Santa Barbara Lawyer

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# Spotlight on Judge McGregor

**ENFSI Guideline / Equity Compensation/ Franchise Purchasing / Mass Incarceration / Honoring Native People / Opposing Counsel Research / Private Family Foundations / Workplace Wellness Through Artmaking**

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# In Recognition of California's Native People

By Erin Parks

## *Native American Day*

Many people are not aware that there is a day reserved to celebrate the culture and voices of the Native People[1] and their tribal nations which exist in the State of California. There are over 500 federally recognized Nations, as well as over 100 federally recognized tribal Nations, and even more State recognized. Each Nation's culture has a unique history, language, and beliefs, and relationship (past and current) to California.

In 1939, Governor Culbert Olson declared October 1st to be "Indian Day", making California the first state to honor this holiday. In 1968, Governor Ronald Reagan, along with California tribal leaders, acknowledged the fourth Friday in September as California "Native Indian Day". In 1998, California's Assembly passed Assembly Bill 1953 which made "Native American Day" an official state holiday. September 24th is the day in 2021 reserved for honoring the cultural contributions of Native People to California's history.

In 2019, Governor Gavin Newsome recognized that California's tribal nations contributed to the rich fabric of California as leaders in renewable energy, disaster and emergency response and natural resource management.[2] To that end, it is my pleasure to introduce you to the legacy of Harry Cline Williams (1956-2021). The CalEPA Tribal Affairs Program recently paid tribute to Tribal Advisory Committee Member Harry Williams—a Warrior, Water (Paya) Protector, elder of the Bishop Paiute Tribe, mentor, and friend to Mother Earth—who dedicated his life to activism and advocating for the land, water, and Native People. [3]

Harry also appeared in many commercials, films, and documentaries including Obsidian Trail, Maverick, and Paya: Water Story of the Paiute. The Paya film has been an important tool in spreading understanding about the social and environmental justice impacts of Los Angeles taking water from Payahuunadü (Eastern Sierra Region), and of memorializing the Paiute's amazing engineering which created over 60 irrigation waterway networks using primitive tools.[4]

## *Traditions of Native American Day 2021*

*Erin Parks*

Traditionally, Native American Day is viewed as a time of honor and celebration. In California, organizations and community groups support this day through learning initiatives that focus on the traditions, culture, and background of Native People. It is a day to celebrate the heritage of Native People and for both native and non-native cultures to unite so the many aspects of native culture can be shared. Cultural activities such as markets and gatherings of Native People (pow-wows), are held and involve dancing, singing, and socializing.

Due to the ongoing pandemic, it might not be possible, or you may not choose, to attend group gatherings. In that case, consider watching a movie that celebrates Native People in a respectful way.[5] We are lucky to have more Native People, like Harry Cline Williams, that are changing the way Native People are represented in film.

## *Native People & the Media*

Some of you might remember, perhaps vaguely, when Sacheen Littlefeather made history appearing at the 1973 Academy Awards ceremony in place of Marlon Brando, declining his Oscar for Best Actor in the Godfather and making a speech about Native People rights. She explained that Brando could not accept the award because of "the treatment of American Indians today by the film industry". The crowd's reception of her speech was frosty at best. John Wayne had to be restrained from physically ejecting her, and Clint Eastwood reportedly made a sarcastic remark. Nonetheless, Littlefeather continued with "in the future, our hearts and our understandings will meet with love and generosity".[6] At the time, nobody knew what to make of it.[7]

Littlefeather was the first woman of color, and the first Indigenous woman, to use the Academy Awards platform to make a political statement. This was radical in 1973 unlike today where such political statements are expected and appear to have inspired change.[8] At the 2020 Oscars, before presenting the Academy's honorary awards, (including one for celebrated Cherokee actor Wes Studi), Maori director

Taika Waititi began with a recognition of the Native People upon whose land Hollywood sits on.

Waititi, who won an Oscar for best adapted screenplay for his film Jojo Rabbit, joined Buffy Sainte-Marie as only the second Native Person to ever win a competitive Hollywood award, dedicated his win to "those that will continue the shift."[9]

During a recent SAG-AFTRA panel discussion about "Re-Creating Native Americans in the Media", the movers and shakers in Hollywood "were urged to tell more stories about Native Americans as the modern people that they are, not just as throwbacks to the bygone era of cowboys and Indians—and to give Native Americans a seat at the table to tell their own stories." The big push to stop reducing Native People to caricatures and stereotypes is important because one of the greatest threats to them is invisibility and erasure. Invisibility and toxic stereotypes, fuel racism and bias that show up in how Native People are treated in the courts and in Congress; in how children are treated every day in classrooms, and to the epidemic of murdered and missing Native People in this country, and around the world. Hollywood, media entertainment, and pop culture is a big culprit.[10]

For almost a century, Hollywood has been the primary avenue for images and stories of Native People to be displayed to non-native audiences. Historically, films have played a highly influential role in shaping flawed perceptions of Native People. "The glamorization of Western expansion, of manifest destiny, of the inherent goodness of the American cowboy and his pursuits rests on a premise of erasure of Native American genocide, one which excludes narratives of violent forced displacement, rape, genocide, and the removal of children from their families and cultural heritage to become indoctrinated in white, Christian boarding schools."[11] Contemporary filmmakers and actors are working to combat these dominant, negative narratives, and reflect the complex and vibrant experiences of Native People and their communities.[12]

Representation of Native People on screen is not the only thing that matters; it is also what is behind the camera. Luckily, "Native American-themed" films and film makers have been on the rise.[13] In the face of insidious historical context, contemporary Native People, filmmakers and actors have engaged "in what University of Chicago professor Michelle Raheja calls a 'visual sovereignty' for Indigenous peoples, 'a creative act of self-representation that has the potential to both undermine stereotypes of Indigenous peoples and to strengthen the 'intellectual health' of communities in the wake of genocide and colonialism.'"[14]

The explosion of native content is due in part to Native People fighting for representation in entertainment and media for decades, like Sacheen Littlefeather, and activist Harry Cline Williams. It is also due to the murder of George Floyd and the beginning of a reckoning with systemic racism. Commitment to making systemic change, whether it be in the justice system or in Hollywood, is key. Hollywood creates 80% of global content and shapes the way that people think about the world and communities. This has created a deep responsibility to understand the power and opportunity that exists to be a force for good in dismantling systemic racism. And to tell stories that are reflective of the ever-rapidly changing and diverse society, of which Native People play an important role.[15]

On September 24, 2021, you can also honor the local Native People by listening to a Chumash song: "I am alive, I am alive, because of our ancestors."[16] ■

*Erin Parks is the Editor of the Santa Barbara Lawyer. Since 1992, she has been a solo practitioner fighting for civil rights through her Employment, Immigration and Estate Planning practice. Ms. Parks can be seen at www.erinparks.com and contacted at law@erinparks.com or (805)899-7717.*

## Endnotes

1. This article uses the terms Native People or Native Person. Because every Native Person is shaped by their ancestral history and their own experiences, whether they live on a reservation or identify with a particular tribe; there is no consensus as to what Native People prefer to be called: Native American, American Indian, Indigenous People, or otherwise. Some Native People prefer to be identified by their clan within a tribe. One thing is clear, use of the term "Indian" should be avoided by the non-indigenous due to its derogatory usage in the past.
2. https://www.gov.ca.gov/2019/09/27/governor-newsom-issues-proclamation-declaring-native-american-day/.
3. https://calepa.ca.gov/tribal/; https://www.legacy.com/us/obituaries/inyoregister/name/harry-williams-obituary?pid=199281479.
4. https://www.legacy.com/us/obituaries/inyoregister/name/harry-williams-obituary?pid=199281479.
5. Harry Cline Williams in Obsidian Trail, Maverick, or Paya: Water Story of the Paiute (https://www.legacy.com/us/obituaries/inyoregister/name/harry-williams-obituary?pid=199281479); Little Chief (2019) (https://www.teenvogue.com/story/better-native-american-representation-film); and Little Big Man (1970); Billy Jack (1971); Windwalker (1980); Powwow Highway (1989); Dances with Wolves (1990); Geronimo: An American Legend (1993); Smoke Signals (1998); Atanarjuat: The Fast Runner (2001); Skins (2002); or Imprint (2007) (https://theculturetrip.com/north-america/usa/oklahoma/articles/10-native-american-films-you-should-see/.)

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# Q & A with North County Santa Barbara Superior Court Judge John McGregor

By John McGregor

*Judge McGregor, his motorcycle, and Mt. Rainier*

***How long you have been on the Bench?***

I have had the pleasure of serving on the Bench since January of 2004 when I was appointed by the Judges of the Superior Court as a Commissioner. In August of 2012, I was appointed as a judge. For the first ten years of my judicial career, I was in Santa Maria's Department 9 which was the arraignment court as well as the Domestic Violence Review Court. There, I handled all probation and parole violations. Those were wonderful years. The bailiff, the two court clerks, and I spent every day together in a busy courtroom. We worked closely with our probation officers and Judge Flores's treatment court. This gave us the opportunity to use a collaborative approach to have an impact on the lives of the people who appeared in court. It was extremely gratifying to see the changes in the lives of so many people. Failures were more common than successes, but the successes were revitalizing. The years simply flew by.

I have been in a criminal trial court for the last seven years with responsibility for one third of the criminal trial court cases in Santa Maria. During that time, I have presided over trials in more than 50 cases. In June 2021, Judge Herman came up from Santa Barbara's Anacapa Division and took over my criminal calendar. This allowed me to concentrate on one multi-defendant criminal trial that is anticipated to last almost a year.

***Tell us about your education:***

I grew up in upstate New York in a little town called Port Ewen located on the banks of the Hudson River about 90 miles north of New York City. I did my undergraduate work at Fairfield University in Fairfield, Connecticut. One cold New England day a political science professor and mentor told me that there was a law school in Malibu and that I would be accepted. I graduated from Pepperdine University School of Law and was sworn-in as a lawyer in 1980.

