

# Contra Costa Lawyer Online

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## Law Practice Management and Organizational Theory

An organizational theory framework prompts us to think critically and systematically about choices and challenges us to ask if the firm's structure or internal routines should be adjusted.

### Spotlight

**Court Budget Season 2014**  
If the trial courts get only \$100 million more and we lose our reserves, we are facing further cuts in service.

**What is Your Google Analytics Data Telling You About Your Website Visitors?**  
You'd be surprised at the amount of information that Google is collecting about your website and its visitors.

### More...

**Bar Soap: June 2014**  
I have enough trouble keeping my kids and their friends from using "like" in their conversations, but as I sat in a hearing the other day, a lawyer used it at least five times in arguing a motion.

**The Law and the County Archives**  
The story you are about to enjoy was written by the Hon. A. F. Bray, who was a force of nature in Contra Costa County. The county was privileged to have his love of history to guide us.

The Contra Costa Lawyer is the official publication of the Contra Costa County Bar Association (CCCBA). It is published 12 times a year, six in print and 12 online issues.



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# The Business of Law

Sunday, June 01, 2014



Many of us became lawyers because we weren't inclined to go into "business." But the truth is, whether you are an associate, solo or leading a full-service firm, you are running a business. The business of law has its own set of challenges, from structure to valuation to business development. In this edition of the Contra Costa Lawyer, we look at some of those challenges particular to law practices.

## Access to Justice

An issue that should be of top concern for all attorneys is the court funding crisis and its effect on access to justice. Courts are not so unlike other businesses in that they are not immune to management and financing concerns. Year after year, California courts are asked to do more with fewer resources and this is affecting how attorneys advise clients, how we interact with the court and who gets access to justice.

We are fortunate in Contra Costa that we have the benefit of two particularly knowledgeable leaders to navigate the budget situation and advocate on our behalf. Presiding Judge Barry Goode was appointed by the Chief Justice to the Trial Court Budget Working Group, where he learned much about California court funding. And this year, Stephen Nash, who previously served as Director of Finance at the Administrative Office of the Courts, joined the Contra Costa Superior Court and has provided sophisticated strategy relative to the courts' budgeting process.

Judge Goode's article on the court funding crisis explains the financial situation our court finds itself in after many years of funding cuts. The CCCBA's Access to Justice Committee has been working with Judge Goode to reach out to local legislators and attend hearings in Sacramento. This is important advocacy work that the CCCBA is undertaking for its members and the public, but as Judge Goode explains, it is important that all voices are heard. I urge you to reach out to your local legislator to discuss the financing crisis and explain to him or her how it is affecting your clients' access to justice.

## Building Your Business

CCCBA is also a resource for growing your practice, and we have a number of articles to help you make the most of your business.

In “Law Practice Management and Organizational Theory,” UC Hastings Professor Morris Ratner introduces us to various structures for developing effective management approaches and practices designed to help firms recognize and achieve their business goals.

One of the most frequent questions I hear from attorneys who are transitioning out of practice is how to value their practices. Michael Eggers, CPA, with American Business Appraisers, LLP, provides a primer on structuring the sale of a law practice in “Succession Planning: How to Determine and Realize the Value of Your Law Practice.”

There is no getting around the fact that effective business development is an essential element in building a successful firm. Much attention has been given to social media as a means of attracting business, but two articles explain why old-fashioned face to face networking is so important, and what to do when social media turns on you.

Business development coach Martha Sullivan explains some of the science behind face to face marketing and why it must be part of every attorney’s business strategy in “True Social Networking: Face to Face Meetings.” Attorney and internet marketing executive Ken Matejka’s article on “Reputation Management for Your Law Firm” explains what to do, and not do, when social media works against you.

Geoffrey Steele, partner at Steele George Schofield & Ramos, LLP, a firm known for the many pro bono cases it handles, makes the argument in “The Profit in Pro Bono” for including pro bono work in your business model, not simply because it fulfills a social duty, but because it can ultimately lead to profits and grow your business.

Have you ever wondered if your website is truly pulling its weight as part of your marketing program? In our spotlight article, Ken Matejka explains how to evaluate your website’s performance through Google Analytics in “What is Your Google Analytics Data Telling You About Your Website Visitors?”

In case you haven’t heard, changes are coming to our MCLE requirements. Associate Executive Director Theresa Hurley has been following these changes and implementing them in MCLE programming at the CCCBA. In her article “Upcoming MCLE Changes and How They Affect You,” Theresa outlines the changes that are coming as of July 1, 2014, and give us a peek at other changes that may be coming down the line.

Don’t miss the article by the Contra Costa County Historical Society. The Historical Society is a valuable resource for Contra Costa lawyers. It is the repository for a variety of historic records previously held by the Superior Court. In this story, learn about the documents held by the Historical Society. As a sample, you will find a transcription of an interesting radio talk given by Justice A. F. Bray in 1938 outlining an early real estate scandal in the mid-19th century Contra Costa.

Finally, for those of you who are interested in learning more about law practice management, please join me at the CCCBA’s annual law practice management MCLE series. It runs every third Tuesday (except in August), through October 2014, at JFK

University. On June 17, 2014, we will discuss “Four Steps to Ethical and Empathic Client Relationships and Communications.” Details and the full schedule are available [here](#).

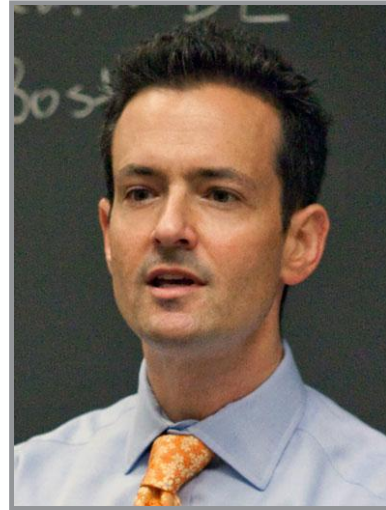
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# Law Practice Management and Organizational Theory

Sunday, June 01, 2014

Effective law firm management is grounded in organizational theory. Firms can be managed based on mere intuition, and profitably so, but a coherent theoretical framework of the law firm focuses the attention of firm managers on all aspects of the firm's existence that can be manipulated to achieve organizational goals (e.g., profit maximization), and, moreover, gives management discussions a principled basis.

By way of example, this article samples three prominent organizational theories, and applies them to a hypothetical firm, to see what kinds of management choices each theory suggests.



Assume that five partners have agreed to start a new firm, and now wish to organize it. Assume, further, that the partners agree that the primary focus of the firm itself should be to maximize profits, but that profit maximizing should be tempered by two additional goals, i.e., that the firm's personnel adhere to the ethical standards of the profession, and that the environment of the firm be collegial. Organizational theory identifies structural levers by which these competing goals can be balanced and achieved on an ongoing basis as the conditions of practice change.

## Agency Cost Theory of the Firm

Economists Michael Jensen and William Meckling famously posited the firm as a series of contracts, or agency relationships, in which decision-making authority is delegated. Each such agency relationship entails costs, including the costs by the principal to monitor the agent to ensure the agent's loyalty, and the residual loss that flows from inevitable disloyalty.

Once so conceived, a goal of management should be to develop a law firm structure that minimizes agency costs. That entails, first, identifying all of the agency relationships within the firm—from the relationship of each partner to the firm itself, to the relationships between the firms' owners and other law firm constituents (including non-equity attorneys and staff).

As to each such relationship, the firm can (1) align the interests of all constituents with the firm as tightly as possible and (2) erect effective monitoring systems. Interest alignment can be achieved using all of the formal and informal levers that motivate firm constituents, from decisions regarding the granting or allocation of equity, to promotions, resource allocation, titles and other recognition (e.g., praise). Monitoring systems can include everything from a law practice management software package that permits detailed analysis of constituents' professional decisions (from time allocation to resource allocation within the firm) to audits of specific employee practices.

The goal of effective management in an agency cost frame is to methodically employ



these devices across all significant agency relationships within the firm, and, equally importantly, as to each of the firm's key goals. One of the most common management errors is to focus too heavily on the dominant goal (e.g., profit), without providing sufficient incentives or monitoring as to other goals (e.g., ethical practice or collegiality).

