

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 3:30 p.m. on January 20, 2010, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Pat Matzek, Committee Assistant

Conferees appearing before the Committee:

Greg Dennis, Kansas Veterinary Medical Association General Counsel, Presentation on Animal Rights and Animal Welfare Issues.

Others attending:

See attached list.

Chairman Powell opened the meeting by welcoming Representative Meier back to the Committee from her tour of duty in Iraq.

Representative Lukert made a motion to introduce a resolution urging Congress and the Federal Environmental Protection Agency to not enact needless restrictive regulations on Kansas livestock producers. He is working on the language with the Kansas Livestock Association and should be finalized early next week. Representative Fund seconded the motion. The motion carried.

Greg Dennis, Kansas Veterinary Medical Association General Counsel, gave a presentation on legal implications of animal guardianship and personhood (Attachment 1). Mr. Dennis began by saying that in a focused and determined effort to grant legal rights and protections to animals, including animals involved in research, lawyers within the animal rights movement have begun to lay the groundwork for testing new legal theories. Also, distributed to members of the Committee, was a copy of the Missouri Revised Statutes regarding ownership of domestic animals, no laws or regulations to prohibit, Section 67.140 (Attachment 2).

Main topics included:

- The American Veterinary Medical Association is supporting passage of federal laws preventing plaintiff animal owners from recovering noneconomic damages in the event of animal loss or injury and also preserving the legal status of animals as property.
- There is no doubt that inserting the word "guardian" in place of "owner" in describing the relationship between a human and a pet would be regarded by courts as a meaningful change.
- In defense of animals: Terminology
Guardian = Companion, friend
Owner = Master, Abuser
Guardian = Do not abuse, neglect or abandon animals
Owner = Do abuse, neglect and abandon animals
Reconstruct = Return to a status that supposedly previously existed; in fact, did not exist.
- The American Kennel Club (AKC) supports the use of the term "owner" rather than "guardian" when referring to the keeping of dogs. The AKC believes that the term guardian may, in fact, reduce the legal status and value of dogs as property and thereby restrict rights or owners, veterinarians, and governmental agencies to protect and care for dogs.
- In 2001, Rhode Island became the first state to incorporate the use of the work "guardian" into its statutes dealing with animals.
- Unlike domesticated animals, individuals generally cannot own wild animals. Rather, wild animals are considered to be owned by or held in trust by the state for use and benefit of its people.

The next meeting is scheduled for January 21, 2010.

The meeting was adjourned at 4:20 p.m.

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Ownership to *Guardianship* to
Personhood : Treatises (cont.)

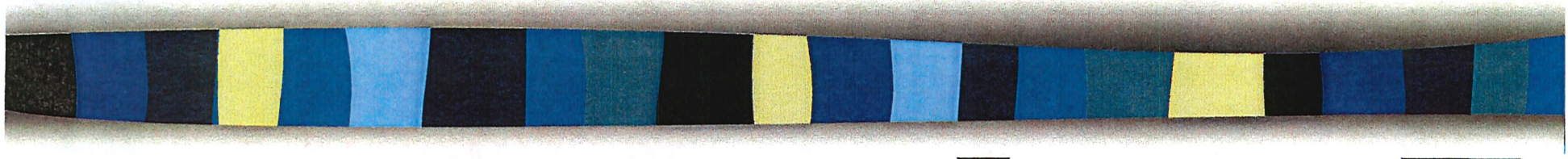
Nibert *et al.*, *Animal Rights / Human Rights: Entanglements of Oppression and Liberation* (2002).

Francione & Watson, *Introduction to Animal Rights: Your Child or Your Dog?* (2000).

Singer, *Animal Liberation* (2001).

Singer, *In Defense of Animals: The Second Wave* (2005).

Legal Implications of *Animal Guardianship* and *Personhood*




Gregory M. Dennis
Kansas Legislature
House Committee on Agriculture
& Natural Resources
Wednesday, January 20, 2010





What the *Heck* is Going On?

- Animal *Guardianship*
- Animals as Legal *Persons* / *Personhood*




“In a focused and determined effort to **grant legal rights** and protections to animals, including **animals** involved **in research**, lawyers within the animal rights movement have begun to lay the groundwork for **testing new legal theories**. Even though **many lawyers** are involved in this new movement are sincere in their concern about the treatment of animals, **many are** also **flatly opposed to the use of animals in research.**”

Michael, *Animal Personhood: A Threat to Research?*
Vol. 47, No. 6, *The Psychologist* (December 2004).

1

“This *long-term, step-by-step strategy* includes a *multi-front campaign* to: toughen state animal cruelty laws; authorize non-economic damage awards (*i.e.*, pain and distress, loss of companionship, *etc.*) for cases in which animals are killed or harmed; establish new legal torts through judge-made case law; *replace the term ‘owner’ with ‘guardian’* in local and state statutes; enact laws that allow *trusts* to be set up for family pets; *make it easier to file lawsuits by eliminating standing requirements* and permitting a private right of action under the *Animal Welfare Act* (AWA); and eventually establish a form of *legal personhood* for some species of *animals*. *While many of these strategies do not appear, at first glance, to affect laboratory animals, the ‘sum of their parts’ has the potential to have a significant impact on life-saving medical and scientific research.*”

Michael, *Animal Personhood: A Threat to Research?* Vol. 47, No. 6, *The Psychologist* (December 2004).



