

# The WRIT

January 2012, Vol. 34, No.1

OFFICIAL PUBLICATION OF THE WASHOE COUNTY BAR ASSOCIATION

Thursday, January 19, 2012, Santa Fe Hotel, Drinks 5:30, Dinner 6:30

## Flock to the Santa Fe

### Annual Dinner Honors Bruce Laxalt

Join your friends and colleagues at the Washoe County Bar Association's annual dinner at the Santa Fe Hotel. WCBA started this dinner tradition in 2006, building on the success of our Centennial in 2005. As always, we promise great Basque boarding house fare, a crowded bar for picons, good conversation with friends, and other libations. . . and No Speeches!

Our dinner host this year is Monique Laxalt and the 2012 dinner will be held in recognition of Monique's brother, Bruce Laxalt—founding partner at Laxalt & Nomura and a longtime WCBA member who died after a long illness in 2010.

The bar opens by 5:30 p.m. with dinner beginning at 6:30 p.m. WCBA is grateful to Bowen & Hall (2010) and John Ohlson (2011) who have generously hosted the bar the past two years. John Ohlson is hosting again this year.

**RSVP** Seating is limited to first 200 guests and this event has sold out for the past several years so don't wait too long. \$40 per person and \$320 for table of eight with a sign. Register and pay online at [wcbar.org](http://wcbar.org) or fax/mail the form on page 19.



*Photo: Michael Edminster, Trailing of the Sheep, Hailey, Idaho. Used with permission.*

We're hoping for a special guest appearance from Monique Laxalt's cousin, Paul Laxalt, who will park his restored sheepwagon in front of the Santa Fe—with one caveat. As Paul writes: "The only issue we might incur is snow. The wagon is in Washoe Valley. It qualifies as a 1906 farm vehicle. It tows at 15 mph. Let's pray for clear skies!"

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## Clay Brust, President



Welcome back from the Holidays. As you probably already know, Judge Hardy is now the Chief Judge for Washoe County. Be sure to thank Judge Steinheimer for all the hard work she put in while she was Chief Judge. Following is an address by Judge Hardy concerning the state of our courts.

## CHIEF JUDGE'S REPORT

by Chief Judge David Hardy

Judge Connie Steinheimer was the Chief Judge of the Second Judicial District Court during the past four years. She served with distinction and I am pleased to continue her efforts to improve the judiciary. According to WDCR 2, the Chief Judge "represents the court in its relations with other agencies of the government, *the bar*, the general public, and the news media."

The court is a complex organization with 22 full-time judicial officers, periodic part-time masters and short-trial *pro tem* judges, more than 150 employees, and an annual budget of almost \$15 million. The court fluidly responds to technology advancements and budget constraints. I am proud of the court and believe it should be visible and responsive to the citizens it serves. Community partners and funding agencies should also have confidence in the court's stewardship of public funds.

I therefore intend to communicate with the bar through a periodic column in which I identify court challenges and policy changes affecting lawyers who practice in Washoe County. The court can be improved through greater bar participation in these matters. The frequent exchange of information is the

common thread of all improvement efforts. I invite you to contact me regarding general issues you experience with the courthouse, judicial departments, and court administration. You may call me at chambers or send an email to david.hardy@washoecourts.us. I personally receive all emails sent to my court email address.

I refer you to the grievance procedures outlined in NRS 3.026. In short, a lawyer may submit a grievance to the Chief Judge that is "directly related to the administration of [a] case or other proceeding." Grievances are not appropriate to address "the merits of [a] case or other proceeding" or challenge "the merits of any decision or ruling in [a] case or other proceeding."

The Chief Judge makes case category assignment decisions. Examples of case categories are foreclosure mediation, business court, probate, guardianship, civil commitments, dependency, and delinquency. Our judges also preside over and manage subject areas such as specialty courts, domestic violence, child support, the arbitration and short-trial programs, and pre-trial court services. I will soon announce case category and subject area assignments.

Our court has several active and dormant committees. For example, the court has used committees to improve bench/bar relations and examine matters

affecting security, technology, forms and procedures, library and self-help services, and even employee relations. I will soon announce committee assignments and invite participation from members of the bar.

The bench is well served by its court administration team. As you may know, Howard Conyers resigned as court administrator in November. We are fortunate to have Joey Orduna Hastings return as the new court administrator. Ms. Hastings graduated from Gonzaga Law School and worked several years at the National Council of Juvenile and Family Court Judges. She was the assistant court administrator for several years before working as Governor Sandoval's Legislative Coordinator during the 2011 legislative session. She is known throughout the state for her professionalism and commitment to public service. I encourage you to contact her with any court-related concerns you may have. Her telephone number is 328-3119 and her email address is joey.hastings@washoecourts.us.

Several other professionals compose the court administration team. Craig Franden has been the court's information technology expert for 14 years. He also resolves facilities issues. Julie Wise is a lawyer who has worked for the court for several years. She managed the Peace

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# CONVERSATIONS ON DISCOVERY

By Wesley M. Ayres, Discovery Commissioner

More and more attorneys are discovering that social networks such as Facebook, MySpace, or LinkedIn can provide valuable information in connection with contested matters. Examples include photographic evidence of a spouse's infidelity, substantiation of a parent's violent temper, proof of a probation violation, or indications that a plaintiff's injuries are not as serious as alleged. See Steven Seidenberg, *Seduced: For Lawyers, the Appeal of Social Media is Obvious. It's Also Dangerous*, ABA Journal, Feb. 2011, at 50, 51; Peter S. Kozinets & Aaron J. Lockwood, *Discovery in the Age of Facebook*, Ariz. Att'y, Jul./Aug. 2011, at 42, 44-45. But lawyers who use social media sites for research must be wary of potential ethical issues. The question can be stated broadly: "How far can an attorney go in an effort to obtain information about a party or witness from one of these sites?"

Reported cases addressing this topic do not yet exist, but the issue is the subject of a few ethics opinions. The first formal opinion on the subject was issued by the Oregon State Bar Association in 2005. Its starting point was the rule prohibiting an attorney from communicating about the subject matter of a representation with a person that the attorney knows to be represented by another attorney in the matter ("Rule 4.2"). See, e.g., Nev. R. Prof'l Conduct 4.2. It determined that the interests we seek to protect through Rule 4.2 are not implicated merely by visiting a website:

Accessing an adversary's public Web site is no different from reading a magazine article or purchasing a book written by that adversary.

Because the risks that Oregon RPC 4.2 seeks to avoid are not implicated by such activities, no Oregon RPC 4.2 violation would arise from such electronic access. A lawyer who reads information posted for general public consumption simply is not communicating with the represented owner of the Web site.

Or. State Bar Ass'n Bd. of Governors, Formal Op. 2005-164 (2005), 2005 WL 5679590, at \*1 [hereinafter *OSBA Op.*]; see generally *Palmer v. Pioneer Inn Assocs., Ltd.*, 118 Nev. 943, 951, 59 P.3d 1237, 1242 (2002) (identifying the competing policies that must be considered when deciding how to apply Rule 4.2 to organizational clients). But when the attorney can communicate with an individual via the Internet, the prohibitions of Rule 4.2 exist to the same extent as with any other communication. In that event, the attorney must ascertain (a) whether the organization with which he or she is communicating is a "represented person" for purposes of the rule; (b) whether the individual with whom he or she is communicating is a nonmanagerial employee who is merely a fact witness; and (c) whether any of the exceptions to Rule 4.2 exist (e.g., prior consent of opposing counsel, authorization by law, etc.). See *OSBA Op.*, at \*1-2; see also *Palmer*, 118 Nev. at 954, 960-61, 59 P.3d at 1244, 1247-49 (adopting the Managing-Speaking Agent Test for determining whether attorney can communicate with employee of opposing organization represented by counsel).

