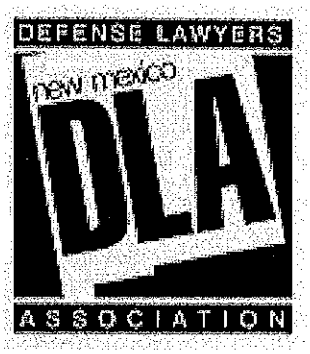
Fall 2006



DEFENSE news

The Legal News Journal for New Mexico Civil Defense Lawyers

Fall 2006

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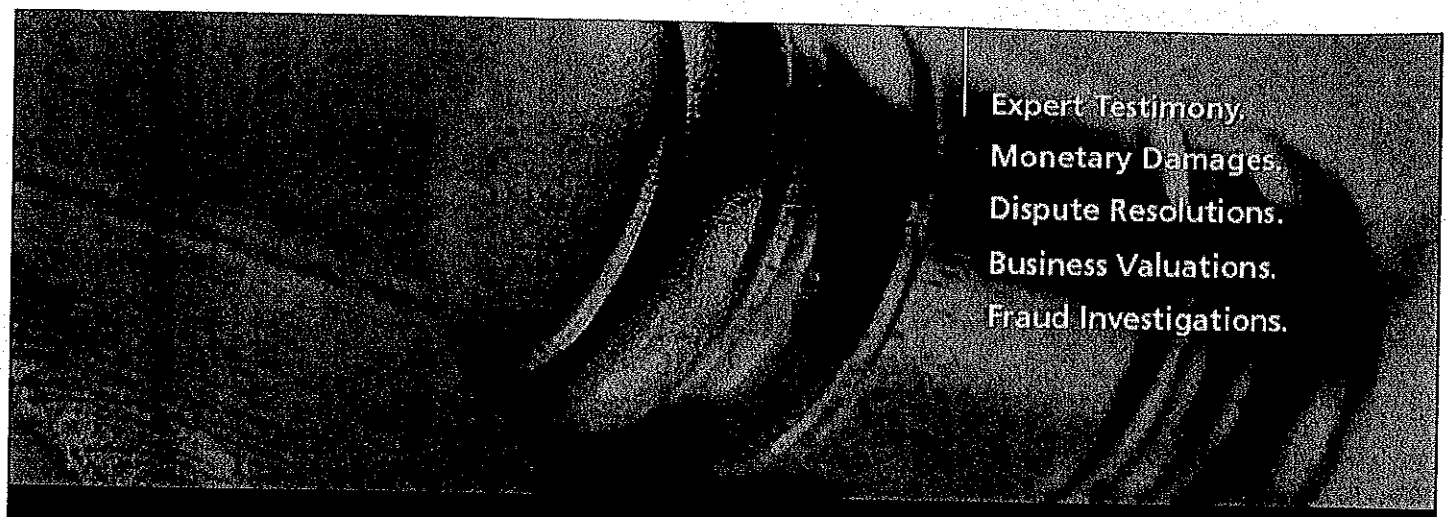

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The New Mexico Defense Lawyers Association is the only New Mexico organization of civil defense attorneys. We currently have over 350 members. A common misconception about NMDLA is that its membership is limited to civil defense attorneys specializing solely in insurance defense. However, membership in NMDLA is open to all attorneys duly licensed to practice law in New Mexico, who devote the majority of their time to the defense of civil litigation. Our members include attorneys who specialize in commercial litigation, employment, civil rights, and product liability.

The purpose of NMDLA is to provide a forum where New Mexico civil defense lawyers can communicate, associate, and organize efforts of common interest. NMDLA provides a professional association of New Mexico civil defense lawyers dedicated to helping its members improve their legal skills and knowledge. NMDLA attempts to assist the courts to create reasonable and understandable standards for emerging areas of the law, so as to make New Mexico case law dependable, reliable, and a positive influence in promoting the growth of business and the economy in our State.

•The services we provide to our members include, but are not limited to:

•Exceptional continuing legal education opportunities, including online seminars, and self study tapes including 5 Professionalism seminars – significant discounts for DLA members;

•A quarterly newsletter, the "Defense News", the legal news journal for New Mexico Defense Trial Lawyers;

•Quarterly members' lunches that provide an opportunity to socialize with other civil defense lawyers, share ideas, and listen to speakers, who discuss a wide range of issues relevant to civil defense attorneys;

•An e-mail network and website, where members can obtain information on judges, lawyers, experts, jury verdicts, the latest developments in the law, and other issues; and

•An Amicus Brief program on issues of exceptional interest to the civil defense bar.

