



The Marin Lawyer

An Official Publication of the Marin County Bar Association

GENERAL MEMBERSHIP MEETING THERE'S A NEW JUDGE IN TOWN MEET JUDGE ANDREW SWEET

Come hear from the newest judge on the Marin County bench, the Hon. Andrew E. Sweet. Judge Sweet, 43, was appointed by Gov. Schwarzenegger in March and took the bench in early April. Judge Sweet will address the General Membership Meeting of the Marin County Bar Association on **June 24, 2009**, at noon, at Jason's Restaurant in Greenbrae.

Judge Sweet will talk about life so far on the bench, his early observations about the Marin courts, and what he does and does not want to see from the lawyers who appear in his courtroom. He will also answer your questions, at least those that do not relate to a pending case.

Before his appointment, Judge Sweet was an attorney with Moscone, Emblidge & Quadra. He previously served as a Deputy District Attorney for the Alameda County District Attorney's Office from 1992 to 2005. Judge Sweet earned an undergraduate degree from U.C. Berkeley and his law degree from the University of San Francisco. He was appointed to fill the seat vacated by the retirement of Judge John Graham.

Seating is limited; early reservations are recommended. Please register for this exciting program by completing and returning the reservation form on page 2, or by calling or e-mailing Robynn Gaspar at (415) 499-1314 or rgaspar@30nsp.org.

Calendar of Events

June 24th

General Membership Meeting
Jason's Restaurant, Greenbrae
12 – 1:30 pm

June 16th

Probate & Estate Planning Section Meeting
12 – 1:30 pm

June 17th

ADR Section Meeting
12 – 1:30 pm

June 18th

Real Property Section Meeting
12 – 1:30 pm

June 22nd

Probate & Trusts Mentor Group
12 – 1:30 pm

Look for details each month in
The Marin Lawyer

In This Issue

President's Message.....	2
Cleaner Energy.....	3
Tam High Mock Trials.....	4
Hello Out There!.....	5
How to Relax.....	6
Spotlight on Mary McLain.....	7
Marin Jury Verdicts.....	8
Judicial Council Advisory Committee	10
RCL Portraits.....	11
Details for Calendar.....	18
New Members.....	18
The Marketplace.....	19

Timothy J. Chambers was Guest Editor of this issue of *The Marin Lawyer*. Philip R. Diamond is Series Editor for 2009.

RECENT CHANGES IN CALIFORNIA LAW REGARDING NO CONTEST CLAUSES

By Timothy J. Chambers*

As a result of the enactment of Senate Bill 1264 by the Legislature, a new set of rules will apply to no contest clauses in California as of January 1, 2010. This article is intended to give the reader a brief overview of the new statute, and to touch upon some of the impacts of the new law on both estate planning and estate litigation.

I. No Contest Clauses Generally.

Will contests have been around since at least Roman times - Cicero wrote of the procedure known as *Querela Inofficiosi*, which allowed a family



(Continued on page 12.)



PRESIDENT'S MESSAGE

JUDGE ANDREW E. SWEET APPOINTED TO MARIN JUDGESHIP

By Marlene P. Getchell

In March, Governor Arnold Schwarzenegger appointed Andrew E. Sweet to fill a vacancy on the Marin County Superior Court created by the retirement of Judge John Graham. I recently had the pleasure of interviewing Judge Sweet. If there is one thing I came away with from my interview with Judge Sweet, it is the understanding that he is not only highly qualified to serve as a judge, but also is the kind of person who is successful at everything he does.

Judge Sweet is not well known in the Marin County legal community. His only involvement with the Marin County courts during his 16 years as a practicing attorney was a one-week trial in Marin. However, his local roots run very deep. A 43-year-old native of Marin County and a Redwood High School graduate, Judge Sweet received a Bachelor of Arts degree from the University of California, Berkeley. After college, Judge Sweet spent a year in Washington, D.C., as a legislative assistant for Senator Barbara Boxer, where he met his wife, Inga. Judge Sweet subsequently earned a J.D. degree from the University of San Francisco School of Law.

Judge Sweet has experience in both civil and criminal law. He tried over 50 jury trials during the 13 years he worked at the DA's office in Alameda County. As a Deputy DA, Judge Sweet also headed that office's writs division. Following his work as a Deputy DA, Judge Sweet worked for three years as a civil litigator for Moscone, Emblidge & Quadra in San Francisco, with a special passion for civil rights law. He learned about his appointment just a week

before joining the Bench, and his partners had to immediately step in to take over his case load.

Judge Sweet also served on the State Bar's Commission on Judicial Nominees Evaluation (JNE) for a total of 4 years, including one year as chair of the Commission. A judicial appointment cannot be made without the recommendation of the JNE Commission. The Commission gathers information about judicial candidates and conducts confidential evaluations of the judicial qualifications of candidates whose names have been submitted to the Commission by the Governor. Its findings are reported in absolute confidence to the Governor. In determining the qualifications of a candidate, the JNE Commission considers the applicant's professional ability and experience, industry, judicial temperament, intellectual capacity, judgment, honesty, objectivity, community respect, integrity, commitment to equal justice, moral turpitude, communication skills, work-related health (physical or mental condition), and freedom from bias.

Married to Inga, with 3 children and a dog, Judge Sweet has served as president of his older child's school foundation that raised over a million dollars for the benefit of schools in the community. While in Washington, Judge Sweet even declined an invitation to a White House wedding in deference to his own honeymoon plans. He has wanted to be a judge ever since he was a small child.

The Marin County Bar Association provided the venue for Judge Sweet's induction ceremony in May, at which he was sworn in by the Honorable Kevin Murphy, Judge of the Alameda County Superior Court. Douglas Boxer, long-time friend of Judge Sweet, served as master of ceremonies, and glowing testimonials were given by the Honorable Henry E. Needham, Jr., Justice of the California Court of Appeal, and Thomas J. Orloff, the District Attorney of Alameda County.

Please join the MCBA at our General Membership Meeting on June 24, 2009, at noon at Jason's Restaurant to meet Judge Sweet and hear him speak about what it is like being a judge in Marin County.

RESERVATION FORM

General Membership Meeting **Speaker:** Hon. Andrew E. Sweet

Please make ____ reservations for me at Jason's Restaurant, 300 Drakes Landing Road, Greenbrae on **Wednesday June 24, 2009**, from 12-1:30 pm.

Please choose one: ___ Tortellini Bolognese ___ Chicken Caesar ___ Salmon Caesar ___ Vegetarian Capellini Pomodoro

Name(s) or Firm Name: _____ Phone: _____

Enclosed check for _____ (\$40 members and \$50 non members)

Visa Mastercard _____ Exp _____

Please, we must have RSVP's by June 17, 2009.

Make checks payable to MCBA and mail to: MCBA, 30 North San Pedro Road, Ste. 140, San Rafael 94903.

Reservations are non-refundable unless the individual provides at least 24 hours cancellation notice to MCBA.



CLEANER ENERGY WITHOUT PAYING MORE? SO SAYS SUPERVISOR MCGLASHAN

By Jessica Karner

At our General Membership Meeting on Wednesday, May 27, 2009, we were treated to a clear, engaging presentation by Marin County Supervisor Charles McGlashan. Supervisor McGlashan described the history and current status of the Marin Energy Authority (the "MEA"), a joint power authority he chairs that is made up of the County and most of the cities in the County, and of the MEA's proposed "Marin Clean Energy" program to provide Marin County homeowners and businesses within the MEA's jurisdiction the ability to purchase cleaner electric power at rates at or below PG&E's rates. If successful, the Marin Clean Energy program could be instrumental in helping Marin to meet its greenhouse gas reduction target under AB 32, California's global warming law.

Marin Clean Energy proposes to purchase energy from a broad variety of renewable energy sources that would allow it to offer customers the following choices in buying power:

- Light Green: Initially from at least 25% renewable resources at the inception of the program, and growing to 50% renewable within 5 years. The cost of the light green option would be at or below PG&E's rates.

- Deep Green: 100% renewable from day one of the program. Deep green would be a bit more expensive in the beginning (estimated at 5 to 10% more expensive than PG&E's rates), but program proponents believe the rates of the deep green option would eventually be competitive with, and maybe even below, PG&E's rates.

- PG&E: Under an opt-out option, customers could choose to continue buying power from PG&E in the same way they do now, with no change in source.

