

Our Mental Health

FEB 08, 2018

BY ROBERT ROSBOROUGH

As an undergraduate, my school had something called "Feb Club." The idea was that February was so dark and cold and dull that we needed to have a party every night of the month to keep our spirits up and Feb Club provided that. This was not the most constructive approach to our mental health but we were young and it was fun. You can find many better options in Andy Wolfe and Barbara Monty's article on stress relief. As the article makes clear, struggles with mental health issues are widespread in our profession. And as our President notes in his message this month, many of you have expressed a desire for MCBA to help. Andy and Barbara's article is a good start, with some tips for things you can do on your own to groups here in Marin that offer different options for stress relief. I encourage all of our readers to let Barbara, Andy or me know of other groups and approaches and tips and we will keep you informed of these throughout the year.

Charlie Dresow (our President-Elect) opines on the lifelong effects of a criminal conviction and how California's new "ban the box" law is a good start to remedying the injustice but does not go far enough. And this month's Guest Editor, Nicole Çabalette, gives an overview of several new real estate laws we should all be aware of. Many thanks to Nicole for her efforts this month, which include a recap of our first general membership luncheon of the year. If you missed that luncheon, you missed a fascinating talk on the current state of politics, media and the first amendment so be sure to check out her article for some of what you missed. And if you'd like to go to next month's membership luncheon, you have a chance to do so for free with a new feature in this month's issue of the Marin Lawyer—see the separate blurb about what to do if you spot the hidden gavel in one of this month's articles.

Finally, be sure to check out (<https://www.facebook.com/marincountybar/>) MCBA's Facebook page for photos from January's luncheon and even more photos from our Annual Installation Gala. As

always, I encourage you to get in touch with me about what you'd like to see in the Marin Lawyer, including something you'd like to write, or with your reactions to this month's articles. And be sure to get in touch with Matt White if you have any items for his gossip column. Happy February!

Gratitude, Stress & Speakers

FEB 08, 2018

BY THOMAS S. BROWN

I begin this month's message with an expression of sincere thanks to all who contributed to the annual Installation Dinner & Gala Event held on January 20, 2018 at the Marin Country Club. I was honored and deeply humbled by the kind words from my good friend Andy Perez of the Marin County District Attorney's Office, Presiding Judge Paul M. Haakenson who also administered the oath of office, and from our outgoing President, Dorothy Chou Proudfoot. A special thank you to the tireless efforts of Executive Director Mee Mee Wong and our newest employee, Kiersten Ross, for organizing such a successful event. I also want to acknowledge our table and wine sponsors whose financial support underwrote the dinner. The Officers for 2018, Charles Dresow (President-Elect), Caroline Joachim (Treasurer), Susan Feder (Secretary), and Jessica Karner (Past-President), and I look forward to serving the membership this year. Finally, both Joel Gumbiner and Andrew Giacomini deserve special acknowledgement for their prowess on the dance floor in front of The 85s, the local band who provided such fun entertainment.

I would like to send a special thank you to all who contributed at the Gala to MCBA's scholarship fund, which provides much needed financial support to several deserving law students with ties to Marin County each year. In order to provide the same level of support to next year's awardees, we need the help of all of our members. If you have not yet donated to the scholarship fund this year, please take a moment to do so by donating online through the (<https://marinbar.org/support-us/mcba-scholarship/>) MCBA website or writing a check made out to 10000 Degrees with "MCBA Legal Scholarship Fund" on the memo line and send to the MCBA's address at 101 Lucas Valley Road in San Rafael. Also, pledge cards will be available at the membership meeting this month. Thank you for your continued support of this important scholarship fund.

As those in attendance at the Installation Dinner can attest, we have some extraordinary scholarship

recipients, one of whom candidly shared an extremely personal time in her life when she struggled with mental illness. In reflecting on her comments, I am reminded that the legal profession constantly poses mental health challenges to lawyers, judicial officers, adjunct professionals, and clients. We can all agree that the practice of law can be stressful and unrelenting and we are exposed to stress throughout our careers. The competition in the first semester of law school, studying for the bar exam and waiting for the results with fingers crossed, interviewing for my first job, selecting a jury for the first time, representing a client facing multiple life sentences, and waiting for a verdict on a murder case are just a handful of the emotional challenges I have faced as a lawyer. No doubt you, our members, have experienced similar and more stressful events in your collective practices. These events take their toll on our mental health and it is important to remember the need to address these challenges to our mental (and physical) health. Many of you who were present at the Installation have already reached out to me, asking the MCBA to offer programs and speakers on the topic of mental health in the legal profession, which we will surely endeavor to do this year. To start your year off on the right foot, look to Andy Wolfe and Barbara Monty's article in this issue of the Marin Lawyer on different options for stress relief.

As I mentioned in my remarks at the Installation, one of our goals this year is to continue to offer practical and informative programs to the general membership of the bar. To that end, the members who attended Dan Mogulof's presentation on January 24, 2018 at McInnis Restaurant were treated to an excellent presentation. Dan discussed in detail the legal and political challenges he faces on a daily basis in his role as Vice Chancellor and spokesperson for the University of California, Berkeley. His recounting of the behind the scenes work that was involved in the visits of Milo Yiannopoulos and Ben Shapiro, and the Free Speech Week at UC Berkeley was fascinating and provided the membership with a true in-depth view of the disturbing change in the relationship between the media and those in the court of public opinion. Building on the energy from Dan's presentation, this month we will feature Gerald Uelmen, one of the members of the "Dream Team" who represented O.J. Simpson in the murder trial of the century brought by the Los Angeles County District Attorney's Office. Be sure to mark February 24, 2018 on your calendar to hear Professor Uelmen's presentation.

In closing, I wish to send a special note of appreciation and gratitude to Barry G. Borden, who recently retired from the Marin County District Attorney's Office after providing over 30 years of public service to the County of Marin as a prosecutor. As the Assistant District Attorney, Barry presided over the daily operations of the largest law firm in the County, the Marin County District Attorney's Office. Thanks

again, Barry, for your service to the County.

As always, feel free to reach out to me directly with comments or suggestions about ways the Marin County Bar Association can continue to support your practice.

