

Animal Law

Section Newsletter



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Help! I Need a GAL!

By Barko

I'm an eight year old mutt. My name is Barko. The first six years of my life have been wonderful. My life was great. I played when I wanted. I slept when I wanted. I had plenty to eat, including some wonderful food I snitched from the table during holidays. My folks took me to a vet periodically for check-ups. I even received presents on holidays and for my birthday. Once in a while, I got out of hand — an occasional poop or pee where I shouldn't have; I grabbed things when nobody was looking; and I came home with muddy paws after a frolic in the rain. I never complained nor did I have reason to do so. I was left alone for periods of time but when my folks returned home, I greeted them like royalty — I fussed over them and they returned my love for them. They would kiss me on the head, and I never hesitated to lick them back.



Things changed two years ago. For reasons I don't understand, my folks began bickering. It was frightening. They shouted at each other. Each of them continued to care for me, and I continued to love each of them, but they weren't getting along. (That's a bit of an understatement because they began hating each other.) A new word — divorce — was thrown about. What did that mean to me? I didn't want anything to happen to either of them and certainly wanted to continue to have both of them remain forever

in my life. However, they finally split, and I continued to live with one of my folks and didn't see the other. Does the other no longer want to have a part in my life? Can't I visit with the other half once in a while? I'm still taken care of and appreciate the affection and care given by the one parent with whom I live, but I do miss the other.

Since the break-up, I've had the chance to go to the Doggie Law Library in our neighborhood and read up on Pennsylvania law governing companion pets in divorce cases. Wow, what an education! If I had a GAL (Guardian ad Litem) during the divorce case, I might have had a chance to remain close to both of my folks and not just one. May I share with you what I learned?

There's a Pennsylvania Superior Court case [*DeSanctis v. Pritchard* 803 A.2d 230 (Pa. Super. 2002), appeal denied by 2003 Pa. LEXIS 313 (Pa., Mar. 12,2003)], which leads me to believe that the other parent with whom I no longer live didn't walk out on me. I can't believe that would ever happen. In the *DeSanctis* case, the appellate court refused to enforce an agreement between divorcing spouses on the equal sharing of their dog, Barney. (I like that name!) While acknowledging that pet owners accord a special status on their pets, the Court said the sharing agreement for Barney was "analogous [that's a hard word to pro-

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Letter from the Chair

Adam P. Karp, Esq.

Dear members,

The fiscal year 2005-2006 signifies the WSBA Animal Law Section's fourth year in existence. Since the Board of Governors established our Section in 2002 (the third such state section in the nation, following Michigan and Texas), our section has grown to over 100 lawyer and non-lawyer dues-paying members. As the first chair of the Section, I have observed many significant institutional changes in the field(s) of animal law.

For instance, in 2002 there were approximately 40 law schools offering a course in animal law. Today one finds nearly 70. There were only three state bar animal law sections, but today nine other bar associations have followed our lead (with Massachusetts, Oregon, and Wisconsin in process). In November 2004, the ABA Torts, Trial and Insurance Practice Section created the Animal Law Committee, which has nearly 300 members internationally. In 2003, Seattle University was the first Washington law school to offer a course in animal law. The University of Washington joined in the momentum by offering a similar course in 2004.

Legislative Changes:

In the past three years, our legislature has amended the cruelty code Ch. 16.52 RCW by tremendous leaps, beginning with upgrading juvenile sentencing guidelines for first-degree animal cruelty. RCW 13.40.127(9) and RCW 13.40.0357. 2004 c 117 § 2, eff. July 1, 2004.

2004: When two juveniles and a young adult abducted Max the Cat and set him on fire in a Spokane Valley middle school, Senator McCaslin acted swiftly to change the seriousness level of this crime and make it nonexpungeable. This signified the 10th anniversary of the passage of "Pasado's Law," the 1994 cruelty code overhaul that created Washington's first felony animal cruelty statute. Also in 2004, on March 31, 2004, RCW 16.52.225 became effective. SHB 2802; 2004 c 234 § 1. This law was passed after consider-

able publicity surrounding Midway Meats in Chehalis, Washington, and the Mad Cow scare from a farm in Eastern Washington. Video footage showed a conscious cow being hoisted by her neck into the Midway Meats slaughterhouse after being repeatedly struck with electric wands to force her out of the trailer in which she had fallen down. But the impetus behind passing SHB 2802 was preserving public health and safety from BSE and vCJD, the fatal human neurodegenerative condition believed to be found with greater incidence in "downed" cows (viz., "nonambulatory livestock").



