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The Marin Lawyer

An Official Publication of the Marin County Bar Association

JUSTICE MORENO TO SPEAK AT MARIN COUNTY BAR ASSOCIATION GENERAL MEETING ON "DIVERSITY AND THE ART OF DISSENTING."

The MCBA is thrilled to announce that California Supreme Court Justice Carlos R. Moreno will speak at the **August 26** general membership meeting, to be held at the Four Points Sheraton Restaurant in San Rafael.

The topic will be "Diversity and the Art of Dissenting." Justice Moreno will take questions at the end of the presentation (subject, of course, to ethical limitations).

Justice Moreno, who earned a B.A. from Yale and a J.D. from Stanford Law School, has been on the California Supreme Court since 2001. Before that, he served as a federal district court judge for the Central District of California, and a judge of the municipal and superior courts in Los Angeles. As an attorney, he worked for the Los Angeles City Attorney's office and in private practice.

He was the lone dissenter in *Strauss v. Horton*, the recent state supreme court decision upholding Proposition 8, which banned same-sex marriages in California. According to press reports, he was on President Obama's short list for an appointment to the United States Supreme Court to replace retiring justice David Souter.

(Continued on page 10.)

Calendar of Events

Aug 26th
General Membership Meeting
12 – 1:30 pm

Aug 19th
Probate & Estate Planning Section Meeting
12 – 1:30 pm

Aug 20th
Real Property Section Meeting
12 – 1:30 pm

Aug 24th
Probate & Trusts Mentor Group
12 – 1:30 pm

Look for details each month in *The Marin Lawyer*

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Jordan A. Lavinsky was Guest Editor of this issue of *The Marin Lawyer.* Philip R. Diamond is Series Editor for 2009.

STIPULATIONS FOR ENTRY OF JUDGMENT: PLAINTIFFS BEWARE

By Jordan A. Lavinsky

Stipulations for entry of judgment, pursuant to which a judgment will be entered for a larger amount if the defendant fails to timely pay a lesser agreed upon amount, are commonly used to facilitate settlement. This seemingly effective tool is not, however, without risk as illustrated by the recent decision in *Greentree Financial Group, Inc. v. Execute Sports, Inc.* (2008) 163 Cal.App.4th 49. Consider the following scenario:

Tenant enters into a retail lease with a 10-year term and then fails to pay rent for the last two months

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PRESIDENT'S MESSAGE

IN SUPPORT OF AN INDEPENDENT JUDICIARY

By Marlene P. Getchell

Many members of our legal community have asked the MCBA to respond to the recent decision by the California Legislature to audit the Marin County Superior Court's family law division. This audit will focus on the use, and potential misuse, of court-appointed specialists such as mediators, investigators, and therapists, in family law disputes.

A recent article in the Marin Independent Journal quotes presiding Judge Verna Adams as saying that the courts welcome a well-designed, professional review of our family law procedures because it will reveal that the Marin courts follow the law and utilize the best practices in California.

Unfortunately, with the news of the audit has come a barrage of comments on the internet, mostly unfavorable, toward the Marin courts. The internet is a massive vehicle for anonymous comments and communication, without any barometer or method to ascertain what is true and what is false, what is significant and what is insignificant. It is almost impossible for the reader to determine what is true and what isn't; what information to believe and what to discard. The concern exists that political attacks on judges could potentially undermine the independence of the judiciary and seriously affect the delicate balance of powers in our Constitutional system.

Our Constitutional democracy needs fair and impartial courts. It is important that all cases be presented in an environment that is free from political or religious intervention so that the judge can do what he or she is supposed to do: examine the facts and apply the law in a fair and impartial manner. As long as a judge renders a decision free from outside influences, we should respect the judges's role in the process.

No responsible attorney wants to see a compromise in judicial independence that would make judges less likely to make decisions based on law and conscience and more likely to make decisions that serve political agendas. Our clients want to know that we can bring our disputes to a court where we will be fairly heard, and that a judge has not decided our case before hearing the evidence.

The vast majority of cases are routinely resolved by our fair and impartial Marin County courts without any residual controversy. However, some cases involve highly charged, emotional issues that present difficult problems for the court to decide. There is probably nothing more heart-wrenching than to go before a judge who is to decide whether or not a parent will have custody of a child; whether the parent will be able wake the child each morning and kiss the child goodnight at night. It isn't difficult to understand the loss of hope, desperation and disappointment felt by the losing litigant.

Our system of justice of allowing us to be heard in fair and impartial courts may not always provide us with the result we want. While some may not agree with a judge's decision, that decision is made after considering a great deal of information regarding the issues and applying the rules established by law. Sometimes evidence rules or other forces preclude the introduction of certain information in court, thereby limiting a ruling to the facts presented. Sometimes the law itself is controversial. Our Superior Courts do not get to pick and choose the cases or issues to address, and judges do not choose their cases.

In order to ensure the dignity of the justice system, judges are not free to respond to criticism or defend themselves or their judicial opinions. They are not allowed to explain their opinions in the press or at public forums, or to respond to attacks in the newspapers or on the internet. MCBA therefore believes that it is up to individual lawyers and organized bar associations to help ensure that judges remain highly respected leaders of our legal system and communities by supporting our judicial system and educating the public on how that system operates, so that the public has an accurate understanding of the true role of the judiciary.

For attorneys and litigants who disagree with a court

(Continued on page 13.)

RESERVATION FORM General Membership Meeting **Speaker:** Justice Carlos Moreno

Please make ____ reservations for me at Four Points Sheraton, 1010 Northgate Drive, San Rafael

on **Wednesday August 26, 2009**, from 12-1:30 pm.

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LEAD-FREE PLUMBING REGULATIONS ON THE HORIZON IN 2010

By Sophia B. Belloli

California's new lead-free plumbing law, A.B. 1953, will go into effect in January 2010. Codified as Health & Safety Code section 116875, A.B. 1953 specifically mandates that all pipes, plumbing fittings or fixtures "introduced into commerce in California" that convey water for human consumption comply with stringent lead-free requirements. This legislation will reduce the allowable lead content in pipes and plumbing fixtures to negligible amounts, and was specially designed to reduce lead contamination in drinking water.

THE NEW REGULATIONS

A.B. 1953 mandates that wetted surfaces of plumbing fixtures contain only 0.25 percent lead as determined by a weighted average. *See* Health & Safety Code § 116875(e) (effective January 1, 2010). The 0.25 percent requirement decreases allowable lead to negligible levels from the current federal and state standard - a lead content of 8.0 percent in pipes and pipe fittings and 4.0 percent lead content by dry weight in plumbing fittings or fixtures. U.S.C. § 300g-6(d); Health & Safety Code § 116875(e) (2009).