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President's Message

by Kathleen M. Wilson - Keleher & McLeod, PA

I have really enjoyed serving as President of NMDLA this year. It has been a great opportunity for me and I look forward to continuing to serve on the Board in 2007. Steve French will be President of NMDLA in 2007. I am sure that Steve will make 2007 an enjoyable and high energy year for NMDLA.

2006 has been another great year for NMDLA. One of the highlights was DRI's presentation to NMDLA of the Rudolph A. Janata Outstanding Achievement Award which is in recognition and appreciation of NMDLA's outstanding achievement in the support of the goals and objectives of the organized defense trial bar. The award was established in memory of Rudolph A. Janata an esteemed past chairman of the DRI Board and President of DRI, and in appreciation for his dedicated leadership as chairman of the DRI state and area defense association committee. The award was presented to NMDLA at DRI's annual meeting in San Francisco on October 13, 2006.

NMDLA's Annual Meeting which took place on October 19, 2006 was also very successful. Patrick Longon from Mercer Law School was an informative and entertaining speaker and I think that everyone who attended the Annual Meeting really enjoyed it. NMDLA was honored by the attendance of a variety of New Mexico's judiciary both as attendees and speakers. Patrick Long, President of DRI, attended the Annual Meeting and he mentioned to me how impressed DRI is with NMDLA. It was also gratifying to see Bill Gralow accept the award for Outstanding Civil Defense Lawyer. Bill certainly deserved it.

Some characteristics that were mentioned in regard to Bill, and that have also been mentioned in regard to past recipients, are Bill's professionalism within the legal profession and the fact that he is also just a nice guy. One of the main benefits, in my opinion, to working with a relatively small group of attorneys in New Mexico is the relationships that we develop with one another. The professionalism that attorneys in New Mexico exhibit toward one another is something that is not always evidenced in the bigger legal markets. I think that we are lucky to be New Mexico lawyers.

Many thanks to NMDLA Executive Director, Rhonda Hawkins, the Board and the Members for making 2006 a great year. Please remember to check out our website for a list of upcoming events and other information about NMDLA at www.nmdla.org. I hope to see you at one of our upcoming events soon.

Thank you NMDLA Contributors, without your support this publication would not be possible.

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Should You Do a Roth 401(k)?

by Julie Neerken - Rodey, Dickason, Sloan, Akin & Robb, P.A.

Law firms should consider adding to their 401(k) plans the ability to contribute Roth 401(k) contributions. Many payroll companies and retirement plan administrators were not geared up to accept Roth 401(k) contributions before 2007, but most are now. If you read financial advice columns, you are also familiar with the advantages of Roth IRAs, and with the fact that many attorneys' incomes are too high to permit contributions to Roth IRAs. However, law firms can allow Roth 401(k) contributions to 401(k) plans. The most important difference between Roth IRAs and Roth 401(k) contributions is that there is no income cap disqualifying people from Roth 401(k) contributions, so you may be able to take advantage of this opportunity. Recently, the "sunset" on Roth 401(k)s were eliminated, so the features can stay in 401(k) plans after 2010.

Roth 401(k) contributions operate in a manner similar to Roth IRAs, and differently from pre-tax 401(k) contributions. If your practice offers a 401(k) plan, you know that you can make pre-tax contribution, reducing your over-all tax bill, and save for retirement through these plans, while protecting your savings from creditors. Earnings on pre-tax 401(k) contributions are tax deferred. When you withdraw pre-tax 401(k) contributions, you will pay ordinary income tax on them. In contrast, Roth 401(k) contributions are made after after-tax dollars. This means there is no tax due on your contributions when you withdraw them and, if you withdraw your contributions as "qualified distributions", the earnings are never taxed! The "cost" of tax advantage is that Roth after-tax contributions to your 401(k) plan do not reduce your current tax bill, as do pre-tax 401(k) contributions.

You need to keep in mind a number of facts about distributions in making your decision. Distributions – whether of Roth contributions or pre-tax elective deferrals – can generally be made from 401(k) plans only upon death, disability, termination of employment, when the participant reaches age 59 ½, or upon a hardship (as defined by the IRS). Earnings from Roth Contributions are tax free only if withdrawn in a "qualified" distribution. A "qualified" distribution is a distribution taken when you have reached age 59 ½, become disabled, or are paid to your beneficiaries upon your death. In addition, to be qualified, 5 years must have passed since your first Roth 401(k) contribution. If a distribution is taken from a Roth 401(k) account, and the distribution if not "qualified", the earnings on your after-tax contributions are taxable as ordinary income and may be subject to a 10% penalty unless rolled over or unless you are at least 59 ½. This is also true for distributions from pre-tax 401(k) accounts.