***What advice would you offer to a new attorney?***

The law offers many potential areas of practice. Find one that fits you. I think that it is a good idea to start out with a job that gives you regular courtroom experience. In the long run, it is invaluable. Always remember that your life outside of work is more important than work. In the end, it is family and friends that are most important. Do not lose sight of that.

***Describe your style in the courtroom:***

I try to create an atmosphere where everyone feels comfortable. I do not try to put a great deal of pressure on the attorneys; they already have enough. With the help of bailiff Federico Cortes, clerk Brittany Bartilet, and court reporter Craig Barnett, our team creates an environment where everyone who comes to the courtroom, especially the defendants, and particularly those in custody, are treated respectfully. This leads to a courtroom where more gets accomplished. When I send someone to prison, which happens every week, I remand them to the custody of the Sheriff and then say, "thank you, sir" or "thank you, ma'am" and "please have a pleasant day." In almost every single instance for 17 years the response has been "thank you, judge." It is simply part of the respect which is deserved by all parties, lawyers, court staff, and family members.

***Who were/are your mentors and what were important lessons they taught you?***

In life, my first non-parent mentor was Sr. Rose Vincent in third grade. She taught me to calm down, take a breath, and just read the question.

*Judge McGregor on his Paint horse*

My wife, Kathy, has simply changed my life completely over the course of our 46 years together. She created our life together; I am just a bit player.

In my professional career there is no doubt, retired Judge Rodney S. Melville has been an inspirational mentor. Rod impacted so many people; I am just one of them. As a judge, he taught me how to be an effective lawyer and, more pointedly, when to sit down and shut my mouth. He taught me the difference between being a lawyer and being a judge and how to listen patiently to litigants. On my first day on the Bench, he gave me the sage advice, "just don't do something, sit there."

I would not be here without all those mentors, for which I am eternally grateful.

### *What do you love about your job?*

My favorite part of the job is the relationships with my co-workers and particularly those who work in the courtroom. We deal with gut-wrenching issues in the murders, rapes, robberies, and sexual abuse of children cases that are our daily fare. Our camaraderie and mutual support sustain us. I enjoy watching trials play out and the unexpected twists and turns that happen in each one. It is gratifying to see how seriously jurors take their job and how effective they are.

### *How do you like to spend your spare time?*

For about ten years, I played lead guitar in a band "Class Action" with Judges Flores, Judge Voysey, and Ventura County Superior Court Judge Dino Inumerable. We started out with one court commissioner and three lawyers. All of us are now on the Bench! Simply statistically unlikely. Of course, the band never would have gotten off the ground without our ringer musician and senior public defender investigator, Bob Childs, and our star, Mike Arriola. We played all over San Luis Obispo and Santa Barbara counties with occasional gigs in Ventura, Los Angeles, and Lake Tahoe. We had a ton of fun.

My wife and I have ridden our horses on the beach two or three days a week for the last 30 years. I try, with limited success, to be a do-it-yourselfer. My number one hobby is motorcycling. The freedom, joy, and escape from life's tensions lends balance to my busy career and life. My motorcycle is familiar with most of the winding roads and pretty places in the US and Canada. I spend at least 20 to 25 nights a year on the road and have ridden my motorcycle over half a million miles.

### *Do you have advice for attorneys trying a case before your Bench?*

Realize that you have a toolbox and practice how to use the correct tool at the correct time. If you always use the same tool, remember what Mark Twain said: "Why is it when the only tool you have is a hammer everything looks like a nail?" Be considerate of the witnesses and opposing counsel; it will make you more effective and keep this judge happy.

### *Are there any changes in the legal community you are excited about?*

I am excited to have been around for multiple generations of lawyers particularly the District Attorneys and Public Defenders that appear in my court daily. Watching them develop their skills is a joy. The lawyers I see have gotten

*Continued on page 31*

# You Have Options: Incentivizing Employees and Service Providers with Equity Compensation

By Russell Terry

*Russell Terry*

At a certain point, founders of an emerging startup face a predicament: the need to assemble a talented team without the cash to pay for it. This is where equity compensation, such as stock options and restricted stock, can serve as a powerful tool. Equity compensation helps the company attract and retain skilled workers, incentive longevity and performance, and align the interest of the company with its employees and service providers.

Founders often have questions about the various types of equity compensation and how they work. This article provides a brief overview of the most common types of equity compensation used by early-stage startups – stock options and restricted stock – provides pros and cons of each, and describes additional features and consequences of equity compensation, such as vesting, acceleration, and tax considerations.

## *Types of Equity Compensation*

There are many types of equity-based awards available to companies. The most used by startups are stock options and restricted stock. Additional forms of equity compensation include restricted stock units (RSUs), stock appreciation rights (SARs), phantom stock, and performance awards, but this article focuses on the awards typical to early-stage startups.

All awards should be granted under an equity incentive plan adopted by a company's board of directors and shareholders. If appropriately drafted and adopted, the plan will provide an exemption from securities law registration requirements, a critical feature for any private company.

Founders should be mindful that each award dilutes the ownership of the founders and other stockholders. Founders should be deliberate in making awards to ensure that they do not surrender too much of the company's ownership. For an early-stage startup, an initial allocation of around ten percent (10%) to equity compensation is typical.

## *Stock Options*

Stock Options are the equity award of choice for startups. A stock option provides the recipient with the right to purchase stock at a predetermined price, called the "exercise price" or "strike price", in the future. The exercise price is typically set at the fair market value of the underlying stock on the grant date, so the recipient benefits from future appreciation in the value the stock. Essentially, the recipient can buy stock tomorrow at today's price.

Unless and until a stock option is exercised, the recipient does not own any stock – he or she merely owns the option to buy stock – and therefore has no voting, dividend, or other shareholder rights.

Stock options come in two flavors. Incentive Stock Options (ISOs), which may be granted only to employees, potentially provide the recipient with favorable tax treatment if certain criteria are met, including that the recipient holds the shares underlying the ISO award for both (a) one year from the date the recipient exercises the ISO, and (b) two years from the grant date. All other stock options are Non-Qualified Stock Options (NSOs). NSOs may be granted to employees, directors, and other service providers. NSOs are more flexible than ISOs but do not offer the favorable tax treatment for which ISOs are eligible.

Stock options are not taxable upon grant. ISOs are not taxable upon exercise; NSOs are taxable upon exercise at ordinary income rates on the spread – *i.e.*, the excess of the fair market value of the shares acquired on exercise over the aggregate exercise price. When the underlying shares are sold, eligible ISOs are generally taxed at long-term capital gains rates on the difference between the exercise price and the sale price; NSOs are generally taxed at capital gains rates on the difference between the fair market value at exercise and the sale price.

Pros of Stock Options:

- Incentivize recipients to increase the company's value; an increase in the company's value results in an increase in the option's value.

- Allow the recipient to determine when to exercise the option and therefore dictate when tax will be imposed.
- From the company's perspective, avoid the burden of having to confer voting and other stockholder rights on potentially many small holders, since the recipients do not hold stock unless and until the options are exercised.

Cons of Stock Options:

- Do not have retentive value if the company's stock price is not increasing; no increase in the company's value results in no increase in the option's value.
- Require the recipient to come up with cash to pay the exercise price and receive the benefit.
- Require a valuation of the company's stock to set the exercise price at fair market value.

### *Restricted Stock*

Restricted stock is stock that is subject to certain restrictions until it vests. Unlike stock options, a restricted stock award is a grant of actual stock, so the recipient becomes a shareholder, generally entitled to voting, dividend, and other shareholder rights upon grant. For startups, restricted stock is sometimes used to attract experienced senior executives who may prefer it to stock options.

The primary restriction on restricted stock is vesting. While the recipient receives the full amount of the stock upfront, unvested shares are forfeited to the company, or repurchased by the company at the price paid for the stock (if any), upon the termination of the recipient's employment or service relationship. Some companies also retain the right to repurchase vested shares at fair market value upon termination. Restricted stock is subject to additional restrictions, such as limitations on transfer.

By default, restricted stock is taxed as it vests. On each vesting date, the recipient is taxed at ordinary income rates on the difference between the amount paid for the stock (if any) and the fair market value of the stock on that date.

However, recipients may make an 83(b) election with the IRS within 30 days of the grant, electing to be taxed on the difference between the amount paid for the stock (if any) and the fair market value of the entire grant on the grant date (rather than on each vesting date). An 83(b) election is advisable if the fair market value of the stock is low at the time of grant (and is the clear choice if the fair market value is close to $0, such as in an early-stage startup, or if the recipient paid fair market value for the stock) and can have a *very* significant tax benefit if the shares become more valuable in the future as vesting occurs.

When the restricted stock is sold, the recipient will generally be taxed at capital gains rates on the difference between the sale price and the fair market value of the stock at the time of vesting (if no 83(b) election is filed) or at the time of grant (if an 83(b) election is filed).

Pros of Restricted Stock:

- In general, will always have some economic value to the recipient since no future payments, such as an exercise price, are required.
- May be used to attract senior-level executives or other key employees.
- Do not require recipients to pay an exercise price to realize the value of the award.
- Do not require valuation of the company's stock for issuance.

Cons of Restricted Stock:

- Recipients will have tax liability on each vesting event (if no 83(b) election is filed) or upon grant (if an 83(b) election is filed) when the shares are illiquid, and the prospects of the company (and the stock) are uncertain.
- From the company's perspective, confer voting, dividend, and other shareholder rights on the recipient.
- Results in additional shareholders for the company to account for.



*Continued on page 14*

## Corporate Law

Terry, *continued from page 12*

### *Vesting*

Nearly all equity compensation is subject to vesting. Vesting requires the recipient to remain with the company to "earn" the equity compensation, rather than receiving the full benefits upfront before putting in any sweat.

For most employees, vesting is typically time-based over "four years with a one-year cliff", meaning that twenty five percent (25%) of the award vests after one year of service (the "cliff") and the remainder vests monthly over the following three years of service, such that the entire award is vested after four years. Vesting can also be based on the achievement of performance goals, or a combination of time-based and performance-based vesting.

