

## Mediating Animal-Law Issues

The use of mediation to address animal-law issues is growing. Animal-law jurisprudence is in its relative infancy, and courts are ill-equipped to address many contemporary matters. Mediating animal-law issues allows parties to craft creative and workable solutions, untethered by, for example, such “relevant” authority as 18<sup>th</sup> Century English property law or the famous case of *Pierson v. Post*, (3 Cai. R. 175, 2 Am. Dec. 264 (N.Y. 1805)), which, as you may recall, involved a dispute between hunters over the right to kill a fox. A looser procedural framework also opens up a host of possibilities, including even allowing for the presence and input, so to speak, of an animal. Personal observation of an animal and how it behaves in certain settings, or around certain individuals, can aid in assessing the best interests of the animal, an assessment for which there is little existing framework in mainstream jurisprudence.

### Issues Ripe for Mediation

Issues especially well-suited for mediation include custody issues and disputes between neighbors. Custody issues are well-suited because neither courts, nor statutory guidelines, have brought forth commonly accepted frameworks for determining custody and visitation issues involving animal property. Disputes between neighbors are well-suited because an outcome satisfactory to all parties is necessary for neighborhood peace. Furthermore, unresolved issues between neighbors, or even situations in which a court has “resolved” the issue and thus, typically, has determined one neighbor the loser, always have the potential to result in future harm to the animal. Such happenings are not wholly uncommon.

Even disputes involving animal testing may lend themselves to mediation if the goal of the party challenging the testing is not to seek complete cessation of the testing, and if the party doing the testing recognizes that mediation may spare it the public relations costs associated with a public trial, as well as the potentiality, albeit somewhat slight in today’s climate, that the testing may be ordered halted. Disputes involving dog bites often also involve mandatory, non-binding, mediation as a precursor to a scheduled trial. In addition, disagreements over the sale of an animal can be aided by mediation.

### Issues that May Present Challenges

Other issues are less well-suited to mediation. Issues involving alleged veterinary malpractice can involve highly complex and technical matters that may not lend themselves to a more informal and less confrontational mediation-type setting. Furthermore, a veterinarian has little incentive, excepting perhaps good will or a statutory mandate, to participate in mediation when it is known the plaintiff’s costs to pursue legal action can be high in respect to the average payout. Issues involving animal abuse also may not be good candidates for mediation. Often the actions-at-issue are, at the least, borderline criminal, and appropriate remedies may point toward actions designed to bring about substantive behavior modification in an abuser, including refraining from contact with certain animals. A mediation-based mechanism may not have the power to ensure

the abuser's compliance. Furthermore, often the resources of the state are needed to aid the abuser in obtaining treatment.

### Other Considerations

For those looking to use animal-law jurisprudence to try to advance their interpretation of animals' interests in a substantial way, mediation probably is not the answer. Obviously there are no published decisions in mediation. However, the reality, even for those currently pushing the frontiers of animal "rights" based litigation, is that most progress is being made around the edges. There will be no Emancipation Proclamation for animals, and anytime persons go into court pursuing a larger agenda for animals than simply addressing the facts of the case, they are running a risk in today's legal climate of doing more harm than good unless they really know what they are doing and also how to minimize the potential downside.

Marin County, California, on one end of the political spectrum, has been at the forefront in offering animal-law mediation services. Closer to the other end of the spectrum, San Antonio, Texas, has created animal-court, designed, overall, to address a perceived deficiency in the enforcement of laws as they relate to animals. In both cases one can see nascent attempts by government at smaller approaches to animal law-related issues and disputes. Smaller approaches, including private mediation, is how many of the resolutions of animal-law issues will occur, at least in the near term.