

THE Legal Secretary®



August 2013

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ALOHA LSI!

BY TERRIE QUINTON, CCLS
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Rise To The Challenge

BY SANDRA T. JIMENEZ, CCLS — LSI PRESIDENT



The 2012-2013 year was a very busy year! Sincere thanks to everyone for all the support given to me as President, and the entire Executive Committee this past year. I am proud to have stood with the elected officers, appointed officers, and chairmen, as we joined together to improve LSI this past year. The LSI Team was successful in accomplishing many tasks, which I summarize below:



SANDRA T. JIMENEZ

is currently self-employed as a Legal Temp/Notary Public. Previously she was employed with the County of Imperial, Department of Social Services. Prior to that she was employed with law firms specializing in civil litigation, employment law, real estate transactions, collections, bankruptcy, and probate in El Centro for the last 30 years. Sandra was awarded the Legal Professional of the Year 2012 award by the Imperial County Bar Association in June 2012.

- We added two new positions to increase flow and productivity: an additional PRC Assistant Editor and a Website Editor – both have proven to be efficient and necessary.
- To unite and train the LSI team, we had our first Officer/Chairmen Training Luncheon in August 2012, which proved to be invaluable in bringing us together as a team.
- Our Parliamentarian, Astrid B. Watterson, CCLS, developed a new NCR motion form which has been very helpful at business meetings.
- LSI went green with all directives, reports, and agendas posted on the LSI website before each conference. This has proved beneficial in more ways than one. Governors are able to read everything in advance and prepare any comments and/or motions for smoother flow of business.
- Michelle Tice, CCLS, the Editor of TLS magazine, instituted a new and improved format for the magazine.
- Sylvia Marsh, Scholarship Chair, updated and improved the Scholarship guidelines.
- Under the direction of Cheryl Kent, PLS, CCLS, the LSS newsletter format was greatly improved and the registration for the seminars was simplified.
- Many of our Bylaws and Standing Rules were updated and immediately posted after every conference by our Parliamentarian Astrid B. Watterson, CCLS.
- The governors voted for a new LSI logo or emblem – which is still being perfected before use.
- Due to the efforts of local associations and Mary Beaudrow, CCLS, Membership Chair, our membership increased dramatically this past year.
- Under the direction of our Website Editor, Cathleen McGrath Siler, a new blog for governors was created; a LinkedIn page for members; and a Legal Procedure blog, which Jeffrey Weddle, our Legal Procedure Chair, is diligently updating.
- Under the direction of J. Cori Mandy, CCLS, and the Continuing Education Council, a legal educational program was scheduled at each quarterly conference and will continue this coming year; work began on a CCLS online program – which is due to commence in August of this year; and work also began on an online Legal Secretarial Training program, which is still in the works.
- Under the direction of Maria Bishop, CCLS, both the Law Office Procedure Manual (LOPM) and Legal Professional's Handbook (LPH) publication contracts are currently being updated. The Publications Revision Committee met all deadlines this past year and all updates on the LOPM and LPH are current.
- The LSI Administrator also has been very diligent and efficient throughout the past year – she completed the LSI Roster in time for Annual Conference, which is a first! The 2013-2014 LSI Roster was disseminated at the May Annual Conference to all presidents, governors, and LSI officers and chairmen.

A heartfelt thank you to everyone: all members, governors, the Executive Committee members, appointed officers, chairmen, and past presidents who **rose to the challenge** in making our 2012-2013 a very successful year. Excellent teamwork -- LSI is definitely moving forward!

MAY 2013 ANNUAL CONFERENCE – ACKNOWLEDGMENT/RECAP:

Thank you SANTA CLARA COUNTY LPA! For those who were not able to attend LSI's 79th Annual Conference, you missed a lot. It was an excellent conference!

Special thanks to Annual Conference Chair Rod Cardinale and hosting association Santa Clara County LPA for an awesome conference. The food was excellent and the hotel service was absolutely great. I commend Santa Clara County LPA for “**rising to the challenge**” of planning and hosting a fantastic Annual Conference – awesome teamwork! Everyone relived and enjoyed the conference theme, “LSI – Through the Years.”

It was also a pleasure and an honor to meet Betty Lou West (LSI Past President 1972-1974) who came all the way from Ohio to participate in our 79th Annual Conference. Another LSI Past President, Caroline E. Van de Pol (1990-1992) also traveled all the way from Georgia to join us. We thank these ladies for coming from afar to join in the festivities. I was also very pleased and happy that our son, Mike Jimenez, Jr., and his girlfriend, Marteena Cao, were able to join me. I truly appreciate their support and assistance during the weekend.

Many LSI Past Presidents attended Annual Conference: Patricia S. Brady, PLS, CCLS, Esq.; Betty Lou West; Diana E. Estabrook, PLS; Caroline E. Van de Pol, PLS, CLA/CAS, CCLS; Linda Duarte; Patricia E. Miller, PLS, CCLS; Yvonne Waldron-Robinson, CCLS; Mary S. Rocca, CCLS; Lorraine Bettencourt, PLS, CCLS; Christa Davis; and Brooke Mansfield, CCLS. Also in attendance were two honorary members: Kalman Zempeny II of The Rutter Group, and Donald F. Lee, member of Merced County LPA. We certainly enjoyed having them join us and truly appreciate their continued support at conferences.

Our 79th Annual Conference commenced with the Officer/Chairman Workshops on Friday morning. Special thanks to J. Cori Mandy, CCLS, LSI Educational Program Coordinator, for organizing the workshops, which were a huge success. Of special mention are two workshops: the President's Roundtable moderated by Patricia E. Miller, PLS, CCLS, and Mary S. Rocca, CCLS, who were outstanding (they make such a great team); and the Marketing Workshop presented by Jeremy Durant of Bop Design on the topic of increasing effectiveness of a website. Overall, all the workshops were evaluated as great! A special thank you to all the moderators.

The reception Friday night was so much fun! I thoroughly enjoyed myself – especially judging the “Twist Contest” and dancing the twist to music of the 50s and 60s. Melissa Her-

andez, President of Imperial County LPA, won the twist contest. A special appearance was made by Elvis (Don Lee) and Marilyn Monroe (Maria Patterson)!

At the Pre-Annual Board of Governors Meeting, the Executive Committee resume was reviewed, conference bids for November 2014 and February 2015 were announced (and graciously accepted), and three previously noticed bylaw amendments were unanimously approved.

The Legal Specialization Sections organized informative seminars with great topics and speakers. The seminars were scheduled on Friday and Saturday afternoons. All the sections reported great attendance. I personally had the opportunity to attend the Law Office Administration (LOA) seminar on Social Media with speaker Jeanine DeBacker, Esq. – great topic and outstanding speaker! This is the type of information that we need to be updated on constantly.

Our opening ceremony participants were: Linda Duarte, Betty Lou West, Diana E. Estabrook, PLS, and Caroline E. Van De Pol, PLS, CLA/CAS, CCLS – thank you ladies for your participation! Our welcome speaker on Saturday morning was San Jose City Council Member, Sam T. Liccardo, Esq. It was a pleasure to have him welcome us to San Jose. Our sincere thanks also to Christa Davis, LSI Past President 2008-2010, for introducing the Executive Committee members on Saturday morning – she always comes through with an excellent performance.

A total of 90 delegates registered and attended the General Session. All officers and chairmen gave oral reports and the officers were re-elected for a second term. Membership gain and scholarship winners were announced, as well as the winners of the bulletin and history book contests. A list of the May Annual Conference winners is included in this August issue of *The Legal Secretary* magazine.

Our California Certified Legal Secretary (CCLS) Chair, Terrie Quinton, CCLS, reported that LSI's first CCLS online class is commencing on August 15, 2013, at an introductory price of \$100 for members, and \$125 for non-members. This information is posted on the LSI website. Please share the information with all members and non-LSI members.

Our Saturday evening banquet Master of Ceremonies, the Honorable Edward Lee, certainly had a sense of humor. He is such a positive and delightful man and it was our pleasure to have him join and participate in the evening festivities. The Chapter Achievement awards were presented that evening, along with the announcement of those who passed the CCLS exam this past year. The President's award was also announced. The recipient was LSI **Parliamentarian Astrid B. Watterson, CCLS, of Sacramento LSA**, who received a standing ovation. The San Jose Jazz High School All Stars Band played big band sounds of the 40s and 50s – a very talented youth group. Everyone enjoyed the music. All in all, it was a very exciting evening – Annual Conference always is!

Continued on page 14



LSI CONFERENCE SCRAPBOOK

LSI 79th Annual Conference





Heather Edwards, LSI Treasurer



As you all know, Heather Edwards has just completed her first year as LSI's Treasurer, and has been a member of the San Fernando Valley Legal Secretaries Association since 1991. Prior to joining LSI's Executive Committee, Heather held state level positions as LSI's Liaison to the Law Practice Management & Technology Section of the State Bar of California, Director of Public Relations, Legal Specialization Sections Coordinator, Probate Section Leader (two terms), and moderator for the Newcomer workshop and luncheon at both the 2011 and 2012 Annual Conferences. As a member of the San

Fernando Valley Legal Secretaries Association, she held various board positions as a three-term President, Parliamentarian, First Vice President of Membership, and Hospitality Chair. In addition to all of this, she was presented with the President's Award by LSI Past President Mary S. Rocca, CCLS, for the 2005-2006 fiscal year when she was LSS Coordinator.

Graduating from California State University Northridge with a Bachelor of Science Degree in Health & Human Services and with an emphasis in the area of Fashion Merchandising & Marketing, she also received an Associate of Arts degree in Fashion Merchandising & Marketing from the Fashion Institute of Design & Merchandising and attended the University of California, Irvine, majoring in the Arts. She also managed a women's clothing store, The Limited, in Los Angeles, for a short time.

Heather has been an executive legal secretary since 1990. She started out in probate, probate litigation, conservatorship, guardianship and estate planning. She worked for Warner Brothers for a short time in the Television Legal Department and has been with her present employer, Alpert Barr & Grant, since 2000, with a primary area of expertise in administrative and governmental relations, arbitration and mediation, business, commercial and construction, and real estate transaction law. The office manager at the firm was good friends

with the FIDM President and took a chance by hiring her with no prior office experience at all! This was the beginning of her legal career. She started by working as a part-time receptionist while working her way through college. The firm promoted her within six months to a junior legal secretary and she was then promoted to a full legal secretary after she graduated from college. Heather loves her job because she is able to work with so many influential people on a daily basis, both in government affairs and in the private and voluntary sector. In addition, her firm is very family oriented and they support and encourage her in her volunteerism. She is known as "The Connector" or "The Link" because she connects people with people, both personally and professionally.

Lee Karon Alpert, Heather's boss, is her mentor. He has taught her the gift of giving back to the community by volunteerism. Mr. Alpert and the partners in her firm donate more than 3,000 volunteer hours to community causes each year. Someday, she hopes

to pay it forward by making a positive difference in someone's life. "That to me is mentoring," says Heather. Besides her current position as LSI Treasurer, she sits on the Executive Board of the Leukemia & Lymphoma Society's Warner Center Walk's Light the Night Committee, raising money to help fight blood cancers. She is a Mother's Guild Legacy Member for Notre Dame High School in Sherman Oaks, raising money to fund education for students who lose a parent. She admires the Leukemia & Lymphoma Society because they continue to help find a cure for blood cancers.

