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### **PRESS RELEASE**

#### **DOGS NO LONGER PRESUMED GUILTY UNTIL PROVEN INNOCENT**

FOR IMMEDIATE RELEASE

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**Seattle, WA** – Division One of the Washington Court of Appeals today reversed a King County Board of Appeals ruling upholding the decision of King County Animal Control declaring Maxine, a dog cared for by Peter Mansour of Kirkland, as vicious and ordering her removed from King County within 48 hours. Today's ruling overrides the practice of King County to presume dog guardians guilty until proven innocent and to hamstring their efforts at defending themselves by preventing them from subpoenaing witnesses or records.

The significance of this decision affects all dog owner-guardians in Washington State. Many jurisdictions will declare a dog dangerous and provide the owner with an appeal hearing to contest the allegations, which, if found to be valid by the hearing examiner, could result in a death sentence for the dog. Prior to today's ruling, at least in King County, your dog could be declared dangerous and ordered confined or removed on threat of euthanasia and, if you contested the charges, your dog would be presumed guilty until proven innocent. After today's ruling, government must provide dog owners the same due process protections that are afforded speeders. When contesting parking tickets, the burden of proof is on the State to demonstrate by a preponderance of the evidence (more likely than not) that you sped. In your defense, you can subpoena witnesses.

But when Mr. Mansour vehemently contested the allegation that his dog killed a cat off his property, he was forced to prove that King County Animal Control acted arbitrarily or capriciously. In other words, the Board of Appeals assumed that King County Animal Control was correct in issuing the order, even though this was the first opportunity for Mr. Mansour to contest these allegations. He was also prevented from subpoenaing witnesses, including critical veterinary records that could have demonstrated that his dog did not kill the cat in question. Furthermore, the notice outlining the offenses with which he and his dog were charged was erroneous in many respects.

Although Mr. Mansour lost on appeal to King County Superior Court, where Judge Steven Gonzalez affirmed the Board of Appeals, today the Court of Appeals reversed both Judge Gonzalez and the Board of Appeals and held the following:

- 1) **On Burden of Proof:** In recognizing “that the bond between pet and owner often runs deep and that many people consider pets part of the family,” the court held that, “an agency seeking to enforce a removal order must prove both the violation and the remedy it has imposed by a preponderance of the evidence.” Page 9 of Opinion.
- 2) **On Subpoenaing Records and Witnesses:** On whether Mr. Mansour was entitled to subpoena records and witnesses, the court said, “the Board’s attorney’s refusal to permit discovery or subpoenas significantly limited Mansour’s ability to offer witnesses and evidence on his behalf, cross-examine Dr. Fry, or rebut the evidence against him. He could not call his own expert to dispute Dr. Fry’s causation opinion without access to Lacie’s veterinary records. He could not dispute some of the County’s evidence that Maxine was a neighborhood nuisance because he could not subpoena Wegener and Usher to impeach or rebut their earlier inculpatory statements. Even a person disputing a minor civil infraction like a parking ticket has the right to subpoena witnesses. The lack of subpoena power prejudiced Mansour’s ability to present his case and argue for a less severe penalty.” Page 12-13 of Opinion.
- 3) **On Due Process:** The court added that, “Requiring Mansour to move out of King County to keep Maxine alive was severe enough sanction to warrant more formal procedural safeguards. Due process requires that a pet owner contesting a removal order be able to subpoena witnesses and records.”
- 4) **On the Sufficiency of the Notice:** Finally, on whether the Notice and Order of Violation was sufficient, the Court held that requiring the Director of Animal Control merely to issue a “brief and concise description of the conditions for finding the violation ... is insufficient to satisfy the fundamental due process requirement for notice of the charges. While Mansour had notice that the County could remove Maxine if she bit or attacked a domestic animal, he was entitled to know ahead of time exactly what the County needed to prove at the Board hearing. If in fact it could not prove that Maxine violated a code provision that supported the removal order, he was entitled to know that in time to move for dismissal at the Board level.” Page 15 of Opinion.

Other jurisdictions with appeal processes that would appear to violate today’s ruling include the City of Everett (6.08.035), Pierce County, the City of Spokane (SMC 17G.050.320(C) and SMC 10.03.020) and the City of Tacoma (17.04.030). Other municipalities appear silent on precisely what due process protections are afforded, and are accordingly ready to be challenged. They include the Cities of Yakima, Pasco, Richland, and Kennewick, among others.

Below is the direct link to the opinion:

<http://www.courts.wa.gov/opinions/?fa=opinions.opindisp&docid=552929MAJ>