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CITATIONS

M A Y - T W O T H O U S A N D T H I R T E E N



EAST COUNTY BAR MIXES IT UP

by Alfonso Martinez

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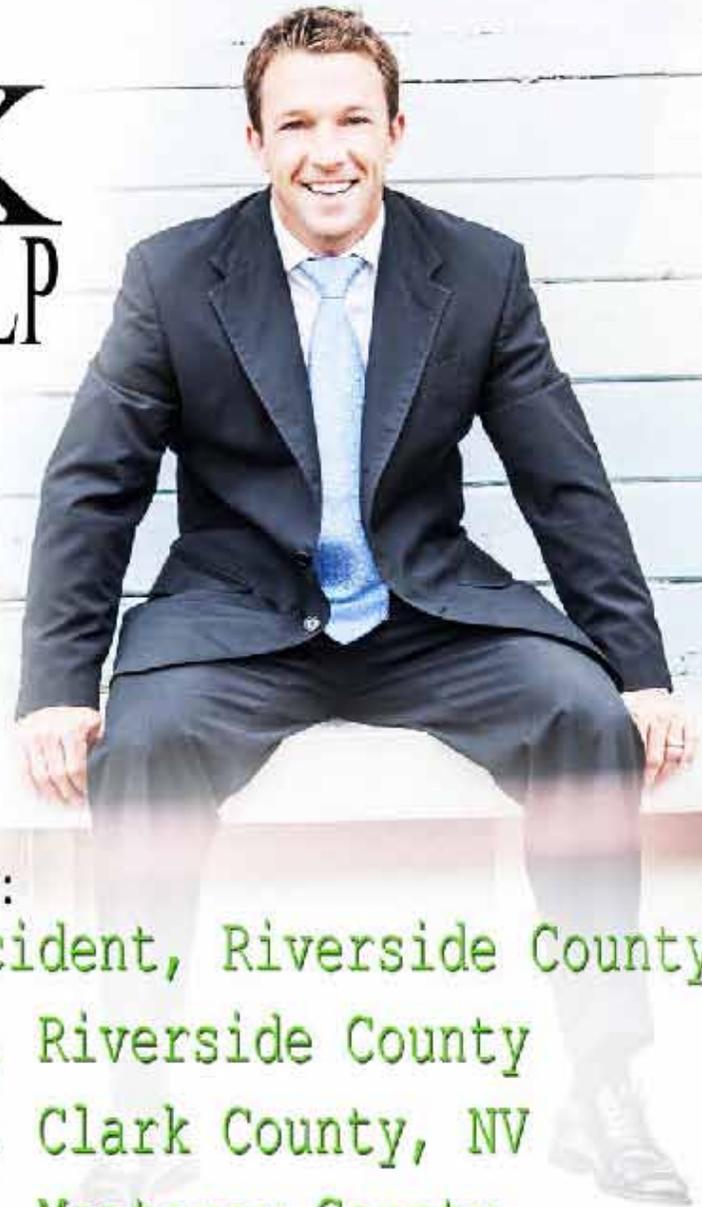
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PRESIDENT'S MESSAGE: LAW DAY? I'LL RACE YOU THERE!

by Joel Mark



Law Day is a national day set aside on the first day of May to recognize the rule of law, and how the legal process contributes to the freedoms all Americans enjoy. It also recognizes the role of our courts in protecting those freedoms, and how we all have a responsibility to help in that process, including with jury service. Is there a more important topic to discuss among lawyers?

Having decided to write this month's President's Message about Law Day, I figured that I probably first should get my facts straight. People of my generation were trained to do research from things called "books." But, I decided to try to come into this century, and did my research on the Internet. As an Internet rookie, however, on my way to Law Day my attention was diverted to a few other American holidays, apparently of some lesser importance.

I typed "Law Day" into my search engine, only to learn that, in America, we celebrate "Mother-in-Law Day" – every year on the fourth Sunday of October. According to www.altiusdirectory.com: "Though there is no factual information regarding why this day is celebrated, researchers opine that Mother-in-Law Day may have [been] started by [the] cards, flowers and confectionary industries." A day to honor one's mother-in-law with cards, flowers and confectionary items started by the cards, flowers and confectionary industries? A quintessentially American holiday indeed.

Curious, I wondered whether there was a Father-in-Law Day, too. There is. It is celebrated on July 30 every year. I could find nothing about its origin. All I discovered was that it is on the official celebration calendar of a South African chain of "Authentic Irish Pubs" called The Brazen Head. No cards or flowers for fathers-in-law, no Sir. Suggests the Brazen Head website instead: "So bring him to The Brazen Head and treat him to a great meal – or at least his favorite draught." Now you're talking!

But, I digress.

