

Sacramento LAWYER

July/August 2012

SACRAMENTO
COUNTY BAR
ASSOCIATION
MAGAZINE



**First All-Female Panel
Convened at the Third
Appellate District**

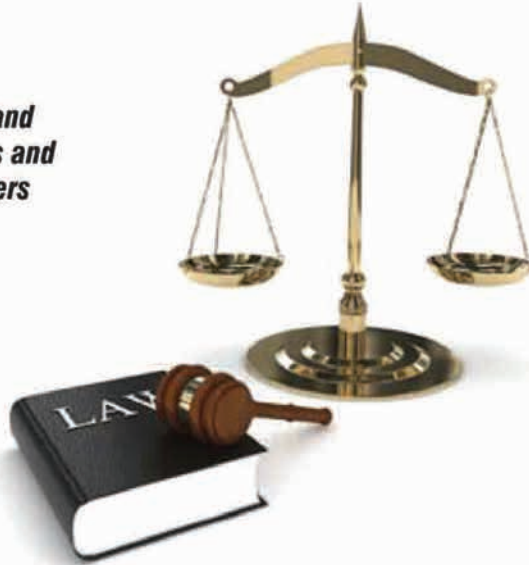
From left: Associate Justice
Elena J. Duarte, Acting
Presiding Justice M. Kathleen
Butz, and Associate Justice
Andrea Lynn Hoch of the
Court of Appeal, Third
Appellate District

Hon. Darrel W. Lewis (Ret.) Mediator

The Judge

“Employment law is complex and requires marshalling emotions and expectations between employers and employees. When such difficulties arise in my cases, I want Judge Lewis as the mediator. He is respectful and thoughtful to my clients and me throughout the process, but he gets people to move and to compromise.”

Galen T. Shimoda
Shimoda Law Corp.



The Mediator

“He quickly identified the key issues in this contract/real estate/construction case and brought both sides to a fair and satisfactory settlement. He is bright, tenacious and makes the clients feel that he understands what they are going through. He keeps the parties focused and gets a speedy resolution.”

Philip A. Kerr
Jones & Kerr

Don't compromise when choosing your next mediator.

Judge Lewis is a trained and experienced mediator who listens empathetically and will also speak with the authority and stature of a retired judge when necessary.

916-483-2222 • www.mediatorjudge.com

Sacramento and all Northern California

Just pick up your phone and dial 916-483-2222

AT JAMS, YOU FIND EXPERIENCE. KNOWLEDGE. FAIRNESS. SERVICE.

AND AN UNSURPASSED PANEL OF NEUTRALS.



Hon. Cecily
Bond (Ret.)



Gary S.
Davis, Esq.



Hon. Fred K.
Morrison (Ret.)



Donald R.
Person, Esq.



Hon. Rick
Sims (Ret.)



Charles J.
Stevens, Esq.

Visit www.jamsadr.com for our extended Sacramento panel.

JAMS Sacramento Resolution Center | 916.921.5300
2520 Venture Oaks Way | Suite 400 | Sacramento, CA 95833

THE RESOLUTION EXPERTS



**TED AND HIS CALIFORNIA FORMS
WERE INSEPARABLE.**



LIGHTEN YOUR LOAD WITH NEW WESTLAW FORM BUILDER.

Westlaw® Form Builder can take your California forms from tedious to streamlined, from time-consuming to cost-effective. This new online document assembly tool delivers continually updated official and lawyer-tested forms from Witkin, Judicial Council of California, and other trusted sources, plus state-of-the-art automation to build them. No-charge linking to WestlawNext™, too! Embrace the future with Westlaw Form Builder.

For more information, call 1-800-759-5418 or visit west.thomson.com/formbuilder.

Westlaw.



THOMSON REUTERS™



By Jack Laufenberg

Historical Perspective

This month's cover story got me thinking, so I decided to do a little checking.

California's intermediate appellate courts were created in 1904 to help deal with a burgeoning caseload. Prior to that there was just the Supreme Court and a handful of commissioners hearing appeals. Originally, there were three appellate districts: District 1 in San Francisco, District 2 in Los Angeles, and District 3 in Sacramento. District 4 in San Diego was created in 1929, District 5 in Fresno was created in 1961, and District 6 in San Jose was created in 1984.

There are currently 100 appellate court justices serving in all six districts, with two vacancies: one in Sacramento and the other in Los Angeles. Of those 100 justices, 33 are female. Excluding the 5th District Court of Appeal, whose figures were

not available by press time, 273 former justices have served on the appellate court since its creation in 1904. Of those, 24 were female and 249 were male, bringing the total number of female justices who have served, past and present, to 57 compared to 316 for the men. Of the 57 female justices that have or are serving on the appellate court, 27 have been appointed since 2000 and 44 – or about 77% -- have been appointed within the last 21 years (i.e. since 1990).

The first female justice appointed to the appellate court was the 3rd District's own **Annette Abbott Adams** in 1942. The second female justice was not appointed until **Mildred L. Lillie** was named to the 2nd District Court in 1958. No female was appointed to the 1st District Court of Appeal until 1971 and no female was appointed to the 4th District Court of Appeal until 1976, although admit-

tedly the 4th District got a late start, having been created 25 years after the first three districts.

When we talk about the first all-female panel in the 108-year history of the 3rd District Court of Appeal having been convened in April, it's nice to know where we are on the evolutionary scale in order to put the event in some kind of historical context. While the gender diversity of the appellate court, like all other courts, appears to be headed in the right direction, it has taken a little time to get there. ■■




 <p>Sacramento LAWYER</p> <p>EDITOR-IN-CHIEF Jack Laufenberg - editor@sacbar.org</p> <p>STAFF EDITORS Heather Cline Hoganson</p> <p>SACRAMENTO LAWYER POLICY COMMITTEE Samson R. Elsbernd Helene Friedman David Graulich Coral Henning Yoshinori H.T. Himel Jack Laufenberg</p>	<p>COURTHOUSE STEPS steps@sacbar.org</p> <p>SURFING FROM RIVER CITY Coral Henning (916) 874-6013 chenning@sacbar.org</p> <p>ADVERTISING - EVENTS MEMBER CLASSIFIED ADS Michelle Bender (916) 564-3780 x200 reception@sacbar.org</p> <p>DESIGN AND LAYOUT MaryBurroughsStudio.com MJBggraphicdesign@aol.com</p>	<p>EXECUTIVE DIRECTOR Carol Prosser</p> <p>OFFICERS June Coleman - President Jean-Pierre Francillette - 1st Vice President Bruce Timm - 2nd Vice President Stacy Moak - Secretary Treasurer</p> <p>BOARD OF DIRECTORS DIRECTORS AT LARGE Mark Slaughter Katie Patterson Sonia Fernandes Theresa La Voie Richard Miadach Jeannie Lee William Schuetz Sabrina Thomas Dan Graulich</p> <p>SACRAMENTO LAW FOUNDATION Stephen Duvernay, saclawfoundation.org</p>	<p>AFFILIATE REPRESENTATIVES Asian Bar Association (ABAS) Angela Lai Barristers' Club Dan Tichy Capitol City Trial Lawyers Jack Vetter Federal Bar Association Meghan Baker Hellenic Law Association of Sacramento (HELLAS) Vasilios Spyridakis LaRaza Michael Terhorst Leonard M. Friedman Bar Association Jeff Levine Saint Thomas More Society of Sacramento (STMS) Herb Bolz Sacramento Lawyers for the Equality of Gays and Lesbians (SacLegal) Jeff Edwards</p>
---	--	---	---

Table of Contents

VOLUME 113, NUMBER 4 • JULY/AUGUST 2012

LITIGATION

- 8 A View from the Civil Trial Bench: "Blowing Hot and Cold" in Pleadings: A Risky Business at Trial
- 30 Law and Motion: A Primer on Selected Topics: Motions to Withdraw as Counsel of Record

PROFILES

- 10 Lawyer Lore: The Indomitable Judge Raul Ramirez

COVER STORY

- 14 First All-Female Panel Convened at the Third Appellate District

MCLE SPOTLIGHT

- 26 I Don't Think That Word Means What You Think It Means... Expungement in California

EVENTS

- 35 Law Library to Honor Trustee with Dedication Ceremony

SECTION & AFFILIATE NEWS

- 24 Barristers' Club Update

COMMUNITY SERVICE

- 29 How You Can Help VLSP Clients

DEPARTMENTS

- 4 Editor's Message
- 6 President's Message
- 12 Law Library News
- 13 Surfing from River City
- 35 Calendar
- 35 Index to Advertisers



Sacramento Lawyer welcomes letters and article suggestions from readers. Please e-mail them to editor@sacbar.org. The Sacramento County Bar Association reserves the right to edit articles and letters sent in for publication. Please contact SCBA 916-564-3780 x200 for deadline information, fax 916-564-3737, or e-mail reception@sacbar.org. Web page: www.sacbar.org. Caveat: Articles and other work submitted to *Sacramento Lawyer* become the copyrighted property of the Sacramento County Bar Association. Returns of tangible items such as photographs are by permission of the Executive Director only, by pickup at the SCBA office only.

South Asian Bar Association
Nirav Desai
Wiley Manuel Bar Association
Alana Mathews
Women Lawyers of Sacramento
Jamie Errecart

COMMITTEE / SECTION
REPRESENTATIVES
**Lawyer Referral and Information
Service (LRIS)**
Don Hansen
Conference of Delegates
Andi Liebenbaum
Indigent Defense Panel (IDP)
Kevin Adamson
Section Representative
Daniel Yamshon
**Voluntary Legal Services
Program (VLSP)**
Victoria Jacobs

SECTIONS
Administrative Law
Heather Cline Hoganson

Alternative Dispute Resolution
Ken Malovos
Appellate Law
Stephanie Finelli
**Bankruptcy &
Commercial Law**
Aaron Avery
Business Law
Sarra Ziari
Children's Counsel
Diane Wasznicky
Environmental Law
Osha Meserve
Family Law
Judith Winn
Health Care
Brian Taylor
Labor & Employment Law
Jason Jasmine
Probate & Estate Planning
Thomas Reid
Real Property
Gregg Phillip
Tax Law

Ciro Immordino
Worker's Compensation
Ohnmar Shin

COMMITTEES

Bylaws
BJ Susich
Continuing Education of the Bar
Daniel Yamshon
Diversity Hiring and Retention
Linda Partmann
Electronic Media
Coral Henning / Heather Hoganson
Fee Arbitration
Ken Bacon
Judicial Review
Philip R. Birney
Judiciary
Diane W. Wasznicky
Long Range Planning
Bunmi Awoniyi
Membership
Heather Candy

Pictorial Directory
Herb Bolz
Sacramento Lawyer Policy
Jack Laufenberg

Sacramento Lawyer (USPS 0981-300) is published bi-monthly by the Sacramento County Bar Association, 1329 Howe Avenue, #100, Sacramento, CA 95825. Issn 1087-8771. Annual subscription rate: \$6.00 included in membership dues, or \$24.00 for nonmembers. Periodicals postage paid at Sacramento, California. Postmaster: Send address changes to *Sacramento Lawyer*, 1329 Howe Avenue, #100, Sacramento, CA 95825. Copyright 1999 by the Sacramento County Bar Association.

Each author's commentary reflects his/her individual opinion only and not that of his/her employer, organization with which he/she is affiliated, or *Sacramento Lawyer* magazine, unless otherwise stated.



By June D. Coleman

The SCBA: Working Hard for the Mission

The SCBA has been very active over the last two months, following its mission statement *to enhance the system of justice, the lawyers who serve it and the community served by it*. The SCBA has celebrated Law Day with its annual dinner recognizing the SCBA Operation Protect and Defend program and the high school students who excelled in the essay contest and the art contest. Operation Protect and Defend is an SCBA program that assists Sacramento high schools to teach constitutional principles and civics. The in-class part of Operation Protect and Defend culminates with attorneys and judges pairing up to lead a high school class in a dialogue on an identified constitutional issue. This year's issue was immigration.

The Honorable **Cruz Reynoso**, retired Associate Justice, California Supreme Court, was the guest speaker at the Law Day dinner. This event continues to be a highlight of the SCBA year, which recognizes the Sacramento legal community giving back through this educational program. This is just one of the SCBA programs that implements the SCBA's mission.

The SCBA was also proud to participate in the Law Day event organized by the Sacramento City Attorney's Office. SCBA manned a booth during the event, providing the public with pamphlets and handouts describing SCBA programs that serve the public, as well as the Voluntary Legal Services Program. SCBA was also proud to display the winners of the Operation Protect and Defend art contest at this Law Day event.

The SCBA also organized a rally on the courthouse steps to promote greater

funding for the court and raise awareness of the crisis that is impacting and effecting our court system. Statewide and local organizations co-sponsored this event, including Open Courts Coalition, Asian/Pacific Bar Association of Sacramento, California Defense

SCBA mission statement: to enhance the system of justice, the lawyers who serve it and the community served by it.

Counsel, California Women Lawyers, Capitol City Trial Lawyers Association, Consumer Attorneys of California, JustBuild California Coalition, La Raza Lawyers Association of Sacramento, SacLEGAL, Sacramento County Attorney's Association, South Asian Bar Association of Sacramento, State Building and Construction Trades Council, and Wiley Manuel Bar Association. Local and statewide luminaries each spoke of the effect that an underfunded court system has on our local community. And our local judicial officers led the crowd to cheer its support of increased funding. The Sacramento Bee also covered the rally.

As many of you know, **Carol Prosser**, our executive director for 11 years is retiring in several months and your Board of Directors has

been working to fill her shoes. The applications have been submitted, and the SCBA is reviewing the applications to select candidates for interviewing. During this period of transition, the bar office has been understaffed, and we ask for your patience during this period.

The SCBA Delegation to the Conference of California Bar Associations (previously known as the Conference of Delegates) is working on a variety of resolutions that will be presented at this year's Conference, which is held at the same time as the State Bar's annual meeting. This year, the Conference and State Bar Annual Meeting will be held in Monterey, October 12-14. The SCBA Delegation has a long history of sponsoring resolutions that are approved at the conference. Once approved, work begins on placing those resolutions with members of the Legislature. SCBA Delegation resolutions have resulted in a host of bills that have been signed into law thanks to the thoughtful and carefully crafted resolutions developed by members of the SCBA. For more information on how you can propose an idea for a Conference resolution to the SCBA Delegation, please contact the delegation chair, **Andi Liebenbaum**, at liebenbaum@gmail.com.