Sup. McGlashan emphasized that the County of Marin won't be servicing the lines: under all three options PG&E would still deliver the power to the customer and remain responsible for billing, customer service, and line repair.

While the central focus of Marin Clean Energy will be on providing access to cleaner energy at competitive prices, other benefits cited by McGlashan include increasing our use of local energy sources, which would help support local job growth, and price stabilization, since renewable sources of energy are generally not subject to the same level of price fluctuation as fossil fuels.

Requests for Proposal were just issued to energy service providers in May 2009, and responses are due in July. Those responses will determine Marin Clean Energy's ability to provide cleaner power at rates no higher than PG&E's rates. So stay tuned.

For more information on Marin Clean Energy, they have a great website at www.marincleanenergy.info with lots of easy-to-access information, including alternative proposals and information about PG&E's position on MCE.

The Bay Area's Premier Reporting Service



- ◆ Complimentary Conference Rooms
- ◆ Document Depository
- ◆ Livenote/E-Transcript
- ◆ Videoconferencing

*Capturing your words
with caring hands.*

800-979-2361

117 Paul Drive, Suite A
San Rafael, CA 94903
415-472-2361 · Fax 415-472-2371
depos@westcoastreporters.com

Employment Law

Jay Luther
Law Offices of Jay W. Luther

(415) 456-6197

AV Rated

Over 30 years' experience

Fax: (415) 532-1807

jluther@lutherlaw.com

www.lutherlaw.com

TAM HIGH MOCK TRIAL TEAM AT ATLANTA NATIONALS

by Dennis Kavanagh*

The Tamalpais High School Mock Trial Team placed sixth in the National High School Mock Trial Competition in Atlanta, Georgia on May 8 and 9. Forty-two high school mock trial champions from 42 states competed in the competition with Tam representing California. A high school in South Bend, Indiana, won the competition. In April, Tam High won the California State High School Mock Trial Competition in Riverside. Approximately 450 high schools in California participated in the mock trial competition. The Riverside State Competition brought 38 county champions together and Tam High prevailed as the #1 team in California, which qualified them to go to the national competition in Atlanta.

In 2005 Tam also won the California State Competition and participated in the national competition in Charlotte, North Carolina. On that occasion Tam won the national competition on behalf of California and became the national champion.

David Vogelstein, a Marin County criminal defense attorney, has been the head coach for the Tam team for 14 years. During the Vogelstein reign, Tam has won the Marin competition for 14 straight years and has, thus, participated in the state competition 14 times. During the time that Tam has been in the state competition, they have been in the final two round four times. They won the state title on two occasions and have been runner-up on the other two occasions. Tam has always placed in the top 10.

The State Bar of Georgia was the host for the competition in Atlanta. A committee of the Georgia State Bar drafted a somewhat complicated fact situation for the high school mock trialers. The case was a criminal matter involving a first degree murder charge. The setting was a rural small town in Georgia where the defendant was a curator of a small museum featuring American Indian artifacts. The victim was a former employee of the museum who was fired by the curator because of a falling out between the curator and the employee. On the date of the killing, it was alleged by the defendant that the ex-employee burst into her office after hours with a weapon. The curator alleged that in self defense, she took a pistol out of her drawer and shot the ex-employee dead. There were no eye witnesses to the killing; however, two witnesses came forward who had conflicting information about events both immediately before and after the killing. The fact situation set up the two expert witnesses at loggerheads with conflicting testi-

mony. As expected in high school mock trial competition, the fact situation and the statements of the witnesses all left something to be desired to prove the case either for the prosecution or the defense.

The competition was set up for four trials, two on Friday and two on Saturday. Tam High, coming into the fourth trial, was 3-0. At that point they met up with the Indiana team that was also 3-0. In a very close trial Indiana prevailed. Thereafter, Indiana went on to the final 2 competition and won and was crowned the national champion.

The Indiana team employed a unique strategy in the trial against Tam. The fact situation governing the case provided a key witness in support of the defendant. This witness was the defendant's best friend and according to the witness statement would have supported the defendant's version of self defense. However, when Indiana called this witness to testify they pulled a somewhat "Perry Mason" type of stunt. Instead of using the witness's statement to support the defendant's version of self-defense the questioning attorney turned on the witness and in a hostile form of cross-examination attempted to show that the witness actually was the murderer. This unique strategy seemed to impress the three scoring judges and Indiana emerged as the victor.

(Continued on page 14.)

Green MediationSM ADR Neutrals

Over 58 years combined legal experience

Clean up and resolve your case. We have formal mediation training and have served as advocates in dozens of mediations, settled successfully. As litigators, we know how to settle creatively, get parties to think outside the box and to narrow the issues. Our International experience is an asset to any case.

- Business & Contract disputes
- Corporations, LLC, LLP and Partnership disputes
- Intellectual Property disputes
- Entertainment & media matters
- Estate disputes
- Employment matters
- Real Estate contracts, neighbor disputes
- Construction disputes

Beverly & Phil Green
Courthouse Square
1000 4th Street, Suite 595
San Rafael, Cal 94901
(415) 457-8300

HELLO OUT THERE! THIS IS YOUR STAFF CALLING!

By Kristi L. Edwards

Hi! You know me. I'm your right hand man, your gal Friday, your legal assistant, paralegal, or legal secretary. I'm that person who helps you keep on track with your calendar and clients, be where you need to be at the right time with the right file, correct your spelling and make your documents look fantastic, wade through the details of forms and court rules. And you know what? I like it!

I like working in a law office. It's interesting and challenging. I like working with you on all these different cases and learning new things every day. Sure, the clients drive us nuts sometimes, but hey, they're just people who need help. And I like that part, too, being of service to people who need assistance.

Say, I've heard there is a professional organization, similar to your bar association, for me. It's called the Marin County Legal Professionals Association, and they just elected new officers and started their fiscal year. They meet once a month for dinner and listen to a speaker. Don't worry, they don't sit around bashing employers or talking about clients. They have a code of ethics that reminds each member that they are bound by the same confidentiality and professional conduct rules that attorneys are. Dues are only \$45 a year and they are part of a statewide group called Legal Secretaries, Inc., which offers continuing education and a whole host of benefits I might be interested in, like dental insurance and retirement plans. I could attend some workshops, pick up some helpful information, and bring it back to the office. Do you think we should check it out?

For more information, contact Kristi L. Edwards, CCLS, President, at (415) 491-5000, kledwards@justice.com or Jennifer Page, CCLS, Membership Chair, (415) 898-1010.

MARIN COUNTY LEGAL PROFESSIONALS ASSOCIATION

A professional organization for legal assistants

NEXT MEETING: Thursday, June 11th, 6 pm,
Café Arrivederci
11 G Street, San Rafael

SPEAKER/TOPIC: Shelley A. Kramer, Esq.
Trial Preparation

RSVP/INFO: Kristi L. Edwards, CCLS,
491-5000
kledwards@justice.com

TIP OF THE MONTH: MCLPA members qualify for discounts on procedure manuals published by The Rutter Group.



LEGAL VIDEOS, LLC

Serving Marin and Sonoma Counties since 1988

4340 Redwood Highway F #150
San Rafael, CA 94903

www.legalvideos.com
info@legalvideos.com

415.459.7672
Toll free 866.454.7672
Fax 415.459.1797

Complimentary Deposition Suites with refreshments when using our services. Deposition Suites also available for rent.

- Depositions
- Trial Preparation
- Trial Software Training
- Trial Presentations
- Courtroom Set-up
- Mock Trials
- In House Synchronization
- Duplication & Editing
- Day-in-the-Life
- Court Reporters
- Free Wireless Internet
- Video Teleconferencing



myers • stevens • mello

Specialist
Since 1946

Medical

Dental - Vision - Life - Disability

For Quotes call (800) 862-4243

Insurance License# OF04106

San Bruno, CA 94066

www.myersstevens.com

HOW TO RELAX AND NOT WORRY: THE BRAIN SCIENCE OF PRODUCTIVITY

By Dr. Maynard Brusman*

Everyone you meet these days is overworked and out of time. In our tech-enhanced world, we have more timesaving helpers and systems than ever before. So, why isn't there enough time to juggle our work, home and health responsibilities? We have an enhanced quality of life, but we're also adding to our stress levels by taking on more tasks than we have resources to handle.

