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Only through our connectedness to others can we really know and enhance the self. And only through working on the self can we begin to enhance our connectedness to others.

— Harriet Goldhor Lerner

As we enter the last quarter of the year, we encourage you to take the opportunity to make meaningful connections to our courts, your colleagues and your community.

Last year, the SDCBA, in conjunction with the San Diego Superior Court, presented the first Bench-Bar Luncheon. During the luncheon, attorneys across all different practice areas had the ability to speak to San Diego federal and state judges in a small forum. On October 26, we hope you will join in the second annual Bench-Bar Luncheon, taking place at the U.S. Grant Hotel from 12 to 1:30 p.m., and have your chance to ask questions of our judicial officers and discuss topics of mutual interest.

This fall, you will also have the opportunity to connect with the judiciary at our third annual beach clean-up on November 5. All SDCBA members and friends and family members (including kids) are invited to join in the fun and help preserve one of San Diego’s beautiful beaches.

Lastly, end the year by connecting at Stepping Up to the Bar, the SDCBA’s annual holiday reception, on December 2. Join in welcoming our new Board of Directors and celebrating all of the connections we’ve made this year.
I know that I have mentioned in this column before (but it’s always worth another mention) how privileged I feel to be a part of San Diego’s legal community. We are thriving, growing, serving and adapting, and doing our best each day to meet our obligations to our clients while serving our purpose in our legal system. While I recognize the time, dedication and passion we put into our individual practices, it has always been apparent to me that my ability to practice, and our collective responsibility to ensure justice, is predicated by the strength of our courts.

The noble judges in the federal and state courts in our community, and the remarkable, dedicated staff in our courtrooms, make it possible for us to perform our jobs each day. Over the years, our courts have continued to adapt and change in response to our legal system’s growth and evolution. New and updated procedural and administrative rules continue to be issued regularly, and our courts have embraced new technology, systems and processes, in order to best serve the needs of litigants and lawyers alike.

However, courts throughout our state, and particularly in San Diego County, continue to face increasingly difficult challenges. Primarily, budget cuts and existing budget constraints, driven by the state of California’s financial hardships, threaten to affect the day-to-day operations of our courts.

Our practices and profession will likely be impacted. I urge you to stay apprised of issues affecting our Bench, and what you can do in your role as an attorney.

Each year, San Diego Lawyer dedicates the September/October issue to our courts, in order to provide you with a firsthand perspective on the current status of our Federal, Appellate and Superior Courts. Thank you to Judge Irma Gonzalez, Justice Judith McConnell and Judge Kevin Enright for taking the time to provide us with updates on each of their respective courts in this issue, and for all they do to keep our courts running smoothly.

I would like to offer an additional word of thanks to all of the judicial officers and staff at our courts, who do so much to ensure that we are well-informed, in order to better serve our clients. The SDCBA will continue to use our print and e-publications to keep our members informed of pertinent court-related issues and changes.
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Tablets are the current rage. You can hardly go anywhere without finding someone reading e-mail, the newspaper or a book on one of these devices. The arguable standard, Apple’s iPad, has been joined by a host of increasingly competitive rivals, like the Motorola Xoom, Samsung Galaxy Tab, HP TouchPad and the BlackBerry PlayBook. All of these pack a lot of processing punch into diminutive packages with intuitive, touch-based interfaces. But can a computer tablet be an effective tool for an attorney on the go?

Apps-solutely

Attorneys spend large portions of their days composing, reviewing and communicating about documents. While the Microsoft Office suite is probably the most commonly used in law firms, there is currently no tablet-based version. Fortunately, app makers have filled the void with applications such as Quickoffice and Documents to Go, which allow you—to varying degrees—to create, edit, view and share Microsoft Word, Excel and PowerPoint files on a tablet. Specialized viewers such as iAnnotate PDF, GoodReader, PDF Expert and ezPDF Reader also allow annotating (e.g., highlighting) PDF documents. Many of these apps have smart-phone equivalents, but the additional screen real estate makes working on a tablet a possibility, rather than a novelty. Apps like Dropbox and Sugarsync allow easy storage, retrieval and sharing of documents by installing an application on your desktop computer, mobile phone, tablet and/or laptop. By moving files into the application on one device, you instantly synchronize your files to all the other devices via the Internet.

There are even specialized apps that allow you to access your firm’s existing document management system, such as iManage WorkSite Mobility and SharePlus. And for the litigation-centric attorney, specialized research apps such as Fastcase permit legal research on the go.

Almost all apps cost less than $20 each, and many can be installed on multiple devices for a single price. Also, tablet app developers respond to user feedback with improved features much more quickly than developers of desktop software. With tens of thousands of existing tablet apps, and more coming out every day, the app factor weighs in favor of using tablets as a law office productivity tool.

Tablet Compositions

Despite the many excellent apps available for tablets, they all seem to fall short for large typing projects, such as composing a brief. An on-screen keyboard just can’t compete with the tried-and-true desktop equivalent. Fortunately, companies like Logitech and Zagg offer ultra-portable, BlueTooth wireless keyboards and mice that can be used with a variety of tablets. Pairing a good keyboard with a tablet gives you nearly the power of a laptop computer as well as longer battery life, in a lighter, more compact and arguably less expensive form when you consider all costs, including software. And when flying, you can put a keyboard in your lap and the tablet on the tray and keep that billable clock running even when crammed into coach class with a reclined seat in front of you.

Extra Credit

The real magic of the tablet computer, though, is that it can do so many other things besides being another work tool. After you get done reviewing and editing that contract, you can switch on a movie, read a magazine or newspaper or just play a rousing round of Angry Birds or Words with Friends. That flexibility is what makes tablets such great work/life products for attorneys on the go.

