

COMMITTEE NEWS



Animal Law

Special Professional Ethics Issue

Dog-gone it! Can I Help My Animal Law Client Without Breaking the Ethical Rules?

Clients regularly engage animal law attorneys for issues involving wildlife, farmed animals, animals used in research or entertainment, and their own individual companion animals. Although the efforts of an animal protection attorney may be aimed at bettering the treatment of all animals, specific client goals can vary. This can lead to unanticipated ethical issues, as set forth in the American Bar Association (ABA) *Model Rules of Professional Conduct* and addressed in the examples below.

Example 1: Declawed

Attorney Drew Gooder filed a civil complaint on behalf of her clients, the Grubbers, for veterinary malpractice against a defendant veterinarian and animal clinic. The Grubbers' cat, Pounce, endured a botched declaw resulting in a severe infection and the amputation of Pounce's right forepaw. The Grubbers expressed their strong desire to use Pounce's case in a public campaign to outlaw declawing throughout the United States. Already having pushed Attorney Gooder into calling a press release at the time of filing, and with the Grubbers regularly posting updates about the case on social media, Pounce's case gained national attention and Attorney Gooder began receiving calls from numerous other clients of the defendant veterinary chain, "Cut It Out Clinic," whose corporation operates from hundreds of locations throughout the U.S. and focuses on feline declaw and canine devocalization surgeries.

The defendants approach Attorney Gooder with a proposal for settlement including an unexpectedly high dollar payment to the Grubbers, contingent upon (1) the removal of all existing and stopping all future social media references to Pounce, (2) barring the Grubbers *and* Attorney Gooder from revealing the terms of settlement, (3) mandating the Grubbers instruct their social media and media contacts not to disparage the defendants, and (4) barring the Grubbers *and* Attorney Gooder from making any disparaging communications about the defendants. Attorney Gooder,

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ANIMAL LAW DOCKET

Practice Tips For Animal Law Cases

Practicing Animal Law—Applying Professional Ethics While Dealing with Immoral and Unethical Conduct

One of the things I love about practicing law is that, to observe the legal requirements of practice, I must act candidly and ethically towards the courts and everyone else involved. I like the legal requirement to act ethically because it keeps me in check when I might want to lash out at adversaries who are promoting and defending some of the worst treatment of animals or the decimation of species. At the same time, that absolute hold on what may be human nature is one of the things that makes this practice the most difficult. When faced with some of the most abject, immoral, undeniable cruelty to living beings; when addressing sworn declarations saying that conditions of intensive confinement, mutilation, and abuse in the farm animal setting are “humane”; when dealing with hoarders who neglect hundreds of animals and accuse my humane organization clients of abuse; and when faced with all of the lawyers who represent those interests, who often gladly fabricate stories for the courts about the treatment of the animals, it is a major challenge not to lash out. But I am prohibited from acting in kind, both by the rules of professional responsibility and the ethical requirements of being the kind of attorney I was trained to be. The good news is, for virtually all my cases, I do feel like I am on the right side of the moral continuum.

The list of examples of unethical behaviors I have witnessed over the course of my career is long. There are, of course, the blatant, provable lies—that a group of hoarded animals was all healthy and under a veterinarian’s care when they were actually emaciated, infected, infested, and the only medications on site were more than five years old. Or that it is “humane” to keep pigs in gestation crates where they cannot move except to stand up and lie down in their own waste, or to keep hens in battery cages after cutting off the end of their beaks and most of their toes without anesthesia. Lies like these are best dealt with by presenting the truth to the courts, and as long as all goes as it should, that deals with the unethical conduct while maintaining integrity. But then there are those situations that can’t be as easily addressed, like when opposing counsel fabricates stories about the treatment of

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animals, for the very first time in a case, in the middle of an appellate argument, on a point of interest to the court, and my only available response at the moment is “that’s not true.”

I have noticed, over thirty years of this work, that the perpetrators of animal abuse, as well as their lawyers, seem to be motivated to lie about how their actions have impacted animals. Perhaps their involvement in the cruelty somehow puts their moral compass completely out of whack, so that bad becomes good and anything becomes a valid justification—even a lie. Or maybe the obvious suffering of the animals causes people involved to posit justifications, even if they are totally false, so that they can sleep at night. Either way, I have seen it again and again. It’s almost a guarantee that the truth will be twisted or obfuscated in working on these cases.

Despite that, it is our duty—both to the states in which we are licensed, the courts in which we practice, and the clients we serve—to maintain integrity, i.e., the core of the ethical practice of law. Our first reactions—to meet insult with insult, to fight fire with fire—must be sublimated by the importance of professionalism, candor, and respect for all involved. While it may be hard at first to cooperate with the other side in cases of catastrophic suffering, I believe it is crucial in order to ensure that the still-growing field of animal protection law not be labeled as one characterized by tactics unbecoming of the profession, even if around us that is not the status quo.

When unethical conduct by opposing counsel violates court rules or the or the duty of candor to the tribunal, one’s approach to a resolution must always be carefully considered. While the initial inclination is probably always to seek sanctions through a contempt motion, that should be weighed against the expense and time such motions take, courts’ general unwillingness to grant those motions, and the limited chance of recovering all the fees put into the effort. While it may help to inform a court of the trustworthiness of opposing counsel, it may also not be necessary. Most courts will be able to identify lawyers who are willing to throw truth out the window and lie to a judge, without the cumbersome and time-consuming work of the contempt process.

One case that comes to mind was a rescue of some cats from a hoarder; my client was a nonprofit rescue group that discovered the neglect and the abuse, identified animals who needed immediate veterinary care, and got the hoarder to agree to turn over the cats to the rescue. After these events, and once the cats received expensive veterinary treatment and were healthy, the hoarder hired a lawyer who



was as willing as she was to lie. They concocted a story of pet theft against my client. The veterinarian involved refused to assist, absent a subpoena, and we did not want to force her. We discovered that the hoarder had actually made two calls to the sheriff's department, and that the sheriff's department recorded those calls, and that in plain English, the hoarder stated, "I turned the cats over to Mary [name changed] because I could not take care of them anymore."

Armed with this undeniable audio admission, we sent a copy to opposing counsel, who refused to respond and continued to publish the pet theft story in multiple briefs. We presented the evidence to the court in the form of a motion to strike testimony, and ultimately, in that case, we did file a substantive motion for contempt, given the lawyer's refusal to retract her statements or admit the surrender. We did that only after having exhausted multiple attempts to get a concession and agreement on the core of the case. But before the contempt motion could be heard, the other side agreed to a settlement completely favorable to my client. Our efforts to fight the unethical conduct with professional force had prevailed.

In general, animal protection lawyers are on the right side of the morals question and are challenged to maintain the high ethical standards of the profession while dealing with opponents who are neither ethical nor moral in their treatment of animals. It is this provocation that makes the practice one with hidden issues and dilemmas and one in which the need to address the ethical aspects of both practicing law and treating animals, often combine. ➤

