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Article Submission

We are looking for articles for our Sept. 2010 Issue (and every other issue for that matter) of Flim Flam.

We welcome any member to submit an article, story, ad, or any other kind of column idea. If interested, please email your submission to our Editor, Cynthia Brown.

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Eastern Alameda County Bar Association

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President's Message

By Patricia Turnage, EACBA President



It is May and we have passed that financial milestone, April 15. We can all collectively sigh in relief as we know that we successfully completed another year of making payroll and paying taxes. For a solo practitioner, that is quite an achievement. For partners/members of a firm, that is also quite an achievement in this unsettling economy.

Our luncheon meeting scheduled for May 21, 2010, affords a second opportunity for EACBA members to earn MCLE credit in ethics by attending the meeting. This month the speaker will be Joann Remke, Presiding Judge of the State Bar Court. I am sure we will have a lively discussion about ethical rules of professional conduct in the hour we spend with her.

A portion of my active personal injury cases have been referred by a practicing attorney who works up the file in the claims stage. Once he has made a demand to settle, and the carrier's response makes it clear that the case is going to have to be litigated, he refers the case to me to file suit and litigate the matter to settlement, verdict or judgment. Because he has worked the file, he and I enter into a fee sharing arrangement. Fee sharing is allowed as long as the agreement between the referring attorney and me is in writing and signed by the client. I include a paragraph about fee sharing in the retainer agreement. California Rules of Professional Conduct Rule 2-200 addresses the proper procedure when shar-

ing a fee with a lawyer who has worked on the case. Par. (A) (1) is satisfied by a paragraph in a retainer agreement stating clearly that the referring attorney will receive a portion of the attorney's fee and the attorney's fee will not be increased by the agreement to fee-share.

Referrals are a large part of my business, as I am sure they are yours. A satisfied client who returns to use your services again or who refers a client to you is especially pleasing. With referrals comes the question, do I pay the referring party a referral fee? Par. B of Rule 2-200 appears to address this issue. This code section applies unless the law practice is sold, Rule 2-300. Rule 2-200 par. B prohibits an attorney from paying a referral fee if the fee is being paid to the referring attorney for the promise of employment; i.e., the referring attorney has the client hire the attorney. However, gifts or gratuities given to the referring lawyer that are not paid for consideration of the promise to give the other lawyer the case, are permitted. A call to the State Bar Ethics Hotline regarding the language of par. B revealed that California follows the ABA Rules of Professional Conduct regarding referral fees between lawyers. ABA Model Rules of Professional Conduct, Rule 1.5, Fees, par. (e) allows a division of a fee between lawyers who are not in the same firm under certain circumstances. The rule allows a division of the legal fee only if:

- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
- (3) the total fee is reasonable.

These rules apply to lawyers. What if the referring person is a non-attorney, can a referral fee be paid? We need only look to Rule 1-320 to find the answer. Fee sharing with a non-lawyer is prohibited, except in a few instances. Par. B of this rule specifically prohibits a member of the Bar to compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client or other non-lawyer. The member lawyer can still give a gift or gratuity to the non-lawyer "but it cannot be offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future." This law applies if at the time the referral was made the person was a non-attorney but has since become licensed as an attorney.

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The Low Down on High Tech

by Gerald R. Prettyman

***“To Blawg or Not to Blawg” that is the question:
Whether ‘tis nobler in the mind to suffer
The slings and arrows of outrageous fortune,
Or to take arms against a sea of troubles,
And by opposing end them?
(With apologies to Wm. Shakespeare.)***

Without question, it is no longer, “To Blawg or Not to Blawg?” Many thousands of lawyers are already writing legal web logs (blawgs). Many more are on LinkedIn, or have pages on Facebook, Twitter, MySpace and one or more of the many professional and electronic networking sites. The question is, rather, to what extent may or should an attorney use the Internet for business purposes. As with all business and risk management issues, the questions of business and career goals must be balanced by the risks of malpractice and ethical liability.

On the upside, having more than a website on the Internet creates name recognition and clients well beyond the typical law firm website. Patent attorney Gene Quinn has been writing a blog named IPWatchdog (www.ipwatchdog.com) for several years. Each day (weekends often included) IPWatchdog discusses many topics of patent law, the Patent Office, plus issues in trademark law, copyright, and any intellectual property topic worth a few hundred words. It's been so successful that he has added several associate authors.

When specifically questioned about its value, Quinn commented in 2009 that the blog generates hundreds of calls each month. The quantity of calls allows him to be quite choosy about these clients while adding significant revenue to his firm. Thus, for Quinn at least, the blog is worthwhile in spite of the time needed for drafting and maintenance.

