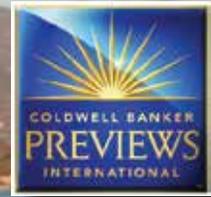


Santa Barbara Lawyer

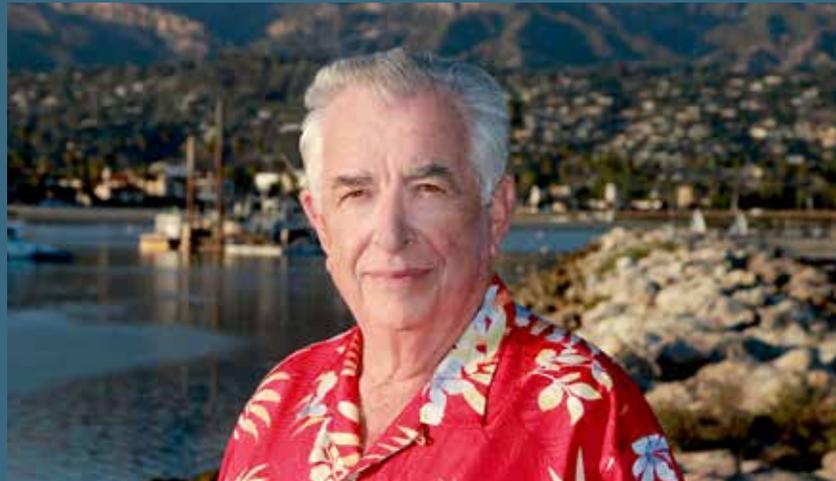
Official Publication of the Santa Barbara County Bar Association
February 2017 • Issue 533





KEITH C. BERRY

YEARS OF EXPERIENCE AND LOCAL EXPERTISE IN THE SOUTH COAST SANTA BARBARA REAL ESTATE MARKET



WE KNOW MORE, TO GET YOU MORE!

Up-to-the moment market knowledge
Connecting sellers to the most qualified buyers
Greater exposure to sell your home in the shortest practical time
Personal attentive and tailored service to meet the specific needs of each customer

KEITH C. BERRY

REALTOR®, CRB, CRS, GRI, ABR

PREVIEWS ESTATES DIRECTOR & ARCHITECTURAL PROPERTIES DIVISION SPECIALIST

MOBILE: 805.689.4240 | OFFICE: 805.563.7254 | MAIL: PO Box 5545, ZIP 93150

1482 EAST VALLEY ROAD, SUITE 17 SANTA BARBARA, CA 93108

KEITH@KEITHBERRYREALESTATE.COM

WWW.KEITHBERRYREALESTATE.COM



facebook.com/KeithBerryRealEstate



linkedin.com/in/keithcberry

©2015 Coldwell Banker Real Estate LLC. All Rights Reserved. Coldwell Banker Real Estate LLC fully supports the principles of the Fair Housing Act and the Equal Opportunity Act. Each Coldwell Banker Residential Brokerage office is owned by a subsidiary of NRT LLC. Coldwell Banker® and the Coldwell Banker Logo, Coldwell Banker Previews International® and the Coldwell Banker Previews International Logo, are registered service marks owned by Coldwell Banker Real Estate LLC.

Get the Best Coverage at the Best Price

Selecting the right insurance broker is the first step in protecting your assets, clients, reputation and practice. You need a policy that serves your best interests at an affordable premium, and we offer you that choice.

Walter R. Anderson Insurance has specialized in lawyer malpractice insurance since 1981. We negotiate terms with 19 insurers throughout California, so we can offer you the best coverage options at the best prices.

Get the Best Choice of Coverage and Price

If fifty percent of your practice is devoted to one category, and you've had no claims in the last five years, you should be eligible for a large discount in your insurance premiums.

**Call for an estimate:
805.682.8885**

Or visit us online and complete
the law firm information form:
Lawyers-Insurance.com
Click on Get Started Now

**WALTER R. ANDERSON
Insurance Services, Inc.**

3757 State Street, Suite 2B
Santa Barbara CA 93105
TEL: 805.682.8885
FAX: 805.563.1160

info@lawyers-insurance.com
CA License: 0711805

Santa Barbara County Bar Association

www.sblaw.org

2017 Officers and Directors

MICHAEL DENVER

President
Hollister & Brace
PO Box 630
Santa Barbara, CA 93102
T: (805)963-6711
mpdenver@hbsb.com

JEFF CHAMBLISS

President-Elect
Santa Barbara County Public De-
fender's Office
1100 Anacapa Street
Santa Barbara, CA 93101
T: (805)568-3497
jchamb1@co.santa-barbara.ca.us

AMBER HOLDERNESS

Secretary
Ofc of County Counsel
105 E. Anapamu Street, #201
Santa Barbara, CA 93101
T: 568-2969
aholderness@co.santa-barbara.
ca.us

ELIZABETH DIAZ

Chief Financial Officer
Legal Aid Foundation
301 E. Canon Perdido Street
Santa Barbara, CA 93101
T: 963-6754
ediaz@lafsb.com

JAMES GRIFFITH

Past President
Law Offices of James P. Griffith
25 E. Anapamu Street, #2
Santa Barbara, CA 93101
T: (805) 962-5821
jim@jamesgriffithlaw.com

LETICIA ANGUIANO

Vice President and Counsel
MUFG Union Bank NA
1021 Anacapa Street
Santa Barbara CA 93101
Leticia.anguiano@unionbank.com

ERIC BERG

Berg Law Group
3905 State St Ste. 7-104
Santa Barbara, CA 93105
T: (805) 708-0748
eric@berglawgroup.com

JOSEPH BILLINGS

Allen & Kimbell, LLP
317 E. Carrillo Street
Santa Barbara, CA 93101
T: (805) 963-8611
jbillings@aklaw.net

MICHAEL BRELJE

Grokenberger & Smith
152 E. Carrillo Street
Santa Barbara CA 93101
T: (805) 965-7746
gmb@grokenberger.com

LARRY CONLAN

Cappello & Noël LLP
831 State St
Santa Barbara, CA 93101
T: (805) 564-2444 lconlan@cappel-
lonoel.com

BRIAN COTA

Ofc of District Attorney
1112 Santa Barbara St
Santa Barbara, CA 93101
T: (805) 568-2424
bcota@co.santa-barbara.ca.us

STEPHEN DUNKLE

Sanger, Swysen & Dunkle
125 E. De La Guerra, Ste 102
Santa Barbara, CA 93101
T: 962-4887
sdunkle@sangerswysen.com

JENNIFER DUFFY

Fell, Marking, Abkin,
Montgomery, Granet
& Raney LLP
222 E Carrillo St #400
Santa Barbara, CA 93101
T: (805) 963-0755
jduffy@fmam.com

ELVIA GARCIA

Law Offices of Gregory I. Mc-
Murray PC
1035 Santa Barbara St Ste 7
Santa Barbara, CA 93101
T: (805) 965-3703
elvia@mcmurraylaw.us

JEFF SODERBORG

Barnes & Barnes
1900 State St Ste M
Santa Barbara, CA 93105
T: (805) 687-6660
jsoderborg@barneslawsb.com

ELIZABETH E. VOGT

Law Offices of Elizabeth E. Vogt
926 Garden Street
Santa Barbara, CA 93101
T: (805) 568-0446
eevogt@vogtfamilylaw.com

LIDA SIDERIS

Executive Director
15 W. Carrillo Street, Ste 106
Santa Barbara, CA 93101
569-5511; Fax: 569-2888
sblawdirector@gmail.com

Santa Barbara Lawyer

A Publication of the Santa Barbara
County Bar Association

©2017 Santa Barbara County Bar Association

CONTRIBUTING WRITERS

Tanya A. Ahlman
Jennifer Duffy
Elvia Garcia
David Peterson
Robert Sanger

EDITOR

Eric Berg

ASSISTANT EDITOR

Lida Sideris

MOTIONS EDITOR

Michael Pasternak

VERDICTS & DECISIONS

EDITOR

Allegra Geller-Kudrow

PROFILE EDITOR

James P. Griffith

PHOTO EDITOR

Mike Lyons

GRAPHIC DESIGN

Baushke Graphic Arts

PRINT PRODUCTION

Printing Impressions

Submit all **EDITORIAL** matter to
sblawyer magazine@gmail.com
with "SUBMISSION" in the email
subject line.

Submit all **MOTIONS** matter to
Michael Pasternak at
pasterna@gmail.com.

Submit all **ADVERTISING** to
SBCBA, 15 W. Carrillo Street,
Suite 106, Santa Barbara, CA 93101
phone 569-5511, fax 569-2888
Classifieds can be emailed to:
sblawdirector@gmail.com

Mission Statement

Santa Barbara County Bar Association

The mission of the Santa Barbara County Bar Association is to preserve the integrity of the legal profession and respect for the law, to advance the professional growth and education of its members, to encourage civility and collegiality among its members, to promote equal access to justice and protect the independence of the legal profession and the judiciary.



Santa Barbara Lawyer

Official Publication of the Santa Barbara County Bar Association
February 2017 • Issue 533

Articles

- 6 Santa Barbara County Bar Association Honors Tom Hinshaw and Welcomes 2017 Board Members
- 9 Preparation for Persuasion, The Foundation of Every Successful Presentation, *By David Peterson*
- 10 New Employment Laws, 2017, *By Jennifer Duffy*
- 16 2016 SBWL Annual Dinner, *By Elvia Garcia, 2016 President, Santa Barbara Women Lawyers Association*
- 19 Quantification of Expert Opinions – NCFS Contributes to the On-Going Saga, *By Robert Sanger*
- 24 Non-Immigrant Visa Revocation for DUI Arrests, *By Tanya A. Ahlman*

Sections

- 22 Motions
- 26 Section Notices

On the Cover

California State Senator Hannah-Beth Jackson presents Commissioner Denise Motter with a Senate Proclamation honoring Commissioner Motter with the Deborah M. Talmage Attorney of the Year Award. Article on page 16.



