

Fire, Rent Control and the Many Facets of the District Attorney's Office

NOV 04, 2019

BY ROBERT ROSBOROUGH

It has become distressingly routine at this time of year to be addressing the consequences of wildfires. And as if fire victims needed any more challenges, this year we added blackouts to the mix. I would like to extend my sympathy to all of those affected by the fires and remind our readers that our December 2017 issue was, and remains, a helpful resource for fire victims. In particular, it contains Fred Hertz's advice on dealing with the twin challenges of rebuilding and insurers and Michael Estrada's extensive advice on interpreting your insurance policy. You can access the issue (<https://marinbar.org/marin-lawyer/newsletter/?id=25>) here.

One effect of the loss of housing from a wildfire can be increased rents. As most of you know, California passed the nation's first statewide rent control and just cause eviction statute this year. (<https://marinbar.org/news/article/?type=news&id=491>) Vince DeMartini outlines the law's basic provisions, while Len Rifkind and David Levin offer their respective (<https://marinbar.org/news/article/?type=news&id=490>) anti- and (<https://marinbar.org/news/article/?type=news&id=493>) pro-rent control opinions, each laying out their case for why the law is a bad or good idea. It is not terribly surprising that both David and Len agree on the ultimate solution to rising rents: more housing.

I would like to thank Deputy District Attorney Andy Perez for serving as this month's Guest Editor. Aside from exploring our new rent control law, he has put together an issue reflecting the broad expertise in our District Attorney's office, starting with an

(<https://marinbar.org/news/article/?type=news&id=492>) interview with our new District Attorney, Lori Frugoli. Don't miss the opportunity to learn more about her and her plans for the office. You can also read Andy's article about (<https://marinbar.org/news/article/?type=news&id=489>) Lawyers for America, the innovative Hastings Law School program changing the format of legal education and providing an intern to the D.A.'s office for two years as part of his law school education.

And you may not know that the District Attorney's office doesn't just prosecute crimes. Kristina Warcholski tells us about its (<https://marinbar.org/news/article/?type=news&id=488>) Consumer Mediation Unit, which offers free mediation of a wide array of consumer complaints, as well as neighbor disputes. And finally, Chief Deputy District Attorney (<https://marinbar.org/news/article/?type=news&id=487>) Dori Ahana educates us about gun violence restraining orders, which will soon be available to a wider range of citizens.

Courtroom by Candlelight

NOV 03, 2019

BY CHARLES DRESOW

The dedication of the Marin County Superior Court Bench, staff, security, bailiffs, deputy public defenders and deputy district attorneys shone even as the lights dimmed during the recent blackout. All of these individuals showed up to work and remarkably kept the Court functioning during the unprecedented challenge presented by the power outage.

On Monday, October 28, 2019, a generator powered the Courthouse, but minimally: only certain lights and electrical outlets functioned. Clerks from the civil and criminal divisions greeted attorneys and the public, taking roll of arrivals and directing litigants and attorneys. They quickly continued many non-urgent matters, lessening the load on the sole operating courtroom, Department F. Bailiffs and security staff helped everyone who needed to be there get there.

As the clock moved closer to 9:00, the dedicated public defenders and district attorneys congregated outside Department F with their files in hand (literally—elevators out of service meant no carts). There, they triaged the cases to determine what could be handled quickly and what needed more time. When the courtroom opened, the lighting could have been described as Italian restaurant romantic, the clerks having strategically set up shop lights near the few operating outlets. In this one courtroom, multiple judges worked together to manage their daily calendars, calling every criminal department, along with an urgent family law matter. Everyone worked together to get through the cases and get everyone home.

Even though Department F was the only open courtroom, it was not the only place court was held. In-custody criminal defendants have important rights regarding when their matters are heard. To protect these statutory and constitutional rights, a court for in-custody criminal defendants was convened at the jail. The Court, bailiffs, jail staff, public defenders, various private attorneys and district attorneys all cooperated to enable holding court in this unusual environment.

Overall, the dedicated members of the Court floor team kept the courthouse going until the close of business. Cases that had to be handled were handled. The public was served. It was a shining moment for the Marin County Superior Court, Public Defender's Office, District Attorney's Office, and the Sheriff's Department.

The Marin County Bar Association and the public owe a debt of gratitude to all of the individuals who came to work and kept the courthouse open. They had the same obligations, anxieties and kids out of school that everyone else had. Rather than stay home and hunker down, they came to work and did their jobs. While I cannot speak for the public, I can give tremendous thanks on behalf of the Marin County Bar Association to all of these dedicated public servants.

