

WHAT'S A TRIAL LAWYER AND HOW I BECAME ONE (Continued from page 1)

John A. Snowdon, Jr., Esq.

weeks in court meant everyday, all day. We tried two or three cases per week, plus sentences, motions, probations hearings, anything that was on the judge's calendar. Prep time was insufficient, there were virtually no investigators (you had to do your own investigations for the most part) and sometimes you didn't even meet your client until the day of trial. As for instruction, there was none. The first day you got a pile of about 50 cases and from then on it was sink or swim.

After years of this I went to the prosecutors office. Not much was different except the caseload went from 50 cases to about 125. The drug explosion of the late seventies and eighties and the crime it spawned caused a huge backlog that required constant trials. About twelve

assistant prosecutors in the trial section processed over 2000 cases per year.

The regimen was grueling, but you did learn your trade, or you were out.

Altogether I did the two jobs for 29 years, but always managed to keep my passion for trials. That's really the difference between an occupation and a profession. You work at an occupation; you live a profession. But if you don't have the passion, you don't belong in a courtroom. There's a very old expression in the law, which all lawyers learn: the law is a jealous mistress. It's especially true for trial lawyers who live their cases night and day. Just ask my wife. All attorneys at Azrak & Associates are trial lawyers

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- White Collar Crime
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- Business Formation Structuring
- Interstate Commerce
- Elder Care
- Insurance
- Identity Theft

CUSTODY - HOW TO PROTECT YOUR RIGHTS FOR YOUR CHILDREN'S WELFARE

Matthew H. Rudd, Esq.

The New Jersey Statutes set forth the criteria for custody at N.J.S.A. 9:2-4. The Legislature of New Jersey has found and declared that a minor child is entitled to frequent and continuing contact with both parents after the parents have separated or dissolved their marriage. Every child should, and must have the opportunity to have in their mind an image of two good parents. It is essential for the court system and lawyers to foster and encourage a good relationship between children and their parents.

The concept of encouraging a relationship between your child and your ex-spouse is not always easy to do. However you must remember this is in your child's best interest, whatever, you may think of your ex-spouse. The basic rules for this are as follows;

1. Do not poison your child's mind against your ex by discussing their shortcomings. This can be extremely harmful to your child.
2. Do not expose your child to members of the opposite sex with whom you are involved.
3. Do not use your parenting time as an excuse to continue arguments with your spouse.
4. Do not visit your child if you have been drinking.
5. Do not visit your child at unreasonable hours.
6. Do not fail to notify your spouse as soon as possible if you are unable to keep your parenting time.
7. Do not question your child regarding activities of your spouse.

8. Do not make promises to your child which you cannot keep.

The residential parent does have responsibility, both physically and mentally to prepare the child for parenting time. They must make sure that the child is ready on the mutual date agreed upon. Parents must act like adults and work out their scheduling problems. If one parent has plans for the child that conflict with parenting time then the parties must take into consideration the best interest of the child.

The parties must always work toward the spiritual well being, health, happiness and safety of their child.

The term visitation is being phased out by the Legislature and Courts because when a parent is with a child it is not visitation. Instead, the term "parenting time" more accurately describes time spent with a child. The parties are free to agree upon and the attorneys are free to request that the Court Order any type of physical custody arrangement which serves the best interest of the child. Shared residential custody arrangements are not uncommon.

Joint custody is defined by Statute as a legal custody or physical custody which includes provisions for residential arrangements that a child shall reside either solely with one parent, alternatively with each parent, in accordance with the needs of the parents and the child. Provisions are required that call for consultation between the parents in making major decisions regarding the child's, education and general welfare.

(Cont. on next page)

CUSTODY (Continued from previous page)

Sole custody, on the other hand, is where one parent provides appropriate parenting time for the non-custodial parent. The Court by Statute does have the power to order any type of custody arrangement that it determines to be in the best interest of the child. The factors that will be considered by the Court are the parent's ability to agree, communicate and cooperate in matters related to the child, the parents' willingness to accept custody, interaction and the relationship of the child with its parents and siblings, any history of domestic violence, the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision, the needs of the child, the stability of the home environment offered, quality and continuity of the child's education, the fitness of the parents, the geographical proximity of the parents' homes, the extent and quality of the time spent with the child prior to or subsequent to the separation, the parents' employment responsibilities, the age and number of the children.

