

Santa Barbara Lawyer

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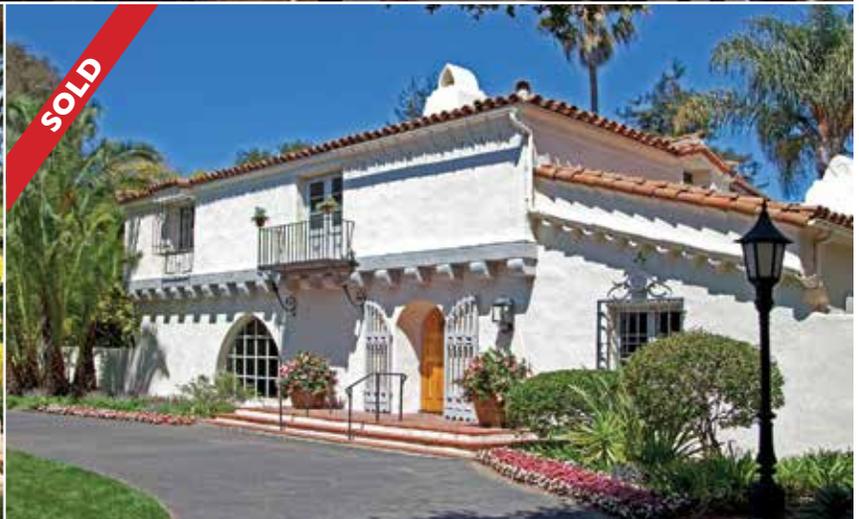
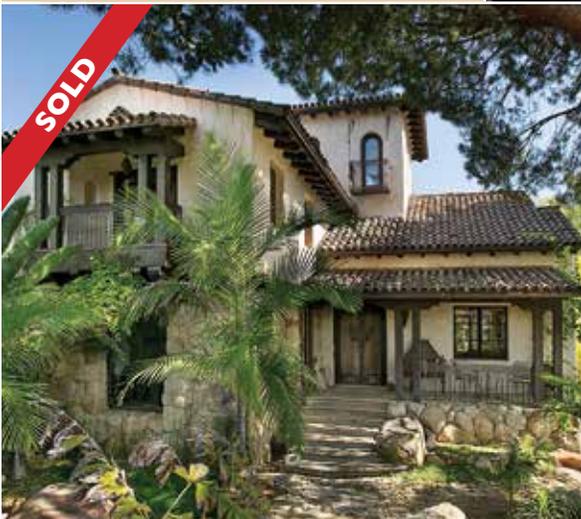
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Mission Statement

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.



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MEDIATION SERVICES

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President's Message

BY ELIZABETH DIAZ

Santa Barbara County Bar Association has been in existence since 1878. In 2020, I will be the first Hispanic lawyer, and the first Legal Aid lawyer, to be President.

I want to tell you a little about myself. I was born and raised in Santa Barbara. Spanish was my first language. My parents were born in Mexico, and I am first generation American. I am also the first in my family to graduate college and law school.

I started with Legal Aid in 1991, as an intern for the Domestic Violence Restraining Order Clinic, an "in pro per" clinic" assisting victims of domestic violence with preparing their restraining orders. During this time local attorneys volunteered for the DVRO evening clinic.

In 1994, I left Legal Aid for a few years and worked for the municipal court as a criminal clerk. As a clerk, I was able to observe the judges and lawyers at work and I knew that being a lawyer was what I wanted to be. The municipal court eventually merged with the superior court and is known as the Figueroa Division now.

In 1999, I returned to Legal Aid as a paralegal for the DVRO Clinic where I was in charge of running the program, supervising the volunteers for the evening clinic, and helping victims prepare their restraining order paperwork. I was even able to accompany the victims to court.

Once I became an attorney, I helped develop the DVRO Clinic to become more than just a "pro per" clinic, and today we have three full-time attorneys for the county who represent victims of domestic violence, elder abuse, sexual assault and human trafficking. I am one of those three attorneys, and the supervising attorney for the program, now called the Family Violence Prevention Program. This FVP program has also expanded in services to include representation with Dissolution of Marriage cases, Paternity Actions for victims of crime and immigration remedies for victims of crime.

I am excited and look forward to being County Bar president. I am eager to work next year with the new officers, directors and delegates to make this year a success.

My hope for the County Bar in 2020 is for the organization to become more inclusive and seek out attorneys with diverse backgrounds to be involved and included in our organization. I hope to be able to get participation from a different sector of practicing lawyers that will bring a valuable perspective to our organization. As a way to encourage more membership from the public interest and non-profit field, we offer a reduced membership fee.

In addition, my hope is to have the County Bar Association keep running successfully and smoothly with the help of Lida Sideris, our Executive Director, who works hard for the Bar Association. I know I could not have taken on this responsibility without her. Thank you, Lida.

The County Bar will continue to offer programs for the membership and community. We will continue to offer our MCLE programs next year, with the Bench and Bar Conference happening on January 25, 2020 at the Santa Barbara Club. The Conference will have interactive presentations on jury trial, immigration, employment law, trust contests and mediation. We will also have a lively panel led by Judge Anderle and Presiding Judge Carrozzo on "Tips for Effective Civil and Criminal Litigation". An event not to be missed.

The Bar Association will also continue to run the Lawyer Referral Service (LRS), a program that refers people in Santa Barbara County that are dealing with legal issues to an experienced lawyer. And we will continue to promote access to justice with our Modest Means Program in the areas of family law and recently created estate planning.

Last year we took over the Food from the Bar campaign from the Santa Barbara Women Lawyers and successfully raised money for the Foodbank's "Picnic in the Park" program with the generation donations from our legal community. Amber, our past president, and I will be working on that campaign this year, so be on the lookout for our letters, e-mails and phone calls next year. ■



Elizabeth Diaz

Don't forget to renew your membership in the Santa Barbara County Bar Association. See application on page 33.

Trailblazer, Advocate, Mentor, Inspiration, Friend: A Tribute to Jamie Forrest Raney

WRITTEN/COMPILED BY JENN DUFFY AND RICK MONTGOMERY FOR FELL, MARKING, ABKIN, MONTGOMERY, GRANET & RANEY, LLP



Where or how do you start telling the story of someone who cannot adequately be described in words? Jamie was one-of-a-kind. Timeless. Unique. We are better people, and better attorneys, for having known her. We only wish we had more time.

Jamie received her Bachelor of Arts degree *summa cum laude* from UCSB in 1974 and her law degree from UCLA in 1979.

Judge Glen Reiser (Ret.): *It was January 1973, on the second floor of South Hall in the heart of the UCSB campus, History 1B, at the weekly section meeting. She was seated to my left at a desk in the row closest to the window, mid-length brown hair, wearing a white long-sleeved shirt with blue flowers, corduroy jeans. I do not remember the professor or the teaching assistant. I do not remember any of the course material. But I do vividly remember Jamie Forrest, where she was sitting, and what she was wearing, as if it were yesterday. Jamie is that memorable. Jamie later became my lawyer and my friend. She once proved to a court I was not intentionally suppressing income by becoming a judge. Jamie was brilliant, joyful, charming, and a blessing to everyone around her. Rest in peace.*

While in law school, Jamie interviewed with Rick Montgomery for an associate attorney position in a relatively new law firm in Santa Barbara. The funny thing is, Jamie didn't know she was interviewing for a firm in Santa Barbara. She accepted the offer to join the firm, found out she was moving to Santa Barbara, and told her family, "Guess what? We are moving!" Rick knew immediately that there was something special about Jamie, who joined that firm in 1980 and became a partner in 1984. Jamie has been a named partner in that firm for over two decades, which is now known as Fell, Marking, Abkin, Montgomery, Granet & Raney, LLP.

Doug Fell, Esq.: *We were a firm of men. Then Jamie joined us. Her roots were as a legal secretary, so she had a "staff is important" mentality, caring deeply for our staff. When she became a partner, Jamie brought a level of kindness and civility to our meetings and firm that we had not had before. She made us good people, a family.*

During her nearly 40-year career, Jamie focused almost exclusively on family law matters, particularly those involving complex business and tax issues. Jamie was an excellent lawyer and a creative problem-solver. She was passionate and poised, focused and wise, and helped so many in our community through personal crisis.

Laura Collins, Attorney at Law and Family Law Mediator: *I learned so much from Jamie - her directness, her wisdom and grace were an inspiration to me over the years, and I could always feel her steadying hand on the wheel when the emotional storms threatened to overwhelm our mediations with conflict. And Jamie was funny. Smart and funny. Her honesty and the confidence she instilled in her clients guided them toward reasonable solutions, not more conflict. Our community is greatly diminished by her passing.*

Jamie's warmth built bridges, bridges that most often were impossible to anyone else. She had this way of making everyone in the room feel heard. In the high-conflict family law world that she inhabited, people were drawn to

In Memoriam

her, not only her clients, but opposing parties and opposing counsel, too. It was a gift.

