

# The News, Emotions and the Practice of Law

SEP 04, 2018

**BY ROBERT ROSBOROUGH**

August is often a dull month, where the pace has slowed from many people being on vacation or focusing on children returning to school. While perhaps that was the case for many of us this year, the news cycle did not take August off. When Morgan Daly started writing her article on a place for cash bail in bail reform, it looked as if California's bail reform might be falling apart. But before the month was out, we had a signed bill that will go into effect in October, 2019. While a sea change in criminal justice was happening here, the criminal justice system back East produced some remarkable drama. Be sure to read Tom Brown's President's Message for some thoughts on how a perhaps unexpected institution is suffering from the latest events surrounding President Trump's associates: the attorney-client relationship. What do you think the future holds: will attorney-client protections erode or will a reaction against that prevail?

Both bail reform and the Mueller investigation produce some heated emotions. Conflict tends to do that. How do you handle these emotions in your practice? Do you talk with your clients about making "rational decisions" when they are emotional? Or do you ask them more about what they're feeling? Eileen Barker writes about the need for "emotional literacy" among mediators and I would argue that the need applies almost as much to attorneys. As a conflict resolution professor, I teach students how much emotions are a part of our decision-making process and as a meditation teacher, I teach how much meditation is about gaining a better relationship with our emotions. I encourage everyone to read Eileen's article for some insight into both of those things: the role of emotions in conflict and how, whether as mediators or lawyers, our own relationship with emotions influences how we help—or don't help—our clients as they struggle with conflict.

Speaking of emotions, Marie Barnes meditates on the role of joy in the practice of law and invites us to consider what gives each of us joy in our practices. I think simply asking the question is a good start to cultivating joy in your practice. If that is something you'd like to do more of, Marie invites you to attend the Joy in the Law conference on September 28th. MCBA is a co-sponsor of this day-long conference designed to explore and cultivate practices that bring us joy in the practice of law. And really, who wouldn't like a little more joy? You can sign up through MCBA's events page or through a link in Marie's article. I hope to see you there.

Another event I encourage our members to attend is an Open House at Legal Aid of Marin on October 11th. As many of our readers know, Legal Aid has a new executive director: Stephanie Haffner. I profile her to help you get to know her better and learn a little about Legal Aid. She is grateful for the remarkable amount of time that members of the bar donate to Legal Aid clients. I volunteer for Legal Aid one afternoon a month but you don't have to have a regular gig to volunteer. Read the profile and get in touch with her to explore how you might help or at least add yourself to the guest list for the Open House.

As always, I encourage feedback from our readers, whether a few comments to me or another board member at an event, a letter to the Editor, or best of all, an article for a future issue with content you'd like to see in the Marin Lawyer. Until next time, I wish everyone a little more joy in their practice.

# The Erosion of the Attorney-Client Relationship

SEP 03, 2018

**BY THOMAS S. BROWN**

Since leaving the District Attorney's Office and going into private practice, I have been schooled and tutored that the duty of confidentiality in the attorney-client relationship is one of the most important principles an attorney can uphold. Rule 3-100 of the California Rules of Professional Conduct (soon to be Rule 1.6) provides that an attorney shall not reveal confidential communications without the informed consent of the client but may disclose confidential information if the attorney reasonably believes the disclosure is necessary to prevent certain criminal acts (or in other limited circumstances under the new rule.) The comments to the rule, both old and new, note that "Preserving the confidentiality of client information contributes to the trust that is the hallmark of the client-lawyer relationship."

Protecting the interests of individual and corporate clients facing government investigations and prosecutions is an integral part of my practice. The decision whether to disclose confidential information provided by my clients and when to disclose such information is a frequent challenge. It may be in the client's interest to self-disclose conduct that may violate a specific regulation or statute in exchange for a lesser sanction or to cooperate with the government in an ongoing investigation or prosecution. Alternatively, the more prudent approach may be to divulge nothing and maintain the sacred confidences held between an attorney and his or her client.

Like many of you, I've followed the daily legal maneuverings and challenges arising out of special counsel Robert Mueller's investigation. The impact of this investigation on the attorney-client relationship is indeed significant. We have the frayed relationship between Attorney General Sessions and the President, the revolving door of the President's legal team, and the revelation that Donald McGhan, the current White House counsel, apparently spent nearly 30 hours with Mueller's

investigators or prosecutors, perhaps without the knowledge of the President. The event with the most impact on the attorney-client relationship, however, must be the headline last week, "Lawyer pleads guilty to violating campaign finance laws, implicates Trump." Michael Cohen's recent decision to plead guilty to tax evasion and violating our nation's campaign finance laws, among other related offenses, was truly a game-changer in the attorney-client relationship.

