

The REAP Record

April 2018



President's Message

By Nancy Clark

Hello everyone I hope you are doing well. We have a lot of exciting things going on this quarter. The Grace DeLa Torre scholarship will be offered in May, the deadline to apply is May 31, 2018. More details are listed in this newsletter on page 2.

It's also time to submit nominations for paralegal of the year, so please think of someone that has inspired you to be better at your job and let REAP honor them. See page 2 for more info.

As always, if you have any REAP questions or would like the board to discuss a certain matter, please feel free to email me directly at nancy@galantilawgroup.com

I look forward to reviewing your scholarship applications and to see who you would like to honor as a paralegal of the year!

<p><u>CAPA Conference</u> Saturday June 23, 2018 Irvine, CA capaparalegal.org</p> <p>For more information, go to page 6</p>	<p>Working Paralegal Scholarship</p> <p>Paralegal of the Year Nominations</p> <p>&</p> <p>Discovery Workshop Go to p. 2</p>	<p>Where Does the Money Go?</p> <p>REAP's treasurer follows <i>your</i> money. See p. 4</p> <hr/> <p>Editor's Corner, p. 7</p>
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Working Paralegal Scholarship

REAP is pleased to announce a \$500 scholarship will be awarded to a reap member working paralegal in honor of Grace DeLaTorre.

Grace has been a true advocate of the paralegal profession and its members. Redwood empire of association of paralegals will award a \$500 scholarship to a special individual, who is a current working paralegal. Selection is based on contribution to the profession and the community. Financial need is not considered. Current membership as a voting member in reap is required. **Deadline to apply is May 31, 2018.** The scholarship will be awarded by June 15, 2018.

A scholarship application and other pertinent information was emailed to REAP members on April 7.

Paralegal of the Year Nominations

It is that time of the year to nominate a REAP member for our paralegal of the year. The winner will automatically be eligible for the California Alliance of Paralegal Associations paralegal of the year award. CAPA will select a paralegal of the year (and runners up) at their June conference.

Please email your nomination to REAP at redwoodempireparalegals@gmail.com by **April 20, 2018.** After we receive all nominations, we will send out bios and ask you to vote for your favorite candidate by May 4, 2018.



Past members who were selected as REAP paralegals of the year are:

Grace DeLaTorre
Trudy McQuiddy
Joni Boucher
Ana Rivas
Debra Winters



Civil Discovery Workshop

REAP is pleased to announce that we will sponsor a discovery workshop on Monday, June 4, 2018 from noon to 1:30 pm. Attorney Marie Muchow, SRJC discovery instructor, will be our presenter.

The event is brown bag and will be held at the Sonoma County Bar Association offices, located at 111 Santa Rosa Avenue, 2nd Fl. Suite 22. The cost is \$35 for members and \$45 for non-members. MCLE: 1.5 units general. if you have a particular topic you would like our speaker to cover, please send an email to REAP.

Mark your calendar and look for the flyer coming out soon.

Case Law and Legislative Update

By Jeff DiCello
REAP Record Editor

Immigration consultants: Assembly Bill 638 would repeal California's immigration consultant law and do away with the immigration consultant industry as of January 1, 2019.

Thereafter, only licensed attorneys may act as immigration consultants. Paralegals will no longer act be permitted to act as stand-alone immigration consultants; paralegals engaged in this area of law must be supervised by an attorney.

Proponents of the bill argue that it is necessary because the profession has attracted thousands of con artists with no expertise who charge top dollar and usually do nothing for their clients.



Paralegal fee recovery: In *Alcone v. SLV Associates, LLC* (G051813, Aug. 30, 2016 [unpub. opn.]), the defendants opposed the awarding of 80.9 hours of paralegal fees. The defendants first argued that paralegal fees in general were not awardable. The court disposed of this meritless contention pretty quickly, holding that "The rule is now fairly well settled that parties may recover as part of an attorney fee award reasonable amounts separately billed by law clerks, paralegals and other support staff."



The defendants' next contention was that the paralegal in question had not been shown to have complied with the educational requirements of Business and Professions Code section 6450(c)(3). The court rejected this argument, noting that the attorney who supervised the paralegal's work had filed a declaration stating that "he graduated from the University of California, Los Angeles with a B.A. He graduated from Western State Law School in May 2014 with a Juris Doctorate degree and has worked under my supervision for over one year. [He] is therefore qualified to perform legal tasks. . . ."