John Rydell, Esq.: *We have lost one of our finest colleagues. From the first time I met Jamie nearly 40 years ago, I could tell that she was whip smart with an open, engaging personality. I always looked forward to the cases we had because I knew that she would prepare thoroughly, yet always be willing to meet for an open, frank discussion about settlement. By insisting on the highest standard of legal and factual analysis, Jamie made all of us better lawyers. By her commitment to friendship and mutual respect, she made all of us better human beings. We will profoundly miss her.*

Jamie was one of the first female partners in a law firm in Santa Barbara and was a role model to countless younger female attorneys, both in and out of the courtroom. Yet, she never considered herself to be a role model.

Rachel Wilson, Attorney at Law: *Jamie was smart, charming, funny, passionate – she was my peer, my colleague, and my friend. We were Jewish “valley girls” from the San Fernando Valley, went to UCSB at the same time in the aftermath of the bank burning and, after law schools in Los Angeles, returned to Santa Barbara within one year of each other to begin our 40-year-long family law careers and professional and personal friendship.*

There were fewer than 10 women attorneys in Santa Barbara when Jamie and I began our careers. Jamie, while a traditionalist in many ways, was a trailblazer in others; we shared many firsts – bar association board, family law chair-people, founders of Santa Barbara Women Lawyers. But more than this, were the lunches and late-night conversations sharing our enthusiasm and anxieties over the practice of law – the highs and lows of representing clients, litigation deadlines, and judge decisions, and collaborating on the “perfect” marital settlement agreement or client questionnaire.

Jamie was the consummate lawyer. She loved family law, and

she loved the challenge of the argument. Her work ethic was remarkable as was her energy, commitment, and integrity. She was an expert in her field, dedicated to the professionalism of the law and made outstanding contributions to our local legal community. She was kind and helpful, and her door was always open to lawyers, young and old, to dispense needed advice, discuss a thorny legal issue, or just to share a good chat and laugh.

It was truly a privilege to be Jamie’s friend. She was a cherished colleague, and I miss her more than words can express. The Santa Barbara legal community has lost an outstanding attorney, but more importantly, in Jamie’s and my shared Yiddish “isms,” a “mensch” – a person of integrity and honor, someone to admire and emulate, and someone of righteous character.

Short in stature, Jamie was huge in personality, incredibly funny, and wickedly smart. She was also always very understated about herself. She did not want to be the center of attention, and she usually downplayed her contributions. She was an active listener, waited to understand the dynamics at play, and yet, was never shy in speaking her mind. She treated everyone she met with respect.

Maureen Grattan, Attorney at Law: *Jamie Raney was one of the finest family lawyers in Santa Barbara. She had a keen mind and a dogged curiosity. I remember when she read an expert’s report and questioned the legal standard on which he based his rather esoteric opinion. She researched the matter herself and proved him wrong. I will also remember her as a warm, personable woman with a welcoming smile.*



Jamie with flowers she received upon becoming a partner.

Bruce Glesby, Esq.: *I met Jamie in 1988 when I was fresh out of law school and eager to move to Santa Barbara and begin my legal career. She didn't know me from Adam, but she took my call and spoke to me at length about employment prospects here. That act of kindness and generosity to a stranger, I soon came to learn, was the essence of Jamie.*

Jamie was one of the few Santa Barbara lawyers who bridged the gap between the old generation of family lawyers, like JJ Hollister, Jack Wilson, and Jim Westwick, and the new generation, one in which many more women joined the ranks. Her lawyering and mentoring served as a model for many of the family lawyers of the new generation. She had a pleasant, approachable manner. She was creative, trustworthy, ethical, and reasonable in her approach to resolving cases. She could make her point without being abrasive or off-putting. Nor was she quick to infer ill motive to an adversary. If she had an issue regarding your client's veracity, she approached you informally, lawyer to lawyer. She refrained from ad hominem attacks. Her clients' reputations rose to her expectations; she didn't sink to theirs. She didn't talk down to opposing attorneys with whom she disagreed. In fact, she was often self-effacing, but in a manner that nobody mistook for weakness or self-doubt. She had a cheery, sing-songy and sonorous first greeting "heeeello," which always brought a smile to my face. Conversations or meetings with her were engaging and productive. When she was on the other side of a case, you often amicably accomplished something of benefit to both parties. And, because she was a dedicated and skilled problem-solver, many of us took difficult cases we wouldn't ordinarily take just because she was on the other side.

In addition to being highly respected and at the top of her field, Jamie was extremely well liked. Whether it be professional or personal, you could go to her for advice when you needed it. And if at times she sought yours, you felt honored and happily gave it. In

all the important ways, she personified that which is admirable about our profession.

Jamie had such a plucky spirit that it's hard to imagine that she is gone. We already greatly miss her. The practice of law in our community was a lot better when she was in the trenches brushing her shoulders against ours. She leaves a hole in our community, one that will not soon be filled; and she will not soon be forgotten.

Jamie was a Founding Director of the Santa Barbara Women Lawyers organization in 1988. She was President of the Santa Barbara County Bar Association in 1996 and served on the State Bar of California Family Law Committee. She also acted as Chair of the Family Law Section of the Santa Barbara County Bar Association for many years.

Herb Fox, Esq.: *I first met Jamie around 1990, after leaving the Court of Appeal to work for a litigation firm located in the same building as Fell Marking. My firm and Jamie's firm were co-counsel in a large probate case, which meant frequent trips upstairs for meetings and to conduct legal research (in those pre-PC/internet days, Fell Marking had a dedicated Westlaw computer). Jamie and I instantly hit it off, and over the ensuing years she became a friend, mentor, co-counsel, and when the occasion arose, my personal attorney. Her warmth, generosity, and personal attention were legend - during a difficult patch in my own divorce she provided advice, room and board, and a bottle of scotch. Jamie's common-sense, low-drama approach to family law problems made her my go-to referral for any client needing a family law attorney. Jamie was in a league of her own, and she will be sorely missed.*



Craig Granet, Jamie, Joe Abkin, Mike Hellman, Jim Davidson





Jamie and Doug Fell

Jill Friedman, Attorney at Law: *I was on the Bar Association Board during Jamie's presidency. She brought such great energy, with that big smile, quick wit, and distinctive voice. She was such a powerhouse. When I decided to file for divorce, Jamie was the first one I called. She was a lawyer's lawyer. She will be missed.*

Jamie's philanthropy passion was the Legal Aid Foundation of Santa Barbara County. She was a champion of that non-profit organization throughout her career.

Ellen Goodstein, Attorney at Law: *From the very beginning of my tenure as Executive Director of the Legal Aid Foundation (2006-2013), I found a strong supporter in Jamie Raney. She understood why a robust free legal-services provider was so important to the overall health of our community. Her support came in word, deed, and money. Jamie was very special, and she will be greatly missed.*

Alan Blakeboro, Esq., Current President of the Board of Legal Aid Foundation: *The story that most readily comes to mind is Jamie's support for Legal Aid's Chowder Fest. For many years we had a "52 Bottle" raffle, one bottle for each week of the year. Board members were responsible for donating bottles of wine to reach this goal, but almost never succeeded in getting there. I am not sure when it started, but Jamie, even though not a board member, began a practice of making up the difference, donating a case of wine and sometimes two to make sure that we reached our goal and were able to have the raffle go forward. Most past winners likely have a few bottles of wine from Jamie in their cellar, whether they know it or not.*

If you ever went into Jamie's office, you know that she had a heart collection that continued to grow over the years. She didn't expect that to happen. She didn't have an affinity for hearts, really. Her collection started when a client gave her a small stone heart, painted blue, with "true blue – all heart" written in the accompanying card. That heart was so meaningful to Jamie. And yet, when she talked about that client, she was dismissive of her role in his life. That was her way. She was always understated in what she did for others.

So many hearts followed. Clients thanked her time and again with a heart for her to keep. Some of the hearts even came from opposing counsel and opposing clients.

Kimberly Litherland, Family Law Paralegal at Fell Marking: *I*

was Jamie's assistant and paralegal. I treasured the moments we shared getting to know each other and sharing personal stories. Jamie cared deeply about the staff, and she took the time to get to know each one of us. She never thought she was funny, but Jamie always made me laugh, and she was very instructive in a kind and gentle way. I miss her warmth and compassion every day.

Deb Reber, Family Law Paralegal at Fell Marking: *I miss watching Jamie circle the office, phone in hand, on a call with a client for hours it seemed. She was absolutely devoted to her clients. She was as bright and sympathetic/empathic an individual as ever there was. What I will miss most was her incredible smile, warmth, and laugh. She always put people first – never herself. One year for Christmas, she gave me a jar of absolutely delicious hot fudge sauce and a gift card to McConnell's Ice Cream store. She also included a sterling silver spoon which had imprinted in the bowl: Believe. I use that spoon every day so that I will always remember Jamie for her generosity and friendship.*

Here is some advice from Jamie:

- If you receive a rude or nasty letter, do you send a rude or nasty letter back? No, you don't. Because you are not rude or nasty. Be you. Be authentic. Write the letter back that you would write. The client may want a rude letter back, but that is only wasting time and resources, and further fanning flames.
- You can only pretend to be someone you are not for so long. So, don't start. Be you.
- When discussing cases, go outside, walk around, get some exercise. (Jamie was often seen walking around [and around and around] the parking lot discussing cases with other attorneys or speaking on the phone.)

