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Paws with a Purpose – Federal and Michigan Rules Regarding Service Animals

by Ann Griffin

There are more than 50,000 service dogs working in the United States.¹ The use of service dogs in the U.S. began in the early twentieth century when dogs were trained to assist the blind.² As we have learned more about the ways in which dogs can assist people with a variety of physical and mental challenges, the number of service dogs has increased dramatically, and it is a safe bet that the number will continue to increase. Even though it is not unusual to encounter a service dog in public, ignorance of the applicable laws and outright discrimination exist. This overview of federal and Michigan law will address various types of access for service dogs.

The Relevant Laws

It warrants mentioning that no fewer than three federal agencies enforce rules regarding service animals: the Department of Housing and Urban Development, the Department of Justice (ADA – Civil Rights), and the Department of Transportation – meaning a disabled person who leaves [his or her] apartment, takes a bus or cab to the airport, and gets on a plane has navigated three different federal sets of rules and regulations.³

This article will focus on three categories of federal regulations relevant to service dogs. The first include the regulations implementing Title II, subtitle A of the Americans with Disabilities Act of 1990⁴ (ADA) and Title III of the ADA.⁵ The regulations as related to service dogs under Title II, Subtitle A may be found in 28 C.F.R. Part 35 and those under Title III may be found in 28 C.F.R. Part 36. The second category of regulations includes those implementing the Air Carrier Access Act (ACCA),⁶ which may be found at 14 C.F.R. Part 382. The third category of federal regulations includes those related to service dogs in federal housing.⁷ These include the regulations at 24 C.F.R. Part 100, implementing the Fair Housing Act (FHA);⁸ 24 C.F.R. Part 5, regarding Housing and Urban Development (HUD) program requirements for the elderly and those with disabilities under the Housing and Urban-Rural Recovery Act of 1983;⁹ and 24 C.F.R. Part 960, which pertains to admission to and occupancy of HUD public housing under the U.S. Housing Act of 1937.¹⁰

This article will also briefly address relevant Michigan law regarding service dogs, which can be found in the Michigan Penal Code Chapter LXXII regarding public safety.¹¹



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Donald R. Garlit

(734) 451-9950

donaldgarlit@yahoo.com

Editor's Note

Welcome to the second issue of the Newsletter for 2014.

We have a very interesting article on service dogs in this issue. You will note that the laws covering service dogs are varied according to location, circumstances and the dogs themselves. We have case summaries of two recent Michigan case rulings. Other articles are the Treasurer's Report for 2013-14 FY to date, a press release and photos of the recent Wanda Nash Award Ceremony at Wayne State Law School, and recent news of animals and the law.

We continue to print the issue in all color including photographs and graphics. This greatly increases the visual appeal of the Newsletter.

I plan to send out a request for articles on the Section listserv soon after you receive this issue. It will be a request for articles with some suggested general topics. I am hoping that some members will be able to assist with an article.

As always, please remember that this is your newsletter, too. Helpful articles are always needed. In fact, if I can get one good main article for each issue, I can do the rest. Please consider writing an article that will be of interest to your fellow Section members. I have had several members suggest or volunteer articles and I am looking forward to these and other articles.

Donald Garlit, Newsletter Editor
donaldgarlit@yahoo.com

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The Americans with Disabilities Act

Ashley is studying International Relations with a minor in Middle-Eastern Studies at Grand Valley State University. . . . And she has a PAWS Service Dog with her. At 18 months old, Ashley was diagnosed with Dejerine-Sottas syndrome, a disease that causes loss of sensation and muscle mass and results in weakness of her limbs. Ashley always planned to go to college after high school, but didn't feel anywhere close to being able to take care of herself while there. . . . So she decided to apply for a PAWS Service Dog. . . . "I really hated having to be in a situation where I had to interrupt someone to help me. It just gave them another reason to view people with disabilities as vulnerable and needy." Ashley added, "There were many experiences like that. I was excited when I got MAUI because I knew I would never have to ask somebody to pick up my mittens again!" Every day MAUI helps Ashley get in and out of bed, open a door or refrigerator, and pull off her clothing. Ashley says the biggest thing MAUI does is, "pick something up. She has saved me from that feeling of desperation. When I drop something now, it's no big deal."¹²

The public places Ashley may go with her service dog, MAUI, are determined by the ADA and its related regulations. Title II, subtitle A of the ADA prohibits public entities, such as state or local government, from discriminating against persons with disabilities.¹³ Title III of the ADA protects persons with disabilities

from discrimination by places of public accommodation and commercial facilities.¹⁴

What is a Service Dog?

The federal regulations implementing the ADA define a service dog as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”¹⁵ It is interesting to note that while this article primarily focuses on service dogs, the ADA regulations also recognize service miniature horses, so long as the miniature horse has been trained to perform tasks on behalf of the disabled person and certain criteria are met.¹⁶ While service miniature horses are a relatively new phenomenon, they have been successfully trained as guide or service animals for the visually impaired.¹⁷ The service miniature horse option could be particularly beneficial to a visually impaired person who is allergic to dogs.¹⁸ The same provisions that apply to a service dog would apply to a qualified service miniature horse.¹⁹

Under the ADA regulations, the key component of the definition is whether the service dog or miniature horse performs beneficial tasks. While some people use what are called “emotional support dogs,” under the federal regulations, “the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition,” thus, emotional support dogs are excluded from the ADA definition of a service dog.²⁰



Rudy, the author’s certified therapy dog who visits nursing homes and schools.



