

## In Memoriam: Allan S. Ghitterman

BY RUSSELL GHITTERMAN

**O**n a beautiful, sunny, Monday morning, while resting comfortably in his bed, Allan Ghitterman took his last breath. He was my father, my law partner, my mentor, my role model, and my friend. It is my fervent desire that I do his legacy justice.

While my father's family upbringing and background could be found in any Horatio Alger story, it is his contribution to the legal community and our legal partnership that I want to discuss. To understand a little of my dad's contributions, I do need to provide a little background.

My father started his legal career at Rose, Klein & Marias, but he quickly branched out as a solo practitioner. His entrepreneurial spirit remained a constant throughout his life. He established a practice in Ventura and formed a partnership, Ghitterman, Spielman and Steele. This was the first of many partnership iterations, ending with Ghitterman, Ghitterman & Feld. The spread of his law firms covered the Central Coast and Central Valley.

The reach of my father's influence in the worker's compensation community overwhelms me. I have been practicing for more than twenty years in the worker's compensation field, and I cannot interact with anyone who hadn't either worked for him or against him or knew of him. Many people simply refer to me as Allan once they see the last name. When I argue before the appellate court justices, they tell me they hear my father's voice when I'm arguing.

While many may chafe at that misunderstanding, I always took it as a badge of honor. More important is what my dad meant to his clients and what they meant to him. At Ghitterman, Ghitterman & Feld, our Mission Statement is: "Relentless commitment to protect our client's rights. Always." This is a direct outgrowth of my father's dedication to the working man and woman. After 60 years of dinner conversations and law partner arguments (yes, we argued, sometimes vehemently), I can say without equivocation

that I've never met anyone so passionate about doing everything he could to help the injured worker seek and obtain benefits.

He viewed this as his personal mission. He was a knight-errant -- a Don Quixote -- on his quest to slay the dark forces that prevented his clients from recovering from their injuries and providing for their families. I'm convinced that the saying: "When you have the law, argue the law. When you have the facts, argue the facts. When you have neither, pound the table," emanated from those who did battle with my father on a day-to-day basis. I don't think I've ever seen one person so successfully pound the table as my dad.

His license plate read: "PENAL T." My dad took pride in pursuing penalties against insurers who unreasonably delayed benefits to injured workers. Often, the effort required in this pursuit could not be justified by the economic benefit derived, but he felt it was important to hold insurers to their statutory obligations. Similarly, he was quick to resort to an appeal whenever he believed that his client had been given short shrift by the trial court. A quick search of the Supreme Court and Appellate Courts database will reveal over 200 cases pursued in his drive to seek justice.

His knowledge of workers' compensation law was encyclopedic, and his intuition was even more astounding. Many a time I would go to him with a question about a particular case, and he would accurately predict the outcome. He had a sixth sense that led him to the right result, even when he sometimes couldn't articulate the how or why, just the existence of it. To paraphrase Rene Descartes: "He thought that's how it would be, and it was." I've often said my father has forgotten more about worker's compensation law than I will ever learn.

Beyond worker's compensation, my dad was involved in many community and legal organizations, and donated his time in public service. He served as a pro bono judge in small claims court throughout the 20+ years of our partnership. He was a representative to the regional board of the first California Coastal Commission and took pride that his name is on the landmark California Coastal Plan of 1975. He participated on local boards, including the American Civil Liberties Union, the Anti-Defamation League, the Food Bank, New Beginnings, and most significantly, Legal



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to “reconstruct” the hearing. The Court of Appeal found that a trial court abuses its discretion where the denial of a settled statement effectively denies the appellant the right to review.

Rule of Court 8.137 was amended last year, streamlining the procedure for obtaining a settled statement and eliminating the need for the appellant to proceed by motion where the proceedings were not reported or the appellant had a fee waiver. As a result, the impact of *Rhue* is somewhat lessened. Under other circumstances, the appellant still needs to proceed by motion.

For represented parties, the settled statement procedure is usually not cost-effective, because the cost of preparing and litigating the contents of the settled statement can easily exceed the cost of having had a court reporter, or paying for a transcript in the first place.

### ***No Disqualification of the Trial Judge After Reversal of an Interlocutory Order***

One of the most frequently asked questions by appellants is whether they have the right to disqualify the trial judge if they win an appeal and remand for further proceedings. The answer depends on the procedural status of the case. Reversal of an interlocutory order does not allow the prevailing appellant the use of a second peremptory disqualification on remand, because Code of Civil Procedure Section 170.6 (“Section 170.6”) provides for a second, post-appeal disqualification only upon reversal of a final judgment.

So explained the Court of Appeal in a case decided in late December 2016 (*McNair v. Superior Court* (2016) 6 Cal. App.5th 1227). There, a defendant exercised its right to a Section 170.6 disqualification, and thereafter appealed an order denying its anti-SLAPP motion. Upon remand after partially winning that appeal, the defendant attempted to disqualify the trial court a second time, which the trial court allowed.

But the plaintiff sought and won a writ petition. The Court of Appeal found that, by its own terms, Section 170.6 can only be used a second time upon reversal of a final judgment, and not upon reversal of an appealable order. The Court of Appeal reiterated, however, that if the defendant had not earlier used its peremptory disqualification right, it would have been able to exercise it upon remand after the anti-SLAPP appeal. ■

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Aid Foundation. He was a huge believer in the right of everyone to have access to competent legal representation.

While these comments scratch the surface of my dad’s impact on the community, I’m unable to express, in such a short opportunity, the profound impact he had on my life and on my career as an attorney. He taught me to think beyond myself, to fight for justice, to protect the defenseless against powerful interests, to care for others, to be a positive role model for my sons and a good husband to my wife. He led by example and, hopefully, I’ll assume that mantle to honor him. I love my dad and I will miss him. ■

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