In the context of a stock option, a recipient may exercise only the options that are vested at the time of exercise. In the context of restricted stock, the recipient receives the full amount of the award upfront, but if his or her employment or service relationship is terminated the unvested restricted stock is forfeited to the company or repurchased by the company at the price paid for the stock (if any).

Awards may provide for acceleration – meaning that all unvested awards become immediately vested – based on a sale of the company. Acceleration may be "single-trigger", meaning it occurs automatically upon the sale of the company, or "double-trigger", meaning that it occurs only if there is both a sale of the company and a second event (typically a termination of employment by the company without cause or by the employee with good reason) within a specified period after the sale.

### *Conclusion*

Equity compensation is a critical tool for early-stage startups to attract top-level talent, align the interests of the company and its employees and service providers, and allow employees and service providers to share in the growth and successes of the company. Founders should be deliberate when considering equity awards and fully understand the consequences of the awards on the company, its shareholders, and the recipients. ■

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## Editor's Notes

Parks, *continued from page 8*

6. At the time, Native People activists and US authorities were in a standoff at Wounded Knee, South Dakota, due to the murder of a Lakota man. Littlefeather's Oscar speech drew international attention to Wounded Knee, where the U.S. authorities essentially imposed a media blackout. It was a key moment in the struggle for Native People rights. (https://www.theguardian.com/us-news/2021/jun/03/i-promised-brando-i-would-not-touch-his-oscar-secret-life-sacheen-littlefeather.).
7. https://www.theguardian.com/us-news/2021/jun/03/i-promised-brando-i-would-not-touch-his-oscar-secret-life-sacheen-littlefeather.
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# Buying a Franchise: Dream vs. Delusion

By Barry Kurtz

Franchising is a flexible, tried, and true method of distributing products and services that offers business owners an alternative avenue to expand their already successful operations.

In a typical franchise arrangement, franchisees sell or distribute their franchisor's trademarked products or services, usually in exclusive, protected territories in which the franchisor will not permit other franchisees to operate or offer the same products or services.

Franchisors generally provide their franchisees with operations manuals covering in minute detail an outline of operational and management procedures.

At the same time, they closely monitor their franchisees for compliance to protect the integrity of their brand and systems, while franchisees rely on their franchisors for advice, training, advertising, and marketing assistance.

## *What is a Franchise?*

If the elements of a franchise are present in an agreement, the business relationship governed by the agreement is legally considered a franchise regardless of the name given to it by the parties involved.

If a business relationship is a franchise, the relationship is highly regulated by federal and state laws to protect franchise buyers.

Under California law, a business relationship is a "franchise" if the business "will be substantially associated with the franchisor's trademark; the franchisee will directly or indirectly pay a fee to the franchisor for the right to engage in the business and use the franchisor's trademark; and the franchisee will operate the business under a marketing plan or system prescribed in substantial part by the franchisor.[1]

By way of contrast, true licensing, distributorship, and dealership arrangements are not franchises because they lack at least one of the three elements described above.

For example, under a typical licensing arrangement, one company, the licensor, permits another, the licensee, to sell its products or services in exchange for a percentage of the proceeds from the sale without any other involvement on the part of the licensor.

The licensee operates under its own trade name and usually buys products or services from the licensor at wholesale prices that the licensee resells to the public. Neither party is substantially involved in the day-to-day business affairs of the other.

*Barry Kurtz*

## *Pros and Cons of Buying a Franchise*

Though McDonald's, Subway, and Burger King immediately come to mind, there are hundreds of other franchisors in a wide variety of businesses that compete to market and sell their franchises.

The benefits of owning a franchise are many—for example, access to a proven and experienced business mentor; a wider customer base; an established brand name recognition and market presence; group purchasing discounts; marketing, and research and development support; continuing professional education and training; and support from fellow franchisees who share similar goals and challenges.

On the other hand, franchising isn't always a bed of roses as it has drawbacks that can include operating under the delusion of independent ownership.

Generally speaking, franchisors do not want free thinkers who will buck the system; they want followers and can impose numerous limitations on any deviations from their corporate business model and standard operating procedures.

Buying a brand name franchise can also be prohibitively expensive and, in many cases, can exceed the costs of starting an independent business.

In most cases, franchisees are also required to pay their franchisors non-refundable advance payments, as well as non-refundable continuing royalty payments for the franchisor's support services. Such payments are calculated from a percentage of gross revenue.

In addition, as surprising as it may sound, some franchisors may not provide any of the training, guidance and support services that are crucial for the success of a franchise.

## *Regulation of Franchises*

Federal law requires franchisors to provide prospective franchisees with a franchise disclosure document (FDD) before the franchisor may sell a franchise.[2]

Currently, thirteen states—California[3], Hawaii[4], Illinois[5], Indiana[6], Maryland[7], Minnesota[8], New York[9], North Dakota[10], Rhode Island[11], South Dakota[12], Virginia[13], Washington[14] and Wisconsin[15] also require franchisors to provide similar information in their FDD and to submit their FDD for review and registration by a governmental agency before any franchises are sold.

An FDD is an offering prospectus written in plain English that provides prospective franchisees with answers to 23 specific questions with dozens of ancillary queries regarding the franchisor and the franchise.

As a rule, franchise candidates must have an FDD for at least 14 full days before they can execute a franchise agreement or pay the franchisor any money.

The FDD must include, among other things, background information and business experience of the franchisor and its executives; the litigation and bankruptcy history for the franchisor, its affiliates, and their executives; descriptions of the fees payable from the franchisee to the franchisor; the amount of the initial investment required to open a franchised business; a summary of the primary responsibilities of the franchisor and franchisee; and an explanation of the franchisor's training requirements and a schedule for classroom and on-the-job training.

The table of contents of the franchisor's operations manuals must also be included in the FDD, as well as any information regarding institutional and local, maintenance of any franchisor-managed marketing funds and disbursements from the marketing fund in the preceding year; an explanation of the territorial rights that may be granted to franchisees; information regarding the ownership and use of the franchisor's trademarks and patents; a description of the franchisees' rights to renew the term of their franchise agreements; the grounds for the termination of a franchise agreement by the franchisor and franchisee; and detailed information regarding the number of company-owned and franchised units operating, opened, closed, transferred and terminated during the prior three years.

In addition, contact information for the franchisor's current and former franchisees; samples of the contracts franchisees must sign with their franchisor for their franchised businesses; and, in most cases, audited comparative financial statements for the franchisor for the previous three years must also be included in the franchise disclosure document.

Franchisors may also be required to provide historical information on the financial results of company-owned and franchised units in Item 19 of their FDD. A franchisor need not include an Item 19 disclosure in its FDD, but the franchise marketplace encourages franchisors to make financial performance representations in Item 19.

In the context of an FDD, financial performance representations are any indication of "a specific level or range of actual or potential sales, income, gross profits, or net profits."

Franchisors choose what Item 19 disclosures to make. Choices include historical gross revenue of company-owned and franchised units, gross revenue with expense information or gross revenue, expense information and gross and/or net profit.

Each choice requires franchisors to gather the information from its entire network of operating affiliates and franchisees.

### *Purchase Guidelines*

A client's business must have the potential to succeed. A wise franchise candidate will make a detailed review of the franchisor's Item 19 and use the information provided to develop budgets and projections for at least 2-3 years of operations.

When considering the purchase of a franchise, a potential franchisee should look for a business in which the typical

daily activity involved with the franchise aligns with what they enjoy doing and avoid those that will require activities they dislike, and not jump into businesses that are in fields completely new and different to them as their chance of success is greatly enhanced by selling products or services they understand.

Clients should also consider their own strengths, weaknesses, and comfort levels. If a client is amenable with following orders, buying a franchise could be a wise choice. On the other hand, if an individual insists on going their own way at every turn, consideration should be given as to how long it will take before they rebel against the highly supervised and structured nature of a franchisor/franchisee relationship.

There are several other guidelines that counsel and their potential franchisee clients should keep in mind:

Consideration should be given to the profitability of the business model for both the franchisor and its franchisees. Is the business sustainable in the marketplace? Franchises built on fad products or services rarely survive. To be sustainable, the business concept should be unique enough to withstand competition and be one that potential franchisees are willing to pay to learn.

A client should be pragmatic about the actual investment in the time and money involved in becoming a franchisee and should look for a franchise that matches their resources.

A client should obtain a current FDD from the franchisor as a franchisor without an FDD is generally not one worthy of consideration.

Due diligence is vital. Both counsel and client should learn everything possible about the franchisor and the franchise. A client would do well to talk to every current and former franchisee that they can contact as one of the most important signs of a healthy franchise system is a high level of satisfaction among current franchisees.

A client should research the franchisor's management structure to ensure that the company is being led by leaders who have substantial experience in the field~~-su~~ch a management team is infinitely preferable to a preferred over a company whose management team's experience is marginal or diluted by involvement in other industries.

It should be ascertained if the character of the franchisor's staff and fellow franchisees matches up with the client's own standards.

Franchise agreements tend to favor franchisors to maintain system uniformity. However, franchise agreements that are too one-sided place franchisees at the mercy of the franchisor's whims and judgments. A client should find a system where the franchise agreement is balanced, either at its inception or through negotiation.

### *Legal Protection*

The purchase of a franchise is a complicated process as there are many other legal factors to consider before doing so.

Once a franchise is purchased, the parties must adhere to the terms of their franchise agreement as well as applicable law.