- The dispute is between the clients, not you.
- You are hired for your objectivity. Keep it.
- Only fight the fights worth fighting.
- Look for the solution. Be creative in getting there. The law is important. But, the solution is more important.
- Everyone deserves respect.
- It is not acceptable to ever split infinitives.
- For settlement offer letters, do the analysis and cut to the chase. Figure out the best-case scenario for each party on every issue. Then write the settlement offer, explaining these polar bookends on each issue, to settle somewhere in the middle. Don't play games or insult people with lowball offers. Do the homework and get it done.
- A "last, best, and final offer" is exactly that. No more negotiating. Use it sparingly. And, mean it. Your word means everything.

The Honorable Thomas P. Anderle: *Jamie was a lawyer's lawyer; ethical, competent, and kind. I could never understand why she often said to me, unaccountably, "You never change your tentative."*

In 2017, Jamie was diagnosed with leukemia. She was certain she would beat it, and, she did. After a stem cell transplant in August of 2018, Jamie was and remained cancer-free for the rest of her life. But, she developed complications from the transplant. Jamie was managing these complications relatively well, until suddenly she no longer was.

On Friday, November 8, 2019, it was shocking that Jamie was admitted to Serenity House for hospice care. Understated until the very end, Jamie was adamant that she did not want any visitors. She never wanted anyone to worry about her. She did allow visits from Rick, Jenn Duffy, and Allan Morton, the three attorneys who worked most closely with her at the firm. These visits were powerful, meaningful, and terribly, terribly hard.

Jamie passed away peacefully the morning of Tuesday, November 12, 2019, surrounded by

her family. She was 67 years old. Her passing was sudden, untimely, and truly devastating to those who loved her.

Jenn Duffy, Attorney at Law: 11-12-19. *My mentor, my champion, my role model, my inspiration, and my friend, Jamie Forrest Raney, attorney at law and my law partner, passed away this morning at Serenity House. We were supposed to have more time, she and I, on this crazy law journey, which is still mostly a man's world. She taught me how to navigate all of it. My career is where it is, in tremendous part, because of her. She forged the way, so I could be here. She scooped me up and believed in me.*

I have had the privilege of having Jamie as my mentor. She changed my life. I so wish we had more time. And, I am so thankful for the time we had.

I had to make a court appearance 30 minutes after learning she had passed. And I did it. She was there with me to help me do what I had to do.

The very last thing I said to Jamie, in hospice, was "I love you." Love is what it is all about, really.

I am working in my mind about what I want to do for her legacy. It will most certainly be to lift up other women in law. I am now the most senior female attorney at my firm. I will honor her, always. I am so, so sad and yet, so very, very lucky.

Since Jamie's passing, the Santa Barbara legal community has shown a tremendous outpouring of love and support for her colleagues and family. Jamie will be deeply missed by all who had the pleasure of knowing or working with her.



Craig Granet, Jamie, Doug Fell, Bonnie Johnson (administrator), Phil Marking and Rick Montgomery

In Memoriam

Paul Roberts, Esq.: *Jamie Raney and I began having cases together almost as soon as she arrived in Santa Barbara and began a friendship then, in the early 80s. We were opposites in many ways besides our genders. I was nearly twice her size, only sent emails during working hours, and regularly exercised. (She's mad at me now, but I can take it. We thrived on her scolding me.) In 2014, we each had failed shoulder-replacement surgeries done by the same doctor at the same hospital and continued to have a series of other complications over the next three years. It brought us closer together, although we continued as adversaries.*

I thought it best to write about Jamie in her words over the years reflecting her kindness, generosity, affection, and humor. It was reciprocal, I hope. These are her words in emails to me and tell you what a professional "friendship" can look like with my pal Jay Ray:

Regarding our mutual doctor before we both went for our first surgery: *I'm going to send a big basket of Santa Barbara goodies to Dr. I and staff. Maybe even before the surgery. I'll say something like, "It is very comforting to know that I will be in your caring and good hands." I'll sign your name, too.*

From Jamie's husband after her surgery: *I'm sure Jamie will want to update you when she is in a room and more coherent. She said she loves you but she's still under the anesthesia.*

From Jamie after my surgery: *I'm guessing that all has not gone as we hoped. Let me know when you are up to it. I'll bug*

you after a few days. Keep your chin up.

Jamie goes back for replacement number two with humor: *I am going back to have the shoulder replacement on Tuesday. This time it will be a reverse, de-caf, half-gainer with a twist.*

Jamie after she finds out I followed her with a second replacement that was very difficult: *I wish I could find an Alan Alda/Paul Roberts way to make the point, but this is so terribly unfair and is making me cry.*

Jamie when she realizes I had an emergency surgery #3: *Take a deep breath. This will be the one that turns everything around. I'll check in with M. in a few days to see how things are going. Evolving from little sister to Jewish mother....*

On Jun 30, 2017, I wrote to Jamie about the two of us.

Hey Jay-Ray

It is all so freaky what we have been through and these parallels. Let's just spin the good side and say that it makes us closer. After having gone through this mess, I don't even want to go to L.A. to see Elvis, let alone have another surgery. I'm keeping what I've got—with all their issues—like you I can't face more risks. We have too much more breathing to do. So, glad you are back to the job. These transitions are nutty, but you have dedicated co-workers there for you, I know them, and then there is always the weekend. Hope yours is wonderful and that you see some fireworks from the porch or the swing under the elm tree.



Natalie, Alek, Jamie, Bruce, Jackson, Eloise, Erik. 2014.

On April 18, 2018, I sent Jamie a song I made for her, sang for her, and recorded for her--kind of a heart-to-a-heart deal. She was at UCLA med center I think at the time. It is called "Jamie Where Are You." I now know she is watching fireworks from the porch or in the swing under the elm tree.

In lieu of flowers, please consider a donation to the Legal Aid Foundation of Santa Barbara County in Jamie's name. On the website, there is a drop-down menu under "donate" that allows the giver to select Jamie's name, in memoriam.

A celebration of Jamie's life is being planned for a future date. If you would like to be notified of this event when it is finalized, please contact the Fell Marking law firm at (805) 963-0755 or supportstaff@fmam.com.

Marlea Jarrette, Attorney at Law: *I was introduced to Jamie 20 years ago by Bill Rogers. He suggested asking Jamie to serve as my mentor as I started to practice family law. I was instantly drawn to her. She was extremely intelligent, charismatic, kind, engaging, and generous with her time. Jamie loved the practice of law and was willing to take time out of her very busy practice to mentor an attorney she had never met and was new to the practice. One of the most profound things I learned, and which I have incorporated into my own practice, is Jamie's belief that we should do everything in our power to help our clients, regardless of the client's continuing ability to pay for services. Of course, this means providing a lot of pro bono work, but Jamie embraced pro bono work.*

As the years went by, my relationship with Jamie grew stronger.

I was thrilled when Jamie and Bruce decided to move just a few blocks from us in Los Olivos. They fit right in with the Los Olivos scene – going to the "locals" bakery farm stand on Saturdays, watching the annual tractor parade, and attending art festivals. During this time, Jamie developed a close relationship with our son, Maxwell.

I loved Jamie for so many reasons. I loved her strength, her integrity, her wisdom, her love of the law, and the way she analyzed and questioned things. I loved her beauty, her generosity, her kindness, and her sense of humor. I loved that she inspired me not only to be a better lawyer, but a better human being. I love that she cared for others more than she cared for herself.

When Jamie was first diagnosed, she came to my house to tell me the news. Jamie didn't want sympathy from me. She wanted to make sure I understood that it was not going to be like when my sister had cancer just a year earlier. Even with a diagnosis of leukemia, Jamie wanted to make sure that I would be ok. During the course of her illness, her primary concern was always about her husband Bruce, her son, and his family. This is who Jamie was.

When Jamie passed, Maxwell cried in a way that I have never seen him cry before. He loved Jamie, as I do, as her family does, as many of us do. I know that we will go on, but without Jamie, something is missing. The world is less vibrant, less beautiful, less interesting... It's just less.

Jamie's legacy begins with the powerful impact she made on so many, many people. May we all strive to make such an impact, and a difference, in the lives of others. Let's have that be an ongoing part of Jamie's legacy, to reach out a



Alek, Natalie and Jamie Raney



Jamie and her husband, Bruce Bennett

In Memoriam

hand to others and lift people up.

Allan Morton, Esq.: *If the theme of one's life could be described in a phrase, then Jamie is "loving kindness." I knew Jamie for about fourteen years, and we worked together on many cases. She treated everyone, be it colleagues or staff, a client, opposing counsel, or members of the legal community with warmth, presence, and empathy. Helping others was always natural, never forced or begrudged. She always put others ahead of herself. Even if her responsibilities were burdensome, she never held back. She was a beautiful soul and a dear friend, who I will always remember with love and gratitude.*

Erik Raney: *It's hard to describe what your mom means to you, and even harder to understand it until she's gone. If hindsight is 20/20, then reflection is a magnifying glass. Looking back on my childhood, I see a mom who was incredibly hardworking and focused. Yet, her family and the home she made were equally as important as her career. Jamie balanced long hours and late nights at work with home-cooked meals and evenings spent sitting together at the table. My mom provided structure, balance, and love, instilling in me a sense of pride in self, in achievement, and in doing for others.*

Every year during the Christmas holidays, I would help my mom bake hundreds and hundreds of cookies. We boxed them up and sent them off to work with my dad, who was a forensic mental health specialist at Juvenile Hall. The cookies were not for his co-workers as you might suspect, but were sent to the juveniles incarcerated there, so that they would feel a sense of love and car-

ing during the holidays.

