I would like to discuss solicitation and how it is now permissible for American Kennel Club judges to approach, request, and advertise for assignments. Apparently this subject has become quite a heated topic of discussion with harsh sentiments, threats, and posturing. Although I am about to set forth a supposition here it is not unfounded. I have based my conclusions on conversations with other judges and I find there is a discernible categorization of those in favor and those in opposition. Naturally there are exceptions however my sorting has in opposition judges who have enjoyed group and multi-group privileges for lengthy periods. Then we have the advocates being judges who are new, comparatively new with few approved breeds and the great many who are provisional in one or more breeds and approved in only a few.

Oh yes, being provisional and its status. This is a never-ending holding pattern sometimes taking years, waiting for the rare phone call from some distant show chairperson that has taken pity on the lowly provisional judge with few breeds. These judges have been, up until now, basically useless for all-breed show chairs. Not surprisingly, when that call does comes from such compassionate showchair more often than not they are calling from a far off distant state; in some cases 3000 miles away! Oh, the joy of finally having another assignment bestowed upon you; after the elation your next reaction is, “I won’t tell my husband that I have to fly cross-country again. I’ll break it to him gently, and that will be later, much later!” Fill in your own blanks here regarding spouse’s name and the show’s location; perhaps it is the midwest, the south or north for you.

In any case, when you do break it to your spouse, theirs most frequently is a look of disbelief. As if you are insane to be flying to an all-breed dog show 2000-3000 miles away to judge just one or two breeds especially when often there may be 10 or less entries in each breed(s). I have heard the statistics for an average entry at an all-breed dog show are 6-7 entries per breed. Perhaps you are approved for at least one or two other breeds. Even so, flying cross-country in order to complete a provisional assignment(s) while approved for breeds you can count on one hand does not seem to justify the expense to your spouse. All these expenses are yours from airfare, hotel, food, and the likelihood of a car rental as provisional judges with few breeds do not get compensated except for occasionally a club will offer $3.00 per dog. It’s amazing what we bear to complete our provisional assignments. And now the inevitable question that your rational spouse will pose usually goes

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like this, “Why can’t you get any assignments around here?” Ha! Good question! One of which we, of course, have no good answer for as up until now it has been the age-old dilemma for newer judges—the chicken or the egg—since we have not been permitted to solicit or notify show chairs in our region about our availability.

Oh, then we have a segment of the veteran judges who are in opposition to the repeal of the ban. The well-known, the established mentor judges who have made emotional statements such as; “I did my time,” “I got through it,” “these new judges have to pay their dues like I did,” “it wasn’t easy when I started.” When the topic is introduced it seems to bring forth a cauldron of spite thick with passion and instant condemnation of soliciting.

I have spoken with several group and multi-group judges in which several serve or have served in the capacity as an all-breed showchair. Many immediately opposed judges’ solicitation and, amusingly, none provided any rational reason. One went on to add that having served as a show chair for many years they and others they’ve spoken with would NOT hire any judge who solicited and further, they would keep files on soliciting judges to make certain “those people” would not receive any future assignments. Wow! I find this quite alarming. We have an official AKC policy change and now judges are vulnerable to tyranny from another segment of our judge’s society. How can they justify their behavior?

I and others believe it is completely unacceptable and cannot be tolerated. Impetuous statements such as these have no place in our sport especially as these threats may have an impact on club finances when you realize there are many provisional judges with few approved breeds who also are breeder/exhibitors and remain active in showing their dogs. It may be that these breeder/exhibitor/judges have long memories and will not exhibit under a bully judge who has threatened subordinate judges. Cause and effect being the clubs will suffer the loss of entries and money. Perhaps though the bully judge does not care as their compensation may not be dependant on how many dogs are enter what our sport has come to?

Why does the scenario of a judge, which includes the humble provisional judges, advertising or requesting assignments conjure up such harmful intensity from the already well-established judges? Do they honestly believe that provisional judges who have few breeds will encroach on the number of annual assignments veteran group and multi-group judges receive? Is the animosity based on resentment? Is it because of change as commonly many people do not accept change very well?

Why do some judges feel so adamant about not allowing solicitation when in fact there are some judges who stipulate in their judging contract that they will not judge more than 140 dogs a day? I discussed this topic with one group judge, a surprising advocate of the new revision who also notably had served as a show chair for decades. They hypothesized that some senior judges supplement their retirement income by judging and these judges feel threatened by allowing the solicitation concept. As I stated previously, frequently most provisional judges with few approved breeds do not get paid nor do they charge for their services. Rather they are grateful, delighted to have the opportunity. Indeed, they are a benefit for the clubs to save money. My source went on to challenge why a club should pay one judge two times more money than another judge to pass over the same 175 dogs? Now, the customary and hasty response to that question usually is that the more costly and recognizable judge will attract more entries. However, my source tells me that in their extensive chairman experience exhibitors frequent certain shows and not judges in particular. As evidence they went on to add that over a 5-year course the entries in each breed varied only 1-2%, regardless of the judge. As an exhibitor of 26 years I must agree. Without question I frequent the same shows and countless times I have shown under unfamiliar judges.

