The Publication of Stanislaus County Bar Association http://www.stanbar.org

December 2016

Volume No. 4





THANK YOU FOR YOUR VALUABLE AND CONTINUED SUPPORT OF SCBA!

It's funny how when you're a kid school years' seem interminably long and all breaks unduly short; yet once you start working in the "real world" every day ends in "y" and they just seem to fly by. That was certainly the case with 2016 nearing an end, and so too my term as President of the SCBA. Thank you to the entire bar association board for their hard work, dedication, and boundless enthusiasm over this past 12 months. I also want to thank and acknowledge our Executive Director, Deana Skelton, for all that she does to make our jobs easier. Together we have been able to advance a significant number or programs and events to benefit our bar membership. I also want to thank our local bench and bar for their continued participation with and support of our local bar association—we couldn't do it without you! While it may be stating the obvious, it is the generosity of all of our local businesses, members, firms, and participants that make what we do possible. As a "non-profit" your bar association is highly dependent upon sponsorships to defray the ever increasing costs of operation. That said, the following are several upcoming MCLE programs that we hope you will attend and that you continue to provide SCBA with your much-needed sponsorships for our programs (when applicable):

JANUARY:

13 MCLE: COMPETENCE ISSUES – General Wellness & Stress Management, by David Mann of The Other Bar, in the Jury Room, from 12-1 p.m., worth 1 hour Competence Issues (formerly Substance Abuse) credit. This is a "free" class to all 2017 paid bar members! This class fills up quickly-sign up ASAP! You have the option to order a lunch only for \$8.50. Program flyer is included in this issue. You may also go online to the bar website at STANBAR.ORG and to register and pay.

FEBRUARY:

3 MCLE: ABC's OF CONTEMPT, by Judge Robert Westbrook, from 12-1 p.m., in the Jury Room, for 1 hour of general MCLE credit.

Our website, STANBAR.ORG, was revamped this year to make it more convenient and user- friendly. You can now sign up and PAY for events and MCLE programs online. Please be sure to RENEW your SCBA MEMBERSHIP (online) and reach out to your fellow practitioners and encourage them to join if they aren't currently or have never been members. As noted above, the first obtain FREE admission to our MCLE covering Competence Issues on January 13, 2017 by David Mann who is always a compelling, motivational, and entertaining speaker. Thank you again to all who have made this year a successful one for the SCBA as we look forward to the next year under our new President, Robert Farrace.

Wishing you all a happy holiday season and a prosperous and healthy New Year!



IN THIS ISSUE:

President's Message.....Pg 1 Calendar and Around the Offices......Pg 2 Jobs, News, Ad, & Announcements....Pg 3 2017 Stan Co Court Assignments.....Pg 4 2017 SCBA Installation.....Pg 5 Article, Mock Trials, Scholarships....Pg 6-7 Bench-Bar Dinner & Jud Cal Lunch....Pg 8 2017 Bar Member App & Web Ads.....Pg 9 MCLE's & Lawyer's Referral Svc......Pg10 Holiday Lunch & 2016 Bar Board......Pg 11

SCBA Calendar of Events

** You may also view all Bar Association events at STANBAR.ORG **

JANUARY 2017

13 MCLE: COMPETENCE ISSUES: GENERAL HEALTH & STRESS MANAGEMENT, by David Mann, Peer Counselor at The Other Bar, for 1 hour of Competence Issues credit (formerly substance abuse), from 12-1 PM in the Jury Room. THIS IS A FREE PROGRAM WITH YOUR PAID 2017 BAR DUES! Lunch can still be ordered separately for only \$8.50. This class fills up quickly so do not wait to sing up! The flyer and registration form is included in this issue and you may also register and pay online at STANBAR.ORG – just follow the easy step-by-step instructions. Contact SCBA if you have any questions: (209) 571-5729 or Deana@StanBar.org.

FEBRUARY

3 MCLE: ABC's of CONTEMPT, by Judge Robert Westbrook of Stanislaus County, from 12-1 PM, in the Jury Room. SCBA has not had a program presented on "contempt" before. This will be an important program you do not want to miss out on!

ROUND THE OFFICE

Brandy L. Barnes, Esq.