As I settled into my chosen profession as a Santa Barbara County Deputy Sheriff, our professional lives began to overlap. Jamie would often call me on behalf of a client with a criminal law question, or to ask how law enforcement might respond to a conflict regarding a particular court order. My favorite overlap was when my duties would take me downtown for court or a deposition, so we could meet up at La Playa Azul for lunch.

Jamie loved being a grandmother. Dressing up as Princess Leia to come trick-or-treating with the kids, turning her living room into a pirate ship, or showing up to babysit at my house with a bag of arts and crafts were all part of being a grandma for Jamie.

In her passing, I am awed by all of the wonderful and special relationships that my mom had with family, friends, colleagues, and community. My beautiful wife Natalie could write a biography about Jamie and how to be the perfect mother-in-law. As I reflect on who my mom was as a person; a lawyer, a colleague, a wife, a friend, a sister, a daughter, and a mother, I want to be more like her. I want to give selflessly, to see all sides and do right by all, to care deeply, have meaningful relationships, and be the best parent I can to my children, providing them with an environment where they can learn, grow, and thrive. That is my mom's legacy, to me.

We hope this has provided you with insight into our treasured friend and colleague.

This tribute does not seem done, nor quite perfect, no matter how many rewrites and how much fine-tuning we have done. But as Paul Roberts so aptly said, this project of describing and paying tribute to Jamie will never be finished.

And that's a good thing.

Thank you, Paul, for that meaningful perspective. ■



Jamie, Alek, Jackson, and Erik Raney, Bruce Bennett

Special thanks for contributions from The Honorable Thomas P. Anderle, Alan Blakeboro, Laura Collins, Herb Fox, Jill Friedman, Bruce Glesby, Ellen Goodstein, Maureen Grattan, Marlea Jarrette, Kimberly Litherland, Allan Morton, Erik Raney, Deb Reber, The Honorable Glen Reiser (Ret.), Paul Roberts, John Rydell, and Rachel Wilson.



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New Standards for Forensic Accounting

BY ROBERT SANGER

Effective January 1, 2020, new standards for forensic accounting will take effect as promulgated by the American Institute of Certified Public Accountants (AICPA). The Statement on Standards for Forensic Services No. 1 (affectionately known as “SSFS 1”)¹ will apply to all engagements accepted after the first of the year. However, lawyers and CPAs can use the new standards as a critical standard for existing engagements.²

In this month’s *Criminal Justice* column we will outline the SSFS 1 standards and analyze them in light of the current, and evolving, standards of forensic science in general. Overall, and with some exceptions to be noted, these standards admirably codify the best practices in forensic accounting and make explicit what we would expect. Civil and criminal litigators, as well as corporate counsel and forensic CPAs themselves, will benefit from understanding these new standards.

Forensic Accounting and Forensic Science

Forensic accounting is prominent in both criminal and civil litigation and, to an extent, in corporate internal investigations and other non- or pre-litigation contexts. SSFS 1 states that it applies to both “litigation” and “investigation.” Litigation includes actual or potential litigation in court, regulatory bodies and in the context of all dispute and alternative dispute resolution procedures. Investigation, includes, “[a] matter conducted in response to specific concerns of wrongdoing” in which the CPA is engaged to analyze data and “assist the stakeholders . . . in reaching a conclusion on the merits of the concerns.”³

For the purposes of legal analysis, insofar as the new standards apply to all pending or potential litigation, like other areas of expertise that are involved in pending or potential litigation, accounting is subject to the same rules of evidence and the same “scientific” standards set forth in our favorite forensic cases of *Daubert*, *Kumho Tire*, *Sargon* and *Kelley*,⁴ and the rules of evidence under the Federal Rules⁵ and the California Evidence Code.⁶ The law, for all areas of forensic testimony and opinion, requires appropri-

ate expertise, an empirical basis and an opinion that is based on fact, not speculation or advocacy. SSFS 1 advances those goals with three possible caveats to be discussed later. Thus, SSFS 1 generally brings forensic accounting in line with the aspirational goals of current forensic science.

Until the adoption of SSFS 1 in July of 2019 (effective January 1, 2020), the AICPA had not adopted an overall standard for forensic accounting. The existing standards and rules guiding best practices under the auspices of the AICPA were applicable to CPAs performance of all services, including forensic. AICPA Code of Professional Conduct (AICPA CPC) contains robust rules that set high standards for the practice of accounting. The “Integrity and Objectivity Rule,” for instance, states that, “[i]n the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.”⁷ However, there were no general rules pertaining to forensic practice.

California statutes do not specify independent accounting standards at all. The Business and Professions Code simply states: “A licensee shall issue a report which conforms to professional standards upon completion of a compilation, review or audit of financial statements.”⁸ There are no forensic standards. That leaves the practitioner with “Generally Accepted Accounting Practices” (GAAP) and organizations like the Association of Certified Fraud Examiners (ACFE), California, the California Society of Certified Public Accountants (CalCPA), or AICPA. However, until now, there was little guidance specifically regarding forensic standards.

Nationally, as chronicled in previous *Criminal Justice* columns, the Federal Bureau of Investigation (FBI) created forensic groups for most forensic endeavors. They were called “SWG’s” for “Scientific Working Groups.” The FBI was founded as a bureau within the Department of Justice by a group of accountants and, during the mid-twentieth century, to become an FBI agent usually required a law degree or an accounting degree. To this day, “following the money” often involves complex forensic accounting. Accounting is a mainstay of the organization and constitutes a specified FBI career path.⁹ Still, no SWG was formed by



Robert Sanger

the FBI for forensic accounting.

The federal government decided to take the establishment of forensic standards out from under the direction of law enforcement in the Department of Justice after the famous NAS Report.¹⁰ That responsibility was redirected to the National Institute of Standards and Technology (NIST) under the Commerce Department. NIST, in turn, created an Organization for Scientific Area Committees (OSAC) with five Committees (Biology/DNA, Chemistry/Instrumental Analysis, Crime Scene/Death Investigation, Digital/Multimedia, and Physics/Pattern Interpretation). Within these Committees are multiple subcommittee OSACs relating to more specific forensic disciplines. None of them pertain to forensic accounting.

The Statements on Standards for Forensic Services

So, the AICPA stepped up and created a standard for forensic practice by CPAs. The standard seeks to embody the best practices consistent with the current understanding of what is, or should be, required for expert opinion and testimony. Leading up to the promulgation of the new AICPA Standard, SSFS 1, the AICPA delegated the job of investigating and creating forensic standards to its Forensic and Valuation Services (FVS) Executive Committee. When the new Standards were released, the Chair of the FVS Executive Committee, Annette Stalker, CPA, CFE, summed up her Committee's accomplishment,

"These new forensic standards are the first time we are codifying best practices for litigation and investigation consulting work. Forensic accounting is a diverse practice, and this standard is unique because it is applied based on why a service is provided—litigation or investigation—rather than what skill set is employed."¹¹

In essence, SSFS 1 is an overlay on existing standards and best practices with the specific focus on actual forensic practices. It is attempting what an

accounting SWG or OSAC would have done, if one had existed.

The Statement makes it clear that it is intended to supersede provisions of the General Rules of the AICPA that pertain to consulting services. It is to be considered an addition to the Rules that apply to valuation of businesses or other assets. On the other hand, it is not to apply to an "attest



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engagement,” for example, for tax audits. And, the restriction on opinions will not apply where the CPA is engaged by both parties or by the trier of fact in a dispute resolution procedure.¹² SSFS 1 also does not apply to a CPA employed as an in-house accountant to a business enterprise.¹³

This means that, for the most part, the “General Standards Rule” of the AICPA¹⁴ applies in addition to SSFS 1. This includes, as enumerated in SSFS 1, “professional competence,” “due professional care,” “planning and supervision,” and “sufficient relevant data,”¹⁵ as well as, “integrity” and “objectivity.”¹⁶ While this has always been a basis for qualification – and cross-examination – of a CPA serving as an expert, it is expressly incorporated in the new forensic standard.

Potential Issues in the Interpretation of SSFS 1

While overall emphasizing integrity and objectivity, there are some possible issues in the specific language of SSFS 1. These are subtle and may or may not affect the ultimate performance of an expert functioning under the Standard. For lawyers insisting on compliance with current law on expert testimony – that is, that it be empirically justified, based on valid principles and reasoned according to objective standards – SSFS 1 gives a basis for support and for cross-examination. However, there may be some questions raised by some specific language. Two questions, in particular, while they should not defeat the stated purpose of SSFS 1 to promote integrity and objectivity, they could come into play even by way of “mental reservation” during the testimony of a witness.¹⁷ A third question pertains more to actual practice of investigations rather than testimony.