Most lawyers are stressed — out of patience and out of time. Neither advanced educations, nor time-management models, nor the variety of available organizing tools have given us a sustainable means for managing 21st-century demands. It doesn't matter which we use: Microsoft Outlook, a Day-Timer, PDA or iPhone. They're inadequate to handle the speed, complexity and changing priorities of today's work environment. There's a tremendous need for new methods, systems, and, above all, habits to keep us on track.

Information Fatigue

The consequences of these problems are serious: Our productivity and creativity are impaired. We're allowing huge amounts of information and communications into our brains. We're generating an equally large volume of innovative ideas and integrating them with our preexisting knowledge. We continuously process and formulate new concepts, making split-second decisions on how and with whom to communicate. In this information age, we know we have choices—but there are way too many. We must sort through options and triage them to determine which receive our attention.

You've probably already discovered that whichever system or calendar you're using to track projects and priorities is important, but limited. As management guru Peter Drucker explains:

"In knowledge work...the task is not given; it has to be determined. 'What are the expected results from this work?'...is the key question in making knowledge workers productive.

"And it is a question that demands risky decisions. There is usually no right answer; there are choices instead. And results have to be clearly specified, if productivity is to be achieved."

We haven't been taught to think deeply about our work before we undertake it. Thinking in a concentrated manner to define desired outcomes is something few people do. But outcome thinking is one of the most effective methods available for creating successful realities.

The Left-Brain Versus Right-Brain Battle

Your ability to be productive and successful at home

and work is closely tied to your ability to relax and think clearly. Only when you're well organized and your mind is clear can you unleash your true creative potential. Success depends on freeing up your mind to be more relaxed. But no one can relax when the time-oriented, linear left brain is nagging the free-flowing, creative right brain about impending tasks.

What's needed is a trustworthy system to manage everything we must remember. The more we can download our to-do lists into a reliable system, the more brain space we free up. With a clear mind, you can think about other important items and enjoy greater productivity.

Brain Clutter

Many of us have experienced working in the "zone," where creative processes flowed and we lost all sense of time. This happens when we use our right brain hemisphere. Right-brain thinking is essential for innovation. It functions like an artist, concerned only with the present moment. In contrast, the left brain supplies logic and linear thinking; it's concerned with time and numbers. It reminds us of tasks left undone, prior experiences we need to consider and future deadlines. It functions more like a banker than an artist.

Our government, schools and businesses prefer to operate in left-brain mode, with an emphasis on laws, rules,

(Continued on page 15.)

"Providing Complete ADR Services!"

RESOLUTION

JUDGE MICHAEL J. BERGER*	PATRICK M. BRODERICK
JUDGE RICHARD H. BREINER*	CLAYTON E. CLEMENT
HON. JEANNE MARTIN BUCKLEY*	W. GREGORY ENGEL
JUDGE VICTOR M. CAMPILONGO*	HOWARD M. GARFIELD
JUDGE JOHN J. GALLAGHER *	PERRY D. LITCHFIELD
JUDGE ISABELLA H. GRANT*	GARY T. RAGGHIANI
JUDGE RON GREENBERG *	PAMELA M. SAYAD
JUDGE INA LEVIN GYEMANT*	MICHAEL D. SENNEFF
JUDGE HADDEN ROTH*	MATTHEW N. WHITE
JUDGE VERNON F. SMITH*	W. BRUCE WOLD

Validated Parking - Famous RESREM Lunches

Look for us on the Web - www.resolutionremedies.com

*Retired

REMEDIES

Diane Levinson-Fass, President Diane Story, Vice President

for more information call: **(800) 778-2823**



MEET YOUR DIRECTORS SPOTLIGHT ON MARY McLAIN

The Marin Lawyer decided that it would be a good idea to let the MCBA membership get to know a little more about the MCBA Directors whom they elected, and who give so much to make the MCBA a great, vibrant, organization. To that end, The

Marin Lawyer will run a series of articles, each focusing on a different MCBA Director or Officer. This month, our spotlight is on Board Member and 5-Year Past President Mary McLain.

The Marin Lawyer: What is your practice area?

Mary McLain: Back in the day (early 1980s) I concentrated on general civil litigation including construction defect, personal injury and product liability cases. In the late 1990s, I represented a defendant in a consolidated product liability asbestos case that lasted 8 months. My youngest of 4 children was in kindergarten and I hardly knew his teacher. At that time, I decided to transition out of litigation into Alternative Dispute Resolution. I obtained my LL.M from the Straus Institute for Dispute Resolution at Pepperdine University School of Law with an emphasis in Mediation and began my career as a commercial mediator.

TML: Do you have a particular emphasis?

MM: My practice, McLain Mediation, concentrates on ADR with an emphasis in commercial mediations. I am also an adjunct professor at UC Hastings and UC Berkeley where I enjoy teaching Mediation Clinic, Mediation and Negotiation.

TML: Why did you decide to become a lawyer?

MM: When I was a child, my parents were social activists involved with issues of human rights, peace and justice. I was exposed to the very turbulent and exciting issues of the 1960's in my parents' home where we had a constant stream of global activities. I was instilled with the importance of social change and knowledge of how the system works and they taught me to change the system from within with the most knowledge. I observed that the lawyers were the critical thinkers and architects of reason, justice and peace and I was hooked.

TML: Why do you live in Marin?

MM: Marin truly resonates a peaceful easy feeling. Marin has an abundance of beauty and serenity when I need

it, right outside my front door. I can hike on Mt. Tam, walk on an ocean beach, sit quietly under the Redwood trees, hit the slopes in Tahoe or go to a world class symphony all in a day. It is practically a perfect blending of urban meeting nature. I never tire of it.

TML: What do you love to do when you're not busy practicing law?

MM: I love being with my family, helping people through difficult times and TENNIS!!!! I am a passionate community activist and have been involved on many boards and within the public schools. I am currently Past President of CorStone, formerly the Center for Attitudinal Healing in Sausalito. CorStone emphasizes programs teaching resiliency and the importance of positive attitude in life. I have also twice been on the board of the Marin Abused Women Services dealing with domestic violence, Friends of the Redwoods (the senior community living establishment in Mill Valley), and the Mill Valley Tennis Club. I like giving back to the community that has given so much to my family.

TML: Tell us about your family.

MM: I have a beautifully blended family. My husband Barry Bram and I have been married for over 20 years. At the time we married, I had 2 daughters, Summer Skye (then 16) and McLain (then 11) who lived with me

(Continued on page 17.)



A. MAGGI SAUNDERS & ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

Serving the Entire Bay Area since 1974

415-383-6281 (office)

415-823-3790 (mobile)

maggisaunderscsr@neteze.com

**"In a deposition, the Court Reporter
is your biggest asset"**

Lowest Per Page Rate - Delivered in One Week

**No Premium rates for Doctors, Expert Testimony,
Evening or Weekend Depositions**

**Free Condensed transcripts, ASCIIs, CDs,
Translators, Video Depositions, Free Conference Room**

Member: National Court Reporters Association & SFTLA

**Multiple References upon request, UCLA Graduate with Honors
And Mom to a talented young actor**

*Labor & Employment, Civil Rights, Medical Malpractice, Complex Personal
Injury, Construction Defect, Product Liability, Commercial Business*

The best court reporter always gets the last word!



MARIN COUNTY JURY VERDICTS

By Steven Perl

The Marin Lawyer will periodically report on jury verdicts from the Marin County Superior Court. We welcome reports from trial attorneys involved in Marin County verdicts; please contact Steven Perl (SPerl@co.marin.ca.us) with your information.

Vochatzer v. Reese, et al.

Complete Title of Plaintiff: Kimberly Vochatzer

Complete Title of Defendants: Gary Reese, Penelope Vorster

Case Number: CV060296

Insurance Carriers: Coast National Insurance Company for Reese; Progressive Insurance for Vorster

Plaintiff Attorneys: Christine Lee, Leah DiBello, (415) 394-6688

Defendant Attorneys: Ken Jorgensen (for Reese) (916) 851-3701; Daphne Beletsis (for Vorster) (707) 525-8800

Plaintiff Doctors: Christopher Hackett, D.C., chiropractor, Novato; Kelly Reed, M.D., primary care doctor, Novato

Defendant Doctors: None

Plaintiff Experts: None

Defendant Experts: James Hughes, accident reconstruction, Vacaville; Sean Shimada, Ph.D., biomechanic, Davis (both for Reese)

Judge: John A. Sutro

Date & Time of Incident: February 6, 2004 (accident with Reese); February 29, 2004 (accident with Vorster)

Type of Action: Personal injury action from two auto accidents

Location of Accident/Incident: February 6, 2004: Novato Boulevard, Novato; February 29, 2004: DeLong Avenue, Novato

Plaintiff: Age: 37 **Occupation:** Handyman

Residence: Novato

Facts of Case: Plaintiff was involved in two rear-end collisions in February 2004. On February 6, her pickup

truck was rear-ended by a pickup truck driven by Gary Reese. On February 29, she was a passenger in a car that was rear-ended by a car driven by Penelope Vorster.

