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S E P T E M B E R - T W O T H O U S A N D F O U R T E E N

EIGHTH ANNUAL WOMEN LAWYERS OF VENTURA COUNTY SCHOLARSHIP DINNER

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Vanessa Frank

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PRESIDENT'S MESSAGE:

HOW SWEET IS YOUR NAVEL?

by *Laura V. Bartels*

How sweet is your navel? According to the California Citrus Board, it's sweeter than last year. Codified into the Food and Agricultural Code and adopted into the Code of Federal Regulations starting with last year's crop, the trademarked "California Standard" is the new standard by which all navel oranges are measured. The law now requires navel growers to hold the navels on their trees longer in order to provide the market a sweeter fruit. Once a navel exceeds 90 percent on a newly formulated relationship scale between sugars and acid, it can be harvested.

The first quality laws were codified in the California Fruit and Vegetable Act of 1917. The act required navel oranges to exceed 8°Brix as measured on a refractometer. The handheld device resembling a child's kaleidoscope, one end with a pointed edge with glass, is jammed into the orange where the solids (sugars) and the liquids (acids) are measured by refracting the solids and using the calibrations into a measurement known as the degree Brix (°Bx), pronounced "bricks" and named for 1800s German industrialist Adolf Brix. If the navel exceeded 8°Bx it could be sold commercially. If it didn't, it was an illegal orange.

Oranges are picked once their sugars reach a certain level. After that, they are graded by how they look. Fruit is either sold fresh or juiced. Eighty percent of California oranges are packed fresh with the remaining going to juice. Florida oranges are opposite: 80 percent of their fruit is juiced and only 20 percent marketed as fresh. California growers try to get their fruit into the fresh market because it brings premium prices.

There are three grades of fresh navels: Fancy, No. 1 and Choice. Navels unable to make

the fresh fruit cut are relegated to the lowly juice pool. The cosmetic impacts alone determine the grade of fresh fruit; taste has nothing to do with it. The highest-grade fruit needs to be firm, smooth, and well formed. If there are furrows radiating from the stem end of the navel, they must be shallow. If the furrows are deep or heavily pebbled, or if your navel is soft or protruding, it goes straight to juice. Title 7 CFR §51 et seq., define "well colored" and "fairly well colored;" "firm" and "fairly firm;" "well formed" and "fairly well formed;" "smooth texture," "fairly smooth texture" and "slightly rough texture." Federally-defined defects include: broken, bruised or mushy skins; rough, wide or protruding navels; decay, growth cracks, split rinds, scars, oil spots, scale, skin breakdown, sunburn, dirt, insect damage and mechanical damage, to name a few. "Excuse me ma'am, federal government here, but I'm going to have to confiscate your mushy navels."

Oranges are packed by size and are measured by how many oranges fit in a carton. A consumer "standard" sized orange you'd be apt to approach at a store is a 72 or an 88. The 72 is larger; it means that 72 oranges fit in the carton. 88 oranges fit in the 88 to a box. 138s are much smaller and usually reserved for bagging. The smallest orange you'll see in commercial markets is a 156. Smaller does not mean better, nor does bigger. Huge 48s and 56s are unwieldy for most consumers (but pretty for table decorations) and require niche marketing for these sizes or sending them to the "juice" pool. Growers make most of their money on the 72s and 88s. Marketing campaigns must induce customers to buy small oranges by calling them "lunch-sized" and bagging them. If farmers could grow only Fancy 72s and 88s, they would be rich and happy.

Federal laws also control the types of orange juice available to the consumer. Regulated by 21 CFR §146 et seq., you will be pleased to know that in California (Texas and Florida have different federal definitions – right?) there are eight federally regulated orange juices: pasteurized orange juice (21 CFR §146.140); canned orange juice (21 CFR §146.141); orange juice from concentrate (21 CFR §146.145); frozen concentrated orange juice (21 CFR §146.146); reduced acid frozen concentrated orange juice (21 CFR §146.148); canned concentrated orange juice (21 CFR §146.150); concentrated orange juice for manufacturing (21 CFR §146.153 and 21 CFR §146.154); and dehydrated orange juice. After you've satisfied the grade of the juice, the marketing arm lets you decide about most pulp, mild pulp, no pulp, calcium, blended. Argh.

Color of orange juice is also federally defined and consists of three options: Very Good, Good and Reasonably Good. Flavor is ranked Very Good, Good and Poor. The definition of poor "means orange juice that fails the requirements for good flavor." (Funny.)

