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The Contra Costa County Bar

The Contra Costa Lawyer is the official publication of the Contra Costa County Bar Association (CCCBA_) published 12 times per year - in six print and 12 online issues.

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All in the Family – Following in the Family Footsteps

Saturday, October 01, 2016

Part 1, Family Practice Corner



Sometime in late June, I went to the bank to make a deposit. The banker, Kate, has known me since I was an intern in Tim Hyden's office, which was some years ago. Kate knew that my son, Garrett, was born in early December of last year. In the course of conversation, she mentioned, "Maybe your son will be a lawyer someday." Without thinking, I blurted, "Over my dead body!" My response gave rise to a curiosity; why did I have such a strong, immediate, and negative gut reaction? As a new mom, how would I feel if my little guy decided he wanted to be a lawyer? How would I feel if he wanted to be a family lawyer like mom? Would I prefer he avoid

the practice of law?

Family attorneys are often exposed to the nastier side of the law, as well as the profession. This experience certainly impacted my reaction at the bank, and it ignited my curiosity about how attorney parents feel when their "little ones" enter this roller-coaster profession. So I decided to ask them.

This article is the first of several articles with interviews of parent/child(ren) "teams". This article features an interview with Family Law Father/Daughter George "Skip" Pfeiffer and Laura Pfeiffer.

George and Laura Pfeiffer

George and Laura Pfeiffer practice family law at Pfeiffer Law in Walnut Creek.

LJM: Laura, did you always know you wanted to be a lawyer?

LP: I don't think I did, but everyone else always knew it. When I finally went to law school everyone was like, we knew you would do that since you were a kid.

LJM: So it was your own unilateral decision?

LP: One hundred percent.

GP: As opposed to saying I had any influence over it?

LJM: Right, as opposed to thinking, 'Well my dad is a lawyer, and then I could work for my dad' -- that thought process.

LP: I sort of went to law school in part because I didn't want to get a 'real job.' I took time off between college and law school and lived in various ski towns. I knew that I needed to move on to something different, but was not sure what I wanted to do. I happened to do well on the LSATs, got into some good schools, and was offered a partial scholarship, so I figured, *why not?* I definitely talked to my dad prior to that, and my dad has always had such a supportive position. He has always encouraged us (all 5 kids) to do whatever we want to do as long as we do it well. If that's being a ski instructor in Colorado, then be a ski instructor. If it's being an attorney, then go for it.

LJM: Skip, what were your initial thoughts when she told you she was going to go to law school?

GP: Great.

LJM: You didn't have any reservations about the kind of career she was entering, or the adversarial nature of this profession?

GP: No. She's good. She has great verbal skills. She's bright, a perfect fit for law.

LP: And he likes what he does.

LJM: When you, Skip were looking at the course of the stress of law school, the agony of the Bar, and then the anticipatory Bar limbo period, do you remember that from when you went through it?

GP: Oh hell yeah, but I had a lot more confidence in her than I had then.

LP: In fact he had some very helpful insight for me when I went to law school. One of the first things Skip told me was to study for the final exam every semester. Don't worry about how stupid you sound in class. So I took advantage. That piece of information alone, they should tell all law students. I didn't care about the reading for each day. I just went through outlines and studied for the final exam all along because of that little piece of advice.

LJM: When you, Laura, decided to go to law school, did it ever occur to you that you may start working for your dad someday?

LP: No, in fact when I was in law school even I said I am never going to be a lawyer. I never thought in my wildest dreams that I would do that. And then I just happened to get a job at a D.A.'s Office, and I really liked that, and I ended up practicing law. Then through life circumstances, I ended up working for my dad. But no, I never thought I would work for my dad, or in family law.

LJM: When Laura said she was going to go to law school, did it occur to you that she may end up working for you some day?

GP: Not really.

LJM: Did you want her to work for you?

LP: (laughing) Not really!

GP: Um, yeah, it would be great if all of the kids could work for me. I would like somebody else to go to law school but it is a little too late for that.

LJM: Laura, after you left the D.A.'s office, and went to your dad about leaving, was it one of those things where you said, "I need to come and work for you"?

LP: I left the D.A.'s office to go to Washington, then I came back to California, not to work at the D.A.'s office. The initial idea was to practice law in Washington, so I took the Bar up there. At the time I was at the D.A.'s office, it was during the budget crisis, and on a regular basis they would say they were going to hand out pink slips and they were doing this as a political play to get the community to say that the D.A.'s office needed funding, but the reality was I had no job security, and to remain where I was just didn't make sense to me. I became tired of the limbo and I turned in my notice. I did a few things, and then I called my dad up and said "Hey, why don't we play law together?" And I started working for him.

GP: Well since she had the law background, she could do research and stuff.

LP: Based on the fact that when I returned to California, I was working as a ski bum, making 5 cents an hour, if I worked three hours doing research a week, I would have ended up with the same income. So I asked him if I could just do three hours of research a week, and he's like "No, but you can come and be an attorney for me."

LJM: Skip, did it occur to you to ask Laura to work for you when she first started working as a lawyer?

GP: No, because I expected her to be at the D.A.'s office for a long time.

LJM: It seems like working with your dad was somewhat of an opportunity of circumstance, and you did not think initially that you could just go and work for your dad.

LP: No, but I am really glad that I did.

LJM: How is your relationship different with the office dynamics? I know it is a rather small office, just the two of you, Kelli Miles, your assistant/paralegal. And Kelli also works for Stanley (another attorney in the office), but do you have to deal with any office politics?

GP: I doubt it. Kelli is pretty open with us.

LP: Kelli started working for my dad about 10 years ago, so she is practically like family now.

LJM: How long have you been working for your dad now?

LP: Since March of 2010, so about 6 years now.

LJM: How has your relationship changed, if at all, by working with your dad?

LP: I don't think it has.

GP: Not at all.

LP: We have always been pretty close, even since I was a kid.

LJM: Do you think that your working relationship has impacted your siblings at all?

LP: No.

GP: For the rest of them it doesn't even register.

LJM: Exposing your daughter to the adversarial component of this business does not phase you at all? There is very little work/life balance unless you impose it upon yourself.

GP: Laura does a much better job with that than most people I know. There was one client that almost forced Laura out of the practice of law all together. The client was quite difficult and frankly quite rude to Laura and others. But I think now we have an unwritten rule that if you do not like the client you get rid of the client, or pass the client on to someone else. Laura can take care of herself.

LP: You can't take this stuff home. I think he may have taught me to do it better than he does.

LJM: Perhaps your comfort with allowing your daughter to embark on this profession stems from the fact that you knew your daughter much better when she was in her 20s than I do my son, who is just 9 months old. Imaginably the inherent need to protect will wane as he grows up.

GP: I think at 9 months, I probably would not have thought "Yeah, I want to get her into this." I am obviously older than I was when she was 9 months, and you will eventually have a different perspective on it. It depends on how he grows up. She was always very skilled at arguing, bright and logical, so this is a good job for her; a good outlet for her. I think she would be frustrated if she worked in a really happy place.

LP: (laughing)

LJM: I have noticed that you call him "Dad" in the office. You don't call him "George" or "Skip." Obviously Skip is going to call you Laura...

LP: That's not true. Sometimes he calls me "Lor Lor". (laughing)

GP: I know some kid (attorneys) who call their(attorney) parents by their first name. I always thought that was kind of weird. I couldn't have called my dad "Bobby," even if I had worked with him.

LP: You would have called him "Sir." Let's be real.

LJM: Are you both able to leave work at work?

GP: We probably talk shop outside of the office, but I know that it bothers Laura's husband, so we try and minimize that.

LJM: I know it bothers her husband too...

LP: Because he won't let Lisa and I talk about work either!

LJM: What do you think is the best professional advice your dad has given you?

GP: I don't think I have given her a whole lot of advice. I think she can probably watch what I do and how I conduct myself, and that may have an effect on her positively. Good behavior that she can model, and bad behavior that she can avoid.

LJM: Such as...

LP: How to interact with judges. From as long as I can remember, I have watched him in front of judges. When I first came on, I watched you more but not as much now.

GP: Watching me and other lawyers. I don't know if you were even a lawyer yet, and I took you to the courthouse and an excellent lawyer from Sacramento was up there. Somehow I got a pretty good result, but you told me afterwards I was lucky because the other lawyer was far superior and was quite skilled in his presentation to the Court. I did not disagree.

LP: (laughing)

GP: Thank you, Laura.

LP: Also that whole watching from learning, I think there are little bits of advice you have given me throughout my life, unrelated to law, that equally applied to the law. Growing up, if I thought things were a bigger deal than maybe you thought they were, you would tell me to let it go, roll with it, some things are not worth fighting over. And that, especially in family law, we say that a million times a day to our clients. "It is not worth fighting about, let it go." A lot of advice outside of the law is applicable. He is very hands-off as a boss.

LJM: Do you think that is why you work well with your dad?

LP: I don't know. I mean, I grew up with him, so you're naturally going to get along, right?

LJM: When Laura decided she was going to become a lawyer, did you think you now have a legacy, someone to pass the firm on to?

GP: No.

LP: (laughing) Your legacy! The George W. Pfeiffer legacy!

