

Mariposa County Bar Association

Volume 2, Issue 10

www.MariposaBar.org

Newsletter@MariposaBar.org

February 2019

President's Column

Casey Aitchison, MCBA President

The Mariposa County Bar Association is continuing to grow in membership and attendance!

Our next meeting is Monday, March 11, 2019 at the Miner's Roadhouse 140, banquet room. Casey Aitchison will be providing a presentation on the Standards and Best Practices in Family Law. We invite everyone to join us for this presentation, which has been approved by the California State Bar for 1 hour of MCLE credit. The 1 hour MCLE credit is provided free to MCBA members (for non-members it is \$10.00), and attendees may order lunch at their own cost. RSVPs are appreciated, but not required, by replying to this email at MCBA@MariposaBar.org.



Our regular meetings are on the second Monday of each month at the Miner's Roadhouse 140, banquet room. The atmosphere is always fun, and we welcome new members. This is a great opportunity to network with other attorneys and to enjoy lunch with friends.

Our membership fee for 2019 is \$35.00, and includes access to several MCLE credits throughout the year as well as a listing on our web site. Visit our web site at www.MariposaBar.org, where you will find the latest on the event schedule and our list of members. You may use the application there and send in your dues for 2019, or bring the application and your dues to our next luncheon.

Be sure to save the date for Law Day, May 13, 2018, when Judge Fagalde will be our speaker with a presentation on Free Speech, Free Press, Free Society.

Join Us for MCLE Credit at March 11, 2019 Luncheon

Our March 11, 2019 luncheon speaker will be Casey Aitchison of the Merced and Mariposa law firm Aitchison & Emery. Ms. Aitchison's presentation, Standards and Best Practices in Family Law, has been approved by the California State Bar for 1 hour of MCLE credit.

Ms. Aitchison has been a family law attorney for 30 years. In addition to family law, she practices law in the related areas of guardianships, adoption, and juvenile dependency, and is frequently appointed by the Superior Court to represent children as minor's counsel. Ms. Aitchison regularly serves as Judge Pro Tempore of the Merced County Superior Court, Family Law Division, and has served in that capacity for the Mariposa County Superior Court as well.

Ms. Aitchison currently serves as President of the Mariposa County Bar Association and President of the Family Law Section of the Merced County Bar Association. She is a member of the National Association of Counsel for Children, the Association of Family and Conciliation Courts, and the State Bar of California. She is appointed to serve on the Board of Trustees of the Merced County Law Library, and served as President of the Merced County Bar Association in 2018.

Prior to law school, Ms. Aitchison served as a Congressional Page before going on to receive her undergraduate degree in Business Management. In 1989, she earned a Juris Doctor from San Joaquin College of Law in Fresno, California, where she served as President of the Student Bar. She passed the California Bar exam in 1989 and worked for a law firm in Merced prior to founding her law practice in 1994. In 2018, attorney Skye Emery became a partner in the law firm and they established the family law firm Aitchison & Emery.

After raising her children in Merced and seeing them off to college, Ms. Aitchison now resides in Catheys Valley, where she and her husband own and operate California's largest alpaca ranch.

Legal Aid for Mariposa Residents

by Ed Johnson

A new legal aid program for Mariposa County senior citizens rolled out on February 1 at the Mariposa County Senior Center. It is sponsored by the Mother Lode Office of Catholic Charities under a grant from the Area 12 Agency on Aging, and Central California Legal Services (CCLS). There is no cost to Mariposa residents for this service.



The program is available only to senior citizens age 60 and over. It offers services in limited areas, including estate planning, landlord/tenant issues, fraud upon seniors, contracts, and other simple concerns. Other more complex services that could be available include immigration and social security issues. One area specifically excluded from the service is any kind of family law issue.

The legal services are provided by attorneys from CCLS who travel to Mariposa the first Friday of each month. Mariposa residents must make an appointment with Catholic Charities, although limited walk-in service is available.

The Mariposa County Bar Association (MCBA) is monitoring the program and exploring the possibility of partnering and/or assisting in that effort.

