

Eastern Alameda County Bar Association

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Honored To Be Taking The Reins in the 50th Year of EACBA

*Greetings fellow EACBA
Members, and Happy Summer!*

It is with deep honor and gratitude that I write my first President's Message of 2019! I am thrilled to be able to serve as this organization's president, joining the high ranks of esteemed colleagues who graced this position before me.

We are healthily into 2019 now, and my earliest impressions of this position is that EACBA is a well-oiled machine. My executive duties have been completely manageable, and I believe credit must be afforded to our devoted board members and our executive director.

We've already had some great MCLE programs this year, on topics including: family, employment, marijuana regulation, criminal and attorney wellness, and our board is working hard to provide programs on topics that matter to our members!

We are always open to hear your ideas for programs that would benefit your practice- please contact eacba@gmail.com with any ideas for programs, or if you would like to present one yourself.

On a sad note, I regret to report that EACBA is losing Stacie Eiras this year. Stacie is leaving EACBA as our Executive Director after dedicating six years in this position. I have had the privilege of serving on the board since 2017, and Stacie's hard work has always made it easy to balance the duties of serving on the board with a busy law practice. There was never a question that Stacie could not answer, or a problem that went without a solution under her watch. She will be greatly missed, but our board wishes her the best of luck as she pursues new endeavors!

On a happier note, we are fortunate to have found a new executive director who assumed Stacie's role in April – Ms. Shelley Neuss! Shelley has been the legal assistant for Doris Slater since 1984, and before that she worked for John Noonan, Michael Brown, and Hon. Mark Eaton.

Shelley was born and raised in New York, and has been married to "the boy next door" for 50 years this summer. She and her husband have three children

President's Message

By Indy Colbath
2019 EACBA President



and four grandchildren, and are proud Western Kentucky State Alums.

Needless to say, Shelley comes on with an impressive legal resume, having worked for multiple current and former members of our board. Welcome aboard, Shelley! We are so happy to have you.

As you may be aware, 2019 marks the 50th Anniversary of the Eastern Alameda County Bar Association. It's incredible to think of how much our region and the legal profession have evolved since 1969.

Eastern Alameda County's close proximity to San Francisco and Silicon Valley has helped transform the demographics of the Tri-Valley area, and has helped support a robust legal community, with a wide multitude of practice areas.

While EACBA continues to be a staple of the legal community, we are always seeking to widen our reach and expand our membership. I encourage those of you who continue to enjoy the benefits of EACBA membership to reach out to your colleagues and encourage them to attend our monthly MCLE lunches.

In closing, I would just like to state how privileged I am to be your president, especially during EACBA's 50th year. In honor of our Golden Anniversary, we will be throwing a "Golden Holiday Party" this year, so mark your calendars for December 12, 2019 at 5:30 p.m. at the Market Tavern in Dublin (right across the parking lot from On the Border). Unlike our past holiday parties, this one will be in the evening time, and please feel free to bring guests!

I look forward to celebrating all EACBA has done for our legal community over the past half-century amongst our colleagues and friends. Cheers to 50 more years!

Indy Colbath

2019 EACBA President
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Like Running Through a Minefield – Judicial Reformation of a Will

By Denise E. Chambliss and Mallory L. Homewood

For those rare instances when a decedent's estate instruments fail to accurately state the testamentary intent, a judicial interpretation of affected estate documents might be able to reform the instruments to fix the error

in expression. Recently, we took such a case to trial in a will contest, on our argument that the pour-over will was properly construed to cover only the decedent's separate property. The proponent of the will, decedent's son, argued that the plain meaning of the standard CEB will and the general-



purpose residue clause was intended to cover his mother's separate and her community property acquired during her marriage to her second husband. After trial, the court rejected the son's argument and held that the community property was not controlled

by the pour-over will, under the Estate of Duke case.

To reach our successful outcome in the will contest, we focused on evidence of the decedent's testamentary intent (principally from the estate planning attorney and his paralegal) with guidance from the following legal principles. The following is an overview of the legal principles needed to support our position that the pour-over will did not apply to the decedent's community property.

