



The REAP Record

Spring 2015

REAP Board of Directors

President - Cenaida E. Guzman
Vice-President – Nancy Clark
Secretary – Miranda Mendoza
Treasurer – Debra Winters
CAPA Primary – Shafiq Spanos
CAPA Secondary – Vacant

[REAP](#)

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Santa Rosa, CA 95401



President’s Message

By Cenaida E. Guzman

The President’s Message column will return next quarter.

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Editor's Corner

By Jeff DiCello
REAP Record Editor

What Every Paralegal Needs to Know About Judicial Notice

In civil and criminal litigation, sometimes a party will want the court to take judicial notice of some fact or other matter in making a decision on a matter before the court, such as a motion.

For example, requests for judicial notice are common elements in motions for summary judgment, motions for judgment on the pleadings and demurrers.

If you look at almost any California Superior Court website's civil tentative rulings page you will see many instances of the court granting requests for judicial notice in law and motion matters.

As paralegals, we may be called upon by our supervising attorneys to help create a request for judicial notice. Here are some, not all, of the "paralegal "must-knows" when it comes to requests for judicial notice:

1. What Is Judicial Notice?

Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter. (*Kilroy v. State* (2004) 119 Cal.App.4th 140.)

2. Types of Judicial Notice

In California, there are things which a court *must* take judicial notice of if asked ([Evid. Code, § 451](#)), and things which a court *may* take judicial notice of upon request. ([Evid. Code, § 452](#).)

a. Mandatory judicial notice ([Evid. Code, § 451](#)): This category includes, but is not limited to the statutory, case and constitutional law of

California and other states; rules of professional conduct for attorneys; certain federal court rules; the meaning of all English words and phrases and of all legal expressions; and facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute.

b. Discretionary judicial notice: See list in [Evid. Code, § 452](#).

3. Separate Request for Judicial Notice Required

In civil litigation, "a request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with rule 3.1306(c)." ([Rules of Court, rule 3.1113\(l\)](#).)

The party requesting judicial notice must provide the court and each party with a copy of the material. And if the material is part of a file in the court in which the matter is being heard, the party must make arrangements with the clerk to have the file in the courtroom at the time of the hearing. ([Rules of Court, rule 3.1306\(c\)](#).) (This is a task likely to fall to the paralegal.)

4. Burden of Proof/Truthfulness

Although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable. ([Fremont Indem. Co. v. Fremont General Corp.](#) (2007) 148 Cal.App.4th 97.)

The burden is on party requesting judicial notice to supply the court with sufficient, reliable, and trustworthy sources of information about the matter; the court is not required to seek out on its own initiative indisputable sources of information. ([People v. Moore](#) (1997) 59 Cal.App.4th 168.)

This information is intended for educational/informational purposes and is not intended to be legal advice. Please get approval from your supervising attorney prior to utilizing any of the information here.



CAPA News

By Shafiq Spanos

REAP's Representative to CAPA

REAP hosted the most recent CAPA board meeting in Windsor at the Hampton Inn & Suites. The staff were very accommodating even is the weather was not (drenching rain on Friday while everyone was travelling) with many people arriving late in the evening. I called on my catering background and provided food for a lovely reception on Friday night with donations of wine and champagne from Korbel. Saturday night our most recent past president, the fabulous and inimitable Trudy McQuiddy (assisted by her long suffering husband), put together a true Sonoma County special — a crab feed with all the fixings. Wine was donated by Beringer Vineyards and the cost of the feed was underwritten by REAP. It was a great time and all the attendees came to dinner. It allowed for social interactions and an opportunity for the board, many of whom are new this year (including four men), to get to know one another. It was a thoroughly enjoyable time.

The meeting was very productive, with a very dynamic board this year thanks in part to many new board members. CAPA set a number of goals for the coming year. The legislative committee, of which I am a member, is hard at work drafting language to clarify certain sections of Business and Professions Code 6450, including the two year reporting period for MCLE and adding language that will allow a paralegal who is not compliant to become compliant in the current reporting period (currently not possible). We are also going to suggest changes to the Family and Civil Rules of Court to bring them into alignment with the Probate Rules of Court (which require an affidavit from a paralegal when seeking attorney's fees). We hope to have language ready to present to the CAPA board at the June board meeting. I am also on the committee that will review the CAPA bylaws which have just been finished by the attorneys preparing them.

Two things will arise from the new CAPA bylaws. The first is that the membership of the CAPA board may change. The Corporations Code changed a few years ago and no longer allows non-voting board members. CAPA is working on how to change the way we operate to be in compliance with the Code. This may create two voting members per organization (rather than the current voting Primary Rep and a non-voting Secondary Rep). Because of this potential change, REAP will need to have a Secondary Rep, which we currently do not have. Anyone who is interested in being a CAPA representative can contact any of the REAP board members. The REAP board will be discussing this at the April board meeting and making decisions in the May board meeting.