The Judiciary Committee has also been hard at work conducting peer reviews and evaluations of judicial candidates at the request of **Governor Brown**. This process culminates with a confidential evaluation that is provided to the Governor. It is hoped that the Governor will appoint judges soon to fill the four vacancies on our local bench.

The Diversity Fellowship Program

began its summer program this month as well. There are 16 fellows this year, all law students who have finished their first year in law school. The fellows will be immersed in an intense 10-week program where they will work for local law firms and participate in 11 panel discussions about such topics as legal writing, business development, and exploring different practice areas. This intense program serves the Fellowship Program's long-term goal of opening avenues for increased hiring and retention of diverse attorneys.

SCBA congratulates the following fellows: **Ananth Srinivasian, Ann Agravante, Chris Ogata, Irene Williams, Jennifer Yazdi, Jonathan Ash, Katherine Fowler, Katie O'Ferrall, Laura Gavilian, Marium Lange, Michael Richardson, Mike Parnes, Nada Nassar, Nazanin Pournaghshband, Jordy Hur, and Patrice DeGuzman.**

SCBA also recognizes the support of the sponsoring firms, without which this program would not exist: *Carothers, DiSante & Freudenberger LLP; Cook Brown LLP; Downey Brand LLP; Katchis, Harris & Yempuku; Klinedinst, P.C.; Kronick, Moskovitz, Tiedemann & Girard; Lozano Smith LLP; Mastagni, Holstedt, Amick, Miller & Johnsen; Olson, Hagel & Fishburn; Orrick, Herrington & Sutcliffe LLP; Porter Scott; Seyfarth Shaw LLP; Somach, Simmons & Dunn; Stoel Rives LLP; Weintraub Genshlea Chediak; Wilke, Fleury, Hoffelt, Gould & Birney.* Thank you to each firm for your support of SCBA and this wonderful program.

Of course, the SCBA sections were having meetings and providing MCLE, and other SCBA committees were hard at work over the last couple of months. Just another spring where SCBA has worked to enhance the system of justice, the lawyers who serve it and the community served by it. ⚖️


June

Civil Appeals

Writs and Motions

Pre-Appeal Consultation

Family Law



Jay-Allen Eisen
Super Lawyers® 2009

Jay-Allen Eisen, J.D., Hastings College of Law, 1968. Certified Appellate Law Specialist, State Bar of California Board of Legal Specialization. Fellow, American Academy of Appellate Lawyers. President, California Academy of Appellate Lawyers (1998-1999). Chair, State Bar Standing Committee on Appellate Courts (2005-2006). Counsel in over 350 appeals and appellate writs. Listed in *The Best Lawyers in America*®, Top 100 Northern California Super Lawyers.

Appellate, writ and motion practice in state and federal courts in all areas of civil litigation, including business litigation, employment, construction, real estate, environmental, family law, probate, personal injury, constitutional and administrative law, among many others.

Committed to the highest quality of legal advocacy at reasonable rates.

Jay-Allen Eisen Law Corporation

2431 Capitol Avenue · Sacramento, CA 95816 · Telephone 916.444.6171 · Fax 916.441.5810
For more information, including complete resumé, see our website www.eisenlegal.com

Reach A Variety of Sacramento Area Professionals







**ADVERTISE IN
Sacramento Lawyer Magazine
Call (916) 564-3780 x200**



By Judge Judy
Holzer Herscher

A View from the Civil Trial Bench: “Blowing Hot and Cold” in Pleadings: A Risky Business at Trial

This article represents the thoughts and opinions of the author and should not be considered court policy or the opinion of other trial judges. Comments should be addressed to HersherJ@saccourt.ca.gov

Among the motions filed by civil trial counsel before the start of trial is one asking that certain statements in a party's pleadings be deemed judicial admissions. A ruling that a statement is a judicial admission is significant. It prevents the pleading party from offering contrary evidence or argument at trial on the factual representation, since the evidence would be both irrelevant and immaterial. This is because a judicial admission represents “conclusive concessions of the truth of those matters.” (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746; *Walker v. Dorn* (1966) 240 Cal.App.2d 118, 120) Thus, if granted, the motion is a powerful tool to surgically excise problem testimony and stave off changes in legal theory, remedies or amendments that might otherwise be liberally allowed at trial.¹

Examples of potential judicial admissions include requests that the pleadings establish that a particular person was or was not driving a vehicle; did or did not do a particular act; gave or withheld permission; or signed or did not sign a key document. The requests for rulings commonly address statements in both verified and unverified pleadings.

Findings of judicial admission are grounded in part on fairness and judicial economy. Allowing the admission of facts contrary to statements in a pleading that the opposing party has relied on during the run up to trial may well blindside or prejudice the other party, who has not conducted discovery or prepared for trial on that or a contrary factual assertion. (*Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271)

Judicial Admissions are Powerful Tools to Excise Problem Testimony and Amendments to Conform to Proof at Trial

What then qualifies for consideration as a judicial admission? Judicial admissions are limited to statements in pleadings. Some papers filed in an action are “pleadings” and others are not. Only admissions in complaints,

demurrers, answers and cross-complaints have the potential to serve as judicial admissions. (Code of Civ. Proc. Sections 420, 422.10; *St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.* (2003) 111 Cal.App.4th 1234, 1248). Statements offered in or agreed to for purposes of undisputed facts in a motion for summary adjudication or judgment can never serve as the basis of a judicial pleading admission. (*Myers v. Trendwest, supra*, (2009) 178 Cal.App.4th at 747-749) A proposed amendment or petition, not otherwise filed, even if attached to motion papers, also cannot serve as a basis for a claim of judicial admission by pleading. (*Betts v. City National Bank* (2007) 156 Cal. App.4th 222, 235-236)

An argument in favor of a trial court finding of a judicial admission is more involved than simply pointing to a statement filed in a document with the court and claiming it amounts to a judicial admission. The history of discovery, prior requests to amend a pleading, alternative theories of liability and defense referenced in the pleadings, as well as statements made in papers other than the “pleadings,” can all impact a court's decision.

Normally a court will not find a judicial admission if the pleading permissibly alleges inconsistent counts or defenses based on alternative fact patterns. So, for example, a party might seek damages based on an alleged breach of a written contract or alternatively, if no written or executed contract exists, breach of an oral contract or possibly quantum meruit. Also, for policy reasons favoring liberality in permitting amendments, if the court permits an amendment to a pleading, the earlier pleading cannot be used to establish a judicial admission, although the parties may be free to offer the earlier statements as evidentiary admissions of what did or did not happen or for impeachment of the witness. (See, e.g., *H. L. E. Meyer Jr. v. State Board of Equalization* (1954) 42 Cal. 2d 376, 384)

If a pleading is verified, however, the rules change. So, for example, a party cannot allege in a verified pleading that the party's relationship is governed by an orally modified written lease, but then deny in the same pleading the

existence of the written lease. (See, e.g., *Walker v. Dorn* (1966) 240 Cal.App.2d 118,120, citing Witkin, California Evidence, section 224, page 251; “It should be remembered that no judicial admission results from the permissible use of inconsistent counts or defenses unless they involve contradictions of fact in a verified pleading.”). In *Walker v. Dorn*, the court found the pleader had admitted that there was a written contract when he so stated in a verified complaint and therefore should not be permitted to prove otherwise at trial. As another court put it, “[A] pleader cannot blow hot and cold as to the facts positively stated.” (*Brown v. City of Fremont* (1977) 75 Cal.App.3d 141, 146)

Amending Pleadings and Discovery Responses is Critical

The importance of careful drafting in the preparation of pleadings, the history of discovery, and the need for diligence in pursuing amendments to pleadings where appropriate is illustrated in *Valerio v. Andrew Youngquist Construction, supra*, (2002) 103 Cal. App. 4th 1264. In *Valerio*, general contractor Birtcher Construction Services (Birtcher) solicited bids from painting subcontractors. It awarded the bid to Bart Valerio (Valerio), sent him two copies of the contract and told him that he would receive a fully executed contract after he returned his copy, signed, along with a performance bond. Valerio sent back a signed contract, but never provided a performance bond. As a result, Birtcher never provided Valerio with a fully executed contract. However, Birtcher allowed Valerio to begin work, eventually replacing him several months into the project with another contractor. Valerio was not paid for the work he did do, and so he sued alleging breach of an express written contract or, alternatively, *quantum meruit*. Birtcher filed a cross-complaint. In a court trial, the trial judge found there was no written agreement and awarded Valerio *quantum meruit* and attorney fees.² The appellate court reversed and remanded. It held that Valerio was bound by its statement in its unverified pleading that a written contract existed.

Why the finding of judicial admission in an unverified complaint? Valerio, in answer to the Birtcher’s cross-complaint, admitted an allegation that he had signed a written construction services trade contract with Birtcher on March 4, 1998. Valerio also admitted there was a signed written contract in response to a request for admission. Seven months before trial, counsel for Valerio advised the trial judge in his trial management conference statement that his client had made an error. He wrote: “Only after having gathered together all of the documents and having digested the deposition testimony of Birtcher’s Operations Manager did the actual status of the contract become clear. Birtcher

intentionally never signed the contract. Since there was no contract, Valerio’s only claim is upon the second cause of action for work, labor, services and materials rendered on a *quantum meruit* basis.” (*Valerio v. Andrew Youngquist Construction, supra*, (2002) 103 Cal.App. 4th at p. 1268) Despite this knowledge, Valerio did not dismiss the breach of an express written contract claim, nor amend his answer to the cross-complaint or his response to Birtcher’s request for admissions. Thus at the time of trial the pleadings remained as they were on the date of filing. Meanwhile Birtcher, in its trial management conference statement and trial brief, stated that based on the pleadings, admissions and discovery responses, the existence of the written contract was not in dispute and that it would object to any contrary evidence being offered at trial and sought a judicial admission to that effect.

Describing the law on judicial admissions as “well settled by venerable authority,” the appellate justices pointed to the pleadings, discovery, and failure to amend as a concession to the truth of the written contract -- even in light of the trial management conference statement to the contrary. They held that as a result, “[A]ny finding adverse to the admitted facts drops from the record, and any legal conclusion which is not upheld by the admitted facts is erroneous.” [Citations.]” (*Welch v. Alcott* (1921) 185 Cal. 731, 754) (*Valerio v. Andrew Youngquist Construction, supra*, (2002) 103 Cal.App. 4th at p. 1271)

Importantly, acknowledging and balancing the policy in favor of liberally allowing amendments to pleadings during the course of litigation, the appellate justices acknowledged that facts can and do change during the course of discovery, and if timely made, a party can mitigate the impact of any early judicial admission. The court then denied Birtcher’s request to have the trial court instructed on remand to find that the parties entered into a written trade contract at the retrial. Instead, the justices stated, “...the cause is at large for retrial. The [trial] court has the same authority to allow amendments as in a case not yet tried, and leave to amend is granted with about the same liberality.” [Citations]. (*Id.*, at p. 1274)

Valerio was decided based on the totality of the circumstances -- that is, on his unverified complaint, admissions, answer to the cross-complaint, and on his failure to seek an amendment even when he learned that his prior admissions were incorrect. The lack of one or more of these circumstances might well end in another result for a litigant. ✍

1. According to 4 Witkin, Cal. Procedure (4th ed. 1997) Pleading, section 413, pp. 510-511, an admission in a pleading is really a “waiver of proof of a fact by conceding its truth, and it has the effect of removing the matter from the issues.”

2. There is no explanation in the case for the basis of the award of attorney fees.



By Brendan J. Begley

Lawyer Lore: The Indomitable Judge Raul Ramirez

We know that top litigators are skillful at marshaling favorable facts, employing their storytelling talents, and using compelling theories of recovery or defenses to advance their clients' interests. On the other hand, great mediators find ways – sometimes delicate, sometimes forceful – to get the parties and counsel to look beyond their well-crafted yet self-serving narratives or theories to see other possibilities.

The Hon. Raul Ramirez is a superb example of a mediator who has been able to combine the diplomacy of a statesman with the assertiveness of a hard-charging prosecutor to bring about resolution in thousands of cases. The former Sacramento judge says being an effective mediator is not an easy job because it “means you gotta look the people who are paying you in the eye and tell ‘em the hard truth.” He enjoys a well-deserved reputation of driving parties toward reasonable compromises with all the gentleness of a sword-toting knight chasing dragons from a village – but a suit of armor is not the only item of apparel in his mediation wardrobe.

“When I was on the bench, I don’t think I knew how to spell the word grovel,” Judge Ramirez recently joked. “But sometimes you gotta let go of your ego as a mediator and be humble – and, if that means I have to grovel to get a case settled, I’ll do it.”

Over the years, Judge Ramirez’s settlement batting-average has ranged between 70 percent and 95 percent, usually hovering in the mid-80-percent range. Given his strong yet amiable personality, sharp mind, and great attention to factual details – not to mention an authoritative voice that sounds like The Jungle Book’s Baloo the Bear with a juris doctorate – it is not surprising that he has achieved such impressive results.

The experience of working for many years as a criminal and civil practitioner, and then as a judge in state and federal court, undoubtedly contributed to Judge Ramirez’s mediation abilities. However, it is surprising that he did not receive any mediation training or significant mediation experience until later in his career. His first glimpse

of what a capable neutral can achieve came while overseeing plea bargains in criminal matters as a state court judge between 1977 and 1980.

“One problem with the legal profession is that lawyers are trained to be gladiators in the arena, but they aren’t taught how to end the war without spilling blood,” Judge Ramirez explained. “You know, a law student is regarded as the class genius if he can come up with the most claims or defenses from a law professor’s hypothetical.”

The scarcity of previous mediation training didn’t slow

Judge Ramirez’s metamorphosis into one of the area’s top neutrals after he ascended to the bench. Indeed, his natural mediation talents took flight when he served as a settlement-conference judge in federal court between 1980 and 1990. Picture John, Paul, Ringo, and George having no formal musical training in school, but later becoming the Fab Four while playing tunes in a Hamburg nightclub for ten years.

Like the Beatles singing just for the joy of it, Judge Ramirez found non-monetary reasons to excel in his field. “When you’re a federal judge, your cases are assigned to you for all purposes,” he pointed out. “So the more cases on your docket that get settled, the more attention you can give to the

cases that really need to be tried.”

