



# CITATIONS

A P R I L - T W O T H O U S A N D F O U R

## VCBA MISSION STATEMENT

To promote legal excellence, high ethical standards and professional conduct in the practice of law;

To improve access to legal services for all people in Ventura County; and

To work to improve the administration of justice.

## Judge William Liebmann — Years of Public Service



— Michael McQueen

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# **EULUA ACCOUNTING**

# A Week in the Life of the PGA Tour

*Philip Garrett Panitz*



I am writing this month's column fresh on the heels of an interesting week in February. With the two-month delay between authorship and publication, some of

this may be dated, but I hope you bear with me. It was an exciting week.

I had the honor of serving as a Marshall at the PGA Tour's Los Angeles Nissan Open. I thought I'd share my experiences with you.

**T**he PGA Tour makes a stop in Los Angeles once a year, and the best golfers in the world typically attend. It is played at the Riviera Country Club, one of the most famous golf courses in the world. I had once put my name on a list of people interested in serving as a Marshall, and — lo and behold — this year they gave me a call.

My official duties include standing "inside the ropes" with the players, keeping all of you away from them. I also make sure that there is absolute quiet when they are swinging. There would have been no hecklers of Davis Love III on my watch (although probably that would be more related to the fact that he didn't play in Los Angeles than to my crowd-control skills).

I was assigned for all four days of the tournament to the 9<sup>th</sup> hole. The 9<sup>th</sup> is a very long uphill par four, with a treacherous green guarded by bunkers. One of the advantages of working on the same hole each day is that you get to see every golfer on the course. Some of my observations and anecdotes that I can share with you include having to hold Tiger Woods and his entourage at a crossing gate in front of the 9<sup>th</sup> tee box because other golfers were teeing off on our hole. Tiger was attempting to cross to the 14<sup>th</sup>. Okay, you try telling Tiger what to do. Tiger was very polite, and waited his turn.

**I was assigned to the 9<sup>th</sup> Hole for all four days of the tournament, so I saw every golfer on the course. For instance, I had to hold Tiger Woods and his entourage at a crossing gate in front of the 9<sup>th</sup> tee box.**

**Okay . . . You try telling Tiger what to do.**

**I**t was not as easy when I had to stop Fred Couples from crossing in front of the tee box. I put a rope across and put my hand up in the "stop" position to look really official. Freddie and his group came to a halt, and he leaned over the rope to see why he was being stopped. He then turned to me and his caddie and said, "If you can name that golfer who is hitting his drive right now, I will give you \$100,000." His caddie shrugged his shoulders, and I attempted to stealthfully reach for my program lodged in my back pants pocket, but to no avail. "See," he said, "these \*\*\*\* punks from the Nationwide Tour are coming here trying to steal my money!" The Nationwide Tour is like golf's minor leagues. The kid that was driving the ball looked like he was about 20 years old. I tried to chuckle, hoping that he was making a joke. I'm not sure he was.

I was standing next to a cardboard garbage can when Kevin Sutherland hit his ball right into it. I cleared some space and told the crowd to back away as the golfer approached his errant shot. Somebody from the crowd asked me if I would have to go through the garbage to get his ball. "Not me, they don't pay me enough. It will be his caddie," I laughed. Much to my surprise, Sutherland arrived before his caddie and immediately started going through the garbage himself.

When Mike Wier (the eventual winner) came through my hole, he motioned with his hand for people to move out of his line of sight. I looked behind me and saw a row of photographers whom I ordered to immediately move. They did, following my orders, only to hear Wier call out "Hey, Marshall, I meant you!" Oops.

Another funny incident happened when the skies burst and the rain was coming down hard. For golfers who teed off on the 10<sup>th</sup> hole that day, the 9<sup>th</sup> was their last hole of the day. I'll never forget Jasper Parnevik of Sweden (he of the pink pants) sprinting ahead of his group, slapping his ball toward the hole, slapping it again, and then running to the Club House long before his group actually arrived at the green. The other golfers in his pairing were laughing, one of them squealing out, "He's melting, he's melting." Apparently they must not have rain in Sweden, as Jasper was definitely in panic mode as he was running up the fairway. He ended up in last place.

**O**n the final day of the tournament, I had a "Zelig moment." *Zelig* is a Woody Allen movie where the lead character appears in the background in almost every historic event, blending in like a chameleon. At the end of the tournament, when Mike Wier and Shig Marayuma were battling it out tied for the lead, I was asked to help out on the final hole to keep the throngs back.

I followed the golfers up to the green for the exciting chip shot that led to Wier winning the tournament. As the winner's check was being presented, I was the only marshall who stood on the green looking very official, pretending to keep any crazy fans away. Nobody told me to leave, so there I was, in the winner's circle. I saw myself on the television show "Inside the PGA Tour" just beaming away, truly inside the PGA Tour.

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Philip Garret Panitz specializes in corporation and tax law.

