

# VALLEY LAWYER

SEPTEMBER 2016 • \$4

A Publication of the San Fernando Valley Bar Association

**Meet SFVBA's  
New President,  
Kira Masteller**

**The Afterlife  
of Debts**

**Earn MCLE Credit**





Official Sponsors of the San Fernando Valley Bar Association

## KRYCLER ERVIN TAUBMAN & KAMINSKY

FULL SERVICE ACCOUNTING FIRM

CONTACT MICHAEL J. KRYCLER, CPA, FCA | SCOTT R. ERVIN, CPA

*When you need more than just numbers...  
you can count on us...*

- LITIGATION SUPPORT
- EXPERT WITNESS
- FORENSIC ACCOUNTANTS
- FAMILY LAW MATTERS
- BUSINESS VALUATIONS
- LOSS OF EARNINGS
- DAMAGES

MEMBERS OF  
American Institute of Certified Public Accountants  
California Society of Certified Public Accountants

15303 Ventura Boulevard, Suite 1040  
Sherman Oaks, California 91403

[info@ketkcpa.com](mailto:info@ketkcpa.com)

t: 818.995.1040

f: 818.995.4124

[www.ketkcpa.com](http://www.ketkcpa.com)



# ANDREW L. SHAPIRO

*now available as a private*

## MEDIATOR & ARBITRATOR

Andrew L. Shapiro is utilizing his extensive negotiation and trial experience to expand a growing mediation practice. Over the years he has personally handled over 1,500 pro bono cases as a Court Settlement Officer, Arbitrator or Mediator for Los Angeles and Ventura County Superior Courts.

### PRACTICE AREAS:

- Wrongful Death
- Spinal Cord Injuries
- Premises Liability
- Traumatic Brain Injuries
- Products Liability
- Dangerous Conditions of Public Property
- Bicycle, Auto, Motorcycle & Truck Accidents
- Serious Dog Attacks
- Medical Malpractice

### MEMBERSHIPS:

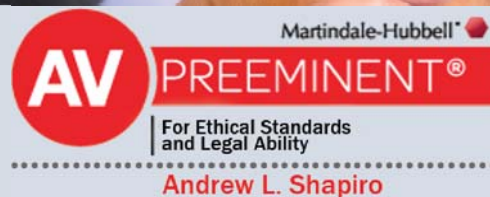
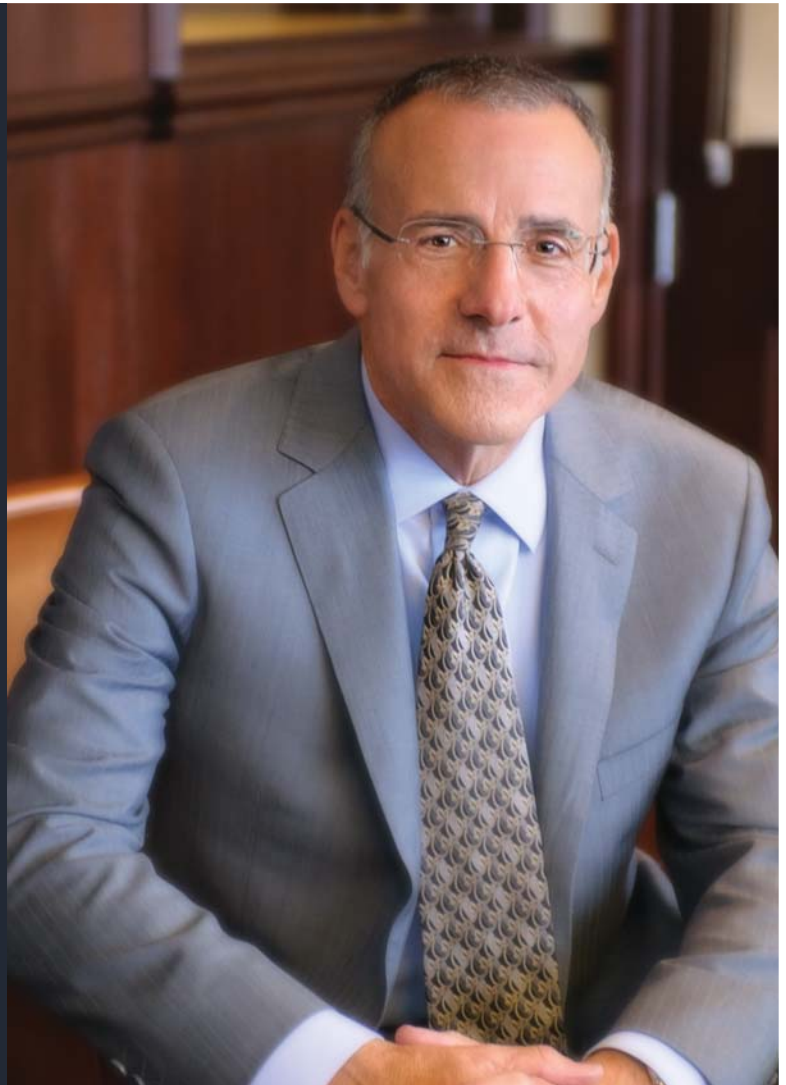
- American Board of Trial Advocates (ABOTA)
- Consumer Attorneys Association of Los Angeles (CAALA)
- Consumer Attorneys of California (CAOC)
- Los Angeles County Bar Association
- San Fernando Valley Bar Association



LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN  
A LAW CORPORATION

818.907.3266  
AShapiro@LewittHackman.com

16633 Ventura Boulevard, Eleventh Floor  
Encino, California 91436



Andrew L. Shapiro

*"Andy is an excellent lawyer with a firm understanding of not just the law, but the personal injury business. More importantly he is a wonderful person, who has the right temperament to be a fantastic mediator. Trial lawyers on both sides of the fence will benefit from Andy's mediation skills. It will only be a short time until the personal injury community will recognize his talents and he will join the ranks of elite mediators."*

**– Matthew B.F. Biren, Biren Law Group**

*"I have known Andy Shapiro for over 30 years. I had cases against him when I was practicing and have mediated and arbitrated cases with him in my more recent capacity as a Neutral Hearing Officer. Based on my experience with him, Andy has the skills and more importantly, the temperament, to be extremely effective in this endeavor. His many years of experience will serve him well, and I enthusiastically endorse and support his entry into the field."*

**– Darrell Forgey, Judicate West**



# 30 YEARS INSURANCE BAD FAITH



## “EVE OF TRIAL” A SPECIALTY

Insurance companies never pay up unless they know you will go to trial and are able to get punitive damages.

- 40 jury trials
- 150 lawsuits
- 200 additional claims
- Former Member, Bd. of Governors, CAALA
- Known to defense Counsel

## CALL WITH YOUR QUESTIONS

Sassoon Sales • [www.sassoonlaw.com](http://www.sassoonlaw.com) • [s@sassoonlaw.com](mailto:s@sassoonlaw.com) • 818-728-6658

## EMPLOYMENT LAW REFERRALS

### Professionals Serving Professionals

Our referral program can be your profit center! **Stephen Danz & Associates** is recognized as one of the most experienced and successful employment law firms representing whistle blowers and victims of wrongful termination, retaliation, discrimination and sex harassment. Our clients are executive, technical, administrative and hourly employees. We pay generous referral fees in accordance with State Bar rules. We also provide regular updates on your referred case.

- Regular bi-monthly report on status of referred cases
- Highest possible referral fees pursuant to state bar rules
- Reciprocal referrals where appropriate
- Referral fees paid religiously at case closure with a complete distribution report to you
- Regular email updates on new significant developments in employment law



“Recently a friend of mine contacted me because I was the only lawyer she knew. Her sister was being pushed out of her job because of her age. With complete confidence, I referred her to Stephen Danz, who immediately met with her and gave her an honest assessment of her legal options. Steve informed me when he met with her and sent me an unexpected, but much appreciated, surprise- a referral fee. I hadn't realized it beforehand, but referral fees are a standard part of his practice. My friend's sister was extremely satisfied with Steve, which of course made me look good too. It's important for me to know attorneys like Steve, who I know will do a great job for the people I refer to him.”

- David L. Fleck, Esq.