## Systems Theory of the Firm

A systems theory of the firm may be one that sees the components of the firm (from its HR policies to its decisions regarding deployment of technology) as interdependent; changes in one part of the firm have an effect system- or firm-wide. An "open systems perspective" is one that focuses—not on the relationships within the firm that constitute it as an entity, but instead—on the dynamic relationship between the firm and outside or environmental factors. Both of these perspectives are critical components of good management.

How will the adoption of a new law practice management software package, for example, affect the way the firm monitors or is able to reward the kinds of behaviors tracked by the system? Similarly, how do changes in technology outside the firm impact the firm itself; for example, does a firm devoted to estate planning need to respond to the growing popularity of do-it-yourself estate-planning programs, and, if so, what changes are to be made (in terms of pricing of services, marketing, etc.)?

## Cultural Theory of the Firm

Organizational culture is the personality of the firm. Firm culture changes over time, as individuals migrate in and out of the firm, and as the firm's constituents' assumptions evolve. In addition, a firm may have sub-cultures (e.g., a culture among persons involved in litigation that varies from the culture of the transactional lawyers, etc.).

While agency cost and systems theories of the firm assume that constituents are rational, and will respond rationally to stimuli such as incentives and disincentives, cultural theory of the firm assumes that constituents are also irrational, making decisions based on shared and often both invisible and unquestioned assumptions about who or what the firm "is" or "does," that carry over from one situation, where such assumptions may be appropriate, to future situations, where they may not be.

For example, a firm's commitment to the autonomy of each partner, and to shared and equitably distributed governance responsibilities, may work as a personality trait of the firm to guide decisions when the firm has five partners, but may not be an appropriate set of assumed values to achieve the correct balance of organizational goals once the firm has 10 or more partners. Effective managers who implement new policies responding to new conditions must be aware of the drag-effects of firm culture, and must be aware of ingrained assumptions about the firm as an organization that warrant modification.

Much of what this article reveals is consistent with common sense. An organizational theory framework prompts us, when acting as law firm managers, to think critically and systematically about choices that may currently be grounded merely on intuition, and challenges us to ask if the firm's structure or internal routines should be adjusted. That is, theory provides a route to more complete awareness and adaptability.

**Morris Ratner** is an associate professor of law at UC Hastings College of the Law, where he teaches civil procedure, legal ethics and law practice management. Please send comments or questions to Professor Ratner via email at [ratnerm@uchastings.edu](mailto:ratnerm@uchastings.edu).

# Succession Planning: How to Determine and Realize the Value of Your...

Sunday, June 01, 2014

## Valuation



Financial theory and valuation practice support the fundamental principle that the equity value of a business (law practice) is the present value of future practice net cash flows discounted at a risk-adjusted rate of return. Like an office building, valuation professionals use (1) an income approach (like the rents/net operating income in the office building) and (2) a market approach (like the per square foot estimate of the value of real estate) to calculate and estimate the value of equity. But, let's get real...

## Practical Approach

Be it a partnership, proprietorship or corporation, the real asset of any law practice is the "book of business" controlled by the responsible client manager. To value a book of business and sell a law firm, we suggest this practical approach:

1. Compare and contrast the subject book of business to the industry standard. Specifically, hours worked, billed and managed, realization rates, professional time utilization, revenue per employee/partner, referral sources, rent and other operating expenses should be compared to industry standards. The subject is either at, better or worse than the industry standard.
2. Determine the industry standard revenue multiplier. That is, find transactions in practices that sell as some percentage of cash basis fee revenues. (Example: 0.60 x trailing 12 months revenue). The more recurring annuity type of provided services to recurring services users, the more valuable the book of business/firm and more likely a successful transition can be accomplished.
3. Depending upon the result of the comparison in No. 1 above, adjust the multiplier up or down from the industry standard. The resulting calculation is the intangible value of the book of business/firm.
4. Because almost all comparable market transactions are asset (as opposed to equity) sales, to determine the value of equity the "packaging adjustments" of an asset sale need to be considered. To the calculation made in No. 3, add cash, the *realizable market value* of receivables and unbilled work in progress less ALL liabilities of any kind at the valuation date. The resulting calculation is the equity value of the book of business/firm.

## Let's Make a Deal/Term Sheet and Definitive Agreement

Most (but not all) reported transactions are NOT cash equivalent. That is, a check for the entire calculated amount is not paid at close. Due to the very personal nature of legal services, buyers wish to minimize risk and offer contingent consideration. If the clients listed on Exhibit A to the Purchase Agreement pay fees to the buyer, then an agreed percentage of the fees are paid to the seller.

In the above example at 0.60 times revenue, if the payout period were five years, then the percentage of gross payments would be 12.0 percent ( $0.60/5$ ) of collected fee cash receipts. It is common that the settlement payment is made quarterly and if a floor price deposit (see below) is paid, then that amount is credited against the amount due until the deposit balance is exhausted.

The advantage to the buyer is risk minimization. For the seller, the advantage can be deal price maximization especially if the seller is helpful in the transition to the successor firm. The seller sends a letter to the book of business clients saying that great effort was made to find a highly qualified successor and that the seller has agreed with the buyer to work on client files and assist the transition as needed. (A separate Consulting Services Agreement for "as needed" consultation at an agreed hourly rate, with margin for the buyer, is customary).

Other common deal terms are:

1. A purchase price floor.
2. Minimum and maximum consulting hours to fit the needs of both buyer and seller.
3. Retention payments for key personnel.
4. Security, collateral and guarantees, if any.
5. Incentive payments from seller proceeds to reward and acknowledge prior and planned work effort.

Taxation of the purchase payments is an issue. Are they deductible to the buyer as ordinary income to the seller, or asset purchases not immediately deductible to the buyer but capital gain to the seller? Likely, it is some combination of both. (Tip: Early on, discuss this issue and even fill out a preliminary draft pro-forma IRS Form 8594 as part of the Letter of Intent or Term Sheet). Remember, value is value, but deal terms affect the final negotiated price. These same concepts can apply to a transfer WITHIN the firm from senior partners to partners and/or associates.

## Final Thoughts

It is important to note that the book of business/firm may be more valuable in the hands of a potential buyer than it is as operated. It is possible that the book of business, the required professionals and staff relocate to existing office space and rent is actually less when allocated to the larger revenue base. Similarly, head count reduction, changes in employee benefits or policies may result in lower operating costs and greater contribution margins. All of these facts should be considered when negotiating deal terms and value.

In our experience, the best kind of deal is negotiated in the sweet spot between the fair market value of the practice operated as is by the seller and investment value to the buyer that includes the synergies, strategic benefits and cost savings to be realized by the buyer.

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# True Social Networking: Face to Face Meetings

Sunday, June 01, 2014



If you have attended one of my business development workshops, you know that I have two rules about business development. The first is: It's all about the client. The second is: It's a face to face activity. This second rule often meets resistance from my lawyer coaching clients. When your life revolves around the billable hour and your work often requires that you spend long periods of time at your desk, it can be challenging to recognize the value of time-consuming face to face meetings.

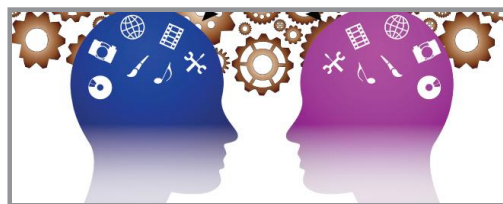
I've learned a small amount about neuroscience, and I'll share that with you here. Until recently, I didn't realize that human brains are literally wired to connect with other human brains. When we talk to another person face to face, that interaction creates neural pathways in our brains. The more often we meet, and the more we discover about our common interests, the more pathways we create. Over time, these pathways make us feel connected, and our brains literally light up when we get together. No amount of texting, emailing or online chatting can create the powerful connections that occur when we share ideas in person.

You might assume that the technology companies who have given us productivity tools would prefer digital communication among their own employees, but it turns out that they have recognized the value of face to face interactions—what I like to think of as *true* social networking.

In a recent article in The New York Times, author Greg Lindsay wrote about “Engineering Serendipity.”<sup>[1]</sup> Companies like Yahoo and Google have always realized the importance of creative individuals, but they now know that great ideas are more likely to come from the random discussions that happen in hallways, at coffee machines and at company cafes.

You might recall the uproar last year when Yahoo announced that their employees needed to work on-site, instead of working at home. Besides the fact that the majority of off-site employees weren't even signing on to Yahoo's intranet to produce work each day, there is another important reason why Yahoo demanded this change. Even a strong performer may not develop an idea to its fullest extent while working at home because he or she is missing the spontaneous conversations that could lead to connections with the work being done in other areas of the company.

