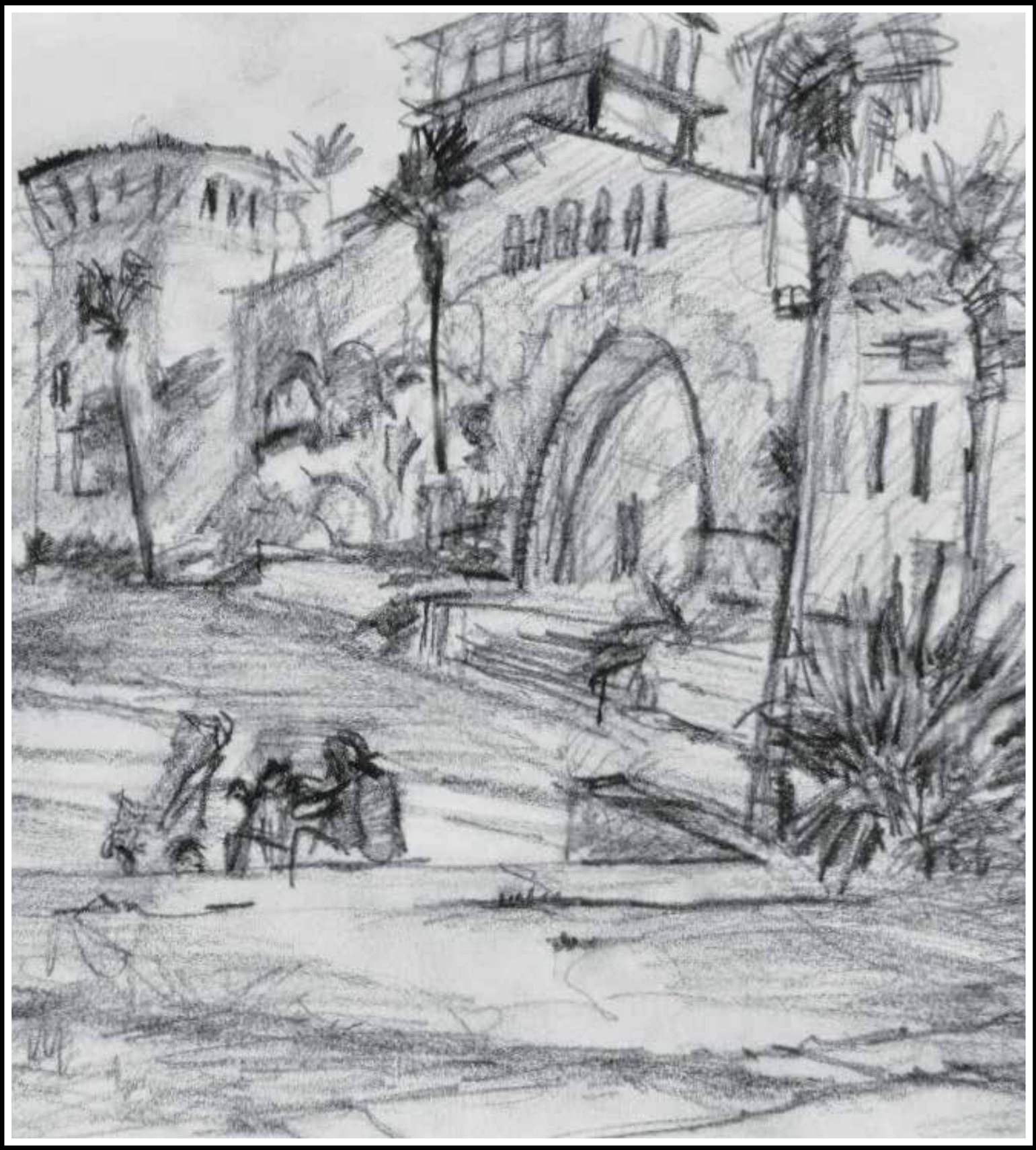
Santa Barbara Lawyer

Official Publication of the Santa Barbara County Bar Association
April 2018 • Issue 547



Santa Barbara County Bar Association

www.sblaw.org

2018 Officers and Directors

Officers

JEFF CHAMBLISS
President
Criminal Defense Attorney
133 E. De La Guerra St. #188
Santa Barbara, CA 93101
T: (805) 895-6782
jeff@chamblisslegal.com

AMBER HOLDERNESS
President-Elect
Office of County Counsel
105 E. Anapamu Street, #201
Santa Barbara, CA 93101
T: (805) 568-2969
aholderness@co.santa-barbara.ca.us

ELIZABETH DIAZ
Secretary
Legal Aid Foundation
301 E. Canon Perdido Street
Santa Barbara, CA 93101
T: (805) 963-6754
ediaz@lafsbc.com

ERIC BERG
Chief Financial Officer
Berg Law Group
3905 State St Ste. 7-104
Santa Barbara, CA 93105
T: (805) 708-0748
eric@berglawgroup.com

MICHAEL DENVER
Past President
Hollister & Brace
PO Box 630
Santa Barbara, CA 93102
T: (805) 963-6711
mpdenver@hbsb.com

Directors

LETICIA ANGUIANO
Mechanics Bank
1111 Civic Drive, Suite 204
Walnut Creek, CA 94596
Leticia_anguiano@mechanics-bank.com

JOSEPH BILLINGS
Allen & Kimbell, LLP
317 E. Carrillo Street
Santa Barbara, CA 93101
T: (805) 963-8611
jbillings@aklaw.net

DEBORAH BOSWELL
Mullen & Henzell LLP
112 Victoria St
Santa Barbara, CA 93101
T: (805) 966-1501
dboswell@mullenlaw.com

LARRY CONLAN
Cappello & Noël LLP
831 State St
Santa Barbara, CA 93101
T: (805) 564-2444 lconlan@cappellonoel.com

IULIA I. DAVIES
800 Anacapa St, Suite A
Santa Barbara, CA 93101
T: (858) 260-9096
Iuliadavies@gmail.com

JENNIFER GILLON DUFFY
Fell, Marking, Abkin, Montgomery, Granet & Raney LLP
222 E Carrillo St #400
Santa Barbara, CA 93101
T: (805) 963-0755
jduffy@fmam.com

STEPHEN DUNKLE
Sanger, Swysen & Dunkle
125 E. De La Guerra, Suite 102
Santa Barbara, CA 93101
T: (805) 962-4887
sdunkle@sangerswysen.com

ELVIA GARCIA
Law Offices of Gregory I. McMurray PC
1035 Santa Barbara St Ste 7
Santa Barbara, CA 93101
T: (805) 965-3703
elvia@mcmurraylaw.us

MICHELLE ROBERSON
President
Sierra Property Group, Inc.
5290 Overpass Road, Bldg. C
Santa Barbara, CA 93111
T: (805) 692-1520 *102
michelle@sierrapropsb.com

JEFF SODERBORG
Barnes & Barnes
1900 State St Ste M
Santa Barbara, CA 93105
T: (805) 687-6660
jsoderborg@barneslawsb.com

ROSALEEN WYNNE
Law offices of James F. Cote
222 E. Carillo St. Ste 207
Santa Barbara, CA 93101
T: (805) 966-1204
rosaleen@jfcotelaw.com

LIDA SIDERIS
Executive Director
15 W. Carrillo Street, Ste 106
Santa Barbara, CA 93101
T: (805) 569-5511
Fax: 569-2888
sblawdirector@gmail.com

Mission Statement

Santa Barbara County Bar Association

The mission of the Santa Barbara County Bar Association is to preserve the integrity of the legal profession and respect for the law, to advance the professional growth and education of its members, to encourage civility and collegiality among its members, to promote equal access to justice and protect the independence of the legal profession and the judiciary.

Santa Barbara Lawyer

A Publication of the Santa Barbara County Bar Association

CONTRIBUTING WRITERS
Jennifer Gillon Duffy
The Honorable Donna Geck
Lynn E. Goebel
Bradley Herrema
Gregory W. Herring
Guneet Kaur
Austin Lampson
Robin Oaks
Robert Sanger
Scott Slater

EDITOR
Jennifer Gillon Duffy

ASSISTANT EDITOR
Lida Sideris

MOTIONS EDITOR
Michael Pasternak

VERDICTS & DECISIONS EDITOR
Allegra Geller-Kudrow

PHOTO EDITOR
Mike Lyons

PRINTING
Printing Impressions

Submit all **EDITORIAL** matter to sblawyermagazine@gmail.com with "SUBMISSION" in the email subject line.

Submit all **VERDICTS AND DECISIONS** matter to: Allegra Geller-Kudrow at ageller-kudrow@mullenlaw.com

Submit all **MOTIONS** matter to Michael Pasternak at pasterna@gmail.com

Submit all **ADVERTISING** to **SBCBA**, 15 W. Carrillo Street, Suite 106, Santa Barbara, CA 93101 phone 569-5511, fax 569-2888 Classifieds can be emailed to: sblawdirector@gmail.com

Santa Barbara Lawyer
Official Publication of the Santa Barbara County Bar Association
April 2018 • Issue 547

Articles

Sections

On the Cover

When he sat down last March on the edge of the Courthouse sunken gardens to sketch this afternoon scene with a mother and child, he didn't know that his daughter, attorney Elise Cossart-Daly, was newly pregnant with her first child. **Kit Boise-Cossart** graduated from UCSB's College of Creative Studies with a BA in Art. His day job has been as a builder of green residential projects, and when time allowed, as an artist.

Chief Justice Reception. Back row: Judges Michael Carrozzo, Timothy Staffel, Arthur Garcia, Executive Officer Darrel Parker, Judges John McGregor and Jim Herman. Front row: Judges Colleen Sterne, Donna Geck, Patricia Kelly, the Chief Justice Tani Cantil-Sakauye, Judge Kay Kuns, Commissioner Von Deroian, and Judge Jean Dandona

Case Management 101 – Tips from Department 4

By Judge Donna Geck

Judge Donna Geck

For many civil litigators, a Case Management Conference and the attendant need to file and serve a Case Management Statement is a tedious and recurring task. Some litigators consider it an annoyance unworthy of much thought or effort or at best, a billing opportunity. It is often delegated to the newest associate at the firm or even contract counsel.

