

Santa Barbara Lawyer

Official Publication of the Santa Barbara County Bar Association
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Mike Lyons: Capturing SBCBA History for 15 Years

Inside: Dos Pueblos Mock Trial Wins County / SBC Lawyer Referral Service / How Much Is Too Much to Pay a Trustee? / Three Financial Barriers to Reaching a Divorce Settlement Agreement / Unity Mixer / George Bobolia 1924-2022 / Critical Need for Court Reporters



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JENNIFER GILLON DUFFY

President
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T: (805) 618-2606
jennifer.duffy@rimonlaw.com

STEPHEN DUNKLE

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

ERIN PARKS

Secretary
The Law Office of Erin R. Parks
625 E. Victoria St, Garden Ste
Santa Barbara CA 93101
T: (805) 819-7717
law@erinparks.com

MICHELLE ROBERSON

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

ERIC BERG

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

BRADFORD BROWN

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

RAYMOND CHANDLER

Law Office of Raymond
Chandler
15 W. Carrillo St #220
Santa Barbara CA 93101
T: (805) 965-1999
Rdc@rdclawoffice.com

IAN ELSENHEIMER

Ferguson, Case, Orr,
Paterson, LLP
1050 S. Kimball Rd
Ventura, CA 93004
T: (805) 659-6800, x203
IElsenheimer@fcoplaw.com

THOMAS FOLEY

Foley, Bezek, Behle & Curtis
15 W. Carrillo
Santa Barbara CA 93101
T: (805) 962-9495
tfoley@foleybezek.com

TAYLOR FULLER

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

CASSANDRA GLANVILLE

Apex Family Law
7 West Figueroa St. Ste. 300
Santa Barbara CA 93101
T: (805) 770-2015
cassandra@apexfamilylaw.com

Directors

ANGELA GREENSPAN

Fauver Large
Archbald & Spray LLP
820 State Street, Suite 4
Santa Barbara, CA 93101
T: (805) 966-7499
agreenspan@FLASLLP.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
(805) 568-2950
teresamartinez@co.santa-bar-
baraca.ca.us

MATTHEW MOORE

Moore Family Law & Mediation
148 E. Carrillo Street
Santa Barbara, CA 93101
T: (805) 697-5141
matthew@moorefamlaw.com

DAVID TAPPEINER

DT Law Partners, LLP
125 E. Victoria St. Ste I
Santa Barbara, CA 93101
T: (805) 456-8324
David@DTlawpartners.com

RYAN ZICK

Office of Attorney General
300 S. Spring St. Ste. 1702
Los Angeles, CA 90013
Zick.ryan@gmail.com
T: (213) 269-6306

Staff

MARIETTA JABLONKA

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

CHRISTY BARKEY

Legal Assistant

Santa Barbara Lawyer

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CONTRIBUTING WRITERS

Bradford Brown
Marietta Jablonka
Kimberly Malesky
Teresa M. Martinez
Peter S. Myers
Darrel Parker
Lisa Rothstein
Craig Smith
Joshua S. Yager

EDITOR

Bradford Brown

ASSISTANT EDITORS

Marietta Jablonka
Alexandra Nissani

MOTIONS EDITOR

Michael Pasternak

PHOTO EDITOR

Mike Lyons

GRAPHIC DESIGN

Baushke Graphic Arts

* * *

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sblawyer magazine@gmail.com
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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

Mission Statement

Santa Barbara County Bar Association

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



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Mike Lyons, SBCBA photographer, enjoying the powder at Snowbird, Utah

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Mike Lyons Capturing SBCBA History for 15 Years

BY BRADFORD BROWN

I had the distinct honor and pleasure of interviewing Mike Lyons for the feature article in the April 2023 issue of the *Santa Barbara Lawyer* magazine. Many of our readers may not realize that Mike has provided photography coverage of many of the Santa Barbara County Bar Association's most important events for the past 15 years. Yes, for the past 15 years. We want to thank Mike for all of his years of service documenting the SBCBA events, and as part of that thank you, we want to tell you about Mike.

Mike grew up in Santa Barbara and graduated from San Marcos High School class of 1987. Mike went on to attend Santa Barbara City College and the University of California, Santa Barbara, and double majored in Environment Studies and Geography, and graduated in 1993.

After graduating college, Mike worked in cartography (mapping) for several years mapping county lots, water lines, and utility lines, roadways and natural hazards. Mike went on to operate an industrial wastewater treatment plant in Goleta, California and eventually started his own business remediating underground fuel leaks and solvent pollution resulting from gas stations and other businesses with leaking underground fuel tanks.

Throughout college and his working career, Mike had an interest in law and making a difference in environmental protection. Mike attended Santa Barbara College of Law, graduated, and passed the California Bar exam in 2005. As an attorney, Mike does both Criminal Defense and environmental law working with property owners, the EPA, and Superfund Sites to clean up contaminated properties. He also serves as Board President for Get Oil Out! (GOO!) a non-profit organization which has served since the 1969 Santa Barbara oil spill to prevent similar issues from occurring in the Santa Barbara Channel and to promote alternative energies.

Mike is passionate about surfing, and has done so around the globe, including Costa Rica, El Salvador, Hawaii, Indonesia, Australia, and beyond. His other sporting passions include snowboarding, mountain biking and disc golf. On a more personal note, Mike is engaged to be married to



Mike and his fiancée, Nicole, enjoying a birthday toast in Savannah, Georgia.

Nicole Patton who works as a respiratory therapist in the neo-natal unit at Cottage Hospital.

It was during exotic surfing and snowboarding adventures that Mike developed a love for photography and memorializing the moments in photos and videos. Mike does action-adventure photography as a hobby and is passionate about documenting his travels and sporting exploits.

Mike's role as Santa Barbara Lawyer Magazine photographer began about 15 years ago, when he served on the Board of Directors for the Santa Barbara Barristers (a young lawyers organization) and was asked by past Santa Barbara County Bar Association President, Saji Gunawarden, to photograph an event for *Santa Barbara Lawyer* magazine,

Continued on page 19



Mike with California Attorney General (at the time) Xavier Becerra. Becerra is now U.S. Secretary of Health and Human Services.

Dos Pueblos Mock Trial Wins County, Hopes to Bring Home State Championship

BY LISA ROTHSTEIN

Six Santa Barbara County teams competed over two weekends for the county mock trial championship and the honor of representing Santa Barbara County at the California State Championship later this month. On the afternoon of March 4, Judge Brian Hill announced that Dos Pueblos had narrowly defeated cross-town rivals, San Marcos High School, for the championship.

