

CONCURRENT SESSION

Cat Got Your Tongue? Barking up the Wrong Tree?
SUCCESSFULLY NAVIGATING CURRENT ISSUES
IN ANIMAL LAW

By: Calley Gerber, Esq.
Gerber Animal Law Center

Calley Gerber

Calley Gerber was born in Wisconsin and grew up in the Midwest, always in the companionship of animals. From a young age, she felt a deep connection with, and desire to protect, animals of all shapes and sizes.

Ms. Gerber received her Bachelor of Arts in History from Pepperdine University in 1993 and her Juris Doctor from the University of Denver College of Law in 1996. She practiced law in Colorado as a prosecutor until mid-2000, where among other things, she handled animal abuse cases. In 2000 she moved to North Carolina and currently lives with her Great Dane, 4 hens rescued from battery cages, and various foster animals.

Calley Gerber is licensed to practice law in the State of North Carolina, the State of Colorado (current status inactive), the United States District Court - District of Colorado, and the United States District Court For The Northern District of Illinois. However, her practice currently focuses solely in North Carolina.

Ms. Gerber has been quoted and/or featured in USA Today, The Chicago Tribune, Lawyers Weekly, The News & Observer, DogLiving Magazine and other publications. She was the program planner and a speaker at the first Animal Law CLE at the North Carolina Bar Association, has taught Animal Law at two law schools, and regularly speaks on animal law topics throughout North Carolina.

**Cat Got Your Tongue?
Barking Up The
Wrong Tree?**

Successfully Navigating Current
Issues In Animal Law

**The Phone Rings; you need
answers fast...**

- ☛ Veterinary Malpractice
- ☛ Custody
- ☛ Someone's Animal Has Been Harmed
- ☛ Cruelty/Negelect
- ☛ Planning for Continued Care of Companion Animals

Veterinary Malpractice

- ☛ Client Betty calls and Gertrude, her beloved dachshund of ten years, has died from what she believes to be veterinary malpractice. After her recent monthly arthritis injection, Gertie began having seizures and was rushed to an emergency veterinarian for blood transfusions. Unfortunately, she was not able to be saved.

Veterinary Malpractice

- ☞ Duty
- ☞ Standard of Care
 - ☞ Locality
 - ☞ Remember 9(j) expert
- ☞ Causation
- ☞ Damages

Veterinary Malpractice

- ☞ Need to get full medical records
- ☞ Independent review by veterinarian
- ☞ Costs
- ☞ Finding an expert willing to testify
- ☞ Potential complaint with NCVMB

Custody Fact Pattern

- ☞ Client Barney calls because his ex-girlfriend of 5 years has a new boyfriend & no longer allows shared visitation of the former couple's rescue dogs as previously agreed. The dogs require medication and Barney is concerned they are not getting the medical care they need due to his ex-girlfriend's new partying and drug use.

Custody Analysis

- ☞ Animals are property
- ☞ Agreement
- ☞ Ownership
 - ☞ Vet records/boarding/grooming
 - ☞ Registration
- ☞ No best interest standard, but remember 19A

**Someone's Animal
Has Been Harmed**

- ☞ Two types of harm
 - ☞ Intentional Harm
 - ☞ Negligent Harm

**Intentional Harm
Fact Pattern**

- ☞ Clients Homer and Marge call you because their neighbor, upset about paw prints on his car, has shot and killed their beloved 15 year old cat.

Intentional Harm Analysis

- ☞ Conversion
 - ☞ Until time Defendant came into possession, Plaintiff was lawful owner & entitled to immediate possession
 - ☞ Defendant wrongfully converted property in question
 - ☞ Good faith, honest intentions & innocence are not defenses

Intentional Harm Analysis

- ☞ Intentional Infliction of Emotional Distress
 - ☞ Extreme & outrageous conduct
 - ☞ Which is intended to & does cause
 - ☞ Severe emotional distress

**Negligent Harm
Fact Pattern**

- ☞ Client Neil calls because his beloved Rottweiler mix, Shiloh, was harmed on a recent stay at Lucky Paws, an elite boarding facility. Shiloh was fine when he was dropped off, but upon pick-up had lost 25 lbs, had an open wound with maggots and urine burns to his groin from lying in his own urine unable to get up.

