

# Contra Costa Lawyer Online

**CONTRA COSTA LAWYER**

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## The Conference of California Bar Associations

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The Conference of California Bar Associations (CCBA) has become the primary professional body of organizations in California.

**Spotlight**

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The CCCBA hosted Judges' Night on August 23 at the Martinez Event Center. Thank you

[Photos: Women's Section Annual Luncheon 2018](#)  
The CCCBA Women's Section's Annual Luncheon was held June 27th on "Navigating Gender Bias in the Workplace"

[Diversity Networking Event with Minority Bar Associations](#)  
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**News & Updates**

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Welcome Aboard to these CCCBA members who've joined between June 1st and July 31. We

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The CCCBA hosted Judges' Night on August 23 at the Martinez Event Center. Thank you

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This month we decided to do something a little bit different. Instead of choosing a

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



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# An Introduction to the Conference of California Bar Associations

Monday, October 01, 2018

*Editor's Note: This issue of the Contra Costa Lawyer features the Conference of California Bar Associations (CCBA) and should not be confused with the Contra Costa County Bar Associations (CCCBA).*



For the past several years, the Conference of California Bar Associations (CCBA) has been one of the most effective lobbying organizations in California. Many people who have not participated in the CCBA may think that the organization is only an annual meeting, the Conference of Delegates. The 85th annual Conference convened in San Diego in September 2018. This dynamic and fun meeting is the culmination of hours of thought and work, and begins the process of presenting proposals to the California legislature, with that work lead by the CCBA lobbyist, currently Larry Doyle.

The CCBA's success is largely due to the review and revision of the proposals over the course of several months. Many of the ideas begin with delegates trying to solve real-life problems they encountered in their practice. They submit resolutions to the CCBA to address these problems. Other resolutions are designed to correct unintended consequences of laws written by non-lawyers and some bring outdated laws current. While some of the CCBA's work can be mundane, the organization has also been on the leading edge of social change, being among the first groups to support elimination of discrimination in employment and housing, and proposing rules and statutes designed to assure access to the courts.

The formal process begins when an individual drafts a resolution. To be considered by the CCBA, each resolution must be sponsored by either a local bar association or 10 members. The resolution deadline is typically in January or February of each year. All submitted resolutions are posted to the CCBA's website. Once resolutions are posted, local and specialty bar associations have a window of time to submit written opposition or proposals to modify the resolutions.

Each resolution is reviewed in detail by the CCBA's Resolutions Committee, which is

comprised of approximately 20 lawyers. The Resolutions Committee is a diverse group of attorneys, with prosecutors and criminal defense attorneys, civil litigators, probate attorneys, corporate attorneys, other areas of practice, large firm attorneys, solo practitioners, and attorneys who practice in major cities and rural areas. For each resolution, a member of the Resolutions Committee looks at existing statutes and case law, evaluates whether the resolution will effect the change the proponent desires, and prepares a report analyzing the problem, the proposed solution, and recommending a position on the resolution. These reports are reviewed by the Resolutions Committee leadership, which may ask for revisions, clarification, or even a change of position. Then, the full Resolutions Committee meets for 3 days to discuss the resolutions and its final position, which is published on the CCBA website.

Most of the local and specialty bar associations that attend the Conference go through a similar process. This year, the Contra Costa County Bar Association delegation met three times, over dinner, to discuss the resolutions and determine what position they would take. While the bar association may have a formal position, each delegate is free to argue or vote his or her conscience at the Conference.

Before the Conference, delegations may discuss proposed amendments with the proponent. A spreadsheet of each delegation's positions is published. Some authors accept amendments to save their proposals. Others realize that nothing will save the resolution and withdraw it, often to bring it back in revised form the following year.

At the annual Conference, the resolutions are debated on the merits. This time, the body is larger, typically approximately 200 attorneys from around the state. There are amendments, new arguments for and against resolutions, and a vote by the entire body.

Resolutions that are approved by the entire body are sent to the CCBA lobbyist. The author is asked to identify groups that would support the resolution as well as likely opponents. If a legislator is willing to take on one of the resolutions, and it becomes a bill, the author may well be invited to speak with the legislator or her staff, or even to speak at committee, or when the bill is presented in the Senate or Assembly. Each year at the Conference, authors of bills that have become law receive framed copies of those bills, signed by the legislative sponsor. The number of signed bills seems to grow annually.

*Maggie Grover is a mediator and practices employment law with Wendel, Rosen, Black & Dean LLP in Oakland. She currently heads the Alternative Dispute Resolution Section of the Contra Costa County Bar Association. Her never-to-be-published book is titled "There's A Naked Man In My Bed And Other Observations Of A Working Mother." Graciously, none of the six people who have read excerpts from the book have suggested that Maggie abandon all hope of writing. Only one of them cried.*

# A Force for Improving the Law

Monday, October 01, 2018

***Editor's Note: This issue of the Contra Costa Lawyer features the Conference of California Bar Associations (CCBA). It should not be confused with the Contra Costa County Bar Associations (CCCBA).***

The Conference of California Bar Associations (the CCBA) was incorporated in 2001 primarily for the purpose of aiding in matters pertaining to the improvement of the administration of justice. Virtually all the bills sponsored, co-sponsored and supported by the CCBA – over 135 since 2010 – fit into this category.

Improving the administration of justice takes different forms. In some cases, it involves correcting errors in the statutes that can confuse, confound or annoy lawyers, clients, and judges. These include proposals to remove erroneous cross-references to statutes that have been re-numbered or repealed.

