



FAMILY LAW

The newsletter of the Illinois State Bar Association's Section on Family Law

Editor's note

By Matt Kirsh

This month's Newsletter contains a copy of the eulogy for Cook County Circuit Court Judge Edward Jordan. The eulogy was delivered in a heartfelt manner by Judge Nancy Katz on July 2, 2012. Judge Jordan was a member of the ISBA Family Law Section Council for many years and also a member of the ISBA Assembly.

In just a few short minutes, Judge Katz conveyed a wonderful picture of Ed Jordan the man, the lawyer and the judge. Whether you knew Judge Jordan or not, I urge you to read Judge Katz' moving farewell.

—MK

Beloved pets—The oft-overlooked legal quagmire

By Jennifer A. Shaw, Edwardsville, Illinois

In law as in life, change is the only constant. As family lawyers, we feel that change acutely. Though every family is different, revolutionary changes in the definition and composition of families have occurred over the last generation.

Gender roles have shifted, making the female bread-winner and/or the stay-at-home dad a commonplace fact pattern. We no longer assume that Wife receives custody and Husband pays child support. In fact, we no longer assume that children born during a marriage are, in fact, products of the marriage. Same sex couples live openly in committed relationships, often within the confines of civil unions. Heterosexual couples eschew marriage for many reasons, sometimes as a stance in alliance with their gay friends. Fewer and fewer families meet the stereotypically defined "traditional" family unit.

With these and other societal changes, the way we interview clients has also changed. More than ever, families choose to forgo children, whether living within the bonds of marriage/civil union or partnered without legal benefit. Even when children are present, we question parentage; parental roles and responsibilities; and our client's desires as to the outcome of the ultimate custodial determination. Nothing is a foregone

conclusion and we ask our clients a plethora of questions that were previously left untouched. Nonetheless, we frequently forget to inquire as to the presence of, or the relationship with, family pets or animals.

While the family pet has been a staple of American life for many generations, our pets' roles, perceived needs, and places within the family unit have changed dramatically. I grew up with a succession of Schnauzers in a neighborhood where pets were part of the family. At that time, canine socialization meant a brief visit with other neighborhood dogs while out on a walk. I am now convinced that Bismarck's monthly escapes were part of her larger plan to attempt play with Churchill, De Gaulle and Bonkers. Yet, doggie daycare was a scoffed foreign concept—something the extremely wealthy were doing in New York and California. Bismarck was regularly vetted and groomed; she even had a \$20 sweater for the heart of winter. Yet, I can still hear our family's ridicule of the Neiman Marcus Christmas Look-Book's high-end designer collars, leashes and "active wear." When Bismarck succumbed to old age, she was buried in the backyard and

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Beloved pets—The oft-overlooked legal quagmire

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memorialized with a dogwood. Had my parents divorced, however; without question she would have received no mention in the decree.

In 2005, like so many of my single, child-free contemporaries, I became the proud owner of a rescued pug. When I started my search, little did I know that I would endure an extensive telephone interview, a home visit and a six-month post-placement interview. Shortly after her arrival, Mildred was re-vetted; outfitted with a soft leather collar and a bevy of winter sweaters and coats; enrolled in a doggie daycare program; and gradually introduced to spending time at the office.

Much to my surprise, she made immediate, valuable contributions to my practice. Many clients would ask to hold her or to pet her when talking about difficult topics. She instinctively knew which clients wanted her close and which clients did not. Children flocked to her and she kept them entertained so clients could speak to me without interruption. Her power to provide comfort, entertainment and joy was demonstrated on a daily basis. Many clients commented that they hired me specifically because I understood how they felt about their animals. At that point, I started to realize the evolution of society's valuation of pets.

Although she loved the attention at the office, Mildred craved play with her friends at day care. She was more content when she socialized at least twice a week. Day care was as important as food, water and love. As I wrote the check and read the daily day-care report cards, I quickly realized that I had become invested in Mildred—emotionally and financially.

When my partner entered the picture, Mildred's approval was as important as my parents'. Once our relationship was long-established, I would gently tease him—reminding him that the State of Illinois recognized her as my non-marital property and in the event of the termination of our relationship, Mildred would be awarded to me. After his well-formed argument detailing his contributions to her well-being and care, I would grin and say, "When you have the law, you argue the law. When you have the facts, you argue the facts. You lose."

