

# *Santa Barbara* Lawyer

Official Publication of the Santa Barbara County Bar Association  
December 2022 • Issue 603



## **The Notable Marilyn Metzner Retires at 84**

*Inside:* President's Message / Letter from the Editor / 2023 Bench  
and Bar Conference / Lawyer Advertising and Solicitation in the  
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# Santa Barbara Lawyer

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Marilyn Metzner

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## President's Message

BY ERIC BERG

This year we saw the beginning of a return to the personal interactions we all crave. In person events have returned to many of our schedules; at the same time, we've found new ways to meaningfully connect in hybrid spaces. I feel lucky that the Bar continues to bring us together in these changing times.

Our first in person event in three years—our Summer Barbeque—was a huge success. Every member I spoke to said, “we’ve missed this”—and the feeling was mutual.

Leaders of the Bar recently had the honor of gathering with an impressive group of over a dozen new admittees sworn in over the past three years. It inspires me to see so many of these new lawyers coming to the law as a second career, having managed to successfully navigate law school along with a full time job commitment.

At our Annual Dinner, we honored an impressive group of local lawyers and jurists. The Bar does not automatically hand out awards every year. It only does so when one of our colleagues distinguishes themselves in such an extraordinary manner that we can't help but take notice. We have

three such individuals to celebrate this year. I hope you will agree that Lol Sorensen, Robin Unander and Von Nguyen Deroian represent the best of our profession and remind us of both the privilege and the responsibility we are given to affect positive change in our community.

Most of all, I'm proud that the Bar Association is a respected and respectful leader in the legal community.

Every interaction we have, every day, affords us the opportunity to frame the public's perception of our profession. The best part of being President is that I've had a number of opportunities to have those conversations. When students ask me what a lawyer does, I tell them we help people solve their most serious and stressful problems. That's not what they usually expect to hear. But I think it's a critical message to deliver, and it has been a joy to have this platform to be able to do it.

Thank you for allowing me to serve as your President. Thank you to my wonderful wife Shaunah, and my sons Matthew and Henry; as meaningful as the last year has been, husband and dad will always remain my two most important jobs. Please join me in warmly welcoming Jennifer Duffy as our 2023 President. ■



*Eric Berg*

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## Letter from the Editor Cue Boys II Men: “End of the Road”

BY MICHELLE E. ROBERSON

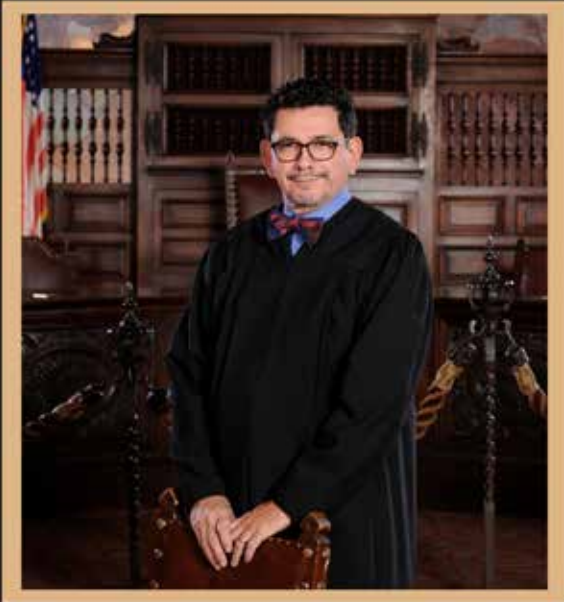
Another year closes and we are in the holiday season. La Arcada will sprinkle with lights and the City has already sent out its email for their 36<sup>th</sup> Annual Santa Barbara Parade of Lights in a clever pun (boy do I love them), Deck the Hulls!

Many of us take December to start thinking of the future, setting those resolutions to start in January. I'd like to start by looking back at this year. We started the year with our longtime executive director, Lida Sideris. Lida—a

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respectable author having just published Book 5 of her series, *Gambling with Murder*—retired earlier this year leaving a huge void in our organization.

The executive committee, comprised of our incoming president, Jennifer Duffy, Secretary Stephen Dunkle, our CFO Erin Parks, and immediate Past President Elizabeth Diaz all lead by Eric Berg, 2022 President, immediately jumped into action.

Eric has been an exceptional leader this past year taking all things in stride. Committing to a search for a new executive director, setting interviews with the executive committee and reporting promptly to the board. Navigating, along with Ms. Parks, the current financial impact inflation has taken on the organization, spearheading the resumption of in-person events...the list goes on and on.

We are forever grateful to Eric for his commitment to SBCBA.

Now here we are, fortunate to have our new Executive Director Marietta Jablonka filling those large shoes for Lida. We prepare as new leadership enters and know that Jenn Duffy will continue on the tradition of carrying this organization with grace and professionalism.

2023 is upon us and great things are continuing to come our way thanks to the roads paved by those before us. As I sign off from my tenure as this year's editor, I extend a warm welcome to Bradford Brown, incoming editor for this magazine and his assistant editor, Alex Nissani. I know they will be amazing with the support of our community that will continue to submit articles for publication.

*Michelle E. Roberson is CEO of Sierra Property Group, Inc. and Sierra Support Services, Inc. She also advises and consults on matters related to owning and renting real property. She has two amazing little girls, Reese and Elliot, with her husband Kevin of over seventeen years that are ever patient and supportive of her numerous hobbies and business endeavors. If you'd like to read more of Michelle's writings, you may do so by visiting <https://llawma.substack.com>*



*Michelle E. Roberson*



# SBCBA 2023 Bench and Bar Conference

BY THE BENCH AND BAR COMMITTEE

The Santa Barbara County Bar Association (“SBCBA”) will continue its long tradition of hosting an annual “Bench & Bar Conference” on Friday, January 27, 2023.