For your consideration, a different perspective:

A Case Management Conference is your opportunity to get your client's story before the Court. With the direct calendaring system of the Santa Barbara Superior Court, unless your case involves law and motion matters, the only time the Court will be considering and addressing the case between the filing of the Complaint and Trial is at the Case Management Conference. Why not use the opportunity to set forth your case in the best light possible? It is one of the few opportunities to have a face-to-face discussion of your case with the Court. It is also your chance to guide the progress of the case, whether toward settlement or trial.

To assist you in "winning" your Case Management Conference, consider the following:

1. The timely filing and service of a Case Management Statement is essential. California Rule of Court 3.725(a) requires the Case Management Statement to be filed and served 15 calendar days before the hearing. Parties must use the Mandatory Case Management Statement (form CM-110). It is not sufficient to file an initial Case Management Statement and then coast on that. A new timely Case Management Statement must be filed for each hearing. The Court cannot adequately address the issues set forth in California Rule of Court 3.727 if the Court has not been apprised of the true status of the case. A joint statement is authorized by CRC 3.725(b).

2. Counsel have a duty to meet and confer in person or by telephone regarding issues in the case prior to the hearing per California Rules of Court 3.724. This rarely happens in any meaningful way. Counsel will often check box 19 on the form (or sometimes skip it altogether) that they have met and conferred, but at the hearing it becomes abundantly clear they have never spoken to each other.

3. Some litigators are apparently of the impression that the less information conveyed in the Case Management Statement, the better. The statements are terse and contain little information that is helpful to the Court in directing the course of the litigation. The more information the Court is given, the better the chances that the litigation will proceed in an orderly fashion.

4. Counsel should ensure that their offices have a reliable calendar/diary system for Case Management Conferences. Sometimes Case Management Statements are not filed or served and sometimes counsel misses the hearing. This can and will result in an Order to Show Cause why sanctions should not be imposed. Moreover, the missing statement and missing the hearing do not enhance a litigator's professional reputation.

5. Be prepared to discuss the status of the case. While there is no requirement that trial counsel attend the hearing, at least send a lawyer who is knowledgeable about the case. It is not helpful to the Court when counsel is unable to answer basic questions about service of the complaint or cross-complaint, the status of doe defendants, and other procedural matters.

6. Paragraph 4b of the Case Management Statement requires a brief statement of the case. This is a chance for counsel to tell the client's story. Plaintiff should always address the amount of damages so the Court can consider whether a referral to CADRe or CMADRESS is appropriate. Many times defendants will respond to paragraph 4b by stating "see plaintiff's Case Management Statement." This is a mistake. Is defendant really adopting plaintiff's version of things? If so, why are we in Court? The defense has a story to tell and this is the place to tell it. The Court does read and consider Case Management Statements. The Court wants to ensure that the parties' litigation journey proceeds as smoothly and expeditiously as possible.

Continued on page 8

Retirement of Senior Deputy Joey L. Patrick

By Lynn E. Goebel and Guneet Kaur

Way Back When…

Three decades ago, the long-fought Iran-Iraq war had reached a deadly stalemate, the stock markets took a huge hit on Black Monday in October, American politicians were gearing up for the 1988 Presidential race, Baby Jessica was rescued from a well (broadcast live on CNN), and much more. `Photographers were also busy documenting the lives of Peewee Herman, Menudo, Mikhail Gorbachev, Howard Stern, Princess Diana, Donald Trump, Bernie Goetz, and many others (or so that's what the internet says).

That was also when now-retired Sheriff Senior Deputy/ Special Duty, Joey L. Patrick, Jr. (hereinafter "Joey"), began his 30-year career with law enforcement. His last Special Duty assignment before he retired on March 29, 2018, was as a Senior Deputy assigned to the Santa Barbara County Superior Court.

Joey L. Patrick

Before gracing the hallowed halls of the Santa Barbara courthouse, Joey's interest in law enforcement began in high school, where he knew that he wanted to help the consistently disadvantaged: primarily women and children. There, he was outspoken about not bullying others. Joey's mother was a huge influence in his decision to follow the law enforcement route.

Before entering law enforcement, Joey served in the United States Air Force from 1983-1987. He was first based in San Antonio, Texas, and then transferred to Vandenberg Air Force Base. Perhaps not surprisingly, he was a police officer in the Air Force as well.

After four years in the military, Joey applied to the Santa Barbara County Sheriff's Office ("SBSO") in 1988. He was accepted into their ranks and first assigned to the Custody Division. After four years "in custody," he attended the Police Academy at Allan Hancock College. Following that training and over the next six years, Joey worked various assignments in Patrol, including Isla Vista, Goleta, Santa Ynez, Solvang, Buellton, and Carpinteria.

Then, Joey joined the Special Operations Division, where he served as a gang investigator for three years. On his days off, he taught at Allan Hancock College at the Police Academy. During this time, he also assisted with SBSO Narcotics Division and Vice Intelligence.

Joey was assigned to the Santa Barbara Superior Court in the early-2000s, first working as a Bailiff to the Honorable James W. Brown (Ret.) for four years. In 2005, he was promoted to Senior Deputy. It is from this position that he recently retired.

During his career, Joey achieved his long-held desire to assist women and children. Several years ago, an individual was allegedly engaging in a sexual act in the presence of two young girls who were attending a gymnastics meet at San Marcos High School. Joey investigated the incident and was able to calm the (obviously traumatized) girls so they could provide pertinent information about the suspect. The girls wrote a letter, thanking Joey for his help. The letter credited him with making them feel safe. To this day, he has the letter and treasures it more than any other awards, commendations or accolades he has received throughout his career.

Thoughts from our Santa Barbara County District Attorney

District Attorney, Joyce Dudley, graciously agreed to answer a few questions about Joey and provide her thoughts upon his retirement.

When did you first meet Joey? "When he was the Bailiff on

Continued on page 8

Geck, *continued from page 6*

7. Litigators often fail to complete paragraph 5 of the form as to whether a jury trial or court trial is being requested and paragraph 7, the estimated length of trial. The Court needs this information for its planning purposes and management of its calendar.

8. If there are related cases or issues of consolidation or coordination, this may affect the timing of matters in the case. Paragraph 13 should be fully completed.

9. Paragraph 16 addresses the status of discovery. It is not helpful to the Court to respond "per code." The Court needs to know the extent of the proposed discovery, the status of the discovery and what remains to be accomplished.

10. Paragraph 18 is an opportunity to discuss other "issues." The Trial Court Delay Reduction Act of the Standards of Judicial Administration 2.2(d) sets a goal that all civil cases are to be disposed of within two years of the date of filing. Standard 2.2(f) is even more specific setting the following case disposition time goals.

A. 75% disposed of within 12 months;
B. 85% disposed of within 18 months;
C. 100% disposed of within 24 months.

If there is a reason why the case is not likely to be disposed of within these parameters, this is the time and place for the explanation. The defendant may have to be served pursuant to the Hague Convention. The plaintiff may be facing multiple surgeries which may prevent her from participating in discovery or for counsel to reasonably ascertain the nature and extent of her injuries. Perhaps there are multiple out-of-state parties who are creating logistical and scheduling nightmares. There may be good reasons why the disposition goals cannot be met, but the Court needs to know why so as not to run afoul of the Standards of Judicial Administration.

With these tips in mind, the parties and counsel are more likely to have a meaningful Case Management Conference. ■

Judge Donna D. Geck presides in Department 4, a civil department. She is the South County Supervising Civil Judge, a member of the Executive Committee, and serves on the Appellate Panel.

Patrick, *continued from page 7*

an aggravated rape case I prosecuted where tensions ran high between the victim, her family, and the defendant and his family (not to mention the defense attorney and me). He truly did a Herculean job!"

Three words or phrases you'd use to describe Joey? "Integrity, warmth, and compassion for all."

Fondest memory of Joey? "When he stood up for me when a Judge wasn't embracing a concern that I brought to his attention."

Parting words that you'd like to say to Joey? "You have my heart-felt thanks for having brought justice, safety, professionalism, and kindness to our Court system in general, as well as everyone with whom you have ever interacted."

In Parting

For his retirement, Joey intends to travel internationally for 6-8 months visiting Australia, Germany, Mexico, Canada, and Nicaragua. He will continue his passion for music, which began when he was 12-years-old playing piano and keyboards. There is no doubt that he will continue to enjoy his pursuits of golf, tennis, and motorcycle riding.

Joey said he will miss the people the most – those with whom he worked, interacted, and saw daily. His parting words upon his retirement: "I've had a very rewarding career, and I've really enjoyed my time serving the community, particularly interacting with the people whose paths crossed mine."

When asked what advice he would give to others, now-retired Senior Deputy Joey L. Patrick, Sr., said, "Have patience, be dedicated, and be open and understanding to the fact you are going to deal with people who are from all walks of life. You have to understand that they are different from what you are used to dealing with; treat everyone with respect." He repeated and emphasized, **"THE KEY IS TO TREAT PEOPLE WITH RESPECT."** ■

Lynn E. Goebel and Guneet Kaur are both family law attorneys in Santa Barbara.

The National Task Force on Lawyer Well-Being Part Three
Recommendations for Specific Groups of Stakeholders, including Law Schools, Legal Employers, and Bar Associations

By Robin Oaks

Over the past two months, I have provided highlights from the ABA's National Task Force Report on Lawyer Well-Being[1] (the "Report") in hopes that the recommendations cited will act as a launchpad for action.[2] At the very least, the recommendations from the Task Force should spark conversations in our legal community about what well-being means for the sustainability of our profession, and for our personal and professional health and competence.

If the health of our legal profession, as the Task Force notes, is in a state of crisis, we have a choice regarding how to react to the challenge. We can adopt a pessimistic outlook that may see all the reasons why "lawyer well-being" is an oxymoron; or, instead, we can adopt a mindset of growth, reframing the challenge as an opportunity for creative change and learning.

I suggest that we approach the recommendations provided by the Task Force as a "multi-dimensional" road-map, not one that points only in a specific, linear direction. Although the term "well-being" is a noun, I am inclined to envision it more as a verb, more akin to how we act and the healthy life skills we utilize, rather than one more thing to attain. This paradigm shift is reflected in the Task Force comments when it emphasizes that well-being is "a continuous *process* whereby lawyers seek to thrive" in multiple and interconnected experiences of life. It includes lawyers' "ability" to make "healthy, positive choices, to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients."