**VCBA Board**

# Judge William Liebmann — Years of Public Service

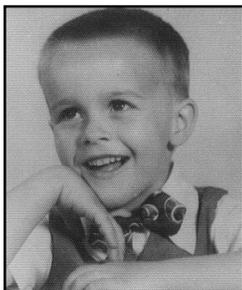
*Michael McQueen*

The woman would not answer the question. Judge Liebmann patiently asked the question again. The hearing was now encroaching into the lunch hour, but Judge Liebmann exhibited no frustration or impatience, and allowed the self-represented petitioner to have her say, despite the fact that she was not addressing the question asked by the court. Judge Liebmann then allowed the respondent an opportunity to express his feelings. The only individual exhibiting any frustration or exasperation was the defense counsel, who was clearly anxious about the judge's willingness to allow the participants their say in Court.

This vignette is a prime example of Judge Liebmann's guiding principle as a judicial officer. Allowing the participants to feel that they have had their say in and that they have been fairly heard is very important to the new Judge. And so, even though the hearing concluded past the twelve o'clock hour, both parties were satisfied that they had had their say and that their issues had been patiently considered. At no time did Judge Liebmann exhibit any irritation or frustration or give the impression that he was not attentive to their concerns.

## **The Sunny Road to California**

Born on December 29, 1950, in Green Bay, Wisconsin, William Q. Liebmann was raised in the pristine environment of the Wisconsin countryside, which he grew to love in the company of his four brothers and one sister. Like Judge Liebmann, one of the brothers also became an attorney, while two of the brothers pursued engineering careers and the remaining brother joined the army, from which he is about to retire. Not to be outdone, Judge Liebmann's sister became a businesswoman and owns her own business.



Playing football was a foregone conclusion if one grew up in Green Bay, but a broken jaw on the third day of practice at

Tremontre High School frustrated that endeavor, and so Judge Liebmann turned to the wrestling program, where he achieved third in state in his weight class. When it came time to choose a college, he went east and enrolled at Georgetown University for two years. Although he enjoyed Georgetown and found Washington, D.C., exciting and stimulating, he was not happy

with the congestion and pollution of the East Coast, and after two years returned to Green Bay to be with his family and back in the countryside.

After two years at the University of Wisconsin, Judge Liebmann earned a liberal arts degree, and then decided to pursue a legal career, a move primarily motivated by the intellectual challenges represented by the law. Judge Liebmann always had a scholarly bent and the law represented a fulfilling challenge in that regard.

He then was faced with the daunting task of deciding where to attend law school. Judge Liebmann remembers perusing the local paper in February of



1973 and realizing that the weather graph for January showed that the temperature in Green Bay had never exceeded 20 degrees for the entire month. That was the deciding factor in Judge Liebmann's choice to head to the West Coast, where he enrolled at the University of Southern California School of Law.

## **Ventura County Via Green Bay**

While studying at USC, Judge Liebmann took a summer externship with Associate Justice Robert Thompson and clerked for the appellate bench, which gave him an inside look at the appellate and judicial processes. After graduating in December 1975, he took a position as a law clerk in a San Pedro firm and later became an associate with a sole practitioner involved in general practice. He gained extensive experience in personal injury, workers' compensation, criminal and family law matters, focusing primarily on the litigation side of the practice.

After several years practicing in the San Pedro area, a schoolmate told Judge Liebmann that she was dating a lawyer who, like him, had emigrated from Green Bay, Wisconsin. The Wisconsin expatriate practiced law in Camarillo, California. Judge Liebmann had handled a couple of cases in the Ventura County area and liked the attorneys he had met, and particularly liked the bench. With a little encouragement, he decided to leave San Pedro and join the Camarillo firm of Taylor, Churchman & Lingl.

His associates and friends in the Los Angeles area tried to discourage his move, telling him that he would never make enough money in Ventura County. He remembers responding that, because the life-style in Ventura was such that he would probably live 20 years longer, he would end up making much more money just on the basis of longevity. And so, in 1979, he moved to Camarillo, where his

**Growing up in Green Bay,  
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practice consisted of general, civil and criminal litigation, family law and general real estate matters.

Judge Liebmann met his wife Cathy in his office building in Camarillo, where she was working as an accountant. They were married in 1981. There were two children from Cathy's prior marriage and a third child from their marriage who currently lives in Ventura County and attends Ventura College. Cathy worked with Judge Liebmann for over 20 years and is quite pleased that he was appointed to the bench. She finds that her husband is happy and is home for dinner, though he still brings a lot of work home. They also have more time to pursue their love of the outdoors, camping and fishing, long-held enthusiasms from Wisconsin.

**His associates and friends in the Los Angeles area tried to discourage Liebmann's move to Ventura County, telling him that he wouldn't make enough money there. He pointed out that because of the lifestyle in Ventura, he would probably live 20 years longer, and end up making much more money just on the basis of longevity.**

### **A Career of Public Service**

Judge Liebmann explains that while he was growing up in Wisconsin, it was understood that you contributed to the community through public service. It was just something one did. He believes that he brought this value system from Wisconsin and has always felt the obligation to make that contribution.

When he moved to Camarillo, he immediately joined the Lions Club to assist in their service organization. He then was appointed to the Camarillo Planning Commission and served for six years. He was then elected to the

Camarillo City Council. After 10 years, he stepped down in 2000 from the Camarillo City Council to spend more time with his family. The demands of a sole practice as well as being a City Councilman were intense, and he felt that he had neglected his family.

