

SONOMA COUNTY BAR ASSOCIATION THE BAR JOURNAL

Volume 63

Issue 1

Spring '21



*Sonoma County Courthouse, Circa 1921;
Celebrating The Sonoma County Bar Association's 100th Anniversary: 1921-2021*

The Sonoma County Bar Association Launched • Looking Back, Looking Forward...

Luda Barham: First Woman Attorney in Sonoma County, 1895

*Why You Should Welcome Being Uncomfortable • Reminiscence of Practicing Law in Sonoma County 50 Years Ago
100 Years Later—Why the Sonoma County Bar Association is Thriving*

A Peek into the Past: The Cost of Doing Business

Discovery Refresher: Exchanging Relevant Information and Avoiding Gamesmanship

Supervisors Appoint Robert Pittman as County Counsel • Helping Our Own: SCBA's Mentoring Program



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By Stephanie Hess,
President, SCBA

President's Message: SCBA's 100th Anniversary

I am looking forward to the coming year as your Sonoma County Bar Association president and am honored to serve as the president during the SCBA's 100th anniversary. In the months leading up to this year, I had grand aspirations of holding fantastic events in celebration of this momentous anniversary. Surely we would be able to gather together again by the beginning of the year to celebrate our rich past and the brilliant future, right? Wrong. By the time this message reaches your computer, it will have been over a year since the pandemic took hold of our lives and, while I see the light at the end of this very long tunnel, our in-person celebrations will have to wait. The work of the SCBA, though, has not and will not stop.

The past year brought innumerable challenges to our community – a once in a century pandemic, devastating wildfires, widespread evacuations, unprecedented windstorms, repeated power outages, an economic crisis, and more. Our resilience and commitment to serving the community was tested, as almost every aspect of our lives was shaken over the last year. Our technical prowess in particular has been tested as we attempt to meet clients, take depositions, attend mediations, and attend court remotely, all while attempting to balance working from home, monitoring distance learning for our children, and helping our older or isolated family, friends, and neighbors. With the unwavering leadership of our Executive Director Amy Jarvis and the incredibly resourceful SCBA staff (including Win Rogers, Susan Demers, and Ann Horn), the SCBA met these challenges and, with the assistance of hundreds of SCBA members, have continued to provide the programs and support we have all come to expect from the SCBA. So, what were the accomplishments of the SCBA over the past year?

Amy Jarvis rapidly shifted the SCBA's model for MCLE presentations from in person to Zoom seamlessly. As a result, SCBA hosted 52 MCLEs in 2020, providing the membership with timely and informative educational opportunities. These programs also gave us the opportunity to chat with colleagues, even if for only a moment before the start of a presentation, thereby feeding our innate need for social contact and professional connection. Amy Jarvis also worked closely with the website developer to complete the much-needed update of the SCBA website, which now allows members to renew membership and sign up for programs electronically.

Win Rogers, Legal Programs Director, and Susan Demers, Community Relations Coordinator, fielded hundreds of calls from the community seeking legal assistance. They managed to refer 614 individuals who needed help now more than ever to attorneys in our community through the Lawyer Referral Service, all while working remotely.

With the steady guidance of SCBA's 2020 President, Michelle Zyromski, the SCBA launched a reboot of the mentoring program (previously known as the "Big Brother/Big Sister" program). It links seasoned veteran
(Continued on page 6)

== In This Issue ==

President's Message: SCBA's 100th Anniversary	3
From the Editor: <i>Marbury v Madison</i>	4
The Sonoma County Bar Association Launched	7
Looking Back, Looking Forward... ..	8
Luda Barham: First Woman Attorney in Sonoma County, 1895	9
Why You Should Welcome Being Uncomfortable	12
SCBA Welcomes Our New Spring 2021 Members	15
Reminiscence of Practicing Law in Sonoma County 50 Years Ago.....	16
SCBA "Movers & Shakers"	17
<i>Thoughts from the Bench</i> : 100 Years Later—Why the Sonoma County Bar Association is Thriving	18
A Peek into the Past: The Cost of Doing Business	19
Discovery Refresher: Exchanging Relevant Information and Avoiding Gamesmanship	20
2021 Upcoming Schedule of Seminars & Events	22
Early 1920s Images of Santa Rosa	23
Supervisors Appoint Robert Pittman as County Counsel	24
Status of SCBA Programs During Shelter-In-Place	24
Helping Our Own: SCBA's Mentoring Program	25



From the Editor: *Marbury v. Madison*¹ 5 U.S. (1 Cranch) 137 (1803)

By Malcolm Manwell

The Election of 1800 was particularly contentious, even by American standards. The press, especially from New York, was full of partisan accusation.

The election pitted central government advocates (Federalists like Washington and Adams) against individual rights agrarians (the Republicans of old—Jefferson and Madison).

By way of background, until the end of the 18th century, political parties in America were disfavored. But when the Federalists, through Washington's brilliant Secretary of the Treasury, Alexander Hamilton, established a National Bank, it was perceived as an expansion of the Constitution. The Jeffersonians formed a party to challenge that expansion, and we have had political parties ever since.

Adams lost the election, despite the fact he was the author of what is now the oldest living Constitution on Earth (Massachusetts'). He also brought to the Presidency one of the truly great power couples in American history, being married to the finest woman in New England, Abigail Adams (Adams' view). Adams was the first to serve only one term.

The Republicans were not slouches at that time, either. They were led by Thomas Jefferson (author of the Declaration of Independence) and his soon to be Secretary of State, James Madison (the author of the US Constitution). Together, those two and the documents they authored have helped shape the world's outlook on individual freedom.

The stage was set in 1801 when the outgoing Federalist controlled Congress adopted the so-called "Midnight Judges Act," the Judicial Act of 1801. Adams, on the eve of his departure, appointed William Marbury as the Justice of the Peace of Washington DC. But the commission by which that appointment was finalized was not delivered by the time the new Administration took over.

When Jefferson took office, his Secretary of State, James Madison, refused to deliver Marbury's commission. So, Marbury did what all Americans do when they feel aggrieved—he sued.

By this time, Adams had already appointed Jefferson's

distant cousin, John Marshall, as the Chief Justice of the US Supreme Court. Marshall and Jefferson detested each other. Once appointed, however, Marshall served for 34 years, and in the process molded the Supreme Court into the co-equal branch of government it now is.

Marbury filed a Writ of Mandamus (the common law writ to compel an official to act) in the Supreme Court under the 1801 Act. Marshall ruled that, while Marbury had been lawfully appointed as a judge, the Supreme Court did not have jurisdiction to issue the Writ. That power had not been given to the Supreme Court by the Constitution. The 1801 Act of Congress was, therefore, unconstitutional.

Sometimes the greatest exercise of a power is its non-exercise.

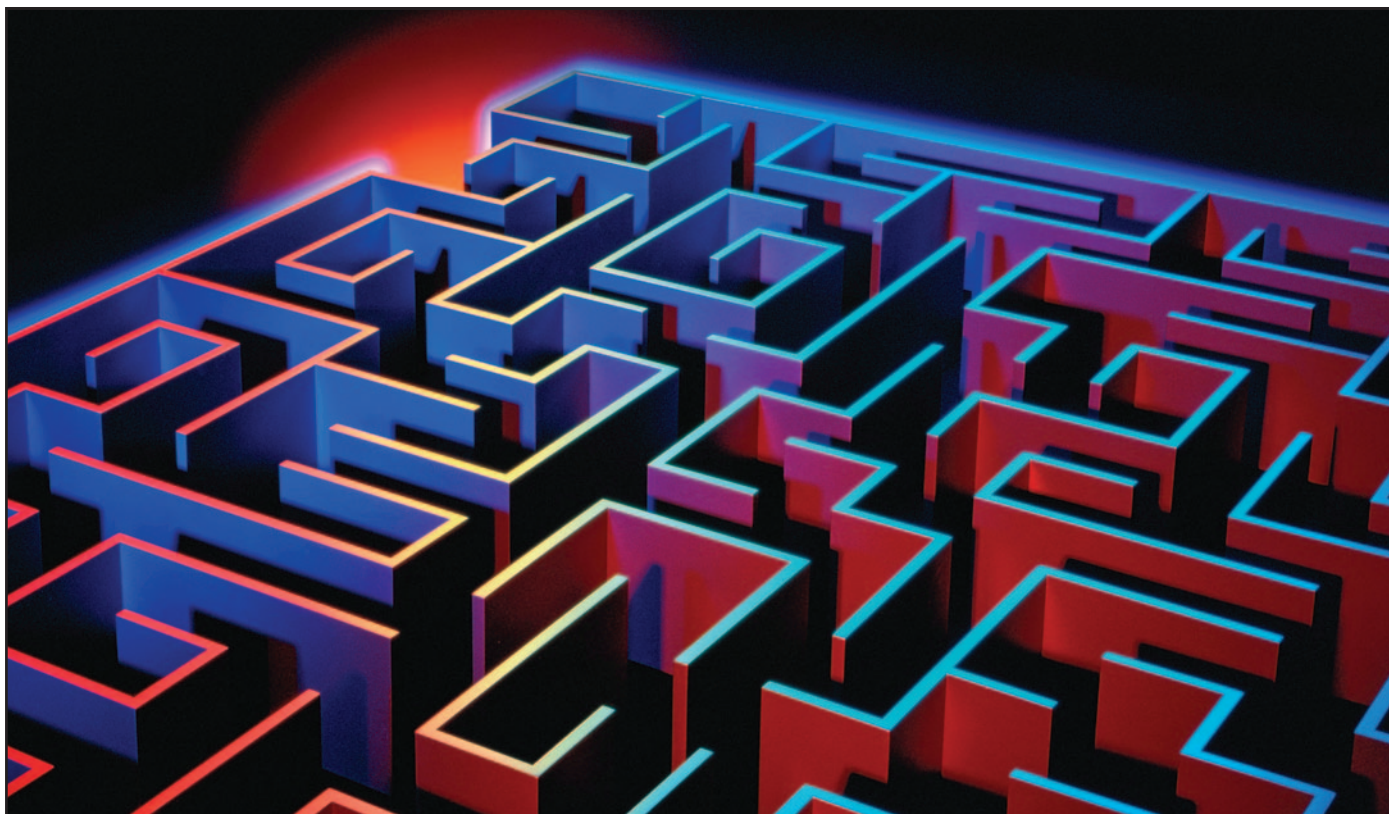
Ostensibly, by limiting the Supreme Court's jurisdiction to the Constitution, Marshall actually expanded that power by subjecting acts of Congress to its jurisdiction. The Executive Branch won the battle, but the Judicial Branch won the war. *Marbury v. Madison* started the Supreme Court on its road to becoming supreme.

