

THE PUBLICATION FOR MONTEREY COUNTY LAWYERS

BAR LINE

A PUBLICATION OF THE MONTEREY COUNTY BAR ASSOCIATION • FALL 2022

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We invite constructive feedback and suggestions for future articles and interviews. If you would like to contribute articles or get involved with Barline, contact us at **barline@montereycountybar.org**.

Farewell from the Editor

This issue, the start of the fourth year of this iteration of the Barline, will be my last before I leave the Board of Directors and the new Barline committee takes over.

It has been a sincere pleasure playing a part in bringing this magazine back and putting these issues together for you every quarter.

Thank you for reading, and for all the support you give the MCBA.

—Ryan Bailey

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MONTEREY COUNTY BAR ASSOCIATION

JUSTICE AGLIANO LIFETIME ACHIEVEMENT AWARD

remarks by **Judge Richard M. Silver (Ret.)**
at the MCBA Fall Bench Bar September 29, 2022



Judge Richard M. Silver (Ret.)

I am pleased to be here tonight to participate in both remembering and recognizing Justice Agliano and the personal and judicial qualities that he embodied that led the Bar Association to create this Award; and that has led all of us here who knew him to acknowledge the tremendous impact he has made not only here in Monterey County but in every endeavor he has undertaken. A leader, a mentor, and a friend.

There are two primary components that defines a JUDGE and, to an even larger context, JUSTICE: Making the best decision that you can, consistent with the law and evidence; and doing so in a way that breeds public confidence in that decision and the Courts in general.

Justice Agliano excelled as to each of these attributes.

He never made decisions without careful thought, fully utilizing the “adversary process” and challenging lawyers to convince him. As he said in an interview with Justice McAdams: *“Our job is so awesome in terms of the responsibility it carries with it... to make such important decisions about other people’s life and property. It is not a job you can ever take lightly.”*

He never did. Whether while in private practice, on the Superior Court, the Court of Appeal, or his many years as a mediator/arbitrator with JAMS, his work ethic and intellect never faltered and, from the beginning to the end, guided and inspired all that knew him. A mensch and a mentor.

As it has been said, *“Justice must satisfy the appearance of justice... it is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done.”*

When Justice Agliano received the MCBA Lifetime Achievement Award in 2011, I made two comments about his demeanor and character:

First, he was a steadying influence on the Monterey Courts. There is little doubt that the work of justice is often “crammed” with emotions of all sizes and shapes. The issues often touch on the very nerve fibers of society and of individuals. He was the proverbial “calm in the eye of the storm” through his demeanor and temperament; patience and courtesy; high ethics; compassion and respect for the essential dignity of all persons; and his reputation for honesty and fairness.

I once told him “Nat, you’re the only judge I know that can sentence a person to a thousand years and as he leaves he’ll thank you!”

Which leads to my second comment: *“When you say ‘Nat Agliano’ it’s the same as saying ‘gentleman.’”*

I was blessed when I was appointed to the Court in 1977 at the ripe old age of 35 to have him as my mentor and friend. Of all of us “old judges” still living, I served the longest with him on the Superior Court. In the 20 years I spent with him at JAMS, he continued as my friend and mentor. My success, however it may be defined, is in large part owed to him. The reputation of our Superior Court as one of the best in the State is in large part owed to him.

It is for these reasons I am honored to be a part of this Award presentation, to share with you my thoughts on those legal, judicial, and people skills that made him the standout jurist that he was and the significance of and basis underlying this award. I will leave it to Judge Wills to share with you why my friend and long-time ally “in the struggle for justice,” Judge O’Farrell, is the perfect recipient of this award.



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A Profile: Judge Robert O'Farrell

2022 Recipient of the MCBA Justice Nat Agliano Lifetime Achievement Award

introduction by Judge Thomas W. Wills, September 29, 2022



Judge Thomas W. Wills

Judge Robert O'Farrell served as a full-time judge for 35 years before retiring in 2009 – the longest tenure ever by a judge in Monterey County. Thirteen-plus years later, he's still at it, coming back through the State Judicial Council's Assigned Judges Program, to sit on the bench covering courtrooms in Monterey, San Benito and Santa Cruz counties, as well as a few other counties. That is dedication personified.