Rodarakis & Sousa, APC 1301 L St, Ste 4, Modesto CA 95354 (209) 554-5232

BBarnes@rodsoulaw.com

(Formerly with Damrell, Nelson, Schrimp, Pallios, Pacher & Silva)

Youlet Ovrahim, Esq.

General Counsel & Compliance Mgr at Scenic Oaks Funding 1156 Scenic Dr, Ste 200, Modesto CA 95350 (209) 572-2301

YOvrahim@scenicoaks.com

(Formerly with the Law Office of Michael Normoyle)

Geoffrey Hutcheson, Esq.

1112 Black Wood Pl, Modesto CA 95355 (209) 524-2808

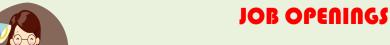
geoffreyhutcheson@sbcglobal.net

(Retired October 31, 2016, and will teach at various institutions)

Law Office of Curtis D. Colaw

1317 Oakdale Rd, Ste 330, Modesto CA 95355 (209) 549-0933

> attorneycolaw@gmail.com (New Address only)



Stanislaus County – PUBLIC DEFENDER

Stanislaus County invites qualified candidates who are experienced in the practice of criminal law and possess strong administrative, communication, and leadership skills to serve as Public Defender. The incumbent will be responsible for planning, organizing, and directing the legal activities and services of

the Public Defender's Office. This at-will position is appointed by the Board of Supervisors. This individual administers, directs, and coordinates the activities of the Public Defender's Office and carries out the objectives of the Board in providing for a safe community. Performs related duties as required.

For more information or to apply, go to: www.stanjobs.org



JOB OPENINGS

Ascende Law Group, APC in Modesto, CA seeks an attorney w/ J.D. from ABA-approved law school & lic. to practice in CA. Min 9 mos of recent CA legal exp in SSI/SSDI, workers' comp, & pers. injury law. Req'd to practice SSI/SSDI, workers' comp, & personal injury law, w/skills & knowl in legal research & analysis & understanding of laws, legal codes, court procedures, precedents, gov't reg, exec. orders, agency rules to research and analyze legal matters. Write briefs, motions, & other responsive

pleadings & written submissions req'd by courts, workers' comp appeals board, & SSA; & prepare for & attend depositions, hearings, trials, mediations, arbitrations & other proceedings. Consult & advise claimants w/SSI/SSDI, personal injury, & workers' comp law. Mail resume: Ascende Law Group, APC, 619 13th St, Suite J, Modesto, CA 95354

Advertise here for any open positions your office may need to fill. Simply contact SCBA to submit job information, at (209) 571-5729.

The Honorable Hurl W. Johnson (Ret.)

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"It's a girl!"

Brandy Barnes has a daughter!

EVERLY ELIZABETH BARNES

arrived on July 10th, and weighed 7 lbs. and 13 oz., and was 19.5 inches long

CONGRATULATIONS, BRANDY!

Douglas Neibauer (1940 - 2016)

Douglas Leroy Neibauer February 3, 1940 - September 16, 2016

Doug grew up in Montana and graduated from Billings High School. He attended the University of Montana and graduated law school in 1964, at the age of 24. He clerked at Montana Supreme Court and served in the US Air force JAG Corp, attaining the rank of Captain. After leaving JAG in 1967, he became assistant district attorney for Yellowstone County, Montana.

Having lived in California during his military service, he returned in 1969. California weather was excellent for his favorite pass time—tennis. He was also a member of Del Rio CC, Modesto Tennis Club, SOS, California and Stanislaus County Bar.

Doug was with Strauss, Neibauer in Modesto, CA, until 2015.

Doug will be greatly missed by our legal community. Our thoughts go out to his family and friends.

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240 sq. ft. office located at **418 13th Street.**Bathroom, separate entrance, off-street gated parking. \$450 includes utilities and use of conference room. Storage space available. **209-529-7254**

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Phone: 209,529,7254
Fax: 209,529,7244
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MINIMUM CONTINUING LEGAL EDUCATION

Group 2 (H – M)

2/1/15 – 1/31/18 Deadline: 2/1/2018

Group 3 (N - Z)

2/1/14 – 1/31/17 Deadline: 2/1/2017

SCBA SCHOLARSHIP FUND

The SCBA continues to accept contributions for the 2017 Scholarship Fund. Our goal for 2017 is to provide two \$1,000 Scholarship Awards to Stanislaus County High School seniors at the 2017 Law Day Luncheon.

