

Weed, Elders and Sexual Harassment (Not Necessarily Together)

AUG 05, 2019

BY ROBERT ROSBOROUGH

When I was in college, I never imagined being able to sit at my desk and order marijuana to be delivered to my door. It still amazes me even though it has been possible for years. If you'd rather go see (and smell) your choices, you have the option of many dispensaries in the City. Not in Marin. Nor do you have the choice of delivery for non-medical marijuana in most of the County. Despite strong support for Prop 64, implementation in Marin is slow and grudging. You can learn the details in Habib Bentaleb's article on the status of marijuana in Marin. I would like to thank Habib not only for his article but for serving as guest editor of this month's issue.

Did you know that Cannabis is also a hot topic among seniors (as in elders, not the high school kind)? That is something a geriatric care manager would know. Have you had clients who are struggling with a declining parent? Or clients themselves who are declining and don't know what to do? As a family-conflict mediator, I am involved in plenty of family dramas where the health of an elder—mental and/or physical—and what to do about it is an issue. Read Kira Reginato's article on geriatric care managers to learn what a tremendous help they can be to you and your clients.

In honor of Labor Day, next month's issue of the Marin Lawyer (a quarterly special magazine-style issue) will be devoted to employment law. But so much is happening in this field, we couldn't wait to bring all of it to you. Get a taste of the September issue by reading Brittny Bottorff's article on two significant new California laws governing sexual harassment in the workplace. You don't need to be an employment-law specialist to need to know about these new laws.

I would like to call special attention to this month's non-profit: New Beginnings Law Center. NBLC helps formerly incarcerated citizens reengage as productive members of the community by working to clear their records in order to open greater opportunities for them. NBLC knows that the chances of success increase not just from outstanding legal work but by addressing each client as a whole person, working with them to determine what they need besides legal advice to break the cycle of recidivism. A young organization, NBLC partners with other non-profits like Legal Aid of Marin and the Downtown Streets Team in providing its services. Doing this work requires community support and engagement and NBLC is looking for dedicated board members to help it grow. If you think you might be interested, read the profile and get in touch.

I'd also like to draw your attention to Kristi Edwards' article on California Certified Legal Secretaries. MCBA has a small, diverse and engaged group of non-attorney members. Some of them are part of, or connected to, the legal profession, including legal support staff. If you've ever had difficulty hiring support staff, read Kristi's article to learn how hiring a CCLS assures you of competent staff and if you are staff, learn the advantages of becoming a CCLS.

Finally, I would like to remind readers that with every issue of the Marin Lawyer, you have the option of printing all of the articles together as one pdf with one click (well almost, anyway). Under the "Current Issue" section on MCBA's website (or in the monthly email to subscribers), just scroll down to where you see "August 2019 Articles" (right before the calendar of events in the current issue) and click the "Link to August 2019 Articles." That will download a pdf of all of the articles, which you can take with you on your tablet or print out on actual paper if you prefer.

Inspiring the Next Generation

AUG 04, 2019

BY CHARLES DRESOW

I strongly urge all members of the Marin County Bar Association to consider creating internship opportunities for young law students or college students who are interested in a legal career. If you do not have the time or capacity to supervise an intern, another opportunity to connect with and inspire the future of our profession is by attending a local law school, college, or high school career day. Our Association is full of talented and impressive attorneys. The life and career experience of our membership is profound. Passing down our accumulated wisdom to the next generation of lawyers keeps it from being lost, improving not only the practice of law but our society as a whole.

Throughout the history and development of our society, lawyers have traditionally moved the law forward as both legislators drafting the law and as advocates molding the law through common law precedent. Lawyers have led the charge to protect our Constitution and to preserve and grow our civil rights. It is critical that young individuals from varied backgrounds and economic circumstances feel that there is a place for them in preserving the rule of law and in shaping it to serve their generation's goals. Providing internship opportunities or even just allowing a young person to tag along for a day or a week may light the fire in that young person for a life of service in our profession.

Most of us have had some help from an older attorney along the way. Whether that was through a formal internship, mentorship, or just a lunch with an attorney whose field you were interested in, the effect was likely positive. Remembering the hands that helped us into the profession should inspire us to extend those opportunities to the next generation. And doing so is rewarding for both generations. Everyone benefits from the exchange of knowledge. The enthusiasm and interest of an intern can remind an attorney of the excitement they felt when they were drawn to a life in the law. It is refreshing to walk around the courthouse and see interns tagging along with their attorneys or externs diligently observing the proceedings in their judge's courtroom.

The Bay Area has a large number of law schools. Finding an intern is as easy as reaching out to their career offices or if you are an alum of a local school, posting an internship opportunity on the alumni board. Most colleges now have similar internship placement boards for students who are interested in a legal career. If you have never had an intern, I urge you to try it at least once—you won't regret it.

Doing (Cannabis) Business in Marin: The Current Landscape

AUG 03, 2019

BY HABIB BENTALEB

Unless you've been living under a rock for the last couple of years, it's impossible to have missed that cannabis is now legal in California. In June of 2017, the California Legislature passed the Medicinal and Adult-Use Cannabis Regulations and Safety Act ("MAUCRSA"), which created one system for both medicinal and adult-use cannabis regulations. MAUCRSA effectively merged the Adult Use of Marijuana Act (aka Prop 64) that was approved in 2016 by a statewide vote and the Medical Cannabis Regulation Safety Act (MCRSA) that the Legislature enacted in 2015. Although now legal, commercial cannabis businesses in California are highly regulated.