Putting aside one's own political views and attempting to ignore the never-ending spin from both conservative and liberal sources on the disgraced "fixer's" decision, that's really a very troubling headline to read as an attorney. An attorney who secretly tape recorded and divulged confidential client communications, later exposing his former client, in this case the President of the United States, to potential criminal liability is not an everyday occurrence in the attorney-client relationship. New York, unlike California, is a one-party consent state for recording conversations and the practice is not per se prohibited. The New York bar's formal opinion is that a lawyer cannot secretly record conversations "as a matter of routine practice," but may do so if the attorney had a reasonable basis for believing that disclosing that a recording was taking place would "impair pursuit of a generally accepted societal good." It's hard to conceive how Mr. Cohen could contend that recording conversations with his client in which they purportedly discussed the payment of so called "hush money" to a woman who may have had an affair with the President constitutes the "pursuit of the generally accepted societal good." The disclosure appears to fall outside Rule 3-100's exception that a member may reveal confidential information necessary to prevent a criminal act since Cohen is disclosing information about a criminal event that, according to him, already occurred, not to mention that, as far as we know, the criminal act did not involve a risk of death or serious bodily harm, which at least in California is required for disclosure. I expect that Mr. Cohen's counsel would contend that the President has already waived any existing privilege by his consistent statements and tweets attacking Mr. Cohen and their prior legal relationship. Whether Mr. Cohen's guilty plea results in legal peril for President Trump, it is clear that instead of "fixing" issues for his client, Mr. Cohen has plainly destroyed the fundamental relationship of trust in the attorney-client relationship.

Much closer to home, we have no shortage of attorneys and members of the bar doing their best to preserve trust in the attorney-client relationship by doing good work for their clients and good work for the community. This past weekend, I was pleased to attend the Marin Trial Lawyers Association ("MTLA") Annual Judges Dinner where the Honorable Beverly Wood received MTLA's Judge of

the Year Award, which recognized her for the founding of and continued involvement in the Marin Community Court. The Community Court is a partnership among the Society of St. Vincent De Paul, Legal Aid of Marin and the Marin Superior Court, designed to help the homeless and other underprivileged resolve their legal issues in a non-adversarial and positive environment. Judge Wood's acceptance speech recognized the substantial volunteer work done by Marin attorneys and encouraged those in attendance to continue to devote their time outside of the office to helping the less fortunate in our county. Jonathan Gertler was acknowledged as the MTLA President's Award Recipient and he followed Judge Wood's inspiring words with a humble story about a matter early on in his career when he represented a seriously injured individual in a case against a large railroad. Jonathan went on to stress the need for attorneys to continue to fight for rights of those who have been injured or prejudiced.

In keeping with the theme of "Lawyers Behaving Well," and with school starting up again, I would like to extend a special note of gratitude to all of the mock trial coaches who have been so instrumental in the development and success of the County's mock trial program over the years. Many members of MCBA have coached or otherwise been involved in the program, including in just the last three years our own Past Presidents Dorothy Chou Proudfoot, Joel Gumbiner and Gary Ragghianti, current Board Member and District Attorney candidate Anna Pletcher, Deputy District Attorney Tom McCallister, Judge Beverly Wood (when she's not busy receiving awards) and Gordon McAuley, Shelly Kramer, Robert Epstein, Chris Sheron, and Sara Allman. This past week, David Vogelstein, who coached the highly successful Tamalpais High School mock trial team to a national and several state championships, announced his "retirement" from the mock trial program. Here is a (<http://www.marinij.com/social-affairs/20180820/vogie-era-ends-for-tamalpais-highs-mock-trial-team>) link to the article from the Marin IJ about David's retirement for your review and enjoyment. Please join me in thanking David and all of the other coaches for their contributions to this invaluable program that does much to educate our citizens about the important role of law in our society, not to mention inspire a future generation of lawyers.

As we move into the fall, MCBA is excited to have Judge William H. Orrick III address the membership on the topic of the Continuing Role of Justice in our Federal Court System at this month's (<https://marinbar.org/events/?type=event&id=209>) meeting on September 26, followed by the (<https://www.eventbrite.com/e/joy-in-the-law-conference-2018-tickets-41299245154?discount=MCBA>)

Joy in the Law Conference on September 28. Our annual (<https://marinbar.org/events/?type=event&id=212>) Judges Luncheon takes place on October 24 and your chance to earn those elusive specialty CLE credits comes with the (<https://marinbar.org/mcle-fair/?id=3>) MCLE Fair on November 29, 2018. Please put these dates on your calendars.

Finally, the Board of Directors welcomes Deputy District Attorney Andy Perez to the Board. Andy will be filling the slot of one of our Board members who had to step down due to work conflicts. Andy is the head of the Marin County District Attorney's Consumer and Environmental Protection Unit and we look forward to his involvement in the Board.

See you around the courts.

