

Three to four times annually the AKC Judges Newsletter, "The Standard," is sent to its Judges community. The newsletter is generated by the AKC Judges Operations Department and is considered a direct line of communication to its judges.

"The Standard" summer 2011, which is the most recent issue, contained both an article of special interest on AKC Field Representatives and a reminder message. They immediately captured my attention and, as I am being told, quite a few other judges attention because they are problematic subjects. One of which was challenged head-on by the Senior Conformation Judges Group (SCJA) with the American Dog Show Judges (ADSJ) weighing in against the policy as well.

Let us consider the vexing, seemingly casual reminder appearing in the "The Standard" newsletter. On page 7, in their "Things to Know" column the AKC writes, "JUDGING NON-AKC SHOWS. Members of the judging community are reminded that the Rules, Policies and Guidelines for Conformation Dog Show Judges as approved by the AKC Board of Directors requires the following when accepting assignments at Non-AKC Shows such as UKC, CKC, ASCA, ARBA, etc. [P] Non-AKC Shows. Judges who accept assignments for their approved breeds in the United States at non-AKC shows, where championship titles are awarded, are required to notify the Event Plans Department at AKC in writing at least four months before the show date stating: The exact location of the show. The complete assignment being judged at the show.

Such assignments are subject to the 30-day, 200-mile conflict policy. Any changes made to these assignments must be reported to the Event Plans Department within five days of the end of the event."

It is constructive to this discussion to reassert the fundamental that Judges are independent contractors. In a much earlier *Canine Chronicle* article, I discussed federal work laws and The Internal Revenue Service (IRS). I explained that the IRS has a helpful tip sheet that helps to demystify the relationship between Employee vs. Independent Contractor Status on their website. Moreover, if uncertainty remains, the IRS Form SS-8, "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding" will assist parties to clear up any ambiguity. This form requests information germane to Behavioral Control, Relationship of the Worker and the Employer and upon the behest of either, the IRS would make a determination of work status. A helpful note for readers is that the IRS provides this further clarification, "Behavioral Control covers facts that show whether the business has a right to direct or control how the work is done through instruction, training or other means."

For many, this IRS description of the nature of behavioral control is adequate to define the scope of the relationship between AKC and its Judges. Some say no, that there are grey areas to be considered. Some believe our perspectives are nuanced by our roles (AKC vs. Judges) ergo, what actions, what policies cross boundaries. I am not practicing law, however, I

*Continued on page 212*

by Lisa Dubé Forman



HERE WE  
GO AGAIN



# HERE WE GO AGAIN

will point out the clearly not so subtle differences that are applicable to defining our relationship status. I am also aware that there are attorneys specializing in this field who vary in their opinion on the determination of worker status. Before continuing, it is useful to know Policies [P] are adopted by the Board of Directors, and Rules [R] are approved by the Delegate body.

Judges are independent contractors and the AKC has acknowledged this divination various times. I believe it is safe to say that the AKC does not wish to convert our relationship to employee status as it would be cost prohibitive. Even so, there appears to be an ongoing effort by AKC to restrict its independent contractors' autonomy and progressions. So there is no misunderstanding, I certainly do not advocate a conversion.

The AKC has had a long history of domination, in posture and correspondingly, in its communications with judges. We all are familiar with the most damaging, restrictive policy being, until October 19, 2010, the AKC Board prohibiting judges from advertising or soliciting assignments. Continuing in this vein, it implemented a judging conflict of interest policy (the subject of this article) originally approved by the AKC Board in late 2006 effective January 1, 2007. If you had never read it before, it was very strong language. "Any AKC-approved judge, who shall judge a purebred dog event in the U.S. not in accordance with the rules of AKC, which apply to such purebred dog events without the express permission of the AKC, may be disciplined even to the extent of having his or her AKC judging approval revoked...Other activities may be added to this list at the discretion of the AKC Board."

Originally, the AKC prefaced their announcement by citing grounds for their decision, "AKC believes that it has the best judges in the world and expends millions of dollars a year to administer its judging approval system to ensure that quality remains high. AKC judging approval confers a certain status on an individual and with such status comes an enormous responsibility to both AKC and the Sport as governed by AKC."