The full-day virtual conference will offer six hours of continuing legal education credit, including the specialty credits of legal ethics, competence, and elimination of bias, and will be followed by an in-person happy hour mixer at the University Club of Santa Barbara.

The Bench & Bar Committee is excited to welcome a diverse selection of presenters on various legal topics, including keynote speaker, Hector Villagra, Executive Director at the American Civil Liberties Union (“ACLU”) of Southern California.

ACLU defends the fundamental rights outlined in the United States Constitution and Bill of Rights, including the right to freedom of speech and assembly, the right to religious freedom, due process of law, equality before the

law and the right to privacy. ACLU has affiliates in all 50 states, Washington D.C., and Puerto Rico. California has three affiliates, ACLU of Northern California, ACLU of Southern California, and the ACLU of San Diego & Imperial Counties.

Prior to joining the ACLU SoCal, Mr. Villagra served as regional counsel for the Los Angeles Regional Office of the Mexican American Legal Defense and Educational Fund (“MALDEF”). He has led numerous civil rights cases involving such issues as educational equity, religious discrimination, immigrants’ rights and voting rights. Mr. Villagra will discuss recent cases and leading issues faced by ACLU SoCal.

The 2023 Conference will also include presentations on Cryptocurrency, civil rights and racial discrimination in birth and reproductive care, family law, mock trial, and a Judges’ Penal.

If you are interested in sponsoring the 2023 Bench & Bar Conference, please contact SBCBA Executive Director Marietta Jablonka at (805) 569-5511.

On behalf of the Bench & Bar Conference Committee, we extend our appreciation to the slated speakers and attendees, and look forward to another successful Bench & Bar Conference.

## ***Bench & Bar Committee***

Taylor Fuller, Teresa Martinez, Richard Lloyd, Jessica Phillips, and David Tappeiner



## HAPPY HOLIDAYS

FROM THE SANTA BARBARA COUNTY BAR ASSOCIATION

# The Notable Marilyn Metzner Retires at 84

BY MICHELLE E. ROBERSON

In 1882, several brothers travelled from Vermont across country eventually settling in Santa Barbara. One of these brothers was a stonemason characterized as the “notable” Clarence George according to a book, *Stone Architects of Santa Barbara*, for his masonry work in the area. After the devastating earthquake in 1925 that destroyed the original Santa Barbara County Courthouse, he built the little low sandstone wall that surrounds the existing structure rebuilt in its stead that still stands today.

On one fine day, he continued the craft he perfected over the years by reconstructing the steeple at Trinity Episcopal Church at 1500 State Street using native sandstone. Some would say what happened next was tragic as the scaffolding broke underneath him, rendering him paralyzed; but not the notable Clarence George.

He took this tragedy as a cue to begin a new career. He enrolled in law school and became a lawyer, hanging his shingle right across the way of his home where La Arcada now stands. He earned a new notable reputation in his legal career and even became a city councilmember to devote more time to his community. Continuing his commitment to Santa Barbara, he was appointed a judge to serve at the

newly completed courthouse sitting within the walls he built during his former career.

On the night before he was to be sworn in, he had a heart attack that ended his life—but not his legacy.

Fast forward two generations and welcome Marilyn Metzner to the world eighty-four years ago, great granddaughter to the Notable Clarence George. With dreams of becoming a lawyer one day, she took her first job as a legal secretary at the age of seventeen. Weeks after she started, she was assigned to the partner of the firm to be his personal secretary. Ms Metzner made an impression and it was obvious she had a knack for the rhythm and complexities of the law.

Eventually, she became secretary to Clarence Rogers, former president of the Santa Barbara County Bar Association and estate lawyer. He had a stroke that ended his career and Ms. Metzner helped close the firm for him before taking on her next job.

The memory of her great grandfather’s resonated with her, though: setting one’s mind to it, one can do a lot.

She could go to law school, she had proven already she was capable even though times were different in the fif-



Michelle E. Roberson

***Please wish Marilyn a happy retirement on Wednesday, December 14th from 4:00pm until 7:00pm in Department 3.***



Marilyn with two children and four grandchildren



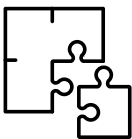
Judge Anderle and staff at lunch



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Metzner, *continued from page 10*

ties for women in the male dominated legal profession. But she loved her work and immersed herself in it, taking every educational opportunity along the way to refine her own skills for her role at the law firm known then as Goux, Romasanta, & Anderle. She met with clients, helped with research, and strategized with these legal giants of Santa Barbara. For all intents and purposes, she was doing the work of a paralegal as this young “secretary” even had her own secretary. Modest even after decades of legal training, she said she never called herself a paralegal because she never officially got a certificate despite her countless CEBs and years of hands-on work in the industry.

Private practice was invigorating and memorable as she worked in family law, probate, and some civil cases as they came into the firm. In 1977, she moved with one of the partners, now known as the Honorable Thomas P. Anderle, when he went into solo practice. She says she felt at home at the new firm located at La Arcada. Why wouldn’t she? Her new work home was at the exact same location as her great grandfather’s home above the former Acapulco.