While reliance on applicable law is not a wise alternative to effective pre-purchase due diligence, California and 17 other states have franchise relationship laws that restrict a franchisor's right to terminate or refuse to renew or consent to a transfer of a franchise without good cause.[16]

Several years ago, California expanded the termination, transfer, and renewal rights for franchisees under franchise agreements entered or renewed on, or after, January 1, 2016, and for franchise arrangements with an indefinite duration that permit either party to terminate a franchise agreement *without cause*.[17]

The law increased the required cure period for franchisee defaults from 30 to at least 60, but no more than 75 days,

*Continued on page 27*

# ENFSI – European Guidelines for Evaluative Reporting in Forensic Science

By Robert M. Sanger

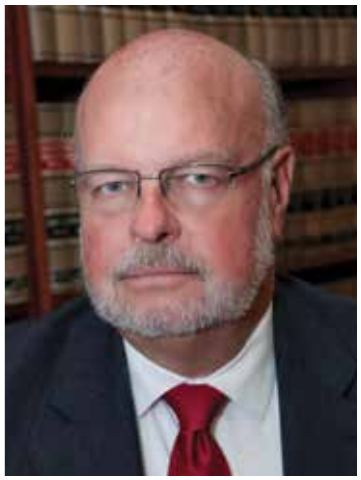
The way forensic evaluations are reported has been a recurring topic in *Santa Barbara Lawyer's* Criminal Justice column. Issues related to the opinions offered by forensic science witnesses have been discussed. In February, March and April of 2021, this Criminal Justice column was dedicated to a comprehensive analysis of the language of expressing forensic science opinions. Those articles, and several others over the years, have reviewed the concept of uncertainty, Bayesian likelihood ratios, and what should or should not appear as an opinion in forensic reports and testimony.

During the 1990's the United States was creating Scientific Working Groups (SWGs) under the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) to try to bring scientific standards to bear in forensic evaluations. During this same time, in 1995, the European Network of Forensic Science Institutes (ENFSI) was founded "with the purpose of improving the mutual exchange of information in the field of forensic science." In this article, the specific ENFSI standards of evaluative reporting will be considered.

### *The United States and the World*

Like so many things, the United States does its own thing in establishing forensic standards. It is not that international work is ignored but it is often considered inapplicable to practice in this country. For one, the United States and some other systems influenced by British jurisprudence use the jury while most countries in the world do not or, if they do, use it only in limited circumstances. In non-jury jurisdictions, forensic opinions are addressed primarily to professional law and lay judges, not to a random group of people who are likely to have no training in the law, statistics, or science.

However, both in the United States and the international community, there is a tension between the guilds – the associations of professional expert witnesses – and the sciences. Over the last century, it has become commonplace for "experts" to create cottage industries testifying for one "side" or the other. It has become all too frequent that the experts sacrifice scientific objectivity to come through for the side that retained them. This, in turn, has led to a tradition of testifying that based on "training and experience" or "scientific expertise" the proposition of the person calling the witness is "true to a reasonable degree of scientific certainty." While this approach is discredited, it persists in practice.



*Robert M. Sanger*

The National Institute of Standards and Technology (NIST) under the United States Department of Commerce has tried to come to terms with standards for reporting evaluations and has addressed the issues relating to such reporting at NIST conferences. Consideration has been given to international trends, however, when actual standards have been hammered out, they have often been the result of compromise among the stakeholders, many of whom do not want to relinquish the power of the experts to testify that they can see it and the jury cannot.

NIST, as a government agency, set up the Organization of Scientific Area Committees (OSACs), including "stakeholders" in the various disciplines to address forensic science standards. As a non-governmental organization (NGO), the American Academy of Forensic Sciences (AAFS) has reviewed and further refined these standards through its Academy Standards Board and consensus bodies for submission to the American National Standards Institute (ANSI) for adoption and publication. While AAFS, the ASB and ANSI are all NGO's, they still rely on "stakeholders" to do the work.

The European Network of Forensic Science Institutes (ENFSI) has fared a bit better in relying on academic research to create overall scientific standards as well as standards in particular disciplines. ENFSI has two standing committees, one on Quality and Competency and the other on Research and Development. They also have working groups for the individual disciplines like the OSACs of NIST and the ASB consensus bodies of AAFS.

Importantly, ENFSI created an overarching guideline on how reports are to be written and opinions are to be rendered in court regarding forensic evaluations. This document, "ENFSI Guideline for Evaluative Reporting in Forensic Science" (the ENFSI Guideline) is subtitled "Strengthening the Evaluation of Forensic Results across Europe." Both the

NIST OSACs and the AAFS ASB consensus bodies have yet to create such an overarching document, and it leaves the individual working groups to wrestle with reporting testimony language on a discipline-by-discipline and case-by-case basis.

## *The ENFSI Guideline*[1]

To those involved in forensic science at the higher levels, either professionally or academically (and to readers of this Criminal Justice column), a lot of what has been included in the ENFSI Guideline will be familiar. There are still some compromises in the Guideline between the guilds and science. There is also a preference for quantification, particularly likelihood ratios that may or may not be practical in testimony before lay jurors. Nevertheless, read as a whole, the ENFSI Guideline puts together nicely the legitimate concerns of science in the effort to convey forensic evaluations in reports and testimony to the users of the justice system—the police, lawyers, judges, and jurors.

First, the significance of some terms must be acknowledged. "Evaluative reporting" is to be distinguished from intelligence, investigative or technical reporting. Evaluation involves two specific requirements: 1) the forensic practitioner has been asked to examine and/or compare material, typically trace material to reference material, by a mandating authority or a party; and 2) the practitioner seeks to evaluate findings with respect to two competing propositions or hypotheses. This is distinct from, although it may include mere reporting of intelligence, reporting what was observed at a crime scene. It also differs from the forensic practitioner's role in assisting law enforcement or a party in trying to develop leads as a part of an investigation. And it is different than simply providing a technical scientific result, such as the chemical composition of a substance.

In other words, the ENFSI Guideline regulates the reporting of a conclusion or opinion as to whether the findings are more or less probable if one hypothesis is true than if the competing hypothesis is true. This is essentially a Bayesian analysis that may or may not be subject to numerical or verbal quantification. The ENFSI Guideline emphasizes that it is important not to transpose the conditional, which is all too common in court where a party claims that the evidence demonstrates that the likelihood ratio translates into a proposition as to the likelihood that the defendant did (the prosecution fallacy) or did not (the defense fallacy) do it.

The ENFSI Guideline also makes it clear that any likelihood opinion must state the assumptions of that opinion, which will, of necessity, include an assumption that the trace evidence was properly collected, preserved, and not contaminated at any stage. The evaluative mechanism must follow scientific principles, which include that it is balanced, logical, robust, and transparent. Balance requires that there be at least one pair of propositions that fairly state alternative hypotheses, which give value to the analysis. It must be based on logic, that is, that it assesses the probability of the findings given the hypotheses and background conditions. It must be robust in that it is based on sufficient reliable data and based on sound scientific principles. Finally, transparency requires that any conclusions be derived from a demonstrable process.

The ENFSI Guideline articulates the hierarchy of propositions that the evaluative reporting or testimony will address. The reporting—the conclusions of the forensic practitioner—does not address the guilt or innocence of the defendant. That level of the hierarchy is the issue for the trier of fact. However, the reporting can address either the source (or sub-source) level or the activity level. The source level is fundamental: what is the likelihood that a result would be observed considering two competing hypotheses? However, that likelihood could be extremely misleading unless the expert considers background conditions that might include, for instance, the likelihood of transfer or persistence. Even though activity is still within the realm of the trier of fact, an expert can, within the expert's area of expertise, explain circumstances that may affect the significance of, for instance, an extremely small likelihood ratio relating to source comparison.

One of the fundamental propositions of the ENFSI Guideline is that science is the study of uncertainty. Hence, in an ideal world, a likelihood ratio could be computed based on the background information, the specific data related to the scientific inquiry, and the uncertainty of measurement. However, uncertainty as to what occurred at the date and time in question goes far beyond uncertainty of measurement and is difficult to quantify. How does one quantify the possibility of contamination of evidence, the manufacturing or planting of evidence or mistaken assumptions such as the maintenance of the chain of custody? That type of uncertainty is not merely a function of calculating the proficiency of the laboratory in controlled tests or the running of control samples. If a major error occurred, it could nullify the significance of the forensic evaluation entirely. The ENFSI Guideline includes over 100 pages of examples that challenge the forensic practitioner to apply the Guideline in a meaningful fashion.

## *Conclusion*

The ENFSI Guideline is an exemplary effort to bring evaluative reporting and testimony to the highest standards of forensic science. There are places in the Guideline that seem

to defer a bit to the pull of the guilds toward allowing *ipse dixit* opinions but, even there, considerable effort is made to require full disclosure of the bases for the opinion and full transparency of the data and processes underlying such opinions. There is also a tendency to imagine that forensic analysis can result in meaningful likelihood ratios based on a form of Bayesian analysis. That may be aspirational but, as previously argued in this Criminal Justice column, Bayesian analysis (even based on a highly computational Bayesian network analysis using a supercomputer) cannot address the messy uncertainties of determining what happened at another time and place in the real world. In addition, presenting likelihood ratios to a trier of fact—particularly a jury—may overwhelm the trier's own folk Bayesian weighing of evidence with a scientific sounding number that might be misinterpreted by transposing the conditional or by just assigning a number too much (or too little) significance.

Having said that, the NIST OSACs and the AAFS ASB consensus bodies are still approaching the guidelines for reporting and testimony on a discipline-by-discipline and, sometime, issue-by-issue basis. Work still needs to be done to determine the optimal manner to express forensic opinions, particularly the evaluative conclusions of comparative analysis. The ENFSI Guideline is a good place to start. ■

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## Endnotes

1 European Network of Forensic Science Institutes, Guideline for Evaluative Reporting in Forensic Science (2015), https://enfsi.eu/wp-content/uploads/2016/09/m1_guideline.pdf. The remaining text is based on the content of the ENFSI Guideline without specific endnote reference.

# Mass Incarceration in Santa Barbara County

By J. Jeff Chambliss

In June 2020, Santa Barbara Defenders, a county-wide organization of private criminal defense attorneys, sent a clear message to the Santa Barbara County Board of Supervisors: end mass incarceration in Santa Barbara County.[1] Its members spoke to the Board publicly, wrote to them and met with certain Supervisors. The message was clear, that the COVID-19 pandemic presented the Board with an unprecedented opportunity to act to permanently reduce Santa Barbara County Jail rolls.

Due to recent pandemic-related efforts to reduce the number of persons incarcerated in the Santa Barbara County Jail ("South County Jail"), the inmate population dropped to an historic low of 540 persons, half its average population, and there was no resultant spike in crime. In fact, locally, crime was already down, and it has remained low.