The biggest misconception out there is that many people still believe they can open up their cannabis business anywhere in the state and that couldn't be any further from the truth. The reason why a cannabis business can't set up shop wherever they want is because MAUCRSA grants local jurisdictions the authority to regulate cannabis businesses as they deem appropriate – which can include an outright ban on them at the restrictive end of regulation to the authorization of every single type of cannabis business (cultivator, manufacturer, distributor, laboratory, retailer, delivery, microbusiness, and temporary cannabis special events) at the permissive end.

California is a dual-licensing state when it comes to cannabis, which means that before you can open a cannabis business, you must first obtain approval from your local jurisdiction and then obtain your state license. There are 58 counties and 482 municipalities in the Golden State and approximately two-thirds of those jurisdictions have placed outright bans on all commercial cannabis activities. And those prohibitionist jurisdictions aren't just in some of the more conservative parts of the state—they can be found in liberal leaning areas as well. Nearly seventy percent of Marin residents voted in favor of Prop 64, yet many of the county's municipalities prohibit all commercial cannabis activities. Here's

what the current commercial cannabis landscape looks like in Marin:

- **Unincorporated Marin County:** Back in December 2015, the Board of Supervisors passed an ordinance authorizing up to four medical cannabis dispensaries in the County. After a lengthy application and vetting process, the County Administrator denied all applications for a dispensary — public opposition to all the proposed locations was intense. The County has since amended its ordinance to authorize up to four medical cannabis delivery-only retailers and approved two out of four applications at a hearing July 27th. All other commercial cannabis activities (including all adult-use activities) are currently banned in the County.
- **San Rafael:** The city of San Rafael is by far the most cannabis-friendly jurisdiction in the County (as of the date of this publication). In January 2018, the City Council passed a medical cannabis pilot program authorizing four testing labs, eight infused manufacturing licenses, and four delivery licenses. San Rafael has since authorized medical license holders to serve the adult-use market and has re-opened the application process for additional testing labs, infused manufacturers, and distributors.
- **Novato:** Novato has currently placed a moratorium on all commercial cannabis activities except for the limited exceptions of two previously-licensed medical cannabis businesses: a testing lab and a non-volatile manufacturer. Novato does allow medical deliveries from operators that were licensed by their local jurisdictions prior to November 17, 2017. Novato's moratorium is set to expire on November 19th of this year and the City Council is currently reviewing a proposal to allow up to four licenses each for cultivation (indoor only), manufacturing (which would include distribution and testing) and retail.
- **Fairfax:** Like Novato, Fairfax also has a moratorium on all commercial cannabis activities, with the exception of a previously-licensed medical dispensary — which has just recently been authorized to conduct adult-use deliveries upon approval from the state. Fairfax's moratorium is set to expire on October 31st and the Town Council is currently discussing whether or not to authorize additional cannabis operators.
- **Belvedere, Corte Madera, Larkspur, and Sausalito:** All commercial cannabis activities are banned but medical and adult-use deliveries are allowed from properly licensed operators in other jurisdictions.
- **Mill Valley, Ross, San Anselmo, and Tiburon:** All commercial cannabis activities are banned but medical deliveries (but not adult-use) are allowed from properly licensed operators from outside jurisdictions.

As you can see, Marin County is not a bastion of progressiveness when it comes to licensing cannabis businesses. The “not in my backyard” (aka NIMBY) sentiment is still quite strong at public hearings in Marin regarding licensing cannabis businesses. Although one can appreciate how reasonable people can disagree as to the location of a dispensary, it has been surprising to see outright bans of all the other cannabis license types throughout so much of Marin. Cannabis manufacturers, distributors, and testing labs can operate in small facilities and do not carry the same concerns of being open to the public that come with a dispensary. To that end, San Rafael will be an important bellwether for the rest of Marin. If the cannabis operators in San Rafael are able to succeed, providing employment and tax revenue to the city, then other Marin jurisdictions may rethink their outright bans. The cannabis industry has made a strong push to educate the public on what cannabis products look like today. As the perception shifts from that of the “lazy stoner” to the individual who uses cannabis for pain relief, or that of the responsible professional/parent who has replaced a glass of wine with a cannabis-infused tea, we’re likely to see a change in attitude from the public and Marin’s local legislators.

New California Laws in Response to the #MeToo Movement

AUG 03, 2019

BY BRITTNY BOTTORFF

In response to the #MeToo movement, the California Legislature has recently implemented significant changes to existing law about sexual harassment in the workplace. Most notable are two new laws relating to mandatory sexual harassment prevention training and an expanded definition of “hostile work environment” in the context of sexually harassing conduct.

New Sexual Harassment Prevention Training Requirements.

Previously, California law required only employers with 50 or more employees to conduct bi-annual, two-hour sexual harassment training for supervisory employees. Under a new law, Senate Bill 1343, California employers who employ five or more employees must now provide one hour of sexual harassment prevention training to nonsupervisory employees and two hours to supervisory employees. This training must take place by January 1, 2020, and thereafter, each employee must be retrained every two years.

Another important change regarding mandatory training is that, starting January 1, 2020, employers with five or more employees must also provide sexual harassment prevention training to all seasonal and temporary employees within 30 days of their hire date or within the first 100 hours worked (whichever occurs first). Previously, there was no requirement to train temporary or seasonal employees.

New Legal Definition for Hostile Work Environment Created by Sexual Harassment.