"Defects" in orange juice are measured as "practically free" (all Grade A juice) or "reasonably free" (all Grade B juice) from defects. Defects mean juice cells, pulp, seeds or portions of seeds, specks, particles of membrane, core, peel or any other features that adversely affect the appearance or drinking quality of the juice. Who says the life of farming is easy?

When we moved to Bardsdale to learn my husband's grandfather's orange business in 1986, we worked hard to get the navels on

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the market in December. A December pick brought a premium price as, back in those days, navel oranges were an available winter fruit and often purchased to put in Christmas stockings and adorn holiday tables. With the globalization of world markets, the decline of the navel orange as a key agricultural crop in Ventura County started in the mid-1990s and has never recovered. The introduction of Australian navels in the summer as well as the introduction of traditionally summer crops now available year round, like raspberries and melons, have taken the market share out of Ventura County navels. For decades a Ventura County top 10 crop, navel oranges now have less than 500 planted acres. The new regulations regarding the sweetness of the fruit to encourage consumers might be a little too late.

Laura Bartels can be reached at LBartels@FillmoreLawyers.com. Fresh-squeezed, unregulated orange juice available upon request. Her husband Bill's family farmed citrus in Bardsdale for over 100 years until converting most of the acreage to Sriracha jalapeno peppers in 2005.

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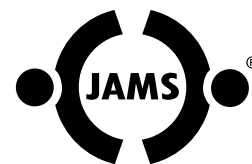
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EIGHTH ANNUAL WOMEN LAWYERS OF VENTURA COUNTY SCHOLARSHIP DINNER

by Katie Becker

Women Lawyers of Ventura County will hold its Eighth Annual Scholarship Dinner on September 4. The Dinner will be held once again at the beautiful Museum of Ventura County from 5:30 to 8:30 p.m. This year, to take advantage of Ventura's wonderful September weather, we will hold the silent auction and wine tasting (provided by local winery, Four Brix) in the Museum's courtyard. The night will also celebrate two female pioneers in our community, **Marsha Bailey** and **Vanessa Frank**.

The Legacy Award recognizes a woman who advocates for the advancement of women and girls in law and society in our community. We are proud to announce that this year's awardee is Bailey. She is the founder and CEO of Women's Economic Ventures and the Small Business Loan Fund of Santa Barbara. Since 1991, WEV has provided entrepreneurial training and technical assistance to over 15,000 women and men and made more than \$3.5 million in loans to pre-bankable small businesses. WEV has helped more than 2,500 local businesses start or expand.

Under Bailey's leadership, WEV has grown from a small organization with two employees and an annual budget of \$75,000 to a nationally recognized women's business development organization with 14 employees and an annual budget of \$1.4 million. WEV serves clients in Santa Barbara and Ventura Counties, and licenses its proprietary curriculum to other entrepreneurial organizations.

Bailey began her non-profit career in 1983 as the Public Relations and Community Education Director for the Santa Barbara Rape Crisis Center. She is the primary author of WEV's self-employment training curriculum, *From Vision to Venture*. Bailey is the president of the board of directors of the Association of Women's Business Centers (a national organization), a member of the National Women's Business Council, a member of Union Bank of California's Community Advisory Board, and past president of the California Association for Micro Enterprise Opportunity (CAMEO).

She has served on the board of directors of many local organizations including the Fund for Santa Barbara and the Women's Political Committee.

In conjunction with her work with WEV, Bailey has mentored and trained emerging female leaders from California, Nepal and Jordan, has provided entrepreneurial training for women in Hungary, and lectured at the Sorbonne in Paris. She has provided consulting and training on organizational development and sustainability to a USAID-funded women's business organization in Amman, Jordan as well as to many U.S. organizations.

Bailey was born and raised in Muskegon, Michigan and is a lifelong Spartan fan. She has lived in Santa Barbara since 1976. Married for 28 years, she is the mother of twins, Max and Sam Anderson.

The Holly Spevak Memorial Award honors the memory of a woman whose short time as an attorney brought lasting contributions to the community and access to justice through pro bono work. This award is presented to a new or "newish" attorney who exemplifies the commitment to serve others. This year's very deserving awardee is Vanessa Frank.

Frank opened the Law Office of Vanessa Frank in the spring of 2009 to provide high quality immigration law service with integrity. She represents clients in a wide range of family and immigration law matters, while also organizing and advocating on behalf of Ventura County's immigrant and farmworker community. Frank began her work on behalf of justice for immigrant youth and families in college, leading the successful campaign at Stanford University against passage of the infamous Proposition 187, which would have unconstitutionally denied social services including schools, hospital emergency rooms and police protection to undocumented immigrants.

