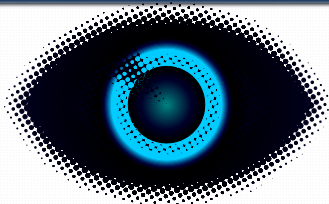


presenter:
Ronald S. Granberg

Can we have:
Private trials?
Sealed files?
Confidential MSA's?



Statutory and Case Precedent Counts!

Precedent Supporting

Privacy

4

California Constitution, Article I, Section 1

“All people are by nature free and independent and have inalienable rights. Among these are . . . privacy.”



5

Privacy Is Precedented:

- **1979:** California Constitution, Article I, Section 1
- **1954:** *Flynn v. Flynn*
 - (overruling the 1948 case *Price v. Price*)
- **1964:** FC §214
- **1967:** *Jackson v. Jackson*
- **1971:** *In re Marriage of Carter*
- **1993:** *In re Marriage of Cream*

6

Precedent Supporting

Transparency

7

United States Constitution First Amendment



“Congress shall make no law . .
. abridging the freedom. . . of
the press”

8

TRANSPARENCY is Precedented:



- **1788** U.S. Constitution, First Amendment
- **1872** CCP §124
- **1980** *Richmond Newspapers, Inc. v. Virginia*
- **1998** *IRMO Lechowick*
- **1999** *NBC Subsidiary v. Superior Court*
- **2001** California Rules of Court 2.550-2.551
- **2004** FC §2024.6
- **2006** *IRMO Burkle* (“Burkle I”)

9

Transparency

- “Sunshine is the best disinfectant”
 - Transparency protects the public from judicial corruption, incompetence and favoritism
- **Court proceedings** are open to the public
- **Court files** are open to the public



Transparency

U.S. Constitution
First Amendment

Code of Civ. Proc.
§124

*Richmond
Newspapers,
Lechowick,
NBC Subsidiary,
Burkle I*

Privacy

Cal. Constitution
Article I, Section 1

Family Code
§214

*Flynn,
Jackson,
Carter
Cream*

11

1. Private Trials



12

CCP §124



Except as provided in Section 214 of the Family Code or any other provision of law, the sittings of every court shall be public.

13

FC §214



Except as otherwise provided in this code or by court rule, the court may, when it considers it necessary in the interests of justice and the persons involved, direct the trial of any issue of fact joined in a proceeding under this code to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel.

14

Privacy in Proceedings



- Adoption proceedings – FC §8611
- Proceedings to declare a child free from parental custody and control FC §7884
- Parentage proceedings – FC §7643

15

***Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555**

A trial court ordered closure of a criminal trial.

The United States Supreme Court held the closure unconstitutional.

Pursuant to the First Amendment, both the press and the public have constitutionally-guaranteed rights to attend criminal judicial proceedings.

16

***IRMO Lechowick* (1998) 65 Cal.App.4th 1406:**

- Husband/Judge (Mendocino County) requested the Divorce Judge (also Mendocino County) close the hearings
- Divorce Judge granted request (Fam. Code §214)
- Divorce Judge denied journalist's motion to open

17

***IRMO Lechowick* (1998) 65 Cal.App.4th 1406:**

- Trial (Mendocino County) reversed: " . . . we think it plain that a [Family Code] section 214 order must pertain to the trial of one or more particular issue[s] of fact' and be justified by a showing of particularized need by the moving party." (*Id.* at pp. 1414-1415.)
- Divorce Judge granted request (Fam. Code §214)
- Divorce Judge denied journalist's motion to open

18

***NBC Subsidiary (KNBC-TV), Inc., v.
Superior Court (1999) 20 Cal.4th 1178***

Sondra Locke sued Clint Eastwood for fraud, intentional interference with prospective economic advantage, and breach of fiduciary duty arising out of alleged promises by Eastwood to assist Locke in the development of motion picture projects.

19

NBC Subsidiary

LA County Superior Court trial judge:

- Excluded the press and the public from all courtroom proceedings held outside the presence of the jury, and
- Sealed the transcripts of those proceedings.

20

NBC Subsidiary

KNBC-TV sought a peremptory writ of mandate directing the trial court to vacate its closure order, and to make the transcripts available to journalists and the public.

The Second District Court of Appeal issued the writ.

21

NBC Subsidiary

KNBC-TV sought a
mandate directing the
court to vacate its closure
transcripts available to
the public.

The Second District
issued the writ.

