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# CITATIONS

J U L Y - T W O T H O U S A N D F I F T E E N



## CALIFORNIA'S NEWEST LAWYERS

by Kathi Smith

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*Photo Credit: Victoria Borjesson*

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## PRESIDENT'S COLUMN:

**"YES IT'S SUMMER, MY TIME OF YEAR"***Summer - War. 1976*

by Bill Grawe



**They're off!** The swearing-in ceremony was June 9 in Courtroom 22. Presiding Judge Donald Coleman was at the helm, joined on the bench by Assistant Presiding Judge Patricia Murphy and Justice Arthur Gilbert. The new admittees were seated in the jury box, and the seats were filled with family and friends. A full and happy house, I must say.

Ventura County's ceremony could not be surpassed. Each admittee stands, introduces him or herself and talks about their path. Then, family and friends are introduced by the admittee. It was a bit emotional for some.

The admittees were welcomed to the bar, on behalf of your VCBA, its affiliates and friends, by speakers Kathi Smith (WLVC); Melanie Ely (Barristers); Katie Clunen (ABA); Katie Becker (CYLA) and myself. Countywide, though not all were sworn-in on June 9, there were 21 new admittees: fourteen women and seven men. On the wall in 22 above where the new admittees, the four women speakers, and Asst. PJ Patricia Murphy sat on June 9 are portraits of our county's first two women judges, the late Hon. Alice Titus Magill and the Hon. Melinda Johnson (ret. d.). When Judge Magill retired from the bench in the 1960s, in her eighties, she said, "I wish a woman was taking my place."

The relaxed and friendly banter of judges Coleman and Murphy set the tone for an event which actually celebrates the practice of law. When listening to Justice Gilbert, you

are always left wanting to hear more. It is a wonder that a man who has such a way with a story would find himself in a career where he is saddled by precedent and actual facts.

**The Benevolent Chairperson.** By the time this issue of Citations is printed, the Law Day 5K will have been run, and run smoothly and in good spirits, thanks to Joe Strohman and his team. I have, over the past few years, watched Joe run a board, a committee, a meeting. No one does it with more grace and natural flair. You forget he is holding the figurative gavel. His reward for doing what he does so well? He is asked to do more! Keep Joe in mind if you ever need organizational insight. He does a lot for our local legal community.

**July 1, 1776.** Perhaps what was *not* done on this day made possible all that would follow. A vote on a declaration of independence was at hand. Hot. Humid. Raining. Stuffy. A closed door and fervent emotions. John Adams, looking toward the horizon of history, would say to the gathering, "the lives and liberties of millions, born and unborn are before us."

Jefferson, who could use words like a master artist applies color, observed that Adams was "not graceful nor elegant, nor remarkably fluent." But Adams would do the message one better.

Jefferson said Adams spoke with "a power of thought and expression that moved us from our seats." Even so, as the votes were lining up, it became clear that though the

declaration would carry, the vote would not be unanimous. Passage would come with bumps and bruises. A lesser name could sense the significance of what was playing out and knew this was not a good day, after all, for a summit try. Edward Rutledge—ultimately the youngest signer—moved that the final vote be postponed until the next day. Immediately, the tension in the room fell. Rutledge's motion was seized upon and accepted. The vote was deferred.

**July 2, 1776.** Whether in the saloon the preceding night or within Independence Hall in the early morning, things coalesced. New York abstained. The twelve other colonies voted as one to declare independence and that settled it for all, clearly.

**Makes it all worth it.** At the Drug Court Graduation recently, Judge Brian Back shared that he received an envelope in May bearing an Idaho postmark. It was an invitation to the 2015 graduation of the College of Western Idaho. The invite was accompanied by a personal note of thanks from a young adult who had appeared before Judge Back in juvenile court some eight years ago, and had taken his words of encouragement and guidance to heart and just wanted him to know.

**MABA's** educational scholarship fundraiser on June 5 was a hit. **Judges Manuel Covarrubias and Gilbert Romero and Commissioner Michele Castillo** were on hand at Café Fiore for the well-attended fundraiser. Watch the calendar and, if you can, stop by a future event.

**Ventura College of Law celebrated its 45th anniversary on June 18.** Its contribution to the legal community at large, the bench and our county has been significant. Ventura College of Law has offered an alternate pathway to the bar and bench where a need existed. The contribution of those whose legal careers have often followed life experiences or who have been able to attain their goal despite financial constraints or co-obligations of family and work have

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## CALIFORNIA'S NEWEST LAWYERS

*by Kathi Smith*



VCBA helped welcome seven new admittees at the California State Bar admission ceremony on June 9 in Courtroom 22. In addition to the luminaries mentioned in Execs ... this month, Alan Yokelson appeared on behalf of the State Bar Board of Trustees.

**Spencer Bailey**, graduate of Thomas Jefferson School of Law, with a bachelor's degree from University of Nevada Las Vegas, hopes to practice law in Ventura County.

**Carrie Bourdeau**, graduate of Golden Gate School of Law and Humboldt State University, is a Nevada lawyer employed in-house at Clark County School District. She passed the Attorneys Examination.

**Gerard Eugenio**, a former Ventura County Deputy Probation Officer, attended Ventura College of Law. Eugenio has a bachelor's degree from U.C. Irvine and aims to become a deputy district attorney.

**Monique Fierro** graduated from Stanford Law School and also holds a B.A. in English from Stanford. Fierro serves as a staff attorney at California Rural Legal Assistance in Santa Barbara, working on social justice issues in housing, employment and public benefits.

