

**Standing Up for Animals:
Can a Bad Economy Inspire Greater Goodness?**

Lewis & Clark Law School

October 15, 2011

**Practicing Animal Law:
Why Contracts, Wills and Business Law Matter to Animals**

**Rebecca J. Huss
Professor of Law
Valparaiso University School of Law**

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American Bar Association, MODEL ACT GOVERNING THE STANDARDS FOR THE CARE AND DISPOSITION OF DISASTER ANIMALS, adopted February 8-9, 2010 *available at* http://www.americanbar.org/content/dam/aba/migrated/disaster/docs/disaster_animals.authcheckdam.pdf

United States v. Approximately 53 Pit Bull Dogs, Civil Action No.: 3:07CV397, Second Order as to Disposition and Appointing Guardian/Special Master (E.D. Va. Oct. 5, 2007) (Bad Newz Kennels Case)

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LIST OF ARTICLES AND LINKS

You may find the following articles useful as a starting point in your research. Each of them can be accessed for free through the SSRN link on the following webpage:

www.valpo.edu/law/faculty/rhuss

In the alternative, you may go to SSRN directly <http://ssrn.com> and access the articles

http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=330506

Canines in the Classroom: Service Animals in Primary and Secondary Educational Institutions, forthcoming 4 J. ANIMAL L. AND ETHICS ____ (forthcoming 2011).

Why Context Matters: Defining Service Animals Under Federal Law, 37 PEPP. L. REV. 1163 (2010).

The Pervasive Nature of Animal Law: How the Law Impacts the Lives of People and Their Animal Companions, 43 VALPO L. REV. 1131 (2009).

Lessons Learned: Acting as Guardian/Special Master in the Bad Newz Kennels Case, 15 ANIMAL L. 69 (2008).

Rescue Me: Legislating Cooperation Between Animal Control Authorities and Rescue Organizations, 39 CONN. L. REV. 2059 (2007).

No-Pets Allowed: Housing Issues and Companion Animals, 11 ANIMAL L. 69 (2005).

Separation, Custody and Estate Planning Issues Relating to Companion Animals, 74 U. COLO. L. REV. 183 (2003).

.....
Professor Gerry W. Beyer, Governor Preston E. Smith Regents Professor of Law at Texas Tech University School of Law has an excellent website devoted to issues relating to estate planning and pets. You can access a listing of the state statutes and several articles he has written about the subject at <http://www.professorbeyer.com/>

Information about the activities and publications of the American Bar Association, Tort, Trial and Insurance Practice Section's Animal Law Committee can be found at: <http://apps.americanbar.org/dch/committee.cfm?com=IL201050> I encourage you to join the ABA, TIPS Animal Law Committee and if available, your local and state bar associations' animal law section or committee.

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 8-9, 2010

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association adopts the Model Act
- 2 Governing Standards for the Care and Disposition of Disaster Animals,
- 3 dated February 2010 and recommends its adoption by state and territorial
- 4 legislative bodies.

1 **AMERICAN BAR ASSOCIATION**
2 **MODEL ACT GOVERNING STANDARDS FOR THE CARE AND**
3 **DISPOSITION OF DISASTER ANIMALS**
4 **(February 2010)**
5

6 **Section 1. Short Title**
7

8 This Act may be cited as the “Standards for the Care and Disposition of
9 Disaster Animals.”
10

11 **Section 2. Purpose**
12

13 The purpose of this Act is to provide certainty of ownership for disaster
14 animals by providing an owner with a specific time frame by which the
15 owner must reclaim companion animals following a Major Disaster and to
16 provide an animal shelter with specific guidelines as to how long disaster
17 animals must be held prior to their disposition.
18

19 **Section 3. Definitions**
20

21 As used in this Act:

22
23 (1) “Animal Shelter” means: a physical facility or entity, including
24 those utilizing private homes, operating for the purpose of providing
25 temporary or long term shelter to lost, unwanted or abandoned
26 animals, that is recognized and approved by the state or local
27 authority. For the purposes of this Model Act, the singular, as in
28 “Animal Shelter,” shall include the plural, as in “Animal Shelters,”
29 and vice versa.
30

31 (2) “Disaster Animals” means domesticated companion animals that
32 have become separated from an owner as the result of a Major
33 Disaster. Disaster animals include those found on private property or
34 running at large, as well as, owner surrendered or relinquished
35 companion animals. Feral animals are excluded from this Act.
36

37 (3) “Companion Animals” mean domesticated animals, such as a dog,
38 cat, bird, rabbit, rodent, or turtle that are traditionally kept in the home
39 for pleasure rather than for commercial purposes, can travel in

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40 commercial carriers, and be housed in temporary facilities.
41 Companion animals do not include reptiles (except turtles),
42 amphibians, fish, insects/arachnids, farm animals (including horses),
43 and animals kept for racing purposes or animals held by a registered
44 research facility under the federal Animal Welfare Act. Feral animals,
45 animals covered by the federal Animal Welfare Act or by regulations
46 issued under that act, and any other animals held for use in or used in
47 research are excluded from this Act.

48

49 (4) "Owner" means the person having title to companion animals.

50

51 (5) "Feral Animals" means animals that do not have an owner.

52

53 (6) "Holding Period" means the length of time that disaster animals
54 are cared for by an animal shelter and not disposed of, except by
55 humane euthanasia.

56

57 (7) "Reclaim" means the taking back of possession of disaster animals
58 by the owner or an agent of the owner.