Miniature horses are now being used as service animals for the visually impaired

It is also important to distinguish animal-assisted therapy (AAT) dogs from service dogs. “Therapy [d]ogs . . . are family pets that are trained and registered or certified through therapy organizations. They are only half of the therapy team. The handler is the other half. Therapy teams enter nursing facilities, hospitals, schools and other facilities by invitation or prior approval. Therapy animals do not have legal rights.”²¹ For example, the author and Rudy, an adopted English Shepherd (pictured at left), are a therapy team certified by Therapy Dogs International, Inc.²² AAT dogs work in partnership with their handlers and are considered the handlers’ pets, which distinguishes them from service dogs. While a particular institution may allow them access, AAT dogs are not entitled to the public access afforded to service dogs by federal and state law.

Identifying a Service Dog

Public entities and places of public accommodation are not allowed to ask a person with a service dog about the nature or extent of his or her disability. The regulations do allow two inquiries to be made as to whether the dog qualifies as a service animal. It is permissible to “ask if the animal is required because of a disability and what work or task the animal has been trained to perform.”²³ However, these questions may not be asked if it is obvious that the animal is providing service or performing tasks for a disabled person.²⁴ The regulations do not allow public entities and places of public accommodation to ask for documentation that the animal “has been certified, trained, or licensed as a service animal.”²⁵

Public Access for Service Dogs

The ADA regulations require a public entity or public accommodation to “modify its policies, practices, or proce-

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dures to permit the use of a service animal by an individual with a disability.”²⁶ For example, a restaurant that has a “no pets” policy is required to make an exception to that policy for a service dog. Places of public accommodation must allow a disabled person accompanied by a service dog “in all areas . . . where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.”²⁷ A public entity must allow a person with a disability who has a service dog “in all areas of a public entity’s facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.”²⁸ Neither a public entity nor a public accommodation is responsible for supervising or caring for the service dog.²⁹

Neither a public entity nor a public accommodation may ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public accommodation normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.³⁰

Can a Service Dog be Legally Excluded?

There are two situations in which a public entity or a public accommodation may request that a disabled person remove his or her service animal from the premises. The first is when “(t)he animal is out of control and the animal’s handler does not take effective action to control it,” and the second is when “(t)he animal is not housebroken.”³¹ A public entity that legally excludes a service animal must give the disabled person “the opportunity to participate in the service, program, or activity without having the service animal on the premises.”³² If a public accommodation properly excludes a service animal, it is required to “give the individual with a disability the opportunity to obtain goods, services, and accommodations without having the service animal on the premises.”³³

Air Carrier Access Act

“Sgt. 1st Class Kevin Crowell served for more than 20 years, including countless hours in combat. He came home in 2013, and like many veterans returning home, now suffers from post-traumatic stress disorder.”³⁴ Sgt. Crowell has a service dog, a Golden Retriever named Bella.³⁵ Sgt. Crowell has traveled with Bella on numerous occasions.³⁶ But in early

May 2014, when Sgt. Crowell attempted to fly on American Airlines from Miami to Key West with Bella and his family to attend a Wounded Warriors Project event, flight attendants removed him from the flight.³⁷ This situation is not governed by the ADA, which only applies as far as the gate. Whether it was legal to exclude Sgt. Crowell and Bella from the flight depends on the provisions of the Air Carrier Access Act (ACCA)³⁸ and related regulations,³⁹ which prohibit discrimination against an airline passenger based on his or her disability.⁴⁰

What is a Service Dog?

The regulations implementing the ACCA do not explicitly define the term “service animal.” The regulation states that a carrier “must permit a service animal to accompany a passenger with a disability.”⁴¹ The service animal cannot be denied access to the cabin “on the basis that its carriage may offend or annoy carrier personnel or persons traveling on the aircraft.”⁴² The regulations do distinguish between service animals and emotional support animals with regard to the documentation that may be required.⁴³

Identifying a Service Dog

When identifying a service animal, airline personnel “must accept identification cards, other written documentation, presence of harnesses, tags or the credible verbal assurances of a qualified individual with a disability using the animal.”⁴⁴ However, in the case of an emotional support or psychiatric service animal, more specific documentation may be required. A passenger wishing his or her emotional support or psychiatric service animal to travel in the cabin must provide:

current documentation (i.e., no older than one year from the date of the passenger’s scheduled initial flight) on the letterhead of a licensed mental health professional (e.g., psychiatrist, psychologist, licensed clinical social worker, including a medical doctor specifically treating the passenger’s mental or emotional disability) stating the following:

- (1) The passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders--Fourth Edition (DSM IV);
- (2) The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger’s destination;

(3) The individual providing the assessment is a licensed mental health professional, and the passenger is under his or her professional care; and

(4) The date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.⁴⁵

Airline Access for Service Dogs

An airline "must permit the service animal to accompany the passenger with a disability at any seat in which the passenger sits."⁴⁶ If, however, the animal would block an aisle or obstruct an emergency evacuation route, the airline "must offer the passenger the opportunity to move with the animal to another seat location, if present on the aircraft, where the animal can be accommodated."⁴⁷

Can a Service Dog be Legally Excluded?

