

# Lawyers' Obligation to Decline Representation for Morally Reprehensible Clients in Animal Law

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## INTRODUCTION

The legal system often requires lawyers to deal with people exhibiting morally questionable conduct. Whether it be intentionally lying when entering a contract, stealing someone else's property, or testing animals in laboratories,<sup>1</sup> lawyers may find themselves representing people who have exhibited behavior that at least some of society believes is immoral.

For the purposes of this paper, the term "morally reprehensible" is defined as conduct that a significant portion of society would view as unethical or immoral. As discussed below, moral values differ across people and jurisdictions, and there is no one singular moral code that all people follow for an indefinite period of time.<sup>2</sup> However, where a considerable part of the public recognizes that the ethical considerations underlying a given decision go against its own, this creates an ethical debate between those who agree with the decision and those who do not. Under the following analysis, this decision would be considered morally reprehensible.

During law school, I worked in the animal law field for one semester. Whether the topic was hunting, farming, breeding, or tort claims for abused animals, there was always a sense that legislators and judges are missing what the public wants. Where it was clear to me and my classmates how animals should be treated in any given area, it seemed as though the government's reasoning went the opposite direction. Albeit there are several caveats that need to be explained in this situation: my classmates and I are certainly not representative of the entire United States population, the organization I was working for and being taught by was not an unbiased opinion in the field, and the decisions being made by the government

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1. See generally Tim C. Mazur, *Lying*, 6 ISSUES IN ETHICS (1993); Emma Borg, *Is it Wrong to Steal from Large Corporations? A Philosopher Debates the Ethics*, THE CONVERSATION (May 27, 2022), <https://theconversation.com/is-it-wrong-to-steal-from-large-corporations-a-philosopher-debates-the-ethics-182193> [<https://perma.cc/2AME-GT6W>]; Claire Andre & Manuel Velasquez, *Of Cures and Creatures Great and Small*, 3 ISSUES IN ETHICS (1998).

2. E.g., Nick Haslam, Melanie J. McGrath & Melissa A. Wheeler, *Changing Morals: We're more Compassionate than 100 Years ago, but more Judgmental too*, THE CONVERSATION (Mar. 4, 2019), <https://theconversation.com/changing-morals-were-more-compassionate-than-100-years-ago-but-more-judgmental-too-112504> [<https://perma.cc/CNP3-GKSY>] (demonstrating how morals can change over time).

certainly supported at least one party's interest in any given topic. Nonetheless, given our government is a representative democracy, the consistent decision-making against our personal ethical codes felt inherently wrong, especially in the areas of law where the public's views have shifted or grown.

When the legitimacy of a government depends on representing its people's interests, the need for the law to reflect its citizens' moral values becomes increasingly important. In the United States, we lack effective methods to adapt to these evolving values. The country relies on the voting process to influence our legislature which, in turn, should affect how laws are implemented and amended to represent our views. However, in practice, particularly in animal law, this is not the case. Within the past decade, there have been several shifts in or the strengthening of moral values that have not been effectively addressed by the legislature or courts. First, society has seen a dramatic increase in the number of pets that have been adopted.<sup>3</sup> It is clear that a substantial portion of pet owners have strong emotional bonds with their pets,<sup>4</sup> but the valuation process for tort claims involving harmed pets does not reflect this.<sup>5</sup> Second, there has been an increase in the number of vegans around the world,<sup>6</sup> and many attribute their dietary changes to the treatment of farm animals.<sup>7</sup> Yet, animal law continues to allow for abusive farming practices.<sup>8</sup> Third, the number of people opposing animal captivity and exhibition practices has greatly increased following the release of the film, *Blackfish*,<sup>9</sup> and the Netflix docuseries, *Tiger King*.<sup>10</sup> While there has been some recent progress in this area, these changes have been limited and continue to not reflect the public's evolving views.

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3. Ashlee Tilford, *Survey: 78% of Pet Owners Acquired Pets During Pandemic*, FORBES (Dec. 8, 2022), <https://www.forbes.com/advisor/pet-insurance/survey-78-pet-owners-acquired-pets-during-pandemic/> [https://perma.cc/F34S-7KWD] (demonstrating the increase in number of pets during the COVID-19 pandemic).

4. E.g., Chris Melore, *Fur-ever Loyal: 1 in 4 pet Owners Would Sacrifice Themselves to save their dog*, (Feb. 7, 2022), <https://studyfinds.org/pet-owners-sacrifice-themselves/> [https://perma.cc/7DHC-HNXQ] (describing the extent of pet owners' affection for their pets).

5. The valuation process for pets is the market value of that animal, which tends to be around a few hundred dollars. Sebastien Gay, *Companion Animal Capital*, 17 ANIMAL L. 77, 79 (2010-2011). This amount does not reflect the emotional attachment pet owners have with their pets.

6. Andrew Anthony, *From Fringe to Mainstream: How Millions got a Taste for Going Vegan*, THE GUARDIAN (Oct. 10, 2021), <https://www.theguardian.com/lifeandstyle/2021/oct/10/from-fringe-to-mainstream-how-millions-got-a-taste-for-going-vegan> [https://perma.cc/6UCM-PPFA]; Janet Forgive, *The Growing Acceptance of Veganism*, FORBES (Nov. 2, 2018), <https://www.forbes.com/sites/janetforgive/2018/11/02/picturing-a-kindler-gentler-world-vegan-month/?sh=6880d9222f2b> [https://perma.cc/EH83-VAFH].

7. See, e.g., Christel L. Larsson et al., *Veganism as status passage: The process of becoming a vegan among youths in Sweden*, 41 APPETITE 61, 63 (2003) (demonstrating the rising demand for ethical treatment of animals as the basis for the increase in veganism amongst youths in Sweden).

8. Claire Roberson, *9 Cruel yet Legal Farming Practices*, ANIMAL EQUAL (Nov. 28, 2022), <https://animalequality.org/blog/2022/10/14/9-cruel-yet-legal-farming-practices/> [https://perma.cc/6EPB-UM9D].

9. See E. C. M. Parsons & Naomi A. Rose, *The Blackfish Effect: Corporate and Policy Change in the Face of Shifting Public Opinion on Captive Cetaceans*, 13 TOURISM IN MARINE ENV'T 73, 73 (2018).

10. See Dina Fine Maron, *How 'Tiger King' Helped kill the Industry it made Famous*, NAT'L GEOGRAPHIC (Dec. 20, 2022), <https://www.nationalgeographic.com/animals/article/tiger-king-cub-petting-illegal> [https://perma.cc/3MDW-P2BZ].