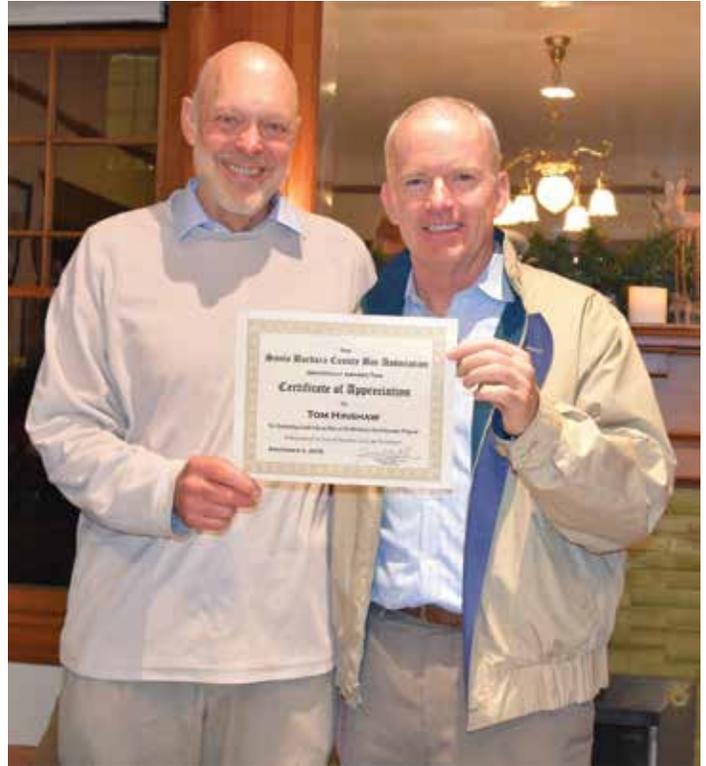
SBCBA Joint Board meeting revelers: Tom Hinshaw, Donna Lewis, Alan Fenton, Annie Fenton, Janelle, Lauren Udden, John Reyes

Santa Barbara County Bar Association Honors Tom Hinshaw and Welcomes 2017 Board Members

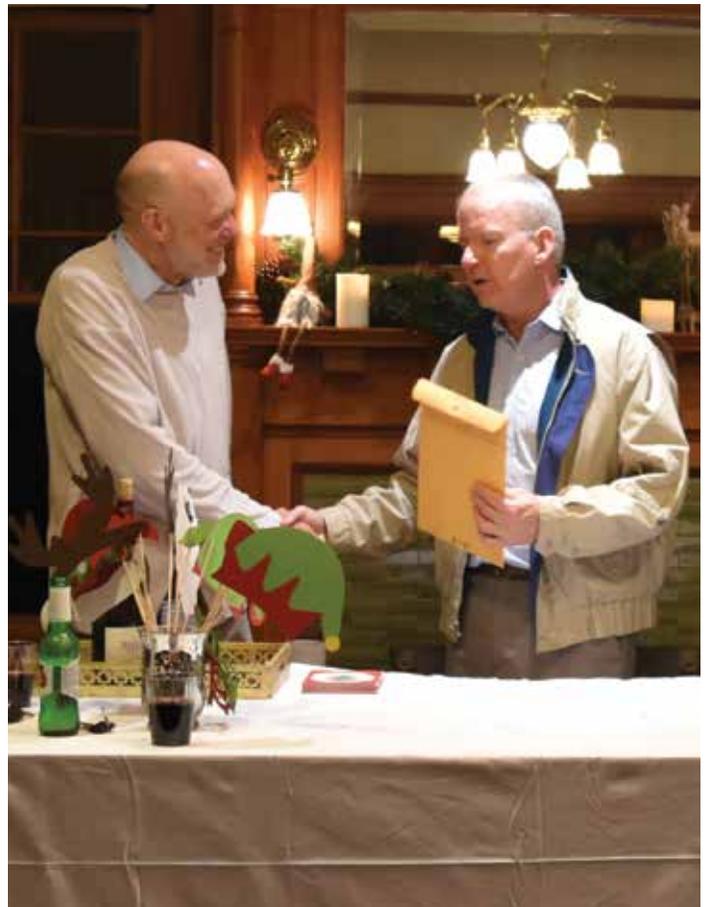
The Santa Barbara County Bar Association recently marked its successful conclusion to 2016 and welcomed its new Board of Directors for the 2017 term. The event was graciously hosted by Alan Fenton at his historic offices on Anacapa Street. In attendance were members of both the 2016 and 2017 Boards, as well as the heads of the various law sections that form such a vital part of the Board's work, and members of the Lawyer Referral Service and Mandatory Fee Arbitration Committees.

Jim Griffith, 2016 Board Chair, was thanked and congratulated for his tremendous year of leadership and service, and 2017 incoming Board Chair Mike Denver was officially welcomed to his new role.

The highlight of the evening was the Board's honoring of Tom Hinshaw for his years of service to the Bar Association. Tom has served as a tireless advocate for the local bar, both in his capacity as a former Board Member and Officer, and, most recently, as the longtime Chairperson of the Association's Mandatory Fee Arbitration Program. For over ten years, Tom has presided over a local Arbitration program that is the envy of local bar associations throughout the state. Both attorneys and clients have been well served by the careful and thorough vetting their disputes are given by our local volunteer Arbitrators. As Tom steps aside from his leadership of this program, he deserves all of our thanks. ■



Tom Hinshaw and Jim Griffith



Tom Hinshaw and Jim Griffith

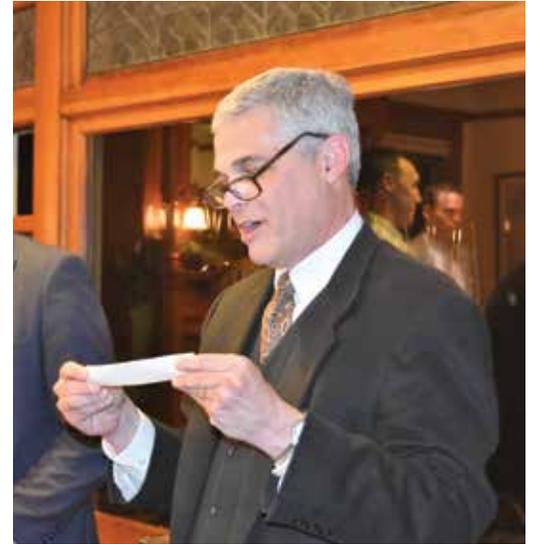
Have you renewed your membership in the Santa Barbara County Bar Association?

If not, this will be your last issue of the *Santa Barbara Lawyer*!

See page 30 for the 2017 SBCBA Renewal Application



Lida Sideris, Jim Griffith, Mike Brelje, Larry Conlan



Eric Berg



Lida Sideris and Jim Griffith



Tom Hinshaw, Lida Sideris, Jim Griffith, Mike Brelje

***Welcome 2017
Santa Barbara
County Bar
Association Board
Members!***

*Elvia Garcia,
David Peterson,
Mike Denver, Lauren
Udden, Alan Fenton,
Naomi Dewey, Donna
Lewis, Stephen Dunkle*



Before cyber crime devastates your law practice ... **be ready!**

FREE \$100,000 in Cyber Coverage – Our Latest Benefit –
Included When You Buy a Malpractice Policy* with **LMIC**



...be safe
...be secure

LMIC

*All Programs except Bar Associations

Lawyers' Mutual Insurance Company, The Premier Legal Malpractice Carrier



LMIC.COM or call **(800) 252-2045**

Preparation for Persuasion

The Foundation of Every Successful Presentation

BY DAVID PETERSON

In construction, the motto followed by the best is, "Measure twice - cut once." This not only saves on materials but assures success of the project. In litigation, mediation and negotiation, success depends upon how well one is prepared. The actual event is short compared to the time and effort put into preparing for it. To obtain optimum results in a trial, mediation or negotiation, extensive preparation is required.

When I was litigating, before turning to full-time mediation, I found that briefs were a powerful means to sway the opinion of judges and arbitrators. Grasping this, the results were gratifying in proportion to the preparation. The use of quotes from depositions, excerpts from writings of credible experts, appellate opinions, and other recognized sources all provided support for the presentation. So too did the assembly of objective evidence, such as relevant documents, reports generated in the case, photographs, and anything else the mind could conjure up. In one case before an administrative law judge I obtained and brought in the actual piece of the construction subject to the action. In another case at trial we brought in the entire countertop that was at issue to prove a critical point. What a comfort it was going to trial in such cases where I had put together all I could think of to support my client's position. Win or lose, there was scarce thought that we should have put together more.

The best trial lawyers I know, those who receive the highest recognition and awards, are always prepared.

They assess what will be most persuasive and then acquire and assemble it in an organized and easily understood fashion. They wrap their statements and arguments around the law (and jury instructions) along with the objective evidence to be presented. The overarching goal is to be as persuasive as possible.

The same is true whether these masters of organization and presentation are in trial, a mediation or negotiation. It does not matter. They seek on all occasions to be as persuasive as possible. They succeed in obtaining maximum results for their clients. Talk alone, aggressive tones, and threats are unpersuasive, and likely expose the attorney's lack of preparation and/or confidence in their case. Either or both etch away at the ability to achieve the best for their clients.

