

IN THE IOWA DISTRICT COURT IN AND FOR WORTH COUNTY
MAGISTRATE DIVISION

WORTH COUNTY,
STATE OF IOWA,

Plaintiff,

vs.

BARBARA KAVARS,

Respondent.

No.

PETITION FOR FINDING
THREATENED STATUS,
CUSTODY AND DISPOSITION
PURSUANT TO IOWA CODE
§717B.4

COMES NOW, Kelsey A. Beenken, Assistant Worth County Attorney, who submits this Petition for Dispositional Proceedings pursuant to Iowa Code §717B.4, and in support thereof, respectfully states to the Court as follows:

1. This is an action for the finding of threatened status, custody and disposition of animals pursuant to Iowa Code §717B.4.
2. This Court has jurisdiction over this matter pursuant to Iowa Code §717B.4(1), as the animals are being maintained in Worth County by a responsible party designated by a local authority. Further, Iowa Code §602.6405(1) provides jurisdiction to magistrates to determine the disposition of animals pursuant to Iowa Code §717B.4 if the value of the animal(s) is under \$10,000.
3. On November 12, 2018, pursuant to two lawful search warrants (attached as Exhibit A) issued by the Honorable Douglas A. Krull, Magistrate for Worth County, State of Iowa, the Sheriff seized and took custody of 154 dogs, all Samoyeds, and four cats (hereinafter the "Seized Animals") from a property located at 1071 Highway 9, Manly, Iowa (the "Premises"). Both warrants were issued based on a showing of probable cause of animal neglect, in violation of Iowa Code §717B.3.
4. Respondent was present on the Premises at the time of the execution of the warrant. Respondent owns the Premises and claimed ownership of and responsibility for the Seized Animals. Notice was provided to Respondent (attached as Exhibit B).
5. At the request of the Sheriff, the American Society for the Prevention of Cruelty to Animals (the "ASPCA"), a not-for-profit animal welfare organization, assisted the Sheriff with the removal of the Seized Animals, providing approximately 40

specially-trained responders, including veterinarians, animal handlers and other experts (“ASPCA responders”).

6. On November 12, 2018, Respondent voluntarily surrendered legal ownership of all but 13 (nine dogs and four cats) of the Seized Animals (hereinafter the remaining 13 animals shall be referred to as the “Rescued Animals”).
7. The Rescued Animals are individually listed and described in the inventory attached as Exhibit C.
8. Although the Rescued Animals are in the custody of the Sheriff, they remain the property of Respondent.
9. At the request of the Sheriff, the ASPCA is providing shelter, food, water, behavioral enrichment and necessary veterinary care for the Rescued Animals. Substantial costs have been, and will continue to be, incurred in connection with the sheltering and care of the Threatened Animals.
10. The value of the Rescued Animals is under \$10,000.

RESCUE AND DISPOSITION OF THREATENED ANIMALS

11. The Sheriff, as authorized by Iowa Code Iowa Code §717B.5 had cause to believe that the animals on the Premises were Threatened Animals, and after consulting with an Iowa-licensed veterinarian, entered the property pursuant to a lawful search warrant and rescued the animals.
12. The animals have been removed from the Premises and are being maintained in Worth County by the ASPCA, pursuant to a contract between the ASPCA and the Sheriff.
13. Pursuant to Iowa Code 717B.4, within ten days of the removal of rescued animals, the local authority is required to file a Petition seeking a dispositional hearing. The purpose of Iowa Code §717B.4 is to “provid(c) for the rescuc, maintenance and disposition of neglected animals.” (1994 Ia. ALS 1103, 1994 Ia. Ch. 1103, 1994 Ia.LAWS 1103, 1993 Ia. HF 637.)