Our region has faced historic wildfires in the last few years. It is always at risk for earthquakes. Now we are faced with planned blackouts. But the courthouse kept functioning, a sign that we could make it through. Lawyers have a duty to guard our clients' interests even during natural disasters. It is critical that attorneys and law firms engage in disaster planning for their practices. Clearly, we cannot always count on electricity to power our devices or cell towers to connect our calls during a disaster. As one of my last acts as MCBA President, I will be forming an ad hoc disaster planning committee. Its goal will be to publish recommendations on how to handle and protect your law practice and clients during a disaster. The committee will also be available to assist the Court in planning for disaster. If you would like to serve, please contact me directly at 415.453.9433 or (cdresow@rflawllp.com)
cdresow@rflawllp.com.

A Civil Solution to Preventing Gun Violence

NOV 02, 2019

BY DORI AHANA

What Is a Gun Violence Restraining Order?

The prevention of gun-related violence is a top priority for law enforcement. Accordingly, law enforcement agencies have begun to turn increasingly to the Gun Violence Restraining Order ("GVRO") as a tool to help avert tragedies resulting from gun violence. In California, GVROs are civil court orders that prohibit a person from owning, purchasing, possessing, receiving, or having in their custody or control, any firearms or ammunition. Because GVROs are civil, not criminal, orders, they do not require that a crime happen or that a crime be prosecuted for them to be issued. They offer a method to address situations where no alternative legal way exists to remove firearms from individuals who pose an immediate and present danger to themselves or others or to prevent their acquisition in the first place.

Initially, GVROs were sought primarily in family violence and stalking cases. They are now being obtained in situations involving substance abuse or an emotional crisis brought on by unforeseen circumstances (death of a loved one, divorce, etc.) where a person's behavior indicates that the presence or availability of firearms creates a danger to that person or others. GVROs are also a useful tool in situations involving people suffering from mental health issues such as post-traumatic stress disorder or where dementia may cause an individual not to recognize a family member or caregiver and potentially use a firearm against them, thinking there is a stranger in their house. There is also a growing trend of GVROs being used to address potential workplace or school violence, often communicated through the use of social media.

Who Can Obtain a GVRO?

You don't have to be a victim of a crime to apply for a gun violence restraining order. Currently, law enforcement and immediate family or household members are the only individuals who can petition for these orders, although most if not all are usually sought by law enforcement. Immediate family or household members include: a spouse, domestic partner, parent, child, sibling, grandparent, grandchild, in-law, and any other person who for the previous six months lived in or regularly resided in the household.

Starting September 1, 2020, in recognition of the growing occurrences of workplace and school violence, employers and coworkers, secondary or post-secondary school employees, teachers, and administrators, may also apply for a GVRO. Once a GVRO is served, law enforcement can require immediate surrender of firearms and ammunition. If the restrained person does not comply, a search warrant can be obtained for seizure of the firearms and ammunition.

Types of GVROs

There are three types of gun violence restraining orders: temporary emergency, ex parte, and "permanent." For the most part, they have the same requirements for a court to issue them: 1) a person poses a danger of personal injury to self or others; 2) a GVRO is needed to prevent such harm; and 3) less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate. The primary differences between the three types of gun violence restraining orders are the legal standard by which the court makes its determination and the length of time the orders last.

Only law enforcement may obtain a temporary emergency GVRO, which a judge typically issues over the phone, followed by the law enforcement officer completing a judicial council form and submitting it to the court following service of the order. The officer must assert, and a judge must find, that there is reasonable cause to believe that a person poses an immediate and present danger of personal injury to self or others and the order is necessary to prevent injury to the person or others. This GVRO goes into effect immediately and expires after 21 days.

Law enforcement and immediate family or household members may obtain an ex parte GVRO. As noted above, effective September 1, 2020, those who can petition for these orders expands to include employers and coworkers and secondary or post-secondary school employees, teachers, and

administrators. For the order to issue, the petitioner must state why the person may be dangerous and the court must determine that there is a substantial likelihood that the person poses a significant danger, in the near future, of personal injury to self or others, and the GVRO is necessary to prevent the injury. Ex parte GVROs are valid for up to 21 days.

The "permanent" GVRO may issue after notice and a hearing on a filed petition. A law enforcement or immediate family or household member must show by clear and convincing evidence that the person poses a significant danger, in the near future, of causing personal injury to self or others and the GVRO is necessary to prevent the injury. The GVRO issued after notice and hearing does not require that there be a prior emergency or temporary GVRO and can last up to one year. Effective September 1, 2020, GVROs issued after notice and hearing may last from one to five years, and who may apply for this GVRO expands to employers and coworkers or secondary or post-secondary school employees, teachers, and administrators.

GVRO Resources

Law enforcement and the District Attorney's office here in Marin have been trained on obtaining GVROs. The District Attorney's Office has also put on a county-wide presentation on GVROs to educate the community at large on this subject. The court forms for these petitions and orders can be accessed through the Marin County Superior Court website under "http://marincourt.org/family_other_restrain.htm) Restraining Orders – Other Types" (which simply takes you to the Judicial Council website) or through the Judicial Council of California website itself under the "<http://www.courts.ca.gov/forms.htm?filter=GVP>) Forms and Rules" tab (if the link does not work, choose "Gun Violence Prevention" from the dropdown list).