Roth 401(k) accounts are subject to the minimum distribution requirements when you reach 70½, but, in another important difference, if Roth 401(k) accounts are rolled into a Roth IRA, the account will not be subject to minimum distribution requirements. This can be very useful for estate planning purposes. Here's an example of the differences Roth 401(k) contributions can make in an estate plan. Assume that in 2026, Lawyer rolls her $1,000,000 Roth 401(k) account into a Roth IRA. The IRA assets earn 8% a year, and Lawyer dies in 2036. By then, the Roth IRA assets have increased to $2,200,000. Lawyer's spouse is the IRA beneficiary, and leaves the money in the IRA until his death in 2046; now the Roth IRA holds $4,400,000. Junior, the beneficiary, withdraws the amounts over his 25 year life expectancy, as determined under the IRS's life expectancy table. Ultimately, Junior with take $15,000,000 – ALL INCOME TAX FREE! Pretty good estate planning!

Who should utilize Roth contributions to 401(k) plans? If you expect your tax rate to be higher when you take retirement distributions from your 401(k) plan, making contributions on an after-tax basis now, at lower rates, makes sense simply because of the anticipated differential in rates. And with the large Federal deficit, many experts anticipate the tax rates will go up. If you are relatively young, and expect to practice for several more decades, the value of not having to pay any tax on the earnings can be very high. And even if you are older, you may want to engage in "tax diversification", where some of your contributions are pre-tax, and some after-tax, so that either way, you have taken advantage of tax rates. Lastly, if you wish to increase your savings rate, contributing to a Roth account in your 401(k) plan means that, by paying the tax burden up front, you in effect will be saving more, as a $15,000 maximum elective deferral, and a $5,000 catch up contribution (available to participants who will be at least 50 by the end of the year), if paid with after-tax dollars, you in effect save $27,000 if you are paying at a 37% marginal rate.

Roth 401(k) contributions do not make sense if you anticipate that you will be retiring shortly, and that your average tax rate in retirement will be less that your current top tax rate. Then you should take advantage of the reduced tax rate you expect to pay after you retire.

The bottom line is that Roth 401(k) contributions can be very useful for lawyers anticipating practicing for more decades, who expect high earnings in their plans, or who believe their tax rates will be higher in retirement than their current rates. Where Roth 401(k) contributions fit with a lawyer's plans, such contributions can be an exceptionally valuable financial planning device. If you are interested, contact your retirement plan service provider.

Interview with the Honorable Richard Knowles

by Agnes Fuentevilla Padilla - Butt Thornton & Baehr, PC &
Courtenay J. Keller - Riley & Shane, PC

DLA: When did you make the transition from criminal to the civil docket?

KNOWLES: Officially, on paper, the notices went out in October of last year. Really, truly, taking over the caseload, was November, December. Judge Thompson had 120 jury trials set over six weeks, and I couldn't get my brain around that. And so I literally vacated everything.

DLA: 120 jury trials in a six week docket, is that possible?

KNOWLES: Well, Judge Thompson would set 20 jury trials every week with the idea that the first ten were at risk of going, and the second ten were really going to be Rule 16 scheduling conferences. I'm not saying that is a good way or a bad way, but I'm kind of a literal guy, so if I send a notice out that says jury trial, I want people to think it means jury trial as opposed to, "oh, he just means a scheduling conference. And so, that is one of the reasons I did that. And the other thing, frankly, is, I just have this thought in the background, "what if everybody really thinks it's a jury trial," not that I expected that, but, I thought I could have received 120 sets of jury instructions. I decided to do it my own way.

DLA: So that's the reason for two month gap between the notices and the official start date?

KNOWLES: Well, actually, the reason for the two month gap was to continue with the criminal caseload before Judge Butkus started. What happened was that Judge Thompson retired, and so I started babysitting that caseload, and looking at that with a lot of help from Brenda in Judge Lang's office, and the other civil judges would give advice, but I had Brenda working with me and training MaryAnn. I was reviewing pleadings as they were coming in, starting settings in December, January.

DLA: Will you tell us about your background?

KNOWLES: Pick a time frame...

DLA: Post law school.

