

# *Santa Barbara* Lawyer

Official Publication of the Santa Barbara County Bar Association  
July 2021 • Issue 586



## Spotlight on Judge Rigali

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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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Judge James F. Rigali and Lilly

Life happens. And you want to be ready when it does.

### Let us help you take care of what matters most

Getting to know you and what you care most about — planning for college, taking care of an elder family member, passing a legacy to future generations, buying a second home — is so important. Once we understand your priorities, together, we can help you pursue the goals you've set for yourself and your family. Call to learn more today.



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# Be an Ideal Lawyer - Change the World for the Better!

BY ERIN PARKS

## *International Days are Powerful Advocacy Tools*

The United Nations (UN) has embraced international days as an advocacy tool to promote international awareness and action on issues of public concern. International days “mobilize political will and resources to address global problems, and to celebrate and reinforce achievements of humanity.” Most international days have been established by resolutions of the UN General Assembly.<sup>1</sup>

Nelson Mandela devoted his life to the service of humanity as a human rights lawyer, a prisoner of conscience, an international peacemaker and the first democratically elected president of a free South Africa. In 2009, in recognition of Nelson Mandela’s contribution to the culture of peace and freedom, the UN General Assembly declared July 18<sup>th</sup> as “Nelson Mandela International Day” recognizing Mandela’s “values and his dedication to the service of humanity in: conflict resolution; race relations; promotion and protection of human rights; reconciliation; gender equality and the rights of children and other vulnerable groups; the fight against poverty; the promotion of social justice.” The UN resolution acknowledges Mandela’s contributions to the international struggle for democracy and promotion of peace worldwide.<sup>2</sup>

On the 18<sup>th</sup> of July every year, the United Nations entreats the citizens of all nations to mark Nelson Mandela International Day by making a difference in their communities.<sup>3</sup> Everyone should do something to inspire change on this Mandela Day - July 18, 2021.

## *The Life of Nelson Mandela*

Nelson Mandela (1918–2013) was born in Transkei, South Africa, the son of a tribal chief. He attained university and law degrees. In 1944, he joined the African National Congress (ANC) and worked to abolish the apartheid policies.<sup>4</sup>

Mandela opened the first black law firm in South Africa in 1952. Everyday black South Africans needed legal representation in court due to apartheid. Mandela fulfilled the core mission of the legal profession by providing access to justice serving as a legal aid and public defender all wrapped

up into one. After spending a decade honing his lawyerly talents in court, he translated the core competencies of the legal profession into the political project of helping to create a democratic South Africa.<sup>5</sup>

While on trial, Mandela declared: “I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live

together in harmony and with equal opportunities. It is an ideal which I hope to live for and achieve. But, if need be, it is an ideal for which I am prepared to die.”<sup>6</sup>

After a life imprisonment sentence, Mandela became a powerful symbol of resistance for the anti-apartheid movement. He refused to compromise his political position to obtain freedom. When released in 1990, Mandela continued to battle oppression. From 1994 to 1999, he served as South Africa’s first black president.<sup>7</sup>

## *Nelson Mandela Rules*

In 2015, the UN General Assembly decided to extend the scope of Nelson Mandela International Day to promote humane conditions of imprisonment; to raise awareness about prisoners in society; to value the work of prison staff as important contributors of social service. By resolution, the revised UN Standard Minimum Rules for the Treatment of Prisoners were adopted as the “Nelson Mandela Rules” to honor the legacy of Mandela who spent 27 years in prison.<sup>8</sup>

## *Nelson Mandela Decade of Peace (2019 – 2028)*

In 2018, world leaders met at UN Headquarters in New York for the Nelson Mandela Peace Summit. There, they adopted a political declaration committed to redoubling efforts to build a just, peaceful, prosperous, inclusive, and fair world, as they paid tribute to the Nelson Mandela’s service to humanity. Recognizing the years of 2019 to 2028 as the Nelson Mandela Decade of Peace, the declaration “saluted Mr. Mandela for his humility, forgiveness and compassion, acknowledging as well his contribution to the struggle for democracy and the promotion of a culture of



Erin Parks

peace throughout the world.”<sup>9</sup>

In the declaration, heads of state reaffirmed their commitments to uphold the sovereign equality and political independence of all nation states, as well as the duty of Member States to refrain from the threat or use of force. Leaders pledged to “move beyond words in the promotion of peaceful, just, inclusive and non-discriminatory societies.”

In addition, they reaffirmed that protection from genocide, war crimes, ethnic cleansing and crimes against humanity is the responsibility of each state. They emphasized strengthening the rule of law, poverty eradication, and social development. “It is clear that lasting peace is not realized just by the absence of armed conflict, but is achieved through a continuing positive, dynamic, inclusive and participatory process of dialogue,” they underscored.<sup>10</sup>

On building peace, Nelson Mandela, said:

“Peace is not just the absence of conflict; peace is the creation of an environment where all can flourish, regardless of race, colour, creed, religion, gender, class, caste, or any other social markers of difference. Religion, ethnicity, language, social and cultural practices are elements which enrich human civilization, adding to the wealth of our diversity. Why should they be allowed to become a cause of division, and violence? We demean our common humanity by allowing that to happen. ... It is so easy to break down and destroy. The heroes are those who make peace and build. ...”<sup>11</sup>

### ***Mandela—A Role-Model for Ideal Lawyers***

“Mandela’s heroism satisfies a very old standard of lawyerly excellence. Twenty years ago, Anthony Kronman, then Dean of Yale Law School, famously bemoaned the lost ideals of the legal profession embodied by the demise of the concept of the lawyer-statesman. Kronman described the lawyer statesman as a lawyer who not only honed his legal craft but also pursued the art of great statesmanship, thereby rightfully earning the respect of the community and the respect of himself. The art of great statesmanship entailed two qualities, ‘extraordinary devotion’ to the public good, and ‘wisdom in deliberating about it.’ This would tend to support wise judgment, which on the personal level would lead to integrity and in the public sphere would lead to the promotion of political fraternity, or ‘empathic pluralism.’”<sup>12</sup>

The values that Mandela was willing to die for—democracy, human rights, and the rule of law—are the highest values of the legal profession. Recognizing Mandela as a role-model for modern lawyering highlights what members

of the Santa Barbara County Bar Association can strive to contribute to the Santa Barbara community—providing access to justice and creating civic cohesion.<sup>13</sup> ■

*Erin Parks is the Editor of the Santa Barbara Lawyer. She has a solo practice in Santa Barbara and for almost 30 years has devoted a substantial amount of time pro bono representing the under-served in Santa Barbara County. At Santa Clara University School of Law, she studied International Dispute Resolution and Comparative Law. Ms. Parks can be seen at [www.erinparks.com](http://www.erinparks.com) and contacted at [law@erinparks.com](mailto:law@erinparks.com).*

### ENDNOTES

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## ***Santa Barbara Lawyer SEEKS SETTLEMENTS, VERDICTS & DECISIONS***

*SBL* encourages all SBCBA members to share notable non-confidential settlements, verdicts or decisions. The data is valuable to our membership.

Please submit information to Victoria Lindenauer ([Lindenauer\\_mediation@cox.net](mailto:Lindenauer_mediation@cox.net)) or R.A. Carrington ([ratc@cox.net](mailto:ratc@cox.net)).



# In Chambers - Off the Record

BY JUDGE JAMES F. RIGALI

## *“How Can I Help You Resolve Your Clients’ Disputes?”*

Hopefully, those reading this article have had the opportunity to appear in Department 2 in Santa Maria (SM2) and hear me ask, “How can I help you, the attorneys, resolve your clients’ disputes?” The resources that flow to the public through SM2 are the compilation of important work by court front office staff, courtroom staff, judicial secretaries, bailiffs, interpreters, research attorneys, as well as that of the attorneys and self-represented litigants. Indeed, many members of the Santa Barbara County Bar Association (SBCBA) have had a part in creating the SM2 body of work. And, for that, I am thankful. I have been presiding in SM2 for about eleven years with a five-year stint before that in a felony trial department. SM2 handles one third of all civil cases filed north of the Gaviota Tunnel to the Santa Maria River. In addition, SM2 is an active overflow court for criminal cases as needed.

## *Judges Should Register to Be “Decline to State Voters”*

Having been on the Bench for sixteen years, there is probably too much information, both fact and fiction, about my background in the public domain. And at the same time, it is true that I ran for election as one of two Republican candidates in a 2004 run-off vote. For a long time, I have been registered as a “declined to state” voter. It is my philosophy that all judges should do likewise to help distance all benches, as much as possible, from partisan acrimony. In the early days on the Bench, I was pushing my six children to go to Notre Dame like their dad. Now I own T-shirts from UCLA, Oregon, Santa Clara, Holy Cross and Seattle Universities. Obviously, I am a much more open-minded bench officer today.

## *Thank You SBCBA—The Heartbeat of Our Court’s ADR Efforts*

Before I took the Bench, I ran the Gray Mediation Center which was both dedicated to appropriate dispute resolution



*Judge James F. Rigali*

and the late Supervisor Joni Gray who at the time was my law partner. While on the bench, I have always invited and emphasized all forms of ADR. Currently presiding over the housing court in SM2, I am delighted that court employee Rick Corbo conducts mandatory settlement conferences on most all cases involving residential housing disputes. Rick’s settlement percentage is phenomenal. I hope you get to work with him someday. He is available to work on any case regardless of the department the case is in with an order from the judge assigned to the case. Please consider him a resource when you work in both the Santa Maria and Lompoc branch courts.

I am also always available to conduct Zoom or in-person mediations on any case in the system if the judge to whom the case is assigned so orders it. The court’s formal ADR options are always available for cases filed in branch courts. I thank Vance Saukko and Judge Sterne for running those robust and successful programs. Those programs only work because of pro bono donations by SBCBA’s membership. Do not be so quick to opt for private mediation when clients are cost sensitive. I think the court’s in-house ADR loops are quite effective and economical. SBCBA’s membership gets the credit for that.

### **Secretary Julie Hernandez and Resident Clerk Kelley Allain Are the MVP's of SM2**

For *ex parte* and other secretarial information about SM2, do not hesitate to contact Julie Hernandez who provides support for SM2 calendars. Her email is [jhernandez@sbcourts.org](mailto:jhernandez@sbcourts.org) and her phone number is (805)614-6500. For courtroom questions it is best to email SM2's expert clerk, Kelley Allain, at [kallain@sbcourts.org](mailto:kallain@sbcourts.org). You might catch her by phone when SM2 is dark, but email is a better way to connect unless you happen to be on campus.

The reporters and bailiffs rotate relatively frequently through SM2. Questions about security while trying cases in SM2 should go to Deputy Sheriff Rob Lacey. IT questions should be directed to Ryan Hughes and Kathy Sorrells, care of court administration. I want to thank these people for always helping the attorneys and the self-represented litigants that appear in SM2. If you, or your clients, want to observe SM2, you can Zoom in and identify yourself as an observer. Obviously, as in-person hearings resume, you and your clients are almost always welcome to observe court sessions.

