

# NORTH COUNTY *Lawyer*

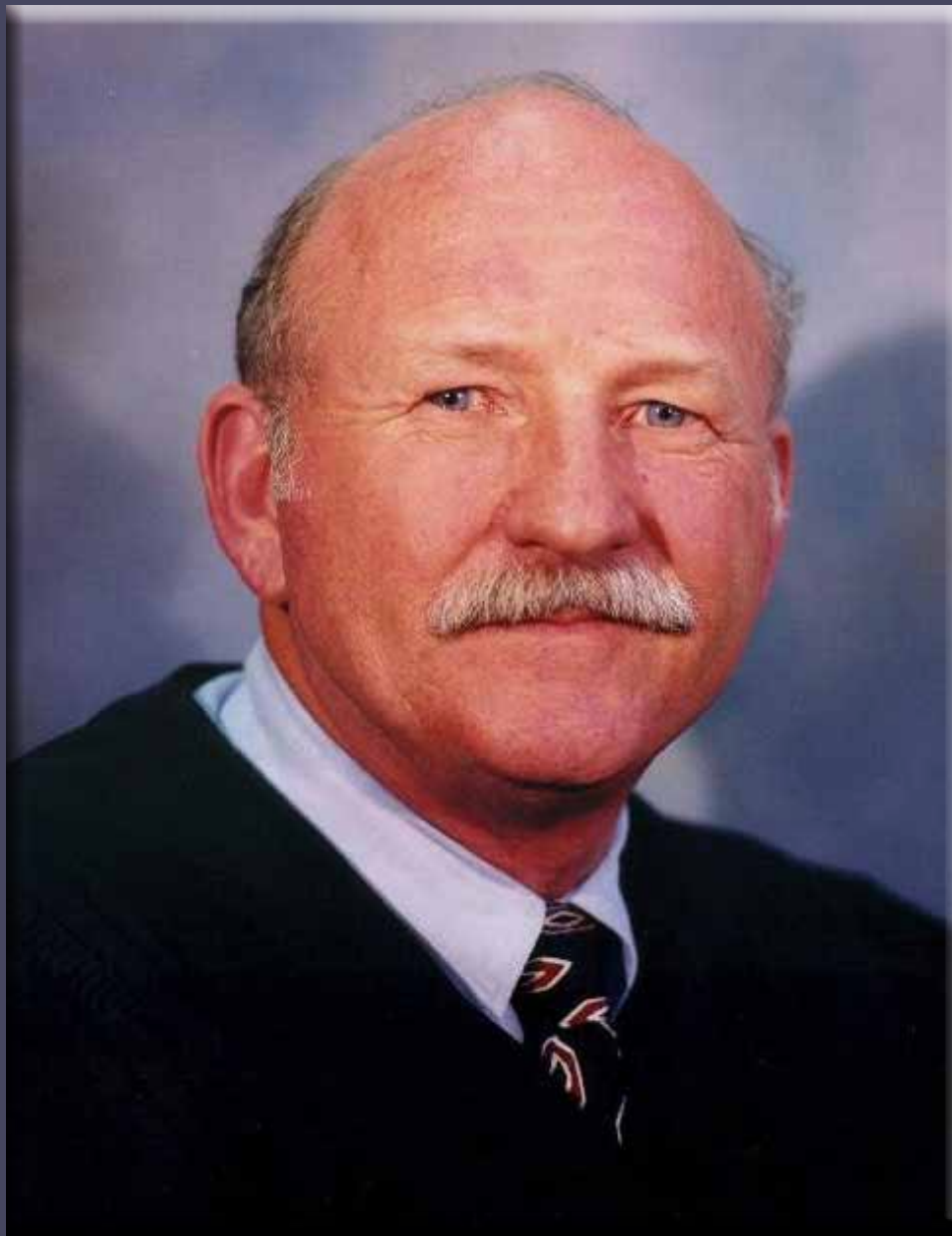


*THE MAGAZINE OF THE NORTH COUNTY BAR ASSOCIATION*

**VOL. 30, NO. 7**

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**JULY 2013**



The NCBA Honors  
The Honorable Richard G. Cline  
With its Distinguished Lifetime Achievement Award

# NORTH COUNTY *Lawyer*



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**The North County Lawyer reserves the right to edit all submissions.**

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# LETTER FROM THE EDITORS

---

By Debra H. Lewis, Co-Editor  
[debra@inclegalattorneys.com](mailto:debra@inclegalattorneys.com)



Well, I, too, had planned on attending the picnic but at the last minute, my husband told me he had to go a meeting in Switzerland and perhaps I should tag along? Of course, being the dutiful wife, I assented! We were lucky enough to get a picture

perfect-day to view the Matterhorn.



The sun was shining, the sky was virtually cloudless, and the majestic peak was covered in fresh snow. The day we left Zermatt, it was snowing quite heavily. It was like Christmas in June! My high school French came in very handy on the trip and the food in the French portion was terrific. On the German side - not so much, but the beer flowed. I loved visiting the old castles, strolling down the cobblestone pedestrian open-air shopping malls, and comfortably riding on their great mass transportation system. Sorry I missed the picnic but, you gotta admit, I had a great excuse!

By Laura D'Auri, Co-Editor  
[alamor@roadrunner.com](mailto:alamor@roadrunner.com)



I was definitely feeling like an early summer picnic, and was happy to attend the Board's annual picnic at the Lacy house on June 2. As my "+1" I took Deborah Bayus. It seemed appropriate, as she is the one who initiated the Board picnics when she was Bar President. Ya gotta love those New Yorkers.

There were good spirits abounding, and guests brought their preferred grilling items, as well as the usual panoply of table goodies. I gave in to my Italian urge and made a big ol' pan of Baked Ziti (tube pasta with meat sauce and secret ingredients), since it's the dish my friends and neighbors rave about. It seemed to go over well with the crowd.

I was married at 20 when I lived in Rome, and my mother-in-law taught me to cook. She used to say "Se non puoi far da mangiare per 10 persone al ultimo minuto, non vali niente." ("If you can't feed 10 people at the drop of a hat, you're worthless.") It scared me so much that I became a cooking wizard. I even followed the unspoken rule that you have to feed your husband a different dish every night for at least 14 nights in a row; no repeats. Mamma used to call me every night to check. ("Didn't you make that a week ago Friday?") We moved back to the States soon after our wedding.

But I'm still cooking.