59

60 (8) "Major Disaster" means a major disaster or emergency declared by
61 the President of the United States under the Robert T. Stafford Relief
and Emergency Act, P.L. 93-288, as amended.

62

63 (9) "Tracking Information" means available information about the
64 owner, physical description and health history of the disaster animal,
65 photographs of the disaster animal, information about where the
66 disaster animal was found and transported to, recommended course of
67 treatment, and communications with an owner, including holding
period extension by contract.

68

69 (10) "Approved Website" means a website approved by the state
70 veterinarian.

71

72 (11) "Extension by Contract" means extensions of the mandated
73 holding period based upon an agreement between the owner and
74 animal shelter for an additional time period.

75

76 (12) "Shelter Animals" means companion animals living at an animal
77 shelter before a Major Disaster.
78

79 **Section 4. Provisions for Disaster Animals**
80

81 (a) Disaster animals taken from a disaster area or delivered to an animal
82 shelter following a Major Disaster will be kept by the animal shelter that
83 receives the disaster animals according to the applicable holding period,
84 unless the owner of the disaster animals agrees otherwise in writing. After
85 the applicable holding period has passed for disaster animals, then the
86 animal shelter has the authority to dispose of the disaster animals as allowed
87 under state law when there is no Major Disaster, unless the owner has an
88 extension by contract with the animal shelter for additional time. An owner
89 who does not retake possession of their disaster animals by the end of the
90 applicable holding period plus any extension by contract thereof, has
91 abandoned the disaster animals and any new owner shall have
92 unencumbered title to the disaster animals.
93

94 (b) Disaster animals brought to an animal shelter shall be kept for at least 30
95 days after the posting of a photograph and tracking information about the
96 disaster animal on an approved website, and up to six months if required by
97 the State Veterinarian. The requirement for posting a photograph and
98 tracking information on an approved website may be modified or eliminated
99 as determined by the State Veterinarian.
100

101 (c) During the holding period, the animal shelter is fully authorized to
102 provide or arrange for necessary veterinary health services that are in the
103 best interests of the disaster animal as may be determined by a veterinarian.
104 Disaster animals that exhibit ownership by the presence of a tag or
105 identification chip or were removed from a private residence, including
106 fenced adjacent land, may not be spayed or neutered without the written
107 permission of the owner unless it is medically necessary as may be
108 determined by a veterinarian.
109

110 (d) During the holding period an animal shelter may place a disaster animal
111 in a private home or other animal shelter either in the state or out of the state
112 so long as available tracking information is kept, and any transfer out of
113 state is authorized by the state veterinarian. In no case shall title to a disaster

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114 animal be awarded to a new owner until after the holding period has expired,
115 together with any extension by contract thereof.

116

117 (e) If the owner of a disaster animal contacts an animal shelter about a
118 disaster animal but is unable to assume possession of the disaster animal by
119 the end of the applicable holding period, then the owner may request the
120 animal shelter to keep the disaster animal for up to an additional 30 days, if
121 the owner is willing to pay the cost of care as established by the animal
122 shelter for the disaster animal during the extension by contract. The animal
123 shelter may require payment of the costs as a condition of extending the
124 holding period. If by the end of the extension by contract the disaster animal
125 has not been reclaimed by the owner, then the animal shelter may treat the
126 holding period as expired. The animal shelter shall advise an owner of the
127 dates of the required holding period and opportunity for extensions by
128 contract, if any owner inquiry is made.

129

130 (f) If an animal shelter becomes inoperative because of a Major Disaster,
131 then all the companion animals removed from the animal shelter shall be
132 treated as disaster animals by whoever takes control of the companion
133 animals. However, if records that accompany these shelter animals
134 demonstrate that it was lawfully permissible to transfer title to the shelter
135 animals before the Major Disaster, those shelter animals would not be
136 treated as disaster animals.

137

138 (g) If the owner of a disaster animal has contacted the animal shelter
139 responsible for the disaster animal before the end of the holding period to
140 reclaim the disaster animal, but the animal shelter refuses to return the
141 disaster animal, then any transfer of title agreement by the shelter to a new
142 owner is voidable by court order.

143

144 **Section 5. Private Keeping of Disaster Animals**

145

146 Any individual, who is not working under the authority of an animal shelter,
147 who takes possession of disaster animals, shall transfer the disaster animals
148 as quickly as reasonably possible to an animal shelter along with available
149 tracking information.

150

151

152

153 **Section 6. Movement of Animals**

154

155 (a) No disaster animals may be removed from the State without the
156 permission of the State Veterinarian or by satisfying such requirements as
157 might be established by the State Veterinarian.

158

159 (b) Except as provided above, anyone who knowingly removes disaster
160 animals from the state is subject to a civil fine of up to \$1,000 per offense.

161

162 **Section 7. Exemptions**

163 (a) This Act shall not limit an animal control authority or agent thereof from
164 humanely euthanizing an animal in accordance with existing state law.

165 (b) This Act does not impose any affirmative duty on an animal shelter to
166 admit disaster animals.

167 (c) This Act shall not restrict or interfere with the general powers of the
168 State Veterinarian [or Department of Agriculture] [Department of Health],
169 including the power to quarantine or restrict the movement of disaster
170 animals, or to exercise powers provided by law.

171 (d) This Act shall not be construed as preventing veterinary care for disaster
172 animals either before or after they are brought to an animal shelter.