I started coaching mock trial in 2016, when my oldest daughter joined the Dos Pueblos team. I started slowly, helping out a little with the students who argued the pre-trial motion. I figured since I argued civil motions all the time, I was at least somewhat qualified in that area. At first, I did not want to work with the trial attorney students since, like many civil litigators, my actual trial experience was limited. You know you suffer from imposter syndrome when you feel unqualified to teach fourteen-year-olds about trial practice.

My hesitation gave way before long, and now, over seven years later, I barely remember life before mock trial. I know it is subjective and all extra-curricular activities benefit the students that participate in different ways, but in my opinion, mock trial is the most rewarding, most adrenaline-producing, and most beneficial program available to high school students. Unfortunately, it is not available to all local high school students. Over the past few years, we have seen the total number of teams that compete for the county championship dwindle from a dozen or so, down to six—due to Covid we dropped to an all-time low last year of only five teams from four high schools.

If you are reading this and want to do something that is both personally and professionally rewarding and leaves you feeling optimistic about the future, do not hesitate—contact your local high school and get involved with mock trial. And if your local high school does not have a mock trial team yet, offer to start one. We coaches know that we are fortunate at Dos Pueblos to have a long mock trial legacy, and we would be glad to meet and talk about the program and what has worked (and not worked) for us over the years. We all benefit from a robust county competition;

it would be great to increase the number of schools and students that participate.

But I digress; I was asked to write about this year's competition. Our case this season was *People v. Jordan Franks*. The alleged crimes of robbery and battery causing serious bodily injury, occurred on a cruise ship. Both the defendant and the alleged victim were co-stars in the ship's production of *Macbeth*. Ms. Franks is accused of stealing a ring from her co-star; a ring that might have once belonged to William Shakespeare. In addition to the defendant and the victim, students portrayed the detective that investigated the incident, friends of the involved parties, jewelry experts and the ship's head of security, in addition to pre-trial and trial attorneys, and the court clerk and bailiff.

Each year, the California mock trial case is produced by the Constitutional Rights Foundation for use statewide. The Santa Barbara County Education Office co-sponsors our local competition, a two-weekend event, with the Santa Barbara County Superior Court.

Students at participating high schools form teams early in the school year and spend months learning the facts of the case, drafting opening statements, closing arguments, witness examinations and cross examinations with the support of a teacher advisor and local attorney coaches. But for the team to be successful, the driving force has to come from the students themselves. Over the course of the season, these high school students spend literally hundreds of hours outside of practice, drafting, practicing, and discussing evidentiary issues - often with more nuance than many actual attorneys.

I asked the team what winning the championship meant to them. Senior Io Zhu, one of our captains, told me, "Winning county means a lot to the team, because we've worked so hard. We've spent countless hours; we've scrimmaged other teams all over the state to improve and become the very best we can be. So, it feels incredible to win and get that recognition. I love the excitement of walking into a courtroom with my teammates and I'm grateful for the chance to compete for the state championship with these amazing people."

The members of Dos Pueblos varsity mock trial are Liam Avolio, Edo Barel, Tobin Bohley, Victoria Chen, Charlotte Choi, Elyssa Crutchfield, Theo Evans, McKenzie Kelly, Rachel Lenchner, Anastasia Li, Koi Liechti, Amelia Mendro, Jacob Molina, Daniel Nickolov, William Shen, Maxfield Steele, Alok Thakrar, Sienna Valentine, Jonathan Yang and Io Zhu.

The teacher advisor is Hannah Krieshok. The varsity team is also coached by Sr. Deputy Public Defender Christine Voss and Sr. Deputy County Counsel Lina Somait.

If you can help us with a donation to support our trip to Los Angeles on March 17-19 for the state championship, please send a check made out to “Dos Pueblos Foundation,” with “mock trial” in the memo line, to, Attn: Hannah Krieshok, Dos Pueblos High School, 7266 Alameda Ave., Goleta, California 93117. All donations are fully tax-deductible ■.

Lisa Rothstein is Senior Deputy County Counsel at the Santa Barbara Office of County Counsel and Dos Pueblos Mock Trial Attorney Coach. Lisa has been a Deputy County Counsel for over twenty years. She has handled tort and land use litigation and currently represents Child Welfare Services in juvenile dependency matters.



San Marcos High School Mock Trial team

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Santa Barbara County Lawyer Referral Service

BY MARIETTA JABLONKA
SBCBA EXECUTIVE DIRECTOR

Did you know that the Santa Barbara County Bar Association has a Lawyer Referral Service? The purpose of this article is three-fold. To educate our legal community about our service, to recruit more attorneys, and finally to thank the incredible attorneys on our panel that make our program possible.

The SBCBA has sponsored the Lawyer Referral Service since 1964. This service assists people in Santa Barbara County who have legal problems and are seeking the advice of a qualified attorney. Our service includes a free 30-minute consultation to clients matched with an attorney, and is certified yearly by the California State Bar. We have recruited and maintained 30 attorneys on our panel, five of which participate in our Modest Means program. It provides legal representation in family law matters for individuals and estate planning for seniors that don't qualify for pro bono services, but cannot afford typical attorney fees.

Our main objective is to connect members of the public who need legal assistance with an attorney who is experienced in the relevant area of the law. We also refer callers to local agencies or resources that are appropriate to their

situation. There are also times when someone just needs a sympathetic ear or a little pep talk.

Every day, Christy and I carefully screen callers to assure referral to the right attorney. We are not attorneys and we do not give legal advice. Prospective clients that are matched with an attorney receive a free 30- minute consultation. We speak to an average of 150 callers a month and about one third of those callers retain local attorneys that serve on our panel. We are able to help our callers in English and in Spanish.

We currently need more **Spanish speaking attorneys** on our panel. Other areas in need are **medical malpractice** and **patent law**, but will consider **all areas of law**. If you like dealing with speeding tickets we get a lot of calls for those too....

There is a yearly membership fee and panel attorneys give a small percentage back to the SBCBA to support the program. If you are interested in learning more about the program or would like to join the panel, please do not hesitate to call me at (805) 569-5511 or you can email me at sblawdirector@gmail.com.

And once again, **THANK YOU** to all of the attorneys on our panel. You make a difference to the Santa Barbara Community. ■



Marietta Jablonka

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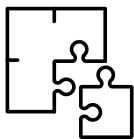
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How Much Is Too Much to Pay a Trustee?

An Analysis of the Facts-and-Circumstances Test of the California Rules of Court, Rule 7.776

BY JOSHUA S. YAGER, ESQ.* AND PETER S. MYERS, ESQ.**

THE PROBLEM

It would be unreasonable for the trustee to accept the weight of these responsibilities without being fairly compensated. But what amount of compensation is appropriate? The vast majority of trustees find themselves with little guidance from the trust instrument, their professional advisors, governing statutes, or a court of competent jurisdiction to know what they should be paid.