The
California
Supreme
Court
affirmed.

22

NBC Subsidiary, at p. 1219

“ . . . public access plays an
important . . . role in the
conduct of [civil judicial]
proceedings. **Public access to
civil proceedings serves to:**

23

NBC Subsidiary, at p. 1219

“ . . . 1. demonstrate that **justice
is meted out fairly,
thereby promoting
public confidence in
such governmental
proceedings;**

24

NBC Subsidiary, at p. 1219

- “ . . . 1. 2. provide a means by which **citizens** scrutinize and **check the use and possible abuse of judicial power**; and

25

NBC Subsidiary, at p. 1219

- “ . . . 1. 2. 3. **enhance the truthfinding function of the proceeding.**”

26

NBC Subsidiary, at p. 1181

First Amendment prevents closure of substantive courtroom proceedings unless a trial court finds:

1. “there exists an overriding interest supporting closure;

27

NBC Subsidiary, at p. 1181

First Amendment prevents closure of substantive courtroom proceedings unless a trial court finds:

- 1.
2. there is a substantial probability that the interest will be prejudiced absent closure;

28

NBC Subsidiary, at p. 1181

First Amendment prevents closure of substantive courtroom proceedings unless a trial court finds:

- 1.
- 2.
3. the proposed closure is narrowly tailored to serve that overriding interest; and

29

NBC Subsidiary, at p. 1181

First Amendment prevents closure of substantive courtroom proceedings unless a trial court finds:

- 1.
- 2.
- 3.
4. there is no less restrictive means of achieving that overriding interest.”

30



Does
Private
Judging
provide a
private trial?

31

Cal Constitution Art VI, section 21 (private judges)

“On stipulation of the parties
litigant the court may order a cause
to be tried by a temporary judge
who is a member of the State Bar,
sworn and empowered to act until
final determination of the cause.”

32

Open to public – an overview

- CRC 2.834(a) open proceedings
- CRC 2.834(b)(1) access statement with contact person
- CRC 2.834(b)(2) website notice
- CRC 2.834(d) appropriate hearing site

33

Proceedings open to public

CRC 2.834(a)

“All proceedings before a temporary judge requested by the parties that would be open to the public if held before a judge **must be open to the public**, regardless of whether they are held in or outside a court facility.”



34

Must be open to public

CRC 2.834(b)(1)

- A temporary judge **must** file a statement that provides the contact information of the person who may be contacted to **get information about scheduling** and general nature of all hearings.
- The statement must be filed **at the same time** as the temporary judge's certification.

35

Must be open to public

CRC 2.834(b)(1) and contact person:

- A temporary judge that provides the person who may **information about** general nature of
- The statement must **time** as the temporary

CRC 2.834(b)(2)

website:
The private judge may instead maintain a **publicly-accessible website** providing this information.

36

Must be open to public

CRC 2.834(d) appropriate hearing site:

- The **presiding judge**, on application of any person or on the judge's own motion, may order that a case before a private judge must be heard at a **site easily accessible to the public** and appropriate seating for those who have made known their plan to attend.

37

Arbitration – does it provide a solution?

The parties have a **right** to submit issues such as the division of their community property or the determination of the character of community or separate property to private arbitration. (*IRMO Elden* (1997) 53 Cal.App.4th 1497, 1508-1509)

Note: Determinations of child custody and child support are not generally subject to such delegation of judicial authority.

38

Arbitration – does it provide a solution?

Arbitration **removes** the controversy from the procedures applicable to trials (*IRMO Elden, supra*, at p. 1509)

This would provide authority that private arbitrations are **not subject** to the “open to the public” provisions of Code of Civil Procedure § 124.

39

Arbitration – does it provide a solution?

A settlement reached before an arbitrator, if it meets all of the other requirements of Code of Civil Procedure § 664.6 may be enforced and entered as a judgment in the pending action (*IRMO Assemi* (1994) 7 Cal.4th 896, 911)

40

Historically, arbitration had its dangers

- Arbitrations are **not** governed by the rules of evidence or judicial procedures applicable to superior court trials.
- There are **very limited grounds** to correct or vacate an arbitration award. Arbitrator's decisions are generally **not reviewable** for errors of fact or law (*IRMO Assemi, supra*, 7 Cal.4th at p. 909.)