Conversely, a blog may have a down side. In January 2010, Quinn received a lawsuit filed by “Invention Submission Corporation,” dba ‘InventHelp’. InventHelp alleged that Quinn’s blogs about invention submission companies (i.e., companies like InventHelp, and specifically InventHelp in some cases) were false and misleading. At its gist, InventHelp is alleging Lanham Act (federal trademark law) plus defamation, trade libel and interference with contract. Undaunted, Quinn has added this topic as fodder for his blog.

Conversely, InventHelp wants lawyers to learn the same lesson as any other plaintiff – speak negatively of my business and you’ll pay attorney fees defending yourself, irrespective of whether the suit lacks merit. While the suit is likely to die in settlement (without admission or payment, I suspect), it will likely affect some legal bloggers to ignore suspicious activity and leave those stories to the big guns.

Thus, the IPWatchdog moral is to keep your blogs clean of controversy and omit derogatory comments unless you are citing authoritative support.

Besides legal blogs, a number of social media authors recommend that lawyers also create pages on LinkedIn, Facebook, or other social websites. It is, however, at this point that the business/ personal distinction becomes most important. For example, LinkedIn suggests that you create your business profile, join professional groups and make contact or ‘invite’ other people to develop your professional network. Facebook, on the other hand, is designed primarily for personal connections.

As an example, there is on LinkedIn a Danville-based “Executive Career Coaching for C-Level Executives” who last year was hired by someone just on the fact that the coach has 500+ connections. While undoubtedly the 20+ years of experience helped, the LinkedIn profile worked both as free advertising, and as a valuable marketing and sales tool.



In addition, LinkedIn has numerous professional groups and forums to which a person may subscribe. These groups and forums are free and allow a person to post or read discussion topics to which any other member may respond. That some groups are popular is an understatement. The Solo Attorney Practitioner’s Forum has a following of close to 2000 members, about 200 discussion forums and several subgroups. One benefit of group membership is that members will post news summaries, links to relevant articles, and responses based on personal experience, such as comments from attorneys regarding smartphone features. These forums also foster peer recognition among the members.

LinkedIn also has an Answer forum for professionals to post questions and answers. A distinction of the “Answers” forum from a group discussion forum is that the poster of the question may select an answer as the “best” answer, thereby adding a degree of expertise to the profile of the person posting the best answer. As with all legal advice, anyone answering must be cautious about jurisdictional concerns. One posting, appropriate to this article, is titled, “Are there best practices for disclaimers when lawyers post online?”¹ This posting is a must-read for online lawyers as it addresses both the diversity of legal issues involved in a client-attorney relationship, and provides possible malpractice-saving examples.

There is though, a less glamorous side of LinkedIn. This is the time involved in checking activity, or conversely, sorting through the plethora of email a person might receive from LinkedIn. A user may opt-in to receive an email describing postings for each group on a weekly basis, a daily basis, or (don’t try this at work) an email whenever someone posts something. The more groups you belong to, the more emails you receive. Perhaps not unexpectedly, the relationship seems exponential rather than linear.

Each LinkedIn group also has a jobs forum for people to post employment opportunities or looking for referrals. Some recruiters have taken to posting every position handled by the recruiter, which can result in many emails.

Another difficulty with LinkedIn is the volume of unsolicited requests to ‘network’ via LinkedIn, and add another ‘connection’. While it’s great to receive a request from a former associate or a bygone friend, there are people whom you have never met, and will never deal with, who send network requests, or worse, solicitations for work masked as network requests. These requests can be deleted without an answer. Each email or request just takes a little time – which, of course, adds up, just like reviewing and deleting spam.

On the personal side of online networking are Facebook, Twitter and MySpace. If an attorney is trapped in travel or working, these websites are valuable for allowing us to tell our friends en masse about our ups, downs or delays, as well as helping us stay informed about our friends and events. Conversely, these websites easily create problems because while they seem private, postings may become public knowledge, even if shared only briefly.

One case involves a teenager who created a Facebook page with negative comments about a teacher, and included a picture of the teacher.² The student removed the page two days later after other three students replied with positive comments about the teacher and derided the student for the posting.³ In spite of the takedown, the school principal two months later gave the girl a three day suspension based on the “disruptive behavior” of the posting and for “Bullying/Cyber Bullying Harassment towards a staff member.”⁴ The suspension knocked the student from her advanced placement classes and allegedly “unjustifiably strain[ed] her academic reputation and good standing.” A lawsuit based on a First Amendment violation is now proceeding over the school’s objection of qualified immunity.⁵ The crux of this case is that while the posting was online for only two days over the weekend, someone copied the content, and two months later used it against the student.