In 2009, the Philadelphia Bar Association focused on a different facet of this question in connection with an attorney's efforts to obtain access to an

unrepresented nonparty witness' Facebook and MySpace accounts. Based upon information obtained during a deposition of this witness, the attorney believed her web pages might contain relevant information, including information that could be used to impeach her testimony. Because access to her web pages could be obtained only with her permission, the attorney proposed asking a third person—whose name the witness would not recognize—to go to her Facebook and MySpace websites and seek to "friend" her, thereby obtaining access to her web pages. If successful, the third person would provide the attorney with information posted on the witness' web pages. In attempting to obtain access, the third person would state only truthful information; however, that person would not reveal that he or she is affiliated with the attorney, nor would that person reveal the true purpose for "friending" the witness. See Phila. Bar Ass'n Prof'l Guidance Comm. Op. 2009-02 (2009), 2009 WL 934623, at \*1 [hereinafter *PBA Op.*].

The Philadelphia Bar Association opined that the proposed course of conduct would violate Rule 8.4 of the Pennsylvania Rules of Professional Conduct because the planned communication would be deceptive:

It omits a highly material fact, namely, that the third party who asks to be allowed access to the witness's pages is doing so only because he or she is intent on obtaining information and sharing it with a lawyer for use in a lawsuit to impeach the testimony of the witness. The omission would purposefully conceal that fact from the witness for the purpose of

inducing the witness to allow access, when she may not do so if she knew the third person was associated with the inquirer and the true purpose of the access was to obtain information for the purpose of impeaching her testimony.

*Id.* at \*2; *see also* Nev. R. Prof'l Conduct 4.1(a) (prohibiting an attorney from making false statements of material fact or law to third person), 5.3(c) (lawyer is responsible for violation of ethics rules by nonlawyer employed, retained by, or associated with the lawyer, if the lawyer ratifies the misconduct with full knowledge of its impropriety), 8.4(c) (prohibiting an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The fact that the witness might permit anyone access to her web pages did not alter the analysis: "Deception is deception, regardless of the victim's wariness in her interactions on the internet and susceptibility to being deceived." *See* PBA Op. at \*2. While it recognized disagreement over the ethical propriety of a lawyer engaging in certain kinds of investigative conduct that might be viewed as deceitful, *see id.* at \*3-\*5, it nevertheless found that the proposed course of conduct was impermissible.

In 2010, the New York City Bar Association addressed the same issue, and came to a different conclusion:

[A]n attorney or her agent may use her real name and profile to send a "friend request" to obtain information from an unrepresented person's social networking website without also disclosing the reasons for making the request. While there are ethical boundaries to such "friending," in our view they are not crossed when an attorney or investigator uses only truthful information to obtain access to a website, subject to compliance with all other ethical requirements.

N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2010-2 (2010) (footnote omitted), [available at](http://www.nycbar.org/ethics/ethics-opinions-local) <http://www.nycbar.org/ethics/ethics-opinions-local> (follow "Formal Opinion 2010-2" hyperlink). Like the Philadelphia Bar Association, the New York City Bar Association recognized that in the virtual world, individuals can often obtain information more easily than if they

sought the same information in a face-to-face encounter. Moreover, it made clear that ethical rules are violated if an attorney "friends" an individual under false pretenses to obtain evidence from a social networking website. Thus, an attorney could not create (either directly or through the services of a third person)

when the client is lured into clandestine communication with opposing counsel through the unwitting acceptance of an ex parte "friend request." *See id.* Ultimately, it concluded that "an attorney's ex parte communication to a represented party intended to elicit information about the subject matter of the representation is



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is pleased to announce that

### JENNIFER M. MAHE

has become a shareholder in the firm as of January 1, 2012.

Jennifer, a 2005 graduate, with great distinction, of the McGeorge School of Law at the University of the Pacific, came to the firm in 2006 after completing a one-year clerkship for the Honorable Archie E. Blake, Third Judicial District Court. Her emphasis will continue to be on real property, water, business and administrative law, and litigation.



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## Discovery cont.

a false Facebook profile with information likely to be of interest to the targeted witness, and then falsely represent that he or she is a former classmate, prospective employer, or even the friend of a friend. Ultimately, however, it found that the failure to divulge the reasons for the request would not constitute “deception.” *See id.*

In the same month, the New York State Bar Association released its opinion on the question of whether a lawyer who relies solely on “public” pages (i.e., pages that are accessible to all members in the network) may view and access the Facebook or MySpace pages of a party other than his or her client in pending litigation in order to secure information about that party for use in the lawsuit, including impeachment material. It distinguished this situation from the one addressed by the Philadelphia Bar Association, because the web pages at issue in the New York opinion were accessible to all members of the network (in that regard, the situation was similar to the one addressed by the Oregon State Bar Association). So long as the lawyer does not “friend” the opposing party, or otherwise engage in deceptive conduct, he or she could ethically view an opposing party’s publicly accessible Facebook or MySpace profiles. *See* N.Y. State Bar Ass’n Comm. on Prof’l Ethics, Op. 843 (2010), 2010 WL 3961381.

Most recently, the San Diego County Bar Association addressed the following situation involving an attorney representing a former employee in a wrongful discharge action in which the former employer is represented by counsel:

Attorney obtained from Client a list of all of Client’s former employer’s employees. Attorney sends out a “friending” request to two

high-ranking company employees whom Client has identified as being dissatisfied with the employer and therefore likely to make disparaging comments about the employer on their social media page. The friend request gives only Attorney’s name. Attorney is concerned that those employees, out of concern for their jobs, may not be as forthcoming with their opinions in depositions and intends to use any relevant information he obtains from these social media sites to advance the interests of Client in the litigation.

*See* San Diego Cnty. Bar Ass’n Legal Ethics Comm. Op. 2011-2 (2011) (footnote omitted), available at <http://www.sdcba.org/index.cfm?pg=LEC2011-2>. The committee noted that counsel must initially ensure that the “high-ranking” employees are treated appropriately under the California equivalent to Rule 4.2. But assuming that an individual falls within the protections of that rule, a “friend” request would constitute a communication about the subject matter of the representation, even though it does not explicitly mention the litigation or its issues:

It is not uncommon in the course of litigation or transactional negotiations for open-ended, generic questions to impel the other side to disclose information that is richly relevant to the matter. The motive for an otherwise anodyne inquiry establishes its connection to the subject matter of the representation.

