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## Prevailing Message

by Wendy C. Lascher

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## PRESIDENT'S COLUMN

## VCBA'S FEE ARBITRATION PROGRAM: AN IMPORTANT OPPORTUNITY TO GIVE BACK

by Charmaine H. Buehner

Recently, I asked former Ventura County Bar Association president **Ron Harrington** about VCBA's Fee Arbitration Program in order to highlight the program for this month's column. Ron, who has been involved in the program since its inception in 1978, told me that ours is the only profession in which the client has the option - regardless of the professional's choice - to arbitrate or go to court in the event of a fee dispute. We went on to talk about the program, its importance and the benefits of volunteering in it. Our conversation caused me to reflect on my own education about the singular nature of the legal profession.

I did not come from a family of lawyers, nor did I go to law school with a primary desire to help people. Rather, I went to law school after suffering somewhat of a beginning-life-crisis realization: Though only in my early twenties, I had 40 or 50 years left in the workforce but already felt there was not much more to learn to do my marketing job well. Then one day an employment lawyer in a nice suit came to talk at a managers meeting I attended. He was funny. He was smart. He told great stories punctuated with recent developments in the law. Most importantly, he talked about his job as if, after more than twenty years, he was still learning, interested and engaged in what he was doing. A year or so later, I matriculated at American University's Washington College of Law in Washington D.C.

My initial goal in becoming a lawyer was simple: to have an intellectually satisfying career that would provide a comfortable life for my family. It did not take long, however, for the gravity of the profession to sink in. One of my law professors, Peter Cicchino, despite facing terminal cancer that would take his life shortly after my 1L year, taught with razor-sharp brilliance, a "mercilessly sweeping Socratic style," compassion and a conviction for social justice. (See Volp, *In Memory of Peter M. Cicchino* (2001) 50 Am.

U. L. Rev. 613 ("Volp").) He is one of the best teachers I have ever had.

Peter had moved to academia only after becoming somewhat famous in public interest circles and after discovering the severity of his illness. (Volp, *supra*.) After his death, Peter's colleague wrote that his move to academia was affirmation that such a shift "could not be equated with abandoning a commitment to social justice." (*Ibid.*) As his student, I observed this to be true. Despite the gravity of his illness, Peter spoke passionately of his conviction to social justice, and challenged his students to adopt and carry that conviction into their professional lives. (See *e.g.*, Cicchino, *Reason and the Rule of Law: Should Bare Assertions of 'Public Morality' Qualify as Legitimate Government Interests for the Purposes of Equal Protection Review?* (1998) 87 Geo. L.J. 139.) For me, Peter's life and career are catalysts for my resolve that being a lawyer - in addition to meeting my initial goals - must include a commitment to give back to both the profession and the community. I am involved in VCBA because membership provides an avenue to fulfill this commitment. This is true whether one's involvement takes the form of volunteering in the soon-to-be launched free legal clinic at the Ventura County Law Library ([www.vclegalaid.org](http://www.vclegalaid.org)) or participation in another of the Bar's excellent programs. And, after speaking with a number of volunteers in the Bar's Fee Arbitration Program, it is clear that the Fee Arbitration Program is an excellent way to give back.

VCBA's Fee Arbitration Program is overseen by a VCBA committee chaired for many years by **Dean Hazard**. The objective of the program is to get fee disputes out of the courts and elevate the legal profession in our community by providing a fair, low-cost process and opportunity for clients to be heard. The program provides for both binding and non-binding arbitration, as well as mediation, and it derives its authority from

Article XIII of the State Bar Act enacted in 1978. (Bus. & Prof. Code, §§ 6200-6206.) The rules governing VCBA's program are largely taken from the State Bar's Mandatory Fee Arbitration Committee's model rules. (See <http://www.vcba.org/for-the-public/attorney-client-relations-fee-arbitration-program/>). Your VCBA staff coordinates and administers over 30 confidential fee arbitrations per year.

Arbitrations may be initiated by either the client or attorney with the filing of a request for arbitration and filing fee with the VCBA, and after the attorney provides the client mandatory notice of the client's right to arbitrate. The VCBA selects arbitrators from an approved panel subject to the agreement of the parties. The panel comprises members who have participated in a three-hour (usually free!) CLE training program. The amount in controversy determines the size of the panel: if \$10,000 or less, one arbitrator is assigned; if over \$10,000 is at issue, a panel of two attorney arbitrators and one lay arbitrator is assigned. **Zoya Shenker**, a recent panel volunteer, observed that the inclusion of a layperson on the three-person arbitrator panel lends credibility to the process as it demonstrates the process is not governed by "insiders". The parties then prepare their case and forward their materials to the VCBA staff, who in turn provide it to the arbitrator or panel of arbitrators. Finally, the hearing is conducted, and a written opinion is issued.