Google is aware that if it hadn't been for lunchtime conversations among engineers in different areas of the company, Gmail, Google News and Street View might not exist today. Google has even designed its new campus to capitalize on these accidental meetings between employees, or what they call “casual collisions of the work force.”<sup>[2]</sup>



According to the article,<sup>[3]</sup> “Almost 40 years ago, Thomas J. Allen, a professor of management and engineering at M.I.T., found that colleagues who are out of sight are frequently out of mind—we are four times as likely to communicate regularly with

someone sitting six feet away from us as we are with someone 60 feet away, and almost never with colleagues in separate buildings or floors.” Perhaps you have experienced this lack of communication with your colleagues who have offices on different floors or in different cities. By their very design, law firms encourage solo efforts rather than facilitate the face to face meetings that foster collaboration, teamwork and better client service.

If your firm is trying to encourage cross-marketing, it is essential that you find ways to increase the number of face to face meetings between your attorneys. The more you know about each other’s practices, the easier it will be to identify additional services that your firm can provide to your current clients. Spending more time together will help you develop deeper relationships and bring new perspectives and skills to your clients’ work.

For you as an individual lawyer, having face to face meetings with your colleagues will increase the possibility of receiving internal referrals and may generate introductions to other clients of your firm. As an added benefit, the more comfortable you become meeting with internal colleagues, the more likely you are to schedule your external business development meetings. Your success at business development depends on establishing and maintaining both internal and external networks.

As you consider your business development goals, your social networking meetings should include your current clients. I recommend that my coaching clients spend two-thirds of their business development time on client retention, and one-third on acquiring new clients. Schedule an occasional non-billable lunch or meeting with your current clients. Discuss business issues that are not related to the work you’re currently doing for them. Ask them how their companies are generating the conversations that lead to new products and services.

Your clients are likely to have ideas about creativity and innovation that might inspire you to change the way you work with colleagues in your own practice group and in other practice groups. I encourage you to deliberately plan to cross paths with as many of your colleagues as possible. Those true social networking conversations can generate ideas and connections that aren’t possible any other way.

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[1] "Engineering Serendipity," by Greg Lindsay, The New York Times, published April 5, 2013.

[2] Id.

[3] Id.

# Reputation Management for Your Law Firm

Sunday, June 01, 2014

In the past, reputation management was easier because if something bad happened, newspapers had a short shelf-lives, people had short memories and burying negative information with positive information was often effective enough.

Before the Internet, reputation management wasn't as necessary as now. If someone was unhappy with your services back then, they might have told their friends and relatives, but it ended there. Now, negative comments from a disgruntled former client can be read worldwide and found in search results for the rest of your career.

Consequently, for purposes of this article, reputation management is to be viewed more as damage control for negative comments about you and your firm posted on the web.



## What to Do with Negative Reviews

It doesn't matter how good you are or how well you did in a case with an unfortunate set of facts and circumstances, occasionally a client is going to be disappointed enough with the result to say it on a review site like Yelp.

It goes without saying that a bad review that ranks high in search engine results is going to have a negative impact on your online success, but what can you do to minimize the potential damage?

## Challenge the Review

Whether the review is at Yelp or on some other review site, if the review is libelous, you can write to the editors to have it removed. For example, you may find a review where you do not recognize the author or the circumstances he or she is describing, leading you to a conclusion that it may have been posted by a competitor. Or, you may recognize the client but the review is filled with slanderous falsehoods. Of course, if you recognize the person and they are expressing their constitutionally protected opinions, then you will want to skip to the next section.

If you would like to have a review taken down, you can write to the editors usually through a contact form on the website for this specific purpose, making your strongest case for why the review should be removed.

If a few weeks later the review is still there, it may be worthwhile to follow up with a stern email requesting that the review be taken down.



## Respond to the Client

If you know the person who put the review up on the website, you can respond to the reviewer to see if there is anything that can be done to address their concerns or make things better, but be careful not to do anything that could be misconstrued as an offer for something specifically to change the review. In the case of Yelp, you have an opportunity to reply privately through the Yelp website itself to see if there is any hope of improving the reviewer's attitude towards your law firm.

If you tried this and it was unsuccessful, or if you think it would be pointless to try, you may want to post a public reply if the reviews site allows.

## Posting a Public Reply

Yelp and some other review websites will give you an opportunity to give your side of the story in the form of a public reply. This can be effective if handled artfully, but can be risky if the reviewer wants to post a reply to your public reply, in which case you may be doing more harm to yourself than good.

## Bury the Review

By eliciting positive reviews from former satisfied clients, you may be able to drive the negative review deep in your review site listing and dilute the negative impact of the bad rating for your law firm with very positive reviews.

Simply asking for reviews, giving the link to the listing where your negative review exists, may be enough. Plan for many of your reviews, if at Yelp, to be filtered out, but some of them will stick.

Do not post contrived reviews at Yelp or Google Places because they can often detect that and penalize you for it. Furthermore, it may run afoul of the professional rules of conduct prohibiting false and misleading statements.

## Bury the Search Result

If none of the above has helped and the negative review is still showing prominently in the search results for your name or your law firm's name, the next best thing would be to bury the search result by crowding it off the first page with more positive information about you.

Your active social media platforms can be effective in placing higher in the search results for your name than a Yelp listing. In addition, posting frequently to your Google Plus account should cause that account to rank well in Google's search results.

Google has an apparent fondness for certain press release websites like PRweb. By putting up press releases at websites like these (often for a small fee), you should be able to get your hand-crafted positive content to rank well.

YouTube can also be helpful in displacing a negative search result. Videos about you can sometimes outrank a negative Yelp listing, giving Google users one more opportunity to ignore the bad review.

So if you find yourself in this situation, and most lawyers will eventually, be proactive in



minimizing the negative impact on your law practice.

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# The Profit in Pro Bono

Sunday, June 01, 2014

There are innumerable reasons for attorneys, both solos and in firms, to do pro bono work. Besides the obvious need in our community for low cost and free legal services, especially to those who do not qualify for any kind of legal aid, there is also the moral component about helping our fellow citizens who are caught up in a system they cannot understand or afford representation to defend their rights.



The State of California gives attorneys a monopoly to represent persons in our courts, and there is the argument that the price of that monopoly should be some form of public service or pro bono legal services. The courts have recognized that pro bono is not something that can be forced, as the burden would fall to a select group of trial lawyers.

As set out in *Cunningham v. Superior Court* (1986) 177 Cal.App.3rd 336, the court held “[r]equiring lawyers to devote a reasonable amount of time to represent indigent defendants in paternity cases as a condition of licensing, might not offend constitutional principles if all lawyers were to bear the burden evenly. But, those lawyers who specialize in the nonlitigation aspects of such diverse areas of law as tax, corporation, entertainment, real estate and business, may have never seen the inside of a courtroom. Although there may be some exceptions, it is not likely that members of this class of attorneys, who lack training and experience in litigation, would be selected to represent indigents in paternity cases. ... If the court only appoints lawyers having litigation experience or skill, then the burden will fall solely upon trial lawyers. Yet, trial lawyers possess no special privileges that are not shared by lawyers who do not do trial work. As a subclass within the general class of lawyers, trial lawyers would then be singled out to bear the burden that other lawyers would not have to bear.” (*Id.* at p 349-350.)

The California State Bar has long shied away from requiring pro bono hours to be part of the licensing requirement and instead tries to encourage pro bono by offering honors publicity and “guilting” lawyers into taking on pro bono matters.[1]

This is not about those “pro bono” cases where there is a possibility of getting paid attorney’s fees (i.e. California’s Private Attorneys General Act[2] or prisoner’s rights cases where the attorney stands in the shoes of the Attorney General).[3] This is about where the profit is in taking the truly pro bono cases, the ones where there is no payment expected by the client or any other party in the action; the cases taken with the knowledge that the client does not have the resources required to undertake litigation.

So the issue is that you have a busy practice with paying clients providing you and your firm a good living. So where is the profit in taking a pro bono matter? The simple fact is that the vast majority of pro bono matters are taken on by solos and small firms who see a need and have flexibility in their billable time “requirements.” The large firms have pro bono departments that use their pro bono activities as recruiting and marketing to young

idealistic attorneys who still believe in doing good.

