

# Association for DisAbled Americans Inc.

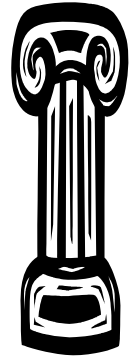
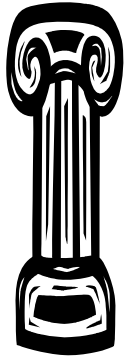
**PMB #196**

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## **Why Get Involved?** by [Michelle Wisniewski](#)

In the course of a recent ADA lawsuit a Senior Federal District Judge asked me why, considering I was unpaid, did I initiate this action.

The short answer I gave was simple self-preservation. As I and others have learned very painfully, lack of disabled access is a serious threat to survival.

We disabled are not best left housebound and bedridden, begging for subsistence.

Many of us find work a privilege to be savored. The disability we accept; the loss of independence we do not. Modern medical technology immensely broadened our horizons and lengthened our lives. Then, after a decades long struggle, Justin Dart in 1990 led the disabled people of this country to the passage of the Americans with Disabilities Act (ADA). This law, if vigorously enforced, can remove discriminatory barriers in employment and public accommodations.

Landmark civil rights legislation, the ADA is designed to protect the fifty-two million (52,000,000)

Disabled Americans. The reality of this law is that for it to be effective, individuals must bring each violation to Federal Court, one by one.

None of us can fight this battle alone. For many years I tried to find willing ADA legal expertise in my area without success. Finally I discovered the Association for Disabled Americans at a regional trade show. Here were three hundred empowered, like-minded disabled people. They had good leadership, hard-won experience and formidable legal knowledge.

I took the plunge. They did all the work. They joined the action as fellow plaintiffs. They inspected the site of my complaint, assigned an attorney, prepared the plea and guided me through the entire process to settlement.

Solid ADA cases are indefensible. In over seventy cases now, all were decided in our favor. Only one has gone to trial, requiring ten minutes of my testimony. In cases settled out of court, only three required me to provide depositions.

Other than expenses, I get no payment. The Congress designed this law so that the violators pay the expense of litigation. The merchants of my town are upset with me for the added construction and legal expense in running their businesses, but this a small price for the freedom of so many. Those of us who earned our disabilities serving our country understand the price of freedom. We have earned the right to live in a country which allows us to fully participate according to our remaining abilities.

Discrimination against another person by treating them as sub-human because they are a minority race, color, religion or have a different language, are a minority race, color, religion or have a different language, partner preference or disability is both ignorant and brutal. This kind of thinking has led to much of the misery in human history. Our times have witnessed the struggles to overcome these devils within by non-violent means. Mahatma Gandhi, Nelson Mandela and Martin Luther King have all led their people to freedom from discrimination.

Each of us who are disabled has the opportunity of making the promise of the ADA reality. We have the moral duty of becoming pro-bono plaintiffs in these cases, not just for ourselves, but for all fellow disabled Americans now and to come.



## **City to respond to complaints about access**

Key West Keynoter 2/3/01

ADA violations alleged By Bridget McDonald, bmcDonald@keynoter.com

Although Key West Pedestrian and Traffic Coordinator Jim Malcolm says City Hall is, "for the most part, handicap-accessible," parties in a legal complaint alleging lack of access call city efforts "miniscule and meager." The city has been served legal notice concerning 20 alleged violations of the Americans with Disabilities Act. Most violations pertained to wheelchair access to City Hall, restrooms, courtesy phones and second-floor offices. Handicapped-accessible parking at city parks, city policy and procedure required by the ADA — which became law in 1992 — are also being challenged. Michelle Wisniewski, a Cudjoe Key resident and a party in the complaint, says she has had several incidents in which she needed access to City Hall and could not be accommodated. One incident involved a visit to the mayor's office on the second floor. Another time she needed access to the Police Department. "I was interviewed by the police in the outside hallway," she said. Wisniewski said she comes to Key West "almost daily" for church, medical services and other services available here. She has been in a wheelchair for six years. "There are so many ways Key West is impossible for people in wheelchairs," she said. "What we are addressing in this complaint is one flake of

