# VALLEY LAWYER

MARCH 2017 • $4

A Publication of the San Fernando Valley Bar Association


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VALLEY LAWYER
A Publication of the San Fernando Valley Bar Association





On the cover (left to right): *Los Angeles Superior Court Judges Thomas Trent Lewis and Paul A. Bacigalupo Photos by Ron Murray*

## FEATURES



## DEPARTMENTS

VALLEY LAWYER

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*Printing Southwest Offset Printing*

# Judicial Independence and Executive Orders

**KIRA S. MASTELLER**
SFVBA President

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FOLLOWING ITS FEBRUARY meeting, the SFVBA Board of Trustees approved a position statement on the independence of the judiciary.

"In furtherance of its mission to uphold and defend the administration of justice," it reads, the Bar "calls on our members and individuals in every position of leadership to support the following principles: respect for the independence of the judiciary and the separation of powers guaranteed by the Constitutions of the United States and the State of California; respect for the intellectual honesty and integrity of the justices and judges of the courts who are compelled to decide each case based on the rules of law, justly applied; and respect for all people without regard for age, ancestry, color, religious creed, disability, marital status, national origin, race, religion, gender or sexual orientation."

> "The SFVBA has a long history of supporting the independence of the judiciary"

The SFVBA has a long history of supporting the independence of the judiciary and the Board believes it is an appropriate time to communicate this important principle to our members, judiciary, elected officials and the public as part of its mission to educate Valley residents about the law and our judicial system.

It's been difficult not to notice that many friends and colleagues have been discussing what presidential executive orders are and their impact on the political process. To understand that, a bit of background is necessary as they are nothing new and are most certainly not a "recently" or "uncommonly" used power tool in the President's toolbox.

The very first executive order was issued by George Washington in 1789—an instruction to the heads of federal departments "to impress the president with a full, precise, and distinct general idea of the affairs of the United States."

Since 1933, exactly 7,721 executive orders have been issued, including those mandating the racial integration of the armed forces under Harry Truman and the desegregation of public schools under Dwight D. Eisenhower. Franklin Roosevelt issued the most executive orders, 3,522; Presidents Gerald Ford and George H.W. Bush issued the least, 169 and 166, respectively.

Still, there hasn't been a set form to the executive orders and as such, they have varied greatly in both form and content. Congress has the power to pass legislation that would invalidate an executive order and can also refuse to provide the funding necessary to carry out all of or parts of the order. In the case of the former, the president retains the power to veto such a decision but Congress can override the veto with a two-thirds majority, a nearly impossible event due to the supermajority vote required and the fact that such a vote leaves individual lawmakers vulnerable to a rain of political criticism.

SAN FERNANDO VALLEY BAR ASSOCIATION

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# Unglazed Awesomeness

**MICHAEL D. WHITE**
SFVBA Editor

michael@sfvba.org

THE PHRASES "MAKE A difference" and "make the world a better place" have become somewhat shopworn over the past several years, with their core meanings worn down by tiresome overuse. Like the word "awesome," both phrases can almost immediately invoke what I've come to call the Krispy Kreme Syndrome—a quasi-sugar rush leading to eye glaze-over and a debilitating drowsiness.

In any event, though, there are times when such phraseology is apt. Such as in our January issue when I penned a few lines about the experience of stepping into the Presiding Judge's chambers and even more so, having the privilege of being able to spend a few minutes with the new Presiding and Assistant Superior Court Judges, Daniel Buckley and Kevin Brazile.

> "We honor these jurists for their commitment to the law and their dedication to an even-handed, fair and impartial application of the same."

In this issue of *Valley Lawyer*, we follow a similar tack as the Bar acknowledges a trio of Los Angeles County Superior Court judges who will be recognized on April 4 at the SFVBA Annual Judges' Night Dinner for their service to the community and the legal profession.

Superior Court Judge Paul A. Bacigalupo will be honored as SFVBA Judge of the Year, which is bestowed annually on exceptional jurists "who distinguish themselves with the community, with the Bar, and who possess superior judicial qualities."

Judge Thomas Trent Lewis, Supervising Judge of the Superior Court's Family Law Division, is slated to receive the Bar's Stanley Mosk Legacy of Justice Award. Named in honor of the late California Supreme Court Associate Justice, the award recognizes a legal career that "embodies Mosk's longevity, independence and compassion," and "has made significant contributions to the legal community over a distinguished career."

The presentation of the Bar's Diversity Award to Judge Holly J. Fujie will recognize her career-long work to ensure diversity in the legal profession.

We honor Judges Bacigalupo, Lewis and Fujie for their commitment to the law and their dedication to an even-handed, fair and impartial application of the same. Every day, they serve as the face of the law to attorneys and the public alike, rendering decisions with insight, accumulated wisdom, and no small sense of duty and responsibility that uniquely impact individuals, families, and society as a whole.

Please join us on April 4 at the Sheraton Universal to recognize these very special people who are worthy of the honors bestowed on them. Each of them, in their own way, have genuinely made a difference and made the world a better place.

# CALENDAR

## MARCH 2017

| SUN | MON | TUE | WED | THU | FRI | SAT |
|---|---|---|---|---|---|---|
| **WOMEN'S HISTORY MONTH** | | | | | | |
| | | | *Valley Lawyer* Member Bulletin **1**<br>Deadline to submit announcements to editor@sfvba.org for April issue. | **2**<br>Membership & Marketing Committee<br>**6:00 PM**<br>**SFVBA OFFICES** | Bankruptcy Law Section **3**<br>Discharges<br>**12:00 NOON**<br>**SFVBA OFFICES**<br>Hon. Barry Russell and attorneys J. Scott Bovitz and Ira Katz will discuss U.S. Code Title 11, evidence, civil procedure and trial tips. (1.25 MCLE Hours) | **4** |
| **5** | **6**<br>VBN VALLEY BAR NETWORK<br>**5:30 PM**<br>**CHABLIS RESTAURANT TARZANA**<br>VBN is dedicated to offering organized, high quality networking for SFVBA members. | **7**<br>Probate Agreements<br>**12:00 NOON**<br>**SFVBA OFFICES**<br>Sponsored by<br>ANNGEL BENOUN<br>Dilbeck & States<br>CHRISTIE'S INTERNATIONAL REAL ESTATE<br>See Page 37 | **8** | **9** | **10** | **11** |
| **12** | **13** | Probate & Estate Planning Section **14**<br>Certificates of Independent Review<br>**12:00 NOON**<br>**MONTEREY AT ENCINO RESTAURANT**<br>Attorneys Eugene Belous and Nancy Reinhardt explore case law and statutory framework for gifts to care custodians and disqualified individuals; how to overcome the presumptions of invalidity; and practice tips to limit the liability of the drafting attorney. (1 MCLE Hour)<br>Board of Trustees<br>**6:00 PM**<br>**SFVBA OFFICES** | Workers' Compensation Section **15**<br>PTSD<br>**12:00 NOON**<br>**MONTEREY AT ENCINO RESTAURANT**<br>Dr. Scott Frazier, Ph.D., addresses the group on posttraumatic disorders. (1 MCLE Hour) | **16** | **17**<br>  | **18** |
| **19** | **20** | Taxation Law Section **21**<br>Settlements<br>**12:00 NOON**<br>**SFVBA OFFICES**<br>Certified Specialist Cory Stigile will discuss settlements with the California Board of Equalization. (1 MCLE Hour) | **22** | | | |
| **26** | Family Law Section **27**<br>Crossover Issues between Dependency and Family Courts<br>**5:30 PM**<br>**MONTEREY AT ENCINO RESTAURANT**<br>Judge Michael Convey and Elise Greenberg lead the discussion on Family Law Court and Dependency Court crossover issues in child custody proceedings. Approved for Legal Specialization. (1.5 MCLE Hours) | Editorial Committee **28**<br>**12:00 NOON**<br>**TONY ROMA'S** | 2017 Employment Law Update Webinar **29**<br>**12:00 NOON**<br>See Page 37 | | | |

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## DINNER AT MY PLACE

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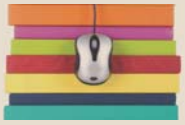
| 2 | **3**<br>VBN VALLEY BAR NETWORK<br>**5:30 PM**<br>**CHABLIS RESTAURANT TARZANA**<br>VBN is dedicated to offering organized, high quality networking for SFVBA members.<br>*Valley Lawyer* Member Bulletin<br>Deadline to submit announcements to editor@sfvba.org for May issue. | **4**<br>ANNUAL JUDGES' NIGHT DINNER<br>SHERATON UNIVERSAL<br>5:00 PM COCKTAIL RECEPTION<br>6:30 PM DINNER AND PROGRAM<br>See Page 8 | 5 | **6**<br>Membership & Marketing Committee<br>**6:00 PM**<br>**SFVBA OFFICES** | 7 | 8 |
| 9 | **10**<br>Happy Passover | **11**<br>Probate & Estate Planning Section<br>**12:00 NOON**<br>**MONTEREY AT ENCINO RESTAURANT** | 12 | **13**<br>Board of Trustees<br>**6:00 PM**<br>**SFVBA OFFICES** | 14 | 15 |
| **16**<br>Happy Easter | 17 | **18**<br>Taxation Law Section<br>New IRS Audit Rules<br>**12:00 NOON**<br>**SFVBA OFFICES**<br>Monica Gianni, CSUN tax professor and Of Counsel at Davis Wright Tremaine LLP, will outline the new IRS audit rules that apply to partnerships and limited liability companies, including their ramifications to the entity and the partners/members. (1 MCLE Hour) | **19**<br>Workers' Compensation Section<br>**12:00 NOON**<br>**MONTEREY AT ENCINO RESTAURANT** | 20 | 21 | 22 |
| 23<br>30 | 24 | **25**<br>Editorial Committee<br>**12:00 NOON**<br>**TONY ROMA'S** | **26**<br>**ADMINISTRATIVE PROFESSIONALS DAY**<br>  | 27 | 28 | 29 |

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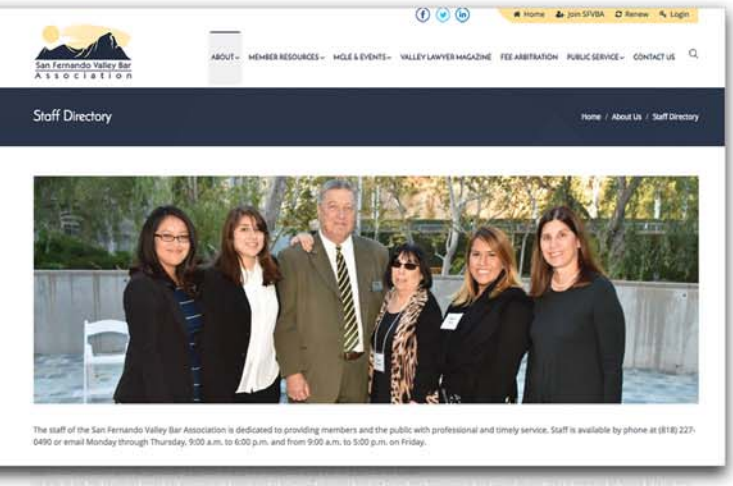
# SFVBA Launches Innovative Website

**ELIZABETH POST**
Executive Director
epost@sfvba.org

OUR 90-YEAR-OLD BAR ASSOCIATION BEGAN 2017 with a well-deserved facelift to our website (SFVBA.ORG). The interactive website, rolled out in January, is the result of an eight-month collaboration between Bar staff, the organization's Technology and Membership & Marketing Committees, and a local web developer.