Products affected by A.B. 1953 include all devices intended to dispense water for human consumption, including kitchen and bathroom faucets. Health & Safety Code § 116875(b)(1). The legislation does not, however, apply to products that do not convey water for human consumption such as laundry fittings. The statute also explicitly excludes service saddles and backflow preventers for non-potable irrigation and industrial services. Health & Safety Code § 116875(b)(1). Moreover, products subject to the new regulations must receive a certification of compliance with the lead requirement from an independent third-party testing organization. Health & Safety Code § 116875(g)(1). Vermont is the only other state in the country that has enacted legislation that is equally stringent, though Maryland is expected to follow-suit.

To enforce the new legislation, the California Department of Toxic Substance Control ("DTSC") will annually select up to seventy-five drinking water plumbing fittings and fixtures for testing, and evaluate whether the selected fixtures comply with the new law. Health & Safety Code § 25214.4.3 (2009). DTSC will publish the results of its random tests on its website and transmit the results to the State Department of Public Health. *Id.* The new statutory provisions also require the adoption of building standards consistent with the new legislation, which will be enforced by state and local building and health officials. *See* Health & Safety Code § 116880.

The East Bay Municipal Utility District ("EBMUD") sponsored A.B. 1953. Prior to the bill's enactment, to prevent ingestion of excess lead by children, EBMUD removed lead from its treated water and switched to non-leaded plumbing components. It was unable, however, to completely remove lead from its service area because lead leached back into drinking water that EBMUD supplied from customer plumbing and faucets.

Other municipalities, water districts, utilities and non-profit environmental groups supported the bill, including the City and County of San Francisco, the San Francisco Public Utilities Commission, the Marin Municipal Water District and the National Resources Defense Council. Plumbing manufacturers, the building industry, homebuilders and contractors opposed the bill.

Proponents of the bill argue that the bill's gradual phase-out of the use of lead-containing products within the drinking water system will help to alleviate ongoing health risks and spur the plumbing market to create affordable alternatives to existing plumbing fixtures containing lead. Opponents of the bill argue that the bill prohibits the continued sale of virtually all plumbing fixtures currently on the market because low-lead fixtures are not widely utilized or manufactured. Manufacturers must create new, virtually lead-free products to be sold in California.

EFFECTS OF THE NEW REGULATIONS

The new regulations mandate that plumbing fixtures sold in California be virtually lead free in 2010. The most obvious, and intended, effects of the legislation are its

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ASHCROFT V. IQBAL: GIVING TEETH TO THE FEDERAL PLEADING STANDARD

By Megan Oliver Thompson

The pleading standard in federal court recently got a little bit tougher. Of course, that means that the standard for dismissing a federal complaint also got a little bit easier. In *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), decided on May 18, 2009, the United States Supreme Court solidified and expanded on its earlier decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) regarding the pleading standard of Federal Rule of Civil Procedure 8(a)(2).

In an opinion by Justice Kennedy, the Court held that Rule 8 requires a complaint to contain sufficient facts to "state a claim to relief that is plausible on its face." "Facial plausibility" means that the facts pled allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Plausibility is somewhere between possibility and probability. A plaintiff's goal in pleading should be to "nudge" the claim "across the line from conceivable to plausible."

Iqbal established a two-step process for determining whether a complaint satisfies the plausibility standard:

The first step is to identify any allegations that are not entitled to the assumption of truth. Conclusory allegations, unlike factual allegations, are not entitled to be assumed as true. Thus, a complaint based on conclusory statements or "threadbare recitals of the elements of a cause of action" will not survive a motion to dismiss.

The second step is to consider whether the factual allegations plausibly suggest an entitlement to relief. This will be a "context-specific task" requiring the court to "draw on its judicial experience and common sense." The allegations must allow the court to "infer more than the mere possibility of misconduct" and show "that the pleader is entitled to relief."

Requiring plausibility gives the standard some teeth in the context of the Rule 12(b)(6) motion to dismiss. Before *Iqbal* and *Twombly*, plaintiffs might have found some protection from dismissal in the oft-quoted "no set of facts" language of *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957): "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Indeed, the language was interpreted and applied by the Court of Appeals in *Iqbal* as the Rule 8 pleading standard. But in *Twombly*, the Court recognized that the language was never meant to set a minimum standard for pleading. Rather, it was meant to establish that *after* "a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations of the complaint." Citing years of "puzzling the profession," *Twombly* officially retired the "no set of facts" language as "an incomplete, negative gloss on an accepted pleading standard."

Iqbal also rejected the invitation to relax the Rule 8 pleading standard on the basis that groundless claims could be weeded out early in the discovery process through "careful case management." *Iqbal* strongly cautions that whether a complaint should be dismissed for insufficient pleading "does not turn on the controls placed upon the discovery process." In other words, courts should not allow the discovery process to serve the function of weeding out claims that should have been dismissed in the first place.

Iqbal made clear that the plausibility standard applies to all civil actions and proceedings filed in the federal courts, not just antitrust suits like *Twombly*. Practically speaking, *Iqbal* is a significant decision for both plaintiffs and defendants in federal court. Although the Court recognized that "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era," plaintiffs better come to federal court armed with more than mere legal conclusions. And when presented with a factually deficient complaint, defendants may find some comfort in a standard that actually has some teeth.

Megan Oliver Thompson is an associate at Hanson Bridgett LLP in San Francisco representing public agencies, businesses, and individuals in state and federal court, including bankruptcy court. Her practice covers a full range of business-related litigation involving breach of contract, fraud, breach of fiduciary duty, accounting malpractice, UCC issues, and real estate issues.

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GOING GREEN

By Kate Rockas, MCBA Director

For most of us, our mode of transportation and fuel costs are huge issues, particularly if we have more than one person in the household. We all know the main transport options – bike, car, bus, ferry, etc. The truth is that most of us prefer to get around in our own vehicle. Which means that we need to consider how we can make our transportation choices a little greener.

One option is the hybrid vehicle such as a Toyota Prius. The most common type of hybrid car is powered by both an electric engine and an internal combustion engine. Hybrid cars run much cleaner than cars that use just gasoline or diesel because they run on electricity. They have state-of-the-art batteries that recharge while the gas engine is being used and during braking. During the time that hybrids are driven on the battery, there are no emissions at all. Hybrids give real fuel economy with some models getting up to 60 miles per gallon and beyond. Another green feature of the hybrid car is that the batteries are recyclable.

If you are still driving a "regular" car, you should still get as much life out of it as possible. In environmental terms, there is nothing to be gained from junking cars prematurely, unless they have serious pollution problems. There are a good many ways to go about increasing fuel economy for your family vehicles.