Michael Fuller (mike.fuller@kmob.com) is a partner with Knobbe Martens Olson & Bear; associate Nick Transier (nick.transier@kmob.com) assisted with this article.
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Superior Court Presiding **Judge Kevin Enright**, California Court of Appeal Administrative Presiding **Justice Judith McConnell** and Southern District of California Chief **Judge Irma Gonzalez** provide updates on the state of the courts in *San Diego Lawyer’s* third annual Courts issue
“Every opportunity has its difficulty, but every difficulty has its opportunity.”

I WRITE TO PROVIDE YOU with the state of the judiciary in the San Diego Superior Court. Deep state budget cuts have presented the difficulty of having fewer resources to meet the ongoing demand for timely service. However, I know our judges and staff will view this difficulty as an opportunity to find new ways to ensure equal access to justice to all who seek it.

It has been my honor and privilege to serve the bench, bar and public over the past year and a half as presiding judge. The San Diego Superior Court is one of the best trial courts in the country. As the judiciary moves through these turbulent budgetary times, it is my goal to protect, maintain and improve the court, whose high standards of professionalism, ethics and performance are a benefit to all it serves.

Our court remains the third largest trial court in the country and the second largest in the state. Currently, our 130 judges, 24 commissioners and 1,469 staff members are administering justice in 10 courthouses throughout the county.

Over the past three years, the court’s budget has been cut by nearly $20 million to the current level of $217 million in the 2011-2012 fiscal year. In an effort to operate within that budget over the past three years, all state trial courts were closed one day per month in fiscal year 2009-10, employees were on a mandatory furlough program, and we continue to reduce our workforce by not filling positions when employees leave. Our workforce now has more than 260 vacancies (15 percent).

One-time monies that have been used to buoy the trial courts statewide will likely be exhausted, and as a result, the San Diego Superior Court faces additional cuts in fiscal year 2012-13 (beginning July 1, 2012) that may add millions more to our deficit.

Our court sees this fiscal reality as an opportunity to continue to reevaluate how it operates and how to minimize the impact of the cutbacks on court users, judges and staff. Accordingly, our court has moved more services online. On August 1, we began electronic filing and document imaging (i.e., went paperless) in Department 69, Judge Jeffrey Barton’s civil independent calendar department. We will add two more civil departments to our e-filing and imaging project by the end of the year and all civil departments to our e-filing and imaging effort is designed to reduce paper filings and storage, facilitate electronic access to civil court files and allow remote electronic filing of papers in civil cases. The ultimate goal is to create a paperless or electronic file in all civil cases, and other case types as well.

Our online Register of Actions now allows users to view and print court-generated documents, such as minute orders, for a nominal fee.

As far as a review of filings overall, the court has seen a decrease in filings on both the criminal side and civil side of its caseload. In the last fiscal year, felonies decreased 3.6 percent over the average number of filings for the prior three years. Misdemeanors (traffic and non-traffic) decreased 15.4 percent over the same average. Unlimited civil cases decreased 3.4 percent over the average number of filings for the last three years. Limited civil cases decreased 2.8 percent, and unlawful detainers decreased 8.2 percent over the same average. The two areas of filing increase: infractions (traffic and non-traffic), which increased 1.3 percent last year to a little more than 506,000 citations processed by the court, and family law (dissolutions/separations/nullity), which increased 2.1 percent.

One of the reasons our caseloads are down in civil is because the huge increase in the filing of debt collection and mortgage default cases has begun to subside.

Generally, we are seeing a continuing trend of more complexity in the types of civil cases filed. For example, we hear fewer simple traffic accident and breach of contract cases and more complex commercial disputes and significant personal injury cases.

A reduction in filings would normally result in shorter lines and faster processing of court cases, but because of court staff reductions, court users continue to suffer delays. These delays are not due to any lack of effort on the part of our judges, commissioners and court staff. On the contrary, I am proud of the judges, commissioners and court staff of the San Diego Superior Court for their dedication, hard work and flexibility as we meet the many challenges we face and take the opportunity to improve our service to the public. Indeed, that is why our court is one of the best trial courts in the country.

Our judges bring their best every day to the task of listening to both sides and applying the facts as they find them to the law in a timely and efficient manner in order to render fair and impartial decisions. The law is a noble profession. We, the judges of the San Diego Superior Court, strive in earnest to uphold that great truth.
The California Court of Appeal for the Fourth Appellate District, Division One

By Justice Judith McConnell
Administrative Presiding Justice, California Court of Appeal

THE COURT OF APPEAL, Fourth Appellate District, is experiencing severe budget cuts just as are the state’s trial courts. For the past two and a half years, our employees have suffered monthly furloughs and have not received cost-of-living increases in years.

While these cuts have forced us to reduce our workforce, we are able to remain current in our management of juvenile dependency appeals. However, with the cuts we face, it is inevitable we will see delays in our resolution of our heavy criminal caseload and our civil appeals.

We continue to receive monthly transfers of cases, primarily from Division Two of the Fourth Appellate District, which has a very heavy criminal caseload. The transfers are made to help equalize the workload of the Fourth District. To date, more than 500 cases have been transferred.

The court continues to encourage electronic filing of briefs, and the court’s website (www.courts.ca.gov) has been updated to make it even easier to file online. Furthermore, following the fine example of the attorney general and Appellate Defenders Inc., who have agreed to electronic service, counsel in civil matters are urged to serve electronically, both to expedite service and to reduce the volume of paper used in appeals.

For further information and to sign up for electronic notice of any activity in a particular case, please go to the court’s website.
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ALL RISE

The new Federal Court building is rising quickly, and San Diego Lawyer will track its progress in future issues. Photo by Barry Carlton (bjcarlton@cox.net), a supervising deputy attorney general with the California Attorney General’s office.
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Report from the Chief Judge

By Judge Irma Gonzalez
Chief Judge, Southern District of California

IN MY FINAL YEAR as chief judge of the U.S. District Court for the Southern District of California, our court and the federal judiciary as a whole face a number of challenges created by the current budgetary climate. Courts throughout the country have been notified by the Administrative Office of the U.S. Courts that next year’s funding will be far below past levels. As a result, courts have been urged to act as wise stewards of the limited financial resources available for operation of the court system. Although this will result in the need for more streamlined operations in our district and across the country, I do not anticipate the public will see a significant impact in court operations.