Judge Ramirez boasted the best judicial track-record for settling cases during his tenure at the federal court in Sacramento, and his achievements caught the attention of important peers. For example, the local U.S. Attorney at that time decreed that lawyers in his office would stipulate to allow Judge Ramirez to serve as the settlement-conference judge in cases where Judge Ramirez was serving as the trial judge. Moreover, Judge Ramirez was assigned the then-novel task of mediating appellate cases for the Ninth Circuit.

“I learned the only way to do a mediation is from A-Z,” he reminisced. That means starting out with a conflict check, then doing a conference call to iron out details, and then (except in exceptional cases) beginning the mediation with a well-controlled joint session.



Judge Raul Ramirez

“You gotta have the conference call to identify the folks who should or shouldn’t attend and to take care of other pesky details so that we start off on the right foot at the mediation,” Judge Ramirez insisted. Going from A to Z also requires getting the participants to relax at the mediation, because being too tense or rigid can get in the way of exploring promising options.

“I have them come to my office where there is plenty of indoor parking and lots of space in comfortable conference rooms,” he revealed. “I give them refreshments and I tell them to take off their jackets, roll up their sleeves, settle in and, most importantly, to relax.”

Telling participants to loosen-up does not always lead them to do it. In one probate mediation where the heirs were squabbling over the division of roughly \$50 million in assets, Judge Ramirez found himself breaking up a physical fight between two litigants and taking a knife away from one of them. The emotional experience he had in a different high-stakes case is far more touching.

That mediation involved the surviving parents of two teenaged girls who sued the drivers of two semi-trucks. The driver of one of the trucks was passing the other truck in a curve on a two-lane highway when the big-rigs collided head-on with the teenagers’ compact car. The truckers walked away from the wreck, but they lived forevermore with the horrendous memory of the girls’ mutilated bodies at the accident scene.

Fog did not cause that accident, but it almost thwarted the mediation. A dense layer of it lingered in Sacramento as a bleak obstacle to Judge Ramirez reaching Las Vegas on the morning the proceeding was to take place there. Two California Highway Patrol cruisers slowed traffic to a crawl on the interstate in order to guide drivers carefully through the pea soup, causing Judge Ramirez to worry that he might miss his plane. Upon reaching the terminal, he learned that flights were grounded due to poor visibility.

Nonetheless, and for unknown, but seemingly supernatural or divine reasons, Judge Ramirez’s plane was the only one permitted to lift off that morning. Once in Las Vegas, and after spending many hours at the negotiating table, Judge Ramirez was able to help the truckers and the parents reach a voluntary resolution. He then took a momentous step further.

“The settlement only fixed the money part, and I knew that all of them were still suffering emotionally,” Judge Ramirez recalled with a lump in his throat. “So after they signed the agreement, I invited the mom and dad to come into the other room to meet the drivers and let them ask for forgiveness.”

According to Judge Ramirez, the devastated parents slowly rose from their seats, cautiously walked into the other room, paused to look the truckers in the eye and listen to their expressions of deep remorse – and then intensely hugged the defendants while everyone cried

tears of unimaginable loss, immeasurable regret, mutual understanding, and ultimate forgiveness. “I can’t kid myself that the experience relieved all of their pain, but I think it helped the process of their emotional healing,” he concluded solemnly.

Although the judge greatly enjoys the sense of accomplishment that comes from such successes, that is not the only reason that he remains in the mediation game. “I didn’t stay at the state court or federal court long enough to retire from either place,” he chuckled, “so I have to keep working hard as a mediator to pay the bills.”

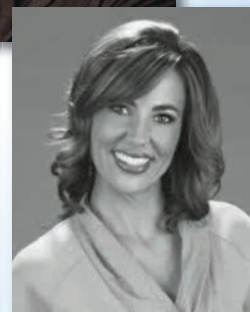
Judge Ramirez has been a neutral long enough to know that it is rare for parties to obtain their “wish list” in mediation, and that most times the parties on each side come away only with items on their “I can live with it” list. So he posts on his website articles and tips to help attorneys prepare their clients adequately for mediation proceedings. Given the valuable lessons that Judge Ramirez has learned and, in turn, shares to promote successful mediations, he has become an integral part of Sacramento’s lawyer lore. 🗡️

Brendan J. Begley is a former chair of the SCBA Appellate Law Section and head of the Appeal and Writs Group at Weintraub Genshlea Chediak Tobin & Tobin Law Corporation. He is also a California State Bar certified appellate law specialist.

Professional Creative Events & Business Portraits



Head
Shots
As Low As
\$50.*



MIB
Mary Burroughs
Studio.com

(916) 296-9657

Call or email: MJBgraphicdesign@aol.com

for individual or **GROUP PRICING** information

*When you have a group of 5 to 7 at one time it is \$50. per headshot

Spotlight on the Collection: The California State Bar MCLE Audio Sets

Compiled by Robyn M. Moltzen, Public Services Librarian, Sacramento County Public Law Library

Recently, the law library ordered several MCLE titles from the California State Bar (www.versatape.com) to add substance and variety to our audio collection. Check out a few of these titles the next time you are in the law library.

An Inside Look at California's Attorney Discipline System

Speakers: Suzan Anderson, Jerome Fishkin, Cecilia Horton-Billard, and Ellen Pansky

Learn how to avoid the discipline system, what to do if the State Bar contacts you, and how to handle foreclosures without getting into trouble with the Bar.

MCLE Credit: 1.5 hours (Legal Ethics)

Basic Family Law Enforcement

Speaker: Raymond Goldstein

An in-depth program on enforcement of court orders (support, equalization & fees), including wage assignments, execution & levies, affidavits of identity, EWOs, personal property liens, examinations and DCSS and SDU issues.

MCLE Credit: 1.0 hour

Best Practices: Representing a Client before the IRS

Speaker: Steven L. Walker

Learn the fundamentals of representing a client before the Internal Revenue Service. This program delivers a primer on the key issues that crop up when clients are faced with a potential examination by the IRS. No prior tax experience is required.

MCLE Credit: 1.5 hours

Consumer Bankruptcy 101: What Every Lawyer Needs to Know About Consumer Bankruptcy

Speakers: Elissa Miller and

Michael O'Halloran

A primer on common issues attorneys may face in representing debtors and creditors in cases filed under Chapter 7 and 13.

MCLE Credit: 1.0 hour

Dealing with Difficult Clients and Opposing Counsel: Successful Strategies and Tactics

Speaker: Steven G. Mehta

What lawyer hasn't had a difficult client or faced an uncooperative opposing counsel? Often, these people can be so frustrating that it can ruin your law practice, and make you spend more time and resources. Learn proven strategies on how to handle difficult people, set boundaries, and enhance your effectiveness in communicating with them.

MCLE Credit: 1.0 hour

Employment Relationship in a Social Media Environment: From 1st Amendment to Facebook and Beyond

Speakers: John Marcin and Lisa Miller

This program provides an analysis of trends, legal developments, and the squishy constitutional parameters at the intersection of the legal workplace and the social media explosion.

MCLE Credit: 1.5 hours

Income Taxation of Same-Sex Couples

Speakers: Prof. Patricia A. Cain, University of Santa Clara School of Law, Santa Clara; David Rice, David Lee Rice, APLC, Torrance; Steve Sims, California Franchise Tax Board, Sacramento; and Stephen Toomey (Invited), Internal Revenue Service, Washington, D.C.

The increase in the number of states providing marriage-type benefits to same-sex couples has left a tension between state and federal income tax law. As federal law only recognizes marriage between a man and a woman, this panel will focus on the problems inherent in this disparity, including federal and state filing and

Continued on page 33



Main Library
813 Sixth Street, First Floor
Sacramento, CA 95814-2403

916-874-6011
www.saclaw.org
www.facebook.com/saclawlib
www.twitter.com/saclawlibrarian

NEW ACQUISITIONS

*Handling Subpoenas:
Here's How and When To Do It*
California CEB
KFC1040.5 H36

*The Careers Project: Survey of
Representatives of Business and Industry
in California*
California Research Bureau
L960 .C27b California Documents

*Guidebook to the Freedom of Information
and Privacy Acts*
Thomson Reuters
KF5753 .G85 2012

Basic Family Law Enforcement
State Bar of California
KFC133 .B3

*Forensic Accounting for Today's Busiest
Practice Areas*
California CEB
KFC1042.A75 F67 2012

*Juvenile Dependency:
An Overview for Family Law Practitioners*
State Bar of California
KFC1196.A75 J88

Surfing From River City: SCBA Affiliate Bars



Compiled by Mary Pinard Johnson, Public Services Librarian,
Sacramento County Public Law Library

This issue of the *Sacramento Lawyer* spotlights just a portion of the SCBA's affiliates. There are numerous affiliated bars in the Sacramento area, each with its own focus. All offer the opportunity to attend educational events, network, and socialize with like-minded attorneys. See each organization's website for more information.

Asian/Pacific Bar Association of Sacramento

<http://www.abassacramento.com/>

The Asian/Pacific Bar Association of Sacramento (ABAS) promotes and protects the interests of Asian- and Pacific Islander-American attorneys and community members in the greater Sacramento area. The Association promotes its members' professional growth and continuing legal education; provides social and networking opportunities; serves as an advocate for matters of concern to the members of the Association; and provides members with community service opportunities.

Barristers' Club of Sacramento

<http://www.sacbar.org/For%20Attorneys/barristers.aspx>

Sacramento County Bar Association members practicing 5 years or less, or age 35 or under, are automatically members of the Barristers' Club. The Barristers' Club provides newer attorneys with education and public service opportunities, as well as social and networking events.

Capitol City Trial Lawyers Association

<http://www.cctla.com>

The Capitol City Trial Lawyers Association brings together trial advocates in the Sacramento area for practical continuing legal education, networking opportunities, and the exchange of ideas and experiences. The Association also serves its members as a liaison to the courts, and as a representative to the Consumer Attorneys of California.

Federal Bar Association - Sacramento Chapter

<http://www.fedbar.org/sacramento.html>

This national association of federal lawyers and judges promotes the integrity, quality, and independence of the judiciary. FBA members serve as advocates for change

and improvement in the federal legal system. The association provides opportunities for continuing education and professional and social networking.

Hellenic Law Association of Sacramento

<http://www.helleniclaw.org>

The Hellenic Law Association of Sacramento strives to preserve and foster the Hellenic principles of individual liberty, the rule of law as an instrument of justice, and the love of learning and free inquiry. The association brings together legal professionals and students to promote legal, professional, and ethical principles; to facilitate networking and social interaction; and to provide a forum for the exchange of ideas and information related to the practice of law.

La Raza Lawyers Association of Sacramento

<http://larazalawyers.net> (website for the statewide organization)

The La Raza Lawyers Association of Sacramento promotes the professional advancement and education of Hispanic lawyers, and the social and civic advancement and cultural values and economic interests of the Hispanic community.

Leonard M. Friedman Bar Association

<http://jsaclaw.org/about.html>

The Leonard M. Friedman Bar Association serves as voice and forum for Jewish attorneys and judges on legal and community issues. The association hosts a variety of speakers and social events throughout the year.

Sacramento Lawyers for the Equality of Gays and Lesbians

www.saclegal.org

This professional association of attorneys, legal professionals, and legislative advocates strives to develop and secure equality for members of the lesbian, gay, bisexual, transgender, queer, questioning, intersex, and ally (LGBTQQIA) community. The group educates the LGBTQQIA community, the legal community, and the community at large

about the legal rights of LGBTQQIA individuals through civil and social activities, legislative advocacy, and educational programs.

South Asian Bar Association of Sacramento

<http://www.sabasacramento.org>

The South Asian Bar Association of Sacramento offers its members professional development and networking opportunities, promotes the professional advancement of attorneys and law students of South Asian descent and helps serve the legal needs of the Sacramento region's South Asian community.

St. Thomas More Society

<http://www.sacstms.org>

The St. Thomas More Society is sponsored by Catholic lawyers, but membership is open to legal professionals and legislative advocates of any religious persuasion. STMS serves as a mutual support group that encourages individual spiritual growth and interfaith understanding. STMS promotes the teachings of the Second Vatican Council, but does not engage in political or legislative advocacy or take stands on controversial current issues.

Wiley Manuel Bar Association

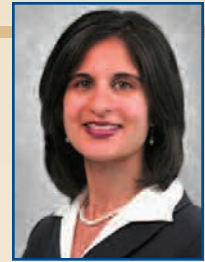
<http://www.wileymanuelbarassociation.com>

The Wiley Manuel Bar Association of Sacramento County was organized to represent the professional interests of the legal community, with special emphasis on black attorneys. The association encourages the use of legal tools and legal discipline to advance the economic, political, educational, and social interests of Sacramento's black community.

Women Lawyers of Sacramento

<http://www.womenlawyers-sacramento.org>

WLS promotes full, equal participation of women in the legal profession, improving status of women in our society, and advocates for equality in social, political, economic, and legal issues. The organization provides legislative advocacy, networking and mentoring opportunities, and educational seminars and forums.



By Shama Mesiwala

First All-Female Panel Convened at the Third Appellate District

On April 17, 2012, a significant moment in California judicial history arrived when the first all-female panel for the Court of Appeal, Third Appellate District, convened. The case before the panel was a serious one – the appeal of a first-degree murder conviction in the killing of a Sacramento County sheriff's gang detective, *People v. Siackasorn*, C065399. For the three justices hearing oral argument that morning – Acting Presiding Justice **M. Kathleen Butz**, Associate Justice **Elena J. Duarte** and Associate Justice **Andrea Lynn Hoch** – it was not a time for fanfare.

But in its own quiet and dignified way, the serious calm of the courtroom on that spring day stood as a tribute to these three women, and to the other female justices who preceded them. Over the 107-year history of the Third Appellate District, eight women have served as justices. The lineup is impressive. It includes **Janice Rogers Brown** of the U.S. Court of Appeals, District of Columbia Circuit, **Consuelo M.**

Callahan of the U.S. Court of Appeals, Ninth Circuit, and **Tani Cantil-Sakauye**, Chief Justice of California. The other two women of the Third Appellate District also stood as legal powerhouses: **Annette Abbott Adams** (1877-1956) and **Frances Newell Carr** (1923-1992).