As she aged, her expenses began to multi-

ply. When she was diagnosed with advanced hip dysplasia and arthritis, we were referred to board-certified specialists. Eventually, her medical and dental costs rose significantly, exceeding ours. Nonetheless, withholding care was not an option. Although Mildred is near the end of her life, we do not regret one penny we have spent—even when those pennies meant a shorter vacation or fewer "things" for us.

At the end of the day, Mildred has, in essence, been my child. Once Tim integrated into our family, she became his child as well. She was included in the family pictures with my parents and brother. She is invited to extended family holiday celebrations. She may be one of the only dogs with a personalized needlepoint leash, made with love by her "Pug Gram."

Our family's relationship with our dog is far from unique. Data collected over the past decade affirmatively shows that Americans have become more willing and desirous to spend substantial portions of their disposable income on pets. This holds true across the social-economic spectrum.

The non-breeding portion of the pet industry, spanning the range of food to day care; accessories to veterinary care, is one of the few that has continued to experience at least 5 percent growth each year since 2001. The *New York Times* and *USA Today* have both commented positively on the industry's ability to withstand the recession. Advances in veterinary science have allowed people to extend the length and quality of pets' lives. Owners express greater concern about the quality of the food that their animals consume and providing their pets with healthy, vibrant lifestyles.

USA Today reported in November, 2011 that pets live within 72.9 million households, roughly two-thirds of all American households. Given the widespread ownership and increased interest in ensuring Fido's lofty place in the family, our profession must recognize that in many cases, resolving pet issues can be as important as addressing child custody and property. Accordingly, we, as practitioners must affirmatively meet our obligation to ensure that our clients' animal needs are being met in the advice we give and the legal documents we prepare.

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Just as we ask probing questions about children, financial holdings and real estate, we should also be inquiring as whether clients have pets. Although technically considered property, the questions we ask about pets should more closely resemble the questions we ask about children. As with children, different families have different ways of raising, interacting and dealing with their pets. We must determine whether the parties will be able to work together to achieve the best outcome for the animals or whether court action may be required.

Within my own practice, I have handled numerous issues surrounding the custody, care and expenses of animals. Learning the questions to ask has helped me meet my clients' needs.

I always ask the following questions:

- Do you have any pets?
- What type of pets do you have:
- What are their names?
- When did you acquire the pets?
- Have you reached an agreement as to where the pets will live?
- If so, have you discussed how the pets' bills will be paid?
- What are their average food, medical, dental and accessory expenses?
- Does your pet have any extraordinary expenses?
- What type of interaction do the children have with the pets? (If applicable)
- Describe your relationship with your pets.
- Describe your spouse's relationship with your pets.

Depending on the answers, follow-up questions may be necessary. Obtaining a realistic portrait of the expenses incurred by the animals is important. This is particularly vital if the custodial parent will be primarily responsible for the pets' care. In some circumstances, a large portion of child support may literally be eaten by the animal. In those instances, you may serve your client well to attempt to negotiate an agreement about expenses.

Recently, a client came to me after successfully mediating most issues in her divorce. In our first meeting, we reviewed the terms of the mediation agreement. She initially indicated that all issues had been addressed. After discussion, I learned that she and her husband had amassed an extensive turtle collection with accompanying accoutrements exceeding \$15,000. Although they had agreed that the turtles would remain in

the marital residence until Husband relocated to his permanent residence, the move would not occur for several months. The parties had verbally agreed to a complicated schedule of cleaning and care. They had devised a formula for division of expenses relating to the turtles. None of this had been raised in mediation. The provisions were reduced to writing and the parties have followed the terms of the settlement agreement since that time. I recently learned that issues had arisen regarding certain unexpected turtle expenses. The terms of the Marital Settlement Agreement and Judgment of Dissolution of Marriage were the tools the parties needed to navigate their differences of opinion.

A few years ago, I met with a new client. She had entered into an agreed dissolution without the benefit of counsel. The parties had a side agreement to equally divide time with and expenses of their dog. One year later, my client was transferred to a new position. After writing a letter to the opposing party indicating that the Marital Settlement Agreement failed to address issues regarding "Molly," I received a panicked call from husband's original attorney. "How in the world could I forget to include a child?" she exclaimed. After the relief set in, we were able to negotiate an agreement that provided for Molly to visit Husband when Wife returned to the area for holidays and vacations. The strict letter of the law provided that as pre-marital property, Molly could have been awarded exclusively to my client. Nonetheless, she strongly believed that Molly would benefit from continued contact with her ex.