The district has had a number of technological advancements over the past several years. It has now been almost five years since our court first required attorneys to file their documents electronically through the Case Management/Electronic Case Filing system known as CM/ECF. Though the bench and bar may have had some initial resistance to the idea of electronic filing, it is now difficult to imagine a world in which judges and counsel did not have immediate access to court documents at any time of the day or night, from any computer or electronic device with an Internet connection. Building upon the efficiency of the electronic filing system, the court now requires attorneys to file their new civil actions electronically, utilizing an electronic cash register program. Very soon, attorneys will also be able to file their own civil sealed documents in CM/ECF. In addition, the court is testing an eVoucher program, which will allow counsel appointed under the Criminal Justice Act to keep track of their time and request payment of fees electronically. The judges have also become technologically advanced. Many of us now use portable devices to prepare for court.

Construction on the new courthouse annex continues on schedule and within budget. All structural steel is now in place, and work on the interior and exterior of the building is proceeding simultaneously. The annex, rising 16 stories above Broadway and State Street, is scheduled for occupancy by the end of 2012. Space will be initially provided for six district courtrooms and 12 chambers suites. Offices of the Clerk of Court, U.S. Pretrial Services, and the U.S. Marshals Service will all also be moved to the new building. The annex is designed to ultimately house up to eight additional district courtrooms and 14 additional chambers, including two court of appeals chambers. The new annex is expected to achieve, at minimum, LEED Silver certification by the U.S. Green Building Council.

We have had several transitions in the makeup of our court recently. In March of this year, Anthony Battaglia was confirmed as a U.S. district judge. Prior to his appointment, Judge Battaglia had served as U.S. magistrate judge in this district since December 1993. Shortly after Judge Battaglia was sworn in as a district judge, Magistrate Judge Mitch Dembin was sworn in to fill the vacancy on the bench. Judge Dembin was a former federal prosecutor specializing in computer crimes. Finally, President Barrack Obama recently nominated Magistrate Judge Cathy Bencivengo to become a district judge, and the court awaits her confirmation. This will leave one vacant seat on the court, which we hope will also be filled in the near future.

Our court was recently selected as one of 14 districts across the country to participate in a Patent Pilot Project. Under the Pilot Project, at least three district judges in our court will be designed as specialized patent judges. Although all newly filed patent cases...
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will be randomly assigned, the assigned district judge can elect to designate the case for reassignment to one of the specialized patent judges. The purpose of the project is to allow a core group of judges to develop expertise in the sometimes very difficult area of patent law. The Federal Judicial Center will study whether the assignment of these patent cases to judges who have special knowledge in patent law will improve efficiency in the processing of the cases. In addition, they will compare the rate of reversal of decisions of the designated patent judges with non-patent judges on issues of claims construction and substantive patent law, to determine if the program leads to greater consistency in rulings.

Our court’s next chief judge, Judge Barry Ted Moskowitz, will take over the reins on January 23, 2012. He is already an extraordinarily hard worker, and I cannot think of anyone more suited to guide our court through the move to the new courthouse annex and the other challenges that lie ahead. I have enjoyed my tenure as chief judge and look forward to continuing to serve the court in the years ahead.

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**SAVE THE DATE**

**October 26**
Annual Bench-Bar Luncheon
12-1:30 p.m.
U.S. Grant Hotel
Register at www.sdcba.org/benchbarluncheon.

**The Bench-Bar Luncheon provides a unique opportunity for attorneys and judges to get together and discuss topics of mutual interest in a smaller forum. Space is limited.**

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**SUPERIOR COURT LEADERSHIP**

Hon. Robert Trentacosta has been elected Presiding Judge of the San Diego Superior Court, succeeding Hon. Kevin Enright on January 1. Hon. David Danielsen was elected Assistant Presiding Judge.
COLOR OF JUSTICE
Photos by Julie Myres

A Color of Justice mentoring conference brought judges and lawyers together for an interactive program with 27 students from the School of Leads at the San Diego High Educational Complex. The National Association of Women Judges’ program was presented in collaboration with the University of San Diego Law School, LexisNexis and the San Diego Superior Court and included a speed mentoring session. One of the goals was to motivate students to pursue legal careers. More than 27 judges and attorneys participated in the conference. “The feedback from the students, teachers and mentors was extremely positive,” says Superior Court Judge Tamila Ebrahimi Ipema, who chaired the May 26 event at the Hall of Justice.

NAPOLEON A. JONES JR. JUDICIAL LUNCHEON
Photograph by Joe Williams

The Earl B. Gilliam Bar Association hosted its inaugural Napoleon A. Jones Jr. Judicial Luncheon on May 24 at the U.S. Grant Hotel. The luncheon was established to honor San Diego judges.

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SOMETHING HISTORIC kicked off in a downtown civil courtroom this summer. Starting August 1, 2011, all new cases filed in Judge Jeffrey Barton’s Department 69 were scanned and uploaded onto the Court Case Management System (CCMS). This event marked the beginning of a multiyear project that will eventually move the court’s civil, small claims and probate cases into the world of electronic document storage/retrieval and electronic filing.

“This project represents the next critical step in moving the San Diego Superior Court into the digital age,” says Judge Barton. “Once fully implemented, the court will provide full electronic remote access for both filing documents and reviewing court files; no longer will trips to the court be required. Court files will be available 24 hours a day.”

Judge Barton, supervising judge of the civil court, has been intimately involved in the planning process and is the first San Diego Superior Court judge to test case imaging. As of August 1, all documents (with some exceptions) associated with new cases filed in Department 69 are being imaged for computer viewing by Judge Barton, court staff and parties involved in the case.

Public documents related to those cases are also available online to any interested party. The original documents filed in Department 69 will be retained in paper form for 90 days before destruction and recycling. All cases filed in that department before the August 1 start date will be maintained in hard copy.

