

## Animal Cruelty & Domestic Abuse A talk with Christine Mott

### I. Animal Cruelty Laws

- A. Many American families have pets in their households. When there is abuse in the home, often a pet is not spared from that abuse.
  - 1. Pets are easy victims for an abuser in the home. The abuser may target the pet as a method of abuse and control over another member of the household.
  - 2. Pets may be used to control or manipulate children in the home.
  - 3. Because domestic abuse is directed toward the powerless and vulnerable, animal abuse and intimate partner violence is inextricably linked.
  - 4. Many domestic abuse victims delay or refuse to leave their abuser or even return to their abuser out of fear for the safety of their pets.
- B. Protection for animals under the law
  - 1. All 50 states have animal cruelty laws and felony aggravated cruelty laws.
  - 2. Misdemeanor animal cruelty laws usually apply to all animals and prohibit conduct that subjects animals to unjustifiable harm.
    - a. E.g. New York's misdemeanor law
      - i. N.Y. Agriculture and Markets Law § 353: defines cruelty to animals as “overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal... or deprives any animal of unnecessary sustenance, food and drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits” such act.<sup>1</sup>
      - ii. Punishable with a fine up to \$1000 and/or imprisonment up to 1 year.
  - 3. Felony animal cruelty laws are generally aggravated or egregious instances of animal abuse.
    - a. E.g. New York's aggravated cruelty of animals felony law
      - i. N.Y. Agriculture and Markets Law § 353-a (AKA Buster's Law)<sup>2</sup>: with no justifiable purpose, intentionally killing or causing serious physical injury to a companion animal with aggravated cruelty.
      - ii. Defines “aggravated cruelty” as conduct intended to cause extreme physical pain or is carried out in an especially depraved or sadistic manner.
      - iii. Applies only to “companion animals” and not to livestock, farm, or wild animals.

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<sup>1</sup> N.Y. Agriculture and Markets Law § 353: <http://codes.findlaw.com/ny/agriculture-and-markets-law/agm-sect-353.html>

<sup>2</sup> N.Y. Agriculture and Markets Law § 353-a: <http://codes.findlaw.com/ny/agriculture-and-markets-law/agm-sect-353-a.html>

- b. “Companion animal”
  - i. N.Y. Agriculture and Markets Law § 350 defines “companion animal” or “pet” as any dog or cat. Includes “any other domesticated animal normally maintained in or near the household...”<sup>3</sup>
- c. *People v. Garcia*, 29 A.D.3d 255 (N.Y. App. Div. 2006)<sup>4</sup>
  - i. Aggravated cruelty to animals law was applied to the killing of a goldfish. Defendant lived in an apartment with Emelie Martinez and her 3 young children. Defendant stomped on a pet goldfish of one of the children and was charged with and found guilty of aggravated cruelty to animals.
  - ii. The appellate court found that goldfish were companion animals within the meaning of Agriculture and Markets Law §§ 353-a and § 350.

## II. Link between Animal Abuse & Domestic Violence

### A. Animal abuse and violence link

1. Abuse is not limited to physical violence and can take many forms including emotional, mental, and economic abuse. Nearly 1 in 4 women aged 18 and older in the US have been a victim of severe physical violence by an intimate partner in their lifetime.<sup>5</sup>
2. Pets are often vulnerable and may be the first target of an abuser who goes on to abuse humans. Animal abuse is considered to be a significant indicator of domestic violent behavior.
3. When a pet is targeted in the home, it is not unlikely that a human companion is the next target.
4. The abuser may continue to abuse that animal as a means of terrorizing a partner or child in that same home. This is also a form of domestic abuse.

### B. Lawyer-client relationship and ethical implications

1. Providing competent representation - lawyers have a duty to provide competent representation. Competency includes “legal knowledge, skill, thoroughness and preparation.” See Appendix A (Model Rule of Professional Conduct 1.1 Competence).

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<sup>3</sup> N.Y. Agriculture and Markets Law § 350: <http://codes.findlaw.com/ny/agriculture-and-markets-law/agm-sect-350.html>

<sup>4</sup> *People v. Garcia*, 29 A.D.3d 255 (N.Y. App. Div. 2006): [https://scholar.google.com/scholar\\_case?case=16893401706066961601&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=16893401706066961601&hl=en&as_sdt=6&as_vis=1&oi=scholar)

<sup>5</sup> Centers for Disease Control and Prevention (CDC). *Costs of intimate partner violence against women in the United States*. <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html>