2005: On July 24, 2005, the felony animal cruelty law RCW 16.52.205 was amended to include criminally negligent acts related to starving, dehydrating, or suffocating an animal. The misdemeanor law was also amended. The practical effect was to felonize animal neglect related to lack of food, water, and ventilation, but regard as misdemeanors animal neglect related to lack of shelter, rest, sanitation, space, and medical attention. In addition to modifying RCW 16.52.205 and .207, the 2005 law marked the first year Washington felonized animal fighting.

2006: In 1909, Washington criminalized bestiality. RCW 9.79.100; RRS 2456. In 1975, the legislature revamped the

criminal code. In the process it repealed without replacing the bestiality law. It took three decades for our legislature to amend the felony cruelty law to address bestiality, thanks in large part to the publicity surrounding the Enumclaw equine sexual assault of 2005. This March 6, 2006, the legislature passed SSB 6417, felonizing bestiality as a ranked level III felony. To date, however, felony animal cruelty (non-sexual assault) is classified as an unranked Class C felony. This means that regardless of priors (points), the perpetrator can be imprisoned only for the statutory maximum of 12 months per conviction (the minimum is 0 days). See RCW 9.94A.510 Table I (Sentencing Grid). The range for a bestiality conviction (no priors) is 1-3 months. The maximum sentence is 68 months given an offender score of 9 or more.

Our section has a Legislative Committee. In the coming months, we anticipate generating our own model legislation and presenting it to the Board of Governors for GR 12-compliance. If you wish to participate, please contact me, or at-large committee members Kim Thornton and Jim Anable.

Law School Liaison:

The Executive Committee, for the first time, has set aside \$1000 to support law students from SU, UW, or GU who wish to participate in the National Animal Advocacy Competitions ("NAAC"). Elaine Conway, 3L at SU, received a \$200 scholarship from our section to compete at NAAC's Closing Argument competition at Harvard Law School this February 2006. Competing against nine other students from around the nation, Elaine persuaded six "jurors" (attorney volunteers) of the state's case against an animal rights activist charged with trespass, burglary, and theft by taking. We encourage all law students and the three law schools to support participation in animal law-based moot court, appellate brief writing, and legislative drafting competitions.

2006 also signifies the re-offering of animal law by SU and UW. I am co-teaching with Lorrie Elliott (SU)

and Sylvia Glover (UW). Both 2-credit classes enjoy attendance of more than 25 students, showing a keen interest in this discipline.

CLE:

April 21, 2006 marks the fourth annual animal law conference, co-sponsored by our section, WSBA-CLE, and the Animal Legal Defense Fund (www.aldf.org). ALDF has donated \$1000 to be distributed to seven individuals as partial scholarships earmarked for law students; those working in the animal care, control, and use fields who do not need CLE credit; and attorneys for whom finances present an obstacle. ALDF offers great resources to its attorney and non-attorney members. I encourage you to join this worthy organization and learn more about their many programs.

The Executive Committee also voted to give the first ten section members who sign up for this CLE a free subscription to the *Animal Law Review* published by Lewis & Clark Law School (now a semi-annual law journal). Those of you who are not yet members may qualify for this giveaway if you sign up as a member at the same time you register for the CLE. This is just another way our section is returning perquisites to our members.

This CLE offers a host of novel and incredibly germane topics to the average litigator — landlord-tenant animal law, tribal animal law, e.coli and mad cow litigation, Vioxx animal testing challenges, dogbite liability (police, household, landlord), a legislative and judicial update, and a keynote duo discussing the laws concerning Hurricane Katrina and emergency rescue. For more information, go to our website and select the hyperlink for the CLE (www.wsba.org/lawyers/groups/animallaw/default1.htm).

Our section is also evaluating regional CLEs in areas traditionally underserved. For instance, at-large committee member Elyette Weinstein is coordinating a Vancouver-based mini-CLE in July or August with emphasis on horse law and veterinary discipline. We are also evaluating mini-CLE opportunities in Spokane, Yakima, and Silverdale. If you want to participate in coordinat-

ing these CLEs, please contact me or Elyette Weinstein.

