

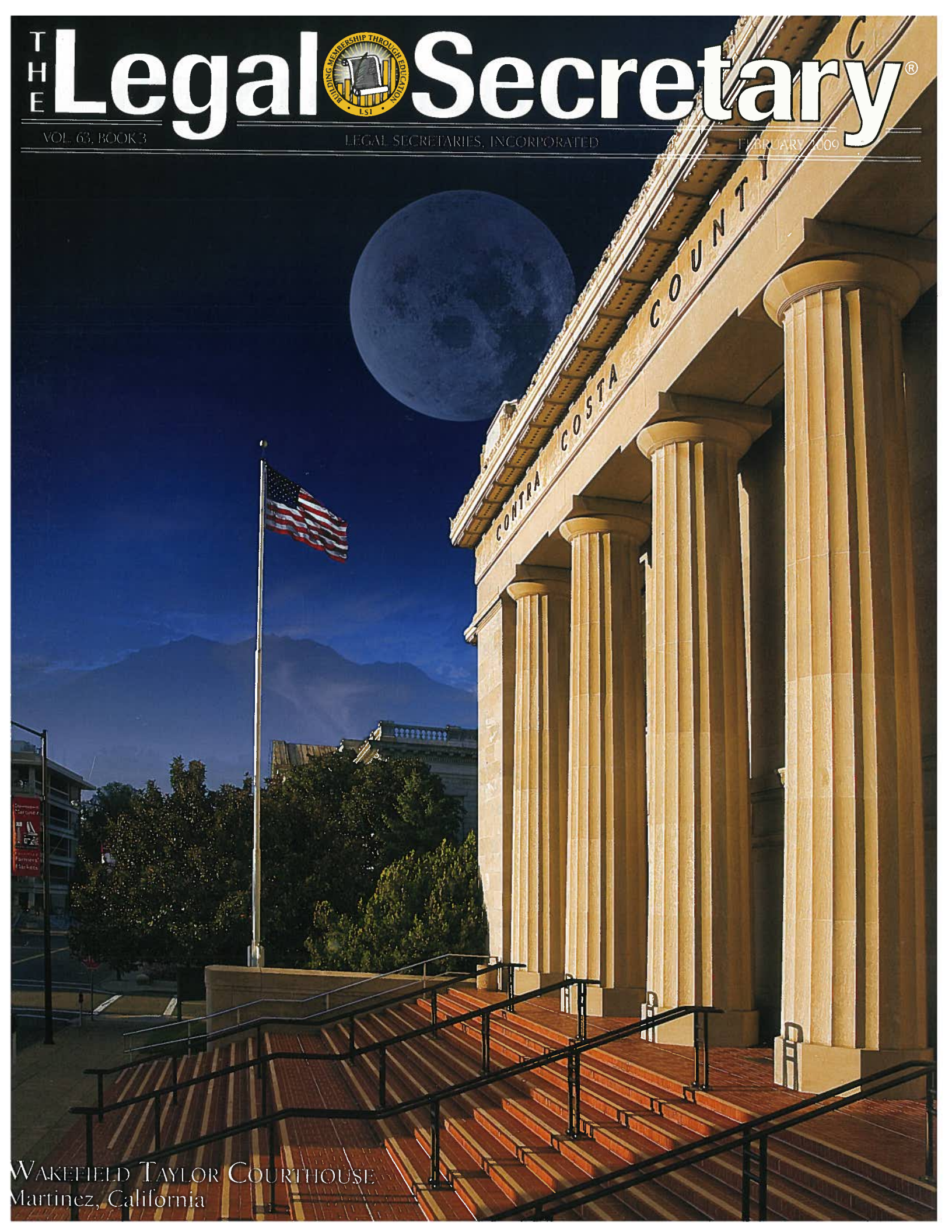
THE

Legal Secretary®

VOL. 63, BOOK 3

LEGAL SECRETARIES, INCORPORATED

FEBRUARY 2009



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Editor: DEBORAH RICKERT, CCLS Printed by: MONARCH LITHO, INC.

Building Membership Through Education

I am sure we have all heard the expression "Time flies when you are having fun." Well, time does fly, and here we are half way through our fiscal year. It has been a fun and educational year so far.

Riverside LPA hosted the November Quarterly Conference and treated us to a wonderful weekend of education, history, and of course fun at the Mission Inn. Despite the name, the Mission Inn was never a mission, but built to resemble a mission. For those of you who have yet to have the pleasure of attending a conference, the Mission Inn is just one example of the many places that if it weren't for conference, we may never have the opportunity to visit.

During the conference weekend in Riverside, attendees were treated to six different Legal Specialization Section workshops – all well attended and very informative. Legal Secretarial Training/Seminar Chairman, Cindy Illum Jones, moderated the workshop "Seminars/Workshops - from Topics to Presentations," providing attendees with the tools and information to present an educational workshop; and LSI Historian, Denise Lopes, CCLS, moderated a history book workshop to put together a history book or scrapbook without spending an exorbitant amount of money.

Well, we are half way through the fiscal

year and what have we accomplished? In my opinion, LSI has accomplished quite a bit. The CCLS Study Group pilot program is in full swing with eleven participating associations and seventy-one eager students with their eye on attaining the CCLS distinction this coming March.

We now have a chat room for local association Program Chairmen to exchange ideas. This is a great networking tool, and members can join the group by accessing http://groups.yahoo.com/group/LSI_programchairmen.

Our website (www.lsi.org) continues to grow and improve. In November, we welcomed Rapid Legal as our newest advertiser to the website. Rapid Legal is a strong supporter of LSI and is visible at many of our conferences along

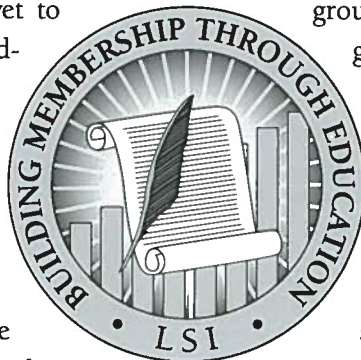
with Janney & Janney, our other website advertiser. We are very fortunate to have the support of two distinguished businesses, and in turn, we can show our appreciation by giving them our business.

A new page has been added to the website: the Court Link page. This page provides a link to every California Superior Court, the California Courts of Appeal, the California Supreme Court, United States District Court - Central District of California, and the United States Bankruptcy Court - Central District of California.

We also welcome a new benefits pro-



Christa Davis is President of Legal Secretaries, Incorporated and a member of Livermore-Amador Valley Legal Professionals Association. Christa started her legal career as a legal secretarial trainee in 1987. She has been working for Staley Jobson, a family law firm in Pleasanton since 1989, where she is currently the Administrator. Christa lives in Castro Valley with her husband and daughter.



vider: Working Advantage. Working Advantage provides a means for members to purchase special events tickets, movie and sports tickets at a reduced price. Look for more information about Working Advantage on our website soon.

The Spring Regional workshop will be held April 4, 2009, at the Hilton Hotel in Ontario, which is just across from the Ontario Airport making it very easy for everyone – no matter where you live - to attend the workshops.

The Continuing Education Committee (CEC) is working hard to ensure that all of LSI's publications are updated, currently focusing on the Guidelines for Preparation of a Legal Educational Program, and The Legal Secretary's Reference Guide. The CCLS study kit is also under review to be updated. The CEC certainly have their hands full, and are anxious to provide the most updated, quality educational materials to our members.

The February Quarterly Conference will be held at the Concord Hilton Hotel in Concord, hosted by Mt. Diablo LPA. We look forward to a weekend packed full of educational programs. In addition to the Legal Specialization Section workshops, LSI Career Promotion/Scholarship Chairman, Sally Mendez of San Francisco LPA, will be presenting a workshop on the scholarship program. With the deadline to submit scholarship applications quickly approaching, this will be a great opportunity to find out what your association can do to promote the scholarship program, the legal field, and LSI.

February 15, 2009, is the deadline to submit your association's bid to host an upcoming conference. We have read about the many conferences held over the years – the educational workshops offered, the networking, and the enjoyable times. Attending conference is a fulfilling experience and the opportunity to visit another city is

exciting. Why not invite the members of LSI to your city and submit your bid to host an upcoming conference! It is definitely a giant step outside of the box, but one well worth taking.

As I contemplated my article for the February issue of *The Legal Secretary*, I decided to read through older issues of the magazine to see exactly how far we have grown. It was interesting to read back as far as 1966 to see what was happening within and around LSI. Times have changed since then, but the fundamental message of LSI is still the same – education and participation. I was especially intrigued by the message that then LSI President Helen E. Harney wrote:

“....Legal Secretaries, Incorporated has progressed, has gained an even greater recognition throughout California, and has continued to be an organization held in the highest esteem, both by its members and the general public. We must never stand still. We must continue to be the leaders and set the pace, especially in the field of legal education.”



legal field – each in our own right. Just in the past year alone, we have taken huge strides to move this corporation into the future. Take advantage of everything LSI has to offer: education, networking, promotion of the legal field, and of course, friendships. The opportunity to access quality education, a website full of information, and the ability to contact other legal professionals at your fingertips is a rare find these days; take advantage of it, in every way, shape and form. Don't allow LSI to be a well kept secret. □

LEGAL SPECIALIZATION SECTION WORKSHOPS
3rd Quarterly Conference – February 2009 – Hilton Concord – Host: Mt. Diablo LPA

REGISTRATION FORM - DEADLINE IS MONDAY, February 23, 2009

Registration **MUST** be **RECEIVED** by each Section Leader **on or before the deadline**.
Please make advance reservations so materials may be prepared. Please check appropriate boxes below.

Mail or Fax a copy of this form to each corresponding Section Leader.

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

PLEASE MAKE ALL CHECKS PAYABLE TO "LSI"



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
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Friday, February 27, 2009 -- 7:30 p.m. to 9:00 p.m.

<u>TRANSACTIONAL LAW:</u> <i>"Mortgage Fraud"</i> Speaker: Barbara Jewell, Esq. <input type="checkbox"/> I will attend <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member <input type="checkbox"/> Handout Only Send to: Mae Brooks, CCLS, Transactional Law Section Leader 1050 S. Kimball Road Ventura, CA 93004 (H) 805-642-6478 (O) 805-659-6800 FAX: 805-659-6818	<u>FAMILY LAW</u> <i>"Domestic Partnership Relationship Law – How it Works and When it Does Not"</i> Speakers: Brigeda Bank and Katie Fox – Bank & Fox <input type="checkbox"/> I will attend <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member <input type="checkbox"/> Handout Only Send to: Stephanie Harrison, Family Law Section Leader c/o Law Offices of Marvin J. Brown 720 West 19th St., Merced, CA 95340 (H) 209-723-4479 (O) 209-384-0123 FAX: 209-384-1661
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Saturday, February 28, 2009 — 10:30 a.m. to 12:00 p.m.

<u>LAW OFFICE ADMINISTRATION</u> <i>"Have You Had Your Break Today? Meal & Rest Period Requirements"</i> Speaker: Paul Lynd, Esq. – Nixon Peabody <input type="checkbox"/> I will attend <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member <input type="checkbox"/> Handout Only Send to: Jan Vomkahl, Law Office Administration Section Leader 3553 Sutton Loop, Fremont, CA 94536 (H) 510-790-8337 (O) 415-984-8341 FAX: 415-226-0735	<u>CRIMINAL LAW:</u> <i>"Working Like a Dog! – Law Enforcement K-9 Unit"</i> Speaker: Officer Heidi Stephenson, Concord P.D., and K-9 Drago <input type="checkbox"/> I will attend <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member <input type="checkbox"/> Handout Only Send to: Cheryl Kent, PLS/CCLS, Criminal Law Section Leader 5534 Blackbird Drive, Pleasanton, CA 94566 (H) 925-462-3440 (O) 925-837-0585 FAX: 925-838-5985
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Saturday, February 28, 2009 — 4:00 p.m. to 5:30 p.m.

<u>PROBATE & ESTATE PLANNING:</u> <i>"Accounting: Charges? Credits? Migraine? Martini?"</i> Speaker: Margaret M. Hand, P.C. <input type="checkbox"/> I will attend <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member <input type="checkbox"/> Handout Only Send to: Leslie Ames, CCLS, Probate/Estate Planning Section Leader 1500 – 4th St., Eureka, CA 95501 (O) 707-442-0500 FAX: 707-443-2973	<u>CIVIL LITIGATION</u> <i>"Complex Discovery Issues"</i> Speaker: TBA <input type="checkbox"/> I will attend <input type="checkbox"/> Section Member <input type="checkbox"/> Non-Section Member <input type="checkbox"/> Non-LSI Member <input type="checkbox"/> Handout Only Send to: Elizabeth Adame, CCLS, Civil Litigation Section Leader P.O. Box 4344, El Centro, CA 92244 (H) 760-352-8333 (O) 760-352-4001 FAX: 760-352-5561
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The Legal Specialization Sections are a program of Legal Secretaries, Incorporated, an approved provider, and certify that these workshops have been approved for minimum MCLE/CLE credit of 1.25 hours each, by the State Bar of California.

Join Us For An Around The World Tour In Just Three Days!

**Third Quarterly
Conference
Chairman**



Maria Bishop, CCLS, is the Chairperson for the February 2009 conference. She has been employed as a legal secretary and paralegal for the past 33 years, working for the same attorney, Richard Perez of Perez & Miller, for the past 31 years. Maria is currently a member of LSI's Publications Revision Committee and is the Editor of the Law Office Procedures Manual, and she is the Treasurer and Bulletin Editor in her local association, Mt. Diablo LPA.

