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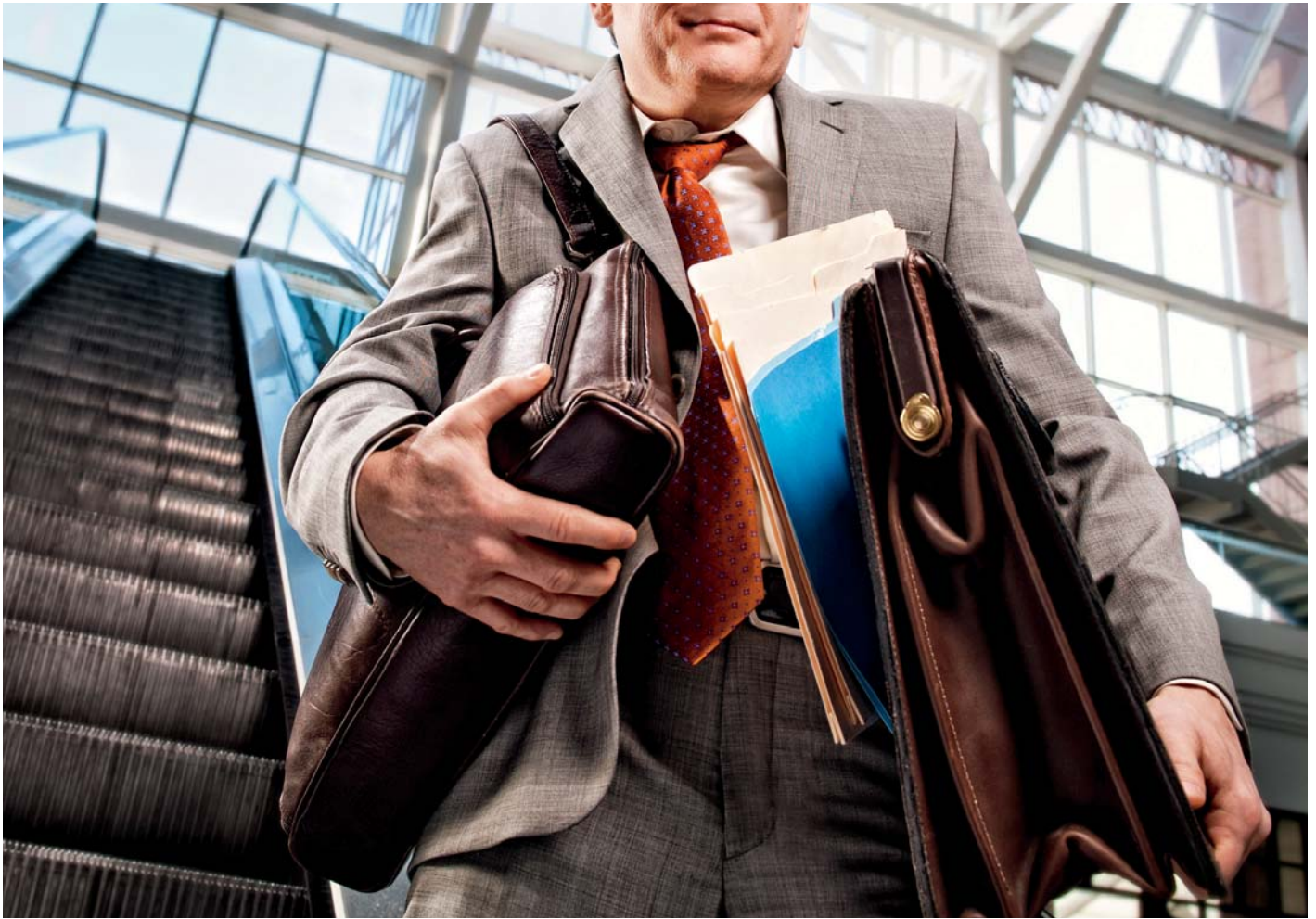
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Bar to be Honored with Chief Justice Visit

SERRANUS C. HASTINGS was a 19th century politician and prominent lawyer who began his legal career in what was then called the District of Iowa (part of the Wisconsin territory). Iowa became its own territory a year later, and Hastings was elected a member of the House of Representatives of the Iowa Territorial General Assembly. When the territory became the state of Iowa in 1846, he won an election to represent the state in the United States House of Representatives.

After his term ended, he became Chief Justice of the Iowa Supreme Court, but resigned after one year in office and moved to California. He was appointed to the California Supreme Court as the state's first Chief Justice just a few months after leaving the Iowa bench. In 1878, he founded the Hastings College of the Law with a donation of \$100,000.

Since Justice Hastings 2-year term as Chief Justice, 27 men and women have served the California Supreme Court in its most prestigious role. Two justices served in the role of Chief Justice for nearly a quarter century (Phil S. Gibson served from 1940 to 1964 while William H. Beatty served the longest tenure, 1889 to 1914), while others served a brief period, their tenure ended after a brief stint (Henry A. Lyons served as Chief Justice for merely two months in 1852, while Royal T. Sprague died in February 1872, just weeks after assuming the role).

The most recognizable of California's 28 chief justices are those who have served in this capacity during the course of many of our lifetimes. Roger J. Traynor served as Chief Justice from 1964 to 1970; Donald R. Wright from 1970 to 1977; Rose Elizabeth Bird from 1977 to 1987; Malcolm M. Lucas from 1987 to 1996; Ronald M. George from 1996 to 2011, and our current Chief Justice of California, who assumed the office in January 2011, Tani Cantil-Sakauye.

Last month, *Valley Lawyer* highlighted diversity in our community.

Each article pointed out the undeniable fact that our community, our city and our state represent a beacon of light for the proactive acceptance and advancement of diversity, whether it be within the workplace, our religious communities, our schools or a plethora of social activities.

Our current Supreme Court represents a microcosm of the diversity that is California. Of our seven justices, more than one-half, or four are female. Among the justices are a Filipino-American justice (Cantil-Sakauye), one Eurasian-American justice (Kennard—Dutch father, Chinese mother), two East Asian-American justices (Chin and Liu) and three European-American justices (Baxter, Corrigan and Werdegard).

The Bar is honored and delighted to announce that Chief Justice Tani Cantil-Sakauye will be our guest and speaker at the SFVBA Judges' Night celebration on Thursday, February 23 at 5:30 p.m. at the Warner Center Marriott. This will mark the first time since Chief Justice Malcolm Lucas was our honored guest at our 1993 Judges' Night that a sitting Chief Justice of the California Supreme Court has taken the opportunity to speak before the San Fernando Valley Bar Association and our members.

To say that I am thrilled to be among those to welcome Chief Justice Cantil-Sakauye to our legal community is a gross understatement. I hope that many of you will choose to join us the evening of February 23 to greet the Chief Justice and display our appreciation for her interest and willingness to address us on what will most certainly be a memorable evening.

No brief summary of the California Supreme Court and a word about its well-respected justices covering a period of 162 years could be complete without highlighting some of the influential and landmark decisions made over the years, many serving as the basis for high court rulings in other states:

- *Houston v. Williams* (1859) was an important early case concerning

the separation of powers under state constitutions. The already overworked court, under the leadership of Chief Justice David Terry, overruled as unconstitutional a statute directing the court to give reasons for its decisions in writing. Despite the court's rationale in so ruling (its soaring caseload made the time-consuming task of written opinions impractical), a later 1979 statute required the court to decide all cases in writing, with reasons stated.

- *Perez v. Sharp* (1948). The court overturned the statutory ban on interracial marriage as unconstitutional. The *Perez* decision directly influenced the landmark U.S. Supreme Court decision on this issue in the 1967 ruling in *Loving v. Virginia*.



ALAN J. SEDLEY
SFVBA President

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- *Summers v. Tice* (1948). A case included in nearly all tort textbooks and treatises as a matter of course, the court, under Chief Justice Phil S. Gibson, shifted the burden to the defense to disprove causation when it was clear that one of two defendants must have caused the plaintiff's injury, but it was not clear which one.
- *Commune v. Traders & General Insurance Co.* (1958). The court created the modern tort of insurance bad faith, or in more formal terms, the tort of breach of the implied covenant of good faith and fair dealing in the context of insurance policies (but see, *Foley v. Interactive Data Corp.*, below).
- *Dillon v. Legg* (1968). Chief Justice Traynor's Court brought forth the then landmark decision, whereby the tort of negligent infliction of emotional distress was radically expanded beyond its traditional form, which historically had been limited to plaintiffs standing in the same "zone of danger" as a relative who was killed.
- *Rowland v. Christian* (1968). Another California decision most-often found in textbooks and treatises, the court abolished the old distinctions between different types of persons entering land and imposed a general duty of care in the context of negligence.
- *People v. Anderson* (1972). The Justice Wright Court relied upon the state constitutional clause prohibiting "cruel or unusual punishment" to abolish capital punishment in California. The state electorate promptly overruled Anderson that same year with a popular initiative, Proposition 17, that kept the "cruel or unusual" clause but declared the death penalty to be neither cruel nor unusual.
- *Gruenberg v. Aetna Insurance Co.* (1973). The Justice Wright Court dramatically expanded insurance bad faith from its original home in third-party insurance to cover first-party insurance as well. Insurers and insurance of all types in California were now subject to tort liability for breach of the implied covenant of good faith and fair dealing.
- *Li v. Yellow Cab* (1975). Another landmark case under the Justice Wright Court, the court embraced comparative negligence as part of California tort law and rejected strict contributory negligence.
- *Marvin v. Marvin* (1976). The court ruled in favor of the enforceability of non-marital relationship contracts, express or implied, to the extent that they are not founded purely upon meretricious sexual services.
- *Royal Globe v. Superior Court* (1979). The Justice Bird Court found an implied private right of action to enforce a key provision of the state Unfair Practices Act (Insurance Code section 790.03), even though the statute lacked an express private right of action. This highly controversial decision was responsible for the successful effort of the insurance industry, together with death penalty supporters (who opposed the Bird Court's stance), to eject Chief Justice Bird and two allies from the court in 1986.
- *Turpin v. Sortini* (1982). The Justice Bird Court became the first state supreme court to allow a cause of action for wrongful life.
- *Moradi-Shalal v. Fireman's Fund* (1988). Justice Lucas' Court overruled the court's earlier controversial decision in *Royal Globe*, holding that there was no implied private right of action to enforce the Unfair Practices Act against insurance companies. This case marked the first of several where the court, regarded as leaning conservative, ruled such as to impose limitations of several, earlier Supreme Court rulings.
- *Foley v. Interactive Data* (1988). The Lucas Court limited tort liability for breach of the implied covenant of good faith and fair dealing to the insurance context and refused to apply it to an employer.

This brief summary of California Supreme Court decisions reminds us the prominent role our state's highest court holds not only in shaping the role of government and the rights of its citizenry, but also its far-reaching influence on other state's high court decisions, as well as forming the basis for U.S. Supreme Court rulings as well. 🏛️

Alan J. Sedley can be reached at Alan.Sedley@HPMedCenter.com.



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From the Executive Director

The Gift of Giving



ELIZABETH POST
Executive Director

AS PART OF THE BAR'S HOLIDAY CELEBRATIONS, THE SAN Fernando Valley Bar Association sponsored a Giving Tree benefiting the families of Haven Hills, the Canoga Park agency that provide shelter and services for victims of domestic violence. The response was overwhelming. Because of the generosity of the following members, staff and member benefit providers, 39 families with little else to celebrate were able to provide some joy to their children during the holiday season:




Adam Grant, Aileen Jimenez, Alan Sarver, Alan Sedley, Alexander Cozzaglio, Alexandra Mells, Sean Judge, Amy Bernardino, Annette Kulik, Barry Edzant, Bonnie Chermak, Brian Beck, Carol Newman, Caryn Sanders, Charles Shultz, Cheryl Templeton, Claudia Quevada, David Kestenbaum, Doug Larson, Elliot Matloff, Gerald Fogelman, Ilene Fletcher, Irma Mejia, Jan Loomis, Jill Shibata, John Khoukaz, Michael Hoff, Linda Temkin, Liz Post, Lucinda Salas, Mark Blackman, Mark Shipow, Martin Rudoy, Rudoy & Fleck, Malinda Muller, Michelle Daneshard, Michelle Diaz, Michele Morley, Michelle Short-Nagel, Bill and Milena Kropach, Caren Nielsen, Natasha Dawood, Prahba Rao, Raquelle Baca, Ron Tasoff, Rosie Soto, Sean Judge, Serria Bishop, Shane Loomis, Sharley Allen, Sheryl Alzona, Stephen Fenster and Victoria Brown.