She worked at the new solo practice for twenty years while raising her four kids, back then very young children: Kevin (65), Kathy (60), Paul (55), and Pam (54). Her son Paul and Judge Anderle’s son were only ten days apart in age, becoming the best of friends. The work was demanding, but the attorney and his devoted secretary made sure to prioritize their respective families. Ms. Metzner, now a single mother, made homecooked meals dutifully planned in advance from her arsenal of recipes. Many times they put the kids to bed after homework, activities, dinner, only to go back to work in the evening to finish their day.

In 1998, when Judge Anderle got appointed to the bench, Ms. Metzner was given the option to cut her pay and follow her employer of over two decades to work for a new employer: The State of California. But the cut in pay was not what was difficult as she always lived modestly within her means. The hard part was leaving the office—her great grandfather’s home—that she loved, as well as the clients and the work she loved.

At the end of the day, though, there was no question: she was absolutely committed to continuing her journey with Judge Anderle. He was always conscientious and would do little things that spoke volumes about his character in private practice, sometimes talking himself out of a job to resolve disputes by nudging potential clients to set aside their differences to amicable compromise.

Recalling her first day on the job, she got a lot of training on the programs and answering phones. There were six civil

judges, six judicial secretaries, floater clerks in addition to the primary staff, and many resources. Judge Anderle was also dutiful in his work, wanting to email tentative rulings, getting hundreds of calls that she navigated. While the judicial secretary was not required to be in the courtroom, Judge Anderle was adamant that the jury meet her to show that the court was accessible and available to all, or as he termed it “user friendly.”

She did not think that she did anything special or out of the ordinary, the same way she never considered herself a paralegal. She did the job to the best of her ability not realizing how many lives she touched along the way. This is why in September 2017 when she was awarded for impacting so many in the legal community, she had tears all night about what people said. “I’m just an ordinary person and was stunned, you do your job, answer questions and years later, you find out you had an impact on people. It is stunning, rewarding, and gratifying.”

She continued to be devoted to her profession even working through the pandemic in her 80s, steadfast and committed with Judge Anderle, who she has now worked with for fifty years. But, the court is different than it was over twenty years ago when she started. There are now only three civil judges with mammoth caseloads and she is only one of two judicial secretaries, the other being her youngest daughter, Pam, recruited to public service by Judge Brown (retired).

Now with one kidney working and her health slowly declining, she and Judge Anderle decided to retire at the end of 2022 together, with Ms. Metzner’s official last day being December 31, 2022. In June 2022, she was stunned to learn that Judge Anderle decided to stay on the bench. To quote her perfectly, it was an “oh my stars” moment for Ms. Metzner. But, she knew that this extension on the bench was one she could not commit to and she planned her retirement party for December 14, 2022 as she prepared to close out the year and the chapter as a judicial secretary on December 31, 2022.

Almost immediately after sending the announcement in October, her functioning kidney failed her. She was hospitalized for two weeks and is adjusting to her new regimen of dialysis three days a week from 5pm to 9pm. It is certainly not how she planned her departure and feels her time was cut short. But she remains optimistic. She receives calls and cards from the legal community she got to know on a personal level, including her dear friend Lida Sideris, our recently retired executive director.

I probed about her plans for retirement and what comes next, travel? Projects? She was a bit quizzical because she’s done all of that, even having just returned from a two-

Feature

week vacation to Indiana to celebrate her son's sixty-fifth birthday. She has lived a wonderful, full life surrounded by amazing people doing work she loved and the only change is she will no longer report to chambers as a judicial secretary. But her devotion remains.

To sum up her feelings, she says she's been happy all her life and continues to be happy despite her recent health scare that has her a bit rundown while she adjusts to dialysis. She has four grown children she is proud of and has been blessed with six grandchildren and three great grandchildren. A devoted Presbyterian, she shares that prayers from church, court, and family contribute greatly to her source of positivity. She is a bright light at the court and has touched thousands of lives in her years devoted to the legal community. Retirement, though, is only because she realizes her body is starting to slow her down, not because she feels the need to find time to do other things as she has done what she loves her whole life.

Little did Ms. Metzner know that she, too, leaves on the same legacy as her great grandfather that built the wall surrounding the court she devoted over two decades at as the Notable Marilyn Metzner.

We thank her for her devotion to our community and wish her well in her retirement. ■

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## 2023 Virtual Bench & Bar Conference Friday, January 27, 2023

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Executive Director at the  
ACLU of Southern California

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# The Forensic Science Regulator Act

BY: ROBERT M. SANGER

England and Wales have a Forensic Science Regulator and a new law grants the Regulator rather striking powers to enforce the yet to be codified regulations. The Regulator has put his proposed regulations out for comment. The comment period closed October 31, 2022. The Regulator is now preparing the final draft of those regulations which will go to Parliament for approval. It is expected that the regulations take effect March of 2023.

As has been reported in several of these *Criminal Justice* columns, improvement of forensics scientific standards and guidelines has been a matter of concern in the United States and throughout the world. There is yet to be agreement on those standards let alone a means to enforce them. American and international “accreditation” programs have largely been voluntary. It appears that the United Kingdom has suddenly moved into the lead regarding quality assurance by invoking governmental promulgations of standards, mandatory accreditation and regulatory enforcement.

## Standards and Accreditation

In the United States there is no government accreditation of forensic laboratories or services. The creation of professional criminalists and the proliferation of other forensic experts came into vogue in the twentieth century. Police crime labs came into existence, often centered on one or two specialties, like fingerprints or firearms. The FBI created its own laboratory branching out into every aspect of forensic science—and sometimes aspects later to be discredited as science. The FBI became the leading governmentally run laboratory in the United States.