Gun Violence Restraining Orders will not end gun violence in America, but are an important tool to stop senseless tragedies before they happen.

The Tenant Protection Act of 2019: The Basics of Statewide Rent Control and Just Cause Eviction

NOV 02, 2019

BY VINCENT DEMARTINI

Governor Newsom recently signed the Tenant Protection Act of 2019 into law, which for the first time enacts statewide just cause eviction limitations and annual rent caps on rental housing. The Act's provisions are effective January 1, 2020 but sunset after 10 years.

Just Cause For Eviction (Civil Code section 1946.2)

Under the Act, landlords of non-exempt residences where tenants have continuously and lawfully occupied the residence for 12 months or more must state in writing a just cause basis for termination of a tenancy. Just cause reasons may be "at-fault" or "no-fault."

Just cause reasons for termination where the tenant is at fault include:

- A default in rent payment;
- A material breach of the lease (after service of a cure/quit notice providing tenant the opportunity to cure);
- Maintenance of a nuisance (after cure/quit notice);
- Waste (after cure/quit notice);
- Refusal to execute a lease;
- Criminal activity;

- Unauthorized subletting or assigning;
- Refusal to allow lawful entry;
- Use of premises for an unlawful purpose;
- If the unit is occupied by an employee, failure to vacate after termination of employment or license to occupy; and
- Failure to vacate if the tenant provided a notice to terminate/vacate that was accepted by landlord but the tenant subsequently failed to vacate.

Just cause reasons where the tenant is not at fault include:

- The intent of the owner or an immediate family member to occupy the residence;
- The unit being withdrawn from the rental market;
- The unit must be vacated to comply with a government agency or court order or local ordinance; and
- The owner's intent to demolish the residence or substantially remodel it (defined as requiring more than 30 days.)

No-fault just cause terminations also require the owner to notify the tenant in writing of the tenant's right to either relocation assistance equal to one month's rent or waiver of the last month's rent; however, the choice is the owner's option.

Properties exempt from the Act include:

- Single-family owner-occupied residences where no more than two tenants also occupy rooms or units in the residence;
- Owner-occupied duplexes;
- Housing less than 15 years old;
- A single property where the owner is not an investment trust, corporation, or an LLC with a corporate member;
- Adult care facilities and hospitals; and
- Dormitories and hotels.

Finally, the statewide just cause provisions do not apply to residential property subject to a local just cause ordinance enacted before September 1, 2019, in which case the local ordinance would apply. Just cause ordinances enacted or amended after September 1, 2019, that are more protective than Civil Code section 1946.2 shall supersede it. In Marin County, just cause ordinances were enacted before September 1, 2019 in the Town of Fairfax, City of San Rafael, and unincorporated areas under county jurisdiction; therefore, section 1946.2 does not apply in these areas. In all other cities and towns in Marin County, section 1946.2 will apply.

Rent Control (Civil Code section 1947.12)

The Legislature has found and declared that "the unique circumstances of the current housing crisis require a statewide response to address rent gouging by establishing statewide limitations on gross rental rate increases." (Civil Code § 1947.12, subd. (k)(1).)

The Legislature's response was to enact Civil Code section 1947.12, which prohibits owners of residential real property from increasing the gross rental rate for a dwelling or unit more than 5% per annum plus the percentage change in the cost of living, or 10%, whichever is less.

While the statute does not become effective until January 1, 2020, it will apply to all rent increases occurring on or after March 15, 2019. This means that if between March 15, 2019 and January 1, 2020, an owner has increased the rent by a percentage above the statutorily allowed increase (e.g., 20%), then effective January 1, 2020, the rent will decrease to the prior pre-increase gross rent plus the percentage increase allowed by statute. For example, if rent were \$1,000 on March 1, 2019 and was otherwise lawfully raised to \$1,500 on April 1, 2019, the rental amount effective January 1, 2020 would decrease to \$1,000 plus the percentage change in the cost of living or \$1,100 (i.e., \$1,000 + 10%), whichever is less. Notably, the property owner would not be liable for any corresponding rent overpayment between the date of the 2019 rent increase and January 1, 2020.

Civil Code section 1947.12 does not:

- Prohibit an owner from raising the rate to market rate when the prior tenant vacates.
- Allow a tenant to enter into a sublease that results in a total rent more than is allowed by the Act.
- Apply to housing subject to a rent control ordinance that restricts annual increases in the rental rate

to an amount less than that provided by the Act.

- Apply to housing less than 15 years old.
- Apply to duplexes where the owner occupies one of the units as their principal place of residence.

Disclaimer: This article presents a general overview only. Each of the items addressed have numerous and specific restrictions, requirements and limitations which must be reviewed and addressed in order to be compliant with the Tenant Protection Act of 2019.

