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A VISIT WITH OUR PRESIDENT, KEN SIGELMAN

By
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Ken Sigelman, J.D., M.D., is CASD's President for 2008. He is the founder of Kenneth M. Sigelman & Associates, which represents plaintiffs in medical malpractice, product liability, and personal injury cases. Dr. Sigelman is a graduate of Dartmouth College, the University of Florida College of Law, and the University of Miami School of Medicine. He is a past recipient of the CASD Outstanding Trial Lawyer Award, and is a member of the American Board of Trial Advocates. Dr. Sigelman can be contacted by email at: ken@sigelmanassociates.com.

I visited with our 2008 President, Ken Sigelman, to learn a bit about his background and his plans for CASD for this year. Ken has only been practicing law in San Diego for the last 13 years and a lot of his cases are out of town, so you may not have gotten to know him yet. Here's a little background sketch. Ken is a very focused and business-like, but friendly, fellow. After talking with him a bit, you realize how he has been able to accomplish so much in his educational and professional career. He just works harder and with more concentration than the others. And he never gives up.

Ken was raised on Staten Island, New York City, but decided to leave the big city for college at Dartmouth College, which is located in an idyllic town on the Connecticut River in New Hampshire. He majored in history and was in the honors history program. Ken always knew he wanted to go to law school and he also knew he wanted to go where it was warm, so after college he headed for University of Florida Law School.

Ken had also decided to go to medical school after completing law school because he was fascinated with the interplay between the disciplines when treatment of people was involved. So he began taking pre-med classes during his summer breaks from law school. Nine-hour days of organic chemistry, microbiology, embryology and physics were not much of a summer vacation, but, as Ken says, he was "keeping the dream alive."

Following law school, Ken took the Florida bar exam and accepted a clerkship at the Florida Supreme Court, which at the time was fairly progressive. He was tempted to start practicing law, but realized he was at the proverbial "fork in the road" and thought if he didn't go to medical school now, he would probably not take the time from a law practice to do it later. So he went down to the University of Miami for medical school.

Always keeping one foot in each of his chosen disciplines, Ken worked in an insurance defense law firm in New York during a summer break from medical school. This helped him decide law was really where he wanted to be, but he also decided he wanted to represent plaintiffs rather than work for the insurance monoliths.

Ken's sister and brother-in-law lived in San Diego, so in his fourth year of medical school he moved in with them and took his electives at UCSD. He accepted an internship at St. Mary's Hospital in San Francisco, took a California bar review course and managed to take the California bar exam during the first month of his internship. The two-foot "Hokey Pokey" was a bit overwhelming. On the night before the exam, his fortune cookie read, "You never hesitate to tackle the most difficult tasks." Ever the optimist, Ken saw this as a good sign that he would pass the bar exam, despite the fact that the pass rate at that time was about 33% and it had been five years since law school.

During an internship rotation at Mercy Hospital in San Diego, Ken saw a notice on the bulletin board about recently-enacted legislation known as MICRA which would solve the purported malpractice insurance crisis. "Preposterous," he thought. "The courts will never let that stand."

When the bar results came, he was sworn in as a California attorney the morning after his 29th birthday in 1981. Ken completed his internship and decided to take some time off, again moving in with his sister and brother-in-law in San Diego. "It was a bit like *'You, Me and Dupree'*," he laughs, adding that he had a couple of little nieces and a nephew to play with on this first real vacation since high school. He became a beach bum for the next eight months, working part time as an urgent care doctor, before the law beckoned him again.

Through Harvey Levine, a friend of his sister, he met Sam Shore, a Los Angeles attorney who concentrated on plaintiff's medical malpractice cases and joined the firm. Ken tried his first case less than a year later -- a four-week trial involving an 18-year-old client who lost his leg to vascular surgery gone awry. Four years later, Ken opened his own practice. He has taken more than 40 trials to verdict and obtained more than 30 verdicts, settlements or arbitration awards of \$1 million or more. He became a member of ABOTA in 1994; and he recently obtained a settlement of \$8 million which he believes may be the largest payout for any medical malpractice case in the history of San Diego. He is proud of the fact that he has had the same associate, Penelope Phillips, since 1991; she maintained his practice in Los Angeles while he transitioned to San Diego and joined him here in 1999. Three of the defendants whom Ken sued for medical malpractice subsequently referred family members to him for representation.