Best,

Tom

# Emotional Literacy for Mediators

SEP 02, 2018

**BY EILEEN BARKER**

You don't have to be a mediator to know that emotional issues lie at the heart of conflict. As Bernard Mayer points out, "emotions are the energy that fuel conflict," but they can also be the "key to de-escalating it."<sup>1</sup> The ability to deal skillfully with emotions can be essential to finding lasting resolution. Yet emotions are often overlooked, feared, avoided and misunderstood by mediators, parties and attorneys. As mediators, we need to become adept at recognizing, understanding and addressing emotional issues. We need to become emotionally literate, fluent in the emotional language of conflict.

Conflict arises from unmet human needs, and the emotions that are closely linked to those needs. Emotions are often under the surface, but they are always in play. Much information about the parties' relationship can be gleaned from astute observation of the emotional context of the conflict. In some cases, what parties want most is the chance to feel heard, and although a written agreement is a central part of most settlements, it may be less important to the parties than the emotional satisfaction of having their needs and feelings understood.

Emotional literacy enables the mediator to assess the parties' emotional states and find a balanced and constructive way of dealing with them. It challenges her to walk the fine line between emotional expression that is useful on the one hand, and detrimental on the other. Mayer astutely writes: "The art of dealing with conflict often lies in finding the narrow path between useful expression of emotions and destructive polarization."<sup>2</sup> Indeed, it is most likely the fear of destructive polarization that causes mediators to avoid the emotional dimension in the first place.

Not only must mediators walk the "narrow path," they must do so in a culture that is largely ignorant of, and frequently hostile toward, emotional expression. When a mediator mentions feelings, he may well be met with skepticism ("I didn't come here for therapy") or derision ("too touchy-feely"). Attorneys will often squirm in their seats, ask what possible relevance emotions could

have to the dispute, and urge that the discussion be refocused elsewhere.

In the face of this, the mediator's challenge is to become not only emotionally literate, but deft. In a recent survey, mediation trainers rated addressing emotional issues as generally more important than addressing substantive issues in a mediation session. This suggests that failure to adequately address the emotional issues can result in ineffective mediation. Close to half those surveyed, including two-thirds of the most experienced mediators thought mediation training does not sufficiently teach mediators how to address the parties' emotional reactions.<sup>3</sup>

## Emotional Awareness

So how can mediators address the parties' emotions in an effective way? What often stands in the way of emotional literacy is our own habit of recoiling when faced with strong feelings, both in ourselves and in others. Why do we tend to resist, deny or avoid dealing with feelings? The answer lies in our own relationship with emotion.

Many of us are more comfortable in the realm of the intellect, the black and white world of logic. We find emotions difficult terrain, a foreign and elusive language. As Kenneth Cloke observes, emotions are multi-layered and difficult to label: "Grief and pain are often masked by anger, as fear of loss is masked by denial. This makes it necessary to search beneath the surface of these volatile emotions for deeper truth."<sup>4</sup>

Daniel Goleman, in his groundbreaking book Emotional Intelligence, says that the foundation of emotional intelligence is self-awareness. He uses this term to mean "an ongoing attention to one's internal states," or the ability to monitor one's feelings from moment to moment.<sup>5</sup>

Thus, to gain emotional literacy, the mediator must begin to understand her own internal states, and develop greater comfort and skill in this area. A useful starting place in gaining greater awareness is self-assessment. Try answering these questions:

- Are you aware of what you are feeling moment to moment?
- What are your beliefs about emotion?



- Which feelings are okay for you to have and express, and which are not?
- What is your family history with emotional expression?
- What cultural and gender-based messages have influenced your emotional expression?

Stone, Patton and Heen, authors of *Difficult Conversations*, refer to this as the “emotional footprint” and state: “Exploring the contours of your footprint across a variety of relationships can be extremely helpful in raising your awareness of what you are feeling and why.”<sup>6</sup>

The attitudes and beliefs that make up our unique emotional footprint are formed in early childhood and are deeply ingrained. We need to explore where our forbidden territory lies, and what behaviors and emotions cause us to contract or recoil. Only when we understand the way in which we relate to emotions, and embrace the richness of emotion, can we begin effectively to support others.

#### Addressing Emotional Issues in Mediation

A moment often arises in mediation when the “real issue” emerges on the horizon. Even if it has not been spoken of or acknowledged, the emotional charge is palpable. It’s a question away. Cloke describes this as a “dangerous” moment, a moment when “something fundamental could shift.”<sup>7</sup> The mediator must decide whether to avoid or address the deeper issue.

This can be a profound choice, and there is no universal “right” answer. It may be wise to sidestep an emotional issue in one situation, and essential to address it in another. Mediators might ask themselves the following questions:

- Are you making a conscious decision at that moment, or are you reacting to the emotional charge in an unconscious way?
- Are you aware of the emotion looming on the horizon, or does it go unnoticed on your radar?
- Do you avoid addressing the emotion because of personal discomfort?
- Do you ignore the emotional energy because you are unsure whether or how to address it?
- Are you willing to allow parties to feel and express emotion when you sense that it would help them move forward?
- Are you willing to take the risk of moving into uncertain terrain?

