VALLEY LAWYER

JANUARY 2015 • $4

A Publication of the San Fernando Valley Bar Association

California's New Paid Sick Leave Requirement

Earn MCLE Credit

LASC's Top Judges Discuss the Court's Current State and Future Plans

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VALLEY LAWYER
A Publication of the San Fernando Valley Bar Association
JANUARY 2015

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On the cover: *Los Angeles Superior Court Presiding Judge Carolyn B. Kuhl and Assistant Presiding Judge Daniel J. Buckley Photo by Paul Joyner*

DEPARTMENTS

VALLEY LAWYER

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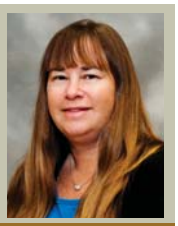
Printing Southwest Offset Printing

Court Updates and a Resolution to Be Nice in the New Year

CARYN BROTTMAN SANDERS
SFVBA President



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WHILE I SAT TO WRITE THIS COLUMN, I considered waxing philosophical about New Year's resolutions but instead thought it was the perfect time to tell you about some of the changes, improvements and other updates at the local courts.

After years of hearing about the court's cut-backs and budget crisis, I am pleased to report that some of the changes have had very positive results. The move to hub courts for small claims, unlawful detainer, and collections has resulted not only in economies of scale but also greater efficiencies that come with the focused and centralized approach. Limited jurisdiction collection matters are, for the first time in many years, current with no backlog. The number of complaints from the general public about the unlawful detainer courts has decreased dramatically.

The new year will bring more changes to the courts. An additional juvenile dependency court has been opened. Four new family law courts will open in Compton, Pasadena, Mosk and Chatsworth. The family law courts have already moved from San Fernando to Chatsworth where they have larger and nicer facilities. The family law courts in Santa Monica will move to the Stanley Mosk Courthouse, with only domestic violence matters remaining in Santa Monica.

The unlawful detainer courts that moved from Van Nuys to Santa Monica will return to Van Nuys, addressing some of the accessibility concerns that arose when the courts were moved. The unlawful detainer court in Long Beach will also be split with some of the cases going to Norwalk. Some of the trial courts at the Stanley Mosk Courthouse will become additional independent calendar courts. All of these changes are expected improve court access and efficiency. As the transitions take place, be sure to check the Los Angeles Superior Court (LASC) website, www.lacourt.org, to make sure you are filing new cases in the right locations.

And if you haven't already noticed, the Superior Court now has a new website, one of several technological changes in process at the courts. The new website is more user friendly and will accommodate payment plans, such as those accepted in criminal or traffic matters. In the past, if you had a payment plan, you had to wait at the window to make a payment. It is anticipated that this will drastically decrease the lines at the clerk windows. LASC is also in the process of changing the phone systems to a Voice over Internet Protocol (VoIP) system, which will save the courts about $3 million per year.

LASC's 28 case management systems will all be upgraded and consolidated. Some courts still use DOS and Cobalt computer systems. The funds for these technological upgrades are coming from reserves that can't be retained and can't be used for personnel because they are non-recurring. The probate court's case management system will be the first to be updated, followed by family law, traffic, criminal, and civil. The estimated completion for all of the case management system updates is in 2017. All courts will have e-filing when the updates are completed. New equipment will be purchased as well because some of the computers can't even run Windows XP. The courts will switch to Outlook and Office 365 for further integration.

Many of the courts are implementing an online court reservation system. Since the pilot program began, the courtroom reservation system has been updated so that clerks can enter and make changes. This reservation system will be used to reserve hearing dates in most of the courts.

Many of you may not be aware of LASC's Community Outreach Programs. The court, through volunteers, sponsors several community service programs, including Teen Court, S.H.A.D.E.S. Teen Court, California Association of Youth Courts, the Power Lunch Program, mock trials, foreign delegations, and speaker programs. The courts are always looking for attorneys to assist in these programs.

Finally, LASC judges have asked us to share with our members the following information regarding gifts. The Canons of Judicial Ethics prevent judges from accepting anything! They cannot be bought coffee in the cafeteria. They cannot accept a taxi ride. They cannot accept candy or baked goods or anything. Their staff cannot accept gifts either. They are allowed to be comped at bar association events if it is the bar association that is footing the bill. But they cannot be the guest of a particular attorney or firm. And they cannot accept your offer to buy their drink at such an event. Please do not put our judges in an awkward situation by offering or insisting that they accept something they are prohibited from accepting.

Though I intended not to discuss New Year's resolutions, I have one that I ask of all of you on behalf of our local judges: be nice to the court staff. The court staff has had years of cut-backs, fear of layoffs, friends who have lost jobs, and changes in assignments and workloads. They have no control over issues such as over-crowded courtrooms and 6-month motion dates. Changes are occurring and there may be some growing pains, but the end result will be an improvement. So in 2015, resolve to be nice to the LASC court staff.

Happy New Year!

SUN	MON	TUE	WED	THU	FRI	SAT
				1 Happy New Year!	2	3
4	5 *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for February issue.	6	7 Employment Law Section What's New in 2015 12:00 NOON SFVBA OFFICE Nicole Kamm and Hannah Sweiss will update the group on the important new employment laws of 2015. (1 MCLE Hour)	8	9	10
11	12 Tarzana Networking Meeting 5:00 PM SFVBA OFFICE TEN The Esquire Network	13 Probate & Estate Planning Section New Laws 12:00 NOON MONTEREY AT ENCINO RESTAURANT James Birnberg updates the Section on the latest legislation. This is the essential meeting of the new year! (1 MCLE Hour)	14	15 Intellectual Property, Entertainment & Internet Law Section Washington Redskins Trademark Controversy 12:00 NOON SFVBA OFFICE Michael DiNardo and Kelly Cunningham discuss the Washington Redskins Trademark cancellation by the U.S. Patent and Trademark Office and the impact of the trademark ruling. (1 MCLE Hour) New Lawyers Section Establishing Yourself 6:00 PM SFVBA OFFICE SPONSORED BY Marathon Records Free to SFVBA new lawyers! (1 MCLE Hour)	16–17  SFVBA 18th Annual MCLE Marathon See page 37	
18	19 	20 Taxation Law Section 2014 Income Tax Law Update 12:00 NOON SFVBA OFFICE Stuart A. Simon will review the latest in regard to 2014 income tax. (1 MCLE Hour) Litigation Section How to Win at Trial 6:00 PM SFVBA OFFICE Attorney Matt Haffner, who has over 30 civil jury trials to verdict, will discuss how to put together a winning presentation and what makes for a successful trial. (1.5 MCLE Hour)	21	VBMC Valley Bar Mediation Center 22 OPEN HOUSE See page 18	23 Bankruptcy Law Section Section 523 Dischargeability Issues 12:00 NOON SFVBA OFFICE Our distinguished panel of Judge Barry Russell and attorneys Scott Bovitz, Ira Katz and Alan Broidy will bring the group up to speed on these critical issues. (1 MCLE Hour)	24
25	26 Family Law Section New Laws 5:30 PM MONTEREY AT ENCINO RESTAURANT Barry Harlan and Michelle Robins review what new laws you must know in 2015. Approved for Legal Specialization. (1.5 MCLE Hours)	27 Editorial Committee 12:00 NOON SFVBA OFFICE	28	29	30	31

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

CALENDAR

FEBRUARY 2015

SUN	MON	TUE	WED	THU	FRI	SAT
BLACK HISTORY MONTH						
1	2 *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for March issue.	3	4	5 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	6	7
8	9 Tarzana Networking Meeting 5:00 PM SFVBA OFFICE TEN The Esquire Network	10 Probate & Estate Planning Section Identifying Medi-Cal Issues 12:00 NOON MONTEREY AT ENCINO RESTAURANT Caren R. Nielsen and Terry Magady discuss how to identify Medi-Cal issues at the initial estate planning meeting. (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICE	11 Business Law & Real Property Section Protecting the Parties in the Sale of Fine Art: Documentation and Due Diligence 12:00 NOON SFVBA OFFICE	12 Small Firm & Sole Practitioner Section and Litigation Section Litigation Skills 12:00 NOON SFVBA OFFICE John Marcin provides invaluable tips to improve your litigation skills. (1 MCLE Hour)	13	14 
15	16 	17 Taxation Law Section Partnerships and IRC Section 10 12:00 NOON SFVBA OFFICE Robert Briskin will address the group. (1 MCLE Hour)	18 Workers' Compensation Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT	19 New Lawyers Section Networking Mixer 6:00 PM LOCALE TBD Free to SFVBA new lawyers!	20	21
22	23 Family Law Section Negotiations 5:30 PM SPORTSMEN'S LODGE	24 Editorial Committee 12:00 NOON SFVBA OFFICE	25	26 *Annual Judges' Night Dinner* THURSDAY, FEBRUARY 26, 2015 WARNER CENTER MARRIOTT See page 33	27	28

HOLIDAY OPEN HOUSE

1. Director of Public Services Rosie Soto Cohen with SFVBA President Caryn Sanders and Trustee A.J. Harwin 2. SFVBA Trustees Alan Kassan and Yi Sun Kim and SFVBA Treasurer David Kestenbaum 3. Steven R. Fox and Brian T. Smith 4. VCLF President Seymour Amster with Sam Ogura and Wes Hampton of Narver Insurance 5. Jeff Briskin, Lindsay Lang and Richard T. Miller 6. Tal Grinblat and Sam Wolf 7. Marlene Seltzer and Dale Arens

BLANKET THE HOMELESS

SFVBA members and their families gathered in North Hollywood to "Blanket the Homeless" on Saturday morning, December 6. Volunteers distributed 1,000 blankets to homeless and battered women shelters and provided legal consultations to clients of LA Family Housing. Since 1995, more than 40,000 blankets have been provided to Valley shelters. The Valley Community Legal Foundation of the SFVBA was also on hand to honor Jennifer Espilin and Kevin Bordenave, who were once homeless but now are employed and enjoy stable housing thanks in part to successfully completing the Drug Court Program in Van Nuys.

New Year, New Developments

IRMA MEJIA
Publications & Social Media Manager

editor@sfvba.org

THE START OF A NEW YEAR BRINGS A WHOLE SLATE OF NEW LAWS and challenges for our courts and our daily work. With this issue of *Valley Lawyer* we hope to bring you an update on important developments affecting local attorneys.