In 2018, the California Legislature broadened the definition of “hostile work environment” in the context of sexually harassing conduct. California courts had relied on the Ninth Circuit’s standard, as set forth in *Brooks v. City of San Mateo*ⁱ, for what constitutes a hostile work environment in

the context of sexual harassment. This former standard required that the conduct must be “severe and pervasive” in order to constitute a violation of the law prohibiting sexual harassment.

However, Senate Bill 1300 specifically rejects the Brooks standard. Instead, the new law defines hostile work environment created by sexual harassment to specifically include “a single incident of harassing conduct” so long as such incident “has unreasonably interfered with the plaintiff’s work performance or created an intimidating, hostile, or offensive working environment.”ⁱⁱ

In addition, the new standard directs courts to consider the “totality of the circumstances” when determining whether specific conduct constitutes a hostile work environment.ⁱⁱⁱ The law now specifically states that even a stray remark could possibly constitute a hostile work environment (even if made outside the direct context of an employment decision or uttered by a non-decision maker).^{iv} Finally, Senate Bill 1300 explicitly states that sexual harassment cases are rarely appropriate for summary judgment.^v

These new legislative changes effectively allow employees to bring sexual harassment claims for conduct that, even if only occasional or seemingly trivial, altered the employee’s working conditions and made it more difficult, under a reasonable person standard, for the employee to perform his or her job.^{vi} Over time, as courts review and interpret these new legislative changes to the standard for hostile work environment, we will gain more clarity about what type of specific conduct constitutes sexual harassment under this new standard.

Best Practices for Employers.

These new changes in the law regarding sexual harassment will impact not only law firm clients, but also law firms themselves. Employers with five or more employees have only until January 1, 2020 to train all of their employees in sexual harassment prevention. If they have not already done so, employers should research the available training options and schedule this training for their workforce.

Notably, the legislative changes to the definition of hostile work environment will now include more behaviors that had not previously been considered to be sexual harassment. Thus, it is imperative that employers (and their employees) fully understand exactly what constitutes sexual harassment and a

hostile work environment and how best to avoid engaging in such conduct. This can be accomplished through effective training and through clearly stated company policies prohibiting sexual harassment. All such policies should be consistently and fairly enforced throughout all levels of the organization. Most importantly, employers should take great care to create and foster a workplace culture that promotes genuine diversity and inclusion for everyone.

ⁱ (9th Cir. 2000) 229 F.3d 917

ⁱⁱ Cal. Gov. Code § 12923, subd. (b).

ⁱⁱⁱ Cal. Gov. Code § 12923, subd. (c).

^{iv} Id.

^v Cal. Gov. Code § 12923, subd. (e).

^{vi} See, e.g., “Senate Committee on Labor and Industrial Relations Bill Analysis, April 11, 2018” or any of the other committee or floor bill analyses, available

(https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB1300) here.

How to Help Clients Struggling with Elder Care Issues

AUG 03, 2019

BY KIRA REGINATO

When clients come to you because they are struggling with care for an aging parent or other relative, disentangling legal, medical and family issues can be challenging. Addressing the legal issues may often be difficult because the family is in crisis around care. Referring the family to a geriatric care manager can relieve pressure on you to solve problems your legal education did not envision and allow you to focus on helping resolve their legal issues. In this article, I give an overview of the type of help a care manager can bring to the table and I discuss some smartphone-based applications that can also help.

Geriatric Care Managers

According to (<http://aginglifecare.org/>) aginglifecare.org, “An Aging Life Care Professional, also known as a geriatric care manager, is a health and human services specialist who acts as a guide and advocate for families who are caring for older relatives or disabled adults.” After an initial call to a geriatric care manager (“GCM”), help typically begins with meeting family and/or the elder, sometimes together, sometimes not. One of the GCM’s first tasks is an initial in-home assessment to find out what the older adult needs, which includes their own goals and desires.

During an assessment, a GCM can review some or all of what I call the “Seven M’s”:

- Memory
- Mood
- Money
- Medication
- Meals
- Mobility

- Medical condition

GCMs also look to see if clients have a trust, will, POLST form, and powers of attorney in place, but that doesn't start with the letter "M."

Working with the family and sometimes legal counsel and medical professionals, GCMs usually develop a care plan, better referred to as an action plan. The plan recommends what is needed and when, who can do it, and sets out the costs. Having a plan in place not only provides a map for action but also peace of mind for everyone involved. When followed, the plan often results in fewer crises and hospital stays, which are always top goals of a care manager.

Using the plan, the family and the elder can then decide what they want to do themselves and what they may want help implementing. The action plan often includes getting better organized, which may include anything from legal documents, finances, schedules, medications, or all of these. I recommend families get a smartphone app to help. Then they can easily share information and tasks among trusted family members. GCMs often work with families daily during a crisis but may also consult weekly, monthly, or as needed, depending on what everyone needs and how much the elder's situation might be changing. Sometimes all that is needed is a one-time consultation.

Keys to Care Management Work

Providing support and guidance to the entire family is a mainstay of a care manager's work. Having an experienced, neutral elder care consultant to speak with is one of the most valuable services they offer. They listen to how families are coping so they can provide education and help manage expectations and family dynamics during a difficult time.

The foundation of effective work comes from building rapport and trust. GCMs can come in to do a quick assessment and make recommendations but often they are not heeded without trust. Sometimes that trust is from the elder themselves when a care manager is the only person visiting the elder. Other times it must be from a family so that the GCM can keep them moving forward.

