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VALLEY LAWYER
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VALLEY LAWYER

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In the Legal Community, the B&B is Much More than a Weekend Destination

ADAM D.H. GRANT
SFVBA President

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WHEN MOST PEOPLE THINK OF A B&B, THEY think of a quaint, cozy inn to go to for brief periods and escape the trappings of everyday life. However, in the legal community, the B&B (the Bench and the Bar) shape our lives on a daily basis. Whether you litigate or practice transactional law, the bench impacts what you do and don't do.

Approximately 23 years ago, I made my first court appearance and at the same time, learned about the close connection between the bench and the bar. The firm that hired me after law school trained all their associates in their main office in Bakersfield. As usual, the firm paired me with a partner and a seasoned legal secretary to teach me about the actual practice of law, which differed from what I learned in law school.

After a few months preparing discovery responses and deposition outlines, the partner advised me that I would be making a court appearance the very next day on a petition for a minor's compromise. I reviewed the entire file, did some research, created an outline of exactly what I would ask and say—and then tried to sleep through the night. My nerves got the better of me and I spent hours staring at the alarm clock, not wanting to be a nano-second late for my first court appearance.

I arrived thirty minutes early and nervously checked the calendar to see what number I was–number 3! That meant only two matters ahead of me before I spoke in open court for the first time. I took a seat near the front of the room. The court called my matter. I asked my questions. The court asked me a few questions, approved the petition and called the next matter. As you would expect, the legal community in Bakersfield at that time was very small and very connected to the judicial officers on the bench. I soon learned just how close.

My walk back from court took only 15 minutes. I went straight to my office to settle into my work for the rest of the day and take in all that my first successful court appearance had to offer. However, no sooner had I sat in my chair when the intercom buzzed; the partner in charge of the file I just appeared on beckoned me into his office with the file.

My heart shot through my throat. Had I made a horrible mistake and not even realized the depth of my ineptitude? Was I so nervous that every attorney in court called the partner to recommend I be disbarred? I gathered up the file along with my notes and walked what I thought was the "Green Mile" to the partner's office.

The partner looked stern. He asked me to shut the door and sit down—gulp. He asked me how the appearance went and I provided him excruciating details about all my questions, all the responses in addition to the court's questions. In the end, I told him the court approved the petition and I thought all was fine. He slowly leaned back in his chair and shared the following: the judge knew the firm very well (it was the largest firm in Bakersfield), knew all the partners very well (in particular, the one to which I was assigned) and had been told ahead of time I would be making my first appearance that morning. Shortly after completing my hearing, the judge took a three minute break, went into chambers and called the partner. I received praise for being prepared and calmly responding to all the court's questions in a succinct manner. Hearing such news, I realized I could breathe once again as I still had a job.

I share this story with members of the Bar to remind us how crucial it is to cultivate the relationships we have with our judicial officers. Just last month I attended the Santa Clarita Valley Bar Association installation to honor my dear friend, Amy Cohen, as she was installed as the SCVBA President. I listened to a very affable judicial officer describe the history of the bar and how he became a judge in the community. He urged all in attendance to reach out to the bench, share time with them, share experiences with them and learn from them.

Each year the San Fernando Valley Bar Association holds two large events: the Installation Gala and Judges' Night. During the Installation Gala, we highlight our own and welcome new trustees to guide the Bar. At Judges' Night, we honor our judicial officers for the tireless hours they put in and for the even temperament with which they help us resolve matters.

In reflecting on the prior years, and in particular the wonderful way in which a particular judge helped launch my legal career with a favorable phone call, I look forward to seeing our judicial officers during Judges' Night on February 27. In particular, I look forward to seeing many judicial officers at the next installation. I feel that such reciprocal patronage will truly reinforce the deep connection shared throughout the years.

While the more common understanding of a B&B is one to which we escape for brief periods of time, our legal B&B is one to which we cultivate relationships that span decades. Here's to the decades to come!

SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3	4
5	6	**7** Intellectual Property, Entertainment & Internet Law Section **Trade Secret Litigation in the Software Industry** Tom Morrow presents on this timely topic. (1 MCLE Hour) 12:00 NOON SFVBA CONFERENCE ROOM	**8** Business Law Section **Arbitration Clauses** Jay Spillane of Spillane PLC will update the group on the recent developments regarding arbitration clauses. (1 MCLE Hour) 12:00 NOON SFVBA CONFERENCE ROOM	**9** Employment Law Section **The Affordable Care Act—What Is Ahead in 2014** Major provisions of the Affordable Care Act take effect on January 1, 2014. Certified Health Care Reform Specialist Barbara Oberman Lippe talks about what policy issues might arise as the law is implemented and how attorneys can best advise their clients. (1 MCLE Hour) 12:00 NOON SFVBA CONFERENCE ROOM	10	11
12	**13** Tarzana Networking Meeting Hosted by San Fernando Valley Bar Association and Attorney Referral Service of the SFVBA. 5:00 PM SFVBA CONFERENCE ROOM	**14** Probate & Estate Planning Section **New Laws** Attorney James Birnberg will give his annual seminar on the 2014 laws. This is the seminar that all probate and estate planning attorneys and legal professionals should attend to be kept abreast of the latest changes! (1 MCLE Hour) 12:00 NOON MONTEREY AT ENCINO RESTAURANT	**15** Workers' Compensation Section **Case Law Update** Mark Kahn will discuss the changes coming about in 2014. (1 MCLE Hour) 12:00 NOON MONTEREY AT ENCINO RESTAURANT	16	17	18
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SFVBA 17th Annual MCLE Marathon

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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.

A Fresh Take on the Courts

IRMA MEJIA
Publications & Social Media Manager

editor@sfvba.org

I'M EXCITED TO PRESENT TO YOU A SPECIAL ISSUE of *Valley Lawyer* devoted to The Courts. I am very grateful to Presiding Judge David S. Wesley, Judge Mary Thornton House and Judge James A. Steele for contributing to this issue. Through their experience they offer us great insight into the daily operations and needs of our county court system.

In his article, Judge Wesley writes about the grave need for adequate court funding as he calls on Governor Brown to address the severe shortage in financial support of the trial courts. As Judge Wesley states, the Los Angeles Superior Court has weathered the recent financial storm with severe cuts, innovative restructuring and the dedicated labor of court staff and judges. However, severe court delays are significant failures that must be addressed in order to maintain a just society under rule of law. Certainly many of our readers will agree with his proposal.

Judge House provides us with a very persuasive argument for the wider—scale implementation of Expedited Jury Trials (EJT). As she explains in detail, EJTs have similar outcomes to regular jury trials but are much quicker and less costly. An effective alternative to expensive litigation, complete with satisfied jurors—it's no wonder she's so passionate about EJTs.

Judge Steele's overview of the new Probate Settlement Program is a refreshing unveiling of the legal community's efforts to help increase the public's access to justice. In particular, Judge Steele singles out the SFVBA, its members and executive director for their leadership in implementing the successful program. This program and EJTs are just two examples of how the courts, attorneys and litigants are adapting to chronic underfunding.

Finally, our issue rounds out with informative articles on litigation strategy and developments. Diana Zitser and Brandon Johnson provide an excellent MCLE article on the recent developments in case law regarding court-awarded attorney fees in divorce proceedings. Jonathan Reich gives readers an in-depth examination of the nature and handling of lis pendens against real property. And Mark Schaeffer presents an overview of significant cases pending before the California Supreme Court.

I am proud to present these quality articles in a fresh redesign of the magazine. I hope you enjoy it.

It Is Time to Adequately Fund the California Trial Courts

By Presiding Judge David S. Wesley

ECONOMIC CYCLES ARE A FACT OF life. The courts as public, tax-funded agencies have ridden out our share of them. It is a particular challenge for the trial courts because the work does not cease just because funding is reduced. But we manage. When the dot-com bubble burst in 2002, we closed courtrooms and courthouses, slashed programs and implemented efficiencies across the board. Although we never were able to fully restore service, after years of hard work we felt we were providing an acceptable level of access to justice for the citizens of Los Angeles County.

As the Great Recession ends, however, I fear that this cycle will be different for the courts. While other parts of California government are starting to experience a fiscal restoration, the state-funded court system is not. When the state provided $60 million in new funding last June, Los Angeles Superior Court's share of that funding was merely sufficient to avoid *additional* reductions.

Yet the courts are clearly underfunded. California spent less than 1% of its general fund budget on courts last year. The national average is twice that. A systematic study of funding needs, adopted by the legislature in last year's budget, shows that the trial courts need hundreds of millions of dollars more than they are currently receiving to operate properly.

I am proud of the ingenuity of our judges and staff in designing and implementing the Consolidation Plan last spring. After years of reductions that totaled nearly a third of our operations spending and one quarter of our staff, we found ways to remain open in all case types.

In the wake of this consolidation, and no longer occupied with downsizing, we have a moment to stabilize, reassess and move forward. We are exploring new and more efficient ways of handling personal injury cases. We have consolidated collections cases in ways that have drawn positive reviews from the bar. We have some one-time funding for sorely needed automation.

But, for all these innovations, we lack the resources to serve the public adequately. Although we are providing due process to every case before us, and complying with the constitutional and statutory obligation to attend to all matters submitted to the court, the only outlet is delay and backlogs.

Next available dates for motions in civil proceedings are four to eight months away in some locations. Courthouse hallways are too crowded with consolidated caseloads. Post-judgment processing is too backlogged. People have to wait nearly a year to resolve a traffic ticket by trial, or wait two hours in line to pay the fine, or to post bail for trial. People are traveling further to receive services that were previously available locally. These problems will not go away until we receive funding comparable to our workload.

Delay is pernicious. It takes hold incrementally. There will be no catastrophe, only a slow and inexorable decline. Delay allows everyone to continue to pretend there is access to justice. Only after months or years of waiting will one litigant at a time realize how the system has failed.

Those failures have real consequences. When traffic tickets cannot be resolved timely, traffic laws lose their force. When people cannot depend upon the courts to help them settle domestic disputes, they will take matters into their own hands. When people cannot find relief in the civil courts, predators are emboldened.