“The *AVMA is supporting* passage of federal laws preventing plaintiff animal owners from recovering noneconomic damages in the event of animal loss or injury and also *preserving the legal status of animals as property*.”

“Both measures are part of a comprehensive legislative agenda for the 110th Congress recommended by the [AVMA] Legislative Advisory Committee and approved by the [AVMA] Executive Board during its April 12 – 14 [2007] meeting.”

Noneconomic Damages, Animals’ Legal Status on AVMA Legislative Agenda, AVMA News (May 15, 2007).

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“[G]ranted pets human-like legal status could create ‘troublesome’ consequences for veterinarians, pet food and toy companies, shelter operators and perhaps even pet owners themselves. Higher damage awards for malpractice could lead to unnecessary testing and higher vet fees. And clothing animals with human-like status might eventually limit an owner’s ability to decide to euthanize a suffering pet.”

Salving *et al.*, *Pet Status as Property May Shift after Recall: Food-Contamination Deaths Could Push for New Legal Definition*, *Los Angeles Times* (March 31, 2007).



Law Schools & *Animal Law*

There are more than **108 law schools** in the United States that offer or have offered **animal** law courses. National Association for Biomedical Research, *Animal Law Section*.

A text commonly used in laws schools is Waisman *et al.*, ***Animal Law: Cases and Materials*** (Durham, North Carolina: Carolina Academic Press, 4th ed. 2009).

The *first* edition was published in **2000**, *second* in **2002**, *third* in **2006**, and the *fourth* in **2009**.



Law Schools & *Animal Law* (cont.)

Neither Washburn University or the *University of Kansas* law schools have animal law courses.

However, of the *University of Missouri-Kansas City* *does*.



Law Schools & *Animal Law* (cont.)

“In the past decade, an *enormous change* has begun. The *animal rights movement* has evolved from a moral / philosophical basis to a pragmatic, *increasingly sophisticated legal action basis*, and it has done so with startling rapidity on a large scale. *Ten years ago*, for example, there was only perhaps *two animal law courses* being taught at United States law schools.”

Cupp, *A Dubious Grail: Seeking Tort Law Expansion and Limited Personhood as Stepping Stones Toward Abolishing Animal Property Status*, Vol. 60 *So. Methodist University L. Rev.* 3 (2007).

“When and how legal rights for animals will be established is as yet unknown. We are only beginning to explore the legal theories that may be argued. Perhaps a student reading this casebook today will be part of the effort to achieve that breakthrough.”

Tischler, Executive Director, Animal Legal Defense Fund, *Animal Law, Epilogue: Toward Legal Rights for Other Animals*, p. 693 (3rd ed. 2006).



“The guardian[ship] movement had its *genesis* in **1995**, at the eleventh Summit for the Animals held in ***St. Louis, Missouri***. Representatives from forty-seven national organizations approved several resolutions, including one styled ‘***Adopting Language that Recognizes Animals as Individuals and Not as Property or Things.***’”

M. Toby, ***The Complete Equine Legal & Business Handbook***, p. 11 (Lexington, Key: Eclipse Press 2007).





*“Everything we are doing lays the foundation for the **one day when animals will have legal rights**. . . .*

We need to *get in their faces* and *sue the animal users* so *often* they don't know which courtroom they're supposed to appear in next.”

Valerie Stanley, *Animal Legal Defense Fund*
Attorney (June 1996).



Changing the Legal Status of Animals:

(1) *Owners Becoming Guardians*

“There is ***no doubt*** that inserting the word ‘***guardian***’ in place of ‘***owner***’ in describing the relationship between a human and a pet would be ***regarded by courts as a meaningful change.***”

Animal Health Institute, ***Pet Owner or Guardian?*** (November 2005).

Changing the Legal Status of Animals:

(1) *Owners Becoming Guardians* (cont.)

“People involved with the [animal guardianship] campaign said updating the term ‘ownership’ to *‘guardianship’ can create for many people a new way of perceiving the human-animal bond.*”

“In other words, *semantics* do make a difference.” (Italics supplied.)

Collier, “*Guardianship*” *Replacing Ownership*”
Companion Animal News (January 12, 2004).

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Why is the *public responsive* to *guardianship* and animals as *persons*?

“Your dog is put to sleep and his suffering is over. But life is life, whether it be that of an animal or a human being.

Is the *veterinarian* a *murderer*, *or* is he a *humanitarian*? Should he not serve a *prison* sentence, guilty of murder? After all, isn't that what happened to *Dr. Kevorkian*?”

Letter to the Editor, *The Kansas City Star*, p. B10 (Tuesday, June 26, 2007)—*Urban* letter.

2007



Guardianship and Ownership are NOT Semantics.

Guardianship and property laws are NOT the same.