Whether it's in mediation, trial, arbitration or private negotiations directly with the other side, adequate preparation separates mediocre or average from excellence. We are all in the profession of providing service. The question always is: Are we doing an adequate job or the best we can do to prepare to persuade? ■

David C. Peterson is a local mediator having obtained a master's and LLM degree in mediation, and is adjunct professor of Mediation Theory & Practice at Pepperdine's Straus Institute for Dispute Resolution, Malibu (2009 to present), and is an author of many published articles over the years on topics designed to assist attorneys in achieving the best results for their clients. For questions, comments or further information, Mr. Peterson may be contacted at PETERSON MEDIATION PROFESSIONALS, davidcpeterson@charter.net, or directly at (805) 441-5884.



David C. Peterson

Lawyer Referral Service
805.569.9400

Santa Barbara County's ONLY State Bar Certified Lawyer Referral Service
A Public Service of the Santa Barbara County Bar Association

New Employment Laws, 2017

BY JENNIFER DUFFY

This article updates you about some of the more important new laws affecting California employers. Each is effective January 1, 2017 unless otherwise noted.

Wage and Hour Laws

State Minimum Wage Increases

The California minimum wage will hike to \$15 over the next several years.

In 2016, minimum wage was \$10 per hour for all employers. As of January 1, 2017, employers with 26 or more employees must pay minimum wage of \$10.50 per hour, with the rate reaching \$15 per hour in 2022. Small businesses with 25 or fewer employees are not required to begin the scheduled increase until 2018. So, for 2017, smaller employers remain at \$10 per hour and will remain 50 cents to \$1 per hour behind larger employers each year until they catch up to \$15 per hour in 2023. This means that there will be two different minimum wages in California through 2023 (meaning two different overtime rates, as well), as follows:

<u>Effective Dates</u>	<u>Employers with 26 or more employees</u>	<u>Employers with 25 or fewer employees</u>
1/1/17	\$10.50 per hour	\$10 per hour
1/1/18	\$11 per hour	\$10.50 per hour
1/1/19	\$12 per hour	\$11 per hour
1/1/20	\$13 per hour	\$12 per hour
1/1/21	\$14 per hour	\$13 per hour
1/1/22	\$15 per hour	\$14 per hour
1/1/23	\$15 per hour	\$15 per hour

Once the minimum wage reaches \$15 per hour for all businesses, the annual minimum wage could then be increased up to 3.5 percent per year (rounded to the nearest 10 cents) for inflation as measured by the Consumer Price Index.

Employers should consider the effect that these minimum wage increases will have on the status of exempt classi-

fications for employees. In addition to satisfying the “duties test” of doing exempt work, exempt employees must receive a minimum monthly salary of at least twice the current minimum wage (i.e., the “salary test”). For 2017, employers with 26 or more employees must pay exempt employees at least \$3,640 gross per month (\$43,680 per year). By the time the minimum wage reaches \$15 per hour, exempt employees must earn at least \$5,200 gross per month (\$62,400 per year). That is significant. At some point in this increase pattern, it may make economic sense to change certain employees from exempt to non-exempt, to save costs.



Jennifer Duffy

There is also a new required minimum wage poster.

In addition, many cities and towns enacted their own minimum wage ordinances, with various effective dates. These are: Berkeley, Cupertino, El Cerrito, Emeryville, Long Beach, Los Altos, Los Angeles (city of), Los Angeles County (unincorporated areas), Malibu, Mountain View, Oakland, Palo Alto, Pasadena, Richmond, San Francisco, San Jose, San Leandro, San Mateo, Santa Clara, Santa Monica, and Sunnyvale.

Meals and lodging credits also increased when the new minimum wage became effective.

The New Federal Overtime Law: On Hold.

As you are likely already aware, there was supposed to be a significant change to Federal overtime rules, effective December 1, 2016. In California, this meant that most exempt employees who had earned between \$41,600 and \$47,475 per year would have needed a salary increase to at least \$47,467 per year by December 1, 2016 in order to continue being exempt from overtime pay.

This law was highly criticized. At the end of November, a federal court in Texas, with power to do so, halted implementation of this new law across the country. As of this writing, it is unknown whether or when the law will be implemented.

If you increased salaries in anticipation of the new law, you have some options. You are allowed to reduce the person’s salary, moving forward (not retroactively). The better option for employee morale is to inform the affected

employees that they will not have salary increases for some time, in order to allow the raises they would have received to catch up to their increased salary.

Calculating Overtime

For purposes of calculating overtime, an employer must include cash payments given to employees in lieu of health benefits when determining the regular rate of pay.

Major Changes for Agricultural Employers

Currently, agricultural employees are exempt from overtime, meal breaks, and other working conditions and wage requirements. There will be overtime requirements phased in over four years, between 2019 and 2022. This is a very significant change for this industry.

In addition, agricultural employers are no longer exempt from the seventh day off provision. This means that agricultural employers cannot require such employees to work more than six days in seven.

Pay Stub

A new law has confirmed that employees who are exempt from the payment of overtime and minimum wage are not required to have their hours tracked and logged on a pay stub.

Also, employers do not need to include the monetary value of accrued vacation benefits (or paid time off, if that is your policy) on the itemized pay stub unless and until the paid vacation is paid out at the end of the employment relationship.

Earned Income Tax Credit

Employers who must notify employees of their eligibility for the Federal Earned Income Tax Credit must now notify these employees that they may be eligible for the California Earned Income Tax Credit. There is a new required notice.

Bond for Appealing Labor Commissioner Ruling

Employers who contest a Labor Commissioner decision that they failed to pay minimum wage now must post a bond equal to the unpaid wages, excluding penalties, in order to appeal. The bond is issued in the name of the unpaid worker.

Janitorial Industry

There are new record-keeping, registration, and training requirements for the janitorial industry. Many, but not all, of these provisions are delayed (i.e., not starting in 2017). The overall intent is to protect janitorial workers from wage theft and sexual violence and/or harassment.

A covered worker is an employee, independent contractor, or franchisee working predominantly as a janitor.

Effective January 1, 2017, covered janitorial employers must keep accurate records of the following, which must be kept for at least three years:

1. The names and addresses of all employees who perform services for any business of the employer.
2. Daily hours worked for each employee, including the time the employee starts and ends each work period, to be reported by the employee to the employer.
3. Wages paid each payroll period.
4. Ages of minor employees.
5. Any other express conditions of employment.

Covered janitorial employers must register annually with the Labor Commissioner, beginning July 1, 2018. There is a registration fee. Also beginning July 1, 2018, covered employers must provide employees with the Department of Fair Employment and Housing's sexual harassment prevention pamphlet, and continue until the Department of Labor Standards Enforcement establishes the training requirement, explained below.

By January 1, 2019, the DLSE will develop a biennial, in-person sexual violence and harassment prevention training for employers and employees.

Violations of these requirements will result in civil fines.

Private School Teachers

Currently, private school teachers in California must earn two times the state minimum wage to be exempt from overtime and must meet all other requirements for the exemption. Effective July 1, 2017, private school teachers will need to meet a new minimum earnings test that will look at the comparable salaries offered to public school teachers in the same district or county, rather than the state minimum wage. To be exempt from overtime, the private school teacher must earn the greater of (1) no less than the lowest salary offered by any school district, or (2) the equivalent of no less than 70% of the lowest schedule salary offered by the district or county in which the private school is located.

Hair/Nail Salons

Effective July 1, 2017, any establishment that is licensed by the Board of Barbering and Cosmetology ("BBC") must post a notice regarding workplace rights and wage-and-hour laws. The Labor Commissioner will create the model notice by June 1, 2017. The Labor Commissioner will be responsible for inspections, and failure to post the notice will result in a fine.

Also effective July 1, 2017, the BBC must provide every

licensure applicant with basic labor law as part of its health and safety curriculum.

Temporary Services/Wages

Under the Labor Code, wages are due and payable weekly to an employee of a temporary service employer, regardless of when the assignment ends. The Labor Code had been amended, effective July 25, 2016, to reflect that this weekly pay requirement applies to security guards employed by private patrol operators who are temporary services employers.

Wage Garnishments

Effective July 1, 2016, the amount of wages exempt from garnishment changed. For more information, please go to <http://courts.ca.gov/documents/wg002.pdf>.

Discrimination and Retaliation Protections

Fair Pay

In 2015, significant amendments were made to California's equal pay laws to address gender wage inequality. This year, two new bills expand California's fair pay law.

The Fair Pay Act now extends to racial and ethnic wage disparity. The legislation prohibits an employer from paying any of its employees wage rates that are less than the rates paid to employees of another race or ethnicity for substantially similar work.

In addition, under the revised Fair Pay Act, prior salary cannot, by itself, justify any disparity in compensation. The law is intended to, "help ensure that both employers and workers are able to negotiate and set salaries based on the requirements, expectations, and qualifications of the person and job in question, rather than on an individual's prior earnings, which may reflect widespread, long-standing, gender-based wage disparities in the labor market."

Harassment, Discrimination, and Retaliation Prevention Policy Now Required

All employers must now have a written harassment, discrimination, and retaliation prevention policy. This policy must have effective internal complaint procedures. There are extensive requirements. The policy must contain the following:

1. Be in writing.
2. List all protected categories under the Fair Employment and Housing Act, plus the types of conduct that constitute harassment under State and Federal law.