In another instance, a woman posted on Twitter, “Who said sleeping in a moldy apartment was bas for you? Horizon realty thinks it’s okay?”⁶ Two months later, the company sued her for “liable per se” [sic] and alleged damages of \$50,000.⁷ Perhaps fortunately for the plaintiff, the judge dismissed with prejudice on grounds that the posting was too vague for libel.⁸

Then there’s the case of a man who posted on MySpace, “Society labels me as an outlaw and criminal To those people I say, if I can do it and get away. B. . . . s. . . . And with all my obstacles, why the f can’t you.” Perhaps not surprising, the Indiana Supreme Court found the statement admissible character evidence at his murder trial.⁹

Attorneys also need to be aware of postings by jurors and the jury pool. In 2008, a British juror in a child abduction and sexual assault case was so perplexed over the guilt or innocence of the three defendants that she posted on Facebook that she didn’t “know which way to go, so I’m holding a poll.”¹⁰ Fortunately (or not), her posting was not private, but was available to the entire world. Someone wisely alerted the court, which dismissed the juror, with trial continuing with the remaining 11 jurors.¹¹ Although the juror’s method was clearly incorrect, her confusion might be understandable. Two of the three defendants were acquitted, with the remaining defendant found guilty by his confession.¹²

Stepping up a notch of impropriety is a case where an alternate juror had seen “[f]rom the time of jury selection until the time of verdict that a “juror had continuously communicated with a “judge friend” about the case via text messaging on her “T-Mobile Blackberry.”¹³ While this seems a clear breach of a juror’s duty, the Court of Appeals sided with the trial court and dismissed the allegations as unsubstantiated. The court found that as alternate jurors are not present during deliberations, the “communications . . . must have been made during breaks in the trial,” and that as the messages “related to procedural matters,” “nothing . . . suggests that these communications were prejudicial to appellant.” As the court of appeals also ruled against all nine grounds stated on appeal, further appeal is unlikely.

This is not to say that juror postings cannot be entertaining. Witness this juror posting.

This not quite anonymous posting made the rounds on the Internet some time ago. While it is apparently no longer available on Facebook, or even on Google, it is good evidence that jurors will post if for no reason than to treat the boredom of trial.

With jurors having an almost cavalier attitude to the judicial system, courts are taking a strict view on jurors posting online, and may strike even on a prospective juror. In March 2010 a Winston-Salem N.C. woman posted on Facebook that her number had been called for jury duty.¹⁴ The spouse of an attorney at a firm representing a defendant in that court responded to ask if the woman had been called to a particular murder trial. The woman replied yes; the spouse called the attorney; and jury selection then came to a halt. After an hour’s discussion, jury selection resumed with three alternates – and absent the posting juror.

Thus, judges may now advise jurors, “At no time are you permitted to talk to the witnesses, lawyers or parties, go to the scene or use Google, Facebook or Twitter concerning the case.”¹⁵ In at least one case, however, several jurors not only ignored the judge, at least one juror cursed the judge in a post.¹⁶

Nor are judges immune from electronic networking controls. The Florida Judicial Ethics Advisory Committee recently “concluded [that] judges should not be Facebook friends with attorneys who appear before them.”¹⁷ While its true that judges must demonstrate impartiality on the bench and the absence of impropriety off the bench,¹⁸ the difficulty with the Committee conclusion is a clear imbalance with reality. Contact over Facebook is non-visual, often time delayed, and typically has some public exposure. The Facebook ban, however, does not affect the face-to-face lunches and

other social activities that lawyers and judges may have when not in trial. Consequently, the Facebook ban is but a charade to pacify people who either do not understand electronic networking, or are unaware of the social networking that occurs off the bench. Evidence of this is clearly apparent in that at least four candidates for the 2010 California election of Attorney General have Facebook pages, and one candidate previously worked for Facebook.¹⁹

So if this article has not been clear about keeping your online business and personal lives both separate and protected from public scrutiny, here are “6 Career-Killing Facebook Mistakes.” (1) Inappropriate Pictures, (2) Complaining About Your Current Job, (3) Posting Conflicting Information to Your Resume, (4) Posting a Status You Wouldn’t Want Your Boss to See, (5) Not Understanding Your Security Settings, and (6) Losing By Association, i.e., be cautious of friends with cameras or posting online while you are doing any of the above.²⁰

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¹ Dana Shultz, *Are there best practices for disclaimers when lawyers post online?*, Mar. 1, 2020, http://www.linkedin.com/answers/marketing-sales/advertising-promotion/internet-marketing/MAR_ADP_INNM/637694-191770.

² David Kravets, *Student Who Created Facebook Group Critical of Teacher Sues High School Over Suspension*, Dec. 9, 2008, <http://www.wired.com/threatlevel/2008/12/us-student-inte>.

³ Jennifer Mooney Piedra, *Teen sues former principal over ‘Facebook’ suspension*, Dec. 9, 2008, <http://www.mcclatchydc.com/2008/12/09/57455/teen-sues-former-principal-over.html>.

⁴ Carmen Gentile, *Student Suspended for Facebook Page Can Sue*, New York Times, Feb. 15, 2010, <http://www.nytimes.com/2010/02/16/education/16student.html>.

