



If I Am Winning, Why Do I Have Fewer Chips?

By Edwin B. Reeser

Additional pressure arises because Mary has to decide what to do, and decide fast, or sit tight another year. That is because the firm only credits departing partners with draws received to the date of departure. A 55 percent draw on \$750,000, less monthly costs, is \$32,375 per month. Every month she waits costs her \$28,125 in lost income, which is hoped to be received in the following January from the year end distribution (less the principal paydown on the capital loan due the bank and the contribution to the 401k retirement plan).

Even more pressure is brought by the need to make quarterly installments of federal and state estimated taxes, which for Mary are roughly \$56,250 or \$18,750 monthly, leaving her \$13,625 per month. She and her husband bought a new home with a \$900,000 mortgage at 6 percent on a \$1.5 million property in 2006 when life was "good," so after \$5,400 in mortgage, \$1,000 in insurance and \$1,500 in real property taxes each month, she is down to \$5,725 to cover all living expenses for the family.

THIRD IN A FIVE PART SERIES

This series explores some of the current illusions and realities of partner capital and capital accounts treatment in some large law firms. It is intended to be illustrative of issues and does not present the profile of any specific individual firm, past or present.

Mary has gotten used to having a personal line of credit to cover those shortfalls in her living expense requirements, which she pays off every January with some of the net proceeds from the year end distribution. It typically runs up to about \$50,000 or \$60,000 per year. She took out a home equity line mortgage last year for \$100,000 to pay off the credit line and get a little extra cash.

Now, this is not to demonstrate that we should all lose sleep or shed tears for Mary's situation, but simply to illustrate that there may not be as much freedom of choice in making the decision as one would initially surmise for a "successful" partner in a large law firm. As the year goes by, the economics make a departure in the second half of the year simply unthinkable.

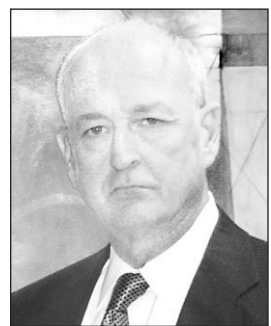
So, what if Mary stays and the firm fails? She likely will not get any capital back, and she will still owe the bank \$143,760. There may or may not be additional liabilities. Equity partners have personal recourse risk if there is a bankruptcy, where the facts and law support a creditor clawback of distributions made to all or some of the partners in the period before the bankruptcy. But if the firm survives, she will pay down that loan balance another \$60,000 or so over a couple of years, the economy should recover, the firm will do better as should she — and maybe things will work out. If she goes to another "peer group" firm like the one she is leaving, for all practical purposes the survival prospects may not be any better, and she will be increasing her capital at risk for the next two to three years.

Mary is struggling with the unknown of what is happening in her own firm, the inertia associated with a decision of this type and feeling that she is perhaps hostage to her own capital invested in the firm.

With an "aspirational" forecast of income by the managing partner at this year's annual retreat that is meaningfully higher than last year and an official message of supreme confidence in the future of the firm, things should be better. Except for that little problem with getting those rate increases and what it may do to her client roster. How does Mary weigh those two factors against each other? After all, it seems like notable law firm failures recently were all preceded with strong future forecasts of income and supreme confidence in the future — except they didn't happen that way.

Mary is struggling with the unknown of what is happening in her own firm, the inertia associated with a decision of this type and feeling that she is perhaps hostage to her own capital invested in the firm. The fact is that while she feels she has done everything that has been asked of her and more than carried her share of the burden, she is much worse off financially than she was five years ago. Her debt is higher, her capital investment at risk is greater, her monthly distributable income is lower, her departure costs are greater, the firm culture is frayed, her client roster is at risk, her options for increasing her contribution to secure greater or even the same income seem to be diminishing and the announced direction of the firm is not one that necessarily must include her any longer. In fact, the only way to fulfill the strategic plan is to laterally acquire significant numbers of high priced partners, putting the future of the firm into the hands of people that are not even known yet.

This is the part that Mary sees from her perspective and information directly available to her. Next, we will look at the mechanics of how partner capital is handled by the firm itself, something that is not discussed openly or known to Mary or to most of the partners in the firm. If Mary thought her situation was anxiety provoking before, what will follow is going to bring home a new reality.



Edwin B. Reeser is a business lawyer in Pasadena specializing in structuring, negotiating and documenting complex real estate and business transactions for international and domestic corporations and individuals. He has served on the executive committees and as an office managing partner of firms ranging from 25 to over 800 lawyers in size.