First, Sec. 7 of SSFS 1 specifically states, “A member must serve his or her client with integrity and objectivity, as required by the AICPA Code of Professional Conduct. A member performing forensic services should not subordinate his or her opinion to that of any other party.” Taken in a benign fashion, this seems to say that the expert should be absolutely objective. That is, no party should have an influence on her opinion. Read more carefully, it implies a duty to “serve” one party and not to allow another party to influence that duty. This interpretation could be regarded as double-speak. One has to wonder why the Committee settled on it. Was it a result of compromise or is it merely an unfortunate contraction?

Integrity and objectivity do not “serve” a client. That suggests the type of “junk science” testimony that courts are trying to get away from. It would have been better to simply state, “A member performing forensic services should not subordinate his or her opinion to that of any party” – leaving out the word “other.” Nevertheless, for the purposes

of the law, it is a fair reading of existing precedent, that expert opinion should be based on integrity and objectivity without regard for who has hired or called the expert.¹⁸ It seems fair to invoke Section 7 in that regard notwithstanding the wording of that particular sentence.

A second question arises in the language of the introductory paragraph of SSFS 1, stating, “Authoritative standards and nonauthoritative guidance are not a substitute for the use of professional judgment.”¹⁹ This is a bit of a mixed bag. On the one hand, the courts have incorporated “clinical judgment” into the standards for medical diagnosis, such as intellectual disability.²⁰ It seems appropriate that the clinical judgment of professionals who have evaluated a subject be considered in determining whether a person should be executed. On the other hand, testimony from “experts” who claim that only they can see the truth has been condemned as being extremely dangerous, particularly in guilt and innocence issues. It is hard to say why this language in SSFS 1 was decided upon. Accounting should be a matter in which reliable data is analyzed and objective principles are applied. It is hard to see how a trier of fact would benefit from “professional judgment” as opposed to a straight-up analysis of the facts.

Having said that, lawyers should be suspicious of any conclusions that are supported in any significant part by a witness’ professional judgment that cannot be recreated by a clear recitation of the reliable data. In other words, the numbers should add up and conclusions about those numbers should be the province of the trier of fact. The last paragraph of section 2 of SSFS 1 seems to say that, and current case law supports the proposition that, an expert should present facts not speculation. Professional judgment should not be the basis for an opinion. Any opinion should be based on empirical data and objective principles and, more to the point, the data and the principles should be made available to the trier of fact so that the trier of fact can form their own opinion.

The third question pertains to the application of SSFS 1 to investigations that are not related to litigation or potential litigation. Under the definition of “Investigation,” this Standard applies to a “response to specific concerns about wrongdoing.” This critique goes a different direction. Here, SSFS 1 may be too restrictive. It is true that all accounting work, including forensic accounting, must be done with integrity and objectivity. Furthermore, opinions, including ultimate opinions of “fraud,” should not be offered in a way that usurps the function of the trier of fact. However, investigations present issues that may be prior to or temporarily in lieu of an opinion by a litigation expert.

In the course of a corporate internal investigation, par-

ticularly at the early stages, a CPA may provide a valuable function in offering opinions that create leads for further investigation. This is similar to the emergency room doctor who offers a quick opinion as to the cause or mechanism of death so that investigators can immediately follow up with that preliminary information in light of other leads. The quick opinion may be born out or refuted by further evidence, for instance, obtained by the pathologist in the course of an autopsy. However, a quick, working hypothesis may be critical to finding a potential suspect before the suspect flees the country.

Similarly, at the early stages of an investigation, a quick and clearly labeled tentative opinion of the mechanism of fraud might lead to the ability to stem losses or identify a suspect. The danger, of course, is that a quick and tentative opinion can be wrong. Given the propensity of humans to have confirmation bias (that is, forming an opinion and then seeing evidence in light of that opinion rather than objectively), it is critical that any preliminary opinions be labelled as such, and all investigators and subsequent experts can be highly critical of any findings and opinions unless and until a thorough examination of the reliable data not only supports the hypothesis, but excludes all other possible hypotheses. Furthermore, the CPA on the investigative team may be disqualified from being the testifying expert due to the actual or apparent lack of integrity and objectiveness in presenting the matter to the trier of fact.

Conclusion

Nevertheless, the new SSFS 1, overall, contains the basic foundational rules for CPAs to form and present their expert testimony. All lawyers who might have a forensic accounting opinion in their case should be aware of SSFS 1 and the underlying ethics rules of AICPA. Lawyers must be prepared both for the purpose of qualifying the opinion of an accounting expert and for cross-examining, and possibly challenging that expert. SSFS 1 is largely consistent with the intention of the forensic community to advance the integrity and objectivism of forensic science. Refinements may follow but this is a good start. ■

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(COFSE) and a member of the Academy of Criminal Justice Sciences (ACJS). Mr. Sanger is also serving as a Mediator and Arbitrator with the Hon. Frank J. Ochoa (Ret.) both of whom are graduates of the Strauss Institute for Dispute Resolution. The opinions expressed here are Mr. Sanger's own and do not necessarily reflect those of the organizations with which he is associated.

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ENDNOTES

- 1 <https://www.aicpa.org/content/dam/aicpa/interestareas/forensicandvaluation/resources/standards/downloadabledocuments/ssfs-no-1.pdf> (hereinafter, "SSFS 1").
- 2 SSFS 1 specifically states, "This statement is effective for new engagements accepted on or after January 1, 2020. Early application of the provisions of this statement is permissible." SSFS 1, sec. 11.
- 3 SSFS 1, sec. 1.
- 4 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *Sargon v. Univ. Southern Cal.*, 55 Cal.4th 747 (2012); *People v. Kelly*, 17 Cal.3d 24 (1976).
- 5 FRE 702.
- 6 Cal. Ev. Code §§ 801, 802.
- 7 "Integrity and Objectivity Rule" AICPA rule 1.100.001.
- 8 Cal. Bus. & Prof. Code § 5062.
- 9 <https://www.fbijobs.gov/career-paths/forensic-accounting>.
- 10 Committee on Identifying the Needs of the Forensic Sciences Community, National Research Council, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD, NCJRS (2009).
- 11 AICPA announcement, July 10, 2019, <https://www.aicpa.org/press/pressreleases/2019/aicpa-issues-new-professional-standards-for-forensic-accounting.html>.
- 12 SSFS 1, sec. 2.
- 13 SSFS 1, sec. 5.
- 14 AICPA Ethical Standards, ET sec. 1.300.001 and 2.300.001.
- 15 SSFS 1, sec. 6.
- 16 SSFS 1, secs. 7 and 8, incorporating ET 0.300.040 and 0.300.050.
- 17 See, Sissela Bok, LYING: MORAL CHOICE IN PUBLIC AND PRIVATE LIFE, (Pantheon books, 1978).
- 18 See, e.g., *Sargon*.
- 19 SSFS 1, Introduction.
- 20 See, *Hall v. Florida*, 134 S. Ct. 1986 (2014) and *In re Lewis*, 4 Cal.5th 1185 (2018) where it is acknowledged that "clinical judgment" of a mental health professional is considered as a part of the definition of intellectual disability for determining whether a person should be found ineligible for execution as a result of being intellectually disabled.

Demystifying Cannabis Regulations in Santa Barbara County

BY AMY STEINFELD AND JACK UCCIFERRI, BHFS

Cannabis—whether you support or oppose it, you certainly can’t avoid this topic. But due to the patchwork of local regulations and its status as a Schedule I drug, there’s still confusion over how cannabis is regulated. This article aims to clarify the regulatory regime governing cannabis farms in Santa Barbara County (“County”). Our hope is that with greater understanding of the cannabis industry’s regulatory burden, there will be greater support for policies that allow legal cannabis cultivators to remain viable vis-à-vis extremely sophisticated black market operators who ignore their regulatory and tax responsibilities. Two years after legalization, it’s increasingly clear that a properly regulated market benefits the public, the environment and consumers. In fact, the County, aided by millions in cannabis taxes, has shut down over 40 black market operations and is using the balance of funds to support local public services.

Background

Contrary to popular belief, Proposition 64 didn’t legalize commercial cannabis cultivation throughout the state. Instead, it gave cities and counties free range to regulate, or even outlaw, commercial cannabis operations. In counties where growing cannabis is prohibited, illegal grows are often sited in pristine environments or in dark warehouses powered by lights that consume massive amounts of energy. Illegal farming operations also use pesticides that are extremely harmful to the environment. The negative impacts of illicit cultivation on the environment have been well-documented.²¹

Over the past few years, lively debates have unfolded as local governments grapple with the complexities of regulating cannabis. Santa Barbara County, after months of studies and public comment, opened its doors to outdoor cannabis farms in the county’s inland zone, while requiring that cannabis be grown in greenhouses along the coast. As it turns out, the Central Coast is the perfect spot to grow pot due to the region’s mild weather and topography, existing agriculture infrastructure, and proximity to Los Angeles—



Amy Steinfeld

Jack Ucciferri

perhaps the largest cannabis market in the world.

But before planting, growers must comply with hundreds of pages of regulations and obtain approval from a complicated web of state and local agencies. As a result, obtaining a cannabis cultivation license is a herculean task. This makes cannabis the most highly regulated and environmentally friendly crop in California.