**Edwin Lee** attended Whittier Law School. His family travelled from South Korea to attend his swearing in. He will soon enter the U.S. Army as a JAG officer.

**Mariela Murillo** worked for the Ventura Superior Court and attended Ventura College of Law. Her bachelor's degree is from

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## PRESIDENT'S COLUMN:

*Continued from page 3*

enriched us. Ventura College of Law has enabled it to be so.

**Are we on the record?** At the recent New Admittee Swearing-In, Justice Gilbert shared that even he attends bar functions. In fact, he attended a Barristers' Pizza Night and welcomed the opportunity to meet members of the bar. He recalled being asked a question about writ filings and confirmed that they are rarely granted but offered the most common exception to general rule. Several weeks later, he and his fellow justices were reviewing pleadings including a writ petition. As he read, it struck Justice Gilbert that the quoted passage offered in support sounded familiar. Sure enough, the citation was to one Justice Arthur Gilbert, Barristers' Pizza Night.

**Get tougher on lemonade stands, but maybe stop there.** Every spring and summer, you see the story about some little kid's lemonade stand that is shut down by code enforcement. You can probably shake your head and live with that, but did you

know that the State Bar is again considering increasing MCLE from 25 to 36 hours per reporting period? Now that's news! The public comment period just closed, so wait and see... and if you ever need units, or just want to hear what is up or new or on the cutting edge, please consider our local programs, as it helps turn the wheels. I'll continue to send my Monday emails about the week's programs, and always take a peek at the flyers in Citations or visit [vcba.org](http://vcba.org).

**Never trust anyone over forty... with a computer.** You can register for just about every bar program online. At [vcba.org](http://vcba.org), you can create a username and password, and then you can log-in and sign-up with protection in place. When you register online, you save the bar staff a lot of time and effort. Sandra and Nadia tell me that VCBA members over a certain age always call to register. (I'm sure they were generalizing!) I told Nadia I would call in later in the month to see if this mention helped.

**On July 14, NASA's New Horizon space probe will pass by Pluto.**

*"I used to chat with them in a friendly way and was always polite to them because I sort of felt sorry for them. They seemed like well-meaning, decent enough young men. Yet there they were, neglecting their business to waste their time day after day on that ridiculous flying machine."*

**Luther Beard, managing editor, Dayton Journal.** (Quote taken from *The Wright Brothers*, by David McCullough. Page 115. 2015.)

**Fly the flag. Give thanks and celebrate. All month long.** Hope to see you soon at a bar event or function. From Oak Park to Ojai, take the summer in.



**Bill Grewel** handles wrongful death, personal injury, employment law and workplace injury cases at Rose, Klein & Marias, LLP in Ventura. and can be reached at [w.grewel@rkmlaw.net](mailto:w.grewel@rkmlaw.net)



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*Continued from page 5*

CSU Fullerton. She intends to continue in the public sector as an attorney.

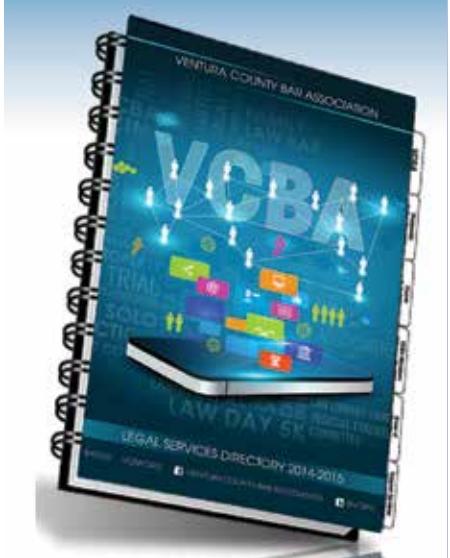
**Michael Pamploma** attended Loyola Law School. He has a B.A. in Film from CSUN. He plans to practice adoption law. He has been employed by the VCBA as an LRIS Counselor and going solo July 6 practicing Family Law.

The February 2015 pass rate was 39.5 percent for the General Bar Examination and 46.1 for the Attorneys Examination. Congratulations to these new California lawyers.

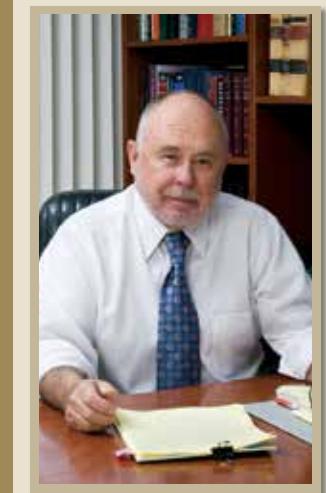


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# SURPRISE'S DRACONIAN EFFECT UPON CIVIL TRIALS

by Matthew Haffner

The element of surprise – wielded against your opponent or implemented against your client – is the single most effective trial tactic. Its ramifications may be draconian, overwhelming all other evidence, stripping the case of all persuasive power.

Why is the element of surprise so powerful? Usually surprise evidence involves impeachment, which criticizes the credibility of a witness or legal theory. It may sharply contradict previous sworn testimony, or opposing counsel's representations regarding the evidence. When a trial lawyer is able to surprise his or her opponent with a damaging document or critical witness, the unveiling of this evidence can be planned for its greatest effect, introduced at the most devastating time, and in the strongest manner. Impeachment evidence can have a monumental effect on the jury.

Surprise evidence's initial impression usually cannot be refuted, since there is neither time nor opportunity to fully respond. Even if rebuttal evidence is introduced, the timing of the impeachment is powerful. Surprise evidence, however, need not be impeachment. Any evidence not previously disclosed may surprise the other side. At the least, the sudden unveiling may preclude opposing counsel's ability to respond, much less refute the new evidence.