The second thing that will come out of the CAPA bylaws revision is that it will lead to REAP reviewing our bylaws and updating them as they have not been changed since the Corporations Code was changed. The REAP board has decided to wait until the CAPA bylaws are available and use those as a guide to make things easier.

The CAPA Annual Education Conference is coming up in June and it's right in our backyard. It will be Saturday, June 27 at the Doubletree Hotel in San Jose. It will be a great opportunity to meet paralegals from all around the state and network with your peers. There are five different tracks for MCLE, four hours each: family law, estate planning, forensic document examination, and two IP tracks. All REAP members should have received the flyer with the specifics. If you have not or have any questions, please contact me at REAP1@caparalegal.org. There is a raffle at the conference with 11 items all valued at \$100 and you do not have to be present to win. All REAP board members have raffle tickets, so please buy some: tickets are \$1 each. The next CAPA board meeting is in San Jose on the Sunday after the conference. I will be attending both and hope to have a new secondary to go with me by then.

The Overtime Dilemma

By Vicki Voisin

A Paralegal's Dilemma: Is he/she eligible for overtime pay for working through the lunch hour?

This scene is common in law firms across the country. Perhaps it's even happened to you:

It is 11:56 am on a Thursday in March. Patti Paralegal has been reviewing medical reports all morning and is looking forward to getting out of the building during her lunch hour.



Patti is expected to work from 8am to 5pm and to take a one-hour lunch break away from her desk. This gives her a 40-hour work week.

Patti grabs her purse and is on her way out of her office when her supervising attorney, Bob Lawyer, stops her. He gives Patti a file and he needs a contract completed for his client. Then Bob tells Patti he's going to lunch and to just put the contract on his desk when it's finished.

Patti takes the file and returns to her desk, where she works on the contract while she eats an apple and some almonds that pass for her lunch.

Here's the scoop: Paralegals are generally considered by the U.S. Department of Labor to be nonexempt employees under the Fair Labor Standards ACT (FLSA).

This non-exempt status means that Paralegals are entitled to overtime pay for any hours worked in one week in excess of 40 hours. This article is not written to debate exempt/non-exempt status of paralegals. There are many opinions and if you disagree you should take that up with the Department of Labor. Good luck with that.

Fact Sheet No. 22 published by the U.S. Department of Labor, Wage and Hour Division addresses hours worked under the FLSA

concerning what constitutes *compensable time* under the Act. The FLSA has determined that employees may not be employed for more than 40 hours in a week without receiving at least one and one-half times their regular rate of pay for any hours worked over 40 hours. (*Note: this applies to all employees who are considered non-exempt.*)

The Fact Sheet goes on to state:

"Rest and Meal Periods ... Bona fide meal periods (typically 30 minutes or more generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform duties, whether active or inactive, while eating.

"Typical Problems: Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example, an employee who remains at his/her desk while eating lunch and regularly answers the telephone and refers callers is working. This time must be counted and paid as compensable hours worked because the employee has not been completely relieved from duty."

If Patti's lunch break is interrupted 3 times a week, she will have worked an additional 3 hours beyond what's expected. Any time Patti works over 40 hours in one week, she is entitled to overtime pay at one and one-half times her hourly rate of pay.

What should Patti (and you) do?

First, Patti should tell Bob she's just about to leave for lunch and ask if the work must be done immediately. Bob may not be expecting her to work through lunch – she may only be assuming so. Chances are the project can wait until she returns from lunch and then there's no problem.

If the work cannot wait, Patti should explain that this will make her entitled to overtime pay because she will be working more than 40 hours that week. (Continued on next page)

Overtime Dilemma, continued

What if Bob tells Patti that if she works through the lunch hour, she can leave an hour early on Friday? This is perfectly acceptable since technically she wouldn't go over the 40 hour total hours work. Total hours would be determined by totaling hours worked in the entire work week.

Your challenge: Be sure your employer is aware of the overtime pay rules for non-exempt employees. Then be sure you are paid fairly for ALL the hours you work.

About the author: Vicki Voisin, "The Paralegal Mentor", delivers simple strategies for paralegals and other professionals to create success and satisfaction by setting goals and determining the direction they will take their careers. Vicki spotlights resources, organizational tips, ethics issues, and other areas of continuing education to help paralegals and others reach their full potential. She is the co-author of *The Professional Paralegal: A Guide to Finding a Job and Career Success*. Vicki publishes *Paralegal Strategies*, a weekly e-newsletter for paralegals, and hosts *The Paralegal Voice*, a monthly podcast produced by [Legal Talk Network](#).

Empire College Students Inducted into the AAFPE



Congratulations to three Empire College paralegal graduates (pictured above) who were recently inducted into the [American Association for Paralegal Education](#) (AAfPE) [LEX Paralegal Student Honor Society](#). From left to right: Melissa Horve, Crystal Weinper and Ede Figueroa.

Monthly Paralegal Lunches

Each month, a few paralegals meet for lunch in the downtown Santa Rosa area. You do not have to be a REAP member to attend. These informal lunches are a great way to meet other members who work near you.