Finally, the defendants argued that the purported paralegal did not qualify as a paralegal because there was no showing he met the requirements of Bus. & Prof. Code section 6450(d)'s "every two years" CLE requirements. The plaintiffs' attorney pointed out that two years had not passed since the time the paralegal first met the required paralegal qualifications, and defendants presented no evidence that it had or that the certification required by subdivision (d) was ever triggered. *Alcone v. SLV Associates, LLC* cited See *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 889, a case rejecting the argument "that compliance with the educational requirements of Business and Professions Code section 6540 is in every case a prerequisite to the recovery of paralegal fees."

State Bar approves plan to fingerprint attorneys

The State Bar of California voted to require most active lawyers to get re-fingerprinted at their own expense. If the plan is approved by the California Supreme Court, henceforth the California Department of Justice will notify the bar any time an attorney has been arrested. Absent any hiccups, attorneys will be expected to submit their prints by April 30, 2019. Those who miss the deadline could be fined or face a license suspension.





Where Does Your Money Go??

By Debra Winters
REAP Treasurer

Do you wonder where REAP spends your dues and workshop proceeds?

In 2017 REAP collected approximately \$3,300 in member dues and made approximately \$4,300 from workshops (Family Law, Motion Writing, and Ethics). Our total income was \$7,600.

REAP spent \$400 on a bookkeeper. Having a bookkeeper has helped the organization tremendously. Keeping the books was a huge task for our former Treasurers.

We rent a P O Box, pay a website expert to update and maintain our website, pay dues to the California Alliance of Paralegal Associations each year, and have office supplies and postage costs. We now incur PayPal charges each month for members who pay their dues and workshop registrations through our website.

We are proud of the fact that we awarded a \$500 Scholarship to a law student (Congratulations Monica Lehre). We give a donation to Legal Aid every year and donate \$300 for the court staff appreciation breakfast. (In 2017 we gave a second donation to Legal Aid on behalf of one of our members, Pattie Tate, who passed away.) This year we gave a donation to one of our members who lost her home in the October fire. We are a sponsor of the Sonoma County Bar Association Summer Soiree each year (a great way to promote our organization).

In the past we have awarded two \$500 scholarships to SRJC and Empire paralegal students. In 2017 we had no applicants for the student scholarships.

A large expense for REAP is the cost to send our CAPA representative to CAPA Board meetings. (We try and send a secondary representative as well.) There are three CAPA Board meetings each year and they are almost always held in Southern California—this means airline tickets, rental cars, hotels, meals. REAP feels it is important to maintain a relationship with paralegal organizations in California and is proud to be a member organization of CAPA.

When we conduct a seminar, we must rent a room and pay for snacks or a light dinner. We also have advertising costs for development of flyers. We can send a workshop flyer once at no cost through the Bar Association. If we need to send the flyer again, we must pay a fee of \$100.



A LOOK *at the* BUDGET

Last year REAP hosted a summer social and general membership meeting for members. The Board had an end of the year retreat (lunch). The retreat is an important meeting—it helps the Board plan for the coming year.

For many years REAP has held a no host downtown paralegal lunch once a month. We now conduct a drawing each month and pay the lunch tab of the winner. REAP is checking out lunch spots away from the Santa Rosa downtown area with the hope it will be easier for some of our members to attend.

Bottom line—We made \$7,600 in 2017 and spent just under that. We still have almost \$14,000 in checking, savings, and our PayPal account. We are in great fiscal shape thanks to prudent spending by past Boards.

SRJC Paralegal Program News



SRJC is a community college, which means in terms of enrolling, means anyone can take any class in any program without matriculating. All existing paralegals are welcome to enroll in any class to further their understanding of a subject or to learn something new.

This summer, the program is offering the following classes:

- Contracts (On Line) June 18 to August 12, 2018
- The American Jury System (On Campus) July 14, 2018 and July 21, 2018

For more information, go to <https://bd.santarosa.edu/paralegal-studies-major>

The TRANSLIFE Professional Symposium

April 28, 2018
Finley Community Center
Santa Rosa



Learn from professionals about the legal, medical, mental/behavioral health, and educational needs, challenges, and cultural competencies necessary to provide sensitive and appropriate care to the transgender and gender non-conforming community. [Tickets available.](#)



NALA offers online courses on its website that qualify for mandatory continuing legal education for the State Bar of California.