Unfortunately, however, pursuit of surprise in a trial may compromise an attorney's ethics and adherence to both courtroom rules and the code of civil procedure. Trial counsel, seeking surprise, may omit key documents from the exhibit book. So hot in pursuit of surprise, some will misrepresent the prior disclosure of evidence, pretending it has already been revealed. Others will present witnesses intentionally omitted from discovery responses or even left off of a witness list.

It is generally not difficult to avoid surprise. The Code of Civil Procedure, Court Rules, and courtroom rules command disclosure of evidence (as long as the right questions are asked) before trial. Many courts require the exchange of exhibit books before jury selection. Thorough pre-trial

discovery should elicit disclosure of all critical documents, witnesses and evidence. However, many times surprise evidence is not revealed in discovery because the answer is either incomplete or evasive, if any responsive information is provided at all, and supplemental responses are not pursued.

The quest for complete discovery responses may entail obtaining court orders. Also, discovery responses are frequently concluded with the statement that "the responding party expressly relies upon the accumulation of additional evidence which, in retrospect, proves responsive to this request," or similar language. This evasive response can be mitigated by serving supplemental interrogatories and document demands, including a set served on the last day that discovery may be issued.

The best way to avoid surprise is to be exhaustive in your pre-trial discovery. The vast majority of pre-trial discovery is incomplete, not fully responded to, or evasive. If you anticipate even a relatively small likelihood that the case may go to trial, you must exhaust discovery and seek to elicit production of all witnesses, documents and evidence that should enable you to negate opposing counsel's surprise at trial.

If pre-trial discovery was complete and thorough, comparison of your adversary's witness list with prior discovery responses should posture a motion *in limine* to exclude non-disclosed witnesses and new documents. The motion's success depends upon thorough discovery requests and, if necessary, securing pre-trial orders commanding full and complete discovery responses. Your motion *in limine* must attach a document demand that would have elicited the document, along with the responses. Only then may you legitimately argue that the "surprise" document within the exhibit book should be excluded.

How then, can you take advantage of the element of surprise without disregarding the rules and your ethics? It seldom occurs that all pertinent documents are requested, available for production when the responses come due or not subject to some privilege.

Generally, not all objections are contested. Motions to compel are usually not necessary and are discouraged by the trial court. Further, you may withhold documents from your exhibit book, referencing "impeachment" documents or "privileged" documents. As long as you have identified the documents' existence, it becomes necessary for your opponent to challenge your lack of production. Be prepared to argue why the documents should not be disclosed before trial. You may need to produce the documents *in camera*, so that the judge may decide, without showing them to opposing counsel.

Regarding witnesses, you may identify "surprise" witnesses on your witness list without referencing names, identifying them as "impeachment witnesses." Ensure that their identities were not sought in discovery, and again be prepared to argue why you should be able to keep identities secret.

Whatever tactic you choose to try to "surprise" your opponent, do not abandon your ethics or credibility. Not only are these tactics abhorrent and unnecessary, but a careful opponent and insightful trial judge will ensure that you do not benefit from these transgressions.

Use of the element of surprise at trial is a carefully cultivated skill that must be ethically implemented. Every trial has opportunity to surprise your opponent and strongly advance your cause.



**Matthew Haffner** is a partner in Haffner Law Group, a Ventura-based civil litigation firm founded in 1997.



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## A SMALL JEWEL OF A NON-PROFIT

by Gisele Goetz

The Ventura Center for Dispute Settlement (VCDS) is a small jewel in our non-profit community. Located at the Ventura County Community Foundation in Camarillo, for 25 years VCDS has offered education, training and volunteer programs to make mediation fully accessible, not just to the legal community, but to the wider Ventura community.

According to **Wendy Lascher**, VCDS was born because attorney **Nina Meierding** had one of “those cases,” the ones where it is too expensive to litigate, or too complicated, or what the parties really need from the court is not within the court’s powers. Coincidentally, Professor Peter Robinson (now the Managing Director of the Strauss Institute, Pepperdine) and Professor Randy Lowry were seeing mediation take off across the country, but according to Robinson, not seeing “community based mediation” in their “backyard” in Ventura. And so, long before mediation became “cool,” Meierding, Lascher, **Richard Chess** and **Matt Guasco** (now **Judge Guasco**), partnered with the two professors and founded VCDS to foster the ideals of mediation.

Quietly and competently, VCDS puts its ideals into practice in the local small claims courtrooms. Those courtrooms are crowded, confusing and scary places to many community members. If you are lucky enough to go on a Friday in Ventura or a Monday in Simi Valley, VCDS staffs the courtroom with a supervised panel of volunteer mediators and mediators in training. If you want to see the true value of mediation, watch the smiles and handshakes as small claims litigants return to court with a settlement for the record. In small claims court alone, VCDS’s cadre of volunteers has mediated over 219 cases so far this year. When cases settle through mediation, that means the court does not have to try those cases, the waits get shorter and the process goes more smoothly. Even when the cases don’t settle, the parties typically are happy that they made the attempt. As **Michael Planet**, Ventura Superior Court Executive Officer, explained: “The court truly values our partnership with VCDS over

the years. Not only have the volunteers that come to the Ventura and Simi Valley courthouses saved the court thousands of hours of court time by settling cases, they have enhanced access to our courts and the outcomes of so many cases through the mediation process.”

