

# FOOTHILLS BAR ASSOCIATION

Foothills Bar Association, P.O. Box 1077, El Cajon, CA 92022  
www.FoothillsBar.org FoothillsBarAssociation@gmail.com

## Attorney Profiles on the FBA Website Coming Soon & Featuring: YOU!

By *KimMarie Staron*

We hope you are checking the website at least weekly to see the changes that are continually taking place.

The Calendar of Events is located in the upper right-hand corner and you will see it as soon as the page loads.



Here you can find the upcoming monthly seminars for the Civil Litigation, Estate Planning and Family Law sections and other events such as Law Day 2011.

The latest FBA and Attorney News is just a click away from the main page. The box containing the news is located just under the Events section. If you need an attorney referral and don't have the directory handy, you can use the website and search for an attorney by areas of practice. Soon, we will be sending out an individual email to each member that will assign a

## Foothills Bar Association to Expand Its Use of Eventbrite.com Invitations

By *Heather Milligan*

As some members have already seen, the Foothills Bar Association has been using Eventbrite.com when introducing and inviting members to our events.

Thus far we have invited members to events such as the 2010 Annual Dinner, the 2010 Annual Toy Drive and Attorney Mixer, and the 2011 Annual Hard-to-Get MCLE Seminar through Eventbrite.

We are now going to use the website to remind members about the monthly section meetings. Eventbrite is a great tool to use in reaching out to all

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user name and password. You will then be able to upload your biography information and become one of those searchable attorneys. **You should be receiving those emails within the next 30 days.** If you need a Non-Attorney Professional and they are an affiliate member of the FBA, you will find them listed in the Non-Attorney Professional section directly below the Attorney section. And finally, make sure you keep your email current by updating it at the bottom of the Home page so you can continue to receive the newsletters and other relevant information. Any comments, suggestions or constructive criticism relating to the website is welcome and appreciated. **Please send it directly to me at [kstaron@lawinsandiego.com](mailto:kstaron@lawinsandiego.com).** Let's generate some traffic! ♦

members to notify you of our upcoming events. If there is a fee associated with the event, you have the option to pay by credit card immediately or bring a check to the event itself. You will notice that once you sign up for the event, Eventbrite will send you a ticket for the event via e-mail. Not all events will require the ticket, but go ahead and bring it just in case; it helps us keep track of attendees.

We hope you appreciate the new ways the Foothills Bar Association is keeping you apprised of our events and we hope you attend any and all that you can. ♦

## New Section: The Red Onion

*A Hyperbolic Taste of Irreverent Satire*

*By Jennifer Hughes*

### The Tortoise and the Flare

On March 22, 2011, a troublemaking pet tortoise—Giovanni—escaped from his terrarium in a Brooklyn, NY bedroom by deliberately sparking a fast-moving blaze by tipping over his tank, which sent the heat lamp crashing to the floor, igniting a pile of art supplies, including paint thinner and paint.

Giovanni—whose getaway speed was not the source of his own salvation—was unharmed, but sadly, a second reptile, a water-dwelling turtle, Vito—with whom Giovanni had a longstanding dispute—was killed in the blaze, fire officials said.

As the incident destroyed the family's apartment and injured a firefighter and three cops, authorities are investigating other unprovoked animal crimes. ♦

## Clash of the Titans: PROMETHEUS INSPIRES IN PRO PER PARTIES

*By Keith A. Jones*

Courts lament that their resources are impinged by the significant increase of cases over the last couple of years in which parties represent themselves. These parties create unique challenges for the courts, particularly when the non-legally educated party argues the law as they think it should be, rather than as it is. But this problem is not new as courts have wrangled with these sorts of problems for decades. For example, an in pro per husband and wife team stretched legal logic to the point that the California appellate court compared them to the mythological Prometheus, known for his wily intelligence.