Available On-Demand Webinars

[2017 Employment Law Updates](#)

[5 Steps to Develop a Marketing Mindset](#)

[5th and 14th Amendments](#)

[A Basic Guide for Paralegals: Ethics; Confidentiality; and Privilege](#)

[Advanced Contracts - Commercial Leases](#)

Scheduled Webinars

[Technology and Law Practice](#)

Tuesday, April 3, 2018 - 12:00pm

[Life Care Planning](#)

Thursday, April 5, 2018 - 10:00am

[Unauthorized Practice of Law](#)

Friday, April 13, 2018 - 12:00pm

[Copyright Law in a Digital World: A Basic Guide for Paralegals](#)

Monday, April 16, 2018 - 1:00pm

[Gender Communication, Persuasion, and Power](#)

Tuesday, April 17, 2018 - 2:00pm



CAPA News



CAPA has announced they will hold their annual education conference in Irvine (Orange County Airport) on June 23, 2018. CAPA should be sending out more information soon and we will pass the details on to our members. Registration is open (through CAPA website) and you can make hotel reservations.

Scheduled Seminars

Employment Law

- Employment/Labor: Fraud Trends in Workers Comp.
- Employment/Labor: New California Wage/Employment Laws
- Employment/Labor: Elimination of Bias
- Employment/Labor: Me Too/Sexual Harassment & Responding to Complaints

Litigation

- Advanced Litigation: Fact or False: How to evaluate the accuracy of information the Internet and avoid costly errors
- Advanced Litigation: Writing Motions
- Advanced Litigation: Who/What/Why/How of Paralegals with examples of UPL (Ethics)
- Advanced Litigation: Tips & Tricks for Collecting on Judgments

e-TEch

- e-Tech: Future of Legal Technology/Software as a Service
- e-Tech: Electronic Surveillance/Soc. Media
- e-Tech: Trial Director Update with Jeff Bennion, Esq.
- e-Tech: Technology Competency Requirements (Ethics)

Corporate Law

- Corporate Law: Alternative Entities
- Corporate Law: Ethics-Attorney Discipline (Ethics)
- Corporate Law: Mergers & Acquisitions
- Corporate Law: ERISA 101: Fiduciary Investment Basics & Compliance

*Seminar offerings are subject to change.

CAPA will also offer NALA's Certified Paralegal exams on April 28 in San Francisco and June 22 in Irvine. The CAPA website has registration information and study guides available.

For more information on the June conference and the CP exam, please go to the CAPA website at caparalegal.org.

Constitutional Problems with Immigration Detainers



By Jeff DiCello
REAP Record Editor



Senate Bill 54, which went into effect January 1, limits the circumstances when state and local law enforcement agencies may detain and notify immigration authorities that a person in custody is suspected of being in the U.S. illegally. Prior to SB 54, there was little consistency among state and local law enforcement agencies concerning whether and for how long to hold such individuals in local detention facilities to allow immigration authorities to take custody of the person.

Typically, immigration authorities have lodged detainers with local jails which, in theory and practice, allowed the local authorities to hold in custody an individual who would otherwise be qualified for release (e.g. bail had posted; local criminal charges were dismissed; person had served their local sentence, etc.), so that the person could be turned over to federal authorities for possible deportation.

Many jail administrators took the position that Fourth Amendment does not allow them to hold a person in custody solely on an immigration detainer and they do not honor them because they are not supported by probable cause. In other words, no judge has reviewed the case and found probable cause to believe the person is in the country illegally.

It is correct that an immigration detainer is a just a piece of paper (the [DHS Form I-247](#)) filled out by an immigration official, not a judge. Several federal courts have reviewed the legality of immigration detainers and found major legal and constitutional deficiencies:



- Federal courts agree that holding someone on a detainer after they have concluded their local or state custody constitutes a new arrest that must meet Fourth Amendment requirements. fn. 1.
- Most detainers do not satisfy the Fourth Amendment. An immigration detainer is a voluntary request that does not impose any obligation on the receiving jurisdiction. fn. 2.
- Therefore a jail cannot evade responsibility for unlawful detention by claiming the federal government obligated them to hold the person on an immigration detainer. fn. 3.
- A jail must have a warrant or probable cause of a new offense to detain a person after they would otherwise be released from custody. fn.4.
- An immigration detainer is not a warrant, and the initiation of investigation indicated on some detainers does not, federal courts have found, provide a legal basis for detention. fn.5.