GP: Laura may be outta here before I get outta here.

LJM: Did you [Laura] ever think you could take the ball and run with it?

LP: Never. Never. We are technically now partners. My dad brought up the idea of being partners previously and I fought that, pretty successfully, until recently. I did not want the

responsibility. I love that I get to work with my dad, but I never thought of taking over. The best part of this job is getting to work with my dad. There is no doubt in my mind that I would go do something else, probably somewhere else. Sorry buddy, your legacy is going with you!

*A Bay Area native, raised in Fremont, **Lisa Mendes** has a B.A. in Spanish Language and Literature, a Masters in Business, and a Juris Doctorate. Lisa worked for five years in Corporate America for a Fortune 50 Company before deciding to become a lawyer. Lisa practices primarily family law at her own law firm in Walnut Creek. Lisa currently lives in Contra Costa County, with her debonair hubby, Steve, their adorable baby boy, Garrett James, and their 12 year old fur baby, Bailey. Lisa appreciates irony, and strategically placed sarcasm. She is a professional bruncher & enjoys glamping, shopping, reading TheSkimm, and is an avid proponent fine wine, still & sparkling (drink responsibly, folks).*

Quality of Life and Family Law in New York & California

Saturday, October 01, 2016



When my Brooklyn granddaughter arrived two years ago, I came to New York thinking that I'd split my time between there and California. But I fell in love, not just with my granddaughter, but also with New York: the place, the people, the climate and the law, so I decided to move here.

Clearly, New York is better than California because there are actual seasons, rain and snow, and mass transit everywhere, so I can easily visit my granddaughter who lives two hours by train down the Hudson River from my home. In the little I've seen of New York courts so far from my pro bono work, it seems that New York has a lot of advantages for families and children. They are generally dealing either with divorce court or family court for almost all other matters reducing the "crossover" issues that

follow California families back and forth from family to juvenile to probate divisions. New York divorce records are entirely confidential and other family records are available only by special application. [1] They also have a little better chance at receiving appointed counsel if they need it and therefore fewer self-represented litigants in family matters. [2]

And yet . . . both New York and California have a lot in common. Both are progressive states that strive to help all their people. Both have a wine industry, sailing and good baseball teams. They also approach child custody and child support in similar ways. Both use the best interest standard to determine custodial plans. [3] Both have custody mediation although California's process is mandatory and uses professional mental health providers while New York custody mediation is voluntary and uses extensively-trained community volunteers. Both have independent actions available for grandparents to sue for visitation and both consider the child's preference with more weight given as the child matures. Both allow children to address the court directly. California has a statutory mandate that requires the Court to hear from children above age 14 upon request. New York case law establishes the preferred practice to hold an in camera interview on the record with only the child and his/her attorney present and it may be reversible error to disallow if the children had not otherwise been able to communicate their views to the Court. [4]

New York and California also both use mathematical formulas to set a presumptively correct amount of child support based on the "income shares" theory that a child is entitled to the same share of parental income before and after separation. Both use algorithms but California's requires a computer program while even the mathematically challenged like myself can calculate the New York version. New York differs from California in that the percentage of time each parent spends with the child is not part of the formula. As a result, a parent with more than half of custodial time or a parent with equal time but less money will receive child support from the other parent. If they have more than half of the time, they get full support; if they have equal time but less income, the amount is discretionary, but they will generally receive support. As to duration of the

obligation, New York requires parents to support their children to age 21, California only to age 18 or 19 if still a full-time high school student living at home. [5]

Both states have similar automatic restraining orders prohibiting the unauthorized transfer of assets or changes in insurance pending final judgment of dissolution. California also restrains parties from removing the child from the state or applying for a new or replacement passport. Both states have similar provisions for compulsory disclosure of financial information upon filing divorce. While California mandates ongoing updates of disclosure as circumstances change during the pendency of the divorce, New York does not. [6]

And yet . . . California does have a lot going for it that New York lacks. I miss California's mediterranean climate, sailing on the San Francisco Bay, visiting the best wine area in the country, and going to see the Giants play. California also has more advantages for families and children in court. It was the first state to establish no-fault divorce in 1970 while New York was dead last in 2010. There are seven different grounds for divorce here including adultery that still may result in a denial of spousal support. Fiduciary duties of loyalty and care between spouses are more evolved in California, covering the entire length of the marriage and setting out remedies for breach. [7] New York has no statutory law on fiduciary duty, and case law limits the duty to time of divorce only. [8] And California is a community property state so everything earned, accumulated or received during the marriage (e.g. wages, benefits, property, the value of a business etc.) except for separate property owned prior to marriage, gifts or bequests, as well as all liabilities incurred are equally split at dissolution. [9] Although New York is an equitable distribution state and not one of nine community property states; most property acquired during marriage is presumed to be marital property. In practice, everything is generally split equally regardless of title except businesses. Non-business owner spouses who do not participate in the business operation generally receive far less than half the value of the business. To make an equitable disposition of marital property upon divorce, New York courts should consider 14 factors very similar to the 20 factors California courts use to determine permanent spousal support. However, the equitable distribution factors, unlike California's spousal support factors, appear to be a guideline with no requirement that the Court make any record findings. [10] And, until last fall, New York actually considered a spouse's "enhanced earning capacity" from awards, degrees and prizes (e.g. Nobel) to be a marital asset to be valued and distributed at dissolution. [11]

Both states use a similar formula considering both income and expenses to reach temporary spousal support but New York now also mandates the formula be used to set presumptively correct permanent support although it retains discretion to adjust where appropriate. It's unclear whether this will be better or worse for families and their counsel. A formula for permanent support certainly increases predictability but significantly reduces judicial discretion. [12]

Maybe, the best thing is to combine the states. This approach has certainly worked for the Giants. [13] Combining both states means that I can continue to visit friends and family, teach and work in the Bay Area. I come west when the east is too cold, to see the Giants play, buy wine, and go sailing. I can also avoid litigating fault divorce, retain more judicial discretion for permanent spousal support, and hold parties to a stricter fiduciary duty. Sounds pretty good.

Commissioner Josanna Berkow retired in 2013 from the Contra Costa Superior Court after 20 years on the family law bench. She currently resides in New York but often visits

the Bay Area where she continues to teach at the John F. Kennedy College of Law and work as a temporary judge for uncontested judgments. See www.jberkow.com . You may contact Commissioner Berkow c/o Karen Olson, Legal Document Assistance at 925-640-2069 or legalprokolson@gmail.com or at josanna@badtke.com

[1] N.Y. Domestic Relations Law § 235, N.Y. Family Court Act §166.

[2] The latest official study I could locate shows that roughly a half of NYC family law litigants rather than California's two thirds appear unrepresented.

[3] California mandates record findings on specific best interest factors defined by statute where New York relies on case law with no requirement for record findings with the sole exception of a history of domestic violence. Cal. Fam.Code § 3011 and N.Y. Domestic Relations Law § 240(1).

[4] Cal. Fam.Code § 3042; *Koppenhoefer v. Koppenhoefer*, 159 AD2d 113 (2d Dept 1990); *Matter of Brice v. Mitchell*, 184 A.D.2d 1008 (4th Dept 1992).

[5] N.Y. Domestic Relations Law § 240(1)(b), N.Y. Family Court Act § 413, and Cal. Fam.Code § 3011.

[6] Cal.Fam.Code § 2100 and N.Y. Domestic Relations Law § 236 B(4).

[7] Cal.Fam.Code § 721 and § 1100-1101.

[8] *Manes .v. Manes*, 277 A.D.2d 359 (2000).

[9] Cal.Fam.Code § §760,770 & 802.

[10] N.Y. Domestic Relations Law § 236(1) and § 236 B(5)(d); Compare Cal.Fam.Code § 4320.

[11] *O'Brien v. O'Brien*, 66 NY2d 576 (1985).

[12] The new law caps annual income available for both temporary and permanent support at \$175,000. The court can deviate from the formula where it finds the presumed award unjust or inappropriate in a particular case based on specific factors quite similar to California's discretionary permanent support factors under Cal.Fam.Code § 4320. The law also establishes a presumptively correct duration of permanent support based on the length of the marriage with adjustments that must be based on the same factors for non-guideline support. N.Y. Domestic Relations Law § 236B(6).

[13] When you combine their New York and California records, the Giants have won the most games in baseball, 23 National League pennants, 20 World Series competitions, and 8 World Series championships. I don't want to talk about the Miracle Mets who killed my Baltimore Orioles in 1969 or the damn Yankees so pardon me Oakland A's fans for not getting into American League details.

Help is Coming with Limited Scope Court Appearances

Saturday, October 01, 2016

According to the Judicial Council, between 70% and 80% of California Family Law litigants are self-represented. Any attorney looking for new clients who does not see this as a marketing opportunity is not paying attention. Most of these people can afford some legal services, but not the traditional full-service representation. Others are simply “ornery DIY’ers” who are used to getting information for free off the web and insist on doing as much as possible themselves. They still need professional legal services; they’re just not writing any blank checks.