The “Easy” Part: State Licenses

CalCannabis, a division of the California Department of Food and Agriculture, is responsible for licensing cultivators of medicinal and adult-use (recreational) cannabis and implementing a track-and-trace system to record the movement of cannabis through the distribution chain. To obtain a state cultivation license, an applicant must run a gauntlet of at least eight²² different state wildlife, water and agriculture agencies, pay hefty licensing fees, and ensure crops are free from heavy metals, pesticides and mold.

The Hard Part: Santa Barbara County Permitting and Licensing

Local cannabis regulation is highly dynamic. The County’s original cannabis ordinance was adopted in February 2018²³ but has since been amended several times, and further amendments are being considered. There are two distinct but interrelated County processes a cannabis project must successfully navigate before operating: land use permitting and business licensing.²⁴

The County Planning and Development Department (“P&D”) is responsible for processing and issuing land use permits.²⁵ For the past year, P&D’s capacity has been tested by dozens of prospective cannabis applicants trying to discern how to navigate the complex and uncharted land use permitting process—a process that is generally applied to developers, not farmers. Numerous County agencies are

involved in the permitting process. It's not uncommon for an agency to change how it views a particular issue, which often translates to costly and time-consuming revisions on the part of an applicant.

Various surveys and plans must be submitted along with a land use permit application, including archaeological and paleontological surveys²⁶ in addition to security, screening, landscaping, lighting, noise, odor abatement, tree and habitat protection, wildlife movement,²⁷ and water efficiency²⁸ plans. Unlike other crops, cannabis is also subject to environmental review under the California Environmental Quality Act. These efforts often require the assistance of land use lawyers and planners, engineers, biologists, hydrologists and architects.

On May 1, 2018, the County adopted the Cannabis Business License Ordinance,²⁹ which requires a business license to operate a commercial cannabis business in any unincorporated area of the County.³⁰ The application process is coordinated by the County Executive Office, which has broad authority to revoke³¹ or deny³² licenses. The application process requires extensive information and documentation, including site visits by Environmental Health, County Sheriff and Fire Department personnel, and preparation of an energy conservation plan. Additionally, business licenses must be renewed on an annual basis.

Project Appeals and NIMBY Opposition

After months or even years of navigating the land use application process, the County is finally starting to issue cannabis permits. But most applicants are now facing planning commission or board review, often based upon an appeal,³³ which can further delay a project. Appellants, often neo-prohibitionist groups or neighbors, have expressed concern over odors, public safety, air quality, and impacts on wine grapes from terpenes created by cannabis flowers. These fears are being taken seriously. For example, two local industry groups, Carp Growers and the North County Farmers Guild, have launched educational campaigns to destigmatize the plant and educate the public. The County and cannabis industry are also diligently working to address adverse claims via scientific studies. For example, recent studies demonstrate that odors can be contained to greenhouses with odor control technology, that odors from outdoor farms do not cause a public nuisance, that properly applied pesticides will not contaminate cannabis crops, and that terpenes do not "taint" grapes.

Further, in response to public opposition over the proposed number of grows, the County established two separate acreage caps on cannabis cultivation: 186 acres in Carpinteria and 1,575 acres in the rest of the County. That

means that cannabis can only be planted on less than 1% of agriculturally zoned land in the County, which should alleviate concerns that the industry could expand exponentially.

Our prediction is that once cannabis growers receive permits and implement all required mitigation measures, they will prove to be great neighbors. For instance, cannabis farmers must implement odor abatement plans and they cannot apply chemical pesticides or use surface water for irrigation, all with continuing county oversight. We believe that all farmers, including grape and avocado farmers, can co-exist and together increase tourism. After all, agriculture is still the lifeblood of this county.

Conclusion

Operating a cannabis farm is not for the risk averse or poorly capitalized. Compliance with the complex and ever-changing regulations and the high tax burden has proven so onerous that many small farms have gone out of business. And while the black market has been nearly eliminated in our backyard, the statewide black market is still three times the size of the legal market. This reality puts additional enforcement burdens on police and financial burdens on public coffers, in addition to jeopardizing public health and safety. To ensure the survival of local cannabis farms, we urge the public to support smart policies that encourage regulatory certainty and streamline the permitting process. By supporting legal cannabis farmers, we can continue to eradicate bad actors and encourage environmentally friendly crops, which serve as the foundation for a new industry that is providing numerous, high-paying jobs. ■

Amy Steinfeld is an attorney at Brownstein Hyatt Farber Schreck and serves as office managing partner for the Santa Barbara office as well as co-chair of the firm's Cannabis & Industrial Hemp industry group. Jack Ucciferri is a law clerk with Brownstein and member of the firm's Cannabis & Industrial Hemp industry group.



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Recent Restrictions of Post Conviction Relief for Non-United States Citizens

BY ANDREA ANAYA

Post-conviction relief is widely sought by all types of defendants to mitigate a past criminal conviction. Non-United States citizens (non-citizens) may seek post-conviction relief to mitigate a prior criminal conviction that is barring them from obtaining immigration benefits or placing them at risk of deportation. A non-citizen may seek post-conviction relief to modify the sentence imposed, reduce the potential sentence or in some cases vacate the underlying criminal conviction.

Post-conviction relief has been especially important for non-citizens during the current administration which has taken an aggressive approach towards immigration¹. For some non-citizens, post-conviction relief is their only option to remain eligible for an immigration benefit or avoid deportation. Recent decisions by the Board of Immigration Appeals and Attorney General have severely limited the circumstances in which post-conviction relief will be given effect for immigration purposes.

Matter of Eduardo Velasquez-Rios¹--Potential Sentence under PC§ 18.5(a)

In 2003, the defendant in the case, Velasquez-Rios, was convicted under Section 475(a) (forgery) of the California Penal Code, a misdemeanor. He was only sentenced to 12 days in jail, but in 2003 a sentence of one year could have been imposed for that misdemeanor offense, so the immigration court found he was barred from applying for Non-LPR Cancellation of Removal under INA § 237(a)(2) for having been convicted of a crime of moral turpitude for which a sentence of one year or more could have been imposed.

On January 1, 2015, Section 18.5 of the California Penal Code was enacted to set the potential sentence for California misdemeanor convictions to 364 days. On January 1, 2017, the law was amended to apply retroactively, so misdemeanor convictions which occurred prior to January 1, 2015 would be considered to have a maximum possible sentence of 364 days.

On October 4, 2018, the Board of Immigration Appeals

(“Board”) held that they would not give retroactive effect to Penal Code § 18.5(a) for convictions that occurred prior to January 1, 2015. The Board acknowledged that the retroactive application of PC § 18.5 may be valid under State law, but it would not be given effect for immigration consequences under Federal law. The decision did not impact the actual sentence, only the “potential” sentence



Andrea Anaya

the individual could have received. The length of the potential sentence is important for non-citizens in two scenarios:

A lawful permanent resident or visa holder may be removable from the United States if convicted of a crime involving moral turpitude (“CIMT”), committed within five years of their last admission to the United States, and the offense carries a potential sentence of one year.

A person with no lawful status who is convicted of one single CIMT and the offense carries a potential sentence of one year will be barred from applying for relief from removal under INA § 240A(b) (Non-LPR Cancellation of Removal).

Non-citizens in one of those scenarios cannot benefit from the retroactive application of PC § 18.5(a) for immigration purposes if their conviction occurred prior to January 1, 2015.

Matter of Thomas and Matter of Thompson³--Effect of Sentence Modifications

Matter of Thomas and Thompson are two separate cases with similarly situated defendants, so the cases were joined. Both Thomas and Thompson were longtime lawful permanent residents (green card holders) convicted under a Georgia domestic violence law and were initially sentenced to 12 months in custody. They were both placed in removal proceedings for having committed a “crime of violence” aggravated felony. Thomas had his sentence “clarified” by the State court to show the sentence imposed was actually 11 months and 28 days of probation. Thompson had his original sentence “modified” by the State court to reduce his sentence to 11 months and 27 days. Thomas’ sentence “clarification” was not given effect for immigration pur-

Continued on page 24

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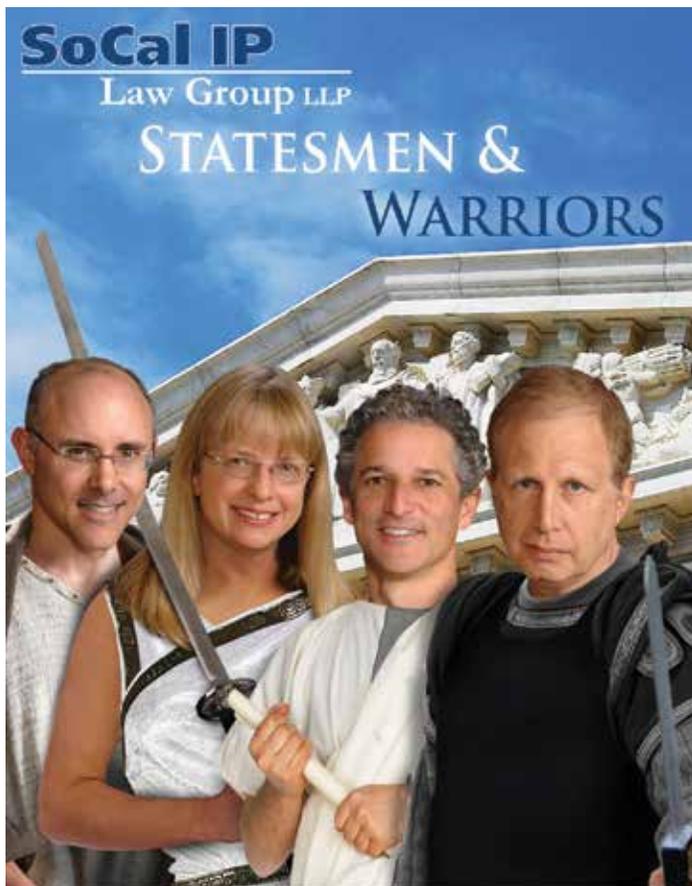