They are distinct, with different legal:

- **rights,**
- **obligations, and**
- **repercussions.**

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Why is the *public* NOT responsive to *guardianship* and animals as *persons*?

“What would PETA think?”

“People like Bob Barker, Oprah, Ellen and others, *seem to think* because they love their dogs and cats, that *all animals live indoors*. I don't love our cows, but I do love my horses and our outside dog. But *I also believe they are animals and as such do not have the rights that humans have.*”

Letter to the Editor, *Ozarks Farm & Neighbor*, p. 7
(December 21, 2009)—*Rural* letter.

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In Defense of Animals: The Guardian Campaign; Be a Guardian Not an Owner

“By disavowing the concept and accompanying language of animal ownership, we can *reconstruct* the social and legal relationship between humans and animals.”

“Altering your language to represent yourself as a *guardian*, *companion* or *friend* of animals, rather than their owner or master, will demonstrate your compassionate viewpoint, and show others that animals are *not* ours to *abuse*, *neglect* or *abandon*, but rather to be *cherished* and *protected*.”

In Defense of Animals: *Terminology*

Guardian = Companion, friend

Owner = Master, Abuser

Guardian = Do *not* abuse, neglect or abandon animals

Owner = *Do* abuse, neglect and abandon animals

“Reconstruct” = Return to a status that supposedly previously existed; *in fact*, did *not* exist.





ASPCA ON GUARDIANSHIP

Unlike *In Defense of Animals*, the ASPCA does **not** call “guardianship” a “reconstructed” relationship between humans and animals but, rather, a “**new**” relationship.

“To fully recognize this **new** relationship between humans and animals, laws must change accordingly.”

ASPCA Policies and Positions: Position Statement on Ownership / Guardianship.

Bad owners will be bad guardians


“Whereas the proponents of the name change believe that guardians will take better care of their pets, results of the present study indicated that dog owners from an owner / guardian city were no more likely to provide for the basic legal requirement of rabies vaccinations or licensing their dog than owners from owner cities. To this end ***there appears to be no tangible benefit to the legal recognition of pet owners as guardians.***”

Helms *et al.*, ***Evaluation of Owner Attachment to Dogs on the Basis of Whether Owners are Legally Considered Guardians of their Pets***, Vol. 234, No. 7 ***Jo. A.V.M.A.*** 896, 899 (April 1, 2009).

SHOW ME *MISSOURI!*


Rev. Stat. Mo. § 67.140: *Ownership of domestic animals, no laws or regulations to prohibit: “No political subdivision of the state nor any local government, city or county, or any agency, authority, board, commission, department or officer thereof, shall enact any ordinance or promulgate or issue any regulation, rule, policy, guideline or proclamation describing the relationship between persons and domestic animals as other than persons may or can own domestic animals.”*

1-2-4



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The Council of State Governments:
*Resolution of Animal Guardianship and
Liability Legislation* (September 29,
2004)

**BE IT NOW THEREFORE,
RESOLVED**, that The Council of State
Governments *opposes legislation* that
reclassifies *pet, livestock* or animal
owners as guardians or that otherwise
alters the legal status of animals.



“This resolution put forward the proposition that ‘animals are not property to be used for the benefit or whim of humans.’ In *Defense of Animals*, a California-based, non-profit animal rights advocacy organization headed by veterinarian Dr. Elliott Katz, soon took up the cause with its nationwide guardian campaign: ***‘They are not our property...we are not their owners.’***”

Toby, *The Complete Equine Legal & Business Handbook*, p. 11 (Lexington, Key: Eclipse Press, 2007).



A.V.M.A. Positions on Animal Welfare

“Any change in terminology describing the relationship between animals and owners, including “guardian,” **does not strengthen this relationship and may, in fact, harm it.** Such changes in terminology **adversely affect** the ability of society to obtain and deliver animal services and, ultimately, **result in animal suffering.**”

Positions on Animal Welfare: Ownership vs. Guardianship / Terminology Describing Relationship Between Animals and Their Owners (June 2005).



Oregon V.M.A. Statement

“While the [Oregon] VMA appreciates the term ‘guardian’ may reflect current emotional and social trends of the human relationship with animals in our society, the *legal ramifications* of making such a change in the terminology from ‘owner’ to ‘guardian’ have *far reaching* consequences that may not always be in the best interest of animals or society.

Furthermore, *there is nothing to suggest that changing the definition from ‘owner’ to ‘guardian’ would lead to better treatment of animals.* People who mistreat animals are going to do so regardless of their legal status: *a ‘bad owner’ would undoubtedly be a ‘bad guardian.’*” >www.oregonvma.org/news/owner.asp<



American Kennel Club Position


“The *American Kennel Club* **supports** the use of the term ‘**owner**’ rather than ‘guardian’ when referring to the keeping of dogs. The AKC believes that the term *guardian may* in fact reduce the legal status and value of dogs as property and thereby **restrict rights of owners**, veterinarians, and governmental agencies to protect and care for dogs.”

AKC, *The Dangers of “Guardianship” / Be Your Dog’s Owner, Not its “Guardian”*, p. 5 (November 2008).