Case Study: The Reappearing Client

<blockquote>An attorney asked me to visit a client who was repeatedly showing up at his office without an appointment, seeking help. He explained to his client his scope of service and that her legal documents were in place but she continued to show up, so he suggested she meet with me.

I met with the client and learned there were some cognitive and personality issues affecting her ability to live alone. I worked with her for several months on solving a variety of problems, from reordering medication to bringing in home help to other housing options. The good news is that she decreased and then stopped her visits to the attorney.</blockquote>

Case Study: The New Patient Transitioning Care

<blockquote>An attorney called me to be a care manager for a client who had a devastating stroke that left her depressed and unable to speak. I helped her transition from a skilled nursing facility to an assisted living home and then continued to visit to ensure good care. Her only relative was her conservator but did not live in the U.S. He constantly expressed his appreciation for having a professional to ensure good care. Part of ensuring good care involved managing the behavior of the significant other, who tended to be overprotective of the client as well as domineering with staff caring for her. I monitored her care and made sure her needs were met until she passed away 18 months later.</blockquote>

Caregiving Tools

Care managers are connected to an extensive network of professionals and other resources to help their clients. Sometimes something as simple as a smartphone or computer application can help manage the tasks of caregiving. A few of the things apps can help clients do are:

- Maintain a current medication list and quickly access the refill numbers needed to reorder medications.
- Create a daily schedule so family can keep track of what's happening and when, and who might

be providing the transportation.

- Store a medical history in the app so they are prepared when they accompany their loved one to a doctor's appointment or the emergency department.
- Efficiently ask for help from siblings or friends to lighten the load. One can email their community of helpers a "to-do list" from a phone or tablet and let folks choose a task to complete.
- Keep track of the hours and money spent caregiving. Statistics show that caregivers spend about \$5000-7000/year of their own money buying incidentals for their loved one.
- Easily access solutions to daily concerns as they arise.

It takes some time to input data initially, but since the typical caregiving journey lasts about four years, the effort is well worth it with the convenience and time and money saved in the long run.

I recommend one of the following apps (Full disclosure: I helped design the first one and have a financial interest in it):

- Caring:

(<https://www.apps4caring.com/apps/caring/>) <https://www.apps4caring.com/apps/caring> (Note that Caring does not have any advertising on its app.)

- Dementia Solutions:

(<http://www.dementiasolutions.ca/products/dementia-caregiver-solutions-app-page>)
<http://www.dementiasolutions.ca/products/dementia-caregiver-solutions-app-page>

- Lotsa Helping Hands:

(<https://lotsahelpinghands.com>) <https://lotsahelpinghands.com>

- CareZone:

(<https://carezone.com/home>) <https://carezone.com/home> (Note that affiliate ads come up when using this app.)

Robert Epstein

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BY THE MARIN LAWYER

The Marin Lawyer recently sat down with Rob Epstein, City Attorney for San Rafael, who somehow manages to be both City Attorney and in private practice as well as have a family and life outside the law. Find out how he does it!

Why did you decide to become a lawyer?

I have been an avid reader my entire life and also love writing. I wanted to pursue a career in which I could be of service in some way to others. I did not think I had what it took for medical school, although I always have been fascinated by medicine and health care. At some point, I figured out that the law would be a good fit for me. Also, I majored in rhetoric at Cal, where we had a lot of pre-law students.

What is your practice area?

I love being in court and have handled a wide variety of civil litigation and trials. I particularly enjoy working with expert witnesses. My focus in recent years has been trust and estate litigation in probate court. Each case involves the history of a family, and each family's story is interesting and unique. Because the cases are so personal, the relationship with the client often becomes very close. It is a privilege to be able to help clients resolve these cases.

How do you balance managing a law firm as well as being a city attorney for San Rafael?

I am thrilled to have recently formed a new partnership — Epstein + Holtzapple LLP — with my friend and colleague of 30 years. Bob Holtzapple and I met when we were new associates at Farella Braun & Martel in San Francisco. Bob made partner at the firm and managed their litigation department for many

years. He has contributed tremendous energy and the highest level of competence to our practice, which has been so helpful to me. We have an amazing team of attorneys at our firm who have earned the trust and confidence of our clients and the courts, and the respect of our opposing counsel. I also have full-time staff at the City, in particular, our Assistant City Attorney, Lisa Goldfien. Most of the litigation filed against the City is handled by various outside counsel whom Lisa and I supervise. My role at City Hall is focused on attending City Council meetings and providing legal and strategic advice to the elected officials and senior staff.

Why do you live in Marin?

The older I get, the more I appreciate how lucky I am to have grown up in San Rafael and to be able to continue to live here. I love to get outside and can enjoy terrific trails a few steps from my door. I have lifelong friends here and my commute is two minutes!

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

This past year, I have been spending a lot of time on my new electric bicycle, which provides the opportunity for exercise without sweating! I have frequently ridden to Court in my suit and tie and also ride constantly around downtown San Rafael. I have taken longer weekend rides to Petaluma, Bolinas, and points beyond. I am biking substantially more than I did on my old non-electric bike.

Tell us about your family.

My wife Lisa and I are the proud parents of Noah (23), Zoe (20), and Adam (17). We anticipate that our sweet dog Louie will soon be our only child at home. We are still trying to get used to that idea.