173 **Section 8. Effective Date**

174 This Act shall take effect July 1, 20xx.

REPORT

Hurricanes, Gustaf, and Ike are the most recent reminders of the major disasters that periodically strike American communities. The country also experiences many smaller, but locally no less significant disasters such as fires, tornados, and others. A common thread in such disasters is that both the human and animal populations often become dislocated from the disaster area.

This recommendation is intended to address a problem that arises with animal rescue operations. When disaster strikes, many companion animals, primarily dogs and cats, are separated from their owners, abandoned, or otherwise dislocated. The animals that survive usually end up in animal shelters which quickly become overwhelmed.

Often, there are no guidelines for how long a shelter must keep an animal, how and when it may adopt the animal out, or when it may otherwise move the animal. At the same time animal owners encounter problems; their efforts to find and reunite with their companion animals are also affected by the lack of any guidelines as to how long an animal must be kept, when it can be adopted out, and when it can be moved.

In the wake of Hurricane Katrina many owners found the location of their companion animals only to discover that their companion animal had been adopted by a new family, or even euthanized because of the lack of shelter space or other problems. Many ownership disputes and much human and animal suffering resulted from the lack of guidelines as to what shelters can do with companion animals and how long they must keep a companion animal before taking action.

The TIPS Animal Law Committee was instrumental in putting together an Animal Disaster Relief Network following Hurricanes Katrina and Rita. The Network includes most of the major animal organizations in the United States. It includes representatives from State Veterinarians and Veterinary organizations. The Network subsequently formed a Legal Panel on Emergency Management Regarding Animals. One of the issues the Legal Panel addressed was the concern about disaster guidelines and rules for animal shelters, including the general lack of mandatory minimum hold periods. The Legal Panel's primary conclusion was that every state and territory needs to have a policy in place that provides rules

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and guidelines for animal shelters in disaster situations, including mandatory minimum holding periods.

To achieve that goal, the Legal Panel recommended that states and territories adopt statutes setting forth mandatory minimum hold periods for animals caught up in disasters. With input from major animal organizations in the United States, the Legal Panel developed a model statute that could be used by the states and territories in establishing guidelines and hold periods for disaster animals. The Legal Panel's recommended statutory language, The Model Act governing "Emergency Holding Periods for Disaster Animals", is set forth in this recommendation. The Legal Panel addressed this topic because it has been the subject of comment and concern by organizations dealing with disasters, including FEMA (for more information see <https://training.fema.gov/emiweb/downloads/b-3.pdf>) and veterinarian associations, including the American Veterinary Medicine Association (for more information see <http://www.avma.org/disaster>).

The Tort Trial and Insurance Practice Section urges adoption of this Recommendation calling for states and territories to adopt a statute to establish disaster guidelines for animal shelters and mandatory minimum hold periods for companion animals following disasters.

Respectfully submitted

John R. Tarpley, Chair
Tort Trial and Insurance Practice Section
February 2010

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: John R. Tarpley, Chair

1. Summary of Recommendation(s). This Recommendation is intended to address a problem that arises with animal rescue operations in disasters, when many companion animals, primarily dogs and cats are separated from their owners, abandoned, or otherwise dislocated. The animals that survive usually end up in animal shelters with uncertain results because the animal shelters become overwhelmed with animals and there is often no guidelines for how long a shelter must keep an animal, how and when they may adopt the animal out, or when they may otherwise move the animal.
2. Approval by Submitting Entity. Approved by the Council of the Tort Trial and Insurance Practice Section on October 4, 2009.
3. Has this or a similar recommendation been submitted to the House or Board previously? Yes, but it was withdrawn so that revisions could be made.
4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption? Not applicable
5. What urgency exists which requires action at this meeting of the House? It has been established that the fate of companion animals has affected the life and health of concerned and loving owners. Providing a set of procedural rules that establish mandatory minimum hold periods for companion animals following disasters provides certainty to shelters and owners in search of companion animals. The next hurricane season begins June 1.
6. Status of Legislation. (If applicable.) Not applicable
7. Cost to the Association. (Both direct and indirect costs.) Not applicable
8. Disclosure of Interest. (If applicable.) Not applicable

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9. Referrals.

This Report and Recommendation is referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

10. Contact Persons. (Prior to the meeting.)

a) James F. Carr
10406 W. Glasgow Ave.
Littleton, Colorado 80127
303-978-1776-O 303-513-0026-Cell
jimcarrlaw@gmail.com

b) Hervey P. Levin
Law Offices of Hervey P. Levin
6918 Blue Mesa Drive
Dallas, Texas 75252
972-733-3242-O 972-896-4312-Cell
hervey@airmail.net

c) Janice Mulligan
Mulligan & Banham
2442 4th Avenue, Suite 100
San Diego, CA 92101-1609
619/238-8700/cell phone 619-977-4444
jfmulligan@yahoo.com

11. Contact Person. (Who will present the report to the House.)

James F. Carr
10406 W. Glasgow Ave.
Littleton, Colorado 80127
303-978-1776-O 303-513-0026-Cell
jimcarrlaw@gmail.com

EXECUTIVE SUMMARY

1. Summary of the Recommendation

This Recommendation calls for states and territories to adopt a statute to establish guidelines for animal shelters and mandatory minimum hold periods for companion animals following disasters.