When done cleanly and correctly, limited scope court appearances have been proven to be a profit center to many lawyers. Seriously, how many lawyers wouldn’t love to have an area of their practice where they are paid in full in advance of service and have no accounts receivable?

Some lawyers are scared off because of the difficulty of getting out at the end of the service and the fear that in order to be relieved as counsel they will have to invest additional (unpaid) time. This is a legitimate concern. Since the limited scope court rules were first being debated in 2003, I have been advocating for a simplified notice of completion of limited scope representation. To date, I have been unsuccessful in California, but successful in many other states where I have consulted and which have adopted a notice of completion form similar to the withdrawal of attorney form used after full-service representation.

The good news is that the current pro per crisis has caused the Access to Justice Commission and the Judicial Council to recognize the impact not only on access to justice, but court efficiency, and take a second look on how to actively encourage lawyers to make more limited scope court appearances.

We are now operating under the second iteration of the family law withdrawal process for limited scope as set forth in CRC 5.425(e). For the past two years, I have been lobbying for relaxation of this rule and the corresponding Rule 3.36 for civil law. The Family Law and Juvenile Advisory Committee has now taken it up. There were hearings earlier this year on a relaxed form of 5.425 which would make it easier for lawyers to get out after a court appearance if the client does not sign a substitution.

A Substitution of Attorney remains of the gold standard. If you’re going to make a limited scope court appearance for a client you need to explain that when the appearance is over (and the Order After Hearing filed if you were ordered to draft it) you will be sending them a document entitled Substitution of Attorney. You will not charge them for this form but they must agree to promptly sign and return it to you. Their agreement to do this is a condition of your agreeing to appear in court on their behalf. Note: NEVER, NEVER, NEVER have a client sign a substitution of attorney in blank to be filed at a later time at your discretion. That is a disciplinary offense. That being said, there is no reason why you cannot have a blank Substitution in your briefcase to be signed after the hearing is over.

The importance of the rule change comes up when, for whatever reason, the client doesn’t sign the Substitution. Sometimes it’s ignorance. They see an envelope with your

return address and assume that it contains either a) a bill or b) something they're going to be billed for. The fact is that once they have purchased a service from you and paid you, the client doesn't want to ever see you again. They don't understand why they have to sign a piece of paper to go to the court to simply attest that you've done what they know you've done.

The current version of Rule 5.425(e), in the absence of a Substitution of Attorney, requires the limited scope lawyer who has filed an FL-950 to file and serve a Certification of Completion of Limited Scope Appearance. The client then has 15 days to object if they think there's something more that you agreed to do which you have not done. In the absence of an objection, the attorney then files a Proposed Order to be Relieved with the court. Nobody likes this process, although it is infinitely better than the old rule 5.71 which went into effect in 2004. No matter how attractive the fee for making a single court appearance may be, no lawyer wants to have to get court permission to be relieved as counsel.

As of this writing, we still don't know the precise language of the new 5.425 which will be sent out for comment this fall. What we do know is that the version which was discussed by the Judicial Council in the spring was less onerous than current 5.425(e) and, as a result of lobbying by yours truly and others, an even more relaxed version is likely to be released for comment in the fall of 2016, to go into effect July 1, 2017 with the goal of making it as easy as possible for lawyers to attend a single hearing limited scope, providing a service to the public, a service to the courts, and business to the lawyer, without fear of being roped into indentured servitude.

I don't yet have a link to the exact wording of the rule, or to the request for comments. I invite any, repeat, any interested lawyer to contact me at sue@privatefamilylawjudge.com The Judicial Council welcomes thoughtful comments from experienced lawyers, takes them very seriously, and never gets as many comments as it would like.

Note to Civil Lawyers:

This isn't just about Family Law. It also works very well (and profitably) in many areas of civil law. Any time a one-shot court appearance is required, limited scope is potentially available. This includes landlord/tenant, administrative proceedings, small claims appeals, law and motion, consumer law, denial of insurance coverage, special needs advocacy, and many other areas where the individual consumer of civil legal services interacts with the court or other administrative bodies.

Your operative court rule is CRC Rule 3.36 et. seq. and forms MC-950 et. seq. As with Family Law, MC-950 is a mandatory form if you are making a limited scope court appearance. You need to carefully define the limitation on your scope both in your MC-950 and your written fee agreement.

As with Family Law, the key is getting out cleanly after your appearance is over. You should assume that you will be asked to draft the order after hearing, and factor that into your fee request. And yes, limited scope representation is always pay-as-you-go (hence the reference above to profitability).

One final note: experience has shown that these will be your happiest clients.

M. Sue Talia is a national expert on limited scope representation and has been teaching lawyers throughout the U.S. and Canada how to do it safely, ethically, and profitably since 1997. Her day job is as a private family law judge in Danville California specializing in complex family law litigation.

After ADR Fails in Family Law... What Happens Next?

Saturday, October 01, 2016

COLLABORATIVE PRACTICE AND MEDIATION



Recently, there has been a lot of focus on utilizing different Alternative Dispute Resolution (ADR) practices to (*in theory*) help clients avoid costly and emotional litigation. Some questions that arise are 1) What types of ADR are available in family law?; 2) What happens when the ADR process is not successful?; and 3) How is future litigation impacted by the strict confidentiality requirements and other limitations that go along with ADR?

ADR IN FAMILY LAW

Most people are familiar with the concept of mediation where an impartial third party (the mediator) assists the negotiations of both parties and helps to settle the case. The mediator cannot give legal advice or be an advocate for either side. If parties have retained attorneys (which is usually a requirement in Family Law mediations) those attorneys may or may not be present at the mediation sessions. If the attorneys are not present, they typically consult with their clients between mediation sessions. When there is an agreement, the mediator will prepare a draft of the settlement terms for review and editing by the parties and their lawyers. If mediation doesn't result in a settlement, the parties are free to use their counsel in litigation.

Another option that many non-Family Law attorneys may not be familiar with is a Collaborative Practice. Collaborative Practice allows both parties to have lawyers, who have training similar to mediators, who assemble a team of professionals to assist the parties in working through the various issues of their divorce. This process requires signing a Collaborative Law stipulation that specifically states that the Collaborative attorneys and other professional team members (child psychologists, forensic accountants, communication "coaches", etc.) are disqualified from participating in any future litigation (including providing aid, information or assistance of any kind) if the Collaborative process ends without reaching an agreement. This Agreement is designed to encourage the parties to work together and to result in settlement that is drafted by the lawyers and incorporates the shared goals of the parties.

WHEN ADR IS NOT SUCCESSFUL

Both Collaborative Practice and mediation rely on voluntary, free exchange of information and commitment to resolutions respecting everyone's shared goals. This sounds great. But, let's be honest, if the parties had mutual trust, shared goals and could communicate effectively, they probably would not be getting a divorce.

In reality, not everyone is suited for Collaboration. They may go into the process with the best of intentions but then realize it is not the proper forum for them to resolve their issues—either because there is a lack of trust, an imbalance of power or lingering

hostility over the breakdown of the marriage.

Every client and every attorney should go into the divorce process with the goal of exchanging information and reaching a settlement that is acceptable for both sides. Why do we need all of these restrictions and penalties? In the Collaborative Law framework, a party is essentially penalized for engaging in ADR and not reaching an agreement. Shouldn't a party always have the option of going to court without also being punished with the loss of their attorney and/or the information and support they receive from their team of experts? It is not uncommon to see a person who is unhappy with the certain issues in the proposed settlement but is not financially in a position to opt out of the Collaborative process since it will basically mean that they are starting over.

Then again, there are those who will use the threat of opting out of the process as leverage to get the other party to give in to his/her demands because they are afraid of the penalties associated with an unsuccessful Collaborative case. Not only can this be emotionally devastating— since they feel they are entering into an unfair agreement — this will also result in increased litigation in the future with subsequent modification proceedings to try and change these “agreements.” There is also a lot of anger and resentment from both parties who have invested a lot of time and money in the process only to be forced to do it all again. [1]

WHAT ABOUT CONFIDENTIALITY ISSUES?

Evidence Code Section 1119 provides for mediation confidentiality and states that no evidence of anything said or any admission made for the purpose of, in the course of or pursuant to, a mediation or mediation consultation is admissible or subject to discovery.

Does Evidence Code Section 1119 apply to the Collaborative Law process as well? Evidence Code Section 1119 and our Local Rules are silent on this issue. Does the fact that there is not a mediator or “neutral third party” facilitating communication between the disputants to assist them in reaching an “acceptable agreement” (Evid. Code Section 1115) preclude them from qualifying for the mediation privilege? Many Collaborative Law stipulations address this issue by including provisions that specifically state that all settlement discussions or negotiations, whether oral or written, made in the Collaborative process are privileged and shall be inadmissible in any proceeding involving the parties. Some stipulations specify that the work product of any attorney or professional team members is also deemed inadmissible. What does that mean if you opt out of the Collaborative process? After all of that time and money, what do you have?

Sometimes, you have some signed interim agreements for child custody and/or child and spousal support.