Please send contributions to: SCBA, 804 14th St, Modesto, CA 95354



SUPERIOR COURT OF CALIFORNIA COUNTY OF STANISLAUS

Ronna D. Uliana Interim Executive Officer Jury Commissioner

Department 1

800 - 11th Street Modesto, California 95354 Telephone (209) 530-3111 Fax (209) 236-7797 www.stanct.org

PRESS RELEASE

FOR IMMEDIATE RELEASE CONTACT: Ronna Uliana
December 8, 2016 (209) 530-3111

The Superior Court of California, County of Stanislaus is pleased to announce the following leadership and assignment changes effective January 2017:

Criminal

Presiding Judge Judge Ricardo Cordova
Asst. Presiding Judge Judge Dawna Reeves
Supervising Family Law
Supervising Civil Judge Timothy Salter
Supervising Criminal Judge Thomas Zeff
Presiding Judge-Juvenile Judge Ann Ameral

Judge Dawna Reeves

Criminal-Specialty Calendar Department 2 Judge Linda McFadden Judge Marie Silveira Criminal Department 3 Department 4 Judge Rick Distaso Criminal Criminal Department 5 Judge Thomas Zeff Judge Nancy Ashley Criminal Department 6 Criminal Department 7 Judge Scott Steffen Department 8 Judge Ricardo Cordova Criminal Criminal Judge Robert Westbrook Department 9 Department 10 Judge Shawn Bessey Criminal Department 11 Judge Alan Cassidy Family Law Department 12 TBD - Vacant Criminal-Arraignments Judge Valli Israels Family Law Department 13 Department 14 Judge Jack Jacobson Family Law Department 15 Commissioner Ken Hara Family Law-DCSS Department 17 Judge Ruben Villalobos Juvenile Delinguency Department 18 Judge Ann Ameral Juvenile Dependency Commissioner Jared Beeson Civil/SC Department 19 Department 20 Commissioner Lynne Meredith Traffic Department 21 Judge William Mayhew Civil Department 22 Judge Timothy Salter Civil Department 23 Civil Judge John Freeland Civil Department 24 Judge Roger Beauchesne Department 25 Family Law Judge Loretta Begen Department 26 Assigned-Judge Barbara Zuniga Criminal

For inquiries please contact Ronna Uliana at 530-3111 or Ronna.uliana@stanct.org.

CONGRATULATIONS 2017 SCBA Officer's & Board of Director's

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President, Robert F. Farrace of the Farrace Law Firm

Vice President, Michael R. Dennis of Crabtree Schmidt

Secretary, Andrew S. Mendlin of Curtis Legal Group

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EX OFFICIO

Keric J. Cushing of the Law Office of Keric J. Cushing

A big thank you to the Honorable Alan Cassidy for administering the bar oath and swearing in our new board at the Holiday Luncheon on December 9th, 2016.



RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND ATTORNEY MALPRACTICE

By Tom Hallinan

Well, timing is everything in life. I was recently appointed by Governor Jerry Brown to the California Law Revision Commission. The Commission usually reviews mundane subjects like statutory clarification of Common Interest Development Law, technical corrections to the Code of Civil Procedure, and Decennial Reviews of Exemptions from Enforcement of Money Judgements. However, my appointment came at a time when the Commission is undertaking its most contentious study in years – reviewing the relationship between mediation confidentiality and attorney malpractice. 2012 Cal. Stat. res. Ch. 108 (ACR 98 (Wagner & Gorell)). In short, the study concerns whether attorneys should continue to be exempt from liability for malpractice claims arising out of mediation proceedings.

The most recent California Supreme Court decision on mediation confidentiality is *Cassel v. Superior Court*, 51 Cal. 4th 113, 244 P.3d 1080, 119 Cal. Rptr. 3d 437 (2011). This decision, and the Legislature's response to it prompted the Commission's current study.

In *Cassel*, A man agreed in mediation to settle a lawsuit to which he was a party. He later sued his attorney for malpractice claiming breach of fiduciary duty, fraud, and breach of contract. He claimed that at the mediation, his attorneys "by bad advice, deception, and coercion ... induced him to settle for a lower amount than he had told them he would accept, and for less then what the case was worth." 51 Cal. 4th at 118.

