A legal note from Marshal Willick updating prior items

I often receive inquiries as to how developing matters played out. As stated in the last note, there have been substantial developments, good and bad, on several topics of prior notes. This time around – some progress, and some bureaucratic intransigence.

I. "VIDEO RECORD OF COURT PROCEEDINGS" (July, 2010)

When good news actually appears, it should be celebrated. The long-awaited ability to download video of hearings in Clark County was announced by Brandi Wendel of Court Administration on May 26. In the "credit where credit is due" department, Ms. Wendel states that the achievement is due to the "direction, support and dedication of resources by Court Executive Officer Steve Grierson," who she describes as "truly the driving force for this endeavor."

For those that missed the bench/Bar meeting, the basic parameters of the service are:

- It is "free" to those that are already paying $700 per year for access to Attorney's Corner.
- It is accessed by simple e-mail request to Transcript Video Services, which will e-mail the requested hearing videos back to the requesting counsel.

This is not quite the automated nirvana originally promised over three years ago, but in functionality it is close enough to constitute a promise kept to the legal community – of making the preparation of orders from hearings no slower, more expensive, or more difficult than it was through 2008, when the current round of updates to the Court's electronic systems was implemented.

Not all difficulties have been addressed. A lawyer posted a complaint on the Nevada Family Law Section's List Serv (nvfamilylaw@lists.nvbar.org) that only the attorney whose name on an "Attorney Corner" account matches the attorney of record in the case management system can actually download a video – if a firm uses more than one name on its pleadings (presumably in the upper left-hand corner of page one), that firm will need multiple accounts (at $700 apiece) to view its videos.

It is useful to view such developments through the lens of history. The newly-available service has simply restored to the Bar the economy and convenience of order preparation obtained in 1993 (when videotape was implemented) – and lost in 2008 (when the Court went "electronic" and started charging $5 to $25 per hearing for videos). And, of course, to have access to it, one may not now, as previously, stroll into a hearing with a $1.00 VCR tape, but must subscribe to Attorney's Corner at a cost of $700 per year.

The efforts of those that made videos available by e-mail should be appreciated. But it should also be noted that the ***minimum*** standard of performance is not making things worse for the public and the Bar than they were previously. So those in charge deserve a "thank you." But they should not expect handsprings, and further efforts to reduce cost, and increase ease of use and access to the users, are warranted.

And, as detailed in legal note # 20 (archived at http://www.willicklawgroup.com/newsletters), court staff ***should*** be preparing most orders directly, at a far greater savings of time and money to the Bar and public. Implementing that change would actually ***reduce*** costs to the public of every order produced, and speed the delivery of functional orders. Some behind the scenes work is apparently ongoing; it will be reported if and when progress is made on that score.

II. "MAKE LAWYER CLE MEANINGFUL" (January, 2011) & "JUDICIAL CLE" (March, 2011)

Proposals were made to see if CLE could be made to actually do something useful to provide meaningful education, as opposed to funding a bureaucracy that consumes large amounts of cash each year primarily to pay people to keep tabs of essentially-meaningless "credits."

The specific proposals included:

- Testing of attendees, as a means to assure some consciousness of the material taught – or at least actual attendance.
- Posting on the web and making publicly available the CLE attendance records of judges and lawyers so the public can see what "education" their jurists and lawyers have received since law school.
- Mandating that judges receive continuing, intensive substantive education relevant to the divisions in which they sit and applicable to the cases over which they preside.

The response? Utter inactivity. The deliberations of the Board of Governors were not particularly encouraging to anyone inclined to actually make CLE useful, or to increase the transparency of the bench and Bar to the public.

It is reported that there is "no appetite" by either the CLE Committee or the Board of Governors to make any potentially-useful information available to the public, as to either lawyers or judges. As to judges, the matter of what education they should have, and whether it should have any relevance to their jobs, is apparently "not up to CLE," but is in the hands of the AOC and the Judicial College.

In other words, do-nothing and buck-passing. Legal note No. 33 stated that:

> It remains to be seen whether there really is a commitment to stated policy, and if the willpower exists to do something to further that policy.