# Save the Dates

*3 Legal Seminars* YOU HAVE GOT TO ATTEND:

*June 26*  
TWENTY13

12:00 NOON - 1:00 PM

## WHY NOT YOU AS JUDGE OR POLITICIAN?

SPEAKERS: Hon. Victor Ramirez (Superior Court Judge, Ret.)  
Hon. Olga Diaz (Deputy Mayor of the City of Escondido)  
Phil Hanneman (Director- Region 18 – San Diego Democratic party)

The issues of diversity, fund raising and hiring a qualified campaign treasurer along with the ethical obligations needed to run a winning campaign for Judge or office will be covered in this informative noon seminar.

*August 13*  
TWENTY13

12:00 NOON - 1:00 PM

## WINNING CIVIL APPEAL STRATEGIES

SPEAKER: David Kay, Esq. (Appellate Lawyer)

Learn the finer issues of economically conducting a civil appeal including cost bonds, stays, and the tips and traps of managing a winning Plaintiff's civil appeal in the Fourth Appellate District, Division 1.

*September 10*  
TWENTY13

12:00 NOON - 1:00 PM

## HOW TO WIN THE IMPOSSIBLE CASE

SPEAKER: Browne Greene, Esq. (Trial Lawyer)

Meet legend Plaintiff's Trial Lawyer Browne Greene and his trial team as they discuss winning the impossible injury case. He'll examine his recent \$7 million verdict for San Diego Criminal Defense Attorney Michael Burke against the City of San Diego. Portions of his Power Point and electronic exhibits will be displayed by his audio visual expert.

## *Seminar Location*

North County Bar Building: 249 S. Indiana Ave., Vista, CA 92084

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*Richard L. Duquette, Esq. & William L. Halsey, Esq.*

# ***PRESIDENT'S PERSPECTIVE***

---

I hope everyone is enjoying their summer! Don't forget that we have our Annual Beach Party on August 2, 2013. Details are on the back of this magazine. Kurt Weiser sets up games for the kids and we normally have a piñata! It is a great place to socialize with your colleagues and their families. We will grill up some burgers and just have a good old time.

We recently had a mixer for the board, section, and committee chairs. It was a success in reaching out to those who are responsible for making all the different facets of this organization work. I am so happy to see our sections going strong. We even created a new Immigration Law Section that will be chaired by Silvina Tondini.

I want to take this opportunity to thank our editors Laura D'Auri and Debra Lewis. They have done a fantastic job with our magazine. It can be very difficult in putting together a monthly magazine but they have managed to do it without any problems.

If you haven't heard yet, Debra Leffler Streeter is your 2014 president-elect. Debbie has been very in-



involved in our association for years. I know our organization will be in good hands this coming year.

I look forward to seeing everyone at our September dinner meeting which will feature a panel of judicial officers addressing current issues in law.

*Jeffrey Bledsoe Lacy  
President*

## **What is a Listserv?**

A Listserv is an e-mail discussion group. Members of the group can easily come together to discuss a topic of shared interest as well as exchange information and expertise. The NCBA operates three (3) Listservs discussion groups in the fields of family law, trust/estates and general civil litigation.

## **Who can join?**

Membership in any of the groups is open to all members of the North County Bar Association.

## **Why belong to Listserv discussion group?**

Discussion lists are ideal for exchanging expertise, obtaining feedback and fostering collaboration among group members.

Copy the link below to join a Listserv discussion group:

**NCBA Family Law Listserv:** <http://mailman.listserve.com/listmanager/listinfo/ncba-family>

**NCBA Civil Litigation Listserv:** <http://mailman.listserve.com/listmanager/listinfo/ncba-civil>

**NCBA Estates Law Listserv:** <http://mailman.listserve.com/listmanager/listinfo/ncba-estates>

# *Reflections*

## *Judge Richard G. Cline*

**T**he older I get, the more it is apparent that my upbringing and early years must seem downright bizarre to my colleagues, especially those who are white, Anglo-Saxon, and male. The rumors are actually true that I was born in a dentist's chair. My folks were operating a large sheep ranch eight miles from a small town on the eastern slopes of the Rocky Mountains in Montana. At the appointed time in the dark of the night, my mom and dad drove into Ennis only to find that the local health care provider, the veterinarian, was out and the dentist was the back-up. My dad told me he held up the dentist's pajamas while the dentist and his wife did the extraction. When the procedure was completed, I and my two new parents proceeded to the nearest really large city (e.g. about 5000), Bozeman, where mom and I got proper hospital care. Two years later came the winter of '45 which was grim climatically and economically. My folks and their shepherds could not get feed to the sheep on the range or rescue them from the snow drifts and ultimately were forced to leave them as spring feed for the carnivores. Within about a year, we sold the ranch and moved into Bozeman, the second of my many residences. We ended up moving from Bozeman to Baker (City), Oregon to Walla Walla, Washington and thence to Yakima, Washington where I attended schools from 3rd through part of my 11th grade. We then moved to Santa Maria, California and, finally, to the San Jose area where I graduated from high school. I was fortunate that my parents both had three years of college and appreciated education. I always knew I was going to go to college and I worked summer jobs from age thirteen to save for that eventuality.

My work history involved a lot of manual labor that taught me that there had to be something better in life that an education could facilitate. I thinned apples and picked raspberries and pears. I did the interior decorating (i.e. I hung pictures and moved furniture) in model homes. The summer after I graduated from high school, I worked in a friend's small family business splicing wires together with special pliers making chicken and rabbit cages. I loaded railroad boxcars and trucks with boxes of fruit at a fruit cold storage plant. I worked 12 hours a day (or night) seven days a week off-loading fruits and vegetables from farmers' trucks at a Safeway produce dock. I drove a dump truck 12 hours a day or night seven days a week. The truck carried either pea vines or corn waste which I and other

drivers dumped off a cliff to a silage pit below the cliff that was part of my stepfather's cattle operation. Today, the dangers of that job would trigger a four-alarm alert at OSHA. Two buddies and I spent a couple of weeks hoeing weeds from around newly planted fruit trees in a large, new orchard. I worked one summer as a firefighter for the California Dept. of Forestry. The summer after college graduation, I surveyed an easement with a transit in a mountain subdivision and used a chain saw to cut down trees in the easement. My vastly more experienced and mature co-worker almost succeeded in cutting off his leg.

