

# Commissioner Douglas G. Carnahan Speaks on Legal Ethics at the LAPA South Bay Section Meeting

by Judy Lynn Shields

On February 13, 2008 about 55 LAPA members gathered at the Del Amo Room, in Torrance, California to hear Commissioner Douglas G. Carnahan speak on legal ethics. The evening began with dinner, followed by a brief introduction given by Marcia McRill. Prior to beginning work in the court system, Commissioner Carnahan received his degree in law from University of California, Hastings School of Law in 1975. He practiced law, specializing in civil litigation, from 1975 to 1978, and again from 1981 to 1984. He was a Clinical Assistant Professor of Law at USC from 1978 to 1981.

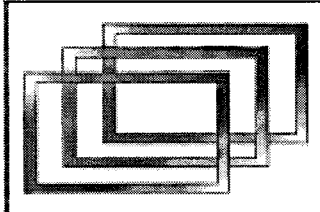
As Marcia informed the members, Commissioner Carnahan has been on staff at the Torrance courthouse

since 1984. At the time Commissioner Carnahan began working there, two judicial courts existed: the Municipal Court and the Superior Court. Commissioner Carnahan worked for the Municipal Court from 1984 until 2000 when the courts were consolidated together. Now all cases are heard in Superior Court.

Commissioner Carnahan asked the members if they wanted to know the difference between a judge and a commissioner. After an affirmative showing of hands, Commissioner Carnahan explained a judge is elected for a certain time, usually six years, or is appointed by the governor to fill a vacancy. If no one else runs against the judge at the time of reelection, he or she is automatically reelected.

Commissioners, in contrast, are appointed by the presiding judge of the local court, with no term limit. A commissioner can, however be removed "at will" by the judge. A commissioner's pay is slightly less than a judge, and the legal powers are slightly less than a judge. A commissioner is legally allowed

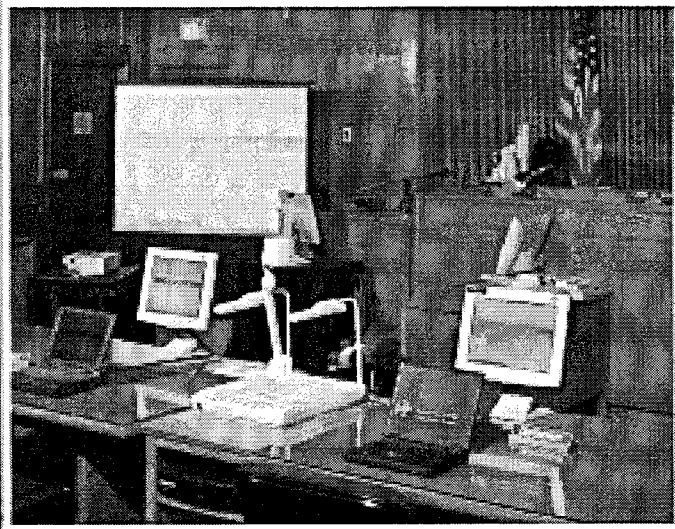
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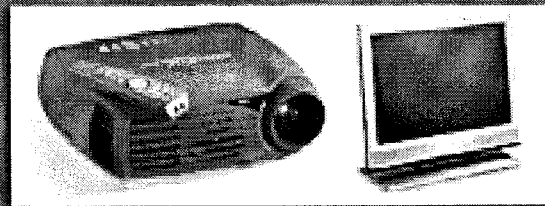
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to hear small claims and traffic cases. Sometimes parties stipulate to having a commissioner hear other matters, and the commissioner is seated as a temporary judge for that case.

Judges do not have to get consent from the parties involved to hear their case. However, if there is a conflict of interest, or the parties believe the judge may be prejudiced towards the matter, the parties have the right to file a motion to remove the judge from the case under the California *Code of Civil Procedure* Section 170.6.

The next part of the evening's presentation concentrated on legal ethics as they apply to paralegals and other legal professionals, or "paraprofessionals" according to Commissioner Carnahan. Commissioner Carnahan informed the members that California *Business and Professions Code* Section 6450 defines what a "paralegal" is contrasted with unlicensed law school professors, law librarians, accountants, and investment bankers. *Business and Professions Code* Section 6450 distinguishes a "paralegal" from a "legal document assistant," and from an "unlawful detainer assistant."

*Business and Professions Code* Section 6450 was enacted in January 2001 in response to paralegals who were out in the community "creating havoc."

A "paralegal," pursuant to *Business and Professions Code* Section 6450, "... is someone who holds him or herself out as a paralegal who is qualified by education or work experience, and who performs substantive legal work supervised by an attorney."

Paralegal tasks include case planning, legal research, and drafting legal documents. Paralegals can also collect information, and then make suggestions to the attorney. Paralegals can only represent clients before certain state or federal agencies, in certain limited circumstances, when the law specifically allows for it.

Paralegals can never represent a client in court, give legal advice, solicit business, contract with a natural person to provide paralegal services, induce investments, or take part in fee setting. Commissioner Carnahan emphasized the importance of a paralegal not holding him or herself out to the public in such a manner that someone would mistake the paralegal to be an

attorney. Like attorneys, paralegals are bound by the attorney-client confidentiality rules. Paralegals cannot discuss cases with their family members, or friends.

Ethical standards for legal "paraprofessionals" are very precise and should be followed by paralegals, lawyers, and judges. Commissioner Carnahan discussed examples of ethical violations. One example was of an attorney who would use client trust funds to pay for trips to Hawaii. Trust account violations are the leading source of complaints to the State Bar about attorney misconduct. There are strict rules and record keeping requirements on how to manage a client trust account.

Examples of technical violations included the "untruthful proof of service." Commissioner Carnahan mentioned that it is a crime to backdate a proof of service, even if only by one day.

Commissioner Carnahan then outlined the second leading cause of complaints to the State Bar which involves attorney abandonment of a case. It is legal to say the attorney is "unavailable," but if that is said more than a few times the client may get suspicious. Commissioner Carnahan acknowledged that attorneys need more instruction on this subject in law school. In contrast, business people are taught to return every phone call, or answer every email they receive from a client. Commissioner Carnahan considered "good ethics" to be "good business."

Commissioner Carnahan then opened up the meeting to questions from the members. One member asked about electronic signatures in response to Commissioner Carnahan's earlier voiced preference of having the attorney review the document, and personally sign it. Commissioner Carnahan stated he considered electronic signatures to be acceptable if the attorney was familiar with the document.

The evening concluded with Marcia McRill presenting Commissioner Carnahan with a small gift of appreciation for his time and for his sharing of information, which was then followed by a brief presentation from Jim Kaylor, the National Account Manager of Parasec. Parasec, a company which provides document filing and retrieval services, was the sponsor of the evening. ■