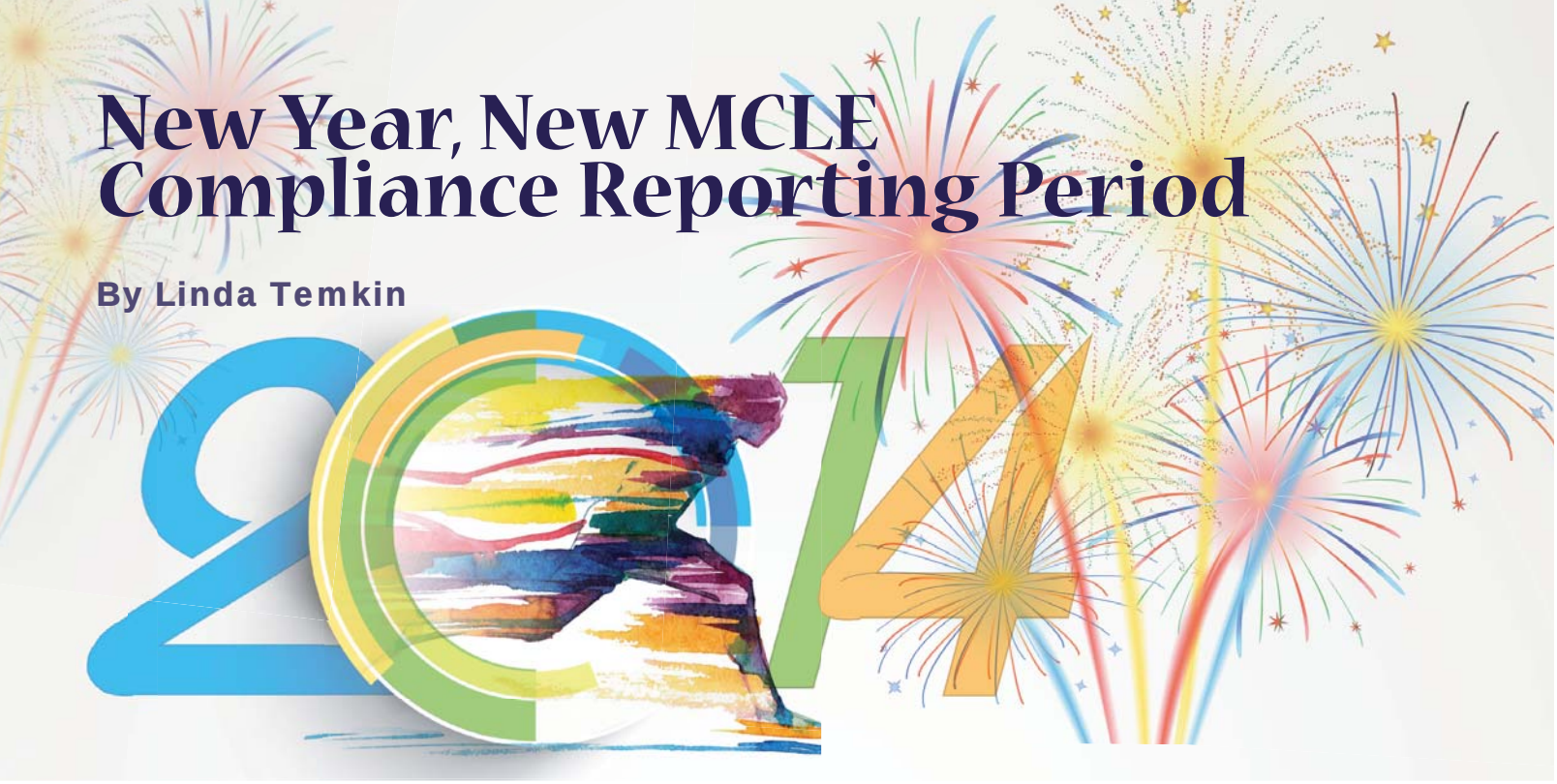
None of these sorts of impacts show up in our statistics. They will, however, signal to all those involved a failure of California's government to provide for the welfare of Californians.

As this issue goes to press, Governor Jerry Brown will release his budget proposal, including his funding proposals for the courts. I hope and trust that his spending proposals show that he agrees that it's time for California to begin to appropriately fund its courts. You, your clients, and all Californians deserve that.

Judge David S. Wesley is the Presiding Judge of the Los Angeles Superior Court and serves as Chair on the LASC Executive Committee. He was initially appointed to the Los Angeles Superior Court in 1997. Judge Wesley also serves as the director of Los Angeles County Teen Court and is the President of the California Association of Youth Courts, Inc.

New Year, New MCLE Compliance Reporting Period

By Linda Temkin



AS MANY ATTORNEYS ALREADY KNOW, January not only marks the new year but also heralds the return of MCLE compliance reporting. This month often serves as a reminder for members to build up credits for the next reporting period or to complete a mad rush to catch up on the necessary credits to meet the requirements for the current term. The San Fernando Valley Bar Association (SFVBA) provides members with many convenient and affordable options for earning MCLE credits, including our annual MCLE Marathon, monthly educational seminars, recorded seminars for self-study and educational articles and tests published in this magazine.

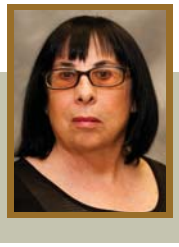
Currently the State Bar mandates that attorneys must complete a total of 25 hours of approved credit every three years. At least 12.5 hours must be participatory; the remaining hours may be self-study. Of the required 25 hours, a specific number must be completed in specialty areas: four hours of Legal Ethics, one hour of Prevention of Substance Abuse, and one hour of Elimination of Bias.

In July 2013, the State Bar conducted its largest compliance audit for MCLE, scrutinizing 4,700 attorneys to ensure they met their continuing legal education requirements. It is likely the State Bar's enhanced oversight will continue. For those unfortunate souls that were discovered to be non-compliant, the State Bar has a firm system of discipline in place. Failure to comply with the audit results in an assessment of a $75 penalty and the issuance of a 60 day notice. Failure to pay the penalty and subsequently comply can then result in the attorney's placement on Administrative Inactive or Not Eligible to Practice status. Attorneys don't want to wind up on this list.

The SFVBA makes it easy for members to avoid this headache. Every seminar members attend is recorded in our database and sign-in sheets are stored for five years. Members who happen to lose their certificate of attendance can easily have another one issued. And if members have forgotten exactly what they've previously attended, the SFVBA maintains a transcript listing all the Bar-sponsored seminars they've registered for and attended.

The SFVBA sponsors terrific seminars throughout the year for members to stay updated on the latest developments in their areas of practice while acquiring the mandated participatory MCLE credits. The Bar also makes it easy and convenient to complete self-study credits with monthly informative articles and self-assessment tests in *Valley Lawyer*. Additionally, many SFVBA programs are available as digital audio downloads via Versatape, the SFVBA's newest partner. Versatape provides quality recordings, an enhanced listening experience and reasonable rates. Visit versatape.com to see all the recordings they have to offer.

For those who prefer to ring in the new year with a race to the finish line, we have our dependable MCLE Marathon scheduled for January 17 and 18. Our widely popular annual



Linda Temkin is the Director of Education & Events at the San Fernando Valley Bar Association. She collaborates with section leaders to provide SFVBA members with compelling educational programs. She also is responsible for organizing all of the Bar's social events. She can be reached at events@sfvba.org.

MCLE Marathon makes completing the State Bar requirements easy. The two-day program includes all the specialized areas as well as 6.5 hours of general MCLE, completing all the required participatory credits for the reporting period. If additional self-study credits are needed, the SFVBA makes available (at a reduced price for MCLE Marathon attendees) a USB drive loaded with MCLE articles and self-assessment tests that fulfill 12.5 hours of self-study.

We know law school was time consuming and for some attorneys the thought of sitting through additional educational seminars seems burdensome, especially when one is attempting to sustain or build a practice. That's why we make our MCLE Marathon as painless as possible. You not only learn information relevant to your practice, you earn the necessary mandated credits in a lovely country club setting, with delicious food provided.

The MCLE Marathon has something for everyone, from those that pride themselves on planning ahead (even if their compliance group is not due for another year or two), to those that relish living in the moment and being "spontaneous," the ones that enjoy getting in their mandated credits just barely under deadline—this is the must-attend event.

Do take advantage of all the SFVBA has to offer. The SFVBA strives to provide members with convenient, affordable and enjoyable options for completing their mandated educational credits and staying abreast of the latest developments in their practice areas.

Central District Tackles Probate Cases

By Judge James A. Steele

THE CENTRAL DISTRICT'S Probate Settlement Conference Program formally commenced its operations in August 2013. In just a few short months, the Program has already proven to be highly effective in resolving cases pending in the probate courts. As a result, there have been inquiries from other counties that, like Los Angeles, are faced with the possibility of elimination of their court-funded ADR programs. Before discussing the program however, I must first express my sincere gratitude to the San Fernando Valley Bar Association for its initial and continuing support as without that assistance, the Program would very likely not exist.

Need for an Effective Settlement Program

In early 2013, Supervising Probate Judge Mitchell Beckloff asked me if I would assist him in developing a settlement program for the Probate Division. There had been a mediation program in the Central District some years earlier but it ended for a number of reasons, including the fact that the court had in place a very effective ADR civil program which was also utilized by the litigants in the probate courts. Unfortunately, the ADR program cost the LASC approximately $1.8 million annually and, given the huge cuts to the judicial branch over the past several years, there was simply insufficient funding to continue it.

At the very same time, the need to resolve cases, especially in the probate area, was becoming more acute. From 2007 to 2012, the LASC experienced a 45% increase in conservatorship case filings and, with respect to initial trust case filings, the court experienced a 16% increase in the first four months of 2013 alone.

It should also be noted that these statistics relate only to initial case filings and not to petition filings within each case. As those familiar with the process know, the ratio of petition filings to initial case filings is oftentimes 10:1 or even more. The reality is that our courts are being, and will continue to be, inundated with demands to adjudicate parties' disputes. We have neither the time nor the staffing resources to adequately meet the increased demand.

Judge James A. Steele was appointed to the bench in March 2007 after 29 years in corporate and business litigation. He recently moved from a combined general jurisdiction civil/probate assignment in the Northwest District to a full-time probate assignment in the Stanley Mosk courthouse where he hears probate trials. Judge Steele frequently writes and lectures on probate related matters, including for CJER, the statewide educational arm of the Judicial Council.

The increasing burden on the probate courts should not be a surprise given the nation's changing demographics and other such factors. For example, the proportion of Americans reaching the age of 65 increased at a rate of 12% from 1990 to 2000; by a 15% rate in the decade beginning in 2000; and will experience another 35% increase over the following 10 years.

By 2050, and by some accounts perhaps even earlier, at least one in five persons living in the U.S. will be over the age of 65. This demographic reality, combined with generational wealth differences and the inevitable transfer of that wealth, as well as increasingly complex tax laws, have resulted in increased reliance upon the legal system and the courts. As an example, the so-called wealth gap is now five times what it was 25 years ago, such that the average wealth of households headed by someone aged 65 is currently 47 times that of the wealth of households headed by 35 year olds.

All of these circumstances result in an increasing need to resolve issues in the context of guardianships, conservatorships, decedent's estates and trusts. Perhaps the most effective means for the court in mitigating the potential harm caused by these unmet needs lies in the development of effective dispute resolution mechanisms. This is an especially pressing need for the vast majority of cases in which the financial limitations of the parties precludes the use of private neutrals who, although oftentimes highly effective in resolving cases, generally charge between $400 and $500 per hour for their services.

Defined Objectives

The first order of business in developing the program was to define and prioritize the objectives. Given the circumstances, it was obvious that the most important feature of any such program would be to ensure that few, if any, court resources, especially court staffing, would be required. Otherwise, the program would be subject to the same potential fate as the formal ADR program that preceded it. Also, to ensure equal access, such a program would need to be entirely free of charge to the participants.

Additionally, even though the volunteer settlement officers would be serving without compensation, they would have to be highly experienced and capable attorneys with specific expertise in the specialized area of probate law. Achieving each of these objectives necessitated enlisting the assistance of the bar and in that regard, the SFVBA was the first to step up and offer its help.

Settlement Conference Committee

Recognizing that without the support of the local bar such a program would be doomed to failure, I spoke to several bar leaders to ask about their interest in forming a committee to design and implement a settlement program intended to exclusively focus on probate cases. Fortunately, they were all very receptive to the idea and a committee was soon formed comprised of highly experienced probate law professionals who had a demonstrated commitment to the public and to the bar.

The members of the committee are, in alphabetical order, as follows: Adam Grant, Kira Masteller, Nancy Reinhardt, Jonathan Rosenbloom, Alice Salvo and Charles Shultz. Technical and logistical support, including coordinating settlement officer scheduling among other duties, has been provided most competently by Liz Post, Executive Director of the SFVBA.