Let me share with members this heartfelt note from Emily Janes, Outreach Coordinator for Haven Hills. 🐞



Liz Post can be contacted at epost@sfvba.org or (818) 227-0490, ext. 101.



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\$12.5 million verdict against home for the elderly that failed to protect a 94 year old women with dementia from being raped by a cook on the premises

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Up to 1 Million

\$875,000 settlement with driver/owner of 15-passenger van at L.A.X. whose side mirror struck pedestrian in head

Case Referred by:

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\$175,000 verdict against manufacturer of defective door/hatch causing broken wrist

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Referral Fee: Paid

\$175,000 verdict against police department in Inland Empire for excessive force

Case Referred by:

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Up to \$100,000

\$100,000 settlement of truck v. auto accident

Case Referred by:

Family Law Lawyer

Referral Fee: Paid

\$73,500 settlement with Wal-Mart when improperly maintained flower cooler leaked on floor causing plaintiff to fall

Case Referred by:

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Statutes and Common Law Give Way to Equity

The SFVBA established the Client Communications Committee to address the number one reason for client discontent—need for better communication—and reduce negative contacts with the State Bar. The Committee, a volunteer group of a dozen veteran practitioners in wide-ranging fields of law, answers written questions from attorney members regarding problems they observed or dealt with that may have been avoided by better attorney-client communication. Responses are published anonymously in Valley Lawyer.

MEMBER ALAN GOLDBERG SEEKS SOME authority for the Client Communications Committee published statement: “In family law both statutes and common law give way to equity.” The Committee thanks Goldberg for his inquiry, which is of general interest to all members whether they practice in family law or other fields.

The short answer is that CCP §592 describes fact issues which must be tried by juries, essentially covering torts and contracts. “In other cases, issues of fact must be tried by the court.” *Sharon v Sharon* (1885) 67 Cal 185 notes absence of an inherent right to a jury trial in marital actions. While the court has jurisdiction to order factual issues to be tried by juries, *Cutter Laboratories Inc. v. R.W. Ogle and Company* (1957) 151 Cal. App 2d 410 notes that since the verdict would only be advisory such discretion is seldom exercised. Equity is not specifically mentioned at all, only jury versus court trials. *California Judges Benchbook: Civil Proceedings—Trials* at 130, 131, however lists “Equitable Actions, Not Triable by Jury” and specifically notes “An action under the Family Code.” See *Marriage of Kim* (1989) 208 Cal App 3d 364, 373; *Reynolds v. Reynolds* (1978) 86 Cal. App. 3d 732 and for Dissolution of Marriage, *Porter v. Superior Court* 73 Cal App 3d 798.

There is a more historical answer. An early KB (King’s Bench) or QB (Queen’s Bench) case involved the requirement of passing a huge estate onto the firstborn son upon his father’s death as primogeniture then mandated. The sole heir suffered from major developmental delay. His handicap precluded his ability to continue to maintain the employment of the estate’s personnel and prosperity.

The British judge lamented he lacked the power to remedy the black and white rule based on age. Back then, pragmatic “fairness” was not part of the common law. Later, the king appointed Beckett, the First Chancellor in Equity. The notion of insuring fairness to balance the law probably enabled our common law to develop more dynamically than rigid and mechanical code/statute only venues.

Analytically, the reason there are no juries in family law courts is probably not limited to the procedural rules noted above. Many decisions are not precisely based on statutes or rules. While equity follows the law, equity enables courts to balance many factors. Over the years, many, but not all, of its guidelines are set out in statutory or rule form to aid courts and counsel in expediently applying the concepts. (i.e., The best interests of minor children is usually determinative in custody, visitation and to some extent support matters.)

Hundreds of cases later a sitting judge still needs to make a fair and balanced determination as to what constitutes the “best interests” in many varied circumstances.

It is perhaps not an accident that most family law matters are not resolved by full blown contested trials. It is also perhaps not an accident that the appellate reversal rate in family law is likely far less than civil or criminal courts because the appellate court can’t look the petitioner and respondent in the eye to assist in equitable decisions.

Why would a large bar association committee whose goal is to reduce complaints by clients against membership respond to an inquiry which does not seem to directly deal with client communications? The answer is simple. Don’t be afraid to ask questions! If Socrates had never asked any questions, the legal profession might not have achieved its present stature. ⚡

Written questions may be submitted to epost@sfvba.org or SFVBA Client Communications Committee, 21250 Califa Street, Ste. 113, Woodland Hills, CA 91367. The opinions of the Client Communications Committee are those of its members and not those of the Association.

RICHARD F. SPERLING, ESQ.



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The First Year of Los Angeles Expedited Jury Trials

An Excellent Start with Promising Future

By Judge Mary Thornton House with contributions from Judges Michael Linfield, C. Edward Simpson, Brian Yep, Melvin Sandvig and Russell Kussman

LAST YEAR'S *VALLEY LAWYER* ARTICLE ON Expedited Jury Trials (EJT) was subtitled, "It's About Time." A year has now passed since the EJT law's enactment. Have the anticipated court and litigant savings through the use of an EJT come to pass? The expedited answer is "Yes." The longer answer is "Yes, and now that 2011 has come to an end, the studies will begin."

The Administrative Office of the Courts is in the process of amassing the data statewide. Here in Los Angeles, empirical and anecdotal data are getting collected as well. The 'buzz' around the state is that the EJT procedures work, they are popular with all stakeholders, and are becoming a welcomed, expedient alternative to get to trial in today's increasing crowded civil dockets. Excuse the hearsay, but judicial officers around the state who have presided over these types of trials have approached those instrumental in the law's enactment to express their gratitude and the gratitude of the lawyers, litigants and jurors.

As a procedure, it can be said that product satisfaction overall is high. Yes, one litigant in an adjacent county expressed unhappiness with the verdict, but pundits were quick to point out that the plaintiff received the 'low' even with a defense verdict. And, of course, one can readily point out that such displeasure exists whether a trial lasts one day or five.

What About the Los Angeles Experience?

Keeping in mind that not all the information for 2011 has been collected, there have been at least 25 expedited jury trials conducted across Los Angeles County. The basic data breaks out like this: 6 of the 25 were general jurisdiction matters, although the ultimate profile on all six squarely fit within the limited jurisdiction parameters. Plaintiffs prevailed in 13 matters. One of these verdicts was really a defense verdict, but because of the hi/low, the plaintiff became the prevailing party. Thus, it seems like so far in Los Angeles, chances of a favorable EJT verdict are around 50/50. These cases were also spread around the county. Geographically, the trials percentage-wise to size of district are even as well. Seven expedited trials were conducted in the Stanley Mosk Courthouse, eight in the San Fernando Valley, four on the west side, three in Pasadena, and the remaining three split between Lancaster and Long Beach.

Percentage of Overall Trials

As of November 2011, approximately 101 or so limited jurisdiction (non-unlawful detainer) jury trials have been conducted in the county with 836 or so general jurisdiction trials concluded. Thus, EJT comprised about 20% of all limited jurisdiction trials in LA County in an 11-month period. The general jurisdiction trials percentage is obviously much lower.

All in all, this could be considered a good start for a nascent innovative procedure. It certainly tracks the experiences in New York and South Carolina—the jurisdictions upon which California's EJT model were derived. In those jurisdictions, the use of their 'summary jury trial' started slowly with the 'smaller value' cases predominately in play during the first few years. However, with the dwindling resources in both states supporting—or rather not—civil matters, the bulk of their civil trials are now done on a summary basis. Whether this is a prediction for California is yet to be seen; it is, however, rewarding to know that the upstart of the EJT procedures is following a comparable path to those who have come before the courts.

Informal Review of 15 EJTs

What is the typical profile of the EJTs conducted in the last year, here in Los Angeles? In response to an exceedingly unscientific survey requesting information, the contributors to this article answered some questions about 15 of their trials.

Case Types

The bulk of the surveyed EJTs tried were automobile accidents: 13 of the 15. The remaining two comprised a dog bite and a slip-in-fall. Except for the scar in the dog bite case, the injuries were MIST (Minor Impact Soft Tissue) matters.

Timing Issues

The EJT concept was based upon the 'goal of completion of the trial' in one day. The vast majority of these matters spilled over to another day. At least one judge in three EJTs presided over, used the afternoon to pick the jury with the start of the trial commencing and completed the next day.

Lawyers expressed a great deal of fear that the three hour time limit would be difficult, if not impossible for adequate

case presentation. This is a fear unrealized. Amazingly, in 13 cases, only three had both parties using all of their allotted time. Plaintiffs came in first in terms of time usage: six used all of their time while seven did not. Only three defendants used all of their time as 10 defendants did not. In short, it's doable.

Witnesses

Plaintiffs presented at least one, and up to four witnesses; the average was 2.3. Defendants countered with 0 to 2, taking the stand with the average at 1.2. Five of 14 cases did not use any experts. One case used the CCP §98 declaration option; one case used the deposition transcript of the expert. Two plaintiffs brought in their treating physicians; one plaintiff eschewed any experts and one defendant presented the only expert in the trial.

The Jury

Juror satisfaction is huge. After the first LA-EJT was concluded, the *Los Angeles Times* reported extreme juror satisfaction. One juror indicated that they have "spent more time trying to get off jury duty than they spent hearing" the EJT.

Of major importance in any trial to the parties is juror attentiveness. Not one judge presiding over these matters has gotten the sense that the jury has taken the case less seriously because it was an expedited trial. In fact, the opposite has been sensed: that the juries appreciated the lawyers getting to the heart of the matter and not wasting their time. This is borne out by the numbers as well: jury deliberations spanned 35 minutes to five hours, with the average deliberation about two hours.

Verdicts

Verdicts ranged from \$2,000 to \$12,600, with back stories of some interest. In one matter, the demand was \$14,999 and the offer \$5,388. The parties entered in a hi/lo agreement of \$14,000/\$5,388. The jury found the defendant negligent, but no causation. Thus, the verdict was for the defendant, but judgment was for the plaintiff in the amount of \$5,388.

In another trial, the plaintiff's prior demand was \$9,700 but indicated at the MSC that he would take substantially less. Defense counsel indicated that plaintiff's demand did not seem unreasonable, but he could not get authority from the carrier to make an offer. The verdict was \$3,200. Both sides were reported to be happy with the result.

In yet another instance, prior to the MSC, the demand was \$9,999 and the offer \$6,152. However, at the MSC, plaintiff indicated she would accept defendant's offer of \$6,152. But, the defendant changed positions and said the offer was 'off the table.' The jury returned with a verdict of \$8,139.

Savings

Of these 15 cases surveyed, every single one had trial estimates of at least three days and as high as seven days. Most were three to five-day estimates. All trials and most deliberations were completed in two days. The costs here are both quantifiable and karmic: 50 to 75 days of jury trials were eliminated. And, for those familiar with the typical auto accident jury trial verdict, the results appear to be the same except now the difference is the expediency in which they were tried.

With dwindling staff due to budget cuts, freeing up courtroom staff to assist in the clerk's office because they are not in a lengthy jury trial will be an efficiency and professional grace to calculate for the future. Jury fees commence on the second day of trial; hence, most fees assessed were for the one day and for only eight, not 12+ jurors. Less jurors were required to be summoned, ergo another savings. Experts were easily scheduled and not subject to typical 'holdovers' to another day eliminating that expense for the parties. In an era of the vanishing civil jury trial, lawyers are getting a chance to argue their case before a jury. All members of society are able to sit on a jury without sacrificing their financial well-being, bringing important diversity to the court's panels.

