



the SideBar

CUSTODY of the DOG



Marital asset? Service animal? Emotional support animal?

By Joseph Trotti, Esq.

In a recent decision decided in Nassau County, the Court dealt with the sensitive issue of a marital dog. The husband in the instant case asked for sole custody of the dog, which he claimed he had not seen for some time. He had petitioned the Court to take care of the dog on a full-time basis without contribution from the wife. His allegations included the fact that the wife had represented that she wanted to euthanize the dog, thereby subjecting it to cruel and inhumane treatment. The wife argued that the dog is her certified service dog and therefore is her property. She denied any claims that she intended to euthanize the dog. The Court ordered visitation time with each party having the dog for

two weeks while the case was pending. As to the custody issue, the wife argued that the pet, an American Eskimo dog, is her emotional support animal which assists her daily. She asked that the Court recategorize the dog as her service dog and not as a marital asset.

Dogs traditionally have been categorized as marital assets. In prior decisions, the determination of who deserves to have possession of the pet, including in non-matrimonial cases,



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Don't ask! Avoiding discrimination claims in the interview process

By Avrohom Gefen, Esq.



The purpose of a job interview, from the employer's perspective, is to glean as much information as possible about a job candidate. Ostensibly, this information is used to decide if the job candidate is a good fit for the open position. However, there are certain questions that an employer should never ask a job candidate, at the risk of being accused of discrimination or violating a statute. This article will outline these off-limit questions to help employers avoid possible discrimination claims by a job candidate, and to educate job candidates accordingly.

The most obvious improper questions are those that ask a job candidate about his or her age, race, ethnicity, country of national origin or birthplace, religion, disability, sexual orientation, marital or family status and gender identity. In addition to avoiding asking these questions outright, interviewers should also be wary of asking more subtle questions that touch these impermissible topics.

- For example, interviewers should avoid asking candidates their children's ages, since this could be construed as seeking information about a candidate's age or marital or family status.
- Other examples include asking candidates if they will need time off for any particular holidays, or if they have experienced serious illness. If a candidate offers information on these topics, the interviewer can answer specific questions (e.g. "Is the company closed on Good Friday?"), but should

not pursue further.

Recently, New York City and Suffolk County passed laws that make it a "discriminatory practice" for employers to inquire about the salary history of a prospective employee. An employer also may not conduct any form of search through publicly available information for an applicant's salary history. (The law does not



Avrohom Gefen, Esq.

prohibit the employer and the applicant from discussing salary and other compensation and benefits being offered). The purpose of these laws is to eliminate what some believe is one of the reasons for the continuing wage gap between men and women.

Sometimes, a job interview turns into a friendly chat, especially when the participants feel comfortable and relaxed. It is during these interviews that employers should be most vigilant not to veer off topic and get into problematic territory. By limiting interviews to questions that likely will reveal if a job candidate has the skills, experience and demeanor needed to perform the job, employers can avoid claims of impermissible discrimination in the hiring process. **M**

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CUSTODY OF THE DOG: Marital asset? Service animal? Emotional support animal?

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the Courts traditionally have considered which party has a superior possessory right to the pet, rather than his or her respective ability to care for the pet or any emotional ties to the pet. However, that pattern has changed, as the Courts have begun to recognize that unlike other types of property, companion animals should be treated as a special category of property. This is consistent with an underlying public policy to protect the welfare of animals.

In a recent New York County case, Justice Matthew F. Cooper concluded that a strict property analysis should not be used to resolve a dispute between divorcing spouses over the possession of their dog. That Court indicated that Courts must recognize the cherished status afforded to pets in our society. As such, Justice Cooper applied “a best for all concerned” standard, rejecting the prior application of best interest standard as unworkable.

In another recent matrimonial action where temporary possession of a dog was awarded to one party, the Court determined that final possession of the dog would be determined at trial and a credit for any proven value of the dog against a possible distributive award or division of tangible property could be awarded at that time.

This area of the law is evolving rapidly, as the Court has had many instances where pet custody/visitation has been an issue for the Court. To complicate

matters further, the issue of emotional support animals is becoming a hot topic of discussion. The Court in the most recent case indicated there is a clear distinction between a service animal trained for the assistance of a person, such as in a Seeing Eye Dog or one trained to alert its owner to an



oncoming medical issue, and that of an emotional support animal, which can be a comforting and calming force.

It is important to note that unlike service animals, emotional support animals are not trained to behave in a certain way for the benefit of the owner.

Another issue to be resolved in the Nassau County case concerned one of the procedural and equitable matrimonial law mandates. In this case, the preliminary conference was held in January 2017. The dog at that time was listed as marital property. Based on the information and paperwork provided to the Court at that time,

the wife did not convert the pet into an emotional support animal until four months later. At that later date, she provided two letters by clinical psychologists. However, the Court recognized that neither of the letters indicated that the doctors had ever met with the pet or watched the wife’s interaction with the pet. The Court also was mindful that any litigant during a matrimonial action can obtain a variety of letters from various individuals to attempt to convert the family’s marital pet into an emotional support animal. The Court indicated it could not allow a litigant to knowingly violate the automatic orders by, post commencement, changing the nature of what is still currently considered a marital asset. This conduct is a clear violation of the automatic orders whereby a litigant is transferring marital property into something which divests the Court of its equitable distributive authority.