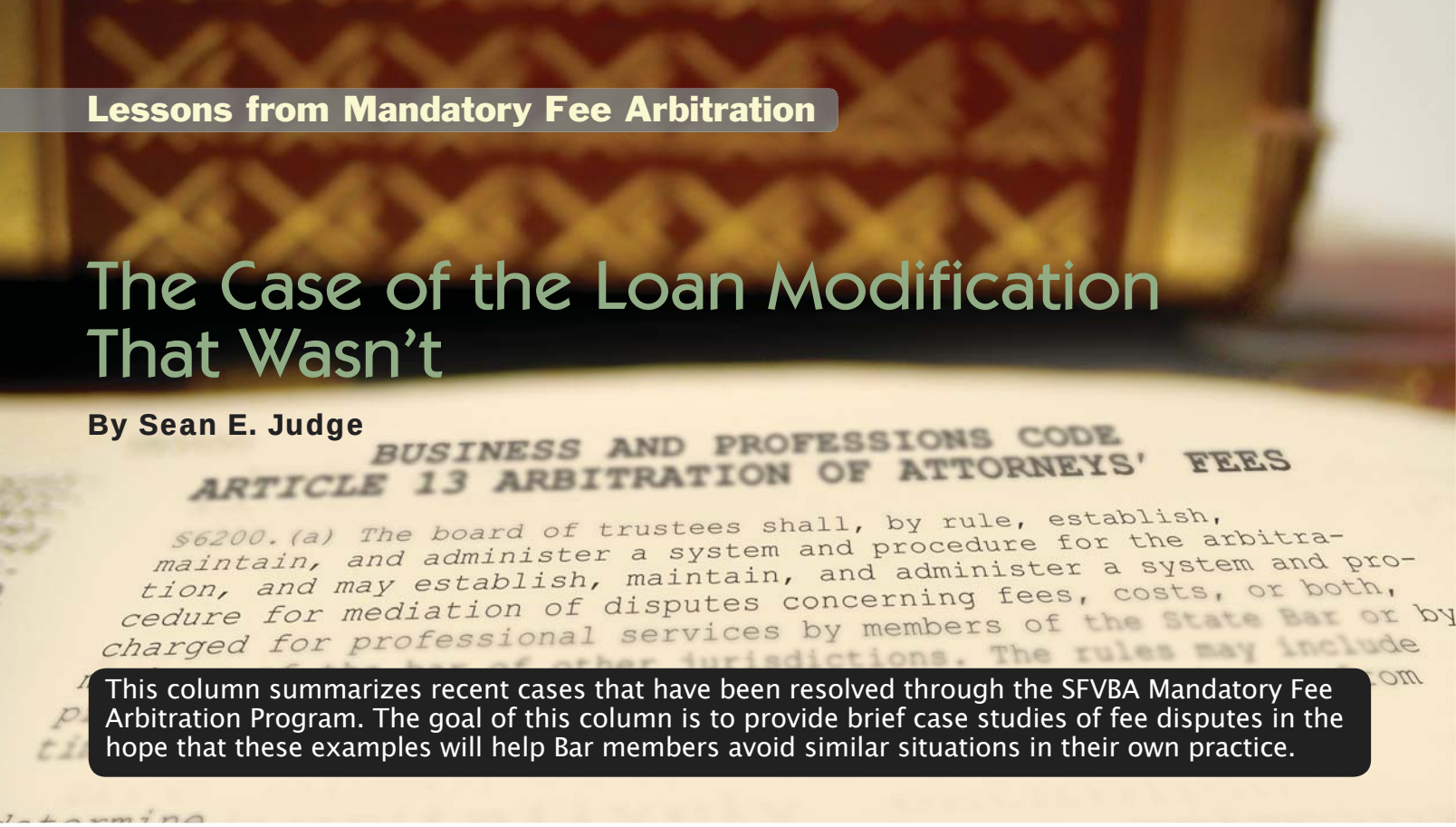
Kimberly Westmoreland's article on California's new paid sick leave requirement is a must read for employment law attorneys, professionals in human resources, and business owners. Ron Tasoff offers a helpful overview of the new executive action on immigration, while Susan Baker and Mark Shaeffer offer a preview of the year's notable cases before the state's Supreme Court. Section chairs Steven Fox, Angela Berry-Jacoby and John Rogers, Jr. provide practice tips for this year's batch of new lawyers.

Our cover story introduces SFVBA members to the new Presiding and Assistant Presiding Judges of the Los Angeles Superior Court. We are very grateful to both Judge Kuhl and Judge Buckley for taking the time out of their busy schedules to answer questions and pose for photographs. The judges discuss the updates and challenges facing the court in the coming years. A lot of technological changes are already underway, many of which have already affected Valley attorneys. Readers will find a wealth of practical information from our court's leaders in this issue.

Of course, new developments aren't limited to the start of the year. Laws will be enacted and important cases will be heard throughout 2015. SFVBA members are invited to submit articles to *Valley Lawyer* about major developments in their areas of practice at any time of the year. Feel free to contact me at the address above for more information about publishing in *Valley Lawyer*.

The Case of the Loan Modification That Wasn't

By Sean E. Judge



This column summarizes recent cases that have been resolved through the SFVBA Mandatory Fee Arbitration Program. The goal of this column is to provide brief case studies of fee disputes in the hope that these examples will help Bar members avoid similar situations in their own practice.

Facts

In a case that came before the SFVBA Mandatory Fee Arbitration Program, the client sought $6,000 in returned fees from her first attorney. The client needed a loan modification to stay in her house, and retained an attorney to assist her in doing so. The attorney required the client to pay $1,500 as an advance payment and a monthly payment of $495, which was designated as a "processing fee." The client was assured by the attorney that the loan would be modified within 2-3 months.

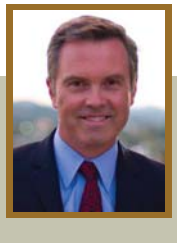
The monthly processing fee of $495 was then said to be for a negotiator and the client was instructed to fill out a form allowing an automatic withdrawal from her bank account. These were the only communications the client received from her attorney's office.

This went on for nine months with no other communications from the attorney's office. However, the client received numerous communications from her bank that she was in danger of foreclosure. She then fired her attorney, only to find that the replacement attorney demanded a similar financial arrangement. It was only when she retained a third attorney that the loan was modified and she was able to stay in her home.

The client brought the fee arbitration against her first attorney, alleging that for the $6,000 she paid the attorney, there was virtually no work completed, and communication between them became non-existent after she allowed the monthly fee of $495 to be automatically withdrawn from her bank account. The attorney indicated the he had tried on numerous occasions to contact the client, and produced a supporting phone log. Nevertheless, it was undisputed that advance fees for a loan modification had been charged.

Discussion

Under California Civil Code §2944.7 (also known as SB 94), an attorney may not receive fees from loan modification services prior to the completion of the contracted services. Further, California Business and Professions Code §6106.5 provides that an attorney may not charge advance fees when retained for loan modification services in dwellings of 1-4 units. Finally, State Bar Advisory Opinion 2010-10, Section 3 states that any such agreement in loan modification cases would be void and unenforceable and that the attorney would be required to refund the fees regardless of whether the work was actually completed. This would be



Sean E. Judge is the principal of Judge Mediation in Woodland Hills and a Trustee of the SFVBA. He is currently co-chair of the Mandatory Fee Arbitration Committee. Judge can be reached at sean@judgemediation.com.

required, the Bar concluded, because SB 94 made the act of entering into such an agreement a violation of ethics, possibly mandating discipline. As such, the arbitrator had no trouble finding that all such fees should be disgorged from the attorney and returned to the client. The attorney was ordered to refund all of the fees earned, along with the client's arbitration filing fee.

The Takeaway

Loan modification became a significant concern for homeowners who bought homes at ultra-low interest rates on the basis of stated income. Virtually all of these homes were purchased before the financial collapse of 2008. As such, these variable rate loans (many of them interest-only) became more expensive for homeowners, such that many of them lost their homes. Those who were able to stay needed these loans to be modified, and this created considerable work for lawyers.

The California legislature and the State Bar sought to provide maximum protection for consumers against the "advanced fee" practice. Thus, in both SB 94 and the State Bar Advisory Opinion, any fees generated in loan modification cases must only be charged at the end of the case. Whether the attorney is successful in obtaining a loan modification or not, any such fees must be reasonable and reasonably reflect the actual work done.

Take Two Aspirin and Call Your Employment Counsel in the Morning

By Kimberly A. Westmoreland

This year, California will become one of only a few states to require employers to provide paid sick time to employees. The Healthy Workplaces, Healthy Families Act of 2014 mandates a minimum number of hours be provided to employees for the care of themselves or family members during illness. Employment attorneys must familiarize themselves with the new legislation to effectively advise their clients about the law's requirements and best practices.

By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 23.

WHEN GOVERNOR JERRY BROWN SIGNED AB 1522, known as California's Healthy Workplaces, Healthy Families Act (HWHFA) of 2014, into law on September 10, 2014, it was chalked-up as a victory for California employees. On the heels of a scheduled graduated increase in the state's minimum wage, employees can now also count on at least three paid sick days per year. While the benefits to employees are obvious, employers are expected to also reap benefits in the form of increased employee morale and productivity.

The HWHFA comes into effect on July 1, 2015. In the simplest terms, the statute requires employers to provide certain California employees at least three days (or 24 work hours) of paid time off per year to care for themselves or family members during a time of illness or to care for themselves and seek assistance if they are the victim of domestic violence, sexual assault, or stalking.

The statute was designed and created for the purpose of enabling employees to recover from illness or injury faster so they can return to work faster and reduce the spread of illness to coworkers. It is estimated that 6.5 million employees, or forty percent of the California workforce, will start receiving paid sick time from their employer due to this law.

Paid sick time will have a significant impact on women and service employees. Women tend to be both the family caregiver and employed in low-wage earning jobs that typically do not offer paid time off. Workers in the service industry, who typically have a significant amount of contact with the public, are also less likely to be offered sick time by their employers, which leads to the spread of illness on a larger scale. As such, the HWHFA is being touted as a benefit to the public at large. It is also anticipated that providing paid sick time will also have a positive impact on employers when the cost of employee absenteeism due to illness is less than the cost of decreased production due to ill employees.

Despite the positive benefits conveyed by the proponents of paid sick leave, the concept of paid sick days is relatively new to the United States. Only two other states (Connecticut and recently Massachusetts) and a handful of cities (including Jersey City, NJ; Newark, NJ; New York City; Portland, OR; Seattle, WA; Washington, D.C.; Oakland, CA; San Francisco, CA; San Diego, CA (currently stayed); and Long Beach, CA (only applicable to hotel workers)) have enacted similar legislation. Worldwide, the United States is the only country among 22 developed nations that does not guarantee the payment of wages for time away from work to tend to one's illness or that of a sick family member. It is no surprise that California, with its well-deserved reputation for enacting employee-friendly legislation, is helping to lead the charge toward mandatory sick leave for employees.

As can be expected for a California labor-related statute, the HWHFA is very technical and requires the employer to pay close attention to the company's written policies, as well as its practices and procedures, to ensure compliance. The good news is that the statute provides a great amount of detail related to standards and enforcement. However, as with all new statutes, there will inevitably be a period wherein extraordinary or outlier circumstances will be decided by the courts.

It is best practice for all businesses to have a written employee handbook that sets forth all of its employment-related policies, practices and procedures, including any paid time off policy, or policies, such as paid sick leave. For out-of-state businesses with employees in California, the handbook must appropriately account for required deviations in certain policies due to California's nuanced labor laws, which now includes paid sick time.

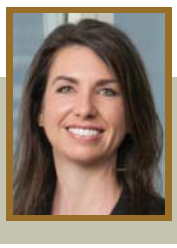
Which Employers Are Subject to the Law?

A company with one or more employees, each working 30 or more days in California within a one-year time period, must comply with the HWHFA with respect to its qualifying employees. There is no exception for small businesses or companies that only have part time employees. Companies located out of state with employees performing services in California are subject to the HWHFA.

If a company has questions or concerns related to whether its California-based workers are independent contractors or employees, it should consult with an employment attorney who is well-versed in California employment law to avoid or mitigate potential penalties and damages related to employee misclassification.

Which Employees Are Entitled to Paid Sick Leave?