A parent cannot be deemed unfit as a parent unless his or her conduct has caused a substantial adverse affect on the child.

In reference to very young children the "Tender Years Doctrine" still applies and affords the mother a presumption as residential custodian. The Court has

held that the mother having the initial custody of an infant has a particularly strong claim arising out of the unquestionable bond that exists. Although, the Statute creates equal rights to custody of children this does not mean that consideration of the "Tender Years Doctrine" has been abolished. Vannucchi v. Vannucchi, 113 N.J. Super. 40 (A. D. 1971) and In re Baby M., 109 N.J. 396 (1988).

The real issue of custody usually surrounds the issue of physical custody of the children. If both parents possess basic skills of parenthood they are in a position to both share custody over alternating weekends, alternating holidays and large blocks of time for summer vacations and other school closings. So, contested physical custody disputes tend, where both parents have parenting skills, to center around where the children sleep Sunday through Thursday. This can get really complicated when you consider children's extra-curricular activities, social schedules, medical appointments and other after school activities. If the parties step back and look at it in some ways they are arguing about only a very few hours of the week. Sometimes we lose sight of quality over quantity.

All of these issues are important to protect your rights and determine what is in your children's best interest.

PREPARING YOUR SMALL OR MID-SIZE BUSINESS TO SURVIVE THE COMING STORM

James T. Gibbons, Esq.

You wake up in the middle of the night with a sense of foreboding. You are the owner/chief operating officer of a small or mid-sized company. The stock market lost 315 points yesterday; the price of oil topped off at \$102; the value of real estate lost 17% in the preceding six months and most "experts" are predicting no improvement before the middle of 2009; the sales figures at nearly every major retailer have been in a freefall from Christmas until now; and, for the first time, you've become concerned that the President may be a "tad" optimistic when he declares that the U.S. is not experiencing a recession.

Unlike the large corporations we read about in the news, you can't write off \$5-10 billion, layoff 40 or 50,000 people, resign, collect a \$40,000,000 golden parachute and go back to sleep. You have to prepare yourself and your company for what appears to be difficult times ahead. But how do you start?

First, review the business entity you operate.

If it is a proprietorship or a partnership, immediately remove your pajamas, put on your business suit and deliver yourself to a lawyer.

Aside from the many benefits available from operating in one of the corporate or limited liability entities, your

immediate overriding concern should be protecting your personal assets from attack if the financial situation becomes desperate. Your lawyer can assist you in accomplishing this end.

If you presently are operating from one of the corporate or limited liability entities, is its status current? Have you maintained your corporate kit on a current basis? Have you held your annual meetings, created minutes evidencing those meetings? Have you created resolutions evidencing the corporation's approval of important actions taken?

The failure to do these things can result in a Court "piercing the corporate veil" and making your personal assets available to pay the corporation's creditors. Estate of Swensen v. Director, Div. of Taxation, 12 N.J. Tax 558 (N.J. Tax 1992) If your company has failed to do those things, you too better get to your lawyer. He can update and create the necessary documents to bring you into compliance. Zeiger v. Wilf, 333 N.J. Super. 258 (App. Div. 2000).

Congratulations! You are safe; but, what about the business?

The costs of operating are rising (INFLATION) and demand is receding (RECESSION). How can you stabilize your operation?

(Cont. on next page)

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PREPARING YOUR BUSINESS (Continued from previous page)

First, protect your lines of supply! This requires that the company to enter into "Requirements Contracts". Standard Oil Co. of Ca. v. U.S., 337 U.S. 293 (1949), U.S. v. Moorman, 338 U.S. 457 (1950). Therefore, you need to negotiate agreements with your suppliers which fix your costs of inventory or raw materials perhaps adding a floor and a ceiling to price changes to protect you and your supplier during this period. But, you must enter into agreements which guarantee that your supplier will meet all of your needs ("requirements") for inventory or raw materials. Tigg Corp. v. Dow Corning Corp., 962 F.2nd 1119 (3rd Cir. 1992) Once again, your attorney can create enforceable agreements which will protect the company. **(It should be noted that these agreements have the added benefit of placing your company in the position of not being required to increase prices in order to reap**

a profit, thus making you far more competitive.