Public Service Announcements:

For years we have tried to publish triptych-style handouts for general use on various animal law subjects — e.g., dangerous dog laws, animal cruelty, animal trusts, veterinary liens, animals in rental housing, service animals. The goal is to provide these materials for free to the public, with an overview of the applicable laws and resources for self-direction. For a template of how we might prepare and present these PSAs, see www.abcny.org. If you wish to draft or design these PSAs, please contact me.

Perquisites:

Our committee is proud to announce a new perk for members. Entering its fourth year, Animal Legal Reports Services (www.animallegalreports.com) has been touted as the “Cliff’s Notes of Animal Law” and its three reports—Legal, Veterinary, and Animal Welfare & Law Enforcement—are now listed on Westlaw’s premiere “Animal Law” tab. While originally offered for between \$60 and \$80 per report per year, ALRS has offered a special rate to Animal Law Sections so that all its members (lawyers and nonlawyers) may access all three reports for one low charge. Effective shortly, you will be able to download these reports from ALRS’s website for free simply by being a dues-paying member of our Section. Stay tuned for a mailer that will give you the username and password. By receiving this password, you are agreeing not to share it with any other person.

The list serves are another perk of membership. I encourage you to contact me if you wish to join the lawyers-only or all-access list serves, which are hosted by Yahoo. The attorney-only one is fairly active, with an average of 5 to 20 posts a month.

We are also striving to use your dues to provide member benefits. Please contact your Executive Committee with suggestions.

Newsletter

You may have noticed a delay in publishing this second issue. Normally, I strive to publish four newsletters a year, but due to lack of content, I thought it

ANIMAL LAW SECTION 2005-2006

Executive Committee

Adam Karp, Chair
Cheryl Mitchell, Immediate Past Chair
Brandyn Miller, Chair-Elect
Kim Thornton, Secretary & Treasurer
Cecilia Cervantes, At-Large
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Jim Anable, At-Large
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Newsletter

Adam P. Karp, Editor

Desktop Publisher

Adam P. Karp/Publisher 2003

This is a publication of a section of the Washington State Bar Association. All opinions and comments in this publication represent the views of the authors and do not have the endorsement of the Association or its officers or agents.

preferable to wait. Please submit anything of interest — including practitioner’s notes, insightful pretrial rulings, arbitration awards, jury/bench verdicts, memoranda of law, legislative changes/proposals, news, essays, and commentary.

Elections

The Executive Committee member terms will expire the end of September 2006. Your dues will grant you access to the listserves and ALRS only until October 1, 2006. We are at the half-way point of the fiscal year. Now is a good time to think about running for office. Electioneering will begin in mid-to-late August, so feel free to ask me or your other officers for information on the responsibilities and opportunities involved in running for such a position.

As you can see, animal law has trod lasting inroads into Washington State’s legal institutions. Now is a wonderful time to join and participate in the section, whether you focus on animal law, handle an incidental animal law case, or just have a curiosity about the subject matter.

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nounce] in law, to a visitation schedule for a table or lamp.” Now that’s hard for me to swallow. Tables and lamps don’t breathe! They don’t lick their owners as I do! They don’t grab food off the table! I feel sorry for Barney, and I feel sorrier for myself. Would a GAL have helped me?

I also had time to read an amicus curiae [I don’t know what this means] brief filed by the Animal Legal Defense Fund in a case involving Heyzeus, a husky mix canine. *Rose v. Hughes*, Superior Court of the State of Washington, King County, No. 02-2-34912-9 SEA. The ALDF brief starts off with the following statement:

This is not a typical custody case. It does not involve a child, and it does not involve an incompetent adult in need of a caretaker because he is unable to make important decisions about his health and safety. But it does involve the custody of a living, feeling being with the undisputed physical and emotional life and consciousness, who is unable to make important decisions about his health and safety, and who is dependent on one or more adults as his caretaker. Just as family law courts consider the interests of the ward before that bar, courts have been considering the interests of dependent animals in reaching decisions about their custody. Here, this Court should consider Heyzeus’s interests, not because of sentimental attachment but because prevailing legal authority mandates that treatment. This brief sets out the basis for this Court’s jurisdiction over the issue at bar — Heyzeus’s placement and custody.