There is always something to learn from history. Arguably, the "Living Constitution" theory got its start during Washington's Presidency (when Hamilton and the Federalists established a National Bank). But then it goes back to "Original Intent" when John Marshall says, no, you can't expand the power of the Supreme Court outside the Constitution.

Can we say the Supreme Court ignores the political landscape? *Marbury v. Madison* is pretty good evidence politics plays a part.

Marbury and the Election of 1800 suggest the issues of our time [last minute judicial appointments; one term Presidency; struggles to expand government and limit it; urban vs. rural; big states vs. small] aren't unique. That, in history, there is always a yesterday; there will always be a tomorrow. And the wise seek to bridge the two. ¶¶¶

¹ Editorial based on secondary sources: *John Adams*, (© 2001) by David McCullough; and *The Unfinished Nation* (8th Ed., © 2016) by Alan Brinkley.

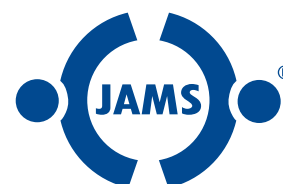


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President's Message (continued from page 3)

attorneys with recent bar admittees to foster collaboration, camaraderie, and civility, and provides the type of continual personal and professional development for the mentor and mentee which creates a ripple effect through the community as a whole. You can read more about this reimagined program in Michelle's article on page 25.

These are but a few of the many accomplishments of the SCBA over the last year. We have seen significant change over the last year, but what has remained constant is the SCBA's deep and enduring commitment to the Sonoma County legal community and the broader community it, in turn, serves. Now more than ever is a time to count our blessings, and I wish to thank the incredible SCBA staff as well as the hundreds of SCBA members who volunteer their time through development of MCLE programs, serving on one of SCBA's 20 committees, writing articles for this Bar Journal, and the myriad of other tasks you do to serve the Sonoma

County Bar. We look forward to seeing you throughout the year as we continue to serve the Sonoma County legal community. Happy 100th SCBA! 🙏

SCBA 100th Anniversary

As you peruse this year's *Bar Journals*, look out for some blasts from the past. Throughout this issue and for the remainder of the year, the *Bar Journal* will be remembering the SCBA's rich history of education, volunteerism, and camaraderie. We are digging through the archives and pulling out articles and photos depicting some of these highlights. I invite you to aid in this effort by sharing photos and anecdotes about SCBA's history and/or submitting an article for an upcoming issue of this Bar Journal.

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February 11th, 1921: The Sonoma County Bar Association is Launched

Santa Rosa Press Democrat, 2-12-21:

COUNTY BAR ASSOCIATION IS FORMALLY LAUNCHED

The Sonoma County Bar Association was formally launched last night at a meeting of 32 members of the bar of the county out of a total of 48 held in the Occidental Hotel, where a dinner was served and a pleasant social time was enjoyed until a late hour.

Following the disposal of the elaborate dinner Attorney W. E. McConnell, the dean of the Sonoma county bar, was called upon to preside in the absence of Superior Judge Emmet Seawell, who had been selected to preside at the meeting. He presented in turn J. T. Campbell, Superior Judge R. L. Thompson and A. E. Bolton, former president of the State Bar Association and a former practicing attorney of the city, as the speakers of the evening.

Attorney Campell gave an interesting account of the early-day practitioners in the county, most of whom have gone over the great divide to appear before the Presiding Judge of the Universe. Many interesting and entertaining incidents connected with the lives of the early members of the bar were related.

Judge Thompson spoke a few words of encouragement and endorsement relative to the formation of the bar association and the good which should result by proper co-operation of the attorneys of the county.

Judge Bolton gave an instructive talk on the needs of such co-operation and organization and the benefits to be derived by the attorneys of the county through membership. He endorsed the plan and urged hearty, active co-operation of all attorneys of the county.

The committee which have been preparing the constitution and by-laws presented the draft and it was adopted, after which W. F. Cowan was elected president; W. L. Ware, senior vice-president; F. S. Howell, junior vice-president; J. R. Leppo for three years; F. W. McConnell for two years; and F. J. Burke for one year term on the board of governors.

After adjournment, the board of governors met and elected Hilliard Comstock secretary, and Clarendon Anderson treasurer. ❧

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JUDGE BOLTON TO TALK TONIGHT AT BAR ASSOCIATION

Organization of a bar association in Sonoma county will be effected at a banquet and meeting to be held tonight in the Occidental hotel, starting at 7 o'clock.

Judge A. E. Bolton, prominent in the state association of attorneys, will be the speaker of the occasion. A former resident here, Judge Bolton will be warmly welcomed, especially by the older members of the bar here.

There has never been, up to the present, any Sonoma county bar association, but a movement has been gaining ground for the past several months for the establishment of such an organization in response to the invitations mailed to all attorneys in the county, there was nearly a hundred per cent response, indicating that the attendance tonight will be complete.

Advocates of the association point out the advantages of friendly intercourse between attorneys, greater dignity for the bar, promotion of mutual interests, action for clean-cut justice, curbing of evil practices, and agitation for remedial legislation, as arguments for the organization.

Those present at the supper and meeting were Superior Judge R. L. Thompson, District Attorney G. W. Hoyle, J. T. Campbell, W. E. McConnell, Hilliard Comstock, F. H. Kellogg, Ernest Vedun, R. M. Barrett, M. T. Vaughan, Carl Barnard, Clarendon Anderson, H. T. Kyle, L. R. Lambert, L. B. Fulwider, W. Finlaw Geary, W. L. Ware, Donald Geary, W. A. Cockrill, R. M. Guackenbush, G. A. Long, H. W. A. Weske, J. W. Ford and W. F. Cowan, all of Santa Rosa.

E. M. Norton, F. W. McConnell, A. W. Hollingsworth, J. T. Coffman, of Healdsburg.

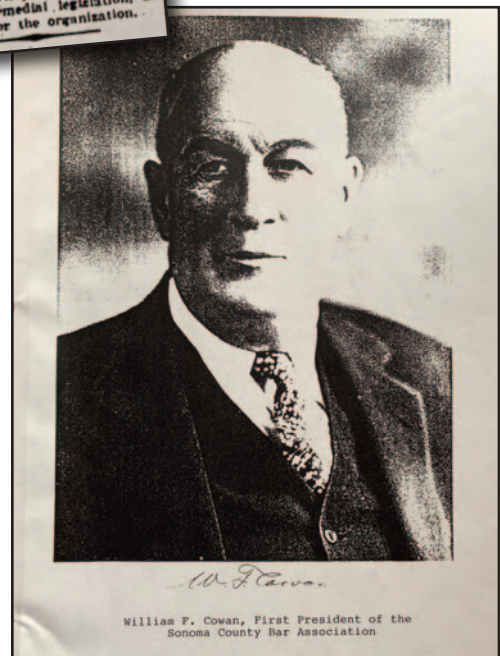
G. P. Hall, E. J. Dolz, F. S. Howell, F. J. Burke, of Petaluma.