New additions to SFVBA.ORG include a downloadable event calendar, members' dashboard with a searchable membership directory, photo albums, and Valley Bar Network (VBN) pictorial directory. The state-of-the-art homepage features eye-catching displays of upcoming events, latest news, and President's Circle members and affinity sponsors.

With the new website, the San Fernando Valley Bar Association provides a portal for SFVBA members to easily retrieve their benefits, and access to the Bar's programs and services for all attorneys and the public.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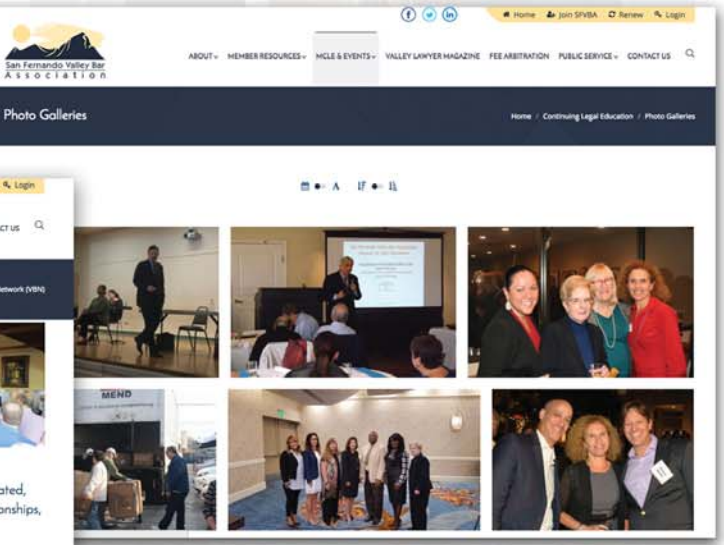
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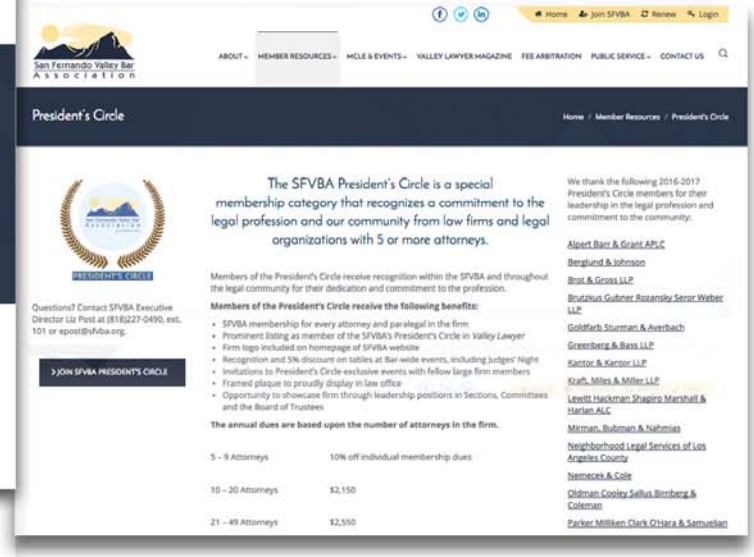
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Members of the President's Circle receive recognition within the SFVBA and throughout the legal community for their dedication and commitment to the profession.
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Questions? Contact SFVBA Executive Director Liz Post at (818)227-0490, ext. 101 or epost@sfvba.org.
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**By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 23.**

# The Evolution of the Private Attorneys General Act of 2004

By Hannah Sweiss

The Labor Code Private Attorneys General Act of 2004 was intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative private attorney general system for labor law enforcement. More than a decade later, wage and hour claims continue to rise and it's unclear if the private attorneys general under PAGA are really initiating lawsuits on behalf of social or public interest.

THE TERM "PRIVATE ATTORNEY GENERAL" FIRST appeared in an appellate court ruling in 1943[1] and generally refers to a private attorney who initiates a lawsuit on behalf of social or public interest.[2] The legislature has the ability to create private attorneys general by statute,[3] which is how the Private Attorneys General Act of 2004 (PAGA) came into being.

**Where it All Began**

Proposed in 2003, Senate Bill (SB) 796, the Labor Code Private Attorneys General Act of 2004, was intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative private attorney general system for labor law enforcement, due to the California Labor Commissioner's lack of resources and truncated ability to enforce California's wage and hour laws.[4] The California Legislature declared:

> *"Adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws in the underground economy and to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices . . . It is therefore in the public interest to provide that civil penalties for violations of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general, while also ensuring that state labor law enforcement agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act."*[5]

Opponents of PAGA feared the new law would disproportionately tip labor law protection in favor of the employee to the detriment of overburdened employers and encourage frivolous lawsuits,[6] citing the fact that employees would be entitled to attorneys' fees and costs if they prevail in their actions, yet there was no similar attorneys' fees and costs for prevailing employers.[7]

Additionally, PAGA opponents feared that it provided no discretion to reduce penalties under the law and that insignificant or inadvertent violations could lead to astronomical penalties. There were also concerns that PAGA plaintiffs would be able to file on behalf of a class, but would not be required to fulfill class certification requirements.[8]

Despite the opposition, on October 12, 2003, PAGA was signed into law,[9] expanding the prospect of litigation under the Labor Code, while allowing an "aggrieved employee"[10] to step in the shoes of the Labor Commissioner and bring a representative civil action to recover specified civil penalties[11] that prior to PAGA could have only been assessed and collected by the Labor and Workforce Development Agency (LWDA).[12] PAGA actions can also include violations that were short in duration, were highly obscure or technical in nature, or those that were so minor they did not incur monetary penalties.

**Senate Bill 1809**

It wasn't long before PAGA lawsuits became alarmingly common and within months of its passage, newly elected California Governor Arnold Schwarzenegger attempted to repeal the law to no avail.

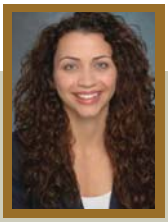
Though his repeal efforts were unsuccessful, he was able to amend the law through Senate Bill 1809 and provide some procedural protection for employers. Since SB 1809 was enacted, employers no longer have to file a copy of their job application forms with the Division of Labor Standards Enforcement.[13]

All settlements, the Senate bill directed, would require court approval,[14] with courts having discretion to reduce the amount of a civil penalty if, under the circumstances, the penalty otherwise would be "unjust, arbitrary and oppressive, or confiscatory."[15]

Another safeguard implemented was the administrative exhaustion procedure, which requires the employee to provide written notice to the LWDA and employer that cites the specific Labor Code sections the employer allegedly violated and sets forth the facts and theories upon which the alleged violations are based.[16] The employee is then required to wait until the LWDA advises it will not investigate the claim, or 65 calendar days of the postmark date of the notice given, before filing suit. Failure to exhaust this administrative remedy within one year of the violation bars the suit.[17]

Despite the passage of SB 1809 and the continued efforts to amend and repeal PAGA, plaintiffs' attorneys have remained vigilant in bringing PAGA suits, leaving employers largely exposed.

Since its inception, PAGA has altered Labor Code enforcement by creating new civil penalties for every provision of the Labor Code that affect employees and that did not previously have a civil penalty,[18] and assuring a private right of action to recover civil penalties (where only previously recoverable by the LWDA).[19]



**Hannah Sweiss** is an employment defense attorney at Lewitt Hackman in Encino. She can be reached at hsweiss@lewitthackman.com.

# SFVBA JOURNEY TO CUBA
# OCTOBER 22-27, 2017

San Fernando Valley Bar Association
*founded in 1926*

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PAGA provides that 25 percent of the civil penalties recovered are awarded to the "aggrieved employees," with 75 percent going to the LWDA.[20] Where no specific civil penalty previously attached to a Labor Code violation, under PAGA there is a "one hundred dollar ($100) [civil penalty] for each aggrieved employee per pay period for the initial violation and two hundred dollar ($200) [civil penalty] or each aggrieved employee per pay period for each subsequent violation."[21]

Shortly after PAGA was enacted, the Court of Appeal in *Caliber Bodyworks v. Superior Court*[22] arguably expanded the scope of PAGA beyond what had been intended, holding that statutory penalties differ from "civil penalties."[23] So, for violations of Labor Codes statutes[24] which do not provide for a "civil penalty," an employee can arguably recover PAGA penalties in addition to the penalties already available under those statutes.

Regardless, if it is possible to obtain an award of civil penalties on top of statutory penalties for the same violation, courts may exercise discretion not to award where doing so would be "unjust, arbitrary and oppressive, or confiscatory."[25]

**A Representative Action**

Before PAGA became law, individual plaintiffs could largely only sue employers on behalf of other employees by way of a class action lawsuit.[26]

Under PAGA, an aggrieved employee may recover civil penalties in a civil action "filed on behalf of himself or herself and other current or former employees."[27] However, PAGA provides almost no guidance on how an "aggrieved" employee can seek penalties on behalf of other aggrieved employees. Thus, PAGA has created a mechanism for employees to sue employers in a representative capacity, without having to satisfy the procedural requirements of a class action lawsuit.

Unlike a class action, where a plaintiff must show ascertainability, commonality, typicality, adequacy, and numerosity,[28] PAGA plaintiffs do not have to establish the existence of an ascertainable class and a well-defined community of interest among the class members, predominant common questions of law or fact, class representatives with claims, or defenses typical of the class. Nor does the class representative have to be an individual that can adequately represent the class.

Significantly, there doesn't need to be any particular number of aggrieved employees to bring a PAGA suit. There is also no requirement to notify other potential PAGA plaintiffs of a pending suit, much less give them the option to opt-out.

So, when the representative nature of PAGA is combined with the ability to stack penalties on top of penalties, the exposure and potential liability can be astronomical for even small employers.

