

## BAR BULLETIN

10630 Town Center Drive, Suite 119 ~ Rancho Cucamonga, CA 91730

Volume XIII, Issue 4

[www.wsbcba.org](http://www.wsbcba.org)

April 2012



### **REMARKS FROM THE PRESIDENT'S DESK**

*By: Laurel A. Hoehn*

“The first of April is the day we remember what we are the other 364 days of the year.”

- Mark Twain

Spring has finally arrived, as has the month of April. I am sure that Tony Sears will have some great tips and pointers for everyone to prepare their gardens for a plentiful summer bounty. Hopefully, the weather remains nice and everyone will be able to spare some time to enjoy the outdoors this month.

On March 22, 2012, the Western San Bernardino County Bar Association honored Judge Ben T. Kayashima with the Third Annual Judicial Officer of the Year Award at the Sierra Lakes Country Club. It was a wonderful event and nice to see so many people come out to recognize the commitment Judge Kayashima has made to our local legal and Judiciary community. Thank you to those of you who were able to attend and congratulations again to Judge Kayashima.

The Bar Association is currently redesigning its website as well as the website for the Lawyer Referral Service (“LRS”). We hope to unveil the new sites within the next couple of months. For those of you who do not know, the LRS is a service provided to local residents to assist with locating an attorney who can help with their particular legal situation. Local, qualified attorneys apply to become panel members in specific areas of the law. Upon receiving a call from the public, the LRS forwards the referral to one of its panel members for a low-cost consultation. This has been a particularly helpful avenue for people who have had trouble finding an attorney or lack the money for a more expensive consultation. If you receive calls in your office for matters outside your area of expertise, please refer them to the Lawyer Referral Service.

We will continue to host MCLE lunches on various topics. If there is a topic of interest you would like to see as one of our MCLEs, please let us know. Also, mark your calendars for May 17<sup>th</sup> when we will host the Joint Eastern Los Angeles County Bar Association and Western San Bernardino County Bar Association State of the Courts at the Rainbow Canyon Ranch Academy. See you there!

### **From The Desk of the President of the Josph B. Campbell Inn of Court**

*By: Hon. Barbara A. Buchholz*

I, like millions of others in the world, prefer not to think about or admit that someday I will be old, maybe infirm or feeble, and even perhaps not capable of tending to my own affairs; essentially incompetent. Pushing aside my own inevitable lack of future immortality, as our large crush of baby-boomers reaches senior citizen status, I am mindful that we as practitioners and judges must be cognizant of the realities of this aging population and the impact it has now and will have in the future on the practice of law. Our March program, excellently moderated by Jack Osborn, our program chair, addressed this ever increasing and highly specialized nuance of the law in our evening Inn of Court presentation entitled: “Greed, Gold Diggers and the Golden Years.” The program focused on both the criminal and civil implications of elder abuse.

The evening program consisted of a group of informed panelists, including the Hon. Cynthia Ludvigsen, Probate Judge for San Bernardino County, Felix Martin of Cohen & Richardson PC, John Short of Brown, White & Newhouse LLP, and La Verne law student, Anthony DiBenedetto.

Through the use of selected fact patterns, the panelists focused on 3 different perspectives: issues as they pertain to capacity of your client to be a plaintiff or defendant in a case; undue influence from a caretaker on a party to act or forego acting to the benefit of the caretaker; and the appropriate arena to pursue claims – civil or probate court.

The group first tackled the issue of the client’s competency to act either at the inception of a case or at some point in time during the litigation. All agreed that this can be a “touchy” area of inquiry. Mr. Martin explained that the attorney needed to discern this critical question; however, care needed to be taken that the attorney did not act on his/her “diagnosis” of the client. Rather, that it should be generally suggested to the client or a family member that a doctor’s visit might be appropriate under the circumstances. Mr. Short indicated that under some circumstances, approaching the judge and opposing counsel in chambers might be advisable.

## From The Desk of the President of the Joseph B. Campbell Inn of Court

*Continued from Page 2*

Panelists also discussed the need for the appointment of a Guardian ad Litem (GAL) if appropriate. Attorneys must advocate for their client and put forward their client's position even if their client is perhaps wrong in their thinking. However, a GAL can speak to what is in the best interest of the person no matter if it is adverse to what the client is requesting. Another tool discussed was to have the client petition a conservator for himself for the limited purpose of dealing with the litigation.

In the event a client is placed in a conservatorship, attorneys must be mindful that any settlement reached on their client's behalf must be approved by the probate court *before* moneys are paid and the case dismissed. Also critical is the impact of attorney fees; the probate code clearly outlines how much the attorney can be paid for his services. This may be true even if the person is not conserved, but it is clear the person has a true incapacity (e.g., traumatic brain injury).

The next fact pattern addressed when the client during the course of litigation died, for example, a defendant in a civil litigation. Panelists agreed that in those circumstances a statute of repose would control. In other words you would have 1 year from the date of death to file a claim in the probate court against the estate. If you failed to do so, you would be precluded from collecting against the decedent's estate if you subsequently prevailed in a civil action. Again the attorneys involved would be subject to the probate court for approval of any settlements and decisions regarding how much the attorney received in fees. Even if they were no family members to establish the estate, the interested party would have to have a Personal Representative appointed in order to proceed to establish the claim in probate court.

