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Photo by Robert McLeroy

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Adversarial by Trade

Medical malpractice attorney
Marynell Maloney

SOUTH TEXAS SPIRIT

MARYNELL MALONEY:

'I feel
genuinely
good about
what I'm doing'

NAME: Marynell Maloney

AGE: 37

OCCUPATION: Attorney specializing in medical-malpractice suits

FAMILY: Husband and law partner, Michael; children, 9-year-old Michelle, 7-year-old Erica and Michael Jr., 4

BENEFITS OF HER SPECIALTY: "I can't tell you the best doctors in town, but I certainly can tell you the worst."

ON RUMORED RIFT WITH FATHER-IN-LAW PAT MALONEY: "Any time you have a lot of family with good Irishmen, wonderful personalities, lots of emotion and a fast-paced lifestyle, you're inevitably going to have conflict. But I really enjoy Pat Maloney. He's a one-of-a-kind, old-school orator. In terms of our offices, it's night and day. I don't see us as being in competition."

ON MAKING ENEMIES: "I haven't been very effective if I don't have any enemies. I think there are probably some doctors who are bitter not only about me but about the whole system that enables them to be sued at all. Apart from the legal arena, I'm really a non-confrontational person. I hate to fight. I love peace and good relations. By virtue of being an attorney, I'm sort of compelled to be adversarial, but apart from that, I'm really not."

PEOPLE DON'T KNOW: "I'm an in-the-closet diary keeper. And if I could be anything in the world, I'd want to be a great writer."

THE FACE on the TV screen is almost angelic, with soft blue eyes and a cheery smile. Help is only a phone call away if a doctor or insurance company has done you wrong, it says.

"Call me," says attorney Marynell Maloney. Once more, with feeling: "Call me."

The commercial is low-key; its effect powerful.

It has drawn many clients to her law firm, and in turn, perhaps millions of dollars in legal fees. It also has prompted some doctors to refuse to treat her family and the Bexar County Medical Society to challenge the ethics of her style of advertising.

The medical society, in a grievance filed about 1½ years ago with the State Bar of Texas, said the ads were inappropriate in their somewhat emotional appeals to solicit medical-malpractice clients.

No public reprimands were issued, and no technical violations were found; still, the imbroglio spilled over into Maloney's personal life.

She had to agree with a handful of physicians that she would not sue them if they treated her family, or take on cases in which they were named as defendants.

Maloney — who at age 37 is in practice with her husband, Michael, and four other attorneys — defends the commercials as a way of educating people about their legal rights.

Controversy seems to follow her. She is known as much for her long blond ponytail and style of dress as she is for being a barracuda in her chosen legal field of what she calls "medical mal," short for "malpractice."

In legal circles, Maloney impresses colleagues with her exhaustive trial preparation and her sheer brilliance. But in the same breath, they ridicule her clothing as too flashy and label her an opportunist for trying to cash in on a family's health misfortunes.

Maloney brushes off her critics by saying she only takes one out of every 100 cases. The selection is not based on the money involved but rather whether she can devote her all to it.

She often spends between \$50,000 and \$100,000 on depositions, expert opinions, court reporters and other pretrial work.

"We have to, by necessity, be exclusive in the types of cases we take," she says. "But once we take a case, it gets 100 percent."

Maloney describes herself as compulsive, obsessive and meticulous in preparing to represent a client.

"I am incredibly disciplined and incredibly hard-working," she says. "I will out-work everybody else. I will put as much time and money into a case as it needs. Because of that, the defense attorneys know I will leave no stone unturned and will try a case if they don't offer the money that the case is worth. Because of that, over the years, I've built up a reputation."

In what Maloney characterizes as a rela-

tively new, but nonetheless welcome, development, her reputation also is reaching insurance companies.

"Insurance companies are getting to the point where many times they prefer to settle early," she says.

As for her flowing hair, stiletto heels and miniskirted suits, Maloney says, "It's the one frivolous side of me that I indulge. In court or a jury trial, I don't wear anything that's particularly extreme."

"But I enjoy dabbling every now and then in a little bit of fashion. It's fun," she says. "I'm not a terribly frivolous person. If you ask me, 'Do I ever go to the beauty parlor?' No. 'Do I ever get my nails done?' No. One of the justifications for the long hair is I don't have to keep it styled."