Best,
Tom

MCBA Installation Gala & Scholarship Fundraiser

FEB 08, 2018

BY MEE MEE WONG

The 2018 MCBA Board & Officers Installation Gala & Scholarship Fundraiser, held on January 20 at the Marin Country Club in Novato, provided a memorable and entertaining evening to all in attendance. Past President Dorothy Chou Proudfoot passed the gavel to incoming President Tom Brown, and attendees got to know the new President a little better with Andy Perez's warm introduction.

The Honorable Paul M. Haakenson presided over the swearing in of the 2018 Officers, President Thomas S. Brown, President-Elect Charles D. Dresow, Treasurer Caroline Joachim, Secretary Susan Feder, Past President Dorothy Chou Proudfoot, and Five Year Past President, Jessica Karner; and the 2018 Directors, Marie A. Barnes, Toussaint S. Bailey, Gregory R. Brockbank, Eva E. Bennett, Alan Brayton, Nicole Çabalette, Damon Connolly, C. Clay Greene, Christian Martinez, J. Timothy Nardell, Anna T. Pletcher, Robert Rosborough, Nestor Schnasse, and Michael Wear.

Special thanks to our Table Sponsors, Foley & Lardner LLP, Greene Taubman & Dias LLP, Hanson Bridgett LLP, Marin County District Attorney's Office, and Ragghianti Freitas LLP, as well as our Premium Wine Sponsor, Brayton Purcell, who donated the delicious Thirty-Seven Wines. We would also like to thank our Wine Sponsors, Law & Mediation Offices of Lawrence A. Baskin, Eva E. Bennett, Lori Frugoli, Anna T. Pletcher, Resolution Remedies LLC, Law Offices of Barrett R.P. Schaefer, Strick Law Offices and Wynne Law Firm. Your support of this event and the Marin County Bar Association is greatly appreciated.

MCBA's Legal Scholarship: Request for Donations and Profiles of the 2017-2018 Winners

FEB 08, 2018

BY MEE MEE WONG

Congratulations to our 2017-2018 Marin County Bar Association Legal Scholarship recipients. The application narratives were compelling, with all of the winners demonstrating a commitment to global change through their legal service projects. Our administrative partner, 10000 Degrees, recruits from law schools and reviews eligibility before forwarding the applications to our Scholarship Committee members, who determine the awards. Marin Community Foundation manages the scholarship funds for us.

A big thank you to those who donated at our annual Installation Gala to help fund next year's scholarship students. We are still collecting pledges and donations and need your help to continue to provide the same level of scholarships to deserving recipients. Every single donation has a direct impact by helping an awardee meet the financial challenges in pursuing a legal career.

Please consider donating by writing a check for any amount you can afford, made out to "10000 Degrees" with "MCBA Legal Scholarship" on the memo line. Mail checks to:

MCBA
101 Lucas Valley Rd., Suite 326
San Rafael, CA 94903

Or you can donate online by credit card to 10000 Degrees by visiting (<https://donatenow.networkforgood.org/10000degrees>) here. Make sure you designate the donation to MCBA Scholarship Fund in the dropdown menu.

Our three MCBA Legal Scholarship recipients for 2017-2018 are:

Dannielle Antone is a Marin County native who attended elementary and high school in Mill Valley, CA. She obtained her B.A. in Economics from Pitzer College and worked for three years prior to attending Berkeley School of Law. Dannielle is a 3L and an active participant in several affinity groups and organizations. Dannielle previously served as the President of the Women of Color Collective and currently mentors 1L students who, like Dannielle, are the first in their family to attend college. She has worked on the Berkeley Business Law Journal, and as an intern in the Berkeley International Human Rights Clinic where she had the opportunity to travel to Uganda to assist with an international human rights matter. She spent her 1L summer at Legal Aid of Marin in an effort to give back to the community she grew up in. She currently works for the Berkeley Center for Law, Business and the Economy as a graduate fellow and is the chair of the Women in Business Law mentorship program. Dannielle says that being a scholarship recipient has significantly helped her in achieving her dream of obtaining a law degree and allows her to spend more time focused on her studies and participating in her community to promote equal access to the legal system.

Janeene Iles was born and raised here in Marin County. She attended UC Berkeley during her undergraduate years, and is now completing her final year of law school at the University of California, Hastings College of the Law. Currently, she is studying in Paris, France completing a dual-degree program. In May 2018, she will graduate with a Juris Doctor degree and Master's in European Law. She first became interested in the legal profession when she was orphaned by it. In February of 2009, approaching her high school graduation, she lost her parents to substance abuse and the criminal justice system. Now she is the first in her family to attain a Bachelor's degree and will be the first in her family to attain a J.D and M.A. "Receiving this scholarship is truly a blessing for which I am so grateful. Your support and confidence in my future success means so much to me and has helped me in achieving my dreams. I will continue to strive to make my family, friends, and community proud." Janeene has received an offer to work at Skadden, Arps, Slate, Meagher, & Flom LLP after graduation.

Lucia Diaz is the first scholarship recipient from a Southern California law school after MCBA expanded its eligibility criteria to fund law school at any California school rather than just Northern California. Lucia attended San Rafael High School and is now a 2L at California Western School of Law. She first knew she wanted to practice law when she witnessed her classmates participating in mock trials when in high school. "I was so intrigued by the adversarial system and found it fascinating. Beyond my curiosity, personal matters were also forces that led me to learn some of the ins and outs of immigration law. I now find myself nearing the finish line of my legal academic career and am excited to be able to help...people understand how to navigate the law, particularly immigration law."

The First Amendment: Navigating the Balance in the Trump Era

FEB 08, 2018

BY NICOLE ÇABALETTE

MCBA's first General Membership Meeting of 2018 featured U.C. Berkeley Assistant Vice Chancellor and Director of Communications Dan Mogulof discussing the challenges of navigating the balance of First Amendment rights in our current political climate.

Mogulof gave an engaging first-hand account of how the protest against conservative activist Milo Yiannopoulos' visit to the Berkeley Campus in February 2017 turned violent, and what it felt like to come face to face (or close) with Antifa at the height of the protest. He also shared the details of the aftermath, including the many challenges the University faced as further visits by conservative political commentators such as Ben Shapiro, Ann Coulter, Milo Yiannopoulos (again) and his "Free Speech Week" in September 2017 approached.