**877.789.9707**  
[www.employmentattorneyca.com](http://www.employmentattorneyca.com)

20501 Ventura Blvd., Ste. 327, Woodland Hills, CA 91364

Los Angeles   Orange County   Pasadena   San Bernardino   San Diego   Fresno   San Francisco   Santa Rosa   Sacramento



On the cover: SFVBA's New President, Kira Masteller  
Photo by Ron Murray

### FEATURES

- 14** Mandatory One Day Jury Trials Are Here—Are You Prepared? | BY BARRY P. GOLDBERG
- 16** The Afterlife of Debts | BY MARK L. SHARE  
MCLE TEST NO. 95 ON PAGE 24.
- 26** Taking a Different Path: Meet SFVBA's New President, Kira Masteller | BY MICHAEL D. WHITE
- 32** You Can't Handle the Truth: When Lying Becomes Dangerous | BY DAVID CARNIE
- 36** Why Clients Stall (And What Estate Planning Attorneys Can Do About It) | BY TONY A. ROSE, CPA

### COLUMN

- 46** Dear Phil  
Deal or No Deal

### DEPARTMENTS

- 7** President's Message
- 9** From the Editor
- 10** Event Calendars
- 13** Executive Director's Desk
- 39** Santa Clarita Valley Bar Association
- 41** Valley Community Legal Foundation
- 43** New Members
- 44** Classifieds



## HOEFFLIN • BURROWS

A Law Corporation

*Personalized representation to attain client goals*

HOEFFLIN • BURROWS delivers results by putting client interests first and using a team-based approach to creatively, intelligently, and effectively resolve legal matters. Specializing in disputes and litigation including:

- Real Estate
- Partnerships/LLC's
- Business and Corporate
- Trust/Estate Disputes
- Executive Employment
- Alternate Dispute Resolution
- Entertainment Disputes

*Refer with confidence*



Steven A. Meadville, of Counsel • Richard M. Hoefflin • Jason M. Burrows

2659 Townsgate Road, Suite 232 • Westlake Village, CA 91361  
805.497.8605 • [www.hoefflinlaw.com](http://www.hoefflinlaw.com)

**SOUTHERN CALIFORNIA'S  
PREEMINENT PROFESSIONAL  
LIABILITY DEFENSE FIRM**

**NEMECEK • COLE**  
Attorneys At Law



FRANK W. NEMECEK\*

JONATHAN B. COLE\*

MICHAEL MCCARTHY\*

\* Certified Specialist, Legal Malpractice Law, The State Bar of California Board of Legal Specialization

15260 VENTURA BOULEVARD, SUITE 920  
SHERMAN OAKS, CA 91403  
TEL: 818.788.9500 / TOLL FREE: 877.314.1177

[WWW.NEMECEK-COLE.COM](http://WWW.NEMECEK-COLE.COM)

## VALLEY LAWYER

### SAN FERNANDO VALLEY BAR ASSOCIATION

5567 Reseda Boulevard, Suite 200  
Tarzana, CA 91356  
Phone (818) 227-0490  
Fax (818) 227-0499  
[www.sfvba.org](http://www.sfvba.org)

#### EDITOR

Michael D. White

#### GRAPHIC DESIGNER

Marina Senderov

#### BOARD OF TRUSTEES

President ..... Carol L. Newman  
President-Elect ..... Kira S. Masteller  
Secretary ..... Alan E. Kassan  
Treasurer ..... Anie N. Akbarian  
Past President ..... Caryn Brottman Sanders  
Executive Director ..... Elizabeth Post

#### TRUSTEES

|                     |                   |
|---------------------|-------------------|
| Jonathan Birdt      | Yi Sun Kim        |
| William A. Daniels  | Kathy G. Neumann  |
| Michelle E. Diaz    | Samuel R.W. Price |
| Barry P. Goldberg   | Joanna M. Sanchez |
| Peta-Gay Gordon     | Marlene Seltzer   |
| Alexander J. Harwin | John F. Stephens  |
| Sean E. Judge       | Toni Vargas       |
| Nicole Kamm         |                   |

#### STAFF

Director of Public Services ..... Rosie Soto Cohen  
Director of Education & Events ..... Linda Temkin  
Editor ..... Michael D. White  
Referral Consultant ..... Fanny Arellano  
..... Catherine Carballo-Merino

