A legal note from Marshal Willick about a modest proposal* for improving the handling of family law cases in the Nevada Supreme Court

The Justices of the current Nevada Supreme Court are bright, compassionate individuals who seem deeply committed to doing the right thing whenever possible. When they come to our annual meetings in Ely, they seem genuinely concerned with the issues and policies that guide the evolution of family law in Nevada.

How then to explain the series of bad choices and misfires in the decisions being issued? Not perceiving the practical unworkability of *Rivero I*. The missed opportunity to clarify the mess of NRS 125.155, in *Hedlund*. Undermining the uniformity of the uniform act in *Ogawa*. Making it nearly impossible in many divorce cases to get paid, through *Argentena*. Needlessly mucking up the law governing dissolution of cohabitant relationships (while demoting family court judges to the rank of "junior grade") in *Landreth*.

The list – just over the last two years – is longer than that, and it may take many years to correct the problems that have been created or exacerbated by inadvertence in such decisions.

One thing that comes to mind as a reasonable explanation is that those who are preparing the bench memos, analyses, and proposed opinions for the Court are just unaware of the real world impacts of their suggested resolutions. Since there are no Justices now on the Court with a recent substantive familiarity with our area of the law, the Court is presumably leaning heavily on its "family law" Central Staff for direction.

It's a job I know pretty well; I ***had*** the job of a Central Staff Attorney as my first out of law school. But the game has changed, somewhat, since the early 1980s – the Central Staff is much larger than it used to be, and part of the Court's adaptation to its increased size, huge case load, and lack of an intermediate appellate court has been to rely ever more heavily on Central Staff for substantive expertise in discrete practice areas.

If – as it seems – those folks really do not understand the practice of family law in what passes for the real world we work in, the results would be . . . well, pretty much what we've seen.

It would not be appropriate to ascribe a lack of caring about this state of affairs, as one local wag complained: "Justice does indeed have to be blind – but it does it also have to be deaf and stupid?" I am sure that both the Justices and staff really ***do*** care. They just do not seem to anticipate the hugely negative impacts that decisions like some of those mentioned above have on litigants, family law attorneys, and the family court itself.

The attorneys for the Court that have attended Ely in past years have seemed capable, interested, and caring. I'm sure they are trying hard, while probably overwhelmed. But I think they have no way of knowing the real-world impacts of their submissions to the Court. If, as I suspect, the problem is the lack of exposure to the realities of family law practice, what would seem advisable is to solve ***that*** problem, as directly as possible.

I suggest that the Nevada Supreme Court consider giving its family law staff attorneys a rotating series of sabbaticals from the Court to work in real-world law firms for a month or so at a time, to find out how family law really works. I will volunteer my office as one such place, where a staff attorney can come, attend meetings, go to court, actually work on substantive matters if desired, etc.

There will be a couple of practical details – like ensuring that once such persons return to the Court, they don't work on cases about which they gain personal knowledge. But those logistics are not particularly complicated. The Court should gain improved memos and draft opinions, and the Staff Attorneys would leave the Court much better prepared to handle real litigation in private practice.

I realize that this is not "how such things are done" normally. But look at the alternatives. We have, on the one hand, a family law Bar increasingly frustrated by the lack of understanding of the implications of decisions being rendered, and on the other a very busy Court doing what it can to provide substantial justice while staying on top of its case load. Seems to me that a little "out of the box" thinking might be appropriate for both.

Complaining once a year at Ely about what was done during the last year – and waiting another year or longer for some attempt to address the problem – is not a particularly efficient means of managing concerns (although it beats the heck out of having no means at all for providing feedback to the Court). I just think we can and should do better than that. There may well be superior alternatives to this proposal, and if so I sure hope someone suggests them.

Now – how to get this proposal to the Court, and get the Court to consider it – or something better – to address the perceived problem . . . .

*-With apologies to Jonathan Swift. This proposal is not so much about eating our own as training our own.

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