*Id.* The committee acknowledged that nothing precludes counsel from accessing the opposing party’s public Facebook page, because obtaining such access does not require communication with the opposing party. But the purposes underlying the prohibition on ex parte communications with opposing parties represented by counsel is eviscerated

impermissible no matter what words are used in the communication and no matter how that communication is transmitted to the represented party.” *See id.* It also joined the Philadelphia Bar Association in concluding that the attorney’s duty not to deceive prohibits him from making a friend request even of unrepresented witnesses without disclosing the purpose of the request. *See id.*

To the reader interested in additional information about these issues, I recommend a recent article from the *Journal of High Technology Law*. *See* Yvette Ostolaza & Ricardo Pellafone, *Applying Model Rule 4.2 to Web 2.0: The Problem of Social Networking Sites*, 11 *J. High Tech. L.* 56 (2010), available at 11 *JHTL* 56 (Westlaw). The authors provide an informative explanation about social networking sites, including the different kinds of profiles available to the user and how they can be used in litigation. They also discuss Rule 4.2 and the “Observation Exception”—essentially, the well-recognized exception to Rule 4.2 that allows an attorney to observe a represented party’s conduct if the attorney is acting as a member of the general public in his or her interactions with the represented party. They close with an explanation of how they feel that exception should be applied to social networking sites. As the authors note, with more people cataloging the details of their daily lives on social networking sites—and Facebook alone claims over 500 million active users—the potential value of these sites in virtually any area of litigation is significant. The lawyer’s understanding of the attendant legal and ethical issues is no less important.

*Wes Ayres is Discovery Commissioner for the Second Judicial District Court. His columns are online and searchable at [wbar.org](http://wbar.org).*



# C O U R T S



## Chief Judge Report cont.

Center before being appointed the assistant clerk of court. Her primary responsibilities are grounded in the filing office and with the court clerks. Angela Davis is the court's human resource administrator. Though new to the court, she has almost 20 years of human resource experience. Cathy Hill is the court's fiscal officer. Ms. Hill has substantial private accounting experience. She assists the court with all financial matters. The court is currently searching for an assistant court administrator. Information about this position may be obtained from Ms. Hastings or the court's webpage.

The court is involved in many ongoing changes that affect the bar. I am pleased

to announce the implementation of a wireless access pilot program throughout the courthouses at both 1 South Sierra and 75 Court Street. The wireless service will be open to the public without the need for a password. However, each user will need a network identification number, which the court will provide upon request. There will be no charge for this service.

Several months ago the judges voted to reduce their in-court hours on Friday afternoons. The primary benefit is to court employees who are required to do more while the number of employees has decreased through budget constrictions. Friday afternoon remains part of the work week for all judges and court staff. The filing office will be open on Friday afternoons.

The court is no longer able to continue courtroom proceedings beyond 5:00 p.m. Extended proceedings incur additional costs for court and security employees. The only exception will be made when juries deliberate—and only then until 7:00 p.m. I appreciate your assistance in helping the judges complete each court day without after-hours expenses.

I frequently hear compliments about the "Washoe County" experience from lawyers practicing in other areas of the state. We are fortunate to work within the Second Judicial District. Thank you for your contributions to the administration of justice within our county.

*Please note that President Clay Brust's "Random Thoughts" will be back in February.*



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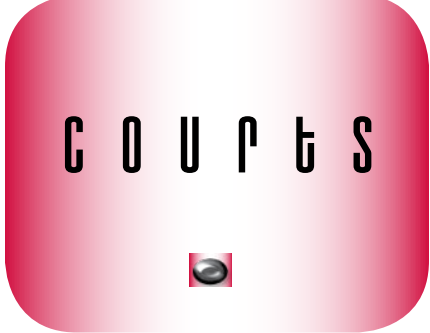
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## SAVE THE DATE. . . UNITED STATES DISTRICT COURT CONFERENCE THURSDAY, APRIL 5, 2012

Please mark your calendar for the U.S. District Court Conference which will be held on April 5, 2012 at the Atlantis Hotel in Reno. Educational topics include a Supreme Court Review; Neuropsychology and the Law; the Mortgage Meltdown Crisis; the Future of the Practice of Law, and an Open Forum Discussion with the Bench for Civil, Criminal, and Bankruptcy practitioners.

Registration is only \$75.00 with a reduced \$50.00 registration fee for government attorneys. A request is pending for six (6) Continuing Legal Education credits.

Registration information will be sent to all members of the State Bar of Nevada in early February, 2012. If you have questions about the conference, please contact Mr. Lance S. Wilson, District Court Executive, at 702.464.5456. Thank you.

## Nevada Law Foundation Invites Board of Trustees Applications

From time to time, the Nevada Law Foundation has openings on its Board of Trustees and committees. If you are interested in volunteering with NLF, please contact NLF and fill out an application.

The Nevada Law Foundation is dedicated to serving the legal needs of

disadvantaged Nevadans. The primary goal of the Board of Trustees is to develop funding opportunities to serve those needs. In an effort to find qualified candidates for the Board, the NLF invites interested volunteers to submit an application. Those applications will be screened and the Board will recommend specific candidates to the State Bar of Nevada and the Supreme Court of Nevada to be appointed to the Nevada Law Foundation Board of Trustees.

If you are interested in applying for a Board position you can find information at [www.nevadalaawfoundation.org](http://www.nevadalaawfoundation.org) or by mail at P.O. Box 1048, Las Vegas, NV 89125. The application is also online at [nvbar.org](http://nvbar.org).



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# J U D I C I A L E T H I C S

Hon. David Hardy, Second Judicial District Court, Department 15

“And what is good, Phaedrus—And what is not good—Need we ask anyone to tell us these things?” *Zen and the Art of Motorcycle Maintenance: An Inquiry into Values*

Every January I summarize the more entertaining examples of judicial misconduct from the previous year. The exercise makes me feel better about my own shortcomings. I always have more material than space, and I enjoy sifting through the decisions to winnow my list to a manageable size. I revere good and great judges—their positive influence in our communities is palpable. This annual retrospective reminds me that bad judges are equally influential. Unfortunately, their negative influence often captures the public’s attention and diminishes the judiciary.

**Too Nutty to Believe.** A Pennsylvania judge had a perverse fascination with acorns. During a lunch recess at a continuing education seminar, while wearing a badge identifying himself as a judge, he stopped two women he did not know and handed them each an acorn. He said they “make a nice afternoon snack, try them. I’ll be here tomorrow; let me know what you think.”<sup>1</sup> The women opened the acorns and discovered they had been hollowed out and each contained an unwrapped condom.