There is no rigid rule for determining what amount is reasonable to compensate a trustee; “reasonable compensation depend[s] largely upon the circumstances of each particular case.”¹ California Rules of Court, Rule 7.776, sets forth the following eight nonexclusive factors that should be considered when reasonable trustee compensation:

- (1) The gross income of the trust estate;
- (2) The success or failure of the trustee’s administration;
- (3) Any unusual skill, expertise, or experience brought to the trustee’s work;
- (4) The fidelity or disloyalty shown by the trustee;
- (5) The amount of risk and responsibility assumed by the trustee;
- (6) The time spent in the performance of the trustee’s duties;
- (7) The custom in the community where the court is located regarding compensation authorized by settlors, compensation allowed by the court, or charges of corporate trustees for trusts of similar size and complexity; and
- (8) Whether the work performed was routine, or required more than ordinary skill or judgment.²

The remainder of this article addresses each of these factors.

THE FACTORS UNDER RULE 7.776

The Gross Income of the Trust Estate

The first factor a trustee should consider when establishing their compensation is the “gross income of the trust estate.”³ Trustee fees necessarily reduce the income

and principal available to fulfill the trust purposes. A trust with “low” income and “high” trustee fees will prevent the trustee from fulfilling their central duty to administer the trust consistent with its identified purposes.

Although the language of the rule only references the gross income of the trust, this analysis should not be constrained to this component of total return. These factors were identified in the 1950s, before the “total return” framework of the Third Restatement of Trust was developed.⁴ In this pre-Third Restatement world, the income of the trust was of primary focus. In fact, the fee charged by many corporate trust companies fifty years ago was based on the income produced by the trust rather than the more modern practice to charge based on the assets held by the trust.⁵

The Success or Failure of the Trustee’s Administration

The second factor to evaluate when establishing the trustee’s compensation is “the success or failure of the trustee’s administration.”⁶ The evaluation of the success or failure of the trustee’s administration will be focused on the *process* the trustee followed rather than the investment results that were experienced by the trust during their tenure.

In practice, the compensation analysis will consider the policies, procedures and practices the trustee has adopted to ensure their central duties are fulfilled. A trustee who has established a governance process and has followed a systematic administrative plan for their duties would be considered to have successfully administered the trust. A trustee who has developed no such coordinated administrative process but manages the trust in a haphazard and uncoordinated way could be found to have failed in their duty to prudently administer the trust.

The Trustee’s Skill, Expertise or Experience

The third factor that is to be evaluated when establishing the trustee’s compensation is the “skill, expertise, or experience brought to the trustee’s work.”⁷

There are two types of individual trustees – those who have a professional license that qualifies them to hold out their services as a trustee to the public and those that do not have this licensure. The Legislature has recognized that CPAs, attorneys, Enrolled Agents and Licensed Professional Fiduciaries may hold themselves out to the public as professional fiduciaries competent and capable to serve as a trustee.⁸ Those with a fiduciary license are recognized by the State of California as possessing the necessary skill and expertise to occupy the office of trustee, and those with related licenses are exempt from this general anti-solicitation rule.⁹

In practice, a professional trustee may reasonably command a higher trustee fee than an individual who has not been recognized with similar skills or expertise. This is not to say that a non-licensed individual does not possess the skills or experience to serve as a trustee. Rather, it suggests that licensed professions may have the skills and expertise that may justify a higher fee than a non-licensed trustee.

The Trustee's Fidelity (or Disloyalty) to the Trust and its Beneficiaries

The fourth factor evaluated when establishing the trustee's compensation is the "fidelity or disloyalty shown by the trustee."¹⁰ The concept of the trustee's fidelity is as ancient as the Roman roots of the office.¹¹ Following are several common actions that may serve as evidence of the trustee's fidelity to their office that should be considered upon the Trustee beginning their appointment.

First, the trustee should adopt a policy that all agents who are engaged by the trust affirm that they – the agent – will also act in the sole interest of the beneficiary and have no financial or familial relationship with the trustee.

Second, the trustee's fidelity can be demonstrated by the seriousness and vigor with which they administer the trust. A trustee should establish and follow a systematic administrative process, including regular reporting, that is explained to the beneficiaries to the trust. Such a process will document and explain the decisions of the trustee and help in a later determination that the Trustee successfully administered the trust, and thus to have acted with fidelity to their office and the beneficiary.

Finally, the trustee's fidelity and loyalty can be demonstrated by their engagement of independent legal representation on behalf of the trust to ensure that the beneficiaries' interests are protected when complex fiduciary matters arise.¹²

The Risk and Responsibility Assumed by the Trustee

The fifth factor evaluated when establishing the trustee's compensation is the risk and responsibility assumed by the trustee.¹³ The primary risks to a trustee are the loss or damage to trust assets and the resulting risk of litigation and disputes between themselves and the trust beneficiaries. There are several factors that tend to increase the risk assumed by the trustee.

A trust with multiple beneficiaries with adverse interests tends to increase the risk of dispute and litigation that the trustee may encounter.

The types of assets held by the trust may also increase the level of the trustee's risk and responsibility (e.g., business

interests or commercial or residential real estate).

Where a trustee has very limited discretion (whether in investment or distribution decisions), there is less opportunity for the beneficiary to challenge the trustee's decisions. Conversely, where the trustee's discretion is broad ("sole and absolute"),¹⁴ there is greater risk of disagreement between the beneficiary and trustee.

Where a trustee has delegated some portion of their administrative responsibility to a third party (investment advisor, property manager, accountant/bookkeeper, etc.), that delegation should be noted. It would also be appropriate that the fees charged by the delegate should result in a downward adjustment to the fee that the trustee is paid.

In practice, the compensation analysis will identify the various responsibilities the trustee accepts as they occupy the office. Special note should be made where there are any added responsibilities arising from: (1) multiple beneficiaries, (2) a large trust size or (3) unusual or illiquid assets held by the trust such as real or business property. The analysis would also include any modification to the trustee fee where key administrative responsibilities have been delegated to third parties such as investment advisors, accounting professionals or property managers.

