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DECEMBER 2014 • \$4

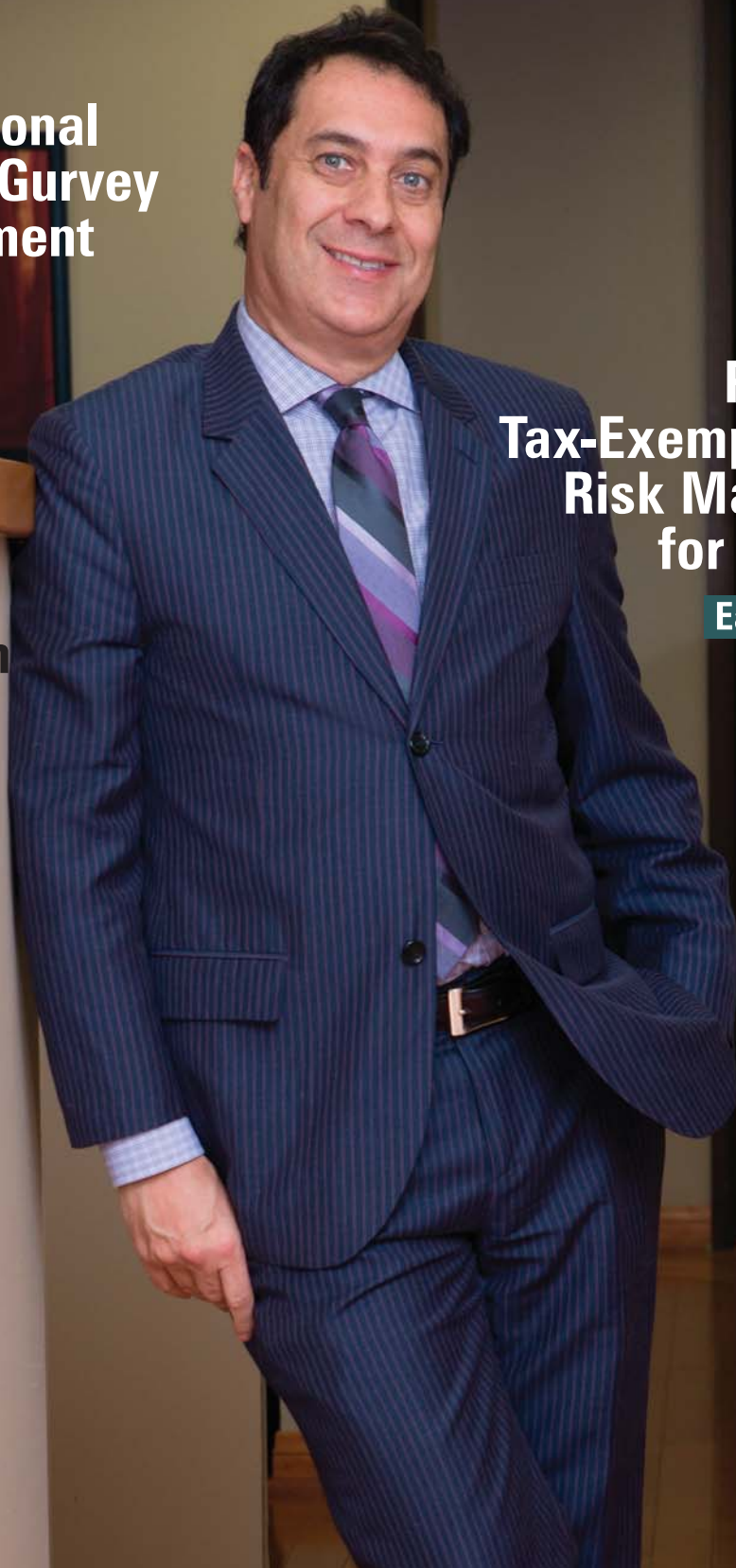
A Publication of the San Fernando Valley Bar Association

**An Unconventional
Journey: Alan Gurvey
and a Commitment
to Service**

**Breastfeeding in
the Workplace**

**Reinstating
Tax-Exempt Status &
Risk Management
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- **\$13.5 MILLION SETTLEMENT AGAINST CITY/CONTRACTOR FOR MAN SERIOUSLY INJURED IN AUTO COLLISION**
- **\$6 MILLION WRONGFUL DEATH SETTLEMENT FOR SURVIVING FAMILY OF FACTORY WORKER KILLED ON THE JOB**

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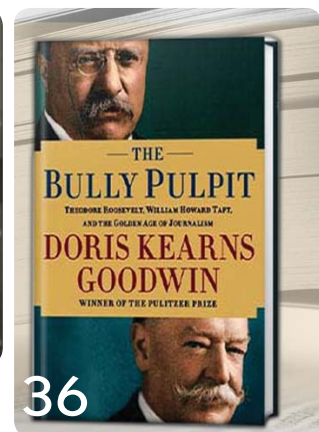
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CONTENTS

Public Service

DECEMBER 2014



FEATURES

12 Breastfeeding in the Workplace: A Mother's Rights, An Employer's Responsibilities | **BY NICOLE KAMM AND GENEVIEVE THOMAS COLVIN**

18 Reinstating Tax-Exempt Status & Risk Management for Nonprofits | **BY MARSHALL A. GLICK AND HEATHER P. GLICK-ATALLA**
MCLE TEST NO. 74 ON PAGE 27.

28 An Unconventional Journey: Alan Gurvey and a Commitment to Service | **BY IRMA MEJIA**

32 Changes to Criminal Sentencing under Proposition 47 | **BY DMITRY GORIN, ALAN EISNER AND BRAD KAISERMAN**

COLUMN

36 Book Review
A Colorful, Contradictory Time | **BY DAVID GURNICK**

41 Fastcase
Fastcase Hints and Tips | **BY CHARLES J. LOWRY**

46 Dear Phil
Social Shoals

On the cover: Alan Gurvey
Photo by Paul Joyner

DEPARTMENTS

7 President's Message

8 Event Calendars

11 From the Editor

17 Public Service

39 Bulletin Board

39 New Members

42 Author Index

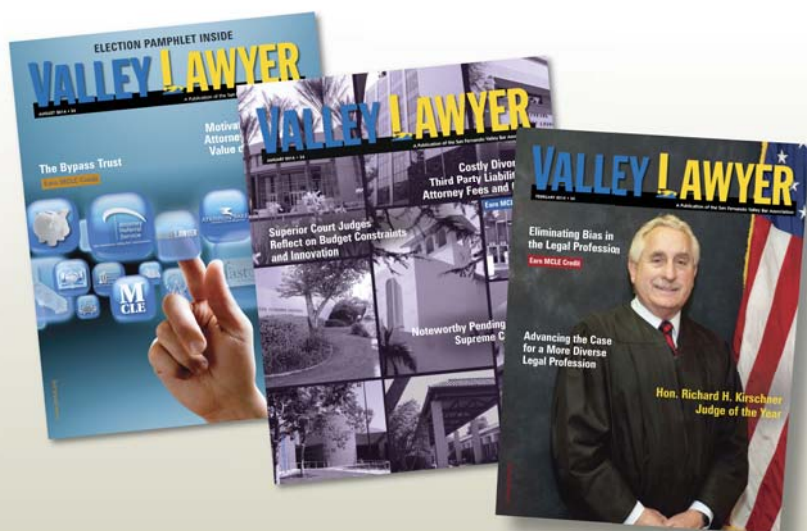
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Valley Lawyer is published 11 times a year. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

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PRESIDENT'S MESSAGE

Ho Ho Ho or Bah Humbug?

CARYN BROTTMAN SANDERS
SFVBA President



carynsanders@sbcglobal.net

IF YOU ARE READING THIS ARTICLE, you are probably beyond the days of the traditional school winter break. I was with some high school students who were talking—or maybe whining—about the fact they only got two weeks for winter break when some of their friends got three. When the conversation moved to their plans for winter break, they were somewhat surprised when I told them that once you finish college and move on with your career, there really are no more winter breaks, spring breaks, and certainly no lengthy summer breaks. As the holidays approach, I am sure many of us would love a true winter break.

I am often asked how I manage a work-life balance and while I like to think I do a pretty good job, it never is more challenging than during the period between Thanksgiving and the end of winter break. There's a lunch at Morton's, a dinner at Larsen's, a dessert party, a casino night, brunch at Salt Creek Grille, and a dinner at Tournament Players Club, among other events. Sounds amazing, doesn't it? Without a job and family and other responsibilities, this would amount to a thrilling life! But over a three week period with a job, family and other responsibilities, these additions to the schedule could send you over the edge.

If you have children, you probably try to squeeze in a family vacation as well. If you are lucky and not quite as much of a Type A personality as I am, you can actually check out of work for the week (or whatever period you are on vacation). While I have been known to read deposition transcripts or medical records rather than a legal mystery while in front of the ski lodge fireplace, I do try to put it all away when my family returns from skiing. Part of a work-life balance is

also remembering to actually disconnect during those vacations. Try to find some time to disconnect over these holidays.

So how do you balance it all? I wish I had the answer! To some extent, where possible, I pick and choose the events that I attend. If the event is appropriate (i.e., not too long and boring) and it is possible, I will bring my daughter. We get to spend the time together and she gets to see what I do and to learn more about future career opportunities.

If you are like me, you will attend many events that request that you bring toys or other items for donation. My daughter and I have a tradition of shopping together for these donations. She understands the importance of the donations and looks forward to picking out these gifts.

At the San Fernando Valley Bar Association we have our annual Holiday Open House on Tuesday, December 9 from 5:30 p.m. to 7:30 p.m. This is a wonderful opportunity to connect with old friends, meet new people, and give back through our annual toy drive. Every year we donate mountains of toys to Haven Hills and other worthy organizations. Please consider making the SFVBA one of your annual stops in your schedule of holiday events. And if you have kids, perhaps you too can start a tradition of shopping for toys to donate.

Another important event that the Bar sponsors every year is Blanket the Homeless. Please join us on December 6 at 8:00 a.m. at L.A. Family Housing in North Hollywood to distribute blankets to local organizations. It is truly a rewarding experience and families are welcome.

I wish everyone a wonderful holiday season and a happy, healthy and prosperous new year. 🐼

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- Murder - Not Guilty by Reason of Insanity, Jury (Van Nuys)
- Medical Fraud Case - Dismissed, Preliminary Hearing (Ventura)
- Domestic Violence - Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud - Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation - Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)

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24/7 Immediate Intervention

SUN	MON	TUE	WED	THU	FRI	SAT
	Valley Lawyer Member Bulletin 1 Deadline to submit announcements to editor@sfvba.org for January issue.	Editorial Committee 2 12:00 NOON SFVBA OFFICE Criminal Law Section SPONSORED BY  See page 13	3	Membership & Marketing Committee 4 6:00 PM SFVBA OFFICE	Recent Developments in California State and Local Taxes 5 SPONSORED BY  See page 26	Blanket the Homeless and ARS Legal Clinic 6  See page 16
7	Tarzana Networking Meeting 8 5:00 PM SFVBA OFFICE 	Probate & Estate Planning Section 9 What Every Trusts and Estates Attorney Should Know about Changes in Ownership and Transfers of Property 12:00 NOON MONTEREY AT ENCINO RESTAURANT Attorney Matthew Burke will discuss basic Proposition 13 change in ownership rules for trusts and estates professionals whose clients have significant real estate holdings and the two recent appellate cases— <i>Ocean Ave LLC v County of Los Angeles</i> and <i>926 North Ardmore LLC v. Country of Los Angeles</i> . (1 MCLE Hour) SFVBA Holiday Open House! See ad below	10	Marketing Yourself on the Web 11 SPONSORED BY  See page 26	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			



HOLIDAY OPEN HOUSE

Tuesday December 9, 2014

5:30 p.m. to 7:30 p.m.

