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2024 SBCBA Annual Summer Barbecue!

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Santa Barbara County Bar Association

SBCBA

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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Santa Barbara County Bar Association
SBCBA

Articles

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On the Cover

Mack Stanton mans the grill at the SBCBA Annual Summer Barbecue. Photo by Mike Lyons.

The Bar Needs More Fee Arbitrators!

A Refresher on the Fee Arbitration Process

By Eric Berg

Eric Berg, Past President

Most of us don't appreciate how fortunate we are that the Santa Barbara County Bar Association continues to run a local Fee Arbitration Program. About half of the counties in California do not. It takes a lot of time and resources to do it properly, let alone well. Counties that do not sponsor their own program utilize the State Bar's Fee Arbitration Program. Here in Santa Barbara, we have been fortunate to be able to avoid that.

The State Bar's program will only assume jurisdiction if either party asserts that the County's program cannot offer a fair hearing. But the State Bar will also assume jurisdiction if the local bar does not have an arbitrator available to hear the dispute.

That's where we need your help. Our Bar Association needs more Fee Arbitrators. This invaluable local program simply cannot be placed in jeopardy of going away.

As Chairperson of the local Fee Arbitration Program, I want to provide you all with a refresher on the fee arbitration process and strongly encourage you to volunteer to join our arbitrator team.

Some Background

The Mandatory Fee Arbitration Act is found at *Bus & Prof. Code* §§ 6200- 6206. The Act was enacted in 1978 to provide a faster, less expensive, and more confidential way to resolve fee disputes. Prior to the Act, attorneys & clients had to sue each other in court or—assuming the fee agreement so provided-- pursue an arbitration action. This created the perception that the process favored the attorney over the client, who was forced to retain counsel to "even the playing field". The Act was partially designed to address that inequity.

The Act is client-friendly in that one of its mandates is that neither party can recover fees incurred in participating in fee arbitration. The Act is also client-friendly in that it requires the attorney to participate if the client so elects. Attorneys were not left without some benefit of their own, however. Pursuant to *Cal Bar Rule* 3.512, a request for arbitration, any record of proceeding, and the award are all confidential.

The Basics

The Program is mandatory for attorneys. It is not mandatory for clients. That means that a client may compel an attorney to mandatory fee arbitration, but not the other way around. How does the attorney avoid this outcome? By including a mandatory fee arbitration provision in their fee agreement. Unless there is a mandatory fee arbitration clause in the engagement letter, the Santa Barbara County Bar Association has no authority to proceed with an attorney-requested arbitration if the client refuses. *Bus & Prof. Code* §6200(c). And for any attorney thinking they can insert language in the fee agreement getting the client to waive the protections afforded the client under the Act, think twice: such an attempt is void on its face. *Alternative Systems, Inc. v. Carey,* 67 Cal. App. 4th 1034, 1043 (1998).

The statute of limitations for a client to file a claim for arbitration is one year from discovery of the wrongful act or omission. *Code Civ. Pro.* § 340.6(a). However, once an attorney serves the client with Notice of Client's Right to Fee Arbitration, the client's time period is shortened to thirty days from issuance of the Notice.

The award is binding only if both parties consent. The parties may not consent to binding arbitration until after the dispute arises. *Bus & Prof. Code* § 6204(a); a clause in the engagement letter requiring the parties to submit to binding fee arbitration will typically be reformed to read as non-binding fee arbitration.

The Arbitration will typically be heard by a single arbitrator selected by the County Bar. More significant matters will result in the appointment of three arbitrators, at least one of whom is required to be a layperson. Fees associated with the arbitration are paid by the initiating party, are based upon the amount at issue, and are subject to reallocation as part of the final award.

Discovery is limited. While subpoenas are technically available, they are rarely issued, and only upon a showing of good cause. *Bus & Prof. Code* § 6200(g) (3). Additionally, attorneys often do not appreciate that in advance of the fee arbitration, the client has the right to obtain and inspect a

complete copy of their file. *Cal Bar Rule* 3.540(B).

The Hearing

The hearing can proceed even if a party does not appear. That is not wise, however; if the non-appearing party challenges the award in court and the court determines that the failure to appear was willful, then that party loses the right to a trial after arbitration. *Bus & Prof. Code* § 6204(a). The hearing is not transcribed or recorded. *Cal Bar Rule* 3.541(F)

In terms of evidence presented, think of the basics—the engagement letter and any modifications thereto, bills and invoices, proof of payment, communication between the parties regarding whatever issues may be in dispute. During the hearing, the attorney may disclose client confidences and work product without violating confidentiality restrictions. *Bus & Prof. Code* §6202.

Lawyers often are less than clear about the client's right to assert a malpractice claim as part of the Fee Arbitration. The client can assert such a claim. However, the malpractice claim is only admissible to the extent that the attorney's alleged negligence adversely affected the value of the legal services rendered. That is not the same thing as saying that any fee award can be offset against a claim for malpractice. Think of the following example: The lawyer claims that the client owes $50,000.00 in fees. The client defends that claim by stating that the lawyer's work comprising the fee fell below the applicable standard of care. If the Arbitrator finds the client's defense valid, that can operate to reduce the attorney's fee claim in whole or in part as a result of the malpractice. However, the arbitrator cannot (1) award the attorney some or all of the fees sought; and then (2) separately award the client a monetary recovery based upon the attorney's negligence. More likely will be the procedural scenario where the client files a separate Complaint for Malpractice against the attorney in Superior Court.

The Award

The Final Award will be in writing and signed by the Arbitrator. Once prepared, the Bar Association's Fee Arbitration Committee will review the award for any procedural errors. The Committee does not review nor does it offer suggestions or changes to the substance of the award or of the particular outcome.

Sometimes attorneys believe that the Fee Arbitration process by definition gives them some advantage over the client. Sometimes clients believe that the Fee Arbitration process by definition is stacked against them. Both assumptions would be gravely in error. The Santa Barbara lawyers who generously give of their time to serve as Arbitrators have undergone formal training with the State Bar. They have access to the most up to date California administrative and legal opinions on the topic of fee disputes. They work incredibly hard to reach the right result. Sometimes lawyers get all of the fees they are seeking. Sometimes they get some of the fees they are seeking. Sometimes they get none of the fees they are seeking. Sometimes they have to return fees to the client. Each arbitration, like each client relationship, is unique.

Our Bar Association needs more Fee Arbitrators. This invaluable local program simply cannot be placed in jeopardy of going away.

Once finalized, the Bar will issue the award to the parties along with a form entitled *Notice of Your Rights after Fee Arbitration*. A request for trial *de novo* must be filed within 30 days after the date the Bar serves the award. Even if it is non-binding, the award becomes binding if no one files a *de novo* request within 30 days. *Bus & Prof. Code* § 6203(b).

Both attorney and client need to be careful, however, about utilizing the *de novo* process. Often one or both will "make light" of a non-binding Fee Arbitration, reasoning that any adverse result can simply be unwound by the Superior Court. What the litigants often fail to consider is the Superior Court's discretion to award fees to the losing side of any such trial *de novo*. As set forth at §6204(d),

> "The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorney's fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorney's fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence."

So while the Superior Court will utilize a *de novo* standard of review and give the parties a fresh look at their case, the Court will also have the discretion to award fees to the prevailing party in such proceeding. And it is important to remember that the "prevailing party" in such an instance

could be the client who, while ordered by the Court to pay the attorney some amount of fees, achieves a better result than that achieved at the Fee Arbitration.