The FBI laboratory was not accredited by anyone. It was under the jurisdiction of the United States Department of Justice headed by the Attorney General and supervised by the Director of the FBI. This seemed pretty impressive. Local agencies bragged, and still do, that they send their criminalists to the FBI for training. Local police agency laboratories and private forensic laboratories, however, maintained only internal quality management standards and guidelines, if any. They were not accredited by any governmental or

non-governmental agency. Adherence to standards was voluntary and self-administered. Conflicts between the administration of labs and strict forensic standards were often at odds.<sup>1</sup>

However, in the 1970’s criticisms of crime lab conduct began to gather headlines. There was evidence of criminalists in some labs “dry labbing,” meaning that actual laboratory tests were not even conducted but that reports were being written confirming the results that law enforcement had hinted at or specifically stated they expected. There was also evidence of sloppy procedures leading to cross-contamination, of failure to follow basic scientific protocols and of unreliable and outright false results.

As a result, the FBI and the directors of some thirty law enforcement related crime laboratories got together to come up with a program for participating laboratories to emulate the purportedly high standards of the FBI. The group of lab directors established itself as a non-governmental organization with the name “The American Society of Crime Laboratory Directors” and was incorporated as ASCLAD, Inc. In the 1980’s this new ASCLAD, Inc.—which, on their website, they insist is pronounced “azz-clad”—began creating basic standards for crime labs.

Then ASCLAD, Inc. created a separate non-governmental organization called ASCLAD/LAB—again insisting it is pronounced “azz-clad.” This separate entity began to create a certification process so that individual labs could be deemed “accredited” although there was no government sanction to that title. While, at least in part, this was a step forward in promulgating standards, it meant that the lab directors’ private organization was cladding their guild members with a certain armor to protect them from getting kicked out of court. The standards favored the bigger labs that could afford to maintain protocol manuals, administrative staffs and pay accreditation fees. ASCLAD/LAB focused less on the performance of individual laboratory technicians and scientists and more on laboratory administrative compliance.

Meanwhile, the FBI laboratory, which had been the model for ASCLAD and ASCLAD/LABS, came under devastating scrutiny when it was found that the FBI’s own alleged hair comparison science was not based on science at all.



Robert M. Sanger

That was followed by the revelation that their bullet lead comparisons were also devoid of scientific basis. That led to criticism of shoe print comparisons and comparative analyses in general. This was a crisis for forensic practice not only at the FBI but everywhere in the United States. The FBI responded by creating Scientific Working Groups (SWG's) for the various scientific disciplines, but it was too little too late. The National Academy of Sciences issued its infamous Report<sup>2</sup> in 2009 and, eventually, the federal forensic overseeing process was moved away from the DOJ to the Department of Commerce and the National Institute for Standards and Technology.

NIST then formed Committees and Subcommittees to create standards through the OSACs. However, few standards and guidelines have been promulgated. The OSACs have been working with the American Academy of Forensic Sciences (AAFS) for almost a decade resulting in well-crafted documents that address only a handful of the many issues that must be addressed. Some are published in the NIST Registry and others are making their way through the AAFS process to be submitted to ANSI for approval and publication there.

The standards and guidelines that have been published do not have the force of law. Even the ones approved by NIST are not federal regulations of the sort published in the Code of Federal Regulations. In addition, neither NIST nor any other governmental organization has created a regulatory body to enforce standards if and when they are published in the Registry. ANSI is a non-governmental organization and, as such, has no regulatory authority. In fact, there is no plan for mandatory accreditation or mandatory compliance with standards. It is still left to the decision of the individual laboratories as to whether they want to go to the expense of applying to a private organization for accreditation or to comply with these aspirational standards and guidelines.

ASCLAD/LAB has now merged with the ANSI National Accreditation Board (ANAB) in part to remove the implication that the Lab Directors were protecting their own. ANAB is taking a step further in raising standards of laboratories. A few standards are beginning to filter down from the OSACs to AAFS to ANSI. Yet a comprehensive set of standards and guidelines for forensic laboratories are still a long way off and ANAB is still a voluntary accreditation body that provides its services for a fee to willing laborato-

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ries. Stressors that exist in forensic organizations that may lead to erroneous conclusions are still not fully addressed.<sup>3</sup>

The European Union has done a little better than the United States. They created the European Network of Forensic Science Institutes, ENFSI. They do not have the power to enforce standards but they have published the ENFSI Guidelines and have annual international conferences regarding updating the Guidelines and developing means of enforcement. Currently, International Organization for Standardization, the international counterpart to ANSI, has issued ISO 9000 as a general standard related to maintaining a quality management system and ISO 17025 as a standard suggesting that scientific laboratories be “validated,” that is, subject to internal testing to maintain scientific standards. The process under the European Union ENFSI Guidelines or the laboratory accreditation under the ISO standards, as in the United States, is voluntary and is sponsored by the non-governmental European Academy of Forensic Sciences, counterpart to the AAFS in the United States.

### ***The Forensic Science Regulator Act***

That brings us to the Forensic Science Regulator Act (UK Public General Acts 2021 c. 14). Britain removed itself from the European Union (Brexit), that left the UK without any national standards or guidelines. The FSRA was enacted by the Queen on advice of the Home Secretary and Parliament on April 29, 2021. This was intended to fill the void left by Brexit and the fact that The UK would not be involved with ENFSI or the ENFSI Guidelines.