Volunteer arbitrators, including Zoya, **Joel Mark**, **Rachel Coleman**, and **Richard Walton**, report that most arbitrations require approximately six to ten hours. Total time for each case includes previewing of case materials, coordinating the hearing time and date, conducting the hearing and, finally, preparing, reviewing and issuing the written decision. Once the decision is written and

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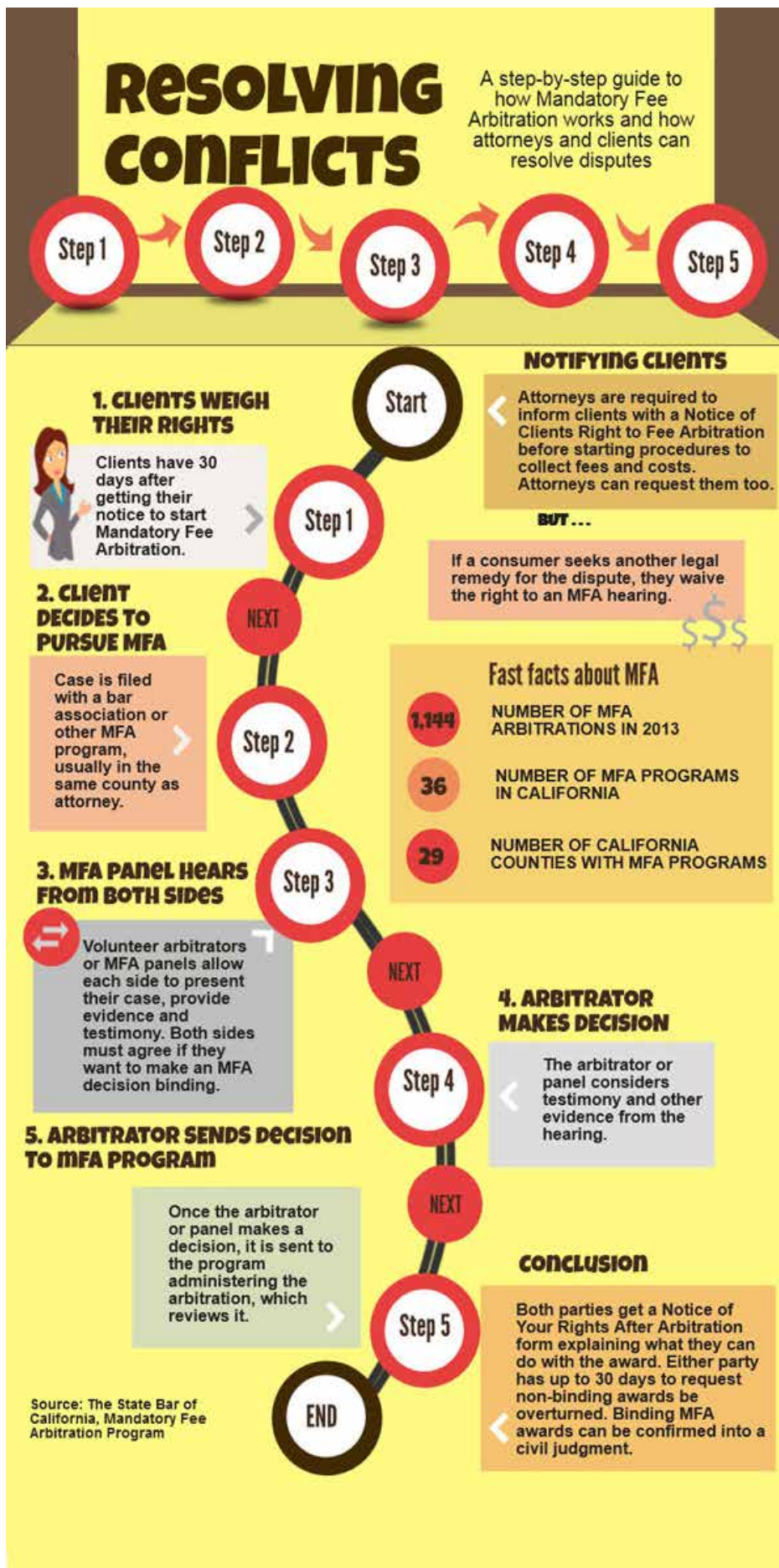
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approved, the lead arbitrator sends it to the VCBA, which in turn advises the parties. Panel members are not obligated to take any particular case.

As Rachel observed, the program affords both volunteers and parties the opportunity to better understand the rules and requirements relating to the attorney-client relationship and ensure future compliance. More often than not, the program serves to repair what volunteer-arbitrator **Michael McQueen** describes as a simple (and often, avoidable) breakdown of communication between lawyer and client. The program is straightforward, mandatory for lawyers, optional for clients, and as Zoya said, "immensely fair." Joel, who is on the State Bar's Committee for Mandatory Fee Arbitration, has arbitrated over 350 fee disputes and trained over 1,000 volunteer arbitrators. Joel reports that, statewide, 90 to 95 percent of arbitrated cases are resolved by mandatory fee programs without resort to formal litigation. Richard lauds the program for encouraging resolution of fee disputes while avoiding public disputes and possible malpractice insurance entanglements. All volunteers agree that the process serves to satisfy the inner judge that seems to exist in all lawyers.

While the program currently has a robust and impressive panel of volunteer arbitrators, there is always room for additional engaged, interested and willing lawyers. Within the next several months, **Nadia Avila** of our excellent VCBA staff tells me that an arbitrator training will be planned. If you are a regular volunteer, thank you for your service. If being a panel member sounds like it may be of interest to you, please consider signing up for the next training. Perhaps in doing so you will find out why, as Ron said, the program has been restorative of his faith in his fellow attorneys. Please contact the VCBA at [bar@vcba.org](mailto:bar@vcba.org) for details.