⁵ Carmen Gentile, *Student Fights Record of ‘Cyberbullying’*, New York Times, Feb. 7, 2009, <http://www.nytimes.com/2009/02/08/us/08cyberbully.html>.

⁶ Marian Wang, *Rounding up the buzz... Will one Chicago woman’s Tweet cost her \$50,000?* ChicagoNow, Jul. 27, 2009, <http://www.chicagonow.com/blogs/chicago-bar-tender/2009/07/exhibit-a-will-one-chicago-womans-tweet-cost-her-50000.html>

⁷ Complaint ¶10, *Horizon Group Management LLC v. Bonnen*, 2009L008675 (Circ. Ct. Cook County, Ill., filed Jul. 23, 2009) <http://www.chicagonow.com/blogs/chicago-bar-tender/Twitter%20lawsuit.pdf>.

⁸ Andrew L. Wang, *Twitter Apartment Mold Libel Suit Dismissed*, ChicagoNow, Jan. 20, 2010, <http://www.chicagobreakingnews.com/2010/01/twitter-mold-libel-defamation-suit-dismissal-cook-county-court.html>.

⁹ Landon Ascherman, *New Age of Technology and Criminal Law- How Criminal Law is Being Impacted by Social Networking Sites*, Hearsay (Minnesota State Bar Association), Vol. XII, No. 2, page 3, <http://www2.mnbar.org/sections/new-lawYERS/Winter%202010.pdf>, (citing Clark v. State, 915 N.E.2d 126, 129 (Ind. 2009), http://www.internetcases.com/library/cases/2009-10-15-clark_v_state.pdf).

¹⁰ Duncan Riley, *Juror thrown off trial after setting up Facebook poll to help with decision*, The Inquisitr, Nov. 24, 2008, <http://www.inquisitr.com/9433/juror-thrown-off-trial-after-setting-up-facebook-poll-to-help-with-decision>.

¹¹ Gary Cutlack, *Idiotic juror asks her Facebook friends to vote guilty/not guilty in child kidnapping case*, Techdigest, Nov. 25, 2008, http://www.techdigest.tv/2008/11/idiotic_juror_a.html.

¹² Staff Writer, *Juror dismissed after Facebook poll*, Metro, Nov. 24, 2008, <http://www.metro.co.uk/news/415692-juror-dismissed-after-facebook-poll>.

¹³ *People v. Godoy*, 2d Crim. No. B194465 (Cal. App. 3/18/2009) (Cal. App., 2009).

¹⁴ Staff Writer, *Juror’s Facebook Post Delays Plouff Murder Trial* WGHP-TV, Mar. 4, 2010, <http://www.myfox8.com/wghp-plouff-trial-facebook-100304,0,7082363.story>.

¹⁵ Patrik Jonsson, *Advent of the Internet Multiplied Possibilities for Juror Misadventures*, abcNews, Oct. 24, 2009, <http://abcnews.go.com/Technology/AheadoftheCurve/tweeting-jurors-jeopardize-trials/story?id=8901970>.

¹⁶ Staff Writer, *Dixon Jurors Ignore Judge, Continue Facebook Posts*, KBAL-TV, Jan. 4, 2010, <http://www.wbalvt.com/news/22117438/detail.html>.

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Pushing Your Limits

by Steve R. Sherman

There's a phrase I heard recently that goes, "there is nothing better than finishing something you were really stupid to start in the first place." I hearken back to the times I have taken apart my car's dashboard in an attempt to install a new radio – with a cassette player no less—only to wish I could just put it back together again. And then there's that extra screw left over! Hmmm.

But this time was much different. Some friends of mine were going to participate in a "double century" bike ride and thought I should train for and do it with them. The "Devil Mountain Double" (The "DMD") – a double century- 206 miles – with 20,000 feet of climbing! "They're crazy!", I said to my wife, expecting she would agree and the subject would be over. "I think you should do it," she said. "What ? !!!" I think they had already sought her approval before they started working me over. What betrayal. Et tu, Brute?

So, we trained all winter. Oh what fun that was. In the cold, and I mean cold, weather. And some rain too. And mountain climb after mountain climb.

The course starts in San Ramon and hits every mountain pass in our area: Mt. Diablo, Morgan Territory, the Altamonte Pass, Patterson Pass, Mines Rd., Mt. Hamilton, Sierra Rd. (Ugh), Calaveras Canyon, Palomares Canyon, Crow Canyon, and (finally) Norris Canyon ending back in San Ramon.

The day started with me getting up just before 4:00 a.m., picking up my friend Bryan Gillette who was doing the ride, and heading over to the San Ramon Marriott.

Ideally, my other friend, Jim Ott, the CEO of Uncle Credit Union, and I would ride the entire course together. But we both knew that many things can happen over the period of a day to alter that.