In Goshgarian v. George, the husband and wife contended that if the County of Fresno had an easement over a lot for drainage and disposal of water, then as taxpayers, they likewise had the legally recognizable right to drain and dispose of water over the same easement.

California Appellate Judge Kenneth Andreen recognized both the novelty and absurdity of this unique twist on legal logic while adding a sense of levity, taking jabs at both the in pro parties and opposing counsel. Judge Andreen wrote:

Please see *Prometheus* continued on Page 9—not to be missed!



*Have you seen this Bear?*

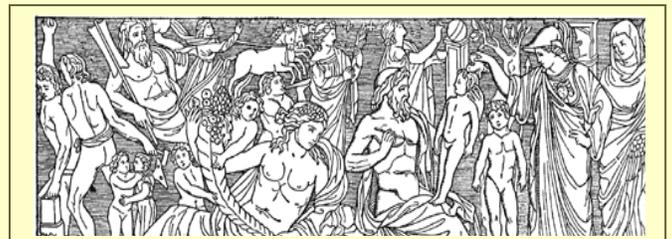
### Apocalypse Chow

Investigators are looking into a conspiracy theory derived from an anonymous tip linked to an incident which occurred in Laconia, New Hampshire, some nine months ago, wherein a yet unidentified black bear walked into a home, ate two pears and a bunch of grapes, took a refreshing drink from the family fishbowl—and yet to be satiated, grabbed a box of goldfish crackers—then grabbed a stuffed bear on its way out the door.

The family's nine-year-old was relieved that the bear ate only Brangelina, Tomkat and Bennifer and left his favorite goldfish, Lulu, unharmed.

The teddy bear was found in pieces on the lawn; upon it, the chilling mark of a defiant perpetrator: a solitary goldfish. ♦

*“Only a mind unburdened by the ephemeral shackles of legal training and gloriously free of the stultifying pomposities of precedent and stare decisis could have formulated the epiphanous principle that what the public may do as an entity, so may individual members of the public do, acting in their individual capacities. Appellate counsel for cross-complainants, with an imagination dulled by years of legal training, evidently lacked the audacity to appreciate cross-defendants' argument and misinterpreted (and diminished) it as a mundane attack upon the sufficiency of evidence to support the jury's finding of trespass. Not so. Cross-defendant Mr. George is on the wave front of the expanding legal universe, Prometheus unbound by the strictures of logic and reason*



*Prometheus demonstrates adroitness and ingenuity, only to get his liver eaten by an eagle (talk about sanctions)*

# FOOTHILLS BAR ASSOCIATION CALENDAR OF EVENTS

*Contributions by KimMarie Staron, Carolyn Brock, and Cheryl Stengel*

## CIVIL LITIGATION SECTION

## ESTATE PLANNING SECTION

APRIL 19, 2011, attorney George De la Flor will speak on "Litigating the Personal Injury Case" from 12:00 noon to 1:15 p.m. at BJ's Restaurant, 5500 Grossmont Cntr Dr, La Mesa, CA 91941

THURSDAY, APRIL 14, 2011  
David K. Kroll, Esq.  
Topic: Updates in Trust and Probate Litigation  
12:15 - 1:30 p.m.

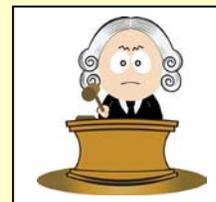
The meeting will be held at Nancy Ewin's office  
8166 La Mesa Blvd., La Mesa, CA

Save the Date in May: WRITING FOR THE BENCH  
TUESDAY, MAY 17, 2011  
12:00 pm - 1:00 pm  
BJs RESTAURANT  
5500 Grossmont Cntr Dr, La Mesa, CA 91941  
Writing for the Trial Court  
Speaker: Randy Christenson

Save the Dates in May and June (same time and venue):  
May 12, 2011 Joel S. Weissler, Esq. Topic: Asset Protection with the use of Domestic Asset Protection Trusts

