The Most Oppressive Motion Ever Presented to a Superior Court

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Local rules in many California jurisdictions place limits on the number of documents that can be filed and page limits for certain law and motion matters. In fact, Black's law dictionary defines a legal brief as a "condensed statement . . . of some larger document, or of a series of papers, facts and circumstances or propositions." Recently, however, the attorneys in an employment law dispute ignored these principles and an Appellate Court castigated a trial judge for allowing the attorneys to do so.

Nazir v. United Air Lines (2009) was a garden variety wrongful termination case where the attorneys for United filed a motion for summary judgment seeking adjudication of 44 issues, filed a separate statement in support of the motion that was 196 pages long, setting forth hundreds of facts, many of them immaterial (as conceded by defendant's own papers). The moving papers concluded with a request for judicial notice of 174 pages. All in, defendant's moving papers totaled 1,056 pages.

As if that were not enough, the opposition was almost 3 times as long, including a 1,894 page separate statement of allegedly disputed material facts. Not to be out done, defendant's reply papers included a 297 "reply separate statement" and 153 pages of "exhibits and evidence in support of defendant's reply". The reply culminated with 324 pages of evidentiary objections consisting of 764 specific objections. In all, the defendant filed 1,150 pages of reply. When added together, 5,415 pages of material in an otherwise standard employment dispute were before the trial court. At the hearing, the trial court judge proceeded to overrule 47 of plaintiff's evidentiary objections, yet simultaneously sustained 763 out of 764 of defendant's evidentiary objections and granted the motion. Plaintiff understandably appealed.

One can imagine the sheer magnitude of the documents designated in the record on appeal, all of which the appellate judges were obligated to read and analyze. This might explain the negative tone of the opinion and the resulting criticism of the lawyers and judge involved. The Court of Appeal described this motion as the "most oppressive motion ever presented to a superior court". Although the Court of Appeal admonished the lawyers for filing defective, bloated, excessive, and inappropriate briefs, the thrust of the criticism was directed to the trial judge, who had the inherent power to control what is filed in his or her courtroom and was castigated for failing to use it and for failing to even read the moving and opposing papers. "While not reading the papers cannot be condoned, it can perhaps be understood, as we hesitate to speculate how long it would take a trial court to meaningfully digest over 2,200 pages of separate statements, analyze and rule on 764 objections, set out in 325 pages, review it all in light of the applicable law, and then write a proper order. The incredible volume of material here simply has no place in a system where over burdened trial courts labor long and hard", wrote the Court of Appeal. Ultimately, the Court of Appeal granted the motion in part, denied it in part and remanded the case back to the trial judge for trial. The most oppressive motion ever presented to a superior court resolved only a fraction of the case. Plaintiff was awarded costs on appeal.

Matthew J. Trostler is a Partner in the Los Angeles office of Borton Petrini, LLP. He received his undergraduate degree from the University of Southern California earning a major in psychology and a minor in English, with an emphasis in expository writing. He earned his Juris Doctorate from California Western School of Law in 1991 where he was a contributing editor for the law school newspaper.

Matthew's primary area of emphasis at Borton Petrini, LLP is insurance defense. His wide-ranging experience in the field of insurance has provided additional insight to insurance carriers through seminars defining and discussing insurer regulations in California.

Matthew has significant experience in arbitrations, mediations and jury trials. Some of his verdicts have been published statewide and nationally. His aggressive applicational style is tempered by his sense of fairness and compassion.

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