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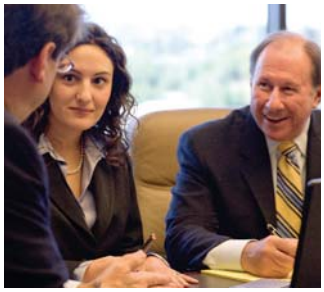

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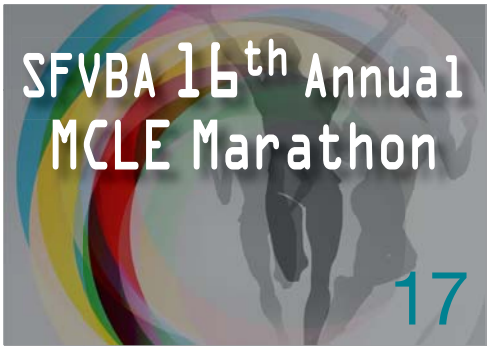

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New Year Resolutions

DAVID GURNICK
SFVBA President
dgurnick@Lewitthackman.com

"Every day is in reality the ending of a year, as far as the sun and earth are concerned. The real solar year ends June 21st or December 21st if a circle can be said to have any end. To keep one day out of 365 sacred to past moral lapses and future moral leaps is foolish; one day isn't enough. A New Year resolution alters a person no more than a new outfit. What the world needs is more new wearers of old clothes, not more old wearers of new ones."—*Los Angeles Times, January 1, 1913*

THE *LOS ANGELES TIMES* SAID THIS ABOUT New Year resolutions exactly a century ago, adding "the fact that these resolutions are annual products shows how lasting they are."

Before resolutions, as the New Year begins, please enjoy some moments of pride. In the quiet or bustle of daily work, you serve clients, you protect individuals, you right wrongs. Using the force of logic you get results that are right for individuals, families, organizations and our society. You honor our history. You build a better present and future for everyone.

Up there with farmers who grow our food, armed forces who protect our nation, and teachers who teach our children, legal professionals are critically important to our world. You deserve the compliment.

So I hope you'll also indulge some affectionate critique in the form of New Year resolutions for ourselves, and colleagues, resolutions to improve on excellence, to serve clients better, to be the best we can be. Most Valley lawyers do most of these already. If you do not yet do them all, let's consider resolving:

- A client speaking to me of their matter will get my full attention, my focus on their matter, not changing topics to myself or my other case.
- I will consider displaying modesty to clients—in office decor, attire, jewelry, car, dining, leisure and other ways. The client pays for my lifestyle, but maybe cannot afford the material things I enjoy. I will not flaunt.
- Whether fees are contingent, hourly, salary from a company, flat, reimbursed by an insurer or some other basis, I will be ever mindful that the client pays those fees.
- I will make myself accessible, reply promptly and with full attention to clients. My service to the client is about the result, and about easing their way through the fearful, complex legal process. The client needs my patient ear and communication, even in discussions on the way, that do not affect the outcome, even discussions that are not billing events.
- I will view the client always with gratitude, recognizing how fortunate I am to be a lawyer, to be their lawyer. To be a lawyer who represents clients, clients are essential.
- I will appreciate how fortunate I am to be a lawyer; however difficult my work may sometimes seem, it is a privilege to practice this profession.
- I will not be jealous of client success or good client outcomes, but will seek to advance their good fortune. I do not seek to trade places with a successful client; someone else's position often deceptively looks better. Client situations are usually harder than they seem.
- Colleagues too deserve my gratitude and respect, including adversaries. I will treat colleagues how I like being treated.
- Even the unreasonable client, the client who refuses to pay or who takes advantage of my dedication, even the difficult adversary, all deserve my best and my courtesy.

The case of *Kraft v. Gordon* is instructive. Our own Marcia Kraft represented a client who failed to pay the fees. Kraft had to sue, even while continuing to represent the client in a matter. The Court of Appeal upheld Kraft's right to attorney fees and commended Kraft: "Attorney Kraft continued to faithfully represent Gordon after bringing suit, even obtaining a favorable ruling which saved Gordon tens of thousands of dollars. At no time did Attorney Kraft mishandle the dissolution action to gain an advantage over Gordon in this case. She continued to zealously and faithfully represent her client, despite the client's refusal to pay fees or allow her to withdraw." *Kraft v. Gordon* 2006 WL 2145582 (Cal.App. 2006).

If you resolve to do these things, and keep your promise, you will make the practice of law even better for clients, colleagues and yourself.

Calendar

Probate & Estate Planning Section
New Laws

JANUARY 8
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
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James Birnberg will review and give the critical updates for the new year.

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Business Law Section and Employment Law Section
Best Practices in Hiring—Avoiding the Landmines

JANUARY 9
12:00 NOON
SFVBA CONFERENCE ROOM

The hiring process is crucial—it's both the employer's best opportunity to get the employment relationship off to a sound start and, if mishandled, a source of potential liability for the employer. This program is designed for attorneys advising employers as well as attorneys concerned about their own hiring process. Attorney Jeffrey S. Thomas will cover employment applications, interviews and employers Googling applicants.

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$30 prepaid	$40 prepaid
$40 at the door	$50 at the door
1 MCLE HOUR	

Criminal Law Section
Marijuana Laws: What's the Latest?

JANUARY 10
6:00 PM
SFVBA CONFERENCE ROOM

Attorney Eric Shevin will discuss the laws pertaining to marijuana alongside Ariel Clark who will outline the business and corporate side of the medical marijuana industry. How does the government determine what's a true collective? Do your clients have the necessary permits? Attend this important seminar to find out.

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Taxation Law Section
Cancellation of Debt Income

JANUARY 15
12:00 NOON
SFVBA CONFERENCE ROOM

Attorney Layton Pace will detail what you need to know regarding the cancellation of debt income.

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Bankruptcy Law Section
Judge Barry Russell: Motions to Dismiss

JANUARY 22
12:00 NOON
SFVBA CONFERENCE ROOM

U.S. Bankruptcy Judge Barry Russell, along with attorneys Howard Ehrenberg and Stella Havkin, will discuss motions to dismiss both Chapter 7 cases and adversary procedures. The distinguished panel will address basic and advanced issues concerning circumstances when motions to dismiss are proper.

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1 MCLE HOUR	

Family Law Section
Domestic Violence: What You Need to Know

JANUARY 28
5:30 P.M.
MONTEREY AT ENCINO RESTAURANT
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Commissioner Steff Padilla, Deborah Kelly (DASH office) and Matthew Lax, as moderator, will discuss domestic violence in regard to your clients and your practice.

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1 MCLE HOUR	

Elder Law Section
Long Term Care Litigation

JANUARY 30
6:00 PM
SFVBA CONFERENCE ROOM

All are welcome to the first meeting of the new Elder Law Section. Attorney Steven Peck, chair of the section, will give the ins and outs of long term care litigation.

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Executive Director's Desk

Turning the Page

ELIZABETH POST
Executive Director
epost@sfvba.org

"For last year's words belong to last year's language and next year's words await another voice. And to make an end is to make a beginning."—*T.S. Eliot*

HAPPY NEW YEAR! JANUARY IS THE TIME to turn the page from the previous year's accomplishments and challenges, to the fresh goals and dreams of the new year. This month, *Valley Lawyer* is turning the page, so to speak. This edition of *Valley Lawyer* marks the last issue that Angela Marie Hutchinson will serve as Managing Editor of our fine magazine.

Angela has served as Editor for five years, or 52 issues to be exact, and was influential in the evolution of the SFVBA's old newsletter, *Bar Notes*, into the full-fledge magazine that members value today. Angela also played an active role in the development of the current generation of the SFVBA's website, as well as numerous other membership and marketing projects over the past half decade.

Angela is a woman of many talents and interests. Throughout her tenure as Editor, she simultaneously wore many hats in the entertainment field, serving as a casting director, screenwriter, producer, as well as Founder and Editor-in-Chief of the new industry magazine, *Hollywood & Vine*. The Board of Trustees and staff at the San Fernando Valley Bar Association wish Angela and her loving family well. We hope, and expect, that Angela achieves all of her goals and dreams in the new year.

Valley Lawyer's new Editor will be Irma Mejia, known to members over the previous two years as the SFVBA's Member Services Coordinator and Fee Arbitration Program Administrator. Irma recently received a well deserved promotion to SFVBA Publications & Social Media Manager. She will also continue to oversee the Bar's MFA Program, and in 2013, publish the Bar's popular Attorney-to-Attorney Directory.

Irma has been on the frontline of the Bar's innovative membership recruitment and renewal drives. During her short tenure, she has grown the SFVBA's presence on Facebook, Twitter and LinkedIn exponentially, while educating members on social media through frequent seminars, as well as regular columns in *Valley Lawyer*. Irma will bring her intellect, experiences and individuality to her new role as Editor.

February will mark a new beginning for *Valley Lawyer*.

Congratulations to
John D. Weiss, Esq.
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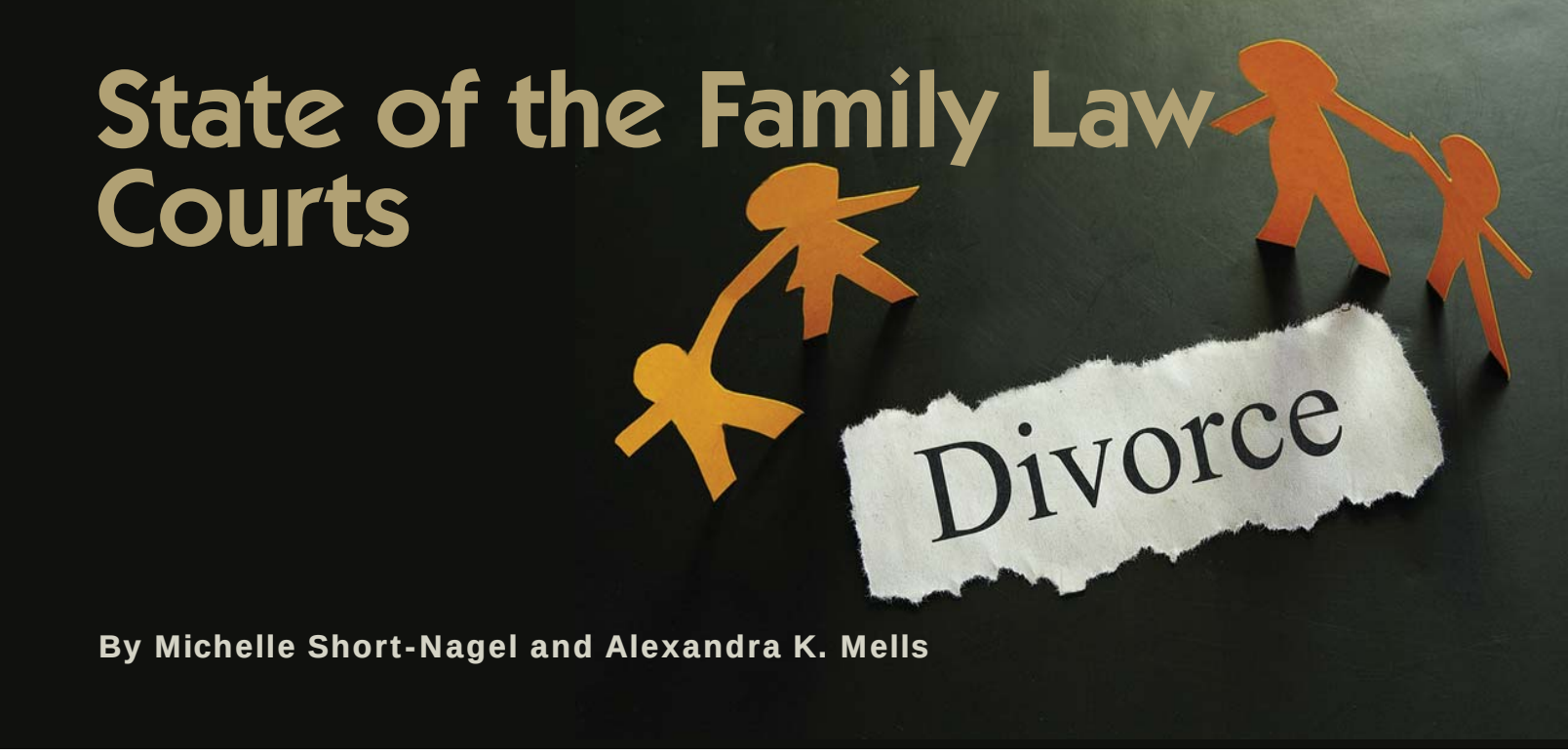
State of the Family Law Courts