**Scope of Discovery in PAGA Cases: *Williams v. Superior Court***

In addition to the threat of astronomical penalties, when an employee brings a PAGA claim on behalf of a group of employees, PAGA has been used as a tool to obtain wide-ranging discovery (i.e., names and contact information of all employees). In fact, the scope of discovery in a PAGA action is a question currently pending before the California Supreme Court.[29]

The discovery issue made its way to the state's high court after the Second Appellate District affirmed Superior Court Judge William Highberger's decision to deny PAGA plaintiff Williams' motion to compel disclosure of contact information for all nonexempt employees in a PAGA action against the retailer Marshalls.[30]

The *Williams*' court significantly held the discovery request was premature because the plaintiff had yet to be deposed and because the plaintiff had not established the defendants' employment practices were uniform.[31] Writing for the majority, Justice Chaney stated:

> *"Even if Marshalls' employees' identifying information was reasonably calculated to lead to admissible evidence, their right to privacy under the California Constitution would outweigh plaintiff's need for the information at this time. The California Constitution provides that all individuals have a right of privacy. (Cal. Const., art. I, §1.) This express right is broader than the implied federal right to privacy.… The California privacy right "limits what courts can compel through civil discovery." … "[W]hen the constitutional right of privacy is involved, the party seeking discovery of private matter must do more than satisfy the section 2017[.010] standard. The party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced." … A discovery proponent may demonstrate compelling need by establishing the discovery sought is directly relevant and essential to the fair resolution of the underlying lawsuit. Applying this balancing test we conclude Marshalls' employees' privacy interests outweigh plaintiff's need to discover their identity at this time. Those interests begin with the employees' right to be free from unwanted attention and perhaps fear of retaliation from an employer. On the other hand, plaintiff's need for the discovery at this time is practically nonexistent. His first task will be to establish he was himself subjected to violations of the Labor Code. As he has not yet sat for deposition, this task remains unfulfilled. The trial court could reasonably conclude that the second task will be to establish Marshalls' employment practices are uniform throughout the*

> *company, which might be accomplished by reference to a policy manual or perhaps deposition of a corporate officer. The trial court could reasonably conclude that only then will plaintiff be able to set forth facts justifying statewide discovery. The courts will not lightly bestow statewide discovery power to a litigant who has only a parochial claim. Here, the trial court's measured approach to discovery was reasonable.*[32]

Needless to say, the California's Supreme Court's decision will have a significant and immediate impact on California employers. This is especially true for larger employers who are particularly vulnerable to overreaching discovery demands due to the number of locations, the number of employees and positions, the scope of their operations, and the high costs associated with expansive discovery.

Discovery demands such as the one at issue in *Williams* have become commonplace in PAGA litigation and clarity is needed with respect to a trial court's role in determining the appropriate scope and sequence of PAGA discovery.

**Contracting around PAGA?**

Not only are employers subject to massive penalties and broad discovery, the case law evolution of PAGA has produced an outcome not even the original objectors to PAGA could have envisioned—the fact that employers cannot contract around PAGA.

*Iskanian v. CLS Transportation*[33] held that a prospective waiver of an employee's right to bring a representative PAGA claim in court is contrary to public policy and unenforceable as a matter of state law.[34] The court further held that its new rule is not preempted by the Federal Arbitration Act (FAA) because the state's interests in enforcing the Labor Code and recovering civil penalties through a PAGA action does not interfere with the FAA's goals of promoting arbitration as a forum for private dispute resolution.[35] The *Iskanian* court noted:

> *"Simply put, a PAGA claim lies outside the FAA's coverage because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the state, which alleges directly or through its agents—either the Labor and Workforce Development Agency or aggrieved employees—that the employer has violated the Labor Code."*[36]

This issue recently played out in *Hernandez v. Ross Stores, Inc.*,[37] when both the trial and appeals courts denied the employer's motion to compel arbitration. Ross argued Martina Hernandez must arbitrate a dispute over whether or not she was an aggrieved employee before she could pursue

her PAGA action, and on appeal, questioned whether the FAA gave the employer and employee the right to individually arbitrate certain disputes of a PAGA claim.

The court held (1) contractual waiver of representative actions was unenforceable as contrary to public policy as applied to PAGA claims and (2) contractual waiver of representative actions did not authorize trial court to "split" representative claim into an arbitrable "individual claim" and a non-arbitrable representative claim.[38]

The Fourth Appellate District Court's opinion noted "this dispute does not involve an individual claim by Hernandez regarding the Labor Code violations but rather an action brought for civil penalties under PAGA for violating the Labor Code. There are no "disputes" between the employer and employee as stated in the arbitration policy. The trial court properly determined it had no authority to order arbitration of the PAGA claim."[39]

**PAGA and the Ability to Cure**

Prior to 2015, employers were dead in the water even for the most technical violation of the Labor Code. In 2015, Governor Brown approved Assembly Bill 1506, providing employers a right to cure certain pay stub violations within 33 days. The emergency legislation declared:

> *"This bill would provide an employer with the right to cure a violation of the requirement that an employer provide its employees with the inclusive dates of the pay period and the name and address of the legal entity that is the employer before an employee may bring a civil action under the act. The bill would provide that a violation of that requirement shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee, as specified. The bill would limit the employer's right to cure with respect to alleged violations of these provisions to once in a 12-month period, as specified. The bill would also delete references to obsolete provisions of law."*

The bill went into effect immediately, rather than at the start of the 2016 new year, to give employers the opportunity to promptly cure pending disputes arising from wage statements.

On February 2, 2017, Assembly Bill 281 was introduced to amend PAGA to allow an employer the opportunity to cure not only certain pay stub violations, but the proposed law would allow an employer the opportunity to cure any violation (with the exception of health and safety violations).[40] If passed, Assembly Bill 281 will significantly change the landscape of PAGA, providing employers with the ability to cure.

**Procedural Changes to PAGA and Settlement of PAGA**

Last year, Governor Brown signed an amendment to PAGA which made largely procedural changes. Employees must now serve notice to the LWDA online, pay a $75 processing fee, and notify the employer via certified mail.[41]

The LWDA now has 60 days to review claims and consider potential actions,[42] and 180 days to investigate the claim.[43] The complainant must now wait 65 days after notice to LWDA to file a PAGA suit and must provide the LWDA with copies of file-stamped PAGA lawsuit filed in court.[44]

As noted previously, any settlement of a PAGA claim must be reviewed and approved by the court.[45] And effective last year,[46] all proposed settlements shall be submitted to the LWDA at the same time the settlement agreement is submitted to the court.[47]

In PAGA settlements, plaintiff's lawyers typically try to avoid attributing much of the settlement to PAGA because 75 percent of the settlement goes to the LWDA. In fact, California courts have accepted an award of zero dollars attributed to PAGA.[48] However, after last year's amendments to PAGA,[49] the trend is that most courts require some amount to be attributed to PAGA. Among many open-ended questions is one asking whether the 25 percent portion of a PAGA settlement goes only to the individual plaintiff, or distributed among the individual plaintiff and all other alleged aggrieved employees.[50]

> "When the representative nature of PAGA is combined with the ability to stack penalties on top of penalties, the exposure and potential liability can be astronomical for even small employers."

**Employment Defense**

From the evolution of PAGA over the past decade, it is unclear if the private attorneys general under PAGA are really initiating lawsuits on behalf of social or public interest. As we wait and see what happens next with PAGA, wage and hour claims continue to be on the rise, with numerous potential pitfalls for employers left vulnerable to potential PAGA claims.

Though employers will continue to argue PAGA awards are unjust or oppressive—prompting the court to exercise discretion in assessing penalties—there are currently no hard definitions to determine whether or not a particular award qualifies under these categories.

[1] *Associated Industries v. Ickes*, 134 F.2d 694 (2d Cir. 1943) ("Instead of designating the Attorney General, or some other public officer…Congress can constitutionally enact a statute conferring on any non-official person, or on a designated group of non-official persons, authority to bring a suit…even if the sole purpose is to vindicate the public interest. Such persons, so authorized, are, so to speak, private Attorney Generals.")

[2] The phrase is sometimes used to refer to plaintiffs, occasionally used to refer to defendants, and typically refers to lawyers. *See e.g., Fogerty v. Fantasy, Inc*. 510 U.S. 517, 524 (1994); *Albermarle Paper Co. v. Moody*, 422 U.S., 405, 415 (1975); Daniel J. Meltzer, *Deterring Constitutional Violations by Law Enforcement Officials: Plaintiffs and Defendants as Private Attorneys General,* 88 Colum. L. Rev. 247, 251 (1988); Bryant Garth et al., *The Institution of the Private Attorney General: Perspectives from an Empirical Study of Class Action Litigation*, 61 S. Cal. L. Rev. 353, 370 (1988); Geoffrey C. Hazard, Jr., *Modeling Class Counsel*, 81 Neb. L. Rev. 1397, 1403-06 (2003).

[3] *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*., 421 U.S. 240,247-61 (1975) (providing a historical overview of the creation of private attorneys general).

[4] S.B. 796, 2003-2004 Reg. Sess., Cal. Senate Judiciary Committee (April 30, 2003).

[5] S.B. 796, §1, 2003-2004 Reg. Sess., Chapter 906 (Cal. 2003).

[6] S.B. 796, 2003-2004 Reg. Sess., Cal. Senate Floor Analyses (September 11, 2003).

[7] *Id.*

[8] *Id.*

[9] Cal. Lab. Code §2698.

[10] Cal. Lab. Code §2699(c) (for purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.)

[11] Cal. Lab. Code §2699.5.

[12] S.B. 796, Cal. Senate Floor Analyses, *supra*.

[13] S.B. 1809, Chapter 221 (Cal. 2004).

[14] Cal. Lab. Code §2699(l)(2).

[15] Cal. Lab. Code §2699(e)(2).

[16] Cal. Lab. Code §2699.3(1)(A).

[17] *Id.*

[18] Cal. Lab. Code §2699(f).

[19] Cal. Lab. Code §2699(a).

[20] Cal. Lab. Code §2699(i).

[21] Cal. Lab. Code §2699(f)(2). In *Amaral v. Cintas Corp*., 163 Cal. App. 4th 1157, 1209 (2008), the California Court of Appeal held that an "initial" violation encompassed violations covering multiple employees for multiple pay periods, up until such time as "the employer has learned that its conduct violates the Labor Code," at which point "the employer is on notice that any future violations will be punished just the same as violations that are willful or intentional," meaning the penalty rate will be doubled.

[22] *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

[23] *Id.*

[24] *See,* e.g., Cal. Lab. Code §256 (providing a separate civil penalty previously recoverable only by the LWDA for violations of Cal. Lab. Code Section 203); Cal. Lab. Code §210 (providing a separate civil penalty recoverable only by the LWDA for violations of Cal. Lab. Code §§204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5).

[25] Cal. Lab. Code §2699(e)(2).

[26] With the exception of Bus. & Prof. Code §17200 litigation.

[27] Cal. Lab. Code §2699(g)(1).

[28] *Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 470 (1981).

[29] *Williams v. Superior Court*, S227228 (B25997; 236 Cal.App.4th 1151).

