



In Their Own Words..... Interviews with the Judiciary

An Interview With the Honorable Martin Colin, 15th Judicial Circuit

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On October 1, 2007 I sat down for lunch with The Honorable Martin Colin, Circuit Judge in the Fifteenth Judicial Circuit (Palm Beach County). Judge Colin came to Florida from the State of New Jersey after graduating from Rutgers Law School in 1974. He spent the next 31 years as a trial lawyer, garnering extensive experience in both criminal and family division. Judge Colin was elected to the Judiciary in 2004. Our luncheon provided me with an opportunity to discuss with Judge Colin his views on litigating family law cases. His comments were so insightful and his observations so valuable that I felt they deserved to be shared with the readers of this publication.

I began our conversation by asking Judge Colin what he feels his role is in the courtroom. Here is his response:

In that family law matters are held nonjury my obvious role is to be the trier of fact and apply the law on each issue that is presented to me. I consider myself not to be an advocate on the bench, which of course is the responsibility of the two lawyers appearing before me, but many times it is necessary to be an activist in the pursuit of the true facts and their application to the law. I will inquire of lawyers to have them articulate their specific position. I will ask questions if I feel that I do not have enough evidence to make an informed decision. Normally I request permission of counsel if I can ask questions of a particular witness in order to fully understand

an issue. On occasion if a party is not represented by an attorney I may suggest to them to refer to a particular statute and consider its import in connection with evidence that they would like to present to the court.

In family law, decisions are better made when the court has sufficient evidence to properly apply the law so to give the parties a fair disposition.

What recommendations would you have for counsel who are appearing before you to be the most effective in their presentation?

One of the most important aspects for a lawyer in the presentation of his case is to be intimately familiar with its factual background. I recommend that any attorney who is presenting a case in front of me to be completely conversant with all of the pleadings and the remainder of the court file before coming into the courtroom. Many times counsel are requesting relief, which there is no basis for since it was not set forth in any of the pleadings. In some instances I have been confronted with the circumstance where attorneys have actually requested relief, which they were already entitled to under an existing agreement or order and they would have known that if they had just bothered to reread the pleadings.

Counsel should in opening statement outline what specific relief is being sought and the authority to obtain such relief. Counsel should be clear as to the burden of proof that is necessary in order to prove or disprove any component of their case. One of the critical elements of any case is an effective cross examination. It is extremely important to be well prepared for the cross examination of a witness and if a deposition was previously taken of that witness, to know how to use the deposition for impeachment purposes

How do you address temporary relief hearings and what do you

believe to be an effective presentation?

Temporary relief hearings are a half hour and are set usually within 7 to 10 days. However, if counsel requests an additional half hour, I usually can accommodate that request. If the primary area to be addressed in temporary relief relates to economic issues the most effective and efficient use of time is for counsel to use their respective forensic accountants if they have been employed, to testify on financial matters.

With regard to the issue of exclusive use of the marital residence, how do you address which party gets to stay in the house?

It is generally my belief that if the parties can economically afford to live separate and apart, it is a good idea and avoids domestic violence and conflict in the home. The goal is for the children to remain in the house and I then make a determination as to which parent ought to be the temporary custodial parent.

Since there is no partial equitable distribution on a temporary basis how do you protect one spouse from the other spouse potentially dissipating assets?

The current state of law is that court's do not make temporary or partial equitable distribution before final hearing. However, if there is evidence of dissipation I can have assets moved so that they are under different parties control. In other words, take for example a situation where the husband is in control of 3 million dollars. I may have half of that placed under the control of the wife, if I believe that the husband may dissipate all of those assets. That does not mean that I am giving her that money, but only the custody of the money pending final hearing.

What is your view on the issue of alimony at the present time?

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One of the most difficult issues that I am often faced with in regard to alimony is that there are really only 3 options of alimony on a periodic basis putting aside lump sum. That being bridge the gap alimony, rehabilitative alimony and permanent alimony. Bridge the gap is limited to a short term not to exceed 3 to 5 years by case law. Rehabilitative plan is generally of a similar length of time, which usually does not exceed 3 to 5 years leaving only permanent alimony. In some cases, selection of one of these 3 types of alimony may not appear most appropriate especially in the instance of a younger healthy woman in a gray area or longer length of marriage women where permanent alimony may not be desirable, but she certainly would be entitled to alimony for more than a few years. One suggestion is what it is being done in California, which is courts are awarding alimony on a periodic basis more reliant upon the number of years of marriage.

Do you like to receive in advance proposed temporary relief order or proposed final judgments?

It is my preference not to have a proposed temporary relief order or a proposed final judgment. I take detailed notes throughout the course of the case and generally like to articulate orally what my findings and conclusions of law are and then have one lawyer draft and exchange it between the other lawyer before submitting it to the court.

Is it your preference to have memorandum of law?

No, memorandum of law often become position papers and are filled with facts, which I already would be familiar with and in some instances were not even presented in evidence. I find the most effective case law presentation is to give me one or two cases relevant to a particular legal issue and have the salient points highlighted.

Do you believe it is helpful to have client's attending all of the hearings?

There is no question that for a major hearing it is appropriate to have your client present. Also while it is not necessary it is often helpful to have your client present for uniform motion calendar hearings because it helps the client understand the process that is going on.

With regard to attorney's fees on a temporary basis, do you award fees that cover the length through trial?

Normally I will award attorney's fees up and through the time of trial at the temporary relief hearing so as to avoid continued or multiple fee hearings. Recently I found it helpful if one spouse is in control of the money to have that spouse pay for the fees of the other spouse in a similar amount to which they are incurring fees.

What have you been doing that has assisted in resolving disputes between two parents who are having difficulties in connection with visitation and/or having difficulties in communicating with regard to their minor children?

When two parents are having difficulties communicating I find that one of the best ways to resolve that problem is through the internet and emailing. The parties can communicate through email and put their communications in writing. That way there is a record as to what is going on and each party is aware that if they are inappropriate in their email communications that it can be presented to the court. That will cause parties who are in high conflict cases to be more considerate of what they are saying.

What do you find that is most often overlooked in the courtroom

setting?

I find that often the rules of evidence are overlooked. The lawyers should have the rules of evidence in front of them at the time of trial in order to articulate a clear basis as to why an objection is being made or why certain evidence should be excluded. Often objections are made without good legal basis. Moreover, often times witnesses are allowed to testify about matters that are clearly inadmissible, while the opposing lawyer does not properly object. I recommend to all lawyers before me to be familiar with the rules of evidence.