
Psychology and Family Law

By Mark Baer, Esq.



In my prior articles, I have touched upon the inherent risks involved in having a dispute resolved in court. I realize that many readers of my column have been waiting for me to write about the use of mediation in family law. However, I have felt that, in order to properly convey my views on mediation, I must first express my beliefs about the problems inherent to the judicial process in general, and the problematic nature of judge selection in particular.

- **Quality of Judges**

In 1993, the Judicial Counsel of California commissioned a survey of California lawyers and judges to determine how to attract and keep highly qualified judges. Overall, the survey found that the selection/election process is among the three greatest disincentives to becoming a judge, along with salary and loss of privacy. The survey found a negative mystique surrounding the selection process, including a belief that who one knows, rather than ability, is the basis for judicial selection. Another concern is the perception that the current process does not actively seek the most qualified lawyers but instead accepts whoever comes through the political process. Finally, the cost of running for a seat is prohibitive to many prospective candidates.

- **Appointment of Judges**

Authority for California's current judicial selection process is found in the Constitution, specifically the Government Code and the Elections Code. When a vacancy occurs in the Supreme Court or the Courts of Appeal, the governor nominates a candidate for the next election or appoints a candidate to fill an interim vacancy. The only selection criterion imposed by law is that each judge must have been a member of the State Bar for ten years prior to appointment/election. In my last article I pointed out that the difference between the length of time since an attorney was admitted to the State Bar, as compared with the length of time he or she has *actually been practicing law* could be significant. Please keep in mind that an attorney could theoretically have been a member of the bar for ten years and never have actually practiced law.

Before the Governor appoints or nominates a judge, the name is submitted to the State Bar for evaluation of the individual's qualifications. The Judicial Nominees Evaluation Commission, comprised of attorneys and public members, reports its evaluation to the Governor in confidence. After reviewing the report, the Governor officially appoints or nominates the candidate.

After confirmation, the judge is sworn into office to serve until the next gubernatorial election, when the judge runs unopposed in a nonpartisan retention election where voters decide whether to retain him or her for the balance of the judicial term. Superior Court Judges serve six year terms and Supreme Court and Court of Appeal Justices serve twelve-year terms.

The California Constitution provides for retention elections for Supreme Court and Court of Appeal judges. However, it also provides for direct election of Superior Court judges.

- **Election of Judges**

In the general election held in June of 2006, Dzintra Janavs, a Los Angeles Superior Court judge, was defeated by Lynn Olsen. It should be noted that Dzintra Janavs had been a 20-year veteran of the bench, and the Los Angeles County Bar Association's evaluating panel gave Janavs its highest possible rating, "exceptionally well qualified." Lynn Olsen, on the other hand, was admitted to practice law 15 years prior to the election, but had only practiced law for the first 3 years after being admitted. In addition, Lynn Olsen was rated "not qualified" by the Los Angeles County Bar Association's evaluating panel--after she declined to meet with the committee. Fortunately, less than 72 hours after the loss, Dzintra Janavs was reappointed by Gov. Arnold Schwarzenegger to a vacant seat on the bench.

The general public does not check to see the ratings given by the applicable County Bar Association's evaluating panel and therefore tends to vote based on a name or for an incumbent. In the case of Judge Janavs, the populace ignored

(continued on next page)

the fact that she was an incumbent and voted against her because they *did not like her name*. Moreover, just because someone is an incumbent does not mean he or she is qualified. For example, what if Lynn Olsen were to run for re-election? She would be an incumbent at that time. Does that make her qualified?

This brings me to my next topic, which was unification of the Municipal and Superior Courts. On January 22, 2000, the judges of the Los Angeles Superior and Municipal Courts voted to unify all of the Los Angeles County trial courts into one court, the Superior Court of California, County of Los Angeles. This unification was allowed by the provisions of Proposition 220, the state constitutional amendment passed by California voters in June of 1998. In effect, this meant *that Municipal Court Judges now became Superior Court Judges*. Please keep in mind that the only selection criterion imposed by law for Municipal Court judges had previously been that they must have been members of the State Bar for five years. Remember, too, that all other judges must have been members of the state bar for ten years. With unification, these Municipal Court judges have now become Superior Court judges. Furthermore, when they run for election, they now run as incumbents, and hence garner an advantage.

The judicial officer in many courtrooms is a court commissioner. In order to be eligible as a court commissioner one must have been admitted to practice before the Supreme Court of California for at least ten years. Court commissioners are not elected. Rather, they are appointed by a committee of ten judges that reviews the application of each applicant. The committee designates which applicants it finds to be qualified and ranks them in the order of preference.

Whether the judicial officer is a judge or a commissioner, he or she is not assigned to a particular courtroom based upon the type of law he or she had practiced, if any, prior to becoming a judicial officer. Since approximately 1983, most lawyers elected or appointed as judges and commissioners have come from a criminal law background. Therefore, they may have little, if any, experience or knowledge related to the type of law practiced in the courtroom to which they are assigned. Therefore, is it wise to insist on having your "day in court" instead of attempting to resolve the matter through mediation or some other form of alternative dispute resolution?

Mark Baer, Esq. can be reached at (626) 389-8929 or by email at mbaer@rrjlaw.com



A Dutch Treat Networking ... HAPPY HOUR!

How many times have you wondered
exactly what your colleagues do professionally?
Or - after long hours seeing patients - to get out and get to know some of
your fellow professionals a little better?

THIS IS FOR YOU!

JOIN IN!

August Appetizers and Libations

Dutch Treat Networking Happy Hour at
Roy's Hawaiian Fusion Bar and Restaurant
621 E. Colorado Blvd.

Pasadena

on a Friday evening Date

TBA

to be announced via the SGVPA Listserv
in mid-July.

Bring plenty of business cards!

For more details, contact

Dr. Elisse Blinder

At dreblinder@charter.net