2. Summary of the Issue that the Resolution Addresses

The Recommendation is intended to address a problem that arises with animal rescue operations in disasters, when many companion animals, primarily dogs and cats, are separated from their owners, abandoned, or otherwise dislocated. The animals that survive usually end up in animal shelters with an uncertain fate, because the animal shelters become overwhelmed with animals and there are often no guidelines for how long a shelter must keep an animal, how and when they may adopt the animal out, or when they may otherwise move the animal.

In the wake of Hurricane Katrina, many owners found the location of their companion animals, only to discover that their companion animal had been adopted by a new family, or even euthanized because of the lack of shelter space or other problems. Many ownership disputes and much human and animal suffering resulted from the lack of guidelines as to what shelters can do with companion animals and how long they keep a companion animal before taking action.

3. Please Explain How the Proposed Policy Position will Address the Issue

The recommended model statute can be used by the states and territories in establishing guidelines and hold periods for disaster animals, providing a safe harbor for shelters and greater certainty for owners concerning the time periods available to them to seek, find and recover their companion animals. It does not require any government agency to accept the financial or physical burden of disaster animals. It does not change the legal status of animals already in government control but is an aid for those animal shelters that voluntarily accept responsibility for disaster animals. This is done by providing clearer guidelines on what should be done by the holding agency to allow the owners to find their animals and stating how long to hold the

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animals. The provisions also seek to limit difficulties experienced in the past by requiring that the animals be kept in the state of the disaster for a minimum period rather than having the animals scattered across the county.

4. Summary of Minority Views or opposition which have been identified:

No minority or opposing view has been identified.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No.: 3:07CV397
v.)	
)	
APPROXIMATELY 53 PIT BULL DOGS,)	
)	
Defendants.)	

**SECOND ORDER AS TO DISPOSITION AND
APPOINTING GUARDIAN/SPECIAL MASTER**

On August 31, 2007, the Court entered an order forfeiting the defendant pitbull dogs to the United States pursuant to 7 U.S.C. §2156(f). Following behavior testing by experts, the United States, on October 1, 2007, moved for an order to euthanize one of 49 remaining dogs previously forfeited on the basis that the dog exhibited intense aggression toward humans such that it could not safely be maintained. Though not ruling out the possibility that additional dogs may have to be euthanized, the government reported that the behavior testing suggested that many of the remaining dogs could possibly be placed in appropriate facilities.

The government now seeks the appointment of a guardian/special master to advise the Court as to the appropriate final disposition of the remaining 48 dogs.

The United States has moved the Court to appoint Rebecca J. Huss, Professor of Law at Valparaiso University School of Law, as the guardian/special master. Having considered Professor Huss' qualifications, experience and willingness to serve, it is hereby ORDERED as follows:

1. Rebecca J. Huss is hereby appointed as guardian/special master to consider appropriate options for a final disposition of the remaining 48 pitbull dogs previously forfeited to the United States.

2. Professor Huss shall have the following powers and duties to fulfill her obligations:

(a) Consider available disposition and placement options as she deems appropriate for the final disposition of the remaining dogs;

(b) Engage and employ any individuals or entities the guardian/special master deems necessary to assist in her duties (“Retained Personnel”);

(c) Take such action as necessary and appropriate to provide for the interim care prior to final permanent disposition of the dogs. Interim care can consist of transferring dogs to outside organizations for temporary care or providing other types of care, including but not limited to veterinary care to the animals that remain in their current housing until a final disposition is determined;

(d) To consult with individuals and organizations that have experience with animal welfare issues, including but not limited to individuals or organizations that have specific knowledge about the breed (or breeds) of dogs at issue in this case; and

(e) To permit access to the remaining dogs by organizations, as she deems appropriate, in order for the organizations to assess their suitability to offer a permanent disposition for the dogs.

3. In evaluating the permanent disposition options, Professor Huss shall consider the following factors, among others:

(a) The need to protect the public and other animals from any dogs which may be aggressive; and

(b) The quality of life for any dog which may need to be housed in a restrictive environment for the long term.

4. The organizations considered for permanent placement should meet the following standards:

(a) There should be minimum standards to show the organization is established.

i. It must be a non-profit organization with section 501(c)(3) status under the Internal Revenue Code; and

ii. It must have been in existence for at least three years.

(b) The organization must agree to hold harmless the United States, Department of Justice, United States Attorney's Office for the Eastern District of Virginia, and Department of Agriculture, including their officers and employees, for any future death, injury, or other harm suffered by the organization (including its officers, employees, volunteers, and other individuals working for or volunteering at such organization), caused by the dogs or otherwise resulting from placement of the dogs with the organization.

(c) The organization must be willing to execute an indemnification agreement, indemnifying the United States, Department of Justice, United States Attorney's Office for the Eastern District of Virginia, and Department of Agriculture, including their officers and employees, in the event that any suit is filed against the United States, Department of Justice, United States Attorney's Office for the Eastern District of Virginia, and Department of Agriculture, including their officers and employees, resulting from any future death, injury, or other harm suffered by third parties caused by the dogs or otherwise resulting from placement of the dogs with the organization.

(d) The organization must carry at least \$1,000,000 in general liability insurance. Additionally, the organization must be able to show that it has carried such insurance on a consistent basis.

(e) The organization must be able to show that it can house the dogs in a manner that will be safe for the dogs, other animals, and any person interacting with the dogs. (In other words, in a manner consistent with public safety concerns.)

i. The organization must show that it has the ability to provide veterinary care to any animals under its care.

ii. The organization must show that either its facility or any foster care home used for the dogs have adequate security measures in place to protect the dogs from leaving the premises other than under the control of a responsible adult.