Once a serious jazz and ballet dancer who performed professionally in New York in the mid-1970s, Maloney has no regrets about leaving that life behind to become a wife, mother and high-profile lawyer.

'We have criticized a hospital or doctor, and we have seen changes. We have complained about certain practices, and they have improved.'

— Marynell Maloney

She met her husband in a philosophy class at the University of Texas at Austin, and he later convinced her to go to St. Mary's University Law School.

Both clerked at the law firm of her father-in-law, famed personal-injury lawyer Pat Maloney, but Marynell Maloney says it was she who wanted some independence and broke away from his firm so she and her husband could start their own business.

She gained early notoriety by handling most of the varied and complex legal cases for the flamboyant Clinton Manges, a financially troubled Duval County rancher and former owner of the defunct USFL Gunslingers.

Now that her practice is more focused, she says her ideal day off would be to spend time with her family or to steal a few hours for reading, another of her great passions.

She speaks adoringly of her three children and says they strive to make the most of their free time.

"Every minute we're together is wonderful," she says. "When I come in the door, there they are, yelling, 'Mommy, mommy,

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DOSSIER

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mommy,' and sometimes I think if I were home more, we would lose some of that ebullience."

Her office on the 21st floor of the Milam Building is adorned with photographs of her two daughters and son.

Drawing upon her own childhood in Costa Rica with a mother who emphasized the arts, Maloney has encouraged her children to pursue their cultural interests.

Both daughters dance at Incarnate Word College; one plays piano and the other has taken up violin. Perhaps inspired by their mother's example, the older one is a prolific reader and the younger writes and illustrates books.

Her son is bilingual, one of the benefits of a housekeeper/nanny from El Salvador, whom Maloney calls "the other mother."

Maloney limits her dancing to a daily 6 a.m. ballet class for fitness' sake.

And while she tries to read a book a week, a natural progression of her love for literature is her dedication to knowledge for her clients' sake. Each case challenges her to learn more about a new area of medicine.

"I have to be as conversant with the literature and the state of the art of that area of medicine as the doctors," she says.

Having specialized in medical malpractice for at least five years, Maloney passed a certification test in personal-injury law that the Texas Board of Legal Specialization gave last fall.

She is one of 102 of Bexar County's 3,592 attorneys who have been so certified. The board does not certify for medical malpractice, a specialty considered a subcategory of personal-injury law, but it is clearly where Maloney's heart lies.

"I feel genuinely good about what I am doing," she says. "We have criticized a hospital or doctor, and we have seen changes. We have complained about certain practices, and they have improved. That's very gratifying. We have helped victims or alleviated a dangerous practice. You feel like you're out there making a difference and helping people, and that's really important."

But insurance companies and the Bexar County Medical Society are much less starry-



Express-News file photo

Marynell Maloney once represented Clinton Manges.

eyed about Maloney's approach to medical-malpractice lawsuits.

Rick Evans, an attorney with Ball and Weed and legal counsel for the medical society and a number of Bexar County hospitals and doctors, says he probably spends an average of one day a week in court or in a

deposition with Maloney.

Evans emphasizes that the medical society does not feel people should be denied access to the judicial system.

"We feel (that) bad doctors should be held accountable," he says. "But what is disconcerting is that an avalanche of cases is being filed because people have been solicited to bring all sorts of claims to where doctors can no longer afford insurance, or worse yet, insurance companies go bankrupt paying those claims."

Maloney and attorneys like her give the public unrealistic expectations, says Evans, in large part through TV ads about money that can be collected from doctors.

"Some patients perceive the tort system as a get-rich-quick lottery," he says.

"Some people think working on the human body is like working on a car, and it's not. A heart transplant is not like getting your brakes changed. There's an art to medicine, and there are cer-

tain risks inherent to some procedures. Some people will die under general anesthesia every year, and there's nothing to be done about it."

The malpractice crisis has forced a number of doctors to engage in "defensive medicine," in which extra tests are ordered routinely so that the physician cannot be later faulted for not doing everything that could have or should have been done, says Evans.

For every dollar spent on malpractice-insurance premiums, doctors spend \$2.70 performing unnecessary tests and beefing up record-keeping to avoid litigation, says Dennis Dawson, executive director of the Bexar County Medical Society.

As exorbitant claims are settled, insurance premiums rise; the costs are put back on the pocketbooks of patients, Dawson says.

And what do the society's files say about how the settlement money is carved up?