One area where Mariposa County Bar Association members can be of assistance is with referrals where the legal aid program cannot assist clients. Typically, this type of program would refer those cases to local attorneys for fee-based assistance. MCBA has made it's list of members and practice areas available to CCLS for these referrals. Any such referral would be treated like any other client contact with fees and services negotiated between the parties.

Another area where MCBA members can be of assistance is with family law matters. No such services are offered as part of this program. Service enhancements could include legal advice, or even occasional clinics on basic family law procedures.

A third area where MCBA members can assist is with expanding this service to residents under the age of 60, offering services similar to those now offered to seniors.

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Mark Your Calendars for Our Upcoming Meetings

The MCBA is in the process of obtaining its status as a Multiple Activity MCLE provider. Ultimately, by attending our luncheon meetings each month, attendees will be able to fulfill all of the MCLE requirements mandated by the State Bar.



Our regular meetings are at noon on the 2nd Monday of each month at the Miner's Roadhouse 140 Banquet Room. We occasionally schedule our meetings for alternate days if necessary due to holidays, so be sure to check our website at www.MariposaBar.org for the most up to date schedule.

Everyone is invited to attend our meetings. The atmosphere is always fun, and we welcome new members. The following is a list of our 2019 events:

January 14, 2019

Luncheon meeting: Speaker Mariposa County District Attorney, Walter Wall

February 11, 2019

Luncheon meeting: Legal Aid for Mariposa Residents, presented by Ed Johnson

March 11, 2019

Luncheon meeting: Standards and Best Practices in Family Law, presented by Casey Aitchison, approved by the California State Bar for 1 MCLE credit

April 8, 2019

Luncheon meeting: Legal Developments in LGBTQ Employment Discrimination, Presented by Lindsay Nako, Esq., and David Nahmias, 1 MCLE Credit in **Elimination of Bias**

May 13, 2019

Law Day - Speaker, Judge Michael Fagalde "Free Speech, Free Press, Free Society"

June 10, 2019

Luncheon Meeting: Navigating the New Rules of Professional Conduct, presented by Mandy Jeffcoach, 1 MCLE credit in **Ethics**

Congratulations to Mariposa's Newest Minor's Counsel!

The Mariposa County Bar Association was represented by a strong contingency at the Minor's Counsel Training Symposium in San Luis Obispo during February 2019.

The MCBA would like to congratulate attorneys Ashley Albertoni, Alex Albertoni, and Stephanie Perez for completing the requisite training for qualification to accept appointments by the Mariposa County Superior Court to represent minor children in family law custody proceedings. All three attorneys bring a rich array of life experience and dedication to their newly acquired qualifications as minor's counsel. Featured articles regarding these three attorneys who comprise Mariposa's newest minor's counsel, are set forth below.



(pictured: Cindy Morse and Stephanie Perez)

Other Mariposa County Bar Association attorneys who attended the training to renew their longstanding qualifications to accept appointments as minor's counsel were Deborah Bennett, Cindy Morse, Skye Emery, and Casey Aitchison. The faculty at the symposium was an impressive line-up, including Judge Thomas Trent Lewis, the Supervising Judge for the Los Angeles County Superior Court, Family Law Division.

The Role of Minor's Counsel

California law regarding minor's counsel has evolved significantly in the past few years. Prior to 2010, the role of minor's counsel was to essentially act as an evaluator of sorts, making a report and recommendation to the Court regarding custody and visitation. This role began to change in 2007 with the case of *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1368. In *Elkins*, the California Supreme Court held that family law litigants should have the same

due process protections as litigants in other types of civil cases. The court recommended that the Judicial Council of California establish a task force to "study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings." In response to this recommendation, the Elkins Family Law Task Force was appointed.

The Elkins Family Law Task Force published its Final Report and Recommendations in April 2010, which states in pertinent part with regard to minor's counsel:

"The goal of [minor's] counsel's representation should be to provide the court factually correct information through the presentation of reliable, admissible evidence in a proper court proceeding. Because minor's counsel is acting in the role of an attorney, he or she should not make 'recommendations,' file a report, testify, or present anything other than proper pleadings."

