LOS ANGELES
Daily Journal
www.dailyjournal.com
TUESDAY, DECEMBER 2, 2014

LETTER TO THE EDITOR

No one benefits from making the bar look bad

By Timothy D. Reuben

Typically a plaintiff's lawyer in a wrongful termination lawsuit does not publish articles arguing his case to the public. But that is what Mark Geragos did in the Nov. 21 edition of the Daily Journal. ["What's really going on at the bar"]. What could his purpose be? There is no motion to win or verdict to obtain, nor is Geragos arguing to a mediator a settlement value. And there is no current election scheduled amongst California lawyers. Apparently Geragos' lawsuit on behalf of Sen. Joe Dunn (Ret.), former executive director of the State Bar of California, was just recently filed and presumably no discovery has even begun.

So what is Geragos' goal for his client? He certainly can't win anything by publishing an opinion piece. Could he be trying to shame the Board of Trustees to offering Dunn his job back? That would seem unlikely since the lawsuit and the article would probably have the opposite result, and one would guess that the trustees' reaction is that if this is what Dunn is doing, then they made the correct decision to let him go.

Indeed, there would appear to be no litigation-related purpose for Geragos to plead his case to the California legal community. Rather, the lawsuit and the article seem to be a public relations stunt — an effort to embarrass the trustees and somehow to whitewash the now-terminated Dunn. That may somehow serve both Geragos and Dunn, but it does a great disservice to the California legal community.

The State Bar of California is the largest mandatory bar in the nation. It has as its mandate both the oversight of the legal community and the promotion of justice throughout California and indeed the nation. There is no particular benefit to lawyers, the judiciary, or the public to make the bar look bad.

That is not to say that the bar should not be subject to appropriate criticism and public comment. But Dunn was its executive director — the man in the best position to address the bar's issues. Presumably he was hired to lead the bar into a new era, to improve its image and operation. While what occurred internally is certainly not clear, experience tells us that a new leader's efforts are sometimes resisted and even undermined by long term and entrenched senior executives who don't want change, and perhaps this is what happened to Dunn.

Indeed, according to Geragos, a whistleblower complaint was made against Dunn by chief trial counsel Jayne Kim. But based on reports, Dunn's own complaint alleges that he was fired for sending his own whistleblower complaint against Kim to the bar. What business does the executive director have sending a whistleblower claim? What kind of ridiculous nonsense is that? As executive director, he is the very person that a whistle is supposed to be blown at!

Dunn is supposed to work within the institution and root out issues, solve problems, and take appropriate action. If he surreptitiously sent a whistleblower claim to himself and the board as a way to attack those opposing his positions at the bar, that type of gamesmanship is totally inappropriate. And it is not whether he had the right to do such a thing — it is that he should not have done so. Such a tactic only creates rancor and disruption and is definitely not the way to lead. But then to sue over his termination and widely publicize it — that seems a purely personal and vindictive act, not in the interest of lawyers or the bar which Dunn claims he cared about and was trying to improve and lead.

The trustees have not communicated their reasons for terminating Dunn, but reports suggest that the termination may have been based on an investigation performed by Munger Tolls & Olson LLP, who was hired by the bar. On that topic, there are also some interesting admissions in Geragos' article. He makes much of a Munger Tolles' $ 300,000 bill and suggests that because the investigation revealed "only" $10,000 worth of inappropriate expenses, the investigation was therefore not worth the expense. $10,000! That is not nothing. The amount of the Munger Tolles' bill is not the issue — perhaps it was reasonable and perhaps not, but that has nothing to do with the significance of its results.

By focusing on the cost, Geragos tries an old tactic of changing the topic to distract from what is not in his client's interest. But the real issue is that the investigation apparently found that Dunn took $10,000 from the bar that he should not have taken. We put people in jail for stealing that kind of money. If nothing else, the expense issue suggests very poor judgment on the part of the executive director, who is leading an organization that enforces ethical duties. Anyone who obtains reimbursement from a law firm of $10,000 in expenses not properly reimbursable would typically be fired.

Then there is the issue of misreporting the positions of the Chief Justice. Geragos claims that "given the multiple conversations among different people, there was confusion about exactly what was said at different times." Come on. We call this an admission against interest, and also another old litigation tactic — "I just did not clearly understand your Honor's order — I was confused." This alleged confusion is not credible. And it does not usually work with most judges. Simply put, if Dunn was confused by the Chief Justice, he should have indicated as much to the board and gone back to the Chief Justice to clarify. It seems he did not do so, so one must ask why.

Geragos' basic theme is that $50 million dollars was lost because the board opposed selling the San Francisco office building. But actually, nothing was lost — the bar still owns the building and the value still exists. Real estate is appreciating these days — perhaps more can be realized next year if selling is the direction the bar wishes to go. And obviously there are and will continue to be differing opinions on such things as the sale, where the bar should be located and other issues. That boards of trustees and bar associations move slowly and deliberately in making these decisions is not a bad thing.

The saddest aspect of this messy and very public dispute is that it hurts all members of the bar. It hurts our profession. That is not what a past executive director and California state senator and a lawyer should do. Even if he can. It is all just a shame.

Timothy D. Reuben *is the founder and managing principal of Reuben Raucher & Blum, a litigation boutique located in Westwood. He handles matters at both the trial and appellate level and in arbitration and specializes in complex matters including real estate, intellectual property, employment, unfair competition, and related business disputes. He currently serves on the Board of Public Counsel and also as a fee arbitrator for the LA County Bar. He is a past member the California State Bar Committee on Administration of Justice and past President of the SoCal Business Litigation Inn of Court. He can be reached at treuben@rrbattorneys.com.*