Yet, the Santa Barbara County Sheriff's Office proposes to renovate the South County Jail at an estimated cost of 60-90 million dollars. The proposed renovation would bring the County's total jail capacity to over 1200 persons total in North and South Counties. [2]

High incarceration rates are far more correlated to an increase in the availability of jail beds than they are to any increases in the rate of violent crime. Ultimately, only limits on jail capacity have impacted local criminal justice system actors to explore jail alternatives as broader solutions to the problem of jail overcrowding.

The convergence of the pandemic and Black Lives Matter presented Santa Barbara County with an unprecedented opportunity to end mass incarceration in the County. The County jails are primarily filled with poor people of color. There is a tendency to think of Santa Barbara as exceptional, and that typical big city problems do not trouble our idyllic little paradise. It is, after all, a relatively safe community for its size. We can now see, due to COVID-19, that that the community's cherished safety is not necessarily tied to incarcerating people of color.

Mass incarceration is a complicated issue. Time will tell whether Santa Barbara County's jail population will slowly tick upward, or a different, maybe better, solution will be implemented in our little slice of paradise. ■

*Jeff Chambliss*

*After 27 years with the Santa Barbara County Public Defender in which he rose to the position of Chief Trial Deputy and supervised the Lompoc, Santa Maria and Santa Barbara Offices, J. Jeff Chambliss, opened the Law Office of J. Jeff Chambliss serving clients in Ventura and Santa Barbara Counties. Mr. Chambliss' extensive experience handling cases throughout Santa Barbara County makes him uniquely qualified to represent clients in conservatorships (Probate and LPS), juvenile (Dependency and Delinquency), and all criminal matters. Mr. Chambliss can be reached at (805) 895-6782.*

Endnotes

1 Founded in 2017, the original officers and board members of Santa Barbara Defenders were J. Jeff Chambliss, William C. Makler, Annie Hayes, Catherine Swysen, Stephen Dunkle, and Tara Haaland-Ford (deceased). Current officers and board members are J. Jeff Chambliss, William C. Makler, Danielle DeSmeth, Luis Esparza, Chris Horowitz and Diana Lytel.

2 Historical Note: twice the voters of this County rejected a half cent sales tax increase to fund a North County Jail—Measure U in 2000 and Measure S in 2010.

## Santa Barbara County Bar Association's Criminal Law Section Update

After a pandemic hiatus, the Santa Barbara County Bar Association's Criminal Law Section is up and running hosting MCLE events, via Zoom. In June and August 2021, the Section presented "Representing Incarcerated TGI People" and "Crimmigration Updates." Both were excellent presentations.

In the "Representing Incarcerated TGI People" program, Alex Binsfeld, the Director of the TGI Justice Project in San Francisco gave a very informative 1.5-hour presentation on the history of gender terms, correct usage, and how to assist incarcerated TGI persons in custody. The presentation qualified for Elimination

*Continued on page 27*

# Should You Form a Private Family Foundation?

By Casey Summar

Many high-net-worth individuals will at some point consider whether to start a private family foundation, as it can be a valuable vehicle for philanthropic giving and preservation of a family legacy. However, private foundations have some drawbacks that you should fully understand before forming one.

### *What is a Private Foundation?*

A private foundation is a tax-exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code (the "Code"). This tax status is offered by Congress to incentivize wealthier individuals to support charitable activities. Donors may take an immediate tax deduction upon making a charitable contribution to a private foundation, and the entity is exempt from federal and state income tax (as well as some other taxes). However, private foundations are subject to greater restrictions and requirements than other tax-exempt entities due to both actual and suspected abuses over the years.

### *What are the Pros and Cons of Forming a Private Foundation?*

The primary advantages of a private foundation are that it may:

- Exist in perpetuity, engaging unlimited future generations in the family giving legacy.
- Be controlled by the family by appointing a board of directors and providing for family oversight in the private foundation's articles of incorporation and bylaws (or trust agreement, as the case may be).
- Hire and compensate staff members, including family members, and pay other expenses that are reasonable and necessary in furtherance of its charitable purposes.
- Engage in a variety of giving strategies, including the ability to make grants for charitable purposes to individuals (such as a scholarship for tuition expenses), other types of tax-exempt organizations, and international organizations, as well as engage in program-related investments.
- Run charitable programs directly.

*Casey Summar*

The primary disadvantages of a private foundation are that it:

- Is subject to a minimum distribution requirement of 5% of its net investment assets and required to pay an excise tax of 1.39% of its net investment income.
- Must adhere to restrictions on operations, including prohibitions on self-dealing, excess business holdings, jeopardizing investments, and expenditures for non-charitable purposes or that are otherwise prohibited by the Code.
- Must engage in corporate formalities, including holding board meetings and maintaining minutes thereof (unless organized as a trust).
- Is subject to the scrutiny of federal and state charity regulators.
- Requires sufficient administrative personnel to develop and oversee an appropriate grantmaking process, maintain proper financial recordkeeping, and make annual filings with federal and state regulators.
- May offer a lower charitable tax deduction to its donors depending on their adjusted gross income.

### *What are the Alternatives to Forming a Private Foundation?*

A common alternative to forming a private foundation is to create a donor-advised fund ("DAF"). A DAF is not a separate legal entity like a private foundation; rather, it is an account housed at a public charity, typically a community foundation or financial institution.

The key advantages of a DAF are that, like a private foundation, a donor receives a tax deduction immediately upon making a charitable contribution to the DAF. Because a DAF is a public charity, the donor may receive a higher charitable tax deduction. Additionally, the donor need not engage in the direct administration of the DAF, resulting in substantially lower overhead. The donor may recommend grants from the DAF to public charities over time and the operator of the DAF will implement the donor's desired grantmaking (subject to policies and procedures of the DAF

operator). A DAF is ideal for a family seeking an efficient, less hands-on way to manage their charitable giving while maximizing tax deductions during years when they experience a significant wealth event.

Drawbacks of a DAF include that it offers substantially less control over giving and investments and has more limitations on the types of grants it may make (e.g., DAFs typically may not grant to individuals). Further, a DAF does not offer the same opportunities for perpetual existence or engagement of family members as directors (and potentially staff) that a private foundation does. Another potential drawback of a DAF is that it may not be converted to a private foundation if the family later decides that it would prefer to manage and distribute those funds via a foundation (in contrast to a private foundation, which may grant out some or all its assets to a DAF if it chooses).

## *Conclusion*

Forming a private foundation can be a rewarding and lasting investment for a family if the pros and cons of operating this type of legal entity match the family's philanthropic priorities and level of personal commitment. However, the entity could be a burden for a family whose members do not share the same goals and needs. ■

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ENDNOTES

1 26 U.S.C. § 501(c)(3). Every organization that qualifies for tax-exemption within the meaning of section 501(c)(3) is classified as a private foundation unless it can demonstrate that it is a public charity based on the source of its donations or the type of entity. (See Id. § 509(a).)

2 Subject to the requirements of certain state laws restricting self-dealing, i.e., transactions between a nonprofit corporation and its directors and officers or their family members. (See, e.g., Corp. Code, §§ 5227, 5233.)

3 26 U.S.C. § 4941.

4 Each of the giving strategies described herein requires that the private foundation follow specific procedures for each type of grant. For example, grants to individuals must be made in accordance with procedures approved in advance by the IRS to avoid being a taxable expenditure. (Id. § 4941.) Likewise, grants to any organizations other than a 501(c)(3) public charity (including most foreign organizations) may only be made if the private foundation undertakes an extensive process known as "expenditure responsibility" prior to making the grant and upon any grant renewals. (Id. § 4945(h).)

5 A "program-related investment" is an investment with a primary purpose to accomplish the foundation's exempt purposes as opposed to generate revenue. It offers a private foundation the ability to provide loans and equity investments while earning a return on investment for the foundation. (See Id. § 4944(c).)

6 Private foundations that engage in charitable activities directly are typically referred to as "private operating foundations." Whereas most private foundations are funding organizations, private operating foundations devote their income and assets directly to the active conduct of their exempt activities, e.g., operating a museum. (See Id. § 4942(j)(3).)

7 Id. § 4942.

8 Id. § 4940.

9 Id. § 4941. With limited exceptions, the law prohibits all direct and indirect financial transactions between a private foundation and persons or entities who fund or control the private foundation as well as certain family members (so-called "disqualified persons").

10 Id. § 4943. The prohibition on excess business holdings is designed to prevent a private foundation from owning a significant stake in a family business.

11 Id. § 4944. A private foundation may not invest any amount in a manner that would jeopardize the foundation's ability to carry out its tax-exempt purposes, in essence requiring that the private foundation's assets be managed pursuant to the prudent investor rule.

12 Id. § 4945. An example of a taxable expenditure is an expenditure to attempt to influence legislation.

13 In any given year, a donor may only deduct cash contributions to a private foundation up to 30% of the donor's adjusted gross income ("AGI") whereas donors to a public charity (or a private operating foundation) may typically take a deduction of up to 60% of the donor's AGI. However, a donor may roll over the excess deduction for five additional years. (See Id. § 170, and related regulations for detailed guidance regarding the deduction of charitable contributions.) Note also that the threshold for gifts to public charities and private operating foundations was raised to 100% of AGI in 2020 and 2021 due to the pandemic.

14 Id.

# Ride the Highs and Avoid the Lows: Opposing Counsel Research with Legal Analytics

By Nicole Clark

*Nicole Clark*

Along Highway 246 sits a cannabis hoop-house operation in Santa Barbara County. Over the past year, the 22-acre farm has been the subject of a series of legal actions filed by the Santa Barbara Coalition for Responsible Cannabis. Composed of two hundred vintners, farmers, and homeowners, the Coalition claims that the County of Santa Barbara failed to properly review the environmental impacts of cannabis cultivation on the local wine-tasting businesses. In particular, the county failed to consider the pungent smell marijuana plants might billow out into the community.