Second, redundancy in financing sources should be acquired. Develop banking relations with local banks. One, they have a stake in the local economy and two, they haven't become, themselves, strapped financially by investments in sub-prime mortgages etc. which will make borrowing from them more difficult.

Third, don't ever borrow from the government. Things do get tight. However, delaying or non-payment of withholding taxes, sales taxes, use taxes, etc., are, in the end, far more costly than borrowing from a financial institution (interest, penalties etc.) and have the added detriment of potential criminal liability. Further, in the worst case scenario, tax liabilities are not generally dischargeable in bankruptcy. In re Jackson, 184F.3rd 1046 (9th Cir. 1999).

Fourth, don't replace competence with less expensive incompetence. You trained your people, they're the ones who have grown the business, they know your clientele and your clientele know them. A bad economy is the worst time to start changing a successful team.

Finally, **don't panic!** Fear breeds fear. Your staff knows you and will react if you show fear, in all probability, by looking for new, secure employment.

Remember, business downturns, recessions, indeed even depressions are all self-limiting, and end with the passage of time, a change in circumstances and frequently with the mere substitution of confidence for the fear that created them.

You've now taken the necessary steps to survive. **Call Azrak & Associates and then call your office; tell them you intend to sleep late. You've earned it!**



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Azrak & Associates, L.L.C. attorneys have over 125 combined years of experience in general practice. We are continually adding professionals and staff to meet our clients legal needs. Call for a consultation and evaluation of any legal matter.

In This Issue:

"Going Green"1
We can represent you in all Municipal Court matters..1
What's a Trial Lawyer & How I became one.....1
Azrak can represent you in all the following matters.....2
Custody - How to protect your children's welfare.....2
Preparing your small or mid-sized business to survive the coming storm3

AZRAK & ASSOCIATES "GOING GREEN"

In an effort to observe "The Three R's, Reduce, Reuse and Recycle," Azrak & Associates, L.L.C. is working to improve environmental awareness. We know your postal mailbox is always full and you are concerned about deforestation and landfills. Azrak & Associates would like to help conserve our planet's precious natural resources by reducing the enormous amount of mail. Think of how many times a week you print a piece of paper and toss it in the trash. We are asking you to provide us with your email address so that we can contact you immediately regarding your file or email you documents for your review and/or comments. Kindly forward your email address to lawyers@azraklaw.com.

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John A. Snowdon, Jr., Esq.

(Continuation from previous newsletter)

I'm sitting at the counsel table. The trial is over and the jury is filing in to deliver its verdict. I stare at them, trying to divine their decision. It never works. I can feel my heart beating so hard I half expect it to fly out of my chest onto the table. Next to me my client is pale and sweating. He's staring catatonically at the jury and beginning to hyperventilate. As the jury is seated and prepares to announce its verdict, I ask myself, as I always do, "What am I doing here?"

I always feel this way, even after more than 500 trials (to put that in perspective, many lawyers never try a case, and the average is about 25 for an entire career.) I believe that if you don't feel that way about your cases, you should be doing real estate closings, not trials. A trial lawyer is to lawyering as a surgeon is to doctoring. A different breed. Trying cases is much more art than science. So how do you get

to be a trial lawyer? Here's how it happened to me.

I always thought I wanted to try cases. I couldn't see my self as desk-bound. After law school at Penn State, I knew there were only two routes to becoming a trial lawyer: the Public Defender's Office or the Prosecutor's Office. These are the only places a young attorney can get immediate heavy trial experience. And in doing trials, experience is what its all about. No one wants a doctor doing his first operation and no one wants a lawyer trying his first case.

The Public Defender was the best choice. Being fairly newly established, it was staffed with a lot of young lions that wanted nothing more than a steady diet of trials. And that's exactly what we got. We worked in teams of two, assigned to a judge for a year. We worked two weeks in court and two weeks prep time. The

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