Mt. Diablo Legal Professionals Association is looking forward to taking you around the world in three days at the Third Quarterly Conference at the Hilton Hotel in Concord, California.

On Friday you will check in at LSI Airlines and be given your Boarding Pass to a fun filled trip around the World. First stop is Mexico at the Friday Night Reception. Come meet our wonderful LSI Officers, then snack on some tasty food from south of the border, visit our great vendors, and win prizes competing in the Suitcase Game. We will also have a contest for the "Most Recognizable Suitcase." A prize will be awarded to the suitcase most easily seen in the baggage carousel. So bring that special suitcase to the Friday night reception and enter it in the contest.

Saturday morning you'll be whisked off to Hawaii. You'll be greeted in the true Hawaiian tradition with a flower lei. Halfway through the morning business meeting, you'll be treated to a coffee break with a little hint of Hawaiian charm. Bring your cameras because there will be photo opportunities.

At lunch you'll find yourself in Italy. Relax with friends enjoying a delicious lunch and listening to soothing Italian music.

After the afternoon business meeting you'll get to make a short stop in China for afternoon tea and cookies to tide you over before we send you

off to France for a wonderful evening of fine food and music. The Diablo Women's Chorale will be entertaining us that evening with their beautiful voices.

On Sunday morning you'll be in England enjoying tea and pastries and some other delicious food. We'll have a great speaker to motivate and inspire you, and then we'll bid you bon voyage back home. We will have a contest for the funniest slippers. So bring your funniest pair and enter them in the contest to win a prize.

There will be no formal dress code. Nice casual will be the dress code for Saturday night banquet and throughout the entire conference weekend. We want you to be comfortable.

The Concord Hotel is home to Grisini Trattoria & Wine Bar, a moderately priced restaurant which serves breakfast, lunch and dinner. If you want to venture out, the Willows Shopping Center is right

across the street where you will find many restaurants such as Claim Jumper, Benihana, El Torito, and Fudruckers, and lots of stores to shop in. There is also Sun Valley Mall just a couple of miles away. The hotel offers free shuttles to/from the Concord BART station. Parking is free at the hotel. Visit the hotel's website at www1.hilton.com for more information about what the hotel offers and things to do in the area.

We are looking forward to traveling around the world with you. □



Humboldt County Legal Professionals Association Celebrates Boss of the Year/Legal Secretary of the Year

Submitted by
Humboldt County LPA

Leslie Ames has been a legal secretary since 1998, is a Notary Public, and obtained her California Certified Legal Secretary (CCLS) designation in 2003. She has been a member of Humboldt County LPA since 1999, has held numerous chairmanships within the Association, was President fiscal years 2003-2005, and has represented HCLPA as Governor since 2005. She works for William R. McClendon and John M. Anderson in Eureka, in the areas of Probate and Estate Planning, Trust Administration, Real Estate, and Corporate and Business Law.

Leslie has been married to her husband, Shorty, since 1987, has five cats and is an avid trail runner. In May, she completed her first 50k ultra trail run in Portland, Oregon, in memory of her mom.

On October 16, 2008, Humboldt County LPA held its sort of Annual, but not always—okay, not in about 4 years—Boss of the Year (BOTY)/Legal Secretary of the Year (LOTY) Luncheon.

Secretaries nominated their bosses for BOTY, and members of the HCLPA nominated other members for LOTY, via letter, poem, or in whatever written form struck their fancy, with judging done by a completely unbiased panel of office workers who knew not who the nominees were. The event was held at the Red Lion Inn in Eureka with approximately 40 people in attendance. HCLPA members put together gift baskets for raffling, and the attorneys did their part by purchasing lots of tickets (thank you!). Rory Hanson, Esq., came out the big winner in that department by winning two of the five baskets available. It was considered doubtful that he'd be putting the scrap booking basket to good use himself, but he also won a wine basket with a couple of bottles of wine, so anything is possible. However, his two secretaries and HCLPA members, Barbara McGee and Jan Nickell, were seen eyeing the wine and whispering conspiratorially. To date, it's unknown what transpired once those baskets

returned to their office.

Denise Lopes, CCLS, HCLPA's first ever LOTY winner, read the winning LOTY nomination, which was submitted by HCLPA President Kathy Parker on behalf of Leslie Ames, CCLS. Jim Kucharek, Esq., with the Department of Child Support Services, read the winning nomination of BOTY, also submitted by Kathy Parker, on behalf of her boss, Paul Brisso. Jim kept everyone in stitches with his side comments, and drew out the moment of suspense for as long as possible. Both Leslie and Paul provided gracious acceptance speeches, and it was quite evident that both were extremely surprised. Their respective nomination letters were presented to them in beautiful frames with a plaque attached stating their name and year of winning.

Soon to be retiring and long time Humboldt County Superior Court Judge, J. Michael Brown, was honored by HCLPA for his 26+ years of service to the bench, and was presented with a beautifully etched Fire and Light plate.

A good time was had by all, and many kudos go to HCLPA member and BOTY/LOTY Committee Chair Chris Cook and her band of merry helpers for putting on a fun luncheon. □



Elder Law: Our Parents, Ourselves

Submitted by
Placer County LPA



Lynn A. Dean is an attorney in private practice in Roseville, California. She graduated from California State University, Sacramento, with a B.A. in psychology, and went on to McGeorge School of Law. It was in law school that Lynn discovered her talents for trial advocacy. She was admitted to the California State Bar in 1983 and started her own practice in 1986, between the birth of her first child, Alan, and her second child, Monica. She is married to Michael Dean, an attorney practicing with Meyers Nave. Lynn's practice is devoted exclusively to estate planning and elder law and is focused on the needs of the aging population. She teaches classes through the local community college emeritus program, and is a frequent guest speaker at senior facilities and conferences on the topics of legal documents and asset protection.

The Elder Law attorney who is practicing today often works with families in crisis. Mom or Dad has just received the dreaded "D" diagnosis (dementia). The family is struggling to cope with a home situation that is deteriorating rapidly. No one can afford to quit their job and become Mom's full time caregiver, but the cost of bringing in care is beyond the family budget.

Often the first place the family goes after visiting the physician is to the attorney. The family has been told to "get things in order" so that they can assist Mom with her business affairs and her health care decisions. It has become apparent to me that the most important person in my office is the person who answers that phone call. We receive calls for everything from "I need to put Mom into a facility, but she doesn't want to go" to "how do I protect Dad's assets, if he has to go into skilled nursing." But the most troubling calls are the ones that begin, "Dad has Alzheimer's, and my sister has moved in with him, and is spending all of his money."

Every time I am asked to speak on the subject of aging, I always bring up the issue of elder abuse. Someone told me recently that where we are with elder abuse is about where we were with domestic violence about 20 years ago. This means that there is a lot of it going on, but no one is talking about it. I know that you have heard that the majority of elder abuse cases come from family members. In these challenging economic times, when people are losing jobs and houses, financial elder abuse will very likely be increasing.

Our public agencies (adult protective services) are overwhelmed, understaffed, and

will see their budgets cut in this era of drastic revenue shortfalls. I frequently hear from families that someone has contacted APS, but they wouldn't do anything about the problem. I tell them that APS can only do certain things, and since they are only one agency, getting all of the calls for these problems, they can't fix every situation.

We all need to be vigilant in order to protect our families, our friends, and our neighbors. Ironically, it seems sometimes that a senior will trust a stranger before they will trust someone in their own family. With dementia often comes a certain level of paranoia, but that usually takes the form of accusing the family members (or caregivers) of stealing something, when it has just been misplaced.

What should a good secretary be listening for when the phone rings? Here are some suggestions:

1) Who is calling? This is the most troubling issue for the attorney. As attorneys, we are usually retained to represent our clients. I would say more often than not, the person calling is not the senior, it is the son or daughter who is looking for help. Sometimes it is a spouse, who is embroiled in a dispute with children from a prior marriage. The attorney has to decide who they can represent in the situation. If the senior is no longer mentally competent, then from a legal standpoint, they cannot retain an attorney because they do not have the "capacity" to enter into a legal agreement. When growing up, I thought I wanted to be a doctor. Now I have to evaluate the mental capacity of my clients before I can sign them up. This becomes increasingly

(Continued on page 8)

difficult when you are dealing with the various types of dementia, some of which can be very subtle.

2) What is the urgency of the problem? This question usually involves trying to find out what the person who is calling wants me to do. Since I view my practice as a service business, I will make house calls, hospital visits, and see people in facilities. If someone is dying in the hospital, and the person calling wants me to “come over right away so that Mom can give me her house” (yes, I have received those calls), I will generally talk to the person, but politely decline the job. I try to see people as soon as possible, because they are looking for information. They will talk to their friends, their neighbors, and their colleagues at work, and come in with a lot of bad advice. Many times, the caller has been procrastinating because he doesn’t want to deal with confronting his parents about the problems they have. When the situation reaches “crisis” level, now he calls me and wants it fixed in 24 hours. If the problem is elder abuse, I need to know if the person can be removed from the abusive situation in order to come to the office.

3) Is this someone we can help? In my legal toolbox, I can offer people a few things. I can help with legal documents, such as powers of attorney, if the parent who needs them is still competent. If they are no longer competent, I can explain what a conservatorship is, and how you go about creating one. Believe it or not, many of the children who call me have no idea as to whether their parent has created a will, trust, or powers of attorney. If the parent has dementia, they may no longer remember this fact, and they certainly don’t remember who the attorney was who helped them years ago. But beyond my legal toolbox, I can offer the family resources. My office can refer to geriatric care managers, companies that assist

with placement, companies that provide in-home care, people who can help move Mom into the facility, or to her daughter’s home. One of the best resources I can refer is a company called the “Dementia Whisperers” who can help the family understand and communicate with the family member who has dementia. This will relieve much of the stress involved in coping with this difficult condition.

4) Should we be calling APS? Or 911? Although the majority of the calls that I get are from the senior or a family member, sometimes we get calls from neighbors who are “concerned” about a situation that they see. Family members may be unwilling to deal with their parents due to family history, or they may live far away. The neighbors, or church friends, may be the closest people to the day-to-day situation. They call me because they see something bad happening, and feel that it is not their place to intercede. We have to determine whether the situation is drastic enough that we should be calling APS. I have had calls from my clients, when they are concerned about a neighbor who is refusing to see a doctor, or go to the hospital. Although this is not a “legal” question, we all have a responsibility to care.

I find this area of practice to be very rewarding. But the challenges are increasing, as the population ages, and the cost of care goes up. Our profession will be serving this population as the baby boomers age and face the same issues. The best advice that we can give our clients, and their children, is to have those important legal documents in place, and communicate their wishes. It will never be easy to transition from independence to a need for assistance. But with compassion, we can protect those we care about, and make sure that they have quality of care in the years that they are with us. □



Why Parliamentary Procedure? What Is It Good For?

LSI Parliamentarian



Kay J. Bliss, PLS, CCLS, has held a number of chairmanships with LSI and is currently the LSI Parliamentarian. She has been employed in law firms all her working life and has been employed by Best Best & Krieger LLP for more than 27 years.

Parliamentary procedure is all about helping people run meetings efficiently and fairly. It is important for any group that wants to make sure that it doesn't violate the rights of its members and wants to get its business done as quickly and efficiently as possible.

People often make the mistake of viewing parliamentary procedure only as a set of rules. However, it is much more than a set of rules. It is a process for conducting business.

Parliamentary procedure is a system of conducting business when working in a group. Simply stated, it is an organized system that allows a group of people to come together and make a decision. The system is made up of basic principles and rules that determine how the group will proceed through the decision-making process. It is not about helping any one individual get his or her own way, and it is certainly not intended to prevent members from participating in the group.

Parliamentary procedure helps the group stay focused on a single issue until the members resolve it. This helps groups make better, more logical decisions. In many respects, parliamentary procedure is the "rules of the road for meetings." You should think of it as a set of guidelines by which to conduct meetings.

The following are basic concepts upon which parliamentary procedure is based:

- One thing at a time. Only one main motion is allowed on the floor at a time.
- One person. Only one person may talk at a time.
- Only one time per meeting. The same motion, or practically the same motion, cannot be made more than once per session.
- Enough people have to be there to decide. The group determines the minimum number of people (quorum) that must be present to make a decision for the whole group.
- Vote requirements are based on members' rights. The determination of what kind of vote is needed (such as majority, two-thirds, and so on) is based on members' rights. If an action gives rights to the members, it requires a majority

vote to pass. If an action takes away rights from members, it requires a two-thirds vote to pass.

- Silence = consent. If a member chooses to abstain from voting, that member is giving his or her consent to the decision made by the group.
- Everybody is equal. All voting members have equal rights. The majority rules but the minority has the right to be heard and attempt to change the minds of the majority.