Cat Fanciers Association Position

“While extending various ‘rights’ to animals can seem very reasonable in terms of conditions of animals’ welfare or even enjoyment, changing their status as property *would* consequently *eliminate the very owners’ right that ultimately protect animals and provide remedies that hold people legally accountable* for a broad spectrum of acts involving animals.”

Cat Fanciers’ Association, *Ownership, Not Guardianship: Keeping Our Rights to Protect Cats and Dogs* >www.cfainc.org<



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New York A.B. 6340 & S.B. 2791 (2003-04) &
Massachusetts S.B. 932 (2003 & 04)

“*Damages...for injuries sustained by a companion animal shall be recovered in an action in tort brought by a **guardian ad litem** or next friend appointed by the court....*”

“Damages so recovered shall be payable into a **trust** for the care of the companion animal, which trust shall be enforceable for the **life of** the companion **animal** by a person appointed by the court. Any **remainder** of trust funds existing at the death of the companion animal shall be distributed **to a non-profit organization** dedicated to the protection of companion animals.”

Oberschlake v. Veterinary Associates Animal Hospital, 151 **Ohio** App.3d 741, 785 N.E.2d 811 (2nd Dist. 2003): **rejecting** [1] owners' emotional pain & suffering claim and [2] **dog's pain & suffering** claim against a veterinarian brought by his "**pet guardians**."

Followed, Pacher v. Invisible Fence of Dayton, 154 **Ohio** App.3d 744, 798 N.E.2d 1121 (2nd Dist. 2003).

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Common Law: Property

Under common law, predating the settlement of north America, domesticated animals have been considered the *property* of people.

Various local communities around the country have enacted *ordinances* declaring one does *not own an animal* but, rather, is the *guardian* or *custodian* of the animal.

In 2001 **Rhode Island** became the *first state* to incorporate the use of the word “*guardian*” into its statutes dealing with animals.





Rhode Island -

R.I. Code § 4-13-41: *Use of the terms owner or guardian:*

“Wherever the word ‘owner’ shall appear in this chapter [*Animals and Animal Husbandry–Dogs*] it shall also mean and may be interchanged with the word ‘guardian’ as defined in [R.I. Code] § 4-13-1.2.”

R.I. Code § 4-13-1.2(10)

““***Guardian***’ shall mean a person(s) having the same rights and responsibilities of an owner, keeper and both terms shall be used interchangeably. ***A guardian shall also mean a person who possesses, has title to or an interest in, harbors or has control, custody or possession of an animal and who is responsible for an animal’s safety and well-being.***”

■ ***Unconstitutional taking of private property without just compensation?***

■ When government action deprives an owner: (1) of all value of its animal; (2) right to possess; (3) transport; and (4) to donate to devise its animal to another, then “[w]e are convinced. . .that in a case such as this ***where the entire bundle of property rights have been destroyed, the Fifth Amendment requires compensation*** for the taking ***unless***...the government regulation does no more than prohibit or abate a public nuisance for which the property owner did not possess the right to use his property in the first place.”

■ ***Raynor v. Maryland Dept. of Health & Mental Hygiene***, 110 Md. App. 165, 190, 676 A.2d 978, 990 *app. denied* 343 Md. 679, 684 A.2d 454 (1996) *cert. denied* 520 U.S. 1166, 137 L. Ed.2d 537, 117 S. Ct. 1428 (1997).



Changing the Legal Status (cont.)

Bazzini v. Garrant, 116 Misc.2d 119, 120, 455 N.Y.S.2d 77, 78 (1982):

“In life ***Bird was a bird***—an animal of feelings, of flesh and blood and feathers. It is one of the sad aspects of the law that the heat and passion of life so often translate to cold, unfeeling words upon a page. This is such an instance for in death, *notwithstanding his memory, Bird is a chattel.*”

Chattel = personal property.



Changing the Legal Status (cont.)

Williams v. Michigan Central R.R. Co.,
2 Mich. 259, 55 Am. Dec. 59 (**1851**):
railway company *most certainly* did not
assume a *guardianship* obligation for
cattle, horses and swine that strayed onto
or strolled along its tracks.



Changing the Legal Status (cont.)

In re: Estate of Callan, Jr. (Shelby County, **Tennessee**, D-2252, March 20, 2007): probate court *appointed a guardian ad litem for a dog* that had been owned by the decedent “not as an advocate for the dog, but. . .to determine what is best for the dog’s welfare.”

Changing the Legal Status (cont.)

Arrington v. Arrington, 613 S.W.2d 565, 569 (Tex. Civ. App. Ft. Worth 1981): in a divorce proceeding, trial judge **did not err in making** the wife a “**managing conservator**” of a dog, instead of the husband, **even though** “managing conservator” was created **for** the **benefit of human children**, not animals.



Changing the Legal Status (cont.)

In April, 2007, an *Austrian* court **denied** *an application to appoint a guardian for a chimpanzee*. The court ruled if it appointed a guardian for the chimpanzee, then this might create a *public perception that humans with court-appointed guardians were at the same level as animals*.

Activists in Austria Seek “Personhood” for Chimpanzee, *The Boston Globe* (May 5, 2007).

