

We're looking for 2 new team members! [See page 3 for details]



Arlene L. Kasarjian
alk@kongreen.com
ext.228

When it Comes to Your Child, You Can Fight the System, and Win

From time to time, tragic stories about children suffering neglect and/or abuse at the hands of their parents make the front page of the newspaper or headline news on TV. The Department of Children and Families (DCF) is the Massachusetts agency charged with the responsibility of protecting children from abuse and neglect. In conjunction with this responsibility comes the power to investigate allegations of neglect and abuse of children by their caretakers or parents, and to seek, by court order, the authority to remove children from the care and custody of their parents and place them in foster care.

While DCF does important and valuable work, it unquestionably makes its share of mistakes. Would you know what to do or where to turn if an anonymous report of abuse or neglect of your children was filed against you? Even worse, what if DCF filed a petition in court alleging your unfitness to care for your children? Parents confront this nightmare every day in the Commonwealth of Massachusetts.

I have firsthand experience with DCF, having represented DCF in child custody cases for many years in Boston. Recently, I was able to utilize my experience to help a mother regain custody of her daughter, who had been placed in foster care, after a ten year battle with DCF. When I became involved, the child had been out of her mother's care for over five years and DCF was making plans to find a long-term guardian, rather than reunite my client with her daughter. Despite an established bond between my client and her daughter, and my client's willingness to comply with everything asked of her, DCF portrayed my client as incapable of meeting the emotional and physical needs of her daughter.

The reality was DCF never gave her a chance to show that she was fit to parent her daughter and capable of meeting her daughter's needs. I challenged DCF's outrageous conduct and petitioned the court for review of the case. Ultimately, with a concrete plan in place, my client proved the naysayers wrong. Her daughter returned home with the blessing of DCF and the case was dismissed from court.

LATEST NEWS

On April 2, 2011, Arlene Kasarjian will be presenting a workshop on Estate Planning for Adoptive Families at the 38th Annual New England Adoption Conference sponsored by the Adoption Community of New England (ACONE).

Arlene recently spoke at Resolve of New England's annual Fertility Treatment, Donor Choices and Adoption Conference. She presented a workshop on the Legal Strategies in Domestic Adoption.

Arlene was recently appointed to the board of the Westwood Youth and Family Services, in Westwood, MA.

Konowitz & Greenberg
Attorneys at Law, P.C.

20 William Street, Suite 320
Wellesley Office Park
Wellesley Hills, MA 02481

tel 781-237-0033
fax 781-235-2755

www.kongreen.com

Volume 4 | Issue 1 IN THIS ISSUE:

- When it Comes to Your Child, You Can Fight the System, and Win 1
- Just Because You are a Guard, Does Not Mean You are a Point Guard! 2
- Mistaking Your Attorney for Your Hairdresser! 2
- How to Know if You Have Been Constructively Terminated 3
- Check Twice Before You Send: New Discoveries Regarding the Perils of "Reply All" 4
- New Homestead Law is Welcome Change to Homeowners 4



Steven S. Konowitz
ssk@kongreen.com
ext.236

Just Because You are a Guard, Does Not Mean You are a Point Guard!

Recently, I had a long-standing client call me to say that he did not need legal advice, but rather “counseling advice.” His call made me realize that a good attorney’s true value lies in not just knowing the law—all lawyers should know the law—but rather in being a listener and a mentor.

How does an attorney become the client’s trusted advisor? The term “trusted advisor” is fiendishly hard to define, but it seems to boil down to one essential component: giving priority to the client’s best interests and being fully invested in business practices that put those interests first. It means having the business acumen, experience, training, knowledge and subject matter expertise to be trusted to advise the clients well, and taking the time a client needs to be able to do so. A trusted advisor has the ability to diagnose the client’s business problems and challenges and then to make the right recommendations to improve their situation; to act as a change agent to build the case for change and to manage the politics of change within the client’s organization; and to ensure the client achieves the outcomes that you have represented.

By being totally involved with my clients, I am able to coordinate with their team of trusted advisors. These services, again, are not just legal services, but also include skillfully coordinating the communication and collaboration among each of these professionals, resulting in a unified approach to the client’s issues.

