

Discrimination at the Adoption Counter

Does turning down a potential adoption put your organization at risk of a lawsuit?

BY CHERIE TRAVIS



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Recently, representatives from two area shelters contacted me with questions about adoptions they had rejected. One shelter had turned down an 85-year-old prospective adopter who wanted a kitten. Another organization turned down a family with a child with a mental disability who wanted a small puppy. Both prospective adopters had angrily declared that they would sue the shelter for discrimination.

So the question is, can adopters sue for discrimination—and beyond that, could they sue in these particular cases?

Practically speaking, it costs money to hire a lawyer and bring a lawsuit, so it is unlikely that the aggrieved prospective adopters will follow through. That's not to say that they won't tell their friends, neighbors, and co-workers about how horrible their experience was and how discriminatory they perceived it to be.

That kind of word-of-mouth could be damaging as well—to your shelter's reputation, and consequently to the animals you care for. How can you make sure your adoption decisions don't make your organization vulnerable to legal or publicity threats?

Denying Without Discriminating

Everyone has heard of a case in which someone who feels discriminated against files a lawsuit. But is every denial of services considered to be discrimination? Obviously not. Credit card companies regularly turn down credit card applicants, and colleges routinely deny some applicants admission.

To figure out whether there's a legal discrimination issue, you need to look at who is doing the refusing, who and what is being refused, and why.

Some states, such as California, have broad anti-discrimination laws. California's Unruh Act states that, "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, language spoken, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in *all business establishments* of every kind whatsoever." (Emphasis added.)

Given that the law only mentions "business establishments," can you assume that it doesn't apply to a nonprofit or municipal agency? Not necessarily. The courts have not issued a blanket exception for nonprofit organizations. In *Doe v. California Lutheran High School Association*, the California Court of Appeals stated that a group "should not be deemed a business unless it has some significant resemblance to an ordinary for-profit business." While the court in that case determined that the admission decisions of a private religious school were not subject to the Unruh Act, the ruling was narrow. And there

Starting with this issue of *Animal Sheltering*, we will be alternating our Shelter Medicine column with this new department, appearing in every other issue.

Humane Law Forum will offer expert perspective on some of the day-to-day legal issues shelters face, examining the relevant case law and providing guidance and suggestions on how certain issues can be best managed to improve operations, keep shelter clients satisfied—and avoid lawsuits.

Our columnist is Cherie Travis, adjunct professor of animal law at DePaul University College of Law and Northwestern University School of Law, and the associate director of the Center for Animal Law at DePaul. She is the past chair and current legislative liaison for the Chicago Bar Association's Animal Law Committee, which has more than 75 lawyer-members. She is the president and co-founder of PACT Humane Society in Illinois, a founding member of the Chicago Animal Shelter Alliance, and was recently appointed commissioner of Chicago Animal Care and Control.

In her first column, Travis examines the issue of discrimination, asking when an adopting agency might be held liable for a decision not to adopt. Her advice: Be clear, consistent, and compassionate when enforcing shelter adoption policies.

[humane law forum]

are elements of standard shelter operations—business hours, adoption fees, etc.—that do resemble “an ordinary for-profit business.” There’s no guarantee about what direction courts will take in the future.

In addition, if your animal shelter receives public funding, either through operations as an animal control facility or by taking in strays through a contract with a county or municipality, you may be subject to an anti-discrimination ordinance or law.

This does not mean that your organization cannot evaluate prospective adopters—it merely means that you could be subject to statutes if you deny an adopter simply because of a factor such as sex, race, religion, etc. If you turned down the prospective adopter because they intended to give the puppy as a birthday present and your shelter has a specific policy against giving pets away as gifts, that’s different.

areas of “employment, transportation, public accommodations, public services, and telecommunications.” Public accommodations include such things as hotels, restaurants, bars, movie theaters, day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, and other social service center establishments.

While animal shelters are not included on the list, it’s helpful to look at how the courts have interpreted the Act as applied to “adoption agencies” to see how the courts might look at a future case alleging discrimination by an animal shelter.