Increased Housing Security Benefits Renters and Marin County

NOV 02, 2019

BY DAVID LEVIN

Marin renters have long struggled to cope with a regional housing crisis that has displaced seniors, families, and local workers, but new California legislation will strengthen communities by protecting renters' access to local jobs and educational opportunities. Numerous studies have documented the harmful effects of housing insecurity, especially for children and people with serious medical needs. California's new renter protections will help reduce the threat of displacement for renters, which often falls harshly on the most vulnerable households, including disabled and immigrant renters.

Although the best long-term strategy will be to significantly increase Marin's rental housing supply, it would be unfair to continue penalizing renters during the many years or even decades this will require. Communities in Marin have already suffered from the loss of residents who work in local jobs and contribute to volunteer activities, and by increasing housing security we help renters to invest in themselves, their families, and our whole county.

While not going so far as to pass local rent control ordinances, several Marin County jurisdictions looking to address the rental housing crisis enacted mandatory mediation requirements for rent increases above five percent, along with just cause eviction protection, including the City of San Rafael, the Town of Fairfax, and unincorporated Marin County. Recent examples where property owners imposed rent increases above 25% received local media attention because of the problems faced by families trying to cope with such an obvious threat to their housing security.

Other consequences from the intense pressure on local renters are visible everywhere one looks. Studies

show over 50,000 workers must commute in and out of Marin County daily because they cannot afford to live in our county, and more renters are displaced every week by steeply rising costs. Even with very little population growth across the county, current projections estimate our planned housing production for the next ten years will only meet the needs for about five percent of Marin's limited growth.

The failure to produce adequate housing in Marin and across our region has produced a severely unbalanced rental market. Estimates of vacancy rates for Marin rental properties are around 1.5%, while healthy rental markets have vacancy rates above 5%. This intense demand for rentals meant that owners could issue eviction notices with little regard for business concerns or the legal prohibition against retaliation and discrimination, while renters had only a limited ability to contest unlawful evictions in those summary proceedings.

Recently Governor Newsom signed AB 1482—the “Tenant Protection Act of 2019.” This new law will cap annual increases for many rental properties at five percent plus the local rate of inflation, and it also requires most owners to state a “just cause” for any eviction. Until now, California law required only a 60-day notice when owners increased the rent by any amount above ten percent. The rent cap in AB 1482 is very reasonable—with a local inflation rate around 2% it amounts to a limit of about 7%—roughly twice the average rate of rental increases in Marin last year.

Owners who stay within the normal range of rental increases and only evict tenants for good reason should face little or no impact from the new law. The rent cap in AB 1482 will provide an important measure of fairness for renters along with requiring just cause to evict. This new law will improve housing security for renters until the ultimate solution of reaching a balance in Marin's rental market is achieved.

Why Rent Control is Not a Solution

NOV 02, 2019

BY LEN RIFKIND

Effective January 1, 2020, millions of California residential units become subject to statewide rent control and just cause eviction controls due to the passage of AB 1482. While tenants may cheer, mind the old adage, “Be careful what you wish for.” Rent control may well limit rent growth on current occupied units and enable existing tenants to remain in their units longer; however, it discourages new housing starts. Lack of housing supply is the true culprit in causing high rents. While existing tenants may appreciate their protected cocoon, rent control does nothing for their progeny or anyone else who would like to move to the community. Tenants will be less mobile to relocate for job and other life opportunities as they arise for fear of losing their rent-controlled housing. Cities and towns will become stagnant as long-time residents subsist in rent control units that landlords, because of reduced return on investment, are discouraged from maintaining properly.

The clear solution is to build more housing and offer subsidies, such as Section 8 and other programs for residents needing assistance to be able to afford decent housing. As a local land use attorney and former councilmember in Larkspur, I can personally attest to the gauntlet that housing developers must face to construct a unit—additional fees and costs typically can add more than 25% to the cost. Only four other states and the District of Columbia have rent control in some formⁱ. The remaining 90% of the states in this great country have it correct.

A further unintended consequence of rent control is the creation of a two-tiered rental housing market. Similar units in the same building can have vastly different rental rates, because fortunately California did not include vacancy controls, i.e., regulation of the amount of rent that can be charged when the unit becomes vacant, so that empty units in California can still go to market rateⁱⁱ. As a result of rent control, those few units that do become available are bid up even higher because of that pesky

supply and demand principle. Thus, we get inexpensive units that rarely turn over and absurdly high-priced units because of supply constraints, coupled with strong discouragement for developers to construct new housing because of reduced return on investment. I would call that a triple whammy of apparently intended consequences because this is not rocket science here, but Economics 101.

Politics, not rationality, is the reason AB 1482 was approved, as there are more tenants than developers and landlords. All three, though, are necessary for a healthy ecosystem and much of the blame for our current predicament lies at the feet of state and local government for failing to lead over the course of decades in creating the proper environment to construct more housing through investment in infrastructure. Think about it: we boost the economy through infrastructure development to support new housing; in turn, adequate housing supply stabilizes rents and tenants have a choice of housing opportunities from low to high cost—just like most other things in life, whether we are talking about diamonds or cars.