The California Legislature responded to the Elkins mandate in 2011 by revising Family Code Section 3151 (a). The revised statute now provides that the role of minor's counsel is to gather "admissible evidence," not hearsay, and present the admissible evidence to the Court "in the manner appropriate for the counsel of a party."

Similarly, California Rules of Court, Rule 5.242 was amended in 2012 in response to the Elkins Family Task Force, to provide that "the role of the child's counsel is to gather evidence that bears on the best interest of the child and present that admissible evidence to the court in any manner appropriate for the counsel of a party."



(pictured: Ashley & Alexandria Albertoni and Deborah Bennett)

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Newest Minor's Counsel, continued...

Family Code Section 3151 provides that “If the child so desires, the child's counsel shall present the child's wishes to the court.” If the Court precludes the calling of the child as a witness, the child’s testimony and other input “must be in writing and fully document the child's views on the matters on which the child wished to express an opinion” and “must be provided to the court and to the parties by an individual who will be available for testimony and cross-examination” (California Rules of Court, Rule 5.250 (d) (2) (A) and (B).) The take-away from all of this, is that minor’s counsel is no longer supposed to act in the capacity of a mini-evaluator, but rather, is constrained to only present admissible evidence in the same manner as any other attorney in the proceeding.

New Minor’s Counsel Attorneys - Bios

ALEXANDRIA ALBERTONI

Alexandria Albertoni is a native Californian, raised in Oakdale, CA. Alexandria's practice focuses on the area of estate planning and trust administration and juvenile dependency law. Alexandria is a member of California Attorneys for Criminal Justice (CACJ).



Alexandria received her undergraduate degree from California State University, Stanislaus. She received her Juris Doctorate from Humphreys Drivon School of Law.

Alexandria is involved in the Merced Community. She has volunteered for the Boys and Girls Club of Merced, and the Kiwanis Club of Greater Merced. Alexandria also has community involvement with United Samaritans, the Dante Club, and the Stanislaus County Swiss Club.

ASHLEY ALBERTONI

Ashley Albertoni is a native Californian, born and raised in Oakdale, CA. Ashley practices in the areas of family law, criminal defense law, juvenile dependency and civil litigation. Ashley's work in family law has included cases involving child custody, visitation and support, guardianships, and dissolutions. Ashley's criminal defense practice has included cases involving a variety of both felony and misdemeanor crimes from DUI and other vehicle crimes, drug cases, fraud, assaults, to theft cases. Ashley is experienced in criminal trials. Ashley's civil litigation work has also involved a variety of legal issues ranging from landlord-tenant disputes, property claims, contractual disputes, to trusts and estate plans. Ashley is a member of California Attorneys for Criminal Justice (CACJ).



Ashley received her undergraduate degree from California State University Stanislaus, in Turlock. She received her Juris Doctorate from Humphreys Drivon School of Law.

Ashley is involved in the Merced community. She has volunteered with the Boys and Girls Club of Merced, and the Kiwanis Club of Greater Merced. Ashley also has community involvement with United Samaritans, the Dante Club, and the Stanislaus County Swiss Club.

STEPHANIE PEREZ

Stephanie M. Perez was born in Merced, CA, and raised in Le Grand, CA. She earned her Bachelor of Arts degree from the University of California, Davis and earned her Juris Doctorate degree from the University of the Pacific, Mc George School of Law. She was admitted to the California State Bar in December 2000.



Ms. Perez began her legal career as an associate attorney with the Fresno law firm Forrest, Henderson, Sloan, and Davis.

In 2001, she accepted a position with the Merced County District Attorney’s office as a Deputy District Attorney in the child support division.

In 2002, she joined the firm of Morse, Morse and Morse as an associate attorney for 12 years. In 2014, Ms. Perez opened her own law practice focusing in the areas of family law, guardianship, adoptions, Estate planning, and Estate administration.

Ms. Perez serves as a board member for Merced County Community foundation and serves as secretary for the Kiwanis Club of Greater Merced. She is fluent in Spanish.

Legal Aid, continued...

