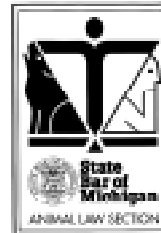


STATE BAR OF MICHIGAN Animal Law Section

Summer 2000



MISSION STATEMENT

The Animal Law Section's mission is to promote animal welfare and rights through the judicial process, legislation and education.

Animal Abuse and the Whistleblower's Protection Act

By Barbara Goldman

A former employee of a biomedical animal supply company was entitled to pursue her claim under the Whistleblower's Protection Act, MCL 15.362 et seq.; MSA 17.428(2) et seq. in *James v HRP, Inc*, 852 F Supp 620 (WD Mich, 1994).

The plaintiff worked in a rabbitry operated by the defendant in Kalamazoo. She made several complaints to her supervisors about a co-worker, whom she alleged was abusing the rabbits. Finally, she took a video camera, which had been provided to her by an animal rights organization, into the rabbitry, where she filmed "cages, feeders and a single dead rabbit."

The site manager was told about the camera and drove to the facility to view the video tape. The plaintiff said the camera belonged to her; she testified later that she told him she was attempting to document animal abuse. The supervisor fired her, because employees were not allowed to bring "personal items" into the rabbitry. The plaintiff, however, alleged that other employees had previously brought video cameras in "without censure."

Judge David W. McKeague denied the defendant's motion for summary judgment, holding that "there are ample facts from which a jury could find a causal relationship between plaintiff's efforts to document animal abuse and her subsequent discharge" and that "[t]here is sufficient evidence from which a jury could infer that plaintiff was terminated because she was attempting to document animal abuse . . . and that HRP's stated reason for the discharge was mere pretext."

The court also denied the defendant's motion for summary judgment on one of two counts of libel, arising out of a letter the president of the corporation wrote to news media representatives after the Detroit News began investigating the case.

Anyone interested in purchasing a subscription to the Animal Law Section's Newsletter or joining the Animal Law Section should contact Twila Willard at the State Bar of Michigan, 306 Townsend St., Lansing, MI 48933, 517-346-6341.

Annual Meeting Speaker Addresses Relation between Animal and Human Abuse

By Wanda Nash

Mary Lou Randour, Ph.D., will present the history, background, experience, and a preventative program that addresses the link between a child's cruelty to animals and the environment of violence against human beings.

Dr. Randour is the Director of Programs for Psychologists for the Ethical Treatment of Animals (PSYeta), and Director of "Beyond Violence: the Human-Animal Connection," a joint project of PSYeta and the Doris Day Animal Foundation.

She has been a psychologist in private practice for 18 years; a Fellow in several different psychology programs at Harvard University, and at Wellesley College's Center for Research on women; a research and Policy Specialist for the White House (Task Force on Women); and a Steering Committee representative to the American Psychological Association's Proposed Division on Human-Animal Studies.

Dr. Randour is the author of several books and papers, and most recently presented from her book "Animal Grace: Entering a Spiritual Relationship with Our Fellow Creatures" at "The Kinship with All Life Conference" in San Francisco (July 2000); and from the joint project on "The Connection Between Human Violence and Animal Abuse: Empirical Findings and Intervention Possibilities" at the Annual Meeting of the New England Psychological Association in October 1998.

Dr. Randour's presentation to the Animal Law Section will help give lawyers information and tools when working with clients in family matters that may include abuse/neglect, juvenile delinquency, and mental and emotional illnesses, among others. This will be especially timely given the passage of 2000 PA 175, a law that requires judges to order psychological assessments of juveniles charged with animal cruelty (and also of arson).

We hope many of you will attend Dr. Randour's presentation Thursday, September 21, 2000, at 9:30 a.m., at the Annual Meeting of the Section and of the State Bar of Michigan, in Detroit.

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State Regulations In Animal Law

A series by Wanda Nash

This is the second in a short series of informational columns concerning state regulations in animal law. In this issue, we deal with regulation of pet shops, dog pounds and animal shelters.