In the end, it's really the beginning. And, all in all, with it looking like there's no appreciable difference between the expedited trial and the longer version but for cost savings, it's an excellent start and a promising future solution to the diminishing court resources. 🏡

Judge Mary Thornton House is the Supervising Judge for the North Central and Northeast Districts. In April 2009, she chaired the AOC working group that reviewed, wrote and ultimately got the current EJT legislation and rules of court passed a year later. The SFVBA recognized her last year with its first ever Administration of Justice Award for her efforts in marshaling the EJT procedures into California law.



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SMALL, SAVING(S) GRACES MAY ULTIMATELY MEAN A LOT



By Judge Mary Thornton House

A SANTA ANA WIND RAGED. FIRES WIPED OUT thousands of homes. The long, budget-beleaguered fire department had no chance as years of budget cuts eliminated all hopes of a fair fight. A jury verdict triggered civil disobedience. Riots ensued. Shots were fired. Lives were lost. The small, urban police department that had always prided itself on doing more with less—despite years of pleas for more officers—simply couldn't cover the flashpoints erupting all over the city. Extensive property damage took its toll for decades. Public confidence has yet to recover.

These past events that enveloped the court's public safety partners now forecast the parallel track of doom looming for the justice system. A fire department can't control the wind. Police can't predict the vagaries of a mob's mentality. Courts can't control the economy. When budget deficits impinge on all facets of public service (prisons, schools, courts, etc.), lobbying the legislative and executive branches for more pieces of the shrinking pie is effective only to a certain point. Oh, the courts have tried.

Just like police and fire departments decried cuts but carried on, the courts have endured years of cobbling together monies through various means: construction funds, furlough days, limited layoffs, spending down reserves and closing some courtrooms. All of these one-time solutions without sustaining benefits were carried out with hopes that the economy would improve. In short, the patchwork solutions to save the biggest budget item and most treasured asset, courtroom and clerical staff, are at an end. It is no longer a dire prediction, it is a reality: 700 layoffs of courtroom staff this October with continued cuts rising to a 32% reduction of court staff by 2014. In short, doing more with less is no longer an option. The difference—and only a small saving grace—between police-fire budget cut consequences and those now faced in the courts is a quantifiable, yet small degree of control over aspects of the consequences.

The Los Angeles legal community has been most gracious and courageous both in asking and doing what they can do. There are macro efforts in play. But, the 'now' and the future

is clear: the business model lawyers rely upon to support their litigation strategies no longer exists with a downsized Los Angeles Superior Court. Please consider the below small, 'savings' graces that might be embraced as a way individual efforts could groundswell to some collective solutions to mitigate the impact of budget woes on shrinking court resources and the loss of public confidence in the courts.

Engage in a Paradigm Shift

Just as President Kennedy implored, "Ask not what your country can do for you—ask what you can do for your country," as an officer of the greatest court system in the world, take individual responsibility for the allocation of court resources. Yes, just like every vote counts, so do the smaller choices by attorneys impact the court's fiscal future.

The financial situation has forced the hard questions: are some matters more important than others? How, and should, the court prioritize where its resources belong? San Joaquin and San Francisco have already done so, with the cessation of small claims and most civil. Indeed, time constraints for criminal cases direct court resources by fiat. But does that mean a jury trial for a violation of Vehicle Code §14601 (driving with a suspended license) should have priority over the expenditure of scarce resources in a child custody matter? Or should that traffic case take away resources from civil harassment matters impacting public safety, even though handled by the civil courts?

It is estimated by the National Center for Courts that one juror costs society approximately \$700 per day, taking into account administrative costs and employer contributions. Postage to bring in 7,500 jurors per day into 50+ courthouses is in the millions of dollars annually. Reducing that cost by even 25% results in staff savings, ergo more open courtrooms. So less jurors should be used and it's possible; it's done every day in federal and countless other state court systems.

A constitutional amendment is not needed to deploy a reduced jury because parties can stipulate to fewer jurors. But, lawyers won't 'just do it' fearing malpractice claims

and/or jail sentences connected to reduced jury sizes. So, let's push for an elimination of those fears. Ask the legislature to enact a one-sentence law: "no legal malpractice action may be based upon the agreement by a litigant to a reduced panel of jurors when made on the record or in writing."

Ask the legislature to reward a criminal defendant choosing a six person jury with a reduced sentence, if convicted. This would encourage the use of six person juries in all appropriate cases, especially criminal ones. The beginning widespread use of the new Expedited Jury Trial legislation embodies the right start. None of these solutions require a constitutional amendment, all can have a sunset provision to coincide with the projected end of the state's economic woes, and they achieve savings, literally and morally.

Billable Results Not Hours

Quit thinking about billable hours and think of billable results. The homily of cutting off one's nose to spite one's face is apt. Every time a matter is put on calendar, the average cost to the court in staff time has been said to be between \$300 and \$500—computer entry, file retrieval, scanning, placement in the file, removal of the file to a research attorney or other court staff before and after the hearing comprise these costs in staff resources. A scorched earth policy of litigation may be a 'win' in the short run, but in the long run, no viable earth, only a resource exhausted court system, is left.

How can an attorney be a trial lawyer if the courtroom is closed? So, ask oneself: "Can the objective of this pleading be achieved in any other way that doesn't strain court resources?" If every lawyer asked themselves that question and acted on it, significant staff resources would be reduced by the elimination of unnecessary pleadings. And when there is no staff, the more critical functions could be carried out by staff that remains.

For example, what is with the explosion of demurrers on calendars? 99% of all demurrers educate the pleading party in the weakness of their product. Appellate courts instruct trial courts to afford multiple opportunities to amend. The presumption of preserving one's trial rights weighs in favor of those seeking redress. So, unless the demurrer knocks the complaint out of court, why give an opponent an opportunity to improve their litigation foundation?

And, now, the question becomes why would the legal community, as a collective, want to clutter court law and motion calendars that drain court resources without value for cost? Answer the complaint; send contention interrogatories asking for the facts related to each paragraph of the pleading. Use those responses to focus all facets of the litigation from requests for production of documents already identified, special interrogatories, the direction of depositions, to how to frame a motion for summary judgment and so forth. It's good for the client; great for the court.

Significant efforts along these lines already exist. The court's website holds the Voluntary Efficient Litigation Stipulations developed by the Los Angeles County Bar Association's Litigation Section and judges of the court. These are designed to and do preserve court resources. Please, use them.

Rooms of Public Opinion

Embody the "conscience in rooms of public opinion" to shaping public perception to stave off a loss of confidence

in the courts. Do attorneys really want to be a member of an organization that the public holds in disdain because it appears that it is not coping with the pressures put upon it? Perception is reality. The necessity of the justice system must be advertised and sold to the full functioning of society. The loss of this vital message will harm the courts. All the creative solutions minimizing the impact on the system's downsizing will mean nothing if the word doesn't get out.

What if every lawyer in this state wrote a letter to the *Valley Lawyer* editor about the impact of budget cuts and what they, as attorneys, are individually doing? What if every lawyer volunteered to speak at one school, one community club meeting, one church social, one PTA meeting and so on about the court system and what it means to preserve society's freedoms? It's an army of hundreds of thousands; this would be grassroots at its finest tradition in a country that was born out of such intrepidity. It costs nothing but buys immense positive implications for the firestorms and public unrest that are looming as the economy impacts the court system and the courts are questioned about their effectiveness. In short, these small saving(s) will mean a lot. 🐘

DISCLAIMER: This article reflects the personal opinions (and frustrations) of the author, not those of the Los Angeles Superior Court.

Judge Mary Thornton House is the Supervising Judge for the North Central and Northeast Districts. She has been a judge for 16 years as of this month, serving as a supervising judge in one capacity or another for ten of those years in Pasadena and the Stanley Mosk Courthouse.

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SFVBA Celebrates Valley's Distinguished Judges

By Angela M. Hutchinson

ON FEBRUARY 23, 2012, THE SAN FERNANDO VALLEY BAR Association (SFVBA) will honor two of the Valley's finest judges who have not only impacted the legal profession and the community, but also served as an inspiration to attorneys who practice law in the Valley.

Family Law Judge Michael Convey joins twenty notable Valley judges who have received the prestigious honor of SFVBA Judge of the Year, including Alan Haber, Marvin Rowen, Meredith Taylor, Judith Ashmann, Bert Glennon, William MacLaughlin, Juelann Cathey, Geraldine Mund, Michael Farrell, Michael Hoff, Howard Schwab, Kathyne Stoltz, Alice Hill, Sandy Kriegler, Kathleen Thompson, Michelle Rosenblatt, Michael Harwin, Ronald Coen, Maureen Tighe and Susan Speer.

Convey is a graduate of Arizona State University and DePaul University School of Law. In August 2002, he was elected commissioner by the judges of the Los Angeles Superior Court; at the time, Convey practiced with Silva, Clasen & Raffalow, a Sherman Oaks defense firm for Mercury Insurance Company, and was a member of the Board of Trustees of the San Fernando Valley Bar Association.

Convey was assigned to the Palmdale courthouse, later to the Lancaster courthouse, until finally finding his way to Department K at the Van Nuys East courthouse. In July 2010, Convey received a judicial appointment by Governor Arnold Schwarzenegger.

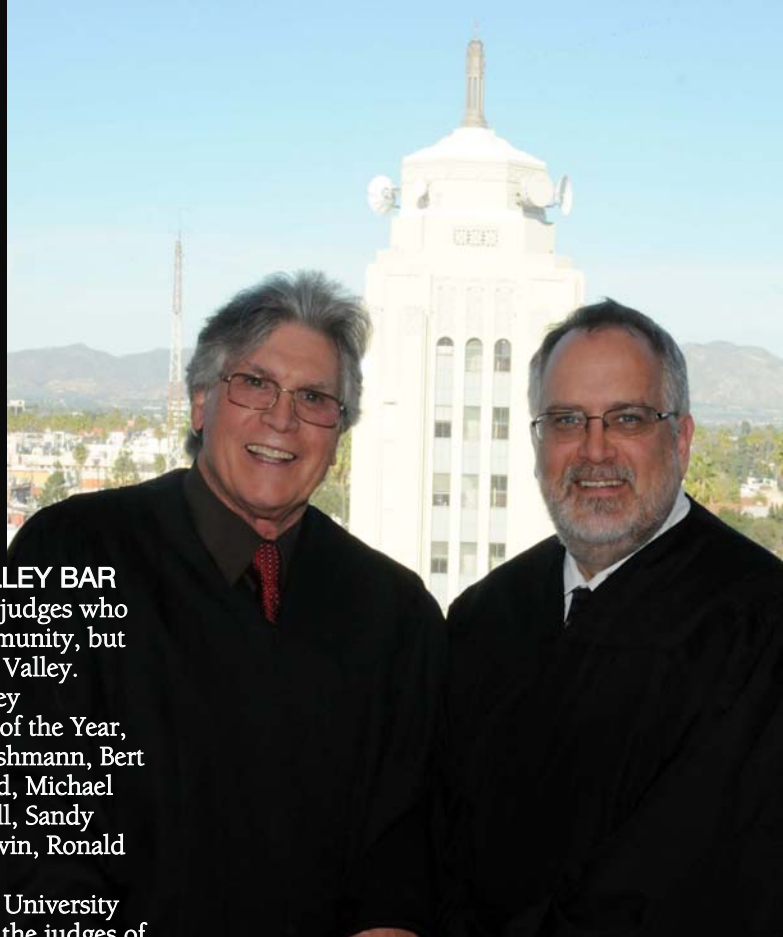
"Judge of the Year Michael Convey has the strong support of the Family Law Section for his judicial demeanor and intellect," says Liz Post, SFVBA Executive Director. "He has involved himself in the education and volunteer programs of the Family Law and New Lawyers Sections, serves as a Director of the Valley Community Legal Foundation and is a former trustee of the SFVBA."