He applied to be a court commissioner in 1995. Seventy-five applicants were narrowed to six. He was one of those six finalists considered for the position, which ultimately went to Judge Covarrubias.

In 2002 a commissioner position became available, and Judge Liebmann again applied for the position. At about the same time, he was asked if he would consider being appointed as a judge. He is most appreciative that the Ventura County judicial officers hired him for the Commissioner position even though they knew that he was under consideration for appointment to the bench. 45 days after being sworn in as a commissioner, Judge Liebmann was advised that he had been selected and appointed to be a Superior Court judge. Contrary to what many people believe, there was no connection between the commissioner position and the judicial appointment. The timing just happened to correspond.

### **Judicial Demeanor Developed Over Years of Public Service**

Though serving as a judge only since March 2003, Judge Liebmann exhibits a calm, controlled and experienced judicial demeanor. He handles family law matters,

unlawful detainers and occasional civil cases, and believes that his years on the Planning Commission and City Council helped him develop the patience to address these matters. He believes that the most important goal is to make sure that the litigants feel that they have had their day in court and have been fairly listened to. He also states that this personal goal is most frustrating because the time demands of the calendar make this very difficult to do.

Though only on the bench a short while, he finds that he loves the job and the responsibility. He said it is one of the best of all possible jobs. All he is asked to do, every day, is to do what is right. He finds it challenging and tremendously rewarding. He admits that he is dependent on counsel to assist him in resolving the issues they bring before him. He expresses some frustration, and admits that he finds the quality of lawyers a bit of a mixed bag and that sometimes he gets briefs that do not address the relevant issues. Judge Liebmann wants guidance and help from counsel. Requiring him to wade through pages of irrelevant argument or diatribes and boilerplate authorities is not helpful. He wants counsel to identify the issue that he needs to address, and to provide him with succinct guidance and case law that specifically addresses those issues.

As a longtime civil practitioner, he has vowed to remember the day-to-day pressures and challenges faced by private practitioners and not to forget these burdens and challenges just because he is now on the bench. He has expressed, on a number of occasions, an open-door policy, and wants to make sure that counsel feel free to visit with him to discuss issues they may have with the court. He chuckles and thinks that the lawyers don't believe him, but he emphasizes that it is important that the bench and bar have good communications so that he can achieve his goal of doing the right thing. Every day.

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**Michael McQueen** is a business litigator. He has a solo practice in Camarillo.

# The Wonders & Worries of Wireless Networking

Trevor Maingot



Here's the scenario: The computer network is expanding at work (and at home); laptops are becoming increasingly useful and the expense and trouble of connecting Ethernet cable to every machine is just too much of a problem.

The solution: Go wireless. You and millions like you have come to the same conclusion. Computer wireless network installations are booming, at over 19% per year. Not too long ago you would have had to have a specialist install your wireless networks, but in the last few years equipment manufacturers have made huge improvements in the ease of setup so that wireless networks function almost as soon as they are plugged in. A few easy settings are entered on the wireless access point and the computer's network card and the network connect.

**T**he newfound freedom from wires makes life so much easier. Work — and homework — is no longer confined to a computer desk or particular office. Computers can now connect to the home office while you are waiting at the airport, in network cafes, and in wireless "hot spots" that are springing up everywhere. But in this simplicity and ease of use (you knew there would be a "but") there lurks a problem that could possibly compromise your personal and company information, and even turn your computer into a Zombie.

Before we get going into the problems and solutions for safely working with wireless (wi-fi) networks we have to understand some jargon. I have seen what attorneys read on a daily basis and I can guarantee that you will find this easy reading.

As a computer smart-aleck once said, "It is a good thing we like standards, there are so many of them," and wi-fi is no different. There are three basic wi-fi standards: 802.11a, 802.11b, and 802.11g. A new one scheduled is to come on line about the middle of this year, 802.11i. Each of these standards has different speed, range, and

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compatibility characteristics.

With the proper equipment virtually any kind of wired network can be tapped to read traffic moving over the wire. Wireless networks are a magnitude worse; anybody sitting around with a wireless receiver can pickup signals being transmitted. The designers of the wireless standards knew this and came up with what they called Wired Equivalent Privacy (WEP). By means of encryption, WEP theoretically makes wireless transmissions as safe as using wires. Unfortunately, encryption experts soon found that WEP was crack-able. Naturally, it did not take long for the bad guys to come up with ways to break into wireless systems.

The wireless standard-makers realized that they would have to cure the WEP failings and the new 802.11i would be the answer. But 802.11i was not going to be ready until mid-2004. So they came up with a stopgap measure implemented in 802.11g and later equipment models of 802.11a and b. This is WEP. (Wi-Fi Protected Access). WPA is far more secure than WEP. So it now seems that wi-fi appears to be safe to use for the transmission of sensitive material and will become even safer with the advent of 802.11i. Well, yes and no.