KNOWLES: Post law school, I went to law school at the University of Florida and decided that I wanted to live somewhere that had mountains and skiing, and I had some family in Colorado, so I moved to Boulder, took the Bar in Colorado, and my first job was at the law library at the Tenth Circuit Court of Appeals. If you look at the Tenth Circuit Court of Appeals index for unpublished opinions in 1981, that's me. I was also training people. At that time, Lexis and Nexis were, cutting edge, gee whiz, technology. I had worked with that in law school, and so I was training some of the staff attorneys at the Tenth Circuit on that, and then I wound up being a part time law clerk for Gene Brightenstein, who was in senior status at the Tenth Circuit at the time. So I did that for a few years, then I went to work for a law firm in Denver. I originally wanted to do estate planning and taxation, and so I was doing that. Found that to be devastatingly boring, and then the oil market at the time crashed. And now you're looking at $75, $76 a barrel. But the oil in the '70s had gone way up in value and then dropped, and so a lot of the law firms that were relying on prosperous companies to pay their bills folded, as did mine. So I left there in '83. I couldn't find a job in Colorado, my dad lived in Roswell, and someone offered to let me share offices for free while I took the New Mexico Bar, and then split the cost of the offices, so I went down to Roswell. I did that for a year and changed and joined the public defender office there. I did that until...let's see, I moved up into Albuquerque in '86, was with the public defender office here as well as a district defender in Roswell at the Fifth Judicial District. I came up here as a statewide training director, became the district public defender, and then went into private practice in '88, '89, somewhere around there, and was in private practice doing primarily criminal, but a balance of criminal and civil. The civil I did was primarily plaintiffs, personal injury, some civil rights work, things like that in state and federal court. It was like five percent of my practice and 50 percent of my income. You know, the thing about criminal is it... it ends, and civil tends to stretch out longer. So, the income flow is a little bit more predictable in criminal as long as people are coming in. That was my mainstay, and then I had these other things where you have interesting little boosts of income as a case would settle or resolve. Well, I took the bench in '95 and did criminal...started the drug court. And then, left to do civil in '05.

DLA: Were you a sole practitioner?

KNOWLES: Yes, I office shared with Wendy York, Tom Jameson, Jeff Kaufman, Howard Anderson, Jackie Robins, and a couple of other people at various times.

DLA: Did you always have the goal of becoming a judge?

KNOWLES: Well, it's kinda like saying, did you always want to be a lawyer? I mean, you have these things in the back of your mind that might be kind of interesting, but when you go to law school, you don't think in terms, necessarily, of being a judge. You think in terms of what you're going to do when practicing law. The big step for me was going into litigation, switching from estate planning, and becoming a trial lawyer, and then I thought it would be sort of interesting, but it's kind of saying, would you like to win the lottery. I mean, yeah, you know, it'd

be a great thing, but at least for me, my whole life didn't revolve around that as a particular goal. My wife is a Metro Court judge. Loves it. She loves the pace, everything else. I was interested in a little bit more formal type of practice, and so I didn't want to go to Metro Court. There had been, at that time, and it still sometimes happens, a number of instances where a slot would come open in criminal or civil, and everybody would shift around so then all of a sudden, you had to go do DR for a year or two. I didn't really want to do that. Judge Blackhurst retired, and it was going to be a designated criminal slot. Well, that's where I spent most of my time and energy in state and federal court. And so that was the slot I was interested in. So, then, I started thinking, well, you know, this would work out well. This is what I had been interested in doing. The other thing is I was, at the time, doing math now, 38, and had been practicing for 13, going on 14 years, had done close to 50 jury trials, and was doing just fine. I mean, it was gonna be a cut in pay to be a judge, but I also started thinking that if I continued to do trials at the pace I was doing, I'd be dead by the time I was 50. I loved doing trials, but I'm an extremely competitive person, and I couldn't just relax and be happy with winning at a trial or having done a good job in trial. You don't win that many in criminal cases, and so as soon as one trial was over, I'd think about the next thing I had to do, and thought I'm gonna die young. And I enjoy trials, so now I get to do trials and...and I don't care who wins. My focus is, is the process done well? I like to solve problems, not create them, and sometimes that's not necessarily, in the criminal context, in your client's best interest from the defense side. If the process goes smoothly, sometimes that means your client gets convicted sooner. So, on the bench, I'm just there to solve problems, referee issues, so, it's a good thing.

DLA: That brings to mind the expression, "I'd rather play ball than be an umpire."

KNOWLES: Well, it's a lot more exciting playing ball, but, you know, it takes its toll. I mean, I had a whole lotta fun playing ball...actually, my fantasy, at...I've expressed this several times, it's an impossible fantasy, but I think it'd be great. I think it'd be really good for the judges that did it, and it'd be good for the lawyers who appear in front of me. I think it'd be great. Five years, ten years, some finite period of time, after a judge goes on the bench, to have a sabbatical. We'd go to some remote jurisdiction and try some federal cases. The point being, you'd be in front of a judge who didn't care who you were. They're just interested in the job you're doing, and you get to have your memory refreshed on just what it's like to litigate again. I think that would be great, but you can't do it. But wouldn't that be fun?