The Settlement Conference Committee not only assisted in devising the structure of the program, but also in developing and instituting an extensive screening and approval process intended to ensure that those serving would have the necessary credentials and experience to successfully serve. In addition to all of the foregoing, the Committee worked diligently to draft various forms and promotional materials, including, for example, settlement stipulations to be utilized by the settlement officers. All of

these were ultimately presented to court counsel for review and approval.

Program's Commencement

The Probate Settlement Conference Program commenced operations in August 2013. Before that date however, numerous emails were sent by the various bar associations to their members announcing the program. The Central District Probate Division bench officers made mention of the program's anticipated commencement during their calendars weeks before the commencement date as well.

After commencement, the court's Probate Attorneys included reference to the availability of the program in the Probate Notes. The program was planned to operate only on Tuesday and Thursday mornings. During the first two months there were days when no conferences were scheduled while on other days there were only one or two.

By October, however, there were consistently two to three scheduled each morning and currently there are typically 4 scheduled conferences. It has since become obvious that in order to meet demand the program will soon have to add one or more sessions on additional days of the week. In order to accommodate all of these sessions, the Committee screened and approved almost 75 extraordinarily well-qualified individuals, many of whom have specialty practice credentials and/or post-graduate degrees in taxation or other relevant areas of the law.

The Program's Simplicity

One of the outstanding features of the program is how user friendly it is. The SFVBA takes the laboring oar in scheduling the presence of two settlement officers on each of the days during which the program operates. If a scheduled settlement officer has a calendar conflict, that individual is responsible for independently finding another volunteer from the panel to appear on his or her behalf.

The parties schedule their conference dates entirely at their convenience by visiting my courtroom, Department 11, and inserting the required information into a reservation book, which sits on the public side of the clerk's station.

On the day of the conference, the settlement officers arrive, announce the cases to be heard, and escort the parties to a location within the courthouse. Supervising Family Law Judge Scott Gordon has generously made available to us two currently unused family law departments (Departments 2B and 2C) which are across the hall from the probate courtrooms on the second floor of the Stanley Mosk Courthouse.

The parties are advised to bring settlement briefs and/or their operative pleadings to the conference. If a settlement conference results in full or partial settlement, as is very often the case, the settlement officers may use the Settlement Agreement form developed for this specific purpose. If necessary, and assuming a courtroom and bench officer is available, a settlement may also be placed on the record.

The program details are available to the public in the Probate section of the L.A. Superior Court website. The website provides a general description of the Settlement Program as well as Frequently Asked Questions and Answers. The questions and answers include the following:

> **Q:** If I want to mediate, do I have to use the court's settlement program?
> **A:** No. In fact, if the parties can afford private mediation services, they are strongly encouraged to hire their own private mediator. There are a number of very qualified individuals and organizations who offer such services. Private "for pay" mediators should have a greater degree of available time than the maximum of up to 3 hours available to you at no cost through the Program.

> **Q:** Do I have to hire an attorney in order to participate in the program?
> **A:** No. Although you do not have to hire an attorney to participate, if you have an attorney, the attorney must be present during the settlement session. If you do not have an attorney of record, although you need not be represented during such proceedings, be advised that parties often benefit greatly by hiring their own counsel to assist them during this settlement process.

The Central District Probate Settlement Conference Program provides parties litigating their cases in the probate courts an opportunity, without any cost to them, of resolving their disputes through the assistance of highly qualified attorney volunteers. This has been achieved without utilization of any ongoing court staffing resources.

The crucial importance of the bar in this process—especially that of the SFVBA—cannot be overstated since without their expertise and assistance, the Program would very likely not exist. Therefore, on behalf of all of the judges of the Probate Division of the Los Angeles Superior Court, I extend our sincere appreciation to the SFVBA, its leaders, staff and members for their exemplary service.

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Expedited Jury Trials: A Hollywood Sleeper Seeking Blockbuster Status

By Judge Mary Thornton House

Our heroine is a hardened, long suffering attorney

IMAGINE IF YOU WILL, THE FOLLOWING TREATMENT provided to a talent agent in hopes of making itself to the small and/or big screen in the mythical world of not *Hollywood Land*, but *Legal Land*:

> *Our heroine is a hardened, long suffering attorney with 20+ years of experience who has seen her share of trials and can usually predict the outcome. It's about 9 o'clock in the evening and we see her sitting in her office, reading depositions for the next day of trial. It's the economics expert who must be cross-examined, even though the numbers are not in doubt, but perhaps some doubt could lower or raise expectations. It's been a long three days and there's still another two, perhaps three left to finish the trial. It has only seemed long because the commute across the county to one of the few open courts for a five-day trial moved the trial farther away. The jury seems upset, too. There's even been a note: "Why are we, here in Pomona, wasting our time on a case from Van Nuys? Judge, can't you get the attorneys to hurry things up? The 14 of us are wondering why this couldn't have taken less time?"*

If this treatment ever makes it to production, perhaps showcased in a legal version of an SNL skit on television, the lawyer could slap her forehead and say, "Oh, no, I could have had a J-8!" And, by J-8 she'd be referring to the provision in the Expedited Jury Trial (EJT) Legislation that relies upon 8-person juries.

The EJT Production

For those of you unfamiliar with California's Expedited Jury Trial procedures, they can be found in California Code of Civil Procedure §§630.03 through 630.12 and California Rules of Court 3.1545 through 3.1552. Simply put, an EJT is a consensual, binding jury trial before a reduced panel of jurors with the goal of completion in a day. There are no penalties if it overlaps to the next day, as is the case most of the time–mainly because it takes at least an hour for jury rooms to process new jurors.

There are limited appeal rights. Each side has up to three hours to put on its case in addition to an hour set aside for jury selection. The time used by one side to cross-examine the other side's witnesses is chargeable to the cross-examiner's three hours. In short, an EJT is a seven hour jury trial using eight jurors.

The law was enacted in 2009 and EJTs started getting used throughout California in 2010. Has there been a groundswell of usage? Well, yes and no. In Los Angeles' first year, EJTs accounted for 19% of all limited jurisdiction trials. That number has increased upwards to 30%. This percentage somewhat tracks the historical usage trend in New York and South Carolina–two states that have had what they call "summary jury trials" in play for over a decade. Their initial usage was slow, but as their courts became more congested and trial dates were set further out, the speedier, less expensive option became the go-to procedure. Hmm....could

Los Angeles County, with its new Civil Consolidation Plan, follow a similar trend?

Is this foreshadowing an obvious future trend in California with the impact of the budget cuts now being felt more than ever throughout all court systems? Well, yes and no. In the language of Hollywood, we don't have a blockbuster with hopes of a sequel, yet. It's more like we are in the Indie film category and with some more advertising and play to the public, award winning results are more than a possibility.

What We Know Now

There's a lot we now know about EJTs in Los Angeles County that we didn't know in 2010.

The outcomes, compared to "regular" trials are the same! In the 55 EJTs (40 limited and 15 unlimited) that have taken place in LA County since March 2010, there have been 27 plaintiff verdicts and 28 defense verdicts. You can't get a more even split if you tried. This seems to be the trend statewide, as well.

Juror satisfaction is huge. This satisfaction is measured in fewer requests to be excused, greater attention paid to the trial, and deliberations that are the same amount of time given to longer trials of the same genre. One judge reported that her jury list had at least five jurors requesting a hardship excuse that had been denied in the jury room. When the trial was estimated for two days, three at the most, no additional requests to be excused were made by anyone on the panel. Thus, the parties truly got the socio-economic diversity in their panel that is limited by longer cases.

Once a judge has presided over an EJT, it is more likely that they will encourage and preside over additional ones. Of the 55 reported EJT trials, 29 judges have done more than just one–one has presided over as many as eight, with at least eleven presiding over two or more. Obviously, this could relate to the assignment of the judge (limited jurisdiction versus general jurisdiction), but general jurisdiction judges also rank in the two+ EJT category column as well.

There are many inferences to be drawn from this, the obvious one being that once a jurist has experience with the procedures, it is easier to sell it to the parties. A less obvious one is that EJTs are easier to fit into an otherwise hectic trial or I/C court.

EJTs cost less and save money for everyone connected. With the lower number of jurors used, less are summoned, and more are utilized because hardships are eliminated. Jury fees and mileage are limited to one or two days, at most. Expert witnesses rarely spill over court sessions, so they cost less. Even parking for two days instead of five saves money!

Consider this: the average trial in Los Angeles County is five to seven days. Therefore, the 55 EJTs in Los Angeles that lasted on average two days, saved taxpayers 275 trial days on the high end and 165 days on the low end. Lawyers also spend fewer days in court, perhaps enabling them to work (and bill) more on other matters.

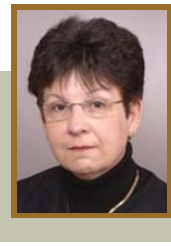
"Hybrid" EJTs are catching on for the benefit of litigants, lawyers and jurists. Many judges have reported that while they are not doing "pure" EJTs in their courtrooms, they are able to persuade the parties to agree to components of an EJT. For example, 8-person juries are becoming more common and popular. Limitations on case timing are more routine, so that even within the EJT framework, it can be stipulated amongst the parties to having five hours per side, two hours for voir dire, and so forth.

The parties can agree to a pivotal trial issue to be decided (damages, liability, credibility, etc.) and try only that to the jury. The parties can agree to waive the non-binding aspect and stipulate that that the trial verdict and post-trial motions are appealable, like any other case. Indeed, the entire EJT procedure could have been agreed to between the parties well before the passage of the legislation and court rules; having them on the books, however, legitimized and provided a framework from which to work and be creative.

Casting Call

Calling all carriers, lawyers, judges, and litigants! Take a good look at the EJT procedures and what they have to offer before relegating them to smaller audiences or discarding them altogether. Put this production technique high on your list of considerations when talking with a client. Tell them that the result will likely be the same at a lesser cost—and this isn't infomercial-style trick advertising!

Our fatigued lawyer with the angry jury isn't benefitting the "big screen/picture" of the justice system. The bottom line is that a whole host of creative and viable alternatives to lengthy jury trials exist in the EJT components which, if deployed, garner the same results but at much less cost to the parties and of great societal benefit by preserving the now fading right to a jury in a civil case.



Judge Mary Thornton House is the Supervising Judge of North Central and Northeast Districts and Supervising Judge of Hub Operations. She has been a judge for 18 years, serving as a supervising judge in one capacity or another for ten of those years in Pasadena and the Stanley Mosk courthouse. She also led the AOC working group that devised and wrote the EJT law and rules.

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2014 Issue	Content Focus	Editorial Deadline
January	The Courts	December 2
February	Diversity	December 2
March	Business Law	January 3
April	Taxation Law	February 3
May	Criminal Law	March 3
June	Work/Life Balance	April 1
July	Bankruptcy Law	May 1
August	Probate and Estate Planning	June 2
September	Back to School/Education and Family Law	July 1
October	New Lawyers	August 1
November	Attorney Resource Guide	*Special Issue*
December	Public Service/Law Practice Management	October 1

Articles are not limited to content focus. *Valley Lawyer* seeks articles covering all areas of law, plus articles focusing on the courts and judiciary, lifestyle, law practice management, social media and legal marketing, as well as humorous commentary about the practice of law. Submit articles and ideas to editor@sfvba.org. Word count for feature article is 1,500-3,000 words; word count for MCLE article is 3,000-4,000 words, including 20 true and false questions for MCLE test. Word count for column (i.e., Case Study, Law Practice Management, Social Networking) is 1,000-1,500 words.