Given this failure in governance, it is important to look at alternative methods that more effectively represent the public's interests. One possible alternative is analyzing the role of the lawyer in choosing which clients to represent. Particularly, whether it is or should be within the lawyer's capacity to refuse representation of clients who have exhibited morally reprehensible behavior. There are two central competing views on this topic, nonaccountability and accountability, that have yet to be discussed in the animal law context. Put simply, the nonaccountability perspective is the idea that everyone deserves a lawyer.<sup>11</sup> Lawyers are considered to have specialized knowledge that is not accessible to most of society, and their expertise is a necessary tool to ensure all parties are given a fair chance to advocate for their sides.<sup>12</sup> In contrast, the accountability perspective<sup>13</sup> argues that our legal system is founded upon principles of morality and justice, and lawyers should not represent people who have committed morally reprehensible acts.<sup>14</sup>

This paper analyzes the two competing perspectives through the lens of animal law and proposes a potential solution that acts as a compromise. It first explains the relevance of animal law in discussing morality's role in the legal profession and details the aforementioned three changes in society's moral views. Then, this paper analyzes each perspective and its prevalence in the *Model Rules of Professional Conduct*. To conclude, it proposes a compromise between the two perspectives by amending the *Model Rules*. This amendment would require lawyers to consider the moral values of their governing jurisdiction and balance this interest alongside the additional considerations already provided in the *Model Rules* when deciding whether to represent a client.

## I. RELEVANCE OF ANIMAL LAW

As mentioned before, there have been several shifts amongst the public that imply changes to public sentiment about animal law. Notably, a rise in the number of pets increases the demand for changes in the valuation process for tort claims, an increased number of vegans marks a desire to reduce factory farming, and a rise in anti-animal captivity and exhibition practice reveals the declining support for animal exhibitions. Each of these movements has attempted to protect animals more heavily than the way the law currently stands.<sup>15</sup> While these shifts may not be shared by all people, there should be a mechanism by which the legal

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11. See Erwin Chemerinsky, *Protecting Lawyers From Their Profession: Redefining the Lawyer's Role*, 5 J. LEGAL PROF. 31, 31, 40 (1980).

12. *Id.* at 42.

13. The term, "accountability perspective," combines the assertions made by several scholars and has been coined as such for ease of comparison in this paper.

14. David Luban, *Conscientious Lawyers For Conscientious Lawbreakers*, 52 U. PITT. L. REV. 793, 805 (1990-1991).

15. Geordie Duckler, *The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation*, 8 ANIMAL L. 199, 199, 212 (2002) (discussing the poorly constructed valuation process for pets in tort claims). See, e.g., Larsson et al., *supra* note 7 at 63. Parsons & Rose, *supra* note 9 at 73 (revealing the anti-animal captivity movement that resulted from the release of *Blackfish*).

system reflects the evolving views held by a significant number of people. Where the legislature fails in doing so, lawyers face a moral dilemma when choosing to represent those who have harmed animals, operated factory farms, or held wild animals in captivity.

Before proposing a potential solution, it is important to understand why animal law is particularly relevant to the discussion. Aside from there being demonstrable changes in the public's sentiments regarding the treatment of animals, animal law is closely tied to morality. Criminal law can easily explain the value of the nonaccountability perspective in attempting to protect criminal defendants from arbitrary punishment and the loss of freedom that may result from lack of representation.<sup>16</sup> In contrast, the appeal of accountability becomes more apparent when discussing the areas of animal law in which the legislature and courts have failed to reflect the public's increasingly protective views. Therefore, particularly in a legal system based on principles of representative government, animal law serves as a strong foundation for discussing the competing perspectives on the role of the lawyer in ensuring society's moral values are represented.

#### A. IMPORTANCE OF MORALITY IN ANIMAL LAW

Topics in animal law are frequently rooted in questions of morality. Whether a person is comfortable with hunting and killing animals for sport, capturing wild animals in cages to use for entertainment, or farming practices that abuse animals for meat consumption often ties to their moral code on the treatment of non-human beings.<sup>17</sup> Given moral values can often differ from person to person, religions can serve as guides to understanding respective communities' views on their relationship with animals.<sup>18</sup> On examination of multiple religions in the United States, it becomes obvious that American animal law falls short on reflecting the moral principles expressed in these religions.

First, Hinduism honors, and even celebrates, dogs.<sup>19</sup> Yet, when another person intentionally injures someone else's seven-year-old toy poodle, that poodle's owner can sue for intentional infliction of emotional distress. The recovery that the poodle's owner receives is estimated to be between \$100 to \$200.<sup>20</sup> Valuing a pet, a living being that many pet owners would sacrifice their own lives for,<sup>21</sup> at a

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16. See Julie A. Oseid & Stephen D. Easton, *The Trump Card: A Lawyer's Personal Conscience or Professional Duty*, 10 WYO. L. REV. 415, 422–423 (2010).

17. See Scott D. Wilson, *Animals and Ethics*, INTERNET ENCYC. OF PHIL. (last visited Feb. 25, 2023), <https://iep.utm.edu/animals-and-ethics/> [https://perma.cc/GT29-T94H].

18. See Krista Kihlander, *What Each Major Religion Says About Animal Rights*, SENTIENT MEDIA (Nov. 15, 2019), <https://sentientmedia.org/what-each-major-religion-says-about-animal-rights/> [https://perma.cc/V9B6-HFM5].

19. Syama Allard, *Dogs and Diwali? 5 things to know about Hinduism and hu(man's) best friend*, HINDU AM. FOUND. (Nov. 3, 2021), <https://www.hinduamerican.org/blog/dogs-and-diwali-5-things-to-know-about-hinduism-and-humans-best-friend> [https://perma.cc/V5SX-SSMD].

20. Gay, *supra* note 5 at 79.

21. Melore, *supra* note 4.

few hundred dollars cannot be considered “honoring,” when human life is often valued at least in the hundreds of thousands of dollars in intentional tort claims.<sup>22</sup>

Similarly, Buddhism preaches to “do no harm to living creatures” and to help animals with dignity and grace.<sup>23</sup> Under this method of thinking, defending a person who has intentionally harmed an animal or captured wild animals and placed them into trauma-inducing environments<sup>24</sup> is defending a person who has done harm to another living being. The legal system’s response to both actions does not align with the Buddhist teaching to maintain a “unified life force” for the betterment of society.

