



April 19, 2019

VIA EMAIL AND FIRST CLASS MAIL

Sarah T. Blodgett, Esq.
Executive Director
NH Judicial Council
25 Capitol Street, Room 424
Concord, NH 03301-6312

Dear Sarah-

The Governor's Commission on the Humane Treatment of Animals ("Commission"), pursuant to Executive Order 2017-05, is writing to the New Hampshire Judicial Council ("Council") to request that the Council recommend that the State of New Hampshire Supreme Court Advisory Committee on the Rules undertake drafting court administrative rules in New Hampshire to address the administration of animal cruelty cases.

Under RSA 494:3 III and IV, the Council is tasked with devising "ways of simplifying judicial procedure, expediting the transaction of judicial business, and of improving the administration of justice" and recommending and providing "general information to the general court, to the supreme court, to the superior court, to the circuit court, to any public official, department or agency or to the state bar association, either upon request or upon the council's own motion, such changes in the law or in the rules, organization, operation or methods of conducting the business of the courts, or with respect to any other matter pertaining to the administration of justice, as it may deem desirable." The Commission seeks the Council's assistance in addressing the need to have court administrative rules given the unique nature and statutory requirements of animal cruelty cases as described below.

Animal cruelty cases are unique in both the statutory requirements, mainly under RSA 644:8, and the fact that the cases can involve live, sentient animals, requiring that the courts timely address issues involving the proper care and housing of the animals, preservation of evidence, costs associated with housing and medical care of the animals, and the general well-being of the animals during the court proceedings. Without a state agency or state funds to handle these issues, the courts are left with these issues needing to be addressed in a timely manner and in accordance with RSA 644:8.

The number of animal cruelty cases in New Hampshire appears to be on the rise and the cases that have been prosecuted recently involve great number of animals and/or animals that require costly medical and daily care. Animal cruelty cases are prosecuted in both the New Hampshire District and Superior Courts, with possible appeals to the New Hampshire Supreme Court. One of the most widely reported recent cases was Christina Fay, which is currently pending before the New Hampshire Supreme Court.

Pursuant to RSA 644:8, cruelty to animal cases have deadlines and procedural issues that are unique. RSA 644:8, IV (a) specifically states that “[c]ourts shall give cases in which animals have been confiscated by an arresting officer **priority on the court calendar.**” (emphasis added). Despite such provision, for example, there is nothing in the court rules to give expedited scheduling to the arraignment in such cases. In addition, RSA 644:8, IV-a (a), referred to as the “temporary protective custody” or exigent circumstances clause, allows a law enforcement officer to take any animal into temporary protective custody when (1) there is probable cause to believe that it has been or is being abused or neglected in violation of RSA 644:8, III or III-a; (2) when there is clear and imminent danger to the animal’s health or life; and (3) there is insufficient time to obtain a court order. RSA 644:8, IV-a (a) has deadlines by which a law enforcement officer shall petition the court for permanent custody and rights to dispose of the animal.

Furthermore, cost of care issues are unique in animal cruelty cases. Under RSA 644:8, IV (b), the courts must address bonding issues regarding the defendant’s obligations to post money for the care of the confiscated animal(s) that remain in the custody of the arresting officer pending disposition of an appeal. There are also cost of care issues that arise throughout the court proceedings on animal cruelty charges that are not timely being addressed by the courts, leading to great expense and uncertainty by all parties. Restitution issues must also be addressed under RSA 651:63, I in animal cruelty cases. Despite such cost issues, there are no court rules addressing bonding issues in these cases.

Additional animal cruelty provisions in RSA 644:8-a (Exhibitions of Fighting Animals), RSA 644:8-aa (Animals in Motor Vehicles), and RSA 644:8-g (Bestiality), all must be processed by the courts and arguably should have deadlines set forth similar to those in RSA 644:8 given the great likelihood of live animals being held during such proceedings.

There have been many instances of late in New Hampshire where charges have been filed for animal cruelty, involving live animals, which are not being given priority by the courts nor are cost of care bonds being required to be timely posted. For example, in Bristol, New Hampshire, Jennifer Choate was charged with animal cruelty after two fires, three weeks apart, at her property resulted in the death of first seven dogs, including two adults and five newborn puppies, and then twenty nine more dogs, including three adults and twenty six puppies. After the second fire on December 13, 2017, the Bristol police filed animal cruelty charges. The Alexandria police filed separate charges on January 2, 2018. The police in total seized 36 German shepherds in December 2017 and January 2018. In July of 2018, Ms. Choate was found guilty of animal cruelty. Ms. Choate was ordered to post a \$70,000 bond in order to retain ownership of the dogs. Seven months later, Ms. Choate has not paid the bond and the dogs remain in the custody of the

New Hampshire SPCA. Ms. Choate has appealed her conviction, seeking a jury trial and still has not posted any bond. Now, over a year later, the jury trial concluded the beginning of April, with a not guilty finding on two charges and the jury deadlocking on the remaining 24 charges, resulting in a mistrial. The dogs still remain in the care of the New Hampshire SPCA, who is unable to place them in permanent, loving homes. An article in the Laconia Daily Sun on December 14, 2018 sums up the procedural issue:

One year after a pair of fires that killed a number of German shepherds, no date has yet been set for a jury trial on the resulting animal cruelty charges against Jennifer "Bobbi" Choate . . . A final pretrial hearing originally scheduled for October 31 has been moved to Wednesday Jan 2 -- a date that coincides with the anniversary of the seizure of additional dogs from a barn in Alexandria.

In July of 2018, the Monadnock Humane Society assisted law enforcement with the rescue of fifty two (52) Labrador retrievers from John Riggieri, an unlicensed breeder in Marlborough, New Hampshire. On or about February 23, 2019, almost 8 months later, Mr. Riggieri was found guilty of two charges of animal cruelty. Mr. Riggieri has appealed the case for a jury trial. The cost of care for humane societies providing care for the dogs has exceeded \$240,000 to date. It is now almost 9 months later and the case is still waiting for a jury trial despite RSA 644:8 which requires that cruelty cases in which animals who are being held receive priority on the court's docket.

Shirley Patch and Caroline Wilkins, two Farmington, NH women were charged in September 2012 with animal cruelty with regard to three dogs, two goats, two chickens, and several horses. It took over a year to resolve the matter and in December 2013, Ms. Patch and Ms. Wilkins received suspended sentences of 365 days in jail and Ms. Patch received conditions on future ownership of animals along with repayment orders of more than \$46,000 to the New Hampshire SPCA.

In addition, Christina Fay had her 84 great Danes seized in June 2017. The trial did not occur until May 2018, almost a year later. The dogs needed to be preserved as evidence during this time period at great cost and expense.

The Governor's Commission on the Humane Treatment of Animals voted on April 15, 2019 to support this letter to the New Hampshire Judicial Council and to provide any additional information and assistance that is necessary in advancing the drafting of judicial rules relating to animal cruelty cases.

Very truly yours,



Patricia Morris, Chair

The Governor's Commission on the Humane
Treatment of Animals