Save the Date in May: Law Day May 6  
Law Day—Free Legal Clinic  
Friday May 6, 2011 9:00 a.m.--4:00 p.m.  
Law Library  
East County Regional Center, 1<sup>st</sup> Floor  
250 E. Main Street, El Cajon, CA 92020  
**VOLUNTEERS NEEDED! E-mail**  
[Carolyn@crbrocklaw.com](mailto:Carolyn@crbrocklaw.com) to volunteer

June 9, 2011 Daryl Golemb, CPA Topic: Value billing



## APRIL 2011 CALENDAR

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14 EP CLE: Updates in Trust and Probate Litigation	15	16
17	18	19 Civ Lit CLE @ BJs: Litigating the PI Case	20	21	22	23
24	25	26	27	28	29	30

## Counseling for Women and Families: An Economic Challenge We Cannot Ignore

By Damaris Martinez, RN, MFT; CEO CWCI Counseling Center, La Mesa

It's not surprising to learn that in this time of economic crisis and with our country at war, women and their families are constantly facing enormous challenges. Many issues such as marital conflict and parent/child relationship issues have always been common however it may surprise you to know that in these times of hardship, the issues have become increasingly alarming.

Women and their families are dealing with the financial and emotional difficulties of single parenting as well as the crisis of intimate partner violence and child neglect/abuse. In addition to this, with many spouses returning from the battlefield with severe posttraumatic stress, some of the gravest issues have surfaced. Due to a lack of access to treatment, many family members are finding the stress intolerable and, as a result, are resorting to suicide and even homicide as a solution.

According to the CDC (2010):

*Problems related to mental health, jobs, finances, or relationships might have contributed to the high rates of suicide in this age group (40-55). Mental health and/or substance abuse problems, relationship problems and losses, and recent crises were frequent precipitants for suicide. These factors have been documented in other studies as important risk factors for suicide.*

*Homicide rates were more than three times higher among males than females. However, a current or former spouse or partner commits approximately one in three homicides of females. Among male homicide victims, approximately 5 percent are killed by intimate partners.*

*The findings of this report indicate that male homicide decedents were more likely to be killed following arguments or conflicts with persons other than an intimate partner or for other reasons (e.g., crime or drug-related) whereas more than half of homicides involving a female victim involved intimate-partner-related violence.*

How many times have you heard someone say, "I really need counseling but I just can't afford it."? The statistics are daunting and reveal this as a problem most people can't afford to have. In 2009, 3.2 percent of adults aged 18 and over reported experiencing psychological distress during the past 30 days.<sup>1</sup> 20% of children are estimated to have mental disorders with at least mild functional impairment<sup>1</sup> and during a 1-year period, 22% to 23% of the U.S. adult population - or 44 million people - are diagnosed with mental disorders.<sup>1</sup>

At our community counseling centers we provide the highest quality of care possible and we strive to remove the limits and obstacles that prevent women and their families from seeking counseling. We have a vision for a compassionate community and we believe that all people, from all socio-economic backgrounds should be treated with the utmost respect. We know that this is a vision that needs to be realized and in our desire to make mental health care accessible to all women and their families, we have made our professional counseling services affordable.

CWCI counseling center in La Mesa is a non-profit 501(c) 3 that works diligently to serve the community by accepting most health insurance plans and EAP programs as well as providing a sliding scale fee that is accessible to most women and their families. In addition to this, CWCI creates supportive relationships within the community and solicits donations to provide women in need with scholarships to attend group therapy.

We encourage you to partner with us in this community effort to help women and their families overcome these times of crisis and difficulty. Help us to interrupt the cycle of violence and abuse, educate families on how to lovingly and safely parent their children and give a helping hand to military wives and their families by sponsoring our therapy groups. We also encourage you to make referrals to our counseling center and donate your precious time as legal consultants to women in need. Your support will create change and transform lives. It may even save a life.