If a service dog is going to be on a flight anticipated to last eight hours or more, the airline

may, as a condition of permitting a service animal to travel in the cabin, require the passenger using the service animal to provide documentation that the animal will not need to relieve itself on the flight or that the animal can relieve itself in a way that does not create a health or sanitation issue on the flight.⁴⁸

Although the regulations do not define service animals, the regulations do provide that an airline does not need to allow "certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin."⁴⁹ Instead, the regulations give the carrier the discretion to determine whether the animal may be safely accommodated, considering such factors as

whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, [or] whether it would be prohibited from entering a foreign country that is the flight's destination.⁵⁰

It is interesting to note that the regulations do not require foreign carriers to transport any service animals other than dogs.⁵¹ An airline that excludes a service animal "must explain the reason for [its] decision to the passenger and document it in writing."⁵²

Federal Housing Laws

Abigail Janes claims that in April 2014, a staff member at Sage Terrace Apartments in Kalamazoo, Michigan told her that her emotional support dog, Atheena, would not be welcome (despite the complex's policy allowing pets) because Atheena is an American Staffordshire Terrier.⁵³ Atheena is a "nationally registered emotional therapy dog that helps Janes deal with anxiety and depression."⁵⁴ In an interview with the news agency investigating the story, the regional manager for the apartment complex said that as long as Janes' and Atheena's paperwork is in order, the apartment complex would not refuse Atheena because of her breed. Whether the apartment complex could legally refuse to rent to Janes because of her emotional support dog depends on various federal rules, some of which overlap.

For example, the Fair Housing Act (FHA) is broad and covers virtually all types of housing.⁵⁵ As implied by the title, the FHA is intended to codify the U.S. policy of providing for fair housing throughout the United States.⁵⁶ This policy is also expressed in the regulations.⁵⁷ With regard to service dogs, FHA regulations provide:

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants [to] live in a dwelling unit with a seeing eye dog. The building has a no pets policy. It is a violation of [this section] for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.⁵⁸



An American Staffordshire Terrier

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In addition to the broad housing laws contained in the FHA, there are statutes that address animals in specific types of housing. For example, the Housing and Urban-Rural Recovery Act of 1983⁵⁹ pertains specifically to housing projects for the elderly and disabled.⁶⁰ The related regulations state:

Project owners and [public housing agencies (PHAs)] may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This exclusion applies to animals that reside in projects for the elderly or persons with disabilities, as well as to animals that visit these projects.⁶¹

A similar provision is included in the regulations⁶² implementing the United States Housing Act of 1937,⁶³ which applies to public housing.

What is a Service Dog?

Neither the FHA nor the HUD regulations define the term service dog or service animal.⁶⁴ However, in a memorandum providing guidance to entities covered by the FHA and/or HUD regulations, HUD stated, “An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.”⁶⁵

It is interesting to note that while the ADA limits the definition of service animal to a dog and excludes dogs that are used for emotional support, the FHA and HUD regulations impose no such restrictions. In fact, the preambles to the ADA regulations specifically indicate that animals other than dogs and emotional support dogs may qualify as a “reasonable accommodation” under the housing rules.⁶⁶

Identifying a Service Dog

Federal housing regulations related to service animals focus on whether allowing the animal to live in housing covered by the regulations is a reasonable accommodation. Housing providers are directed to answer the following questions in evaluating a request for accommodation of a service animal:

1. Does the person seeking to use and live with the animal have a disability – i.e., a physical or mental impairment that substantially limits one or more major life activities?

2. Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?⁶⁷

If both questions are answered in the affirmative, the law requires the housing provider to modify any policies as necessary to allow the animal to live with the person.⁶⁸ The housing provider is allowed to ask for documentation of a disability or of the disability-related need for a service animal if either or both are not readily apparent.⁶⁹ In cases where the federal housing laws and ADA both apply, the housing provider should first apply the ADA service animal test.⁷⁰

Federal Housing Access for Service Dogs

If the applicable criteria are met, a housing provider is required to allow the animal to live with the individual and to accompany him or her wherever he or she is allowed to go.⁷¹

Can a Service Dog be Legally Excluded?

If the answer to either or both of the questions listed above is no, then the service animal may be legally excluded.⁷² Further, even if both of the questions are answered in the affirmative, the housing provider will not be required to permit the service animal to live in a dwelling if “doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services.”⁷³ For example, if the service animal is a dog of a particular breed excluded by the housing provider’s insurance policy, and “[i]f a housing provider’s insurance carrier would cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or a certain animal, HUD will find that this imposes an undue financial and administrative burden on the housing provider.”⁷⁴

The housing provider may also legally consider the characteristics of the specific assistance animal in question with regard to allowing it as a reasonable accommodation. A service animal may be legally excluded if it “poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation.”⁷⁵ An animal that “would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation” may also be legally

excluded.⁷⁶ This analysis must be conducted on a case-by-case basis focused on objective information about the specific animal and cannot be speculative or based on the behavior of other animals.⁷⁷ Deposits and other restrictions that may apply to pets may not be applied to service animals.⁷⁸

Michigan Law

Michigan law pertaining to service dogs applies to both public access and access to housing.

What is a Service Dog?