Supporting appropriate emotional expression can be one of the keys to helping parties resolve conflict. It can create an opening, a willingness to let go of the conflict. It can open the door for movement and new possibilities. However, the mediator's comfort level with emotions will often dictate the level of emotional expression that is allowed,<sup>8</sup> and thus, may limit or expand opportunities for resolution.

Conflict resolution has been described as requiring an advanced skill set. "In the realm of emotional intelligence, conflict management is a high-level skill that draws upon integrated use of several emotional competencies: self-awareness, self-regulation, empathy and social skill."<sup>9</sup>

As mediators, we frequently sit in the middle of intense emotional cross-currents. We must be able to allow the tension of conflict, without needing to suppress it or rush in to fix it. We must have the ability to empathize with strong emotions, such as grief and anger, and yet, somewhat paradoxically, also remain detached and objective. We must develop a tolerance, and better still, an appreciation, for emotional expression. In short, our work requires not only the development of emotional literacy, but ultimately emotional mastery.

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<sup>1</sup>Mayer, Bernard, *The Dynamics of Conflict Resolution*, Jossey-Bass, 2000, pp.10-11.

<sup>2</sup>Mayer, p.11.

<sup>3</sup>Schreier, Lori, *Emotional Intelligence and Mediation Training*, *Conflict Resolution Quarterly*, Vol. 20, No. 1, 2002, p. 107

<sup>4</sup>Cloke, Kenneth, *Mediating Dangerously*, Jossey-Bass, 2001, p. 61.

<sup>5</sup>Goleman, Daniel, *Emotional Intelligence*, Bantam Books, 1995, pp. 43-4.

<sup>6</sup>Stone, Douglas, Patton, Bruce and Heen, Sheila, *Difficult Conversations*, Penguin Books, 1999, pp. 91-92.

<sup>7</sup>Cloke, pp. 4-5.

<sup>8</sup>Schreier, p. 104.

<sup>9</sup>Schreier, p. 101.

# Cash Bail: There's Still a Role for it in a Reformed Bail System

SEP 01, 2018

**BY MORGAN H. DALY**

A robust public debate is taking place about shaking up the criminal justice bail system and, more specifically, eliminating money bail. The District Attorneys for Brooklyn and Manhattan announced in January that they would no longer be seeking money bail in misdemeanor cases. In June, Senator Bernie Sanders introduced "The No Money Bail Act," which would formally end the use of secured bonds in the federal criminal court system and provide incentives for states to reform their own bail systems. The California Money Bail Reform Act (SB10, AB 42), which will establish a complicated, costly pretrial risk assessment system and allow courts to impose only non-monetary conditions of pretrial release, passed the Legislature on August 21st, was signed by Governor Brown on August 28th and takes effect in October 2019.

One of the most promising attempts at reform came from our local appellate district. In January, the First District Court of Appeal decided *In re Humphrey* (now under review by the California Supreme Court), which declared California's bail system unconstitutional and required courts to engage in an individualized analysis of an accused's ability to pay and allowed for imposition of a commensurate amount of bail only if no less restrictive alternative (such as GPS monitoring) would ensure defendant's appearance at future court dates.<sup>1</sup>

Bail reform is long overdue. As a criminal defense attorney the majority of whose clients are indigent, I have witnessed firsthand the unfairness of the current bail system, in which poor defendants are held in custody pending trial solely because they cannot afford bail. However, I am not convinced that reform requires the elimination of cash bail entirely.

Under the current system, the amount of bail is set according to a uniform bail schedule and the bail

amount can be posted in cash or through a bail bondsman. The bail bondsman posts the entire amount of the bail, say \$50,000, in exchange for a non-refundable 10% fee, which here would be \$5,000. If the defendant failed to show up for future court appearances, the bail bondsman would forfeit the bail.

When Humphrey was still good law, I watched one of our Marin Superior Court judges carefully consider defendants' individual circumstances in setting bail. In one case, a defendant with no criminal history who worked full time at a local retailer earning only about \$15/hour, asked to be released on his own recognizance. The judge set bail at \$10,000, reasoning that the defendant would be able to come up with \$1,000 to pay the 10% fee to the bail bonds company, which would put up the full bail amount. In this circumstance, the bail bondsman is allowed to bet that the defendant will return to court, in which case it would get its \$10,000 back and get to keep the \$1,000 fee taken from defendant. But shouldn't the defendant be allowed to bet on himself?

The purpose of bail is to ensure a defendant's appearance at future court appearances. There is no reason why a reasonable bail amount cannot be used where appropriate to incentivize defendants to return to court. However, in order to restore the appropriate incentives, bail should be set in an amount the defendant can actually afford. If the court determines that the defendant can afford \$1,000 that should be the bail amount if he posts his own bail in cash. The defendant would get his money back after returning to court every time through the conclusion of his case. If he borrows from friends and family to raise the money, all the better – then he has a support system of people who are also invested in making sure he gets to court.