See also *Chimp Denied a Legal Guardian*
www.bioedonline.org/news/news.cfm?art=3289



Changing the Legal Status (cont.)

Jones v. Butz, 374 F. Supp. 1284 (S.D.N.Y.) *aff'd* 419 U.S. 806, 42 L. Ed.2d 36, 95 S. Ct. 22 (1974): lawsuit challenging provisions of federal ***Humane Slaughter Act***, allowed to proceed through a plaintiff “*as next friend and guardian for all livestock animals now and hereafter awaiting slaughter in the United States.*”

Jones v. Beame, 86 Misc.2d 832, 382 N.Y.S.2d 1004 (1976) *reversed & dismissed* 56 App. Div.2d 778, 392 N.Y.S.2d 444 (1977) *aff'd* 45 N.Y.2d 402, 380 N.E.2d 277, 408 N.Y.S.2d 449 (1978): lawsuit initially allowed to proceed through a plaintiff “*as guardian for all animals now confined in*” ***New York City zoos***; subsequently dismissed for other reasons.

Changing the Legal Status (cont.)

Brinton v. Codoni, 2009 Wash. App. LEXIS 313, 2009 WL 297006 (Wash. App. 2009): *negligence* and *nuisance* suit brought as *co-owners-keeper-harbinger-guardians* from mauling death of a dog. “It is well established that a pet owner *no right to emotional distress damages* or damages for loss has of human-animal bond based on the negligent death or injury of a pet” and *cannot avoid* this rule *by alleging a nuisance* claim.

Wolverton v. Young, 131 Wash. App. 1020, 2006 Wash. App. LEXIS 78, *28, 2006 WL 165734, *10 (2006): individual could not file a lawsuit making a claim for animals as *individual lacked next friend status to sue on behalf of animals.*

Changing the Legal Status (cont.)

Pickford v. Masion, 124 Wash. App. 257, 98 P.3d 1232 (2004): suit by plaintiffs for themselves ***and as guardians for Buddy, a companion animal.***

Suit ***dismissed*** as Washington state would not recognize a cause of action for destruction of a companionship relationship with a dog.



Changing the Legal Status (cont.)

*McAuliffe, the guardian of the **late** service dog, Sunny v. U.S. Dept. of Veterans Affairs*, 2007 WL 2123690 (N.D. **Cal.** July 23, 2007): action arising from a Veterans Affairs hospital prohibiting a veteran from bringing his service dog into a hospital.

Changing the Legal Status (cont.)

Falls Mills Associates, Ltd. v. Maruzo, 13 Conn. App. 119, 534 A.2d 912 (1987): tenants in landlord eviction action, moved to join their dog as a *necessary party* and to appoint a guardian *ad litem* for their dog.

The trial court *denied* the motion and the appellate court said “[t]his ‘issue’ will be afforded no discussion”; calling the “issue” *frivolous*.


Changing the Legal Status (cont.)

International Primate Protection League v. Institute for Behavioral, Inc., 799 F.2d 934 (4th Cir. 1986) *cert. denied* 481 U.S. 1004 *reh. denied* 482 U.S. 909 (1987): **dismissing** complaint brought by individuals as “**guardians**” for **laboratory animals**.

“ “[A] mere interest in a problem; no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is **not** sufficient by itself” to create [legal] standing. [This] conclusion applies precisely to these plaintiffs’ asserted commitment to the humane treatment of animals. **The commitment of an organization may enhance its legislative access; it does not, by itself, provide entry to a federal court.**” (Bold & Italics supplied.) 799 F.2d at 938.

Ownership *to* Guardianship?

- Guardianships are a **fiduciary** relationship that imposes a *duty of the highest fidelity* and requires the guardian always act in the **best interest of the ward** (animal).
- **Fiduciary relationship**—“a relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships—such as trustee-beneficiary, **guardian-ward**, agent-principal, and attorney-client—require the **highest duty of care.**” **Black’s Law Dictionary**, p. 640, col. 2 (7th ed. 1996). *See generally Cat Champion, Corp. v. Primrose*, 210 Or. App. 206, 149 P.3d 1276 (2006).



In re: Marriage of Stewart, 356 N.W.2d 611 (Iowa 1984): “A *dog* is personal property and while courts should not put a family pet in a position of being abused or uncared for, [courts] *do not* have to determine the *best interests* of a pet.” (Italics supplied.)

Raymond v. Lachmann, 264 App. Div.2d 340, 341, 695 N.Y.S.2d 308, 309 (1999): *best interests* of the *cat* was for it remain in the home of the party where it had lived for the past four-years.

Ownership *to* Guardianship? (cont.)

- *Who determines* what is in the “**best interest** of the animal”? The guardian, the veterinarian or both?
- *What if there is a conflict* between the guardian and the veterinarian about what is in the “best interest of the animal”?



Ownership *to* Guardianship (cont.)

“While the *NCCR* [National Center for Research Resources] acknowledges the continuing importance of chimpanzees to biomedical research, it also *recognizes the fiduciary responsibilities it has to maintain the health and well-being of the chimpanzees* already in its care.”

