Santa Barbara Lawyer

Official Publication of the Santa Barbara County Bar Association
October 2021 • Issue 589

In Memory of Tara Haaland-Ford

ADUs / Compassion Satisfaction Bias / DV "Guardrails" / Judicial Secretaries Speak Out / Honor Our Legal System / Social Media Solicitations

Santa Barbara County Bar Association
www.sblaw.org

2021 Officers and Directors

Officers

ELIZABETH DIAZ
President
Legal Aid Foundation
301 E. Canon Perdido
Santa Barbara, CA 93101
T: (805) 963-6754
ediaz@lafsbc.org

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

JENNIFER GILLON DUFFY
Secretary
Rimon Law
200 E. Carrillo Street, Suite 201
Santa Barbara, CA 93101
T: (805) 618-2606
jennifer.duffy@rimonlaw.com

STEPHEN DUNKLE
Chief Financial Officer
Sanger, Swysen, & Dunkle
222 E. Carrillo St, #300
Santa Barbara, CA 93101
T: (805) 962-4887
sdunkle@sangerswysen.com

AMBER HOLDERNESS
Past President
Office of County Counsel
105 E. Anapamu St, #201
Santa Barbara, CA 93101
T: (805) 568-2969
aholderness@co.santa-barbara.ca.us

Directors

BRADFORD BROWN
Law Offices of Brad Brown, APC
735 State St. Ste 418
Santa Barbara, CA 93101
T: (805) 963-5607
brad@bradfordbrownlaw.com

IAN ELSENHEIMER
Ferguson Case Orr Paterson LLP
1050 S Kimball Rd.
Ventura, CA 93004
W: www.fcoplaw.com
T: (805) 659-6800, ext. 203
F: (805) 659-6818
ielsenheimer@fcoplaw.com

TAYLOR FULLER
Herring Law Group
559 San Ysidro Road
Ste G
Santa Barbara, CA 93108
tfuller@theherringlawgroup.com

RICHARD LLOYD
Cappello & Noel LLP
831 State St
Santa Barbara, CA 93101
T: (805) 564-2444
rlloyd@cappellonoel.com

TERESA MARTINEZ
Office of County Counsel
105 E. Anapamu St. # 201
Santa Barbara, CA 93101
T: (805) 568-2950
teresamartinez@co.santa-barbara.ca.us

TARA MESSING
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 93408-7037
T: (650) 589-1660
tmessing@adamsbroadwell.com

ERIN PARKS
Attorney at Law
625 E. Victoria St.
Santa Barbara, CA 93103
T: (805) 899-7717
law@erinparks.com

JESSICA PHILLIPS
Maho & Prentice LLP
629 State St., Ste 217
Santa Barbara, CA 93101
T: (805) 962-1930
jphillips@sbcalaw.com

MICHELLE ROBERSON
Sierra Property Group, Inc.
5290 Overpass Rd, Bldg. C
Santa Barbara, CA 93111
T: (805) 692-1520 *102
michelle@sierrapropsb.com

RUSSELL TERRY
Reicker, Pfau Pyle & McRoy LLP
1421 State St. Ste B
Santa Barbara, CA 93101
T: (805) 966-2440
rterry@rppmh.com

Staff

LIDA SIDERIS
Executive Director
15 W. Carrillo St, Suite 106
Santa Barbara, CA 93101
T: (805) 569-5511
Fax: 569-2888
sblawdirector@gmail.com

Mission Statement
Santa Barbara County Bar Association

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

Santa Barbara Lawyer

A Publication of the Santa Barbara County Bar Association

CONTRIBUTING WRITERS
Daniel Bauerlein
Joseph R. Billings
Gregory W. Herring
Jody M. Kaufman
Marilyn Metzner
John H. Parke
Robert M. Sanger

EDITOR
Erin Parks

ASSISTANT EDITORS
Tara Messing
Lida Sideris

MOTIONS EDITOR
Michael Pasternak

PHOTO EDITOR
Mike Lyons

GRAPHIC DESIGN
Baushke Graphic Arts

* * *

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

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

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

Santa Barbara Lawyer
Official Publication of the Santa Barbara County Bar Association
October 2021 • Issue 589

Articles

Sections

On the Cover

Tara Haaland-Ford

Uphold and Honor Our Legal System or Be Sanctioned

By Erin Parks

Erin Parks

I was recently invited to read a "carefully-considered, thoughtful and important opinion by U.S. District Court Judge Linda V. Parker in one of the Michigan election challenge cases" entitled *King v. Whitmer.*[1] Judge Parker's opinion in *King v. Whitmer* illuminates the limits to attorney advocacy. While "[i]ndividuals may have a right (within certain bounds) to disseminate allegations of fraud unsupported by law or fact in the public sphere... [] attorneys cannot exploit their privilege and access to the judicial process to do the same. And when an attorney has done so, sanctions are in order."[2]

Why? Because "[i]ndividuals [ ] must litigate within the established parameters for filing a claim. Such parameters are set forth in statutes, rules of civil procedure, local court rules, and professional rules of responsibility and ethics. Every attorney who files a claim on behalf of a client is charged with the obligation to know these statutes and rules, as well as the law allegedly violated. Specifically, attorneys have an obligation to the judiciary, their profession, and the public (i) to conduct some degree of due diligence before presenting allegations as truth; (ii) to advance only tenable claims; and (iii) to proceed with a lawsuit in good faith and based on a proper purpose. Attorneys also have an obligation to dismiss a lawsuit when it becomes clear that the requested relief is unavailable."[3]

In *King v. Whitmer*, the Court did not decide whether there was fraud in the 2020 presidential election in the State of Michigan. The sole question before the Court was whether Plaintiffs' attorneys engaged in abusive litigation practices under 28 U.S.C. § 1927,[4] Federal Rule of Civil Procedure 11,[5] and the Court's inherent authority. The Court answered the question in the affirmative and issued sanctions against Plaintiffs' attorneys involved in the lawsuit because the attorneys "abused the well-established rules applicable to the litigation process by proffering claims not backed by law; proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the required prefiling inquiry; and dragging out these proceedings even after they acknowledged that it was too late to attain the relief sought."[6]

"[P]rotestations, conjecture, and speculation"... "are neither permitted nor welcomed in a court of law. And while we as a country pride ourselves on the freedoms embodied within the First Amendment, it is well-established that an attorney's freedom of speech is circumscribed upon 'entering' the courtroom. [citation omitted] ¶ Indeed, attorneys take an oath to uphold and honor our legal system. The sanctity of both the courtroom and the litigation process are preserved only when attorneys adhere to this oath and follow the rules, and only when courts impose sanctions when attorneys do not. And despite the haze of confusion, commotion, and chaos counsel intentionally attempted to create by filing this lawsuit, one thing is perfectly clear: Plaintiffs' attorneys have scorned their oath, flouted the rules, and attempted to undermine the integrity of the judiciary along the way. As such, the Court is duty-bound to grant the motions for sanctions ...."[7]

The following are some of the lessons on sanctionable conduct gleaned from Judge Parker's opinion in *King v. Whitmer*:

Lesson 1: Attorneys with Signatures or Names on Pleadings are Accountable

Plaintiffs' lawyers argued that they could not be sanctioned merely because their names appeared in typewritten form; only local attorneys who appeared or signed a document filed in the matter could be sanctioned. The local attorneys argued that while they signed the filings, they did not prepare them, and thus should not be responsible for them. Judge Parker found:

> "In this age of electronic filing, it is frivolous to argue that an electronic signature on a pleading or motion is insufficient to subject the attorney to the court's jurisdiction if the attorney violates the jurisdiction's rules of professional conduct or a federal rule or statute establishing the standards of practice."[8]

By placing electronic signatures on pleadings, and by agreeing to have their names placed on pleadings and/or motions, all counsel (even attorneys that served as Of Counsel) are responsible for the submissions.[9] One of Plaintiffs' attorneys that feigned lack of knowledge of the inclusion of his name on the pleadings was not absolved from his part in the abuse.[10] And, attorneys who only put a few hours into the pleadings, or read a pleading on the day of filing, were likewise held accountable.[11]

Lesson 2: Good Faith Belief is Not Enough to Escape Sanctions

Plaintiffs' attorneys argued that they genuinely believed the factual allegations in the lawsuit, and filed the suit and supporting documents in good faith. Due to such good faith, Plaintiffs' counsel contended, they should not be sanctioned. Judge Parker disagreed: "... an 'empty-head' but a 'pure-heart' does not justify lodging patently unsupported factual assertions. [citation omitted]...."[12]

Lesson 3: Failure to Present any Evidentiary Support for Factual Assertions is Sanctionable

Inferences from circumstantial evidence must be reasonable and come from facts proven, not speculation or conjecture.[13]

Lesson 4: Presentment of Conjecture and Speculation as Evidentiary Support for Factual Assertions is Sanctionable

Judge Parker was concerned "with what the reports and affidavits say and reveal on their face, and what Plaintiffs' counsel should (or should not) have done before presenting them in light of what is revealed on their face. [citation omitted]"[14] Plaintiffs' counsel failed to present any evidence to support their allegations,[15] and presented affidavits that were based on conjecture, speculation, and guesswork.[16] "...[S]peculation, coincidence, and innuendo could never amount to evidence of an 'illegal vote dump' - much less, anything else. [citation omitted]."[17]

Lesson 5: Failure to Inquire into Evidentiary Support for Factual Assertions is Sanctionable

Plaintiffs' counsel failed to ask questions of affiants that were central to the factual allegations in the pleadings. This error, paired with the decision to label one witnesses' testimony as "'*eyewitness testimony* of election workers manually changing votes'- evinces bad faith. Plaintiffs' counsel may not bury their heads in the sand and thereafter make affirmative proclamations about what occurred above ground. In such cases, ignorance is not bliss - it is sanctionable."[18]

Lesson 6: Failure to Inquire into Evidentiary Support Taken from Other Lawsuits is Sanctionable

When Judge Parker asked whether Plaintiffs' counsel had inquired "as to the affidavits copied and pasted from the other cases, Plaintiffs' counsel dipped and dodged the question and did not disclaim the ... assertions that they did not. [citation omitted]… Clearly, Plaintiffs' counsel relied on the assessment of counsel for the plaintiffs in other cases as to the affidavits from those cases that Plaintiffs' counsel recycled here. ¶ This is not okay. The Court remains baffled after trying to ascertain what convinced Plaintiffs' counsel otherwise. 'Substituting another lawyer's judgment for one's own does not constitute reasonable inquiry.' [citation omitted] ... In short, Plaintiffs' counsel cannot hide behind the attorneys who filed [other cases] to establish that Plaintiffs' counsel fulfilled their duty to ensure that the affidavits they pointed to as evidentiary support for the pleadings here, in fact had any chance of ever amounting to evidence. [citation omitted]." Plaintiffs' counsel could not escape accountability for their failure to conduct due diligence before recycling affidavits from other cases to support their pleadings.[19]