*Charmaine Buehner is an Assistant County Counsel with the County of Ventura, an aspiring black belt in Taekwondo together with her family and the co-chair of Ventura County Legal Aid's Free Legal Clinic Committee ([www.vclegalaid.org](http://www.vclegalaid.org)). Ms. Buehner may be reached at [charmaine.buehner@ventura.org](mailto:charmaine.buehner@ventura.org).*



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## Cover Story: Prevailing Message

by Wendy Lascher

Without any scripting, all six panels at the 2016 Bridging the Gap echoed a few basic themes: play fair; follow the rules; listen carefully; be honest with yourself and others; respect other people's perspectives; you cannot force another person to change, but only provide them information; and when someone else acts inappropriately, you need not, and should not, respond in kind.

Although CITATIONS has a policy against reporting merely that an event took place and that the people who attended enjoyed themselves, when so much good information is provided, it makes sense to share. And in addition to these tidbits, you can review all the Bridging the Gap materials at <http://www.vcba.org/2016/01/bridging-the-gap-2016-material/>.

**JUDGES Vincent O'Neill, Tari Cody, Patricia Murphy and Justice Steven Perren** emphasized that it is crucial to start off on the right foot, that litigation is not a shouting match, that accusations are never persuasive, and that there is no harm and much benefit in "keeping it short."

**ETHICS Michael Case** of Ferguson Case Orr Paterson invoked Napoleon's advice that lawyers should "Never ascribe to malice that which is adequately explained by incompetence." In other words, acts that might at first seem hostile or worse may simply be the result of inattention, poor choice of words, or just ineffective lawyering. Don't be afraid to agree with opposing counsel when it will not hurt your case because "civility is a sign of strength, not weakness." Civility is good business. Bullies may get away with some things, but judges and juries see civility and approve. Conversely, incivility breeds incivility.

**LEGAL WRITING** If you are writing to persuade, it is crucial to keep in mind who your audience is, and what you want to accomplish. Your task as a writer is to make it easier for opposing counsel, the judge, or even your own client to agree with you. That means organize your document, take advantage of the table of contents, write great opening paragraphs, follow the rules (both the court rules and the rules of

English), don't talk down to your reader by using pretentious words, and keep it short. And most of all, edit, edit, edit.

**SUBSTANCE ABUSE AND COMPETENCY** Riverside attorney and former State Bar President James Heiting told of his recovery from alcoholism. He has been sober for 30 years, but remains acutely aware that lawyers are twice as likely as members of the general public to abuse alcohol. Heiting explained that being an alcoholic is not measured by the number of drinks, but by whether the drinking has become more important to the drinker than the adverse consequences of drinking. The four-question CAGE test helps identify problem drinkers.

- Cut down: Do you promise yourself you are going to cut down?
- Annoyed: Are you annoyed when people tell you that you are drinking too much?
- Guilt: Do you ever feel guilty about how much you drank?
- "Eye-opener": Do you have a drink to wake up?

People who answer two or more questions "yes" are at least at risk for alcoholism. But you cannot persuade someone else to stop drinking; this is a decision they must make for themselves. Also on the subject of substance abuse, addiction specialist Greg Durst of The Other Bar spoke of that organization's willingness to work with troubled lawyers throughout Southern California.

**DEALING WITH DIFFICULT PEOPLE** Psychotherapist Esther Bleuel described how you can manage your interactions with difficult people if you can manage yourself. You may not appreciate what makes a person seem difficult to you. They are not necessarily bad people, but may be having a bad day, expressing themselves badly, or you may misinterpret their facial expressions or word choices.

Your interactions with others are like a bank account. Each interaction is either a withdrawal or a deposit in a "good will" account. If you think in advance what you want from each interaction, and if you listen

deeply and confirm your understanding of the other person, you will improve the outcome. People don't care what you know unless they know that you care about them and what they say. Allowing the other person to keep their dignity is crucial, so postpone conversations when you are too angry, or too hurt, to be thoughtful.

**ELIMINATION OF BIAS** Pepperdine Law School Professor Christine Goodman discussed nine anti-discrimination laws, and the difference between seeking integration and seeking diversity. She noted that generalizations about other people are shortcuts that may be useful in proving facts, but not when you use generalizations based on race or gender. Professor Goodman also pointed out that "implicit bias is an instant reaction so we do not always recognize it." She noted that small messages can make a big difference, that being civil is always the best place to start a conversation, and that the motivation to be fair always makes a difference.



**Wendy Cole Lascher** is a State-Bar certified specialist in appellate law, and a partner at Ferguson Case Orr Paterson LLP. She is the managing editor of CITATIONS. [wlascher@fcoplaw.com](mailto:wlascher@fcoplaw.com)

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# GRAVITY, RAIN, MUD AND LITIGATION

by Michael McQueen

This is a reprint of an article that first appeared in CITATIONS in February, 2015.

Ventura County as it appears today is the result of millennia of coastal uplift, stream carving, slumping, landslides and erosion. Into this delightful environment we build homes in flood plains, on the sides of hills, and under ancient landslides in blithe disregard of the consequences. Because it hardly rains, we don't recognize that the landscape and normal runoff patterns of surface water can be inadvertently and tragically altered.

These events will one day lead to a panicked call from a client knee-deep in water in her kitchen, screaming about her flooded property. This is what you do.

## GET OUT OF THE OFFICE

To evaluate your client's potential claim, you have to understand the topography, geology and surface water flows.