Defendants admitted liability, but contended both accidents were low-impact, with insufficient force to cause personal injury damages.

Length of Jury Trial: 4 days **Jury Deliberated:** 4-5 hours

Plaintiff Attorney asked the Jury to Award: \$16,000 for medical expenses and lost wages plus \$15,000 for pain and suffering

Defendant Attorney asked the Jury to Award: According to plaintiff's attorney: \$800 and \$0; according to defendant Reese's attorney, he asked for a \$1,500 award as to defendant Reese

Injuries/Damages:

Plaintiff Doctors Stated: Soft tissue neck and back injuries - severe whiplash - that required five months of chiropractic care and prevented plaintiff from working for the same amount of time; treatment was reasonable and necessary

Defendant Experts Stated: Plaintiff's injuries would have been short term in nature and would be expected to resolve within a week or two.

Residuals: None claimed.

Specials/Damages: Approx. \$6,000 in medical specials claimed, according to defendant Reese's attorney; \$5,000 in medical specials according to plaintiff's attorney; \$11,000 in lost income.

Settlement Talks:

Demand: \$9,000, according to defendant Reese's attorney; \$7,000 total (\$3500 demand to each defendant), CCP 998, according to plaintiff's attorney

Offer: \$1,200 from defendant Reese, according to defendant Reese's attorney; \$0 from defendant Reese and \$1200 from defendant Vorster, according to plaintiff's attorney.

Result: \$10,000 against defendant Reese (\$2,500 for medical specials; \$7,000 for lost income; \$500 for general damages); \$6000 against defendant Vorster

Poll Result: 12-0

Verdict Date: 3/24/09

(Continued on page 9.)

(Jury Verdicts, continued from page 8.)

Bodeman v. Carson

Plaintiffs: Maria Bodeman & William Bodeman

Defendant: Patricia Carson

Case Number: CV 069479

Insurance Carrier: Allstate

Plaintiff Attorney : Christopher W. Wood, (916) 379-3500

Defendant Attorney: Martin J. Ambacher (925) 939-5330

Plaintiff Doctors: Hans Bueff, MD, orthopedic surgery, Roseville; George Picetti, III, MD, B. Kelly Hunt, MD

Defendant Doctor: Peter Sfakianos, MD, orthopedic surgery & sports medicine, Folsom

Plaintiff Experts: Carol Hyland, Kirk Blackerby

Defendant Expert: Eric J. Drabkin, Pacific Economic Consultants, Inc., Lafayette

Judge: Terrence Boren

Date of Incident: 11/18/04

Type of Action: Rear-end auto accident

Location of Accident/Incident: US 101 northbound, San Rafael

Plaintiff Maria Bodeman: Age: 46

Occupation: Accountant

Residence: Folsom

Facts of Case: Plaintiff stopped for traffic. Defendant rear-ended a pickup truck stopped behind plaintiff, propelling pickup into plaintiff's car. Aggravation of pre-existing cervical (C4-5, C5-6) degenerative disc disease alleged.

Defendant admitted liability.

Length of Jury Trial: 10 days

Jury Deliberated: 1 day

Plaintiff Attorney asked the Jury to Award: \$9 million

Defendant Attorney asked the Jury to Award: \$1.1 million

Injuries/Damages:

Plaintiff Doctor Stated: Plaintiff made a good recovery after 2-level cervical fusion surgery, but had ongoing problems related to accident.

Defendant Doctor Stated: Conceded surgery and post-surgical problems related to accident.

Residuals: Neck pain, alleged need for further treatment

Specials/Damages: \$115,000 past medical expenses, \$3.66 million in future medical expenses claimed; \$50-\$75,000 past wage loss, \$1.14 million future wage loss claimed

Settlement Talks:

Demand: \$750,000 CCP 998, increased to \$1.5 million, then \$3.5 million

Offer: \$290,000 CCP 998, increased to \$1.5 million at start of trial

Result: \$1,237,485

Poll Result: 12-0

Verdict Date: 10/29/08

NOTE: The information concerning *Bodeman v. Carson*, above, was provided solely by defendant's attorney; plaintiff's attorney did not respond to MCBA's request for information.



Lawrence A. Hoytt

Over 30 years inspecting Marin and Sonoma County single-and multi-family residential buildings

- Real estate disclosure and home inspection standard of care and practice issues
- Tenant v landlord disputes involving habitability claims-including applicable code violations
- NEUTRAL claims evaluation for building owners and managers and their legal counsel

Hoytt Inspection Services, Inc.
Marin County, CA
(415) 897-9517

On the web: www.hoyttinspect.com
E-mail: lah@hoyttinspect.com



REQUEST FOR JUDICIAL COUNCIL ADVISORY COMMITTEE NOMINATIONS

The Administrative Office of the Courts is currently soliciting nominations to fill upcoming vacancies on Judicial Council advisory committees. The advisory committees monitor specific areas of law as they impact the judicial branch. Each committee reviews and makes recommendations to the Judicial Council on legislation, rules, standards, forms, and other policy matters within its purview for improving the quality and advancing the consistent, independent, impartial, and accessible administration of justice.

Terms and Time Commitment for Serving on the Advisory Committee

The Chief Justice appoints advisory committee members to positions specified in the California Rules of Court and by statute. Terms of service for advisory committee members are generally three years, although some committee terms are shorter. Terms for those appointed in this nomination cycle will begin on November 1, 2009. Committee membership involves a commitment of approximately ten hours per month, although that may vary considerably from committee to committee and month to month, depending on the projects underway. Committees generally meet in person two times per year and by telephone conference five to ten times per year.

How to Submit Nominations

The deadline for submitting advisory committee nominations is **June 30, 2009**. An online nomination form and details regarding how and where to submit the nominations are available on the California judicial branch website at <http://www.courtinfo.ca.gov/jc/advcommnom.htm> Please contact Maria Kwan, Nominations Coordinator, at (415) 865-4543 if you have any further questions.

Serving the legal community of Marin since 1965

MARIN PACIFIC COMPANY, INC.

General Insurance Brokers and Agents

PROBATE BONDING

453-1620

1430 Fourth Street
San Rafael, CA 94901

Daniel C. Dufficy
Gail Anne Geary

Representing major surety carriers • fast local service



Drunk Driving and DMV Matters

Paul Burglin

Mitchell, Hedin, Breiner, Ehlenbach & Burglin
Courthouse Square, 1000 Fourth St., Suite 570
San Rafael, CA 94901

(415) 453-0534

DUIandDMV.com

Author: *Calif. Drunk Driving Law*
A-V Rated - Martindale Hubbell™

MEDIATION OFFICES OF

STEVEN ROSENBERG

Highly effective and skilled mediation services for

- Commercial
- Employment
- Family Law
- Real Estate
- Probate
- Personal Injury



Mr. Rosenberg has practiced law for over 30 years. He is an Adjunct Professor of Law at USF, an Approved Consultant for The Academy of Family Mediators and was chair of The Marin County Bar ADR Section. He is a member of the mediation panels for the U.S. District Court, NASD, and all Bay Area Trial & Appellate Courts.

References available upon request.