In the New York case of *Adams v. Monroe County Department of Social Services*, the district court examined whether an adoption agency had violated the ADA when it did not place a foster child with a blind woman and her husband. The court determined that the county’s decision that the best interests of

children was “of paramount concern,” and agencies should be given some deference in such an important task.

Just as adoption and foster agencies are charged with the responsibility of the health and safety of children they place in homes, animal shelters are responsible for placing the animals in their care. Referring back to the example of the family with the mentally challenged child, if the shelter’s concern was with the health and safety of a small puppy that the family wanted to adopt, it seems that the court might view the shelter’s decision as reasonable if the facts indicated that the child did not possess the gentle handling skills required to care for a pet, or was prone to violent outbursts.

In the case of the blind plaintiff who wanted to adopt a child, the court also took notice of the fact that the plaintiffs were not willing to accept just any child—they specifically wanted a younger, white child and were not interested in an older or nonwhite child. This resonates with me as a shelter president who sees lots of adopters who are only willing to consider the littlest of puppies and kittens, when an adult animal may well be suited for that household.

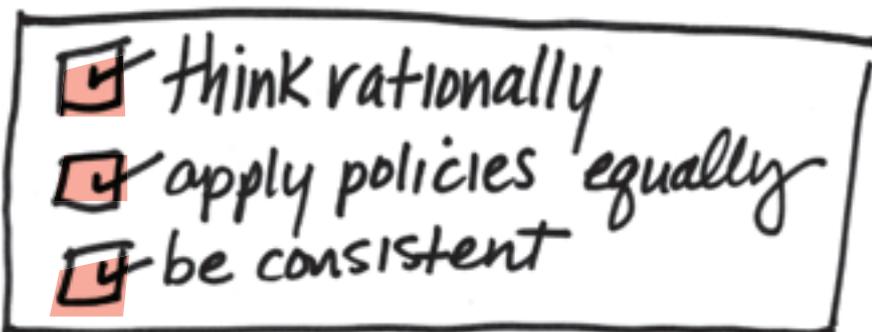
The court accepted that the adoption agency had taken the plaintiff’s blindness into consideration in determining whether she would be a fit adoptive or foster parent, but stated that it was a legitimate consideration “and that such a consideration did not amount to unlawful discrimination in violation of the ADA.”

This case highlights the importance of an evaluative process that emphasizes the health and safety of the animal and the person, and also suggests that options should be offered when possible.

Check Your Biases

Again, we will use the analogy of the adoption of children, which by all accounts would be given greater deference than the adoption of animals.

Many states have anti-discrimination laws that include sexual orientation, which has affected child adoption agencies. In 2007, a gay couple in San Jose, Calif., won a lawsuit against the adoption networking site *adoption.com* for violating the state’s anti-discrimination law mentioned above. And in 2006, the Boston



Who Was Denied—and Why?

For the sake of argument, let’s assume that the shelter that denied adoption to the elderly man was in California. Could it have violated the Unruh Act?

No, because age is not a provision in that law (not surprising because, had age been listed, minors would have been able to challenge age restrictions regarding renting cars and purchasing cigarettes and alcohol). In fact, age is seldom included in anti-discrimination laws, with the notable exception of the federal Age Discrimination Employment Act of 1967.

What about the family of the child with a disability? Could they sue under the Americans with Disabilities Act (ADA), a federal anti-discrimination statute? According to the government website *ada.gov*, the Act is intended to prohibit discrimination in the

the children would not be served by placement in the plaintiffs’ home (because of the risk of physical harm) did not constitute unlawful discrimination.

There is language in the case that is useful to our analysis of how a court might approach a discrimination claim against an animal shelter. The applicable state law, the court wrote in its ruling, “simply provides that ‘physical handicaps or illness of foster parents ... shall be a consideration only as they affect the ability to provide adequate care to foster children or may affect an individual child’s adjustment to the foster family.’ That is not a state-provided license to discriminate against persons with physical handicaps, but a reasonable regulation intended to ensure the health and safety of foster children, and it is not inconsistent with the ADA.” The court said that the safety of

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archbishop shut down the adoption agency affiliated with Catholic Charities instead of submitting to Massachusetts' anti-discrimination policies, which would have required the agency to adopt to gays and lesbians.