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SUN	MON	TUE	WED	THU	FRI	SAT
				Happy New Year 1	2	3
4	Valley Lawyer Member Bulletin 5 Deadline to submit announcements to editor@sfvba.org for February issue.	6	7 Employment Law Section New Laws 12:00 NOON SFVBA OFFICE	8 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	9	10
11	Tarzana Networking Meeting 12 5:00 PM SFVBA OFFICE 	13 Probate & Estate Planning Section New Laws 12:00 NOON MONTEREY AT ENCINO RESTAURANT James Birnberg updates the Section on the latest legislation. This is the essential meeting of the new year! (1 MCLE Hour)	Nicole Kamm and Hannah Sweiss will update the group on the important new employment laws of 2015. (1 MCLE Hour)	15 Intellectual Property, Entertainment & Internet Law Section Washington Redskins Trademark Controversy 12:00 NOON SFVBA OFFICE Michael DiNardo and Kelly Cunningham discuss whether the Washington Redskins Trademark cancellation by the U.S. Patent and Trademark Office was warranted and what might be the impact of the trademark ruling. (1 MCLE Hour)	 SFVBA 18th Annual MCLE Marathon See page 35	
18	19 	20 Taxation Law Section 2014 Income Tax Law Update 12:00 NOON SFVBA OFFICE Stuart A. Simon will review the latest in regard to 2014 income tax. (1 MCLE Hour)	21	22 New Lawyers Section How to Open Your Own Firm 6:00 PM SFVBA OFFICE SPONSORED BY  Free to SFVBA new lawyers! (1 MCLE Hour)	23 Bankruptcy Law Section Section 523 Dischargeability Issues 12:00 NOON SFVBA OFFICE Our distinguished panel of Judge Barry Russell and attorneys Scott Bovitz, Ira Katz and Alan Broidy will bring the group up to speed on these critical issues. (1 MCLE Hour)	24
25	26 Family Law Section New Laws 5:30 PM MONTEREY AT ENCINO RESTAURANT Barry Harlan and Michelle Robins review what new laws you must know in 2015. Approved for Legal Specialization. (1.5 MCLE Hours)	27	28	29	30	31



The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0490, ext. 105 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.



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FROM THE EDITOR

Calling All Writers!


IRMA MEJIA
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Media Manager



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THIS YEAR HAS BEEN A GREAT ONE FOR VALLEY LAWYER AND we're looking forward to making 2015 even better. The magazine's success is due in great part to the willingness of members to share their expertise. It is your informative articles that make this publication such a valuable benefit for members and legal professionals throughout Southern California. You are responsible for the MCLE content, the legal updates, the procedural tips and the amusing anecdotes that make *Valley Lawyer* such an instructive and entertaining publication.

Our editorial approach in 2015 will be slightly different from what we've done these past few years. Rather than publish issues dedicated solely to a particular practice area (e.g., a February issue dedicated to family law or a May issue dedicated to criminal law), we will cover a variety of practice areas in each issue. This will expand each issue's appeal to attorneys in all areas of practice and will broaden the opportunities for members to submit timely articles in their areas of expertise at any time throughout the year.

To the right is our editorial calendar for the upcoming year. I encourage you to continue submitting the excellent content. It's your contribution that make this publication stand out from the rest! 

CONTINUING OUR TRIBUTE TO VETERANS

In commemoration of Veteran's Day, last month's issue of *Valley Lawyer* paid tribute to SFVBA members who have served in the U.S. military. As part of our tribute, we included a roster of members who are also veterans. As it was the first time we organized such a list, there were a few unintentional omissions. We ask that members who have served in the military please email the editor at the address above to be added to the growing roster.

The following members are respected veterans of our armed forces who were not recognized in last month's issue. We recognize them here and thank them for their dedicated service to our nation.

Earl H. Fagin, Army, 1963-1965
J. Patrick Francis, Marines, 1942-1945
Edwin K. Niles, Army, 1943-1946

2015 EDITORIAL CALENDAR

FEBRUARY

Submission Deadline:
December 1, 2014
The Courts

MARCH

Submission Deadline:
January 5, 2014

APRIL

Submission Deadline:
February 2, 2014

MAY

Submission Deadline:
March 2, 2014

JUNE

Submission Deadline:
April 1, 2014

JULY

Submission Deadline:
May 1, 2014

AUGUST

Submission Deadline:
June 1, 2014
Special Insert: *Board of Trustees
Election Pamphlet*

SEPTEMBER

Submission Deadline:
July 1, 2014

OCTOBER

Submission Deadline:
August 3, 2014

NOVEMBER

Submission Deadline:
September 1, 2014
New Lawyers
Bonus Distribution: *State Bar
Swearing-In Ceremony,
Pasadena, CA*

DECEMBER

Submission Deadline:
October 1, 2014
*Cover Auction Winner/
Public Service*



By Nicole Kamm and
Genevieve Thomas Colvin

BREASTFEEDING IN THE WORKPLACE:

A Mother's Rights, An Employer's Responsibilities

SINCE 2011, STUDIES HAVE shown nearly 80% of all newborn infants are breastfed.¹ Though many mothers question how long they will breastfeed, working mothers may be faced with an additional challenge: how will they continue to breastfeed after they return to work?

State and Federal Breastfeeding Laws

In recent years, several state and federal laws have been passed protecting the rights of nursing mothers in the workplace. The federal Fair Labor Standards Act (FLSA) was amended in 2010 with the passage of the Patient Protection and Affordable Care Act

(PPACA) mandating employers provide break time for hourly employees to express breast milk at work.²

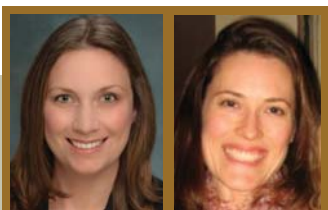
The PPACA states employers must provide a reasonable amount of time and a private space other than a bathroom, where the employee is shielded from view from co-workers and the public and will not be interrupted. Breastfeeding mothers have the right to take such breaks for one year following the child's birth.

Employers with 50 or less employees in a 75 mile radius may apply for an undue hardship exemption. To receive an exemption, the employer must prove that providing accommodations would cause "significant difficulty or expense when considered in relation to the size,

financial resources, nature, or structure of the employer's business."³

Under state law, all California employers are required to provide lactation breaks, which may run concurrently with regular break time(s) already provided to workers, to the extent possible. Break time that does not run concurrently with the rest time authorized for the employee by the applicable Industrial Welfare Commission wage order need not be paid. Further, California Labor Code Section §1031 states:

The employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work



Nicole Kamm is an employment defense attorney at Lewitt Hackman in Encino and may be reached at nkamm@lewitthackman.com. **Genevieve Thomas Colvin** is a Program Manager at BreastfeedLA and may be reached at gcolvin@breastfeedla.org.

area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.

While California's requirements apply to employers of all sizes, a California employer may be excused from providing lactation breaks if providing such breaks would seriously disrupt operations (as with federal law, this is a fairly high bar).

Prior to 2013, the California Fair Employment and Housing Act (FEHA), which prohibits employment discrimination based on various factors including race, marital status, and sex, defined "sex" to include gender, pregnancy, childbirth and medical conditions related to childbirth. Effective January 2013, Assembly Bill 2386 amended the statutory definition of "sex" to include breastfeeding and medical conditions related to breastfeeding, thus providing nursing mothers additional workplace protections with regard to harassment, discrimination and retaliation.

Additionally, the recently revised California pregnancy disability regulations include lactation and "lactation-related medical conditions" as a "related medical condition" requiring employers to engage in a good faith interactive process and reasonable accommodation analysis.⁴

The Department of Health and Human Services recommends women express milk for 10-15 minutes, two or three times during an eight hour work day.⁵ This is a very general guideline as many women will need at least 20 minutes, and others, particularly very new mothers, may need 30 or more. The duration of breast pumping breaks depends on the quality of the breast pump, experience, and a multitude of physiological factors.

EEOC Clarifies Obligations to Pregnancy and Nursing Employees

In July 2014, the U.S. Equal

Employment Opportunity Commission (EEOC) continued the trend of accommodating working mothers and issued new guidance regarding pregnancy discrimination. The EEOC states: "It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth."⁶ The new guidelines also prohibit employers from forcing pregnant workers to take leave and cover lactation following childbirth as a pregnancy-related medical condition.

In 2011, the EEOC filed a complaint on behalf of Donnicia Venters, who alleged she was subjected to disparate treatment by her employer Houston

Funding II Ltd., because of her sex, specifically because of "pregnancy, childbirth, or related medical conditions."⁷ Venters claimed she was let go because she requested the use of a back room to breast pump when she returned to her office after maternity leave. Her claim to the EEOC came under Title VII sex discrimination prohibitions.

The district court in Texas disagreed with the EEOC, and granted summary judgment for the employer because, among other things, "lactation is not pregnancy, childbirth or a related medical condition," which according to the court, includes "cramping, dizziness and nausea while pregnant."

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The Fifth Circuit Court of Appeals reversed in 2013, saying that when an employer intentionally discriminates based on a sex-specific function, the employer violates Title VII of the Civil Rights Act of 1964.

The new guidance, the first to address pregnancy discrimination since 1983, focuses in part on how the 2008 amendments to the Americans with Disabilities Act (ADA) apply to employees with pregnancy-related disabilities.

The guidance primarily addresses employee rights in terms of childbirth-related conditions and needs, including leaves of absence, for both parents of the newborn. However, it also states a nursing mother has the right to express milk at work and any practice that singles out lactation or breastfeeding for less favorable treatment affects only women and therefore is considered sex-based discrimination. As an example, the guidance states it would violate Title VII for an employer to freely permit employees to use break time

for personal reasons except to express breast milk.

While the new guidance is not necessarily binding law, the EEOC can internally enforce its guidance and courts generally give deference to the guidance.

What is the Penalty for Failure to Comply?

Employers who fail to comply with breastfeeding laws may be subject to civil penalties as well as claims for harassment or discrimination based on sex, a long-protected category in employment discrimination law. Employers may not refuse to hire or provide accommodations for breastfeeding employees, nor may they retaliate against an employee who lodges a complaint regarding her right to breastfeed at work.

How Employers Can Comply With These Laws?

- Do you have a policy and procedure in place to provide reasonable break

time and a private non-bathroom place for employees who are nursing? If not, update your policies and procedures as soon as possible.

- Are you providing a private place to express milk? A restroom or toilet stall is insufficient. The designated lactation room does not have to be a permanent space, but must be accessible by the employee as needed. Employers should also ensure such spaces can be locked and are not within view of security cameras.
- Consider state and federal laws. While federal law provides an undue hardship exclusion for employers with 50 or fewer employees, California does not. To the extent operations are not disrupted, all California employers must comply with lactation break accommodation requirements.
- Are your managers aware of applicable laws regarding lactation in the workplace? Train managers on the company's obligations and responsibilities regarding breastfeeding in the workplace.
- How have you handled requests for accommodation or complaints from employees? Review any requests for accommodation or complaints to ensure the Company's response was lawful and complete. 🏠



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¹ Division of Nutrition, Physical Activity, and Obesity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, *Breastfeeding Report Card: United States* (2014), available at <http://www.cdc.gov/breastfeeding/pdf/2014breastfeedingreportcard.pdf>.

² Robert B. Fitzpatrick, "Lactation Provisions in the Patient Protection and Affordable Care Act," ABA Health eSource, Volume 7, Number 1, September 2010, available at http://www.americanbar.org/newsletter/publications/aba_health_esource_home/Volume7_01_fitzpatrick.html.

³ 29 U.S.C. 207(r)(3).

⁴ Tit. 2 CCR Sec. 7291.2.

⁵ U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA), Maternal and Child Health Bureau, *The Business Case for Breastfeeding, Steps for Creating a Breastfeeding Friendly Worksite: Easy Steps to Supporting Breastfeeding Employees*, 2008, available at <http://mchb.hrsa.gov/pregnancyandbeyond/breastfeeding/easysteps.pdf>.

⁶ U.S. Equal Employment Opportunity Commission, "Pregnancy Discrimination," <http://www.eeoc.gov/laws/types/pregnancy.cfm> (last visited November 10, 2014).

⁷ *EEOC v. Houston Funding II LLC*, No. 12-20220, available at <http://www.eeoc.gov/eeoc/litigation/briefs/houston.txt>.

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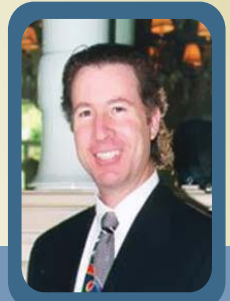


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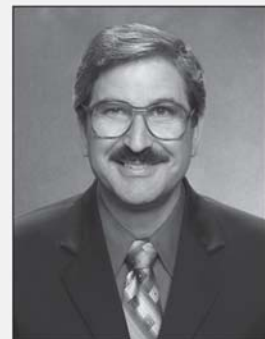
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A Project of the San Fernando Valley Bar Association and the Valley Community Legal Foundation of the SFVBA



Share the spirit of the Holidays - Help Blanket the Homeless when they need it most!

Since 1995, the SFVBA has delivered more than 40,000 blankets to homeless and battered women shelters in the San Fernando Valley. SFVBA members are invited to assist with the blanket distribution and volunteer for a legal clinic on December 6 at 8:00 a.m. at L.A. Family Housing, 7843 Lankershim Boulevard, North Hollywood.