The truth is that we all need trusted advisors. We cannot be experts in everything. Any good trusted advisor will assist with five key tasks. They will:

- Educate with relevant and timely information
- Provide objectivity in evaluating the current situation
- Seek to understand the client’s goals and why they are important to the client
- Suggest several possible strategies for achieving the client’s goals
- Use their expertise and network of contacts to help the client accomplish their goals in the quickest, most economical way possible

There are many guards, but very few point guards!



Karen K. Greenberg
kkg@kongreen.com
ext.235

Mistaking Your Attorney for Your Hairdresser!

Please do not permit your attorney to cut your hair, and likewise, under no circumstances allow your hairdresser to be your attorney.

In keeping with my theme of the many costs of divorce, not listening to your attorney can be extremely hazardous to your wallet and your case. Anticipated outcomes grounded in the experience of another will simply lead to frustration and unrealistic expectations. Contrary to divorce legend, no case is the same as any other. Emotional aspects, child related issues and habits systemic to the relationship should not be treated in a cookie cutter fashion and given short shrift.

One of the most challenging aspects of divorce, for both the client and the attorney, is for the client to leave preconceived notions at the gate of the former marital home. Likewise, clinging to what is assumed to be “fair” is just as great an obstruction.

We at *Konowitz & Greenberg* work hard at educating our divorce clients throughout our representation of them, beginning with what we call the “Game Plan Letter.” The Game Plan Letter is specifically tailored to each client’s needs, concerns and specific issues in their domestic relations matter and sets forth certain plans, goals and expectations. Shortly after receiving the Game Plan Letter, the client meets with the attorney to review and discuss the letter in detail and help the client establish realistic expectations and goals.

Understandably, it can be difficult for clients to let go of what if’s and improbable outcomes in the midst of a divorce, particularly given the emotional, and often physical, chaos they are going through. That is why, at *Konowitz & Greenberg*, we routinely have “reality checks” with our clients. Reality checks are scheduled as often as required, based upon the needs and overall well-being of the client. Some clients have told me it is similar to being taken to the woodshed. We, on the other hand, view it as watching out for a best friend. Have high expectations, but listen to your new best friend.



Mia Rosenblatt
Tinkjian
mrt@kongreen.com
ext.226

How to Know if You Have Been Constructively Terminated

Constructive Termination occurs when an employer renders an employee’s working conditions so difficult and intolerable that a reasonable person would feel forced to resign.

An employee that has been constructively terminated may be entitled to recover lost wages and other damages suffered as a result of the termination. In determining whether an employee has been constructively terminated, a number of important questions must be answered.

First, is the employee an employee-at-will or a contractual employee? While either type of employee may be constructively terminated, the standards for establishing constructive termination are very different.

An employee-at-will may be terminated for any reason, or no reason at all—directly or constructively—provided that the termination does not implicate public policy concerns. Contract employees are employees who, among other things, have a written employment contract. However, the mere fact that an employee has a written employment contract does not mean that he or she is a contract employee. The critical aspect of the relationship between employer and employee that distinguishes at-will employment from tenured employment is not the existence of a written employment contract. Instead, it is the establishment of a definite term of employment.

Under Massachusetts law, as in many other states, a contractual employee may pursue a claim for breach of contract, while at-will employees may only pursue a claim for wrongful termination. The requirements to prove wrongful termination in such a case are twofold:

- First, prove that the employer’s decision to constructively terminate his employment was motivated by bad faith, malice, or retaliation; and
- Next, show that the employee was constructively discharged because they performed an act that public policy would encourage, or refused to perform an act that public policy would condemn.

Constructive termination occurs most often with contract employees, typically employees in executive and/or managerial positions. Most cases finding that an executive has been constructively discharged involve express employment contracts and a material breach by the employer not contemplated by the agreement that is so important it makes continued performance seemingly pointless. Thus, courts

have found constructive discharge if the employer effectively gave the employee’s job to someone else, transferred the employee’s responsibilities leaving him without any authority, or reassigned the employee to a nonexistent job. The case law does not prohibit justifiable reduction in rank or material change in duties. If the employee is not performing his or her duties effectively, for example, these changes may be appropriate.

WE’RE LOOKING FOR 2 NEW TEAM MEMBERS!

As much as we prefer to be the ones giving help, we’re fortunate to be in a position where we’d like to ask you to help us!