There is another reason for the attorney to be mindful of utilizing the trial *de novo* process. The confidentiality afforded the attorney as part of the Fee Arbitration process goes away once the trial *de novo i*s sought—that case becomes a public proceeding like any other court action.

Collecting the Award

If the Fee Arbitration results in an award to the client, and if that award becomes binding, the client may file a *Client's Request for Enforcement of an Arbitration Award* with the State Bar if the attorney has not satisfied the Award within one hundred days. The attorney must appreciate that a binding fee award in favor of the client is not to be trifled with. The State Bar can and will place the attorney on involuntary inactive status until the refund is paid, and can fine the attorney up to twenty percent (20%) of the amount owed—up to $1,000.00—to ensure collection. *Bus & Prof. Code* §6203(c) (3).

Final Thoughts

You do not have to be a member of the Bar Association to enjoy the benefits of its Fee Arbitration Program. But for those of us who take a hard look every year at our various professional memberships and ask "what am I getting out of this?" the Bar's Fee Arbitration Program is reason alone for our continued membership.

For those of you who find the subject particularly interesting and have some time to give, please consider volunteering to get formally trained and serve as an Arbitrator. We don't want to find ourselves having to send important cases to the State Bar for resolution. Anything we can do to build out a more robust local program benefits us all. Contact me or Marietta Jablonka for more information. ■

Eric Berg is Past President of the Santa Barbara County Bar Association and Chairperson of its Fee Arbitration Committee. His litigation practice includes the defense of law firms and other professional service firms in litigation throughout California. Eric also serves as a Commercial Arbitrator with the American Arbitration Association. He can be reached at eric@berglawgroup.com.

From Distrust to Resolution: Leveraging Mediation in Contentious Divorces

By Judge Susan Lopez-Giss

Judge Susan Lopez-Giss

Imagine this scenario: You are representing a client—the wife, in a long-term marriage of over 15 years, with children under 12. Despite the fact that their lifestyle doesn't suggest there is extra money, she insists that her husband is hiding assets. She is distraught and wants you, her lawyer, to "do everything you can " to make him pay. You have obtained a temporary support order...but she is convinced it is not enough. Your fees have been completely exhausted. You went to mediation at the Courthouse, but she felt unheard and is consequently convinced that "when a judge hears my story…"

Who you gonna call? I suggest a case buster.

Every lawyer, litigator or not, faces this ultimate challenge—how can I prove that my client (but actually me) is right? Is the issue, the way you are presenting it, going to prevail?

For a family law practitioner, that question is complicated by emotions, lack of documents and, finally, a client who is looking to prove the other person is a liar.

As a former prosecutor and civil litigator for the City of Los Angeles, I learned that the more I knew about the opposition and my own client, the more effective I became. I am not simply talking about documentation; I am talking about how the other side presents. What triggers the opposition? How does my witness present when free to speak?

The best way to gather that information is through meditation. Meditation is a completely confidential process that allows you to observe your client and watch the opposition respond in a manner where nothing is "on the record", helping you build your strategy. As a side benefit, it can also serve as a function to narrow the issues.

Family law doesn't have jury instructions. There is no legislative authority guiding the presentation of issues. An effective mediator can assist in determining the disputed issues and obtain, at a minimum, an agreement of what specific questions need to be addressed.

Early mediation can therefore provide insight into the credibility of the parties and a framework of the issues at stake.

The key to success is in preparation. Based on my experience, both as a litigator and as mediator, I've found that these are the top three ways you can set yourself up to succeed in mediation:

1. Hold a joint conversation with both counsel and the mediator prior to the mediation to establish a framework for the mediation. For instance, how does the mediator conduct the mediation? Who goes first? What role do the parties expect the mediator to play?
2. Prepare a Joint Statement of disputed issues. What issues do *both* sides agree are in dispute—*not* simply "We disagree about everything". If, for instance, the issue is support, what type of support? Spousal or child? And what are the sticking points? Oftentimes these include income, pre-marital agreements, time shares, among other assets. Be sure to list all disputed issues so the roadmap forward is clear.
3. Make sure the mediator recognizes that the parties need to vent. California is a no-fault state, but that doesn't mean the parties do not need to talk about fault.

A mediator who recognizes the importance of these three components has the information necessary to effectuate resolution.

Resolving these issues requires parties to recognize that there is risk inherent in every litigation. Parties who spend more money than they can, or do recover, either ignored or failed to evaluate the risk in their case. A family law judge has much codified discretion, e.g. California Family Code Section 3040-matters to be considered when granting custody. Judicial discretion translates to risk. There is no guarantee that two judges will rule the same on a given set of circumstances. Add to that the emotional state of the parties, and evidence that, in many cases, is in dispute

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Update on the Corporate Transparency Act

By Natasha Bhushan

The Corporate Transparency Act (the "CTA"),[1] effective January 1, 2024, is arguably the most far-reaching federal legislation in twenty years. It requires an estimated 32.6 million existing business entities, plus an estimated 5 million new business entities per year,[2] to report personal information about the entity's owners and control persons (termed "beneficial owners") to the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the U.S. Treasury Department. This personal information includes full legal name, date of birth, residential address, and a copy of government-issued identification, such as a driver's license or passport. All reported information must be kept current.

Congress enacted the CTA in 2021, as part of the of National Defense Authorization Act. Congress's rationale for the CTA is that criminals exploit state formation laws to conceal their identities when forming corporations or LLCs, and then use those businesses to facilitate crimes, notably terrorism, money laundering, tax evasion, and foreign corruption.[3] The law is purportedly designed to prevent criminals from hiding behind business entities and to provide law enforcement with information helpful to criminal investigations.

The CTA targets small, privately-held entities. Most small or family-run corporations and LLCs, which make up most American businesses, are subject to the law's reporting obligations. Large operating companies, publicly-traded companies, and tax-exempt entities are among the entities exempt from the reporting requirements. Any doubt about whether a particular entity is required to file should be resolved in favor of filing, given the steep penalties for non-compliance. These include civil fines of $500 per day up to $10,000 *per violation* (the fines can add up quickly, especially for failing to keep information up-to-date) and criminal charges that could result in up to two years in prison.

Perhaps unsurprisingly, the unprecedented scope of the CTA and the burdens it imposes on small businesses have already made it the target of several court challenges and congressional bills.

Natasha Bhushan

The first U.S. District Court to rule on the CTA found it unconstitutional. On March 1, 2024, in *National Small Business United v. Yellen, No. 5:22-cv-1448*, the U.S. District Court of Alabama ruled, on cross-motions for summary judgment, that the CTA exceeds Congress's enumerated powers. The court issued a permanent injunction halting enforcement against the plaintiffs, including the National Small Business Association ("NSBA"). The court explicitly rejected the federal government's arguments that the CTA is a valid exercise of Congress's power over foreign affairs, commerce, or taxation, or is justified by the necessary and proper powers. The court's decision paid special attention to the commerce clause, noting: (1) the CTA regulates entity formation rather than the use of channels or instrumentalities of commerce; (2) the connection between entity formation and criminal activity is too attenuated to justify regulating formation under the commerce power; and (3) Congress failed to include a jurisdictional hook (e.g., "affecting commerce," "in commerce") in the language of the CTA that would indicate an intent to regulate under the commerce power.

The case has been appealed to the U.S. Court of Appeals for the Eleventh Circuit, with oral argument currently scheduled for the week of September 23, 2024.[4] A decision is expected early next year,[5] with potential Supreme Court review later in 2025. FinCEN has stated that while review is pending, the CTA remains in effect for all entities, except the plaintiff-appellees.[6]

Similar cases challenging the constitutionality of the CTA have been filed in the U.S. District Courts for the Northern District of Ohio, Western District of Michigan, District of Maine, and Eastern District of Texas. It remains to be seen whether the decisions there will have anything to say on constitutional issues not addressed by the Alabama district court, including whether the CTA invades the rights to privacy and freedom of association, whether reporting requirements constitute an illegal search without a warrant, and whether certain language, including a test to determine "beneficial owners," is unconstitutionally vague.