Thank You for Supporting Blanket the Homeless!

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Mail donation to VCLF, 5567 Reseda Blvd., Ste. 200, Tarzana, CA 91356 or fax to (818) 227-0499.

For more information, please call (818) 227-0490.

Volunteer for the 19th Annual Blanket Distribution and Legal Clinic

**MARK S.
BLACKMAN**



mblackman@alpertbarr.com

BLANKET THE HOMELESS, A PROJECT OF THE San Fernando Valley Bar Association and the Valley Community Legal Foundation, is now in its nineteenth year of distributing much-needed blankets and legal advice to local shelters. SFVBA members are invited to assist with the blanket distribution and legal clinic on December 6 at 8:00 a.m. at L.A. Family Housing at 7843 Lankershim Boulevard, North Hollywood.

At the suggestion of then SFVBA President Robert Weissman, Blanket the Homeless began under the auspices of the bar association's Attorney Referral Service as a community service project. Since 1995, the SFVBA has raised over \$200,000 to purchase and distribute over 40,000 blankets to area shelters.

Originally, new and used blankets were solicited by members of the Blanket the Homeless Committee. But it soon was determined that numerous logistical issues existed with used blanket donations. Ultimately, the committee located a company that specialized in making blankets for the Red Cross and homeless shelters. This company—and several others over the last 19 years—have provided the SFVBA with heavily discounted blankets (around \$5 per blanket in 1995). Thus, a simple fundraising campaign began.

Although the blankets have increased in price over the years, SFVBA members remain dedicated to the project. Twice a year, as a check-off donation with dues and during the holidays, our members are asked to make a donation to supply at least five people with blankets. A donation form has been mailed to members and is included in this issue. Donations may also be made simply by contacting the Bar office at (818) 227-0490.


If every member of our organization makes a \$35 donation each year, the SFVBA can significantly increase its blanket order and add more shelters to the program.

Ask-A-Lawyer Program

A few years after Blanket the Homeless began, our blanket distribution was relocated to L.A. Family Housing Corporation's transitional housing unit in North Hollywood. In 2001, the SFVBA Board of Trustees agreed to link the ARS's Ask-A-Lawyer Program to the annual Blanket the

Homeless distribution. While some Bar members manage the distribution of the blankets to shelters, others are on hand to provide the clients of L.A. Family Housing with free legal consultations on landlord-tenant, social security, criminal defense, and other pressing issues in their lives.

The blankets distribution benefits a number of homeless and battered women shelters in the San Fernando Valley, including Children of the Night, M.E.N.D., Women's Care Cottage, BRIDGES, Hillview Mental Health, Haven Hills, San Fernando Valley Interfaith Council, San Fernando Valley Mental Health Center, San Fernando Valley Rescue Mission, and L.A. Family Housing.

Anyone wishing to volunteer for the blanket distribution or legal clinic should contact Director of Public Services Rosie Soto Cohen at rosie@sfvba.org or (818) 227-0490, ext. 104. 

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FAMILIES DO MATTER



Reinstating Tax-Exempt Status & Risk Management for Nonprofits

By Marshall A. Glick and Heather P. Glick-Atalla

The background of the page is a photograph of a modern conference room. It features a long, light-colored wooden table with several black chairs. On the table are microphones, water bottles, and papers. A large flat-screen monitor is mounted on the wall at the head of the table. The room has large windows and a high ceiling with recessed lighting.

Nonprofit organizations face a labyrinth of regulations to maintain their tax-exempt status. Attorneys advising nonprofits should familiarize themselves with the procedures for reinstating the status and the risk management solutions that can prevent revocation.

GOVERNING AND MAINTAINING A SUCCESSFUL nonprofit organization requires a lot more than dedicated volunteers and good intentions. Navigating the complex regulations and maintaining a standard of governance requires knowledgeable guidance on everything from tax filings to privacy policies. A surprising number of non-profit organizations fail to take proper steps to ensure the continuation of their tax-exempt status with federal and California authorities. Attorneys guiding these organizations should advise on the best practices to minimize risk and the steps that may be taken to reinstate tax-exempt status in the event it is lost.

Reinstating Tax-Exempt Status after Automatic Revocation

In 2012 the Internal Revenue Service (IRS) sent a wake-up call to over 275,000 nonprofit organizations (16 percent of the entire nonprofit sector in the United States) automatically revoking their tax-exempt status due to their failure to file information returns for three consecutive years.¹ The only notice many of these organizations received of the termination of their tax-exempt status was the publication of an online Non-Filer Automatic Revocation List, first released by the IRS on June 8, 2011.²

Automatic revocation of tax-exempt status of organizations that chronically fail to file information returns is mandated under the Pension Protection Act of 2006.³ Most of the organizations that lost their tax-exempt status in 2011 had annual gross receipts of less than \$25,000.⁴ According to Holly Paz, the former IRS Director of Rulings and Agreements, Exempt Organizations, well in excess of 400,000 nonprofit organizations have to date lost their tax-exempt status under the automatic revocation rules⁵, and many more may soon fall into the same pit if they allow their annual Form 990 (or version thereof) information return to become delinquent for three consecutive years.⁶

It may seem elementary, even intuitive, that most tax-exempt organizations are required to submit annual filings to the IRS, the California Franchise Tax Board (FTB), the California Registry of Charitable Trusts (the Registry), and, in some cases, local governmental agencies (based upon the nature of the organization's exempt activities). However, all too often persons in charge of tax-exempt organizations ignore the risks of non-compliance, either through ignorance, negligence, or a misguided belief that their organization will escape review. Some boards of directors and officers of tax-

exempt organizations are clueless in their naive belief that their accountant is handling it. Even when knowledge of the annual filing requirements exists, compliance may find its way to the back burner.

The extremely negative consequences of failing to comply with IRS, FTB and the Registry's reporting requirements should never be ignored. When the IRS wake-up call finally comes, many noncompliant organizations learn the hard lesson that ignorance and procrastination can bare bitter fruit.

Obtaining tax-exempt status is not easy and once lost, it is often difficult, time consuming and costly to regain. Prior to January 3, 2014, the process for reapplying for tax-exempt status was the same as used for nonprofits seeking tax-exempt status for the first time. Previously, the IRS did not grant retroactive tax-exempt status unless the applicant organization could prove that its Form 990 had been timely filed. The IRS required such proof to be in the form of registered or certified mail receipts or other similar proof of delivery that Form 990 had been timely filed by overnight mail.

Without such proof of filing, the IRS would only confer tax-exempt status as of the postmark date of the reapplication on Form 1023 or Form 1024 (depending upon the type of organization), and the application was otherwise deemed adequate. Additionally, an organization that lost its tax-exempt status was subject to federal income tax on income earned from the date of revocation of exempt status until the date of reinstatement of exempt status. Donors could not claim charitable deductions made during the hiatus between loss of exemption and reinstatement of exemption. To regain tax-exempt status, an organization had to pay the applicable filing fee (either \$400 or \$850, depending upon the organization's actual or projected revenue), establish that it still met the requirements of section 501(c)(3), and file all of the previously unfiled 990 tax forms.

These IRS rules often led to draconian results for both small and large nonprofits and their donors. The IRS realized this and, as a result, on January 3, 2014, promulgated Revenue Procedure 2014-11, which is intended to ameliorate some of the most severe consequences resulting from automatic revocation of tax-exempt status.⁷

Today, there are significant benefits under this procedure for both small and large organizations that attain retroactive tax-exempt status. Such organizations will not be required to pay federal income tax on their revenue for the time their tax-exempt status was revoked, and they will not be subject to penalties for failure to file Form 990 (or some version thereof). Their donors may continue to claim a tax



Marshall A. Glick has practiced nonprofit law for over 45 years and has been a principal author for CCH, Inc. on the subject of forming and advising nonprofit organizations. He can be contacted at glicklaw@sbcglobal.net. **Heather P. Glick-Atalla** focuses her law practice on nonprofit law and estate planning. She can be contacted at hglick@glicklaw.com.



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deduction for contributions made to the organization prior to reinstatement and private foundations may include any grants received during such time in their calculation of charitable distributions.

Under Revenue Procedure 2014-11, the IRS now classifies organizations with automatically revoked tax-exempt status into three categories: small nonprofits that refile for exempt status within 15 months of automatic revocation; large nonprofits that refile for exempt status within 15 months of automatic revocation; and all nonprofits that refile for exempt status more than 15 months after their exempt status has been revoked. The IRS defines a small organization as a nonprofit that either had annual gross receipts less than or equal to \$50,000 or annual gross receipts of more than \$50,000 but less than \$200,000 with total assets of less than \$500,000. Under both scenarios, to qualify as a small nonprofit, the organization must have been eligible to file Form 990-N or Form 990-EZ for each of the three consecutive years it failed to file a return. Large organizations are defined as organizations that do not fall within the definition of small organizations.

A small nonprofit that has not previously lost its exempt status for failing to file Form 990 will have its tax-exempt status reinstated retroactively to the date its status was revoked if it files for reinstatement with the IRS within 15 months after its exempt status was lost. Under Revenue Procedure 2014-11, the 15 month period begins on either the later of the date the IRS provides written notification to the organization that it has lost its exempt status (the Revocation Letter) or the date the IRS first publishes notice of the organization's loss of exempt status (the Automatic Revocation List).

To file for reinstatement, the nonprofit organization must complete a new Form 1023 (or Form 1024, if applicable) application for exemption (just as had been required prior to January 3, 2014) and pay the filing fee. Because of the chance that the IRS may not have the organization's current mailing address at the time of automatic revocation, resulting in the Revocation Letter not being received, organizations should always file their reinstatement applications within 15 months of the first publication date of the Automatic Revocation List.

Once the IRS reinstates tax-exempt status, a small nonprofit organization must file all 990-EZ tax forms that it previously failed to file but such filings are not a prerequisite to obtaining reinstatement of tax-exempt status. Organizations that were eligible to use the postcard Form 990-N during the period they were no longer tax-exempt are not required to file Form 990-N for such years. Pursuant to Revenue Procedure 2014-11, a small organization that received reinstatement of its tax-exempt status prior to January 2, 2014, and that would have met all of the requirements for retroactive reinstatement, will be treated as

if it had been reinstated retroactively from the date its tax-exempt status was revoked.

Large organizations may also obtain retroactive reinstatement of tax-exempt status. If the organization files within 15 months of the loss of tax-exempt status, it may follow the same procedures used by small organizations, with two exceptions: prior to filing an application for reinstatement of tax-exempt status, all past due 990 tax forms must be filed with the IRS, including but not limited to Form 990 that became due after loss of exempt status; and large organizations must demonstrate that reasonable cause existed for their failure to file Form 990 for at least one of the three years leading to revocation of their exemption.

In order to establish "reasonable cause," an organization must be able to show (in a sworn statement filed under penalty of perjury) that it exercised ordinary business care and prudence in attempting to comply with IRS reporting requirements. In making such determination, the IRS will take into account all pertinent facts and circumstances, including, but not limited to, whether the organization's failure was due to its good faith, reasonable reliance on erroneous written information received from the IRS; whether the organization's failure to file Form 990 occurred because of events beyond the organization's ability to control that made it impossible for the organization to file the return for that year; whether the organization had established a history of complying with its Form 990 and other reporting requirements; and whether the organization acted in a reasonable and responsible manner to avoid or mitigate its failure to file the required return and to prevent similar reporting failures from occurring in the future.

The IRS defines having acted in a reasonable and responsible manner as efforts made to prevent any foreseeable impediments to filing; acting as promptly as possible to correct the cause of the reporting failure following its discovery; and implementing safeguards to ensure future compliance in a timely manner with all reporting requirements.

The IRS has indicated that an organization does not have to satisfy all four factors and that no single factor is determinative. However, the more factors that can be satisfied, the better chance the large organization has to obtain retroactive tax-exempt status. If a large nonprofit organization receives retroactive reinstatement of tax-exempt status, the IRS will waive any penalties for the organization's failure to file its Form 990 in a timely manner.

Both small and large organizations may still apply for retroactive reinstatement of tax-exempt status once the 15 month period has passed, provided that they can demonstrate that there was reasonable cause for failure to file Form 990 (or a version thereof for small organizations) for each of the three years leading to revocation.