## Walk the Watershed

How did the water flood your client's property? Was the inundation a natural result of lots of water or was the water artificially diverted there? Buy contour maps and determine the extent of the watershed, i.e. the drainage area where the property is located. If there is a ridge behind your client's home, you are not normally concerned about the water that falls away from your client's property, but you are concerned about how water flows through the nooks and crannies, drains and ditches of the neighborhood.

## Manhole Covers

Look at the manhole covers and catch basins. They will often indicate what entity installed them or maintains them. Sometimes, it is difficult to determine whether a particular ditch or drain is maintained by the city, the county, a private water district or private property owner. Easements are a good source of information. Inspect the deed to the property.

## Diversions

As you walk through the watershed, try to imagine and follow the path of the surface water diversions. Make note of any recent improvements that can divert drainage and impact the path of the water.

## COMPLY WITH THE TORT CLAIMS ACT

If a governmental entity is responsible for flood control, drains, and ditches, etc., your client must comply with the Tort Claims Act. A claim must be filed with the appropriate governmental entity within 180 days of the injury. If you are uncertain, make claims against the county, the water district, quasi-governmental entities and the local municipalities. Rarely will a governmental entity acknowledge liability for the claim, but if you fail to go through this charade, your client's claim may be barred.

## RETAIN YOUR EXPERTS

A water damage case is heavily dependent upon expert testimony. You need to retain the following experts early in the process to help evaluate the claim.

### 1. Meteorologists

There are a limited number of rain gauges situated through the county that will tell you how much rain hit a particular area. They may or may not reflect what actually occurred on your client's property. Small intense storm cells can be contained within a large storm. These cells can aggravatingly miss gauges a mere quarter mile away and dump the proverbial biblical flood in your backyard.

Doppler radar allows meteorologists to identify storm cells and even calculate the amount of rain falling within a particular area. Meteorologists will also help determine the level of the storm involved (meteorologists and engineers like to talk about 50-year, 100-year and 1,000-year storms, reflecting the likelihood of the occurrence of a particularly intense storm).

Though you need to check the local regulations, as a general proposition, the county and local municipalities require that curbs be built in anticipation of 10-year storms, while housing foundations should be built to withstand 50-year storms. Most city engineers believe it makes no sense to design for 100- or 1,000-year storms.

### 2. Hydrologists

A meteorologist cannot tell you the amount of water that actually accumulates on the surface. For that you need a hydrologist. The county hydrologist will give you the run-off records of streambed flow gauges and thus an approximation of the accumulated rainfall in the area. A hydrologist may define the watershed area where your client lives and calculate the amount of water dumped into the watershed area and the amount of drainage your client's property is exposed to.

### 3. Hydraulic Engineers

A hydraulic engineer addresses how to handle the water involved. Were the catch basins large enough? Were the ditches large enough? How and where was the water diverted?

### 4. Real Estate Appraisers

Depending on the nature of the claim, you may have to retain a real estate appraiser to support the client's argument that the overall value of the house had diminished because of the improper design of the drainage system or the acts of the upstream property owners.

### 5. Toxic Contamination Experts

Water is often referred to as the universal solvent. As the mud and debris of agricultural and commercial properties accumulate in your client's house, they may bring toxic substances. There may be compensable injuries. An expert will be required to explain this exposure and the risk of illness from exposure.

## COMMON ENEMY DEFENSE

As a general proposition, municipalities and governmental agencies are not responsible for the damages suffered by the public for the flooding of natural waterways. They are not necessarily responsible for the lack of design capacity for the flood control improvements in natural waterways.

The public policy has been that a flood is a "common enemy" in that the municipalities, neighbors and others should not be held responsible for the flooding of natural waterways.

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GRAVITY, RAIN, MUD AND LITIGATION *Continued from page 9*

At a time when most in this country believe every harm must have a remedy, this can be difficult to explain to your client. Rain happens. Flooding occurs. So do mudslides. Sometimes it's no one's fault. But you have to go through the evaluation to that conclusion.

**SURFACE WATER DIVERSIONS**

One of the nuances in water damage litigation is that a "flood" does not give rise to liability. A "flood" raises the common enemy defense. One should avoid the use of that term, if possible. However, the flooding of your client's property from surface water diversions is certainly not the result of a common enemy. A landowner who alters the natural flow of surface waters, resulting in damage, is liable even if the consequences do not come for years.

**ACT OF GOD DEFENSES**

You can count on city engineers and defense counsel to embrace the Act of God defense. They will shrug and say that no reasonable, prudent engineer can plan for a 1,000-year storm; it is not their fault.

Be prepared with experts to walk the defendants through the watershed to show that the most significant causation was that the natural surface water drainage was altered. Once altered, the consequences are not subject to the Act of God defense. This is often a pivotal issue.

**INVERSE CONDEMNATION CLAIMS**

The developer usually prepares the drainage plan. The plan is submitted to the city engineer who usually refers it to a private engineer to check the hydrology, hydraulics and design capacity. The drainage system is then approved and built, and once built, there is a period of time after which the local municipality obtains control of the public streets and drainage system.

If the diversion results in the flooding of your client's property, you have a basis for an inverse condemnation claim against the municipality for approving and assuming the responsibility for the drainage works. The argument is that the city has indirectly used your client's property for public drainage purposes. Importantly, though an inverse condemnation claim may be duplicative of other theories, it allows for attorney fees.