Frank's approach to legal services emerges from years of community organizing. She is dedicated to ensuring access and justice for families and communities who are often

disenfranchised, working to support her clients in resolving their immediate legal situation while also engaging in the broader movement for humane, comprehensive immigration reform.

The Law Office of Vanessa Frank was one of the first offices to represent minors and other long-term residents of the United States in securing "Prosecutorial Discretion" in accord with President Obama's 2011 mandate. Subsequently, the office represented many young people in securing their work permits through the Deferred Action for Childhood Arrivals ("DACA") program in the summer of 2012. Recently, the office has been deeply involved in advocacy work on behalf of the current wave of unaccompanied minors, primarily from Central America. As the office grows, it is Frank's hope that it can be a place for reliable information both for immigrants and non-immigrants in the effort to secure justice for all in Ventura County and beyond.

Frank earned both her Bachelor's Degree and Juris Doctor from Stanford University. She has volunteered her time at the East Palo Alto Community Law Project and was a staff attorney at California Rural Legal Assistance in Oxnard. Currently she is the chair of the board of directors for the Clergy & Laity United for Economic Justice of Ventura County ("CLUE-Ventura County"). There, she leads the only county-wide interfaith group dedicated to advocacy and education on issues of economic justice. She is also the chair of the scholarship committee of both the Mexican-American Bar Association and the Mixteco/Indigena Community Organizing Project ("MICOP"). Frank volunteers as a pro bono attorney for both El Concilio Family Services of Oxnard, and the Westminster Free Clinic of Thousand Oaks.

Marsha Bailey and Vanessa Frank are both very deserving of the awards they will receive and we are excited to honor them both.

Our community partners, Girls Inc. will also again receive recognition. A portion of the

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NAMES WORTH MILLIONS

by Douglas Bordner

What do Marilyn Monroe, Michael Jackson and Jackie Robinson have in common? Names worth millions.

Over the past several years, there has been much news coverage of the income generated by the estates of deceased celebrities, including deceased entertainers and sports figures. *Forbes* magazine reported on October 23, 2013 that Michael Jackson's estate earned an estimated \$160 million dollars between June 2012 and June 2013. Elizabeth Taylor's estate earned an estimated \$210 million in 2011 and \$25 million dollars in 2012. Elvis Presley's estate earned an estimated \$55 million dollars in 2013, and Bob Marley's estate earned an estimated \$18 million dollars in 2013. This has not always been the case. Only recently, with changes in the law, have families of deceased celebrities been able to both profit from their names and likenesses, and adequately protect their names and likenesses.

In 1971, the State of California enacted Civil Code section 3344, which allowed a living individual to recover damages for the unauthorized use of his or her name, photograph or likeness for commercial purposes. However, this law did not extend to deceased individuals. As the common law right was derived by the laws on privacy, it was not transferable upon death and the rights of publicity expired when the individual died. With the invention of television and film, companies began to use the name and likeness of deceased individuals to market products using clips of entertainers in television commercials. The most famous one being a clip of Fred Astaire from "Singing in the Rain" in a commercial for vacuum cleaners.

Families of several deceased celebrities attempted to prevent their famous deceased relatives' names, likenesses and voices from being used without their permission and without compensation, but California courts ruled that deceased celebrities



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FAMILY LAW DISPATCH: THE FAIR TREATMENT OF “OUT SPOUSES” IN FAMILY BUSINESS BUYOUTS

by Greg Herring



In light of the recent Supreme Court cases, *Citizens United* and *Hobby Lobby*, folks have been focused on the rights of those owning closely-held family businesses. In family law (and other) cases, those rights often involve valuation issues when one spouse buys out the interest of the other. Often the managing spouse claims that the business has little-to-no inherent value, as “it would fold without me.” Another still-heard argument is that the business has no real value because it lacks any potential “outside” buyers.

In cases where those might actually be the facts, California law achieves fairness by treating the “out spouse” as a silent partner who is entitled to an “investment value” buy-out. The analysis starts with the basic principle that property acquired during marriage is presumably community property. (See Fam. Code, § 760) It builds on the mandate that a trial court “shall” divide a community’s estate equally. (§2550.)