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*proudly announces that
James P. Griffith has joined the firm as
partner effective January 1, 2020*

Howell Moore & Gough LLP is proud to announce that James P. Griffith, formerly of counsel to the firm and the principal of the Law Offices of James P. Griffith, has joined the firm as partner as of January 1, 2020. Jim will continue to practice in the areas of estate planning, probate and trust administration, trust and estate litigation, and general civil litigation. He is a graduate of the University of California, Santa Barbara and the UC Davis King Hall School of Law. He is the 2016 president of the Santa Barbara County Bar Association and a delegate to the California Conference of Bar Associations, and is a member of the Board of Directors of Transition House.



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Anaya, continued from page 22

poses, but Thompson’s sentence “modification” was given effect for immigration purposes.

On May 28, 2019, the Attorney General directed the Board of Immigration Appeals to refer Thomas and Thompson to him to address whether, and under what circumstances, judicial alteration of a criminal conviction or sentence—whether labeled “vacatur,” “modification,” “clarification,” or some other term—should be taken into consideration in determining the immigration consequences of the conviction⁴.

On October 25, 2019, the Attorney General held: a criminal conviction or sentence modification or vacatur will have legal effect for immigration purposes when based on a procedural or substantive defect in the underlying criminal proceeding, but not when the change was based on reasons unrelated to the merits, such as the alien’s rehabilitation or immigration hardship. This is the same test the Board previously set forth in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) to determine whether a vacatur or dismissal of a criminal conviction will be given effect for immigration purposes. With a few very limited circumstances⁵, dismissal

or vacatur of a conviction by a California State Court is usually not given effect for immigration purposes unless the vacatur makes it evident that there was a procedural or substantive defect in the underlying criminal proceeding. *Matter of Thomas and Thompson* did not disturb the test for determining immigration consequences of a vacated conviction.

Matter of Thomas and Thompson did disrupt decades of precedential decisions that gave full faith and credit to an individual’s sentence modification issued by a State court, even if the modification was for immigration purposes. The Attorney General overturned *Matter of Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005), *Matter of Song*, 23 I&N Dec. 173 (BIA 2001), *Matter of Estrada*, 26 I&N Dec. 749 (BIA 2016) which gave effect to State court orders that modified a criminal sentence. The new test set forth by the Attorney General requires that sentence modifications be based on a ground of procedural and substantive invalidity to be given effect for immigration purposes. It is applying the same test required for a case vacatur to sentence modifications and overturning a long line of cases.

Continued on page 35

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Motions

Renee M. Fairbanks has been accepted to the American Academy of Matrimonial Lawyers.

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Certified by the State Bar of California as a family law specialist with family law offices in Santa Barbara and Los Olivos, Fairbanks has represented a broad base of clients in divorce, legal separation, support, parentage and custody proceedings for more than a decade in Santa Barbara County and along the Central Coast.

Strongly connected to her community, Fairbanks is a member of both the Santa Barbara County and the Northern Santa Barbara County bar associations. In addition, she's a past president of the County Bar Foundation; a former board member of the Santa Barbara Women Lawyers; and an adjunct professor of law at the Santa Barbara College of Law, teaching community property.

Fairbanks is also a supporter of the Environmental Defense Fund, the Legal Aid Foundation of Santa Barbara County, the Fund for Santa Barbara, the Santa Barbara Courthouse Legacy Foundation and the local Animal Shelter Assistance Program. She is also a past board member of Old Spanish Days, Inc., which plans and organizes Santa Barbara's premiere festival, Fiesta.

A graduate of UCSB, Fairbanks graduated from Santa Barbara College of Law.



Howell Moore & Gough LLP is proud to announce that **James P. Griffith**, formerly of counsel to the firm and the principal of the Law Offices of James P. Griffith, has joined the firm as partner as of January 1, 2020. Jim will continue to practice in the areas of estate planning, probate and trust administration, trust and estate litigation, and general civil litigation. He is a graduate of the University of California, Santa Barbara and the UC Davis King Hall School of Law. He is the 2016 past president of the Santa Barbara County Bar Association and a delegate to the California Conference of Bar Associations, and is a member of the Board of Directors of Transition House.

If you have news to report such as 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., the Santa Barbara Lawyer editorial board 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. Any accompanying photograph must have a minimum resolution of 300 dpi. Santa Barbara Lawyer retains discretion to publish or not publish any submission as well as to edit submissions for content, length, and/or clarity.

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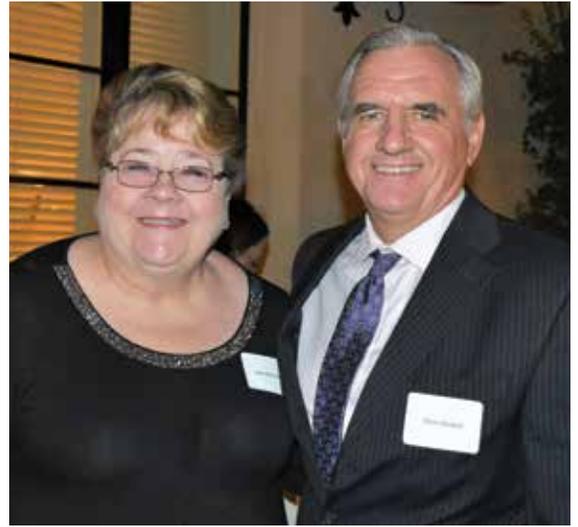
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Zahra Nahar-Moore, Sheila Nagaraj, Teresa Martinez



CA Attorney General Xavier Becerra with 2020 SBCBA President Elizabeth Diaz and Legal Aid Staff members, flanked by the Hon. Jim Herman (top left), the Hon. Frank Ochoa (ret) and Legal Aid Executive Director Jennifer Smith (right)



Hon. Tom Anderle and wife June



Eric Berg, Tom and Patricia Foley



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**Thank you to everyone who attended
the Santa Barbara County Bar
Association's Annual Dinner Meeting!**

We appreciate all who joined and helped make it such a special occasion. Many thanks to our attorney-photographer Michael Lyons and a special thanks to our Annual Dinner sponsors:

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More Annual Dinner photos on our website at sblaw.org.

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.

The SBCBA Alternative Dispute Resolution Section Presents:

Bias in Mediation:
A Roundtable Discussion facilitated by
Penny Clemmons, Ph.D.

- *The Curse of Knowledge and Hindsight Bias*
- *Confirmation Bias*
- *Self-Serving Bias*
- *The Sunk Cost Fallacy*
- *The Backfire Effect*
- *The Fundamental Attribution Error*
- *The Forer Effect (a.k.a. The Barnum Effect)*

Reading materials will be provided to paid registrants prior to the course.

Date:

Wednesday, January 15, 2020

Time:

12:15 pm – 1:15 pm

Where:

Santa Barbara College of Law
20 E. Victoria Street

Cost:

\$35 Lunch Included

MCLE:

1 Hour Elimination of Bias

R.S.V.P.:

Penny Clemmons, clemmonsjd@cs.com or Lida Sideris, sblawdirector@gmail.com. Please make checks payable to the Santa Barbara County Bar Association and mail to: SBCPA 15 W Carrillo St. Santa Barbara, Ca. 93101

The SBCBA Family Law Section Presents:

Protecting the Privacy of
a Public Figure/Celebrity
During Divorce

When:

February 6, 2020 at Noon

Where:

Santa Barbara College of Law

MCLE:

1.0 Hour of General MCLE

Speaker(s):

Christopher C. Melcher, CFLS and Anthony D. Storm.

About the Event:

This program will delve into crucial considerations an attorney should be aware of when representing individuals of notoriety, including practice tips on keeping confidential information out-of-the-public-stream, ensuring there is limited access to the client information, alternatives to litigation, security measures, inter-office policies, what to do if information leaks into the public realm, controlling the narrative, strategies to keep the press at bay, and advising your client, security personnel, and their family office.

Price:

\$30 for members/\$35 for non-members

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

Mail checks payable to the Santa Barbara County Bar Association c/o Renee M. Fairbanks, CFLS, 226 E. Canon Perdido Street, Ste. F, Santa Barbara, California 93101 no later than **January 15, 2020**.