VCDS also serves the Ventura judges handling civil harassment cases. While stalking and other forms of violence may require a court resolution, feuding neighbors, quarreling family members, lost friendships and teenage bullying problems can often be resolved by mediation. For those cases, where the court deems the case appropriate and the parties are willing, VCDS provides the court with specially trained civil harassment mediators all pro bono.

VCDS also provides mediation services free to those who cannot otherwise afford mediation, and uses a graduated scale for those who can pay something. No one is turned away because they cannot pay. Veterans and members of the military involved in disputes can receive mediation services for free too.

What about “those cases,” the ones that got Nina Meierding and the rest of the founders of VCDS together in the first place? VCDS has been accepting and mediating “those cases” for 25 years. VCDS has a full panel of experienced mediators who donate their time or split fees with VCDS for those cases where a fee is appropriate. The diverse VCDS panel of mediators includes lawyers, real estate professionals, social workers, bankers, psychologists and people from other professions.

In addition to practicing mediation in venues that for-profit mediators might eschew, VCDS remains true to its mission by providing mediation training to any interested person. What is in it for lawyers? For those of us (maybe most of us) who rely on persuasion, hard bargaining and adversarial tactics, adding interest based negotiation and collaboration techniques to our negotiation toolbox can be eye-opening.

The current training curriculum was created by Dr. Tracylee Clarke, Associate Professor and Chair of Communication at CSU Channel Islands and former member of the VCDS Board. As Dr. Clarke advises, “[t]he training, grounded in theoretical understanding, focuses on communication skill building and teaches new mediators how to create opportunities dialogue so participants can genuinely collaborate, build on their interests, and create solutions that meet both parties’ needs.” Even if you don’t want to become a mediator, if you want to learn how to deal with complaints and effectively manage difficult people, VCDS training will also help you.

VCDS doesn’t limit its training to in-class simulations, VCDS provides its students with practical opportunities to mediate for the community. Trainees can put their new mediation skills to practical use through VCDS’s volunteer court programs, first as observers, then as co-mediators and finally as lead mediators.

True to its long term strategic partnership with Pepperdine, VCDS also provides internship opportunities at its offices to students from Pepperdine, and more recently Cal State Channel Islands as well, who are studying communication and conflict resolution. Both of VCDS’s current employees, Executive Director Clare Rice and Program Manager Cameron Spencer, are graduates of the Master of Dispute Resolution program offered at Pepperdine School of Law’s Straus Institute.

Moving into a new season, VCDS is looking to expand the scope of its training program. As Professor Robinson points out, there are many underserved community members and community groups and not all issues are susceptible to a courtroom solution. With community based mediation organizations, such as VCDS, “conflict can be addressed before it becomes destructive.”

VCDS is eager to partner with the legal community to develop programs that will

*Continued on page 20*



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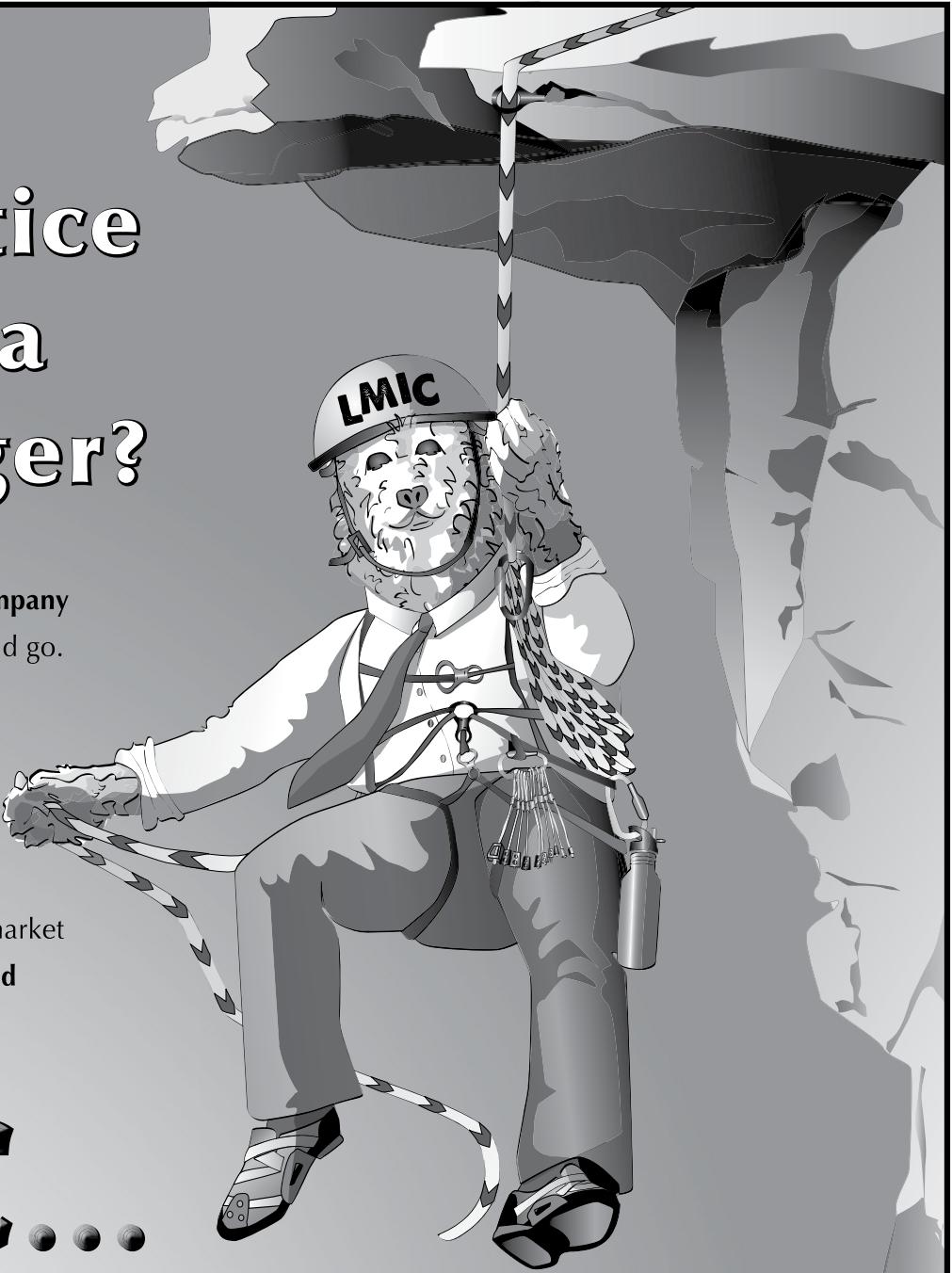
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## Barristers' Corner