During the summer of my sophomore year of college, my brother, a cousin, and a friend of my brother stocked drywall on a construction site. This job came to an unexpected and sudden end. Just as suddenly, at midnight, we all bailed out of our apartment. I think we left my dad holding the bag on that because it is likely he co-signed on the lease. With nothing particular to do at that point, my brother and I shined up our thumbs and hit the road hitchhiking from Oakland to visit our older sister in Virginia. Some four days later and five pounds lighter, but with five bucks still in our pockets, we arrived safely to surprise our sister. Unaware of our trip and about eight and one-half months pregnant, sis almost experienced instant unexpected childbirth when two smelly, dirty loudmouths knocked on her door at 9:00 p.m. After a short stay, we hit the road back to the west coast. I decided to make a detour with my brother to Seattle where he was supposed to be in a wedding party four days hence. We did not make it. On the fourth night, we checked into a seedy hotel on skid row in Denver to catch some sleep. For some reason, sleeping on the side of the road in shifts or in culverts is not restful. I recall entering our hotel room and opening the window for some fresh air just as the gunshots across the street finished echoing. Within



*Continued on page 14*  
*North County Lawyer*

# Meet The President-Elect

**A**t the regular meeting of the NCBA Board of Directors, current vice-president and treasurer Debra Leffler Streeter was elected to serve as president of the bar association in 2014 after serving as a board member for three years.

Debbie has been practicing law in San Diego County for 14 years, and a member of the North County Bar Association for about 10. After graduating from Point Loma Nazarene University with a BA in Psychology, Debbie went on to the paralegal program at the University of San Diego. She worked for two years as a paralegal in Tucson, Arizona before attending the University of San Diego School of Law. She received a Juris Doctor degree in May 1999 and started practicing later that year.

Debbie worked for a few attorneys doing estate planning, criminal defense, and commercial real estate work. As part of that work, she worked on the death penalty appeal for the first woman on death row, and wrote two briefs to the U.S. Supreme Court arguing the three strikes law was cruel and unusual punishment as applied to those clients.

She opened her own firm in October 2003. Debbie's office is in Carlsbad. She focuses primarily on estate planning and elder law while doing some work in the areas of business transactions, commercial real estate transactions, and bankruptcy.

While on the board, she has served as co-chair and volunteer for the Youth in Court and On My Honor programs, chair and volunteer of the Legal Clinic/Law Week program, chair of the Donor Advised Fund committee, and has participated in numerous other committees. She is active in both the Trusts and Estates and Business law sections.

In addition to managing her business, networking, and serving the community in her professional role, Debbie is also active in her community with the programs for her two children (ages 8 and 11) at her kids' school and church. She is also on a board for managing a charitable bequest given to her church.

As president, she hopes to further the success and positive growth experienced in past years. She believes our bar association is unique in the relationships we are able to form and the positive atmosphere that encourages personal and professional growth. We do this through both



service to our members and service to the North County community. Debbie's goal is to further that service and growth in the most positive manner possible. She is honored to have been elected president of our bar.

*Debbie can be reached at 760.930.1987.*

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# VICTORY OF THE VILLAGE PEOPLE:

Recapture of Copyright  
A summary of *Scorpio Music v. Willis*  
Case No. 11vb1557 BTM(RBB)

By Laura D'Auri, Co-Editor



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**F**or those of you who are old enough, remember the motorcycle cop impersonator from the 1970s band, The Village People? As the lead singer for the group, Victor Willis also co-wrote a number of their hits, including “Y.M.C.A.”

The music deals that prevailed at the time usually included signing over all or part of the music publishing rights to the record company. This practice was very lucrative for the record companies because, as differentiated from book copyrights where specific permission must be requested beforehand, anyone can cover a music composition that has been “published,” i.e., performed in public, as long as they pay the established royalties. So record companies that own music publishing rights recover royalties not only for the songs written and performed by an artist or group they signed, but when they own publishing rights they also collect from any other performer or group who performs the compositions of the signed artist or band. (Such royalty payments are usually handled by music royalty companies such as ASCAP or BMI.)

The 1978 Copyright Act amendments included a “recapture of copyright” clause, which provides for recovery of copyright beginning 35 years after assigning the rights and the statute continues for 5 years from that point. 17 U.S.C. § 203 (a)(3). This year (2013) marks the first year the recapture clause goes into effect. *Scorpio Music*, therefore, is a seminal case, and numerous artists – purportedly including Bob Dylan, Tim Waits, Bryan Adams, Bruce Springsteen, Billy Joel, Kenny Rogers, The Doobie Brothers, Fleetwood Mac and Tom Petty -- are waiting in the wings to file their own lawsuits to recapture music publishing rights. After the Willis decision, Rick Carnes, president of the Songwriters Guild of America, said in a statement that “A decision that so emphatically endorses congressional intent to protect creators will hopefully smooth the way for all songwriters seeking to recapture their copyrights.”

The recapture provision requires at least 2 but not more than 10 years’ advance notice of the intent to file the notice of termination. 17 U.S.C. § 203(a)(4)(A).

In January 2011, Willis served on Plaintiffs a “Notice of Termination of Post-1977 Grants of Copyright on

Certain Works of Victor Willis.” The Notice concerned 33 songs of which Willis was joint author. On July 14, 2011, Plaintiff record companies filed a lawsuit challenging the validity of the termination and seeking a declaratory judgment that Willis had no right, title or interest in the composition copyrights, requiring Willis to withdraw the notice of termination because he was the only author serving a Notice of Termination, and enjoining him from making claims to the compositions’ copyrights.

17 U.S.C. § 203 sets forth termination rights. The issue before the court was whether a joint author who grants his rights under a separate agreement from the other authors has a right to terminate that grant or whether a majority of the authors was necessary to terminate the grant. Plaintiff record companies argued that Willis, as only one of the joint authors filing the Notice, was not entitled to relief. The court disagreed.

In a 10-page ruling in federal court, Chief Judge Barry T. Moskowitz rejected such a claim and granted Willis’ Motion to Dismiss, as “The purpose of the Act was to safeguard authors against unremunerative transfers and address the unequal bargaining position of authors, resulting in part from the impossibility of deter-

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# MAKING IT TO 3L

*By Richard Younger, Jr.  
Third Year Law Student  
Thomas Jefferson Law School*

The beginning of law school was more like a foreign language lesson rather than a lesson in the law. The assigned cases were in Old English and took what seemed like forever to brief. Words like *dicta*, *de novo*, and *sua sponte* floated through the lectures along with other terms of art. I needed a dictionary to understand those first few lectures. By the time I got a handle on that first semester, it was time to confront the stress of taking an exam that accounted for the entire grade in the course. Talk about pressure.

Despite the choppy start to law school, two things became clear to me by the end of my first year: (1) I could be successful in law school, and (2) some of my classmates were going to be lifelong friends. However, I still felt like I was missing something at the end of my first year -- Oh, the confidence that I could actually be a lawyer. That would change over the next two semesters.