The Time Spent in the Performance of the Trustee's Duties

The sixth factor that is to be evaluated when establishing the trustee's compensation is the "time spent in the performance of the Trustee's Duties."¹⁵ A prudent trustee will keep careful record of the time spent administering a trust. Even if a trustee charges a fixed fee or a percentage of the trust corpus, the court may expect a trustee to be able to quantify how much time they spent administering the trust.¹⁶

It may be reasonable for the trustee who is charging an hourly rate to have two rates; one for the more routine duties that could be easily delegated at a modest cost to the trust; and a second, higher rate for those duties and responsibilities that are uniquely fulfilled by the trustee. Just because a trustee is a CPA or attorney is accustomed to charging a particular hourly rate does not mean charging the trust that same rate for routine duties performed by the CPA or attorney serving as trustee is reasonable.¹⁷

Custom in the Community

The seventh factor that is to be evaluated when establishing the trustee's compensation is the "... custom in the community where the court is located."¹⁸

Probate Code section 15686 recognizes that there are several acceptable ways to calculate the trustee's compensation.

These include: (1) a base fee—sometimes called a fixed retainer, (2) a percentage of the value of the trust assets and (3) an hourly rate.

In practice, it is likely that any of these three methods could reasonably be considered a custom in the community. More importantly, the report should identify which of these approaches the trustee has decided is most appropriate given the particular facts and circumstances. Whatever approach, the rationale should be based on what is in the best interest of the trust and its beneficiary, rather than what is the most expedient for the trustee. Some trustees who are reticent to charge a percent of assets under management should evaluate the source of such reticence. This policy is well substantiated by authoritative sources such as *A Trustee's Handbook*,¹⁹ and publications from the Continuing Education of the Bar organization.²⁰

Compensation Allowed by the Court

Besides case law there are two areas of guidance the courts look to when reviewing trustee's compensation: (1) the statutory compensation for a personal representative set forth by statute; and (2) the local rules of court adopted throughout the state.

Probate Code section 10800 identifies the compensation that a personal representative may receive for their services as they administer and settle a decedent's estate. The roles, responsibilities, duties, and risks of a personal representative are substantially similar to those of a trustee and can serve as guidance when conducting a trustee compensation study.²¹

A 2020 article in *California Trusts and Estate Quarterly* noted, "the reasonable compensation for the services of the trustee of an administrative trust might best be determined by reference to the statutory schedule applicable to ordinary services of personal representatives of probate estates."²² Where the trust is not an administrative trust, but rather a long-term trust that may last for many years or even decades, some modest discounting – perhaps 20%-30% - should be made to the statutory fee when it is being considered as one of several factors in a "trustee compensation" analysis. Our rationale for this suggestion is that the oversight and disposition of an estate or an administrative trust typically takes more time, energy and focus of the fiduciary than the annual administrative burden of a long-term trust. Additionally, the trustee fee for a long-term trust is charged annually and the fee paid for an estate administration is for the entire projects which will often take longer than one year. The administrative fee is an important factor to consider when conducting a trustee fee study, but it would be inequitable, in our view,

to directly apply that fee schedule to the annual administration of a long-term trust because the time periods and duties are different.

Charges of Corporate Trustees for Trusts of Similar Size and Complexity

The authors have collected fee schedules from several reputable corporate trust companies who operate in California markets. This data was collected from representatives of these corporate trustees and publicly available published fee schedules. The eight corporate trustee fee schedules we have used are administrative models where the asset management responsibilities have been delegated to a third party. This sampling approach results in a lower average trustee fee than the non-delegated fee models that were included, where asset management is retained by the corporate trustee. From this study, the average annual fee across the eight corporate trustees for a \$1 million trust is 0.56 percent when investment advisory services are delegated to a third party.

Another resource can be found in a 2017 article in *Wealth Advisor* which surveyed ten trust companies. The average fee for a \$1 million trust in the sample was 0.63 percent, and an average minimum annual fee of \$5,200.²³

As noted above, when the day-to-day asset management responsibilities are delegated to a third party, the trustee's fee should be reasonably reduced.²⁴ Obviously, where an individual trustee retains investment management responsibility, the use of a fee analysis from a full-service trust company would be more appropriate.

More than Ordinary Skill or Judgment

The final factor evaluated when establishing the trustee's compensation is "whether the work performed [is] routine or required more than ordinary skill or judgment".²⁵

An administration that requires "more than ordinary skill or judgment" could be "extraordinary." An extraordinary administration would tend to justify a higher level of trustee compensation than an "ordinary" one. The California Rules of Court, rule 7.703, identifies those activities where an extraordinary fee should reasonably be paid. These activities include: (1) selling, leasing, exchanging, financing, or foreclosing real or personal property; (2) carrying on the decedent's business if necessary to preserve the estate or under court order; and (3) handling audits or litigation connected with tax (or other) liabilities (or claims) of the decedent or of the estate. These are all instances where extraordinary fees are appropriately paid.

Continued on page 16



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Yager and Myers, *continued from page 14*

In practice, the compensation analysis will identify those factors that would tend to complicate the administration of the trust. If the administrative effort is expected to be “no more than ordinary,” that expectation should be noted.

Periods of heightened administrative burden may ebb and flow over the term of the trust. If this is the case, there may be periods where a higher trustee fee is appropriate because more than ordinary skill or judgment is needed. At other times, when the administration is more typical, the fee would be reduced to a level that is normal and customary for a more routine administration.

DOCUMENTATION

Even though a trustee often has the power to compensate him or herself for all services rendered as trustee without first obtaining a court order,²⁶ it is best to anticipate the challenges of a disgruntled beneficiary.

Of course, it goes without saying that the trustee should contemporaneously (and in detail) document their time, efforts and work performed as trustee. However, a prudent trustee should also carefully document how they arrived at the level of compensation they believe is “reasonable.” This analysis should include an evaluation of each of the factors noted in Rule 7.776. It may be the case that some of these factors do not apply to the trustee’s facts and circumstances. A trustee may also find that an honest evaluation will tend to strengthen the rationale for the compensation reached. In either case, a prudent trustee will address each and every one of these factors in their compensation study. No factors should be ignored. A trustee who has no documented basis for the compensation model settled upon is in a much weaker position to defend their decision than a trustee who has created a record.

Once an analysis of the factors defined by California Rules of Court, rule 7.776 has been performed, a statement of compensation should be clearly documented.

CONCLUSION

While seemingly simple, establishing trustee compensation can be one of the more difficult tasks of a trustee. Trustees are most commonly allowed a “reasonable” amount of compensation “under the circumstances.” As we all know, reasonable minds may differ and clearly the circumstances of every trust administration are unique. A prudent trustee will be mindful of the factors of Rule 7.776 at the outset of a trust administration and when setting their compensation.