by Katie Becker

Summer is here and that means beautiful weather and fun Barristers events! Recap: we held Trivia Night on May 21 at Garman's in Santa Paula. It was a great event, with six very competitive teams. The victors... the team from Ferguson Case Orr & Paterson! Congratulations to **Doug Goldwater, Kymberly Peck, Lauren Rad, Lauren Sims and Wendy Lascher!** Our next Trivia Night will be in November.

Do not miss our 8th Annual Bowling Night on July 16 to benefit Make-A-Wish Tri-Counties. We will be at Harley's Bowl in Camarillo from 5:30-7:30 (Ponderosa Shopping Center, 305 Arneill Road). The event is open to all attorneys, judges, friends and family. Whether you attend with an already organized team or not, this promises to be a fun event. Your \$10 donation includes your bowling shoes and a good time! The first person to bowl three strikes in a row wins our coveted prize of a bottle of Wild Turkey! The team with the highest score will go home with the illustrious Barristers Bowling Ball Trophy to display in your office until next year's

event. If you are thinking of making a donation or sponsoring the event in some way, please contact Melanie Ely at [mely@ec2law.com](mailto:mely@ec2law.com).

Coming up August 5 – our third MCLE lunch program, "Basics of Appellate Practice," hosted by Justice Steven Perren. The program, to be held at noon at the Court of Appeal (200 E. Santa Clara Street, Ventura), is sure to be informative and entertaining. This is a brown bag lunch, offering one MCLE credit. The event costs \$15 for Barristers and \$25 for all others. Law students may attend for free. This program is a great opportunity to introduce yourself to appellate practice and the appellate court, or to give your practice a refresher course. Please RSVP to Nadia at [bar@vcba.org](mailto:bar@vcba.org), or you can pay at the door.

Later in August – our Annual Wine and Cheese Mixer, hosted by Ferguson Case Orr & Paterson, will be held this year on Thursday, Aug. 20. This event is free, and is open to everyone! We will discuss our mentor and mentee program, other

upcoming events, and of course, enjoy cold beer, provided by Anacapa Brewing Co., and delicious wine and cheese, sourced from Paradise Pantry. This networking event always has great attendance, so please join us! Questions or sponsorship queries may be sent to [jhopstone@fcoplaw.com](mailto:jhopstone@fcoplaw.com).

If you are interested in getting more involved with the Barristers, you are welcome to email us at [vcba.barristers@gmail.com](mailto:vcba.barristers@gmail.com) or attend our board meetings. Our meetings are held on the first Tuesday of every other month at the VCBA Offices. The next meeting is Aug. 4 at noon. Have a great July, and we hope to see you at these upcoming events!



**Katie Becker** handles estate planning, probate, conservatorship and business matters at Ben Schuck & Katherine Becker, LLP in Santa Paula. She is the current Barristers President.

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## MARRIAGE OF WINTERNITZ REMINDS THAT EXPERTS REQUIRE ACTIVE HANDLING

by Greg Herring

The Court of Appeal recently published *Marriage of Winternitz* (2015) 235 Cal. App.4th 644. The pertinent holding is that a court-appointed expert's (1) failure to adhere to all the requirements of the California Rules of Court and (2) admission that he made significant procedural errors did not require the trial court to automatically disqualify him or exclude his written report. Rather, trial courts have discretion to consider those types of failures in potentially giving an expert's report and testimony less weight in the overall balance of the evidence.

At one level, the case provides common sense permission for trial courts. They can still choose to benefit, at least to some extent, from an expert's insights and opinions even if the underlying work might have been flawed.

On another level, it reminds us that experts are human. The *Winternitz* expert is an otherwise reputable psychologist (custody evaluator) with a national practice. However, he admitted on cross-examination to personnel difficulties in his practice, a loss of phone records, other "problems galore" in his office, and "a variety" of record-keeping errors.

Trial attorneys routinely need experts. Some are court-appointed under Evidence Code section 730. Others are hired as private consultants or witnesses for hearings and trials. They provide analysis, insights and opinions beyond the abilities of lay witnesses. (Evid. Code, §§ 800, 801).

Experts can also help trial attorneys to streamline courtroom presentations. In a family law case, for example, an expert witness accountant can efficiently present community balance sheets and backup documentation in a fraction of the time a lay party might consume.

But experts require affirmative handling and oversight. Attorneys are charged with managing their clients' cases, which includes overseeing and understanding experts'

methodologies, analyses and conclusions. As Justice Sheila Sonenshine (ret.) puts it, we need to keep in mind "who's driving the bus" ... and it needs to be us.