Frequently, the parties are equally attached to an animal, making settlement impossible. The law in Illinois is very clear. Animals are treated as any other property. Nonetheless, the interaction clients have with their pets is typically distinguishable from their relationship with inanimate objects. As practitioners, we have little legal guidance as to how to address the emotional attachment people have to their animals in dividing property. We have no provisions to determine which party is best suited to be awarded the animals. Similarly, we have no provisions that allow the Court to determine which party the animal may prefer.

ISBA's Family Law Section Council has had vigorous debate as to whether additional legislation is required to address this issue. The naysayers believe this to be a slippery slope. Those in favor believe that practitio-

ners and the judiciary desperately need direction. Some judges believe that they absolutely have jurisdiction to hear testimony as to where animals should be placed. Judge Ed Jordan once described a hearing that featured a well-behaved Rottweiler as the star witness. Other judges believe they have no such jurisdiction.

Fairness dictates that the same facts, tried by the same people should obtain the same results no matter where the case is tried. As the law currently stands, this is not the case. Passing legislation regarding possession and support of pets would realize a substantial step to guarantee decisional uniformity throughout Illinois.

Family practitioners are well aware that changes in the law lag far behind changing societal beliefs. Multiple attempts are often required to effectuate the necessary developments. Now is the time to start the process. Our clients deserve it. More importantly, their pets deserve it, too. ■



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Eulogy for Hon. Edward R. Jordan

By Hon. Nancy J. Katz

Editor's Note: Hon. Edward R. Jordan died June 28, 2012. Judge Jordan served in the Domestic Relations Division in Cook County. He was equally well known as a member of the ISBA Assembly and various ISBA committees and activities. Judge Nancy Katz delivered the eulogy at Judge Jordan's funeral service.

July 2, 2012

Good afternoon Rabbi, beloved family and friends of Ed, esteemed colleagues, and especially Jackie. We are here to remember and celebrate a truly remarkable man, Judge Edward R. Jordan.

I remember the first time I met Ed. It was thirteen years ago. I was running for Associate Judge at the time, making my way through the thicket of judicial chambers in the back corridors of the Daley Center. Ed invited me into his chambers, at the northeast corner of the floor. My eyes first rested on the penguins. There were many, many penguins. Next I saw the telescope, pointed at the heavens. Then a book on his desk, an espionage mystery thriller. And, the man. A very distinguished looking man with a fabulous head of white hair and a twinkle in his blue eyes. He made me feel at home, and he was so encouraging. He listened. And of course he talked. We all know how Ed liked to talk. He told me a bad Jewish borsch belt joke or two. And he told me that being a judge was the absolutely best, I think he may have said "bestest" job in the whole wide world. There was no superlative in the English language that could quite convey Ed's love for his profession. I thought to myself at the time, "Here's a man who loves what he does, but takes time to play with toys, look at the stars and the boats on the water, and read a novel. I want to be a judge like him." I had no idea at that time how much I would want to be a judge in the model of Judge Ed Jordan.

While Ed was a great lawyer, he was an outstanding judge. His 22 years of private practice gave him grounding in family law and sympathy for its practitioners. He sat in the Domestic Relations Division of the Circuit Court of Cook County, by choice, from the day he was sworn in, on August 1, 1994 until his passing. He was the embodiment of the best attributes of a judge: **intelligence, hu-**

mor, compassion, and passion for the law.

Intelligence and Humor

There was no question that Ed was smart. He was a technician of the law, a lawyers' lawyer, and a judges' judge. He reveled in the law. I recall my first lunch with Ed about a month after I was assigned to the Domestic Relations Division. I received a call from Ed. "We have to talk," he said. "I'm hearing good things about you. When can we go to lunch?" At lunch I brought up a rather esoteric question about attorneys fees that had come up in a case of mine. He discussed it with relish. He said to me at one point, "Really! Really!" Now, if you ever were on the receiving end of one of Ed's "really," you know that this could be a prefix for a compliment or a, shall we say, "friendly" critique. "I like how your mind works," he said, a high complement from the master. "Let's do this again." And so began, twelve years ago, our weekly lunches. Several years back, Judge John Carr joined our little lunch group. The three of us would sit in Ed's booth at Petterino's, and cackle and laugh and discuss and argue over points of law. Ed and John would tell jokes. I was the willing audience.