A Will Can Be Reformed By Clear and Convincing Evidence that the Testator's Intentions Were Not Accurately Reflected in the Will

On the will reformation claim, the California Supreme Court in the Estate of Duke established authority for equitable reformation of even unambiguous testamentary instruments. (Estate of Duke (2015) 61 Cal.4th 871.) In the Estate of Duke, the Court held that "an unambiguous will may be reformed to conform to the testator's intent if clear and convincing evidence establishes that the will contains a mistake in the testator's expression of intent at the time the will was drafted, and establishes the testator's actual specific intent at the time the will was drafted." (Estate of Duke (2015) 61 Cal.4th 871, 875-876; see also *In re Barton's Estate* (1950) 96 Cal.App.2d 234, 239 (contracts are voidable for a mistake of fact where the mistake "goes to the essence" of the agreement).)

In Estate of Duke, the husband's holographic will left everything to Wife but provided that "[s]hould my wife . . . and I die at the same moment, my estate is to be equally divided" between charities A and B. The Duke will instrument was not ambiguous but simply failed to address what would happen if Wife predeceased husband (which of course happened). On the contest brought by the charities, the Duke court reformed the will to provide that the charities would inherit. (Id.)

The Goal of Will Interpretation Is to Give Effect to the Testator's Intentions

In the interpretation of a will, ascertainment of the testator's intention is the fundamental rule of construction, to which all others are subordinate. (In re Estate of Nielsen (1962) 204 Cal.App.2d 357, 361.) A probate court's paramount concern is to ascertain and give effect to the intent of the decedent, as far as possible. (Estate of Della Sala (1999) 73 Cal.App.4th 463, 467 (quoting Estate of Morey (1905) 147 Cal. 495, 505).) Under California law, the intent of the testator – and not merely words on a page – govern the disposition of one's estate, and such expressed intent must be enforced by the Court.

In interpreting a will or trust, where the goal is to ascertain the intent of the testator or settlor, it is appropriate for the court to consider the circumstances and context in which the document was made (*Wells Fargo Bank v. Marshall* (1993) 20 Cal.App.4th 447, 453), and to place itself in the position of the testator or settlor whose language it seeks to construe. (Estate of Russell (1968) 69 Cal.2d 200, 210-211.) As part of the judicial interpretation, the intent of the testator as expressed to the drafting attorney is given predominant consideration.

The Drafting Attorney's Testimony Is Key to Establishing the Testator's Intentions

The role of the drafting attorney in will reformation cases cannot be underestimated. The explanation of the testamentary intent from the drafting attorney is fundamental in the court's adjudication of disputed or ambiguous estate plans. (*Ammerman v. Callender* (2016) 245 Cal. App. 4th 1058, 1077-1078.) Testimony of the attorney who drafted the will is entitled to much weight on interpretation of the testator's intent, especially when he is the subscribing witness. (Estate of Goetz (1967) 253 Cal.App.2d 107, 115; see also *Estate of McDonough* (1926) 200 Cal.57, 62-63 (noting opinion of capacity by subscribing witnesses is given more weight than the opinions of nonsubscribing witnesses); see Evid. Code §870(b).) A direct expression of the testator's intent is admissible to determine the testator's intent, including oral declarations of instructions made by the testator to the lawyer drafting the will or trust. (Estate of Taff (1976) 63 Cal. App. 3d 319, 325; *Ammerman v. Callender* (2016) 245 Cal. App. 4th 1058, 1078.)

In Ascertaining the Testator's Intentions, the Entire Testamentary Plan Must Be Read Together

"In construing a trust instrument, the intent of the trustor prevails and it must be ascertained from the whole of the trust instrument, and not just separate parts of it." (In re Estate of Cairns (2010) 188 Cal. App. 4th 937, 944 (apparent meaning of particular words phrases, or provisions must be subordinated to the testamentary plan).) "Once the testamentary scheme or

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Judicial Reformation of a Will

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general intention [of a trust] is discovered, the meaning of particular words and phrases is to be subordinated to this scheme, plan or dominant purpose.” (Estate of Goyette (2004) 123 Cal. App.4th 67, 73.)

Several instruments of a testamentary character are to be read together and construed as one instrument as a guide for ascertaining a testator’s intention. (Estate of Cross (1912) 163 Cal. 778, 781.) A will should be construed considering its whole scheme, plan, or dominant purpose. (See e.g. In re Stanford’s Estate (1957) 49 Cal. 2d 120, 134.)

