

# *Civil Rights Legends and Pioneers Honored at State Bar Annual Meeting*

By Phyllis W. Cheng

At the 2009 Annual Meeting of the State Bar Labor and Employment Law Section, the Section and the Department of Fair Employment and Housing (DFEH) honored four civil rights legends and pioneers, on the 50th anniversary of the Fair Employment and Housing Act (FEHA).

## **AILEEN CLARK HERNÁNDEZ**

Aileen Clark Hernández began her career as an organizer for the International Ladies' Garment Workers' Union, and became the Education and Public Relations Director for the Pacific Coast Region of the Union.

Hernández was later appointed Deputy Chief of the Division of Fair Employment Practices in the California Department of Industrial Relations from 1962 to 1965. In that capacity, she enforced the Fair Employment Practices Act (FEPA), the precursor to the FEHA, under Governor Pat Brown's administration.

Hernández became known nationally for her FEPA enforcement and, in 1964 was the only woman Lyndon Johnson appointed to serve on the newly established Equal Employment Opportunity Commission (EEOC). In 1966, Hernández resigned from the EEOC to form an independent urban consulting firm, Aileen C. Hernández Associates.

In addition to her FEPA and Title VII work, Hernández has been a leading feminist, who became the second national president of the National Organization for Women (NOW) in 1970. It was under her leadership that NOW organized the Women's Strike for Equality in 1971. In 1973, she co-founded Black Women Organized for Action in San Francisco.

Hernández was one of the 2006 honorees of the National Women's History Project; she also was the 1993 Tish Sommers Lecturer at the Institute for Health and Aging of the University of

California, San Francisco, as well as the 1993 Regents Scholar in Residence at the University of California, Santa Barbara.

Currently, she is coordinator of Black Women Stirring the Waters, and chair of the California Women's Agenda, a state action alliance of over 600 organizations.

## **JUDGE ALICE LYTLE**

Judge Alice Lytle's early passion for civil rights led her to the law. As a student at Hastings College of the Law, Judge Lytle became president of the Black Law Students Association. As a law student, she worked in the Alameda County public defender's office and with the NAACP Legal Defense Fund, the National Housing and Economic Development Law Project, and the Earl Warren Legal Institute. Her goal was to become a civil rights lawyer.

Judge Lytle eventually served in the administration of Governor Jerry Brown, who appointed her Chief of the Division of Fair Employment Practices in the Department of Industrial Relations. Ultimately, Judge Lytle was appointed to a cabinet level position—Secretary of the State and Consumer Services Agency. In this role, she oversaw the transition of the FEPA into the FEHA. Under her watch, two new civil rights agencies—the Department of Fair Employment and Housing (DFEH), which enforces the FEHA, and the Fair Employment and Housing Commission (FEHC), which adjudicates FEHA administrative complaints—were born.

Governor Brown later appointed Judge Lytle to the municipal court bench. Judge Lytle was the first African American woman to serve on the Sacramento court and for all but the final two months of her 20-year tenure, the only African American woman to serve on the Sacramento Municipal or Superior Courts. Throughout her tenure, Judge Lytle has been consistently recognized for her

courageous leadership, compassion, and unwavering commitment to the people of California and their fundamental right to equal justice under law.

## **MARIAN M. JOHNSTON**

Marian Johnston began her legal career as a staff attorney with California Rural Legal Assistance (1974-1976) and then worked as a staff attorney for the Fair Employment and Housing Commission (1977-1978). Until 1991, she served as Supervising Deputy Attorney General in the Civil Rights Enforcement Unit of the California Attorney General's Office (1978-1991). Johnston also was an Adjunct Professor at Hastings College of Law (1982-1985) and at U.C. Davis Law School (1999-2000). In 1991, she co-founded and was shareholder at the appellate firm of Eisen & Johnston. Before her retirement, Johnston was a Senior Deputy Legislative Counsel.

Anyone who practices FEHA employment or housing law is familiar with Johnston's groundbreaking legal work:

- In the landmark case, *California Federal Sav. and Loan Ass'n v. Guerra*, 479 U.S. 272 (1987), the DFEH's only U.S. Supreme Court case, Johnston successfully argued before the high Court that pregnancy disability leave under the FEHA is not preempted by Title VII, resulting in greater benefits for California working women.
- In *Smith v. Fair Employment and Housing Comm'n (Phillips)*, 12 Cal. 4th 1143 (1996), Johnston prevailed before the California Supreme Court, which held that the FEHA's prohibition against discrimination because of marital status was not barred by the Religious Freedom Restoration Act or the California Constitution, thus making it possible for unmarried couples to rent housing.