One of the very best ways of increasing fuel economy is learning how to drive smoothly and gently. Plan your trips so that you are not short of time and feeling the need to rev your engine to get to your destination quicker. Plan your route so as to minimize traffic and the need to stop and start your car many times. If you need to stop for more than just a moment or two, cut your engine. Air conditioning can significantly add to your fuel consumption. Although driving around with all of your windows down can be worse than using your air conditioning. The drag created with the windows down increases fuel consumption as much or more than air conditioning. Speaking of drag, roof racks are going to cost you in increased resistance. Try to park in the shade so that you don't have to cool down a hot car when you return to it. Keep your car clean. Believe it or not, dirt increases wind resistance.

Make sure that your car is well maintained. This will also help increase fuel economy. Air filters and oil should be changed regularly. Make sure the oil in your car has the correct thickness (viscosity); oil that is too thick is harder to move around the engine. Lastly, check to make sure that your tires have the right amount of air.

Of course, the best way to be greener with your vehicle is to leave it at home. Consider car pooling or riding your bike to work.

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THE CALIFORNIA ELECTRONIC DISCOVERY ACT

By Mert Howard and Batya Swenson

The California Electronic Discovery Act (Assembly Bill 5) was signed into law by Governor Schwarzenegger on June 29, 2009. Effective immediately, it amends various provisions of the Code of Civil Procedure related to the discovery of electronically stored information ("ESI"). The Act is intended to clarify existing ambiguities in the procedures as they relate to ESI in state court practice, much in the way that the changes to the Federal Rules of Civil Procedure did in federal court practice a few years ago. A few of the most significant changes are discussed here. The changes to the Code have been inserted throughout the Civil Discovery Act (Cal. Code Civ. Proc. §§ 2016.020, 2031.010, et seq., and 1985.8) and are referred to here by section number only.

Scope: A party may now "inspect, copy, test, or sample" ESI in the "possession, custody, or control of the party on whom demand is made." (Section 2031.010 (e).) The Act provides new language clarifying that a party requesting ESI in a demand for production may specify the form in which that ESI should be produced. (Section 2031.030 (a)(2).)

Responding to a Request for ESI: If the requests do not so specify, the responding party may produce the information in the form in which it is ordinarily maintained or in a form that is reasonably usable. (Section 2031.280 (d)(1).) If necessary, the responding party must, "through detection devices, translate any data compilations included in the demand into reasonably usable form." (Section 2031.280 (e).) However, the Act allows the responding party to charge the costs associated with that data processing back to the requesting party. (*Id.*)

In order to preserve its objections to requests for ESI, the responding party's written responses must identify the types or categories of sources of ESI that it asserts are not reasonably accessible. (Section 2031.210 (d).) The statutes do not establish, however, which of the two possible next steps for an objecting party is favored (*i.e.*, waiting for and opposing a motion to compel or bringing a motion for protective order). Thus, the next move remains a strategic decision for counsel. (Sections 2031.060 & 2031.310.)

In either case, the objecting party bears the burden of proving that the ESI is not "reasonably accessible", which is now the standard. (Sections 2031.060 (c) & 2031.310 (d).) Therefore, counsel must be familiar enough with the client's ESI and the people who manage it to adequately explain and assemble the evidence demonstrating why the ESI is not reasonably accessible in the context of a particular matter.

Batya Swenson

The term "reasonably accessible", although not itself defined, is tied to the concept of "undue burden or expense." (Sections 2031.060 (c) & 2031.310 (d).) Both are relative concepts that the courts will evaluate by balancing a number of familiar factors. These are the same factors, in fact, that the courts will use to assess whether limits should be imposed on discovery of ESI that is otherwise reasonably accessible. Relevant factors include: (1) whether the information can be obtained from a less expensive, more convenient source; (2) whether the demand is unreasonably cumulative or duplicative; (3) whether the demanding party has had ample opportunity to obtain the information through discovery; and (4) whether "the likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues." (Sections 2031.060 (f) & 2031.310 (g).)

(Continued on page 14)

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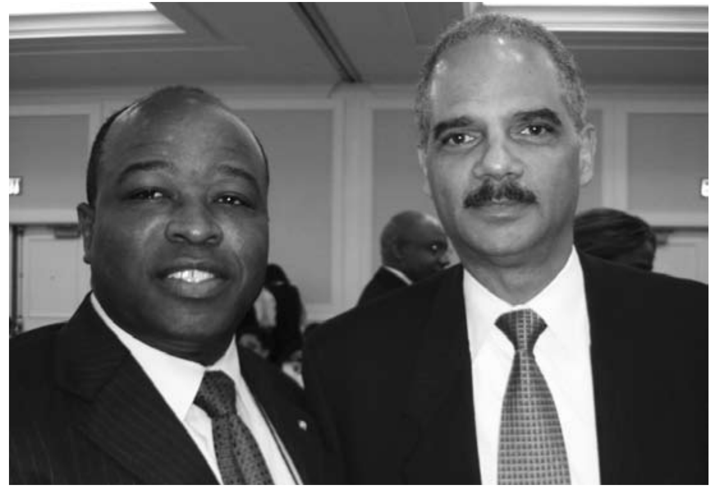
THE NATIONAL BLACK PROSECUTORS ASSOCIATION

Marin County Bar Association Treasurer and Deputy District Attorney, Otis Bruce, Jr., recently attended the National Black Prosecutors Association's (NBPA) 26th Annual Conference and Job Fair in Memphis Tennessee. There were approximately 200 African-American prosecutors in attendance from around the United States and England. The keynote speaker was the nation's top prosecutor, the Honorable Eric H. Holder, Jr., Attorney General of the United States. Among the distinguished guests at the conference were Adolpho A. Birch, Jr., retired Tennessee State Supreme Court Justice and Christopher D. Chiles, President of the National District Attorneys Association

Attorney General Holder spoke of the U.S. Attorney's office commitment to strengthening the Civil Rights Divisions in prosecutors' offices across the country and enhancing the resources available to victims of crimes. General Holder encouraged the prosecutors to prosecute cases appropriately but "never forget, never forget your fundamental sense of right and wrong." He encouraged prosecutors to become mentors, educators, community leaders and advance their career as prosecutors. He also encouraged prosecutors to reach out to the children and teenagers in the neighborhoods and schools before they are "lured into a life of bad decisions." "If you reach them early enough, you won't ever have to see them in courtrooms," he said. "And as African-American prosecutors, you can play a special role in breaking the 'us-against-them' myth that divides young people from the men and women in the law enforcement community."

