The Alternative Dispute Resolution, Employment Law and Litigation Sections proudly present...

#2 LIGHTS, CAMERA, ACTION: PREPARING TO MEDIATE – A 3-ACT PLAY

Panelists / “Cast Members”:

Benisa Berry, Center for Human Development
Margaret Grover, Wendel, Rosen, Black & Dean LLP
Robin M. Pearson, Pearson & Schachter
Marta R. Vanegas, Martin & Vanegas, APC
Jordan “Jody” Yudien, Yudien Law Firm, P.C.

Through a three-act role play, followed by input from the panelists and Q&A with the audience, experienced litigators and neutrals demonstrate the challenges of setting the stage for a successful mediation, through separate meetings with adverse clients as well as meetings between adversary counsel. Sparks will fly, ethical issues will be raised, allegiances, fortitude and sanity will be tested. Roadblocks will be built and overcome, modeling effective strategies to establish buy-in, meet ethical responsibilities and set appropriate expectations for all.
SPEAKER BIOGRAPHIES

**Benisa Berry** is a mediator and manages the Guardianship Mediation Program for Contra Costa Superior Court and community Conflict Resolution Programs for Contra Costa County through the Center for Human Development. She also is the Diversity and Inclusion Officer and the Deputy Title IX Administrator for John F. Kennedy University. At the Contra Costa County Bar Association (CCCBA), Benisa is on the board of directors of the Alternative Dispute Resolution section and serves on the CCCBA Diversity Committee.

**Maggie Grover** is a mediator and employment lawyer with the Oakland firm of Wendel Rosen Black & Dean LLP. In her over 30 years of practice, Maggie has represented employers and employees in litigation, provided advice on employment matters, and conducted workplace investigations. She enjoys finding creative solutions to workplace employment law issues.

**Robin Pearson** is a founder and an owner of Pearson & Schachter. She is an experienced trial lawyer effectively litigating cases involving a broad range of commercial matters including contracts, unfair business practices, real estate, insurance, employment, professional liability, construction disputes and creditors rights in federal bankruptcy. She is also an accomplished negotiator with extensive mediation experience. Before founding Pearson & Schachter, Robin was with the firm of Miller Starr Regalia. She has authored articles on real estate, employment and insurance issues. Robin served as President of the Contra Costa County Bar Association (CCCBA) and Chaired the CCCBA Diversity Committee from 2002 - 2017. She served as a member of the Board for Family Support Services of the Bay Area, currently serves on the Board of the National Kidney Foundation and is a member of the Board of CASA (Court Appointed Special Advocates for Children). Ms. Pearson is a Past-President of Black Women Lawyers of Northern California and is a past Chair of the State Bar Council on Access & Fairness. Ms. Pearson received her BA from the University of Virginia and her JD from Boston College Law School.

**Jordan “Jody” Yudien** has been a litigator for 40 years specializing in the areas of labor and employment, real estate and general business matters. After receiving his Bachelors from Cornell’s School of Industrial and Labor Relations and his J.D. from Washington University, Jody began his legal career working for the National Labor Relations Board in New Orleans. After leaving the NLRB, Jody went into private practice as a labor practitioner, first and Phoenix, AZ and then in the Bay Area starting in 1985. In 1991, Jody opened up his own office in Walnut Creek, where he has owned and operated his own law firm ever since. Jody has been a member of the Employment and Real Estate sections of the CCCBA since first coming to Walnut Creek, and for the past 3 years, he has served on the board of the Employment Section.

**Marta R. Vanegas** practices labor and employment law, business law, social security disability law, civil rights law, and pension rights as a Shareholder at Martin & Vanegas, APC. A native of Budapest, Hungary, Marta calls California home for the past nineteen years. Prior to joining her firm, Marta served as Deputy Legislative Counsel in Sacramento, California, drafting legislative proposals and providing counsel to legislators on labor, employment, and business law issues. She also has over eight years of experience as Intellectual Property Paralegal at two large San Francisco law firms, Townsend and Townsend and Crew, LLP, and Cooley Godward Kronish, LLP.
Marta holds a Juris Doctor degree from Eötvös Loránd Tudományegyetem (ELTE), Budapest, Hungary (J.D. *summa cum laude* 1998) and from the UC Davis School of Law (J.D., 2011). She also has an LL.M. degree in International Business Law from Central European University, Budapest, Hungary (LL.M. *with distinction* 1999) where she studied Comparative European Labor Law. While at UC Davis, Marta served as Senior Symposium Editor of the UC Davis Law Review, and as Senior Articles Editor of the UC Davis Business Law Journal. When not in the office, Marta serves as Vice President and Treasurer of the Board of the Contra Costa County Bar Association (CCCBA) Employment Law Section and is a Delegate of the CCCBA to the Conference of California Bar Associations. She also volunteers on the Parent-Faculty Club of Clayton Valley Charter High School as Parliamentarian and Auditor and serves as a Judge at the UC Davis School of Law Annual Intraschool Negotiations Competition. An avid reader, Marta keeps herself fit by dancing and gardening.
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Contra Costa County MCLE Spectacular – November 16, 2018
Co-sponsored by the CCCBA, the Alternative Dispute Resolution,
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RELATED READING AND RESOURCE MATERIALS

This discussion implicates professional responsibility standards for attorneys, new requirements for obtaining informed client consent, and behavioral science data which reveals handicapping errors made by clients and counsel alike, and steps to deal with all these issues. Related reading and resource materials follow:

1. **New Rules of Professional Conduct for California Attorneys**: On May 10, 2018, the California Supreme Court approved 69 new or revised Rules of Professional Conduct for California attorneys. These new rules became effective November 1, 2018. They closely follow the American Bar Association (ABA)’s Model Rules of Professional Conduct. With these changes, the California Supreme Court approved 27 amended rules and modified and added 42 more rules. A link to the new Rules follows:

   As well, the Los Angeles County Bar Association compiled a cross-reference chart of the current California Rules and the New Rules, sorted by current California Rule numbers:
Relevant new or revised rules impacting attorneys and clients involved in planning for, discussing and conducting mediations include, among others:

- Rule 1.4: Communications with Clients
- Rule 1.4.1: Communication of Settlement Offers
- Rule 1.12: Former Judge, Arbitrator, Mediator or other Third Party Neutrals
- Rule 1.87: Aggregate Settlements
- Rule 4.1: Truthfulness in Settlements to Others

2. **Mediation and Informed Client Consent**: Separately, on January 1, 2019, a new Evidence Code Section 1129 and an amendment to Evidence Code Section 1122 – specifically Section 1122(a)(3) – take effect. Combined, they require attorneys to make sure clients understand the effect of California law relating to mediation communications before the client agrees to mediate. Per these new provisions, attorneys must obtain their client’s signatures on a separate printed disclosure form confirming the client understands the main code section governing mediation confidentiality – Evidence Code Section 1119. The new Section 1129 specifies the content of a sample form – which must be in the preferred language of the client – as follows:

"I, ______________ [Name of Client], understand that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between me and my attorney, can be used as evidence in any subsequent noncriminal legal action including an action against my attorney for malpractice or an ethical violation."

An attorney’s failure to secure this newly required consent form may subject the attorney to discipline under Section 1129(e) but does not appear to create grounds to overturn the party’s settlement.

3. **Behavioral Science Research Impacting Client and Counsel Handicapping**:

The following is a select bibliography of works addressing the data which reveals how clients and counsel both make handicapping errors – often to their detriment – in planning for and conducting litigation and settlement negotiations. It also analyzes means to anticipate and overcome those points of resistance, and best practices for advocates.