'True Retainer' Deal Leaves Law Unsettled

Dispute settled over \$1 million fee paid by Phil Spector to Robert L. Shapiro before trial.

By Ciaran McEvoy
Daily Journal Staff Writer

LOS ANGELES — A long-running fee dispute brought by music producer and convicted murderer Phil Spector against his ex-lawyer Robert L. Shapiro settled last week on the eve of trial.

With the confidential settlement, a chance may have passed for California courts to clarify the meaning of a "true retainer."

Had the case gone to trial, it likely would have centered on such a retainer — where an attorney charges a fee solely for availability over a period of time, not for actual legal services rendered. When an attorney's services are needed later, they are billed and paid for separately.

When Spector was arrested on suspicion of murdering actress Lana Clarkson on Feb. 3, 2003, he hired Shapiro, who charged him \$1 million. Shapiro claimed that fee was a non-refundable true retainer and that he had turned down Robert Blake's and Scott Peterson's requests to represent them at their murder trials to focus exclusively on the Spector case. Shapiro deposited the money in his personal bank account, according to briefs filed by Spector's lawyers.

In January 2004, Spector fired Shapiro, "after almost a year of being ignored by Shapiro and constantly being told he was out of the country, in court or otherwise not available to speak to him," court papers state. He later sued for a refund of the \$1 million fee.

The lawsuit settled Thursday in the courtroom of Los Angeles County Superior Court Judge Peter D. Lichtman Jr., according to Spector's lawyer Michael D. Dempsey of Dempsey & Johnson P.C. The terms of the settlement are confidential.

"It's a resolution and that's about it," said Joel N. Klevens of Glaser, Weil, Fink, Jacobs, Howard & Shapiro LLP, one of Shapiro's attorneys, when contacted Friday. Glaser Weil also was a defendant in the suit.



Record producer Phil Spector, left, with his attorney Robert L. Shapiro

Once common, true retainers are a rarity today.

"It would be good to clear this up in the future because I found many of my colleagues didn't know what it was," Shapiro said in an interview last week.

fund money advanced by a client but not earned by the lawyer. Legal ethics officials are concerned that attorneys will double-bill their clients or charge a true retainer then do no work on the client's behalf, experts said.

"The [State] Bar is very cautious about saying whether true retainers are ethically proper," said Gregory

'It would be good to clear this up in the future because I found many of my colleagues didn't know what it was.'

— Robert L. Shapiro

The overlay between contract law and legal ethics rules has led to some confusion among legal practitioners, experts said.

"An amazing number of lawyers do not understand the law of fees," Dempsey said.

California's Rules of Professional Conduct require attorneys to re-

L. Ogden, a professor at Pepperdine University School of Law.

Sometimes clients in expensive family law cases will pay true retainers as a tactical move to block their estranged spouses from hiring an opposing counsel.

In criminal law, defense attorneys often demand large payments

up front because of concerns prosecutors could seize a client's assets early in a case.

"If you don't get the money up front you'll never get the money from the client," Ogden said.

That may have been Shapiro's reasoning behind charging the well-known music producer such a fee up front.

Shapiro argued he quickly hired a team of high-profile experts including Drs. Henry Lee and Michael Baden, who assisted in Spector's defense.

In 2005, Spector dropped his initial lawsuit against Shapiro without prejudice and then re-filed his complaint two years later. *Spector v. Shapiro*, BC382572 (L.A. Super. Ct., filed Dec. 19, 2007)

After his first murder trial ended with a hung jury, Spector was retried and convicted of Clarkson's murder in 2009 and was sentenced to 19 years to life in state prison. He is appealing his conviction.

ciarancmcevoy@dailyjournal.com

The Play's the Thing

Continued from page 1

tem? But giving out "Oscars" would be so...so derivative. Instead, the winners would receive an "Oliver."

I devised a list of categories eligible for awards: a dramatic role for trial lawyers (I rejected creating an award for best comedy judge and lawyer for obvious reasons, though I had some candidates in mind); supporting roles for law firm associates and judicial research attorneys; behind-the-scenes roles for secretaries, assistants and paralegals; writing awards for briefs (comparable to original screenplays) and judicial opinions (comparable to screenplays adopted from another source).

And then I became stymied for the award that would parallel "Best Picture." Pardon my bias, but I wanted this award to reflect some great spectacle in the judiciary. I needed something that contained drama, conflict and tension — something like *The Social Network*. I was at a loss. *The Fighter* had no appropriate counterpart in the court system, and I was ready to throw in the towel. (Sorry.) And then I found a way to solve my dilemma. It was in the very opera I was attending, *Il Turco in Italia*.