3. Indicate that the law prohibits supervisors, managers, co-workers, and third parties with whom the employee comes in contact from engaging in prohibited conduct.
4. Include a complaint process that ensures complaints receive all of the following:
 - A. A designation of confidentiality to the extent possible.
 - B. A timely response.
 - C. An impartial and timely investigation by qualified personnel.
 - D. Documentation and tracking for reasonable progress.
 - E. Appropriate options for remedial actions and resolutions.
 - F. Timely closure.
5. Make clear that an employee has the right to complain about harassment or participate in any workplace investigation without fear of retaliation.
6. State that confidentiality will be kept by the employer to the extent possible.
7. Explain that the employee does not need to file a complaint directly to his or her immediate supervisor, and provide an alternate mechanism for complaints, including but not limited to:
 - A. A designated company representative (e.g., Human Resources Manager)
 - B. A complaint hotline
 - C. Access to an ombudsperson and/or
 - D. Identification of the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission as additional avenues for lodging complaints.
8. Instruct supervisors to report any complaints they receive to a designated representative.
9. Explain the company's process for handling complaints.
10. Include a statement that if misconduct is found during the investigation, the company will take appropriate and remedial measures.

In addition, the policy should state that all conduct that is unprofessional is prohibited (zero tolerance policy), and that the company's rules prohibit such conduct, regardless of whether it rises to a legal violation.

If your workforce has 10 percent or more of workers who speak a language other than English as their spoken language, the policy must be translated into that language.

The policy must be distributed to all employees, and employers must ensure that employees receive it by obtaining a confirmation of receipt or other methods ensuring receipt.

All-Gender Restrooms

Beginning March 1, 2017, all single-user toilet facilities in any business establishment, place of public accommodation, or government agency, must be identified as “all gender” toilet facilities.

Immigration-Related Protections

Employers are required to verify an employee’s eligibility to work using the Form I-9 process. Under federal law, it is unlawful for an employer to ask for more or different documentation than is required by the Form I-9, refuse to accept documents that appear genuine on their face, or engage in other types of document abuse. This type of conduct is unlawful under state law, as well.

There is a new Form I-9. After January 21, 2017, previous versions of the I-9 form will no longer be valid for new hires. The new form can be found here: <https://www.uscis.gov/i-9>. There is also a supplement form to use if extra space is needed to document that more than one person or translator assisted the employee in completing the form.

Driver’s License

Employers are not allowed to require applicants or employees to hold, or present a driver’s license unless the policy is uniformly applied and for legitimate business purposes.

Leaves of Absence and Benefits

Paid Family Leave Benefits

Beginning January 1, 2018, there will be an increase in the amount of paid family leave benefits an employee can receive to either 60% or 70% of earnings, depending on the employee’s income. Currently, employees may receive 55% of earnings. Under the new law, there will still be a maximum weekly benefit limit on the amount received.

Also effective January 1, 2018, the new law will remove the current seven-day waiting period that exists before an employee is eligible to receive paid family leave benefits.

State Disability Insurance

Physician Assistants can now certify a disability for purposes of an employee being eligible to receive SDI benefits.

Domestic Violence, Sexual Assault, and Stalking Protections

Employers with 25 or more employees must give all employees written notice about the rights of victims of

domestic violence, sexual assault, and stalking to take protected time off for medical treatment and legal proceedings. A required form must be given to all new employees upon hire, and to current employees upon request. The Labor Commissioner will develop the form by July 1, 2017. Employers are not required to comply with this notice requirement until the Labor Commissioner posts the notice on its website.

Private Retirement Savings Plan

The California Secure Choice Retirement Savings Program (“SCRSP”) has been created. It is a state-run retirement plan for private sector workers. The legislation sets forth specific prerequisites that must be met before the SCRSP is up and running; so, it may be some time before we actually see this program implemented. Under the legislation, employers with five or more employees that do not offer specified retirement plans must put a payroll arrangement in place so that employees may contribute a portion of their salary or wages to a retirement savings program in the SCRSP.

Paid Sick Leave

Effective July 1, 2018, California’s paid sick leave law will extend to cover in-home supportive service workers. There will be a specific amount of paid sick leave to provide to these workers, which is different from the amount provided to other California employees.

Background Checks

Juvenile Criminal History Information. Employers are not allowed to ask about an applicant’s juvenile criminal convictions, or use such convictions as a factor in determining any condition of employment.

Criminal Background Checks for Ride Sharing Services. Any “transportation network company” (think Lyft and Uber) must conduct, or have a third party conduct, both a local and national criminal background check for each driver. These companies cannot contract with, employ, or retain a driver who is a registered sex offender, has been convicted of certain terrorism-related felonies or a defined violent felony, or within the previous seven years, was convicted of misdemeanor assault and battery, any domestic violence, driving under the influence, or any number of a specified list of felonies.

Unemployment Insurance

Effective January 1, 2017, employers with 10 or more employees must file all unemployment insurance reports and returns electronically and remit all contributions for

unemployment insurance premiums by electronic funds transfer.

Workplace Safety

Indoor Heat Illness

By January 1, 2019, Cal/OSHA must propose a heat-illness and injury prevention standard for indoor workers. There are already standards for outdoor workers.

Driving

This law reaffirms the general ban on using wireless electronic devices while driving. It amends existing law to authorize drivers to use their hand to activate or deactivate a feature or function on the device with a single swipe or tap, as long as the device is mounted so it does not hinder the driver's view of the road. This means that you can no longer use GPS navigation while driving and you cannot do anything while holding your phone.

Marijuana Use

Employers can still prohibit marijuana use in the workplace, despite the recent legalization of recreational use of marijuana in California. Also, employers can still test for marijuana use in pre-employment drug testing and decide not to hire an applicant based on a positive test.

It is best practice to clearly state your policy to all employees on marijuana use in the workplace.

Smoking

A package of bills was signed earlier this year, effective June 9, 2016, that extends the ban on workplace smoking. Electronic cigarettes and other nicotine delivery devices, such as vaporizers, are covered under the statewide ban on smoking in the workplace.

Other New Laws

Additional Trade Secret Law Protections for Employers

In 2016, the federal Defend Trade Secrets Act was signed into law. It gives employers another method to pursue claims of trade secret misappropriation in federal court, including the ability to obtain compensatory damages, punitive damages, and attorneys' fees.

If you want to use the benefits of the DTSA to protect your trade secrets, you must give your employees notice that they are entitled to DTSA whistle blower protections. You must also notify them that they are immune from liability under federal or state trade secret law if they confidentially disclose trade secrets for the purpose of reporting illegal conduct to governmental agencies.

Employers should consider including this immunity notice in any confidentiality or trade secret agreement with employees or contractors, including in employee handbook provisions.

IRS Mileage Reimbursement Rates

For 2017, the standard IRS mileage rates are:

- 53.5 cents per mile driven for business purposes.
- 17 cents per mile driven for medical or moving purposes.
- 14 cents per mile driven in service of charitable organizations.

Please check www.irs.gov for the most current mileage reimbursement rates, as these often change mid-year. ■

Jennifer Gillon Duffy is a Santa Barbara native and a Partner with the law firm of Fell, Marking, Abkin, Montgomery, Granet & Raney, LLP in Santa Barbara, where she specializes in employment law and family law. She can be reached at Jduffy@fmam.com and (805) 963-0755.

THE OTHER BAR NOTICE

Meets at noon on the first and third Tuesdays of the month at 330 E. Carrillo St. We are a state-wide network of recovering lawyers and judges dedicated to assisting others within the profession who have problems with alcohol or substance abuse. We protect anonymity. To contact a local member go to <http://www.otherbar.org> and choose Santa Barbara in "Meetings" menu.



MEDIATION SERVICES

R.A. Carrington, Esq. and Victoria Lindenaus, Esq.

Mr. Carrington and Ms. Lindenaus have conducted over 3,000 mediations, 300 arbitrations and have been discovery referees in multiple complex matters. Mr. Carrington (ABOTA Member) has been a full-time mediator since 1999 and Ms. Lindenaus has been mediating since 2011. Their professional association as of 2017 reflects their jointly held commitment to the values of tenacity, creativity, and the highest ethical standards applied to the resolution of every dispute.

Serving Los Angeles, Orange, Ventura, Santa Barbara, San Luis Obispo, and Kern Counties

Contact R.A.:
(805) 565-1487

ratc@cox.net

Contact Victoria:
(805) 730-1959

lindenaus_mediation@cox.net

www.californianeutrals.org/ra-carrington

www.lindenausmediation.com

Hebda Property & Title Solutions

John Hebda
President



- Attorneys
- Title Companies
- Commercial, Industrial and Agricultural Real Estate Professionals
- Residential Real Estate Professionals
- Utility companies and contractors
- Government agencies
- Surveyors
- Developers

Hebda Property & Title Solutions is committed to sharing over 30 years of title insurance and real property problem solving expertise with Professionals seeking quality research and common sense solutions regarding a host of complex real property issues.

john@hebdatasolutions.com
805.636.2537
www.hebdatasolutions.com

Hot Writs & Cool Appeals



Herb Fox, Esq.
Certified Appellate Law Specialist*

A Full Service Appellate Boutique

Appeals and Writs
Post-Trial and Anti-SLAPP Motions
Appellate Opinion Letters
Trial and Post-Trial Consultations

899.4777
HFox@FoxAppeals.com
www.FoxAppeals.com

Hourly, Flat and Contingency Fees Considered
Referral Fees Paid in Accordance with State Bar Requirements

Southern California Appellate Superlawyer®
AV® Rated / AVVO® Rating 10

*Board of Legal Specialization, Cal. State Bar

2016 SBWL Annual Dinner

BY ELVIA GARCIA
2016 PRESIDENT, SANTA BARBARA WOMEN
LAWYERS ASSOCIATION

It was an inspirational and uplifting evening at the 2016 Santa Barbara Women Lawyers Annual Dinner, which took place on December 12, 2016 at the historic Santa Barbara Club. This year marked the 20th year that the Deborah M. Talmage Attorney of the Year Award has been given to an outstanding recipient. This year the award was given to the one and only Commissioner Denise Motter, whose speech reminded us about the simplicity of practicing kindness in every aspect of our lives.

