

A legal note from Marshal Willick updating prior items

When these notes go out, I sometimes get a lot of feedback, including inquiries as to how developing matters played out. As it's been most of a year since they started, it seemed appropriate to update prior items.

I. "QDRO CHECKUPS" (October, 2009)

The problems with retirement benefits orders that are badly drafted, or not drafted at all, got an increasing amount of attention, and was made the subject of the Advanced Track seminar at the annual meeting of the Nevada State Bar Family Law Section at Ely in March.

Those materials have been posted in their entirety on the firm web site, at http://www.willicklawgroup.com/ely_2010_advanced_track_materials, and include lots of useful resources, including the entire PowerPoint presentation from the seminar, a fairly comprehensive PERS primer (summarizing all retirement benefits cases and statutes in Nevada), and a great deal of material contributed by Barbara DiFranza of Reno on ERISA and QDROs. If anyone has any questions on those topics after reviewing any of the materials, feel free to contact me.

A brief description of the various private and public retirement systems, and checklists for the kind of information an attorney needs to draft orders for each retirement system, are posted on our QDRO/Retirement Orders page, http://www.willicklawgroup.com/qdro_retirement_orders. And the original QDRO Checkup service is also still available, with details posted at http://www.willicklawgroup.com/qdro_checkup.

II. "ATTORNEY LIENS AFTER *ARGENTENA*; ACTUALLY GETTING PAID" (October, 2009)

Many practitioners have apparently updated their retainer agreements as suggested to provide advance agreement between counsel and client to resolution of any resulting dispute as to fees owed by the court hearing the underlying dispute, without the need of filing a separate lawsuit (which many malpractice carriers effectively forbid doing).

In the months that followed, the Nevada Supreme Court requested a response to a direct appeal taken by another disgruntled client who had an attorney's lien adjudicated (*Spencer*), and to a writ petition brought by an attorney seeking to have *Argentena* apply retroactively to void all prior Nevada lien adjudications (*Seiff*), which actions provided a vehicle for placing before the Court the multiple concerns of the family court bench and Bar as to the ramifications of the *Argentena* decision.

Both of the later cases remain pending at this writing; if there are significant further developments in the area, they will be related in a future posting.

III. "*LANDRETH* & COHABITANT RELATIONSHIP DIVISIONS" (January, 2010)

One of the parties filed a Petition for Rehearing through attorney Robert Lueck of Las Vegas. It was accepted, and the Nevada Supreme Court requested an *Amicus* brief on the issues by the Nevada Bar Family Law Section, which brief was drafted and submitted. The brief is posted for review at <http://www.willicklawgroup.com/appeals>.

At its meeting in Mesquite in April, the Nevada District Court Judges' Association voted to join in the Section's submission from its own perspective, and hired counsel (Robert Eisenberg of Reno) to request permission to file a separate *Amicus* brief. That motion was accepted and granted.

At this writing, the matter remains pending.

IV. "FERAL PARALEGALS" (part 1, February, 2010; part 2, April, 2010)

These notes provoked a remarkable response from all over the U.S. Apparently the problem is not confined to Nevada, although our reputation as a divorce Mecca probably makes the divorce mills here among the worst in the nation.

Several members of the Bar's Board of Governors chimed in that the problems noted required far more attention and action. If any substantive action to address the rampant unauthorized practice of law inside and outside of law offices has been taken, however, it has not been publicly visible.

V. "THE STATE BAR OF NEVADA'S FEE DISPUTE RESOLUTION SYSTEM IS BROKEN" (March, 2010)

This was another note that apparently resonated with many lawyers – in several different ways. Half a dozen Nevada attorneys sent e-mails detailing similar stories of having fee disputes lingering in limbo for months or years, resulting in lost funds, unpaid accounts, and aggravation all around.

One former fee dispute arbitrator reported that he got so fed up with a system that did not work he eventually decided to quit. Another wrote in, claiming that he found the note "disturbing" because he was always punctual and efficient when handling such disputes and apparently thought he was being maligned in too broad of a brushstroke.

And, apparently, some folks did take action. I mentioned two outstanding fee disputes, one of which had been filed two years earlier and had been heard six months before my note, with no decision ever being rendered.

Decisions resolving both fee disputes were received in the following ten days. Both said that we were entitled to our fees as charged. But the delay had predictable effects. The decision came in two days *after* escrow closed on the last parcel of real estate from which we might have actually collected the fees owed. As of this writing we are trying to have the money interpleaded, but it looks like the Bar's fee-dispute resolution system – again – delayed matters so long that the paper confirming my entitlement to tens of thousands of dollars in outstanding fees has become totally worthless.

If anyone is doing anything to actually fix the system (getting new panels, amending the rules, altering the required time for automatic submissions, etc.) I have not heard about it.

CONCLUSIONS

There is much work remaining to be done, on many fronts. That reality should not depress anyone to inaction, but instead motivate those with the authority and ability to improve matters to actually do so.

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This legal note is from Marshal S. Willick, Esq., 3591 E. Bonanza Road, Ste 200, Las Vegas, NV 89110. If you are receiving these legal notes, and do not wish to do so, let me know by emailing this back to me with "Leave Me Alone" in the subject line. Please identify the email address at which you got the email. Your State would be helpful too. In the mean time, you could add this to your email blocked list. And, of course, if you want to tell me anything else, you can put anything you want to in the subject line. Thanks.