Heather has been married to Ernest Edwards for 20 years and they have four amazing children. She is so proud of her son Kennedy, a Cadet at the United States Military Academy at West Point; her daughter Koree, a soon to be junior in high school; her daughter Kaden, a soon to be 7th grader; and her son Kamden, a soon to be 2nd grader, adding that her children continue to motivate her.

Continued on page 19

Caroline E. Van De Pol, PLS, CLA/CAS, CCLS

Many of you know Caroline, and for those of you that do not, she is the 1990-1992 LSI Past President. She is at almost all LSI annual conferences, traveling all the way from Gainesville, Georgia. What a delight it is to see her each year!

Caroline is a member of the Santa Clara County Legal Professionals Association and served as president, governor, and numerous other positions. For several years she was a member of Solano County LSA while she lived in Vacaville and Davis, serving as their governor and president. She has three children. Corina, a retired Lt. Colonel in the U.S. Army and a research optometrist, lives in Orange, California. Her son, Casey was a teacher and also worked in social media management. Not only is her son Hendrik Van de Pol a computer wizard, he was a Sr. Master Sergeant in the Air Force and just retired after 27 years.

Caroline attended the University of Phoenix and is a 1990 graduate. Her advice to others seeking higher education is that “it doesn’t matter how old you are, it matters how much you want to learn.” She received a Bachelor of Science in Business Administration.

Starting her legal career, Caroline worked for the Carnation Milk Company in Los Angeles and assisted a tax attorney. She soon got bored and decided to take classes that specialized in legal secretary training. Shortly thereafter, she had a reputation for being logical and organized and has a knack for what needs to be done. She started working for one attorney and before long, was working for the whole firm. In addition to being a legal secretary, Caroline worked at the University of California Law School in Davis before returning to Santa Clara where she served as a paralegal for 15-16 years. “Today’s

legal world is very challenging,” says Caroline.

After retiring about ten years ago, Caroline enjoys playing Mah Jongg, but also learned to operate the sound and lighting for productions such as the Follies and participates in Chorus, Belles and Barber Shoppers, three musical groups that are dear to her heart. She can sing either second soprano, alto, or tenor. She has sung with the Gainesville Chorale and plans to accompany the Michael O’Neal Singers on a trip to Spain in 2014. Her advice to retirees is that one should always be sure that you pursue something new, enjoy, and continue to learn. “Don’t be stagnant” are her words of wisdom.

Before living in Gainesville, Georgia, Caroline lived in Campbell, California, from 1987 to 2003. She currently lives in a retirement community, planning activities, sometimes taking over for the fitness instructor teaching classes, teaching line dancing, and helping the Chaplain with Vespers and memorial services. Within a year, she served as secretary to the Board and then as president of the residents’ association. In October 2012, Caroline went on a mission trip to Bolivia, working with doctors, nurses, and a dentist. She said it was a great learning experience by helping to keep them organized, even though she knew nothing about medical. She had learned to read glasses and match them to a needy person while traveling with her daughter on mission trips, so she was able to utilize that skill again in Bolivia.



When Caroline is introduced at our LSI conferences, we often wonder what all those initials stand for after her name. Well here is your answer—PLS: Professional Legal Secretary; CLA: Certified Legal Assistant; CAS: California Advanced Specialist; and CCLS: California Certified Legal Secretary. Thank you for the opportunity to interview you Caroline ... you are truly a remarkable woman. **LS**

CCLS QUIZ - P. 14 ANSWER KEY

1. b
2. a
3. a
4. b
5. b
6. a
7. b
8. a
9. b
10. b

Betty Lou West



Betty Lou is the 1972-74 LSI past president and 1962-63 past president of San Francisco Legal Professionals Association. She also served as LSI's Parliamentarian, Secretary and First Vice President, and NALS director. In 1962 she attended her first LSI Convention in Beverly Hills when Patricia Brady was LSI president. LSI conferences were very different than they are today. For example, they all wore hats and white gloves!

After graduating from high school, Betty attended the University of California in Berkeley. She also attended Humphries Business College in Stockton. Following college, she was employed as a secretary in the Superintendent's Office of Stockton Unified School District.

What a pleasure it was to meet Betty Lou West at LSI's Annual Conference in San Jose, and it was my honor and privilege to sit down with and learn more about her.

Betty and her husband, Ken, were married in 1964, and he often accompanied her to LSI meetings. She has a daughter, Shelley, who lives with her husband in Boise, Idaho. Her family also includes three granddaughters, two great granddaughters, and two great grandsons.

Betty's legal secretary career began in the claims department of Pacific Gas and Electric Company in San Francisco. She and one of her co-workers saw an item in the legal paper about a beginning class for legal secretaries offered by SFLPA. They both took the course and subsequently were invited to join the organization. After receiving her training, Betty was moved into the law department of the company. For ten years, she worked for one of the lawyers who was promoted to Executive Vice President. She enjoyed her association with a company that offered wonderful benefits, and retired after 28 years of service.

One of Betty's hobbies is genealogy research, and she has traced her family lines back to the late 1700s. Her family immigrated to the United States in the late 1860s from Sweden. One of her grandfathers, married with three children, returned to Sweden in late 1911 to visit his mother, brother and sister. After a few weeks, he longed to return to his family in the U.S. and

booked passage on the RMS Titanic. He decided not to wait for two weeks for this beautiful, new ship to depart. He then cancelled his reservation on the Titanic and returned home on her sister ship, the RMS Olympic. While 2,224 people set sail on the Titanic, many more were scheduled to make the voyage, but for one reason or another, never did. Soon after the Titanic sank, reports came in from all over the world of those who claimed to have been scheduled to sail on the Titanic but who did not. They became known as the "Just Missed It" club.

Betty also volunteers and is active in her church. She does have some concerns about the future. "Things are changing too fast—specifically technology. It is hard to keep up with new toys and devices," says Betty.

Her motivation continues to be family and good friends. She will always value the many, many friendships she has made over the years in her association with legal secretaries all over California. "I am still impressed by their professionalism."

Thank you Betty ... it was my pleasure to spend some time with you. **LS**



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KATHY PARKER, CP,

has been a member of Humboldt County Legal Professionals Association for 18 years, holding numerous chair and board positions. She is the current Governor and Executive Advisor, most recently sitting as president in 2012-2013. She is a certified paralegal employed in civil litigation and insurance defense at the Law Offices of Mitchell, Brisso, Delaney & Vrieze, LLP, in Eureka, California.



To Shred or Not to Shred – That is the Question

BY KATHY PARKER, CP — SUBMITTED BY HUMBOLDT COUNTY LPA

We have an annual “cleaning day” at our office, where the staff vaguely become aware that the numerous and/or voluminous files that have been closed and stored upstairs during the last year have filled storage to capacity and some must either be carted to off-site storage or destroyed.

The basic understood principle that readily comes to mind has always been “records must be retained for seven years . . . or is it ten?” ~ a vague misunderstanding that rises to the surface annually when contemplating ones own tax records (for clarification, see: <http://www.irs.gov/Businesses/How-long-should-I-keep-records>). But what does “records retention” mean in the law office and when can documents be shredded? That answer is not as simple as it once was considered to be, and for the purpose of this article, will basically cover the background for requirements pertaining to retention or shredding of data.

The procedures for preservation and non-preservation of information have become more complex due to the electronic age and privacy issues. Of course, different kinds of documents require different handling or retention periods. (For example, a client’s estate plan or corporate records should be kept in perpetuity, pending death or dissolution; but a paper file containing a lawsuit that settled a number of years ago may not need to be kept, while its key electronic storage may be useful for future or separate litigation purposes.) However, eventually, even legal docu-

ments lose their value and become obsolete. Keeping them indefinitely can expose your clients to unnecessary risks that can be avoided with a document destruction strategy. Regulatory compliance and increased emphasis on ethical conduct and accountability demand that you safeguard your clients’ privacy and administrative records.ⁱ

The United States Supreme Court determined a case that helped define privacy rights relating to material discarded as trash. (*California v. Greenwood*, 486 U.S. 35 (1988).) In this case, the Supreme Court held that the Fourth Amendment does not prohibit the warrantless search and seizure of garbage left for collection outside the curtilage of a home.ⁱⁱ

Greenwood had thrown out information in his trash that incriminated him in a crime, and the information was used to gain a conviction. Greenwood claimed that he was the victim of an unlawful search and that his privacy rights had been violated. In its ruling, the Supreme Court stated that there could be no expectation of privacy in trash left accessible to the public. The Court further stated it is common knowledge that garbage is readily



accessible to animals, children, scavengers, snoops, and other members of the public (including criminals, investigators, journalists, garbage collection agencies, law enforcement, etc.).

Privacy protection is experiencing a rebirth in legislative activity. The runaway crime of “identity theft” is causing a groundswell of interest in the electorate; hence, also in our state and federal politicians. “Identity theft” also has a connection to national security issues.

The concept of protecting the privacy of ordinary citizens did not become significant until the beginning

Continued on page 10

of the information age. Problems arose from increased identity theft. The U.S. Congress responded with acts to protect privacy: the Social Security Act of 1934; Privacy Act of 1974; Right to Financial Privacy Act of 1978; Health Insurance Portability and Accountability Act of 1996 (HIPAA); Economic Espionage Act of 1996 (EEA); Gramm-Leach-Bliley Act (GLBA) of 1999; Fair Credit Reporting Act of 2001 (FCRA); Sarbanes-Oxley Act of 2002; and the Fair and Accurate Credit Transactions Act of 2003 (FACTA). These legislative acts have reinforced the overall need for organizations to take reasonable measures to safeguard private documents.

The 2003 FACTA expanded several FCRA provisions and provides protection for victims of identity theft (and includes one free credit report per year). The Federal Trade Commission (FTC) utilizes federal law and is responsible for enforcement. FACTA is a federal law designed to minimize the risk of identity theft and consumer fraud by enforcing the proper destruction of consumer information. The FTC developed the Disposal Rule in November 2004 to further implement the policies set forth in FACTA. The Disposal Rule applies to businesses that utilize consumer information; however it affects every person and business in the United States. The Disposal Rule requires disposal practices that are reasonable and appropriate to prevent the unauthorized access to – or use of – information in a consumer report.

The FACTA Disposal Rule, effective June 1, 2005, states that “any person who maintains or otherwise possesses consumer information for a business purpose” is required to dispose of discarded consumer information, whether in electronic or paper form. The Disposal Rule further clarifies the definition of compliance as “taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.” “Reasonable measures” include burning, pulverizing, or shredding

physical documents; erasure or destruction of all electronic media; and entering into a contract with a third party engaged in the business of information destruction.ⁱⁱⁱ

The “Comprehensive Identity Theft Protection Act” was passed in 2006. Almost every state is also passing laws to protect identity and privacy, and at the federal level additional new laws are being introduced. California and Georgia are being particularly aggressive, where new laws even require “self-reporting” of any security incident. The message is clear that private and confidential information should no longer be disposed of in the trash. Thus, if you look up “shredding laws” on the Internet, you will find numerous shredding businesses that provide much more detailed information regarding the congressional acts (see sources listed at the end of this article, as well as local advertisers in your area), and offers for professional shredding services are prolific.