775 East Blithdale Avenue, #363, Mill Valley, CA 94941

RosenbergMediation.com
415/383-5544

President
MARLENE P. GETCHELL
President-Elect
BETH S. JORDAN
Secretary
JESSICA KARNER
Treasurer
OTIS BRUCE, JR.
Past President
EDWARD S. BERBERIAN
5 Year Past President
MARY K. MCLAIN



MARIN COUNTY BAR ASSOCIATION

Executive Director
ROBYNN GASPAR
Client Relations Chair
JUDITH H. B. COHEN
Program Chair
MATTHEW N. WHITE

Directors

2009
ELIZABETH A. BREKHUS
HOUMAN CHITSAZ
TIMOTHY J. CHAMBERS
JOEL GUMBINER
JORDAN A. LAVINSKY

2010
DAVID I. BROWN
TODD A. DUPLANTY
MICHAEL J. FISH
DENNIS KAVANAGH
ERIC STERNBERGER

2011
SARA B. ALLMAN
PHILIP R. DIAMOND
LOUIS S. FRANECKE
ANDREW C. MCCULLOUGH
KATE ROCKAS

June 1, 2009

Dear Member:

The MCBA has engaged the firm of RCL Portrait Design, which specializes in "Executive Portraits", to photograph all the members for our annual member directory.

RCL, the nation's leading executive portrait studio, has worked with more than 500 professional organizations and photographed over 100,000 professionals.

The photographs will be taken in the MCBA conference room at 30 N San Pedro Rd, in San Rafael and there is no cost to you to participate. A professional portrait photographer will photograph you in several poses. You will then be able to view your proofs immediately through an instant video system and choose your picture for the directory. Additional portraits will also be made available to those wishing to purchase them, however there is no obligation to do so.

RCL suggests for professional quality and best presentation, that you wear professional attire to the photo shoot.

If you already have a photo in this year's (2009) directory you wish to continue using, please contact RCL and let them know. You are welcome and encouraged to participate in this program even if we already have your photo.

Please call RCL Portrait Design at 800-580-5562 to schedule your appointment.

We hope everyone will take advantage of this free service to make the 2010 MCBA directory look great.

Thank you,

A handwritten signature in black ink, appearing to read "Robynn Gaspar". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robynn Gaspar
Executive Director

No Contest, continued from page 1.)

member who suffered the insult of being passed over by a testator to reclaim their honor by setting aside the will and taking their intestate share of the estate. No contest clauses developed as a means for a testator to try to prevent any such challenges to their testamentary wishes by threatening disinheritance as a price for taking legal action to invalidate the testator's will. Sometimes referred to as an in terrorem clause, the language typically directs that if a party challenges the testator's intended distributions and fails, the challenger takes nothing from the testator's estate. In California, courts and the legislature have tried to balance a testator's "right to grant bequests subject to any lawful conditions he or she may select" with the concerns over the unintended forfeitures and public policy issues that sometimes result from the enforcement of no contest clauses.¹ The latest step in this process is the legislation discussed in this article, which narrows the applicability of no contest clauses to a few specifically identified types of pleadings, bringing California within the majority rule in the United States.

II. The New Law.

A. Narrow Application of No Contest Clauses.

The new law repeals the existing Probate Code sections applicable to no contest clauses, and replaces them with new Probate Code sections 21310 – 21315.² Under the new law, enforcement of a no contest clause is limited to (1) a direct contest that is brought without probable cause; (2) a pleading challenging a transfer of property on the grounds that it was not the transferor's property at the time of the transfer; and (3) the filing of a creditors claim or prosecution of an action based on a creditor's claim.³ The new statute defines a contest as a "contest that alleges the invalidity of a protected instrument or one or more of its terms" based on several specifically identified grounds.⁴ Protected instruments include the instrument that contains the no contest clause, and an instrument that is in existence on the date that the instrument containing the no contest clause is executed, and expressly identified as being governed by the no contest clause.⁵ The "instrument in existence" language allows for no contest clauses to apply to instruments such as beneficiary designations on retirement accounts.

Taken together these new terms represent a dramatic narrowing of the application of no contest clauses in California. This is so because the existing definition of a contest is broad enough to include any action identified in the no contest clause as a violation of the clause, and over the years California courts have applied no contest clauses to a wide variety of actions and instruments. But with the repeal of the old scheme and the adoption of the new statutes, no contest clauses are applied only to the three actions listed above.

B. Probable Cause.

The new language limits enforcement of no contest clauses to direct contests brought "without probable cause." The new statute directs that probable cause exists if "at the time of filing a contest, the facts known to the contestant would cause a reasonable person to believe that there is a reasonable likelihood that the requested relief will be granted after an opportunity for further investigation or discovery."⁶ While the probable cause standard may afford some latitude for the prospective challenger, it does not seem likely that the determination of whether probable cause existed at the time of the challenge will be made until the trial of the matter is concluded and the contestant has lost. And, contestants will no longer have recourse to so-called "safe harbor" petitions pursuant to Probate Code section 21320, which allow application to the court for a determination of whether a pleading will trigger a no contest clause, because this section has been repealed.

C. Clauses Directed Toward "Forced Elections" Remain Enforceable.

A common reason for a testator to include a no contest clause as part of their estate plan is to try to prevent claims made by a surviving spouse that the testator's plan gives away community property that did not really belong to the testator because the surviving spouse has some unacknowledged interest in the community property. These kinds of claims can take many other forms, and be asserted by family members other than a surviving spouse. A no contest clause can force the surviving spouse or family member to choose their remedy – they can either take what is given to them under the testator's will, or forego their interest in the will and seek their community property interest in the disputed assets. This remains an enforceable no contest clause under new Probate Code section 21311(a)(2), although the no contest clause must expressly provide for its application to such a claim.

D. Creditor's Claims.

The new law provides that a no contest clause is enforceable against a party who files a creditor's claim. As with the retention of enforceability against forced elections, the clause must expressly provide for application against a creditor's claim in order to be enforced.⁷ Of all of the retained enforceability clauses, the creditor's claim portion probably carries with it the highest risk of unintended forfeitures. This is so because there are many customary creditor's claims that could be presented by a family member which do not represent any kind of a challenge to the decedent's estate plan. These include claims for repayment of funeral expenses, or repayment of expenses of last illness or expenses associated with caring for the decedent before the decedent's death. It is easy to envision a circumstance in which a sympathetic family

(Continued on page 13.)

No Contest, continued from page 12.)

member could unwittingly jeopardize their entire share of an estate by making a legitimate creditor's claim worth a few thousand dollars and triggering application of the no contest clause. Accordingly, careful consideration should be given before drafting a no contest clause which applies to creditor's claims.

III. The Statute Will Apply to Instruments Signed Before the Effective Date of the Legislation.

The new statutes apply to "any instrument, whenever executed, that became irrevocable on or after January 1, 2001."⁸ Accordingly, this new law will apply to instruments now in existence which become irrevocable after January 1 of 2001, no matter when the document was originally signed.

IV. Some Implications of the New Rules.

Planners will need to evaluate their current no contest clauses and determine whether revision is necessary, which will likely depend in some measure on the reliance of the client on a no contest clause in their particular plan. For the future, planners will need to tailor the language in their trusts to reflect the new statutes. The drastic narrowing of the scope of enforceability of no contest clauses may be an opportunity to revisit the propriety of including no contest clauses in estate plans at all. Even before the enactment of the new legislation many planners questioned whether no contest clauses really acted as deterrents to litigation. One frequent obstacle to the deterrent rationale is the fact that a beneficiary must be given a significant inheritance in order to have something to lose by proceeding with a contest. If a testator is concerned about someone challenging their estate plan, they are usually not inclined to give that person a gift as a "carrot" to encourage compliance with the no contest clause. There are alternative measures that can be taken to prevent assets from going to disfavored individuals, such as inter vivos gifting or payment of salaries to favored beneficiaries, or drafting separate contracts between the testator and a beneficiary during the testator's lifetime. Planners may also consider using conditional gifts to try to ensure that assets are passing to beneficiaries as the testator wished. Drafting conditional gifts should be done with caution however, because based on the author's discussions with colleagues and review of materials gathered by the author at various seminars, there is some disagreement among practitioners as to whether a conditional gift will be treated as a no contest clause in disguise, and therefore considered unenforceable.⁹

Many issues are created by the new legislation for litigators. Those defending against contests will now need to be building their case for the absence of probable cause at the time the litigation was commenced by the contestant. Discovery steps commensurate with preserving a "snapshot" of the facts available to the contestant at the time they decided to go forward with their challenge should be taken.

Because the new statutes apply to "pleadings," there is a possibility that defensive pleadings could trigger application of a no contest clause. Regarding making decisions about whether to file a contest in the interim period between now and January 1, 2010, given the timeline for resolution of contested matters through appeals, the provisions of the Probate Code regarding transitional provisions of law provides authority for application of the new law to a case that is still "breathing" past January of 2010.

