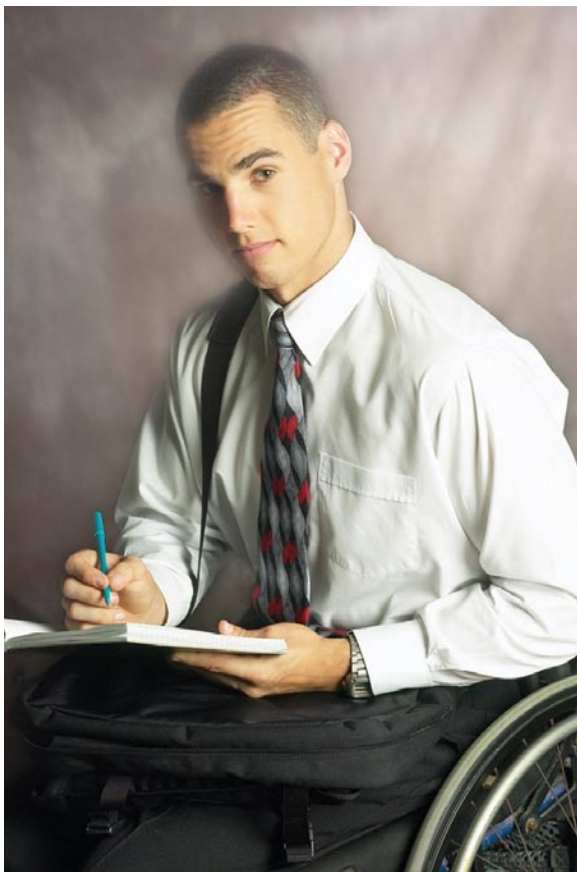


Poetic Justice... What Goes Around,



THERE HAS BEEN MUCH ADO REGARDING THE IMPLEMENTATION and enforcement of the many new ADA handicap requirements since the formation of the Americans With Disabilities Act in 1990. As these changes filtered down over time from the federal level into state and local levels, many of the requirements became even more stringent and exceedingly difficult and costly to implement.

Changing Times

While the advent of many ADA Handicap requirements has greatly improved facility access for persons with disabilities, it also unwittingly created an unforeseen situation where certain unscrupulous individuals have taken it upon themselves to take advantage of our many small, medium, and large business owners by way of frivolous litigation tied to ADA handicap compliance.

Most of us have heard the stories of the “ADA police” going around to business establishments, checking the width of doors, gauging the opening force of door closers, and making sure there are grab rails in restrooms. Many of these “ADA police” are themselves handicapped individuals, in wheelchairs, or walkers, and will visit many businesses on any given day, typically finding several ADA discrepancies at each business. What is going on here?

Ambulance Chasing with a Twist

In many well-documented cases, it has now been proven that some members of the legal profession are behind much of this ADA police action. In essence, it has the same ring to it as we

Comes Around

by John Linder

used to ascribe to the old ploy of “ambulance chasing.” Some legal entities have actually sought out less than honorable individuals to perform the initial “investigative” legwork, while the law firm files the necessary paperwork and pulls in the money any way they can get it.

California Fact

One Woodland Hills, CA man has filed his last court action. This man filed more than 400 suits under the Americans with Disabilities Act before a federal judge barred him from future litigation in 2004. In a highly unusual court action in 2004, U.S. District Judge Edward Rafeedie branded this man a “hit-and-run plaintiff,” accusing him of systematic extortion of businesses across California. This one individual, who uses a wheelchair, and with the aided help of a San Francisco law firm, has sued restaurants, bowling alleys, wineries, and other retail outlets for misplaced handrails, insufficient handicapped parking, improper doors, and other violations of the disabilities act. Together, this

individual and his lawyers demanded that business owners be fined \$4,000 for every day their facilities failed to meet exacting ADA standards.

Fear of adverse judgments compelled many business owners to settle out of court, earning this “tag team” many hundreds of thousands of dollars in less than two years. Not willing to give up his lucrative source of income, this individual and his lawyers appealed before the U.S. Supreme Court.

Final Outcome... Poetic Justice

The U.S. 9th Circuit Court of Appeals in April, by a strong majority ruling, denied a rehearing of this case by the full court. The Court dismissed the defendants named, and affirmed the prior district court’s order declaring this California ADA policeman a vexatious (harassing) litigant, prohibiting him from filing any other ADA complaints in the Central Court of California. The law firm, in cahoots with our crusader friend, was also sanctioned by the court and imposed with a similar pre-filing order to cease and desist.

Moving on

The reality of the situation is that ADA is now very much a part of business owner’s daily lives. While much of ADA can be a little complicated, and compliancy can be expensive, most business owners recognize the need to change and comply. Typically, most business owners do not need to be pounded by the kind of systematic extortion described in this article. In fact, it is this very kind of systematic extortion that gives ADA compliancy a reputation for being unfair, and causes some business owners to look upon ADA compliancy adversely. A few more courts and judges like the Honorable Edward Rafeedie would go a long way toward encouraging further improvements by business owners.

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Mr. Linder’s opinions are solely his own and not necessarily those of this magazine.