“The distinctive feature of California marital property law is that the marital community is viewed as a partnership in which the spouses are equal partners. It has long been recognized in California ‘that the marriage, in respect to property acquired during its existence, is a community of which each

spouse is a member, equally contributing by his or her industry to its prosperity, and possessing an equal right to succeed to the property after dissolution.’...The equal division of the community property of the spouses, upon dissolution of marriage, appears to be an implicit recognition of this equality in interest that prevailed during marriage.” [Citation.] (*In re Marriage of Brigden* (1978) 80 Cal.App.3d 380, 389-390.)

The ideal is a mathematically equal division: “[T]he fundamental objective of the Legislature with respect to the disposition of community property upon dissolution of a marriage was to provide for an equal division thereof as an additional way of advancing its primary no-fault philosophy...” (*In re Marriage of Juick* (1971) 21 Cal.App.3d 421, 427.)

In dividing marital interests, a court should value a closely-held business based on its “investment value” to the operating spouse because the asset is non-marketable. The seminal case holding this was *In re Marriage of Hewitson* (1983) 142 Cal.App.3d 874.)

A civil case referenced *Hewitson* in distinguishing investment value from “fair

market value” (“FMV”): “We concluded that if an active market existed for the stock, its **market value** could be determined, but if none existed then its **investment value** should be determined.” (*Ronald v. 4-C’s Electronic Packaging, Inc.* (1985) 168 Cal.App.3d 290, 298 [emphasis added].)

California family law guru Garrett Dailey puts it this way: Investment value differs from FMV in that investment value measures the value of the business to a specific buyer, e.g., the operating spouse, rather than to a hypothetical buyer, as required for FMV.

A leading American Bar Association (Family Law Section) treatise on business valuation issues contrasts investment value with FMV as follows:

“The primary distinguishing characteristic of investment value is that it denotes value to a particular owner or investor. This is in contrast to FMV, which is a concept of value in exchange, assuming hypothetical, typically motivated buyers and sellers. In other words, **investment value is the value to a particular individual or entity, considering that individual’s or entity’s situation, perceptions, and motivation, not necessarily value in the marketplace...**” (Pratt, *The Lawyer’s Business Valuation Handbook: Understanding Financial Statements, Appraisal Reports, and Expert Testimony*, 2000, pp. 8) (emphasis added).)

Whether to use investment value or FMV in a family law case is determined by whether the asset being valued is marketable. *In re Marriage of Cream* (1993) 13 Cal.App.4th 81, 89 specifically restricted the use of FMV to marketable assets “because some marital assets are not marketable, but nonetheless may have to be valued.”

Other opinions have recognized this concept without specifically stating that they are using investment value. For instance, *In re Marriage of Foster* (1974) 42 Cal.App.3d

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CHANGES AHEAD FOR THE LAW LIBRARY

by Dolly Moehrle

We have been fortunate that under the leadership of now-retired director Jane Meyer, the Ventura County Law Library was able to amass reserves which allowed us to operate at a deficit without making significant cuts. However, the ongoing decline in civil filing revenues, which form nearly the entirety of our budget, has showed only minor signs of recovery, so the board decided to attempt to operate under a balanced budget for this fiscal year. When balancing a library budget, one can really only take from three areas: hours, staff, and collections. We've made cuts in all three.

Some of our regular users are familiar with some of these changes:

- The Law Library has closed Saturdays.
- Following the retirement of Director Meyer, the library now has just three full-time staff members.
- We have cut approximately \$80,000 out of our publications budget. Most significantly, we have had to go down to one copy of each of the CEB titles we receive. We've also cut from the tax section and other subject areas

but have attempted to maintain our policy of retaining one active set in each subject.

Is this ideal? No. Is this the most fun way to begin my first few weeks on the job? No. (Sympathy chocolate always accepted.) But at this point, cuts are a way of life; the closed courthouses, the reduced hours and services are all familiar to everyone dealing with the law in California these days.

We have managed despite these cuts to retain our online resources, and will continue to offer access to CEB OnLaw, Hein Online, Lexis, and Westlaw Next (with access to Rutter group titles) for in-library usage. We also have access both inside and outside the library to the EBSCO Legal Information Reference Center, which houses the majority of Nolo titles, including forms and samples (visit our website, *vencolawlib.org*, and click on "For the Public" to find out more). For those who prefer paper, our collection is still formidable.

Even as the economy is turning around, the law library will still have to contend with

income issues because our portion of the filing fee revenue has not been raised since 2007. Additionally, the number of paid filings has decreased significantly. We have taken several steps to help the library in the long term. **Al Vargas** has spearheaded the creation of the Friends of the Ventura County Law Library, a 501(c)(3) charitable organization which will be happily accepting your donations and suggestions for fundraising opportunities. The Council of California's County Law Librarians is focused on working with members of the Legislature on passing legislation leading to an increase in (sustainable) law library funding.