*Damaris Martinez, RN, MFT; CEO CWCI Counseling Center, La Mesa*

*An RN and a licensed marriage and family therapist (LMFT), Damaris specializes in treating women and families struggling with abuse, crisis, trauma and post-traumatic stress (PTSD). She is a contributing author for "Twelve Steps: A Spiritual Journey" (RPI) currently available online and in local bookstores.*

## Civil Litigation Section CLE Recap: "Tips From the Bench"

by Mark Raftery

The Civil Litigation Section sponsored a program on "Tips From the Bench" for two dozen attorneys and paralegals with San Diego County Superior Court Judges Eddie Sturgeon and Joel Wohlfeil on March 15 at BJ's Restaurant in La Mesa.

Judges Sturgeon and Wohlfeil are the only judges in the El Cajon Branch of the Superior Court handling exclusively civil cases. Although Judge Sturgeon has been in Dept. 14 for a number of years, Judge Wohlfeil has been assigned to Dept. 15 for only a few months. Each shared their candid thoughts on how they handle their cases and offered a number of tips on what they prefer to see in their respective departments including the following.

Each of them have over 800 active cases, which is approximately 200 cases more than the typical case load of judges with civil departments in downtown San Diego. Although they move their cases as rapidly as possible and they still resolve the majority of their cases within 12 month after filing, there may be some delays. For example, Judge Sturgeon is currently about two to three months behind on his long cause trials, although Judge Wohlfeil is getting his civil cases out to trial more rapidly. If counsel in Judge Sturgeon's department cannot wait for their case to begin trial, Judge Sturgeon will set the matter "on the wheel" and it will be transferred to an open department in downtown San Diego for trial.

## Litigating the Personal Injury Case: New CLE

By Cheryl Stengel

On **Tuesday, April 19, 2011**, the Civil Litigation Section will host a program on "Litigating the Personal Injury Case" with speaker George De la Flor, Esq. from 12:00 noon to 1:15 p.m. at BJ's Restaurant in Grossmont Center in La Mesa.

Mr. De la Flor is an experienced trial attorney with more than 27 years in legal practice. His practice includes personal injury and tort litigation, labor and employment law and business law. He has been selected for inclusion in the U.S. News "Top Attorneys" listing and was honored by S.D. Metro Magazine as one of the top personal injury and employment lawyers in San Diego. He has received two Outstanding Trial Lawyer Awards from Consumer Attorneys of San Diego.

His professional activities and service have included the Board of Directors for the Consumer Attorneys of San Diego, vice-chairman of the Civil Litigation Section of the San Diego County Bar Association, San Diego Inn of Court Workshop Leader, San Diego Superior Court Judge Pro Tem and Superior Court Panel Arbitrator.

Despite the delay is getting long cause civil case trials out, Judge Sturgeon said that short cause or several day bench trial matters can "go to the head of the line," and will be scheduled between longer cause jury trials.

Judge Sturgeon is currently scheduling law and motion hearings approximately 60 days out; Judge Wohlfeil can set within 30 days. If counsel need a hearing scheduled on shorter notice, each Judge recommended counsel appear ex parte and, if good cause is shown for an expedited hearing, will work to schedule the hearing sooner.

Judge Wohlfeil stressed that he will handle civil discovery disputes but cautions that sanctions can, and will, be imposed if a motion is brought, or opposed, without substantial justification. If counsel have a discovery dispute they cannot resolve, he is willing to speak with them before a motion is filed to see if the matter may be resolved without a motion.

On trial practice tips, Judge Sturgeon mentioned that, to prevent forum shopping, if an attorney challenges either judge, the case will be sent to the Presiding Department in downtown San Diego for reassignment downtown. The case will not be reassigned to another civil judge in El Cajon.

In his civil trials, Judge Wohlfeil will allow counsel about 30 minutes for voir dire, although additional time may be requested, if needed. He will also preinstruct the jury on its role in the matter at the beginning of the case, instead of waiting until the end.

