Legalese is S.A. attorney's native language

High hemlines, high heels and high fees are the Maloney style.

By Sanford Nowlin
EXPRESS-NEWS BUSINESS WRITER

Doctors have refused to treat her family, complained to the Texas Bar Association about her commercials soliciting medical malpractice clients and formed a committee to counteract her hefty contributions to Democratic judges.

Defense attorneys seethe when they talk about her, blasting her aggressive legal style and penchant for short skirts and high heels.

Marynell Maloney, the daughter-in-law of legendary San Antonio lawyer Pat Maloney Sr. and one of the city's best-known trial lawyers in her own right, remains, after almost 25 years on San Antonio's legal scene, one of its most complex and divisive characters.

Though she spends much of her time in France, has dabbled in independent films and more than once threatened retirement, Maloney — by her own admission an "obsessive workaholic" — isn't about to give up high-profile legal work.

A $30 million suit she filed this year against the Drug Enforcement Administration puts her right in the middle of one of

See MARYNELL/20A

BOB OWEN/STAFF

Marynell Maloney, one of the best known trial lawyers in the state, divides her time between her offices in the Milam Building and homes in France.

"In the courtroom, you see her cutting and slashing at her opponents' throats."

LAWYER FRANK HERRERA

Marynell Maloney has winning style

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PHOTOS BY BOB OWEN/STAFF

Marynell Maloney displays portraits of her parents by Lubbock artist James Johnson. They ran private schools in Costa Rica, and she calls her mother, 91, there every day.

San Antonio's most wrenching ongoing dramas. The suit claims agents had no reason to use deadly force when they fired on and killed 14-year-old Ashley Villarreal, the daughter of a convicted cocaine trafficker.

"I think the largest share of why I do this is the side of me that deeply believes I'm, perhaps in an odd way, doing some societal good," Maloney said. "At another level, I think there's a part of me that thrives on overcoming the obstacles that are put in my way during a case. There's a constant creative challenge in dealing with them."

Her aggressive style has rankled many people. Maloney rose to prominence amid the medical-malpractice lawsuits of the late 1980s, and it didn't take long for the big-winning attorney with the long blond hair and omnipresent television commercials to become the poster child for groups looking to rein in trial lawyers.

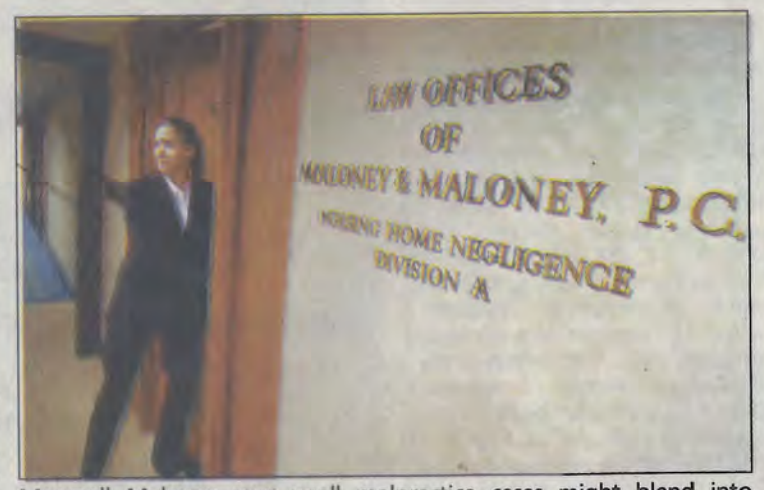
"Most doctors can be sued several times in their career and their memory of it all will be a blank — except for the one time they were sued by Marynell Maloney," said attorney Rick Evans, who frequently faced her in malpractice suits.

"She's a lightning rod in the medical community. I've had doctors line up at my door to help out on a case because Marynell is on the opposite side."

Maloney has even found herself mildly at odds with lawyers in her own firm, Maloney & Maloney, in which she is a partner with her husband, Michael; they complained about being disturbed by her offbeat taste in art for the office.

One recent Saturday afternoon, after returning to her office in the Milam Building downtown from a deposition out of state, Maloney, trim and statuesque in a black business suit and stiletto heels, strode toward her desk.