Existing law requires a business to take all reasonable steps to destroy a customer’s records containing personal information when the business will no longer retain those records. The existing laws provide civil remedies for violations of these provisions. California Senate Bill 1386 was introduced in July 2003 and was the first attempt by a state legislature to address the problem of identity theft. In short, the bill introduces stiff disclosure requirements for businesses and government agencies that experience security breaches that might contain the personal information of California residents. It is expected that many organizations in the United States (and possibly worldwide) are now subject to these requirements.

SB 1386 comes with the biggest recrimination, allowing for civil litigation against businesses that don’t comply. If you fail to disclose computer security breaches, you become liable for civil damages and may face a class action lawsuit. However, the bill permits notifications required by its provi-

sions to be delayed if a law enforcement agency determines that it would impede a criminal investigation. The bill would require an agency, person, or business that maintains computerized data including personal information owned by another to notify the owner or licensee of the information of any breach of security of the data, as specified. The bill states the intent of the Legislature to preempt all local regulation of the subject matter of the bill. This bill would also make a statement of legislative findings and declarations regarding privacy and financial security.

Civil Code sections 1798.80-1798.84 provide details pertaining to requirements, violation, rights, and remedies.^{iv} The consequences for failing to maintain legislative compliance include serious fines and penalties.^v

So it is clear that basic steps are needed to create and implement an effective document retention policy (a whole separate magazine article in itself). The reader here should utilize research tools available to effectuate a well-designed policy that ceases document destruction upon notice of a pending lawsuit or governmental investigation, as well as utilizing Government Code requirements for specific retention periods, depending upon the type of entity, or department within the entity, for which the document retention policy is needed.

While paper shredding can elicit images of obstruction of justice à la Enron, with today’s technological advances and the information-sharing electronic age, the majority of information is now generated electronically, and 60 to 70 percent of all documents are never printed. Hence, discovery of electronic information is also critical in litigation today. The California state courts, as well as federal courts, allow discovery of information stored electronically. Revisions to the Federal Rules of Civil Procedure to incorporate electronic discovery continue to be updated. It is assumed that state

court judges will utilize federal rules to some degree for guidance when dealing with issues pertaining to discovery of electronic evidence. But, getting back to best practices for retention or shredding: Many businesses have adopted retention policies that require routine destruction of documents or information after a certain lapse of time. Under FRCP 37(f), absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine operation of such a procedure.

Because technology is changing so quickly, new questions and issues continue to arise. The best policy is to have a policy that protects identity and privacy while regularly monitoring the status of files and data, as well as continuing to monitor how the courts use their inherent power to manage discovery and address issues as they come up.^{vi}

Without a program to control it, the daily trash of every business contains information that could be harmful. This information is especially useful to competitors because it contains the details of current activities. Discarded daily records include phone messages, memos, misprinted forms, drafts of bids, and drafts of correspondence. All businesses suffer potential exposure due to the need to discard these incidental business records. The only means of minimizing this exposure is to make sure such information is securely collected and destroyed.

Again, while paper documents remain the most visible and tangible information that must be dealt with, they are not the only format where your confidential information is stored. Keep in mind that data is contained on all types of information storage: paper, x-rays, checks, promotions, cardboard, signage, binders, files, photographs, CDs, DVDs, hard drives and back-ups, portable drives, computers, videotapes, prototypes, and the list goes on.

Once a business no longer needs a document and its retention is not otherwise required, it should gener-

ally be destroyed. By not adhering to a program of routinely destroying stored records, a company exhibits suspicious disposal practices that could be negatively construed in the event of litigation or audit. Also, Federal Rule 26 regarding disclosure requires that, in the event of a lawsuit, each party provide all relevant records to the opposing counsel on a deadline. If either of the litigants does not fulfill this obligation, it will result in a summary finding against them. By destroying records according to a set schedule, a company appropriately limits the amount of materials it must search through to comply with this law. If a party makes a discovery request, the other party has a duty to diligently search for documents in its custody responsive to the request. (Code of Civil Procedure §2031.280(a).) And fewer necessary documents mean less expensive time-consuming search and production.

It is permissible to destroy documents, including deleting computer files and shredding documents, unless at the time of the destruction there was a duty to preserve them. A document retention policy can be critical in positioning a business to effectively and efficiently defend against future lawsuits, while allowing it to justifiably dispose of unneeded documents while managing only necessary documents. Such a retention policy also holds down litigation costs.

From a risk management perspective, the acceptable method of discarding stored records is to destroy them by a method that ensures that the information is obliterated, and documenting the exact date that a record is destroyed is a prudent and recommended legal precaution. For various important reasons, the choice of recycling as a means of information destruction is undesirable from a risk management perspective.

Every business entity, not just a law office, needs to have and enforce an appropriate document and data retention or destruction policy. The nature of that policy, its enforcement, and/or non-usage of the policy to avoid

destruction of evidence may have significant ramifications in litigation.

ENDNOTES:

- i. <http://www.shredit.com/Legal-shredding-service.aspx>
- ii. http://en.wikipedia.org/wiki/California_v._Greenwood
- iii. http://www.stopandshred.com/government_regulations.php; Stop and Shred Document Shredding Service
- iv. <http://www.goshredex.com/california-shredding-laws-senate-bill-1386.php>
- v. <http://www.proshred.com/current-privacy-legislation>; ProShred Security
- vi. <http://www.shrednations.com/articles/Shredding-Compliance.php>; Shred Nations

OTHER SOURCES USED:

- 1.) Risk Management – Record Retention Policies – Electronic Data Changing the Way the Game is Played; July 2012, by Mark C. Russell, GORDON & REES; <http://www.gordonrees.com/publications/viewPublication.cfm?contentID=2729>.
- 2.) Lexis Nexis notes re document retention: http://www.lexisnexis.com/applieddiscovery/lawlibrary/whitePapers/ADI_WP_ElementsOfAGoodDocRetentionPolicy.pdf; by Timothy R. Sullivan of McLaughlin Sullivan LLP
- 3.) <http://www.fresnocountybar.org/files/SELF-TEST-NewElectronicDiscovery-Rules2.doc>

LS



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Of LEGAL SECRETARIES, INCORPORATED

2013-2014 MEMBERSHIP APPLICATION/ANNUAL RENEWAL FORM

Complete and mail with your check made payable to LSI, for \$20 for each section, or a total fee of \$75 per year to join all SIX sections simultaneously if an LSI Member, or \$40 for each section, or a total fee of \$150 per year to join all sections simultaneously if joining as a non-LSI member.

Mail to: **Cheryl L. Kent, PLS, CCLS, Legal Specialization Sections Coordinator**
P. O. Box 12082, Pleasanton, CA 94588

Enclosed is payment of my dues for the fiscal year **8/1/13** through **7/31/14** for the following Section(s). Please check appropriate boxes below for the sections you are joining.

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NEW RENEWAL

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Quarterly Assignments

THE FOLLOWING ASSOCIATIONS ARE EXPECTED TO SECURE ARTICLES FROM GUEST WRITERS FOR PUBLICATION IN THE MAGAZINE ISSUES SPECIFIED BELOW.

- a. AUGUST ISSUE (to be submitted no later than **June 1st**):
Alameda County, Beverly Hills/Century City, Butte County, Capitol City, Conejo Valley, Desert Palm, El Dorado County, Fresno County, Humboldt County, Imperial County
- b. NOVEMBER ISSUE (to be submitted no later than **September 1st**):
Livermore-Amador Valley, Long Beach, Los Angeles, Marin County, Merced County, Mt. Diablo, Napa County, Orange County
- c. FEBRUARY ISSUE (to be submitted no later than **December 1st**):
Placer County, Redding, Rio Hondo District, Riverside, Sacramento, San Diego, San Fernando Valley, San Francisco, San Gabriel Valley, San Mateo County
- d. MAY ISSUE (to be submitted no later than **March 1st**):
Santa Barbara, Santa Clara County, Santa Cruz County, Santa Maria, Sonoma County, Southern Butte County, Stanislaus County, Stockton-San Joaquin County, Trinity County, Ventura County

Dates to Remember in 2013

| | | | |
|-----------------|---|------------------|--|
| AUG. 9-11, 2013 | LSI Quarterly Conference Crowne Plaza Hotel, San Diego, CA Host Association: San Diego LSA | AUG. 20, 2013 | Deadline to submit CCLS Exam Application |
| AUG. 9, 2013 | CEC Seminar (see page 20 for registration) Probate and Estate Planning and Law Office Administration Workshops (see page 16 for registration) | SEPT. 2, 2013 | Labor Day (Courts Closed) |
| AUG. 10, 2013 | CCLS Workshop (See page 36 for registration) Family Law, Civil Law, Criminal Law and Transactional Law Workshops (see page 16 for registration) | OCT. 14, 2013 | Columbus Day (Courts Closed) |
| | | OCT. 19, 2013 | CCLS Exam |
| | | NOV. 11, 2013 | Veterans' Day (Courts Closed) |
| | | NOV. 15-17, 2013 | LSI Quarterly Conference The Hotel Maya, Long Beach, CA Host Association: Long Beach LPA |

Helpful Websites

Supreme Court of the United States
<http://www.supremecourt.us>

Office of the Attorney General
www.ag.ca.gov

California Courts
<http://www.courtinfo.ca.gov>

California Assn. of Legal Support Professionals
www.calspro.org

California Codes
<http://www.leginfo.ca.gov/calaw.html>

California State Bar
http://www.calbar.ca.gov/state/calbar/calbar_home.jsp

California Legislative Information
<http://www.leginfo.ca.gov>

U.S. Citizen and Immigration Services
<http://www.uscis.gov>

Administrative Office of the U.S. Courts
<http://pacer.psc.uscourts.gov>

American Medical Association
<http://www.ama-assn.org>

American Association of Law Libraries
<http://www.aallnet.org>

National Notary Association
<http://www.nationalnotary.org/index.cfm>

California Secretary of State
www.sos.ca.gov

National Court Reporters Association
<http://www.ncraonline.org>

CCLS QUIZ

SEE P. 7 FOR ANSWER KEY

LAW OFFICE ADMINISTRATION – ALPHABETIC FILING

IN EACH PAIR OF NAMES BELOW, INDICATE WHICH COMES FIRST ALPHABETICALLY.

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| 1. (a) Aaace Lube ‘N Tune (b) 342 6th Avenue, LLC | 6. (a) W & W Carpeting (b) WGN Television |
| 2. (a) Johnson, Michaels, Smith & Wellesly, APC (b) Rufus O'Connor | 7. (a) Dr. James R. Foster (b) James R. Foster, CPA |
| 3. (a) The Walker Store (b) Percy Walker-Smythe | 8. (a) Sandra Lisom Combs (b) Sandra Lisom-Combs |
| 4. (a) #1 Wine Store (b) NASDAQ | 9. (a) Mark G. Clausen Homes (b) Mark G. Clausen, Jr. |
| 5. (a) Mike's Malt Shop, 321 Market Street, San Diego (b) Mike's Malt Shop, 98365 Fourth Avenue, San Diego | 10. (a) David Van Ness (b) Angela Vanness |

PRESIDENT'S MESSAGE | *Rise to the Challenge*

Continued from page 3

The Honorable LaDoris Hazzard Cordell (ret.) was not only our inspirational speaker on Sunday morning -- she was also the entertainment. She played the piano beautifully before the meeting started. She is truly a remarkable and very talented woman. It was our pleasure to have her join us for Brunch and thank her for taking the time to join us, in spite of her busy schedule.