The gross inequities caused by our current bail system do not stem solely from the use of financial incentives. Reasonable bail, tailored to what a defendant can actually afford out of his or her own pocket, should be considered as another alternative to the current system in appropriate circumstances.

<hr align="left" width="50%) <sup>1</sup>In re Humphrey, Jan. 25, 2018, A152056, review granted S247278.

# Joy in the Law: An Invitation to Reflect and Learn

SEP 01, 2018

**BY MARIE BARNES**

Joy in the law—is that even possible? Joy is not something the general public or even we lawyers equate with our profession. When I meet people in a social setting and tell them that I am a lawyer, I often get a shocked stare and a response along the lines of, “You are too nice to be a lawyer!” I laugh and say, “Thank you!” while wondering why lawyers are not expected to be nice. Another frequent response is, “How are you a lawyer with two small children?” to which I think that I never imagined not starting a family and being a lawyer.

These comments seem endless and tell me that the perception of what it’s like being a lawyer is often not positive but rather gloomy. No doubt this perception stems from the reality of many. So is it possible to find joy in the law? I guess it depends on how you define joy. I invite readers, whether you have been practicing for over thirty years and retirement is on the horizon or whether you are newly licensed, to reflect on your own definitions of joy and whether you can say you have found joy in your practice.

As we all know, the practice of law itself can be intense and not for the faint of heart, whether you are in big law with big billable hour demands or you are a public interest attorney worried about your client’s liberty, the pressure can be insurmountable. Where do we find the joy? Is it in the amount of money we make every year? Is it in winning a case? Is it finding a way to relieve the innate pressure we all encounter from the nature of our jobs? Is it striking the perfect work/life balance?

The answer is, it depends. How fitting for lawyers that the answer is not black or white but somewhat gray. We may be able to agree that joy is a happy emotional state but whether or not there can be joy in the law can only be answered by you personally based on what brings you happiness.

I believe that you can find joy in the law. Personally, I have always lived by the mantra that as long as I am happy in my practice then I have found joy in the law, but the minute I no longer have that emotion then it's time to re-group. I have been lucky enough to find a group of like-minded women attorneys who help me re-group. We have formed a group called Joy in the Law to support each other in finding joy in our profession. Later this month, we are holding our second conference with the purpose of promoting joy in the legal profession by sharing and teaching techniques for cultivating joy. The conference is open to men and women and offers three specialty credits (two in competence and one in ethics.) Past attendees have said it was life changing.

MCBA is one of the conference sponsors. If you are interested in exploring what still seems to many lawyers an unorthodox concept, join us on September 28, 2018. Learn more about it and sign up (<https://joyinthelaw.com/2018-conference>) here. Do not miss this opportunity to share, learn and recharge!

# The End of an Era for Tamalpais High's Mock Trial Program

AUG 31, 2018

**BY MARIN LAWYER**

Attorneys who have acted as mock trial coaches have been instrumental in the development and success of Marin County's mock trial program over the years. Mock trial educates our citizens about the important role of law in our society, not to mention inspires a future generation of lawyers. Many members of MCBA have coached or otherwise been involved in the program, including our own Past Presidents Dorothy Chou Proudfoot and Joel Gumbiner, current Board Member and District Attorney candidate Anna Pletcher, and Deputy District Attorney Tom McCallister, to name a few. This past week, David Vogelstein, who coached the highly successful Tamalpais High School mock trial team to a national and several state championships, announced his "retirement" from the mock trial program. Read about David's retirement in this [Marin IJ article](http://www.marinij.com/social-affairs/20180820/vogie-era-ends-for-tamalpais-highs-mock-trial-team).

# J. Timothy Nardell

AUG 30, 2018

**BY MARIN LAWYER**

What is your practice area?

I run a boutique litigation firm with my law partner Houman Chitsaz that we call Nardell Chitsaz & Associates or “NCA.” Houman and I just celebrated our tenth year in business together this April. I think the best label for our practice is “general civil litigation,” with an emphasis on commercial and real estate disputes. Our office is located at 999 Fifth Avenue in the heart of downtown San Rafael. We are both from Marin and we both enjoy having a Marin-centered law practice.

I started my legal career at a firm in San Francisco that was then called Cooley Godward, now just Cooley. Although I mostly worked on commercial cases, the partners trained us young associates to eschew specialization in any specific kind of case. They liked to say that as litigators we were experts in solving problems, and each case had its own unique business and legal problems to solve. Later, I spent a year working as a prosecutor for the Marin DA’s office, working mostly on consumer and environmental cases. Then I spent a few years at the Coblentz firm, doing more civil cases, with an emphasis on real estate cases.