ⁱ New York, New Jersey, Maryland, and Oregon.

ⁱⁱ Consider the same situation with Proposition 13, where adjoining and similar size homes using the same services may pay vastly different property tax amounts. Also, be careful about assuming California has no vacancy controls. See Penal Code Section 396, an anti-rent gouging criminal statute that contains vacancy control provisions that apply during a State of Emergency declared by the Governor. A State of Emergency declaration has remained continuously in effect since the Northern California wildfires in October 2017.

Beyond Prosecution: The District Attorney's Office Resolves Consumer and Community Disputes

NOV 02, 2019

BY KRISTINA WARCHOLSKI

Did you know that your District Attorney's Office serves the community in more than just a prosecutorial role? For more than 40 years, the Marin County District Attorney's Office has had a Consumer Protection Division, which has provided no-cost dispute resolution assistance to thousands of Marin County residents.

The Consumer Protection Division primarily enforces a broad range of consumer protection laws, but from the Division's inception, the Consumer Mediation Unit has expanded the Division's role beyond enforcement to address issues that are proper for mediation. The Unit provides dispute resolution services for those without the means to hire a private mediator or whose disputes were not ripe for the filing of a civil action.

The Consumer Mediation Unit comprises two full-time mediators (including a bilingual mediator) and eight dedicated volunteer mediators, all of whom are retired professionals, including several attorneys. All have extensive experience beyond required mediation training and the CMU matches their diverse experience to the wide range of consumer and community issues it handles. These include:

- Consumer-vendor billing
- Landlord-tenant issues
- Construction and home repair
- Automobile sales and repair

- Financial and credit concerns
- Internet sales
- Utilities
- Transportation (DMV, Fastrak and public transit)
- Communication (phone companies, internet providers)
- Insurance and medical billing
- Travel
- Scams
- Neighbor, community, and homeowners' association disagreements

The CMU's mediation services do not extend to criminal acts, complex financial disputes, family/divorce matters, and probate/trust issues.

In the last year, the CMU has also become the mediation services provider for the County of Marin's Rental Housing Dispute Resolution Program, which provides for mandatory mediation for rental increases greater than 5% occurring in unincorporated Marin County. The CMU provides mediation services for similar programs in the City of San Rafael and the Town of Fairfax. These programs have been successful in providing a neutral forum for parties to air their differences, as well as to educate landlords and tenants about their rights and responsibilities under the law.

The CMU's function differs slightly from traditional private mediators, who are often hired as a result of matters currently in litigation. It accepts only matters that have not been filed in court, including small claims court. The goal is to help the parties resolve their differences, whenever possible, without the need to hire an attorney, thus keeping parties out of the court system. Funded by taxpayers or volunteering their time, the CMU's mediators are true neutrals with no financial interest or incentive, enabling them to fully focus on providing the opportunity for a meaningful dialogue that results in a resolution where both sides feel heard. When the need for legal assistance sometimes becomes necessary, parties may still use the CMU's services, but attorneys serve as "legal advisors" during the process, leaving the talking to the parties.

While the vast majority of mediations within Marin County are handled by highly-qualified private

mediators, it's good to know that those without the financial means to pay for mediation have an alternative resource for help resolving disputes. You can learn more about the program on the (<https://www.marincountyda.org/service/consumer-protection-unit>) District Attorney's website.

Lori E. Frugoli

NOV 01, 2019

BY ANDRES H. PEREZ

The Marin Lawyer recently sat down with Lori E. Frugoli, Marin County District Attorney.

How long have you been in the law enforcement field?

My interest in law enforcement began in high school. I envisioned a career as a canine trainer at Guide Dogs for the Blind, which led to a ride-along with canine officers from the Richmond and San Francisco Police departments. That changed my career focus toward law enforcement.

After graduating from Terra Linda High School, I volunteered as an explorer scout at the San Rafael Police Department, which led to positions as a cadet, traffic enforcement officer and volunteer reserve police officer. My first position as a sworn peace officer was with the Marin Community College District and a few years later, the Santa Rosa Police Department hired me.

While working at the Santa Rosa P.D., I earned my B.A. in Administration of Justice. Testifying in court led to my interest in law school and in 1985, I transferred to the Marin County Sheriff's Office to be a Deputy Sheriff by day and law student by night. The Marin County District Attorney's Office hired me in 1989.

What was your most memorable case as a police officer?

I actually have two, both from my time as a Santa Rosa police officer. In the first, I confronted a suspect who was reportedly attempting to cash a suspicious check at a bank drive-thru lane. Upon contacting the suspect, he began reaching into his jacket to allegedly retrieve his ID, which I knew he had already

given to the bank teller. I, along with another officer, had to forcefully prevent him from reaching further into his jacket, where we ultimately discovered he had a loaded handgun. In the second, I was the first to respond to a local clothing store where the owner's husband reported finding his wife unconscious on the floor with a gunshot wound to her head; she was not breathing. I attempted CPR to no avail. I still remember her husband standing next to me as he helplessly watched his wife pass. A suspect was ultimately apprehended, I testified at trial, and he was convicted of murder in the course of a robbery.