Installing Officer, Yvonne Waldron-Robinson, CCLS, and Installing Marshal, Donald F. Lee prepared a wonderful installation program on Sunday morning, as the elected officers were installed for a second term. It was certainly a memorable occasion. After the “*Rise to the Challenge II*” acceptance speech, all the appointed officers and chairmen for the 2013-2014 term were announced. A list is included in this issue of *The Legal Secretary* magazine. We welcome the new LSI 2013-2014 Team!

Before closing our Sunday meeting, the past presidents gathered around the piano and led us in singing our closing song, “*Til We Meet Again*.” They performed so wonderfully that I believe we should make that a new LSI tradition. It is such a special song that it always gives me goose bumps when we sing it. It not only reminds us of the end of one year; but provides us with renewed hope for the coming year. Special thanks to Kay J. Bliss, PLS, CCLS, of Riverside, for accompanying them on the piano.

Following Sunday Brunch, all officers, chairmen and governors met for the Post Annual Board of Governors meeting.

The Proposed 2013-2014 budget was approved as amended and two proposed Bylaw Amendments will be noticed for the governors' vote at the August 2013 Conference in San Diego. I commend the governors for their professionalism at business meetings and all their hard work this past year. Your vote does count!

COMING UP - AUGUST 2013 QUARTERLY CONFERENCE

Our next conference is coming up in beautiful San Diego – Hawaii Five-0 Mystery Weekend! Detailed information regarding our August 2013 Quarterly Conference is included in this issue. Read the article and you will definitely be persuaded to attend the upcoming fun and educational Quarterly Conference – register early, as you don't want to miss it!

You are invited to visit the LSI website, www.lsi.org, and check out posted information regarding topics and speakers for the August Legal Specialization Sections Seminars, the Continuing Education Council's legal educational seminar, and the CCLS workshop. More information is in this issue of *The Legal Secretary* magazine. Remember that LSI is an MCLE provider and all seminars provide continuing legal education credit – so, register early!

We look forward to seeing you at LSI's August Quarterly Conference in San Diego!

LS

TERRIE QUINTON, CCLS, has been a legal secretary since 1985, and is a member of San Diego Legal Secretaries Association. Terrie obtained her CCLS in 1997, and has since served four years on the CCLS Certifying Board. In addition, Terrie is currently LSI's California Certified Legal Secretary Chair.



Aloha LSI!

BY TERRIE QUINTON, CCLS — SUBMITTED BY SAN DIEGO LSA

San Diego Legal Secretaries Association is very excited to host the members of LSI for the First Quarterly Conference, August 9-11, 2013, at the Crowne Plaza Resort in the Mission Valley area of San Diego. We have great plans – including a mystery for you to solve!

Our “Hawaii 5-0 Mystery Weekend” at the Crowne Plaza will be full of exciting events in a beautiful surrounding. The hotel has lush tropical gardens throughout, with plenty of areas to sit and enjoy the serenity (well, serenity might be pushing it that particular weekend).

The Friday Night Reception, “Welcome to the Islands,” will be held poolside, with lots of yummy tropical treats. I’m sure you’ll feel like you’ve left the mainland and headed across the Pacific to a tropical paradise. Be sure to come to the Reception and enjoy the food – as well as the exciting entertainment we have planned.

You’ll be “Living on Island Time” when you attend our luncheons on Saturday. If you’re not a governor or a president, think about attending the Membership luncheon.

The Saturday Night Banquet is our “Hawaiian Luau.” Dinner will be a buffet full of island tastes. After dinner, enjoy our Polynesian dancers as they wow you with their moves. There is, of course, a dress code for the evening – your Hawaiian Luau best (no shorts, bathing suits, or coconut bras, please).

We will wish you “Aloha and Mahalo” at Brunch on Sunday. Please join us as we wish you bon voyage and safe travels home.

What’s the mystery, you might ask, in the “Hawaii 5-0 Mystery Weekend”? By now, many of you have seen our conference mascot, Aloha Lani. Well, Lani is going to have photos taken at various mystery locations throughout the hotel and San Diego (don’t worry, they’ll be well-known places, not the corner down the street from my office), like the photo shown here, which will be posted near the vendors. Each registrant will be provided with a special card to write down their guesses as to where the photo was taken. Complete your card, put it in the marked box, and wait to see if you’ll receive a special prize!

The Crowne Plaza Resort is located approximately 6 miles from both the San Diego International Airport and from the Amtrak Station in Downtown San Diego. The hotel does not offer a shuttle, but cabs are plentiful. Cloud 9 Shuttle is also available. If you’re driving, parking is complimentary. The hotel is also giving us complimentary WiFi in both the guest rooms and the meeting spaces for the weekend.

There are 3 malls within 5 miles of the hotel (Fashion Valley Mall, Mission Valley Mall, and Horton Plaza), or if you’re feeling a little “South of the Border,” San Diego’s Historic Old Town is just minutes away. Beaches are also just a few miles away. If you



have some extra time or are bringing your family, the hotel offers free shuttles to the World Famous San Diego Zoo and SeaWorld – the shuttle will drop you off in the morning and pick you up in the afternoon.

We will also be holding a very special drawing, from which 100% of the the proceeds will be donated to San Diego LSA’s charity this year, Crime Victims Fund. The prize will include a two-night stay at the Crowne Plaza Resort, as well as tickets to a local theme park and a gift card for dinner. Tickets will be \$10 each – and you don’t have to be present to win. So if you would like to have a fun family weekend in San Diego, be sure to purchase these tickets or, if you won’t be able to attend Conference, send your money with someone else or send your check to either Leanne Pierce or me and we will send you your tickets.

We look forward to hosting the August 2013 Conference, and hope you will all join us at San Diego LSA’s “Hawaii Five-0 Mystery Weekend”!

LS



LEGAL SPECIALIZATION SECTION SEMINARS
LSI 1st Quarterly Conference – August 9-11, 2013 – Crowne Plaza San Diego

Hosting Association: San Diego LSA

REGISTRATION FORM - DEADLINE IS Tuesday, July 30, 2013

Registration **MUST** be **RECEIVED** by the LSS Coordinator **on or before the deadline.**



Please make advance reservations so materials may be prepared. Please check all appropriate boxes below.

| | | |
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| LSI SECTION MEMBER: Free with Advanced Reservations \$5.00 at the Door/After Deadline Handout Only: \$5.00 | LSI NON-SECTION MEMBER: \$10.00 with Advanced Reservation \$15.00 at the Door/After Deadline Handout Only: \$10.00 | NON-LSI MEMBER: \$15.00 with Advanced Reservation \$20.00 at the Door/After Deadline Handout Only: \$15.00 |
| Friday, August 9, 2013 – 7:30 p.m. to 9:00 p.m. | | |
| <u>PROBATE/ESTATE PLANNING:</u> Topic: <i>"Trust Litigation - Prevention & Prosecution"</i> Speaker: Susan Stricklin Wilson, Esq. <input type="checkbox"/> I will attend <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member | <u>LAW OFFICE ADMINISTRATION:</u> Topic: <i>"Performance Evaluations and Discipline – Avoiding Wrongful Termination Lawsuits"</i> Speaker: Tammy L. Hunt, CCLS <input type="checkbox"/> I will attend <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member | |
| Saturday, August 10, 2013 – 10:30 a.m. to 12:00 p.m. | | |
| <u>FAMILY LAW:</u> Topic: <i>"Family Law Basics"</i> Speaker: Mary Lou Floyd, CCLS, Paralegal <input type="checkbox"/> I will attend <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member | <u>CIVIL LAW:</u> Topic: <i>"Military Law versus Civil Law"</i> Speaker: Paul J. Leeds, Esq. <input type="checkbox"/> I will attend <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member | |
| Saturday, August 10, 2013 – 4:00 p.m. to 5:30 p.m. | | |
| <u>CRIMINAL LAW:</u> ***1.25 hours of Elimination of Bias MCLE*** Topic: <i>"Race, Ethnicity and the Criminal Justice System"</i> Speaker: Liz Missakian, Esq. <input type="checkbox"/> I will attend <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member | <u>TRANSACTIONAL LAW:</u> Topic: <i>"Patent Prosecution"</i> Speaker: Scott Menghini, Esq. <input type="checkbox"/> I will attend <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member | |

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Cheryl L. Kent, PLS, CCLS, LSS Coordinator
 P.O. Box 12082, Pleasanton, CA 94588
 925-523-3086 (fax) ~ clkcls@comcast.net

Send a self-addressed, stamped envelope if you wish confirmation of your reservation.

PLEASE MAKE ALL CHECKS PAYABLE TO "LSI"

Speakers and Topics are Subject to Change

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The Legal Specialization Sections are a program of Legal Secretaries, Incorporated, an approved provider, and certify that these seminars have been approved for minimum MCLE/CLE credit of 1.25 hours each, by the State Bar of California.

2013-2014 Legal Specialization Section Leaders:

| | |
|---|--|
| Civil Litigation: Dawn R. Forgeur, CCLS drforgeur@stoel.com Criminal Law: Jill Gardella jgardella@nablaw.com Family Law: Mary Lou Floyd, CCLS, M.S. Louloux7@yahoo.com | Law Office Administration: Tammy L. Hunt, CCLS loaleader@thunt.org Probate/Estate Planning: Kristi L. Edwards, CCLS kledwards@justice.com Transactional Law: Lisa De La O ldeiao@fitcheven.com |
|---|--|

is President of Business Development & eDiscovery Consulting for TERIS. His professional career has extended to training and public speaking engagements for corporations, law firms, and industry organizations. Shawn consults regularly with attorneys and executives to develop custom processes and procedures for collecting data, early case assessment, analysis, processing, discovery reviews, and production through modern litigation support technologies. Prior to his current position, Shawn worked in account and project management at ALC Legal Technologies (now TERIS).



Alternate Fee Arrangements

BY SHAWN SIECK — SUBMITTED BY SAN DIEGO LSA

When the world of eDiscovery was young, it made sense to charge per gigabyte, much as a Laundromat charges per shirt. Although the presence of electronic data, devices, and storage were becoming increasingly prevalent in daily life, the litigation industry was a bit slow to catch on at first, and the per-gigabyte pricing model stuck around.

THE WAVE OF THE FUTURE

These days, what used to be a half-dozen shirts dropped off at the cleaners has become an entire bushel. According to the International Data Corporation, the total amount of worldwide digital content created in 2010 exceeded one zettabyte, the highest volume of data ever recorded in history. And yet, that number is predicted to double by the end of 2013. If imagining every byte as a single grain of sand, the total data created would encompass 400 Hoover Dams.

