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Disability Compliance Bulletin

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**HEADLINE:** Public awareness of HIV case prompts 2nd alleged victim to step forward

**BODY:**

Sometimes a dormant settlement negotiation can be kick-started by using innovative approaches to keep word of your efforts alive among members of the affected community.

At least, that's been the recent experience of attorney Eric Maxfield, of the Legal Center for People with Disabilities and Older People in Denver, whose use of the Web and an audience-specific newsletter led to his finding a second alleged victim of discrimination by a national eye surgery provider.

The Legal Center filed a charge of disability discrimination against Dr. Paul Cutarelli and his employer, the **Lasik** Vision Institute on Oct. 20, 2003. In its complaint to the Colorado Civil Rights Division, the center alleged that Cutarelli, as an individual, and as an agent of the company, had refused to treat an HIV-positive individual solely on the basis of his disability.

Further, the complaint alleged, the doctor refused the patient service without performing an individualized health assessment as required by the ADA and under state law.

"Because Title III doesn't provide for monetary damages, we're just trying to get them to change their behavior," Maxfield said.

But while negotiations have been ongoing since the complaint was filed, a final resolution of the matter has been slow to materialize.

"We've been confident that a settlement would be reached, but when you're dealing with a business, negotiations can seem to bog down as it conducts a cost/benefits analysis of the proposals on the table, that kind of thing," he said.

That may soon change, now that a second HIV-positive individual has stepped forward to say that she too was denied service at the **Lasik** Vision Institute due to her HIV-status. According to Maxfield, the new witness simply walked through the door one day and said she wanted to tell her story.

Maxfield said the importance of a second individual coming forward cannot be overstated.

"It's very different when a second person comes forward," Maxfield explained. "Basically, what had essentially been a he said/she said argument goes out the window and your allegations have a lot more weight. They become more factual, in a sense."

Maxfield said the **Lasik** Vision Institute and the state Civil Rights Division have both been informed of the second individual's account. Though the institute has not responded to the new information, Maxfield said he believes a settlement could be reached by the end of the year.

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