What was your most memorable case as a deputy district attorney?

I prosecuted a murder case where one co-defendant pleaded guilty and testified at trial against his co-defendant. It was a long, complex investigation and trial which included very graphic testimony about the murder. After the trial, the father of the testifying co-defendant (who was sentenced to prison for a significant length of time) thanked me for treating his son with respect and dignity.

What inspired you to run for District Attorney?

I was inspired to run for Marin County District Attorney because I envisioned an office of more than just great prosecutors but one that also takes an active role in community building. I believe increased visibility of—and accessibility to—prosecutors beyond the confines of the courtroom is essential to my goal of connecting the community to the courtroom.

What was the most challenging part of running for elected office for the first time?

Before I took a brief leave of absence to focus on the campaign full-time, I had to balance the duties of my full-time job as a prosecutor, including maintaining a full case load, with the steep learning curve of a first-time candidate for countywide office—not an easy task.

What did you learn about yourself during the election process?

That I can survive for weeks on a few hours of sleep! Seriously though, it was not as much what I learned about myself, but what I learned about our community. When you have the opportunity to meet with community members or leaders “one-on-one,” answer their questions, and exchange points of

view, you realize the amazing diversity of ideas we have in our county—it was a very powerful and rewarding experience.

What goals did you accomplish in your first 100 days as District Attorney?

In my first hundred days I am proud to say that I:

- Created a working group of community leaders and organizations to collaborate, work together and have meaningful discussions on issues that impact our County.
- Facilitated the necessary process to establish a sustainable, local Sexual Assault Exam program.
- Integrated an experienced Immigration Attorney into the team to provide expertise, guidance and training to the office and legal community at large.
- Promoted an inclusive office environment that encourages a voice for all staff members at every level.

What goals do you hope to accomplish by the end of your first term in office?

- Create a social justice attorney position with a focus on relationship building and collaborating with our community partners and stakeholders.
- Establish a Veterans Court.
- Develop an ongoing and successful collaboration with Marin County's Youth Court.
- Build a strong, positive, and visible presence in the community for the office.

What do you believe is the biggest misperception of the Marin County District Attorney's Office?

That we have a narrow focus on getting convictions. To the contrary, our goal is to seek fair and just resolutions for all. We have a very strong focus on justice for victims of crime but that is not to the exclusion of also incorporating, where appropriate, concepts of restorative justice which can benefit the community at large. I believe it is incumbent upon our office to ensure that this message reaches all corners of the Marin community.

What is a fun fact that you think most people in your office don't know about you?

I love animals, particularly horses. I have shown horses competitively and I also enjoy horse camping. I made the difficult decision to sell my show horse when I ran for office. Since the election, I have fostered rescue horses for the Milo foundation. I hope to have another horse sometime in the future.

Lawyers for America: But I Graduated from Law School, Doesn't that Make Me a Lawyer?

NOV 01, 2019

BY ANDRES H. PEREZ

Are law school graduates prepared to practice law after three or four years of grueling coursework and with a financial burden that could purchase a small home in Fresno? A 2015 Lexis/Nexis study found that 95% of hiring partners and supervising associates surveyed believed that recent law school graduates lacked key practical skills. The study found that while recent graduates had basic research skills, they lacked advanced research skills and a fundamental understanding of how legal matters worked in the real world. The net effect is that employers are stuck still needing to teach newly-minted graduates how to be a lawyer, resulting in a period of diminished value to both the employer and clients.

Enter Lawyers for America, Inc. or LfA. In 2011, two Hastings law school professors, Marsha Cohen and (now Chancellor and Dean) David Faigman, recognized there was a preparedness problem among new lawyers who were competing for fewer jobs during the downturn in the legal market. Professor Cohen believes a legal education that models the medical school progression of classroom, clinical, and finally practice years better prepares students to be viable lawyers when they graduate.

Cohen and Faigman founded Lawyers for America as a 501(c)(3) non-profit corporation to address this problem. Its mission is to improve the practical skills of new lawyers, expand the availability of legal services for those who cannot afford lawyers, and increase the ability of government and non-profit legal offices to render such services.

U.C. Hastings is so far the only law school that has implemented the program, but Professor Cohen

anticipates signing up additional law schools in the future. LfA operates as a fellowship program that trains law students to work in a legal office, recruits the offices for placement of student Fellows, and handles all logistics between the law school and the legal office. Professor Cohen has limited the pool of legal offices to government agencies and non-profits to fulfill the third prong of LfA's mission.