If you support the law library, be sure to inform your assembly member and state senator, and reach out to Al to find out more about the Friends of the Law Library.

Dolly Moehrle is the director of the Ventura County Law Library. Al Vargas may be reached at avargaslaw@gmail.com or 805-415-7837.

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Katie Becker is a partner at Ben Schuck & Katherine Becker, LLP and Of Counsel at Schneiders & Associates, LLP. She is the president and treasurer of Women Lawyers of Ventura

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FAMILY LAW DISPATCH: THE FAIR TREATMENT OF “OUT SPOUSES” IN “FAMILY BUSINESS” BUYOUTS

Continued from page 9

577 recognized that the value of goodwill in a medical practice might be more than its FMV.

From the idea of investment value follows the principle that the non-operating spouse is entitled to a full buyout as a withdrawing “silent partner” even when non-transferable assets and rights are involved:

In their treatise, *Complex Issues in California Family Law*, Steve Wagner and Dawn Gray put it this way: The investment value approach has for decades acknowledged that the professional practice or small business in which the operating spouse’s skills, efforts and talents are both the (1) key to the value of the business, and also (2) truly not transferable to a third party will still have value to the operating spouse, this value may include goodwill. This is because the day after the case is resolved, “the operating spouse will walk to the front door, turn the key and an ongoing business will be in place, just as it was the day before.”

Thus, the silent partner concept is part of the investment value approach for a close corporation as outlined in *Hewitson*, above. Several cases, including *Brawman v. Brawman* (1962) 199 Cal.App.2d 876, have expressly used the term “Silent Partner” and have required this approach.

Closely-held family businesses are typically not suited to FMV valuations. That is in part because they have unique investment value to the “in spouse” that cannot be appraised based on any open market. *Hewitson* and its progeny have, for decades, recognized this valuation problem and then solved it through the investment value and silent partner approach. Even though managing spouses may genuinely feel this way, the “I’m the business and therefore don’t have to buy him or her out at full value” argument has long been untenable in family law property divisions.



Greg Herring is a State Bar Certified Specialist in family law and is a partner with Ferguson Case Orr Paterson LLP. He is the immediate Past President of the

Southern California Chapter of the American Academy of Matrimonial Lawyers.

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FROM THE PROBATE CLERKS –MAKING FILING EASIER ON BOTH SIDES OF THE WINDOW

by Amber Rodriguez

The executive committee of the Estate Planning and Probate Section met recently with the court to determine what can be done on both sides of the filing window to make probate filings go more smoothly. We were fortunate to have Patti Morua-Widdows, the juvenile and probate courthouse manager, and Supervisor Alyson Hernandez attend. Carol Henry, also a supervisor, was unable to join us.

Here are some of the helpful things these ladies shared with us:

1. Request a Date: Attorneys should be more proactive in deciding their hearing dates. A simple note on a new filing can let the clerk know your preferred dates. Be certain to give several options, as only so many items are allowed per calendar.

2. Default Hearing Dates: If you do not request a date, one will be assigned to you. Conservatorships are typically set not less than 60 days from the date of filing; trust matters will be set not less than 35 days from the filing date; and probate matters will be set not less than 20 days from the filing date. Keep this in mind if you use an attorney service or file by mail. You want to be certain to allow yourself enough time to give statutory notice of the hearing date.

3. Filing Maximums: When at the filing window, you can only file three filings at a time. Once you have reached that maximum, you must return to the end of the line and wait for another turn. Though this may seem to be an unnecessary hassle, the intention is good. By following this procedure, the clerks can minimize the wait for people in line behind you and assure one person is not allowed to consume large chunks of the clerk's time.

4. Wait Time: As you have probably noticed, we are down to one probate clerk at the window. Most of the time, this is not a problem. When the clerk and the person filing your documents are well prepared, things usually go quickly and smoothly. However, certain filings (such as a new conservatorship) simply take more time

– there is no way around it. In addition, certain times of day (Tuesday, Wednesday and Thursday mornings after the regular hearing calendar, for example) there are just more people trying to get something filed. The supervisors have been asked to keep an eye on the line. Whenever possible, they will call in another clerk to assist when the line gets longer than three people. However, as you are well aware, court resources are stretched pretty thin right now – be sure to bring your patience when you come to the window.