However, the fact is that these firms usually want to take on high visibility targets and have the resources to do so. The needs in just this county alone are the litigants who are hit with lawsuits for amounts that may seem minor to attorneys, but will devastate the fragile economy of the average working person. The credit card cases, identity theft cases and the mortgage matters that are clogging the courtrooms all would move more quickly and efficiently if there were representation of those civilians.

## Publicity

Media like the Contra Costa Times seem to take a liking to stories regarding low income and the elderly where the lawyer is acting on a pro bono basis and the issue is some consumer complaint that may have resonance with others in a similarly situated position. Notifying the press of a situation where the person represented has a compelling sympathetic story gets the lawyer's name in the newspaper, and believe it or not, people still read the newspaper. In one recent instance, there was a story in the Contra Costa Times about an elder who had been scammed by a roofing company. The attorney mentioned in the story was able to get her money back from the company, and then calls came in from other people who were also victims. Several of the calls also involved other matters and the cliental for the attorney built up and became profitable, all because the attorney took a case pro bono.

## Referrals

It is amazing how taking cases involving people who do not have the resources to pay for their own cases have the ears of people who do. In speaking with dozens of lawyers in the Bay Area over the past decade regarding their pro bono experiences, it has come to light that many paying referrals have come from those people who had been helped without cost.

"I can trace four cases in two years to my working on a pro bono matter, all of which turned out to be paying clients," one local attorney recounted. In one matter that the author was involved, there was a property issue in Pleasant Hill, which required a public appearance before the zoning commission.[4]

In the audience was a party who had a completely different issue, but came up to the author after the meeting and asked to discuss representation for them based on the manner in which the hearing was held for the author's client. That conversation led to a now long-time client whom the author has worked for on several matters completely unrelated to the zoning issue that was the initial contact. But for the pro bono matter, the attorney would not have been before the zoning commission and the client and the attorney might never have met.

## Opposing Parties

It is the height of the attorney ego stroke when, after a matter has been litigated, the opposing party comes up to you and says "I want you to represent me in this other issue I have." It may sound like an urban legend but there are instances when that has happened. Now it can also happen when you are representing a paying client as well as one for free, but in one case, the party was so impressed with the attorney's passionate representation of someone "for free" that the party said they could only imagine how hard the attorney would fight for them if the attorney was getting paid.

So it is possible to make a profit by taking and doing pro bono work. In addition, the skills and exposure you get to an area of the law that may not be your specialty also can pay dividends far beyond the single matter itself.

**Geoffrey Steele** is a partner at Steele George Schofield & Ramos, LLP. He is a civil litigator, with an emphasis on real property and financial elder abuse.

[1] It appears the closest that the State Bar has come was back in 2002 but instead made the following somewhat ethereal resolution: PRO BONO RESOLUTION (Adopted by the Board of Governors of the State Bar of California at its December 9, 1989, Meeting and amended at its June 22, 2002, Meeting.)

RESOLVED that the Board hereby adopts the following resolution and urges local bar associations to adopt similar resolutions:

WHEREAS, there is an increasingly dire need for pro bono legal services for the needy and disadvantaged; and

WHEREAS, the federal, state and local governments are not providing sufficient funds for the delivery of legal services to the poor and disadvantaged; and

WHEREAS, lawyers should ensure that all members of the public have equal redress to the courts for resolution of their disputes and access to lawyers when legal services are necessary; and

WHEREAS, the Chief Justice of the California Supreme Court, the Judicial Council of California and Judicial Officers throughout California have consistently emphasized the pro bono responsibility of lawyers and its importance to the fair and efficient administration of justice; and

WHEREAS, California Business and Professions Code Section 6068(h) establishes that it is the duty of a lawyer "Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed"; now, therefore, it is

RESOLVED that the Board of Governors of the State Bar of California:

(1) Urges all attorneys to devote a reasonable amount of time, at least 50 hours per year, to provide or enable the direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to indigent individuals, or to not-for-profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged, not-for-profit organizations with a purpose of improving the law and the legal system, or increasing access to justice;

(2) Urges all law firms and governmental and corporate employers to promote and support the involvement of associates and partners in pro bono and other public service activities by counting all or a reasonable portion of their time spent on these activities, at least 50 hours per year, toward their billable hour requirements, or by otherwise giving actual work credit for these activities;

(3) Urges all law schools to promote and encourage the participation of law students in pro bono activities, including requiring any law firm wishing to recruit on campus to provide a written statement of its policy, if any, concerning the involvement of its attorneys in public service and pro bono activities; and

(4) Urges all attorneys and law firms to contribute financial support to not-for-profit organizations that provide free legal services to the poor, especially those attorneys who are precluded from directly rendering pro bono services.

[2] California Code of Civil Procedure § 1021.5: "Upon motion, a court may award

attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code. ... Attorneys' fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in *Serrano v. Priest*, 20 Cal. 3rd 25, 49."

[3] Once a party has established he or she is entitled to fees, the lodestar method is generally presumed to be the starting point in analyzing the appropriate amount of attorney fees. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131–1132.) Under this method, a court first calculates the number of hours reasonably spent multiplied by the reasonable hourly rate for each billing professional, and then may adjust the amount based on various relevant factors to ensure the fee reflects "the fair market value [of the attorney services] for the particular action." (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1321.) This rule may apply even if the attorney has performed the services pro bono. (See *Flannery v. Prentice* (2001) 26 Cal.4th 572, 585; *Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 873.)

[4] Someone once asked that if the pro bono client owned a house, why not just put a lien for fees on it and then collect your fees when the house was sold? In case described herein, the property owner had recently gone on disability for a terminal disease and had two special needs children who would need care once she passed away. The house was the only asset she had for the care of the children and the legal fees would have eaten a big chunk of any residue value. Furthermore, where there is an asset that can be subject to a lien for fees, then we are outside the scope of the classic definition of pro bono work.

# Upcoming MCLE Changes and How They Affect You

Sunday, June 01, 2014



The State Bar has made changes to the MCLE rules that take effect on July 1, 2014. Read on for a summary of these changes and how CCCBA can help you easily meet your compliance requirement:

## Elimination of Bias

This has now been changed from: "Elimination of Bias in the Legal Profession" to "*Recognition and Elimination of Bias in the Legal Profession and Society*." These changes expand the scope of this requirement so that you can now earn credit by attending programs about implicit and explicit bias found in society in general, not just bias in the legal system. Programs must still focus on education about how to identify and eliminate bias. The plenary

session at this year's MCLE Spectacular will be for Elimination of Bias credit.

## Competence Issues

This expands the former "Substance Abuse" MCLE requirement to also include programs that offer education into *any* mental or physical issue (such as dementia, stress or mental illness, in addition to substance abuse/addiction), which may adversely impact an attorney's performance. The primary goal of the program must first be education about the science of how or why these issues may impact an attorney's professional competence, and second, relate to an "emotional or physical" issue that can impair a member's competence.

Programs must be taught by someone qualified in the subject matter and may offer suggestions (but not instruction) into ways a member may deal with the issues being discussed. The September 16, 2014, program in CCCBA's 2014 Law Practice Management Series, "Wellness for Attorneys – Avoiding Substance Abuse in the Law," will qualify for the new Competence Issues credit.

## Self Study MCLE

You may still claim up to half of your MCLE credit hours as "Self Study." Starting on July 1, 2014, to qualify for MCLE credit, Self-Study MCLE activities must have been *prepared* within five years from the date that you take (or view) that self-study activity.

For example, a self-study article that was prepared in 2007 and taken in 2013 would *not* qualify for MCLE credit, but a self-study article that was prepared in 2007, taken in 2012, and reported for the members' compliance period in 2014 *would* qualify for MCLE credit. CCCBA's Self-Study MCLE offerings will be continually updated so that they are within the five-year preparation period. CCCBA has a number of self-study articles and videos that you can access to receive these credit hours. See our Self-Study MCLE page for more information.

## Other Possible Changes to MCLE Rules

The State Bar MCLE Working Group is considering other changes to the MCLE rules such as requiring that a certain number of MCLE hours must be relevant to an attorney's practice area. We will provide you with updates as more information becomes available.

Are you interested in presenting an MCLE program for our members or authoring an MCLE Self-Study article for the CC Lawyer magazine? Do you have questions about CCCBA's MCLE offerings (either in-person or self-study)? Please contact Theresa Hurley at (925) 370-2548 or [thurley@cccba.org](mailto:thurley@cccba.org). To view upcoming MCLE events, you can access our event calendar by [clicking here](#).