Mogulof noted some distressing trends in these events. One is that for some of these speakers, their appearance at Berkeley was primarily about generating support and outrage among their base, particularly through social media and right-wing news outlets rather than any genuine interest in debating issues. His insider accounts were enlightening with the facts behind baseless claims by potential speakers that UC Berkeley was prohibiting them from speaking. (And be on the lookout for a New Yorker article about campus speech that will include the events at UC Berkeley.)

He also commented about the changing nature of the media and the news cycle. He has observed that with the twenty-four-hour nature of the news cycle, very few news outlets do what he considers, as a former journalist, real reporting. The pressure to report something immediately leads much of the media to simply report what someone—like many of these potential campus speakers—said without any

investigation of the facts. Sometimes there may be a quote from someone on the opposite side of events but rarely is there any examination of what actually happened not to mention any context or nuance.

Another trend particularly distressing to attorneys was the degree to which members of the UC community, in these cases from the left of the political spectrum, called for the administration to actually prohibit the speakers. Particularly troubling was the small but not insignificant number of faculty members who took this position. Mogulof recounted his conversation with one faculty member who insisted that Yiannopoulos be prohibited from speaking and when Mogulof asked why the answer was "Because he's wrong."

Despite the calls of some within the University for cancellation of the potentially violent visits, Mogulof noted that the University, in addition to its strong desire to uphold its long tradition of supporting free speech and avoid stoking the anti-Berkeley narrative, was bound by the doctrine of prior restraint. At least two federal courts have held that universities cannot ban speakers, and that a generalized concern about violence is not sufficient to bar such speech.

When asked about the costs to the University associated with Ben Shapiro's visit and Yiannopoulos' second brief visit to the Berkeley campus in September 2017, which were estimated at \$3,000,000 over three days, Mogulof noted that such costs are paid out of unrestricted donor funds, and not tuition or state funds.

Past MCBA President Randy Wallace recalled his experience on the Berkeley campus in 1968, when the political climate was equally as charged, but there seemed to be more respect and dialogue and asked Mogulof what he thinks has changed. Mogulof responded that it was a number of factors, including a change in parenting styles, a shift towards identity politics, lack of modeling for compromise, a prevalence of a "winner take all" attitude and the absence of national leadership.

However, Mogulof reported that there are some recent signs of change within the University community. For example, the Berkeley Conservative Society, a new student group formed in an effort to "bring back political decency" and foster civil bipartisan discourse, recently met with the Cal Berkeley Democrats to debate health care, climate change and taxation. There has also been a leadership change

within the Berkeley College Republicans that appears to reflect a shift away from extreme conservative leadership. He also cited Ben Shapiro as a speaker who is genuinely interested in dialogue on the issues rather than pure political posturing, going so far as to give priority to audience questioners who disagree with him. Mogulof noted that two years ago, Shapiro spoke on campus, attracted a small crowd, cost UC nothing and resulted in no news articles. Now the cost is seven figures.

As Mogulof noted, "Free speech is a process. It's a work in progress."

The Stressed-Out Lawyer: Finding Relief in Marin

FEB 08, 2018

BY BARBARA MONTY AND ANDREW WOLFE

It would be hard to find a lawyer who does not think law is a stressful profession—perhaps not surprising in a profession centered on conflict. And while stress can be useful, it can easily lead to serious problems, including substance abuse and poor mental health. Indeed, the ABA has documented an alarming degree of “lawyer impairment” in the profession. In 2015, the ABA Commission on Lawyer Assistance Programs (CoLAP), in conjunction with the Hazelden Betty Ford Foundation, facilitated national research on lawyer impairment. The results of this study reveal the disturbing incidence of substance abuse and mental health issues among U.S. lawyers, judges, and law students:

- 21 percent of licensed, employed attorneys qualify as problem drinkers
- 28 percent struggle with some level of depression
- 19 percent demonstrate symptoms of anxiety
- 11.5 percent admitted to having suicidal thoughts at some time during their career
- Younger attorneys in the first 10 years of practice exhibit the highest incidence of these problems.

All of these numbers are far higher than for the general population. For those who attended MCBA’s annual gala, you heard a compelling first-hand story of mental health struggles from one of our very own scholarship recipients. No wonder thirty percent of lawyers would choose a different profession if they could start over and law has the highest rate of dissatisfaction of any profession.

Of course, many lawyers, mediators, and judges have found ways not only to cope with stress in the profession but to thrive. Below we share a few of the ways that we and several colleagues here in Marin

not only cope with stress but seek to improve the practice of law for ourselves, our clients and our colleagues.

JOY IN THE LAW

Marin County employment and privacy law attorney Diana Maier and several other Marin County women attorneys (who were already meeting monthly to network) put together a conference in 2016 on Joy in the Law that was so successful that they are putting it on again on September 28, 2018. Since the original conference, the attorneys group has changed its name to the Joy in the Law group, and one of its members, Brittny Bottorff, started a San Francisco Joy in the Law group.

Both groups' mission is to increase personal satisfaction and fulfillment in the legal profession. They do this, in part, through sharing work and life practices that generate happiness and discussing how to ethically and professionally address challenging situations that arise in the workplace. The women provide support and friendship to one another and also serve as a networking group. They generally meet on the first Thursday of the month from 7:30 to 9:00 AM at Il Fornaio restaurant in Corte Madera. They occasionally have special events, dinners, and presentations. For more information, visit their (<https://www.joyinthelaw.com/>) site or contact (diana@maierlawgroup.com) Diana. For information on the SF group, contact (brittny@maierlawgroup.com) Brittny.

MINDFUL LAWYERING: A MEDITATION RETREAT FOR LAWYERS

This five-day retreat takes place at Spirit Rock Meditation Center in Woodacre. It provides lawyers with an opportunity to meditate, to build community with fellow lawyer-meditators, and to explore the particular importance of mindfulness to lawyers in a time of social change. This retreat includes evening talks and other presentations on the principles of mindfulness and on applying mindfulness to strengthening lawyering skills, enhancing well-being, and building resilience. It offers MCLE credits for Recognition and Elimination of Bias, Competence Issues, and Legal Ethics. Held every other year, this retreat most recently took place in the fall of 2017 and is planned for the fall of 2019. You can sign up for Spirit Rock's email announcements, including retreat information, (<https://www.spiritrock.org/>) here.