[30] *Williams v. Superior Court*, 236 Cal.App.4th 1151, 1159 (2015).

[31] *Id.*

[32] *Id.* at 1158.

[33] *Iskanian v. CLS Transportation Los Angeles LLC*, 59 Cal. 4th 348 (2014).

[34] *Id.* at 384.

[35] *Id.* at 386-387.

[36] *Id.*

[37] *Martina Hernandez v. Ross Stores, Inc*. 7 Cal.App.5th 171 (2016).

[38] *Id.* at 489-90.

[39] *Id.*

[40] A.B. 281, 2017-2018 Reg. Sess., (Cal. 2017).

[41] *See* Senate Bill 836 (effective June 27, 2016); see also, Cal. Lab. Code §2699.3 (1)(B).

[42] Cal. Lab. Code §2699.3 (2)(A).

[43] Cal. Lab. Code §2699.3 (2)(B).

[44] Cal. Lab. Code §2699.3 (2)(A), Cal. Lab. Code §2699 (l)(1).

[45] Cal. Lab. Code §2699(l)(2).

[46] S.B. 836 (26), 2015-2016 Reg. Sess., Chapter 31 (Cal. 2016).

[47] *Id.*

[48] *Nordstrom Commission Cases*, 186 Cal.App.4th 576, 589 (2010) (Appellate court found no abuse of discretion in trial court's approval of settlement agreement where the parties allocated $0 to any PAGA claim.)

[49] S.B. 836 (26), supra.

[50] *Cunningham v. Leslie's Poolmart, Inc.* (2013) WL 3233211, fn. 1 ("…the best interpretation of PAGA is that the penalties not distributed to the Labor Workforce Development Agency are distributed to the individual employee who brought the action.")

# Test No. 101

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. A private attorney general is usually a private attorney who initiates a lawsuit on behalf of social or public interest.
   ❑ True ❑ False

2. The Private Attorneys General Act of 2004 (PAGA) was unopposed.
   ❑ True ❑ False

3. PAGA has altered Labor Code enforcement by creating new civil penalties for every provision of the Labor Code that affect employees and that did not previously have a civil penalty.
   ❑ True ❑ False

4. After SB 1809 was passed, there is no administrative exhaustion requirement.
   ❑ True ❑ False

5. One of the amendments to PAGA after the passage of SB 1809 gave courts the discretion to reduce the amount of a civil penalty if, under the circumstances, the penalty otherwise would be unjust, arbitrary and oppressive, or confiscatory.
   ❑ True ❑ False

6. An employee is required to wait until the Labor and Workforce Development Agency (LWDA) advises it will not investigate the claim, or 65 calendar days of the postmark date of the notice given, before filing suit.
   ❑ True ❑ False

7. PAGA provides that 25% of the civil penalties recovered goes to the aggrieved employees and 75% goes to the LWDA.
   ❑ True ❑ False

8. Under PAGA, there is a $200 civil penalty for each aggrieved employee per pay period for the initial violation.
   ❑ True ❑ False

9. PAGA is not a representative action.
   ❑ True ❑ False

10. A PAGA plaintiff is required to show ascertainability, commonality, typicality, adequacy, and numerosity to proceed with a PAGA action.
    ❑ True ❑ False

11. The scope of discovery in a PAGA action is a question currently pending before the California Supreme Court.
    ❑ True ❑ False

12. Employers cannot contract around PAGA.
    ❑ True ❑ False

13. *Iskanian v. CLS Transportation* held that a prospective waiver of an employee's right to bring a representative PAGA claim in court is contrary to public policy and unenforceable as a matter of state law.
    ❑ True ❑ False

14. In 2015, Governor Brown approved Assembly Bill 1506, providing employers a right to cure certain pay stub violations within 33 days.
    ❑ True ❑ False

15. On February 2, 2017, Assembly Bill 281 was introduced to amend PAGA to allow an employer the opportunity to cure not only certain pay stub violations, but the proposed law would allow an employer the opportunity to cure any violation (with the exception of health and safety violations).
    ❑ True ❑ False

16. PAGA settlements do not require court approval.
    ❑ True ❑ False

17. A question remains as to whether the 25% portion of a PAGA settlement goes only to the individual plaintiff, or distributed among the individual plaintiff and all other alleged aggrieved employees.
    ❑ True ❑ False

18. Last year, Governor Brown signed an amendment to PAGA which made largely procedural changes.
    ❑ True ❑ False

19. The LWDA now has 60 days to review claims and consider potential actions, and 180 days to investigate the claim.
    ❑ True ❑ False

20. All proposed settlements shall be submitted to the LWDA at the same time the settlement agreement is submitted to the court.
    ❑ True ❑ False

## MCLE Answer Sheet No. 101

**INSTRUCTIONS:**

1. **Accurately complete this form.**
2. **Study the MCLE article in this issue.**
3. **Answer the test questions by marking the appropriate boxes below.**
4. **Mail this form and the $20 testing fee for SFVBA members (or $30 for non-SFVBA members) to:**

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

**METHOD OF PAYMENT:**

❑ **Check or money order payable to "SFVBA"**
❑ **Please charge my credit card for $_____.**

_____
**Credit Card Number** **Exp. Date**

_____
**Authorized Signature**

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

**Name**_____
**Law Firm/Organization**_____
_____
**Address**_____
**City**_____
**State/Zip**_____
**Email**_____
**Phone**_____
**State Bar No.**_____

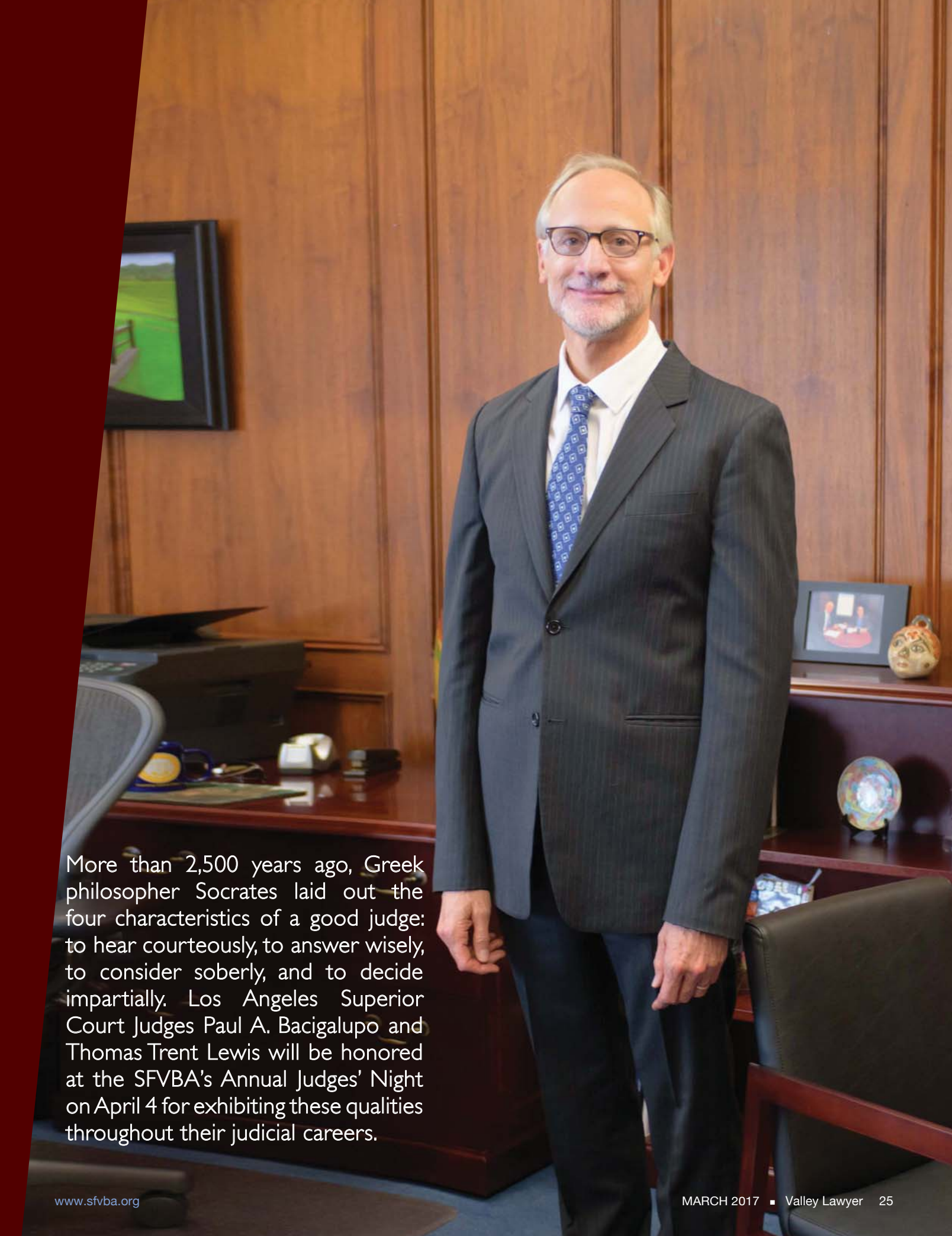
**ANSWERS:**
**Mark your answers by checking the appropriate box. Each question only has one answer.**

| | | |
|---|---|---|
| **1.** | ❑ **True** | ❑ **False** |
| **2.** | ❑ **True** | ❑ **False** |
| **3.** | ❑ **True** | ❑ **False** |
| **4.** | ❑ **True** | ❑ **False** |
| **5.** | ❑ **True** | ❑ **False** |
| **6.** | ❑ **True** | ❑ **False** |
| **7.** | ❑ **True** | ❑ **False** |
| **8.** | ❑ **True** | ❑ **False** |
| **9.** | ❑ **True** | ❑ **False** |
| **10.** | ❑ **True** | ❑ **False** |
| **11.** | ❑ **True** | ❑ **False** |
| **12.** | ❑ **True** | ❑ **False** |
| **13.** | ❑ **True** | ❑ **False** |
| **14.** | ❑ **True** | ❑ **False** |
| **15.** | ❑ **True** | ❑ **False** |
| **16.** | ❑ **True** | ❑ **False** |
| **17.** | ❑ **True** | ❑ **False** |
| **18.** | ❑ **True** | ❑ **False** |
| **19.** | ❑ **True** | ❑ **False** |
| **20.** | ❑ **True** | ❑ **False** |

# A Truly Dynamic Duo:
## SFVBA Honors Outstanding Jurists

**By Michael D. White**

*Photos by Ron Murray*



More than 2,500 years ago, Greek philosopher Socrates laid out the four characteristics of a good judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially. Los Angeles Superior Court Judges Paul A. Bacigalupo and Thomas Trent Lewis will be honored at the SFVBA's Annual Judges' Night on April 4 for exhibiting these qualities throughout their judicial careers.