If this requirement cannot be satisfied, tax-exempt status may nevertheless be reinstated but the effective date of reinstatement will be the postmark date on the application

for reinstatement. In such cases there is generally no retroactive reinstatement of tax-exempt status to the date of revocation, with one exception. If a large organization applied for and received reinstatement of exempt status prior to January 3, 2014, and would have satisfied the retroactive reinstatement requirements for large organizations that filed for reinstatement either within or after the 15 month period to file an application for reinstatement, a large organization may reapply for retroactive reinstatement if it meets the requirements of Revenue Procedure 2014-11. In such cases the large organization should submit a copy of its application as previously filed to receive reinstatement, its original determination letter granting tax-exempt status, and any other materials required under Revenue Procedure 2014-11.

Risk Management for Nonprofits

Not only do a surprisingly large percentage of exempt organizations ignore their annual federal and California information return filing requirements, they engage in a variety of inadequate administrative and record keeping practices (if records of income and expenses beyond a checkbook and bank statement are maintained at all) that may eventually lead to full blown investigations by the IRS, the FTB and/or the Registry. Such investigations may in turn culminate in revocation of the organization's tax-exempt status. Permanent revocation of tax-exempt status can be a death knell for charities, especially for those that depend upon public financial support for their existence.

Making timely annual information filings with the IRS, the FTB and the Registry is only the tip of the iceberg. It is the attorney's roll to educate clients about the importance of conducting tax-exempt activities in the manner recommended by the IRS, the FTB and the Registry. In addition to making their timely annual federal and state information filings, all exempt organizations should go the extra mile by adopting and strictly adhering to the letter and spirit of specific governance policies and procedures that the IRS promulgates.

When, for example, the Registry undertakes an intensive investigation of an exempt organization (most, if not all, complaints made to the Registry are fully investigated), the adoption early on of governance policies and procedures and the organization's strict adherence thereto may prove to be the ounce of prevention that saves a pound of cure.

Although the IRS does not require tax-exempt organizations to adopt specific forms of governance and management policies, it strongly encourages them to implement policies and procedures relating to conflicts of interest, investments, executive compensation, fundraising, documentation of governance decisions, document retention, whistleblower claims, and more as discussed below.⁸ The IRS also encourages public charities that have chapters or affiliates to adopt procedures and policies to ensure consistency and transparency in their operations.

The IRS recommends that board members regularly review the organization's financial statements and information returns,

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and consider whether an independent auditor should be retained.⁹ The IRS also encourages all public charities to adopt and monitor policies and procedures that ensure that all information about their mission, exempt activities, finance and governance is made available to the public.¹⁰

The early adoption of and strict adherence to risk management policies and procedures for all nonprofit organizations that have attained exempt status is essential to maintaining a healthy and vibrant tax-exempt organization. One of the most important monikers of risk management for nonprofits (in addition to the timely annual filing of the applicable version of Form 990 and making required annual filings with the FTB and the Registry) is to establish and ardently follow specific governance policies and procedures that mandate how the organization must conduct its exempt activities on a daily basis.

The following are 19 governance policies and procedures that are recommended for adoption by the board of directors of all nonprofit, tax-exempt organizations, be they small or large.¹¹

Whistleblower Policy for Reporting Fraud and Abuse

This policy outlines procedures for employees to report illegal acts and questionable practices without fear of retaliation, and establishes protocols for responding to complaints received from employees and other persons. This policy charges each employee with a good faith responsibility and affirmative obligation to report suspicious activity, authorizes an audit committee, and establishes a confidential system of internal reporting.

Fiscal Control Policy

This policy provides basic set procedures designed to keep financial responsibility at the forefront of the organization's activities at all times. It also identifies the line of authority and responsibility for officer, manager and employee access to, and control over, the organization's financial information, books and records. This policy should follow general principles of accounting and cover the handling of cash receipts, cash disbursements, purchasing, payroll, taxes, receipt of property, leases, insurance, budgets, travel and expenses, grants and contracts, loans and other related topics.

Governance and Code of Ethics

These practices promote honesty, transparency, and shapes the working environment with mandates that reflect respect, fairness and integrity in all of the organization's activities. It also declares that each board member, officer, staff member and volunteer will continuously affirm the organization's mission, respect the governance responsibility of the board of directors, ensure compliance with the law, practice responsible stewardship over all assets and properties of the organization, encourage diversity, provide accurate and complete information to the public, and conduct fundraising with the utmost honesty and integrity.

Records Retention Policy

This policy reviews a comprehensive list of documents relevant to nonprofit governance and provides a timetable for document retention, as outlined in IRS Publication 4221-PC and provided for under the California Corporations Code. Categories of documents covered include institutional and legal records, federal and California tax records, accounting and financial records, litigation related records, insurance records, bank records and personnel files. Also included are provisions to keep all records and electronic data safe from destruction, revision or loss.

Policy for Acceptance of Donated Marketable Securities

This policy establishes a clear method for accepting donations of marketable securities by authorizing the immediate liquidation by sale of donated stocks and bonds upon their receipt. This policy enables the organization to avoid losing money on time sensitive valuation assets that are received by foregoing a board or committee decision. It also requires that this policy be disclosed to all prospective donors of marketable securities prior to acceptance of the donation.

Board Finance Committee Charter

The charter establishes a board finance committee to effectively guide, oversee and support financial and tax practices of the organization. It also defines the committee's organization and reporting structure, provides goals with specifically enumerated objectives, and specifies timelines for compliance with legal and internal requirements, including requirements established by the organization's governance policies and procedures.

Board Member Annual Affirmation of Service

This practice reminds each board member of his or her commitment to serve on committees, attend board meetings on a regular basis, uphold and strengthen the organization's mission, comply at all times with the organization's code of ethics and by-laws, and contribute meaningfully in furtherance of the best interests of the organization and the public at large.

Board Member Peer Evaluation

This practice assists with governance and board development by allowing for the assessment of individual board member performance in a confidential and collaborative manner. It provides a multi-point response scale, along with evaluation questions, and gathers important information about board member feelings and attitudes toward other board members, without being overly time consuming to complete.

Board of Directors Membership Guidelines

These guidelines assist board members in developing a clear understanding of the expectations of board members and the level of commitment required for membership on the board of directors of the organization.

Confidentiality Policy

This policy defines the scope of confidential information and provides an action list for directors, officers, staff and independent contractors to follow when handling confidential information of the organization. It also requires that every director, officer, staff member and independent contractor be instructed regarding the confidentiality of information and how to maintain confidentiality.

Conflict of Interest Disclosure Questionnaire

This practice requires the organization's directors, officers and other controlling persons to identify when an actual or potential conflict of interest arises or has arisen and outlines a structured process for dealing with recognized conflicts of interest. The questionnaire should be specifically designed for use on an annual basis. It also requires that each board member, officer or other controlling person disclose the existence of any employee family members, receipt of direct or indirect remuneration, financial, business, or personal interest in each entity that the organization will do or currently does business with, and membership on other boards, affiliations with auditors of the organization and relevant legal proceedings. Board members, officers and other controlling persons are also required to disclose any other information that the organization should otherwise be made aware of.

Donor Bill Of Rights

This document specifies distinct rights that the organization declares are vested in all donors and ensures that donors and prospective donors may have full confidence in the organization and the exempt causes it supports.

Ethics Rules and Policies

Nonprofit organizations should provide a comprehensive ethics statement that can be used by board members, officers, other controlling persons and employees. This reflects the high-standards of professionalism and integrity required of those who are entrusted with the organization's assets and confidential information. Internal procedures and external relationship topics are covered that include funds, property, time, antitrust and insider trading, confidentiality, conflicts of interest, environmental protection, gifts, undue influence on contracts, intellectual property, media and public relations, internet/computer usage, record keeping, retaliation and other topics.

Expense Reimbursement Policy

This policy assists the organization in controlling costs and expenses, and complying with applicable state and federal laws, statutes and ordinances when providing reimbursement of reasonable and necessary expenses incurred by Directors, officers, other controlling persons and employees. Lists examples of reimbursable and non-reimbursable expenses and establishes a step-by-step approach to follow in the reimbursement procedure.



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General Board Committee Protocols

These protocols establish procedures for the removal of a board committee or committee member and specifies a unified set of roles and responsibilities for committee chairs and committee members. It also provides general guidelines for holding committee meetings and maintaining committee records of proceedings.

Governance and Board Development Committee Charter

This charter establishes a governance committee and defines the scope of its work and purposes. The committee is charged with the responsibility of retaining outside legal counsel if and when needed, reviewing the organization's by-laws and recommending by-law revisions to the board of directors, nominating the chairman of the board, and overseeing various aspects of board composition and the organization's governance generally.

Individual Board Member Annual Self-Assessment

This practice provides an annual self-assessment tool that helps identify how a board member is performing and how board members may improve and strengthen communication and understanding among board members. It also assists board members in taking their responsibilities seriously. Scaled response categories target key areas of board participation and open-ended response sections promote in-depth reflection by each board member.


Nomination Process for Selecting Members

This practice provides a multi-step procedure for assessing prospective board members in view of the organization's needs and specifies criteria that include leadership skills, community experience, specialized knowledge and diversity. It also encourages interviews of multiple potential board candidates.

Protocol for Issues Involving Outstanding Prior Year Checks

This procedure promotes better internal control mechanisms by establishing procedures for the disposition of unclaimed or uncashed checks. It also ensures that cash and expense reporting for a closed period will not be subsequently altered.

The preceding list is not all inclusive and each tax-exempt organization should consider adopting such additional governance policies and procedures that are consistent with the exempt purposes and activities conducted by the organization, as may be needed to round out the organization's comprehensive risk management program.

In a review (i.e., investigation) by the IRS, the FTB or the Registry, there may be a world of difference in the outcome between those organizations that can prove they adopted and strictly adhered in their daily activities to the letter and spirit of the above governance policies and procedures, and those organizations that chose to bury their heads in the sand and gave little if any credence to risk management. 

¹ Amy Blackwood and Katie L. Roeger, "Revoked: A Snapshot of Organizations that Lost their Tax-Exempt Status," Urban Institute, published, August 29, 2011, available at <http://www.urban.org/publications/412386.html>.

² The online Non-Filer Automatic Revocation List was first released by the IRS on June 8, 2011, and has been subsequently updated on a monthly basis. See Internal Revenue Service, "Automatic Revocation of Exemption List," available at <http://www.irs.gov/Charities-&-Non-Profits/Automatic-Revocation-of-Exemption-List>.

³ 120 Stat. 780; Public Law 109-280, adopted August 17, 2006.

⁴ Under current law, small exempt organizations with gross receipts of normally \$50,000 or less are not required to file Form 990, Return of Organization Exempt From Income Tax, or Form 990-EZ, Short Form Return of Organization Exempt From Income Tax. Most small tax-exempt organizations annually file the e-Postcard, Form 990-N, electronically with the IRS. Exceptions to this requirement include private foundations that file Form 990-PF, section 509(a)(3) supporting organizations that file Form 990 or Form 990-EZ, and organizations that file group returns. The annual filing requirement does not apply to churches and synagogues, their affiliated auxiliaries, and conventions or associations of churches and synagogues.

⁵ CCH Group, "More Than 400,000 Organizations Automatically Lose exempt Status, IRS Official Says," published March 23, 2012, available at <http://news.cchgroup.com/index.php/tax-headlines/federal-tax-headlines/more-than-400000-organizations-automatically-lose-exempt-status-irs-official-says/>.

⁶ Even for organizations that neither receive nor generate revenue (i.e., donations, interest and other income, dividends and the like) during a year, the so-called "postcard" Form 990-N filing with the IRS is required to be filed.

⁷ See 26 CFR 1.6033-2; Internal Revenue Service, "Revenue Procedure 2014-11," available at <http://www.irs.gov/pub/irs-drop/rp-14-11.pdf>.

⁸ See Department of the Treasury, Internal Revenue Service, *Compliance Guide for 501(c)(3) Public Charities*, Publication 4221-PC (Rev. 7-2014), page 22.

⁹ California Government Code Section 12586(e)(1) (all public charities with annual revenue of \$2,000,000 or more are required to have audited financial statements).

¹⁰ *Id.*

¹¹ The designated governance policies and procedures are not intended to be all inclusive and should be adopted by the board of directors of each tax-exempt organization either at a regular or special meeting, or by an action by unanimous written consent of the board members. The minutes of such meeting or action by unanimous written consent should be placed in the minute book of the organization, and copies of all governance policies and procedures should be distributed to all Directors, officers, and other persons charged with the responsibility of administering or overseeing such policies and procedures.