Another clear example comes from Christian, Jewish, and Islamic beliefs on farming practices. The Bible speaks against overworking animals and promotes the idea that not only is cruelty to animals forbidden, but God demands compassion and mercy towards them.<sup>25</sup> The Quran teaches Muslims that there is an inseparable bond between man and nature, and nature should not be manipulated or dominated, but rather is something with which people should harmonize.<sup>26</sup> The legal system that refrains from taking action to prevent abusive farming practices, such as painful mutilations, overcrowded cages, and lack of food and water for several days during live transport,<sup>27</sup> contributes to the suffering of billions of farm animals in factory farms around the world.<sup>28</sup> Evidently, these practices go against the religious teachings of several communities described before. From religious principles, it can easily be implied that the significant portions of society that follow these religions are not being represented by the legal system in these respects. Particularly, society has demonstrated its clear evolving moral stances on at least three central topics in animal law described below.

## B. VALUATION OF PETS IN TORT CLAIMS AND EMOTIONAL BOND WITH PETS

As the law currently stands, pets are classified as personal property and are valued at their market value.<sup>29</sup> The market value of a pet is typically a few hundred

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22. See Ralph Peeples & Catherine T. Harris, *What is a Life Worth in North Carolina: A Look at Wrongful-Death Awards*, 37 CAMPBELL L. REV. 497, 511 (2015).

23. Briar Golladay, *The Place of pets in our Lives: Some Christian and Buddhist Perspectives*, EMERGING PERSP. ON RELIGION AND ENV'T VALUES IN AM. (last visited Mar. 10, 2023), <https://ohiostate.pressbooks.pub/enr3470studentbook/chapter/the-place-of-pets-in-our-lives-some-christian-and-buddhist-perspectives/> [https://perma.cc/8Y8Y-55VQ].

24. Jay S. Malloneé & Paul Joslin, *Traumatic Stress Disorder Observed in an Adult Wild Captive Wolf (Canis lupus)*, 7 J. APPLIED ANIMAL WELFARE SCI. 107, 109-10 (2004).

25. Lewis Regenstein, *The Bible's Teachings on Protecting Animals and Nature* (last visited Feb. 25, 2023), <https://www.humanesociety.org/sites/default/files/docs/replenish-booklet-in-color.pdf> [https://perma.cc/Q6ZP-CB9E].

26. Julie B. Bloch, *Preserving Biological Diversity in the United States: The Case for Moving to an Ecosystems Approach to Protect the Nation's Biological Wealth*, 10 PACE ENV'T L. REV. 175, 193 (1992).

27. Roberson, *supra* note 8.

28. *Factory Farming*, HUMANE SOCIETY INTERNATIONAL, <https://www.hsi.org/issues/factory-farming/> [https://perma.cc/B6MC-X7B6] (last visited Dec. 16, 2022).

29. Duckler, *supra* note 15 at 199.

dollars.<sup>30</sup> To put this into context, when another party harms a pet, the pet owner may sue that party for intentional infliction of emotional distress, and the maximum recovery for this harm is a few hundred dollars. Not only does a significant portion of society treat pets as ideal love-object substitutes for children, but for some, pets, especially dogs, actually supersede children as ideal love objects.<sup>31</sup> Several surveys have also shown that the vast majority of dog owners classify their dogs as part of their family,<sup>32</sup> a significant number of dog owners would save their dog's life rather than a foreign stranger's life,<sup>33</sup> and one in four dog owners would sacrifice themselves to save their dog.<sup>34</sup> Clearly, pet owners have a deep emotional attachment to their pets that the few hundred dollar recovery for intentional infliction of emotional distress does not reflect.

During the recent COVID-19 pandemic, millions of dogs were adopted.<sup>35</sup> In fact, 78% of pet owners today got a pet during the pandemic.<sup>36</sup> This growth of pet owners amongst the public makes the stark disparity between the law and society's morals even more pressing to address.

### C. RISE OF VEGANISM AND ANTI-FACTORY FARMING SENTIMENTS

Another area that has recently grown is veganism. Several reports from around the world have shown a clear trend towards veganism and away from meat-eating.<sup>37</sup> As seen in these reports, veganism is certainly not the majority's preference, and it is admittedly difficult to expect the law to conform to a practice not adopted by most people. However, one of the most predominant reasons reported for the trend away from animal food products is the concern regarding farming practices.<sup>38</sup> Evidently, there has been a rise in concern for the treatment of farm animals and the law should reflect the increasing desire to reduce abusive farming practices.

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30. Gay, *supra* note 5 at 79.

31. Heidi J. Nast, *Loving... Whatever: Alienation, Neoliberalism and Pet-Love in the Twenty-First Century*, ACME: AN INT'L J. FOR CRITICAL GEOGRAPHIES 300, 302 (2006).

32. See Stanley Coren, *Do We Treat Dogs The Same Way As Children In Our Families?*, PsychologyToday (2011), <https://www.psychologytoday.com/intl/blog/canine-corner/201105/do-we-treat-dogs-the-same-way-children-in-our-families> [<https://perma.cc/454A-TV8R>].

33. Amanda Scherker, *Many People Would save their dog over a Foreign Tourist, Study says*, HUFFPOST (2013), [https://www.huffpost.com/entry/save-dog-foreign-tourist-stranger-study\\_n\\_3781329](https://www.huffpost.com/entry/save-dog-foreign-tourist-stranger-study_n_3781329) [<https://perma.cc/84GC-52F7>].

34. Melore, *supra* note 4.

35. Jacob Bogage, *Americans Adopted Millions of dogs During the Pandemic. Now what do we do with them?*, WASH. POST (Jan. 7, 2022), <https://www.washingtonpost.com/business/2022/01/07/covid-dogs-return-to-work/> [<https://perma.cc/58P5-SARJ>].

36. Tilford, *supra* note 3.

37. See Anthony, *supra* note 6; Forgrieve, *supra* note 6.

38. E.g., Larsson et al., *supra* note 7 at 63 (detailing a study conducted on teenagers in Sweden, where the single most important motive for teenagers becoming vegan was their moral concern about the treatment of animals).