General Recommendations for Specific Groups of Stakeholders

In this third and final installment, I will highlight recommendations from the Report that focus on specific groups of stakeholders, including: (1) judges; (2) regulators; (3) lawyers' professional liability carriers; (4) lawyer assistance programs; (5) law schools; (6) legal employers; and (7) bar associations. The Task Force emphasized that all of these groups can help in their own unique ways by taking action to address five core steps: (1) identifying the role that each of us can play in reducing the level of toxicity in our profession; (2) ending the stigma surrounding help-seeking behaviors; (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence; (4) expanding resources and educational outreach and programming on well-being issues; and (5) changing the tone of the profession one small step at a time.

Robin Oaks

The judiciary, regulators, professional liability carriers, and lawyer assistance programs all have significant and unique power to set the parameters for what constitutes competence, enforce and assist lawyers and judges to create civility in the profession, and show support for funding efforts to build critical skills that promote mental and physical health. The Report provides a number of useful checklists and additional resources for these groups to consider when taking action.

The ABA Task Force cited California's regulations as a commendable example of a continuing legal education requirement that broadens the scope of competence to include those skills that promote mental, emotional, and physical health.[3] Regulations in other states specifically support and encourage education on a broad range of well-being topics, including: enhancing optimism, resilience, relationship skills, and energy and engagement; connecting lawyers with their strengths and values; addressing stress; and fostering cultures that support outstanding professionalism.

Recommendations for Law Schools

According to research cited by the Task Force in the Report, law students start law school with positive feelings and high life satisfaction. However, during their first year, there is a decrease in well-being and a marked increase in rates of anxiety, depression, and substance abuse. "Research suggests that law students are among the most dissatisfied, demoralized, and depressed of any graduate student population." "In recent research, forty-two percent of students needed help for poor mental health but only about half sought it out."

"Law school well-being initiatives should not be limited to detecting disorders and enhancing student resilience. They also should include identifying organizational practices that may be contributing to the problems and assessing what changes can be made to support student well-being. If legal educators ignore the impact of law school stressors, learning is likely to be suppressed and illness may be intensified."[4]

It is imperative for law schools to create counseling resources, and develop "best practices for creating a culture in which all associated with the school take responsibility for student well-being." Recommendations for law schools include publicizing resources for combating stress, creating forums for open discussions about the realistic stressors of the legal profession, and providing courses and presentations that will help develop healthy mental and physical life habits. Developing a well-being curriculum and establishing peer mentoring are other actions that can assist law students and help build healthy cognitive and emotional skills that will stay with them when they become lawyers.

Recommendations for Legal Employers

Legal employers include all entities that employ lawyers. I never quite understood how the term "life-work balance" made sense considering that we are living when we do our work; the beliefs, emotions, thoughts, and experiences we have as humans are intertwined with how we as legal professionals "make a living."

Healthy work environments reflect relationships of inclusion, respect, and diversity. Leaders should understand the value of creating work environments that support cognitive, emotional, and physical sustainability. The Report includes useful checklists that assist legal employers to take action. Some of the recommendations include creating well-being committees and designated advocates, providing education for new lawyer orientation, and promoting skill-building in well-being techniques for everyone.

Law firms are encouraged to create standards of conduct and establish organizational infrastructure to promote well-being. Some law firms, like Baker & McKenzie, have already developed codes of business conduct and policies "to ensure that every partner, lawyer and employee in the Firm knows the principles that are to guide us in the choices we make and in the way we behave." Their code spells out legal and ethical obligations and responsibilities that seek to align operations with standards of human rights, fair labor, the environment, anti-corruption, and anti-abusive conduct.[5]

Advocates within a law firm or outside consultants can assist in "evaluating the work environment and identifying areas of greatest mental distress among employees." An assessment tool could include an anonymous survey conducted to measure lawyer and staff attitudes and beliefs about well-being, stressors in the firm, and ideas for improving the workplace climate. A wide range of ideas and topics that law firms might include in such surveys are included in Appendix D to the Report.

Any evaluation should seek input from everyone "in a safe and confidential manner, which creates transparency that builds trust." Of course, we know well that policies are not the only measure of a healthy work environment. "Attitudes are formed not only by an organization's explicit messages but also implicitly by how leaders and lawyers actually behave."

"At its core, law is a helping profession…Work cultures that constantly emphasize competitive, self-serving goals will continually trigger competitive, selfish behaviors from lawyers that harm organizations and individual well-being. This can be a psychologically draining bottom line since poor mental health can cause disability and lost productivity."

The Task Force urges "legal employers to evaluate what they prioritize and value, and how those values are communicated. When organizational values evoke a sense of belonging and pride, work is experienced as more meaningful. Experiencing work as meaningful is the biggest contributor to work engagement—a form of work-related well-being."[6]

Recommendations for Bar Associations

Because bar associations reflect the mission and mindset of the local legal community, the Task Force recommends that this group of stakeholders should: 1) sponsor continuing legal education programs centered on well-being; 2) launch well-being committees; 3) train staff to be aware of lawyer assistance programs; and 4) create a resource center for sharing information about well-being and assistance programs. Bar associations can partner with other lawyer-wellbeing committees in various states, including Georgia, Indiana, Maryland, South Carolina, and Tennessee, to share education, identify qualified speakers, and develop relevant materials.

Bar associations share the common goals of "promoting members' professional growth, quality of life, and quality of the profession by encouraging continuing education, professionalism (which encompasses lawyer competence, ethical conduct, eliminating bias, and enhancing diversity), pro bono and public service."

The Task Force suggests that bar associations can sponsor empirical research on lawyer well-being as part of annual member surveys. "They can survey lawyers on well-being topics they would like to see addressed in bar journal articles, at bar association events, or potentially through

continuing legal education courses." These surveys will help identify the education and types of programs that will best meet the needs and interests of the legal community.

Bar association committees can provide valuable service to members by "compiling resources, high-quality speakers, developing and compiling educational materials and programs, serving as a clearinghouse for lawyer well-being information, and partnering with the lawyer assistance program, and other state and national organizations to advocate for lawyer well-being initiatives."

Conclusion

As this final article about the Task Force Report concludes, I intend to continue efforts to provide education and training for our legal community on a variety of cognitive fitness, energy management, emotional intelligence, and physical and mental health topics. I hope to gather resources from other state and national committees, and create local forums, including in our local bar associations and law schools, to foster well-being. With your involvement and support, we can create spokes in an ever-growing multidimensional "well-being" wheel that connect, support, and empower us all as legal professionals.

Margaret Mead said, "We – humankind – stand at the center of an evolutionary crisis, with a new evolutionary device – our consciousness of the crisis – as our unique contribution." The conversation about the growing crisis in our legal profession, and what is needed to foster well-being and sustainability, has begun.

The Task Force urges us to take action. "Regardless of your position in the legal profession, please consider ways in which you can make a difference in the essential task of bringing about a culture of change in how we, as lawyers, regard our own well-being and that of one another." Booker T. Washington once wisely noted, "No one who continues to add something to the material, intellectual and moral well-being of the place in which they live, is left long without proper reward." Your conscious participation is sought to energize and move this opportunity for creative change in a positive direction. ■

Robin Oaks has been an attorney for over thirty years, and for over twenty years has focused her legal practice exclusively on conducting workplace investigations and providing conflict resolution services for public and private sector clients. She has studied a wide range of mind-body techniques and healing arts geared toward fostering health and well-being and helping professionals thrive personally and professionally. In addition to her work as a workplace investigator, mediator, well-being coach, and instructor of how to conduct investigations and prevent discrimination, she also offers work environment climate assessments, and witness preparation stress-reduction support. Contact her at: Robin@RobinOaks.com or 805-685-6773.

Endnotes

1 "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change," The Report of the National Task Force on Lawyer Well-Being, August 2017. https://www.americanbar.org/content/dam/aba/images/abanews/ ThePathToLawyerWellBeingReportFINAL.pdf

2 Santa Barbara Lawyer, "Creating a Movement to Improve Well-Being in the Legal Profession;" By Robin Oaks, February 2018; "What Stakeholders Need to Consider to Improve Well-Being in the Profession." By Robin Oaks, March 2018.

3 98 CAL. RULES PROF. CONDUCT R. 3-110, available at http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules/Rule-3-110. 99 See RULES OF THE STATE BAR OF CAL., Title 2, Div. 4, R. 2.72 (2017).

4 L. S. Krieger, "Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence," 52 J. LEGAL EDUC. 112, 113-15 (2002). A. A. Patthoff, "This is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students," 2015 UTAH L. REV. 391, 424 (2015).

5 https://www.bakermckenzie.com/-/media/files/about-us/bm_codeofconduct_oct15.pdf?la=enIn

6 In the study of 6,000 practicing lawyers summarized in the Task Force Report, law professor Larry Krieger and psychology professor Kennon Sheldon found that the number of vacation days taken was the strongest predictor of well-being among all activities measured in the study. It was even a stronger predictor of well-being than income level.

Welcome to the

PHILANTHROPY CORNER

By Jenn Duffy, Editor

Featuring Local Non-Profit Organizations

In honor of Earth Day, this month's featured non-profit organizations focus on THE ENVIRONMENT. They are

Explore Ecology and Community Environmental Council

Explore Ecology

Explore Ecology is an environmental education and arts nonprofit located in Santa Barbara, dedicated to promoting a greater understanding of the connections between people and their environment and encouraging creative thinking through hands-on environmental education and artistic expression. Its programs include the Watershed Resource Center, Environmental Education, the School Gardens Program, the Art From Scrap Creative ReUse Store and Gallery, and Summer Camps.

Community Environmental Council

Since 1970, the Community Environmental Council has pioneered solutions to our region's most pressing environmental issues. Our current focus is in areas with the most impact on climate change, and our programs provide pathways to clean vehicles, solar energy, resilient food systems, and reduction of single-use plastic. Our annual Earth Day Festival brings the community together for a fun, family-friendly weekend that highlights the latest in eco-friendly products, services, vehicles, and food.

Environmental Volunteer Spotlight: Lynn E. Goebel and Guneet Kaur

Attorneys and UCSB Alumni Lynn E. Goebel and Guneet Kaur recently planted willow trees as part of the UCSB's Day of Caring, in conjunction with the non-profit organization "Your Children's Trees," which plants trees and takes care of Santa Barbara County's urban forests. http://yourchildrenstrees.org/About-us.php

If you have volunteer opportunities you would like to have listed in the Philanthropy Corner, please contact Jenn Duffy at (805) 963-0755 or JDuffy@fmam.com.