G]bW' hY'7 c'UVcfUj] Y'dfcWgg ZcWgYg'cb'UWYj] b['hY' [cU'g'cZVch' dUf]Ygž hYmcZyb' ZcWg'cb[Yh]b['U' ['cVU'gYhYa YbhczU'']ggi Yg'UbX'Xc' bchYbhYf']bhc'UbmhYa dcfUfmc' bYfa]a' cfXYfg'hUhUfY'Z'YX'k]h' hY'Wēi fH'K]h'ci hUbmK f]hYb'cfXYfgž'U'dUfma i ghglUfh Zca' hY'VY[]bb]b['UbX'Z'Y'U Request for Orders to obtain some temporary orders. Documents that are signed under penalty of perjury (such as an Income and Expense Declaration, Schedule of Assets and Debts and Declaration of Disclosure) should be available to assist new counsel in preparing their case. @UddY'j "'Gi dYf]cf'7 ci fh

f&\$%('E&' &'7 U'''5dd'"(h' ++("'I gi U'nž' ghVYWli gY'U'dUfmc dhg'ci hcZ hY'7 c'UVcfUj] Y dfcWggž]hXcYg'bchia YUb'hYmUfY'bchcdYb'hc'fYUW]b['U'gYhYa Ybhcb'U'']ggi Yg"Gca Yh]a Yg]h' ghU_Yg[Yh]b['hY'7 ci fh'hc'fi 'Y'cb'cb'U'Z'k' WēbhYghX'']ggi Yg'hc['Yh'hY'dUf]Yg'VUW'cb'hUW' Zc'f'gYhYa YbhUbX'U'fYgc'i h]cb'cZU'']ggi Yg"< Uj]b['h'Uhcdh]cb'Uj]U'UV'Y'hc' hY'dUfmiUhUbm ghU['Y'cZ hY'dfcW I 'Wēi 'X'gUj 'Y'hYa 'a cfY'h]a 'Y'UbX'a cbYm]b' hY'cb['fi b'UbX'fYgi 'h]b'Ub'U[fYY! a Ybh'hUhVch' dUf]Yg'UfY'gUhgZ'YX'k]h'"

6YZcfY'nci f'W]YbhU[fYYg'hc'YbhYf']bhc'7 c'UVcfUj] Y'DfUWVWž]h]g]a dcfUbh'hc'WfZ' mYI d'U]b hY'dfcg'UbX'Wēbg'cZ hY'U'hYfbUj] Y'UddfcUWYg'gc' hYmWb'a U_Y'Ub']bZca YX'XYW]g]cb'cb \ck'hc'dfcWYX'"K' \Uha UmVY'Uddfcdf]UHY'Zc'f'gca Y'W]Yb'g'k]j'WYUfmbchKcf_'Zc'chYfg'"

Suzanne Boucher is a Certified Family Law Specialist. Her practice, located in Walnut Creek, focuses on complex property, support and custody issues in dissolution proceedings.

Senate Bill 917 Requiring Court Clerks to Prepare Orders after Hear...

Saturday, October 01, 2016

Senate Bill 917 was introduced on January 27 by Sen. Hannah-Beth Jackson (D-Santa Barbara) to ensure Family Courts provide clear, timely, written orders to litigants. The bill attempts to address concerns raised by the observation that many Family Law litigants are self-represented and often English learners, struggling to comprehend, let alone comply with spoken orders. While the bill targets implementation by July 1, 2017, this date remains uncertain because of its predicted cost.

As of the writing of this article, it provides as follows:

(a) Unless a shorter time period is provided by another statute, beginning July 1, 2017, within two court days after the conclusion of a hearing conducted pursuant to this code, the court shall make available to each party who is present at the hearing a written, detailed, official order setting forth the basic terms of any orders that were made in open court during the hearing. The order may be made available electronically. To the extent practicable, the court shall provide the order, in writing, to each party present at the hearing prior to the party leaving the court that day.

(b) This section does not require the court to prepare or provide a judgment of dissolution, legal separation, nullity, or parentage.

(c) This section is not intended to impact the law governing statements of decisions.

(d) This section does not preclude the court from requiring the parties or counsel to prepare an order, or accepting proposed orders or stipulations for orders from the parties or counsel at the time of the hearing. The court may, after providing the order described in subdivision (a), permit parties or counsel to submit more detailed orders after the hearing.

(e) On or before July 1, 2017, the Judicial Council shall adopt a rule of court and any forms necessary to implement this section.

The legislative analysis of the bill notes that, "In most counties, courts have attempted to distribute the impact of the budget cuts by reducing funding across the board. In no area have the cuts been felt more deeply than in the area of family law, which has traditionally been underfunded and where the vast majority of litigants are self-represented. Such self-represented litigants are disproportionately affected by the lack of resources, especially court reporters. Without a record, these parties struggle to understand the specifics of orders, often made verbally in court." (Sen. Judiciary Com., Rep. on Sen. Bill No. 917 (2016-2017 Reg. Sess.) March 30, 2016, p. 1-2.)

The bill passed the Senate 39-0 and was referred to the Assembly on June 2. The Assembly Judiciary Committee approved the bill 10-0 and referred it to the Appropriations Committee on June 28. It has remained as the bill's cost (stated only as "many millions" in the legislative reports) is an issue.

Locally, if this bill is signed into law as an unfunded or under-funded mandate, case

volume might well be reduced. According to Family Law Supervising Judge Christopher R. Bowen, the volume of cases addressed by our courts could be cut in half, if the legislature passes down the written order requirement without increasing funding for personnel and resources to provide the two-court-day turn around for written orders.

Joseph Nykodym practices Family Law with the Law Office of Ariel Brownell and teaches social science at Monte Vista High School.

An Update from the Front-Lines of Contra Costa County's Legal Incub...

Saturday, October 01, 2016

Carlos Carbajal is busy. As a Lawyer for Family Justice attorney, his appointment slots are booked solid every week and he has taken on over 50 paying clients (in addition to dozens of pro bono consultations) since joining Contra Costa County's Legal Incubator program in February.

"The need for pro and low bono services is overwhelming, especially in the minority, Spanish-speaking community," says Carbajal, "There is incredible need."

When he joined the CCCBA Lawyer Referral and Information Service through Lawyers for Family Justice, Carlos became one of two Spanish-speaking Family Law attorneys on the referral panel. He has so much work that he is considering hiring a paralegal or intern, and potentially setting up a small firm specifically to assist Spanish-speaking families.

In October 2015, The Contra Costa County Bar Association Bar Fund Gala raised over \$40,000 for the Lawyers for Family Justice legal incubator program at the Family Justice Center. Today, the program houses six incubator attorneys serving moderate and low-income clients in Contra Costa County.

"The plan was to do two things at once: help the 80% of our clients who desperately need legal assistance, while nurturing new and transitioning attorneys who were interested in providing affordable services to Contra Costa County residents but did not have the means or know-how to hang out their own shingles," explains Family Justice Center Executive Director, Susun Kim.

The plan is working. "The Lawyers for Justice Program allows me to assist community members who are unfamiliar with the legal system and/or have limited access to a lawyer due to their financial constraints," said Lawyers for Family Justice attorney Harpreet Sandhu, "Furthermore, the lawyers in the program, my colleagues, benefit my practice on two levels: they act as a sounding board and they provide support/advice on client management, as well as specific case issues."

The Lawyers for Justice 2016 cohort is almost half way through its 18-month tenure. In addition to training and mentorship, the Family Justice Center houses the attorneys, paying for important overhead costs such office rent and furniture, telephones, internet, computers, printers, online subscriptions, books on substantive law, and even a receptionist. Lawyers for Family Justice attorneys also benefit from free PLI courses, CEB On-Law, CCCBA Lawyer Referral and Information Service and CCCBA Section Membership.

"The Lawyers for Family Justice program is a community effort," says Kim. "We have outstanding community attorneys dedicating their time to mentor, strong support from the Contra Costa County Bar Association, and friendships with incubator programs all across the country, which continue to evolve and improve their practices."

The program works, in part, because of partnerships with attorney mentors, like James

Greenan, Melody Saint-Saens, Claire Johnson, Gloria Park, Brigeda Bank, and Marta Vanegas. Sarah Mraule, who works with mentor, Brigeda Bank said, "The Family Justice Center has been an integral part of the learning experience as a new attorney. The mentorship that they provide, by connecting us with more experienced attorneys in our field of practice has been an invaluable part of the program; and the exposure to cases that we may not have had without participating in the Legal Incubator Program has been enlivening, and will shape the way that we practice, and interact with clients moving forward."

The attorneys are modest about their work, but the Family Justice Center staff can tell endless stories of the tremendous difference that the attorneys have made in the lives of their clients. "Since they started seeing our clients in February, the Lawyers for Family Justice attorneys have helped over 90 families — all for free, and all on-sit," says Family Justice Center Navigator Sandra Trevino, "They meet directly with the clients right here in our office, which is so essential to helping families in crisis who have already travelled to too many agencies looking for help."

Oravanh Thammasen is a Navigator at the West Contra Costa Family Justice Center. She regularly works with the Lawyers for Family Justice, including attorney Yuriy Rubanov. "A survivor of domestic violence came into our Center to seek assistance with reporting an incident to the police and to file a restraining order. During the navigation assessment, the client mentioned that her apartment had habitability issues and she had made numerous complaints. At our Center, she was able to meet with Rubanov for a housing law consultation. Rubanov assisted the client in writing a demand letter to the property. With his assistance on the demand letter, the client is on the wait list to move into the next available unit."