At the beginning of my second year, I obtained an internship at a biotech company assisting general counsel with patent infringement claims. I performed research to find evidence of infringement of the company's patents. Initially, the internship consisted of research and writing various memoranda and motions. This connected legal writing in law school to the real world, but it still felt very academic. Then, about halfway through the semester, the attorney sat down with me and requested my opinion about a particular case strategy he was working on. This took me by surprise and I quickly got nervous and worried that I would say something wrong and sound ignorant. In my mind, counseling is a big part of being a lawyer and I did not want to get it wrong. I jumped right in, though, and to my surprise, was able to discuss competently the pros and cons of the stated strategy. From that point, confidence started to build that I could actually be a lawyer.

*[Practice note from Editors: This example demonstrates the importance of positive mentoring.]*

In the second semester of 2L, I interned for a federal magistrate judge. I took notes for the judge in early neutral evaluation, case management, and settlement conferences for a variety of cases. I also sat in on



many criminal proceedings. I worked in chambers about thirty hours a week and this allowed me to observe many attorneys and to interact with the judge on a regular basis. I still remember how nervous I was in those first few interactions with the judge. I was not sure what to say and how to say it when speaking to him. That nervousness eventually subsided and I became comfortable speaking to and in front of the judge. This ease, along, with my previous experience gave me the full confidence that I could be a lawyer. I had the confidence that I could counsel and appear before a judge.

There is a well-known mantra in law school: the first year they scare you to death, the second year they work you to death, and the third year they bore you to death. I think that it really is more like your first year is when you realize whether you can succeed in law school, your second year is when you gain the confidence that you can be a lawyer, and your third year, you are just anxious to get out there and be a lawyer.

I stand today at the third stage: Just anxious to get out there and be the lawyer I now know I can be.

*Richard can be reached at 760.917.8746 or  
Richard.younger@gmail.com*

# NCBA Board of Directors 2013 Election

Nominations for the 2013 election of directors of the North County Bar Association have been released by the Board of Directors Nominating Committee.

**Nominees this year include:**

**Kathryn Anderson  
Amber Crothall  
Robert Daniels**

**John Donnoe  
Debra Lewis  
William Wolfe**

Four vacancies will be filled in this election, each with a three-year term that begins in January 2014. Ballots, including statements from the candidates, will be mailed in August and counted in September. Outgoing directors in 2013 will be Debra Leffler Streeter (who will become NCBA President), Virginia Lopez, Christine Mueller, Kurt Weiser, and Jeffrey Bledsoe Lacy.

The Board of Directors encourages additional nominations from the membership. Nominations may be made by written petition signed by twenty-five (25) active members and filed with the secretary of the bar board by July 30, 2013.



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# *FUNDAMENTALS OF PERSONAL INJURY MEDIATION*

*By David Dekker, Esq.*



**M**ediation has become the preferred method of ADR in the San Diego courts. There was a time when judges recommended most cases to either binding or nonbinding arbitration. When you go to a Case Management Conference these days, be prepared to talk to the court about your case going to mediation.

## **To Mediate Or Not To Mediate**

Before you get to the CMC you should ask yourself: “Do I really want to go to mediation?” A majority of cases are amenable to mediation and have at least a chance of settling. Other cases are really better suited for trial, and you should not let yourself be pressured into mediation. Be prepared to suggest some other kind of ADR such as a judicial settlement conference, or a two attorney panel. A judicial settlement conference is free and takes less time. You should also consider whether you can settle your case without using a third party at all.

## **Choosing A Mediator**

Assuming you decide mediation is right for your case, begin your preparation prior to the CMC by choosing a mediator.

The choice of a mediator is one of the most important steps in a successful mediation. Don’t show up for the settlement conference without having considered who you would like to mediate your case. A sharing list-serve such as the Consumer Attorneys of San Diego list-serve allows you to research the archives for comments from experienced attorneys. You can also post a request for opinions on mediators you are considering, or talk to experienced attorneys who handle the same kind of cases as the one you are preparing. The more people you talk to about any particular mediator the better idea you will have about whether they are right for you and your case.

Depending on the relationship, you may wish to ask opposing counsel for a list of the mediators they would consider acceptable. It is ideal if you and opposing counsel can agree on a mediator prior to the settlement conference.

Mediators have different styles and strengths. Consider what style will give your case the best chance of settling. An example is when you have a client with unrealistic expectations who is not listening to your advice and over whom you have very little control. In such a

case you might want to consider a mediator with a reputation for a “firm hand.”

Conversely, placing a client who is very sensitive, or emotionally fragile into a situation with a strong-willed mediator might not bring you the best result. For this type of client you probably want a mediator who is soft-spoken, gently persuasive, and has the skill to lead your client to a successful conclusion without making them feel as if they’ve been strong-armed.

Another issue in mediation is whether you want to have a joint session at some point, where all the parties and attorneys are together in the same room communicating their thoughts and feelings about the case. Some mediators like to begin with a joint session. Other mediators rarely call a joint session and will start with the parties in separate rooms, keeping them separated until a successful conclusion is reached. Whether or not to have a joint session is usually decided on a case by case basis.

In a case where your client is a friendly, likable, articulate person whose life has been seriously disrupted by the injury she received, your assessment of the client may be that she will make a wonderful witness and have a very favorable impression on a jury. When she talks about the impact the injury has had on her life, it is emotionally powerful and convincing. Assuming her deposition has already been taken, opposing counsel will communicate his or her impressions of your client to the insurance adjuster. However, in a case like this you should insist on a joint session during the mediation, so the insurance adjuster can appreciate, in person, the effect your client will have on a jury. After all, it is the insurance adjuster who makes the settlement decision. Therefore, you will want a mediator who is amenable to a joint session and knows how to conduct one properly and effectively.

You can contact a proposed mediator directly and ask him or her whether they would be willing to conduct a joint session during the mediation, since that is not considered an *ex parte* communication. Most of your communication with a mediator is outside the presence of opposing counsel.

*Continued on page 16*

*North County Lawyer*



# Mark A. Chambers

Attorney at Law

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*FELONY AND MISDEMEANOR REPRESENTATION*

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# *Reflections*

## *Judge Richard G. Cline*

*Continued from page 6*

a short time, the cops came to claim the deceased and the suspect. Still, we did get a better rest than previous nights. There is more to this story which I will save for the book.

This brings up the question of how I got into law and became a judge. As long as I can remember, I have been interested in all things scientific and mechanical. I was accepted at U. of Santa Clara with expectations of becoming an engineer. However, unexpectedly I received acceptance from Claremont Men's College. I jumped at this opportunity, particularly since it included a full scholarship. I graduated from there in 1965 with a degree in Economics. This was a particularly boring major, but my interest and success in the electives made everything worthwhile. I do recall that I hated my classes in Business Law and Constitutional Law/Theory. The Vietnam draft was looming just at the time I graduated. For no particular reason other than to dodge the draft as a student, I applied to Pomona College to satisfy some pre-med requirements with medicine the obvious target. As the dreaded draft day approached and having heard nothing from Pomona, I gave in and signed up for the Navy Officer Candidate program. The day after I was sworn in as a soon-to-be Naval Officer, I received notice of my acceptance to Pomona. So much for bad timing!