An employee who, on or after July 1, 2015, works at least 30 days in California within one-year from the commencement of employment is entitled to the benefits of the HWHFA. The HWHFA applies to full-time and part-time, seasonal and temporary, qualifying employees.



Kimberly A. Westmoreland is an employment defense attorney at Klinedinst, PC in Los Angeles, an adjunct professor in fashion law at Woodbury University, and is the chair of the Employment Law Section of the SFVBA. She can be reached at kwestmoreland@klinedinstlaw.com.

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There are limited exceptions to the definition of "employee" under the HWHFA. Specifically, the following employees are exempted from the paid sick time law:

- Employees who are covered by a valid and qualifying collective bargaining agreement as set forth in Labor Code §245.5(a)(1)[1]
- Employees in the construction industry who are covered by a valid and qualifying collective bargaining agreement as set forth in Labor Code §245.5(a)(2)
- A provider of in-home supportive services as set forth in Labor Code §245.5(a)(3)
- A flight deck or cabin crew member employed by an air carrier as set forth in Labor Code §245.5(a)(4)

What Are Employers Required to Provide to Qualifying Employees?

Employers must allow all qualifying employees to use no less than three days or 24 work hours of paid sick time per year, accrued at a rate of not less than one hour of paid sick time per every 30 hours worked (approximately 0.033 hours of paid sick time per hour worked).

With respect to information related to the HWHFA, employers are required to track the accrual and use of paid sick time and provide this information on the employee's itemized wage statement or in a separate writing provided to the employee on the pay date. The employer must also provide details regarding its paid sick leave policy to new employees in the Notice to Employee, as required under Labor Code §2810.5. The paid sick leave law also expands the employer's workplace notification duties by requiring the display of a poster in the workplace that states that an employee is entitled to accrue, request, and use paid sick days; the amount of sick days provided for by the HWHFA; the terms of use of paid sick days; and that retaliation against an employee who requests or uses paid sick leave is prohibited and the employee has the right to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

For What Purposes Can Employees Use Their Paid Sick Time?

The HWHFA paid sick time is to be used by the employee to care for themselves or their family member during a time of illness to allow for recovery and to prevent the spread of illness, or during a time of recovery from domestic violence or sexual assault. Specifically, the employer must provide sick days to qualifying employees for purposes of:

- Diagnosis, care or treatment of an existing health condition of, or preventative care for an employee or an employee's family member

- For an employee who is a victim of domestic violence, sexual assault, or stalking to obtain or attempt to obtain any relief including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child

- For an employee who is a victim of domestic violence, sexual assault, or stalking to take the following actions related to the aforementioned violent acts: seek medical attention; obtain services from a domestic violence shelter, program, or rape crisis center; obtain psychological counseling; or participate in safety planning and take action to increase safety from future violence, including permanent relocation

The paid sick time law defines a family member as a spouse, registered domestic partner, grandparent, grandchild, sibling, or child (which for the purposes of the HWHFA means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in *loco parentis*, regardless of the child's age or dependency status). Also included in the definition is a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in *loco parentis* when the employee was a minor child.

How Is Paid Sick Time Earned?

While the terms of the HWHFA are very particular and detailed, there is a bit of freedom for the employer to work within when creating its paid sick time policy. Employers can choose the accrual rate for its particular sick leave policy, as long as it is not less than the statutory minimum of approximately 0.033 hours per hour worked. Further, the employer can combine vacation time with sick time and create a paid-time-off (PTO) policy to be used for multiple purposes. Or an employer can elect to allow employees to accrue the time on a pro rata basis as the employee works. An employer can also provide the employee with all of their sick time at the beginning of the year. Each option comes with its own set of requirements.

Accrual Method

If an employer chooses the accrual method, then the employee must accrue no less than one hour of paid time off per 30 hours worked, beginning at the commencement of employment or July 1, 2015, whichever is later. The law permits the employer to limit employee annual use of paid

sick time to three days or 24 hours per year. However, an employer may elect to offer additional time above and beyond that provided for by the HWHFA. Regardless of the minimum use requirement, the employee continues to accrue paid sick time at the applicable rate throughout the year to allow for carryover of unused time so the employee has paid sick time in its bank to use at the beginning of the year.

Employers who use the accrual method are allowed to implement a limit on the amount of total sick time an employee may accrue; however, the cap may not be less than six days or 48 hours. Once the employee uses sick time and reduces its balance to less than the capped amount, the employee will once again begin to accrue paid sick time at the applicable regular accrual rate until the cap is again reached.

For example, an employee who works 40 hours per week and accrues paid sick leave at the minimum rate of 0.033 for every one-hour worked is technically eligible to accrue a total of approximately 69 hours of paid sick leave per year. The employer can limit the employee's use of paid sick time to 24 hours per year, but must allow the employee to accrue up to at least 48 hours of sick time. If this employee uses 24 of the possible 69 hours sporadically throughout the first half of the year, then he or she will carry the unused 44 hours over to the next year where the employee will continue to accrue and use paid sick time until he or she reaches the 48-hour cap. At that point, the employee's accrual will stop until he or she uses sick time and brings their balance below 48 hours. Whenever the employee's balance is below 48 hours, he or she will accrue sick time at the regular rate until the employee reaches the 48-hour cap.

With respect to the accrual of paid sick time for exempt employees whose hours worked are often not documented and may vary, they are deemed to work 40 hours per workweek, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek. Exempt employees must accrue paid sick time at the applicable rate based upon a 40-hour workweek.

Annual Lump Sum Method

Another alternative for employers who do not wish to track the pro-rata accrual of employee sick time allocations is to simply offer all three mandated days (or more, at the employer's discretion) to employees at the beginning of the year. Employers utilizing the lump-sum method are still required to track the amount of sick time earned and used by each employee and account for the time on their paystubs; however, it alleviates the employer from the requirement that it allow unused sick time to carry over to the next year.

Combined Paid Time Off Policy

Employers can also elect to combine the mandatory sick time with a broader PTO policy to provide a cumulative number of hours to be used for vacation, sick time, personal time, and/or floating holidays. Employers who include paid sick time in their PTO policy are cautioned to ensure that each employee's sick time is accurately tracked and documented to reflect how many sick hours are accrued and used per year. At least three days or 24 hours of the PTO time under a combined policy must be allocated to and be available to use pursuant to the sick time law, and the policy must satisfy the accrual, carry over and use requirements set forth in the statute.

Proper documentation of sick time use is crucial, as any question as to whether the PTO was taken for sick time or vacation time will impact the amount of accrued and unused vacation time to be paid to the employee at the time of separation of employment.

Employers must evaluate the accrual rate under the PTO policy to account for the required minimum sick time accrual rate, the mandatory allowable minimum use of three days of sick time per year, and to ensure compliance with the PTO policy and avoid forfeiture of previously promised or accrued PTO under the original PTO policy. For example, if the employer offers 10 days (80 hours) of PTO per year to be used for any purpose, including sick time, the employer should evaluate its options for how to account for the approximately 69 hours the employee must accrue over the course of the year as paid sick time. Such an analysis is best done with the advice and direction of employment counsel to ensure that employees are accurately accruing paid sick leave, and to ensure they are compensated appropriately for their vacation wages if a forfeiture results and/or at termination of employment.

Finally, if the PTO policy calls for the accrual of the time off on a pro-rata basis as the employee works, then the employer must ensure that sick time complies with the requirements for the capping and carrying over of unused time from year to year.

Unlimited/Untracked Time Off Policy

Many companies are moving toward a policy wherein employees' time at or away from work is not tracked. Again, under the HWHFA, employers must document that they allow their qualifying employees to accrue paid sick leave at a rate no less than the minimum rate; are allowing employees to use at least the three mandated days per year; track when and if each employee uses time away from work to care for themselves or others under the HWHFA; and are capping and/or carrying over the sick time per the requirements of the statute.

Pre-existing Paid Sick Time Policies

Employers who already have a paid sick time policy are urged

to review the terms to ensure that it satisfies the accrual, carry over, and use requirements discussed herein, and to ensure that it provides no less than the required three days or 24 hours of paid sick leave, or an equivalent paid leave or paid time off, for the employee to use each year of employment or calendar year or 12-month basis.

Documentation of Accrual and Use of Paid Sick Time

Documentation of employee hours worked, accrual or earning of paid sick leave, and the use of such time must be maintained by the employer for at least three years. The employer must allow the Labor Commissioner to access the records and must make them available to employees within 21 days of a written or oral request to inspect or copy the documents.

Proper and accurate documentation is key, as failure to maintain adequate records will result in a presumption that the employee is entitled to the maximum number of hours accruable, unless the employer can show otherwise by clear and convincing evidence.

Management of Paid Sick Time

Regulation of Accrual and Use

Employees begin accruing paid sick leave at the commencement of employment, or July 1, 2015, whichever date is later. Employees are eligible to use their accrued paid sick leave on the ninetieth day of employment. Therefore, employees who started employment on or before April 2, 2015, are eligible to use their paid sick time as it accrues, starting July 1, 2015. Employees hired after April 2 but before June 1, 2015 may be eligible to start accruing paid sick time on July 1, 2015 (as set forth above); however, they will not be eligible to use their sick time until their ninetieth day of employment. The HWHFA does not prohibit employers from allowing employees to use their accrued paid sick time before the ninetieth day of employment.

Employers also have discretion to allow employees to borrow paid sick time that is otherwise not available to the employee. However, as with all borrowed time or wages, an employer is not permitted to deduct any wages from an employee's final pay check if the employment relationship terminates before the employee fully accrues the borrowed time.

An employer can request an employee to provide advance notice if it is foreseeable that the employee will be using sick time. An employer is also allowed to specify a minimal increment that an employee may use its sick time; however, the minimum cannot be less than two hours. Employees are not required to find a replacement worker to cover the time during which the employee uses paid sick days.

Payment of Sick Time

When an employee uses sick time, the employer must pay that time at the employee's regular rate of pay. To determine the pay rate for a commissioned employee or one whose pay rate fluctuates, employers must calculate the employee's total compensation over the previous 90 days and divide by the number of hours worked. Sick time must be paid no later than the payday or the next regular payroll period after the sick leave was taken.

Employers are not required to pay out an employee's unused sick time at any time, including at the time of termination of the employment relationship. However, if an employee is rehired within one-year of separation, then the employer must reinstate the previously accrued and unused paid sick time, allow the employee to use this time, and allow the employee to accrue paid sick time upon rehire, per the company's policy regarding accrual rate and capping.

Retaliation or Discrimination

The HWHFA specifically prohibits employer retaliation and discrimination related to the request to use or use of paid sick time. There is a rebuttable presumption of unlawful retaliation if an employer denies the use of paid sick leave or if there is an adverse employment action within 30 days of an employee filing a complaint with the Labor Commissioner or alleging a violation of the HWHFA, cooperating with an investigation or prosecution related to the HWHFA, or an employee's opposition to a policy, practice or act prohibited by the HWHFA.

California Labor Code sections 230 and 230.1 already prohibit employers that have a paid sick time policy from retaliating against employees who are the victim of domestic violence, sexual assault, or stalking for taking time off of work to obtain or attempt to obtain relief. The HWHFA expands on this and precludes employers from retaliating against victims of domestic violence, sexual assault or stalking from requesting and/or using sick leave time to obtain the aforementioned relief.