In practice, state cruelty codes notoriously only cover the most abhorrent practices, and federal laws, such as the Twenty-Eight Hour Law,<sup>39</sup> Humane Methods of Slaughter Act,<sup>40</sup> and Federal Meat Inspection Act<sup>41</sup> tend to only cover the transportation of animals to slaughterhouses and conduct within slaughterhouses rather than on the farms themselves. To add to the legislature's lack of specificity, court decisions have often focused on the fine detail of defining various terms in laws rather than broadly addressing abusive farming practices. For example, *Levine v. Conner* discussed whether poultry falls under the meaning of "live-stock."<sup>42</sup> The district court found that poultry does not qualify as "livestock" under its *Chevron* analysis, meaning poultry is not protected under the Humane Methods of Slaughter Act.<sup>43</sup> To put it another way, the court avoided overriding an agency's law and changing the way poultry slaughterhouses work to better the treatment of poultry animals. Despite the public's increased desire to protect farm animals, the courts are seemingly more concerned about overstepping the legislating agency than representing the public's shifting morals.<sup>44</sup>

#### D. THE "BLACKFISH EFFECT" AND THE DECLINE IN SUPPORT FOR ANIMAL EXHIBITION PRACTICES

In 2013, the documentary *Blackfish* was released and sparked a major movement against wild animal captivity, particularly orca whales held captive in SeaWorld. The movie's release brought a powerful response across social media and led to protests around the world,<sup>45</sup> where disapproval of SeaWorld's treatment of its orca whales led to SeaWorld's decline in the corporation's number of theme park visitors, business partnerships, and stock price.<sup>46</sup> As succinctly stated by ecological and philosophical scholars, Parsons and Rose, "[s]hifts in public perception of captive cetacean display strongly suggest policy makers should reconsider the legislative and regulatory status quo."<sup>47</sup>

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39. 45 U.S.C.A. § 71-74.

40. 7 U.S.C. § 1901.

41. 21 U.S.C.A. § 601-695.

42. *Levine v. Conner*, 540 F. Supp. 2d 1113, 1117, 1120-21 (N.D.Cal. 2008).

43. *Id.* at 1121.

44. The judicial system's relationship with government agency regulations raises questions about the role of the judiciary. While this paper discusses one view on the court's ability to overrule agency regulations, a full discussion on this ability is outside of the scope of this paper.

45. E.g., City News Service, *Group protests 'animal captivity' at SeaWorld San Diego*, FOX 5 SAN DIEGO (May 8, 2021), <https://fox5sandiego.com/news/local-news/group-protests-animal-captivity-at-seaworld-san-diego/> [<https://perma.cc/26HF-8YUR>]; Aristos Georgiou, *Sea World Shuts Down Dolphin Shows After Protesters Jump in Pool: "Animals Are Not Entertainment,"* NEWSWEEK (Dec. 17, 2018), <https://www.newsweek.com/sea-world-gold-coast-australia-animal-rights-activists-protests-dolphins-1261719> [<https://perma.cc/3965-HGDL>]; David Breen & Orlando Sentinel, *Protesters demand end to killer-whale shows at SeaWorld*, ORLANDO SENTINEL (Dec. 22, 2013), <https://www.orlandosentinel.com/news/os-xpm-2013-12-22-os-seaworld-blackfish-protest-20131222-story.html> [<https://perma.cc/6JNF-EK3G>].

46. Parsons & Rose, *supra* note 9 at 73.

47. *Id.*

In contrast, the legislative and judicial response to this shift has been inadequate. One of the main pieces of legislation discussing animal exhibitions is the Animal Welfare Act.<sup>48</sup> The Animal Welfare Act is greatly limited by the statute's narrowly interpreted terms, and the Department of Agriculture's choice to protect business interests results in little enforcement.<sup>49</sup> Courts have interpreted the Animal Welfare Act to not allow concerned citizens to sue on behalf of the welfare of a zoo animal, further limiting its enforcement.<sup>50</sup> Thus, despite an aggressive movement by the public, the legislature's statute and the court system's narrow interpretation of this law have failed to reflect the public's concerns.

As of December, 2022, the Senate passed the Big Cat Public Safety Act after animal protection organizations, the *Blackfish* director Gabriela Cowperthwaite, and celebrities united to start another online social media movement and petition to protect big cats from being privately possessed and put on exhibition.<sup>51</sup> While this is undoubtedly a major step towards representing the public's demands, the Act cannot be deemed a total success, as current owners of big cats are grandfathered into protection.<sup>52</sup>

Compared to the other two trends, the shift towards preventing animal captivity and exhibition practices has arguably been addressed more by lawmakers, but this is likely due to the vast amount of overt public outcry over the issue. With documentaries like *Blackfish*, and the later released Netflix docuseries, *Tiger King*,<sup>53</sup> the public's response to exhibition practices was undoubtedly more obvious and continued for almost a decade.<sup>54</sup> In sum, the number of overt demands on the legal system for change in animal captivity has led to some beneficial changes, but there is still much to address given the amount of change the public is seeking from the government to truly be considered representative of the people's increasingly protective views.

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48. Kali S. Grech, *Detailed Discussion of the Laws Affecting Zoos*, ANIMAL LEGAL & HIST. CTR., 2004 (distinguishing the importance of the Animal Welfare Act from the lack of support provided in the Endangered Species Act).

49. *Id.* See also Doris Lin, *Overview of the Animal Welfare Act*, TREEHUGGER (June 11, 2019), <https://www.treehugger.com/overview-of-the-animal-welfare-act-127546> [<https://perma.cc/K6NS-7PLU>]; Rachel Fobar, *USDA accused of ignoring animal welfare violations in favor of business interests*, NATIONAL GEOGRAPHIC (Oct. 13, 2021), <https://www.nationalgeographic.com/animals/article/usda-accused-of-ignoring-animal-welfare-for-business-interests> [<https://perma.cc/L43K-BHHF>].

50. Rebecca L. Jodidio, *The Animal Welfare Act is Lacking: How to Update the Federal Statute to Improve Zoo Animal Welfare*, 12 GOLDEN GATE U. ENV'T. L. J. 53, 59 (2020).

51. Animal Legal Defense Fund, *Big Cat Public Safety Act Passes the U.S. Senate in Victory for Animals* (Dec. 6, 2022), <https://aldf.org/article/big-cat-public-safety-act-passes-the-u-s-senate-in-victory-for-animals/> [<https://perma.cc/W7UL-JZAC>].

52. Big Cat Rescue, *Big Cat Public Safety Act Passes Congress* (Dec. 17, 2022), <https://bigcatrescue.org/big-cat-public-safety-act-passes-congress/> [<https://perma.cc/2P4U-WBAP>].

53. Maron, *supra* note 10.

54. *Blackfish* was released in 2013; *Tiger King* was released in 2020.