Regulations are designed to support state laws and effectuate the Legislature's intent and purpose in enacting the laws. The Regulations are contained in the Administrative Code which is accessible on the Internet at www.michiganlegislature.org (click on the link for Michigan Administrative Code) or www.state.mi.us/orr/

The Regulation governing pet shops, dog pounds, and animal shelters is R 285.151.1 – 37 (the related statute is MCL 287.331 et seq) . Many people are concerned about the conditions of dogs and cats in pet shops. Some people want to know that they are donating to an animal shelter that meets the needs of its animals, and some people want to help "dog pound" animals get basic care for the short time they are kept as strays. Consequently, it is useful for attorneys to know what the standards are for each of these facilities.

The Department of Agriculture has the authority to set standards and inspect pet shops, dog pounds, and animal shelters that house dogs and cats. Definitions of these facilities are found in the statute. The Regulations add definitions for a number of terms including "ambient temperature," "euthanasia," "incompetence," "primary enclosure," "sanitize" and "standards."

Pet shops, dog pounds, and animal shelters all must apply for a license with the Department on the Department's forms. An applicant will receive a copy of the Department's standards and must acknowledge receipt in writing.

If pet shops do not comply with the standards, the Department will notify them in writing of the deficiencies and the corrective measures necessary to bring them into compliance. If a licensee's license has been suspended or revoked, that



A wonderful website
for locating small dogs available
for adoption is
smalldog@centurytel.net



licensee cannot be licensed in his own name or in any other manner during the period of suspension or revocation.

Dog pounds and animal shelters (defined in other public acts now as "Animal Control Shelters" and "Animal Protection Shelters," respectively) must also agree to comply with the standards. These forms must be signed by the chair of the Board of Commissioners, the City Manager, or the mayor in the case of a dog pound, or by the president of the animal welfare society in the case of an animal shelter. Pet shops, dog pounds, and animal shelters must keep records of each dog and cat purchased or otherwise acquired, held, transported, sold, or otherwise disposed of.

A housing facility for dogs or cats must be structurally sound and maintained in good repair to protect the animals from injury, to contain the animals, and to restrict the entrance of other animals.

Sanitation standards apply to (1) food and bedding storage (to protect against infestation by vermin); (2) removal and disposal of animal waste and food waste, bedding, dead animals, and debris; (3) washrooms to maintain the cleanliness of animal caretakers; (4) interior building surfaces of indoor housing facilities; and (5) drains to eliminate excess water from indoor facilities. Standards for heating, ventilating, and lighting of indoor facilities promote the health and comfort of the animals as do the regulations requiring fresh air, lighting that provides uniform illumination sufficient to permit routine inspection and cleaning during the entire working period, and an ambient temperature that does not fall below 50 degrees Fahrenheit. Outdoor facilities must provide sufficient shade to allow dogs and cats to protect themselves from the direct rays of the sun. They must also provide shelter with suitable drainage for dogs and cats to remain dry during rain or snow.

"Primary enclosures"¹ must be structurally sound, maintained in good repair to protect the animals from injury and from predators, and to keep them dry and clean. These enclosures must be sufficient to allow each dog and cat to turn about freely and to easily stand, sit, and lie in a comfortable normal position. Where the primary enclosure is used for "more than 1 animal, a resting perch for each cat" must be provided. The animals must have convenient access to clean food and water. The floor must protect the feet and legs of dogs and cats from injury. Cats must have adequate litter. The number of dogs or cats in a primary enclosure must not exceed a number which would prevent proper ventilation and sanitation. Female animals in estrus must not be housed

in the same primary enclosure as male animals.

Dog houses with chains, as a form of "primary enclosure" for dogs kept out of doors, require that chains be placed so that they cannot become entangled with the chains of other dogs, or any other objects. The chain must fit the size of the dog, and be attached to the dog by a well-fitted collar. The chain's length must allow exercise and convenient access to the dog house. Outdoor facilities must be fenced around the perimeter so animals cannot escape and other animals cannot get in.