Ten days before I completed my six months of Navy training at the enchanting city of Newport, Rhode Island, I was hauled out of a really boring party by a strange but persistent and assertive woman. Anne and I were married a year and a half later and immediately upon the conclusion of a tour of duty on an LST to Vietnam and places east.

About the time I was near to discharge from the Navy, Anne had some health challenges that gave me cause to decide that I should stay in the military for a while. I obtained an assignment to shore duty in San Diego. It was at this point I first gave thought to the notion that the law might be an interesting career. I was certain that I did not want to work in a big institution, like the Navy, or do tedious and rote work. Ironically, I hated the myriad of rules and regulations governing activities of the Navy. I was not on a mission to get rich, but I wanted a job where I did not have to worry about making a living. So, I enrolled in night law school at USD in 1969. In early 1972, the Navy got tired of me having a shore billet and gave me a choice of going to sea or going home. Efforts to stay one more year to finish law school in exchange for a career in the

JAG Corp went nowhere. So, I gave my final salute, started growing my mustache and sideburns, and became a civilian. I went full-time to school and graduated in time to take the February 1973 Bar Exam. I passed and was admitted to practice in the summer of 1973.

My first and only job was as the associate and then partner of Richard Ring. Mr. Ring decided to specialize in family law. I took anything and everything else that walked in the door and interested me. For 25 years, I sat in the same chair in the same office with the same partner practicing law. I was fairly competent in legal procedures and cocky enough to take on cases involving new subject matters. So, over the years I handled criminal, bankruptcy, workers' compensation, slip-and-fall, trip-and-fall, motor vehicle, and a variety of other torts and negligence cases. I represented or sued virtually everyone in the food chain of the construction and real estate industries. I had a couple of employment discrimination cases as well as medical and dental malpractice matters. I did a variety of work on transactional matters for corporations and partnerships. Of interest is the fact I did very little probate work. At the end of my career as an attorney, most of my work was in litigation in the fields of construction, torts, and real estate.

I never had any great passion to become a judge. What I did have a passion for was learning new things, being independent, helping people solve their problems, working in a competitive environment, and becoming exposed to interesting people and ideas. Being king of the hill seemed like the place to meet all of these needs. So, I applied to become a judge and was appointed in September 1998.

Before and after I was appointed a judge, I always laughed at the folks from the big cities who suggested that North County attorneys were like back-woods hicks. Time and again, attorneys from North County have shown they are to be taken very seriously, and for all the right reasons.

I have always enjoyed participating in a good contest or match. As a judge, I have been a spectator to and entertained by some brilliant and well-fought legal battles. I have always had an amateur psychology streak in me. And, so, I have thoroughly enjoyed the exposure I have had to every type of personality type and trait, many of them aberrant, and the task of deciding the mental aspect

*Continued on page 20*

*North County Lawyer*

# Trust/Estates Section

Judges Julia C. Keley and Jeffrey Bostwick drove up for a special meeting with the Trust/Estates Section to introduce themselves and give us an insight on the move of probate to downtown, the current state of affairs of the court, as well as future improvements such as E-Filing. A summary of the salient points will be out soon. The judges assured the 60 or so in attendance that North County was not forgotten and substantial efforts were being made to lessen the travel issues. Curmudgeons' complaints as to the conditions of the Marge Bradley building were countered by Judge Keley who announced that plans were in the works for a new 12 story courthouse. The excited murmurs were quickly quieted by Judge Bostwick whose bantered response could best be summarized as "don't hold your breath."

Despite the lack of security, the judges bravely stayed after their presentation to meet the members and share coffee and a great homemade cake. All and all a very positive experience. Thank you!



*The Hon. Julia Keley and the Hon. Jeffrey Bostwick*

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# *FUNDAMENTALS OF*

## *PERSONAL INJURY MEDIATION*

*Continued from page 12*

On the other hand, if you represent a client who does not make a good impression, you probably want to avoid a joint session. This is especially true if the mediation has been scheduled before your client's deposition has been taken.

### **Preparing Your Client**

You should prepare your client for mediation as thoroughly as you would prepare them for their deposition or court testimony. Prepare clients by discussing what they should and should not say. Explain to them in detail what is going to happen during the mediation, including what the opening offer or demand will be, and that it will probably not be accepted. Explain the confidentiality rules. Tell them what they can expect from the opposition and from the mediator. Discuss the "bottom line" and what the settlement target is. With thorough preparation, your clients will be more relaxed and self-confident.

Inexperienced negotiators sometimes get impatient with a negotiation which is moving slowly and want to "cut to the chase." They think this will motivate the other side to do the same. Such an approach is seldom successful.

### **Arm Yourself With The Facts, Know The Law**

It is crucial that you have all the information necessary to evaluate any settlement offer or demand. In personal injury cases this means that you must know what all of the medical expenses, loss of income, and other economic damages are to date, and you must have a professional estimate of future medical expenses, loss of income and/or earning capacity, and any permanent disabilities or restrictions. Be prepared to discuss how the Hanif (Hanif v. Housing Authority (1988) 200 Cal.App.3d 635) and Howell (Howell v. Hamilton Meats & Provisions, Inc. (2011) 52 Cal.4th 541) cases and their progeny apply to your case.

If you are representing a Plaintiff in a tort case, the defense is almost always being controlled by an insurance company. In most, if not all, such cases the insurance adjuster who attends the mediation, comes with a limited amount of authority (money) and cannot exceed that amount without permission from a supervisor. The amount of authority given to the adjuster was determined ahead of time by a committee, or a computer program or a supervisor. Even if you or the mediator convince the adjuster that the case is worth more, the adjuster's hands are tied unless

they can reach a supervisor (who may be 2 time zones away and has left for the day) and convince that person to authorize more money. Therefore, it is to your benefit to provide the insurance adjuster with all of the information and documentation to support your claim well in advance of the mediation so the items can be considered when the amount of settlement authority is determined.

Liens by medical providers and health insurance companies present one of the biggest impediments to settlement of personal-injury cases today. It is a complicated and sometimes confusing area of the law, and any lawyer going into mediation should be familiar with the concepts.