Ed was funny. While he took what he did with the utmost seriousness, he didn't take himself all that seriously. I remind all of you of his four famous rules that he taught in his IICLE trial class for family law attorneys: "Rule #1: Never make the judge cranky. Rule #2: Never ask a question unless you know the answer. Rule #3: Treat opposing counsel, the litigants and witnesses with dignity, respect and courtesy at all times. Rule #4: Don't ever forget Rule Number One! Never make the judge cranky."

Ed's Rule #3, treating everyone with dignity and respect, is reflective of the **compassion** which he brought to the bench. He understood the stresses and strains of the litigants he served and sought to treat all that came before him with patience and respect. I remember walking into Ed's courtroom, trying to extract him from the bench, and there he was, with two pro se litigants in front of him, working diligently to settle a custody matter, long after others would have thrown up their hands and given up. Ed told me that knew that his mediation intake speeches

had an effect on the listeners when he was able to move them to tears.

But of all his attributes, most importantly, Ed was a shining example of a man with a **passion for the law and a true knowledge of the laws' impact on real people.** Second only to his passion for Jackie, this was Ed's passion. He saw family law practitioners, lawyers and judges alike as having a sacred trust—to save and help families, and especially children. This is what drove Ed. It drove Ed to be a teacher and a mentor. He taught countless CLE programs for the bar, and for the judiciary, too many to list. It drove him to mentor new judges and new lawyers. Many of us here in this room benefitted from Ed's wisdom and counsel. I co-taught with Ed for the LLM program at Chicago-Kent College of Law, and saw how he tried to convey to students both the skills necessary to be an effective advocate, and his vision of the importance of what family law practitioners did for their clients. And I saw his delight when these students, and other lawyers who he considered to be his protégés, practiced before him, and made a good argument, performed an excellent cross-examination or gave a convincing closing argument.


This **passion for the law** also drove Ed to engage in bar association activities and law reform. Ed was a proud past president of the Decalogue society. He served for many years as a member of the ISBA Assembly. He also served for many years on the ISBA Family Law Section Council.

Less than a month before Ed died, I had a conversation with him about what he considered to be his legacy. We talked of many aspects of his career, including one important case he tried as a lawyer, *Bosze v. Curran*. In that case, he represented the father of a 13-year-old boy who was dying of leukemia. This boy had two twin half-brothers, three years old at the time. Ed, for the father, sought to have the mother of the twins consent to have them tested to see if they could be bone marrow donors for their dying half-brother. The mom refused. The case went to the Illinois Supreme Court, which ultimately sided with the mother. This case was truly a case of life and death, and, while the case had a sad outcome, Ed said of this case, "I put my heart and soul in it." Ed also talked about

his recent work on an amendment to the Supreme Court Rules that has resulted in expedited appeals in cases involving children.

Ed knew that what he did **mattered**. He told me how touched and moved he was by a comment that a colleague from the bar, David Hopkins, made to him. David said to Ed, "your handprints are all over Illinois family law." To Ed, this was his legacy—not the awards he has received or accolades from bench and bar, which have been many. Ed wrote these following words to his students in his trial prep class but they are applicable to Ed. Ed's (and I quote) "diligence and perseverance have resulted in the shaping of remedies for people who could not have made it without [him], and the evolution of family law into a source of hope for many." This is Ed's living legacy—and a challenge to all of us to work with diligence and perseverance to help families and to carry Ed's legacy forward.

Thank you. ■



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October

Tuesday, 10/2/12- Teleseminar—Compensation Issues in Nonprofits. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/3/12- Webcast (originally presented on July 7, 2012)—Admitting Facebook Information into Evidence. Presented by the ISBA Standing Committee on Legal Technology. 1:00-2:00.

Thursday, 10/4/12- Chicago, ISBA Chicago Regional Office—Defamation, The Play - When Cultural Biases Collide with Our Legal System. Master Series presented by the Illinois State Bar Association. 3-5.