The next fact pattern addressed issues of elder abuse, the remedies available under the statutes for violations and the benefits and burdens of proceeding in probate court versus civil. Our law student, Mr. DiBenedetto, explained the remedies available under both the Welfare & Institutions Code and the Civil Code and the availability of punitive and treble damages for certain violations.

Judge Ludvigsen discussed the benefits of probate court in that it can be expedient, there is no jury involved in the process, and the court has great latitude to fashion an appropriate remedy on behalf of the estate. She also discussed a procedure unique to probate known as a Citation. Essentially it is a process that allows the court to conduct a deposition in the courtroom with the power of the court to act immediately to fashion an order if appropriate. For example if the estate is concerned that not all assets have been disclosed the court through the use of the citation process can have the person

who has knowledge of the asset, such as bank personnel, come to the court and be subject to exam in front of the judge. Thereafter, the court can make an immediate decision that the asset belongs to the estate and order that the asset be placed in the estate.

Also discussed were issues of undue influence and the resulting presumption which might preclude a caretaker from receiving a gift from an elderly person.

This month was yet another very informative presentation to our group. And, remember, MCLE credit is given for each program. If you did not get to the March meeting, you missed another great program. Next Month we have our Joint Dinner Meeting on April 3, 2012 at the San Bernardino Hilton, with California Supreme Court Justice Goodwin Liu speaking. Hope you are able to attend. Our **next program**, which will again be at the Arrowhead Country Club, is set for **May 9, 2012 at 5:30 pm**. The topic will be: "So You Think You Are a Good Negotiator?"

All membership questions should be directed to our membership chairman, Donna Connally. She can be reached at: (909) 758-5136 or you can e-mail her at:

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Until next time, Hon. Barbara A. Buchholz

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## March Almanac

By: Tony Sears

All times Pacific Daylight Time (PDT), which is minus seven (7) hours from UTC (Universal Time Coordinated). April will be a great month for naked eye sky watching. Venus and Jupiter shine brightly in the Western sky after Sunset. Mars is in Leo and Saturn rises after 10:00 p.m. Night sky viewing should be especially good later in the month, just before the New Moon on April 21, 2012, at 12:19 a.m. Look for a tight grouping of the thin crescent Moon, Venus, and Jupiter on April 22 and 23. The April Full Moon is called the "Full Egg Moon" and happens on April 6, 2012. The Full Egg Moon will rise at 7:37 p.m. after having gone full at 12:20 p.m., so it will be bright all night.

**Garden Notes:** Now this is the time to prep your tomato patch. Nothing, I mean nothing can match the flavor of a homegrown heirloom tomato. You should turn the soil and add any organic material of your choice. Tomatoes seem to do best when they have their own space, either in a raised bed or container, which enables a strong root system to develop. I have a dozen or so raised beds, so I plant two beds per month from April until September yielding tomatoes from June through Christmas. I use cactus mix in large containers around the yard. This provides excellent drainage. It is simple to grow heirloom tomatoes from seed. If you want to give it a try, check out Victory Seed Company, ([victoryseeds.com](http://victoryseeds.com)) a small seed company in Oregon. My favorites, so far, are "Cherokee Green," "Green Zebra," and "Kellogg's Breakfast."

**Recipe of the Month:** April Recipe: Remember the Leek, the King of the Soup Onion? Try my Potato Leek Chowder. This is the detailed version because this is a great recipe to teach kids or novice chefs how fresh ingredients and good technique yield tasty results. This soup goes really well with a sour dough bread bowl. As always, if you have your pans, tools, and ingredients set out, you can make it in a snap. **Potato Leek Soup/Chowder** Serves 4-6. Prep and cooking time: 30 minutes.

**Tools:** Chef's knife. Potato peeler. 4 qt. sauce or stock pan. This is for boiling potatoes.

**Dutch Oven** for making the chowder. Go ahead, drag out that La Crusette. What are you waiting for? This is for cooking the bacon and the leeks. **Stick Blender.** A regular blender is okay, just be careful you can only fill it 1/3 to 1/2 full, or else you'll have a "hot soup incident" on your hands and a mess in the kitchen. **Colander:** for washing up your potatoes and leeks.

**Ingredients:** 4 cups of water; 1 1/2 lbs Yukon Gold Potatoes, peeled and cut into chowder size chunks. Try to keep the chunks uniform in size so they

cook evenly. **3-4 fat leeks.** If you aren't sure how to choose your leeks, ask the produce staff at your market. **Bacon (or Olive Oil).** Hmmmmmm. Cut up into 2 inch pieces and cook down 10-12 strips of bacon in your Dutch oven. Plain bacon works best, rather than Applewood or Hickory Smoked. If you are not a bacon person, olive oil works just as well to cook down the leeks. Two tablespoons will do the trick. **2 cups of heavy cream;** and **1/4 cup of White Wine.** **Sourdough Bread Rounds** (for making bowls). **Optional: Grated Sharp Cheddar Cheese.**