Although services are currently provided by in-person meetings, phone consultations could be explored for local attorneys willing to participate in the program. Catholic Charities maintains liability insurance for attorneys providing legal aid for this program.

These are just some ideas that have been discussed for partnering with the current program. While most attorneys fulfill their pro bono responsibilities in many ways, assistance in any of these or other similar areas can be a valuable resource for Mariposa County residents.

MCBA representatives will continue to monitor the program and coordinate with CCLS and Catholic Charities to discuss areas for supplementing services. If anyone would like to join in this effort, has suggestions for program improvements, or has any questions about the current program, please contact MCBA Vice-President Ed Johnson at 559-760-7659 or at edjohnson@sti.net.

Watch this space for regular updates.

MCBA Membership List

Thank you for your 2019 Membership.

2019 Members listed below:

Casey Aitchison
Alexandria Albertoni
Ashley Albertoni
Susan Albertoni
Deborah Bennett
Anita Starchman Bryant
Steven W. Dahlem
Skye Emery
Wayne Green
Edward J. Johnson
Jane Mackie
Cindy Morse
Stephanie Perez
Elizabeth Waldow
Walter Wall

A 2019 Membership Application may be downloaded at www.MariposaBar.org. If you haven't already paid your 2019 dues, please bring payment to the next luncheon, or mail it in with your application to MCBA, PO Box 628, Mariposa, CA 95338.

MCBA Newsletter – February 2019

Important Changes to Civil Code Section 1542

by Anita Starchman Bryant

Senate Bill 1431, Chaptered in July 2018 and effective January 1, 2019, amended California Civil Code Section 1542, which precludes the waiver of unknown claims unless the protections of the section are expressly relinquished. The protections of Civil Code Section 1542 cannot be waived unless the parties to the agreement actually acknowledge that they are waiving the rights and benefits of the statute, as quoted verbatim in the agreement.



Prior to amendment, Civil Code Section 1542 provided that a general release from an obligation does not apply to claims that the creditor does not know or suspect to exist in his or her favor, as specified, and that would have materially affected his or her settlement with the debtor.

Senate Bill 1431 clarified that the terms "creditor" and "debtor" include "releasing party" and "released party," respectively.

In summary, going forward, any document that contains a Civil Code Section 1542 waiver must include the new statutory language which now reads as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

2019 MCBA Officers

President: Casey Aitchison

Vice President: Edward Johnson

Secretary: Anita Starchman Bryant

Treasurer: Skye Emery

Upgrade to Mariposa County Jury System

The Court is in the process of upgrading the current Jury system to a web-based program. This will allow the use of self-check-in for jurors, text message reminders and online excuse processes.

The goal with the upgrade of the system is to streamline the jury check in process and the requesting and granting of excuses.

Please contact the Court if you have any questions regarding this upgrade.

The Mariposa County Bar Association Wishes You a Happy Valentine's Day!



SIDEBAR

JUDGE BACCIARINI TO SPEAK IN MERCED ON SMALL CLAIMS

The Merced County Bar Association invites all Mariposa area attorneys to attend their luncheon meeting at the Branding Iron on March 7, 2019, where Judge Bacciarini will speak on Small Claims. One hour of MCLE credit will be offered for this presentation. The cost for non-members is \$15.

Judge Bacciarini was appointed by Governor Arnold Schwarzenegger in June 2010 to succeed retired Judge Frank Dougherty. Judge Bacciarini served as a Merced County Deputy District Attorney for the 10 years prior to his appointment to the bench. Born and raised in Merced



and a 1976 graduate of Merced High School, Judge Bacciarini graduated with a bachelor's degree in music from University of the Pacific and worked 16 years as a high school music teacher and band instructor in Manteca, Merced and Clovis. During the mid-1990s, Judge Bacciarini decided to switch gears in his career and attend law school. He graduated with a Juris Doctorate degree from San Joaquin College of Law in 1998. Judge Bacciarini's experience as a former teacher and chief deputy district attorney brought him into contact with a diverse group of people and prepared him to serve with the fairness, integrity and respect for which he is renowned.