At the 20th Annual Judges' Night Gala at the Warner Center Marriott, Judge Michael Kellogg will be presented with an Inspiration Award for his perseverance and commitment to achievement. "The life and career of Judge Michael Kellogg, who handles felony trials in Department N at the Van Nuys West courthouse, should inspire lawyers as well as anyone considering a career in the law," says Post.

After overcoming a polio diagnosis at age six, Kellogg went on to play in the NFL for the Denver Broncos and Oakland Raiders. "Upon his retirement from professional football, Kellogg coached and taught constitutional and criminal law for the Torrance Unified School District," says Post.

In 1975, Kellogg entered the now defunct California College of Law in West Los Angeles. After he graduated, Kellogg opened a solo civil litigation firm and later worked as a prosecutor with the Torrance City Attorney's Office. Kellogg was appointed to the Los Angeles Municipal Court in 1996 by Governor Pete Wilson and four years later, upon court unification, elevated to the Los Angeles Supreme Court.

Valley Lawyer interviews two distinguished judges named Michael: Michael Convey, Judge of the Year, and Michael Kellogg, Inspiration Award Recipient. The judges discuss their personal experiences, concerns with the court and advice for attorneys. SFBVA members are encouraged to attend the upcoming Judges' Night gala to celebrate these admirable men who continue to administer justice in the Valley with sheer excellence.



Reflections and Perspectives

Q: What inspired you to practice law?

Michael Convey: During my undergraduate studies at Arizona State University, I majored in English, but I was uncertain as to a career path. A friend recommended that I take a constitutional law class, which I enjoyed very much. That class more than anything else, motivated me to study law. Then I took other classes in logics, philosophy, and history to prepare for law school. I worked in the residence halls as a student advisor. My inspiration to practice law comes from the simple example of my parents' work ethic and my college experiences in serving others.

Michael Kellogg: Many factors. I knew what I could not do. I could not return to the NFL. So, it was either go to veterinary school or law school. I decided that law school would be a challenge and a change of pace. From the time I started law school, I knew that I had made the right decision. I actually enjoyed the experience and the practice of law. Still to this very day, I enjoy the courtroom drama that unfolds on a daily basis.

Q: Congratulations on your award! What does it mean to receive such an honor from the SFVBA?

MC: To me, this honor means that the SFVBA is recognizing the hard work and dedication of the many people who work in Family Court. It is truly a team effort.

MK: Thank you. It is a tremendous compliment, even more so because it was a decision made, not by a colleague, but by the lawyers who come into the courtroom that I maintain. It tells me that they feel comfortable in what I do and, hopefully, feel that I am that bench officer who will be fair and impartial, and allow them to try their cases. Seeing those who have been previously honored by this very same Bar Association is icing on the cake.

Q: The Valley courts face various crisis throughout the year. In your opinion, what is the most pressing issue and how it being handed?

MC: There are two pressing issues this year, one for all of the courts in Los Angeles and another that is specific to family law. Our budget situation may require the entire court to reduce its workforce at all levels. We will have to work harder this year than we have in the past to find creative and innovative ways to provide services to the bar and to the public, but with fewer resources. For the future, we will have to develop more efficient ways to continue to provide these services, because when the budget crisis does pass, we cannot go back to “business as usual.”

In family law, we have the additional challenge of implementing the many, long overdue changes in the process of handling family law cases as a result of the recommendations of the Elkins Task Force, the passage of new legislation, and the adoption of new court rules.

MK: Financial issues have long been ignored, not just by this court, but by government in general. There is only so much money to go around, so spend it wisely. This is a very touchy subject. In a general sense, do whatever we need to provide services that the community needs, but some of these services will have to come from sources not yet tapped. And I am not talking about financial assets, but also getting the bar associations from Los Angeles County to dedicate time and effort. I do not see any sign that points to recapturing new capital, so it will have to come from consolidating courts, and having those in those courts do more, with less.

Q: How do you think legal professionals benefit from joining bar associations?

MC: Bar associations benefit legal professionals in obvious ways, for example, by providing opportunities for networking, educational programs, and social interactions. However, in these times, bar association members can also become involved in and have an active role in shaping how the court will be structured and how it will carry out its mission when we emerge from our current budget situation.

Q: Why is it important for lawyers to give back? Since you are actively involved with the Goals for Life organization, how have you benefited from volunteering?

MK: I believe that in any profession, those who are fortunate should volunteer to do something for the

community they serve. Goals for Life is an idea started by Reggie Berry. He was a [NFL] player who saw the need to give something—encouragement, motivation, recognition—to those who were less fortunate. He was aware that many of the professional athletes were from certain parts of the city and that some grew up without a father figure. Reggie knew that by your occupation, more often than not, you are a role model, whether you chose to be or not.

So, he and others maintained contact with schools, church groups, homeless organizations to provide a little encouragement to those who might not otherwise hear anything positive. One of the most enjoyable and memorable experiences was putting a Super Bowl party for the children of the homeless at the Rescue Mission. I do not know who enjoyed themselves more, the kids or the players.

Q: What advice would you give to attorneys who may want to become a judge?

MC: It helps to approach the practice of law not as a means to financial wealth, but rather, as a process by which you simply help or serve another person in some small or minor way, without an expectation of recognition or reward. Having and developing traits of self-confidence, patience, strength of mind, and a desire to be inquisitive and decisive are important, too. Provide volunteer service to others, both inside the law and in your community. Teach or write about a subject that interests you. Become involved in the SFVBA to develop professional contacts and to assist in the court's efforts to provide services in your area. Develop and maintain strong personal relationships with a partner and your family.

MK: Stay a lawyer. No, just kidding. If that is what you want to do, then go for it. Don't listen to the nay sayers, those who will gladly tell you that you are not connected, have no political pull, have no chance of being appointed, etc. I was told all the same things. It is the greatest job (and it is a job) that I have ever had. When you think that each day, there are folks who do not know you, but who are putting their trust and confidence, in you, that you will do the right thing. That your oath is actually the guide in your daily task, and that you are there to safe guard their rights to a fair hearing, regardless of the nature of the proceedings. It is more than awesome and I have not taken one day since being on the bench for granted. There is isolation, however, like those who are unintended role models, you have few that you can associate with, friends, family, whatever, they cannot put you in a position that will bring disgrace to the court. The system is greater than each of its working parts. 🐼

Angela M. Hutchinson celebrates four years as the Editor of SFVBA's Valley Lawyer magazine. She works as a communications consultant, helping businesses and non-profit organizations develop and execute media and marketing initiatives. She can be reached at editor@sfvba.org.



San Fernando Valley Bar Association

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ISSUES FACING THE VALLEY COURTS

Growing Pains Lead to Great Gains

By Judge Charlaine Olmedo



AS 2012 IS HERALDED IN, IT IS TIME TO TAKE stock of the outgoing year. With continued budgetary concerns, numerous changes have taken place within the North Valley District. The Chatsworth courthouse became the hub for civil litigation within the district. A second traffic/civil overflow courtroom was opened in Chatsworth and all small claims matters, unlawful detainers, limited civil cases and TRO's were, or are in the process, of being transferred there.

In San Fernando, two preliminary hearing courts were consolidated into one and a long cause/criminal overflow court was created. In an effort to ensure that criminal jury trials stayed within the district, criminal calendars merged. Felony trial courts tried misdemeanors and misdemeanor trial courts tried felonies. In order to expedite dispositions, provide better security and work on case backlogs, felony arraignments and preliminary hearings were moved from Santa Clarita down to San Fernando. Due to security and facility concerns, the two family law courts were moved from the annex and patio area into the main courthouse. With the implementation of additional security cameras and equipment throughout the courthouse, security was enhanced.

To provide greater consistency in Santa Clarita, all traffic matters were consolidated into one courtroom. The two remaining courts in Santa Clarita are now dedicated misdemeanor trial courts. Due to budget constraints, the annexed courtroom that is set away from the rest of the Santa Clarita courthouse is in the process of being closed.

While all of these changes were taking place over the past year, the bench officers in North Valley tried more jury trials than ever before. Many bench officers found a new home in the North Valley, including Judge David Gelfound, Judge Lesley Green, Judge John Kralik, Judge Hilleri Merritt, Judge Beverly Reid O'Connell and Judge Charlaine Olmedo.

In addition to completing more jury trials, bench officers tried new ways to handle civil jury trials and felony sentencings. With shrinking resources, the Expedited Jury Trial program (or "EJT") spearheaded by Judge Mary Thornton House was implemented within the district. The first EJT was tried this past December.

For all concerned, it was a win-win situation. A jury was picked in 50 minutes and the case was completed and to the jurors by 4:15 p.m. the same day. Both attorneys felt the result was fair and that there was no compromise in justice for efficiency. Significantly, the jurors were thrilled with the EJT and consequently they were also thrilled with the lawyers (with the exception of one juror who actually requested to be placed on a longer case).

In addition to the EJTs, realignment legislation radically changed the way criminal courts sentence defendants. Now defendants serving a state prison sentence for certain non-violent, non-strike offenses will complete their sentence in county jail and will be released at the discretion and need of the Los Angeles County Sheriff's Department. As a result, all justice partners are working together to explore possible alternatives to traditional sentencing options in order to ensure that both individual needs and public safety concerns are met within the confines of the newly enacted law.

As the business of the court hums along, this year will no doubt bring additional changes. Struggling to meet the needs of the public, the courts will ensure that justice continues to prevail even with ever-shrinking resources.

What can be expected in the upcoming year? Who knows? For that matter, who would have thought that the court would be completing civil jury trials in one day or sentencing state prisoners to serve years in the county jail? What is known for sure is that the court's budgetary woes will continue to worsen. However, these concerns will be faced head on as a community with a common purpose and a unified goal—to see that the courts continue to meet the needs of those who seek justice. 🌱

Judge Charlaine Olmedo was appointed to the Los Angeles Superior Court by Governor Gray Davis in 2002. She serves as Supervising Judge of the North Valley District and previously served as Assistant Supervising of Criminal, Limited Jurisdiction, Site Judge for Metropolitan courthouse, along with several other notable leadership positions.





Understanding the DUI Laws in California

BY PHIL HACHE

DRIVING UNDER THE INFLUENCE (DUI) LAWS in California can be tricky if unfamiliar with them. There are many different variables that can come into play as it relates to actual charges, enhancements to the DUI charges, penalties and consequences, and defenses. Like many issues in the legal world, a potential client may come knocking on a lawyer's door thinking they need an attorney for one charge (i.e., a DUI charge), when in actuality, there are several enhancements that can significantly increase the potential penalties.

The majority of DUI's are charged as misdemeanors with a few exceptions. It is possible for someone under 21 to be charged with an infraction under VC §23140 if their Blood Alcohol Content (BAC) level is between a .05 and .07. Further, if someone is under 21 years of age and has a BAC level as low as a .01, they can face civil penalties under VC §23136, otherwise known as the "zero tolerance" law.

DUI's can also be charged as a felony under some circumstances. This includes a fourth or more DUI within a ten-year period or a DUI with accident causing injury (see VC §23153). If someone is killed as a result of an accident caused by someone driving under the influence, the driver can be charged with a vehicular manslaughter felony under Penal Code §191.5, or in some cases they can potentially be charged with murder based on what is known as a Watson

Admonition pursuant to VC §23593 (See *People v. Watson* (1981) 30 Cal.3d 290).

Since the majority of DUI cases are filed as misdemeanors, understanding misdemeanor DUI charges is important as well as DMV hearings based on DUI arrests.

Misdemeanor DUI Charge

The two potential misdemeanor DUI charges are VC §23152(a) and VC §23152(b). The "VC" portion stands for Vehicle Code, which is the set of laws in California that controls, among other things, DUI laws.

VC §23152(a) is a general DUI catch-all charge that covers driving under the influence of alcohol and drugs. For example, a person can be convicted of this charge if they were under the influence of alcohol and had a BAC of .07. Likewise, a person can be arrested and charged with this if an officer believes that the person was driving a car under the influence of another intoxicant such as marijuana or even prescription drugs.