### Cooking Technique:

1. Get the bacon going and preheat the oven to 425F. Cook bacon in Dutch Oven until crispy, drain on paper towels and set aside for garnish (or snacking). Remove from heat (this means turn off the stove!). Reserve about two tablespoons of the bacon drippings. Remove remaining bacon fat from Dutch oven and deglaze with 1/4 cup of white wine. Set Dutch Oven aside.
2. Wash, peel, cut, and boil potatoes in four (4) cups of water, until tender. In this recipe, the potato cooking water forms the base for the soup, which is why we measured it. In this recipe, you need to keep the potato water, for the starch (which thickens the soup) and for the residual heat.
3. Wash, chop up, and cook down the leeks: Leeks get fat and tasty because the edible (white) part grows in the dirt. So, you need to clean well. Cut the leek where the white turns to green. The leek leaves can go in your compost pile. Slice the leeks as you would an onion. Rinse thoroughly. You'll be surprised how much dirt gets in the leek as it grows. Cook leeks in the Dutch oven using bacon fat or olive oil until soft and translucent. If there is still too much bacon fat or oil in the pan, you may dab it off using a paper towel.
4. Optional Sour Dough Bread bowls: Get some sour dough rounds. You should have preheated your oven to 425 F. Gently cut a large hole in the top of the bread and carefully remove the bread inside, keeping the crust intact. Tear the removed bread into chunks. Place bowls and bread chunks on a cookie sheet and place in oven for 10-15 minutes.
5. Now, here's the finish: Separate out about a third of the cooked potatoes and place in bread (or other soup bowls) to form the chunks of the chowder. Using your stick (or regular) blender, add remaining potatoes and reserved potato cooking water to the cooked leeks (in the Dutch oven) and puree. The soup should still be quite hot. Temper the cream by adding and stirring in a tablespoon of the hot soup to the cream. The cream is now tempered and can be added to the hot soup and stirred in. Add soup to bread bowl and there you have it.
6. Garnishes and sides: Grated cheddar and the Bacon! Also, a Meyer lemon zest is nice. Salad: Try a salad of baby arugula with a vinaigrette of your choice. Wine pick: Sauvignon Blanc.
7. Spring Holiday Feast Variation: This soup even better when served cold, as a starter for a spring holiday feast. It is amazing. In such an event, you may wish to tone down or even lose the bacon (cook Leeks in olive oil), drop the cheese, and puree all of the potatoes. Finish the same way, but let the potatoes and reserved water cool down first. This is much closer to a classic

## March Almanac

*Continued from Page 3*

French cold potato leek soup, rather than a dinner time chowder.

8. Finally, remember this helpful hint for boiling potatoes: no potato water down the drain, as the starch will go to about the exact middle of your plumbing system, re-solidify, and clog your drains at the worst possible time, like December 24, 2000, at 6:30 p.m. with a houseful of company. If you are not using the water for your soup, then let the water cool down and use it in your garden.

Buon Appetito! Tony Sears

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**Keynote Speaker: Lynne Bassis, Esq.**

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**12:00 Noon to 1:30 p.m.**

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**5:30 — SOCIAL GATHERING**

**6:00 — “CANYON CITY BBQ” BUFFET/HOSTED BAR**

**6:30 TO 7:30 — MCLE PRESENTATION**

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# Western San Bernardino County Bar Association And IVAMS

*PRESENT an MCLE LUNCHEON on*

## **“A JUDGE’S VIEW ON BIAS IN THE LEGAL PROFESSION”**

**Keynote Speaker: Honorable Craig Kamansky**

This one-hour presentation will focus on a general discussion of bias and its influences on our legal profession in general as well as recent developments. The speaker will discuss the California judiciary’s efforts to eliminate bias in the courtroom and will use specific personal examples from trial and courtroom experiences to provide participants with some insights on the topical issue.

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## ANNOUNCEMENTS

### WSBCBA Events

**April 19, 2012:** Tips and Topics In-  
volving Successful Resolution of Em-  
ployment and Workplace Disputes.  
Speaker: Lynn Bassis, Esq. Call The  
Bar Office for more information.

**May 17, 2012:** East Meets West, held  
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mation.

**May 24, 2012:** Judge Kamansky will  
be speaking on Bias. Location to be  
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The News Bulletin of the Western  
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Our circulation is approximately 400,  
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mission.

The majority of our membership  
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Articles, advertisements and no-  
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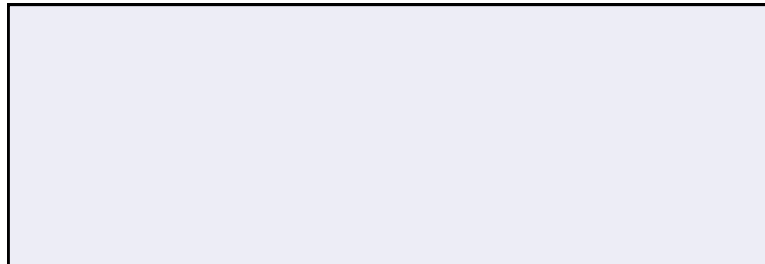
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