Once the imaging project has been successfully utilized and reviewed in Judge Barton’s courtroom, the process will be expanded to other Superior Court judges.

“We will be looking at a variety of issues during the start-up period,” says Judge Barton. “This project represents a sea change in judicial and court staff workflow in terms of the transition from paper to digital briefs, motions and other filings.”

Beginning September 1, 2011, the San Diego Superior Court Imaging Project will expand to two more Central Division courtrooms. Starting September 1, all newly initiated cases assigned to Department 72 (Judge Timothy Taylor) and Department 73 (Judge Steven Denton) will be scanned.
In the second phase, scheduled to begin in late fall, the court will incrementally implement e-filing, a process by which court users can submit cases electronically. The e-filing project will also begin in Judge Barton’s courtroom.

Mirroring systems in place at other California courts, San Diego Superior Court will work with a service provider(s) to assist with the e-filing process. Individuals filing with the court will file directly with the chosen vendor(s).

“Once the court has a service provider in place, legal professionals and the public will have the ability to file documents electronically, including paying the filing fees, from the comfort of their offices or homes using their own computers,” says Chief Information Officer Celeste Schwartz. “Once accepted by the court, e-filed documents that are not confidential will be available online. These documents will be time-stamped and processed as if they were presented in person at the business office—with no more waiting in line at our courthouses.”

The development of the multifaceted project has involved the court’s bench, legal services, information technology and operations staff. All four groups have worked together to develop procedures and court rules that ensure a smooth process from a paper-based to paperless operation.

“As we have learned from other courts that have implemented electronic filing and are maintaining documents in an electronic format, there are numerous rules and procedural changes that must accompany the technology,” says Court Executive Officer Michael Roddy. “Without such changes, we will be unable to take full advantage of the improvements that are possible. Even more importantly, we may not be ensuring the full, complete and accurate maintenance of the official record for the court or the parties.”

Electronic filing is becoming more and more widely used by courts at all levels. Not only does the technology result in faster and easier access to court records, it also benefits users and taxpayers in saving time and money. Court users no longer need to rush to court and wait in line to file documents, and they can view court documents from their computers. Taxpayers save money in the reduction of court staff time for inputting case information. In addition, the court no longer has to maintain and store paper copies at the courthouse or off-site storage areas.
The jurors like the fact that they’re hearing evidence for just a day and can then get right into their deliberations.

—DARIN BOLES
Pat Hosey: The topic for today is the expedited jury program. I'm hoping to get an overview of what the program is, how it's implemented and some of the procedural hurdles and ramifications. How would you describe the program in a nutshell?

Judge Jeffrey Barton: It's a plan that allows a one-day trial with the attorneys and clients stipulating in advance. The parties meet in advance of the trial and go over the exhibits and the jury instructions. The case is then put on with a jury of eight, with three peremptory challenges, and the goal is to get it all done in one day.

Pat Hosey: Can it be done?

Judge Barton: Yes. The trial can be done in one day. The jury, however, usually serves more than one day, including jury selection and deliberations.

Judge Steven Denton: This legislation is directed primarily at cases that have a limited number of witnesses or issues that need to be tried. It's perfect for a case where the parties can stipulate to the admissibility of most of the facts and leave the testimony to a limited number of witnesses. The difficulty is that it doesn't easily lend itself to our system, where we have a trial readiness conference and then a trial call, because it requires the parties to have identified all of the issues well in advance and for the court in pretrial proceedings to have made all the evidentiary rulings. It preloads a lot of work for the court and, since most cases settle very close to the date of trial, creates work that would otherwise be avoided by ordinary settlements in a lot of these types of cases.

Hosey: Is that a problem purely in San Diego because of our fast-track rules?

Judge Barton: Not really.

An interesting aspect of this program is that the parties can stipulate to just about anything. The program provides for eight jurors, but they can stipulate to fewer, or to relax the Rules of Evidence. You can basically tailor your case as long as you have the agreement of the other side.

—JUDGE RANDA TRAPP
**Judge Denton:** The other complication with those pretrial procedures is that you’re essentially requiring the [pretrial] judge to be the trial judge on the case. It forecloses the case being put onto the “wheel” for assignment.

**Darin Boles:** The benefit is that the attorneys are able to get a date certain for that one-day trial. Since the [pretrial] court keeps the trial, we know we’re going to start on such-and-such date.

**Hosey:** Are there certain procedures the parties can stipulate to, and if so, what types of things would you suggest?

**Judge Randa Trapp:** An interesting aspect of this program is that the parties can stipulate to just about anything. The program provides for eight jurors, but they can stipulate to fewer, or to relax the Rules of Evidence. You can basically tailor your case as long as you have the agreement of the other side.

**Judge Denton:** One of the requirements is a consent order, which is required by the statute. The consent order must indicate that the [client] has been notified and does not disapprove of the process going forward, because you’re waiving most of your appellate rights and your right to a jury of 12. It is still an open question as to whether the parties can stipulate around that order and, absent that order, whether there could be an attack to the waivers on appeal. The [best] practice would be for counsel to have arranged for and provided the court with a consent order.

**Judge Trapp:** Everybody should have a consent order.

**Judge Barton:** I would be reluctant to do it without a written and signed consent order. It isn’t until some of our usual deadline dates have passed that the parties really get to the point where they are ready to commit to the process. To encourage the system, we should allow people to stipulate the day before and get the pre-rulings, or do it the morning before you start.

**Hosey:** Are pro tem judges allowed [to hear these cases]?

**Judge Denton:** There are limits on that. [The pro tem judge] has to be on the court’s preapproved list.

**Hosey:** If somebody’s approved, does he have to make all of the evidentiary rulings, or [must it be] the trial judge?

**Judge Barton:** You can stipulate around many things in civil cases, so you could stipulate around the same judge doing all of that. But the general rule is that if you make pretrial rulings, that trial is yours. [Darin], you’ve probably seen the most of them. How often are you sticking to these timelines, as opposed to making the decision on getting an agreement rather late in the process and then coming in and doing it by stipulation?