2. Effective communication - lawyers have a duty to consult with the client about ways to achieve the client's objectives, to keep them informed about their case, and to provide information reasonably necessary for the client to make informed decisions. See Appendix B (Model Rule of Professional Conduct 1.4 Communications).
  3. These ethical obligations require lawyers to, at minimum:
    - a. Research and keep up to date on the specific state's protection order laws.
    - b. Ask the right questions. Ask about the presence of pets and any other animals living in the house. Work with shelters or safe haven programs.
    - c. Communicate with the client to understand what type of relief the petitioner seeks and what is in the best interest of the client.
    - d. Understand and communicate to the client how animal cruelty will impact the case.
    - e. Include animal abuse in the underlying offense portion of the petition (if state has such statutory provisions).
    - f. Gather evidence of past instances of animal abuse.
    - g. Include pets in safety planning.
    - h. Help victims retrieve animals and gain custody of animals.
- C. Including pets in orders of protection and restraining orders
1. An order of protection can be obtained through the criminal or civil court systems. An order of protection can order the abuser to stay away from the victim, the victim's workplace, and family members. It may also direct the abuser to refrain from any and all contact with the victim, including through phone calls, letters, emails.
  2. In a civil action, the victim can petition for an order of protection in the Family Court.
    - a. The petitioner can appear before the court pro se and obtain an ex parte order of protection, which would grant temporary and immediate protection.
    - b. The respondent must be served and notified of the hearing date. The petitioner has the right to have the police serve the summons and order.
    - c. The ex parte order of protection does not go into effect until the respondent is served.
    - d. At the hearing, the respondent must answer the allegations, either by consenting to the order or contesting the order. A contested order will result in the case going to trial during which each party may present evidence in support of their case.
    - e. A violation of the order of protection can result in criminal prosecution.

3. More than 30 states have legislation with provisions for pets in protection orders.
    - a. State laws either include animal abuse as an underlying offense which may form the factual basis for issuing a protection order or allow courts to authorize to order the abuser to stay away from the pet.
    - b. Even if a state does not have a specific provision protecting pets, the victim should still include pets in the property or “other relief” sections of the protection order.
- D. Other remedies
1. Restitution
    - a. In some states, the court may order the abuser to pay costs that resulted from the abuse.
    - b. Where there is animal abuse, these may include vet bills, pet therapy expenses, reimbursement of value of animal and any other out of pocket expenses.
  2. Counseling - a court may also order the abuser to attend counseling for anger management, Alcoholics Anonymous, or others types of counseling.

### III. Link between Animal Abuse and Child Abuse

#### A. Child neglect and abuse

1. *Nicholson v. Scoppetta*, 3 N.Y.3d 357 (2004)<sup>6</sup>
  - a. Sharwline Nicholson was a single mother of 2 young children. She was involved with the father of her younger child. He not live with them but would make monthly visits to New York from South Carolina. On one visit, when she ended the relationship, he violently assaulted her sending her to the hospital. The Administration of Children’s Services (ACS) took custody of her children claiming that they were at risk because she was not able to protect herself or her children from domestic violence. ACS also filed charges of neglect for engaging in acts domestic violence.
  - b. The New York Court of Appeals held that a parent’s inability to protect a child from witnessing abuse does not in and of itself constitute neglect. The Court noted that a parent who is a victim of domestic violence may be charged with child neglect not because the children witnessed the abuse but if the children were actually or imminently harmed by the battered parent’s failure to exercise even minimal care in providing them with proper oversight.

#### B. Cross-reporting

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<sup>6</sup> *Nicholson v. Scoppetta*, 3 N.Y.3d 357 (2004):  
[https://scholar.google.com/scholar\\_case?case=612551303847632569&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=612551303847632569&hl=en&as_sdt=6&as_vis=1&oi=scholar)

1. Because of this link between animal abuse and child abuse, a number of states have enacted cross-reporting legislation.
2. States vary in their specific requirements. Generally, these laws require cross reporting of suspected animal and/or child abuse by animal control and welfare workers, child health care providers, and child protective services.
  - a. Illinois requires cross-reporting under the Abused and Neglected Child Reporting Act. § 11.8 requires certain child protective workers to report suspected animal abuse.<sup>7</sup>
  - b. In other states without such laws where reporting is not mandatory, it may be encouraged or permissible.

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<sup>7</sup> Illinois Abused and Neglected Child Reporting Act: § 11.8 Cross-reporting:  
<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1460&ChapterID=32>

## Appendix

### A. ABA Model Rule of Professional Conduct 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence.html)

### B. ABA Model Rule of Professional Conduct 1.4 Communication

#### a) A lawyer shall:

- 1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- 2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- 3) Keep the client reasonably informed about the status of the matter;
- 4) Promptly comply with reasonable requests for information; and
- 5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

#### b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_4\\_communications.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications.html)