### **Judges & Attorneys Share Space with Employees of the Court, Sheriff's Office & Contractors**

I invite you to a thought experiment wherein the judge is the least powerful person in the courtroom. It is the hallmark of America to share power and, as attorneys, you all have considerable power conferred upon you by earning a license to practice law. In a way, the State Bar is your boss.

The court staff reports to Darrel Parker, and the bailiff reports to the Sheriff. ADA accommodations and interpreter needs are by necessity accepted as an overlay in all proceedings, and those things do not just happen without human cooperation. Do not forget some reporters and interpreters are extra help and they may be both temporary, independent contractors and/or on loan from a larger court.

So, my ask is only that you give the judges as much courtesy as you demand. From my point of view, we are in this together and unlike me, you always can take it up on review. Maybe that is a little different expression of the situation than you are used to hearing. Judges are people too. And yes, I understand judges have a lot of power. Trust me, alimony decisions without any use of the Dissomaster are, for me, among the most powerful and difficult decisions I am required to make!

### **Getting Your Case to the Right Judge**

I have been told I do not recuse myself at the same rate as my colleagues statewide. I do not know if that is true or

even meaningful. I do not ever sit if I am not supposed to handle the case. But if perfect arm's length was the standard, then I guess our bench should Zoom-in to Orange County Superior Court where we would not know a soul. And all of you should get your cases heard by Riverside judges.

I firmly believe in the balance which calls for judges who are both from our local communities and not disqualified to serve. I only bring this up because I understand that it is an important legitimate part of your job to try to get your case to the right judge. If you are aware of any reason, you want me to recuse me, do not be fearful I will be insulted. Please raise the issue with candor if you so choose. Obviously, this is an issue that should be dealt with up front and immediately. On the other hand, just because you bring it up does not mean that I will agree with you and recuse myself.

### **Moms and Dads are Great but They Make Lousy Lawyers for their Kids, Kudos to All Minors' Counsel**

If you practice in family court in SM2 then yes, it is true that I almost always appoint an attorney for any child involved in the proceedings. While moms and dads have important parental jobs, they are probably the worst people to be advocating for a child's legal rights in a courtroom. I thank all of you who have served as minor's counsel at greatly reduced compensation in any court in the state. I know that providing attorneys is a big budget item and I do not make these orders lightly.

I am so proud of our interpreters. You are in a great position to appreciate my rationale. The law is itself a specialized language and hopefully someday all civil litigants, not just children, can have at least a modicum of representation. For now, we can only thank our facilitator attorneys and mediators for being important law "interpreters" for us juris doctor degree bearing folk.

### **Exhibits are Numbered from 1 to Infinity and Beyond**

SM2 only uses numbers for all exhibits regardless of the side of the case you are representing. My favorite obsession is trying to get the exhibits right for our appellate clerks in the front office. Packaging up cases and transcripts to send to the court of appeal is a daunting task. I will often harp on counsel over and over to make sure the record as it relates to exhibits is without concern. Your help being aware of my foibles is appreciated.

Please strike the phrase, "with all due respect" from your lexicon. You might as well just say, "Judge you don't get it and you're wrong." Instead, use different words and try to





explain yourself another way, maybe emphasizing another learning modality, maybe a chart or exhibit this time.

***SBCBA Members Are Welcome in Santa Maria***

As Santa Maria has grown to the most populated city in our county, it does seem that I see more and more of your members in SM2. Please feel welcome as members of the state bar, officers of the court, and doctors of the law. I thank you all for your work. After all, we routinely say 90% of all cases settle and they do not settle because the judges have nice personalities, or any one of us settles all the cases. Cases settle because of the work of your membership. When a case is worked up well by both sides, its real value usually becomes self-evident. Working up your case so you can know its real value promotes resolution. For all your work in the past, and for all that has yet to come, SM2 thanks you.

***Santa Maria Branch Courts Will Play a Big Role in Serving the County for Years to Come***

I am very excited as I look to the future of our courts in the county. I am not in leadership in the court hierarchy, but my colleagues who have served on our executive committee and as presiding judges have designed and implemented strategic plans that are sure to serve us well for a long time. I think it is public information that in the future, the Lompoc criminal courts will try the felony cases filed in Lompoc rather than shipping them to Santa Maria. This move should better serve the citizens of Lompoc.

Currently, two of my colleagues live in San Luis Obispo County and sometimes the court feels more regional than otherwise. Indeed, it has come to pass that judges, like lawyers, do more traveling than in the past. My hat is off to Judge Raimundo Montes de Oca who drives from his home in the south of the county to Lompoc and back almost daily.

Zoom offers us all many paths to fight back against these kinds of logistics. Again, it is not only my decision to make, but I hope SM2 will keep Zoom as an option for all morning calendars (short appearances). Hard set evidentiary matters will require in-person appearances. Of course, Zoom may come in handy for remote witnesses, but please keep in mind that conveniences for the lawyers and judges sometimes makes staff jobs more difficult. Zoom fatigue seems to add stress to court reporters and interpreters in some instances. Other times they love it. Together we can maximize benefits and minimize disadvantages.

With only Judges Staffel, Garcia and myself still living in the greater Santa Maria/Orcutt areas, I hope some more of you will open offices here and serve the Santa Maria, Guadalupe, mid-county, Lompoc, Nipomo and New Cuyama

**If it's there,  
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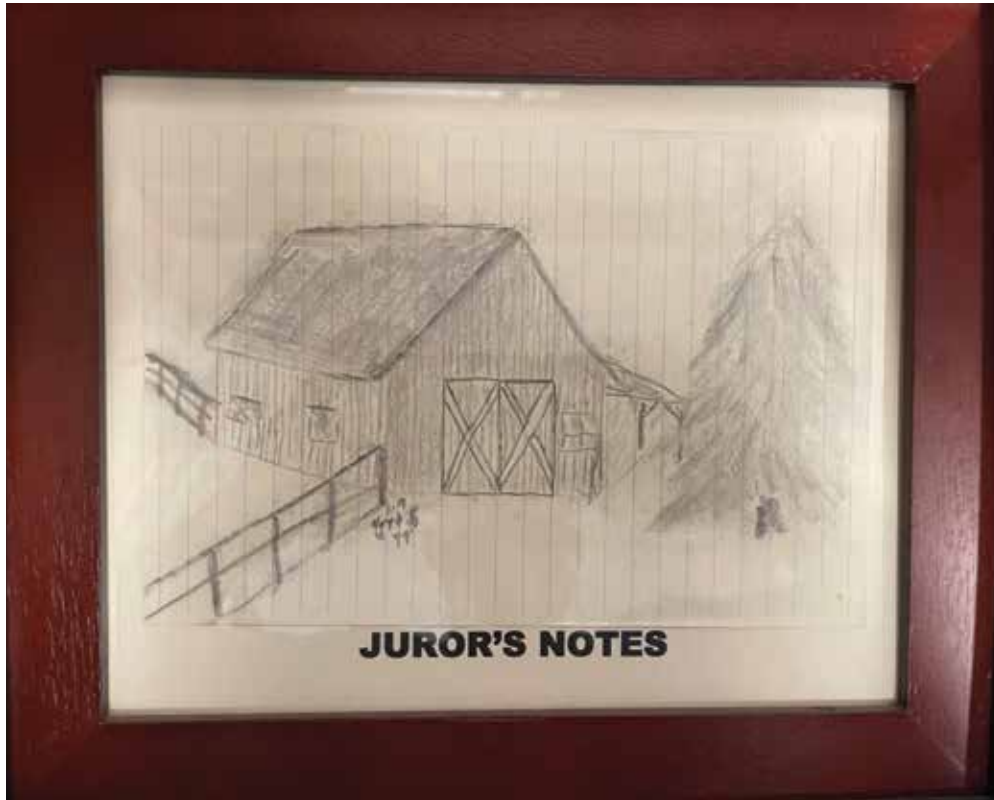
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*This note left by a juror is prominently displayed in Judge Rigali's office.*

communities from within. Maybe in the future you can be a branch court judge and be the first transparent Regional Judicial Selection Advisory Committee member from Santa Maria or Guadalupe.

### ***How to Get the 411 on Judges***

While it does not always work, I often found it helpful to focus on the kind of attorney the judge was before she took the Bench. I cannot mention all my illustrious colleagues but consider these few examples. Judge Herman is a former President of the State Bar! No wonder he is a stellar judge. Judge Hill is Santa Maria's favorite son who rose through the ranks of the office of the district attorney, and it is not surprising that his criminal courtroom has anchored court operations for years. Judge Voysey managed the entire operation for the office of the public defender this yonder side of the Gaviota Tunnel. Is it any wonder that his judicial work has been superb?

With this prism in mind, I offer only that I opened my first office in the garage of a house on Fesler Street in Santa Maria in 1991. My partner at the time, the late Mark Henbury, worked by day selling mini donuts at the fairgrounds to make ends meet. We wrote estate plans on laptops during the lulls. We were both Realtors and attended MLS meetings weekly at the Elks Lodge #1538.

I hope I am just an ordinary citizen that became an okay judge despite my shortcomings and quirks. I like to look

to the law for solutions. And most of all, I like to help you lawyers resolve your clients' disputes. I look forward to working with you some more. Your work is very important to me and to our way of life here in beautiful Santa Barbara County.

### ***P.S. – A thought about Jurors***

A copy of a juror's notes from one of my trials over ten years ago is pictured above. I took the liberty of not having it destroyed. It is framed in my chambers. Come try a case in SM2 and we can enjoy the jury trial experience together. Best of luck to all sides in all cases. ■

*Judge Rigali was born and raised in Torrance, California. In 1983, he received a bachelor's degree in economics from the University of Notre Dame. Judge Rigali graduated from the Santa Clara University with both Law and MBA degrees in the late eighties. After being employed for several years in Los Angeles, he married and moved to Santa Maria. Once in Santa Maria, Judge Rigali and his wife raised six children and he practiced general civil law with Henbury & Rigali. From 1994 to 2004, he was affiliated with the law firm of Kirk & Simas focusing on real estate litigation and general civil matters. As an active member of the Santa Maria community, Judge Rigali has been involved in a variety of non-profit organizations. He ascended to the Bench in Santa Barbara County on January 1, 2005, after winning a contested election.*



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# City of Santa Barbara Passes Just Cause and Relocation Assistance Ordinance

BY MICHELLE E. ROBERSON

This year, the City of Santa Barbara (“City”) adopted Resolution No. 20-082 to provide tenants relocation fees for no-fault evictions. This ordinance mostly mirrors Assembly Bill 1482 (AB 1482), known as the Tenant Protection Act of 2019 except (1) it increases California’s one-month’s rent relocation benefit to three times the rent for relocation, and (2) the ordinance does not sunset on January 1, 2030.