The FSRA gave the position of Forensic Science Regulator, previously created by Royal prerogative, official governmental statutory powers. The current Regulator is Gary Pugh, OBE (Order of the British Empire), who is a criminalist with 40 years’ experience and a former Director of Forensic Services for the Metropolitan Police Service. Upon taking office he said, “The Royal Assent for the Forensic Science Regulator Bill will put my role on a statutory footing recognising the importance of forensic quality standards and their critical contribution to delivering justice.”<sup>4</sup>

The Act, itself, requires that the Regulator publish a code of practice, keep the code under review and revise or replace it as needed. (Sect. 2.) It must be promulgated for review which it now has been, and will be submitted to the Parliament and Crown for approval. (Sect.3.) While the code does not result in criminal or civil liability, it is admissible in evidence and a failure to act in accordance may be taken into account by the court. (Sect. 4.) The Regulator has the power to investigate failures and to bring proceedings for injunction. (Sect. 5.) And, after a compliance proceeding,

the Regulator may take action, including issue a notice that will “prohibit the person on whom notice was served from carrying on any forensic science activity in England or Wales” until such failures have been corrected. (Sect. 6.)

The proposed code, to be submitted to the Home Secretary, then Parliament and then the King, is extremely detailed.<sup>5</sup> Overall, it is an attempt to mandate quality assurance for anyone engaged in “forensic science activities” (FSA). It covers management issues, record keeping, privacy issues, and accountability. It emphasizes, “independence, impartiality and integrity. While the proposed code relating to the details of scientific standards is voluminous, the accreditation of the various specialties also relies heavily on the ISO standards.

The details of the codes, of which there are many, in addition to ISO standards and evolving ANSI standards, should be the basis for study in the United States. Forensics is largely regulated after the fact by the courts in this country, and the courts and litigants should consult with the details in formulating proffers or objections to forensic testimony in cases. Of course, the legislatures of the various states and the federal government should also take this as a lesson in how to go about formulating comprehensive and binding requirements for accreditation and control of forensic experts reports and testimony.

Meanwhile, in England, the Regulator, Gary Pugh, was interviewed regarding his powers under the FSRA. He was asked, in particular, about his “ultimate power of prohibition,” that is, the power to order an injunction against a person engaged in FSA’s from continuing to work in the field unless and until a showing of compliance. Mr. Pugh said—as could only be said in England—“I hope I never have to go there. It’ll be a sad day if I do.”<sup>6</sup> He did say, since the code has been out for comment, by the time it is in force, presumably March 2023, practitioners should be prepared to conform with it when it takes effect. He did add that there are different deadlines for accreditation and that may provide a time lag for compliance. Nevertheless, the Regulator seems to mean business.

### ***Forensics Science Going Forward***

Basically, The UK has taken a bold step to move from the aspirational to the mandatory in forensic quality assurance. It is long overdue in the UK and in the rest of the world, including the United States. Needless errors continue to be made. Courts continue to admit “junk science” or to admit purportedly legitimate science that has been coopted by expert witnesses who do not adhere to basic scientific standards. We not only need mandatory accreditation but

## Criminal Justice

a means to enforce standards for forensic services. This is an area where quality assurance is critical to the correct outcome of criminal (and, for that matter, civil) cases. ■

*Robert Sanger is a Certified Criminal Law Specialist (Ca. State Bar Bd. Of Legal Specialization) and has been practicing as a litigation partner at Sanger Swysen & Dunkle in Santa Barbara for 49 years. Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is a Professor of Law and Forensic Science at the Santa Barbara College of Law. 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 See, Murdock JE, Holmes KJ. "The conflicts between managerial responsibilities and the ethics of forensic science," 31 JOURNAL OF FORENSIC SCI SOC. (1991) 151-161.
- 2 National Research Council of the National Academy of Sciences, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES, A PATH FORWARD (2009).
- 3 See, Busey, T, Sudkamp, L., Taylor, M., and White, A., "Stressors in forensic organizations: Risks and solutions," 4 FORENSIC SCIENCE INTERNATIONAL: SYNERGY (2022) 100198.
- 4 UK government news release, May 17, 2021, at <https://www.gov.uk/government/news/gary-pugh-appointed-forensic-science-regulator-for-england-and-wales>.
- 5 See the draft and revisions at: <https://www.gov.uk/government/publications/forensic-science-regulator-draft-core-statutory-code-for-comment>.
- 6 Reyes, E., "New powers for forensic science regulator by end of March," THE LAW SOCIETY GAZETTE (Nov. 4, 2022).



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# The Lawyers for Non-Profits: Helping Good People do Good Things

BY MICHELLE E. ROBERSON

This month, I had the great pleasure to interview Casey Summar, managing partner for the Law Firm for Non-Profits (“LFNP”). I had so many questions as a volunteer for several non-profit boards. Plus, I find myself finalizing my own estate plan and now have dreams of starting my own non-profit.

Even we, as lawyers, know when something is not right and wonder who to call and if to call while we serve on various boards. Sometimes, we are the sole attorney on a board and people look to us for answers. Are we meeting our fiduciary obligations? What do the tax notices mean? We want to raise funds for scholarships as part of a new initiative, can we?

If you have volunteered for a board, you know these questions come up all the time. If you’re the sole attorney on a board, let’s be real, you’re probably the one raising the questions. Then the next question becomes a gray area of when to phone a friend or, as lawyers, spend hours researching any given issue.

Something we (or maybe it’s just “I”) take for granted is that non-profits are corporations, governed under various bodies of law. My initial thoughts when preparing for my interview with Casey was that she helped numerous cozy non-profits whose outflows are as small as their inflows.

But, boy was I wrong. The Law Firm for Non-Profits is a veritable legal giant armed with the tools needed to represent and/or advise very large multi-million-dollar corporations, ahem, non-profits.

This became scary for the small little non-profits I had envisioned that would truly benefit from their services: are these way out of their league?