I find the above AKC preface remarkable. This is a seemingly altruistic statement as if the AKC itself has spent millions of dollars educating and training its judges to be the best in the world via their administration. Further, the tenor is that we judges do not contribute financially. Au contraire, all expenses from application fees, DVDs, required training, breed mentoring, fulfillment of components is all on our dime. No expense accounts, just us 3,189 judges who pay out-of-pocket. Moreover, it certainly does not stop there as at least 43% percent of judges absorb all or most expenses themselves when judging. This is because 43% of judges are approved in only one or two breeds hence, they are not paid to judge.

Most all of you know by now this 2007 judging prohibition was beaten back and in January 2007, the AKC Board modified its earlier position stating: "The Judging Conflict of Interest Policy was amended, with the prohibition on AKC judges, judging non-AKC events removed." However, they amended but did not remove the entire objectionable policy. So, here we are today with remnants of this policy now causing controversy.

I reached out to the Senior Conformation Judges Associ-

ation (SCJA) and its CEO for background on this controversial subject from 2007. The CEO provided the following statement, "The SCJA after attempting to settle this problem with AKC Board of Directors contacted the Federal Trade Commission. The SCJA furnished a complete report on the violations to the Federal Trade Commission and illegal restrictions placed on AKC judges in clear violation of the antitrust laws. This action resulted in the AKC revoking the restriction on the judges judging for other registries. However, more recently the SCJA became aware of the AKC continued violation of federal statutes by insisting that AKC Judges advise the AKC whenever they accept an assignment for another registry. This is still 100% in violation of federal statutes as Judges are independent contractors."

As a Judge and an independent contractor, I along with many others believe accepting judging assignments for a non-AKC show should not require notifying AKC. This notification requirement remains objectionable based on principle but also federal antitrust laws. AKC history virtually is a culture of sovereignty over judges. Hence, why AKC initially instituted this wrongful policy. Before the repeal, in 2006, during a liaison meet with the ADSJ, the AKC used the example of dueling registries holding shows on the same day in which both shows may have AKC Judges. If the competing registry had a judge who was more popular he or she would most likely draw entries away from the AKC show. The AKC continued to cite costs of educating and maintaining the list of over 3,000 judges as a basis for their policy along with the fact that a great deal of time and effort had been put forth by staff to improve the quality of judging. AKC did not feel that their approved judges should take that expertise to show venues of other competing organizations.

This reeks of outright ownership of judges. By all accounts, the AKC is unwilling to recognize that these non-AKC assignments are opportunities for judges to gain valuable experience in show ring judging, especially those who find it nearly impossible to obtain any AKC assignments. These non-AKC assignments may enhance a judge's knowledge of the breeds--they gain credibility, confidence and competence. It may even supplement their income but for whatever reason they choose to do so, it is their right as an independent contractor to accept non-AKC assignments. What is next on the horizon? Will the AKC require Judges to disclose their earnings when judging for a non-AKC show? When and where do you draw the line? AKC's seeming lack of temperance may invite unwanted attention and the IRS may help them to realize, perhaps painfully so, that lines are being crossed.

Fast forward to today and we still have a policy [P] in effect that judges are required to notify AKC when, and in advance, they judge a non-AKC event. This naturally leads me to reflect on the following important IRS definition of behavioral control as it is essential to the discussion. It refers to facts that show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to di-

*Continued on page 214*

# HERE WE GO AGAIN

rect and control the work. The behavioral control factors fall into the categories of: 1 - Type of instructions given, 2 - Degree of instruction, 3 - Evaluation systems and 4 - Training.

**1 - Types of instructions given.** The IRS states that an employee is generally subject to the business's instructions about when, where, and how to work. I include for you three of the six IRS examples of types of instructions about how to do work. 1a-When and where to do the work, 2b-What tools or equipment to use, 3c-What order or sequence to follow when performing the work.

Do any of these three types of instructions sound familiar? Let's mull over, 'When and where and how to work.' The first example of behavioral control is current AKC policy requiring Judges to inform AKC when and where they will be fulfilling a non-AKC Judging assignment. As to the 'how to work,' we are all thoroughly familiar with AKC policy and rules governing how judges are to complete our assignments. If we deviate from the norm, or are found to be "struggling with procedures or quality of selection...or when difficulty is noted," as quoted from the 2011 judges newsletter, whether regular or provisionally approved, then an AKC Field Representative will have a post-observation interview with us and, quite possibly, we may receive a 'does not meet expectations' evaluation. These conversations can include discussions regarding exhibitor or club complaints filed against judges on 'how we work.' Any marginal or does not meet evaluations on 'how we work' by an AKC Field Rep has negative ramifications on our careers.