The National Black Prosecutors Association is the only professional membership organization dedicated to the advancement of African-Americans as prosecutors. Founded in 1983, the association membership is comprised of over 800 prosecutors in the United States, Canada and England. It includes both chief and line prosecutors from local, state and federal offices. In addition to prosecutors, the association's membership includes law students, former prosecutors, and law enforcement personnel. NBPA is emerging as the international association of black law enforcement professionals with a reputation for providing education and leadership in the legal profession through its intensive training sessions and multi-discipline networking.

One other highlight of the conference - Otis was nominated and elected to be the Southwest Regional Director for the National Black Prosecutors Association. As a regional representative of NBPA, his general responsibilities will be to encourage and promote the advancement of African-Americans in the legal profession as mentors, educators, community leaders and career prosecutors. This will require Otis to appear as a speaker, contact and network with



Otis Bruce, Jr. and Honorable Eric H. Holder, Jr at the National Black Prosecutors Association's (NBPA) 26th Annual Conference and Job Fair in Memphis Tennessee.

colleges, law schools, and government law offices such as: District Attorneys, City and County Attorneys, Attorney Generals and U.S. Attorneys in California, Nevada, Arizona and Hawaii. "This was indeed an informative and empowering training conference. It's a privilege and an honor to represent and work with the NBPA," said Otis. The 2010 National Black Prosecution 27th Conference and Job Fair is scheduled to be held in San Francisco, California at the Intercontinental Mark Hopkins San Francisco.

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SPOTLIGHT ON DEREK WELLER

Derek Weller, co-chair of the Real Property section of the Bar, is a solo practitioner doing business as Law Offices of Derek A. Weller, and Of Counsel with Keegin Harrison Schoppert Smith & Karner.

The Marin Lawyer: What is your practice area?

Derek Weller: Commercial and residential real estate transactions, land use and property development, entity formations and other small business matters. I also provide project-based contract services to other attorneys on large real estate transactions and other real property specialty areas.

TML: Do you have a particular emphasis?

DW: Representing property developers in obtaining entitlements and establishing common interest developments, including lot subdivisions and condominium projects, and all other matters falling under the Subdivision Map Act.

TML: Why did you decide to become a lawyer?

DW: I am one of those persons who decided to go to law school because I wasn't really sure what I wanted to do and a law degree "opened doors." As I went through law school and began my practice, however, I found that I truly enjoyed the practice of applying legal principles and analysis to help people resolve their problems and achieve their objectives. I believe that knowledge of the law and the ability to use it effectively to help others is a valuable and rewarding service and is why I chose the practice of law as my permanent career.

TML: Why do you live in Marin?

DW: I grew up in Marin and have lived here most of my life. The opportunity to both live and work in Marin is ideal (knock on wood). Whenever I visit other places, I always return feeling that there is no better place to call home.

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

DW: Spending as much time as possible with my family, especially while my kids are still young enough to want to hang out with me. I also try to get out and play golf as much as possible. Anyone up for a round of golf on a Friday afternoon?

TML: Tell us about your family.

DW: I have a wonderful wife, Jennifer MacPhail, who is a fourth grade teacher at Sun Valley School in San Rafael, and two great kids, Dillon (age 13) and Maggie (age 10), who will both be attending Davidson Middle School this coming year. We have a very loving Chocolate lab named CoCo, two goofy cats named Luke and Daisy, and a guinea pig named Rainbow who doesn't do much of anything other than eat and squeak.

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

DW: I have always thought that a job that consisted of fun and games would be ideal because it would be hard to ever call it "work." As a child, that meant playing pro baseball. Now, as an adult, I think a career as a pro golfer would be best. Dream on.

TML: Why did you join MCBA?

DW: About eight years ago, I left a large law firm in SF and decided to base my practice out of Marin. One of the first things I did was join the MCBA. It was a no-brainer. Since then, the MCBA has provided me with an invaluable opportunity to get to know and learn from the other lawyers in Marin. I look forward to many more years of participating in MCBA events and programs and contributing to the overall strength of the Marin bar.

TML: Why did you become a head of the real property section of the MCBA?

DW: I was honored when I was asked to become co-chair of the Real Property Section of the MCBA. Over the years, the Real Property Section has become well known for its quality monthly legal seminars and the large level of participation by its members. As the co-chair of the Section, I am proud to be contributing my efforts to carry on that rich tradition.

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

DW: Starting my own solo practice about two years ago. Although it has not been easy, the challenge of running my own practice has been extremely rewarding and has provided a degree of flexibility that allows me to truly balance my career and personal life.

TML: What was the best/worst/strangest experience in your career? Please describe.

DW: The best, and most valuable, experience I ever had in my career was during my first year out of law school when I was working on a groundwater contamination case and the attorney on the other side tried to bully me with outrageous behavior and insults aimed at taking advantage of my inexperience. I stood my ground and kept my cool, however, politely focusing only on the facts and the law. After weeks of more of the same, the other attorney finally backed down, we obtained a favorable settlement for our client and the attorney wrote me a letter congratulating me for my perseverance and professionalism. The lesson learned, which I bring to my practice on a daily basis, is to avoid aggressive lawyering (it does not work) and that a smart and professional approach will almost always produce the best results.

INSURANCE BAD FAITH LITIGATION SEMINAR

On September 10, 2009 at the Corte Madera Inn from 4:00 – 6:00 pm, the Marin County Bar Association will offer a seminar offering 2 hours MCLE credit, on "INSURANCE BAD FAITH LITIGATION" presented by Guy O. Kornblum. Mr. Kornblum is well known in the insurance bad faith field, having been one of the first lawyers in California to try a first party bad faith case after the key cases of *Gruenberg* and *Silberg* were decided in the early 70's. He also co-authored the first Rutter Group Practice Guide; Bad Faith, and has conducted hundreds of hours of seminars on insurance litigation. He is co-author of the recently released 2 volume "Negotiating and Settling Tort Cases," published by the American Association for Justice and the Thomson West Publishing Company.

Mr. Kornblum is Certified in Civil Trial Advocacy by the National Board of Trial Advocacy; is a Lifetime Member, Multi-Million Dollar Advocates Forum Member; and is a Platinum Member of The Verdict Club, which recognizes "significant accomplishments by verdicts or settlements" of trial lawyers. He also is a CharterFellow, Litigation Counsel of America Trial Lawyer Honorary. Mr. Kornblum has been listed in many significant lists of premier law firms. He is a Northern California Super Lawyer for 2006-2009.