snow on the tip of an iceberg.” The legal notice lists the Florida Paralegic Association, the Miami Beach-based Association for DisAbled Americans, Out of Desperation Inc., the Coral Springs Advocacy Committee for the Disabled, and the Alliance for ADA Compliance as parties to the legal action. Malcolm — recently designated the city’s ADA coordinator — said he has become aware of the handicapped-accessible issues through the Community Traffic Safety Program meetings that he attends. “It’s a matter of the law,” he said. “It’s very complex as to what needs to be done to comply. Budget and costs are always constraints.” He said the city is composing a letter of response, reviewing procedures and looking for shortfalls to procedures already in place.



## Accessible Taxis now in Key West

The Association and individual plaintiffs have filed what is believed to be the first two case against taxis. Prior to the suit, there were no means for an individual who uses a wheelchair to obtain accessible transportation from the airport to any of the hotels in Key West without having made prior reservations. The two suits against the taxi companies now requires that an accessible vehicle be made available on demand. The agreements require the companies to comply with all the applicable regulations as with securement, minimum 600 pounds weight capacity, the ability to operate in the event of power loss, the ability and a right to use as a standee and usage of proper seat belt restrains. The settlement agreements require the accessible taxi services to be available during all hours of operation. The availability of the accessible taxis are to be made known in all advertisements, brochures or other promotions and on their respective web sites. Employees will be required to receive training in order to provide services in an appropriate manner. The alterations are required to be completed within six months from the execution of the agreement which was January 2005.



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## GOOD THINGS TO KNOW

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**There is no thing such as “grand fathered”, every commercial facility is required to provide access through some means.**

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A permanently installed TDD (Teletype Display Device) is *required* if an interior public pay telephone is provided in a stadium or arena, in a convention center, in a hotel with a convention center, or in a covered mall.

Every municipality with 50 or more employees is *required* to have an ADA coordinator and transition plan to remove barriers unless no barriers exist.



## Notices given to many locations educates businesses

One of the pro bono educational services provided by the Association is through the assistance of it's counsel, members and consulting experts achieving corrective measures without litigation by providing detailed lists of barriers sent by one of the association counsels. •The Square Grouper Grill Cudjoe Key•Sunset Margarita Key West•Hurricane Hole Stock Island•Duncan Auto Key West•Tradewinds Plaza Key Largo•Sheraton Suites Key West•St. Thomas University Miami•Doubletree Grand Key Resort Key West•Southernmost Hotel on the Beach•Red Garter Saloon Key West•Moontide Plaza Cudjoe Key, Mangrove Mamas Upper Sugarloaf Key•Wreck Riverfront Bar & Grill Daytona•North Beach Physical Therapist Miami Beach•Antonia's Key West Restaurant are but a few.

### Association business matters

The Association is attempting to update its membership list, e-mail addresses, phone numbers and disability. Please go online to update this information or forward the postage free membership located on page 6. Nominations are also needed for involved advocates to serve on the Board of Directors. Interested individuals or nominations can be made through the Association e-mail address: <mailto:ada2000@poboxes.com>

The Association is looking to assist our Veterans in Medical facilities and bases. There is deplorable access at most of these facilities. Involved members can compel the Government to make these changes for those who have sacrificed much for our country only to return and receive second-class citizenry. Become a member and describe your access issue for assessment towards possible litigation to compel compliance with the requirements. Be a part of the solution.

A Certified Public Account is now being used to assume the Associations Trust account for all administrative deposits and disbursements. A new bank account has been set up. Plaintiffs that attend depositions, court and/or mediations will receive a per diem reimbursement. Funds are replenished from enforcements where defendants have not done required barrier removal, from reimbursement of administrative expenses in the stipulation agreements and charitable donations.