Much of the above information has been taken from *The Complete Idiot's Guide to Robert's Rules*. I realize the name of the book may seem strange to you, but if you have a problem understanding Robert's Rules, it sets rules out in an easy format to follow. This is just the tip of the iceberg as far as information that can be found about Parliamentary Procedure, but I hope it will give you an idea of why such procedures are followed at the meetings of Legal Secretaries, Incorporated and also your local associations. As the LSI Bylaws state in Article IX (2) (b), my duties are set forth as follows:

The Parliamentarian shall: (1) review and act upon all proposed Local Association bylaws and amendments and, if approved, submit them to the Executive Committee for ratification; (2) be knowledgeable of the LSI Bylaws and with *Roberts Rules of Order Newly Revised*; (3) advise the President with respect to matters relating to the LSI Bylaws and Standing Rules and parliamentary procedure; (4) comply with the provisions of the LSI Bylaws in furnishing copies of the proposed amendments to the Governors; (5) after adoption of any amendment, provide copies of amended Bylaws to LSI Officers, Committee Chairmen and Governors no later than the following Board meeting; and (6) assist in the dissolution procedure of a Local Association, including the return of its charter and closing of the LSI Parliamentarian file. The Parliamentarian shall have the privilege of voice, but no vote. □

Carrying The Message, Attending LSI Conferences

Submitted by
San Fernando Valley LSA

Since passing the California Certified Legal Secretary (“CCLS”) exam in October 2004, I have attended most of the quarterly conferences put on by Legal Secretaries Incorporated (“LSI”) and hosted by various associations. I check out the seminar topics to be offered at the conferences, and choose those that interest me to attend. (Obviously, since there are six seminars per conference – two scheduled at the same time – I can only attend three seminars in any given conference.) For the most part, there is no requirement that the hours of legal education be in a specific area of law. I attend the seminars for my own growth in legal knowledge. I want to learn more about the law.

When I attend the seminars, I go with a notebook and pen in hand. I take copious notes while the speaker is speaking, and turn these notes into a formal report. When completed, for topics that are relevant to the firm (Civil Litigation and Law Office Administration, specifically), I submit this report to the secretarial manager at my office, who then disburses my reports to the secretaries in the firm. I believe that the knowledge I obtain from these conferences should be shared with those at my firm who are unable to attend the seminars themselves. Let them benefit from the knowledge I obtain from the wonderful speakers I hear so their legal knowledge can be broadened as well. I attend these conferences for my benefit, as well as for the benefit of the firm for whom I work.

Those of us who are CCLS’s must re-certify, requiring us to submit original Certificates of Attendance reflecting fifteen hours of legal education every three years. Upon my first recertification in October 2007, I submitted original Certificates of Attendance reflecting over 70 hours of legal education! (In addition to the four quarterly LSI conferences and two LSI regional conferences each year, my firm presents MCLE seminars during the lunch hour throughout the year for the attorneys and paralegals of the firm, that may also be attended by the secretaries that are CCLSs.)

I attend all seminars which interest me, with no limits on the hours I accrue by attending them. It is not about “getting the hours,” but rather about “getting the knowledge.”

HOWEVER, there is part of the experience that I cannot “carry” back to my firm. That is the experience of the wonderful people I meet at these conferences – other secretaries, paralegals and even attorneys who are attending the conferences for the same purpose as me – to gain knowledge. It is an experience that cannot be duplicated to meet these people, exchange information, and make friends with many of them. (Some of my closest friends today – with whom I share a lot of myself on a personal level – are friends I made at these very conferences.) So the next conference I attend, there are that many more people I remember from the previous conference. This builds a network of friends and “fellow travelers” within the legal community. My “community” grows as I am willing to participate with others within the legal community for the sake of knowledge and friendship. When questions are brought to me from legal secretaries with whom I work, if I do not know the answer, I now have a network of people with whom I can communicate – by e-mail or by phone – to whom to forward these questions, and who invariably have the answers I can then pass on to those who asked me the questions. Since I know I do not have all the answers, I can surely get them now within my growing network of friends!!

For those of you reading this article, if you have not yet attended an LSI conference, I encourage you to attend them, whether you are a California Certified Legal Secretary or not. Your knowledge will grow, the people within the legal community within the State of California will grow, and if you are not a CCLS now, this might even motivate you to become one. I urge you to join us. We have lots of fun – and we learn a lot too!!! □



Michal Prager, CCLS has worked as a legal secretary – primarily in litigation – since May 1976. She has been employed at Lewis Brisbois Bisgaard & Smith LLP in their Los Angeles office since March 2002, currently working with two employment law attorneys. Michal belongs to the San Fernando Valley Legal Secretaries Association and lives in Reseda with her dog Bonnie. She enjoys reading legal thrillers (of course!), watching television shows related to law (from Perry Mason to Law & Order), going to movies (movies “with a message”), going to concerts, listening to music, folk dancing, and writing short stories and poetry.

A Foiled Attempt to Ramp Up The Cost of Probate

Submitted by
Long Beach LSA

In the not too distant past, the probate of decedent's estates was big business and the source of significant fees to lawyers (and income to the Superior Court by way of filing fees). The fee schedule for lawyers is established in the Probate Code and is very generous. Subsequently, the popularity of trusts exploded, permitting many to avoid the probate process altogether.

The cost of probate took a big jump when, during the budgetary process for 2003-2004, the California Legislature concluded that the trial courts would not receive adequate funding. The answer was the enactment of a variety of new fees, including a graduated probate fee based strictly on the value of the estate to be probated. Instead of paying \$213.00, the usual filing fee in the civil courts, the new schedule resulted in significantly higher amounts.

For a few years this scheme was not challenged, probably because the increased amount involved was not enough to make litigation worthwhile.

This ended when Noelle Claeysens Burkey, as the executor named in the will of Pierre Claeysens, filed her petition for probate in the Santa Barbara Superior Court. The initial probate fee was \$29,197.00, based on an estimated estate of \$15,000,000.00. Noelle paid the fee under protest. By the time the process was to conclude, the value of the estate jumped to \$35,657,055.85. The resultant probate fee became \$74,642.51. Noelle paid the balance, also under protest. Parenthetically, the attorney fee was a healthy \$240,172.60.

Noelle next petitioned for a refund of the filing fee to the extent it exceeded \$213.00. The Santa Barbara Superior Court, the home for this probate, denied her petition.

Noelle appealed.

The Court of Appeal was not kindly to the Attorney General who argued for the validity of the fee system.

It wasted no time siding with Noelle. The introduction in its opinion read, "This appeal is about an estate or inheritance tax masquerading as a graduated probate user or filing fee... To the

extent that these statutes authorize the fee, they were enacted in violation of the state constitution and are of no force or effect."

The Court of Appeal continued, explaining that as a general rule there is no estate tax in California. This is as a result of a 1982 California voter initiative then known as Proposition 6. Notwithstanding Proposition 6, California does receive what is known as a "pickup" tax, which is equal to the credit that federal tax law allows. Inasmuch as this sum amounts to a reduction in what the Federal government would otherwise receive, there is no additional burden on the estate.

The court then explained that the Legislature is powerless to change the provisions of a voter initiative without a vote of the electorate, unless the language of the initiative specifically permits the Legislature to act on its own. No language in Proposition 6 so empowers the Legislature.

The Attorney General, arguing for the validity of the scheme, claimed that the Legislature did not change Proposition 6: It merely enacted a new statute which provides for a new fee. The court's response was, "We cannot agree. This myopic view is tantamount to the 'transparent evasion' condemned by the California Supreme Court over 100 years ago." As reflected in the Proposition 6 ballot arguments, the law proposed by the initiative was "carefully written to withstand challenges in the courts and to block legislative shenanigans to reimpose the [estate and inheritance] tax in any other name."

The judgment was reversed. All but \$231.00 will be returned to Noelle. She was also awarded her costs on appeal.

This decision should open the floodgates demanding refunds for the amount of the excess filing fees previously paid for existing and closed probates.

Although the graduated filing fee game is over, probate remains an expensive process. The generous attorney fee schedule remains unchanged.

This case is entitled *Claeysens v. California*. It was decided in 2008. □



Thomas A. Ramsey is a sole practitioner in Long Beach, California. Tom graduated from University of Southern California School of Law, and was admitted to The State Bar of California in 1965. During the past forty-three years, Mr. Ramsey has served as general counsel for a wide variety of business entities including franchised motor vehicle dealers, platforms and motor vehicles for the motion picture and television industries, restaurants, manufacturers and distributors of products, real estate developers and lessors, insurance brokers, and healthcare providers. One of Mr. Ramsey's most prized awards is that of Boss of the Year, given by the Long Beach Legal Secretaries Association. Thomas Ramsey's Business Law Column appears regularly in the Long Beach Business Journal.

Legal Secretaries, Incorporated

LEGAL SPECIALIZATION SECTIONS

CIVIL LITIGATION
CRIMINAL LAW
FAMILY LAW
LAW OFFICE ADMINISTRATION
PROBATE/ESTATE PLANNING
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- Networking provides a forum for the exchange of information.
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- Professional and personal excellence.

***For more information, contact Margaret Tovar, CCLS, Legal Specialization Sections Coordinator.
Office: (213) 452-0115; Home: (562) 699-2006; mtovar@kbblaw.com***

In Support Of The Law

Submitted by
San Diego LSA

We live in a time where many different factions or competing interests come to blows over what is right and what is wrong. Powerful people from across the globe have international discussions that determine the outcome of these affairs. Precedence and rulings, which were determined centuries ago, are utilized, referenced and support these arguments. Never before has the written word and/or the documentation of discussions been as important.

The number of laws, rules and regulations in today's society, compared to 50, 10 or even 5 years ago, is astounding. Who supports these powerful people that determine the outcome of these affairs when there is no room for error? The legal secretaries. Who ensures that the facts are presented properly, but the legal secretaries. Whom do these powerful people trust with highly confidential information? The legal secretaries.

The role of the legal secretary is constantly changing and plays a role in the direction of the industry as a whole. As the needs of the lawyers change, the role of their support person is evolving too. Legal secretaries are a very necessary part of any legal practice or government law office. We must possess a skill set and traits far above average, including excellent keyboarding, transcribing dictation, general knowledge about computers and other office machines, and ethics. In addition to their skill set, the legal secretary is an expert at time management, juggling many activities and roles at the same time. Their communication skills must be top notch and will, at times, include psychological flair in dealing with the differing personalities they come across. Legal secretaries also foster critical thinking, which enables them to make vital decisions. And in this

ever changing technology world, legal secretaries must maintain the industry-current technology to manage the information workflow which will determine how information is used for decision-making and to solve information management problems.

The key message here is this: there is a powerful and compelling business case for investing in a program of secretarial development. Legal secretaries are specialized and focus on specialty sections of the law to become more knowledgeable in their field. Be it civil, criminal or white collar litigation, corporate, contracts, intellectual property, patent, construction defect, family and estate planning, we are part of a team that

supports the law. That is where Legal Secretaries, Incorporated comes in... established in 1934, Legal Secretaries, Incorporated, (LSI) was organized for the purposes of providing educational, professional, and personal development programs to its members. In addition, LSI works towards promoting the interest of legal professionals and sup-

port staff and provides continuing education and professional development through seminars and workshops.

Here in San Diego, our objectives are to join together for the further education of legal secretaries and to work with attorneys, judges and bar associations in stimulating a high order of professional standards and ethics. The San Diego Legal Secretaries Association, as well as other local associations of LSI, encourages friendship, cooperation, and an exchange of ideas among members, all of which is a symbol of its commitment to growth and personal development. After all, we all work towards the same common goal ... to support the law. □



Michelle Tice has been a legal secretary since 1977 and currently works for Baker & McKenzie, assisting Chair of the North American Litigation Practice Group, Senior of Counsel to the North American Region and a partner in the transactional field. She is currently President of San Diego Legal Secretaries Association and also served SDLSA as a Director, chaired the Publicity and Charitable Projects Committees and was Secretary and Historian. Michelle has been married for 10 years to Harry, and has one son, Jack.



LEGAL SPECIALIZATION SECTIONS
Of LEGAL SECRETARIES, INCORPORATED

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: **Margaret Tovar, CCLS, Legal Specialization Coordinator,**
12412 Camilla Street, Whittier, CA 90601-3305

Enclosed is payment of my dues for the fiscal year 8/1/08 through 7/31/09 for the following Section(s). Please check appropriate boxes below for the sections you are joining.

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Creating the Law Firm Team – It's Not “We” and “They,” It's US

Every successful lawyer is, or should be, part of a team, even if that is just the lawyer and an assistant. Creating the right team is a lawyer's number one practice responsibility. Everyone in a law firm – lawyers, staff and support personnel – should be committed to a team effort for providing the best possible client service. Clients ultimately get their understanding of a firm by the way in which everyone, lawyers and staff, conducts themselves. A successful law office or law firm should be a team that creates quality service and work product for the benefit of clients. Improving the client service skills of everyone in the office involves them in the financial and organizational life of the firm so that they understand and appreciate their role and look forward to the future. The result will be a better firm.

The Barriers

At too many law firms, unfortunately, such an understanding does not exist. As a Certified Master Coach to legal professionals, my work with lawyers has helped me understand the lawyer personality traits that create challenges for administrators, staff, paralegals, even associates. Lawyers primarily focus on the task at hand and getting results, leaving little room for camaraderie and support. Inclusiveness will produce more harmony for all, increase productivity and therefore profitability of the firm. But studies have shown that inclusiveness is difficult for lawyers, who tend to be more skeptical, impatient and intense, and less interactive and able to take criticism, than people in general.