Until very recently, the Third Appellate District had never included enough women justices to permit the convening of an all-female panel. The trio making up the historic April panel brought strong, diverse backgrounds to the honor. Butz was a named partner in a civil law firm before being elected to an open seat on the trial bench in Nevada County, rising to presiding judge of the superior court within five years of her election. Duarte was an Assistant United States Attorney who became section chief of the Cyber and Intellectual Property Crimes Section and was selected by the Daily Journal as one of the top 75 women litigators in California. Hoch was a litigator who reached the highest levels of public service in California's executive branch. She



From left: Associate Justice Elena J. Duarte, Acting Presiding Justice M. Kathleen Butz, and Associate Justice Andrea Lynn Hoch of the Court of Appeal, Third Appellate District



The justices of the Third Appellate District. Top row, from left: Elena J. Duarte, Louis Mauro, M. Kathleen Butz, William J. Murray, Jr., and Andrea Lynn Hoch. Bottom row, from left: Harry E. Hull, Jr., Coleman Blease, Presiding Justice Vance W. Raye, George Nicholson, and Ronald B. Robie.

represented the state in its historical litigation against the tobacco industry that resulted in the largest settlement in United States history, led the Government Law Section and Civil Law Division of the Attorney General's Office, supervising more than 800 attorneys and paralegals, and then was selected by Governor **Arnold Schwarzenegger** to be his Legal Affairs Secretary.

"These three women jurists are the embodiment of who we hope our judges will be," said **Laurie Earl**, Presiding Judge of the Sacramento County Superior Court and the first woman to serve in that capacity after the municipal and superior courts unified. "They are powerful women on their own and even more so when they come together." The convening of the panel was indeed a significant and memorable moment in history, said **Vance Raye**, Presiding Justice of the Third Appellate District. "It is symbolic of the increasing number of women practicing law." "Assuming there are no unnatural barriers to the ascension of women in the judiciary, there will likely be multiple three-women panels in the future."

In the past, the assigned three-justice panels of the court had occasionally seen a majority of women assigned to the same panel. Butz recalled that when she and Cantil-Sakauye served together, they would feel a twinge of excitement during the few times the two were assigned to the same panel. It wasn't until December 10, 2010 - when the Commission on Judicial Appointments unanimously

approved the appointments of Duarte and Hoch and it became clear they would be joining Butz on the Third Appellate District - that the possibility of an all-female panel became real.

For the three justices, their seats on the April panel and their place in history have brought a sense of inspiration and hope for the future. Both Hoch and Duarte said it hadn't crossed their minds before joining the appellate bench that they would be part of such a historical event. Once they learned the moment was on the calendar, it brought great meaning.

"I realize that we are role models and hope this will give others the encouragement that they can do the same," said Hoch, recalling that when she was litigating cases, she never dreamed of becoming a judge. "Frankly, I never thought it was attainable." Her goal at the time was to lead the Government Law section of the Attorney General's Office, which she achieved in January 2002.

"It inspires and humbles me," said Duarte, who reflected on how she began to envision the possibility of a judicial career when she was a young litigator in Los Angeles. "My first two supervisors were female and within the first two years I was at the [U.S. Attorneys' Office], they both secured judgeships. I thought maybe if they did it, I could do it too. I think it helped that they were similarly-situated women in the same job, from the same office, and one a minority -- because it brings some reality to the equation. Even if you

are taught to believe that these things are achievable, without role models to illustrate the achievement, it can be very difficult to imagine, much less implement.”

Butz, the acting presiding justice of the panel, expressed her vision for future panels. “It is so important the benches reflect the communities they serve.” “I am proud that we can show the community that women are an integral part of the Court of Appeal and not just an anomaly.” “I am optimistic it will be a fully integrated bench as time goes on, especially given the number of women in law school now.” Butz also took pride in the legacies of the prior five women who had served the court. “We are so honored to be preceded on this court by such trail blazers,” she said after the April panel had concluded its historic hearing. “After 107 years, I think the Third Appellate District is on a roll.”

The Third Appellate District: Hard Work and Collegiality

Among California’s appellate districts, the Third is not the first to convene an all-woman panel. The trend, though, is a young one. The first all-female panel of sitting Court of Appeal justices convened on March 11, 2003, in San Diego. That notable moment came in the Fourth Appellate District, Division One, with a panel composed of Acting Presiding Justice **Patricia D. Benke**, Justice **Judith D. McConnell**, and Justice **Judith Lynnette Haller**.

The Third Appellate District holds the distinction of having the first woman appointed to a Court of Appeal, Annette Abbott Adams, in 1942. Adams also was the state’s first female presiding justice, and became the first woman to sit on the California Supreme Court when she sat *pro tempore* for one case to celebrate that court’s centennial in 1950.

The Third Appellate District is one of the three original Courts of Appeal established in 1904 by constitutional amendment. It is the largest appellate district in geographic terms, with jurisdiction covering 23 counties. For its first 26 years, the State Capitol Building was home to the court until it moved to the Stanley Mosk Library and Courts Building across from the Capitol. Currently, the Third Appellate District is operating temporarily out of a high-rise office tower a few blocks west of the Capitol at 621 Capitol Mall while the historic courts building undergoes renovation.

The Third Appellate District has earned the reputation of being the “workhorse” district. This is not only because of its size but also because it sits in the state Capital, where most state agencies are headquartered. As a result, many lawsuits involving the administration of government and elections law arise in the Superior Court of Sacramento County, with appeals landing naturally in the Third District. Case loads for justices run high. According to the Judicial Council of California’s 2011 Court Statistics Report, “the Third District had the highest levels of filings and dispositions per justice in 2009-10.” Filings per justice were 27 percent higher than the statewide average, while dispositions per justice were 28 percent higher.

In the minds of those who have served there, the Third District stands out in other ways, as well. “By far that court is the most collegial court I have sat on. It was a deep kind of collegiality,” said Callahan, who served on the Third Appellate District from 1996 to 2003, before being appointed to the U.S. Court of Appeals, Ninth Circuit. On the Third District, “the justices respect each other in a way that is so deep. That’s not to say everyone is of one mind. But everyone is so supportive of one another.”



Presiding Justice Annette Abbott Adams



Justice Frances Newell Carr

The process of having three-justice panels, Callahan noted, contributes to the collaborative atmosphere because the three individuals work on the same appeal, which provides a greater opportunity for “nothing to be missed...and fine tuning where there are differences.” During her time on the Third District, Callahan was the only woman. Her colleagues, she said, were supportive at every step. “It is a court that has always welcomed diversity.” “I felt that court was really the wind beneath my wings.”

Elizabeth Rindskopf Parker, the Dean of Pacific McGeorge School of Law in Sacramento for the past decade, said she has found the spirit of collegiality on the Third Appellate District to be part of an even larger pattern in the Capital region. “When I arrived here in 2002,” she said, “I was stunned by the close relationships involving the judiciary. I believe it is different than other places. We have an unusually collaborative and collegial relationship between the bar and the judiciary. The legal community is quite special here.”

A History of Extraordinary Women

After Associate Justice **Richard Sims III** was appointed to the Third Appellate District in 1982, he found himself drawn to the gallery of black and white framed portraits of former justices displayed in the court’s hallway. One photo in particular caught his eye. It was of Annette Abbott Adams, who was presiding justice from May 1942 to November 1952. “I thought there must be an interesting story about her,” Sims said, recalling that he asked **Linda Wallihan**, the court’s “very gifted and talented law librarian” to find some background about this first woman to turn up amid a sea of male portraits. Her

story was a delight to uncover.

Adams grew up on a Plumas County ranch, rode horses with her girlfriends, and was known for hanging onto the horses’ tails and swinging out over precipices. She became an elementary school teacher and one of the state’s first female school principals. While a resident of Plumas County, she befriended a superior court judge. The judge was impressed by her intellect and convinced Adams to attend law school. She chose Boalt Hall (now Berkeley Law). Adams’ biography on the California Courts website succinctly tells her remarkable story: She was “one of the first two women to receive a law degree from the University of California, one of the first women to be admitted to the California Bar, the first woman to serve as a U.S. Attorney, the first woman appointed Assistant U.S. Attorney General, and the first woman to serve as an appellate court justice in California.”

It wasn’t always smooth sailing, though. After graduating from Boalt Hall, Adams could not find a job and hired a vocal coach to help her change the timbre of her voice to sound more masculine. She then began practicing family law with another woman. Later, she found a mentor who was an Assistant U.S. Attorney in San Francisco, and she eventually was hired by that office. She became a litigator and prosecuted cases under the Alien Sedition Act.

Adams was active in Democratic politics and it is believed that at one point her name was put into nomination as the first female Vice Presidential candidate of the United States. When Governor **Culbert Olson** named Adams to the Third Appellate District, he appointed her directly as presiding justice, where she became known for her elegant and to-the-point opinions. Her lifestyle was a quiet one: She lived in a modest home in Sacramento



Judge Janice Rogers Brown



Judge Consuelo M. Callahan

with a woman friend and spent most evenings by the fire reading. Adams left the court in 1952, and died in her home in 1956.

It took the passage of another generation before the next woman joined the Third Appellate District. Frances Newell Carr was known as a pioneer and champion for women on the bench. Born in 1923 to migrant farm workers, she was an independent and tenacious spirit who worked her way through the University of California, Berkeley, and Boalt Hall, supporting herself as a nightclub photographer, ship builder, and radio announcer. After admission to the California Bar in 1949, she practiced law in Antioch, then Sacramento. In 1975, Governor **Edmund G. "Jerry" Brown, Jr.** appointed Carr as the first woman to the Sacramento County Superior Court, where she served as presiding judge from 1978 to 1979. From there, Governor Brown elevated Carr to the Third Appellate District, where she was known for her sharp intellect and precise writing skills, devotion to children, and good humor.

Associate Justice **Coleman Blease**, the longest-serving justice on the Third Appellate District, recalled Carr had "very high standards, which of course she held herself to." Justice Sims described her as "a student and practitioner of good writing" who was "the arch enemy of the split infinitive." She authored a number of very important opinions on dependency law in which Sims recalled she expressed her "honest concern for children who were in the dependency system." She would never permit parental rights to be terminated unless the record made clear the child was certain to be adopted. Her repeated admonition, Sims said, went like this: "We are not going to have these kids in no man's land."

Carr was a strong advocate for women practicing in the male-dominated field of law, but she also was quite tough on women lawyers who appeared before the court and failed to perform well. She believed she was protecting the status of women in the legal profession by holding them to high standards, Sims said.

Her toughness, at its core, was not a gender matter. It was about the professionalism and decorum she saw as necessary hallmarks of the legal profession, said Third Appellate District Associate Justice **Harry Hull**, who appeared before Carr when he was an attorney and she was a trial judge. Hull recalled a hearing where a lawyer appearing before Carr did not agree with the date she gave him for a continuance. The attorney said, "Judge, that new date would really screw with my calendar." Not missing a beat, Carr responded, "I don't appreciate you using that language in my courtroom." Hull, taking note of Carr's no nonsense style recalled he was "very careful of what I said when it was my turn to speak." Those high standards, Hull said, won her the respect of the legal community.

Carr touched the lives of many. "I deeply loved Frances," said Blease. "She came up the hard way. She was a scrambler." Blease described how Carr took care of her mother-in-law until her mother-in-law died in Carr's own home. "That says something about her." Carr served 12 years on the appellate court, passing away suddenly in her home in 1992, six weeks before she planned to retire.

One Woman At A Time, A Legacy Is Built

Adams and Carr each had the distinction of being the only woman among their colleagues while serving on the Third Appellate District. That pattern would stretch through



Chief Justice Tani Cantil-Sakauye



Justice M. Kathleen Butz

the 1990s and into the 21st Century. After this spring's first all-female panel convened, Butz noted the trend in her remarks to a gathering of well-wishers following the historic oral argument in which she chronicled the women on the court who preceded her - first Adams, then Carr, then Brown. "All of these, you notice, are just one woman at a time," noting that Callahan came next. "She had to leave before I could be appointed," Butz said with a smile.

Two years after Carr died, Governor **Pete Wilson** appointed Janice Rogers Brown to the Third Appellate District in 1994. Brown earned her juris doctor from the University of California, Los Angeles, in 1977 and then began her career first as a Deputy Legislative Counsel and then a Deputy Attorney General. It was at the Attorney General's Office that Brown met Raye. She was a lawyer in the criminal division and he was a lawyer in the civil division. Raye sought out Brown as one of only a handful of fellow African American lawyers at the Attorney General's Office. They and their families would grow close.

Brown is "a very bright person who really excelled in every position she had ever held," Raye said, describing her as "thoughtful," with "a flair for writing," and "a delight to be around." He recalled that when a "comparable worth" lawsuit was filed against the state, officials considered retaining outside counsel for such sensitive and difficult litigation, but ultimately decided to stay with the Attorney General's Office, with Brown as lead attorney. "It was a really tough case in federal court in San Francisco," Raye continued. "She did a magnificent job as lead counsel."

Brown's work on that case soon led to her appointment as head of the Business and Transportation Agency in Governor **George Deukmejian's** administration, said Raye,

who at the time served as Deukmejian's Legal Affairs Secretary. Thereafter, Brown left government service to join the law firm of *Nielsen, Merksamer, Parrinello, Mueller & Naylor*. When Governor Pete Wilson came into office, Wilson asked Brown to become his Legal Affairs Secretary, a position in which she served for three years until Governor Wilson appointed her to the Third Appellate District.

When reflecting on her time on the state appellate court, Brown said she still considers the Third District her "judicial home" and her "favorite judicial assignment." After serving one and a half years on the Third Appellate District, Brown was elevated to the California Supreme Court by Governor Wilson. She served on that court for nine years until President **George W. Bush** appointed her in 2005 to her current position on the U.S. Court of Appeals for the District of Columbia Circuit.

The next woman to join the Third Appellate District was Consuelo Maria "Connie" Callahan. Candid and reflective, she described her sense of being fully deserving of the positions she has earned, while also being keenly aware that she was up against other qualified applicants. Her "femaleness" must certainly have been a factor, she said, in her appointment to replace Brown on the Third Appellate District, as well as her Hispanic background. (Callahan is half Spanish, with her mother's family arriving in this country as indentured servants in Hawaii, while her father was a native San Franciscan of Irish background. She has retained her maiden name.) But Callahan also expressed her awareness of the "things I didn't get as a woman." Of her judicial appointments, she noted, "It's almost like an eclipse coming together. You are qualified, and you are the one they want to appoint."