VC §23152(b) is a more specific DUI charge and relates only to alcohol. To be charged with this, a person must have a BAC of .08 or higher. For example, if after getting arrested, a person submits to a breath test and the results come back at 0.10, the complaint would likely list both charges, VC §23152(a) and VC §23152(b).

Keep in mind that if a person submits to a blood test as opposed to a breath test, the arrestee will likely receive a citation that only lists VC §23152(a). If the blood test results come back at .08 BAC or higher, the prosecutor will add a VC §23152(b) charge to the complaint.

Enhancements to DUI Charges

The penalties for DUI charges can be enhanced depending on many variables that can come into play. Common enhancements include prior DUI convictions or other priorable alcohol related driving convictions, such as VC §23103 per VC §23103.5, known as a wet-reckless. Keep in mind that out-of-state alcohol driving related convictions can also be used to enhance penalties.

Another fairly common factor that can be taken into consideration when determining penalties includes if someone's BAC level was a 0.15 or higher, or more commonly, an enhancement if someone's BAC level was a 0.20 or higher.

If the subject refuses to submit to and complete a breath or blood test they can be charged with a refusal enhancement under VC §23557. Under the implied consent law in California, a motorist who is requested by a peace officer to perform a BAC test is required to complete either a breath test or a blood test.

If the subject chooses to perform a breath test but is unable to complete it as instructed by the officer, they will be instructed to complete a blood test. If at that time the subject refuses the blood test, they can be charged with a refusal enhancement. Further, if the officer suspects intoxicants other than alcohol are involved, they may require a urine sample, refusal to which can also lead to a refusal enhancement charge.

It should also be noted that completion of a Preliminary Alcohol Screening (PAS) test, which is often administered prior to arrest, does not satisfy the evidential breath test requirement for purposes of avoiding a refusal allegation in most cases.

Less common enhancements can include child endangerment under VC §23572, where a minor under the age of 14 was a passenger in the vehicle at the time of the offense, and reckless driving or speeding pursuant to VC §23582.

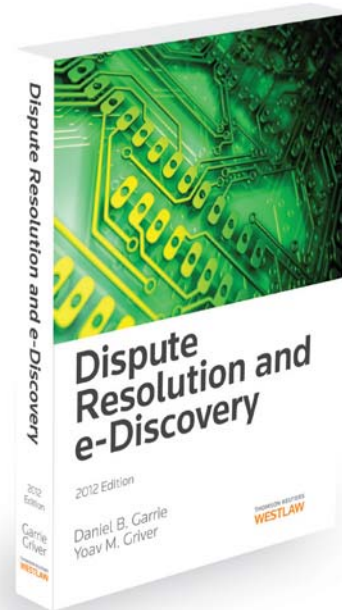
Penalties for VC §23152(a) and §23152(b)

Both VC §23152(a) and VC §23152(b) carry the same penalties, and they vary depending on whether this is a first offense DUI, or if there are other DUI or alcohol related driving convictions within the last 10 years of the subject's arrest.

If convicted of a first offense DUI with no enhancements, pursuant to VC §23538 the penalty may include anywhere between 48 hours to six months in jail, a probation period between three and five years, a fine between \$390 and \$1,000 plus penalty assessments (i.e., fees and taxes the court adds to a fine), an alcohol course ranging from three months to nine months, and a 6-month license suspension imposed by the DMV, or a 10-month suspension if a 9-month alcohol program is required.

The court also has the power to impound the defendant's car, require an Ignition Interlock Device (IID), and take other further action, such as additional AA meetings, community service or community labor, a Mothers Against Drunk

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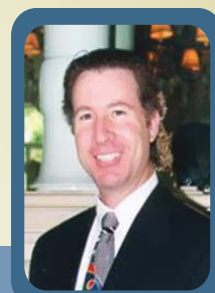
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Driving course, and a “Hospital and Morgue” program as potential penalties that can be factored into sentencing. Further, there are additional license suspension issues and potential restrictions if someone is convicted of a DUI and has a commercial driver license.

If convicted of a second offense DUI, the penalties increase from a first offense DUI pursuant to VC §23542 and may include anywhere from 96 hours to one year in jail, an 18-month alcohol program, and a 2-year driver license suspension imposed by the DMV in addition to the other potential consequences of a first offense DUI. If convicted of a third or more DUI within a ten-year period, the potential penalties can increase further. It should be noted that the subject may be eligible for a restricted driver license within the driver license suspension time periods noted above.

DMV Hearings and Further Potential Driver License Suspension

Two Possible License Suspensions for a DUI

There are two possible license suspensions associated with a DUI. The first is a license suspension based on a DUI conviction in criminal court. Once there is a DUI conviction, the DMV receives notification of this conviction and starts a license suspension. The length on the time of that suspension depends on some variables, such as whether this is a first offense DUI (6-month suspension), a second offense DUI (2-year suspension), etc.

The second possible license suspension as a result of a DUI is issued directly from the DMV, without the criminal courts involvement. Again, the length of time on that suspension depends on some variables, such as whether this is a first offense DUI (4-month suspension), a second offense DUI (1-year suspension), etc.

Note that it's possible to have both suspensions run at the same time or get credit towards a suspension so there is no overlap, thus minimizing the time that the driver license is suspended in cases where there is a driver license suspension based on a DUI conviction and another directly by the DMV.

Any time there is a DUI arrest with a .08 BAC level or higher, there is the risk of driver license suspension issued directly from the DMV separate and apart from a DUI conviction. With a few exceptions, DMV hearings in order to contest this suspension must be requested within ten days of the arrest for a DUI. If a request for a DMV hearing is not made within that time frame, it is very likely that the DMV will automatically suspend the licensee's driver license thirty days after the date of arrest.

As noted earlier, the DMV can also take action against a driver license if the subject was under 21 at the time of the incident and had a .01 or higher BAC level.

For subjects 21 years of age or older and not on probation for a prior alcohol related driving conviction, the three major points discussed at DMV hearings for DUI are: (1) whether there was probable cause to pull the subject over; (2) whether there was a lawful arrest; and (3) whether the subject's BAC Level was .08 or higher.

Temporary License Issued at Time of Arrest

If arrested for a DUI with a .08 blood alcohol level or higher, the officer is authorized to take the subject's California driver license away and issue them a temporary license for 30 days.

If the subject is issued this piece of paper, they can lawfully drive for 30 days after the arrest. There are exceptions to this, for instance, if the subject's driver license is already suspended for something else. In that case, the subject did not have a valid license to begin with, so they will not be able to lawfully drive with a temporary license. Also, if within the 30 days after the arrest the subject gets convicted in criminal court of the DUI, then a separate license suspension will be issued, over-riding the temporary license.

It should also be noted that an officer does not have authority to take someone's out-of-state driver license. Should that happen, it is important to try to contact the arresting agency as soon as possible to attempt to get that driver license returned.

10 Days After an Arrest

After being arrested for a DUI, the subject, or their attorney, will have 10 days to request an Admin Per Se (APS) hearing also known as a DMV hearing. There are some potential exceptions to this for good cause, such as serious injury or incapacity immediately following the DUI arrest. If the tenth day falls on a weekend or holiday, the time to request a hearing will go to the next regular business day. If an APS hearing is not requested, the DMV will perform their own review of the file, which generally leads to a driver license suspension at the end of the 30-day temporary license.

At the time of the APS request, the subject or their attorney can also ask for a stay on the suspension of the driver license. After it is granted, the subject will receive a new temporary license that will be good for an extended period of time pending the results of the APS hearing or DUI conviction in criminal court.

Mandatory Ignition Interlock Device (IID)

Effective July 1, 2010, as mandated by VC §23700, anyone convicted of a DUI conviction, VC §23152 or VC §23153, in Alameda, Los Angeles, Sacramento or Tulare Counties is required by the DMV to install an IID device on each car they own for a time frame which varies depending on whether the DUI is a first, second or third offense, etc. During the IID restriction period, the person affected by this pilot program cannot legally drive a car unless that car is fitted with a certified IID device.

This pilot program requires that anyone convicted of VC §23152 or §23153 in the affected counties install an IID on each car they own for set time frame, and show proof of installation to the DMV. The cost of an IID may vary depending on provider, but there is generally an installation fee for each IID installed. Quotes seem to range from about \$25 to \$150 and can depend on the type of car and ignition. There is also a maintenance fee every time the IID device is maintained. The IID is required to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device. Quotes generally seem to be around \$75 per maintenance visit. The installation and maintenance of the IID device is monitored by the DMV.

Additionally, depending on the income as compared to the federal poverty level, the person may only have to pay as little as 10% of the cost of the ignition interlock device. The offender's income may be verified by presentation of that

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person's current federal income tax return or three months of monthly income statements.

A person affected by this pilot program must install IID(s) in order to be issued a restricted driver license and reissued a driver license. Additionally, courts may make compliance with the DMV on the IID restriction a term of the probation.

The time length of IID restriction for a DUI conviction varies, depending on the offense number and whether or not there is injury involved. Based on a conviction of VC §23152, a first offense DUI, mandatory term of five months; second offense DUI, mandatory term of 12 months; third offense DUI, a mandatory term of 24 months; and fourth offense DUI or any subsequent violation, mandatory term of 36 months.

Based on a conviction of VC §23153 (DUI causing injury), a first offense DUI, mandatory term of 12 months; second offense DUI, mandatory term of 24 months; third offense DUI, a mandatory term of 36 months; and fourth offense DUI or any subsequent violation, mandatory term of 48 months.

Exemption from Pilot Program

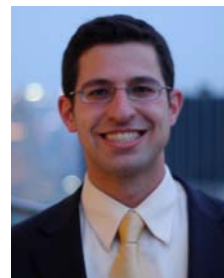
There is a possible exemption from compliance with this pilot program if within 30 days of the notification of the IID requirement, the person certifies to the department all of the following:

- The person does not own a vehicle.
- The person does not have access to a vehicle at his or her residence.
- The person no longer has access to the vehicle being driven by the person at the time of arrest for a violation that subsequently resulted in a conviction for a violation of VC §23152 or VC §23153.
- The person acknowledges that he or she is only allowed to drive a vehicle that is fitted with a functioning ignition interlock device.
- The person acknowledges that he or she is required to have a valid driver license before he or she can drive.
- The person is subject to the requirements of this section when he or she purchases or has access to a vehicle.

Installation of an IID device on car(s) does not allow the person to drive without a valid driver license. For the purposes of this pilot program, vehicle does not include a motorcycle until the state certifies an IID that can be installed on a motorcycle. Further, a person subject to an IID restriction shall not operate a motorcycle for the duration of the IID restriction period.

The full statute can be viewed at http://dmv.ca.gov/pubs/vctop/d11_5/vc23700.htm. Additionally, this mandatory pilot program should not be confused with SB 598, which gives multiple DUI Offenders the option to get a restricted driver license at an earlier time with the installation of an IID. SB 598 is a statewide program and is optional. 🐾

Phil Hache is a criminal defense attorney with an office in Sherman Oaks, specializing in DUI defense for criminal and DMV hearing matters. He can be contacted at (818) 336-1384 or PhilHacheLaw@gmail.com. For more information on Hache, visit www.1DUILawyer.com.