Equitable Reformation of a Will Must Be Proven By Clear and Convincing Evidence

The burden of proof on the will contest and equitable reformation petition filed by the contesting party is subject to the high hurdle of clear and convincing evidentiary standard. Clear and convincing evidence requires a finding of high probability. (In re Angelia P. (1981) 28 Cal.3d 908, 919.) The standard Judicial Council Civil Jury Instruction provides: “Certain facts must be proved by clear and convincing evidence, which is a higher burden of proof. This means the party must persuade you that it is highly probable that the fact is true ...” (CACI 201.) The California Book of Approved Jury Instructions defines clear and convincing evidence as “evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered as proof.” (BAJI 2.62.)

To link together these legal principles at trial, we used opinion testimony from expert witness C. Tucker Cheadle, a renowned expert witness and attorney from Newport Beach. Cheadle testified on the drafting attorney’s standard of care and the importance of the drafting attorney to understand and memorialize the decedent’s intent in the estate plans. In turn, we used testimony from the drafting attorney which supported our argument that the decedent herself did not intend to have her community property controlled by her estate plans. Ultimately, the court agreed with our position by finding in this particular and rather rare instance, the decedent’s community property was not controlled by her trust or her pour-over will.

We share this review of judicial reformation of a will as a guide for our estate planning colleagues to underscore the importance of keeping detailed notes of your client meetings, which notes could be needed to support the enforcement of your client’s testamentary intent.

Denise E. Chambliss is shareholder with Hoge Fenton Jones & Appel and the founding chair of its Trust and Estate Litigation Practice Group. Mallory L. Homewood is a trust and estate litigation associate with Hoge Fenton Jones & Appel. Chambliss and Homewood maintain offices in San Jose and Pleasanton.

Fair Time Is Fun Time

By J. Michael Brown

Law Office of J. Michael Brown

The Alameda County Fair opened Friday, June 14, 2019 and runs through Sunday, July 7, 2019. Fair time is a great time for anyone whether young or old. This year, the fair is making it possible for everybody to join the fun.

Active duty military get in free every day by showing their ID card. On July 4, first responders get in free. Every Friday, baby boomers over 62 get in free up until 5:00 p.m. On Father’s Day, dads get in free until 5:00 p.m. On June 20 and June 27, kids under 12 get in free until 5:00 p.m. There are special days when you can get in for free and get \$1.00 rides until 5:00 p.m. On June 19, there’s a pet food drive, bring a new unopened package of pet food. On June 26, it’s Feed The Need Day, bring in four nonperishable food items. On July 3, support foster kids by bringing one new clothing item. For each of those you get in free and get \$1.00 rides until 5:00 p.m.

There will be three “fests”. Saturday, June 15, will have a brew fest; Saturday, June 22, will have a cocktail fest; and Saturday, June 29, will have a wine fest.

One day is really not enough to enjoy everything the Alameda County fair has to offer. You can get a season pass for \$80.00 and go to the fair as often as you want. Regular adult admission is \$15.00, but if you order it through the fair’s website before the fair begins you can get the season pass for \$80.00. You can also get a family fun pack which includes four tickets plus a parking pass for \$50.00.

Every year the fair puts on a series of concerts every night. You will want to come back for those concerts more than once.

The Alameda County fair is fun for everyone. The exciting games and rides are just as much fun for the adults as they are for the kids. Exhibit halls have more stuff than you ever could imagine. There is food for every taste everywhere. The model electric train exhibit is amazing. You won’t believe the trains and

the cities, towns and country sides they travel through. Entertaining shows of music and magic play all day long.

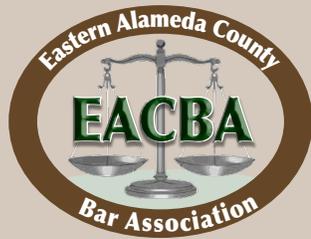
Go to AlamedaCountyFair.com and see all the details and all the schedules. Take your family and have a great time.