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Bhushan, *continued from page 12*

If any of these challenges are ultimately successful, it seems likely that Congress will amend the CTA to address the constitutional problems identified by the courts. These fixes may include narrowing the types of entities that must file BOI Reports. For example, the U.S. District Court for the Northern District of Alabama's decision mentioned that if the CTA only regulated entities engaged in "commerce," that may be an acceptable exercise of Congress's Article I powers under the Supreme Court's Commerce Clause. If another court determines that the CTA violates a constitutional right to privacy, Congress may be forced to change the personal information beneficial owners are required to report.

Meanwhile, bills to repeal the CTA have been introduced in both the House and Senate. Following the *Yellen* decision, on April 30, Representative Warren Davidson (R-OH), along with eleven other House Republicans, introduced the Repealing Big Brother Overreach Act in the House. Senator Tommy Tuberville (R-AL) subsequently introduced the bill in the Senate. More than 100 trade organizations across every major American industry sent a joint letter to Representative Davidson expressing support.[7]

A less ambitious bi-partisan bill, The Small Business Red Tape Relief Act, introduced in the House by Representative Zach Nunn (R-IA) on April 11, and co-led by Representative Henry Cueller (D-TX), does not go so far as repealing the CTA, but would purportedly alleviate some of the burden on small businesses. Nunn's office claims the legislation "will hold the U.S. Treasury accountable for educating Main Street businesses on reporting responsibilities to prevent small businesses from being penalized for not complying with new requirements when they have not even been informed." The current version of the bill requires FinCEN to provide quarterly reports to Congress on the number of BOI Reports filed. There is no indication as of yet what the U.S. Treasury's obligations to educate might look like ■.

Natasha Bhushan is an associate at Hollister & Brace. Her current practice focuses on corporate and transactional work. She previously practiced at an appellate litigation firm in Pasadena for several years. She received her J.D. from Cornell Law School in 2012.

Endnotes

1 Codified as 31 U.S.C. §5336.
2 Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498 (September 30, 2022).
3 31 C.F.R. § 1010.380 (2022).
4 USCA11 Case: 24-10736 Document: 71 Date Filed: 06/14/2024 Page: 1 of 1
5 The median time interval between oral argument and last opinion or final order for civil appeals in the Eleventh Circuit was 4.3 months for the 12-month period ending September 30, 2023. United States Courts, Table B-4A, https://www.uscourts.gov/sites/default/files/data_tables/jb_b4a_0930.2023.pdf
6 FinCEN, Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.), Mar. 4, 2024.
7 A copy of the letter is available on the website of the S Corporation Association, https://s-corp.org/wp-content/uploads/2024/04/FINAL-4-29-24-Joint-Trades-Letter-CTA-Repeal.pdf

Santa Barbara County Bar Association
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Santa Barbara County Bar Association Awards

The SBCBA calls for nominations for 2024 awards for recognition of outstanding attorneys, law firms, and judges in our community.

Richard Abbe Humanitarian Award
This special award honors a judge or attorney who evinces exceptional qualifications reflecting the highest humanitarian principles as exemplified by the late Justice Richard Abbe.

John T. Rickard Judicial Service Award
This award honors one of our judges for excellence on the Bench and outstanding contributions to the judiciary and/or the local court system.

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

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

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

The Thomas P. Anderle Award for Judicial Excellence
This Award should be viewed as recognition of a distinguished career on the Bench, as well as contributions to the community and the practice of law. The following factors should be considered:

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

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

Please submit your nominations to Marietta Jablonka: sblawdirector@gmail.com by August 31, 2024. Please include specific facts to support the award's criteria for each nomination.

SBCBA members enjoy good food and friends old and new at the 2024 Annual Summer Barbecue

Maria Elosu, Erin Parks, Phyllis Parks

Mark Coffin, Jeff Boyle

Jim Cote, Scott Garcia and two UCSB student guests

Halle Papen, John Reyes

Jeff Young, Farfalla Borah

Rusty Brace, Maria Elosu

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Fis[c]her Unshredded

By Robert M. Sanger

Robert M. Sanger

The *Fischer* case was decided by the United States Supreme Court. The immediate political interpretations are—who would have thought—polarized. Some see it as the Supreme Court acquiescing to the MAGA influence and giving the J-6 rioters and Trump himself a break; others see it as a great political victory for those same people. Politics aside, in the context of the criminal law, it is a significant decision from a jurisprudential perspective.

Fischer may have been lost to a certain extent in the pack of controversial decisions that the Court revealed in the last two weeks of the Term. Certainly there were other cases that eclipsed *Fischer*, such as *Trump v. United States*, which seemed to create a rather broad version of presidential immunity out of whole cloth and the *Loper Bright* case which overruled the *Chevron* doctrine and dealt a substantial blow to the thoughtful regulation of affairs in a modern society. Overall, the assessment is that the Federalist Society agenda, which MAGA Republicanism reflects at least superficially, has dominated the Supreme Court during this last Term.

I have a view, however, that the *Fischer* case is probably a good case for the rule of law. It was just a few months ago that the significance of the then pending *Fischer* case was discussed in this *Criminal Justice* column in *Shredded Fish Part Trios*. Reference was made in that article to two prior Criminal Justice Columns, *Shredded Fish* and *Shredded Fish Redux*. Notwithstanding politics and whether or not it will assist rioters and possibly the former president from enhanced punishment, it is my position that the case was decided correctly from the standpoint of criminal jurisprudence.

Fis[c]her Unshredded

Both Mr. Yates and Mr. Fischer were prosecuted under related sections of the Sarbanes-Oxley Act of 2002. Yates was prosecuted for destroying fish while a federalized game warden was investigating allegations that the fish were undersize. Fischer was prosecuted for storming the United States Capitol during a joint session of Congress to certify the votes in the 2020 Presidential election and, by doing so, attempted to obstruct, influence, or impede an official proceeding.

The Sarbanes-Oakley Act of 2002, of course, was enacted as a result of the shedding of documents by Enron and their accountants while a criminal investigation was pending. Thus, Yates was prosecuted for "shredding" fish and Fischer was prosecuted for "shredding" who knows what. Yates won, but the decision of the United States Supreme Court resulted in a number of opinions with none commanding a majority. Fischer won with a majority opinion by Chief Justice Roberts and a concurrence by Justice Jackson, accompanied by dissent.

The "shredding" language of the Sarbanes-Oakley Act, as relevant to Fischer, pertains to anyone who corruptly "alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding." (18 U. S. C. §1512(c)(1).) This is followed by a section that extends that prohibition to anyone who "otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so." (18 U. S. C. §1512(c)(2).) The Court in *Fischer* held that the "otherwise" clause in section (b) required that the obstruction , influence or impeding must relate to the "integrity or availability" of records, objects or other things used in the official proceedings as described in section (a). In other words, the crime is for shredding or otherwise hiding or destroying documents or objects.

Prosecutors were not allowed to use the "otherwise" language to expand the felony punishable by 20 years in prison to cover something that the prosecutors did not like but which had nothing to do with the intent and language of the statute relating to hiding or destroying documents or items of evidence. The Chief Justice got to this conclusion in a somewhat circumloquacious fashion and Justice Jackson, in her concurrence, got there more directly.