AT ITS ANNUAL JUDGES' NIGHT DINNER ON APRIL 4 at the Sheraton Universal Hotel, the San Fernando Valley Bar Association will recognize Los Angeles Superior Court Judges Paul A. Bacigalupo and Thomas Trent Lewis for their years of distinguished service to the community and the legal profession.

"We're pleased to honor Judge Paul Bacigalupo as our 2017 Judge of the Year and Judge Thomas Trent Lewis with the Stanley Mosk Legacy of Justice Award," says Bar Association President Kira Mastellar.

"Judge Bacigalupo has distinguished himself with his commitment to justice and judicial excellence. He has demonstrated a sincere desire to help make justice accessible to all, as exemplified by his chairing the 2016 countywide Court-Clergy Conference, an interfaith dialogue with religious leaders and the Los Angeles Superior Court, which our ARS has been privileged to participate in."

At the same time, she says, "I am proud to follow in the footsteps of [SFVBA Past President] Judge Thomas Trent Lewis. As Supervising Judge of the Superior Court's Family Law Division, he is held in high esteem by the attorneys who appear before him for his dedication to families and children. We honor him for his tenure on the bench exhibiting patience and depth, as well as almost 40 years as a respected authority in the family law arena."

Two judges who personify something Socrates wrote defining the core philosophy of judgeship—"to hear courteously, to answer wisely, to consider soberly, and to decide impartially."

What the Greek philosopher penned more than 2,500 years ago was as true then as it is today, a simple, straightforward, and challenging job description for those who sit on the bench and serve the community, and the legal profession itself, as the very personification of the law.

"Courts are like emergency rooms where the ills of society on virtually every level are diagnosed and treated," says Judge Bacigalupo, the 2017 recipient of the SFVBA Judge of the Year Award.

Over the past several years, he says, there's been a "shift in the public's attitude toward the judiciary, with a growing feeling that it's become politicized and less independent," adding that "what happens in the courtroom molds people's perceptions of authority and the scope of the law, so it's critical then that judges do all they can to humanize their role in the legal process."

A native of Visalia in Central California, Judge Bacigalupo received his undergraduate degree from Santa Clara University and his J.D. from McGeorge School of Law in Sacramento. He then served as a judicial clerk for the U.S. Immigration Court in downtown Los Angeles, working with nine administrative law judges, followed by eleven years practicing civil law at Castle & Lax in state courts throughout California.

It was during that period that Judge Bacigalupo acted as a founding attorney mediator and arbitrator with JAMS in Los Angeles—an experience that had a profound impact on his career and instilled a deep appreciation for the role of arbitration and resolution in the legal process.

Dispute resolution, he says, "allows parties to have more control to pursue a family, business, neighbor relationship in a non-adversarial environment with established guidelines. It's a vehicle that gets you to a good place, namely a common ground between two opposing parties."

Elected to the Los Angeles Superior Court in 2002 after serving as a judge for the State Bar Court, he currently sits in Van Nuys in an unlimited general jurisdiction conducting civil trials. From 2003 to 2014, he was assigned to the South Central District in Compton, handling high security, long-cause felony trials, as well as misdemeanor cases, preliminary hearings, arraignment and early disposition court, and drug and traffic court.

"Every case was, and is, its own separate organism, and I think it's safe to say that, both as a practicing attorney and as a judge, I've seen it all," he says, citing an accumulation of experience that has led him to serve last year as a founding faculty member of a groundbreaking program studying the impact of—and ways to cope with—the trauma visited every day on lawyers, plaintiffs, defendants, jurors, witnesses and judges.

Offered under the auspices of the MacArthur Foundation Research Network on Law & Neuroscience and the Advanced Judicial Studies Institute in San Diego, the course fixes on the juxtaposition of the law and neuroscience to analyze what impact vicarious trauma has

on memory, testimony, lie detection, and a significant part of what happens in a courtroom.

"It's a fascinating approach to much of what happens in a courtroom," says Judge Bacigalupo. "Much of it is groundbreaking in giving judges and others the tools they need to deal with the stress they confront on a regular basis and can only help make the judicial process function more effectively."

Last year, in addition to his other commitments, he served as chair of the Los Angeles Superior Court-Clergy Conference in Tarzana, which educated more than 125 local clergy on how to best minister to their communities in times of legal crisis.

Judges "have an obligation to be involved in the community," he says. "That helps in a significant way to de-mystify the judge's role in the legal process," as does mentoring young attorneys, a much-needed commitment he sees as a critical component of a complete legal education.

"Young attorneys need mentors, but, unfortunately, many don't ever get one," he says. "The culture at many law firms often doesn't allow young lawyers the opportunity of getting into the courtroom so they can see how things really work."

Only by mentoring them, he says, "can we mold educated, mindful and respectful advocates. It's incumbent on judges to mentor from the bench, as it were…to be fair, thoughtful, sober in judgment, respectful of the law and insightful and present an ideal for younger lawyers to emulate. It's one of the best things we can do."

All in all, says Judge Bacigalupo, "I've been blessed with the opportunity to be of service and help in some way


Los Angeles Superior Court Judge Holly J. Fujie has been named the recipient of the San Fernando Valley Bar Association's prestigious Diversity Award.

"I am incredibly honored to receive the SFVBA's Diversity Award for 2017," Judge Fujie says. "It has been my privilege to participate in the Association's diversity activities for many years, and I continue to be amazed at the scope and breadth of those efforts. The SFVBA's diversity activities are among the best offered by any bar association I know, and they have done so much for the cause of inclusivity in our profession."

Judge Fujie, who earned both her undergraduate and law degrees from UC Berkeley, was named to the bench by Governor Jerry Brown in December 2011 and was an equity shareholder in the firm of Buchalter Nemer from 1991 until she took office as a judge of the court.

Judge Fujie was elected to the State Bar Board of Governors—now the Board of Trustees—in 2005 and served as the organization's president during the 2008-2009 term. She was the first Asian-American to hold that position and has served on the boards of the California Bar Foundation, the Women Lawyers Association of Los Angeles, the Los Angeles chapter of the Federal Bar Association, the Boalt Hall Alumni Association, Bet Tzedek, and the Chancery Club.

In 2009, she received the "Making a Difference through Service to the Profession Award" from the American Bar Association. Last year, the California Women Lawyers presented her with its 2016 Joan Dempsey Klein Distinguished Jurist Award in recognition of her "excellence as a jurist and for long-standing, vigorous service and inspiration to women lawyers in California."

"I'm so pleased that Judge Holly Fujie is receiving our Bar's Diversity Award," says SFVBA Immediate Past President Carol L. Newman. "Judge Fujie and I go back 30 years to when we were both associates, and then partners, in a law firm. She was my closest compadre, and I followed her career after that to her partnership in a major law firm, President of the State Bar, and then a judgeship. I also see her every quarter at the meetings of the Multicultural Bar Alliance, of which our Bar is a proud member. I can't think of anyone better to receive our Diversity Award."

to repair the public's trust and confidence in judicial affairs. People want, and deserve, procedural fairness."

Worthy goals for all judges, no matter the circumstance, but more often than not, people enter a courtroom unrealistically seeking more than justice—they're looking to be vindicated, validated and, perhaps, compensated.

That's particular true in family law, one of the most involved, and, very often, emotionally-wrenching areas of legal specialty.

Family law, says Judge Thomas Trent Lewis, "has always been about helping influence the future for families and children with, hopefully, a positive approach. Some, for whatever reasons, view family law as a second-class field of the law, but don't view it that way. I see it as a sacred trust, an opportunity to influence the lives of people and give them the opportunity to move on."

As Supervising Judge of the Superior Court's Family Law Division and this year's recipient of the SFVBA's Stanley Mosk Legacy of Justice Award, Judge Lewis has seen "both sides now" in a distinguished career spanning almost four decades that include eleven years on the bench and supervising the family law division.

Often, he says, "We, as judges, tend to think that we have a magic wand and a scepter, but we don't really. What we have is the opportunity to set the tone as to how people are going to organize their lives and conduct themselves."

Judge Lewis was "strongly encouraged" to go into the law by his father—a World War II pilot and investment banker—and his mom, a homemaker with a degree in social work, who had worked with several Catholic adoption agencies and was the first person in her family to graduate from college.

A true son of the Valley, Judge Lewis was raised in Woodland Hills and, following graduation from Taft High School, graduated from UCLA and the University of La Verne Collage of Law.

"Early in my career, like everybody who was with a small Valley firm, I helped handle whatever came in the door…some criminal cases, some worker's comp cases… but, very early in my career, I decided I wanted to specialize in family law," he says.

And specialize he did, holding numerous positions and receiving multiple kudos for his devotion to the practice and application of family law. To name but a few, Judge Lewis became a Certified Family Law Specialist in 1985 and was inducted into the Academy of Matrimonial Lawyers in 1987. He served on the Family Law and Juvenile Advisory Commission until 2014. In 2010, he was awarded the Outstanding Jurist Award by AAML's Southern California Chapter, and in 2014, he became the first emeritus member of the Association of Certified Family Law Specialists.

From 2015 to the end of 2016, he presided over a long cause family law trial department in Los Angeles and served as Assistant Supervising Judge of the Family Law Division from 2011 to 2014. He served on the Family Law and Juvenile Advisory Commission until 2014 and, last year, was honored with induction as a Fellow of the International Academy of Family Law.

Judge Lewis is immediate past president of the California Chapter of the Association of Family and Conciliation Courts and, in 2015, received LACBA's Family Law Section Spencer Brandeis Award, the highest honor bestowed by the group.

A past president of the San Fernando Valley Bar Association and the California Chapter of the Association of Family and Conciliation Courts, Judge Lewis is a contributing author of The Rutter Group's *California Practice Guide: Family Law* and serves as CFLR Program Director for the update program, the advanced family law program, the basic training program, the evidence programs, and the expert series programs.

Most curiously, Judge Lewis learned many of the basics of how to conduct himself both as an attorney and as a judge years ago surfing along the Southern California coast at beaches from the Ventura County line to the Trestles.

"I started surfing in 1964 and the experience actually helped me be a better lawyer," he says. "I learned to not be afraid and how to persevere because I think those two attributes are key to being a good lawyer. You have to take risks, so I think the sport translates very well into the law. Being able to maintain balance in critical situations and learning to adjust in rapidly changing circumstances, all that's important."

> "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially." —*Socrates*

Another inspiration was meeting California State Supreme Court Associate Justice Stanley Mosk himself. "We met in 1988 at a luncheon at Cal State, Northridge," says Judge Lewis. "He was still sitting on the California Supreme Court and was as vibrant as ever."

Mosk, he says, "understood that it is a high calling to be a lawyer, as well as what it took to be an effective officer of the court—bringing all of the intellectual power and wisdom that you have to what you're doing and not sacrificing your common sense.