As a result, lawyers and law firms as employers tend to act on the premise that all non-lawyer personnel, from administrative professionals to the Executive Director, are servants to the law. Traditionally, servants are at a disadvantage in the master-servant relationship when the master has set no formal rules of conduct and acts arbitrarily. The successful team has colleagues, not

masters and servants. Lawyers, like managers everywhere, are most effective when they connect with their staff. When that connection is real and reinforced, it creates a shared work ethic, values structure and belief that what is done for clients is worthwhile. Failure to do so will cause inefficiencies, create disharmony within the firm and result in poor client relations.

Clear Descriptions

Having a comprehensive job description for every position in the law office is essential to creating a shared perception of work objectives. The absence of such descriptions promotes inconsistency and threatens objectivity. Descriptions should include the specific, significant tasks of each position and the performance standards by which the accomplishment of these tasks is judged. When administrative professionals understand what they should be doing and how they are evaluated, their performance is more likely to be positive, because all team members know and are committed to their roles.

Clear job descriptions can prevent one of the most consistent lawyer failings when dealing with staff: wanting the “perfect employee.” What job descriptions support is the role of the “ideal” employee – one who is competent, highly skilled, congenial and committed. Just as lawyers represent specialties in the law, so too does the ideal employee. Defining what the firm's needs are for each staff position and making clear what it takes to meet them is essential to helping every staff person become an ideal employee. Unfortunately, that's a reality that lawyers too often cannot see.

Years ago, when I was a Chief Operating Officer of a mid-sized firm, I was approached by several partners who said that the woman that we had on the switchboard was super bright, super good, and needed to be advanced. Their idea of advancement was taking the receptionist, and putting her into the data processing department.



*Edward Poll is a strategic planner, coach and law practice management consultant for lawyers and law firms. His 10 books and many articles about starting and operating a law practice profitably, and his speaking at law firm retreats and bar association CLE programs, comes from lessons learned during his experiences as a lawyer for 25 years, CEO of manufacturing companies and chief operating officer of a mid-size law firm. He has helped thousands of lawyers dramatically increase both their revenue and their profits through his coaching, syndicated columns and books which have received critical acclaim; they include his seminal work, *The Attorney & Law Firm Guide to The Business of Law*, 2nd ed. (Pub. ABA), his *Special Reports* series (*LawBiz*® 2007-2008) which are primers on running the law firm and *Secrets of the Business of Law: Successful Practices for Increasing Your Profits!* (*LawBiz*® 1998) and *The Profitable Law Office Handbook: Attorneys' Guide to Successful Business Planning.* (*LawBiz*® 1996). Contact: EdPoll@lawbiz.com or visit: www.lawbiz.com*

(Continued on page 16)

Aside from the fact that I thought that was a demotion, not a promotion, I reminded the lawyers that the receptionist was the firm's first point of contact with the outside world and that we should not risk replacing her with someone who might not be so good. What we needed to do instead was recognize her, reinforce her value, and increase her responsibility in her existing position.

Personal Growth

This is not to say that staff persons should remain in their area of specialization. Education and personal growth are essential for everyone in a law office. In the larger picture, building a team is inseparable from giving everyone in the office – including staff and lawyers alike – the opportunity to learn skills that provide better service and enhanced performance to clients. Everyone in the office should take hours of client service education programs each year. Education and training are not and should not be just a function of CLE courses for lawyers.

Giving staff the right training and support will give any lawyer the kind of confidence in the law office team that Teddy Roosevelt once expressed, "The best executive is the one who has the sense enough to pick good people to do what must be done, and self-restraint enough to keep from meddling with them while they do it."

Education is just one form of recognition that staff professionals should be afforded. For example, including staff on a web site gives clients additional contacts to help them, particularly since these are people who wouldn't expect to issue a bill for the service. It also enhances the morale of the entire firm, giving everyone a business card that recognizes they exist and are part of the team. Inclusiveness will produce more harmony for all, increase productivity and therefore profitability of the firm. It moves beyond the dynamic of "we" and "they," and creates a dynamic of US!

True Participants

The law firm team should be a part of all communication activities. Clients should be able to connect directly with all the people in a law office who may have an impact on their matter or who might be able to provide the client with the answer to one of their questions. The client who knows how to contact an effectively trained staff person and who receives an appropriate answer to a question, even if not from the mouth of the attorney, is generally far more satisfied, less agitated, than he or she would have been with merely having to leave a message for a later return phone call. The happy client with an answer is a

satisfied client, one who will maintain an ongoing relationship with the firm.

The ultimate expression of such a shared work dynamic is to provide staff persons an opportunity to participate in the financial rewards of the firm. If a lawyer takes the initiative to win a new client or begin a new practice area, the "bonus" comes from the increased revenue and profitability generated by the lawyer's own efforts. Staff persons, by contrast, rarely have any direct influence on the outcome of firm revenue and expenses. They can, however, make the extra effort beyond their job descriptions that can justify an extra reward. Two examples of such extra efforts are volunteering to make collection phone calls on overdue accounts and using personal time for reading up on law firm management to suggest ways to implement lessons learned.

When extra financial rewards for performance are on the table, measurements for success must be clearly defined so every person understands the criteria by which the firm will make its evaluation. It must be clear what contributions to extra efforts are considered to be within staff control, and which ones are not. The staff person must be told specifically what he or she must do, and how performance of those responsibilities will be evaluated to qualify for a bonus. When approached in this light, such extra compensation gives staff persons the opportunity for reward that clients increasingly afford to lawyers – having "skin in the game," and making the extra effort that justifies that participation.

Shared Perspectives

This brings us back to where we began, the importance of creating a team spirit in the law firm, one that embraces lawyers and staff with shared perspectives and objectives. Without that sharing, there will be less than a satisfactory work environment, less than a satisfactory result for the clients and less personal satisfaction for all concerned. We deserve to be emotionally as well as financially satisfied from work, an activity in which we spend so much of our waking time. To my mind, as an avid cyclist, the epitome of such satisfaction and how to achieve it remains Lance Armstrong's astonishing seven straight wins in the Tour de France. While a single cyclist may get most of a day's headlines, the Tour is the result of the efforts of not only the eight other riders on a team, but also the dozens of individuals who contribute to the months of preparation and training. That's teamwork – and that's what every law firm needs for staff professionals and lawyers to make their work lives worthwhile. □

LSI Second Quarterly Conference 2008



The California LLC Fee Ruled Unconstitutional – File Claims for Refund Now

Submitted by
San Mateo County LSA

Serving as both legal counsel and trusted business advisor to his clients, Mr. Lund specializes in the complex area of tax law. He works with companies of all sizes, from small, family-owned businesses to multi-national corporations, with a primary focus on middle market, privately held companies. Mr. Lund also works with high net worth individuals and families, counseling them on a variety of personal income tax issues. As a third-generation Bay Area resident, he has established strong ties with the region's business and community leaders. His familiarity with San Mateo and the surrounding counties enables him to expand the scope of his tax advice to include practical, sometimes local, business considerations, providing an added value to his clients.

Mr. Andersen has practiced tax law with Carr McClellan since 1977. He is certified as a specialist in taxation law by the State Bar of California. Mr. Andersen specializes in federal and California income tax planning for business, real estate and financial transactions. He works with the firm's corporate, healthcare and real estate attorneys to conduct tax analysis and planning when a transaction may have significant tax consequences for our client. Mr. Andersen works closely with the firm's Estate Planning, Trusts and Wealth Transfer Group in estate tax minimization strategies such as family limited partnerships and family limited liability companies.

California's taxation of limited liability companies is in a state of flux. If you are a member of a limited liability company ("LLC") or are contemplating forming an LLC, it is important to understand the recent and possibly permanent changes to California's method of taxing LLCs. An LLC formed to carry on an active business, hold investment real property, or facilitate complex family estate planning would all be impacted by these changes.

On January 31, 2008, the California Court of Appeal upheld a trial court's ruling that California's unapportioned LLC fee was unconstitutional. (*Northwest Energetic Services, LLC v. California Franchise Tax Board*, January 31, 2008.)

On August 11, 2008, the California Court of Appeal also held that the limited liability fee was an unconstitutional tax. (*Ventas Finance I LLC v. California Franchise Tax Board*, August 11, 2008.) The court limited the refund to the difference between the levy actually paid and the amount that could have been assessed.

The trial court and appellate court analyzed California's existing LLC fee structure. Under current law, all LLCs doing business in California are subject to the state's LLC fee. Even if there is no California income, the LLC is still obligated to pay the fee on the LLC's "total income," that is, its worldwide income. The fees are permanently set as follows:

- \$900 if the total income is at least \$250,000 but less than \$500,000;
- \$2,500 if the total income is at least \$500,000 but less than \$1,000,000;
- \$6,000 if the total income is at least \$1,000,000 but less than \$5,000,000; and,
- \$11,790 if the total income is \$5,000,000 or more.

Both the trial court and the appellate court determined that this LLC fee structure violated fundamental tax principles. A prime tenet of state and federal taxation requires that a tax imposed by a state must (1) have "substantial nexus with the taxing state;" (2) be "fairly apportioned" between income earned inside the taxing state and outside the taxing state; (3) "not discriminate

against interstate commerce;" and (4) be "fairly related to the service provided by the state." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). Applying these tests to the LLC fee, California courts concluded that the fee is invalid because it is not fairly apportioned. That is, the LLC fee taxes too much LLC income rather than only the income earned or related to California. Consequently, both courts held that the LLC fee was unconstitutional.

The recent appellate court ruling was anticipated. The California Legislature passed AB 198, which revised the terms of the LLC fee. Governor Schwarzenegger signed AB 198 into law on October 11, 2007, prior to the appellate court ruling. This new law preemptively reduced the state's obligation to refund LLC fees in the event it was declared unconstitutional. The Legislature made an "11th hour" play to protect California's coffers.

AB 198 changes the LLC fee calculation in two significant ways: (1) The amount of the fee is determined using only California income for tax years beginning on or after January 1, 2007; and (2) If the LLC fee was declared unconstitutional, a taxpayer filing a claim for refund for year prior to 2007 would only be entitled to a refund related to the income earned outside of California.

The Legislature retroactively revised the fee calculation by requiring the amount of the LLC fee to be determined on only California income. AB 198 essentially provides that while the court can declare the entire LLC fee unconstitutional, the legislature will only allow refunds for the portion that LLCs were "harmed" by the unconstitutionality of the fee.

Under AB 198, LLCs operating solely in California will not be entitled to any refund of previously paid LLC fees. LLC's generating income from California and outside California will receive a refund of only the LLC fee related to income earned outside California.

The Franchise Tax Board (FTB) has not decided whether to appeal the appellate court decision to California's Supreme Court. In the meantime, the FTB is allowing taxpayers to file a "protective claim," which preserves the LLCs right to refund. □

CCLS Study Group Update

CCLS Chairman

Congratulations to Riverside LPA for hosting a successful LSI quarterly conference. While I was not present, I am told that it went well and that the Mission Inn is quite beautiful. I would like to take this opportunity to bring you up to speed as to the progress of the CCLS program.

It is my understanding that of the 15 examinees for the October 2008 exam, 4 have passed. Congratulations to Shara J. Bajurin, CCLS, Joy Jordan, CCLS, Jennifer L. Page, CCLS, and Jessica Slaton, CCLS!

At the time this article is being written, we will have completed half of the CCLS study program. We began this endeavor with 72 students and 11 instructors – a total of 83 participants with 11 participating associations. During the beginning weeks, the instructors were advised to anticipate losing students during the holidays. It is always unfortunate to see students quit or drop out, but for those of us who have been in this field for some time, we know that it happens. The important thing at this time is to stay focused and keep our eyes on the goal – helping our students become a CCLS! Unfortunately, 11 weeks into the program, we have lost a few students along the way. Many have dropped out due to illnesses, personal time commitments, and change in their employment status. As this was anticipated, the instructors are working around these unfortunate occurrences and are trying to keep the remaining students focused.

The California Certified Legal Secretary exam consists of seven sections: Law Office Administration; Reasoning and Ethics; California Legal Procedure (Civil, Family, Real Estate Corporations, Probate/Estate Planning); Skills; Legal Terminology; Legal Computation; and Ability to Communicate Effectively. The study program has been designed as a 23-week simultaneous study group program, with at least one instructor per group. Each week while in class,

students are given pop quizzes, a lesson, and a recap quiz, as well as homework to reinforce the materials that are being taught. Students who have signed up for the CCLS study group plan are being challenged every week on all subjects which will be on the exam.

I thought about sharing with you only the positive aspects and outcomes of the CCLS study groups, but then the focus of this article is not only to provide a progress report, but to help those who are undecided about becoming a CCLS. One of the challenges that this program has faced throughout the years, is lack of faith. Once you set becoming a CCLS as your personal goal, you need to have faith; faith in yourself as a legal professional; faith in your abilities; faith in your work product; faith in your studies, and faith in your own success.

Throughout this course, I have heard students ask why they should become a CCLS; why should they continue to participate in the study groups; why should they complete the homework and turn it in. At times, I have heard that a student wants to study by themselves and receive only the materials. As I have discussed with the instructors, the current CCLS plan was designed for a classroom setting and the use of an instructor is imperative for true success within this program as currently structured. At this time the program is not designed for independent study. After fine tuning the class course, we may eventually design a program for independent study, but at this time, our focus remains with the current program.