I finally got to some websites devoted to Law Day. I discovered that, in 1957, American Bar Association President Charles Rhyne envisioned a special day for celebrating the United States legal system. At his urging, on Feb. 3, 1958, President Dwight D. Eisenhower established Law Day by proclamation. In 1961, a joint Congressional resolution established Law Day as an official day of observance throughout the United States. The celebration became officially codified that year in 36 U.S.C. §113.

As I pointed and clicked my way through my Law Day research, I discovered that May 1 is "Loyalty Day" – an official observance where we also recognize our loyalty to the United States and the freedoms it promises to all of its citizens. Loyalty Day was established in 1958, also by an act of Congress, and was first celebrated by proclamation of President Eisenhower on

May 1, 1959. I suspect that, in those days, the lobby that may have been suspicious of a Law Day settled a year later for a presidential reminder on the same day for us all to be both legal *and* loyal, too.

But, I digress again.

Since President Eisenhower in 1958, every president has issued a Law Day proclamation, usually inviting the nation to join in recognizing the importance of the rule of law in the United States. Also, the proclamation sets the theme for that year's observance, such as "Justice for All" or "Foundations of Freedom." This year's theme is "Realizing the Dream: Equality for All" in honor of the 150th anniversary of the Emancipation Proclamation.

According to the 2013 official Law Day website, "Law Day, May 1, 2013, will provide an opportunity to explore the movement for civil and human rights in America and the impact it has had in promoting the ideal of equality under the law. It will provide a forum for reflecting on the work that remains to be done in rectifying injustice, eliminating all forms of discrimination, and putting an end to human trafficking and other violations of our basic human rights. As Rev. Dr. King pointed out in his Letter from a Birmingham Jail, 'Injustice anywhere is a threat to justice everywhere.'"

What really started me thinking about devoting this President's Message to Law Day was one of the unique ways we have recognized Law Day here in Ventura County, with our annual Law Day 5K run/walk event. Organized each year by a committee of local members of the legal community, and led for the past number of years by Past Ventura County Bar Association President, **Joe Strohmman**, this year is the 30th anniversary of the event.

You might ask what possible relationship a 5K race has to recognizing the rule of law in America. The answer is that ours is a major fundraising event for the Volunteer Lawyer Services Program, Inc., an organization devoted to providing volunteer legal services to members of our community whose access to justice otherwise might be impaired or

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STATE OF THE PROBATE COURT

by Amber Rodriguez

On March 28, the Estate Planning and Probate Section of our bar welcomed **Judge Glen M. Reiser**, Ventura County's presiding probate judge. Judge Reiser presented his annual State of the Probate Court address to a standing-room-only crowd. As usual, Judge Reiser's presentation was informative and humorous. Some highlights:

Attorney Fees

An item that is always at the top of every attorney's list: attorney fees. Given that most attorney fees in probate matters (including guardianships and conservatorships) are subject to court approval, this is very valuable information. Judge Reiser shared with us that he has increased his "maximum" allowable hourly fee from \$325 to \$340. The fee for any particular attorney is determined by considering his or her personal experience and expertise.

Local Rules

Among the next round of proposed changes for our local rules are procedures that encourage counsel and pro pers to make video appearances, authorization to use either local or state forms for filing a care plan and various bond issues, including the absolute requirement that out of state representatives post bonds and changes to the local rules which emphasize that the Probate Code guidelines will be strictly enforced.

Changes to Filing Fees

Judge Reiser reminded the audience of the following fee changes: (1) An increase to \$435 for the filing fee for most probate petitions (plus a one-time fee of \$30 for court reporter services); (2) a \$50 fee for lodging a will; and (3) a \$500 filing fee for any motion for summary judgment.

Technology Report

The audience also learned that Ventura County is falling behind a bit in the technology department. By the end of next year, most counties will have e-filing available. Some of the very few exceptions will be Ventura County, Los Angeles County and Imperial County. Judge Reiser is extremely active in this area and hopes Ventura will catch back up (and begin offering e-filing) soon.

Counsel for Proposed Conservatee

Judge Reiser shared with us his belief that the court should appoint counsel for a conservatee early in the conservatorship process (a belief he has shared with us on many prior occasions). He believes this is appropriate even when private counsel claims to represent the conservatee. His reasoning behind this position involves the rights that can be affected before a conservatorship is even in place. He believes it is a better protection of due process to appoint counsel (or, in some cases, co-counsel) early in the case and relieve them if it is determined that the proposed conservatee has the capacity to retain their own counsel.

Special Needs Trusts

The audience engaged Judge Reiser in a discussion involving Special Needs Trusts ("SNTs") that are created in civil matters without the Probate Court's involvement. Unfortunately, these SNTs can later become administrative nightmares. Judge Reiser indicated that he would consider a local rule which required the proposed SNTs be presented to the Probate Court for approval before a civil matter could be settled.

Giraldin

Judge Reiser also briefly discussed the recent California Supreme Court decision in *Giraldin*. He urged practitioners to review the case carefully and be mindful of how it may apply to their clients. Judge Reiser will be joining two other presenters for a panel discussion of the *Giraldin* case at our June meeting.