14. This Petition is properly filed in this Court, as the Rescued Animals are being maintained in Worth County, Iowa. This Petition seeks a hearing so the Court can determine whether the Rescued Animals are threatened and order their disposition. Upon a finding that the Rescued Animals are threatened, the Court shall order the Sheriff to dispose of them in any manner deemed appropriate for their welfare. (Iowa Code §717B.4). Upon a finding that the Rescued Animals are not threatened, the Court shall order the Sheriff to return the animals.
15. Central to this Court's determination regarding appropriate disposition is whether or not the Rescued Animals are Threatened Animals. Iowa law defines a threatened animal as "an animal that is abused as provided in section 717B.2, neglected as provided in section 717B.3, or tortured as provided in section 717B.3A." (Iowa Code §717B.1.)
16. An owner commits neglect by failing to supply the animal during confinement with sufficient food or water, adequate shelter if that animal is a dog or cat or deprives the animal of necessary sustenance causing unjustified pain, distress or suffering. (Iowa Code 717B.3).
17. The animals in this matter were indeed Threatened Animals, as Respondent failed to supply them with a sufficient quantity of food and/or water, failed to provide them with adequate shelter and/or deprived them of necessary sustenance which caused unjustified pain, distress or suffering.

COSTS

18. In addition to determining the disposition of rescued animals, Iowa Code §717B.4 also authorizes this Court to order Respondent to pay an amount that shall not be

more than the dispositional expenses incurred by the local authority as well as court costs, reasonable attorney fees and expenses related to the investigation and prosecution of the case, which shall be taxed as part of the costs of the action.

19. Care of the Rescued Animals has involved and will continue to involve transportation, housing, supervision, food, enrichment, medical examinations, medical treatment and grooming. However, costs are not requested at this time. Should Respondent request a continuance, as is authorized via statute, costs may be sought via amended petition depending on the length of the continuance.
20. The estimated cost of providing care to the Rescued animals is \$30 per dog, per day, and \$20 per cat, per day.

CONDITION OF THE PREMISES AND ANIMALS

21. At the time of the rescue and seizure of the Rescued Animals, agents of the Sheriff and ASPCA responders observed the following conditions on the Premises:
 - A. The majority of the Seized Animals were kept outdoors in kennels with little to no food. No clean water was present; a few buckets contained a small amount of frozen water. No mechanisms to keep drinking water heated above freezing were present. The kennels had limited roof coverings and were full of feces. Fallen branches and other debris were laying throughout the property. The kennels were overcrowded, and none were heated despite the below-freezing temperatures.
 - B. The nine dogs that are Rescued Animals, like many of the dogs on the premises, appeared to have matted and dirty fur as well as other untreated medical conditions. The matting on some of the dogs was so severe to encompass entire tails or underbellies. Many were underweight, some to a significant degree.

Many further suffered from dental problems, some severe. Their nails were untrimmed, and fecal matter was present on their bodies and between the pads of their feet. Dogs crowded together were barking and fighting, and some were cowering. Some had trouble standing and walking.

C. In addition, three dogs and four cats were found inside Respondent's residence on the Premises. The conditions within the residence were unsafe for human or animal habitation. An overwhelming odor of ammonia and feces permeated the home, making it nearly impossible to breathe and caused irritation to both lungs and eyes. Containers of unopened food – both human and animal – were piled throughout the home. A water bowl with a tissue floating in it was on the first floor, and a litter box inside a second cardboard box – both overflowing with feces – were in the basement. Mats of fur and dirt were caked on surfaces, including kitchen counters. Pads commonly referred to as “pee pads,” soaked in feces and urine, covered the living room floor. There was little room to walk, and little to no surface area on which to sit or place an object.

22. On or about and between November 12, 2018 and November 15, 2018, the Rescued Animals were examined by ASPCA licensed veterinarians. The Rescued Animals consist of the three dogs and four cats from inside the residence as well as six dogs found in outside kennels. Preliminary findings from the exams are described below:

A. Rescued Dog identified as A73: An adult male Samoyed, this dog was housed outdoors in an enclosure with a metal roof, dirt floor and access to an enclosed outdoor run reachable via an opening with no flaps or door covering such. There was access to a scant amount of frozen water, and no food was present. This dog is lean with a body condition score of 4/9 on the Purina Scale, which is a tool developed to measure whether a dog is too thin, ideal or overweight.