(f) If the special master determines that a dog must be placed in a manner to restrict the dog's contact with the public on a long term or permanent basis (e.g., an animal sanctuary environment) the organization must be able to show that it has the ability to provide lifetime care for the animal.

i. An organization providing care for a sanctuary dog must own the real property where the animal is to be kept or otherwise show that it has the capability to provide a secure location for the dog for the estimated lifetime of the dog.

ii. An organization providing care for a sanctuary dog must be able to show that it has experience dealing with dogs with special needs.

iii. An organization providing care for a sanctuary dog must be able to show that it has the administrative structure to manage the dog's care on an ongoing basis, including but not limited to the segregation of funds allocated to the dog or dogs' care.

(g) The organization will be subject to site visits by the guardian/special master or her agents.

(h) A dog cannot be placed in a jurisdiction that has a ban on the ownership of the breed of dog at issue.

(i) Organizations used for interim care or considered for permanent placement must meet Department of Agriculture standards for animal care found in the Animal Welfare Act, 7 U.S.C. § 2143, and implementing regulations found at 9 C.F.R. Chapter 1, Subchapter A-Animal Welfare, Part 3, Subpart A. The organization must grant authorization to the USDA Animal and Plant Health Inspection Service (“APHIS”) to review its facilities for compliance with the Animal Welfare Act. APHIS will make a determination as to whether or not the entity complies with the Act and such determination is final.

(j) The organization must agree that no information may be disclosed or used for fund-raising purposes by the organization regarding the dogs or the fact that the dogs have been placed with such organization. This prohibition applies not only to the organization but also to its officers, employees, volunteers, and other individuals working for or volunteering at such organization.

(k) The guardian/special master, in consultation with the United States Attorneys Office, may prescribe additional confidentiality provisions which will apply to any organizations and their employees which accept a dog for interim or permanent placement.

5. The government having moved to have all of the remaining dogs spayed or neutered and implanted with microchips to facilitate their recovery should a dog be lost, the Department of Agriculture or guardian/special master is authorized and directed to take such actions as it

deems appropriate to perform those tasks as soon as practical for any dogs that are not deemed candidates for immediate euthanasia.

6. The guardian/special master is entitled, along with any Retained Personnel, to reasonable compensation and expenses reimbursement. Such compensation shall be in amounts commensurate with the services performed by the guardian/special master and Retained Personnel. Such amounts may be paid from the Assets Forfeiture Fund. At the conclusion of this case, all expenses paid by the Fund and any prospective expenses, shall be paid by Michael Vick as provided for at paragraph 8 of Mr. Vick's plea agreement in case number 3:07CR274.

7. The guardian/special master shall not be required to post bond or give an undertaking of any type in connection with her fiduciary duties and obligations in this matter unless and until the Court so orders.

8. At the conclusion of the guardian/special master's duties outlined herein, she shall file a summary report with the Court describing her activities and recommendations. The Court will thereafter direct the final disposition as to the remaining dogs.

9. Upon final disposition of a dog(s) placed with an organization (including but not limited to placement in a foster home), complete ownership, title, and control of such dog(s) shall immediately transfer to the organization, and the Government's ownership, title, and control shall immediately cease.

The Court is mindful that this is an exceptional case which, because of the restitution provision of the plea agreement in the related criminal case, brings to this civil case exceptional resources which are unlikely to be present in other cases involving the forfeiture of animals involved in an animal fighting venture pursuant to 7 U.S.C. § 2156(f).

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record and to the guardian/special master appointed hereunder.

Date

UNITED STATES DISTRICT JUDGE

We ask for this:

/s/
G. Wingate Grant
Michael R. Gill
Assistant United States Attorneys

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 14, 2011

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, territorial, and local legislative bodies and governmental agencies to enact laws and implement policies to ensure the humane treatment and disposition of seized animals in a timely manner that:

1. Establish effective evidence collection and identification of each animal at the scene of the seizure;
2. Provide prompt and continuing veterinary attention for each animal as warranted by each animal's medical condition;
3. Establish a protocol for humane and appropriate confinement for the animals;
4. Provide that the person who has ownership or control of the animals at the time of the seizure must, consistent with due process requirements, post a reasonable bond or security or, in the alternative, promptly surrender the animals to the custody of the lawful authorities;
5. Utilize a timely process to determine the disposition of the animals and provide for prompt transfer to an appropriate rescue organization or adoptive home with humane euthanization occurring only if an animal's medical or behavioral condition warrants such action or it is determined, after reasonable time and effort have been expended, that no appropriate placement for an animal exists;
6. Provide that the localities and/or organizations caring for the animals be granted restitution for the costs incurred for the care of the animals not covered by a reasonable bond or security by any person who does not promptly surrender such animals.

REPORT

Introduction

Recent seizures of animals have illustrated the challenges faced by authorities dealing with these cases. From high profile cases such as the allegations in the Michael Vick/Bad Newz Kennels case in 2007 and the July 2009 multi-state seizure by federal authorities of hundreds of dogs in the Midwest relating to dog fighting to hoarding and cruelty cases prosecuted by state and local authorities, the seizure of animals occurs on a daily basis. Potential defendants and the animals are benefited when there is an efficient process in place that provides for the humane treatment and disposition of seized animals.