In addition, during that time, he has also served in the community as a 4-H leader, volunteer judge for the high school mock trial program, and as a member and president of the Palma High School Board of Directors.

Where and when did this lifetime of hard work and service start?

Born in New York, raised in New Jersey and California, Judge O'Farrell worked as an appliance repair and delivery man, worked the night shift on a lima bean harvesting crew, drove a water truck, worked as a carpenter's assistant, as a busboy, a waiter, and a wine steward in Yosemite. He then drove a taxi in San Francisco while in law school.

After graduating from Hastings with his law degree in 1968, he went to work in the Ventura County Public Defender's Office—where a fire-breathing defense attorney by the name of Harkjoon Paik was the chief trial attorney. This of course was the same Harkjoon Paik who came to Monterey County to head up the first Public Defender's Office in Monterey County—and asked Bob O'Farrell to join him there, which he did in 1969. In 1975, Judge Paik was appointed to the Superior Court by then Gov. Jerry Brown.

From the Public Defender's Office, Judge O'Farrell went on to serve as the Judge of the historic Castroville Justice Court for a year. He then went on the Municipal Court of Monterey County for six (6) years.

In 1981 he began 28 years on the bench of the Superior Court of Monterey, where he served with the man in whose name this award was established, Nat Agliano. Judge O'Farrell served as Presiding Judge and as Civil Supervising Judge for many years.

Those of us who have had the privilege to appear before Judge O'Farrell as attorneys always felt, as the late Chuck Warner put it, "welcome in his court." Judge O'Farrell was always thoughtful, patient, calm of demeanor and attentive.

When Nat Agliano was elevated from Superior Court judge to Justice, and later Presiding Justice, of the 6th District Court of Appeal, he was joined by his former colleague Bob O'Farrell from Monterey, who was assigned by California's Chief Justice to serve on multiple occasions as an assigned justice at the Court of Appeal. And so Bob O'Farrell served alongside Justice Agliano there as well, and they often commuted to San Jose together. And served with distinction.

When the creation of this award was announced, the person who came to mind as the one who deserves this recognition was immediately Bob O'Farrell. We all join Judge O'Farrell's family—his wife, of 48 years, Maria, and his children Megan and Michael—not all the family could be here tonight, but many of them are—in congratulating and thanking him for his service and example to the community and the legal profession. Congratulations Judge O'Farrell, on this well-deserved honor.



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A TRADITION OF EXCELLENCE ON THE CENTRAL COAST SINCE 1928

How to Include Autistic Attorneys

by Ryan Bailey



I recently attended a Diversity, Equity, Inclusion, and Belonging Educational Conference arranged by the San Diego Paralegals Association. Having obtained a number of Elimination of Bias credits in the past, I was impressed at the different types of diversity discussed. One excellent [presentation](#) from autistic Ohio attorney Troy Doucet inspired me to expand on his ideas in a slightly different direction.

Where are all the autistic attorneys?

There are astonishingly few attorneys across the country who identify publicly as autistic, numbering perhaps in the tens or dozens. The most [recent data](#) in the US show 1 in 44 children have autism spectrum disorder, greater than 2% of all children. The rates have been “going up” for many years as various professionals have become better at recognizing and diagnosing it in children, especially in girls, who have traditionally been overlooked.[1]

The State Bar of California currently reports [about 195,000](#) active attorneys in the state. If even only 1% of us are autistic, there would be 2,000 in this state alone. Where are they? It’s [Fermi’s Paradox](#) of autistic attorneys.

I can think of two reasons for this, one of which you and I can do something about. First, we will discuss the benefits of adding them to the team.



[1] The DSM, used to diagnose this and all other disorders, was largely designed to diagnose nonverbal little boys. It has improved some in recent years, but the elements of the diagnosis still rely entirely on observed behavior rather than the lived and reported experience of the patient.

