

Skin to Win

**By Reg P. Wydeven
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Last summer our family went to a pool party at my sister's house, which was a blast. We swam all day until my brother-in-law treated us to burgers and brats off the grill. Everything was going great until the pocket on my swimming trunks accidentally caught the latch on the gate to the pool.

One of the great blessings my family has is living in close proximity, so we get to see a lot of each other. However, after my swimming trunks ripped, my family got to see WAY more of me than they ever wanted.

Embarrassing moments like this happen to me quite often. I'm just grateful this one happened at my sister's house in front of only family, as opposed to a public beach in front of hundreds of innocent bystanders. Apparently Roy Lester of Long Beach, New York, shares my modesty in swimwear. Unfortunately, his bashfulness cost him his job.

In 2007, Lester was a 57-year-old lifeguard for Jones Beach on Long Island. That year he was required to complete an annual re-hire evaluation to see if he was still qualified to lifeguard. When he showed up, however, the New York Office of Parks, Recreation and Historic Preservation did not allow him to take the test.

Lester was wearing swim jammers, which are tight shorts that end a couple of inches above the knee. The New York State Parks Department swimsuit regulations, though, provide that all lifeguards taking the qualifying test must wear boxers, briefs or board shorts – not jammers.

Lester contends that in his 35-plus years of lifeguarding at Jones Beach, he had never before encountered this regulation and it was never a problem in any of his previous re-hire tests. Lester says he cannot wear board shorts or boxers because they reduce his speed, which is critical in the timed tests. There are four timed tests, one of which mandates he swim 100 yards in 75 seconds or less.

Therefore, Lester maintains his only other choice would be to wear the Speedo briefs, which he refuses to do. "The older you get, the less skin you should show," he says. "Older people ... prefer a more modest swimsuit and thank goodness they do." Lester believes, "There's a thing called aging and there's a thing called aging gracefully."

Because he was prevented from taking the test, Lester sued the Parks Department, claiming their swimsuit policy discriminates against lifeguards his age. Lester alleges he certainly qualifies for the position: he came in second place in this year's National Lifeguard Championships.

The complaint was investigated by the New York State Division of Human Rights but was dismissed because there was "no probable cause" to believe the parks office engaged in discriminatory hiring practices. The agency cited that of the 271 lifeguards hired in 2007, 80 were between 40 and 80 years old, and 6 were the same age as Lester. The Division decided that, "it is not reasonable to believe that the respondent denied the Complainant the privilege of taking the rehire exam because of his age."

Lester's appeal was dismissed because it had been filed two days late. However, he returned in 2008 to take the new hire lifeguard test, but was once again denied because he was wearing his jammers.

As a result, Lester sued again in 2009, claiming the new hire test also discriminates based on age. The case is currently in the New York appellate courts and is expected to go to trial next year. Lester has been working as a lifeguard for the past two years at a private Atlantic Beach on Long Island. But he is also a bankruptcy attorney, so he is representing himself in the case.

I think Lester should retake the test in a Speedo. "Let it all hang out" is my motto.

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