[Online Member Registration](#)

**CLICK HERE TO LINK**

[E-mail list update for Online Newsletter](#)

[Online Complaint Form](#)

The ADA is the first and largest Association in the southeast, to litigate ADA cases beginning in 1995. The organization represents the largest geographic area covering two states. Membership exceeds 245 individuals. No other Association has filed with as many different plaintiffs and organizations. To date, the **ADA**, and more than 50, yes 50 different named individuals and organizations, have been involved in over **324 civil suits**. These suits can only seek compliance and not punitive damages. When stipulation agreements are violated liquidated damages are sought.



**COMPLAINT FORM**

NAME OF LOCATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ Zip \_\_\_\_\_

PROBLEM \_\_\_\_\_

\_\_\_\_\_

**DATE of ENCOUNTERING BARRIER** \_\_\_\_\_

\_\_\_\_\_ **FOLD HERE AND DROP IN MAIL** \_\_\_ **No Postage required** \_\_\_\_\_

**Association for  
DisAbled Americans Inc.**  
PMB #196  
6538 Collins Avenue  
Miami Beach, FL 33141

**Free Matter for the Blind  
or Physically Handicapped  
Post Manual 138**

**Mail** this form to: **Association for DisAbled Americans Inc.**  
PMB #196  
6538 Collins Avenue  
Miami Beach, FL 33141

# Membership Form

## Online Member Application

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY** \_\_\_\_\_ **STATE** \_\_\_\_\_ **ZIPCODE** \_\_\_\_\_

**PHONE:** 1-(\_\_\_\_)-\_\_\_\_\_ **FAX:** 1-(\_\_\_\_)-\_\_\_\_\_

**E-MAIL or Internet address** \_\_\_\_\_

**DISABILITY:** \_\_\_\_\_

A physical or mental impairment that substantially limits one or more of the major life activities of such individual. Required for standing in civil actions.

**DATE:** \_\_\_\_\_

Direct authorization will be obtained prior to any individual being used as a named plaintiff. How did you hear about us? \_\_\_\_\_

**Like to volunteer? Email or write us.** W3C conversion of our newsletter and Website and occasional courier service volunteers needed.

\_\_\_\_\_ **FOLD HERE AND DROP IN MAIL** \_\_\_\_\_ **No Postage required** \_\_\_\_\_

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## THE ADA IS UNDER ATTACK. By Luis Androuin, Law Clerk

Over 12 years since its *effective date*, and over 15 years since its passing, recent federal court rulings are undermining the far-reaching, noble effects of the American With Disabilities Act. These inappropriate judicial attempts at legislating ( themselves a constitutional violation of the separation of powers doctrine) have generally taken three forms: (1) attack the individual Plaintiffs as vexatious litigants; (2) Limit an individual Plaintiffs' standing to seek redress only to those few and specific violations which were actually encountered; and, (3) either require pre-litigation notice to a Defendant prior to filing suit, or limit (or refuse entirely) an award of fees and costs as a penalty for the failure to do so. Additionally, every year Congress attempts to pass a bill which will further limit the ADA. In light of this, our community must stay informed and continuously lobby Congress to reject any measure which will frustrate the ADA, while our legal teams battle in the Courts to overturn these ill-reasoned decisions.