Here are some of the major points made in the ALDF brief:

1. While I’m a form of property, I’m in or should be treated as a special form of property.
2. Animals are protected by animal cruelty statutes. (There’s no such protection for tables or lamps!)
3. Other courts have routinely acknowledged that animals are to be treated differently than inanimate [I know what this word means] forms of property.
4. It is undisputed that there are personal relationships formed between humans and animals.

On this latter point, in a dissenting opinion in *Hahrstedt v. Lakeside Village Condominium Association*, 8 Cal. 4th 361 (1994), Justice Arabian of the California Supreme Court examined the significance of animal [not table or lamp] companionship:

mon knowledge and understanding as well as extensive documentation. People of all ages, but particularly the elderly and the young, enjoy their companionship. Those who suffer from serious disease or injury and are confined to their home or bed experience a therapeutic, even spiritual, benefit from their presence. Animals provide comfort at the death of a family member or dear friend, and for the lonely can offer a reason for living when life seems to have lost its meaning. In recognition of these benefits, both Congress and the state Legislature have expressly guaranteed that elderly and handicapped persons living in public-assistance housing cannot be deprived of their pets. Single adults may find certain pets can afford a feeling of security. Families benefit from the experience of sharing that having a pet encourages.

In another case, *Buechner v. Hamel*, 886 S.W. 2d 368 (Tex. App. 1994), (Ardell, J. concurring), it states:

Courts should not hesitate to acknowledge that a great number of people in this country today treat their pets as family members. Indeed, for many people, pets are the only family members they have.

I learned that there is nearly one pet for every two Americans. About 124 million dogs and cats live in American households and while I’m one of that tremendous number, I have always been treated like royalty in my family. One recent survey revealed that more than half of companion animal owners would prefer a dog or cat to a human if they were stranded on a desert island. While I would not enjoy being stranded on a desert island, I’d certainly want my folks to be with me if I were on such a desert island.

I’ve learned a lot since my folks separated. I love the one with whom I live. I still sorrow for the one who is no longer with me. I can only hope that things will change in Pennsylvania. It may be too late for me, but it certainly can help the millions of other companion pets who are impacted by the divorce of their parents.

Thanks for listening to my story. In closing, I’d like to acknowledge the assistance of **Albert Momjian, Esq.**, who chairs the Family Law Department of Schnader Harrison Segal & Lewis LLP and is current chair of PBAAnimal Law Committee, whose help in the translation of this article from dog language to English has been very helpful. *Reprinted with Permission from Pennsylvania Family Lawyer.*

Washington Appellate Updates

***Mansour v. King Cy.*, 131 Wash.App. 255
(1/23/06, Div. I, published)**

Plaintiff's Attorney: Adam Karp

Defendants' Attorney: John Zeldenrust

Judges: Ellington, Grosse, Agid

Division I of the Washington Court of Appeals reversed the King County Board of Appeals's decision to uphold King County Animal Control in declaring Maxine, a dog cared for by Peter Mansour of Kirkland, as vicious and ordering her removed from King County within 48 hours. The January 23, 2006 ruling overrides the practice of King County to presume dog guardians guilty until proven innocent and to hamstring their efforts at defending themselves by preventing them from subpoenaing witnesses or records.

The significance of this decision affects all dog owner-guardians in Washington State. Many jurisdictions will declare a dog dangerous and provide the owner with an appeal hearing to contest the allegations, which, if found to be valid by the hearing examiner, could result in a death sentence for the dog. Prior to today's ruling, at least in King County, your dog could

be declared dangerous and ordered confined or removed on threat of euthanasia and, if you contested the charges, your dog would be presumed guilty until proven innocent. After today's ruling, government must provide dog owners the same due process protections that are afforded speeders. When contesting parking tickets, the burden of proof is on the State to demonstrate by a preponderance of the evidence (more likely than not) that you sped. In your defense, you can subpoena witnesses.

But when Mr. Mansour vehemently contested the allegation that his dog killed a cat off his property, he was forced to prove that King County Animal Control acted arbitrarily or capriciously. In other words, the Board of Appeals assumed that King County Animal Control was correct in issuing the order, even though this was the first opportunity for Mr. Mansour to contest these allegations. He was also prevented from subpoena-

ing witnesses, including critical veterinary records that could have demonstrated that his dog did not kill the cat in question. Furthermore, the notice outlining the offenses with which he and his dog were charged was erroneous in many respects.