Since forming my own firm in Marin, I’ve worked on a wide gamut of civil cases, just about everything except family law, because I saw right away that there were plenty of good family lawyers in Marin. In addition to practicing litigation, I also give business advice to clients to help keep them out of litigation, and provide some “corporate organization” and contract drafting type advice for a few business clients.

Houman and I have worked with our office manager Terry Odetto since day one, and have worked with a few associates over the years. We’ve tended to work on cases venued in Marin but I’ve worked on



cases all over Northern California from Humboldt to San Luis Obispo, and even a few in Southern California. I tend to gravitate towards commercial and real estate cases, but I have also worked on employment and injury cases, as well as municipal litigation and estate and trust cases.

Why did you decide to become a lawyer?

I've got a few origin stories. One is that back in my Berkeley undergraduate days, I got pulled over for riding my bike through two stop signs in a row coming down the hill below Telegraph. When I blurted out, "This is bull\*\*t. I'm not going to sign those tickets," the overzealous officer decided it would be a good idea to tackle me and throw me in jail, "to teach this punk kid from Novato a lesson," he said. Anyways, I decided that if he was teaching these kinds of lessons to me he must be doing it to others, and so I brought a case against him to the Berkeley police review commission. At the hearing, I had the fun of trying a mini case against the officer and his union lawyer, complete with cross-examinations, opening and closing arguments, and so on. At the end of it all, the lawyer shook my hand and said that I should really think about going to law school. I guess it was always in the back of my mind since high school, but I didn't know any lawyers and didn't think that much about it until that experience. After finishing undergraduate school, I was living in New York and got an internship at the U.N. Centre for Human Rights. My supervisors there all suggested that I drop the PhD program I was enrolled in, and go to law school instead. The rest, as they say, is history.

Why did you choose to live in Marin?

I didn't exactly choose to live in Marin, Marin (or my parents) chose to have me here. My parents were living on the slopes of Mount Tamalpais, up on Sequoia Valley Road near Panoramic. So, though I was born at Kaiser in San Francisco, I was a Marin resident from day two of my life. Some of my earliest memories are of playing in Redwood Creek and on the rocks in Muir Woods and in the sand at Stinson Beach. Later, my family moved to the Bahia neighborhood of Novato. I grew up there as a "lagoon" from first grade until I finished at Novato High and moved across the Bay for college.

Years later, when it came time to settle down and buy a house, after adventuring in Berkeley, New York and the rest of the world, and then going back to Berkeley for law school, my wife Roselle and I started our house search in Oakland, where we were living. We happened to come over the bridge to visit with

some old family friends who were living in Fairfax, and we immediately decided to shift gears and look here instead. Fairfax still had that old Marin community charm that I remembered from growing up in Marin in the '70s.

In 2000, we bought a little two-bedroom bungalow in Fairfax. Roselle opened a Montessori preschool, originally in the back room of our house and later as a small stand-alone school in the heart of downtown Fairfax. She still runs the school and that has been a great way for her to get to know many of the families in Fairfax and the Ross Valley. I was still working in San Francisco at the time, but later moved my practice in Marin to keep it closer to home and be able to have a bit more control over my work life. We are now living in San Anselmo, almost directly between the homes where I grew up on Mt. Tam and Bahia, as the crow flies. I love practicing law in the community that I grew up in.

If you could pursue any career other than law, what would it be?

While I don't have special artistic talent, I like to think that if I wasn't practicing law, I would do something artistic. My dad was a good musician. He taught music and played classical guitar and Hawaiian slack-key guitar. My mom was a painter and potter. Of course, they both had day jobs – my dad was a teacher and my mom was a nurse. I've always enjoyed writing. So, yeah, if I wasn't doing what I'm doing, I'd like to say that I'd be spending my time doing something artistic. Of course, I'd probably be a starving poet, living out of a van, far from Marin and the Bay Area. If I wasn't doing law or writing, I'd probably be teaching social science somewhere, probably also a long ways from here.

What do you love to do when you are not practicing law?

My wife, our daughter and I all love to travel. We've had some great family trips together, including a fantastic four month trip to Ecuador a few years back. I grew up with boats on the Bahia lagoon, back before it silted up. We keep a canoe under the deck at home and a small sailboat out in the Delta. Every summer, we enjoy spending weekends up on the Delta, which still feels much like old California.

Why did you choose to join the Bar Association?

For me it was a no-brainer to get involved in MCBA once I opened up a practice in Marin. I had the good fortune to start my practice at 790 Mission Avenue, which at the time was owned and operated by local lawyers. A lot of the attorneys there had been involved in the bar association over the years, like Marlene Getchell, Craig Dykman, Len Rifkind, Kate Rockas, Colin Claxon and Jerry Ackeret. They encouraged me and others who moved into the building to join the Marin County Bar Association. Joining seemed like the obvious thing to do anyway because two of the main reasons that I decided to open a practice in Marin were to be closer to home and more involved with the community that I lived in. I finally decided to get more involved in MCBA at the board level a couple years ago as way to give back to the community myself and to encourage my peers to give back as well.