Outgoing Colleges of Law Dean Heather Georgakis did an amazing job of introducing us to the new Dean and Chief Academic Officer of the Colleges of Law, Jackie Gardina. Ms. Gardina gave us a glimpse at how the Colleges of Law have been and will continue to serve our community. Most importantly, she reminded us of the value of working together and building each other up.

Lastly, we were honored to present Senator Hannah Beth Jackson with a more than well deserved award for her tireless efforts on behalf of women lawyers and women's rights, and for her success in the passing of Senate Bill 358, the California Fair Pay Act. Senator Jackson's inspirational and contagious outlook towards life reminded us to "never, ever give up."

As part of the evening's events, the 2017 SBWL Board was sworn-in by the Honorable Jean Dandona. We were happy to share this night with more than eighty-five of our members and guests. For me, as the 2016 leader of this

organization, it was a pleasure to be a part of this organization's twenty-eight year legacy, and I look forward to seeing how SBWL will build on the exciting momentum that has developed with its 2017 leader, Jennifer Smith.

Thank you all for your support. ■





FAMILY LAW MEDIATION

WHY?... BECAUSE IT WORKS

TRUSTED MEDIATION AND SETTLEMENT MASTER
SERVICES FOR MORE THAN 35 YEARS

- Dissolution of Marriage
- Custody and Visitation
- Parenting and Time-Share Plans
- Spousal and Child Support
- Pre and Post Marital Agreements
- Legal Separation
- Guardianship and Conservatorship



Rachel Lindenbaum Wilson, Attorney at Law and Mediator

1996 SBCBA ProBono Service Award - Establishment of the SB Children In The Middle Program



PHONE 805-564-2191
wilsonpettine.com

Wilson & Pettine, LLP
1006 Santa Barbara Street Santa Barbara, CA 93101

**Experienced.
Trusted.
Proven.**

Mediator and arbitrator
for the resolution of
cases including:

- Business/Commercial
- Contracts, Employment
- Environmental and Real Estate
- Construction
- Wills and Trusts
- Family Law
- Personal Injury

Retired Judge, Elinor Reiner



Judge Elinor Reiner
MEDIATOR AND ARBITRATOR

To schedule a consultation, please call 805-879-7517
211 E. Anapamu Street • Santa Barbara, CA 93101
elinor@elinorreiner.com • WWW.ELINORREINER.COM

2017 Memberships with the William L. Gordon Inn of Court

The William L. Gordon Inns of Court is accepting applications for 2017. Our new year starts November 3, 2016.

Since 1995, The William L. Gordon Inn of Court has been a Santa Barbara Chapter of the American Inns of Court Foundation. Its mission is to foster civility, professionalism and excellence in the legal profession.

The monthly meetings are generally entertaining, educational and a great way for the more experienced professionals to mentor the less experienced attorneys and students.

Benefits of membership in the Inn include all of the following:

1. Ten excellent dinners at the University Club (one each month November through October - excepting December and January);

2. At least nine hours of participatory MCLE credit (based on attendance - plus credit for being a presenter);

3. The opportunity to work as a team with local attorneys, judges, and other judicial officers at all levels of experience to give one MCLE presentation during the year; and,

4. Social hour prior to dinner meetings to meet and become acquainted with the other members of the Inn and their guests.

If you are interested in becoming a member of our Inn of Court, please contact Cheryl Johnson at 963-6711 or at cjohnson@hbsb.com.

JOHN E. NORDSTRAND ECONOMIC CONSULTING

For 22 years serving the Central Coast as an expert economist for personal injury, wrongful death, wrongful termination, and business litigation matters.

SERVICES:

- Valuations of Wage and Fringe Benefits Loss
- Household Services
- Business Valuations
- Loss of Profit Analyses
- Statistical Studies

EXPERIENCE:

Over 150 appearances of courtroom testimony in Superior Courts of Santa Clara, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, and Orange Counties, as well as U.S. Federal Court.

(805) 684-2750

www.johnnordstrandecomomics.com
john.nordstrand747@gmail.com

Quantification of Expert Opinions – NCFS Contributes to the On-Going Saga

BY ROBERT SANGER¹

Quantification of expert opinions continues to evolve as a subject in the law right now. New standards are being proposed by various entities, including the National Commission on Forensic Science (NCFS) in partnership with the National Institute of Standards and Technology (NIST), to give guidance regarding “statistical statements.” This has been the subject of prior *Criminal Justice* columns. It is being discussed at the highest levels of government, academia and the courts, and is slowly being acknowledged by trial lawyers and trial courts.

“Statistical statements” have recently been the discussion of a draft proposal by the NCFS² and will be open for public discussion until January 27, 2017, and subject to further discussion and possible approval at the NCFS meetings on April 10 and 11, 2017. In the November 2016 *Criminal Justice* column, we reviewed the President’s Council’s efforts to evaluate appropriate parameters of comparison forensics in the PCAST Report.³ This new NCFS draft proposal, approved by the Subcommittee on November 16, 2016, independently makes some similar observations but also focuses more intently on the statistical aspect of a forensic witness’ statement.

Quick Review

As discussed previously, the California Supreme Court in *Sargon Enterprises, Inc. v. University of Southern California*⁴ deemed that the trial judge is the “gatekeeper” in California, just as in federal court and other states that long ago adopted *Daubert v Merrell Dow Pharmaceuticals, Inc.*⁵ and *Kumho Tire Co., Ltd. v Carmichael*.⁶ *Sargon* explicitly held that an expert may not “speculate” in his or her opinion and it must be based on reasons supported by evidence upon which the expert relies. This means that the trial judge is obligated, if requested by the opposing party, to review -- under Evidence Code Sections 801 and 802 and *Daubert/Kumho Tire* and *Sargon* -- the proffered opinion of an expert witness. This includes any “statistical statement.”

A “statistical statement” is anything that quantifies the opinion of the expert. Such a statement does not have to

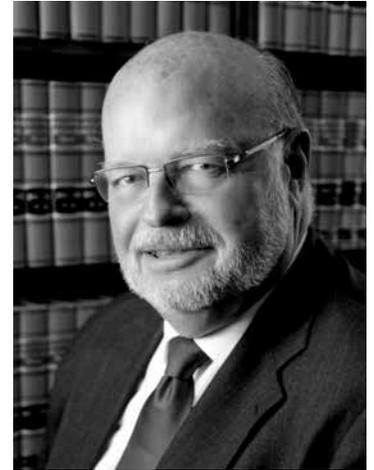
be articulated by the witness numerically and can be expressed in words. It has already been conceded that words like “identification,” “match,” and “conclusive,” or phrases like “to a reasonable degree of medical (or scientific) certainty”⁷ are inappropriate in forensic testimony. They convey, in words, something like “100% true.” It remains, however, the subject of controversy as to whether or not, and under what conditions, the trial judge should allow an opinion which expresses some sort of actual statistical calculation.

A statistical statement may be expressed in non-numerical words, such as “highly probable,” “probable,” “likely,” or “unlikely.” To the extent that those words are used, they are a means of conveying a statistical opinion without using numbers. In other words, the expert may or may not have a statistical value in mind or may not be able to support a statistical computation but, by using those words, the witness suggests that there is a statistical computation that is informing the opinion. In addition, such expert opinions suffer from the further distorting filter of interpretation by the trier of fact. The use of such words conveys an, albeit imprecise, statistical conclusion. However, the words are rendered even more imprecise by the jurors’ guesses as to what they might mean. For instance, does “highly probable” mean 95% to 99% or 80 to 90%?

Having said that, assuming that the expert is actually attempting to make a “statistical statement” in good faith, whether using words or numbers, it is far from a scientific conclusion. The fact is, “statistics is the ‘science of uncertainty.’”⁸ A “statistical statement” includes a number of subjective choices and, even in the comparison of fairly unambiguous features, it is an opinion based on a calculation relating the evaluation of a data base to an empirical inspection of the evidence in a case. The significance of the statistical statement would include an evaluation of how accurate or uncertain the measurement of the data may be, the extent to which the data supports particular conclusions or the probability of the conclusions themselves.

The NCFS Draft Report

The newly released NCFS draft “*Views of the Commis-*



Robert Sanger

sion: *Statistical Statements in Forensic Testimony*” (hereinafter “NCFS Draft Report”)⁹ is another attempt to deal with the parameters of proper statistical testimony. The NCFS Draft Report includes the statement that the “Commission advances a preference for an explicit statistical foundation for statements because mathematical analysis tends to provide a ready means for assessing and expressing uncertainty.” This is consistent with the general aspiration of the National Academy of Sciences’ (NAS) now famous report on forensic sciences issued in 2009.¹⁰ Since vague opinions expressed in words are implicitly based on some sort of statistical evaluation, or purport to be so, the statistical basis should be expressed whether the conclusions are expressed in words or numbers. Once again, as with the NAS and PCAST, the NCFS Draft Report refers to the “success” of DNA analysis in using probabilistic models. The question remains whether and how the aspiration of the NAS and the preference of the NCFS is attainable in expressing opinions regarding examples of pattern and impression evidence, trace evidence, qualitative analysis, quantitative back-extrapolation, or cause, manner and time of death.

