

# Pet Custody

“Knick-knack, paddy-wack. Give a dog a home!”

# Pet Custody: update on law revisions

- Prior Family Law section presentation in 2015 by Rep. Max Gruenberg and Rep. Liz Vazquez on then-proposed HB147
- In October 2016, Gov. Walker signed HB147 into law.
- Effective date was 1/17/2017. It's now law!!
- Substantive changes to Animal Cruelty statutes, as well as changes to DV and Family Law provisions.
- Legislative history indicates that the public has changed thinking on animals over time. Animals are not just for food or for use (such as horses or oxen use to plow fields). They are more than just pets – they have become FAMILY.
- Law changes reflect this change in thinking.
- Landmark move by AK – made both national and international news!!

# Animal Cruelty changes – AS 03.55.110-130 and AS 03.55.190

- Owner of pet must now pay for costs of boarding and care of animal, pending final disposition as to custody of that animal.
- “Costs of care” defined in AS 03.55.190 as:
  - Cost of shelter
  - Cost for care, such as feeding
  - Cost for veterinarian or medical services
- Pet owner may not sue for damages for injury or death of pet against facility unless can show was caused by gross negligence or by misconduct (AS 03.55.120(e)).

# Animal Cruelty (cont') – AS 11.61.140

- New provision in criminal law as well (changes are underlined)
- Clarifies who can be held criminally responsible for animal cruelty:
  - (a) A person commits cruelty to animals if the person
    - (1) knowingly inflicts severe or prolonged physical pain or suffering on an animal;
    - (2) has a legal duty to care for the animal and, with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;
    - .....

# Why is this important?

- Shows legislative intent for how we should interpret the changes in DV and Family Law on this issue
- Make sure that it's not just ownership of the pet that matters, it's all persons with legal duty to care for animal.
- Focus of legislature is "duty to care," wanting to make sure that pets are cared for appropriately.

# DV law changes

- AS 18.65.520(a)(10) is amended so that peace officers inform victims that the court may give a victim possession of a pet, regardless of who owns the pet.
  - Aware of the cycle of violence and the issues of power & control: DV perpetrator may use pet as way to manipulate victim, or may harm (or threaten harm) to a pet as means to hurt victim or a way to get victim to return to the home.
- AS 18.65.520(a)(12) is amended as well, informing victims that the court could require a DV perpetrator to pay support for a pet in the victim's care.
  - Legislature has added this language in same paragraph as child support and spousal support!!!

# DV changes (cont'd)

- AS 18.65.590 defines “pet”
  - Vertebrate living creature
  - Maintained for companionship or pleasure
  - Specifically excludes sled dogs and rodeo animals!
- AS 18.66.100(c) makes the changes applicable in protective orders as detailed in AS 18.65.520 above.
  - We should make sure that court forms are changed to show these options
  - We should inform clients of these protections when we represent victims AND when we represent alleged perpetrators!
  - We should make sure the court is aware of these protections as well

# DV changes (cont'd)

- Finally, AS 18.66.990(3)(I) adds one more crime to the list of possible DV offenses under the law:
  - “cruelty to animals under AS 11.61.140(a)(5) if the animal is a pet.”
  - This means that the legislature holds cruelty to a pet at the same or similar level as a force assault, criminal mischief, violating a protective order, etc.
  - Again, DV research has shown direct correlations between animal abuse and DV. Alaska ASPCA held training a few years ago on this issue, presentation with complete binder of information.
  - A lot of information at: <http://aldf.org/resources/when-your-companion-animal-has-been-harmed/animal-cruelty-and-domestic-violence/>.

# General Civil cases – AS 22.15.030(a)

- District court now given jurisdiction to hear civil cases involving cruelty to animals.
- Includes seizure, destruction, adoption or cost of care of animals.
- Specifically limited to cases that fall under AS 03.55.100-03.55.190, as detailed above.
- Important to note again the legislature's intent here: includes cost of care.