The Bay Area has changed enormously over the past 40 years. While there have been a lot of good and fascinating changes that have made the area a fantastic economic engine and have given birth to some amazing new technologies, I have a lot of concern for the contractors and electricians, the teachers and nurses, the artistic types whom I grew up around, who now find Marin and the Bay Area hard places to live.

We are privileged to practice law in Marin. Even though we work really hard as lawyers, I still think there's a lot that we can do to give back to the community through pro bono work and other volunteer efforts. There's a huge need for legal help out there, and fewer and fewer people can afford decent legal representation. Beyond the local level, there are also worrisome legal changes afoot that will require people with legal training to step up. I'm excited about programs like Lawyers in the Library and the Marin Pro Bono Network and am excited to work with others at MCBA to do more. Over the last ten years, I've met a lot of great lawyers working in Marin and MCBA is a great way to stay connected and stay in touch.

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

You know, I don't have a good answer for that question. It seems like every year I've practiced law, there have been highlights, and every year is different. Back when I was working at big firms I had the chance to work on some "high profile" cases that went to trial and through appeals, et cetera, but I've taken just as much if not more pleasure in helping individual clients and small businesses with much smaller but still daunting legal problems, and getting them to good resolutions through mediation,

a business agreement, or some other out-of-court deal.

I think that is what I like most about the practice of law, or at least the practice of general civil litigation. Every dispute is a human story or set of problems with an arc to it. The one thing that is constant is the variety. It sounds corny, but what I enjoy most about practicing law is helping people. I love the challenge of getting clients through the difficult and expensive labyrinth of civil litigation to some kind of judicial vindication or a good settlement result that they can live with. I have many great memories of the cases that I've worked on, and especially the clients whom I've had a chance to help and get to know along the way.

# Meet Stephanie Haffner, the New Executive Director of Legal Aid of Marin

AUG 29, 2018

**BY ROBERT ROSBOROUGH**

As many of our readers know, Legal Aid of Marin has a new Executive Director: Stephanie Haffner. In an effort to help our readers learn more about leading figures in the Marin legal community, the Marin Lawyer sat down with Haffner. Still new to the job, she is undertaking a thoughtful strategic planning process to help Legal Aid maximize its impact. And, as someone who has been making a difference in the law even before law school, Haffner knows how to have an impact.

Haffner traces her connection to the law back to “stumbling into” an upper-level class on black politics in urban America during her freshman year of college; she became fascinated with how American society operates, particularly for people on the margins. She ended up majoring in government and Afro-American studies. Upon graduation, she took an internship at a small non-profit in a small rural community in North Carolina (Concerned Citizens of Tillery’s Land Loss Fund). In a community with a 95% black population, one of the non-profit’s goals was the preservation of local black land ownership in the face of state law that facilitated the forced sale of intestate property. In addition to education and outreach efforts to encourage citizens to make wills, she also did first-hand research on discrimination in U.S. Farmers Home Administration lending, documenting disparities that ultimately led to a class-action lawsuit. And she obtained a grant to staff a community health clinic (the Concerned Citizens of Tillery’s Curin’ House), and worked side by side with legal aid lawyers who lobbied local governments to step up to protect public health in the face of environmental impacts caused by industry that was moving in. Keep in mind that all of this was before law school!

Law school at Berkeley first brought Haffner to the Bay Area, where she also discovered the joys of

hiking in Marin. (Hiking is still one of her passions—the first thing she named when asked what she does for fun after being told “this,” i.e., her legal work, was not an acceptable answer.) But Haffner was drawn away from the Bay Area after law school to work for California Rural Legal Assistance in Stockton. For CRLA, she did housing and benefits work that notably included litigation to force local governments to address the effects of their policies, including Stockton’s decision to “revitalize” by eliminating hundreds of single-occupancy housing rooms at once. After Stockton, Haffner moved south, to Neighborhood Legal Services of Los Angeles County, and then the Western Center on Law & Poverty, eventually handling mostly large-scale housing and benefits litigation. She is thrilled to now be back in the Bay Area and working in community-based legal assistance. According to LAM Board President Jonathan Gertler, Haffner won the Executive Directorship after an intensive search and, “It is working out well.”

Haffner observes that, “Legal Aid of Marin enjoys tremendous community support, which is essential since we elected not to be a federally-funded legal aid organization many years ago. That gives us the freedom to take on the challenges to justice in the community as we find them. For instance, we can initiate impact litigation and also serve clients of all immigration statuses; we can deploy a wider array of advocacy tools to solve a given problem.” Foundations, particularly the Marin Community Foundation, are one pillar of this support. Support from the LAM Board and the Bar are two more.