For me, the best part about the Alameda County Fair is the horse racing. Back in the 80’s, I raised Arabian horses for show. I bought two mares who had some foals that we raised. I got to really love the beautiful Arabian horses.



I won some show trophies, but I wanted to be more involved so I started long distance endurance riding. Unfortunately, they changed the tax laws so it was no longer profitable, and I got out of the business; but I never lost my love for Arabian horses. Four years ago, the veterinarian who taught me how to care for the horses came to me and said he was getting me back in the horse business. I told him, “No; been there, done that.” But then I found out that for a few hundred dollars I could help form the Pleasanton Arabian Racing Club. It’s a new and growing concept. We lease three horses each year for racing. We have a great trainer who picks out the best horses. We lease them from big racing farms that have more horses and they can race themselves. We pay the owner a small portion of the winnings and use the rest to pay our expenses. In three seasons we have covered expenses. We don’t make a profit. We get paid in fun time. We became California licensed race horse owners.

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EACBA Leadership

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Fair Time Is Fun Time

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That gets us into every racetrack in California for free including owners parking. There are five fairs in California that have horse racing from Ferndale in the north down to Fresno, including the California State Fair, plus four major private tracks, all for free to us and our families. We've been to all of them and watched our horses run and win. It's a thrilling moment when you go to the winner's circle and get your picture taken with your winning horse.

The Alameda County Fair is special. Our fairground has the longest continually operating horse racetrack in the United States. It was opened 1858 by Augustin Bernal and has been hosting horse racing ever since. It is the birthplace of horse racing in California. No other racetrack in America can match that record. It is one of the best racetracks anywhere. Races are held every Thursday through Sunday during the fair. The first race at 1:45 p.m. is for mules. It's fun to watch all the jockeys that are going to race later in the day come out and watch and cheer for the mules. After that you have Quarter Horses, Arabian horses, and Thoroughbreds. For those who don't know anything about horse racing, there is a free race betting seminar at noon every race day at the track. Dennis Miller the track handicapper and Chris Griffin, the race announcer will give a seminar on how to handicap

and will share their picks for who they think will do well.

Races start every half-hour. Once the race announcer shouts, "THEY'RE OFF" your heart will pound with excitement whether you've made a bet or not, but it's a lot more exciting if you have placed even a small bet. Horse racing has been a part of our area for many years and it's just a lot of fun. The thrill of racing is something you really have to experience. The track at the Alameda County Fairgrounds in Pleasanton is not just a piece of land, it is a piece of history.

A special day will be June 28 when the fair will have its annual fireworks spectacular. Spectacular is an understatement; it's an incredible fireworks show.

Go to the website, learn about the fair and learn about how to order tickets in advance for all the special events.

This year the directors lounge in the upper grandstands of the racetrack is being renamed the Sky Lounge and will be open to the public. As long as they are available, all day tables are \$50.00 per person which includes a buffet lunch. You can enjoy your own table as you spend the day watching the races. That is something you should order online in advance because those tables will sell out early.

Bring your family and friends to the Alameda County Fair. Have fun and enjoy a great day!



Upcoming 2019 Events

HOMETOWN EVENTS

Alameda County Fair Pleasanton, CA

June 14 thru July 7, 2019
<https://annual.alamedacountyfair.com>

Wente Vineyards Summer Concert Series

– Livermore, CA
Select dates in July, August
and September
<https://wentevineyards.com/concerts>

Red, White & Boom

– Livermore, CA
July 4, 2019
Fireworks at 9:30 p.m.
<https://www.livermoredowntown.com/do/4th-of-july-family-fun-fireworks>

EACBA EVENTS

LUNCHEON

Thursday
June 20, 2019
from 12:00 p.m. – 1:30 p.m.
(Speaker 12:30-1:30)

“Intersections of Law & Artificial Intelligence”

Featured Guest speaker

Mr. David V. Sanker

@ On the Border
at Hacienda Crossings,
4940 Dublin Blvd, Dublin, CA

EACBA GOLDEN HOLIDAY PARTY*

Thursday
December 12, 2019

from 5:30 p.m. – 8:00 p.m.
EACBA's 50th Anniversary
Celebration & Annual Holiday Party
@ Market Tavern
4775 Hacienda Drive, Dublin, CA

**Invitation to follow*