# Court Budget Season 2014

Sunday, June 01, 2014



The Legislature is once again considering how much money to allocate to the trial courts in the state budget. This is an important debate. On its outcome turns the answer to the question: “How much access to justice will we have in Contra Costa County?”

The Governor’s January 2014 budget proposed adding \$100 million to the trial courts. This amount hardly begins to restore the more than \$700 million in cuts the branch has suffered.

In fact, if the trial courts are given only \$100 million, then the Contra Costa Superior Court will have to *cut* services again.

In simplest terms, here is the reason: Contra Costa’s share of the \$100 million will be about \$2.1 million. But we have been using about \$4 million of our reserves (our savings account) this year to retain 43.6 employees. The Legislature has decreed that starting July 1, 2014, courts cannot maintain significant reserves. We will, accordingly, lose \$4 million in future operating funds while gaining only \$2.1 million. That means, effectively, that we are facing a net cut of \$1.9 million, and that will result in a reduction in court services.

We have been working with the Contra Costa County Bar Association to make this problem known to our legislators. The Bar has been extremely helpful in this regard. At the hearings before the relevant Assembly and Senate budget subcommittees on April 9 and 10, 2014, the Bar played a big role in helping bring witnesses to tell the legislators about the problems we are facing. Contra Costa County was well represented on both days.

I tried to capture the problem, and the opportunities, in a brief statement to the lawmakers. Here is my formal testimony:

*Thank you for trying to add \$100 million to the trial courts last year. The \$60 million that we got was helpful—in a small way—in retaining employees and restoring some services.*



[This refers to fact that the legislature's budget last year proposed adding \$100 million to the trial courts, but in negotiations with the governor, that was cut to \$60 million.]

*But things are still very bad.*

*We should have 46 courtrooms serving the public. Eight are closed.*

*We close most of our clerks' windows at 1 p.m. People stand in line for hours waiting to file papers.*

*We stop answering most of our phones at 1 p.m.*

*Civil jurors serve almost twice as long as they should because our courts are jammed.*

*Worse, our budget for the next fiscal year includes nine furlough days.*

*The Governor's budget would add only \$100 million to the trial court budget. For Contra Costa, that's about \$2.1 million. But we have been using almost \$4 million in reserves to keep our doors open. If the trial courts get only \$100 million more and we lose our reserves, we are facing further cuts in service.*

*Maintaining a fund balance—for employee retention and working capital—is essential to the sound management of our court.*

*So, with \$100 million more, we are going to be cutting services. However, if we get the money sought by the Chief Justice[who is seeking \$612 million for the judicial branch; of which \$356.4 million would be used to augment existing trial court operations] we will be able to:*

- *Keep both our clerk's office windows open and restore full phone service until 4 p.m. We will cut the wait time to file papers from hours to minutes.*
- *Cancel the furloughs.*
- *Reopen at least one courtroom; perhaps two.*
  - *Staff our branch courts in Richmond and Pittsburg so people can file locally for:*
    - *Domestic violence*
    - *Elder abuse*
    - *Workplace violence and*
    - *Civil harassment restraining orders.*
- *Serve approximately 18,000 people at our self-help center—and serve them for more than 10 minutes a visit as we must do now.*
- *Mediate child custody disputes within three to four weeks—instead of making people wait three to four months.*
- *Eliminate the backlog in our annual conservatorship reviews.*
- *Keep our homeless court, which is hanging by a thin grant-funded thread.*
- *Perhaps establish a veteran's court and a truancy court.*
- *And do much, much more to help our constituents regain access to justice as it should be in this great state of ours.*

*We look forward to doing all that with your help. Please give us the money we need so that we do not have to continue to turn away people who desperately need access to the courts.*

The budget debates will intensify between now and mid-June when a final budget is likely to be adopted. We will continue to play an active role in reminding legislators that justice must not be rationed.

We look forward to continuing to work with the Bar to get the resources we need to begin to provide full access to justice once again.

Every voice counts. Please let yours be heard too.

# What is Your Google Analytics Data Telling You About Your Website V...

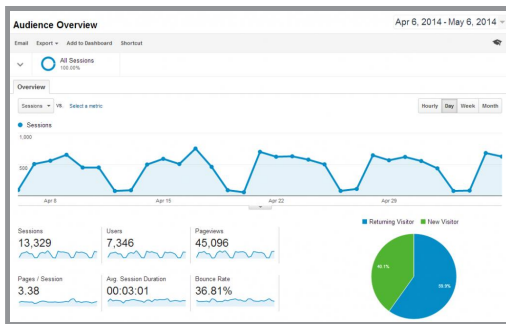
Sunday, June 01, 2014

Google Analytics is a free data-gathering tool for your website to help you evaluate how your website is doing, both in terms of how much traffic it is bringing in and how good it is at keeping people on the site.

If you have the analytics code in your website, it will give you a wealth of information relating to what kind of traffic you're getting and what they are doing on your site once they get there. Not all of the information you will get will be of much use to you, but this article will cover some of the key pieces of information that will help you evaluate your web presence.

## The Analytics Dashboard

When you first login to your Google Analytics account, you'll be brought to your "Dashboard" as shown below. There is a lot of useful information here and you can drill down to more specific information in each one of these categories.



## How much traffic are you getting?

By looking at "Users," you can see how many visitors have come to your website over the course of the selected period of time. In the case of this report, the time of the report is 30 days around May 2014 and shows 7,346 users. While the number of users will vary depending on your practice area(s) and the geographic scope of your practice, this particular website in San Francisco receives a very large quantity of visitors.

If you are in a narrow practice area in Contra Costa County, you may have 500 or 600 users and it may be a very good number. On the other hand, if you are a personal injury lawyer and you serve the entire Bay Area, your traffic levels should be much higher.

If you find that your number of users is very low, then it indicates that your website is not very visible. As your visibility increases, the number of your users will increase as well.

## How are people responding to your website?

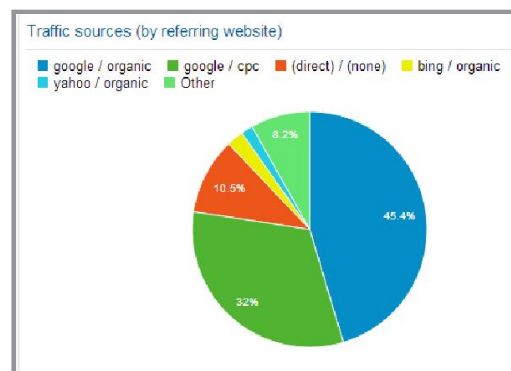
"Bounce Rate" is the percentage of how many people come to your website and leave before viewing a second page. In the case of the graphic above, the bounce rate for this website is 36 percent. This tells us that about 64 percent of the website's visitors are drawn to visit at least one other page on the website.

Your website's bounce rate is significant because it indicates how inviting people are finding your content. If your bounce rate is 80 percent, for example, then that is a clear indication that there are problems with your website. If your bounce rate is under 50 percent, generally speaking, then people are finding your website attractive.

By the same token, pages per session and average session duration are important measures of how much time people are spending reading your content. The higher the number, the better your content. In this graphic, this website has about three pages viewed per session and three minutes per page, which is terrific. If your pages per session is 1.2 and your average session duration is 45 seconds, for example, that is a strong indication that people are not finding your content very interesting.

## Where is your traffic coming from?

While not viewable from your Dashboard, another extremely important piece of affirmation is where your traffic is coming from. By navigating to "Acquisition/All Traffic," you can view traffic sources to give you an idea of how people are finding your website. Since Google has an overwhelmingly large share of the law-related search market, you want most of your traffic to be coming from Google (for most practice areas). If Google is not your primary traffic source, then your website is not visible enough in Google.



In this chart, from the same analytics account as above, you'll see that 77 percent of this website's traffic comes from Google.

## Custom Dashboards

You will want certain types of information at your fingertips without having to navigate to it every time you enter your account, and it is now possible to create custom dashboards whereby you can select the information you want to display when you login. For example, if you want to see your traffic sources at a glance, this is an element that you can add to save you from having to remember how to navigate to that data.

Creating a custom dashboard is beyond the scope of this article, but your website content manager should be able to assist you in setting one up containing the information that is most important to you.