The NCFS Draft Report, as did the PCAST, the NAS and most everyone else, recognizes that the main difference between DNA analysis and virtually all other areas of forensics is that DNA employs a widely accepted probabilistic model based on an adequately established and studied data base.¹¹ They recognize that, “at the core of all such statistical calculations, there must be data from a *relevant population or sampling*.” (Emphasis in original) This is, indeed, at the core of the problem. Data bases of shoe prints, expended bullets and even fingerprints are either not sufficient in the size of sampling or have not been analyzed sufficiently to develop the kind of meaningful distinctions that are necessary to do a statistical comparison. As a part of that, unlike DNA analysis, the significance of the presence or absence of particular features has not been established in the same fashion.

Forensic opinions then often devolve to probabilistic statements made based upon the subjective judgment of the witness. That can lead to disaster where, as in the infamous Willingham “arson” case, the witness said the “fire spoke to him” and he could see things others could not – only to find out after Mr. Willingham was executed that the witness made it up as he went along and offered opinions that were

contrary to fact.¹² Subjective elements have to be taken into account and may override any meaningful statistical conclusions. At the least, there should be empirical studies of the reliability of the examiner’s subjective judgment.

The NCFS Draft Report concludes that, “Not all forensic subdisciplines currently can support a probabilistic or statistical statement. There may still be value to the fact-finder in learning whatever comparisons the expert in those subdisciplines has carried out. But the absence of models and empirical evidence needs to be expressed both in testimony and written reports.” That leaves unanswered more

than what the rest of the Draft Report answers. Yes, probabilistic or statistical statements are something toward which to aspire, however, that cannot always, or perhaps usually, be attained. The NCFS Draft Report acknowledges that expert witnesses should discuss features of the known and questioned samples, their processes of comparison along with limitations and uncertainties in measurement. They should also acknowledge choices among types and means of analysis, acknowledgement of errors and lack of information, and avoid claims of certainty. But the Re-

port does not say to what extent or in what combination limitations and uncertainties should preclude the testimony entirely.

Assuming that the foregoing issues are acknowledged and that it is possible to do a statistical analysis, the NCFS Draft Report recommends that the expert witness:

To explain the value of the data in addressing claims as to the source of a questioned sample, forensic examiners may:

A. Refer to relative frequencies of individual features in a sample of individuals or objects in a relevant population (as sampled and then represented in a reference database). The examiner should note the uncertainties in these frequencies as estimates of the frequencies of particular features in the population.

B. Present estimates of the relative frequency of an observed combination of features in a relevant population based on a probabilistic model that is well grounded in theory and data. The model may relate the probability of the combi-

The trial judge still has to make the determination as to whether an expert opinion should be allowed at all.

nation to the probabilities of individual features.

C. Present probabilities (or ratios of probabilities) of the observed features under different claims as to the origin of the questioned sample. The examiner should note the uncertainties in any such values.

D. When the statistical statement is derived from an automated computer-based system for making classifications, present not only the classification but also the operating characteristics of the system (the sensitivity and specificity of the system as established in relevant experiments using data from a relevant population). If the expert has no information or limited information about such operating characteristics, the expert must state this fact.”

Conclusion

This is better than nothing – but it really does not come close to giving a trial judge the equipment to make the “gatekeeper” decisions. The trial judge still has to make the determination as to whether an expert opinion should be allowed at all and, if so, what the limitations are on the specific content. A “statistical statement,” as broadly defined to include verbal quantitative assessments, may not be supported at all. In addition to all of the other issues discussed in the NCFS Draft Report, the trial judge will have to decide how to quantify the possibility of contamination or deliberate manipulation of evidence, the reliability of empirical evidence, such as witness testimony to some foundational event, and include the possibility of a mistaken or willfully deceptive witness.

The problem is that jurors give an expert witness’ testimony a lot of weight, particularly when it is probably least reliable when proffered on the expert’s subjective opinion based on training and experience, e.g., I know because the “fire speaks to me.” So, yes, it is better than nothing to have a discussion about the statistical basis for an opinion, but the subjective element will always be present in choice of samples, choice of test, comparisons with the data base, etc. And there are no cases in which negligent or willful manipulation of evidence will not potentially upend any “statistical statement” entirely. Thus, we remain at the drawing board attempting to design appropriate rules for the admissibility and scope of statistical statements of forensic expert witnesses. ■

practicing as a criminal defense lawyer in Santa Barbara for over 40 years. He is a partner in the firm of Sanger Swysen & Dunkle. Mr. Sanger is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers’ organization. He is a Director of Death Penalty Focus. Mr. Sanger is a Member of the ABA Criminal Justice Sentencing Committee and the American Association for the Advancement of Science (AAAS). Mr. Sanger is also a member of the Jurisprudence Section of the American Academy of Forensic Sciences (AAFS) and an Adjunct Professor teaching law and forensic science at the Santa Barbara and Ventura Colleges of Law.

ENDNOTES

- 1 ©Robert M. Sanger.
- 2 <https://www.regulations.gov/document?D=DOJ-LA-2016-0025-0001>
- 3 *Santa Barbara Lawyer Magazine*, November, 2017; see, President’s Council of Advisors on Science and Technology, “REPORT TO THE PRESIDENT, Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods,” Executive Office of the President (September 2016), (hereinafter, “PCAST Report”), https://www.whitehouse.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf.
- 4 55 Cal. 4th 747 (2012).
- 5 590 U.S. 579 (1993).
- 6 526 U.S. 137 (1999).
- 7 See, e.g., Nat’l Comm’n on Forensic Science, *Views Document on Use of the Term “Reasonable Scientific Certainty,”* Mar. 22, 2016, <https://www.justice.gov/ncfs/file/839731/download>.
- 8 Oft uttered phrase in statistics, see, e.g., Noel Cressie and Christopher K. Wikle, *Statistics for Spatio-Temporal Data*, (Wiley, 2011) p. 4.; see also, Michael J. Evans, Jeffrey S. Rosenthal, *Probability and Statistics: The Science of Uncertainty*, (Freeman & Co., 2010) (“Probability is the science of uncertainty. It provides precise mathematical rules for understanding and analyzing our own ignorance.”)
- 9 Approved by Subcommittee on November 16, 2016, at: <https://www.regulations.gov/document?D=DOJ-LA-2016-0025-0001>.
- 10 National Research Council, *Strengthening Forensic Science in the United States: A Path Forward*, (NAS 2009)
- 11 Problems have been discovered and partially corrected with regard to one of the primary DNA databases and nothing is beyond further examination. There are also, of course, serious problems with DNA analysis in low copy number cases, degradation or contamination of samples, and, in particular, mixed samples. But the comparison of the non-degraded, non-contaminated single-source sample to the relevant data base remains a standard toward which other forensic sciences can only aspire.
- 12 David Grann, *Trial by Fire*, *The New Yorker*, September 7, 2009, <http://www.newyorker.com/magazine/2009/09/07/trial-by-fire>; see also, Paul C. Giannelli, “*Junk Science and the Execution of an Innocent Man*,” 7 N.Y. Univ. J. of Law and Liberty 221 (2011).

Robert Sanger is a Certified Criminal Law Specialist and has been

Motions



Hager & Dowling is pleased to announce that **Lizinka "Zinka" Benton** has joined the firm as an associate attorney. Ms. Benton has a broad practice that includes entertainment, employment, construction, business/commercial and insurance bad faith.

In addition to practicing law, Ms. Benton, spent 4 years as managing partner of a digital media company, where she handled business, legal, and media production matters from start-up through wind down. She also taught Entertainment Law at Quinnipiac Law School in Hamden, CT. Before becoming a lawyer, Ms. Benton wrote and produced for film and television.

Ms. Benton served on the board of the New Haven Arts Council and Love Makes a Family, CT. She has mentored start-up businesses and provided pro bono assistance to a variety of media projects.

Brittany D. Hansen is the new associate attorney at the Montecito law firm **Ambrecht & Associates**. Ms. Hansen specializes in taxation and estate planning.



Prior to joining Ambrecht & Associates, Ms. Hansen interned at the Low Income Taxpayer Clinic at Syracuse University in Syracuse, New York, where she assisted clients with administrative proceedings before the Internal Revenue Service as well as

represented clients in judicial proceedings before the United States Tax Court.

Jennifer and Brian Hanrahan welcomed new baby girl **Soleil Vivian Quinn Hanrahan** to their family firm on November 30, 2016, a precious angel born at 8 lbs. 10 oz. and 20.5 inches long. Blonde, blue-eyed big sisters Cielle and Seren and new big brother Hawken are thrilled with their dark beauty baby sister! Jennifer is forever filled with gratitude for the brilliant, talented, creative, compassionate members of the Santa Barbara legal community who have given support and counsel over the years as she has been building her professional legal and personal family practices.



Hon. Frank J Ochoa (Ret.), Of Counsel with the firm of **Sanger Swysen & Dunkle**, has expanded his arbitration and mediation practice with new professional relationships. He has been inducted into the California Academy of Distinguished Neutrals and the National Academy of Distinguished Neutrals. The National Academy has around 900 members. Induction is by invitation only and is limited to professional mediators and arbitrators who are well established as trusted neutrals among members of the legal community within their state of practice. The Academy considers professionals nominated for membership and conducts a comprehensive review of the nominee's work with attorneys who have utilized that person's services.