UCSB Alumni Guneet Kaur, Lynn Goebel, and Michael Vidal, planting trees

Explore Ecology

empowers the community to protect and preserve the environment through environmental education and creative exploration. Explore Ecology works with over 30,000 children a year, inspiring them to engage with the natural world, think critically, and experience the value of environmental stewardship.

School Gardens

Explore Ecology Garden Educators teach children how to grow organic food in 35 elementary schools in Santa Barbara County. Using the garden as an outdoor classroom, students learn about Planting, Cultivating, Harvesting, Composting, and Nutrition. Students in our School Gardens Program grow vegetables, healthy bodies, lasting friendships, and little green thumbs.

VOLUNTEER: Explore Ecology's School Gardens Program is looking for volunteers who love plants, gardening, and being outdoors.

Environmental Education

Since 1990, Explore Ecology has educated over a half million students at Art From Scrap, the Watershed Resource Center, and in classrooms and gardens throughout Santa Barbara County. Explore Ecology lessons and field trips are free to most Santa Barbara County schools. Visit the Watershed Resource Center at Arroyo Burro Beach to learn about watershed ecology and the importance of protecting our creeks and ocean.

VOLUNTEER: Explore Ecology Summer Camps offer a Counselor-in-Training (CIT) program for teens 13 to 18.

Art From Scrap

Sign up for a workshop for children or adults, hunt for treasures in our store, and enjoy local art in our gallery. The creative possibilities are endless! Art From Scrap diverts thousands of pounds of clean, reusable items from the landfill and accepts donations of used and new materials from both businesses and individuals. **Art From Scrap Store Hours:** Thursdays and Fridays from 11:00 am to 6:00 pm and Saturdays and Sundays from 10:00 am to 4:00 pm.

VOLUNTEER: The Art From Scrap Creative Reuse Store needs help with stocking, sorting, and organizing materials.

Beach Cleanups: Bring your family and friends to our Arroyo Burro Beach Cleanups, held on the **2nd Sunday** of the month at noon.

Save the Date for our BIGGEST Beach Event, Coastal Cleanup Day on Saturday, September 15th, 2018. Beach Cleanups are a wonderful way for families, businesses, and groups to volunteer together.

Celebrate Earth Day by helping at our Earth Day Booth on April 21 and 22. Visit **ExploreEcology.org** for information about how you can get involved.

Donate Today To Support Our Work of Educating the Next Generation of Environmental Stewards
Visit ExploreEcology.org/Donate or email Jill@ExploreEcology.org

Community Environmental Council

CEC's **Transportation program** continued to inspire more people to Drive Clean in 2017, giving 369 test drives in plug-in electric and fuel cell vehicles. We're also advancing policies and programs that create more vibrant and livable communities that empower more people to walk and bike, more often.

CEC's **Solarize program** had a great year, expanding into all of Santa Barbara and Ventura Counties, and offering our first program in the City of Irvine. This year's programs helped 142 households "Go Solar" bringing the program's historical impact to 665 homes.

Our **Green Gala** was a fun and starry evening at The Lark. We raised significant funding and were thrilled that Lieutenant Governor Gavin Newsom could attend. CEC's work and the environmental movement is driven by your donations as well as a passionate and active volunteer corps. Pictured here are our stellar Green Gala Junior Committee, all students from Santa Barbara High School.

CEC is building a network of ranchers, farmers and advocates interested in how **regenerative agriculture** practices can improve soils and potentially help reverse climate change. Through stakeholder outreach, policy engagement, and pilot projects we're building a model for scaling-up **carbon farming**.

The CEC partnered with the Sierra Club of Santa Barbara to promote and advocate the adoption by the City of Santa Barbara of a **100% renewable** energy target by 2030, making it the 30th city in the country to do so. We could not be prouder to be leading the way to a clean energy future!

CEC pioneers real life solutions in areas with the most impact on climate change. Our programs—including the annual **Santa Barbara Earth Day Festival**—provide pathways to **clean vehicles**, **solar energy**, **resilient food systems**, and **reduction of single-use plastic**.

Community Environmental Council
SANTA BARBARA EARTH DAY
Educate. Inspire. Act.

Volunteer at Community Environmental Council's Santa Barbara Earth Day Festival

Each year, over 300 community members band together to help bring CEC's Santa Barbara Earth Day Festival to life. By supporting CEC's largest awareness raising and activation event, you're helping make our community a greener, healthier place to live.

FOR MORE INFORMATION OR TO SIGN UP
sbearthday.org/volunteer

Ethical and Other Issues Concerning Technology and Your Law Practice

By Gregory W. Herring, CFLS, AAML, IAFL

As our modern lives are increasingly dominated by e-mails, texts, social media, electronically stored information ("ESI"), and related technology, so are our law practices. We have ethical and other obligations toward identifying and handling it all, and a "head in the sand" approach will not cut it. This article percolates some ethical and other issues. It also provides practical tips.

E-mails:

E-mails are not (and never were) a secure method of communication. The increasing frequency and sophistication of hacking, spying, phishing schemes, ransomware attacks, and internet infiltrations should make this impossible to ignore. Los Angeles lawyer and friend, Steve Kolodny, emphasizes that any e-mail that is sent may be copied and held by the various computers through which it passes as it goes from law office to client or *vice-versa.* E-mails are subject to being accessed or copied by persons innocently or by those with a hostile agenda.

Based on Steve's early consciousness-raising, our family law firm systematically emphasizes to our clients in writing a wide variety of concerns including the following:[1]

- E-mails may be inadvertently accessed by, or delivered to, persons not intended to participate, nor authorized to being a part of, particular communications.
- E-mails may be intercepted by persons improperly accessing a client's or your law firm's computer, or even some computer unconnected to either through which the e-mail passes.
- By inadvertence, someone may reply to an e-mail and mistakenly include an unauthorized person, even opposing counsel or the opposing party, because of using the "reply to all" feature.

ABA Formal Opinion 477 dated May 2017 (the "Opinion") provides that law offices should always determine and implement appropriate and measured levels of protection for electronic communications dependent on the particular circumstances involved. "The use of unencrypted routine e-mail generally remains an acceptable method of lawyer-client communication." "However, [because] cyber-threats and the proliferation of electronic communications devices have changed the landscape[,] it is not always reasonable to rely on the use of unencrypted e-mail."

Gregory W. Herring

California now requires technical competence. As such, law offices must constantly analyze how they communicate electronically about client matters using a case-by-case method for their decision-making.

The Opinion suggests some considerations as guidance for the law office in this case-by-case analysis about whether to use unsecure or secured electronic communications or some other non-electronic method of communications about confidential client matters:

- Understand the nature of the threat.
- Understand how a client's confidential information is transmitted and where it is stored, making sure it is not open to inappropriate access.
- Understand and use reasonable electronic security measures on a case-by-case basis, considering the nature of the communication and information contained.
- Determine how electronic communications about client matters should be protected in each instance.
- Appropriately label confidential client information and privileged attorney-client communications.
- Train lawyers and nonlawyer assistants in appropriate technology and information security protocols and practices.
- Conduct regular due diligence reviews on vendors that provide communications technologies for the lawyer, including e-mail, document storage, internet, and wi-fi access, and other related services.

Other ways of addressing e-mail confidentiality concerns include:

- Warn clients of the risks of electronic communications through a standard written "personal privacy" memo (see Footnote No. 1).
- Consider "old-fashioned" alternatives for delivering

Continued on page 24

Judge James Herman and Chief Justice Tani Cantil-Sakauye

Judges George Eskin (ret.) and Frank Ochoa (ret.)

SBCBA's Reception for Chief Justice Tani Cantil-Sakauye

Judges Brian Hill, Timothy Staffel, Arthur Garcia and Patricia Kelly

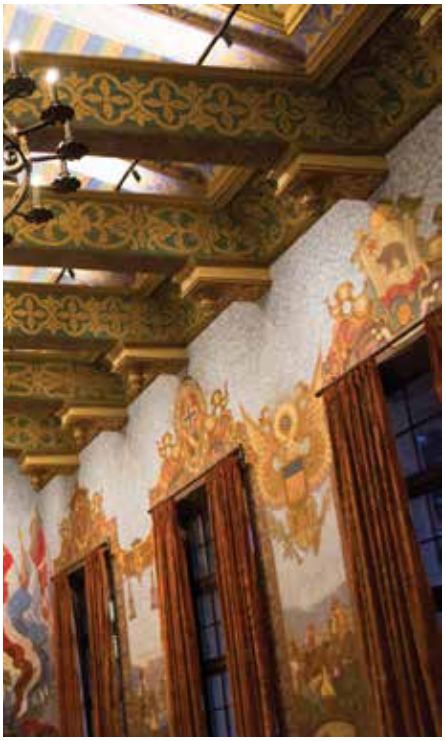
CA Supreme Court Chief Justice Tani Cantil-Sakauye, Darrel Parker, Justice Martin Tangeman, Judge Monica Marlow (ret.)

Judges Thomas Anderle and Michael Carrozzo

Jeff Chambliss, Tom Hinshaw, Donna Lewis, Michael Colton, James Griffith

Greg McMurray, Renee Fairbanks, Guneet Kaur

Rachel Wilson, Allan Morton, Paul Pettine



Judge Monica Marlow (ret.), Justice Martin Tangeman, Herb Fox, Katy Graham, Eric Berg

And the Winner is....

By Lida Sideris, Executive Director of the Santa Barbara County Bar Association

Eight teams from seven local high schools competed in the 35th annual county Mock Trial competition: Dos Pueblos (two teams), San Marcos, Santa Barbara, Carpinteria, Laguna Blanca, Santa Ynez Union, and Carrillo. Dos Pueblos and San Marcos battled it out in the finals, with Dos Pueblos taking the county championship. San Marcos placed second, Santa Ynez third, and Santa Barbara fourth. Dos Pueblos will represent Santa Barbara County at the State Mock Trial competition in Orange County on March 16-18th.

The Mock Trial program is a partnership between the Santa Barbara County Courts and the County Education Office, and is designed to introduce students to the legal system by providing a challenging, academic competition. The program offers students an opportunity for personal growth and achievement, emphasizing the importance of research, presentation, and teamwork.