In other cases, improving the administration of justice (or aiding in matters pertaining to the advancement of the science of jurisprudence, the other purpose for which the CCBA was incorporated) involves improving the operation of our court system for the benefit of clients, lawyers and judges. An example of this is AB 383 (Chau) of 2017, a bill sponsored by the CCBA which authorized courts to hold informal discovery conferences in civil cases, reducing wasted time, cost and paperwork for all concerned. In some instances, the CCBA has improved the administration of justice without the enactment of legislation, as in the case of Resolution 07-05-2010, which resulted in the enactment of a Rule of Court increasing the opportunities for counsel to appear in cases telephonically. An even simpler example is AB 1932 (Jones) of 2014, which required Appellate Division court opinions to provide an actual explanation for a decision, rather than simply saying "affirmed" or "denied."

In still other cases, CCBA-inspired legislation has improved the administration of justice by changing the law to eliminate injustice. In some cases, this requires overturning appellate court decisions that for any number of reasons have resulted in unfairness. A classic example of this is AB 1624 (Gatto) of 2012, which overturned the case of *Lee v. Yang*, 111 Cal. App. 4th 481, which held that even if one party to multiple-party bank account contributed all the money in that account, any other party to the account could withdraw and keep all the money as his or her own. AB 1624, which was inspired by a CCBA resolution, restored the original intent of the multiple party accounts law, thereby preventing the legal victimization of California seniors who add family members or friends to their bank accounts to help them pay the bills.

Other CCBA-sponsored and inspired bills have protected other members of society by prohibiting the secret settlement of childhood sexual abuse and exploitation cases, as well as felony sex abuse cases, as a matter of public policy (AB 1682 by Asm. Mark Stone of 2016), by requiring hotels and motels, the most common sites of human trafficking activity, to post notices providing essential information on victims of the practice (AB 260 by Asm. Miguel Santiago of 2017), and by authorizing courts to penalize those who commit financial elder abuse by imposing double damages and holding them liable for attorney's fees and costs incurred by the victims in protecting their rights and property.

Much of the administration of justice is handled by our criminal courts and justice system, and the CCBA has been particularly active in this arena. Bills sponsored by the CCBA to improve our criminal corrections and juvenile justice systems include:

- SB 355 (Mitchell) of 2017 – Ended the practice of requiring innocent criminal defendants represented by public defenders and other court-provided counsel to pay the costs of their representation.
- SB 625 (Atkins) of 2017 – Re-authorizes courts to grant honorable discharges to juvenile offenders with good records on supervised probation. Honorable discharge fell victim to the intricacies of realignment but was restored with this bill thanks to the efforts of the CCBA.
- SB 411 (Lara) of 2015 - Specifies it is not a crime to peaceably film police officers in the performance of their duties.
- AB 2765 (Weber) of 2016 – Extended by five years the time limit (originally only three years) on Petitions to Recall Sentences established by Proposition 47.
- AB 1375 of 2015 and AB 2839 of 2016 (Thurmond) – Increased the rate of credit for incarceration against criminal fines from \$30 per day, set in the 1980's, to \$125 per day, a reasonable adjustment for the cost of living to enable criminal defendants who cannot afford to pay fines to get out earlier, benefiting the defendants and reducing jail overcrowding.

The CCBA also has sponsored and supported many bills to improve the administration of justice by helping reduce bias in California's courts and society. The CCBA has been one of the original supporters and most consistent supporters of legislation to make it easier for transgender individuals to obtain identification consistent with their gender identity (AB 433 of 2011 and SB 179 of 2017). Another bill (AB 830 of 2015) established a civil cause of action for damages based on violence motivated by the victim's gender identity, consistent with recent changes to Unruh Act.

The CCBA is unique among the organizations that seek to improve the workings of California's court and justice systems – the administration of justice. The CCBA is the only organization that provides an opportunity for rank-and-file lawyers to identify what they see as failings, inefficiencies, and injustices in our court and justice systems, to develop proposed solutions to the problems and, after an extensive vetting process, to see that proposal through to enactment as a statute. Literally any California lawyer can propose a change in the law to the CCBA through his or her local or specialty bar association. This is particularly important for public attorneys, such as public defenders – and even judges - who are extremely limited in their opportunities to recommend improvements in the law through their professional organizations.

*As a contract lobbyist, **Larry Doyle** has guided over 100 legislative proposals into law on behalf of the nonprofit Conference of California Bar Associations (CCBA), a statewide organization of attorneys representing over 30 local, regional and specialty bar associations. Before that, he spent nearly two decades as the Chief Legislative Counsel and principal lobbyist for the State Bar of California, overseeing (and, where necessary, helping prevent) the enactment of hundreds of legislative proposals relating to attorney conduct, lawyer ethics, and the practice of law in the fields of family law, trusts and estates law, business law, and others.*



# If You're Not at the Table, You're on the Menu – Legislative Day

Monday, October 01, 2018



***Editor's Note: This issue of the Contra Costa Lawyer features the Conference of California Bar Associations (CCBA) not be confused with the Contra Costa County Bar Associations (CCCBA).***

Every year, usually in March or April, the Conference of California Bar Associations (the CCBA) participates in Legislative Day (Leg Day). On Leg Day, delegations (bar associations) from all over California travel to Sacramento to speak with our state legislators.

Each delegation from the conference has approximately 6 – 8 meetings scheduled with various state assembly members and state senators throughout the day. Delegates are typically assigned the state legislators from their district but delegates may choose to sit in on meetings outside their district if they have a particular issue to discuss with a legislator from outside their district.

During our meetings, we talk to senators and assembly members about resolutions we have passed through our annual conference. We advocate and lobby for the resolutions we have passed in the hopes of gaining support, and in some instances obtaining a sponsor, for our proposed legislation. Personally, I have had proposed legislation sponsored on three separate occasions that I have taken to Leg Day in the hopes of gaining further support (SB 1473 in 2018, AB 449 in 2017, and AB 1450 (2015).