Numbers at the low end indicate that a dog is underweight, and the lower the number, the more severe the issue. The same applies in reverse on the other end of the scale, with numbers close to nine indicating obesity. This dog also suffers from dental disease with a fracture of his upper left incisor and tartar buildup. The dog has large, dangling hair mats embedded with debris on his front legs, a dirty coat, overgrown nails and matted fur behind his ears, on his neck and on his thighs.

B. Rescued Dog identified as B321: An adult male Samoyed, this dog was housed in an outdoor shed/kennel with metal fencing, concrete flooring and a metal roof. The kennel was connected to an outdoor run with dirt flooring, metal fencing and a wooden building that smelled strongly of ammonia. The dog had access only to frozen water and no food. This dog is thin, with a body condition score of 3/9 on the Purina Scale. He has moderate dental disease, and there is debris in both ears, flea dirt and fecal material present on his body. The dog's nails are overgrown, and there is severe matting behind his ears, on his tail and under his collar.

C. Rescued Dog identified as B322: An adult female Samoyed, this dog was housed in an outdoor shed/kennel with metal fencing, concrete flooring and a metal roof. The kennel was connected to an outdoor run with dirt flooring, metal fencing and a wooden building that smelled strongly of ammonia. The dog had access only to frozen water and no food. This dog is pregnant. Despite the pregnancy, the dog is thin, at a body condition score of 3/9 on the Purina Scale. The dog suffers from moderate dental disease with heavy tartar and wear to the dental surfaces of her upper canine teeth. There is evidence of delivering

previous litters. The dog has a dirty coat, small mats behind her ears and on her tail, and overgrown nails.

D. Rescued Dog identified as B323: An adult female Samoyed, this dog was housed in an outdoor shed/kennel with metal fencing, concrete flooring and a metal roof. The kennel was connected to an outdoor run with dirt flooring, metal fencing and a wooden building that smelled strongly of ammonia. The dog had access only to frozen water and no food. This dog is lean with a body condition score of 4/9 on the Purina Scale and has mild dental disease. The fur around both eyes is stained, and there is waxy buildup in both ears. There is evidence of delivering previous litters as well as evidence the dog suffered a previous wound to the left lower back area. This dog's coat was dirty, there were feces present and there was minimal fur matting and moderately overgrown nails.

E. Rescued Dog identified as B324: An adult female Samoyed, this dog was housed in an outdoor shed/kennel with metal fencing, concrete flooring and a metal roof. The kennel was connected to an outdoor run with dirt flooring, metal fencing and a wooden building that smelled strongly of ammonia. The dog had access only to frozen water and no food. This dog is thin with a body condition score of 3/9 on the Purina Scale and has mild dental disease. A mild heart murmur was detected. The dog has dirty skin along the underside and matting as well as evidence of delivering previous litters.

F. Rescued Dog identified as B325: An adult male Samoyed, this dog was housed in an outdoor shed/kennel with metal fencing, concrete flooring and a metal roof. The kennel was connected to an outdoor run with dirt flooring, metal fencing and a wooden building that smelled strongly of ammonia. The dog had access only to frozen water and no food. This dog is lean, with a body condition

score of 4/9 on the Purina Scale. Advanced dental disease is present, with pulp exposure of the upper left canine tooth, heavy tartar and wear to canine teeth. There is discharge from both eyes. The dog is severely matted with debris and fecal material caught in the mats and between the paw pads. Flea dirt is present and nails are overgrown.

- G. Rescued Dog identified as C9:** An adult female Samoyed, this dog was housed inside the private residence on the premises. This dog is lean with a body condition score of 4/9 on the Purina Scale and suffers from severe dental disease. Several teeth have receded, there is pus present at the red and inflamed gums, and teeth are loose and painful. There is mild discharge from both eyes. There is wax in both ears, especially close to the ear drum on the right side. There are excessive layers of flaking skin built up in the hair coat, moderate fur matting and nails are moderately overgrown. A mass is present in her left mammary area.
- H. Rescued Dog identified as C10:** An adult female Samoyed, this dog was housed inside the private residence on the premises. This dog is of normal body condition, with a score of 5/9 on the Purina Scale and has mild dental disease with significant recession of its first upper left incisor. Both ears have dry, waxy debris inside. There is evidence of a prior spay or C-section. The dog is severely matted throughout her head, neck and trunk, and fecal matter is present at her tail. Mats encompass the entirety of her hindquarters, and her tail is encased in one large mat. Her coat is dirty and dry, and her nails are overgrown.
- I. Rescued Dog identified as C11:** A senior adult female Samoyed, this dog was housed inside the private residence on the premises. This dog is overweight with a score of 6/9 on the Purina Scale. This dog suffers from mild degenerative