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1. The Nonprofit Protection Act of 2006 mandates the automatic revocation of tax-exempt status for any nonprofit organization that fails to file informational returns for three consecutive years.
☐ True ☐ False
2. Under Revenue Procedure 2014-11, the IRS defines a large nonprofit organization as one that has gross receipts of more than or equal to \$200,000 and total assets of more than \$50,000.
☐ True ☐ False
3. Nonprofits that obtain retroactive tax-exempt status under Revenue Procedure 2014-11 do not have to pay penalties for failure to file Form 990.
☐ True ☐ False
4. Under Revenue Procedure 2014-11, the 15 month period to file for retroactive tax-exempt status begins when the IRS publishes the organization to the Automatic Revocation list regardless of when the IRS provides written notification to the organization that it has lost tax-exempt status.
☐ True ☐ False
5. Large organizations must demonstrate that reasonable cause existed for their failure to file Form 990 for at least one of the three years leading to revocation of tax-exempt status as part of the process to obtain retroactive reinstatement under Revenue Procedure 2014-11.
☐ True ☐ False
6. For small nonprofit organizations filling all 990-EZ tax forms is not a prerequisite to obtaining reinstatement of tax exempt status under Revenue Procedure 2014-11.
☐ True ☐ False
7. Under Revenue Procedure 2014-11, organizations may not apply for retroactive reinstatement after the 15 month period has passed under any circumstances.
☐ True ☐ False
8. Large nonprofit organizations must file all past due 990 tax forms, including those that became due after loss of exempt status, prior to filing an application for reinstatement of tax-exempt status under Revenue Procedure 2014-11.
☐ True ☐ False
9. The IRS requires tax-exempt organizations to adopt the specific forms of governance policies and procedures, as required in the IRS Compliance Guide for 501(c)(3) Public Charities.
☐ True ☐ False
10. Nonprofits that have obtained tax-exempt status with the IRS must file some version of Form 990 every two years.
☐ True ☐ False
11. Under the prior procedure for attaining tax-exempt status following automatic revocation, and the new Revenue Procedure 2014-11, in order to file for reinstatement, a nonprofit organization is required to complete a new Form 1023 (or Form 1024 if applicable).
☐ True ☐ False
12. The IRS classifies organizations with automatically revoked tax-exempt status into four categories.
☐ True ☐ False
13. Large organizations filing for reinstatement under Revenue Procedure 2014-11 may have to show an established history of complying with filing Form 990 and other reporting requirements.
☐ True ☐ False
14. A whistleblower policy protects employees guilty of committing illegal acts from employer reprisal of any kind.
☐ True ☐ False
15. A confidentiality policy is for use with directors, officers and staff but should not be used with independent contractors of the organization.
☐ True ☐ False
16. A comprehensive expense reimbursement policy includes examples of reimbursable and non-reimbursable expenses in addition to providing a detailed procedure for approving reimbursements.
☐ True ☐ False
17. Annual board member self-assessment tools or questionnaires are generally designed to help board members identify and claim any uncashed checks.
☐ True ☐ False
18. Currently, the only way nonprofits are notified that their tax-exempt status has been revoked is by the online Non-Filer Automatic Revocation List maintained on the IRS website.
☐ True ☐ False
19. Under Revenue Procedure 2014-11, donors who made contributions prior to reinstatement may continue to claim a tax deduction if the nonprofit organization secures retroactive tax-exempt status to a date on or before the date their donation was made.
☐ True ☐ False
20. Because of Revenue Procedure 2014-11, obtaining tax-exempt status for exempt organizations has become much easier.
☐ True ☐ False

MCLE Answer Sheet No. 74

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$15 testing fee for SFVBA members (or \$25 for non-SFVBA members) to:

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5567 Reseda Boulevard, Suite 200
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METHOD OF PAYMENT:

- ☐ Check or money order payable to "SFVBA"
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5. Make a copy of this completed form for your records.
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ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

- | | | |
|-----|-------------------------------|--------------------------------|
| 1. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 5. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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Irma Mejia is Editor of *Valley Lawyer* and serves as Publications and Social Media Manager at the San Fernando Valley Bar Association. She also administers the Bar's Mandatory Fee Arbitration Program. She can be reached at editor@sfvba.org.

A large window in an office setting provides a view of a cityscape with mountains in the background. The window is divided into two panes by a dark frame. The city below is filled with buildings, trees, and parking lots. The mountains in the distance are hazy and blue. The office interior is visible in the foreground, including a desk with papers and a chair.

An Unconventional Journey: Alan Gurvey and a Commitment to Service

By Irma Mejia

The second annual *Valley Lawyer* Cover Auction raised \$4,001 to benefit the Valley Community Legal Foundation. This year's winner, Alan Z. Gurvey, is a passionate workers' compensation attorney. In addition to managing a busy practice, he hosts a weekly radio program about the intersection of the law and everyday life. And in between it all, he still finds time for family and public service.

Photos by Paul Joyner

THE VALLEY LAWYER COVER AUCTION IS A YOUNG tradition but one that is picking up steam. It allows SFVBA members the opportunity to promote their work in the community while raising money for a worthy cause. This year's auction winner, Alan Z. Gurvey, is an excellent example of a Valley attorney carving a unique path to make an impact in the community.

Gurvey's current success is the result of a non-traditional career path, one that led him to explore extraordinary options and meet his goals at his own pace. As managing partner of Rowen, Gurvey & Win in Sherman Oaks, his practice focuses exclusively on workers' compensation, helping people who are suffering from injuries or disabling conditions. He also hosts a weekly radio show, Gurvey's Law (790 KABC) and commits his free time to supporting local causes through the Los Angeles Trial Lawyers Charities (TLC).

A State Bar-Certified Specialist in Workers' Compensation Law, Gurvey is a respected leader in his field with over twenty years of experience. But the road to his success was never clear-cut. "I feel so fortunate. Sometimes you have to wait because life doesn't always give you what you want right away," he says. "I can't say that it was always smooth sailing but somehow I just continued with the will to get what I wanted. I know there's luck involved but there's also work."

After completing his undergraduate degree at Brown University, Gurvey worked for a major advertising agency in Chicago. There he was bitten by the acting bug and took improvisation lessons at Second City. He continued his classes even after his office was transferred to Canada. Eventually he moved to Los Angeles to pursue acting full-time. He landed odd jobs in the entertainment industry, including a two-year stint as a disc jockey on a cruise ship.

With a helpful push from his parents, he took a break from acting to enroll in law school. "I was very thankful," he says of his parent's intervention. "I could finally do something that I

could put my heart and soul in and not feel like it's up to chance if I succeed or not."

Law seemed to be the perfect fit for him: he had served as class president throughout grammar school and later joined the debate team in college. "I always had the gift of the gab," he says. "I was either going to end up acting as a lawyer on TV or being an actual lawyer."

He earned his law degree from the University of Manitoba in Winnipeg, Canada and worked in the legal department at NBC Studios, where he had gotten a start as a law student intern. He did legal work for various productions, including "Saved by the Bell."

The entertainment industry kept drawing him in other ways. He started to produce his own projects but he soon found that he required a more stable income. As he describes it, "Everyone has strange twists and turns in life." He eventually answered an ad for a workers' compensation attorney at the Law Firm of Kenneth H. Rowen, a leading workers' compensation practice.

What initially began as contract work ended up becoming a permanent gig, with him staying on for 22 years. But early on, he still wasn't quite sold on lawyering. He remembers telling a judge on the workers' compensation appeals board that he was going to Canada to act. "It's kind of embarrassing every time I appear before him," he says. "I had told him, 'I'm done with this' and there I am arguing my cases 18 years later."

Gurvey eventually came to enjoy and excel in the field of workers' compensation. "I'm still learning today but at the beginning I didn't have enough confidence," he says. The key to gaining confidence? "Do your homework," he says. "Do your research. Understand your topic." It's the advice he gives to all new attorneys: "When you get a new file, read every word in it."

His affable personality helped him make friends and do well with attorneys and judges. Soon he found his niche. "I am passionate about the fight to help people. I take pride and it warms my heart when I am able to turn people's lives around,





people who had no other place to go," he says. "To be able to make an impact in their lives is invaluable."

His expertise is also in demand. He has presented at meetings of the California Applicants Attorneys' Association, the State Bar's Workers' Compensation Section, the California Workers' Compensation Defense Attorneys' Association, among other organizations. He currently serves on the Board of Governors of the California Applicants' Attorneys Association (CAAA) and is co-chair of CAAA's education committee and an active member of its technology and regulations committees.

The passion for helping people is shared throughout the firm. Founded by Kenneth H. Rowen in 1968, the firm has grown to include seven attorneys practicing exclusively in workers' compensation. With the passing of Rowen in 2007, the remaining partners faced the challenge of carrying on his legacy. "What we do here didn't die with him," says Gurvey.

Today, the Law Firm of Rowen, Gurvey & Win is a thriving practice with a family environment. "We try to bring humanity back into the legal profession and the firm," he explains. Regular staff meetings and open channels of communication help nurture the sense of unity, which is apparent in the loyalty of staff, some of whom have been with the firm for thirty years.

Interestingly, Gurvey, the once fickle attorney and sometimes actor, became the firm's managing partner and led it through the difficult period to its current success. Along the way, he found an outlet for his interest in the entertainment industry. The radio appearances he started doing a few years ago led to his own radio show, Gurvey's Law, on 790 KABC. The show airs Saturdays and is co-hosted by Kerri Kasem.


As Gurvey explains, the show's title is a spin on Murphy's law. "The purpose of the show is to take negative things and turn them into positives," he says. "In Gurvey's Law, anything that can go wrong can also go right." The show features interviews with celebrities and attorneys, from Gloria Allred and Dean Erwin Chemerinsky to Ed Alonzo. The show often centers on a particular theme, as did a recent one on bullying featuring actor Martin Krove, who appeared in *The Karate Kid*.

As part of the show, Gurvey makes it a point to inform the public about the law and its effect on certain issues. "I really try to convey to people that you can have a lot of knowledge, expertise and opinion but not have to be stuffy, arrogant or holier-than-thou," he says. The show recently celebrated its one year anniversary.

When asked how he is able to balance the demands of the law firm with those of the radio show, Gurvey explains that it's a matter of compartmentalizing the two types of work. He focuses on his law practice during the week and relies on an excellent support staff, including his senior paralegal and show producer, Erica Wise. His Friday nights and Saturday mornings are dedicated to preparing for the show.

All the while, he maintains a strong commitment to community service, especially children's charities. As a teenager he started a program called Fun on Wheels which brought arts, crafts and sports equipment to children in inner city parks. As an adult, he has given his time to the Boys and Girls Club, the Make-A-Wish Foundation and the Special Olympics for which he coached track and field. Most recently, he became an honorary board member of the Los Angeles Trial Lawyers' Charities (TLC). Through TLC he is able to volunteer for a variety of causes, from reading to children to mentoring at-risk youth.

According to Gurvey, giving back is about recognizing oneself in another person. "I've always felt that we are all the same, no matter the background, opportunities or lack thereof," he says. "I just want people to realize that with hope, motivation, and positive thinking, you can be something. You don't have to be a doctor or a lawyer but you can be proud of yourself and have others be proud of you, too."

With success in law and radio, his proudest accomplishment remains his family. When not volunteering, broadcasting or litigating, Gurvey spends quality time with his 2-year-old son Hudson, 1-year-old daughter Harper, and his wife Nancy. "I hate to say it but taking the kids skating is more fun than winning a case," he says. 

Changes to Criminal Sentencing under Proposition 47

By Dmitry Gorin,
Alan Eisner and
Brad Kaiserman

LAST MONTH, CALIFORNIANS decisively voted into effect Proposition 47, an important measure for bringing more balanced sentencing to California's criminal justice system. Through a combination of code amendments and additions, Proposition 47 reduces several felony theft and drug possession offenses to misdemeanors, except for persons with certain criminal histories.

This reclassification of offenses impacts three types of defendants: those who will be facing or are currently

facing charges on one of the reclassified offenses; those who are currently serving a sentence on one of the reclassified offenses; and those who have already served a sentence on one of the reclassified offenses.

Theft Offenses

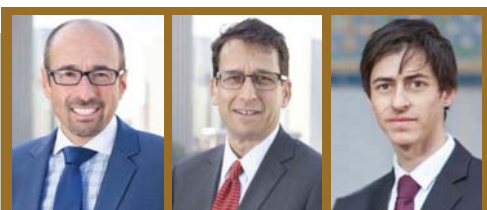
Proposition 47 modifies three wobbler¹ theft offenses: forgery (Penal Code (PC) §473), insufficient funds (PC §476a), and receiving stolen property (PC §496). Under the new scheme, these offenses are now misdemeanors if the value of

the property in the offense is under \$950. However, there are two important caveats. As to forgery, the reduction to misdemeanor does not apply to persons convicted of both forgery and identity theft (PC §530.5). And as to insufficient funds, the reduction to misdemeanor does not apply to persons made ineligible by specified prior convictions.²

Proposition 47 also creates the new offense of shoplifting (PC 459.5(a)). According to the code section, "shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary." The section also notes in subdivision (b) that "[n]o person who is charged with shoplifting may also be charged with burglary or theft of the same property." In sum, Proposition 47 addresses a common prosecutorial filing practice of charging multiple offenses for a single act of shoplifting.