Lesson 7: Failure to Inquire into Outlandish and Easily Debunked Statistics is Sanctionable

Even where attorneys sought to defend their use of an affidavit which had been supplemented in a subsequently filed report, Judge Parker found that it did not change the fact that a reasonable inquiry was not done before the initial affidavit was presented. Plaintiffs' counsel presented pleadings for which the factual contentions lacked evidentiary support and were, therefore, sanctioned. [20]

Lesson 8: Evidence of Improper Purpose Warrants Sanctions

Evidence of improper purpose was found in counsels' decision to label as "eyewitness testimony" an affidavit that did not state that the affiant saw election workers manually changing votes, especially when the affiant was not asked if she saw such a thing. What Judge Parker found to clearly reflect bad faith was that Plaintiffs' attorneys attempted to use the judicial process to frame a public narrative absent evidentiary or legal support for their claims.[21] The Court also found bases to conclude that "Plaintiffs' legal team asserted the allegations in their pleadings as opinion rather than fact, with the purpose of furthering counsel's political positions rather than pursuing any attainable legal relief." [22]

Continued on page 14

Tara Haaland-Ford Left Our World a Better Place

By Jody M. Kaufman

Jody M. Kaufman and Tara Haaland-Ford

On July 17, 2021, Santa Barbara and the world lost a great advocate, activist, and friend. Tara Haaland-Ford bravely fought cancer for almost nine years after originally being given six weeks to six months to live. In those nine years, Tara accomplished more than some people accomplish in a much longer lifetime. Tara tackled each task with her unique blend of vigor and tenacity, actively participating in the Santa Barbara community and was an accomplished criminal defense attorney. Additionally, she was President of the Washington Elementary School's Parent Teacher Organization (PTO), a founder of the Santa Barbara Support System, which assisted those in need after the Thomas Fire and Montecito Mudslides, supported the Friendship Paddle that supported her fight against cancer, and was a Teen Court Judge for many years.

Tara was born on September 1, 1972, at Indian Hills Hospital in Novato, California, to Marcia and Arnie Haaland. Arnie was stationed at Hamilton Air Force Base at that time. Her family moved to the Conejo Valley where she graduated from Agoura High School. She attended Cuesta College before transferring to UCSB and went on to earn her Juris Doctorate at University of San Francisco. Tara is survived by her husband Jon Ford, daughters Madison and Lucy Haaland-Ford, father Arnie Ford, stepmother Deb Day, mother Marcia Haaland, brother Cody Kramer, godson Jacoby Thompson, stepmother Laurie Windsor and step siblings Gregory and Carolyn Kramer, Laurie Gottlash, Ken Almony, and Tiffany, Brandee and Jason Scott.

While Tara's life was cut way too short, her legacy lives on. In her professional life, Tara was not only well respected by her fellow criminal defense attorneys, but by the prosecutors on the other side of the table and the judges before whom she appeared.

Judge Tom Adams had this to say about Tara:

When I reflect upon the life journey of my friend, Tara Haaland-Ford, at least the 15 or so years I was privileged to know and appreciate her, I think of two descriptors for that life journey. One from the song "Only One Life" by Jimmy Webb. "Only one life, what does it mean? It's only birth and death and everything in between." For me, it is the "everything between" part of life that is so very significant. Depending upon how one lives that portion of a life, that "everything between" part, that is truly what matters. That is the legacy that one leaves behind for one's family and friends; that legacy that shows your fellow travelers the results of one's life journey. And for Tara, that "everything between" portion of life was, for sure, GOLDEN. It was not the privileged nor the powerful that Tara sought out, but rather it was the disadvantaged and the less fortunate that caused her to pause so often along the way in order to reach out to assist and give of herself. For those of us who were the observers of her magic, we could not help but have been significantly impacted by it.

When I pause and reflect upon that goodness, I think to myself that Tara Haaland-Ford might well have been the perfect model for the wonderful poet, Robert Frost, when he penned his forever-classic poem The Road Not Taken. Allow me to paraphrase from the conclusion of this poem "I shall be telling this with a sigh, somewhere ages and ages hence: Two roads diverged in a wood, and she, she took the one less traveled by, and that has made all the difference." I am most grateful to Tara that our life paths were able to cross during her extraordinary, if far too brief, life journey. For me, and for so many others, it made all the difference.

Judge Jean Dandona had the following to say about Tara:

I loved when Tara had an appearance in juvenile or one of the treatment courts or came to one of the treatment court planning meetings. She jumped right to the heart of the matter, never hesitating to point out the injustice, the ridiculous. But her presentation

Tara and her husband, John Ford

was wonderful – thoughtful, reasonable, practical, matter of fact, commonsense, never casual. On rare occasion, there was barely unrestrained outrage, but the outrage was always appropriate. She was wonderful at coming up with non-traditional resolutions. She was so attentive to her clients in court, and it was clear that she was attentive to them outside of court. They clearly adored her.

Tara's final email to me in January, when she stepped away from her practice, was pure Tara –direct, hopeful, compassionate, grateful, elegant. I miss her immensely.

These unique qualities were no more prevalent than in Tara's successful fight against Santa Barbara's gang injunction. In 2011, the Santa Barbara City Attorney's Office and Santa Barbara District Attorney's Office filed for an injunction against alleged members of the Eastside and Westside street gangs. The individually named defendants, all of whom were Latinx, ran the gamut from people serving lengthy prison sentences, to people whose gang involvement was in the past and who were now working and raising families. If the injunction was enacted, many more people would be served with it in the future. Rather than limiting the scope of the proposed injunction to individual blocks or neighborhoods plagued by gang crime, the proposed injunction would have covered most of downtown, almost all of Santa Barbara's city parks, and even the beach.

Tara took this effort by the government to further stigmatize this group of young people already labeled as gang members by the system as a call to arms. She put together a coalition of pro-bono attorneys, civil liberties groups, nonprofits interested in funding expert witnesses and costs, and sympathetic politicians who opposed the injunction.

She established a consulting relationship with the Southern California ACLU. She served as a liaison to community groups interested in fighting the injunction. She reached out to potential funders and obtained thousands of dollars in funding for expert witnesses and costs. She organized and appeared at public forums. She connected with local progressive politicians, including Santa Barbara's current Mayor, Cathy Murillo, who came out against the proposed injunction.

Once the attorneys were on board, Tara was on the front line of repeated battles to keep our clients' juvenile records out of the gang injunction case, which culminated in favorable rulings from the Juvenile Court judge as well as the judge hearing the gang injunction case. Tara recruited expert witnesses to help present the case. As trial approached, her original client's case was dismissed, and she immediately associated in to co-represent another client so that she could remain in the case.

She led off the trial presentation by giving the opening statement. After all the evidence had been presented and the case had been argued, Tara sent the following message to the core group of attorneys who conducted the trial:

I just wanted to say thank you for jumping in and giving up your time these past weeks and years to fight the gang injunction. There's not a lot of attorneys that would have done that. It's good for the soul. Seven minds are definitely better than 1. We gave a portion of our community a fighting chance. I'll be sure to rope you all into my next pro bono adventure! Have a great weekend. Whatever happens we put an amazing effort in.

After Judge Sterne struck down the injunction in July of 2014, our contact at the ACLU said they were going to issue a press release about the case. Tara said:

I hope he includes that this was a group of local defense attorneys who worked pro bono [from] start to finish. It is kinda like a fairy tale.

Tara's comment says so much about her. To her, the rights of our young, people of color, clients being vindicated by the court system after local attorneys worked tirelessly on their behalf for years without compensation was a fairy tale come true. At the time the injunction was denied, it was the only time a gang injunction had been rejected by a court in California.

However, Tara's work and commitment to make Santa Barbara and the world a better place did not stop with fighting the gang injunction. Tara was one of the founding members of the Santa Barbara Teen Legal Clinic, Inc.

(SBTLC), a local nonprofit organization, the goals of which are to empower youth to know and understand their legal rights and responsibilities and, by doing so, everyone would benefit from the world being a better place.

Tara educated youth through the Street Law program, teaching youth directly, as well as by teaching the Street Law class at the Colleges of Law (Santa Barbara and Ventura campuses). These law students then in turn taught the Street Law curriculum to the youth. Tara also gave individual presentations to groups of local youth on such issues as the right to remain silent, search and seizure laws, education rights, and immigration rights. Tara taught all of this with the understanding that along with rights come responsibilities.

Tara and daughters, Madison and Lucy

Another project of the SBTLC is the Pro Bono Legal Services, where a panel of attorneys provide free legal representation for local youth and teens in certain areas of the law who could not otherwise afford representation or the opportunity to truly be heard. Through this project, Tara gave countless hours of free legal services, particularly representing students with regards to school suspensions and expulsions. One case Tara handled was for a senior in one of the local Santa Barbara high schools who received a full four-year scholarship to the University of California at Berkeley. At the end of his senior year, this student was bored and did something incredibly stupid. This student was caught drinking alcohol in his car during lunch on a school day. The school district was going to expel this student, and in turn, he would lose his scholarship to Cal. In representing this young man, Tara was able to work with the school district to obtain a resolution that better fit what this student did and did not jeopardize his long-term future. Using her skill, creativity, compassion, and intelligence, Tara was able to get the school district to agree to a suspended expulsion, where this student still had consequences for his actions, but not consequences that would have ruined his future.

Lastly, and Tara's greatest passion, is Restorative Justice (RJ) as an alternative or diversion program to traditional criminal justice systems and education systems. As Tara's life was ending, she told numerous people that she wanted RJ to be her legacy. For those not familiar with RJ, it brings together the person who has been harmed and the person who has committed the harm. This involves creating a setting whereby a harmer meets with the harmed within an actual circle made up of both and their respective extended families and support systems. The harmer then listens to the harmed and is given an opportunity to understand how their actions have impacted everyone involved. This process gives the victim an opportunity to face the person who harmed them and to provide input as to an acceptable resolution. With this in mind, the SBTLC renamed its RJ project The Tara Haaland-Ford Restorative Justice Project and is actively working with interested parties to make Tara's RJ dream a reality and ensure her legacy.

Being a criminal defense attorney is not easy. At some time in every criminal defense attorney's career they are usually asked, how can you represent people who commit crimes and do such awful things? Most criminal defense attorneys will justifiably tell you they are defending the United States Constitution for all of us, or they will tell you that they are making the prosecution do their job by proving their case, also required by the U.S. Constitution. Some will even say they do it to defend the undefendable. And while I know Tara believed in all of this, when we were discussing one day the job of a criminal defense attorney and I asked her why she was a criminal defense attorney, even knowing what an incredible activist, advocate, and human being she was, Tara's answer surprised me. Tara said,

I defend people because I want to make a difference in their life. I want to take what is probably one, if not, the worst day of their life, and I want to see if some good can come out of it. I want to see if I can help facilitate a change in someone's life for the better.