Why hire an autistic attorney?

Let's start with a quick primer: autism is an extremely broad spectrum of traits characterized by [differences](#) in sensory perception (higher or lower sensitivity), communication (unusual speech patterns or difficulty with nonverbal communication), and social interaction (difficulty connecting with others or perceiving subtle social factors). It is not a disease one can acquire, like diabetes, but rather a way of describing a certain type of brain wiring. Symptoms become more pronounced with stress, potentially leading to a shutdown/[burnout](#) if pushed far enough without pausing to calm and recenter. Autistic people[2] feel very deeply, but some may appear the opposite. Every autistic person is different.

How can these differences benefit your firm? Many employers talk a big game about their diversity and how much they work to promote it, and may even have associates in charge of diversity initiatives. Diversity is critically important for many different reasons, including [at least](#) retention and worker satisfaction, innovation, public image, and probably [profit](#). The ABA says “[a] diverse legal profession is more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes.”[3] But your firm is either lacking in neurodiversity, [4] or the autistic attorneys and staff at your firm are pushing themselves to the limit trying to pass as neurotypical.

Certain traits you have been seeking out while you sifted through candidates are amplified in most autistics. At the risk of overgeneralizing the world's most varied group: once autistics learn the rules and the basis for those rules, they will rigidly follow those rules off a metaphorical cliff if necessary—including your office's well-founded[5] procedures as well as the Code of Civil Procedure and ethics rules—because it is the correct thing to do. They are not fudging their hours, because doing so would be incorrect.

[2] There is [debate](#) about how to refer to autistic people. A majority, but by no means a conclusive majority, appears to favor “identity first” (“autistic person”) over “person first” (“person with autism”), in an effort to push back on public conceptions that it is curable or tangential to their daily life. Mention of “functioning” is disfavored. The diagnosis of Asperger's Syndrome was eliminated about a decade ago, placed under the broader umbrella of Autism Spectrum Disorder (ASD), and references to Asperger's are now somewhat disfavored in the US as a “functioning” reference (although it remains a formal diagnosis in the UK and some other countries).

[3] <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2016/spring2016-0416-diversity-in-law-who-cares/>

[4] The term “neurodiversity” is broader than only autism, including ADHD, dyslexia, dyspraxia, OCD, and others. This article is only about autism, but much of it likely applies to all these other neurotypes as well.

[5] A rule that serves no articulable purpose is likely to be ignored. All your subordinates appreciate your discarding it.



They find the structure a comfortable refuge. As Mr. Doucet explained in his [presentation](#), the law “[o]ffers a construct that is easy for an autistic brain. The law is a literal, rules-based construct. Law school teaches us the Rules are the most important aspect of the law” and that “the equal application of the process is more important than the outcomes.” Justice and fairness are paramount.

A commitment to following each step in its proper order, a defining benefit to the many autistics in science and tech, means attention to detail in the law. A methodical, step-by-step approach to their projects means their motion is not failing for missing a CRC or citing an inapposite case. They know where their evidence is and what it contains, whereas others may not have caught that the dates on document X and document Y do not agree.

Many autistics have a capacity to [focus](#) longer and deeper on their tasks than other people, finding it peaceful and rewarding to block out everything else and work the problem.

Most have a strong sense of [loyalty](#), an excellent memory, and unusually high empathy—something your clients value as you advise them through their hardest times.

Innovation is a natural benefit from a team member who perceives and organizes the world in a different way from the rest of your team. Don’t be surprised when your autistic associate finds an inventive solution for your settlement offer or trust dispute.

If you can hire these people first, this detail-oriented focus and innovative problem-solving will be on your side of the courtroom instead of your opponent’s.

Now we will discuss why you are not knowingly surrounded by autistic colleagues.

Reason 1: Most autistic attorneys likely do not know they have Autism Spectrum Disorder.