(Republished and abridged from California Trust and Estates Quarterly Volume 27, Issue 1, 2021)

** Anodos Advisors, Santa Barbara, California*

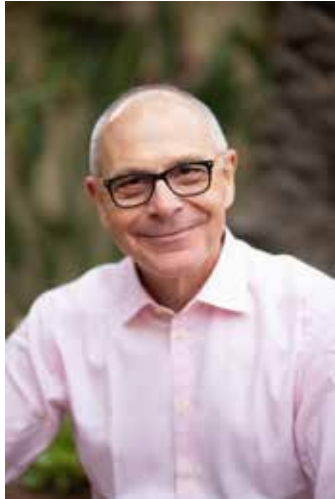
*** Fox Rothschild LLP, San Francisco, California*

ENDNOTES

- 1 Estate of McLaughlin (1954) 43 Cal.2d 462, 467-468.
- 2 California Rules of Court, rule 7.776.
- 3 California Rules of Court, rule 7.776.
- 4 *state of McLaughlin, supra*, 43 Cal.2d 462.
- 5 See e.g., *Estate of Duffill* (1922) 206 P. 42 [trustee fee is 7.5% of gross income].
- 6 California Rules of Court, rule 7.776.
- 7 California Rules of Court, rule 7.776.
- 8 Bus. & Prof. Code, section 6530.
- 9 Note, however, that holding such a license should not, in itself, establish a higher standard of care. For example, a new enrolled agent with no practical background in fiduciary practice would not necessarily be held to the standard of an experienced professional fiduciary. Similarly, an attorney who practices criminal defense or prosecution, or insurance defense, would not necessarily be expected to carry out the trustee function in the fashion of an experienced corporate or licensed trustee.
- 10 California Rules of Court, rule 7.776.
- 11 A *fideicommissum* is a request to the good faith of another to receive transferred property from one owner, subject to it being transferred to yet another person at a later stage. In Roman law, certain persons could not be heirs or legatees. To get around these rules, people would make a bequest to a person capable of being a legal heir and request that person to give the money or property to the intended (but prohibited) person. They initially had no legal effect but were later partially enforced under a special system. Collins Dictionary of Law (2006). <https://www.collinsdictionary.com/us/dictionary/english/fideicommissum> & [https://legal-dictionary.thefreedictionary.com/fideicommissum#:~:text=a%20request%20to%20the%20good,intended%20\(but%20prohibited\)%20person.](https://legal-dictionary.thefreedictionary.com/fideicommissum#:~:text=a%20request%20to%20the%20good,intended%20(but%20prohibited)%20person.)
- 12 Prob. Code, section 16247.
- 13 California Rules of Court, rule 7.776.
- 14 Probate Code, section 16081, further circumscribes the trustee’s discretion in such cases:
 - (a) Subject to the additional requirements of subdivisions (b), (c), and (d), if a trust instrument confers ‘absolute,’ ‘sole,’ or ‘uncontrolled’ discretion on a trustee, the trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust.
- 15 California Rules of Court, rule 7.776.
- 16 *Edward Jones Trust Company v. Duong, Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 2017, 2017 WL 5764169*. Offered for illustrative purposes and not for citation. Trustee, Edward Jones Trust Co, did not submit time data as part of their fee petition. The Trustee argued that corporate trustees don’t keep track of fees when a fee schedule for a percent of trust assets is used. The Court held that “Contrary to Trustee’s assertion, the court’s discretionary determination of the reasonableness of a corporate trustee’s compensation is not confined solely to considering comparable corporate trustees’ published fee schedules.” See also Superior Court of Sacramento County, Local Rules, rule 4.84(A) which anticipates that a trustee will have maintained time records categorized by services performed in order to justify a trustee fee.
- 17 Given different facts an alternative conclusion might be reached.
- 18 California Rules of Court, rule 7.776.

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- 19 "The prevailing practice in this country is to calculate the trustee's compensation on the basis of a fixed percentage of principal and/or income." Loring and Rounds, *supra*.
- 20 Continuing Education of the Bar (CEB) notes that an asset-based fee for a non-professional family trustee should likely be one percent or less absent other factors. Tippet, California Trust Administration (2nd ed. 2015) pp. 9-10.
- 21 Loring and Rounds, *supra*.
- 22 Kinyon et al., *High Value Estates: Proposal for Compensating Personal Representatives and Attorneys for Ordinary Services in Probate Estates That Exceed \$25 Million* (2020) 26 Cal. Tr. & Est. Q. 1.
- 23 Martin, *Who's Charging What for Trust Services?* (Aug. 27, 2019) Wealth Advisor, <https://www.thewealthadvisor.com/article/whos-charging-what-trust-services>.
- 24 See Uniform Trust Code, section 708, com.
- 25 California Rules of Court, rule 7.776.
- 26 Prob. Code, section 16243; *Estate of Gilfillan* (1978) 79 Cal.App.3d 429, 436-437.

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Three Financial Barriers to Reaching a Divorce Settlement Agreement From a CDEFA®'s Perspective

BY KIMBERLY MALESKY, CFP®, CDEFA®, MBA

How does this affect me? Will I be okay financially?

Most divorcing couples do not understand how financial settlement could affect them. Consequently, financial disparities between parties may cause some trepidation during the settlement process. A less well-off partner may fear that they will be left with nothing and unable to fully support themselves. The wealthier partner may fear that the proposed settlement will leave them with too much of a financial burden to continue living comfortably. As a Financial Advisor, trust me when I say that most people do not have a firm grasp on their monthly expenses. While they may have filled out financial disclosures during the divorce process, I find that unfortunately most are inaccurate not because people are being deceitful, but because they are not entirely sure leading to a lot of guess work. Until the parties are able to comprehend and detail their actual spending, it is impossible for them to make a confident decision.

As couples navigate the divorce process, one crucial thing I share with my clients is that the same income currently covering *one* household must now cover *two* households. This deceptively simple point often gets lost in translation with divorcing parties as each party understandably wishes to maintain their own standard of living at any cost.

I do not want to share my retirement account or pension. Plus, the 50/50 trap.

As humans, we have an emotional attachment to money, plain and simple. Money means different things to different people, and causes various reactions during a divorce process. It is common for parties to have divergent beliefs

about what is the most important aspect of the financial settlement. While one party digs in their heels about their retirement or pension, the other party does the same about the marital home. Sound familiar? However, the good news is the notion that couples must divide each account and property 50/50 is simply untrue and furthermore, not always beneficial to either party.



Kimberly Malesky

To begin dividing 15 retirement accounts in half can become a logistical nightmare. Every custodian, (where the account is held) has different procedures and protocols for dividing assets left from a divorce. Some are relatively simple and others can require an overwhelming amount of paperwork for couples. Understanding custodian requirements helps avoid any of these issues and is key to determining which assets to “split,” versus which to allow one party to keep. Naturally there will be an equalization and an identification of how this will happen logistically.