The judge admitted the event but claimed it was a joke and he did not intend to offend the women. He also admitted that he collected, hollowed out, and inserted condoms inside hundreds of acorns while he had been a judge. He sometimes used the acorns in his courtroom to raise awareness of the efficacy of condoms against pregnancy and disease.<sup>2</sup>

Inexplicably, the judge was not disciplined because his behavior was not so “extreme as to bring the judicial office itself into disrepute.” However, the court of judicial discipline noted the judge’s “preoccupation with acorns is mystifying

... It is not funny and we strongly disapprove of this conduct. Although it does not rise to a violation, it certainly lacks good judgment and must not be repeated.”<sup>3</sup>

**What Was I Thinking?** A Georgia judge regularly used marijuana. Whether under the influence or not, his ability to make unwise decisions is impressive. One night he appeared at his sister-in-law’s estranged husband’s home, identified himself as a judge, and then kicked in two doors within the home. The police arrived and he demanded the home occupants be arrested. When the police declined he became irate and cursed at the officers.<sup>4</sup>

On another occasion, while at the courthouse, this same judge pointed a handgun at himself and bragged that he was not afraid. He refused to work certain hours assigned to him and “occupied” the administrative judge’s office until he was arrested and escorted from the courthouse.<sup>5</sup>

While appearing on a television program he referred to a fellow judge as “spineless” and publicly disclosed that he had filed a confidential complaint against the judge. He also displayed a photograph of a confidential informant. He called into the same program during a different episode and attempted to disguise his voice with a foreign accent. When he was put through he said the sheriff (who was a guest on the program) “crapped himself” and was a “spineless jelly spine.”<sup>6</sup>

**Retired on Duty.** A Pennsylvania judge was disciplined for her “beyond egregious” work habits.<sup>7</sup> Her docket started at 9:30 a.m. yet she habitually arrived at the courthouse between 10:00 and 11:00 a.m. To make matters worse, she often called in after the docket was

scheduled to begin and informed her staff that she would not be working that day. The judge did this “day after day, week after week, month after month, year after year.” The judge also enjoyed an “excessive vacation schedule.” She was seemingly unbothered by the hundreds of citizens she inconvenienced. The Court of Judicial Discipline concluded she was “a judicial officer who is at once callous and uncaring, oblivious and incurious of the consequences of her conduct—conduct which was unchecked even by written warnings and admonitions from the [court administrator and presiding judge].”<sup>8</sup>

**Beware of Mississippi Vigilantism.** A Mississippi judge’s relative was the victim of a crime.<sup>9</sup> The judge interfered with the investigation. He attempted to influence the bond amount decision. He attempted to dissuade local attorneys from representing the defendant. The judge was not pleased when the defendant pled guilty to a reduced charge so he appeared at the sentencing and testified as follows:

“I could assure you that if anything like this ever happened to anybody that I know, my advice to them would be do to not use the court, handle it themselves. I would like for everyone in this court to know that had I had this to do over again we would never had went to a grand jury; that we would have taken care of this . . . down on the farm like things should have been taken care of.”<sup>10</sup>

**Speaking of Mississippi . . .** A Mississippi judge (who had also been a state senator) apparently missed the First Amendment lecture during his constitutional law class. He jailed an attorney for refusing to recite the Pledge

of Allegiance at the beginning of the court session. The attorney chose to stand quietly; he did not say or do anything to “disrupt court proceedings, subvert justice, or embarrass the court.”<sup>11</sup>

**Demeanor Not Even Befitting a Dog.** The Pennsylvania judge “retired on duty” also struggled with litigants who interrupted her with irrelevant questions and arguments. She decided to make a point by interrupting a litigant with an equally irrelevant response. The event was reported as follows:

[I]f you interrupt me again, I’m going to interrupt you to see how you like it.” The defendant said, “Judge,” to which the judge responded “Rover has a bone. Rover

years; and never in my adult life has any professional addressed me that way. I wouldn’t let my mother speak to me that way.”<sup>14</sup>

**The Ever-Recurring Problem of Libido.** A New Mexico judge, who had been chief criminal judge in his district, retired after he was arrested on felony charges of criminal sexual penetration and intimidation of a witness.<sup>15</sup> The criminal complaint alleged the judge responded to an ad on a webpage and traded money for sex acts with a prostitute. When the prostitute declined a particular sex act the judge forced himself upon her. The prostitute secretly recorded the judge telling her if she ever reported him he “would use the police and his connections

I revere good and great judges—their positive influence in our communities is palpable. This annual retrospective reminds me that bad judges are equally influential.

has a bone. How do you like it Mr. [Defendant]? How do you like it when you’re interrupted when I’m trying to speak?” The defendant attempted to speak again, saying “Judge, I just want to let you know I have a witness” but the judge interrupted: “Rover has a bone . . . Rover has a bone, Rover—how do you like it, Mr. [Defendant]?”<sup>12</sup>

On another occasion an attorney moved to modify bail to permit his client to be transferred to an in-patient treatment facility. The judge went into a “tirade” saying, “you’re a low life and now you want bail, and I’m not going to grant you bail unless you tell me that you’re a scumbag.”<sup>13</sup>

Another litigant described the judge as going “ape shit” about wasting her time. “I sat there and she screamed at me for probably five minutes. And I was trying to interject, trying to explain myself, and she just kept cutting me off. And I eventually just sat with my hands crossed and took my beating, because I knew there was nothing else I could do. I have been to Catholic school; I was raised in an Italian-American household; I was a high-spirited youth; I worked the credit counter at Sears for a few years; I tended bar in North Jersey and Los Angeles for

to take care of the situation.”<sup>16</sup>

**Is Lady Justice Blindfolded or Racist?**

A California judge asked a man accused of domestic violence where he was born. When the man responded he was born in California the judge said, “I’m concerned about the throwing of the rocks and the spitting. I’ve been doing domestic violence for 14 years. Usually that is the kind of behavior I see in Middle Eastern clients, but almost—if I read a declaration where they say, ‘He spit on me, he threw rocks at me,’ almost always it’s a Middle Eastern client.”<sup>17</sup> If the declaration says, “He drags me around the house by the hair,” it’s almost always a Hispanic client. The California Court of Appeals found the judge’s comment did not reveal a decisional bias but it cautioned the judge “to be more thoughtful in her comments concerning her previous cases and statements concerning her perceptions of race, ethnicity, or gender.”<sup>18</sup>

**My Campaign Materials Promote Public Confidence in my Impartiality.**

An Indiana judge circulated an invitation to a fund-raiser in which the \$150.00 contribution was described as “sustained,” the \$250.00 contribution was “affirmed,” the \$500.00 donation was “so ordered,” and a \$1,000.00 donation was a “favorable ruling.”<sup>19</sup>

Many other judges were disciplined for misusing their contempt power, violating the law, showing poor courtroom demeanor, revealing salacious behavior, abusing the judicial office by advancing personal interests, privately enforcing street safety, and ignoring conflicts of interest. While all judges have their moments, no Nevada judge came close to appearing on my list. My hope for 2012 is renewed professionalism for myself and my colleagues.

**NOTES**

<sup>1</sup> *In re Magisterial District Judge Isaac H. Stoltzfus*, 29 A.3d 151, 153 (Pa. Ct. Jud. Disc. 2011).

<sup>2</sup> *Id.* at 155.

<sup>3</sup> *Id.* at 156.

<sup>4</sup> *In re Peters*, 715 S.E.2d 56, 57-58 (Ga. 2011).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *In re Magisterial District Judge Maryesther S. Merlo*, No. 1 JD 11 (Pa. Ct. Jud. Disc. 2011).

<sup>8</sup> *Id.*

<sup>9</sup> *Miss. Comm’n on Judicial Performance v. McGee*, No. 2011-JP-00114-SCT (Miss. 2011).

<sup>10</sup> *Id.*

<sup>11</sup> *Miss. Comm’n on Judicial Performance v. Littlejohn*, No. 2011-JP-01954-SCT (Miss. 2011).

<sup>12</sup> *In re Magisterial District Judge Maryesther S. Merlo*, No. 1 JD 11 (Pa. Ct. Jud. Disc. 2011).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *In the Matter of Hon. Albert S. (Pat) Murdoch*, No. 33,127, JSC Inquiry No. 2011-068 (N.M. July 26, 2011).