The Hon. Thomas P. Anderle, the judge assigned to the case, remarked on the importance of the proceedings in his decision to toss the lawsuit on May 25, 2021. The lawsuit is one of the first cases to seek stricter regulation of outdoor cannabis cultivation based on alleged violations of the California Environmental Quality Act (CEQA). As such, Judge Anderle's ruling may establish a precedent for future cannabis litigation in California, particularly his decision to characterize the potential effects of terpene taint on grapes as economic impacts not covered by state environmental laws.

Still, uncertainty remains. Will other judges follow suit? How might other civil litigators learn from the trials and tribulations of the farmers along Highway 246? How might they harness the power of state trial court data to grapple with their own unknowns?

## *Litigating in the Dark*

"Business hates litigation because it's enormously expensive and risky," writes Kirk Jenkins, Senior Counsel at Arnold & Porter Kaye Scholer in San Francisco. "There's a degree of truth to that, but it's far from the whole truth. Business doesn't dislike expense or risk *per se*. Business dislikes unquantified expense and risk." The same could be said for civil litigation.

AI-powered legal analytics emerged from the frustrations of day-to-day life as an attorney. Attorneys know that the details of a past case can provide invaluable guidance on how they should position similar cases in the future. The problem, however, was that this guidance was impossible to access, especially for attorneys at the state trial court level. What could be known about your judge, or your opposing counsel was limited, either filtered through the anecdotal memories of colleagues or buried within the thousands of pages of court records.

In other words, the data for legal analytics at the state trial court level has always existed, but the formats in which it came were too cumbersome and clunky to use. The data was not available in a consistent fashion, as each county in each state authors its own protocols for collecting, cataloging, and publishing court documents. Navigating this data required targeted searches on each court's website. These complexities trapped state trial court data within the confines of courthouse walls, rendering it virtually impossible to browse court archives by topic, judge, party, or counsel.

## *A Peek into the Other Side*

Things are different now. Legal technology platforms have remapped the ways in which attorneys conduct legal analytics. These platforms have curated their own archives of state trial court records, reclassifying, and restructuring data collected across multiple counties and multiple states. Once rendered searchable, attorneys can use these archives to collect qualitative and quantitative information about the individuals involved in legal proceedings.

Consider, as an example, your opposing counsel. There are things you want to know about them the moment litigation begins. How many times have they appeared before this judge? How often have they handled this issue in the past? How many of those cases did they take to trial? What types of motions did they file in those cases? How many of those motions did they win? How many cases do they have pending? Knowing the answers to these questions can change the entire trajectory of a case.

There are also qualitative metrics to identify about your opposing counsel. Legal technology platforms have been

created with a Google-like search algorithm that allows users to search court documents for the names of individual attorneys and their law firms. This enables users to locate any other cases in which these actors have been involved. The search, which crosses jurisdictional boundaries, lets legal practitioners study how opposing counsel draft motions, approach legal issues, and shape case timelines. Reading the petitions filed by your opposing counsel can help you learn how they think, how they argue, and how they win.

In a matter of seconds, a user can learn the names of the attorneys involved in the cannabis hoop-house operation on Highway 246. This information can then be used to search state trial court records for their litigation histories. It took me less than five minutes to learn that the individual attorneys representing the Santa Barbara Coalition for Responsible Cannabis have appeared before Judge Anderle dozens of times in the past, primarily for breach of contract matters. I also learned that one of the attorneys has previously represented the Gaviota Coast Conservancy, the Transportation Futures Committee, and the Gaviota Coastal Trail Alliance, a client list that suggests an expertise in litigating environmental matters under CEQA. This could be one reason why the attorneys for the respondents devoted their energies to redefining the agricultural land-use conflict as an *economic* rather than an *environmental* matter, a litigation strategy that would remove the dispute from the purview of petitioning attorney's comfort zone.

### *Data Points to Patterns*

"There are so many unique data points that can be obtained from judgments," explains Amanda Chaboryk, a Disputes and Litigation Data Lead at Norton Rose Fulbright. Alexandra Steel, a personal injury attorney based in Los Angeles, echoes these sentiments. "Litigation analytics has definitely helped build case strategy. Before litigation analytics, to find information on a specific attorney's work product, for the same type of issue, it would take hours," she says.

The insights provided through careful study of state trial court data can offer invaluable glimpses into how a case is likely to unfold, helping litigators anticipate the future behaviors of judges, lawyers, and parties. The strength of this data lies in its quantity. With thousands of data points to compare, legal analytics can undercut the problem of anecdotal evidence, alerting users to the trends that hide behind the exceptions and the outliers. Users, in other words, can begin to identify the tendencies of their opposing counsel—their strengths and their weaknesses, their repertoires and their habits. Everyone has patterns. The question is, what are we going to do with them? ■

*Nicole Clark is a business litigation and labor and employment attorney who has handled litigation in both state and federal courts. She has worked at a variety of law firms ranging from mid-size litigation boutiques to large firms and is licensed to practice law in three states. She has defended corporations and employers in complex class action and wage and hour disputes, as well as individual employment matters ranging from sexual harassment to wrongful termination. Additionally, Nicole is the CEO and co-founder of Trellis Research, a legal analytics platform that uses AI and machine learning to provide litigators with strategic legal intelligence and judicial analytics. Nicole has an intuitive understanding of technology and is deeply committed to helping lawyers leverage technology to gain a competitive advantage and achieve a more favorable outcome for their clients.*

Kurtz, *continued from page 12*

unless the parties mutually agree on a longer cure period and include a new 60-day notice of default/termination requirement.

In addition, the amendment imposes a substantial noncompliance standard on any actions and/or inaction that may constitute good cause for termination and non-renewals with the goal of eliminating terminations and non-renewals for non-material violations of the franchise agreement.

However, despite the notice and cure requirements, franchisors may, if their agreements allow, still terminate a franchisee with no opportunity to cure in the case of bankruptcy, abandonment, mutual agreement, material misrepresentation, illegal activity, repeated non-compliance with the franchise agreement, and imminent danger to the public.

California law prohibits a sale, transfer, or assignment of a franchise, all—or substantially all—of the assets of a franchise business, or a controlling or non-controlling interest in the franchise business, without the franchisor's written consent, while creating a framework for the notice and information a selling franchisee must provide its franchisor on a proposed sale.

However, franchisors cannot prevent such a transfer to a purchaser who meets its then-existing standards for new and renewing franchisees.

A franchisor must, as soon as practicable after receiving a franchisee's notice, inform the franchisee of any additional information it requires and issue its approval or disapproval, with reasons, within 60 days or any shorter period provided in the franchise agreement. A franchisor that fails to do so will be deemed to have approved the transfer.

In addition, with some exceptions, even when a franchise agreement is properly terminated or legally not renewed, a franchisor must purchase from the franchisee, at their original price less depreciation, all inventory, supplies, equipment, fixtures, and furnishings that the franchisee purchased from either the franchisor or a franchisor-approved supplier.

And, in addition to any other damages, franchisees may be awarded the fair market value of the franchised business, as well as the franchise assets, following a wrongful termination or non-renewal. ■

*Barry Kurtz is a Certified Specialist in Franchise and Distribution Law and serves as the Chair of the Franchise & Distribution Law Practice Group at Lewitt Hackman in Encino. He can be reached at bkurtz@lewitthackman.com.*

Criminal Law Section, *continued from page 21*

of Bias MCLE credit. Any attorney, not just criminal law practitioners, would have found the presentation informative. The correct use of gender pronouns is a must know for any lawyer.

In "Crimmigration Updates", Abbe Kingston, Tanya Ahlman, and Andrea Anaya of Kingston, Martinez & Hogan, updated a presentation they gave three years ago on the intersection of criminal and immigration law. The issues covered included how criminal law practitioners are required to evaluate and advise their clients on the impact of criminal charges, and negotiate with that in mind, on their client's immigration status. Additionally, recent changes in law have made post-conviction remedies available to clients. Finally, with the change in administration, enforcement priorities have changed.

The Criminal Law Section encourages the members of the Santa Barbara County Bar Association to attend its programs. Future presentations are planned but not yet scheduled. As always, any ideas for presentations and speakers are more than welcome and can be emailed to Criminal Law Section Head, J. Jeff Chambliss, at jeff@chamblisslegal.com or Lida Sideris at sblawdirector@gmail.com.

*This article is reprinted, with permission, from Valley Lawyer magazine, the monthly publication of the San Fernando Valley Bar Association.*

ENDNOTES

1 Cal. Corp. Code § 31005(a).
2 16 CFR. § 436.2.
3 Cal. Corp. Code § 31000.
4 Haw. Rev. Stat. § 482E-3.
5 815 ILCS 705.
6 IC 23-2-2.5.
7 Md. Code Ann., Bus. Reg.§ 14-214(a).
8 Minn. Stat.§ 80C.
9 N.Y. Gen. Bus. L.§ 683.
10 N.D. Cent. Code § 51-19.
11 R.I. Gen. Laws § 1928.15.
12 S.D. § 37-5B.
13 Va. Code § 13.1-557.
14 Wash. Rev. Code §19.100.010.
15 Wis. Stat.§ 553.
16 CFR § 436.2.
17 Cal. Bus. & Prof. Code §§ 20000 – 20043.

# Workplace Wellness for Lawyers Through Creativity

By Kathy Leader

The common misconception is that creativity is the opposite of work. However, it is the basis for our most innovative ideas that make businesses successful. Aside from the value that creative thinking brings to the workplace, many stressful law firm environments sap employees of their energy to work efficiently, think creatively and work as a team. Bringing some art activity/workshop into the environment immediately creates a calmer, more inspirational environment. The world is beginning to see the value of bringing arts-related workshops into the work environment. Some of the most innovative companies like Google, Facebook, and Apple, all give employees many opportunities to think creatively. Greater competition and greater stress levels have often depleted employees of their ability to think outside the box.

### *What is Creativity?*

Creativity is defined as the ability to use the imagination, view things from a new perspective, think outside the box, and come up with innovative ways to approach a task.