## **AB 1482 – The Tenant Protection Act of 2019**

On January 1, 2020, The Tenant Protection Act (“Act”) went into effect containing two primary sections. The first requires a specific cause be provided to terminate certain tenancies and in a specific manner such that the owner must provide a one-month rent relocation benefit to the tenant. The second caps the amount of rent owners could increase over a certain period to 5% plus CPI and never more than 10%. The City elected to not proceed with a rent control ordinance, therefore the focus in this article is only on just cause and relocation benefits.

## **Exemptions – Generally**

Generally exempted from the Act are tenancies with a duration under a year, or two years if there was a change in composition of the household and one tenant remained constant. Also excluded are units that could be individually sold, such as condos and single-family homes unless owned by a corporation (LLCs are not exempt unless one member is a corporation) or REIT and the tenant received notice that the unit was exempt from the Act.

Housing that is newer than fifteen years old and ADUs are exempt. Some duplexes are exempt if an owner occupied one of the units as their primary residence at the inception of the lease and continues to do so. There are other tenancies exempt from the Act, such as some low-income housing, boarding school dorms, hotels, residential care facilities, but relevant to most investment property owners are those listed above.

## **No-Fault Terminations**

At-fault terminations still exist without triggering relocation benefits, but the Act added language that requires all notices have an option to cure. Otherwise, the only reasons to terminate tenancies of a non-exempt unit are when (1) there is intent to occupy the real property by the owner or a close relative as identified in the Act provided any lease agreement entered into after July 1, 2020 allows for this type of termination; (2) the property will be withdrawn from the rental market completely; (3) the property provider is complying with a local ordinance, court order, or other governmental entity that results in the need to vacate the property; or (4) the property provider intends to substantially demolish or remodel the rental unit (substantially remodel being defined in the Act).

Should a no-fault reason be given to the resident in writing and they are not exempt from the law, the tenant is entitled to a one-month rent relocation benefit per unit. The tenant must be paid either within 15-days of giving notice or waiving the last month’s rent in writing. However, if the tenant fails to vacate pursuant to the notice, the relocation benefit is recoverable as damages in an action to recover possession. Failure to strictly comply with the statute renders the termination notice void.

## **City of Santa Barbara’s Relocation Ordinance**

In early 2020, the City Council directed that an ordinance be drafted to make it more protective of tenants than the Act. To that end, the City commissioned a relocation analysis. See the Table on page 15.

The City’s commissioning of a study to establish relocation costs could be seen as a diligent undertaking to establish a nexus between the cost of the public impact during a housing crisis and burden to the property owner. In *Nollan v. California Coastal Comm’n* (1987) 483 U.S. 825, the court found that there needs to be an “essential nexus” between the public impact[ ]...and the government’s demand.” (Id. at 837.) Similarly, in *Dolan v. City of Tigard* (1994) 512 U.S. 374, the court found that there had to be a “rough proportionality” between the public impacts and the proposed use of the land and the government’s demand for the property or



Michelle E. Roberson



TABLE

Estimated Relocation Expenses				
	Studio	1-Bedroom	2-Bedroom	3-Bedroom
<b>Within the City</b>				
Relocation Expenses – General Population	\$2,365	\$2,700	\$4,583	\$7,125
Relocation Expenses – Special Needs Tenants	\$2,571	\$2,921	\$5,468	\$8,460
<b>Within the South Coast Region</b>				
Relocation Expenses – General Population	\$2,328	\$2,866	\$4,564	\$6,430
Relocation Expenses – Special Needs Tenants	\$2,534	\$3,087	\$5,449	\$7,765
<b>Outside the South Coast Region</b>				
Relocation Expenses – General Population	\$2,698	\$3,236	\$5,007	\$7,023
Relocation Expenses – Special Needs Tenants	\$2,904	\$3,457	\$5,892	\$8,358

it would be an unconstitutional taking of private property. (*Dolan*, at 386.)

Despite the hard data available, the City chose a number that swayed from its commissioned study of relocation expenses. While the City originally voted for two times relocation, it pulled the ordinance from the consent agenda the following week and heard public comment regarding the prior week's decision. The City Council then opted for three-times the monthly rent obligation to be paid to the tenant for no-fault terminations. Perhaps this amount would meet the *Dolan* standard of "rough proportionality," but three times the amount not only exceeds the roughly 1.5 months' rent established by the commissioned study.

It is noteworthy that the City's study includes an expense to the tenant of a security deposit when, in California, there is significant case law establishing that security deposits are fully refundable absent damage to the property. This, arguably, makes the security deposit an asset to the tenant instead of an expense. This is significant because there has been a lot of activity with regard to whether relocation benefits are constitutional or a taking subject to the public use and just compensation clauses. Currently pending on appeal are two cases where they will hopefully clarify where these relocation benefits stand.

While no current Supreme Court case is directly on point, the challengers of relocation ordinances point to seminal cases interpreting the Fifth Amendment to the United States Constitution, which prohibits the government from taking private property unless it is for a public use and just compensation is paid to the owner. (U.S. Const., 5<sup>th</sup> Amend., XIV.) The main case relied upon is *Kelo v. City*

*of New London* (2005) 545 U.S. 469, which states that the government "may not take the property of A for the sole purpose of transferring it to B" nor could it take property "under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit" that would enrich a particular class of identifiable individuals if it is not for public use. (Id. at 477-478.)

In arguing against relocation, the argument is that the "property" is the relocation money that is being given to tenants (See, *Koontz v. St. Johns River Water Mngmt. Dist.* (2013) 570 U.S. 595, 615 (2013).) The response to this is that this is benefiting the public who are currently experiencing a housing crisis in California. However, in 2014, our courts evaluated these relocation costs and cited *Kelo* when finding against the City and County of San Francisco's relocation ordinance because it was a *per se* taking as originally drafted. (*Levin v. City & County of San Francisco* (N.D. Cal. 2014) 71 F. Supp. 3d 1072.)

The question now is whether the public good argument will prevail, particularly when there is case law stating that certain individuals alone cannot be forced by a government "to bear public burdens which, in all fairness and justices, should be borne by the public as a whole." (*Armstrong v. United States* (1960) 346 U.S. 40, 49.)

Some may argue that the relocation expense is well-within the state's police powers if the ordinance is tailored properly. The bottom line is that good arguments could be made on both sides. It is devastating to households to receive a termination notice due to no fault of their own and having to suddenly find new housing. Alternatively, many property owners have become disillusioned with being

in the business of renting their property and simply want to get out of the business or they wish to move back into their own properties. The questions remain, who should bear the burden and how much should the cost be when these situations arise?

Hopefully, by the end of summer, we will all have more clarity on these important issues. Until then, know the rules on how to terminate a tenancy, pay the appropriate relocation benefit, and hope for a smooth transition. But, watch out for Senate Bill 91 if it gets extended past June 30, 2021 as special rules apply to terminations of tenancies! ■

*Michelle E. Roberson is a local attorney that has represented both landlords and tenants on housing matters. She is also a real estate broker and President/CEO of Sierra Property Group, Inc. where she oversees the management of over 1,000 residential and commercial units from Carpinteria to Goleta.*

*Michelle E. Roberson es una abogada local que ha representado tanto a propietarios como a inquilinos en asuntos de vivienda.*

*También es agente de bienes raíces y presidenta / directora ejecutiva de Sierra Property Group, Inc., donde supervisa la administración de más de 1,000 unidades residenciales y comerciales desde Carpintería hasta Goleta.*

ENDNOTES


1. The Act added and repealed California Civil Code sections 1946.2, 1947.12, and 1947.13.
2. Keyser Marston Associates City of Santa Barbara Relocation Assistance Study ("KMA"), p. 2., <https://records.santabarbaraca.gov/OnBaseAgendaOnline/Documents/ViewDocument/Attachment%201%20-%20GENERAL.pdf?meetingId=598&documentType=Agenda&itemId=18402&publishId=11928&isSection=false> (retrieved June 1, 2021).
3. Id. at p.4 [expenses included because "[t]enants will generally need to fund a new security deposit prior to the release of any prior security deposit for their current apartment and may not recover their prior security deposit at all if there is damage to the unit."].
4. Senate Bill 91 (SB 91) was signed into law on January 29, 2021. In summary, SB 91 does the following: extends key tenant and property owner protection provisions provided by Assembly Bill 3088 (Chapter 37, Statutes of 2020); provides new protections for tenants impacted by COVID -19, including debt treatment and civil procedures; and appropriates \$1.5 Billion for the State Rental Assistance Program.

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### *Pro Bono Award*

This award recognizes an individual attorney who has donated at least 50 hours of direct legal services to low income persons during the previous calendar year.

### *Frank Crandall Community Service Award*

This award honors a local law firm's best efforts in providing pro bono services to community non-profit organizations. Factors considered in bestowing the award include:

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- Percentage of firm attorneys performing pro bono work;
- Nature and quality of pro bono work and hours per attorney;
- Leadership of community projects and services benefiting low income persons.

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- Judicial Temperament, Demeanor, Independence, Integrity and Fairness;
- Knowledge of the Law, Legal Ability and Scholarship;
- Contribution to the Improvement or Education of the Legal Community;
- Contribution to the Community at Large and to the Practice of Law;

### *The SBCBA's Jamie Forrest Raney Mentorship Award*

This award honors an attorney who has made a significant difference in the careers of other attorneys through ongoing mentorship regarding professional growth, principals of professionalism, ethics, and law practice management, as did the late Jamie Forrest Raney.

---

Please submit your nominations to Lida Sideris: [sblawdirector@gmail.com](mailto:sblawdirector@gmail.com) by July 31, 2021. Please include specific facts to support the award's criteria for each nomination.

# Criminal Case Mediation and Restorative Justice After the COVID-19 Crisis

BY ROBERT M. SANGER

The COVID-19 crisis has had an impact on the number of unresolved cases in California's state criminal courts leading to a bulging backlog. This *Criminal Justice* article examines some of the possible remedies for the backlog in Santa Barbara County, and other remedies for a more progressive approach to criminal cases going forward.

It is important to give the Court and the Court Administrators credit in Santa Barbara County. This County has set up one of the most successful video court systems in the state. The County is also at the forefront of the specialty court movement to deal with certain classes of cases and defendants in a therapeutic mode. This article seeks to push the envelope a bit further with an emphasis on case mediation techniques and restorative justice.

