

# Mariposa County Bar Association

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

[Newsletter@MariposaBar.org](mailto:Newsletter@MariposaBar.org)

February 2020

## President's Column

Casey Aitchison, MCBA President

The Mariposa County Bar Association ("MCBA") invites all Mariposa area attorneys and colleagues to our next meeting, March 12, 2020, for Judge Michael Fagalde's presentation "Ethics-A Perspective After Crossing the Divide from Attorney to Judge." The presentation has been approved by the California State Bar Association for .5 MCLE credit.



The presentation with .5 MCLE credit in the required topic of Ethics is provided at no cost to members (for non-members it is \$10.00). Those attending may order lunch from the menu at their own cost. RSVPs are appreciated, but not required, by replying to this email at [MCBA@MariposaBar.org](mailto:MCBA@MariposaBar.org).

Our meetings are held on the second Thursday of each month at the Miner's Roadhouse 140. Membership is not required to attend the luncheons. We invite all attorneys and colleagues to attend our meetings, whether you are a member or just enjoy networking and having lunch with friends.

MCBA Membership is \$35.00 and includes access to several MCLE credits throughout the year as well as a listing on the MCBA website at [www.MariposaBar.org](http://www.MariposaBar.org). An application may be downloaded at our website, and will be available at the lunch. Those who are renewing their membership may forego the application and simply send in their dues or bring them to the next luncheon.



## Judge Michael Fagalde to Speak at March 12, 2020 Meeting

The Mariposa County Bar Association is pleased to announce Judge Michael Fagalde as the speaker for our next meeting, Thursday, March 12, 2020, at the Miner's Roadhouse 140, for .5 hours of MCLE credit in the required topic of Ethics.



With over 36 years of combined experience as a Judge and as an attorney, Judge Fagalde has handled thousands of cases, including hundreds of trials by jury or by the court. Judge Fagalde is currently the Presiding Judge of the Mariposa County Superior Court. He hears most criminal cases, juvenile dependency cases, juvenile traffic court and a variety of civil matters. Judge Fagalde helped create the Court's Behavioral Health Court in 2017 and has presided over it since then. That Court is designed to focus on individuals with a diagnosis of serious mental illness, and who have been convicted of a crime and placed on probation with the goal of decreasing future criminality by means of intense treatment and supervision.

Prior to becoming a Judge, Judge Fagalde worked as an attorney for over 31 years, practicing primarily in Mariposa and Merced Counties. He is a member, and past president, of the Mariposa Rotary Club and does volunteer work in the community, including assisting MCBA Secretary, Anita Starchman Bryant, for the past 13 years with the When You Turn 18 Program, involving speaking to classes of high school seniors about how the law affects them when they turn 18. He also volunteers at the high school Sober Grad party every year, and is still dealing cards late into the night in the casino room.

He and his wife, Sharon, reside in Catheys Valley and are the parents of two adult children, and grandparents of three.

# New “Use-of-Force” Law Passed by State Legislature\*

by Anita Starchman Bryant

A bill revising the standards for use of deadly force by peace officers has recently been passed by the California state legislature and approved by Governor Newsom. Penal Code Section 196 previously provided that a homicide committed by a peace officer was justifiable when necessarily committed in arresting a person who has committed a felony and the person is fleeing or resisting such arrest, whether or not the person poses a danger to the officer or someone else. Case law had interpreted this law as requiring such actions to be “reasonable.” Assembly Bill 392 (“AB 392”) amended Penal Code Section 196 to redefine the circumstances under which a homicide by a peace officer is deemed justifiable. Under the revised law, peace officers may use deadly force only when “necessary” in defense of human life, evaluating each situation in light of the particular circumstance of each case.



Upon the adoption of AB 392, the law now provides that a peace officer is justified in using deadly force only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of two specified reasons. An officer must believe that deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person. Alternatively, the officer must believe that deadly force is necessary to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious injury to another unless immediately apprehended. In addition, the law provides that where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has reasonable grounds to believe that the person is already aware of those facts.

AB 392 also balances the nature of officers’ roles in engaging with the public in potentially dangerous situations.

This bill specifies that a peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts when the person being arrested resists or threatens to resist. A peace officer won’t be deemed an aggressor or lose the right to self-defense by using reasonable force to effect the arrest or to prevent escape or to overcome resistance.

In support of the bill, the American Civil Liberties Union of California stated that AB 392 replaced the currently “lax” standard of using deadly force whenever “reasonable,” with a more stringent standard that authorizes police officers to use deadly force only when “necessary” to defend against an imminent threat of death or serious bodily injury. The ACLU stated that with “AB 392, California will have one of the strongest deadly force laws in the nation—if not the strongest.”



Newsom signing bill 492 | Photo from Sacramento Bee

In opposition of the bill, the Burbank Police Officers’ Association stated concerns that the bill contained no mandates for “use of force” policies and training for California officers. “A simple review of the proposed legislation reveals that AB 392 does nothing to change use of force policing policies, training, or guidelines—no funding for training, critical to any plan to reduce police use of force, and no proactive plan to achieve such a reduction in force.” In response to these concerns, Senate Bill 230 is currently in the Assembly, proposing to provide funding to develop and implement use-of-force training consistent with the legal requirements.