By Michelle Short-Nagel and Alexandra K. Mells

MOST ATTORNEYS AND MUCH OF THE public are aware that in June 2012, major budget cuts were made to the Los Angeles Superior Court. The cutback was approximately $37 million and included a reduction of approximately 10% of courtrooms. The reductions included closing courtrooms, laying off court staff, reassignment of personnel and elimination of positions. In an effort to make the Los Angeles Superior Court more efficient, court rules and protocols were restructured. Family law was affected less than other areas, such as civil, but required significant changes to the way the family law court operated.

More cutbacks and modifications are being planned for the 2013-2014 Fiscal Year and beyond. These additional reductions are estimated to be upwards of $50 million. These cutbacks will require further reductions and the courts will need to restructure to maximize efficiency, while ensuring the constitutional protections required by our system of justice. Family law has begun to make wholesale changes to accommodate what has occurred and what is going to occur.

While all of these cutbacks were occurring, at the same time new case law known as *Elkins* was changing the demands and requirements of the family law Bench and Bar. These changes result in a need for greater trial time, increase procedural safeguards and improved access to justice for self-represented parties. The combination of increased need for court resources and less resources available has created "the perfect storm." This storm of events has required that the courts, both at Central and in the Districts, have to rethink the way of doing business. It has made some opportunities to think outside of the box and create an improved system.

Impact of the Recent Cutbacks on Family Law Courts

A few months ago, the North Central (Burbank) Family Law Court was closed. Judge Carlton Seaver was transferred from Burbank to Pasadena, leaving Burbank without a family law courtroom. That meant that Pasadena, Van Nuys and San Fernando all had to take on extra cases from the Burbank load and integrate them into the new calendars as efficiently as possible.

More recently, there has been a restructuring of the case load assignments in the Northwest District (Van Nuys). The new structure consists of two courtrooms with Request for Orders and Trial calendar, ex parte applications, etc., and one courtroom that is handling the domestic violence orders and other important hearings. The new structure also incorporates each courtroom having dedicated trial days. The details of the structure are as follows:

- All odd numbered cases are now assigned to Judge Virginia Keeny in Department NWJ. Requests for Orders (RFO) and motions will be heard on Mondays and Tuesdays; Wednesdays will carry judge set matters (trailed matters, longer FC 217, evidentiary hearings) and trial setting conferences; and Thursdays and Fridays in Department J will be reserved for trial.
- Even numbered cases will be assigned to Judge Michael Convey in Department NWK. Trials will occur on Mondays and Tuesdays; Wednesdays will be reserved for the judge set matters and trial setting conferences; and Thursdays and Fridays will have RFOs and motions.
- New RFOs are being set in both courtrooms about 90 days out from filing.
- Commissioner Steff Padilla will be in Department NWL, handling primarily domestic violence matters, stipulated judgments, adoptions, summary dissolutions and fee waivers.

The Advantages

The real advantage of this breakdown is already showing. Sending all domestic violence matters to one courtroom has the advantage of allowing the other two trial courts to deal in RFOs and trials, instead of bumping matters to give domestic violence matters the statutory priorities required.

Trial Time
Perhaps the best news is that trials will no longer be "piecemeal." No more day or two days here, and another day or two days some months later. For example, if a trial is set for Monday and Tuesday, it may also go into Wednesday, and if it is still not finished, it will start the calendars on the next Monday and Tuesday.

What this means for practitioners is that attorneys will no longer have the luxury of preparing only partially for a trial, in the hopes or plan that it will be months before the next issue needs to be addressed. The trial will begin and end in a short-period. The amount of time assigned to a trial or hearing will be at the discretion of the judge. Should a trial estimate be given which exceeds five days, the judicial officer will have the option to order that the trial is moved to Central. Such orders will be at the full discretion of the bench.

Comprehensive RFOs
The *Elkins* changes, along with the requirement of increased efficiency, results in a policy to have comprehensive RFOs, not make case decisions piece-by-piece. The translation is, don't expect to set one RFO for child support, another later for custody and visitation, another later for school issues, etc. Attorneys should have their RFO be as all-inclusive as possible. And the judges will be making every effort to have RFOs heard in contiguous days (just as the trial calendars will be handled).

It is important to note that as of January 1, 2012, the rules related to declarations changed significantly and declarations are now limited to ten pages in support of moving papers, and five pages for response. (CRC 5.119)

Fewer Continuances
There will be only one stipulated continuance per case, not the seriatim continuances that often occur as counsel or parties are unprepared for a hearing, and try to "kick the can down the road" until they are ready or willing to handle it.

Case Management
As the court now has statistics related to case disposition, case management has become an integral part of family law. Case management conferences are set at the time of a new filing to ensure that proofs of service are quickly filed and that cases progress through to judgment. Status conferences are set automatically in matters, so that the court manages the case, and not let the case manage itself.

Trial Setting/Trial Readiness Conferences
Great changes are being made in the procedures for Trial Setting and Trial Readiness Conferences. They will be handled in much the same way that TSC/TRCs in Central are handled. At the date for the trial setting conference, counsel and parties must have prepared, filed and served the witness list, exhibit list with attached marked exhibits and the trial brief.

At the TSC/TRC, once the court determines that the case is ready for trial, trials will be set in approximately 60 to 90 days. Parties will get to trial much faster than before. However, it means that counsel will have to start their trial preparation much earlier than they have in the past.

Ongoing and Effective Programs are Continued
As a model to not only other districts, but statewide, the daily settlement officer programs continue in all of the San Fernando Valley's family law courts. Each and every day, attorneys volunteer as mediators for whatever cases the bench can send in both Valley family law courts. Just as impressive is the Pro Per Judgment Program, which provides attorney volunteers to both Valley courts, where stipulated and court ordered judgments are written up by the volunteers, then processed by the courts. Many, many cases are dispositioned in this manner and countless people are served.

Most recently, in preparation for the changes in the Northwest District, the courtroom calendars were vacated for a week, over 100 attorneys, mental health professionals, accounting professionals and vocational experts volunteered to mediate 85 cases. That program resulted in a 74% settlement rate, and saved the court's resources and countless dollars by saving the court over 110 days of trial time. The program is likely to be repeated this spring.

North Valley District continues to have its biannual Settle-O-Rama program, which similarly dispositions countless cases and saves the court and the litigants significant time and expense.

More Changes to Come

The demand of efficiency will continue to escalate. In addition, procedural changes are afoot. The California Rules of Court will be re-numbered as of January 1, 2013 and contain significant procedural modifications. Some of these changes will require that local LASC rules may have to be rewritten or eliminated in order to bring them into

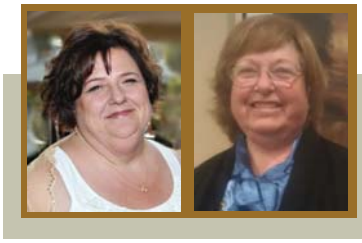
compliance with state statutes. An example of the change is that the statutory preparation of orders will be required within ten days, with a 20-day review period. (CRC 5.125)

The judges recommend attorneys bring proposed orders pre-written to court in order to save time and have orders ready forthwith. Attorneys may also use the carbonless forms in the courtrooms to prepare orders that very day in court.

Tips for Practicing in the "New Normal"

- Ex Partes will be granted only if there is an emergency, and there is irreparable harm that can be demonstrated, pursuant to statutory requirements. The threshold of evidence is "reasonable evidence," which is less than "a preponderance of the evidence." For example, if there is an ex parte filing just a few days before the start of school, the judicial officers will look to see if the parties merely let time run out and came to the court only at the last possible moment. That might not be considered an emergency.
- Less may be more at hearings. Try to keep examination of witnesses to the basics. In other words, plan what needs to be proved, and what information needs to be provided to prove that point. Do not conduct testimony as if taking a deposition. Get to the point!
- When filing declarations, put in the facts that are actually personal knowledge and leave out the hearsay. Obey the ten page limit for moving. Declarations are not for oral argument.
- Have the "What a trial will cost" conversation with your client early in the matter. In fact, counsel may want to have this talk when they are preparing their case plan at the onset of the case. A new rule of thumb is plan and be prepared. Cases are likely to move much faster.
- Be sure to meet and confer before the day of the hearing. The Family Code and CRC require it and it can be expected that the bench will enforce that rule.
- Set up a conciliation court appointment as soon as possible. If using the online system, "tickle" a date on one's calendar a few days later to make sure there is follow-through.

Be ready for change. There are more cuts coming, and more "perfect storms" in the offing. Attorneys should bring their legal skills and be ready to adapt. The court and family law will require it.



Michelle Short-Nagel and **Alexandra K. Mells** are sole practitioners in family law in the San Fernando Valley and co-chairs of the SFVBA Family Law Section. Short-Nagel can be reached at emailmsnlaw@aol.com and Mells can be contacted at alexandra.mells@earthlink.net. Valley Lawyer thanks **Judge Michael Convey** for his contribution to this article.

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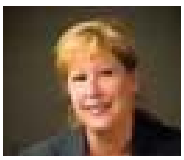

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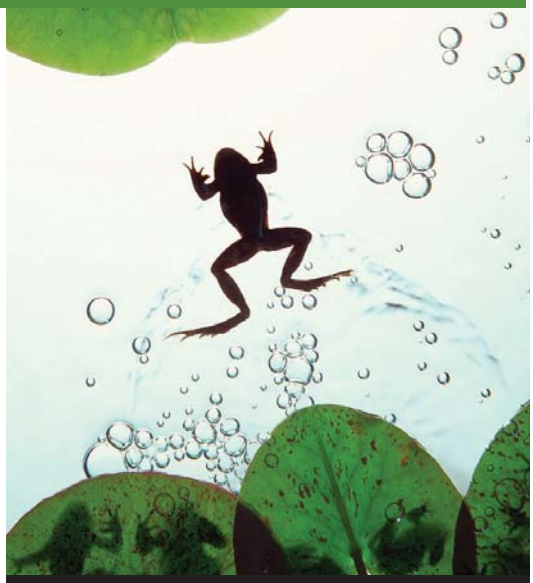

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Statement by Presiding Judge on the Court's Reorganization Plan

By Presiding Judge Lee Smalley Edmon

WHILE ACTIONS OUR COURT HAS ALREADY taken will balance our budget in the current fiscal year, next year's budget has a projected shortfall of between $56 million and $85 million. That shortfall will require us to begin soon to radically restructure court operations. The details of that restructuring are not yet clear. But their outlines are now visible and we want to share them with you today.