**Boles:** All three trials have been decided later in the game, and all came in based on stipulations. The ultimate decisions have fallen between the date of the trial readiness conference and trial call.

**Judge Barton:** In the one I did, the final agreement wasn’t reached until shortly before the trial.
Boles: Generally, so far, that’s what we’ve seen. As word gets out, the best practice will be to have this decision made before the trial readiness conference.

Hosey: From a process point of view, how would the court like to see the lawyers addressing this?

Judge Denton: Bring it up at the trial readiness conference, make arrangements for the consent order to get executed in proper format, and stipulate that the time limitations are not going to be a big problem. The recommendation from the bench would be that all of the evidentiary issues be handled by way of a meet and confer, without judicial intervention.

Judge Trapp: If we start talking about it at the case management conference and have an information sheet we can hand out to the lawyers to get them thinking about it, they can make that decision sooner rather than later.

Hosey: Is there a mechanism for a relaxed version of The Evidence Code?

Judge Denton: No. The Evidence Code is preserved for purposes of objections during trial, but the statutory scheme requires the court to predetermine a lot of the motions that would usually be made during trial.

Hosey: Are the attorneys getting along during this, or is there a lot of pretrial fighting over what’s coming in or not?

Boles: To facilitate use of the program, the attorneys do have to get along. They need to narrow down the issues, because you can’t be dealing with liability, causation and damages, for example. It pushes the attorneys to prepare ahead of time, to narrow the issues down to one or two. That, in turn, cuts the witnesses down, because the attorneys have to be very brief with their presentations.

Hosey: Plaintiffs’ attorneys are very excited about this because it’s a way to get into court on cases they would otherwise not risk putting in front of a jury.

Judge Barton: We’ve seen a fair amount of interest in it already, and I think it will grow. If you’ve got a case you’ve tried to settle, and it comes down to one issue, and one

Plaintiffs’ attorneys are very excited about this because it’s a way to get into court on cases they would otherwise not risk putting in front of a jury.

— PAT HOSEY
side says the jury’s going to give $10,000, and the other side says they’re going to give $600, well, then you can go get that determination from a jury in a way where the high and low parameters have been set, and the costs and expense of getting that determination are going to be reasonable.

Judge Denton: Although the program does not require a high or a low. What’s the reaction been from the defense lawyers you’ve talked to after your case, which was the first one tried in San Diego, both lawyers stipulated to talk to the jurors about the experience, to let them know they’d just been the first ones through a new program. They uniformly liked it and the smaller panel. Two of their questions were: “How could this have taken any longer?” and “What more could we have needed to know?” — which was kind of humorous from my perspective.

— Judge Jeffrey Barton
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of going to mediation.” Do you see this as becoming a preferred method of trying to resolve cases versus mediation?

**Boles:** No. Mediation is still an important way to try to resolve cases, and serves a very strong purpose given the sheer volume of cases that are out there.

**Hosey:** What does the [court] staff say?

**Judge Trapp:** The staff likes it, because it’s a lot less complicated. Jurors love it. I’ve gotten a lot of good feedback from jurors saying that they like the eight-person jury.

**Hosey:** Is there a court-approved [jury] questionnaire for these programs?

**Judge Denton:** With a [30-question] questionnaire, the case might not be appropriate for the one-day expedited jury trial process. You’re going to be limited to your 20 minutes for actual voir dire, which is what the code calls for.

**Judge Barton:** I’m not sure what the right number is on these cases, but voir dire goes much faster with a smaller group. You’re only trying to get eight; there are only three peremptories and no alternates.

**Judge Denton:** Jurors are preloaded to accept the expedited jury trial format because that’s what they’re used to seeing in the media. They’re not used to seeing something that goes on for five days that ought to take a day.

**Judge Barton:** After my case, which was the first one tried in San Diego, both lawyers stipulated to talk to the jurors about the experience, to let them know they’d just been the first ones through a new program. They uniformly liked it and the smaller panel. Two of their questions were: “How could this have taken any longer?” and “What more could we have needed to know?” — which was kind of humorous from my perspective.

**Hosey:** Has anyone raised [the one-day] issue with jurors?

**Judge Barton:** I didn’t tell them that, and I don’t think I will tell juries going forward that this is a one-day trial case. I would just go through my normal routine, telling them we expect the evidence in this case to take a day. I wouldn’t set an expectation in terms of this being a one-day trial or program case.

**Hosey:** Why?

**Judge Barton:** Because they shouldn’t have preconceptions about how long their service is going to be in terms of deliberation. I don’t want them to have the impression that they’re going to be in and out of here in a day.

**Hosey:** As a plaintiff’s lawyer, I would be concerned that a case that only takes a day to put on is, by definition, a small case —

**Boles:** Or less significant. You don’t want to give the impression that it’s less significant.

**Judge Denton:** But that’s a lawyer perception. I don’t think that’s a perception shared by the ordinary person who would be on the jury panel, because they don’t know this isn’t something that shouldn’t take a day to try.

**Hosey:** Is there a dollar amount you think would not be conducive to this program?

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This legislation is directed primarily at cases that have a limited number of witnesses or issues that need to be tried. It’s perfect for a case where the parties can stipulate to the admissibility of most of the facts and leave the testimony to a limited number of witnesses.

—**JUDGE STEVEN DENTON**

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Judge Barton: Theoretically, you could try a causation issue in a case like this. But if a million dollars is on the line, I wonder how many clients are going to waive their appellate rights? That’s really part of the program, and I think what will cause it is to be used on cases at the $50,000-and-under level.

Hosey: What are the biggest pitfalls practitioners should be worried about with this program?

Judge Barton: Poor planning with bad time estimates and not getting to put your whole case on.

Hosey: How are you doing the timing?

