

The Barline



Frank Dice

2011 Fenton Award Winner

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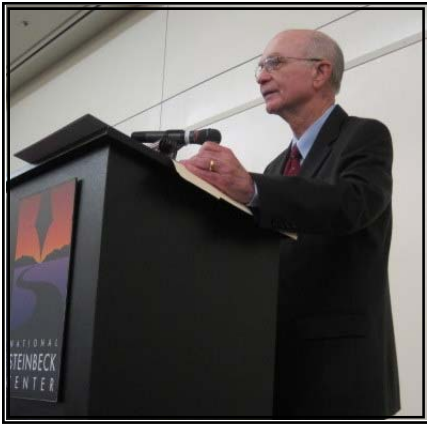
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**LEWIS L. FENTON AWARD
for
“EXCELLENCE IN ADVOCACY”**

- | | |
|-------------|--|
| 2005 | Charles Keller |
| 2006 | Lawrence Biegel |
| 2007 | Thomas Wills |
| 2008 | Myron “Doc” Etienne |
| 2009 | Charles Warner |
| 2010 | Michael Lawrence and Chris Campbell |
| 2011 | Frank Dice |

Justice Nat Agliano Presented with MCBA's "Lifetime Achievement" Award



Justice Agliano, left and above, with Justice Nathan Mihara, Justice Patricia Bamattre-Manoukian, and Justice Wendy C. Duffy.

On October 20, 2011, the Honorable Nat A. Agliano (Ret.) was presented with the Monterey County Bar Association's first ever award for Lifetime Achievement.

The event included a "standing room only" lunch following the Sixth District oral arguments in Salinas. Justice Agliano was introduced by Justice Wendy Duffy. Other speakers included Justice Conrad Rushing, presiding judge of the Sixth District and Judge Adrienne Grover of the Monterey Superior Court.

Justice Agliano served as presiding justice of the California Court of Appeal, Sixth Appellate District in San Jose, and as judge of the Monterey County Superior Court. He was in private practice in Monterey from 1963 until 1971, after three years in Sacramento as a Deputy Attorney General. He has been an arbitrator and mediator with JAMS since leaving the Court of Appeal.



Make no mistake, the lifetime achievement award does not mean Justice Agliano has retired from his busy arbitration and mediation practice.

In addition to his work with JAMS, he also serves with Monterey County Superior Court's court-directed mediation program.

Left: Justice Agliano, pictured in his newly remodeled office, courtesy of daughter Julie. He now has with a separate entrance, more light, and new bookshelves. With the old shelves (which he built years ago with boards), he made flower boxes for his wife Lil.

Coming in the next Barline, a judicial profile of Justice Agliano.

MICHELLE WELSH

HONORED WITH LADY JUSTICE AWARD



On December 8, 2011, Michelle A. Welsh, Esq., of Stoner, Welsh & Schmidt was awarded the ***Lady Justice Lifetime Achievement Award for Legal Advocacy and Community Service*** by the Monterey County Women Lawyers Association. The award was presented by Virginia E. Howard, Esq., President of the Association. Susan K. Blich, Esq., President-Elect, presented Ms. Welsh with a Certificate of Recognition from the office State Assemblyman Bill Monning.

Over fifty people were in attendance at the award ceremony to honor Ms. Welsh. Shayna Gelender, Organizing Director for the American Civil Liberties Union, commended Ms. Welsh for her years of pro bono legal services to the ACLU of Northern California, and, in particular, for her pivotal role in bringing about the resurrection of a toppled cross on church property in lieu of on property owned by the City of Monterey. Currently, Ms. Welsh serves as the Board Chair of the ACLU of Northern California.

Anna Caballero, Secretary of the California State and Consumer Services Agency and former member of the Salinas City Council, complimented Ms. Welsh on her years of community service. Stephen Pearson, Esq., recalled Ms. Welsh's years as an intern and associate with the law firm of Noland, Hamerly, Etienne & Hoss firm. Honorable Timothy Roberts commended Ms. Welsh for her legal advocacy, and Dean Mitch Winnick of Monterey College of Law, thanked Ms. Welsh for her years of service to the law school. A former colleague, Elizabeth ("Petie") Helfrich reflected on the challenges of practicing law in Monterey County as a woman in the 1980's, and expressed her gratitude to Michelle Welsh and Katherine Stoner for joining her in the legal community.