So, the questions remain, why participate in the CCLS study group as currently designed? What are the benefits? I realize that at this point, it is difficult to see the proverbial light at the end of the tunnel. During the holidays, when family time is crucial, faith in themselves, in the instructor, in the program, in the exam, can begin to waiver. Taking into account the level of difficulty and the challenge presented, this is normal



Astrid Watterson, CCLS, is a member and past President 2005-2007 of the Sacramento Legal Secretaries Association, and she is the current LSI California Certified Legal Secretary Chair. Astrid received her CCLS designation in 2003 and is a graduate from the University of California Stanislaus paralegal certification program. She is currently employed as a paralegal with the law offices of Somach Simmons & Dunn in Sacramento. Her primary focus is civil litigation with an emphasis in natural resources. Astrid has worked in the legal field since 1997 and has been teaching the Beginning Legal Secretary classes in Sacramento for four years and the CCLS study group courses over a year. She lives in Stockton with her husband Miles and two daughters, Alexis and Emily, and she commutes to Sacramento.

(Continued on page 20)

behavior. When a student fully participates in the CCLS Plan, they receive the benefit of being in a group, having a structured environment, obtaining feedback from work submitted, having someone who can answer questions, being in the company of others who are experiencing the same doubts and questions that the student may be experiencing, and overall camaraderie and support.

Attitude and an overall positive outlook is a key component to success. I am not a psychologist and can only speak from personal experience, but I can tell you that students, who present a positive attitude and outlook, will have a higher success rate than those who believe they will fail.

I believe the formula for success is:

Positive Outlook + Study – Negativity = SUCCESS!!!

Success breeds success. Achieving short-term goals eventually leads to success in pursuing long-term goals. That is exactly what the study groups attempt to realize for the students. Achieve shorter goals, such as passing the quizzes each week, and eventually we work our way up to the long-term goal – becoming a CCLS!

My parting advice to all those who are studying for the March 2009 exam, whether you are participating in the state-wide CCLS Plan or are part of an independent association study group, or are even studying for the exam on your own, is don't give up! Stay true to the goal you have set for yourself, study, be positive, and remember that LSI and its members are here to help. □

Preparing Your Attorney, (Continued from page 36)

2. Build trust in the mediator. This can be done even before the mediation, by discussing why this mediator was chosen, what you know about him or her, and what he or she can bring to their case.

Your client may be anxious to reach a resolution early in the day. Encourage him or her to be patient, since mediations often evolve throughout the day. Additionally, you can advise clients about 'down time,' when they are inevitably left in the room alone while counsel is in another room with the mediator. Clients' anxieties generally rise during this time. If they are prepared in advance, and even advised to bring a book, work, or even an iPod to keep them busy during the down time, their apprehensions will ease and your attorney will appreciate the help.

Follow Up After Mediation

If the parties did not reach settlement on the day of the mediation, you can capitalize on the momentum of day by assisting the attorney in continuing telephonic negotiations with the opposing party, with the mediator involved. Get a summary from your attorney on where negotiations left off and whether there was any 'homework' assigned by the mediator.

In cases that don't settle, oftentimes it's a matter of additional discovery or other document exchanges that need to take place. You can assist the attorney by scheduling those due dates and ensuring they are complied with. Once they are, you can also help by reminding your attorney about scheduling another mediation session.

Conclusion

Paralegals play an essential role in preparing their attorneys and their clients for mediation. By preparing in advance of the session, the attorney is in a better position to advocate for their client and reach a satisfying result in resolving their dispute. The resolution of a dispute is a huge relief to a client, and their attorney's ability to help them reach results builds trust and a lasting relationship. You are a fundamental part of that satisfaction; you are working to help clients resolve their disputes in an efficient and confidential way.

By taking a proactive approach to mediation, paralegals, legal assistants, and secretaries can assist an attorney and her clients in preparing for mediation in many ways. A successful mediation experience for all parties is in your capable hands. □

The Importance of Quality

Submitted by
San Gabriel Valley LSA

A small number of years ago, back when I practiced law on the east coast, I represented a printing company that was being sued by its former quality assurance manager. The name of the company, like the name of the quality assurance manager, is unimportant. The story, though, is one that has remained with me and which I expect to tell until my dying days.

Among other things, the printing company printed huge numbers of inserts for Sunday newspapers using massive cylinders the size of tractor-trailers. Unfortunately, they had repeated issues with typos, incorrect prices and blurry photographs on their print runs. The errors would not have been particularly costly if they were only printing a few copies of each insert. Instead, each time there was an error, the company had to reprint several hundred thousand multi-page documents – at its own expense. The expense was tremendous. The quality issues were costing the company large sums of money for paper and ink and labor. And, just as importantly, they were costing the company clients. Even though it was paying for the new print runs, clients lost confidence every time they had to point out to the company that it had the wrong price for a product or had misspelled a name.

Eventually, the company terminated its quality assurance manager and hired a new one. Under the new manager's supervision, the problems ceased. But the former quality assurance manager filed suit, alleging he had been unlawfully terminated.

Now, this is where the story becomes particularly interesting. In the process of handling the lawsuit, we took the former quality assurance manager's deposition. Sadly, he did not take any responsibility for his performance issues or for the company's quality problems. I will hold my thoughts about the effect that failing to take

responsibility has upon our society for another day. For today, it is more important to know that the former quality assurance manager also complained that, after his termination, he had been unable to find another job for almost a year. He had sent his resume to dozens of printing companies across the country, he told us, but not one of them even called him for an interview.

That, he thought, was odd.

Why wouldn't another printing company want someone with his experience?

Why wouldn't they even interview him?

The only conclusion he could come up with was that his former employer, our client, was defaming him. They must be telling other printing companies that he was a problem employee, or that he had sued the company. There must be a conspiracy.

He had no evidence that any of this had occurred – and there was no evidence that it had occurred – but it was the only conclusion he could reach.

"Is this the resume you sent them?" we asked him, very gently, during his deposition, and we handed him a copy of his resume.

"Yes," he said.

"Would you do us a favor?" we asked. "Right there, at the top of the resume, do you see where it says you worked for the company for 10 years?"

"Yes."

"Would you tell us what it says your job title was?"

He looked at the resume, but didn't answer the question.

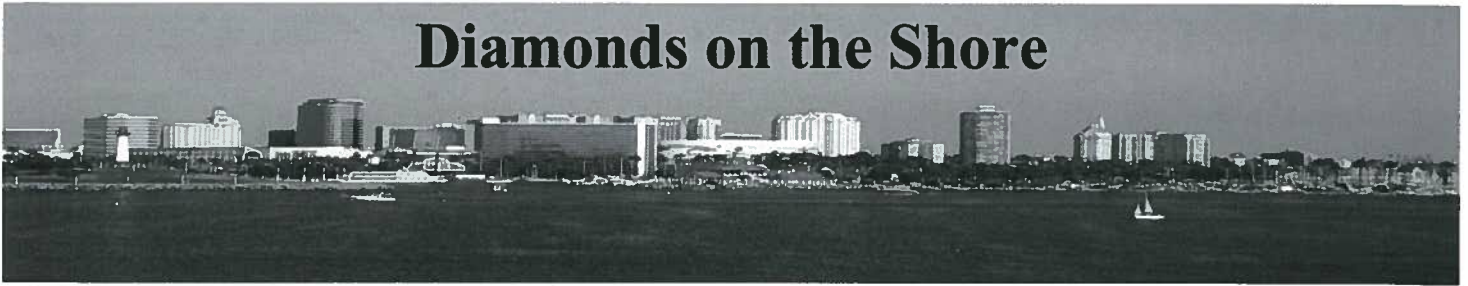
Because, you see, at the top of his resume that he was sending to potential employers in an attempt to find work as a quality assurance manager, he had written that he had worked for 10 years as a "QUILTY ASSURANCE MANAGER."



*Michael Kun is shareholder with the law firm of Epstein Becker & Green PC in Los Angeles, where he represents employers in a wide array of employment matters, including class actions and lawsuits alleging discrimination, harassment, breach of contract and defamation. He is also a novelist whose most recent novel, *You Poor Monster*, was nominated for the Pulitzer Prize. Contact www.ebglaw.com.*

(Continued on page 24)

Diamonds on the Shore



Legal Secretaries, Incorporated - 75th Annual Conference May 14-17, 2009



701 West Ocean Boulevard
Long Beach, CA 90831-3102
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Fax: 1-562-983-1200

Hotel Reservations

Room Rates:

\$169 per night for Single/Double Occupancy
\$25 per person additional charge for Triple Occupancy, plus local tax
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Room Reservations:

1. Call directly to Long Beach Hilton at 562-983-3400, Group Code LEG
2. Make reservations online at <http://www.longbeach.hilton.com> - Group Code LEG
3. **Deadline for group rate is April 13, 2009**
4. Cancellations must be received 24 hours prior to arrival or one night room and tax will be assessed.

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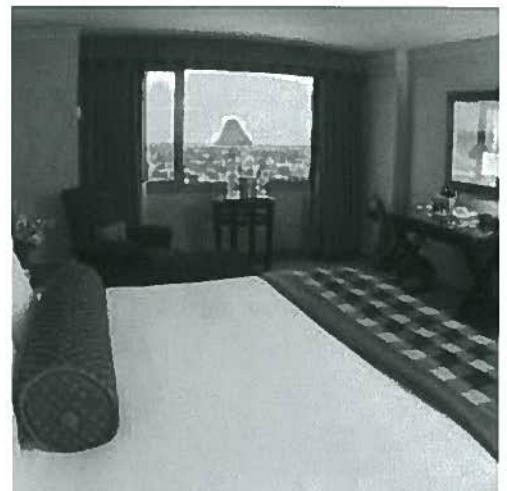
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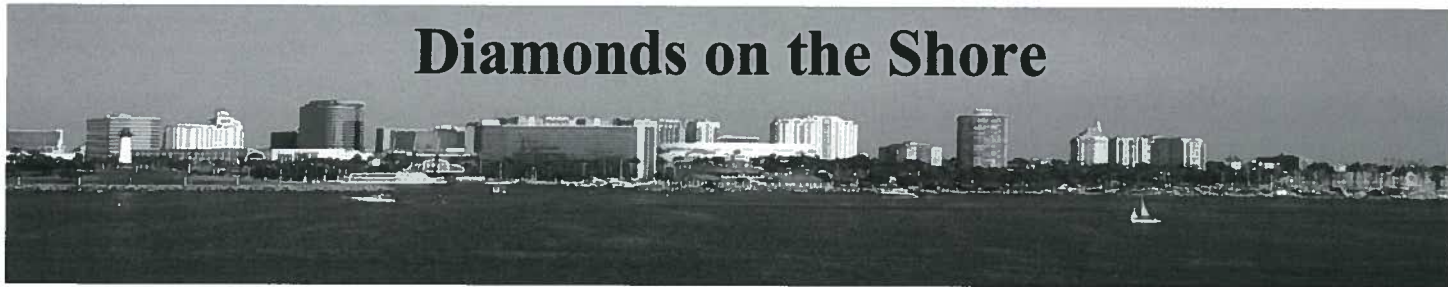


Questions:

Debby Tankersley, CCLS, Conf. Chair
Telephone: 949-851-7473
E-Mail: dtankersley@jdtplaw.com



Diamonds on the Shore



Legal Secretaries, Incorporated - 75th Annual Conference May 14-17, 2009

Conference Registration Form

Name (as it will appear on badge): _____
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E-Mail address: _____

Please check if applicable and include title:

- ☐ State Officer _____
☐ State Chairman _____

Please check if you are:

- ☐ Governor
☐ CCLS ☐ PLS

POSTMARKED ON OR BEFORE APRIL 15, 2009 _____ @ \$110.00 \$ _____

POSTMARKED ON OR AFTER APRIL 16, 2009 _____ @ \$120.00 \$ _____

INDIVIDUAL TICKETS

Registration by 4/15/09	_____ @	\$ 11	\$ _____
Registration after 4/16/09	_____ @	\$ 21	\$ _____
Governor's Lunch (Friday)	_____ @	\$ 35	\$ _____
Welcome Reception (Friday)	_____ @	\$ 11	\$ _____
CCLS Lunch (Saturday)	_____ @	\$ 35	\$ _____
Newcomer's Lunch (Saturday)	_____ @	\$ 35	\$ _____
Banquet (Saturday)	_____ @	\$ 59	\$ _____
Brunch (Sunday)	_____ @	\$ 35	\$ _____

TOTAL AMOUNT: \$ _____

Dinner Choice: ☐ Chicken Stuffed with Boursin, Spinach and Pancetta **or** ☐ Asian BBQ Glazed Salmon
Special Dietary Requests: _____

PLEASE NOTE: All LSI Conference Delegates and Alternate Delegates must register.

Make checks payable to **LBLSA 2009 CONFERENCE FUND**

Mail to: Debby Tankersley, CCLS, 2009 Conference Chair

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Not "QUALITY ASSURANCE MANAGER."
"QUILTY ASSURANCE MANAGER."

There was no need for us to say anything more.

In the time since those events occurred, I have not been able to think of a better example of irony than the quality assurance manager who misspells the word "quality." Perhaps you can think of one. Moreover, it has become the story that I tell, over and over, whenever I want to stress the importance of quality.

In doing our jobs, whatever we do affects our reputations, not just individually, but as a company. Everything we say or write has the ability to bolster our reputations or, in a moment, ruin them. In fact, there is an old saying that it takes a lifetime to build a reputation, and one second to destroy it.

An excellent memorandum becomes an insult if you misspell a client's name.