*Continued on page 8*

The cost of buffet lunch (pizza, salad and drink) will be \$17.00 if more than 19 people attend. If fewer than 19 people attend, then the cost of lunch will be whatever you choose. The seminar is free to members of the FBA and \$10.00 for nonmembers.

This activity has been approved for 1.0 hour of MCLE general credit by the State Bar of California. The FBA certifies this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing mandatory minimum continuing legal education.

If you have any suggestions for speakers or upcoming meetings, please contact section co-chairs, Mark Raftery at [mraftery@epsten.com](mailto:mraftery@epsten.com) or Cheryl Stengel at [cs@debtbsd.com](mailto:cs@debtbsd.com).

**UPDATE FROM THE CIVIL  
LITIGATION SECTION OF THE FBA**

## Nominations for Top Attorneys 2011 are open at the San Diego Daily Transcript!

[Nominate a Top Attorney today](#)

### Frequently Asked Questions

#### What is Top Attorneys?

*The Transcript* conducts a peer voting process to determine the best lawyers in private, corporate, academic and government practice in San Diego County in key categories. The categories have been selected to represent the main areas of law practiced in San Diego County.

#### Who is eligible?

Lawyers in private, public, contracts or Federal patent practice that are licensed in the State of California and/or the Federal Patent bench. Lawyers in good standing with the California State Bar that have not had any disciplinary actions leveled against them at any time in the past.

#### How are the practice areas determined?

Although the categories are very broad, they were created to reflect the primary practice areas in San Diego County. We recognize that there are many specialty practice areas among San Diego attorneys, but cannot accommodate them all. Many specialty practice areas fall under the existing general categories - for an in-depth look at the categories, please see the **Practice Areas Examples**. If there is an overwhelming request for additional practice areas, they will be considered for possible inclusion in next year's Top Attorneys.

#### How are nominations obtained?

E-mail invitations are sent to lawyers listed in the San Diego Attorney Directory. Contact us at [attorneydirectory@sddt.com](mailto:attorneydirectory@sddt.com) to add or update your e-mail listing. Call for nomination notices are also advertised in *The Daily Transcript* in print and online.

#### May I nominate myself?

Attorneys MAY NOT nominate themselves.

#### What information will be required to make a nomination?

Each attorney will be asked to nominate a lawyer (solo, in-house, firm, government, academic) that they have had experience with in a professional setting. We will need to collect information about each lawyer making the nomination and the person they are nominating. *The Daily Transcript* will need the name, firm/company, phone and e-mail of each party. Each lawyer will be required to tell us why they are nominating the attorney in 500 words or less.

#### Will the information be kept confidential?

All information provided will be kept confidential from the person they are nominating. The nominator MAY NOT nominate themselves. *The Daily Transcript* reserves the right to contact any or all attorneys making nominations to verify the nomination.

#### What happens once nominations are in?

*The Daily Transcript* will tabulate the responses. The top 25 nominated attorneys in each of the categories will be considered semi-finalists.

#### What happens once the semi-finalists are decided?

The semi-finalists will be open to a peer voting process and the top 10 ranked attorneys will be considered the finalists.

#### What happens after the finalists are selected?

*The Daily Transcript* will publish a special publication called Top Attorneys. Each of the finalists will be profiled in print and online. Finalists will be contacted by *The Transcript* to 1. congratulate them on their selection; 2. collect biographical information and a photo.