MARIN MEDITATION GROUP

This group was started several years ago by Marin lawyers who wanted to create a supportive environment for lawyers to get together at lunchtime to meditate. Both of your authors attend the twice-a-month noontime sessions as often as they can, which take place in the second-floor conference room (No. 285) at 1000 Fourth Street in San Rafael. We begin by meditating for 25 minutes and then we take turns talking about how we're doing, sharing anything from professional concerns to personal issues to questions about meditation practice itself. To get on our email list or for a copy of the current schedule, contact (awolfe@montywhitelaw.com) Andy Wolfe.

IREST MEDITATION

The Editor-in-Chief of this very publication both practices and teaches (to lawyers especially) an easy and effective type of meditation called iRest®. When Rob first came across it, he was impressed that the Departments of Defense and Veterans Affairs are two of the biggest consumers of the practice. "They use it to help treat PTSD very effectively. For me, the fact that you can get a bunch of soldiers to sit around and meditate and then talk about how helpful it is was a great testimonial." He notes that there are a number of short films and videos of soldiers talking about how helpful it is, such as this inspiring video on YouTube.

iRest is a research-based, westernized version of yoga nidra, an ancient type of meditation. Its accessibility and flexibility appealed to him: "Unlike many other types of meditation, iRest takes the mind through a number of different activities and you don't have to do each one every time. You can take five minutes at lunch to recharge with one or two steps and you can take twenty or thirty minutes before bed to go into deep relaxation. I liked how instead of years of practice to feel like you were getting somewhere, my very first practice was deeply relaxing." Rob is now a certified iRest teacher and in addition to corporate teaching, he leads a weekly meditation at San Francisco's Integral Yoga Institute. "I love how even when I am leading a class, I can feel the benefits of iRest myself, not to mention the reward of helping others experience them." [Editor's Note: You can read more about iRest in Rob's Marin Lawyer article about it (<https://marinbar.org/news/article/?type=news&id=257>) here.]

TIPS FROM AN ABA INSIDER

Francine Ward serves on the ABA's Commission on Lawyers Assistance Programs, which helped develop the grim statistics at the beginning of this article. We asked her for advice on coping with stress in the profession. The first thing she said struck us as a critical observation: "As much as I want to blame external forces, much of my stress is self-imposed. It's about the choices I make. Once I accepted that harsh truth, I was able to make some necessary changes." She says that the steps she has taken fall into three general categories: health, work, relationships. In her own words, here are the top ten very practical steps she has taken to reduce stress:

1. I recognize that my life is about MY choices. I am no longer a victim of circumstances.
2. Thirty-eight years ago, I got help for my substance abuse problem. Addiction is itself a stressor.
3. Two years ago, I stopped eating sweets. I had a deadly sweet tooth, which kept me hyped up all the time.
4. I exercise most days. Running helps me reduce tension and manage my weight.
5. I drink three to four quarts of water every day. Staying hydrated keeps me regular.
6. My stress dropped exponentially when I stopped working for a New York law firm.
7. I charge a flat rate for most of my legal work and I get paid up front, reducing the need to worry about getting paid.
8. I learned that "NO" is a complete sentence all by itself. I am responsible for protecting my boundaries.
9. I make time for my girlfriends. Every week I have a meal or a walk with a gal pal.
10. Finally, I have interests other than law.

FORGIVENESS IN THE LAW

Managing stress can also very much be about how you approach your cases and your clients. One of your authors—Barbara Monty—found that many of her litigation and mediation clients became blocked by holding on to resentments and pain from past harm. Several years ago, she began studying the psychological benefits of forgiving: "I was astonished to learn how forgiving lowers blood pressure, aids clear thinking and reduces stress." Gradually she has incorporated principles of forgiveness into her litigation and mediation practice and has become certified as one of the few lawyers who is also a

forgiveness coach.

This ongoing practice of letting go helps her to relieve her own stress, understand others and is helping clients make more informed decisions about their own lawsuits and their lives. Along with Judge Roy Chernus, Stanford Forgiveness Project founder Fred Luskin, and forgiveness coach Eileen Barker, Barbara provides training for lawyers and mediators wishing to learn more about the process of forgiveness and incorporate it into their lives and practices. For more information see this (<http://www.thepathofforgiveness.com/>) site or contact (awolfe@montywhitelaw.com) (bmonty@montywhitelaw.com) Barbara Monty.

THE CENTER FOR UNDERSTANDING IN CONFLICT

Based in Mill Valley, the Center is led by renowned mediators Gary Friedman and Catherine Connor and offers another approach to conflict that reduces stress in parties and lawyers. Simply put, their programs teach how to resolve conflicts by coming to a better understanding of the interests and emotions that have resulted in the conflict. Put even more simply, their programs cultivate compassion for the parties to the conflict. As stated on the Center's website, "It's never just about the money, or the issues on the agenda. Conflict is filled with difficult—even volatile—emotion, which often goes unacknowledged in the legal system and other professional or work settings. We teach lawyers, mediators, psychotherapists and other professionals who work with conflict to see, acknowledge and use the emotions in themselves and their clients to achieve a deeper understanding of the issues, and to find solutions that will genuinely satisfy the parties." This is a profoundly humane approach to conflict resolution and, as both of your authors can attest, really does reduce stress.

The Center's programs are usually not presented exclusively for lawyers but are attended by a large number of lawyers. The basic 40-hour training program provides MCLE credits for the full 40 hours. It will be offered at Green Gulch Farm, set in a lovely canyon above Muir Beach, beginning on March 21 and again on November 7. Find more information (<http://understandinginconflict.org/>) here.

No doubt other programs and groups right here in Marin help lawyers, mediators and our clients reduce stress, become better lawyers and enjoy work and life more. If you know of such resources, we

encourage you to contact either (awolfe@montywhitelaw.com) Andy Wolfe or (bmonty@montywhitelaw.com) Barbara Monty and we will share an updated list of opportunities. We are committed to helping our profession, our clients and all of us lead healthy lives.