muscle wasting and has tearing and cloudy eyes. Both ears contain moderate dark brown waxy debris. Moderate dental disease is present. The dog suffers from a buildup of scaling skin and debris in her coat, including burrs and plant material. The undercoat is one large mat, and a mat on the tail measures 6X4 inches and contains numerous seeds, burrs and fecal matter. All four feet are stained from prolonged contact with urine and feces. On the left side of her chest there is a matted area with dark brown crusts. The dog has moderately overgrown nails.

J. Rescued Cat identified as C12: A senior adult dilute calico short hair female cat, this cat was housed inside the private residence on the premises. This cat is thin, with a body condition of 3/9 on the Purina Scale and suffers from mild dental disease with six teeth missing and one fractured. The cat's eyes have mild discharge, and there is debris in her ears, which are also very itchy. The cat has alopecia on her front legs consistent with over-grooming and a lesion on its right neck and has overgrown nails.

K. Rescued Cat identified as C13: A senior adult calico medium-haired, female cat, this cat was housed inside the private residence on the premises. This cat is very thin, with a body condition score of 2/9 on the Purina Scale. There is mild dental disease present with two teeth missing and mild gingivitis. This cat suffers from discharge from her eyes and has upper airway noise consistent with an upper respiratory infection. Her fur is matted in multiple places, multiple scabs are present, and her nails are overgrown.

L. Rescued Cat identified as C14: A senior white domestic, short-haired adult female cat, this cat was housed inside the private residence on the premises. This cat is lean, with a body condition score of 4/9 on the Purina Scale. There

is discharge coming from both eyes, and both ears have dirt and debris inside.

The nails are overgrown.

M. Rescued Cat identified as C15: A senior white and brown tabby, short hair adult female cat, this cat was housed inside the private residence on the premises. This cat is overweight, with a body condition score of 6/9 on the Purina Scale. Its eyes have nuclear sclerosis consistent with aging, and her ears have dry, tan debris inside that obstruct both eardrums. There is tartar on her teeth, and three teeth are missing. Her nails are overgrown.

23. Based on the above described conditions, Respondent is not able to adequately provide for the Rescued Animals and/or is not fit to have custody of the Rescued Animals. The Rescued Animals are threatened animals due to neglect as defined by statute, as Respondent has not provided them with sufficient food and water and adequate shelter. Further, deprivation of necessary sustenance has caused these animals unjustified pain, distress and suffering. These Rescued Animals are therefore proper subjects for rescue and disposition.

PRAYER FOR RELIEF

WHEREFORE, Worth County, State of Iowa requests that this Honorable Court:

- A. Schedule by written order a hearing on this petition, to be held with the ten (10) days after filing, to determine all matters raised in this petition and under Iowa Code §717B.4.
- B. Order that a copy of the order setting the above hearing and a copy of this petition be personally served on Respondent, and that such service shall constitute service of process on the Respondent as contemplated by Iowa law.

- C. After holding the above hearing, find that the Rescued Animals are threatened animals and order that Respondent's rights in the Rescued Animals shall be forever terminated and that the Rescued Animals shall be turned over to the Sheriff for appropriate disposition in accordance with the law.
- D. Grant to the Sheriff and his agents or designees such other and further relief as the court deems just and proper.

VERIFICATION

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE READ THE FOREGOING PETITION AND THAT THE FACTS STATED IN IT ARE TRUE.

Dated this 21st day of November, 2018.

/s/ Kelsey A. Beenken

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