Test No. 42

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

1. All DUI's are filed as misdemeanors.
True
False
2. Prior DUI's out-of-state are never a factor in sentencing based on a DUI received in California.
True
False
3. In order to be convicted of a DUI, the subject's BAC must be .08 or higher.
True
False
4. A person can be convicted of a DUI based on consumption of prescription drugs.
True
False
5. An IID restriction is currently mandatory for all DUI convictions in Los Angeles County.
True
False
6. One of the penalties of a first offense DUI conviction is a 6-month driver license suspension.
True
False
7. A conviction for a VC §23103 per VC §23103.5 is not considered a priorable offense for purposes of DUI.
True
False
8. One of the factors considered in an APS hearing based on a DUI arrest is whether the arrest was lawfully made.
True
False
9. A person has 15 days after being arrested for a DUI to request an APS hearing.
True
False
10. A peace officer is authorized to confiscate an out-of-state driver license based on a DUI arrest.
True
False
11. Completion of a Preliminary Alcohol Screening test does not satisfy the evidential breath test requirement for purposes of avoiding a refusal allegation in most cases.
True
False
12. A probation period for a second offense VC §23152 conviction can statutorily be as long as 6 years.
True
False
13. The subjects BAC level must be .08 or higher to be convicted of VC §23152(b).
True
False
14. A second offense VC §23152 conviction requires a penalty of a 9-month alcohol program.
True
False
15. A person convicted of a DUI in Los Angeles County has 21 days from notification of the IID requirement to apply for exemption.
True
False
16. As long as a person attempts to complete a breath test after being arrested for DUI, they satisfy the implied consent law and will not be subject to a refusal allegation.
True
False
17. Motorcycles are required to have an IID installed based on a DUI conviction in Los Angeles County.
True
False
18. The required amount of time for the installation of an IID based on a second offense §23152 conviction is 12 months.
True
False
19. It is possible to get an extended temporary license after being arrested for a DUI.
True
False
20. It is possible for there to be a driver license suspension after DUI charges are dismissed.
True
False

MCLE Answer Sheet No. 42

INSTRUCTIONS:

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

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

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State Bar No. _____

ANSWERS:

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

- | | | |
|-----|-------------------------------|--------------------------------|
| 1. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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Dealing with a Client's Criminal Law Matter

The 8-Step Rule Book for Civil Attorneys

By Gerald L. Fogelman

THERE ARE IMPORTANT POINTS THAT EVERY civil attorney should know when a client, or anyone else, calls them regarding a criminal law matter. When a client is arrested, there are eight primary steps a civil attorney is able to take before contacting a criminal defense attorney.

1. Advise the client to be respectful to the law enforcement authorities, but to refuse to be interviewed by them without an attorney present.

Inform client that there is no expectation of privacy while using a jail phone; therefore, the client should not discuss the facts with the attorney at that time. If this is an important client, the civil attorney can visit the client at the jail he or she is being held at and have a privileged conversation with him or her.

If planning to do this, take detailed notes as their memory may never be more accurate. Also, be sure to advise client that there is no such thing as an "off the record" conversation with a law enforcement officer about the facts of the case.

2. Suppose the client is not arrested, but a search warrant is being executed. Use the following protocols:

- ☒ Item number 1 above, still applies.
- ☒ Advise client to cooperate in the execution of the search warrant and not to interfere.
- ☒ Tell client to be sure to be observant.
- ☒ Tell client not to volunteer information, or make sarcastic, or other challenging inappropriate remarks.
- ☒ Tell client to request a copy of the warrant, and a receipt for any items removed pursuant to the warrant.
- ☒ Tell client to get the names of the officers, and their law enforcement agency, and what station they operate out of, with a phone number, so that the client can provide it to their attorney.

The lead detective may give the client a business card. As soon as the search is completed, and the law enforcement agents have left, tell the client to sit down and write out everything he/she heard and saw. His/her memory will never be better.

3. Before calling a bail bond agent, obtain important information.

- ☒ Client's full name spelled correctly
- ☒ Client's birth date

- ☒ Location where client is being booked into jail
- ☒ Booking number assigned to client
- ☒ Charge for which client was booked
- ☒ Bail amount set
- ☒ Identity of the law enforcement agency that arrested client
- ☒ Name and phone number of the person who will be arranging the posting of bail for the client

If the bail amount is low enough, post the full amount in cash or money order, and avoid paying any premium. The deposit will be returned to whoever posted it, a few weeks after the case is completed. Also, all of the above may not be able to be obtained, but obtain as much of these items as possible. This will allow the bail bonding process to go smoother and faster.

4. When phoning a bail bond agent, do the following:

- ☒ Before giving the bail bond agent the referral, try to negotiate the premium down from the standard 10%. Just by asking, the attorney may get it down to 9 or 8%.
- ☒ Make sure that the bail bond agent will have someone at the jail promptly, so that the client does not waste time in jail after being booked.
- ☒ Have the bail bond agent contact the responsible person.
- ☒ Tell the bail bond agent to call the attorney when the client is bailed out and advise the attorney of the court date and location for which the client's arraignment date has been set. The client will be given a notice to appear upon release from the jail.

5. Establish a relationship with an experienced criminal defense attorney.

- ☒ Have the defense attorney's name and phone number readily available at all times. Like an emergency room physician, a good defense attorney usually can be reached 24/7, because of the nature of his/her work. Be sure to have the attorney's emergency numbers.
- ☒ Advise the client and the people he or she resides with that for about two weeks they will receive "jail mail" by the dozens at the address on the booking sheet. These are solicitations by criminal defense attorneys. The slick, and often not slick, solicitations will stop after about two weeks.

6. Referring the client and their friends or loved ones to the criminal defense attorney is an important function the civil attorney can serve.

- ✓ Make sure that he/she is acquainted with the defense attorney and familiar with his/her reputation and integrity.
- ✓ The client and their friends or loved ones are often scared and frightened. They want and need to trust someone with their crisis. It is the civil attorney's job to begin laying the ground work for that trust. It is up to the attorney to inform them about the qualities and experience of the defense attorney that he/she is referring them to. By beginning to establish the confidence that the attorney places in the defense attorney, the attorney will make the transition to that defense attorney easier. Since the civil attorney has trust and confidence in the referring defense attorney, he/she should do his/her best to instill that in the client and the client's support system.
- ✓ The attorney should tell the client or their friends or loved ones that they should wait about ten minutes, unless it is a critical emergency, before calling the defense attorney. The attorney should tell them that he/she wants to try to contact the defense attorney first to advise him/her of their crisis and tell the defense attorney how important the client's welfare is to the civil attorney and his/her firm. This is important. It allows the defense attorney to get the details which the civil attorney has already accumulated and have a better perspective before his/her contact with the client and client's support team, who may not be as collected and professional as the civil attorney. Also, the information the civil attorney provides will help the defense attorney in pulling up the client's information on the sheriff's website.

7. What the civil attorney should do when a client advises him that he/she received a voice mail from a police officer or a police officer's business card on his door.

- ✓ The attorney should refer him to a criminal defense attorney to confer with, at least by phone, before the client responds to the contact initiated by law enforcement.
- ✓ Because the police officer does not have to advise the client of his Miranda Rights, unless the client is in custody, they often try to get the client to make admissions on the telephone, which can be used against the client in court.

8. What the civil attorney should do if his/her client has received a letter from the City Attorney, District Attorney or the court regarding a criminal accusation, as an order to appear in court or at the prosecutor's office, based upon a criminal accusation.

The attorney should put the client in contact with a criminal defense attorney immediately and strongly advise the client to do so before responding to the letter. The reason for this is that the client usually has no idea of the significance of such a letter or proceeding. Often times, clients simply show up as notified, and wait to see if they need a criminal defense attorney, which is the worse thing a client can do.

When an attorney does all of the above, he/she has done a great deal for their client and his/her welfare. 🐶

Gerald L. Fogelman has an office in Encino and is a former Deputy District Attorney who has practiced criminal defense since 1978, representing both adults and juveniles. He is an SFVBA Trustee, Programs Committee Chair and Chair of the Criminal Law Section. Fogelman can be reached at (818) 906-9941 or ZSavant2@aol.com.



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Medical Marijuana Overview

The Law and Its Ambiguities

By David D. Diamond, Dmitry Gorin and Brad Kaiserman

DESPITE MEDICAL marijuana laws being on “the books” for fifteen years, prosecutions of dispensaries, its owners and employees have continued. The government pursues criminal prosecutions, arguing that entities are not operating within the parameters of the Compassionate Use Act.

So can a dispensary ever operate lawfully? Can patients use marijuana pursuant to a doctor’s recommendation? Unfortunately, there is ambiguity in the medical marijuana laws. Law enforcement often takes a narrow reading of the law, even when that interpretation conflicts with the opinion issued by the California Attorney General’s Office, to justify a criminal arrest and prosecution.

Now, after fifteen years of prosecution based on relatively ambiguous laws, Attorney General Kamala Harris has sent a letter to the State Legislature identifying several areas of the medical marijuana law that need immediate clarification, including how collectives and cooperatives should operate, how dispensaries should operate, what constitutes a non-profit operation and how edible medical marijuana products should be handled.

Hopefully the Legislature will provide guidance for caregivers and patients trying their best to comply with medical marijuana laws that have been described as vague and ambiguous, and yet still subject to criminal prosecutions.

For a trial attorney litigating marijuana cases, it is of the utmost importance to thoroughly understand the history of the medical marijuana laws, the role of the Attorney General-issued opinions, areas of vagueness in the law and the possible defenses justifying the cultivation and distribution of marijuana.

History of Medical Marijuana Laws

In 1996, California voters passed Proposition 215, commonly referred

to as the Compassionate Use Act (“CUA”). Voters wanted to ensure that seriously ill Californians would have the right to obtain and use marijuana for medical purposes without criminal ramifications. However, after the passage of Proposition 215, a great deal of confusion arose.

Marijuana patients have been searched, arrested and prosecuted for marijuana violations, partly because the act has been interpreted in many different ways. As a result, the California Legislature passed Senate Bill 420, which became law on January 1, 2004. After SB 420 became law, there have been numerous decisions by both the Court of Appeals and the Supreme Court of California that have attempted to clarify the law.

Specifically, the Compassionate Use Act provided that H&S §11357 (Possession of Marijuana) and H&S §11358 (Cultivation of Marijuana) “shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.”

Seven years later, in 2003, the California Legislature passed the Medical Marijuana Program Act, which enacted H&S §11362.7 *et seq.* Here, the express purposes of the act were to “[c]larify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers,” to “[p]romote uniform and consistent application of the act among the counties within the state,” and to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.” (Stats. 2003, ch. 875, §1(b)(1)-(3).)

Specifically regarding collectives and cooperatives, H&S §11362.775

provides that “[q]ualified patients, person with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.”

Further, the Medical Marijuana Program Act provided that “the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.” (H&S §11362.81(d).)

Pursuant to this authorization, the Attorney General issued an opinion titled “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use” in August of 2008.¹ Among the topics addressed in the opinion are what characterizes a cooperative or a collective and suggestions as to how cooperatives and collectives should operate.

Identifying the Ambiguities in Law

The use of marijuana for medical purposes has now become a highly debated issue in both the judicial and public forums. However, under the Federal Controlled Substances Act of 1970, marijuana use for any purpose is illegal. As such, Proposition 215 has put California law in direct conflict with federal law, and litigation has ensued.

As mentioned previously, on December 21, 2011, California Attorney General Kamala Harris, the state’s chief law enforcement official, wrote a letter to the California Legislature “to identify some unsettled questions of law and policy in the areas of cultivation and distribution of physician-recommended marijuana that ... are suitable for legislative treatment.”

In the letter, she specifically raised questions about H&S §11362.775, which authorizes the cultivation of medical marijuana through collectives and cooperatives, and pointed to “significant unresolved legal questions regarding the meaning of this statute” and “the statute’s ambiguity.” She further pointed out that the Legislature has failed to “clarify what it means for a collective or cooperative to operate as a ‘non-profit.’” A copy of this letter can be found at the website for the California Attorney General.

That the statutes surrounding medical marijuana laws are considered ambiguous should come as no surprise to any defense attorney who has represented a client on such matters. Accordingly, it is paramount in such cases to argue both the vagueness of the law as well as the contours of the law to the court.