<sup>16</sup> Email from Cynthia Gray, Up-date from the AJS Center for Judicial Ethics: June 15, 2011 (June 15, 2011 6:11 AM) (on file with author).

<sup>17</sup> Public Admonishment of Judge Nancy Pollard, (California Commission on Judicial Performance July 13, 2011) available at [http://cjp.ca.gov/res/docs/public\\_admon/Pollard\\_07-13-11.pdf](http://cjp.ca.gov/res/docs/public_admon/Pollard_07-13-11.pdf).

<sup>18</sup> *Id.*

<sup>19</sup> Public Admonition of The Honorable Rebekah E. Pierson-Treacy Marion Superior Court, (Indiana Commission on Judicial Qualifications November 29, 2011) available at <http://www.in.gov/judiciary/jud-qual/docs/admonitions/pierson-treacy-11-29-11.pdf>.

This is number 52 in a series of essays on judicial ethics authored by Chief Judge David Hardy, *Second Judicial District Court, Dept. 15.*



## HOW A NONPARENT MAY ACHIEVE PARENTAL STANDING WITHOUT REALLY TRYING

***Rennels v. Rennels*, 127 Nev. Adv. Op. 49 (August 2011).**

Roger Rennels (“Father”) obtained custody of his daughter, Martina, in 2001. Two months later, Father and Martina moved in with his mother, Audrey Rennels (“Grandmother”), who lived in northern California. Five months after that, Father and Martina moved to Texas. After two years, they moved back to Las Vegas. Father remarried, and his wife, Jennifer Rennels, adopted Martina.

In 2004 Father stopped allowing Martina to visit Grandmother. Grandmother filed a petition under NRS 125C.050 for visitation rights, and Father filed a motion to dismiss the petition. Before evidentiary hearing was held, Father and Grandmother stipulated to a visitation schedule, which was adopted by the court. The visitation stipulation/order granted Grandmother supervised visitation with Martina until her guardian ad litem and the psychologist appointed to oversee the visitation concluded that unsupervised visitation was appropriate.

In 2008, the psychologist recommended unsupervised visitation, which Father refused to follow. Grandmother filed a motion to compel Father’s compliance with the visitation order. Father countered with a motion to terminate Grandmother’s visitation rights. The district court denied Grandmother’s motion and

terminated visitation, reasoning that: (1) Grandmother had no fundamental right to visitation, given the presumption that a fit parent acts in the best interest of the child, even with a prior visitation order in place; (2) acrimony between Father and Grandmother had increased; and (3) continued visitation was not in Martina’s best interest. The Nevada Supreme Court reversed the ruling on appeal.

**1. The stipulated visitation order is a final judgment, precluding relitigation of Grandmother’s visitation based on the same facts already considered by the district court.**

Citing *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226-227 (2009), the Supreme Court noted a “strong public policy favoring the prompt agreement and resolution of matters related to the custody, care, and visitation of minor children.” “An order is final if it ‘disposes of the issues presented in the case . . . and leaves nothing for the future consideration of the court.’” *Rennels*, 174 Nev. at \_\_\_, citing *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). Entry of a final judgment precludes later litigation on the same issues. The Court found that Father and Grandmother intended their visitation stipulation to be final, and precluded relitigation of grandparent visitation on the same facts already considered by the district court.

**2. Is a parent entitled to the parental presumption that he is acting in the best interest of the child when he seeks**

**to modify or terminate a judicially approved nonparent visitation arrangement?**

The Supreme Court answered that question with a resounding NO, ruling that a parent’s constitutionally protected parental preference is irretrievably coopted when third party visitation is ordered, whether by voluntary assent of the parent, or by order after contested litigation. In subsequent proceedings, the nonparent stands on equal footing with the parent, in that visitation cannot be modified or terminated unless the parent first satisfies the two prong *Ellis v. Carucci*<sup>1</sup> test, which until *Rennels* applied only to disputes between parents.

*Troxel v. Granville*, 530 U.S. 57 (2000) recognized the long standing presumption that a fit parent acts in the best interest of his child, and the court must accord the decision of the parent special weight in a visitation dispute between a parent and a nonparent. NRS 125C.050(3) permits a person who has established a meaningful relationship with a child to seek visitation if the parent has denied or unreasonably restricted visitation with the child. Section 4 of the statute provides that if “a parent of the child has denied or unreasonably restricted visits with the child, there is a rebuttable presumption that the granting of a right to visitation to a party seeking visitation is not in the best interests of the child. **To rebut this presumption, the party seeking visitation must prove by clear and convincing evidence that it is in the best interests of the child to grant**

*visitation.*” (emphasis added). NRS 125C.050(6) lists factors the court is to consider when determining whether the presumption has been rebutted.

*Hudson v. Jones*, 122 Nev. 708, 713, 138 P.3d 429, 432 (2006), held that a parent does not get the benefit of the parental presumption once a nonparent is granted custody by court order. In *Hudson*, the grandmother obtained custody of her grandchild after the mother was killed in a drive by shooting related to the father’s gang involvement. The court found that the father was an unfit parent and that sufficient extraordinary circumstances existed to overcome the parental preference.

Ten years later the father, claiming to have turned his life around, sought modification of the grandparent custody order. Applying the parental preference presumption, the district court granted him sole custody of the child. The Supreme Court reversed, holding “that the parental presumption does not apply to a previously ‘litigated custody dispute’ because ‘applying the parental preference to modifications would only ‘weaken the substantial change requirement.’” *Rennels*, 127 Nev. at \_\_\_, citing *Hudson*, 122 Nev. at 713.

We recognized that when there is a court-ordered custody arrangement, the nonparent has effectively rebutted the parental presumption, after which the child’s need for stability becomes a paramount concern. (citation omitted) Thus, we concluded that the same test should apply to requests to modify court-ordered parent-nonparent custody arrangements as to proposed modifications of parent-parent arrangements. 127 Nev. at \_\_\_.

We are persuaded that this rationale also applies to requests to modify or terminate judicially approved non parent visitation. When a nonparent obtains visitation through a court order or judicial approval, they have successfully overcome the parental presumption and are in the same position as a parent seeking to modify or terminate visitation. 127 Nev. at \_\_\_.

The facts of *Hudson* were extraordinary. The father lost custody to the grandmother because he was unfit and sufficient extraordinary circumstances existed. Giving him the benefit of the

parental preference after the child lived with her grandmother for ten years would disrupt her security and stability. Even though the facts of *Rennels* are mundane in comparison, the Supreme Court broadly extended *Hudson* to all requests to modify or terminate judicially approved nonparent visitation. A parent gets the benefit of the parental preference only once. When a court grants a nonparent visitation, the nonparent is accorded the status of a parent for purposes of modification or termination of visitation. The burden of proof shifts to the parent to establish the *Ellis* standards, even if he voluntarily allowed nonparent visitation and his unfitness and other extraordinary circumstances to rebut the parental presumption were never clearly and convincingly established.