Ken concentrates his practice on birth injuries and catastrophic medical injuries. He received CASD's Outstanding Trial Lawyer Award for representing the family of an 18-month-old child who died from a bacterial infection because she was a Kaiser member who had been brought by paramedics to a non-Kaiser hospital. The ER doctor was told by Kaiser not to treat the child, but rather to bring her over to a Kaiser facility. Had she been treated with immediate antibiotics, she could have been saved. Michael Moore chose her story as one of those featured in his 2007 documentary, "SICKO", in which he exposed some of the flaws of managed care and our health care delivery system as a whole. Ken obtained a verdict of \$1,353,000 for Mychelle's family -- a paltry sum for depriving them of the joy of a lifetime with Mychelle.

When Ken began practicing law, Sam Shore told him that if he was going to represent plaintiffs he needed to join the Los Angeles Trial Lawyer Association. Ken quickly learned it was important that he get involved with the legislative developments which were drastically impacting his clients so he joined the Board of LATLA and got involved with CAOC. MICRA passed in 1975 and was upheld

by the courts; Prop. 51, which eliminated the rule of joint and several liability as to general damages, substituting a rule of partial liability based on percentage of fault, was adopted in 1986. Centuries of legal theory were being tossed away as individual rights were sacrificed on the altar of protecting business. Times were certainly changing and attorneys needed to be proactively involved to protect their clients.

Ken was soon on the Board of CAOC and then Chair of the Medical Malpractice section. “We finally realized that unless we got involved and fought hard, more rights would be destroyed,” he says. “The courts had not saved us from MICRA and business interests were intent on destroying the tort system.” Ken spent a great deal of time drafting legislation, organizing grassroots support for changing or eliminating MICRA, discussing med mal-related issues with broadcast and print media and meeting with and testifying before the legislature.

At one of the LATLA seminars in 1989, Ken met Susan Handel, another plaintiffs’ attorney, and one meeting was all it took. They are still in love and regularly handle cases together. When Susan moved her practice to San Diego, Ken soon followed. The commute did not allow him enough time with his wife. Also, his parents had moved to San Diego in 1983 when his dad retired from his ophthalmology practice and it was good to be near family. Soon he was on the CASD Board, still tirelessly guarding individual rights and helping his injured clients.

Ken believes anyone practicing plaintiffs’ law needs to be a member of CASD. “Political survival is an ongoing issue,” he says. “We are fighting to preserve our clients’ rights and our professional practices. We must be ever vigilant to protect these rights because the forces seeking to destroy them are powerful, well-funded and determined.” CASD is also essential to help us integrate the information explosion into our practices. It provides the knowledge base of nearly 800 attorneys at the mere click of a mouse. “Trial lawyers are superb communicators,” he reminds us, “and they are always willing to share what they know and help each other out.”

When asked what advice he would give to new attorneys, Ken responds, “Follow your dream. You spent a lot of time getting to this point. Now make your career worthwhile. Think about what you like doing and put your heart and soul into it. If you are wrong, learn from it and move on. Don’t be afraid to change course.”

Ken’s advice for working with obstreperous defense attorneys is: (1) never lose your cool -- always take the high road and be professional; (2) don’t give in – if they insist on making things difficult, do whatever it takes to keep the case moving forward; (3) don’t back down -- when they are wrong, make your record, bring your motion to compel and keep fighting. He recalls being requested by a judge to render first aid to a juror who was experiencing a medical problem while deliberating on one of his cases. As an afterthought, the judge told the defense attorney to go back to the jury room with Ken. Ken told the bailiff to call 9-1-1 and went to see what he could do. After discovering that the juror was having a panic attack and not a medical emergency, Ken realized he had a bit of an ethical dilemma – should he continue rendering aid and risk the defense attorney moving for a mistrial? The next day, the ill juror had been replaced by an alternate and the jury rendered a verdict in Ken’s client’s favor. Defense counsel did not move for a mistrial.

During his presidency, Ken hopes to expand CASD’s outstanding educational seminars to a webinar

base and a DVD library. He envisions having seminars on a specific topic ready for download and viewing whenever a member has the need. And he will continue the fight to eliminate MICRA, pass laws which prohibit secret settlements, and restore third-party bad faith actions. He still has the passion with which he charted his course all those years ago in college. “When I sit across from a client and hear what happened to them – what caused these horrible injuries – I have to control my sense of outrage,” he says, “and get down to the business of helping them.”

And he looks forward to meeting the other like-minded, passionate guardians of plaintiffs’ rights – the members of CASD he does not yet know. “Come up and introduce yourselves at the mixers, parties, dinners and seminars,” he says. “I look forward to meeting and working with you to make CASD the best plaintiffs’ resource ever.”