L. G. Scott, of Sebastopol.

H. P. Hilliard, president, and J. G. Stafford, secretary, of the Santa Rosa Chamber of Commerce, were also in attendance.

For various reasons several attorneys of the county were unable to be present, but it is understood most of them favor the organization of the Bar Association and will become members.

SEBASTOPOL VOTES 'DRY' ORDINANCE



Archival images above courtesy of the SCBA Archive Committee records

Looking Back, Looking Forward...

The archive committee of the Sonoma County Bar Association is pleased to share images and articles with the membership that provide a window into the past of the organization and the world in which it was ushered into existence—Sonoma County in the 1920s.

With our world in profound flux and change, the success of the SCBA—and Sonoma County's larger legal community—has derived from its willingness to adapt to the environment and its membership as the needs arise, and to value each other and our community. With that in mind, this Bar Journal—and all the issues of the newsletter published this year—will invite us to consider a more inclusive future with articles that recognize diversity and the role of women in this organization and our society, while recognizing and appreciating where we came from by looking back at SCBA's rich history.

This first 100th anniversary issue will focus on the origins of the SCBA using Archive Committee materials and local Sonoma County historical resources. Other issues of the newsletter during the year will offer remembrances of the evolving organization and its membership over the subsequent decades.

The Archive Committee's mission statement reads: "The mission of the Archives Committee is to preserve the history of the Sonoma County Bar Association. The Committee strives to collect, store and display items of historical interest related to the Sonoma County legal community; to record the memories and stories of the judges, lawyers, and other members of the Sonoma County legal community; and to share this history with the Bar Association and the general public."

By Caren Parnes

Caren Parnes works with the SCBA to publish the SCBA Bar Journal and Directory



SCBA members examine early 20th Century Sonoma County artifacts in the basement of the Sonoma County Museum during the last SCBA event held before Covid and sponsored by the Archive Committee: The exhibition "From Suffrage to #MeToo" held on March 10, 2020.

Photo courtesy of Caren Parnes

Santa Rosa Press Democrat article from February 16, 1922 announcing the news that women will be selected to serve as jurors for the Superior Court of Sonoma County

Clipping courtesy of the Archive Committee



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Luda Barham: First Woman Attorney in Sonoma County, 1895



This is the 100th year anniversary of the Sonoma County Bar Association. In 1921, Superior Court Judge Emmett Seawell called a meeting of all attorneys of the county for the evening of Friday, February 11, 1921. The meeting was held at the Occidental Hotel "for the purpose of

a banquet at which bylaws will be presented, considered and acted upon, and officers elected for the new" Sonoma County Bar Association. Hilliard Comstock was appointed secretary of the first association.

To commemorate the centennial of the Bar Association, readers of *The Bar Journal* will be treated to articles and photographs in each issue celebrating the rich history of our local bench and bar, including a series focusing on women lawyers and judges.

To kick off the effort, this first article recognizes a pioneer of women in law: Luda Barham, the first woman attorney in Sonoma County.

Many Sonoma County women attorneys can be proud to claim "firsts," including Gayle Guynup, the first Sonoma County female judge, appointed by then Governor Jerry Brown to the Municipal Court in 1983 after practicing law for only six years; Jill Ravitch, who was elected and took office as the first woman Sonoma County District Attorney in 2011; and Kathleen Pozzi, the first woman Sonoma County Public Defender, appointed in 2013.

Luda Virgelena Fulkerson Barham is a notable "first." At age 23, Ms. Fulkerson likely was the youngest person to

be admitted to the practice of law in Sonoma County. She became an attorney at a time when women could not even vote. In fact, she became an attorney at a time when women were deprived of many fundamental rights that we now take for granted.

Luda Fulkerson was born on July 8, 1872 in Santa Rosa to John W. Fulkerson of Sonoma and Rachel Ann Cannon of Missouri. Luda's father, John, was born in 1835 in Indiana and died in 1901 in Sonoma County. Luda's mother, Rachel, was born in 1846 in Missouri and died in 1918 in Marin County. John and Rachel married in 1861, at the ages of 26 and 15, respectively. John was a farmer and property owner and Rachel was a homemaker, and both were renowned early residents of Sonoma County. They are buried in the Fulkerson Cemetery which, collectively with the Moke, Old Rural, and Stanley Cemeteries, are now known as the Santa Rosa Rural Cemetery located on Franklin Avenue.

Luda taught in Sonoma County public schools for three years during her late teens and early twenties. Her stature in Santa Rosa has likely been increased by the fact that she owned a piece of property, deeded to her by her father on November 12, 1892 (Book 141 Page 326 of *Sonoma County Deeds*). After teaching for three years, Luda commenced the study of law, although she did not formally attend law school.

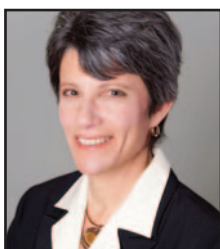
On November 2, 1895, she married Edwin Chester Barham. Edwin was born on January 12, 1872 and was the son of Congressman John A. Barham, the first republican congressman from this area. As a newspaper wedding announcement stated, "Both bride and groom are exceptionally intellectual, and the honored name of Barham will be distinguished in this State in more than one generation."

In 1895, Luda and her husband were admitted to the California bar. The couple began practicing law together at Barham and Miller, out of an office at 543 Fourth Street in downtown Santa Rosa. As reported in the November 30, 1895 edition of *The Sonoma Democrat*, Ms. Barham "will next Monday commence the practice of law in association with Barham & Miller. Mrs. Barham . . . pass[ed] very successful examinations to the bar. She holds a certificate which entitles her to

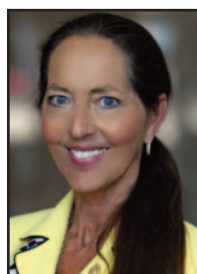
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Hon. Gayle Guynup



Jill Ravitch

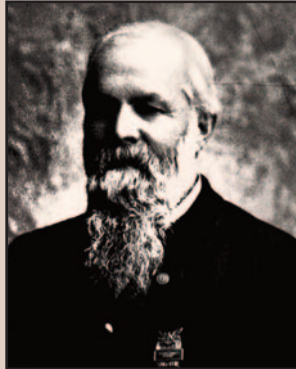


Kathleen Pozzi

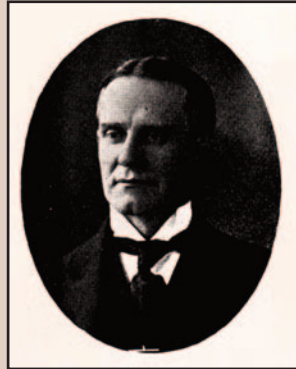
Members of the Sonoma County Bench during Luda and Edwin's Practice



Hon. Samuel K. Dougherty
1888-1902



Hon. Richard F. Crawford
1890-1896



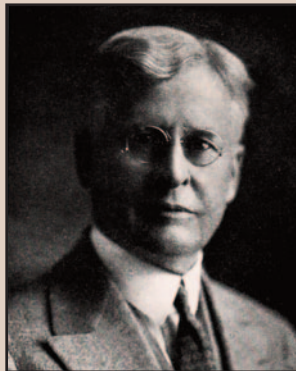
Hon. Albert G. Burnett
1896-1906



Hon. Emmett Seawell
1902-1923



Hon. Thomas C. Denny
1906-1920



Hon. Rolfe L. Thompson
1920-1929



Hon. Ross Campbell
1922-1930



Hon. Hilliard Comstock
1928-1964

All archive photos pages 9 and 10, courtesy of Sonoma County Law Library

practice before all courts." Luda and Edwin were the first husband and wife team to practice law in Sonoma County.

In 1900, Luda and Edwin were sworn in together before the U.S. Supreme Court upon recommendation by the Congressman. It was reportedly the first time a husband and wife had been admitted at the same time to the Supreme Court. (The first woman to be admitted to the U.S. Supreme Court was Belva Lockwood in 1879. The following year, she became the first woman to argue a case before the Justices.)

In 1903, the couple and their surviving son, John Stuart (Jack), lived at 552 B Street in Santa Rosa. Jack was the first local Piper Cub airplane dealer. Their other son, Edmund Louis, died at an early age of diphtheria.

To provide context, in 1900 rent for 2 large furnished rooms and bath in San Francisco ran in the range of \$16

to \$18 per month. In 1903, Emmett Seawell became a Sonoma County Superior Court Judge and was a strong supporter of women's suffrage (a "suffragent"), especially during the successful 1911 campaign to pass an amendment to the California State Constitution giving women the right to vote. Around the turn of the century, the Russian River developed as a destination vacation resort for those in the San Francisco Bay Area. Concurrently, the population of Santa Rosa increased and the city established its importance as the center of finance and county government. Until World War II, Santa Rosa's economy was largely fueled by the poultry industry, the processing of local fruit, and the production of hops. In 1935, Sonoma County ranked tenth in the nation in overall agricultural production.