"The Lawyers for Family Justice program definitely offers help with services that people would otherwise not have access to," comments Rubanov, "People find the services helpful and valuable. As for me, I get the satisfaction of being able to provide that."

At the Central Contra Costa Family Justice Center, Navigator Olivia Ortiz's client, Laura* was being bullied by her son's father who threatened to disappear with their son. When her son told his grandmother that his father was physically abusing him, Laura came to the Family Justice Center for help. Ortiz immediately sought the assistance of Lawyers for Family Justice attorney Layli Caborn. "The attorney reviewed the client's paperwork and found that client was permitted to communicate with her son and had vacation rights to see him," reports Ortiz. "The attorney was able to help client file paperwork at the Martinez court house and to have the father come to Contra Costa County [from Los Angeles] for court. Layli helped my client get awarded temporary physical custody of her son. My client was very emotional and grateful after the court hearing. She never thought it was possible."

"In my 15 years of experience in the legal field as a victim's advocate, law clerk, legal office manager, Deputy District Attorney, litigation attorney, juvenile dependency attorney, and deputy public defender, I have tried my best to help individuals in need to the best of my ability," says Layli Caborn. "The Lawyers for Family Justice Program has shed light on what is truly important — helping those in need when no one else will listen or help them. I have been with the Family Justice Program for a short period of time. In that period, I have represented clients in many levels of involvement in the criminal and family justice system. I am fortunate to have the opportunity to work a long side all of the brilliant, talented, and caring individuals at the Lawyers for Family Justice Program."

Legal incubator attorneys are available for hire. Looking for someone to do a special appearance? Need backup on a case? Need to contract out some work? Contact the Lawyers for Family Justice directly or visit them at cclawyers.org.

***Tamina Alon, Esq.** is Director of Operations at the Family Justice Center and runs the Lawyers for Family Justice Program.*

A Concerted Effort

Saturday, October 01, 2016

I was honored to be selected as the Guest Editor for this year's Family Law edition of the Contra Costa Lawyer magazine. Shortly after learning that I would serve as Guest Editor, I received several e-mails and telephone calls from attorneys, retired judges and commissioners, and volunteers offering to assist in submitting articles for this edition. This serves as a testament to the qualities of the judges (both retired and currently sitting), the attorneys of the big bar and Family Law section, and the numerous volunteers in our communities. A quality that is one of the themes of this edition, serving our community. In that theme, Sharon K. Raab, Esq. has provided an update on the extensive Contra Costa County Family Law Pro Per Program and Tamina Alon, Esq. has provided an update on the recently created Contra Costa County Legal Incubator Program. Even if you are not a Family Law attorney in Contra Costa County, I invite you to explore these articles to learn more about these programs that continue to provide great benefit to our community.

This Family Law edition has taken a literal approach to the term "Family Law" with an article by Lisa J. Mendes, who interviewed four sets of parent-child attorneys in her article All in the Family, Following in the Family Footsteps. In this issue, we publish the interview with Family Law father/daughter, George "Skip" Pfeiffer and Laura Pfeiffer. Retired Commissioner Josanna Berkow, who relocated to New York, provides her initial observations between New York and California Family Law judicial systems. In California, Alternative Dispute Resolution ("ADR") has grown significantly over the past decade, and Suzanne Boucher explores what happens if ADR fails in Family Law.

Looking towards the future of Family Law in California, M. Sue Talia provides her insight on the future of Limited Scope Court Appearances and Joseph Nykodym comments on proposed legislation related to Senate Bill 917 – requiring court clerks to prepare findings and order after hearings for all Family Law litigants.

I hope that this edition of the Contra Costa Lawyer Magazine educates some, informs others and entertains all. Thank you to all of the judges, commissioners, attorneys and volunteers who assisted in preparing this edition.

David C. Erb is a Family Law attorney at Flicker, Kerin, Kruger & Bissada, LLP, with offices in Menlo Park and San Ramon. Mr. Erb was elected to serve on the Board of Directors of the Contra Costa County Family Law Section commencing in 2014. In 2017, Mr. Erb will serve as the President of the section.

Life as a Solo

Saturday, October 01, 2016

Recently, I met with a client I have been working with for several years. He registered surprise at the new corporate style digs I'd moved into on the top floor of a downtown office building that includes sweeping views from the conference room. He continued "...and you share it with other solo attorneys?" I replied, that I, indeed, shared it with other solos. He seemed to relax with this knowledge.

It was an interesting exchange with my client. He is a successful entrepreneur, who holds an MBA from Cal, and has several decades of business experience under his belt. He is looking for top notch legal advice, but not big firm trappings with their corresponding expenses.

My client seemed disconcerted for a minute which made me consider, once again, the rapidly changing legal profession. When I first considered the legal profession as a career, many years ago, I joined a large firm with many attorneys and even more staff. Each attorney, and some paralegals, had a window office. There were teams of paralegals and secretaries, clerks and other support staff. There were large file rooms, copy rooms, break rooms. Of course, that still exists, but to a growing extent, it is a thing of the past.

Today, my practice looks very different than that first impression. I am a solo attorney that relies heavily on technology. This not only makes me more efficient, but saves space and time. For example, my files are saved and backed up in the cloud. This allows me to easily work remotely, but also allows me to easily share access to documents with my clients and consultants. My clients like this, because they can have immediate access to copies of documents without many emails, faxes, or snail mail. I can provide clients with documents in an organized, efficient manner.

My billing and timekeeping software is also on-line. My billable hours are accounted for in real time, and I can produce a draft invoice in a moment's notice if requested. My invoices are reviewed online and even emailed directly to the client. No stuffing envelopes, stamps or waiting for mail delivery. And even, better, my clients can pay their bills with the click of a mouse, by linking to a secure payment portal.

And as for research, I find it a novelty to head to the library these days. Most of my research is done online without ever leaving my desk. You will find few practice guides or books sitting behind my desk.

All of these changes allow me to efficiently and cost effectively provide services to clients. But it is not just the efficiency that appeals to my clients. With my focused practice, and limited support staff, many of whom work remotely, my clients know that they will be working very closely with me. I am the one they will talk to about contracts, revisions and negotiations. I know their businesses, their goals, and personalities. So in a real way, not a virtual way, I am able to connect with clients. I love this part of being a solo. And, I think, this is the way I can compete with online providers of legal services. The personal touch.

If there is a downside to this lean, solo practice, it is simply that it is easy to become isolated in a solo world. I start the day at my desk reviewing email. I spend hours working

on projects, before sending a few emails and heading home. It is so easy to forget to connect with colleagues, to share ideas and keep up to date in my practice area. For this, I am thankful for the CCCBA that keeps me connected, in a real way, to other practitioners, both solos and from firms -- not just to learn about changes to the law, but technology updates, and best practices for law offices.

I'd love to hear how your practice has changed over the years, or hasn't, and how the CCCBA has helped support your practice. Drop me a line and stay in touch.

Chart: Percentage of Unrepresented Petitioners in Family Law Cases ...

Saturday, October 01, 2016

Data contained in the chart below represents initial family law filings in March of two years: 2010 and 2016. Whether or not parties are represented in family law cases tends to change repeatedly as the case progresses; these fluctuations are not reflected in the chart. The chart reflects each party's status at the time of the initial filing. Other parties that may have entered the case, such as the Department of Child Support Services, grandparents, etc., are not included in the numbers.

Percentage of Unrepresented Petitioners in Family Law Cases

Contra Costa Superior Court

Cases Filed in March 2010 vs. March 2016

Percentage of Unrepresented Petitioners in Family Law Cases
Contra Costa Superior Court
Cases Filed in March, 2010 vs. March, 2016

Dissolution w/ children								
Year	Petitioner Represented	Respondent Represented	Total Represented	Petitioner Not Represented	Respondent not Represented	Total Not Represented	Total Filings	% Unrepresented
2010	24	22	46	165	75	240	286	83.9%
2016	33	19	52	120	28	148	200	74.0%

Dissolution w/out Children								
Year	Petitioner Represented	Respondent Represented	Total Represented	Petitioner Not Represented	Respondent not Represented	Total Not Represented	Total Filings	% Unrepresented
2010	26	16	42	150	49	199	241	82.6%
2016	36	20	56	108	22	130	186	69.9%

Parentage								
Year	Petitioner Represented	Respondent Represented	Total Represented	Petitioner Not Represented	Respondent not Represented	Total Not Represented	Total Filings	% Unrepresented
2010	12	8	20	38	38	76	96	79.2%
2016	11	9	20	35	7	42	62	67.7%

Total Family Law Cases								
Year	Petitioner Represented	Respondent Represented	Total Represented	Petitioner Not Represented	Respondent not Represented	Total Not Represented	Total Filings	% Unrepresented
2010	65	49	114	434	214	648	762	85.0%
2016	96	62	158	367	88	455	613	74.2%

Contra Costa County Family Law Pro Per Programs

Saturday, October 01, 2016

I began helping to staff and organize programs for self-represented litigants over 15 years ago. At that time, there were increasing numbers of pro-per litigants and very few resources to assist them. Initially, the Family Law Section staffed two workshops a week giving classroom-type presentations on “starting your divorce,” “ending your divorce” and “how to file motions.” Over time, and post Elkins, the county expanded its services to the self-represented, not only in increased online resources, but in staff from the expanded Facilitator’s office beginning to conduct these programs at the courthouse.