If you can imagine sifting through even a fraction of those grains of sand for data relevant to specific litigation, it becomes clear why the old usage-based pricing models no longer make sense. The clamor from clients for more reasonable and predictable cost structures has become deafening, while legal teams are frustrated at the lack of an industry-standard alternative. Meanwhile, total litigation costs are rising everywhere, and the exorbitant (yet vital) electronic discovery costs are largely being blamed.

The world has changed, especially where technology is concerned. Remember when emails weren't considered admissible evidence because they were too informal? Courts took a long time to recognize electronic data as valid. These days, corporate communication via emails can form the entire

foundation of a case. While the courts are finally embracing many aspects of technology, one area remains stubbornly set in outdated ways: existing pricing structures for eDiscovery. Is it time to leave usage-based pricing behind? Can the idea of alternative fee arrangements (AFA) finally bring eDiscovery costs into the twenty-first century where they belong?

HISTORY OF EXISTING PRICE STRUCTURE

Historically, the idea of alternative fee arrangements was limited to single-service solutions. Clients would pay one subcontractor for computer forensics and another for data mining, while hiring yet another for electronic discovery. All the services were separate, and paid for separately, according to usage. Again, when the amount of data was so much smaller, this method was completely reasonable.

Multi-service solutions started being offered to allow clients a one-stop solution for their litigation support needs. However, though the offered services themselves had changed significantly, the pricing structure never did. Despite the advantages gained by both parties by adapting a multi-service approach to eDiscovery and other technologically-based litigation support, the billing remained based on usage, not service.

At a small level, usage-based fees make sense, and are very attractive to clients. After all, you only pay for the information you harvest and the specific services used. Clients feel confident that they're not being overbilled, and might even feel like they're saving significantly over the more standardized prices associated with alternate fee arrangements.

For minor litigation, they may even be right. What happens, though, when the litigation isn't minor? Litigation, by its nature, is pretty erratic. One month a firm may only need \$10,000 worth of electronic discovery services; the next month, a huge and unexpected case may push them into 20 times that amount. With no predictability comes a disastrous attempt at budgeting, or more accurately, the impossibility of either maintaining or predicting said budget. Any savings that seemed worth cheering over on the usage-based model go right out the window with just one complicated lawsuit.

The high costs don't only impact the client, either. As with any company, higher operating costs from litigation support are passed on to the client as higher fees. Yet, in the months or years when there's a lull in the action, the same teams may be struggling to stay in business due to lack of revenue.

Continued on page 18

The level of havoc wreaked on client electronic discovery budgets and counsel operating budgets next led to a market push toward retainer-style pricing systems. Much like retaining counsel directly, an upfront fee is paid in exchange for exclusivity. This structure, though an improvement in some ways over usage-based pricing, too easily leads to client overpayment and frustration, combined with providers undercharging for actual support efforts. A better solution is needed, and soon.

MOVING TOWARD AFA

These pressures combined to create a cry for truly predictive pricing from clients and counsel alike. The benefits of predictive pricing are clear: budgeting would become more accurate and litigation costs would remain stable regardless of volume. Clients enjoy a reliable average litigation cost, while providers can take advantage of a more consistent revenue stream. More importantly than either of these advantages, however, would be the creation of a much-needed industry standard in the development of a common system. This is where the concept of alternate fee arrangements comes in.

Alternate fee arrangements provide protection to both clients and counsel where the bottom line is concerned. A predictable fee structure keeps costs reasonable and predictable, for both parties. More importantly, AFA means recreatable costs, allowing for litigation teams and clients to accurately determine fee estimates based on similar cases and past experience.

Clients are relieved that legal expenditures for electronic discovery are far more budget-friendly. They are also able to choose litigation support services à la carte, rather than getting locked into paying high fees for services they'll never use, just to get access to the few they will.

And, providers can feel confident that their revenue stream is solid and

steady, as opposed to the feast-or-famine mindset that defined per-gigabyte pricing. The à la carte approach allows more customized litigation support for each client, leading to more efficient provider services and increased customer satisfaction.

CHALLENGES OF AFA

Though the benefits of alternate fee arrangements are undeniable, there are obstacles that still block its widespread acceptance within the litigation support community. Primarily, pricing uncertainty still remains under the AFA model, albeit in a drastically lessened form. The rates charged are still dependent upon the types of services provided, and to what extent those services are utilized. And of course, there is always the possibility of that one huge case that will throw off everyone's average, putting both provider and client right back where they started: frustrated.

Clients like the idea of AFA, yet remain skeptical. Are they paying too much for the amount and type of services rendered? About six months of usage history is required to obtain an accurate rate gauge for every client. This means they have to take the provider on faith for six months, which is not a comfortable prospect. Although exceptions can be outlined in a provider-client agreement for client protection against an unexpected surge in litigation, the possibility of exorbitant electronic discovery costs remains intimidating.

And as for the providers themselves, they're left vulnerable as well. How can they properly estimate the needs of a new client when they have no experience with that specific client's requirements, especially when every business has a different level of technology and consists of different business components? Will providers end up underbilling to the point of bad business? Or do they run the risk of overcharging to the extent of client distrust? It's definitely a delicate balance.

REAL-WORLD SUCCESS

Alternate fee arrangements aren't just theoretical. In the real world, the TERIS litigation support team has adopted an AFA pricing structure with great success. As a full-spectrum EDRM solutions provider, TERIS has stood at the forefront of high-tech litigation support since its inception. A pioneer of predictive pricing back in 2009, TERIS is largely responsible for setting industry standards in the field.

The TERIS system is both specific and straightforward. They begin by examining the preceding twelve months of data, discarding the largest and smallest cases to avoid extremes, then take the average cost plus a slush percentage for added insurance. This system delivers unique rates to every client, while retaining a predictive pricing structure overall.

Clients no longer feel pressure to choose a single solution for their discovery needs (and no longer have to worry that that solution may be the wrong one). Instead, they can customize their services to each specific case. This not only benefits their litigation budget, but also allows TERIS to deliver more targeted services and point solutions rather than less effective blanket solutions.

As for success metrics, the numbers speak for themselves. TERIS clients report an average savings of between \$1M and \$3M every year. As for the lost income to TERIS, their preference is definitely for the reliable income over the erratic, even if that number is reduced.

A NEW INDUSTRY STANDARD

With TERIS as a beacon of success in the AFA pricing model, clients are pushing for this cost structure to become the future industry standard. The benefits of cost predictability and flexible service options are tremendous to the client. Providers, once seeing a steady revenue stream rather than the capricious highs and lows associated

HEATHER EDWARDS, LSI TREASURER

Continued from page 6

with usage-based pricing, can focus on developing their businesses rather than just keeping their heads above water. The bottom line is that predictable costs equal predictable savings, for all parties.

The key to success moving forward is to develop a sustainable plan for alternate fee arrangements. Examination of client litigation history helps create static pricing, allowing providers to deliver a confident estimate of costs going forward.

To this end, both sides must supply complete transparency. Clients need to be clear about their requirements, with the understanding that these same guidelines will be the determining factors for their pricing structure. And in return, the provider must be open about its capabilities. Accountability, too, must be enforced, ideally with a bi-annual analysis. With these metrics, and both sides acknowledging allowable thresholds, AFA success will be ensured. **LS**

Although I find it hard to believe, in her spare time she enjoys traveling, shopping, knitting, and playing competitive basketball in several “mom” basketball leagues in the San Fernando Valley. Her team name is “Rock Pile,” but I think Rock Star would be more appropriate. Basketball, says Heather, would be impossible to give up so it didn’t surprise me that the Los Angeles Lakers (as a girl from Boston, you can imagine the rivalries we share) is her favorite basketball team.

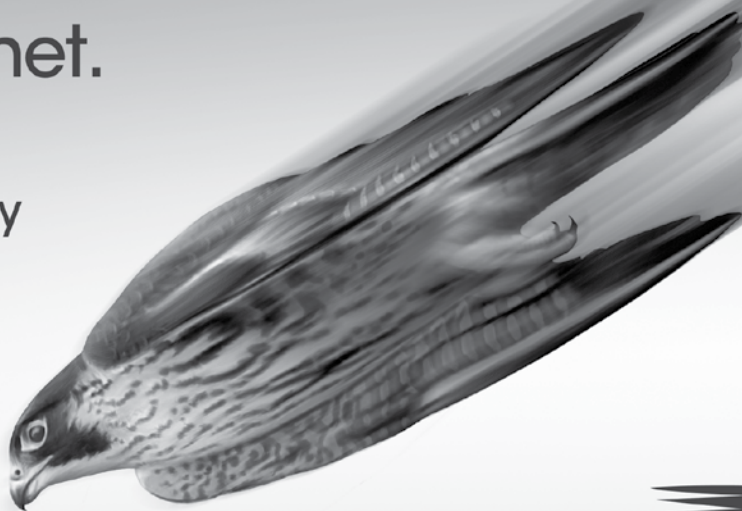
Heather’s advice to new and recent legal staff members is to join LSI and attend your local association’s monthly meetings and LSI conferences. “The educational and networking benefits are priceless,” says Heather and I am sure that you would all agree with that. When asked

where she sees herself in five years, she said “Starting my 1st term as LSI President!” Oh yeah and so do we. HOOYAH! **LS**



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When: FRIDAY, AUGUST 9, 2013, from 5:15 p.m. to 6:15 p.m.

Where: CROWNE PLAZA HOTEL

Reservations: email J. Cori Mandy, CCLS at cori.mandy@procopio.com
or call 619-515-3256 or 619-954-3603.



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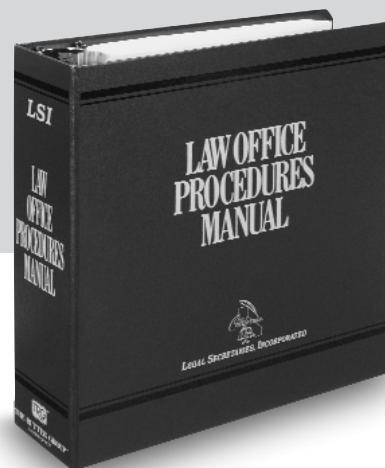
For more information, contact Cheryl L. Kent, PLS, CCLS, Legal Specialization Sections Coordinator. Office: (925) 837-0585; Email: clkcls@comcast.net

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Please check if you are:

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POSTMARKED ON OR AFTER 10/17/13 _____ @ \$ 120.00 \$ _____

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Registration by 10/16/13 _____ @ \$ 15 \$ _____

Registration after 10/16/13 _____ @ \$ 25 \$ _____

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Presidents' Lunch (Saturday) _____ @ \$ 30 \$ _____

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HIRBOD RASHIDI is an attorney for the Riverside County Public Defender's office, and instructor (through Extension) in legal research and writing at the University of California, Riverside & Los Angeles, and an adjunct professor at National University.

NEW FAMILY CODE SECTIONS MAY BOOST YOUR BUSINESS

BY HIRBOD RASHIDI — SUBMITTED BY ORANGE COUNTY LSA

Recently, while speaking to a few family law attorneys, I noticed that a good many of them are unfamiliar with some recent amendments and additions to the Family Code. In addition to providing an update on some of the bigger changes, I think with the right marketing strategy that some of these sections could very well bring in new clients.