Dogs and cats must be fed at least once each day. Food must be free from contamination, wholesome, palatable, and of sufficient quantity and nutritive value to meet the animal's normal daily requirements. Food receptacles must be accessible to all dogs and cats and not likely to be contaminated by excreta. If disposable food receptacles are used, they have to be discarded after each feeding. If self-feeders are used, they are for dry food only and must be sanitized regularly to prevent molding, deterioration, or caking of food. If potable water is not accessible at all times, potable liquids must be offered at least twice daily for periods of not less than 1 hour. Excreta must be removed as often as necessary to prevent contamination of the dogs and cats within them. If hosing or flushing is used, dogs must be removed during the process.

All buildings and grounds must be kept clean and in good repair; the primary enclosures for dogs and cats must be sanitized often enough to prevent accumulation of debris or excreta. An effective program for control of insects, ectoparasites, and avian and mammalian pests must be established and maintained.

Animals in primary enclosures must be maintained in compatible groups; dogs or cats with vicious dispositions must be housed individually in a primary enclosure. Puppies and kittens are not to be housed with adults other than their dams.

Continued on next page



If you are looking to adopt a senior dog or are looking to place a senior dog, consult the website

www.srdogs.com



Animals exhibiting symptoms of communicable disease must be separated from all other susceptible species, to prevent spread of that disease.

The number of employees must be sufficient to maintain the prescribed level of husbandry practices. A licensed veterinarian must be available, and his or her name must appear on the application for license or registration. The Department must be notified of any change in veterinarians. The licensee must seek the services of this veterinarian whenever a health hazard arises.

If the Department's Director finds that an animal is suffering as a result of failure to provide proper food and water or inhumane treatment by the management of the dog pound, animal shelter, or pet shop, the Director may order the animal confiscated or destroyed in a humane manner, if he determines the circumstances warrant such action.

Vehicles used in transporting dogs and cats must be mechanically sound, and equipped to provide fresh air to all animals being transported, without injurious drafts or undue exposure to the elements. The interior must be clean, and

not overcrowded to the extent that animals could be injured during transportation. Animals must be of the same species and in compatible groups, and puppies and kittens must be separated from all adult dogs and cats except their own dams. Animals with vicious behaviors must be transported individually. Female animals in season must be transported in a separate primary enclosure from males

Many humane societies and individuals have reported serious violations of the aforementioned Regulations in pet shops, animal control shelters and animal protection shelters. In order to monitor enforcement of the Regulations, the Animal Law Section needs to know of instances where they were, or should have been, enforced but were not. Please send your documentation to our Data Bank Chair, Barb Goldman, at 14521 Artesian, Detroit, 48223.

¹ "Primary Enclosure" is defined as "a structure used to immediately restrict 1 or more animals to a limited amount of space, such as a room, pen, run, cage, or compartment."

Spring Section Council Meeting

By Bee Friedlander

Although the rescue of Blue was the most dramatic moment of the Animal Law Section retreat held May 18-20, 2000, it was by no means the only highlight of the weekend. The venue was Watervale, a 100 year old compound in Arcadia, MI. Originally a lumber camp, it was transformed into a summer retreat for the family of a Chicago doctor in the 1910s.

The weekend was planned by Chairperson Cathy Wolfe, of nearby Frankfurt. The retreat afforded Council members an opportunity to relax, dine on gourmet food (with special vegetarian meals prepared by the chef) and brainstorm together over several days, instead of the usual two hour meetings.

At the Quarterly Section Meeting on Saturday, members discussed ways to become a resource for legislators. Suggestions were to systematically monitor animal-related legislation, to consider lobbying, and to make Section members available to testify on animal-related legislation.

The Section will develop a program for Law Day (which coincides with "Be Kind to Animals" week). It was the consensus that the Section should provide programs and speakers to schools.