To maximize the chances that your case will settle at mediation, you must know what all the liens are and whether or not your client can assert a partial or complete defense to the existing liens. Prior to mediation, contact the lien holders and find out if they are willing to reduce the lien, and if so by how much. Many times the lien holder will not commit to a reduction without knowing what the final settlement amount is and what other lien holders are willing to do. In that case try to get at least a tentative commitment to a reduction based on an estimated settlement amount. Keep in mind that while all of the professionals at the mediation will be talking about the gross amount of the settlement, the plaintiff will want to know what the net amount will be, since that is what they will receive. You cannot properly advise your client regarding on the projected net value without all the pertinent information on the liens.

Many a mediation has stalled because the attorneys did not have all the pertinent information, and were not prepared to discuss these important issues. Here is one real-life example:

At a recent mediation in a personal injury case, there were multiple parties with serious injuries and substantial medical bills and loss of income claims. The insurance coverage was insufficient to satisfy everyone's claim in full. Each party was negotiating for a piece of a limited pie. Almost all the parties had medical liens to contend with. I asked one of the attorneys if the health insurance company who was asserting a lien against his client's recovery had included in their health insurance contract a waiver of the "make whole rule" (See: 21st Century v. Sup. Ct. (2009), 47 Cal.4th 511.) Since his client was not going to receive the full value of her claim (thus would not





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# May Dinner/Fundraiser Highlights

*A special thanks to The Hon. Richard Cline for participating in our bar's Fundraiser Dinner, and to all in attendance. Also, a special thanks to all sponsors for their generous support. Judge Cline was presented with the "Distinguished Lifetime Achievement Award"*



*Debra Leffler Streeter, and Jeffrey Lacy presented the "Distinguished Lifetime Achievement Award" to The Hon. Richard G. Cline*



*Stanley Prowse, Phil & Barbara Burkhardt*



*Herbert Weston, The Hon. Adrienne Orfield, and Bill Wolfe*



*Richard Ring, Betsy Draper and The Hon. Bill Draper, Ret.*



*The Hon. Jeffrey Bostwick & Commissioner Patti Ratekin*



*Bradley Patton, Richard Heller, and The Hon. David Moon, Ret.*



*Anne Cline, Kendra Cline, Stefanie Wettstein, and Paul Smith*



*Nadia Keilani, The Hon. Richard Cline, Anne Cline, Peggy Tiess, and Sharon Thomas*



*Jeffrey Lacy & Mary Cataldo*



*Christine Mueller, Debra Leffler Streeter, and Christine Mohar*



*Linda Grunow, The Hon. Julia Kelety, Ron Grunow, and Marguerite Lorenz*



*Richard Macgurn, Mary Brooks, Susan Tran, and Karen Kaiser*



*Codie Dukes, Peggy Tiess, Laura & David Bright*



*Dawn Getyine, Michael Garland, The Hon. Robert Dahlquist, and K. Martin White*

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# Reflections

## Judge Richard G. Cline

*Continued from page 14*

or element of the many crimes and causes of action that are inherent in legal conflicts. Litigation is a mental chess match and I enjoy well-fought matches.

The first thing I noticed upon becoming a judge was that the pace and stress of work dropped to about half of that I experienced as an attorney. This was good in that it was better on my psyche and also allowed for deeper and more thorough examination of the issues I faced. The downside to it was that occasionally I had time on my hands.

In large part because of the fact I hate being without some current task, I decided to draft the first script of what became the *On My Honor* program. This was not a particularly tedious or lengthy chore. More importantly, the first time I welcomed a class participating in the program, I was hooked. All you had to do was see the smiles and attentive looks on the faces of the fourth grade participants. As I expanded the *On My Honor* program and developed its big sister, *Youth in Court*, I really got hooked. Not only did I continue to witness all of the big smiles of the kids, their teachers, and parents, I also got to experience the good cheer, camaraderie, and shared enthusiasm of a number of volunteer attorneys and court personnel. It has given me a real rush to see people who have heard of the program volunteering to participate. Even my wife, Anne, volunteered. She set the standard for the role of the "Bag Lady" who was dumpster diving and witnessed the infamous battery in the "On My Honor 2" program.

In addition, teachers from all over North County have signed on to bring their students after word spread about the program. Further, members of the North County Bar Association have volunteered in droves to assist with the eighth-grade OMH and the YIC programs. Over 50 attorneys have volunteered for the various outreach programs each year for 12 or more years. This totals thousands of hours. I have never heard of any other occupation or professional group that can match that.

Looking back over the past 13, I could not originally have conceived of the success and good will that these shared endeavors would engender. Over 16,000 students have attended the mock trials or the Youth in

Court breakout sessions. That represents over 400 classes of 4th/5th & 8th grade students and 135 classes of high school seniors. In the separate On My Honor Institute, about 175 additional teachers have received direct exposure to OMH in a program designed to teach them about the legal system and third branch of government. In the 13 years that these programs have been presented to students, I have heard of only one complaint that rose to the level of "I did not like it." One mother of a fourth-grade student who participated in the drug possession mock trial stated, in essence: she was offended that we would present her child with the notion that there were young people somewhere who might actually do a bad thing like using drugs. She did not want her student exposed to the idea of illegal drug use. So much for critical comment.

The collateral duty I have described above was sufficient to make my life as a judge very worthwhile. But, I had the extra reward of being volunteered for the assignment of North County probate judge. As a new appointee who had drafted a bunch of simple wills and even simpler trusts, I was deemed qualified to get the angry North County probate bar off the back of the presiding judge of the county. Eleven and one half years later, I can truly say that Probate is a rewarding, fascinating, and intellectually challenging area of the law. Also, as one vested with the immense powers of a Court

of Equity and having no direct probate supervisor, I had the perfect job: I could help people solve their problems, some quite challenging, with the assistance of a willing and skillful staff. In this role I had the good fortune to also be able to witness ferocious contests between brilliant and skillful adversaries, professionals one and all. The camaraderie and professionalism exhibited by the Probate Bar is something I will always treasure. It was with considerable irritation, and sadness that I witnessed the transfer of Probate out of Northern San Diego County. I predict that it will return some day.

Anne and I will be moving to Portland, Maine immediately upon my retirement. For those who have not ventured to those parts, Portland is absolutely charming. For anyone interested, I suggest Googling "Portland, Maine ratings." You should quickly see the attractions.

*I will miss Northern San Diego County and the many legal professionals with whom I have had the good fortune to associate over the years. But, it is time to move on and finally learn the game of golf.*

There a lot of places in the Maine where one can wander. I will update my photography and, very likely my sailing skills. Our daughter and two granddaughters and Anne's entire family are down the highway within striking range. I also have about 500 pounds of hand tools and gadgets. So, I do not anticipate any serious threat of boredom. If such a threat looms, I am certain my soul mate will have a way to fend it off. Who knows, I might even introduce *On My Honor* to the state of Maine.