**3. A parent seeking to modify or terminate a nonparent visitation order must meet the *Ellis v. Carucci* standard.**

“If parents can unilaterally modify or terminate visitation with nonparents, with whom a child has had an ongoing relationship, and which exists because the court has adjudicated and approved a visitation schedule, the order would serve no legal or policy purpose. Thus, we adopt the test we enunciated in *Ellis* for modifying child custody arrangements among parents and apply it to modifying or terminating judicially approved nonparent visitation rights.” *Rennels*, 127 Nev. at \_\_\_. Under *Ellis*, “modification of primary physical custody is warranted only when (1) there has been a substantial change in circumstances affecting the

## Washoe County Bar Foundation Gratefully Acknowledges Donors for the 2012 Year\*

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welfare of the child, and (2) the child's best interest is served by the modification." 127 Nev. at \_\_\_, citing *Ellis*, 123 Nev. at 50.

*Hudson* relied on a case from Alaska which was decided before *Troxel* and did not address constitutional implications. Without constitutional analysis, *Rennels* extends *Hudson* to parents who voluntarily agree to nonparent visitation. The liberty interest of parents "in the care, custody and control of their children – is perhaps the oldest of the fundamental liberty interests recognized" by the U.S. Supreme Court. *Troxel*, 530 U.S. at 65. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.*, citing *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). The law presumes that a fit parent acts in the best interests of his children. *Id.*; *Parham v. J.R.*, 442 U.S. 584 (1979). Referencing multiple precedents, the U.S. Supreme Court recognized that "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel* at 66.

By resolving litigation, the father in *Rennels* unwittingly waived his constitutionally protected parental preference, without a showing that he made a knowing and intentional waiver of his rights, and without any finding of parental unfitness or clear and convincing evidence rebutting the parental presumption. *Rennels* shifts the burden of proof from the nonparent to the parent, denying the parent the right to make decisions in the best interest of his child, without state interference. The nonparent gets a free pass and benefit of a new presumption – that the voluntary visitation agreement of a parent constitutes rebuttal of the parental presumption. The Court's rationale is that its interference in the parent's liberty rights is necessary to promote a child's stability, even without proof that the parent's decision to limit or terminate nonparent visitation would create instability or that he is not acting in his child's best interest. Due process

protects a parent's fundamental right to make decisions for his children. As long as "a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Troxel*, 530 U.S. at 68.

The district court enforced the parental presumption and based upon evidence, found that continued visitation was not in Martina's best interest. The Supreme Court reversed, holding that by stipulating to nonparent visitation, the father ceded to the State his right to make decisions for his daughter. Would

the ruling be the same had the Court considered *Troxel* and the constitutional protections underlying the parental presumption?

## NOTES

<sup>1</sup> 123 Nev. 145, 161 P.3d 239 (2007)



*Mary Anne Decaria is a partner in Silverman, Decaria & Kattelman, Chtd. She served on the Family Law Section Executive Council and chaired the Northern Nevada Disciplinary Board. Her columns are online at wcbar.org.*

## You be the judge. . . High School Mock Trial Competition Scoring Judge Volunteer Form

The Northern Nevada Regional competition is scheduled to take place on Friday, February 10, 2012. This success in the growth of the program means we will need at least 18 scoring judges for each trial. The first round of competition will begin at 8:30 a.m. with the succeeding rounds beginning at 10:30, and 1:30.

Here's what two Wooster High School students say about Mock Trial:

*"Being in Mock Trial is a way to boost one's confidence. I joined last year and since then, I've improved my social skills. It's exciting to think on my feet. Mock Trial at Wooster has never a club about winning or losing—it's about bonding with each other and simply enjoying playing attorney/witness.*

*Ningxin Wang*

*"It's amazing to learn about the simple, yet complex process of a trial and to actually attempt it."*

*Shubham Gogna*

We hope you can mark your calendar now to participate as a scoring judge. Note the times you signed up for here and mark your calendars. Confirmations will be sent to you before the trial dates. Thank you!

Please copy and return the form to P.O. Box 1548, Reno, NV 89505 or fax to WCBA at 324-6116. Thank you! You can also e-mail [gina@wcbar.org](mailto:gina@wcbar.org) with the same information.

Name \_\_\_\_\_  
Phone: \_\_\_\_\_ Cell # \_\_\_\_\_ (in case of changes)  
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Yes, I can be a scoring judge at the Regionals on February 26. I can participate at  8:30 a.m.  10:30 a.m.  1:30 p.m.  3:30 p.m.

# A C R O S S   T H E   L I N E

James L. Porter, Porter • Simon

## LANDLORD'S RIGHT TO ENTER DWELLING

One question that frequently arises in landlord/tenant situations is when the landlord may legally enter a residential dwelling. Some tenants believe the answer is “never.” A few landlords think “whenever.”

### SIX CIRCUMSTANCES

California Civil Code section 1954 addresses the question and allows the landlord to enter the tenant's rental only for certain specified reasons, during specified times and only after providing the tenant with advance notice. Section 1954 limitations cannot be waived.

A landlord may enter a residence only: (1) in an emergency; (2) to make necessary or agreed upon repairs, decorations, alterations or improvements; (3) to supply necessary or agreed-upon services; (4) to exhibit the house for prospective or actual purchasers, lenders, tenants, workman or contractors; (5) when the tenant has abandoned or surrendered the property; or (6) under a court order.

Note there is no specific authorization for landlords to enter rental premises purely for the purpose of inspecting them. Landlords should fashion any inspection to meet one of the six code-authorized reasons. The right of entry to make alterations does not include extensive alterations that unreasonably interfere with the tenant's possession. *Dwyer v. Carroll* (1890) 86 Cal 298; 24 P. 1015.

### NOTICE

A landlord must give a tenant “reasonable” notice *in writing* before

entering. The writing requirement became effective in 2003. The notice must include the date, approximate time, and purpose of the entry. The notice must be personally delivered to the tenant, left with someone of suitable age and discretion at the property, or left on, near, or under the usual entry door in a manner in which the tenant will discover the notice. 24 hours is presumed to be reasonable. The notice may be mailed to the tenant, but at least six days prior to the intended entry to be presumed reasonable notice.

If the purpose of the entry is to show the unit to prospective or actual purchasers, the notice may be given verbally, in person or by telephone, if either the landlord or his or her agent has notified the tenant in writing within 120 days of the verbal notice that the property is for sale and that the landlord or agent may contact the tenant verbally for showing the property. Again, 24 hours

is presumed reasonable. The landlord or agent must leave written evidence of entry—like a business card—inside the unit.

The landlord and tenant may verbally *agree* to an entry to make agreed repairs or supply agreed services. That agreement must include the date and the approximate time of proposed entry, which must be within one week of the agreement. In that case the landlord is not required to provide the tenant written notice.

No notice is required to respond to an emergency or if the tenant is present and consents to the entry. An emergency would include inspecting the smell of propane, justified concern over snow load or evidence of water leaking. It should be a true emergency. *People v. Plane* (1969) 274 CA 2<sup>nd</sup> 1; 78 CR 582.

No notice is required after the tenant has abandoned the premises. Whether a residence has been abandoned may *cont. page 18*

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## Profitability Relative to Business Value, Especially Given the State of the Economy

Richard M. Teichner, CPA, ABV, CVA, CFF, CDFATM

We can all agree that the economy has had a negative impact on many, if not most, businesses. In fact, many businesses and business interests appear to have virtually no value, and some may actually not have value, but they could still very well be viable. For those businesses whose profitability has suffered, this has translated into at least some, if not a substantial, decrease in their values. Those business enterprises fortunate enough to not have been materially affected by the downturn in the economy or that have even thrived despite the downturn, are still probably not worth as much as they would otherwise be in a favorable economy.