## ***The Case Backlog and the COVID-19 Crisis***

There are thousands of criminal cases pending in the Santa Barbara Superior Court system, including the Lompoc, Santa Maria, and Santa Barbara branches.<sup>1</sup> At the beginning of June 2021, the Santa Barbara Jail housed 133 people who were sentenced and "serving time."<sup>2</sup> However, there are 477 people being held in the county jail who are still awaiting trial or sentencing. Of these, there are 44 people being held on charges of murder (Penal Code section 187) and 24 held on attempted murder (Penal Code section 664/187). That is striking and has an impact on the backlog since those cases are more likely to use court services, including jury trials. However, that also means that 409 people are there on misdemeanors (21) and other felonies (388). There are many more people charged in cases who are cite releases, released on their own recognizance or bail, or received letters to appear. A percentage of all of them may go to trial. The number of people in custody has significance because they may have some priority over those out of custody for the earlier trial dates.

The Santa Barbara Superior Court has just started setting cases for trial. There is one trial department in the North County and one in the South. Furthermore, due to COVID-19 restrictions, the jury assembly rooms for North, and South can only accommodate approximately 20 potential jurors at a time. This is contrasted with the pre-COVID-19 practice of having three criminal jury departments in the North and four in the South, and a Jury Commissioner who could provide all the jurors needed. Filtering a regular caseload from nine trial departments through two courtrooms cannot keep up with the caseload and will contribute to an increasing backlog.

The two departments in Santa Barbara also must proceed at reduced speed since jury selection in a case can take several times longer than before COVID-19 restrictions. Major felonies with 20 peremptory challenges per side or multiples thereof within co-defendant cases, will take even longer. Other counties have also resumed trials and some, like Orange County, claim they never stopped despite the Order of the Chief Justice in March of 2020.<sup>3</sup> Anecdotally, those counties are experiencing difficulties recruiting jurors and, if the summoned jurors show up, there are difficulties in getting the jurors to not seek excuses. An increasing backlog of trials is the norm throughout the state.

The Chief Justice of California, Tani Cantil-Sakauye, issued a Memorandum as Chair of the Judicial Council on December 22, 2020. The Chief Justice acknowledged that, "many courts have developed a significant backlog of criminal cases in which the defendant has been arraigned but there has been minimal progress toward case resolution either through plea or trial." She noted that this has an impact on all participants in the criminal justice system:

"Prosecutors may have witnesses who become unavailable over time or find that evidence in the case has become stale. Defendants and their counsel must continue to develop the defense case, with counsel having only limited access to in-custody defendants. Defendants who are out of custody are often severely hampered in their ability to steady their lives—through employment, obtaining a driver's license, moving to



Robert M. Sanger



lower cost housing, etc.—due to the lack of resolution of their criminal cases. Victims are without timely resolution and restitution.”

Furthermore, the Chief Justice acknowledged that the courts will still face the problem of dealing with this backlog, “as we emerge from regional stay-at-home orders and the COVID-19 pandemic unless the justice community makes a concerted effort to take action now.”

### ***What is Being Done?***

Procedures have been put into place and many of them are good. Santa Barbara County has been one of the most efficient in using Zoom for court appearances, including appearances in contested hearings. Many other counties have been struggling, some relying more on telephone appearances and others with systems that have not seemed to work as well. This is the case with Los Angeles and Orange Counties where Web-Ex has been used but either not used well, or used at all, by individual judges. Some counties, like Ventura, made it through the last year with minimal use of video.

In Santa Barbara County, the systems have worked better. The jail has implemented a meaningful system for attorney-client interviews by Zoom and, for good or otherwise, the new North Branch Jail, if it ever opens, is allegedly equipped with state-of-the-art professional Zoom capabilities. The Sheriff’s Office has also done an admirable job of making clients available for court when needed. It is undeniable that there are some long-term advantages to video capabilities and, certainly, as short-term measures during the crisis.<sup>4</sup>

There has also been an effort in Santa Barbara County among the courts, prosecutors, and defense lawyers to resolve cases, particularly misdemeanors. Many misdemeanor cases were not filed by the District Attorney’s Office, and others are simply not placed on calendar by the court until specifically requested by the District Attorney. In addition, a new state law, Penal Code section 1001.95 has been enacted to allow the granting of diversion for just about all misdemeanors. Some judges are more inclined to grant that relief than others, but the effect has been to further reduce misdemeanor cases pending. Still there are many misdemeanors pending trial.

Felony cases often resolve with the “threat” to both sides of a preliminary hearing or an actual trial date. Preliminary hearings have started to occur more frequently, either by video or in-person. However, jury trials are slowly and painfully resuming in small numbers and slow motion. Nevertheless, counsel on both sides have been making efforts to settle felonies. The Santa Barbara judges have

taken different approaches to settlement. If a case has not been assigned to a court, it may be eligible for an early settlement conference with a visiting judge. If it has been assigned, then the assigned judge will usually try to have a private settlement conference, especially if asked. It is also possible to request that the case be sent to a settlement judge, currently, Judge Kelly in North County, and Judge Deroian in the South.

Finally, Santa Barbara County courts are progressive in implementing specialty courts that provide their own form of diversion from the regular criminal process. These include courts for veterans, people with mental health, drug, or alcohol problems and the houseless.<sup>5</sup> In addition, to avoid people entering or re-entering the criminal system, County Behavioral Wellness in conjunction with the Sheriff, Probation, the Public Defender, private defense lawyers and the District Attorney have enhanced the programs available for people who might otherwise be booked into the jail and who need mental health or other social services. Despite all of this, the backlog persists. There are still those 477 people held in the county jail, almost all on felonies and 68 of them on murder or attempted murder. There are also the larger number of their counterparts in the community who are out of custody awaiting trial.

### ***What More can be Done?***

Like so many things in life, necessity is the mother of invention—or, at least, the mother of implementation. Necessity has already resulted in the implementation or expanded implementation of some remarkable inventions as described above. Still, we have mass incarceration and, while jail and prison populations state-wide and locally have dropped, they are still well above the norms for socially and economically developed countries. Furthermore, they have plateaued and may be on the rise again. And, we still have that backlog of cases that need to be resolved so that the ones that really need to go to trial can do so.

Hence, some modest suggestions:

First, the criminal justice system must do even more to try to resolve cases. The first suggestion is that there be a more liberal use of retired judges who are not a part of the local justice ecosystem. As good as a trial judge may be, if the case is assigned to her, she is going to understandably take the position that she may be required to preside over a trial and should not become involved in pushing either side or both toward a resolution. Other judges on the same Bench are going to be more reticent in calling out one side or the other to move toward settlement. Retired judges, particularly from other courts, are better able to take an objective view of the case and get down to settlement.<sup>6</sup>

Second, the retired judges – or any judges who are going to actively participate in settlement negotiations – should be trained in mediation. Certainly, there is training available through the judicial education. However, actual mediation training would be helpful. For instance, the Straus Institute for Dispute Resolution at Pepperdine University conducts weeklong intensive training in mediation with the opportunity to pursue advanced studies. Anecdotally, experienced retired judges who have attended have said that they wished they had completed such training while still on the Bench.<sup>7</sup> Application of these skills to criminal cases can have positive results.<sup>8</sup>

Third, resolution of cases should include non-traditional and non-criminal remedies to address public safety while using remedies other than incarceration.<sup>9</sup> Credit is due to the Santa Barbara County courts and to others which have made progress as mentioned above. Diversion and therapeutic programs often make more sense in addressing real issues and avoiding recidivism. The Public Defender's implementation of Bronx Defender holistic representation is also key and should be incorporated in the practices of appointed and retained counsel to the extent that it has not been.

However, there is an entire process that has been largely ignored for significant criminal cases - restorative justice.<sup>10</sup> Restorative justice has been implemented in a limited fashion regarding property crimes in juvenile court and in the houseless court. Yet, the California "Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice."<sup>11</sup> Without giving any particular guidance, the California Penal Code says that community-based remedies may include: "Restorative justice programs such as mandatory victim restitution and victim-offender reconciliation."<sup>12</sup>

The concept of restorative justice has been used successfully in other states and other countries for significant alleged offenses.<sup>13</sup> Without going into all the details, suffice it to say that there are many applications, including post-conviction reconciliation between victims and defendants. Here, however, the proposal is to use it as an alternative to "due process" prosecution in serious cases. The ideal case that comes to mind is vehicular manslaughter. It is a kind of case that usually does not involve ill-will on the part of the person accused and certainly no ill-will toward the individual victim. It is often just a terrible accident. Even cases involving gross negligence and alcohol are candidates for restorative justice reconciliation.

Pre-trial restorative justice requires a willing victim or victim's family and a willing defendant who will risk losing the protections of due process by accepting responsibility.

Reference to the "circle"<sup>14</sup> or its equivalent does not mean that there will not be punishment. Following some systems, the defendant and the prosecution submit to the decision of a circle. Following other systems, the defendant returns to court after the restorative justice process. The benefits, however, are enormous for both the victim and the defendant. It is not for all cases and, in many cases, a defendant may maintain innocence or believe that the case cannot be proven beyond a reasonable doubt.<sup>15</sup> However, for those many cases where the participants are willing, it would certainly provide a way to short cut the court process along with the expense and anxiety to all involved.

### Conclusion

Much is being done to deal with the backlog of criminal cases in Santa Barbara County. Those cases that are stalled affect the lives of human beings who have a stake in the outcome. So, kudos to Santa Barbara County for what it is doing. But much more can be done. We need to keep working. ■

*Robert Sanger is a Certified Criminal Law Specialist (Ca. State Bar Bd. Of Legal Specialization) and has been practicing as a litigation partner at Sanger Swysen & Dunkle in Santa Barbara for 47 years. Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is a Professor of Law and Forensic Science at the Santa Barbara College of Law where he has also taught Restorative Justice. Mr. Sanger is an Associate Member of the Council of Forensic Science Educators (COFSE). He is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization, and Past Chair of the Board of Death Penalty Focus. The opinions expressed here are those of the author and do not necessarily reflect those of the organizations with which he is associated. ©Robert M. Sanger.*

### ENDNOTES

- 1 An exact figure is not available. However, as a gauge of how many cases may be pending, before the COVID-19 crisis, the Public Defender handled 2,000 to 2,500 felony criminal cases per year and another 7,000 to over 9,000 misdemeanors. An additional large number of cases are handled either by conflict defense lawyers or private defense counsel. See, County Executive Office, *Annual Budget Report 2021-2022*, <https://santabarbaracounty.ca.gov/ceo/asset.c/4490>. Since the Superior Court is now a State agency, the number of cases pending by county is not readily available but there have been approximately five million criminal filings a year statewide in California.
- 2 Statistics provided to counsel by the Santa Barbara County Jail Administration in the Jail Conditions litigation pending in the Santa Barbara Superior Court, *Inmates of the County v. John Carpenter*, Santa Barbara Superior Court Case Number 152487, and

*Continued on page 25*



# You and Your South Santa Barbara County Superior Court Research Attorneys

BY TOM HINSHAW

**L**ida Sideris, your Santa Barbara County Bar Association Executive Director, asked me to write an article about Superior Court research attorneys. I thought about something along the lines of “A Day in the Life of a Research Attorney.” But that would be a short and boring article: “Sit in front of computer. Select next civil law and motion matter. Read pleadings. Do any necessary research. Write memo for judge. Email memo to judge. Repeat.”