**Would you like to recognize an attorney in San Diego County for exceptional skill, knowledge, or service to the community?**

**April 20, 2011 is the nomination deadline!**

### Top Attorney Practice Areas

Academic  
Corporate Litigation  
Corporate Transactional  
Criminal  
Estate Planning/Probate & Trust  
Family  
Insurance  
Intellectual Property Litigation  
Intellectual Property Transactional  
Labor/Employment  
Municipal/Government  
Personal Injury/Property Damage  
Real Estate & Construction Litigation  
Real Estate & Construction Transactional

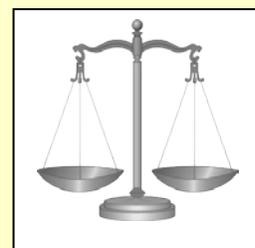
### Get Involved

Don't miss out on this wonderful opportunity to recognize your peers or congratulate attorneys from your firm. Highlight your firm's expertise by advertising or sponsoring Top Attorneys 2011. Call 619.232.4381 or e-mail [contact@sddt.com](mailto:contact@sddt.com) to get more [information](#) today!

### Deadlines

**Nominations Open** March 9 – April 20  
**Nominees Announced** May 2  
**Semi-Finalists Announced** May 11  
**Finalist Voting Open** May 16 – May 20  
**Finalists Notified** May 27  
**Sponsorship/Advertising Close** July 11  
**Publication Date** July 20  
**Event Date** July 27

<http://www.sddt.com/microsite/topattorney11/>



## Family Law Section Report

By Family Law Section co-chair Kimberly Kirkpatrick

Happy Spring! Over the last couple of weeks, I have had the chance to see the wonder of Spring, (and the annual arrival of Peeps), through small eyes as my youngest daughter comes home from school to scour the yard to find signs of Spring. I hope that all of you will find a smile at a the sign of a bird building a nest, the return of ladybugs or indulging in sugar-covered, bright pink marshmallow bunnies.

On to the news of the Family Law Section. . .

On March 15, 2010, the Family Law Section welcomed Dr. Robert A. Simon to our monthly "brown bag" seminar. Dr. Simon shared with us the differences between forensic and clinical psychology in a MCLE entitled, "It's About the Evidence: Forensic vs. Clinical Psychology in Custody Litigation."

The fundamental differences between these two types of psychology center on confidentiality, privilege and the question of who is the client. Clinical psychology is the area of treatment that we generally think of as "therapy." As Dr. Simon points out, when there is court order that a person participate in a custody evaluation or mediation, or even court-ordered counseling, that person's participation is not truly voluntary. Even if the person is willing or even happy to participate, their participation is court-ordered and their refusal to participate carries consequences. Because participation is involuntary, Dr. Simon says that the parties cannot truly consent to participating. This inability to consent creates a fundamental difference between clinical psychology, in which the participant sees the psychological professional as a "helper" and forensic psychology in which the professional's role is that of an objective evaluator.

In a forensic setting, Dr. Simon informed us, the professional should be objective and collect data that is concrete, transparent, replicable and verifiable. In a truly forensic evaluation, the professional neither believes nor disbelieves what is being said and represented by those being evaluated. Forensic evaluations should reach conclusions based on the presence of objective data, not hunches, intuition or clinical instinct.

In the clinical setting, the clinical psychologist has an alliance with the participant. Effective clinical psychology requires the participant's willingness to communicate openly and honestly. Communications between clinical psychologists and their patients are privileged. No similar privilege exists between the party being evaluated and the evaluating forensic psychologist. For this reason, Dr. Simon told us that a forensic psychologist must be especially careful to treat data objectively and keep in mind that, in a sense, the psychologist's client is the court or the attorney, not the party being evaluated.

Dr. Simon had many practical tips on dealing with forensic evaluations in the family court. He suggested that one of the first things to ask any psychological expert on the stand is to ask them to opine on the ability of psychology to make accurate predictions. He also suggests that attorneys question forensic professionals as to the methods that they used to collect their data.

We should be on the watch for reports that pose multiple hypotheses and evaluate each in light of the data. A good report will do this, and, will also inform the reader of data that did not confirm the hypotheses. A lack of any reported data that does not "fit" or a report that makes no mention of error rates is cause for a red flag and may warrant review by an independent expert.

Another area of examination of the expert is the degree to which the test used was or was not intended to be used on a population of child custody litigants. Dr. Simon offered this inside hint; "few, if any, tests were developed with child custody litigants as the intended reference population."