DLA: Who played a role in your career as a mentor?

KNOWLES: At what stage?

DLA: As a lawyer.

KNOWLES: Paul Snead was a trial judge and district judge in Roswell when I started in trials there, and I really admired him. He was always willing to talk, if you stopped by and visited him, he would tell great stories about practicing law in the good old days, which now seem like the Stone Age. He was a tremendous influence. The lawyers I practiced with were terrific. There's a long list of them, and it was always fun to watch them in trial. When I was in law school, I attended a lot of NITA seminars as the technician videotaping the presentations. And so, I got see a lot of excellent lawyers from across the country as both faculty and as students. You know, but the individuals that I can say really influenced me would be Paul Snead in Roswell and then when I got to know him up here, Frank Allen. He was a terrific influence as a trial judge when I was doing trials as a trial lawyer, and a tremendous friend and mentor when I got to the bench.

DLA: What do you miss most about the criminal bench?

KNOWLES: The reason I made the shift is I felt like I was starting to get burned out. At the time I started doing it, and when I was doing it, I enjoyed doing the trials, I enjoyed, the interplay, the give and take. I felt like I was on familiar turf, because I'd been doing it for a long time as a lawyer. The reason I made the shift, I started feeling burned out, and things were starting to blend, which isn't good. Every individual accused of a crime. That's the most important thing in their lives, and when you're literally having to close out 50, 60, and 70 cases a month, you know, it's hard for you to look at it in the way that they do. It's more like you start to get worried that you're telling people not to tell you things that are important to them and you're not hearing the things that are important to them, and important to you in making the decisions. And so, that concerned me. So, as of this second, I don't look back and say, gee, you know, I miss this aspect of trying cases. What I do miss is the attorneys that were appearing in front of me. They're a very talented group on both sides, defense and prosecution. You have the folks that are better, and certainly like the bell curve, you have the people that are just unbelievably good, and folks that aren't.

DLA: How has the transition been?

KNOWLES: I've enjoyed it a lot. But that's a question you may want to ask the lawyers appearing before me. I'm having fun. The variety has been tremendous. The learning curve has been challenging, but I started doing things to prepare when I started thinking about doing the transition; I hadn't looked at the Rules of Civil Procedure in ten years. They were irrelevant in my life, so I pulled out one of that section of the Rules and just carried them around and would read them, and wake up in the middle of the night, I'd pick a Rule and read through it. And my habit has always been in criminal whenever there's an issue, instead

Continued on next page

Interview with the Honorable Richard Knowles Continued

of ruling from the hip, I'll pick the Rule up and reread it, even though I've read it a hundred times. I've been doing and enjoying that, so, I think the transition is going okay from my end. I hope it's going well for the attorneys.

DLA: What have you done other than reviewing the Rules to effect the transition?

KNOWLES: Read. Read, read, and listen. I don't know if this is a basic thing or not, but I read everything. When I get motions and responses and replies. First of all, if somebody's taken the time to write it out, I think the least I could do is to have the courtesy to read it, and so I read all of that, and then I ask questions if things don't make sense to me. I'll try to answer my questions by going and looking up the cases referred to. Even though I hadn't done a whole lot of civil for...well, I hadn't done any in the last ten years, you'll see a case citation sometimes and it will say this case stands for the following proposition, X, Y, and Z. Well, there are propositions that make sense, and there are propositions that don't make sense, and so many times while I'm reading the motions, I'll think okay, yeah, that makes sense, that makes sense, that makes sense. This is consistent with what I remember from law school and everything since then. And then I see something and think, wait a minute, I don't know if this makes logical sense until I go and read the cases. Judge Butkus is next door. And he's doing criminal and his primary area was in civil, and my primary area was in criminal, so we spend a little bit of time visiting. You know, I'll go over and say, well, I don't know if this makes sense, and he'll give me his view. I'll talk to my other colleagues on the civil bench and they've been extremely helpful.

DLA: Other than the obvious and vast differences in the subject matter, what differences do you perceive between the practice on the civil bench as opposed to the criminal bench?

KNOWLES: Civil is more paper intensive. Criminal is kinda like a baseball game. It's like ten minutes of action packed in the three hours. If you go to a baseball game, you've got time to get the hot dog, but then when things really happen, they happen fast and hard and intensely. Civil seems to be a little bit more of a steady diet of action. Maybe a little more like a football game. You get your plays and you get a little bit of a break between 'em and then something else happen. Sometimes people score, sometimes they don't. But there's more continuity of action.

DLA: You've had an opportunity now to do some civil jury trials. Do you perceive any differences in approaching jury trials from the civil perspective as opposed to the criminal?