Keep in mind that the well-off partner may *benefit* financially from dividing a pension. Bear with me. Retirement projections inclusive of tax ramifications, outlines that perhaps the CEO spouse will be in a much higher tax bracket down the road. With the non-CEO spouse in a lower tax bracket, it could behoove the CEO spouse to share this asset. They simply need to see the after-tax projections to understand the financial benefit.

There are numerous ways to divide assets and liabilities. Making forward-looking projections that take into account the liability side (mortgages, credit card debt) of the balance sheet as well as tax implications and logistical procedures of the account custodian is just a limited subset of ways to approach this monumental task.

Once the divorce decree is finalized, many “next steps” may not be possible, regardless of what the decree reads. For example, one party must refinance the marital home to buy out their former partner. Unfortunately, this is often not doable as they may not qualify. Participating in financial planning sessions before finalizing the divorce can avoid this type of undesired outcome.

My best friend receives way more money than me in spousal and/or child support, or my best friend pays far less in spousal and/or child support.

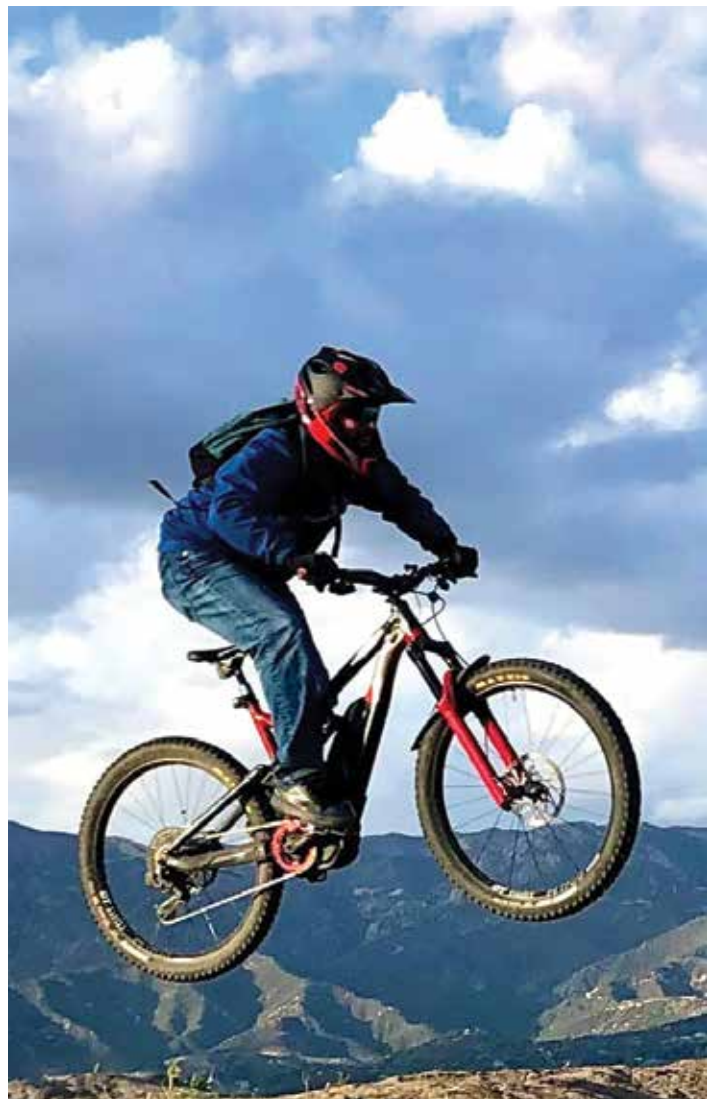
The sooner both parties understand that they absolutely cannot compare their case to their friend’s case, the better. Similar to financial and investment planning, no one situation is identical to another. There is no way to know the specifics of their friend’s case and whether they are frustrating themselves comparing apples to oranges. Discussing an ongoing case with friends can be therapeutic, but the chances you will get well-intentioned, yet inaccurate advice are very high. This misinformation can throw off a perfectly suitable settlement agreement and send one partner down a fruitless rabbit hole. ■

Kimberly Malesky is a CFP®, MBA, CDFIA®, trained in mediation and collaborative divorce protocols. She is also a 2023 Fellow with the American Bar Association, serving on their Early Dispute Resolution committee. Her firm is Ezharmony, LLC Divorce Solutions. www.ezharmony.com

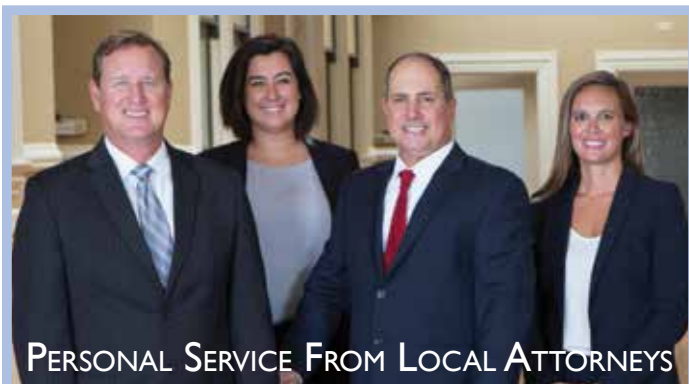
Brown, *continued from page 17*

for which Mike happily agreed. That was 15 years ago! Mike has continued to provide coverage of almost all of the important SBCBA events since then. The list of events that Mike has covered for the SBCBA Magazine is long, and includes Past President’s Luncheons, Appellate Court Receptions, Swearing In Ceremonies, Bench and Bar Conferences, SBCBA Annual Barbecues, SBCBA Annual Dinners, Retirement Parties, and Awards ceremonies. One of Mike’s favorite events is the Annual Barbecue because it is more casual, and held outdoors, and everyone seems more relaxed. Plus, he loves a good BBQ!

All of us in the Santa Barbara County Bar Association owe Mike Lyons a great deal of gratitude for all of the photographs he takes documenting our events and preserving our many good memories. Thank you Mike Lyons!!! ■



Mike enjoys mountain biking the local trails in Santa Barbara, California



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Unity Mixer Brings Neighboring Legal Communities Together to Promote Diversity in the Legal Profession

BY TERESA M. MARTINEZ

The Santa Barbara County Bar Association (SBCBA) Diversity, Equity, and Inclusion Task Force and the Ventura County Diversity Bar Alliance recently hosted a Unity Mixer at the Corktree Cellars in Carpinteria. The event was an opportunity for our two organizations to network and discuss our dedication and actions to ensure diversity in the legal profession and on the judiciary.