There is a lot more information than has been described above that can be gathered about your law firm's website from your Google Analytics account. For example, you can look at the bounce rate or average session duration for a particular page or see the path

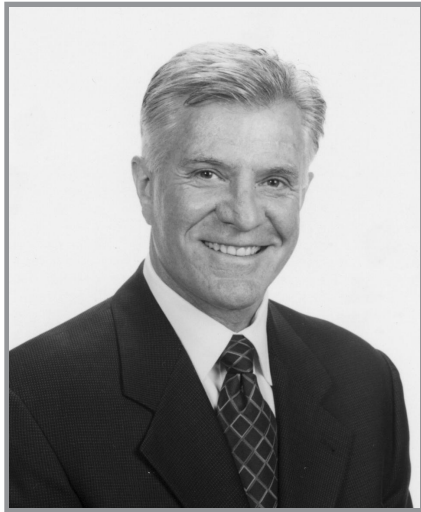
users take through your website. For what it's worth, you can view your users' geographical location, operating system, type of mobile device and more.

If you do not have Google Analytics installed in your website, or if you're not sure whether you do or not, please talk to your website content manager to find out. Once it is in your website and you have gathered a month or two of data, login and see what it's telling you. You'll be surprised at the amount of information that Google is collecting about your website and its visitors.

***Ken Matejka***, J.D., LL.M, is a California-licensed attorney and President of LegalPPC, Inc., a San Francisco-based Internet marketing company for solo practitioners and small law firms. If you have questions about this article or his services, Ken can be reached at [ken@legalppc.com](mailto:ken@legalppc.com).

# Civil Jury Verdicts: June 2014

Sunday, June 01, 2014



Now that's more like it: Attorneys are actually reporting jury verdicts to me. Although I must confess, I did chase down a couple of them myself.

As we discussed some time ago, our courts have been severely impacted by the state budget problems. Locally it means trials are taking place in half days and not every day of the week. I spoke with a friend recently who reported a 32-day jury trial, which normally would have been a 10-day trial. Goodness!

*Wald v. Petrossian*, Case No. MSC 12-01549 was tried before the **Hon. George Spanos**. **Scott Sumner** represented Plaintiff and **David Sidran** represented Defendant.

The case involved a rear-end accident with admitted liability, but hotly contested medical causation (isn't that always the case nowadays?). Plaintiff was driving a 1922 Model T and stopped behind traffic. The Model T was hit by a cargo van. Plaintiff had undocumented earnings loss from restoration of classic cars. Plaintiff claimed back injury.

Defendant (by State Farm) offered CCP 998 of \$25,000.01. Plaintiff demanded policy limits of \$250,000, and prior to trial, offered to accept \$200,000.

The jury returned a 9-3 verdict of \$100,000 in past non-economic damages and \$225,000 in future non-economic damages. Sounds like a gross verdict of \$325,000 to me. That \$200,000 pretrial offer to settle must look pretty good now.

At any rate, the reported trial schedule was from 1:30 p.m. to 4:30 p.m. each day; reportedly a real hardship in trying a case, but folks, get used to it, as that is our new reality.

*Minter v. Galios* (San Pablo Police Department) USDC Case No. C12-02905 was tried in Federal Court in San Francisco before **Magistrate Judge Jacqueline Scott Corley**. It appears the Plaintiffs were the children of the decedent and they appeared In Pro Per. **Noah G. Belchman** of the McNamara firm represented the police department, and **Edi M. O. Faal** and **Renee L. Campbell** represented Defendant Officer Mark Galios.

The case involved claims of excessive force, as Officer Galios shot and killed the decedent during a violent struggle.

The jury returned a defense verdict. On the verdict form, the jury found that the decedent pointed a gun at Officer Galios, and that Officer Galios did not violate the decedent's 14th Amendment rights.

*Arnold v. Padrah*, Case No. C12-02895, was tried before the **Hon. Steven Austin**. **Clyde Long** represented Plaintiffs. Defendants appeared In Pro Per. **Dewey Wheeler** appeared

in defense of the cross-complaint filed by Defendants against Plaintiffs.

Because of the limited time allocated to actual trial time (the case was tried in half days and not every day of the week), the trial took an agonizingly slow 32 days just to get to the liability verdict. The punitive damages portion was still going at press time. The jury found in Plaintiffs' favor and confirmed a prescriptive easement for ingress and egress and for recreational purposes. Plaintiffs presented a 12-minute edited video clip from security cameras showing Defendants destroying improvements in the easement area. The jury found liability for trespass, invasion of privacy and intentional infliction of emotional distress, and awarded \$68,000 for those claims. The jury also found malice warranting an award of punitive damages against both Defendants. A total defense verdict on the cross-complaint.

We will keep you posted on the punitive damages aspects of the case. Sounds like appearing at trial with punitive damages allegations is not for the faint hearted, nor more importantly for Pro Per Defendants. Anyone disagree?

I can always count on my friend **Will Kronenberg** to report his many jury verdicts. Take note, folks. It's not that difficult to report those verdicts and settlements to me by email. Will just reported two verdicts to me.

*Haynes v. Pak* was tried before the **Hon. Joseph Di Loreto** in Los Angeles Superior Court. Plaintiff was represented by **Michael Piazza** of Los Angeles. **Will Kronenberg** of Oakland represented Defendant U.S. Metro Group, Inc.

The case stemmed from a car versus motorcycle collision in which Plaintiff suffered severe diffuse axonal shear injuries (traumatic brain injury), resulting in, among other things, an inability to walk, feed himself, or talk.

Plaintiff asked the jury to award \$100 million in damages against the four Defendants. The liability of U.S. Metro, on an agency theory was the centerpiece of the jury deliberations, and after several notes from the jury, the judge took the unusual step of giving further instructions and allowing second closing arguments on the fourth day of deliberations.

The jury returned a defense verdict for U.S. Metro and awarded \$16,715,647 to Plaintiff from the other three Defendants.

*King v. LAJ Trucking* was tried before the **Hon. John G. Evans** in Palm Springs (Riverside Superior Court). Plaintiffs' counsel was **Michael Alder** and **Steve McElroy** of LA and **Ciro Sapetto** of Indio. Defense counsel was none other than **Will Kronenberg** of Oakland (I bet Will has a lot of frequent flyer miles).

The case involved the death of an individual in a truck versus motorcycle accident. The Plaintiffs asked for a jury verdict in the aggregate of \$30,000,000. The jury awarded \$750,000, reduced to \$525,000 for the comparative fault of decedent.

Please keep those civil verdict/settlement emails coming to me at [mguichard@gtplawyers.com](mailto:mguichard@gtplawyers.com).

## Bar Soap: June 2014

Sunday, June 01, 2014



I am feeling a little better now that many members are contacting me to ask, "When are Jury Verdict and Bar Soap articles coming out?" I now have enough information to prepare both a Civil Jury Verdicts article, and a Bar Soap article. Having said that, I do still need information from all of you in order to write such articles.

### People on the Move

Our practice continues to evolve in ways not imaginable just a few years ago. Big firms are going under in unprecedented numbers. Many lawyers are going out on their own. Some are just giving up. My take on it is that there are just too many lawyers, the economy has NOT picked up in the general legal market and overhead is killing many firms. We do know that law school applications are down and many licensed lawyers cannot find work as lawyers. Our firm's recent ad for an experienced litigation paralegal produced scores of resumes from licensed lawyers. That appears to be the bad news. The good news is that attorneys are moving around, starting new practice areas, going to trial, practicing law and letting me know all that and more.

I'm giving our first plug to **Stuart C. Gilliam** because he reported his new move before anyone else. Stuart has opened his own practice in Pleasant Hill. He reports that he has left the insurance defense world to focus his solo practice on special education law. So all you insurance defense lawyers lamenting the change in that business, there is hope for you. Just ask Stuart.

Now more than just a rumor is that Gordon, Watrous, Ryan, Langley, Bruno & Paltenghi is dissolving. I do know **Bruce Paltenghi** has joined Bowles & Verna; I saw him since the move and he is enjoying his new firm. I have heard that **Peter Langley** is going out on his own. Let me know if you hear where the other firm attorneys are headed. Of course "the" Gordon is long gone and **Tom Watrous** long ago retired. I do see Tom on Wednesdays at bocce in Martinez, and he and I share the Coroner's Inquest Hearing Officer duties here in Contra Costa County.