Michigan law does not define the term “service dog,” but the statute regarding public access for persons with disabilities refers to guide or leader dogs, hearing dogs, and service dogs.⁷⁹ Some states’ statutes refer to “service animals,” meaning that an animal other than a dog, such as a monkey, could potentially be entitled to public access under that state’s law.⁸⁰

Identifying a Service Dog

In Michigan, a service dog should be “wearing a blaze orange leash and collar, hearing dog cape, or service dog backpack.”⁸¹ Contrary to federal rules, in Michigan, the person with the service dog must have “in his or her possession a pictured identification card certifying that the dog was trained by a qualified organization or trainer.”⁸² While a person who believes he or she was discriminated against could pursue a remedy under federal law without such identification, it may be necessary to file a criminal complaint under the Michigan statute. It is a misdemeanor in Michigan, punishable by a fine of not more than \$10.00, to be in possession of a dog that is wearing a blaze orange leash and collar or harness in a public place unless the person is “deaf, audibly impaired, or otherwise physically limited.”⁸³

Public Access for Service Dogs

Under the Michigan Penal Code, it is a misdemeanor for “an owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public or private housing, accommodation, amusement, or recreation. . . [to refuse] to permit a person with disabilities to enter or use the place when the place is available because the person with disabilities is being led or accompanied by a guide or leader dog, hearing dog, or service dog.”⁸⁴ As noted above, this applies in situations where the service dog is “wearing a blaze orange leash and collar, hearing dog cape, or service dog backpack.”⁸⁵ This rule also applies to a trainer who is working with a guide or leader dog, hearing dog, or service dog.⁸⁶

Conclusion

Animals are taking a more significant role in our daily lives. Some animals, such as service dogs, provide a level of independence and mobility to disabled people that they would not otherwise have. The laws have changed to provide greater public and housing access to these service dogs, and because any of us could encounter a service dog at any time, familiarity with these rules is beneficial to everyone. Unfortunately, the number and complexity of these rules makes them difficult for disabled individuals, the entities to whom the rules apply, and the general public to comprehend. 🐾

About the Author



Ann Griffin

Ann Griffin designed and implemented the first Animal Law class at the University of Detroit Mercy School of Law in Fall 2011, and she has taught the class every fall since its introduction. A former employee of the Michigan Humane Society, Ann is an active MHS volunteer. And as noted above, she and Rudy are a Therapy Dog International certified therapy team.

Endnotes

- 1 *What is a Service Dog?*, Positive Service Dog Solutions, <http://pawsitivesolutions.org/what-is-a-service-dog/> (last visited June 2, 2014).
- 2 Rebecca F. Wisch, *Detailed Discussion of Assistance Animal Laws*, Michigan State University Animal & Legal Historical Center (2007), <http://www.animallaw.info/topics/tabbed%20topic%20page/spusassistanceanimals.htm>.
- 3 Splinterfl, *Federal-HUD/FHA Housing Laws*, Service Dogs of Florida, Inc. (Sept. 7, 2011), <http://2012.servicedogsfl.org/?p=32>. This article does not address service dog access to forms of public transportation other than aircraft.
- 4 42 U.S.C. § 12131 (2013).
- 5 42 U.S.C. § 12181 (2013).
- 6 49 U.S.C. § 41705 (2013).
- 7 John Ensminger & Frances Breitkopf, *Evolving Functions of Service and Therapy Animals and the Implications for Public Accommodation Access Rules*, Part II.E.4, Michigan State University College of Law Animal Legal and Historical Center (2009), <http://www.animallaw.info/articles/arusersminger2009.htm>.
- 8 42 U.S.C. § 3601 (2013).
- 9 12 U.S.C. § 1701r-1 (2013).