The program model is a two-year paid fellowship in which 3L students are placed with a legal office where they complete a training year as a student followed by a service year as a first-year attorney. During the first of these two years, a Fellow receives between 24 and 32 hours per week of legal training and is supervised by both law school faculty and attorneys at the placement site. In between the first and second year, Fellows get three months to take the California bar (which they will hopefully pass) and briefly recover from the law school experience. During the service year, Fellows dedicate 40 hours per week to the practice of law and receive a stipend (currently \$42,000/year) plus additional funds for health insurance. Funding for each Fellow comes from the entity with whom they are placed. Due to the nature of their work, Fellows are generally eligible for loan repayment or forgiveness programs related to performing public service.

Currently, LfA has three law-student and four first-year-attorney Fellows placed throughout the Bay Area. Since the program's inception, it has placed approximately 31 Fellows in a wide variety of government law offices including District Attorney, Public Defender and City Attorney offices as well as legal non-profits such as the Center for Biological Diversity, Disability Rights California, Consumers Union, and the Center for Food Safety.

Starting this school year, the County of Marin has partnered with Lawyers for America to place a Fellow with the Marin County District Attorney's Office where as part of the program the Fellow will receive orientations and ongoing litigation training and mentorship. This year's Fellow, Austin Shopbell, is a certified law student, which allows him to make court appearances under the supervision of a licensed attorney. Prior to starting as a Fellow in September, Austin went through a two-week bootcamp at Hastings on the roles and duties of a Deputy District Attorney. During his training year, he will be assigned various forms of motion practice and will receive ample time in the courtroom arguing motions, managing misdemeanor calendars and, of course, conducting jury trials. Austin's advice to prospective fellows is to make sure their prospective placement fits into their anticipated career progression.

The success of programs like Lawyers for America will hopefully spur conversation about whether our current legal education model is outdated. Law school graduates deserve more from their education than a handshake and a diploma—they should expect to be prepared to serve society right out of the gate.

Litigation is (Apparently) Alive and Well in Marin County: The 2019 MCBA Judges Luncheon Recap

NOV 01, 2019

BY ANDRES H. PEREZ

Once again, the MCBA Judges Luncheon was the hottest lunch ticket in Marin as The Club at McGinnis played host to yet another capacity crowd of bench and bar members. The event was expertly, for the most part, co-hosted by MCBA President Charlie Dresow, representing the members of the Association, and the Honorable Paul Haakenson, representing the distinguished members of the Marin County bench. Both Charlie and Judge Haakenson lamented the fact that this would be their final opportunity to address the bar as Bar President and Presiding Judge, respectively. To their dismay, no motions were made from the floor from either the membership or the bench to extend either of their terms by acclamation; however, being consummate professionals, they pressed on admirably.

<h4>The Dresow Report</h4>After a round of introductions of our bench and distinguished guests, with several assists from Judge Haakenson, Charlie introduced the proposed slate of incoming MCBA Officers and Directors, who were unanimously approved by a voice vote of the membership. Congratulations and welcome to an impressive group of new officers and directors. The MCBA is fortunate to have the benefit of your talents. Your new officers and directors are:

Officers

- Susan Feder, President
- J. Timothy Nardell, President-Elect

- Robert Rosborough, Treasurer
- Scott Buell, Secretary
- Charles Dresow, Past President
- Matthew White, 5-year Past President

Directors (Thru 2022)

- Emily Charley, Hanson Bridgett LLP
- Kristine Cirby, Law Offices of Kristine Fowler Cirby
- Christopher Locke, Farella Braun + Martel
- Ann Munene, Jones Clifford
- Karthik Raju, Office of the Marin County Public Defender

Director (Thru 2020)

- Chelsea Heaney, Vance Family Law

Charlie also thanked outgoing officer David Feingold and directors Scott Buell and Anna Pletcher for their outstanding contributions to the success of the Association. Charlie's final housekeeping matter of his term was to remind the membership, especially those of us whose MCLE compliance date is coming up (M-Z), that our annual MCLE Fair is fast approaching and that it can help us top off our MCLE credits in the event of an audit—good advice.

Incoming President Susan Feder gave a brief presentation highlighting the MCLE fair, especially our keynote speaker Dale Minami, Esq., who was part of a legal team that successfully represented Fred Korematsu in overturning his wrongful conviction for defying the WWII Japanese internment law. Susan encouraged members to attend and to consider signing up their legal support employees to take advantage of a track tailored for them. She also acknowledged current MCBA board members in attendance. We look forward to Susan's leadership in the upcoming year.

The Haak(enson) Docket

Presiding Judge Haakenson then took center stage and started off by thanking Charlie for an exceptional job as co-host and outgoing MCBA president. Speaking on behalf of the members of the bench, Judge Haakenson thanked the membership as a whole for being exceptional officers of the Court and making the Court's job easier on a daily basis. Judge Haakenson acknowledged that the bench feels "guilty" about being heaped with praise every year at this luncheon, but apparently was relishing the opportunity to gently roast his fellow judges. We are lucky to have such a bright and hard-working group of jurists here in Marin.