Seen this way, this seems to be an application of fairly standard criminal law principles. First, for something to be a crime, a law prohibiting it must be promulgated in a clear and not vague fashion to give notice to the public so the public can conform their conduct to it. Second, prosecutors should not have such broad discretion that they

Continued on page 20

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Sanger, *continued from page 12*

can construe statutes designed for one type of conduct in order to punish another. Essentially, it is the legislature that proscribes criminal conduct and not the prosecutor.

Yates possibly got away with throwing the undersized fish overboard. He would have been subject to an administrative sanction including a fine and possibly a suspension of his fishing license if a case could have been proven. Nevertheless, Sarbanes-Oakley does not provide a basis for the prosecution to creatively use a 20-year felony to punish him criminally *given the language and intent of the statute*. Of course, the legislature could pass a law making it a crime to deliberately destroy undersized fish after being told by the game warden to preserve them. But no such law had been passed and promulgated at the time.

Fischer, it turns out, was prosecuted for other felonies regarding his conduct in storming the Capitol on January 6. In his case he was charged with other laws proscribing the offensive conduct, they just did not include a 20-year sentence. However, the fact that the prosecutors believed that Fischer deserved a harsher sentence did not provide a basis to creatively use the statute to obtain that punishment *given the language and intent of the statute*. The legislature, in this instance as well, could enact a statute that makes it a 20-year felony to attempt to disrupt a session of Congress itself by force. But, again, no law had been enacted imposing a twenty-year sentence where documents or objects were not being withheld from a proceeding.

The Rule of Law

If *Fischer* is understood this way, it stands for the rule of law and the proper separation of powers between the legislative branch enacting laws and the executive branch enforcing those laws. Prosecutorial discretion can be lauded as a perceived attribute of being tough on crime or advancing some other goal involved in taking people to task. However, it goes beyond discretion to an arbitrary wielding of unauthorized power if the doctrine requiring promulgation of clear criminal laws is abrogated to advance these other agendas.

As histories of the Department of Justice and, in particular, the FBI and J. Edgar Hoover demonstrate, the jurisdiction of federal law enforcement officers and the DOJ have grown through expansive interpretations of laws that seemed more modest in their scope, at least when enacted. The DOJ and the then Bureau of Investigation had little law enforcement jurisdiction until federal laws were passed to make it a federal crime to rob a federally insured bank, to take a stolen car across state lines, and to use the mails or interstate wires to commit a fraud. Add to that RICO and money laundering and what was within the state's police powers became grist for the mill of federal prosecutions by United States Attorneys based on investigations by a legion of federal law enforcement agencies.

Fischer, of course, did not preclude the use of Sarbanes-Oakley in January 6 cases nor did it preclude Trump and other alleged co-conspirators from prosecution. The cases were remanded to the district courts for determination as to whether the "integrity or availability" of records, objects or other things used in the official proceedings were being compromised. As this is written, the Department of Justice is revising its arguments to preserve convictions and continue with 1512 cases. The electoral college certificates held in the mahogany boxes are alleged to have been imperiled by the forceable siege of the Chambers. Other theories are

being advanced. The *Fischer* decision will slow things down but may not be a windfall for rioters and conspirators.

The result in *Fischer* is also admittedly in the Federalist Society playbook. Expansive federalization of criminal law and overcriminalization in general have been criticized openly by the Federalist Society, Heritage Foundation and CATO Institute on the right but have also been joined by the National Association of Criminal Defense Lawyers, the ACLU and groups on the left. This is one area where there is general agreement among those who have studied prosecutorial discretion and, I for one, think it is correct.

So, notwithstanding all of the other decisions just rendered by the Court and the polemicized criticism or praise—and notwithstanding that this decision could be argued to be result oriented—the fact is that it does at least give lip service to the rule of law and the concept of lenity in the application of criminal statutes. One would hope that similar respect for criminal statutes would be shown if the defendants had been associated with, say, a Black activist group rather than the Proud Boys or the presumptive candidate of the Republican Party. We'll see. ■

Robert Sanger has been practicing as a litigation partner, now principal shareholder at Sanger Law Firm, P.C., in Santa Barbara for over 50 years and is a Certified Criminal Law Specialist 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.

Minding Our Sleep Powerhouse

By Robin Oaks

I'm going to make a statement that may sound like heresy, considering that as legal professionals we believe our skillsets, cognitive abilities, and success are measured by what happens while we're awake. However, the truth is that rest and what happens while we're not awake, i.e., sleeping, are critical for our performance, productivity—and sustainability. Getting deep sleep is not just a time for our brain and body to rest, it is when vital maintenance, repair and functioning actively occur.

In *Sacred Rest: Recover Your Life, Renew Your Energy, Restore Your Sanity*, Dr. Saundra Dalton-Smith argues that rest needs to be reframed as an essential restorative activity affecting all areas of life: physical, mental, emotional, spiritual, social, environmental, and creative. Dr. Dalton-Smith asks us to evaluate, "What are the things that we can do to pour back into the areas where we feel depleted?" Recognizing what getting "good sleep" means is an important part of answering that question.

This week after feeling jet lagged from my cross-country travels, I was challenged to catch up with work deadlines and pulled a few caffeine-fueled late-nighters. I slept less than five hours several nights in a row, which caused me to feel quite depleted—on many levels. However, far more was at play than my perceived lack of hours in my illusory sleep bank account, because it is not simply the quantity but the quality of sleep that really matters.

Dr. Matthew Walker, a sleep scientist, has researched how getting good quality sleep affects our metabolism, regulates our appetite, maintains our reproduction organs, immune system and cognitive functioning and mental/brain health – and prevents illness (including depression and dementia). In his informative and entertaining Ted Talk[1] (and in his book), he emphasizes how sleep affects our ability to think, learn, memorize, and make logical decisions. He cautions us, "Sleep, unfortunately is not an optional lifestyle luxury, it's a non-negotiable necessity. We can't catch up on sleep. Sleep is not like the bank; you can't accumulate a debt and then hope to pay it off later. Human beings are the only species that deliberately deprive themselves of sleep for no apparent reason."

Robin Oaks

Among a host of research, Walker cites one study in which people had their sleep restricted to four hours in one night (I recently experienced that each night for several days!). The researchers found that with only one night of sleep deprivation there was not ten percent, not twenty percent, but a whopping seventy (70%) percent **reduction** in natural killer cell activities, which are a vital part of our immunity defense mechanism for preventing disease. In fact, because of the link between sleep deprivation and cancer, the World Health Organization has designated "any form of nighttime work shifts as a probable carcinogen because of a disruption of a person's sleep-wake rhythms."

The disruption of sleep cycles caused by my recent travels across many time zones reminded me that our modern-day advancements in travel and technology are not without their destructive stressors to our health and well-being. In one study, researchers found that when daylight saving time happens in springtime, and we "lose" an hour of sleep, there was a "twenty-four percent increase in heart attacks the following day." Interestingly, when time is adjusted and we "gain" an hour of sleep time in autumn, studies have shown a "twenty-one percent reduction in heart attacks."

Neuroscientists in recent years are discovering more about what's happening in the brain that makes deep sleep so important to cognitive functioning and health. Sleep is characterized by different phases and patterns of neuronal activity. It is believed that several vital functions relating to memory integration, cellular repair, growth hormone regulation, and cognitive functions, such as focus, decision-making, and learning, are affected during the deep sleep phase.