V. Conclusion.

For an excellent and much more detailed analysis of the new law and its potential consequences, I recommend Neil F. Horton's article "The New No-Contest Law: New Challenges For Trusts and Estates Attorneys," which was published in the Fall, 2008 California Trusts and Estates Quarterly. I look forward to watching the next stage in the evolution of another interesting legal issue unfold, and feel privileged to be participating daily in a legal system that is a living part of a continuum dating back hundreds of years.

** Timothy J. Chambers is a partner at the Law Offices of Rowland & Chambers in San Rafael, and practices in the areas of Trust and Estate Litigation, Estate Planning and Tax Controversies. He may be reached at (415) 459-3100, or by email at tim@rowlandchambers.com.*

(Endnotes)

- 1 Tunstall v. Wells, (2006) 144 Cal.App.4th 554.
- 2 Stats. 2008, c. 174 (S.B. 1264) §§ 1, 3 operative January 1, 2010.
- 3 Prob. Code, §21311(a), effective January 1, 2010.
- 4 The grounds are: Forgery; Lack of Due Execution; Lack of Capacity; Menace, Duress, Fraud or Undue Influence; Revocation of a Will pursuant to Section 6120, Revocation of a Trust pursuant to Section 15401, or Revocation of an Instrument other than a will or trust pursuant to the procedure for revocation that is provided by statute or by the instrument; and Disqualification of a Beneficiary under Section 6112 or 21350. Prob. Code, §21310(b), effective January 1, 2010.
- 5 Prob. Code, §21310(e), effective January 1, 2010.
- 6 Prob. Code, §21311(b), effective January 1, 2010.
- 7 Prob. Code, §21311(a)(3), effective January 1, 2010.
- 8 Prob. Code, §21315(a), effective January 1, 2010.
- 9 See "From the Ashes: Can No Contest Clauses Be Resurrected By Conditional Gifts?" Andrew Zabronsky, California Trusts and Estates Quarterly, Volume 14, Issue 3, Fall 2008.



(Mock Trial, continued from page 4.)

The national competition differs considerably from the California competition. In California the high school mock trial teams consist of four attorneys and four witnesses for both the defense and prosecution, plus a bailiff and a clerk, which brings the total to an 18-person team. However, at the national level the team is only eight members – 4 attorneys and 4 witnesses. In addition, the eight-person team has to go both ways in the trials. In other words, in one trial the team will be the prosecution and in another trial it will be the defense.

David Vogelstein had high praise for his eight-person team. Judge Paul Haakenson also assisted as a coach in preparation for Atlanta. Vogelstein stated that after winning the California competition in April, the Tam team had only 30 days to completely master a new fact situation and case for the national competition. Hard work over a four-week period was accomplished by the team and they were prepared to go back to Atlanta. In preparation for the Atlanta competition, the team went to Seattle and had all-day practice trials against the champion Washington High School team. In addition, Tam had a practice trial by video conference against the Georgia High School team. Tam met Alabama, Georgia, and Ohio in the first three trials and prevailed. The sponsors of the national competition power-match the 3-0 teams against each other in the fourth trial. By way of analogy the mock trial competition is somewhat similar to the March Madness of the college basketball tournament. Tam in the fourth trial was in the equivalent of the Final Four. Unfortunately, they did not advance past the Final Four, whereas the Indiana team did.

One of the Tam High parents who was at Atlanta provided email commentary for the two days of the trials. Here's what Mrs. Julie Kertzman stated after the four trials had concluded: "Our team had an incredible tournament and we came in sixth of 42 teams. We lost in the final regular round to Indiana who ended up winning the tournament. We had won three trials prior to that, so we knew the winner would go to the finals. It was an amazing competition and Indiana employed much more drama than our team. The scoring judges seemed to appreciate theatrics in this tournament. . . . You would have been proud of these kids – they represented Tam High, Marin County and California with class and professionalism. They demonstrated good sportsmanship and grace in both victory and defeat. What an incredible experience for the students, coaches and parents. Wow, it's going to take a while to process all that happened."

"That said, as you looked around the room tonight and realized that we were with 42 state championship teams, it started to dawn on everyone what an incredible accomplish-

ment sixth place really is. Each state represents hundreds of teams, and in California it's 450 teams. Our team was very proud to achieve this, and once again California was a trend-setter."

"In my email this afternoon I focused on the final showdown with the Indiana team, but I need to tell you about the superb performance of our defense teams as well. This morning we faced a team from Ohio that was really quite a challenge. Most teams are very professional and polite, but Ohio had a different approach. There was confrontation in the air during most of the trial, and one of their lawyers was very sarcastic and rude. Our student attorney Ben Harris handled this situation with complete ease and in the end, one of the scorers even complimented Ben (very rare at the Nationals). You could tell they were impressed. David Vogelstein was saying tonight that it's really amazing that Ben has never done a cross-examination or a direct examination in competition until the Nationals. What an arena to get your start. Ben managed this with the whacky witnesses and interrupting attorneys and protected our witnesses. (Ben Harris for two years in mock trial competition has solely done the pre-trial argument and had not participated as a trial attorney.)"

David Vogelstein went on to explain that the decision-making and scoring is also a little different at the national level. In California competition the cases are tried to the trial judge and not to the scorers. At the national level the scorers are counted as the jury, and the trial is directed toward the scorers sitting as a jury in the jury box. Vogelstein indicated that dramatics and theatrics are much more applicable at the national level than at the state level in California. The Indiana team was very dramatic and some would say overacted, but the scoring judges as the jury seemed to appreciate that approach.

Vogelstein also singled out the four attorneys at Tam who did an exceptional job in the competition: Ben Harris; Casey Khademi, who gave the opening statements; IndiAna Gowland, who did magnificent closing arguments; and Frank Alarcon for difficult cross-examinations.

The Marin County Bar Association initially contributed \$2,000 toward the funds to send the Tam team to Atlanta. The total budget was approximately \$35,000, and the funds were raised with help from many sources in the Tamalpais High community, including MCBA.

**Dennis Kavanaugh is a member of the MCBA Board of Directors and was an assistant attorney coach for the Tamalpais High School mock trial team for 8 years until his retirement from that position before the 2009 season.*

(Productivity, continued from page 6.)

logic, accounting and calendars. But we cannot create novel solutions without our right brain's creative powers. Instead of allowing our minds to perform optimally, many of us fill our brains with daily life's mundane details and rules. Worse, we spend endless hours repeating the tasks and projects we're trying to juggle.

It's far more effective to employ a reliable system to handle all of these routine details and clear our minds to creatively solve important challenges. Instead of learning to do more, we must develop strategies to think more clearly and achieve greater relaxation to obviate stress. You cannot be creative if you're constantly worrying about incomplete details and mind-numbing numbers. You need a functional system to hold these details until the appropriate time, when you can systematically tick off as many tasks as possible to clear your mind again. Writing things down on a to-do list is a good first step, but it's not enough.

What's Wrong With To-Do Lists?

Why is there so much on our minds? As we struggle to multitask, we find there are too many things that are out of alignment with our current sense of reality. To cope, we put them on "the list," which can grow to gargantuan proportions. Often, this list is nothing more than names of pressing projects written on numerous pieces of papers, often kept in several discrete places:

- Speak with So-and-So about this.
- Discuss project x.
- Decide who's on committee y.
- Delegate z to So-and-So.
- Plan the presentation to the board.

Here's what's missing from our lists:

- A clearly identified intended outcome
- A specific next-action step to be taken
- Reminders of outcomes and action steps in a reliable system.

Some people keep multiple to-do lists of undone tasks. There are notes in their Day-Timers, computer calendars, PDAs, iPhones and all of the other common organizing tools to which we cling. When we write something down and place it on a list, we assume we have a surefire way to remember it.

Open Loops

But the problem is more complex than keeping multiple lists. The left brain keeps its own list and tends to be untrusting. It will continually issue reminders and incessantly interrupt your most creative moments. In response, you will write down the task yet again, blocking the mind from thinking clearly and creatively. Until these thoughts have been clarified, you make a decision, and you enact a system you know with certainty you can trust and review regularly, your brain will work overtime to nag you.

All of the tasks for which you haven't formulated de-

sired outcomes and decisions remain active in what scientists call "open loops." They will haunt you, sapping your energy and creative powers. It's the way our mind is wired to work. These loops will control you until you control them.