As a young woman, Callahan decided to enter the legal



Justice Elena J. Duarte



Justice Andrea Lynn Hoch

profession because she wanted to help others. She earned her juris doctor from Pacific McGeorge in 1975. Her first job was as a Deputy City Attorney in Stockton, followed by a position as a Deputy District Attorney for San Joaquin County. In 1986, she was appointed Commissioner of the Stockton Municipal Court. That was followed seven years later by Governor Wilson's appointment of Callahan to the San Joaquin County Superior Court, where she became the first woman and first Latina to serve on that bench. Four years later, in 1996, Governor Wilson elevated her to the Third Appellate District, making her the first San Joaquin County resident in 73 years to serve on that bench.

"She is so well respected," said Third Appellate District Associate Justice **William J. Murray, Jr.**, who worked with Callahan as a prosecutor and as a judge in San Joaquin County before he was confirmed as an appellate justice at the same time as Duarte and Hoch. "There was an overall community pride about having someone who grew up professionally in Stockton get elevated to the level she is at."

Callahan has been instrumental in encouraging Murray and other minorities in their judicial careers. When she left the trial court, she urged Murray to take her "bear" of a calendar, which encompassed civil law and motion from 8 a.m. followed by "any sort of civil trial" from 10 a.m. onward. Nobody wanted to take over Callahan's assignment, recalled Murray, because San Joaquin County had the highest proportion of civil filings in the state at the time. Callahan encouraged Murray to take this calendar because she thought it would give him valuable civil experience. It did. And Murray credits that experience with making him a more well-rounded candidate for the appellate bench. Perhaps Callahan had that in mind, as she later encouraged him to apply to the Third Appellate District. Murray views Callahan as a generous mentor who has helped facilitate the careers of many women and minorities, and whose door "is always open for young people and for community members."

Callahan served as the only female on the Third Appellate District until her appointment by President George W. Bush to the U.S. Court of Appeals, Ninth Circuit, in 2003, where she still serves. In 2005, the New York Times reported that she was on a list of possible successors to U.S. Supreme Court Justice **Sandra Day O'Connor**.

Callahan recalled that when she was nominated to the Ninth Circuit, all of her colleagues on the Third Appellate District signed a letter of support to the Senate Judiciary Committee. "The men of that court were tremendously

supportive of the careers of all of their justices," Callahan said. "As a woman, if I was treated differently at all, I think I was treated better. It was an important factor in leading to other opportunities."

The Trend Begins to Shift

The year 2003 saw the appointment of the next woman to serve as the sole female on the Third Appellate District - M. Kathleen Butz. Unlike her predecessors, however, she would soon be joined by a female colleague, Tani Cantil-Sakauye.

As a young woman, Butz envisioned a career "having something to do with languages," but events of her life led her to the "practical" decision of attending law school. Butz grew up in Auburn in a family whose ancestors came to Northern California in the mid 1800s. As a high school junior, she was selected as an American Field Service International exchange student, and learned via telegram she would be spending a year in Brazil only two weeks before she was set to board a plane for the first time. Her year in Brazil was a difficult experience in many ways. Her host family did not have a telephone so she did not speak to her own family in Auburn for one year. She corresponded with them by mail, which wasn't very reliable because "every third letter went missing." But she became fluent in Portuguese, and her time in Brazil

shaped her passion for foreign languages and her desire for a career in foreign relations. She selected UC Davis for college because a professor there taught Brazilian Portuguese.

Within four years of completing her undergraduate degree, Butz married, had a son, and divorced. By then, Butz was working two jobs at UC Davis -- one in the college of engineering editing the alumni newsletter and the other at the Shields Library editing transcriptions of oral histories. She found herself in need of a "stronger skill set in order to take care of my child." Friends suggested law school, and her decision to attend was "a practical one." Her approach to law school was, "I have to get through this." She would put her son to bed, put on a pot of coffee, and study until 2 a.m. Butz and her son lived in Davis with her sister and when it came time for finals, her mother in Auburn would take care of her son. "My family was fabulous. I could not have done it without them."

After graduating from law school in 1981, Butz decided to raise her son in the small town of Nevada City, where she worked full time for a civil litigation firm that understood her need to have a flexible schedule so she could spend time with her son. She eventually worked her way up to become

Callahan served as the only female on the Third Appellate District until her appointment by President George W. Bush to the 9th Circuit U.S. Court of Appeals in 2003

ing a named partner in the law firm. Her litigation skills caught the attention of Nevada County Superior Court Judge **Frank Francis**, and he ultimately retired from his judicial post so Butz could run in an open election for his seat. By that time, nine others had also put their hats in the ring. It was a “crowded ballot,” Butz recalled, and she found campaigning to be an “arduous” but “great experience.” “I got to know my community and had the opportunity to do my homework about the variety of court services and court users before taking the bench.” With the help of a “fabulous grassroots campaign committee,” Butz won the election in November 1996. The trial bench proved a wonderful fit.

“I loved being a trial judge,” Butz recalled, who reveled in the vast array of opportunities that arose. During her eight years on the trial bench, she presided over every type of case, including criminal, civil, and probate trials as well as family law and juvenile matters. She served in a management capacity as well, becoming presiding judge of the superior court for two years, presiding judge of the family/juvenile department for one year, and supervising judge of the civil grand jury.

Life as a trial judge was “demanding” with “a lot of work,” and when presiding over the family/juvenile department, Butz brought home “buckets of files” each night. Yet, moving to the appellate bench never entered Butz’s mind. “Out of the blue,” Butz recalled, she received a call in 2002, while she was presiding judge of the trial court. It was Sims asking her to consider applying for the appellate bench because it appeared Callahan would be elevated to the Ninth Circuit.

At first, Butz “didn’t think she was ready.” But Sims did. In his capacity as associate justice, Sims had reviewed her work as a trial judge and found it to be “first rate.” With encouragement from Sims and Francis, and after meeting some of the other justices on the Third Appellate District, Butz decided to apply. Months later, in the fall of 2003, Governor **Gray Davis** appointed her to be an associate justice. Butz describes the appellate court as “the best fit for me at this time in my life.” “I love the luxury of working with my colleagues to reach the right result.”

During her eight and a half years on the Third Appellate District, Butz has developed a “stellar reputation” as “an intelligent and graceful leader,” said California’s Chief Justice Cantil-Sakauye, who served with Butz on the appellate court for five years. Butz has been active in numerous judicial and educational endeavors, including serving as the president-elect of the Schwartz/Levi American Inn of Court based at UC Davis, an executive board member of the California Judges Association, and an instructor of judicial

education. “I can’t tell you how personally pleased I am,” continued Cantil-Sakauye, that Butz “is serving as the acting presiding justice on the first all-female panel.” Blease added that he frequently asks Butz for her advice on cases on which she is not a member of the panel. He describes her as “smart, incredibly upbeat, and great.” Her chambers are known as a welcoming place where legal interns grow from her wise mentorship and judicial skills, and where curious fifth-graders get their questions answered with sincerity and a warm smile. Respect for Butz’s intellect, graciousness and talent runs broadly and deeply, Cantil-Sakauye said. “I look forward to seeing her preside over many, many other panels.”

In 1981, the year Butz was leaving UC Davis with her law degree, Cantil-Sakauye was just entering law school. A quarter century later, the two would become colleagues and fellow pioneers on the Third Appellate District. But like Butz, Cantil-Sakauye first had some trail blazing to do.

In 1984, her juris doctor in hand, Cantil-Sakauye planned to find work as a corporate lawyer. She worked briefly as a cocktail waitress and blackjack dealer while waiting for her bar exam results. Although it was a tight job market, she landed a job as a deputy with the Sacramento County District Attorney’s Office, and she soon built a name for herself. At the

same time, Raye was Governor Deukmejian’s Legal Affairs Secretary and was looking for a lawyer to work for the Office of Criminal Justice Planning. A mutual friend had told him about Cantil-Sakauye’s abilities as a “super smart” and “really well spoken” attorney. The friend encouraged her to interview with Raye. She did, and Cantil-Sakauye was offered the position. Cantil-Sakauye declined the job offer, though, wanting to spend more time litigating cases. Sometime later, one of Raye’s deputies left, and the Governor needed to fill that vacancy. Recalling Cantil-Sakauye’s intellect and eloquence, Raye brought Cantil-Sakauye in for another interview. Raye recommended that the Governor appoint her Deputy Legal Affairs Secretary. This time she accepted the job offer. Later, when Raye was appointed to the superior court, Cantil-Sakauye became the Governor’s Deputy Legislative Secretary.

In 1990, Governor Deukmejian appointed Cantil-Sakauye to the Sacramento Municipal Court, where she became that court’s youngest judge at age 31. By then, Raye was on the appellate court. He recalled his sense that she would go far: “I knew she would rise,” and “I knew she would demonstrate the very best. And she did. That talent did not go unnoticed.”

In 1997, Governor Wilson named Cantil-Sakauye to

In 1997, Governor Wilson named Cantil-Sakauye to the Sacramento County Superior Court, where she presided over criminal and civil matters

the Superior Court of Sacramento County, where she presided over criminal and civil matters. During her first year with the superior court, she established and presided over the first California court dedicated solely to domestic violence issues.

In 2005, Schwarzenegger elevated Cantil-Sakauye to the Third Appellate District. “It felt extraordinary to be appointed to this notable bench,” Cantil-Sakauye said, “not only because of the women jurists who have served on it, but also because of the court’s stellar reputation of all its jurists – both male and female. The Third District has always had a rich history of storied jurists.” It also felt “pretty intimidating,” Cantil-Sakauye added, given the long and distinguished careers of the justices she was joining.

Over the next five years, Cantil-Sakauye earned a reputation as an intelligent, disciplined, and diplomatic justice. She became known for her well-written legal opinions and service on various judicial task forces and subcommittees. She also developed a firm understanding of the state’s judicial system and its administrative workings.

In 2011, Cantil-Sakauye made nationwide history when she was sworn in as the first Asian-Filipina American and the second woman to serve as the Chief Justice of California. After Schwarzenegger nominated her the prior year, the California State Bar Judicial Nominees Evaluation Commission found her to be exceptionally well qualified, she was unanimously confirmed by the Commission on Judicial Appointments, and, in a general election on November 2, 2010, a large majority of California voters elected her to the position.

An All-Women Panel Becomes A Reality

As Cantil-Sakauye assumed leadership of California’s judicial branch, not one but two women - Elena J. Duarte and Andrea Lynn Hoch - were being elevated to the Third Appellate District. Their pathways were different, but equally distinguished, and marked by the support of the same governor, Arnold Schwarzenegger. Duarte moved from her second Schwarzenegger appointment as a trial judge in Sacramento to appointment by him as an appellate justice, while Hoch finished her service as Legal Affairs Secretary before joining the Third Appellate District. Both appointments came in late 2010, with Duarte joining the court slightly before Hoch, who remained at the Governor’s Office until the very end of the Governor’s administration.

Louis Mauro, Associate Justice of the Third Appellate District, worked with both justices prior to his own appel-

late appointment, which preceded theirs by several months. He describes them as extremely hard-working justices who care deeply about the issues they face every day. Mauro worked with Duarte when the two of them served on the Sacramento County Superior Court and with Hoch when both were with the Attorney General’s Office and Governor’s

Office. Mauro noted that when the April panel of three women convened, he felt great pride in the court because the three women justices are, more than anything, “outstanding jurists.”

Judicial appointments represent some of the most significant decisions a governor can make. Associate Justice **Marvin Baxter** of the California Supreme Court assisted in this important duty when he advised Governor Deukmejian on the appointment of more than 700 judges while serving as Appointments Secretary. Baxter explained that judicial appointments are among a governor’s “greatest responsibilities.” They are the administration’s “lasting legacy” because a judge can serve more than 20 years after a governor leaves

office. Given the importance of judicial appointments, each involves a lengthy and detailed research and vetting process of the candidate. In Duarte’s case, she went through the process of being vetted three times in just five years with her appointments by Schwarzenegger to the Los Angeles Superior Court in 2007, the Sacramento Superior Court in 2008, and the Third Appellate District in 2010.

Looking back, Duarte marvels at the journey. Growing up, she was first exposed to the law through her parents. Her father was born in Mexico and was the first in his family to attend college. He became a criminal defense attorney, serving mostly indigent clients and living on a very modest salary. Duarte’s parents separated when she was seven, and Duarte and her sister lived with Duarte’s mother and grandparents. The financial picture grew tighter.

Duarte started working at age 16 at fast food establishments like Jack-in-the-Box. As she got older, she switched to jobs at sit-down restaurants because “they paid better.” She worked her way up from hostess to waitress, learning along the way that “life is hard, but it is what you make of it that counts.” In doing so, Duarte has never forgotten the lessons her parents taught her: Don’t be afraid to work hard and make sacrifices. A strong work ethic is invaluable. Good work is more important than a lot of money. Know there are two sides to every story, and everyone deserves a fair chance to present his or her side.

As a young woman, Duarte first wanted to be a singer and then a foreign language interpreter, and did her undergraduate work in voice and Italian. The law beckoned,

Duarte has never forgotten the lessons her parents taught her: Don't be afraid to work hard and make sacrifices.

however, and in 1992, she earned her juris doctor from Stanford Law School. She was selected as one of 12 graduating law students nationwide to participate in the Attorney General's Honor Program, Criminal Division, at the Department of Justice in Washington, D.C., where she was also a Special Assistant U.S. Attorney. Duarte knew she wanted to be a trial lawyer, and chose to stay in public practice because she would gain more trial experience than if she joined a private firm. In 1994, she returned to California as an Assistant U.S. Attorney. In that capacity, she prosecuted a wide variety of crimes from investigation through appeal in Sacramento and later in Los Angeles, where she was appointed Deputy Chief and then Chief of the Cyber and Intellectual Property Crimes Section. She served in that position until her 2007 appointment to Los Angeles Superior Court.