Other weekend activities included tours of the studios of artists Gwen Frostic and Carl Freeman; a nature hike; a historical tour of Watervale; and bird watching.

What about Blue? He is a shepherd-mix who lives with one of Watervale's year-round residents. On Saturday evening as attendees were on the shores of nearby Lake Michigan watching the sunset and roasting marshmallows, Blue hobbled by in obvious pain. Closer inspection revealed that he had many porcupine quills stuck in his muzzle. Cathy Wolfe and Deborah Ness immediately hustled him into a car and took him to a veterinarian for treatment. Because Blue had so many quills, he had to be anesthetized before they could be removed. Fortunately, the veterinarian was able to remove them all—something she said was extremely important because if they remain in the body they will migrate and can cause serious injury or death if they penetrate the brain or spinal cord, or puncture an organ.

The three arrived back about midnight. Blue was a little groggy but otherwise fine, and of course was the recipient of much love and attention.

Metropark Deer Get a Reprieve

By Bee Friedlander and Cathy Wolfe



Last year three Detroit-area Metroparks used hunting to reduce their deer populations. Three hundred ninety nine (399) deer were killed by bow, muzzleloader and shotgun at Kensington, Stony Creek and Hudson Mills Metroparks. Fortunately, this year the parks appear to be having second thoughts about hunting as a form of wildlife

management. At a public meeting on August 10, the Huron-Clinton Metroparks Commissioners voted "not to accept" a proposal to use the hunting program this year. However, that does not mean the deer are out of the woods, so to speak, because, while the Commissioners did not vote to accept the hunting plan, they rejected a proposal that would have postponed reconsideration until the November meeting. Consequently, the hunting program could be reconsidered as early as September 14, at their next meeting.

Encouragingly many members of the public attended the August 10 meeting and the majority spoke against the plan, including Animal Law Section members Sharon Smith and Bee Friedlander. Ms. Friedlander spoke on behalf of the Section. She gave all the Commissioners a copy of Dean Favre's article "Dispelling the Notion that Hunting is Necessary to Control Wildlife Populations" which was in the Section's last newsletter. (That is a landmark article because it carefully and scientifically explains why hunting does not reduce populations effectively, but rather, artificially inflates them so as to provide hunters with a "harvest" every year.) Ms. Friedlander also cited the Natural Resources and Environmental Protection Act, which states that "All animals found

in this state...are the property of the people of the state..." MCL 324.40105 and urged the Commissioners to listen to the majority of Michigan citizens who do not support hunting. Finally, Ms. Friedlander quoted from the book *Animal Grace*, written by Mary Lou Randour (who will be the Section's annual meeting speaker September 21). In her book Ms. Randour writes movingly about the fear and terror suffered by deer who are hunted.

The Metroparks Deer Preservation Council (MDPC) was also present at the meeting. MDPC is a grassroots organization formed to promote non-violent deer management. Last year it filed a lawsuit to stop the hunt but the suit was dismissed. Nevertheless, MDPC's efforts to stop deer hunting continue. Among other things, the group contests the contention that the purpose of the hunting is to promote biodiversity and halt vegetation damage in the parks. MDPC contends that "deer numbers and Metropark wildlife may be mismanaged for economic and political reasons." The group points out that:

"Gov. Engler's Hunting/Fishing Task Force set a goal to increase hunting in Michigan's urban parks...Members of the Task Force sat on the Metroparks Wildlife Advisory Committee and carried out the park hunts..."

In this context, the group notes that "Senate Bill 299, requires the use of hunters to kill Metropark wildlife" and "House Bill 4633 would make Metroparks ineligible for local recreational grants if the parks impose restrictions on hunting."

While the Commissioners took no definite action for or against the hunting plan, their refusal to adopt it off the cuff is significant. They, along with the rest of the public, are no longer willing to accept the hunters' argument that hunting is the only way to manage wildlife populations. They are finally beginning to examine the fallacious arguments advanced by hunters and consider alternatives – hopefully non-lethal.