Manage the Mind to Manage Action

Now, for the good news: You can train like an athlete to be faster, more responsive and more focused on your work. You can learn to think more creatively and effectively, with greater ease and control. You can minimize loose ends and open loops, leading to increased productivity with decreased effort.

That said, you can't have more time. You can't stop the deluge of incoming information. You can't manage priorities; you can only have them.

The answer lies in managing your actions: what you do with your time, your information, and your mind, body and focus. You must decide how to allocate your limited resources. You must answer the question: How do I make appropriate choices regarding what to do at any given point in time?

We get stuck when we fail to define our next steps. The real problems are lack of a clear vision and an inability to define what a project truly entails, as well as its corresponding future action steps.

No Defined Steps

On its face, this problem is an obvious hurdle to progress. But most people haven't adequately determined next

(Continued on page 16.)

PHILIP R. DIAMOND MEDIATOR

EXPERIENCED • EFFECTIVE • DEDICATED



Philip R. Diamond is a talented, hard working mediator, who is committed to shepherding all matters through to resolution. His wide-ranging mediation and civil litigation experience includes:

- Construction and Real Estate
- Commercial and Residential Landlord/Tenant
- Business Disputes and Litigation
- Employment
- Personal Injury
- Professional Liability
- Insurance
- Product Liability
- Wills and Trusts
- General and Toxic Torts

LAW & MEDIATION OFFICES OF PHILIP R. DIAMOND
4040 CIVIC CENTER DRIVE, SUITE 200
SAN RAFAEL, CALIFORNIA 94903
TELEPHONE (415) 492-4500 • FACSIMILE (415) 388-8257
email: philipdiamond@comcast.net

(Productivity, continued from page 15.)

actions in their commitments and projects. They leave key steps undecided and vague. Most of us think the major issue is lack of time. In reality, we haven't adequately defined our project's scope and specific requirements.

A Bottom-Up Approach

Many people think the most appropriate way to tackle productivity should be from the top down:

- First, uncover personal and corporate missions.
- Next, define critical objectives.
- Finally, focus on the details of implementation.

But productivity expert David Allen, author of *Getting Things Done*, says otherwise:

"...The trouble is that most people are so embroiled in commitments on a day-to-day level that their ability to focus successfully on the larger horizon is seriously impaired. Consequently, a bottom-up approach is usually more effective."

Start with the most mundane, ground-floor level of current activity and commitments. Catch up by taking control of your in-basket and your mind — right now. You will unleash creative, buoyant energy that supports your attempt to reach new heights. Your confidence will increase as you more effectively handle the spoils of your newfound creativity.

You will experience an immediate sense of freedom, release and inspiration. These rewards come naturally to those who roll up their sleeves, dig in and take care of the little things. As your in-basket empties, you'll find yourself better equipped to handle the big picture and higher-level thinking.

Empty Your Mind

There's no real way to achieve control if your mind is racing. If it's stuffed with worries, to-do lists and generalized anxiety, you'll never be as productive, innovative or successful as you desire.

"The art of resting the mind and the power of dismissing from it all care and worry is probably one of the secrets of our great men." — Captain J.A. Hatfield

Most of the stress we experience comes from inappropriately managed commitments we make or accept. Even those of us who aren't consciously "stressed out" can experience better focus, greater relaxation and increased energy when we learn to more effectively control the open loops of our lives. Anything that's pulling at your attention is a source of stress, which distracts from your ability to be innovative and productive. You must identify and gather up all of the stressors that plague you.

Next, plan how you will handle them, using outcome thinking and writing down next-action steps. This may seem like a simple task, but in practice most people don't do it in a consistent way.

Basic Requirements for Managing Commitments

Here are some basic activities and behaviors you can implement to free up your mind and be more productive:

1. Empty your mind. Anything you consider unfinished must be captured in a trusted external system. This "collection bucket" must be reliable, and you must return to it regularly to sort through it.
2. Clarify exactly what your commitment entails, its desired outcome and what you have to do to make progress toward fulfilling it.
3. Once you've pinpointed all of the next-action steps you need to take, keep reminders of them organized in a system you can review regularly.

Employing next-action decision-making results in clarity, productivity, accountability and empowerment. When you hold yourself to the discipline of identifying the real results you want, you will obtain them.

Things that have your attention need your intention. Here are some questions to regularly ask as you go over your list:

- What does this mean to me?
- Why is it here?
- What do I want to be true about this?
- What's the successful outcome?
- How do I make this happen?
- Which resources must I allocate to make it happen?
- What's the next action?

Everything you experience as incomplete must have a reference point for "complete." Your life and work are composed of outcomes and actions. When your newly adopted behaviors help you organize everything that comes your way, a deep alignment will occur. Wondrous things will emerge. You will become highly productive, achieving your desired outcomes with minimal stress and maximum results.

Working with a seasoned executive coach trained in emotional intelligence and incorporating leadership assessments such as the Bar-On EQ-i and CPI 260 can help you better manage stress and become a more inspiring leader and lawyer. You can become a lawyer who models emotional intelligence and social intelligence, and who inspires people to become happily engaged with the strategy and vision of the law firm or legal practice.

**Dr. Maynard Brusman is a Consulting Psychologist and Executive Coach with Working Resources, a Strategic Talent Management and Leadership Consulting, Training and Executive Coaching firm. Working Resources helps companies to assess, select, coach, and retain emotionally intelligent people, and assists in emotional intelligence based interviewing and selection, multi-rater 360-degree feedback, competency modeling, succession planning, career coaching, change management, corporate culture surveys, and executive coaching. Dr. Brusman may be reached at mbrusman@workingresources.com.*

(Spotlight, continued from page 7.)

fulltime. Barry and I had 2 sons together, Aharon (now 19) and Gabriel (now 17), so our childrens' ages range over 20 years from start to finish! The greatest benefit is that our family is extremely close knit and enjoys being with one another. Our younger sons have watched their older sisters go to college, have careers, live in all parts of the world where they developed community and shared that with their brothers. Likewise, our daughters were very involved and instrumental in their brothers' development, introducing them at a young age to mountain biking, snowboarding and wakeboarding as well as exposing them to their lifestyles in New York City and Hood River, Oregon. We love to travel together as a family and we spend a lot of our time together in Idaho where we have a place in Tamarack Resort.

TML: If you could pursue any other career besides law, what would it be and why?

MM: I would want to be able to make a difference in the world. I think it would be in an area regarding emotional well being and health. I am not exactly sure what it would be called. I have lost so many dear ones to different cancers and I have been privileged to witness their journeys with this disease. I guess I would be some sort of scientist.

TML: Why did you join MCBA?

MM: I joined MCBA in the 1980's on the advice of one of my expert witnesses, Dr. Treanor. He told me I should meet his daughter Wanden who was also a woman attorney in Marin. Once I met Wanden, I became active in the MCBA and the Marin County Women Lawyers and became President of both of these organizations.

TML: Why did you become a Director?

MM: I became an MCBA director at the guidance of Wanden. Also I enjoy being an attorney and am proud of our legal profession. I believe that working together as colleagues in pursuit of the best practices is an important part of giving back to the profession that I cherish.

TML: If you had to pick a single highlight of your career, what would it be?

MM: Graduating from law school on Mother's Day in 1984 with my daughters at my side, who were at the time 11 and 6. A very sweet memory for me.

TML: What was the best, worst, or strangest experience in your career?

MM: I would have to say the most profound experience of my life was the loss of my daughter Summer Skye in June 2005. When Summer was diagnosed with a malignant brain tumor in 2003, the Marin community surrounded my family in a way that we will never forget. All the organizations we had been involved with came to support us. It was amazing how quickly people responded. Summer moved

back to live with us after her brain surgery and during her treatments. People did our shopping for a year, helped drive to the infinite doctor appointments and treatments, helped our younger sons get to school and Hebrew school, athletic games, offered their various advice. After a year, Summer became a brain cancer survivor and an activist and spokesperson for the National Brain Tumor Foundation. She became a triathlete and competed to raise money for the NBTF. She had made it and was thriving and living on her own again but now in Marin. When she went back to visit her friends in Hood River, Oregon, she drowned tragically. Yet she lives on by the tremendous impact her memory has on so many in this community.