- In *Robinson v. Fair Employment and Housing Comm'n*, 2 Cal. 4th 226 (1992), Johnston successfully persuaded the California Supreme Court to rule that a part-time employee working for a small employer with five or more employees was subject to the protection of the FEHA's prohibition against pregnancy discrimination.
- In *Rojo v. Kliger*, 52 Cal. 3d 65 (1990), Johnston convinced the California Supreme Court to rule that: (1) the FEHA does not supplant common law claims relating to employment discrimination; (2) employees do not have to exhaust the administrative process under the FEHA before resorting to judicial relief for nonstatutory causes of action; and (3) sex discrimination in employment might support a claim of tortious discharge in contravention of public policy.
- In *Johnson Controls, Inc. v. California Fair Employment and Housing Comm'n (Foster)*, 218 Cal. App. 3d 517 (1990), Johnston advocated, and the court of appeal held, that an employer's fetal protection program violated the FEHA's prohibition against sex discrimination, and was not defensible as a bona fide occupational qualification.
- In *Raytheon Co. v. California Fair Employment & Housing Comm'n (Estate of Chadbourne)*, 212 Cal. App. 3d 1242 (1989), Johnston successfully argued before the court of appeal that AIDS is a disability under the FEHA.
- In *Bohemian Club v. Fair Employment and Housing Comm'n*, 87 Cal. App. 3d 1 (1987), Johnston prevailed in the court of appeal, which held that: (1) social clubs are not exempt from the FEHA's nondiscrimination provisions; (2) the FEHA is not preempted by Title VII; and (3) male gender was not a bona fide occupational qualification for employment at the club.

As a result of all of the above decisions, the depth and breadth of the FEHA today is due in great part to the perseverance, commitment and legal acumen of Marian Johnston.

## LYDIA I. BEEBE

Lydia I. Beebe was appointed by Governor Pete Wilson to two terms as a stellar Chairperson of the FEHC, where she served from 1991 to 1999.

Beebe came to the Commission as a Chevron tax attorney. She quickly delved into the law and became an expert on the FEHA and the Unruh and Ralph Civil Rights Acts. When she took on the daunting role of Corporate Secretary (and now also Chief Governance Officer) for Chevron Corporation, Beebe never flagged in her commitment to the Commission's work. She continued to read every proposed decision, brief, regulation and underlying case law, and made reasoned decisions based on the law and the facts in more than 100 cases. In fact, Beebe led and attended each and every Commission meeting during her tenure.

The accomplishments of the FEHC while Beebe was Chair are numerous:

- Authorized the Commission to use its own Administrative Law Judges to conduct administrative adjudications and award emotional distress damages and administrative fines in employment cases.
- Provided job-protected family and medical leave to employees under the California Family Rights Act for their own serious health conditions, and for the serious health conditions of their parents, spouses, and children.

- Amended the FEHA's disability discrimination protections.
- Expanded employee protections against sexual harassment.
- Clarified employer responsibilities to prohibit sexual harassment.
- Conformed the FEHA's housing discrimination provisions to the federal Fair Housing Act, and expanded the FEHA to prohibit housing discrimination based on familial status.
- Required employers to reasonably accommodate pregnant employees.
- Authorized the Commission to adjudicate disputes under Civil Code sections protecting disabled individuals' access to public places and highways, and their use of service animals.
- Promulgated regulations on the California Family Rights Act, sexual harassment, pregnancy, physical disability, and the Commission's administrative procedures.

The Commission's accomplishments under Beebe's leadership continue to be a legacy today, guiding all civil rights actions under the FEHA, and under the Unruh and Ralph Civil Rights Acts.

The half-century of the FEHA's achievements is made possible by the work of these valiant pioneers and many other champions of the law. The fiftieth anniversary of the Act promises to launch a challenging new chapter for civil rights in California. ♫



Left to right: honoree Aileen C. Hernandez, DFEH Director Phyllis Cheng, honoree Lydia I. Beebe, Section Outgoing Chair Karen V. Clopton, honoree Marian Johnston, Section Incoming Chair Patricia C. Perez. Honoree Judge Alice Lytle could not attend the event.