In addition to lobbying some of our resolutions, every year we also request and advocate for more funding for the courts. Of the total state general fund for fiscal year 2018- 2019, only about 1.4% was allocated to the judicial system. I am sure many of the readers of this magazine have seen the impact caused by such minimal funding.

Another benefit of attending Leg Day is that each of the years I have attended, Chief Justice Tani Cantil-Sakauye has given a speech on the state of the judiciary towards the close of Leg Day. The Chief Justice often urges the members of the state legislature to

consider the additional funding that is needed by the courts. The Chief Justice also provides insight into the challenges for the courts that she has witnessed over the past year. I always learn so much from hearing the Chief Justice speak and am further inspired to continue my efforts through the CCBA and Leg Day.

I have been able to learn my way around the Capitol by attending Leg Day. I know where certain offices are located. I have met with various state legislators and their staff, and I have obtained valuable contact information for the people with whom I have met.

In the past, whenever I have had a resolution sponsored as proposed legislation, and I have worked diligently with staff of various assembly members and senators to revise the proposed legislation to a point where we can gain more support from other legislators and address concerns in the initial proposed legislation. I anticipate that these contacts will continue to be helpful for resolutions that I have sponsored in the future.

It is also helpful to know your way around the Capitol in the chance that you need to testify about a piece of proposed legislation in the future. When I had proposed legislation sponsored in 2017, I found myself having to testify before the Revenue and Tax Committee, and it was helpful that I had some familiarity with where offices and various committee rooms were located.

Further, and as I mentioned previously, attorneys from all over the state attend both our annual conference and Leg Day. Attorneys who attend both the conference and Leg Day have the amazing opportunity to network and speak with some of the best attorneys throughout the state of California both within and outside of their practice areas. It is an amazing way to build your network and form relationships within the legal community.

Even though you can network with attorneys from all over the state at both the annual conference and Leg Day, these are two very distinct opportunities.

At the conference, you are trying to get your resolution passed or debate why others' resolutions should or should not pass. It is all in an effort to come up with and only pass good, well-vetted resolutions. It can be contentious, but any contention stays at the podiums. It can also be a great way to further refine your own resolution or learn about other areas of the law or deepen your understanding of the law in your own practice area.

While the conference itself is the primary event and an amazing opportunity, Leg Day offers a second and different opportunity – the opportunity to work together in a collaborative fashion with attorneys from all over the state of California. It is an opportunity to band together with other lawyers, take proposed legislation that has been thoroughly vetted by the conference, and meet with state legislators in an effort to make good laws and amend existing laws as needed.

When it comes to the laws in California, California lawyers are the ones who have first-hand knowledge of how the laws affect people. We know if a law should be changed. We know if an injustice has occurred to our client because of a poorly written or archaic law. Because of this, we are a credible voice. State legislators want to hear from us because of the first-hand knowledge that we possess.

Many of us have assisted clients with cases that we know did not have the right outcome but based on the laws at that time, there was only so much we could do to help. The Conference of California Bar Associations is every California lawyer's chance to change

the laws so that the bad or wrong outcome we witnessed does not continue to happen to our clients. This is the power of the CCBA and Leg Day. This is the power to use your platform and your voice to advocate for others in our community and our state. This is the way to continue to progress and make sure we have well thought out and just laws in our state.

I have once heard it said, “If you’re not at the table, you’re on the menu.” I will always choose to be at the table – for my clients, for my community, for my family.

***Christina Weed, JD, LLM (Taxation) is the principal attorney at the Law Offices of Christina Weed, PC, which is located in Walnut Creek. She is the Chair of the Tax Section of the CCCBA. Christina Weed’s practice covers tax law, business law, and estate planning.***

# Local Idea: National Impact

Monday, October 01, 2018

*Editors Note: This issue features the Conference of California Bar Associations (CCBA), not to be confused with the Contra Costa County Bar Association (CCCBA).*



It began as a local issue. In the process of overhauling the Contra Costa County Bar Association website in 2009-10, I realized how important our Lawyer Referral Service is to members of the public and to the CCCBA. It was crucial to highlight our program and make it more accessible through the website. Once the new website was launched, I took on the role of vice-chair of the CCCBA's Lawyer Referral and Information Service Committee, which establishes the rules and procedures of the Lawyer Referral Service (LRS) and oversees it.

## 1. Identifying A Problem

The director of the CCCBA LRS, Barbara Arsedo, raised a question that had come up with some callers to our program: were their communications with CCCBA staff privileged? In researching the issue, I found a gaping hole in protections fo

r the LRS program and the public that used it. Although requests to the LRS were clearly made to obtain legal counsel, those communications were not expressly covered by any privilege (though we did have an internal policy of keeping them confidential). As a result, we could not reassure clients of the CCCBA's LRS that their communications with us would be privileged and safe from discovery by any adverse party, which naturally constrained some callers' willingness to work with us and share information, and our staff's ability to get clients the best possible referral.

## 2. Drafting A Resolution

That's where the Conference of California Bar Associations became involved. I wanted to assure that communications to the LRS were privileged, but understood that any change to the Evidence Code would have to be drafted carefully. The change needed to be narrowly drawn in a way that would be acceptable to prosecutors, criminal defense attorneys, civil litigators, and the judiciary. Not an easy feat.

I drafted a proposal that would apply only to Lawyer Referral Services certified by the State Bar of California and operating in compliance with section 6155 of the Business and Professions Code. It also applied to an enterprise which the client reasonably



believed to be a certified Lawyer Referral Service.

The resolution defined client and defined “confidential communications” between a client and a Lawyer Referral Service. The resolution proposed California Evidence Code section 966 et seq., which grants the client a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and the Lawyer Referral Service. The people authorized to assert the privilege are: (1) the client, who is the holder of the privilege; (2) a person that the client has authorized to assert the privilege; and (3) the Lawyer Referral Service or its staff.