Judge Reiser's State of the Probate Court presentation is always packed full of helpful hints and timely advice. We appreciate the time he takes to make this annual presentation and we are looking forward to having him update us again next year. We hope you will join us.

Amber Rodriguez is the current chair of the Executive Committee for the Estate Planning and Probate Section of the Ventura County Bar. Her practice focuses on probate and trust litigation and administration, conservatorships & estate planning. You can reach Amber at arodriguez@estateattorneycalifornia.com.

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OOOPS!

Last month CITATIONS published a style sheet providing guidelines for submitting articles. In case you missed the glaring error, here's a corrected entry:

Said/says: If you're reporting an interview, reference to the interviewer's comments are present tense. *Ex.:* Henderson says he graduated from Cal Poly SLO.

PRESIDENT'S MESSAGE:

Continued from page 3

even denied.

This year's event will be on May 18. Following pre-race festivities, the race starts at 8:30 am. Joe has assured me that there still is time to register. You can run, jog or even walk it. You can sign up through the event website at www.lawday5k.com or by calling the VCBA offices.

I know many of you, like me, are exercise challenged. But that does not matter. The last time I entered, I sprinted out with the best of them – wind in my face, spring in my step, breakfast burrito in my stomach. Then, just short of the 1K mark, it happened. From behind me, I could hear what sounded something like metallic jingling. As it got closer, I could hear the steady footsteps of a trained runner. And as it passed me by, I saw it – I had just been passed by a dachshund. A dachshund? Oh, the shame of it all. But, the takeaway from my performance that day is that you would have to work pretty hard to do worse than I did, and be pretty grumpy not to have a lot of fun doing it.

The Law Day 5K is an enjoyable event, it raises funds to promote access to justice for those in need, and it also celebrates a very important day that recognizes a very important idea – the rule of law in America. Hey, you all are lawyers. What is more important for lawyers to do than that? I know you could use the exercise, and you could even invite your mother-in-law, too. I hope to see you all there.

Joel Mark is the managing partner at Nordman Cormany Hair & Compton LLP, in Oxnard. Any similarity between Mr. Mark and an elite runner is more than a coincidence. It is a complete fantasy.

LAW LIBRARY WOES

by Alfred Vargas

The Ventura County Law Library (“VCLL”) has provided legal materials to the bench and bar since 1891. In the late 1990s, the library’s mission encompassed the public’s need for equal access to legal information. Despite decreased budget revenues, the library still provides for the legal research needs of Ventura County. While every California county may have a county law library, not all do. Ventura is fortunate to have this resource.

A six-member board of trustees oversees the VCLL. The County Board of Supervisors appoints two members as representatives of the Board of Supervisors and the Ventura County Bar Association. The Ventura County Superior Court fills the remaining slots with one judge and three local attorneys.

VCLL is a local public agency governed by Business and Professions Code sections 6300 et. seq. Ninety-eight percent of its operating revenue comes from a portion of the civil filing fee. The library receives \$32 from fees on the first documents filed by the plaintiff and defendant on civil cases, excluding juvenile matters. Small claims filings over \$5,000 generate two dollars a case. The County provides the law library quarters on the first floor of the Hall of Justice building at 800 South Victoria Avenue.

Before 2007, the VCLL could ask the County Board of Supervisors for an annual increase of up to three dollars of the VCLL’s portion of the civil filing fee. Every five or six years, the VCLL would exercise this option to keep up with inflation. In 2007, however, the Administrative Office of the Courts pushed through legislation for a uniform filing fee, eliminating the Board of Supervisors’ authorization to increase library fees. The legislation placed a moratorium on raising fees until 2010. County law libraries were assured that the AOC would work with them for a fee increase when the moratorium ended. Nevertheless, since 2010, the AOC has raised the civil filing fee twice without including additional fees for law libraries. A new moratorium prevents raising the civil filing fee until 2014. At that time the county law libraries will be forced to return to the Legislature for relief.

What fees are allowed have been diminished by economic woes. Increases in the jurisdictional limit for small claims cases from \$5,000 to \$7,000, and most recently to \$10,000 in 2013, have reduced the VCLL’s resources because cases normally filed as limited civil cases became eligible for small claims court instead. Where law libraries once received \$64 from a limited civil filing fee, they now receive two dollars for the small claims filing over \$5,000. The County’s recent economic downturn contributed to a decrease in the number of paid civil filings, and many people feeling the effects of the economic downturn qualify for fee waivers, further reducing revenues.

Meanwhile, continual increases in subscription fees by legal information vendors have forced the library to cancel upkeep on many of its titles. However, the library is still dedicated to keeping a current practice collection with an emphasis on California law and certain federal practice areas. The library also maintains a self-help collection, mainly Nolo Publishing titles, for the pro per litigant.