The new measure also adds PC §490.2 to define petty theft as "obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950)." The statute also clarifies that this definition of petty theft must be used "[n]otwithstanding §487 or any other provision of law defining grand theft."

Additionally, whereas previously the penal code had punished recidivist petty theft offenders by making a defendant's fourth petty theft a felony,



Dmitry Gorin and **Alan Eisner** are partners in Eisner Gorin LLP, a criminal defense firm in Van Nuys. Gorin is a former Deputy District Attorney. Eisner is a State Bar-Certified Criminal Law Specialist with over 25 years of trial experience. Gorin can be contacted at dg@egattorneys.com and Eisner at alan@egattorneys.com. Brad Kaiserman is an associate with Eisner Gorin LLP and specializes in motion and appeals work. He can be contacted at brad@egattorneys.com.

Proposition 47 removed petty theft with a prior (former PC §666(a)) for those defendants except in cases in which the defendant either is required to register as a sex offender (PC §290), has a prior violent or serious felony conviction under PC §667(e)(2)(C)(iv),³ or has a conviction under PC §368(d) or (e) (thefts by caretakers of elderly or dependent adults).

Drug Offenses

Proposition 47 reduces to misdemeanors most felony drug possession cases, including possession of concentrated cannabis, LSD, cocaine, heroin, and methamphetamine (Health and Safety Code Sections 11350, 11357(a) and 11377).

Possession of marijuana (excluding concentrated cannabis) under 28.5 grams remains an infraction under PC §11357(b). With reduced drug offenses, Proposition 47 keeps people from being classified as convicted felons, making it easier for them to find and maintain employment. It is important to note that offenses for drug trafficking and sales are not reduced by Proposition 47.

Exception for Criminal Background

The big exception to Proposition 47's changes applies in cases in which the defendant is either already required to register under PC §290 or the defendant has a prior violent or serious felony conviction under PC §667(e)(2)(C)(iv).³ If the defendant meets this criteria, then the offense may still be prosecuted under the old sentencing scheme and be filed as a felony in the charging documents. In sum, individuals with convictions for specified strike offenses and registered sex offenders will not be benefited by Proposition 47.

Persons Currently Serving a Sentence for a Newly Categorized Offense

The changes brought on by Proposition 47 can be applied retroactively. The new measure adds PC §1170.18,

which outlines the procedure for persons who are serving a sentence or already served a sentence for one of the offenses described above. If a person is currently serving a sentence on a felony that would have been categorized as a misdemeanor under Proposition 47, the person may petition the court for re-sentencing. The court will then resentence the person under Proposition 47 unless "the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety."

The statute provides what the court may consider in making this assessment and clarifies that "'unreasonable risk of danger to public safety' means an unreasonable risk that the petitioner will commit a new violent felony" under PC §667(e)(2)(C)(iv).

Furthermore, no person with a prior conviction of an offense requiring registration under PC §290 or of an offense under PC §667(e)(2)(C)(iv) may be re-sentenced. The statute also states that no resentence may be higher than the original sentence. Any petition for resentencing must be filed within three years from the effective date of Proposition 47.

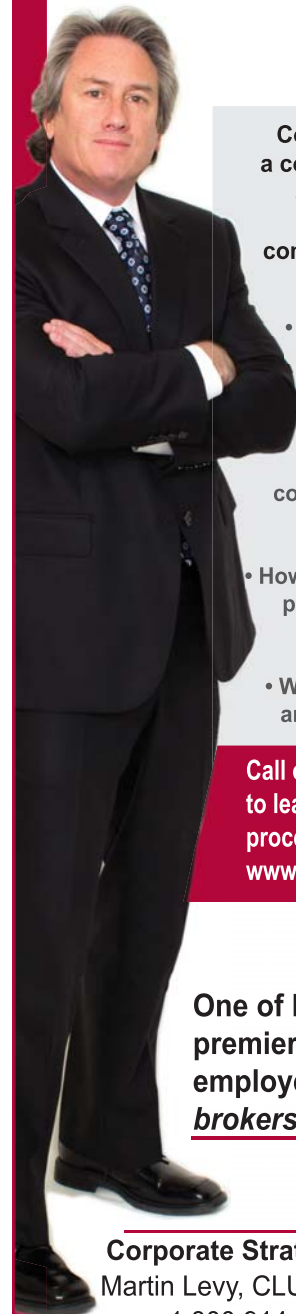
Persons Who Have Already Served a Sentence for a Newly Categorized Offense

Under PC §1170.18(f) and (g), a person who has already completed their sentence on an offense that would have been a misdemeanor under Proposition 47 may also petition the court to have their offense designated as a misdemeanor. This is important for employment prospects, as the system will no longer classify them as felons. However, Proposition 47 does not provide people eligible for relief with the right to possess a firearm. Already, courts are granting petitions for relief under Proposition 47.

Again, no person with a prior conviction of an offense requiring

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registration under PC §290 or of an offense under PC §667(e)(2)(C)(iv) may have their offense reclassified. Any petition for the offense to be designated as a misdemeanor must be filed within three years from the effective date of Proposition 47.

Potential Financial Impact

According to the language in Proposition 47, money saved on incarceration costs will be redistributed to crime prevention and support programs in K-12 schools, trauma recovery services for crime victims, and mental health and substance abuse treatment programs.

This new law is particularly helpful to minor theft or narcotics offenders who do not have a history of convictions for violent crimes or crimes requiring sex offender registration. It enables citizens to remove the stigma of being a convicted felon, allowing them to regain their rightful place in the workforce and community at large. 

¹ A wobbler is a criminal offense that gives the prosecution discretion to classify the offense as either a misdemeanor or a felony in the charging document.

² Persons are ineligible if they have prior convictions for violations of PC Sections 470, 475, 476, the new 476a, or for petty theft if it was also a violation of Sections 470, 475, 476, or for 476a. Persons are also ineligible if they have prior convictions in another state or under federal law of an offense (including petty theft) that would be punishable in California under Sections 470, 475, 476, or 476a.

³ PC §667(e)(2)(C)(iv) lists the following offenses: "(I) A 'sexually violent offense' as defined in subdivision (b) of §6600 of the Welfare and Institutions Code. (II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by §288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by §286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by §289. (III) A lewd or lascivious act involving a child under 14 years of age, in violation of §288. (IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive. (V) Solicitation to commit murder as defined in §653f. (VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of §245. (VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of §11418. (VIII) Any serious and/or violent felony offense punishable in California by life imprisonment or death."

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► 9:30 a.m.
Ethics of Partnership Agreements
Wesley Hampton, Narver Insurance
1 Hour MCLE (Legal Ethics)

► 10:30 a.m.
Financial Disclosures
Chris Hamilton, CPA, CFE, CVA
Arxis Financial, Inc.
1 Hour MCLE

► 11:30 a.m.
Rules of Professional Conduct
Judge James Steele, Ret.
ADR Services, Inc.
1 Hour MCLE (Legal Ethics)

► 12:30 p.m.
Lunch

► 1:30 p.m.
Bar Discipline
Professor Robert Barrett
2 Hours MCLE (Legal Ethics)

► 3:30 p.m.
Polygraph 2015...If It's Not
Admissible...Why Bother?
Jack Trimarco
Jack Trimarco Polygraph Services
1.5 Hours MCLE

SATURDAY JANUARY 17

► 9:30 a.m.
Nuts and Bolts of Estate Planning
Alice A. Salvo
Law Offices of Alice A. Salvo
1 Hour MCLE

► 10:30 a.m.
Top Ten Insurance Mistakes:
How Best to Advise Your Clients
Elliot Matloff
The Matloff Company
1 Hour MCLE

► 11:30 a.m.
Elimination of Bias
Carol L. Newman
1 Hour MCLE (Elimination of Bias)

► 12:30 p.m.
Lunch

► 1:30 p.m.
Collecting Fees
Jonathan B. Cole and David A. Myers
Nemecek & Cole
1 Hour MCLE

► 2:30 p.m.
Prevention of Substance Abuse
Ron Hoffman
1 Hour MCLE (Prevention of
Substance Abuse)

► 3:30 p.m.
Bankruptcy Tips for the
Non-Bankruptcy Practitioner
Steven R. Fox
1 Hour MCLE

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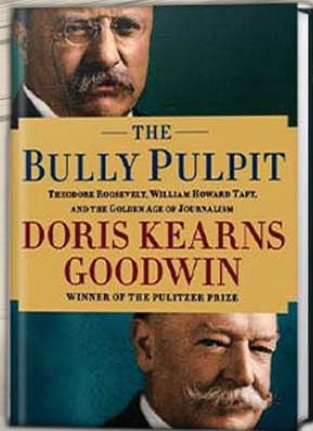
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A COLORFUL, CONTRADICTIONARY TIME



The Bully Pulpit: Theodore Roosevelt, William Howard Taft and the Golden Age of Journalism

By David Gurnick

CONSIDER THE HERCULEAN efforts, endless campaigns and long, windy roads politicians trek, seeking to become our nation's president. Consider the media's impact, helping some politicians succeed while destroying others. In *The Bully Pulpit: Theodore Roosevelt, William Howard Taft and the Golden Age of Journalism* (Simon & Schuster, 2013), Doris Kearns Goodwin brings back to life the colorful personalities of two presidents (Theodore Roosevelt and William Howard Taft), major events at the start of the twentieth century, contradictions in their personalities, and the drama of an important era in American law, journalism

and history. The book is fascinating reading by a gifted biographer of several U.S. Presidents, and most recently, the author of *Team of Rivals* about Abraham Lincoln and his cabinet.

Theodore Roosevelt is often ranked among America's greatest Presidents. Scholars give Taft far less attention. Goodwin shows us these two Presidents in relationship to each other. And their relationship was important.

Despite upbringings in families of wealth and power, Roosevelt and Taft could hardly have differed more from each other. Roosevelt, a short, sickly child in New York, read, studied, and became a physical fitness fanatic, with

a vibrant, extroverted, even abrasive personality. His intellectual interests encompassed all subjects, from arts to history to ornithology to taxidermy.

Taft, by contrast, was an oversized, more often than not overweight, paragon of good cheer, a jolly fellow, loved and respected by all he met, yet introverted, with narrower interests. Once, he told Roosevelt, "I don't believe you can interest me in natural history."

Goodwin traces the histories of these two large figures—how fortune brought them together, their friendship, their political partnership, and later their break and epic conflict with each other. But Goodwin's book traces much more. Presidential biographies so often simply focus on their subject but Goodwin shows us another important development of the Roosevelt-Taft era. Similar to how the internet has brought epic changes to the world over the past two decades, with politicians from Clinton to Obama embracing the new media, the turn of the nineteenth century also saw an important change in media: the birth and age of muckraking journalism. Goodwin's book explores Roosevelt and Taft in this context, showing how print media was instrumental in their formation as public figures and how they worked with the new media.

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After graduating from Harvard, Roosevelt won a New York Assembly seat. Upon the birth of his first child, his wife and his mother died on the same day. Distraught, Roosevelt placed his new daughter Alice Lee with his sister, suspended his aristocratic life, and moved to the rugged badlands of North Dakota to escape his misery. For most of two years, Roosevelt rode the range, wrangled cattle, lived with and learned to relate to a different class of people.

Taft was more introspective, exhibiting less energy, though no less initiative. He graduated from Yale, then tried his hand at law but did not succeed. Supported by a wealthy and powerful family (his father was Secretary of War and Attorney General under Grant), Taft obtained positions of increasing importance, and under President Benjamin Harrison was U.S. Solicitor General.

Roosevelt returned, getting a position in Washington D.C. on the U.S. Civil Service Commission. His and Taft's capitol residences were not 1,000 feet apart, and so they met. Opposites in so many ways (as Goodwin notes, "Taft steadfastly shunned the very spotlight Roosevelt craved"), the two became social friends and political allies.