Casey Summar

While the LFNP is not a non-profit organization themselves, their services are tailored for non-profits of any size and at any part of the life-cycle from starting an organization, to doing a “health check-up” during the life of the organization, to helping organizations that find themselves at the brink of losing their status for one reason or other.

## **Starting a Non-Profit**

It turns out that Ms. Summar’s favorite phase is helping people that have a passion and concept to make an impact in the world. Those are her words, actually. They offer a “quick launch” service that is comprehensive in taking people through the formation, tax exemptions, and registration with the Attorney General, along with resources along the way regarding the role of the board, checklists for annual filings, and many other resources.

A google search or kit will get you partway there, but Casey shares that many of her clients come when they are overwhelmed at the paperwork and she finds that many pieces of foundational organization were actually not done. So whether it is in the planning stages or the end stage when the visionaries throw up their hands, the firm is ready to take charge and wrap it up. As their managing partner says: Leaders of non-profits want to focus on their organization, not tax forms so their focus is to remove the roadblocks to help non-profits start doing the good work.

## **Health check-ups and Mutations of Non-Profits**

Two years ago, SBCBA under immediate past president Elizabeth Diaz, started the Diversity and Inclusion Task



Force Committee. We have lofty goals for this committee, but it turns out, the SBCBA is not set up to accept *tax deductible* donations. But is this the only question?

What if we started a new program and it did not align with our mission statement? By law, we could only engage in activities in the mission statement, and it could be as simple as amending the articles. Ms. Summar explains that these changes and mutations are “typical to a corporate practice, like mergers and acquisitions, but it is a different set of constituents and set of regulators that we navigate.” This includes the IRS at the federal level, the California Attorney General’s Registry of Charitable Trusts, Secretary of State, and Franchise Tax board at the state level that may come into play depending on the organization.

Recently, there has been news about organizations losing their status after an investigation by a state attorney general. This is where LFNP comes into play again as they assist if an organization is in the unfortunate position of being audited along with the organization’s accountant, and they go further by reviewing finances, operations, compensation, and checking in to see how a board has been operating and working with the organization to get through the process.

Because of their vast experience in this arena, they look at organizations during the health check to make sure that they would withstand an audit by looking for issues to try and remedy them so they are ready.

### ***Assets Held by Charitable Trusts***

They also are adept at working hand-in-hand with litigators who are assisting people in defending certain lawsuits and in need of expertise on charitable laws. For example, if your relative donated funds to an organization for a specific purpose, do you have standing to sue? All charities are considered to hold assets in trust for a specific purpose, Casey explains. They are keenly aware on how these assets should be stewarded. An organization cannot simply transfer an asset, even if it is to another charity, without going through proper procedures and obtaining required approvals. The most simple, but complicated situation is one charity holding funds for another charity and a donor advising on this aspect.

I learned that even art pieces have a whole body of law on donating or loaning artwork with very specific regulation on this piece. Apparently it is possible that loaning a piece of art could get a non-profit in a lot of trouble.

Another big area of law is the crowd funding space or “intermediary charity platforms” that donate a percentage to a charity of the consumer’s choice. There is a lot of

regulation in this arena as well while this is becoming more and more common.

### ***Is LFNP Accessible?***

Given the above, it would seem like a small question from an organization that has few funds may not be a good fit for the brainpower at LFNP. However, they are absolutely accessible and provide free introductory calls with people to see if there is a good fit and if there is a need. Many times, these consultations lead to them directing them to a resource or consultant as their tagline says, their Mission Statement is helping good people do good things. They are open and transparent about what each area would cost and prioritize for the non-profit what is most important and within their budget.

So, in sum, while they may not be a non-profit themselves, the savings comes by having a firm in this area of the law that will save you hours of research time and get straight to the point. Plus, they will advise on areas of law you may not have even know existed. I, for one, see my dream of starting a non-profit turning into a goal for 2023.

*Casey Summar is the managing partner of the Law Firm for Non-Profits. Prior to relocating to the Central Coast, Casey founded the Tennessee Volunteer Lawyers for the Arts in 2005 which grew to become the Arts & Business Council of Greater Nashville, for which she served as Executive Director for over a decade. Casey was recognized for this work as the 2016 Nonprofit CEO of the Year for Middle Tennessee. She received her J.D. with honors from Vanderbilt University Law School where she continues to serve as an adjunct Professor of Law teaching Nonprofit Law. Casey serves on the boards of MOXI, The Wolf Museum of Exploration + Innovation and the Common Table Foundation and as a trustee for The Colleges of Law, Santa Barbara and Ventura.*



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

## Photographs and images

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

<u>Image file name</u>	<u>Caption</u>
[ARTICLE NAME] 1.jpg	Jane Smith, John Doe, and Miles Davis
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- **Coverage:** From time to time, an article idea, feature, profile, event, or photo opportunity may come along that you think should be in the magazine. Please send it to us when you think of it. This allows us to plan ahead and make sure it is covered.
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- **Space in the magazine:** *Santa Barbara Lawyer* is printed in multiples of four pages (i.e. an edition will be 28/32/36/40 pages long). Thus, when space is a concern, we may shorten or even omit an article. When this is done, we will take into account timing, need to publicize events or other deadlines, and whether the article can run in the following issue.
- **Content:** *Santa Barbara Lawyer* is a publication of the Santa Barbara County Bar Association (SBCBA), written by and for our membership. We reserve the right to reject content that runs counter to SBCBA’s published mission and goals or that is not of interest to our readership.

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Please submit articles to Brad Brown at [brad@bradfordbrownlaw.com](mailto:brad@bradfordbrownlaw.com).