#### SECTION CHAIRS

Bankruptcy Law ..... Steven R. Fox  
Business Law & Real Property ..... Steven J. Shapero  
..... Neil M. Sunkin  
Criminal Law ..... David S. Kestenbaum  
..... Angela Berry-Jacoby  
Employment Law ..... Kimberly Westmoreland  
Family Law ..... Sandra Etue  
..... Kenneth Nahigian  
..... Amir Aharonov  
Intellectual Property,  
Entertainment & Internet Law ..... John F. Stephens  
..... Thomas M. Morrow  
Litigation ..... Christopher P. Warne  
New Lawyers ..... Christopher Blaylock  
..... Hannah Sweiss  
Probate & Estate Planning ..... John E. Rogers  
Small Firm & Sole Practitioner ..... Arsalan Hayatdavoodi  
Taxation Law ..... Ronald Hughes  
..... Hratch J. Karakachian  
Workers' Compensation ..... Jeffrey S. Swartz

Valley Lawyer is published monthly. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Printing Southwest Offset Printing

© 2016 San Fernando Valley Bar Association

### Justice(s) and Politics

**T**HIS VERY BIZARRE POLITICAL year continues to remind me of another bizarre political year right down to the excessive violence and unrest. In 1968, we wondered if the political assassinations would ever stop, while this year we wonder if the mass murders of innocent people will ever stop. Since I wrote my last message, we've experienced, in no particular order, Orlando, Nice, Munich, Baton Rouge, Minneapolis, Dallas, etc. Have we simply become numb to the carnage? Is it going to be just another fact of everyday life going forward?

Along with all the gore, the justice system is in the news, and not in a good way. This is the first time I can remember where one of the major presidential candidates, Candidate A, is involved in a very public fraud case while the other, Candidate B, was under criminal investigation, but managed to escape prosecution just in time to be nominated. Candidate A makes headlines by claiming that the justice system is rigged and corrupt, while Candidate B seemed to feed that perception with her spouse meeting in secret with the U.S. Attorney General just a day before the decision was made not to prosecute. By not acknowledging the obvious appearance of impropriety, the U.S. Attorney General exposed both her office and our nation's legal system to legitimate criticism and scorn.

In the midst of all of this, we have the dispute over the "Notorious RBG." In early July, Justice Ruth Bader Ginsburg gave a series of interviews to the media in which she explicitly criticized GOP presidential candidate Donald Trump, calling him a "faker" and suggesting

**CAROL L. NEWMAN**  
SFVBA President



[carol@anlawllp.com](mailto:carol@anlawllp.com)

that if he was elected, her late husband would have wanted to move to New Zealand. These statements set off a firestorm of criticism with some legal experts chastising Justice Ginsburg, while others defending her "right" to do so.

The Code of Conduct for United States Judges may not technically be binding on the members of the Supreme Court, but whether it should nevertheless be a standard for those serving on the highest court in the land was hotly debated.

Shortly after Justice Ginsburg's comments, Stephen Gillers, an expert on legal ethics at New York University Law School, stated in the *New York Times*: "We want the public to view judicial rulings solely as the product of law and legal reasoning, uninfluenced by political considerations. Acceptance of court rulings is undermined if the public believes that judicial decisions are politically motivated. It's not that judges don't disagree among themselves. But disagreements must be over legal principles, not a ruling's effect on a political candidate or party."

We can't disagree with those statements. But is it accurate to say that the Supreme Court is "uninfluenced by political considerations"? After all, aren't each and every one of us influenced by political considerations to some extent? To put it another way, do we want a Supreme Court that is uninformed and unfazed by what is going on in the outside world, or do we just want a Supreme Court that fairly and judiciously decides each case that comes before it, regardless of personal beliefs of the justices?

## ERISA LAWYERS

**LONG TERM DISABILITY,  
LONG TERM CARE, HEALTH,  
EATING DISORDER, AND LIFE  
INSURANCE CLAIMS**

**WE HANDLE BOTH  
ERISA & BAD FAITH  
MATTERS**

- California Federal and State Courts
- More than 20 years experience
- Settlements, trials and appeals

