A legal note from Marshal Willick about the dysfunctional mess of joint petitions filed in the Fifth Judicial Circuit and what should be done about it.

Feral paralegals operating divorce mills out of Las Vegas continue to churn documents through the courts of Nye County. And that seems to be just fine with the folks running the courts there.

I. A TALE FROM THE RURALS; DYSFUNCTION AND DYSPEPSIA

A. The Case and Problem

The last time my office was hired to clean up the mess left by one of those feral paralegal firms resulting in a worthless *Decree*, it had been filed in a rural court – one that has no local rules.

We tried to find some alternative to having all the lawyers and clients drive several hours – each way – to attend a hearing for the purpose of having the venue for the case changed to where everyone actually lived, so the merits could be addressed more conveniently and economically here.

One would think the judicial authorities in such places would be sensitive to the distances involved to where actual lawyers might live, and would go to some lengths to accommodate litigants and counsel located so far away. At least as to this court, one would be wrong.

B. Rules? WHAT Rules?

First, we tried to submit the venue change on the papers, without an appearance.

A district without local rules is ***supposed*** to apply the State-wide District Court Rules ("DCRs"). DCR 13(4) provides that a motion can be resolved on submission in advance of the date of the scheduled hearing, and on its face requires counsel to contact the Clerk of the Court and obtain the appropriate submission form.

We did so – only to be told that the Clerk there was not aware of any such form, or any such procedure.

C. No New-Fangled Telephones

So we tried to use some 20th century technology. At the last annual meeting of the Family Law Section, the several Nevada Supreme Court Justices in attendance said at their plenary session that the Court set up the "telephonic appearance" rule to encourage lawyers in Las Vegas and Reno to be willing to undertake filings in cases in the rural districts, by making it possible to do so more economically and efficiently. To do so, counsel submits a "Notice of Intent to Appear by Communications Equipment" form, which we did.

The request was summarily denied by an order indicating that the court believed the upcoming hearing would take more than 15 minutes and might elicit "oral testimony."

That order seemed bizarre for multiple reasons. The venue motion (which could and we hoped would) terminate further proceedings in that court would take only moments, and there would be no "testimony" – the hearing was set solely on law and motion, and my client lived overseas and would not even be there.

D. Daring to Ask for an Explanation

Since neither the ruling nor the asserted reasons for it made sense, we consulted with the Administrative Office of the Court in Carson City. At their suggestion, we sent a letter to the court (copied to opposing counsel, of course) setting out some of the above facts and requesting a procedural accommodation before both counsel drove several hundred miles round trip, and billed their clients some $4,000 each, just to attend a hearing during which the first order of business would be a motion seeking to avoid incurring exactly those costs.

Specifically, I asked the court to reconsider permitting the telephonic appearance, or at least consider putting the matter on calendar in a courtroom closer than the one in which it was pending – still requiring multiple people to travel to attend the hearing, but at least significantly decreasing the cost to those parties of limited means.

Daring to ask for a rational accommodation to the economic welfare of both parties resulted in great judicial umbrage. The court issued an order finding it was "inappropriate" to request inconveniencing the court by asking it to spend 20 minutes on the phone, just to save litigants thousands of dollars.

E. Proper – and Improper – Judicial Responses

The same order included a voluntary recusal, however, since the judge had apparently spent the prior weekend hanging out with one of the lawyers and it "might appear" that the case could have been discussed *ex parte*. The case was transferred to the alternate court we had requested [this legal note was delayed until after the case was resolved, so there could be no claim of trying to influence its outcome].

The first part of this rural adventure left me feeling like Chevy Chase's character facing Dan Akroyd's Judge Alvin 'J.P.' Valkenheiser (*Nothing But Trouble*, Warner Bros. 1991; http://www.imdb.com/title/tt0102558/). I kept waiting to hear "You might be interested to know that you are ***not*** under the jurisdiction of just any old fishing license dispenser and stamp pad jockey! We've always been set to deal with the offenders ***once*** and for all at their first appearance! Quick as sump grease through a ten-year old goose!"

Total disregard for the economic impact on parties by requiring personal appearances at enormous

expense – and without legitimate cause – is a telling sign of the judicial arrogance of "Black Robe Fever," which is apparently not restricted to the "big city," but on ready display in the land of Mr. Haney and Arnold the pig.

But court staff in the second rural court again rebuffed our requests to have the venue motion decided on the papers. We were told that telephonic appearances would be permitted there, but elected not to risk a repeat of our prior experience.

The argument, lasting all of five minutes, raised no information not contained in the written materials. Delivering that argument, however, took half a day to get to the court, wait to be called, and drive all the way back to Vegas. The bright spot is that it took "only" four hours of wasted attorney time, instead of eight.

In fairness, the second judge was a model of judicial courtesy and decorum – fully familiar with the file in advance, polite, considerate, efficient, and just. As expected, he granted the venue motion and sent the case to Las Vegas where the only party remaining in Nevada lives. But the question was why the heck a hearing was held at all.