Dr. Simon also reminded us of the importance of knowing the Evidence Code. Forensic psychologists, as all scientific experts, must be aware of the requirements for the admissibility of expert opinion. The California Supreme Court adopted the Kelly-Frye standard: Test results used as evidence must be generally accepted within the relevant portions of the scientific community and any test results from scientifically unproven methods are excluded from evidence.

Many thanks to Dr. Simon for his generosity in sharing his time and expertise with all of us.

Please join us for our "Brown Bag Seminars." Held the third Tuesday of each month in department 7 of the East County Courthouse, the events are free to FBA members and \$10.00 to non-members. Upcoming Brown Bags will include Lou Reese of Lamplighter Appraisals and a seminar on using the Family Wizard web communication tool (coming soon to a court order near you).

*The thing about family disasters is that you never have to wait long before the next one puts the previous one into perspective.*

~Robert Brault

### PROFESSIONAL OFFICE SPACE AVAILABLE

Three offices to choose from - one large with secretarial space and two small individual offices. Must see to appreciate! Grossmont Professional Building in La Mesa - near the 8, 125 and 94 freeways.

Amenities include house phone, lobby, kitchen, conference room, patio area, parking, T-3 internet and phone service (intercom and voicemail). Please call Novella at (619) 337-0290.

## Civil Litigation Section CLE Recap: "Tips From the Bench" *continued*

If counsel want to show a jury a writing or piece of physical evidence during opening statement, he requests counsel discuss the matter before statements begin to attempt to resolve any differences they may have. If differences remain, he requests they be brought to his attention before opening statements begin. If it is likely that the writing or physical evidence will be admitted during trial, he may be inclined to allow it to be shown to the jury during opening statement.

Judge Sturgeon insists that counsel not approach a witness without first asking for permission. Also, exhibits should be moved into evidence after they are introduced instead of moving large numbers of exhibits into evidence at the end of the case.

Each judge reminded the audience that although counsel may vigorously argue their cases, they expect appropriate decorum in their departments and all counsel should be courteous to court staff. ♦

### Replacement Cost vs. Market Value

*By Randall Shlake, Certified Appraiser*

While discussing the final results of a real property appraisal with the Owner, a conflict arose over the Owner's understanding of replacement cost for the existing structure provided by the Insurance Agent and the estimated market value, i. e. what the current market will pay for the property.

Some background: The property was a large custom house of good quality built in the early seventies. It was of a contemporary style that was popular in that period. The house was very well placed on the point of a hilltop and had a one hundred eighty degree plus view to the east, south and west. Coronado was visible but not downtown San Diego. As pointed out above, it was of good quality but interior amenities were, for the most part, original.

When I presented the market value to the Owner, the Owner had difficulty in reconciling the discrepancy between the insurance estimate of the replacement cost to rebuild the house as nearly as possible to original and the estimated market value.

For purposes of the appraisal, lot value was not determined but the Insurance Agent gave the Owner a "best guess" estimate of the lot value. I do not know what the Agent based his estimate upon, but when the

Owner added the estimated land value to the estimated replacement cost to rebuild the existing structure, there was several hundred thousand dollars of difference between the two values (replacement cost and estimated market cost). Another factor that played into this discussion was the memory of the "value" of the property during the boom time when mortgage money was easily obtained but that is another story.

Being a typical Owner, the higher value was naturally assumed to be the correct value for the house. I am sure that we all know our properties are worth more than what they would appraise for, it is a natural occurrence. We all remember what the value we could have sold our properties for in 2005/2006. In addition, if we have owned the house for any amount of time, we have memories of raising our children, births, deaths, etc. Events add an intrinsic value to our properties.