This rule change can benefit all judges and should not cause such intense division amongst the judge’s ranks and become a basis for threats. I believe this has occurred because many people do not understand the reasons behind the revision. From my many conversations, it became apparent a great many judges, old and new, were oblivious as to why the AKC reconsidered and announced the revision. It is my hope that many of these reasonable, educated people will recognize the certainty of this new ruling and will embrace and accept it once they are educated as to why the revision had to be made. So I shall review.

To begin, the multitudes of judges in our ranks are usually employees or are retired and therefore are not knowledgeable about Employee vs. Independent Contractor Status. The IRS has a helpful tip sheet that helps to demystify the relationship located on their website. I include the relevant and most helpful:

1. The IRS uses three characteristics to determine the relationship between businesses and workers:
  - Behavioral Control covers facts that show whether the business has a right to direct or control how the work is done through instructions, training or other means.
  - Financial Control covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker’s job.
  - Type of Relationship factor relates to how the work-
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ers and the business owner perceive their relationship.

2. If you have the right to control or direct not only what is to be done, but also how it is to be done, then your workers are most likely employees.

3. If you can direct or control only the result of the work done -- and not the means and methods of accomplishing the result -- then your workers are probably independent contractors.

4. Employers who misclassify workers as independent contractors can end up with substantial tax bills. Additionally, they can face penalties for failing to pay employment taxes and for failing to file required tax forms.

Additionally, the IRS has Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. In this form the IRS requests information germane to Behavioral Control. Relationship of the worker and the employer and upon the behest of either, the IRS will make a determination of work status.

The history and the subsequent confrontations begin with the Senior Conformation Judges Association (SCJA) and the American Kennel Club (AKC). The SCJA, founded in 1983, has been advocating on behalf of judges for the better part of 27 years and has worked tirelessly behind the scenes arguing against and resisting the AKC’s behavioral control over judges. The SCJA was successful in the argument against the AKC Board’s ill-advised policy restricting judges from judging for other registries and ultimately the policy was revoked. In the 1990s the SCJA also created and implemented the inspiring and worthy, “Help the Provisional Judges Program.”

Here we will begin as the latter program became a source of controversy. The particulars surrounding this are as follows: “The SCJA’s position through the years is that dog show judges, as independent contractors, have the right by federal statutes to advertise their services to the public. The SCJA has been stressing this point ever since the ‘Help The Provisional Judges Program’ back in the mid-90s. The problem arose when the American Dog Show Judges (AD SJ) and the AKC officially complained to the AKC about the SCJA’s ‘Help the Provisional Judges Program’. In the fall of 1999, the AKC ruled in favor of the ADSJ complaint against the SCJA’s ‘Help the Provisional Judges Program’ in spite of their request for reconsideration and directed that the SCJA’s program, as then constituted, should be “immediately discontinued”. AKC pointed out, “This is clearly contrary to the directive in the Guidelines for Conformation Dog Show Judges to ‘Never solicit or promote assignments.’”

Fast-forward to summer 2010. “The SCJA has met with AKC Chairmen and Board members on more than one occasion with very positive results for all concerned. We again stressed that this problem required the personal leadership qualities of AKC Chairman Menaker and the management experience and decision-making ability of the AKC Board and President. We made a point that, on many occasions in the past, the SCJA had made suggestions concerning the behavioral control assumed by the AKC Judges Department and Reps as to their compliance with federal statutes as applicable to independent contractors (AKC judges are independent contractors, not employees of the AKC). We use as one of the very basic examples - AKC judges are prohibited from advertising, i.e. soliciting. Independent contractors can advertise. The SCJA pointed out that this proviso is clearly one of the official distinguishing features of the Internal Revenue Service for an independent contractor vs. an employee. Another point covered which is even more important was the behavioral control placed on AKC judges by the AKC, i.e. AKC Judges Department. This absolute control was certainly not in accordance with the behavioral restrictions permitted by the IRS in their policies differentiating between independent contractors and employees. AKC judges are certainly not employees of the AKC or the independent show-giving clubs that happen to hire them from time to time.