NCCR, NIH, *Chimpanzee Management Program* (May 2007).

www.ncrr.nih.gov/comparative_medicine/chimpanzee_management_program/

Ownership to Guardianship? (cont.)

- **Tort claims by animals?** While animal owners can recover various damages from a veterinarian for malpractice, if animals are no longer property can animals through a “**next friend & guardian**” now assert their own claims for their injuries or damages? *E.g., Oberschlake v. Veterinary Associates Animal Hospital*, 151 Ohio App.3d 741, 785 N.E.2d 811 (2003); *Pacher v. Invisible Fence of Dayton*, 154 Ohio App.3d 744, 798 N.E.2d 1121 (2003); **N.Y. A.B. 6340 & S.B. 2791** (2003) and **Mass. S.B. 932** (2003).
- Could a **parent animal** assert a **wrongful death** claim against a veterinarian for the death of an offspring [like a human parent could the death of a child]?

Ownership *to* Guardianship? (cont.)

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- Will the classification of animal guardian apply only to *pets* or *companion animals* or to ***all domesticated animals***?
- **K.S.A. § 47-816(c)**: “‘*Companion animal*’ means any *dog, cat* or other *domesticated animal* possessed by a person for *purposes of companionship, security, hunting, herding* or providing *assistance* in relation to a *physical disability* but shall ***exclude any animal raised on a farm*** or ranch and used or intended ***for use as food***.”

Ownership to Guardianship? (cont.)

- Va. Code Ann. § 3.2-6500: “*Companion animal*’ means any domestic or feral *dog*, domestic or feral *cat*, nonhuman *primate*, *guinea pig*, *hamster*, *rabbit* ***not raised for human food or fiber***, *exotic* or *native animal*, *reptile*, exotic or native *bird*, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. *Agricultural animals*, *game species*, or *any animals regulated under federal law as research animals* shall ***not be considered companion animals*** for the purposes of this chapter.”

Ownership *to* Guardianship? (cont.)

- Tenn. Code Ann. § 39-14-201(3): ““***non-livestock animal***’ means a ***pet*** normally maintained in or near the household or households of its owner or owners, ***other domesticated animal***, previously ***captured wildlife***, an ***exotic animal***, or ***any other pet***, including but not limited to, pet ***rabbits***, a pet ***chick, duck, or pot bellied pig*** that is ***not*** classified as ‘***livestock***’ pursuant to this part.”



Ownership *to* Guardianship? (cont.)

- If animal guardianship only applies to companion animals, *which domesticated animals* are to be considered *incapable of ownership* as compared to those animals which may still be owned?

Ownership *to* Guardianship? Government Inspection / Quarantine of Animals / Animals in Research

- There are numerous federal and state laws governing *inspection and quarantining* of animals and *obligations of veterinarians* in carrying out those laws. If animals are no longer property, *what provisions* of these laws might *need to be altered*?
- There are numerous federal and state laws governing use of *animals in research*. Will animals still be allowed to be used in research if they are no longer owned? Even if they can still be used, how will laws and regulations have to be modified for guardianship?



Ownership *to* Guardianship?

Third-Party Intervention

- If animals are no longer property of an owner but wards of a guardian, *can some person intervene* and assert the guardian's decisions on veterinary care and treatment, is *not in the "best interest of the animal?"*

Ownership *to* Guardianship?

Movement of Animal

- What legal and ethical obligations might a veterinarian or others have should they learn a guardian is going to move an animal to a property (non-guardian) state?
- An animal *Dred Scott* decision? *Dred Scott v. Sandford*, 60 U.S. 393, 15 L. Ed. 691 (1856).



Ownership to Guardianship: *Treaties*

- Dennis, *Animal Guardianship*, Vol. 18, No. 4 *Equine Disease Quarterly* 1 (October 2009).
- Dennis, *Where are my Cattle? What Animal Guardianship Means for You*, Vol. 11, No. 12 *Ozarks Farm and Neighbor* (May 4, 2009).
- Hankin, *Making Decisions about Our Animals' Health Care: Does it Matter Whether We Are Owners or Guardians?* Vol. 2 *Stanford Jo. of Animal Law & Policy* (2009).



Ownership to Guardianship: *Treaties*

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- Regan, *The Case for Animal Rights* (2004).
- Scully, *Dominion: The Power of Man, the Suffering of Animals, and the Call for Mercy* (2003).

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- American Veterinary Medical Law Association, *Ownership of Animals vs. Guardianship of Animals: The Effect of a Change in the Law on Veterinarians in California*, Vol. 56, No. 3, *California Veterinarian* (May – June 2002).
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- Patterson, *Eternal Treblinka: Our Treatment of Animals and the Holocaust* (2002).
- Hannah, *Animals as Property– Changing Concepts*, 25 *Southern Illinois University Law Jo.* 571 (Spring 2001).



Ownership to *Guardianship* to
Personhood : *Treatises*

Francoine, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (2008).

Cupp, *A Dubious Grail: Seeking Tort Law Expansion and Limited Personhood as Stepping Stones Toward Abolishing Animal Property Status*, Vol. 60 *So. Methodist University L. Rev.* 3 (2007).