While Luda was a teacher prior to entering law, her husband was a candymaker, having first owned the Candy
(Continued on next page)

Luda Barham, (continued from page 9)

Kitchen in Napa at 18 years old, then the Palace of Sweets in Santa Rosa. He then studied law for about two years while employed in the office of his father, the Congressman. One source credited Edwin as "a young man of good habits, always found in his office, a thorough student, and with a bright future before him." He did not live long to prove the accolades true, having passed at the young age of 34 in 1906.

Luda continued working as an attorney and, on August 14, 1911, remarried Stephen R. Chaffee. Luda was a member of the Daughters of the American Revolution and the Christian Science Church. She was active in social, welfare, literary, and professional groups.

Luda Barham, "one of Santa Rosa's widely known and most respected pioneer women," died on July 9, 1947, at 75 years old. She died from coronary disease and, at the time of her passing, was at a friend's house near her home on Sonoma Avenue, now in Montgomery Village. An article published in the July 11, 1947 edition of *The Press Democrat* entitled *Long Illness Brings Death to Mrs. Luda Barham* credited Luda as being "a brilliant woman, and a student of national and world affairs . . . and widely known in literary circles." Both she and Edwin are buried in the Santa Rosa Rural Cemetery.

Thank you, Luda, for paving the way. ☸



Luda & Edwin's graves in the Santa Rosa Rural Cemetery

Photo courtesy of Caren Parnes

Sources:

Sonoma Democrat, November 30, 1895.

Newspaper extracts from *The Marin Journal*, *Marin County Tocsin*, and *Sausalito News*, January 3, 1895 to December 31, 1896, abstracted by Carol Schwab, Marin County Genealogical Society.

Illustrated Atlas of Sonoma County, CA (Reynolds Procter, 1898), p. 16

<https://www.supremecourt.gov/visiting/exhibitions/LadyLawyers/Default.aspx>

The San Francisco Call, May 15, 1900.

<https://sonomalibrary.org/blogs/history>

The San Francisco Call, August 14, 1911.

Press Democrat, January 23, 1921

The Press Democrat, July 11, 1947.

Gaye LaBaron, *Santa Rosa: A Nineteenth Century Town*, p. 142; *An Illustrated History of Sonoma County, California* (Chicago: The Lewis Publishing Company, 1889), pp. 328-329;

<http://www.wendtroot.com/fulkerson/d0003/1167.html>

<https://sonomacounty.ca.gov/PRMD/Planning/Historic-Resources/Sonoma-County-Historic-Overview/>

By Rose Zoia

Rose Zoia is a land use, transactional, and appellate attorney and was the 1996 President of the Sonoma County Bar Association. She currently heads the SCBA Archive Committee.

Images from the last SCBA event held before Covid at the Sonoma County Museum, an exhibit celebrating Women in Sonoma County.

Photography courtesy of Caren Parnes



Why You Should Welcome Being Uncomfortable

Late winter and early spring provide us with multiple reminders of the importance of diversity and inclusion, including celebrating Martin Luther King, Jr. Day, Lunar New Year, Black History Month and Woman's History Month.¹ And there is much to celebrate. However, while our country and Sonoma County have made great strides towards equality and equity, we need to continue to fight because we are far from free. By "we," we do mean all of us. Diversity and inclusion is not a fight to be undertaken by members of underrepresented groups alone. We need allies. To be a powerful ally, one must engage in self-reflection and education. We are all biased, will make mistakes and be uncomfortable at times. It is precisely that feeling of discomfort that will help us make a real and lasting change toward an anti-racist society.

As members of the legal community, we understand the importance of word choice and precision in terminology. As such, when a word makes us uncomfortable, we should not avoid that feeling. Rather, we should hone in on the word and try to determine what precisely makes us feel off kilter. "Privilege" may be one such word.

What is "privilege"? "Privilege" does not mean that your life has been without challenges, difficulties, heartbreaks or betrayals. It is not synonymous with "racist." It does mean that the color of your skin, the land of your ancestors, which language was spoken in your home growing up, your physical presentation, and/or how you are in the world neither increased the challenges, difficulties, heartbreaks and betrayals you faced nor acted as their proximate cause. Most of us live our lives swimming in a somnambulant sea of whiteness, of ableness, of cisgender heterosexuality, of secular Christianity, of food and housing security. How can we open our eyes to our role in it? By examining our privilege.

As race is a social construct, our caste system is based on appearances. "As we go about our daily lives, caste

is the wordless usher in a darkened theater, flashlight cast down in the aisle, guiding us to our assigned seats for a performance. The hierarchy of caste is not about feelings or morality. It is about power—which groups have it and which do not."² In America, the privileged caste, the caste with power, is generally made up of those descended from the largely Anglo-Saxon Europeans whose fabulous economic coup d'état in the late 18th century created a new nation with property owning males at the top. If you did not look like one of those guys for any one of a million reasons, the "benefits of liberty" were not for you or your "posterity." You, and your posterity, were forever destined to live outside the privileged caste. "White men are . . . far less likely to have to code-switch—adjust their style of speech, appearance, and behavior to fit into a particular culture and increase their chances of being hired, accepted, or promoted."³ That is privilege.

Why is examining privilege important? It can reveal one's biases. Those with privilege do not necessarily know what it is like to not be a member of the privileged caste and that even seemingly small actions and statements can have a profound and lasting effect on others. Code switching, or changing your vocabulary, dialect or presentation in order to be accepted by the dominant group, is a daily, if not hourly, occurrence for those who are outside the privileged caste. For some whose personal identity does not conform to expectations established by northern European norms, code switching may be necessary to get home alive at the end of the day. And sometimes, even that isn't enough.

One colleague told the authors, "Years ago, I was told after an interview by one interviewer that she had been asked by another attorney who was white about my 'wild hair' when they were considering hiring me. She told me she told him, 'well you know she's Black.'" After being hired, while conversing with our colleague, that same attorney started to say, "it's like

(Continued on page 14)

¹ Point of pride and inspiration: Local non-profit the National Women's History Alliance is responsible for the creation of National Women's History Month; President Jimmy Carter adopted the first resolution as sponsored by Congresswoman Lynn Woolsey in 1979.

² Wilkerson, I. (2020) *Caste: The Origins of Our Discontents*.

³ Melaku, T., et al, *Be a Better Ally*, Harvard Business Review, November-December 2020, <https://hbr.org/2020/11/be-a-better-ally>.

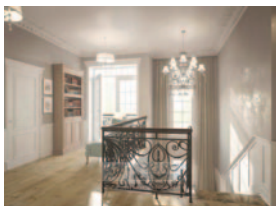
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Being Uncomfortable (continued from page 12)

the pot calling the kettle..." looked at our colleague and stopped talking. Our colleague told us, "My race clearly made him uncomfortable and if the decision to hire me was his alone, I might not have been hired." These two interactions affected our colleague in important ways. She wore her hair natural and let her thick curls show and hearing that her boss questioned her hair styling choice made her wonder whether she should pin her hair back after she was hired. When her boss chose another associate for a case or to join him at an event, she questioned whether his decision was because of her race. Our colleague eventually left that position for a more inclusive and welcoming law firm.⁴ The failure to recognize privilege and bias cost the law firm an attorney.

The next step after examining one's privilege is to push to topple the legal barriers to full inclusion that have continued after centuries of opposition. Laws continue to be put into place to try to help people overcome bias. For example, the California State Bar is required to adopt the regulations requirement for mandatory continuing legal education curriculum to include training on implicit bias and the promotion of bias-reduced strategies by January 1, 2022.⁵ By the end of 2021, publicly held domestic or foreign corporations whose principal executive offices are located in California are required to have at least one "director from an underrepresented community" on its board.⁶ By the end of 2022, that number may increase depending on the number of directors on its board.⁷ "Director of an underrepresented community" is defined as "an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender."⁸ This is in addition to the requirement that such

corporations have at least one female director on their board and that by the end of 2021, that number may increase depending on the number of board members.⁹ A female is defined as "an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth."¹⁰ While these are two separate laws, a director who identifies as female and a member of an underrepresented community can satisfy both requirements. Corporations that violate these laws are subject to fines and the California Secretary of State is required to publish annual reports by March 1 of each year related to these laws.¹¹ Laws like these are a step in the right direction, but we all need to continue to push for more protections against bias on all levels.

