

*Justice Marilyn J. Kelly speaks at Animal Law Symposium*

Record number of attendees at event held at MSU School of Law

By

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Legal News

The Honorable Marilyn J. Kelly, accompanied by her award winning West Highland White Terrier, McDuff, aka Duff, opened the 2008 Animal Law Symposium, held at Michigan State University School of Law.

Commenting on the increase of the interest in animal law, Justice Kelly said, “I’ve been impressed to learn that 92 of the nation’s 196 law schools accredited by the American Bar Association now offer courses on animal rights. That’s up from nine that were offered in the year 2000 according to a recent Detroit article.”

“I have been on the bench now for 20 years and come across a few cases involving animals. Some years ago the Bay County Animal Control impounded Keto, a ferret, after the ferret had scratched the knuckles of a man who reached in his cage to pet him while the pet was being shown at a Bay City mall. Under Michigan law, the animal had to be beheaded for it to be determined if it had rabies. The matter went all the way to the Supreme Court and I want to tell you the vote was 5 to 2 and I was on the losing side of that.”

What was interesting about this was the reaction that the case got. It received a lot of media attention and I got a letter from a gentleman in California on very nice ferret stationary thanking me for my efforts. The next day I got a card with a ferret on the front with his paws up in the most beseeching position and in the inside it said, ‘Thank you for trying to save my life.’ That was sent by my staff.”

“A second case in the last year was the case of the Bloomfield Estates Improvement Society versus City of Birmingham. It involved a dispute between homeowners and the city over the city’s installation of a dog park. It was a place to take the dogs off leash. The homeowners didn’t appreciate it—too much noise, traffic and smells. The facts of the case did not seem to bear that (claim) out,” said Justice Kelly. “There was a restrictive covenant that ran with the land that required that the land be used for installation of a building. That was overlooked for 75 years. But our court decided the city had to close the dog park –again I was on the losing side—I found it frustrating, but the case could have gone either way, but certainly it seemed that the covenant provision had been waived.”

“ I wrote the dissenting opinion,” she said. Expressing her feelings about the decision, she wrote, ‘The majorities decision is a dog gone shame. It has alarming implications for restrictive covenants in Michigan and coming as it does during the dog days of summer, when four legged creatures long to run outdoors unrestrained, it marks a howling defeat for Birmingham’s canine residents.’

Justice Kelly presented the group with a sample sales contract for the purchase of a purebred dog. She said, “the contract contains the information needed in order for the animal to be registered with the American Kennel Club.”

Justice Kelly recommended that attorneys read the contracts carefully and be aware of the following provisions:

- The animal be taken for a health check within 48 hours with a provision that the dog can be returned if vet check shows health problems that are serious—the remedy can be replacement or return of sales price.
- If the dog has a communicable disease, the breeder should be contacted—if there is any problem, the breeder should be notified.
- Dog can’t be given to a dog retail center and if owner can no longer keep the dog at any time, breeder must be told and has option to take the dog back.
- Animal is to be neutered.
- The breeder will register the animal with the AKC

Referring to rescue dogs, Justice Kelly said, “If your clients want to pick up a rescue dog, they need to understand that the people who are making the dog available feel genuine interest in this animal. They will typically add in their contract that the person who adopts the animal will not dispose of it without notifying the rescue people first.”

It was unanimously recommended by the attendees at the close of her remarks that there should always be at least one animal at each of the Animal Law events.