For me the experience has made me recognize the importance of each and every moment as we do not know when our time will come. I live life with an open heart, mindful of the importance of loving kindness and compassion and forgiveness in this world. In my mediation practice, I try to role model solution based peacemaking by creating an atmosphere of openness and a willingness to express the emotional impact of the conflict so that the shifting in perspectives to build agreement can begin.

DETAILS FOR CALENDAR

June 16th

Probate & Estate Planning Section Meeting
NEW DATE & LOCATION – FOR THIS MEETING ONLY
Marin County Civic Center, Courtroom J
Please join us for a conversation with
Hon. Verna A. Adams and Hon. Roy O. Chernus
Marin County Probate Court
Bring your lunch! Please, no plastic knives due
to enhanced security at the courthouse.
12 – 1:30 pm

June 17th

ADR Section Meeting
Location: Seafood Peddler
12 – 1:30 pm

June 18th

Real Property Section Meeting
12 – 1:30 pm
Trees v. Views -
The Quintessential Marin Dilemma
A Survey of Marin's Tree and View Ordinances
presented by Dotty LeMieux
For more information and to sign up,
please contact section co-chair Derek Weller at
derek@derekwellerlaw.com or (415) 453-1375.

(Continued on page 18.)

NEW MEMBERS

Mitchell A. Carp
78 Throckmorton, Ste. 1
Mill Valley, CA 94941
415-389-9417 Fax: 415-962-0733
carplaw@comcast.net

Stephen S. Mayne
Manatt, Phelps & Phillips
One Embarcadero Center
San Francisco, CA 94111
415-291-7455 Fax: 415-291-7631
smayne@manatt.com

Patricia M. Nelson
Public Trust Alliance
c/o 130 Edward Ave.
San Rafael, CA 94903
415-497-1147
nelsonp34@hotmail.com

Charles Patterson
Charles Patterson Law Office
100 Larkspur Landing Circle, Ste. 110
Larkspur, CA 94939
415-461-4695 Fax: 415-461-4504
cpatterson@estlaw.com

Karolyn Plummer Poppin
Law Office of Karolyn Plummer Poppin
P O Box 7096
Corte Madera, CA 94976
415-272-8187 Fax: 415-329-1713
karolyn@poppinlaw.com

CHANGE OF SCENE

Shawn Collins
Law Offices of Shawn Collins
55 First Street, Box E
Lakeport, CA 95453
415-517-2701
shawncollinsattorney@hotmail.com

Albert Cordova
1101 Fifth Avenue, #200
San Rafael, CA 94901
415-457-9656 Fax: 415-457-9656
aec-law@att.net

Justine Durrell
Law Offices of Justine Durrell
4000 Bridgeway, Suite 401
Sausalito, CA 94965
415-887-9797 Fax: 415-887-9796
jd@durrell-law.com

Patricia Tobin
802 B Street
San Rafael, CA 94901
415-847-0547
pmt1111@comcast.net

(Details for Calendar, continued from page 17.)

June 22nd

Probate & Trusts Mentor Group

An informal forum to further discuss issues addressed at the monthly estate planning section meetings or any other issues. Bring your lunch and interesting estate planning/trust administration/probate issues to discuss, and snacks will be provided.

Location: 802 B Street, San Rafael
12-1:30 pm

Parking is available in the City of San Rafael parking lot on B Street south of 4th Street.

TO INCREASE SALES,
ANNOUNCE A NEW PARTNER
OR ADVERTISE A NEW BUSINESS:

PLACE YOUR AD IN

"The Marin Lawyer"

contact

Pat Stone, Express Printing

Phone: (707) 585-3248

Fax: (707) 585-0844

E-mail: express@sonic.net

THE MARKETPLACE

Anyone wishing to advertise in the Marketplace should send their text ad to MCBA, 30 N. San Pedro Rd, Ste. 140, San Rafael, CA 94903 with payment of \$35 per month, or you may email to: rgaspar@30nsp.org. The ad should be no longer than 25 words and paid in advance. For each additional word add \$1.

CORTE MADERA TOWN CENTER- Full service, Class A, Corte Madera Town Center office space available sharing overhead with seven attorneys, asking \$1,950 per month. For details, call Judy at: 415-924-8870 x 21, or E-Mail to: judy.mchaney@comcast.net.

LOAN SOLUTIONS FOR PROBATE * CONSERVATORSHIP * TRUST CLIENTS: Established 35-year San Francisco Private Money Lender has innovative programs that allow rapid, reliable funding at competitive rates and flexible terms to settle estates. Eva Roza of Roza Real Estate Loans, Inc. Call 415-584-3000 or email eva@roza.com.

CONTRACT PARALEGAL - 15+ years successfully shepherding clients through legal processes and providing immediate value. Areas of law: real estate, trademark, business/corporate, regulatory and litigation. Email: cae-vangelista@sbcglobal.net.

LAWYER REFERRAL SERVICE PANEL

We need attorneys for our Lawyer Referral Service Panels in the following areas:
Tax, Workers Compensation, Juvenile, and Education.

Contact: Jan at (415) 499-1813 for an application or more information.

Deadline for submission of articles, ads, inserts, and announcements is the 15th of each month.
Thank you.



USE THE 1031 EXCHANGE INTERMEDIARY OTHER INTERMEDIARIES CALL FOR ADVICE!

David Hellman, 1031 Exchange Expert at MARIN COUNTY EXCHANGE CORPORATION

A Qualified Intermediary Providing Real Estate Exchange Services and Expertise with over 3,000 Exchanges facilitated since 1984

www.marin1031exchange.com

David M. Hellman, President
Attorney & CPA

TEL: (415) 457-4411
FAX: (415) 457-0356

THE ROBIN ERDMANN GROUP

Real Estate & Land Use Economic Consultants & Appraisers

ROBIN J. ERDMANN, MAI
Principal

1885 Falcon Ridge Drive
Petaluma, California 94954
Telephone: (707) 766-8313
Fax: (707) 766-8343
RobinErdmann@comcast.net

Appraisal/Evaluation & Review Market Feasibility Financial & Economic Analysis
Litigation Support Strategic Planning Condemnation & Eminent Domain
Redevelopment & Economic Development Analysis Highest & Best Use Analysis



GREEN BUSINESS
MARIN COUNTY



MISSION STATEMENT OF THE MARIN COUNTY BAR ASSOCIATION

To involve, encourage, and support bar association members, to serve as a liaison to the Marin County courts, and to educate the community and enhance access to legal services.

Marin County Bar Association
30 North San Pedro Road, Ste. 140
San Rafael, CA 94903

published by
The Marin County Bar Association
415-499-1314 Fax 415-499-1614
www.marinbar.org

MCBA Officers

Marlene P. Getchell	President
Beth S. Jordan	President Elect
Otis Bruce Jr.	Treasurer
Jessica Karner	Secretary
Edward S. Berberian	Past President
Mary K. McLain	5 Year Past President

Board of Directors

Sara Allman	Elizabeth Brekhus
David I. Brown	Timothy J. Chambers
Houman Chitsaz	Philip R. Diamond
Todd Duplanty	Michael Fish
Louis S. Franecke	Joel Gumbiner
Dennis Kavanagh	Jordan A. Lavinsky
Andrew C. McCullough	Kate Rockas
Eric Sternberger	
Executive Director	Robynn Gaspar
Production	Express Printing
Advertising	Pat Stone

Printed on recycled paper with vegetable oil based inks. ♻️

MCBA encourages submission of articles that may interest the legal community. Letters to the Editor are also welcome and may be published if space permits. Submissions will not be returned. The Editor reserves the right to publish, decline to publish, edit or otherwise modify any submission. Editorial material should be sent to the Marin County Bar Association at the above address.

FIRST CLASS
U.S. POSTAGE
PAID
PERMIT #51
ROHNERT PARK
CALIFORNIA
DATED MATERIAL

*When it involves charitable giving,
you have a partner.*

We're experts in charitable giving. Whether your clients are doing estate planning, selling a private business, or deciding how to give back while saving taxes, the Marin Community Foundation is here to help.

To find out more, visit www.marincf.org and click on **For Professional Advisors**.

Or call Aviva Shiff Boedecker, director of gift planning, at 415.464.2516.

You can also request a copy of ***You Have a Partner: An Introduction to the Marin Community Foundation for Professional Advisors***.



MARIN COMMUNITY FOUNDATION

We make giving easy, effective, and enduring.

www.marincf.org | 415.464.2500