The Evolving Legal Status of Chimpanzees, 9 *Animal Law Jo.* 1 (2003).



Legal *Personhood* for Animals: United States Supreme Court (cont.)

13th Amendment: “Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

14th Amendment: “No state shall...deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protections of the laws.”

International treaties prohibiting *torture*.

The pretend Brief argues that as the *Constitution does not define* who or what is a “*person*,” *animals can*, therefore, be considered “*persons*.”

>www.personhood.org/personhood/lawreview/<



Legal *Personhood* for Animals: United States Supreme Court

From Property to Person: The Case of Evelyn Hart [a great ape], *Seaton Hall Constitutional Law Jo.* (2000).

Pretend brief to the Supreme Court, *arguing* a *great ape* is a *legal person* entitled to core constitutional rights and protections under:

5th Amendment: “No person shall...be deprived of life, liberty, or property without due process of law.”

8th Amendment: “[C]ruel and unusual punishment [shall not be] inflicted.”



Legal *Personhood* for Animals? (cont.)

City of Akron v. Tipton, 53 Ohio Misc.2d 18, 21, 559 N.E.2d 1385, 1388 (Akron Mun. 1989):

“A *dog does not have a fundamental right to travel* as suggested by the defendant. If there be a *constitutional right to travel*, it is *for individuals*, not dogs.”



Legal *Personhood* for Animals? (cont.)

Veale v. Furness, 2007 WL 54820 report
& recommendation adopted 2007 U.S.
Dist. *LEXIS* 9276, 2007 WL 465405
(D.N.H. 2007): deceased *dog could not*
assert a federal civil rights action for
violation of constitutional rights.

Legal *Personhood* for Animals? (cont.)

Ramey v. Collins, 2000 Ohio App. LEXIS 2540, 2000 WL 776932 (4th Dist.) appeal denied 90 Ohio St.3d 1428, 736 N.E.2d 25 (2000): holding *dog owner had no 1st Amendment constitutional right of freedom of association with its dog.*

“Freedom of association” *only* pertains to association with *humans, not with animals.*



Legal *Personhood* for Animals? (cont.)

American Canine Foundation v. City of Aurora, Colorado, 618 F. Supp.2d 1271, 1278 *reh. denied* 2009 WL 2868836 (D. Colo. 2009):
“Ownership of a dog does not implicate any *fundamental constitutional right*.”



Legal *Personhood* for Animals? (cont.)

McAdams v. Faulk, 2002 Ark. App. LEXIS 258, 2002 WL 700956, *2 (2002) appeal after remand 96 Ark. App. 118, 2006 Ark. App. LEXIS 615, 2006 WL 2623324 (2006): deceased *dog could not maintain a veterinary malpractice* action.



Legal *Personhood* for Animals? (cont.)

Citizens to End Animal Suffering & Exploitation, Inc. v. New England Aquarium, 836 F. Supp. 45 (D. Mass. 1993): dolphin *did not have legal standing* to bring a lawsuit under either the *U.S. Constitution* or the *Marine Mammal Protection Act*.

Nor did the *Federal Rules of Civ. P. 17(b)* [same as *K.S.A. 60-217(b)*], defining who is “party” who can file a lawsuit in federal court, apply to non-human forms of life.

Legal *Personhood* for Animals? (cont.)

Hawksbill Sea Turtle v. Federal Emergency Management Agency, 126 F.3d 461 (3rd Cir. 1997): sea turtles and tree boa snakes did not *have legal standing* to sue under the *Endangered Species Act*.

“If Congress ‘intended to take the extraordinary step of authorizing animals...to sue, they could, and should, have said so plainly.’” 126 F.3d at 466, fn. 2.



Legal *Personhood* for Animals? (cont.)

Cetacean Community v. Bush, 386 F.3d 1169 (9th Cir. 2004): whales, dolphins and porpoises did ***not have legal standing*** to sue under the *Endangered Species Act*, *Marine Mammal Protection Act*, *National Environmental Policy Act* and the *Administrative Procedure Act*.

“Animals are not authorized to sue in their own names to protect themselves.” 386 F.3d at 1178.



Legal *Personhood* for Animals? (cont.)

Palila v. Hawai'i Dept. of Land & Natural Resources, 852 F.2d 1106, 1107 (9th Cir. 1988): “[a]s an endangered species under the *Endangered Species Act*, . . . the *bird* (*Loxioides bailleui*), a member of the Hawaiian honeycreeper family, . . . *has legal status* and wings its way into federal court as *a plaintiff in its own rights*.”

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Legal *Personhood* for Animals? (cont.)

Bass v. State of Florida, 791 So.2d 1124, 1125 (Fla. App. 4th Dist. 2000):

“as much as *dogs* are *loved* and *cherished* by their owners, they *are not persons or ‘individuals’* for purposes of the *criminal law*.”

Question: If animals are no longer property, then is an *unlawful* killing of an animal, *murder* / *manslaughter*?



Legal *Personhood* for Animals? (cont.)