HIGHLIGHTS of SEMINAR

- Some basic concepts of insurance law and insurance bad faith that you need to know, you may think you know them but maybe don't.
- The construction of an insurance policy; what you need to evaluate whether the company has made a wrong decision. You may think you have it all, but probably do not. How do you get it and insure that it is complete?
- Bad faith cases – where are they today? Concepts and Realities. The three tiers, and rules as to each; cost considerations in pursuing such; issues pertaining to punitive damages in bad faith cases. Limitations on recovery and economic realities of litigating a bad faith case.
- What makes a "good" "bad faith" case? How do evaluate, and how do you settle these cases. Are they subject to good results at mediation, and if so how do you posture them for a good result then.
- The "genuine dispute" doctrine. Is it really a defense to "bad faith"
- How important is the insured's conduct?
- How do you convert the contract claim to a tort claim? What gets you over the contract limitation on damages to the tort arena, and exposure to punitives?
- Does punitive exposure factor into the evaluation and settlement of a bad faith case?
- Some thoughts on the claim file and how it can be used in settlement and trial.
- The trial call: 10 basic "must do's" at the trial of a bad faith case.

Date: **September 10, 2009** Time: **4-6PM**
Location: **Best Western Corte Madera Inn, 1815 Redwood Hwy, Corte Madera**
Cost: **$60 for MCBA members/ $85 non MCBA members**
Seating is limited. Please make reservations in advance using form below.

Marin County Bar Association is a State Bar of California MCLE Approved Provider. MCBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education and qualifies for two (2) hours of MCLE credit. State Bar Provider #411.

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To register, please fill out the form below and mail it, with your check payable to the Marin County Bar Association, 30 N. San Pedro Road, Ste. 140, San Rafael, California, 94903. Insur Law 9/10/09

Name: ____ CA State Bar No.: _____________

☐ Check enclosed for $ _____________ or ☐ You can bill my VISA or MasterCard

Visa Account No. ____ Exp. _________

MasterCard Account No. _____________________________________ Exp. _________

GREEN STAR INCENTIVE PROGRAM

We have had a good response to our green star program and want to give you some extra incentive along the way to becoming a green business. Each of us can make a difference with small changes.

★ One Star

Discourage printing emails and learn how to archive emails using Microsoft. Outlook or some other program.

Encourage emailing rather than faxing and mailing.

Recycle discarded office paper.

Recycle cardboard and newspapers.

Recycle glass, plastic and aluminum bottles and containers.

Recycle plastic bottles and containers.

Recognized in our newsletter, the Marin Lawyer for your achievement.

★★ Two Stars

When doing legal research, email or download the results to your computer as often as possible rather than printing the results.

Use double-sided copying and printing at least for drafts and internal documents.

Centralize acquisition and storage of forms and materials generally used by attorneys in the firm or building, ie. Federal Express, US Post Office boxes.

Purchase office paper with at least 30% recycled content.

Recognized in our newsletter, the Marin Lawyer and announced at a general membership meeting.

★★★ Three Stars

Eliminate all plastic bottles from the workplace.

Have toner cartridges refilled or recycled.

Purchase recycled envelopes.

When possible, scan document and correspondence and store in your computer rather than printing or copying them.

One free lunch* at a general membership meeting, recognized in our newsletter, the Marin Lawyer and announced at a general membership meeting.

★★★★ Four Stars

Turn off all of the nonessential lights after working hours.

Institute a formal policy that all nonessential electronic devices and lighting be turned off when not in use.

Use the standby mode on equipment (e.g., energy saver buttons on copiers.

Rearrange workspace to take advantage of areas with natural light.

Set thermostat to 78 degrees F for cooling, 68 degrees F for heating; use the thermostat's night setback

Recognized in our newsletter, the Marin Lawyer and announced at a general membership meeting.

★★★★★ Five Stars

Replace incandescent bulbs with more efficient compact fluorescents.

Replace older T-12 fluorescent lighting with energy-efficient T-8 or T-5 fixtures with electronic ballasts.

Clean lighting fixtures, diffusers and lamps so they are lighting as effectively as possible (dirt can reduce lighting efficiency by up to 50%).

Use task lighting instead of lighting the entire area.

Recognized in our newsletter, the Marin Lawyer and announced at a general membership meeting.

★★★★★★ Six Stars

Become officially certified by Marin county as a certified green business in Marin! Go to the Marin county website http://tinyurl.com/greenmarin for the official application.

One free member lunch and one free non member guest lunch* at a general membership meeting, recognized in our newsletter, the Marin Lawyer and announced at a general membership meeting.

*must be used at the meeting you receive recognition.

(Justice Moreno, continued from page 1.)

Make your reservation early; this event is certain to sell out. See page 2 to sign up or sign up online at marinbar.org.

1 UNIT OF MCLE CREDIT

This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of one (1) hour of credit. The Marin County Bar Association, as an approved provider, certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education. State Bar Provider #411.

(Stipulations, continued from page 1.)

of year two in the total sum of $20,000. After landlord serves the tenant with a notice to pay or quit, tenant turns over the keys, which terminates the lease. As of the date of termination, the tenant owes past due rent in the amount of $20,000. Future rent damages through the remaining eight years of the lease are an additional $960,000.

The lease provides that landlord is entitled to the Civil Code § 1951.2 remedies, including past due rent due as of the date of termination of the lease, in addition to rent that would come due through the term of the lease for the total sum of $980,000, minus rent the landlord would receive through reasonable mitigation efforts – i.e., leasing the space to a new tenant.

Months later, landlord and tenant's negotiations have failed to yield a settlement of tenant's lease liability and the space sits vacant despite landlord's reasonable efforts to find a new tenant. Landlord files a complaint for breach of lease seeking an award of past due rent in the amount of $20,000, future rent damages in the amount of $960,000, for a total sum of $980,000. Thereafter, the parties agree to mediate.

With no tenant prospects, and vacancies on the rise, landlord has a solid claim for past due rent of $20,000 and at least a year of future rent damages of an additional $120,000, and maybe more. Tenant has no viable defense to the action but tenant's financials show little hope of landlord collecting a sizable judgment any time soon. After hours of fist pounding about the merits on one side and poverty on the other, the parties settle. Landlord agrees to accept, in the event tenant pays in full and on time, payment from tenant of past due rent in the amount of $20,000 within 30 days, and six months future rent damages in the amount of $60,000 payable in equal monthly installments over the next year, for the total settlement sum of $80,000.

Understandably concerned about tenant's history of non-performance, landlord wants some mechanism to (1) encourage full and timely payment of the settlement, and (2) avoid further litigation if tenant once again fails to make payment. Therefore, landlord proposes a stipulated judgment to be entered immediately, with a stay of execution. Tenant resists because of the impact a judgment might have on tenant's credit.