"This," she said as she smiled and pointed to a drawing by Lubbock artist James Johnson, of a man with a screaming mouth



Marynell Maloney says small malpractice cases might blend into blockbusters. She has few pals among nursing homes' lawyers.

ers would complete in two. Before the Texas Supreme Court limited the sessions' total length

who was fired after she spoke out about that city's efforts to censor library materials, including

AT A GLANCE

- **Name:** Marynell Baker Maloney
- **Age:** 49
- **Job:** Lawyer, partner in Maloney & Maloney, P.C.
- **Areas of specialty:** Nursing home litigation, civil rights litigation
- **Hobbies:** Writing, filmmaking, dancing, collecting art, reading.
- **Born:** Hutchinson, Kansas.
- **Education:** St. Mary's University, J.D., 1980; Trinity University, M.A., 1978; Oberlin College, B.A., 1975.
- **Family:** Three children. Daughter Michelle, 21, attends Sarah Lawrence College in upstate New York; daughter Erica, 18, attends Bowdoin College in Maine; son Dennis, 16, attends school in France.

She and husband, Michael, 50, are in divorce proceedings.

EXPRESS-NEWS GRAPHIC

of the court ultimately met to hear her motion, with four siding with her argument.

"I was highlighting a particularly egregious political ruling," Maloney said. "Was it tasteful to do it that way? Maybe not. But was the injustice acceptable? I don't think so. I felt the lesser of the two evils was to bring attention to it."

Maloney's firm was among the first in San Antonio to aggressively promote itself on television. And her early ads also raised the ire of critics.

In one, Maloney urged viewers to call if they need legal help righting a mistake made by a doctor. After all, she said, physicians are only human and can make "devastating mistakes."

The spot might not raise an eyebrow these days, when plain-

reversed his call for a new trial in a widely watched malpractice case in which Maloney won a substantial jury award. Some physicians, already angry about the rising tide of malpractice suits, saw the move as political since Maloney had supported Spears' campaign.

"You could say she lit the match with that incident," said defense attorney Evans, a Bexar-PAC member. "But it landed on a very fertile field."

Three years later, Maloney's firm pleaded no contest to charges it violated elections law by giving bonuses to employees, who then made contributions in the same amount to Democratic candidates. It paid a $20,000 fine.

Despite her fund-raising efforts, Maloney concedes that Texas trial lawyers have won few

where his eye should be, "is one of mine."

The public face

Maloney, 49, is the public face of her firm. While doctors, hospitals and insurance companies know her from her dogged pursuit of malpractice claims, the public knows her from her firm's commercials. In them she gazes into the camera and plaintively asks viewers to call if they've been wronged.

Maloney's nursing-home litigation work, her focus for several years, is said to have led to tougher employee screening in the state and a drop in sex crimes at the facilities.

Among those for whom she's won hefty settlements are the family of a paralyzed nursing home resident impregnated by a facility worker and parents so poor they couldn't afford a washtub for their infant who suffered brain damage at the hands of negligent medical personnel.

Friends describe Maloney as a tireless champion of the voiceless who has suffered for taking on institutions that value the bottom line more than human beings.

Unlike lawyers whose reputation stems from fiery courtroom oratory, Maloney is best known for winning cases before they go to trial. Few local lawyers spend as much time and money exhaustively preparing a case, observers say.

"I outwork my adversaries, all of them," said Maloney, whose car often is the first in the Milam's parking garage and the last to leave at night. "And I will work until I win. I try to leave nothing to chance. I try to win in every way possible."

Her intense trial preparation can rack up $150,000 or more in depositions, reporting fees and expert opinions before a trial even begins.

Supporters say the strategy yields large out-of-court settlements from defendants afraid to face trial, while critics say the meticulous preparation slows down the wheels of justice and cuts into plaintiffs' winnings.

Maloney also is a master at depositions, with an uncanny ability to goad defendants into admissions that hurt their case, attorneys say. Sometimes she needles them until they grow angry and make damaging statements. Other times, she kills with kindness, letting them tip their hand in a desire to be helpful.

She's also known for stretching to six hours depositions that others could take 10, 12, even 14.

"She wears them out," said attorney Stephen F. White, who worked with Maloney in the '90s. "I've seen doctors physically slump in their chairs. You could just see the fight ebbing out of them.

"That woman is an indefatigable worker. She puts in hours that most people can't physically handle."

It's hard work that pays off, though.