California Supreme Court Justice **Carlos Moreno** has known Duarte since she was with the U.S. Attorney's Office. Although they met when she was in Los Angeles, he had heard of her previously. When Moreno was a Stanford law student, he interned at the Santa Clara Public Defender's Office. There, Moreno met a Latino assistant public defender who talked to Moreno about his two young daughters. One of those daughters turned out to be Duarte. Moreno describes Duarte as a highly principled legal mind and team player, recalling that during her time on the Los Angeles Superior Court bench, she was asked to serve in Lancaster, a remote courthouse far from Duarte's home at the time. Duarte, he said, took the position willingly and without complaint because she saw it as her duty. "That impressed a lot of people," Moreno said. "She approaches her job with rigor and a great deal of principle. It is amazing how quickly she has risen."

For Duarte, becoming a judge was not part of her early game plan. But looking back, there was one experience she had as a girl that imbued her with the sense it could be an achievable goal. When she was in high school, she said, a young minority female judge presided over Duarte's high school mock trial competition. "I remember being amazed and inspired that she looked like she did and was a real judge."

Within weeks of Duarte joining the Third Appellate District, Hoch also joined the appellate bench. It was not a step Hoch had taken lightly. Her years in public service had been challenging and satisfying. She had litigated some of the biggest, most risky public cases in California and indeed the nation. She had been a leader, supervising first 25 government lawyers, then 500, then 800 or more lawyers and paralegals. She had been a trusted advisor to the Governor.

"I thought long and hard," Hoch said, about whether to apply for a judicial appointment. "I asked myself, 'What do I want to do and how could I continue to use my skills to be of service to the public?'"

Hoch's road to the bench was not a linear or easy path. As an undergraduate at Stanford University, Hoch began as an economics major, but found herself questioning that decision after taking a political science course taught in the Socratic method by a visiting law professor. Intrigued by classes that had more than "yes or no answers," she started taking more political science courses and enjoyed them. While still "on the fence" about whether to apply to law or business school, Hoch began on-campus interviews with companies like Xerox and Proctor & Gamble because "that is what you did back then." At one of the interviews, a company representative noted that Hoch's electives were not typical of a business student. It was an important moment for Hoch, who found herself asking, "Why am I doing this?" She cancelled

the rest of her on-campus interviews to give other students who were really interested in these positions a chance to compete for them. She spent the summer working at the Veterans' Affairs hospital in Palo Alto.

Hoch then applied to California law schools and selected Pacific McGeorge because of its high bar passage rate. She found McGeorge to be a "safe, nurturing environment" and took her studies seriously. "There was a lot of work to do in law school. And I had to be disciplined to get through."

Hoch earned her law degree in 1984 and then went to work for a law firm. In a letdown that would ultimately become a life lesson, the firm let Hoch go in favor of hiring a man who had graduated from a more prestigious Los Angeles law school. As she was looking in the newspapers for another job, the phone rang. It was one of the partners of the law firm, asking her to come to the office. She didn't know why, but she went. When she walked in, the partners "admitted their mistake" in hiring the man, who did not meet their expectations, and said they wanted to rehire Hoch. "I respected them tremendously because they had admitted to making a mistake and had learned from their mistake." The lesson she learned, which she practices to this day, is to not prejudice people by where they went to school. "It's elitist."

Hoch worked for a time at another law firm in Southern California, then began her career in public service at the Agricultural Labor Relations Board in Sacramento. She was

Continued on page 34

*Hoch enjoyed
and excelled at new
and challenging
assignments, and
the people higher
up noticed her skill
and extraordinary
work ethic.*



Barristers' Club Update

By Kurt D. Hendrickson,
Barristers' Media Chair

Barrister Membership

The Barristers would like to remind the members of the Sacramento County Bar Association that it's easy to be a member of the Barristers' Club. A member only has to meet one of two requirements. The member must either be 35 years of age or under or has been practicing law for five years or less -- whichever is later. We felt it was worth reminding everyone of these requirements since this topic was brought up several times at the Barristers' Judicial Reception.

Judicial Reception

The Barristers would like to thank all the judges and attorneys who attended the judicial reception. Judges from both the federal and California state courts were in attendance this year. Members were able



to meet these local judges and get a better understanding of the judges they will appear in front of while practicing in Sacramento. Our members really appreciate the opportunity to get to know the judges in this social setting. We look forward to continuing this great tradition.

Seminars

So far this year, the Barristers have organized several continuing-education seminars. Some of the seminars have been staples of the Barristers' seminars for many years, but this spring we were able to add a new one:

The Expedited Jury Trial Seminar. Expedited jury trials are a recent edition to the Code of Civil Procedure, which limits trials to three hours a side, among other provisions. See Code of Civil Procedure section 630.01, et seq.

The Barristers' Club presented the Expedited Jury Trial Seminar with the assistance of the Honorable **Robert Hight** and **William Brelsford** of *Poswall, White & Cutler*, who litigated the first expedited jury trial in Sacramento County last May. The Barristers would like to thank Judge Hight and Mr. Brelsford for participating in the seminar and discussing this cutting edge topic.

The Barristers' Club would also like to thank the lecturers who participated in the Deposition Seminars, Bridging the Gap, the MSJ Seminar, and the Arbitration Seminar.

Upcoming Events

The year is close to half way over, but the Barristers' Club still has many more events. Social events that are scheduled for this summer include the 20th Annual Summer Associates Reception. We are also planning several more seminars, including the Law and Motion Seminar wherein Judge **David I. Brown** and Judge **Shelleyanne W.L. Chang** discuss important topics related to law and motion in their departments. The Federal Nuts and Bolts Seminar is also being scheduled.

Finally, as an additional reminder, anyone can follow the Sacramento Barristers' Club on www.facebook.com. We hope to see you at our next seminar or social event! 🗑️

PENSTEIN GROUP LLC
Construction Defect and Building Envelope Experts

*Leading The Way in
Building Diagnostics*

- Water Intrusion Investigation
- Quality Assurance Testing for New Construction
- Litigation Support
- Expert Witness Testimony

1261 Hawks Flight Court, Suite E
El Dorado Hills, CA 95762

916.939.6430 www.pensteingroup.com

CLIENTS SKIPPED OR NOT PAYING YOU ON TIME?

ARE YOU

sitting on a pile of judgments that you
need collected?

DOES THE

balance in your checking
account need fattening up?

THEN CALL

the collection experts who have handled collections
for the largest and smallest law firms in
Northern California for the last 36 years!



**Northern
California
Collection
Service, Inc.**

**Nation-wide
Collections
Since 1963**

700 Leisure Lane, Sacramento, CA 95815

916-929-7811

FAX 916-929-5125

Lawrence H. Cassidy, President

President—California Association of Collectors, 1974-75

President—California Commercial Collectors Assn., 1988-90

President—American Commercial Collectors Assn., 1990-91

Associate Offices Worldwide



By Heather Hoganson

I Don't Think That Word Means What You Think It Means...Expungement in California

MCLE ARTICLE AND SELF-ASSESSMENT TEST

By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 28.

Californians are able to get relief from certain criminal baggage through a process we commonly call “expunging” a record. However, unlike in some states, this process does not completely wipe the slate clean. On the contrary, it only relieves a person from the criminal penalties of their actions, which leaves out a lot more in life. For example, a felony which has been expunged must still be reported on any application for state or local licensure or registration, or in any applications for lottery vendor contracts. While the original crime itself may not constitute grounds for disqualification for licensure, failure to report it surely is.

California Law on Expungement

California Penal Code 1203.4 provides an individual who has completed probation the ability to withdraw a guilty or *nolo contendere* (no contest) plea and replace it with a plea of not guilty or, if there has already been a conviction, the authority for the court to set the conviction aside and dismiss the charges. This is, to some, the first step in making a petition for a certificate of rehabilitation or pardon. While many do not read the fine print, the order granting relief under 1203.4 states that the order does not relieve the individual of the obligation of disclosing the conviction in response to any direct question in a questionnaire or application for public office, state or local licensure, or contracting with the California State Lottery.¹

California case law makes clear what otherwise may not be clear. Expungement does not render the conviction a legal nullity.² It “does not eradicate a conviction or purge a defendant of the guilt established thereby.”³ The prior conviction may also be used to impeach, for deportation proceedings, or for sentencing under U.S. Sentencing Guidelines.⁴ As stated in *Adams v. County of Sacramento*:

[I]n *Ready v. Grady* (1966) 243 Cal. App. 2d 113 [52 Cal. Rptr. 303], an insurance agent’s license was revoked because of an expunged felony conviction. Relying on the foregoing decisions, the Court of Appeal upheld the revocation indicating “[i]t is now well settled that the suspension or revocation of a license to practice a profession is not a penalty or disability within the purview of section 1203.4 of the Penal Code.” (*Supra*, at p. 116.) The purpose of such revocation “is not the punishment of the licensee, but rather the protection of the public.” (*Ibid.*)⁵

A court does not automatically grant relief under section 1203.4. The petitioner must have completed probation and must not be charged, convicted, or serving a sentence for any other offense at the time. The prosecuting attorney may also object to the grant of relief. When a court grants relief under 1203.4, the petitioner is relieved of the punishment of a conviction. But the felony conviction still exists, as the *Meyer* court noted:

The expungement of the record under section 1203.4 is also a reward for good conduct and has never been treated as obliterating the fact that the defendant has been convicted of a felony. As stated by the court in *In re Phillips*, 17 Cal.2d 55, 61 [109 P.2d 344, 132 A.L.R. 644]: “... The power of the court to reward a convicted defendant who satisfactorily completes his period of probation by setting aside the verdict and dismissing the action operates to mitigate his punishment by restoring certain rights and removing certain disabilities. But it cannot be assumed that the legislature intended that such action by the trial court under section 1203.4 should be considered as obliterating the fact that the defendant had been finally adjudged guilty of a crime. ...”⁶

A person convicted of a crime may use section 1203.4 for relief, then follow the relief by seeking a certificate of rehabilitation or a grant of pardon by the Governor⁷. Yet neither the certificate nor the pardon can impair “...the power or authority of any board that issues a certificate which permits any person or persons to apply his or her or their art or profession on the person of another.”⁸

Sealing the Record of a Minor

Unlike 1203.4, if the offense was committed before a person reached the age of 18, the person may request to “seal” their record of conviction under Penal Code section 1203.45. If the court grants the petition, it’s as if the prosecution and/or conviction of the offense never happened. Thereafter, the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrences.⁹

It is a canon of construction that the legislature is presumed to know the language of statutes, and having 1203.45 so clearly erase the record of conviction of those eligible for its relief is in stark contrast to 1203.4’s directive that applicants must continue to disclose the conviction for any state licensing purpose.

Discipline and Denial of Licenses Regardless of Expungement

Additionally, while licensing agencies are sometimes required to deny any applicant with a felony conviction – even if expunged – denial may be discretionary on the party of the agency with regard to expunged misdemeanors under Penal Code section 1203.4a. This also applies to the discipline of an existing licensee. It may behoove an applicant or licensee to inquire whether or not the felony could be reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b), before requesting relief under 1203.4. If the court reduces the conviction, it changes the record of conviction from a felony to a misdemeanor and from that moment onwards the conviction is treated in all respects as a misdemeanor.¹⁰

What if relief under 1203.4 has already been granted? There is no time limit specified for a defendant to apply to the court to reduce the felony to a misdemeanor, although this commonly happens at the time of sentencing/granting of probation. A court grappled with the question of whether or not a person who had been granted relief under 1203.4 could come back and ask that the felony to be reduced to a misdemeanor:

The remaining question is whether the petitioner is barred from making application under section 17, as amended, since (a) his probationary period has expired and (b) his record was expunged under Penal Code section 1203.4. We think not.

(a) The word “thereafter” in Penal Code section 17 is not followed by a time limit, nor is it by express terms restricted to the probationary period. Moreover, in conferring upon the court the power to declare an offense to be a misdemeanor after it has suspended imposition of judgment or sentence, the Legislature evidently intended to enable the court to reward a convicted defendant who demonstrates by his conduct that he is rehabilitated. Thus, the word “thereafter” should not be unduly restricted to the probationary period for there is even greater reason for rewarding a convicted defendant who continues to demonstrate his rehabilitation long after his probation has expired, when he is no longer under the constant supervision of a probation officer.¹¹


Thus, the granting of 1203.4 relief does not preclude a subsequent request to reduce the conviction to a misdemeanor¹², which could come in handy.¹³

Just be aware that some agencies may have minimum waiting periods from the date of conviction. In other words, it may simply be “too soon” after a conviction to apply for licensure.

Other Issues Licensing Agencies Consider

Whether or not the crime in question is a crime of moral turpitude will also play a part in the agency’s inquiry; and many agencies are required to find a nexus or substantial relationship between the crime and the duties and responsibilities of the license or occupation.

What if an arrest was truly a misunderstanding? If someone really wants to wipe the slate clean, then using Penal Code section 851.8 would be beneficial. This section provides for a petition for factual innocence, which statutorily declares that the arrest shall be deemed not to have occurred. All records regarding the arrest and prosecution are sealed for three years and then destroyed, along with all records relating to the petition itself. This petition must be filed within two years of the arrest or the filing of the accusatory pleading, whichever is later¹⁴, so time may be of the essence. Fortunately, early petitions are available and in cases where the charges are dismissed, the petition can be filed immediately¹⁵. Getting a quick factual innocence finding could prevent job loss, bad publicity, or security clearance denials.

With so many Californians being regulated by state or local agencies, either by teaching grade school or selling real estate, practicing law or practicing medicine, foster parenting or running an auto repair shop, it is important to be able to best prepare when applying for new licenses or protecting current ones. 

1. Many licensing agencies rely on section 7.5 of the Business and Professions Code, which defines conviction as a plea or verdict of guilty or a plea of *nolo contendere*, irrespective of a subsequent order under Penal Code 1203.4.

2. *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2003) 112 Cal. App. 4th 509, 518.

3. *People v. Barraza* (1994) 30 Cal. App.4th 114.

4. *People v. James* (1940) 40 Cal.App.2d 740; *Wood v. Hoy* (1959) 266 F.2d 825; *Garcia-Gonzales v. INS* (1965) 344 F.2d 804 (cert denied (1965) 382 US 840); *United States v. Hayden* (2001) 255 F.3d 768.

5. *Adams v. County of Sacramento* (1991) 235 Cal. App. 3d 872, 881.

6. *Meyer v. Superior Court In and For Sacramento County* (1966) 247 Cal.App.2d 133, 140.