**"War Drivers" are a new scourge: people who drive around with a laptop hooked to a powerful, directional antenna and a GPS looking for open access points they can exploit.**

**Y**es, the encryption is better and is much harder to crack. The problem is that it may not be turned on. In the effort to make setup as easy as possible, the wi-fi manufacturers ship their units with all protection turned off! It is up to the user to turn on the protection, change the administrative password for access to the Wireless Access Point (all wireless hackers know the default passwords to access points), change the SSID (the station identifier) and pick strong pass phrases for the shared secret encryption key. The shared secret phrase allows remote computers to communicate with each other and their access points. Far too many people leave the default settings enabled and are open to having their systems hacked. It is vital that these defaults be changed.

**Going wireless means that your data can be read as it flies through the air on the radio waves. If you download your email or send an attachment to the office, it can be read with a "sniffer" on another machine.**

**S**o, are you still vulnerable if you take the precautions outlined above? At some level yes; with the right money and resources just about any computer system can be compromised, but you will no longer be "low hanging fruit." The hackers and "war drivers" (people who drive around with a laptop hooked to a powerful, directional antenna and a GPS looking for open access points they can exploit) will probably look for easier targets.

The newest standard also makes a "man in the middle" attack a bit harder. This is where somebody hooks up an access point that sends out a stronger signal than your regular network access point, causing nearby computers to attach to it. Unpro-

**Work — and homework — is no longer confined to a computer desk or particular office. Computers can now connect to the home office while you are waiting at the airport, in network cafes, and in wireless “hot spots” that are springing up everywhere.**

tected data and information can be retrieved from the spoofed computers.

With WEP or WPA, you may be safe at the office, but what about one of those public access points? Public access points do not have any encryption installed, so anybody can connect. If you can connect to an access point, then somebody can connect to you! If you have unprotected shared folders open on your computer, bad guys will be able to get in and poke around. You can close this opening with a software firewall on the laptop such as ZoneAlarm, or my personal favorite, Sygate.

**S**till, closing this hole does not get you totally out of the woods because your data can still be read as it flies through the air on the radio waves. If you download your email or send an attachment to the office, it can be read with a “sniffer” on another machine. To combat this you need a VPN (Virtual Private Network) installed on your computer and either on your firewall, router or a corresponding computer at work (or home). A VPN allows encrypted, authenticated traffic to travel on a public network without fear of its being read. But of course it takes some setting up to get a VPN to work and it is another application that must be started.

Are you still with me? Just a couple more things to be aware of. If you want the best protection and you have not yet switched over to wi-fi, hold out a bit longer

and wait for the 802.11i standard to come out later this year. If your wi-fi equipment came with WPA installed, make sure it is turned on. If you have some newer “a” or “b” equipment that does not have WPA, you can download and install new firmware that will upgrade your protection from WEP to WPA. If you have older equipment, at least turn on WEP. It may be vulnerable, but it is better than nothing. (There is apparently no upgrade path from 802.11a/b/g to 802.11i so you will have to buy new equipment to get better protection; this may be subject to change but I would not count on it.) Finally, make sure all your wi-fi network cards and your access points are compatible. They are supposed to be, but . . .

So what is the moral of the story? Educate yourself before you install new equipment. Know its capabilities and weaknesses, and account for them.

Bear in mind, we are not talking here about Blackberries and Treos. These use cellular technology and generally do not hook up to the wireless network, and sync via USB ports at the office. However, some PDAs and pocket PCs can use wireless cards to hook up remotely. In that case, all the same concerns apply. Be aware that there is a problem that seems to be confined to certain phones that allows “Bluesnarfing.” These phones come with the short range (8 – 10 feet) Bluetooth wireless turned on. It is possible for somebody walking close to you with their Bluetooth application in receive mode to download your phone lists and other data from your phone. So the moral of the above story applies to these as well.

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**Trevor Maingot** operates Digital Detectives, a computer forensics and network security company. To receive his Network Alert e-mail which Trevor sends on an irregular basis when there is something truly bad floating about on the internet, contact him at [Maingot@sbcglobal.net](mailto:Maingot@sbcglobal.net)

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## Note from Dubai

*Anna Ashford*

Yay! Jackson, my husband, recently came home after 29 days in the very bleak country of Kazakhstan. I spoke with him while he was at the Kazakhstan airport ready to come home. (Me) "What kind of things can you bring from their airport shops?" (Jackson) "Well, honey, they don't exactly have a shop here. There is a guy with three card tables and some Russian magazines. There are holes in the floor here; the airport looks like it was in a war; and we will have to wait outside on the tarmac in the cold to have our boarding passes checked."

Jackson could see that the people on the plane with him from Kazakhstan were beside themselves with wonder after they saw the luxury of the Dubai airport. Admittedly, Dubai is one of the nicest airports in the world, and those people were coming from one of the poorest, bleakest, ugliest places.

I looked up Kazakhstan in the "Lonely Planet" travel guide. According to the guide, Kazakhstan was famous for using a headless goat carcass for their hockey team's puck. The country was formerly used as a nuclear test site, and the only other thing they have to offer is horse meat sausage.

This is not a joke.

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**Anna Ashford** is a VCBA member whose husband took a job in Dubai. She reports periodically on how her life-style has changed.