While we were busy entrenching power and privilege for descendants of Europeans, those outside the privileged caste have created dynamic, healthy, thriving, prosperous, creative, valuable, positive, honorable and exceptional communities full of beautiful, motivated, intelligent, determined, resilient, strong, robust, effective and tenacious attorneys who would be an asset to any firm. Isolating ourselves in our privilege ultimately denies descendants of Europeans inclusion into our diverse, beautiful, multi-abled, multi-ethnic and multi-gendered nation. Justin Michael Williams, teacher, activist and artist, postures that we can end racism in one generation if 25% of the population promises to end racism.¹² We ask you, friendly reader, to join us in that pledge. ¶¶¶

By Nicole Jaffee & Rebecca Slay

Nicole Jaffee is a general civil litigator with Perry, Johnson, Anderson, Miller & Moskowitz, LLP and chair of the Diversity + Inclusion Section of the SCBA.

Rebecca Slay worked in public policy before joining Meechan, Rosenthal & Karpilow, P.C. as a civil paralegal, and is a member of the Diversity + Inclusion Section of the SCBA

4 Hopefully you were able to make it for the fascinating discussion on the link between bias and productivity during the profound presentation by Traci Owens, *At the Risk of Being Uncomfortable: Unconscious Bias and the BIPOC Experience*, that the SCBA hosted on February 11, 2021.

5 Bus. & Prof. Code, §6070.5(a) (eff. 1/1/20).

6 Corp. Code, §301.4(a) (eff. 1/1/21).

7 Corp. Code, §301.4(b).

8 Cal. Corp. Code §301.4(e)(1).

9 Cal. Corp. Code §301.3.

10 Cal. Corp. Code §301.3(f)(1).

11 Cal. Corp. Code §§301.3(d)(e), 301.4(c). Reports pertaining to Women on Board started in March 2020; Underrepresented Communities on Boards will start March 2022.

12 <https://www.justinmichaelwilliams.com/blog/endingracism>.

SCBA Welcomes Our New Spring 2021 Members!

Amy Ariyoshi, Sonoma County District Attorney's Office

Yudith Arreguin-Lopez, Law Student

Richard Baum, Beyers Costin Simon

Susan Beene, Sonoma County District Attorney's Office

Dylan Brady, City Attorney's Office - Petaluma

Lewis L. Brown, Lewis L Brown, Attorney at Law

Theresa Cannata, Anderson Zeigler, P.C.

Kristine Cirby, Law Offices of Kristine Fowler Cirby

Susan Coffin, Law Offices of Kristine Fowler Cirby

Maile Dunlap, Sonoma County Counsel

Rachel Fein, Law Student

Alex Fisher, Sonoma County District Attorney's Office

Keren Freeberg, Sonoma County District Attorney's Office

Gamaliel Galindo, Sonoma County Public Defender's Office

Hallie Christine Gifford, Law office of Jeffrey J. Allen & Law Office of Joseph Baxter

Thomas Gotshall, Sonoma County District Attorney's Office

Justin Graham, Zimmerman Pavone LLP

Stuart Gross, Gross & Klein LLP

Ryan Henderson, Welty, Weaver & Currie, P.C.-Santa Rosa

Matthew Henning, Sonoma County District Attorney's Office

Laura Hiatt, O'Brien, Watters & Davis LLP

Matthew Hobson, Sonoma County District Attorney's Office

Ward Hoskins, Sonoma County Public Defender's Office

Anna Kashtonova, Sonoma County Public Defender's Office

Martina Kitzmueller, Sonoma County District Attorney's Office

David Lusby, Meechan, Rosenthal & Karpilow, P.C.

Daniel Lyman, Ford Harrison LLP

Emily Malfatti, Sonoma County District Attorney's Office

Adam McBride, Sonoma County District Attorney's Office

Kevin Mendez, Law Office of James Krupka

Jessalee Mills, Sonoma County District Attorney's Office

Annette Nelson, Law Student

Michelina Perani, Perani Law

Paul Pitingaro, Carle, Mackie, Power & Ross LLP

Sharmalee Rajakumaran, Sonoma County District Attorney's Office

Collin Ravelle, Kaufman Dolowich Voluck

Jason Rifkind, Sonoma County District Attorney's Office

Dr. Russell Sawyer, Law Office of Dr. Russell W. Sawyer

Jason "Jake" Stebner, Law Offices of Jason Stebner

Carson Swope, Law Student

Marianne Taleghani, Kaufman Dolowich Voluck

Nicole Umamoto-Snyder, Redwood Empire Law & Mediation

Orlando Whitehall, Welty, Weaver & Currie, P.C. - Healdsburg

Philip Williams, Welty, Weaver & Currie, P.C. - Healdsburg

Aaron Ziskin, Law Student

Psychiatrist / Researcher / Expert Witness

Anish S. Shah, MD, MBBS, QME



Anish S. Shah, MD, MBBS, QME provides psychiatric consultation and expert witness services for both plaintiff and defense attorneys. Dr. Shah addresses a wide range of mood disorders in cases including personal injury, emotional injury, fitness for duty, and mental disability claims.

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Reminiscence of Practicing Law in Sonoma County 50 Years Ago



I joined the Sonoma County Bar Association 47 years ago, in July 1974. It was a different time and a different practice. Very few lawyers practiced in Sonoma County (compared to today). Most of us were "general practitioners" who did everything from criminal defense to estate planning.

Lawyer relationships were not only professional, they were personal. All of us knew that we would be dealing with each other over and over again. This frequent association seemed to breed civility. In contrast, today it is common to have opposing counsel from out of town and you both know that it is unlikely that you will encounter each other again.

Sonoma County was still something of a cow county. In fact, one of my first cases involved a piece of animal excrement. The issue was whether it was cow feces or horse feces. The judge, who was raised on a local dairy farm, almost fell out of his chair laughing when opposing counsel characterized the cow paddy as "horse s...t."

The martini for lunch era was ending. But it was not over yet. On my first day of work in Sonoma County, the boss took me to a bar for lunch. He pointed to three gentlemen who were nicely dressed in suits and ties. They were drinking what appeared to be cocktails. My boss said that all three were judges and he jokingly (?) claimed that is why the first unwritten rule of court in Sonoma County was to never make a complicated motion after lunch.

The Topaz Room was an iconic restaurant and bar on Old Courthouse Square. Attorneys had gathered there after work for generations to have a "final final" before going home. It could get wild. On one occasion, a well-known local trial lawyer got into a fist fight with a well-known local court reporter. We decided to call the fight a draw.

Gradually, martinis at lunch gave way to exercise at lunch. Mike Senneff organized a group of lawyers who ran out of the YMCA at lunch. Lawyers formed baseball and basketball teams. Lawyers even formed a rugby team. The ruggers did not win many matches but they never lost an argument with the referees.

Many firms hosted holiday parties and most of these gatherings occurred on the same afternoon. It was fun hopping from party to party. Again, it was common to see most local attorneys at these parties. It was another opportunity to mingle with local lawyers under very cordial circumstances.

But the ultimate lawyer meeting place was at the courthouse on Monday mornings for the Superior Court master trial calendar call. The presiding judge called both the criminal and civil trial calendars. Trial counsel were required to appear. It seemed like a cast of thousands as lawyers filled the courtroom and spilled out into the hall. The lawyer gossip was legendary but the chances of being assigned to one of the four Superior Court courtrooms were slim.

One Monday morning, while lawyers were waiting out in the hall for master calendar call, a prisoner came running down the hall with the bailiffs in hot pursuit. One of the lawyers waiting in the hall made a perfect tackle of the prisoner and the bailiffs regained control of him. The lawyer played on the lawyer rugby team. Best tackle he ever made. Never a dull moment.

The Bar Association picnics were epic. My first picnic was memorable. I was the new kid in town. At dinner, I sat at a table with judges, prosecutors and public defenders (who were wearing shirts that said "Reasonable Doubt at a Reasonable Price"). I felt a tap on my shoulder. When I turned to look, a lawyer handed me a smoking joint and walked away. He thought

(Continued on next page)



*The bar area of the Topaz room in 1954.
Photo courtesy of Sonoma County Library*

Reminiscence of Practicing Law (continued from previous page)

that it was hilarious. I was mortified as judges and prosecutors looked at me.

Those were the days, my friends. I could go on and on but space does not allow. We worked hard and we played hard. We took our clients seriously but we tried not to take ourselves too seriously. We managed to find ways to have fun. It might be worth attempting to resurrect some of that old time spirit. ☺

Bart Weitzenberg

Bart Weitzenberg is a named partner at Abbey, Weitzenberg, Warren & Emery, recipient of the 2019 Michael F. O'Donnell Civility Award, and a 2013 Careers of Distinction honoree.



Bart with a bunch of attorneys taking a break for lunch on Old Courthouse Square



Bart on a ski trip with 5 local attorneys standing under a "no standing" sign



Local rugby team which includes 10 current and former members of the SCBA

Photos courtesy of Brad Weitzenberg

SCBA Spring '21 "Movers & Shakers"

If you have new information about yourself or any other SCBA member, please send to SCBA "Movers & Shakers" at info@sonomacountybar.org. Include position changes, awards, recognitions, promotions, appointments, office moves, or anything else newsworthy. If your firm sends out notices to the media, please add info@sonomacountybar.org to the distribution list.