Andy Wolfe and Barbara Monty are Marin lawyers at Monty White LLP.

New Real Estate Laws for 2018

FEB 08, 2018

BY NICOLE ÇABALETTE

The following are a handful of some of the new laws related to real estate that took effect on January 1, 2018, or will take effect later this year. This is, of course, not intended to be a comprehensive list, but reflects some of those laws that may be of widespread interest to lawyers and/or landlords and tenants.

1. Tenant Immigration Status (Revise)

The Immigrant Tenant Protection Act, which was signed into law by Governor Brown on October 5, 2017, and took effect on January 1, 2018, amends and creates a number of code sections to strengthen protections against housing discrimination or harassment based on immigration or citizenship status. The new law broadly defines immigration or citizenship status to include a person's actual immigration or citizenship status, as well as a perception that a person has a particular immigration or citizenship status, or that a person is associated with a person who has, or is perceived to have, a particular immigration or citizenship status. (Civil Code §1940.05.)

California landlords are now expressly prohibited from the following:

a. Disclosing information regarding the immigration or citizenship status of a tenant, occupant, or person associated with the tenant, to any immigration authority, law enforcement agency, or local, state, or federal agency, for the purpose of, or with the intent of, harassing or intimidating a tenant or occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling, irrespective of whether the tenant or occupant currently resides in the dwelling. (Civ. Code § 1940.35.). However, Disclosure is allowed if done to comply with legal obligations under federal law, including, but not limited to, any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant, or a subpoena, warrant, or other order issued by a court.

b. Threatening disclosure of information regarding the immigration or citizenship status of a tenant,

occupant, or person associated with the tenant is added to the list of prohibited conduct for the purpose of influencing a tenant to vacate a dwelling. (Civ. Code § 1940.2.)

c. Inquiring about or disclosing to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property for the purpose of, or with the intent to, harass, intimidate, retaliate, or influence a tenant to vacate a unit. (Civ. Code § 1940.3.)

d. Initiating an unlawful detainer claim because of the immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, unless the landlord is complying with a federal affordable housing program. (C.C.P § 1161.4.) The law also creates a rebuttable presumption that a landlord has violated this law if the unlawful detainer action asserts the tenant's failure to provide a requested social security number, consumer credit report, or identification, and the landlord had already approved the tenant to take possession of the dwelling prior to such request.

e. Reporting, or threatening to report, a tenant or individuals known to the landlord to be associated with the tenant to immigration authorities (such conduct is now considered a form of retaliatory conduct). (Civ. Code § 1942.5(c).)

New Civil Code section 3339.10 provides that immigration and citizenship status are irrelevant to any issue of liability or remedy in most landlord tenant disputes.

Under the new law, attorneys are now subject to suspension, disbarment, or other discipline for reporting suspected immigration status or threatening to report suspected immigration status of a witness or party to a civil or administrative action of his or her family member to a federal, state or local agency because the witness or party exercises or has exercised a right related to his or her hiring of residential real property. (Bus. & Prof. Code § 6103.7.)

2. Landlord Disclosure of Flood Hazard


As of July 1, 2018, if you are a residential landlord, and (a) you have been notified by a public agency in

writing that your property is located in a flood hazard zone; (b) your lender requires you to carry flood insurance; (c) you currently have flood insurance, or (d) you otherwise have actual knowledge that the property is located in a special flood hazard area or an area of potential flooding, you will be required to include a specific disclosure in your lease or rental agreement. (Cal. Govt. Code § 8589.45.)

Specifically, the lease must state, in no less than 8-point font, that:

- a. The property is located in a special flood hazard area or an area of potential flooding;
- b. The tenant may obtain information about hazards, including flood hazards, that may affect the property from the website of the Office of Emergency Services (also, this disclosure must include the address for the MyHazards tool maintained by the Office);
- c. The owner's insurance does not cover the loss of the tenant's personal possessions and it is recommended that the tenant consider purchasing renter's insurance and flood insurance to insure his or her possessions from loss due to fire, flood, or other risk of loss; and
- d. The owner is not required to provide additional information concerning the flood hazards to the property and that the information provided pursuant to this section is deemed adequate to inform the tenant.

3. Increased State and County Recording Fees.

As of January 1, 2018, to support the Building Homes and Jobs Act, County Recorders are now required to charge an additional \$75 at the time of recording every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted under the law. (Cal. Govt. Code § 27388.1.)  Unless an exemption applies, for each document title in a transaction the fee is charged per parcel of real property, but caps out at \$225 per single transaction (this comes in handy when the transfer of a single address includes multiple parcels). It is also important to note that

even if an exemption applies, if the party recording the document fails to submit a declaration of the exemption on a cover page or on the face of the document, the fee will be applied.

Documents exempt from the \$75 fee include:

- a. Documents subject to the documentary transfer tax pursuant to Section 11911 of the Revenue and Taxation Code at the time of recording, which documents include a declaration stating the amount of such tax paid at recording.
- b. Documents recorded concurrently in connection with a document subject to the imposition of a documentary transfer tax.
- c. Documents representing a transfer of, or that are recorded in connection with a document representing a transfer of a residential dwelling to an owner-occupier (such as transfers of the primary residence to or from a revocable trust).
- d. Documents that are not related to real property.

In Marin County, the Recorder will now charge an additional \$10 at the time of recording most documents that are not otherwise subject to a documentary transfer tax to fund programs to enhance the capacity of local police and prosecutors to deter, investigate, and prosecute real estate fraud crimes. (Cal. Govt. Code § 27388; Marin County Board of Supervisors Resolution 2017-102.). As with the \$75 fee, even if an exemption applies, if the party recording the document fails to submit a declaration of the exemption on a cover page or on the face of the document, the fee will be applied.

Documents exempt from the \$10 fee include:

- a. Documents that are subject to a documentary transfer tax pursuant to Section 11911 of the Revenue and Taxation Code.
- b. Documents that are recorded concurrently with a document that is subject to a documentary transfer tax.
- c. Documents that are presented for recording within the same business day as and are related to the

recording of a document that is subject to a documentary transfer tax.