Hey, I am retired after nearly 16 years with the court. I could let you in on all the juicy inside skinny. Which judges always follow the research attorneys’ recommendations? When do judges write their own tentative rulings? What knock-down-drag-out arguments have you had with a judge regarding a ruling? Who really made Department 5 smell like garlic that day three years ago? (Okay, that was me.) But, no, out of respect for my former bosses, this is not a “how sausage is made” exposé.

One question I get asked more than any other about my former job is: Who are the research attorneys? That I can answer. Ann Battles, Brennan Lynch, and Paul Larsen are the current lineup in the South County. Their bios are included at the end of this article. The North County research attorneys are David Nyssen, Tracy Splitgerber, and Michael Acker.

You may say, “Wait, I thought there were four research attorneys in South County.” Yes, there were. Again, I retired. So where is my replacement? Well, there is not one. And it is not clear if, when, or how the court will fill the gap. That staffing issue is subject to “study.”

You may have noticed that the court is continuing several law and motion matters. That is because the depleted research staff cannot keep up with burgeoning law and motion calendars. Even though civil case filings are down, it seems the pandemic has brought on renewed enthusiasm for aggressive litigation through motions. Things will not get better when civil jury trials start up this summer. And

the court is dealing with unfunded mandates like the death penalty habeas corpus petitions the ill-considered Proposition 66 has dumped on Superior Courts.

Considering these difficulties, I thought a useful subject would be a primer on how you can write pleadings that are user-friendly for research attorneys. This will not only make my colleagues’ lives easier, but it will also help you get your point across more efficiently, effectively, and successfully. So, I asked my colleagues for some pointers. (I still call them colleagues, even though I have moved on.) Here is what we have come up with:



Tom Hinshaw

## ***Be Focused and Concise***

This is just good writing practice. Be aware of your audience—the court. Think about what you want the court to do and what points most persuasively convey that message. Effective writing is difficult precisely because it requires the writer to think of the reader’s point of view instead of the writer’s perspective.

Yes, there are page limits (15 pages for most motions and oppositions; 10 for most replies) but that does not mean you have to fill that many pages. Peter Susi, a wise sage of a lawyer many of you may know, told me his goal was to file a one-page motion. I do not know if he ever accomplished that goal but the “less is more” aspiration is a noble one and can have greater impact than a rambling screed.

## ***Stay on Topic***

Related to the above, many pleadings include expositions regarding subjects wholly unrelated to the motion at hand. A common example is the response to a motion to compel further discovery, in which the responding party points out that the moving party has not provided responses to discovery propounded on it. That may well be, but it has nothing to do with your responses to discovery. When a busy reader encounters extraneous material, the tendency is to scan ahead to find when the author will get back on point. Ask yourself, “what part of your brief you want a research attorney to scan through?”

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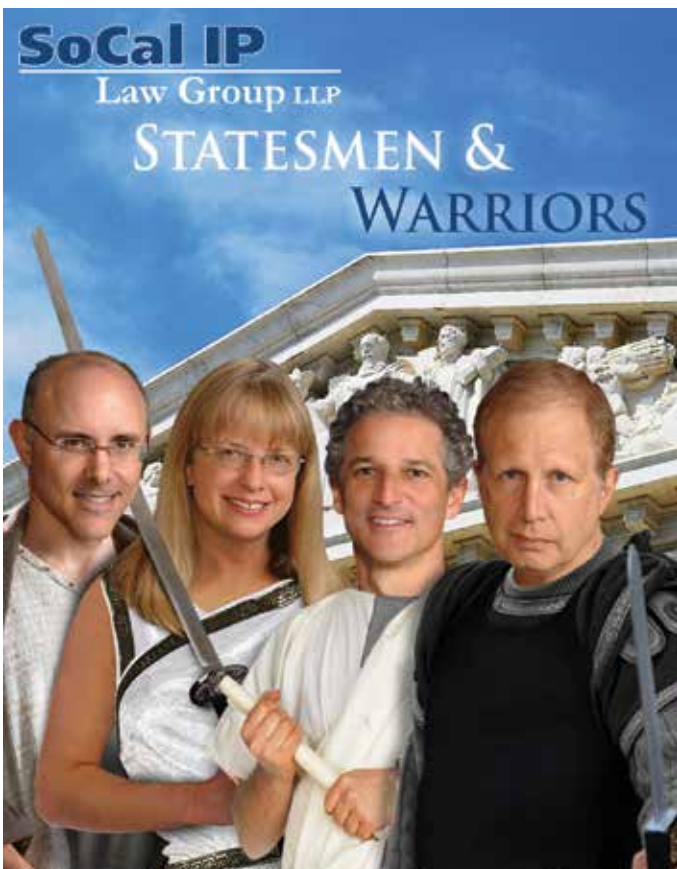


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## Feature

### ***Please Do not Complain About Opposing Counsel/Parties***

You have probably read pleadings telling the court about the awful injustices the other party has inflicted on a client or the unreasonable behavior of opposing counsel. Again, these lawyers have strayed off topic. And, frankly, it is off putting. Research attorneys, like you and your opposing counsel, are part of the same legal community—many times the same general community. How awkward is it to run into an individual you have just eviscerated in a pleading? It is awkward running into that individual if you have just read such a pleading, let alone written it.

When I complained about this phenomenon to a lawyer friend in the community, he said lawyers often do that to appease the client. I replied that sometimes the lawyer must be the adult in the room. Keep in mind specifically General Principle #3 of the Litigation Guidelines for Practice Before the Superior Court: “Counsel should at all times be civil and courteous in communicating with adversaries, whether in writing or orally. A lawyer should not behave offensively, derogatorily or discourteously even when his or her client so desires.” Communications with those adversaries include those made through pleadings.

One of my favorite quotations on this topic is from the Supreme Court of the state where I attended law school: “The existence of [] disagreements, and the ability of our legal system to thrive on them, are virtues of the judicial process and of our system of government. The terms of the debate, however, must be framed by civility and respect, and not by suspicion and untruths. When rancor eclipses reason, the quality of the debate is diminished, the bonds of collegiality are strained, and the judicial process is demeaned.” (*People v. Bull* (1998) 185 Ill.2d 179, 222, Miller, J, specially concurring [addressing fellow justices’ remarks but noting the standard is the same for counsel].)

### ***Be Timely or Even Early***

On the rare occasion when a research attorney gets to pick up a motion to work on a week ahead of time, it is frustrating when all the pleadings are not there. Most replies are due five court days before the hearing, which usually means a calendar week before the hearing. One of the unfortunate characteristics of electronic filing is that a pleading filed by 11:59 p.m. on the day it is due is considered timely. What you may not know is that the pleading does not automatically show up in the court’s case management system. It must be manually processed in the Clerk’s office. So, that late night filing may not appear until noon the next day.

This is particularly a problem with summary judgment motions. Even though the motion must be filed 75 days

before the hearing, the opposition and reply deadlines are closer to the hearing date than they are for other motions. Summary judgment motions are often much more complicated than standard motions. Yet, research attorneys have less time to review timely filed pleadings before the hearing date and we want to get the judge a memo significantly before the hearing. Often this means we are working up a memo after having read the motion and opposition (and respective supporting separate statements and declarations) but not the reply. A lawyer who has a substantive reply should get it in earlier than the due date.

We know you are busy and juggling many different cases. But getting pleadings in on time or even early will better serve your clients.

### ***Know and Follow the Rules***

Formatting of pleadings may seem like an arcane and uninteresting topic. But court rules are not there to just to make you jump through hoops. They are helpful to the people at the court reading your papers.

All papers filed with the court and specifically all memoranda “must be numbered consecutively beginning with the first page and using only Arabic numerals (e.g., 1, 2, 3).” (Cal. Rules of Court, rules 2.109 and 3.1113(h).) The old practice was to start at Arabic page one, switch to Roman numerals for tables, and the revert to Arabic page one several pages into the document. The consecutive and consistent numbering requirement is not just a technical one. Research attorneys review pleadings very carefully, often finding it necessary to refer to a pleading after reading an opposition or reply. When referring, they hope to find help in the tables. A memorandum that exceeds 10 pages must include a table of contents and a table of authorities. (Cal. Rules of Court, rule 3.1113(f).) When the page numbers in the tables do not match the actual pages in the electronically filed pdf document, the tables are of limited help.

“[E]lectronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.” (Cal. Rules of Court, rule 3.1110(f)(4).) When there are several exhibits consisting of many pages and no electronic bookmarks, it is very difficult to find what you refer to in your pleadings. Research attorneys are going to check references to exhibits. So, you might as well make it easier to find.

When citing authority, be accurate. Again, research attorneys check. If the authority does not read as you say it does, including points that are negated in the next sentence that you did not include, your pleading loses credibility. Also, please give us the complete citation. Include “pin

cites”—the pages where we can find the point for which you cite the authority.

### ***Do not Repeat Yourself***

A reply is not an opportunity to start over. There is no need to restate what the case is about and reiterate the current dispute before the court. Research attorneys read the motion, opposition, and reply all together. So, when a reply starts out like this, the research attorney’s eyes glaze over. She/he has just read all this in the motion and opposition. Again, you do not want to lose the reader’s attention before you get to the meat of the matter.

### ***Have a Colleague Read Your Pleadings***

When I was in private practice, I found that one of the advantages of being in a firm was the opportunity it afforded to ask another lawyer to read and pick apart my pleadings. Sometimes we get so wrapped up in the dispute, we cannot see the flaws in our written presentations. Having a trusted colleague look it over and point out how you can better state your position can be invaluable. Even solo practitioners can find a trusted colleague to perform this task.

### ***Pick up the Phone or Meeting Face-to-Face***

Some motions, such as motions to compel further discovery and demurrers, require lawyers to meet and confer. Other types of motions can benefit from the same practice. It does not mean writing a lengthy letter that tells the other lawyer why she/he is wrong. This usually elicits a dismissive response and maybe an equally dismissive reply.

“A reasonable and good faith attempt at informal resolution entails something more than bickering with [opposing] counsel. . . . Rather, the law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate.” (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1439.) An attempt at “informal resolution means more than the mere attempt . . . ‘to persuade the objector of the error of his ways.’” (*Clement v. Alegre* (2009) 177 Cal. App.4th 1277, 1294.)

A meaningful back and forth discussion of issues is best pursued in real time via a conversation. Be old-fashioned, pick up the phone, and try to get opposing counsel on the line. Maybe meet for a working lunch. Set the tone by asking about counsel’s day, hobbies, kids, etc. . . . Perhaps you will get the dispute resolved or at least the issues narrowed. Better yet, you might make a friend.