Ultimately the parties execute a stipulation for entry of judgment pursuant to which, judgment will be entered only if tenant fails to make the agreed upon settlement payments in full and on time. The parties agree to a judgment for $80,000 (past due rent and six months future damages), plus an additional six months future damages in the amount of $60,000, for a total judgment of $140,000, with a credit for any amounts paid under the settlement. Landlord insists on the larger judgment because that provides incentive for the tenant to pay the lower settlement amount. Tenant agrees that the additional $60,000 is reasonable because landlord's actual damages are much higher; landlord would recover far more than that at trial, including attorney fees.

This is a good settlement, right - solid outcome all around? On the one hand, although landlord would likely have recovered more at trial, landlord will still recover significant damages, and potentially more if tenant breaches the settlement. On the other hand, tenant will avoid a judgment if it performs under the settlement and escape greater damages for which it would have otherwise been liable. Both parties avoid potentially expensive and time-consuming litigation, and the court has one less case to burden its busy docket.

But is the stipulation enforceable? It may not be, according to the recent opinion in *Greentree Financial Group, Inc. v. Execute Sports, Inc.* (2008) 163 Cal.App.4th 495, in which the Court held that a judgment for $40,000 more than the total $20,000 due under the parties' stipulation, constituted an unenforceable penalty because it did not bear a reasonable relationship to the range of actual damages the parties could have anticipated from a breach of the stipulation.

In that case, Greentree sued Execute for breach of contract. The complaint alleged Execute failed to pay $45,000 due under the contract in consideration of financial advisory services provided by Greentree. On the day of trial, the parties settled and memorialized their agreement in a stipulation for entry of judgment pursuant to which Execute would pay $20,000 in two installments. If Execute defaulted on either installment, Greentree would be entitled to immediate judgment against Execute for all money paid as set forth in the complaint, including interest, attorney fees and costs, less any amounts already paid by Execute.

Execute defaulted on the first installment of $15,000. Correctly anticipating that Greentree would seek entry of judgment, Execute filed an opposition to entry of an excessive judgment (the judgment to which it had stipulated). On the same day, Greentree submitted to the trial court a proposed judgment for $61,232.50, consisting of $45,000 in damages, $13,912.50 in interest, $2000 in attorney fees, and $320 in costs. The court entered judgment as requested. Execute appealed arguing that the $61,232.50 judgment entered after Execute failed to make the $15,000 installment payment under the terms of the stipulation, constituted enforcement of an illegal penalty. Greentree contended that the amount was a valid liquidated damages provision in a contract between the parties.

In determining whether the stipulation amounted to an illegal penalty, the Court of Appeal started with the language of Civil Code § 1671(b): "[A] provision in a

(Continued on page 12.)

(Stipulations, continued from page 11.)

contract liquidating damages for the breach of the contract is valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable at the time the contract was made." Interpreting this language, the Supreme Court has noted: "A liquidated damages clause will generally be considered unreasonable and hence unenforceable under section 1671(b) if it bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from the breach. The amount set as liquidated damages must represent the result of a reasonable endeavor by the parties to estimate a fair average compensation for any loss that may be sustained." *Greentree*, 163 Cal.App.4th at 499, citing *Ridgley v. Topa Thrift & Loan* (1998) 17 Cal.4th, 970, 977.

Greentree argued the amount set forth in the stipulation was reasonably related to the damages it suffered as a result of Execute's breach of the underlying contract. But the breach the Court analyzed was the breach of the *stipulation*, not the breach of the underlying contract. And as to that breach, the court held that the judgment for $61,232.50 had no reasonable relationship to the range of actual damages the parties could have anticipated from a breach of the stipulation to settle the dispute for $20,000. Damages for the withholding of money are easily determinable – i.e., interest at prevailing rates. The judgment, however, was more than triple the amount for which the parties had agreed to settle the case. The Court of Appeals reversed the judgment and remanded the matter to the trial court with directions to reduce the judgment against Execute to $20,000, plus post judgment interest and costs.

Greentree is concerning because it calls into question the enforceability of a valuable settlement tool that benefits plaintiffs, defendants, and the system. Plaintiffs agree to settle for less because a stipulation for entry of judgment provides more certainty that defendant will indeed perform and finality of a judgment for more if the defendant once again breaches. Defendants benefit from stipulations for entry of judgment because without them, plaintiffs might not otherwise settle. A stipulation gives a defendant collateral of sorts, without the adverse impacts that entry of judgment might carry.

Greentree is also concerning to the extent it suggests that after parties enter into a settlement agreement, it is that obligation owed under the settlement agreement, and not defendant's underlying liability, that defines plaintiff's damages in the event of a breach. Does that also mean that plaintiff's conditional release of underlying claims, conditioned upon defendant's payment on time and in full, is unenforceable and that the only remedy in the event defendant breaches a settlement is to enforce the settlement agreement itself?

In other words, according to *Greentree*, once parties settle, the liability under the settlement forever replaces defendant's liability that gave rise to the case in the first place. Taking this proposition one step further, a party can reduce its own liability by breaching and then settling for less than their original liability, even if they had no intention to perform the settlement, because now the plaintiff's damages are limited to the settlement amount rather than the original liability. That result does not seem balanced considering it was the defendant's original breach that triggered the underlying litigation. Indeed, if a defendant agrees to have judgment entered based on the original liability in the event defendant fails to make good on settlement payments, that agreement should be respected. The plaintiff is agreeing to forebear a larger claim on the condition that defendant actually pays the lesser amount. The larger judgment amount is consideration for plaintiff's release of defendant's liability in excess of the stipulated judgment amount, and for assuming the risk that defendant may not perform. If the defendant fails to pay, the plaintiff should be entitled to the larger judgment. Plaintiff should not as a matter of law be compelled to release the defendant's underlying liability in excess of the settlement amount, unless and until defendant makes good on the settlement. Otherwise defendant's conduct is without consequence, while plaintiff bears the burden of defendant's breach yet again.

So what can be learned from Greentree? For one, bigger is not necessarily better. The larger a stipulated judgment amount is, compared to the settlement amount, the more likely the court is to consider the difference an unenforceable penalty. The judgment amount should bear a reasonable relationship to the damages the parties can anticipate by virtue of a breach of the settlement. Include interest and potential attorney fees that plaintiff may incur to obtain and enforce the judgment. Craft the stipulation with an eye towards justifying the judgment amount. Also, consider a stipulated judgment instead of a stipulation for entry of judgment. Judgment would be entered immediately but plaintiff will file a satisfaction of judgment if and when defendant pays the lesser settlement amount. It is true a stipulated judgment is less advantageous to a defendant, but plaintiff's options are limited, and ironically, the seemingly defendant-friendly *Greentree* decision (and similar cases before it) is to blame for that.