**Creative Dispute Resolution**

JAMS

***Clarification:***

The Juvenile Justice Complex article in the March 2004 issue of CITATIONS indicated that dependency wards awaiting foster homes or other placement are sometimes housed in juvenile hall. They are not. Welfare & Institutions section 602 kids may be held in juvenile hall, either pre- or post- disposition, but section 300 (dependency) and section 601 (status offense) kids are not held in secure custody. — *Editor*

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## Ear to the Wall

### Ventura County Law Library

Have you checked out the Ventura County Law Library lately?

We have three new practice guides from Matthew Bender that may interest you: California Civil Discovery, California Landlord-Tenant, and California Pre-Trial Procedure. We've also upgraded the electronic information services.

We have Internet access, Shepard's Online, and a new Westlaw package that includes the National Litigator Premier Library and the California Analytical Library for cases, codes, jury verdicts, newsletters and public records.

We also have Matthew Bender CD libraries available at no charge. To help you to use these products the Law Library will be holding the following training sessions, each worth one hour of MCLE credit:

- Westlaw presented by Gregg Kravitz, Tuesday, April 20, 2004 Noon to 1:00 p.m.
- Lexis and Matthew Bender CD's presented by Wes Keebler Monday, April 19, 2004 12 noon to 1:00 p.m. and Monday, May 17, 2004 12 noon to 1:00 p.m.

Please call 642-8982 for reservations and further information.

### Sespe Institute Request

We would appreciate your help in locating pro bono assistance for the Sespe Institute.

Although there is considerable interest in Ventura County in community-based restoration of such areas as the Ormond Beach wetlands and the Ventura and Santa Clara River watersheds, Ventura has very few environmental organizations with 501(c)(3) status that can undertake large restoration projects and obtain the grants to fund them.

Enabling the Sespe Institute to get up and running would be a significant contribution to the community and would be a worthwhile and fulfilling project for any lawyer willing to contribute some time to making it happen. Contact Bob Thiel at [Robert.thiel@cox.net](mailto:Robert.thiel@cox.net).

Barry Cane

**INSURANC**

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## Fixing the Reputation of the ‘Bad Patient’ — Karen Darnall



Being a difficult patient at the doctor's office is a lot like having a bad credit rating at the loan office. Reputation is important, particularly for persons who need a lot of medical attention.

A diagnosis of *noncompliant behavior* can stand in the way of empathy and careful listening by health practitioners. I have seen clients whose physicians excused themselves by writing a registered letter (return receipt requested) explaining why the doctor decided to end the relationship.

Some patients are difficult because they have a condition that challenges the doctor's technical competence and diagnostic skills. Some physicians dislike hyper-intellectual patients who ask too many questions. Some patients are truly obnoxious, manipulative and downright mean. If you're the caregiver of a patient with ugly medical records (or if you're the patient), then it might be time for a "good patient" makeover.

### Starting Over

It's usually better to ditch a troubled relationship than to analyze or try to repair it. Delay can stand in the way of treatment and, possibly, a cure. Before you look for a replacement doctor, it is always a good idea to copy the patient's records to actually see what's in there. A chronically ill patient particularly needs accurate records for compassionate care.

### Addendum for California Patients Limited to 250 Words

California Health and Safety Code §123111 allows any adult patient to inspect their chart and "to provide to the health care provider a written addendum with respect to any item or statement in his or her records that the patient believes to be incomplete or incorrect." The addendum is limited to 250 words *per alleged incomplete or incorrect item* and it must clearly indicate in writing that the patient wants the addendum to be part of the medical chart. The California provider is required to attach the addendum to the patient's medical record *every time* the patient's records are released to a third party.

### Fixing Patient Records Pursuant to Federal Law

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule gives patients the right to have a medical office ("Covered Entity" or "CE" for short) amend the patient's "Personal Health Information" (PHI) as long as the CE maintains the records. (See 45 CFR § 164.526, et seq.) The Rule does not recommend specific language for requesting amendments to PHI — nor does it indicate that such requests should be in writing. You should ask if the CE already has a standard form for this purpose.

Once the request is received by the CE, a determination to accept or reject the request must be made within 60 days of receipt. This deadline can be extended once for up to 30 additional days if the patient is notified in writing of the reason for the delay. A request may be denied if the CE determines that the PHI falls into one of four categories: 1) the PHI was created by another entity; 2) the PHI is not part of the records used for treatment or payment purposes; 3) the PHI would not be available for inspection under the HIPAA regulations; or 4) the existing record is *sufficiently accurate and complete*.

If the requested amendment is denied, the CE must provide a written notice explaining the reasons for its denial. The CE must also notify the patient of their right to submit a written statement disagreeing with the denial. The patient's request, and the corresponding denial letter, must always be included in the PHI set. If the patient submits a written disagreement, the CE may attach a rebuttal statement. Of course, a copy of the rebuttal must be sent to the patient.

### Accounting for Disclosures of Information

Under HIPAA, the CE must retain records of requests to amend PHI for a period of *six years*.

Patients have the additional right to receive an accounting of *all disclosures* of PHI for as long as the provider maintains the information.

HIPAA Rules may influence small businesses to dump their PHI records at the earliest opportunity. CEs with undersized medical-records staff will be ill-equipped to deal with the extra paperwork demanded by HIPAA. So far, California has enacted only a few record-retention laws, including those for minor patients (where records must be retained until the child is 19 years

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old) and Medi-Cal patients (where records must be stored a minimum of three years).