## II. COMPETING PERSPECTIVES ON THE LAWYER'S ROLE

As mentioned, there are two competing perspectives on the idea that lawyers should be held accountable for their decision to represent a client. First, there is the nonaccountability perspective, which simply states that everyone deserves representation,<sup>55</sup> essentially eliminating the possibility of lawyers acting as the mechanism for representing the public's moral interests. Alternatively, there is the accountability perspective, which would hold lawyers responsible for their choice of client based on the notion that lawyers serve to represent principles of morality and justice.<sup>56</sup> This paper will analyze each perspective in how they are presently being advocated for by different scholars and then describe how each of these perspectives are reflected in the *Model Rules of Professional Conduct*. The *Model Rules* serve as a lawyer's guide to professional responsibility and legal ethics and will be used to demonstrate which perspective the legal system seems to favor and is most feasibly adopted.

### A. NONACCOUNTABILITY PERSPECTIVE

Nonaccountability is considered to be a fundamental, yet controversial, tenant of the American legal system.<sup>57</sup> Attorneys "are not held morally accountable for who their clients are, what their clients have done, or what attorneys will do for their clients as long as it is within the bounds of the law."<sup>58</sup> Nonaccountability is deemed the standard in the legal profession, where, according to the *Model Rules*, a lawyer's representation of a client "does not constitute an endorsement of the client's political, economic, social or moral views or activities."<sup>59</sup> Instead, attorneys are expected to remain objective tools for clients to use in a complex legal system.

Some advocates of nonaccountability view their roles as lawyers as independent from their clients because their work addresses the broader principles of the law beyond the arguments they make for their individual clients. For example, in representing the Trump administration in the highly controversial impeachment trial before the Senate, Professor Alan Dershowitz stated, "I'm presenting an independent argument as an independent academic against impeachment, which is a view I've held for a long time."<sup>60</sup> Another Harvard Law professor, Ronald Sullivan, justified his representation of Harvey Weinstein by emphasizing how

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55. See Chemerinsky, *supra* note 11 at 36.

56. See Luban, *supra* note 14 at 805.

57. Judith A. McMorrow & Luke M. Scheuer, *The Moral Responsibility of the Corporate Lawyer*, 60 CATH. U. L. REV. 275, 276 (2010-2011).

58. *Id.*

59. MODEL RULES OF PROF'L CONDUCT R. 1.2(b) [hereinafter MODEL RULES]. See Luban, *supra* note 14 at 804.

60. Annie Karni, *Alan Dershowitz Adds Trump to the List of His High-Profile Clients*, N.Y. TIMES (Jan. 17, 2020), <https://www.nytimes.com/2020/01/17/us/politics/alan-dershowitz-trump.html> [<https://perma.cc/BD9Z-QSQQ>].

many widely hated defendants have been wrongfully convicted due to others presuming their guilt, which goes against the criminal justice process that requires lawyers to “defend those we perceive as guilty as vigorously as those we perceive to be innocent.”<sup>61</sup>

One advocate of nonaccountability, Erwin Chemerinsky, states that the entire legal system, and even society at large, is founded upon the idea that every person has the freedom to choose their values and beliefs after considering the alternatives,<sup>62</sup> and a lawyer’s obligation to their clients is outweighed by that lawyer’s responsibility to themselves and society.<sup>63</sup> He continues to say that the prior version of the *Model Rules*, the *ABA Code of Professional Responsibility*, reflects these beliefs by emphasizing the duty to represent everyone, especially the unpopular.<sup>64</sup>

Practically, it is extremely rare that there will be no attorney who shares the client’s views and is able to represent the morally reprehensible client.<sup>65</sup> However, given this unlikely scenario does occur and the lawyer is absolutely certain that no other lawyer can represent the client, “the need to assure every person a day in court justifies accepting a counter attitudinal[, meaning against the lawyer’s personal moral beliefs,] assignment.”<sup>66</sup>

Other scholars have also labeled nonaccountability as the standard legal practice in an adversarial legal system,<sup>67</sup> noting that the ultimate duty of providing every client the opportunity for justice requires representation under this perspective.<sup>68</sup> To solidify this position, Chemerinsky adds that by allowing attorneys to deny representation to the unpopular, the legal system would be welcoming social persecution and make “the legal process a sham.”<sup>69</sup>

## B. MODEL RULES OF PROFESSIONAL CONDUCT ON NONACCOUNTABILITY

The principles behind nonaccountability can be seen quite explicitly throughout the *Model Rules*. As stated before, the lawyer’s representation of a client does not mean the lawyer endorses the client’s political, economic, social, or moral views<sup>70</sup> and “legal representation should not be denied to [those] . . . whose cause

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61. Eric Levenson, *Harvard professor representing Harvey Weinstein says people deemed ‘vile’ deserve defense*, CNN (Jan. 28, 2019), <https://www.cnn.com/2019/01/28/us/harvard-dean-harvey-weinstein/index.html> [<https://perma.cc/69VJ-T97B>].

62. Chemerinsky, *supra* note 11 at 36.

63. *Id.* at 34-35.

64. *Id.* at 41-42.

65. *Id.* at 36.

66. *Id.* at 37.

67. Murray L. Schwartz, *The Professionalism and Accountability of Lawyers*, 66 CAL. L. REV. 669, 674 (1978).

68. *See also* Chemerinsky, *supra* note 11 at 37.

69. *Id.* at 42.

70. MODEL RULES R. 1.2(b).

is controversial or the subject of popular disapproval.”<sup>71</sup> It is clear that in choosing to represent any given client, the lawyer is not only not affiliated with their moral values, and therefore cannot be held accountable to the client, but the lawyer should not decline representation based on the public’s disagreement with the client’s morals.

Further, just as the process of initially choosing to represent a client is important, the decision for a lawyer to continue representation is equally relevant to the nonaccountability and accountability analysis. Under the *Model Rules*, the withdrawal process is limited to extreme circumstances. Rule 1.16 allows a lawyer to withdraw from representation if the client commits fraudulent activity or criminal conduct involving the lawyer’s services.<sup>72</sup> Given the *Model Rules* explicitly state fraudulent or criminal conduct, this places a high threshold to withdraw, and it is logical to assume that the American Bar Association (ABA) wanted the threshold to initially decline representation to likewise be high in light of the previously mentioned rules.

However, Rule 1.16 also allows a lawyer to withdraw if the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has fundamental disagreement.<sup>73</sup> In referencing a lawyer’s own views on a client’s conduct, Rule 1.16 opens the possibility of enforcing the accountability perspective as discussed below.