The Firm: Emily DuBois, Michelle Welsh, Katherine Stoner and Peggy Schmidt.



Supreme Court Chief Justice Tani Cantil-Sayouke Visits Central Coast, pictured above with MCBA President Juliet Peck, past President Emily Du Bois, and Michelle Welsh. Below, Monterey County Women Lawyers President Virginia Howard, Emily, Juliet and Michael Lawrence.



Judicial Profile *Honorable Thomas Wills*

by Regina Gage

The Honorable Thomas Wills was born and raised in Kinderhook, a Dutch farming community in the Hudson River Valley of upstate New York. He is the oldest of 14 children. (Ironically the name of the town means “Children’s Corner” in the language of the original Dutch settlers.) He earned a B.A. in biology from Fordham University in the Bronx, New York, where one of his roommates was Bill McGrane, a San Francisco/San Jose attorney who eventually wrote the book *Bad Law*.

Judge Wills eventually moved west so he and his wife Judy would be closer to her family in Monterey. He had been considering law school for some time and was familiar with the Monterey College of Law. He applied and started in 1975, becoming the third class to graduate from this newly established evening law school. He fondly recalls his classmates, who included Judge Russell Scott, Tom O’Brien, Katherine Stoner, Michelle Welsh, and former Public Defenders Don Coleman and Gerry Osmer.

While attending MCL, he worked in the appliance department at Holman’s Department store, doing general maintenance. He left that job to become a Law clerk for Noland, Hamerly, Etienne and Hoss.

Ever wonder why Judge Wills always wears a bow tie? One of the people he misses most from the early days of his practice was his dear friend and mentor, Bill Bryan. Judge Wills said “Bill was like a father to me, and anyone who worked with Bill knew him to be not only a memorable character but an excellent attorney.” A 1970s era photo of Bill Bryan and other Monterey County attorneys indeed features Bill Bryan in a bow tie. When Bill died several years ago, Judge Wills was honored with Bill’s bow ties and has continued this classic and dapper manner to honor of his dear friend and mentor.

Judge Wills has a breadth of knowledge in the law as a result of practicing both criminal and civil law for more than thirty years before becoming a judge. Confident that he was good at evaluating cases after practicing criminal defense and personal injury for thirty years, he wanted to give back to the community that had given him so much satisfaction and success. He was encouraged by now retired Judge Phillips to become a judge. His path to the bench was unique. After announcing his bid for the seat left open by Judge Stephen Sillman, and two weeks before the primary, he received a call from the Governor’s Office. He faced a dilemma: whether to continue with the primary or accept the appointment. Adding to curious timing, the Governor’s call came on the day of the annual Gibson dinner. Those in attendance may recall hearing the news then.

I asked Judge Wills about his perception of what it would be like on the bench and how that has compared to the reality of his job. We digressed for a moment and talked about the ever-popular pastime of watching TV, especially the influx of shows portraying those in the legal profession. Judge Wills had but one word to offer...well, I guess that word had to be omitted so he offered an alternative word “unrealistic.”



Judge Wills expected to work hard, giving 110 % and this he does, along with his colleagues. He expected the job to be intense. That it is.

The variety of the cases is endless; whether they are guardianships, move-out orders, unlawful detainers, weekly jury trials on misdemeanors, will contests, conservatorships, business disputes, and personal injury. The mortgage crisis and all the legal issues arising with it have caused a huge spike in their case load. A significant number of these individuals are unrepresented by legal counsel, which adds to the challenges of handling the cases.

The realignment of prisoners as a result of recent changes in the law has also significantly impacted the local courts. These changes have required that the judges work diligently to understand the new laws and how they will be implemented.

Last but far from least, the Monterey County Superior Court recently offered all employees an opportunity to take a “voluntary separation,” downsizing the staff, and increasing the work load for those remaining.

Judge Wills knows most of the attorneys who appear in his court, having worked with so many of them while in private practice. This is a benefit, he believes. They are his former colleagues and, while they may not agree with his ultimate decision, they understand his reasoning.

One of his more amusing cases involved a wife who had requested a Temporary Restraining Order against her husband. Domestic Violence is no laughing matter but there was not any domestic violence. In all seriousness the woman implored Judge Wills to order her husband to “pick up the yard and clean the house.” He gently told her that while he could understand her sentiment, being a husband to Judy for over forty years, but no legal precedent allowed him to order her husband to “stop being a slob.”