### ***Make Life Easier***

Research attorneys do not expect sympathy for the work they do. Heck, they get paid for it. Yes, following the above



suggestions may make research attorneys' work easier and maybe even more pleasant. More importantly, it will make your motion practice more efficient and more successful.

### **Lineup of South County Research Attorneys**

Ann Battles has the longest tenure of current research attorneys. Ann was raised on a farm on the outskirts of a very small town in Nebraska. She earned her B.A. from the University of Nebraska-Lincoln (Go Huskers!) in 1980, and her J.D. from the University of Southern California in 1983. She ultimately found her way to Archbald & Spray in Santa Barbara at the beginning of 1986, where she practiced until her son was born in 1993. Ann reentered the legal world a few years later, performing research, law and motion, and appellate work on a contract basis. She joined the court's newly expanded legal research department in April 1999. Among other things, Ann enjoys reading, college football in general and Nebraska and Michigan (her son's alma mater) particularly, and she hopes to travel again in upcoming months and years.

William Brennan Lynch (he goes by Brennan) has been with the court since 2009. He was born in Milwaukee, Wisconsin, and his family moved to Los Angeles when he was seven. Brennan majored in English Literature at Stanford University. After working in a legal aid office in Pasadena for a year, he attended Loyola Law School, seeing a law degree as a ticket out of the big city. It worked! Brennan accepted a position with Archbald & Spray in Santa Barbara. He did not know a soul in Santa Barbara and the first person he ever spoke to in town was Barbara Jean Skelton. After weeks of putting him off, Barbara finally agreed to a lunch date. Two years later, they were married

at the Santa Barbara Mission. Barbara passed away in 2017, after 34 years of marriage. Brennan says, "It's amazing how empty the world can be with the loss of just one person." Brennan left Archbald & Spray in 2005 to start his own practice where he handled mostly wills, trusts, and other estate planning matters. Brennan is a Marine Corps veteran having served three years active duty and four years in the reserves. Although he considers the research attorney job the best law-related job he has ever had, he says the Marine Corps was even better.

Paul Larsen grew up in Santa Barbara and attended local schools. He graduated from UC Berkeley with a B.A. in economics. At UCLA he earned both his J.D. and M.A. in economics. Following law school, Paul worked briefly for a large law firm in the Bay Area but decided that small firm life was better. He was a partner in small firms in Los Angeles and Pasadena for about 20 years with a practice focused on complex business litigation and business transactions. Paul joined the court as a research attorney in 2010. Paul is an adjunct professor of law at the Santa Barbara and Ventura Colleges of Law, where he helped to establish the Hybrid legal education program and teaches Remedies and Legal Research. ■

*Tom Hinshaw is a former President of the Santa Barbara County Bar Association and a recently retired Superior Court Research Attorney. He is a graduate of Northwestern University and the DePaul University College of Law. He is an actor, swimmer, cyclist, and White Sox fan. Tom is married to Donna Lewis, another former SBCBA President. (Two former Presidents! How insufferable must that household be?). They have a dog and a cat.*

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Sanger, continued from page 20

- cases consolidated therewith, currently pending hearings before the Honorable Brian Hill.
- 3 Order of Hon. Tami Cantil-Sakauye, Chief Justice of California and Chair of the Judicial Council dated March 25, 2020.
  - 4 It has been argued in this article and elsewhere that video conferencing with clients and video court appearances have their dangers. These include decreasing the actual meaningful interaction between attorneys and clients, and depersonalizing the process. With that in mind, after the crisis abates, much thought will have to go into what parts of the video system should be preserved and what should not. This is a subject for another time.
  - 5 “Houseless” is less objectifying term than “homeless,” better reflecting the reality that people without a house are still trying to establish a home wherever they are and are entitled to respect as fellow human beings. A nice short article on the subject is: Suhani Dalal, “Cycle the word homeless out of your vocabulary,” *The University of Washington Daily* (April 29, 2019).
  - 6 Of course, plea-bargaining is the foundation of our system of criminal dispute resolution and is subject to many abuses. The “plea for daylight” -- where someone in custody is told that if they plead guilty, they can go home -- is the ultimate form of extortion. Too many people have entered pleas who should have had a trial. This is reinforced by the “trial penalty” -- where a person who exercised the right to go to trial is then sentenced more harshly. All of this is taken in the present context of a backlogged system regarding which the Chief Justices warned about the harm caused by delay in trial resolution. Plea bargaining among informed professionals, with the rights of the accused being respected, can result in a rough form of justice.
  - 7 The author obtained a Certificate from the Straus Institute for Dispute Resolution in 2019 in a class of approximately 50 people, most of whom were either retired judges or were professional mediators. The response from the judges and mediators resoundingly emphasized that, even among such professionals, there was much to learn about mediating.
  - 8 See, e.g., the symposium following the introduction, Michael M. O’Hear & Andrea Kupfer Schneider, Introduction: Dispute Resolution in Criminal Law, 91 *Marq. L. Rev.* 1 (2007).
  - 9 Pen. Code § 17.5 (“Criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable and will not result in improved public safety.”)
  - 10 See, Gerry Johnstone, *Restorative Justice* (2nd ed., Routledge, 2011).
  - 11 Pen. Code § 1170.
  - 12 Pen. Code § 17.5(a)(8)(E).
  - 13 John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford, 2002).
  - 14 Kay Pranis, *Circle Processes*, Good Books (2005).
  - 15 Andrew von Hirsch, et al., eds., *Restorative Justice and Criminal Justice* (Hart, 2003) [Including a few articles relating to the inter-relationship and sometimes competing interests of restorative and criminal models and including essays on the experience in other countries].

## 2021 Bench & Bar Meetings

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

**August 19, 2021**  
**November 18, 2021**

These Bench and Bar Meetings will be held via Zoom. They 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](mailto:ielsenheimer@aklaw.net)

## Santa Barbara Lawyer Wants to Hear More From SBCBA Members

The focus of the *Santa Barbara Lawyer* in 2021 is to create a forum to engage in rich and provocative conversations across power-differentiated communities, geographic distances, and disciplinary divides. *SBL's* editorial staff invites the submission of articles about social justice, inclusion, and privilege, particularly how these issues pertain to the Santa Barbara community. *SBL* strongly encourages the submission of rigorously researched articles that show how law is deeply engaged with socio-political, cultural and climate issues.

# Everyone Needs an Advance Health Care Directive

BY CONNOR C. COTE

**A**re you healthy? Do you plan to get sick? Sometimes we are lucky enough to plan for a surgery or have time to make arrangements during a long-term illness. However, the events of the last 18 months have shown us that timing for health care needs is often far from certain. As we slowly emerge into post-pandemic life, a review of our fundamental right to control decisions relating to our individual health care is in order.

The document by which an individual can state their health care desires and designate an agent to carry out these directions is the Advance Health Care Directive/Power of Attorney for Health Care (Directive). This article will give a brief overview of the statutory provisions governing Directives, what information they can include, and provide some information regarding our local Cottage Hospital's push to have community members execute Directives and include them in patient medical files.

## Public Policy

On July 1, 2000, the California Legislature passed the Health Care Decisions Law. (Prob. Code §§ 4600-4805.) All reference to code sections in this article are to California's Probate Code. In Section 4650, the Legislature lays down the foundation upon which the statutory provisions covering Directives are built. Section 4650 proclaims a strong public policy that individuals have a right to dictate how much, or how little, they wish modern medicine to go in prolonging their life. Section 4650 states in part:

- (a) In recognition of the dignity and privacy a person has a right to expect, the law recognizes that an adult has the fundamental right to control the decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or withdrawn.
- (b) Modern medical technology has made possible the artificial prolongation of human life beyond natural limits. In the interest of protecting individual autonomy, this prolongation of the process of dying for a person for whom continued health care does not

improve the prognosis for recovery may violate patient dignity and cause unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the person.



Connor C. Cote

## Legal Documents

The relevant Probate Code sections allow an individual to give directions pertaining to their health care without designating an agent under an "Individual Health Care Instruction" (Sections 4623), and/or, to designate an agent to make health care decisions under a "Power of Attorney for Health Care" (Section 4629.) Section 4605 defines "advance health care directive" and "advance directive" as either an "individual health care instruction" or to a "power of attorney for health care." Medical directions can be made orally or can be memorialized in a written document. The requirements for giving directions are few: an individual must be an adult and must have capacity.

The capacity bar for executing a Directive is low. A person must only be capable of understanding the nature and consequences of a decision, including the significant benefits, risks, and alternatives to any decision, and be able to communicate that decision. (Section 4671.)

While instructions can be given orally, when the time comes to make certain decisions, an individual may no longer have capacity. Therefore, it is best practice to set forth, in writing, one's desires and to designate an agent, as defined in Section 4607, to make decisions on your behalf.

To be legally sufficient a patient's Directive must: (1) contain the date of execution; (2) be signed by either the patient, or in the patient's name by another adult, in the patient's presence at the direction of the patient; and (3) the document must be either acknowledged before a notary public OR signed by at least two witnesses who meet the requirements for acceptable witnesses in Sections 4674 and 4675. (Section 4673.)

## Contents

At its core, the purpose of a Directive is to lay out an individual's health care decisions and instructions and designate an agent to make sure your desires are fulfilled if you are unable to advocate for yourself. In addition to



providing general or specific health care instructions, as a non-exhaustive list, a Directive can: name successor agents (it is recommended to include an agent's contact information so that they can be reached in an emergency), authorize an agent to donate organs, tissues, and parts, authorize an autopsy, direct disposition of remains, nominate a conservator of one's person and/or estate, specify whether to prolong or not prolong one's life, authorize the use of pain medication even if it hastens death, and designate a primary physician.

Further, it should be noted that unless an individual specifically restricts the disclosure of medical information, a designated agent has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information (Section 4678.)

While a patient can draft their own Directive, which may be very comprehensive and tailored to an individual, the legislature has also provided a statutory Advance Health Care Directive form which allows an individual to give health care instructions and designate an agent. This statutory form can be found in Section 4701.

### **Cottage Hospital – Advance Care Planning Program**

With new-found knowledge of Advance Health Care Directive basics, and the unpredictability of life, no doubt all readers of this article will have one prepared and signed sooner than later. But what does one do with an Advance Health Care Directive after it is completed?

It is best to keep the Directive in a place where it can be found, especially in an emergency. A safety deposit box or filing cabinet at home is a good place for safekeeping. Also, Cottage Hospital has implemented the Advance Care Planning Program. Through this program any community member can submit their Directive to Cottage Hospital, and it will be put into their existing file, or, if an individual has never been a patient there, an electronic file will be made for them. Directives can be submitted in three ways (1) dropped off at any of the three hospitals operated under Cottage Health: Santa Barbara Cottage Hospital, Goleta Valley Cottage Hospital, or Santa Ynez Valley Cottage Hospital, (2) mailed to the "Advance Care Planning Program, Cottage Health, P.O. Box 689, 400 West Pueblo Street, Santa Barbara, California 93102, or (3) scanned and emailed to [mycare@sbch.org](mailto:mycare@sbch.org). If a person has designated a primary physician, it is a good idea to send them a copy too.

