A legal note from Marshal Willick about how the State Bar fee dispute system is still broken, but progress has been made regarding attorney specialization; also, an invitation to participate in "niche" *pro bono*, and a certain bunch of whackadoodles proved depressingly predictable.

The State Bar scored one hit and one miss in the area of meaningful services to the Bar and public; both merit some discussion.

I. THE STATE BAR FEE DISPUTE PROGRAM IS ***STILL*** BROKEN

In July, 2010, legal note No. 13, "The State Bar Fee Dispute System," complained of the absurd delays that were routine – if not universal – in adjudicating State Bar fee disputes, whether brought by lawyer or client, and explained how those delays rendered the process dysfunctional and inflicted enormous expenses and losses on all parties to the disputes.

The note set out a handful of simple steps that could and should be followed by the Bar over a period of ***weeks*** to render the system much more useful for its intended purpose. The conclusion of that note stated:

> [I]t is just a matter of those in positions of responsibility caring enough to want to solve the problem, and having the will to actually get something done.
>
> The substance of the above was sent to the Bar in the form of a private letter – a month and a half ago. There has been no response of any kind, beyond a note from Bar staff indicating the letter was received and copied to those in charge.
>
> I, for one, have never had much patience with bureaucratic inertia, especially when it repeatedly costs me tens of thousands of dollars. And if not for the benefit of lawyers, then attention to this process was and is required to rescue the courts, self-help, and *pro bono* providers from the effects of *Argentena* recounted above.
>
> In light of that case, the Bar ***should*** have responded proactively on this matter half a year ago, streamlining the fee dispute resolution mechanism and making it more widely, easily, ***and quickly*** available to both clients and attorneys. This is not a matter that must be studied, thought about, sent to a commission or otherwise dawdled regarding. It is an immediate problem that can, and should, be solved – now.

The response from the Bar? The sound of crickets chirping. There has been not so much as a public announcement of an ***intention*** to meaningfully improve the process, nevertheless the laying out of any kind of program that would actually accomplish anything substantive. If anything has been done, it has been so quiet that I have seen no sign of it.

So I was quite surprised to receive the e-mail blast from two members of the Board of Governors in December, proudly stating as a purported matter of ***fact***:

> The Fee Dispute Program continues to be hugely successful, with over 180 committee members (including both attorneys and lay persons) serving on regional panels. This year

> to date about 200 fee disputes have been resolved. The Judges of the Clark County District Court have been willing, generally, to reduce the fee dispute arbitration awards to judgment when the matters go that far.
>
> The State Bar Board of Governors made mediation mandatory for all State Bar fee disputes involving claims of $5,000 or less. About 44% of all 2011 claims have been resolved through mediation or other settlement. Since 2009, the average time frame for case completion has greatly decreased from 211 days to 95 days. Thanks for your great work Lisa!

This is where cognitive dissonance sets in. Since legal note No. 13, this office has had only one fee dispute – one we initiated against a former client to obtain an enforceable judgment for fees owed (as to why lawyers can and should use this process in appropriate circumstances, see legal note No. 13).

We filed the paperwork in November, 2010. The Bar lost it. We re-submitted it in January, 2011. By mid-March, after multiple extensions were extended to the former client, we sent a letter to the panel explaining that the former client had repeatedly demonstrated an intention to delay all processes and to please disregard any such efforts and schedule the hearing promptly. This was ignored.

Legal note No. 39, "Landreth Argentena and Other Updates" (May, 2011), mused:

> This office has had, since the prior legal note, one fee dispute, which we filed in November, 2010 – six months ago. In that time, the Bar has not managed to even assign a non-conflicted panel to start – to begin – to commence – to convene – a hearing on the dispute. Who knows how long it will take to actually get a decision – six more months? Another year? As long as the theme song to Bar fee disputes remains "*Mañana*," the fee dispute process remains effectively useless, making the economic harm of *Argentena* that much worse.

Unfortunately, this musing turned out to be prophetic.

Because (as predicted) the former client refused to "be available" for multiple months, we asked for submission on the papers. But because the Bar ***still*** has not got around to the simple rule amendments requested ***a year and a half ago*** that would readily deal with such recalcitrance, the panel insisted on having a hearing even if one party would not show up (Mr. Rogers would say "Can you say 'monumental waste of time'? Sure you can!"). So the stall tactics worked for ***another*** half a year before the panel finally scheduled a hearing, which was held in late August, 2011.

After consuming yet another two hours of my time to go to an unopposed "hearing" that gleaned nothing whatsoever that was not set out in our paperwork most of a year earlier, we waited for a decision, which should have taken about seven minutes. And waited. And waited.

After 30 days, we sent an e-mail to the panel chair asking if there was some problem. After that and three subsequent notes yielded no response of any kind, we started leaving weekly messages, which were likewise ignored. So we called the Bar. Silence. Then we sent e-mails to the Bar, which

garnered a response – eventually (November, 2011) – that "the panel Chair . . . is not returning emails or phone calls," and that the Bar was "working on it."

More time passed. On December 7, 2011 – 4 months after the one-sided default hearing, 13 months after we filed our fee dispute, and after consuming many additional hours of my time for no productive purpose whatsoever, we received a decision approving our request in its entirety.

It should not take more than a year and that many hours of additional work to get a default fee dispute judgment. This process, as is, is just stupid. The cleaning-house and rule-changing suggestions made in July, 2010, seem just as necessary now as they were then.

This brings me back to the self-congratulatory e-mail blast from the two members of the Board of Governors. Reading it, I had a Bush-era flashback and kept thinking "Great job, Brownie!"