To our collective shame, the answers to those questions are, respectively, "no, there isn't," and "no, it doesn't."

Many members of the Board of Governors are intelligent, well-meaning folks. It is inexplicable what compels them, collectively, to be such an ossified obstruction to pretty much any progress or improvement on pretty much any subject the Bar administers. Regardless of the cause, however, the bureaucracy that is our Board of Governors will – as usual – do nothing that might actually improve the education of lawyers, the qualification of judges, or the information available to the public.

I offered to act as liaison for the judicial college to both the Family Law Section and the Academy chapter, in an effort to develop and present a thorough substantive program that would actually do what NRS 3.028 says will be done to instruct new family court judges. The judicial college never even responded.

Any meaningful reform – either for transparency and public information, or to make "CLE" actually have any meaning or value in the real world beyond an expensive but useless P.R. ploy – will have to come from the top.

III. "E-FILING #3 – THE CONTRACTS, THE MATH, AND WHAT SHOULD HAPPEN NEXT" (May, 2011)

The series of legal notes regarding e-filing has criticized the 50-to-1 disparity in the actual costs of e-filing for those in Clark County compared to those in Washoe County. It was noted that the system in Washoe appears to run at least as well as that in Clark, while the fee structure in the South has effectively shaken down the Bar and public to fund regular court operations. The notes asked those with the power to do something about it to at least reduce costs here to match those in Washoe.

If at least one cynic is correct, some folks have been paying attention to the disparity identified – but it has been the wrong people.

A Reno attorney forwarded a copy of a notice sent out recently by the Washoe County Clerk's Office that the annual e-filing fee in Washoe County is being tripled for the stated reason of "budgetary constraints." A recent notice from the Washoe County Bar Association read in part:

> Second Judicial District Court: The District Judges, due to increased budgetary constraints, have determined that, effective July 1, 2011; the subscription fee for electronic filing will be increased to $300.00 per attorney, per year. We regret the necessity of this increase at this time, and want to let you know that we value your use of our electronic filing system. We look forward to working with you to create a more efficient system in the future.

The notice did not say that the cost of ***e-filing*** was more than $100 per year per lawyer – just that the court wanted more money. It is hard to resist the conclusion that the Northern court bureaucracy, having seen the ease with which their Southern counterparts have looted the Bar and public to finance general court operations, have elected to emulate that cash grab, Nevada Electronic Filing Rule 5(i) be damned. Just not as shamelessly as court administration in Clark County – at least, not yet.

The Nevada Supreme Court's Electronic Filing Rules prohibit precisely what appears to be going on, especially in Clark County. Any concerned attorney (in Washoe ***or*** Clark County) could, presumably file a petition for writ of prohibition. But even in the absence of such a petition, the Supreme Court should act administratively to prevent such flagrant flouting of the rules it set out for e-filing, which was never intended as a mechanism for siphoning money from litigants and lawyers to fund the operation of the courts, whether or not they have "budgetary constraints."

In both Washoe and Clark Counties, e-filing has permitted the courts to eliminate positions and drastically slash their operating expenses. It costs the courts ***less*** to accept each filed document, not more, than it did before. The "incremental cost" of e-filing is therefore ***zero***, and to permit the courts to continue looting litigants and lawyers is an atrocious abuse of the lawyers, and the public, not to mention the Supreme Court's rules. It should be stopped.

V. QUOTES OF THE ISSUE

"Failure is not the crime – low aim is."
– John Wooden

"I am not influenced by the expectation of promotion or pecuniary reward. I wish to be useful, and every kind of service necessary for the public good becomes honorable by being necessary."
– Nathan Hale

"It must be considered that there is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things. For the reformer has enemies in all those who profit by the old order, and only lukewarm defenders in all those who would profit by the new order, this lukewarmness arising partly from fear of their adversaries, who have the laws in their favor; and partly from the incredulity of mankind, who do not truly believe in anything new until they have had actual experience of it. Thus it arises that on every opportunity for attacking the reformer, his opponents do so with the zeal of partisans, the others only defend him half-heartedly, so that between them he runs great danger."
– Niccolo Machiavelli, *The Prince*, Ch. 6.

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