Most adults of attorney age ([median age: 50](#)) grew up in a time when parents, doctors, and school professionals did not have experience with cases of autism that did not require major accommodations or come with severe communication deficits. Growing up, they learned to instinctively conceal what made them “weird” (an approach called “[masking](#)”) and leaned on their strengths to become the high achievers that eventually go to law school.[6] They mistook their occasional autistic burnouts for an intermittent depression. They took more time than their peers on projects and thought longer about verbal responses. Unable to interpret everything happening around them, they experienced regular anxiety.

Now adept at masking, they will likely never be recognized, although increasing numbers of [parents](#) are being diagnosed after the [extremely heritable trait](#) is recognized in their children.

These adults may start thinking about their unusual sensory sensitivity (to bright lights, loud noises, smells, or rough clothes), their difficulty with transitions, the inscrutable complexity of unspoken rules and social interactions, their getting overwhelmed by crowds, or their unusually deep knowledge of one or two specific subjects.

If your friends are tired of hearing you monologue about WWI aircraft or obscure anime, maybe click [here](#) when you have some quiet time to yourself and see what it tells you. For a more conclusive answer, doctors experienced in diagnosing adults are extremely rare but [not unheard of](#).

The natural result of all the above is that you have likely worked with autistic attorneys or argued in front of an autistic judge, but they did not have access to the information to connect the dots between so many apparently unrelated traits. Their experience has been harder than their peers for reasons they did not understand, but they pushed through it and have managed to make it this far without the knowledge or accommodations.

There is little we can directly do about this reason except spread information.

[6] Unfortunately, if they *had* been diagnosed as children, they would have been subjected to Applied Behavioral Analysis (ABA) Therapy, an [antiquated and discredited method of behaviorism](#) which is usually deeply harmful to the child and almost certainly the only treatment covered by your health insurance, even now, in 2022. There are now two very different ABA's referenced in this article, for which the author apologizes.

Reason 2: All autistics face an uphill battle at every stage of their professional life.

There are so many steps on the path to becoming a practicing attorney at a law firm, and all of them filter out autistic people. Those who make it past all of these hurdles knowing they are autistic likely conceal it at work to avoid backlash and even firing.

First, the spectrum itself is so broad. A portion of autistic people have symptoms too severe to go to college and they never become attorneys.

Second, [law school](#) is anxiety-inducing for anyone, but is particularly designed to reward those who can work for all their waking hours without wearing down and those who can work faster than their peers during the timed finals. The anxiety autistics already feel at their uncertain surroundings and uncertain outcomes is turbocharged in a high-stakes, cutthroat competition for their future against all the smartest people they have ever met. Autistics will be more sensitive to this pressure, as they are to most things, and some will unfortunately filter themselves out at this stage simply to escape it.

Third, attorney recruitment is structured to filter out autistics. Getting hired depends largely on networking: a test of unspoken social norms to build a large network of friends and friendly acquaintances in the industry, a task that is difficult if the networker did not catch the jokes they heard or if they overshared their encyclopedic knowledge of Cretaceous-era dinosaur species.

If the candidate was not able to network their way into a position, they have to apply to general job postings and, if they are fortunate, are selected for an interview that is likely a test of homogeneity—viewed in the interviewer’s mind as checking how well they “fit in” or “click with the office [culture](#).” A lack of eye contact will be interpreted as a lack of confidence or even untrustworthiness, when in autistics it is more often a sign of careful concentration. The candidate’s unusual candor or poor posture may be off-putting to an interviewer. If the candidate has started to mention something that makes the interviewer react negatively, the candidate likely can’t perceive or interpret those microexpressions. A neurotypical candidate will come out ahead in substantially all of these contests.



If a candidate discloses their diagnosis during the application process, there is a temptation for partners to react with fear, not wanting to explore adding such a person to their team but also afraid of exposing the firm to discrimination allegations. One candidate disclosed their diagnosis in their thank you email after a very promising interview, suggesting accommodations that could meet all the firm's needs as well as the candidate's. Instead of a dialogue, the candidate received a curt, formal email response, and later, a rejection.

Fourth, once hired, autistics are more likely to be targeted and excluded in the workplace. Their continued success will depend largely on their ability to blend in, build strong relationships with coworkers, and navigate office politics lying entirely outside their perception.