Rebecca Simonitsch is the program manager for the Advance Care Planning Program at Cottage Health. She was kind enough to speak with me for this article to give

insight into how a Directive is implemented in the real world. There are two usual scenarios: patients who have a directive, and those who do not (or cannot locate their Directive).

If a person arrives at the hospital without a family member and is unable to communicate his wishes for himself, the hospital will default to doing everything possible to keep the person alive.

If a person arrives and either has a Directive, or has submitted a Directive to Cottage Health, they will first identify the person, then pull up the Directive, implement the person's desires, and contact his agent as soon as possible.

While not required for a valid Directive, a drafting practice tip for anyone who plans to submit a Directive to Cottage Health is to include the principal's name in the title or at the very beginning of the document, include their birthdate (used to match a Directive on file), and the relationship of each named agent to the patient.

### **Conclusion**

The California Legislator has recognized our broad fundamental right to make health care decisions for ourselves. No matter what your specific desires may be, it is important not only for yourself, but also for your loved ones, to take some time to think about your health care desires and designate a person to make sure those desires are carried out. As much as we may wish to control our lives, we can never predict when a proverbial bus, or world encompassing pandemic, will hit us. ■

*Connor C. Cote is an associate at the Law Offices of James F. Cote specializing in estate planning and trust and probate administration.*

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# Cyber Security Professionals Are Essential For Law Firms

BY JOHN TROXEL

In early May 2021, Colonial Pipeline suffered what CNN called a “relatively unsophisticated ransomware attack” that shut down the nation’s largest fuel pipeline. The result? Gas shortages, fuel price spikes, and consumer panic. It happened on a Friday, and the following Tuesday, about 10,600 gas stations were still without fuel, causing gas prices to go up as much as \$0.16 across the country.<sup>1</sup> Early rumors are that Colonial Pipeline paid \$4-\$5 million in ransom, and the group behind the hack reportedly received \$90 million in other breaches.<sup>2</sup> Business is good!

## What if it were electricity or water?

In mid-May 2021, Irish Healthcare Service was hit with a ransomware attack that is already estimated to cost tens of millions in euros, and one of the major hospitals with over 1,200 employees are using pen and paper to record all patient details. All maternity appointments were cancelled for those under 36 weeks.<sup>3</sup>

A quick Google search will show a plethora of news articles addressing the rise in cyber crime; the fastest growing form of criminal activity. So, it is obvious that cyber security needs to be addressed with every law firm.

## How Should a Law Firm Choose a Cyber Security Professional?

Who should a law firm hire to improve their cyber hygiene? For context, consider this: there is a difference between an accountant and an auditor. One takes care of day-to-day financial transactions to include payroll, tax deductions, customer billing, reconciling the books, etc. The other is engaged to check the accountant’s work to ensure that it is accurate and keeps the company out of trouble with the IRS. The auditor knows everything the accountant knows, and then some.

Similarly, there is a difference between an IT professional and a cybersecurity consultant. Having in-house IT folks or an outsourced managed services provider do cybersecurity is tantamount to self-auditing. There is value in putting a fresh set of eyes on potential cyber vulnerabilities.

## Three Reasons Why Third-Party Experts Should Be Engaged for Cyber Security

**1. Perspective.** IT pros do not think like bad guys. They may be super smart and can do a really good job at securing your IT. For many businesses, a “really good job” is all you need. The first Pfizer shot reportedly makes one 80% protected against COVID-19, but the second shot reportedly puts them over 90% protected. So if mission critical data or sensitive information is at risk, those extra few percentage points of cybersecurity health can mean the difference between keeping your business intact, or calling for your cyber insurance company’s negotiation team to come in to pay the ransom. IT pros have a ton of things on their plate, while cyber security consultants have only one; making sure their client is a hard target.

**2. A Focus on People and Technology.** Using best in class technology is not very expensive. In fact, it is cheap insurance. There are software applications you can deploy to detect vulnerabilities, protect from breaches and other external attacks, log intrusion attempts, and to help employees stay on track.

Did you know that 94% of malware is delivered by email?<sup>4</sup> And, that 98% of cyber attacks are focused on some sort of social engineering?<sup>5</sup> The cyber criminals know that some employees may be afraid to confirm that an email came from their boss. The most secure system in the world can be easily defeated by an unsuspecting employee.

Elon Musk can make the safest and most advanced car out there, but stuff still happens! Training anyone who touches your technology is critical and is not a one-and-done proposition, but really needs to be a routine, automated part of a law firm’s business operations. Cyber security professionals focus on training employees *and* using top notch programs.

**3. Attacks are Increasing.** As cyber insurance companies continue to pay out ransom money, it seems likely that attacks will continue to trend upward. According to Accenture’s 2019 Cybercrime Study, cybercrime is not only on the rise, but events take more time to resolve and are becoming more expensive. The study estimates a 67% increase in security breaches in the previous five years, with an 11% bump in 2018 alone. The threat landscape will continue to evolve, so cyber hygiene vigilance is critical.<sup>6</sup>

It is not hard to identify the costs in dollars of well-known data breaches like Miracle Systems, DoorDash or Sony PlayStation. Chainalysis reported hackers were paid over



John Troxel

## Feature

\$350 million in ransom in 2020, others say the ransom paid was triple.<sup>7</sup> But the damage to intangible assets like brand reputation and customer goodwill can be a hard road to recovery.

Further, cyber insurance appears to be changing, and not just their prices. For example, as of May 2021, AXA is no longer writing policies that allow for cyber ransom coverage in France.<sup>8</sup> It appears they have tired of selling car insurance to people who leave their keys on the dash. (Smile emoji here.)

According to Keeper Security's 2019 Cyberthreat Study, 66% of senior decision makers still believe they are unlikely to be targeted by cyber criminals.<sup>9</sup> This is likely one of the reasons *Inc.* magazine reports 60% of small businesses are shuttered within six months of a breach.<sup>10</sup> Forty-three percent (43%) of cyber attacks are aimed at small businesses, but only 14% are sufficiently prepared from a cyber security standpoint.<sup>11</sup>

Law firms must be proactive. They must assess vulnerability, shore up areas of deficiency, and decrease the size of attack surface. They should also consider the value of a third-party expert to put a fresh set of eyes on potential cyber vulnerabilities. Engaging a cyber security professional is an IT best practice. ■

*John Troxel is one of the owners of VRICyber, a cyber security firm focused on securing law firms and their clients. He also owns Verdict Resources, an investigations firm serving attorneys since 1996, and is a computer forensics expert. He can be reached at jt@verdict.net or 805-445-1997.*

### ENDNOTES

1. <https://www.wsj.com/articles/colonial-pipeline-ordering-system-disrupted-but-still-moving-fuel-11621358203>.
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# Safeguarding the Impartiality and Fairness of the Arbitration Process: *Grabowski v. Kaiser Foundation Health Plan, Inc.*

BY MARC KARLIN

Judicial review of arbitration awards in California is limited. Nevertheless, California's Fourth District Court of Appeal, in the recently published decision in *Grabowski v. Kaiser Foundation Health Plan, Inc., et al.* (April 19, 2021) ---Cal.Rptr.3rd---, 2021 WL 1850714, 2021 DJDAR 4536, did not hesitate to vacate an arbitration award based on an undisclosed ex parte communication between the arbitrator and counsel for the prevailing party. The court held that the arbitrator's failure to follow the disclosure requirements under *Code of Civil Procedure* section 1286.2(a)(6)(A) mandated the vacating of an arbitration award, even absent a showing of prejudice. (Id.)

Joanna Grabowski brought claims for medical malpractice against various Kaiser entities and associated physicians (collectively "Kaiser"). Grabowski alleged that her Kaiser healthcare providers failed for years to properly diagnose and treat a benign "melon size" ovarian tumor. Even after the tumor was surgically removed when she was a teenager, Grabowski suffered pain and other complications until another physician found that Grabowski's "small intestine had become trapped when her surgical incision was closed." Kaiser disputed that they should have diagnosed the tumor, or that the tumor caused Grabowski's years-long symptoms. It alleged that other conditions caused Grabowski's pain. (*Grabowski*, supra.)

As with most medical malpractice actions involving Kaiser, Grabowski had agreed to submit her claims to binding arbitration. Now college-aged, Grabowski represented herself at the five-day arbitration hearing in San Diego before arbitrator Bryon Berry. Grabowski was assisted by her mother. Vincent Iuliano represented Kaiser. During a break

in the arbitration proceedings, Grabowski stepped out of the hearing room. Grabowski's mother was recording the proceedings on her cell phone and had inadvertently left it going while she and Grabowski left the hearing room. (*Grabowski*, supra.)

Grabowski's mother's cell phone recorded an ex parte communication between the arbitrator and Kaiser's counsel during this break. The arbitrator mocked Grabowski's *pro per* status, stated this was the "wrong case" for Grabowski not to have representation, and laughed about Grabowski's inability to deal with the complexities of her case. Subsequently, without disclosing his ex parte communication with Kaiser's counsel, the arbitrator ruled against Grabowski. (*Grabowski*, supra.)

After receiving the arbitrator's award and discovering the ex parte communication between the arbitrator and Kaiser's counsel on her mother's cell phone, Grabowski filed a petition with the superior court to vacate the arbitration award. Primarily, Grabowski, now represented by counsel, contended that the arbitrator committed fatal misconduct by, in her words, "yukking it up" with Kaiser's counsel, showing his disrespect and disregard for her. Grabowski contended the arbitrator's conduct showed bias, which was grounds for disqualification. She further argued that this undisclosed, ex parte communication demonstrated corruption, fraud, or other undue means, requiring that the arbitration award be vacated. (*Grabowski*, supra.)

This trial court ruled that the ex parte communication between the arbitrator and Kaiser's counsel was improper and unethical. However, the superior court found that Grabowski did not show how this communication "substantially prejudiced her rights" and that she failed to establish "a nexus between the communication and the award." Therefore, the superior court dismissed Grabowski's petition to vacate the award. (*Grabowski*, supra.)

The Court of Appeal reversed, noting that while parties to an arbitration agreement accept some risk of an erroneous decision by the arbitrator, judicial review is provided by statute in circumstances "involving serious problems with the award itself, or with the fairness of the arbitration process." To the court, the arbitrator's undisclosed ex parte communication with Kaiser's counsel undermined



Marc Karlin

## Arbitration

the arbitration process, obligating it to vacate the award. (*Grabowski*, supra.)