41

Historically, arbitration had its dangers

Because of the inapplicability of the rules of evidence and the fact that an arbitrator's award is not reviewable or correctable because of an error in law, arbitrations have been thought to be somewhat **"dangerous."**

While arbitrations do provide clients with significantly more privacy, before 2008 they did not provide any certainty that the appropriate law will be applied to the case.

42

Arbitration is now more “trial-like”

In *Cable Connections, Inc. v. Direct TV, Inc.* (2008) 44 Cal.4th 1332, the California Supreme Court held that arbitration agreements **that provided for judicial review of the award for legal error** are enforceable under the California Arbitration Act. The court disapproved prior holdings to the contrary.

43

Now more “trial-like”

Cable Connections held that arbitration agreements may provide for **appellate review based on legal error**.

The court found that judicial review was appropriate as the parties agreed that the arbitrator **would not have the “authority” to commit errors of law**.

Thus, an award could be vacated or corrected on appeal. The rationale is that an arbitrator’s award that contains errors of law **“exceeds the powers”** of the arbitrator.

44

Now more “trial-like”

It appears we can now provide our clients with the privacy, convenience and efficiency of arbitration and **still protect their right to judicial review for errors of law**.

Remember this is private arbitration **and differs from judicial arbitration.**


45

Arbitration – what else could we do?



If *Cable Connections* permits our clients to require the arbitrator to follow the law, is there any reason our clients cannot include an arbitration agreement provision requiring the arbitrator to **consider only admissible evidence**?

46



The End
of private trials discussion

47

2. Sealing Divorce Files



Let's examine some cases

48

Sealing/Privacy is afforded to some Documents



- Psychological evaluations --FC §3025.5
- Custody recommendations -- FC §3025.5
- Drug test results -- FC §3041.5
- Income tax returns FC §3552
- In forma pauperis applications
Cal. Rules of Court, Rules 3.54 and 8.26

49

IRMO Lechowick (1998)
65 Cal.App.4th 1406:

Minors' counsel moved the court for an order sealing "the entire file."

The court minutes read:

"Court orders this file sealed to the public."

50

IRMO Lechowick (con't)

A year later, a reporter (identifying himself as a "free-lance journalist specializing in the Court system") filed an ex parte application to show cause why the court file should not be open to the public.

After argument by Husband, Wife and reporter (and after unsuccessful efforts by Husband to introduce evidence of antagonism towards him by the reporter and his publisher) the matter was submitted – and the motion denied.

51

IRMO Lechowick (con't)

The court of appeal held:

“We agree: In general, court files in family law cases should be treated no differently than the court files in any other cases for purposes of considering the appropriateness of granting a motion to seal any of those files. We accordingly must reverse the order appealed from and remand the case to the trial court.”

52

Ron Burkle and the Golden Rule

4/13/04: Divorce judge granted portions of Ron Burkle's sealing motion. *(But not enough for Ron.)*

6/7/04: Schwarzenegger signed AB 78 (urgency):

53

Ron Burkle and the Golden Rule

4/13/04: Divorce judge granted

6/7/04: Schwarzenegger signed AB 78 (urgency):

“Upon request by a [dissolution] party . . . **the court shall order a pleading that lists . . . identifying information about [financial assets and liabilities] sealed.** The request may be made by ex parte application. **Nothing sealed pursuant to this section may be unsealed except upon petition to the court and good cause shown.**”

54

IRMO Burkle (2006) 135 Cal.App.4th 1045 ("Burkle I")

12/21/04:

Burkle filed an ex parte application to seal 28 pleadings in his divorce file

The Associated Press and Los Angeles Times intervened, arguing that Section 2024.6 was unconstitutional on its face

55

IRMO Burkle (2006) 135 Cal.App.4th 1045 ("Burkle I")

12/21/04:

Burkle filed an ex parte application to seal 28 pleadings in his divorce file

The trial court denied Burkle's application and found §2024.6 unconstitutional on its face

The Associated Press and Los Angeles Times intervened, arguing that Section 2024.6 was unconstitutional on its face

56

1/20/06: The Second District Court of Appeal affirmed:

" . . . the principles employed by the United States Supreme Court [in *Richmond Newspapers*] – and relied upon in *NBC Subsidiary* – to confirm the existence and scope of the right of access . . . applicable to 'ordinary civil cases' **also applies to divorce proceedings.**" (*Id.* at p. 1054.)

57

CRC Rule 2.550 permits sealing where:

1. "There exists an overriding interest that overcomes the right of the public to the record;
2. The overriding interest supports sealing the record;
3. A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
4. The proposed closure is narrowly tailored; and
5. No less restrictive means exist to achieve the overriding interest."