Although Mr. Mansour lost on appeal to King County Superior Court, where Judge Steven Gonzalez affirmed the Board of Appeals, the Court of Appeals reversed both Judge Gonzalez and the Board of Appeals and held the following:

On Burden of Proof: In recognizing "that the bond between pet and owner often runs deep and that many people consider pets part of the family," the court held that, "an agency seeking to enforce a removal order must prove both the violation and the remedy it has imposed by a preponderance of the evidence." Page 9 of Opinion.

On Subpoenaing Records and Witnesses:

On whether Mr. Mansour was entitled to subpoena records and witnesses, the court said: "the Board's attorney's refusal to permit discovery or subpoenas significantly limited Mansour's ability to offer witnesses and evidence

on his behalf, cross-examine Dr. Fry, or rebut the evidence against him. He could not call his own expert to dispute Dr. Fry's causation opinion without access to Lacie's veterinary records. He could not dispute some of the County's evidence that Maxine was a neighborhood nuisance because he could not subpoena Wegener and Usher to impeach or rebut their earlier inculpatory statements. Even a person disputing a minor civil infraction like a parking ticket has the right to subpoena witnesses. The lack of subpoena power prejudiced Mansour's ability to present his case and argue for a less severe penalty." Page 12-13 of Opinion.

On Due Process: The court added that, "Requiring Mansour to move out of King County to keep Maxine alive was severe enough sanction to warrant more formal procedural safeguards. Due process requires that a pet



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owner contesting a removal order be able to subpoena witnesses and records.”

On the Sufficiency of the Notice: Finally, on whether the Notice and Order of Violation was sufficient, the Court held that requiring the Director of Animal Control merely to issue a “brief and concise description of the conditions for finding the violation ... is insufficient to satisfy the fundamental due process requirement for notice of the charges. While Mansour had notice that the County could remove Maxine if she bit or attacked a domestic animal, he was entitled to know ahead of time exactly what the County needed to prove at the Board hearing. If in fact it could not prove that Maxine violated a code provision that supported the removal order, he was entitled to know that in time to move for dismissal at the Board level.” Page 15 of Opinion.

Other jurisdictions with appeal processes that would appear to violate this ruling include the City of Everett (6.08.035), Pierce County, the City of Spokane (SMC 17G.050.320(C) and SMC 10.03.020) and the City of Tacoma (17.04.030). Other municipalities appear silent on precisely what due process protections are afforded, and are accordingly ready to be challenged. They include the Cities of Yakima, Pasco, Richland, and Kennewick, among others.

Wolverton v. Young, 2006 WL 165734

(1/24/06, Div. III, unpublished)

Plaintiffs’ Attorney: Adam P. Karp

Defendants’ Attorneys: Alicia Berry (Youngs/TCAC), George Fearing (Cities of Richland and Pasco), Tyler Morris (City of Kennewick)

Judges: Schultheis, Thompson, Kato.

The following is taken in large part from the pleadings filed with the Court of Appeals

In this Tri-Cities case, the plaintiffs appealed Franklin County Superior Court Judge Robert Swisher’s January 4, 2005 dismissal of plaintiffs’ entire complaint with prejudice and denial of their motion to amend. Plaintiffs are individual taxpayers residing in the Tri-Cities metropolitan area. The cities of Kennewick, Pasco, and Richland entered into an interlocal cooperative agreement pursuant to Ch. 39.34 RCW in March 1998, thereby creating the Tri-City Animal Control Authority (“ACA”). Every three years, one of the three jurisdictions is designated as the Operating Jurisdiction to administer the ACA Personal Services

Agreement (“PSA”) through a contractor chosen by a competitive bidding process. The Operating Jurisdiction must establish policies for implementing an Animal Control Plan serving the citizens of all three cities through impounding, boarding, adopting out, and euthanizing apprehended animals, investigating cruelty, and notifying owners of found animals. Since 1998, the ACA has repeatedly let the contract to Defendant Tri-Cities Animal Control (“TCAC”) and its officer-employees Defendants Bruce and Sandy Young, with the latest contract term of 2004-2007. The ACA, through its PSAs, controls the means and methods of performance in the areas of impoundment, hold, redemption, humane treatment, and euthanasia.