Judge Trapp: I have a timer on my laptop, and I have the attorneys fill out a witness estimate sheet. Given that you only have three hours to put on your entire case, that estimate is critical.

Judge Denton: And if you’re calling for a sidebar, you’re eating up your time to do it. If you’re talking, it’s your time.

Judge Barton: I’ve done this in another context when we’re down to timing each lawyer for each time they speak. The loser of the debate at sidebar is charged the time.

Hosey: At some point, those types of rules are going to need to be formalized.

Judge Denton: There isn’t any current uniform practice between judges because the system is just not old enough. There’s going to have to be flexibility with the court and opposing counsel in how this thing is going to be actually applied.

Hosey: Is there anything we haven’t touched upon that you think would be good, either anecdotally or procedurally?

Judge Barton: One, there’s a benefit to the program in that it provides a mechanism for cases to get decided on the merits, efficiently and in a financially reasonable manner. Second, there is a need for lawyers to get in front of juries; this provides for that opportunity.

Judge Denton: That’s a real important point. Many lawyers, when they really need to be good in front of a jury in a large case, aren’t comfortable because they don’t have the prior experience. This is going to be a way of getting that experience and investing in future cases.

Hosey: Thank you, everybody. 🙏

C.J. Mody (cj.mody@sdcda.org) is a deputy district attorney.
THE INNS

THE LOPARDO INN OF COURT WAS founded in 1997 to provide North County attorneys with an opportunity to participate in an Inn of Court without having to commute long distances to other locations in the county. Its original name, the Oliver Wendell Holmes Jr. Inn of Court, was chosen to inspire members by Justice Holmes’ integrity, work ethic, scholarly opinions and passion for the rule of law. Accordingly, for many years, all Inn meetings opened with the reading of one of many quotations from Justice Holmes about the law, legal profession or life.

In 2007, a group of North County attorneys and judges suggested to the Inn’s Executive Committee that they should consider renaming the Inn for an individual with a connection to North County who epitomized the principles of the American Inns of Court. A number of candidates were considered. Eventually, Judge Fiorenzo V. Lopardo was nominated and was chosen by a large majority of the Inn’s active and alumni members to replace Justice Holmes as the Inn’s namesake and role model.

Judge Lopardo was appointed to the San Diego Superior Court by Governor Ronald Reagan in 1971 and was one of the first full-time judges in North County. He was a strong advocate for the expansion of the North County branch of the court. He believed North County cases should be tried in North County.

The meetings are still opened with quotations from prominent lawyers and judges about the importance of integrity, professionalism and civility in the work of lawyering and judging.

NORTH STARS

The Fiorenzo V. Lopardo American Inn of Court started life under another name but continues to serve North County

BY HON. ROBERT DAHLQUIST

continued on page 34
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“I tried cases in front of Judge Lopardo. I participate in the Inn as a way to honor his memory as a judge and a Marine. In addition, I really enjoy interacting with the less experienced attorneys. I appreciate the quality of the speakers and educational programs.”
Hon. David Brown

“Many of the best lawyers in North County are members of the Lopardo Inn. I have learned a lot from them and from the judges who are Masters of the Lopardo Inn. The Inn helps to remind all of us that we are members of a noble profession, with obligations to each other and to our system of justice that extend beyond the outcome of any particular case.”
Hon. Robert Dahlquist

“The Lopardo Inn of Court gives you the unique perspective of North County community, bench and bar. I think the bonds made and shared are irreplaceable, and the respect members have for each other is like no other. I would strongly urge an attorney who practices out of the North County Regional Center to join this Inn.”
Kelly Rand
Deputy District Attorney

“The Lopardo Inn of Court provides a unique opportunity for North County lawyers to better their advocacy skills, network with their colleagues, commiserate with the local bench and hone their concepts of professionalism and civility. This Inn has benefited greatly from the dedication of many senior lawyers and judges.”
Hon. Michael Orfield (Ret.)
and decided by North County juries. To help facilitate this, Judge Lopardo was a strong force to obtain a North County branch of the San Diego County Law Library, joining with the North County Bar Association to advocate for it. He sanctioned tardy lawyers by requiring them to contribute to the North County Law Library Branch.

When Judge Lopardo was first appointed to the Superior Court, he was appalled by what he perceived to be pervasive incompetence of many lawyers. He called upon several seasoned North County attorneys and created “Lopardo’s Academy” — a forerunner to the current Inns of Court. He literally held night school at the courthouse, using experienced lawyers to instruct those who were less experienced. He mentored hundreds of attorneys in this way and by his demands on them in his courtroom. Judge Lopardo was probably more demanding, and less tolerant, of lawyers than most of today’s judges are. He required, among other things, attorneys to be on time and to be prepared. Known for his punctuality and his preparation, Judge Lopardo demanded no less from others.

Judge Lopardo was born in New York, 10th of 14 children of Italian immigrants. To finance his undergraduate education, he worked as a waiter and at two cobbler stores. He graduated in May 1941 from the University of Notre Dame and then enrolled in Harvard Law School.

World War II interrupted Judge Lopardo’s legal education. After completing his first year of law school, he became an officer in the United States Marine Corps. During the Battle of Iwo Jima, he served as a company commander in the 28th Marines, the regiment that raised the American flag on Mount Suribachi. He was decorated for leading his company of 360 men, only 11 of whom were not killed or wounded during the battle. He also served in Japan during the post-war occupation.

After the war, Judge Lopardo returned to Harvard Law School and graduated in 1948. He then practiced civil law with a small firm in Los Angeles. He traveled to San Diego periodically and happened to pass through a sleepy little town
named Escondido that he felt would be the ideal place to raise his family. He moved there in 1960 and continued to practice civil law until his appointment to the Superior Court in 1971.

Judge Lopardo retired from the bench in 1987. However, he continued his service to the legal community for another decade as a private judge, specializing in civil cases. Judge Lopardo died on January 24, 2004.