Haffner finds the amount of direct pro bono legal services that the Bar provides to the community through LAM remarkable. One of her goals is to cultivate and nurture the relationships Bar members have with LAM to increase the level of service even more. She points out that LAM works hard to leverage its services not only by working with the local bar, but also through the political process, adding, “We work directly with local governments to address needs LAM finds in the community,” such as creating more secure housing for many of its potential clients through encouraging more renter protections.

Still new to the job (two months at the time of our conversation), Haffner is still drawing the map of LAM’s future. She has begun a strategic planning process with the Board that will examine the needs of the community and how LAM can best use its resources and expertise to serve those needs. Historically, LAM has had the greatest depth of expertise in housing, employment, and family law, and Haffner plans to build upon those strengths. She also intends to develop, in collaboration with the Board,

a clear vision and plan for LAM's future. It is clear to her that early emphasis will include developing new resources to grow and serve more needs of the community. Haffner finds the "vision-first" approach leads to more stability and long-term growth than tailoring services to whatever earmarked short-term funds are available at any given time, and she notes that the LAM Board has historically resisted that temptation.

Of course, fund-raising and fiscal management is a large part of any executive director's job. Haffner says that not only have Bar members been generous in providing legal services but in donations as well and in particular helping LAM locate funding sources. LAM will be hosting an open house this fall on October 11 to reconnect with existing and past staff, volunteers, and supporters and to encourage new ones. Haffner encourages you to reach out to her to ensure that you are on the guest list (all are welcome!) and to discuss how you might help, whether by providing direct legal services if you are an attorney, donating, fund-raising, research, client intake or through whatever creative means possible.

Haffner believes that in Marin there is a real desire to advance racial and economic equity, and that LAM has an important role to play. She, the staff and the Board are working to help the community advance equity through all avenues available to them. One project that is already underway (having started before Haffner's tenure) that she wants to spread the word about is the Marin Pro Bono Network. One of the challenges many non-profits in Marin face is not only connecting with potential volunteers but in particular reaching people who live in Marin but work in the City or elsewhere. With the support of the Marin Community Foundation, One Justice and the Canal Alliance, LAM is leveraging its infrastructure for providing pro bono legal services in Marin with the creation of the Marin Pro Bono Network. The idea is that potential volunteers can go to one place with their interests and availability and get connected with the best opportunity for them – whether it be housing, immigration, or some other area of legal services. The Network is seeking more legal nonprofit partners to maximize the effectiveness of this single portal model. Please check it out at (<https://www.marinprobononetwork.org/>) <https://www.marinprobononetwork.org> and if you sign up to volunteer, you'll already be helping Haffner and LAM advance their goals.

If you'd like to contact Stephanie Haffner, you can reach her at ( [shaffner@legalaidmarin.org](mailto:shaffner@legalaidmarin.org)) [shaffner@legalaidmarin.org](mailto:shaffner@legalaidmarin.org). Why not take a few moments to welcome her back to Marin or let her know you'd like to attend the October 11 open house?

# Call for 2019 Officer and Board Nominations: Deadline for Applications Extended until 9/14

SEP 01, 2018

**BY MEE MEE WONG**

Would you like to be part of the Marin County Bar Association leadership team? MCBA wants you to apply for an Officer or Board position. Board service is a unique opportunity to give back to your community, hone your leadership skills, and work with fellow board members to deliver valuable benefits to our member organization.

MCBA is now accepting applications for 2019 Officer and Director positions. Pursuant to the Bylaws of the Marin County Bar Association, a Nominating Committee has been chosen to select the slate of Officers and Directors for 2019. The Nominating Committee will make its recommendations at the September 26th General Membership meeting, and the election of Officers and Directors for 2019 will be held at the October General Membership meeting.

The MCBA Board is comprised of 15-20 Directors and Officers. Board members serve three-year terms. Governed by the MCBA Bylaws, the Board is responsible for MCBA policy, governance, and fiscal oversight. To be eligible to serve on the Board of Directors, you must be a lawyer in good standing with the State Bar of California, and an MCBA member in good standing.

Expectations of Board service include:

- Regular attendance at all Board lunch meetings and the annual Board retreat (including paying a Board fee that covers the cost of the Board meetings and retreat)
- Regular attendance at MCBA General Membership meetings and special events



- Serving as a guest editor for up to one issue of the Marin Lawyer per year
- Involvement in Board committee activities
- Directors serve a three-year term, and Officers serve a one-year term

Please see the (<http://www.marinbar.org/docs/mcba/mcba-bylaws-6-1583.pdf>) MCBA Bylaws for additional information.

Please send your completed application to:

Charles Dresow

Marin County Bar Association

101 Lucas Valley Road, Suite 326

San Rafael, CA 94903

Or email application to: ([mwong@marinbar.org](mailto:mwong@marinbar.org)) [mwong@marinbar.org](mailto:mwong@marinbar.org)