In vacating the arbitration award, the Court of Appeal concentrated on the rarely analyzed requirements of Code of Civil Procedure section 1286.2(a)(6)(A), which concerns an arbitrator's obligation to timely disclose a ground of disqualification of which the arbitrator is aware. Under section 1286.2(a)(6)(A), the Court of Appeal held, an arbitrator's failure to timely make a required disclosure of a ground for disqualification demands vacation of an arbitrator award, even without a showing of prejudice. Moreover, given the arbitrator's failure to disclose his ex parte communication with Kaiser's counsel, *Grabowski* was not required to prove that the arbitrator was influenced by bias. As the Court of Appeal noted, "The arbitrator disclosure rules are strict and unforgiving. And for good reason." (*Grabowski*, supra, citing *Honeycutt v. JP Morgan Chase Bank, N.A.* (2018) 25 Cal. App. 5th 909, 931.)

Before the Court of Appeal, Kaiser did not dispute that the arbitrator's ex parte communication with its counsel was unethical. Further, Kaiser conceded that the arbitrator should have disclosed his ex parte communication. Still, it argued that a further finding was required to vacate the award, such as corruption, fraud, or use of undue means. The Court of Appeal was not persuaded, holding that the arbitrator's ex parte communication with Kaiser's counsel could cause a "person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial." For this reason, the court held, the mandatory disclosure requirements under §1286.2(a)(6)(A) required that the arbitration award be vacated without any further showing of prejudice. (*Grabowski*, supra.)

The COVID-19 pandemic has caused an extreme and unprecedented backlog of civil trials in California. Given the extended wait for a trial date, more parties will likely look to binding arbitration to resolve disputes. Yet, the informality of the arbitration process provides a ready platform for ethical lapses—especially between often-selected arbitrators and frequently appearing counsel. The *Grabowski* decision is a welcome intervention by the judiciary to safeguard the impartiality and fairness of the arbitration process. ■

*Marc Karlin is the managing partner of Karlin & Karlin. He specializes in medical malpractice, catastrophic injury, and wrongful death cases throughout California. He is a member of CAALA, CAOC, and SBCBA, and can be reached at mkarlin@karlaw.com; www.karlaw.com.*

## Update Regarding COVID-19 & Santa Barbara Superior Court Operations

As of Monday, June 21st, the Court will no longer require social distancing in the courtrooms. All persons, however, must continue to wear a mask. The Court will maintain all other COVID-19 precautions inside the courtrooms other than social distancing. All courtrooms will be fully open without capacity limits and jury services will resume normal operations without social distancing on the 21st. Court operations will also be opening the public counters on the 21st but with reduced hours. These reduced hours are posted on the Court's website. For any questions, please contact Chief Deputy Executive Officer, Angela Braun, abraun@sbcourts.org.



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# Motions

**The Law Office of John B Richards** is pleased and excited to welcome **William P. Frusetta** as an associate attorney. Mr. Frusetta received his Bachelor of Arts in Political Science at the University of California, Santa Barbara, in 2014 and his Juris Doctor with an emphasis in business law at the University of the Pacific, McGeorge School of Law, in 2017. Mr. Frusetta was admitted to the California State Bar in 2017 and practiced in Northern and Central California for several years, during which time he litigated complex employment disputes, business disputes, personal injury matters and class actions. Mr. Frusetta intends to continue pursuit of his personal interests in the symphony, running and politics while in Santa Barbara.



*William P. Frusetta*

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**Danielle De Smeth, Managing Partner at Bamieh & De Smeth, a Professional Law Corporation**, is pleased to announce that **Natalie N. Mutz** has joined the firm's civil litigation department. For over 10 years, Natalie has counseled businesses, individuals, and homeowners' associations through planning and dispute resolution. She has worked with plaintiffs and defendants at the trial court level and on appeal.



*Natalie N. Mutz*

Ms. Mutz moved to Santa Barbara in 2017 with her husband, Andrew, who is Chief Technology Officer of Property Management at AppFolio, Inc. Natalie joins B&D from the civil litigation firm of Hager & Dowling. Prior to moving to the Central Coast, Natalie worked with Kulik Gottes-

man Siegel & Ware in Sherman Oaks. She graduated from Southwestern School of Law in 2010. Before law school, Natalie lived in Osaka, Japan, where she taught English for three years. She has worked with the U.S. Consulate in Barcelona, the Argentinian National Court of Appeals, and the U.S. District Court. She is proficient in both elementary Japanese and Spanish.

Natalie's great loves include her husband and their two boys William (5) and Mathew (3). They live in Goleta with their cat Lindy, who is excited that Natalie will have the flexibility to work from home. When she is not working, you will find Natalie hiking, traveling, and cooking. Her family would add that she is the best baker ever. Welcome Natalie!

\*\*\*

**The law firm of Ghitteman, Ghitteman & Feld** is pleased to announce that they have added two new attorneys to better serve their clients. **Alicia Journey** and **Khouloud Pearson** have joined the firm. Alicia will practice out of GG&F's Santa Barbara office, while Khouloud will practice out of the firm's Santa Maria office.



*Alicia Journey*

Alicia earned a BA in Neuroscience from Westmont College before attending Pepperdine Law School, where she graduated with honors in 2009. She also earned a certificate in Dispute Resolution from the acclaimed Straus Institute of Dispute Resolution. Alicia has ample legal experience in a variety of different areas, including family law, criminal law, civil law, and corporate law. She served as a Deputy District Attorney at the Riverside District Attorney's Office, where she specialized in prosecuting sexual violence, sexual assault, and child abuse cases. Due to her expertise on these types of cases, she also provided training to law enforcement that focused on how to investigate these types of crimes during her time at the District Attorney's Office. In 2013, Alicia founded her own law firm, Offices of Journey Law, where she focused on handling corporate, family, civil, and criminal law cases. Alicia will be focusing on handling employment law cases at GG&F.



*Khouloud Pearson*



Khoulood earned a BA in both Political Science and English from San Diego State University and then went onto the Thomas Jefferson School of Law where she earned her law degree.

Upon graduating, Khoulood became a prosecutor in New Mexico, where she litigated an array of criminal cases, including racketeering, drug trafficking, violent crimes, and juvenile delinquency cases. During her time as a prosecutor, she was lauded as a "Rookie of the Year." After working as a prosecutor, Khoulood was admitted to the California State Bar making her eligible to practice law in two states. Khoulood has also practiced business law, personal injury, administrative law, employment law,

and assisted clients with contract negotiations. Khoulood is on the board of directors for the San Luis Obispo Legal Assistance Foundation and has served as an attorney coach for the Alamogordo High School Mock Trial Team. She also served as a board member of the Otero County Superior Court Community Service Board.

GG&F is excited to welcome Alicia and Khoulood to the firm where they will relentlessly advocate to protect the rights of clients.

\* \* \*

*To "Make a Motion!" send material for consideration to our Motions editor, Mike Pasternak at [pasterna@gmail.com](mailto:pasterna@gmail.com).*

## Verdicts, Settlements & Decisions

*Plaintiff v. Third Party and UIM Insurance Companies*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA

**CASE NUMBER:** Confidential Settlement  
**TYPE OF CASE:** Personal injury; Auto vs. Pedestrian  
**TYPE OF PROCEEDING:** Mediation  
**MEDIATOR:** Hon. Elinor Reiner  
**PLAINTIFF'S COUNSEL:** Renee J. Nordstrand and Douglas M. Black, NordstrandBlack PC

**FACTS:** In April 2018, Plaintiff, a healthy 75-year-old woman, was walking in a parking lot in a shopping center in Carpinteria when an elderly driver's vehicle softly hit her and immediately stopped. The impact caused her to fall and fracture her hip. The driver denied that his vehicle contacted plaintiff.

**INJURIES AND DAMAGES:** Left femoral neck fracture ORIF with 3 compression screws. Full recovery after less than a year of physical therapy.

**SPECIALS:** \$28,158.89 in medical treatment expenses (mostly paid by med pay which was not reimbursable). \$16,184.12 in out-of-pocket expenses (refinishing floors due to use of walker and retrofitting bathroom to add a bathtub; first class air fare). Life care plan by Thomas Zweber, M.D. estimating "complication costs" of future medical treatment and care totaling \$440,475.00.

**DEFENDANT'S CONTENTIONS:** Defense disputed all claim for future medical care and treatment as claimed by Dr. Zweber. Allowed for only \$5,000 in out-of-pocket costs and \$91,000 for pain and suffering.

**SETTLEMENT DISCUSSIONS/ PROCEDURAL STATUS:** Insurance company providing coverage for the driver settled for the policy limit of \$100,000 after reviewing plaintiff's comprehensive demand letter. Plaintiff's UIM insurance carrier offered only an additional \$25,000.00 to settle. The UIM policy was issued in Colorado and does not require binding arbitration, as California policies do, so plaintiff filed a lawsuit alleging bad faith and breach of contract. The case was referred by the court to CMADRESS and settled in 2021 at mediation with the help of Retired Judge Elinor Reiner at for an additional \$275,782.00.

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**HAGER & DOWLING, LLP SEEKS ASSOCIATE ATTORNEY**

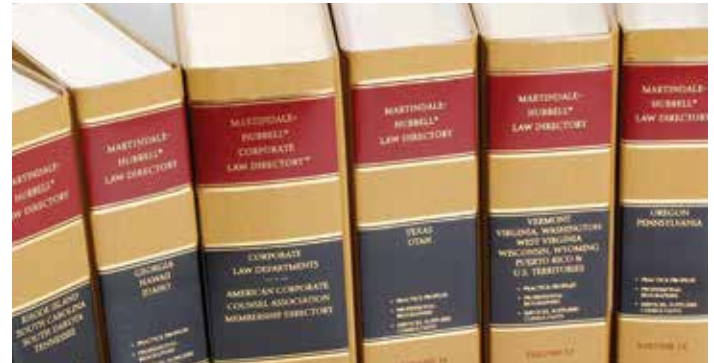
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**Criminal**

Jeff Chambliss (805) 895-6782  
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[renee@reneefairbanks.com](mailto:renee@reneefairbanks.com)  
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**Mandatory Fee Arbitration**

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Vanessa Kirker Wright (805) 964-5105  
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**Real Property/Land Use**

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[jbillings@aklaw.net](mailto:jbillings@aklaw.net)

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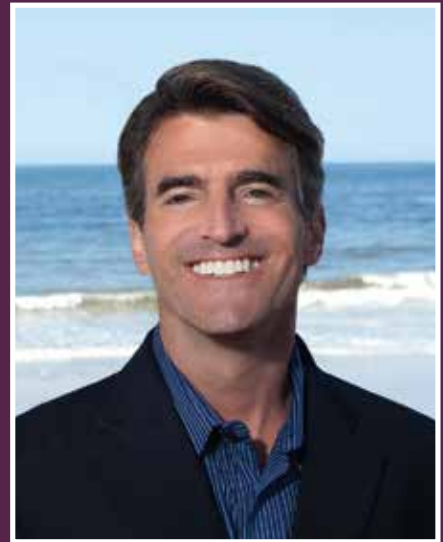
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