Consider 'Order and sequence.' The non-AKC show policy is again an appropriate example to highlight what may be considered by the IRS as defining order and sequence. Judges must notify the AKC four months in advance of completing a non-AKC assignment and any changes made to these assignments must be reported to the Event Plans Department within five days of the end of the event. What else? Clubs must submit to AKC a judge's name for approval before the Judge, an independent contractor, completes an assignment. Forgive the colloquialism, but 'Order and sequence to follow when performing the work,' is a no-brainer when one considers that from beginning to end, we judges perform in a structured, order sequence while carrying out our duties.

It is indisputable that AKC instructs its judges 'when' they can accept assignments (reference the 200-mile or 30 days distant rule), 'where' (see non-AKC events policy) and 'how to work' (see Rules, Policies and Guidelines for Conformation Dog Show Judges). Lastly, let us consider 'Tools or equipment to use.' Until recently, we were not able to have any electronic devices in the ring, this to include iPad or iPhones. Now as of April 2011, the rules state, "Before Entering the Ring, Cell Phone and Electronic Devices: Judges may use electronic devices including cell phones to review written breed standards while at their judges' table." The rule was amended on or about the time the AKC created the AKC Breed Standards App available for purchase to download on portable electronic devices such as iPad, iPhones and Smartphones. Side note: I am a big fan of this App and have found

it very convenient especially when attending Judges Seminars though I suggest adding more photos to the breed standards.

**2 - Degree of Instruction.** The IRS states this means that the more detailed the instructions, the more control the business exercises over the worker. The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. Key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

I believe almost all judges would agree that the AKC has significant behavioral control over how a judges work results are achieved. The AKC has far-reaching control over details to include dress attire, ring procedure and quality of selections. Regarding quality, this was addressed in the article contained within the summer newsletter, page 5 in which I quote, "In addition to the observation of provisional judges, the Field Representative also observes those judges previously identified as struggling with either procedure or quality of selection." The AKC retains the right to control the details of its Judges performance. If the above statement is not enough to convince you then re-read the *Rules, Policies and Guidelines for Conformation Dog Show Judges*.

**3 - Evaluation System.** If an evaluation system measures the details of how the work is performed, then these factors would point to an employee. If the evaluation system measures just the end result, then this can point to either an independent contractor or an employee.

It is safe to declare that all details of a judges performance is evaluated from how we approach and examine our entries, the highly regulated process of measuring or weighing, our judging and gait patterns to our selections. So, let us look beyond these obvious examples. Mull over the AKC Judging Approval Process, in effect since 2000, amended January 1, 2007. This AKC policy stipulates, "Judges must complete five assignments in each provisional breed, demonstrating sufficient competence in the breeds. Unlimited assignments may be accepted. Additional provisional assignments may be required. Must have been observed for a total of three times by different Field Representatives. Additional provisional assignments may be required. Following a Marginal or Does Not Meet evaluation at least two additional evaluations on that breed will be required."

The AKC requires evaluation of its judges during their provisional process and is also applicable to regular status judges. Irrefutably, the AKC evaluation system does not measure just the end result but all details of how our work is performed. Additionally, the new evaluation system specifies "to receive an evaluation in a breed, there must be enough entries present of quantity and quality to provide an opportunity for the judge to display their ability to prioritize and make decisions. Very small entries do not present this. Entries of extreme poor quality do not either. A rule of thumb is a minimum of four entries in a class of varying quality will usually be sufficient. Clearly, if the end result were only of im-

*Continued on page 216*

# HERE WE GO AGAIN

portance then the quality and quantity of the entries would be of no significance.

**4 - Training.** If the business provides the worker with training on how to do the job, this indicates that the business wants the job done in a particular way. This is strong evidence that the worker is an employee. Periodic or ongoing training about procedures and methods is even stronger evidence of an employer-employee relationship. However, independent contractors ordinarily use their own methods.