Now, given that the number of self-represented litigants continues to grow (some estimates are as high as 70%) [1] the Family Law Section has implemented new and different outreach programs to help pro pers and in turn assist the court. Currently, the Family Law Section staffs four programs:

1. Finishing your Divorce clinic at the Family Law Courthouse
2. A general information clinic held monthly at JFK Law School in Pleasant Hill
3. Staffing of the “Double Pro Per Settlement Conference” calendar for each of the five Family Law departments
4. A “Double Pro Per Settlement Conference Clinic” workshop held monthly at JFK Law School in Pleasant Hill

A. "Finishing your Divorce Clinic" at the Family Law Courthouse

The Finishing your Divorce clinic is held on the first and third Wednesday of each month at the Family Law Courthouse in Martinez. Self-represented litigants are referred to this program in two ways. They are referred by the Facilitator’s Office when they have completed their Declarations of Disclosure and need help putting the pieces of the Judgment together. They are also referred by each of the Family Law Departments if the parties have been to a Double Pro Per Settlement Conference and the volunteer attorney did not have time to complete all the Judgment documents.

B. General information clinic held monthly at JFK Law School in Pleasant Hill

The general information clinic at JFK Law School was originally set up by retired Commissioner Josanna Berkow who is a faculty member at the law school. It is designed to give procedural and informational direction to the self-represented at a central location in the evening to accommodate working litigants who cannot take time off during the day to see the Facilitators at the courthouse. It was also originally designed to give current law students a chance to interact face-to-face with clients and learn about resources available to assist them. It is held on the second Tuesday evening from 7-9 pm, 10 months of the year.

C. Staffing of the “Double Pro Per Settlement Conference”

Each of the five Family Law departments sets their self-represented litigants for settlement conferences on specific days set by the department to be “Double Pro Per Settlement Conference” days. On each of these dates, which is provided by the Department at the beginning of the year, a volunteer family law section attorney signs up to assist the court. The goal is to assist the parties to reach a full agreement and complete their Judgment paperwork that afternoon. Therese Bruce, current assistant to the Family Law Section, does a great job in helping to coordinate and fill these positions.

D. “Double Pro Per Settlement Conference Clinic” workshop held monthly at JFK Law School in Pleasant Hill

The “Double Pro Per Settlement Conference” Clinic is also held on the second Tuesday of the month from 7-9 pm at JFK Law School ten months of the year. Josanna Berkow originated the program to aid the Court in helping ensure the parties were prepared for their settlement conferences. It was also originally an “internship” type position for third-year law students who had already taken, or were currently enrolled in, a family law course. This program has been staffed and nurtured from the beginning by Selam Gezahegn, a dedicated and enthusiastic attorney and member of the Family Law Section. I can count on her to be present at every session. This program has been very successful and is very much appreciated by the Court. The parties complete a worksheet of all issues, noting which they agree on and which they don’t. They are also given a sheet to note all the “evidence” they need to bring to the settlement conference on the issues they don’t agree on. The worksheets are then sent in advance to the department so the Court has a copy in the file. A copy of the worksheet is also sent to each volunteer attorney for that date so they can be prepared for the couple and know how to focus their time. The result of these efforts is that most of the cases at the Double Pro Per Settlement Conferences do settle and it has helped with the Court’s calendaring of other trials. The number of court referrals to this program continues to grow each month.

CONCLUSION

I began assisting with the pro per programs as a way to help the court and the self-represented who were trying to maneuver their way through a confusing and paper intensive process. In general, I have found that the people helped through these volunteer programs are genuinely grateful and that in turn creates a good feeling in me. I think that helping the self-represented also helps the Court and the other attorneys at the same time because the entire system works a little better and a little quicker.

Divorce is an emotional time in anyone’s life and helping families through this in a positive way is very rewarding. I am often asked why I continue to do this work but the honest answer is that it is more joy than work. As in any situation where we give of ourselves in any way, we always gain more than we give. The real thanks for the success of these programs, as with those that preceded them, is the amazing generosity of the Family Law Section attorneys who month after month donate their time and experience to help the self-represented and the Court. Through their patience and kindness, one by one, the perception of the community at large views the entire legal system in a more positive light.

[1] See statistics of unrepresented petitioners from the court.

Sharon K. Raab is a Certified Family Law Specialist with an office in San Ramon. Ms.

Raab has been instrumental in establishing and maintaining Contra Costa County's wide ranging in pro per programs, which significantly reduce the burden of these cases on the bench officers, court staff and other administrative capacities of the court.

Civil Jury Verdicts

Saturday, October 01, 2016



Indeed it has been some time since I penned the popular Civil Jury Verdicts column. Same old story: Very few attorneys are reporting their jury verdicts to me. I will say, trials are getting out in our Contra Costa Superior Courts, so I know there are cases to report. I also know local lawyers who are going to trial in other venues, including Federal Court. And, I am aware of

significant settlements here in Contra Costa Superior Courts, as well as in other venues. I will mention all of those cases in our Civil Jury Verdicts column. You just have to report those cases to me. Sounds like a broken record doesn't it?

Now let's get down to some case reporting.

Moore vs. Wiebe, Case No. S-1500-CV-282514 LHB was tried in Kern County Superior Court, before the Honorable Lorna Brumfield. Plaintiff was represented by Solomon Green of RG Lawyers, LLP of Encino, California. Our own Bob Slattery along with Denise Billups-Stone of the McNamara firm represented the Defendant.

The Plaintiff, a 49-year-old medically-disabled welder, sued the Defendant, a neurosurgeon M.D., for complications he developed after a laminectomy, facetectomy and a tethered cord release. The surgery took place at Bakersfield Memorial Hospital.

Prior to the trial, the Plaintiff offered to settle for \$250,000. Defendant offered to resolve the case by a CCP 998 offer of a dismissal in exchange for a waiver of costs. Doesn't exactly sound like a meeting of the minds.

After a two week trial, the jury found for the Defendant doctor, in a unanimous verdict. The tough part for Plaintiff in such med mal cases is there are generally significant expert costs and Plaintiff may very well be on the hook for those.

Thanks to Bob Slattery for reporting the case. He regularly reports cases to me, but looks like he has now transitioned into a mediator (See my next edition of Bar Soap), so I may not see any more Bob Slattery cases. Remember that "Mediation privilege?" It means he cannot report the mediation cases to me.

An interesting note on medical malpractice cases: My research has reflected over the years medical malpractice cases have the lowest percentage of an outcome in favor of Plaintiffs of any type of personal injury matter.

In June of 2014 I wrote about Arnold vs. Padrah. Contra Costa Superior Court Case No. MSC12-02895. The Honorable Steve Austin presided. Clyde Long just reported an appellate decision in that same matter.

Recall at the time of my report there was a verdict, but the bifurcated trial on the issue of punitive damages had not yet taken place, and Judge Austin had not yet ruled on the Plaintiff's quiet title claim of prescriptive easement. Clyde promised to let me know the

final result. It took 29 months from start of the trial to the appellate decision.

The jury subsequently awarded \$20,000 of punitive damages on top of the \$68,000 damages award. Judge Austin granted a prescriptive easement in favor of Plaintiff, and awarded costs of \$112,000. The total judgment was \$200,000. The judgment was appealed by Defendant. The Court of Appeal recently affirmed the judgment in its entirety.

Thanks Clyde for that follow up.

Scott Jenny is another local attorney who regularly reports cases to me. Great Oaks Water Company vs. Ramendra and Charu Bahunuga, Santa Clara County Superior Court Case No. 115CV276571, was tried before the Honorable Mark H. Pierce. Scott Jenny of Martinez represented property owners Bahuguna. Bradley Matteoni and Gerry Houlihan represented Great Oaks.

In this eminent domain action, Great Oaks was taking some 16,000 square feet of property from the property owners' 10-acre home site. The property taken would be improved with a 90,000 gallon water tank. The trial involved the value of the property taken and severance damages.

The Great Oaks appraiser valued the property rights at \$90,000. The property owners' appraiser valued the property rights at \$456,000. Dr. Bahuguna himself valued the property rights at \$790,000. Great Oaks final settlement offer was \$125,000. The Bahugunas' final demand was \$750,000. The jury returned a verdict of \$353,000.

You just have to wonder who comes up with such disparate appraisals? An interesting aside is that the representative for Great Oaks advised the property owners it would not pay the verdict, but rather it would build the tank elsewhere. In an eminent domain action, that is called "Abandonment." An abandonment requires the condemning agency to pay all attorney's fees and costs.

Garcia vs. Abeygoonesekera, an Alameda County Superior Court Case was tried before the Honorable Delbert Gee. Plaintiff was represented by Arkady Itkin of San Francisco. Defendant was represented by Maria Caruana of Walnut Creek.