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- 10 42 U.S.C. § 1437z-3 (2013).
- 11 Mich. Comp. Laws Ann. § 750.502c (West 2014).
- 12 Paws with a Cause, Paws Stories, *Ashley & MAUI's Story: Working as a Team*, <https://www.pawswithacause.org/who-we-are/stories> (last visited June 2, 2014).
- 13 42 U.S.C. § 12131 (2013).
- 14 42 U.S.C. § 12181 (2013).
- 15 28 C.F.R. §§ 35.104, 36.104 (West 2013).
- 16 28 C.F.R. §§ 35.136(i), § 36.302(c)(9) (West 2013).
- 17 The Guide Horse Foundation, *The Guide Horse Program*, <http://www.guidehorse.com> (last visited June 2, 2014).
- 18 The Guide Horse Foundation, *Common Misconceptions About Guide Horses*, <http://www.guidehorse.com/misconceptions.htm> (last visited June 2, 2014).
- 19 28 C.F.R. §§ 35.106(i)(3), 36.302(9)(iii) (West 2013).
- 20 28 C.F.R. §§ 35.104, 36.104 (West 2013).
- 21 Dreamworkers, Inc., *What is a Therapy Animal?*, <http://www.dogsaver.org/dreamworkers/whatisdwdog.html> (last visited June 2, 2014).
- 22 For more information about TDI and its requirements to certify a therapy dog, please visit www.tdi-dog.org.
- 23 28 C.F.R. §§ 35.136(f), 36.302(c)(6) (West 2013).
- 24 *Id.*
- 25 *Id.*
- 26 28 C.F.R. §§ 35.136(a), 36.302(c)(1) (West 2013).
- 27 28 C.F.R. § 36.302(c)(7) (West 2013).
- 28 28 C.F.R. § 35.136(g) (West 2013).
- 29 28 C.F.R. §§ 35.136(e), 36.302(c)(5) (West 2013).
- 30 28 C.F.R. §§ 35.136(h), 36.302(c)(8) (West 2013).
- 31 28 C.F.R. §§ 35.136(b)(1) & (2), 36.302(c)(2)(i) & (ii) (West 2013).
- 32 28 C.F.R. § 35.136(c) (West 2013).
- 33 28 C.F.R. § 36.302(c)(3) (West 2013).
- 34 Elisa Black-Taylor, *Veteran with PTSD and Service Dog Kicked Off American Airlines Flight in Miami*, [examiner.com](http://www.examiner.com/article/veteran-with-ptsd-and-service-dog-kicked-off-american-airlines-flight-miami) (May 8, 2014), <http://www.examiner.com/article/veteran-with-ptsd-and-service-dog-kicked-off-american-airlines-flight-miami>.
- 35 *Id.*
- 36 *Id.*
- 37 *Id.*
- 38 49 U.S.C. § 41705 (2013).
- 39 14 C.F.R. Part 382 (West 2014).
- 40 14 C.F.R. § 382.1 (West 2014).
- 41 14 C.F.R. § 382.117(a) (West 2014).
- 42 14 C.F.R. § 382.117(a)(1) (West 2014).
- 43 14 C.F.R. § 382.117(e) (West 2014).
- 44 14 C.F.R. § 382.117(d) (West 2014).
- 45 14 C.F.R. § 382.117(e) (West 2014).
- 46 14 C.F.R. § 382.117(b) (West 2014).
- 47 14 C.F.R. § 382.117(c) (West 2014).
- 48 14 C.F.R. § 382.117(a)(2) (West 2014).
- 49 14 C.F.R. § 382.117(f) (West 2014).
- 50 *Id.*
- 51 *Id.*
- 52 14 C.F.R. § 382.117 (g) (West 2014).
- 53 Jennifer Dowling, *Woman Said She Was Refused Housing Because of Therapy Dog's Breed*, Fox 17 West Michigan (April 30, 2014), <http://fox17online.com/2014/04/30/woman-said-she-was-refused-housing-because-of-therapy-dogs-breed/>.
- 54 *Id.*
- 55 U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, FHEO-2013-01, *Service Animals and Assistance Animals For People with Disabilities in Housing and HUD-Funded Programs* (April 25, 2013).
- 56 42 U.S.C. § 3601 (2013).
- 57 24 C.F.R. § 100.5 (West 2014).
- 58 24 C.F.R. § 100.204 (West 2014).
- 59 12 U.S.C. § 1701r-1 (2013).
- 60 24 C.F.R. § 5.300 (West 2014).
- 61 24 C.F.R. § 5.303(a) (West 2014).
- 62 24 C.F.R. § 960.701 (West 2014).
- 63 42 U.S.C. § 1437z-3 (2013).
- 64 U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, FHEO-2013-01, *Service Animals and Assistance Animals For People with Disabilities in Housing and HUD-Funded Programs* (April 25, 2013).
- 65 *Id.*
- 66 *Id.*
- 67 *Id.*
- 68 *Id.*
- 69 *Id.*

- 70 *Id.*
- 71 *Id.*
- 72 *Id.*
- 73 *Id.*
- 74 Bryan Greene, U.S. Department of Housing and Urban Development, Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation (June 12, 2006), <http://www.fairhousing.com/include/media/pdf/insurance-guidance.pdf>.
- 75 Sara K. Pratt, U.S. Department of Housing and Urban Development, New ADA Regulations and Assistance Animals as Reasonable Accommodations Under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 (February 17, 2011), http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf.
- 76 *Id.*
- 77 *Id.*
- 78 *Id.*
- 79 Mich. Comp. Laws Ann. § 750.502c (West 2014).
- 80 John Ensminger & Frances Breitkopf, *Evolving Functions of Service and Therapy Animals and the Implications for Public Accommodation Access Rules*, Part II.F, Michigan State University College of Law Animal Legal and Historical Center (2009), <http://www.animallaw.info/articles/arusensminger2009.htm>.
- 81 Mich. Comp. Laws Ann. § 750.502c(1) (West 2014).
- 82 Mich. Comp. Laws Ann. § 750.502c (West 2014).
- 83 Mich. Comp. Laws Ann. § 752.62 (West 2014).
- 84 Mich. Comp. Laws Ann. § 750.502c(1) (West 2014).
- 85 Mich. Comp. Laws Ann. § 750.502c(1) (West 2014).
- 86 Mich. Comp. Laws Ann. § 750.502c(2) (West 2014).

Graduating Wayne Law Student Receives Animal Law Section's Wanda Nash Award

Editor's Note: *The following press release is courtesy of the Wayne State University Law School and was provided by Shawn Starkey, Director of Marketing and Communications*

Rebecca K. Wrock, who graduated Monday, May 12, from Wayne State University Law School, has been awarded the 2014 Wanda A. Nash Award from the Animal Law Section of the State Bar of Michigan.

Wrock was presented with the award at a reception Tuesday, May 6, in the Law School's Damon J. Keith Center for Civil Rights. The award goes to the graduating law student in the state who has contributed most to the development of animal law.

She was nominated by Wayne Law Adjunct Professor Jerry Simonelli, who teaches animal law. The award is named for the founder of the Animal Law Section of the State Bar of Michigan, the first state bar association to approve such a section.

Wrock, a Westland resident, is president of Wayne Law's Student Animal Legal Defense Fund, shares her home with two dogs and a cat, and was instrumental in getting Simonelli's course offered at the school.