With our busy practices, the impulse towards over-delegating to experts can be strong. Even in court, counsel have been heard to explain that they are merely forwarding the *expert's* legal arguments, as opposed to their own. No wonder a judicial officer in that situation might be skeptical!

Steps towards taking proper control include:

- **Review the expert's engagement letter, rather than automatically forwarding it to the client "as is."** These letters have been seen to include "first class travel" clauses, provisions for the client to defend and indemnify the expert (in case the other party might sue the expert) and "minimum billing blocks." These are not likely in a client's best interests, and they should be deleted. No matter how chummy an attorney's ongoing relationship with the expert may be, her primary duty is to the client.

- **Ensure that documents are organized, indexed and electronically filed only once.** Experts often have staff who are most willing to do this work at substantial cost, but no client wants to pay for their lawyer to do it and then see the expert's office duplicate the task, even if it might be done to suit the expert's particular "system." Rather, coordinate with the expert to determine who is going to do the work – only once – and how it is going to be done, so that counsel, the expert, and the client can easily access and use the documents and data.

- **Assert communications limits.** Attorney-expert communications are non-confidential and become discoverable once counsel might designate the expert under Code of Civil Procedure section 2034 or otherwise submit the expert's opinion in a declaration. Suddenly, previously "funny"

and "chatty" emails with the expert about "crazy" clients and "dense" judicial officers, as well as sensitive substantive discussions, can thus be "outed." Keep the communications professional, minimize emails and pick up the phone.

- **Monitor the work.** Stay on top of the process to avoid a *Winternitz* disaster. Ensure that the expert understands the fine points of the law, or at least a reasonable interpretation favoring the client's position. Bring it to the court's attention if the expert exhibits disdain for "cumbersome" notions of due process.

- **Demand responsive communications.** Too often it seems that certain experts are inaccessible or that they feel that they are doing the system a favor. Rather, they exist to serve counsels and the court's inquiry, *not vice-versa*. Communicate and clarify that prospective future assignments are contingent on the expert's availability and attention to the current one.

*Winternitz* reminds that experts are not infallible. Between the lines, it also cautions attorneys to stay alert and avoid subcontracting their professional duties.



**Greg Herring** is a State Bar Certified Specialist in family law and is the principal of Herring Law Group. He is the immediate Past President of the Southern California Chapter of the American Academy of Matrimonial Lawyers. His prior articles and ongoing blog entries are at [www.theherringlawgroup.com](http://www.theherringlawgroup.com).

## OBTAINING A LAW DEGREE ONLINE: THE NEXT WAVE IN LEGAL EDUCATION

by Mari K. Rockenstein

When Ventura County attorney **Carol Mack, PhD** (Nursing), decided to go to law school, she was working full time at Amgen and did not plan on quitting her job to become a full time law student. "I was working in Regulatory Affairs and believed that a legal education would help my career." Attending a brick and mortar law school was out of the question, even if it was only part time. Instead, she decided to attend Concord Law School, an online school that allowed her to obtain her law degree while working full time.

The American Bar Association stunned the legal community last year when it approved the first hybrid law program at William Mitchell College of Law in St. Paul, Minnesota. The ABA's approval of the new half-online, half-onsite program, which began in January, could be the first step toward the approval of a fully online law degree.

No wholly online law school is accredited by the ABA. This distinction is significant because states usually allow only students who have graduated from an ABA accredited law school to sit for the state's bar exam. California is an exception, allowing graduates of unaccredited law schools, including online law schools, to sit for the California bar exam.

But with law school admissions down and students searching for options, online law schools may be the wave of future legal education. Things have definitely changed since 2006 when William Hunt, Dean of the California School of Law ("CSL"), filed the paperwork for the online law school. "I couldn't even get West or Aspen to give me books for the courses. I paid for the textbooks myself. Now there is a little more respect for the online law schools. Our students use the same textbooks, have the same resources and are subject to the same requirements and exams as those at a traditional law school," said Hunt.

I was one of the first faculty members Hunt hired to teach for CSL. I was hired on as the torts professor. I had previously taught Law and Ethics, an online course in CSU Channel Islands' MBA program, and am proficient with online learning management software programs and voice over internet protocol ("VOIP") technology.

According to Hunt, the majority of his students are older and have always wanted to go to law school or believe a law degree will help their current career. They choose to obtain an online law degree because they cannot attend a brick and mortar law program due to family or work commitments, not to mention the financial burden of the tuition and travel involved in attending such a program.

But even among online law schools, the educational models are different, either synchronous or asynchronous. Synchronous means real-time communication and collaboration in a same time/different place

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mode. Asynchronous means communication and collaboration over a period of time in a different time/different place mode at each person's own convenience and schedule. "The first time I met my fellow students was at graduation," said Mack.

That is not the case at CSL. Classes are synchronous, with live audio and video. Students and professors participate in a live videoconference in which they discuss and debate the law as if they were in the same physical classroom. The professors also utilize the traditional Socratic method of legal education used at all law schools. Because the classes are synchronous, the students can see and hear each other, make comments and ask the professor questions. "I wanted the experience to be as close to a 'brick and mortar' school as possible," said Hunt.

Whether synchronous or asynchronous, both Mack and Hunt agree that online law classes are not for everyone. Some students prefer the direct face-to-face contact in a brick and mortar school. And with the majority of classes held later in the day after most students have had a full day of work and family responsibilities, it takes a great deal of commitment.