And toward the end of her life, Tara and I had an opportunity to discuss this again and she said,

I just want to explain to everyone to just look at people and for people to be seen as human. To just smile at people and realize what a difference that can make.

With Tara in mind, I want to leave everyone reading this article with these thoughts: In today's world, there are clearly things worth fighting for, and Tara would be the first one to tell you to stand up and fight for what you believe in. But in those moments when you just feel road rage, or you want to ring someone's neck, or shake your fist at them, or lock away the criminal and throw away the key—think of Tara—show some compassion, empathy, kindness, and maybe even smile at them and remember that they are human, too.

Rooted in the Jewish culture is to leave the world a better place than when you got here. Tara clearly left this world a better place. In support of Tara's daughters, donations are welcome to "Gals Give Back" on *PayPal*. Donations may also be made to the Santa Barbara Teen Legal Clinic for the Tara Haaland-Ford Restorative Justice Project at *sbteenlegal.org* in support of Tara's legal legacy. ■

Jody M. Kaufman is a Legal Specialist representing injured workers in the California Workers' Compensation system since 2002. She is the managing attorney of Stout & Kaufman, APLC. After being admitted to the State Bar of California in 1999, Ms. Kaufman, along with Tara Haaland-Ford, and Dianna Van Wingerden, founded the local non-profit, The Santa Barbara Teen Legal Clinic, Inc. Jody has taught as an adjunct professor of Street Law at Santa Barbara College of Law and as a high school mock trial coach. She has also been on the boards of the Legal Aid Foundation of Santa Barbara and the Santa Barbara County Bar Association. Ms. Kaufman can be reached at jmk@kmstout.com or 805-897-1152 x222.

Jody M. Kaufman collaborated on this article with Steve Dunkle of Sanger Swysen & Dunkle.

SBCBA Diversity and Inclusion Task Force Survey

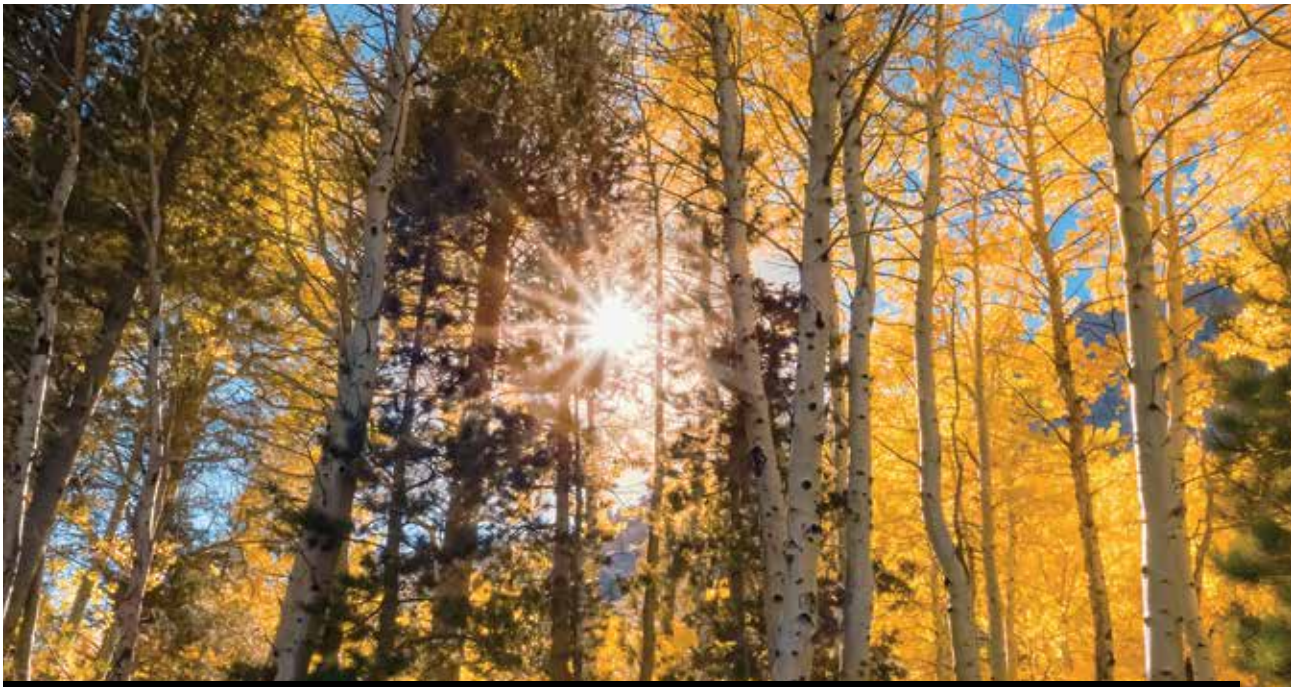
The Diversity and Inclusion Task Force would like to thank all those who've taken the time to participate in the survey, thus far. The results have been very helpful and your participation appreciated. And for those who've not yet had a chance to complete the survey, the link appears below.

Diversity in the legal profession is a necessity that helps to improve the overall focus of the profession. A group of culturally, racially, ethnically, and gender-diverse legal practitioners can attract and effectively connect with a broader network of clients than can their non-diverse counterparts. Such diversity strengthens the belief in the fair delivery of justice, regardless of the background of the client.

Please take a few minutes to complete this survey:
https://docs.google.com/forms/d/1IFxl71KRILAw5soDd4_PPckUZeg-9tPadhV3sihsc-0/viewform?ts=607f2d53&edit_requested=true

The link to review the Diversity and Inclusion Resources Guide for legal professionals is https://sblaw.org/diversity-inclusion-resource-guide/.

Thank you for your participation.



BUILT WITH YOU IN MIND, INTRODUCING OUR LAWYERS' INSURANCE DEFENSE PROGRAM

Lawyers' Mutual is excited to share our values, services and member benefits with an ever expanding pool of California attorneys.

Built with you in mind, Lawyers' Mutual has redesigned our Lawyers' Insurance Defense Program for firms of six attorneys or more who practice 90% insurance defense work or greater.

Key program features:

- Limits from $1,000,000 per claim / $3,000,000 in the aggregate to $10,000,000 per claim / $12,000,000 in the aggregate.
- $50,000 Claims Expense Allowance outside limits included.
- Expert in-house California claims examiners.
- Multi-attorney discount factor.

Our Lawyers' Insurance Defense Program delivers on our commitment to enhance, revolutionize and challenge the status quo of how the traditional insurance industry operates.

LAWYERS' MUTUAL
INSURANCE COMPANY
Our strength is your insurance

www.lawyersmutual.com

Parks, *continued from page 8*

"It is not acceptable to support a lawsuit with opinions, which counsel herself claims no reasonable person would accept as fact and which were 'inexact,' 'exaggerate[ed],' and 'hyperbole.' Nor is it acceptable to use the federal judiciary as a political forum to satisfy one's political agenda. Such behavior by an attorney in a court of law has consequences. Although the First Amendment may allow Plaintiffs' counsel to say what they desire on social media, in press conferences, or on television, federal courts are reserved for hearing genuine legal disputes which are well-grounded in fact and law."[23]

Judge Parker also found the existence of improper purpose because Plaintiffs' counsel failed to conduct the pre-filing reasonable inquiry required of them as officers of the court. "As officers of the court, Plaintiffs' counsel had an obligation to do more than repeat opinions and beliefs, even if shared by millions. Something does not become plausible simply because it is repeated many times by many people. [citation omitted]" [24]

Judge Parker identified numerous instances which, individually, evinced "bad faith and improper purpose. But when viewed collectively, they reveal[ed] an even more powerful truth: Once it appeared that their preferred political candidate's grasp on the presidency was slipping away, Plaintiffs' counsel helped mold the predetermined narrative about election fraud by lodging this federal lawsuit based on evidence that they actively refused to investigate or question with the requisite level of professional skepticism and this refusal was to ensure that the evidence conformed with the predetermined narrative (a narrative that has had dangerous and violent consequences). Plaintiffs' counsels' politically motivated accusations, allegations, and gamesmanship may be protected by the First Amendment when posted on Twitter, shared on Telegram, or repeated on television. The nation's courts, however, are reserved for hearing legitimate causes of action."[25]

California Statutory Law and Sanctions

Judge Parker's opinion in *King v. Witmer* is an important reminder of the duties and responsibilities that "we have as officers of the court to seek and do justice, not perpetuate harm, deception, or abuse."[26] The remainder of this article explores conduct that qualifies for sanctions against attorneys in California state courts and the trial court's power to issue sanctions.[27]

California Judicial Power to Impose Monetary Sanctions

California courts have inherent power to control proceedings and to punish and redress litigation misconduct. However, unlike federal courts, California's trial courts do not have the inherent authority to impose monetary sanctions. They may only award attorney's fees as a sanction for misconduct pursuant to statutory authority or an agreement of the parties.[28]

Sanctions under California's Code of Civil Procedure

Under **Code of Civil Procedure section 128.7**, a court may impose sanctions against attorneys and law firms. Section 128.7 applies to all attorneys who present a paper to the court, "whether by signing, filing, submitting or later advocating," that document.[29]

Under section 128.7, a lawyer who presents a pleading, motion or similar papers to the court may be subject to sanctions for violation of an implied "certification" as to its legal and factual merit. By signing the document, the attorney is certifying to the court, to the best of his or her knowledge, information and belief that (1) the document is not being presented for an improper purpose (such as to harass the opposing party or cause unnecessary delay), (2) the claims, defenses, and legal contentions are supported by existing law or a non-frivolous argument extending, modifying or reversing existing law, (3) the allegations and factual contentions are likely to have evidentiary support and (4) the denials of factual contentions are warranted.[30]

A two-step process is required to attain sanctions under section 128.7: (1) The moving party must first serve the sanctions motion on the offending party without filing it. The opposing party then has a 21-day "safe harbor" period to withdraw the improper pleading and avoid sanctions; (2) at the end of the waiting period, if the pleading is not withdrawn, the trial court may issue an order to show cause as to why sanctions should not be imposed under section 128.7.[31] If the improper pleading is withdrawn, after providing notice to the other party, during the safe harbor period, sanctions may not be imposed. Otherwise, an order to show cause will be issued and sanctions can be awarded.[32]

Code of Civil Procedure section 128.5 allows a court to impose monetary sanctions against an attorney for bad faith actions or tactics. The statute expressly states that it is to be interpreted in accordance with section 128.7.[33]

California's Discovery Act authorizes the court to impose monetary sanctions against "one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both."[34] "An attorney may only be penal-

ized under this provision for advising disobedience. It is not enough that the attorney's actions were in some way improper and contributed to the disobedience of the court order."[35] "Monetary sanctions against the party's attorney requires a finding the 'attorney advis[ed] that conduct.'"[36] The attorney against whom sanctions are sought must be provided notice and given the opportunity to be heard.[37]