We were honored to host local judges from the Santa Barbara Superior Court Pauline Maxwell and Raimundo Montes De Oca, along with judges from the Ventura County Superior Court, Kevin DeNoce and Tari Cody who was recently nominated to serve as an Associate Justice on the Second District Court of Appeal, Division Six. Also in attendance were Carpinteria Councilmember Natalia

Alarcon and Ventura County Court Chief Executive Officer Brenda McCormick along with many attorneys from both counties. Our guest of honor was Jessie Morris who joined us from Sacramento to talk about the role of local unity bars to support and retain highly qualified candidates to the judiciary who reflect the communities to which they serve.



Teresa M. Martinez

The event was sponsored by the Santa Barbara Colleges of Law and Meyers, Widders, Gibson, Jones, & Feingold.

In 2021, the SBCBA Diversity, Equity, and Inclusion Task Force was created by the SBCBA to promote access, diversity, and inclusion amongst professionals in the local legal community, with a focus on supporting students from diverse backgrounds obtain careers in law through mentor-



Vanessa Valdez, Teresa Martinez, Dien Le, Wendy Lascher, and Jessica Wan

ship and scholarship. Since its inception, the Task Force has partnered with the University of California, Santa Barbara's pre-law program to connect students with attorney mentors, organized panels on careers in law with local colleges, and provided education on diversity to the local legal community through MCLEs. We also work collaboratively with other legal organizations to achieve our shared goals of diversity, equity and inclusion in the legal profession. For more information about the Diversity, Equity, and Inclusion Task Force, please visit <https://sblaw.org/diversity-and-inclusion-task-force/>.

The Ventura County Diversity Bar Alliance is an organization comprised of many affiliate bar associations in Ventura County, including the Black Lawyers of Ventura County, Women Lawyers of Ventura County, LatinX Bar Association, Ventura County Sexual Orientation and Gender Identity, and the Ventura County Asian American Bar Association. The Ventura County Diversity Bar Alliance was created in 2012 with a focus on addressing issues of judicial diversity in Ventura County.

We look forward to continuing the important work of ensuring that the local bar reflects the diversity that exists in our community. For more information on how to become involved, please contact Diversity, Equity, and Inclusion Task Force Chair Teresa Martinez at teresa-maemartinez@gmail.com. We hope to see you at future events! ■

Teresa M. Martinez is a Senior Deputy County Counsel with the County of Santa Barbara, Office of County Counsel, and serves on the Board of Directors for the Santa Barbara County Bar Association.



Dien Le, Wendy Lascher, Jessica Wan, Judge Kevin De Noce, Judge Tari Cody, Jill Friedman, Jessie Morris, and Michael Pellegrini



Lorraine Benavides, Brenda McCormick



Judge Raimundo J. Montes De Oca, Monique Fierro, Josh Fierro, Marisol Alarcon



Wendy Lascher and Jessica Wan



Jennifer Yates, Judge Pauline Maxwell, Marisol Alarcon, Teresa Martinez, Brandon Veltri, Danielle DeSmeth, Keri Kettle



Michael Pelligrini, Jill Friedman, Judge Kevin DeNoce, David Shea, Judge Tari Cody, Claire Mitchell



Brenda McCormick, Michael Pellegrini, Judge Pauline Maxwell, Jill Friedman, Judge Kevin DeNoce, Judge Tari Cody, David Shea, Claire Mitchell, Taylor Fuller and Jessica Wan

George Bobolia 1924-2022

BY CRAIG SMITH

My first job out of law school was with the Santa Barbara District Attorney's Office. One of the attorneys in the office who was among those I enjoyed working with the most was George Bobolia. George passed away this past December at the age of 98.

When I arrived here in the late summer of 1976, George was already an institution in the office. With his closely cropped hair and bow ties, he stood out from the rest of us with our sideburns and neckties. He was always willing to help out if you needed someone to cover a court appearance for you. Although George wasn't a guy who tried high-profile cases, I learned a lot from him in observing the way he went about his business, both in and out of the office.

Stan Roden, who was a deputy DA from 1968 to 1970 (Stan would later become the District Attorney) recalls that George, was always kind and caring.

"I admired his bow ties; ever-present beaming smile; optimistic outlook on all things, despite the work he was doing; his respectful approach to all he encountered, including judges and defense attorneys. There were some who stopped talking to me when I left in 1970 and switched sides (to become a defense attorney); not George. I will never forget the look on his face when I brought in the Sheriff's record showing my client, (who he indicted for burning down the Bank of America in Isla Vista) was in jail at the time his witness, a deputy sheriff from Los Angeles County, said he saw him throw the pivotal Molotov Cocktail."

That last experience might explain the philosophy George would share with us on reviewing police reports and making filing decisions: "Don't tell me what the facts are, just tell me who the officer is."

His wisdom wasn't limited to professional matters. During George's time in the office, a group of us would go to lunch every Friday at the old Castagnola's Seafood across from Stearn's Wharf. At the end of the meal when the waitress would ask whether there was anything else she could get for us, George would often say, "A big smile and a small check."



George Bobolia

His five rules for a happy marriage:

1. Don't have kids right away.
2. Forced savings.
3. Take a substantial vacation every year.
4. Always have some money in your pocket.
5. No pets!!

And his rules worked. He and his late wife Mabel were married for nearly 60 years.

Following graduation from law school at USC, George took a job as a deputy DA in Inyo County, working in the historic courthouse in Independence, just off Highway 395 on the way to Mammoth. While working there he discovered a dining venue he would often recommend to others, The Restaurant at Convict Lake.

It was 1959 the Bobolias relocated to Santa Barbara. George and Mabel would become patrons of the local theater production companies and gourmands dining at restaurants that offered the best meals for the buck. One of their favorites was the gourmet dining room at SBCC.

After 24 years of employment with Santa Barbara County, George retired from the DA's office in 1982 at age 58. When the Board of Supervisors recognized his years of service with a proclamation, the attorneys in the office filled the front row of the board hearing room, all of us sporting bow ties in honor of George. When one of us asked him how he was able to retire at such an early age, his answer was, "Simple, live in the same house and stay married to the same woman."

Continued on page 25

Critical Need for Court Reporters

BY DARREL PARKER

According to a recent Judicial Council Fact Sheet on the Shortage of Shorthand Reporters, courts employ 1200 court reporters in California. To meet the minimum requirements, it is estimated that California may need an additional 650 full-time court reporters. On November 2, 2022, over 50 Court Executive Officers from the Superior Courts throughout California published a letter highlighting the critical shortage of court reporters in California and the US. Santa Barbara Superior Court, until recently, was not struggling the way other courts were. Shasta County suffers with such a shortage of qualified court reporters that they have had to conduct murder trials without a court reporter.