### *What has Wellness to do with Creativity?*

To think creatively, one must first open one's mind mindfully. Creativity does not come about under stress, rather when we are quietening our minds, we are able to change perspectives and problem solve in an innovative way. There are serious consequences of worker burnout.

### *Why Art?*

There have been many studies on the value of art for mental health. A study published in the Journal of the American Art Therapy Association in April 2016 entitled "Reduction of Cortisol Levels" describes the impact of art-making on stress levels in the brain. Researchers collected saliva samples from participants before and after their creative work to analyze cortisol levels, an indicator of stress. The results found that 45 minutes of creative activity significantly lessens stress in the body, regardless of artistic experience or talent.

For legal professionals, the stresses of deadlines, answering emails, attending meetings, and court appearances, can be turned around through creativity. Just one hour taken out of a busy day in an art workshop is transformative. Anxiety is replaced by a sense of calm and wellbeing. The artmaking process, akin to the slowing down of meditation, takes us out of our analytical brain into heightened awareness. From a business perspective, creativity is the foundation for productive problem-solving. Often the best new ideas are formulated when one is engaged in an out of the box activity.

### *Additional Benefits of Art Therapy*

Following is a short list of the additional benefits of art therapy:

- Better teamwork and team bonding
- Increased workplace engagement and interaction
- Increased staff morale and happiness
- Improved problem solving and productivity. ■

*Kathy Leader is the owner and creative coach at The Art Process Studio established in California. She studied fine art and art education in South Africa before emigrating to the US. She is a working mixed media artist and is focused on living a mindful life through creative self-expression. Her mission is to bring the healing power of art to all communities regardless of experience. The goal is not to teach people how to be an artist, but to create an immersive art process experience to gain greater insights both personally and professionally. She has her own studio for classes, workshops, and retreats. Ms. Leader has presented at many conferences on the value of art in the workplace. Kathy Leader can be reached at theartprocess@yahoo.com, and seen at www.theart-process.com.*


# Verdicts, Settlements & Decisions

## *Roza LLC v. Robert W. Montgomery, ET AL.*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA

| | |
|---|---|
| CASE NUMBER: | 19CV03268 |
| TYPE OF CASE: | Commercial Real Estate Lease & Personal Guarantee Dispute |
| TYPE OF PROCEEDING: | Bench Trial |
| MEDIATOR: | Thomas P. Anderle |
| LENGTH OF TRIAL: | 5 days |
| DECISION DATE: | September 30, 2020 |
| PLAINTIFF: | Roza LLC |
| PLAINTIFF'S COUNSEL: | Jared M. Katz, Mullen & Henzell L.L.P. |
| PLAINTIFF'S EXPERT: | Michael Chenoweth |
| DEFENDANTS: | Robert W. Montgomery and N of S, LLC |
| DEFENSE COUNSEL: | Robert B. Locke, Law Offices of Robert B. Locke |
| DEFENSE EXPERT: | Matthew Olufs |

FACTS AND PARTIES' CONTENTIONS: Plaintiff, the landlord of a commercial restaurant space, sued the former tenant and personal guarantors, to recover economic damages and attorney's fees owed under the commercial lease and personal guarantee agreements. Between 2015 and 2018, Defendants owned and operated a restaurant at the space. Plaintiff agreed to assign the lease to a new tenant subject to the personal guarantee of Defendants. Shortly after the assignment, the assignee filed a Chapter 7 bankruptcy, and stopped paying rent. Plaintiff demanded performance from Defendants under the personal guarantees to cure the assignee's defaults. Initially, Defendants paid the rent but eventually refused to continue making payments. Defendants contended that Plaintiff failed to mitigate by either re-letting the premises or permitting Defendants themselves to re-enter and reopen the restaurant. After unsuccessful pre-litigation dispute resolution efforts, Plaintiff sued Defendants. Defendants continued to deny liability.

COURT'S STATEMENT OF DECISION: For Plaintiff in the amount of $275,330, including recovery of all unpaid rent, broker's fee, late fee, and interest of approximately $135,330, and attorney's fees of $140,000.

SETTLEMENT: Prior to trial, Plaintiff served a Code of Civil Procedure section 998 offer for $118,000, and Defendants served an offer for $40,001. Following the Court's Statement of Decision, the Court overruled Defendants' Post-Trial Objections, and the case settled for $292,000 (more than the judgment amount). Final judgment was filed on October 20, 2020.

# Motions

*Ian L. Elsenheimer*

**Ferguson Case Orr Paterson LLP,** Ventura County's largest full-service law firm, is pleased to announce that **Ian L. Elsenheimer** has joined the firm's business transactions and real estate and land use groups. Ian is an experienced transactional attorney that takes great pride in his ability to assist his clients in all aspects of their real estate matters, including financing, leasing, purchases and sales, title evaluations, tax deferred exchanges and co-ownership arrangements. Ian also has experience in land use planning as well as the formation and operation of homeowners' associations. Ian is equally effective for his business clients, assisting with various matters including the selection, formation, operation, and dissolution of both for-profit and non-profit business entities.

Ian received his undergraduate degree from the University of California, Santa Barbara, where he studied political science with an emphasis in international relations. In 2018, Ian obtained his law degree from the University of Southern California Gould School of Law (USC). At USC, Ian's focus on corporate law and related matters earned him graduate certificates in both business law and technology and entrepreneurship. Ian also received high honors grades in numerous courses, including contracts, civil procedure, business organizations, real estate law and business, partnership taxation, secured transactions and international human rights.

Prior to joining Ferguson Case Orr Paterson, Ian was an associate attorney in a boutique law firm in Santa Barbara. Ian continues to serve on the Santa Barbara County Bar Association Board of Directors. When not practicing law, Ian enjoys spending time with his family, surfing, playing volleyball, travelling, and watching Los Angeles Lakers basketball. He can be contacted at ielsenheimer@fcoplaw.com or (805) 659-6800.

* * *

*Casey Summar*

*Arthur Reiman*

**Casey Summar** makes partner at **The Law Firm for Non-Profits**. Celebrating its 25th anniversary, The Law Firm for Non-Profits was established by Arthur Reiman in Studio City, California. The firm helps clients launch nonprofits on a worldwide basis and provides a variety of services to assist clients in complying with governmental regulation and building successful organizations. Summar is based in the firm's Santa Barbara office. Casey is licensed to practice law in California and Tennessee. She graduated magna cum laude from Belmont University and received her J.D. with honors from Vanderbilt University Law School.

Ms. Summar is also a national arts consultant on strategy, planning, and board development, and has taught as an adjunct professor of non-profit law at Vanderbilt University for more than 10 years. Locally, she serves on the boards of MOXI, The Wolf Museum of Exploration + Innovation and the Common Table Foundation and as a trustee for The Colleges of Law, Santa Barbara, and Ventura. She has extensive experience with nonprofit work in both California and Tennessee, previously founding and serving as the executive director for the Tennessee Volunteer Lawyers for the Arts which later became the Arts & Business Council of Greater Nashville. Casey loves "advising non-profits and their people because it gives [her] the opportunity to support these amazing forces for positive change in the world."

For more information, visit LNFP.com, casey@lfnp.com, or call (818) 623-9898.

* * *

The **Law Office of Dana F. Longo APC** and **Fauver, Large, Archbald & Spray LLP** are pleased to announce their merger, combining a business practice with concentrated trust and estate planning expertise. The firms' complementary philosophies allow for continued growth while providing clients with a high level of service and seamless access to a depth of practice areas. According to FLAS' Managing Partner, Trevor Large, "Mr. Longo and his team are the ideal partners. Dana offers extensive estate experience, supported by an exemplary team, and provides sophisticated counsel to clients."

Mr. Longo's firm will operate under the name Fauver, Large, Archbald, Spray LLP. Both firms and its partners are locally known and respected, having served the Santa Barbara area and the California Central Coast for decades. Mr. Longo shared, "We are a family business, serving many local businesses, nonprofits, and individuals. Our attorney-client relationships are long standing and deeply rooted in this community. This merger allows us to strengthen our relationships and provide extended counsel for current and future clients." Mr. Longo shares a long history of community involvement as past president and current board member of Semana Nautica, and the 2021 Commodore of the Santa Barbara Sea Shell Association. Dana enjoys spending time with his wife and children and, in his spare time hiking, swimming, and surfing throughout Santa Barbara County. For more information about Dana F. Longo, and the FLAS team, visit www.flasllp.com.

McGregor, *continued from page 17*

so much better in their knowledge base and presentation than when I was a young lawyer.

***What do you believe is the biggest difference between practicing law and presiding as a judge?***

A lawyer is an advocate; their job is to see their side. The judge does not have a side. As a result, as a judge, you are above the fray and ascertain the important issues upon which the decision is based. The side that you were previously on - in my case criminal defense - is no longer part of the equation. It is all about the big picture.

***What are your views on how to deal effectively with racial and gender bias in the courtroom?***

As a parent of three daughters, now blessed with four granddaughters and a grandson, the issue of gender bias caused me, along with my wife, to raise my daughters understanding teamwork; how to aggress appropriately; and to understand that there are no limits for their accomplishments. The first step is to acknowledge that the biases exist. Recent social movements have shown that light brightly. In the courtroom, it means treating everyone politely, calmly, and consistently. There is a reason why lady justice is blind.

***What is the highlight of your judicial career?***

The highlight of my judicial career was the opportunity to swear-in my daughter, Lindsey, as a member of the bar. I will never forget the mixture of pride and gratitude that I experienced that day. Her job as a daily courtroom lawyer has provided one more layer to our daughter-father relationship. I also had the opportunity to walk two daughters down the aisle and then officiate at their wedding ceremonies. Simply priceless! ■

*Judge John McGregor was appointed to the Bench in 2012 by California Governor Jerry Brown to replace the retiring Judge James W. Brown. At that time, Judge McGregor was 58 years old and a resident of Arroyo Grande. He served the previous eight years as a Santa Barbara County Court Commissioner in Santa Maria. Before that, Judge McGregor spent most of his legal career in private practice. He served as a partner in the North County Conflict Defense Team from 1997 to 2003.*

*The Santa Barbara County Bar Civil Litigation Section presents:*

## What Kanye West Can Teach Us About Litigation

***When:***
Wednesday, October 6, 2021, 12:00 noon

***Where:***
Zoom

***Price:***
$10/members; $15/non-members.

***MCLE:***
1 hour general credit (pending)

***Description:***
Over the past decade, Kanye West has run the gamut when it comes to civil lawsuits. From copyright and trademark infringement to class action litigation, West has seen it all. In this presentation, Texas litigator Brent Turman analyzes Kanye's "greatest hits" in the courtroom and shares lessons other attorneys can learn from his experiences.