The opera involves a playwright who is looking for ideas for his next comedy. Only he cannot come up with something that is original or novel. He visits a gypsy camp where he hopes to find material and inspiration. He watches a drama unfold, which becomes his play, much like my writing about the lady in the men's room. We need not repeat here the events in the opera because they involve multiple love affairs, a Turkish prince, his slave paramour, an unfaithful wife and mistaken identities. I cannot speak for the legal profession, but the plot of the opera bears no resemblance to the California judiciary...as far as I can determine.

I decided to use the device of the playwright in the opera to find material for my column. I would simply write about dramatic events unfolding in the judiciary. From this I might get a handle on what would qualify for the counterpart of "Best Picture" in the Academy Awards. The



Arthur Gilbert is a presiding justice of the 2nd District Court of Appeal, Division 6. His previous columns are available on www.dailyjournal.com and gilbertsubmits.blogspot.com.

King's Speech was a wonderful movie, certainly deserving an Oscar, but my choice was *The Social Network*. But what in the judiciary could be comparable to the tension, the animosity, recriminations and rancor involving a billion dollar company?

I was ready to exit center stage (better than a boxing metaphor here) when it hit me like a perfect high C. It was right in front of my face — the drama involving the Court Case Management System (CCMS) alleged to cost \$2 billion or more. The state auditor had sharply criticized the management of the project and the oversight of its costs. Some legislators and judges were appalled by the way the project was handled, and a number of judges called for abolishment of the entire project. Even Justice Terry Bruiniers, Chair of the Judicial Council's CCMS Executive Committee, appeared to agree with most of the auditor's critiques. But he and others have taken strong positions against abandoning the project.

Shortly after the auditor's scathing report, the Judicial Council received a cost benefit analysis from a prestigious audit tax firm that concluded the "statewide case management system...has an essential role in the operation of our state justice system" and, when in operation, will save the state \$300 million a year.

A recent epistolary exchange between Justice Bruiniers and Los Angeles Superior Court Judge J. Stephen Czuleger highlighted great differences in perception about the manner in which the project was presented to judges statewide and to the Legislature. Some judges in those courts where a version of CCMS (V-3 the civil module) was implemented think it is wonderful. Others tell me it is a failure.

The playwright in *Il Turco in Italia* finds a happy ending to his play. The wayward wife decides it is more prudent to be more conservative and stay home with her husband and gives up her two lovers, one of whom is the Turk. The Turk settles down with the woman he truly loves, a slave from his harem, and the wife's other lover

repents and gains forgiveness from her husband.

But I am facing an obstacle. There is not as yet an ending to the CCMS drama, let alone a happy one. Is there a way to bring this drama to a happy ending? Perhaps we all can agree that a statewide case management system that works will be beneficial and efficiently improve the administration of justice. But a good ending for this drama lies in the answers to some questions. Is CCMS worth the cost? If so, how do we pay for it when the judiciary's budget may be cut by \$200 million? If we halt the project now, will we lose the investment we have made to date if we resume the project in the future?

The AOC just answered this question in minutes of its last meeting. Cancelling the program will result in an unrecoverable loss of 270.5 million already spent on the development of CCMS-V4. With that good news in mind, how does the judiciary decide its spending priorities with a drastically reduced budget? The playwright in *Il Turco in Italia* intervened on occasion to prod the characters in certain directions to achieve a good ending. I too wish to nudge us in a direction toward a satisfactory ending for our drama. I suggest an approach that reflects a paramount value: all players in our drama, the judges, lawyers, and administrators throughout the state, whatever their opinions about CCMS, unite in support of our highest priority — keep the courts open.

To close the courtroom in the middle of a trial and tell litigants they must go home and come back in two days because we have other things to pay for is not a good ending to our drama. It is disheartening to the judges and court staff who have devoted themselves to the cause of justice. And it is most unfair to the public who trusts us and depends on us to resolve their disputes.

Keeping our values straight will provide a good ending to our drama. And the award, the coveted Oliver, will go to those who sacrifice to make this ending possible.

CALIFORNIA'S BEST SOURCE FOR DAILY LEGAL NEWS

Keeping up-to-date on the courts, legal matters, government actions and business can pay off in time, opportunities and even money. Get your own copy of the Daily Journal.

CLIENT SERVICES >> 866 / 531-1492