Health insurance coverage orders: With every court order for child support, parents are routinely required to provide health insurance for their child if it is available to them at either no cost, or a reasonable cost. Up until this year, the code did not define what constitutes “reasonable cost.” Starting this year, Family Code section 3751 has been amended to provide: “Health insurance coverage shall be rebuttably presumed to be reasonable in cost if the cost to the responsible parent providing medical support does not exceed 5 percent of his or her gross income.”

If I were in private practice, I would place a notice on my website and let my former clients know that if they believe the cost of their health insurance coverage is too high, they should contact me for a free consultation. In reviewing the obligor parent's income, one ought to be careful to only consider the cost of the coverage for the children; “in applying the 5 percent for the cost of health insurance, the cost is the difference between self-only and family coverage.” Also, “[i]f the obligor is entitled to a low-income adjustment as provided in paragraph (7) of subdivision (b) of Section 4055,

medical support shall be deemed not reasonable, unless the court determines that not requiring medical support would be unjust and inappropriate in the particular case.”

Incarcerated obligors: California case law already provides that if an obligor becomes incarcerated and files a motion for modification, absent a showing of ability (e. g. continued income from an annuity, trust, lottery winning, Native American stipend, etc.), the court must set their support obligation at zero since they don't have an ability to pay. *State of Oregon v. Vargas* (1999) 70 Cal.App.4th 1123. However, the court does not have any authority to retroactively modify a support order. Thus, if an obligor comes to court post-incarceration asking for credit, the court must deny the motion due to the rule against retroactive modification. Family Code section 3651(c); *Santa Clara v Wilson* (2003) 111 Cal.App.4th 1324.

However, with the addition of Family Code section 4007.5, commencing July 1, every support order that is being enforced by the local child support agency must provide that “the obligation of the person ordered to pay support shall be sus-

pending for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, unless the obligor has the means to pay support while incarcerated or involuntarily institutionalized.” And “[t]he suspension of the support obligation shall only apply for the period of time during which the obligor is incarcerated or involuntarily institutionalized, after which the obligation shall immediately resume in the amount otherwise specified in the child support order.” The code section also provides for a post-incarceration motion for credit.

Note the following limitations, however: there is no retroactive effect, i.e., it applies to incarceration period after July 1 only; it is set to expire on July 1, 2015; and is inapplicable for those incarcerated “for any offense constituting domestic violence against the support obligee or supported child.”

Address verification needed for service by mail: Effective January 1 of this year, “[a] postjudgment motion to modify

Continued on page 25

NEW FAMILY CODE SECTIONS...

Continued from page 24

a custody, visitation, or child support order may be served on the other party or parties by first class mail or airmail, postage prepaid, to the persons to be served. For any party served by mail, the proof of service must include an address verification.” This process is somewhat similar to the affidavit needed in a motion to withdraw as counsel of record where service is accomplished by mail. The Judicial Council is currently seeking comments at www.courts.ca.gov/documents/SPR11-44.pdf. This website is actually a good resource in giving additional information on the implementation of this amendment. For example, it lists the forms that will be affected. It also provides for “a mandatory

form for use by the local child support agencies [that] would include a standard address verification declaration that references that the address was verified using the Department of Child Support Services’ statewide automated child support enforcement system.”

Financial institution data match system: Family Code section 17450 *et. seq.*, provides for enforcement of delinquent support orders through automated bank levies. Though it has been on the books for a couple of years, recently in a case of first impression – *In re Marriage of LaMoure*, 2011 DJDAR 12882 (4th Dist. Aug. 24, 2011) – Division 2 of the 4th District Court of Appeal did a good job explaining the process

while upholding its constitutionality, at least with regards to its notice provisions. (Disclosure: My office, along with at least a couple of other counties, submitted a request that *LaMoure* be published, which was granted.) Family law practitioners will be well-served by familiarizing themselves with the code sections, as well as *LaMoure*, by learning how the process works and what exemptions, if any, are available to their clients.

With these new code sections in hand, hopefully family law practitioners can be of better service to their clients.

GOLDA J. COOPER 2012-2013 CHAPTER ACHIEVEMENT CONTEST

GROUP A – MEMBERSHIP 5-30

| | |
|--------------------|---------------|
| Conejo Valley LPA | 13,110 WINNER |
| Southern Butte LPA | 10,120 |

GROUP B – MEMBERSHIP 31-50

| | |
|---------------------------------|---------------|
| Stanislaus County LPA | 31,945 WINNER |
| San Gabriel Valley LSA | 21,925 |
| Stockton/San Joaquin County LPA | 14,675 |
| Imperial County LPA | 13,330 |
| Alameda County LSA | 12,925 |
| Beverly Hills/Century City LSA | 11,400 |

GROUP C – MEMBERSHIP 51 – 75

| | |
|-------------------------|---------------|
| San Fernando Valley LSA | 23,275 WINNER |
| Long Beach LPA | 18,725 |
| Los Angeles LSA | 18,225 |
| San Francisco LPA | 15,115 |

GROUP D – MEMBERSHIP 76 -100

| | |
|----------------------|---------------|
| Orange County LSA | 32,875 WINNER |
| San Mateo County LSA | 22,875 |

GROUP E – MEMBERSHIP 101-150

| | |
|------------------------|---------------|
| Santa Clara County LPA | 31,085 WINNER |
|------------------------|---------------|

GROUP F – MEMBERSHIP OVER 150

| | |
|----------------|---------------|
| San Diego LSA | 69,475 WINNER |
| Sacramento LSA | 48,780 |

Continued on page 26

CONTEST WINNERS

Winners of the 2012-2013 Bulletin Competition

CLASS A (5-30 MEMBERS):

- First Place: Conejo Valley LPA
Barbara Husmann, CCLS, Editor
- First Place: Santa Maria LPA
Chellette Christovale Valasquez CCLS, Editor

CLASS B (31-50 MEMBERS)

- First Place: Imperial County LPA
Aloma Harris, Editor
- First Place: Beverly Hills/Century City LSA
Linda LaVallee & Gwendolyn Edwards, Co-Editors
- Second Place: San Gabriel Valley LSA
Corinne Patera, Editor

CLASS C (51-75 MEMBERS)

- First Place: Los Angeles LSA
Reynalda Nogales, CCLS, Editor
- Second Place: Long Beach LPA
Cathleen McGrath, Editor
- Third Place: Fresno County LPA
Denise Chaffee CP & Chris Banks, CCLS, Co-Editors

CLASS D (76 – 100 MEMBERS)

- First Place: Orange County LSA
Dee Johnson, Editor

CLASS E (101 – 150 MEMBERS)

- First Place: Santa Clara County LPA
Rod Cardinale, Jr., Editor

CLASS F (OVER 150 MEMBERS)

- First Place: San Diego, LSA
Linda Gubba-Reiner, CCLS, Editor
- Second Place: Sacramento LSA
Liz Gideon, Editor

Winners of the 2012-2013 LSI History Book Competition

CLASS A (5-30 MEMBERS): NO ENTRIES

CLASS B (31-50 MEMBERS) = 1 ENTRY

- First Place: Stanislaus County LPA
Historian(s): Linda Fischer, CCLS, Jessica Nunes & Deana Skelton

CLASS C (51-75 MEMBERS) = NO ENTRIES

CLASS D (76 – 100 MEMBERS) = 1 ENTRY

- First Place: Orange County LSA
Historian(s) Deborah Rickert, CCLS & Heather Nowak

CLASS E (101 – 150 MEMBERS) = NO ENTRIES

CLASS F (OVER 150 MEMBERS) = 1 ENTRY

- First Place: San Diego, LSA
Historian: Michelle D. Tice, CCLS

SECRETARY

2013-2014 Eula Mae Jett Scholarship Winners

PLAN A - HIGH SCHOOL SENIOR

2nd Place
87 points out of 120
Erica Angelo
Sponsoring Association: Los Angeles LSA

1st Place
105 points out of 120
Caroline Wells
Sponsoring Association: San Diego LSA

PLAN B - COLLEGE STUDENT

1st Alternate
80 points out of 120
Katie Owens
Sponsoring Association: San Diego LSA

2nd Place
83 points out of 120
Katherine Pollock
Sponsoring Association: Los Angeles LSA

1st Place
98 points out of 120
Xiomara Urbina
Sponsoring Association:
Stockton-San Joaquin County LPA

PLAN C - CAREER CHANGE

2nd alternate
87 points out of 120
Dayna Ruiz
Sponsoring Association: Los Angeles LSA

1st alternate
88 points out of 120
Lauren Cadish
Sponsoring Association: San Diego LSA

2nd Place
93 points out of 120
Anlanda Hollenhorst
Sponsoring Association: Stanislaus County LPA

1st Place
98 points out of 120
Victoria Hughot
Sponsoring Association: San Mateo County LSA

WINNERS OF THE 2012-2013 LSI SCRAPBOOK COMPETITION

First Place: Merced County LPA
Historian: **Julia Chacon-Larson**
Second Place: Santa Clara County LPA
Historian: **Elena K. Schneider, CCLS**
Third Place: Conejo Valley LPA
Historian: **Jack-Lynn Sawyer, CCLS**
Fourth Place: San Gabriel Valley LSA
Historian: **Jennie Cecchini**

Winner of History Book Members' Choice Award:
SAN DIEGO LSA
Historian(s): **Michelle D. Tice, CCLS**

Winner of Scrapbook Members' Choice Award:
SANTA CLARA COUNTY LPA
Historian(s): **Elena K. Schneider, CCLS**



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J. CORI MANDY, CCLS, is currently serving as LSI's Educational Program Coordinator and as Parliamentarian for the San Diego Legal Secretaries Association for 2013-2014. Cori has been with her boss, Craig A. Ramseyer, since 1987 and they have been employed at Procopio Cory Hargreaves & Savitch, LLP, for 12 years.

May 2013 LSI Officer/Chair Workshops Overview

BY J. CORI MANDY, CCLS — EDUCATIONAL PROGRAM COORDINATOR (CEC AND MARKETING COMMITTEE)

A big kudos goes out to all the moderators who helped make the LSI Officer/Chair Workshops a success. Another huge kudos also goes to Knox Attorney Service who printed (gratis) all the workshop handouts for me in a short period of time! They are the best!

The moderators work very hard to put on a great workshop and from the reviews I have read, they succeeded. The workshops received a lot of "Excellents" and "Very Goods." Of the comments received, the members were very impressed with the notebooks presented at the President's Roundtable and the Governor's Workshop, and loved the moderator/class interaction in several of the workshops. One member made the comment that she was going to compile a Governor's guide to make the next Governor's job easier and now understands the requirement of certain documents because LSI is a corporation. Another comment made at the Governor's Workshop was that having LSI President, Sandra T. Jimenez,

CCLS, LSI Secretary, Jennifer L. Page, CCLS, and LSI Parliamentarian Astrid Watterson, CCLS, present helped bring more insight and perspective to the workshop. The Marketing Workshop was well received also, and those who attended really liked Bop Designs' handout. It was also very nice to put a face to the name.