**TRESPASS ALLEGATIONS**

Erosion often results in debris leaving one piece of property and entering another. A common law count for trespass will survive demurrer if one can allege that the unlawful dumping of debris, dirt, etc., on, and failure to properly maintain, the property upstream resulted in unintentional trespass. This may also allow for attorney fees. This most often arises in agricultural and rural areas.

Consider naming the original developer or contractor, the engineer, the city, the city's designer and any professionals that contributed to your client's grief. There is a ten-year statute of limitations for construction defects. The tricky part may be determining when the defect was discovered. Issues of whether the drainage problem was a latent defect will be critical to your ability to keep the original developer in the fray. The date the city accepted the improvements may also be critical. Depending on the circumstances and type of defect, see if you can obtain an affidavit of negligence from a design professional.

**INSURANCE**

Ask your client for all insurance policies. See what kind of homeowner's policy she has. See if you can file under FEMA.

Be careful. Most homeowners' policies will not cover flood damage, but they will cover rain and wind damage. This may raise issues of replacement costs for severely damaged property. It is now when your client realizes that her replacement policy does not cover the cost of replacement. Depending on the factual circumstances, you should explore whether a professional negligence claim against the agent who sold the policy is possible.

**PRIOR EVENTS AND FAILURE TO DISCLOSE**

Interview neighbors and local real estate agents about whether these types of drainage problems have occurred in the past, putting the property owner on notice that there was a drainage problem in the area. There may be a claim against the prior owner if the property was sold without disclosure.

**DAMAGES**

The damages in flooding cases are quite similar to any type of accident, fire or property claim. Retain a company that specializes in damage evaluation and inventory services. You will have to engage in your normal tug-of-war with defense counsel in what damages are justified and supportable.

Don't overlook physical injuries. People try to save their homes. They can suffer wrenched backs, necks and sore muscles. Also, monitor physical reactions to toxic exposure.

Remediation costs can vary from client to client. Those that have the resources do a proper job of drying out and remediation. Others who do not have the resources basically just slap together the repairs and sell the property, only to later discover mold contamination. Mold growth from water damage can be a significant problem if not properly addressed.

Diminution of value of the property depends largely on whether the municipality is going to alter or modify the drainage system to prohibit similar damage in the future. If it doesn't, then your client will have to disclose to a future buyer that the house is subject to periodic water intrusion. Perhaps she should consider disclosure even if alterations are made.



**Michael McQueen** handles business transactions and litigation, environmental and natural resource matters, and estate planning, among other areas of law, from his Camarillo offices. He is a member of CITATIONS' Editorial Board.

## NEWS FROM THE ESTATE PLANNING AND PROBATE SECTION

by Amber Rodriguez

Those who handle conservatorship matters in Ventura County are likely familiar with **Mary Webster** and **William ("Bill") Lenehan**, the super-duo from the Public Defender's Office who represent most (if not all) conservatees.

Webster and Lenehan have recently relocated to a new Public Defender Office location situated across from the Government Center. Their new mailing address is as follows:

Ventura County Public Defender's Office  
789 S. Victoria Avenue,  
Suite 307  
L#2375  
Ventura, CA 93003

Please update your mailing lists and records to reflect their new address in order to assure timely receipt of your notices and documents.

Got news to share with the Estate Planning and Probate section? Contact **Amber Rodriguez** using the information below.



**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](mailto:arodriguez@estateattorneycalifornia.com), or you can visit her website at [estateattorneycalifornia.com](http://estateattorneycalifornia.com).

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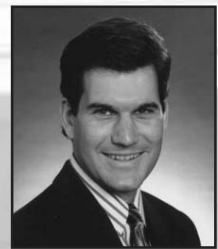
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## CALIFORNIA FAIR PAY ACT

by *Rabiah Rahman*

Despite continued progress toward gender equality in the workplace, a significant earning gap between women and men still exists. Women's median earnings are lower than men's in nearly all occupations. In 2014, women working full time in the United States were paid on average just 79 percent of what men were paid. (*The Simple Truth about the Gender Pay Gap 3* (Fall 2015) American Association of University Women at p. 3.) Women comprise almost half of the U.S. labor force and are increasingly becoming the sole source of support in their families.

On Jan. 1, California's Fair Pay Act went into effect. The Act amends Labor Code section 1197.5 relating to private employment, and builds upon the California Equal Pay Act of 1949. Under the new Fair Pay Act, an employer is prohibited from paying employees of the opposite sex lower wage rates for "substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions." Previously, the equal pay statute was more limited. It prohibited employers from paying employees of the

opposite sex in the *same establishments* for *equal* work. The new standard permits an employee to bring an unequal pay claim based on employee wage rates in any of their employer's facilities and in other job categories as long as the work is *substantially similar*. In other words, a hotel cleaning woman can now compare her salary to that of a janitor who cleans conference rooms. Additionally, the Fair Pay Act eliminates the requirement that the wage differential be within the same establishment. Workers at the same company can now investigate what their counterparts make in another office location. This means a female employee of a company working in Los Angeles can compare her salary to a male employee who works for the same company in the same or *similar* position in San Diego.