Enforcement of the Healthy Workplaces, Healthy Families Act

The Labor Commissioner is charged with investigating and enforcing the HWHFA, including the filing of a civil action against the employer. If the Labor Commissioner, after a hearing, finds that a violation of the HWHFA has occurred, then the Commissioner may order "any appropriate relief," including reinstatement, backpay, payment of sick days unlawfully withheld, and an additional "administrative penalty" to the employee.

Among other enforcement rights, if the Commissioner determines that paid sick days were unlawfully withheld, then the employer will be liable for the dollar amount of the paid sick days withheld multiplied by three, or $250, whichever is greater, up to a maximum aggregate penalty of $4,000.

Drafting the Sick Time Policy

As with all employment policies, it is best practice for an employer to draft their sick time policy in a manner that clearly sets forth the terms, conditions, and expectations related to the policy. The policy should specify the amount of sick time to be provided each year; how the sick time is earned (pro-rata accrual or annual drop); if the sick time is part of an overall PTO policy (such as cumulative PTO or unlimited time off); the accrual rate (if applicable); when the employee is allowed to start using its sick time (no later than the ninetieth day of employment); what the sick time may be used for (e.g., care for self and family members when suffering an illness, or to recover from domestic violence or sexual assault); notice requirements; a statement of the company's prohibition of retaliation due to request or use of sick time; and any minimum incremental use.

The policy should encourage employees to take their sick time in accordance with the provisions of the HWHFA. The lack of payment of the sick time at the end of employment combined with the capping of accrued hours (or lack of carryover for "annual drop" sick time) should be an incentive to employees to use their sick time when they are sick, rather than stockpiling the time in hopes of a financial benefit. By encouraging employees to take advantage of this time off, the employer will be more likely to reap the benefits of a healthy workplace and a productive workforce.

The sick time policy should also confirm that it does not guarantee employment for any period of time, nor does it alter the at-will employment relationship (when appropriate and applicable). Employers are also encouraged to draft their sick time policy to include a reservation of rights to discipline employees who violate the sick time policy, up to and including termination of employment. Finally, supervisors and managers should be trained on the paid sick leave law and the company's policies related thereto.

The introduction of the HWHFA is a great opportunity for employers to review their employee handbooks, policies, wage statement contents, workplace postings, and Notice to Employee (per Labor Code section 2810.5) to ensure compliance not only with the new law, but also with the current status of California labor laws.

The HWHFA may be pushing employers out of their comfort zone; however, with proper documentation and an understanding of the law, this will hopefully benefit employers and employees, as well as California at large.

[1] The HWHFA will be codified under Labor Code section 245, *et seq.*

Test No. 75

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. 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. Companies that are located outside of California may be subject to California's Healthy Workplaces, Healthy Families Act of 2014 (HWHFA).
   ❑ True ❑ False

2. The employee's available paid sick time must be documented on their pay stub or another document provided to the employee on the payday.
   ❑ True ❑ False

3. Employers are required to lend paid sick time hours to employees who are ill and do not have sufficient paid sick time available.
   ❑ True ❑ False

4. Employees may use paid sick time under the HWHFA to recover and recuperate from domestic violence or sexual assault.
   ❑ True ❑ False

5. The California Labor Commissioner may assess fines and penalties against an employer who is in violation of the HWHFA.
   ❑ True ❑ False

6. Employers must pay an employee his or her unused sick time at the time of termination of the employment relationship.
   ❑ True ❑ False

7. Employers must pay the sick time at the employee's regular rate of pay.
   ❑ True ❑ False

8. An employer is within its legal rights to give an employee a less desirable schedule because he or she requested paid time off to care for their ill child.
   ❑ True ❑ False

9. To qualify for paid sick leave, an employee must find a replacement to cover his or her job duties while on leave.
   ❑ True ❑ False

10. Part time employees are not eligible for paid sick leave.
    ❑ True ❑ False

11. If an employer already has a paid time off policy, it does not need to comply with the requirements of the HWHFA.
    ❑ True ❑ False

12. Once an employee accrues three days (24 hours) of paid sick time, he or she stops accruing further paid sick time for that year.
    ❑ True ❑ False

13. The employer need only keep records reflecting the earning and use of sick time for two (2) years.
    ❑ True ❑ False

14. When calculating the regular rate at which to pay its commissioned employees for sick time, the employer must divide the employee's total compensation for the past 90 days by the number of hours worked.
    ❑ True ❑ False

15. Employers need to advise employees of the company's paid sick time policy in the Notice to Employee, pursuant to Labor Code §2810.5.
    ❑ True ❑ False

16. If an employee receives the full amount of leave at the beginning of each year, he or she is still entitled to carryover any unused paid sick time from the year before.
    ❑ True ❑ False

17. The terms of the HWHFA are effective as of June 1, 2015.
    ❑ True ❑ False

18. The employer may cap an employee's accrual of paid sick time at 40 hours.
    ❑ True ❑ False

19. Employers must pay the employee for paid sick leave no later than the payday for the next regular payroll period after the sick leave was taken.
    ❑ True ❑ False

20. Employers must display a poster in the workplace setting forth employee rights related to the HWHFA.
    ❑ True ❑ False

MCLE Answer Sheet No. 75

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 $20 testing fee for SFVBA members (or $30 for non-SFVBA members) to:

   San Fernando Valley Bar Association
   5567 Reseda Boulevard, Suite 200
   Tarzana, CA 91356

METHOD OF PAYMENT:
❑ Check or money order payable to "SFVBA"
❑ Please charge my credit card for $_____.

_____
Credit Card Number Exp. Date

_____
Authorized Signature

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.

Name_____
Law Firm/Organization_____
_____
Address_____
City_____
State/Zip_____
Email_____
Phone_____
State Bar No._____

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
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False

LASC's New Top Judges Discuss the Court's Current State and Future Plans

By Irma Mejia

Los Angeles Superior Court's new Presiding Judge Carolyn B. Kuhl and Assistant Presiding Judge Daniel J. Buckley discuss their goals while in office and the continued challenges facing the nation's largest trial court system.

Photos by Paul Joyner

THIS MONTH, THE LOS ANGELES SUPERIOR COURT (LASC) welcomes Carolyn B. Kuhl as the new Presiding Judge and Daniel J. Buckley as Assistant Presiding Judge. The judges were elected by their peers to serve two-year terms leading the largest trial court system in the country. Both judges shared information about upcoming changes to the courts, stressing that while the courts have survived dramatic changes, they are still in need of additional funding and work to bring them back to the level of service they provided before the economic recession. Both judges also expressed their gratitude for the volunteer work of lawyers throughout the county and their hope for continued cooperation from Valley attorneys.

PRESIDING JUDGE CAROLYN B. KUHL

Q: The last time you appeared in *Valley Lawyer* (February 2013) the courts were facing a lot of challenges, including a system-wide consolidation plan that was just getting underway. How do you think LASC weathered those challenges?

A: Truly our court was in crisis mode when we last spoke. At that time we were preparing for another massive reduction in the court's funding. This cut was in addition to previous layoffs, elimination of 10 percent of our courtrooms in all locations and case types, elimination of court reporters for civil trials, elimination of nearly all referees, an early separation plan for some commissioners, and elimination of the informal juvenile traffic court program.

The consolidation plan had to be implemented in just six months after Judge David Wesley took over as Presiding Judge and I became Assistant Presiding Judge. No one knew if that was possible. The court had never undertaken anything like this reorganization.

In the end, the cuts to LASC staff totaled nearly 25 percent. We lost all court reporters from our civil courtrooms and dramatically consolidated our operations in all case types in light of the forced staff reductions. We had, and still have, judges sharing courtrooms and court staff, and judges who are working in settlement courts without any staff.

Looking back, I have to say I feared that in some areas our court operations would simply grind to a halt. We were doing the best we could with innovations in case management, but it seemed to me there was a good possibility that backlogs would simply build up to the point that we could not recover.

Thankfully, through the hard work and resilience of our judges and staff, we did better than that. Cases of all types are continuing to be litigated. We are meeting constitutional and statutory deadlines.

Although the consolidation plan worked better than we feared, that doesn't mean our court has sufficient resources to serve the public adequately. We continue to face undesirable backlogs for processing court documents, and substantial delays for motions in civil cases and requests for order in family law. We lack a record of proceedings in civil cases unless a party chooses to pay for a court reporter. And parties continue to be impacted by the distances they must travel.

Q: How do we maintain the efficiencies we achieved through the restructuring plan?

A: We don't want to maintain "efficiencies" that affect the quality of justice rendered by the courts, that restrict the ability of the courts to deal with emergency relief requests, that restrict the ability of courts to resolve all disputes promptly, or that fail to provide reasonable access to the courts for all people living in Los Angeles County. Due process requires notice of a proceeding and the opportunity to be heard by a judge. While notices can be automated and hearings can be conducted telephonically or by video, the judge cannot be replaced by technology.

That said, with the help of our very talented Court Executive Officer, Sherri Carter, LASC is moving as quickly as possible to reengineer its operations so that essential case processing is streamlined; so that people can transact business with the court (e.g., traffic tickets) remotely rather than by standing in line; and so that resources saved by efficiencies are used to support courtroom adjudicative functions.

It's important to understand that we are still struggling with substantial backlogs, delays and reduced court access. For now we are only able to incrementally improve those problems.

Q: What are your objectives for your term in office?

A: My first priority is to support my fellow bench officers in the work of the court, adjudicating cases and resolving disputes. They need the resources necessary to do their jobs with the excellence of which they are capable. The courtroom is where the real work of the court is done.

Judge Buckley and I also will be supporting the efforts of our very creative Court Executive Officer as she finds and implements efficiencies through reengineering of our case processing systems and our systems for interacting with court users. For example, we will be replacing all of our extremely antiquated case management systems—systems that run on a DOS platform and systems that are programmed using COBAL. When these systems are replaced, enhanced access by e-filing will be possible.

We will also make sure that additional funding provided to our court will be used effectively to reduce backlogs, improve the time it takes to resolve cases and provide increased access for litigants.

Q: It seems that the budget cuts of recent years have subsided. Do you anticipate any further blows to the court's finances? What are the court's priorities for any increase in funding?

A: The details of the statewide court budget make a great deal of difference to us. Last year additional funding was provided to the trial courts, but it was not sufficient to account for all of the increases in employee benefits (i.e., increased health care costs). Also, there was a decrease in statewide revenue for fines and fees, and some of that decrease was passed on to the trial courts, which reduced the amount of the additional funds appropriated for the trial courts in the budget. So we hope that the budget will account for unavoidable cost increases and any revenue shortfalls. If not, the five percent increase promised by the governor to the courts could be dissipated substantially or totally.

LASC also faces an increased workload from various new legislative acts. For example, the court is experiencing a substantial workload increase from the passage of Proposition 47, which allows persons convicted of certain felonies to ask to have the offenses reduced to misdemeanors. We are expecting more than 1,000 filings per week under Proposition 47. This increased workload to process Prop 47 petitions is adversely affecting the court's other work. We are seeking additional funding at the state level to deal with this increased workload.

The court's priorities for increased funding are improving our ability to adjudicate cases in a timely manner and increase public access.

Q: Last year, we saw the closure of the court's ADR program. Do you see this program being established again in the future?