*Submitted by Bill Kamenjarin.*

*Judge Cline can be contacted at*

*richard.cline@sdcourt.ca.gov.*

*Bill can be reached at 760.729.0107*

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Thank you!



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# *FUNDAMENTALS OF PERSONAL INJURY MEDIATION*

*Continued from page 16*

be “made whole”), the absence of such a waiver would give his client a complete defense against the lien, thereby increasing her net recovery substantially.

If the lien could be defeated, his client could afford to accept a smaller piece of the pie and still net a reasonable amount. If she could accept less, the others would get more and increase the chances of settling the case. When I asked if there was a waiver of the make whole rule in the health insurance contract, he said he did not know the answer. From the look on his face it was not clear if he even knew what the “make whole rule” was. The case did not settle.

Arm yourself with the facts and know the law that applies to your case.

## **Other Practice Tips**

Make sure that all the decision-makers are present at the mediation or at least available by telephone. This may include nonparty decision-makers such as a spouse or a parent of your client. If your client absolutely cannot or will not make a decision without them, then you might as well have them at the mediation so the mediator can talk to them.

Make your initial demand or offer before the mediation. Try to get the opposition’s initial demand or offer before mediating. At the CMC, ask opposing counsel to commit to giving you his or her client’s initial offer or demand before mediation. Ask opposing counsel for

the reasoning behind their offer so that you can have the necessary facts and law to counter that reasoning during mediation.

Mediation can be a relatively inexpensive and less stressful method for resolving cases. However, to give your case the best chance of settling, mediation must be approached seriously and only after thorough preparation.

*David Dekker can be reached at 760.807.2293.*

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*Beach Party at Oceanside Harbor*

*September 19, 2013*

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*October 14, 2013*

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# VICTORY OF THE VILLAGE PEOPLE

*Continued from page 8*

mining a work's value until it has been exploited..." and he added, "Under plaintiffs' interpretation, it would be more difficult to terminate an individual grant than it would be to make it in the first place." (At 6.)

The court cites from the House Report accompanying the passage of the Copyright Act of 1976. "Under the bill, as under the present law, coowners [sic] of a copyright would be treated generally as tenants in common, with each coowner having an independent right to use of [sic] license the use of a work, subject to a duty of accounting to the other coowners for any profit." H.R. Rep. No. 94-1476m at 121 (1976).

17 U.S.C. § 203(a)(1) states that "In the case of a grant executed by one author, termination of the grant may be effected by that author..." But § 203(a)(2) continues: "In the case of a grant executed by two or more authors of a joint work, termination of the grant may be effected by a majority of the authors who executed it..." So the case appears to state that if an artist contemplates filing a notice of termination in future, he/she should execute a unilateral grant of rights. Otherwise, if joint authors grant rights under a joint agreement, a majority of the authors must file for termination of copyright.

The decision dismissed plaintiff's lawsuit as "not stating a claim," and awarded Victor Willis his recaptured share of royalties to 33 songs, including "Y.M.C.A.," "In The Navy," and "Go West."

On the matter of copyright ownership, plaintiffs wanted to limit it to the same percentage ownership as set forth in Plaintiffs' contracts for royalties (12 – 20%), but the Court ruled that the amount was an undivided half or third, etc., depending on the number of authors for each composition. The House Report accompanying The Copyright Act of 1976 acknowledged that, "Under the bill, as under the present law, coowners of a copyright would be treated generally as tenants in common..." H.R.Rep. No. 94-1497, at 121 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5736. As stated in *Pye v. Mitchell*, "...each co-owner of a joint work becomes a holder of an undivided interest in the whole." 574 F.2d 476, 480 (9th Cir. 1978). Nimmer concurs: "[i]n the absence of an agreement to the contrary, one joint owner may always transfer his interest in the joint work to a third party, subject only to the general requirements of a valid transfer of copyright." Nimmer on Copyright § 6.11 (2011).



*Reprinted with permission of Getty Images.*

Willis had assigned his rights under a unilateral grant agreement and the Court said therefore he was entitled to unilaterally terminate the grant of rights. Upon termination, he would get back what he had transferred – an undivided interest in the whole.

The issue remains to be decided whether songs are "works for hire" if created while an artist is under contract to a record company, as such claim was withdrawn by Plaintiffs and the Court did not comment on the issue.

The Court allowed Plaintiff record companies 30 days to file an amended complaint on the issue of percentage of ownership, or the case would be closed.

Plaintiffs filed their First Amended Complaint, seeking adjudication regarding the percentage of interest in the copyrights that Willis would recover upon termination, and questioning whether the claim was time barred. Plaintiffs contended that the correct percentage should be equal to what Willis received from BMI, or at most one third, representing an equal share if there are three authors. Willis filed a counterclaim, claiming he is due 50% of copyright, as there were only two authors for 24 of the songs.

On rehearing (January 10, 2013), the Court conducted an extensive review regarding when Willis' rights vested and held that Willis' claim accrued when plain and express repudiation of Willis' claim to 50% ownership was communicated to him (see *Zuill v. Shanahan*, 80 F.3d1366 [9th Cir. 1996]), and that there were issues of fact regarding when Willis had actual notice, and whether Willis'



claim was time barred. The Court therefore denied Plaintiffs' Motion to Dismiss.

Willis' attorney, Brian Caplan of Caplan and Ross, New York, was unavailable for comment but his partner, Jonathan Ross, said they are confident they will prove at trial that there were only 2 authors for the 24 songs in question and that Willis is therefore entitled to 50% of the royalties, and that the claim is not time barred. The case is currently in discovery and tentatively set for trial in November 2013.

Songs by The Village People continue to bring in millions every year.

*Laura D'Auri is a lawyer, writer and commercial property owner and is Co-Editor of North County Lawyer magazine. She can be reached at 760.603.8072.*

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## CLASSIFIEDS

**OCEAN VIEW OFFICES POWERED BY SOLAR** near intersection of 78 and El Camino Real, executive offices with receptionist, digital phones, high speed Cox cable, conference room, messenger service, Westlaw, Rutter, CEB, state of the art technology, etc. 2170 El Camino Real, Oceanside starting at \$500. Call Patricia or Gary (760) 721-0200.

**OFFICES** -Two ocean view offices for sublease in suite with conference room in Del Mar. \$1,500 per month each. Contact Tom Vance at (858) 793-0040 or tom@vanceblair.com

**SOLANA BEACH OFFICES** - AVAILABLE: Law Firm located off I-5 in Solana Beach Corp. Centre has available to sublet recently remodeled, furnished, windowed offices with 1 to 3 cubicles. Includes use of 3 conference rooms, 2 kitchens, bathrooms, lobby area, off-street parking and janitorial services. Suite is very high quality and located on second floor of a three story building. Please call to set-up time to view. (858) 755-5666 ext. 7233.