Judge Haakenson began his year in review by reporting on the state of court filings in fiscal year 2018/19. Total court filings were 8,383 cases: 4,147 criminal and 4,236 civil. Of the criminal filings, 3,343 were misdemeanors and 804 were felonies. Misdemeanor filings increased by 243 cases and felony filings increased by 167 cases over FY 17/18. Judge Haakenson quickly dispelled any theories that this uptick in criminal filings was related to the District Attorney's tagline of "connecting the community to the courthouse."

On the civil side, limited civil filings numbered 1,450, unlimited were 1,423, and family law cases accounted for 1,363 filings. There was an overall increase of 220 civil filings or 5% from 17/18.

Lastly, as of October 2019, the number of active cases by type were: felony criminal - 474; misdemeanor criminal - 1,693; family law civil - 839; unlimited civil - 1,015; and limited civil - 792. Overall, court filings in Marin appear to be pretty consistent from 17/18 to 18/19, with a slight increase in both civil and criminal filings.

Sensing the mounting anticipation of the crowd, Judge Haakenson moved on to the big reveal: 2020 judicial assignments. The main takeaways are: Judge Sweet is the incoming Presiding Judge and will be on a special homicide trial assignment but hopes to return to a civil department when it concludes; the criminal trial department formerly occupied by Judge Chernus, who will take over the misdemeanor calendar department (M), will remain vacant for now; and Judge Simmons will be moving from her longtime criminal trial department to a civil trial department while still presiding over probate matters and will retain her position as supervising criminal judge but without a criminal courtroom. On a special note, Judge Adams will be celebrating her 20th year on the bench. Congratulations, Judge Adams!

<h4>2020 Judicial Assignments</h4>

Criminal Trial Departments:

- Hon. Paul Haakenson (F)
- Hon. Geoffrey Howard (D)
- Hon. Beth Jordan (J)
- Hon. Andrew Sweet, Presiding Judge (Special Criminal Assignment)
- Hon. Kelly Simmons, Supervising Criminal Judge (no courtroom)

Criminal Calendar Department, Misdemeanor:

- Hon. Roy Chernus (M)

Criminal Motions Calendar:

- Hon. Beverly Wood

Juvenile Law Dept:

- Hon. Beverly Wood (G)

Adult Drug Court:

- Hon. Paul Haakenson

Family Violence Court:

- Hon. Geoffrey Howard

STAR Court:

- Hon. Sheila Lichtblau

Civil Trial Departments:

- Hon. James Chou (B)
- Hon. Stephen Freccero, (Supervising and Presiding Judge of Appellate Division) (A)
- Hon. Kelly Simmons (E)

Probate Department:

- Hon. Kelly Simmons (E)

Civil Harassment Restraining Orders:

- To be heard by Civil departments on a rotating basis

Family Law Departments:

- Hon. Verna Adams (Supervising) (H)
- Hon. Mark Talamantes (L)
- Hon. Sheila Lichtblau (K)

Commissioners/Referees:

- Commissioner Christopher Longaker - DCCS (N)
- Referee Frank Drago - Traffic (N)

Court Electronic Case Management System (Coming Soon)

Judge Haakenson provided an update on the status of a new case management system. He expressed his gratitude to Court CEO James Kim, whose efforts were responsible for the Court receiving a major grant that will now allow it to implement a full electronic case management system. The Court has narrowed down the choices to three vendors and is in the process of doing due diligence, including visiting other courts that utilize these vendors and inviting stakeholders to weigh in. The Court has not decided at this point as to whether the civil or criminal division will go live first but expects the system to go live in approximately three months, or longer if they decide to have both divisions go live at the same time. Judge Haakenson said the three potential systems have "all the bells and whistles," including e-filing capability; however, it is unknown whether any will have a paywall associated with them.

Final Reflections of a Presiding Judge

With all of the formalities out of the way, Judge Haakenson brought the house down with what could

only be described as an audio and visual assault on the senses as he let us in on the rock star status and lifestyle of a Presiding Judge, including the highs and lows. He related how the Presiding Judge is responsible for inspiring his fellow judges, which he, in part, attempts to do by penning theme songs for each of them. Judge Haakenson shared a few of his songs with the audience and it is hard to believe that these melodic masterpieces were not enthusiastically embraced by their recipients, Judges Sweet, Chou, and Howard. Judge Haakenson noted that former Presiding Judge Simmons has always been the lodestar by which he measures his success as Presiding Judge. When he began his term as Presiding Judge, Judge Simmons gave him the following Yoda-esque advice: "Immense is the power and responsibility of Presiding Judge." Wise words indeed. He noted that when you are as good as Judge Simmons, America makes you an icon, citing Mattel's design of its immensely popular "Judge Barbie" after her. He hopes his term as PJ will also be recognized for its greatness someday, perhaps with a transformer doll that changes from a majestic hawk to a noble presiding judge—one can only dream.

Thank you Judge Haakenson for your leadership and to the entire bench, who consistently inspire confidence in the judicial system in Marin.