The defendant's attorney moved under the statute governing mediation confidentiality, to exclude all evidence of private attorney-client discussions immediately preceding, and during, the mediation concerning mediation settlement strategies and defendants' efforts to persuade [their client] to reach a settlement in the mediation. The trial court granted the motion and an appeal was taken.

In a split decision, the court of appeal reversed, ruling that mediation confidentiality did not apply. The majority reasoned that the mediation confidentiality statutes are "not intended to prevent a client from proving, through private communications outside the presence of all other mediation participants, a case of legal malpractice against the client's own lawyer." Id. at 122.

The defendant's attorney petitioned for review in the California Supreme Court, maintaining that "under the plain language of the mediation confidentiality statutes, their mediation-related discussions with their client were admissible in his malpractice actions against them, even if those discussions occurred in private away from other mediation participants." Id. at 123. The Court granted review and held that the mediation confidentiality statutes must be strictly construed and are not subject to a judicially crafted exception where a client sues for legal malpractice and seeks disclosure of private attorney-client discussions relating to meditation. Id. at 123–33

The Court therefore reversed the decision of the court of appeal, but noted that "the Legislature is free to reconsider whether the mediation confidentiality statutes should preclude the use of mediation – related attorney – client discussions to support a client's civil claims of malpractice against his or her attorneys." Id. at 137.

Justice Chin concurred in the result, "but reluctantly." Id. at 138 (Chin J., concurring). He warned that the court's holding would:

Affectively shield an attorney's actions during mediation, including advising the client, from a malpractice action even if those actions are incompetent or deceptive. Attorneys participating in mediation will not be held accountable for any incompetent or fraudulent actions during the mediation unless the actions are so extreme as to engender a *criminal* prosecution against the attorney. This is a high price to pay in order to preserve total confidentiality in the mediation process.

Reaction to the *Cassel* decision was vigorous and copious. Eventually, Assembly Bill 2025 was introduced in the Legislature. The Assembly Judiciary Committee analysis quoting the author stated:

The purpose of AB 2025 is to specify that communications between a client and his or her attorney during mediation are admissible in an action for legal malpractice or breach of fiduciary duty, or both, and in a State Bar disciplinary action, if the attorney's professional negligence or misconduct forms the basis of the client's allegations against the attorney. The bill responds to the California Supreme Court's decision in Cassel v. Superior Court (2011) 51 Cal. 4th 113, which held that the plain language of Evidence Code Section 1120 compelled it to find that attorney-client confidentiality in a mediation is absolute, but strongly suggests that the Legislature change the statute.

(Continued on next page)

The bill received significant opposition and was eventually amended to direct the Commission to conduct this study. (See AB 2025 (Gorell), as amended on May 10, 2012.)

As the study proceeds, the Commission will be considering the following factors in making its recommendation to the Governor and the Legislature.

Factors Favoring Disclosure of Mediation Communication to Establish Attorney Malpractice

With respect to mediation communications bearing on legal malpractice or other attorney misconduct, the policy analysis against mediation confidentiality has several components:

- Mediation confidentiality may deprive a party of evidence that would help prove that an attorney committed malpractice or engaged in other misconduct.
- Because mediation confidentiality may result in exclusion of relevant evidence, legal malpractice or other attorney misconduct may go unpunished.
- Allowing legal malpractice and other attorney misconduct to go unpunished may undermine attorney-client relations and the administration of justice.
- Allowing legal malpractice and other attorney misconduct to go unpunished may chill future use of mediation and deprive the state of its benefits.

Factors Favoring Mediation Confidentiality

The main policy argument for mediation confidentiality rests on four key premises:

- (1) Confidentiality promotes candor in mediation.
- (2) Candid discussions lead to successful mediation.
- (3) Successful mediation encourages the future use of mediation to resolve disputes.
- (4) The use of mediation to resolve disputes is beneficial to society.

(California Law Revision Commission Memorandum 2013-39, Study K-402, July 23, 2013.)