\* This column was originally printed in the Mariposa Gazette

Anita Starchman Bryant, who earned her J.D. from UC Berkeley School of Law, is a Mariposa attorney practicing in the areas of real estate, land use, estate planning & administration, and probate law. Disclaimer: This article is intended to provide general information. The content of this publication is for informational purposes only. Neither this publication nor its author is rendering legal or other professional advice or opinions on specific facts or matters.

## MCBA 2020 Meetings

The MCBA meetings are held on the second Thursday of each month at the Miner's Roadhouse 140 banquet room. Everyone is invited to attend. The atmosphere is always fun, and we welcome new members. Our attendance grew significantly in 2019, and we look forward to the coming year. We have many informative presentations planned, and hope to see everyone at our luncheons.

### January 9, 2020

Luncheon meeting: Strategic Planning Meeting for 2020

### February 13, 2020

Luncheon meeting: Speaker, Dr. Eric Sergienko, Mariposa County Public Health Officer, regarding Public Health Law

### March 12, 2020

**Luncheon meeting: Speaker, Judge Michael Fagalde, .5 MCLE credit in Ethics with his presentation "Ethics-A Perspective After Crossing the Divide from Attorney to Judge"**

### April 9, 2020

Luncheon meeting: Russell Cook, Mediating the Hatfield-McCoy Dispute, for 1 hour MCLE credit

### May 14, 2020

Law Day - Speaker, Judge Michael Fagalde "Your Vote, Your Voice, Our Democracy: The 19th Amendment at 100"

### June 11, 2020

Luncheon Meeting: Speaker, Miles Menetrey, Chairman of the Mariposa County Board of Supervisors

### July 9, 2020

Luncheon meeting: Speaker, Chevon Kothari, Director of Mariposa County HHS, regarding the homeless situation in Mariposa County and the applicable laws the County must navigate to address the problem

### August 13, 2020

Luncheon meeting: Speaker To Be Announced

### September 10, 2020

Luncheon meeting: Speaker To Be Announced

### October 8, 2020

Luncheon meeting: Speaker To Be Announced

### November 12, 2020

Luncheon meeting: Speaker To Be Announced

### December 10, 2020

Luncheon meeting: Holiday Luncheon and Judges Appreciation Day

## Family Law News

by Casey Aitchison, President, Merced County Bar Association Family Law Section

The featured case this month is *Rico v. Mitsubishi Motors* (2007) 42 Cal.4th 807, wherein the California Supreme Court addressed the ethical requirements of a lawyer who inadvertently received privileged documents.

In *Rico*, the plaintiffs' attorney inadvertently obtained a defense attorney's notes and used them during a deposition to impeach a defense expert. The Supreme Court found that an attorney's thoughts and impressions about a case are work product and absolutely privileged. In determining how this privileged information should be treated, the *Rico* court adopted the standard set forth in *State Compensation Insurance Fund v. WPS Inc.* (1999) 70 Cal.App.4th 644 ("the State Fund Rule") for handling inadvertently produced confidential information.

The Court held that when a lawyer receives material that "obviously appears to be" confidential and subject to a privilege, and where it is reasonably apparent that the materials were provided or made available through inadvertence, the receiving attorney must refrain from reading the material and immediately notify the sender that they possess material which appears to be privileged. Failure to do so and attempting to use the material is unethical and grounds for the attorney to be disqualified and removed from the case. The *Rico* holding was specifically referenced and included in the new Rules of Professional Conduct, Rule 4.4, which went into effect November 1, 2018.

The Family Law Section of the Merced County Bar Association meets on the second Tuesday of each month. We invite any interested persons to join us, whether you are a Family Law practitioner, have crossover questions, enjoy networking, or just want to get together with friends for lunch. Our next meeting is:

Merced Family Law Section Meeting

Date: Tuesday, March 10, 2020 at noon

Location: King's Asian, 360 W. Main St, Merced, California

For more information, please email the Merced County Bar Association Family Law Section President, Casey Aitchison at [Casey@MercedDivorce.com](mailto:Casey@MercedDivorce.com).



## State Bar News

The State Bar has issued the following email to be distributed to MCBA members, with more information available at this link: <http://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Committee-Appointment-Application-Overview>:

“Dear Colleague:

Applications are now open to serve on State Bar committees.

Volunteers who are selected will play an essential role in guiding the work of the State Bar which continues to tighten its focus on its core mission of protecting the public through the licensing, regulation, and discipline of attorneys, and by working to increase the diversity of the legal profession and increase access to legal services.

This year’s volunteer recruitment effort is intended to ensure a broad and diverse pool of applicants in accordance with statutory language clarifying that the State Bar’s core mission “includes support for greater access to, and inclusion in, the legal system.”

The State Bar is seeking to fill positions on the Committee on Professional Responsibility and Conduct, the Client Security Fund Commission, the Council on Access and Fairness, the California Board of Legal Specialization, the Commission on Judicial Nominees Evaluation, and the Legal Services Trust Fund Commission.