4. Landlord Notice of Bed Bug Life Cycle and Reproductive Habits

As of July 1, 2017, residential landlords were required to provide prospective tenants with a written notice providing information on bed bug identification, behavior and biology, the importance of cooperation for prevention and treatment, and the importance of and procedure for prompt written reporting of suspected infestations to the landlord.

The law provides detailed information about bed bugs which must be included in the notice. Here are some highlights: An average bed bug lives for about 10 months. Female bed bugs lay one to five eggs per day. Bed bugs grow to full adulthood in about 21 days. Bed bugs can survive for months without feeding.

Although this is technically not a new law, Civil Code section 1954.603 provides that by January 1, 2018, landlords must have provided this notice to their existing tenants.

Does anyone else feel like they need a shower?

A Call for Comprehensive Criminal Conviction Rehabilitation Reform

FEB 08, 2018

BY CHARLES D. DRESOW

The direct consequences of a criminal conviction are devastating: imprisonment and/or probation. The former means being taken from everything you know, including family. Both mean being disenfranchised from your civil rights. A criminal sentence lays out the direct punishment a citizen will receive for their crime: terms and conditions they must fulfil that are meant to punish but also ultimately to return the individual to a law-abiding life. These terms and conditions are largely the result of negotiated plea bargains between defense counsel and the prosecutor or a determination by a judge after a careful review of the facts of the case. What the parties don't negotiate is the impact a conviction can have long after the terms and conditions have been satisfied: "Even when the sentence has been completely served, the fact that a man has been convicted of a felony pursues him like Nemesis."⁽¹⁾

I do not argue that an individual should not be prosecuted, convicted and punished for committing a crime. Rather, I call for the criminal justice system and society as a whole to recognize that the long-term effects of a criminal conviction can sometimes cause greater damage to society than the actual criminal conduct itself did. How? The disenfranchisement of legions of citizens creates a class of unemployable or underemployable individuals who continue to be burdened by conduct that occurred years prior. Are high recidivism rates any surprise when a past conviction denies them the ability to meaningfully participate in society even after they have satisfied all of the terms and conditions our criminal justice system has imposed? The silent punishment of a prior criminal conviction lasts far longer than the criminal justice system's punishment. Indeed, it is often a life sentence.

Recent initiatives such as California Assembly Bill 1008 have sought to address the un-employability

effect of old convictions and arrests. This “ban the box” initiative seeks to preclude employers from asking a potential employee about their criminal history prior to making them a conditional job offer. If an employer discovers a criminal history after the conditional offer, the bill, which became law January 1, 2018, requires an employer to “make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position.” Gov. Code § 12592 (d)(1)(A) It also prohibits the consideration of older convictions, arrests without conviction and certain other circumstances, including sealed records. Gov. Code § 12592 (a)(3)

Assembly Bill 1008 is a good start. However its most direct effect is only to preclude the employer from asking about a conviction prior to a job offer. After an offer is made the employer can still deny the potential employee a job as long as they follow the process outlined in the statute. Interestingly, the statute directs an employer to provide examples to a potential employee of mitigation or rehabilitation evidence that the applicant could voluntarily provide. The California legislature needs to create a companion piece of legislation where a person who was been convicted of a crime and successfully completed their sentence is automatically deemed rehabilitated. Of course, certain offenses such as sex crimes and certain violent crimes could be exempt from this, but the majority of misdemeanors and less serious felonies should be eligible upon successful completion of sentence/probation for an automatic certificate proving rehabilitation which would then deny an employer the ability to consider the old conviction at all.

As society slowly seems to be realizing, even the direct costs of our criminal justice system are unsustainable. It is a disgrace that California has built more prisons than schools in the last 30 years. To a large degree, recent criminal justice reform has focused on redirecting individuals away from these prisons because of the sheer magnitude of the costs. What has not been addressed in a meaningful way is what to do about the masses of individuals who have been convicted of a crime, paid their debt to society through imprisonment, restitution, probation and otherwise fulfilling their sentences but cannot rejoin productive society because of the mere fact of their conviction. Many of these individuals are unemployable, unpromotable, unable to gain citizenship, unable even to secure housing.

As AB 1008 begins to acknowledge, conviction for a crime can have a long tail, or half-life, haunting the convicted for years after he or she serves time and finishes probation successfully. Media archives, such

as newspapers, that were formerly stored in physical format are now stored electronically online. An arrest or prosecution for a crime now becomes part of a person's digital life. A Google search of a potential employee or even a new friend retrieves decades-old newspaper articles that mention an arrest or allegation that was later dropped or even disproved. News sources do not necessarily publish a story to inform readers that the allegation was false, the charges were dropped, or the civil complaint was dismissed.

Like the rumors perpetuated across town in Harper Lee's *To Kill a Mockingbird*, rumors are perpetuated in internet archives and private background check databases that have not been cleaned over time. Scout describes Boo Radley to the reader: "Inside the house lived a malevolent phantom. People said he existed, but Jem and I had never seen him. People said he went out at night . . . Any stealthy small crimes committed in Maycomb were his work." Even once the culprit was found, "people still looked at the Radley Place, unwilling to discard their initial suspicions." (p. 9)

When information beyond what the legislature comprehended or envisioned regarding criminal convictions is accessible years later, it destroys the proportionality of the punishment to the crime and creates a more severe punishment than was originally envisioned. Proportionality between the seriousness of the offense and severity of the criminal sanction is "a bedrock principle of our sentencing jurisprudence." (2) While AB 1008 starts to address this problem in the employment arena, it does not go far enough. California must provide its individuals convicted of a criminal offense a comprehensive way to clear their records once they have served their original sentence and rehabilitated themselves from their criminal past. The current structure of post-conviction relief available to individuals who wish to clean their records is woefully insufficient in the modern age of digital records and online access to Court records. One suggestion would be to allow an individual convicted of a crime to petition to the sentencing court for a certificate of successful completion of sentence and a finding of rehabilitation which would officially seal the court file related to their conviction. Another would be automatically vacate a conviction once an individual has successfully completed their sentence and not violated their term of probation. California needs to find additional ways to address the lifelong impact in all areas of a person's life of criminal convictions; the current system creates punishment disproportionate to the crime.

Research and editorial assistance provided by Jonathon Kathrien J.D.