Legal Defenses

Courts have held that the CUA does not afford qualified patients complete immunity from criminal charges, but, rather, provides an affirmative defense to prosecution, which must be raised as a defense at trial or by a motion to set aside an indictment or information prior to trial for lack of reasonable or probable cause. Again, two methods to assert the medical marijuana defense under the CUA are: (1) through a motion to set aside the indictment or information before trial under Penal Code §995 and/or (2) as an affirmative defense at trial.²

The vagueness of the medical marijuana laws can give rise to several possible defenses, either in a pre-trial motion to dismiss or in trial: due process violation for vagueness (pre-trial/post-trial only), mistake of law, mistake of fact and entrapment by estoppel. Certainly in light of the recent letter from the Attorney General, the ambiguities in the statute should be an excellent foundation for an argument based on a due process violation.

For the mistake of law defense, attorneys should refer to the CALJIC commentary to CALCRIM No. 2370, which cites *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 as holding that “an honest mistake of law may be a defense to the charge of conspiracy to sell marijuana.”

Since the *Urziceanu* court relies on the rationale that the honest mistake of law negates the specific intent of a conspiracy offense, the same reasoning can be used to apply to a charge of

possession for sale. A mistake of fact defense can be framed similarly to a mistake of law defense, but rather than argue that the client believed the law was x, argue that the client believed his conduct fell within the parameters of the immunized conduct.

Entrapment by estoppel is a due process defense to criminal charges when an official has advised the client that the conduct is legal, and the defendant reasonably believed the official. (See *Raley v. Ohio* (1959) 390 U.S. 423; *United States v. Hsie Hui Mei Chen* (9th Cir. 1985) 754 F.2d 817.) It would also be beneficial to look at Corporations Code §31511, which prevents liability from being imposed on an individual who acted pursuant to an Attorney General opinion.

In arguing the contours of the medical marijuana laws, the Attorney General Opinion is the best source of guidance. Not only was this opinion specifically mandated and authorized by the California Legislature but it has already been relied upon in *People v. Hochanadel* (2009) 176 Cal. App. 4th. In addition to *Urziceanu* and *Hochanadel*, other cases that should be considered are *People v. Kelly* (2010) 47 Cal. 4th 1008 (quantity limits on medical marijuana that may be possessed by patients are unconstitutional); *People v. Mower* (2002) 28 Cal. 4th 457 (the medical marijuana laws may serve as a basis for a motion to set aside an indictment or information prior to trial); *People v. Mentch* (2008) 45 Cal. 4th 274 (who may qualify as a primary caregiver); and *County of Butte v. Superior Court* (2009) 175 Cal. App. 4th 729 (a civil case that addresses collective cultivation).

Even when a medical marijuana dispensary, cooperative or collective has done everything to be in full compliance with the law, law enforcement may still obtain a search warrant for the entities and seek to prosecute the entities and its patients. Until the Legislature provides further clarification, every patient participating in a dispensary, cooperative or collective needs to be aware of the risks involved. Accordingly, a defense attorney needs to be a ready advocate for the rights of patients and collectives provided by California’s medical marijuana laws.

Retroactivity and Complaint Dismissal

Both the CUA and SB 420 are retroactive. The general rule is that a

defendant in a criminal case is entitled to the benefit of a change in law, unless that law contains a savings clause.³ Because neither the CUA nor SB 420 contains such a clause, one can argue successfully the law’s retroactive application.⁴

The defendant may also “informally suggest” that the court dismiss the information or complaint “in the interests of justice” under Penal Code

Medical Marijuana Case Law

The following list summarizes important cases to review when attempting to prosecute or defend a medical marijuana case.

- *People v. Konow* (2004) 32 Cal. App.4th 995. The court can dismiss the complaint/information in the interest of justice.
- *People v. Kelly* (2010) 47 Cal.4th 1008. There is no longer a limit on the amount of medical marijuana patients can possess.
- *People v. Wright* (2004) 21 Cal.Rptr.3d 609. The Medical marijuana defense applies to transportation charges as well.
- *People v. Jones* (2003) 112 Cal. App.4th 341. Once the medical marijuana defense is raised by defendant’s testimony that doctor recommended marijuana, the prosecution must disprove this claim by a reasonable doubt.
- *People v. Spark* (2004) 121 Cal. App.4th 259. There is no need to show a defendant was “seriously ill.” The jury cannot second guess a valid prescription for medical marijuana.
- *People v. Chakos* (2007) 158 Cal. App.4th 357. Puts limitations on testimony from law enforcement if they are not qualified as medical marijuana expert.
- *People v. Peron* (1997) 59 Cal.App.4th 1383. A primary caregiver who consistently grows and supplies physician approved or prescribed medical marijuana for a Section 11362.5 patient is serving a health need of a patient.

§1385.5 Counsel can file this motion at any time, even as early as the arraignment, or with a demurrer to the complaint.

Trial Defense

The medical marijuana defense has four elements: (1) the medical use of marijuana has been recommended or approved by a physician; (2) the physician has determined that the person's health would benefit from the use of marijuana in the treatment of an illness for which marijuana provides relief; (3) the marijuana at issue was for the personal medical use of a qualified patient; and (4) the quantity of marijuana, and the form in which it was possessed, were reasonably related to the patient's current medical needs.⁶

The defendant must provide evidence of "the written or oral recommendation or approval of a physician."⁷ In addition, despite public confusion, one does not need both a recommendation and a medical marijuana card.⁸

The Chakos Defense

A defense attorney must ask the court to "voire dire" the police expert as to his training in medical marijuana. Upon reversing a conviction, the Court of Appeals stated, "nowhere in

this record do we find any substantial evidence that the arresting officer had any expertise in differentiating citizens who possess marijuana lawfully for their own consumption, as distinct from possessing unlawfully with intent to sell."⁹ As such, once the defense is raised, law enforcement must show proper training.

Qualified Primary Caregiver

The CUA defines a "primary caregiver" as "the individual designated by [a qualified patient] who has consistently assumed responsibility for the housing, health, or safety of that person." Health & Safety §11362.5(e) (emphasis added). This creates two elements: (1) designation by a qualified patient, and (2) having assumed consistent responsibility for the housing, health or safety of the patient.¹⁰

Cooperatives

Prior to the enactment of SB 420, cooperatives and their suppliers received almost no legal protection in the courts. One court of appeal held that neither cooperatives nor the individuals who operate them qualified as primary caregivers, even if formally designated as such by the patient-members, because they did not consistently assume the responsibility for the

health or safety of their members.¹¹ However, SB 420 has abrogated at least a portion of these holdings, exempting collectives and cooperatives formed in California for cultivating marijuana for medical purposes from prosecution for cultivation and distribution of marijuana. 🏠

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¹ A copy of the opinion can be found at: http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.

² *People v. Mower* (2002) 28 Cal.4th 457, 122 Cal.Rptr.2d 326.

³ See *People v. Babylon* (1985) 39 Cal.3d 719, 722, 216 Cal.Rptr. 123; *People v. Rossi* (1976) 18 Cal.3d 295, 304 134 Cal.Rptr. 64.

⁴ See *People v. Trippett* (1st Dist. 1997) 56 Cal.App.4th 1532, 1544-45, 66 Cal.Rptr.2d 559, 567 (holding that CUA applies retroactively).

⁵ <http://www.losangelesmedicalmarijuanalawyer.com/Drug-Crimes/Sample-Motions.aspx>

⁶ See CALJIC 12.24.1; *People v. Trippett* (1st Dist. 1997) 56 Cal.App.4th 1532.

⁷ Health & Safety Code §11362.5(d).

⁸ Health & Safety Code §11362.71.

⁹ *People v. Chakos* (2007) 158 Cal.App.4th 357, relying on *People v. Hunt* (1971) 4 Cal.3d 23

¹⁰ See *People v. Mower* (2002) 28 Cal.4th 457

¹¹ *Lungren v. Peron* (1st Dist. 1998) 59 Cal.App.4th 1383

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Collaborative Practice Makes Sense

BY MICHELLE DANESHRAID

COLLABORATIVE LAWYERS are a team of attorneys supporting one another, focusing on a win-win resolution. The collaborative attitude is that no one wins unless everyone wins. Collaborative lawyers are generally supported by the mental health professionals who help the parties deal with their emotions responsibly and focus on common grounds.

The most difficult task of a collaborative lawyer is putting aside being competitive and adversarial and instead being creative in problem solving and brainstorming possible solutions that satisfy both parties. Collaborative lawyers keep all of their clients' interest in mind. They use their legal expertise in exploring options. The clients' interests are not limited to what the law provides, but also what the law and the court cannot provide.

In criminal law cases, the collaborative process is called "Restorative Justice." The prosecutor and the defense attorney team up to collaborate with the offender and the victim on what actions the offender could take to restore or repair the harm. This is a process that is more healing to the victim and transformational to

the offender. By taking actions that improves the community, the offender will start to relate to him or herself as someone who can and does make a difference.

The traditional approach to litigation is backward looking; collaborative process and restorative justice are forward looking. Backward looking leads to punishment; forward looking leads to reparation, improvement, restoration and restitution. As an example, a defense attorney's client was facing criminal charges and deportation. In the collaborative process, the attorney created a team with the prosecution, and with the client's cooperation, not only was the client released without serving any more jail time, but also his attorney teamed up with the deportation officer and his deportation was able to be avoided.

Why Practice Collaborative Law?

Let's look at it from the lawyers' perspective. Do lawyers have the life they went to law school to have? Some go to law school for money, some for rank, some to help people. Ever wonder how many lawyers get satisfaction or fulfillment in those areas?

There are several different categories of lawyers. Those of course who love what they do and gain sincere satisfaction from their profession. Then, there are those lawyers who are struggling to build a profitable practice. And there are also those who have built a successful practice, but feel trapped by their practice and are looking forward to retiring and not having to practice anymore. And finally, those attorneys who are working for a large firm and either do not have time to think about or do not think about the future of their practice that much.

Let's examine why that is. If any lawyer is asked what matters to them most in their lives, they would probably say it is their family, their relationships, their health, quality of their life and their peace of mind.

How does being a litigator impact these areas? Most litigators know that to be "winning" in court, they need to be faster, more skilled, competitive and strategic in the process of litigation—planning the case, conducting discovery, motions, pretrial preparation and be prepared for attacks.

The stress of litigation is sometimes destructive to the areas of life that is most important to lawyers as people. One in five lawyers suffers from alcoholism or drug addiction. According to www.lifeatthebar.com, attorneys have the highest rates of depression and suicide of any profession. The time it takes to be a great litigator to be prepared and timely in all aspects of the case, can barely leave any time for family, relationships, exercise, eating healthy and quality of life. In addition, being adversarial and competitive and ready for attacks does not stay in the office or the courtroom; it can naturally follow them home to their loved ones.

What some attorneys may not realize is that what brings fulfillment and satisfaction in life is making a real difference in life of others. Litigation alone does not make life better for people. Therefore, litigation ultimately may not be satisfying for lawyers—causing stress and damaging to the important areas of their lives. The money earned through this process is not as valuable as it seems after factoring the harm by that way of practice.

Effects of the Litigation Process

Consulting a lawyer is one of the first steps people take when facing a legal problem. Generally, lawyers

are trained to first gather the facts. Then, they almost immediately take sides, which promote adversity and competition between the parties. Sometimes, the “best” lawyers are known by reputation of being the most aggressive and competitive in their practice. Unfortunately, the aggressive, adversarial and competitive nature of litigation process is the most damaging and destructive to the parties. People with legal conflicts are naturally very emotional; scientifically it is known that people dealing with conflict lose their ability to problem solve.

Within the court system, parties are not always treated as respectable adults. Meaning, they are told how much to pay, how long it takes and what they will get. In a divorce case, for example, if the parties were asked individually what really matters to them, they would find many things in common. Their children are probably at the top of their list, followed by their health, finances, peace of mind, etc., all of which get compromised and damaged in the traditional divorce process.

If parties look at their issues intelligently and calmly, they would know that the litigation process makes no sense for the most part. Parents are partners in raising their children, whether they like it or not. Adversity inevitably weakens that partnership. Their money is for their well-being as well as the well-being of their children. The most precious thing that they have is time. And the litigation process usually takes an unpredictable overwhelming amount of money, unpredictable overwhelming amount of time and unpredictable and overwhelming amount of damage on their children; it is most often a humiliating and stressful experience, and for what result? Totally unpredictable outcome; there is no control and no guarantee.