"Our task must be to free ourselves...by widening our circle of compassion to embrace all living creatures and the whole of nature and its beauty."

—Albert Einstein

The Realities of “No Kill” Shelters

By Cathy Wolfe

“No kill” animal shelters are becoming very popular. These shelters are appealing to animal lovers because they do not kill animals. In theory this is a wonderful idea, but in reality, it is fraught with problems.

Their strongest point of course is that they do not kill animals. Ironically, that is also their weakest point. Since they do not kill animals, “unadoptable” animals have a place to live out their lives in comfort and safety. Unfortunately, those animals consume space and resources that could otherwise be used to process and place numerous “adoptable” animals. An “unadoptable” animal may live for years at the shelter (and many do) during which time numerous “adoptable” animals are turned away for lack of space. Realistically, retention of the “unadoptable” animals condemns numerous “adoptable” animals to uncertain and often unkind fates. Typically, when the animals are declined at a “no kill” shelter, they wind up at the local humane society or animal control shelter where they are usually killed.

Another problem with “no kill” shelters is that they are guilt receptacles. Irresponsible animal owners like the idea of leaving their animal at a “no kill” shelter because then they can ease their conscience by telling themselves that the animal will not die. In so doing, the shelter actually fosters irresponsibility. If people think that they can drop an animal off at a “no kill” shelter whenever things do not go as they planned, they are more likely to adopt a animal under questionable circumstances and then surrender it when it becomes inconvenient, as opposed to trying to work things out or making alternate arrangements themselves (i.e. finding the animal a new home).

“No kill” shelters are the first place many irresponsible animal owners go to surrender their animals and consequently such shelters fill up rapidly. When a shelter reaches its maximum capacity, animals will be turned away and sometimes their owners resort to abandoning the animals at the shelter after hours. At the shelter where I volunteered, animals were routinely thrown over the 12 foot barbed wire fence (even puppies and kittens), tied to the fence or left in containers. In one gruesome incident someone left a mother cat and her kittens in a portable cooler on the shelters doorstep overnight. The cooler had been duct-taped shut and there was no ventilation so that they all died cruel deaths from suffocation before they were discovered. Abandonments such as these mean that the shelters operate at their maximum ca-

capacity (and frequently over it) so that they are able to accept animals only under the most dire circumstances (i.e. where people will kill the animals themselves). When animals are taken in under such circumstances and the shelter is over its maximum capacity, the shelter will frequently take the animal to a shelter that does kill animals to at least insure that it is killed humanely.

Yes, “no-kill” shelters save the lives of numerous animals, but the fact is that they could save many more lives if they did kill animals. This is an unfortunate truth and one that should be given serious consideration before a shelter adopts a “no kill” policy. In the end, the answer to the problem of “to kill, or not to kill,” is SPAY/NEUTER and STOP BREEDING (even purebreds).¹ There simply is no excuse for bringing another animal into this world when millions upon millions are killed every year.

¹ People who think it is acceptable to breed purebreds should realize that every animal they bring into this world quite literally kills another animal because the people that adopt a purebred’s offspring will not be going to a shelter, humane society, or rescue group to adopt a homeless animal. People who must have a “designer” dog should adopt one from a rescue club—there are rescue clubs for almost every breed. A list of such clubs may be found on the internet at <http://petnet.detnews.com/resource>

Visit the Animal Law Section online at
<www.michbar.org>
for the latest news and project updates.



Forfeiture Law Aids Shelters When Collectors/ Hoarders are Busted.

By Cathy Wolfe

The scenario is becoming all too familiar. You pick up the newspaper or turn on the television to learn of another "collector/hoarder" bust; some person has acquired a large number of animals in violation of a local ordinance, and/or has criminally neglected or abused them. Consequently, the local authorities have seized the animals and placed them in a shelter for safe-keeping since they are now exhibits, as it were, until the owner is prosecuted. The prosecution may take months or more and during that time, the shelter incurs tremendous expenses in caring for the animals and if it has limited resources, those expenses can easily cause its financial ruin. The problem for shelters is that legally the animals still belong to the owner so that they cannot be adopted out or killed (except in the most extreme cases) and the shelters must bear the cost of caring for them.