The current fiscal year is in balance largely because of the reductions already achieved.

For the current fiscal year (which runs from July 1, 2012 through June 30, 2013), statewide reductions to trial court funding equal $1.1 billion. Various fee increases and redirection of judicial branch funding mitigate some of those reductions. However, new statutory requirements to create a statewide reserve fund increase the statewide shortfall for the trial courts. The net result for FY12-13 is a $626.9 million reduction. Given these statewide funding reductions and several sources of unfunded local cost increases, the budget shortfall for LASC in FY12-13 totals $217.1 million.

Two solutions will balance this year's budget. The first is use of reserve funding. Since unification of the municipal and superior courts in 2000, the Court has remained in a slow-growth mode, accumulating year-end unspent moneys in a local reserve account as protection against budget downturns. Much of the impacts of the past four years of reductions have been absorbed by this fund. However, new legislation and actions in the budget eliminate the Court's ability to maintain this fund. The Court will spend the remainder of this fund—$104.5 million to mitigate the current year shortfall.

The second solution is prior reductions. Since 2002, the Court's staffing has been reduced by 23%. More recently, in response to the state's fiscal downturn, the Court implemented a series of reductions: staffing reductions and a hard hiring freeze in FY09-10; additional staffing reductions in FY11-12. These and other actions have resulted in ongoing savings of $100.4 million.

Because of these two solutions, no further action is needed to balance the current year's budget (FY12-13). Given these two sources of solutions, plus a number of one-time budget savings, the Court anticipates the FY12-13 budget will be balanced with no further budget actions.

However, next year's budget is projected to have a significant shortfall requiring changes to Court operations before July 1, 2013.

Based upon permanent funding reductions already implemented, we project significant shortfalls for the FY13-14 budget. While the statewide shortfall is anticipated to shrink in FY13-14, the Court will no longer have local reserves as mitigation. **Depending upon the resolution of a number of open issues at the statewide level, the Court projects a local net shortfall in FY13-14 of between $56.6 million and $85.3 million.**

Given that the Court's reserves will be exhausted by the end of FY12-13, the Court has no ability to bridge fund a delay in implementation of the cuts needed to balance the FY13-14 budget. Thus the Court will need to implement all actions required to balance next year's budget by the end of the current fiscal year (June 30, 2013). In response to that projected shortfall, the Executive Committee on November 13, 2012, approved the following principles for consolidation of court operations:

First, the Court will operate fewer courthouses, removing traditional court services from 10 courthouses: Huntington Park, Whittier, Pomona North, Malibu, West Los Angeles, Beverly Hills, San Pedro, Beacon St., Catalina, and Kenyon.

Second, the Court will operate fewer multi-purpose courthouses and courtrooms, as the remaining courthouses and courtrooms will each specialize in a narrow range of case types. Hubbing certain case types at certain courthouses, and having courtrooms dedicated to only one type of matter, will become the norm. For instance, rather than handling small claims cases in 26 courthouses as currently done, we will end up handling them in perhaps only six courthouses.

Third, a combination of changing the caseload and the workload of courtrooms, together with creating new operational efficiencies, will allow reductions in courtroom staffing.

The details of implementing these principles and thus the ultimate impacts on the Court's staff and court users remain to be worked out.

Outlines of the Operational Plans

While there is considerable planning work still to be done,

the outlines of the Court's operational reduction plans can be seen in each of the case types:

Criminal
At the core of the Court's constitutional responsibilities, and constrained by the availability of suitable courthouse space (e.g., lockups for in-custody defendants), the redistribution of criminal cases forms the basis for the geographic distribution of the Court's caseloads. Adjusting courtroom calendars to maximize the amount of time that specific courtrooms focus on criminal cases, and achieving other efficiencies will allow the elimination of 12 criminal calendar courts. These changes, in turn, drive the withdrawal of standard operations from the 10 courthouses mentioned above.

Civil
The civil plan is premised upon consolidating calendars, redistributing caseloads in the most efficient manner, and moving to a master calendar system[1] in many types of civil cases. For instance, this means that we will be handling small claims in fewer than the 26 courthouses in which we currently handle them. There will be similar hubbing of unlawful detainers, limited civil cases, and general jurisdiction personal injury claims. Pre-trial, the caseloads at each hub will be managed centrally, and any required trials will be handled by a number of dedicated civil trial courtrooms around the County. Compared to the status quo, the total number of fully-staffed civil courtrooms will be reduced.

Family
Significant changes were made in the family law courts during the reductions implemented last fiscal year and several calendar courts in family law were eliminated. In the current round, the family law courts will assume the handling of civil harassment cases in a manner still to be determined.

Juvenile
The two delinquency courts in the Kenyon Courthouse will be closed and the Court will no longer conduct court business at Kenyon. Those cases will be distributed to existing delinquency courts to be determined. The specialized Adoptions Court at the Edelman Courthouse will be closed, and its caseload handled by existing dependency courts at Edelman.

Probate
Probate case processing will be centralized, with the exception of matters filed at the Antonovich Courthouse in the Antelope Valley. Otherwise, all probate matters will be filed in, and most hearings will be set in, the Stanley Mosk Courthouse.

Traffic
Six fewer courtrooms will be available to hear traffic matters.

The movement of caseloads from courthouse to courthouse, and the re-staffing of hubs, will be implemented in phases to ensure an orderly transition. While the time frame of the phases have not yet been determined, it is anticipated that employee transfers will be necessary to ensure operational continuity during the transition.

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Programmatic Changes
The Court also anticipates making the following programmatic changes:

- Elimination of part-time court reporters in most civil courts;
- Elimination of all non-mandatory elements of the Court's Alternative Dispute Resolution programs;
- Significant reduction of the Court's Dependency Mediation program.

Juvenile Referees
The reduction plan includes the elimination of our corps of Referees in delinquency and dependency, and their replacement with other judicial officers. The expertise and dedication that these judicial officers have shown to the needs of children and their families is unparalleled across the state. The elimination of these positions is an indicator of just how awful the Court's budget situation has become.

Further Planning is Required

The outline above is necessarily incomplete. There are significant details yet to be determined. Rather than wait until those details are worked out and recognizing that we are far from ready to answer the questions that people have we wanted to notify you of the scale, magnitude and nature of the reduction before us. As court leadership continues to work on the plan with our judges, our staff, our justice system partners, the attorney community, and our employees' representatives, we will keep everyone apprised of progress toward these awful, but necessary, measures.

Unavoidable Impacts

The impacts of these changes will dwarf anything that this Court has seen. There is no way to maintain the current level of service to the public in the face of state-mandated reductions of nearly one-fifth of the Court's discretionary funding. We will no longer be able to be a neighborhood court providing a range of services across the county. Instead, litigants, attorneys, witnesses, law enforcement officers and others will find themselves traveling long distances to attend hearings. We will no longer be able to maintain the gains we once made in delay reduction, as we will lack the fully operating courtrooms necessary to ensure that cases are resolved in a timely manner.

Worst, we will no longer have the people we need to adequately serve the public.

These changes will have a profound and lasting effect on our Court and the people who depend upon us. They come after judges and staff have endured repeated cutbacks, restructurings and reductions. We can all be proud of how well we have performed through these difficult times; we continue to hold ourselves to the highest standards of public service. We know that that commitment will preserve the Los Angeles Superior Court through the difficulties to come.

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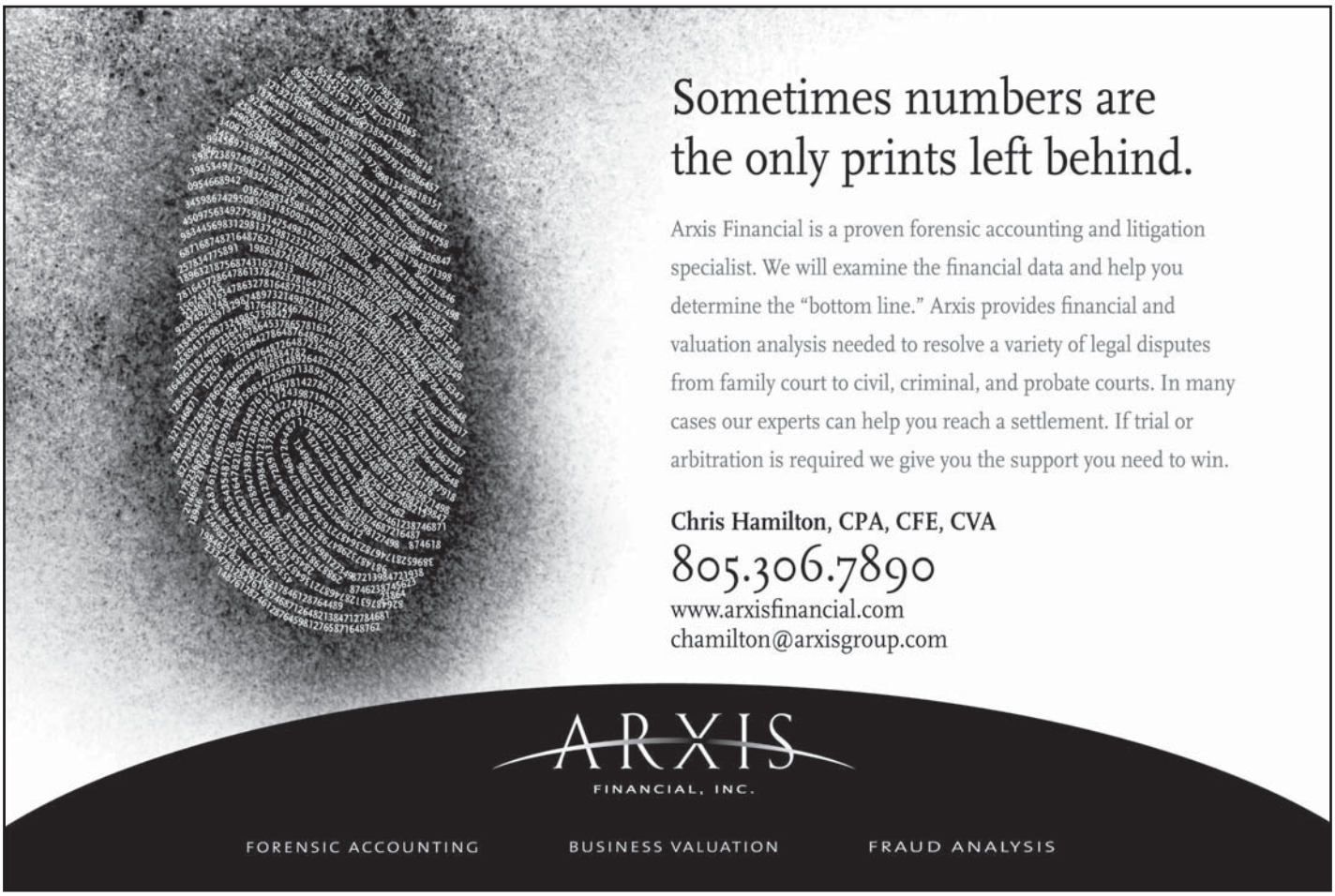
[1] In an individual calendar, or direct calendar courtroom, a particular case will be handled generally from start to finish. By contrast, in a master calendar system, a division of labor exists: one judge may handle some pre-trial matters, a different judge may handle other pre-trial matters, another judge may conduct the trial.