The Court indicated that it adopted the “best for all concerned” standard as the presumptive norm if the issue was still not settled at time of trial. Obviously in this case and in future cases in the event that parties obtain a service dog for one litigant or if the parties agree and execute a document that the family pet has become an emotional service animal, then litigation and the formula adopted by this Court would not apply. **M**

Partner Joseph Trotti heads the firm’s VMM Family Institute and is a member of the LGBT Representation and Commercial Litigation Practice Groups. He can be reached at jtrotti@vmmlegal.com, or 516.437.4385, ext. 140.



Before moving on to the rest of this SideBar, we're turning to you with an important question: Are there any topics you'd like to read about in future issues? Responsive content is of the utmost importance to hold our readers' attention. It's what keeps people engaged in newspapers, blogs, websites, magazines and all sorts of journalism, including The SideBar. Just send an email to rschwartz@vmmlegal.com or call us at 516.437.4385.

PROMOTION



Constantina S. Papageorgiou, Esq.

We are pleased to announce that **Constantina Papageorgiou, Esq.** has been promoted to partner. Constantina joined VMM in August 2013 as an associate and was promoted effective December 2018. She is a member of the firm's Trust and Estate Practice, concentrating in Trust and Estate Administration, Trust and Estate Planning, Guardianships and Elder Law.

Ms. Papageorgiou is a frequent speaker (in English and Greek) to community groups, professionals and young families on Medicaid planning, trust and estate planning and guardianships. Recent engagements have included the HANAC Ravenswood Senior Center, Bank of America, Momally Astoria, Momally Parenting Group, and New York Center for Rehab Social Workers. Upcoming, Ms. Papageorgiou will be addressing the New York Center for Rehab Social Workers, St. Demetrios Church and the North Queens Homeowners Civic Association and St. Nicholas Ladies Philoptochos.



VMM ACADEMY ANNOUNCES THE VMM SPEAKERS' BUREAU

We invite you to take advantage of the VMM Speakers' Bureau, a spin-off of VMM Academy, the educational arm of Vishnick McGovern Milizio LLP.

VMM Academy has expanded beyond the walls of our office in Lake Success. Our knowledgeable attorneys are available AT NO CHARGE to present the legal aspects of relevant topics to members of your business or organization.

Consider the range of our experience in the areas of Trusts and Estates Law; Elder Law; Matrimonial and Family Law; Transactional and Business Law; Exit Planning for Business Owners; Employment Law; Commercial Litigation; Real Estate Law; and legal issues affecting those in the LGBTQ community...each of which are multi-faceted and ever-changing.

For more information or to book a speaker, please contact Roy Schwartz at 516.390.4385 x 127 or at rschwartz@vmmlegal.com.

OUT AND ABOUT

The events our attorneys have attended and organizations we have supported during the last few months include:

- ✓ Alliance of Merger and Acquisition Advisors - Long Island Chapter
- ✓ Brandeis Association
- ✓ Chamber of the Willistons
- ✓ Chaminade Long Island Business Alumni Network
- ✓ Collaborex
- ✓ Columbian Lawyer's Association – Nassau Chapter
- ✓ Ellevate
- ✓ Exit Planning Institute, Long Island Chapter
- ✓ Franklin Square Kiwanis
- ✓ Gaingels
- ✓ Garden City Chamber of Commerce
- ✓ Hellenic Lawyers Association
- ✓ Holocaust Memorial & Tolerance Center of Nassau County

- ✓ Human Rights Campaign
- ✓ Kiwanis of Garden City
- ✓ JEP Long Island / Camp Nageela
- ✓ Literacy Nassau
- ✓ Long Island Center for Independent Living
- ✓ Marconi Club
- ✓ Mineola-Garden City Rotary
- ✓ Nassau County Bar Association
- ✓ New York Association of Business Brokers
- ✓ New York State Bar Association
- ✓ Own Your Wellness Women's Conference
- ✓ Riley's Way
- ✓ Ronald McDonald House
- ✓ Society of Bietto of Mutual Aid
- ✓ US Army 800th Military Police Brigade

APPOINTMENT



Andrew A. Kimler, Esq.

Partner **Andrew A. Kimler, Esq.**, who heads VMM's Commercial Litigation, Employment Law and Alternate Dispute Resolution (ADR) Practice Groups, has been appointed to membership in **Eastern District of New York (EDNY) ADR Department Advisory Council for the 2019-2021 term.** The mission of this program is to provide litigants with an opportunity to resolve their disputes expeditiously through court

annexed mediation and arbitration. As a member, Andy will participate in guiding the EDNY ADR Department into the future.



Associate **Meredith Chesler, Esq.**, a longtime supporter of Island Harvest (<https://www.islandharvest.org>), organized an office food drive in December 2018, which resulted in a donation of 75+ pounds of canned goods to the "Turkey & Trimmings Collection Campaign."



Meredith Chesler, Esq.



VMM participated with Birthday Wishes Long Island (<http://longisland.birthdaywishes.org>), to collect birthday gifts for young women who are residing in shelters or transitional living facilities with their families.



Group photo: Kathleen Vera, Lois DeNardo, Rosemary Vella and Meredith Chesler, some of the participants displaying the first assortment of donations made to Birthday Wishes.



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