The Lawyer Referral Service is not allowed to raise the privilege if there is no holder of the privilege in existence or if the client or client’s representative has instructed the Lawyer Referral Service to disclose the information. Unless one of those conditions exists, the Lawyer Referral Service may not disclose any information provided by the client as part of the referral process.

In addition, no privilege attaches if the Lawyer Referral Service is asked to enable or assist in the commission of a crime or a fraud. When a Lawyer Referral Service staff member receives a confidential communication in processing a request for legal assistance, and reasonably believes that disclosure of the confidential communication is necessary to prevent a criminal act that reasonably appears likely to result in the death of, or substantial bodily harm to, an individual, the communication is not privileged and may be disclosed.

I brought my resolution to the CCCBA Board of Directors, which agreed that CCCBA could be the sponsoring delegation. The resolution passed the Conference of California Bar Associations in 2012, with very strong support from the diverse group of attorneys. The next year, the Conference lobbyist found a legislator to sponsor the resolution as a bill in the California legislature, and I went to testify in favor of it at committee hearings in Sacramento. It was later passed by the California Legislature with nearly unanimous support and signed into law by Governor Jerry Brown on August 19, 2013.

### **3. The National Impact**

California’s changes are, however, not the end of the story. Drafting the resolution for the Conference of California Bar Associations led me to draft a similar resolution for consideration by the American Bar Association (ABA). At its annual meeting in 2016, the ABA adopted Resolution 106, which provided “RESOLVED, That the American Bar Association urges federal, state, tribal, and territorial courts and legislative bodies to adopt rules or enact legislation to establish an evidentiary privilege for lawyer referral services and their clients (“LRS clients”) for confidential communications between an LRS client and a lawyer referral service, when an LRS client consults a lawyer referral service for the purpose of retaining a lawyer or obtaining legal advice from a lawyer.”

Since then, Utah and New York have adopted similar provisions establishing an evidentiary privilege for lawyer referral services and their clients. Wisconsin is on the verge of adopting such a privilege, and more states are examining the issue and seem likely to create similar privileges. And it all started in the Contra Costa County Bar Association.

***Steve Steinberg** is a past President of the Contra Costa County Bar Association and a frequent member of the CCCBA’s delegation to the Conference of California Bar*

*Associations. He is Chair of the American Bar Association Standing Committee on Lawyer Referral & Information Service. Steinberg is an intellectual property and business trial lawyer and litigator whose practice focuses on claims for patent, trademark, and copyright infringement, theft of trade secrets, and other complex business disputes in both federal and state courts. He has served as lead counsel in several cases involving patents and trademarks, and has represented clients in numerous trials. He is a principal in Bartko, Zankel, Bunzel & Miller in San Francisco.*

# A Newcomer's Perspective of the Conference of California Bar Associ...

Monday, October 01, 2018



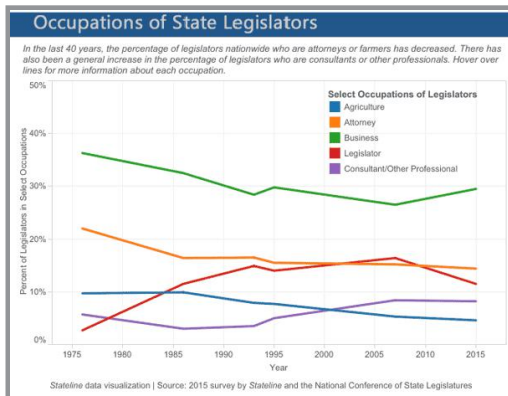
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Over the course of my legal career, I've had numerous experiences in which I was frustrated with the status of the law. I would come across it in court, hearing the judge say, "I am sorry, but the law does not give me the authority to do that," only to have the absence of that authority detrimentally impact a litigant, and even sometimes, a child. I would experience the frustration with the law in research, wondering why the law

did not provide for something which was common sense. I felt client frustration while delivering the concepts in a legal standard that simply did not make sense or was purely inequitable. So many times, the only response was, "Please don't shoot the messenger." Then I was invited to participate in the Conference of California Bar Associations (CCBA), and the occasional helplessness I felt in changing the inequities of the law was mitigated.

The beauty behind the CCBA is the voice it gives to practicing attorneys to make a difference in the laws when change is needed. Practicing attorneys are on the front lines, in the trenches with the law, trying to explain it, manipulate it, structure it, all for the benefit of our clients. We, the practicing attorneys, are the best suited to help form the laws we work with every day.

According to the 2015 article from PEW, the number of attorneys serving the statehouses across the nation dropped from 22.3 percent in 1979, to 14.4 in 2015.



The legislators in our statehouses are those who are debating and deciding the laws which not only impact our clients, but us personally. Yet, many of them have zero legal

experience. This could explain some of the issues we encounter with the law, and statues as they evolve. Participation in the CCBA helps bring more attorney experience and knowledge into the law-making process.

The biggest concern I had in participating in the delegation was the time commitment required. On top of running two law firms with my law partner, I am a wife and mom of two little kids -- an almost three-year-old son and a one-year-old daughter, so to say my free time is limited is an understatement. That said, it takes time to prepare your solutions, but not generally more than a couple of hours. We have about two to three meetings per session to review the resolutions. There is dinner, and wine. The conference is a three-day commitment, which I just always put in the calendar. Sadly, the 2018 conference conflicted with my daughter's first birthday, so I had to move her party.

There is a value add which practicing attorneys can bring to the legislative process that other professionals cannot. It comes from the familiarity they have with the frustration the law can cause.