Judge Wills talked about the fact that many litigants suffer from mental illness. This does not excuse them from taking personal responsibility for their actions, it offers a sad explanation for the cycle of bad decision making that takes over their lives. They should be medicated in order to exercise good judgment, they stop taking their meds, they make bad decision, and they end up in court. The cycle of bad decisions, that is, breaking the law, continues.

Judge Wills is a reasonable and thoughtful man but he is willing to make controversial decisions if he believes in them. Recently, he set guidelines for probate fees and put limitations on fees that some attorneys were charging. Most were already in compliance but there were a few disgruntled who thought their services should exceed the amount Judge Wills thought fair.

At the end of the long day, Judge Wills is honored to be a member of the Monterey County Bench. He is delighted to see that there has been a renewed interest in the local Monterey County Bar Association; he made a specific request to have attorney Tom Espinosa, Monterey County Bar President at the time, speak at his investiture because he wanted to acknowledge the important role the Monterey County Bar Association plays in the legal community.

Judge Wills is a man who cherishes his life; he’s been married to Judy (a retired school teacher) for 42 years and is happy to say that she is much involved in helping children at the school where she taught, in their home-town of over thirty five years, Pacific Grove. He and Judy are proud of their son, who is an Aerospace engineer and they are delighted to have 2 grandchildren.

He enjoys travelling when time permits and most recently, took the train to Canada, saying, “It was beautiful and the restaurants were plentiful and reasonable.”

He did admit that if he were not on the bench, his other dream job would be that of sports car racer and restorer. His busy work schedule doesn’t allow him to race or restore as much as he’d like but he still finds the occasional free weekend to go to the Shelby Club meets at Laguna Seca.

If he wears his bow tie while racing, he’ll look just as stylish on the track as he does on the bench.

Stress And The Self-Medicating Professional

By Mark Willison, MFT

I was recently asked to present a talk on chemical abuse and stress at your monthly “Brown Bag Workshop”. I was honored to do so. The title of my talk, Stress And The Self-Medicating Professional, addressed the perils of self-medicating moods with alcohol and other drugs. During my talk I substituted the addictive behaviors of alcohol and drugs use with other addictive activities such as eating, gambling, video game playing and exercise. I did so because as humans we experience negative consequences from a variety of addictive behaviors, thus I will make some of the same substitutions in this article.

It must be noted early here, as I repeatedly did during my talk, most of you have very stressful jobs. In fact I see the emotional strain experienced by lawyers as pretty unique to your profession. Think about it, the nature of your business is conflict and dispute. I picture you, during one of you’re very rare slow moments, hoping a conflicting couple with a serious custody issue walks in the door; or disputing neighbors wanting to throttle one-another calling you for help; or unhappy family members battling over who gets dad’s large-screen TV asking for your free advice. I don’t see a lot of joy coming from your clientele.

To compound matters... and your stress, your job has the built-in pressure of time and billing demands, heavy workloads and the need to be nearly perfect in your production and finally, you’re supposed to win every case! These demands breed obsessive dedication and performance anxiety. While perhaps appreciated by partners and bosses, your health, family and eventually your career will suffer unless you learn to manage your stress without using alcohol or drugs or other addictive substances and or activities.

Stress is the prolonged pressure we experience in response to change and challenge. Pressure itself is not necessarily stress inducing and a certain amount of pressure is in fact helpful in many situations. The right amount helps motivate us... think of deadlines and (healthy) diets, long putts and public performances. In each case, a little pressure increases our focus and actually increases our likelihood of success. Yet, too much pressure for too long a time leads to chronic stress and to severe anxiety and depression. Chronic stress from any source will eventually lead to a diminished ability to function optimally in all areas of your life; at home, at work or on the tennis court.

It probably won’t surprise you that many attorneys suffer from prolonged pressure, anxiety and even depression. What may surprise you is that as a demographic, attorneys have a nearly twice the percentage of alcohol abuse compared to the general public. In one study from the International Journal of Law and Psychiatry “problem drinking developed in 18% of lawyers practicing for 2-20 years and in 25% of lawyers practicing 20 years or more”. Those numbers are both amazing and sad and confirm my belief that attorneys are overworked and under joyed.

continued

How can “taking the edge off” by have a “couple of beers” be so devastating to our health, relationships and careers? The short answer is that with alcohol or drugs, the effects are immediate and effective... yet only temporarily. Alcohol consumption increases serotonin production and serotonin helps calm us, temporarily reduces symptoms of depression and helps us sleep. The problem develops when a dependency on these chemicals and their effects leads to the inability to relax or enjoy your loved ones or hobbies or friends without your substance of choice.