5. Let Us Know If You Have a Problem: Communication between attorneys and the court is key to help keep things running smoothly. If you have an issue, concern or helpful suggestion, please let us know. We

will be working with Ms. Morua-Widdows on an ongoing basis to try to make certain that any problems (no matter which side of the window they originate on) are addressed.

We hope you find this information helpful. Keep these items in mind the next time you send something over for filing with the probate clerk.

Amber Rodriguez is the chair of the executive committee for the Estate Planning and Probate Section of the VCBA. Her practice focuses on probate and trust litigation and administration, estate planning and conservatorships. She can be reached at arodriguez@estateattorneycalifornia.com or you can visit her website at estateattorneycalifornia.com.

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RESIDENTIAL SOLAR PANEL USE IN CALIFORNIA AND IMPACTS UPON NEIGHBORS

by Mark F. Miller



We have all seen or heard the ads beckoning homeowners in Southern California to turn their roofs into power generation plants through the installation of purchased or leased solar panels and, thereby, avoid all or a large portion of their monthly electric bills. Some ads promise that (if leased) the panels can even be installed at no cost to the homeowner. What is not discussed is that many legal issues – regulatory, contractual and impacts upon neighbors – may arise in connection with installing photovoltaic (PV) panels. Failure to heed these issues can result in potential litigation and liability, loss of investment, loss of insurance coverage or enforcement by governmental authorities or homeowner associations.

PV panels convert sunlight into electricity, which is then converted into AC current suitable for household use. Panels generally require little-to-no maintenance, usually have no moving parts, and do not produce carbon emissions. Panels can be purchased outright but are usually the subject of complicated leasing arrangements with the installers, in which a one-time lease payment is made in exchange for the prospect of future free or reduced electricity costs. The market value of the property may be affected, as some buyers may be attracted to a home with a solar panel, while others may consider the risks and drawbacks off-putting. Uncertainty exists as to ownership of the panels in the event of foreclosure of the property.

California's solar access laws appear in the Civil, Government, Health and Safety and Public Resources Codes. Civil Code

section 801.5 provides that neighbors may sign solar easements to ensure proper sunlight is available for PV panels. Government Code section 65850.5 permits subdivisions to include solar easements applicable to all subdivision plots. Public Resources Code section 25980 contains the Solar Shade Control Act (SSCA), under which trees and other natural shading planted after installation of a solar collector may not cast a shadow that covers more than ten percent of a neighboring property's solar collector absorption area between the hours of 10 a.m. and 2 p.m.

Nuisance (Civ. Code, § 3479) is the "unreasonable interference with the use and enjoyment of the property of another." One potential nuisance impact from PV panels is extreme glare. In certain alignments, mirror-surface solar panels may direct and concentrate reflected sunlight (and intense heat and glare) toward neighboring properties. In one well-publicized example, the mirrored convex surface of a London skyscraper concentrated sunlight into a "death ray" that melted the interior of a nearby parked Jaguar. A dearth of case law exists in California as to allowable levels of heat, light, glare and inconvenience that may be directed by PV panels to a neighbor's property. By analogy, provisions of the Los Angeles Municipal Code restricting exterior lighting may be useful. LAMC § 93.0117, provides that "no exterior light source may cause more than two footcandles (21.5 lx) of lighting intensity

or generate direct glare onto exterior glazed windows or glass doors; elevated habitable porch, deck, or balcony; or any ground surface intended for uses such as recreation, barbecue or lawn areas or any other property containing a residential unit or units." Until the heat and glare issue is clarified, it is prudent for PV owners in residential areas to minimize impacts on neighbors through use of solar panels constructed with non-reflective tinted glass.

Another potential adverse impact on neighboring properties from PV panels is loss of view. There is no general protection for light, air or view in California; however, exceptions exist for (a) recorded height restriction covenants; (b) municipal view ordinances; (c) CCRs; and (d) "spite walls" (or "living walls," per cases holding that a massed line of trees planted for spiteful purpose can constitute a "living spite wall"). Height limitations for PV panels are contained in LAMC §12.21.1B(3) which specifies the allowable height deviation for certain roof top features and states: "In all zones, Solar Structures may exceed the roof surface by three feet even if the roof surface is at or above the allowable building height limit."

Prohibitions and restrictions against use of solar panels may be contained in CCRs, architectural guidelines or rules and regulations of homeowner associations or CIDs. Civil Code section 714, subdivision (a), part of the Solar Rights Act, renders "void and unenforceable" any covenant, restriction, or condition "that effectively prohibits or restricts the installation or use of a solar energy system." Subdivision (b) makes this prohibition inapplicable to provisions that impose only "reasonable" restrictions on solar PV, i.e., those which do not "significantly" increase the cost of the system or decrease its efficiency or performance. Subdivision (d) defines a cost increase of more than \$2,000 or efficiency decrease of more than 20 percent as significant.