More law schools could be offering online classes but have chosen not to do so. The ABA allows accredited law schools to offer up to fifteen credit hours via distance learning. Online Masters of Laws ("LLM's") can be a path to online J.D. courses for some schools. The John Marshall Law School in Chicago, Vermont Law School, Washington School of Law and USC's Gould School of Law all offer online LLM programs. "It's fear of the unknown... law schools are steeped in tradition," said Hunt. Many are simply waiting to see what happens with the William Mitchell experiment.

**Mari Rockenstein** is a Ventura County attorney and law professor. She can be reached at [mrock@rockonthelaw.com](mailto:mrock@rockonthelaw.com)



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PRESENTATION BY  
JUDGE GLEN M. REISER  
*by Amber Rodriguez*

The Estate Planning and Probate Section was once again honored to welcome **Judge Glen M. Reiser**, our sitting probate judge for his annual update on the court. Here is some of what he had to share:

THE BIG NEWS: FEE ALLOWANCE INCREASE

Attorneys seeking court-approved fees are enjoying a raise. Judge Reiser has increased the maximum rate to \$350 per hour. Of course, that is the high-end of what he will allow. As always, Judge Reiser will take into consideration the experience and expertise of the attorney, the size of the estate, and the complexity of the work. He also considers the quality and timeliness of work being submitted.

LOCAL RULES:

Judge Reiser encourages our section to review and evaluate our local rules. Although he has been “tweaking” them slowly, he feels it is now time for a major overhaul. He suggests that we consider the local rules of other counties in the state. Our Executive Committee will be doing just that and hopes to present Judge Reiser with our findings within the next few months.

NEW MANDATORY FORM:

His Honor reminded us about the new DE-142 – a mandatory form to waive bond. Find the form on the Judicial Council website, <http://www.courts.ca.gov/forms.htm>.

NEW PRACTICE GUIDE:

CEB has published a new Fiduciary Accountings Practice Guide. We need to take a few moments to make certain our court accountings comply with statutory guidelines. Certainly more than a few practitioners will consider adding the new guide to their collection after hearing his Honor’s comments.

PROBATE CODE CHANGES:

Judge Reiser discussed the newly adopted Interstate Jurisdiction Act. The Act extends the jurisdiction and powers of the courts in



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states which have adopted it to allow for better control over certain conservatorship cases. The new Act will especially be useful when a conservatee has been moved to another state. Although these cases may be rare for local practitioners, the Act could be very helpful if you happen to find yourself (via a client, hopefully) in such a case. In particular, the sanctions allowed under the Act could help motivate the return of a conservatee or a stipulated agreement amongst warring parties.

#### COMMON LAW:

At the request of the Executive Committee Judge Reiser discussed a new case involving *Heggstad and Kucker* principles, *Ukkestad v. RBS Asset Finance* from the Fourth District. Many audience members seemed to change their opinion about the case after hearing Judge Reiser's views.

Finally, his Honor reviewed what he referred to as the "trilogy" of cases involving testamentary capacity, *In re Marriage of Greenway* (2013) 217 Cal. App.4th 628, *Andersen v. Hunt* (2011) 196 Cal.App.4th 722, and *Lintz v. Lintz* (2014) 222 Cal.App.4th 1346. His thorough analysis included a comparison of statutory definitions and guidelines (including the apparent contradictions in the case law.) *Greenway* presents us with a "sliding scale" of capacity which holds that the entering into marriage requires the lowest level of capacity, followed by testamentary capacity and, the highest level, contractual capacity (required for power of attorneys, deeds; etc.). As you can imagine, hearing that the level of capacity required to legally enter into a marriage is even lower than testamentary capacity brought quite a few laughs from the audience.

In comparison, *Andersen v. Hunt* essentially holds that a "simple" amendment, although technically part of a trust (which requires contractual capacity), only requires testamentary capacity. Judge Reiser opined that a "simple" trust amendment would be limited to circumstances such as a beneficiary change, a distributive percentage change, and adding or subtracting property from a gift. *Lintz*. *Lintz* in some ways simply confirmed the holding in *Hunt* by stating that a more complicated restatement requires full contractual capacity.

The Estate Planning and Probate Section is fortunate to have Judge Reiser make himself available, year after year, for these annual updates. On behalf of our Section, I would like to thank him for his time. We look forward to hearing from him again next year.

*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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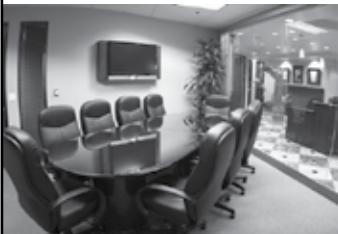
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*Continued from page 11*

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**Gisele Goetz** is an attorney and mediator based in Santa Barbara. She handles disputes and transactions involving general business, real property, water, oil and gas issues.



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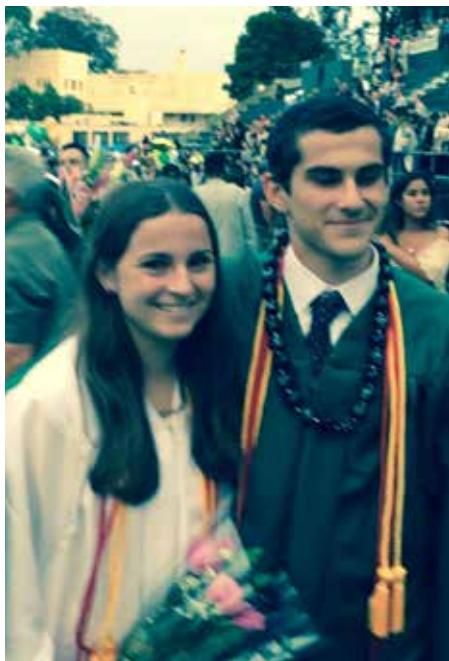
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# Exec's Dot...Dot...Dot...

