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Indictment, suspension for two ADA lawyers

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TWO OF the attorneys behind an onslaught of ADA lawsuits in California — including at least 20 involving Monterey County restaurants and wineries — have run into serious legal troubles of their own.

Thomas Frankovich, who represented plaintiff Jarek Molski in hundreds of handicapped-access lawsuits over the last five years, was suspended June 19 from practicing in the U.S. District Court in Los Angeles. The six-month suspension came after one judge on the court, Edward Rafeedie, declared Frankovich a “vexatious litigant” and said he would recommend Frankovich for disciplinary action because of his “abusive and predatory litigation practices.”

Just three days after Frankovich began his suspension, the United States Attorney for the Central District of California announced the indictment of Stephen Yagman, who signed on to help defend Frankovich after his ADA practice ran into trouble.

The 19-count indictment, handed down by a grand jury June 1 but sealed until June 23, alleges that Yagman “attempted to evade the payment of more than \$100,000 in federal income taxes by concealing his assets and committing bankruptcy fraud.”

An article in the Los Angeles Times noted that Yagman has won several high-profile lawsuits against public officials. For example, he once persuaded a jury to hold the L.A. police chief responsible when officers shot and killed several robbers outside a fast-food restaurant. And he has been brutally critical of prosecutors and judges who did not see things his way. The article included an allegation that the indictment of Yagman was a form of retaliation.

But Thom Mrozek, spokesman for the U.S. attorney’s office in Los Angeles, vehemently denied the case is “motivated by political retribution or any other improper motive.”

Things unravel

Until Rafeedie was assigned to one of his cases, Frankovich was on a successful run of suing small businesses up and down California. According to court records, settlements of just a few of his cases on behalf of Jarek Molski and other handicapped plaintiffs netted hundreds of thousands of dollars.

Businesses sued on the Monterey Peninsula in 2003 and 2004 included Tarpy’s Roadhouse, the Running Iron, Casanova, Jack London’s, A.W. Shucks, Robata, Lugano, Friar Tuck’s, Heller Estates, Georis Winery,

and Katy's Place.

But a restaurant in Santa Barbara County, the Mandarin Touch, represented by Robert H. Appert of San Gabriel, asked Rafeedie to declare Molski and Frankovich vexatious litigants, alleging the sheer numbers of their suits indicated they were running a scam, rather than simply trying to improve access for the handicapped.

In March 2005, Rafeedie agreed.

"The court believes these ADA claims are a sham," Rafeedie said. He was particularly annoyed by the fact that nearly 400 suits alleged nearly identical circumstances, and that Molski claimed to be injured repeatedly — often several times in visits to separate business on the same day.

Rafeedie also accused Frankovich of advising businesses not to hire defense counsel, and offering the help them sue their insurance companies if they wouldn't settle the ADA claims.

He ordered Frankovich and Molski not to file any more federal suits in the L.A. courthouse without a judge's permission. Soon after, a state judge made a similar order.

Worse than Hitler?

Frankovich then hired Yagman to try to get an appeals court to overturn Rafeedie's sanctions. In a fiery appeal filed with the 9th Circuit last year, Yagman noted that Molski has "accumulated and wishes immediately to file" a large number of new ADA cases, and asked the court to free him to do so by removing the "fetid stigma" Rafeedie placed on his client. In comments outside court after an earlier hearing, Yagman hurled insults rarely heard directed toward a judge.

"I would call Judge Rafeedie a Cro-Magnon, but that would be an insult to Cro-Magnons," Yagman said. "His mean-spiritedness, his cruelty and his contempt for civil rights make Hitler look like a humanitarian."

The Frankovich and Molski appeal — with Yagman listed as co-counsel — is still making its way through the appeals court.

According to press reports, when Yagman was arraigned June 23, he barely spoke, saying only he understood the charges before thanking the magistrate at the end of the brief hearing.

But he is famous for his colorful attacks on the judiciary. In one internet blog, Patterico's Pontifications, a former clerk for a U.S. District Court judge in Los Angeles speculated what might happen to Yagman when he goes to court on his own criminal charges:

"Will he be assigned to the judge he once called a 'f**king fat ugly a**hole' with a 'weird shaped head' that 'looked like a Martian'? The one he said suffered from 'mental disorders' and compared to Torquemada? Or the one he called 'anti-semitic' and 'drunk on the bench'?"