"The really important work is done by all the attorney coaches, teacher coaches, attorney scorers, and presiders who teach, lead, mentor, and invest in our amazing high school students," said Ellen Barger, Assistant Superintendent, Curriculum & Instruction. "Local attorneys impact students in numerous ways and help them see their own potential."

The presiders for the finals included: Assistant Presiding Judge Michael Carrozzo and long-time Mock Trial advocate, Judge Brian Hill. The semi-finals were heard by Judges

Judge Brian Hill, Parker Freeman, Dean Axelrod (coach), Dan Kelly, Paige Maho, Molly Sipes (seated), Sydney Fry, Tressa Axelrod, Albert Miao, Julie Schniepp, Mariana Mezic, Aidan Lethaby, Kelly Gilmore, Maggie Tang, Anastasia Fenkner, Ally Mintzer, Hoku Kern, Miles Kretschmer, Marlee Stout, Luis Cardenas, Nora Kelly, Phoebe Naughton, Tyrone Maho (coach), Joel Block (coach/faculty advisor), and Glenn Miller, M.D. (coach).

Donna Geck, Kay Kuns, and George Eskin (ret.), as well as Chris Cobey who is a presider/scorer at the state Mock Trial competition. Local attorney Danielle DeSmeth, once a mock trial competitor herself, again helmed the volunteer scorers' training. Nearly 60 attorney/scorers donated many volunteer hours this year.

The Santa Barbara County Bar Association provided a $2500 award to the winning team to cover travel costs, as well as a $700 contribution for breakfast and lunch. Individual medals were donated by the firm of Rogers, Sheffield & Campbell, LLP and were awarded to the following students who were recognized for their outstanding performance in several categories *(see right)*.

Role	School	Name
Clerk	Santa Barbara	Blake Baay
Bailiff	Dos Pueblos A	Anastasia Fenkner
Prosecution Pretrial Attorney	San Marcos	Katherine Newman
Defense Pretrial Attorney	Carpinteria	Andy Johnson
Prosecution Trial Attorney	Dos Pueblos A	Paige Maho
Prosecution Trial Attorney	Santa Ynez	Francesca Davis
Prosecution Trial Attorney	San Marcos	Dominick Cappello
Defense Trial Attorney	Santa Barbara	Diego Perez
Defense Trial Attorney	San Marcos	Alex Guadagno
Defense Trial Attorney	Carpinteria	Luciano Cortese
Prosecution Witness-Devon Morrison	Laguna Blanca	Sophia Bakaev
Prosecution Witness-Hayden Rodriguez	Laguna Blanca	Jack Fry
Prosecution Witness-Morgan Bonderman	Santa Ynez	Jordan Whitney
Prosecution Witness-Adrian Carroll	Santa Ynez	Mikale Mikelson
Defense Witness-Avery Williams	Santa Ynez	Nathan Berch
Defense Witness-Casey Davison	Santa Ynez	Bella Lind
Defense Witness-Fabian Moreno	Santa Ynez	Sean Campbell
Defense Witness-Tory Lee	Carpinteria	Jeremy Saito
Honorable Mention	Dos Pueblos A	Miles Kretschmer
Honorable Mention	Santa Barbara	Ila Delmarsh
Honorable Mention	San Marcos	Elizabeth Kravcheuk
Honorable Mention	Cabrillo	Cedric Kwon
Honorable Mention	Dos Pueblos B	Sarah Jang
Honorable Mention	Laguna Blanca	Stella Hafner
Honorable Mention	San Marcos	Emma Tracewell
Honorable Mention	Dos Pueblos A	Parker Freeman
Honorable Mention	Dos Pueblos A	Hoku Kern
Honorable Mention	Dos Pueblos A	Molly Sipes

UPDATE: As we go to press, the Santa Barbara County Bar Association congratulates the Dos Pueblos Mock Trial team for placing ninth at the state competition and Junior Molly Sipes for winning a Best Witness Award. As stated by attorney and team coach Lisa Rothstein, mother of Marlee Stout on the team: "Representing Santa Barbara County, Dos Pueblos Mock Trial went 3-1 for the weekend, placing 9th out of 34 teams. We suffered our only loss to Carmel, which went on to place 4th overall in the competition. I feel so fortunate to be involved in this program with these inspiring kids, and I cannot thank the Santa Barbara County Bar Association and other sponsors enough for responding so quickly and enthusiastically to my request for support. It made me proud to be part of the Santa Barbara legal community." The SBCBA contributed $700 toward food for the judges and scorers at the county level and $3,500 for travel expenses for the state competition. ■

Divorce and Mortgage Lending

By Austin Lampson

Austin Lampson

"*I'm getting divorced. So, is that a problem?*" This simple question posed by a client going through marital differences can mean complex issues for mortgage funding. The myriad regulations surrounding mortgage lending become even more intricate when addressing options and pitfalls for clients going through a divorce or legal separation. As the number of inquiries rise for clients within this class, it is important to note some of the actions that may be taken before the divorce is final to put your client in the best position to rebound from such a life change.

A mortgage file is composed of four primary components: income, assets, credit/liabilities, and collateral (property). These different elements are reviewed separately during the lending process, and each section must meet its own criteria – no longer can one compensate, or override, for the other. For example, a client may have excellent credit history, but if their debt-to-income ratio ("DTI") is above posted guidelines, then they are not eligible for financing. That said, let us take a look at how each section may be impacted through divorce. Also, for the basis of this article, I am speaking on general terms as to what is most common throughout all investors. Each lender has their own guidelines, and may be more or less conservative than the common baseline.

First, let us start with income. Underwriters look for income to be stable and likely to continue. This means each source of income to be used to qualify a borrower needs a history, and ideally for a minimum of the past two years. To purchase property, borrowers may need to use their child or spousal support to qualify for a loan. While a client is not required to disclose this income, it is certainly an acceptable income source to qualify for a loan. The key will be to show the *history of stable, full, regular, and timely* payments to the borrower of this support. Support payments need to have been in place for a minimum of six months, and also be supported by a divorce decree, separation agreement, or other binding court order that outlines the terms of payment. This type of income must also be expected to continue for a minimum of three years from the date of the mortgage application. The nuance here is that there must be **both** documented receipt by the recipient and legal requirement to do so by the payor. The key, therefore, is to be sure that the agreement references the history of past payments if they are indeed to be considered as child or spousal support for lending eligibility. If one spouse is giving funds to the other with the intent that it be for spousal support, but there is no written agreement or order stating that the funds were indeed for that purpose, these payments do not meet the requirements to be "income." However, if the agreement references back to each payment made – for what purpose and in what amount- then the guideline can be met. This is, of course, for the recipient of these payments; I will touch on the payer of these in the credit/liabilities section.

Now let's move on to the cold, hard cash. Though we live in a community property state, Fannie Mae and Freddie Mac no longer require "Joint Access Letters," for jointly-held accounts. Previously, if an account was jointly owned, the non-borrowing account holder had to confirm, in writing, that the borrower had access to and use of the funds in the account. This guideline is no longer in place – and while many underwriters may still ask for this, be aware that many no longer do so. This is not to say that all funds with a borrower's name on it may be used for qualifying the transaction: accounts that are held in Trust, or vested in a retirement account, still have additional documentation requirements needed to prove access and use. Deposits into accounts are also reviewed in detail. If a deposit is over and above the borrower's standard, monthly income, additional documentation and sourcing may be required to be sure it is an acceptable source of funds.

Liabilities and credit history pose a significant aspect of proving a borrower's ability to repay, as is now required by the Dodd-Frank Act. Let me begin with liabilities. Monthly liabilities are considered to be obligations from the borrower's credit report, their proposed housing payment, and any other debt or responsibility that may impact their ability to repay the mortgage. One big change for 2017 was the ability to reduce spousal support payments from qualifying income, versus treating them as a monthly obligation. To put it simply: this is a big deal. As most debt to income (DTI) is limited to 45% of qualifying, gross income, this significantly changes how one qualifies with such pay-

ments. Check out the math for a client that makes $10,000 monthly, with a $2,000 monthly spousal support payment.

Before: $10,000 x 45% = $4500. If spousal support = $2,000, then only $2500 would be left for housing and other payments.

Now: $10,000 – $2,000 = $8000; $8000 x 45% = $3,600 towards housing and other payments.

Child support, however, is still treated as a monthly obligation. Yet, if there are ten months or less remaining on the child support payments *and* we can document enough accessible funds left over after down payment, closing costs, and reserves, then there is the possibility that child support can be excluded from DTI.

Credit history is a hot topic for everyone, and one that becomes even more sensitive when untangling joint obligations. As you already know, simply because a specific debt was awarded to one party does not mean that the other party was necessarily removed from the obligation in the creditor's view. Appropriate steps need to be taken to remove your clients from any jointly held debts such as mortgages, revolving (credit cards), or installment (car/student loan) accounts. The simplest way to do this is for the person taking on the full responsibility to reach out to the servicer of the debt and ask to "assume" the debt in full. They may need to show that they have the ability to repay this debt, and the servicer has the right to decline the request.

Yet what happens if the other party is unable to assume the full debt, or simply lags on the process to do so? From the lending standpoint, while a client's credit score will be impacted by any late payments, those late payments are not qualified against a lending client *as long as* the debt was current when it was awarded to the other party. Even short sales or foreclosures will follow this rule. For example, if a mortgage was awarded to Party A in January, and was current at that time, but Party B became delinquent in February, and successively went to short sale or foreclosure, any waiting periods to establish a new mortgage account are waived. Additionally, if we can prove Party B has the responsibility to pay the awarded debt – whether it be for a mortgage, car, or even a credit card – then obligations that are still listed as being jointly held on Party A's credit report can be excluded from their DTI. Therefore, it is best practice for all jointly held debts to be paid off at the time of the final Settlement Agreement.

The final aspect to a mortgage loan file is the property, or collateral. No seasoning requirements are in place when a client is awarded property through a divorce. Even if their name was not on title previously, they have immediate, full rights to the property, and thus to encumber it. Additionally, a refinance in which equity is being accessed to pay off the other party is considered a rate-and-term transaction, rather than a cash-out transaction. This results in more favorable terms for the new mortgage holder.