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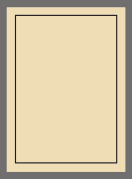

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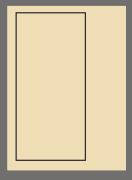

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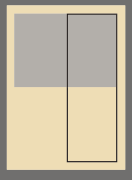

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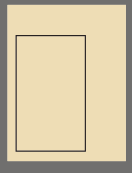

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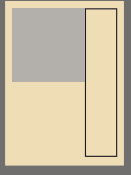

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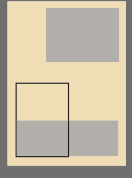

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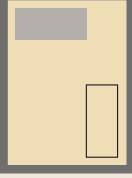

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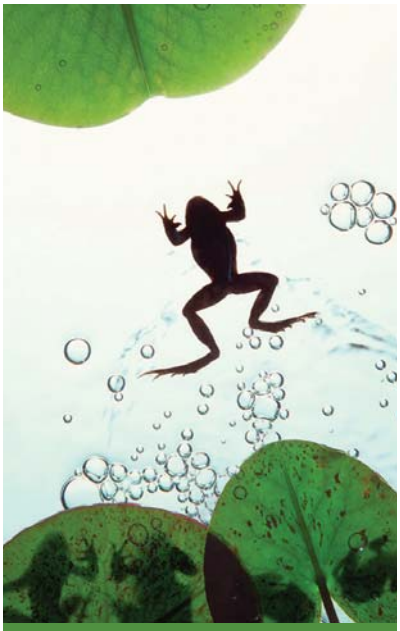

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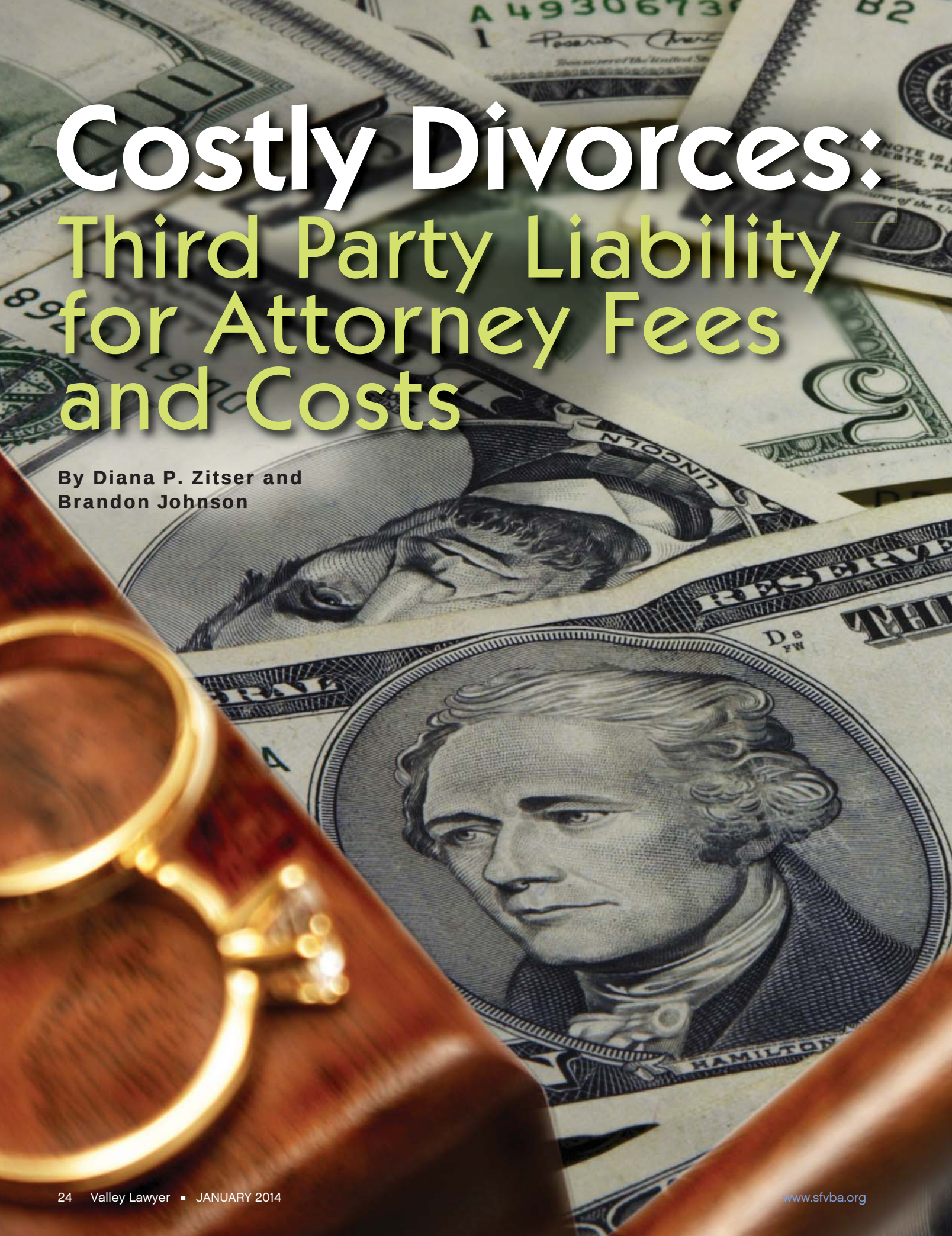


Costly Divorces: Third Party Liability for Attorney Fees and Costs

By Diana P. Zitser and Brandon Johnson

By reading this article and answering the accompanying test questions, you can earn one MCLE credit in Legal Ethics. To apply for the credit, please follow the instructions on the test answer form on page 31.

Recent decisions from the California Court of Appeals have made it easier for a party in a divorce proceeding to seek attorney fees and costs from a third party. Attorneys should take note of these recent developments when reviewing their court strategy to better safeguard their clients' interests.

EVERYONE WHO HAS EVER READ A TABLOID article or watched the evening news is probably familiar with some variation of the phrase "costly divorce." However, very few people know that the soon-to-be-exes are not the only ones who may bear the legal costs of their divorce.

In most areas of civil litigation, an award of attorney fees and costs is seen as a punishment, and a relatively rare one at that. However, attorney fees and costs are treated very differently in family law proceedings.

In family law proceedings, it is common for the court to award need-based attorney fees and costs. If the court finds both that one party requires an award of attorney fees and costs to maintain or defend the proceeding and that another party has a greater ability to pay, the court will generally order the latter to pay for some or all of the attorney fees and costs of the former.

In a divorce proceeding, third parties who are joined to the case can also be made to pay for another party's need-based attorney fees and costs. The court can even order third parties to pay for the need-based attorney fees and costs of another party before trial.

Allowing an award of need-based attorney fees and costs from a third party early in the proceedings presents an unusual problem. In theory, an unscrupulous party could use illegitimate claims to join a wealthy third party to the divorce proceeding, and then use the threat of attorney fees and costs to extort money from the third party.

Requiring a party to show that they are reasonably likely to prevail on their claims relating to a third party before awarding need-based attorney fees and costs may be the only sure way to prevent that from happening. However, if parties in a dissolution proceeding were required to prove their case as it relates to a third party before obtaining need-based attorney fees and costs, a wealthy third party would be able to use aggressive litigation to dominate the divorce proceeding and force financially weak litigants to abandon their rights. This dilemma has taken center stage in two important opinions from the California Courts of Appeal, the most recent of which, *In re Marriage of Bendetti*, was decided earlier this year.

Joinder of Third Parties to Divorce Proceedings

Under Rule 5.24 of the California Rules of Court, there are two primary theories by which a person or entity can be joined to a dissolution proceeding.[1] First, a person must be joined to a divorce proceeding if the person claims custody or visitation rights with respect to any minor child of the relationship.[2] Alternatively, a person may be joined to a divorce proceeding if a joinder would be appropriate to determine an issue in the proceeding and the person to be joined is indispensible for either the determination of that issue or enforcement of any judgment.[3]

The second of the two theories is more general than the first, and it is also more commonly used to join third parties to dissolution proceedings. In particular, the most common reason third parties are joined to divorce proceedings is that they claim or control an interest in property that is subject to the divorce, like the family home, or a business.

A person who has been joined to a dissolution proceeding as a third party is called a claimant.[4] Claimants are considered a party to the divorce proceeding for all purposes, including discovery and attorney fees and costs under Family Code Section 2030.

Attorney Fees in Divorce Proceedings

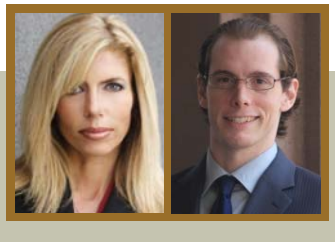
There are many differences between the practice of family law and other types of civil litigation, but perhaps the most important difference is the way attorney fees and costs are allocated in family law proceedings.

Under California's Family Code Section 2030, if there is a disparity between the parties' ability to pay for attorney fees and costs, upon request, the court is required to order an award for reasonable attorney fees and costs.[5] A party with a greater ability to pay for attorney fees and costs will be ordered to pay for the attorney fees and costs of a party who is in need of such an award.[6] Family Code Section 2030 applies specifically to proceedings for divorce or legal separation, but other statutes provide for a similar allocation of attorney fees and costs in other family law proceedings.[7]

Family Code Section 2030 is substantially the same as its predecessor, former Civil Code Section 4370. Civil Code Section 4370 was originally justified as an extension of the duty to support a spouse or child.[8] Now, Family Code Section 2030's stated goal is to preserve each party's rights and ensure that each party has access to legal representation.[9]

Without Section 2030, a financially dominant party would be able to use the costs of the legal process to bury the other parties' rights. This can be a problem in any kind of litigation, but it may be especially important in divorce proceedings, where the litigation often literally hits home, affecting the parties' personal livelihoods and the custody of their children.

The practical effect of Family Code Section 2030 is that the party with the strongest financial situation is often required to pay for some or all of the other party's attorney fees and costs. For the party who is ordered to pay, this can be like adding



Diana P. Zitser is a State Bar of California Certified Specialist in Family Law and the founder of Law Offices of Diana P. Zitser, APC, a firm dedicated exclusively to family law. She can be reached at diana@zitserlaw.com. **Brandon Johnson** is an attorney at the firm and has worked on all types of family law matters, ranging from divorces to adoptions. He can be reached at brandon@zitserlaw.com.

insult to injury, as they are essentially required to pay for their own opposition. While its effects can be frustrating, the courts and legislature have continued to strengthen Section 2030 as a method for preventing a financially dominant party from exercising an unfair advantage in dissolution proceedings.

In 2004, the relevant language of Section 2030 was changed from "the court *may* make findings on whether an award of attorney's fees and costs under this section is appropriate" to "the court *shall* make findings on whether an award of attorney's fees and costs under this section is appropriate."[10]

In 2010, Section 2030 was further amended to expressly authorize the courts to award pendente lite attorney fees and costs by adding the language "including access early in the proceedings."[11]

Attorney fees and costs awarded under Section 2030 are often described as need-based attorney fees and costs. While attorney fees and costs under Section 2030 are not awarded in every divorce proceeding, they are much more common than an award for attorney fees and costs in other kinds of litigation. When attorney fees and costs are likely to be ordered, they can have a major impact on how the case proceeds. When third parties are joined to a divorce proceeding, they can be required to pay for attorney fees and costs under Section 2030 as well.