**Referral fees as allowed  
by State Bar of California**

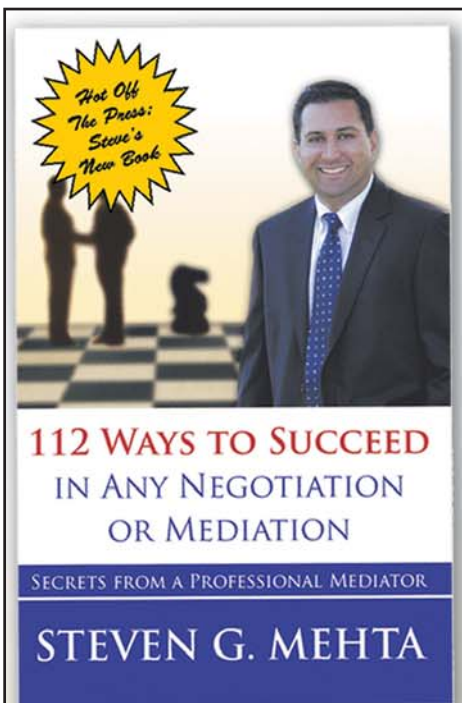
**Handling matters  
throughout California**

**818.886.2525**

**KANTOR  
& KANTOR LLP**

**[www.kantorlaw.net](http://www.kantorlaw.net)**

**Dedicated to helping people  
receive the insurance  
benefits to which they  
are entitled**



**Steven G. Mehta** is one of California's premier, award-winning attorney mediators, specializing in intensely-difficult and emotionally-charged cases.

Steve's book, **112 Ways to Succeed in Any Negotiation or Mediation**, will turbo-charge your negotiation skills regardless of your experience.

To schedule your mediation or order a copy of Steve's new book, call **661.284.1818** or check with your local bookseller, preferred online retailer, or online at:

**[www.112ways.com](http://www.112ways.com) or [www.stevemehta.com](http://www.stevemehta.com)**

Locations in Los Angeles & Valencia  
**Mediations throughout California**

Looking at history, the justices of the Supreme Court have not always taken the high road and been uninfluenced by political considerations. Among other things, the following few examples show notable, and fractious, connections through the years between the Supreme Court and politics. Undoubtedly many more can be found—these are just a few of them:


- In 1800, the members of the Supreme Court openly campaigned for the re-election of John Adams.
- About 100 years ago, after President William Howard Taft was defeated, he became the Chief Justice of the Supreme Court, thereby moving swiftly from No. 1 politician in the nation to Chief Justice in just a few years.
- In 2000, Justice Sandra Day O'Connor was overheard saying that Al Gore would be terrible for the country, yet she still took part in the decision on *Bush v. Gore*.
- In 2004, Justice Scalia went duck hunting with then-Vice President Cheney shortly after the Court had agreed to decide a case involving Cheney.

▪ Justice Alito mouthed the words "not true" when President Obama criticized the *Citizens United* decision during his 2010 State of the Union address.

▪ Justices Scalia, Thomas, and Alito have spoken to the Federalist Society, while both Justices Sotomayor and Ginsburg have spoken to liberal and progressive legal groups.

▪ Justice Thomas has been a guest on the Rush Limbaugh radio show and is married to a lobbyist whose nonprofit is devoted to organizing conservative activists.


In short, the justices of the Supreme Court over the years, and particularly since the turn of this century, have been involved in what is going on around them politically. Of course, in the future, a president is going to appoint justices whom he or she believes will advance a certain political agenda—we would be naïve to believe otherwise.


Sometimes the justices do the expected, and sometimes they do not. Hopefully, whatever their own personal political persuasion, they will decide every case based on the facts and the law. That, and that alone, is what we should expect and demand of them. 

**City National**

PROUDLY SUPPORTS

**San Fernando Valley  
Bar Association**



**CITY NATIONAL BANK**  
The way up. 

California's Premier Private and Business Bank®

CNB.COM    CNB MEMBER FDIC



## A Fully Functioning Mechanism

**MICHAEL D. WHITE**  
SFVBA Editor



michael@sfvba.org

**T**HERE'S AN INTERESTING THREAD THAT connects this month's cover story on SFVBA new president, Kira Masteller, with the article by Tony Rose on why clients frequently stall and delay signing critical estate planning and probate documents.

Both are veterans in the field of estate and trust planning and note the critical value in connecting and establishing open lines of communications with their clients, particularly when navigating a path through what are emotional minefields sewn with sadly explosive, and sometimes divisive, family issues.

"When estate planning attorneys find themselves taking on the roles of quasi life coach and family counsellor...they can help develop deep connections between clients and their estate plans," writes Rose, and, he adds, until the core issues at the heart of the matter are addressed openly and frankly, "many an elaborately prepared estate planning document will sit on a sideboard, unsigned and collecting dust."