Those were things that Mosk was known for."

Lauded as a great scholar of the Constitution, Mosk wrote the decision on what Judge Lewis says "was probably the most important child custody case" on the books, namely *Marriage of Carney*.

"It was written by Mosk about the issue of whether a disabled father could be a real dad," says Judge Lewis. "He wrote an incredible decision in language that eloquently and powerfully describes what it means to be a parent. You always have to look at the issue as an opportunity to find the best solution for the parties involved and that's what Mosk was known for."

Family law, says Judge Lewis, "is a serious thing and advancing the interests of kids and families is something, in the end, I'd like to say I did a little bit in helping along."

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By Steven A. Simons

# Hands On, Hands Off: Driverless Car Liability

IN THE CONTEXT OF TODAY, THE Baby Boomer memory of futuristic family man George Jetson arriving home at the Skypad Apartments in his ultra-modern, autonomous space car can instantly conjure up an image of complex hash of litigation and contested liability in any inquisitive legal mind.[1]

At the core, one begins to speculate exactly who would or should be responsible if his car were to crash and injuries or damage ensued. The manufacturer? The individual who designed the vehicle's operational computer program? The technician who installed the program? George himself?

Those questions may soon move from the realm of the hypothetical to reality as we move, day by day, to seeing such "driverless" vehicles on our community's streets and more and more of today's vehicles are sold with advanced technologies unheard of just a year ago—technology like forward collision warning, with or without auto brakes, electronic stability control, Roll Stability Control, adaptive front lighting, auto dimming lights, to name a few.

Yet, as automakers advance the technology to produce such driverless vehicles, the fundamental question still remains "Who is liable if and when…?" as computer-programmed, self-driving cars come closer to becoming a reality and the character of potential litigation becomes vastly more complex and expensive.[2]

## Background

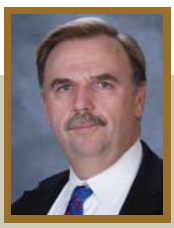
Much has been written concerning the issue of liability for injuries when driverless cars misbehave. Currently, the enactment of specific regulations has been slowed by unaddressed ethical and legal concerns, particularly when it comes to liability for driverless car accidents.[3] Auto makers have complained that the lack of standardized national regulation has hindered the appearance of driverless cars on the market.[4] To be sure, a number of states, including California, have stated that all motor vehicles—driverless or not—must have a licensed driver at all times.[5] At the same time, it should be noted that California has issued permits to allow autonomous vehicle testing to twenty different corporations as of January 17 of this year.

Other states have determined that existing laws are perfectly suited to determine liability, while the National Highway and Traffic Safety Administration (NHTSA) assures us that it has a "solid game plan" and that "current standards are sufficiently flexible" to allow for the development of autonomous, driverless cars.[6]

Swedish automaker Volvo stepped to the fore in 2015 when it stated that the company would accept full responsibility whenever a collision occurred when its cars were in so-called "autonomous" mode.[7] But there was the qualifier that judges and lawyers would soon be debating exactly when a vehicle is in autonomous mode, and when it isn't.

Northern California-based Tesla, on the other hand, has taken the exact opposite tack, stating that it would not be responsible for any autonomous mishaps unless it was something endemic in Tesla's design.[8]

In February 2016, Google reported that its self-driving car was involved in its first crash involving



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non-human error, i.e., a software issue, when the car changed lanes while traveling at 2 mph. The vehicle changed lanes in front of a bus, which was travelling at 15 mph.[9] What wasn't heavily reported about this crash was the fact that Google's on-board test driver saw the bus approaching and failed to override the computerized control system as he believed the bus would slow down and allow the car to merge into its traffic lane. Thus, it would seem that the test-driver was comparatively negligent and, had someone been injured, there would a clear issue of apportionment of fault.

Last year, the *New York Times* reported the first known fatal incident involving a self-driving vehicle, which occurred on May 7, 2016 in Williston, Florida, when a tractor-trailer made a left turn in front of a Tesla, which was in self-driving mode. The car failed to apply the brakes, resulting in the death of the Tesla's driver in the ensuing collision.[10]

Over time, these and other incidents that are sure to occur will call into question who is responsible for the personal injury and property damage that results from these incidents.[11]

**Basis for Liability**

Typically, lawyers would consider two potential causes of incidents involving autonomous cars—either human error or mechanical failure. There is an interplay between the software and the onboard human in that the software could have the tendency to make the driver-attendant complacent or overconfident in the capability of the controlling software and less alert to the possibility of a potentially deadly accident.

While automaker GM has included a warning in its owner's manuals and a software prompt for the driver, others haven't yet reached that level of communicating technical information. Further, although it can be argued that software and programing failures are the result of human error, for the purpose of this article, it will be assumed that such defects fall into the category of mechanical failure as they are an integral part of the end-product.[12]

When one considers potential vehicle design defects, it's easy to imagine everything from the mundane—the vanity mirror light not working—to the exotic—the vehicle mindlessly pulling into the path of a moving train. These failures can, and do, occur despite the existence of software backup systems, vehicle mounted cameras, sensors and other failsafe methods.

To be sure, many new cars already come equipped with collision avoidance, lane deviation and other sophisticated warning systems, including Ford's electronic warning that advises drowsy drivers to pull over and rest, and Volvo's Pilot Assist mode which relies on a windshield-mounted computer equipped with a camera and radar to automatically accelerate, decelerate, avoid obstacles, and stay in the appropriate lane at speeds of up to 80 mph. Thus, liability may well be determined on a case-by-case basis based upon the degree of control of the driver.

There are also instances of the autonomous vehicle recognizing a false threat. Tesla, in the instance of last year's fatal collision in Florida, said that the white backdrop of the truck involved couldn't be recognized by the car's alert system against the glare of the sunlight.

In another example, recent testing by the NHTSA indicated so-called false positive results during one of the eight maneuvers used in a recent study. Here, the "Object in Roadway—Steel Trench Plate" test produced a false positive for one particular vehicle model where the sensors indicated that a collision was imminent.[13]

In the case of Google, the issue levitates to an even higher level. The company has said it plans to build completely automated, driverless vehicles—a scenario that, for all intents

and purposes, would lead one to conclude that the company itself is the driver and would bear any and all liability in any legal action.

While a Volvo with its onboard steering wheel may have a modified degree of control, still further, GM provides warnings to buyers of its new 2017 Cadillac that the "human driver must remain alert and ready to take over steering if visibility dips or weather changes."[14]

To be sure, the 2017 Ford Fusion Owner's Manual contains a disclaimer, which every manufacturer seems to be placing, at the front of its owner's manual. Driving while distracted, it states, "can result in loss of vehicle control, crash and injury. We strongly recommend that you use extreme caution when using any device that may take your focus off the road. Your primary responsibility is the safe operation of your vehicle. We recommend against the use of any hand-held device while driving and encourage the use of voice-operated systems when possible."[15]

Currently, California's strict liability law "is invoked for three types of defects—manufacturing defects, design defects, and warning defects, i.e., inadequate warnings or failures to warn."[16] However, a party will not be "held strictly liable unless doing so will enhance product safety, maximize protection to the injured plaintiff, and apportion costs among the defendants."[17]

But one must always be aware that "engineers who do not participate in bringing a product to market and simply design a product are not subject to strict products liability"[18] and that, in product liability circles, insurance companies routinely distribute consumer cash payouts and seek to recover those payments from components manufacturers whose products allegedly malfunctioned.[19]

It must be remembered that there are numerous defenses to the manufacturer in the strict product arena. First and foremost, there must be a showing that the manufacturer produced the product;[20] that the product was being used in the intended, or foreseeable manner;[21] that the product was responsible for the injury;[22] and that the degree of fault that can be passed on to the injured party or a third person.[23] Often, in order to establish the necessary legal points, the injured party will be required to retain experts relating to these issues.

Gone are the days when a shade tree mechanic armed with a roll of duct tape, a vise-grip wrench and a set of socket wrenches could repair a car in his backyard. Today, service technicians are equipped with laptop computers loaded with expensive proprietary software that analyzes problems and reboots sophisticated electrical, emissions and propulsion systems. The automakers have access to the data gleaned during the repair process, which is analyzed for such anomalies as unauthorized modifications, misuse, and upgrades failures.

As a result, an injured party would have to be prepared to seek out all available maintenance, service and modification records. Where the injured party is an innocent third-party, this information will, of necessity, have to be obtained during discovery. Most manufacturers can pinpoint the engine speed at the time of an event in order to aid in transferring fault away from the vehicle and to the driver, thereby tipping the scales heavily in favor of the well-funded manufacturer.

While strict products liability serves to protect those injured by defective products, many jurisdictions have enacted various consumer protection statues, often referred to as lemon laws. California's lemon law, known as the Song-Beverly Consumer Warranty Act, like others across the country, is designed to address the inability

of a manufacturer to repair defects in a product sold to consumers, in this instance, a motor vehicle. In its most basic form, the lemon law is designed to level the playing field for consumers when the manufacturer cannot, or will not, repair a non-conformity in its product.[24] [25]

The Song-Beverly Act "is a remedial statute designed to protect consumers who have purchased products covered by an express warranty." One of the most significant protections afforded by the Act is that "if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer." All that is necessary "is that the consumer afford the manufacturer a reasonable number of attempts to repair the goods to conform to the applicable express warranties."[26]

Even the lemon law has its defenses to protect the manufacturers, though. The only act that the consumer must undertake is to allow the manufacturer a reasonable opportunity to repair the non-conformity.[27]

While no case law has addressed the issue of "unauthorized or unreasonable use," at least one case has held that the consumer must allow for at least one repair attempt by the manufacturer before the issue of reasonable number of repair attempts can be submitted to the jury.[28] Civil Code §1794.3 allows for this defense based upon conduct after the vehicle was sold. Thus, in any driverless car case there will be issues of unauthorized use, which has not yet been defined by statute or case law.

These could include the modification of tires, wheels, fender, bumpers, etc. by the dealer or owner that change the vehicles dimensions without adjusting the parameters of the onboard computer software. Even improper prior repairs, i.e., independent shops or shade tree mechanics could allow a manufacturer to assert there were unauthorized modifications. Even where the autonomous vehicle has a steering wheel and the operator fails to take control when the system fails, "the driver will always face potential liability in an accident, with the scope depending on the circumstances of the mishap."[29]

Nor is there any case law defining the phrase "unreasonable use" which is subject to broad interpretation. In one case, the manufacturer claimed it was unreasonable for a consumer to take the 4-wheel drive vehicle he had purchased on an off-road track. In another, the manufacturer felt it was unreasonable for the owner of a Corvette to drive the car on a race track.