In July of 2015 this issue captured national attention when Juan Francisco Lopez-Sanchez, a Mexican national with a criminal record and five previous deportations, was arrested and charged with murder for the shooting death of Kate Steinle in San Francisco.

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Constitutional Problems with Immigration Detainers *Continued from previous page*

A few days before the Steinle shooting, Lopez-Sanchez had been released from the San Francisco County Jail when local charges against him were dismissed, despite the fact that U.S. Immigration and Customs Enforcement officials had lodged a detainer against Lopez-Sanchez with the jail. ICE said at the time that Lopez-Sanchez would have been deported if the jail had complied with its requests. San Francisco Sheriff Ross Mirkarimi said at the time that ICE detainers are not legally valid and that the Fourth Amendment does not allow him to hold a person in custody solely on an ICE detainer.

In a 2015 Editor's Corner piece I wrote that no process currently exists to hold a probable cause hearing in order to make an ICE detainer legally binding on a local jail. I opined that the practice in use at the time, which allowed custodial officials the discretion to decide which ICE detainers to honor, based on a subjective notion that the detainee is dangerous, was not a workable solution. Our state legislature's "solution" was SB 54, which specifies which individuals suspected of being in the U.S. illegally may be held in local facilities beyond the time they would otherwise be eligible for release to allow ICE to pick them up. The criteria for holding onto someone is largely based on the detainee's criminal record.

But SB 54 is at best a half measure because it still allows people to be held in custody on the basis of a piece of paper, unsupported by any kind of judicial review.

As I said in that 2015 column, my belief was (and still is) that if the Fourth Amendment is to mean anything, the issuance of ICE detainers should be predicated on a finding of probable cause made by a neutral magistrate. The separation of powers doctrine requires such determinations to be made by the judicial branch of our government, not the executive branch of government, of which ICE and our jails are a part.

Footnotes

1. *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014) aff'd in part, dismissed in part, 793 F.3d 208, 215-216 (1st Cir. 2015); *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014); *Vohra v. United States*, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. 2010).

2. *Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) (local law enforcement agencies are free to disregard detainers and cannot use them as a defense of unlawful detention); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 40 (D.R.I. 2014), aff'd in part, dismissed in part, 793 F.3d 208 (1st Cir. 2015) ("The language of both the regulations and case law persuade the Court that detainers are not mandatory and the RIDOC should not have reasonably concluded as such."); *Villars v. Kubiowski*, 45 F.Supp.3d 791, 802 (N.D. Ill. 2014) (federal courts and all relevant federal agencies and departments consider ICE detainers to be requests).

3. *Id.*

4. *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015) ("Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification."); *Vohra v. United States*, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. 2010) ("Plaintiff was kept in formal detention for at least several hours longer due to the ICE detainer. In plain terms, he was subjected to the functional equivalent of a warrantless arrest.").

5. *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014) (finding immigration detainer for investigation is a "facially invalid request to detain"); *Miranda-Olivares v. Clackamas Co.*, No. 3:12-cv-02317-ST at *17 (D.Or. ppl April 11, 2014) (holding county liable for unlawful seizure without probable cause, based on an immigration detainer); *Vohra v. United States*, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. 2010). See also Christopher N. Lasch, *Federal Immigration Detainers After Arizona v. United States*, 46 Loy. L.A. L. Rev. 629, 686 fn. 308 (2013) (explaining how immigration detainers are different from administrative immigration warrants). See also *Rodriguez v. United States*, 135 S.Ct. 1609 (2015); *Arizona v. United States*, 132 S.Ct. 2492, 2509 (2012) (delaying release to investigate immigration status raises constitutional concerns).



New Court Word Limits – How WordRake Can Help

Editor's Note: This item originally appeared in by Vicky Voisin's October 2016 blog.