Surprisingly, professionals[7] I contacted often advise each other *never* to disclose their diagnosis to supervisors and coworkers because of the hostility it so often engenders, one describing disclosure as “risky at best.” They will be [overlooked](#) for promotions or raises. Due to irresponsibly narrow media depictions of the neurotype, many colleagues will dismiss or disbelieve the diagnosis's legitimacy, assuming it to be a vanity claim for attention, or say ([incorrectly](#)) that “everyone is a little autistic.” Some will respond as though—or even state that—the professional is using their diagnosis as an “excuse” for more breaks or some other perceived shortcoming. Many professionals reported that their symptoms are accepted with understanding when taken individually (i.e., “I just find a dimmer office more soothing,” “I’m uncomfortable at social events,” “I need some time to process all this”), but open hostility once all the traits are directly named collectively as autism.

Some of this hostility and exclusion may be avoided by the attorney telling (and documenting for) their employer only that they have an unnamed [protected disability](#), and the accommodations it will require; but the attorney would be better served by true acceptance and support. Their contributions will be magnified when they know their acceptance at the office is not dependent on hiding this label from the team and trying to avoid anything “weird.”

The recruitment process and work environment are where we can reverse the trend of filtering, and leverage their strengths for our practices.

[7] Attorneys, doctors, and accountants, who I reasoned all have similar barriers to entry and similar work cultures.

What would need to change to include these talented professionals and help them succeed?

First, be brave. They are not applying to your firm because they want to sue you for violating the AWDA: they sincerely want to work for you. Take a deep breath and give them a shot.

Second, adjust your hiring practices to make it friendly to their challenges. Some [suggest](#) giving them the interview questions ahead of time so they are not put on the spot. Evaluate candidates for what new strengths they can bring to your team instead of their body language and eye contact or how similar they are to the rest of the team. Consider adding to your job posting your willingness to make interview accommodations for neurodiverse candidates.

Third, some accommodations at work will increase their success and wellbeing, but the solutions will be as varied as the associates. Make instructions, expectations, and objectives stated instead of implied. Avoid euphemisms and code phrases. Your words are likely the only message they are receiving, so put your entire message into words.

Facilitate allowing your autistic associates more time to complete projects, more time to transition from one thing to another, and fewer transitions. Avoid suddenly changing plans or routines whenever feasible. Many will need time to process new developments in their careful, step-by-step way, so you may need to rely on other associates for fast, on-the-spot objections in depositions or at trial.

Try to avoid ramping up their anxiety. Yelling at them, threatening their position at the firm, or giving them a new project due in an hour will likely noticeably decrease their effectiveness. Don't worry about your kindness being abused: it won't be.

Some small changes to the way we recruit and manage these professionals will increase justice, better serve our clients, and drive success in our practices.

Licensed since 2015, Ryan Bailey is a freelance legal research and writing attorney for other civil litigation attorneys, doing business as [Moss Landing Law](#). He also assists with US and Irish immigration. His undergrad was in journalism, and he enjoys a little good reporting like old times.



LEGAL LEVITY

A paralegal, an associate, and a partner walked to lunch through a city park. They found an old lamp and rubbed it.

A genie popped out and granted each of them one wish.

The paralegal said, “I want to be in the Bahamas on a sailboat!” Poof, she was gone.

The associate said, “I want to be in Hawaii on the beach with a mai tai!” Poof, he was gone.

The partner said, “I want those two back in the office after lunch.”



MCBA EVENTS

CLE Dates

*Please note all dates and topics are subject to change. Check our calendar of events **HERE** prior to each to check status and register. You may also register by calling (831) 582-5400, ext. 2.