The renaming of the North County Inn from the Holmes Inn to the Lopardo Inn in 2007 was intended, in part, to provide North County lawyers and judges with a local role model and namesake who was dedicated to the highest levels of professionalism in the legal community. The Lopardo Inn continues to honor many of the traditions of its founders. The meetings are still opened with quotations from prominent lawyers and judges about the importance of integrity, professionalism and civility in the work of lawyering and judging. In this way, the Inn continues to honor its founding members, who include George Brewster Jr., Philip Burkhardt, Judge John Einhorn, Judge Morgan Lester, Judge David Moon, Deborah Peterson and Judge Dana Sabraw.


Currently, the Inn has approximately 100 members, primarily lawyers and judges who work or live in North County. Each of its seven teams is led by a judicial officer currently assigned to work in the Vista Superior Court courthouse. The Inn is open to membership to all lawyers and judges, regardless of where they work or live. Anyone interested in joining may contact the membership chair, attorney Christine Mueller, at cmueller@pettitkohn.com, or me.

Superior Court Judge Robert Dahlquist (rdahlquist@yahoo.com) has been president of the Lopardo Inn of Court since 2009.
(Almost) Everything You Always Wanted to Know About PRO TEMS

Ever wonder about being a pro tem judge or settlement attorney? Here’s who, what, where, when and why.

BY DEBORAH CUMBA
PHOTOS BY JENNE SPEEGLE

TEMPORARY JUDGES — also called pro tem judges or judges pro tempore — are attorney volunteers approved by the court to hear and decide certain cases, including small claims, traffic and some juvenile matters. Settlement attorneys facilitate the resolution of cases with the parties prior to trial. Each month, hundreds of attorneys regularly volunteer their time to serve in trial courts across California.

Pro tem judges and settlement attorneys provide a valuable service to some of San Diego Superior Court’s busiest venues. The San Diego Superior Court utilizes them to hear small claims, traffic and probate cases and to facilitate settlement conferences in family and civil cases in Central (downtown), Kearny Mesa, South County (Chula Vista), East County (El Cajon) and North County (Vista) court locations.

A Valuable Service to the Court and the Community

According to Presiding Judge Kevin Enright, the Temporary Judge/Settlement Attorney Program “is a key ingredient of our court being able to provide great service to the public. . . . We really couldn’t do what we do for the bar and the litigants without the significant help of the temporary judges. We are greatly indebted to and grateful for the temporary judges and the work that they do.”

The Hon. Maureen Hallahan, assistant supervising judge of the Family Court, states: “The lawyers who serve as settlement pro tem judges dedicate their time, talents and efforts to assist the court, the parties and their lawyers to settle cases. They provide such a valuable service. Settlement saves the parties the ongoing stress of a dissolution proceeding and gives some certainty to their lives and their future. Settlements also assist the court with managing the
judges’ ever-increasing caseload. This process could not work without the lawyers stepping up and volunteering. ‘The court is extremely grateful for their continuing efforts.”

Attorney Victoria Eriqat finds the pro tem experience allows her to “give back to my country and my organization that allowed me to get to this position.” Eriqat volunteers about once a week for three to four hours in small claims court.

**Advantages**

Eugene McMurdy has been a family settlement attorney and pro tem judge for about 20 years in family court, family support, small claims, traffic and civil collections. He serves as a pro tem once or twice a week. He says, “As a settlement judge, you have the great opportunity not only to help folks going through a difficult time in their lives but also to see how arguments work and see things as they are happening.” McMurdy says that while most attorneys are very good at being advocates, the pro tem judge’s role is to let people know where the law stands and where the court is going. Being a pro tem judge gives one the opportunity “to meet one’s colleagues on a different level.”

As a family settlement attorney, McMurdy estimates that 98 percent of his cases settle. He enjoys finding a solution for the parties that may not be available at trial. “In a settlement arena, you can get much more creative. The idea is to get solutions for people rather than judgments.”

And serving as a pro tem judge may make an attorney a better advocate in the courtroom. According to Eriqat, whose background includes just about everything except criminal law, being a pro tem provides “good experience being on the other side of the bench and looking at it from the judge’s point of view . . . Plus, it is just fun.”

“This is a wonderful opportunity to take a different and significant role in our system of justice,” says Judge Enright, “not advocating for a client but instead serving as a judge in adjudicating a dispute.”

**Potential Drawbacks**

According to Eriqat, the only disadvantages of being a pro tem include not being compensated and the occasional difficulty of finding courthouse parking. Judge Enright feels the time and energy the job takes is “more
than made up for by the interesting types of cases and the ability to feel good about oneself.”

McMurdy, whose background is in family law, says serving as a temporary judge or family settlement attorney can lead to conflicts, especially because family law is akin to a general practice. However, he believes the advantages far outweigh the disadvantages because the experience allows one to “give back to the court, see cases from a different perspective and goes a long way in improving [one’s] litigation skills.”

Memorable Cases

One of the more memorable small claims cases Eriqat has heard as a temporary judge involved a Navy SEAL who sued his ex-girlfriend for all the money he spent on her, which he’d documented in a little black book, during their four-year relationship. Eriqat found that during the relationship the live-in girlfriend paid the majority of the bills and the SEAL was not entitled to any money.

McMurdy recalls a paternity case in which twin brothers were each the potential father of a child. One brother was married to the child’s mother, and the twins had been known to impersonate each other. A second round of genetic testing was required. McMurdy ultimately found that the unmarried twin was the child’s father.

Eligibility

The requirements for becoming a pro tem judge include admission to practice as a member of the State Bar of California for at least 10 years (although the presiding judge may appoint an attorney who has been admitted to practice for at least five years) and submission of an application packet, which includes a background investigation form, request for Live Scan fingerprinting, reference letter and driver’s license copy. Pro tem judges also must complete training consisting of three hours each of ethics, live training in bench conduct and demeanor, and substantive training in the
specific area of law being heard, such as small claims, traffic, etc. The minimum qualifications for appointment as a family settlement attorney include, in addition to the requirements above: certification as a family law specialist (CFLS) or 10 years of legal practice (at least 75 percent of which is in family law), attendance at the annual ACFLS-sponsored settlement conference seminar and the approval of the supervising judge of the family law courts. To serve on a family settlement conference panel hearing more complex cases, attorneys must have certification as a family law specialist or 15 years of legal practice (at least 90 percent in family law) and approval of the supervising judge of the family law courts.