### C. ACCOUNTABILITY PERSPECTIVE

The accountability perspective seeks to hold lawyers responsible for the clients they choose to represent. Accountability argues that the duty to not represent unjust causes is clear on its face, or *prima facie*.<sup>74</sup> Admittedly, morality is a spectrum and there are some exceptions where certain cases can be considered relatively less immoral, thus making the decision to represent a client more ambiguous.<sup>75</sup> Nonetheless, a lawyer is justified in declining representation for unjust causes simply because “it is morally wrong to help someone do something wrong.”<sup>76</sup>

Under accountability, lawyers are assumed to have a larger duty to society beyond the interests of the client.<sup>77</sup> Lawyers do not simply represent individuals in isolated situations, but rather represent moral views in the broader societal and political context for which they should be held responsible.<sup>78</sup> Legal professor David Luban discusses the accountability perspective in terms of how a lawyer’s

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71. MODEL RULES R. 1.2 cmt. 5.

72. MODEL RULES R. 1.16(b)(2).

73. MODEL RULES R. 1.16(b)(4).

74. Eduardo Rivera-López, *Is it Morally Wrong to Defend Unjust Causes as a Lawyer?*, 32 J. APPLIED PHIL. 177, 177 (2015).

75. *Id.* at 183.

76. *Id.*

77. E.g., Monroe H. Freedman, *A Critique of Philosophizing About Lawyers’ Ethics*, 25 GEO. J. LEGAL ETHICS 91, 105 (2012).

78. McMorrow & Scheuer, *supra* note 57 at 308.

choice of representation affects society's politics.<sup>79</sup> Luban argues that if lawyers represent clients with whom they are politically or morally opposed to, this would either be politically irresponsible or the representation would be pointless.<sup>80</sup> Where the lawyer believes the client would win, it would be politically irresponsible for the lawyer to help advocate for the causes the lawyer disagrees with.<sup>81</sup> However, if the lawyer chooses to represent the client only because the lawyer believes the client will lose, then there would be no point to the representation to begin with.<sup>82</sup>

Additionally, legal scholars Judith McMorrow and Luke Scheuer advocate for abandoning nonaccountability amongst corporate-transactional attorneys in favor of urging these lawyers to consider the value of their work to society more deeply.<sup>83</sup> McMorrow and Scheuer argue that if nonaccountability did not apply, lawyers would need to be able to defend their choice of representation based on its social impact, which should not be negative.<sup>84</sup> Put simply, this view on lawyers' choice of representation understands that "[w]e are humans who happen to practice law. We are not lawyers who happen to be human," and a lawyer's personal conscience should override their professional duties as a lawyer.<sup>85</sup>

#### D. MODEL RULES OF PROFESSIONAL CONDUCT ON ACCOUNTABILITY

While the *Model Rules of Professional Conduct* do not explicitly address the responsibility of lawyers to represent society's morals, the *Model Rules* allude to the importance of morality in the legal profession generally. When giving legal advice, the *Model Rules* state that lawyers should give candid advice that involves not only the law, but considers moral, economic, social, and political factors that may be relevant to the client's situation.<sup>86</sup> While the lawyer is not a moral advisor, the lawyer should consider the morals and ethics that often influence how the law is applied.<sup>87</sup> If the client's moral views work against their legal argument, this is something the lawyer is expected to account for in their representation of the client. To be clear, this does not mean that the *Model Rules* advocate for lawyers to avoid representation based on a client's morals potentially impeding the success of their argument. Nonetheless, the fact that the *Model Rules* recognize that morals have a place in how a client's representation is composed is crucial to supporting the validity of the accountability perspective.

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79. See Luban, *supra* note 14 at 809-13.

80. *Id.* at 794, 812-13.

81. *Id.* at 813.

82. *Id.*

83. McMorrow & Scheuer, *supra* note 57 at 277.

84. *Id.* at 308.

85. Oseid & Easton, *supra* note 15 at 433.

86. MODEL RULES R. 2.1.

87. MODEL RULES R. 2.1 cmt. 2.

Additionally, concurrent conflicts may exist when the lawyer's "personal interests" materially limit the lawyer's ability to represent a client.<sup>88</sup> The definition of "personal interests" may be interpreted to include the strong morals of the lawyer to justify denying representation of a client. If the lawyer's personal moral values can be used to decide whether to concurrently represent a client, lawyers should have the ability to decline representation of clients that the public considers to be morally reprehensible.

Further, the *Model Rules* also discuss when lawyers are permitted to withdraw from representation and when concurrent conflicts with current clients may exist.<sup>89</sup> Despite withdrawal occurring after the decision to represent a client, the term "fundamental disagreement" in Rule 1.16 may be interpreted to include the lawyer's moral values. Assuming moral values may play a role in choosing whether to continue representation, the accountability perspective becomes even more feasible.

Lastly, the bar admissions process considers an applicant's moral character before allowing them to become a licensed attorney. For example, when one applicant failed to disclose his prior falsification of sources in his work as a journalist, the Supreme Court of California found his prior dishonesty and misconduct worked against his proof of moral fitness to practice law.<sup>90</sup> Where moral character is a factor in deciding whether a person may be admitted to practice law in general, it is clear that being a representative of morality is of importance to the legal profession. With morality having such importance in bar admissions alongside the *Model Rules*, the accountability perspective holding lawyers responsible for representing morality in the broader societal context is further supported.

### III. PROPOSED SOLUTION

In preparing a potential solution to the problem presented in this paper, it is important to preface this proposal by recognizing that it is not the ideal solution. The United States government was structured to allow the public to voice their opinions through voting, where the elected legislative officials would reflect the public's beliefs in their drafting of laws. The judicial system simply serves to interpret those laws as intended by the legislature. If this process worked as planned, the idea of relying on lawyers to represent society's moral values would not be necessary. Hence, the following proposed solution is an attempt to fill the gaps in the way the legal system currently stands.

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88. MODEL RULES R. 1.7(a).

89. MODEL RULES R. 1.16.

90. *In re Glass Admission*, 58 Cal. 4th 500, 521 (2014).

## A. PRACTICALITY OF HOLDING LAWYERS ACCOUNTABLE

If lawyers were not held accountable for their choices in representation as advocated for in the nonaccountability perspective, there would be little to no change in the way the legal profession operates. Whether lawyers choose to represent morally reprehensible clients is their choice, and in practice, the only check on a lawyer's choice is their reputation. When a lawyer chooses to represent someone deemed morally reprehensible by society, that lawyer may face backlash by the community and lose future clients, but there is no council or official process for holding lawyers responsible for their decisions about who they represent.