Monday, 10/8/12- Webinar—Introduction to Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary Training and CLE Credit for ISBA Members Only. 9-10.

Monday, 10/8/12- Chicago, ISBA Chicago Regional Office—Advanced Workers' Compensation- Fall 2012. Presented by the ISBA Workers' Compensation Law Section. 9-4.

Monday, 10/8/12- Fairview Heights, Four Points Sheraton—Advanced Workers' Compensation- Fall 2012. Presented by the ISBA Workers' Compensation Law Section. 9-4.

Tuesday, 10/9/12- LIVE Studio Webcast—Are you Ready? The New Directed Trusts and Decanting Statutes. Presented by the ISBA Trust and Estates Section. 10-11:30.

Tuesday, 10/9/12- Teleseminar—Franchise Agreements: A Practical Guide to Reviewing and Negotiating. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/10/12- Webinar—Advanced Tips for Enhanced Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary Training and CLE Credit for ISBA Members Only. 9-10.

Wednesday, 10/10/12- Thursday, 10/11/12- Chicago, ISBA Chicago Region-

al Office—A Primer on Administrative Law and Rulemaking. Presented by the ISBA Administrative Law Section; co-sponsored by the ISBA Civil Practice and Procedure Section, the ISBA Real Estate Law Section and the ISBA Energy, Utilities, Transportation and Telecommunications Section. All day both days.

Friday, 10/12/12- Chicago, ISBA Chicago Regional Office—Transitions, Economics and Ethics- Ready or Not! Presented by the ISBA Senior Lawyers Section. Half Day PM program.

Friday, 10/12/12- Bloomington, Holiday Inn and Suites—Fall 2012 DUI & Traffic Law Updates. Presented by the ISBA Traffic Laws and Courts Section. 9-4.

Tuesday, 10/16/12- Teleseminar—Understanding Financial Statements for Business Lawyers, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/17/12- Teleseminar—Understanding Financial Statements for Business Lawyers, Part 2. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/17/12- Chicago, ISBA Chicago Regional Office—What Every Lawyer Should Know About Intellectual Property. Presented by the ISBA Intellectual Property Law Section. All day program.

Thursday, 10/18/12- Webcast (originally presented on August 9, 2012)—The New World of Educator Evaluations Webcast. Presented by the ISBA Education Law Section. 12-2.

Friday, 10/19/12- Chicago, ISBA Chicago Regional Office—Practical Advice for Mom and Pop Company Chapter 11s. Presented by the ISBA Commercial Banking, Collections and Bankruptcy Section. All day program.

Tuesday, 10/23/12- Teleseminar—Disclaimers Practice in Estate Planning. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/24/12- Webcast—Clients, Ethics and Negotiations. Presented by the ISBA Alternative Dispute Resolution Committee. 12-1.

Thursday, 10/25/12- Teleseminar—2012 Americans With Disabilities Act Update. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/25/12- Normal, Illinois State University- Bone Student Center- Bowling and Billiards Center Activity Room—Evidence Based Sentencing. Presented by the ISBA Committee on Corrections and Sentencing; co-sponsored by the ISBA Criminal Justice Section. All day.

Thursday, 10/25/12- Chicago, ITT Chicago-Kent College of Law—Wildlife, Renewable Energy and Climate Change: Critical Issues. Presented by the ISBA Animal Law Section and the ISBA Environmental Law Section; co-sponsored by ITT Chicago-Kent College of Law. 8:30-4.

Friday, 10/26/12- Chicago, ISBA Chicago Regional Office—Evidence Based Sentencing. Presented by the ISBA Committee on Corrections and Sentencing; co-sponsored by the ISBA Criminal Justice Section. All day.

Friday, 10/26/12- Bloomington, Bloomington Police Department-Osborn Room—Pro Bono Potpourri. Presented by the ISBA Delivery of Legal Services. 8:45-4:30

Monday, 10/29/12- Webinar—Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association- Complimentary Training and CLE Credit for ISBA Members Only. 9-10.

Tuesday, 10/30/12- Teleseminar—Ethics in Claims and Settlements: Frivolous Claims, Ghostwriting Pleadings, Settlement Authority and More. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/31/12- Webcast (originally presented May 31, 2012)—Improving your Skills as an Effective Communicator Webcast. Presented by the ISBA. 12-12:50. ■

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