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

I think I would have made a good psychotherapist. My late father-in-law was a psychiatrist and I admired him so much. My best friend is also a psychiatrist. Their work fascinates me, and in some ways I think we attorneys employ similar skills with our clients (especially those who are in litigation).

Why did you join the MCBA?

I joined immediately when I began my Marin County practice 25 years ago. I especially appreciate the MCBA's support of Legal Aid of Marin and of our local judges.

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

The trials are highlights, especially those in which I had the opportunity to work with and learn from extraordinary trial attorneys (including Dave Freitas, Ralph Thomas, and Herb Rowland). But the most memorable for me was a wrongful death case — a Kaiser arbitration — in which I was unsuccessful. It was a tragic case that involved a husband and father in his late 30s who died shortly after he was discharged from the hospital emergency room. I tried the case with Paul Melodia, who had provided me my first law clerk job at his firm 30 years prior. Paul has more than 400 jury trials! The way that Paul organized and delivered his closing argument will always stay with me. Such talent is truly extraordinary. (I still think we should have won the case.)

New Beginnings Law Center

AUG 02, 2019

BY THE MARIN LAWYER

Elissa Lasserre, a criminal defense lawyer for indigent defendants, founded New Beginnings Law Center in 2015. After years of watching people's lives negatively impacted—even entirely defined—by prior involvement in the criminal justice system, Lasserre decided to focus her efforts on helping clients assess and redefine their lives in order to maximize their chances of success. NBLC's mission is to empower and transform the lives of those who are burdened by a criminal record and to provide a safety net for those at risk of re-entering the criminal justice system.

<h4>Record Clearing Program</h4>

NBLC's fundamental program is its Record Clearing Program. It uses strategic legal and policy tools to reduce involvement in the criminal justice system and remove barriers to employment and civic participation for people with criminal records. The program begins with a client intake procedure consisting of a criminal history evaluation and needs assessment. Evaluation of the criminal history guides NBLC's legal advocacy strategy. The needs assessment addresses the characteristics, traits, problems, or issues that directly relate to the client's likelihood to re-offend. It provides insight into the client's "wellness," which NBLC defines as having five dimensions: physical, emotional, social, spiritual, and intellectual.

While not explicitly referring to itself as part of the "integrative law" movement, which recognizes the importance of other disciplines in fully addressing a person's needs around what is too often narrowly conceived as just a legal problem, NBLC does refer to itself as a "socio-legal" operation, combining legal advocacy and social work. [Editor's Note: You can read more about integrative law in my (<https://marinbar.org/news/article/?type=news&id=238>) portrait of three Marin practitioners from the September 2017 issue.] NBLC's experience has shown that when one of these five wellness

dimensions is out of balance, the whole person is out of balance and the likelihood of recidivist behavior increases. Through partnerships and collaboration with other social service organizations, NBLC addresses the out of balance dimension. These partnerships are critical for the client's success.

The program serves three segments of the community: 1) the full-fee client, at a rate lower than the private sector; 2) the low- to moderate-income client, on a sliding fee scale; and 3) the client with little to no means, on a pro bono basis through funded NBLC projects.

<h4>Community Outreach Projects</h4>

NBLC believes that community outreach is essential to providing equal access to justice. It reaches out to the most vulnerable in the community at-risk of re-entering the criminal justice system: the homeless, the undocumented/non-U.S. citizen, those suffering from addiction and mental health disorders, and those who are denied equal access to quality independent legal advocacy due to inability to pay legal fees.

Homeless Project

More susceptible to violence and health problems than those with housing, the homeless are often marginalized not just by society but by the justice system. This marginalization is particularly problematic because more often than not, the homeless have been involved in the criminal justice system, primarily for lifestyle crimes such as unlawful lodging, being under the influence of alcohol or drugs, and theft of basic necessities of life. Addressing the issue of homelessness is complicated and requires collaboration and effort among the community, the justice system, law enforcement, social service agencies and mental health and substance abuse professionals.

Downtown Streets Team ("DST") is a nonprofit in Marin County that serves the homeless and those at risk of becoming homeless. [Editor's Note: The Marin Lawyer (<https://marinbar.org/news/article/?type=news&id=381>) profiled DST in its November 2018 issue on homelessness and mental health.] Their ultimate goal is to transition their "team members" into employment because having a job restores hope and opens the door to other opportunities. However, having a criminal record creates a barrier to employment and the many other opportunities available to

those with no criminal record.

Begun in 2016, NBLC's homeless project cleans up the criminal records of its DST's team members and works collaboratively with DST to keep team members from re-entering the criminal justice system.

Pro Bono Criminal Record Clearing Project

A 2009-2012 study funded by the Marin Community Foundation found that more than 7 out of 10 of Marin County's poorest residents experiencing a legal problem do not receive individualized legal assistance. The massive need of low-income Marin residents for legal assistance simply overwhelms the perpetually under-resourced Marin legal service providers. NBLC's criminal record clearing project will soon provide outreach clinics to low income Marin County residents. These clinics will be in partnership with Legal Aid of Marin and will be held in conjunction with Community Court held at St. Vincent De Paul's once per month.

Immigrant Project

Currently in development with the Canal Alliance and the Immigrant Legal Resource Center, the Immigrant Project will address the post-conviction needs of our immigrant community. Those without U.S citizenship may suffer harsher sanctions for involvement in the criminal justice system, including permanent removal from their families and a country that promised a better and safer life. For noncitizens, vacating an unconstitutional conviction and/or reducing felony convictions to misdemeanor convictions can be a powerful way to eliminate certain grounds of deportability, and can open up eligibility for improved immigration status or benefits.