When the Spanish-American War broke out in 1898, Roosevelt was Assistant Secretary of the Navy. He resigned to form a fighting regiment, and led his Rough Rider brigade in a charge that became famous. He was reckless—riding atop a horse while being shot at—and fortunate not to be killed. Roosevelt became a national hero, leading to his election as New York governor. Though popular as a reformer, Roosevelt would not bow to the will of party bosses. To rid themselves of him, the bosses had Roosevelt nominated for Vice President, running-mate to William McKinley. They were elected in 1900.

Then lightning struck. President McKinley was assassinated. At age 42, Roosevelt was the youngest person ever to be President.

Taft, meanwhile, had been appointed by McKinley as Governor-

General of the Philippines, which had been won by the United States in the Spanish-American War. When Roosevelt was elected in 1904 to his own term as President, he summoned Taft to serve as Secretary of War.

But Goodwin enthralls the reader with much more. She recounts a much deeper history. Woven in are the important biographies of wives Edith Roosevelt and Nellie Taft. And the all-important history of America's muckraking era—the birth of deep investigative journalism. Goodwin gives us the fascinating biographies of S.S. McClure, founder of McClure's Magazine. A dirt poor immigrant with a knack for identifying interesting news, McClure assembled "the most notable combination [of writers] that ever launched any publication," famed writers Ida Tarbell, Lincoln Steffens, William Allen White and Ray Stannard Baker. A forerunner to investigative journalism of the later twentieth century, Goodwin recounts how McClure's Magazine exposed the political corruption, roots of labor strife, abuses of the corporate trusts, and other social ills of the early 1900s.

Even more important, Goodwin shows us Roosevelt's give-and-take with journalists, his insight into using the press, and allowing himself to be used, wherein they mutually served each other. Goodwin points out that Roosevelt granted exclusive interviews, got reporters to hold their stories until he was ready for them to be made public, and got the media to cover matters that supported his legislative initiatives. Thus, muckraking helped Roosevelt get major legislation enacted—railroad regulation, meat inspection and the Pure Food and Drug Act—all in one session of Congress. These "monumental measures marked the beginning of a new epoch in federal legislation"—the Progressive Era.

In an impulsive moment the night he was elected to a full term, Roosevelt announced he would not run again. He later regretted that commitment, but adhered to it in 1908, choosing his friend Taft to be his successor. Taft

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was elected to carry on Roosevelt's platform but soon rifts emerged. When Roosevelt returned to the United States after a yearlong African safari, the rift had grown.


Combined with Roosevelt's craving for limelight, he did run again for President—in 1912 against his old friend Taft. Goodwin takes us through the intrigue of the Republican Convention. It was the start of direct state primaries, and the popular Roosevelt won most of the states that held direct primaries. But Taft, by controlling party machinery, won the nomination by carrying states that did not hold primaries.

Roosevelt cried foul, stormed out of the party convention and started a new party, the Progressives, with a nickname gained when Roosevelt claimed to be

strong as a "bull moose." One day on the campaign trail, Roosevelt was shot by a would-be assassin before a scheduled speech. Bull moose that he was, with a bullet lodged in his chest, Roosevelt gave the speech anyway.

The Roosevelt-Taft rift split the Republican Party in 1912, allowing Democrat Woodrow Wilson to be elected, with only 40% of the vote. Roosevelt was relegated to the role of former President, writing and speaking. Taft, who disliked politics and never wanted to be President, had one more important role to fulfill. His lifelong dream was achieved in 1921 when President Harding appointed him Chief Justice of the United States, a position he held until 1930.

We hear a lot about today's fast paced world. But when one pauses

to consider how much went on in the seemingly much slower-paced early 1900s, how much Goodwin weaves together in this extensive work—deep biographies of two Presidents, their wives, five of America's most important journalists, a history of an important era in journalism, and illumination of historic events of the times—a War, governance of the Philippines, building of the Panama Canal, important social legislation of the Progressive Era—it can seem exhausting. Goodwin weaves it all together brilliantly so that the book moves along easily, covering all this, and more. The *Bully Pulpit* is a rich, deep, exciting contemporary review of larger-than-life figures in a colorful and important era in United States political, lawmaking and journalistic history. 



David Gurnick is an attorney with the Lewitt Hackman firm in Encino. David represents franchisors, franchisees and other businesses in litigation, dispute resolution and transactions. David is a Past President of the SFVBA and can be reached at dgurnick@lewitthackman.com.



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Attorney and mediator **David I. Karp** has earned the 2015 Martindale-Hubbell® AV Preeminent™ Rating, the highest possible rating for legal ability and ethical standards.

Linda Temkin, Liz Post, Rosie Soto Cohen and Caryn Brottman Sanders were on hand to welcome SFVBA and CalCPA members at a mixer hosted by the San Fernando Valley Business Journal on October 22 at The Garland in North Hollywood.



Email your announcement to editor@sfvba.org. Announcements are due on the first of every month for inclusion in the upcoming issue. Late submissions will be printed in the subsequent issue. Limit one announcement per firm per month.

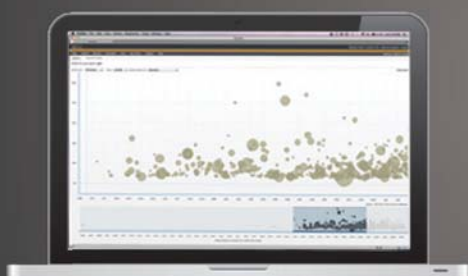
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FASTCASE HINTS AND TIPS

By Charles J. Lowry

SINCE THE SAN FERNANDO VALLEY BAR Association is offering Fastcase access as a valuable part of your member benefits package, Fastcase has supplied these hints and tips to make your use of Fastcase as effective and efficient as possible. In the coming months, we will publish more series notes, and you'll have a little primer on the use of Fastcase. We'll start with three easy ones:

Access

How or where do I find Fastcase? You can access Fastcase through the SFVBA's website at www.sfvba.org. Just sign in with your SFVBA username and password. If you have forgotten either your username or password, please contact Member Services Coordinator Martha Benitez at martha@sfvba.org.


Content

So what does Fastcase offer me? The arrangement the SFVBA has negotiated with Fastcase on your behalf includes premium access (i.e., all state and federal materials). You get the U.S. Supreme Court, all the U.S. Circuit Courts of Appeal, all U.S. District and Bankruptcy Courts and the two highest court levels from each state—and your plan includes access to all the states. If you need a California case or federal case, it is all part of your

plan, at no additional cost. Your plan also includes several specialty courts or tribunals covered by Fastcase: Court of International Trade, U.S. Court of Claims, U.S. Tax Court, Board of Immigration Appeals, etc. For more information, visit www.fastcase.com/barmembers.

Updating

How soon do new cases show up in Fastcase? Fastcase offers daily updating for every court covered in our database: Wednesday's work is in the database on Thursday, Thursday's work on Friday, Friday's work on Monday, etc. All decisions go in as slip opinions. When/if the case subsequently appears in a case reporter, the slip opinion is removed from the database and replaced by the reported version, complete with reporter citation. If the case is not subsequently covered in a reporter, the slip opinion stays in the database as an unreported (or unpublished) case, still searchable by keyword.

Future columns will get into the nuts and bolts of Fastcase, including topics on finding cases, organizing and sorting search results, finding out what courts have said about a case, and using Fastcase outside the office. If you have suggestions for topics to cover in future notes, please offer them. We want this to be as useful as possible! 

Charles J. Lowry is a representative for Fastcase, the research benefit offered to members of the San Fernando Valley Bar Association. He holds a B.A. in Philosophy from the Athenaeum of Ohio and a Ph.D. in Classics from the University of Cincinnati. Before joining Fastcase, Chuck held editorial, product development, sales and marketing positions at Matthew Bender, LexisNexis, Kluwer Law International and American Lawyer Media. He can be reached at clowry@fastcase.com.

AUTHOR INDEX

Valley Lawyer is grateful to all the writers who shared their knowledge, opinions, and perspectives in 2014.

AUTHOR	ARTICLE	2014 ISSUE
Douglas E. Abrams	<i>Rules to Write By: Orwell's Handbook for Lawyers and Judges</i>	June
	<i>Ten Tips for Effective Brief Writing (MCLE)</i>	November
Terri Asanovich	<i>Boundaries: Regaining Control over Your Electronic Devices</i>	October
Joshua Auriemma	<i>Fastcase Pro: Can Watson Do Your Legal Research?</i>	March
Grace E. Ayers	<i>Duly Noted: Encouraging Incarceration</i>	May
Mark S. Blackman	<i>Volunteer for the 19th Annual Blanket Distribution and Legal Clinic</i>	December
Christopher W. Blaylock	<i>Contenting Marketing Your Solo Practice</i>	November
Taylor Chase-Wagniere	<i>Advances in Application of SLAPP Analysis: Hunter v. CBS Broadcasting</i>	March
Jenny Chen	<i>Watching Out for Tax Authorities: Top Three Mistakes Law Firms Must Avoid</i>	April
Bryan H. Clements	<i>Yin and Yang of Beer Distribution and Franchise Laws (MCLE)</i>	June
Amy M. Cohen	<i>Santa Clarita Valley Bar Association</i>	January-November
Rosie Soto Cohen	<i>Diversity Committee in Action</i>	February
	<i>A New Program for Law Day</i>	June
	<i>Optimizing the Attorney Referral Service</i>	September
Alan Eisner	<i>Changes to Criminal Sentencing under Proposition 47</i>	December
John D. Faucher	<i>Bankruptcy as a Tool to Handle Crushing Tax Debt</i>	July
Randi R. Geffner	<i>Book Review: Amending the Constitution: A Supreme Court Justice's Perspective</i>	August
Marshall A. Glick	<i>Reinstating Tax-Exempt Status & Risk Management for Nonprofits (MCLE)</i>	December
Heather P. Glick-Atalla	<i>Reinstating Tax-Exempt Status & Risk Management for Nonprofits (MCLE)</i>	December
Dmitry Gorin	<i>Changes to Criminal Sentencing under Proposition 47</i>	December
Adam D. H. Grant	<i>President's Message</i>	January-September
	<i>O Brother Where Art Thou? Geolocation and the Law (MCLE)</i>	October
David Gurnick	<i>Business Law POV: Shareholder Claims</i>	January
	<i>Book Review: Attorney-Client Privilege and Celebrity Clients:</i>	February
	<i>A Review of Henry Bushkin's Johnny Carson</i>	
	<i>Enforcement of Non-Compete Clauses in California (MCLE)</i>	March
	<i>Book Review: A Colorful, Contradictory Time</i>	December
Gary O. Haase	<i>Pursuing That Work-Life Balance: A California Lawyer in Japan</i>	June
David L. Hoffman	<i>Business Law POV: Determining the Value of a Patent or Patent Application</i>	July
Judge Mary Thornton House	<i>Expedited Jury Trials: A Hollywood Sleeper Seeking Blockbuster Status</i>	January
	<i>A New Technological Age at the Los Angeles Superior Court:</i>	October
	<i>A Dialog with Judge Daniel J. Buckley</i>	
	<i>Civility, Preparation, and Reputation: CPR for New Attorneys</i>	November
Tamila C. Jensen	<i>Conference of Delegates Report: Advancing a Legislative Agenda</i>	November
Brandon Johnson	<i>Costly Divorces: Third Party Liability for Attorney Fees and Costs (MCLE)</i>	January
David Jordan	<i>Duly Noted: Advancing the Case for a More Diverse Legal Profession</i>	February
Sean E. Judge	<i>Lessons from Mandatory Fee Arbitration: The Case of the Unearned Fee and Too Many Continuances</i>	April
Brad Kaiserman	<i>Changes to Criminal Sentencing under Proposition 47</i>	December
Nicole Kamm	<i>Breastfeeding in the Workplace: A Mother's Rights, An Employer's Responsibilities</i>	December
David S. Kestenbaum	<i>Prescription for a Conviction: The Epidemic of Drug-Related DUIs</i>	May
Anthony D. Khoury	<i>Missouri v. McNeely: Alcohol, Blood and Warrants (MCLE)</i>	May
Yi Sun Kim	<i>Exciting Times for the New Lawyers Section</i>	November
KC Marie Knox	<i>Duly Noted: In Support of Sensible Legislation on Digital Assets</i>	October
Barry Kurtz	<i>Yin and Yang of Beer Distribution and Franchise Laws (MCLE)</i>	June
Gregory S. Lampert	<i>Shifting Burden of Proof: Medtronic, Inc. v. Mirowski Family Ventures, LLC</i>	March
Lewis R. Landau	<i>Recovery of Attorney's Fees in Bankruptcy: Gateway Requirements of CCP §685.040</i>	July
Charles Lowry	<i>Fastcase Hints and Tips</i>	December
Kira S. Masteller	<i>Book Review: Civil Rights Act: Lessons from Politics and History</i>	June
Steven G. Mehta	<i>Legal Bytes: Note-taking Apps to Save the Day</i>	June
Irma Mejia	<i>SFVBA Names Hon. Richard H. Kirschner Judge of the Year</i>	February
	<i>SFVBA to Honor Bench Officers at Annual Judges' Night</i>	February
	<i>A Commitment to Service: The Senior Citizens Legal Services Program</i>	March
	<i>Indispensable Support: Celebrating the Valley's Administrative Professionals</i>	April
	<i>Attorney Moms Balance Careers and Families</i>	May
	<i>Taking a Law Practice to New Heights</i>	June
	<i>Meet the 2014 Trustee Candidates</i>	July
	<i>Motivation to Renew: Attorneys Discuss the Value of Membership</i>	August
	<i>Meet the New SFVBA President: Caryn Brottman Sanders</i>	September
	<i>Introducing the 2014-2015 Executive Committee</i>	September
	<i>Team SFVBA: Meet the People Behind the Magic</i>	October
	<i>Reflections and Guidance: World War II Veterans Share Their Story</i>	November
	<i>An Unconventional Journey: Alan Gurvey and a Commitment to Service</i>	December
	<i>From the Editor</i>	January-December