Just how out of touch is our Board of Governors if they do not even realize that they preside over multiple programs incapable of doing even a halfway-acceptable job on behalf of the Bar and the public? The only alternative to that explanation I can think of is that they know full well that fee disputes, CLE, and other programs are inefficient, wasteful, and largely useless, and just don't care. That is rather a shame.

It is not too late for the various improvements to the fee dispute system to be implemented. It is ***never*** too late to actually fix such things. But until and unless the Board actually does the work necessary to make fee dispute resolutions as fast, efficient, and effective as might be achieved, publicly pretending that all is well is hypocritical, if not shameful.

II. THE BAR COMES THROUGH ON SPECIALIZATION, TO PUBLIC BENEFIT

Given the above complaint about Board of Governors' dalliance, obliviousness, and ineffectiveness, it might be thought that there is just some refusal to acknowledge progress when it does appear. But, not so! On those occasions when a promise is kept or more than lip service is paid to serving the public interest, it should be celebrated, and advertised.

In legal note No. 36, "Judicial CLEs (2)," I noted the Bar's failure to provide specialist certification information to the public and why that was problematic:

> In December, 2003, the Nevada Supreme Court first authorized the Nevada State Bar to certify legal specialists. It is unknown whether any judicial officer has applied for specialist recognition in any field, because the State Bar of Nevada has inexplicably failed for seven years to post the names of certified specialists on its web site. This is "inexplicable" because one of the primary reasons certification of specialists was approved in the first place was to give the public more information about the qualification of lawyers in various subjects.

Mainly through the quiet diplomacy of State Bar Family Law Section Chair Bob Cerceo, and a talented I.T. staff, the Bar has come through on this matter. Until recently, anyone selecting "Find

a Lawyer" on the Bar's website (http://www.nvbar.org/find-a-lawyer) saw three potential ways to seek a lawyer: "Search by Contact Information"; "Search by Location"; and "Certified Specialists."

Unfortunately, due to what was described as "technical difficulties," the search-by-specialist tab disappeared from the "Find a Lawyer" page, and for some time that information could only be found by those who knew enough to look for and go to the "Certified Specialists" page. Eventually, a link to that list was provided on the "Find a Lawyer" page. This is good, since it is the very people who do not know that certified specialists ***exist*** who most need to see that information.

But, in any event, credit where credit is due. The Bar has posted the relevant information for the public, fulfilling part of the reason for approving specialist certification in the first place.

III. THE MILITARY RETIREMENT MILITANT GROUPS REACT AS PREDICTED

Legal note No. 47 included the observation that the fanatical pressure groups that were discussed "tend to concoct elaborate conspiracy theories when their views are not shared," and noted that our opposition to legislation in violation of fundamental community property law was not based on any kind of plot:

> There is no conspiracy, and no other agenda. Our reasons for opposing the fanatical fringe groups are based solely on the lack of merit – logical, legal, or equitable – of their proposals, and not on any other factor.

Instantly, one of their ilk attempted to whip up his fellow travelers into a frenzy, using fake "quotes," false facts and (of course) alleging the existence of a "conspiracy in the courts."

[Where have I heard about a nutjob with an undistinguished military career attempting to use half-truths, misrepresentations, and outright lies to stir others to violence with hate speech? . . . Oh, yeah.]

But perhaps to ultimate good. In addition to some ignorance-based hate mail, I received communications of support from other, legitimate, veteran advocates and legal scholars, one of which noted how the little corporal in question has harmed some of those he purports to support by convincing them to violate court orders, and landing them in jail.

If anything, the response proved the validity of the warning. Anyone with a shred of decency should avoid those jihadis like the plague.

IV. "NICHE" *PRO BONO*

The February, 2012, issue of the Clark County *Communique* was focused on *pro bono*. Many readers of these notes are attorneys, for all of whom I have a request. If there is something special that you do particularly well, offer to do that thing for the pro bono project.

For example, we do lots of QDROs and other retirement orders (Civil Service COAPs, Military MBDOs, PERS QDROs, etc.) See www.qdromasters.com. So we volunteered to do the retirement orders for pro bono attorneys who took on divorce cases involving pensions – which is many of them. We supply the technical expertise that allows other pro bono attorneys to represent their clients both competently and completely.

How many other firms must be out there with specialized expertise in specific areas of law that pro bono volunteers might run into but be unable to competently handle? Probably, several.

Firms with such expertise can do a great deal of good for the poor and under-served, with relatively modest effort. If your firm has a special expertise in any specialty, no matter how narrow, please contact Melanie Kushnir at the Legal Aid Center of Southern Nevada – 386-1070, ext. 137, or mkushnir@lacsn.org, and agree to assist pro bono attorneys who need help in your specialty. You may be able to do more good, for more people, than you imagine.

V. CONCLUSIONS

The Nevada Board of Governors has silently ignored calls for meaningful reform and improvement of many programs, including CLE and fee disputes, for years. It is far past time for that to end. In the meantime, public access to lists of certified specialists has (finally) been made available. If any member of the Board is actually interested in doing good for the Bar, and the public, there is more – lots, ***lots*** more – that could and should be done.

The military fringe hate groups should be recognized – and shunned – for what they are.

Much good can be done by experts offering to share that expertise with the poor, doing niche *pro bono* to assist volunteer attorneys. Doing what they easily know and can do, they can allow volunteer attorneys to do a great deal for those who need it. Please do so.

VI. QUOTES OF THE ISSUE

"For a moment, nothing happened. Then, after a second or so, nothing continued to happen."
– Douglas Adams

"A lie can travel halfway around the world while the truth is putting on its shoes."
– Charles Spurgeon

"He said likewise
That a lie which is half a truth is ever the blackest of lies,
That a lie which is all a lie may be met and fought with outright,
But a lie which is part a truth is a harder matter to fight."
– Alfred, Lord Tennyson, *The Grandmother* st. 1 (1864).

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