Always vigilant for new opportunities to maintain services, the VCLL secured an independent grant specifically to provide educational forums on legal topics for the public. Speakers have thus far scheduled talks on the second and fourth Wednesdays, at 5:30 p.m., for April and May. Local attorneys interested in speaking are encouraged to contact the VCLL at (805)642-8982. Future plans also include hosting MCLE classes for attorneys.

The future funding of the VCLL depends on legislators facing significant budgetary constraints because of other state needs. The VCLL certainly will accept donations to help cover the gaps in funding. For more information, please visit the library’s website at www.ventcolawlib.org. This is also the portal for access to on-line materials offered through library partners.

Among all the legal resources at the VCLL, there are some surprisingly fun titles included in the stacks:

- *The Twilight of the Supreme Court: A History of Our Constitutional Theory* by Edward S. Corwin, Yale University Press, 1934.
- *Inquisition* by Edward Peters, Free Press, 1988
- *Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk* by Todd C. Peppers, Stanford University Press, 2006.
- *The Case That Will Not Die: Commonwealth vs. Sacco and Vanzetti* by Herbert Ehrmann, Little Brown & Company, 1969.

For an interesting history of the California Codes, try 42 Cal. L. Rev. 766 for a 1954 article “The Revision and Codification of California Statutes 1849-1953” by Ralph N. Kleps. The VCLL also has older biographies, periodicals and legal quotations books. Among other unexpected finds was *Outdoor California* by the California Department of Fish and Game. This magazine arrives by way of the library’s California Depository program for government documents. It has some great pictures of California wildlife, and may cover laws and programs dealing with the wildlife and lands of California.



Alfred Vargas handles appellate, landlord-tenant and other litigation matters. He is a member of the CITATIONS editorial board.

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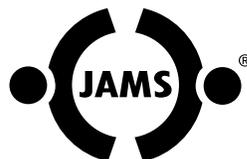


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REAL PROPERTY SECTION PROGRAMS ANNOUNCED

by Ramon Guizar

The Real Property Section of the Ventura County Bar Association has scheduled three great programs.

On May 22, Christian Spring, vice president and general counsel for Foreclosure Resources, Inc., will speak on handling foreclosures following Senate Bill 900, dubbed the “Homeowners Bill of Rights,” by California Attorney General Kamala Harris. Spring will also discuss current foreclosure trends that are exposing clients to foreclosure-related losses.

On June 26, Gov Hutchinson, senior counsel and member of the legal services division of the California Association of Realtors, will give his always-popular legal update and discussion of recent revisions to select CAR forms.

On August 28, Ventura County Planning Director Kim Prillhart and Ventura County Building and Safety Building Official Jim MacDonald will present “Planning, Zoning & Building in Ventura County,” covering everything you want (and need) to know about planning, zoning and California Building Code standards.

Please note that the Real Property Section now meets at the Tower Club. Look for flyers for each of these programs in CITATIONS. If you have questions about these programs or the Section, or suggestions for future meeting topics, please contact me at rguizar@nchc.com or (805)988-8365. We look forward to seeing you at our next meeting.



Ramon Guizar is of counsel to the Real Estate and Land Use Law Section of Oxnard-based Nordman Cormany Hair & Compton.

HOWELL AND ITS AFTERMATH

by Gabriele M. Lashly

Anyone who has compared medical bills to the amount actually paid by an insurer has noticed that there is generally a huge discrepancy between the sticker price and the amount accepted by the medical provider.

Howell v. Hamilton Meats & Provisions, Inc. (2011) 52 Cal.4th 541 settled that an injured plaintiff whose medical expenses are paid through private insurance (or Medicare/Medi-Cal) may recover economic damages of no more than the amounts paid by the plaintiff or plaintiff's insurer for the medical services actually received or still owing at the time of trial. Explaining that while the collateral source rule precludes certain deductions against otherwise recoverable damages, the Supreme Court wrote that the rule "does not expand the scope of economic damages to include expenses the plaintiff never incurred." In other words, plaintiffs may no longer recover the inflated "sticker price" of medical bills. When a medical care provider is contracted to receive pre-negotiated rates from the injured's insurer, the plaintiff may recover medical damages in an amount up to, but no more than, the pre-negotiated amount actually due.

Regarding the admissibility of the "sticker price," the Supreme Court held that "[w]here the provider has, by prior agreement, accepted less than a billed amount as full payment, evidence of the full billed amount is not itself relevant on the issue of past medical expenses." Where a trial jury has heard evidence of the amount accepted as full payment by the medical provider, but has awarded a greater sum as damages for past medical expenses, the defendant may move for a new trial on grounds of excessive damages. A non-statutory "Hanif motion" is unnecessary. If it grants the new trial motion, the trial court may permit the plaintiff to choose between accepting reduced damages or undertaking a new trial.

Post-Howell Court of Appeal Decisions

A pair of recent cases has further attempted to define the reach of *Howell*.