"She was an outstanding student in my class and is an active SALDF leader, sponsoring a robust program of speakers and activities," the professor wrote in his

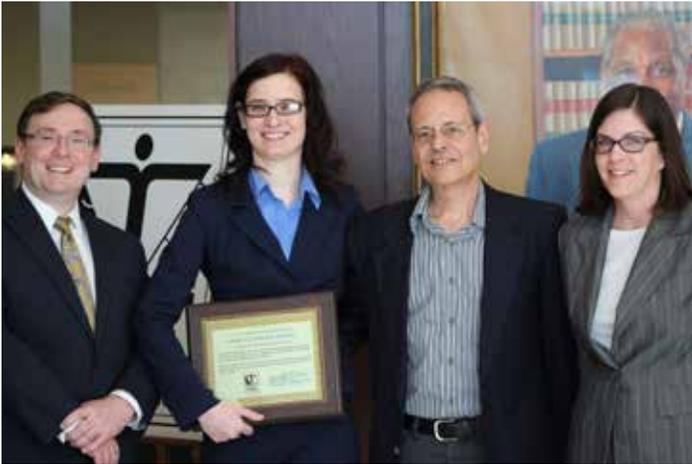


Animal Law Section Chair Jennifer Pierce presents Wanda Nash Award to Rebecca Wrock. Portrait in the background is Judge Damon Keith.

nomination. "Rebecca also serves as student representative to the Animal Law Section Council and was captain of Wayne State's 2014 National Animal Law Competition Appellate Moot Court Team. In addition, Rebecca is currently a

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Graduating ... continued from page 9



Rebecca K. Wrock, second from left, receives the Wanda A. Nash Award. With her are classmate Kenneth Cox, left; Adjunct Professor Jerry Simonelli, who nominated her for the award; and Jennifer Pierce, chair of the Animal Law Section of the State Bar of Michigan.

government relations intern at the American Society for the Prevention of Cruelty to Animals.”

Wrock said she found her role with the Student Animal Legal Defense Fund at Wayne Law to be one of the most fulfilling parts of her legal education.

“I can proudly say that even as a small group of only a few members, we offered many panels, presentations and events,” she said. “Although we’ve been a small and tight-knit group, I think we’re a testament to the difference that can be made by a few people who are really passionate about a cause.”

As a freshman at the University of Michigan, Wrock took a class called Relationships Between Humans and Animals, and was hooked on the topic, she said.

“Ultimately, my degree was in brain, behavior and cognitive science, but I felt like most of my classes ended up being in animal behavior,” she said.

In one such class, she learned about Class B dog dealing, where “random source” dogs are sold for research, and watched the documentary, *Dealing Dogs*.

“I knew then that I wanted to get involved with protecting animals rather than just learning about their behavior, and animal law got added to my list of legal interests,” Wrock said. “I really think that animal law is starting to pick up as a field. People battle over the custody of animals in divorce settlements and provide for their pets in their wills.”

Wrock has other legal interests, as well. She was president and a founding member of the Tax & Estate Planning Student Association at Wayne Law, acting president of the Wayne Intellectual Property Student Association, governor-at-large of the Student Bar Association Board of Governors, and a member of the Environmental Law Society, as well as a participant in Wayne Law’s Student Voluntary Pro Bono Program, for which she was awarded a Warrior Pro Bono Award.

“I’m hoping to pursue an LL.M. in tax law in the fall and ultimately practice in estate planning, tax, trademark, copyright and animal law,” she said. ♣

[Note: Some technical editing changes were made to this press release after initial publication and the changes are incorporated above.]



Rebecca Wrock discusses her Wanda Nash Award with Prof. Jerry Simonelli who nominated her for the award.



Rebecca Wrock shows the Wanda Nash Award to her parents, Robert and Julie Petroff.

Recent Animal Law News

All 50 States Now Have Felony Provisions for Animal Cruelty

South Dakota approved legislation in March 2014 setting felony penalties for malicious acts of animal cruelty. All 50 states and the District of Columbia now have some form of felony animal cruelty laws. Prior to 1986, only four states had animal cruelty laws that had felony provisions. Michigan's felony provisions date from 1931 (4th state in nation to have such provisions) although Massachusetts' dates from 1804. North Dakota became the 49th state with such provisions by adding them in 2013.

Source is the Humane Society of the United States: http://www.humanesociety.org/news/news_briefs/2014/03/south-dakota-lawmakers-enact-stronger-animal-cruelty-penalties-031414.html

The South Dakota law also established felony penalties for cockfighting (felony in 41 states and misdemeanor in remaining nine).

Massachusetts Supreme Judicial Court Rules Animal Cruelty is "Pure Emergency" Overriding the Need for a Search Warrant

In the case of *Commonwealth v. Heather M. Duncan*, police entered a yard in Lynn after they were able to look over a privacy fence and see two dead dogs and one live dog in apparent distress. They entered the fenced yard (after a lock was broken by the fire department) to help the dog. Defendant Duncan was charged with animal cruelty and challenged the legality of the warrantless search. The prosecutor challenged the lower court ruling in favor of defendant Duncan regarding the legality of the search.

The Massachusetts Supreme Judicial Court heard arguments in December 2013 and ruled in April 2014 that the emergency aid exception to the search warrant requirement extends to animals.

Interestingly, a similar case in Fitchburg was on hold pending the finding of the Supreme Judicial Court.