William Adams is now with Johnston Thomas, Attorneys at Law P.C. . . . **Rebecca Salinas** is now working for Redwood Empire Law & Mediation (RELM) in Santa Rosa . . . **Peter Kiel** has opened his own firm, Law Office of Peter Kiel, in Petaluma . . . **Kari J. Brown** has become a partner of Spaulding McCullough & Tansil LLP . . . Friedemann Goldberg Wargo Hess LLP announced the addition of **Mia Bowler** as a partner of their firm . . . Perry, Johnson, Anderson, Miller & Moskowitz LLP announced **Deborah S. Bull** and **Traci L. Carrillo** have been named partners of their firm . . . **Lorilee DeSantis** has moved her office, DeSantis Law Group Inc., to 3358 Round Barn Blvd., Ste. 200, in Santa Rosa . . . **Susannah Edwards** is now with Terre Family Law in Santa Rosa . . . **Nicole Medeiros** is now with Davis Wright Tremaine LLP in San Francisco . . . Paralegal **Leslie Giovanetti**, is now at Law

Office of James Krupka in Santa Rosa . . . **Sheri Chlebowski** is at Perry, Johnson, Anderson, Miller & Moskowitz in Santa Rosa . . . **Edward Lester** is now with Tyson & Mendes, LLP in Novato . . . **Leo Alberigi** has gone back to his own Office of Leo Alberigi in Windsor . . . **Rachael Mache** is now with Welty, Weaver, & Currie, P.C. in Santa Rosa . . . **Daniela M. Pavone** moved her office, Zimmerman Pavone LLP, to 6010 Commerce Blvd., Suite 148, in Rohnert Park . . . **Kristina Gardenal**, paralegal, is now with Spaulding McCullough & Tansil LLP in Santa Rosa . . . **Rebecca G. Kagin** has a new address, Law Offices of Rebecca G. Kagin, 245 Kentucky Street, Suite A in Petaluma . . . **Janne E. O'Neil**, Law Office of Janne E. O'Neil, moved her office to 141 Stony Circle, Ste. In Santa Rosa . . . **Katherine Jefferey** is now with Davis Wright Tremaine LLP in Seattle, Washington.



*By Hon. Bradford DeMeo
Presiding Superior Court
Judge, County of Sonoma*

Thoughts from the Bench: 100 Years Later—Why the Sonoma County Bar Association is Thriving

The Sonoma County Bar Association is 100 years old. For that entire time, 100 consecutive years, a member of the Geary Family has been a member of the Sonoma County Bar Association. There have been four generations of my family with mem-

bership in the Sonoma County Bar Association. I identified a few currently practicing youngsters who have been members for at least 50 years, a few more very close to 50 years, and many more for at least 40 years. (I will not produce names as my mother always told me it is not nice to indicate a person's age publicly.)

So many people, for so long, in one organization. Why? What makes longevity in this bar association?

From my perspective, civility, collaboration, involvement, outstanding work ethic, and especially mentoring all coalesce to make this bar association undeniably excellent. There is a statewide recognition of high standards and excellence in the Sonoma County legal community. The Sonoma County Bar Association is at the heart of it.

Mentoring is a big part of our success in the Sonoma County legal community and the Sonoma County Bar Association is part of that project. There is intellectual kindness in mentoring. I can remember taking a deposition in a case with the late Ken James defending and representing the opposing party. After the deposition, and after the witness and court reporter left the conference room, Ken spent a solid half hour going over my efforts giving pointers on how to do it better. Imagine that! It was always an education litigating cases with someone of Ken's stature, among many other great members of this bar association, some of whom are still practicing today. I've heard many stories similar to my experience. I have endeavored to pay it forward during my career to honor the professional generosity of lawyers like Ken.

In the 1990s the Sonoma County Bar Association facilitated a "Big Sibling" program by providing a list of experienced lawyers who practiced in various areas of the law

and who were willing to take calls from new lawyers to discuss issues, ethics, and procedure. It was highly successful and an honorable way to ensure continued professionalism and competence in our legal community.

The work ethic of members of the Sonoma County Bar Association is undeniable and epic. It is evident at all times. It is present in preparation, in pleadings and in litigation skills. It is also evident when members of our bar association organize and conduct education programs. The education programs produced by our bar association are highly successful because of deep and comprehensive preparation, relevant content, and excellent delivery by the bar association staff and the knowledgeable presenters. These things make our entire community better, so why wouldn't a person want to be a part of it for a long time?

The Sonoma County Bar Association has sponsored and facilitated programs on civility in collaboration with outside organizations like the American Board of Trial Advocates. They've been well-attended and contributed to continued professionalism in our county.

Training and mentoring are very important to maintaining competence and professionalism, but social contact can be just as important. Historically and presently, the Sonoma County Bar Association holds social events to promote contact, communication, and most importantly, friendship. For 100 years our bar association has facilitated friendship among its members. For me, this has been the most important aspect of my membership in the Sonoma County Bar Association. Our friendships last well beyond our careers. I want to thank the Sonoma County Bar Association for 100 years of useful, practical, and social experiences that have helped me grow and improve my personal and professional life.

I look forward to seeing all of you at the next event my friends! ☺

A Peek into the Past: The Cost of Doing Business

Thanks to Hilliard Comstock's foresight in keeping this document as an early officer of the SCBA, the Archive Committee has a copy of the SCBA's "Schedule of Minimum Fees and Rules of Professional Conduct" from 1946. The committee thought the membership might enjoy seeing what services cost back in the day!

6	7
Deed:	
(a) Ordinary Grant, Bargain and Sale, Gift or Code 5.00	(c) Proceedings for transfer of "on sale" liquor license only 50.00
(Plus Notary Fee and extra services, such as pro-rating taxes and insurance, etc.)	Submission of Conveyance for Examination or Approval:
(b) Deed, involving forfeiture clauses, or covenants of restriction as to use 10.00	Whenever a conveyance, in any form, such as a Mortgage, Deed of Trust, Contract, Lease, or other written conveyance is submitted, already prepared, to an attorney for examination or approval 3.50
Deed of Trust, including Note 5.00	Trustee, Substitution of
Deed of Reconveyance by Trustee 3.50	(a) Where procedure specified by instrument 10.00
Homestead, Declaration of 5.00	(b) Where under Section 2934a Civil Code 25.00
Homestead, Abandonment of 5.00	
Lease:	III. WILLS
(a) Simple lease of residential property 7.50	(a) Simple Wills 10.00
(b) Other lease 12.50	(b) Complicated Will:
Mechanic's or Materialman's Lien 12.50	Where any complicated trust provisions, life estates, remainders, or any other complications are provided 25.00
Provided, that the minimum fee shall not exceed 25% of the amount claimed.	(c) Codicil to Will 5.00
Mortgage, real, chattel, or both, including note 5.00	
Mortgage, Satisfaction of (real or chattel) 2.50	IV. PARTNERSHIPS AND FICTITIOUS NAMES
Notice of Non-Responsibility 7.50	Articles of Partnership:
Option to purchase real property or personal property or both 5.00	(a) Ordinary Partnership 25.00
Power of Attorney 5.00	(b) Limited Partnership 50.00
Sale or Mortgage of Business:	Certificate of Partnership, or parties, carrying on business under a fictitious name 10.00
(a) Notice of Sale or Chattel Mortgage, or both, under Section 3440 of Civil Code, including drawing Bill of Sale or Mortgage 25.00	Dissolution of Partnership:
(b) Same, where "on sale" liquor license included 75.00	(a) Contract for dissolution 10.00
	(b) Notice for publication 5.00

Judge Comstock

THE BAR ASSOCIATION
OF SONOMA COUNTY

SCHEDULE OF MINIMUM FEES
AND
RULES OF
PROFESSIONAL CONDUCT

7
(c) Proceedings for transfer of "on sale" liquor license only 50.00
Submission of Conveyance for Examination or Approval:
Whenever a conveyance, in any form, such as a Mortgage, Deed of Trust, Contract, Lease, or other written conveyance is submitted, already prepared, to an attorney for examination or approval 3.50
Trustee, Substitution of
(a) Where procedure specified by instrument 10.00
(b) Where under Section 2934a Civil Code 25.00
III. WILLS
(a) Simple Wills 10.00
(b) Complicated Will:
Where any complicated trust provisions, life estates, remainders, or any other complications are provided 25.00
(c) Codicil to Will 5.00
IV. PARTNERSHIPS AND FICTITIOUS NAMES
Articles of Partnership: 25.00
(a) Ordinary Partnership 25.00
(b) Limited Partnership 50.00
Certificate of Partnership, or parties, carrying on business under a fictitious name 10.00
Dissolution of Partnership:
(a) Contract for dissolution 10.00
(b) Notice for publication 5.00



At Left: Luther Burbank presiding over a tree planting project in Santa Rosa in the early 20s.