Opportunities to Help

Although NBLC receives some fees for service, they are minimal. As a 501(c)(3) non-profit, NBLC relies primarily on grants and donations. It is a young nonprofit with many needs and could use your help, whether via donating, volunteering or partnering. Contact them at 415.459.2000 or via email at (contact@nblawcenter.org) contact@nblawcenter.org to make a difference in someone's life!

November Local Elections and the Latest on the Top Five Democratic Presidential Candidates

AUG 01, 2019

BY GREG BROCKBANK

Disclaimer: The views below are those of the author and do not necessarily reflect those of MCBA and its members.

<h4>Four Marin Cities Have City Council Elections This November</h4>

Some local cities and counties have long had their elections for local nonpartisan offices in even-numbered years, along with the major state and national partisan offices. Others, like Marin, have traditionally held most of them in odd-numbered years, so as not to compete with those statewide races for volunteers' time, donations, and most importantly, voter attention.

But a new law passed a few years ago moved all local elections to even-numbered years if odd-numbered-year voter turnout lagged too far behind. Although Marin's local elections had a better than average turnout in odd-numbered years, our national elections—especially presidential elections—have been first or second in voter turnout in the state for the last three cycles, so we were among those forced to move our local elections to even-numbered years.

This required either extending or shortening the office-holders' terms by one year; most lengthened them to save on the cost of an additional election, and most also kept them in the same month they

always had been. The school districts and special districts (about 45 total) moved a year or two ago, but the cities and towns were given a little extra time, and the last four will hold their last odd-numbered-year elections this November—the last time regularly scheduled elections will be held in Marin in odd-numbered years.

The candidate filing period began in mid-July and runs through August 9th (or the 14th if at least one incumbent does not file) at the city halls of Novato, Larkspur, San Anselmo, and Fairfax, although typically candidates too often wait until the last week — especially new candidates who decide to run (or are talked into it) at the relative last minute. And incumbents and new candidates alike usually file their papers during the last week, even if they “pulled” them a week or two earlier, so they have until the latest possible date to work on their extremely important ballot statement of 200 words, which is due when they file.

NOVATO is considered the big one of the four, largely because of population, but also because it will be having district elections for the first time, thanks to Malibu attorney Kevin Shenkman, who’s been going through the state’s largest cities, sending them letters telling them they have 45 days to pass a resolution to switch from at-large to district elections, and it will only cost them \$30,000 (to pay for his research behind his letter). But if they don’t agree to switch immediately, then he’ll file suit against them pursuant to a recent revision of the California Civil Rights Act, and then the bill would more likely be in the millions (and they’d lose, as the few cities that have challenged him have). (San Rafael went through this process a year ago, but its next election isn’t until next year.)

Novato City Council incumbent (and current Mayor) Eric Lucan is running for re-election, and I’ve not yet heard of any potential challengers to him in his first-ever district election. A second incumbent, Josh Fryday, just announced a month or so ago that he just last month got a new job in Sacramento in Governor Newsom’s administration, preventing him from running for re-election, which he otherwise would have done, so there’s an open seat in that district. The third incumbent, the controversial Pam Drew (who is running for a second term, and who is aligned with the also controversial Pat Eklund, a long-serving councilwoman), will almost certainly draw at least one challenger, but the planning commissioner who’d been planning on running against her for nearly a year now has found himself in a district that is not the same one as Pam Drew’s.

FAIRFAX, SAN ANSELMO, AND LARKSPUR will similarly have two or three seats each up for election, and usually, but not always, the incumbents run for re-election. If there are no challengers, or the number of new candidates equals or is less than the number of incumbents stepping down ("true vacancies"), the race will not appear on the ballot, and that happens in at least one or two cases each cycle.

<h4>The Latest News on the Top Five 2020 Democratic Presidential Candidates.</h4>

While there have been ever-so-slight stirrings of another Republican candidate (the disappearing Mark Sanford for President, anyone?), in addition to former Massachusetts governor Bill Weld (who was the Libertarian candidate for Vice President in 2016), all the action remains on the Democratic side, and so I bring you the latest on the top candidates. In the two months since my last column (of several) on this topic, a few more candidates have jumped in (including Joe Sestak and Tom Steyer), and one has dropped out already (Eric Swalwell). Most of the now 25 or so candidates have no realistic chance, although most of them qualified for the June and July debates by virtue of registering at least 1% in four qualified polls, and having at least 65,000 unique donors.

For the next debate, in September, the qualifying poll numbers and number of donors needed to qualify doubles to 2% and 130,000, and probably about half the candidates will fail to qualify, and will likely drop out as result (or maybe even before they fail to qualify). A few laggards could catch fire and at least make it to the September debate, but the polling for the top few candidates has remained pretty stable for nearly a couple months now, and it's becoming less and less likely that a strong new candidate will join the field, or that an existing one will suddenly rise to challenge the top five.

Pete Buttigieg (#5)

Mayor Pete has made the biggest jump, from less than 1% to about 5%, where's he's been holding relatively steady for nearly two months now. That's pretty remarkable for someone so young (late 30s), and "only" the mayor of a medium-sized city (South Bend, Indiana), but he's still young, and still only a mayor, and no one's ever gone directly from being a mayor to the presidency. He's also gay (and married), which adds a wrinkle, and makes him more appealing to some, but obviously less appealing to others, although ideally it should be irrelevant. Interestingly, a

(<https://news.gallup.com/poll/254120/less-half-vote-socialist-president.aspx>) recent Gallup poll found youth more likely to be held against him than being gay: 76% of Americans said they would vote for a gay candidate for President versus only 71% for someone under 40.

