



# MOUNTAIN BRIEFS...

by Christopher D. McIntire, Esq.

The legal column for non-lawyers

One day Moses was walking the fence between Heaven and Hell and he saw the fence had been broken. Since the breach was from the Hell side, Moses summoned the Devil, showed him the broken fence, and told the Devil to fix it. The Devil said: "No way! It's your fence, you fix it." Moses told the Devil: "Fix it or I'll sue you." The Devil just laughed and replied: "And where do you think you're going to get a lawyer?" This is a good introduction to "fire eaters."

"Fire eaters" are the scourge of the legal profession. The "fire eater" is a lawyer, usually one to three years out of law school (but many

older lawyers are priding themselves as being "fire eaters"), and is the lawyer who will do anything — *anything* — to win. Truth, honesty, fairness and justice have no place on a fire eater's agenda.

Most "fire eaters" are the hourly-wage lawyers, although there are a few on the plaintiff's side. But since the "fire eater's" enthusiasm translates into hundreds of hours worked on a file, the "fire eater" is only profitable to a firm which gauges its productivity by "billable hours." The reason there are fewer plaintiff's "fire eaters" is that the success of a plaintiff's lawyer is judged by the completion of a case.

"Fire eaters" come in all shapes and sizes. They are usually bright (although not nearly as bright as they believe) and have one item in common: enthusiasm for humiliating an opponent. For this reason "fire eaters" are loved by clients (but because of the high cost of a "fire eater's" enthusiasm, sophisticated businesses are starting to thin out the ranks of "fire eaters" working for them) and even businesspeople are regularly fooled by a "fire eater's" enthusiasm. The "fire eater" will tell a client just what a client wants to hear. To a defendant, the "fire eater" promises not only to win, but that victory will be accompanied by sanctions and the disbarment of opposing counsel. To a plaintiff "fire eater," a seemingly insignificant case is worth hundreds of thousands of dollars.

Where the "fire eater" departs from accepted practice is in ethics. While all lawyers take an oath to diligently prosecute their clients' interests, lawyers also take an oath that service to clients will be consistent with the truth. "Fire eaters" disregard this "truth" aspect. The "fire eater" tells the defense wit-

## The Bear Valley Voice • Friday, August 23, 1996 • 5

nesses to lie, tells the plaintiff to stay off work, destroys evidence; etc.

Of course, this frequently backfires. Years ago, General Motors hired a group of "fire eaters" to go through its files and destroy incriminating evidence. When this came out before a jury in Georgia, the jury responded with punitive damages of \$105 million. (The Georgia Supreme Court later reversed the verdict.) And in cases where clients are encouraged to lie, revelation of the lie will generally result in the complete defeat of the client's case.

While "fire eaters" impede society in every case they touch, the damage caused by "fire eaters" is most apparent in family law. In a divorce, "fire eaters" are most attractive to divorcing parties who already desire to completely humiliate the former spouse. The wife's "fire eater" tells the wife to accept nothing less than 70 percent of her former spouse's income, the house, the kids, all furnishings, and — by the way — a suggestion to young children that their father may have abused them would be a wonderfully expeditious way of obtaining custody! The husband's "fire eater"

reassures the husband that it's about time the former wife got a job, so sell the house, the furnishings, the cars, and forget about support. And, by the way, does the mother abuse the children, an argument which is a wonderfully expeditious manner of obtaining custody from the mother!

And until the marital estate is exhausted, the "fire eaters" will continue to argue multiple contempt hearings (the child was dropped off 20 minutes late; the support payment was three days late; the child will not be dropped off until the house payment issue is resolved; etc.) support, division, and anything else that can be argued. What is left are two bankrupted parties, children permanently traumatized by their parents' misconduct claims, but lawyers satisfied that they have done "everything" for their client.

And after a few drinks on a Saturday night, the lawyers will complain about how unappreciative the clients are for all the hard work done for them.

The best means of spotting a "fire eater" is to use the same common sense used in business decisions. Sophisticated business people will

generally tell clients that if an investment looks too good to be true, it usually is. The same thing with a lawyer. If a lawyer's advice seems too good to be true, it probably is. There is no certainty in this crazy profession, and juries and judges *sometimes* rule all out of proportion to the evidence and law.

"Fire eaters" contaminate the entire legal profession. It is the very few plaintiffs' "fire eaters" which are heralded as the need for tort reform. The defense "fire eaters" clog the courts with motions and cases which reasonable attorneys would recognize as resolvable, but the "fire eater" will not settle simply because of a need to "win" everything.

"Fire eaters" have been with the law since forever. In 1803, the Legislature of New York debated whether to exclude lawyers from the ranks of government. The reason for exclusion was the assumption, shared by virtually all members of the legislature, that a lawyer could not be an honest man.

While this column frequently ends with lawyer jokes, this historical fact is no joke.

© 1996 Christopher D. McIntire