Three days ago, the [New York Times](#) published an article about a new limit of 13,000 words for all briefs filed with federal appellate courts. Lawyers are not happy. "There are cases where the facts are complicated," complained one, "and where areas of the law are complicated." [In a radio interview, the Ninth Circuit's Judge Alex Kozinski countered](#), "The more complex the case, the more the lawyers should strive to make the explanation simple and easy to understand." *Lawyers in over 7000 law firms know [WordRake](#) helps.*

42 Million Words Judge Kozinski estimated that the "average case has three briefs, so that's close to 40,000 words in every case, and we get 35-40 of those cases a month." My math tells me that that comes to almost 20,000,000 words a year. (The article estimated 42,000,000.) The average hardback book published in New York runs about 100,000 words, so the average federal appeals judge has to read at least 200 "books" a year.

But the "books" are not written by professional writers edited exhaustively by professional editors. They're written by harried lawyers with myriad cases and clients demanding their time. Judge Kozinski observed that too many lawyers "leave the writing of the brief till the last minute . . . and don't leave themselves time to go back and cut and polish and winnow the arguments." Even if that describes you, in a few minutes—at the last minute—WordRake can help you "cut and polish."

Federal Courts Use WordRake Although many individual federal and state judges and clerks use WordRake to help them draft memoranda, orders, and opinions, whole federal courts in Washington and Florida have integrated the WordRake editing software. Recently, one of the three biggest law firms in the world bought 2,500 WordRake licenses. Big firms and federal courts don't commit to software unless they know it's a sound investment.

Not Just the Federal Courts The *Times* article addresses the new word limit only in federal appellate courts, but local and trial courts all over the country are imposing similar restrictions. Last month, the King County Superior Court (trial courts in Seattle) posted a new rule, that pleadings and motions would now have a word limit instead of a page limit.

"I Can Heartily Recommend WordRake" In the list serve discussion that followed, a colleague wrote: "I can heartily recommend WordRake, a program that is not very expensive, that automates a good bit of the editing for you. It particularly pares down flabby text (the very kind my first drafts normally have in great abundance)." *Continued on next page*

Paralegal Mentor *Continued from previous page*

WordRake will not make your case less complex; it will help you make your brief more clear and succinct. A sample real-time edit from WordRake.

The effect of the amendment was to increase The amendment increased, by over \$400,000, the amount of amusement tax that Sunnyvale would need to must collect and remit to the Borough on an annual basis annually.

A Tip (I've Taught to Litigators and Appellate Lawyers for 28 Years)

Submit a Shorter Brief Judges can lift a brief and tell you exactly its number of pages. Purposely write your brief to come in about 20% under that weight. If it feels lighter than the limit, the judge turns to page one, feeling good about the lawyer who wrote it. Judge Kozinski: "If it's important, and you want to win, the best way to do it is to write a short brief."

More Tips (A Bonus Just for Sticking with Me This Long)

Never Confuse a Fact with a Relevant Fact – facts suggest issues; when we include *irrelevant* facts, we suggest irrelevant issues; that confuses judges.

Never include a Name, a Date, or a Number Unless It's Important – names, dates, and numbers carry the aura of importance, so judges try to keep track of them; if they're not important, judges still try to keep track of them, because they don't know; that also confuses them.

A Collaboration WordRake starts your editing process. It will spot dull and unnecessary words you are too close to notice, too tired to see, or don't know to look for. It will give you an accurate edit 95% of the time. But even if it changes the meaning—we're dealing with almost 200,000 words and their permutations—you will often see its intent and make the edit yourself. You and WordRake will work well together.

For more information about WordRake, go to their website at www.wordrake.com



About the Author:

Vicki Voisin, spotlights resources, organizational tips, ethics issues, and other areas of continuing education to help paralegals and others reach their full potential. Visit Vicki's website at: <http://paralegalmentor.com/>. She lives in Charlevoix, Michigan.

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“The Last Page”

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Santa Rosa Junior College	Steven Fichera		
CAPA Conference Saturday June 23, 2018 Irvine, CA capaparalegal.org			
Membership Stats		Treasurer’s Report	
Debra Winters, Treasurer (as of 3-31-2018)			
Voting Members	56	REAP Checking	\$3,433.11
Student Members	11	REAP Savings	\$10,190.09
Associate Members	0	PayPal Account	\$616.43
Sustaining Members	4	Total	\$14,239.63
Total	71	For 2017, REAP took in \$7,543.21 from dues and workshops. REAP spent \$7,490.02, giving us a net income of \$53.19.	
Membership			
Active (Voting) \$42 yr.	Student (Non-voting) \$15 yr.	Associate (Non-voting) \$30 yr.	Sustaining (Non-voting) \$50 yr.