A: I don't foresee the court's ADR program being reestablished in the same form but we are looking for other effective ways to use the great volunteer services of the Bar to assist in mediation efforts. The court's former ADR program was based on the generosity of volunteer mediators, but because the program was grant-funded, a great deal of time and expense was involved in data gathering and record keeping. More recently, we have had very good results using volunteer lawyers to assist in intensive settlement programs scheduled over the course of a week, as was done recently by the Personal Injury Settlement Conference program and the family law Bar's ongoing volunteer lawyer settlement program in the Central District at the Mosk courthouse. We are very grateful for the Bar's support and we are open to other creative ideas for volunteer ADR programs that can be accomplished with limited court resources.

Q: Are there any major changes to the courts on the horizon?

A: We have added three family law courtrooms across Los Angeles County, including one in Pasadena and one in North Valley. These resources will relieve overburdened family law caseloads and will allow a more even distribution of workloads for family law cases, domestic violence restraining order hearings, and civil harassment restraining order hearings.

Because there was not room in the San Fernando courthouse for an additional family law courtroom, the existing family law courtrooms were moved from San Fernando to the Chatsworth courthouse, where an additional family law courtroom was added. This has allowed us to enhance services to family law litigants.

Additionally, a statewide fund for interpreter services will allow us to provide interpreters in all family law courts and for all civil harassment proceedings beginning this month. We now provide interpreters in all domestic violence cases, in probate guardianship and conservatorship proceedings, in juvenile delinquency and dependency cases, and in unlawful detainer cases. These are proceedings that can have a dramatic effect on peoples' lives. LASC is proud to be the first trial court in the state to provide interpreters for ESL litigants in all of these case types.

Q: The court's new HUB system has had a big impact on Valley litigants and attorneys. Can we expect any changes?

A: As I mentioned, one of our principal priorities is to improve public access, both geographic and through enhanced online access. With the small amount of available additional funding for this fiscal year, we are adding two unlawful detainer "hub" courtrooms—one in Van Nuys and one in Norwalk. In addition, we have coordinated services so that at every hub location throughout the county litigants have access to self-help assistance and to mediation.

Q: What can Valley lawyers do to help the courts?

A: SFVBA members already have helped a great deal in working to convince the legislature to take seriously the needs of the court and in volunteering for the very successful settlement programs.

Attorneys can also help our court improve its ability to decide cases and move them toward trial or settlement by calling their adversary after serving the complaint. Assistant Presiding Judge Buckley has written an article titled "Want To Get a Cup of Coffee?" (*Advocate*, Journal of Consumer Attorneys Associations in Southern California, July 2014). In it, he explained how to streamline litigation by opening lines of communication between opposing counsel. Attorneys can initiate conversations in which they are clear about their goals for the case while trying to clear away the underbrush of unnecessary demurrers and discovery disputes. Attorneys can offer to turn over essential documents and ask opposing counsel to do the same. The fewer unnecessary disputes put before the court, the sooner the court can hear and resolve important, substantive issues and get cases to trial. This saves litigation costs. Buy a cup of coffee—it's a good investment.

ASSISTANT PRESIDING JUDGE DANIEL J. BUCKLEY

Q: What are your objectives as Assistant Presiding Judge? Will you continue your role as Chair of the Technology Committee?

A: My primary objective is to work well with Presiding Judge Kuhl and provide whatever assistance she needs. Another objective for any leader of a court is to know the needs of our judges and work hard on satisfying those needs. I will continue to serve as Chair of the Technology Committee, which leads to another critical objective: work with our CEO Sherri Carter and CIO Snorri Ogata to implement a technology system which becomes the envy of the other courts in California.

Q: As Chair of the LASC Technology Committee, what can you tell us about the technological updates for LASC?

A: We plan to have a number of updates over the next several years. The most significant update will be the implementation of new case management systems for all case types. We currently have over 20 systems but will move to one for civil and one for all other case types. The benefits for the judges, staff, attorneys and public will be immense. Of course, we face significant work and challenges as we coordinate operations with the new systems. We hope to have probate, juvenile and traffic operational in 2016 and the other case types in 2017. And yes, we will have e-filing with these new case management systems.

Some of the other updates include a completely new website with a number of additional features, a new intranet which will provide far more services to judges and staff, a rollout of the Court Reservation System to all the civil courts in addition to the personal injury courtrooms, a new email system with many additional business features for the court, and a new program for our jury services.

Q: LASC recently started replacing its telephone system. Has the implementation been a success? Were there any lessons to be learned from that project?

A: We are still rolling out the new phones. With such a large court, it will take time to install over 6,000 phones. We hope to have the implementation done by early April. Overall, we believe we have been successful with the implementation in about 20 courthouses. We worked hard to get word out to the attorneys and public that all our phone numbers are changing. We have been pleased with the feedback that most people are able to find the new number and contact the court.

A lesson we always must remember is that communication is critical. If the attorneys and public, as well as our judges and staff, know what is happening—and why—they are much more patient and understanding as they deal with the challenges created by change.

Another reason we see success with the implementation is the fact the court will enjoy significant financial savings with the new phone system.

Q: How do you think LASC has weathered the financial challenges of the past few years? Is the court in a stronger position now?

A: One could never say we are stronger after a cut of $187 million. I firmly believe the resolve of our judges and staff to serve the public has only become stronger but we have been devastated by the loss of 25 percent of our staff members and crippled by the closures of 79 courtrooms. The restructure of the last two years has caused severely restricted geographic access to justice, has led to unmanageable caseloads in many areas, and is simply unsustainable.

The ultimate result is delay. We face delay in motions set in civil cases, in trials in traffic court, and in the decisions on child custody, just to name a few. As I have heard Judge Kuhl state: "'Justice delayed is justice denied' is not a cliché, but a reality to too many litigants." We need to diligently work on reducing that delay.

We are confident that our court's creativity and resilience will allow us to find new and efficient ways to enhance access to justice. We are taking the first steps to becoming a stronger court. We are implementing the technology, policies and structure which will shape our court for decades.

Q: With all the budget cuts that affected LASC in recent years, where is the funding for technological improvements coming from? Is the money better spent on these types of projects rather than others?

A: The governor pushed for a law that the courts cannot maintain any reserve above 1 percent. While we disagree with a law which prevents the court from having money for long-range planning and unexpected losses, we used the existing reserves in last year's fiscal year to make the initial investment in technology. That one-time money could not be used on any project or personnel which would require ongoing money. For example, we could not reinstate an ADR program because we would not have had ongoing funding to support the program after the first year.

Technology must be a high priority for our court. The current system is so old that one day soon it will stop

working. It's a question of when we should replace our current systems, not if. We are motivated to install new systems not only because these systems will dramatically improve our efficiencies, but also our annual maintenance cost for the new systems will be dramatically less than what we pay for the current, totally inadequate system. Furthermore, the new technology will allow us to use staff to open up more courtrooms and provide much better service to the litigants.

Q: Should we expect any changes to the court's new HUB system?

A: In addition to the comments by Judge Kuhl in answer to this question, I would add that you should never forget that we did not want to do this consolidation plan. We never thought it would be good case management—or better public service—for the court to have only five unlawful detainer courtrooms to serve the entire county. We had to make so many cuts to all departments and case types which resulted in a big impact on everyone who uses the court.

We are placing a priority on providing some better access to justice despite the limited increase in funding to the judicial branch. This year we will open up a courtroom in Van Nuys for unlawful detainer cases. Half of the unlawful detainer cases filed in the Santa Monica courthouse will be filed in Van Nuys. We still face a number of challenges because we will have the same number of judges and staff handle all these case but we will have a courtroom closer to the litigants in the Valley.

Q: What can Valley attorneys do to help the courts?

A: We cannot emphasize enough our appreciation for all the Valley lawyers have already done to help the courts. We recognize the patience displayed while we implemented the consolidation plan, the efforts to educate the other branches of government on the impact of the budget cuts and the need for more funding, the willingness to serve as judges pro tem, and more.

One suggestion is to work with the opposing attorney to avoid unnecessary motions, whether they are discovery motions, demurrers or other motions which are the result of the attorneys not communicating on a resolution of the dispute. One solution to the problem of delay in getting a hearing date is to have less motions filed. We judges firmly believe a significant number of motions are the result of no communication between the attorneys.

But the ultimate answer to your question is "keep working with us." We could not have survived the last two years without the support of the Bar and will continue to need you as we move forward.

Irma Mejia is Editor of *Valley Lawyer* and serves as Publications and Social Media Manager at the San Fernando Valley Bar Association. She also administers the Bar's Mandatory Fee Arbitration Program. She can be reached at editor@sfvba.org.

EYE ON THE COURT:

SEVEN NOTEWORTHY PENDING CALIFORNIA SUPREME COURT CASES

By Susan S. Baker and Mark Schaeffer

IN THE COMING MONTHS, THE California Supreme Court will address more than 70 decisions by the lower courts on a wide variety of issues. This article analyzes seven notable cases of interest across several disciplines of law.

Prevailing Party's Entitlement to Fees for a Procedural Dismissal

California's anti-SLAPP statute requires a court to grant attorney's fees to the defendant prevailing on a special motion to strike on the theory that the defendant should recover fees incurred to defend a complaint filed solely to chill the defendant's constitutional right of petition or free speech.[1] The SLAPP analysis requires the plaintiff to establish a probability of prevailing on the merits of the complaint.

What if, however, the trial court grants a special motion to strike under the anti-SLAPP statute on the ground that the plaintiff has no probability of prevailing on the merits because the court lacks subject matter jurisdiction over the underlying dispute? In *Barry v. State Bar of California* (Court of Appeal case no. B242054), the Supreme Court will decide whether a lack of merit established on purely procedural grounds gives the court the authority to award the prevailing party the attorney's fees mandated by Code of Civil Procedure §425.16, subdivision (c).

Prohibition against Use of Slot Machine-Type Computer Games In Internet Cafés

Statutory law prohibits the ownership or use of slot machines, which are defined as devices that, by reason of chance, the user may receive some item of value.[2] Internet café businesses commonly feature sweepstakes whereby customers purchase prepaid telephone cards, then use bonus points earned per dollar spent on the card to play sweepstakes computer games. A positive number of winning points at the end of the game entitle the customer to a cash prize. Although the games simulate the look and feel of slot machines or other games of chance, the café owners maintain that the programs are merely an entertaining way for customers to reveal sweepstakes results.

In *People v. Grewel* and *People v. Nasser* (Court of Appeal related case nos. F065450, F065451, F065689, F066645 and F066646), the appellate court determined the computer games violate prohibitions against slot

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machines or gambling devices since the result of the games was unpredictable and random from the perspective of the user. The high court will decide whether this perceived element of chance is sufficiently different from, for example, vending machines that dispense preloaded and sequential lottery scratcher tickets[3] which would violate the Penal Code.

Establishing the Date of Marital Separation

Living separate and apart is a "condition where the spouses have come to a parting of the ways and have no present intention of resuming the marital relations and taking up life together under the same roof."[4] What if the spouses have no intention of resuming marital relations but continue to live together for the benefit of their minor children?

In *In re Marriage of Davis* (Court of Appeal case no. A136858), wife believed the marriage was over in March of 2000, but kept up appearances for the sake of the couple's children for eight years before filing for divorce. Following March of 2000, husband and wife kept their interactions to a minimum, but continued to celebrate birthdays and other special occasions together. Wife moved out of the marital home in 2011.