Attorney Fees from Third Parties in Divorce Proceedings

Family Code Section 2030's predecessor, Civil Code Section 4370, originally allowed an award of need-based attorney fees and costs only from a "husband or wife, or father or mother."[12] However, in 1981, the statute was amended to allow the award from "any party, except a governmental entity."[13] This language has continued under Family Code Section 2030.[14] Accordingly, once a person has been joined as a third party to a dissolution proceeding, the person can be required to pay for the attorney fees and costs of the other parties.[15] However, under Section 2030, orders requiring third parties to pay for the attorney fees and costs of another party in a dissolution proceeding must be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.[16]

Despite this limitation, depending on how the parties handle the case, a third party joined to a divorce proceeding can still be ordered to pay for a significant amount of another party's attorney fees and costs. For example, a third party can be ordered to pay even for the attorney fees and costs that another party incurred in joining them to the case.[17]

Not long after the legislature changed the statute to allow the court to award need-based attorney fees and costs from third parties, a case came before the Third District Court of Appeal that challenged the statute's ability to award need-based attorney fees and costs from third parties before trial.

IRMO Siller (1986)

In *In re Marriage of Siller*, the wife alleged that she had a community property interest in 23 parcels of real property which were also claimed by a corporation and a partnership that had been formed by the husband and his brothers during the marriage.[18] After the partnership filed an action seeking imposition of a purchase money resulting trust alleging it had paid the purchase price of those properties solely from its own funds, the wife joined the partnership and the corporation to the dissolution proceeding.[19]

Both before and after the third parties were joined to the divorce, the wife made numerous discovery requests that were unsuccessfully opposed by the third parties, including depositions, subpoenas to the third parties' bank, and demands for the production of documents.[20] The third parties also made a motion for a protective order, a motion for judgment on the pleadings, and two prior writ petitions to the Court of Appeal.[21]

The wife prevailed on all of these procedural issues and was awarded attorney fees and costs from the third parties for almost all of her costs under Civil Code Section 4370, the predecessor to Family Code Section 2030.[22] The third parties appealed the award of attorney fees and costs, arguing, among other things, that the statute was unconstitutional as applied, and that the statute could only be constitutionally applied when the party seeking fees shows that they are reasonably likely to prevail in their underlying claims against a third party.[23]

The Third District Court of Appeal rejected the third parties' argument and affirmed the award of attorney fees and costs from the third parties, stating that there was no requirement that the party seeking fees against a third party show that they are reasonably likely to prevail in their underlying claims against a third party. However, the Court of Appeal's decision appeared to be based primarily on the fact that the wife had prevailed on all of the procedural issues for which attorney fees and costs had been awarded.[24]

Even though the wife had ultimately been unsuccessful in her claims against the third party, the Court of Appeal held that because she had been successful in her procedural actions, those actions were reasonable.[25] The Court of Appeal also noted that the facts in the case demonstrated that the wife's underlying claims were "not specious."[26]

Because the Court of Appeal's decision in *Siller* could have been interpreted to authorize need-based attorney fees and costs from third parties that were incurred to make motions or requests that had prevailed, *Siller* left many questions unanswered. However, because third parties are rarely joined to divorce proceedings, the issue was not revisited by a Court of Appeal until last year.

IRMO Bendetti (2013)

In *In re Marriage of Bendetti*, the divorce settlement between

the husband and his first wife included an agreement that the husband would sell their 50 percent interest in two restaurants and pay the first wife half of the balance of proceeds from the sales.[27] The divorce settlement also provided that the husband would pay the first wife spousal support.[28] Over the next ten years, the husband gave the first wife neither spousal support nor the wife's share of the proceeds, so the first wife began to take legal action to enforce her interests.[29]

In the interim, the husband had married a second wife, and the husband and/or the second wife had invested in a steakhouse chain.[30] Further, the husband and the second wife were engaged in litigation against the other owner of the steakhouse chain.[31]

As part of the litigation between the husband and the second wife against the other owner, the husband stated in a deposition that while the second wife was nominally the investor in the steakhouse chain, at least some of the money for the investment in the steakhouse chain had come from the proceeds that the husband had been ordered to share with the first wife, and that the husband had been the true investor in the steakhouse chain.[32]

The first wife filed a judgment lien in the steakhouse case, but despite that lien and the husband's statements during his deposition, the second wife received a settlement of $7,250,000 from the steakhouse litigation.[33]

After the second wife received this award in the steakhouse litigation, the husband then paid the first wife with funds from the second wife, to settle the first wife's spousal support claim arising from the dissolution proceeding.[34] The first wife then requested attorney fees and costs against husband.[35]

As part of his opposition to this motion, the husband made statements contradicting his earlier statements in the steakhouse case.[36] In particular, the husband now stated that the second wife was the true investor in the steakhouses, and that he never expected to receive anything from the steakhouse investment or the steakhouse litigation.[37]

The second wife brought a declaratory relief action against the first wife in federal court, claiming that all of the proceeds in the steakhouse litigation belonged to her.[38] The first wife moved successfully to have the second wife's federal court action dismissed.[39]

The first wife then joined the second wife to dissolution proceeding, and filed claims for fraud and unjust enrichment against second wife.[40] The second wife filed a demurer and motion to strike, which caused the first wife to amend the complaint.[41] The first wife also made an omitted asset motion and propounded discovery on the second wife, including an attempt to take the second wife's deposition.[42]

The first wife then moved for attorney fees and costs from both the husband and the second wife.[43] The trial court granted the request, awarding fees from the second wife for the first wife's opposition to the second wife's federal

declaratory relief action, joinder of the second wife, opposing the second wife's demurer and motion to strike, making the omitted asset motion, propounding discovery on the second wife, and attempting to take the second wife's deposition.[44]

The second wife appealed the court's order awarding attorney fees and costs to the first wife, contending that a party seeking attorney fees and costs from a third party must demonstrate a likelihood of success on the merits, and that the first wife had failed to present a prima facie case linking the second wife as a third party to an issue in the proceeding.[45]

Although the Second District Court of Appeal noted that, unlike *Siller*, not all of the attorney fees and costs awarded to the first wife were for motions in which the first wife prevailed, the Court of Appeal nevertheless rejected the second wife's arguments.[46] The Court of Appeal held that there was no requirement that a party to a divorce proceeding demonstrate a likelihood that he or she will prevail in his or her underlying claims against a third party to be entitled to pendente lite attorney fees and costs from the third party.[47]

The Court of Appeal also held that a party does not have to prevail on the motions and matters for which attorney fees and costs are awarded from the third party, because without such a pendente lite award, parties to divorce proceedings may be unable to pursue their claims.[48] The Court of Appeal also noted that the facts in the case demonstrated that there were issues in the dissolution proceeding related to the second wife, and that the first wife's claims against the second wife were "not specious" under the facts.[49]

Attorney Fees from Third Parties in Divorce Proceedings after *Bendetti*

The Court of Appeal in *Bendetti* made it clear that in a divorce proceeding, a party seeking attorney fees and costs from a third party for services that have already been performed need not demonstrate a reasonable likelihood that he or she will prevail in his or her underlying claims against the third party, even if the party seeking fees did not prevail on all of the motions and matters for which the attorney fees and costs were incurred. Nevertheless, some important questions remain unanswered.

Although the opinions of the Courts of Appeal in both *Siller* and *Bendetti* noted that the underlying claims against the third parties were "not specious," neither opinion expressly held that such a finding was necessary, so that portion of the opinions may or may not be dicta.[50]

Furthermore, neither *Siller* nor *Bendetti* reached the issue of whether or not the statute could authorize an award of attorney fees and costs from a third party for services to be rendered in the future, because in both cases the trial court only granted attorney fees and costs from the third parties for work that had already been performed.[51]

The way attorney fees and costs are treated in family law proceedings is very different from other types of civil litigation. In the courthouses and legislative halls, the wind is blowing more and more strongly towards seeing need-based attorney fees and costs as a way to ensure an equal playing field. When attorney fees and costs may be at issue in a divorce proceeding, the way the facts interact with the policy and intent behind the law has to be understood and carefully evaluated.

After *Bendetti*, an attorney opposing an award of need-based attorney fees and costs will have a more difficult time arguing that the party requesting fees is unlikely to prevail on their underlying claims, but an attorney opposing an award of need-based attorney fees and costs can and should argue that the fees requested are not reasonable or justified. By contrast, an attorney representing a party who is requesting an award of need-based attorney fees and costs, when appropriate, might argue that a fee award is required for an equal playing field, and that their fees are reasonable.

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[1] Cal. Rules of Ct. Rule 5.24(e).
[2] Cal. Rules of Ct. Rule 5.24(e)(1).
[3] Cal. Rules of Ct. Rule 5.24(e)(2).
[4] Cal. Rules of Ct. Rule 5.24(b).
[5] Cal. Fam. Code Sec. 2030(a)(2).
[6] *Id.*
[7] Cal. Fam. Code Sec. 2030(a)(1), 7605, 7640.
[8] *IRMO Siller*, 187 Cal.App.3d 36, 45 (1986).
[9] Cal. Fam. Code Sec. 2030(a)(1).
[10] Cal. Fam. Code Sec. 2030(a)(2) (emphasis added).
[11] Cal. Fam. Code Sec. 2030(a)(1).
[12] *Siller*, 187 Cal.App.3d at 46.
[13] *Id.* at 45.
[14] Cal. Fam. Code Sec. 2030.
[15] *Id.*
[16] Cal. Fam. Code Sec. 2030(d).
[17] *IRMO Bendetti*, 214 Cal.App.4th 863, 867-868 (2013).
[18] *Siller*, 187 Cal.App.3d at 41.
[19] *Id.* at 41-42.
[20] *Id.* at 42.
[21] *Id.*
[22] *Id.*
[23] *Id.* at 50.
[24] *Id.* at 52-53.
[25] *Id.* at 53.
[26] *Id.*
[27] *Bendetti,* 214 Cal.App.4th at 865.
[28] *Id.* at 866.
[29] *Id.* at 865-866.
[30] *Id.* at 866.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.* at 866-867.
[37] *Id.*
[38] *Id.* at 867.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.* at 867-868.
[43] *Id.* at 867.
[44] *Id.* at 867-868.
[45] *Id.* at 868.
[46] *Id.* at 870-871.
[47] *Id.* at 871.
[48] *Id.* at 870-871.
[49] *Id.* at 871-872.
[50] *Siller*, 187 Cal.App.3d at 53 and *Bendetti,* 214 Cal.App.4th at 871.
[51] *Siller*, 187 Cal.App.3d at 42, and *Bendetti*, 214 Cal.App.4th at 868.