SFVBA 16th Annual MCLE Marathon

January 18 and January 19, 2013

Braemar Country Club
4001 Reseda Boulevard, Tarzana

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Friday January 18

- 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.
  Understanding Financial Disclosures
  Chris L. Hamilton, CPA, CFE, CVA
  Arxis Financial, Inc.
  1 Hour MCLE

- 11:30 a.m.
  Is That Considered Malpractice?
  Steven R. Yee, Esq., Debra Mondragon and Diane Wood
  Narver Insurance
  1 Hour MCLE (Legal Ethics)

- 12:30 p.m.
  Lunch

- 1:30 p.m.
  Ethics Regarding Collection of Fees
  Myer J. Sankary
  1 Hour MCLE (Legal Ethics)

- 2:30 p.m.
  Elimination of Bias and Diversity in the Legal Profession
  Myer J. Sankary and Professor Christine Goodman
  1.5 Hours MCLE (1 Elimination of Bias and 0.5 General)

- 4:00 p.m.
  California's New Foreclosure Law-The Homeowner's Bill of Rights
  Mark S. Blackman
  1 Hour MCLE

Saturday January 19

- 9:30 a.m.
  Legal Technology and LexisNexis
  Kevin A. McConnell, J.D.
  Lexis Nexis
  1 Hour MCLE

- 10:30 a.m.
  Top Ten Insurance Agent Mistakes: What to Advise Your Clients
  Elliot Matloff
  Matloff Insurance
  1 Hour MCLE

- 11:30 a.m.
  Prevention of Substance Abuse: Clearing Common Misconceptions about D.U.I. Laws
  Ronald N. Hoffman
  1 Hour MCLE (Prevention of Substance Abuse)

- 12:30 p.m.
  Lunch

- 1:30 p.m.
  The Danger Zone: Escaping Bar Discipline
  Professor Robert Barrett
  2 Hours MCLE (Legal Ethics)

- 3:30 p.m.
  Intellectual Property 101
  John F. Stephens
  1 Hour MCLE

Registration Form and Membership Application

(Pre-Registration Deadline is January 11, 2013)

Name _____

Firm _____

Address _____

City, State _____

Zip Code _____

Phone _____

Fax _____

E-Mail _____

State Bar No. _____

Bar Admission Date _____

MCLE MARATHON REGISTRATION FEES

	Member	Non-member
2-Day Seminar	$169	$399
or		
Friday, January 18	$99	$219
Saturday, January 19	$99	$219
or		
Per MCLE Hour	$35	$60
✔ Class Attending		
Late Registration Fee	$40	$60
MCLE Self-Study Key Drive (with Marathon Registration)	$89	$89
MCLE Self-Study Key Drive Only	$139	$229

Membership Dues: $ _____

Total Enclosed/To be Charged: $ _____

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Credit Card # _____ - _____ - _____ - _____

Expiration Date _____ / _____ / _____

Signature _____

MCLE Marathon Weekend

By Angela M. Hutchinson

THE SAN FERNANDO VALLEY Bar Association takes pride in offering a variety of convenient ways that attorney members can earn their Minimum Continuing Legal Education (MCLE) credits year-round: weekly seminars, a complimentary CD tape lending library and *Valley Lawyer*'s monthly self-study MCLE articles. One of the most popular programs for members to earn their required credits is the SFVBA's Annual MCLE Marathon. This year's two-day event will take place on January 18 and 19, 2013 at Braemar Country Club in Tarzana.

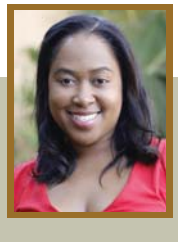
Every three years, attorneys must meet the mandatory 25 hours of approved continuing legal education credit. Held annually in January, the Marathon helps attorneys obtain the required participatory credits before reporting their compliance to the State Bar for renewal. The educational event provides all the specialized units (4 hours of ethics, 1 hour of elimination of bias, 1 hour prevention of substance abuse) and 6.5 hours of general MCLE. The other 12.5 hours of MCLE can be self-study. For those members who attend the Marathon, flash drives with the minimum self-study credits are provided at a reduced price.

Throughout the year, including the Marathon, the SFVBA strives to offer seminars that are relevant to practicing attorneys. Participating in the MCLE Marathon is not only one of the most economical ways to earn MCLE credits, but also a great opportunity for attorneys to relax in a country club setting while also networking and increasing their knowledge about the law.

SFVBA's Director of Education and Events Linda Temkin ensures that each of the Marathon speakers can offer members relevant information through intellectually stimulating and entertaining seminars that will further enhance attorneys' knowledge about their practice areas. From last year's surveys, the majority of Marathon participants gave the event high scores in terms of the event meeting their objectives and expectations. Here is some of the feedback quoted from previous years' participants:

- "The presentations were excellent and engaging. The objectives as stated in the promotion were met and right on point."
- "Alice Salvo gives the best presentations!"
- "Elliot Matloff was fascinating."
- "Love the venue!"
- "Myer Sankary gave an excellent program. Thank you!"
- "Chris Hamilton had a really interesting presentation... [He] gave interesting examples and material was applicable to all professions, very insightful."
- "Professor Barrett's seminar was well-done, informative and interesting... [He] was very helpful. I appreciated the Q&A."

One of the advantages of the MCLE Marathon is that the attendees are there in person. In other words, this is not some sort of virtual webinar conference; this is a live, engaging, educational event. As further indication of the Marathon's success, some attorneys who have previously fulfilled their MCLE requirements still attend the event year-after-year. The SFVBA believes that the MCLE



Angela M. Hutchinson served as the Managing Editor of *Valley Lawyer* magazine for five years with this January 2013 issue as her last one. She is actively focused on her entertainment career and can be reached at angela@breakingintohollywood.org.

Marathon is an avenue for members to get to know each other, and for the Bar to get to know its members. It is an opportunity to network with both new and long-term members, as well as its committed sponsors.

Sponsors

The SFVBA offers many membership benefits that members are encouraged to explore, but the Annual Marathon is certainly one of the most talked about Bar programs. And thanks to the sponsors, the registration is affordable at $169 for the two-day event. Some of the MCLE Marathon sponsors share the benefits of sponsoring this highly productive annual event.

"My firm sponsors the SFVBA's MCLE Marathon to provide pertinent and up-to-date information about insurance programs that may affect an attorney personally as well as his clientele. In this way, the attorney can make more informative decisions in his practice," says Elliot V. Matloff, president of The Matloff Company, an insurance and financial services firm.

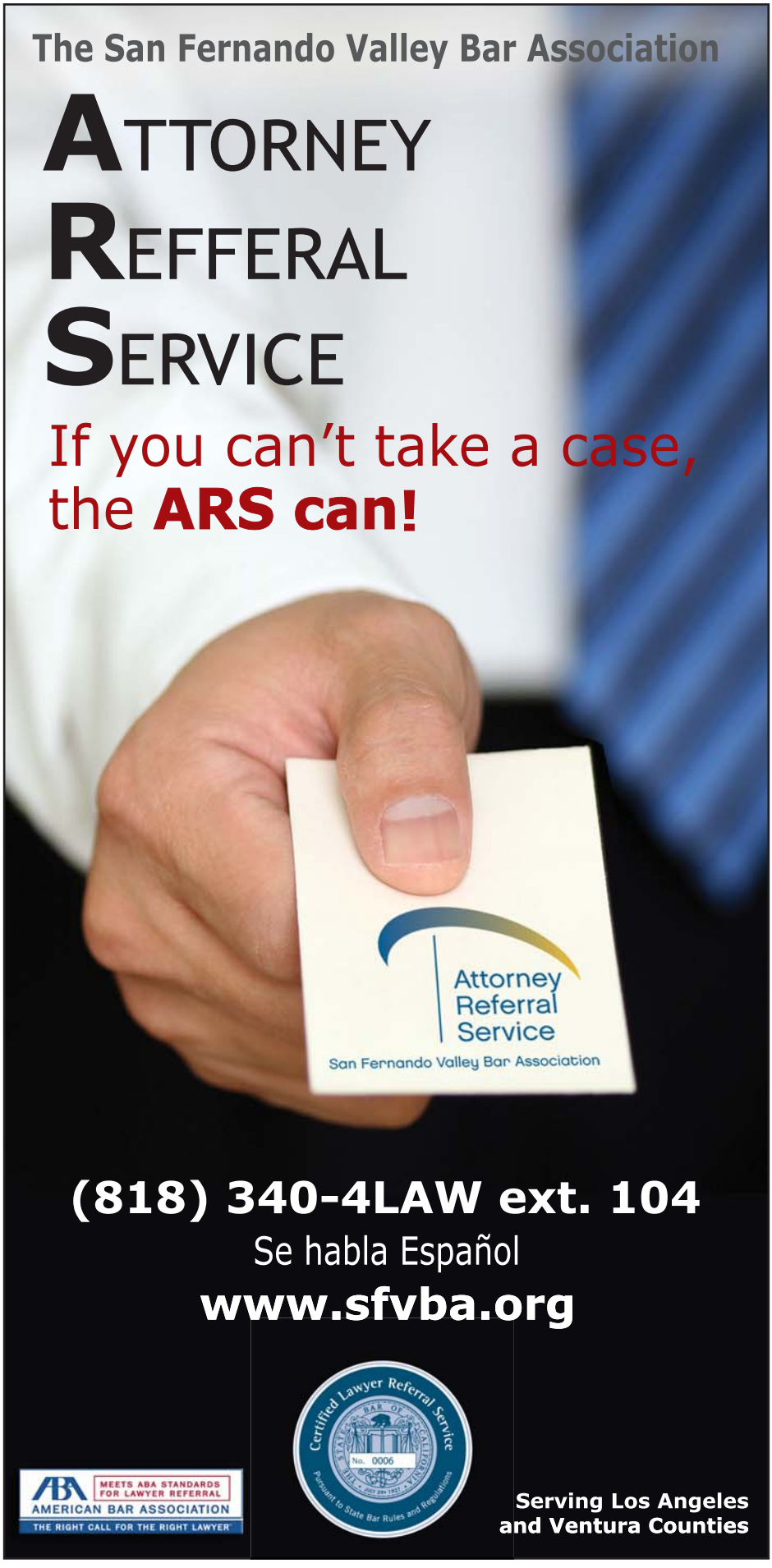
"It is also a great way for attorneys to meet me and my staff and know the type of insurance services that I provide," he shares. "From sponsoring the SFVBA MCLE Marathon, I have met many attorneys and have done business with them, their families and even their clients."