Jordan A. Lavinsky is senior counsel at Hanson Bridgett LLP in San Francisco and Marin specializing real estate litigation, representing commercial creditors, shopping centers, real estate owners, managers, and developers. He can be reached a jlavinsky@hansonbridgett.com.

(President's Message, continued from page 2.)

decision, that decision can be appealed to a higher court. Complaints of bias or discrimination against individual judges may be brought before the California commission of Judicial Performance and/or the Marin County Bar Association's Judicial Fairness Committee. MBCA believes that the most appropriate venue for the resolution of such issues is the legal process itself.

Justice Sandra Day O'Connor has said that "Criticism is fine, retaliation and intimidation are not." Courts are not strangers to constructive criticism and there is no doubt that constructive criticism has led to progressive changes in the judicial system. However, calling judges names along with the nameless criticism and intimidation recently observed on the internet is a form of retaliation and intimidation. This not only diminishes the courts, it diminishes all attorneys who practice before the courts. The US Constitution guarantees our people ample opportunity to express their opinions freely and without restraint. However, speech consisting of intimidation, threats, and lack of respect for our courts, in an attempt to tear down the public trust in the integrity of our courts in order to further a particular political or social agenda, is destructive.

It is of utmost importance that attorneys be able to counsel their clients that they can have their cases heard before our courts without outside influence, fairly and without prejudice or intimidation. We need to ensure that our courts remain strong, continue to protect individual rights and offer equal justice for all.

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- Employment
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- Product Liability
- Wills and Trusts
- General and Toxic Torts

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(Lead-Free Plumbing, continued from page 3.)

health benefits and its impacts on plumbing manufacturers. Lead will not leach from newly-installed faucets into drinking water, while manufacturers of plumbing fixtures sold in California must reformulate their products to conform with the law by the beginning of the new year which is no small task.

From a practical perspective, for ongoing construction projects into 2010, plumbing installers must be aware of the regulatory change. Building inspectors can flag non-complying products installed on 2010 jobs for removal, and installers must confirm with their suppliers and manufacturers that compliant products are available to install at their projects.

From a regulatory perspective, California (along with the State of Vermont, the only other state with equally stringent lead plumbing legislation) is poised to be a national leader in lead-free plumbing legislation across the country and to pave the way for other states to follow-suit. New technologies for water systems that limit lead contact with drinking water are also undoubtedly on the way.

What remains to be seen, however, is whether A.B. 1953's new lead-free standards will be enforced outside of DTSC's testing and publication and the enforcement of new building standards. In comparison to California's Proposition 65 (Cal. Health & Safety Code § 25249.7(d)) and the Safe Drinking Water Act (42 U.S.C. § 300j-8(a), (b)), A.B. 1953 does not contain a citizen suit provision authorizing individuals acting in the public interest to enforce the statute by suing alleged violators. Proposition 65's citizen suit provision, for example, has prompted a tremendous amount of citizen-sponsored litigation regarding the lead content in plumbing, glassware and tableware. The absence of a citizen suit provision in the new legislation makes it unlikely that citizens will bring suits to enforce the new law. It is certainly possible, however, that proactive plaintiffs could attempt to enforce the provision through a Business and Professions Code § 17200 claim. Only time will tell how litigation regarding the terms of the statute will evolve.

For more information about the 2010 lead-free plumbing legislation, visit the DTSC's website at http://www.dtsc.ca.gov/PollutionPrevention/upload/Lead-in-Plumbing-Fact-Sheet.pdf.

Sophia B. Belloli is an associate at Hanson Bridgett LLP in San Francisco. Sophia litigates water rights, water quality, land use and environmental matters in state and federal courts. Sophia is experienced in water rights disputes and transfers, as well as citizen suits brought under the Clean Water Act and California's Proposition 65.

(California ED Act, continued from page 6.)

Even so, notwithstanding a finding that ESI is not reasonably accessible, the court may order that ESI be produced but then reallocate the associated costs to the requesting party. (Sections 2031.060 (e) & 2031.310 (f).) This should give the requesting party incentive to exercise some restraint in those requests it chooses to compel. And, as always, the court may sanction the losing party if it finds that party's position in a discovery motion was not substantially justified under the circumstances.

Meet and Confer Requirements: Another important point concerns the timing and scope of the lawyer's duty to meet and confer about ESI. Here, the Act falls short of expressly imposing a preliminary meet and confer requirement comparable to the ESI conference required under Federal Rule of Civil Procedure Rule 26(f). However, counsel is still required to meet and confer in good faith prior to bringing any discovery motion. From a practical perspective, most parties will find that they must meet and confer early and often about the types of ESI at issue and the form of the production if they want to control costs, manage the results of the discovery and comply with their respective burdens on a discovery motion. To do so, all counsel must have a firm and detailed grasp as to why the ESI that is sought by either side is relevant (or not) to the substantive issues in the case, the location and accessibility of the data on active and/or back-up systems, the volume and format of the data, and the associated cost of searching and producing that data. Given the level of detail required to facilitate efficient and defensible ESI discovery, it is advisable that counsel meet and confer as early as possible, regardless of whether the Act requires a formal meet and confer session as a prerequisite to conducting discovery.

Third Parties: The new procedural requirements apply similarly to third party subpoenas seeking production of ESI. (Section 1985.8.) However, the Act provides that the party seeking ESI has an additional affirmative obligation to take "reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." (Section 1985.8 (j).) Consistent with that obligation, the Act further provides that any court order "shall protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance [with the subpoena]." (Section 1985.8 (k).)

Safe-Harbor: The Act contains a safe-harbor provision comparable to the federal rules related to ESI that has been lost or destroyed as "the result of the routine, good faith operation of an electronic information system." However, it also reminds litigants (and potential litigants) about the affirmative obligation to preserve evidence once litigation can reasonably be anticipated. (Sections 1985.8 (l), 2031.060 (i), and 2031.310 (j).) Accordingly, the safe-harbor will not protect those litigants who fail to control or otherwise impose holds on their internal ESI destruction policies.

Conclusion: Counsel is strongly encouraged to immediately take the time to read the revised Discovery Act from beginning to end. Due to the urgency clause, the revised Act is effective immediately. Discovery of ESI is now an express standard in all California litigation. Counsel should therefore expect to meet and confer and prepare requests and responses that are consistent with the new requirements.

Mert Howard is a products liability litigation partner at Hanson Bridgett and a member of the firm's E-Discovery Task Force. He can be reached at mhoward@hansonbridgett.com.

Batya Swenson is a business and real estate litigation partner at Hanson Bridgett and a member of the firm's E-Discovery Task Force. She can be reached at bswenson@hansonbridgett.com.