### **S**imultaneous Remedies

California's procedure is certainly less complicated than HIPAA, provided the dispute can be stated in 250 words or less. With persistence, most patients will be happier (or at least wiser) if they pursue amendments under HIPAA. According to rules of HIPAA preemption (explained the February 2004 issue of *CITATIONS*), the patient should be able to pursue California and HIPAA remedies simultaneously, in order to gain maximum benefits.

Official information on the HIPAA Privacy Rule is available at [www.hhs.gov/ocr/hipaa/](http://www.hhs.gov/ocr/hipaa/). It also allows you to send questions via e-mail. In addition, you can call (800) 368-1019 to contact the HHS Office for Civil Rights, which enforces HIPAA privacy.

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**Karen Darnall** specializes in the fields of consumer protection, and medical and dental malpractice.

# Business Appraisal

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## WHISTLESTOP: Liability of Decedent Covered by Insurance... Plaintiff Can Open an Estate

Jeanne A. Flaherty



There are times, especially in personal injury actions, when a defendant dies before the complaint has been served on the defendant. *Probate Code* §550 et seq. provides a solution when the decedent has insurance for the claim.

**A**n action to establish the decedent's liability for which the decedent was protected by insurance may be commenced or continued against the decedent's estate without the need to join as a party a decedent's personal representative or successor-in-interest. *Probate Code* §550.

*Probate Code* §551 extends the statute of limitations for one year after the expiration of the limitations period otherwise applicable, if the limitation period otherwise applicable to the action had not expired at the time of the decedent's death.

Plaintiff can, in effect, open an estate under *Probate Code* §552:

(a) An action under this chapter shall name as the defendant, "Estate of (name of decedent), Deceased." Summons shall be served on a person designated in writing by the insurer or, if none, on the insurer. Further, proceedings shall be in the name of the estate, but otherwise shall be conducted in the same manner as if the action were against the personal representative...

**Should one be in a situation** to invoke *Probate Codes* §550 through 552, one should carefully read the entire chapter (*Probate Code* §550 through 555) for additional details. Note that by electing to proceed under this chapter that plaintiff's recovery may be limited to the amount of the insurance coverage. Attorneys need to research the ramifications carefully.

### Quote of the Month:

The answer appears to us before the question . . . Practical application is found by not looking for it, and one can say that the whole progress of civilization rests on that principle.

— Jacques Hadamard, *on mathematics and its real-world application*.

— : —

**Jeanne Flaherty** is the Senior Case Management Attorney and presides over the Civil Case Management Calendar. She contributes articles about the concerns of the Civil Case Management Team of Ventura County which includes Judge David W. Long, Judge Vincent J. O'Neill, Jr., Judge Henry Walsh, Judge Thomas J. Hutchins, Judge Kent M. Kellegrew, Judge Steven A. Hintz, Judge Frederick H. Bysshe and herself.

## Remembering T. Dale Pease — *Kevin G. Staker*

We lost T. Dale Pease, a good lawyer and an even greater man, on December 28, 2003. T. Dale was a good family man, a good friend, a servant of the community, and a dedicated and earnest lawyer.

T. Dale loved his family. He married his wonderful wife Jacqui 50 years ago this August. (Jacqui must have been awfully young.) He loved it when Jacqui came to assist him in his law practice. He loved his daughter Susan. He treated her daughter Catherine as if she were also his daughter. He was especially proud of Catherine and strongly supported her in her golf tournaments and other activities.

T. Dale was a good friend. "Hale fellow, well met" had great meaning with T. Dale. He loved everyone without condition. Everyone was his brother or sister. He had a great wit and a keen sense of humor.

He especially loved golfing with his family and friends. Anyone who played golf with T. Dale became part of his large circle of friends. He may not have hit the ball far but you knew he enjoyed doing it and he always entertained you.

T. Dale served the community. He gave much service through his tremendous



activity through his Masonic lodge. He served on the Pleasant Valley Mutual Water Company Board. He actively participated in the La Reina High School Booster Club.

T. Dale was a good lawyer. He loved his clients and always tried to assist them the best he could. He especially enjoyed the positive nature of his estate planning practice. He felt blessed to get paid to assist others in getting their affairs in order.

He was loved and respected by hundreds, perhaps even several thousand,

of clients and other attorneys. His mind moved quickly to the heart of the matter, and he then gave clear and wise counsel. He was friendly with other attorneys. He treated them as he would like to be treated.

Above all, T. Dale was a great man. He had a ready wit and a keen mind. He was devoid of pretense and full of love for his fellow man.

He quietly suffered physically in his later years. He never complained. He actually viewed his growing physical disabilities with great courage, patience and humor. The fire of such adversity only more greatly refined a great soul with a pure heart.

T. Dale departed from us a man at peace. He securely knew he had done his best. All who knew him loved him. May we all follow his example of loving and serving others. T. Dale, we will see you later.

— : —



**Kevin G. Staker** is a country lawyer with Staker and Esquibias in Camarillo. He practices taxation law and is a member of the VCBA Board of Directors.