Below: Egg Day celebration in Petaluma in 1920.

Photography courtesy of The Sonoma County Library



SCHEDULE OF RECOMMENDED MINIMUM FEES FOR ATTORNEY'S SERVICES

Adopted by the Bar Association of
Sonoma County, March 8, 1946
Effective April 1, 1946

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II. INSTRUMENTS, ETC.

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Bill of Sale	5.00
Birth Certificate, delayed, securing issuance of	15.00
Contract of Sale of real property	5.00
Conditional Sale of personal property	5.00

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Discovery Refresher: Exchanging Relevant Information and Avoiding Gamesmanship

Discovery disputes are unfortunately common in litigation. The purpose of discovery is to exchange relevant information and admissible evidence to aid in resolution of the issues in the action. Ideally, this is a collaborative effort that is handled between counsel and outside of court. However, counsel and parties often do not allow the discovery process sufficient time and attention, resulting in avoidable disputes and delays in litigation. This article will highlight some common issues found in the construction of discovery requests and responses, and outline the meet and confer process prior to filing a motion to compel further discovery responses.

Discovery Requests

Prefaces or instructions are not permitted in special interrogatories or requests for admission.¹ The requests should begin immediately below the party names and the discovery set number—without instructions to the responding party, a preliminary statement, or a list of definitions. If the document contains specially defined terms, consider including the definition inside a parenthesis directly in the first interrogatory in which it appears, rather than at the beginning of the document. Specially defined terms must be capitalized wherever they appear in the document.² Requests for production of documents and things must specify a reasonable time and place for the inspection or production.³ A propounding party will sometimes issue discovery requests that do not meet these specifications, providing the responding party with an opportunity to serve evasive or incomplete responses.

In unlimited civil cases, parties are generally limited to propounding 35 special interrogatories and 35 requests for admission. This limitation does not apply to requests for production of documents or things. Requests for admission or special interrogatories in excess of 35 must be accompanied by a declaration for additional discovery.⁴ A template declaration for addi-

tional discovery can be found at Code of Civil Procedure sections 2030.050 and 2033.050. Before issuing more than 35 interrogatories or requests, consider whether it is necessary. Can the requests be trimmed down in number by wording each request more broadly, so that more information is provided in response to a single request? Can the information sought in the discovery requests be obtained by oral deposition or document requests?

These construction issues may seem relatively minor, but are all easy fixes which will avoid objections, or incomplete responses, simplifying the discovery process. A second pair of eyes should look over the requests before they are served to make sure that all requests are sequentially numbered⁵ and comply with all provisions of the Discovery Act.

A discovery request template is not excellent or objection-proof simply because counsel has been using it in their practice for several years. If counsel receives the same objections to certain requests over and over, impeding their access to discoverable information, it may be time to critically reevaluate the request template to see if its language can be improved. Crafting stronger templates now will streamline the discovery process for all future cases, and prevent many meet and confer efforts.

Discovery Responses

“General objections” are never okay. The same goes for “preliminary statements.” Indeed, any sort of preface or preamble to discovery responses is ineffective as it is not a “separate” response to “each interrogatory,”⁶ nor is a general objection an “objection to the particular interrogatory.”⁷ If an interrogatory or request is objectionable, the grounds for that objection should be stated in response to the *specific* request. They most often state that discovery is just

(Continued on next page)

1 Code Civ. Proc., §§ 2030.060(d), 2033.060(d)

2 Code Civ. Proc., §§ 2030.060(e), 2033.060(e)

3 Code Civ. Proc., § 2031.030(c)(2)(3)

4 Code Civ. Proc., §§ 2030.030, 2033.030

5 Code Civ. Proc., §§ 2030.060(a), 2033.060(a)

6 Code Civ. Proc., § 2030.210(a)

7 Code Civ. Proc., § 2030.210(a)(3)

Discovery Refresher (continued from previous page)

beginning or ongoing, that investigation is not complete, facts are still being developed, and the responding party is answering based on what they currently know, and may amend their response at a later date if new information comes to light. If counsel believes it is critical to explicitly reserve the responding party's right to amend the responses at a later date, then a brief statement to the effect of "Discovery is ongoing and responding party reserves the right to supplement and/or amend this response in the event that further information is revealed" provided at the end of each individual response should suffice.

"Boilerplate" objections are disfavored as well. Only objections that are relevant to the *specific* interrogatory/request should be asserted. For example, it is improper to state an objection of "vague and ambiguous, overbroad, unintelligible, and calls for attorney-client privileged information" in response to a straightforward special interrogatory in a medical malpractice action that reads "State the date that Defendant performed Plaintiff's knee replacement surgery." Not every interrogatory or request will call for privileged information. Very few discovery requests are so vague or ambiguous that they cannot be responded to at least in part, and even fewer are completely unintelligible. "If an interrogatory cannot be answered completely, it shall be answered to the extent possible."⁸ "If only a part of an interrogatory is objectionable, the remainder of the interrogatory shall be answered."⁹

Properly responding to requests for production of documents is a bit more involved. In addition to stating any pertinent objections, the responding party must specify whether they will or will not comply with the request (in whole or in part), and state that all of the documents that are in the "possession, custody, or control" of the responding party and to which no objections are being made will be produced.¹⁰ If documents are withheld pursuant to an objection, the response must "identify with particularity" any such document, and "set forth the extent of and ground for the objection."¹¹ Note that

the responding party must identify withheld documents even if the propounding party did not expressly request a privilege log. Although a party may refuse to produce documents based on an objection, the documents must be identified if requested in an interrogatory.¹² A responding party cannot merely state that they do not have documents. Instead, the responding party must affirm that a diligent search and reasonable inquiry has been made to comply with the request, and state whether the documents (1) never existed, (2) were destroyed, (3) have been lost, misplaced, or stolen, or (4) have never been, or no longer are, in the possession, custody, or control of the responding party. The responding party must also name any individual or organization known or believed to have a copy of the documents.¹³ Finally, a recent amendment to the Discovery Act requires that all documents which are produced be labeled to identify the requests to which they correspond.¹⁴

Meet and Confer Process

Despite well-crafted request templates and good-faith objections and responses, legitimate discovery disputes may still arise. Before filing a motion to compel further responses, counsel must meet and confer regarding the dispute¹⁵ (except in cases of no response whatsoever,¹⁶ or of unverified responses¹⁷). However, it is not enough to simply demand further responses from the responding party. A single brief letter that doesn't explain why the discovery is proper does not constitute a reasonable and good faith attempt at informal resolution.¹⁸ Instead the letter should address each specific response that is at issue, lay out the supporting legal authority, and

(Continued on page 22)

8 Code Civ. Proc., §§ 2030.220(b)

9 Code Civ. Proc., §§ 2030.240(a)

10 Code Civ. Proc., §§ 2031.210(a), 2031.220

11 Code Civ. Proc., §§ 2031.240(b)(1-2)

12 *Best Products, Inc. v. Superior Court* (2004) Cal.App.4th 1181, 1190

13 Code Civ. Proc., § 2031.230

14 Code Civ. Proc., § 2031.280(a)

15 Code Civ. Proc., §§ 2016.040 generally, 2030.300 (special interrogatories), 2033.290 (requests for admission), 2031.310 (requests for production of documents or things)

16 Code Civ. Proc., §§ 2030.290(b) (interrogatories), 2031.300(b) (requests for production of documents or things), 2033.280(b) (requests for admission)

17 *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636)

18 *Obregon v. Superior Court* (1998) 67 Cal.App.4th 427.

Discovery Refresher (continued from page 21)

clarify the information sought by the propounding party. If the letter articulates exactly how the responding party's answer can be improved, the propounding party is more likely to receive the information they seek. The meet and confer letter should indicate that if amended responses are not provided, the moving party will seek sanctions. It is also important to provide counsel a deadline to respond to the letter, as there is limited time to file a motion to compel further responses.

When amending incomplete discovery responses as part of the meet and confer process, it is best to clearly label them as "amended." This distinguishes them from "supplemental" responses, which provide later acquired information at the request of the propounding party.¹⁹

Motion to Compel Further Responses

If the meet and confer process does not result in a full resolution of the dispute, then a propounding party's final recourse is to file a motion to compel further responses. The notice of motion should specify the code sections authorizing a motion to compel and sanc-

tions for each discovery tool. Many judges consider an "et seq." reference in the notice to be inadequate and will decline to award sanctions if not clearly indicated. If the moving party's meet and confer letter was well-structured and thorough, drafting the motion to compel should be straightforward. A meet and confer declaration "showing a reasonable and good faith attempt at an informal resolution of *each issue* presented by the motion" is required.²⁰ It is not unusual for the responding party to provide full and complete responses after the filing of the motion but before the hearing date. However, if the hearing proceeds, the moving party should be prepared with the underlying discovery requests and responses, and to meet and confer once again to reach a resolution during the hearing. ¶¶¶

By Ellie Ehlert

Ellie Ehlert is a paralegal at The Goldman Law Firm in Tiburon, CA and a 2017 graduate of the Santa Rosa Junior College paralegal studies program.