Jim and I were pleasantly surprised when Jerry Pentin, another friend who had NOT entered the event, showed up to ride the first 9 miles with us. He had done tons of training rides with Jim, Bryan, and me, and felt part of our "team".

We started at 5:00. Pitch black. But we've got great headlights to light the way, and great taillights to make sure any cars coming from behind see us clearly, and generally give us a very wide berth.

We were unpleasantly surprised when Jim quickly announced he realized he forgot his water bottle – not in his car, but AT HOME. Water bottles, and drinking in general, are – um – important for cycling events. Quick adjustment – Jerry gives him one of his which had Gatorade, and I give him an extra one since I had actually been carrying three. First problem of the day solved.

Nine miles in we start the Mt. Diablo ascent. No prob. The sun rises as we were going up. Nice way to catch a sunrise. Fortunately, it seemed a bit warmer than the 47 degrees. Anyway, it generally takes about 1:30. We made it to the top right on schedule. The event was totally supported: 99 volunteers for only 200 riders. At the top, volunteers refill our water bottles for us! We put on some extra clothes we brought with us since the descent is freezing with the wind chill. This time – it wasn't miserable, but it still sucked. GET ME OFF THIS @\$%* HILL!

At the bottom we meet two guys riding together and end up spending darn near the entire ride either riding together or leap-frogging. Before I know it (ok, a slight exaggeration since nothing really happens fast on this sort of ride), we're climbing up Morgan Territory.



No prob.

There's a check point at the 91 mile mark that they said you had to be at BEFORE 1:00 or else you're basically out. With all the hills, etc. we were a bit nervous about making it since our plan was to go very conservatively the entire day. Last year, Jim rode too hard (and had issues with nutrition) and had to stop after 165 miles. Anyway, I did some rough math and realized on the way up Morgan Territory that we were going to make the cutoff with no problem.

Go over the Altamont. No prob.

Coming back over the Altamont up Patterson pass was when Jim had his first problem of the day as he started bonking. About ½ mile from the top is a water stop. I made it there a few minutes before Jim which is unusual since he's generally either in front or right with me. While waiting, I reapply sunscreen.

We get to the top literally at EXACTLY the same time as Jan, my wife, who had been riding in the opposite direction! She had been tracking me by my GPS but that was unbelievable. We rode with her to the Mines Road stop/cutoff. We got there at 12:30 – ahead of schedule and with 30:00 minutes to spare! Couple bites of solid food.

On the way to Mines Road we see our friend, Tom, who was co-incidentally riding the "Mt. Hamilton Challenge" that morning – a 100 mile ride which goes along the same stretch in the opposite direction. He turns around and starts riding with us. I ask, "aren't you just adding to your ride?". He says, "yeah, but how often do I come across a friend riding the DMD?" (Never, of course).

Jan leaves us just as we are starting the ascent. Jim and I make it up Mines Rd. and to the Junction. No prob. Quick pit stop with a couple bites of solid food.

We head out towards Mt. Hamilton. We rode up this a bit ago as part of our training. Tough but no prob. Yesterday – BIG PROBLEM. The weather was hotter than it's been all year. So we had not acclimated to it. To make matters worse, because of the slight breeze we were really unaware of exactly how much we were sweating. By the time I was ½ way up the 5-mile ascent, I realized I wasn't sweating as much – a clear sign of the beginning of dehydration – something I know about all too well. And Jim – I had no idea what was going on since he was so far behind me I couldn't see him. But I knew he was in the same boat. About one mile from the top was another water stop. I waited, and waited, and waited. But no Jim. Finally, he shows up and not looking good. Turns out he literally got off his bike since he was feeling nauseated, and eventually was actually walking his bike up the hill. He was ready to pack it in.

He's ready to go again but by now I had been there so long that my entire body had stiffened up. Big prob. I'm literally grunting and groaning to get up the last 1 mile. All my energy was gone.

At the top, I start feeling "the chills" – another sign of dehydration. I was miserable, mentally and physically. My feet were hurting so badly that it even hurt if I was just coasting. Jim and I didn't say a word. We didn't need to. We were both suffering and having nothing but negative thoughts. We put on some extra clothes and start the descent. As if things weren't bad enough, the descent sucks. It's so curvy and bumpy you have to ride your breaks the entire time. No relaxation or "recovery".

Towards the bottom, there's a rest stop at someone's house. I take off my shoes since my feet are killing me. Intolerable. I know how critical it is for us to take in plenty of liquids and we do. I had some nice soup. Ahhhh. That helped warm me up. Had some Gatorade too, and took a few Advil. We were there for a while. Just as I'm ready to climb on my bike, Jan calls. "Where are you???"