CITATIONS  
masthead

# BRATTON MCMORROW

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# Lascher at Large

Wendy Lascher



Last summer came a spate of mailings from California Rural Legal Assistance, including an expensive-looking booklet describing accomplishments of several of the project's

regional offices, and — only a week or so later — a glossy three-fold brochure accompanied by a 2-page letter inviting me to sponsor (at \$1000 to \$10,000 a pop) an Orange County dinner to support the organization.

Forgive me, but isn't there some incongruity here? If I were in a position to make a four- or five-figure contribution to this usually-conscientious nonprofit, I expect the money go to assist clients, not to enhance printers' bank accounts. Moreover, there are plenty of law firms and mediators already making major investments in advertising these days, so CRLA should not feel any need to support the struggling print industry.

## Don't Do It In a Footnote

It is fashionable lately, especially to devotees of Brian Garner's writing seminars, to put case citations in footnotes rather than in text. Personally, trying to read legal arguments set up this way gives me a headache. I want to see who said something cited as authoritative without having to move my eyes up and down the printed page, or search around in the computer for the footnote.

But this isn't about my preferences. Be forewarned: If you file a brief set up this way in the Fourth Appellate District, Division Two (Riverside and San Bernardino), it will be rejected.

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Wendy Lascher is an appellate lawyer with Lascher & Lascher in Ventura. She is also the Managing Editor of CITATION. She can be reached by e-mail at [wendy@lascher.com](mailto:wendy@lascher.com).



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Personal Injury, Medical Malpractice, & Product Liability Cases – Referral Fees Paid. Thiele & McGovern – Phone 963-7226.

### Employment Opportunities

Very dynamic Oxnard law firm seeks legal secretary with experience working with plaintiffs in the areas of catastrophic injuries, medical malpractice and insurance denials. Benefits and profit sharing. Salary to commensurate with experience.

Please fax (988-5828) or email ([claudiajot@cs.com](mailto:claudiajot@cs.com)) your résumé to Jo Tate.

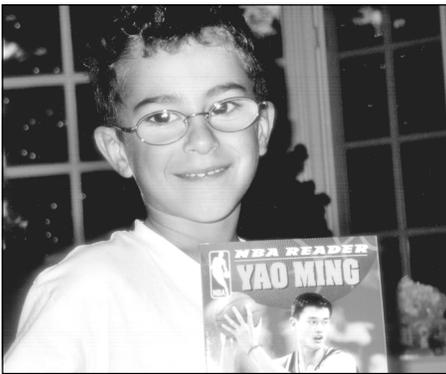
Legal Secretary/Legal Assistant – Family law sole practitioner seeks full-time legal secretary/assistant for downtown Ventura office. Hours are Mon-Thurs. 8-5 p.m. and Friday 8-3 p.m. Salary DOE. Please fax résumé to: 648-2016.

Oxnard Civil Litigation Firm has opening for full-time legal assistant for reception, phones, files and computer work. Some experience preferred – will train. \$\$ DOE. Position requires attention to detail and willingness to learn. Send résumé with cover letter by fax to DK at 988-4948.

### Office Space

Ventura County Premier Space Available – Oxnard – Corner Office Ocean View available in most elegant, high-end professional setting in Morgan Stanley Tower – Suite 1180. Full amenities available in multi-conference room, full attorney suite. Call 988-4848 with interest.

Mammoth Lakes Condo – Awesome FUN. Remodeled Horizons 4 Condo – 2 bed 2 bath. Ask for unit 163, call 760-934-6779.



Final Round scorers for Mock Trial included **Leslie McAdam, Mindy McQueen, Patricia Murphy, Frank Sieh, Michael Walker, John Cardoza, Jean Farley, Michael Frawley, Richard Goldman, Patricia Mann, Phil Panitz,** and **Carol Woo**. 51 other lawyers volunteered hundreds of hours coaching the 21 high schools while 68 additional attorneys donated their time as judges and scorers. The big dogs — **Judge Brian Back** and retired **Judge Melinda Johnson** — pulled it all together for a remarkable three evenings and an insight into the future of the legal profession. Watch for CITATIONS coverage of the competition in the May edition...Don't forget the 21<sup>st</sup> Annual Law Day 5K Race on May 22. **Joe Strohman** and crew have added a 1 Mile Family Fun Run... **Count 'em!** Eight MCLE courses this month. Check out your April flyers stuffed within...

Finding that Brian Puricelli's courtroom work was "artful" in securing a \$430,000 verdict in a civil rights suit, but that his written work was laden with typographical errors, a Pennsylvania federal magistrate judge has ruled that his court-awarded fees should be paid at two rates — \$300 per hour for the courtroom work, but \$150 per hour for the pleadings. Judge Jacob P. Hart seemed almost amused as he described some of the writing as "nearly unintelligible."...**Racist chat room talk** cost a Virginia judge his job. Ralph Robertson, 60, who served on the Richmond General District Court, chose to resign after *The Richmond Free Press* informed him it would publish his remarks. Robertson allegedly endorsed claims such as "African-Americans are prone to crime and violence because it is in their genes." Robertson had served 19 years on the bench...