A payroll change form becomes a nightmare if it provides for an \$85 per hour raise, instead of \$0.85.

A misplaced file, or a misplaced document, can cripple a law firm's ability to defend a lawsuit.

You may have a great idea, but if you mischaracterize or misunderstand something, you will lose the confidence of the people you work with in the time it takes to snap your fingers.

You may stay up all night working on a brief, or completing a report, but everyone is more likely to remember the typographical errors than your commitment.

Can we be perfect? No. There really is no such thing as perfection. But we can be excellent. In fact, we must be if we expect to succeed as individuals and as companies.

What does it take to be excellent? The answer is simple: time. It takes a few more moments of your time to give a document one last review before you finalize it. It means planning ahead so you will have enough time to check the law before you finalize a memorandum. In short, quality is just a matter of time.

If you take the time to be excellent, you will be excellent.

If you focus on quality, you will produce quality work.

If you don't, you may only produce quilty work.

And no one – no one – wants quilty work. □



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California Raffle Rules For Nonprofit Organizations

Submitted by
Capitol City LPA



Michelle Rodgers, CCLS is a legal assistant with Stern Van Vleck, LLP. She has been a legal secretary for 20 years. Michelle earned her CCLS in 2001 and holds a paralegal certificate as well. An LSI member since 1992 when she joined Contra Costa County LSA, Michelle has held many offices. She currently serves as Governor for Capitol City Legal Professionals Association. Michelle has been married to husband Tom for 19 years and enjoys living in Grass Valley with their two sons, Matt and Tyler.

Until recently, I was unaware of the rules in California for conducting raffles. In June, I started working at Stern Van Vleck, LLP, a law firm in downtown Sacramento that represents many nonprofit organizations. I have since learned about the rules for conducting raffles in California and I wanted to share what I have learned with the local associations of LSI.

In my research I found that only one of LSI's 42 local associations holds a raffle permit – Mt. Diablo LPA. I contacted Maria Bishop, CCLS of Mt. Diablo LPA to confirm my research and to learn what her association has been doing to follow the rules.

This article is to provide you with information on the applicable rules in the event your association wishes to conduct raffles at future events, and what your association is allowed to do with the proceeds of such raffles.

Summary of Raffle Rules

Under certain specific conditions, California charities and other eligible nonprofit organizations may conduct raffles to raise funds for beneficial or charitable purposes. This is actually a limited exception to the general Constitutional prohibition against "lotteries" and other games of chance.

"Eligible nonprofit organizations" include charitable and religious organizations, as well as other nonprofit organizations that have received tax exempt status from the State Franchise Tax Board such as business leagues, chambers of commerce, agricultural or horticultural organizations, cooperatives, fraternal orders, civic leagues, social welfare organizations, homeowners associations, and social organizations. LSI holds the right type of tax exempt status from the State to be eligible to conduct raffles if all other applicable rules are followed.

In order to legally conduct raffles, eligible organizations must first register with the Department of Justice (Attorney General) each

year that they plan to conduct raffles. For purposes of registration (and reporting), the Attorney General's office uses the fiscal year September 1 through August 31. Organizations wishing to conduct raffles must file an annual Application for Registration with the Attorney General by September 1 of the year (September 1 through August 31) in which it expects to hold a raffle (Form ct-NRP-1). A raffle registration is good for 12 months, from September 1 through August 31, and must be renewed annually.

The organization must receive written confirmation from the Attorney General that it is registered prior to conducting a raffle, and the raffle must be conducted in accordance with the statutory requirements. The annual registration should be filed as soon as possible because it can take 60 days or more to receive confirmation of registration. The registration fee is currently \$20.

In addition to the annual registration, a separate disclosure report is required for each raffle held by the organization. The reports must be filed with the Attorney General's Registry of Charitable Trusts no later than September 1 for raffles held during the previous 12 month period.

The rules regarding legal raffles are found in California Penal Code section 320.5 and corresponding regulations promulgated by the Attorney General's office. The major statutory obligations for an eligible nonprofit organization to conduct a raffle are that:

1. The fundraising event must meet the definition of a "raffle;"
2. At least 90 percent of the gross receipts generated from the sale of raffle tickets for any given draw must be used to benefit or provide support for the beneficial or charitable purposes of the organization that conducted the raffle, or it may use those revenues to benefit another private, nonprofit organization, provided that an organization receive-

(Continued on page 26)

ing these funds is itself an eligible organization.

- a. In other words, only 10 percent of any raffle ticket sales receipts can be used to pay for the expenses incurred for conducting a raffle.

However, an eligible organization can use funds from sources other than the sale of raffle tickets to pay for the administration or other costs of conducting a raffle. For instance, some organizations obtain cash or in-kind contributions from third parties to cover some of the expenses of conducting a raffle. Another option is to pay for some or all of the expenses of conducting a raffle from the organization's own funds or from receipts from ticket sales to a fundraising event (not raffle ticket sales).

- b. As used in Penal Code section 320.5, "beneficial purposes" excludes purposes that are intended to benefit officers, directors, or members, as defined by Section 5056 of the Corporations Code, of the eligible organization. Thus, appropriate uses of raffle proceeds would include things such as a donation to another charitable organization.
3. All of the money generated from every raffle must be used in California. In no event can funds raised by raffles conducted by an eligible organization (pursuant to Penal Code section 320.5) be used to fund any beneficial, charitable, or other purpose *outside of* California; and,
 4. Each eligible organization must report to the Attorney General every year in which it conducted a raffle and file a separate financial disclosure report on each raffle event held by the organization.

The reports must be filed with the Attorney General's Registry of Charitable Trusts no later than September 1 for raffles held during the previous 12 month period. The required information appears on the Nonprofit Raffle Report (Form ct-NRP-2). Essentially, an eligible organization must report the date and location of the raffle held; total funds received from the raffle; total expenses for conducting the raffle; the charitable or beneficial purpose for which raffle proceeds were used or the amount and organization to which proceeds were directed.

One exception to the initial registration with the Attorney General is if the organization only conducts raffles in which all tickets for the drawing are free and solicitations of voluntary donations to the organization are in no way connected to distribution of tickets (and this is made clear to all participants). If the organization charges for tickets or requires a "donation" in return for a ticket, it must register with the Attorney General.

For example, if an association simply provided each attendee of a meeting with a raffle ticket and then awards a prize to the holders of winning tickets, this would be more like a random door prize and not a raffle and wouldn't be covered by the rules I have described here.

In addition, only an employee of the eligible organization is entitled to receive compensation in connection with the operation of a raffle. The raffle may not be conducted by any gaming machine, apparatus, or device, nor may the raffle be conducted, and no tickets may be sold, within an operating satellite wagering facility or race track. Furthermore, a raffle may not be advertised, operated, or conducted in any manner over the Internet, and no raffle tickets may be sold, traded, or redeemed over the Internet. Note, however, that "advertisement" does not include the announcement of a raffle on the website of the eligible organization. Finally, no individual, corporation, partnership, or other legal entity, besides the eligible organization, may have a financial interest in the conduct of the raffle.

Conclusion

Whether you call it a raffle, an opportunity drawing, or a drawing, if it is a means for distribution of prizes by chance among persons who have paid money for the opportunity to win, your organization is required to obtain a raffle permit before holding such an event. Every person involved in a raffle without a permit could be found guilty of a misdemeanor. (Penal Code §§ 319-329.)

I encourage each association to review these rules and/or visit the Attorney General's website at www.ag.ca.gov for more information about charities and raffles. Your association may want to make registering for a raffle permit and reporting a routine part of business each year.

The foregoing is based on information gathered from the Attorney General's website and attorneys who practice in this area, and is not intended to be legal advice. You should consult with counsel on the application of these rules to ensure that your organization's fundraising efforts are in compliance with state law.

I would like to thank Dale Stern of Stern Van Vleck, LLP for his assistance with this article. □

Positive Mentoring

Submitted by
Sacramento LSA

The definition of mentor is 'a trusted counselor or guide...tutor, coach.'

I read with interest the article that Leslie Ames, CCLS, wrote for the November issue of *The Legal Secretary* magazine. Leslie's article was entitled, "Are you a Mentor?" I have long wanted to do something similar, but from a different angle; that is, talking about positive mentoring.

So many of us have been on local Association boards and have served on committees, when out of the blue comes a comment or two blasting us for this or that, not doing things the way they have always been done, and in a way, completing dissecting any ideas we may have.

The comments are usually directed by those who have served before us – past presidents of our associations, committee chairmen, etc.

I am blessed to have a couple of mentors who helped teach me the ropes. One such person is Marve Breech, CCLS, a lifetime member of Sacramento Legal Secretaries Association. Marve was our long-time Parliamentarian and was on the board when I first began my chairmanships and serving as an officer in various capacities. Marve took me to my first conference, back in 1998. She introduced me to the many LSI officers and chairmen at that meeting. I was forever grateful as I did not know a soul! Marve escorted me to the general assembly meetings and showed me what was done on the state level, and what our officers do on the local level at the meetings. Marve was at our board meetings and dinner meetings and for the most-part, offered advice here and there, in a constructive mode. She did not criticize necessarily – she

taught. She counseled. She guided us. I will always be thankful for this.

What about teaching the ropes to someone else? Someone brand new? How do you do it? You speak from experience. You guide them with examples of how prior events or meetings were put together. Accept new ideas and allow for changes. Just because it may have been done a certain way for a long time does not mean there is not a better or a new way to accomplish the same task. If they ask questions, and you hope they do, answer them simply. Do not send them the other

way by being negative and critical! Instead, be supportive. This is very important. Our association is blessed to have a lot of brand new blood and young members who are full of energy, enthusiasm, and a lot of new ideas. If we have past officers and chairmen who offer nothing but criticism and are seemingly very difficult, our new chairmen and officers will go away. They will not offer to help out any

more or may feel that if they do, their ideas will be thrown out and nothing new will be tried.

We can all help. We are all volunteers. Some are able to give more than others, but each person should be recognized – positively – for what she or he is able to do. Those of us who have served before and perhaps continue to do, can be there. We can listen. If asked, we can suggest an idea or two as to how to make it better or solve a problem. We can guide our new boards and chairmen to see their goals reached. We can teach them to be good role models for our members. We can be positive mentors and team players. I love President Christa's words in our August magazine: "It is not about me. It is not about you. It is about us." □



Debbie Frias, CCLS, has been a legal secretary since 1973. She has worked for The Crow Law Firm – specifically, for Joseph J. Weninger – since April 18, 1977. Debbie is married to Bill Frias and has two daughters Jennifer, and Michelle, and three grandchildren, Richie, Vanessa, and Markie. The Frias family resides in North Highlands, California, with resident pooches, Noah and Lucy, and kitty, Shadow.

Deb served as President of Sacramento LSA from 1998 to 2000 and was Governor from 2000 to 2002. She also served as LSI Treasurer from 2004-2005 and is currently Sacramento LSA's Governor.

Hosting An LSI Annual Conference

Submitted by
**Livermore-Amador
Valley LPA**

When Christa Davis, a member of the Livermore-Amador Valley Legal Professionals Association, made a decision to run for Legal Secretaries, Inc. ("LSI") Treasurer at the LSI May 2002 Annual Conference in San Diego, several members of our association flew down and helped campaign for her. When Christa was elected as the new LSI Treasurer, we knew our association would be hosting the LSI 2008 Annual Conference where Christa would be installed as the incoming LSI President.

Since the only conference our association ever hosted was the LSI November 1988 Quarterly Conference, LSI Past President Patricia A. Parson suggested that we host a quarterly conference to help prepare us for hosting the annual conference. Our association made a decision to bid and won to host the LSI February 2005 Quarterly Conference at the Crowne Plaza Hotel in Pleasanton. I volunteered to be the Chairperson. It was a very successful conference and we had a Core Team of seven members that made plans for the quarterly conference. We had 24 members volunteer to help with the conference.

Christa asked me to be the LSI 2008 Annual Conference Chairperson. Who can say "no" to Christa?

After comparing the Crowne Plaza Hotel and the Hilton Pleasanton at The Club, we decided the Hilton met our needs. They offered our association a room rate of \$89 per night for single or double occupancy and waived the meeting room fees if we utilized 90 percent of the contracted sleeping room block from May 14-18, 2008. With our association's approval, I signed the Booking Agreement on October 23, 2006.

We had our first Core Team meeting on Wednesday, February 28, 2007, and met every fourth Wednesday evening thereafter. The Core Team members included Christa, Nancy Payne, Georgia Peterson, Sharon Beall, Helene Chase, Joyce Gonzalez, Donna Merritt, CCLS, and myself.

Darnell Knauss, CCLS became an Honorary Member of the Core Team.

We needed a theme for the annual conference and Christa suggested "Days of Wine and Roses." We all liked it because it was so appropriate for our wine valley. We wanted to keep the annual conference affordable so all LSI members and guests could attend; therefore, our scrip ticket was \$78.50 which included registration, Friday night welcome reception, Saturday night banquet, and Sunday brunch.

Because we were hosting an annual conference, it was a four-day weekend event instead of three days. We also needed to provide two coffee breaks instead of one and an official program.

To help defray our costs, our association needed to obtain exhibitors, get monetary donations from businesses and individuals, sell advertisements in the official program, and obtain donated items for opportunity ticket drawings.