(1) Travis, Jeremy, "Invisible Punishment: An Instrument of Social Exclusion," published in Invisible Punishment: The Collateral Consequences of Mass Imprisonment, page 19; quoting the National Council on Crime and Delinquency

(2) *Ib.*, page 35

Timothy Barteau

FEB 08, 2018

BY NICOLE ÇABALETTE

The Marin Lawyer recently sat down with Tim Barteau, MCBA's new co-chair of the Probate and Estate Planning Section. MCBA's sections are a critical part of the association, offering an opportunity not only to stay up to date through CLE programs but to get to know colleagues. The Probate and Estate Planning section is one of the larger and more active sections and we spoke with Tim about the section as well as his practice and life in Marin.

What is your practice area?

I am a career litigator. However, I went back to school to obtain my LL.M. in Tax and my Estate Planning Certificate, and have spent the last five years developing knowledge and experience in the areas of estate planning, trust and probate administration and trust and estate litigation.

Do you have a particular emphasis?

Litigation, whether civil or trust & estate, are my main areas of emphasis. However, I also focus my practice on trust and probate administration.

Why did you decide to become a lawyer?

My father was a general practitioner in Indiana. I recall summers spent in his law office and tagging along on various court appearances. Likely because of this, I have always known in some way that I wanted to become a lawyer.

Why do you live in Marin?

I was raised in Mill Valley from the third grade forward. College and law school took me away to different places, and I started my career in San Francisco. When my wife was pregnant with our first child and we had outgrown our one bedroom apartment in San Francisco, crossing the bridge and living back in Marin seemed like the only choice (although it took me a little while to convince my wife of that). Given the beauty, location, and proximity to Mt. Tamalpais and open space, I don't think there is anywhere else that I would rather live.

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

First and foremost, spending time with my family. Otherwise, I train for and participate (definitely not compete) in triathlons and other races.

Tell us about your family.

I met my wife while still in college, and we have been together for 19 years. I have two children in elementary school. My mom and brother also both still live in the area.

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

I have always wanted to be a writer. At this point, I have no grand aspiration of writing as another career. However, writing a book is high on my bucket list.

Why did you join MCBA?

To develop relationships with attorneys and other MCBA members in the area.

Why did you become a Section Co-Chair?

I have found the Estate Planning and Probate Section to be a great resource for Marin attorneys and other professionals in my practice area. I volunteered as Section Co-Chair to do my part in maintaining and developing this resource while building on relationships with the community served by the Section.

What is your vision for the Probate and Estate Planning Section this year?

I would like to work with my co-chair, Valerie Kushel, and continue the excellent work done by past chairs in bringing varied, informative and useful speakers to our monthly meetings. Additionally, I would hope to organize other events or activities that would allow Section members to come together and interact informally.

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

I honestly can't think of anything that stands out. I'm just happy to have the good fortune to do something I love for a living.

Tim Barteau will start a new job with the Keystone Law Group in San Francisco on March 1st where he will continue his trusts and estates litigation and administration practice.

Fair Housing Advocates of Northern California

FEB 08, 2018

BY NICOLE ÇABALETTE

An African-American renter found a new home in Marin and moved in. Her landlord told her that her neighbors would be upset that she had rented to an African-American. The landlord began harassing the tenant, and following a dispute about rent, placed a sign in her window: "Black Section 8 Tenant – Shameless [tenant's name]." This tenant's story of racial discrimination is devastating and is even more disturbing because it happened within the last year.

This year marks fifty years since the federal Fair Housing Act was enacted. After the assassination of Martin Luther King, Jr., 125 cities erupted in riots. Seventy thousand military troops and National Guardsmen were deployed in twenty-nine states. One week later, in an attempt to address racial segregation and discrimination, Lyndon Johnson signed the Act into law.

The Fair Housing Act protects individuals from discrimination in the sale, rental and financing of housing based on race, color, national origin, religion, gender, disability and familial status. In California, there are additional protections for marital status, sexual orientation, immigration status, citizenship, primary language, ancestry, source of income and arbitrary characteristics such as age or physical appearance through the California Fair Employment and Housing Act.

Fast forward to 2018. Fair Housing Advocates of Northern California ("FHANC"), formerly known as Fair Housing of Marin, a nonprofit organization serving Marin, Solano, Sonoma and other Bay Area counties, works to ensure equal housing opportunity and to educate the community on the value of diversity in our neighborhoods.

Based in San Rafael, and celebrating its 32nd year serving our community, FHANC is a HUD-Certified Housing Counseling Agency which provides free fair housing counseling, investigation, enforcement, mediation, and legal or administrative referrals to those who have experienced housing discrimination. FHANC also provides foreclosure prevention counseling for distressed homeowners. FHANC staff may represent tenants in the administrative complaint process, and as an agency with standing, sometimes brings administrative complaints and lawsuits in order to change discriminatory housing policies.

Education

For property owners and managers, and other real estate professionals in both the private and public sectors, FHANC provides fair housing law training programs and seminars. Community and tenant groups can also schedule fair housing presentations.

For homeowners suffering a financial hardship, FHANC provides guidance on eligibility and qualifications for participation in federal and state programs to help them stay in their homes, maintain an affordable mortgage payment, and avoid foreclosure.

For homebuyers, FHANC offers pre-purchase education workshops in English and Spanish in the fall and spring, with the next English workshop scheduled for March 1. FHANC's (<http://www.fairhousingnorcal.org/>) website is also a fantastic resource for best practices and legal information for tenants, landlords, homeowners and other industry professionals.

Advocacy

FHANC conducts on-call housing discrimination investigations, wherein trained testers take on the role of someone inquiring about housing and report on their experience. Testing is critical to the enforcement of fair housing laws and serves to expose discriminatory practices and patterns that might otherwise go undetected. The reports can be used as evidence in support of a housing discrimination complaint.

For example, FHANC recently conducted a two-part investigation at a property in Marin, using callers with racially-identifiable voices. In both instances, the housing provider refused to schedule a private appointment with the African-American callers; however, when speaking with Caucasian callers just

hours later, he agreed to meet without question and offered a lower security deposit.