Under the Fair Pay Act, employers must affirmatively demonstrate that a wage differential is based upon one or more specified justifications, including a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a bona fide factor other than sex. A bona fide factor other than sex, such as education, training, or experience "shall

apply only if the employer demonstrates that the factor is not based on, or derived from, a sex-based differential in compensation, is job related with respect to the position in question, and is consistent with a business necessity." (Lab. Code, § 1197.5, subd. (a) (D).) A "business necessity" is defined as "an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve." (*Ibid.*) The employee must then show that an alternative business practice exists that would serve the same business purpose without producing the wage differential.

In 2010, nearly half of all workers nationally reported that they were either contractually forbidden or strongly discouraged from discussing their pay with their colleagues. (Hegewisch, et. al., *Pay Secrecy and Wage Discrimination 1* (June 2011) Institute for Women's Policy Research at <http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination>.) Under the Fair Pay Act, employers are prohibited from retaliating against an employee for investigating or disclosing wage gaps. Additionally, employers must not enact rules, policies or otherwise engage in conduct that prohibits employees from disclosing their own wages, discussing the wages of others, asking about other employees' wages or aiding and encouraging employees to exercise rights under the Act. They can also inquire about those in positions that closely resemble theirs in responsibility. However, nothing in the Act creates an obligation for employees to disclose their wages.



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**Rabiah Rahman** is an associate attorney at Strauss & Palay, APC. She is a member of the CITATIONS' Editorial Board and the Barristers Board.



## BROOKLYN

by Bill Paterson

Give yourself a cinematic gift – go see “Brooklyn,” a beautifully rendered tale of what happens when a young Irish immigrant is torn between her love for her American boyfriend and her longing for her Irish homeland.

It is the 1950s, and Ellis Lacey (Saoirse Ronan) is a timid shop girl living with her sister and widowed mother in a provincial town where, seemingly, nothing ever changes. It is a stultifying existence, but one day a ray of hope appears when she gets the chance to go to America. Though eager to leave her drab life, she is faced with the age-old immigrant’s dilemma: leaving one’s family for an unknown future in another land. How wrenching that decision can be is movingly depicted as Ellis’s ship makes ready to sail. The camera slowly pans over a myriad of upturned faces scanning the ship for what may be a last look at loved ones.

Once at sea, Ellis learns that little in her uneventful past has prepared her for the turbulent new world that awaits her. Even shipboard life is harsh and disorienting. Fortunately, her cabin mate has made the trip before and provides Ellis with a stream of sage advice. She heeds the advice and is soon ensconced in a Brooklyn boarding house with a host of other young women.

Immigrants have a steep learning curve, and Ellis nearly loses her job at a department store cosmetic counter. They are looking for a hard-charging salesperson, and her quiet and withdrawn demeanor doesn’t fit the bill. She soon learns the ropes, and before long, she has mastered the job and has enrolled in night school to learn bookkeeping. But bigger changes are in store for her when she is persuaded by her more worldly girlfriends to go to a local dance.

At the dance she meets Tony (Emory Cohen). He is Italian-American, and her girlfriends caution her that all such men ever talk about are their mothers and baseball. But Tony is cut from much different cloth. Like Ellis, he is a gentle and sensitive soul, and their sometimes awkward and tentative courtship is wonderfully old-fashioned in the best sense of the word.

But then fate intervenes, and a family emergency calls Ellis back to Ireland. With her new skills and confidence she finds that she is now the center of attention. The local transport company relishes her bookkeeping skills, and the son of one of the town’s local worthies is drawn to her. Ellis now faces a momentous decision. Where does her future lie? Returning to Tony or carving out a new life in Ireland? It is but one of the many pleasures of this film that you are not sure which path she will follow.

Central to the film is Saoirse Ronan’s luminous portrayal of Ellis. Watching her journey from self-effacing wallflower to confident womanhood is a joyous experience. And if you have the heart of a romantic, there is no couple on screen this year as appealing as Ellis and Tony. “Brooklyn” is a very special film.

### DVD Picks:

“The Secret of Roan Inish” – Director John Sayles’ tale of a young girl’s search for her infant brother’s spirit. Years ago, he was swept to sea. According to Irish legend, such children return to the shore again in the form of a “selkie” (seal). A mystical tale set in rural Ireland with photography by the great Haskell Wexler.

“A Better Life” – **An inspirational portrait of a man who only broke one law in his life:** crossing the border from Mexico to the United States. Damien Bachir perfectly captures the stoic dignity and decency of this hard-working man who fears that his rebellious teenage son will not take advantage of the educational opportunities his father never had in Mexico.

*Bill Paterson is a retired attorney from Ferguson Case Orr Paterson LLP. He lives in Camarillo.*





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## LEGAL AID CLINIC OFFERS FREE LEGAL SERVICES

by *Katie Clunen*

In February, Ventura County Legal Aid will conduct its first Legal Clinic to provide legal services to those in the community who would otherwise not have access to such services. The clinic is a welcome companion to the direct representation program offered by VC Legal Aid for twenty years.

The first clinic is scheduled for Feb. 2 from 4 to 7 p.m. at the County Law Library in Ventura. The clinic will be held the first and third Tuesdays of each month and will follow the Ventura Unified School District schedule.