Test No. 63

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

1. In family law cases, attorney's fees and costs are usually only awarded as a sanction.
   ❑ True ❑ False

2. Need-based attorney's fees and costs are ordered when the court finds that one party requires an award of attorney fees and costs to maintain or defend the proceeding and that another party has a greater ability to pay.
   ❑ True ❑ False

3. Third parties who have been joined to a divorce proceeding cannot be ordered to pay for need-based attorney fees and costs.
   ❑ True ❑ False

4. A person must be joined to a divorce proceeding if he or she claims custody or visitation rights with respect to any minor child of the relationship.
   ❑ True ❑ False

5. A person may be joined to a divorce proceeding if joinder would be appropriate to determine an issue in the proceeding and the person to be joined is indispensible for either the determination of that issue or enforcement of any judgment.
   ❑ True ❑ False

6. A person can be joined to a divorce proceeding if they claim or control an interest in property that is subject to the divorce.
   ❑ True ❑ False

7. A third party who has been joined to a divorce proceeding is called a claimant.
   ❑ True ❑ False

8. Family Code Section 2030 is a continuation of former Civil Code Section 4370.
   ❑ True ❑ False

9. The stated goal of Family Code Section 2030 is to preserve each party's rights and ensure that each party has access to legal representation.
   ❑ True ❑ False

10. In 2004, the legislature weakened Family Code Section 2030 by changing the relevant language from "the court *shall* make findings on whether an award of attorney's fees and costs under this section is appropriate" to "the court *may* make findings on whether an award of attorney fees and costs under this section is appropriate."
    ❑ True ❑ False

11. The practical effect of Family Code Section 2030 is that the party with the weakest financial situation is often required to pay for some or all of the other party's attorney fees and costs.
    ❑ True ❑ False

12. Family Code section 2030 does not authorize the courts to award pendente lite attorney fees and costs.
    ❑ True ❑ False

13. In a divorce proceeding, when attorney fees and costs are likely to be ordered, they can have a major impact on how the case proceeds.
    ❑ True ❑ False

14. Under Family Code Section 2030, orders requiring third parties to pay for the attorney fees and costs of another party in a dissolution proceeding must be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.
    ❑ True ❑ False

15. A third party joined to a divorce proceeding cannot be ordered to pay for the attorney fees and costs that another party incurred in joining them to the case.
    ❑ True ❑ False

16. Need-based attorney fees and costs can only be awarded from a third party when the party seeking fees shows that they are reasonably likely to prevail in their underlying claims against a third party.
    ❑ True ❑ False

17. Need-based attorney fees and costs can only be awarded from a third party for motions or requests in which the party seeking fees has prevailed.
    ❑ True ❑ False

18. Need-based attorney fees and costs can only be awarded from a third party for motions or requests that were made by the third party.
    ❑ True ❑ False

19. An attorney opposing an award of need-based attorney fees and costs can argue that the fees requested are not reasonable.
    ❑ True ❑ False

20. A party seeking need-based attorney fees and costs should not argue that a fee award is required for an equal playing field.
    ❑ True ❑ False

MCLE Answer Sheet No. 63

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

   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

The Court of Last Resort:
Noteworthy Pending California Supreme Court Cases

By Mark Schaeffer

NO NEED TO MINCE WORDS: obtaining review from the California Supreme Court is difficult. Its review of appellate court opinions is discretionary.[1] The state's high court may accept review of appellate court opinions in a few instances, notably, when it wants to settle a significant legal question or resolve conflicting decisions by the appellate courts.[2]

According to the latest statistics compiled by the Judicial Council for the 2011-2012 fiscal year, the California Supreme Court granted just four percent of 4,620 petitions for review.[3] This percentage has remained rather consistent over the last ten years, from an eight percent high in the 2006-2007 fiscal year to a two percent low in fiscal year 2008-2009.[4]

Perhaps, this daunting statistic helps explain why there were the fewest number of petitions for review filed in the preceding fiscal year than in the previous ten years.[5] This article will highlight four of those fortunate enough to have received a welcome reception from the high court and discuss the issues that the court will decide.

Host Liability for Furnishing Alcohol to Guests

Statutory law provides immunity from civil liability to a social host who furnishes alcoholic beverages to his/her guests.[6] The host loses that immunity if he/she sells or causes to be sold alcoholic beverages to an obviously intoxicated minor who injures another person.[7]

In *Ennabe v. Manosa* (Court of Appeal case no. B222784), the host charged guests an admission fee to help defray the cost of communal alcoholic beverages on a self-serve basis. An obviously intoxicated minor was admitted who, after leaving the party, drove his car and killed a pedestrian.

The appellate court concluded that the host had not sold or caused to be sold an alcoholic beverage to the minor partygoer. The court found that the relevant statutes required a transfer of title of the alcoholic beverage at the time a fee is paid to cause the host to lose immunity and that the party admission fee did not transfer title since no alcohol was transferred with payment of the fee.

The California Supreme Court found this issue, of apparent first impression, compelling enough to grant review.

Primary Assumption of Risk

The primary assumption of risk rule is not limited to sporting activities.[8] Does an in-home caregiver to someone suffering from Alzheimer's disease assume the risk of physical injury? In *Gregory v. Cott* (Court of Appeal case no. B237645),


Image: Coolcaesar

Cott's husband hired an agency to provide in-home care to his wife who suffered from Alzheimer's disease. The agency assigned Gregory to care for Cott. Gregory knew from her training that Alzheimer's patients could become violent. Cott cut Gregory's wrist with a knife. Gregory sued Cott for battery, negligence, and premises liability, and Cott's husband for negligence and premises liability.

The majority of the appellate court found that the primary assumption of risk doctrine applied and insulated the Cotts from liability. But the California Supreme Court granted Gregory's petition for review and will have the final word on the application of primary assumption of risk doctrine under these circumstances.

Prevailing Party's Entitlement to Fees for Procedural Dismissal with Merits to Be Adjudicated

The general rule is that a party who obtains an interim victory in litigation has not prevailed to be entitled to prevailing party attorney fees pursuant to contract. This rule makes sense. Otherwise, every time a party prevails on any motion, it could claim the right to fees. But, what if a party obtains a procedural dismissal of a state court lawsuit on the ground that jurisdiction lies in federal court and the case is refiled and pending in federal court? Is that party entitled to prevailing party fee?

That was the issue facing the appellate court in *Kandy Kiss of California, Inc. v. Tex-Ellent, Inc.* (Court of Appeal case no. B234541). The court noted a split among some appellate courts on the issue, but chose to follow those cases awarding prevailing party fees at the end of a suit on procedural grounds, even if litigation may be refiled to address the merits of the parties' dispute. This interesting issue, which has caused discord among some appellate courts, will be decided by the high court.

Community or Separate Property

During his marriage to Randy Valli, Frankie Valli acquired a multi-million dollar life insurance policy. Randy testified the policy was for her benefit. Frankie testified the policy was to take care of his family, which included the couple's three children. The insurance agent who sold the policy to Frankie testified that Randy is the owner and beneficiary of the policy. The premiums for the policy were paid from the couple's joint account, which the Vallis agreed was community property—at least prior to their separation.

In a marital dissolution proceeding, the trial court found the policy is community property because the policy was acquired and the premiums were paid during the marriage. The appellate court reversed.[9] It found that the policy belonged to Randy under the form of title presumption because she was listed as the policy's owner and that the community property presumption did not apply because she was listed as the owner with Frankie's consent. The California Supreme Court accepted Frankie's petition for review and will decide to whom the policy belongs.

Crafting an enticing petition for review that grabs the Supreme Court justices' attention is essential. It is critical to remember the function of review—the Supreme Court's purpose is not to correct an error by the appellate court. Rather, it is to promulgate policy by resolving significant issues that are novel, unsettled, or have divided the appellate courts, and which affect the legal system as a whole. A properly drafted petition that takes into consideration the court's role and establishes the widespread importance of the case can improve the odds of obtaining that elusive review.

The parties in the above cases defied the odds. They successfully captured the interest of the high court and have been granted one more opportunity to present their case to the final arbiters in our state.

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[1] There is an exception. In death penalty cases, review is automatic.
[2] Cal. Rules of Court, rule 8.500(b).
[3] 2013 Court Statistics Report, Statewide Caseload Trends, 2002-2003 through 2011-2012, p. 8.
[4] *Id.* at p. 13.
[5] *Id.* at p. 5.
[6] Civil Code section 1714, subdivision (c).
[7] Business and Professions Code section 25602.1, subdivision (c).
[8] E.g., *Beninati v. Black Rock City*, LLC (2009) 175 Cal. App.4th 650, 658-659 [Burning Man bonfire injury]; *Tilley v. CZ Master Assn.* (2005) 131 Cal.App.4th 464, 489–490 [private security guard]; *Dyer v. Superior Court* (1997) 56 Cal.App.4th 61, 72–73 [tow truck driver aiding motorist]; *Nelson v. Hall* (1985) 165 Cal.App.3d 709, 714 [claim by veterinarian's assistant].
[9] In re the *Marriage of Frankie and Randy Valli*, Court of Appeal case number B222435.

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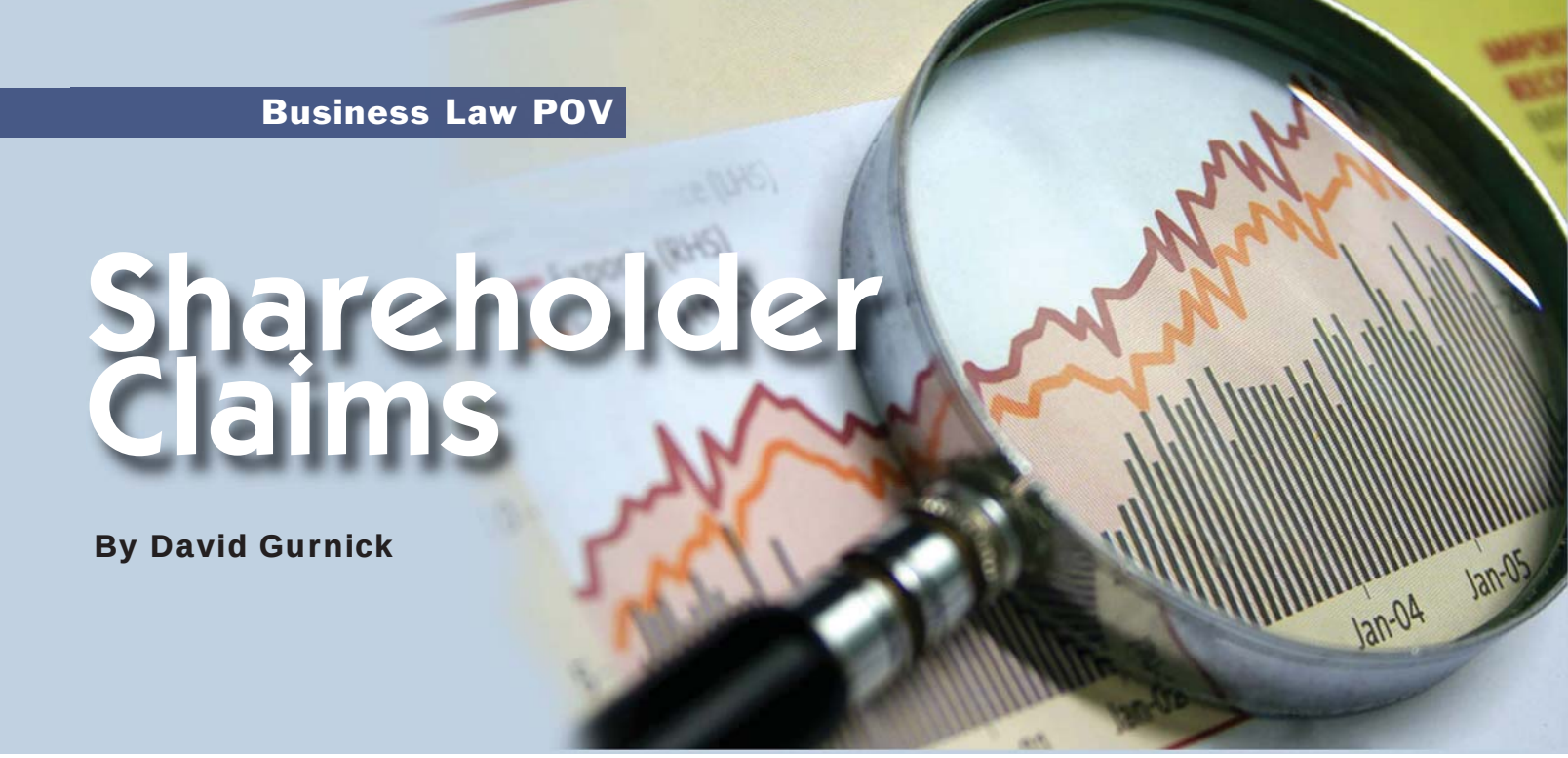
Shareholder Claims