Attorney Alice A. Salvo sponsors the event for networking and marketing opportunities. "I am deeply committed to the San Fernando Valley Bar Association. I am a past president and have been active in the association for 27 years," she says.

Other companies like LexisNexis sponsor the Marathon because "we are constantly striving to be in front of, and working with, the attorneys here in the [San Fernando Valley] and want them to know we are a valuable resource available to them," says Brian Beck, Territory Manager for LexisNexis.

"I have met hundreds of attorneys through different networking events I have attended and sponsored. The SFVBA has been a great help providing the events/locations that help begin and build relationships."

Members interested in sponsoring a future MCLE Marathon or other SFVBA events should contact Linda Temkin at (818) 227-0490, ext. 105.



Q&A with Judicial Officer Judge James Steele

By Nancy A. Reinhardt

JUDGE JAMES STEELE IS THE CURRENT judicial officer handling the probate calendar at the Van Nuys courthouse. Current SFVBA's Probate & Estate Planning Section Chair Nancy Reinhardt interviews Judge Steele about probate and civil practice areas.

Nancy Reinhardt: Since you have had a mixed judicial assignment here in Van Nuys for a number of years, what are the most striking differences between the two areas, civil and probate?

Judge Steele: For one thing, the probate bar is a smaller, more specialized group and as such, the lawyers interact more frequently with one another on multiple cases. This tends not to be the case among the civil bar and this distinction has multiple implications. For example, although there are plenty of pleading and discovery issues which come to the court for resolution in the probate context, given the number of pending probate cases in this district and what I am made aware of by the parties, it is obvious that a great many of these issues are resolved informally without any court involvement whatsoever.

By contrast, my civil cases tend to require far more intervention in order to address pleading and discovery issues. On average, probate lawyers seem to exhibit more professional courtesy towards one another. On a selfish note, it is far more rewarding, and efficient, for a judicial officer to work with counsel who treat one another with respect.

NR: Anything else about the differences in the attorneys who practice in these two fields?

JS: Yes. Another difference is in the degree of specialized knowledge within the probate bar. Although there are plenty of civil lawyers who have mastered their areas of practice, there are also a number who might be said to have spread themselves a bit too thin by taking on cases in areas in which they have only passing familiarity.

I am very impressed by the number of true experts we have in the local probate bar, a great many who have achieved State Bar-recognized specializations, advanced degrees in taxation, as well as a fair number who have written articles and/or who regularly lecture in their chosen field.

Since my professional background in the 29 years I practiced was in corporate, real estate and business litigation, without any probate exposure, I find it stimulating to have the opportunity to be involved in the process with so many accomplished practitioners.

NR: Tell me your thoughts about the court's Pro Bono Probate Mediation Program. Are you happy with it?

JS: Immensely. As you well know, given that you have been personally involved as a volunteer mediator and you have successfully assisted parties in resolving a number of pending cases, this has been an enormously successful program. We have a list of all of our volunteers posted outside the courtroom and in the Probate Clerk's Office.

I wish I could take the credit for developing it but it was instituted by Judge Richard Kolostian, who was the District's Supervising Judge when he sat in probate. It continued when Judge Michael Hoff took over and Judge Johnson immediately before me some years ago.

While I can't speak to how many cases were successfully resolved previously, I did a rough count for last year alone and I found approximately 50 cases had been successfully mediated through this process. I could not imagine a better result.

NR: For those who might not be familiar with how the Probate Mediation Program works, could you outline it for us?

JS: It starts with Alice Salvo's office soliciting volunteers to commit to assisting one Tuesday morning per quarter. When I call the Probate calendar each Tuesday morning, I try to determine a date by which the parties are likely to have completed their initial investigation and discovery. Before setting evidentiary hearing dates, I offer the possibility of a future mediation session with an unspecified member of the local probate bar.

We use the jury room in our department and usually have at least one, and sometimes as many as three, such cases set per morning. I also try to solicit a stipulation for me to order the parties to personally attend since, in the absence of personal attendance, the likelihood of settlement decreases substantially. There is usually no problem in getting such a stipulation.

The mediator arrives in the morning and I usually greet the volunteer and say something about my understanding of the case and what I believe the issues might be, but only in very general terms. Oftentimes, I just leave it to the mediator to review the file and for him or her to talk to the parties to determine what those issues are. In a perfect world, the parties would have provided mediation briefs. If that is the case, I do not look at those briefs.

If the mediator has been able to assist the parties in resolving the case, we generally try to have something put on the record as soon as possible. The parties have usually

prepared a memorandum of settlement and I typically ask each of the parties if they have read, or listened to it, and understood all of the terms. I generally ask if anyone believes there are any other terms which have not been read or memorialized. There are times that I have later regretted having asked that question but it is necessary nonetheless. I also try to clarify any terms which might need some more specificity.

Often times, I will explain what is meant by a Civil Code §1542 release as to unknown claims and whether or not it is intended, and in almost all cases, I inquire of each of the parties about whether or not he or she would like the court to retain jurisdiction for enforcement pursuant to CCP §664.6. I then thank the parties and counsel, as well as our volunteer mediator.

I try to follow up with a personal thank you letter to each of the volunteer mediators. I wish I could say I have done so in every single case, but I definitely make an effort to do so. Unfortunately, I do all of my own typing and secretarial work so sometimes it takes me a while to get around to sending the letters out.

NR: Do you think the court's budget issues will likely impact the mediation program?

JS: I would like to think not but I think some aspects may be affected. For example, for security reasons, it was necessary to have a bailiff available to sit in the hallway in the vicinity of the jury room for these mediations. This is because the hallway is supposed to be a secure corridor with only court personnel present. It took some considerable effort to arrange for a bailiff for that purpose and I am concerned that availability might not continue. This will require that the mediations be moved to another location in the building, perhaps the cafeteria.

Although there has been talk about further changes which will be necessitated due to fiscal concerns, I remain firmly committed to the probate mediation program. I've read estimates as to what it costs to run a courtroom each day being in the range of $5,000 to $9,000, or more. As such, the enormous benefit of the Pro Bono Mediation Program is obvious. This, of course, does not take into account the benefit to the parties in having their disputes resolved without having to suffer, and in many cases I truly mean "suffer," a trial. This can be particularly difficult for family members who would be forced to relive the loss of a loved one.

NR: Your Honor, there has been a lot of speculation about what further cuts will happen as a result of our current budget crisis. Can you give us a brief understanding of what is being contemplated and how that will affect practitioners?

JS: One of the concepts being considered is to consolidate the probate court. In other words, all probate matters would be heard downtown and not in many, or possibly any, of the outlying district courts, except Lancaster due to its remote location. There are currently eight district courts which hear probate matters.

Of course, this will mean that all hearing dates will get pushed out. There will be definite and noticeable changes in the way we process cases in the probate courts. On a personal level, I am very interested in helping Judge Mitchell Beckloff establish a mediation panel downtown if he believes it will be beneficial. We will let our local bar communities know what they can do to help if this panel is established.

NR: In light of this, what is your recommendation for us as attorneys on behalf of our clients?

JS: I would strongly encourage all of you to participate in mediation with the panel, or privately if need be, before the effective date of the consolidation which is expected to be July 1, 2013, if the plan is approved. The Pro Bono Mediation Panel is such an asset to our local court since not every case can support the expense of private mediation.

NR: Do you believe the volunteers gain from serving as mediators?

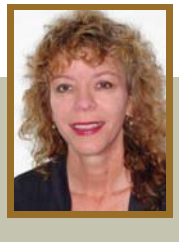
JS: Most notably, there's little in professional life more rewarding than knowing you were instrumental in bringing about the resolution of a dispute. This is all the more so given the dynamics of the kinds of cases we deal with in the probate court.

In addition, serving as a settlement officer forces you to look at cases at several levels you might not otherwise be given the opportunity to do. Of course, there's the intellectual stimulation of analyzing a case.

There's also the challenge of presenting the case from different perspectives. It's not just an exercise in figuring out which side has the better legal argument, but finding a way to assist each of the parties in appreciating the entirety of the issues to be considered including the financial and emotional cost of litigation as well as the unpredictability of litigation.

You also have the opportunity to help your fellow practitioners. It is surprising to me how many litigants are so convinced that they are in the right, that it never dawns on them they might actually lose at trial. Even an excellent, highly experienced lawyer—when dealing with an unsophisticated client in an emotionally-charged case—can have client control problems. A knowledgeable settlement officer, without any stake in the outcome of the case, can have incredible impact on such a party contemplating possible settlement.

Additionally, I can't impress upon you how helpful it is to me and to the court to have the assistance of such accomplished mediators. It's an honor for me to work with such dedicated practitioners.



Nancy A. Reinhardt has a private practice in Woodland Hills, focusing on estate planning, trust administration, probate and conservatorship matters. She chairs the SFVBA's Probate & Estate Planning Section. She can be reached at nancy@nreinhardtlaw.com.

MCLE article sponsored by

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By reading this article and answering the accompanying test questions, you can earn one MCLE credit in Legal Ethics. To apply for the credit, please follow the instructions on the test answer form on page 28.

Can Lawyers Give Clients a Guarantee?

By Edward Poll

Most clients realize that law firms and lawyers cannot guarantee a result. Attorneys know this as well. To do so violates Rule of Professional Conduct 7.1's prohibition of false or misleading communication, which the ABA's commentary says includes "lead[ing] a reasonable person to form an unjustified expectation" about results.

THE STATE BAR OF CALIFORNIA RULE OF Professional Conduct 1-400 prohibits any communication "which contains guarantees, warranties, or predictions regarding the result of the representation" of a client. Of course, legal professionals must always do their very best to win, which by any reasonable definition means doing the best job possible to achieve client objectives. After all, the very first Rule of Professional Conduct (1.1) asserts that "a lawyer shall provide competent representation to a client," which requires "knowledge, skill, thoroughness and preparation." And those requirements go to the heart of what any lawyer should assure clients that they will receive.

Every lawyer must provide quality service in ways that clients find useful and of value. Surveys consistently show that the biggest reason for client dissatisfaction (and filing of disciplinary actions) is unhappiness with law firm's service performance, rather than their legal advice. It stands to reason that for a law firm to guarantee the kind of professional effort and personalized attention that all clients want and expect will create greater client satisfaction.

Technical skill is not the issue here—clients generally assume that anyone with a law license is competent. Successful lawyers must focus on understanding what clients need and want. Only when needs and wants are understood can the lawyer assess the services to provide. The lawyer who does this is in effect proactively managing client expectations about results. The goal is not manipulating the lawyer-client relationship; it is ensuring that this relationship is successful in terms of client satisfaction.

Alternative Billing

Today's increased emphasis on alternative fees is a reflection of this. In fact, virtually any form of billing other than an hourly rate offers clients a degree of certainty suggested by a guarantee. Rather than setting price by a standard unit of time, billing alternatives focus on actions taken to benefit the client, beyond the time of how that value is applied. Take, for example, charging a flat fee at a volume discount. The billing rate is determined and stipulated in the engagement letter, before the assignment even begins and will not vary no by time or result. For the client, this certainty is a benefit that conveys the same kind of assurance as a guarantee.