“The SCJA officially requested a meeting with the AKC Chairman, Board and President for a determination of the behavioral control placed on AKC’s independent contractors, i.e. AKC judges, before asking for a determination from the IRS. We actually quoted a few examples covered in IRS regulations that determine the difference between independent contractor and employee. We respectfully requested AKC’s Chairman, with his personal leadership, to have the Board consider these distinguishing features between the independent contractor and employee.”

The SCJA made numerous legitimate points commenting on IRS Policy. Just three examples:

IRS -- “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.” SCJA stated, “AKC, not the clubs, has 100% control over a judge in the ring with AKC Reps reporting and commenting on judges every move; on occasion, even criticizing a judge’s placements - replacing the judge’s opinion with their own. Judges are even graded and their judging evaluated by the AKC Representative.”
Training--AKC directs that judging applicants must attend an AKC Institute.

IRS--"Training that the business gives to the worker. An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods." SCJA stated, "We know how often an AKC Rep has criticized a judge on how he/she handles their ring even to the extent of how he/she lined up dogs or placed them on a table

Training--Just recently, the AKC Board approved the very questionable requirement that every new judge MUST be trained at an AKC Institute. This is totally out-of-sync with this IRS requirement. In addition, considering the expenditure of unnecessary funds by the AKC Judges Department, they recently requested and the AKC Board approved, that they take on the basic course for new judges, an additional expense, something the SCJA has been doing for the past twenty-four years at no expense to the American Kennel Club except for the expenses of the AKC Executive Secretary who does an outstanding job of representing the AKC...This is also in violation of IRS policy on training for independent contractors."

IRS--"The extent to which the worker makes his or her services available to the relevant market. An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location and are available to work in the relevant market." The SCJA's stated, "It is an established fact that AKC judges are not permitted to advertise. The SCJA has long ago and consistently stated that the judges, as independent contractors, should be able to advertise. Although the SCJA has prevailed on a number of major issues affecting our judges, on the question of advertising our recommendations, through the years, have fallen on deaf ears. The SCJA has, up until now, refrained from getting the IRS involved; however, in view of the clarity of the IRS policy, and on behalf of the judges, we will continue to pursue this issue. The SCJA wants to attempt to have AKC's Chairman and Board address this issue rather than pursuing the only alternative. The SCJA pointed out that while the restriction on judges soliciting is positively not in accordance with IRS policies, that the behavioral control that the AKC has on its judges is a lot more serious."

These are the facts. This is simply not a reversal based on expediency or the squeaky wheel getting greased. As an independent contractor for 14 years in my real-life business none of the IRS information is new to me or to others like me. When first joining the judging ranks I and several others were incredulous to learn of the stranglehold the AKC has had over judges especially as I was told "that’s the way it’s done, so don’t ask any questions."

What kind of message is sent when veteran AKC judges remain bitterly and vocally opposed to the repeal of the solicitation ban even after they are made aware of the facts? Do they not respect equal opportunity, Internal Revenue Service work laws and the Federal Trade Commission? Do not mentor judges want to assist in helping to sustain our shared passion and hobby-- the sport of purebred dog competitive events? I am sure I do not need to remind everyone that this sport is not thriving under these very difficult economic times. When did dog show judging cease to be a privilege and an honor? What happened to the love for the dogs, the sport and respect for the breeds?

I have commented on my observations of judges who appear to be quite miserable while in the ring. If you don’t want to be there then don’t accept the assignment as there are an untold number of judges who would happily jump at the opportunity and make it an enjoyable experience for all. And many would do it for little cost or even free!

Under the Senior Conformation Judges Association's (SCJA) original “Help the Provisional Judges Program” a great many people including clubs, judges and even exhibitors will benefit. The original program will once again be revived. It is a compiled list of volunteer Group Judges that would waive or modify their fees if provisional judges were retained to judge their provisional breeds within that Group Judges respective group. This program can be of huge benefit for the humble provisionals and also financially for the clubs. It provides exposure and opportunity for the provisional judge that until now has been inaccessible. I have always believed that the more opportunities a competent, enthusiastic judge has with their new provisional breed(s) the quicker they will gain confidence and typically the more experience one has the better qualified one becomes to pass judgment. Exhibitors win; the club wins with fewer costs to offset the bottom line, and the provisional judge wins by acquiring experience and much needed assignments!

Let’s join together to stop the insanity! It is ridiculous that provisional judges with few breeds have had to put up with this obsoleteness until now. It is madness to have to fly 3000 miles cross-country to complete a provisional assignment(s) because we cannot get an assignment in our own region where we live. Why can’t we get an assignment in our local area? Because we could not solicit! We have been restricted and not allowed to approach, request or advertise nor inform show chairpersons that we are eager, willing, excited and available to judge our provisional and approved breeds. All this time one of the solutions to the all-breed clubs financial woes has been right in their own backyard.