7. Penal Code section 4852.01 *et seq.*

8. Penal Code section 4853. See also section 4852.15.

9. Penal Code section 1203.45, subdivision (a).

10. The change is not retroactive, however. See *Coffey v. Superior Court* (2005) 129 Cal.App.4th 809.

11. *Meyer v. Superior Court In and For Sacramento County* (1966) 247 Cal.App.2d 133, 139-140.

12. *Meyer v. Superior Court In and For Sacramento County* (1966) 247 Cal.App.2d 133.

13. For example, see *Gebremicael v. California Com. on Teacher Credentialing* (2004) 118 Cal. App. 4th 1477 (at the time of his applications, the teacher stood convicted of a misdemeanor).

14. Penal Code section 851.8(l).

15. Penal Code section 851.8(c).

Heather Cline Hoganson is an Attorney III with the Department of Alcoholic Beverage Control and the current Chair of the Administrative Law Section. She is also a staff editor of this publication and has served on the SCBA’s Board of Directors as a board member-at-large and as a liaison to the St. Thomas More Society of Sacramento.

*Mark your calendars for September 13, when Sacramento Superior Court Judges **Timothy Frawley** and **Michael Kenny** address Writs with the Administrative Law Section. Check the Bar website for details.*

----- **MCLE QUIZ** -----

QUIZ INSTRUCTIONS: This quiz is valid one year from date of issue. Copy this page and circle the letter of each of your answers. Send your completed answer page to the Bar Office with your MCLE fees. Please allow 6 to 8 weeks for your certificate of completion to be mailed to you, to the SCBA address of record.

Bar office Address: SCBA, Attention: "MCLE QUIZ"
1329 Howe Avenue, Suite 100, Sacramento, CA 95825.
FEES: SCBA Members: \$20. Non-SCBA Members: \$40.

If a non-member, please submit your mailing and email address.

1. TRUE OR FALSE: An expungement renders a conviction void.
a. TRUE
b. FALSE
2. TRUE OR FALSE: Relief under Penal Code 1203.4 is automatic.
a. TRUE
b. FALSE
3. TRUE OR FALSE: The prosecuting attorney may object to the grant of relief under Penal Code 1203.4.
a. TRUE
b. FALSE
4. TRUE OR FALSE: A conviction in California, once dismissed under Penal Code 1203.4, may not be used by the Immigration and Naturalization Service (INS) for a deportation proceeding.
a. TRUE
b. FALSE
5. TRUE OR FALSE: A conviction in California, once dismissed under Penal Code 1203.4, may be used to impeach in a subsequent proceeding.
a. TRUE
b. FALSE
6. TRUE OR FALSE: An individual who has a conviction dismissed under Penal Code 1203.4 may claim to have never been arrested.
a. TRUE
b. FALSE
7. TRUE OR FALSE: An individual who has had a petition for factual innocence granted may claim to have never been arrested.
a. TRUE
b. FALSE
8. TRUE OR FALSE: If a petition for factual innocence is granted, all records regarding the arrest are sealed for three years and then destroyed.
a. TRUE
b. FALSE
9. TRUE OR FALSE: An individual who has had an arrest or conviction "sealed" may claim to have never been arrested.
a. TRUE
b. FALSE
10. A person may ask to "seal" a record under Penal Code 1203.45 if:
a. The person was found "innocent."
b. The person was convicted before age 18.
c. The person obtains a recanting by witnesses.
d. The conviction did not occur in California.
11. TRUE OR FALSE: A Governor's pardon statutorily forces an agency to ignore an expunged conviction.

- a. TRUE
- b. FALSE

12. TRUE OR FALSE: Reduction of a felony to a misdemeanor under Penal Code 17 (b) is barred after a record is expunged under Penal Code 1203.4.

- a. TRUE
- b. FALSE

13. When may a conviction be reduced from a felony to a misdemeanor?

- a. At time of sentencing.
- b. After a probationary period has expired.
- c. After expungement under Penal Code 1203.4.
- d. Anytime, including all of the above.

14. When may a request for relief under Penal Code 1203.4 occur?

- a. At time of sentencing.
- b. After a probationary period is successfully completed.
- c. After a petition for factual innocence is granted.

15. TRUE OR FALSE: An agency can use a plea of *nolo contendere* (no contest) in the same way as if the plea was one of guilty.

- a. TRUE
- b. FALSE

16. A petitioner for relief under Penal Code 1203.4 must:

- a. Have completed probation and must not be charged, convicted, or serving a sentence for any other offense at the time.
- b. Have successfully completed anger management classes.
- c. Take and pass a drug test.
- d. All of the above.

17. Which of the following is a canon of construction:

- a. The title of the code section, as found in Deering's Codes Annotated, is persuasive evidence of the statute's intent.
- b. The legislature is presumed to know the language of statutes.
- c. "Never mess with a Sicilian when death is on the line."
- d. Statutes do not need to be read in harmony.

18. TRUE OR FALSE: Some agency rules have time limitations which restrict an applicant for licensure from applying "too soon" after a conviction.

- a. TRUE
- b. FALSE

19. Agencies must inquire if a conviction of an applicant involved a crime of moral turpitude in deciding whether or not to grant a license.

- a. TRUE
- b. FALSE
- c. It depends on the discretionary ability of the agency.
- d. It depends on whether or not the applicant is a celebrity.

20. TRUE OR FALSE: Some agencies are required to find a nexus or substantial relationship between a crime committed by the applicant and the duties and responsibilities or fitness for duty of the license or occupation for which the applicant seeks.

- a. TRUE
- b. FALSE

I submit these answers as my own:

Name _____

Bar Number _____ Date _____



How You Can Help VLSP Clients

By Vickie Jacobs, VLSP Managing Attorney

In hard times, programs like our nonprofit *pro bono* program have to adapt to new realities. Some are caused by funding losses, and others are due to the changing needs of our low-income population. As you might expect, over the last few years there has been an increased need by our low-income clients for services in the areas of law like bankruptcy, debt collection defense, unemployment insurance benefits, and other job-related problems.

Fortunately, VLSP has two legal clinics where staff attorneys and volunteer attorneys (and law students) are able to assist clients with these types of problems. If not for the dedication of many volunteers in our Sacramento legal community, we would be unable to help our clients who are under severe financial and emotional strain caused by debts and unemployment. However, we could always use more volunteers for those clinics, especially if you have experience in those areas of law.

Recently, we have received requests for help with certain types of legal problems where VLSP simply lacks sufficient volunteers and resources to provide the assistance we would like to provide. In particular, VLSP is receiving increasing numbers of phone calls seeking help with probate conservatorships of the person. The increase in calls is not usually about seniors; rather, the new area of need is for conservatorships of the person for developmentally disabled children who are reaching age 18. Their low-income parents need conservatorships over their adult children in order to be able to make decisions about their medical treatment and possible placement in assisted living environments, such as a group home. The Alta Regional Center and local nonprofits helping the families of these disabled children do not seem to offer help with this issue. Usually, the parent is the payee of any public benefits the developmentally-disabled adult child receives and, given this is usually the sole source of income these adult children have, a conservatorship of the estate would not appear to be needed, only a conservatorship of the person. Anyone with experience in this area who could provide help (one case a year would be great!), we would love to hear from you.

Another type of legal problem we are receiving increased requests for help in is the administration of small estates not large enough for a full probate. Some of these clients simply need some advice about how to complete the process themselves, while others need help with a simple petition to transfer personal property. We could use

more volunteer attorneys with some experience in probate willing to help with such cases.

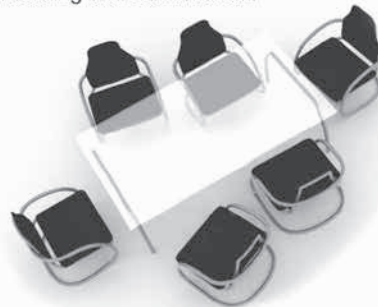
Another type of request for help we are receiving more of is in the area of alleged negligent mismanagement (or worse) of smaller estates by a family member or friend of the deceased. We are aware that these cases can be difficult and time consuming. But from our experience, the number of estate mismanagement cases has grown as our local economic situation continues to struggle. If you are willing to advise a client with such a problem -- even if you are unable to provide representation -- please contact us. We would love to work with you.

If you would like to talk about volunteering with VLSP, please feel free to call Vicki Jacobs, VLSP's Managing Attorney, at (916) 551-2162. If you would like to refer potential clients to us, please have them call our client intake line at (916) 551-2102. ✍

Mediations and Arbitrations

We Keep it **Simple.**

Online CV, rates and up-to-date availability calendar.
Email scheduling and confirmation.



We Make it **Comfortable.**

The Resolution Arts Building at 2630 J St. was designed to provide a welcoming, low-stress environment for ADR services.

Buzz Wiesenfeld

Mediations & Arbitrations

Experienced | Creative | Principled

J.D., M.A. in Conflict Resolution • Proven Success Since 1993

www.buzzwiesenfeld.com

mediate@comcast.net

916.442.1551



Judge David I. Brown

Law and Motion: A Primer on Selected Topics: Motions to Withdraw as Counsel of Record

Nothing contained herein is to be considered a local court rule, an unwritten rule of court or court policy. The thoughts and opinions expressed herein are solely those of the author, who reserves the right to re-examine any issue brought before the court.

There may be fifty ways to leave your lover, but when relations between lawyers and clients sour, the procedural requirements are few but firm. Motions to withdraw are among the most common motions filed, and seemingly the least understood in terms of the statutory requirements and the court rules. The practitioner must be aware of the relevant authority.

[PRACTICE POINTER: An attorney's failure to withdraw in matters in which the attorney's wrongful act or omission is alleged tolls the limitations period for a malpractice action arising out of the matter. (C.C.P. 340.6, 3 Witkin Cal. Proc. (5th), Actions, §631.)]

First, CCP§ 284. [Change of attorney] provides: The attorney in an action or special proceeding may be changed at any time before or after judgment of final determination as follows: (1) Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes; or (2) On order of the court, upon the application of either the client or the attorney, after notice from one to the other.

Second, CRC: Rule 3.1362 [Motion to be relieved as counsel] provides: (a) [Notice] A notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) must be directed to the client and must be made on the *Notice of Motion and Motion to Be Relieved as Counsel--Civil* (form MC-051).

[PRACTICE POINTER: CCP 1005 (b) requires 16 COURT days plus 5 for mailing. See *Barefield v. Wash Mut Bank* (2006) 126 Cal App. 4th 299,303. Defective notice deprives the court of jurisdiction to act. *Lee v. Placer Title Co.* (1994) 28 Cal App. 4th 503, 509, 511. Normal service rules apply, unless Counsel has previously sought and obtained an order shortening time.]

(b) [Memorandum] Notwithstanding any other rule of court, no memorandum is required to be filed or served with a motion to be relieved as counsel.

(c) [Declaration] The motion to be relieved as counsel must be accompanied by a declaration on the *Declaration in Support of Attorney's Motion to Be Relieved as Counsel--Civil* (form MC-052). The declaration must state in general terms and without compromising the confidentiality of

the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1).

[PRACTICE POINTER: Counsel MUST use the Judicial Council Form No. MC-052 [Declaration in Support of Attorney's Motion to be Relieved as Counsel—Civil]. The determination whether to grant or deny a motion to withdraw as counsel lies within the sound discretion of the trial court. (*People v. Brown* (1988) 203 Cal. App. 3d 1335, 1340. A question arises as to how much information regarding the reason for the withdrawal one should place in the declaration without implicating privileges which might apply, or creating prejudice to the client's case. It appears that conclusory statements or "general terms" of conflict may be sufficient when tendered in good faith. Where issues of confidentiality prevent "counsel from further disclosure and the court [accepts] the good faith of counsel's representations, the court should find the conflict sufficiently established and permit withdrawal." (*Aceves v. Superior Court* (1996) 51 Cal. App. 4th 584, 592, citing *Uhl v. Municipal Court* (1974) 37 Cal. App. 3d 526, 527-528 and *Leversen v. Superior Court* (1983) 34 Cal. 3d 530, 539, *Manfredi & Levine v. Superior Court* (1998) 66 Cal. App. 4th 1128, 1133. Thus, as set out in *Manfredi*, counsel may advise the court, generally, that: (1) counsel has divided loyalty between the current client and former clients; (2) has acquired a pecuniary interest adverse to the client; (3) there are unpaid fees to counsel which may result in the sacrifice of important client rights [NOTE: Canon 44 of the American Bar Association recognizes that an attorney may be warranted in withdrawing from employment after notice to the client if the client "deliberately disregards an agreement or obligation as to fees or expenses."]; and (4) there has been an irreparable breakdown of the working relationship, etc. However, this should not be considered an exhaustive list.]

(d) [Service] The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the

case. The notice may be by personal service or mail. If the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either:

(1) The service address is the current residence or business address of the client; or

(2) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved.

As used in this rule, "current" means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned is not, by itself, sufficient to demonstrate that the address is current. If service is by mail, Code of Civil Procedure section 1011(b) applies.

[PRACTICE POINTER: Service is a "trap" for the unwary practitioner. Counsel must be familiar with CCP § 1005, 1013 and 1011. Specifically, §1011 (b) provides "If upon a party, service shall be made in the manner specifically provided in particular cases, or, if no specific provision is made, service may be made by leaving the notice or other paper at the party's residence, between the hours of eight in the morning and six in the evening, with some person of not less than 18 years of age. If at the time of attempted service between those hours a person 18 years of age or older cannot be found at the party's residence, the notice or papers may be served by mail. If the party's residence is not known, then service may be made by delivering the notice or papers to the clerk of the court, for that party." Counsel must comply with the service requirements.

[CRC 3.252. Service of papers on the clerk when a party's address is unknown is pertinent here. Subd. (a) of this rule provides: [Service of papers] When service is made under Code of Civil Procedure section 1011(b) and a party's residence address is unknown, the notice or papers delivered to the clerk, or to the judge if there is no clerk, must be enclosed in an envelope addressed to the party in care of the clerk or the judge.

[Subd.(b) provides: [Information on the envelope] The back of the envelope delivered under (a) must bear the following information:

["Service is being made under Code of Civil Procedure section 1011(b) on a party whose residence address is unknown."

[[Name of party whose residence address is unknown]
[[Case name and number].

[The practitioner must, if he or she does not have a current address for the client, comply with this method of service precisely.]