The Public Utilities Commission has made retrofit installation rebates available to energy customers of the state's three

investor-owned utilities – Pacific Gas and Electric Company, Southern California Edison and San Diego Gas and Electric – through the California Solar Initiative. On the federal level, a personal tax credit is available for certain qualified residential and commercial solar installations; the credit is 30 percent of the cost of a system “placed in service” from Jan. 1, 2006 through Dec. 31, 2016.

A description of energy cost advantages to consumers from PV and guidelines for safe PV installation are found on the state’s “Go Solar California” website. “Net energy metering,” is a billing arrangement that provides credit to customers with solar PV systems for the retail value of the electricity their system generates. The customer’s electric meter tracks the amount of electricity consumed by the customer and the amount of excess electricity generated by the system and sent back into the electric utility grid. Over a 12-month period, the customer pays only for the net amount of electricity used from the utility (plus certain distribution costs). Customers who generate a net surplus of energy at the end of a twelve-month period can receive payment for the excess energy under special utility tariffs.

In PV panel placement, careful consideration should be given to regulatory zone, permit and code requirements, as well as impacts upon neighbors. Failure to consider these matters may cause losses or potential liability that far exceeds any energy cost savings realized from the PV installation.



Mark Miller is a partner at Manfredi, Levine, Eccles, Miller & Lanson, APC in Thousand Oaks. He has considerable experience in real estate, business and insurance litigation,

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NAMES WORTH MILLIONS

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had no rights; the rights died with them. As a result, several families of deceased entertainers, including the family of the late Fred Astaire, lobbied the California Legislature to change the law. In 1984, California passed California Civil Code section 3344.1, commonly referred to as the “Astaire Celebrity Image Protection Act.” Under the law, a right of publicity was created for deceased celebrities for 70 years from the date of death. Subdivision (a)(1) subjects “any person who uses a deceased personality’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from” specified persons, to any damages sustained and to liability for “the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by the injured party or parties, as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages...”.

Further, section 3344.1, subdivision (b) provides that a deceased celebrity’s name, image and likeness are freely transferable by contract, will, trust or other testamentary instrument.

Before 2007, courts held that section 3344.1 only applied to celebrities who died after 1985. (*Milton H. Green Archives, Inc. v. CMG Worldwide, Inc.* (C.D. Cal. 2008) 568 F.Supp.2d 1152.)

In part in response to *Milton H. Green Archives*, the Legislature changed the law to apply to deceased celebrities who died either before 1985 or after 1985. This allowed the estates of deceased celebrities such as Marilyn Monroe, Spencer Tracy and others to protect and profit from their names and likenesses, and to prevent unauthorized use of the names and likenesses for commercial purposes. Allowing families of deceased celebrities to market their loved ones’ names and likenesses in some cases has resulted in earning millions of dollars, sometimes even more than the celebrity earned while alive.

Continued on page 21

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NAMES WORTH MILLIONS

Continued from page 19

For a family to enforce their rights under this law, to the owner of the the name and likeness of a deceased celebrity must file with the California Secretary of State's Office a form titled Registration of Claim of Successor-In-Interest, setting forth the ownership percentage owned in the name and likeness. If this form is not filed, a family cannot recover damages for the unauthorized use of the name and likeness of a deceased celebrity.

What does this mean for attorneys in California? For estate planning attorneys, if you represent celebrities or the families of deceased celebrities, you should familiarize yourself with this area of law. Estate planning documents that you prepare for a client should address the name, likeness and image of a celebrity as a transferable property right, just as any other property owned by an individual. In addition, any attorney representing a family of a deceased celebrity should also make sure that the Claim of Successor-In-Interest form is filed with the Secretary of State.

Not all states have similar laws to protect the name and likeness of a deceased celebrity. If the deceased celebrity did not reside in California at the time of death, California law may not protect the rights of the deceased celebrity.

With new technology and the ability to make deceased celebrities appear in commercials, films, and at concerts, the protection of deceased celebrities' rights in their names and likenesses will continue to be a growing area in the transactional sector, as well as in litigation.