It is in the *slow-wave* brain activity phase of deep sleep that important functions of the glymphatic system occur. The glymphatic system refers to a network of vessels in the brain and fluid exchange that work together in an intricately choreographed process to facilitate the removal of waste products. Harmful neurotoxins (including beta-amyloid believed to be linked to Parkinson's and Alzheimer's disease) that have accumulated in the brain each day are cleared out through the movement and interactions of the glymphatic system, which becomes most active mainly during

deep sleep. I hope this article motivates each of us, in our individual way, to wake up—and recognize how important sleep is to our making a good living and living well.

I recently was introduced by one of our Bar Association board members to a local functional nutritionist, sleep expert, and board-certified health and wellness coach, Shawna Robins. In her book, *Powerful Sleep, Rest Deeply, Repair Your Brain, and Restore Your Life* [2], she outlines the importance of "good quality" sleep and how to get it. I asked her to contribute to this article with some valuable insights about sleep and our brain health.

Shawna, what motivated you to help others become aware of the connection between sleep and brain health?

My journey started while I was working with my father, a serial entrepreneur who was in his early 60's and CEO of a very successful mortgage banking technology company. He called me into his office one day and asked me to read his emails because he couldn't remember how words were spelled. I had noticed his constant need for a daily afternoon "power nap" for the past few years and his struggle to find his words while speaking to clients, employees, and his board of directors. I asked him what was happening, and he told me he was just so tired all the time. "How many hours do you sleep at night Dad?" I asked him. "Not much," he said. "Maybe 3-4 hours on a good night." Two years later I found myself sitting with him across from a neurologist at Keck USC hearing his diagnosis of Alzheimer's disease. He was 62 and we had no family history of Alzheimer's or dementia. Our lives were rocked at the core.

His lifestyle of many years of poor sleep, high stress, eating the SAD (Standard American Diet) diet predominately made up of processed foods, "non-fat" food and sugar, statin use for high cholesterol and no exercise had inflamed his body and brain to a point of no return. He was forced to sell his company and stop driving and traveling. This spurred him to make important lifestyle adjustments, including changing his mindset, diet, sleep and stress management, which ended up adding 12 important years to his life. Watching him learn and grow after his diagnosis was my inspiration to share knowledge about making small but powerful lifestyle changes that have a big impact on your overall health and quality of life.

What challenges do you hear from the professionals you coach that most affect getting a "good night's sleep"?

My work with clients has shown me that stress is the number one issue when it comes to negatively impacting their sleep. I share with my clients the cycle of cortisol and show them that if they want to sleep the necessary seven

to nine uninterrupted hours that the brain and body needs to repair itself at night, then you must find ways to make time for daytime stress reduction. This can be a morning workout, doing meditation in your office or car, reading a book or even listening to relaxing music. Anything you enjoy that helps you to unwind for 20-30 min each day. Most people rely on unhealthy stress reduction choices like drinking alcohol, taking "sleep aid" drugs, binge watching TV, online shopping, social media scrolling or eating sweets, which only makes getting the proper sleep even more difficult.

My number one takeaway is this—if you want to sleep well at night, then you need to prioritize it by making better daytime choices with your diet, nutrition, hydration, exercise, and stress reduction. After a few weeks you will see your sleep improve with both length and quality.

ENDNOTES

1 Why We Sleep; Unlocking the Power of Sleep and Dreams (2017); Ted Talk https://www.ted.com/talks/matt_walker_sleep_is_your_superpower?trigger=0s

2 Download a copy at https://thirdsparkhealth.com/powerful-sleep/

Daytime Tips for Optimizing Deep Sleep

- Turn off all electronics in the evening (and reduce your blue light exposure). Try to do something before bedtime that focuses on relaxing your body and quieting down your thinking, such as taking a warm bath with Epsom salts, meditating, doing a body scan or visualization practice or yoga nidra, or listening to soothing, slow music.
- Have your Vitamin D levels checked by your doctor each year. Low Vitamin D levels can cause sleep problems.
- Maintain cool temperatures in your bedroom at night (around 65 degrees, more or less). Sleep scientists contend that your body needs to drop its core temperature by about 2 – 3 degrees Fahrenheit to fall asleep and stay asleep.
- Go to bed at a regular time (optimally by 10:00 p.m.) and wake up around the same time each day, whenever possible. Regularity in sleep-wake cycles make a difference.
- Don't eat or drink anything (including alcohol and sweets) three hours before bedtime, and reduce caffeine intake, especially in the afternoon.
- Sit outside, first thing, in the early morning sunlight for at least 10-15 minutes. Don't just look outside but be outside (this affects your pineal gland), even on cloudy days. This is very important to help regulate—and if you have been sleep-deprived, like I was recently, this practice really works to reset—your sleep-wake cycles.
- Raise awareness with others in your legal work environment about getting good sleep. Consider watching Matt Walker's brief Ted Talk during your next office meeting to spark a well-being in law discussion.

Robin Oaks has been an attorney for nearly forty years, and for twenty-five years has provided legal services focused on independent workplace investigations and mediation. She is certified in and has studied a wide range of healing, emotional intelligence, cognitive fitness, and mind-body practices. She is a well-being consultant and offers confidential professional life coaching sessions for legal professionals seeking to optimize potential, restore balance, and thrive during stressful life changes and challenges. Contact: Robin@RobinOaks.com or 805-685-6773.

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Verdicts and Decisions

Rodriguez v The Original Mowbray's Tree Service, Inc.

SAN BERNARDINO SUPERIOR COURT

CASE NUMBER:	CIVDS2003809
TYPE OF CASE:	MVA, DUI, Negligent Entrustment, Negligent Hiring Supervision and Retention
TYPE OF PROCEEDING:	Jury Trial
JUDGE:	Donald Alvarez
LENGTH OF TRIAL:	7 weeks
LENGTH OF DELIBERATIONS:	2 days
DATE OF VERDICT OR DECISION:	July 16, 2024
PLAINTIFF:	Jaime Rodriguez and Ana Lidia Gomez
PLAINTIFF'S COUNSEL:	Trevor Quirk, Leonidas Nicol, Iman Jaffrey
DEFENDANT:	The Original Mowbray's Tree Service Incorporated
DEFENDANT'S COUNSEL:	Richard Morton and Kyle DiNicola
DEFENDANT:	Jonathan Armando Gonzalez Varillas
DEFENDANT'S COUNSEL:	Kennett Patrick
INSURANCE CARRIER, IF ANY:	Everest National
EXPERTS:	
PLAINTIFF'S	Keith Feder, MD (Ortho) Carol Frey, MD (Ortho Foot/Ankle) Barry Ludwig, MD (Neurologist) Amy Magnusson, MD (PMR) Bennett Williamson, PhD (Psychologist) Carol Hyland (LCP) Leslie Smart (Fleet Expert)
DEFENDANT'S	Stuart Gold, MD (Ortho) Dean Delis, MD (Neuropsychologist) James E. Rosenberg, MD (Neuropsychiatrist) Sten Kramer, MD (PMR) Amy Sutton, PhD (LCP) Stephanie Rizzardi, MBA (economist)

FACTS AND CONTENTIONS: The Original Mowbray's Tree Service, Inc. ("Mowbray's") is a large commercial tree trimming company. Mowbray's upper management delegated significant authority to its General Foremen, including who was and was not authorized to operate company vehicles.

In June of 2019, Mowbray's hired Jonathan Armando Gonzalez-Varillas ("Varillas") as a tree trimmer. Mowbray's, including its Area Managers and General Foremen, knew that Varillas did not have a valid driver's license.

Mowbray's also knew that Varillas had a drinking problem. The day after being hired, Varillas was written up for drinking and breaking bottles in a hotel room that was paid for by Mowbray's. Due to this incident, the entire company was kicked out of the hotel.