KNOWLES: I hesitate to generalize. Because there's tremendous exceptions on both sides, civil and criminal. I think there are more lawyers who will tend to shoot from the hip a little bit more on the criminal side than there are on the civil side. But that isn't necessarily a bad thing. Some of the best lawyers I've ever seen as trial lawyers are really good, we call standup lawyers. When you're trying a criminal case in...in federal court, for example, you don't get a witness list necessarily. The only witnesses you are required to be told about in advance are the experts. You get into the habit, particularly if you have a lot of federal background, of deciding which witnesses you really need to talk to in advance. When you're trying criminal cases in state court, and sometimes you just proceed with only witness statements. The civil bar...I'm not saying it's bad. They take advantage of the opportunities in the Rules to be a little more thorough in terms of deposing witnesses in advance. I think good trial lawyers will try to make contact with and take statements or depositions of all key witnesses, but I think that it's done a little more in civil cases. Another difference is you won't necessarily see a trial brief on the criminal side. You won't necessarily see a pre trial order that everybody distributes ahead of time which tends to educate the judge. You don't get that on the criminal side. It's not a better or worse thing. It's just a difference in how things were set up. Some of the limitations in discovery in federal criminal cases are due to concerns for safety of witnesses. And that's an appropriate concern in some cases as you are aware.

DLA: Have there been any procedural issues which have been especially novel or...or challenging for you now that you are on the civil bench?

KNOWLES: Motions to compel, but that's settling down. I've heard judges complain about that. I don't have any complaints about it. I just see it a little bit more than I would in the criminal side. But you have a lot more specific rights to discover on the civil side. You don't have interrogatories on the criminal side. You don't have requests for production quite the same way. In a criminal case, you just basically ask the other side for everything they've got, and they give it to you, and you're obligated on the defense side if you have witnesses to provide all statements of the witnesses as well.

DLA: It seems that, between the mandatory disclosures in federal court and the fact that lawyers can call a federal magistrate and say, hey, can we deal with this issue in 20 minutes or in two hours, you better have a serious issue, and you better know that there's nothing you can do to resolve it. I know that would be extremely difficult to do in state court, but it seems like lawyers don't think twice about filing a motion to compel in state court, whereas they may think twice about calling a federal magistrate and asking for immediate attention on the issue. And so, I just wondered what your thoughts were about that. Do you feel that lawyers abuse or take advantage of using the judge to resolve fights when they could, in fact, come to terms with them on their own if they were serious about it and tried?

KNOWLES: Not much if at all. I think part of what being a good trial lawyer is, is knowing your judge. I've heard it referred to a couple different ways, but I call it you get the book on the judge. You know if this judge is going to be a strong motion judge, a weak motion judge, you know what the judge likes, what the judge doesn't like. I think from the judge's perspective, you communicate what you'll have patience for and what you won't have

patience for. Because people have got a handle on how you're going to do it, they don't really need to waste time. I mean, if you know that if you don't comply with discovery, I will follow Rule 37 and you will pay attorney's fees. Then, you're either going to comply with discovery or come in with your checkbook. And why do you need to go through that process; if you know that's what's gonna happen, unless you just want to drag things out, which is another issue. So, I don't see that much of it. And a lot of the time, I'll read through the pleadings, I'll think, well, this is pretty obviously this way or that way, and about three days before the hearing, they'll call up and they resolved it, so, you know, I don't know if that's a function of the lawyers doing a good job or doing what they do when they figure out that... gee, this is what he's going to do, anyway. But that's all part of the process.

DLA: Anybody who appears frequently in front of the judge knows that that's the first rule. Did you author the document "Ten Commandments for Dealing with Judges"?

KNOWLES: Yes. I was asked by the Trial Lawyers Association to talk about working with judges.

DLA: This is a perfect opportunity to ask you some questions about it. I thought we might just walk through and see if you could elaborate a little bit on your Ten Commandments.

KNOWLES: Sure.

DLA: Number 1. Know thy judges.

KNOWLES: You get the book on judges.

DLA: Number 2. Thou shalt not argue with judge about the law unless thou knowest what you're talking about.

KNOWLES: Well, for two reasons that came up was, one, is I tried it and it doesn't work well as a trial lawyer. Second, generally speaking if I say I believe the law is this, I will have looked it up and frequently will have it in front of me and am quoting from whatever source it is. If somebody is saying that's not the way it is, I'm open to that, but be prepared to back it up. If not, your credibility is in danger.

DLA: So, be able to back it up?