!" The GPS tracking didn't work at all on Mt. Hamilton. No surprise since it's out in the boonies. Anyway, I tell her about Jim's problems coming up Mt. Hamilton and tell her to call Pam, his wife, to let her know.

I had wanted to finish so badly, in large part because I didn't EVER want to have to think about doing another 200 mile ride again. And I didn't want the guilt of having not completed it and then doing it again just for redemption. But at this point, there was probably a 95% chance that I would NOT be finishing.

About six miles from there is the base of Sierra Road. On the way there, all the liquid we took in made its way through our system and we felt totally rejuvenated !!! Jan had driven there (3 hours earlier !!!) and was waiting for us with some fresh supplies. We were smiling, joking, etc. 155 miles and we actually felt really good. We say goodbye and start up. It's only 3 ½ miles, but it is the steepest, toughest climb of all. No prob. I mean, it was work, but this time it was not as tough as Mt. Hamilton. Even though it's only 3 ½ miles, it usually takes 50:00 to climb. I made it up in 49:00. We started the climb at 7:30 p.m., and saw a beautiful sunset. I thought it was kind of funny that I was riding and saw the sunrise, and now I'm riding and seeing the sunset. It's now pitch dark – again. Jim is a ways behind me but I know he's doing well and am not worried. After cresting the hill I go to the famous "pet the goat" water stop. Pick up my bag with the warmer clothes I know I'm going to need. More soup. Jim has already arrived as well. We take some pictures with the actual goats and then head out.

Very nice descent and we're flying. At the bottom we turn onto Calaveras Canyon where there is a short, steep hill appropriately called "The Wall". Waiting for us in the total blackness is – Jerry – again, with his wife, Josine, and daughter, Joi (a freshman at Cal). Jerry rides with us and with Jim and me drafting off him as much as possible all the way to Sunol. That stretch just flew by.

At the Sunol rest stop we are greeted with a cheering crowd. Jan, Kevin, my youngest son, another friend named Tom, Pam, her dad, and Josine. We were pretty excited by the crowd and we were feeling good. Really. We had about 23 miles to go and I told them it was "in the bag". We thank everyone for coming out to support us as I wolf down more soup and pretzels and Jim eats his infamous hot dog. We head out to complete the last two hill climbs.

We make our way out the treacherous few miles of Niles Canyon and finally turn onto Palomares Canyon. It's work but we climb it pretty steadily. Super nice descent! Flying. Make our way over to Crow Canyon and hook up with a couple other riders. Then turn onto Norris Canyon – THE LAST CLIMB !!! These other 2 guys start to pull ahead. Are you kidding me ??? NOT IN MY HOUSE ! It's a 206 mile ride, but I don't have to worry about saving my energy anymore since it's all downhill and flat to the finish. So I reel these guys in and pass them. I dropped them like a bad habit. At the top I pull over to wait for Jim. One of the other guys compliments me for the uphill and we chat while waiting for Jim. We head down and make our way over to the Marriott hotel where Jan and Brian (my older son) are waiting for me and Pam is waiting for Jim – at 1:15 A.M. !!!! Yes you read that correctly. We started Saturday at 5:00 a.m. – finished Sunday at 1:15 a.m.

I was soooooo glad to get of that @#\$\$* bike. A quick change of clothes and eat some dinner. Yes, the race volunteers were still there waiting inside with hot lasagna, salad, and drinks! Great support from beginning to end. Jim and I were soooo happy that we set a goal, and achieved it. And we were able to ride with each other the entire way. And – other than the "rough patch" up Mt. Hamilton to the rest stop at the bottom, the ride really went according to our "A" plan.

It took longer than expected, but I finished and actually felt strong

through the end.

I drive home, take a quick HOT shower and fall into bed. Mission accomplished. Quite sore the next day or so. But, there is nothing better than finishing something you were really stupid to start in the first place, right?

Steve

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CONTINUED ARTICLES ...

From Page 1, "President's Message" Continued

The State Bar has made it very clear that members of the bar must act ethically when it comes to paying what has commonly been named "referral fees" or in fee sharing with another member. In the past, I can think of only one time that a lawyer asked me if I would pay a referral fee before providing information about the prospective client. Thankfully, that was a long time ago. I provide this information to you so in the future, should a referral fee demanded, you will continue to ethically in your practices.

I look forward to seeing you all on the 21st!

From Page 3, "The Low Down ..." Continued

¹⁷ Susannah A. Nesmith, Fla. Judges Advised to Unfriend Attorneys, Daily Business Review, Dec. 21, 2009 http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202437076874&Fla_Judges_Advised_to_Unfriend_Attorneys.

¹⁸ California Code of Judicial Ethics, Canons 1,2 and 3, (2009), http://www.courtinfo.ca.gov/courts/supreme/documents/ca_code_judicial_ethics.pdf.