***Speaker:***
Texas litigator Brent Turman's practice covers a variety of areas including business disputes, intellectual property, real estate, and civil RICO actions. He advocates for clients ranging from startups to high net worth individuals to Fortune 50 companies. Before Brent's legal career, he worked in television production for ESPN/ABC College Football. Outside of the office, Brent produces short films, and he recently worked as a Remote Producer for the XFL's relaunch in 2020.

***Payment:***
Please mail checks by Friday, October 1, 2021 payable to Santa Barbara Bar Association, 15 W. Carrillo Street Suite 106, Santa Barbara, CA 93101.

You may also click the link here to pay via Venmo, or go to https://venmo.com/sbcba.

***Contact Information/RSVP:***
Please RSVP by Friday, October 1, 2021 to: Mark Coffin at mtc@markcoffinlaw.com, and Lida Sideris at sblawdirector@gmail.com.

*The SBCBA Alternative Dispute Resolution Section Presents:*

## ADR AND ETHICS AFTER THE PANDEMIC: HOW COVID HAS CHANGED OUR SKILL SET ETHICAL ISSUES WHAT HAVE WE LEARNED? HOW DO WE GO FORWARD?

Please join Penny Clemmons, Ph.D. for a round table conversation and earn 1 hour of MCLE credit ETHICS

***When:***
September 9, 2021

***Time:***
12:00 pm – 1:15 pm

***Where:***
Santa Barbara and Ventura Colleges of Law
20 E. Victoria Street Santa Barbara

***MCLE:***
1 HOUR ETHICS (Pending)
Reading materials will be provided to paid registrants prior to the course.

***Where:***
Santa Barbara and Ventura Colleges of Law
20 E. Victoria Street

***Cost:***
$35 Lunch Included
R.S.V.P.: Penny Clemmons, clemmonsjd@cs.com or Lida Sideris, sblawdirector@gmail.com
Please make checks payable to the Santa Barbara County Bar Association and mail to: SBCBA 15 W Carrillo St. Santa Barbara, CA. 93101
Click the link here to pay via Venmo.

## THE OTHER BAR NOTICE

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

*The SBCBA Civil Litigation Section Presents:*

## "Off the Clock: Professional Ethics on Personal Time"

***When:***
Friday, September 3rd, 2021 12:00 PM

***Where:***
Zoom

***MCLE:***
1.0 Hours Ethics (Pending)

***Speaker(s):***
Wendy L. Patrick is a past Chair and advisor to the California State Bar's Ethics Committee. She is a Deputy District Attorney with over 165 trials, ranging from first-degree murder to domestic violence to stalking. She has been selected as one of the Top Ten criminal attorneys in San Diego and named the Ronald M. George Public Lawyer of the year. Wendy is an author and media personality who has appeared multiple times on CNN, Fox News Channel, Fox Business Network, and a variety of other national news programs.

***About the Event:***
Most legal ethics programs focus on how applicable rules, laws, and related opinions govern a lawyer´s behavior when he or she is practicing law. But what rules apply to a lawyer´s behavior off the clock?
The answer is: ethically, a lawyer is never off the clock. This program will focus on the rules, statutes, case law, principles, and guidelines that govern a lawyer's actions, conduct, and speech, during personal time. It will break down and analyze Professional Rule of Conduct 8.4, Misconduct, breaking down each subsection into informative, practical examples, and present practical illustrations and informative case examples from around the country of how off-the-clock behavior can have on the job consequences.

***Price:***
Members $10/Non-Members $15
Please mail checks by Friday, August 27, 2021, payable to Santa Barbara Bar Association, 15 W. Carrillo Street Suite 106, Santa Barbara, CA 93101.
Click the link here to pay via Venmo..

***Contact Information/R.S.V.P.:***
Please RSVP by Friday, August 27, 2021 to: Mark Coffin at mtc@markcoffinlaw.com and Lida Sideris at sblawdirector@gmail.com

## TWO OFFICES FOR RENT

For rent (available March 1) two professional furnished offices (11'8" x 8'8" for $1,200.00 and 11'8" x 10'9" for $1,350.00). Includes a shared reception, two conference rooms, kitchen and workroom with copier. Located in a great Santa Barbara Downtown location across from the Courthouse and above the old Café Ana. Please contact Howard Simon at hsimon@jhslawsb.com for further information.

## HAGER & DOWLING, LLP SEEKS ASSOCIATE ATTORNEY

Highly respected Santa Barbara civil litigation firm seeks associate attorney with civil litigation and insurance law background.

The applicant must have excellent verbal and writing skills, work well both independently and in a team environment, exceptional legal research and enjoy litigation. Competitive benefits include, health and dental insurance, free parking and 401k plan.

Respond with resume, cover letter and references to kcallahan@hdlaw.com



## SEEKING EXPERIENCED LITIGATION ASSOCIATE

**Clinkenbeard, Ramsey, Spackman & Clark** is seeking a litigation associate with 3-7 years of experience in insurance defense, preferably in medical malpractice. Part-time and fulltime positions available. Some remote work would be considered. Salary commensurate with experience. Please contact hspackman@crslawfirm.com.

## FAMILY LAW ASSOCIATE SOUGHT

**Price, Postel & Parma**, a long-standing law firm in Santa Barbara, is seeking a family law associate with superior credentials, 3-5 years of significant family law/litigation experience and a current license to practice in the State of California. Compensation is commensurate with skills, education and experience. Please submit a cover letter and resume via email to Linda Ford, Administrator, at lford@ppplaw.com.

## SEEKING LITIGATION ASSOCIATE

**Price, Postel & Parma**, a long-standing law firm in Santa Barbara, is seeking a litigation associate with superior credentials, a minimum of 3-5 years of significant litigation experience and a current license to practice in the State of California. Compensation is commensurate with skills, education and experience. Please submit a cover letter and resume via email to Craig Parton at cparton@ppplaw.com

## REICKER PFAU IS PURSUING TRANSACTIONAL ASSOCIATE ATTORNEYS

**Reicker, Pfau, Pyle & McRoy LLP,** Santa Barbara's premier business law firm, is seeking multiple transactional associates of varying skill levels for a rapidly growing practice.

Our firm's corporate/transactional practice includes mergers and acquisitions, emerging companies, financing, securities, private placements, and general corporate and contract matters. We are looking for candidates with a strong work ethic that thrive in a fast paced, dynamic work place. Lower level associates will initially fill a supporting role in transactional matters and progress to assignments with greater responsibility.

Competitive pay and excellent benefits. To apply or inquire, please contact Jan Petteway at jpetteway@rppmh.com.

# 2021 SBCBA SECTION HEADS

**Alternative Dispute Resolution**
Dr. Penny Clemmons (805) 687-9901
clemmonsjd@cs.com

**Bench & Bar Relations:**
Ian Elsenheimer (805) 659-6800
ielsenheimer@fcoplaw.com

**Civil Litigation**
Mark Coffin (805) 248-7118
mtc@markcoffinlaw.com

**Criminal**
Jeff Chambliss (805) 895-6782
Jeff@Chamblisslegal.com

**Employment Law**
Alex Craigie (805) 845-1752
alex@craigielawfirm.com

**Estate Planning/Probate**
Connor Cote (805) 966-1204
connor@jfcotelaw.com

**Family Law**
Renee Fairbanks (805) 845-1604
renee@reneemfairbanks.com
Marisa Beuoy (805) 965-5131
beuoy@g-tlaw.com

**In House Counsel/Corporate Law**
Betty L. Jeppesen (805) 450-1789
jeppesenlaw@gmail.com

**Intellectual Property**
Christine Kopitzke (805) 845-3434
ckopitzke@socalip.com

**Mandatory Fee Arbitration**
Eric Berg (805) 708-0748
eric@berglawgroup.com
Naomi Dewey (805) 979-5160
naomi@trusted.legal
Vanessa Kirker Wright (805) 964-5105
vkw@kirkerwright.com

**Real Property/Land Use**
Joe Billings (805) 963-8611
jbillings@aklaw.net

**Taxation**
Peter Muzinich (805) 966-2440
pmuzinich@gmail.com
Cindy Brittain (805) 695-7315
cindybrittain@gmail.com

## OFFICE SPACE FOR RENT

For rent (available October 1) two professional furnished offices (11' x 10.5') and (10' x 12') plus a large furnished conference room (20' x 11.5'), two L-shape secretarial desk areas, copier, separate entrance, janitorial services, shared kitchen and onsite gym with shower facilities. Lots of free parking, easy on/off freeway access located adjacent to Goleta Valley Cottage Hospital. Please contact Lynette Baker, Administrator at Lbaker@sbelaw.com for further information. $3,300.00 per month.

## 2021 Bench & Bar Meetings

As Assistant Presiding Judge, the Honorable Pauline Maxwell has set the schedule for the last 2021 Bench and Bar Meeting that will take place on:

**Thursday, November 18, 2021, 12:15 pm**

The Bench and Bar Meeting will be held via Zoom. These meetings provide a forum for local members of the Bar to engage in an informal dialogue with the presiding judge as a means of raising issues and concerns that may not otherwise be addressed. All attorneys and paralegals are welcome to attend. For any practitioners wishing to submit agenda items for consideration before a scheduled meeting, please email those items to Ian Elsenheimer at **ielsenheimer@fcoplaw.com.**

*Santa Barbara* Lawyer
The Santa Barbara County Bar Association
15 W. Carrillo St., Suite 106
Santa Barbara, CA 93101
Change Service Requested