**PROBATE-TRUST APPRAISER.** Estate valuations, IRS Form 706 compliant, 28 years experience, Expert witness, S. Dan Lehman - Certified General Real Estate Appraiser. (760) 672-1140.

**ENCINITAS**-Large & small offices include receipt, utilities, internet, phone sys, \$375-\$475/mo. Can reduce for services. (760) 436-2561.

**CARLSBAD** - two offices for rent in Old Carlsbad. \$700 and \$250. Freeway close, ample parking. 2646 Madison St., 92008. Call Vic Balaker at (760) 434-9180 or (760) 434-1543.

**VISTA OFFICES:** Executive Suites to 1,400 sq. ft. Very easy access to HWY 78. View of courthouse and valley. Lobby-Kitchen-conference room. (760) 275-6024.

**SHARE CARLSBAD VILLAGE OFFICE** with personal injury attorney, Private Office, conference room, shared kitchen, copy machine, fax. Month to Month. Call Simon Mikhael at (760) 720-2555.

**CARLSBAD - THE TOWERS AT BRESSI RANCH** - Two nice offices with secretarial bay in attorney suite for rent. Large and small conference rooms, kitchenette, good parking, utilities, internet, phone system. Rent negotiable. 6104 Innovation Way, 92009. Call Edward Ballard at (760) 602-3363, Ext. 106.

**UPSCALE CREEKSIDE LAW OFFICE SUITES FOR LEASE** - Two separate offices with shared conference room, law library, two bathrooms, kitchenette, waiting room and reception area. Plenty of parking. Trash, water, sewer and all maintenance fees included. Share gas and electricity. All offices overlook Buena Vista Creek. Minutes from Highway 78 and the Courthouse; walk to banks and restaurants close by. Partially furnished. One suite \$550, two suites \$1,000.00. Please call (760) 758-3940. Serious inquiries only.

**DOWNTOWN ESCONDIDO 2 OFFICES AVAILABLE** - 1st Office Space Suite includes 12'x16' office with separate 8'x9' secretarial space. 2nd Office Space Suite includes 12'x 16' office, (with optional separate 8'x9' secretarial space - rent negotiable). Available now. Amenities include:


- \* Monitored security system,
- \* Merlin telephones w/voice mail,
- \* Free off street parking, utilities, and janitorial services (twice weekly),
- \* Front lobby receptionist, notary services, spacious waiting room w/antique furniture,
- \* Large conference room, coffee/tea, microwave, refrigerator w/ice maker
- \* And much more.
- \* Copy, postage and fax machines also available.

Well maintained building with long term tenants. These suites will go fast, please call to reserve your showing before they are gone. Please contact Debbie or Frank at 760-745-1484. If responding by e-mail weebitdebi@sbcglobal.net, please put Office Space Available in the subject line.

**FOR SALE** - 30 year Estate Planning, Trust, Probate and Elder Law practice. Turn key operation. Terms available. Law Office of Karen Black, (760) 745-2900.

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**TORTS:** ACCIDENTS (WORKPLACE ACCIDENTS & WORKERS' COMPENSATION) PRODUCT LIABILITY, PROFESSIONAL LIABILITY, TOXIC TORTS AND ASBESTOS

## EDUCATION CALENDAR

### TRUSTS & ESTATES LAW

**DATE/TIME:** Wednesday 07/10 7:30 a.m.  
**PLACE:** IHOP, 78 & Sycamore  
**TOPIC:** *Domestic and Off-Shore Asset Protection Trusts*  
**SPEAKERS:** Jeff Matsen, Esq.  
**INFO:** Mary Cataldo (760) 931-9700 and  
Paul Smith (760) 724-5684  
**MCLE CREDIT HOURS:** 1.0 General

**Dark - July**  
Bankruptcy  
Business  
Criminal Law  
Personal Injury  
Real Property

*The BANSDC certifies that the above activities conform to the standards set forth in Section 7.1 for approved education activities prescribed by the Rules and Regulations of the State Bar of California governing MCLE and are approved for MCLE credit by the State Bar of California.*

For Calendar Changes  
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## *Letters to the Editor*

North County Lawyer is soliciting "Letters to the Editor" for a new column in our magazine. We welcome well-written, timely comments on subjects of interest to the general legal community. Opposing opinions or rebuttals will also be welcome.

Send to: [bansdc@northcountybar.org](mailto:bansdc@northcountybar.org) or mail to North County Bar, P.O. Box 2381, Vista CA 92085

## *Enjoy the Summer!*

### BANKRUPTCY SECTION

**DATE/TIME** Thursday 8/15 12:00 p.m.  
**PLACE:** Old Spaghetti Factory  
(111 N. Twin Oaks Valley Rd., San Marcos)  
**SPEAKER:** Rossana Pestana, RE/MAX Agent  
**TOPIC:** *Recent Changes in the Short Sale Market and Recent Bank Changes in the Market With Regards to Short Sale & the Relevance Bankruptcy Attorneys have in the Process*  
**INFO:** Vik Chaudhry at 858.519.7333  
**MCLE CREDIT HOURS:** 1.0 General



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GOLF TOURNAMENT**



**Mark Your  
Calendar**

**MONDAY  
OCTOBER 14, 2013  
Twin Oaks Golf Course  
1425 North Twin Oaks  
Valley Road  
San Marcos  
760-591-4700**

**Terry Kasbeer, Chairman  
of the Golf Committee**

**SHOTGUN START  
At 12:30 p.m.**

**Dinner will be in the Garden Room  
Great Atmosphere!**

**Only \$85.00 per player  
includes golf fees & dinner**

**Gather your foursomes!**

**Further Details to Follow  
760-758-5833**

**The North County  
Bar Association  
Beach Party**



**Saturday, August 3, 2013**

**at the Oceanside Harbor  
near the South Jetty Palapas  
11:00 a.m. til ???**

**Summer is on its way!** Please mark your calendar for the 2013 NCBA Family Beach Picnic Celebration!

**\*\* Hamburgers, hot dogs and condiments will be provided!**

**\*\*Please bring beverages, a side dish to share, and all of your beach toys.**

**\*\*We will have lots of family activities including beach flags, sand castle judging, beach soccer, a pinata, sand crab hunting, a stunt kite demonstration, ring toss, and more!**

**\*\*It's the social event of the summer!** We are looking forward to seeing you and your families there. **Please RSVP to 760-758-5833 or by email to [info@northcountybar.org](mailto:info@northcountybar.org) and include the number of guests and what side dish will you be bringing.**

**Further details to follow  
visit [www.northcountybar.org](http://www.northcountybar.org)**