Massive awards

Over the years, Maloney has snagged massive awards for her clients, and herself. She's guarded with details about them, but said her largest wins have been settlements. Almost half a dozen have been for eight-figure sums.

In common with other top-rung trial lawyers, Maloney usually keeps some 50 percent of a settlement or jury award, observers say.

That has enabled her to lead a lifestyle that looks extravagant even alongside other successful Alamo City lawyers.

Well known in elite circles are her chateau in France's scenic Loire Valley and her Paris apartment. And while Maloney declined to discuss her French properties, she said that in some years she spends as much as half her time there.

"France still feels as if it has a culture that's conducive to the creative process," she said. "I'd hate to do business there, but it's a lovely place to go and think and pursue ideas."

Maloney and her 50-year-old husband filed for divorce in January and have lived separately since late last year, according to court records. People who know the couple say they seldom spend time together, often passing each other in the air as they fly between San Antonio and Europe.

"Michael and I are best friends and law partners, but we have separate lives," she said, declining to say more about the divorce proceedings.

While medical negligence and nursing home cases have been the mainstay of Maloney's career, she also considers civil rights litigation a vital part of her work. She has served as state vice president of the American Civil Liberties Union, and for years housed its local chapter at her office.

She made headlines in 1997 representing a Weslaco librarian shock-jock Howard Stern's book, "Private Parts."

Maloney sees the Villarreal case as the latest salvo in her civil rights crusade.

Her lawsuit claims agents had no reason to use deadly force against Villarreal, who was shot as she drove a car out of the family's driveway with its lights off during a DEA stakeout. Narcotics agents claimed the teenager's car drove at them.

"There will be a lot of factual re-creation and invention in an effort to exonerate the officers," Maloney said. "But the fact is, had they opted to protect the rights of citizens rather than carry out this dramatic shoot-down, (Villarreal) would be alive today."

The DEA didn't return phone inquiries about the lawsuit.

Workaholic bent

Maloney grew up in Costa Rica, where her parents operated a pair of private schools. She still talks with her 91-year-old mother, Marian, by phone every day.

She credits her parents, who continued to operate the schools into their 70s, for her workaholic bent.

"It just feels very natural to me to be that way," she said. "I can justify it by looking at how driven my parents were."

After getting an undergraduate degree in psychology in 1975, she danced professionally in New York, mostly in "off-Broadway things no one would remember."

Her introduction to the legal world came after meeting her husband, Michael, son of Pat Maloney Sr., the dean of San Antonio trial lawyers, at the University of Texas in a philosophy class in the late '70s. She was attending school there after being drawn to Austin's freewheeling lifestyle.

"Because Michael's family was all lawyers, they had the general opinion that if you didn't have a law education, you really weren't educated," she said. "I wanted to get past that issue, so I went to law school. But I never really expected that I'd do anything other than get the education. I thought I'd go back to graduate school and get a doctorate in literature or something."

Just out of law school, she worked for Pat Maloney Sr., often trying cases beside him.

While some attorneys say the relationship between Pat, 80, and Marynell has been strained at times, the senior Maloney said he respects his daughter-in-law's accomplishments. The two have lunch at his offices more than a dozen times a year and see each other at family gatherings.

"She's tenacious, she's imaginative and she's kind of a lady of steel," he said. "I'm proud of whatever input I've had in her becoming what she has."

Soon after leaving Pat Maloney Sr.'s firm, she cut her own profile representing firebrand oilman Clinton Manges, former owner of the imploded USFL Gunslingers.

Retired District Judge Phil Hardberger served as attorney for Gunslingers players, who sued the cash-strapped Manges for back salaries. He remembers Maloney, then in her late 20s, "fighting on all fronts."

During their public bout, Maloney called Hardberger a "panty-waisted lawyer" during an interview and threatened to have him arrested when he showed up at the Gunslingers' offices to collect team members' property.

"She's ready for the fight," Hardberger said. "You compare her and Pat, and she could be his blood daughter, the way they both look at the law and their aggressive reputation. They both know that being a good lawyer and being an unpleasant lawyer can go hand-in-hand."

But Maloney also can switch off the tough side.

Acquaintances describe her as an affable host and conversationalist more likely to discuss literature and art than her latest legal battles.