Alternative fee arrangements can also be a form of guarantee when they are tied to a specific result. Contingency fees, in which the lawyer gets a stated percentage of the value recovered for the client, are just the most prominent example. If the client doesn't receive value, there is no charge; if the client does receive value, the lawyer's fee is based on a previously negotiated percentage.

Contingency fees are particularly useful for the lawyer skilled at analyzing cases and accepting those with a high likelihood of success. But more sophisticated techniques are possible in corporate dispute resolution when lawyers and clients become partners in planning each specific matter. The sharing of the risk is based on the outcome. When this is approached successfully, lawyer and client have a mutual success goal. Such a billing alternative reflects a highly interactive process: the lawyer takes a direct financial stake in achieving the desired results and the client plays an active role in deciding whether those results have been met. The result is greater assurance and satisfaction for the client.

Alternative fee arrangements reinforce the concept that a firm is committed to performance. They thereby reduce clients' feelings of risk, so that they feel comfortable moving ahead with an engagement. But this is not the only way to give clients the assurance that they will receive the service and attention they want. A whole range of tools will accommodate the variables that can make results uncertain in any matter, but make clients confident that their time and expense will be rewarded with the lawyer's maximum effort. These are some of the most important to use.

Clear Engagement Terms

A clear written agreement at the start of every engagement will detail each party's responsibilities for making the engagement a success. Meeting the client's expectations requires incorporating all essentials in the engagement document. Make sure clients understand that they are entering a two-way relationship. The lawyer agrees to perform to the best of his or her ability in accord with professional standards, and the client agrees to communicate and cooperate fully—which includes paying the bill.

This entire process aims to obtain as much information as possible about the goals and expectations of the client. The information covers parties, issues, anticipated strategies and desired outcomes. Understanding the client's objectives and setting forth how to meet them is not a guarantee of results, but rather makes informed estimates to which the client agrees as defining future satisfaction with the engagement.

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Collaborative Budget

Establishing a budget at the start of an engagement is only an estimate of future activity, but it shows clients that the firm is sensitive to their needs, and shows them what to expect. Budgets should use common sense and realism to define what it will take to complete any work.

Always err on the side of caution, to save the client from negative surprises. Use common sense, be realistic and communicate accurately about the amount of time it will take to complete any work. Be sure to build in more than adequate time, to avoid hitting the client with surprises.

Clients should also have in mind how much money they want to spend to resolve a problem, just as the lawyer should have a feel for whether spending $100,000 to try or $10,000 to settle it will best meet the client's objectives. The key here is not just preparing the budget, but involving the client in its preparation, approval and implementation (which last through constant communication about developments to keep the budget on track). No budget can be guaranteed, but communication about budget progress gives clients the assurance they want.

Reasonable Fees

The only requirement for a lawyer's fee, according to the Rules of Professional Conduct, is that it be reasonable as directly related to the value that the client receives in terms of a lawyer's skill, timeliness, experience, reputation and results. This fee and what it is based on should be clearly stated in the engagement agreement and budget.

The Rules define "reasonableness" by such factors as the time and labor required, the difficulty of the questions involved, the skill needed for proper counseling, the customary local fee for similar services, the time limitations imposed by the matter and the experience and ability of the lawyer.

Some of these criteria are relatively objective, particularly time required and customary local fees. But other factors, such as the difficulty involved and the urgency of the matter, are more for agreement between lawyer and client. To be able to discuss and document certain specifics regarding them will give clients assurance about the value they will receive for the fee they pay. By contrast, controversies and malpractice actions too often arise over what is a reasonable price when a client fails to understand the "value" being offered.

Understandable Bills

A bill that only says "For legal services rendered" or that is inaccurate or confusing is a sure path to client dissatisfaction. Clients need to be assured about the value, and not just the cost, of the services they receive. Start in the initial client meeting by explaining how the firm will bill. Then explain the billing process again, in writing, in the letter of engagement. Be complete in billing statements by using action verbs to describe services provided and clearly indicating the specifics of what was accomplished. This gives clients an appreciation of the effort expended and the successes achieved on their behalf.

Effective Safeguards

It is a lawyer's ethical duty to protect all documents on behalf of clients. Rule of Professional Conduct 1.15 requires that client property and files be appropriately safeguarded. Give

clients the assurance that guarantees that safety. Maintain a full inventory of all physical and electronic client files and papers, and make it a point to back up all computer data and store important records and documents off-site. Work with an insurance carrier to establish the value of client property and effectively cover it with appropriate fire and natural disaster insurance.

Ethical concerns about insurance extend even further. The ethical duties of a lawyer to serve clients are paramount, and some authorities hold that failing to reasonably anticipate and be prepared to service clients in the wake of a disaster is a failure to act competently. Even with property, general liability and fidelity insurance to cover loss to facilities and equipment, business interruption coverage that allows the firm to remain in business—and to continue serving clients—even in the event of a major disaster is a good option. Above all, inform clients about these safeguards so that they have full confidence in the protection provided.

Constant Communication

Clients uniformly want full communication from their lawyers, and will inevitably consider an engagement to be unsatisfactory—no matter what results the lawyer achieved—if they feel ignored or do not know how their matter is being dealt with.

Unresponsiveness, particularly a consistent failure to return phone calls and respond to letters or faxes, is the number one client complaint. Show clients that they are highly valued by guaranteeing certain performance standards regarding communication and interaction. Commit in the engagement agreement to:

- Return phone calls the same day, either personally or through a staff member.
- Reach out proactively to clients rather than waiting for them to ask about progress, by sending them copies of all relevant documents about them that come into the office, and providing status reports on a regular basis.
- Make clients feel like part of the team by seeking out their opinions, asking them what they want to accomplish, and explaining the reasons behind the advice they receive.
- Visit clients at their home or business at no charge to solicit their feedback and learn more about the legal services they need.

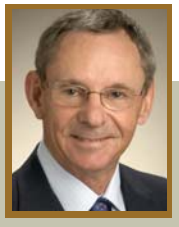
Long-Term Relationships

There is no ethical problem when a firm assures clients that they will receive maximum effort and service quality. Some firms have even put this in the form of a written guarantee. The Summit Law Group, based in Seattle, has offered a variation on guaranteeing satisfaction by providing clients with a "value adjustment line" on its invoices, that allows clients to adjust the billing up or down depending on their perception of value received.

For years, Chicago's Ungaretti & Harris provided the written assurance that dissatisfied clients will have their unhappiness resolved to their satisfaction, even if it means reducing their bill. Of course, no firm or lawyer should make such guarantees if they are not prepared to stand behind their effort.

A better way to look at guaranteed performance is that it can maintain long-term client relationships in a spirit of collaboration. Firm and client work together to assess needs and develop a proactive, interactive law approach, making recommendations to each other about actions and decisions that are mutually beneficial.

Collaboration is maintained by performance. Performance is a factor of communication, understanding and focusing on the client's objectives. Every lawyer wants to get paid on results—and client satisfaction with services received can ultimately be the best result of all, because it depends on the kind of assured effort that increases revenue from satisfied clients.



Edward Poll, JD, MBA, CMC has extensive background in business and law and is one of the nation's most sought-after experts in law practice management issues. Starting, operating and exiting the law practice are issues of keen interest and focus of Poll's writings and presentations. Poll can be reached at edpoll@lawbiz.com.

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Test No. 52

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour in Legal Ethics. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. Both the ABA and California State Bar Rules of Professional conduct prohibit lawyers from making misleading statements or guarantees about an outcome.
   ❑ True ❑ False

2. A lawyer competence, according to the Rules of Professional Conduct, is judged strictly on the extent of his or her legal knowledge.
   ❑ True ❑ False

3. Dissatisfaction with a matter's result is the biggest reason why clients file malpractice actions.
   ❑ True ❑ False

4. Alternative billing arrangements typically still depend on an hourly rate.
   ❑ True ❑ False

5. In certain types of corporate litigation, lawyer and client can agree on how they will share the risk of the matter's outcome as a mutual goal.
   ❑ True ❑ False

6. Setting an alternative fee should be an interactive lawyer-client process.
   ❑ True ❑ False

7. An engagement agreement need only emphasize documenting the client's responsibility in the upcoming matter.
   ❑ True ❑ False

8. While the engagement agreement can state the desired result of a matter, that is not the same as giving a guarantee of result.
   ❑ True ❑ False

9. It is best that a budget estimate more time than will likely be needed to complete an engagement.
   ❑ True ❑ False

10. The best way to get an accurate budget is for the lawyer to prepare it and then have the client sign off.
    ❑ True ❑ False

11. The only requirement for a lawyer's fee is that it be reasonable in terms of value received.
    ❑ True ❑ False

12. All of the criteria for determining a reasonable fee are specific and objective.
    ❑ True ❑ False

13. The best approach to billing is to be specific about what was done for the client.
    ❑ True ❑ False

14. Assuring the safety of client files includes maintaining full inventory records and electronic file backup.
    ❑ True ❑ False

15. Lawyers cannot be held responsible for disasters that damage client files.
    ❑ True ❑ False

16. Business interruption insurance gives coverage even in disasters.
    ❑ True ❑ False

17. Poor communication tops the list of client complaints about lawyers
    ❑ True ❑ False

18. It's best not to trust clients with reports about how a matter is going.
    ❑ True ❑ False

19. No firms have put performance guarantees in writing.
    ❑ True ❑ False

20. Guaranteed performance can enhance collaboration with clients.
    ❑ True ❑ False

MCLE Answer Sheet No. 52

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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   Tarzana, CA 91356

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5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0490, ext. 105.

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

1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
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19.	❑ True	❑ False
20.	❑ True	❑ False

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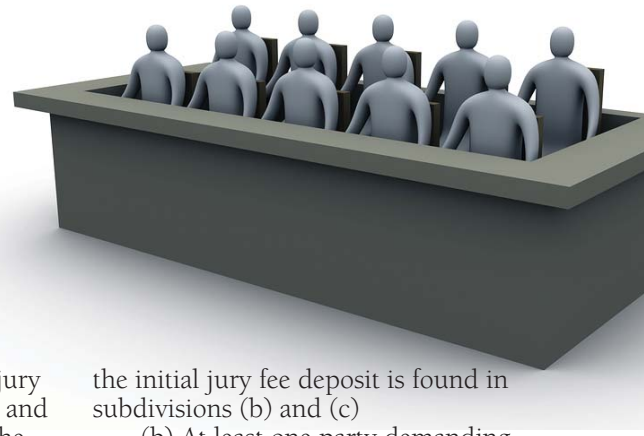
Jury Fee Deposits Under the New Code of Civil Procedure §631



By Diane Goldman

THE DAYS OF WAITING 25 days before the initial trial date before a party must deposit the first day jury fees are gone. So is the right to obtain a refund of jury fee deposits in cases that are dismissed, settled or otherwise resolved without conducting a jury trial. The dire financial straits the courts have found themselves in has resulted in the legislature employing more and more strategies to garner fees from litigating parties regardless of whether any service is actually rendered in return for those fees paid by the litigants.