Sanchez v. Brooke (2012) 204 Cal.App.4th 126 demonstrates that *Howell* may also be applied outside the context of private health insurance. The Second Appellate District extended the *Howell* limitation on recoverable medical expenses to workers' compensation cases. If an injured plaintiff/employee's medical expenses are satisfied in full by the reduced amount pursuant to the workers' compensation laws, the plaintiff/employee may not recover past medical special damages greater than that amount from the third-party defendant.

Sanchez v. Strickland (2011) 200 Cal. App.4th 758 added some confusion when it held that *Howell's* limitation does not apply to "gratuitous write-offs." The Fifth District held that, where a medical provider has issued a bill for medical services to the plaintiff and has subsequently and gratuitously written off a portion of the bill, the amount written off constitutes a benefit that may be recovered by the plaintiff under the collateral source rule. In that case, the plaintiff incurred charges for medical care for which the provider billed Medicare. The provider received a partial payment from Medicare and a "contract allowance" which, combined, equaled more than 90 percent of the bill. The balance was billed to Medi-Cal, but was eventually written off because the provider did not have a contract with Medi-Cal. The court held the portion "gratuitously" written off could nevertheless be recovered by the plaintiff as damages.

The decision is problematic because the court did not explain how the write off was "gratuitous" rather than discounted, in particular since there was no contract guaranteeing payment and no evidence of reasonable value of the medical services provided. Arguably, every write-off could reflect a "gratuitous write off" and the exception could swallow the *Howell* limitations. As a result of *Sanchez*, an attorney in a personal injury case must carefully analyze whether the amounts are reduced or written off. Expert testimony may be necessary to decipher billing codes, contract allowances, and write offs.

Howell's Limitations Applicable to Noneconomic Damages or Future Expenses?

Several issues remain hotly contested as *Howell* expressed no opinion as to the relevance or admissibility of the billed amount versus the paid amount on other issues, such as noneconomic damages or future medical expenses.

These issues are going to be addressed in *Corenbaum v. Lampkin*, B236227. The Court of Appeal has requested additional briefing on two issues: To what extent, if at all, is evidence of the amount billed for medical expenses admissible and relevant to the issues of (1) future medical expenses and/or (2) noneconomic damages and, to the extent that evidence is admissible for those purposes, what type of limiting instruction, if any, should be given to the jury. A decision is expected in early summer.

Medical Liens – A Trap for the Unwary

Attorneys must pay attention to medical liens to avoid subjecting themselves to an obligation to reimburse the lien and/or penalties.

An attorney representing a Medi-Cal beneficiary has a statutory duty to notify the Director of Health Services ("DHCS") within 30 days of filing of a claim. No settlement or award in any action may be satisfied without giving the director notice thereof and a reasonable opportunity to perfect and satisfy the lien. Welfare and Institutions Code section 14124.79 requires insurance carriers liable for a Medi-Cal beneficiary's claim to notify DHCS because they are legally obligated to reimburse Medi-Cal.

Medicare liens are enforceable under federal statutes. (*See* 42 U.S.C.A §§2651-2653.) The Federal Center for Medicare & Medicaid Services ("CMS") is entitled to reimbursement for the medical expenses of Medicare beneficiaries injured in accidents which third parties or private insurers are legally obligated to pay. Applicable regulations give CMS the right to seek

reimbursement from a Medicare beneficiary or the beneficiary's attorney to the extent he or she received settlement payments from defendants or their insurers. (See 42 CFR §411.24(h)-(i).)

Medicare's reimbursement right extends to defendants and their attorneys. Defendants and their liability insurers are under a statutory duty to notify CMS of the litigation. (See 42 USC §1395y(b)(7)(B).) A release given by the plaintiff to the defendant does not bar the United States from recovering for medical services to the plaintiff. (See *United States v. Winter* (E.D.Pa.1967) 275 F.Supp. 895.) If a defendant or the defendant's liability insurer pays a Medicare beneficiary's tort claim without satisfying a Medicare lien, the defendant may end up paying twice. (42 CFR §411.24(i).) All parties in the case – plaintiff, defendant, defendant's

insurer and attorneys on both sides – can be held liable for \$1,000 per-day penalties for failure to comply with Medicare notification requirements, and for double damages if the government sues to enforce its reimbursement rights. (42 USC §1395y(b)(7)(B); 42 CFR §411.24 (c),(g).)

To avoid potential personal liability, attorneys representing a Medicare beneficiary in a personal injury action should contact CMS and propose conditional payment calculations before disbursing any settlement or award to plaintiff or other lien holders. It is proper to complete settlement agreements with a "set-aside" provision providing that the plaintiff will set aside in a blocked account certain sums of monies to cover the amount of benefits provided. (See *Schexnayder v. Scottsdale Ins. Co.* (W.D.La. 2011) 2011 WL 3273547, at *8.)