We were very fortunate to have two rooms available for the 24 exhibitors we obtained for the annual conference. We received many monetary donations, over 80 items for the opportunity drawing, and many items for the boodle bags from businesses, individuals, and local associations. We sold 32 advertisements in the official program. I negotiated a great deal for the printing of the official programs.

You should not be afraid or embarrassed to ask businesses or individuals if they could help support your annual conference. Instead of mailing letters requesting donations, it is better if you meet with them in person. It is more difficult for them to say "no" to you in person. If they say "yes," that is great. If they say "no," do not take it personally and remember to thank them for their time. It gets easier as you do it.

To help curtail our expenses, if we had the businesses' or individuals' e-mail addresses, we e-mailed the letter to them. If we e-mailed or mailed a letter and did not receive a response, we

Joyce L. Woo is the Interclub Chairman for Livermore-Amador Valley Legal Professionals Association. She was LSI 2008 Annual Conference Chairman, Legal Secretarial Training/Seminar Chairman, member of Continuing Education Council 2004-2005, and February 2005 Quarterly Conference Chairman. She has been a member of her association since 1997 and has served as President, Treasurer, Governor, and many other positions. Joyce has been a legal secretary since 1994. Joyce and her husband, Jack, have been married for over 38 years and live in Pleasanton. They have one son, Eric, three daughters, Lisa, Tara, and Karen, and two grandchildren, Nathan and Lexi. In her spare time, she enjoys spending time with her family and friends, playing bocce, and traveling. In June 2008, Joyce and her teammates won a silver medal at the United States Bocce Championships in Highwood, Illinois.

followed up with a telephone call. After the annual conference, we sent a thank you letter as soon as possible to everyone who contributed to our event.

I found it very helpful to create a schedule of events, a list of businesses and individuals contacted and the status, a list of donations received, and a list of volunteers who would help with the various tasks for the annual conference.

The LSI 2008 Annual Conference was a huge success due to the generosity and support of LSI members, local associations, exhibitors, businesses, and individuals. We had a net profit of more than three times what we made at the LSI February 2005 Quarterly Conference.

We had 22 members who volunteered and helped at the annual conference. They helped with conference registration, official program, color guards, entertainment, covering the registration and opportunity drawing tables and History Books and Bulletins Display area, sold opportunity drawing tickets and advertisements in the official program, prepared name badges, meal tickets, programs, and boards to post opportunity drawing winners, obtained boodle bag and opportunity drawing items and monetary donations, assembled boodle bags, served as pages at the General Assembly meeting, set up center-

pieces and programs for the luncheons, banquet, and brunch, collected meal tickets, and played the piano and sang at the Sunday brunch.

If you do not have enough members to assist you at the annual conference, ask nearby associations to help you. Five members from the Alameda County Legal Secretaries Association and one member from Stockton-San Joaquin County Legal Professionals Association helped us monitor the History Books and Bulletins Display. Helene Chase's husband, Lonnie, and my husband, Jack, helped cover the registration table and the opportunity drawing table and items while our members attended the California Certified Legal Secretaries luncheon on Saturday. We greatly appreciated everyone's assistance at the annual conference.

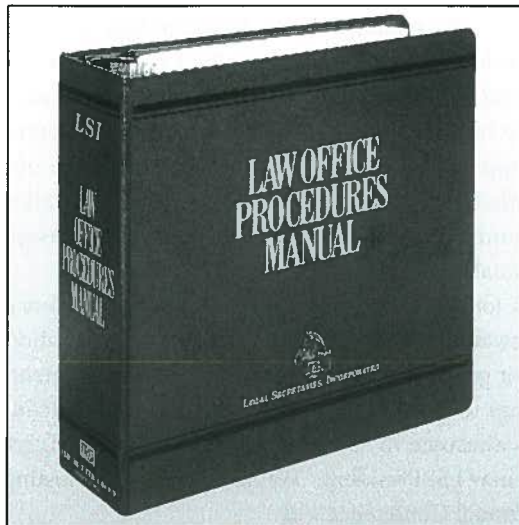
Yes, it is a lot of work to host a LSI Annual Conference but it is very rewarding. It immensely helped our association financially, and it got our members who normally do not attend monthly meetings to be involved by helping at the annual conference. It was awesome to see our own member, Christa, get installed as the new LSI President. We had a great time hosting the LSI 2008 Annual Conference. □



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Stipulated Judgments – a Trap for the Unwary

Submitted by
Livermore-Amador
Valley LPA



Leslie Baxter is a partner at Radick O'Dea & Tooliatos and has repeatedly been named one of Northern California's "Super Lawyers" in the areas of business law and Real Estate litigation. Leslie's litigation practice spans a wide range of business and real estate issues. She also assists commercial clients and developers with land development, permitting, and environmental issues. Leslie has expertise in handling appeals in both Federal and State courts, including oral argument before the State Court of Appeal and the Federal Ninth Circuit Court of Appeal.

Sometimes, our court system produces law that seems contrary to common sense. It is often important, then, to consult with an attorney who can help you avoid the legal traps for the unwary.

Greentree Financial Group, Inc. v. Execute Sports, Inc. is one of those cautionary tales. Plaintiff Greentree sued defendant Execute Sports for breach of contract, seeking a sum certain. Before trial, the parties settled the case. Defendant agreed to pay plaintiff \$20,000, in two installments. The parties stipulated that if defendant failed to make the payments, plaintiff could automatically have judgment entered in the entire amount sought in the complaint, plus prejudgment interest, attorneys fees and costs.

Defendant failed to make the first payment, and the trial court entered the \$61,232.50 judgment, as stipulated. The judgment consisted of \$45,000 in damages as pleaded in the complaint, plus prejudgment interest and attorneys' fees. On appeal, the court reversed the judgment, calling it an *unenforceable penalty*. A layperson using common sense might have expected that the courts would honor the agreement reached by two parties to settle their dispute. Public policy favors private settlement since it allows the parties to retain control over their own dispute, and eases the burdens on the court system. Why then, did the court undo the Greentree stipulated judgment?

The court relied on Civil Code section 1671, which provides that unreasonable liquidated damages clauses in contracts are invalid. The breach which the court analyzed was the breach of the stipulation, not the breach of the underlying contract. Because defendant had promised to pay only \$20,000 in settlement, the court did not look to the underlying contract, where defendant allegedly owed \$45,000. Nor did it give credence to the defendant's new promise, to pay interest and attorney's fees, plus the \$45,000 in damages.

The court's decision ignored the intent of the parties to create their own settlement, on their own terms. Both sides in this dispute were represented by attorneys. Presumably, defendant was advised by its lawyers and knew that, under the settlement it signed, if it did not make the settlement payments, it would have to pay \$61,232.50 instead of \$20,000. It appears that defendant intentionally breached the settlement agreement, by failing to make even the first installment payment. This looks like a bad faith breach of the covenant of good faith and fair dealing, implied in every contract, and a bad faith denial of the existence of the contract to settle the case. Yet the court gives the benefit of the law

to the breaching party, by labeling the settlement terms as a liquidated damages clause.

So, what can parties do when the opportunity arises to settle their dispute and enter into a stipulated judgment? Parties cannot waive the statute regarding liquidated damages because public policy requires that the law be enforced. Within the current status of the law, parties and their attorneys must be careful in structuring stipulated judgments. As the court in Greentree notes, a suing creditor is entitled to bargain if the installment debtor delays payments, the creditor may accelerate and collect the entire obligation, plus a reasonable amount to compensate for the delay. That reasonable amount should be tied in the written settlement, to actual expenses the creditor expects to incur. Greentree got into trouble in part, because it could not tie the amount of the stipulated judgment to such expenses, and the court thus concluded that Greentree had collected a windfall through the stipulated judgment.

The judges who decided Greentree cannot be faulted for following the laws as they see them. The ultimate solution may be to amend Civil Code section 1671, the statute concerning liquidated damages. Perhaps section 1671 should recognize that civil case settlements are different than other contracts and should be analyzed differently in terms of liquidated damages. Settlements are different than other types of contracts because parties faced with the prospect of settlement are already in a dispute which must be solved either by a voluntary settlement or by an imposed solution, or trial. If a party feels the opposition's settlement offer is too high, its only real alternative is to go to trial and see if it can get a better result. This differs from the regular world of contracts where the parties can choose to enter into a contract or walk away from the deal completely. In litigation, where the parties *must* work within the legal system to resolve their dispute, public policy should not hobble the parties ability to craft their own settlements. Cases like Greentree which subvert the parties' own intent to settle overburden the court system; if litigants lose confidence in the enforceability of their own settlement agreements, more cases will go to trial.

The United States civil court system is the best and fairest in the world, but it is not without flaws and traps for the unwary. Parties can avoid legal pitfalls, however, with the guidance of knowledgeable legal counsel. □

Preparing Your Attorney for a Successful Mediation: The Important Role Paralegals, Legal Assistants, and Secretaries Can Play

Submitted by
Alameda County LSA



Nicolas Machado has been with JAMS for six years and started as a case manager. He is currently the Northwest Regional Practice Development Manager. Prior to joining JAMS, he was a legal assistant, paralegal, and office administrator for 13 years, living in numerous cities across the U.S.



Ellen Schuster is an ADR Specialist at JAMS, administering numerous arbitrations and arbitration programs, working closely with clients to select their mediator or arbitrator and guiding clients through the selection and case-setting process. She graduated with a J.D. from University of California, Davis School of Law.

Paralegals, legal assistants, and secretaries can be an indispensable resource in preparing attorneys' cases for mediation in more ways than you might be aware of. Whether in selecting and vetting the neutral, researching and preparing the mediation brief, even to preparing clients for the eventual mediation, legal assistants can and should pay attention to details attorneys might miss or otherwise not consider. This article gives you a basic understanding of mediation and some of the practical ways you can assist and prepare your attorney for a successful mediation experience.

Alternative Dispute Resolution (ADR) is a range of options available to feuding parties who desire an alternative to direct negotiation or litigation, as well as a faster, more efficient way of resolving disputes than the courts. ADR processes can be considered either facilitative or adjudicative.

In a facilitative process, a neutral third person assists parties in negotiating a settlement. The role of the neutral is to find areas of consensus to bring the parties together and to find bridges or solutions to the areas of disagreement. The neutral does not have power to impose a solution or decision, so the parties have control over the outcome of the case.

In adjudicative processes, a neutral decision-maker hears and considers facts and arguments, typically in order to render a binding decision or solution based upon an agreed-upon standard of legality or fairness. While the neutral's role is to issue a solution for the parties, he/she does so within the scope and parameters of either the stipulation or arbitration clause granting authority to the neutral; but parties do have less control over the outcome.

Mediation, a non-binding facilitative process, is available to parties who mutually agree upon it while a binding adjudicative process such as arbitration is typically used by parties who have a

pre-dispute agreement which calls for arbitration when a dispute arises. This article will focus on best practices in mediation, with a subsequent article to address arbitration questions and concerns.

Mediation Defined

During mediation, the parties meet with a mutually selected impartial and neutral third party (the mediator) who assists them in the negotiation of their discussions.

Mediations are often looked at as either facilitative or evaluative. In a facilitative mediation, control over the results of the case remains almost entirely in the hands of the parties and counsel. The mediator is *facilitating* a settlement among the parties. In an evaluative mediation, the mediator creates more structure and injects his or her own view of the potential trial outcome. The mediator is *evaluating* the matter with the parties.

There are many benefits of mediation, but among them, the top four are:

1. **Controlling costs:** Mediation allows for certain predictable costs to your client and often prevents the expenses of litigation. Additionally, because parties negotiate and agree to a settlement, there is more ability to influence the eventual outcome and costs associated with the case.
2. **Efficiency:** Mediation is an efficient, effective way to resolve disputes. Most can be scheduled merely days or weeks ahead of time. And mediation provides a quick means of settling a case that could otherwise end up in lengthy litigation.
3. **Confidentiality:** Statutorily, mediation preserves the confidentiality of the parties, both during the dispute and after it is resolved. Additionally, all documents

(Continued on page 35)

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and reports prepared for the mediation are deemed inadmissible in court, thereby allowing the parties to openly and honestly communicate their positions in hopes of settlement.

4. Preserving relationships: By preserving confidentiality and preventing stressful litigation, mediation can preserve current relationships among parties once their dispute is resolved. This is particularly important in ongoing relationships where parties will be obligated to continue working together following the dispute.

Selecting the Right Mediator

As legal assistants, you play an important role in the ADR process by assisting your attorney with choosing the right mediator for your case. Often attorneys will simply ask assistants to put together a list of potential mediators or at least obtain availability of certain mediators. Thus, there are several considerations to keep in mind, beginning with the overall qualities of a potential mediator in the context of the case.

Keep in mind that there are a wide variety of mediation providers and individual attorneys practicing mediation. Before selecting your mediator, you may want to consider your provider generally. For example, will your attorney get the support they need from the provider? Will there be facilities available for the mediation session?

Potential conflicts are also important. A mediator's neutrality is the cornerstone of his or her credibility to your attorney and his or her client. Checking for potential conflicts may be useful, and using a provider where conflicts can be checked easily and neutrality is systematically maintained could be another consideration.

First you'll want to determine the mediator's knowledge and experience with the subject matter and issues of your case. For instance, you might ask whether the mediator has worked on any similar cases. What has the mediator done in the past to make him/her qualified for this case?