Evidence Collection and Identification of Animals

This recommendation calls for effective evidence collection and identification of each animal at the scene of a seizure. In large-scale seizures multiple agencies and organizations may be involved in the collection of the animals. It can be a chaotic situation and the amount of evidence that must be collected can be overwhelming.¹ It is imperative for the protection of the integrity of any future criminal process and to sustain the applicable burden of proof that the evidence documenting the scene be preserved.² As with any case, the chain of custody of all evidence collected should be maintained.³ Evidence collection at a scene involving animals will mirror other potential crime scenes. For example, photographs and video should be taken at the scene to document the conditions the animals were found in and the animals themselves.⁴ Each animal should be examined to determine whether there is evidence on the animal and to document the animal's condition.⁵ As an example, the body of an animal (including the animal's teeth or nails) can be examined for DNA evidence.⁶ Any scars or injuries on the animal should be documented and the body condition of each animal should be determined.⁷

¹ MELINDA D. MERCK, DVM, VETERINARY FORENSICS: ANIMAL CRUELTY INVESTIGATIONS 21 (2007) (describing animal cruelty crime scenes). In the July 2009 multi-state raids for dog fighting there were twenty-nine crime scenes to process with over 200 animal specialists and volunteers to coordinate. Sara Shepard, *Forensic Veterinarians Help Take a Bite Out of Dogfighting*, GAZETTE-MAIL (Charleston, WV), Aug. 8, 2009, at 9A.

² It is important to note that even if initially the expectation is that any charges may be limited solely to the treatment of the animals, evidence of other crimes may be found at the scene.

³ MERCK, *supra* note 1, at 36.

⁴ MERCK, *supra* note 1, at 21 (describing the types of photographs and video that should be taken at the scene).

⁵ MERCK, *supra* note 1, at 20 (discussing the need to record initial observations as the status of the animal can change after arrival at a veterinary facility).

⁶ MERCK, *supra* note 1, at 66 (discussing the collection and uses of DNA evidence).

⁷ MERCK, *supra* note 1, at 40 (discussing body condition scoring and other aspects of the exam documenting the condition of an animal).

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In investigations involving animals, it is often useful to have a veterinarian assist investigators at the scene. The field of veterinary forensics is developing rapidly, and similar to other potential crime scenes, a veterinarian can determine the time of death of any recently deceased animals, or preserve evidence of any decomposing animals.⁸ The number of professionals that are trained in veterinary forensics is growing with programs such as the Veterinary Forensic Sciences Program at the University of Florida providing on-site as well as on-line training.⁹ Having specially trained personnel is ideal but much of the evidentiary process applicable to other crimes will carry over to crimes involving animals.

Each animal should be identified at the scene in a way that will carry through any future proceedings. Usually this is done through an identification number.¹⁰ The animal can be photographed with the identification number or can be fitted with an identification band (if doing so would not interfere with veterinary treatment or the care of the animal). To avoid confusion, it is best if there is consistent numbering of the animals collected at the scene and carried over upon intake if the animals are being sent to multiple facilities. While it may not be feasible to microchip each animal upon intake, if any animal is transferred outside of the initial intake facility, microchipping can ensure that there is no question that the animal is the one involved in the case.¹¹

Veterinary Attention

This recommendation calls for prompt and continuing veterinary attention for each animal as warranted by each animal's medical condition. As discussed above, ideally a veterinarian will be part of the team on site at the seizure and would participate in the collection of evidence. A veterinarian should also be part of the team to provide immediate veterinary care for any animal in distress on site. It is the responsibility of the authority with custody of the animals to preserve the evidence – which includes the animals themselves.¹² Preserving the evidence includes providing continuing veterinary care to the animal to ensure that the animal's health does not deteriorate while in the custody of the relevant authorities.

⁸ MERCK, *supra* note 1, at 19-30.

⁹ See also International Veterinary Forensic Sciences Association, www.ivfssa.org (last visited April 5, 2010) (describing the association and opportunities for training in veterinary forensics).

¹⁰ Rebecca J. Huss, *Lessons Learned: Acting as Guardian/Special Master in the Bad Newz Kennels Case*, 15 ANIMAL L. 69, 78 (2008) (discussing the use of kennel numbers for official correspondence and court documents and describing how the dogs in the case were provided with a “call name” to distinguish each dog as an individual during the time the dogs were being evaluated prior to final disposition).

¹¹ For example, sixteen dogs that were housed in foster homes before the final judicial order in the Bad Newz Kennels case were microchipped prior to each animal's release from the animal control facilities.

¹² MERCK, *supra* note 1, at 7

The medical condition of an animal can also impact an animal's behavior. Ensuring that animals are maintained in or restored to good health allows for a more accurate determination of an animal's behavioral status.

Humane and Appropriate Confinement

This recommendation calls for humane and appropriate confinement of the animals after the seizure. According to the National Animal Control Association Training Guide usually, after a seizure, the animals will be transported to the seizing officer's animal welfare agency. The animal welfare agency is responsible for the care and treatment of the animals.¹³

The most common places where animals from a mass animal seizure are housed initially include: (a) local and regional humane societies or SPCAs, (b) local and regional animal control and services agencies, (c) other private area animal shelters or rescue organizations, (d) veterinary clinics and hospitals, (e) local fairgrounds, (f) local equestrian centers and ranches, and (f) at the crime scene itself.

