



Profile: Niall McCarthy

The president-elect of Consumer Attorneys of California is a seasoned litigator, philanthropist and fundraiser

BY STEPHEN ELLISON

Turning opportunity into success has become something of a habit of Niall McCarthy's. For the better part of two decades, he's done it for his clients, for his firm, for the needy and for himself. So, it comes as no surprise that the young partner for Burlingame-based Cotchett, Pitre & McCarthy is already a highly decorated trial attorney, a noted philanthropist and poised to become the next president of Consumer Attorneys of California.

McCarthy grew up with law and politics, his father being an elected official in the California state Assembly. The younger McCarthy thus had a firsthand look at a lawmaker's life, and that perhaps influenced him to pursue work in the legal and political arena while attending college. He chose plaintiff law for a number of reasons, he said, primarily: "It gave me the opportunity to represent middle-class Americans against big corporations."

Success with that opportunity came relatively fast. Within a year of being hired by Cotchett right out of Santa Clara University School of Law in 1992, McCarthy had won a punitive damages verdict for the firm. It was a challenge he was ready for with much more than a results-oriented motive. "At this firm, they take a sink or swim approach," said McCarthy, who is going on 19 years with Cotchett. "I was given a lot of opportunities right from the start. I really enjoy the type of work we're doing here. When you can give somebody back a check that might have been their life savings, there's nothing like that feeling. I still get notes from clients from 10 or 15 years ago. Those kinds of contacts with plaintiffs,



McCarthy

the ability to change their lives in a very positive way – that's really what drives me."

By his second year with the Cotchett firm, McCarthy was working on what would be one of his most memorable cases.

It involved a 35-year-old man who had been diagnosed with myeloma cancer and was seeking a bone-marrow transplant that his health insurance carrier refused to cover. "I got an emergency injunction – 90 days – he got the transplant and lived about five or six years longer," McCarthy recalled. "That is something you cannot get anywhere else but in plaintiff law. I'm not saying it happens with every case, but on those occasions it does, it's a great feeling."

Caseload diversity

McCarthy's successful verdicts cover a broad range of litigation from false claims and predatory lending to government and health insurance fraud to elder abuse and personal injury. He has recovered hundreds of millions of dollars for clients across all those areas, most notably as co-lead counsel in class-action predatory lending suits against some of the country's largest financial institutions.

In the false claims and elder abuse realms, McCarthy's expertise is well-documented by numerous published articles he authored or co-authored. And he is a regular on the elder abuse lecture circuit, a tribute perhaps to his dad. "He wrote the state's first elder abuse law," said McCarthy, who has been retained by

San Mateo, Santa Clara, Santa Cruz and Alameda counties to prosecute financial elder abuse cases. "I do a lot of my practice under the statute written by my father."

It's the personal injury and elder abuse cases involving a company's negligence – willful or not – that stick most in McCarthy's memory bank.

One personal injury case in particular involved 14 clients who were at a party in a building in San Francisco when the third-story balcony they were standing on collapsed. One person died and another suffered a severe brain injury, McCarthy said. He won a \$12 million verdict.

Two of McCarthy's elder abuse verdicts involved nursing home incidents resulting in death or serious injury. The first occurred during a heat wave in Burlingame – the home was not equipped with air conditioning. "The place had one fan, and the workers turned it on themselves," McCarthy said. "My clients literally baked to death."

A second nursing home incident involved an immobile patient who was left in a scalding hot shower. The caregiver was of African descent, McCarthy said, and did not speak or understand English very well.

Joe Cotchett, senior partner for the Cotchett firm, described McCarthy as smart, innovative and unafraid. "Not only is he bright, but he's also very tenacious," Cotchett said. "Niall will go into a courtroom and try anything if he believes in the principle."

Getting a case to trial is more than half the battle, McCarthy said, and when he finally does reach that point, he feels he's got the upper hand. "I enjoy when you get to the part where you pick the jury, because at that point you've gotten



JANUARY 2011

past all the obstacles that the defense puts up,” McCarthy said. “Then it’s just you and the jury – there’s no way for (the defense) to stop you at that point.

“I love the beginning of trials, when they’ve done everything humanly possible to stop me from getting there, and I’m there anyway.”

Like many of his peers, McCarthy harps on preparation, saying it is the key to trying cases. “Everything that leads to a successful trial is done well before the trial starts,” he said.

Personal obstacle, personal triumph

McCarthy faced perhaps his most formidable opponent in 1996, and it didn’t involve a judge, jury or courtroom. “I develop this really bad cough, and while I’m jogging, I have trouble breathing,” he said. “So I go to the doctor – because, you know, it just keeps getting worse – and he tells me I have a tumor the size of a grapefruit in my lungs.”

The doctor diagnosed Hodgkin’s disease. McCarthy endured three months of chemotherapy and two months of radiation treatment at University of California San Francisco. “When you’re going through cancer treatment, you don’t think about its effect on you personally – you think about the drugs getting rid of the cancer,” McCarthy said. “As strange as it sounds, I looked forward to going to chemotherapy.

“It does take a toll on you physically. But the other part of recovery is the mental outlook,” said McCarthy, who is now 13 years post-treatment and cancer-free. “I had a tremendously positive outlook, and it worked out.”

That personal triumph may well be his inspiration for giving back – to his field and his community. For the past six years, McCarthy has served on the board of Community Gatepath, a Peninsula-based nonprofit organization that benefits children and adults with disabilities. He was the board chair for three years and now helps the organization with fundraising.

“He’s wise well beyond his years,” said Sheryl Young, chief executive officer of Community Gatepath. “He’s incredible in terms of his ability to analyze data, figure out what the issue is and put together a plan of action.

“He’s left a legacy for thousands of children for years to come,” Young continued. “We have a number of programs – early intervention, inclusive preschool, job placement for mentally disabled adults – we wouldn’t have if not for Niall’s leadership.”

That very leadership quality has not been lost on his peers in CAOC, who elected McCarthy to serve as the organization’s next president. Last year, when he was in charge of fundraising, the organization raised \$4.5 million and was “immensely successful” in the legislative arena, he said. “I truly believe in the CAOC mission,” McCarthy said. “There are still so many barriers – courtroom funding would be one – that I would like to see us break down.”

Family, team and being there

“When Niall gets involved, he’s there 100 percent,” Young said, “and he brings along his family and friends and colleagues – he brings the whole party to the table.”

Indeed, McCarthy, along with his wife of 18 years, Yvonne, has succeeded with yet another opportunity: being a role model for his grade-school-aged children. Not only does he include them in his philanthropic efforts, but he also puts in his share of time for *their* benefit. “I coach my kids in soccer and baseball,” he said. “It’s important to me, and I really enjoy doing it. I was a rugby player – that was my sport. I’ve always been a big believer in team sports: dedication, unity, the whole team concept.”

Coaching, however, is not mentioned when McCarthy considers what alternative career path he may have chosen. “I like to hear myself talk – so maybe something in advertising,” he said. “Well, maybe a better word is messaging, you know, something like a political consultant.”

For young attorneys looking for any bit of wisdom they can get hold of, McCarthy’s advice is don’t be afraid to take the initiative with your own career. “Take risks,” he said. “Which means go to your partner and say, ‘Give me that file, let me try that case.’ You will only learn trial law by doing it yourself. You can’t watch somebody else do it for 10 years and expect the success to gravitate to you.”

In other words, seize that opportunity.

Stephen Ellison is a freelance writer based in San

Jose, Calif. Contact him at ssjellison@aol.com.



Ellison