In the alternative, if lawyers were held accountable for their choices in representation under the accountability perspective, this would require an entirely new system to monitor this process. Legal scholar Monroe Freedman is a strong advocate for lawyers having a moral obligation to justify why they chose to represent their clients to the public.<sup>91</sup> Freedman explains that the legal profession is a public service, where lawyers hold a government-granted monopoly to serve the fundamental constitutional function of providing the right to counsel for the benefit of society.<sup>92</sup> This raises the questions of how and to whom would lawyers be held accountable, and what would be the consequences for a lawyer ruled to be representing a morally reprehensible client under society's standards?

## B. PROPOSED SOLUTION: A COMPROMISE

With these considerations in mind, the best solution draws from both viewpoints. Instead of implementing a strict requirement for lawyers to choose their clients based on the nation's moral views at the time, the ABA should amend Rule 1.2 to instruct lawyers to consider the moral values of their governing jurisdiction, alongside the additional considerations already included in the *Model Rules*,<sup>93</sup> when deciding whether to represent a client. As Rule 1.2 currently states, lawyers are expected to remain objective tools for clients to use in a complex legal system.<sup>94</sup> However, in order to incorporate the accountability perspective, lawyers should use a balancing test when deciding whether to represent a client.

Where there are other considerations, such as whether the lawyer has a concurrent conflict with the potential client<sup>95</sup> or the fact that the lawyer's representation does not constitute an endorsement of the client's views,<sup>96</sup> the lawyer should also

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91. Monroe H. Freedman, *The Lawyer's Moral Obligation of Justification*, 74 TEX. L. REV. 111, 111-12 (1995-1996).

92. *Id.* at 112.

93. *E.g.*, MODEL RULES R. 1.2 & 1.7.

94. See David Luban, *Partisanship, Betrayal and Autonomy in the Lawyer-Client Relationship: A Reply to Stephen Ellmann*, 90 COLUM. L. REV. 1004, 1004 (1990).

95. MODEL RULES R. 1.7.

96. MODEL RULES R. 1.2(b).

consider whether representation of the client would go against the moral views of the public in the lawyer's jurisdiction. Once the lawyer has balanced all of these considerations against one another, then the lawyer can decide whether to represent any given client.

Given this is one of several considerations, lawyers will not necessarily be held responsible for choosing to represent a morally reprehensible client. If a lawyer is asked to explain their choice in a disciplinary proceeding, the series of other considerations given in the *Model Rules* provide adequate support for the argument that the lawyer balanced each consideration before making their decision and found the moral reprehensibility of the client to be outweighed by the client's need for representation.

Additionally, by limiting the relevant moral views to the lawyer's respective jurisdiction, this implies that the decision to represent a client may differ across jurisdictions. As alluded to before, moral values differ across people and change over time.<sup>97</sup> Where lawyers are barred to practice in a specific jurisdiction, it is not unreasonable to expect them to remain aware of that jurisdiction's moral values. In fact, litigation attorneys are likely already aware of these values given their involvement in jury selection. Understanding the morals of community members comprising the jury is already a part of a lawyer's trial preparation.

If instead lawyers were held to a national standard or there were "model morals" applied across the country, local laws and the judicial system would be significantly impacted. The logistics of being able to record the accurate values of the nation are not practical, and the interests of areas with densely populated factory farms and animal exhibitions, while considered immoral to an increasing amount of people in the country, would be overlooked by the anti-factory farm and anti-animal exhibition states. The entire premise of having a representative government, and the central point of this paper, is to have a legal system that reflects the interests of its people. Limiting the moral values that a lawyer is expected to consider to those of the lawyer's specific jurisdiction is not only more practical for the lawyer to know, but it more efficiently allows the lawyer to represent any changes in the population's sentiments while more accurately representing that jurisdiction's beliefs.

After a lawyer has chosen to represent a client, the lawyer is obligated to zealously advocate for that client.<sup>98</sup> Beyond the process of selection, once a lawyer has weighed the considerations for representation and made their decision to represent that client, the lawyer is bound to that decision, with the exceptions given in the *Model Rules of Professional Conduct* for withdrawal,<sup>99</sup> to ensure that the client is not materially impacted by the lawyer's later decision to change their minds.

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97. *E.g.*, Haslam, McGrath & Wheeler, *supra* note 2.

98. Freedman, *supra* note 76 at 91.

99. *E.g.*, MODEL RULES R. 1.16.

#### IV. IMPLICATIONS OF PROPOSED SOLUTION IN ANIMAL LAW

With the implementation of the proposed solution, many large farming corporations, animal exhibitors, and individuals that intentionally inflict harm by injuring pets will face the possibility of not being represented by as wide of an array of attorneys as before. While amending the *Model Rules* would recommend that attorneys not represent clients that their jurisdiction views as acting against their collective values, there will still likely be attorneys available who are willing to represent these clients. The impact on each of the three described trends varies between them.

##### A. IMPACT ON THE VALUATION OF PETS IN TORT CLAIMS

Compared to the other two trends, tort claims brought for intentional harms are more likely to involve individual defendants rather than companies.<sup>100</sup> This makes them seemingly less complex than matters involving major animal exhibition corporations and large-scale farming practices. While bringing forth a claim of intentional infliction of emotional distress is not necessarily simple given its prima facie requirements,<sup>101</sup> when compared to claims involving longstanding farming practices and the accepted abuse of animals in captivity, a client is much more capable of bringing forth a claim without an attorney. Thus, if an attorney decides to decline representing a defendant in an intentional infliction of emotional distress lawsuit due to the immoral nature of the harm that the defendant has been accused of inflicting, the consequences of such a decision is not as impactful on the individual client.

Notably, a lawyer declining representation for these tort claims will likely have little to no effect on the governing law. For example, the facts in *Plotnik v. Meihaus* describe one person hitting their neighbor's dog with a baseball bat after a series of insulting behaviors back and forth between the neighbors.<sup>102</sup> The dog's owners sought damages for both negligent infliction of emotional distress and intentional infliction of emotional distress, but the court only allowed the plaintiffs to recover for intentional infliction of emotional distress, as the defendant had no duty to avoid negligently causing his neighbors emotional distress but had the intent to do so.<sup>103</sup> Hitting a dog with a baseball bat is likely going to be seen as morally reprehensible by many people, no matter which jurisdiction, so the defendant would probably not have legal representation under the proposed solution.

