right to sue was addressed by the Iowa Court of Appeals. The usual rule of interpretation in construing a statute is suggested by the Latin maxim "*expressio unius est exclusio alterius*" - the expression of one thing is the exclusion of another, which, as applied here, would mean that the failure to expressly provide a private right of action means no such right exists. However, the Court of Appeals felt that the old Latin maxim should not apply to this case due to the remedial purpose of the statute. Accordingly, the Iowa court held that, although it was not so specified in the statute, a plaintiff would have a right to bring a private civil suit based upon the Iowa statute. *Shumate v. Drake University*, 2013 WL 5949659 (Ia. App. Nov. 6, 2013)

This Iowa case may be of interest in Alabama because Alabama courts have reached the opposite conclusion. Alabama has a statute virtually identical to the Iowa law. See *Code of Alabama* § 21-7-4 (1975). As is the case in Iowa, the Alabama law makes violation of the statute a criminal misdemeanor but makes no mention of the existence of a private right of civil action. A blind plaintiff was denied permission to take his service dog into the Diplomat Inn in Montgomery. He sued for violation of his rights under the statute. The Court held that the hotel's conduct was clearly a violation of the statute but that the Latin maxim *did* apply and there was *no* private right of action for persons covered by the Alabama law. *Hardesty v. CPRM Corporation*, 391 F.Supp.2d 1067 (M.D. Ala. 2005).

Most people are aware that the service dogs are also the subject of the federal Americans with Disabilities Act, 42 U.S.C. 12101(1990). As a general rule, the federal statute and its regulations take precedence over state statutes under the Supremacy Clause of the United States Constitution. *United States Constitution*, Article VI, Clause 2.

The law governing service dogs, and the even more controversial subject of therapy animals or comfort animals, often varies from state to state and, even at the federal level, is currently evolving. Media accounts of the outcome of a specific case should be considered in this context. UAH officials are encouraged to consult with the Office of Counsel to help assess the applicability to the University, and weight to be given, of particular judicial decisions in this area of the law.