# Divorce cases – the good stuff!!

- The AK legislature has now given the court authority to make determinations as to people's pets in a divorce!
- Quote on the front from a major legal article on these issues: <https://www.animallaw.info/article/detailed-discussion-knick-knack-paddy-whack-give-dog-home-custody-determination-companion>.
- Plenty of information through Google, especially when searching under new term "Petimony."

# Divorce cases (cont'd)

- Prior Alaska case law on the issue:
  - Juelfs v. Gough, 41 P.3d 593 (Alaska 2002): pets as property, subject to division by the court, acceptable for court to include settlement terms involving pets into Decree; however, in order to modify the issues later, need to file the correct motion – here, was a Rule 60(b) Motion, so court denied request to modify because wife did not meet elements of Rule 60(b), NOT because the issue involved a pet or costs of pet care.
  - Mitchell v. Heinrichs, 27 P.3d 309 (Alaska 2001): tort case for shooting death of dog. Court found that “value” of a pet can include all things that go with replacing a pet, including “the cost of purchasing a puppy of same breed, cost of immunization, cost of neutering the pet, and cost of comparable training.” In other words, the “value” of a pet includes costs related to the pet.

# Divorce cases (cont'd)

- AS 25.24.160(a) adds new section AFTER the property division section (Merrill factors) in divorce cases.
- Reads: “(5) if an animal is owned, for the ownership or joint ownership of the animal, taking into consideration the well-being of the animal.”
- Look at the language in this provision:
  - “ownership or joint ownership” – similar to primary v shared custody of children.
  - “taking into consideration the well-being of the animal” – again, similar to “best interest” of child.

# Divorce cases (cont'd)

- Similar changes elsewhere:
  - AS 25.24.200(c) adds provision that person can waive right to participate and agrees with the proposed “ownership of animals, taking into consideration the well-being of the animals,” just like they would accept proposals on child custody and property division.
  - AS 25.24.200 adds a new subsection (f) for Dissolution petitions, parties can put provisions regarding pets into their agreements, but those provisions “must” look to the well-being of the animal.
  - AS 25.24.210(e) similarly adds this language as above.
  - AS 25.24.220(d) requires the court to inquire as to the parties’ agreement regarding pets just as it would child custody or property division.
  - AS 25.24.220(g) allows the court to amend written agreement between the parties regarding pets.

# Divorce cases (cont'd)

- More similar changes:
  - AS 25.24.230(a): puts this same language into the dissolution provisions.
- Definition of “animal” now found in AS.24.990: “means a vertebrate living creature not a human being.”
  - Notice this does NOT require that the animal be a pet.
  - Can include provisions for work animals, such as draft horses or oxen, or for producers like cows, pigs or chickens.
  - DIFFERENT from the DV provisions, which require animal to be a “pet.”

# Divorce cases (cont'd) – What's next?

- See more animals and/or pets addressed in settlement agreements
- These issues will now come up at trial
- Court may now have to determine value of animal, cost of care, and who is best party to provide care for animal post-divorce
- These provisions also apply on interim basis, so court may start getting motions on these issues at separation.
- Court will have to determine meaning of “well-being” of animal– is this the same as “best interest” of child? If not, how different? And why? Should the family’s dog be addressed in the same way as the family’s chickens?

# Divorce cases – What's next? (cont'd)

- Modifications later – what standard should court take?
- What happens if animal(s) NOT addressed previously, but parties now want to raise issue?
- What happens if neither party wants the animal? Who should pay for the animal's care then?
- Legislature specifically included costs for care of pet in DV but not necessarily in divorce/dissolution – why? Is “costs for care” implicit in the term “well-being”?
- Risks at trial v agreements on this issue – novel area for court, so even more unknown results
- Potentially greater litigation – just one MORE issue for people to fight over!!

# Conclusion

- Important that AK legislature has taken this step.
- Acknowledges the changed thinking on animals.
- Allows us to voice our client's interests in and concerns for their animals, where before the court might have declined to get involved.
- Is landmark – we're first state in the nation with these laws!!

Comments, Questions, or Concerns?