Where the court finds grounds to sanction an attorney, discovery sanctions may not be penal and must be proportionate to the offending party's misconduct.[38] It is an abuse of discretion to impose discovery sanctions "solely for punishment purposes" because the main purpose of discovery sanctions is to enable the propounding party to obtain the discovery "rather than simply to punish a disobedient party or lawyer."[39] The only sanctions that may be imposed for violations of specific sections of the Discovery Act are limited to the sanctions that are specifically authorized in those sections.[40]

Rule 8.276 of the California Rules of Court provides that the Court of Appeal may impose sanctions, including the award or denial of costs, on a party or an attorney for various forms of misconduct, including filing a frivolous appeal, appealing solely to cause delay, including in the record "any matter not reasonably material to the court's determination," or committing any other "unreasonable violation" of the court rules.[41] The imposition of sanctions in the form of attorney fees is not allowed. Writ petitions that "grossly and repeatedly misrepresent the law and the facts" provide sufficient basis for the imposition of thousands of dollars in monetary sanction to be paid to the court for "the cost of processing, reviewing and deciding the writ petitions."[42]

California's State Bar Requires Reporting of Sanction Awards

Attorneys must report to the State Bar within 30 days of knowledge of any judicial sanctions of $1,000 or more, excluding sanctions for failure to make discovery.[43] Failure to report may subject an attorney to discipline. Courts must also report attorneys to the State Bar when they impose more than $1,000 in sanctions, other than discovery sanctions.[44]

Conclusion

I trust that all who read this article will heed Judge Parker's opinion in *King v. Whitmer*, as well as California's rules and statutes authorizing monetary sanctions against attorneys for various forms of misconduct, including filing frivolous pleadings or bad faith appeals, or advising a client to engage

in discovery abuse. In the words of my esteemed colleague, Janean Acevedo Daniels, "I am humbled and appreciative to be reminded of the obligations we have as attorneys of law, especially by a federal judge who is a woman, and am humbled and grateful for the trust that our clients and the justice system place in all of us. May we serve them well."[45] ■

Erin Parks is the Editor of the Santa Barbara Lawyer, *on the Board of the Santa Barbara County Bar Association, and a solo practitioner emphasizing Employment Law, Immigration, and Estates and Trusts. She is a long-standing member of Santa Barbara Women Lawyers (SBWL) and participates in a monthly SBWL mentoring Circle. To join a Circle, please contact SBWL at sbwl.admin@gmail.com, or Ms. Parks at law@erinparks.com or www.erinparks.com.*

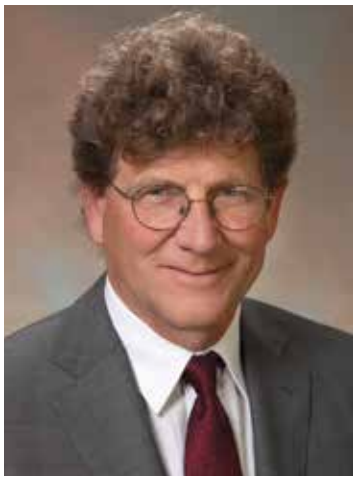
Endnotes

1. Quoting email from local civil litigator, Janean Acevedo Daniels, referring to the Judge Parker's opinion in *Timothy King, et al., Plaintiffs v. Gretchen Whitmer, et al., Defendants, and City of Detroit, Democratic National Committee, Michigan Democratic Party, and Robert Davis, Intervenor-Defendants* (E.D. MI, 8/25/21), 2:20-cv-13134; <https://www.courtlistener.com/docket/18693929/172/king-v-whitmer/> (*King v. Whitmer*).
2. *King v. Whitmer,* supra, at 20.
3. Id. at 2.
4. "Section 1927 provides that any attorney 'who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess of costs, expenses, and attorneys' fees reasonably incurred because of such conduct.' [citation omitted] The purpose of a sanctions award under this provision is to 'deter dilatory litigation practices and to punish aggressive tactics that far exceed zealous advocacy.' [citation omitted]." *King v. Whitmer*, supra, at 20.
5. "Rule 11(b) reads, in part: By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney . . . certifies to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:
   (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
   (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; [and]
   (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery... [footnote omitted]." *King v. Whitmer*, supra, at.21-22.
6. Id. at 2-3, 14.
7. Id. at 3-4.
8. Id. at 26.
9. Id. at 25-28.
10. Id. at 28-34.
11. Id. at 34-37.
12. Id. at 65.
13. Id. at 69-70.
14. Id. at 66.
15. Id. at 68.
16. Id. at 70.
17. Id. at 76.
18. Id. at 77-78.
19. Id. at 80-81, 83.
20. Id. at 85-86.
21. Id. at 87-88.
22. Id. at 89.
23. Id. at 91.
24. Id. at 94.
25. Id. at 101.
26. Quoting email from local civil litigator, Janean Acevedo Daniels, referring to the Judge Parker's opinion in *King v. Whitmer*, supra.
27. Baldwin, Misconduct has its price: Sanctions against attorneys (Sept. 2016) State Bar of California; <https://apps.calbar.ca.gov/mcleselfstudy/mcle_home.aspx?testID=113>
28. Code Civ. Proc. § 128.5.
29. Id.
30. Id.
31. Code Civ. Proc. § 128.7(c)(1), (2).
32. See *Malovec v. Hamrell* (1999) 70 Cal.App.4th 434, 440; CCP § 128.7.
33. Code Civ. Proc. § 128.5.
34. Code Civ. Proc. §2023.030(a).
35. *Corns v. Miller* (1986) 181 Cal.App.3d 195, 200.
36. *Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 261.
37. See Code Civ. Proc. §§ 2023.030, 2023.040.
38. *Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1223.
39. *Ghannoni*, supra, 20 Cal.App.4th at 262.
40. See *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1422.
41. Cal. Rules of Court, Rule 8.276.
42. *In re White* (2004) 121 Cal.App.4th 1453.
43. Bus. & Prof. Code § 6068(o)(3).
44. Bus. & Prof. Code § 6086.7(a)(3).
45. Quoting Janean Acevedo Daniels, supra. Thank you, to Janean, for her words of wisdom and gracious support of SBWL's Thursday lunch mentoring group.

Accessory Dwelling Units (ADUs): Recent California Laws and Local Ordinances in Response to the Housing Crisis

By Joseph R. Billings and John H. Parke

Joseph R. Billings



John H. Parke

It is undeniable that there is (and long has been) a housing supply and affordability crisis in California. According to the California Department of Housing and Community Development, "in the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly." The housing shortage has only been exacerbated by the COVID-19 pandemic, with housing prices increasing and inventory falling even more over the past year and a half. Additionally, the more frequent and severe wildfires in the State of California constrain where new housing can and should be built.

Over the past few years, the California legislature has enacted a slew of legislation in response to the worsening housing crisis. Some of the recent legislation includes changes to landlord-tenant laws such as the Tenant Protection Act of 2019 and the COVID-19 Tenant Relief Act, and changes to zoning and land use laws intended to increase the affordable housing supply in the state. This article will focus specifically on recent legislation regarding Accessory Dwelling Units (ADUs), which are independent housing units built on residential properties with existing single or multi-family homes (think in-law units or granny flats). According to the California legislature, ADUs "offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods" and are "an essential component of California's housing supply."

The recent push for more ADUs in California took off in 2017 when the legislature enacted laws that required local jurisdictions to adopt ordinances allowing ADUs of various types and sizes in all zones permitting single family residences. The 2017 state laws also required vastly simplified permitting processes for ADUs. The County and City of Santa Barbara and the City of Goleta enacted ADU components to their zoning ordinances in 2018 implementing these new state requirements. The 2018 local ADU ordinances included various development standards for ADUs, such as a maximum floor areas, nominal architectural review, parking requirements depending on location, and front, side, and rear yard setbacks.

Following the enactment of the 2017 state ADU laws, some state legislators became impatient with what they perceived as a lack of cooperation by some municipalities with enabling the construction of ADUs. So, in 2019 the California legislature adopted five new bills that made it even easier to develop ADUs. These bills, which went into effect on January 1, 2020, further limited fees and restrictions on building new ADUs, streamlined approval processes, eliminated minimum lot size requirements and certain replacement parking requirements, and allowed for ADUs to be added in multi-family dwellings, among other things.

The several enactments governing the development of ADUs are now codified in Government Code section 65852.2 (hereinafter "Section 65852.2") which distinguishes between ADUs that are entirely exempt from local development standards and those that are subject to limited local development standards. The state legislature also enacted Government Code section 65852.22 authorizing a subcategory of ADUs called junior ADUs that are limited to 500 square feet in floor area and must be located within an existing or new single family dwelling or attached garage.

Following the 2020 ADU laws, the County and City of Santa Barbara and the City of Goleta determined that their year-old ADU ordinances were null and void.

The respective Planning and Development Departments prepared replacement ADU zoning ordinance provisions, each of which are now in effect.

The relevant Government Code sections and the local ordinance provisions create multiple categories and subcategories of ADUs. To say that all of these distinctions and their consequences are totally confusing would be an understatement. One could review Section 65852.2 half a dozen times and find some new twist every time. One could also read any of the dozens of online articles and blogs summarizing the new ADU laws and notice the omission of important details.

It would be nearly impossible for one to memorize all the ins and outs of the various types of ADUs, so this article will summarize some of the distinctions that are worth knowing about for attorneys and property owners in Santa Barbara County. For those who want to dive deeper into the depths of ADU regulation, the County and City of Santa Barbara's websites contain useful ADU resources, as does the California Department of Housing and Community Development's online ADU Handbook.

ADUs can be categorized in different, sometimes overlapping ways. One is physical location in relation to the main house on the property. Some ADUs are entirely within the principal dwelling. This might include separate quarters in the basement of an existing house, for example. Other "attached" ADUs are located within new structures connected to the primary dwelling. Finally, "detached" ADUs are located within structures entirely unconnected to the main house.

Another way of categorizing ADUs is by how they are built. An ADU "conversion" utilizes space in an existing building. The existing building might be the principal dwelling or it might be some other existing accessory structure like a barn, guesthouse, cabana or garage. "New construction" ADUs on the other hand are located in new buildings.

Still another useful way of classifying ADUs is by whether they fit the exemption in Section 65852.2 from local development standards. If they do fit the exemption, only the extremely limited development standards in Section 65852.2 apply. If ADUs do not qualify for the exemption, then development standards in the jurisdiction where the ADU is located will apply.

A final way for categorizing ADUs is by the zoning for the lot on which an ADU is to be located. Lots zoned for multi-family dwellings such as apartments or duplexes have their own development standards under Section 65852.2 for the addition of new, detached ADUs or the conversion of existing space in multi-family dwellings not currently used as liveable space. Some zoning designations, such as those for agricultural properties, allow the construction of houses but are not zoned exclusively for single family dwellings. Lots in those zones are not eligible to be treated as exempt from local development standards under state law. ADUs on lots zoned exclusively for single family dwellings are exempt from local development standards if the ADUs meet the criteria for exemption under Section 65852.2.