Does this suggest that your shelter can't turn down a gay couple? No. You can turn down any couple, assuming that your reason is not related to their sexual orientation or marital status. If neither partner has a job or source of income and your shelter policies require that adopters be able to financially provide for their animals, your decision to turn them down would not be discriminatory. Likewise, if their apartment complex prohibits pets, your refusal to adopt would have a rational basis.

Let's look at another shelter dilemma: Say your shelter has a policy against declawing adopted cats and kittens. But a potential adopter is a hemophiliac, and says that he has been told by his doctor that he must have a declawed cat for medical reasons. Your shelter staff has shown him the already-declawed cats that you have, but he has not yet found one that he likes.

Does your shelter have to adopt to him, knowing that he will declaw the cat in violation of the shelter policy? No. Is the adopter being denied adoption based on his disability? Absolutely not. Your shelter is applying the same policy equally to all prospective adopters: You make declawed cats available to all adopters, including this one; you deny adoption to all adopters who will declaw, including this adopter.



Cherie Travis

Tips for Staying Out of Legal Hot Water and Keeping Clients Happy

- Have a disclaimer stating your right to deny adoptions. Include this on your adoption application.
- Set adoption policies based on rational criteria. Considerations of the health, safety, and well-being of the animal—as well as the health and safety of the adopter—are all reasonable, appropriate, and defensible.
- Be consistent. Train all your adoption counselors to handle adoptions the same way. If each adoption counselor is allowed to use whatever criteria they choose, you will be more vulnerable to charges of discrimination.

If a situation does come up, document everything. Why was the adopter turned down? Your adoption counselor should be able to articulate the reason for refusal. A shelter has a real health/safety concern about an elderly person adopting a young animal; the puppy or kitten may run near the person's feet, causing him to trip and fall and could injure the pet at the same time.

Were any alternatives offered? A court will likely find that the *individual* has not been discriminated against if she is given some options.

At my own animal shelter, I was once confronted by a prospective adopter who was African-American. She alleged racial discrimination when I refused her adoption. She had told me that her source of income was public assistance and financial support from her son, both precarious—so I thought she wasn't an appropriate adopter. However, I suggested some alternatives—she could foster cats for us, which would minimize her financial obligation, or she could volunteer with us, which would enable her to care for many cats without any burden at all. She was interested in neither. I wrote all of this—my concerns and the options I'd offered her—on the application before giving her a copy. We never heard anything further.

- Most important of all, try to work with the public! Remember, these people have come to try to adopt a homeless animal. The best way to avoid even the *threat* of a lawsuit is to provide good customer service.

Imagine if, in the case of the elderly adopter, the shelter representative had offered appropriate suggestions, such as showing him an older, docile cat that would match his own energy level. The shelter's concern that the adopter might die before the cat or become unable to care for her could be handled by talking to the adopter's family members; a relative could co-sign the adoption agreement and agree to be responsible for the cat. This is not foolproof and the cat could still be returned later on, but it would be worth discussing.

Likewise, the shelter that was confronted by the mother of a child with a disability would have been better off letting the parent know that, while a puppy wouldn't necessarily be the right fit for the family, the shelter would be happy to find the right animal. This willingness to help immediately sets a different tone. The shelter's representative could have checked to see if there were any available adult cats or dogs who were good with children.

The best way avoid litigation is to have and apply good shelter policies. Good customer service and a willingness to work with the public is a far better strategy than having a good defense attorney—and it's the best way to find homes for homeless animals! **AS**

Have a question about how the law might apply to your agency's policies and practices? Send it to us at asm@humanesociety.org.

The information contained in this article does not constitute legal advice and should not be used as a substitute for the advice of competent legal counsel. If your organization is facing a legal issue, contact an attorney.