MARIN COUNTY LEGAL PROFESSIONALS ASSOCIATION

A professional organization for legal assistants

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

SPEAKER/TOPIC:
Ali Quam,
Family Law Facilitator & Legal Self-Help

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

FUTURE SPEAKERS:
Sept. - Julia Wald, Esq.
Oct. – Hon. Verna A. Adams

August 1, 2009

Dear Member of the Marin County Bar Association,

Re: Application to become an Officer or Director of the Marin County Bar Association

Pursuant to the Bylaws of the Marin County Bar Association, a Nominating Committee will be chosen.

The committee will meet prior to the September Board of Directors Meeting and make their recommendations for Officers and Directors for 2010. The committee will then report their recommendations at the September General Membership Meeting.

The election will be held at the November General Membership meeting.

If you wish to be considered for a director or officer position, please complete the application below and mail to President-elect Beth Jordan Marin County Bar Association 30 N. San Pedro Rd., Ste. 140 San Rafael, CA 94903. All applications must be received, in hand, by the close of the business day, **September 1, 2009**. If you wish to attach additional information, please do so.

Very truly yours,
Marlene Getchell, President
Marin County Bar Association

APPLICATION

Dear Nominating Committee,

I wish to become a director, the president, secretary, treasurer (please circle applicable positions(s)) of the Marin County Bar Association.

Please state your qualifications:

Please state your reason for seeking this position:

Applicants Signature: ____

Name: ____

Address: ____

City/State/Zip: ____

THE STATE BAR OF CALIFORNIA
COMMITTEE ON MANDATORY FEE
ARBITRATION

INVITES NEW AND CURRENT
FEE ARBITRATORS TO ATTEND:

FEE ARBITRATOR TRAINING

Thursday, September 17, 2009
5:30 p.m. - 8:30 p.m.

Marin Nonprofit Resource Center
555 Northgate Drive
Downstairs Conference Room
San Rafael, CA 94903

This training session is offered to all prospective and current volunteers who arbitrate attorney-client fee disputes for the Mandatory Fee Arbitration Programs through the local bar programs and the State Bar. The course will provide the basic training required to serve on a bar program's fee arbitration panel. Non-lawyers lay arbitrators, in addition to attorneys, are also encouraged to attend this valuable training session and join the Mandatory Fee Arbitration Program.

Speakers will address recent developments in fee arbitration and other important topics such as:

Writing an Enforceable Award
Statute of Limitations
Effect of Conflicts of Interest
Arbitrator Disclosure Requirements
Controlling the Proceeding

Your support and continuing education have been critical to the Program's success. Please take this opportunity to stay abreast of recent developments in the area of fee arbitration.

FREE MCLE
(2.75 hours, includes 1 hr. legal ethics)

To reserve a space, please contact
The Marin County Bar Association
at (415) 499-1314
or email Jan Salas at jsalas@30nsp.org.
For additional information (not RSVP), please call
Program Director Jill Sperber (415) 538-2023
at the State Bar of California.

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San Rafael, CA 94901

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

LEGAL SELF HELP SERVICES MOVE TO THE COURTHOUSE

Legal self help services, offered for the last six years at the Legal Self Help Center of Marin, moved to a new office in the courthouse at the end of June. These services, designed to provide legal assistance and procedural information to low income litigants and those who do not have attorneys, are now provided by the Marin County Superior Court. The Court's newest division, Legal Self Help Services, is located in Room 244 of the Marin County Civic Center Hall of Justice. The office hours are 8:30 to noon and 1:00 to 4:00, Monday through Friday. The phone number is (415) 492-1111.

In May, the Board of Directors of the Legal Self Help Center of Marin, a non-profit organization, determined that the Center would be unable to sustain its operations due to an anticipated significant budget shortfall and difficulties in raising additional operating funds in the current economic climate. The Board looked at a number of alternatives to closing the Center and determined that the best alternative was to dissolve the non-profit and transfer the services to the Court. The Court had contracted with the Center to provide small claims and family law services for many years and was well positioned to assume responsibility for these much-needed public services. Kristine Fowler-Cirby, President of the Board, said, "The Board's only priority was to assure continuation of these vital services for Marin's low income residents, non English speakers and those who have not retained legal counsel. Although we regret leaving our offices in the Marin Justice Center, we are confident that the Court will be able to carry out our mission with no interruption in services."

Legal Self Help Services will be co-located with the Court's Family Law Facilitator Program, which offers legal assistance to litigants who have child or family support issues or need help with custody and visitation arrangements. Alexandria Quam-Rios, the Family Law Facilitator, is an attorney who specializes in family law. She will also act as the manager of Legal Self Help Services, assisted by three other well trained court staff. In addition to one-on-one assistance from court staff, litigants may use a variety of web-based legal applications, available in English and Spanish, as well as step-by-step procedural packets available in the office. There are eight public workstations, configured with the most effective document preparation and legal research tools available for California court users. Three of the four staff are bilingual in Spanish and one is bilingual in Tagalog.

For additional information, contact Kim Turner, Court Executive Officer at (415) 473-6244.

JUDICIAL COUNCIL HAS AUTHORIZED COURT CLOSURES

Following the passage of new legislation, the Judicial Council convened today and authorized the closure of all California courts on the third Wednesday of each month, beginning **September 16, 2009**. The one-day-per-month court closures will continue through the end of the 2009-10 fiscal year. These ten court closure days will be treated as judicial holidays.

Matters that are currently scheduled to be heard on court closure days will be re-calendared and the parties will be noticed of the new hearing dates. Court administration will coordinate with judicial leadership, managers and supervisors to ensure that this work begins immediately.

Kim Turner, Marin County Superior Court (415) 473-6237 kim_turner@marincourt.org

DETAILS FOR CALENDAR

Aug 19th
Probate & Estate Planning Section Meeting
Kevin Urbatsch/Urbatsch Law Firm & Craig Ackerman/Ackerman Realty Group
"Legal Requirements and Practical Solutions to Selling Real Estate During Probate or Trust Administration"
Tamalpais Room, San Rafael Corporate Center, 750 Lindaro, San Rafael
12 – 1:30 pm

Aug 20th
Real Property Section Meeting
Speaker Randy Fry
Topic: Update on Title Insurance Industry, Policies and Issues
Seafood Peddler
12 – 1:30 pm

Aug 24th
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.

NEW MEMBERS

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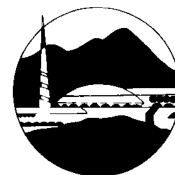

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To involve, encourage, and support
bar association members,
to serve as a liaison to the Marin County courts,
and to educate the community and
enhance access to legal services.

Marin County Bar Association
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