Most importantly, he has a sort of dream resume (Rhodes Scholar, Afghanistan vet), and is so refreshingly direct and articulate, it makes him charismatic, which accounts from his rise from nowhere to around 5%. But just because he rose quickly from relative obscurity to 5% earlier this year doesn't mean he can double or triple that number to compete with the four candidates far ahead of him in the polls, even if he did raise a little bit more money than the other four in the second quarter (\$25M, as opposed to \$3 to 8M less than that for the others).

Kamala Harris (#4)

I've always liked Kamala, and introduced her at a fundraiser when she first ran for Attorney General, and I was impressed by her June debate and sent her a little money. But while she, too, is extremely charismatic, and even has that rare presence that enables me to see her as president, she's still a new senator only in her third year and unknown to the vast majority of people outside California before this presidential run. Although Barack Obama was in that same situation, his main opponent was always Hillary Clinton, whom many Democrats (and most Republicans) disliked.

Her June debate "attack" on Joe Biden caused her to rise from about 7% to about 12% in the polls, a pretty big leap, but she's stayed there about a month now, and is still a ways behind the top three (although she's now neck-and-neck with leader Joe Biden in California). Unless she rises considerably more in the coming months, she may not be in a position to land in the top two or three in Iowa and/or New Hampshire next February, which would hurt her, possibly making her unable to win California after all. Even if she did, she would probably not be the overall frontrunner. Although she talks like a progressive, and takes progressive positions, some don't trust her because she's been a career prosecutor. Her recent health care plan, which she calls Medicare for All, some say is really not, with a longer transition period into it, and perhaps relying on health insurance companies to do what they are supposed to do, which I think is a bad bet.

Bernie Sanders (#3)

I've always liked Bernie, supported him last time, and even gave him a little money a few months ago, but it's possible he's being eclipsed by Elizabeth Warren (#2), if he hasn't already been. I figured he'd be stronger than ever this year, picking up where he left off last time (again, against only Hillary Clinton). In fact, he does have a large fundraising base, which provided more donations than to any other candidate last quarter overall, although not quite as much money as others in the second quarter of this year.

But at the June debate, I thought he looked grumpy and angry (which some people thought he did in his last run, but not me), although I think he presented better in the recent July debate. He still has a lot going for him, and still usually says just the right thing, in the right way (orally and in writing), and he looks and can certainly handle the role of the presidency. But if both he and Warren split the left edge of the electorate, both could lose badly to Biden (still #1), so if Warren has indeed eclipsed Sanders, and it stays that way, he really ought to be thinking about dropping out at some point and endorsing Warren, in order to give their shared agenda a better chance to beat Biden.

Elizabeth Warren (#2)

I've always liked Elizabeth as well (and donated a little to her as well after her strong June debate appearance), and participated in a committee to try and draft her to run for president four years ago. But she was then a pretty-new senator, and she figured she needed more time there, and eventually declined to run, paving the way for Bernie Sanders' run.

This time, I was afraid she wouldn't be as strong as Bernie, and while most of the top candidates have forsworn PAC, lobbyist, and other special-interest donations, I figured Warren wouldn't have enough money because she doesn't even have big-donor fundraisers, a political staple at almost all levels, especially presidential races. But she's raised nearly the same amount as the other top five, and continues to put forth bold, thoughtful, and appealing (to progressives) positions on a wide variety of topics.

She has risen from #4 to #2 in many or most polls in the past couple months, and her "I have plan for that" has even become a lovingly-mocked meme. In the recent debate, she may have had the best line:

"For the life of me, I can't understand why anyone would go to all the trouble of running for president if all they're going to do is say what we can't do and they won't fight for." But while it looked recently like she might pass Joe Biden and become the frontrunner, Biden reversed his slightly dropping poll numbers (and Warren stopped rising), and he currently remains #1 by a considerable margin.

Joe Biden (#1)

Although Biden jumped in a month or two later than most of the other top candidates, that doesn't seem to matter now, and he's been leading the other candidates by about 10 to 20% in most polls. All reasonably informed voters have known about Biden for decades, even before he became Obama's VP 11 years ago, and while I respect his long service as a Senator (and VP), he's not progressive enough for progressives like me, and I think he's made too many mistakes in the past, and has too much baggage, to be anything other than a fragile frontrunner this time.

His two known instances of plagiarism (one in college, one in the Senate), his harsh treatment of Anita Hill in the Clarence Thomas confirmation hearings over a quarter century ago, and other positions he's taken two or three decades ago which may have seemed fine at the time, but are now seen as inappropriate (e.g., opposing busing students to integrate schools) are only a few examples of his baggage. There are more, along with his penchant for taking corporate money (he did represent Delaware, the HQ of most corporations, for nearly 40 years). In the June debate, he seemed a little confused at times, not a good look for someone approaching his late 70s (he's a year younger than Sanders), when so many want someone younger, and/or a woman, and/or a person of color, and/or someone more progressive.

But he's maintained his rather large lead (give or take a slight drop after the June debate, which he now seems to have recovered from), which makes him still the candidate to beat. If Warren's and Sanders' polling numbers were combined (for Warren, as now looks more likely, or for Sanders, as I would have guessed a couple months ago), Biden can be overtaken, but I don't see either Sanders or Warren dropping out any time soon.