"In the courtroom, you see her cutting and slashing at her opponents' throats," plaintiff's lawyer Frank Herrera said. "It's quite a contrast to the way you see her outside of the courtroom, or the way you might see her act around her children."

Powerful enemies

While Maloney's by-the-throat advocacy has helped build her reputation, it also has made powerful enemies.

In 1997, the powerful 4th Court of Appeals referred her to the State Bar for disciplinary action after she submitted a brief accusing three Republican judges on the panel of taking a "pro-rapist, pro-big-insurance-defense-firm position."

In the brief, she claimed the judges ruled against her in a nursing home rape case because of her financial support of Democratic candidates.

Ultimately, though, the Bar decided against disciplinary action. What's more, all seven members of the appeals court that referred her were soon out of office, most of them defeated by Democrats. Plaintiff's attorneys seem to get more daytime television time than Judge Judy. But in 1990, it was an audacious move.

Soon after the commercial ran, the Bexar County Medical Society complained to the State Bar that Maloney had breached legal ethics.

But the Bar ultimately decided the ad wasn't in violation, and Maloney has continued making TV spots in a similar style.

Maloney defends her commercials, saying they're educational and less of a public burden than other tactics trial lawyers use to attract clients.

And it doesn't hurt, local lawyers say, that the repeated television exposure has generated lots of business for Maloney & Maloney. The firm receives so many calls, lawyers said, that Maloney can take only the best potential cases.

"She's not going to take a loser," said Charlie Deacon, a lawyer who often faces her in nursing home cases. "She's only going to do one where everything's stacked in her favor. Her clients are always compelling."

Doing the most good

Being selective, Maloney said, allows her to concentrate on the cases where she can do the most good.

Others in the legal community question her motives, though.

"It's all about the money," said one attorney who asked not to be named. "She's got an incredibly expensive lifestyle and an incredibly expensive law practice. I'd say it's more about sport than compassion for her."

Also controversial has been Maloney's aggressive support of the Democratic Party, generally perceived as the party friendliest to trial lawyers.

Since 1990, she has personally given $216,286 in federal elections. And her firm has contributed $28,000 to state contests since 2000, the earliest year the Texas Ethics Commission includes in its campaign contribution database.

But where she's drawn the most ire is contributions to district court judges — especially those likely to hear her cases.

In response to one particularly contentious showdown with Maloney, local doctors in 1990 founded BexarPAC, an organization that has raised funds for candidates that support limiting trial lawyers' power.

Democratic District Judge Carleton Spears had unexpectedly victories lately.

Voters in September narrowly approved an amendment to the Texas Constitution that bolstered a $750,000 cap the state Legislature passed for noneconomic damages in malpractice cases.

Maloney said recent law changes will make it difficult to vigorously pursue cases against nursing homes, but she added she'll continue to pursue such cases on a pro bono basis.

"Under the new law changes, we're finding nursing homes are telling people, 'if you don't like it, tough,' " she said.

Maloney added that she'd like to sort out what the new laws mean to her legal practice, then spend more time in France and on her artistic pursuits.

Passion for film

Although she's an avid writer, reader and collector of several Texas visual artists, film is Maloney's current passion.

She has screened several shorts at festivals, and this summer hopes to finish "The Sunsetters," a feature-length movie she wrote, directed and financed. The film, largely shot in Costa Rica, is a dialogue-driven comedy set at a philosophy camp for adults.

While Maloney has a reputation as an aggressive litigator, artist and longtime friend Johnson, an actor in "The Sunsetters," said her directorial style is anything but.

"When she directs, she never yells at anyone," said Johnson, who's done portraits of Maloney and both her parents. "I've joked that I want to buy her a megaphone for the next movie."

Other lawyers said they doubt Maloney is ready to push aside legal work to follow her muse.

Maloney has threatened to retire, or at least scale back her legal work, several times, saying she wanted to spend time with family. But those sabbaticals have turned out to be short lived.

Most likely, Maloney will deal with the new caps by combining suits from multiple plaintiffs against a single nursing-home operator, attorney Deacon said. The plaintiffs' monetary wins may be smaller, but the individual wins could stack up.

And by Maloney's admission, it's not easy for her to unwind.

"Even when I'm in France, I'm working," she said. "I'm on the computer until midnight, which is around the time the courthouse closes in San Antonio."

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snowlin@express-news.net