Less than a month after the hotel incident, the General Foremen started giving Varillas the keys to different Mowbray's vehicles so that he could commute between his home in San Bernardino and work in Thousand Oaks. Weekly inventory sheets showed that Varillas eventually became the assigned driver of a full-size work pickup truck designated as PU-149.

On December 13, 2019, Varillas drove PU-149 home over the weekend with the permission and knowledge of his supervisors. Varillas' supervisors knew he was unlicensed and did not have his own vehicle, knew he had previously been reprimanded for drinking and destroying property, and knew he should not be driving vehicles.

On December 14, 2019, Varillas drove PU-149 to several bars, got drunk, and continued to drive PU-149 east on Historic Route 66, when he lost control and crossed over into the westbound lane. Varillas impacted the front left of the 1992 Chevrolet Astro, driven by Jamie Rodriguez. The impact velocity was calculated/determined to be approximately 48-54 mph for PU-149 and approximately 35-39 mph for the Astro. Evidence collected at the crash scene shows that Varillas had a Mowbray's gas card in his wallet.

Defendant Mowbray's contended Varillas stole the truck and was driving it on the weekend without its permission.

SUMMARY OF CLAIMED DAMAGES AND MEDICAL TREATMENT:

Jamie Rodriguez

- Moderate to severe traumatic brain injury
- Adjustment Disorder and Major Depressive Disorder
- GCS score of 7 in the ER
- Multiple facial fractures.
- Fractured left arm
- Fractured left hip
- Comminuted fracture of the left shin
- Comminuted fracture of the right femur
- Shattered right kneecap
- Multiple right foot fractures including a shattered heel bone
- Surgery 1, on December 15, 2019, Mr. Rodriguez underwent significant irrigation and debridement of his wounds, a right knee patellectomy, and intramedullary nailing of the right closed femur fracture.
- Surgery 2, on December 16, 2019, Mr. Rodriguez underwent an intramedullary nailing of the left tibia and an open reduction internal fixation of left posterior wall acetabulum fracture with hardware installed.
- Surgery 3, on December 18, 2019, Mr. Rodriguez underwent right foot surgery. This included a closed reduction and pinning of right calcaneus fracture, right third and fourth metatarsal foot shaft fractures, and a closed reduction and splint immobilization of right second and fifth metatarsal foot shaft fractures.
- Surgery 4, on December 26, 2019, Mr. Rodriguez also underwent an open reduction internal fixation left radial shaft fracture and a closed reduction and splinting of the left distal radioulnar joint injury.
- Surgery 5, on November 11, 2021, Mr. Rodriguez had surgery to repair and reshape damaged cartilage in his right knee.
- Surgery 6, on January 10, 2022, Mr. Rodriguez had surgery to fix the second, third, and fourth toes on his right foot, which would not extend, "hammertoes". He also had 2 screws removed from his calcaneus that were installed during the Arrowhead surgery. Released sural nerve from scar tissue but found it had formed a very damaged area called a neuroma and that was removed.
- Surgery 7, on April 28, 2022, Mr. Rodriguez had surgery to repair and reshape damaged cartilage in his left knee and also remove hardware from left tibia.
- Surgery 8, on December 5, 2022, Mr. Rodriguez had a right foot arthroplasty to release and straighten the third toe on his right foot.

Jamie Rodriguez Future Care Recommendations

- Hardware removal for the left forearm and wrist arthroscopy.
- Knee injections
- Arthroscopy of the right and left knee
- Right knee replacement in 7 to 10 years

- Left hip replacement in 7 to 10 years
- Subtalar joint fusion of the right ankle

Ana Gomez

- Fractured sternum
- Collection of blood behind sternum
- Nausea and vomiting
- Chest and rib pain
- Difficulty breathing
- Emotional distress

RESULT: $83,803,500. By a vote of 12 to 0 for liability and 9 to 3 for damages

Jaime Rodriguez Economic Damages

Past:	$903,500
Future:	$1,400,000

Jaime Rodriguez Non-Economic Damages

Past:	$20,000,000
Future:	$10,000,000

Ana Lidia Gomez Non-Economic Damages

Past:	$1,000,000
Future:	$1,500,000
Punitive Damages:	$49,000,000

Lopez-Giss, *continued from page 10*

because of interpretation by experts or inconsistent testimony and certainty of results is diminished. An experienced mediator can articulate the risks to the parties and by doing so enhance each attorney's credibility. To quote from a movie—an attorney that chooses a mediator that identifies the potential weaknesses in your client's cases—helps that mediator to HELP YOU! ■

Following a remarkable legal career, Judge Susan Lopez-Giss was appointed to the bench in 2007 and served 15 years as a Judge, entirely devoted to Family Law. Judge Lopez-Giss presided over thousands of cases involving all types of contested and complex Family Law matters. Judge Lopez-Giss became known for actively and successfully settling her cases. Her strong legal mind and collaboration to resolve family disputes, has resulted in her reputation as an effective negotiator, problem solver, and adjudicator. She is available in the private sector for mediation and discovery appointments with ADR Services, Inc.

Teresa Duran v Daniel Oh, M.D.

SANTA BARBARA SUPERIOR COURT, COOK DIVISION

CASE NUMBER:	21CV03601
TYPE OF CASE:	Medical Negligence
TYPE OF PROCEEDING:	Jury Trial
JUDGE:	Jeb Beebe
LENGTH OF TRIAL:	7 days
LENGTH OF DELIBERATIONS:	80 minutes
DATE OF VERDICT OR DECISION:	May 23 2024
PLAINTIFF:	Teresa and Robert Duran
PLAINTIFF'S COUNSEL:	Nora Hovsepian
DEFENDANT:	Daniel Oh, M.D., Surgical Associates
DEFENDANT'S COUNSEL:	Kevin E. Thelen, LeBeau Thelen
INSURANCE CARRIER:	Doctor's Company
EXPERTS:	Daniel Marcus, M.D. General Surgery [not boarded] for plaintiff; Wilson Tsai, M.D. robotic thoracic and hiatal hernia specialist.

FACTS AND CONTENTIONS: D performed hernia surgery on plaintiff on June 19 2020 at Marian Hospital in Santa Maria. She began experiencing difficulties after the surgery and began losing weight. She last saw defendant on July 31, 2020. She reported having cramping abdominal pain and diarrhea after eating creamy soups. Dr. Oh suspected that plaintiff had irritable bowel syndrome so he referred her to a gastroenterologist. Defendant never saw plaintiff again since he moved out of state.

Plaintiff claimed that defendant's pre, intra, and postoperative care deviated from the standard of care. Defendant argued that his treatment was within the standard of care. She argued that defendant's care was negligent and that there was a lack of informed consent.

Defendants argued that Dr. Oh's treatment was within the standard of care and that he did receive informed consent.

SUMMARY OF CLAIMED DAMAGES: Post operative dysphagia, weight loss, and the need for a PEG tube. Plaintiff husband claimed loss of consortium. The parties stipulated that economic damages totaled $18,243.

SUMMARY OF SETTLEMENT DISCUSSIONS: Plaintiffs made a $199,999 CCP 998 demand for Teresa and $74,999 for Robert. Defendants made no offers.

RESULT: By a vote of 10 to 2 the jury found for defendants.

Motions

Price, Postel & Parma LLP has welcomed **Kristin King** to the firm's litigation practice group. King will provide counsel and representation in the wide range of civil and business litigation matters handled by the firm.

Before joining Price Postel & Parma, Ms. King served as a judicial law clerk for the Honorable Brian Hill at the Santa Barbara Superior Court. As a judicial law clerk, Ms. King honed her skills in legal research and writing which assisted Judge Hill in making decisions regarding various issues.