Plaintiff Mary Mahoney, an attorney, had involvement with Defendant TCAC since late 2002 in the capacities of redeemer of an impounded dog, as a Good Samaritan attempting to find and rescue an elderly woman’s dog impounded by TCAC and sent to Washington State University/College of Veterinary Medicine (“WSU/CVM”), as vice president of the nonprofit animal rescue and adoption organization Prevent Pet Over-Population (“POPP”), and as a citizen-taxpayer who spoke publicly against the contract between WSU/CVM and the ACA. By this contract, executed in April 2003, the ACA instructs TCAC to send potentially hundreds of dogs and cats to WSU/CVM for “teaching exercises” or complimentary sterilization; few, if any, of these exercises are medically necessary, or even based on a tentative diagnosis.

Defendant Bruce Young allegedly confessed to Ms. Mahoney a number of inhumane euthanasia practices, including finding a supposedly euthanized dog alive in the freezer atop a pile of dead dogs, and a not uncommon, gruesome reaction called “popcorning,” where the animal writhes frantically or reacts fearfully as the euthanasia solution, which has either been improperly administered (by placement or by concentration), takes slower effect. Concerned by these confessions and her discussions with other plaintiffs and citizen-taxpayers, in February 2004, Ms. Mahoney petitioned the Washington State Attorney General, ACA, all Tri-City mayors, all Tri-City prosecutors, and the Franklin County Prosecutor to stop the inhumane treatment at TCAC by removing the Youngs and prosecuting Bruce Young for animal cruelty. No petitioned entity took action as demanded.

Shortly after these contacts by Ms. Mahoney, Defendant Bruce Young allegedly told the POPP leadership that he would not allow any POPP members to pull animals for adoption unless Ms. Mahoney resigned as vice-president. He allegedly added that Ms. Mahoney was banned from the shelter, a publicly owned facility,

and could only enter by police escort. Consequently, Young thwarted her desire to return to the premises for any reason, and her position within the nonprofit rescue organization she helped found was jeopardized by his allegedly unreasoning actions. Ms. Mahoney suffered aesthetic injury in the form of observational and direct sensory harm (deprived access to shelter animals to confirm their health, as well as the ability to monitor cruelty), as well as acquisitional and organizational harm (deprived the ability to pull animals for adoption, thereby saving them from putatively inhumane conditions and euthanasia, and transfer to WSU/CVM, and further harming the goals of the POPP adoption/rescue organization).

It became clear to the plaintiffs that the municipal defendants would not take action to correct TCAC's performance discrepancies when they re-let the competitively bid contract to TCAC for another three years (2004-2007). Based on eyewitness accounts, admissions by former TCAC employees, and a two-day document audit revealing what appeared to be over 300 municipal hold violations (premature euthanasia and adoption) and allegedly long-standing, inhumane euthanasia through underdosing, the plaintiffs filed this taxpayer action to end what they perceived to be suffering and demand fiscal and legal accountability. Included was a bid protest, a request for substantial injunctive and declaratory relief concerning animal care and control operations, and money damages not for the plaintiffs themselves, but as remittance to the taxpayers based on the ongoing misfeasance of TCAC's directors, and the ACA's ineffectual monitoring and ratification of illegal practices.

Joining Ms. Mahoney were four other plaintiffs, whose special injury and involvement with defendants was presented in considerable detail. Of note was co-plaintiff Brandy Leighter's routine involvement as a volunteer, adoption organizer, witness to performance discrepancies and alleged animal cruelty, and bidder against Defendant TCAC for the 2004-2007 contract. Shortly after submitting her bid, according to the allegations, Defendant Bruce Young similarly banned her from the premises unless she had police escort.

Over one year after Judge Swisher's decision, Division III ruled that he abused his discretion in not

allowing plaintiffs to amend the complaint and reversed him on some asserted errors. Highlights follow:

Taxpayer Standing to Challenge Illegal Acts: Joining Division I (*Robinson v. City of Seattle*) and Division II (*Kightlinger v. Clark Cy. PUD No. 1*), Division III rejected *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267 (1997), the Supreme Court decision Judge Swisher relied upon in finding that the plaintiffs had no standing to challenge the validity and legality of certain governmental acts, including an alleged violation of Richland's competitive bidding ordinances. In this rejection, Division III found that the plaintiffs did have standing to contest illegal acts. Unfortunately, the plaintiffs' motion to publish this part of the decision was denied.