First let's look at situations where a business that seems to be making a profit might appear not to have any real value.

We'll assume that the business has a single owner who operates the business and whose owner withdraws money as available and/or as necessary for living expenses and the like. The owner's books and/or the tax return for the business (reported on a Schedule C if a sole proprietorship or single-member limited liability company) shows a profit of \$100,000 per year before any depreciation expense (which can vary greatly among businesses). For many small businesses, this amount would normally approximate cash flow, except when some of the cash flow is used to pay down principal on debt or purchase equipment or other capitalizable asset. Since the owner takes no formal salary from the business, a compensation amount needs to be

imputed (or assumed) in order to arrive at a true profit that is used as a basis in arriving at a value of the business. In other words, the functions performed by the active owner have value and, in fact, if the owner was not active, then that owner would need to pay someone else to perform those functions. So in our example, let's assume that the owner's efforts in running the business warrants a salary of \$100,000 per year based on the

approach is used for arriving at the value. Theoretically, when using the market approach to arrive at a value, i.e. using data from businesses comparable to the subject business, the value should be the same as for the income approach. If there is a wide discrepancy, then another look needs to be given to the information used and assumptions applied.

(The examples above are certainly oversimplifications, since there are various

... if the value of a business appears to be zero, should that be the end of the discussion? Probably not. The operative word here is *appears*.

compensation that others, whether owners or employees, in similar businesses and performing similar functions earn. After deducting the imputed compensation of \$100,000 from the \$100,000 earned by the business before such compensation, the profit is zero (or the cash flow may be less than zero if some of it has been used for debt repayment or equipment acquisitions). If this is the case, then there are no earnings and thus the business appears to have no value.

The same situation could apply to a corporation or other form of entity. Say that a corporation earns \$50,000 after paying the stockholder-operator \$75,000 per year, but the fair compensation amount is \$125,000. Again, in this example, the corporation's earnings for valuation purposes is zero.

In the examples above, the income

factors that need to be considered in arriving at a value of a business, but their purpose is merely to serve the objective in this article of considering the extent that a business may have value given the state of the economy.)

So using the above examples, if the value of a business appears to be zero, should that be the end of the discussion? Probably not. The operative word here is *appears*.

First of all, the value of a business is not based solely on its current profitability, or lack thereof. How has the business fared in the past? What are the prospects for the future when the economy starts to recover? Does the company have the wherewithal to sustain some period, or maybe an extended period, of depressed revenues? Are there funds available from outside sources, and/or is the owner able

and willing to infuse needed capital in the hope that the business can ride out the storm? These are factors that need to be considered when determining value.

As for the past performance of a business, if it has been profitable in prior years and has the potential to be similarly profitable when conditions improve, then, even if the business has nominal or no profit, or is even operating at a loss, it could very well have value when looking at other factors, such as some of those mentioned above.

What if a business has not been profitable in the few recent preceding years and/or there is little likelihood that it will be profitable in the foreseeable future? Could the business possibly have any value? In the context of the business having any return to the owner, after compensating the owner for his/her value to operating the business, or to some investor who would operate or pay someone to operate the business, the answer is probably "no". However, there could be reasons that the business has value to a particular owner-operator that are intrinsic in nature. For example, if the business has earnings that result in cash flow to the owner-operator *before* imposing an imputed compensation to that owner-operator, then if such cash flow is adequate to meet that person's needs, the business is thus allowing him/her to "make a living". Then there are qualitative elements, such as the business allowing the owner to have what could be a relatively secure job and to have the satisfaction of being his/her own boss.

Lastly, what if a business has no earnings and no prospects of earnings in the foreseeable future, but has net worth, i.e. the total of the values of its assets exceeds the total of the values of its liabilities? Does the business as a whole or, more specifically, does the equity of the business, have value? From an ongoing concern perspective, the answer is most likely "no", but from a liquidation perspective the answer is "yes". Certainly, if the trend of losses continues, the business will eventually run out of its net worth (and may have already run out of liquidity), so in this instance the business is worth more dead than alive, and thus the way that any value may be realized is by liquidating the business, i.e. selling the assets and paying off the liabilities.

Hopefully, this action, or merely walking away from the business, will not be necessary for most of those who have survived the economic downturn so far.

*Richard M. Teichner is the manager and sole member of Teichner Accounting Forensics & Valuations, PLLC in Reno, and with an office in Las Vegas. He is a CPA, Accredited in Business Valuation, a Certified Valuation Analyst, a Certified Financial Forensic and a Certified Divorce Financial Analyst™. He provides litigation consulting and expert witness testimony relative to forensic accounting and business valuations in commercial litigation and family law matters.*



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*Left to right: Tom Belaustegui, Margo Piscevich, John Rhodes, Ted Schroeder, John Ohlson (seated) Kent Robison, Gordon DePaoli, Ross deLipkau, Mike Clasen, John Echeverria, Steve Peek and David Hamilton.*

WCBA honored its 1972 "class" of admittees to the State Bar of Nevada at the Bar's December 10th luncheon. Margo Piscevich, who became an honorary member last year, served as our emcee, inviting the honorees and guests to share memories about the new 40+ members.

Music by the String Beings, generously donated by Bill Thornton, added to the holiday atmosphere. The honorees and their colleagues and friends revealed some stories about the Bar and the practice in Reno when they were "baby lawyers."

# P E O P L E

## In Memorium

**William L. Harper** died December 4, 2011 in Reno. Harper was a lifelong resident of Reno, graduating from the University of Nevada before attending Willamette School of Law, graduating in 1964. He practiced in the law office of Harper & Harper with his brother until his retirement in 2000. A celebration of life was held in Reno on December 18.



**Robert L. Schouweiler**, retired judge in Second Judicial District Court, died October 21, 2011 after a short illness in Las Costa, California. Schouweiler graduated from the law school at the University of San Francisco and served as a commissioned officer in the U.S. Marines in the Korean Conflict. He moved to Reno, served two terms in the Nevada State Assembly, practiced law with his brother Bart Schouweiler, and later was appointed to the bench of the Second Judicial Distict Court. A memorial service was held in Reno in November.

## Across the Line cont. from p. 15

The law recites that the landlord may not abuse the right of access to harass the tenant, such as repeated and serious abuse.

### NORMAL BUSINESS HOURS

Except in an emergency or when the tenant has consented to entry other than normal business hours, or when the tenant has abandoned the property, the landlord may enter the premises only during "normal business hours," which is not defined by law but is generally understood to be between 8 AM or 5 or 6 PM, Monday through Friday. Weekends may be appropriate depending on the circumstances, especially for showing property. It is good practice to define "normal business hours" in the lease.

### REMEDY

If the tenant absolutely refuses entry, the landlord may not enter by force or threat of force. If the lease includes a

sentence that the tenant must comply with all laws, the refusal of entry by the tenant amounts to a violation of the lease and law, justifying a 3-day notice and subsequent eviction. With a month-to-month tenancy the landlord may simply give a 30-day notice. It is to everyone's advantage to spell out the rules of entry in a lease, but the Civil Code applies to residential tenancies even without a writing. Commercial rights of entry are generally provided in the lease.