As most litigators are aware, under the old Code of Civil Procedure (C.C.P.) §631, a party requesting a jury trial was required to deposit the estimated first day fees of $150 no later than 25 days before the trial date. Once the trial started, the parties requesting the jury were obligated to pay the jury fees and mileage to the court daily during the trial. The practice of paying for the daily jury fees and mileage varies by court. Subsection (c) of the statute required (beginning with the second day of the trial) payment of that day's fees and mileage in advance at the start of each day of the trial. In practice, though, most courts in Los Angeles County require payment of the previous day's fees and mileage at the start of the trial day.

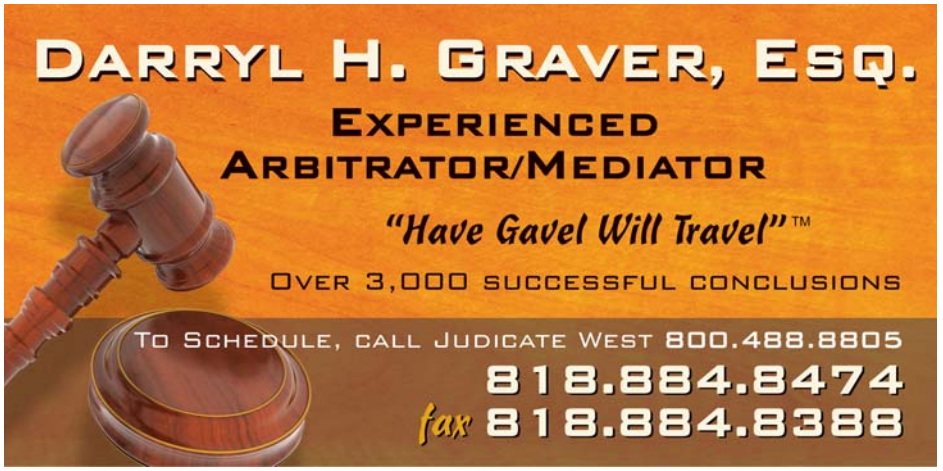
Initial Day Deposit

Under the new version of the statute, the initial day jury fee deposit is required before the case management conference, and the jury fee deposit is not refunded, for any reason. The new directive for the initial jury fee deposit is found in subdivisions (b) and (c)

(b) At least one party demanding a jury on each side of a civil case shall pay a nonrefundable fee of one hundred fifty dollars ($150), unless the fee has been paid by another party on the same side of the case. The fee shall offset the costs to the state of providing juries in civil cases. If there are more than two parties to the case, for purposes of this section only, all plaintiffs shall be considered one side of the case, and all other parties shall be considered the other side of the case. Payment of the fee by a party on one side of the case shall not relieve parties on the other side of the case from waiver pursuant to subdivision (f).

(c) The fee described in subdivision (b) shall be due on or before the date scheduled for the initial case management conference in the action, except as follows:

1. In unlawful detainer actions, the fees shall be due at least five days before the date set for trial.
2. If no case management conference is scheduled in a civil action, or the initial case management conference occurred before June 28, 2012, and the initial complaint was filed on or after July 1, 2011, the fee shall be due no later than 365 calendar days after the filing of the initial complaint.
3. If the initial case management conference occurred before June 28, 2012, and the initial complaint in the case was filed before July 1, 2011, the fee shall be due at least 25 calendar days before the date initially set for trial.
4. If the party requesting a jury has not appeared before the initial case management conference, or first appeared more than 365 calendar days after the filing of the initial complaint, the fee



shall be due at least 25 calendar days before the date initially set for trial.

If the lawsuit was filed between July 1, 2011 and June 28, 2012 (the date the new version became effective), the earlier time limit of depositing initial jury fees applies (no later than 25 days before the trial date). This is true also for lawsuits in which the case management conference was held before the statute's effective date. If a party fails to make the jury fee deposit that was due between June 28, 2012 and November 30, 2012, the party can still obtain a jury trial if the deposit is made before December 31, 2012 or 25 days before the initial trial date (whichever is earlier).

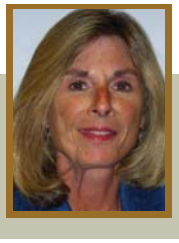
Jury Waivers

The new jury fee deposit rule is a trap for the unwary, as well as being another cost of litigation if the attorney even contemplates having a jury trial. The statute provides that a jury trial can only be waived if the party fails to appear at trial; waives the jury trial right in writing and files the waiver with the court or clerk; orally waives the jury trial right in open court; fails to announce the request for a jury trial at the time the case is set for trial (by notice or stipulation) or five days after receiving notice of the trial date if there was no notice that the trial date would be set or a stipulation to the trial date; fails to deposit the jury fees when due (before the CMC); or fails to pay the daily jury fees during a trial.

The jury waiver does not apply if another party on the same side of the litigation has made the jury fee deposit timely. Similar to the previous version of the statute, there is a provision for the court to allow a party to have a jury trial even if there has been a waiver.

The result of the new version of the statute is that a decision must be made very early in the litigation whether the matter is best tried before a jury. In most lawsuits, little discovery has been completed by the time the case is reviewed by the judge at the case management conference. Therefore, even though many facts will be discovered later in discovery, if there is even a remote chance that the case should be tried before a jury, counsel should diary making the jury fee deposit no later than the date the case management statement is filed with the court.

It is always easier to waive the jury trial right than to beg the court's indulgence and plead for the right to a jury trial that was inadvertently not preserved. In either situation, the $150 deposit should be returned as a recoverable cost to the prevailing party under C.C.P. §1033.5(a)(1).



Diane Goldman is a sole practitioner in Woodland Hills. Her practice is primarily in the areas of personal injury, general business litigation and elder abuse. She is a member of the American Board of Trial Advocates and has tried more than 85 jury trials. She can be reached at diane@dianegoldmanlaw.com.

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Options to Replace the California State Bar Discipline System

One Lawyer's Proposal

By Phillip Feldman

FORTY-FIVE YEARS AGO, I called the State Bar about passing out my new business card around my new Van Nuys office. Unlike today's unreliable lay responses, my query was passed on to its executive director, who called me a few days later. He suggested that I could buy a pack of cigarettes at the local drug store and hand the druggist my card. I told him that law school had taught me that doing indirectly what was directly prohibited was not ethical.

Back then the executive director served a dual role since he was also the equivalent of today's Chief Trial Counsel. The tiny State Bar office on Olympic Boulevard was more than enough for its half dozen staff. The director invited me to become a State Bar Examiner and I joined others throughout the state who had "volunteered." Perhaps too many babies have been thrown out with yesterday's State Bar bath water.

The director personally trained me to perform my function. It was in accordance with the manual I was provided, which set out the goals for representing the State Bar in presenting its case for the discipline of attorneys. A case was presented to panels which adjudicated the lawyer's discipline. Like today, the lawyer could be represented by counsel. Unlike today, my expressly proscribed function did not include a duty "to protect the public." My role was to fairly present evidence to the panel, whose adjudicatory function included public protection. The distinctions may not seem significant, but the difference was and is critical.

In 2011, the State Bar's executive director, in a single day, terminated almost half of the State Bar's prosecutorial top management team, each of whom had served close to a quarter century. The well respected former State Bar president, who had won his seat by attorney votes, held the chief prosecutor's slot for a short spell. He "got the word" and resigned a short time before the fiat.

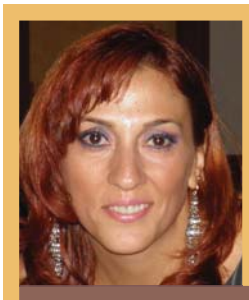
All of the civil servants whose function related to disciplining attorneys repeatedly shouted "their duty to protect the public" mantra to all who would listen. Now, over 150 deputy trial counsel, supervisors, investigators and analysts needed to add "lock step" compliance in order to just keep their civil service jobs.

The original administrative complaint was that the State Bar's prosecutorial group took too long to get their cases to trial. A professional prosecutor was brought in to ensure short time tables. In order to comply with time restraints, prosecutors re-filed old complaints to reflect paper compliance. Case movement was on fast track but the Supreme Court had to remind everyone that "minimum sentencing standards" preserved uniformity.

Yesterday's panels were not judges who only adjudicated State Bar discipline. Like examiners who presented the evidence, they were unpaid volunteers. These experienced lawyers, like the attorneys facing discipline, were peer groups intimately familiar with the day-to-day practice of law and the respondent's particular fields and specialties.

Dissatisfaction with a peer panel's decision enabled direct connection to the ear of the California Supreme Court. Today's civil servant State Bar Court judges are all fair administrative law judges but bear no semblance to peers. Because they are not chartered to sit in equity, they lack the portfolios and purviews of Superior Court judges and appellate justices as well.

Because the Supreme Court was devoting too much of its time to criminal and disciplinary matters, it established the State Bar Court, whose nine judges make recommendations to the Supreme Court. With de minimus exceptions, the "recommendations" are not reviewed "de novo" and once edicted by the three judge "Review Department," constitute finality. As our state's population increased, wholesale



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de novo review of attorney discipline matters was not entitled to the sanctity afforded criminal justice defendants.

In order to deal with important policy and conflict issues of civil matters, delegation to some governmental body was long overdue. The fiction and fallacy is that the delegation must be made within the judicial arm of government. Superior courts and appellate courts, which have never been utilized for appeals from attorney discipline in California, would be most qualified to assure equal protection of the law for lawyers. See, for example, the fair and equitable procedures used for physicians and all other professions in our state, infra.

Generally, the California Supreme Court rule of law holding that the California disciplinary system is not about "punishment" is not even given lip service in the state's present disciplinary system. Protecting the public was not always a primary policy. To understand why it changed requires some probing of the time capsule and a look at the real world. "Proceedings to suspend or disbar attorneys are special…intended, not for punishment, but for the protection of the courts and the profession…" 4 Cyclopedia of Law and Procedure (1902).

Ethics is "the science of moral duty; more broadly the science of ideal human character." 21 Corpus Juris 1258 (1920). Legal ethicists, attorneys and aides who gravitate into the fields of professional responsibility and discipline are not representative of over a quarter million California lawyers. Like Caesar's wife, they need to be "holier than thou." In the real world, attorneys being policed don't need to be models of ideal human character in order to protect the profession or the public.

Attorney Abraham Lincoln and his colleagues were able to protect the profession and the pubic without penal simulating rules. Lawyers are and were professionals. Lawyers are and were people. Most brought and still bring to the profession at least an average sense of right and wrong and the morality of their times. Some didn't. Some still don't. Nineteenth and early twentieth century "regulatory" precepts were generally broad standards of morality.

In modern times, the American Bar Association took the lead in developing "thou shalt not" canons and disciplinary rules to analyze and enforce them. In turn, these became the Rules of Professional Conduct which regulate every state in the United States except California. Although California originally borrowed from the national resource, as 100% of the rest of the country accepted the national standard of brevity and clarity, we followed our own drummer.

Two branches of state government appointed a five-year commission to revisit our rules of professional conduct, with the goal of conformation with ABA Rules and/or the Restatement of the Law, The Law Governing Lawyers, which sets out majority views. The commission delivered its five-year work product to our Supreme Court in 2011, proposing to make our out-of-step rules many times longer and many words more tedious and unwieldy than all other states. Fortunately, the Supreme Court hasn't approved their offering. Unfortunately, no attempt is being made to have California join the universal American ethical rule union, as requested by the Supreme Court.