- **When:** Second Tuesday of each month
- **Time:** Noon to 1:00 PM. We are in and out in one hour so you can get back to work on time.
- **Where:** At a restaurant in the downtown Santa Rosa area. E-mail reminders with the location are sent to REAP members a few days before the event.
- **Cost:** There's no fixed cost; each member pays his/her own check and decides what to order and spend.

Legal Writing Workshop

Mark your calendars for REAP's next workshop series, **Write On: A Series of Three Practical Legal Writing Workshops**.

Dates: June 6, July 11, and August 8, 2015

Details will be forthcoming!

Working Paralegal Scholarship

REAP is pleased to announce that it will offer the 2015 Grace K. De La Torre Scholarship (\$500.00) to working paralegals in our legal community.

This scholarship is only available to our current voting members of REAP.

The application deadline is May 1, 2015.

For more information about the scholarship and to complete an application, please [click here](#).



Membership Information

REAP has four categories of membership: voting, associate, student and sustaining.

1. Voting Member (dues: \$42.00 per year)

Voting members are defined as qualified paralegals by education or valid declaration.

2. Associate Member (dues: \$30.00 per year)

Associate members are defined as attorneys or paralegal educators.

3. Student Member (dues: \$20.00 per year)

Student members are defined as current paralegal students.

4. Sustaining (dues \$50.00 per year)

Sustaining members are defined as individuals, law firms and companies that endorse and promote the paralegal profession.

Membership Period

REAP's bylaws provide that the REAP membership period is from Jan. 1 to Dec. 31 of each year.

First time (new) members joining between Sept. 1 and Dec. 31 retain their membership through Dec. 31 of the calendar year following sign-up.

Full Amt. Due

The full amount of dues must be paid when joining REAP, regardless of date of application.

First time (new) members joining after Sept. 1 retain their membership until Dec. 31 of the year following sign up.

Due Date

Renewal memberships are due Jan. 1 and become delinquent on April 1, at which time membership is terminated.

If past members reinstate after April 1, they are not treated as new members under this agreement.

Voting Eligibility

Only active members in good standing 45 days before the annual or special meeting shall have

been called to order shall be qualified to vote at membership meetings or upon other matters coming to the members for action.

Who Cannot Vote

No active member who is delinquent in the payment of any dues or other assessments shall be qualified to vote. In no event shall student, sustaining or associate members vote.

To join REAP, go to [REAP membership](#) and download the application/renewal form.

About the REAP Record

The REAP Record is published each quarter, on January 15, April 15, July 15 and October 15.

If you are interested in writing for the REAP Record, contact editor, [Jeff DiCello](#).

Article topics may be assigned or you may come up with your own topic.

In some cases, if your article is published, you may receive free admission to a REAP educational seminar (excluding ethics).

In other cases, REAP may pay for your attendance at a seminar if you write an article for us on the seminar.

Persons who submit articles, information or materials to REAP, grant to REAP the right to publish, without compensation, the article, information or materials in REAP's newsletter, on its website and on its Facebook page.

REAP maintains complete editorial control over all articles, information or materials submitted.

Submission of articles, information or materials to REAP and REAP's acceptance thereof is not a guarantee of publication.

Who's Who & What's What

REAP Board Members

President	Cenaida E. Guzman
Vice President	Nancy Clark
Sonoma County Bar Liaison	Grace De La Torre, CP
Secretary	Miranda Mendoza
Treasurer	Debra Winters
CAPA Primary Representative	Shafiq Spanos
Special Projects Coordinator	Vacant
CAPA Secondary Representative	Vacant

REAP Mentors

Probate Mentor	Janet Anderson
Family Law Mentor	Kim Davis
Litigation/ Discovery Mentor	Rhetta Hinton
Computer Legal Research Mentor	Joni Boucher
Sonoma County Bar Liaison	Deborah Cain, CP
Criminal Law Mentor	Jeff DiCello

REAP Committee Members

Education Chairs	Grace DeLaTorre, CP and Deborah Cain, CP
Marketing Chair	Monica Lehre, ACP
Empire Legal Students Association (ELSA) Liaison to REAP	Remy Berger

Miscellaneous

Facebook Page Manager Newsletter Editor	Jeff DiCello
SRJC Paralegal Studies Program Education Adviser	Joni Boucher
Empire College Student and Education Adviser	Monica Lehre, ACP

Contact REAP

By U.S. Mail: 	REAP 1007 West College Ave #138 Santa Rosa, CA 95401
By E-mail: 	info@redwoodparalegals.org (General inquiries)
Facebook 	Facebook
Web 	www.redwoodparalegals.org

**Don't forget to renew your membership.
Go to the [REAP webpage](#) to renew now.**

Membership Stats

Voting Members	72
Student Members	11
Associate Members	0
Sustaining Members	1
Total	84

REAP Treasurer's Report

Debra Winters, REAP Treasurer

REAP Checking	\$8,661.00
REAP Savings	\$5,170.00
Total	\$13,831.00