The longer Biden remains the leader by a comfortable margin, the more the aura of inevitability

surrounds him, making it more and more likely that he will remain the frontrunner, barring a major gaffe (which he's certainly capable of). Many people don't distinguish the candidates so much on their positions, or even whether they're progressive or moderate, but on who's most likely to beat Trump. Currently that's Biden, by a considerable margin, but as I said in my last article two months ago, it may be a tough decision for many Democrats to go for Biden, with polls showing him beating Trump by the widest margin, instead of Warren or Sanders or Harris, who polls show also beating Trump, but by narrower margins, even if they like the others' positions more.

It's said that a week is a lifetime in politics, so things can (and often do) change quickly. Again, some presidential races in recent decades have had candidates rise out of nowhere to be the frontrunner, sometimes very quickly, although they usually fall back to earth quickly as well. And don't forget that our last three Democratic presidents—Carter, Clinton, and Obama—all started out as underdogs and eventually captured the nomination and the presidency.

But with a field this big, full of candidates this good, the likelihood of any of them, much less several of them, falling precipitously and allowing someone else to be the frontrunner, seems slim to me at this point. Three and a half years ago, I predicted Trump would win the Republican nomination, by virtue of his having such a large lead in the polls for so many months (from 20 to 30 to 40% in the polls, all of which were much more than whoever was #2) that no one could catch him, and the same may well happen with Biden.

Hiring Support Staff? What is a CCLS and Why Should You Care?

AUG 01, 2019

BY KRISTI EDWARDS

CCLS stands for California Certified Legal Secretary, a certification program sponsored by Legal Secretaries, Inc. Marin County Legal Professionals Association is the local chapter of LSI and currently boasts 3 CCLS certified members. [Editor's Note: You can read more about MCLPA in (<https://marinbar.org/news/article/?type=news&id=344>) Kristi's article in our July 2018 issue.]

Certification

All attorneys who hire support staff should be aware of the CCLS program because when you hire a CCLS you are assured of hiring someone who has passed a comprehensive examination in the following areas:

- 1) California Legal Procedure: Knowledge of procedure in five areas of law: Civil Litigation, Probate/Estate Planning, Family Law, Corporations, and Real Estate;
- 2) Legal Terminology: Proper format of citations and abbreviations, as well as terminology from the five areas of law covered in California Legal Procedure;
- 3) Performance Skills: An "in-basket" exercise in which the examinees are given an instructional memo and multiple versions of forms, with only one correct form. This section is designed to test an examinee's ability to follow directions and to proofread;
- 4) Reasoning and Ethics: Reasoning verifies an examinee's ability to evaluate facts and situations logically and to reach rational conclusions. Ethics tests their understanding of accepted professional

standards of conduct, including accounts management in a law office and notary public issues;

5) Law Office Administration: Alphabetic filing, computer use and terminology, notary public practices, and general office procedures;

6) Effective Communication: Correct punctuation, grammar, spelling, and word usage; and

7) Legal Computations: Several types of computations performed every day by legal support staff: practical calendaring of due dates and hearings, ability to determine appropriate filing fees in various areas of law, and basic math calculations done in everyday practice.

A minimum of two years-experience is required to participate in the program. The rigorous and detailed eight-hour exam is offered twice a year (next in September 2019 and March 2020). Continuing legal education requirements must be met for recertification every three years.

Benefits to the Employer

Hiring a CCLS ensures that you are hiring:

- A well-rounded employee who has knowledge of several areas of law — your employee will have enough knowledge in various areas of law that will allow him or her to jump in and assist on cases that may not be in the firm's usual practice area(s).
- A professional employee — a CCLS must maintain continuing education credits.
- A quick reference — a CCLS will have a wealth of knowledge ready to answer questions and assist others, or if he or she does not know the answer, they know where and how to find it quickly.
- A self-confident employee — a CCLS has passed a very difficult and thorough exam. Passing the exam increases their self-confidence, which improves efficiency and boosts their morale.
- A pre-screened employee — you will know that they already have knowledge in many areas of law, and that they have passed an exam that thoroughly tests them on that knowledge.

I think this program is particularly valuable to Marin County attorneys because there is no legal secretarial school producing qualified applicants in our area. I have personally fielded inquiries from local

attorneys desperately seeking staff members who can properly compose a letter and proofread briefs, have knowledge of legal terminology and procedure, and understand the ethics of working in a law office. Hiring a CCLS or supporting your current staff in studying for the exam solves the problem!

For more information on the CCLS program, please visit (<https://www.lsi.org/>) LSI.org or contact me at (kledwards@justice.com) kledwards@justice.com.

Kristi L. Edwards, CCLS

Marin County Legal Professionals Association

CPAs, CFAs and MCBA Lawyers and Professionals joined for the 5th Annual Midsummer Mixer

JUL 31, 2019

BY MEE MEE WONG

Under the early evening summer sun, members from CalCPA, CFA-SF and MCBA mingled and met new contacts while noshing on delicious appetizers from Comforts and sipping wine and spirits. Over 120 professionals attended from the three organizations in what has become a summer tradition. Old acquaintances were nurtured and new friends were made.

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Check out photos of the event on our Facebook page:

(https://www.facebook.com/pg/marincountybar/photos/?tab=album&album_id=2089084428064351)

EVENT PHOTOS.