The Oath of Hippocrates, now 2017 years old, "has come down through history as a living statement of ideals to be cherished by the physician."…"The following principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician." AMA Code of Medical Ethics.

Attorneys haven't been around all that long and still have much to learn about protecting the public and the profession. Perhaps the first thing to learn is that by removing the tripartite relationship, which assures our American system of checks and balances, our profession alone in our state has given a free hand to an unrepresentative cadre of civil servants to perform the roles of legislative and executive bodies under the guise of assuring judiciary control of licensed attorneys.

Although few lawyers respond to either voting for bar leaders or even reading, let alone commenting on rules, the fiction of self-regulation is used to justify why attorney discipline is unique to all other California professions. We're all in the Business & Professions Code. That's where the similarity ends.

The public policy "to promote and protect the interests of the people as consumers" was legislatively mandated to the Department of Consumer Affairs under the executive branch

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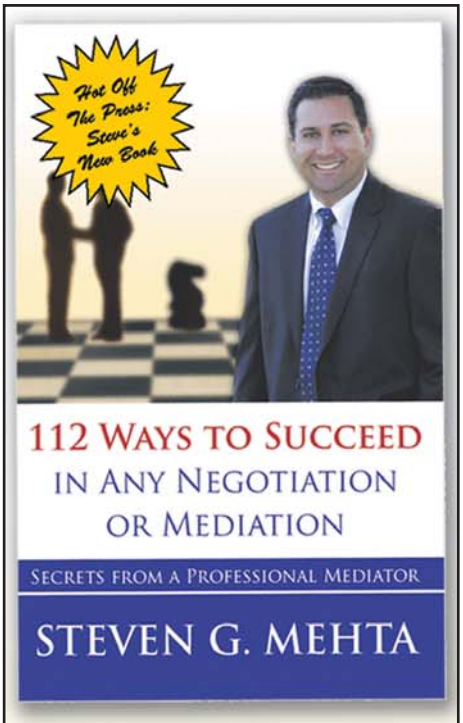

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of government (B&P §301). In other words, just as the state and local police protect us from crime and local fire departments protect us from catastrophes, we expect the executive branch to protect us as consumers.

"Protection of the public shall be the highest priority for the Medical Board of California…" (B&P §2001.1) The Board investigates violations and "to ensure that its resources are maintained for the protection of the public…shall prioritize its investigations and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously." (B&P §2220.05) Hospital review and other peer reviews serve as direct complaints to the Board as well as patient et al. complainants.

Any complaint involving the quality of care must be reviewed by an appropriate medical expert before further referral. (B&P §2220.8) The Division of Medical Quality or Health Quality Enforcement Section of the Office of the Attorney General may use volunteer peer counseling panels (B&P §2332) or experts in their role of presenting discipline cases to the adjudicator. Administrative law judges of the Medical Quality Hearing Panel adjudicate disciplinary hearings pursuant to the government code. (B&P §2227) Proposed decisions are given great weight as to factual findings unless controverted. The Board may not vote to increase a proposed penalty without a full record review. (B&P §2335) Post Medical Board, a physician may seek Superior Court remedies.

Former Governor Wilson suggested that attorney discipline (which is paid for entirely by California lawyers mandatory bar dues) be transferred to the same consumer protection agency as all other professions. The fiction of loss of self regulation or that the Supreme Court (which had already abdicated its serious disciplinary review role) would suffer loss of control of our profession kept the proposal from ever being heard.

Because of such short sightedness, band-aid approaches to resolve the total inadequacy and ineffectiveness of the State Bar of California's Office of Chief Trial Counsel continue unabated. Instead of prioritization, the lawyer prosecutorial group functions on junk in/junk out. Leaving policy level decisions to the unskilled hands of career protecting civil servants permits as many priorities as they have staff.

Hearing and Review Judges of the State Bar Court have no means of implementing their role as administrative law judges other than making post trial decisions. Their major efforts to resolve matters by mediation are thwarted by many prosecutors seeking promotion or job retention by forgetting they have little to do with keeping the public safe and a lot to do with ambition and insecurity. True, there are many fine, dedicated and loyal staff who have seen leaders come and go and will always try to do the right thing. Exercise of requisite independent, professional judgment has never survived in such an environment.

Aside from no prioritization, peer group participation has been absent for decades. An easy way to see the harm caused by disrupting the check and balance system by placing all government eggs in the judiciary basket is to look at the present State Bar discipline system with open eyes. True, there are some unscrupulous and sociopath attorneys long begging for discipline. It's also true that the legislators attempted to introduce rehabilitation and diversion as it did for salvageable miscreants in the older profession and as long part of the criminal justice system.

In 2001, B&P §6230 et seq., following the majority of the United States, was enacted. Legislative intent was for "the State Bar of California to seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety."

Section 6231 mandated the Board of Bar Governors to "establish and administer an Attorney Diversion and Assistance Program" and "establish practices and procedures for the acceptance, denial, completion, or termination of attorneys in the Attorney Diversion and Assistance program." Attorneys could self refer whether under investigation by the Bar or not. To accommodate that legislative edict, the Lawyers Assistance Program began psychotherapeutic intervention.

Lawyers have the highest suicide rate of any profession in the country.

According to Black's Law Dictionary, diversion is "a program that refers certain criminal defendants before trial to community programs on job training, education and the like, which if successfully completed may lead to the dismissal of the charges." Eleven years post legislative mandate, the State Bar thumbs its nose at that branch of government.

Eventually, Rule of Procedure of the State Bar 5.380 et seq. was initiated. It was and is an alternative discipline program, which is not diversion, but offers the prospect of reduced penalties for lawyers sincerely seeking the benefits of psychotherapeutic intervention. In one of its recent "new broom sweeps clean" leadership changes, the chief prosecutor complained that lawyers were taking advantage of it and in that manner public protection was reduced. That translates to mean that the State Bar Court judges wearing quasi equitable, common sense hats were, in the Bar's view, enabled to delay and reduce punishments for complying attorneys to the chagrin of prosecutors.

Rule 5.382 (C) gave the Chief and staff an out that successfully scuttled the program. Grounds for ineligibility included stipulated facts and conclusions of law showing (1) disbarment was warranted or (3) current misconduct involving acts of moral turpitude. The State Bar repeatedly declined to enter into stipulations lacking their unproven legal conclusions or urged that low level offenses were moral turpitude. Since a pre-trial stipulation is mandatory, the Bar has used it as an effective veto of the legislative mandate. This is done by low level prosecutors who over-ride the State Bar Court's options to defer determination till proven. In short, it constitutes a denial of due process and equal protection, which frustrate legislative intent.

Of course, the long line of Chiefs in recent years have taken advantage of their being too busy protecting the public to do their job and protect lawyers as well. Twenty-two years ago B&P §6043.5 was enacted as follows:

> (a) Every person who reports to the State Bar or causes a complaint to be filed with the State Bar that an attorney has engaged in professional misconduct, knowing the report or complaint to be false and malicious, is guilty of a misdemeanor.
>
> (b) The State Bar may, in its discretion, notify the appropriate district attorney or city attorney that a person has filed what the State Bar believes to be a false and malicious report or complaint against an attorney and recommend prosecution of the person under subdivision (a).

A plausible place to start the fix is to require the Chief to report all of the times her watch has exercised its discretion to do just that, or even replied to vindicated member's requests to do so. Perhaps the new State Bar President or the Executive Director might have candid replies, or better yet, a fix instead of more ineffective band-aids.

The opinions stated are the author's only and do not purport to represent opinions of the SFVBA. Alternative views and comments are also welcome and will be considered for publishing in Valley Lawyer.

Phillip Feldman, BS, MBA, JD, AV (Preeminent) defends lawyers before the State Bar of California, testifies as a board certified expert witness in legal professional negligence and has long counseled on preventative law. Feldman can be contacted at StateBarDefense@aol.com.

New Members

The following applied as SFVBA members in November 2012:

Stephanie C. Asher
Los Angeles
(818) 259-2712
asher.stephanie@gmail.com
Law Student

Karla F. Bagley
Ezra, Brutzkus & Gubner
Woodland Hills
(818) 827-9000
kfbagley@ebg-law.com
Paralegal

Maryam Didehban
Woodland Hills
(818) 317-3819
maryamdidehban@gmail.com
Law Student

Linda C. Dmytryk
Studio City
(818) 762-7629
lcdpro@sbcglobal.net
Paralegal

Melody A. Dosch
Van Nuys
(818) 612-5054
mhdosch@gmail.com
Family Law, General Practice

Jerry L. Freedman
Jerry L. Freedman, APC
Encino
(818) 784-9742
jlflaw01@sbcglobal.net
Business Law, Real Property

Thomas Daniel Johns III
Bell Canyon
(805) 279-5658
Tjohns004@yahoo.com
Law Student

Dimitry Y. Krol
Solouki, Krol & Savoy Law
Los Angeles
(424) 442-0019
dkrol@thesksfirm.com
Civil Litigation

Donald A. Lancaster
Lancaster Law Group, APC
Woodland Hills
(818) 992-2924
dlancaster@thelancasterlawgroup.com
Bankruptcy, Business Law, Criminal

William M. Larsen
Los Angeles City Attorney's Office
Van Nuys
(818) 374-6837
william.larsen@lacity.org
Criminal

Gregory J. Pedrick
Encino
(818) 325-3934
gjp@pedricklaw.com
Family Law

Erika Ramirez
Lizarraga Law, APC
Studio City
(818) 985-1983
erika@lizarraga-law.com
Paralegal

Barbra Reinecke
Encino
(818) 981-1770
breinecke4law@aol.com
Mediation, Business Law, Family Law

Ean M. Schreiber
Schreiber & Schreiber, Inc.
Encino
(818) 789-2577 24
ean@schreiberlawfirm.co
Business Law

Lora M. Vorkink
Ezra, Brutzkus & Gubner
Woodland Hills
(818) 827-9000
vorkink@ebg-law.com
Paralegal

Marcia Watson Wasserman
Comprehensive Management Solutions
Northridge
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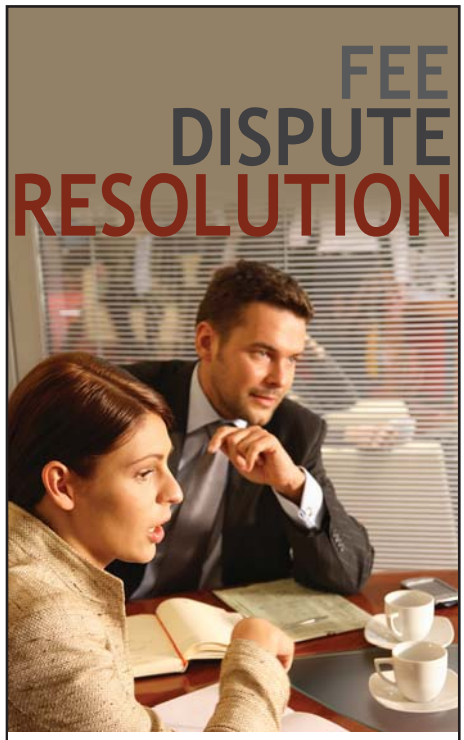

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