Douglas Bordner is a partner at Myers, Widders, Gibson, Jones & Feingold, LLP in Ventura. He represents developers, architectural firms, engineering firms and real estate

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trying to raise money to participate and the hefty price tag is \$2,100. She could use our help. Her home address is 487 Colby Circle in Ventura, 93003. You can call her at 861.8244 and

she would be more than happy to pick up a check!...Ferguson Case Orr Paterson associate **Lane Lopez** and his wife Jessica welcomed their second child, 8 lb. 2 oz. Bailey Rose, on July 19.... And speaking of that firm, **Enrique Schaerer** became an associate Aug. 18.

A Michigan man reportedly thought he had found a way around a personal order of protection his ex-girlfriend obtained in a domestic court case. The ex-girlfriend told police in Bay City that Chad Monroe was posting naked photos of her on the internet and said he would keep harassing her until she committed suicide. Police contacted Monroe and told him to knock it off. However, he said they couldn't stop him because the protective order hadn't yet been served on him and hence it couldn't be enforced. "I talked with my lawyer and he said I could put naked pictures of her on the internet and I'm going to keep doing it." While Monroe and his unidentified counsel may well have been correct about the need to serve the protective order before he could be charged with violating it, police and prosecutors found another way to resolve the situation. Warrant was issued criminally charging Monroe with misdemeanor stalking and unlawful posting of a message on the internet, a felony. Bail was set at \$35,000...



R. Mitchell Mays may now be referred to as the Hon. Robert M. Mays. Mitch is the new Administrative Law Judge for the Workers' Compensation Appeals Board in

Marina Del Rey as of April 28. He may be contacted at 482.3892 and will remain in his home in Camarillo...The Shakespeare



Theatre Company in Washington D.C. has a coffee mug on sale and I have purchased a dozen...**K. Eric Adair** of Hinson Gravelle & Adair has been appointed to serve a three-year term on the Executive Committee of the State Bar's Environmental Law Section, beginning October 2014. Additionally, Eric will speak on hydraulic fracturing at the Environment Law Section's annual Yosemite conference in October, where he will also co-lead the popular mountain bike adventure to the top of the Fresno Dome...



Jill Singer recently became a Certified Specialist in Workers' Compensation by the State Bar of California. You might know of Jill from our Inn of Court Chapter, as our entertainment at our annual Installation and Awards Dinner, or more famously, as The Jill Martini Soiree, an acoustic Gypsy Jazz ensemble ...**Craig Holden** will



be the new president of the State Bar of California effective during the annual meeting in San Diego September 10-14. He is a partner in the Los Angeles office of Lewis Brisbois Bisgaard & Smith LLP. He Co-Chairs the firm's Commercial Litigation Practice...**Michele Castillo** is our newest Commissioner in the Superior Court, starting her new assignment August 4. She was sworn in by Presiding **Judge Brian**



Back in Courtroom #22. Previously, the Hon. Castillo was a Public Defender since 2005 and a member of the board of directors of both the County Bar Association and the Jerome H. Berenson American Inn of Court...The gentleman she is replacing, **Judge Rocky Baio**, is being enrobed formally Friday, October 3, beginning at 4 p.m. inside Courtroom #22

State Senator Hannah Beth Jackson was a guest at a luncheon organized by soon-to-be President of the Ventura County Bar Association, **Charmaine Buehner**. The issues were court funding and challenges and how lawyers may help her as she chairs the House Judiciary Committee. Others in attendance were **Laura Bartels, Lou Kreuzer, Kathi Smith, Katie Becker, Danielle De Smeth, Doug Bordner, Scott Campbell** and I...The **Ben E. Nordman** Selection Committee meets September 24 to discuss nominations. Please see an application in the month's *CITATIONS*. We know lots of lawyers doing great work. Place their name into the competition...**Joanna**



Orr, Director of Legal Affairs for Reiter Affiliated Companies, received her Certified Specialist in Taxation recently from the State Bar. She may be congratulated at

Joanna.orr@berry.net...

Steve Henderson has been the Executive Director and Chief Executive Officer of the Bar Association and its affiliated organizations since November 1990. He became part-owner of the Cleveland Cavaliers July 11, 2014. Henderson is more of a Manning guy than a Maziel dude and currently leading all five Fantasy Football leagues. He may be reached at steve@vcba.org, FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1), LinkedIn, or better yet, 650.7599.

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**Wifey with law clerk
Jeff and Daughter
Kaylene**



Wifey in 39 degree water



**Wifey and Kaylene after
the eight mile race**

Pictures from TEAM
DLL's recent Spartan
Races to benefit
building houses for
wounded veterans.



Kaylene jumps over fire!



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