Last November the Los Angeles Superior Court announced their need to eliminate court-provided court reporters in family law and probate matters. The court had ceased providing court reporters in Civil cases years ago. Other courts are already in this predicament or fast approaching it. The Santa Barbara Superior Court budgeted 16 official court reporters and a supervising court reporter for the current year. Our supervising court reporter faces daily challenges in dealing with unexpected absences. Our court struggles with 4 vacancies. That's 25% of our available court reporters. We have recently increased incentives to recruit and retain certified court reporters, but we teeter on the edge.

In the fiscal year 2021-22 the State Budget appropriated \$30 million for courts to use to recruit and retain court reporters. Many courts have used that funding to ameliorate this issue by creating economic incentives to attract and retain court reporters - signing bonuses; tuition, equipment and subscription reimbursements; retention bonuses and more are being made available in courts throughout California. Similarly, the Santa Barbara Superior Court has recently increased economic incentives to recruit and retain qualified official court reporters.

New Santa Barbara Superior Court court reporters can take advantage of a \$7,500 signing bonus; \$2,500 is available upon signing, \$2,500 is paid at six months and another

\$2,500 at the conclusion of the first year. Current qualified court reporters are eligible to receive a \$10,000 retention bonus receiving \$5,000 initially and then \$2,500 per year for the next two years. The Court is also evaluating its ability to provide tuition reimbursement for recent graduates or candidates currently enrolled in court reporting school. This money is only available to court reporters through AB 1891 which provided \$30 million statewide to aid courts in addressing the shortage of court reporters.



Darrel Parker

If the Santa Barbara Superior Court is unable to recruit additional court reporters, or loses any current court reporters, we will be unable to provide court reporters in civil and other matters as calendars are currently configured. We are doing everything within our power to avoid this result. We are now evaluating various options and will be making a recommendation if the worst-case scenario occurs.

So, what happened? At one time, California had over 40 court reporting schools. Currently there are only nine Certified Shorthand Reporter programs remaining. In 2021, only 175 examinees took the licensing exam and only 36 passed. Over 70% of the state's trial courts are actively recruiting for court reporters. With only 25% of graduates passing the State certification process in any given year, we are all competing for dwindling resources. Retirements are exceeding the rate at which new candidates are graduating from schools and passing the certification process.

This past year the California Legislature authorized the use of "voice writers" once licensed by the California Court Reporter Board. Voice writers are trained personnel in the courtroom wearing a noise cancelling mask with a microphone covering the writer's mouth. The voice writer repeats everything that is spoken in the courtroom. The voice recognition software then converts the spoken word to text. Voice writing school takes approximately four to six months compared to two years for court reporter stenography training, and the graduation rate for voice writers is approximately 90 percent compared to the lower California stenography passage rate. These voice writing technologies are used in over 40 states and in federal courts, military courts and Congress.

It is my belief that Official Court Reporters, 'stenographic

reporters” are the *gold standard* in creating the record in courts. At an earlier point in my career I was responsible for producing all appellate records in the Los Angeles Superior Court. Official Court reporters were critical to professionally and timely completing those tasks. The Santa Barbara Superior Court will continue to use a court reporter wherever we can. We continue to find ways to compete with other courts and the private sector in recruiting available and new court reporters. Our Court is fortunate to have the current compliment of court reporters. They are professionals, seriously committed to doing the best job possible. Their ranks are strained however given the need to cover multiple courts on any given day. We must take into consideration their ability to keep up, and so some changes may be necessary in the future.

If you know a court reporter or know someone interested in going into the profession, please have them contact the court at www.sbcourts.org. ■

Darrel Parker has served as the Jury Commissioner, Clerk of the Court and Court Executive Officer for Santa Barbara the last ten years. He holds a BA from Drew University, and an MPA from USC with specialization in Court Administration.

Bobolia, *continued from page 23*

George always maintained that his most satisfying achievements in life were, “Applying for a marriage license, and going through the ceremony.” There are many of us who would disagree with him on that last one, albeit, for purely selfish reasons. In 1988, George was unhappy with the shabby health insurance plans that were offered to county government retirees, and initiated a successful class action lawsuit that secured health insurance benefits for retired county employees that are equal to active employees. For myself and countless others, it’s a gift that keeps on giving.

If one were to consult a dictionary for a definition of a “life well-lived,” you would undoubtedly find a picture of George there. ■

About the author: Craig Smith was a Deputy District Attorney in Santa Barbara from 1977 to 1983. He also served as a Superior Court Commissioner in Santa Maria from 1992 to 1996. He currently teaches at Colleges of Law, Santa Barbara campus. www.craigsmith.law

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Santa Barbara Lawyer seeks editorial submissions

Articles should be 700 to 3,500 words in length.

Articles should be submitted in Word format, including a short biography of the author. A high resolution photo of the author is desired.

Please submit articles by the 8th of the month for publication in the following month's issue. The editorial board of *Santa Barbara Lawyer* reserves the right to edit for accurateness and clarity, or reject any submission if it does not meet magazine guidelines.

Please submit articles to Brad Brown at info@bradfordbrownlaw.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 approximately 2-9 years (or more) 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. 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 or Kristen Blabey at kblabey@ppplaw.com. The salary range for qualified candidates is \$115,000 - \$225,000, depending on experience and other qualifications.

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rzick@ppplaw.com

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Jeff Chambliss (805) 895-6782
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Teresa Martinez (805) 568-2950
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Lori Lewis (805) 966-1501 x267
Llewis@mullenlaw.

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

Marisa Beuoy (805) 965-5131
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Mandatory Fee Arbitration:

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In House Counsel/Corporate Law

Betty L. Jeppesen (805) 450-1789
jeppesenlaw@gmail.com

Intellectual Property

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

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

Taxation

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April 2023



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 April Fool's Day
2	3	4	5 Passover	6	7 Good Friday	8
9 Easter	10	11 National Pet Day	12	13	14	15
16	17	18 Tax Day	19	20	21	22 Earth Day
23 World Book Day	24	25	26	27	28 Arbor Day	29

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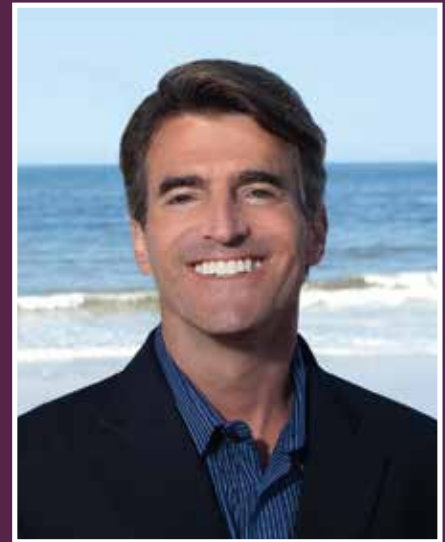
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