By David Gurnick

EVERY BUSINESS LAWYER hears it from time to time. A shareholder client complains of mistreatment, self-dealing, mismanagement or incompetence by a corporation's board of directors or management. The shareholder, whose investment lost a lot of its value, wants to demand corrective action, or sue. It seems intuitive that someone who invested in a company should have a claim for misconduct, whether negligent, or worse, by members of the board of directors. After all, directors are fiduciaries: "a corporation, through its officers and directors, owes fiduciary duties to its investors, shareholders or subscribers, and must act in the highest good faith towards its investors, shareholders or subscribers."[1]

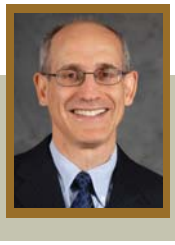
But shareholders cannot always bring a claim against a company's directors or board. Rather, there are two possibilities. Sometimes, a shareholder can bring a direct action, either individually or on behalf of a class of shareholders, for injury to his or her interest as a shareholder. Or, a shareholder may bring a "derivative action." That is a suit against a director or the board, on behalf of the corporation, for injury suffered by the corporation, for which it failed or refused to sue. "The two actions are mutually exclusive: . . . the right of action and recovery belongs either to the shareholders (direct action) or to the corporation (derivative action)."[2]

Thus, under California law, despite suffering loss to the value of one's shares, due to misconduct by a director, board, or management, a shareholder cannot bring a direct action for damages on the theory that the misconduct decreased the value of his or her stock. The corporation itself must bring the action. Or, the shareholder may bring the action, but it is on the corporation's behalf.[3] This principle makes it useful for business lawyers to know the different circumstances when a direct action may be brought, and when a shareholder's claim requires a derivative action.

An action is derivative if the claim is for injury to the corporation, or to the whole body of its stock or property, "without any severance of distribution among individual holders," or if the action seeks to recover assets for the corporation or prevent dissipation of the entity's assets.[4] A shareholder may bring only a derivative suit to enjoin or recover damages for a director's or management's breach of fiduciary duty owed to the corporation.[5] In a derivative claim, the shareholder is the nominal plaintiff, and the corporation is the nominal defendant. The corporation is the real party in interest, entitled to any recovery.[6]

In contrast, an individual cause of action exists if damages to the shareholders were not incidental to damages to the corporation. Examples of direct shareholder actions include suits to compel the board to declare a dividend, or for payment of lawfully declared or mandatory dividends, or to enjoin a threatened action in excess of the board's authority, or enforce shareholder voting rights.[7]

In *Bader v. Anderson*, plaintiff brought an action against Apple and its directors. She claimed the board used a



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misleading proxy statement to persuade shareholders to approve a bonus plan. She sought a judicial declaration cancelling the plan, and voiding the shareholders vote that approved it. The appellate court stated that whether a claim is direct or derivative turns on two inquiries: Who suffered the harm—the corporation or the suing stockholder individually—and who would receive the benefit of any recovery or other remedy? Under this analysis, the injury, bonus payments made to executives and stock options granted to Chairman Steve Jobs, was to the corporation, not to shareholders. Therefore, the claim was derivative.[8]

In deference to a corporate board's managerial role, and to curb abuse, a shareholder bringing a derivative claim must first make a demand on the board to take the desired action. This demand requirement was recognized over 120 years ago by the Supreme Court[9] and is codified in the Corporations Code.[10] Alternatively, "when it is clear that making a demand upon the company's board of directors would be futile, the demand requirement may be excused." Futility may be shown by proving the directors were not disinterested and independent in their decision-making or that the challenged action was not a valid exercise of business judgment by the directors.[11]

When a dissatisfied or victimized shareholder wishes to bring a claim against the board of directors of a corporation, the claim must be analyzed to determine if it qualifies as a direct action, or must be a derivative action on behalf of the corporation. In a derivative action, the shareholder must first make a demand on the board of directors, to bring the claim itself.

[1] *Cleveland v. Johnson* 209 Cal.App.4th 1315, 1338 (2012).
[2] *Schuster v. Gardner* 127 Cal.App.4th 305, 311-312 (2005).
[3] Id. at 312.
[4] *Jones v. H.F. Ahmanson & Co.* 1 Cal.3d 93, 106–107 (1969).
[5] *Schuster v. Gardner* 127 Cal.App.4th 305, 313 (2005).
[6] Id. at 312.
[7] Id. at 313.
[8] *Bader v. Anderson* 179 Cal.App.4th 775 (2009).
[9] *Hawes v. City of Oakland* 104 U.S. 450 (1881).
[10] Cal. Corps. Code Sec. 800(b)(2).
[11] *Charter Township of Clinton Police and Fire Retirement System v. Martin* 219 Cal.App.4th 924, 935-6 (2013).

Lis Pendens: To Expunge or Not to Expunge?

By Jonathan I. Reich

YOU HAVE JUST BEEN served with a lawsuit and, to add insult to injury, the plaintiff has recorded a notice of pending action, or "lis pendens," against your home or other real property which is currently listed for sale. Is it worth the time and expense to file a motion, or even an ex-parte application, to expunge the lis pendens? Although most of the time an attorney will tell you "it depends," in the case of a lis pendens, it is almost always a good idea to seek expungement if the statutory grounds provide any support for doing so.

Provisional remedies—an attachment, injunction or lis pendens—can be very effective tools in litigation. For a plaintiff, it can often mean the difference between being able to collect after a year, or years, of litigation and being left with a large but uncollectible judgment.

Provisional remedies, a lis pendens included, also place substantial burdens on the defendant, which can be a tactical advantage for the plaintiff in resolving a dispute. Given these advantages for the plaintiff, a defendant against whom a lis pendens has been employed should take every opportunity to oppose it.

Opposing a lis pendens, or any other provisional remedy, can have other benefits as well. It allows the defendant an early opportunity to educate the court, and learn how the court views his or her case. Finally, opposing provisional remedies can serve to focus the parties on an early resolution of a case, rather than engaging in protracted and expensive litigation.

What is a Lis Pendens?

A lis pendens is a statutorily created notice which, when recorded, gives constructive notice to persons who later acquire an interest in a property that there is an action pending which asserts a real property claim.[1] Under the principals of priority in recording, a lis pendens insures that a purchaser or lender who acquires an interest after the proper recording of the lis pendens takes that interest subject to the claims alleged in the lawsuit.[2]

From a plaintiff's perspective, a lis pendens prevents "the defendant property owner from frustrating any judgment that might eventually be entered by transferring his or her interest in the property while the action was still pending."[3] Unlike other provisional remedies, however, a lis pendens can be obtained directly by the plaintiff and, at least initially, without the approval of the court, or even notice to the defendant or third party real property owner.

A lis pendens can only be recorded in matters involving a real property claim.[4] A real property claim is a claim which, if sustained, affects "either title to, or the right to possession of, specific real property... or the use of an easement... identified in the pleading...."[5] Whether a pleading asserts a real property claim is an important distinction, and an important point of attack for a defendant, as not every action that mentions or involves real property presents a real property claim.

"[T]he courts have repeatedly held that a lis pendens recorded in an action that does not involve title has no effect: '... if there is a failure to comply with [the lis pendens statute] there can be no constructive notice of the pendency of the action.'"[6] Following this concept, courts have held that claims for constructive trust, an action on a loan, and an action involving personal property do not support the recording of a lis pendens.[7] So too, "allegations of equitable remedies, even if colorable, will not support a lis pendens if, ultimately, those allegations act only as a collateral means to collect money damages."[8]

The recording of a lis pendens can create a great advantage in litigation, especially in light of the time that it can currently take to bring an action to trial. Because a lis pendens acts to preserve a claim as of the date it is recorded, while the lis pendens remains, the real property interest involved becomes, essentially, a frozen asset.

Only the bravest of purchasers or lenders will want to become involved with a property if they are going to be junior to another's claim, particularly one where the claim is uncertain as to both the existence and amount of the claim. Normal buyers and lenders will have no interest in a property that is tainted by a lis pendens, and even those that do, will almost certainly seek a substantial risk premium.

Expunging a Lis Pendens

How does one get rid of a lis pendens once it has been recorded? As a creature of statute, the procedure for expunging a lis pendens is also controlled by the statute. The expungement of a lis pendens can be sought at any time by a party, or even by a non-party, who has an interest in the real property.[9] And the court is required to expunge a lis pendens "if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim."[10] The burden is thus placed on the plaintiff to establish the probable validity of that claim.[11]

This heavy burden is placed on the plaintiff because of, in the words of one court, "[t]he financial pressure created by a recorded lis pendens provided the opportunity for abuse, permitting parties with meritless cases to use it as a bullying tactic to extract unfair settlements."[12]

Moreover, the plaintiff must make his or her case based entirely on admissible evidence. "Good faith and a proper purpose are no longer sufficient to maintain a notice of lis pendens..."[13] and "factual merit is ... necessary to the maintenance of a lis pendens."[14]

The words of the legislative commentary to §405.32 further clarifies this point when it states that "[q]uestions of subjective state of mind are more appropriate to criminal law notions of moral culpability than to the resolution of real property disputes. The provisions regarding proper purpose, good faith and subjective state of mind are superseded ... by the new requirement that the claimant objectively establish the probable validity of the real property claim."[15]

In considering whether or not to expunge a lis pendens, the legislature provided the parties and the court with an alternative: either the plaintiff or the defendant can be required to provide an undertaking. If the court finds that the plaintiff has established the probable validity of its real property claim, the court can, nonetheless, conditionally expunge a lis pendens if the defendant real property owner is willing and able to provide an undertaking sufficient to "indemnify the claimant for all damages proximately resulting from the expungement...."[16]

Conversely, and whether or not expungement of a lis pendens is sought, the court can, at the request of a defendant, or a non-party property owner, require "the claimant to give the moving party an undertaking as a condition of maintaining" the lis pendens.[17]

Just as in the case of an undertaking in favor of the plaintiff, an undertaking from the plaintiff will serve to protect the burdened defendant or property owner in case the real property claim ultimately fails. In either case, the amount of the undertaking is left to the discretion of the court but, depending on the facts, it can be substantial. And, given that a bonding company will generally require security and/or collateral for an undertaking of this type, the requirement of a substantial undertaking could force a plaintiff to abandon the lis pendens, or to suffer the same burdens that they sought to place on the defendant.

Moving to expunge a lis pendens, especially at an early stage of a case, can provide numerous benefits for a defendant or third-party property owner. If granted, it denies the plaintiff a significant point of leverage to force an early, and favorable, settlement of the action.[18]

It also affords a defendant an opportunity to, at a very early stage in the proceedings, educate the court about the case and force the plaintiff to show its hand as to not only its theories of the case but also the actual, admissible evidence supporting its claims. A further benefit of seeking to expunge a lis pendens is that a motion to expunge, if successful, can serve as the basis for a later motion for summary judgment by the defendant.