¹⁹ Code Civ. Proc., § 2030.070

²⁰ Code Civ. Proc., § 2016.040

HOW TO RECEIVE ONE HOUR OF SELF-STUDY MCLE CREDIT

There is a true/false quiz for this article at: <https://sonomacountybar.org/self-study-articles>

Submit your answers to questions 1-20, indicating the correct letter (T or F) next to each question, along with a \$25 payment to the Sonoma County Bar Association at the address below. Please include your full name, State Bar ID number, and email or mailing address with your request for credit. **Address:** Reception@SonomaCountyBar.org • Sonoma County Bar Association, 111 Santa Rosa Ave., Ste. 222, Santa Rosa, CA 95404

2021 Upcoming Schedule of Seminars & Events

Due to the fluid nature of the SCBA event plans and schedule during Covid-19, we are directing our newsletter readers to view our seminar and event schedules online.

Please visit <https://www.sonomacountybar.org> and go to the Seminars/Events tab at the top navigation bar for the list of events. Thank You.

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At Left: Aerial view of downtown Santa Rosa circa 1920.

Bottom Left: Sunday, 1-28-21 announcement in the Press Democrat of the upcoming meeting of local jurists and attorneys to approve bylaws for formation of the Sonoma County Bar Association.

Bottom Right: Sonoma County Courthouse seen from Mendocino Ave., 1920s.

Photos courtesy of Sonoma County Library, PD article courtesy of the Archive Committee



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Supervisors Appoint Robert Pittman as County Counsel

On September 8, 2020, the Sonoma County Board of Supervisors appointed Robert Pittman to serve as County Counsel effective September 22, 2020. Pittman has worked in the county Counsel's Office for eight years, including the last four as Assistant County Counsel, serving as Chief Operating Officer for an office of 32 attorneys and 12 support staff.

Pittman succeeds Bruce Goldstein who will be retiring after 23 years of service with the County including 10 as County Counsel.

"Bob Pittman's professional history with the County, as well as his involvement and leadership during the 2017 fires, the Kincade fire, and the COVID-19 pandemic demonstrate that he is well qualified to assume the role as County Counsel," said Board Chair Susan Gorin. "We are going to miss Bruce, but we are grateful to have someone as capable and as experienced as Bob is to fill the void he leaves."

Pittman has more than 25 years of experience as a public agency attorney, advising county boards of supervisors, city council members and others. As Assistant County Counsel, he has overseen and implemented a \$10.9 million annual operating budget in addition to serving as legal advisor to the Board of Supervisors, General Counsel to the Sonoma County Agricultural Preservation and Open Space District and primary Counsel to the Registrar of Voters.



Pittman also has a deep understanding of the historic challenges facing the county, having overseen the County Counsel Office's response to the 2017 Sonoma Complex fires, the 2019 Kincade fire, and the current coronavirus pandemic.

Prior to coming to Sonoma County, he served as Assistant and/or Acting City Attorney for such cities as Beverly Hills, Diamond Bar, Hermosa Beach, Laguna Beach, Irvine, Pacifica and West Hollywood. He also served as Assistant General Counsel to the Sonoma Marin Area Rail Transit District.

"I am extremely honored to serve the Board as Sonoma County's next County Counsel," said Pittman. "I am passionate about public service, and I look forward to the opportunity to work collaboratively with the Board, County department heads and staff, and other local and regional governments to advance the County's key strategic initiatives and priorities."

Robert Pittman has a Bachelor of Arts Degree in Business Administration from Cornell University and a law degree from Loyola Law School in Los Angeles. He currently lives in San Rafael with his husband. ¶¶

The above information was excerpted from a press release from the Public Information Office of the County Administrator's Office, County of Sonoma.

Status of SCBA Programs During Shelter-in-Place Order

SCBA staff and the Executive Committee are continuing to monitor the situation surrounding the Shelter in Place Order and social distancing requirements. As of this writing, we've determined we will not be offering any in-person programs through at least August 2021. We will continue to provide "distance learning"

through live webinars on Zoom, on-demand videos linked through our website, and self-study options through the Bar Journal newsletter.

The current information on the status of any program will be at www.sonomacountybar.org/events.

Helping Our Own—SCBA's Mentoring Program

The legal profession can be a challenging one for myriad reasons. Meeting those challenges over the years allows us to accumulate a trove of lessons and knowledge. Defeats teach us as much, maybe more, than victories. Most of us in this community have expressed at one time (or many) how fortunate we are to experience the ups and downs of such a career in naturally beautiful Sonoma County. The attorneys and judges in our area produce top-notch legal work while creating a camaraderie that is renowned around the state.

While so many goals of 2020 were derailed by the COVID pandemic, one new endeavor that SCBA was able to launch was the mentoring program. Over a decade ago, the SCBA had listed in its directory the names of an experienced attorney in a particular specialty as someone the younger members of the Bar could contact for advice. I remember being impressed by how many attorneys had agreed to participate and have their name mentioned as a source of assistance. Unfortunately, that program had fallen by the wayside. More recently, we on the Board learned through discussions with those in the Barrister's Section that their members felt a bit of a disconnect from the more seasoned attorneys in the Bar Association. There was a hesitancy to approach those "elder states people" in social settings and a general feeling of lack of commonality.

In order to foster a sense of cohesiveness among the membership, and to provide valuable guidance on a professional basis, we began discussions in early 2020 about how to implement a mentoring program that would operate on a one-on-one basis. If we paired a law student or attorney fresh out of law school with a more experienced attorney in the same area of interest, we hoped to encourage a relationship that would benefit both. The mentee would have a go-to trusted attorney that could answer general questions not only about an area of practice, what it means to be an ethical lawyer, beneficial research tools and techniques, or technical courtroom procedures; but also how to juggle the demands of the legal profession with family and other obligations and retain that all-important sanity. In the same fashion, the mentor would be able to impart his or her decades of experience to someone who would greatly benefit from those pearls of wisdom. Perhaps a friendship might also develop. In short, we wanted this to be a win-win situation.

To get started, we asked the Barrister's Section to poll its members to ascertain interest in a mentoring program and provide a slate of questions for those who expressed an interest to answer. The questions asked for legal education and experience, as well as a few inquiries into life experience and "fun facts." Once we received word that twelve members were interested, the Executive Committee called them to discuss their interest in the program and what specifically they hoped to gain. The Executive Committee met again, discussed those answers and then proposed members of the Bar who we thought would match well with the mentees. We contacted those proposed mentors, and our SCBA should be very proud that 100% of those to whom we floated the idea of being a mentor responded affirmatively. We then put the mentors in touch with the mentees and they were off and running.

We hope that the mentors and mentees will interact every month or so, getting together in person post-coronavirus. This could be lunch or coffee, or functions such as seminars, SCBA events or luncheons, or Section lunches. It is envisioned that the mentor will introduce the mentee to others in our legal community, thereby increasing the number of contacts the mentee develops and enriching their experiences in the profession. After over a year of Zoom court appearances, depositions, mediations, and the like, it will be even more important that those litigators who have actual courtroom experience be ready to show the younger folks "the ropes" of how to be effective in the courtroom!

All of us have the ability to pass on our knowledge and experiences to the next generation of attorneys in our legal community. To grow the mentoring program, we need more mentors who are willing to share their wisdom and befriend a mentee. We know there are many of you out there who have much to give.

Please contact Amy Jarvis at the Bar (707-542-1190 ext. 170, or amy@sonomacountybar.org) if you want to learn how to participate. Many thanks in advance! ☺

By Michelle Zyromski

Michelle Zyromski is a civil litigation attorney with Zyromski Konicek in Santa Rosa. She is Immediate Past President of the Sonoma County Bar Association

SCBA Bar Journal

The *Bar Journal* is published quarterly by the Sonoma County Bar Association.

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Submissions for the Bar Journal

The *Bar Journal* editorial staff welcomes articles submitted by its members. All submitted articles should be educational in nature, and can be tailored for the new practitioner or experienced lawyers. Feature articles should be between 750 to 1,000 words in length. Citations should be within the article's text (no footnotes). A byline must be included and articles must be submitted electronically. The editorial staff reserves the right to edit material submitted. For further information contact Susan Demers at 707-542-1190 x180. Submit all editorial materials by email to: susan@sonomacountybar.org. To place an ad contact Caren Parnes at 707-758-5090 or caren@enterprisinggraphics.com. All advertisements are included as a service to members of the Sonoma County Bar Association. The advertisements have not been endorsed or verified by the SCBA.

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Santa Rosa Press Democrat front page for August 14, 1921, 6 months after SCBA launched
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