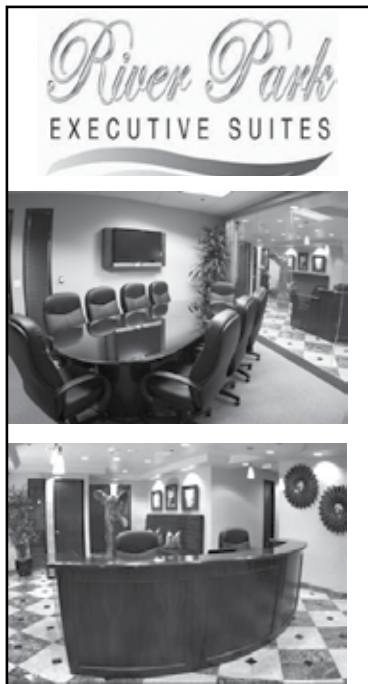
Clinic services are offered on a first come, first served basis. Attorneys will help litigants complete necessary forms, draft declarations and prepare documents for filing and service in areas such as general law, collections law, expungement, and family law. Malpractice coverage will be provided to volunteer attorneys.

The clinic will rely exclusively on the participation of qualified, volunteer attorneys. Please consider volunteering at least once. Donations for additional revenue are gladly accepted. More information may be found at [www.vclegalaid.org](http://www.vclegalaid.org).



**Katie Clunen** is a family law attorney at the Dion Law Group in Westlake Village. Clunen is also a Legal Aid committee member and volunteer. She may be contacted

at [katiec@dionlawgroup.com](mailto:katiec@dionlawgroup.com).



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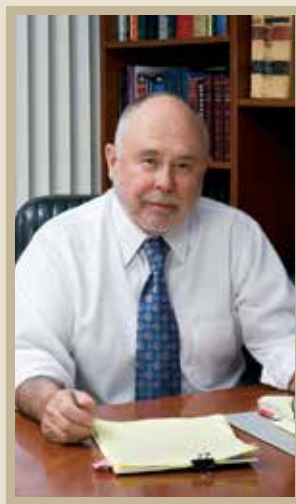


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## BARRISTERS' CORNER

*by Melanie Ely*

Ventura County Barristers is proud to announce its 2016 Board of Directors:

**Melanie Ely** is this year's President. Ely practices defense medical malpractice at Beach | Cowdrey | Owen, LLP, where she has been for five months. When she is not working, she enjoys hiking, Zumba, or any other form of exercise, and she loves to spend time with her husband, Matt, and her stepson, Ty. When time allows, she loves a good book.

**Joshua Hopstone** is this year's Vice-President. Hopstone has practiced civil litigation and appeals at Ferguson Case Orr Paterson LLP for the last six years. Outside of work, Hopstone enjoys camping and hiking.


**Lauren Sims** is this year's Treasurer. Sims practices business transactions, including intellectual property transactions, estate planning, and trust and estate administration at Ferguson Case Orr Paterson LLP. Sims has been at Ferguson Case Orr Paterson LLP for four years. Outside of the office, Sims is an avid amateur photographer with a particular interest in architectural design.

**Lauren Wood** is this year's Secretary. Wood is a partner at the Law Offices of Schurmer and Wood, formerly known as Schurmer & Drane. She started as an associate at the firm in 2011 and has been there since, joining as a partner just last year. Schurmer and Wood handles all types of plaintiff's personal injury and wrongful death matters all over the state. When she is not working, Wood enjoys playing golf, going to Giants and Warriors games, and spending time with her husband, Byron, and their French bulldog, Tank.

For information on upcoming events, please email Ely at [melanie@beachcowdrey.com](mailto:melanie@beachcowdrey.com).




*Melanie Ely is an associate at Beach | Cowdrey | Owen, LLP, and President of the Barristers Board of Directors.*



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## How China's Failing Economy Affects Service of Process

by Nelson Tucker, CEO, Process Service Network LLC

China's once bustling economy has lost its luster in recent months, signifying a potential economic collapse. Its stock market has lost almost 40 percent of its value in the past twelve months. This has led the Chinese government to take drastic measures to protect the assets of China's business entities.

The Chinese government, like that of emerging economies such as India and Mexico, has imposed unofficial "policies" to prevent assets from leaving the country as a result of litigation from foreign entities. China, in particular, has aggressively placed roadblocks to slow the ability of a foreign entity to obtain a monetary judgment against its business entities.

Chinese officials have taken measures to delay service of process and even reject formal service requests with the hope that the case will "just go away." Common delaying tactics include postponing service

of process on defendants for several months, unfoundedly rejecting a service request, alleging a file has been misplaced, or even claiming that the request was never received.

The *Hague Service Convention*, which both China and the United States signed, controls service methods between the two nations. Article Fifteen of the *Convention* permits a court in the state of origination to allow a judgment be entered against an entity in the state of destination if (1) the service request has not been acted on for over six months; and (2) after all other remedies have been exhausted. Chinese authorities have asserted that such procedures violate China's sovereignty and that such judgments entered against Chinese entities will not be enforceable.

The U.S. Department of State has attempted, without success, to convince China to cooperate with formal requests for service

which originate in the United States. The Hague Conference on Private International Law has objected to China's actions, to no significant avail.

Fortunately, there is hope for litigants suing a Chinese entity. Experienced and trusted process servers may have the know-how to prepare and submit formal "Hague requests." While return of service may take time, those process servers with contacts in China can facilitate speedier resolutions.