About 25 percent goes to

compensate the economic losses of the plaintiff, while another 25 percent covers the plaintiff's pain and suffering, Dawson says. The other half pays insurance administrators and attorneys' fees.

A growing movement to stop exorbitant payouts in medical-malpractice cases is taking shape in a campaign known as Texans Against Lawsuit Abuse. The campaign was started by the Rio

Grande Chamber of Commerce but has reached San Antonio and Austin.

The campaign is not directed specifically at Maloney but at a system and a problem, says Art Roberts, senior vice president of the Texas Chamber of Commerce in Austin.

"The problem is fixable in terms of jurors' understanding that it is not a monolithic

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insurance company being impacted by their decisions, but their pocketbook and their rates," Roberts says. "The system in Texas has too many lawsuits being filed that may not have merit."

Rick Gentry, regional vice president of the Insurance Information Institute in Austin, does direct his comments to Maloney, particularly her TV ads.

"I don't know why she would say these things," Gentry says. "My advice would be to contact your agent or company representative to file your claim and request what you are due, which is an honest and fair settlement."

"Why would you want to share any of those dollars with a plaintiff's lawyer?" Gentry says.

"What her TV ads are saying is, 'Don't even take that first step. Call me. You haven't got a chance.' That's baloney," he says. "We are in the business to provide financial security and to pay claims. If we didn't do that, we wouldn't be in business much longer."

In her defense, Maloney says she believes the system is weighted in favor of the medical community and that too often clients come to her because the statute of limitations has run out, records have been altered or established methods for compensation have failed.

"Insurance companies don't ever pay medical malpractice unless you have a significant attorney," Maloney says. "They won't even pay if you have a lousy attorney. The majority of cases are won by doctors and hospitals."

Maloney says doctors, who have the highest mean income of any profession, should be required by law to carry adequate malpractice insurance in much the same manner as motorists, who, even if they have a good driving record, must pay for liability insurance.

"There is individual responsibility," she says. "If I were to commit an error and hurt a client of mine, I would want them to be compensated. I carry lots of insurance."

Maloney also says she believes there is a misperception on the part of doctors that she is "out there filing spurious lawsuits."

"The cases that we take are in dead earnest and they are very significant breaches in the standard of care, and very significant injuries," she says.

She says one of her most rewarding cases involved a family with a child who suffered brain damage due to negligence of medical personnel. So poor they could not afford a bathtub in which to bathe the infant, they had been rejected by three other San Antonio personal-injury lawyers.

The parents were devoted to the child, the youngest of four, and took turns sleeping on the floor at his side to make sure his health did not fail in the middle of the night, she says.

The case was extremely complicated. More than 20 expert witnesses were deposed. Local doctors supported each other in claiming that the child's care was superlative. But a one-hour videotape of a settlement demand made for insurance adjusters showed a different story.

On tape, experts and attorneys gave statements regarding evidence of faulty medical and nursing care. It included compelling evidence that a document examiner had found that records had been altered.

The case was settled on the eve of trial for just under \$2 million, she says, meaning that the child would receive the care to which he was entitled for the rest of his life.

Not bad money for the family, or for Maloney, whose fees are based on a percentage of the settlement or jury award to her clients.

While she hesitates to be specific about her annual earnings, she does not deny her economic success.

"I would rather say I've done a really good job for my clients and that has enabled me some degree of economic comfort as well."

Maloney likes to share that "economic comfort," especially with political candidates in the Democratic Party, or the party itself.

Sylvia Romo, who recently stepped down as chairwoman of the Bexar County Democratic Party to run successfully for the Texas House of Representatives, says Maloney single-handedly kept the office afloat for the last six months of 1991 by covering overhead expenses.

"Historically, it has been difficult for the party to raise money," Romo says. "Had it not been for her, the office would have closed."

This time of financial difficulty was when Romo was recruiting candidates for the March primary, a chief goal of any political party.

"I will be forever grateful to her," Romo says.

Maloney says she has no amount budgeted for political contributions.

"We're not that formal about it," she says. "We give until it hurts to people we believe in, to candidates

we feel can make a difference."

If the medical-malpractice money continues to be good, Maloney's goal is to scale back her practice within the next year so she can have more free time for reading and writing.

"I don't know about ever getting entirely out of law, but my problem is that no matter how many cases I take, I think I'm going to be compulsive about it." ■

Susie Phillips Gonzalez is an Express-News staff writer.