"So, is that a problem?" Well, maybe, yes, and no. Much progress has been made in residential lending guidelines over the past few years to acknowledge and accommodate clients reestablishing their lives after a divorce. Knowing your client's future goals allows the smart attorney to work with other professionals to best establish the solid ground needed to move forward. I hope that by sharing the information above, we will see fewer issues for your clients as they establish new lives post-divorce. ■

Austin Lampson runs the Santa Barbara Office of OnQ Financial. A local residential mortgage lender with over a dozen years in the mortgage industry, Austin is an ally to her clients and partners in the mortgage process.

Motions

Greg Herring was named the Family Law Person of the Year (2018) by the Southern California Chapter of the American Academy of Matrimonial Lawyers ("AAML"). Greg is certified as a Family Law Specialist by the Board of Legal Specialization of the State Bar of California. He is a Fellow of the AAML (aaml.org; socal.aaml.org) and of the International Academy of Family Lawyers (iaml.org).

With his broad litigation background in state, federal, bankruptcy, and appellate courts, Greg routinely handles and consults regarding complex business, property, income, custody/parenting, and other issues in the family law environment. He regularly writes about family law and teaches it across the state. His articles and blogs can be found at theherringlawgroup.com.

Greg's family law firm, Herring Law Group, is located in Montecito, with offices also in Ventura County. ■

If you have news to report Santa Barbara Lawyer *einvites you to "Make a Motion!" Send one to two paragraphs for consideration by the editorial deadline to our Motions editor, Mike Pasternak at pasterna@gmail.com.*

Herring, *continued from page 16*

information, including overnight delivery services or direct messengers.
- Investigate and offer encrypted e-mail systems.
- Use encrypted attachment systems for sending confidential documents, like client reports and tax returns. Even if the **e-mail** may not be confidential, at least the **attachment** would be. "Dropbox," alone, is not enough without using an associated encryption service. Our office has productively used "Sharefile." We are presently moving to Clio's practice mangagement system, which includes a client portal for encrypted communications at the industry standard. Certainly there are other tools and systems.

Personal e-mails to and from an employer's computer are not confidential. Tell your clients to set up a new personal e-mail address, and with a nondescript user name.

Texts:

Does your office text with clients? If so, are these communications documented? Do they make their way into the file? The ethereal nature of texts make them particularly problematic. This is especially true in the new era of "instantly deleted" texts, for instance through Snapchat and like applications. Either bar the practice or develop methods of systematically downloading them into the file.

Social Media:

Modern lives are increasingly dominated by social media, and managing clients' social media is a major and growing concern. Facebook and like posts constitute potential evidence potentially favoring or else harming your clients' cases. They are non-confidential by definition. Advise your clients to **cease** posting.

But you have an affirmative ethical duty to **preserve** existing posts. The duty is a serious one, with potential consequences including disbarment to attorneys who might advise or otherwise cooperate with spoliation of evidence. Immediately advise your clients to refrain from deleting old posts. If posts "must" be deleted, ensure that that they are first preserved by taking "snapshots" through appropriate software. Professional assistance may be appropriate.

ESI:

San Diego attorney, nationally-recognized ESI expert and friend, Gordon Cruse, explains the following:

- ESI is information that is stored in technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. Both users and machines create ESI.
- **Users** create hidden data. Examples include background spreadsheet formulae and revisions and notations in word processing programs.
- **Machines** create metadata and system-level data. "Metadata" is "data regarding data." It is information used by a computer to manage and often classify the origin and other attributes of a computer file. It describes how and when and by whom a particular set of data was collected, and how the data is formatted. It is embedded information that is stored in electronically generated materials, and it is generally not visible when documents or materials are printed.

Sources of ESI include hardware, servers, old-fashioned discs, and thumb drives. They also include personal devices like smartphones, tablets, and automobile and other navigation systems. E-mails, Dropbox files, word processing files, accounting and billing systems, and photo applications are other examples. Security systems (audio and visual recordings), voice-mails, home Nest and Alexa systems, as well as other sources, add to the growing list.

Recognize the various sources of ESI. Learn how to **obtain** it in litigation through e-discovery. **Maintain** confidential ESI when it is already in hand. What happened to the hard drive full of confidential data in the leased copier/scanner your firm turned in for a replacement?!

Technology Outside the Law Office:

Generally, eavesdropping and recording private communications by another person is illegal. Warn your clients regarding hidden cameras, automobile tracking and other means of surveillance. This is reasonably extended to the reading of private e-mail messages/texts/chats and copying of electronic data. California law now extends the definition of "domestic violence" to include the unauthorized downloading and distribution of contents from cell phones and the unauthorized hacking of social media accounts.

Other Practical tips:

- Actively redact sensitive information, like social security and credit card account numbers, from clients' documents before producing them. Use computer technology, like Adobe Acrobat, that avoids transparency.
- Lock all USBs ("thumb drives") that leave your office.
- Use a password security program like Dashlane, OneNote, or others. Use it to randomize your password for each account, and change your passwords regularly.

- Pro-actively gather historical e-mails and other ESI from prior counsel when substituting into an existing case. Too often, prior counsel lazily refrains from transferring this often difficult-to-organize data. New counsel has an ethical duty to **affirmatively** acquire it. You will not have a complete file and you will not fully understand your new case until and unless you do this. Conversely, your office has an ethical duty to gather and provide such communications and data when transferring out of a case.
- Install a "find your phone" application so that mobile endpoints (cell phones, tablets, computers, etc.) can be retrieved if lost or stolen.
- Beware of public Wi-Fi networks (including at coffee houses, hotels, airports, etc.) that can be exploited to steal your laptop's data.
- Calendar regular office privacy and security reviews.
- Sign all the way out of computers and devices, including logging out of Remote Desktop and like programs. This includes erasing software log-in credentials after each use.
- Warn clients about security concerns, risks, and obligations in writing, and pro-actively monitor their ESI preservation efforts at periodic intervals. (See Footnote No. 1.)
- Regularly update your software so that you receive timely "fixes," and also update your anti-virus, anti-malware, and other security systems.
- Consider installing an ad-blocker like uBlock Origin to protect against ads that carry malware.
- Consider providing iPhones to your staff. Their updated operating systems are now more secure than ever. Even the default mail program's data is encrypted. The new iPhones include safeguards that will automatically wipe the phone if an outsider might probe it.
- Work with your merchant services vendor to ensure your office's credit card processes are compliant with the Payment Card Industry Data Security Standard ("PCI"). Failure to meet PCI standards can result in fines up to $50,000 per incident.
- Train your employees on the proper use of computers and devices and how to recognize threats while on them.
- Retain an ESI consultant, who can be a knowledgeable co-counsel or else a non-attorney vendor, when you might find yourself out-of-depth.

Conclusion:

Consider the issues and angles toward creating your own office policies and practices to protect confidentiality. These are no longer optional obligations in our rapidly-changing and challenging new world of law practice technology. ■

Greg Herring is a Certified Family Law Specialist and is the principal of Herring Law Group, a family law firm serving the 805 with offices in Santa Barbara and Ventura Counties. He is a Fellow of the American Academy of Matrimonial Lawyers and of the International Academy of Family Lawyers. The AAML's Southern California Chapter named him "Family Law Person of the Year" for 2018. His articles and blog entries are at theherringlawgroup.com.

ENDNOTES

1 Steve Kolodny's firm has a standard letter that he generously shares with other attorneys. On request, Herring Law Group would be pleased to share our own modified version. E-mail us at info@theherringlawgroup.

Santa Barbara County Bar Association

GRANT REQUESTS

The Santa Barbara County Bar Association provides grants to projects that further its Mission Statement (please see page 4). Priority is given to requests where the funds will be used for the benefit of SBCBA members or for the benefit of individuals within Santa Barbara County.

Requests for grants shall be made in writing addressed to the SBCBA (15 W. Carrillo Street, #106, Santa Barbara CA, 93101) and include the following information:

Name of Requestor • Total Amount of Request • Reason for Request

Description of exactly how the requested funds will be used and whether said request is time-sensitive.

e-Legal Services, Inc.

At your fingertips...

SERVICE OF PROCESS
- Skip-Trace
- Stake-Out
- Rush/Immediate Service

COURT SERVICES
- One Stop e-Filing
- Case Research
- Document Retrieval

RECORDS RETRIEVAL
- Subpoena Preparation
- Patient Authorizations
- Mobile Scanning

PHOTOCOPY SERVICES
- Court of Appeals Filings
- Bankruptcy Mailings
- Exhibit Binder Preparation

CERTIFIED TRIAL TECHNICIAN
- Courtroom Presentations
- Hot Seat Operator
- Equipment Rental

Service so fast, it must be e-Legal!

Phone:(805)439-1800 • Fax:(805)439-1802
www.eLegalServicesInc.com

Science, Science, Science

By Robert Sanger

Robert Sanger

In February, over a two-week period, I had the privilege of attending some of the most advanced forensic meetings in the world relating to both civil and criminal litigation and forensic science education. As a Member of the American Academy of Forensic Sciences ("AAFS"), I participated in the week-long AAFS's 70th Annual Meeting in Seattle, Washington, and as Co-Chair of the Capital Case Defense Seminar ("CCDS") Planning Committee, I attended CCDS's four-day seminar over President's Day weekend. Finally, as an Associate Member of the Council of Forensic Science Educators ("COFSE"), I was able to attend that body's Annual Meeting, also in Seattle.

This is not by way of bragging or complaining. It is just to report that forensic science is continuing to progress in the legal profession at an increasingly rapid pace. Lawyers and judges participating at these levels are quite critical of the current status of forensics in the actual courts. Forensic scientists at the highest levels continue to fight against the historical proliferation of less than scientific work that has been done in the name of science in the forum in the past. In this *Criminal Justice* article, we will explore some of the topics from these conferences as an indication of the direction forensics is headed.

Deputy Attorney General Rod Rosenstein

It is critical for all of us who practice in the trial courts – as lawyers, judges, and allied professionals – to know that the concern for requiring rigorous scientific standards extends (nearly) to the top of the federal government. It is true that the current Administration, at the very top, has been dismissive of most everything, including forensic science. One of Attorney General Jeff Sessions' first moves was to disband the National Commission on Forensic Science ("NCFS"). This was the agency formed by the Department of Justice ("DOJ") to partner with the National Institute of Standards and Technology ("NIST") within the Commerce Department to create standards for the forensic disciplines. This activity followed taking independent DOJ draft forensic guidelines off line and removing the President's Council of Advisors on Science and Technology from the White House website.