Although the standard for the granting of a motion for summary judgment is somewhat more stringent—"[t]he motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the

moving party is entitled to a judgment as a matter of law"—a finding that the plaintiff has not established the probable validity of his or her claim is a move in the right direction for a defendant.[19]

Moreover, unlike a motion for summary judgment, which cannot be made until 60 days after the party's general appearance and generally requires at least a 75 day notice period, a motion to expunge can be filed immediately after the lis pendens has been recorded and can be heard on normal notice, or even as an ex-parte matter.[20]

Finally, the process of dealing with the expungement of a lis pendens, or any other provisional remedy, can serve as a starting point for an early settlement of an action.

Is Disclosure Still Required?

In enacting the lis pendens statute, the legislature stated: "[i]t is the intent of the legislature that this section shall provide for the absolute and complete free transferability of real property after the expungement or withdrawal of a notice of pendency of action."[21] To implement this goal, the legislature further provided that "[u]pon the withdrawal of a ... [lis pendens] ... or upon recordation of a certified copy of an order expunging ... [it]... neither the notice nor any information derived from it ... shall constitute actual or constructive notice of any of the matters contained, claimed, alleged or contended therein, or of any of the matters related to the action, or create a duty of inquiry in any person thereafter dealing with the affected property."[22]

Finally, to support its legislative intent, the legislature provided that upon the expungement of a lis pendens "no person except a party to the action at the time or recording of the notice of withdrawal or order, who thereafter becomes ... a purchaser, transferee, mortgagee, or other encumbrancer for a valuable consideration of any interest in the real property to the action, shall be deemed to have actual knowledge of the action or any of the matters contained, claimed or alleged therein..."[23]

Notwithstanding these clear statements of legislative intent, the question remains as to whether or not a defendant or third party property owner must still disclose the existence of the claim asserted in the action. The disclosure provisions for residential real estate, for example, require a seller to disclose the existence of "[a]ny lawsuits by or against the seller threatening to or affecting this real property ..."[24]

Even if the lis pendens has been expunged, must the selling defendant still disclose the existence of the claim and lawsuit in satisfaction of its obligations under this provision? Likewise, must a borrowing defendant still disclose the existence of the action to his lender?

Unfortunately, there is no clear answer to this question. Prudence, therefore, would seem to dictate that a careful seller or borrower disclose the existence of the claim in order to protect itself from later claims. This, of course, must be balanced against the clear disadvantage that will arise from telling prospective buyers or lenders that a claim exists and there is a possibility, however remote, that they could later be dragged into litigation.

Is It Worth It?

As lawyers always say, each case is different and must be evaluated on its own merits. However, if there is even a slim chance of success, challenging a lis pendens at the early stage of a lawsuit can have very positive results for a defendant and there is little downside, other than the costs, of doing so. If the challenge is successful, the whole momentum of a case can be changed. It also frees up the defendant's usually valuable real property for other uses.

Even if the challenge is not successful, making the effort allows the proactive defendant an early opportunity to educate the court about the case from the defendant's perspective. It also forces the plaintiff, at a very early stage, to reveal the evidence supporting his or her case. Allowing a plaintiff with a weak, or even non-existent, claim to a lis pendens to go unchallenged may also encourage them to take other equally unreasonable and unsupported positions.

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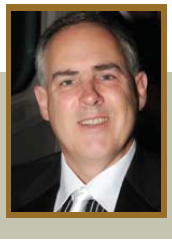
[1] *Code Civ. Proc*. §§405.2 and 405.20, and *Arrow Sand & Gravel, Inc. v. Superior Court*, (1985) 38 Cal. 3d 884, 888.
[2] *Bishop Creek Lodge v. Scira, (*1996) 46 Cal. App. 4th 1721, 1734.
[3] *Lewis v. Superior Court*, (1994) 30 Cal. App. 4th 1850, 1860, citing Cal. Lis Pendens Practice (Cont. Ed. Bar 1994) §1.2, p. 3.
[4] *Code Civ. Proc.* §405.20.
[5] *Code Civ. Proc.* §405.4.
[6] *Lewis v. Superior Court*, (1994) 30 Cal. App. 4th 1850, 1860.
[7] *Urez Corp. v. Superior Court*, (1987) 190 Cal. App. 3d 1141, *MacDermot v. Hayes*, (1917) 175 Cal. 95, and *Allied Eastern Financial v. Goheen Enterprises,* (1968) 265 Cal. App. 2d 131.
[8] *Urez Corp. v. Superior Court*, (1987) 190 Cal. App. 3d 1141, 1149.
[9] *Code Civ. Proc.* §405.30.
[10] *Code Civ. Proc.* §405.32.
[11] Code Civ. Proc. §405.30.
[12] *Amalgamated Bank v. Superior Court*, (2007 149 Cal.App.4th 1003, 1012.
[13] *Hunting World, Incorporated v. Superior Court*, (1994) 22 Cal.App.4th 67, 70.
[14] *Palmer v. Zaklama*, (2003) 109 Cal.App. 4th 1367, 1377-78.
[15] Code Comm., 14A West's Ann.CodeCiv.Proc., supra, foll. §405.32, par. 6, p. 346, emphasis added.
[16] *Code Civ. Proc.* §405.33.
[17] Code Civ. Proc. §405.34.
[18] "[a]lthough the expungement of a lis pendens wipes out constructive notice of a lawsuit ... expungement does not insulate [a defendant] from a damages award ..." based on other theories of recovery. *GHK Associates v. Mayer Group, Inc.*, (1990) 224 Cal. App. 3d 856, 879.
[19] *Code Civ. Proc.* §437c(c).
[20] The statute grants the court wide discretion regarding the form of evidence that may be submitted, as well as the discretion to allow time for discovery if the court thinks that discovery is warranted. See: *Code Civ. Proc.* §405.30.
[21] *Code Civ. Proc.* §405.61.
[22] *Code Civ. Proc.* §405.60.
[23] *Code Civ. Proc.* §405.61, emphasis added.
[24] *Civil Code* §1102.6.



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9:30 a.m.
2014 Developments in Employment Law*
Sue Bendavid and Nicole Kamm
1 Hour MCLE

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

11:30 a.m.
Is That Considered Malpractice?
Wes Hampton, Narver Insurance
Michael Narvid
1 Hour MCLE (Legal Ethics)

12:30 p.m.
Lunch

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

2:30 p.m.
Build Your Practice, Ethically
Martin Rudoy, The Esquire Network
Lynne Bassis
1 Hour MCLE (Legal Ethics)

3:30 p.m.
Elimination of Bias and Diversity in the Legal Practice
Myer Sankary and
Professor Christine Goodman
1.5 Hours MCLE
(1 Hour Elimination of Bias, 0.5 General)

Saturday January 18

9:00 a.m.
Nuts and Bolts of Estate Planning*
Alice A. Salvo
Law Offices of Alice A. Salvo
1 Hour MCLE

10:00 a.m.
Top Ten Insurance Mistakes: How Best to Advise Your Clients
Elliot Matloff
Matloff Insurance
1 Hour MCLE

11:00 a.m.
Conduct Smarter Legal Research
Fastcase
1 Hour MCLE

12:00 noon
Lunch

1:00 p.m.
Escaping Bar Discipline
Professor Robert Barrett
2 Hours MCLE (Legal Ethics)

3:00 p.m.
Latest Developments in Marriage Equality
John Stephens and Carol Newman
1 Hour MCLE

* Seminar day change

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The Art of Working the Room

AMY M. COHEN
SCVBA President

amy@cohenlawplc.com

THESE DAYS, "NETWORKING" seems to be the buzz word on everyone's lips. If you mention to someone that you have your own practice, they usually ask what networking group (or groups) you are in. There are community groups (such as the Chamber of Commerce), there are profession based groups (such as attorneys only or accountants only groups), and there are groups that mix business people from many professions. Some groups meet weekly while some meet monthly and some have requirements or guidelines about referrals while others merely seek to facilitate the conversation.

Whichever group you choose, a fundamental requirement exists for each: you have to be able to carry on a conversation. For the wallflowers (of any profession) in the room, this is a particularly daunting task. As attorneys, we often find ourselves wandering into rooms (courtrooms) filled with people we do not know and many of us are able to strike up conversation and navigate without too much stress. But what about those who are uncomfortable in a crowd? How do you handle the stress (and fear) that comes from not knowing a soul in a crowded room?

I was reminded of this recently at a party when I spied someone standing in the middle of the room, not talking to anyone and just watching things go on around them. The guests at the party were all inter-related, many family members or close friends who see each other often throughout the year. This particular guest also interacts with some of those friends and family members on a fairly regular basis. And yet she placed herself on the fringe, sometimes talking to those who engaged her, but not engaging anyone on her own and not moving from that spot where she initially placed herself.

Now put this same guest in a business setting, in a room where she does not know anyone and would be required to strike up conversation, or even sell her company's product or services. Would she be able to handle it? Or would she simply melt back into the wallpaper?

We often see this with our children. My 3-year-old sometimes has difficulty entering a crowded room and engaging others, even those that she knows well, in conversation. She clings to my legs or asks me to hold her while we make the rounds. Once she has a better feel for the room, she eases up and starts to interact.

I myself was shy in high school and college, often gravitating to those I knew well and not opening up to others. Crowded rooms were the worst for me, as it often felt like everyone there knew each other and everyone else knew that I was the outsider.

Of course some people appear to be born with that innate ability to walk into a room and greet everyone, making a connection with at least ten different people within minutes. I'm not one of those people. However, over the past ten years, I have found myself in many sink-or-swim situations, where I could either plaster

myself to the wall and try to blend in or I could jump in with both feet and work the room.

As an SCVBA board member, I found that I needed to be able to introduce myself to members at meetings, to talk to people I might not know, and greet those I already knew. There are a few things I have learned that have helped me and may help others who fear the crowded room.

First, you are not the only one. There are likely at least two or three other individuals in the room who do not know a soul. Find them and you will have an ally.

Second, never underestimate your own popularity. You may not know anyone, but someone there may know you or have heard of you and want to meet you.

Third, it is very unlikely that you will not know anyone. Even if you do not personally know anyone, the odds are good that you will find someone with whom you have a friend in common. This often happens to me at school or temple events. Eventually, I discover that the person I am speaking with has a relative, friend, or child's teacher that I know. Once you find that common ground, conversation may come easier.

Fourth, smile. This may seem simple and even silly but sometimes you have to remind yourself to smile. When you come into a room with personal things on your mind and add that to the stress of entering the room alone, you may project an unfriendly image. Someone who might have wanted to approach you could decide not to if you look upset or standoffish.

Fifth, put the phone away. Yes, this also seems simple and possibly a no-brainer but in today's tech age, we often turn to our smart phones and other devices for comfort and companionship when we are uncomfortable. (Take a quick look around the next crowded room you find yourself in and note how many people are standing or sitting by themselves, looking down at their phones.) Resist the temptation to hide behind your phone. Put it away and refer back to my fourth tip. Put on a smile and go shake a hand.

I have found that once I make a connection with one person in the room, other connections will follow and flow from that. If the person I am speaking with knows someone else, they will generally introduce me and further connections are made. These connections form the backbone of your network and are part and parcel of your networking attempts. Without these connections, business may be harder to generate in the long run.

One final tip: you never know where business will come from. Even in social settings, you may meet someone who will later want to refer business to you. So continue to smile and good luck working the room.

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