According to Judge Enright, the minimum years of experience are important because they give attorneys “the legal and life experiences to serve on the other side of the bench.”

California Rules of Court 2.810 to 2.834 govern the selection, training, appointment, supervision and evaluation of court-appointed temporary judges.

Does Serving as a Temporary Judge Lead to Becoming a Judge?

While not necessarily a direct path to appointment or election as a judge, the pro tem experience can help attorneys find out if this is something they enjoy. According to Judge Enright, this experience is “invaluable to someone who wonders how judges make decisions and whether this is something an attorney would have an aptitude and the patience for . . . because aptitude, patience, intelligence and the ability to listen are attributes of great judges.”

Serving as a temporary judge didn’t hurt Judge Ronald Frazier in his path to the bench. He says it is “a very good test for anyone with thoughts or aspirations of becoming a judicial officer—it is a good test for the ability to think on one’s feet, temperament and decision-making abilities.”

Judge Robert Longstreth agrees and says the experience gives attorneys “perspective on

(By the Numbers)

There are currently 373 temporary judges in San Diego. In 2010, temporary judges heard more than 23,000 cases.

(Data courtesy of San Diego Superior Court)

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what the decision-making fact-finder finds persuasive.” His 20 years as a pro tem made him “confident that applying for [judicial] appointment was the right thing to do.”

Call for Volunteers

Judge Hallahan urges all attorneys who are interested to participate in this program. “We hope that more lawyers will step up and volunteer their time to assist the court and the litigants,” she says. “The lawyers who regularly volunteer and those who volunteer sporadically feel that participation with the court as a settlement pro tem judge is not only a way of giving back to the community; it is a challenging and rewarding experience. All the branches are in need of more qualified lawyers to act as settlement pro tem judges.”

Currently, the court’s most significant need is for family settlement conference attorneys. The court also needs pro tem judges to settle probate cases, a recently added role for temporary judges. There is an ongoing need for small claims, traffic, family support, civil settlement conferences (North County only), juvenile and the civil collections pilot program.

Applications are received all year, and the court offers training on a periodic basis. Once training is completed, and all other requirements are met, pro tems are appointed at the discretion of the court. To apply, contact Pamela Winters at 619-450-5636 or pamela.winters@sdcourt.ca.gov.

“We could not adjudicate the number of cases and serve the public the way we do without the significant and meaningful help of our temporary judges,” says Judge Enright. “The public is better served, which is the mission of the court.”

Deborah Cumba (deborahcumba@dot.ca.gov) is an attorney with the California Department of Transportation, Legal Division.
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Please submit answers by October 10 to martin@kruming.com. Your name will be entered in a drawing to win lunch for two at Dobson’s Bar & Restaurant in downtown San Diego. Congratulations to Doug Brust of Shiflet, Kane & Konoske for correctly identifying the Clairemont Mesa Small Claims and Traffic Court pictured in the previous issue. Thanks to everyone who participated.

**Stu’s Views**
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JURY DUTY

Miss, you can’t just “sign up” to be on the next celebrity murder jury.
PHOTO GALLERY

DISTINGUISHED LAWYER MEMORIAL FUND RECEPTION
PHOTOGRAPHS BY DOUGLAS GATES PHOTOGRAPHY
Lawyers and judges attended the San Diego County Bar Foundation’s annual Distinguished Lawyer Memorial Fund Reception on June 15 at the Bar Center.

Family, friends and presenters of the 2011 inductees.

Hon. Sheridan Reed (ret.), Lynn Schenk, Hon. Patricia Cowett (ret.), District Attorney Bonnie Dumanis, Ann Parode-Dynes.

Hon. Patricia Cowett (ret.), Hugh Friedman, Hon. Louise DeCarl Adler.

Tom Turner, Jim Sandler.

Paula Todd, Hon. William Todd Jr. (ret.), Chris Todd, Briana Wagner.
Chief Justice Tani Cantil-Sakauye of the California Supreme Court addressed the annual Awards Dinner of Philippine American Business Improvement and Development at the U.S. Grant Hotel on July 7. The program was co-sponsored by the SDCBA.
The 27th annual Red Boudreau Trial Lawyers Dinner, co-sponsored by the SDCBA, was held on August 5 at the Omni Hotel.

Front row, left to right: Tom Sharkey, Gerald McMahon, Peter Hughes, Gerald Davee, Bob Steiner. Middle row: Charles Dick, Charles Grebing, Virginia Nelson, Sidney Stutz, Dennis Schoville. Back row: Robert Brewer Jr., Dave Casey, Mickey McGuire, David Noonan, Dan White, Vincent Bartolotta Jr., Cynthia Chihak

Robert Francavilla, Steve Cologne

Gayle Blatt, Fred and Shari Schenk

Carolyn Thompson Kelly, winner of the Judge David R. Thompson New Lawyer Award

Oleg Cross

Michael Hebert, Joe Patino, Steve Geise, Rick Bergstrom, Robert Brewer Jr.

Daniel Wolfe, Broderick Award winner

Mike Thorsivas, Vincent Bartolotta Jr., Cynthia Chihak, Mickey McGuire

Tom Sharkey, Fr. Joe Carroll, Steve Billings
SDCBA President Dan Link threw out the first pitch on September 16 when the Padres hosted the Arizona Diamondbacks at Petco Park. Hon. John Meyer is a Superior Court judge.
San Diego County Bar Association

BY THE NUMBERS

Your SDCBA membership can be invaluable to your success, but here are just a few ways the numbers add up:

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2. Touchpoint Metrics study of 12 month period
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