

# LITIGATING "PUPPY MILL" CASES

## 10 TIPS & TRAPS

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Here are ten Tips and Traps in litigating "Puppy Mill" cases.

**1. Legislation Looming.** Coordination with legislative effort should be undertaken when undertaking litigation. Friendly, supportive officials and lobbyists should be kept in the loop when litigation is looming or pending.

*Example: Minnesota "puppy mill" lawsuit led to enactment of a moratorium in a nearby county.*

**2. Criminal Consideration.** In challenging "puppy mills" through civil litigation, parties should consider the applicability of criminal sanctions. In some states, it is impermissible to *threaten* criminal proceedings in connection with civil issues, but that: 1) that proscription is receding; and 2) it does not prohibit actual participation or pursuing a criminal case.

*Example: Minnesota Code of Professional Responsibility **formerly** forbade threats of criminal actions in connection with civil litigation.*

**3. Land Use Limitations.** Many "puppy mills" arise under local land use, or zoning, laws. Usually, the operator will seek a conditional or special use permit, which generally requires compliance with most zoning requirements. Or, a variance may be granted, which generally requires some kind of "hardship" by the applicant. Parties opposing establishment of "puppy mills" usually must act swiftly and submit all evidence to administrative or local legislative levels because courts generally will not accept "new" evidence in civil litigation.

*Example: The legal standard for reversing a local zoning decision is usually a high one: arbitrary, capricious, or unreasonable action.*

**4. Don't Disregard Dogs.** While land use issues generally do not address animal welfare issues, the welfare of dogs should not be disregarded. Animal health and humane issues can be asserted. It is important to raise these issues early in the administrative-legislative process, rather than asserted for the first-time in litigation.

*Example: Zoning laws generally focus on land use, not animal welfare.*

**5. Building Battles.** In addition to typical zoning alternatives, a "puppy mill" applicant may have to satisfy building and inspection requirements. Local and statewide building codes and federal animal welfare requirements should be examined to determine if the facility is

out of compliance with these requirements. In the event of non-compliance, suit may be pursued against government officials for failure to conform to their own legal requirements. But local and Federal (USDA) officials often lack resources to perform adequate monitoring. Neighborhood and others should report irregularities to authorities of oversight.

*Example: In most cases, local officials will rarely conduct compliance inspections unless egregious conditions are reported.*

**6. Focus on Features:** An array of issues come into play whether local authorities may permit a "puppy mill." The features that are most commonly featured include environmental matters: noise; traffic; aesthetic issues; and effect on value of surrounding properties.

*Example: The catch-all phrase generally is the "health, safety, and welfare" of the community.*

**7. Go Green:** Environmental issues can often be raised in litigation proceedings. State law may allow — or even require — environment work-up prior to "puppy mill" establishment.

*Example: In Minnesota, a petition by 30 signatures can trigger environmental review if there "may be potential for significant environmental effects."*

**8. Value Variations:** The debilitating effect of "puppy mills" on nearby real estate is an issue that often can be raised effectively. But these must be concrete, legally-admissible evidence, not just speculation. It is preferable that a certified real estate appraiser be used, if available, in addition to real estate sales personnel. One difficulty is obtaining useful "comparables" for valuation purposes.

*Example: In a Minnesota case, a single real estate appraiser opined a 10% real estate decline; in another case, three realtors concurred on a 5-10% diminution in value.*

**9. Add Amicus:** Groups with interest in "puppy mill" litigation or animal welfare generally may be enlisted as *amicus* or "friends" of the court. They can lend an additional perspective and raise some overreaching policy issues that may be beyond the scope or resources of the litigants. Other "experts" also may be used on animal welfare, environmental, and other issues. As indicated, it's usually necessary to include them early in the process.

*Example: See attached article on Amicus.*

**10. Financial Features:** Litigation can be costly. It is important to budget for the battle. Key features that need to be considered are legal

fees; costs for depositions, experts, witnesses and other expenses; appellate briefs; and fund-raising activities.

*Example: Legal expenses for litigating puppy mill cases can range up to \$100,000, or more.*