***Lisa Mendes** is a Partner at Mendes Weed, LLP and co-founder of Weed Law, LLP. She is a licensed attorney, with a Master's degree in Business Administration (MBA), and a Bachelor's degree in Spanish Language and Literature. Lisa is an active member of the Contra Costa County Bar Association (CCCBA), specifically in the Family Law, Women's, Tax and Estate Planning Sections. Lisa advocates for proposed legislation and new laws as a member of the Contra Costa County Delegation of the California Conference of Bar Associations.*



# Tales from the Trenches

Monday, October 01, 2018

*Editor's Note: This issue features the Conference of California Bar Associations (CCBA). It should not be confused with the Contra Costa County Bar Association (CCCBA).*



I first attended the annual Conference of California Conference of Bar Associations (CCBA) in 2006, as a delegate from the Bar Association of San Francisco. Since then, I have chaired the BASF Delegation, served on the CCBA Resolutions Committee, and have been to every statewide Conference since 2008. For me, the Conference is a richly rewarding opportunity to affect public policy. You always meet prominent and interesting lawyers from around the state and learn from them.

Each year, approximately 50 to 60 resolutions are debated during the two-day Conference, so time is limited. Delegates

who want to speak have to learn to state their case in two or three minutes, with another minute for rebuttal. I find that it's tougher than being in court! And it's fantastic training for young lawyers!

Involvement can develop your relationships within your local bar association and help you make professional connections throughout California. It has costs in time and money, for sure, because all the participants are volunteers. But it pays for itself, either in business connections or in personal satisfaction, or both. Although no Continuing Legal Education (CLE) credits are offered for the Conference, many local associations, including the Contra Costa County Bar Association offer CLE for participation in the delegation's study group meetings done in preparation for the Conference.

My CCBA and Conference experience includes authoring a resolution that has become law. In my practice as a trusts and estates litigator, I was troubled by the 2011 decision of *Estate of Bartsch* (2011) 193 Cal.App.4th 885. As a part of the probate of a will the beneficiaries must be determined as well as their distribution rights. This proceeding may be initiated by the personal representative or by any person claiming to be a beneficiary. Personal representatives are not considered true adversaries in the proceedings and have a duty to be fair to all those interested in the estate, even if they are also beneficiaries or heirs. ( *See Bodine v. Superior Court* (1962) 209 Cal.App.2d 354, 360.) In *Estate of Bartsch*, the appellate court held that since the personal representative is assisting the court he or she may participate fully in the litigation and be entitled to have their litigation fees paid by the estate, even if in doing so they are promoting their own interests as a beneficiary and not solely acting in their neutral role as personal representative. ( *Estate of Bartsch* (2011) 193 Cal.App.4th 885, 900.) In so doing, the court made the Probate Code section in question applicable in situations where experienced practitioners had never imagined the statute would apply. The court explained that, although the legislative history revealed that the legislature may have intended the statute to apply to only a specific situation, the language in the statute must

be construed as applying to other situations as well. This created a situation in which the fiduciary who administered an estate could engage in self-dealing by taking sides in a dispute in which he or she also had a personal interest.

Fixing this anomaly required new legislation. I crafted a resolution that would amend the law addressed in *Estate of Bartsch*. The resolution needed to be carefully drafted, to assure that the resolution would resolve the self-dealing concerns without having unintended consequences. I prepared a resolution, got BASF to approve it, and presented it to the CCBA. By the time of the annual Conference, many other delegations had taken positions against the resolution. Given the technical nature of probate litigation procedure, only a small portion of the delegates cared about, much less understood, the resolution. The executive committee of the State Bar of California's Trusts and Estates Section agreed that legislation was needed to address the *Estate of Bartsch* decision, but felt the resolution was not the proper solution. I began the exciting, but challenging, task of educating delegates and changing their positions. The give and take that occurs at the Conference has some of the flavor of an old-style political convention: larger delegations have hospitality suites and caucus rooms, and there is constant lobbying and cajoling to get delegations to change their positions. I worked with another delegation to propose a friendly amendment with new language. Then, I lobbied the Conference Calendar Coordinating Committee to get my resolution rescheduled for a later debate, to give me more time to change minds. That year, the Conference was on the Queen Mary in Long Beach. I vividly remember hustling from ballroom to ballroom on that enormous old liner in order to address members of the larger bar associations as they met for cocktails, breakfasts, and lunches. The resolution passed, but it was a close vote.

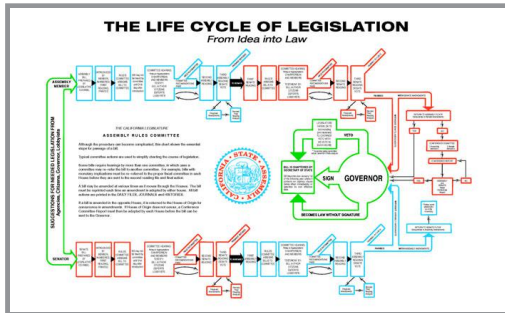
The next steps took a lot of my attention for a while, especially during the legislature's session. The CCBA lobbyist, Larry Doyle, persuaded Assemblyman Don Wagner, an attorney, to sponsor the bill. Before any legislative votes were taken, however, Larry and I had numerous meetings with legislative staffers, representatives of the Judicial Council, the California Judges Association, the relevant state bar executive committee, and the judiciary committees of the two houses. Through this lobbying effort, I learned that committee staffers, even very junior ones, have great power, and can easily kill a bill for any of a variety of reasons. The hard work resulted in a bill that was signed into law by Governor Jerry Brown in September 2013, which became law as of January 1, 2014.