(e) Order. The proposed order relieving counsel must be prepared on the *Order Granting Attorney's Motion to Be Relieved as Counsel--Civil* (form MC-053) and must be lodged with the court with the moving papers. The order must specify all hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no hearing date is presently scheduled, the court may set one and specify the date in the order. After the order is signed, a copy of the signed order must be served on the client and on all parties that have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

[PRACTICE POINTER: The order MUST accompany the motion, or the motion may be denied. Strict compliance with the requirement of this subdivision is recommended.]

NOTE: Even if the practitioner complies with all of these rules, the motion may still be denied under certain circumstances. The trial court retains the discretion to deny the motion and compel continued representation. How can this be? As noted in Witkin, "The answer lies in the concept of the attorney as more than an agent; an attorney is an officer of the court, bound by certain ethical rules and subject to the control of the court in the interests of justice." [1 Witkin, Cal. Proc, Attys, sec. 69]. An attorney may not abandon his representation at will, nor for considerations personal to himself. (Bus. & Prof. Code, § 6068.)" (*People v. Massey* (1955) 137 Cal.App.2d 623, 626). A withdrawing attorney should take steps that are reasonably practicable to protect the client's interests. (A.B.A. Model Rules of Professional Conduct, Rule 1.16.) The California Rules of Professional Conduct, based in part on the A.B.A. rules, specify in detail the conditions under which an attorney may or must withdraw from employment. Like the A.B.A. rules, the California rules emphasize the attorney's obligation to withdraw when necessary to avoid illegal or improper conduct and the importance of avoiding, to the extent possible, prejudice to the client's interests. (Rule 3-700) The rules have been liberally construed to protect clients. (See *e.g. Vann v. Shilleh* (1975) 54 C.A.3d 192, 197; 7 Witkin Cal. Proc. (5th), Trial, §15 [no right to withdraw until steps are taken to avoid prejudice to client's rights]). Thus, a motion made on the eve of trial may appropriately be denied, or on the eve of mandatory settlement conference and so on.

If the motion is granted, counsel is reminded that Rules of Prof. Conduct, R. 3-700, require counsel to turn over the client's files promptly. ✍

Women Lawyers of Sacramento presents



19th Annual
Artfest

Thursday, September 27, 2012 6:00-8:30 p.m.
The Vizcaya, 2019 21st Street, Sacramento, CA

Join colleagues and friends in the splendor of the Vizcaya for an evening including local artistry, music, food, wine and silent auction.
Proceeds fund grants to local charitable organizations and scholarships to law students.

Platinum Sponsors

Boutin Jones Inc.
Hansen, Kohls, Jones, Sommer & Jacob, LLP
Radoslovich Krogh, PC
Wilke Fleury Hoffelt Gould & Birney, LLP
Wagner Kirkman Blaine Klomparens & Youmans LLP

Gold Sponsors

Cota Cole LLP
Downey Brand LLP
Kronick Moskovitz Tiedemann & Girard
Law Office of Katie Bellotti Porter Mennemeier, Glassman & Stroud LLP
Pacific McGeorge School of Law
Phillips Legal Services
Porter Scott
Joan & Tony Stone
Stoel Rives LLP

For sponsorship information, ticket information and/or questions, please call:

Kimberly Lucia (916) 321-4444, klucia@boutinjones.com; Nina Santo, (916) 213-9864, nsanto@surewest.net; or
Brianna Lierman Hintze (916) 446-6752, blhintze@nmgovlaw.com

Please return form and payment to:

WLS Foundation, Attn: Kimberly Lucia, c/o Boutin Jones, 555 Capitol Mall, Ste. 1500, Sacramento, CA 95814

I would like _____ adult ticket(s) at \$40/ticket. I would like _____ child ticket(s) at \$10/ticket.

Enclosed is my payment in the amount of \$_____.
Please make check payable to **WLS Foundation**.

Name: _____

Company: _____

Address/Phone: _____

reporting requirements, community property issues and planning alternatives.

MCLE Credit: 1.25 hours

Juvenile Dependency: An Overview for Family Law Practitioners

Speakers: Andrew Cain, Annalisa Chung and Chris Guillon

Reviews juvenile dependency law and procedure for the traditional family law practitioner. The program discusses the life of a dependency case, from detention through dismissal. Special focus will be paid to dependency/family law crossover issues addressed in AB 939.

MCLE Credit: 1.0 hour

Lawyers on the Rocks

Speaker: Wendy Patrick

Numerous substance abuse presentations provide statistics and facts about lawyers who drink. But what about those in the legal system who must deal with a substance-impaired attorney who fails or feels no compulsion to seek help? This program addresses this provocative question and discusses the applicable laws and rules of professional conduct.

MCLE Credit: 1.0 hour (Prevention of Substance Abuse)

Promotions in the Age of Mobile and Social Media

Speaker: Tsan Abrahamson, Cobalt, LLP, Berkeley


The increase in mobile and social media have given rise to new methods of promotion. From geo-location contests to sweepstakes that reward fan behavior, the increasing use of new platforms to deliver promotions and marketing messages can create a minefield of issues. This presentation will address issues such as conducting legal promotions on Facebook and Twitter; the exclusive use of mobile platforms for promotions; viral marketing issues, privacy concerns, and other issues relating to delivering contests, sweepstakes, and giveaways through new delivery devices.

MCLE Credit: 1 hour

The Parentage Puzzle: Making Sense of California Parentage Law

Speaker: Deborah Wald

An overview of the factors courts consider in determining legal parentage, including application of the various parentage presumptions. Speakers review key cases in this complex area of law, and offer practice pointers for attorneys litigating parentage cases.

MCLE Credit: 1.5 hours 

ALTERNATIVE DISPUTE RESOLUTION OF BUSINESS DISPUTES

Ken Malovos

Mediator
Arbitrator
Referee

3620 American River Drive
Suite 260
Sacramento, CA 95864
(916) 974-8600



*Business, Commercial,
Construction Claims and
Defects, Employment,
Insurance, Intellectual
Property, Malpractice,
Probate, Product Liability
and Real Estate Disputes.*

Calendar and further
information online at:
www.malovoslaw.com.



Ueltzen & Company LLP

CERTIFIED PUBLIC ACCOUNTANTS



Consultants and Accountants
to Management and Counsel

Proven Expertise

Forensic Accounting
Fraud Investigations
Economic Damages
Business Valuation
Tax and Accounting

Visit us at www.uelitzen.com

Contact - Ramona R. Farrell, AVA, CFE

3600 American River Dr., Suite 150
Sacramento, California 95864
(916) 563-7790

Cover Story - continued from page 23

“scared to death,” noting she learned the skills of boldness, directness and risk-taking only with time. Still, Hoch “did good work, worked hard, and was willing to take on challenges that perhaps others had shyed away from.” She took to heart her father’s advice to her growing up, which was to “work hard, be loyal, and prove yourself.”

Hoch enjoyed and excelled at new and challenging assignments, and the people higher up noticed her skill and extraordinary work ethic. She was selected to be the Supervising Deputy Attorney General in the Tobacco Litigation Section, representing the state in its historic litigation against the

tobacco industry. The settlement in that case resulted in the tobacco industry agreeing to pay an unprecedented \$8.5 billion to the state.

Later, Hoch moved to the Government Law Section of the Attorney General’s Office and also headed up the Energy Crisis Team, representing the state in various federal and state forums to obtain monies due the state as a result of the exorbitant prices charged by several energy companies during the energy crisis. A year later, she was selected to lead the Government Law Section. And within less than a year, Hoch was named Chief Assistant Attorney General of the Civil Law Division. In

2005, Schwarzenegger named her his Legal Affairs Secretary, and she became responsible for providing confidential advice to the Governor, his senior staff, and state agencies on major policy and legal issues.

Mauro worked with Hoch in the Attorney General’s Office and Governor’s Office. She “kept getting promoted, and I kept taking the jobs she left.” Her numerous promotions, he said, were “extremely well deserved.” “She is so bright and has the ability to read something once, retain it, analyze it, and then explain it to others in straightforward terms.” It was this skill that she used to advise constitutional officers, including the Attorney General and the Governor. Her appointment to the appellate bench, continued Mauro, was a “natural fit.” “She has worked on very high profile complex cases with novel issues and has shown time and again she can master the most complicated, most sensitive, and most diverse legal areas.” Mauro knew “she would be an outstanding jurist, and she has proven to be one.”

With the arrival of Duarte and Hoch, it was just a matter of time before the first all-female panel of the Third Appellate District would come into being. In the end, it would go down as business as usual for these three distinguished justices. They read the briefs. They read the record. They studied the law. They listened to oral arguments. They recessed and began the critical work of finalizing their opinion. When it comes out, it will bear the names of Acting Presiding Justice Butz, Associate Justice Duarte, and Associate Justice Hoch. And a bit of important history will have been made in the Third Appellate District in Sacramento. ⚖️

Shama Mesiwala is a senior judicial attorney in the chambers of Justice Ronald B. Robie of the Third Appellate District. Before joining the court, she was a staff attorney for the Central California Appellate Program (CCAP), where she argued cases before the California Supreme Court and appellate courts. She began her legal career as an attorney with the Federal Public Defenders Office in Sacramento.

RAMIREZ ARBITRATION & MEDIATION SERVICES



THE HON. RAUL A. RAMIREZ
UNITED STATES DISTRICT COURT JUDGE
(Retired)

Available in California and Nevada for:

- SETTLEMENT CONFERENCES
- MEDIATIONS
- SPECIAL MASTER
- DISCOVERY REFEREE

OVER 30 YEARS JUDICIAL EXPERIENCE

As a Federal and State Court Judge, Mediator
and Settlement Conference Judge

SPECIALIZING IN ALTERNATIVE DISPUTE RESOLUTION

Special Emphasis on: •Resolution of Complex Business Disputes
Employment Litigation •Personal Injury •Wrongful Death Claims

Call (916) 558-6185 for appointments and questions
www.ramsadr.com for resume & rates

400 Capital Mall, Eleventh Floor, Sacramento, California 95814



Law Library to Honor Trustee with Dedication Ceremony

Coral Henning, Director,
Sacramento County Public Law Library

Join us in a naming ceremony on Thursday September 20th dedicating the Sacramento County Law Library's reading room as the W. Austin Cooper Reading Room. W. Austin Cooper has been a dedicated Board of Trustee member since January 1984. An appointee of the

County Board of Supervisors, Austin has been the board president for his entire tenure.

Austin championed the effort to get the Law Library out of the basement of the courthouse and into the historic Hall of Justice building in 2000. He has always been the Law

Library's biggest supporter.

The festivities begin at 5pm. There will be food, beverages and a ribbon cutting ceremony. If you haven't been to our new location, here is a reason to celebrate. Our address is 609 9th St., at the corner of 9th & "F" Streets.

Save the date! 🗓️

Index of Advertisers

Buzz Wiesenfeld	Page 29
Darrel W. Lewis	Page 2
Jams	Page 2
Jay-Allen Eisen Law	Page 7
Ken Malovos	Page 33
MaryBurroughsStudio.com	Page 11
Northern CA Collection Service	Page 25
Penstein Group, LLC	Page 24
Ramirez Arbitration & Mediation Services	Page 34
Sacramento Law Library	Page 12
Thomson Reuters	Page 3
Ueltzen & Company	Page 17
Women Lawyers of Sacramento Artfest	Page 32
Women Lawyers of Sacramento Save the Date	Back Cover

C A L E N D A R

Second Wednesdays -- SCBA Barristers serve at St. John's Shelter for Women. Contact Daniel at dkim@mathenyscars.com

July 5 -- Joint Section Representatives' and MCLE Committee meeting, noon, SCBA Office

July 10 -- Environmental Law Section luncheon, Firehouse. Contact Mae at 916-455-7300 or mae@semlawyers.com

August 15 -- Women Lawyers of Sacramento luncheon at Lucca

August 23 -- Workers' Compensation Section luncheon, Dante Club. Contact Serineh Karapetian at 916-442-4503 or skarapetian@mulfil.com

September 2 -- Submission deadline for November/December issue of Sacramento Lawyer

September 6 -- Joint Section Representatives' and MCLE Committee meeting, noon, SCBA Office

September 12 -- St. Thomas More Society breakfast meeting with Father Bernie Bush, S.J., of El Retiro Retreat Center in Los Altos, 7a.m., Hawthorn Suites. Contact stms.sacramento@yahoo.com or Herb Bolz at 530-848-7252

September 13 -- Administrative Law Section Luncheon featuring Judges Timothy Frawley and Michael Kenny on Writs. Contact rsvp@sacbar.org

September 20 -- Sacramento County Law Library Dedication of W. Austin Cooper Reading Room, 5pm. See article, this page



For more information visit
www.sacbar.org

Sacramento LAWYER

SACRAMENTO COUNTY BAR ASSOCIATION MAGAZINE

1329 Howe Ave., #100 • Sacramento, CA 95825

Women Lawyers of Sacramento

Date:

December 4, 2012

Time: 5:30 p.m.

Location:

Elks Tower Ballroom
921 11th Street
Sacramento

For more information about this event, please contact Rebecca Dietzen at rdietzen@hotmail.com or Megan Lewis at MLewis@wilkefleury.com

Save the Date!!

Women Lawyers of Sacramento 50 Year Celebration!!



*Please plan to join us on December 4, 2012 for an event to remember!!
Let's celebrate WLS's 50 years of important service to the Sacramento legal
community and to the professional careers of local women attorneys and
judges.*

SPONSORSHIP OPPORTUNITIES

PLATINUM SPONSOR, \$1,000

Reserved table for 10 in prime location, full-page display on back inside cover or center in program book, inclusion in all advance publicity, listing as "Platinum Sponsor," recognition from podium at event and in WLS newsletter

GOLD SPONSOR, \$750

Reserved table for 10 in excellent location, full-page display in program book, mention in advance publicity, listing as "Gold Sponsor" in program book, recognition from podium at event and in WLS newsletter.

SILVER SPONSOR, \$600

Reserved table for 10, listing as "Silver Sponsor" in program book, recognition in WLS newsletter.

BRONZE SPONSOR, \$300

Five reserved dinner tickets, listing as "Bronze Sponsor" in program book, recognition in WLS newsletter.

BENEFACTOR, \$150

Two reserved dinner tickets and listing in the program book.