We are looking for an ATTORNEY who is:

- Bringing a book of business and is eager to develop more
- Clever and intuitive
- Outgoing and caring
- An expert in a particular area of the law, yet interested in supporting other areas
- Attentive to detail
- A true team player

We are looking for a LEGAL ASSISTANT/PARALEGAL who is:

- Experienced (2+ years) in a law office or corporate legal environment
- An intuitive self-starter
- Able to multi-task
- Experienced in litigation and/or corporate work (a must)
- Attentive to detail
- A true team player

Konowitz & Greenberg is:

- Active in the practice of business law, litigation, family law and trusts & estates
- Recognized for what we do best: collaborating as a team to provide exceptional client service
- Passionate about delivering outstanding results
- Obsessed with preparation, believing it’s only when you think you are prepared that you can start to prepare
- Focused on solving problems for our clients
- Committed to creating an upbeat and spirited workplace

If you know of someone who is ready to think in terms of WE, please contact our Office Manager, Ellen O’Hare, at 781-237-0033 x237. WE need to meet them!



Brad A. Compston
bac@kongreen.com
ext.225

Check Twice Before You Send: New Discoveries Regarding the Perils of “Reply All”

The legal obligations placed on both businesses and individuals are constantly changing. These changes come from obvious sources such as new laws enacted by legislatures and decisions by courts modifying common law principles. A good example is the Massachusetts Supreme Judicial Court’s decision last year modifying the duties of land owners with respect to snow and ice removal. Changes can also result from less obvious sources; for example changes to the rules of civil procedure with respect to discovery of electronic evidence adopted by the federal court and many state courts.

These changes are driven by many factors, including changes in technology and in the experience and knowledge of the general public. *Konowitz & Greenberg* was recently involved in a case in the Massachusetts Superior Court that illustrates how these changes can occur. In that case, the attorney for the opposing party in a case sent an e-mail to *Konowitz & Greenberg* and blind copied his client on the e-mail. The client then responded to his attorney’s e-mail—with a response that included arguably damaging admissions—and inadvertently copied *Konowitz & Greenberg* by mistakenly using the “reply all” function.

Opposing counsel filed a motion to prevent any use of the e-mail in the case, arguing that the disclosure of the attorney-client privileged communication was inadvertent and that reasonable care had been used to protect the privilege. While the court ultimately allowed the motion, it noted the foreseeability of the type of mistake made by the client, and emphasized that attorneys should avoid using the “bcc” function on e-mails, particularly when sending an e-mail to clients. The Court noted that any further “accidents” would result in a waiver of the privilege.

The Court’s decision illustrates how changing technology, knowledge and experience can result in changes in laws and rules that, though basically procedural, can have wide-ranging impacts. Fifteen years ago, it would have been inconceivable that a court would expect attorneys and their clients to recognize the risks of e-mail and “reply all” buttons. In 2010, at least one Court found that these risks were generally known and that whether a waiver of privilege had occurred was a close question. It is certainly conceivable that in another few years a court will find that not only are the risks of “bcc’s” and “reply all” known and foreseeable, but that parties and their attorneys have an affirmative duty to adopt procedures that prevent the type of inadvertent disclosure that occurred in this case.

..... We’re proud to welcome our Paralegal to the newsletter!



Michael F. Leary
mfl@kongreen.com
ext.238

New Homestead Law is Welcome Change to Homeowners

On December 16, 2010, Senate Bill 2406, an Act Relative to the Estate of Homestead, was signed into law by Governor Deval Patrick. The new law which replaces the Commonwealth’s existing Homestead Law will take effect ninety days after it’s signing, March 16, 2011, and clarifies ambiguities present in the existing Homestead Law while taking into consideration today’s complex financial transactions and modern households. The hallmark of the new law is that it provides for an “automatic” Homestead or protection against unsecured creditor claims of up to \$125,000 in a homeowner’s equity in their primary residence. The scope of the new law extends to the proceeds from insurance as well as from the sale of a home and safeguards homeowners of two to four family and mobile homes.

Here at *Konowitz & Greenberg*, we continue to encourage our clients to have a Declaration of Homestead prepared and recorded with the Registry of Deeds where their primary residence is located as this protects a homeowner’s equity up to \$500,000. The Homestead Estate is designed to protect home ownership from execution and forced sale, so long as the owner or covered family member occupies or intends to occupy the property as his or her principal place of residence.

If you have any questions regarding the new Homestead Law or other estate planning matters, please contact us for a consultation.