Ochoa has also become an approved arbitrator and mediator for the California Public Employment Relations Board-State Mediation and Conciliation Service. By statute, PERB provides arbitration and mediation, in addition to other ADR services, to a wide range of state and local public employment groups. He is also an arbitration and mediation panelist for the American

Arbitration Association and Resolute Systems, LLC. Ochoa has become a member of the Southern California Mediation Association. In 2000, he was named “Judge of the Year” by that organization.

The Environmental Defense Center (EDC)

is pleased to announce that **Matthew A. Smith** has joined our team as a Staff Attorney. A graduate of Duke Law School, Matt was inducted into the Order of the Coif and earned an L.L.M in International and Comparative Law in addition to a J.D. Upon graduation, he clerked for Judge Rosemary Barkett on the United States Court of Appeals for the Eleventh Circuit before working as a plaintiff’s-side class action litigator for several years at two nationally-recognized firms: Hagens Berman Sobol Shapiro LLP in Berkeley and Cohen Milstein Sellers & Toll PLLC in Washington, DC. His experience includes a federal case that resulted in the recovery of \$15 million for thousands of steelworkers, a successful lawsuit on behalf of hundreds of disabled veterans, and a landmark opinion from the first appellate court to address a heavily disputed issue regarding pension regulation.



After years of success as a class action litigator, Matt decided to combine his legal expertise with his passion for the environment. Matt spent four months as a full-time volunteer attorney for the Sierra Club in Oakland, gaining experience in public interest environmental law. During his time there he worked on Clean Water Act issues and collaborated with local advocates to develop an antitrust complaint against developers of an interstate gas pipeline. Matt is thrilled to carry on this work with the team at EDC and take up the fight to protect the South Central Coast’s astonishing natural beauty, biodiversity, and cultural heritage. Matt is working on the Puente Peaker Power Plant proceeding before the California Energy Commission, in which EDC represents the Sierra Club Los Padres Chapter, the Environmental Coalition of Ventura County, and EDC. The proposed project would be the fourth dirty power plant on the beaches of Oxnard, in an area vulnerable to

sea level rise and surrounded by environmentally important areas supporting numerous endangered species. Matt is also working on litigation pertaining to pipeline safety in the aftermath of the 2015 Plains All American Pipeline Refugio Oil Spill.

“Matt brings substantial federal litigation experience to EDC and will be instrumental in helping us enforce state and federal environmental protection laws as they apply to our region,” said Linda Krop, Chief Counsel of EDC. “His work at the Sierra Club provides a strong foundation for our work to protect air and water quality, natural resources and endangered species, and important open spaces.”

If you have news to report - e.g. a new practice, a new hire or promotion, an appointment, upcoming projects/initiatives by local associations, an upcoming event, engagement, marriage, a birth in the family, etc., Santa Barbara Lawyer invites you to “Make a Motion!” Send one to two paragraphs for consideration by the editorial deadline to our Motions editor, Mike Pasternak at pasterna@gmail.com. If you submit an accompanying photograph, please ensure that the JPEG or TIFF file has a minimum resolution of 300 dpi.

Lake Cachuma - Bring on the Rain!



Non-Immigrant Visa Revocation for DUI Arrests

BY TANYA A. AHLMAN

Recent guidance from the Department of State is having significant and long-term consequences for non-immigrants arrested for driving under the influence or a related offense. While most individuals who are arrested and/or convicted for driving under the influence face embarrassment, criminal penalties, and suspension of driving privileges, non-immigrants may also find their visa revoked and be barred from admission to the United States.

In September 2016, the U.S. Department of State published guidance on its recent policy which requires consular officers to prudentially revoke non-immigrant visas for individuals who have “an arrest or conviction of driving under the influence, driving while intoxicated, or similar arrests/convictions (DUI) that occurred within the previous five years.” The basis for this policy is a potential health-related ground of inadmissibility for alcoholism.

This new policy arises out of the agency’s increased concerns about drunk driving and DUI-related offenses. It reflects a much more aggressive approach to addressing those concerns. The Department of State has begun revoking otherwise-valid nonimmigrant visas immediately

upon notification of an arrest for driving under the influence, even while the individual is in the United States, based on the suspicion that the individual is ineligible for a visa based upon physical or mental health-related grounds. Unlike other grounds for inadmissibility or ineligibility for a visa, *a conviction or determination of guilt is not required*. It is sufficient for the Department of State to be notified by local law enforcement that a non-immigrant was arrested for a DUI-related offense.



Tanya A. Ahlman

Although visa revocation can be a ground for court-ordered removal from the U.S., the Department of State has stated that a revocation based on a DUI arrest does

not require the individual to leave the United States. While visa revocation under this policy does not mean that individuals are required to depart the U.S., if the individual does depart the U.S., he or she is required to obtain a new visa prior to entering the U.S. Obtaining a new visa from a consular post, with pending criminal charges can be challenging.

The Department of State has reportedly issued notices to individuals arrested for DUI-related offenses requiring them to depart the U.S. immediately and report to their consular post overseas. Departing with a pending criminal action may create substantial difficulties for the defense in a criminal case because the individual may not be able to obtain a new visa to be physically present in the U.S.

This new visa revocation guidance presents significant concerns for nonimmigrant visa holders, their families, and employers. Individuals who may be affected by this new policy and criminal defense attorneys whose clients may be affected, should consult an immigration attorney. ■

This new visa revocation guidance presents significant concerns for nonimmigrant visa holders.

 **GRANDfolia**
Interior Plantscapes & Service

(805) 898-0835 ■ Fax (805) 898-0613
P.O. Box 3889 ■ Santa Barbara, CA 93130
grandfolia@aol.com

Tanya A. Ahlman is a Junior Partner at Kingston, Martinez & Hogan LLP. She practices immigration law, specializing in representing employers and employees in employment-based immigrant and non-immigrant visa petitions. Tanya can be contacted at tanya@kmhimmigration.com.



The Santa Barbara County Bar Association

THANKS ITS SPONSORS

Bench and Bar Conference – January 21, 2017

KEYNOTE SPONSOR

Foley, Bezek, Behle & Curtis LLP

LUNCH AND VENDOR SPONSOR

Goodwin & Thyne Properties
Law Offices of John J. Thyne III

BREAKFAST SPONSOR

Herring Law Group

VENDOR SPONSORS

Fell, Marking, Abkin, Montgomery, Granet & Raney LLP
Reicker, Pfau, Pyle & McRoy LLP

Law Copy
MyCase

CIO Solutions
One to One Treatment Santa Barbara

The Employment Law Section of the Santa Barbara County Bar Association presents:

EMPLOYMENT LAW ISSUES IN 2017:
The Pendulum Is Swinging Wildly...
Are You Ready?

NEMECEK·COLE
Attorneys At Law

**SOUTHERN CALIFORNIA'S PREEMINENT
PROFESSIONAL LIABILITY DEFENSE FIRM**



* Certified Specialist, Legal Malpractice Law, The State Bar of California Board of Legal Specialization

15260 VENTURA BOULEVARD, SUITE 920
SHERMAN OAKS, CA 91403
TEL: 818.788.9500 / 877.314.1177

WWW.NEMECEK-COLE.COM

When

February 28, 2017, Noon-1:00 p.m.

Where

Santa Barbara College of Law Room
1, 20 E. Victoria Street

MCLE

1 hour General

Speaker(s)

Jon Light & Susan Waag, Light-
Gabler

About the Event

Employment law in California is constantly changing, but the list of new laws for 2017 is huge, and will impact every employer in the State. Moreover, with the new Trump administration vowing to repeal or reverse much of the regulations and rules from the Obama administration, we can expect the federal employment landscape to shift dramatically. Making mistakes can result in staggering costs to employers (and potential malpractice for uninformed lawyers).

Join Jon Light and Susan Waag of the boutique employment law firm of LightGabler and learn what you need to know to navigate successfully through 2017.

Price

\$30/\$35 members/nonmembers -
includes lunch

Contact Information/R.S.V.P.

By February 15th to Alex Craigie
(Alex@Craigielawfirm.com).

Mail Checks, payable to SBCBA, to:
Alex Craigie

The Law Offices of Alex W. Craigie
791 Via Manana
Santa Barbara, CA 93108

The Litigation Section of the Santa Barbara County Bar Association presents:

**THE CLOSING ARGUMENT:
How To Give A Summation That Will
Guarantee Your Verdict**

Learn how to integrate the evidence and the law in an entertaining, informative multi-media presentation.

Speaker

Matthew Haffner of HAFFNER LAW GROUP

Mr. Haffner, with twenty five years civil litigation experience, has over thirty jury trials to verdict, all as a defense lawyer, with 29 defense verdicts, including for wrongful death; catastrophic injury; significant construction defect damage; contractual disputes; and, employment law. Haffner Law Group's practice has recently expanded to include plaintiff's matters, so all trial practitioners may gather critical trial practice information from this seminar.

Date and Time

Thursday, March 2nd, Noon to 1:00 pm

Location

Santa Barbara College of Law, Room 1, 20 East Victoria Street, Santa Barbara

Reservations

Reserve via email to Mark Coffin,
Chair of Litigation Section, by Thursday, February 23,
2017, mtc@markcoffinlaw.com

Cost and Payment

\$40 to members, \$45.00 to nonmembers – includes lunch
Mail checks by Thursday, February 23rd, payable to:
Santa Barbara Bar Association
c/o Mark Coffin
LAW OFFICE OF MARK T. COFFIN
21 E. Carrillo Street, Suite 240
Santa Barbara, CA 93101

MCLE Credit

1 hour general credit applied for

The Litigation Section of the Santa Barbara County Bar Association presents:

**DEALING WITH
ELECTRONIC DATA:
Searching For Needles In A Needlestack**

The production, storage and transmission of data requires that computers and cell phones be an obvious starting point for identifying evidence. Whether it is a computer forensics analysis as an element of an investigation, or production of electronically-stored information for review in an eDiscovery platform, knowing the tools and methodologies is not just important, but critical.