The appellate court decided the separation occurred in June of 2006, years prior to the wife's departure from the marital home, when wife imposed strict segregation rules on the parties' individual finances. The court determined that date to be the point in time when the parties' dysfunctional relationship devolved to where they had essentially become roommates and co-parents. The Supreme Court accepted husband's petition for review and will decide whether, for the purpose of establishing the date of separation under Family Code §771, a couple may be "living separate and apart" when they reside in the same residence.

Staying the Five-Year Trial Rule during Mediation

California's five-year rule requires cases to be brought to trial within five years after the action is commenced.[5] In calculating this deadline, certain time periods during which it was "impossible, impracticable or futile" to attempt to bring the action to trial must be excluded.[6] Does a stay imposed by the trial court to allow for voluntary mediation fall within any of these exclusions? The appellate court could not agree.

Presiding Justice Bigelow, writing for the majority, opined that, where the trial court included a seven month period during which all existing trial and hearing dates were vacated to facilitate mediation, but pending discovery was permitted to proceed, the stay was not complete and no exclusion was justified. Justice Rubin dissented, finding that it was sufficiently "impracticable" to bring the case to trial where a stay was imposed for the express purpose of mediation. Our high court will address the question in *Gaines v. Fidelity National Title Ins. Co.* (Court of Appeal case no. B244961).

Reformation of a Will to Correct Drafting Errors

Dead men tell no tales … or do they? In *Estate of Duke* (Court of Appeal case no. B227954), the reviewing court affirmed the lower court's judgment in a probate proceeding wherein Irving Duke's holographic will specified his intent if he predeceased his wife. The trial and appellate courts agreed that the will was unambiguous and did not make any provision for the disposition of his property in the event Irving's wife predeceased him, which is what actually occurred. In that case, intestacy would result and the estate would pass to Irving's heirs at law (who were not named in the will) rather than two charitable organizations (which were).

The trial court declined to consider extrinsic evidence of Irving's testamentary intent in the form of a "City of Hope Gift Annuity Agreement" and testimony by an officer of one of the charities that the officer believed Irving had already prepared a will containing the charitable gifts. The Supreme Court granted review to determine the following issue: should the "four corners" rule[7] be reconsidered in order to permit drafting errors in a will to be reformed consistent with clear and convincing extrinsic evidence of the decedent's intent?

Borrower's Standing to Challenge Fraudulent Assignment of Note and Deed of Trust in a Wrongful Foreclosure Action

In an action for wrongful foreclosure on a deed of trust securing a home loan, does the borrower have standing to challenge an assignment of the note and deed of trust on the basis of defects allegedly rendering the assignment void? The court will address that question in *Yvanova v. New Century Mortgage Corp*. (Court of Appeal case no. B247188).

Both the trial and appellate courts answered in the negative, finding that, even if the transfers of the promissory note were improper, the relevant parties to the transaction were the holders (transferors) of the promissory note and the third party acquirers (transferees) of the note. Since the borrower failed to tender funds to discharge her debt, her obligations under the note remained unchanged, and the courts determined she was not a victim of the allegedly invalid transfers.

In reaching its decision, the Second District expressly rejected the Fifth District's contrary conclusion[8] that no tender by the delinquent borrower is required to challenge a foreclosure sale as void. The Supreme Court granted review to resolve the conflict among the lower courts.

Use of Circumstantial Evidence Other Than the Results of Chemical Tests to Prove a Driver's Blood-Alcohol Content

An officer stopped Ashley Coffey and administered field sobriety tests, which she failed. An initial breath test, administered about an hour after the stop, showed that her blood-alcohol content (BAC) was 0.08 percent. A subsequent breath test, followed by a blood test, both showed higher BAC levels. At the evidentiary hearing on the administrative suspension of her license, the driver presented an expert who opined, based on the rising BAC levels and an initial test result within the margin of error, that the driver's BAC was below 0.08 percent at the time of driving.

The appellate court determined that the expert's testimony rebutted the presumption that a test showing a BAC level of 0.08 percent or higher within three hours after driving meant that the BAC level was 0.08 percent or higher at the time of driving.[9] The trial court, however, found that circumstantial evidence of intoxication, including erratic driving and the failed field sobriety test, substantially supported suspension of the plaintiff's license. The appellate court affirmed.

In *Coffey v. Shiomoto* (Court of Appeal case no. G047562), the Supreme Court will review the question of whether circumstantial evidence, other than the results of chemical tests, may be used to prove that a driver's BAC at the time of driving was the same as, or greater than, the results of a blood-alcohol test taken approximately an hour after driving.

[1] Code of Civil Procedure §425.26, subdivision (c).
[2] Penal Code §330b, subdivisions (a) and (d).
[3] E.g., *Trinkle v. California State Lottery* (2003) 105 Cal. App.4th 1401.
[4] See, e.g., *In re Marriage of Baragry* (1977) 73 Cal. App.3d 444, 448; *Makeig v. United Security Bk. & T. Co*. (1931) 112 Cal.App. 138, 143.
[5] Code of Civil Procedure §583.310.
[6] Code of Civil Procedure §583.340.
[7] See, *Estate of Franck* (1922) 190 Cal. 28, 31.
[8] *Glaski v. Bank of America, N.A.* (2013) 218 Cal. App.4th 1079, 1100.
[9] Vehicle Code §23152, subdivision (b).

SAN FERNANDO VALLEY BAR ASSOCIATION

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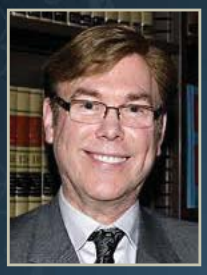

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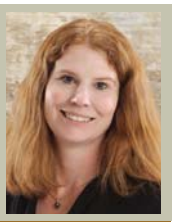
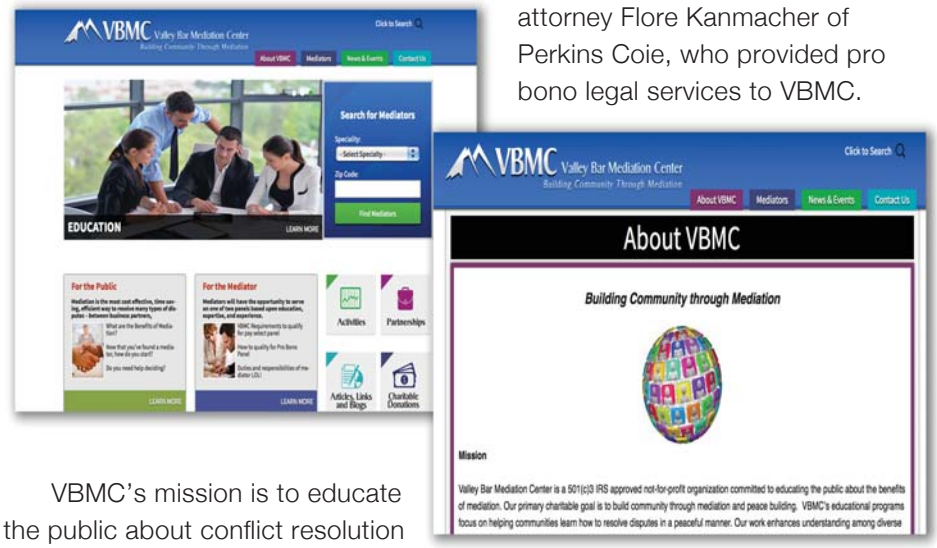
Valley Bar Mediation Center Opens

DEANNA ARMBRUSTER
Executive Director, Valley Bar Mediation Center



deanna.armbruster@gmail.com

AFTER MORE THAN A YEAR of preparation, the Valley Bar Mediation Center (VBMC) is open for business. VBMC is a new 501(c)(3) organization founded by the San Fernando Valley Bar Association. All SFVBA members and mediators are invited to celebrate its launch at an open house and wine tasting on Thursday, January 22 from 5:30 p.m. to 8:00 p.m. at the SFVBA office. Guests will learn about VBMC's services to benefit the legal community, clients and the courts.



VBMC's mission is to educate the public about conflict resolution through mediation and arbitration; reduce the court's budget-related backlog of cases; and refer the public to a panel of highly qualified independent mediators and arbitrators who provide services at no charge or low cost to underserved Valley communities. The Center will also provide training and education for those who wish to enter the mediation field.

VBMC is the result of collaboration between attorney Myer Sankary, mediator Milan Slama, and past SFVBA presidents Adam Grant and David Gurnick. The team worked closely with several accomplished and experienced professionals, including CSUN professor Dr. Jack Goetz, who helped develop the standards for mediator qualifications; mediator Enrique Koenig, who assisted with his expertise in cross-cultural experience and funding; and attorney Flore Kanmacher of Perkins Coie, who provided pro bono legal services to VBMC.

The SFVBA wanted to help meet the community's need for mediation services after the Superior Court closed its ADR program in 2013. The closure added to the court's backlog of cases and limited access to speedy dispute resolution for litigants. The Bar established VBMC by providing the initial funds and other organizational support.

"Until now, there has not been an affordable alternative to the court's ADR system for the more than 10,000 cases it administered every year," says Myer Sankary, VBMC President. "The Valley Bar Mediation Center now offers the only program of its kind in Los Angeles County that is sponsored by a major bar association to address the critical needs of the community."

VBMC will launch with a diverse panel of exceptional mediators selected for their education, training, experience, and commitment to high ethical standards. The initial panel includes 16 local independent mediators who have handled thousands of cases in real estate, family law, employment, contract/business, entertainment, probate, tenant/landlord, HOA, personal injury, insurance, professional liability, consumer/merchant, and intellectual property.

The Center requires panel applicants to provide extensive documentation of their mediation education, training and experience. "They must also commit to high ethical standards based on the court's ADR program and agree to provide affordable mediation to the public," says Milan Slama, VBMC Secretary.

"A key goal in selecting mediators was ensuring we include committed professionals who are interested in teaching the public about mediation," says Slama. "We want to work with local schools, businesses, and community leaders to bring awareness about the value of mediation and dispute resolution."

VBMC has agreed to partner with Parents, Teachers and Students in Action for Better Schools and Community (PTSA), a non-profit founded by past SFVBA president Seymour Amster, to teach high school students to use mediation to resolve conflicts on campuses and at home.

In the coming months, VBMC will consider adding a pro bono panel to offer free mediation services to the public. The pro bono panel will also offer individuals entering the field of mediation the opportunity to gain experience and be mentored by qualified mediators.

> "The Valley Bar Mediation Center now offers the only program of its kind in Los Angeles County that is sponsored by a major bar association to address the critical needs of the community."

VBMC will be a premier low-cost resource for alternative dispute resolution, offering affordable access to justice through early mediation of disputes. In the coming year, VBMC plans to broaden its influence. "We'll reach out to inform the public of the advantages of mediation," says Sankary. "Expanding the use of mediation will be a tremendous benefit to the Valley community."

For more information visit www.valleybarmediationcenter.org or email info@valleybarmediationcenter.org. Independent mediators interested in joining the VBMC panel should contact Myer Sankary at myersankary@gmail.com or call VBMC at (818) 856-0232.