The problem in these cases is that a person cannot be punished before he or she is convicted. Therefore, even though an owner may have committed a crime against an animal, the court may not order the owner to pay for its care until after he or she is prosecuted and found guilty. After the owner is convicted the judge may require him or her to reimburse the shelter for the animal's care as part of the sentence.

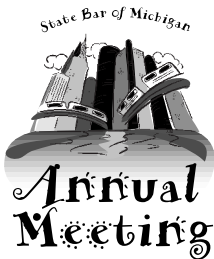
Fortunately, recent changes to the law do provide some relief for shelters. Prior to trial the prosecutor may file a civil forfeiture action against the owner seeking forfeiture of the animals to

the shelter (MCL 750.50(3)). If the prosecutor proves at a hearing before the judge (there is no jury), by a preponderance of the evidence, that the owner criminally mistreated the animals, the judge may order the animals forfeited to the shelter; the owner's property interest in the animals is thereby terminated and the shelter becomes the new owner. Being the new owner, the shelter may then go ahead and adopt out or otherwise handle the animals.

Forfeiture is immediate unless the owner gives the court cash or another form of security which the judge determines is sufficient to pay for the past and future care of the animal at the shelter until the owner's trial. If the owner submits the money or other security, the court may order that it be given to the shelter to pay for the animal's care before the owner is convicted.

As a practical matter, many "collectors/hoarders" do not have the financial ability to pay the cost of the animals' care while they are at the shelter. Accordingly, more often than not, the animals will simply be forfeited to the shelter, enabling it to do whatever it deems necessary for the animals, without being forced to incur the cost of care indefinitely. This will go a long way to alleviating the financial burden placed on shelters and, more importantly, will allow the animals to be handled expeditiously, rather than having to languish indefinitely in the shelter.

The Honorable Kaye Tertzag will be honored at the State Bar of Michigan Annual Meeting September 21, 2000, 10:30 a.m., for his courageous contribution to Animal Law.



Mark Your Calendar! September 20-22, 2000 Cobo Conference/Exhibition Center Detroit, Michigan

3 DAYS OF PRACTICAL SEMINARS & PROGRAMS

Ⓢ Wednesday
CORPORATE/BUSINESS

Ⓢ Thursday
ACCESS TO JUSTICE

Ⓢ Friday
LITIGATION/PROBATE

**Thursday, September 21, 2000
W2-70 (Level 2)**

9:30 am—Program

Beyond Violence: The Connection Between Violence and Animal Abuse

Mary Lou Randour, PhD—Program Director, Psychologists for the Ethical Treatment of Animals, Washington Grove, MD

Dr. Randour will address a serious societal problem—the connection between human violence and animal abuse. Both family and criminal violence are associated with animal abuse.

10:30 am—Business Meeting & Election

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“For as long as men massacre animals, they will kill each other. Indeed, he who sows the seed of murder and pain cannot reap joy and love.”
—Pythagoras

GRANT MONEY AVAILABLE

ATTORNEYS FOR ANIMALS (AFA), a 501(c)(3) organization, has grants available of up to \$1,000 to any attorney pursuing an animal-protection case in Michigan. The grant may not be used for attorney fees, but may be used to defray costs such as filing fees, depositions, transcripts, records-requests, motion fees, etc. Interested attorneys should contact Beatrice Friedlander at (734) 483-4612.

“Non-violence leads to the highest ethics, which is the goal of all evolution. Until we stop harming all other living beings, we are still savages.”
—Thomas Edison

LETTERS, ARTICLES, ETC. FOR FUTURE NEWSLETTERS ARE WELCOME

Please make submissions to the editor in (PC) MSWord or (PC) Wordperfect, ASCII Text Format—kindly include hardcopy printout.

Contact the Editor for Deadline Dates

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