(1) Attacking individual Plaintiffs has been a favorite well-utilized defense tactic for many years and will come as no surprise to our more seasoned members. These thinly veiled attacks usually come in the guise of questions regarding the number of ADA litigations in which a particular plaintiff has been involved for the sole purpose of eliciting a response in the hundreds thereby imputing "gadfly" or "vexatious litigant" designation due solely to the sheer volume of cases attributed to that Plaintiff. In an effort de-tooth this tiger, our legal teams have begun pro-actively addressing this issue head-on rather than wait for Defense teams to weave their erroneous spin. An example of this tactic's effectiveness was evident, recently, during trial proceedings in the case of the Association for Disabled Americans, *et al/v. Marriott Key Largo Bay Beach Resort*, where our President, Daniel Ruiz, apprised the Court of the factors that led to his becoming a civil rights activist. After hearing Mr. Ruiz' testimony regarding the discriminatory acts to which he was subjected as a teenager -- where a high school principal went so far as to tell him that it was "too bad" there were no restrooms to accommodate him -- and continuing as an adult on a daily basis whenever a barrier is encountered, the Court was in a more informed position from which to understand the general motivations of the disabled community. In so doing, the Defense was left without a basis for its attacks. In other words, rather than hide the fact that we are engaging in litigation to end discriminatory practices, civil rights litigants who are disabled have good reason to wear that label with pride. And doing so de-tooths the tiger.

(2) Similarly, strictly limiting ADA Plaintiffs' ability to correct all ADA violations at a given premises by requiring such Plaintiffs to address only those barriers encountered during their initial visit has been countered by our legal teams' pointing out the practical results of such a misguided policy. For example, let's say we arrive at a hotel and find that the so-called "accessible guest room" provided contains numerous ADA violations rendering it impossible to spend the night. After filing the lawsuit, we assert that *all* designated accessible guest rooms must be in compliance and demand that all barriers at these rooms be removed. Unfortunately, Courts have ruled that our standing is limited only to that room which we actually visited. When this occurs we counter by simply informing the Court that such a ruling would lead to the absurd result that a litigation, consuming otherwise scarce judicial resources, will result in the same premises' being subjected to still more ADA lawsuits as a result of its failure to cure *all* the ADA violations...thereby necessitating the utilization (and waste) of further judicial resources. Thankfully, Courts are beginning to see the light on this issue. However, they are seeing the light not because of any heightened sensitivity to the disabled community, but rather, because they do not want the court docket inundated with more ADA lawsuits against a property that has *already* been sued. Regardless of the courts' motivation for any Plaintiff-favorable ruling, we are more than content to reverse the trend on any basis.

(3) By forcing ADA litigants to furnish prospective Defendants with pre-suit notice, a step which is neither required nor contemplated by the plain language of the ADA, the Courts are placing an unnecessary and significant burden on an ADA litigant's ability to effectuate the removal of barriers to access as contemplated by the law. Limiting Title III relief to instances in which prior notice is required would create a standard far more demanding than that contemplated by the congressional objectives that influenced the ADA. Moreover, as a practical matter, prior notice would require every individual with a disability who has been subjected to discriminatory practices to essentially become a legal and ADA expert. They would realistically need to devote all their time and efforts to pursue notifications, follow-up on said notices, and advise the notified entities what types of barrier removals are required and/or readily achievable. These fact specific demand letters and the follow-up required would constitute nothing less than subjecting such individuals to further discrimination by not allowing them to proceed as the present state of the ADA clearly allows. Additionally, these time demanding, intensely law and fact specific, pre-notice activities would need to be carried out without remuneration, thus further burdening an already burdened economic class by interposing hurdles and removing the potent weapons of counsel and experts from their arsenal. Exactly the opposite of the intent of the ADA. Most significantly, such pre-notice would in all likelihood *further* burden the Courts and increase barrier removal costs. Similarly, reducing fee awards for failure to provide these notices is an inappropriate consideration and at odds with prevailing case law as to other civil rights statutes. Our legal teams are now confronting this issue for the first time and, in all likelihood, will need to proceed to the appellate courts in order to halt and reverse this practice.

Remember, our legal teams cannot do it all. In the face of a rising tide of anti-ADA rhetoric led by the business community, we must maintain vigilance and continue to lobby our legislators in order to insure that the our ADA rights are not eroded. One need only realize that over 40 years since the passage of the Civil Rights Act of 1964, racial discrimination cases are still being raised.