Nevertheless, Deputy Attorney Rod Rosenstein attended and spoke at the AAFS Annual Meeting. He said of the DOJ that, "we study forensic science in our research labs. We practice forensic science in our crime labs. And we are patrons of forensic science in the tens of thousands of cases we investigate and prosecute each year." He went on to say, "I have worked in federal law enforcement for more than 27 years. I understand the critical role that forensic science plays in our criminal justice system. And as Deputy Attorney General, I have developed a deeper understanding and appreciation for the role of forensic science in the search for truth."

He praised the use of forensic science in law enforcement and told of a forensic investigation that avoided tragedy. But he also recognized the serious role that forensics has in the actual courtroom. He said, "I want to turn to the Department's commitment to the reliable use of forensic science. Reliable forensic evidence is the result of responsible forensic practice. Responsible forensic practice requires an understanding of forensic methods and the evidence examined. Like all applied sciences, forensic science relies in part on human interpretation and judgment, which lead to an expert's conclusion. Once the conclusion is formed, it must be carefully expressed in words—in both forensic reports and trial testimony. Those words must correctly convey both the significance and the limitations of that conclusion."

This is, of course, where forensic science interacts with the court system, trial judges, and trial lawyers. The standards and language for the expression of opinions of experts in their reports and in testimony is critical to just results in the trial courts. The California Supreme Court, in *Sargon v. University of Southern California*, made it clear that speculation on the part of forensic experts is not acceptable, and that content and language of expert opinions are critical. It was, quite frankly, good to hear that the federal DOJ is still committed to making progress in this critical area.

It was also interesting to hear the Deputy Attorney General say, "[i]n a world that is sometimes buried in a blizzard of conflicting opinions cast as facts, it is easy to fall prey to

confirmation bias. But people who seek the truth always remain open to the possibility that it may not match anyone's preconceptions. Fair-minded investigators must never reach a conclusion first and ignore contradictory facts."

Yes, we heard it from near the top of the Administration – I wonder what the top thinks. But the serious question is whether professionals in the justice system will be permitted to do their jobs. We know of the cuts in budget and the disbanding or weakening of parts of the criminal justice infrastructure. The test will be whether or not those out of the public view can continue to keep science in forensic science.

Developments

Conferences such as these are filled with information about particular advancements in medicine and science. Among the countless scientific topics covered by participants of these conferences was traumatic brain injury ("TBI"). There has been a concern for years, which has recently been brought to the public's attention, that TBI can go undiagnosed and can have significant physical and mental consequences. We all know that football players have brought this to today's headlines both during their lives and as a result of their deaths. We have known for years that TBI can cause behavioral symptoms, can be responsible for unintentional or uncontrollable conduct on the part of unsuspecting victims, and can distort their view of the world.

One of the problems for lawyers has been to actually identify and obtain physical confirmation that a client has suffered TBI. Cases of more profound brain injury present with significant physical symptoms such as spinal fluid emitting from the cranial orifices, loss of consciousness, dilated or unequal pupil size, vision changes, dizziness, balance problems, respiratory failure, coma or semi-comatose state, paralysis, or difficulty moving body parts, weakness, poor coordination, slow pulse, slow breathing rate, with an increase in blood pressure, vomiting, lethargy, headache, confusion, tinnitus, or changes in ability to hear, impaired cognitive skills, inappropriate emotional responses, and aphasia. However, more subtle symptoms –or no symptoms at all – can lead to missed diagnoses and a failure of the justice system to take organic brain damage into account in both civil and criminal cases.

A person can be fully functioning, or appear that way, and yet TBI can affect judgment or behavior that would relate to civil or criminal liability or competency to participate in civil affairs. The physical attributes of TBI often cannot be seen on an x-ray or other traditional devices. Increasingly sensitive fMRI and other non-invasive procedures are now available, and the results of existing technology are subject to more subtle interpretation. Nevertheless, TBI and its consequent physical and mental symptoms still often go undiagnosed until after death and the performance of an autopsy.

Therefore, where a client's mental state is at issue – or that of someone else involved in litigation – a forensic neuropsychologist trained specifically in TBI should be called upon to do appropriate testing and a clinical evaluation where TBI is a possibility. Considering the current public attention brought by professional football players and an increase in the literature on the subject, judges are more likely to be receptive to proper evaluations and good science on the issue. It is up to the lawyer to identify the potential issue and to request a neuropsychic exam at the earliest time. It is good to know that the forensic experts are available to make these diagnoses with the latest sophistication in medical technology and clinical judgment.

Legal Education

While there is much more that could be reported, let me end with the Council on Forensic Science Education ("COFSE"). With science being important in an increasing number and variety of cases, from the crime scene or scene of the civil case to the courtroom, there is a need for forensic scientists and forensic experts. For too long, "criminalists" were required to have bachelor of arts degrees, but few had bachelors of science and fewer still had masters or doctoral degrees. Coroners were the local sheriff or a deputy, and pathologists might be retired or part-time medical doctors. Arson and accident investigators were trained on the job and "odonatologists" were dentists with some free time. Medical opinions were expressed by MDs or DOs with no forensic training. And, in the worst cases, people would offer testimony on practically anything for whoever would call them.

Experts were and still are recruited for "stables," and lawyers, having nowhere else to turn, often rely on those sources as the best way to find an expert in a particular field. Many of those experts will adapt general training and education to offer opinions on areas that have been the subject of specialized training and education in the scientific community. Often the only real recommendation is that the experts have been "qualified" in a certain number of cases.

This is all changing and, as reported here and in prior *Criminal Justice* columns, the top people in forensic science are dedicated to raising the standards – keeping science in forensic science. As also reported previously, there is a slow and modest effort to educate law students, lawyers, and judges to uphold high standards of admissibility and to

restrict forensic expert opinion to real experts. I am pleased to say that I was asked to head the COFSE working group on a topic dear to me, Forensic Science in the Law School Curriculum. However, the real news is that COFSE is the primary organization nationwide promoting forensic education in the high schools and in undergraduate and graduate level university studies.

The emphasis within COFSE is to share resources, help educate professors, and encourage younger involvement on the ground floor of real forensic education. This involves professional training in general science topics but advanced concentrations in specific areas of forensic science. The goal is to encourage educators to instill the principles and ethics of scientists in forensics. This, in turn, is consistent with the holdings of the United States Supreme Court in *Daubert* and *Kumho Tire* as well as the California Supreme Court in *Sargon*.

Conclusion

The theme here is that science is coming to its place within forensic science. Judges and lawyers are coming to understand how they, law enforcement, and crime labs are also expected to facilitate this re-dedication of forensic science practitioners to their proper role as scientists. A great two weeks, now back to work! ■

Robert Sanger is a litigation partner in Sanger Swysen & Dunkle, and a Professor of Law and Forensic Science at the Santa Barbara and Ventura Colleges of Law. He is a Member of the American Academy of Forensic Sciences and an Associate Member of the Council of Forensic Science Educators. Mr. Sanger is a Criminal Law Specialist (the St. Bar Bd. Of Legal Specialization), practicing both civil and criminal litigation for over 40 years, and serves as a forensic consultant on complex civil and criminal cases.

Where There's Smoke There's Water: The Conundrum of Cannabis Farming in California with Federal Project Water

By Scott Slater and Bradley Herrema

Scott Slater and Bradley Herrema

The conflict between federal law and the recent actions of several states, including California, in the legalization of cannabis use and cultivation is well known. This conflict extends to the use of water for cannabis cultivation in situations where the water supply originates from a federal project.

In 1970, Congress enacted the Controlled Substances Act ("CSA") prohibiting the cultivation of cannabis.[1] California voters' 2016 approval of the Adult Use of Marijuana Act (Proposition 64) legalized the use, possession, sale, and cultivation of cannabis within the state. As a result of these two laws, California permits the use of water for irrigation of cannabis, while the federal law characterizes it as illegal. These laws may be on a collision course as farmers with federal water supply contracts begin to contemplate the thought of using federal water for cannabis cultivation.[2] Here is why.

United States Supreme Court Justice William Rehnquist's 1978 opinion in *California v. United States*[3] represented a stunning reversal[4] of national water policy away from the federal government and toward the states. In short, *California v. United States* established that Section 8 of the Reclamation Act of 1902 subordinated the United States Bureau of Reclamation's project operations to state water laws unless Congress had clearly declared a contrary intention.[5]

Section 8 of the Act provides in relevant part:

"[N]othing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, . . . and the Secretary of the Interior in carrying out the provisions of this Act, shall proceed in conformity with such laws…."

In evaluating whether the Bureau of Reclamation was obliged to comply with conditions applied to its operation of the Central Valley Project or was otherwise exempt pursuant to the doctrine of sovereign immunity, the Supreme Court held:

"Under the clear language of § 8 and in light of its legislative history, a State may impose any condition on control, appropriation, use or distribution of water' in a federal reclamation project *that is not inconsistent with clear congressional directives respecting the project*."[6] (Emphasis added.)

California v. United States is the law of the land, and the Bureau of Reclamation now routinely complies with the regulatory decisions of the State Water Resources Control Board ("SWRCB").

What does this have to do with cannabis farming? All water used in California must meet constitutional requirements of reasonable and beneficial use.[7] The simplest translation is that water must be used for a beneficial purpose under reasonable means.[8] And, this is where the trouble arises.

On the one hand, California law authorizes the cultivation of cannabis. This is like other farming, and Water Code Section 106 declares irrigation to be a beneficial use. The SWRCB has adopted permissive standards that condition the use of water for the irrigation of cannabis.[9] Thus, for all cannabis farmers in California who will use native waters of the state under their own independent water rights, the requirement to vest a water right—applying water to a beneficial use—will likely be indistinguishable from other agriculture. That is, a cannabis farmer will be required to follow the applicable common law and statutory requirements, and their rights will vest in a manner like other vested water rights as private property.

On the other hand, for those relying upon the Bureau of Reclamation (the "Bureau") to supply their water for irrigation, the puzzle is made significantly more complex by the existence of the CSA. Specifically, *California v. United*

States tells us that the Bureau must respect state water laws in the operation of its projects and in the distribution of its water. As California enables and authorizes the use of water for cannabis farming, it is a *prima facie* beneficial use.[10] However, as the title of the piece foreshadows, this is not the end of the inquiry.