AUTHOR	ARTICLE	2014 ISSUE
Ryan Metheny	<i>Law Week 2014: Expanded Educational Opportunities</i>	May
Lisa L. Miller	<i>Committee Report: Diversity Committee in Action</i>	February
	<i>Advances in Application of SLAPP Analysis: Hunter v. CBS Broadcasting</i>	March
Caren B. Nielsen	<i>Handling Your First Conservatorship: A Survival Guide</i>	August
Michael L. Poole	<i>Foreclosure Defense Strategies in California</i>	July
Elizabeth Post	<i>Executive Director's Desk</i>	May, August
Michael R. Powell	<i>Practice Update: Changes to AAA Commercial Arbitration Rules</i>	May
Jonathan I. Reich	<i>Lis Pendens: To Expunge or Not to Expunge?</i>	January
Charles P. Rettig	<i>2014 Tax Enforcement Priorities and Practice Tips from the Tax Trenches (MCLE)</i>	April
John E. Rogers	<i>Handling Your First Conservatorship: A Survival Guide</i>	August
Judith M. Sack	<i>Managing a Virtual Estate</i>	October
Sandra I. Salinas	<i>No Small Matter: Domestic Violence, Child Custody and Family Code Section 3044 (MCLE)</i>	September
Caryn Brottman Sanders	<i>President's Message</i>	November-December
Myer J. Sankary	<i>Eliminating Bias in the Legal Profession: Lessons from the Cognitive Sciences (MCLE)</i>	February
Mark Schaeffer	<i>The Court of Last Resort: Noteworthy Pending California Supreme Court Cases</i>	January
Daniel C. Schwartz	<i>Stop the (Tax) Bleeding! Deductions for Self-Employed Individuals</i>	April
Marc J. Schwartz	<i>There is Life after Death and It's Digital: Estate Planning for Digital Assets</i>	August
Brian J. Sheppard	<i>Duly Noted: On the Future of Lawyers and Lawyering</i>	February
Mark S. Shipow	<i>Who Saved Our Nation? Read On—and On—to Find Out</i>	October
Larry D. Simons	<i>Home Sweet Home: The Homestead Exemption (MCLE)</i>	July
Brian H. Standing	<i>The Bypass Trust: A Useful Estate Planning Tool (MCLE)</i>	August
Judge James A. Steele	<i>Central District Tackles Probate Cases</i>	January
Hannah Sweiss	<i>Business Law POV: California's New Uniform Limited Liability Company Act</i>	March
Ronald J. Tasoff	<i>Immigration Law Update: Spring 2014</i>	March
Linda Temkin	<i>New Year, New MCLE Compliance Reporting Period</i>	January
Genevieve Thomas-Colvin	<i>Breastfeeding in the Workplace: A Mother's Rights, An Employer's Responsibilities</i>	December
Ellen Friedman Tinero	<i>Divorced Parents and School Choice</i>	September
Doron Tisser	<i>The Bypass Trust: A Useful Estate Planning Tool (MCLE)</i>	August
Marshall W. Waller	<i>No Small Matter: Domestic Violence, Child Custody and Family Code Section 3044 (MCLE)</i>	September
Presiding Judge David S. Wesley	<i>It Is Time to Adequately Fund the California Trial Courts</i>	January
Anthony D. Zinnanti	<i>Book Review: The Case for The Case Against the Supreme Court</i>	November
Diana J. Zitser	<i>Costly Divorces: Third Party Liability for Attorney Fees and Costs (MCLE)</i>	January

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Social Shoals

Dear Phil,

I am a new lawyer trying to enhance my reputation in the legal community. To accomplish this, I attend SFVBA activities where I often see judicial officers before whom I appear. Many of these activities seem quite informal and very social, but I am sometimes unsure how to properly behave when socializing with these judicial officers. They act differently when they are not on the bench, but I do not know how I should act. Can you guide me through this social conundrum?

Sincerely,

Socially Awkward

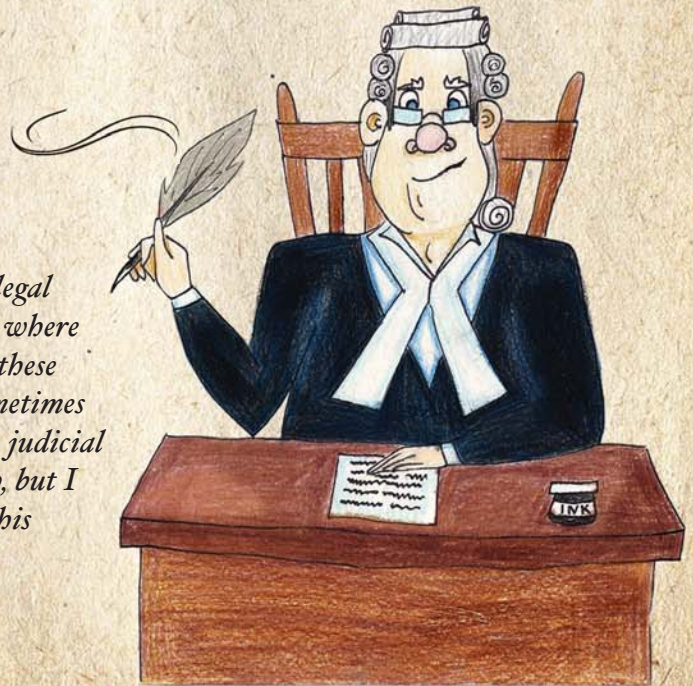


Illustration by Gabriella Senderov

JUDICIAL OFFICERS ARE PEOPLE, too! And they like to socialize.

Their jobs can sometimes be isolating but they enjoy friends as much as you or I. However, when you are at the same social event as they are, you still need to behave in a professional manner—for your own sake, for your client's sake, and for the best interest of our profession. Be mindful of your words and actions at these social events. How you behave in these settings says a lot about who you are as a person and a lawyer. Conduct yourself accordingly.

For example, you may think an edgy, off-color joke is appropriate under the circumstances. But a bench officer in compliance with all the relevant ethics requirements might find that same punchline offensive. It is best to avoid the topics of religion and politics in your discussions with judicial officers. These tend to be emotionally charged topics which can lead to heated arguments. Similarly, it is inappropriate to ask a

bench officer anything about the bench officer's private life. If a judicial officer does share personal information with you, you may not share it with others.

And given the ease of posting to social media, you must be especially conscious of your actions as well as your words. Anyone can record you behaving questionably. The next thing you know, the recording is posted online and goes viral, possibly around the globe. Now everyone can see your borderline behavior, including other members of the bar, clients and prospective clients, and judicial officers who know you or might meet you in the future.

An excellent way to insure that you do not have problems resulting from these quasi-social professional events is to limit your consumption of alcohol. Everyone thinks they know when they hit their limit, but this is not always the case. You do not want to find yourself post-facto having to make excuses for your conduct.

And take this warning to heart: do not discuss with any judicial officer at these events any case that you may have pending in that court, or any case that is pending before the court. Attempts at this kind of ex parte communication are inappropriate and may result in you being sanctioned by the court or the State Bar. None of this benefits you, your client, or your client's matter.

It is important for your career that you establish yourself in the legal community. Meeting attorneys and judicial officers at SFVBA events is an excellent way to make crucial connections. Follow the advice above to help preserve your reputation while socializing with members of the bench and bar.

Bonam fortunam,

Phil

Dear Phil is an advice column appearing regularly in *Valley Lawyer Magazine*. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Answers are drafted by *Valley Lawyer's* Editorial Committee. Submit questions to editor@sfvba.org.

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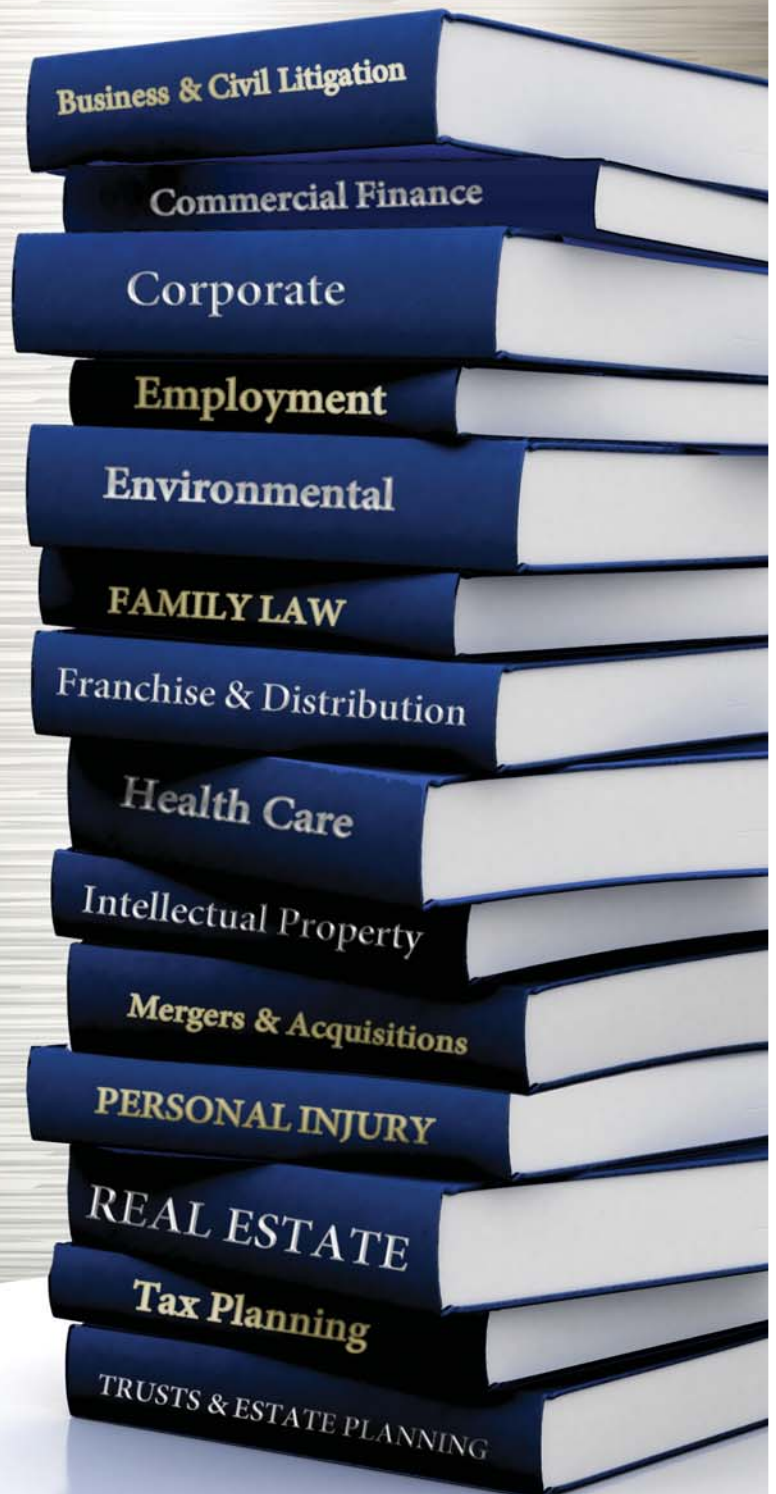
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