Ms. King is a new admittee to the State Bar of California. She received her B.A. in Political Science from the University of California, Santa Barbara in 2012 and her J.D. from the Santa Barbara Colleges of Law in 2024. ■

SAVE THE DATE

Legal Aid Foundation's 65th Anniversary Celebration

Tuesday, October 1, 2024 • 5:30pm-8:00pm
The Anchor Rose - 113 Harbor Way, Santa Barbara, CA 93109

Help us honor and celebrate Legal Aid's 65th Anniversary with a special event Sponsorship. Your sponsorship directly supports our mission in providing free civil legal services to low-income and other vulnerable residents in order to ensure equal access to justice. Space and sponsorships are limited (max occupancy 175) - we expect to sell out. For more information, visit: www.lafsbc.org. If you have any questions, please reach out to Nadia Romero at finance@lafsbc.org or (805)963-6754 x112.

The **Santa Barbara County Bar Association** invites
Members and Guests to our

2024 Golf, Tennis & Pickleball Tournament

Friday, September 27, 2024

DINNER / RECEPTION

So as to provide opportunity for the victors to boast of their athletic conquests, a post golf and tennis reception will begin at 5:00 at the Mulligan's Café & Bar, to be followed by dinner starting at 5:30 pm.
Dinner is $50 per SBCBA Member/$60 per non-SBCBA Member *($60/$70 after September 15th)*

GOLF

Meet at the Santa Barbara Municipal Golf Course at 12:00 pm. First tee off at 12:18 pm. Team prizes for 1st & 2nd places. Individual prizes for Longest Drive and Closest to Pin! Players must give some estimate of his/her handicap. You will be contacted regarding team assignments.
$125 to Play for SBCBA Members/$135 for Non- Members – Includes green fees & cart.
($130/$145 after September 15th)
$170 for BOTH Golf & Dinner for SBCBA Members/ $180 for Non- Members
($180/$190 after September 15th)

TENNIS

Meet at the tennis courts at the Santa Barbara Tennis Club at 1:00 pm for warm-up with round robin play starting at 1:30 pm. A committee will form teams, for all levels. Men and women will participate in the tournament in all levels.
Prizes to tournament winners!
$50 to Play per SBCBA Members/$60 for Non- Members – Includes court fees & balls.
($60/$70 after September 15th)
$95 for BOTH Tennis & Dinner for SBCBA Members/$105 for Non-Members
($110/$120 after September 15th)

PICKLEBALL 1:30-4:30 Earl Warren Showgrounds

$30 SBCBA Members/$40 Non-Members (*$40/$50 after Sept. 10th)*
$75 for BOTH Pickleball and Dinner for SBCBA Members/$85 non-members
($85/$95 after Sept. 15th)

To register, please fill out bottom portion of this flyer and mail, with check, to:
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Questions? Call the SBCBA at (805) 569-5511

Limited Number of Tee Sponsorships: Tee sign on course with your company name ($150)

Name & Phone Number	Handicap/ Rating	Tourney Fees	Dinner	Vegetarian?	Total

Amount Enclosed: $_____ (all fees are non-refundable)

THE CENTRAL DISTRICT OF CALIFORNIA BANKRUPTCY COURT'S WORKSHOP FOR JUNIOR ATTORNEYS

The Court's mission statement is "to serve the most populous and diverse judicial district in the country by providing bankruptcy relief, fair and impartial justice, and a prompt and efficient resolution of disputes." One way the Court advances this mission is to sponsor, contribute to, and promote programs that are aimed at educating the bar and the public on matters of bankruptcy law and practice.

To this end, on **Thursday, September 26, 2024, from 3:00 p.m. to 4:30 p.m.**, the Santa Ana and Riverside Divisions of the Bankruptcy Court of the Central District of California are presenting the **"BANKRUPTCY COURT'S WORKSHOP FOR JUNIOR ATTORNEYS"**, an in-person workshop intended to foster the courtroom presentation skills of junior attorneys. The workshop will be held at the **Ronald Reagan Federal Building and Courthouse, 411 West Fourth Street, Santa Ana, California.**

The workshop is being offered to provide junior attorneys an opportunity to gain real time experience in a courtroom setting. The workshop is open to attorneys who have practiced for less than 7 years.

During each simulated hearing, two attorneys will be involved: one advancing the motion, and one opposing it. Participants will not be required to draft any papers. The preparatory materials, e.g. the motion and opposition papers, will be provided to the participants no later than one week in advance of the simulated hearings. Each attorney will have seven (7) minutes to present their arguments to a bankruptcy judge, who will thereafter question the attorneys on their positions.

At the conclusion of the exercise, the judge will provide feedback to the attorneys and answer questions as time permits. The Court will provide hearing transcript links to all participants to allow them to review the hearings and judicial feedback afterwards.

A reception will follow the workshop, held on the second floor of the building.

For more information, the following attorney coordinators may be directly contacted:

Ryan O'Dea, Esq.
(949) 340-3400
rodea@shbllp.com

Summer Shaw, Esq.
(760) 610-0000
ss@shaw.law

Richard Marshack, Esq.
(949) 333-7777
rmarshack@marshackhays.com

THURSDAY
09.26.2024

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AND COURTHOUSE
411 West Fourth Street, Santa Ana, California

To Register, please visit https://www.cacb.uscourts.gov/
Under "News & Announcements", see the link for "The Central District of California Bankruptcy Court's Workshop for Junior Attorneys (Santa Ana)".

SBWL
SANTA BARBARA WOMEN LAWYERS

proudly presents

2024 Online MCLE Series
"Empower Her"

Join Santa Barbara Women Lawyers for our groundbreaking legal education series focused on acquiring all specialty credits recognized by the California State Bar. While designed to cater to the unique challenges and opportunities faced by women lawyers in the legal profession, this series aims to empower all lawyers to excel in their careers, expand their expertise, and fulfill our professional development requirements. Register now to secure your spot.

2024 MCLE Series Schedule
12:15-1:15 p.m.

Date	Topic(s)	Credit Hours
May 22	*David Mann of the Other Bar* – A Conversation on Attorneys and Substance Abuse (Competence Credit)	1.0*
June 26	*Jennifer Lee* – Technology in the Practice of Law (Technology Credit)	1.0*
July 24	*Dr. Keisha Clark* - Recognition and Elimination of Bias (Elimination of Bias Credit)	1.0*
August 28	*Doug Ridley* – The Complete Attorney (Ethics Credit)	1.0*
September 25	*Civility in the Legal Profession – It's Importance & Why We Need It* (Civility Credit)	1.0*
October 23	*Robin Oaks* - Professional Burnout Among Lawyers & How to Address It	1.0*

* Indicates California State Bar Specialty Credit

Purchase the 6-Series Package

https://www.paypal.com/ncp/payment/G7LA39ZEVAJUN

- SBWL Member Package: $75.00*
- Non-Member Package: $100.00
- Govt. Group Rate Package (5 or More): $75.00
- Non-Govt. Group Rate Package (5 or More): $85.00
- Individual MCLE: $45.00

***Membership may be purchased at** https://sbwl.org/join-sbwl/

Santa Barbara County Bar Association
SBCBA

Santa Barbara
County Bar Foundation
a 501(c)(3) non-profit

Seek Donations to the DEI Scholarship Fund

Help support a student pursue a legal career in Santa Barbara County

Costs to prepare for the LSAT & apply to law school ~ $2,621

LSAT Prep Course $1,699
LSAT Fee $222
Credential Assembly Service (CAS) Fee $200
CAS Report $45.00 / school (min. 10 schools recommended) $450
LSAT Score Report $50.00

Costs to prepare and sit for the California Bar Exam ~ $ 5,421

Bar Prep Course $2,999
Registration with the California Bar $119
Moral Character Determination $551
Fingerprinting $79
Exam Fee $850
Laptop Fee $153
Hotel stay near testing center $670 for two nights

These costs are not covered by traditional financial aid packages and can be a barrier for students to pursue careers in law.