58

CRC 2.550(c)

"Unless confidentiality is required by law, court records are presumed to be open."



59

CRC Rule 2.551(a):

"A record must not be filed under seal without a court order. The court must **not** permit a record to be filed under seal **based solely on the agreement or stipulation of the parties.**"

60

CRC Rule 2.551(b):

In making the motion, two versions of a document containing allegedly confidential information must be filed:

- one redacted for the public file and
- one complete (un-redacted) version lodged conditionally under seal

61

Can we hire a private judge whenever we want to seal a file?
- Is that our answer?

Having a private judge doesn't make it any easier to get a sealing order.

That is because the PUBLIC JUDGE must rule on the sealing motion! CRC Rule 2.835(a)

62

Can we hire a private judge when we want to "CONCEAL" a file?
- Is that our answer?

All pleadings submitted to a private judge must be filed in the public file.

CRC Rules 2.833 and 2.400(b)

63

Is a private judge our answer (con't)?

A private judge must **NOT** accept or consider any pleading that has not been file-stamped by the clerk, unless accompanied by a declaration that the original document has been submitted to the clerk for filing. CRC Rule 2.400(b)

64

Is a private judge our answer (con't)?

A private judge must retain all exhibits and at the conclusion of the proceedings **deliver them to the clerk**, unless the parties file, and the [presumably, public] court approves, a written stipulation for a different disposition. CRC Rule 2.400(c)

65

Is a private judge our answer (con't)?

Documents and exhibits in the possession of a temporary judge . . . that would be open to the public if filed or lodged with the court must be made available . . . for inspection by any person within a reasonable time
CRC Rule 2.400(d)

66

So, IS a private judge our answer . . . ?

Not if you
intend
the follow
the rules!



67

Private Arbitration - Is that our answer?

- Arbitration removes the controversy from the procedures applicable to trials (*IRMO Elden, supra*, at p. 1509)
 - Even including declarations of disclosure (*IRMO Elden, supra*, at pp. 1509-1510)
- It follows that no documents need be filed in the public file unless and until the parties seek to confirm the arbitration award
- (More on confirming arbitration awards later.)

68

Closing
remarks on
sealing
divorce files



69

3. Confidential MSA



70

The Price Wasn't Right

(Let's hear the story of how the First District Court of Appeal's 1948 decision *Price v. Price* was overruled by the California Supreme Court's 1954 decision *Flynn v. Flynn*)

71

Price v. Price (1948) 85 Cal.App.2d 732

The parties' MSA, **not physically attached** to their judgment, was **incorporated by reference** into the judgment

72

Price v. Price (1948) 85 Cal.App.2d 732

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Held: the MSA didn't merge with the judgment, and may not be judicially enforced:
“... an agreement referred to in a decree and made a part thereof by reference only does not actually become a part of the decree for the purpose of enforcement as part of a judgment...” (*Id.* at p. 738.)

73

Flynn v. Flynn (1954) 42 Cal.2d 55

- Errol and Liliane Flynn divorced
- The trial court:
 - Received the parties' MSA into evidence;
 - Incorporated the MSA by reference into the divorce judgment;
 - Ordered the parties to perform the MSA's executory provisions; and
 - **Returned the original MSA to the parties without retaining a copy in the court file.**

74

Flynn v. Flynn

- Nine years later, Errol moved to reduce his child and spousal support payments due to changed circumstances.
- The trial court denied his motion on the ground that the **court lacked jurisdiction to modify** the judgment.
- **Reason: the MSA had not been physically placed in the court file**, but had only been incorporated into the judgment by reference.

75

The Flynn Supreme Court reversed:

“It is settled that a **document may be incorporated** either expressly or **by apt reference** into a judgment or decree so as to make it an operative part of the order of the court.” (*Id.*, at p. 59)

76

The Flynn Supreme Court reversed:

“It is settled that a **document may be incorporated** either expressly or **by apt reference** into a judgment or decree so as to make it an operative part of the order of the court.” (*Id.*, at p. 59)

“Thus in this case, the decree may be given its intended effect by referring to the adequately identified document, and the fact that the document is not a part of the permanent records of the court does not vitiate the decree. [Citations omitted.] *Price v. Price*, 85 Cal.App.2d 732 . . . is contrary to the foregoing authorities and is **disapproved.**” (*Id.*, at p. 60)