This follows because Congress has declared cannabis cultivation to be illegal.[11] And as long as this congressional declaration stands, it is hard to believe that the CSA does not constitute clear direction as to the use of project water. In order to provide additional clarity, the Bureau issued a Temporary Release to provide a "clear statement" of intent to "operate consistently" with the CSA with regard to "the potential use of Reclamation water for the production of marijuana."[12] This policy governs Reclamation conduct and works to ensure that the Bureau is not complicit in violations of the CSA. The state water law deference mandated by *California v. United States*, or a decision not to criminally enforce the CSA, will not overcome Congress' clear directives and may be raised by third parties with standing (*e.g.*, competing users/beneficial uses) to raise the challenge to the propriety of the Bureau's deliveries.

The present Reclamation policy is set to expire on May 16, 2018. Some hope for a change or softening of the policy to comport with state pronouncements legalizing cannabis cultivation. However, unless and until there is a marked change in clear *congressional intent* on cannabis cultivation under the CSA, it is hard to conceive how the Bureau's deliveries of water for cannabis cultivation—an illegal purpose—are not subject to substantial risk of litigation and curtailment regardless of a relaxation or change in Bureau policy. ■

Scott Slater, a shareholder with Brownstein Hyatt Farber Schreck and a member of the firm's Executive Committee, is an experienced

Continued on page 34

The SBCBA Presents:

A Talk With Judge Colleen Sterne

Speaker
The Honorable Judge Colleen Sterne

About the Event
Judge Sterne will speak briefly on how she sees her role in conservatorship, probate, and trust matters, and how we as attorneys can improve the process. If you have any questions for Judge Sterne, please forward them to Mr. Cote and he will pass them on to her so she can address them during the talk.

When
April 12, 2018

Where
Department 5
NO MCLE hours will be offered.

Price
NO FEE; PLEASE BRING YOUR OWN LUNCH AND RESPECT COURT ETIQUETTE.

Contact Information/R.S.V.P. Connor Cote:
Connor@jfcotelaw.com

THE OTHER BAR NOTICE

Meets at noon on the first and third Tuesdays of the month at 330 E. Carrillo St. We are a state-wide network of recovering lawyers and judges dedicated to assisting others within the profession who have problems with alcohol or substance abuse. We protect anonymity. To contact a local member go to http://www.otherbar.org and choose Santa Barbara in "Meetings" menu.

The SBCBA Alternative Dispute Resolution Section Presents:

Psychological Impediments to Mediation Success

Speaker
Penny Clemmons, Ph.D., JD

- **IDENTIFICATION OF PSYCHOLOGICAL IMPEDIMENTS**
- **CAUSES OF FAILURE IN MEDIATION**
- **INTERVENTIONS**

When
April 9, 2018

Time
12:15 pm – 1:15 pm

Where
Santa Barbara College of Law, 20 E. Victoria Street

Cost
$30 Lunch Included

MCLE
1 Hour (General)

Contact Information/R.S.V.P.
Penny Clemmons clemmonsjd@cs.com
or
Lida Sideris director@sblaw.org

Please make checks payable to the Santa Barbara County Bar Association and mail to:
SBCBA
15 W. Carrillo St.
Santa Barbara, Ca. 93101

The Santa Barbara County Bar Association Donates $10,000 to the Santa Barbara Support Network for Mudslide Victims

After the Montecito mudslide, the Board of Directors of the Santa Barbara County Bar Association decided to make a meaningful financial contribution toward the recovery effort. After discussion of how best to provide aid, the Board decided to donate $10,000 to the SB Support Network, which operates under the nonprofit umbrella of the Santa Barbara City College Foundation and provides direct support to those impacted by the Montecito Mudslides.

The recipients of the Bar Association's donation are an unidentified family of three. The father wrote a thank you letter to the Bar Association for his new work truck, which is reprinted here:

Letter to the Bar Association

Hello,

I'm writing on behalf of my family to give a big thanks for the huge help you have given us. Thanks to your generosity, I have been able to get my new work truck to replace the one that was dragged through the mud due to the massive rains. That morning, I had woken up to a huge, dark, red cloud, that appeared to be the end of the world. I tried to figure out what was going on, so I went out to my truck to see what was happening. I went about 200 feet when I began to see the mud coming towards me. I returned to the house for my wife and daughter, but it was too late. There was mud everywhere – it was a massive river of mud that was taking everything with it! We thought it was the end of our lives. It was so terrible and scary. In spite of the intense rain and the immense mud, I was able to lift my wife and daughter onto the roof of the house. Those were moments of sheer anguish and fear. I can still remember when my daughter said, "Tengo mucho frio papa" – Daddy, I'm so cold. My wife and I tried to cover her, but all we had were the cold, wet clothes we were wearing, not even a sweater or anything else to cover her with. It was so horrible. But, life goes on. We have met so many brave and wonderful people like you. Thank you so, so, much. It makes me so happy to know there are people like you in this world who don't hesitate to help others.

Thank you very much.

The **SB Support Network** is a local grassroots organization that currently supports 64 families and over 175 family members, most of whom have lost homes, suffered significant property damage, and/or lost loved ones in the mudslide. Many of these families (most with young children) escaped with only the clothes on their backs and were rescued by first responders. Since day three, the SB Support Network has been providing immediate support, including new school supplies, tens of thousands of dollars in gift cards, and over $32,000 in new clothing, and they have secured housing, covered rent, arranged pro-bono mental health care and legal services, replaced personal and work vehicles, provided replacement laptops and much more.

Each family's story is unique and heartbreaking, and the group is serving each family based on their individual needs. For some of these families, the SB Support Network has been their only hope. New families are added daily and the organization's success would not be possible without the generosity of donors. Unlike many organizations, 100% of donations go straight to the families that the SB Support Network serve. This is a marathon not a sprint, and there are so many who still need our help.

To add a family to the list, provide direct support for a family, or for more information: http://www.signupgenius.com/go/60b0e4daeac22a5f58-must

Slater and Herrema, *continued from page 31*

litigator and transactional attorney with more than 30 years of experience. His practice emphasizes negotiation and strategic planning for his clients, including holistic resource management solutions to further clients' business goals in securing new reliable water supplies.

Bradley Herrema, a shareholder with Brownstein Hyatt Farber Schreck, has more than 15 years of legal experience. His practice focus includes strategic water supply planning, water right permitting and regulatory compliance, litigation, including water right adjudications, transactional negotiations and due diligence, as well as water quality, environmental, and species concerns spanning every aspect of California and national water law.

1 The Controlled Substances Act of 1970 ("CSA") and its implementing regulations prohibit the cultivation of marijuana, as defined at subsection 102(16) of the CSA (codified at 21 U.S.C. 802(16).
2 (www.rgj.com/story/news/marijuana/2018/02/01/can-marijuana-save-dying-town-california-arizona-border/1086062001).
3 *California v. United States* (1978) 438 U.S. 645.
4 *Ivanhoe Irrigation District v. McCracken* (1958) 357 U.S. 275; *City of Fresno v. California* (1963) 372 U.S. 627; and *Arizona v. California* 373 U.S. 546; are disavowed in *California v. United States* 438 U.S. 645, at p. 653-679.
5 *California v. United States* (1978) 438 U.S. 645.
6 *California v. United States* (1978) 438 U.S. 645, 646.
7 California Constitution Art X, §2; *Millview County Water Dist. v. SWRCB* (2014) 229 Cal.App.4th 879, 891 [177 Cal.Rptr. 3d 735] *modified on denial of rehearing, petition for review denied.*
8 *See Tulare Irrigation District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, 572-574; *California Pastoral & Agricultural Co. v. Madera Canal & Irr. Co.* (1914) 167 Cal. 78, 85.; *See e.g.* 23 C.C.R., § 659.
9 Water Code §13149; C.C.R. Title 23 § 2925; "SWRCB Resolution Establishing General Conditions to be Applied to Small Irrigation Use Registrations for Cannabis Cultivation," https://www.waterboards.ca.gov/water_issues/programs/cannabis.
10 Water Code §106
11 United States Controlled Substances Act 21 U.S.C § 801; *Gonzales v. Raich* (2005) 545 U.S. 1.
12 Reclamation Manual Policy (PEC TRMR-63) Expires 5-16-18.

2018 SBCBA SECTION HEADS

Alternative Dispute Resolution
Dr. Penny Clemmons 687-9901
clemmonsjd@cs.com

Bench & Bar Relations:
Stephen Dunkle 962-4887
sdunkle@sangerswysen.com

Civil Litigation
Mark Coffin 248-7118
mtc@markcoffinlaw.com

Criminal
Catherine Swysen 962-4887
cswysen@sangerswysen.com

Debtor/Creditor
Carissa Horowitz 708-6653
cnhorowitz@yahoo.com

Employment Law
Alex Craigie 845-1752
alex@craigielawfirm.com

Estate Planning/Probate
Connor Cote 966-1204
connor@jfcotelaw.com

Family Law
Matthew Long 254-4878
matthewjlong@santabarbaradivorcelaw.com

In House Counsel/Corporate Law
Betty L. Jeppesen 963-9958
jeppesenlaw@gmail.com

Intellectual Property
Christine Kopitzke 845-3434
ckopitzke@socalip.com

Mandatory Fee Arbitration
Eric Berg 708-0748
eric@berglawgroup.com
Vanessa Kirker Wright 964-5105
vkw@kirkerwright.com
Naomi Dewey 966-7422
ndewey@BFASlaw.com

Real Property/Land Use
Josh Rabinowitz 963-0755
jrabinowitz@fmam.com
Bret Stone 898-9700
bstone@paladinlaw.com

Taxation
Peter Muzinich 966-2440
pmuzinich@gmail.com
Cindy Brittain 695-7315
Cdb11@ntrs.com

For information on upcoming MCLE events, visit SBCBA at http://www.sblaw.org//

Santa Barbara Lawyer
The Santa Barbara County Bar Association
15 W. Carrillo St., Suite 106
Santa Barbara, CA 93101

Change Service Requested

PRSRT STD
U.S. Postage Paid
Santa Barbara, CA
Permit #734