I'm always happy to see when one of our law clerks passes the bar exam and lands on her feet. The latest is **Stacy Zhao**, who attended Santa Clara Law and Santa Clara MBA simultaneously. She was admitted this past December and is currently practicing in



Sacramento at the State Board of Equalization.

**Dick Frankel** is now celebrating 22 years at Frankel, Goldware & Ferber, LLP.

I hope you all saw the profile article of **Elise Sanguinetti** in the Plaintiff magazine. If not, take a look at the March 2014 issue (page 36). It is a wonderful profile on a wonderful person and a very good lawyer who got her start in Walnut Creek.

Thought I should mention a recent retirement at the Contra Costa County District Attorney's Office. **Hal Jewett** started about the same time as me, and he just recently quietly retired. A brilliant trial lawyer, he rose to Chief Deputy and left with no fanfare. We hear about a lot of our colleagues in civil practice, but rarely of those who quietly and capably toil on our behalf in the public and government law sectors.

I have always argued that there is really no need for firms to have multiple offices in California, as the web provides instantaneous access to clients and courts. So our firm just opened offices in Willows, San Francisco and San Ramon, to go along with Concord and Davis (and we will be moving back to Walnut Creek from Concord by next year).

So what gives? Well, believe it or not, we are cutting our overhead in half and putting each of our lawyers where they spend most of their time. **Erika Portillo** works at our main office in Concord and in San Francisco. So, we have an actual (not a virtual) San Francisco office. **Chris Teng** has a large business client base in South County, as well as Walnut Creek. **Will Portello** lives in Davis and spends most of his time in Yolo, Glen, Colusa and Contra Costa counties. I get to spend time in all five.

## Sad Losses

Of course all of you have heard of the untimely passing of **Mark Ericsson**. He gave so much of himself. Every Bar committee I was ever on had Mark on it as well. He and I had a tradition of breakfast together about once a month in Lafayette. And he was a rich source of information for Bar Soap. I would call him when I heard rumors of people on the move and he always had the inside scoop.

We also recently lost another local character. I say "character," because **William (Bill) Everett Glass** was truly a character. I first met him when I was a baby DA and he was a prominent criminal defense lawyer. We opposed each other on many big cases and always remained friends. He was the "Copo" on our bocce team going back to 1985 when I joined what was then "The Courthouse Gang," now "The Balls of Justice."

Five years ago, we knew something was up with his health, but it was not until his memorial service that we learned he was given just months to live back then. He survived another five years and never mentioned a word of it to his teammates. Of course, you should all know his true love was Cal sports. For years, he was the Memorial Stadium voice of the California Golden Bears football team and the Harmon Gym voice of the California Golden Bears basketball team.

So, speaking of people on the move (or not), **Judge Judy Craddick** has been on the DL; I hope she doesn't mind me mentioning it. I suspect it is a result of the back-breaking job the Contra Costa Civil Judges have been forced into as a result of state court budget problems. **Judge Steve Austin** also hit a bump in the road recently during a busy court day. I heard he was on the DL for a week or so. I was in his courtroom for a CMC the day

he fell ill. I too almost became ill listening to lawyers on Court Call. Don't they realize that everyone can hear what they are saying? Whatever happened to "Quit talking while you are ahead"?

## Grammar Lesson

Okay, now that I am on a roll, I have enough trouble keeping my kids and their friends from using "like" in their conversations, but as I sat in a hearing the other day, a lawyer used it at least five times in arguing a motion. "And he was, like, not letting me talk, and I was, like, pretty upset." So was he actually not letting him talk, and was the lawyer pretty upset? "Like" has become a four-letter word in our household, and should be so in court as well. Anyone disagree?

Another thing, "myself" is the reflexive. It is not "Please hand the document to myself." It is "Please hand the document to me." It is not "The judge asked the other lawyer and myself to take it outside." It is "The judge asked the other lawyer and me..."

## Mock Trial

The recent 33rd Annual Contra Costa County Mock Trial Competition was a splendid event. Each year, eager and smart young people from our area high schools compete in the competition. I sat as a judge for two nights and I was very impressed. Many of our own Superior Court judges volunteered their time to act as mock trial judges, as did many members of the local Bar Association, but it was the students who really make it the great success that it is each year.

Speaking of students, make sure to accept if you are invited to a Career Day at your former middle or high school. I just spent an afternoon at Career Day at St. Joseph Notre Dame High School in Alameda. Yes, that was my high school. Students are very interested in the legal field, and it was satisfying discussing our profession with young people who have positive attitudes about the law.

## Super Lawyers

I know I keep sounding like a broken record each year when "Super Lawyers" comes out with its list of local attorneys. Funny, at one time it was being AV-rated in a certain publication that was the mark of a top-notch lawyer. Among many civil lawyers it still is ABODA, but the public just loves having a lawyer who is a Super Lawyer. If you have been named a Super Lawyer, please let me know and I will mention it in a future Bar Soap article.

## Congratulations

Congratulations to **Stephen Steinberg** as our new Bar Association Board President. Also congratulations to new board members **Michelle Ferber** and **Katherine Wenger**. We all complain of the work we must put in to practice law in this day and age. Now add in many board meetings and a regular life and you get some idea of the hard work and sacrifice our local Bar board members have signed onto in order to serve us. Thank you Stephen, Michelle, Katherine and all the other members of the board.

Please keep those cards and letters coming. Better yet, contact me by email with all your reports and rumors at [mguichard@gtplawyers.com](mailto:mguichard@gtplawyers.com).

# The Law and the County Archives

Sunday, June 01, 2014



The story you are about to enjoy was written by the Hon. A. F. Bray, who was a force of nature in Contra Costa County. The county was privileged to have his love of history to guide us. During the late 1930s and early '40s, Justice Bray gave a series of weekly radio addresses. These essays were given to the Contra Costa County Historical Society's History Center (CCCHC) by Lorraine Bray, wife of Judge Bray's son, A. F. Bray Jr.

The dialogues mainly dealt with the early legal questions that arose on the raw

California frontier. Some, however, gave insights into the early life and attitudes of our Contra Costa pioneers.

Justice Bray and his friend, Louis Stein, were the founding fathers of the Contra Costa County Historical Society. Because Bray was an attorney, he naturally favored the history of law as it progressed in our county. The thousands of pages of original court cases that now reside in the archives of the CCCHC were saved by the efforts of Bray and Stein. Approximately 70 percent of the papers and ledgers in the archives are legal documents of some sort.

The CCCHC is the official repository for the historic records generated by the Contra Costa Superior Court in Martinez. The CCCHC urges you to visit the archives at 724 Escobar Street, and become members to help support this important work. Members have research access to all of the records. The Society is self-supporting, receiving a stipend from the county annually, but funding the remainder of its expenses from memberships.

The annual membership for a Sponsor is \$75. Members have access to Naturalization and Immigration records (1850-1980), early property Assessment records (1850-1912), early hospital records and court case files (for the most part hand-written from 1850-1910). The R.R. Veale Papers, chronicling the work and daily life of a sheriff who served for 40 years, are also available.

We hope you enjoy these essays about a county that is a linchpin in California history and give your support to protect that history. The History Center is open 9 a.m. – 4 p.m. Tuesday through Thursday and the third Saturday from 10 a.m. – 2 p.m.

## The Law and Moraga Women

By Hon. A. F. Bray  
Contra Costa County, California Broadcast Station  
KLX, Oakland, California Number 93  
Broadcast March 7, 1938

Children and married women received great protection under the early California law. On some occasions, this protection went to such limits as to constitute a great injustice to persons dealing with them. Take the following case.

In Contra Costa County, that territory upon which is now located St. Mary's College was a part of the grant made by the Mexican Government to Joaquin Moraga, and which upon his death descended to his heirs, one of whom was his daughter Guadalupe Moraga, who received a one-tenth of the Moraga Ranch. She died in 1856, leaving her tenth interest to her two daughters, Merced and Francisca.

This interest was subject to a long-existing mortgage, and after the death of Guadalupe, the mortgage holder threatened to foreclose, as he wanted his money. The amount due was \$600, but the girls, who now owned the property, were having difficulty in raising the money. They both had married although they were still under 18 years of age, and their husbands suggested to them that possibly they could find someone willing to loan them the money on a new mortgage with which to pay the old mortgage.