Taxpayer Standing to Challenge Discretionary Acts: Sadly, the court concluded that no plaintiff suffered "special injury" sufficient to achieve standing to challenge discretionary acts of government. Instead, it focused on the claim that none of the animals at issue was owned by any of the plaintiffs. Though borrowing from the reasoning of Article III standing jurisprudence, the court nonetheless found no aesthetic, emotional, or other injury that set the plaintiffs apart from other taxpayers. Plaintiffs' and defendants' motions for reconsideration were denied.

Taxpayer Bid Contest: Citing *Dick Enterprises v. Metro/King Cy.*, 83 Wash.App. 566 (1996), Division III accepted plaintiffs' interpretation that taxpayers may contest a bid after it the contract has been signed. It suggested that if the plaintiffs allegations could be proven, they may prevail on remand in avoiding the contract.

Standing for Animals: The court rejected plaintiffs' contention that they had standing as third-party beneficiaries and as next friends of the subject nonhuman animals.

Wolverton's mandate will likely be issued by early May, at which time the case will remand to Franklin County Superior Court for further litigation on remaining and amended claims, including an Animal Welfare Act and public trust doctrine challenge.

Animal Law Section

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Seattle, WA 98121-2330

FOURTH ANNUAL ANIMAL LAW CONFERENCE:

April 21, 2006, Washington Convention Center

Seattle, Washington (6.5 CLE credits)

Co-sponsored WSBA-CLE, WSBA Animal Law Section, ALDF

Discussions on animal testing in Vioxx MDL, landlord-tenant animal-related issues, an exclusive dogbite liability panel, governmental liability for separating evacuees from their animals, and rescuer liability in Hurricane Katrina, tribal regulation of animals, e.coli litigation, the 2005-2006 legislative and judicial update, and more! For more information, contact WSBA at (800) 945-WSBA.



ANIMAL LAW NEWS:

Compiled by Adam Karp

975.pdf.

ABA Action on Disaster Relief:

On February 13, 2006, the ABA House of Delegates passed a landmark recommendation with the following resolution, *inter alia*: "FURTHER RESOLVED, that the American Bar Association supports the principle that emergency preparedness plans should take into account the needs of individuals with household pets or service animals as an essential part of the response to any disaster or emergency situation." Source: ABA.

Journal of Animal Law & Ethics:

The University of Pennsylvania Law School is debuting its first issue of the Journal of Animal Law & Ethics ("JALE"). To subscribe or submit articles, go to www.law.upenn.edu/groups/jale.

British Animal Welfare Bill:

In the first review of pet law in 94 years, according to the BBC, the Animal Welfare Bill likely to pass the British Parliament any month, will ostensibly recognize five "freedoms" for nonhuman animals, including a code for cats (see inlay). Source: <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/01/31/npets31.xml>; <http://www.bbc.co.uk/religion/ethics/animals/latest.shtml>.

Horses are "Individuals" for Purposes of Indiana Chiropractic Act

A Dubois Circuit Court judge ruled that an Indiana chiropractor did not violate the practice act by manipulating equine spines. Source: www.dcherald.com (12/21/05).

\$990,000 Settlement Arising from Shooting of Hells Angels Dogs

Santa Clara County will pay \$990,000 to settle a lawsuit brought by the Hells Angels Motorcycle Club after police shot and killed three guard dogs during raids of the group's headquarters and suspected members' homes. Lower court judges ruled that actions of the deputies and San Jose police officers during the January 1998 were unreasonable, most of the evidence obtained was unnecessary and the officers did nothing to avoid killing the animals. Source: AP; see also *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962 (C.A.9(Cal.)), April 4, 2005.

Ohio Appeals Court Overturns BSL:

On equal protection, substantive due process, and vagueness grounds, on March 3, 2006, the Sixth District of the Ohio Court of Appeals struck down the City of Toledo's ordinance banning pit bulls as inherently dangerous and vicious. <http://www.sconet.state.oh.us/rod/newpdf/6/2006/2006-ohio->

Code for cats

- Keep the animal indoors at night to protect it from other wildlife.
- Ensure the animal's preference for privacy is met by giving it a hidden-away place with cat litter to relieve itself.
- Give the animal a toy so that its catching behaviour can be stimulated.
- Ensure that the animal receives "mental stimulation" so that it does not become bored or frustrated.