2020 Bench and Bar Meetings

As Presiding Judge, the Honorable Michael Carrozzo has set the schedule for the Bench and Bar Meetings that will take place as follows:

February 20, 2020 • May 21, 2020 • August 27, 2020 • November 19, 2020

Each meeting will be held at the Santa Barbara Court Video Conference Room in the Figueroa Division of the Santa Barbara Courthouse.

These Bench and Bar Meetings provide a forum for local members of the Bar to engage in an informal dialogue with the presiding judge as a means of raising issues and concerns that may not otherwise be addressed. All attorneys and paralegals are welcome to attend.

For any practitioners wishing to submit agenda items for consideration before any of the scheduled meetings, please email those items to Ian Elsenheimer: ielsenheimer@aklaw.net



2020 Bench and Bar Conference January 25, 2020 at the Santa Barbara Club Schedule

| | |
|--|--|
| 8:15 AM – 9:00 AM | Registration and Breakfast. Location: Santa Barbara Club 1105 Chapala Street, Santa Barbara, CA 93101 |
| Joint Session 9:00 AM to 10:05 AM 1 hour MCLE Competence Issues | Substance Abuse Credit Doug Ridley, Esq. Ridley Defense |
| Breakout Session 1 10:10 AM to 11:15 AM 1 hour MCLE | Community Enhancement Through the Eyes of the City Attorney's Office Daniel Hentschke, Esq., Santa Barbara City Attorney |
| 8:15 AM to 2:00 PM | Mock Jury Trial Tyrone Maho, Esq. – Maho & Prentice, LLP Samantha Baldwin, Esq. – Maho & Prentice, LLP |
| Breakout Session 2 11:20 AM to 12:25 PM 1 hour MCLE | Legal Services & Technology Exhibits |
| 12:25 PM to 1:00 PM | Estate Litigation Cristi Michelon Vasquez, Esq. |
| Joint Session 1:00 PM to 2:05 PM 1 hour MCLE | Immigration Abbe Kingston, Esq. |
| Breakout Session 3 2:10 PM to 3:15 PM 1 hour MCLE | Keynote Presentation: CA Assembly Member Monique Limon |
| Joint Session 3:20 PM to 4:25 PM 1 hour MCLE Ethics | Employment Law- Specialty Credit Elimination of Bias Jennifer Gillon Duffy, Esq. - Fell, Marking, Abkin, Montgomery, Granet & Raney LLP David Secrest, Esq. – Law Offices of David S. Secrest |
| | Mediation Perspectives Victoria Lindenaauer, Esq. and Mediator |
| | Luncheon Buffet |
| | Tips for Effective Civil and Criminal Litigations: From the Judge's Perspective Judges' Panel |



2020 Bench and Bar Conference

**Saturday
January 25, 2020
Santa Barbara Club**

- Keynote Presentation: CA Assembly Member Monique Limon, 37th Assembly District – Legal & Policy Issues in Small Dollar Lending
- Judges' Panel - Tips for Effective Civil and Criminal Litigation
- Interactive courses include a presentation from the City Attorney, experts in the fields of immigration, trust and estate litigation, criminal law, mediation, employment law, and a mock jury trial.

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Santa Barbara Lawyer – 2020 Submission Guidelines and Key Dates

Santa Barbara Lawyer publishes monthly. Just like last year, in 2020 the deadline for content, copy, and photographs is on the first Monday of each month. There is no “soft deadline” without pre-approval from Rosaleen Wynne.

Articles

- Include a title or headline. Include your name/title, and a short biography at the end of your article.
- Articles do not need to be laid out; plain text is easier for us to work with.
- Shorter paragraphs work best for our newsletter format. Aim for 600-1200 words.
- Microsoft Word, .rtf or .txt files are ideal. No PDFs.
- Please proof your material before you send it in! We cannot guarantee that we will catch every spelling, grammar, or punctuation error, and proof-reading takes time away from our design and editing process.
- Please use the footnote format for references to authority.
- Please review and submit a signed Author Agreement with your article.

Photographs and images

- Color photographs are preferable.
- Send the largest file (highest resolution) of the best quality. Photographs must be a minimum of 300 dpi.
- Do not edit or crop your photos. Do not imbed images in Word or any other application.
- Send photographs as separate attachments.
- Captions are best sent with their image – for example:

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|------------------------|---------------------------------------|
| [ARTICLE NAME] 1.jpg | Jane Smith, John Doe, and Miles Davis |
| [ARTICLE NAME] 2.jpg | Attendees at the Legal Aid luncheon |

Miscellaneous

- **Coverage:** From time to time, an article idea, feature, profile, event, or photo opportunity may come along that you think should be in the magazine. Please send it to us when you think of it. This allows us to plan ahead and make sure it is covered.
- **Verdicts & Decisions:** *Santa Barbara Lawyer* seeks to objectively report verdicts and decisions from cases involving firms and lawyers based in Santa Barbara County or involving issues of local significance.
- **Profiles:** We welcome suggestions.
- **Work/Life Balance/Exercise/Quality of Life/Stress Relief:** This is an ongoing challenge for all of us. We welcome submissions and suggestions.
- **Space in the magazine:** *Santa Barbara Lawyer* is printed in multiples of four pages (i.e. an edition will be 28/32/36/40 pages long). Thus, when space is a concern, we may shorten or even omit an article. When this is done, we will take into account timing, need to publicize events or other deadlines, and whether the article can run in the following issue.
- **Content:** *Santa Barbara Lawyer* is a publication of the Santa Barbara County Bar Association (SBCBA), written by and for our membership. We reserve the right to reject content that runs counter to SBCBA’s published mission and goals or that is not of interest to our readership.

Contact Information

Content should be sent to sblawyeromagazine@gmail.com

Verdicts & Settlements should be sent to ageller-kudrow@mullenlaw.com

Motions (short news items/announcements) should be sent to pasterna@gmail.com

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Santa Barbara County Bar Association 2020 Membership Application

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Anaya, *continued from page 24*

A non-citizen may have sought a sentence modification for a prior conviction to become eligible for an immigration benefit or avoid an aggravated felony for immigration purposes. Any modifications based on immigration consequences will no longer be recognized for immigration purposes. A small change in sentence such as a non-citizen sentenced to 364 days or 365 days can determine whether they are eligible for relief from deportation.

Practitioners are appealing both decisions, but currently they are binding law. On June 27, 2018, the Board of Immigration Appeals also issued a call for amicus briefs to respond to the question of whether the Board is required to give full faith and credit to a judgment issued under Cal. Penal Code § 1203.43 (dismissal upon successful completion of a deferred entry of judgment program) in light of the conviction definition found at section 101(a)(48)(A) of the INA. That decision from the Board is still pending. As options for post-conviction relief are restricted, non-citizens will have to look to other post-conviction vehicles such as California Penal Code § 1473.7 which modify a conviction on a ground of procedural or substantive invalidity. ■

Andrea Anaya is an associate attorney with Kingston, Martinez & Hogan LLP. She practices immigration law, specializing in

family-based immigration, deportation/removal defense, crimmigration, post-conviction relief and federal immigration litigation. She is licensed by the State Bar of California and is a member of the American Immigration Lawyers Association. Andrea can be reached at andrea@kmhimmigration.com.

ENDNOTES

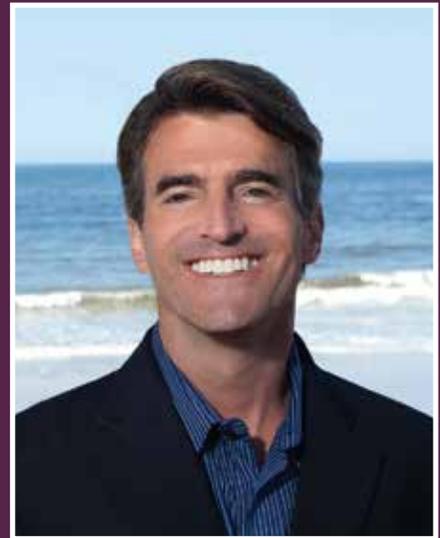
- 1 American Immigration Lawyers Association Report: "Deconstructing the Invisible Wall: How Policy Changes by the Trump Administration are Slowing and Restricting Legal Immigration", 19 Mar. 2018, www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall?utm_source=AILA+Mailing&utm_campaign=c584061dc3-AILA8_8_19_2019&utm_medium=email&utm_term=0_3c0e619096-c584061dc3-287743789.
- 2 Matter of Eduardo Velasquez-Rios, 27 I&N Dec. 470 (BIA 2018)
- 3 Matter of Thomas and Matter of Thompson, 27 I&N Dec. 674 (A.G. 2019).
- 4 Matter of Thomas and Matter of Thompson, 27 I&N Dec. 556 (A.G. 2019).
- 5 i) A California expunged conviction will be given effect for DACA purposes and ii) first simple possession/paraphernalia conviction from before July 14, 2011 which is then expunged may be given effect for immigration purposes if the individual did not violate probation and had no other drug offenses under Lujan-Armendariz, 222 F.3d 728 (9th Cir. 2000); See also Nunez-Reyes v. Holder, 646 F.3d 684 (9th Cir. 2011) (holding "rehabilitative relief" does not eliminate first conviction unless the conviction occurred before 7/14/11).

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