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100. See e.g., *Rabideau v. City of Racine*, 243 Wis.2d 486, 486 (Wis. 2001) (ruling on a police officer shooting a dog); *Burgess v. Taylor*, 44 S.W.3d 806, 809-10 (Ky. 2001) (deciding on an individual selling another party's horses to a slaughter-buyer without permission); *Plotnik v. Meihaus*, 208 Cal.App. 4th 1590, 1595, 1598 (Cal. 2012) (discussing a person hitting their neighbor's dog with a baseball bat); *Barrios v. Safeway Ins. Co.*, 97 So.3d 1019, 1020 (La. 2012) (ruling on an individual hitting and killing a dog with his car).

101. Aaron Minc, *Intentional Infliction of Emotional Distress: Definition & Examples*, MINC (Oct. 25, 2021), <https://www.minclaw.com/intentional-infliction-emotional-distress/> [<https://perma.cc/EAZ5-8TUM>].

102. *Plotnik*, 208 Cal.App. at 1597-98.

103. *Id.* at 1605, 1608, 1611-12.



Whether or not defendants have legal representation, pet owners will likely continue recover a minimal amount in damages for the harm caused to their pet.

In sum, the proposed solution does not force the legislature or courts to change the valuation process of animals. Perhaps in the long-term, the continuous lack of representation being offered to defendants in these cases will serve as a form of protest. Assuming the vast majority of lawyers decide that the morals of their respective jurisdictions outweigh the other considerations used in deciding to not represent a defendant, then this could indicate to courts that there needs to be a change in the law that favors plaintiffs more strongly. If plaintiffs were able to recover greater damages beyond the market value of their pets, then society may feel that the higher recovery more accurately reflects their ethical views. However, this outcome seems rather far-fetched and improbable.

#### B. IMPACT ON FACTORY FARMING PRACTICES

Public sentiments on farming practices are likely the most jurisdiction-dependent as compared to the other two trends described in this paper. Certain areas of the country rely heavily on farming, specifically those containing several factory farms. These jurisdictions may have more favorable, or at least ambivalent, views towards abusive farming practices compared to those areas with less factory farms.

Due to the differences across jurisdictions, there would certainly be an immediate effect of some states' factory farms thriving under the proposed solution, whereas the few factory farmers in predominantly anti-factory farming or pro-veganism states would suffer without legal representation. As a result, factory farming may become more densely located in specific jurisdictions over time, where factory farmers currently in areas that view abusive farming practices as morally reprehensible relocate to more pro-factory farming jurisdictions.

In addition, the relocation of factory farmers would lead to an increase in competition for meat and dairy producers in these densely factory farm-filled areas. Where consumers outside of these jurisdictions are moving away from buying abusively produced meat, there will be an increase in the number of consumers looking for ethically produced meat and dairy products,<sup>104</sup> and factory farms will need to change their farming practices to maintain their profitability. Thus, in the long-term, assuming the number of people against abusive farming practices continues to increase, the proposed solution may ultimately work to reflect this trend against abusive farming practices through its potential impact on the meat and dairy market.

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104. ASPCA, *Public Opinion Surveys on Farm Animal Welfare* (last visited Feb. 25, 2023), <https://www.aspc.org/protecting-farm-animals/aspc-surveys> [<https://perma.cc/B2QB-8WTR>].

### C. IMPACT ON ANIMAL CAPTIVITY

Animal captivity is already a practice that thrives in specific states over others given the climate needed to keep wild animals captive. This does not mean that anti-animal captivity views are limited to specific jurisdictions, but that the actual practice is location-specific, and certain states will attract more animal exhibitions than others.

The expense of and potential profit involved in running animal exhibitions<sup>105</sup> means that many animal exhibitors rely on the government or large corporations to fund their shows.<sup>106</sup> Lawyers may feel financially incentivized to represent these corporations as compared to less profitable individual defendants. Where the proposed solution involves weighing several considerations before choosing to represent a client, the financial incentive for a lawyer and their firm may realistically outweigh their other considerations, including the moral reprehensibility of the client. Moreover, lawyers from outside of the jurisdiction may choose to represent the client given enough financial incentive and adherence to the *Model Rules* on out-of-state lawyers representing such clients.<sup>107</sup>

Additionally, it is important to know which states have the most and the least anti-captivity sentiments compared to the states with animal exhibitions. For example, there is a SeaWorld theme park located in Florida. If Floridians do not find animal captivity to be morally reprehensible, and they compose the majority of this SeaWorld park's visitors, we can assume they have not stopped visiting the theme park since the *Blackfish Effect* began. It is then likely that SeaWorld in Florida will not face detrimental consequences from the proposed solution, where the lawyer will choose to represent the corporation assuming all the other considerations used in the lawyer's balancing test collectively weigh in favor of representation.

In contrast, if Floridians are predominantly against animal captivity, most of SeaWorld in Florida's visitors would logically come from outside of the jurisdiction. Under the proposed solution, SeaWorld may face negative consequences if the financial incentive and other considerations do not outweigh the lawyer's consideration of the jurisdiction's moral values in deciding whether to represent the corporation.

### V. CONCLUSION

To summarize, the conflict between nonaccountability and accountability in determining whether a lawyer should be required to represent morally reprehensible clients is a complex issue prevalent across several fields of law. Animal law

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105. See generally Carolyn Young, *How to Start a Zoo*, STEP BY STEP BUSINESS (last updated Feb. 18, 2023), <https://stepbystepbusiness.com/business-ideas/start-a-zoo/> [https://perma.cc/F5PD-76RV].

106. See Katie Furtick & Harris Kenny, *A Public-Private Partnership Could Help the ABQ BioPark Zoo*, REASON FOUNDATION (Nov. 19, 2012), <https://reason.org/commentary/abq-biopark-zoo-ppp/> [https://perma.cc/6LAP-HS4E].

107. See generally MODEL RULES R. 5.5(c).

presents several trends demonstrating the public's increasingly protective views on the treatment of animals. As society starts to trend further away from the way the law currently stands, the United States' democratic government is becoming less representative of its public.

This Note analyzes the role of a lawyer in addressing this discrepancy between the law and the public and proposes a solution where the ABA would amend Rule 1.2. In the proposed amendment, lawyers would be required to consider the moral values of the jurisdiction in which they practice, balancing this consideration alongside the other listed factors in the *Model Rules*, when deciding whether to represent any given client. This solution not only makes society's morals an express consideration for lawyers to rely upon in their decision-making, but it also ensures that lawyers remain aware of and responsive to the likely shifting views in their jurisdictions. Assuming communities continue to adopt more protective views on animals, this method will reflect these changes and serve the interests of a representative legal system more effectively, where the legislature and judicial system remain inadequate.