There were a number of first-timers who said the workshops were very helpful to them.

The only negative (if that) comments were the moderators needed to speak up and they did not like the roundtable seating and preferred classroom style.

Suggestions for Future Topics Included:

- President's Roundtable for just incoming presidents
- Presidents for small associations
- Treasurer
- Vice President workshop
- A workshop to help with what information and formatting should be included in reports to local membership and a suggestion for a template for reports for use at conference
- Historian
- Communication workshop
- Website building (on a budget) workshop
- Hosting a Conference

I was happy to see these comments –all the moderators were excellent, funny, and informative. I appreciate all the evaluations received and will keep them in mind for the next Officer/Chair Workshops. **LS**



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Signature of
Applicant _____ Date _____

Guidelines for Submission of Articles to *The Legal Secretary*



Dear Friends,

Happy new fiscal year!

I am pleased to introduce our new designer, Lori McElroy of REDROMAN creative. I have worked with Lori in the past and am thrilled to be working with her again. Please send us your comments or suggestions on this month's publication.

Please take a moment to review the Guidelines. One the suggested topics is to send photographs or articles regarding the success of your association and/or your association event. This is a fantastic opportunity to showcase your association and let others in the legal community know what you are up to.

Also, please remember that we do have a "Letters to the Editor" column so feel free to send me your letter in response to an article you've seen in this issue or a in a prior issue.

And lastly, my thanks to Don Lee, Esperanza Larios, and Elizabeth Adame, CCLS for their photo submissions in this issue. Do you have something you'd like to see published? If so, please send it my way.

See you in August!

Michelle

Deadlines for Receipt of Articles by Editor

1. August issue (First Quarter) June 1st
2. November issue (Second Quarter) September 1st
3. February issue (Third Quarter) December 1st
4. May issue (Annual/Fourth Quarter) March 1st

Suggested Topics for Articles

5. Legal procedures
6. Law office management procedures
7. Word processing/computer hints/technology/internet/world wide web
8. Office equipment/environment
9. Personal safety
10. Career promotion
11. Keynote cases
12. CCLSs are encouraged to submit articles about their experience as a CCLS and/or pursuit for certification – e.g., CCLS mock exam (with answers)
13. Information about our publications: LSI Legal Professional's Handbook; Law Office Procedures Manual; The Legal Secretary magazine
14. Any Specialization area (Civil Litigation; Criminal Law; Family Law; Law Office Management; Probate/Estate Planning; Transactional Law) and appellate articles as well
15. Photographs and/or articles regarding the success of association(s) event(s) (how, when and why successful)
16. Other topics of general interest to the legal community

Submission Guidelines

17. Articles must be submitted by email as an attached document using word processing programs such as Microsoft Word or WordPerfect and saved as "doc", "txt", "wpd" or

"ASCII" file. When sending email, include in subject line: "[Last Name of Author] and [contents]", "i.e., Smith - Article, Bio and Photo.

18. All articles submitted must be at least 500 words and no more than 2500 words.
19. Articles sent in PDF format are not acceptable.
20. All articles submitted must be accompanied by the name, email address, contact information of person submitting the article, and name of submitting Association. Articles that do not have this information cannot be considered for publication.
21. Type all copy in Times New Roman 12 point type to fit across an 8-1/2" x 11" page, single spaced. Avoid using style attributes such as bold, italic, centering, columns or tabs.
22. Articles are subject to approval and/or editing. Editor cannot guarantee publication in any given issue, although every effort will be made to publish as soon as possible after acceptance.
23. Articles submitted and published in The Legal Secretary become the property of LSI unless prior agreement is obtained by the authors

Photographs

24. Digital photography is required and must be a resolution high enough to guarantee at least 300 dpi at 100% scale.
25. The subject should be either horizontally or vertically positioned. Centered, straight-on shots are preferred. If you use a flash, direct it away from the subject to avoid glare; or move a few inches left or right of center to eliminate glare.
26. If you submit photographs other than your own, please indicate the source and include any letters of permission for publication in the magazine.



CHERYL L. KENT, PLS, CCLS,

has been a member of Livermore-Amador Valley LPA since 1981. She has been with her current employer, Gagen, McCoy, McMahon, Koss, Markowitz & Raines in Danville since 1982, working in the area of criminal defense.

Legal Specialization Section

MEMBERSHIP – IT'S TIME TO JOIN OR RENEW

BY: CHERYL L. KENT, PLS, CCLS, LEGAL SPECIALIZATION SECTIONS COORDINATOR

It's that time of year again! Time to join or renew your membership in the Legal Specialization Sections ("LSS"). The LSS fiscal year is August 1 through July 31, which is different than the fiscal year for LSI and the local associations. For maximum benefit, be sure your application and fee are received by me before August conference.

Why should you become a member of one or more Legal Specialization Section? Membership in the Legal Specialization Sections ("LSS") is just one of the educational opportunities offered by LSI. Do you need continuing education credits to maintain your CCLS, paralegal, or other certification? Do you want to network with other legal professionals throughout the state who work in the same (or different) area of law as you? Do you want to become a more valuable employee? If you answered "yes" to any of these questions, you should become a Legal Specialization Sections member.

Section members will receive a quarterly newsletter for each section they have joined. The newsletters are prepared by each section leader and include information regarding changes in the law, court rules, forms, and practice area tips, as well as relevant articles. Did you know that whether you are a section member or not, you can earn chapter achievement points for your local association by submitting articles for publication in the LSS newsletters?

Seminars are presented by each section leader at all LSI conferences. Members are entitled to attend the seminars presented by the section(s) in which they belong at no charge with

advance reservations. Yes, as a section member, you can receive MCLE and CCLS credits at no charge! There is a nominal fee for non-section members. At each LSI quarterly conference, 1.25 hours of CLE credit is available (annual conference is 1.75 hours) per seminar. If you are unable to attend a seminar, handouts are available for purchase.

If there is "breaking news" in the legal community that needs to be distributed quickly, the Section Leaders will send out eBlasts to their section members. If you become aware of something that should be shared, please forward it to me or the appropriate section leader for distribution.

Whether you join just one or all six Legal Specialization Sections, you will receive a roster of all section members. The roster is available in November and is updated quarterly. It is a great networking tool, so, the next time you have a question regarding a filing in a county you are unfamiliar with, get out your roster and contact a fellow section member.

There are currently six Legal Specialization Sections from which to choose: Civil Litigation, Criminal Law, Family Law, Law Office Administration, Probate/Estate Planning, and Transactional Law. As a member of LSI, the cost of membership contin-

ues to be the best educational bargain around at only \$20 per section or \$75 to join all six. (Non LSI members pay double.)

At Annual Conference, President Sandra Jimenez, CCLS, announced that the 2013-2014 Legal Specialization Sections Team will consist of returning Section Leaders, Dawn R. Forgeur, CCLS, Civil Litigation; Mary Lou Floyd, CCLS, M.S., Family Law; Tammy L. Hunt, CCLS, Law Office Administration; Kristi L. Edwards, CCLS, Probate/Estate Planning; and Lisa De La O, Transactional Law. Joining the team this year is Jill Gardella, Criminal Law.

Looking for a way to honor a member who passes the CCLS exam? How about gifting him/her with membership in one or more Legal Specialization Sections? If your local association has the budget, how about paying for LSS membership for your legal education chairs?

Should you have questions or comments regarding the Legal Specialization Sections program, please contact me at clkcls@comcast.net.

Please consider making the most of your LSI membership and become a Legal Specialization Sections member today. **LS**

JUSTICE STEVEN M. VARTABEDIAN (RET.)
is a former justice of the California Fifth District Court of Appeal and has been with
Dowling Aaron Incorporated's ADR and Appellate Practice Groups since June 2010
following 29 years of judicial experience.



When May an Attorney Represent in a New Action a Party Adverse to Former Client He Represented in Previous Actions?

BY JUSTICE STEVEN VARTABEDIAN (RET.) — SUBMITTED BY FRESNO COUNTY LEGAL PROFESSIONALS ASSOCIATION

The short answer is the attorney may represent the new client against his old client when the new case does not involve matters substantially related to the prior representations. A “substantial relationship” exists where “the attorney had a direct professional relationship with the former client in which the attorney provided legal advice and services on a legal issue closely related to the legal issue in the present representation.” (*Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 710, 711.)



More specifically, the focus is on “the legal and factual similarities of the two representations.” (*Farris v. Fireman's Fund Ins. Co.* (2004) 119 Cal.App.4th 671, 679.) In *Farris*, the attorney had worked as coverage counsel for Fireman's Fund for over 10 years handling coverage claims and assisting the client in shaping the company's practices and procedures. Six months after his last representation of that client, counsel filed a bad faith claim against it in representing *Farris*. The appellate court reversed the trial court's denial of *Farris*' disqualification motion, finding disqualification was required. (*Id.* at pp. 685, 688.)

Against this backdrop, the Court of Appeal, Second District, Division Four, reviewed the disqualification of attorney Shahian in the recent case of *Khani v. Ford Motor Company* (publication ordered 4/25/13) 2013 DJDAR 5399. The motion to disqualify Shahian from representing *Khani* in *Khani*'s lemon law action against Ford came in an action filed about 4

years after Shahian's last representation of Ford. A partner in Shahian's former law firm declared that Ford was a client of the law firm, Shahian had worked on 150 cases of this client, and Shahian was privy to confidential communications with Ford and information with respect to defense, pre-litigation strategies and tactics in the handling of lemon law cases brought against client Ford. The trial court granted the disqualification motion.

The appellate court in *Khani* reversed the disqualification order. The court cited the above *Jessen* and *Farris* opinions approvingly for their legal analysis; but the court saw differences in their facts from the *Khani* case. For example, the attorney in *Farris* had “shaped the company's practices and procedures in handling California coverage case.” These practices and procedures in *Farris* were said to likely be at issue in the bad faith case the attorney was now bringing against his former client some six months after he had stopped working for it.

By contrast, noted the *Khani* court, there was no evidence that Shahian was exposed to any information that was material to his representation of *Khani* in this case (involving the allegation that a 2008 Lincoln Navigator was defective)—that there was no evidence that any of the particular policies or practices that he learned of in the prior representations were the same as those in the present representation. Accordingly, it found that the trial court abused its discretion in disqualifying Shahian from representing his present client's action against his former client.

Before attorneys run out and decide to sue former clients, I have some words of caution. Appellate opinions, like *Kahni*, often state reasoning in a brief, summarial fashion. A review of a trial record for abuse of discretion involves much more than can be expressed in an opinion. The court

Continued on page 36

here found NO substantial evidence to support the trial court's factual determination—that the trial court abused its discretion. Rarely does an appellate court essentially decide that no reasonable judge could find sufficient facts to justify the disqualification where the fact of the prior direct representation is itself clear. The issue raised by the appellate court here is how closely the cases are related. While an appellate court may disagree on the factual finding of close relationship, it should not reweigh the facts.

Troubling is the appellate court's reasoning implying that the Farris

facts create a standard of minimum evidence needed to disqualify. Farris reversed the trial court's failure to disqualify because the evidence of participation of the attorney in the prior representation was so "pervasive" that no reasonable judge could find otherwise. This hardly sets a minimum standard for disqualification. The legal standard set forth in the opinion makes it clear that a less pervasive participation involving less detailed knowledge could still justify disqualification.