Most tenants have no objection to an entry as long as they are given some advance notice. But not always, so it is best to follow code mandates.

*Jim Porter is an attorney with Porter Simon, with offices in Truckee and Reno. He is a California real estate broker, and was the Governor's appointee to the Fair Political Practices Commission and McPherson Commission, both involving election law and the Political Reform Act. Jim may be reached at [porter@portersimon.com](mailto:porter@portersimon.com) or at the firm's web site [www.portersimon.com](http://www.portersimon.com).*



# L a w L i b r a r y

## Library Hours

Mon.	8am - 5pm
Tues- Wed	10am - 7pm
Thurs.	8am - 5pm
Fri.	8am. - 12noon
Sat.	Closed
Sun.	Closed

The Law Library will be closed on Monday, January 2<sup>nd</sup> in observance of

New Year's Day and on Monday, January 16<sup>th</sup> in observance of Martin Luther King Jr.'s Birthday.

We would like to thank the following attorneys who participated in Lawyer in the Library programs during the month of Nov.: Stephen Scheerer, Leah Wigren, Richard Williamson, and Mark Liapis who volunteered for our Wednesday night program. We would also like to thank Victoria Mendoza, Stephen

Scheerer, Muriel Skelly and Benjamin Albers for volunteering for our Tuesday night program, which is reserved for family law matters.

Please call Nikki Britt at 328-3250 if you would like to volunteer for our weekly Lawyer in the Library programs.

## See [wcbar.org/events](http://wcbar.org/events) for details and registration

### JANUARY

**1 6** WCBA CLE, Business Valuation Issues for Commercial & Family Law Litigation presented by Richard Teichner and Robert Cerceo. 9:00 a.m. to 12:15 p.m. Thompson Federal Courthouse. 3 cr. CLE. Register at [wcbar.org](http://wcbar.org) or call 786-4494.

**1 6** WCBA CLE, Business Valuation and Gift Planning presented by Scott Wait, CPA, Jason Morris and Timothy Riley. 1:30 - 4:45 pm, Thompson Federal Courthouse. 3 cr. CLE. Register at [wcbar.org](http://wcbar.org) or call 786-4494.

**1 7** Please join SNAP Tues., January 17, 2012 at noon at Zozo's Ristorante, Lakeside & Moana, for a presentation by Amy Parks, Chief Counsel for the Nevada Division of Insurance, who will provide a general overview of what the Division does, the types of cases/administrative

hearings it conducts, how best to proceed with the Division if you are involved in an administrative proceeding and protocol re communications with the Commissioner. \$18 for members and guests; \$15 for student members (includes lunch and beverage). RSVP to [jessica@silvermandecaria.com](mailto:jessica@silvermandecaria.com).

**1 7** Please join the Northern Nevada Women Lawyers Association ("NNWLA") on Tuesday, January 17th for its first meeting of 2012 with a panel presentation entitled "Women Who Helped to Pave the Way." For more information, including meeting location and time, please visit our website at [www.nnwla.com](http://www.nnwla.com).

**1 9** Annual dinner party at the Santa Fe Hotel. Our host for 2012 is Monique Laxalt and we honor our longtime member Bruce Laxalt. Watch for your invitation! \$40 per person. \$320 for table of 8 with sign. Limited to first 200

reservations. Drinks at 5:30, dinner 6:30. Register at [wcbar.org](http://wcbar.org).

### FEBRUARY

**2 4** High School Mock Trial Regional Competition. Please mark your calendar and volunteer as a scoring judge. Trials are at 8:30, 10:30 and 1:30 Friday and we promise they are entertaining—you will be impressed at the skill of the young participants. Return the form on page 14 or e-mail [gina@wcbar.org](mailto:gina@wcbar.org) or call 786-4494 to volunteer.

*Send items for the Events page to [chris@wcbar.org](mailto:chris@wcbar.org). Deadline is no later than the 10th of each month. We include only events of bar-related organizations. Please limit to fewer than 50 words. Notice may be edited for space.*

## THURSDAY, JANUARY 19, 2012 • SANTA FE • DRINKS 5:30, DINNER 6:30

### Annual Dinner at Santa Fe

Name(s) \_\_\_\_\_

Firm/Agency \_\_\_\_\_

\$40 per person  \$200 for Table of 8 with sign

Check enclosed for \$ \_\_\_\_\_  Bill my credit card for \$ \_\_\_\_\_

Card # \_\_\_\_\_

Exp \_\_\_\_\_ Sec Code \_\_\_\_\_

Billing Address \_\_\_\_\_

Online registration and outline at [wcbar.org/events](http://wcbar.org/events)

Fax to 324-6116 or mail to WCBA, P.O. Box 1548, Reno, NV 89505.



Fax to 324-6116

Mail to: WCBA

P.O. Box 1548, Reno,  
NV 89505

## CLASSIFIED

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█ **FAMILY LAW PRACTICE SEEKS A PROFESSIONAL, EXPERIENCED PARALEGAL/LEGAL SECRETARY** for part-time position. Salary and work hours negotiable. Family law and civil experience a must. Please submit letter of interest, resume and references to KAVLAW, PO Box 2977, Reno, Nevada 89520.

█ **PRO BONO COORDINATOR:** Volunteer Attorneys for Rural Nevadans (VARN) located in Carson City, Nevada, is seeking a Pro Bono Coordinator to operate and manage VARN's pro bono program. General responsibilities include interviewing potential clients, placing eligible clients with pro bono attorneys, preparing and distributing case referral lists on a regular basis, recruiting pro bono attorneys, participating in community outreach and fund raising events. Past experience in the legal profession desirable. Qualified applicants should also have college level verbal and written skills, computer skills and knowledge of Excel, WordPerfect, and other word processing, and data management software. Position available immediately. Medical benefits. Salary DOE. EOE. Fax resume to 775-883-7211 or e-mail to: oramirez@varn.org

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█ **OFFICE SPACE AVAILABLE:** Approx 1200 sf. Within walking distance to State and Federal Courts. 3 inside offices, conference room w/wet bar, & large reception area. Off street parking & janitorial included. Rent Negotiable. Call Dennis or Trish 329-5329.

█ **COURT STREET OFFICE BUILDING FOR RENT:** 1335 sq. ft. 2 to 3 offices with a large reception area and additional secretarial office. Includes phone system. Basement with sink, stove, fridge full 2nd bathroom/shared 1335 sq ft basement space for storage please call 775.786.4188.

█ **OFFICE SPACE AVAILABLE:** Centrally located office by the River. Apx. 400 sf. Available immediately, Private entrance, plentiful free parking, and Janitorial services: \$650.00 per month 828 Jones Street, Reno, NV 89503. 775-329-2223.

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### CLASSIFIEDS

Your classified ad appears in The Writ and online at [wcbar.org/classifieds](http://wcbar.org/classifieds). Updated weekly. Member rates \$25 for first 30 words and \$.50 each additional word. Non-member rates: \$40 for first 30 words and \$1 for each additional word. Fax to 775-324-6116 or email [chris@wcbar.org](mailto:chris@wcbar.org). Find the form on our website at [www.wcbar.org](http://www.wcbar.org).



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