A chap named Villar came along about this time and agreed to give them the \$600, provided they executed a mortgage to him. So with all the formalities required by the law, Merced and her husband and Francisca and her husband executed a mortgage to Villar and cleared the property of the old mortgage.

A little later, Francisca and her husband, being short of money, went to a man named Granada, and in exchange for \$200, gave him a properly executed mortgage on Francisca's share of the Moraga Ranch. Merced followed the example of her sister, and she and her husband executed a mortgage upon her share of the property to a man named Brown, likewise for \$200. So there were then three mortgages upon the property aggregating \$1000 and all executed by the married Moraga girls, both of whom were still under 18 years of age.

In those days, a girl became of age when she reached her 18th year. That is, a girl arrived at her majority at 18, although a boy did not become of age until he was 21. When Merced and Francisca became of age, they evidently had consulted an attorney well-versed in the law, for each of them immediately disaffirmed and refused to be bound by their mortgages, upon the grounds that they were underage at the time they signed them.

The respective mortgage holders immediately commenced foreclosure suits, saying to the court that they had given these girls an aggregate of \$1000, in good faith upon the security of the mortgages signed by the girls and respective husbands, and they could see no reason why the mortgages should not be paid, or the property foreclosed against.

The girls answered saying, "We were minors at the time you gave us the \$1000, and therefore you should have known better than to do it and so it is just your hard luck. You will have to kiss the \$1000 goodbye." The mortgagees said, "It is true, you were under 18, but you were married and that made you considered as of age in the eyes of the law."

But the eyes of the law were rather dim or else well blindfolded because the court said, "A girl under 18 is a minor even though she be a married minor, and the law says a contract with a minor is void. Therefore, mortgage holders, your mortgages with these two minors, Merced and Francisca, are void, no good and of no value, and you have no interest in the Moraga Ranch whatsoever. For your \$1000, you get nothing but experience, plus the fact that you were lucky that you didn't loan these two young

Moragans any more than \$1000.”

# Coffee Talk: What online resources do you use to support your pract...

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One of my absolute favorites is law.cornell.edu. It includes the Federal Rules and the U.S. Code. Another is the California Courts website, [www.courts.ca.gov](http://www.courts.ca.gov). It has links to each Superior Court site (which, in turn, has its local rules), the California Rules of Court, the Judicial Council forms (writable!), the approved jury instructions, recently released opinions (published and un-published) and the free California Lexis.

**Robert Seeds**, Greenan, Pepper, Sallander & Lally LLP

The online program that I have used for years is Access Law. I first learned of the program through the California State Bar. It is administered through the Continuing Education of the Bar (CEB). It is reasonably priced at \$39 per month. The program allows access to the California opinions, daily opinion service, U.S. Supreme Court Opinions, California Codes, California Rules of Court, 9th Circuit opinions and legislative history. In addition, the slip opinions and squibs are posted daily. The program also includes a case alert for checking the status of the case citations.

Moreover, I can sign into the program from any computer. Perhaps, the best feature of Access Law is the natural language search.

**Martin James Martinez**

Fidelity Passport for title summaries, deeds, title history, etc.

**David A. Brown**

I use every online resource that applies to any given case. This includes legal research, background research, personnel research, facts and circumstances research, all bar association sites, service sites such as One Legal, etc.

**Wayne Smith**

I use most social media and blogging as marketing tools for my practice. We all know that legal marketing is a necessary evil of the law practice and social media visibility is a necessary evil of modern legal marketing, none of which is billable to clients. Over time, I have developed them as part of my marketing plan with virtually no cost and little time commitment.

**Kenneth P. Strongman**, Esq.

## A Whooping Success: Comedy Night [photos]

Sunday, June 01, 2014

**For our 23rd Annual Food From the Bar drive benefitting the Food Bank of Contra Costa and Solano**, we invited nationally renowned comedian Don Reed, with local comedian Ben Feldman as the opening act to kick-off our annual Res Ipsa Jokuitor Comedy Night. Held at the Back Forty Texas in Pleasant Hill, the night was filled with a scrumptious BBQ buffet dinner, lucky raffle prize winners and hilarious comedy.

Below are photos from the event, and you can check out more on our Facebook page.

[gallery ids="8292,8291,8293,8290,8294,8295,8296,8297,8298,8299,8300,8301"]

## Hon. John Cope's Induction [photos]

Sunday, June 01, 2014

On May 2, 2014, Hon. John Cope was sworn in at the Board of Supervisors Chambers in Martinez. Below are photos from the event, and more are available on our Facebook page.

[gallery ids="8279,8280,8281,8282,8283,8284,8285,8286,8287"]



# Don't Miss the 2014 Law Practice Management Series!

Sunday, June 01, 2014

## Don't Miss the 2014 Law Practice Management Series!

Our next program is on **June 17: Four Steps to Ethical and Empathic Client Relationships and Communications**. Click here for more information.

This year's six-part series will take place on the third Tuesday of each month from April through October 2014 (no program in August) from 4:30 - 6 pm at JFK University in Pleasant Hill.

All programs will be for MCLE credit and cost only \$20 per program for members (\$10 for law students)! Light refreshments will be provided. We hope you will join us!

Previous programs can be viewed on our MCLE Self-Study page.

There is a discount for signing up the entire series. For more information, please contact Theresa Hurley at (925) 370-2548 or [thurley@cccba.org](mailto:thurley@cccba.org) or go online to the CCCBA Event Calendar to register.

LAW PRACTICE MANAGEMENT SERIES 2014			
3 <sup>rd</sup> Tuesday of Each Month   4:30 pm - 6 pm			
JFK University   100 Ellinwood Way, Room 5312   Pleasant Hill			
DATE	TITLE	DESCRIPTION	CREDIT
Contact Theresa Hurley for a recorded version.	Ethics of Social Media and Attorney Ratings Websites and Marketing Strategies	Social media use has become pervasive in the practice of law. Part 1 will explore the intersection between social media use and attorney ethics. In Part 2, you will learn the three critical marketing secrets that every successful law practice knows. They are guaranteed to bring you higher value clients and increase revenue!	1 hr. Ethics
May 20 4:30-6 pm	The Virtual Law Office and Technology in Today's Modern Law Firm	Topics to be covered include e-discovery, case and document management, data protection and security/breach issues.	1.5 hrs. General
June 17 4:30-6 pm	Four Steps to Ethical and Empathic Client Relationships and Communications	Learn to overcome existing obstacles to clear communication, cut through the real issues at stake, and increase your client's and even opposing counsel's willingness to cooperate with you.	1 hr. Ethics / 0.5 hrs. General
July 15 4:30-6 pm	Financial Client Relationship Issues	Best practices on billing methods, engagement agreements and fee structure, transfer and destruction.	1.5 hrs. General
Sept. 16 4:30-6 pm	Mindfulness and Substance Abuse Prevention	This program looks at what drives attorneys to abuse drugs, alcohol and other substances, and then offers concrete tools for successfully managing stress without resorting to substance abuse.	1 hr. Competence Issues / 0.5 hrs. General
Oct. 21 4:30-6 pm	Transition Planning for Law Firms	Valuation and succession strategies for lawyers, join CPA Mike Eggers and Oliver Bray as they discuss strategies for determining the value of and selling law firms, and alternately, how to close shop in an orderly fashion, and what happens if you don't!	1 hr. General / 0.5 hrs. Ethics
<b>Cost per session:</b> \$20 for CCCBA members   \$30 for Non-Members   \$10 for Law Students <b>Discount for signing up for the entire series!</b> <b>Early registration is encouraged.</b> <b>Please contact Theresa Hurley at <a href="mailto:thurley@cccba.org">thurley@cccba.org</a>   (925) 370-2548.</b>			





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### Law Practice Management and Organizational Theory

An organizational theory framework prompts us to think critically and systematically about choices and challenges us to ask if the firm's structure or internal routines should be adjusted.

#### Spotlight

##### Court Budget Season 2014

If the trial courts get only \$100 million more and we lose our reserves, we are facing further cuts in service.

##### What is Your Google Analytics Data Telling You About Your Website Visitors?

You'd be surprised at the amount of information that Google is collecting about your website and its visitors.

#### More...

##### Bar Soap: June 2014

I have enough trouble keeping my kids and their friends from using "like" in their conversations, but as I sat in a hearing the other day, a lawyer used it at least five times in arguing a motion.

##### The Law and the County Archives

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