# Motions

**The Legal Aid Foundation of Santa Barbara County** is pleased to welcome two new staff attorneys to our countywide team:

**Camille Agnello** has joined the firm as an attorney for the Family Violence Prevention and Immigration Program. Camille attended law school at the University of Denver, Sturm College of Law, and was admitted to the Colorado Bar in 2019. At a Colorado non-profit, Camille specialized in Title IX administrative law and gained experience in



Camille Agnello

protection order and housing law. Camille was admitted to the California Bar in 2022 and continues to pursue her passion for non-profit legal services. Camille’s practice will focus on domestic violence and elder abuse restraining orders, family law, and immigration matters for victims of crime. On the weekends, you can find Camille hiking in the mountains with her husband and dog.

In addition, **Brianna Locatelli** recently joined the Santa Maria office as a Housing & Probate Attorney as part of the Sargent Shriver Civil Counsel program. Brianna grew up in Santa Cruz and Paradise, California. She attended California State University Chico and UC Davis School of Law. After graduation she worked as a staff attorney with Legal Services of Northern California in their Chico office, and then as a self-help housing attorney in a collaboration between Senior Citizens Legal Services and the Superior Court of Santa Cruz County. Brianna will provide legal representation to families or individuals with incomes at or below 200% of the Federal Poverty Level and below (\$55,500 for a family of 4). Brianna is excited to venture to the southern half of the state and work with the amazing team at Legal Aid.



Brianna Locatelli

\* \* \*

*If you have news to report such as a new practice, a new hire or promotion, an appointment, upcoming projects/initiatives by local associations, an upcoming event, engagement, marriage, a birth in the family, etc., the Santa Barbara Lawyer editorial board invites you to “Make a Motion!” Send one to two paragraphs for consideration by the editorial deadline to our Motions editor, Mike Pasternak at [pasterna@gmail.com](mailto:pasterna@gmail.com).*



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## 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](mailto:kcallahan@hdlaw.com).

## LITIGATION ASSOCIATE POSITION

Rogers, Sheffield and Campbell, LLP, a Santa Barbara-based law firm, seeks to hire an associate attorney to bolster its busy litigation practice. Ideal candidates will have: (i) 3-5 years of experience, including experience dealing with landlord-tenant disputes and other real estate matters, (ii) excellent academic credentials and interpersonal skills, and (iii) graduated from a top-tier law school. Candidates must be licensed to practice law in California. Interested candidates should send their resume and cover letter to [Reception@rogerssheffield.com](mailto:Reception@rogerssheffield.com).

## CONTRACT ATTORNEY AVAILABLE

Contract Attorney Available for Legal Research/Writing Freelance attorney in Oxnard available to provide legal research and writing services to other attorneys on a project-by-project basis. Former judicial law clerk to federal judge in San Diego for three years. Licensed in California. For more information, please visit [www.meghandohoney.com](http://www.meghandohoney.com).

## LITIGATION ASSOCIATE POSITION

Emerge Law Group is seeking an associate attorney for its litigation practice at its new Santa Barbara, California office. EmERGE is a boutique law firm with offices in California, Oregon, New York and New Jersey. The firm is highly regarded nationwide for its work in cutting-edge industries, including cannabis and psychedelics. EmERGE's Santa Barbara-based shareholder also has a national practice and reputation in intellectual property litigation and in tech and media litigation involving important and challenging First Amendment issues.

Emerge is a friendly, collaborative team of hard-working

attorneys and legal professionals. This full-time position is perfect for someone who is highly skilled but wants to break out of the big firm grind, wants to take on intellectually challenging rather than routine litigation work, and wants a flexible work schedule. Each of our cases is unique and presents new issues. The ability to write strong, persuasive motions and other papers in the state and federal trial and appellate courts is crucial. Our new litigation associate will get hands-on opportunities in court and will be able to hone their oral advocacy and writing skills. We are open to considering applicants who prefer to work less than full-time and desire to work remotely.

Qualified candidates must possess a minimum of 3 years of litigation experience; strong analytical, research and writing skills; a stable work history and strong references; thorough working knowledge of federal and California state rules of civil procedure; and experience working on high-stakes or complex civil matters. We offer a competitive compensation and benefits package. Interested applicants should send a resume and cover letter via email to [tim@emergelawgroup.com](mailto:tim@emergelawgroup.com)

## SMALL BOUTIQUE FIRM SEEKS ATTORNEY

Highly regarded AV rated law firm in Santa Barbara primarily specializing in Environmental Law and related litigation in federal and state courts and regulatory work, seeks an Attorney with 3-10 years experience. Attention to detail, courtroom experience, and exemplary research and writing skills are requested. Interested candidates should send their CV and a writing sample to [jan@grebenlaw.com](mailto:jan@grebenlaw.com).

## BUYNAK LAW FIRM SEEKS ASSOCIATE ATTORNEY

Buynak Law Firm has the opportunity to associate an attorney for this coming year into our established transactional practice in the business, real estate and tax/estate planning areas, with offices in Santa Barbara and Solvang. We function as general counsel to business and families for their local and U.S. operations. A successful candidate must have experience and a sincere interest in our core practice areas in serving clients and in client development, with a proactive work ethic and ability to blend physically with our team and systems at our Brinkerhoff office. Send your proposal to [dhall@buynaklaw.com](mailto:dhall@buynaklaw.com) for our consideration.