Under California's Hospital Lien Act, Civil Code section 3045.1, *et seq.*, a hospital that provides medical services to a person injured by an accident or wrongful act may place a lien on the damages recovered from the defendant. The rules are very specific as to how this lien is to be perfected by the hospital. Such a lien is limited to 50 percent of the potential recovery that the injured person may recover from the defendant. Once properly provided with notice, if the defendant then makes payment to the injured person without satisfying the lien, the defendant is liable to the hospital for the expenses of medical care and services rendered to the injured person.



Gabriele M. Lashly is a certified appellate specialist. She handles law and motions, writs and appeals at Slaughter & Reagan, LLP in Ventura.

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EAST COUNTY BAR MIXES IT UP

by Alfonso Martinez

Attorneys from both sides of Ventura County gathered for the East County Bar Association (ECBA) Mixer at the Napa Tavern, in Westlake Village.

ECBA President **Doug Bordner** and **Katie Clunen** chaired the mixer to ensure Ventura County's legal community is equally represented through events hosted on both sides of the Conejo Grade.

"The Conejo Grade is more than a hill. It acts as a symbolic Berlin Wall, separating our two areas of Ventura County," says **Judge Frederick Bysshe**, who drove from Ojai to attend the mixer. "When I was president of the VCBA, I saw this, and made it one of our missions to bring both areas of the bar together."

Judge Bysshe echoes the words and actions of last year's VCBA President, **Dien Le**. One of Dien's goals was to ensure county-wide representation by showcasing events

at different venues to get attorneys from all areas of the county actively involved, and he launched the effort with the very successful 2012 installation banquet held at the Hyatt in Westlake Village.

"It turned out to be a huge success, we exceeded our goal, we had over 40 sponsors and raised over \$22,000," Le says. "At the time, going against the norm and taking a risk was what we needed. Sure, plenty of folks were skeptical, but we proved them all wrong. I hope that others do the same, that they recognize the entire county, and mix it up, move events around every now and then."

This goal has caught current VCBA President **Joel Mark's** attention. Joel has furthered this goal by announcing the 2013 Installation Banquet's mid-county location at the Spanish Hills Country Club in Camarillo.

The ECBA will continue to host monthly mixers to promote unity. Clunen created a Facebook group for the East County Bar that the public can use to keep up to date on the section's events. "Be on the lookout for more mixers and events where we will promote networking between east and west attorneys," Clunen says.

Anyone wants to plan a joint event or get more information on ECBA happenings may contact Bordner at dabordner@sbcglobal.net or "Like" the East County Bar Facebook page.



Alfonso Martinez practices family and criminal law with the Law Office of Marc Dion in Westlake Village.



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MABA SEEKS VOLUNTEERS FOR EL CONCILIO EVENT

by Rennee R. Dehesa

The Mexican American Bar Association will host a legal fair with El Concilio on June 1 at the El Concilio offices, 301 South C. Street in Oxnard. We are seeking attorneys and other professionals willing to donate their time from 10 am to 2 pm (lunch to be provided) to meet with pre-registered individuals from the community who are looking for guidance on legal and financial issues. El Concilio will take care of all of the set up and planning. We just need you to show up and share your knowledge. If you are interested in participating, please contact me at (805) 764-6370 or rdehesa@rstlegal.com.

We will not be providing extended legal services or representing individuals in any particular case. Everyone is welcome to offer their services to individuals through subsequent personal meetings, but there is no expectation of any continued representation. We will have disclaimers and waivers available on-site.

This is a great opportunity for MABA to get involved with the local community and assist many individuals who have basic questions and who can benefit from general legal guidance. Thank you for considering this opportunity and please sign up!



Rennee R. Dehesa is an associate at Schneiders & Associates, L.L.P. in Oxnard. She represents business clients and handles bankruptcy matters. She is president of MABA.

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STUDENT DISCIPLINE CLE TO FOCUS RECENT AMENDMENTS TO EDUCATION CODE

by *Andres Garcia*

School discipline disproportionately affects minority students, according to federal, state and local studies. In a victory for civil rights advocates, new laws went into effect this year addressing educational fairness in California schools.

On Thursday, May 2 at noon, California Rural Legal Assistance, Inc. and the Mexican American Bar Association of Ventura County will provide a CLE presentation on school discipline. \$15 fee; BYO brown bag lunch. This lecture will prepare attorneys and law students to issue-spot and provide basic advice to Ventura County K-12 students and parents in need of help navigating the student discipline process. As of January 1, the following new laws address suspension, expulsion and conduct manifestation determinations, and broaden school districts' obligations:

AB 1729 amends Education Code sections 48900 and 48900.5 to strengthen the alternatives to suspension or expulsion and

clarify that school removals should only happen after other means of correction fail to bring about proper conduct.