Donations can be made by **check** payable to SBCBF, send to P.O. Box 21523, Santa Barbara, CA 93121. Please write "DEI Scholarship" on the memo line
PayPal at https://paypal.me/SBBarFoundation?country.x=US&locale.x=en_US

Donations to SBCBF are tax-deductible

JUDICATE WEST CELEBRATING 30
Alternative Dispute Resolution

Apply for Judicate West's
D&I Scholarship Program

Judicate West's Diversity and Inclusion Committee is excited to share an initiative we believe will make a significant impact on fostering diversity and inclusion within the legal profession broadly and the ADR sector specifically. We are offering a full scholarship for two individuals from underrepresented communities to attend the internationally top-ranked Mediation Training Program at **Straus Institute at Pepperdine University** in Malibu.

Application deadline:	September 1, 2024
Selection notification:	October 30, 2024
Program participation:	Scholarship recipients can attend either of the biannual training dates, within three years of being selected.

Scan to learn more about the scholarship criteria, award specifics, and application deadline

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Classifieds

LITIGATION ASSOCIATE SOUGHT

Price, Postel & Parma, a long-standing law firm in Santa Barbara, is seeking a litigation associate with superior credentials, at least 3-4 years of significant litigation experience and a current license to practice in the State of California. This is an outstanding and unusual opportunity to practice law with experienced trial attorneys and swiftly move into position of significant responsibility in the Firm. Compensation is commensurate with skills, education and experience. A current license to practice in California is required. Salary range for qualified candidates is $115,000 to $225,000. Please submit a cover letter and resume detailing your experience to Craig Parton at cparton@ppplaw.com..

* * *

OFFICE AVAILABLE

Professional, furnished office for rent (11'8" x 8'8" for $1,200.00). Includes two conference rooms, kitchen and workroom with copier. Located in downtown Santa Barbara across from the Courthouse. Respond to hsimon@jhslawsb.com.

SAVE THE DATE

for These Fun SBCBA Events!

September 27th
Golf, Tennis and Pickleball Tournament

November 7th
SBCBA Annual Dinner and Awards

THE OTHER BAR NOTICE

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

SBCBA SECTION CHAIRS

Alternative Dispute Resolution
Judge Frank Ochoa (805) 451-1240
frankochoa@destinationadr.com

John Derrick (805) 284-1660
jderrick@icloud.com

Bench & Bar Relations:
Tom Foley (805) 962-9495
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Civil Litigation
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doug@ridleydefense.com

Diversity & Inclusion
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tmartinez@co.santa-barbara.ca.us

Employment Law
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alex@craigielawfirm.com

Estate Planning/Probate
Lori Lewis (805) 966-1501 x267
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Family Law
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renee@reneemfairbanks.com

Marisa Beuoy (805) 965-5131
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Mandatory Fee Arbitration:
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robin@robinoaks.com

If you are interested in serving as a SBCBA Section Head, please contact Marietta Jablonka, SBCBA Executive Director at (805) 569-5511 or sblawdirector@gmail.com.

August 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17 National Nonprofit Day
18	19	20	21	22	23	24
25	26 National Dog Day	27	28 SBWL **MCLE**: "The Complete Attorney"	29	30	31 Last Day to submit nominations for the SBCBA 2024 Awards

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

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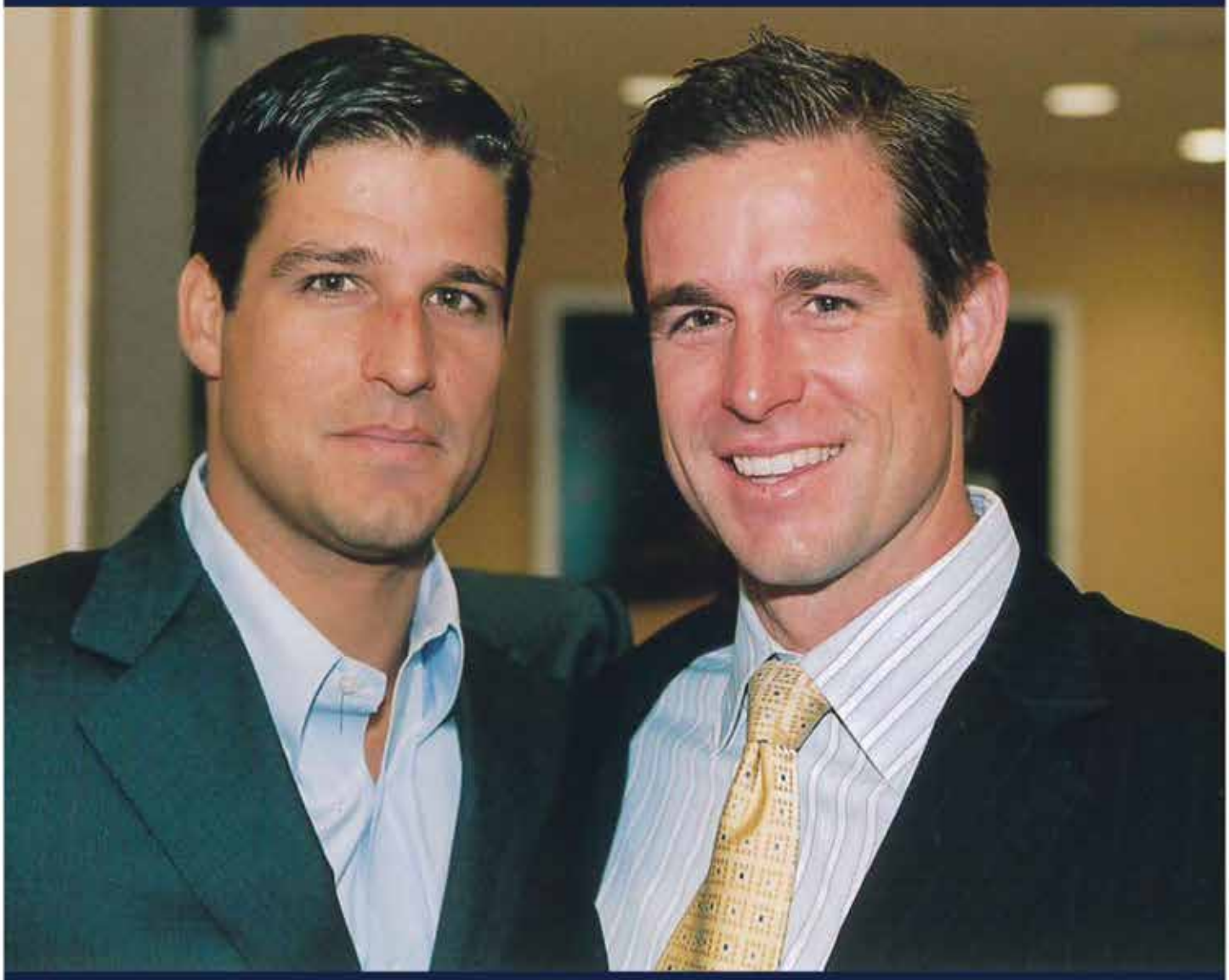

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