The deadline to apply is March 13, 2020.

I hope that you can join us in ensuring that the legal profession in California continues to be the best in the world.

Sincerely,

Donna Hershkowitz | Interim Executive Director  
The State Bar of California | 180 Howard Street | San Francisco, CA 94105  
The State Bar of California | 845 S. Figueroa Street | Los Angeles, CA 90017”

## MCBA Membership List

It’s time to renew your membership for 2020! The following is our current list of 2020 members. If your name is not on the list and you would like to renew your membership, no application is needed, just send in your payment or bring it to the next luncheon:

Casey Aitchison  
Kevin Briggs  
Marvin Brown (retired)  
Anita Starchman Bryant  
Steven W. Dahlem  
Skye Emery  
Ed Johnson  
Andrew Kucera

For new members who wish to have their information listed on the MCBA website, a Membership Application may be downloaded at [www.MariposaBar.org](http://www.MariposaBar.org). Bring the application and payment to the next luncheon, or mail it to MCBA, PO Box 628, Mariposa, CA 95338.

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## 2020 MCBA Officers



Casey Aitchison  
President



Ed Johnson  
Vice-President



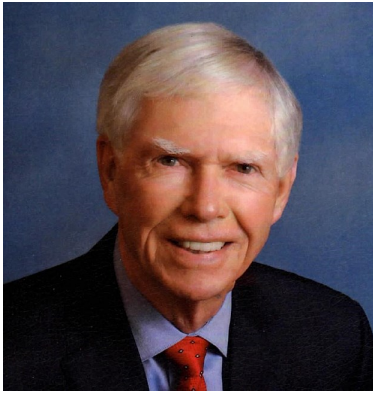
Anita Starchman Bryant  
Secretary



Skye Emery  
Treasurer

# Ralph Sterling Temple Jr.

May 20, 1940 – January 31, 2020



In honor of our long time colleague, Ralph Temple, who passed away on January 31, 2020, the MCBA is reprinting herein the following:

Ralph Temple was born on May 20th, 1940, in Niagara Falls, NY, to Elizabeth and Ralph Temple Sr. He spent his childhood with his older sister Betsy in Memphis and then back to Niagara Falls following his father's assignments as a chemist for DuPont. He graduated from Williams in 1962 and was poised for a career in business when he was arrested during a college road trip. Upon successfully defending himself, Mr. Temple decided to pursue a career in law. While technically enrolled at Hastings Law School, more often Ralph would be studying the fairways and greens of the Bay Area. Much to the chagrin of his classmates, he graduated near the top of his class at Hastings and passed the California Bar on his first try, all while carefully maintaining a four handicap.

Ralph then enlisted in the Army and served his country from 1966 through 1969, including a year of active duty in Vietnam. In 1965 he married Jeanne Allard. The couple had daughter Katy and son Josh while living in Oakland (forever sentencing both of them to be Raiders fans), and then moved to Merced in 1971 where a couple years later they added their third child Mitch.

Ralph loved and served the city and community of Merced for the next forty-eight years of his life. He could be counted on to donate his time and talent to a variety of good causes throughout the city including Bloss Hospital, the successful campaign to bring a University of California campus to Merced where he served as a UC Merced Trustee and the Chair of the joint UC Merced & Merced County Office of Education LLC committee, and pro bono work for a large number of his children's friends (who were all innocent).

In the middle of raising children, practicing law, and contributing as a citizen, was golf. It was his pastime, his joy, and his religion. He loved and honored the game, and immensely enjoyed the friendships he forged and shared on the course. He served as President of the Merced Country Club in 1982 and went on to become President of the Northern California Golf Association in 1998. During his time on the Board he was deeply involved in the development and founding of Poppy Ridge Golf Course, and the celebration of the 100th Anniversary of the founding of the NCGA. Later he was the President of the Cal Seniors Association.

Around that time he rekindled a relationship with his college sweetheart Carole Whitehill with whom he would delightfully spend the rest of his life. They traveled the world, they served their community together, and they organized countless family events in Merced, Pebble Beach, and Palm Desert.

Whether facing him in court, on the course, or at a cocktail party, it was wise to avoid the wrong side of Ralph Temple's intellect and wit, and he could be very short tempered about old-fashion values like patriotism, civic duty, and good manners, especially when it came to stepping in his putting line.

He is survived by Carole, his sister Betsy, his niece Liz, his kids--Katy, Josh, and Mitch, their mom Jeanne, his daughter-in-law Liza, his grandchildren--Ruby, Estelle, Cole, and Julian, Carole's kids--Bob, Ingrid, Wendy, and James, and their children--Chris, Connor, and Diego. He was a patriot, a citizen, a loving partner, a damn fine father, and a hell of a golfer. He will be missed.

In lieu of flowers the family would appreciate donations to "Youth on Course", the charitable junior golf program of the NCGA, and a 501(c)3 tax exempt organization. Donations are tax deductible, and their Federal Tax ID Number is 94-3108575. Mailing address is 3200 Lopez Rd. Pebble Beach, CA, 93953.