Another, lesser known piece of FHANC's advocacy work is its investigations of bank-owned (REO) properties, which commenced in 2013. On February 1, 2018, FHANC, together with the National Fair Housing Alliance and eighteen other fair housing organizations around the country, filed a (<http://www.fairhousingnorcal.org/press-releases>) lawsuit against a Deutsche Bank, its loan servicer, Ocwen Financial, and its property manager, Altisource Portfolian Solutions, related to their failure to maintain and market Deutsche Bank's REO properties in neighborhoods of color compared to white neighborhoods. FHANC and its partners filed a similar lawsuit last year against Fannie Mae.

Learn More and Get Involved

On April 25, to celebrate Fair Housing Month and to commemorate the 50th anniversary of the Fair Housing Act's passage, FHANC will present the 2018 Fair Housing Conference at the Embassy Suites Hotel in San Rafael, which will feature experts in the fair housing field who will address pressing fair housing concerns affecting Marin County and the Bay Area, and offer strategies to promote equal housing opportunity.

The examples of blatant discrimination cited above provide a glimpse into the kind of work still required, fifty years later, to continue the fight for equal housing opportunity. If you are looking for ways to get involved, FHANC is always looking for volunteers interested in becoming testers. If you are interested in helping to uncover illegal housing discrimination, please (katherine@fairhousingnorcal.org) email or call Katherine Collado at 415.483.7516. FHANC is also seeking committed board members and (<https://fairhousingnorcal.networkforgood.com/projects/19823-annual-appeal-2017-fhanc>) donations are always welcome. If you are interested in learning more, please (peattie@fairhousingnorcal.org) email or call FHANC's Executive Director, Caroline Peattie at 415.457.5025.

The Gossip According to Matthew

FEB 08, 2018

BY MATT WHITE

Changes are coming to the District Attorney's office. Last year, DA Ed Berberian announced that he will not run for re-election in 2018. Now Ed's second-in-command, Barry Borden, has announced his retirement, effective at the end of January. As reported here last month, immediate past MCBA President Dorothy Proudfoot recently left the Marin DA's office to become an administrative law judge in San Francisco.

On the other hand, Marin County Public Defender Jose Varela has been on a lateral hiring tear. Kristie Lee Morris, who recently lateraled in from the Los Angeles PD's office, cut her teeth back in 2013-14 as a certified law clerk for the Marin PD's office. Tam grad (and accomplished boxer) Tyler Hicks comes onboard after a stint with the Sonoma County public defender's office. U Tex grad Nadia Iqbal, all the way from the Tulare County PD's office, now handles a felony caseload.

Population explosion at the County Counsel's office! Deputy Valorie Boughey gave birth to her second child, Luke, on July 30; for reasons unknown to your correspondent, he is known as "El Duke" around the house. Meanwhile, not to be outdone, Deputy County Counsel Brian Case became a proud father as Wesley Sullivan Case (6.5 pounds, 19 inches) left the womb and entered the world over the Thanksgiving holiday weekend—just in time to qualify for a 2017 tax deduction. Way to go, Wes!

Those of you who attended Tom Brown's installation dinner on January 20 know how very attractive and elegant everyone looked that night. But did you know that the MCBA photo crew documented the entire event? Check out the stunning photographs on the MCBA Facebook page (<https://www.facebook.com/marincountybar/>) here. The event lasted only an evening, but the

photographs of you on the dance floor will last forever!

Monster appellate victory for San Rafael appellate counsel Elliot Bien, who led a team of lawyers to a \$100 million win in the Court of Appeal on behalf of the City of Modesto and against (boo!) Dow Chemical. Short version: "Many years of casual disposal of a dry cleaning solvent had caused heavy accumulations of the carcinogen in soil and groundwater at dozens of sites." Long version can be found in this (<http://www.courts.ca.gov/opinions/documents/A134419.PDF>) link.

San Rafael family lawyer Ayanna Jenkins-Toney has gone bicoastal! While the rest of us are watching football games, Ayanna is opening up a second shop in Washington, D.C., across from Union Station, walking distance to the Capitol. Pundits predict a political career; stay tuned for news as it happens.

Confused about which judge does what these days? It can be hard to keep track. As of this writing, here's the lineup: Judges Chernus, Freccero, and Haakenson hold down the civil fort. Judges Chou, Howard, Simmons, and Sweet run criminal departments. (Judge Sweet also sits in Adult Drug Court, and Judge Chou in STAR court; newly ex-presiding Judge Simmons assigned herself probate, conservatorship, guardianship, and mental health calendars on top of her criminal duties.) Judges Adams, Talamantes, and Wood comprise the family law bench; Judge Wood also handles juvenile cases and presides over the Community Court. Judges Lichtblau and Jordan are in all-purpose (overflow) trial departments, helping to ensure that criminal and civil trials go out when scheduled. For extra credit, note that we have two commissioners: Frank Drago in traffic, and Christopher Longaker in Family Support. Got it? Good.

Paul Cohen, formerly Executive Director of Legal Aid of Marin, has set up a private law practice in Novato, emphasizing bilingual landlord-tenant law.

Good news! Your correspondent reported last month that Karen Howard, our membership and events coordinator, was leaving the MCBA. This turns out to be only partly true. Ms. Howard will remain, at least for now, to coordinate publication of this newsletter. Apologies all around.

You too can see your name in lights, or at least bold face font. Let me know if you (or someone you know) wins an award, takes a new job, performs in a play or concert, or does anything else worth noting.

To the extent I've missed comings and goings at the courthouse (see above), I'm happy to set the record straight. This column doesn't write itself, you know!

IN MEMORIAM

Henry D. Froneberger

FEB 08, 2018

BY DARIN LEVILOFF

MCBA member Henry D. Froneberger passed on January 5, 2018 after a short but heroic battle with cancer. Well respected in the Marin County legal community, Henry joined John D. Burroughs in Point Reyes Station in 1990 after practicing in San Francisco for seventeen years. Henry was very active in the community and devoted many hours over the years to volunteer work for various non-profit groups, provided pro bono legal assistance through Legal Aid, was a youth soccer coach, a baseball coach and commissioner of Little League Baseball in Fairfax, and served as a mentor for “at risk” youth. Henry also served with distinction in the armed forces and was a combat veteran of the Vietnam War. Henry’s firm will continue operating under the name Froneberger and Leviloff to carry on his legacy.