The consequences for how an ADU is categorized can be important. Just what exact category an ADU falls into will determine how big it can be, how close to neighboring property lines it can sit, and whether it can be used as a rental, among other things. Many property owners will consider these to be negative features of an ADU that can cause it to interfere with the general peace and quiet of adjoining neighbors, ruin their views, and even reduce their property values.

For example, a new construction detached ADU limited to 16 feet tall and to 800 square feet of floor area is exempt under Section 65852.2 from local development standards. That means it can be built on any lot where the applicable zoning is for single family residences. It may be rented out separately from the principal residence, as long as the rental term is longer than 30 days. It requires no additional parking spaces. It is subject to the usual front yard setback but can be placed as close as 4 feet to the side and rear property lines. It can be on the same lot where a garage or part of the main house has been converted into a junior ADU lot. This could result in three different families, including renters, on what would otherwise be considered a single family lot.

For another example, an ADU conversion in a lot where the applicable zoning is for single family residences is also exempt under Section 65852.2 from local development standards. This may be the conversion of space in an existing or proposed principal dwelling or the conversion of a separate existing accessory structure. Exempt ADU conversions must have exterior access separate from the principal dwelling. This kind of exempt ADU is limited in height and floor area only by the size of the principal dwelling or existing accessory structure it is located in. No additional parking is required. No replacement parking is required for parking lost from the conversion of garage space.

Like exempt new construction detached ADUs, exempt ADU conversions may be rented out separately from the primary dwelling as long as the rental term is longer than 30 days. The only setback exempt ADU conversions are subject to under the County zoning ordinance is the applicable front yard setback. The only side or rear setback requirements under Section 65852.2 for exempt ADU conversions are whatever is sufficient for fire and safety. Like exempt new construction detached ADUs, exempt

ADU conversions may be located on the same property as a junior ADU. This could also result in three different families, including renters, on what would otherwise be considered a single family lot.

Homeowners concerned with ADUs in their neighborhoods, however, will need to accept the proliferation of ADUs as it appears the recent legislation has made an immediate and significant impact on the number of ADUs being built in California. According to the UC Berkeley Terner Center for Housing Innovation, ADU permits in the state increased from almost 6,000 in 2018 to almost 16,000 in 2019. ADU completions more than tripled during that time from 2,000 to almost 7,000.

Although ADU construction has increased across the state, significant barriers to building ADUs still exist. Building an ADU is prohibitively expensive for many Californians. According to the UC Berkeley Terner Center for Housing Innovation, ADU construction data suggests the average cost to build an ADU in California is $167,000. Financing for ADUs is difficult to secure, and most low- and middle-income homeowners do not have the cash on hand to build an ADU. The high costs of construction and lack of financing have resulted in more ADUs being built in higher income areas where there is less need for affordable housing. Given the recent push for ADUs at the state level, it will be interesting to see what new laws are passed to tackle these barriers. ■

Joe Billings is an attorney at Allen & Kimbell, LLP in Santa Barbara, and is the head of the Real Estate and Land Use section of the Santa Barbara County Bar Association. Joe's practice is focused on all aspects of real estate matters, including residential, commercial, and agricultural purchases and sales, leases, title evaluation, easements, boundary disputes, co-ownership arrangements and land use. He can be reached at (805) 963-8611 or jbillings@aklaw.net.

John Parke is a Santa Barbara County Planning Commissioner representing the Third District. Mr. Parke is Of Counsel to Allen & Kimbell, LLP, where he focuses his practice on civil litigation with an emphasis on real estate, land use and trust law. Mr. Parke can be reached at (805) 452-8076 or jparke@aklaw.net.

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

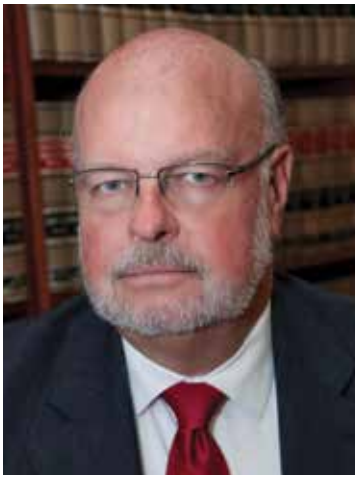
Mandatory Fee Arbitration
Eric Berg (805) 708-0748
eric@berglawgroup.com
Naomi Dewey (805) 979-5160
naomi@trusted.legal
Vanessa Kirker Wright (805) 964-5105
vkw@kirkerwright.com

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

Compassion Satisfaction Bias

By Robert M. Sanger



Robert M. Sanger

In the trial of a defendant for murder, a pathologist testified, "I speak for the victims."[1] In a more recent example, the prosecutor, the lead sheriff's detective, the District Attorney's investigator, and the victim/witness coordinator all wore purple "in solidarity with the victim."[2] These are not isolated examples. Even where it is not expressed, it is not unusual for trial participants to feel that a participant is displaying an allegiance to one side of the case or the other. Forensic experts are not immune from allegiance bias. As recognized in past articles in this *Criminal Justice* column, recently promulgated standards and best practices require that experts do everything they can to eliminate bias in their evaluative analyses and in the presentation of their reports and testimony.

In this month's *Criminal Justice* column, we will look at the unintended consequences of a study just published in the Journal of Forensic Sciences exploring the effects of the work of forensic scientists on their well-being.[3] The study was not a paper on bias, nor was bias a concern of the authorities cited therein. The study was simply an effort to bring better understanding of how certain variables could be analyzed to identify levels of "secondary traumatic stress, burnout, and compassion satisfaction and relate these to demographics and job characteristics." In this regard, "compassion satisfaction" was seen as a mitigating factor offsetting secondary traumatic stress and burnout.

Victim-centric prosecution seems like a nice idea on one level, but obviously it has no place in the structure of constitutional law which seeks to protect the rights of people to be presumed innocent. Compassion for victims is, in some sense, a natural inclination. In many contexts compassion is admirable. For instance, compassion for people suffering from serious diseases, like cancer, is a natural human response. However, even in the civil context, such compassion should not reduce or eliminate proof of causation. In criminal cases, compassion for the victims should not make it easier to convict the accused. In all litigation, a forensic expert must meet scientific standards in their evaluative reports and testimony. In other words, compassion is an inescapable human emotion, but it has no role in determining or reporting scientific results.

Implicit Bias of Forensic Experts

Hence, the crossover significance of recent scientific studies describing how compassion satisfaction can help offset compassion fatigue and burnout. The most recent study makes this association specifically regarding forensic experts. Forensic experts, particularly those who deal directly with victims and victims' families, and those who testify in court, show some of the same symptoms of secondary post-traumatic stress and burnout of first responders. Not surprisingly, the adverse consequences of forensic science work are offset to a degree by "compassion satisfaction." In other words, the feeling that their work is helping victims is not only a factor in their well-being, but it is also a pervasive aspect of what they do.

Any experienced trial lawyer, civil or criminal, will have stories of experts who appear to be biased and who blatantly identify as members of the adversarial team. Efforts have been made to counter this, and to create and adhere to improved scientific standards and best practices. The current calling among the leadership of the forensic disciplines is to put *science* back into forensic science. Last month, this *Criminal Justice* column reviewed the European ENFSI Guidelines. In prior *Santa Barbara Lawyer* editions, the efforts taken by the National Academy of Sciences, NIST and the OSACs, the American Academy of Forensic Sciences and its Academy Standards Board, ANSI, the Department of Justice, and other law enforcement agencies, have been discussed. Although there are still plenty of "hired guns," they are being called out and discouraged at the highest levels of forensics.

The crass and venal practices associated with being a "hired gun" for one side or the other in a civil or criminal matter are easy to identify. Lawyers know which experts will always find the defendant caused disabling fibromyalgia and which will not recognize it as a real medical condition; which will find mechanical causation in unintended acceleration cases and which will find operator error; which will find insanity and which will find the defendant knew right from wrong and knew the nature and quality of his

act; and which will find it was the defendant's firearm to the exclusion of all others, and that not even the class characteristics match. Therefore, we know that allegiance to the position taken by the lawyer hiring the expert can overwhelm any professional integrity in "hired gun" instances.

However, allegiance effects can be much more subtle even if the expert does not approach her duties cynically and believes that she is divesting herself of any biases in forming and expressing evaluative opinions. A famous experiment involved 108 forensic psychologists who were paid to review the same offender case files. Some were led to believe that they were consulting for the defense and others were led to believe that they were consulting for the prosecution. They were asked to score a risk assessment with the same information. Those who believed they were scoring for the defense scored the defendant at a significantly lower risk level than those who thought they were scoring for the prosecution.[4] Many studies have replicated these results.

It is not limited to psychology. The study of partisanship in other aspects of forensic testimony has a long history.[5] For instance, allegiance bias can affect the interpretation of DNA mixtures.[6] In addition, a position in a discipline as an author or researcher can draw allegiance that, in turn, can influence the reports and testimony of the expert. The allegiance to the expert's own research could lead to bias.[7] The fact that a medical examiner works for law enforcement has been found to cause implicit bias in forensic pathology.[8] The effort to identify and attempt to eliminate bias is a major enterprise at this time.

Compassion Satisfaction and the Etiology of Bias

It should be easy to identify the bias among the "hired guns." They are often quite busy, and they can command exorbitantly high fees. Greed motivates experts who are sought after for a particular point of view. Often, the more polarized their opinion, the more support they have from their own community. In addition, a background in research and writing from a particular point of view could prejudice current analysis, reporting and testimony. Who the expert works for, e.g., law enforcement, can have an effect. And, of course, just the fact of who retains the expert can also have an effect.

The research on the stress on first responders and crisis workers may provide an insight into something that has been present in plain view, but which has not, thus far, been associated with bias. Secondary traumatic stress and burnout among first responders and crisis workers is well studied and now, with this new research, it turns out that the same circumstances apply to forensic analysts who deal with crime, victims, and testimony.[9] In other words, first responders, disaster workers and others can develop secondary post-traumatic stress and those workers can burnout due to compassion fatigue. This new study indicates that forensic experts may suffer from the same symptoms and consequences as first responders, particularly if they deal with victims or victim's families, or if they must testify.

But now we also know that empirical research indicates that forensic experts compensate for secondary post-traumatic stress and burnout, and experience "compassion satisfaction" because of their forensic work. In other words, part of the coping mechanism of forensic experts is being compassionate towards victims. Coping with stress is generally a good thing and, one could imagine, most people would say compassion toward people who have suffered harm is a good thing. The problem is that in the context of forensic evaluations, reports and testimony, compassion for one side or the other of a case is an expression of implicit bias even if they do not amount to express bias as in the two introductory examples – speaking for the victim and wearing purple.