Both Jessen and Farris note that where the prior relationship is

direct, inquiry into the actual state of the knowledge is prohibited, and presumptions may be drawn from closeness with the former client, and similarity of the subject matter of prior representation to the present case. That the Khani case is likewise a lemon law case might normally be sufficient similarity; a possible question is whether a 4-year time lapse between representations defeats a presumption Ford's practices and policies remain similar. That would seem to be a question of fact: the ruling of the trial court should prevail unless no substantial evidence supports that ruling. **LS**



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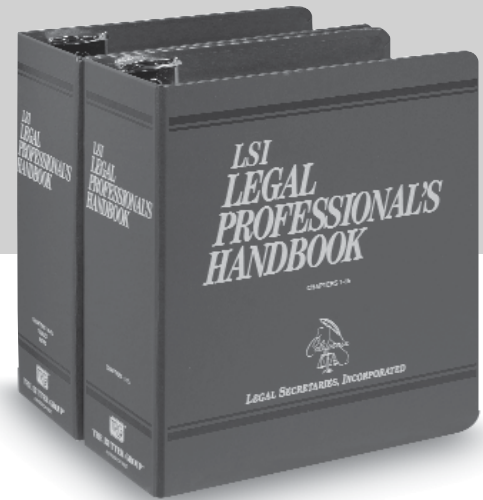
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DR. MIKE SHAW

is a Physicist at Pasadena Scientific; and Professor of Physics & Bioengineering at California Lutheran University (CLU). Dr. Shaw received a Ph.D. in Materials from the University of California, Santa Barbara, an M.S. in Ceramic Engineering from the Ohio State University, and a B.S. in Materials Science and Engineering from the University of California, Berkeley. He performed his post-doctoral studies at the University of Cambridge, England. Prior to his current appointment, he was Manager, of the Design and Reliability Department, Rockwell Scientific Company (formerly Rockwell Science Center).



TODD MILLER

has worked in the accident reconstruction since 1996, when he was instrumental in helping form Keith Miller & Associates, his father's company. As one of the most successful scientific consulting firms in the nation, Keith Miller & Associates has aided in thousands of legal and insurance cases. As Pasadena Scientific formed in 2009, Todd took the reins and began cultivating the top academic and technical talent in the business.



RYAN HOLMES

graduated from UCLA with honors and a degree in Astrophysics. Over the years, Ryan has put his problem-solving abilities and analytical skills to use in a wide range of areas, from aerospace and defense to online radio to medical school admissions.



KRISTIN L. CERNEY, M.S., M.T., C.C.P.,

graduated with a Masters of Science in Pharmacology & Toxicology from the University of Arizona. She is a Certified Cardiovascular Perfusionist and currently works for the University of Southern California, Department of Cardiothoracic Surgery, the Childrens Hospital of Los Angeles, the Keck Medical Center of USC, the Los Angeles County & USC Medical Center, and the USC/Kenneth Norris Jr. Cancer Center & Hospital.

Multidisciplinary Accident Reconstruction/ Biomechanics Analysis in the 21st Century

K. CERNEY, R. HOLMES, T. W. MILLER AND M.C. SHAW — SUBMITTED BY CONEJO VALLEY LPA

INTRODUCTION

What happened? This is the question that accident reconstruction teams need to answer. Plaintiff and defense counsel require this information, or sometimes more importantly, what *didn't* happen, in order to determine whether or not to proceed with litigation. Two parties have very different stories and who is probably more accurate based on the evidence we have?

The principal categories of relevant accidents and the injuries that happen based on those accidents include every imaginable type of accident. Traffic accidents, slip/trip and falls, product liability, ballistics, aeronautical, nautical, and structural accidents make up most personal injury claims. Unfortunately, accidents happen and accident reconstruction experts can help to dissect the root causes based on reports, photographs, depositions, and inspections.

Traffic accidents, unfortunately, are all too common. Rarely do they result from technical malfunctions; operator error is usually the culprit. Traffic accidents encompass a wide variety of cases, including two-car crashes, multiple car crashes, pedestrian-car collisions, bicycle-car collisions, truck-car collisions, etc. In California, auto accidents are the primary cause of personal injury claims.

Slip/trip and falls occur in a variety of locations and conditions, includ-

ing commercial buildings, outdoor facilities, with rainy, wet, or dry conditions, during night or day and can result in grievous injuries. There are a myriad of reasons someone falls down and when someone falls down they can get hurt badly. Whose fault is it or could it have been avoided? That's a question that is relevant in all circumstances.

Product liability cases usually center on whether or not a dangerous condition exists as a result of a

product defect. Defects, in turn, can include actual material defects as well as defects in design. The metals, plastics and ceramics/glass that comprise all material objects are never “perfect,” whether or not a given imperfection complies with design and manufacturing specifications or not can be the determining factor in a case.

What’s common in all these cases is how they’re analyzed through the multidisciplinary sciences. Accident reconstructionists are able to collect physical evidence, analyze the evidence scientifically, and draw informed conclusions about the most likely accident scenarios. These conclusions thus provide the bases for their opinions. Depending on that expert’s background, an opinion can be formed from a lot of different directions. A physicist who is also a metallurgist might apply the physics of an accident in his/her analysis, but they may also find a smoking gun in the way a metallic material behaved in an incident that a physicist may not see and vice versa. Similarly, the way different people react to the same medication/intoxicant can have a significant effect on case liability. As a consequence, it is vital to adopt an interdisciplinary approach in tackling the accidents of today, especially given the enormous recent advances in the sciences and technology.

THE ISSUE

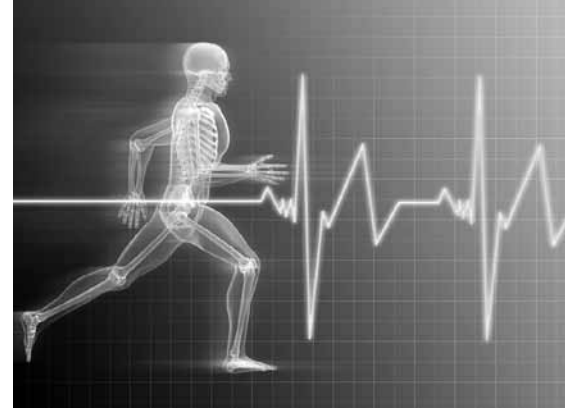
“There are two sides to every story.”
We’re all familiar with this idea – that the description of events depends on who is describing the incident. Accident reconstruction operates in a fundamentally different way. The underlying basis of accident reconstruction is science – mainly physics, engineering, mathematics, materials, and biomechanics. Accident recon-

struction expert witnesses base their opinions on physical evidence, and scientific analyses of the evidence. Consequently, it shouldn’t matter which side describes the incident; since the evidence is shared, the science is the same. Unfortunately, common experience is that expert witnesses often disagree in the interpretation of the physical evidence, and this disagreement can be confusing to a jury.

THE APPROACH

Let’s take a simple example of a hypothetical traffic accident in which two cars collide at an intersection. One car intrudes into the side of the other: the classic “T-bone” crash configuration. The intersection is controlled by four-way stop signs and there are no traffic signals. The accident occurred at noon on a clear, dry day in mid-June. A traffic collision report was prepared by relevant authorities, and owing to the lack of independent eyewitnesses, no blame was assigned for causation. There were no passengers in either of the cars. Neither driver was cited for driving under the influence, there were no arrests made, and there were no special conditions.

The driver of the car that was intruded upon (the “target” vehicle) subsequently filed a complaint alleging significant damages resulting from this accident. The damages claimed resulted primarily in serious, well-documented injuries to his lumbar spine. The injuries consisted of cracked lumbar vertebra accompanied by several significant lumbar disk protrusions. This driver testified that he stopped at his stop sign, noted no other vehicles present, and then proceeded into the intersection whereupon he was hit by the other vehicle. In contrast, the driver of the other car (the “bullet” vehicle) claimed that the target vehicle was the vehicle who failed to stop. She claimed that after stopping at her stop sign, she did observe the target vehicle approaching, but since she was already stopped,



she proceeded into the intersection. Much to her surprise, she claimed, the target vehicle suddenly appeared in front of her and she had no time to perceive, react, and avoid the accident.

In analyzing this case, the accident reconstruction and the biomechanics team have similar, but different tasks ahead of them. The accident reconstruction must determine the likelihood that either/both vehicle stopped at their respective stop signs. The biomechanic must determine whether this traffic collision likely caused the injuries claimed. The keys to both questions are the likely vehicle speeds and the directions of travel immediately prior to the point of impact. Fortunately, the sciences of accident reconstruction, human factors, and biomechanics allow concrete conclusions to be drawn.

First, careful analysis of the damage to both vehicles revealed that the bullet vehicle was traveling at approximately 3 - 5 mph just prior to impact. Second, the analysis of the location of the impact (the Area of Impact, or AOI), and the final resting places of both vehicles (their Points of Rest, or PORs), along with the weights of the vehicles, revealed that the target vehicle was traveling at a speed of approximately 30 mph just prior to impact. These speeds, coupled with well-established vehicle accelerations and the distances both vehicles traveled between their stop signs and the AOI led to the conclusions that the bullet vehicle in fact most likely did stop; whereas it would be essentially impossible for the target vehicle to



Continued on page 40

attain its pre-impact speed if it was starting from a stop. Third, consideration of the human factors involved, namely the time typically required to perceive, and react to an unexpected hazard, supports the account provided by the driver of the bullet vehicle. Finally, analysis of the accelerations experienced by the parties involved during the collision led to the conclusion that the lumbar spine damages are not consistent with the quite mild forces likely experienced during this conclusion. While significant, they most likely did not occur as a result of this accident. A blend of different sciences produce a conclusion that is either connected or detached from the evidence that is presented.

These conclusions, based soundly on science, would certainly support the defense side of this case. It is always possible an expert for the

plaintiff might examine the same physical evidence and come to a different conclusion. Thus is the nature of litigation! In this case, the role of the accident reconstructionist is to examine the rationale supporting the differences to see if there is something that might have been missed, or if there is a fault in the logic. In most cases, the source of disagreement usually can be identified clearly, and described in plain language, leaving it to the arbitrator/jury to make up their own minds whose version is more likely to be consistent with the physical evidence. It is always very important to keep an open mind and treat everyone with respect.

THE BENEFITS

Over several decades, the science of Sherlock Holmes has evolved significantly. By combining the expertise of scientists in different fields, a much

more comprehensive perspective of likely accident scenarios may be obtained. In many instances, what appears to be a simple open and shut case is turned completely on its side by a different perspective. In the end, the greatest value provided by accident reconstructionists is the most accurate depiction of events. Sometimes the reconstruction is favorable to a given client, and sometimes it's not.

SUMMARY

By linking accident reconstruction, human factors, biomechanics, it is possible to deduce the answer to the question of what happened in this specific incident. Collecting physical evidence, analyzing it and drawing conclusions based on the evidence is the bedrock foundation of accident reconstruction. Elementary, my dear Watson! **LS**

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