Relying on chemicals like alcohol, marijuana or pain medications to soothe your mind and body is abuse and you need to make a change in how you think about your lifestyle, health and work. It is important too to understand that a growing reliance on chemicals and alcohol can result in withdrawals, causing greater anxiety and depression which in turn increases the likelihood on further abuse.

An often-asked question of me is “How do I know if I have a dependency problem?” The best response I can give is to ask the inquirer to reflect on the negative consequences associated with the behaviors they’re concerned about. These consequences could be any experience affecting you in a way detrimental; a hangover, an argument with your spouse, tripping and breaking your toe, being late to work, liver disease or heaven forbid... a legal issue. You get my point. The addict will continue the destructive behavior over and over again regardless the consequences.

If you think you might have a dependency problem don’t be shy about sharing your concerns with the person you feel safest opening up with. Perhaps this is your spouse or your doctor or therapist or your best friend. It doesn’t matter. What is important is your willingness to look at the behaviors negatively affecting you and your life and your choosing to address them in a healthier fashion. Second, if your dependency is alcohol or drugs you might need medical assistance with the management of withdrawals. In our community we have specialist certified as Addictionologist, physicians trained to help individuals addicted to chemicals. Additionally, the Peninsula and the surrounding communities also have excellent therapist, treatment programs and 12 Step support groups to help individuals and families through the recovery process.

As for managing stress, the first thing to do is learn how to recognize when you are over stressed and running low on energy; Are you making more mistakes? Is your memory affected, thus costing you time and money? Does you head hurt from constantly hitting your desktop? Second, learn to recognize the different intensity levels of your stress and how each level affects you. Creating a simple scale from 1 (no stress) to 10 (high stress) of the different levels you experience and assign specific stress-relieving activities for each point on the scale.

continued

Mark Willison, Stress and the Self-Medicating Professional, continued.

There are some very simple every-day techniques to help reduce the work-related stress in your life. Below you'll find some of those discussed at the Brown Bag Workshop:

1. Take a walk around the building
2. Close your office door and do breathing or visualization exercises
3. Find times during the day to socially visit your co-workers
4. Take ten minutes every couple of hours and journal... or write your suspense novel
5. If you must, go home early and come back refreshed to following day

Lastly, perhaps the most important thing you can do for yourself and your loved ones is to leave your work at work. Create your own cue as a signal that your workday is over, like these examples below:

1. Turning off your computer means shutting down your day
2. Shift from the business-you to the personal-you by removing your tie, or heels
3. Take the scenic route home while listening to your favorite music
4. Spend a few moments at the end of your day writing that suspense novel



MARK P. WILLISON, MFT

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Upcoming Events

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Spring Bench/Bar
State of the Courts address
by Hon. Timothy P. Roberts, Presiding Judge

Friday, May 11, 5:30 - 8:30, location (and award recipient)
to be decided.
Gibson Award Dinner

California Building Codes: History and Overview

By Myles F. Corcoran

I enjoyed meeting some of you when I gave a presentation on “California Building Codes: History and Overview” at the September 20, 2011, Monterey County Bar Association brown bag lunch meeting. I was grateful for the opportunity to share my expertise on this broad and complex topic. There was a good turnout for this admittedly fairly dry, yet important subject.

Aside from thanking you formally for the opportunity, I would like to use this space to recap some of the salient information. Our firm’s professional expertise centers around construction litigation and, in particular, construction defect discovery and correction. We have been in business for over 20 years and our team has advised/consulted in over 760 construction cases the majority of which were disputes. I have been deposed as an expert witness 42 times, testified at trial 11 times, attended 38 formal mediations, testified at 31 binding arbitrations and arbitrated 44 cases for the CSLB.

My talk started by outlining the basics of the California Building Standards Code or California Code of Regulations Title 24. “A compilation of regulations which guide us to build buildings that are safe to use, can survive that use and any foreseeable disasters long enough for the inhabitants to get out of them.” The regulations are currently broken out into 13 parts (counting Part 2.5 as its own volume), and are revised and updated every 3 years. The codes focus on performance, prescriptive, and alternate means.