This new research lends additional weight to the importance of blind and double-blind analyses. "Compassion satisfaction" cannot be eliminated from the human psyche and certainly should not be. However, in a scientific setting, especially forensic evaluative work, compassion for one "side" or another should be eliminated as a variable affecting the outcome. This is just as true in civil litigation as well as criminal law. For instance, compassion for cancer victims should not have an influence on establishing causation as to a commercial activity that may or may not have had an actual effect. So too, compassion for a trauma victim should not influence the proof required to find a criminal defendant guilty.

Conclusion

The unintended consequence of studies on the counterbalancing effect of "compassion satisfaction" on secondary traumatic stress and burnout on the well-being of forensic experts also empirically documents yet another source of bias in the evaluative analysis, reporting, and testimony of those same experts. ■

Robert M. Sanger is a Certified Criminal Law Specialist (California State Bar Board of Legal Specialization) and has been practicing for 47 years in Santa Barbara as a litigation partner at Sanger Swysen & Dunkle. Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is a Professor of Law and Forensic Science at the Santa Barbara College of Law. Mr. Sanger is an Associate Member of the Council of Forensic Science

Educators (COFSE). He is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization. The opinions expressed here are those of the author and do not necessarily reflect those of the organizations with which he is associated. ©Robert M. Sanger.

ENDNOTES

1 The pathologist met with prosecutors and changed his report to better fit their theory before it was turned over to the defense. He admitted to doing so when cross-examined. The quoted testimony was in response to a claim of bias based on that conduct.
2 This is according to the cross-examination testimony of the lead detective. Not coincidentally, the detective admitted that the move was prompted by a website regarding the disappearance of the victim advocating for the conviction for murder of the defendant.
3 Andrew Levin, Heidi Putney, Danielle Crimmins, and Jonathan McGrath, *Secondary traumatic stress, burnout, compassion satisfaction, and perceived organizational trauma readiness in forensic science professionals* (2021) 66 J FORENSIC SCI. 1758–1769.
4 Daniel C. Murrie, Marcus T. Boccaccini, Lucy A. Guarnera, Katrina A. Rufino, *Are Forensic Experts Biased by the Side That Retained Them?* (2013) 24 J. OF PSYCHOLOGICAL SCIENCE, 1889-1897.
5 See, e.g., Mnookin, J., *Expert evidence, partisanship, and epistemic confidence* (2008) 73 BROOKLYN LAW REVIEW, 587–611.
6 Dror, I. E., Hampikian, G., *Subjectivity and bias in forensic DNA mixture interpretation* (2011) 51 SCIENCE AND JUSTICE, 204–208.
7 Leykin, Yan; DeRubeis, Robert J., *Allegiance in Psychotherapy Outcome Research: Separating Association from Bias* (2009) CLINICAL PSYCHOLOGY: SCIENCE AND PRACTICE 54–65.
8 Itiel Dror PhD, Judy Melinek MD, Jonathan L. Arden MD, Jeff Kukucka PhD, Sarah Hawkins JD, Joye Carter MD, PhD, Daniel S. Atherton MD, *Cognitive bias in forensic pathology decisions* (2021) 66 J. Forensic Sci. 1751-1757.
9 Andrew Levin, et al., supra.

2021 Bench & Bar Meetings

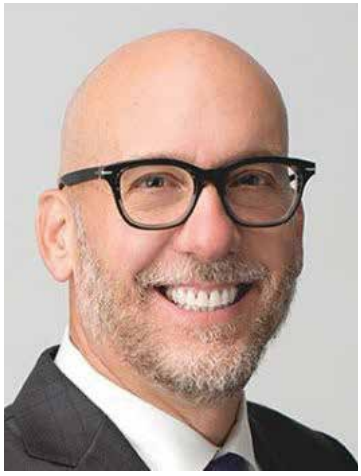
As Assistant Presiding Judge, the Honorable Pauline Maxwell has set the schedule for the last 2021 Bench and Bar Meeting that will take place on:

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.**

The Further Expansion of—and Assertion of— "Guardrails" to California's Notions of "Domestic Violence" in Family Law

By Gregory W. Herring



Gregory W. Herring

Over the past twenty or so years, California's Legislature has enacted a hodgepodge of confusing and sometimes contradictory provisions, as Family Law guru, Garrett Dailey, has put it, in its rush to enact one domestic violence ("DV") statute after another.

As of January 1, 2021, *coercive control* is a newly codified form of DV under the Domestic Violence Protection Act ("DVPA").[1] Family Code section 6320 provides for *ex parte* orders enjoining harassment, threats, and violence. Under the statute, "coercive control" is defined as:

"… a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

(1) Isolating the other party from friends, relatives, or other sources of support.
(2) Depriving the other party of basic necessities.
(3) Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or access to services.
(4) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage."[2]

The standard for "disturbing the peace of the other party" sufficient to warrant DV orders is *"conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party."*[3] This grew from the 2014 decision in *Burquet v. Brumbaugh* rejecting arguments that the Penal Code's stricter definition ought to apply.[4]

In making these amendments, the Legislature was concerned about expanding the scope of abusive conduct beyond what was necessary, taking care to "… limit the application … to clearly abusive behaviors."[5] The trial courts were left with the hard work of analyzing and applying these arguably amorphous notions, including in the context of complex child custody disputes.[6]

On July 27, 2021, the Fourth Appellate District Court of Appeal issued an opinion in *In re Marriage of L.R. and K.A.*[7] The opinion is now certified for publication.[8] The case involved alleged DV in the context of a high conflict custody proceeding. The Court emphasized that coercive control is to be viewed within "certain parameters," including:

"… 'a mental state, objective reasonableness, causation, foreseeable harm, actual harm' – [toward] 'provid[ing] strong guardrails to help ensure that the [law] will function as intended and not reach benign conduct that is ordinarily tolerated in relationships or that does not actually distress the person.'"[9]

It explained, "[t]hese 'guardrails' are necessary because [a DV] order implicates fundamental liberty rights, as a violation of its provisions is a crime, … and it is a factor that is weighed in child custody and visitation determinations." The Court continued, "[r]especting these guardrails, courts are concluding that the [DV laws were] not enacted to address all disputes between [former and existing] couples, or to create an alternative forum for resolution of every dispute between such individuals."[10]

Earlier in the case, the San Diego trial court found that the mother involved acted "obsessively" in an incident with the father and their ten-year-old daughter during the mother's scheduled parenting time at a visitation center. The trial court found that the mother was "aggressive and controlling" during the incident, and that she "escalated an already emotionally intense situation, and subjected both the [father] and the child to further distress," and "she manipulated that child's already sensitive emotional state to a degree that was not acceptable." It noted that a responding law enforcement officer testified that it was "one of the worse" DV calls of his 28-year career. The trial court found that the mother "escalated [the situation] beyond control." Based on those findings, the trial court found that the mother committed DV by disturbing the father's

mental peace and calm, including through "controlling and coercive behavior." It therefore issued DV orders against her, protecting him and the child. [11]

But the Court of Appeal reversed, concluding that "[m]other's conduct did not rise to the level of destroying father's mental and emotional calm to constitute abuse with the meaning of the [law]." In short: *The trial court had the authority to handle the matter as a "pure" child custody dispute outside of the DVPA and should have done so.*[12]

The opinion in *In re Marriage of L.R. and K.A.* immediately set off alarms. Appellate specialists raised concerns that the Court of Appeal appeared to have wrongly asserted its own assessment of the facts over that of the proper factfinder—the trial court. At the substantive level, the appellate court's logic—if extrapolated—could erode hard-fought gains in the eyes of DV prevention professionals (including child development specialists, child advocates, women's advocates, family law attorneys, judicial officers, and many others). *Of course*, trial courts in *any* custody case have the authority to handle custody matters outside of the DVPA. Determinations of DV are always ones of degree. These analyses and applications are well within the normal purview of the trial courts.

As California's Legislature continues to find it popular to expand notions of DV, *In re Marriage of L.R. and K.A.* may be a harbinger of further "guardrails" from the appellate courts. ■

Greg Herring is a CFLS, and a Fellow of the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers. He is the principal of Herring Law Group, a family law firm primarily serving "the 805" with offices in Santa Barbara, Ventura, and San Luis Obispo Counties. His prior articles and blog entries are at www.theherringlawgroup.com.

1 Fam. Code § 6200 *et seq*.
2 Fam. Code § 6320.
3 Fam. Code § 6320 (c).
4 *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1146.
5 Senate Judiciary Committee Analysis, cited by *In re Marriage of L.R. and K.A.,* Cal.App., July 27, 2021, D077533 (page citations are not available as of this writing).
6 Under Family Code sections 3020, 3111, and 3044, DV is an express factor in any custody matter.
7 *In re Marriage of L.R. and K.A.* (July 27,2021, No. Do77533) ___ Cal. App.5th ___ < www.courts.ca.gov/opinions/documents/D077533.PDF>
8 Id.
9 Id.
10 Id.
11 Id.
12. Id.

Pearls of Wisdom from the Santa Barbara Superior Court Judicial Secretaries

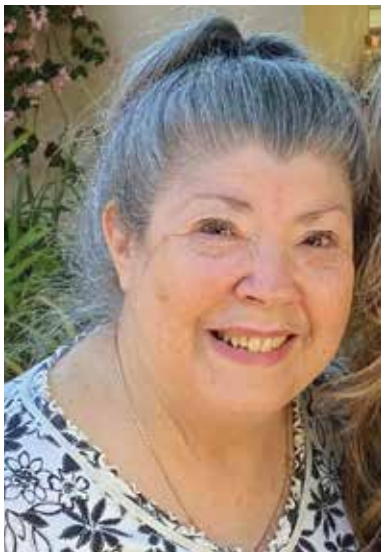
By Marilyn Metzner

It is time for a few hints from the judicial secretaries in the Anacapa Division of Santa Barbara Superior Court regarding civil matters which arise too frequently, such as requests for *ex parte* hearings, filing inquiries, hearing date availability, and stipulations and orders.

Ex Parte Hearings

There is a concern amongst the local judiciary that lawyers are practicing much too frequently through the *ex parte* system. California Rules of Court and our Local Court Rules state definitively that *ex parte* hearings are for dire emergencies only. This does not apply to economic loss, inconvenient scheduling, unsatisfactory visitation schedules, not having work done in time to be prepared for hearing/trial, or other matters of convenience. Potential emergencies include: Not returning a child from visitation; not sending a child for visitation for a very good reason; and motions to compel when discovery cut-off is imminent. Many requests are simply not a dire emergency.

Lawyers are seeking *ex parte* hearings on motions to advance the hearing date assigned in the Clerk's office due to the unavailability of the requested date arising from impacted judicial calendars. It takes extenuating circumstances for judicial secretaries to give an *ex parte* date to seek advancement. For example, moving a 93-year-old conservatee to another date when the next available hearing date for the Petition is months in advance.