Speaker:

John R. Troxel of Verdict Resources

John manages cases requiring technological expertise, including electronic discovery, computer forensics, on-line research and construction of project databases. An investigator since 1997, he has directed cases all over the country as well as several overseas, with proficiency in developing evidence from computers and associated media, finding people, interviewing, corporate investigations, background searches and pollution liability disputes. John is frequently engaged to identify, collect, analyze and produce electronic evidence on storage media such as hard drives, cell phones, etc. He is often asked to speak on issues relating to electronic evidence.

Date and Time

Thursday, March 30th, Noon to 1:00 pm

Location

Santa Barbara College of Law, Room 1, 20 East Victoria Street, Santa Barbara

Reservations

Reserve via email to Mark Coffin,
Chair of Litigation Section, by Thursday, March 23, 2017,
mtc@markcoffinlaw.com

Cost and Payment

\$40 to members, \$45.00 to nonmembers – includes lunch
Mail checks by Thursday, March 23rd, payable to:
Santa Barbara Bar Association
c/o Mark Coffin
LAW OFFICE OF MARK T. COFFIN
21 E. Carrillo Street, Suite 240
Santa Barbara, CA 93101

MCLE Credit

1 hour general credit applied for

Save the Date:

The State Bar of CA Family Law Section Presents: Family Law Essentials 2017

Bridging the Well: Ethics and Practice in Family Law Today

Substantive law is only one component of your family law case. An esteemed panel of six (which will include the Hon. Mark Juhas and the Hon. Sue Alexander) will share practical pointers on how to navigate your case, and bridge the well between the bench and bar in this changing landscape of family law today.

Date and Location:

Monday, June 26, 2017
Santa Barbara School of Law
20 E. Victoria St,
Santa Barbara, CA 93101

Price:

\$200 Family Law Section members
\$295 Non-Section members
(includes enrollment in the Family
Law Section for 2017)

Onsite registration fees are \$250 for Section Members and \$345 for Non-Section Members.

Registration Information

Program package includes 6 hours of MCLE, 1.5 hours of ethics, .5 hours of elimination of bias in the legal profession and society, 6 hours of legal specialization in Family Law, program materials, continental breakfast, and lunch.

Register online at: <http://familylaw.calbar.ca.gov>

In order to pre-register, your form and check (payable to the State Bar of CA) or credit card information must be received at least 5 working days prior to the program.

On-site registration opens at 8:00 a.m. and is subject to space availability.

QUESTIONS: For registration information, please call 415-538-2508. Telephone registrations will not be accepted. For program content and section information, please call 415-538-2238.

The SBCBA Real Estate/Land Use Section Presents:

“Sharing Space – Legal Issues Regarding Short-Term Vacation Rentals”

When: March 23, 2017, 12:00 p.m.

Where: 118 E. Carrillo Street, Santa Barbara

MCLE: 1.0 Hour (General)

Speaker: Ashley M. Peterson, Law Office of Ashley M. Peterson

About the Event: This program will provide an in depth discussion of Airbnb/VRBO/short term vacation rentals and the unanticipated legal issues facing homeowners, homeowner associations, and landlords. Content will cover overview of city laws affecting Santa Barbara, Los Angeles, San Francisco, San Diego, Palm Springs, landlord/tenant issues, and homeowner association enforcement concerns.

Price: \$25.00 for SBCBA members- \$30.00 for Non-members
Lunch will be provided

Make checks payable to:

Santa Barbara County Bar Association
15 West Carrillo Street, Suite 106
Santa Barbara CA 93101

RSVP Deadline: March 16, 2017

Contact Information/R.S.V.P.:

Bret A. Stone, Paladin Law Group® LLP
BStone@PaladinLaw.com





Santa Barbara
County Bar
Association

2017 Membership Application

Member Name: _____

Check here if you do not want your name and office address disclosed to any buyer of Bar Assoc. mailing labels.

Check here if membership information is the same as last year. If so, the rest of the form may be left blank.

Check here if you do not want your e-mail address disclosed to SBCBA sponsors.

Office Address: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

Phone Number: _____ Fax Number: _____

Home Address: _____

City: _____ State: _____ Zip: _____

State Bar #: _____ Year Admitted to Bar: _____

Your member dues include a subscription to *Santa Barbara Lawyer* and the e-Newsletter.

SCHEDULE OF DUES FOR 2017

Active Members	\$130
Student Members	\$30
New Admittees (First Year Attorneys Only)	\$00
Affiliate Members (non-Attorney members only)	\$65

Total amount enclosed \$_____.

AREAS OF INTEREST OR PRACTICE (check box as applicable)

- | | |
|---|---|
| <input type="checkbox"/> ADR | <input type="checkbox"/> Estate Planning/Probate |
| <input type="checkbox"/> Civil Litigation | <input type="checkbox"/> Family Law |
| <input type="checkbox"/> Criminal | <input type="checkbox"/> In-House Counsel & Corporate Law |
| <input type="checkbox"/> Debtor/Creditor | <input type="checkbox"/> Intellectual Property/Tech. Business |
| <input type="checkbox"/> Elder Law | <input type="checkbox"/> Real Property/Land Use |
| <input type="checkbox"/> Employment Law | <input type="checkbox"/> Taxation |

I am interested in receiving information about the SBCBA Lawyer Referral Service

Mail completed form along with check to:

Santa Barbara County Bar Association, 15 West Carrillo Street, Suite 106, Santa Barbara, Ca 93101 Tel: (805) 569-5511

2017 SBCBA SECTION HEADS

Alternative Dispute Resolution

David C. Peterson 441-5884
davidcpeterson@charter.net

Bench & Bar Relations:

Stephen Dunkle 962-4887
sdunkle@sangerswysen.com

Civil Litigation

Mark Coffin 248-7118
mtc@markcoffinlaw.com

Criminal

Catherine Swysen 962-4887
cswysen@sangerswysen.com

Debtor/Creditor

Carissa Horowitz 708-6653
cnhorowitz@yahoo.com

Employment Law

Alex Craigie 845-1752
alex@craigielawfirm.com

Estate Planning/Probate

Tim Deakyne 963-8611
tdeakyne@aklaw.net

Family Law

Matthew Long 254-4878
matthewjlong@santabarbaradivorcelaw.com

In House Counsel/Corporate Law

Betty L. Jeppesen 963-9958
jeppesenlaw@gmail.com

Intellectual Property

Christine Kopitzke 845-3434
ckopitzke@socalip.com

Mandatory Fee Arbitration

Eric Berg 708-0748

eric@berglawgroup.com
Michael Brelje 965-7746

gmb@grokenberger.com
Naomi Dewey 966-7422

ndewey@BFASlaw.com

Real Property/Land Use

Josh Rabinowitz 963-0755

jrabinowitz@fmam.com

Bret Stone 898-9700

bstone@paladinlaw.com

Taxation

Peter Muzinich 966-2440

pmuzinich@rppmh.com

Cindy Brittain 695-7315

Cdb11@ntrs.com

**For information on upcoming MCLE events,
visit SBCBA at <http://www.sblaw.org/>**

BONGIOVI MEDIATION

Mediating Solutions since 1998

Mediator • Arbitrator • Discovery Referee

*“There is no better
ambassador for the
value of mediation than
Henry Bongiovi.”*



HENRY J. BONGIOVI

AV Preeminent Rating
(5 out of 5)

AVVO Rated ‘Superb’
(10 out of 10)

Conducting Mediations
throughout California

805.564.2115
www.henrybongiovi.com



CISLO & THOMAS LLP®

Patent, Copyright and Trademark
Litigation Attorneys at Law



Super Lawyers

2016
Patent Attorneys of Cislo & Thomas LLP

Serving Businesses in California Since 1979

We Have Successfully Settled or Litigated
Over 98% of Our Cases

Office Locations:

West Los Angeles/Santa Monica

Westlake Village

Santa Barbara

www.cislo.com | 1(805) 496-1164

Santa Barbara Lawyer

The Santa Barbara County Bar Association
15 W. Carrillo St., Suite 106
Santa Barbara, CA 93101

Change Service Requested

PRSRT STD
U.S. Postage Paid
Santa Barbara, CA
Permit #734

COASTAL PROPERTIES

EXCEEDING YOUR REAL ESTATE EXPECTATIONS



Gary Goldberg

Real Estate Broker • Licensed Attorney
UC Hastings College of Law • Order of the Coif
CalBRE License # 01172139

- Intensive Marketing Plan for each listing
- Member, Santa Barbara, Ventura, and Santa Ynez Real Estate Boards
- Expert witness in Real Estate and Divorce Matters, and Estate Planning
- Licensed Attorney, Instructor Real Estate Law and Practice Courses at SBCC

For your Real Estate needs, choose carefully and choose experience!

“I’ve been a Lawyer for 24 years and a Real Estate Broker with my own company for over 20 years.”

“As a real estate company owner beginning my 20th year of serving Santa Barbara, I look forward to helping you buy or sell real estate property, and as always, personally dedicating myself to striving for excellence in every transaction.”

Over \$600,000,000 Sold Since 2000

Among the top 10 agents in Santa Barbara

(per MLS Statistics in Gross Sales Volume)



1086 Coast Village Road, Santa Barbara, California 93108 • Office 805 969-1258 • Cell 805 455-8910

To view my listings visit www.garygoldberg.net • Email gary@coastalrealty.com