Analyzing and crafting agreeable ways to defuse those often sticky family dynamics is always challenging and, writes Rose, "clients will not be engaged in a solution unless a fully functioning mechanism helps them achieve their goals or perpetuates their own previously defined values."

Masteller takes it a step further: "Not only do I have to recognize the practical accounting and legal issues, but the psychology behind the decisions that are being made and frame the entire picture not only in a personal perspective, but in a legal frame that will work. There are a lot of different things that we explore from the personal side and the legal side."

Face-to-face communication is "critical to the process," she says, encapsulating a philosophy she says she'll bring to her new posting as SFVBA's new President.

"There's only so much a voluntary bar can offer and it's not something that stays the same," she says. "Over the last decade, we've really seen a change in what members do to research or reach out to other attorneys and, nowadays, much of that communication is electronic, not face-to-face like it used to be. So it's a challenge to stay relevant, successful and value-added for every one of its members in today's environment.

There's a lot of value, she adds, "to looking at someone in the eye and having the opportunity to communicate in ways other than words," she says. "Energy...body language...maybe you get to display a sense of humor...maybe you get to share your empathy...your understanding and that you're a good listener. I don't think that individuals get that opportunity when they're dealing only electronically and not face-to-face."

What is Masteller's goal for her year as SFVBA President? Giving members, she says, "a voice in the direction the bar takes by implementing open forums and promoting communication with its leadership to promote ideas on how they can play a bigger part in its functions and activities."

Perhaps, using Tony Rose's phrase in another context, to develop a "fully functioning mechanism"—one of purposeful and deserving goals that rest on a foundation buttressed by better communication, cooperation, and, most importantly, shared vision.

Worthy aims, indeed. 



 **Rose, Snyder & Jacobs LLP**  
ACCOUNTANTS & ADVISORS

www.rsjcpa.com  
818.461.0600

**Because everyone needs team players.**

| SUN  | MON  | TUE   | WED   | THU  | FRI  | SAT       |
|--|--|---|---|--|--|-----------|
| <b>LATINO HERITAGE MONTH (SEPTEMBER 15 – OCTOBER 15)</b> |  |   |   |  | <b>1</b>   | <b>2</b>  |
| <b>4</b>   | <b>5</b><br>  | <b>6</b><br><b>Valley Lawyer Member Bulletin</b><br>Deadline to submit announcements to editor@sfvba.org for October issue.   | <b>7</b><br>4 PPC Misconceptions That Are Holding You Back<br>Sponsored by <b>FindLaw.</b><br><b>12:00 NOON SFVBA OFFICE</b><br>Successful pay per-click advertising campaigns require extensive industry knowledge, keyword research, and ongoing analysis to maximize your firm's budget and achieve a positive ROI. Presented by Charlie Brown, Senior Client Development Specialist at FindLaw. | <b>8</b>   | <b>9</b><br><b>SFVBA ELECTION DAY</b><br>   | <b>10</b> |
| <b>11</b>  | <b>12</b><br><br><b>5:30 PM CHABLIS RESTAURANT TARZANA</b><br>VBN is dedicated to offering organized, high quality networking for SFVBA members.  | <b>13</b><br><b>Probate &amp; Estate Planning Section</b><br>Attorney-Client Privilege<br><b>12:00 NOON MONTEREY AT ENCINO RESTAURANT</b><br>Nicholas Van Brunt will discuss the attorney-client relationship and the ethical obligations. (1 MCLE Hour—Legal Ethics)   | <b>14</b>   | <b>15</b><br><b>Intellectual Property, Entertainment &amp; Internet Law Section</b><br><b>12:00 NOON SFVBA OFFICE</b><br>John F. Stephens and Kevin Gilliland present. (1 MCLE Hour) | <b>16</b><br>Update on Social Security<br>Sponsored by <b>AXA Advisors, LLC</b><br><b>12:00 NOON SFVBA OFFICE</b><br>Joanne M. Crowley, MBA, RICP® and Michelle A. Curry, CFP®, ChFC, CLU acquaint attorneys with rules and strategies for claiming Social Security benefits. An emphasis will be placed on coordinating the various types of benefits (retirement, spousal, and survivor) in order to maximize benefits over a client's lifetime. (1 MCLE Hour) | <b>17</b> |
| <b>18</b>  | <b>19</b>  | <b>20</b><br><b>Taxation Law Section</b><br>Employee vs Independent Contractor Issues<br><b>12:00 NOON SFVBA OFFICE</b><br>Former IRS attorney LaVonne Lawson will discuss the challenges in classifying workers as employees or independent contractors. She will address the particular concerns of those working remotely or in the field. (1 MCLE Hour) | <b>21</b><br><b>Workers' Compensation Section</b><br>Trial Techniques and Settlement Strategies<br><b>12:00 NOON MONTEREY AT ENCINO RESTAURANT</b><br>Judge Jerold Cohn, Ret. will delineate how best to prepare yourself when going before the WCAB. (1 MCLE Hour)   | <b>22</b><br><br>See page 31  | <b>23</b>  | <b>24</b> |
| <b>25</b>  | <b>26</b><br><b>Family Law Section</b><br>It's All a Show: Presentation of Evidence Using Technology, Plus Special Farewell Presentation to Commissioner Patricia Ito<br><b>5:30 PM MONTEREY AT ENCINO RESTAURANT</b><br>Eve Lopez, CFLS and Jeff Sturman, CFLS discuss when and how to use electronically assisted technology in the courtroom, as well as its benefits and potential pitfalls. Using technology, the panel will demonstrate opening and closing arguments and present evidence. Approved for Family Law Legal Specialization. (1.5 MCLE Hours) | <b>27</b>   | <b>28</b>   | <b>29</b>  | <b>30</b><br><b>Bankruptcy Law Section</b><br>Tentative Opinions of the Woodland Hills Judges<br><b>12:00 NOON SFVBA OFFICES</b><br>Our panel will discuss the latest, most relevant and significant cases. (1.25 Hours MCLE)  |           |



