CALIFORNIA Family Law Monthly

Freedman v. Brutzkus (2010) 182 Cal.App.4th 1065

"Signed." "Approved." "Approved as to Form." "Approved as to Form and Content." To pose a question worthy of a theological academy: What does it all mean?

We all sign our names as counsel to a plethora of documents. Seldom is much thought given to variations of the above-cited words that precede our signatures. No longer. Those words may be substantive. They may contain traps for the unwary. Enter *Freedman v. Brutzkus*.

When Justice Norman Epstein writes for the Court, we have learned to listen carefully. When the opinion acknowledges a case of first impression, the requirement of attention is elevated. In *Freedman*, the Court holds that counsel's signature on a contract under the signature block "Approved as to Form and Content" is *not* an actionable representation to the opposing counsel sufficient to support a basis for tort liability. The court held that the signature recital indicates that the attorney has advised his or her own client of the attorney's approval of the document's form and content but does not, by itself, operate as a representation to the opposing party's attorney that can provide a basis for tort liability.

The opinion does contain a nuanced limitation. In a footnote, the Court notes that this case is one between two opposing attorneys, based upon conduct taken in their representative capacities. Left open was the question whether Freedman's client would have had a cause of action against Brutzkus, the opposing attorney.

A contrary result here would have been harmful to the bar, because it would expose attorneys to a range of potential claims directly from opposing counsel. Despite the existence of an "iron-clad" integration clause in the underlying contract, as was the case here, counsel must exercise vigilant caution in communicating with opposing counsel, or the opposing party through his, her or its counsel.

And from now on, read the signature block! Perhaps consider adding to the substance of the agreement that the attorney's signature is not an affirmative representation to the opposing counsel or the opposing party, citing *Freedman v. Brutzkus*. Can't hurt.

MARSHALL S. ZOLLA