We have received a tremendous amount of compelling testimony from advocates on both sides of this issue - as well as a lot of hyperbole, ranging from "the basis for the study is just a 'tempest in a teapot' to the opponents of expanding attorney liability being compared to 'Chicken Littles' crying that the sky is falling." I encourage you, as members of our local bar, to participate in this process and provide a Central Valley perspective concerning this important study. Your input can be forwarded to California Law Revision Commission, Attn: Barbara S. Gaal, Staff Counsel, 4000 Middlefield Road, Palo Alto, CA 94303-4739; or bgaal@clrc.ca.gov.

Tom Hallinan, serves as a member of the California Law Revision Commission; California Gambling Commission's Gaming Policy Advisory Committee; City Attorney for Ceres, Oakdale, Patterson, and Riverbank; and was recently appointed Hearing Officer for the Port of Oakland.



SCBA WOULD LIKE TO THANK OUR 2017 SCHOLARSHIP DONORS:

Ronald W. Hillberg – Attorney
Law Offices of Mark S. Nelson
Kimberly Ringer, Stanislaus Co. Court
Sally K. Chenault of Chenault Law

We would not be able to provide these special scholarship awards to our local high school seniors without your support. Thank you!

SCBA'S

2017 BENCH-BAR DINNER

"An Evening with Stanislaus County Sheriff-Coroner Adam Christianson"





October 27, 2016
The Seasons in Modesto

SCBA'S

JUDICAL CALENDAR LUNCHEON



The S.O.S. Club in Modesto November 4, 2016

Stanislaus County Presiding Judge The Honorable Marie Silveira Announced 2017 Court Assignments



The Bar Association would like to wish

Rebecca Fleming,

former C.E.O. of Stanislaus Superior Court, a fond farewell and the best of luck in her new position as C.E.O. of Santa Clara Superior Court.

Her 18 years of dedicated service to the courthouse was apparent and we enjoyed working with her in regards to the legal community here and our bar members.



She Will Be Sorely Missed!

2017 WEBSITE ADVERTISEMENT ON STANISLAUS COUNTY BAR ASSOCIATION'S WEBSITE ADVERTISENGE "LIVE Web Links" available on the Stanislaus County Bar Association WEBSITE

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"MEMBERSHIP APPLICATION"



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☐ INFORMATION IS THE SAME:	Check here to duplicate	prior year's information.
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Name (Last, First)		
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California State Bar No		
Law School		Year Graduated

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- AMOUNT ENCLOSED:

 Dues......\$

 "Scholarship Contribution.....\$
- *New Attorney Member: Person who has not been a member of the SCBA for the last consecutive 3 years.
- **Associate Member requirements: (if not admitted to practice law in California or another jurisdiction) are Law Clerks, Law Students, Paralegais, Legal Assistants, Legal Secretaries, Court Personnel, and Legal Administrators. Other jurisdictions: Same.
- ***Scholarship Fund: Please join us in supporting the Scholarships we present annually towards local area high school students futures in the legal field, by contributing today along with your membership dues.

Paid SCBA Members have the option to advertise their firm/self, on our websites ATTORNEY DIRECTORY section at STANBAR.ORG.
Paid SCBA Members require the box above to be checked to renew annually. For more information contact us STANBAR.ORG or (209) 571-5729.

** DEADLINE TO PAY 2017 BAR DUES IS ON/BEFORE JANUARY 31, 2017 **

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www.calbar.org

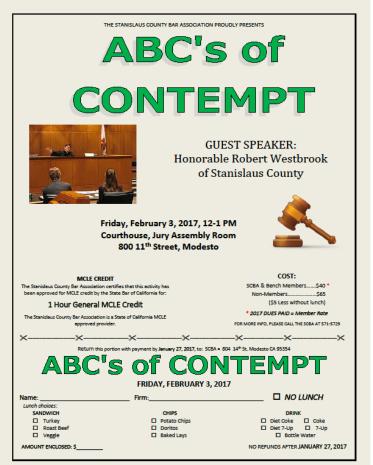
CALIFORNIA

New & Amended Rules of Court

Effective on January 1st, 2017

http://www.courts.ca.gov/3025.htm





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SCBA'S

HOLIDAY LUNCHEON



Entertainment by the Fun Strummers Charity donations for The Other Bar 2017 SCBA Vote & Installation





The S.O.S. Club in Modesto December 9, 2016







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