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FRIDAY JANUARY 16

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

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

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

▶ 12:30 p.m.
Lunch

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

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

SATURDAY JANUARY 17

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

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

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

▶ 12:30 p.m.
Lunch

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

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

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

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2-Day Seminar	$179	$409
or		
Friday, January 16	$109	$219
Saturday, January 17	$109	$219
or		
Per MCLE Hour	$40	$65
✓ Class Attending		
Late Registration Fee	$40	$60
MCLE Self-Study Key Drive (with Marathon Registration)	$129	$129
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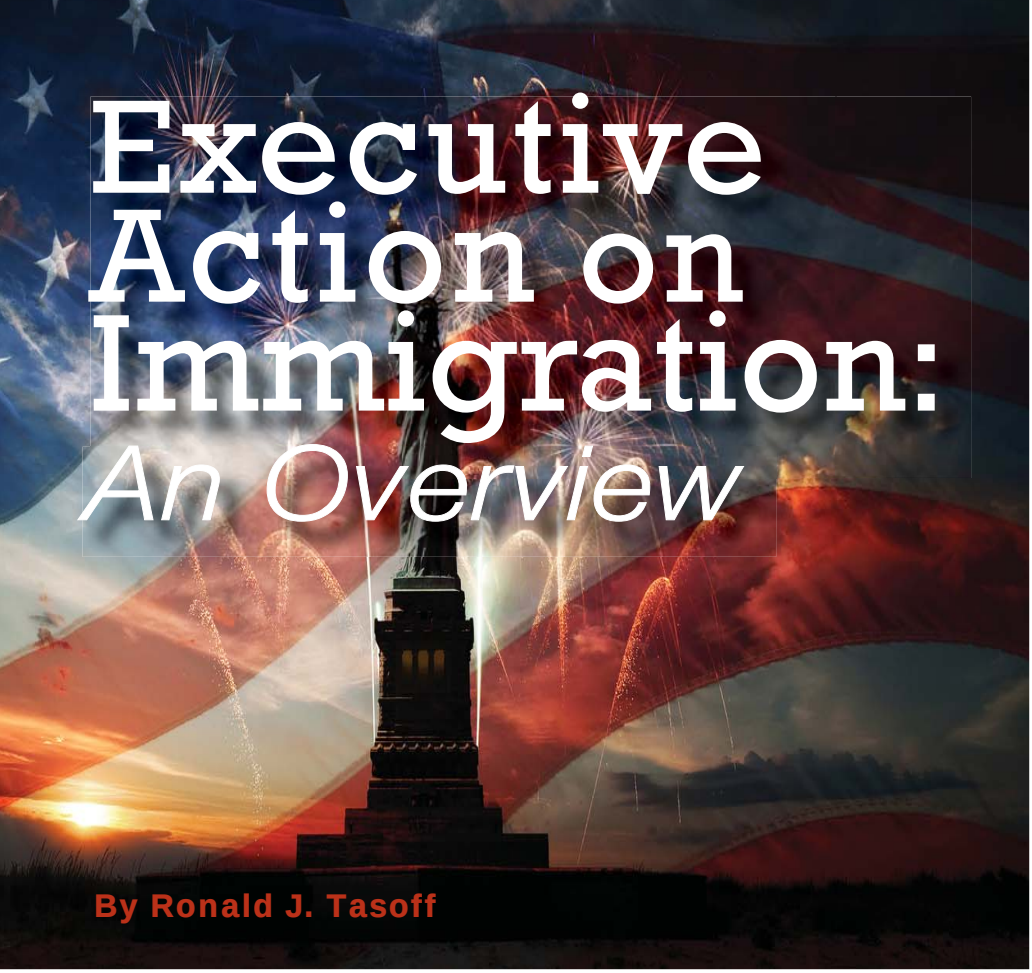
Attorneys who wish to remove their name from lists the State Bar provides to qualified outside entities may do so by logging on to Member Login on the home page of the State Bar's website. After registering with My State Bar Profile, go to "Change my address, phone numbers, and opt-out preference," and change your Opt-out preferences. Members may also e-mail their opt-out request to memrec@calbar.ca.gov, or by calling the Member Services Center, 1-888-800-3400. Members who choose to opt out will not receive mailings about State Bar-sponsored member benefits such as attorney insurance program offerings, MCLE provider programs and a variety of professional discounts.



Executive Action on Immigration: *An Overview*

By Ronald J. Tasoff

THERE REALLY HASN'T BEEN any major changes in immigration law since 1996. Although the Senate passed a long-awaited immigration reform bill in April 2013, the House of Representatives has yet to propose or debate a corresponding bill. Thus, after many months of promises, retractions and political posturing, on November 21, 2014, President Barack Obama signed two executive orders that will temporarily delay the deportation of approximately four million undocumented immigrants and provide them with employment authorization for three years.

The orders primarily apply to the parents of United States citizens and young people brought into the country illegally. Less known are policy shifts to streamline and encourage employment-based immigration, elimination of the controversial Secure Communities Program, and various tweaks that will assist those qualified for permanent resident status under existing laws.

New DAPA Program

The centerpiece of the initiative—and most controversial aspect—is the new Deferred Action for Parental Accountability (DAPA). It is a prosecutorial discretion program administered by the United States Citizenship and Immigration Services (USCIS) that will provide temporary relief from deportation (deferred action) and employment authorization to parents of U.S. citizens or Lawful Permanent Residents (LPRs).

The program will be open to individuals who:

- Have a U.S. citizen or LPR son or daughter as of November 20, 2014
- Have continuously resided in the United States since before January 1, 2010
- Are physically present in the United States on November 20, 2014 and at the time of applying
- Have no lawful immigration status on November 20, 2014
- Are not an enforcement priority, which is defined to include individuals with a wide range of criminal convictions (including certain misdemeanors), those suspected of gang involvement and terrorism, recent unlawful entrants, and certain other immigration law violators
- Present no other factors that would render a grant of deferred action inappropriate
- Pass a background check

DAPA grants will last for three years. The DAPA program should be ready to receive applications by May 19, 2015. It is estimated that as many as 3.7 million people could be eligible for benefits under the DAPA program.

Expansion of the DACA Program

Deferred Action for Childhood Arrivals (DACA) is a prosecutorial discretion program created in June 2012 that is administered by USCIS and provides temporary relief from deportation (deferred action) and work authorization to certain young people brought to the United States as children. DACA has so far helped over half a million young adults become part of mainstream America by granting employment authorization documents (EADs) which they can use to apply for social security numbers and driver licenses.

The new executive orders expand the DACA program by eliminating the age ceiling (previously 31) and making individuals who began residing here before January 1, 2010 (previously June 15, 2007) eligible. Additionally, DACA grants and employment authorization will last three years instead of two. USCIS should start accepting applications under the new criteria by mid-February. Based on previous estimates that 1.2 million people were eligible for the original DACA program, this expansion brings the total of potential DACA-eligible individuals to 1.5 million people.

Abeyance of Pending Deportation Cases

The Department of Homeland Security (DHS) has instructed officials in Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) to identify DACA- and DAPA-eligible individuals who are already in custody, in removal proceedings, scheduled for deportation, or whom they newly encounter. Moreover, they have been instructed to exercise prosecutorial discretion to refrain from further processing individuals who would otherwise be removable due to entry without inspection or overstaying a visa (e.g., not criminal aliens).

ICE lawyers are to close or terminate the cases of eligible aliens in immigration court proceedings or before the Board of Immigration Appeals and refer those individuals to USCIS for case-by-case determinations.

Financial Impact

The operating costs of the DACA and DAPA programs will be financed by user fees. The current filing fee for an Employment Authorization Document is $465 per application. There are no fee waivers. As a result of this independent source of funding, Congress is not in a position to effectively repeal the initiative by attaching an amendment to an appropriations bill that would deny funding to the DAPA and DACA programs.

Also, DAPA recipients will not be eligible for federal public benefits, including federal financial aid, food stamps, benefits under the Affordable Care Act, and housing subsidies. State law will determine whether DAPA and DACA recipients will be eligible for state benefits and opportunities like driver licenses, in-state tuition, and professional licenses.

Employment-Based Visa Reforms

DHS has issued a memorandum outlining new policies that will better enable U.S employers to hire and retain foreign workers. USCIS has been ordered to take steps to reduce wait times for employment-based immigrant visas and improve visa processing.

The changes would expand the educational programs that would be eligible to offer optional practical training to students, expand opportunities for foreign inventors and researchers, increase flexibility for employment-based "green card" applicants to change jobs while their applications are pending, and grant employment authorization to certain spouses of foreign workers with H-1B visas (i.e., highly skilled, temporary workers).

Expansion of the Provisional Waiver Program

Many undocumented aliens are eligible under current law for permanent resident status. However, the application process, which requires them to apply at the American Consulate in their home

country and then wait for the approval of a waiver application, is so daunting that they are afraid to pursue it. This is a result of the otherwise qualified applicant being subject to a 10-year bar for unlawfully remaining in the United States for over a year (a 3-year bar if he or she remained unlawfully for only 180 days), assuming he or she has only made one such illegal entry since 1996.

Although there is a waiver for spouses and children of U.S. citizens and LPRs if extreme hardship to the U.S. citizen or LPR relative can be proved, until recently, the applicant had to travel abroad to apply for their immigrant visa in order to apply for the waiver. Additionally, the waiver application process could take many months and more than half of the applications were denied in 2009. As a result, very few people who were eligible to receive a green card–usually based on being the spouse of a U.S. citizen–were brave enough to apply under the old rules.

In 2013, USCIS adopted regulations allowing spouses, minor children, and parents of U.S. citizens to apply for the waiver from within the United States and then travel abroad for consular processing after USCIS provisionally granted the waiver. These changes significantly reduced the time that family members had to remain outside the country and provided more confidence that they would be able to return.

Under the new DHS guidance, USCIS is directed to adopt a new regulation expanding eligibility for the provisional waiver process to include adult children of U.S citizens and LPRs and spouses and minor children of LPRs. Additionally, DHS announced that there would be additional guidance about the meaning of the phrase "extreme hardship," which would provide a broader use of the existing waiver program.

Changes in Parole Policies

Although quite technical, DHS has announced that it will expand the "parole in place" program to a wider class of relatives of U.S. active duty military and veterans. The effect will be to make such individuals who are otherwise eligible to apply for permanent resident status (usually spouses of U.S. citizens) able to apply and process their cases without traveling abroad.

DHS will also adopt on a national basis a policy announced in a 2012 Board of Immigration Appeals Decision (*Matter of Arrabally and Yerrabelly, 25 I&N Dec. 771 (BIA 2012)*), finding that a lawfully present individual who travels abroad after a grant of advance parole does not trigger the 3- or 10-year bars. Thus, DACA and DAPA aliens who are otherwise eligible for permanent resident status (usually through marriage to a U.S. citizen) can apply for advance parole, travel abroad, and, upon returning in parole status (a legal entry), be eligible to apply for adjustment of status to permanent resident while remaining in the United States.

Shift in Enforcement Priorities and Termination of the Secure Communities Program

Between 2010 and 2011, ICE issued various memoranda encouraging the expanded exercise of prosecutorial discretion in all phases of civil immigration enforcement. In June 2012, DHS announced the creation of the original DACA program. New policy initiatives will further reduce the likelihood that undocumented aliens who have resided in the United States for many years and have committed no crimes will be targeted for removal.

The most welcome reform to immigrant advocates is the elimination of the Secure Communities program, which has been plagued with problems since its inception. Critics of the program have long argued that it has had an adverse impact on community policing, encourages racial profiling and sweeps up long-term residents with family members legally residing in the United States who are arrested for minor infractions. Recently, an increasing number of law enforcement agencies have refused to participate in the program and immigration detainers, which are a request from ICE that a state or local

authorities hold an individual beyond the time when the person would otherwise be released, have been found to be unconstitutional by numerous courts across the country.