Negligent Harm Analysis

- ☞ Negligence
- ☞ Bailment
- ☞ Breach of Contract
- ☞ UDTP

Negligent Harm Analysis

- ☞ Negligence
 - ☞ Duty
 - ☞ Standard of Care
 - ☞ Injury
 - ☞ Causation
 - ☞ Damages

Negligent Harm Analysis

- ☞ Bailment
 - ☞ Animal was delivered to Defendant
 - ☞ Defendant accepted possession & had control over the animal
 - ☞ Defendant failed to return/returned the animal in damaged condition

Negligent Harm Analysis

- ☞ Breach of Contract
 - ☞ Valid Contract
 - ☞ Meeting of minds/offer-acceptance
 - ☞ Consideration
 - ☞ Breach of terms of contract
- ☞ Damages

Negligent Harm Analysis

- ☞ Unfair/Deceptive Trade Practices
 - ☞ Unfair or deceptive act or practice
 - ☞ In or affecting commerce
 - ☞ That proximately caused actual injury

Cruelty/Neglect

- ☞ Individual with one or a few animals
- ☞ Person/group with large number of animals
- ☞ Shelter in violation of the law

**Cruelty/Neglect
Fact Pattern**

☞ Client Beatrice calls because she is concerned about neighbor dogs that are extremely thin, chained to trees without food or water.

**Cruelty/Neglect
Individual (few animals)**

- ☞ Encourage to report to authorities
- ☞ Look to criminal laws (county & state)
- ☞ Possible nuisance (noise/odor)
- ☞ Possible 19A
- ☞ Document, document, document

**Cruelty/Neglect
Puppy Mill Fact Pattern**

☞ Clients Fred and Wilma call after their recent experience visiting a breeder to buy a multi-poo. They tell you about cages stacked, matted fur, horrible stench, rodent infestation and an apparent failure of the owners to realize/acknowledge the validity if these concerns when raised.

**Cruelty/Neglect
Puppy Mill Analysis**

- ☞ Advise to contact local authorities/ HSUS/ASPCA for assistance
- ☞ Potential 19A, but will need assistance of another organization unless you have the ability to house, provide medical care for, and re-home the animals

**Cruelty/Neglect
Animal Shelter**

- ☞ Client Sarah calls you after visiting a local animal shelter. There she sees a dog in need of immediate medical care. Sarah is part of a local rescue group and has pulled animals from this shelter before. She wants to take the emaciated dog with the bulging eye that is unable to even raise his head to eat or drink. The staff refuses, stating the dog's 72 hour hold has not yet expired. Sarah knows the dog will not live 2 more days and calls you to see what can be done.

**Cruelty/Neglect
Animal Shelter**

- ☞ It's not always about a lawsuit
- ☞ Possible complaint to Department of Agriculture Animal Welfare Section
 - ☞ See 52j
- ☞ Possible suit under 19A

**Continued Care of
Companion Animals**

- ☞ Your buddy, Calley, calls because she's getting ready to leave in a couple weeks to attempt the PrimalQuest Adventure Race. People have previously died during this race and she would like to execute something to care for her beloved Great Dane, Joseph, in the unlikely event she does not return safely.

**Planning for Continued Care
of Companion Animals**

- ☞ Power of Attorney
- ☞ Bequest in a Will
 - ☞ Issue of gap while will probated
- ☞ Pet Trust
 - ☞ N.C.G.S Sec. 36C-4-408

**Planning for Continued Care
of Companion Animals**

- ☞ Factors to be sure to consider/address in Pet Trust
 - ☞ Select/designate trustee
 - ☞ Select/designate caregiver
 - ☞ Identify animals
 - ☞ Identify standards of care

On The Horizon

- 🌀 Commercial Breeder Bill
- 🌀 Exotic Bill
- 🌀 ????????

Calley Gerber
Gerber Animal Law Center
Raleigh, NC
919-510-6393
Gerber@AnimalLawNC.com