Source is Justia US Law at: <http://law.justia.com/cases/massachusetts/supreme-court/2014/sjc-11373>

Section member Bee Friedlander has an interesting and detailed blog on the facts of the Duncan case (written before the latest ruling) at the Animals & Society website at: <http://www.animalsandsociety.org/blog/is-a-dying-dog-an-emergency>

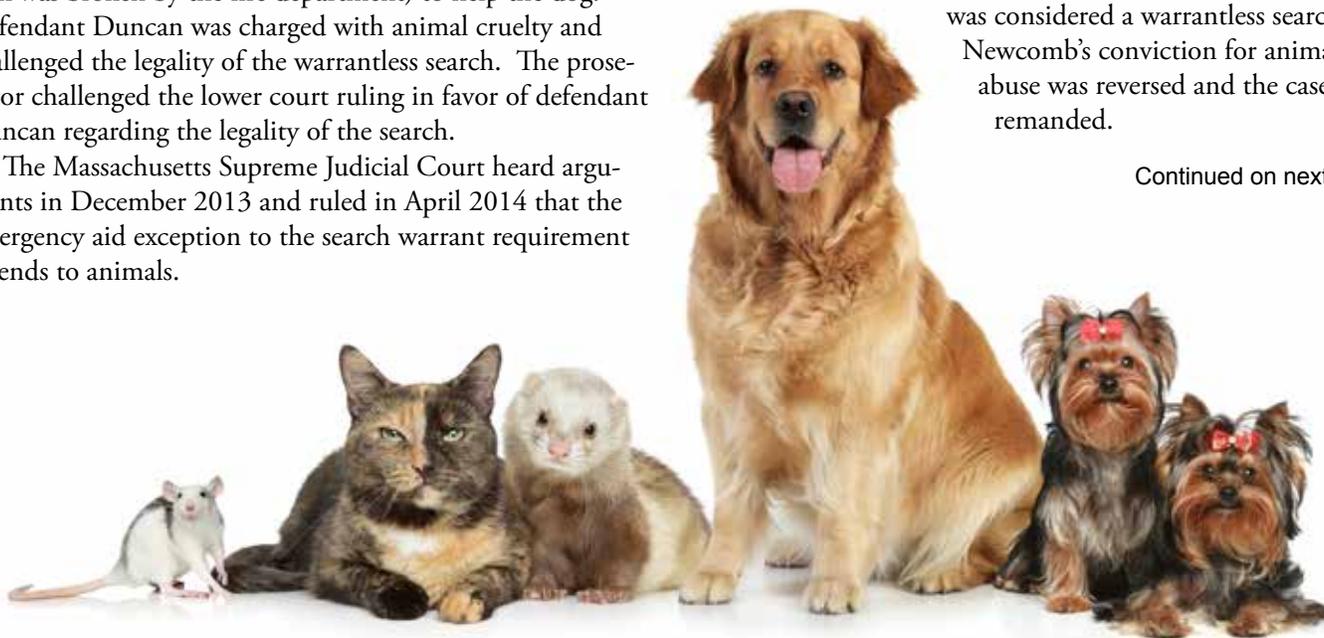
Oregon Court of Appeals Rules Dog in Distress May be Seized without a Warrant Yet May Not be Examined

In the case of *Oregon v. Amanda L. Newcomb*, an animal control officer observed and then seized a dog in distress without a search warrant. A veterinarian then took blood samples and observed the dog's weight over several days. The defendant challenged the seizure and subsequent "search" of the dog as not permissible on the grounds of "constitutional possessory and privacy rights."

The Oregon Court of Appeals ruled that seizure of a dog in distress was permissible under the "plain view" doctrine. The Court ruled that, under the privacy rights principles of the Oregon Constitution regarding personal effects, the blood test was a "search" as "those actions constitute a physical invasion of the defendant's personal effects that revealed otherwise concealed evidence."

As the examination of the dog was considered a warrantless search, Newcomb's conviction for animal abuse was reversed and the case was remanded.

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Recent Animal Law News *continued from page 11*

Source is State of Oregon Judicial Department at: <http://www.publications.ojd.state.or.us/docs/A149495.pdf>

The Animal Legal Defense Fund has a blog discussion of the implications of the ruling at: <http://aldf.org/blog/one-step-forward-two-steps-back-damage-control-in-the-wake-of-state-v-newcomb/>

Case Involving Registration of Cloned Pedigree Horses

A lawsuit has challenged the rule of the American Quarter Horse Association against registering cloned horses.

Section member Sara Chisnell (United Kennel Club Legal Counsel) has written an interesting essay on cloning and registration at: <http://www.ukcdogs.com/Web.nsf/News/ToCloneorNottoClone-Show05082014040415PM>

Fifth Circuit Court of Appeals Upholds Federal Animal Crush Video Prohibition Act

The following is per a press release from the Humane Society of the United States:

“The U.S. Court of Appeals for the Fifth Circuit has reinstated the 2010 Animal Crush Video Prohibition Act and reversed a lower court’s ruling that had declared the law unconstitutional. In the first prosecution of its kind after the anti-crush law passed, two people in Texas were charged with creating and distributing videos that involved horrific acts of sexualized animal cruelty. However, the District Court held that the law, referred to as Section 48, was unconstitutional, violating the First Amendment.”