*Nelson Tucker is CEO of Process Service Network, LLC and specializes in hard-to-serve and international service of process. He can be contacted at [nelson@processnet1.com](mailto:nelson@processnet1.com) or through the firm's website at [processnet1.com](http://processnet1.com).*

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\* Certified Specialist In Legal Malpractice Law from The State Bar of California Board of Legal Specialization

# Exec's Dot...Dot...Dot...

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



The Law Office of Ben Schuck & Katherine Becker, LLP has announced that local attorney **Rennee R. Dehesa** has joined the firm. As of Jan. 1, the firm will be known as

Schuck, Becker & Dehesa, LLP. See [www.venturaestatelegal.com](http://www.venturaestatelegal.com)... Nearly 10 percent of college graduates surveyed in a poll believe Judith Sheindlin, aka "Judge Judy," serves on the Supreme Court. The poll, conducted by the American Council of Trustees and Alumni in Aug. 2015 but released in Jan. 2016, concluded from the 1,000 surveyed that college graduates "are alarmingly ignorant of American History and heritage." ... The 2016 Secretary-Treasurer of the



VCBA is **Mark Kirwin**. Kirwin has joined forces with **David Lehr** and **Peter Lemmon**, and the new firm is called Lehr, Lemmon, Kirwin & Francis. You can reach him at [mark@llkf.attorney](mailto:mark@llkf.attorney).

Many thanks to the Barristers who hosted the 2016 Bridging The Gap event on Jan. 16 at the County Government Center. Special acknowledgement to President **Melanie Ely**, **Katie Becker** and **Rennee Dehesa**. A shout out to **Justice Steven**

**Perren** and **Judges Vince O'Neil, Patricia Murphy** and **Tari Cody** who headlined the Judges' Panel. Six CLEs, including the



more difficult to acquire, terrific speakers, easy parking, hot coffee and a crummy sandwich to boot... Past President of the LA County Bar, Past President of the State Bar of California and eighteen-year federal judge, Margaret Morrow has traded in her robe to become the CEO and President of Public Counsel, an L.A. organization that provides free and low-cost legal services to tens of thousands of folks each year ... I am sitting on an impressive resume of a person who dropped out of practice to raise a family eight years ago. Has had their license since 1990. Will work for cheap to get their foot in the door and re-learn. Email me for more information: [steve@vcba.org](mailto:steve@vcba.org) ...

The 26th Annual Strategic Planning of Bar Leaders will be held Feb. 20 at the Courtyard by Marriott. The Board of Directors, sections, committees, affiliates and friends convene to discuss the coming year and the future of the bar.

This all started in 1990 with the following small group of leaders: **Wendy Lascher**, **Bart Bleuel**, **Dennis LaRochelle**, **Roger Myers**, **Jim McBride** and **Joe Henderson** ... A New York judge dismissed a drunk driving charge against a woman who took steps to prove her body works as a brewery by using excess intestinal yeast to turn ordinary food into alcohol, which resulted in Breathalyzer readouts that generally would indicate life threatening intoxication. The excuse may sound bogus, but the Buffalo News reports Hamburg Town Judge Walter Rooth found the woman's claim compelling. She spent \$7,000 working with a specialist to show that her body sometimes meets the

legal definition of drunkenness without actual alcohol intake ... BEWARE of the phone call. VCBA Board of Directors is convening Feb. 10 inside the FCOP offices to conduct its first-in-a-long-time annual Membership Drive. Members will be treated to pizza and beer while they make calls to the lawyers of the bar who have yet to join in 2016, but were members in 2015. Board members **Doug Goldwater** and **Josh Hopstone** will be leading the charge!...



Ah yes, the Annual Top Ten List of Frivolous Lawsuits is out. Frivolous, but funny! Number one? Animal Rights Group sues on behalf of monkey for ownership of "selfies." PETA, naturally. A complete list may be had at The Institute, a wing of the U.S. Chamber of Commerce. Mind you, it's trumped up a bit to mislead the public ... Noted a new firm in town doing family law: Ditcher, Quick & Hyde ... The State Bar of California Committee on Mandatory Fee Arbitration is recruiting new members for three-year terms. Interested? [Doug.Hull@calbar.ca.gov](mailto:Doug.Hull@calbar.ca.gov) ... Ventura County Legal Aid (VCLA) debuts its Free Legal Clinic on Feb. 2, beginning at 4 p.m. inside the Law Library. Attorneys willing to donate a couple hours each month may contact **Charmaine Buehner** at [Charmaine.buehner@ventura.org](mailto:Charmaine.buehner@ventura.org) ... Library space comes to us with the help of **Dolly Moehrle**, Law Librarian ...

*Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since Nov. 1990. Henderson will be attending the Super Bowl After Party at the Manning household with Peyton and Ashley Manning. Additionally, he will be actively pursuing an administrative position with the Trump/Palin ticket. He may be reached at [steve@vcba.org](mailto:steve@vcba.org), FB, Instagram at [steve\\_hendo](https://www.instagram.com/steve_hendo), LinkedIn, Twitter at [steve\\_hendo1](https://twitter.com/steve_hendo1) or, best yet, 650-7599.≠*



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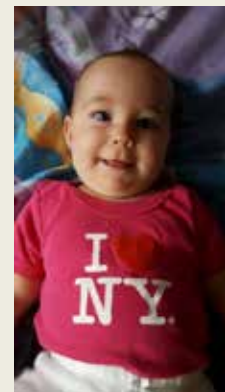
With the Bride and Groom



Steve Henderson  
At the Zoo in  
Thailand!



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