In order to explain the difference between the two estimated values, I briefly explained what replacement costs would entail. Being on the point of a hill, there had to be an extensive amount of structural design and foundation work and depending upon how much of the house had to be replaced, this planning and foundation, if necessary, at today's standards, could dramatically add to the replacement cost. The house was built in the early seventies and building codes and building fees have both changed and increased greatly since that time period. The house would have to be brought up to today's standards. Material costs for modern interior amenities for a custom house of subject's quality have also increased greatly. The insurance estimate, in order to cover the insurance company's cost out of pocket, would assume the worst case scenario and charge the Homeowner a correspondingly larger monthly fee. While insurance companies are not supposed to over value the replacement costs of a structure in order to raise fees, it is possible that this may occur. And that brings up another point about replacement costs. I have extensive experience of evaluating properties destroyed by the wild fires in 2003 and 2007. The stories that I have heard from owners involved in fights with insurance companies over replacement costs are legendary. The replacement cost estimate given to the Owner could turn out to be more than the company wants to pay. Talk is cheap.

*Continued on Page 9*

**Prometheus continued from Page 2**

that constrain lawyers and judges in their quotidian professional functions.

“There is just one problem. The easement is for storm drain water, not mosquito infested swimming pool effluent.” Goshgarian v. George (1984) 161 Cal.App.3d 1214, 1223.

The next time an in pro per party appears in opposition, heed Judge Andreen’s words. Don’t let your legal training cloud your analysis of the illogical legal arguments that the party may present. ♦

**Replacement Cost vs. Market Value continued from Page 8**

In order to help support the estimated value obtained from the Sales Comparison Approach to value, I provided some active listings of properties with similar view amenities, of similar age and of similar quality. As is understandable, these comparables were extremely limited but a couple of properties were found.

**Replacement Cost vs. Market Value continued**

In particular, one active listing was found that had very similar amenities to the subject and when the Owner saw the asking price for this property and how many days it had been actively marketed, it gave very good support for the estimated value that was determined by the original appraisal (no active listings were supplied with the original appraisal as it was retrospective appraisal). I also explained that due to the dated interior of the subject, a prospective buyer would be looking at the additional expense it would cost after the purchase was finalized in order to bring this property up to today’s standards; standards that would be worthy of the view amenity of the lot. I tried to explain, without diminishing the intrinsic value of the house in the Owner’s eyes, that although the house was a fine piece of property and a valued possession/investment, the market is much more brutal in its assessment of the worth of the property.

You can reach Mr. Schlake by calling him at 619-461-4203 (Office), 619-405-8224 (Cell), or e-mail him at [rschlake@cox.net](mailto:rschlake@cox.net). Check can also out his website at: <http://www.hrsappraisal.com/>

## A Message from FBA President Stan Bacinett

### RUSSELL K. ROBINSON HONORED AS TOP SAN DIEGO CRIMINAL ATTORNEY

Long time Foothills Bar Association member, Russell K. Robinson, was peer nominated and peer voted Top San Diego Attorney 2010 in Criminal Law, as reported by the San Diego Daily Transcript.

I join with all other members in congratulating Russell Robinson for this award. Mr. Robinson has been an invaluable asset to our members by being *the* attorney to get criminal law and procedure questions answered, as well as an excellent resource if you need to refer cases out of your practice area.

Mr. Robinson has given presentations for the FBA in relation to all the types of protective and restraining orders. Mr. Robinson is open to assisting all members—particularly new members of the Bar in practice—with procedure questions, and is available via telephone or e-mail for consultations.

**Again, sincere congratulations to Russell K. Robinson from the Foothills Bar Association!**



*Here's to you, Mr. Robinson*

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The FBA welcomes your submissions. Send articles, letters, flyers, notices and non-advertising submissions to Jennifer L. Hughes, Esq., at [jlhughesesq@aol.com](mailto:jlhughesesq@aol.com).

### **ADDRESS CHANGES**

Send change of address and other contact information to Stanley J. Bacinett, Esq., at [sjb@bacinettlaw.com](mailto:sjb@bacinettlaw.com).

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