77

Jackson v. Jackson (1967) 253 Cal.App.2d 1026

- Although the dissolution judgment referred to the MSA, and ordered the parties to comply with the MSA’s terms . . .
- . . . the MSA was never filed with the court.
- When Wife subsequently sought to enforce the MSA, **husband contended that it was unenforceable on the ground that it had never been merged with the judgment.**
- The trial court ruled in Wife’s favor, finding the MSA enforceable

78

Jackson, con't (Trial Court Affirmed):

“An examination of cases dealing with the question of merger . . . reveals that the **courts, in determining** the intent of the parties and **the intent of the court rendering the decree** (see *Flynn v. Flynn* . . .) **have considered** the following factors: . . .

79

Jackson, con't (Trial Court Affirmed):

“An examination of cases dealing with the question of merger reveals that the **courts, in determining** the intent of the parties and **the intent of the court rendering the decree** (see *Flynn v. Flynn* . . .) **have considered** the following factors: . . .

(2) the physical incorporation of the words of the agreement in either the body of the decree or as an exhibit attached thereto;

(3) if not so attached . . . the extent to which the agreement so incorporated can be identified from the terms of the decree . . .”
(*Id.*, at p. 1034)

80

Jackson, con't:

“It has been suggested that the merger of an agreement which has merely been introduced in evidence, and which is not otherwise a part of the record, should not be countenanced because ‘it could be withdrawn or destroyed and interested parties could not, by searching the records of the court construct a complete picture of the rights and obligations of the parties.’”

81

Jackson, con't:

"It has been suggested that the agreement which has no evidence, and which is not in the record, should not be admitted 'it could be withdrawn or corrected if interested parties could be heard.' records of the court concerning the rights and obligations of the parties. [Citations omitted.]

The majority in Flynn rejected this contention" (*Id.* at p. 1035.)

82

Jackson, con't:

"It is obvious that **there is a tendency to refrain from making** [a marital settlement agreement], which involves the **personal financial affairs of the parties, a matter of public record**. If the agreement, as presented to the court, can be readily identified without controversy, **there is no reason for not indulging this normal propensity.**" (*Id.* at p. 1034)

83

Thesis:
property
provisions in
MSA's need not
be public



84

NBC Subsidiary, at p. 1219

“ . . . public access plays an important . . . role in the conduct of [civil judicial] proceedings. **Public access to civil proceedings serves to:**

85

NBC Subsidiary, at p. 1219

“ . . . 1. demonstrate that **justice is meted out fairly, thereby promoting public confidence in such governmental proceedings;**

86

NBC Subsidiary, at p. 1219

“ . . . 1. 2. provide a means by which **citizens scrutinize and check the use and possible abuse of judicial power; and**

87

NBC Subsidiary, at p. 1219

“ . . .
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1.

2.

3. enhance the
truthfinding
function of the
proceeding.”

88

Consider the following:

Entry of stipulated property MSA has no bearing on:

1. a court’s “basis for adjudication” (no adjudication occurs)
2. whether “justice is meted out fairly” (no justice is meted out)
3. the “use and possible abuse of judicial power” (no judicial power is used)

89

Entry of stipulated property MSA has no bearing on:

1. a court
adjudi
2. wheth
justice
3. the “u
power

Public access to
information that may have
lead parties to settle
cannot “enhance the truth-
finding function of the
proceeding” (no truth is
found).

90

It Is Respectfully Suggested:

Public examination of a stipulated property MSA has no bearing on:

1. whether “justice is meted out fairly” –
because no justice was meted out!
2. “use and possible abuse of judicial power” –
because no judicial power was used!
3. “truth-finding function of the proceeding” –
because no truth was found!

91

Advisory Committee Comment to Rule 2.550:

“This rule and rule 2.551 provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary* These rules apply to civil and criminal cases.

92

Advisory Committee Comment to Rule 2.550:

“This rule provides a standard for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary* These rules apply to civil and criminal cases.

They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. * * * *
The sealed records rules . . . do not apply to . . . materials that are not used at trial or submitted to the court as a basis for adjudication.”

93

It Is Respectfully Suggested:

Denying public access to a stipulated property MSA does not deny the public the “right of access to documents used at trial or as a basis of adjudication”

Because:

“The sealed records rules . . . do not apply to . . . materials that are not used at trial or submitted to the court as a basis for adjudication”

94

You Be the Judge

Harold and Wanda submit to you for entry a stipulated MSA resolving:

1. Custody
2. Support
3. Property division



Do you have any *sua sponte* duty regarding fairness of their resolutions?