Plaintiff claimed he slipped and fell as a result of water leaking onto the floor at an apartment complex owned by Defendant. Plaintiff alleged he suffered a broken ankle. Defendant claimed he was not on notice of any leaks, and in any case the water claimed by Plaintiff to have come from the laundry room, could not have happened as the laundry facilities were non-operational, the pipes had been capped and the washing machines had been removed months before. Plaintiff claimed past medicals of approximately \$40,000.

By way of CCP 998, Defendant offered \$15,000. No information on any pre-trial demand by Plaintiff.

In what can only be described as a bit of surprise, the Jury returned a gross verdict of \$279,431.58. They awarded \$39,431.58 in economics and \$240,000 in non-economics. Once again, no telling what a jury might do.

Finally this is an interesting case out of El Dorado County involving a work assignment by

the Sheriff for one of his deputies. You might have read about the case in the newspaper. We had a similar issue in Contra Costa County some years ago involving a county agency and the discretion of a department head to make assignments.

At any rate, the El Dorado case was entitled Fitzgerald vs. County of El Dorado et al. It was tried in the United States District Court Eastern District of California. One of my law school classmates, the Honorable Morrison England, presided. Jill Telfer of Sacramento represented Plaintiff. C. Christine Maloney of Oakland represented El Dorado County. Carl Fessenden of Sacramento represented the Sheriff.

Plaintiff, a Deputy Sheriff worked as a detective for 17 years, when he was assigned by the Sheriff to patrol duties. Plaintiff claimed he was too old at 56 to work patrol and was forced to quit. The Sheriff who took office in 2011 contended he exercised his management rights to make assignments. It appeared there was little turnover in specialty assignments, and thus little opportunity for other deputies to enhance their skills.

Plaintiff claimed loss of past earnings of approximately \$200,000 and loss of future earnings of approximately \$650,000. Plaintiff also claimed depression and PTSD.

The jury in an 8-0 verdict found for the defense.

In speaking with many local police officers about the case, the consensus seems to be that allowing someone to stay in detectives for 17 years without a break is not a good management decision.

That's all folks. Please get those verdicts and settlements coming my way.

Convergence

Saturday, October 01, 2016

In prior accounts, Judge Carlton encountered Three Strikes, recidivism, contentious civil trials, the death penalty, and legal ethics. Now he confronts a juvenile law case without any winners in another attempt to educate about the judicial system.

In Department 47 Judge Raymond Carlton looked at the sentencing report, reflected over his trial notes, and realized a disastrous convergence of time, space, and motion transformed lives in a way that the justice system could never repair. Four lives intersected, and one ended up in front of Judge Carlton six months later with dreams shattered.

Six months before, at a Pizza Hut, Rashad Johnson, a short, slight seventeen-year-old, wiped his wire-rimmed glasses and studied a freshly baked pepperoni pizza as he sliced it into equal triangular pieces for a customer. In his mind, he calculated that sine divided by the cosine equaled the tangent or the width of the pizza, sixteen inches. Numbers always came easy to him and trigonometric functions were no exception. His mind quickly reassembled numbers and shapes into interconnected, harmonious sequences for their resolution. Rashad was the hope of the Johnson family, consisting of a single mother and five brothers and sisters, Rashad being the oldest, all fortunate to have Section 8 housing in Antioch. Seemingly college-bound, a strong candidate for two scholarships, a near perfect SAT math score, Rashad worked after school to help put food on the table for his family. That Saturday, he cashed his small paycheck and gave most of the money to his mother. Saturday night was a night to close out a week of late night studying, tutoring a younger brother, and rolling out pizza dough, by going to a party across town in Antioch. A different pizza would alter his life.

Nineteen-year-old Antoine Carvell pulled \$65 from his wallet, gave it to a Project Trojan gang member, and received a loaded .38 special in return. Recent gang trouble caused Antoine to want to arm himself for protection. He told a friend of Rashad's about Turner Smith's open door party. Carvell then headed to join the Saturday night party, secreting the revolver under his shirt.

Twenty-two-year-old Turner Smith turned up the rap music of T.I., 50 Cent, and Dr. Dre, chilled some cases of Tecate beer, and got ready for the party at his recently rented condo on H Street. Like a tempting siren call, his twitter invitation to friends was soon circulated to a wide range of people looking for some action on a warm Saturday night, for a convergence of catastrophic consequences.

In downtown Antioch, Hector Ramirez stoked the oak wood in the brick oven of his small pizza shop with his young cousin Jaime, who helped deliver pizzas in an old Corolla. Hector emigrated legally from Guatemala fourteen years before, worked doggedly as a dishwasher in a restaurant, then as an after-hours janitor for fast food stores, a pizza maker and delivery person. Finally, trying to achieve his American dream, he obtained an SBA loan with the help of the Antioch Redevelopment Agency, and proudly opened his own pizza shop, "Hector's," where he worked fifteen hours a day building up his business. Recently married to Selena, he had two young children to support. His business had just begun to thrive through word of mouth about his unique oven-fired crust and south of the border spices.

By 11:30 p.m. at Smith's, the beer was gone, the snacks devoured, and the hangers-on were left with little money after buying pot and making beer runs to the local Seven Eleven. A shrill voice in the living room called out he was hungry for a midnight snack, and several others echoed a similar craving, but no one had the money for extra-large pizzas. Turner Smith remembered Hector's, and so half sober, called for a delivery. Hector could hear the rap music and a chaotic background of loud voices yelling at one another as he wrote down the order and address. He knew the H Street address was in a rough part of town. At the other end, Turner Smith devised a plan to take care of the pizza: rip off the delivery boy when he arrived and send him on his way.

Hector had an uneasy premonition something was amiss. He told Jaime he would accompany him on the delivery. They baked two extra-large pizzas, cleaned up the shop, closed for the night, and headed toward the H Street address. Jaime did not want Hector to go with him, telling him to go home to his family. But because of a gut feeling, Hector insisted on going along and brought a baseball bat for protection in case of trouble.

Carvell, Smith, Rashad Johnson, and others argued about how they would handle the delivery. Rashad had never smoked so much marijuana, was light headed, and wanted no part of the scheme. But Carvell insisted that Rashad "be the man," and they would help. Others chanted, "Rashad. Rashad." Rashad quickly computed the numbers: two extra-large pizzas at \$18 each, with an 8.75 per cent tax, and a 10 percent tip for delivery totaled \$43.15, but no one had \$43.15. Collectively they only had \$27.45. Rashad calculated a 36.3 per cent shortfall.

So Rashad, Smith, Carvell, and Hector Ramirez all converged at 12:10 am on H Street. As the Corolla pulled up in front of the condo, Carvell forced the .38 special into Rashad's palm at the open front door. Jaime started to walk up the steps with the Pizzas. Hector waited a short distance behind in the shadows with the baseball bat. Some of the partygoers, including Turner Smith, shoved Rashad, with the gun in his hand, onto the front porch and screamed, "Give us the fuckin pizzas." Jaime backed off, as Hector waving the bat, came around him and confronted Rashad. Rashad felt someone push him forward and yell, "Shoot him!" Everyone and everything converged in one fatal, surreal moment. Somehow the gun fired once. Hector tumbled to the pavement, bleeding profusely from his stomach with a mortal bullet wound. Rashad cried out, dropped the gun, and ran down the street, as if in slow motion mode from a terrifying graveyard. He made it back to his house where his mother had been waiting up for him. He said nothing about what transpired.

Jaime desperately called 911 and tried to stop the abdominal aorta bleeding until an ambulance arrived. A pool of blood covered the sidewalk and two boxes of pizza. The crowd at the house scattered at the gunshot, leaving Turner Smith to answer questions about what happened at his condo. The gun was nowhere to be found. Smith would not snitch, but begrudgingly mentioned the names of a few of the partygoers, well known to the Antioch police. Detectives contacted them and learned in vague bits and pieces about a "Rashad" and what happened. Like an unraveling spool, one interrogation led to another. Jaime was able to describe the shooter, a youngish, 5 foot, 7 inch, thin, black teenager, wearing glasses.

The follow up Antioch police work was swift. A scared Rashad was located, questioned, and arrested the next day at his home, and transferred to the juvenile detention facility in Martinez. Hector Ramirez' body was transferred to the county morgue for an autopsy, then to a funeral home, and Holy Rosary Church for a burial Mass. His widow Selena

was inconsolable.

Because Welfare and Institutions Code Section 707 allows a prosecutor to try a 17-year-old minor in adult court with adult sentences when the crime is murder, Rashad Johnson appeared in Department 47 before Judge Raymond Carlton for a jury trial. The gifted student now faced countless years in state prison instead of a four-year university education.

Veteran public defender Joyce Sawyer was at her best in convincing the jury of eight women and four men to reduce the crime to voluntary manslaughter rather than a 25 year-to-life first degree murder conviction that the prosecuting attorney urged. Although the prosecution obtained an appeal-proof conviction for voluntary manslaughter and attempted robbery, there were no winners, no moral victory to trumpet.

So Judge Carlton reviewed the Probation Officer's sentencing report recommendations, saw hopes dashed, promises unfulfilled, and lives changed by a brief, deadly convergence. The sentencing hearing was gut wrenching for the judge.

