

Trends: Close Up

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Animals in Court

There are a variety of different scenarios that can bring animals to the courthouse. They may be accompanying a witness, a litigant, an attorney in a court case, or someone entering the court to file paperwork.

When someone enters a courthouse with a possible service animal, court staff may, by law, ask only two questions: 1) Is the animal necessary because of a disability? and 2) What has the animal been trained to do to assist the individual? Even if an animal qualifies as a service animal, the public entity can ask them to leave if the animal is not housebroken or is out of control. In addition, if the presence of the animal would cause a fundamental alteration to the service or program, the animal may be excluded.¹ A comfort animal used for psychiatric support is differentiated from a service animal.

Under Title II of the Americans with Disabilities Act (ADA) service animals must be permitted, but not emotional support, comfort, or therapy animals. Most states also have their own regulations that apply to service animals. If the state laws or regulations are broader than the ADA, those would also apply, but the state

About the Series



These special reports are part of the National Center for State Courts' "Trends in the State Courts" series and serve as informative and timely updates for state court leaders. Any opinions expressed herein are those of the authors, not necessarily of the National Center for State Courts.

regulations cannot place limits on the ADA regulations. Emotional support animals are permitted under the broader definitions of Section 504 in the area of housing and transportation. Under the ADA, service animals are defined as any dog that is trained to perform tasks to benefit the person with the disability.² Although only dogs are included under the definition, a special provision makes an exception for miniature horses in certain cases.³

So while a comfort dog that provides emotional support is not allowed under the ADA, an animal that has been trained to provide specific tasks, including preventing epileptic seizures or interrupting behaviors that the individual has trouble controlling, is allowed under the ADA. These animals have had "alert training," examples of which might include nudging the person

¹ 28 C.F.R. §35.136.

² "Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." 28 CFR 35.104

³ 28 CFR 35.136 (i).



*The public entity can only ask:
1) If the animal is required because of a disability and
2) What the animal has been trained to do.*

“Staff may not ask for certification and the animal is not required to wear special tags, vests, or harnesses.”

or walking around the person in a circle, to prevent seizures or interrupt certain behaviors. These are considered to be specific tasks that require training, but the disability is usually not visible. The Department of Justice (DOJ) has released “Frequently Asked Questions about Service Animals and the ADA,” which explain the difference between an emotional support animal and a service animal. If someone is having an anxiety attack and an animal helps to calm them, that is an emotional support animal and not covered by the ADA. If the animal has been trained to sense that an attack is imminent and can take an action to help avoid or reduce the attack, then the animal qualifies as a service animal. Since the public entity can only ask if the animal is required because of a disability and what the

animal has been trained to do, this may be a difficult determination for a frontline court employee. Service animals do not have to be trained by a professional, so the individual with the disability may have trained their own service animal. The ADA does not cover service animals that are still in the training stage; however, some states provide coverage under state statutes. Staff may not ask for certification, and the animal is not required to wear special tags, vests, or harnesses.⁴

Miniature horses were excluded by the proposed DOJ regulations that limited service-animal species to dogs that were individually trained to perform work for persons with disabilities. The final revised regulations include a special provision for miniature horses.

⁴ U.S. Department of Justice, “Frequently Asked Questions about Service Animals and the ADA,” https://www.ada.gov/regs2010/service_animal_qa.html.

ADA Service Animal Checklist for Courts

What animals are permitted by the ADA?

All breeds of dogs are covered by the ADA and can be service animals. A special provision was added to the final rule that includes miniature horses. State law may broaden protections for service animals but may not limit the federal regulations. For example, some states cover service animals in training while the ADA does not.

Do service animals need special training or certification?

No. The individual may train his or her own service animal. The work or tasks performed by a service animal must be directly related to the individual's disability. Service animals may be used to assist people with any disability, including neurological or psychiatric disabilities if the service animal is trained to prevent or interrupt "impulsive or destructive behaviors."

When can service animals be excluded?

All types and breeds of dogs are allowed under Title II, but the public entity can ask the person to remove the animal if the animal is not housebroken or if it is out of control. In addition, if the presence of the animal would cause a fundamental alteration to the service or program the animal may be excluded. The alteration must be more than a minor financial or procedural change.

Can judges or court staff ask for certification, tags, vests, or other documentation?

Neither judges nor court staff may ask for certification, and the animal is not required to wear special tags, vests, or harnesses under the ADA. Individuals are not required to provide documentation that an animal is a service animal; "credible verbal assurances" should be sufficient.

What about comfort, therapy, or support animals?

These animals are not covered by the ADA and can be excluded in some circumstances. Differentiating between a service animal trained to prevent an anxiety attack and a comfort animal who provides emotional support to the individual with PTSD may be difficult for a frontline employee. Additionally, a person may request a comfort animal as a reasonable accommodation under the ADA so this can further complicate the analysis. Requests for an animal as a reasonable accommodation should be treated in the same manner as any other request for accommodation.

28 CFR 35.104 Definitions.

28 CFR 35.136 Service Animals.

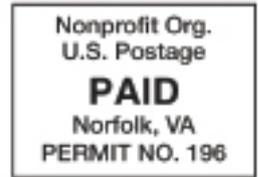
US Department of Justice. "Frequently Asked Questions about Service Animals and the ADA."

https://www.ada.gov/regs2010/service_animal_qa.html.





300 Newport Ave.
Williamsburg, Virginia 23185
(800) 616-6164
ncsc.org



Many advocacy organizations provided input on why to include miniature horses. Reasons included severe allergies to dogs, fear of dogs, longevity (miniature horses can live 30 years), strength (horses can pull a wheel chair), sharp eyesight, and calm nature. Miniature horses are about the size of a large dog and have been used in other venues, such as schools. Four factors are used to determine if a miniature horse must be accommodated: 1) Is the animal housebroken? 2) Is the animal under the owner's control? 3) Can the facility accommodate the type, size, and weight (usually 70-100 pounds, similar to a large dog)? and 4) Is there a legitimate public-safety concern?⁵

Comfort Animals

Comfort or therapy animals are used in some courts for therapeutic reasons. (e.g., Florida Dependency Courts). While this is a relatively new practice, courthouse

therapy or comfort dogs are being used in several courts in California, Colorado, Florida, Maryland, Michigan, Pennsylvania, and Washington State. Statutory authority exists in some but not all of these states. Typically, these programs are started by the prosecuting attorney's office as a way to provide support for child witnesses who have been traumatized. Veterans courts have also started to recognize the therapeutic benefits of comfort animals. Courts that allow or even encourage the use of comfort/therapy dogs for the benefit of victims or litigants are not dealing with ADA or Section 504 issues.

Author: Deborah W. Smith

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