Bobin v. Sammarco, 1995 WL 303632, *2 (E.D. Pa. 1995): declaring
dogs are “not persons.”

Miller v Peranio, 426 Pa. Super. 189, 194, 627 A.2d 637, 640 (1993):
recognizing *dogs are not persons.*



Legal *Personhood* for Animals? (cont.)

The Federal Republic of *Germany* in 2002 became the *first* European nation to *recognize animal rights in its constitution*.

Lawmakers in the lower house of the German Bunderstag (parliament) voted 534 to 19 to add “*and animals*” to a constitutional clause obliging German states to *respect and protect the dignity* of Germans.



Legal *Personhood* for Animals? (cont.)

People v. Holtzer, 255 Mich. App. 478, 482, fn. 1, 600 N.W.2d 405, 408, fn. 1 (2003): recognizing there is a *greater than ninety-nine per cent* (99%) *similarity* between *human* and *chimpanzee* nuclear DNA.



Animal Rights Violations

Animals Have Rights!

“The philosophy of animal rights asserts that many nonhuman animals are bearers of rights and ***if they are used by human beings then their rights are being violated.***”

“If this claim sounds strange it is because it is ***not made often.***”

<http://sites.google.com/site/animalrightsviolations>

See also Yates, *The Social Construction of Human Beings and Other Animals in Human-Nonhuman Relations* (2004).

“It therefore *should not be too great a cognitive leap to allow animals*—given their undisputed commonality with humans in terms of feeling and consciousness—*to become legal persons* in the eyes of the law, in situations where their dignity and autonomy is at stake. In doing so, however, *one must address the practical dilemma that arises when rights and autonomy are given to beings not fully able to fend for themselves. Animal law scholars have therefore argued that legal concepts of guardianship or trustee and beneficiaries must be used to solve this problem.* These ideas may seem preposterous to some, but it was not so long ago that the concept of mental disability rights was unheard of as well.” *Animal Law, Defining Personhood; Conclusion*, p. 58 (3rd ed. 2006).

Legal *Personhood* for Animals? (cont.)

Animal Law, Defining Personhood; Conclusion, p. 58 (3rd ed. 2006): “In comparing the mental disability rights movement to the animal rights movement, we begin with the fact that *the condition of ‘humanness’ is not essential to becoming a ‘person’ under the law* and obtaining all the rights associated with such classification. The *idea is not as radical* as it may first appear to some, since *the definition of ‘person’ is a legal chameleon*—corporations and ships may be legal persons in some situations, and the bundle of rights granted to humans may vary depending on their status (illegal alien, mental incompetent, child), and *not their biological makeup.*”

Legal *Personhood* for Animals?

“The term ‘*personhood*’ for animals is widely used among animal rights lawyers and advocates, their opponents, and the popular media. *There is no single meaning to this term, nor are the implications clear if ‘personhood’ is granted to animals.* What does it mean to grant personhood to animals? *Should all animals be granted personhood or only some?* If some, how do we decide which ones? Should it be those that exceed to a certain threshold of cognitive abilities, or those we especially love as pets?”

Michael, *Animal Personhood: A Threat to Research?* Vol. 47, No. 6, *The Psychologist* (December 2004).

>www.the-aps.org/publications/tphys/2004/html/DecTPhys/michael.htm<

WILD ANIMALS

Unlike domesticated animals, individuals generally cannot own wild animals. Rather, *wild animals are considered to be owned by or held in trust by the state for use and benefit of its people.*

State v. Longshore, 97 Wash. App. 144, 150, 982 P.2d 1191, 1195 (1999) *aff'd* 141 Wash.2d 414, 5 P.3d 1256 (2000): state holds title to wild animals *in trust for the use and benefit of its people.*

New Mexico v. Morton, 406 F. Supp. 1237 (D.N.M. 1975) *aff'd* 426 U.S. 529, 545 *reh. denied* 429 U.S. 873 (1976): *states have broad trustee and police powers over wild animals* within their jurisdictions. However, those powers *only* exist “*in so far as* [their] exercise may be *not incompatible with, or restrained by,* the rights conveyed to the *Federal Government* by the Constitution.”

1-8-1

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Ownership *to* Guardianship: *Treatises*

- Wise, *Rattling the Cage: Toward Legal Rights for Animals* (2000).
- Watson, *Introduction to Animal Rights: Your Child or Your Dog?* (2000).
- Wise, *Wrongful Death of a Companion Animal*, 4 *Animal Law* 33 (1998).

1-8-1

Missouri Revised Statutes

Chapter 67 Political Subdivisions, Miscellaneous Powers Section 67.140

August 28, 2009

Ownership of domestic animals, no laws or regulations to prohibit.

67.140. No political subdivision of the state nor any local government, city or county, or any agency, authority, board, commission, department or officer thereof, shall enact any ordinance or promulgate or issue any regulation, rule, policy, guideline or proclamation describing the relationship between persons and domestic animals as other than persons may or can own domestic animals.

(L. 2009 H.B. 481 § 3)

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Missouri General Assembly

Ag & Natural Resources Committee
Date 2-2-10
Attachment 2