My advice to attorneys considering involvement in the Conference? *Do it. You will not regret it.* Delegates study, debate, and vote on resolutions proposing changes in the law first at the local delegation level and then again at the statewide annual conference level. Any delegate can write a resolution that might become law. I would suggest that for the first year or two you just watch and enjoy yourself until you learn the ropes. But then start writing resolutions. That is what really draws you in. But I would never do this were it not also fun. I always say that just practicing law all day would drive me nuts—I need activities like this for my sanity, to prevent burnout, and to maintain an interest in the legal system.

**Ciarán O'Sullivan** is a solo practitioner in San Francisco. He focuses on general civil litigation, primarily trusts, estates and probate disputes, with an emphasis on ascertaining the client's vital objectives at an early stage of the litigation, and achieving them on a cost-effective basis.

# Life Cycle of Legislation - From Idea into Law

Monday, October 01, 2018



# PHOTOS: Judges' Night 2018

Monday, October 01, 2018

The CCCBA hosted Judges' Night on August 23 at the Martinez Event Center. Thank you to our generous sponsors, the event was a great success.

**ADR Services, Inc.**  
**Aiken Welch Court Reporters**  
**Cal Home Real Estate Services**  
**Lawyer Business Advantage**  
**Mass Mutual**  
**Quivx**  
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# What I Learned from the Conference of California Bar Associations

Monday, October 01, 2018



*Editors Note: This issue features the Conference of California Bar Associations (CCBA), not to be confused with the Contra Costa County Bar Association (CCCBA).*

I confess. I am a Conference of California Bar Associations (CCBA) junkie. I attended my first conference in 1988 as an alternate for the Bar Association of San Francisco (BASF) delegation. Since then, I've attended every year but one. I've headed the Bar Association of San Francisco delegation, served on the Contra Costa County Bar Association Board of Directors, served on the Resolutions Committee, chaired the Conference, and co-chaired the Contra Costa County Bar Association delegation. It has been fun, and a learning experience. Let me tell you about some of the lessons.

## 1. **The Earth Will Not Swallow You Whole**

When I first attended the Conference, the Bar Association of San Francisco required each of its delegates to argue at least one resolution. The BASF delegation was a recognized leader and wanted to be heard on every resolution.

Conference arguments are required to follow a particular format. The proponent always speaks first. When there is limited argument, each delegate has two minutes to speak. The delegate must state her name, the name of her delegation, and whether she is speaking on behalf of the delegation. The remainder of the time may be devoted to as many points as can be articulated before the timer ticks down to zero and the microphone shuts off.

I recall that my assigned resolution was in employment law, an area where I had handled a few matters. I was arguing against the resolution. Despite the hours of research and practice, I felt my knees wobbling as I waited my turn on the microphone. Then, I stepped up and my amplified voice filled the hall. I'll never know whether it was blood pounding in my ear or the echo of my own voice that caused the ringing in my ears. For two minutes, I spoke. The ground didn't shake, there was nothing that could have been measured on the Richter scale, not even a tremor. My delegation applauded in support. I breathed and

was hooked.

### 1. Even the Greats Make Mistakes

James J. Brosnahan, widely recognized as one of the country's foremost litigators, is a Conference regular. His presentations are so persuasive, articulate, and engaging that other delegates schedule their own time just to be present when Jim speaks. His reputation was well-established before I attended my first Conference.

At the Conference in 1988, Jim Brosnahan came to the microphone for three different resolutions. Each time he got to the microphone, Jim launched into vigorous support or opposition to the resolution at hand. Each time, the chair stopped him. "Will the delegate state his name, his delegation, and whether he is speaking on behalf of the delegation." Every time! The third time, the Conference Chair flashed a broad smile, shook her head, and said "Mr. Brosnahan, we **all** know who you are, but you **still** need to introduce yourself as required under the Conference rules."

I am probably the only person who remembers this exchange, but it gave me a new level of confidence, which has allowed me to participate in the conference year after year, despite my own gaffes.

### 1. You Can Become an Expert

What did I really know about employment law when I went to that Conference in 1988? Not much. I was a garden variety litigator. I read the resolution. I studied the proponent's arguments in support of the resolution, the existing statute, and cases on the topic. The research disclosed that the proponent, an experienced attorney whose practice focused on employment law, had overlooked an appellate decision interpreting the statute. Because of that decision, the proposed change to the statute would not have the effect that the proponent intended. I convinced the BASF delegation to oppose the resolution.

I gathered my ammunition and spoke with the proponent before the Resolution came up for debate. He was not about to change his position. He had been practicing employment law for 20 years and **knew** that he was correct. At the Conference, I spoke to several delegations that had indicated support for the Resolution. I was able to explain the unintended impact of the proposed change. By the end of the Conference, the resolution was amended in a way that would accomplish the proponent's goals.

Because of my work, other BASF delegates recognized me as having expertise in employment law. Although I only had four years of practice, members of the delegation who practiced in other areas of law began referring employment work to me. As a result, the Conference was key to my developing a focus on employment law and it provided a major boost to building my career

### 1. One Person Can Change the Law

The first resolution I drafted was enacted as California Code of Civil Procedure section 1985.6. This Code section is designed to allow an individual with the opportunity of protecting her or his own personnel records when they are subpoenaed. Section 1985.6 was modeled on California Code of Civil Procedure section 1985.3, which provides similar protections for financial and medical records.

I recognized that an individual's employment records can also contain medical records (relating to leaves of absence or on-the-job injuries) and financial records (payroll). I presented a resolution adding section 1985.6 to the Code of Civil Procedure. The Resolution was passed by the Conference the first year it was presented and signed into California law in 1995.

### 1. **People Don't Notice Your Flaws**

Speakers at the Conference are on-camera, projected on large screens at the front of the hall, while they are speaking. This was not always the case. The year that the Conference adopted the big screens, I was the proponent of the first resolution. Yep, I was the first speaker to be projected larger than life at the front of the room. Not fully aware of the new procedure, I stepped up to the microphone and began my argument. I introduced myself according to the Conference Rules. I explained the existing law. I provided details about the proposed changes, I explained the problem being addressed and started to address why the proposal would be good for Californians.