## exec's dot...dot...dot...

*Steve Henderson, Executive Director*

The Casitas Municipal Water District and the Lake Casitas Improvement Foundation held a tree-planting ceremony for **Jim Loeb** March 7... License Plate of the Month: ESQ.CPA2, driven carefully by Larry Nathanson...A quiet, low-key retirement gig was held at the Ventura Yacht Club March 25 for **County Counsel Frank Sieh**. His last day, following two years of exemplary service, was the 31<sup>st</sup> and **Noel Klebaum** will be filling the big shoes. **Jim McBride** held the position for nearly 20 years...The Judicial Council announced the recipients of the 2003 Ralph N. Kleps Awards for Improvement in Administration of the Courts. **The Superior Court of Ventura County Tip of the Day Radio Program** WON! The Tip of the Day program consists of five-minute public service radio announcements live in Spanish Monday through Friday at 10:30 a.m. on KOXR, a Spanish-language radio station...

The **U.S. Courts newsroom** is spreading the word both that bankruptcy judges are sponsoring a program to warn youth against the perils of overusing credit cards (a chief cause of personal bankruptcy) and that 32 bankruptcy courts now accept credit card payments online...**Ten Million hours**. That's how much more pro bono work would be needed to meet the legal needs of New York state's poor, says a recently released study from the Unified Court System...

New officers for the Ventura County Family Bar effective immediately: **Marsha Niedens**, President; **Bob Ostrove**, Vice-President; **Donna DePaola**, Treasurer; **Sandra Bolker**, Secretary; **Ed Buckle**, MAC Representative; **Susan Ratzkin**, Member at Large; **Tom Hutchinson**, Member at Large; and **Robert Guerra**, Member at Large...Santa Barbara-based *We The People* now has 130 stores nationwide. Founded 11 years ago, the company yanked in a total of \$28 million

in revenue in 2003...Thanks to the yearlong prodding by Intellectual Property Section President **Chris Balzan**, the bar now owns a Dell digital projector. Any other section, committee or affiliate may use it too. Call **Sandra** at the bar...Senior Partner **Anthony Trembley** of **NordmanCH&C**, has succeeded **Michael O'Brien** as managing partner. Michael served for 11 outstanding years and will remain on the Management Committee...

A **movie star's presidential bid** won Supreme Court clearance this month. There had been some doubt as to whether the candidate was a "natural born" citizen, as required for presidential office. But the high court found that the candidate was indeed eligible because his father had been a citizen. The Philippine Supreme Court voted 8-5 to permit celebrity Fernando Poe to run for that nation's presidency. Who did you think?...

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**Steve Henderson** has been the executive director of the bar association since November 1990. PLAY BALL! How is it that quicksand works slowly, boxing rings are square, a guinea pig is neither from Guinea nor is it a pig, there is no egg in eggplant nor ham in hamburger; and finally, neither apple or pine in pineapple?

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# **ARTIME GROUP**

# Microsoft Class Action Claim Deadline Extended

Scott Johnson

On July 18, 2003, San Francisco County Superior Court Judge Paul Alvarado approved a preliminary settlement in a class action claim against Microsoft. The class action claimants alleged that Microsoft violated California's antitrust and unfair competition laws with respect to sales of operating systems, word processing, and spreadsheet software. Microsoft, on the other hand, denies that it did anything wrong. Rather, it says that it "developed and sold high quality and innovative software products at fair and reasonable prices."

**U**nder the settlement, consumers and businesses are eligible to receive vouchers totaling up to \$1.1 billion if they purchased eligible Microsoft products for use in California between February 18, 1995 and December 15, 2001. (Government entities are excluded.) These vouchers may be redeemed for cash after the purchase of a wide range of hardware and software products (defined in the settlement, but not restricted to Microsoft products.) Two-thirds of any unclaimed benefits will be distributed as vouchers to public schools

**Visit  
www.microsoftalsettlement.com  
or call the settlement  
administrator at (800) 203-9995  
for claim forms and more  
information.**

serving students from low-income households.

The class-action-settlement administrator will issue vouchers valued at \$16 for each copy of *MS-DOS* or *Windows* purchased during the covered period, \$29 for each copy of *Office*, \$26 for each copy of *Excel*, and \$5 for each copy of *Word*, *Works Suite*, and *Home Essentials 97* or *98*. This covers software installed on your computer when you purchased it, as well as upgrades. However, it excludes software for Apple computers.

**I**f you or your firm purchased five or fewer products with a total voucher value of less than \$100, you can use the

"short form" claim form and aren't required to provide proof of purchase or backup verification. If you purchased more, the process is slightly more complicated. The simplest way to provide proof of purchase is to provide the "Product Key Number," "Product ID Number," or "CD Key Number" for each product. Otherwise, you need to provide other documentation showing your purchase.

The original deadline set for filing claims was March 15, 2004. Since the hearing on final approval of the settlement was continued for six weeks, the filing deadline has been extended to April 28, 2004. This means you're not too late!

Visit [www.microsoftalsettlement.com](http://www.microsoftalsettlement.com) or call the settlement administrator at (800) 203-9995 for claim forms and more information.

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**Scott Johnson** is a manager with the Ventura County Air Pollution Control District and a member of the *CITATIONS* editorial board.

## CITATIONS

### Ventura County Bar Association

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