The US Supreme Court ruled in 2010 in *US v Stevens* that the 1999 Depiction of Animal Cruelty Act was “overbroad”. The 2010 Animal Crush Video Prohibition Act was passed subsequent to the *Stevens* decision to have a constitutionally compliant law regarding animal crush videos.

More information is at: http://www.humanesociety.org/news/news_briefs/fifth_circuit_upholds_animal_crush_prohib_act_061314.html

Treasurer’s Report – 2013-2014 FY (7 Months Ending April 30, 2014)

This is a summary of the Animal Law Section’s financial status as of April 30, 2014. The purpose of this summary is to assure the members that the Animal Law Section is operating and maintaining a sound financial status, and that your Section dues are being spent responsibly and for appropriate purposes.

Expenses for the year to date have included \$912 for two newsletters, \$280 for the listserv (used by all members as well as for communications from the Animal Legal Lifeline), \$72 for telephone conference calls for meetings of the Section Council and Legislative Committee, annual meeting room rental of \$150, and \$14 for postage expenses.

The current fund balance is \$17,216; an increase of \$875 from the prior year’s balance as of the same date.

Respectfully submitted,

Anna Scott
Treasurer
May 2014



Case Summaries

By Barbara Goldman

Michigan Court of Appeals Rules that Statute which Imposes a Felony Penalty for Owner of “Dangerous Animal” that Attacks Person is not a “Strict Liability” Offense

In *People v Janes*, 302 Mich App 34; 836 NW2d 883 (2013), the Court of Appeals held (in an opinion by Judge Michael J. Kelly, with Judge Borrello concurring) that MCL 287.323(2), which imposes a felony penalty on the owner of an animal that “that meets the definition of a dangerous animal in [MCL 287.321(a)] [and] attacks a person and causes serious injury,” is not a “strict liability” offense.

The defendant’s pit bull attacked a child. The defendant had obtained the dog from a shelter, which did not have any documented history of viciousness although a prior owner said it had been abused before she adopted it. The dog was “aggressive” toward a smaller dog in the household and, although the defendant did not know it, had bitten the owner’s adult son.

The district court bound the defendant but the Alger Circuit Court (Judge William W. Carmody) reversed in part. The Court of Appeals, after extended analysis, held that the statute did not contain a “mens rea” requirement and that no legislative intent to include one could be inferred.

[T]he prosecution must prove the following elements beyond a reasonable doubt in order to convict [the defendant] under MCL 287.323(2): (1) that [he] owned or harbored a dog or other animal, (2) that the dog or other animal met the definition of a dangerous animal provided under MCL 287.321(a) before and throughout the incident at issue, (3) that he knew that the dog or other animal met the definition of a dangerous animal within the meaning of MCL 287.321(a) before the incident at issue, and (4) that the animal attacked a person and caused a serious injury other than death. [302 Mich App 54.]

Judge Jansen dissented. No application for leave to appeal was filed.

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“Control” Issue Ruling by Michigan Supreme Court Decides Case for Property Owner Involving Accident Caused by Horse Owned by Property Occupier

In *Sholberg v Truman*, ___ Mich ___ (Docket No. 146725, rel'd 6/10/14), the Supreme Court held that the title owners of a farm, who did not live there, were not liable for an accident caused by an escaped horse. The facts are rather involved, but essentially a husband and wife held the fee ownership of a farm which was occupied by the husband's estranged brother. Neither defendant had been on the property for years before the accident. There was evidence that horses and other animals had “eloped” from the property and the plaintiff alleged that the defendants were liable for allowing the existence of a “public nuisance.” The Supreme Court “assume[d], without deciding, that incidents of animal elopement can constitute a public nuisance.” Slip op, p 5. It went on to hold that the defendants could not be liable because they did not “control” the property:

[The defendants] have never possessed or exercised any control over the property. They have not even visited the property in more than a decade. They have no contact with the person who is in actual possession of the property and who is exercising

control over that property. Defendants also had nothing to do with the horse that caused the accident in this case or with any other horse on the property. They did not own, possess, or control the horse. Indeed, they did not even know that Daniel Truman owned the horse. [Slip op, p 11.]

The court emphasized, however, that “evidence of knowledge or the lack thereof is [not] dispositive evidence of control or the lack thereof.” Slip op, p 12, n 11. The court also effectively held that a “right to control” did not constitute “control.” Slip op, n 12. Although it did not address the question, the court suggested that it is possible that “an absentee landowner *could* be held liable for a nuisance where *no one* is in possession of or exercising control over property.” Slip op, p 12, n 13. Justice Cavanagh concurred; Justice Viviano concurred in part and dissented in part, citing an extensive case law that would allow property owner to be partially at fault for a nuisance created by a nonowner in possession.

The effect of the *Sholberg* decision remains to be fully determined. The negative implication is that a property owner, such as a landlord, who *does* retain control of property may be liable on a nuisance theory if the tenant maintains an animal that creates a risk to the public. At the least, it may be question of fact. 🍷





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Animal Law Section Annual Meeting

Friday, September 19, 2014

1:30 p.m. - 3:30 p.m.



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Upcoming Events

July 11-12, 2014

Second Annual International Animal Law Conference in Barcelona, Spain

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State Bar of Michigan Annual Meeting in Grand Rapids

Friday, September 19, 2014

1:30 – 3:30 PM

Annual Animal Law Section Meeting in Grand Rapids during SBM Annual Meeting