Mrs. Johnson did not understand state prison was legislatively mandated for the commission of the crime with the use of a gun. With Rashad's four brothers and sisters in court, their pastor from the Baptist church, and several of Rashad's AP math teachers, she pleaded for some form of probation under strict supervision to allow Rashad to make use of his talents and provide for his family. She explained he was remorseful, repentant, and resolute to make amends. Rashad's minister begged for mercy and compassion.

Rashad removed his glasses and tearfully asked for forgiveness, apologized, and looked for an immediate chance to make something of himself, but the sentencing law did not allow it.

The prosecutor called Hector's widow Selena who explained haltingly through an interpreter how Hector's death forever affected the family. Hector was their sole support, their love, their anchor. Tears streaming, she tried to explain she did not know how to run a pizza business, her education was less than high school, and she had two little children to raise by herself. The California Victim's Assistance Compensation program paid a maximum of \$63,000, not nearly enough for their loans and modest home, and other daily expenses. They had no savings or insurance for the losses and had just started to turn their lives around when Hector was killed. In Spanish she sobbed, "Dios mio, que voy a hacer?" "My God, what am I going to do?" She begged for help from a helpless court that could only sentence her husband's assailant and do little more.

Mrs. Johnson tried to reach out to Selena as she returned to the public seating, but was rebuffed. The courtroom felt as if Lady Justice had tightened her blindfold so tautly that any sense of compassion was blacked out.

After a few words explaining the process, Judge Carlton imposed the sentence required by the penal code and the circumstances of the case: the midterm of six years, finding aggravating and mitigating circumstances roughly offsetting to avoid a higher term, and added an enhancement of four years for use of a gun, as required by the law then in effect, for an aggregate term of ten years in state prison. The sentence for attempted robbery was to be served concurrently. Credit for time served and state prison credits, fractionalized for good behavior, were factored in as the clerk added everything together in the recorded judgment.

As defendant Rashad Johnson listened, his keen mind was able to calculate the sentence that determined his uncertain future faster than anyone else in the courtroom. Judge Carlton, emotionally spent, watched the transportation deputies lead the defendant out, head down, in handcuffs that barely restrained his thin wrists. He realized he could not undo what was done.

Note: Read more stories by Justice James Marchiano (ret.) in Stories from the Bray Building.

LRIS Spotlight: Carl Kadlic

Saturday, October 01, 2016

Contra Costa County Bar Association's Lawyer Referral & Information Service is a win-win for the Bar Association and for the community. The community benefits in that the LRIS offers a low cost method to find qualified attorneys for a variety of issues such as criminal defense law, family law, personal injury, real estate, business law, labor/employment law, landlord/tenant law and others.

Members of CCCBA who join the LRIS also benefit by acquiring prescreened clients who turn into paying clients. Attorneys also win by avoiding the cost and time expense of marketing to acquire new clients. Last year over 5,500 qualified clients were matched with CCCBA member attorneys.



Attorney Carl Kadlic joined the LRIS program in 2011, when he transitioned from working in a big San Francisco law firm to his own solo practice in Lafayette. Tired of working long hours and missing time with his family, he decided to open his own practice so he would have more control of his work, his schedule and the types of cases he accepted.

Today he enjoys a mix of hourly work and contingency fee cases. He has less stress and "being on my own, I get to decide which cases I take," he said. "I can discount my rate and still be affordable to clients."

Kadlic told of one case in which a neighbor sued another neighbor with an unrealistic claim. It involved Neighbor A being accused of sleeping with Neighbor B's wife and passing along a sexually transmitted disease. It could have been a long litigation with a big retainer. Kadlic took it for half the normal retainer and a monthly payment of \$50. Eventually the case was dismissed. Kadlic said the client would not have been able to afford legal services otherwise.

Kadlic appreciates the mixture of cases he acquires from the LRIS. "It is monotonous to do the same thing every day," he said. "With the LRIS you never know what you're going to get. You get unique cases that make it fun to do law."

Kadlic talked about some very good cases that have helped him build his practice while giving him an opportunity to help someone in need.

“Sometimes all the client needs is some advice on how to handle a situation,” said Kadlic. With a little advice, the client may be able to resolve the issue without a court case “and everyone ends up happy,” he said.

Barbara Arsedo, CCCBA’s LRIS Coordinator appreciates Kadlic because there are very few cases he will say no to, without talking to the client first.

Kadlic told of a case where a client slipped and fell. The client called the LRIS when he was given an offer to settle for \$2000. Kadlic talked to him for 20 minutes and asked about his loss of wages, his current condition and told him, “you could probably fight and get more -- but if you hire me, my fees would eat up most of the difference you might win.”

“Sometimes people need to be reassured that what they are doing is right,” he said.

Kadlic had two big success stories with LRIS clients. One involved an individual who was hit by a car while on a bike. He helped write the demand statement to the insurance company. In return for a few hours of work, his client was paid the policy limit of \$300K. Given the flexibility of his own practice, Kadlic was able to charge his hourly fee rather than his contingency fee and still be well paid for a few hours of work.

Another involved an 86-year-old woman who was underinsured on her automobile insurance policy. He represented her in her personal assets and it turned into quite a friendship. Kadlic said he achieved a “great result in a high damage case.”

“It turned out that everyone was happy. That’s what I want to do in my life,” he said.

Other clients who come to Kadlic via LRIS have very little knowledge of the legal system and are basically lost. He offers advice and walks clients through the steps to resolve an issue, and he always follows up with, “if it doesn’t work out, give me a call.”

One LRIS client said, “Emily referred me to Carl Kadlic regarding a car accident. I want to give him the highest commendation possible. He was excellent. He was kind, attentive and very helpful in informing me of my rights and the nature of insurance proceedings. It is very hard to find someone who would take that much time and concern, and I wanted to make sure he was commended.”

Carl Kadlic is a sole practitioner with one legal assistant. He said he really appreciates Barbara, Jenny and Emily for the filter they provide. “When they call me, it is either a strong case or a person who needs help. They are easy to work with and they want to help their clients. If I decline a case, they are understanding. It is a great symbiotic relationship.”

The Contra Costa County Bar Association’s Lawyer Referral and Information Service is in need of attorneys to join, especially those who have experience with housing law, who are in East or West County or those who speak Spanish. For more information, contact Barbara Arsedo at 925-370-2544.

Contact Carl Kadlic at kadliclaw.com.

Carole Lucido is the Communications Coordinator for Contra Costa County Bar Association.

Join us for the Pro Bono Expo November 3

Saturday, October 01, 2016

Interested in Pro Bono opportunities in Contra Costa County but don't know what is available?

Join us for a Pro Bono Expo in Walnut Creek. We'll provide appetizers, beer, wine and soda and most importantly – access to the non-profits that need your assistance! You'll have the chance to speak to legal service providers from a host of local agencies and find out about how you can help those in need in Contra Costa County.

Sponsored By: The Derby Law Firm

Time: 5:00 pm – 7:00 pm

Location: Civic Park Community Center,
1375 Civic Dr., Walnut Creek

RSVP Today!

Register Today for the MCLE Spectacular

Registration is open for the MCLE Spectacular to be held on Friday November 18, 2016 at the Walnut Creek Marriott Hotel.

Fourteen breakout sessions plus three speakers combine to make a full day of education and networking.

Breakfast Kickoff Speaker CATHARINE BAKER

California Assemblyperson, 16th Assembly District
Lawyers in Public Service: What Are They Good For?
1 hr. General MCLE Credit

Luncheon Keynote Speaker DRUCILLA S. RAMEY

Dean Emerita and Professor of Law at Golden Gate University
Discrimination in the Profession: Its Legal, Ethical and Economic Impact and Potential for Change
1 hr. Legal Ethics MCLE Credit

Afternoon Plenary Speaker PATRICIA K. GILLETTE

Special Counsel, Employment Law & Litigation
Orrick, Herrington & Sutcliffe LLP
Working with Millennials
1 hr. Elimination of Bias MCLE Credit

Register now at
<http://www.cccbba.org/attorney/mcle/special-events-mcle.php>



Bench Bar BBQ and Softball Game [photos]

On Saturday September 17, CCCBA members turned out at Heather Farm Park for the annual Bench Bar Barbecue and Softball Game. It was a beautiful day for socializing and for playing ball. Thank you to all who attended and who brought appetizers, salads and desserts. If you missed it this time, be sure to attend next summer!









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 I am a solo attorney that relies heavily on technology. This not only makes me more efficient, but saves space and time.

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 Register now for up to 8 MCLE credits at this all day event November 18, 2016 in Walnut Creek, California.

[Chart: Percentage of Unrepresented Petitioners in Family Law Cases in Contra Costa Superior Court](#)
 Data contained in the chart below represents initial family law filings in March of two years: 2010 and 2016. Whether or not parties are

[Family Law Section Summer Soiree](#)
 The Family Law Section hosted its Summer Soiree at Contra Costa Country Club in Pleasant Hill. Pictured left, Hon. Ed Weil receives a book in appreciation of his service to the Family Law Court from Family ...

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