### EDUCATION LAW ATTORNEY

Griffith & Thornburgh LLP is a well-respected mid-size firm in downtown Santa Barbara with an active and growing education law practice. We represent public school districts, a community college, and a local county education office on the Central Coast and seek an attorney to join our thriving and collegial practice. Our team of education law attorneys is committed to working collaboratively and in a supportive environment to provide the best quality representation. Qualified candidates will have three to five years of experience, including the below qualifications:

- Excellent analytical, writing, research, and communication skills. Flexibility, initiative, and willingness to work on a broad variety of legal matters arising in representing public entities
- Public entity representation experience preferred
- Admission to the California State Bar.

Send resume and cover letter to Felicita Torres at [torres@g-tlaw.com](mailto:torres@g-tlaw.com). Visit us online for more information [www.g-tlaw.com](http://www.g-tlaw.com).

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### MULLEN & HENZELL HIRING ASSOCIATES

- **BUSINESS & REAL ESTATE ASSOCIATE 0-5 YEARS:** Join our business and real estate group. Our transactional practice includes real estate acquisition, development, financing, syndication, and leasing, land use, business and nonprofit formation and operation, business acquisitions, and general corporate and contract matters.
- **LABOR & EMPLOYMENT ASSOCIATE 1-5 YEARS:** Join our labor and employment practice. Work on employment contract disputes, wage and hour, wrongful termination, discrimination, harassment and litigation matters.

Hiring for Santa Barbara office. Option to work in Ventura or Solvang office if you reside near those communities. Must be current member CA Bar. Send resume and cover letter to Jared Green at [Recruit@mullenlaw.com](mailto:Recruit@mullenlaw.com) (re BD or LE position). Visit us online for more information: [www.mullenlaw.com](http://www.mullenlaw.com).

### ESTATE PLANNING ASSOCIATE SOUGHT

Price, Postel & Parma LLP, a long-standing law firm in Santa Barbara with roots dating back to 1852, is seeking an associate attorney with superior credentials to practice in our trusts and estates department. We are looking for a candidate with 3-7 years of significant experience in the area of trusts and estates. This is a full-time position in our Santa Barbara office. Candidates must be a member of the California State Bar. The ideal candidate will have experience drafting revocable trusts, irrevocable trusts, wills and all other estate planning documents, in addition to experience working on post-death trust administrations, probates, and conservatorships. LL.M in Taxation or other significant tax background is preferred. The law partners in the trust and estates department walk alongside associates and guide them through all levels of estate planning, beginning with straightforward estate plans and working up to highly complex estate planning and trust administration matters. Our trust and estates team includes highly trained paralegals and legal assistants well versed in this area of law. If you are a qualified trusts and estates attorney interested in working in downtown Santa Barbara, please submit your resume to Ian Fisher, at [ifisher@ppplaw.com](mailto:ifisher@ppplaw.com) or Kristen Blabey, at [kblabey@ppplaw.com](mailto:kblabey@ppplaw.com).

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### LARGE OFFICE AVAILABLE IN SECURITY BUILDING

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Suite is shared with a business/ transactional/ tax attorney, and includes 4 4-ft. lateral files and overhead storage in reception. A short walk to the Courthouse, County Building, numerous banks, and State Street. City Lot 8 parking is located directly behind the building, with other city lots available nearby with monthly parking. Referrals possible depending on your availability, specialties and experience.

Month-to-month, or 1st month free with 1-year lease, \$1,500 for rent plus 1/3 share of cable internet, security system, bottled water service and janitorial (currently \$125/month) - \$1,625 total. Contact at 805-963-1120 or [rwo@transdental.com](mailto:rwo@transdental.com).



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Please contact **Jeanette Hudgens**  
Cell 805.729.2603



## 2022 SBCBA SECTION HEADS

### Alternative Dispute Resolution

Matthew Moore (805) 697-5141  
matthew@moorefamlaw.com

### Bench & Bar Relations:

Richard Lloyd (805) 564-2444  
RLloyd@cappellonoel.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

Marla Pleyte (805) 770-7080  
marla@marlapleyte.com

### Family Law

Renee Fairbanks (805) 845-1604  
renee@reneefairbanks.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

### Real Property/Land Use

Joe Billings (805) 963-8611  
jbillings@aklaw.net

### Taxation

Peter Muzinich (805) 966-2440  
pmuzinich@gmail.com  
Cindy Brittain (323) 648-4657  
cbrittain@karlinpeebles.com



# December

## 2022



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 SBCBA 2022 Annual Dinner at El Paseo	2	3
4	5	6	7	8	9 Judge Arthur Garcia Retirement Party	10
11	12	13	14 Marilyn Metzner Retirement Party	15 Bill of Rights Day	16	17
18 Hanukkah Begins	19	20	21 First Day of Winter	22	23	24 Christmas Eve
25 Christmas Day	26 Kwanzaa Begins	27	28	29	30	31

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

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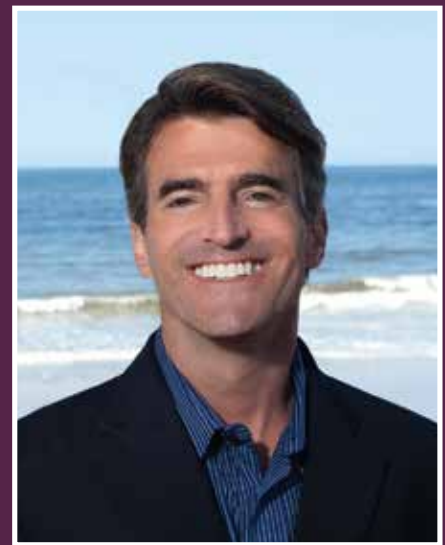
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