KNOWLES: I'm not saying I know everything. But if I'm making a point, I've got a reason for doing it. And I will tell lawyers, "I'm not positive. I think it goes this way." If you want to research it further, that's fine. There are other times, I'll say it looks this way to me, but I have no problem with people disagreeing with me, just have some basis for it other than it's the spirit of the law, whatever that is.

DLA: It sounds like you're on one side of the coin telling lawyers that they need to be prepared and they need to come in and be prepared to back it up, but on the other side of the coin, you're inviting the lawyers who have done their homework to argue their point. And to try to persuade you that, in fact, maybe they're right. ...

KNOWLES: If I'm going in a particular direction in a case, I will usually let counsel know. But, you know, if I've already gone through that process, there comes a point when argument ends. So, I'm not inviting argument when I'm in the middle of ruling. I've gone through it at that point. But I will, generally speaking, deliberately say, you know, this is what I think. Let me know if I'm missing anything.

DLA: Do you think you go into a hearing with your mind made up? I know you read everything before you take the bench.

KNOWLES: If I thought my mind was made up before I went into a hearing, I wouldn't have the hearing, I'd just vacate it and write a decision on it. You know, in the civil context, it is a lot easier than in the criminal side. The criminal side of things may not be briefed as thoroughly, but that's not really the culture. The lawyers will come in very well prepared, and they will have supporting cases on the civil side, you tend to get a little bit more in advance. I'll have ideas ahead of time and it's not unusual for me to start a hearing with, saying, "I've read everything," which is my signal you don't have to read the pleading to me. I will read and I will listen. I want to signal that I've have taken the time to read it. There will be times when I say, listen, you know, we can approach this a couple of different ways. Would you like me to tell you what I'm think right now, and then it'll let you know where I may need to be persuaded.

DLA: Where to focus.

KNOWLES: Sure.

DLA: Number 3. Thou shalt show up on time and ready to proceed. Goes without saying.

KNOWLES: Sometimes.

DLA: Why did you feel it is necessary to say that, because it's so obvious, but maybe it's not.

KNOWLES: There is a culture, and I'll be candid, and it's not a knock, it's just the cultural reality. On the criminal side, folks tend to show up for an 8:30 plea, and at 8:30, acquire the paperwork to discuss it with their client. Well, that's okay. If I didn't have a couple of trials going that day or I wasn't already in trial or something like that, that wouldn't bother me. It will let the lawyers know that if I did have the time and what the constraints are. But if you're not going to be on time, I want communication. You know, my background in doing state and federal cases, I would be there five to ten minutes early, having read everything that I want to present, and I'm rereading it when I get there early. That's just the way I'm designed. That's the way I'm built. Once you're in federal court a few times, you start to learn by seeing folks having to pull out checkbooks at a hundred bucks a minute.

Continued on next page

Interview with the Honorable Richard Knowles

DLA: Number 4. Thou shalt negotiate in good faith.

KNOWLES: I just think that's a good idea. I think many of the things that I say in the Ten Commandments go without saying. I think most people are attentive to those things, but occasionally, they need to be reminded.

DLA: Number 5. Thou shalt not bore the judge.

KNOWLES: I had a lawyer a long time ago argue something, and he kept repeating the same thing, and I literally said to the lawyer, you've hit the ball out of the park, you've rounded the bases, you're jumping up and down on home plate. If you will stop talking, I will rule in your favor. Pay attention to your audience. That works well with juries too.

DLA: Number 6. Thou shalt proofread before filing.

KNOWLES: With what we have in terms of computer resources now, one, I don't see that many typos, but I read things quickly. I just read an article in the Wall Street Journal about how Evelyn Wood is coming back in fashion. One of the things I did before I went to law school is I did law school and undergraduate school in six years. I just went straight through. But one of the things I did before I started law school is I took a speed reading course. I would zoom through stuff, but you pick up the weirdest little typos, and it's not that you don't give any credit to the pleading after that, but it's, why swim upstream? You always want to be there a little bit earlier and do a little bit better job than opposing counsel. So if the judge is in a bad mood, they give them the grief.

DLA: Number 7. Thou shalt not whine.

KNOWLES: Do I need to cover that?

DLA: Number 8. Thou shalt not misrepresent cases or the facts. Do you find that happens?

KNOWLES: Rarely, but it's unbelievably devastating to your reputation if you do that. And there are the occasional instances where lawyers have done that. But it's such a rarity. That's when you literally start drafting the letter to Disciplinary Board if you think that it was intentional.

DLA: This is my favorite. Number nine. Thou shalt not be a jerk to the judge's staff.