Finally, lemon laws require that the non-conformity affect the use, value or safety of the vehicle. Many manufacturers will assert the consumer's continued use of the vehicle is evidence of the safety or lack of dangerous condition, while others may assert that the consumer, paying $750 a month for the financing, should have parked the vehicle and taken the bus to work.

While a number of articles have been written and studies conducted, addressing the question of autonomous vehicle liability promises to remain, at least for some time, shrouded in speculation and legal theory. This despite a 2014 Brookings Institution paper which concluded that existing product liability law already covers the shift to autonomous vehicles taking to the nation's highways.

Be that as it may, most legal scholars agree that it is way too soon to find a point of convergence between the law and what has proven to be a new and problematic technology.

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[1] George Jetson is a fictional character from the animated television series The Jetsons (https://en.wikipedia.org/wiki/George_Jetson).

[2] Fung, Brian, *The big question about driverless cars no one seems able to answer*, The Washington Post, February 17, 2016.

[3] *Who is responsible for a driverless car accident?*, British Broadcasting Corporation, (October 8, 2015), http://www.bbc.com/news/technology34475031.

[4] Iozzio, Corinne, *Who's Responsible When a Self-Driving Car Crashes?*, Scientific American, (May 1, 2016), https://www.scientificamerican.com/article/who-s-responsible-when-a-self-driving-car-crashes; *Who is responsible for a driverless car accident?*, British Broadcasting Corporation, (October 8, 2015), http://www.bbc.com/news/technology34475031.

[5] *Who is responsible for a driverless car accident?, supra*.

[6] Croft, Sara, *Who Will be Liable for Driverless Cars?*, Automotive World, (July 29, 2013), *https://www.automotiveworld.com/analysis/comment-who-will-be-liable-for-driverless-cars.*

[7] *Who's Responsible When a Self-Driving Car Crashes?, supra*.

[8] Muoio, Danielle, *Elon Musk: Tesla not liable for driverless car crashes unless it's design related*, Business Insider, (October 19, 2016), *http://www.businessinsider.com/elon-musk-tesla-liable-driverless-car-crashes-2016-10.*

[9] Davies, Alex, *Googles' Self-Driving Car Caused Its First Crash, Wired*, (February 29, 2016), https://www.wired.com/2016/02/googles-self-driving-car-may-caused-first-crash.

[10] Vlasic, Bill and Boudette, Neal E., *Self-Driving Tesla Was Involved in Fatal Crash, U.S. Says*, New York Times, (June 30, 2016), *https://www.nytimes.com/2016/07/01/business/self-driving-tesla-fatal-crash-investigation.html?_r=0.*

[11] The author prefers the term "incident" over "accident" as the later seems to imply that an event happened by chance or is without apparent or deliberate cause. Whereas an incident can be traced to a specific cause (i.e., mechanical failure, human failure, etc.).

[12] *Arriaga v. CitiCapital Commercial Corp*. (2008) 167 Cal.App.4th 1527, 1534 [85 Cal.Rptr.3d 143] ("Beyond manufacturers, anyone identifiable as 'an integral part of the overall producing and marketing enterprise' is subject to strict liability.")

[13] Snyder, A., Martin, J., & Forkenbrock, G. (2013, July). *Evaluation of CIB system susceptibility to non-threatening driving scenarios on the test track*. (Report No. DOT HS 811 795). Washington, DC: National Highway Traffic Safety Administration.

[14] *Who's Responsible When a Self-Driving Car Crashes?, supra.*

[15] *2017 ESCAPE Owner's Manual, available at* http://www.evergreenford.com/dealer/wp-content/uploads/2016/12/2017-Ford-Escape_Manual.pdf.

[16] *Anderson v. Owens-Corning Fiberglas Corp*. (1991) 53 Cal.3d 987, 995 [281 Cal.Rptr. 528, 810 P.2d 549].

[17] *Hernandezcueva v. E.F. Brady Co., Inc*. (2015) 243 Cal.App.4th 249, 258 [196 Cal.Rptr.3d 594].

[18] *Romine v. Johnson Controls, Inc*. (2014) 224 Cal. App.4th 990, 1008 [169 Cal.Rptr.3d 208].

[19] *The big question about driverless cars no one seems able to answer, supra.*

[20] CACI 1201(1).

[21] *Cronin v. J.B.E. Olson Corp*. (1972) 8 Cal.3d 121, 125–126 [104 Cal.Rptr. 433, 501 P.2d 1153].

[22] *Garcia v. Joseph Vince Co*. (1978) 84 Cal.App.3d 868, 874 [148 Cal.Rptr. 843].

[23] *See generally, Daly v. General Motors Corp*. (1978) 20 Cal.3d 725, 737 [144 Cal.Rptr. 380, 575 P.2d 1162]; *Dafonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 603 [7 Cal.Rptr.2d 238, 828 P.2d 140]; *Hasson v. Ford Motor Co.*, 19 Cal.3d 530 (1977).

[24] Cal. Civ. Code §§1790-1795.7.

[25] Cal. Civ. Code §1791(a). The Song-Beverly Consumer Warranty Act applies to "consumer goods" and not just to automobiles.

[26] *Martinez v. Kia Motors America, Inc*. (2011) 193 Cal.App.4th 187, 191 [122 Cal.Rptr.3d 497], *internal citation omitted*.

[27] *Oregel v. American Isuzu Motors, Inc*. (2001) 90 Cal.App.4th 1094, 1103–1104 [109 Cal.Rptr.2d 583].

[28] *See Silvo vs. Ford Motor Co*. (2003) 109 Cal.App.4th 1205, 1208-09.

[29] *Drivers still liable in accidents, even in near-driverless cars, law firm says*, CBC Radio-Canada, (August 1, 2016), *http://www.cbc.ca/news/business/autonomous-car-borden-ladner-gervais-1.3703347*.

# The Blueprint Guide to Becoming a Legal Blogger

By Deborah S. Sweeney

EARLIER THIS YEAR, THE California State Bar's Standing Committee on Professional Responsibility and Conduct finalized an opinion on the regulation of lawyers' blogs.[1] [2] The opinion stated that, unless their blog expressly mentions that they are available for employment, California lawyers may now blog outside their law office website without worrying about lawyer advertising standards.

For most bloggers, blogging offers few communication limitations. Blog posts, even those sponsored by a brand, may be written on just about any topic as long as it makes sense for the blog's readership. However, this is not quite the case for legal bloggers. California Rule of Professional Conduct 1-400 on Advertising and Solicitation states "'communication' means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a law firm directed to any former, present, or prospective client." Some areas of communication include the use of a firm name, signage or stationery materials like business cards and brochures, and public advertisements.

While blog posts have never formally been considered communication, the legal community still treads with care in this area due to the public nature of a blog. As blogging continues to rise in popularity with the legal community, it is not uncommon to see attorneys positioning themselves as experts by demonstrating legal expertise through their blogs.

The question now is based on limits. How much information can those in the legal profession provide without engaging in the unauthorized practice of law? What can they say and not say on a blog, as free speech protected by the First Amendment? And while open statements of employment declarations are not allowed, how can legal bloggers continue to accumulate clout and traction on an influencer's level through blogging without risking their license in the process?

**Integrated Blogs vs. Stand-Alone Blogs**

First, it's important to understand the communication differences between integrated blogs and stand-alone blogs. The California State Bar has defined integrated blogs as ones that are part of a professional attorney's or law firm's website. These blogs, and their posts, are considered communication. Just as the website is subject to rules and statutes regulating attorney advertising, so must the blog adhere to the same rules as it is a part of the website.

The State Bar notes that there are two styles of stand-alone blogs. The first is by an attorney on a legal topic. The attorney behind this blog may write on a topic in his practice, or in an entirely different field, and it will not be considered communication. As mentioned earlier, it's only if the attorney openly gives readers the distinct impression that he is available for hire will he be held to the requirements of attorney advertising rules.

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The second stand-alone blog is one written by an attorney on a non-legal topic. This blog could be about any topic from food to film and it would still not be considered communication subject to the statutes that regulate attorney advertising rules. These types of blogs may also include links to the professional attorney or law firm's website, but are still not communication unless they openly discuss in details how the attorney is available for employment.

Basically, if a blog post starts off with a chili recipe and ends detailing the attorney's office address, hours, and phone number instead of listing ingredients or offering step-by-step prep tips, the blog post has failed to follow the Rules of Professional Conduct.

**Defining the Five Patterns of Attorney Blogs**

Now that the blog styles—integrated and stand-alone—have been established, the State Bar opinion looks at five blog patterns to determine whether these blogs, and their content, qualify as communication covered or subject to Rule 1-400 and if they may be held to attorney advertising rules.

1. Attorney A is a criminal defense lawyer who runs a stand-alone blog named "Perry Mason? He's Got Nothing on Me!" His posts are typically self-promotional in tone, describing the cases he has won for clients and courts he has wowed with his closing arguments. However, he does not specify the types of cases he won or how many of these cases involved court trials. What he lacks in specifics he makes up for with more self-congratulatory descriptions of himself, including stating he is "one of California's premier criminal defense lawyers." This blog would qualify as a communication subject to Rule 1-400. The content in his posts quantifying his courtroom wins is considered misleading and he risks violating client confidentiality if the client mentioned in the post is identifiable even without a name.

2. Attorney B is a member of a law firm that focuses on tax law and litigation. This attorney writes articles on the firm's blog. The blog is a part of the firm's website, alongside similarly designed website pages that include information on services offered, lawyer bios, and client testimonials. Other lawyers from the firm also write relevant posts on the blog and end each post by stating, "For more information, contact" the author of the post. This blog would qualify as communication covered by Rule 1-400. While the blog's home page might look just like the other pages, it is still a part of the law firm's website and is considered communication by context.

3. Attorney C is a solo family lawyer with a stand-alone blog on family law issues. It features short posts that are relevant to family law practitioners. These posts do not include any mention of the attorney's own cases. Rather, they are written to demonstrate how much the attorney knows and position him as a thought leader within family law. The blog links to his professional website with several posts ending with the attorney's professional phone number for readers to call if they have any questions. This blog would qualify as not a communication subject to Rule 1-400 since there is no mention about employment availability. However, unless they are removed, the articles with direct contact information included qualify as communication subject to advertising rules.

4. Attorney D is a trust and estates lawyer with a stand-alone blog that expresses his opinions on

the justice system, some of which are in opposition to judicial recall efforts. This attorney does not state that he has expertise in the related to judicial independence, but bases his opinions on personal experience. He does not state that he is available for hire anywhere on his blog, though he does hyperlink his professional website at the bottom of each blog post. Hyperlink and personal opinions aside, this does not qualify as communication subject to advertising rules.

5. Attorney E is an employment lawyer with a stand-alone blog all about jazz music. His professional website links to the blog, but the blog is separate from the website. Even though his personal blog also hyperlinks to his professional one, along with a brief bio and his contact information, this does not qualify as communication subject to Rule 1-400 or advertising rules.