I explained that the codes were developed not to protect buildings, but rather the people in the buildings. Historically, they were written mainly by three groups: the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA), and the International Association of Plumbing and Mechanical Officials (IAMPO). Today the codes are written by: the International Code Council (ICC, formerly ICBO), along with the NFPA and IAMPO. In addition, these organizations encourage input from the public.

Next, I mentioned the process of the adoption of the codes and/or amending them to suit. The local government ordinances supercede the ICC codes -- so applicable jurisdictions must be consulted. There was discussion about calling the Building Departments versus relying on a potentially not-up-to-date web site to verify accuracy. I covered who enforces the codes and which ver-

sion applies as it can take years for some projects to be built. The code is applied based on the submitted date of the application of the building permit.

In addition, I covered who is responsible if the building codes are not followed. The Designers, Architects, Builders, and sometimes the Owners are responsible. Neither the Municipality nor the Building Officials are ever responsible.

If there is a special circumstance and it is felt that an exception is warranted, there is an appeal process and a 5 member Board to hear your case. However, I sit on the Board of Building and Fire Appeals for the City of Santa Cruz and I can tell you that not many exceptions are made.

There can be legal claims for damages, code violations, contracts, and warranty issues. The statute of limitations on filing a claim is four years for patent defects (visible) and 10 years for latent defects (not visible -- e.g., leak behind a wall).

I wrapped up my talk by reviewing the three most significant legal cases we are aware of regarding construction defects and SB 800, a new law that was supposed to revolutionize how constructions claims were handled, but in fact has been too restrictive to be followed and has not made much of an impact. Those cases are:

(1) *Aas v. Superior Court*: (2000) 24 Cal.4th 627

Must have property damage resulting from the alleged defect.

(2) *Stearman v. Centex*: (2000) 78 Cal.App.4th 611

Expert expenses incurred while investigating defect to determine repair methodology are recoverable as damages.

(3) *Wright v. Issak* (2007) 149 Cal.App.4th 1116

The cost of not having workers comp – No payment for construction contract.

In closing, I very much enjoyed the professional audience and thank the Monterey County Bar Association for the opportunity to speak about this important topic. If anyone would like to ask any questions or get the 15 page, 58 slide handout, via email or hard copy, please contact my office at 831-476-4502 or office@mfcbuild.com

By Myles F. Corcoran

CEO, Myles F. Corcoran Construction Consulting, Inc. (MFC)

www.mfcbuild.com

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*Bringing the Conference of Delegates
Back to Monterey County
Legislative Update from Don Landis*

At this year's 2011 Conference of Delegates held on September 16 through 18, 2011, at the Queen Mary in Long Beach, MCBA delegates Don Landis and Michelle Wouden sponsored resolution 03-03-2011, which advocated that Penal Code section 1000 be amended to include simple possession of listed benzodiazepines under Health and Safety Code section 11375, subdivision (b)(2), to receive deferred entry of judgment and dismissal upon completion of treatment and probation. This resolution would resolve any due process concerns by extending the benefits of court directed drug rehabilitation across the full spectrum of personal drug abuse – from simple possession of prescription drugs to more serious street drugs like cocaine, heroin, and methamphetamine. It would also relieve court congestion by extending deferred entry of judgment to these more de minimus drug offenses.

The resolution received the Resolutions Committee recommendation of "Approved in Principle," and no one called it up for debate during the session. So MCBA's resolution 03-03-2011 was approved by the entire Conference and entitled to file an "application for lobbying," which could ultimately lead to its enactment if accepted as a legislative priority of the Conference of Delegates. Our delegation immediately completed the Conference of Delegates' legislative program application for the resolution, and hopefully we'll be honored in the future with a certificate that our resolution was enacted into law in 2012. Five such certificates were handed out to several bar associations this year for resolutions that were enacted into law during the 2011 legislative season.

MCBA looks forward to participating in next year's Conference of Delegates most likely to be held in conjunction with the State Bar Convention in Monterey. It is never too early to solicit new resolutions from the MCBA Executive Committee and the membership as a whole. Resolutions must be reviewed, agreed upon, and proposed by March of 2012 - that's really right around the corner.

We hope to present a diverse set of resolutions proposed from the diverse practices in our local Association. If you are interested in proposing a resolution, please visit the Conference of Delegates' website for guidelines, form, and content: http://calconference.org/html/?page_id=33. Then send your proposed resolution to MCBA Conference of Delegates Subcommittee Chair Don Landis at landisde@co.monterey.ca.us.



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