95

Well, What If . . .

Would your approach be different if Harold and Wanda were **self-represented litigants** who submitted to you for entry a stipulated MSA resolving:

1. Custody
2. Support
3. Property division



NOW do you think you have any *sua sponte* duty regarding fairness of their resolutions?

96

Judicial scrutiny of child custody stip:

“ . . . the ‘right [of parents] to contract with each other as to the custody and control of their offspring and to stipulate away their respective parental rights [citation], . . . is subject to the control of the court in which the matter affecting the child is pending, and the court is not required to award the custody in conformity with such stipulation [citations].’ [Citation.]

97

Judicial scrutiny of child custody stip:

“ . . . the ‘right [of parents] to contract with each other as to the custody and control of their offspring and to stipulate away their respective parental rights [citation], . . . is subject to the control of the court in which the matter affecting the child is pending, and the court is not required to award the custody in conformity with such stipulation [citations].’ [Citation.]

Thus, such contracts . . . are not binding on a court; rather, the best interests of the child control custody determinations, regardless of the parties' agreement.” (*Adoption of Matthew B.* (1999) 232 Cal.App.3d 1239, 1259.)

98

Judicial scrutiny of child support stip:

“No . . . contract [between parents] may . . . abridge the power of the court . . . to provide for the support of the children.”

(*Puckett v. Puckett* (1943) 21 Cal.2d 833, 839.)

99

Judicial scrutiny of child support stip:

“No . . .
may . . .
court
of the
(*Pucket*
839.)

“ . . . it has long been the law
of this state that parents
cannot abridge the right of
their minor child to proper
support by any agreement.”
(*Elkind v. Byck* (1968) 68
Cal.2d 453, 457.)

100

***Judicial scrutiny of
spousal support stip:***

(Although no specific authority
has been found. . .

. . . judicial practice
has been observed)

101

IRMO Carter (1971) 19 Cal.App.3d 479

Divorcing parties have the right
divide their property in any
manner they see fit.

The only duty of the court is to
make certain procedural
requirements have been met.

102

IRMO Carter

“Where the parties stipulate to a division of community property satisfactory to them, the court has no duty other than to see that [disclosure] requirements . . . have been met and that the agreement has been entered into voluntarily and freely.

103

IRMO Carter

“Where
division
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Nothing in the Family Law Act changes the pre-existing rule . . . to the effect that the wife may, validly, and for reasons satisfactory to her, agree to something other than, or less than, she might have secured by judicial action if all legal and factual issues had been submitted to a court and had been determined in her favor.” (*Id.* at p. 494.)

104

IRMO Cream (1993) 13 Cal.App.4th 81, 91:

“[T]he parties possess the exclusive authority to agree upon the disposition of their property. **The court’s only role with regard to a proper stipulated disposition of marital property** is to accept the stipulation and, if requested, to incorporate the disposition into the judgment.”

105

A Syllogism:

Major Premise: Transparency rules are based on the public's right to know whether a bench officer is properly performing adjudicatory acts. *(NBC Subsidiary)*

Minor Premise: A bench officer's approval of a stipulated property division is not an adjudicatory act. *(IRMO Cream)*

Conclusion: Therefore, transparency rules do not apply to a bench officer's approval of a stipulated property division.

106

Take-aways #1

- Privacy is increasingly important to our clients
- Private trials are hard to come by
 - Family Code §214 private trials
 - Private judging isn't the answer
 - Arbitration can provide confidentiality



107

Take-aways #2

- Sealing files is difficult – files presumed public
 - Court order needed (stipulation not enough)
 - Five onerous findings required
 - Private judging isn't the answer – if you intend to follow the rules! (CRC 2.400)
 - Here, arbitration IS the answer



108

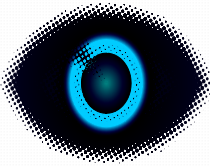
Take-aways #3

- Unfiled MSA's are authorized (*Flynn*)
- MSA incorporated by reference is enforceable (*Jackson*)
- Can protect MSA provisions for property (and, perhaps, spousal support) . . .
- . . . But probably not child custody, child visitation or child support. Those provisions must be included in the judgment.



109

The
End



...or just
the
beginning?

110