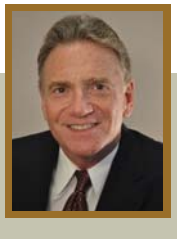
Under the new Priority Enforcement Program (PEP), ICE will focus its efforts on apprehending aliens actually convicted of specified crimes such as national security-related crimes, gang activity, felonies and aggravated felonies, three or more misdemeanors and significant misdemeanors (such as domestic violence, burglary, firearms offenses, drug trafficking, and DUI).

Legality of Executive Orders

There is much precedent for executive branch action on immigration matters. Every U.S. President since Eisenhower has taken executive action to grant temporary immigration relief to various groups of foreign-born individuals. For example, in 1986 President Ronald Reagan used his executive authority to create the Family Fairness Program which established a blanket deferral of deportation policy, very similar to the current DACA program. It allowed families to stay together in situations where only one member of the family qualified for legalization under Immigration Reform and Control Act of 1986, which created a pathway to citizenship for nearly 3 million undocumented long-term residents of the United States. Due to the residency requirements of the law, many spouses and children of the newly legalized aliens were not included.

Then in 1990, President George H.W. Bush issued an executive order expanding the program using provisions similar to those in a Senate bill that failed to pass in the House of Representatives. Later that year, Congress finally passed legislation which President Bush signed into law. This is analogous to the current situation where the Senate passed a comprehensive immigration reform bill in 2013, which the House has refused to act on.

The President's authority to grant deferred action status to a defined group of aliens has long been acknowledged by both Congress and the Supreme Court. The DACA and DAPA programs are similar to other deferred action programs and are consistent with the executive branch's authority to set policy regarding prosecutorial discretion.



Ronald J. Tasoff is a California State Bar Certified Immigration Specialist, former chair of the Southern California Chapter of the American Immigration Lawyers Association (AILA), and a former trustee and executive board member of SFVBA. His office is in Encino and he can be reached at ron@tasoff.com.

Last month, in Los Angeles and across the state, more than 4,000 new attorneys who passed the July 2014 State Bar Exam were admitted to practice law in California. *Valley Lawyer* asked SFVBA section chairs to share their pearls of wisdom with our new Valley lawyers.

5 tips FOR NEW LAWYERS FROM BANKRUPTCY SECTION CHAIR STEVEN R. FOX

1. Help other people. When you help people, they will remember you.
2. Be good to the people you meet on the way up. You'll meet them on the way down. My father used to tell me this. He knew a lot.
3. Attend bar meetings and be involved in the bar association so that other attorneys can see you as someone who is willing to help out, willing to be a team player, and someone who is a good person.
4. Give your time without regret.
5. Participate in the bankruptcy court's programs helping pro se debtors with reaffirmation agreements. You get to meet other attorneys, you get to meet and breakfast with judges, and you get to help people in need who require your help.

5 tips FOR NEW LAWYERS FROM CRIMINAL LAW SECTION CHAIR ANGELA BERRY-JACOBY

1. When designing your business cards, have your State Bar number printed on the cards. Clerks will ask you for your bar number and you will be one step ahead of the game.
2. Be courteous and respectful to judicial officers, the deputy sheriff (bailiff) and the court clerk. Your reputation—good and bad—will get around the court.
3. You can call for a late call. All courts start at 8:30 a.m., ostensibly all cases are to be heard at 8:30 a.m., and therefore all lawyers should be in court at 8:30 a.m. As a criminal law practitioner, however, it is not unusual to have several court appearances a day and even several in different courthouses. Call the court clerk and request a late call. The court clerk will tell you if there is a problem on that particular day. Note, however, that even though you will typically be granted permission to come late, your out-of-custody client still must be in court at 8:30 a.m.
4. Each court can have its own nuances in procedure. For example, some courts do not allow attorneys to approach the clerk while the judge is on the bench. Some courts require attorneys to check in with the deputy sheriff or bailiff. Sometimes the prosecutor will provide the initial discovery; sometimes it is received from the clerk. It is always acceptable to ask questions when you are unfamiliar with a particular courtroom's procedure. You can start with "I haven't been in your courtroom before, so…."
5. Know which side of the counsel table the prosecutor is on, so you don't approach the Public Defender asking for a plea deal. The prosecutor's side of the courtroom is always on the side of the witness stand and jury box.

5 tips FOR NEW LAWYERS FROM PROBATE & ESTATE PLANNING SECTION CHAIR JOHN E. ROGERS JR.

1. Join your local bar's probate section and attend the monthly luncheons. Observe how the lawyers interact. Network gently and consistently.

2. Learn how court works before you start making your first appearances. Go to the probate courts downtown. Get there early. Watch how things are done. Make notes. Observe the protocols and then later mimic them. In a quiet moment, after the calendar, introduce yourself to the clerks and staff in an unobtrusive manner. If you see an attorney perform well, note his or her name. Contact them later and compliment them. Inform them you are new to the field. See if you can take them to lunch.

3. Ask around about a study group in your geographic area and in your field. Contact the leader(s). Ask if you can attend as a visitor. These are very important. They are tight, cohesive micro-networking groups. Consider starting your own and populating it with similarly situated new lawyers, with at least one somewhat more seasoned veteran to add perspective.

4. Find out about the court's PVP (Probate Volunteer Program) for court-appointments in conservatorships, guardianships and other similar matters. See what the requirements are for qualifying. Work toward this goal. When you have the requisite cases and experience, join. It is an invaluable connection to the field, though the pay is modest.

5. Make a point to read the new cases in our field as they come down. Make a note of the law and also the counsel. Being able to talk about this knowledgably will serve you well in peer encounters.

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My Printer Hates Me and My Internet Connection Isn't Too Keen on Me, Either

Dear Phil,

I am a sole practitioner with a modest personal injury practice. It seems like anytime I am on a tight deadline, my technology fails me. Either the database connection quits, my email goes down, or my password is rejected and I can't set a new one without calling overseas. It makes me crazy!

As a solo, I can't realistically work up every case myself, sign up every potential client myself, manage clients and adversaries all alone while also mastering the intricacies and minutiae of law office technology.

What's the smart move here? I am torn between keeping overlapping layers of expensive computer geniuses on speed dial and throwing these expensive malfunctioning machines out the window.

Yours in Desperation,

Sour Situation in the Suite

Illustration by Gabriella Senderov

REMEMBER THAT YOUR TECHNOLOGY IS ON your desk to serve you. If you spend most of your time cursing at it, something has gone very wrong. Set up a consultation with an independent but experienced IT provider. Guide the consultant through your office processes and explain your frustration. Solicit a game plan to make the changes you need to achieve the results your workload requires.

Numerous problems (not all) are the result of viruses, so ask about additional virus protections that the consultant can install for you. Perhaps you can make arrangements with your IT provider to check your computer and keep it virus-free on a regularly scheduled basis, maybe even remotely. Some IT professionals might be open to regular check-up visits for some reasonable fee.

You might want to lease equipment rather than buy it, so you can secure a brand new item each year. You might also want to switch to the cloud, so some of the maintenance can shift to a giant provider, which has more resources than you could ever contemplate or achieve. Consider entering into a loaner agreement with a large provider, where a new machine is delivered same-day once you call in the failure notice. You might make a reciprocal backup usage arrangement with your suitemates.

No matter what solution you and your consultant jointly select, try it for a few months and then report back for further fine-tuning. This will ensure that, in the long run, you are implementing the most powerful possible plan to fight the interrupters that are souring you on your practice.

Best of luck,

Phil

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

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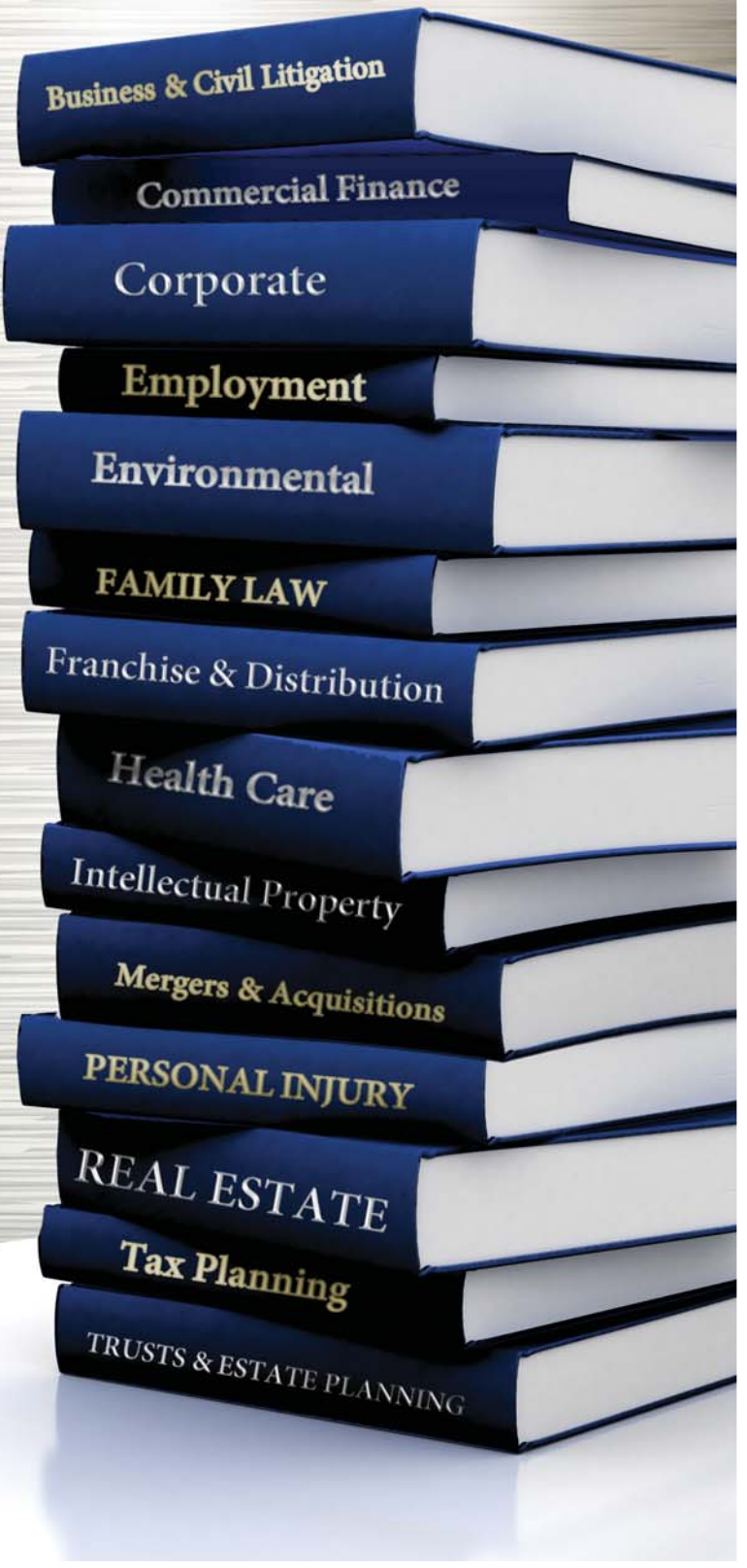

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