¹⁹ For Chris Kelly, Kamala Harris or Alberto Torrico, enter <http://www.facebook.com/> with the candidate's name after the last forward slash. For John Eastman, enter in the facebook search window, "California Attorney General."

²⁰ Erin Joyce, 6 Career-Killing Facebook Mistakes, San Francisco Chronicle, Apr. 6, 2010, <http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2010/04/06/investope-dia43198.DTL#ixzz0kOSQAZXv>.

Any EACBA member wishing to place a classified ad in the Flim Flam may do so for no charge by emailing cynthia@brownlawcpa.com. Ads will be published on a space available basis and a publication date cannot be guaranteed. Ads for law office related materials will have publication priority.



News From the State Bar

The State Bar of California

• Five seats open on bar board

Ballots to vote for candidates for five open seats on the State Bar Board of Governors will be mailed April 30. Eligible voters include any active member of the State Bar who maintains his or her principal office for the practice of law within the bar district in which there is a vacancy.

For the first time, the bar will conduct a “hybrid” election offering voting by mail and electronically. All eligible voters will receive a ballot packet in the mail. Those who choose to vote online will be asked to provide their bar number and a voter PIN number printed on the ballot.

Two seats will be vacant in District 7 (Los Angeles) and the remaining vacancies for single seats are in District 2, (Alpine, Amador, Calaveras, El Dorado, Napa, Sacramento, Solano, Sonoma, Tuolumne and Yolo counties); District 3 (Alameda, Contra Costa, San Mateo and Santa Clara counties) and District 4 (Marin and San Francisco counties).

Voting will end June 30.

Lawyer members are elected for three-year terms and will assume their offices in September.

- **Reminder:** malpractice insurance disclosure required Under Rule of Professional Conduct 3-410, which took effect Jan. 1, lawyers who do not carry malpractice insurance must notify their clients in writing — under most circumstances — that they are not insured.

Notification must be made at the time a client hires the lawyer if it is “reasonably foreseeable” that the representation will exceed four hours. If the insurance coverage later lapses, the attorney must tell the client within 30 days of the time he or she is no longer insured.

The rule does not apply to government lawyers and in-house counsel nor to legal services provided in an emergency to avoid prejudice to a client’s rights or interest. It also does not apply if the lawyer previously informed the same client that he or she was not insured.

For more information, go to <http://calbar.ca.gov/calbar/pdfs/ethics/Insurance-Disclosure-FAQ.pdf>.

REFERRALS

PERSONAL INJURY REFERRALS REQUESTED

Over 25 years experience representing injury victims. Practice dedicated solely to Personal Injury. Each client given prompt, courteous attention. Please call Mark V. Murphy, Attorney, we have both Antioch and San Ramon Offices **Call 925-552-9900.**

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Pleasanton attorney. Fully experienced in all aspects of debt collection cases, creditors’ rights cases, judgment enforcement, and related matters. We succeed in enforcing judgments and debts where others fail. Designated a Certified Specialist in Creditors’ Rights (American Board of Certification). Designated a Super Lawyer of Northern California (Law & Politics Magazine). Also experienced in complex business litigation and complex commercial litigation. More than 27 years of civil litigation experience. Free initial telephone consultation. **Call Stephen G. Opperwall at (925) 417-0300, or e-mail to steve.opperwall@comcast.net**

MEMBERS ADVERTISING

FOR RENT

Pleasanton office for rent at Signature Center.

Share space with estate attorney James J. Phillips.

Call or email him at mail@jamesjphillips.com 463-1980.



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We have an office for rent, parking and waiting room. We are asking \$900 with all utilities included, quiet, private and alarmed. Located in Livermore, near the downtown area at 487 South “J” Street.

If you are interested, please contact us at (925) 449-9093 or email us at: lawoffice@livermoreattorney.com

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THE OTHER BAR

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LIVERMORE-AMADOR VALLEY LEGAL PROFESSIONALS ASSOCIATION

Meeting Date: May 13, 2010
Time: 5:30 p.m. – social; 6:00 p.m. – dinner
Location: Girasole Grill, 3180 Santa Rita Rd., Pleasanton
Cost: \$22.00 (Note: new price)
Speaker: Attorney Scott J. Lantry of Whiting, Fallon, Ross & Abel, LLP
Topic: Family Law
RSVP: sharonbeall1957@yahoo.com or 925-447-1222 (work) by Monday, May 10, 2010
Please be sure to include entrée choice.

MENU

'GIRASOLE' GREENS

Romaine, field greens, shredded carrots, cucumber, tomato, Roasted sunflower seeds, rice wine vinaigrette

ENTRÉE

(Choose one)

TUSCAN PORK

Roasted garlic apricot, whole grain mustard sauce, asiago potatoes, seasonal vegetable

PENNE GORGHI

Gorgonzola cream sauce with fresh grapes & honey roasted walnuts, with or without grilled chicken

DESSERT

Chef's Choice

FRESH HOUSE MADE BREAD COFFEE, TEA, ICED TEA & SOFT DRINKS

Chef Ignacio Sanchez, Jr.