II. BACK-STORY: AN UNHOLY ALLIANCE

Readers of these notes know of the substantial problem in Nevada of divorce mills operated by unlicensed, unregulated paralegals, operating either entirely unsupervised, or under the farcical fig leaf of a token listed attorney, who often is not even in the same city as the paralegals being "supervised." The Bar's efforts to shut down these enterprises has historically been anemic, based on an asserted lack of resources (but see update toward the end of this note).

What has not received enough attention, however, is the fact that these paralegal firms regularly file vast numbers of their terribly-drafted joint petitions in Nye County, even though the victim/clients of the firms live in Las Vegas (Clark County). Apparently, part of the sales pitch they use is the claim that the courts of Nye County do not scrutinize divorce filings, and that proceeding there avoids the "hassle" of attending the Children Cope With Divorce class required in Clark County by EDCR 5.07, and mediation of child-custody disputes, which only is required in "counties whose population is 100,000 or more" under NRS 3.475-3.500. The Fifth Circuit is one of those that does not ***have*** any local rules.

In other words, the feral paralegals are peddling their services by claiming that filing in Nye County makes it easier for one party to take advantage of the other, while stripping away protections for minor children.

That explains the motivations of the unlicensed paralegals and unscrupulous would-be divorcees, but why would the courts of Nye County continue to accept filings from people obviously living elsewhere? Filing fees? That hardly seems an adequate justification – the posted 2009 Nye County budget asserts that "judicial" expenses totaled some $6.5 million dollars.

III. DEMOGRAPHICS AND CONSIDERATION OF DISTANCE

Mesquite has no family court. Laughlin has no family court. That is why the judges of the family court in Las Vegas are so willing to accommodate telephonic appearances from parties located in those other towns, realizing that the economic welfare of litigants deserves accommodation whenever reasonably possible. But that accommodation appears harder to obtain elsewhere in Nevada.

Three counties make up the Fifth Judicial Circuit (Esmeralda, Mineral, and Nye). The 2009 Annual Report of the Nevada Judiciary reports that for the year, there were 7 family law filings from Esmeralda County, 69 from Mineral County, and 1,602 from Nye County. *See* http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/2896/.

There are about 44,000 people living in Nye County – of these, over 38,000 live in Pahrump, while fewer than 3,000 live in Tonopah – which continues by inertia to be the "County Seat." *See* http://www.nyecounty.net/index.aspx?NID=463. A pretty good recap of the history leading to this reality was printed in the August, 2010, issue of *Nevada Lawyer*.

By any rational measure, Tonopah has been dying for years. So many hotels and restaurants shuttered that it lost the capacity to even host the annual meeting of the Family Law Section by 2002 (the Section now meets each March in the comparatively bustling metropolis of Ely).

It would be . . . mathematically improbable that a tenth of the population of Nye County files for divorce every year. They don't. That court's dockets are crowded with lamentable filings prepared by unlicensed paralegals trying to cut corners.

IV. SHORT-TERM SOLUTIONS

For so long as court is still held in remote and inaccessible courthouses in this State, perhaps the Nevada Supreme Court can "encourage" the judicial authorities in such places to actually follow their own existing rules for submission of motions, and for telephonic appearances. Producing the forms required by their rules would be a nice start.

In the larger picture, the judicial establishment Statewide should be policing its cases for precisely the sort of venue abuse exemplified by the case discussed above. Feral paralegals are damaging litigants and their children through avoiding the protections of one county by filing their truckloads of offal in another. One means of limiting the damage they cause would be for courts to refuse to indulge filings when ***everyone*** involved clearly lives somewhere else. If the actual venue rules and procedures have to be amended to bring common sense into common use, they should be.

V. LONG-TERM SOLUTIONS

Much of the garbage being produced by those feral paralegals is landing in Nye County. Having the

Nye County seat at Tonopah might have made sense when Goldfield was a major population center and our courts were full of cattle rustlers. Today, however, it apparently mainly serves as a bucolic backwater where the nefarious can duck substantive and procedural protections enforced in the more populous areas of the State.

The Nye County seat should be moved to where 90% of its population lives, in Pahrump. The district court at Tonopah should be shuttered, or at least limited to hearing cases involving persons living within 100 miles of the place.

The Nevada Legislature should make a couple of amendments to NRS 13.040 and 13.050. The latter statute ***already*** provides that venue may be changed upon motion of a party "when the convenience of the witnesses and the ends of justice would be promoted by the change." Since it would appear, however, that not all judicial officers can be relied upon to rationally construe that statute, it should be amended to make a change of venue a matter of right whenever no litigant at the time of the motion resides in the county of the court. In the meantime, precisely that ruling should be made *sua sponte* by every judicial officer spotting the filing of an action such as this one.

VI. UPDATE: THE NEVADA STATE BAR AND FERAL PARALEGALS

Kudos are due to the Nevada Bar, which as of June, 2010, began to publish lists (in the "Bar Counsel Report" section of *Nevada Lawyer*) of the cease and desist letters sent in efforts to shut down persons and entities engaged in the unauthorized practice of law. Here's hoping the reporting continues, and the substantive efforts intensify.

VII. QUOTES OF THE ISSUE

"No brilliance is required in law, just common sense and relatively clean fingernails."
– John Mortimer.

"Ah, arrogance and stupidity, all in one package. How very efficient of you."
– Londo Molari (fictional character, *B5, In the Beginning*).

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