KNOWLES: This is one of those things that should go without saying, but this is like being rude to somebody's significant other. Who do you think they're gonna talk to? If you're really pleasant and courteous to the judge and rude to the staff, you know, these people can hurt you. I don't think my staff would ever do anything deliberately, but, you know, what if somebody loses a pleading? I mean, life could really be bad. It not that they would, but if somebody were tempted to do that, I mean, why would you want them to even have that risk. When I was practicing, the staff knew more about how cases worked than I did. So, you want them on your side.

DLA: Finally, number 10. Honor thy clients and thy opposing counsel.

KNOWLES: Treat everybody with respect. I've seen people be rude to their clients. You may not like your client, but that's not something I'd air out in front of anybody. If you don't have something nice to say about your client or opposing counsel, just don't say it.

DLA: This is a bit of a sharp turn off the Ten Commandments. We appreciate your thoughts and willingness to share that. I realize that this was something that you authored sometime ago, but I think it's fair to say these are very applicable.

KNOWLES: I hope they help.

DLA: Great. Just transitioning over. There seems to be more pressure on the civil bar to pursue settlement, more pressure than there is on the criminal bar to pursue or consider a plea resolutions to cases. As a backdrop with that, what are your thoughts on the right to a jury trial in civil cases, and how does it differ from your perspective on that issue in criminal cases?

KNOWLES: Well, one, on the criminal side, you're prohibited as a judge from participating in plea negotiations. There's no such prohibition on the civil side. That having been said, I think it's rare in New Mexico, and certainly in the Second Judicial District, for judges to actually get involved in negotiations. I will tell lawyers during Rule 16 conferences with respect to settlement facilitation, engaging in negotiations, I'll order it if they want me to. If they tell me it's an absolute waste of time, I'm generally not going to do it. I like trials. Trials are, for me, fun, interesting. I'd rather be in trial than setting here staring at my desk. This is why I do what I do. On the other hand, trials are hideously expensive, scary, stressful, and unpredictable to a great extent. You know, I used to say to lawyers on the criminal side, I've never won a plea. I've never done a guilty plea where after having heard it, the judge said, oh, well, I'm just gonna find your client not guilty. So even if there's a million to one shot at trial, your odds of winning a trial are still infinitely better than your odds at winning a plea. On the civil side, when I tell parties and the lawyers is they know their case infinitely better than I ever will, or the jury ever will. It's a great risk when that decision in somebody else's hands. So, from my end, I'd just as soon be in trial, but it's not always the best plan. But I am concerned that people aren't doing as many trials as they used to. I've done seven trials on the civil side so far this year. Which I'm told is a relatively high pace. It's a comfortable pace for me, but I'm not gonna twist arms if for the real first setting, both sides agree to continue a case. You don't have to explain it. But second setting, I'm going to be looking for reasons.

DLA: What do you do to balance your professional and personal life?

KNOWLES: I started taking piano lessons about five years ago and I am having a great time, working on jazz piano. I ride motorcycles. I run.

DLA: Do you think that the line is blurred between your professional life and your personal life now that you're on the bench? In light of some of the recent things that have happened with judges and the media and what they do on their own time and how that's perceived by the public, do you feel like your personal life is not really yours when you're on the bench?

KNOWLES: You have to assume that if you do something foolish, it's gonna be above the fold in the paper. I am aware, and I was aware before I became a judge, there's things you just don't do. I mean, you can't take a casual approach to thinks like the law. When you're driving a car that has a bumper sticker on it that says, "Elect Me," you're a little more careful. But, you know, I don't drink significantly more or less now than I did before. I really wasn't a party kinda person before, so it's not a radical change.

DLA: Do you think that since those things have come out in the media that it's been more difficult for you as a judge in terms of the way you're viewed by the community, trust factor, the way the lawyers view you?

KNOWLES: You know, we carry anywhere from twelve to fourteen hundred cases each. On the criminal side, we're closing out 50, 60, 70 cases per month. If you think of the numbers of cases that we deal with, and then the number of cases you can think of where you really think I or one of my colleagues did a bad job, we've got an error rate that's phenomenally low. Ideally, it would be zero. But if it was zero, we wouldn't have a Court of Appeals and Supreme Court either. We will make mistakes. But if you think back over the last five years, of all the cases you're aware of in New Mexico, I would be surprised if you could come up with more cases than you can count on the fingers of one hand where you would say that trial judge blew it.

DLA: Judges are human, too, yeah.

KNOWLES: If they weren't, you wouldn't want them. You don't put a headline in a newspaper that said nothing happened today. Life is good. Albuquerque is wonderful. Weather, you know, is pretty terrific right now. You just don't get those headlines, "The judiciary did a good job today." I've never seen that headline. I probably never will.

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