AB 2537 amends Education Code section 48915 to provide additional discretion to school administrators to use alternative means of correction in lieu of expulsion and further clarifies that possessing an imitation firearm, over-the-counter medicine or student's prescription medicines are not "zero tolerance" offenses that automatically require expulsion. It also eliminates an existing \$500 fine imposed on a principal who fails to notify law enforcement of certain crimes allegedly committed by students.

AB 2616 amends Education Code section 48260 to focus truancy reduction efforts on solutions with schools, students and parents that are shown to work, so that law enforcement and courts are used only as a last resort.

AB 1909 amends Education Code section

48853.5 to ensure that school districts notify social workers or other county child welfare designees and the court-appointed attorney for the foster youth when a foster youth is pending expulsion.

SB 1088 amends Education Code section 48645.5 to help ensure that children who have had contact with the juvenile justice system are not barred from re-enrollment and are immediately re-enrolled in school.

For more information, contact Andres Garcia at agarcia@crla.org or Franchesca Gonzalez at fgonzalez@crla.org.

Andres Garcia is a staff attorney at California Rural Legal Assistance, Inc. in Oxnard. A second-generation attorney, he obtained his undergraduate degree from UCLA, but went across for law school at USC. Though he earned his law degree at SC, Garcia says "my heart will always remain in Westwood with my undergrad, UCLA."

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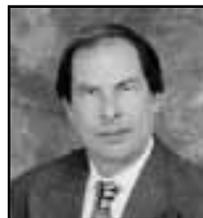
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IMAGINING A WORLD WITHOUT DOMINION: PART 1

by Kate Neiswender

I am sitting in Assisi, Italy, as I write this, within a stone's throw of the chapel that was home to Saint Francis of Assisi. The patron saint of Italy and namesake of the new pope, Francis is most well-known for two things: the kindness he showed to animals, and his call to the faithful to return to the basics: love for all of God's creatures.

The new pope is Francis the First, and his choice of that name is important. It signals a return to a simpler faith. Often, the Catholic Church has a way of making the simple complicated. For example, the little chapel used by Francis and his monks is perhaps twelve feet high, and maybe twenty feet long. But the Church, wanting to honor a man known for simplicity, built an enormous ornate basilica that surrounds and enshrines the little chapel. The metaphor is wonderful.

I admire Francis because he was unique, a kind man in a century of brutality, a man who believed in kindness by all, to all, without regards for species. The 13th Century was a time of incredible cruelty to those species – whether human or not – who happened to fall afoul of those more powerful. And it is that thought which prompted this article.

If I could go back in time and do one thing, only one thing, that would change the world as we know it, I would go back about five or six thousand years and erase one verse from Genesis: verse 1:26. It reads:

And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.

That verse, and in fact all of the Bible, was incorporated in large part in the English Common Law, and those laws were later codified, leading to the statutes that govern us today. This concept of dominion over all things has wormed its way into every part of western culture. Manifest Destiny stems from the divine rights bestowed

upon our conquering forefathers by God. The English, the French, and the Spanish conquered their way around the world based upon the notion that they had – literally – a God-given right to take over the world.

Thousands of years later, that concept is ingrained in our world view. Without it, life might be very different. The Navajo view animals as their partners, brought into this plane with them as equals. Even the lowly turkey brought gifts to the Navajo, and for that reason the turkey is not to be hunted. One of the ancestors of the Lakota Sioux was White Buffalo Woman, who taught the people how to hunt, and how to give thanks each and every time they took a life, in appreciation that another had to die to help the people survive. Not every culture believes in the unashamed slaughter of non-human species. We could have traveled another path.

Think of what this world would be like if that one phrase from Genesis never came into being, how the law itself would be different. People scoffed at *Sierra Club v. Morton* (1972) 405 U.S. 727, which sought to give trees standing, so that an old-growth forest, here a thousand years before Jesus, could be protected against destruction. If Genesis were re-written, would the English common law have recognized that all species have a right to exist without undue interference?

The holocaust brought on by what is haughtily called “resource development” has caused the extinction of so many species that we cannot keep up with the losses. The International Union of Conservation of Nature and Natural Resources' latest Red List of endangered, threatened and extinct species reads like a summary of most of the planet's inhabitants, with the coral reefs and amphibians at the greatest risk of dying out in the next 50 years (www.icunredlist.org). Since 1900, we have forced the extinction of hundreds of species worldwide, with 232 lost in the United States alone. Thousands more are anticipated to be lost in the next 100 years. With global climate change, that number is expected to skyrocket. The situation in the Amazon is tragic; half a

world away, we are losing polar bears at an alarming rate and all because mankind has a God-given right to dominion over all living things.

In the first speech that Pope Francis gave to the faithful, he asked that we all protect the environment and the weak. The two are clearly linked, but I would suggest that the “weak” must include non-human species. In the next issue of *CITATIONS*, I will address some of the other issues that we have imposed upon the rest of God's creatures.