## Recent Settlement Agreements

Mt. Sinai Hospital, Greyhound Bus, Rusty Pelican, seven different restaurants in Key West, and the Yankee Freedom II, a ferry between Key West and the Dry Tortugas have all reached settlement. Two cases were settled as enforcements, when required work was no done; Black Fin Motel/Marina and Hotel La Concha.

### **PUBLIX CONSENT DECREE APPROVED**



Publix Super Markets has promised to improve disabled access at its 857 stores and pay up to \$260,000 to settle a 7-year-old federal class-action lawsuit. The agreement between Publix and the Association for Disabled Americans received final approval from U.S. District Court. The suit filed charged that Publix violated terms of the ADA. Publix has up to six years to implement the terms of the settlement agreement. Required changes include adjusting heights of items like ATMs, service counters, deli ticket dispensers and produce bags to accommodate people in wheelchairs. Each store will also get a text telephone and some stores will get additional handicap parking spaces.

Publix settles 7-year-old class-action  
Posted on Sat, Jul. 23, 2005

### **Publix settles 7-year-old class-action disability suit**

**After seven years, Publix Super Markets has put an end to a class-action lawsuit charging that the supermarket chain violated requirements of the Americans with Disabilities Act.**

**BY ELAINE WALKER**

[ewalker@herald.com](mailto:ewalker@herald.com)

Publix Super Markets has promised to improve disabled access at its 857 stores and pay up to \$260,000 to settle a 7-year-old federal class-action lawsuit.

The agreement between Publix and the Association for Disabled Americans received final approval Friday in Miami from U.S. District Court Judge William M. Hoeveler.

The suit filed by the Miami Beach group and several individual plaintiffs in 1998, charged that Publix violated terms of the Americans with Disabilities Act. The suit was based on violations at seven Publix stores predominantly in Miami-Dade and Monroe counties, but was later expanded to include all stores in the five states where Publix operates.

Both sides say the delay did not reflect an unwillingness by Publix to make changes, but the

complexity involved in a chain with multiple store formats and varying services.

"It would have been easier on the defendant if they were going to fight," said Carol Lumpkin, a Miami attorney representing Publix. "It's because of the coordination required to create an enhanced environment for persons with disabilities that it took so long."

Publix has up to six years to implement the terms of the settlement agreement, which the company's lawyers estimate will involve millions of dollars in remodeling.

Some of the required changes include adjusting heights of items like ATMs, service counters, deli ticket number dispensers and produce bags to accommodate people in wheelchairs. Each store will also get a text telephone and some stores will get additional handicap parking spaces.

Publix has 30 days to pay \$160,000 as a settlement to the attorneys' fees, costs and litigation expenses for the disabled plaintiffs. Over the six-year implementation period, Publix is also required to pay up to \$100,000 to cover any additional fees.

Attorneys for both sides told Hoeveler that the company had agreed to go beyond the level of improvements actually required under the law.

"We were able to obtain more relief than if we had litigated against each of the more than 800 stores separately," said William Charouhis, a Miami attorney who represented the disabled plaintiffs.

"Publix was interested in doing whatever they could to assist their patrons with disabilities."

Publix spokeswoman Anne Hendricks said Friday that the company is already more than 85 percent in compliance regarding the store improvements required by the settlement.

"Publix started making the needed changes as soon as we became aware of the problem," Hendricks said in an e-mail. "We strive to offer superior customer service to 100 percent of our customers 100 percent of the time. A big part of that is being accessible."

The approval Friday came despite objections from one former plaintiff, Denny Wood, who argued that he had not been given enough time to review the settlement. .

Wood also complained that Publix should be prohibited from placing displays that block access to areas like the fish and deli counters for patrons in wheelchairs. But Publix argued that these type of changes are not required by the law.

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## **MISSION STATEMENT**

The **Association for Disabled Americans' (ADA)** The Association seeks to improve the economic and societal opportunities of its members by providing counseling and other services to its members as well as, when required, enforcing the legal rights to access for its members

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