Is Traditional Litigation Working for the Courts?

“For many years, our family courts have attempted to make the most effective use of the resources available to them to meet the increasing needs of California’s families. While the number of cases has steadily increased, the resources devoted to processing and hearing those cases have not. In 2005, the equivalent of 175 full-time judicial officers statewide were responsible for approximately 460,000 new cases filed in family court, as well as ongoing cases from previous years

that were still pending before the court,” according to the Administrative Office of the Courts (AOC), *2006 Family Law Judicial Officer Survey: Judicial Officer Background, Judicial Resource Needs, and Challenges* (2009).

“This translates into an average caseload of over 2,500 new cases for each judicial officer in addition to the unresolved cases that were filed in prior years. The [AOC] has estimated that the family courts need 449 judicial positions to meet the needs of litigants.”

The 2008 update of the AOC’s Judicial Need Study estimated the need for 2,348 judicial positions statewide (See Report to Judicial Council: *Update of the Judicial Workload Assessment*, October 8, 2008). Of those, 449, or 19 percent of the total, are needed to handle the family law workload.

The Collaborative Practice Works

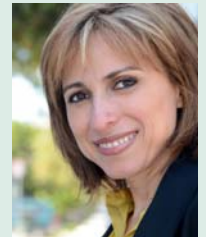
A great practice is having the parties focus on the future they want and paint the picture of that future. The parties and the lawyers, with the unbiased financial expert, collaboratively come up with solutions that support each party in building the future they created. The parties are likely to spend less time, and money, on their complaints about

each other from the past, as their focus becomes about their future.

Collaborative practice may be more difficult and challenging than litigation because it goes against a lawyer’s competitive nature; however, it is more fulfilling, rich and peaceful. Lawyers practice listening and acknowledging both parties, which will be a great practice for the way they relate to their own family members when they go home.

Parties are respected and learn how to listen and communicate constructively. The outcome is reached with the parties’ participation, work, thought and effort. Therefore, there is finality of issues and less likely, if any, motions to set asides, writs or appeals. 🐾

Michelle Daneshrad is the founder of Completion Law Firm in Woodland Hills and founder of San Fernando Valley Collaborative Professionals, an association of 23 collaborative professionals consisting of lawyers, mental health professionals and financial experts. She can be reached at (818) 991-0519 or completionlawfirm@yahoo.com.



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Community Court Success



BARRY EDZANT
SCVBA President

AMONGST THE MANY FEARS of being a parent of a teenager, one of the largest fears is a call from the police department informing the parents that their teenager is in custody for committing a crime. Yet this reality hits home to many families throughout the Santa Clarita Valley. The family is suddenly required to deal with a crisis they were unprepared for. The juvenile is frightened, embarrassed and usually remorseful. Nevertheless, the juvenile has now entered the world of the criminal judicial system.

Once arrested for non-violent crimes such as shop lifting, truancy, curfew violations, tagging, alcohol or drug possession, and other "minor" crimes, the juveniles are dealt with quite seriously. Ordinarily, the juvenile will be required to appear at Sylmar Juvenile Hall, have an attorney, and go in front of a judge who will then sentence the teenager to potential time in juvenile hall, community service, restitution and extraordinarily large fines. A criminal record will stay with the teenager for the remainder of his or her life and any minor slipup during their lengthy probationary period could land the teenager back in juvenile hall.

The City of Santa Clarita recognizes that teenagers may for whatever reason make a mistake, and also recognizes that punishment for those mistakes can be very harsh, even for a first time offender. To make teenagers accountable for their actions, yet provide them with the tools they need to never make the same mistake again, Santa Clarita has formed a partnership with the Santa Clarita Station of the Los Angeles County Sheriff's Department and the William S. Hart Union High School District to create a diversion program known as Community Court.

Instead of the ordinary juvenile hall scenario, qualifying first time teenager offenders are diverted to the Community Court. Through Community Court, the juvenile is asked to appear before a volunteer judge,

who is a local attorney, and to discuss with the judge the nature of the crime, the impact it has had on the victim as well as the juvenile's own family, and discusses in depth the ramifications of the juvenile's action. Because a juvenile must be held accountable for their actions, the volunteer judges hand out sentences such as graffiti removal, teen choice classes, traffic school, restitution, alcohol rehabilitation programs or a visit to the Youth Grove Memorial.

The juvenile is always required to write an essay on various topics which will be presented to the victim, the Sheriff's Department and the juvenile's parents. Along with a small fine, sentencing will also include a short probationary period during which the juvenile is instructed to maintain satisfactory grades in school, introduction to new activities to enhance the growth of the teenager such as sports, and are often times instructed to not hang around friends that may have involved the teenager in the improper activity to begin with.

Most significant, once the teenager has completed their probationary period, the juvenile earns a "clean slate" on his or her record and if ever asked whether or not they have ever been convicted of a crime, they can proudly answer no.

Since the inception of the Community Court program in 2006, the program has proven to be a big

success not only with the City of Santa Clarita and the Sheriff's Department, but with the teenagers themselves. Repeat offenders have been minimal, behaviors have improved, and the teenagers have expressed their gratitude for not only a positive learning experience, but also to not be thrust into the middle of a non-productive punitive system.

At the inception of the program, the City of Santa Clarita asked for volunteer judges for the Community Court. After reviewing the process of the court, and the benefits it has for the teenagers, I proudly accepted their appointment as did Jeffrey Armendariz, John Kunak and Louis Esbin. To this day, all four still volunteer time.

It has been a wonderful experience to give back to this great community and to help teenagers during one of the most important times of their lives. Proper counseling and guidance is a much more positive avenue for first time teenage offenders who have committed nonviolent crimes. Being involved in this program has helped the community to understand that the ultimate goal of the Community Court is to better teenagers with forgiveness while requiring them to be responsible. 🏆

The Law Offices of Barry L. Edzant practices personal injury and lemon law cases. Edzant can be reached at (661) 222-9929 or visit his website at www.valencialaw.com.

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2012 Prediction: A Banner Year



**HON. MICHAEL
R. HOFF, RET.**
VCLF
President

THE VALLEY COMMUNITY Legal Foundation (VCLF), which is the charitable arm of the San Fernando Valley Bar Association, has several members of the judiciary on its Board of Directors. In fact, one of the board members was recently voted Judge of the Year by the Bar. Congratulations to Judge Michael Convey. These are the types of people that are working on the Board of the VCLF.

The courts are facing tremendous financial difficulties and have had to cut back on staffing quite harshly. For example, the Van Nuys court had 39 bench officers a few years ago; today, the number is less than 30 and the reduction hurts. It hurts not only the people trying to obtain justice, but also hurts the general public. The public is harmed by the reduction of police and firefighters on patrol. The public is also harmed by the lack of quick response by the police and fire departments.

For months, those of you who have read this column have heard a plea for assistance in helping the Foundation by donation of money or, better yet, time. The VCLF meets once a month on the third Wednesday at 6:00 p.m. at the Bar offices. All are welcome to attend the meeting. The Foundation encourages large Valley firms to send an associate to represent the firm.

As indicated in the last few columns, the VCLF is not going to

have a gala in 2012. The Foundation is attempting to plan a number of smaller events that will be centered on earning money for the Foundation's numerous causes and to have fun. Please support and attend at least one of these smaller events. They will be advertised in *Valley Lawyer*, so please keep a look out for the announcements.

Now that the economy seems to be improving, the Foundation hopes to take advantage of the upswing. The VCLF is forecasting 2012 as a productive year for the Bar and the Foundation! The Board hopes to be able to give more to the charities that are currently being supported by the Foundation, such as Haven Hills and CASA, and also give out more significant scholarships.

SFVBA attorneys can help themselves by getting involved with the VCLF. The Foundation is a 501(c)(3) tax-exempt corporation. Many have probably just gone over 2011 taxes with an accountant. Get a head start on building legitimate tax deductions for 2012. Join and support the Bar's charitable foundation. Attorneys will feel better when they can say they personally contributed time, effort and money to the Valley Community Legal Foundation. 🐾

Hon. Michael R. Hoff, Ret. can be contacted at mrhoff2@verizon.net.

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New Lawyers

Year-in-Review

**To submit an article or story
idea, email editor@sfvba.org.**

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Volunteer of the Year 2003

Business Law, Real Property & Bankruptcy Section When Anonymous Strikes Your Client: The Attorney as Trusted Advisor in the Computer Security Crisis

FEBRUARY 8
12:00 NOON
SFBVA CONFERENCE ROOM
WOODLAND HILLS

Attorney Gregg Rapoport and David Lam, CISSP, CPP discuss the legal issues that arise from the current threats to information security and outline the steps to take to minimize a client's financial and reputational exposure from data breach. Gregg represents businesses in information security matters; David is Vice President of the Los Angeles Information Systems Security Association.

MEMBERS	NON-MEMBERS
\$30 prepaid	\$40 prepaid
\$40 at the door	\$50 at the door
1 MCLE HOUR	

All-Section Meeting Facebook for Attorneys 101

FEBRUARY 9
12:00 NOON
SFBVA CONFERENCE ROOM
WOODLAND HILLS

SFBVA Member Services Coordinator Irma Mejia will cover the basic principles of social media that attorneys should know to help market their practice. The workshop will focus on Facebook and the benefits it can provide to attorneys. RSVP soon, space is limited!

FREE TO SFBVA MEMBERS!

Probate & Estate Planning Section Estate Planning and Charitable Planning: Recent Developments

FEBRUARY 14
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney M. Neil Solarz of Weinstock, Manion, Resiman, Shore & Neumann will update the group on the latest in estate planning and charitable planning.

MEMBERS	NON-MEMBERS
\$35 prepaid	\$45 prepaid
\$45 at the door	\$55 at the door
1 MCLE HOUR	

Workers' Compensation Section Almaraz Guzman II

FEBRUARY 15
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Dr. Alan Roberts will discuss the latest regarding Almaraz Guzman II.

MEMBERS	NON-MEMBERS
\$35 prepaid	\$45 prepaid
\$45 at the door	\$55 at the door
1 MCLE HOUR	

Santa Clarita Valley Bar Association

FEBRUARY 16
12:00 NOON
TOURNAMENT PLAYERS CLUB
VALENCIA

MEMBERS	NON-MEMBERS
\$35 prepaid	\$40 prepaid
\$40 at the door	
1 MCLE HOUR	

Litigation Section Collections: What You Need to Know

FEBRUARY 16
6:00 PM
SFBVA CONFERENCE ROOM
WOODLAND HILLS

Attorney Eric Spencer will discuss the critical aspects of collections.

MEMBERS	NON-MEMBERS
\$35 prepaid	\$45 prepaid
\$45 at the door	\$55 at the door
1 MCLE HOUR	

Family Law Section What's New in Department 2?

FEBRUARY 27
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO

Judges Thomas Trent Lewis and Scott M. Gordon will update the group on the latest happenings in Department 2.

MEMBERS	NON-MEMBERS
\$45 prepaid	\$55 prepaid
\$55 at the door	\$65 at the door
1 MCLE HOUR	

FEE DISPUTE RESOLUTION



The San Fernando Valley Bar Association administers a State Bar certified fee arbitration program for attorneys and their clients.

**TODAY'S
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TOMORROW'S
RESOLUTION.**



San Fernando Valley Bar Association

www.sfvba.org



The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. To register for an event listed on this page, please contact Linda at (818) 227-0490, ext. 105 or events@sfvba.org.

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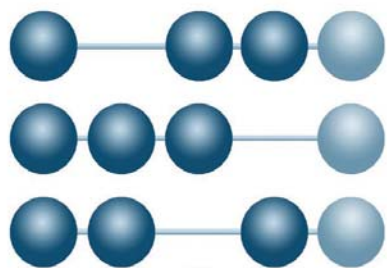
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