Once more, I reference the judges newsletter which has provided helpful illustrations. Page 16, the AKC advertises the dates in which they will hold their, "AKC Institute for Aspiring and Newly Approved Judges. The Only Institute Approved by the American Kennel Club to Fulfill the Requirement for Judging Applicants Applying After January 1, 2009."

This is an excellent example and strong evidence of the AKC procedures and methods that must be adhered to in completing our assignments. The AKC provides their one and only Judges Training Institute, for a fee, of course. Further, they require Judges to attend for instructions on how to do the job, learn how to do it in a very particular way, with schooling on precise ring procedure and the process of evaluating dogs all of which is, per se, training. There are many other examples we could summon though there is no need.

You may ask, "What's the big deal about being recognized as independent contractors? So we are or we aren't, who cares?" To simplify, if you are a judge, you should be concerned because the distinction has been historically pivotal in two developments. Think about these two important AKC Board policy reversals. One was the ban on soliciting and advertising and the other was the prohibition on AKC judges judging non-AKC events. The work status distinction was critical in both policies being overturned based on the principle that judges are independent contractors. Make no mistake, it took many, many years of thankless, hard work by the Senior Conformation Judges Association challenging the AKC to overturn the solicitation ban. The battle against the judging restrictions, though incisive was nevertheless hard fought to overturn.

If not for those who challenged these policies, Judges would continue to spend many more countless years unduly restricted in their efforts to advance in their careers. Your judging abilities would be seriously regulated as there would be a prohibition on your accepting assignments at non-AKC shows such as CKC, UKC, ASCA, ARBA, unless express permission was granted and it may have not stopped there. I find it troubling, and again so should you, that when the AKC Board implemented their judging restriction policy they also included the additional caveat "that other activities may be added to this list at the discretion of the AKC Board."

Today, this work status distinction remains equally important. It is worrisome that we are being reminded by the AKC that its judges need to inform them at least 4 months in advance, if we complete an assignment for a competing registry or non-AKC event. Moreover, this work status distinction is influential in the controversial issue of evaluations.

Judges are subjected to obtaining and enduring the unwarranted proviso of AKC Field Representative evaluations. These evaluations are ratings on the details of how we perform, not just the result of our work which nowadays is also being challenged. In and of itself, this proviso should be highly unsettling to all judges as evaluations are characteristic of an employee relationship. Since we are not employees, why are we subjected to fulfilling, as AKC states, essential procedural and breed evaluations not only conditional on the AKC Field Rep, if one is present and available, deeming the breed entry is of sufficient quality and quantity, but the rating outcome is dependent on that person's opinion of our quality of selections?

I am mindful that as an AKC Judge we must demonstrate sound knowledge of the breeds we judge. Therefore, I am a strong, vocal advocate for judges continuing education. If you read my previous articles you will appreciate that I have made a sound argument for a strategy to achieve this. Primarily a breeder and exhibitor, in my 27 years I can recall countless times I have walked away after exhibiting my dogs just shaking my head. As if waking up from a nightmare and I needed to clear my head because the judging had been horrendous. As a result, I am very fond of quoting Katie Gammill, AKC Judge from "Why a Standout Dog can be a Loser" who states, "The best dog you'll ever breed may be the hardest dog you will ever finish." This is more true today than ever before. Furthermore, the quality of breed judging can be an affront to our breeds. Nonetheless, I walk the fine line that judging and therefore our sport is decidedly subjective, even to the point of being detrimental to some breeds. We need to refocus and require continuous breed education for judges and not evaluations, which in some reported cases are being described as assaults in contrast with friendly mentoring experiences.

The IRS leaves us with the following: The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.

In conclusion, Judges are not employees and should not be subject to the whims of the Board indiscretions. As independent contractors, we should be free to accept assignments for non-AKC events without any notification to AKC. Furthermore, the observation policy, almost unachievable nowadays due to the scarcity of AKC personnel, requires us to obtain procedural and breed evaluations which is a system measuring the details of how we work. As independents, we should not be susceptible to policies inhibiting our ability for advancement in our careers.

Where is this supposed freedom of action that the IRS touches upon? This leads me to the biggest paradox. The definition of independent is, 'free from outside control; not depending on another's authority.'