Timely transfer of the animals from shelters to foster homes as appropriate is beneficial for the animals. In the *Bad Newz Kennels* case sixteen of the dogs were transferred from shelters to foster homes after the civil forfeiture process was complete but prior to final disposition of the dogs. It was extremely positive for the dogs to be out of the shelter environment and in homes. The transfer reduced the burden on the Virginia shelters that had been caring for the dogs since the time of the seizure and reports from the foster homes provided valuable information for the guardian/special master who was making a recommendation on the disposition of the dogs.¹⁴

Posting of Bond or Security or Surrender of Animals

This recommendation calls for a more efficient and effective way to treat the property seized in these cases. Animals are by their nature different than guns, money, or property seized as a result of other crimes. Because the property in these cases is a living being, the authorities and the courts must treat them differently. In recent years a number of states, through their legislative processes, instituted bonds or mandatory surrender of the animals in these cases.¹⁵ These new bond provisions were created out of necessity because animals were literally waiting in shelters for one to two years for the trial process to end. The best of these laws ensure that an adequate bond is posted for a reasonable amount of time (nine months). Also, if the person charged does not agree to post the bond, then he or she is required to surrender the animal. In the event the person is found not guilty, they would be reimbursed for the value of the animal seized or the amount of

¹³ NATIONAL ANIMAL CONTROL ASSOCIATION TRAINING GUIDE 6 (John Mays ed. 2009).

¹⁴ Huss, *supra* note 10, at 78-79.

¹⁵ 510 ILL. COMP. STAT. 70/3.04-3.06 & 720 ILL COMP. STAT. 5/26 (2009); VA. CODE ANN. 3.2-6571 & 3.2-6569 (2009).

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the posted bond.¹⁶ It is imperative that the prosecutors request a bond when the seizure hearing is held.¹⁷

Timely Process to Determine the Disposition of the Animals

This recommendation calls for a timely process to determine the disposition of the animals and for prompt transfer of the animals to an appropriate rescue organization or adoptive home. The judge has the ultimate disposition power. In a recent case U.S. District Judge David Lawson in Detroit granted the Humane Society of Kent County custody of eleven pit bulls seized in a dog-fighting bust, a ruling expected to make the animals eligible for adoption. The decision ended the Eastern District of Michigan's U.S. Attorney's Office bid to euthanize the dogs seized last summer after agents broke up a dog-fighting ring in eastern Michigan.¹⁸

The evaluation of a victim of cruelty is an organic process, one that changes over time. Animals vary widely in their resiliency or sensitivity to stressful or traumatic situations.¹⁹ Behavioral assessment of animals that have been victims of cruelty can serve several purposes. First, such an evaluation helps to provide an overall picture of the animal's health, with an emphasis on determining behavioral health rather than the presence of a specific behavior problem. Such an assessment can be helpful in evaluating the consistency of accounts explaining the animal's injuries. For example, an allegation that a dog was struck or kicked because she responded aggressively when gently petted would be called into question if the animal responded nonaggressively to handling by a variety of people.

Second, such an evaluation can help assess the likelihood that the animal will be able to recover behaviorally, as well as physically, from the effects of abuse. This may be necessary in cases where animals have been seized from an animal hoarder, puppy mill, or dog-fighting situation.

Every effort should be made to place the animals. Humane euthanasia should be a last resort only if the animal's physical or behavioral condition requires such action. If suitable housing for the animals is limited, a behavioral assessment may need to be part of the triage procedure for deciding which animals would benefit most from the limited resources available to rehabilitate and re-home them.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Paul Egan, *Judge Spares Dogs Rescued in Fight Probe*, DET. NEWS, Mar. 10, 2010, at A3.

¹⁹ LESLIE SINCLAIR, DVM et al., FORENSIC EVALUATION OF ANIMAL CRUELTY: A GUIDE FOR VETERINARY AND LAW ENFORCEMENT PROFESSIONALS 68 (2006). *See also* Robert Patrick, *Sweet Success After Dog Raid: Humane Society Expects to Save 60 Percent of Animals Seized in Area*, ST. LOUIS POST DISPATCH, Nov. 26, 2009, at A1 (discussing the results of the evaluation of the dogs seized as part of the July 2009 multi-state raids for dog fighting and the fact that the percentage of dogs expected to be saved is much higher than predicted).

Behavioral evaluations have been used in a myriad of cases including the Bad News Kennels case and the largest dog fighting bust in United States history that occurred in 2009. In the 2009 case teams of animal behavior experts from across the nation assessed more than 500 dogs seized from alleged dog-fighting operations in Missouri, Illinois, Oklahoma, Texas, Mississippi, Iowa, and Nebraska.²⁰

Restitution

This recommendation calls for effective compensation to the localities and/or organizations caring for the seized animals. In many animal cruelty and animal fighting busts the animals are in extremely poor condition at the time of the seizure. The animals must be given proper medical care to maintain them prior to resolution of the case. Many of these animals had never received adequate or any veterinary care. Thus, providing the proper care upon seizure becomes important and costly.²¹ In order for localities and/or organizations to recoup their costs for the daily care and veterinary expenses incurred while maintaining these neglected and abused animals, the prosecutor must ask for restitution at sentencing.²² The restitution should cover the daily expense of caring for the animal at the shelter or other location²³ and also any veterinary expense incurred in treating the animal's injuries.²⁴ If the person has posted a bond, the bond should be

²⁰ *More than 400 Pit Bulls Seized*, WICHITA EAGLE (Kan), July 23, 2009, available at 2009 WLNR 14250021 (discussing the evaluation of the dogs).