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



Courtney Paulk doesn't just swim with sharks in the courtroom – she's in the



water with them, too. An open-water marathon swimmer, Paulk earned the sport's Triple Crown in 2013 by traversing the English Channel, the Catalina Channel and the perimeter of Manhattan Island. Last year, she became only one of seven people in the world to have crossed the shark infested waters of Cape Cod Bay, completing the swim in a record-setting 9 hours and 43 minutes. No wetsuit, no breaks and no respite from the busy construction law practice she maintains as chair of the litigation section of Hirschler Fleischer in Richmond, Virginia...Email



Address of the Month:  
[attorneybythesea@gmail.com](mailto:attorneybythesea@gmail.com) hosted by  
**Vivian Christiansen**. Website of the Month:  
[www.attorneybythesea.com](http://www.attorneybythesea.com) also hosted by Vivian...

The Ventura County Criminal Defense Bar held their annual awards dinner June 5 honoring **Joseph Villasana, Paul Drevengstedt, Andre Nintcheff and Damon**

**Jenkins.** The Lifetime Achievement Award was bestowed upon Mr. Villasana, the Richard Irwin Award to Mr. Drevengstedt, the Joyce Yoshioka Award to Ms. Nintcheff and the Supriya Bhat Award to Mr. Jenkins.... Late June there was a little fisticuffs over a Yale law student who wore a t-shirt reading "F\*\*k Forever" while at the Yale Club of New York. An older member of the club, who exchanged words with this student in the locker room over the shirt, wrote a letter of complaint about "this sad decline in the atmosphere and spirit of the club." In response, the student wrote, "I'd like to point out that my interloper, a refined looking gentleman in his mid to upper 60s, conveniently omits from his letter the fact that he himself walked out of the locker room in a fit of indignation wearing a form-fitting bike shorts with a colorful image of Calvin sledding down a hill with Hobbes emblazoned across both of his butt cheeks..."...

The Military and Veterans Free Legal Clinic (VCMiLC) serving active duty, National Guard, Reserves, veterans and retirees, is seeking volunteers for the efforts with clinics held from 1:00 p.m. to 4:00 p.m. at National University, 1000 Town Center Drive, Suite 502, in Oxnard. They will be conducting clinics Aug. 7, Oct. 2, Nov. 6 and Dec. 4. They need all specialties, so give a shout-out to this fine group serving an underserved population. I can send you an application or go to [www.Military411.org](http://www.Military411.org) or 983.4850.... In the new issue of Super Lawyers out June 16, **Jesse Cahill**, his brother Andrew and his sister-in-law are all recognized as Rising Stars. Pretty unique family deal, and kool...



**Enrique Schaerer**, of Ferguson Case et. al., has relocated out-of-state to the Reno/Tahoe area and may now be reached at [enrique.schaerer@gmail.com](mailto:enrique.schaerer@gmail.com) or 702.274.5501.... Interesting findings in an April 30 correspondence from the State Bar to Honorable Tani Cantil-Sakauye and the Honorable Jerry Brown on the Annual Discipline Report. Some highlights, or lowlights – There were 171 attorneys disbarred in 2014, 263 suspended. The



Supreme Court disposed of 1,536 disciplinary cases. The Intake Unit evaluated 15,497 cases. You seasoned legal veterans will recall Sergeant Phil Esterhaus of Hill Street Blues fame would state weekly, "Be careful out there..."

Quote of the Month: "Sometimes it's not over when it's over." Presiding **Justice Arthur Gilbert**, ruling in *McReady v. Whorf*(2015) 235 Cal.App.4th 478 that a lien entitling the plaintiff to a business's assets and profits was enforceable, even after the business had been through bankruptcy ...Keep in mind that July 6 begins Nude Recreation Week; July 14 is Bastille Day and our Editor, **Wendy Lascher's** birthday; that Elvis Presley's first single was released July 19 (That's Alright Mama) and July 30 is National Chili Dog Day...

**Steve Henderson** has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. He will be interning with Brian Williams at MSNBC and babysitting for Steph Curry. He has formed an exploratory committee to determine whether he would be a suitable GOP candidate for President. To all those who owe for his Warriors selection, just send the beer to his office. Henderson may be reached at [steve@vcba.org](mailto:steve@vcba.org), FB, Twitter @stevehendo1, Instagram, LinkedIn or better yet, 650.7599.

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### Name the Lehr Kid Contest

We are expecting Child #10 on July 21. I am offering one bottle of 2010 Sea Smoke **Ten** to the individual who emails me the most correct answers to the following questions

**BEFORE** the baby's Birth:

- 1) Date of actual birth? (10 points)
- 2) Name? (50 points)
- 3) Gender? (10 points)
- 4) Height ? (10 points)
- 5) Weight ? (20 points)



#10 still cooking

Current kids are named:  
Kaylene, Aubrey, Elly, Trinity,  
David, Patrick, Ameliya,  
Joseph and Victoria

Rules: Only one winner. In the event of a tie, Rachel Coleman will do a random drawing to determine the winner. If you actually help us pick the kid's name then you are likely to win. We currently have 6 girls and 3 boys. Wifey always has C-sections. If this contest violates some state law, then I will find another way to give you the bottle!

**YOU MUST BE 21 or over to enter!**

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