Kate Neiswender is a Ventura-based land use and environmental lawyer. She will be lecturing again this year at the July 13-14 No Kill Conference in Washington DC on “Legislating No Kill”

and “Use of Public Records in Forcing Shelter Reform.”

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by Steve Henderson, Executive Director, M.A., CAE



Her job as an appellate attorney generally does not involve making people laugh, but **Lisa Spillman** can report with glee that many of the 200-strong audience in February at the Ventura Harbor Comedy Club guffawed at her antics about being a lawyer, mom and wife. Her performance capped a great six-week Stand-up Comedy Class. If you'd like to give it a try call 805.644.1500... Think a JD is only for law practice? If so, about 100 pre-law students disagree with you. Half of more than 200 pre-law students responding to a survey by Kaplan Test Prep said they plan to use their law degree in a non-traditional legal field. Forty-three percent said they plan to use their law degree to pursue a job in the business world. Among the students who planned to use their degrees in non-traditional fields, 58 percent said the current job market factored into their decision. Statistics paint a bleak picture of employment. A recent ABA report found that only 56 percent of 2012 law school grads had found full-time, long term jobs that require bar passage... **Joe Strohman's** 30th year with Ferguson Case Orr Paterson was April 13...

Speaking of FCOP, **Meghan Clark** was named one of the Top 50 Women in Business by the *Pacific Coast Business Times* and **Eric Hirschberg** joined the firm as an associate March 18... When a cell phone rang during a prosecutor's closing argument in a domestic violence trial, a Michigan judge didn't have to look far to find the culprit. It was Chief

Ionia District Judge Raymond Voet himself who was to blame. He had recently gotten a new phone and apparently didn't lock it properly before court. He also had trouble turning it off, as it offered him suggestions about voice dialing. "I got very embarrassed, and I'm sure my face turned red." "I thought it would never happen to me." The judge is known for being a stickler about cell phones and has signs posted outside his courtroom warning the public that individuals face a \$25 fine and could lose their electronic device if it goes off during a hearing. Voet held himself in contempt and walked downstairs during a court recess to pay the same \$25 fine he imposes on other offenders... **Panda Kroll** published an article in *Westlake Magazine* about pitfalls to avoid when couples buy a home: "Can't Wait for the Wedding to Buy Your Dream House? Heed These Traps for Unwary Dreamers..."

Cuba? **Dick Hanawalt** at 642.0179 or attorneyhanawalt@sbcglobal.net... Rural law practice will become more lucrative for some South Dakota lawyers under a new law passed last month. The pilot program will pay participating lawyers \$12,000 a year to work in rural areas. Each lawyer will have to make a five-year commitment and will have to work in a county with a population of 10,000 or less. Only 16 lawyers can participate in the pilot project. The rural counties will pay 35 percent of the incentive payment, the State Bar of South Dakota will pay 15 percent and the state will pick up the remainder. Currently 65 percent of the lawyers in South Dakota live in four urban areas... License Plates of the Month: 5K LAWYER on a 2007 LS 460 Lexus piloted by Richard Ross and LIBESQ on a 350 Lexus driven by Libby Barrabee...

Loyal Frazier passed away on March 11. He graduated from USC School of Law in 1953 and was president of the bar association in 1973... Please make every attempt to participate in our 30th Annual Law Day 5K Race scheduled for May 18, beginning at 8:30 a.m. FREE breakfast courtesy of El Pescador and loads of raffle prizes including stays at Fess Parker's Wine Country Inn and

Spa, Montecito Inn, and the Four Seasons Biltmore. Check out the brochure stuffed inside this month's edition of *CITATIONS* or register on-line at www.active.com. Proceeds benefit the vcba/vlsp, inc., too...

Mark your calendars – The Real Property Section will host a CLE luncheon at the Tower Club May 22. Entitled "Handling Foreclosures Following Senate Bill 900," the event should be compelling and educational. Lastly, the newly established Natural Resources Section will conduct its inaugural luncheon May 15 at the bar offices. Kudos to **Giselle Goetz** for organizing! Contact Nadia at 650.7599 to register or bar@vcba.org. Better yet, go to www.vcba.org, click Calendar&MCLE, and you are there... And you thought you were special – According to the LA Times April 22 and since the mid-1950s, lawyer David Chan has eaten in 6,297 different Chinese restaurants. His experiences are on an Excel spreadsheet, a data-centric diary of a gastronomic journey that spans the United States and beyond. Name any neighborhood in Los Angeles and Chan will produce the name of a Chinese restaurant within a few miles...

Steve Henderson is the executive director and chief executive officer of the Ventura County Bar Association and its affiliated organizations since November 1990. Henderson is currently penning fewer words this month because of a torn achilles tendon. He may be reached at steve@vcba.org, FB, Twitter at @stevhend01 or @vcba1, or better yet, 650.7599.

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Some of you have requested pictures of the whole family, . . . so here you go!



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