²¹ Ian Urbina, *Animal Abuse as Clue to Additional Cruelties*, NEW YORK TIMES, Mar. 18, 2010, at A16 (reporting that the estimated cost of rescuing and caring for 170 dogs from a hoarder's home in Franklin County, Ohio was \$1.2 million); see also *Shelter Seeks Help with Rescued Ribera Dogs*, SANTA FE NEW MEXICAN, June 7, 2009, available at 2009 WLNR 10959246 (reporting that the estimated costs for caring for forty-two dogs rescued from an alleged hoarder would likely exceed \$40,000); Dawn Gagnon, *Animal Care Tops \$50,000*, BANGOR DAILY NEWS, Oct. 3, 2007, at 6 (reporting on the costs of caring for twenty dogs removed from their owner); Anne Paine, *Some Neglected Tennessee Horses Find Greener Pastures*, THE TENNESSEAN (Nashville, TN), Dec. 22, 2009, available at 2009 WLNR 25727798 (reporting the cost of care of eighty rescued horses at \$250,000); Keren Rives, *Man Pleads Guilty to Dog Fighting: Sentences to Two-Year Probation*, TIMES-NEWS (Burlington, NC), Mar. 11, 2010, available at 2010 WLNR 5177388 (reporting on order to pay restitution in the amount of \$16,000 for the costs incurred by the city of Burlington, although the estimated costs incurred to date was \$41,548).

²² VA. CODE ANN. 3.2-6570 (2009).

²³ Christine Clarridge, *600 Rescued Dogs and 80% are Pregnant*, THE SEATTLE TIMES, Jan. 24, 2009, available at 2009 WLNR 1422209 (illustrating that the cost associated with seizures can skyrocket for local shelters charged with caring for the seized animals).

²⁴ Abby Simons, *Shih Tzu Rescue Seeks Public's Help with Dogs*, STAR TRIB. (Minneapolis, MN), Nov. 14, 2009, at 02B (discussing the cost of veterinary care for eight dogs, still remaining at Minneapolis Animal Care and Control, who were seized from an individual charged with misdemeanor animal cruelty).

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ordered to be used in providing the restitution. If the bond does not cover the amount of the restitution, the prosecutor should ask the court to order that full restitution be paid.²⁵

Conclusion

The Tort Trial and Insurance Practice Section urges adoption of this recommendation calling for all federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and polices to ensure the humane treatment and timely disposition of seized animals.

Respectfully submitted,
Jennifer Busby, Chair
Tort Trial and Insurance Practice Section
February 2011

²⁵ Carol L. Smith, *Puppy Mill Owner Surrenders Dogs*, BANDERA CO. COURIER (Texas), Dec. 17, 2009, available at http://www.bccourier.com/Archives/News_detail.php?recordID=091217N3 (last visited Apr. 14, 2010) (illustrating that courts may order the total amount of restitution in these cases).

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: Jennifer Busby, Chair

1. Summary of Resolution.

This Resolution is intended to address issues arising from the seizure of animals.

2. Approval by Submitting Entity.

Approved by the Council of the Tort Trial and Insurance Practice Section on May 14, 2010.

3. Has This or a Similar Resolution Been Submitted to the House or Board Previously?

No.

4. What Existing Association Policies are Relevant to This Resolution and How Would They Be Affected By Its Adoption?

Not applicable.

5. What Urgency Exists Which Requires Action at This Meeting of the House?

Animals are being seized each day by governmental authorities. This recommendation provides guidance for the governmental agencies involved to provide a fair, efficient and effective process for dealing with these cases.

6. Status of Legislation. (If applicable.) Not applicable.

7. Cost to the Association. (Both Direct and Indirect Costs)

None.

8. Disclosure of Interest. (If applicable.)

Not applicable.

9. Referral.

This Report and Recommendation will be referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

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10. Contact Persons. (Prior to the Meeting)

Hervey P. Levin
6918 Blue Mesa Drive, Suite 115
Dallas, Texas 75252
(972) 733-3242
(972) 733-3269 (Fax)
hervey@airmail.net

Janice F. Mulligan
MULLIGAN & BANHAM
2442 4th Avenue, Suite 100
San Diego, CA 92101
Tel:619-238-8700
jfm@janmulligan.com

Timothy W. Bouch
Leath Bouch & Seekings LLP
92 Broad Street
Charleston, South Carolina 29401-2201
843-937-8811
843-937-0606 (Fax)
tbouch@leathbouchlaw.com

11. Contact Person. (Who Will Present the Report to the House.)

Hervey P. Levin
6918 Blue Mesa Drive, Suite 115
Dallas, Texas 75252
(972) 733-3242
(972) 733-3269 (Fax)
hervey@airmail.net

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution calls for federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and policies to ensure the humane treatment and efficient disposition of seized animals.

2. Summary of the Issue that the Resolution Addresses

The Resolution is intended to address problems that arise when animals are seized as a result of civil actions or criminal prosecutions. Many jurisdictions do not have procedures and protocols in place in advance of the seizure of the animals which can lead to inefficiencies in the prosecution of these cases and harm to the animals. The animals seized in these cases may be in the temporary custody of the governmental authority for a lengthy period of time prior to the final determination of their legal status.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution sets forth actions that should be taken by governmental entities that will allow them to more efficiently and humanely deal with the seizure of animals.

4. Summary of Minority Views or Opposition Which Have been Identified

No minority or opposing view has been identified.