Then, I lifted my eyes, intending to look at the house to emphasize my point. Rather than seeing the assembled attorneys, I caught sight of my projected profile, towering yards above the room. I still don't know whether I used my outside voice, but I clearly gasped. I forgot my carefully selected words. Instead, the only words that came to mind were "You have one honking **big** nose." Somehow, I managed to pull myself together and made it through the argument. When I debriefed with my delegation, no one said anything about the extended pause. More importantly, no one has ever mentioned the size of my nose when viewed in profile.

### 1. **The Conference is a Great Place To Meet Attorneys Who Care**

Many California attorneys care deeply about the law. Because the Conference provides a forum for improving the law, the organization attracts many lawyers from around the state who are willing to dedicate time and energy to improving the laws for the benefit of all Californians. While we do not all agree, the debates are collegial and professional. We remain friends, despite having different areas of practice, different political views, and different desires about what should be changed. We come together to make the law better and, in the end, we become better lawyers.

*Maggie Grover is a mediator and practices employment law with Wendel, Rosen, Black & Dean LLP in Oakland. She currently heads the Alternative Dispute Resolution Section of the Contra Costa County Bar Association. Her never-to-be-published book is titled "There's A Naked Man In My Bed And Other Observations Of A Working Mother." Graciously, none of the six people who have read excerpts from the book have suggested that Maggie abandon all hope of writing. Only one of them cried.*

# Fingerprinting - A New Requirement from the State Bar

Monday, October 01, 2018

*This month's President's Message is coming to you from CCCBA's Executive Director, Theresa Hurley.*



Fingerprinting – it's on everyone's minds right now. Many of us have already been fingerprinted when we volunteered at our kid's schools, with Scouts or any other organization where volunteers work with vulnerable populations. Since I'm not an attorney I don't need to be LiveScanned for State Bar purposes but I calculate that over the years I have been LiveScanned at least six times! When you work in the non-profit industry that is pretty much de rigueur. Here's what you need to know about the State Bar's new LiveScan requirement:

California Rule of Court Rule 9.9.5 requires all active attorneys to be re-fingerprinted to ensure that the State Bar is in compliance with Business and Professions Code Section 6054, which requires the State Bar to receive notifications of attorney arrests and convictions from the California Department of Justice (DOJ). Until last year, the State Bar was out of compliance with this statutory mandate. **The only way for the State Bar to come fully into compliance is to re-fingerprint licensed attorneys.**

If you've been fingerprinted for another agency (volunteering for schools, scouts, non-profits) you still have to be fingerprinted as the fingerprints are not transferable from one agency to another. The State Bar will not share any of the information received or use it for any purpose other than licensing and regulation. The DOJ will retain fingerprints only for the purpose of notifying the State Bar of subsequent criminal offense information.



The State Bar will receive criminal record information from both the DOJ and the Federal Bureau of Investigation (FBI). This information specifically includes a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, court-ordered rehabilitation conditions, and release. The DOJ will send the State Bar notification of subsequent California arrests and the disposition of those arrests. At this time, the FBI will not send notification of out-of-state arrests to the State Bar.



Failing to comply with State Bar fingerprinting rule requirements by April 30, 2019 will subject you to monetary penalties. **Noncompliance after December 1, 2019 will result in the suspension of your license to practice law in California.**

Inactive attorneys do not need to be fingerprinted. In order to return to active status, an attorney would need to meet the fingerprinting rule requirements.

You can read more about the State Bar's fingerprinting requirements [here](#).

#### **How CCCBA can help**

We have set up several fingerprinting sessions this fall and many more will be scheduled before the April 30, 2019 deadline. If you have more than 15 attorneys in your office you can set up a LiveScan session in your office. Please contact me Theresa Hurley at [thurley@cccba.org](mailto:thurley@cccba.org) or (925) 370-2548 for details.

## Bar Soap

Monday, October 01, 2018



Had a long chat with one of our members. He is a family law lawyer and mentioned how the legal business has changed and NOT for the better. That is an unfortunate truism today. I am hearing that refrain from more and more practitioners and from judges as well. Why is that? Is it only the “old timers” lamenting how things have changed since long ago? Is it younger lawyers who are frustrated with the path to partnership and complaints of overwork? Is it the many who simply say, “The practice is no longer fun”? In fact, it is a bit of all of those and more. From my perspective, the practice of law is not as friendly as it once was. People are a little more on edge. A little less trusting. I have made it a practice for each new case to contact the opposition attorney and introduce myself. I will say in most cases it is a well- received gesture. Helps to turn the temperature down. Perhaps there should be more of that. Occasionally, I do get, “What the hell are you calling me for?” But I still believe civility is the best path forward for all. That leads me to the biggest complaint I continue to hear about lawyers is they do not return phone calls. I have heard that refrain since I started practicing civil law. Prior to that, I was a prosecutor and nobody wanted to hear from me. But now I join in the complaint. I cannot tell you how often I leave a message for lawyers I know and do not even get the courtesy of a return call. Goodness, please return calls. Again, civility and professionalism both dictate that it is best to always return a phone call. Who knows, it might be a very good referral.

And speaking of referrals, it seems impossible to find a lawyer willing to handle Med-Mal plaintiff cases. And I am not just thinking about MICRA. Nobody in our county seems interested. Are any of you interested? I hear there is a big opening on the CCCBA’s Lawyer Referral Service for Med-Mal attorneys too.