**The Four Key Elements to Strategic Blogging**

Now that the acceptable legal and non-legal subjects bloggers can write about have been established, it's time to take a look at blogging with a strategy. Just about anyone can create content for a blog, but that content won't go anywhere if there isn't an outline in place for it.

One of the first things necessary to do it is to define the blog's strategy. This strategy will vary slightly depending on whether it's for an integrated or stand-alone blog, but there are four key elements that will remain the same.

The first key is to define the blog's mission, audience, and goals. The blog must have a clearly defined purpose and unique angle, whether it is to provide valuable information to readers or teach them a new concept. A primary and secondary target audience must also be examined to determine the blog's readership. Finally, there should be a few goals established for the blog. Even if it's just a blog written for pleasure (like Attorney E's stand-alone jazz blog), it should still answer what the legal blogger plans to achieve by blogging.

Next, it's best to focus on the niche subject. Rather than write whatever sounds good at the moment, create an editorial calendar. This calendar allows the blogger space to make strategic decisions about specific content to cover based off of seasonal events to ensure greater relevancy in posts. It also offers room to schedule in reasonable deadlines for posting and how the posts themselves will be presented. A legal blogger may want to write a text post one day, but next week they might want to share a podcast or vlog instead.

The third key element involves the more technical aspect of the blog's website and SEO. The legal blogger will need to decide if the blog will be kept on a blogging platform, like Wordpress, or separate on its own website. If it's separate, the blogger will need to purchase a domain. From there, they will need to determine how to customize the blog's design, their ability to grasp basic HTML techniques, and how they plan on sourcing images used on the blog. Each post should include relevant keywords for SEO purposes. If the blogger isn't familiar with these keywords, they will need to decide how they will find keywords specific to their industry and track them via an alerts system like Google Alerts.

Finally, the last element of strategic blogging is to measure success. Whether it's done on a daily basis or biweekly, blogging is still an investment of time and energy and it's important to know whether or not that effort is paying off.

By utilizing analytical websites such as Google Analytics to measure traffic and referrals to the blog, the legal blogger is able to learn more about their audience and the types of articles that they visit the most. Understanding what readers like to read versus what they're not reading gives the blogger the ability to audit future content accordingly and create more of what resonates with the audience.

**Is Legal Blogging Plateauing?**

The *2016 Legal Technology Survey Report* published by the American Bar Association's Legal Technology Resource Center revealed that the number of law firms with blogs has plateaued.[3] For four years straight, the number has neither grown nor dropped. Does it mean that blogging might be losing its luster with the legal community?

Not exactly. It seems like the answer might be found in the size of the law firm itself. Twenty-six percent of firms have blogs, a number that has remained about the same since 2013. The bigger the firm, the more likely it is to have a blog. For instance, 60 percent of firms with more than 500 attorneys have blogs and 52 percent of firms with 100-499 attorneys have blogs.

Smaller firms, on the other hand, are less inclined towards blogging. Only 20 percent of firms with less than 10 attorneys actively blog while 12 percent of solo lawyers are bloggers. However, a firm doesn't need to blog for a lawyer to maintain a stand-alone blog of his own. In 2016, eght percent of lawyers stated that they did maintain a personal legal blog, one percent higher than reported in 2015.

Lawyers surveyed also revealed that they read blogs in order to stay relevant. In 2016, 64 percent of lawyers use blogs for current awareness. As far as regular returns go, nine percent of lawyers use blogs daily for current awareness. Eighteen percent use them at least once a week and still another eighteen percent use them once a month. Those lawyers under the age of 40 are most likely to use blogs daily while those 60 and up are least likely.

Even more interesting is that as a result of legal topic blogging, clients have retained the services of these lawyers. 42 percent reported that they were directly contacted or referred along as a result of their blog in 2016, a three percent increase from 2015. Regardless of whether or not that blog has expressed that the lawyer behind it was available for hire, it is becoming rapidly apparent that bloggers creating and maintaining legal blogs do have an audience that visit their blog—and most importantly, read the content!

For any lawyer, then, who wants to expand more on legal subjects within their practice, blogging offers the opportunity to position oneself as an expert and in turn provide valuable advice to the reader. Take care to steer clear from self-promotion both within the blog post and the blog itself and establish a strategic outline to have a better understanding of the blog's purpose and mission and how its success will be tracked over time.

Above all, enjoy the experience. At its core, blogging is a creative outlet that allows the blogger to tell a story and educate others while sharpening their own skill set. After all, lawyers blog for the same reason that anyone outside of legal blogs: for the love of the subject and out of a natural passion for writing.

[1] State Bar of California, Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2016-196.
[2] Law 360, '*Stand-Alone' Calif. Legal Blogs Not Subject To Atty Ad Rules*, (2017).
[3] Robert Ambrogi's LawSites, *Has Lawyer Blogging Plateaued? ABA Tech Survey Suggests So*, (2016).

# Don't Delay

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AN AUTO ACCIDENT CAN BE A TRAUMATIC experience with unseen consequences like internal injuries that are not readily visible and may not be felt for days, if not weeks, after the accident. Unfortunately for Yolanda (a pseudonym), the severity of her injuries wasn't diagnosed until almost a year after her auto mishap.

Yolanda's life changed on a Tuesday afternoon in July 2014 when her car was suddenly struck from behind while stopped at a red light at an intersection in Oak Park. There were no mitigating circumstances; it was a perfectly clear day. No fog, no rain, no malfunctioning traffic signal. The driver of the car that struck Yolanda's vehicle was texting.

Yolanda's shock at the event wasn't noticeable until days after the accident, when she found she couldn't read a note she had written that Tuesday afternoon. Weeks passed before Yolanda sought medical treatment. Financial hardship made it difficult for her to think about her needs before those of her family. With daughters in college who relied on her for financial support, Yolanda felt compelled to self-prescribe ice and anti-inflammatories until the pain simply became too much to handle.

Yolanda discontinued physical therapy after it proved to be of limited help, but continued to self-medicate for the next few months. Soon though, she came to realize that she needed medical treatment. In May of 2015, Yolanda and her doctors began to discuss the possibility of double knee replacement surgery.

Yolanda is a paralegal so she was no stranger to the San Fernando Valley Bar Association. She called the Attorney Referral Service and, after routine vetting, was referred to attorney Daniel Robert Chaleff, a personal injury specialist who, according to Yolanda, proved to be "a rare breed of attorney who is honest, kind, thoughtful, compassionate, and has tremendous integrity."

Despite the challenges the case presented—such as not seeking professional medical treatment immediatel—Chaleff found a way to settle the case in the client's favor. "Without the effort Daniel put forth on my behalf, we very literally would have lost our home and been unable to assist our children with their college expenses," says Yolanda.

Though Chaleff's experience and compassion got Yolanda the help she needed without compromising her duty to her family, Yolanda cautions, "I would also tell anyone that has any type of accident to get it checked out right away by a doctor—or go to the hospital—and follow their advice…don't be foolish like I was and hope it will just go away."

# An 18 Year Old's Inspirational Journey toward Independence

**LAURENCE N. KALDOR**
President

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THIS STORY IS ABOUT A YOUNG WOMAN overcoming the odds—with the help of the wonderful advocates at CASA, a grant recipient of the VCLF—who has been able to find peace as she embarks on her next housing opportunity.

Many of us (myself included) often take many of the simplest pleasures in life for granted—basic things like our families, our loved ones, and our warm homes. For most of us, having these elements in place from birth fosters the ease with which we mature towards our own independence.

However, for many, like the young lady in this article, life has been a history of childhood abuse, neglect, and often a struggle for the most commonplace necessities, including food, clothing and shelter. Her story becomes even more compelling, and her needs more dire, as she is also caring for the life and well being of her two-year-old daughter. Due to her age and the sensitive nature regarding her abusive history, Jane's real name and likeness are being withheld.

Jane has been living in the foster care system for the past five years. "I am proud to be an amazing young mother," she says, adding that she "works hard to be a good advocate for myself and my child."

But, she says, it's even more important to be a, "mature and responsible [role model]." She's learned that "being in the [foster care] system has taught me so much about myself, but most importantly it has taught me to make the best of every situation."

Between school, homework and part-time employment, in what little free time she has, Jane loves and treasures the time she spends bonding with her daughter.

"I want to be the best person and mother I can possibly be for her," she says. "My plans for the near future are to get accepted into a [transitional housing program], to finish high school, receive my diploma, and get accepted to a four-year university."

While acceptance into transitional housing programs (THP) for current and former foster youth is limited and in no way guaranteed, Jane's prospects of success are exponentially increased by her positive outlook, her maturity and the advocacy of Amanda Sattler, her CASA Volunteer Advocate.

What Jane hopes to gain from participating in a transitional housing program, aside from the obvious security and stability that comes from the THP, is, "to learn the necessities of being on my own and providing for myself and my daughter and become even more self-sufficient and responsible, and continue to learn how to be comfortable being on my own. I plan on setting a good example for my daughter, and teach her that things may get tough, but as long as we remain focused on our goals, that great things will come our way."

The THP has given her another gift—the ability to finally look towards a positive future. Professionally, Jane is focusing on becoming, "a labor and delivery nurse." On a personal note, and because of her overwhelmingly positive experience with CASA and the THP, she plans to give back to the community by becoming a foster parent herself, "to young pregnant and parenting teens to provide them with the support they need to succeed."

I am excited and eager to check on Jane's progress in the coming years and report back to you about how your donations, big and small, continue to make a difference in the lives of real people here in our Valley.

## About the VCLF of the SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association. The Foundation's mission is to support the legal needs of the youth, victims of domestic violence, and veterans of the San Fernando Valley. The Foundation also provides educational grants to qualified students pursuing legal careers. The Foundation relies on donations to fund its work. To donate to the VCLF or to learn more, visit *www.thevclf.org* and help us make a difference in our community.

# Networking the Bar

**ALAN E. KASSAN**
VBN Chair

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THE SFVBA LAUNCHED THE VALLEY BAR NETWORK (VBN) IN THE spring of 2016 to enable more substantive, positive interaction between members, with the goals of developing new business and enhancing members' professional lives.

Through membership in the VBN, members build new professional connections, make new friends, and generate new business referrals. In one year, VBN has grown to a dynamic group of 60 attorneys and other professionals. VBN plans to expand in 2017 to add other groups of 20-40 members meeting in different parts of the San Fernando Valley.

The monthly meetings are fun and informal, but provide structure to facilitate networking. All SFVBA members are invited to join the VBN program. Annual VBN dues are $400, but members can attend one meeting at no cost to explore the benefits of membership.

The next VBN meeting is March 6 at 5:30 p.m. at Chablis Restaurant in Tarzana. Contact SFVBA Director of Education & Events Linda Temkin at events@sfvba.org or (818) 227-0490, ext. 105 to sign up today.

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