Remember: You may come for the meeting and presentation and are never obligated to buy dinner. Please indicate this when you make your reservation. You will be required to pay for dinner if you RSVP and do not show or cancel your reservation after the indicated deadline.

If you would like more information about LAVLPA, please contact Donna Mapes, Vice President/Membership Chair/Professional Liaison at tldonna@yahoo.com or by phone (925) 447-0790 (home) (925) 997-7613 (cell).

UPCOMING E.A.C.B.A. LUNCHEONS

May MCLE Luncheon

The Eastern Alameda County Bar Association
February luncheon is scheduled for:

Friday, May 21, 2010
12 Noon to 1:30 PM

Pleasanton Hilton • 7050 Johnson Drive

**Speaker: Judge Joann Remke, Presiding
Judge of the State Bar Court**

California is the only state in the nation with independent professional judges dedicated to ruling on attorney discipline cases.

The State Bar of California investigates complaints of attorney misconduct. If the State Bar determines that an attorney's actions involve probable misconduct, formal charges are filed with the State Bar Court by the bar's prosecutors (Office of Chief Trial Counsel).

The independent State Bar Court hears the charges and has the power to recommend that the California Supreme Court suspend or disbar attorneys found to have committed acts of professional misconduct or convicted of serious crimes.

For lesser offenses, public or private reprovls may be issued by the State Bar Court.

Also, it can temporarily remove lawyers from the practice of law when they are deemed to pose a substantial threat of harm to clients or the public.

Lawyers may seek review of State Bar Court decisions in the California Supreme Court.

The State Bar Court conducts hearings and makes decisions and formal recommendations on disciplinary matters.

Since 1989, the court has used full-time judges appointed by the California Supreme Court, legislature and governor. The court is divided into two departments — a Hearing Department and a Review Department, headed by a presiding judge.

Cost of lunch is \$25 for members, \$30 for nonmembers and \$20 for staff. Payment is collected at the door.

Please RSVP no later than Wednesday, February 17, 2010

to Pat Parson at eacbalaw@aol.com or
by phone message to Pat at 510-581-3799.

One hour of MCLE credit will be given.
EACBA certifies that it is State of California
approved MCLE provider.



The Flim Flam is produced by:

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RESTAURANT REVIEW

BY CATOSHA L. WOODS



1 Broadway Street • Oakland, CA; (510) 444-7171 • www.misspearlsjambalaya.com

As a Louisiana native, I have to tell you that I'm very protective over labels such as gumbo and jambalaya. I mean I remember the matriarchs of my family in the kitchen chopping and stirring for hours to be able to serve something called "gumbo." So when I walk into a restaurant purporting to serve Creole food – skepticism doesn't begin to describe my thought process. Miss Pearl's, however, does not disappoint. While I'll never compare the gumbo there to my Aunt Geraldine's (couldn't touch it with a ten foot pole), the food there is definitely worth a try.

This ambitious menu touches on all of the true southern specialties and also includes island favorites for a delectable fusion of spices. Highlights from the menu include, Jambalaya, Hickory Smoked Spare Ribs, Cajun Arancini, Caribbean Rice, Chicken Pontalba with a Creole Béarnaise, and of course Chicken and Sausage Gumbo. Even given that dazzling list of entries, I'd have to say the macaroni and cheese (served in your very own mini-cast iron skillet) absolutely steals the show. This scrumptious "side dish" is made with loads of sharp cheddar and baked to perfection in a stone oven. It's enough to share, but at \$7.00 why should you have to? If you really want a taste of the south, I suggest the shrimp and grits or the Hickory Smoked Spare Ribs.

Another must try at Miss Pearl's is the Hibiscus Margarita. This delectable spirit is made with hibiscus infused tequila. With it's decidedly Louisiana flare, Miss Pearl's drink menu had no other option but to take on the the hurricane. Although I have tasted better (e.g. Pat O'Brien's), Miss Pearl's Hurricane is a nice take on the cocktail and a solid step in the right direction.

The menu is moderately price with entrees ranging from \$16-23. The restaurant is beautifully decorated, complete with a jewel and shell topped bar. If you happen to stop by on the weekend, you'll be greeted with the relaxing island sounds from the restaurant's very own steel drum band.

Catosha L. Woods practices business and civil litigation with Hoge, Fenton, Jones & Appel, Inc. in Pleasanton. Catosha serves on the Board of Directors of the Eastern Alameda County Bar Association and is a coach for the Amador Valley High School Mock Trial team.

Eastern Alameda County Bar Association

c/o – Law Offices of Cynthia L. M. Brown
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