Now let's talk about the big news. The demise of Archer Norris is big news. By all accounts the firm is the largest "home grown firm" in our county. Like humans, however, law firms can live to a ripe old age and others can pass more quickly. Sad to see such a strong and vibrant firm cease to exist. I am confident the very fine lawyers from that firm will land on their respective feet. I see K. C. Ward and his crew already landed at Severson and Werson. Let me know if you have made a move recently.

I heard Aaron Langberg just landed as an associate at Fisher Phillips in San Francisco. Incidentally he was not at Archer Norris. Just some nice news for Aaron.

It was not many years ago I was suggesting that big firms were on the rise and would control our business. I do not hold that opinion anymore. The costs of leases, big brick and mortar edifices, salaries, insurance and all kinds of other expenses make it a real challenge to keep firms prosperous. Lawyers are taking more control of their lives and practices by going solo or into small practice groups, and even driving for Uber. I am busier than I have ever been, but I like to know I do not have to worry about the managing partner meeting with me monthly to compare my billable hours with those of other partners and associates. At one time I was on both the receiving and giving end of that kind of meeting. I do happen to see the current managing partner each morning when I am shaving. He does give me an occasional hard time.

It always pains me to mention the loss of one of our local attorneys, much less more than one. The loss recently of Tom Nagle hit particularly hard. I want to say he and I met at Casper's just a few months ago for a healthy lunch of a hot dog, a soda and some chips. Wonderful guy. He was one of the original founders of the local Inn of Court, later to be renamed the Robert G. McGrath American Inn of Court. He served as the second president. Joyce Cram was the first. The three of us made up the "membership committee" for years. That was fun. His obituary was in the Chronicle. A nicer person you will not meet.

We lost Lois Anne Lindstrom this past March. A Golden Gate University Law grad, Lois was the managing partner of the Oakland office of Ericksen, Arbuthnot, Kilduff Day and Lindstrom. A big loss and much too young.

I want to mention a personal friend who recently passed after a long illness. Allen

Sjostrand finished his career as Chief of Inspectors at the Contra Costa District Attorney's Office. He started his career in law enforcement as a Richmond Police Officer. He and I worked on many cases together over the years when I was a Deputy DA. The outpouring of comments at the mention of his death was overwhelming. Allen was very much a part of our local legal community for many years. He too will be missed.

Finally I would like to make a pitch for our local Bar Association. The benefits of membership are many. As I have mentioned numerous times the annual MCLE Spectacular is worth the price of admission alone. The recent Judges Night event this past August was another successful event. Contra Costa Judges from all areas of practice and from all our courthouses showed up to mingle with Bar Association members, law students and friends. Always nice to chat about things with our judges in an informal venue. Other than the Inns of Court meetings it really might be the only time to visit with members of our bench without starting with "Matt Guichard for the Plaintiff," or whatever.

Please keep those cards and letters coming.

***Matthew P. Guichard** is a nationally recognized trial attorney and senior partner and founder of Guichard, Teng & Portello with offices in Walnut Creek, Davis, San Francisco and Willows California. Mr. Guichard specializes in general civil litigation, commercial litigation, general trial work, business transaction and alternative dispute resolution. He is the author of two columns for the Contra Costa Lawyer magazine: Civil Jury Verdicts and Bar Soap.*

# Coffee Talk - There ought to be a law

Monday, October 01, 2018

Coffee Talk is a regular feature of the Contra Costa Lawyer magazine. We ask a short question related to an upcoming theme and responses are then published in the Contra Costa Lawyer magazine.

This month for the issue on the Conference on California Bar Associations, we ask:

## What law do you think should be changed or introduced?

"I think that "Family Law" should be removed from the court system -- haha. But seriously, litigation is just about the worst way to deal with divorces, support issues, custody, etc. Just my two cents and yes, I know I'm dreaming but heck, I am a dreamer!"

*Karen Juster Hecht, Counselor at Law (California)*

"I find it very distressing and dangerous that motorcycles can pass between cars at any time and I think this practice should be outlawed. A momentary driver distraction, or quick lane change decision in heavy traffic, can spell disaster for all."

*Anonymous*

"Contractors are rarely able to negotiate the terms of contracts for construction of public works, which almost always require that the contractor construct a project in strict compliance with the plans and specifications for the project. Sometimes, the public entity that owns the project specifies that certain vendors or products be used, incorporating the proposals from the specified vendors into the bid documents. Often those vendors' proposals contain exclusions, exemptions, limitations and disclaimers that render them non-compliant with the plans and specifications for the project. Most frequently this takes the form of a warranty that is shorter than that demanded of the contractor, but it also affects other portions of the plans and specifications. The contractor, who is rendered without bargaining leverage by virtue of the requirement that the specified vendor be used, is then stuck with a vendor who won't deliver what the contractor is required to provide under its contract with the owner. There ought to be a new provision of the Public Contract Code that requires that vendors specified by the public agency owner be required to satisfy the plans and specifications of the project for that vendor's product or portion of the work on the project."

*Josh Genser*





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### Spotlight

**PHOTOS: Judges' Night 2018**  
The CCCBA hosted Judges' Night on August 23 at the Martinez Event Center. Thank you

**Photos: Women's Section Annual Luncheon 2018**  
The CCCBA Women's Section's Annual Luncheon was held June 27th on "Navigating Gender Bias in

**Diversity Networking Event with Minority Bar Associations**  
Click on the image below for a pdf copy of this flyer.

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### Inside

**What I Learned from the Conference of California Bar Associations**  
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**Inside**  
This month we decided to do something a little bit different. Instead of choosing a

### News & Updates

**Welcome New Members**  
Welcome Aboard to these CCCBA members who've joined between June 1st and July 31. We

**Bar Soap**  
Hard to believe summer is upon us already. I did receive my annual jury summons.

**Sustaining Firms 2018-2019**

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### More...

**Life Cycle of Legislation - From Idea into Law**

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