Marilym Metzner

There are only three civil judges in South County compared to eight criminal judges. The judges can only do so much, and they do so much more. Please think about that before filing an *ex parte* application.

Filing Inquiries

Judicial Secretaries are not located in the Superior Court Clerk's office. As such, they do not know why a particular document was rejected for filing. It is legal counsel's job to review the electronic rejection slip which spells out the reason for rejection. The judicial secretaries do not know exactly how long it takes to process a filing and get an Order into the judge's queue for signature but rest assured - it takes more than one day. And speaking of queues, judges are in session all day on most days. They have *ex parte* hearings before taking the Bench for the day's session. They have meetings, conferences, and telephone calls which they cannot do throughout the day while sitting in court. Nevertheless, the judges do address their queues every day, and they do the best they can. Please be patient.

Dates Available For Hearing

On average judicial calendars look like this:

8:30 AM	Case Management Conferences
10:00 AM	Civil Law and Motion (including Name Changes and Fee Waivers)
11:30 AM	Trial Confirmations
1:30 PM	Family Law proceedings for the rest of the day (including Case Management Conferences)

Each civil judge also has a "Calendar Day" as follows:

Monday:	Judge Sterne
Tuesday:	Judge Anderle
Friday:	Judge Geck

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.

A normal Calendar Day consists of 15 to 25 civil Case Management Conferences, 6 to 10 civil law and motions, 2 or 3 Name Change Petitions, 2 to 5 trial confirmations, 15 to 25 Family Law Case Management Conferences, and 6 to 12 Family Law motions. This does not include evidentiary hearings and adoptions. Count it up. Judges must prepare for every one of the foregoing matters and come to a tentative decision on many of them.

A quota has been set that caps the matters which will be set for hearing in each category on every date. Attorneys must obtain another date if the date is not available when a filing comes through the pipeline. What else can be done with only three civil judges in the Anacapa Division?

Stipulations/Orders

Stipulations and Orders do not go directly to the judge. They must be "vetted"—case number checked, parties' names, etc.. Then, if applicable, the Order must be reviewed to make sure it comports with the Clerk's Minute Order. This takes time. It is not instantaneous. And some Orders take longer than others to be processed. After that, the Order gets put into the judge's queue. Meanwhile, the judge is on the Bench listening to cases not looking through the queue for Orders to sign. This all takes time. And, the judges have meetings, or a conference call, during the noon hour. Consider all that the judges must do every day before calling a judicial secretary the day after submitting a Stipulation or Order.

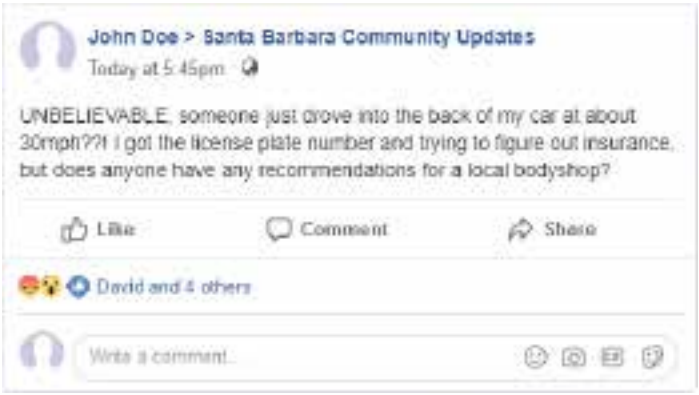
With that said, the judicial secretaries of the Santa Barbara Superior Court, Anacapa Division, are happy to hear attorney requests! ■

Marilyn Metzner has been a legal secretary for 65 years. She has been with Judge Thomas Anderle, both before and since he became a judge, for 45 years, and with the Santa Barbara Superior Court for over 23 years. She is currently the Judicial Secretary for Judges Anderle and Colleen Sterne.

Responding to an Online Post: Solicitation or Advertising?

By Daniel Bauerlein

Like it or not, social media platforms are a major component of modern society, with over *seventy percent* of adults reporting using Facebook at least once a day in the United States.[1] Between global platforms such as Facebook, Twitter and LinkedIn, or hyper-local social media sites such as Nextdoor, social media is a rich source of both potential clients and ethical quandaries.



For example, it is not uncommon to stumble across posts like the above, describing scenarios with potentially significant legal implications. You know that it could be a great case and that you could help that person, and you know that prospective clients often value proactive contact and responsiveness. But can you "drop a comment" offering your services without running afoul of any ethical or professional obligations?

A potential answer lies in California Rules of Professional Conduct (CRPC), Rule 7.3, governing direct client solicitation. Recently enacted in 2018, Rule 7.3, paragraph (a) states "A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyer's pecuniary gain, unless the person contacted: (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer." Rule 7.3, paragraph (e) defines the terms "solicitation" and "solicit" as an "oral or written targeted communication initiated by or on behalf of the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services."


Daniel Bauerlein

Assuming the hypothetical poster is a stranger and non-lawyer, and that you are offering your services with a view to getting paid, whether your offer of services, directed at a specific individual, constitutes prohibited solicitation under Rule 7.3 appears to hinge on whether a social media comment constitutes a "real-time electronic contact" within the meaning of Rule 7.3.

Is Commenting on a Social Media Post a "Real-time Electronic Contact"?

First, it should be noted that ABA Model Rule 7.3 prohibits only "live person-to-person contact,"[2] and the Comment to the Rule specifically excludes "chat rooms, text messages or other written communications that recipients may easily disregard" as types of prohibited solicitations.[3] A comment on a social media post appears to fall squarely within the comment exception to the Model Rule. In adopting its own version of Model Rule 7.3, however, California inserted the phrase "real-time electronic contact" as another type of prohibited communication.

The Executive Summary of CRPC, Rule 7.3, provides guidance for the addition of this term, explaining that "real-time electronic contact" was added because "the same concerns regarding in-person or live telephone communications applies to real-time electronic contact such as communications in a chat room or by instant messaging."[4]

Specifically, the Commission for the Revision of the Rules of Professional Conduct was concerned about "the ability of lawyers to employ their skills in the persuasive arts to overreach and convince a person in need of legal services to retain the lawyer without the person having had time to reflect on this important decision."[5] While some differences may exist between traditional "live chatrooms" and social media posts, those lines have been blurred significantly by new features rolled out by social media sites. The California State Bar's stated policy of protecting individuals from

unwanted solicitation appears to favor treating social media commenting as a "real-time electronic contact."[6]

Can You Offer Legal Services in a Social Media Comment Without Violating the CRPC?

If a social media comment constitutes a "real-time electronic comment," is there any way for an attorney to contact a potential client as in the example above without violating the CRPC? Yes—if certain guidelines are followed. An attorney may respond to the post if they follow Rule 7.3, paragraph (c), which states "Every written, recorded or electronic communication from a lawyer soliciting professional employment from any person known to be in need of legal services in a particular matter shall include the word 'Advertisement' or words of similar import… at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement."

By including the word "Advertisement," the person who made the post will not be misled into thinking that the attorney's reply was an official correspondence that required their response. He or she could simply ignore the reply or follow-up with the attorney at their convenience.

Conclusion

Ultimately, the temptation to fire off an informal comment, or offer of services, to a potential client on social media can be great but doing so carries the risk of breaching Rule 7.3's ethical and professional obligation to refrain from improper solicitation. If you must offer services in passing, follow the guidelines of Rule 7.3(c), and make clear that your comment is an "Advertisement" for your services. ■

Daniel Bauerlein joined NordstrandBlack PC as an attorney in 2020. For three years before that, Mr. Bauerlein worked for the firm while attending Santa Barbara College of Law where he graduated third in his class. Prior to that, Daniel earned a Bachelor of Science degree in Environmental Science, Technology, and Policy from California State University, Monterey Bay. He then went on to serve as an operations specialist on a national security cutter in the United States Coast Guard. While serving in the Coast Guard, Mr. Bauerlein furthered his education by receiving a Master's degree in Environmental Policy and Management from American Military University, where he graduated with honors.

ENDNOTES

1 "Social Media Use in 2021," Pew Research Center (Apr.7, 2021). <https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/>
2 ABA Model Rule 7.3.
3 ABA Model Rule 7.3, Comment 2.
4 The Commission for the Revision of the Rules of Professional Conduct, New Rules of Professional Conduct 7.2, 7.3, 7.4 & 7.5, <https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_7.3-Exec_Summary-Redline.pdf>
5 Id.
6 See e.g., "Live Commenting: Behind the Scenes", Facebook Engineering (Feb. 7, 2011) ("Commenting on Facebook content has been an asynchronous form of communication. Until now. Live commenting, which we rolled out to all of our users a couple weeks ago, creates opportunities for spontaneous online conversations to take place in real time, leading to serendipitous connections that may not have ever happened otherwise.")

Thank You To Our Fee Arbitration Panel!

The SBCBA would like to extend many thanks to the following Mandatory Fee Arbitration attorney-arbitrators for their service in 2020-2021. The program, which operates under the auspices of the State Bar of California, provides services to resolve fee disputes between clients and attorneys.

Stephen Anderson
Monty Amyx
Marcus Bird
Brad Brown
Penny Clemmons
Martin Cohn
Richard Lloyd
John Thyne
Rachel Wilson
Eric Woosley

A big thank you also to the Chair and committee members of the fee arbitration program, **Eric Berg, Naomi Dewey** and **Vanessa Kirker Wright**.

Santa Barbara County Bar Association
2022 Membership Application

Member Name: _____

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

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

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

☐ Check here to opt out of receiving the monthly publication in hard copy. You'll receive a pdf version instead.

Office Address: _____

_____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

Phone Number: _____ Fax Number: _____

Home Address: _____

City: _____ State: _____ Zip: _____

State Bar #: _____ Year Admitted to Bar: _____

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

SCHEDULE OF DUES FOR 2022

Active Members	$130
Student Members	$30
New Admittees (First Year Attorneys Only)	$00
Affiliate Members (non-Attorney members only)	$65
Non-Profit	$65
Inactive/Retired	$65
Total amount enclosed	$_____.__

AREAS OF INTEREST OR PRACTICE (check box as applicable)

☐ ADR
☐ Civil Litigation
☐ Criminal
☐ Debtor/Creditor
☐ Elder Law
☐ Employment Law
☐ Estate Planning/Probate
☐ Family Law
☐ In-House Counsel & Corporate Law
☐ Intellectual Property/Tech. Business
☐ Real Property/Land Use
☐ Taxation

Mail completed form along with check to:
Santa Barbara County Bar Association, 15 West Carrillo Street, Suite 106, Santa Barbara, Ca 93101 Tel: (805)569-5511

Motions

Patrick M. Etchebehere

Brownstein Hyatt Farber Schreck is pleased to announce that **Patrick M. Etchebehere** has joined the firm as of counsel in the Santa Barbara office. Mr. Etchebehere, joining the firm's Corporate & Business Department, focuses his practice on trusts and estates. He creates tailored estate plans, structures entity formations and transactions, and helps clients formulate private foundations. Prior to Brownstein, Patrick founded an estate planning practice, Etchebehere Law Group, in the San Francisco Bay Area. He also served as an associate attorney at Avansino, Melarkey, Knobel, Mulligan & McKenzie in Reno, Nevada. Mr. Etchebehere earned his JD and LLM from the University of San Francisco School of Law and his bachelor's degree from the University of California, Santa Barbara.