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***All CLEs are conducted via zoom from 12pm - 1pm**

Tuesday Nov 15th LPS Conservatorships & Placements

Presented by *Christi McDonald*

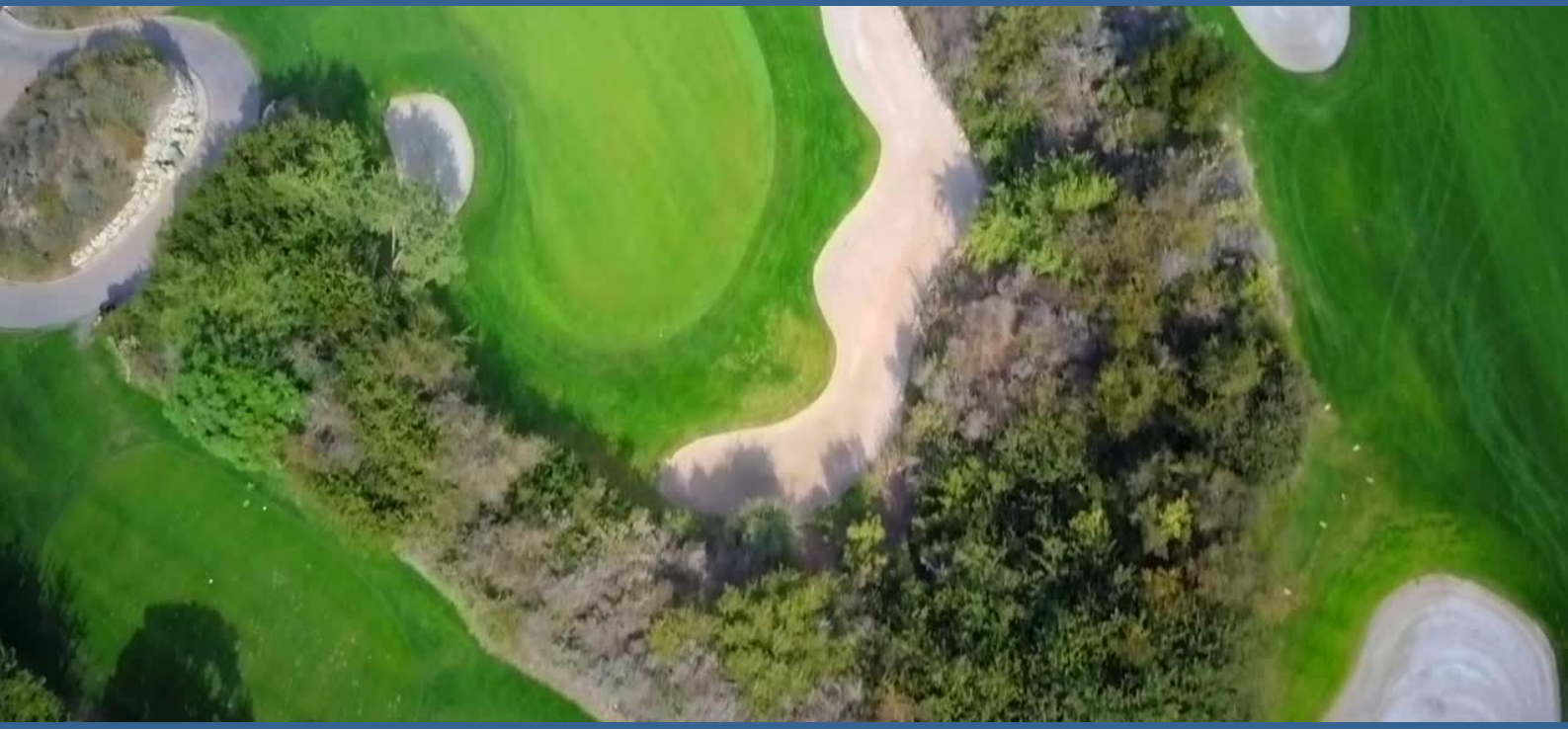
Wednesday Jan 18th Assessment Appeals Process for Monterey County

Presented by *Cody Phillips*

Events:

Friday December 2nd

**MCBA Annual Meeting and Fenton Lunch,
Pebble Beach Fairway One**



MCBA Annual Meeting & Fenton Award Luncheon



FRIDAY, DECEMBER 2

11:15AM-1:00PM

Fairway One at The
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Fall Bench Bar 2022