You will also want to consider the mediator's ability to confront difficult legal and emotional issues. While these questions may not come up in the attorney's mind, good legal assistants will think proactively on behalf of their attorneys and consider or at least present these questions. How will the mediator approach difficult issues and will this approach work for your case? Consider the mediator's ability to work through tough issues and settle the case. You may want to determine what the mediator's approach will be when working towards a settlement gets difficult.

Finally, consider the comfort level of your attorney and your client in working with a particular mediator. What personal qualities does the mediator bring to the case that

will facilitate settlement? Will your attorney and client(s) feel comfortable sharing the intricacies of this case with him/her?

You can research your potential choices by checking out providers' websites, former judges' judicial profiles, and Daily Journal and Recorder profiles. Also consider a short phone or in-person interview for the attorney to meet the mediator and ask questions if it's a particularly large, complex, or high stakes case.

Preparing the Mediation Brief and Mediation File

You can also influence the process by assisting your attorney in preparing an appropriate brief and compiling an inclusive file. An attorney's focus will often range from attention to the details of the case to the overall mediation goal. Superior legal assistants will fill in the missing details by paying attention to less substantive but equally important matters in developing the mediation brief.

Recall the purpose of mediating versus litigating are: 1) controlling costs, 2) efficiency, 3) confidentiality, and 4) preserving relationships. To that end, you can assist your attorney by maintaining focus on the overall goals of the process while the brief is being drafted and prepared for submission.

When editing the brief or compiling documents, keep in mind that the mediation brief should be an analysis of the case, rather than a trial brief, and should include only the most essential exhibits. This is also a cost reducing tip as mediators will generally review all documents provided, hence the fewer unnecessary documents, the less time spent reviewing the file.

The brief should be written in a conciliatory manner and be respectful of your opponent's position. Here again, legal assistants can gently remind their attorneys of the goal of mediation being to settle; therefore hostile language or posturing in a brief will not lend itself to your goal. Mediators also generally appreciate this tactic as it helps them objectively examine the case and spend less time sifting through the hyperbole. Additionally, while exchanging briefs is not required, it is typically recommended, as it demonstrates a conciliatory attitude and paves the way for good faith negotiations.

Often, counsel decides a supplemental confidential brief should be submitted in addition to the exchanged briefs. Counsel might want to advise the mediator of some evidence or information they are not yet prepared to disclose prior to the mediation. Having this information in advance is very valuable to the mediator. Of course, it is imperative to make it clear the information contained in the supplemental brief should not be shared with opposing counsel. If the parties agree not to exchange briefs, it is nevertheless important for the attorney to maintain his/her respectful tone.

Attorneys can also generally avail themselves of a pre-

(Continued on page 36)

mediation conference call with the mediator, especially if there are supplemental side briefs and/or other sensitive matters which could/should be discussed ahead of the session. Many times, counsel will simply forget this option is available. Paralegals and legal assistants should proactively suggest scheduling these conferences, particularly in difficult, emotional, or other high stress situations. This gives the mediator the “lay of the land” from your attorney’s perspective and gives your attorney the opportunity to get to know the mediator better before the session even begins. Alerting the mediator to these concerns can save a mediation session from getting off on the wrong foot.

One situation in which discussing the case before the mediation session is when your attorney is having client control issues. By letting the mediator know about this ahead of time, he or she will be prepared to work with the clients differently. By knowing this potential pitfall ahead of time, the mediator can avoid it, thereby saving time and maintaining an atmosphere of calm negotiation.

When speaking with the mediator, attorneys can discuss whether to have a joint caucus during the mediation or a formal opening session. In some cases, joint sessions are a good opportunity for the mediator to give all parties some guidance and the parties to educate the mediator on certain issues. In other cases, it can be too stressful for the feuding parties to be in the same room and could cause a rift before the session even starts. It is important to discuss this option, decide what will be best for your case, and let the mediator know of your attorney’s preference. At the very least, find out whether the mediator regularly starts the session with the parties in separate rooms or together.

The day prior to the mediation, review the file with your attorney and have it at your disposal throughout the mediation day. In addition, keep pertinent documents available to you and the attorney during the mediation. It may also be helpful to keep the contact information for the mediator’s case manager readily available, in case you need assistance during the mediation session.

Finally, it is helpful to supply the attorney with a draft settlement agreement on his/her laptop, on a disk, or USB drive. Keep a draft for yourself, too. Mediations can run late into the evening on occasion and there is nothing worse than working throughout the day towards a settlement and then not being able to put it in writing at the close of the session. A pre-drafted settlement agreement with at least the major release points drafted out can make the difference between settling and returning for another session.

Preparing for the Mediation Day

A few simple steps taken prior to the mediation can ensure a smooth and successful mediation day for your attorney, your clients, and yourself.

First and foremost, make sure to have all decision-makers with authority present at mediation. Whether it’s the CEO, the claims representative, or the spouse who has to agree to the eventual settlement, for a mediation to be successful, it is essential to have all the necessary parties present.

When all decision-makers are not present, negotiating settlement can be a tedious process, with attorneys on the phone to those with authority each time a new piece of the settlement is discussed. This becomes particularly difficult across time zones. Often, the people who are present cannot make any commitments and leave the mediation dissatisfied with the process because no agreement could be reached. And a settlement agreed upon in principal can be derailed quickly. A potential settlement can get hung up by the board of directors, insurance adjusters, and others who no longer have the press of time or the presence of the mediator as incentives to commit to the agreement.

Thus, ensure all decision-makers will attend the mediation and arrive with authority to agree to a binding settlement. If someone must participate by phone, as a general courtesy, make sure to advise the mediator and opposing counsel in advance. This is an ideal use of the pre-mediation conference call. And make sure you have various contact numbers to reach the individual.

The area where you may have the most impact will be in preparing your client emotionally and factually for the mediation. This is particularly true in smaller and solo firms where legal assistants have significant interaction with clients. Begin by explaining what they can expect throughout the day, including the difference between joint sessions with the opposing party and attorney-only meetings with the mediator (caucuses). Your client’s ability to listen to the mediator and the opposing party will also be essential in reaching settlement, so you may want to discuss their listening skills. You can also review when and how to reply to the mediator’s questions or comments from the opposing party.

A few points to consider when discussing the mediation with the client:

1. Attorney only meetings occur regularly in mediations. They are not a way to exclude clients; rather, they are a time when the attorneys can discuss the legal issues and facts of the case with the mediator without the heightened emotion and other responses from the client.

(Continued on page 20)

Thornton Winery And Inter-Association Mingle

Submitted by
San Diego LSA

For those of you who have never been to the wineries in Temecula Valley, you missed a great time in September, when San Diego LSA, Riverside LPA, Los Angeles LSA, and Imperial County LPA, all met at Thornton Winery for a Tour and Tasting.

We were given a tour of the winery, which included showing us the herb garden that they currently use to get fresh herbs for their 4-star restaurant "Café Champagne." Then it was on to the cellar where we were shown all the vats of grapes and the many wooden wine vats. Did you know that these wooden vats could only be used for 5-7 years? Yup, then they are sent to a home supply

store to be sold for flowerpots, etc.

We were also shown the machine that puts the corks in the bottles. Now I know why you can never put them back in the bottles.

After our tour, we went into the bar/snack area, and were given the opportunity to taste 4 different types of wine/champagne. My favorite was the sweeter champagnes. We were also able to keep the wineglass to commemorate our day of good fun and friendship with our fellow associations. Hopefully, we can have this be a yearly activity – meeting at a winery or two in Temecula. What do you think? Will we see you next year? ☐



Belinda began her Legal Career 10 years ago at Barker Thomas & Walters. She worked in many different roles to include corporate, litigation, probate and assisting the office manager. During her time at BTW, she joined the San Diego Legal Secretaries Association. Belinda moved on to The Maxham Firm in 2003, where she worked as legal secretary for a boutique patent prosecution firm under the direction of Lawrence Maxham. Belinda currently works in the legal department of Gen-Probe Incorporated (a Bio-tech corporation) as a Patent Assistant.

She served 9 years in the Marine Corps and proudly has a son, Troy, now serving in the Marine Corps. She has 2 daughters, Tracy and Katie. She enjoys traveling and spending time with her family, while living on Easy Street.



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A Message From The Editor

Editor,
The Legal Secretary



Deborah Rickert, CCLS is editor of The Legal Secretary. She has served LSI as LSS Civil Litigation Leader, PRC Assistant Editor, Registrar, and Editor of The Legal Secretary 2004-2006. She is currently serving as President of Orange County LSA. Deborah has been a legal secretary for over 25 years, and is beginning her 11th year working at Latham and Watkins LLP in Orange County, California.

It is an exciting time to be Editor of *The Legal Secretary* magazine with new changes in the technology field. The exciting new Court Links tab on the LSI website is up and running, we now have a chat room for local association program chairmen, and are researching the possibility of starting to post articles from *The Legal Secretary* on the website. More news on this exciting change will be coming soon.

I am pleased that the November issue of *The Legal Secretary* was enjoyed by many of you. At the November conference, I received many positive comments and feedback and am delighted that you are enjoying the magazine. My confidence is buoyed by the many expressions of congratulations and support from local associations and members of LSI. Because so many articles were contributed for the November issue, the magazine provided you with a vast array of information and articles to choose from.

With your help *The Legal Secretary* magazine will continue to be a great publication and source of information. Be sure to check out President Christa Davis' article "Building Membership Through Education," and the interesting article "Creating the Law Firm Team – It's Not "We" and "They," It's US" by Ed Poll, J.D., M.B.A., CMC. While we enjoy these types of articles, please continue to also submit those about special events (i.e., Saturday seminars, fashion shows, a day at the races, etc.) your association hosts. It is important to share your achievements and ideas with the rest of us and I will be happy to help you achieve that goal by

including your articles and photos in the magazine. Photographs are welcome! These types of events not only bring in money for the associations, but also help spread the word of your association and may attract new members as well.

All elected and appointed officers are assigned to submit one article per year and each association is assigned to submit both a governor and guest writer article for one issue during each fiscal year. It's easy to earn your association 100 Chapter Achievement Points. For each printed article written by a guest writer you can earn 100 points, and for each article printed written by a

governor, an association earns 50 Chapter Achievement Points. There is no maximum number of articles any association may submit, so keep those articles coming.

The last chance for this fiscal year to submit articles is the upcoming May issue. Those associations assigned are: Santa Barbara, Santa Clara

County, Santa Cruz County, Santa Maria, Sonoma County, Southern Butte County, Stanislaus County, Stockton-San Joaquin County, Trinity County and Ventura County. Submissions are to be received no later than March 1st. In addition to your articles, I also need to receive a photograph of the author, short biography and a completed Checklist. If you need information or a copy of the Guidelines, please feel free to contact me.

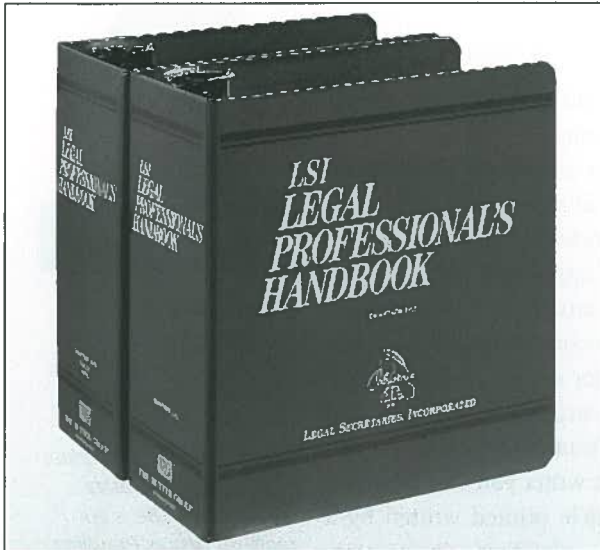
Enjoy this issue. I welcome your comments and would like to know how we can improve the upcoming issues of *The Legal Secretary*. □



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February 27-March 1, 2009	LSI Third Quarterly Conference Hosted by Mt. Diablo LPA Concord Hilton
March 1, 2009	Deadline for submission of articles for May issue of <i>The Legal Secretary</i>
March 21, 2009	CCLS Examination Northern and Southern California locations
April 4, 2009	LSI Spring Regional Hilton Hotel, Ontario, CA
April 13, 2009	Last day to reserve a room for Annual Conference and receive group rate
April 15, 2009	Last day to register for Annual Conference to avoid a late fee
May 14-17, 2009	LSI 75th Annual Conference Hosted by Long Beach LSA Long Beach Hilton



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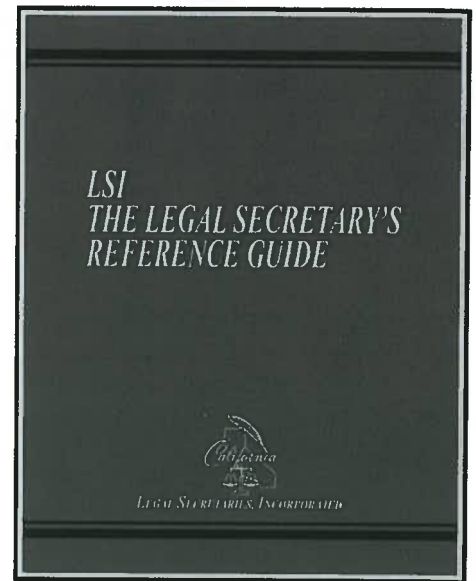
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