* * *

On August 19th, 2021, all of **Ghitterman, Ghitterman, & Feld** (GG&F) celebrated as **Alicia Liera Rodriguez** was sworn-in as a member of the State Bar of California. **GG& F** is very proud of Alicia and proud to celebrate 65 years representing California employees seeking all available disability benefits through many complicated programs, including Workers' Compensation, Social Security Disability, Disability Retirement and other civil remedies. Ms. Liera Rodriguez began her career with GG&F in 2016, bringing her experience as a legal assistant for several different law offices and fluency in multiple languages to the firm. During her time at GG&F, Alicia demonstrated care for her clients and the community through presentations on workers' compensation and Social Security Disability, through organizations such as United Farm Workers Foundation, CAUSE, and Central California Legal Services. Alicia graduated from the Santa Barbara College of Law where she won the Witkin Legal Award for Academic Excellence. She also holds an MBA and has served as an Adjunct Professor of Business Management and Business Law for Santa Barbara City College.

Alicia Liera Rodriguez

* * *

In 2021, the new law firm of **Thyne Taylor Fox Howard, LLP (TTF&H)** was established and has moved to its new offices at 205 East Carrillo Street, #100, Santa Barbara, California. The firm's disciplines include real estate, business & corporations, estate planning & probate, intellectual property & entertainment law, bankruptcy, and civil litigation.

Senior partner **John Thyne** is a long time Santa Barbara attorney who co-founded the successful local real estate brokerage firm, Goodwin & Thyne Properties, and taught at the Santa Barbara and Ventura Colleges of Law. Mr. Thyne has served as President of the Santa Barbara County Bar Foundation and on the Santa Barbara County Bar Association board of directors.

Jerry J. Howard, Justin Fox, Lacy Taylor -and John Thyne

Partner **Lacy Taylor** graduated as valedictorian of class at the Santa Barbara College of Law and was an associate in the firm's predecessor for six years. Lacy currently serves as President of the University Club of Santa Barbara and on the board of the William L. Gordon American Inns of Court.

Partner **Justin Fox** has practiced alongside members of the firm for the past eight years. Justin brings decades of unique and unprecedented experience in the entertainment industry and actively participates in charitable organizations throughout the community.

Partner **Jerry J. Howard** is a seasoned litigator, has a thriving estate planning and administration practice. He served on the boards of the Santa Barbara Boys and Girls Club and Standing Together to End Sexual Assault (formerly known as the Santa Barbara Rape Crisis Center).

Associate, **Angela Greenspan**, is a member of the William L. Gordon American Inns of Court, Santa Barbara Women Lawyers, and the National Charity League of Santa Barbara.

Office Manager, **Marietta Jablonka**, and Paralegals **Maria Bueno** and **Ashley Franco,** are also essential team members at **TTF&H**.

SAVE THE DATE

FOR THE
SANTA BARBARA COUNTY
BAR ASSOCIATION'S

2022
Bench & Bar Conference

Friday, January 7, 2022

8:30am to 4:30pm

Featuring Keynote Speaker

Justin Brooks

Director and Co-Founder of the
California Innocence Project

Join us as we explore emerging legal and social issues from 2021, including cryptocurrency, constitutional law, trust and estates, and family law.

6 hours of MCLE, including mandatory subject units

Verdicts, Settlements & Decisions

Sobhani Group, LLC v. County of Santa Barbara

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA

CASE NUMBER:	18CV05413
TYPE OF CASE:	Breach of Contract
TYPE OF PROCEEDING:	Jury Trial
JUDGE:	Hon. Thomas P. Anderle
JURY DELIBERATION:	5.5 hours
DATE OF VERDICT:	General Verdict - September 9, 2021
PLAINTIFF:	Sobhani Group, LLC
PLAINTIFF'S COUNSEL:	Craig Granet and Claire K. Mitchell, Rimôn Law
DEFENDANTS:	County of Santa Barbara
DEFENDANT'S COUNSEL:	Barbara A. Carroll and Claire E. Hartley, Deputy County Counsel
INSURANCE CARRIER:	Not Applicable
EXPERTS:	Plaintiff: Lee Segal (commercial real estate broker); William Jackson (CPA); Michael Patrick (commercial lending broker) Defense: Jim Turner (commercial real estate broker); Jennifer Polhemus (forensic economist - didn't testify at trial); Rick Rodriguez (commercial lending broker).

OVERVIEW OF CASE: Plaintiff owns a commercial office building in which the County was a tenant. The parties signed a contract for a lease that was due to expire in 2018. Plaintiff claimed the County exercised an option to renew the lease to 2023 and breached the contract when it vacated the property. The County denied exercising the option to renew and breaching the lease.

FACTS & CONTENTIONS: The County and plaintiff signed a 7.5-year lease in 1995; the lease had three 5-year options, the last to expire in 2018. The lease was amended three times over the years, and one of the amendments gave the County a fourth 5-year option, potentially extending the lease to 2023.

In 2017, plaintiff sought a loan using the office building as collateral. The plaintiff had concerns about taking out a loan given the County's short-term lease, and in March 2017 requested that the County exercise its option to renew. The County declined to do so at that time. As part of the loan process, the County was asked to complete a Tenant Estoppel Certificate. A draft Tenant Estoppel Certificate was partially completed by the lender before it was sent to the County by plaintiff. The draft Tenant Estoppel Certificate stated that the lease expiration date was 2023. The County made numerous changes to the draft Tenant Estoppel Certificate, but did not change the 2023 date, and signed it on May 10, 2017. The County contended that the 2023 date was a mistake, and that the lease expiration date should have been 2018. Plaintiff contended that, based on the County's representation that the lease expiration date was 2023, it closed escrow on the loan, which plaintiff would not have done without the 2023 lease expiration date.

Plaintiff subsequently sent a notice regarding the 2018 expiration of the lease and asking the County if it intended to renew. The County responded stating that it would not be exercising the option to renew. Plaintiff then stated that because

the County had signed a Tenant Estoppel Certificate with a 2023 lease expiration date it was bound by the recital in that instrument, that the County had effectively exercised the option by signing the Certificate and would be in breach of the lease if it vacated the premises before the 2023 date.

SUMMARY OF CLAIMED DAMAGES: Plaintiff claimed approximately $1.7M in damages consisting of 5 years of rent and common area maintenance charges, demolition costs and miscellaneous other expenses related to the vacated office space.

SUMMARY OF SETTLEMENT DISCUSSIONS: The parties participated in a CMADRESS session and a Mandatory Settlement Conference. The parties also engaged in private mediation with Judge Melinda Johnson (ret.).

RESULT: The jury returned a general verdict in favor of the County of Santa Barbara and against the Sobhani Group, LLC on the legal issues, 12-0. Judge Anderle ruled in favor of the County of Santa Barbara on equitable issues.

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.

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.

OFFICE SPACE FOR RENT
Two ground floor professional offices each 13' x 11' and 350 sq feet of adjoining workstations. In the Santa Barbara Business Center and two blocks from the ocean. $2,200 a month. Contact alex@anticounilaw.com.

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.

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.

SEEKING 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.

SEEKING EXPERIENCED LITIGATOR
Ventura County's largest law firm, **Ferguson Case Orr Paterson** LLP, seeks a top caliber litigation associate. The ideal candidate has 1 to 5 years of experience, strong academic credentials, and excellent writing and communication skills. Ties to the Ventura County area are a plus. This is an ideal opportunity to build your career in a great community with an esteemed law firm that pays competitive salaries and benefits. Please send a resume with a cover letter introducing yourself and describing your experience to sbarron@fcoplaw.com. Applicants without litigation experience will not be considered.

SEEKING ESTATE PLANNING/TRANSACTIONS ASSOCIATE
Rogers, Sheffield and Campbell, LLP, a Santa Barbara-based law firm, seeks an associate attorney to bolster its busy transactional practice, to assist with estate planning/trust administration matters, the formation of business entities, as well as business and real estate transactions. Ideal candidates will have: (i) at least two (2) years of relevant experience at another firm, (ii) excellent academic credentials and interpersonal skills, and (iii) graduated from a top-tier law school. All candidates must be licensed to practice law in California. Interested candidates should send their resumes to: reception@rogerssheffield.com.

SEEKING EXPERIENCED LITIGATOR
Rogers, Sheffield and Campbell, LLP, also seeks an experienced litigator to bolster its busy trust and civil litigation practice. Ideal candidates will: (i) have at least five (5) years of relevant experience at another firm, including significant trial experience, (ii) be able to handle a case from beginning to end with little or no supervision, (iii) have excellent academic credentials and interpersonal skills, and (iv) have graduated from a top-tier law school. All candidates must be licensed to practice law in California. Interested candidates should send their resumes to: reception@rogerssheffield.com.

Allen & Kimbell, LLP provides personalized real estate, estate planning, business counseling, and litigation legal services. The firm currently seeks applicants for:

ASSOCIATE ATTORNEY: Candidates must be a member of the California State Bar with one to four years of transactional or litigation experience. Superior writing ability, academic credentials and work ethic are essential.

PARALEGAL / LEGAL ASSISTANT: Candidates must have a college degree and paralegal certificate. Prior experience is useful, but we seek someone who can learn to work effectively within the structure of our firm's practice.

Allen & Kimbell's competitive compensation packages include a 401(k) and profit sharing plan. Applicants may submit resumes by email to Administrator@aklaw.net.

October 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 Native American Women's Equal Pay Day	2
3	4 Child Health Day	5	6 The SBCBA Civil Litigation Section Presents MCLE: "What Kanye West Can Teach Us About Litigation"	7	8	9 Leif Erikson Day
10 World Mental Health Day	11 Columbus Day/National Indigenous People's Day Court Holiday	12	13 The SBWL Presents: "2021 MCLE Series: Paving the Way – Female Leaders Speak about their Journey"	14	15 White Cane Safety Day	16
17	18	19	20 International Pronouns Day	21	22	23
24 United Nations Day	25	26	27	28	29 Latinx Women's Equal Pay Day	30
31 Halloween						

The Santa Barbara Bar Association is a State Bar of California MCLE approved provider. Please visit www.sblaw.org to view SBCBA event details. Pricing discounted for current SBCBA members.

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