| SUN  | MON   | TUE   | WED  | THU  | FRI   | SAT       |
|--|---|---|--|--|---|-----------|
| <b>LATINO HERITAGE MONTH (SEPTEMBER 15 – OCTOBER 15)</b> |   |   |  |  |   | <b>1</b>  |
| <b>2</b>   | <b>3</b><br><br><b>5:30 PM</b><br><b>CHABLIS RESTAURANT</b><br><b>TARZANA</b><br>VBN is dedicated to offering organized, high quality networking for SFVBA members.  | <b>4</b><br><b>Valley Lawyer Member Bulletin</b><br>Deadline to submit announcements to <a href="mailto:editor@sfvba.org">editor@sfvba.org</a> for November issue.  | <b>5</b>   | <b>6</b><br><b>Membership &amp; Marketing Committee</b><br><b>6:00 PM</b><br><b>SFVBA OFFICE</b>                                       | <b>7</b>  | <b>8</b>  |
| <b>9</b>   | <b>10</b>   | <b>11</b><br><b>Probate &amp; Estate Planning Section</b><br>Property Tax Issues for the Estate Planner<br><b>12:00 NOON</b><br><b>MONTEREY AT ENCINO RESTAURANT</b><br>Gregory R. Broege reviews the key tax issues. (1 MCLE Hour)   | <b>12</b>  | <b>13</b><br><b>Inclusion &amp; Diversity Committee</b><br>Networking Mixer<br><b>6:00 PM</b><br><b>THE GATE ENCINO</b><br>See page 35 | <b>14</b><br>Cyber Security Liability<br><b>12:00 NOON</b><br><b>SFVBA OFFICE</b><br>Sponsored by<br><br>Wes Hampton will discuss the threat of getting hacked and how you can best protect yourself and the firm. (1 MCLE Hour) | <b>15</b> |
| <b>16</b>  | <b>17</b>   | <b>18</b><br><b>Taxation Law Section</b><br>Tax Planning with Private Foundations<br><b>12:00 NOON</b><br><b>SFVBA OFFICE</b><br>Marguerite Griffin of Northern Trust Bank will present a primer on private foundations. What are the benefits and challenges of creating a private foundation as part of an estate plan? She will also discuss the tax and legal rules regarding maintenance and operation of private foundations. (1 MCLE Hour) | <b>19</b><br><b>Workers' Compensation Section</b><br><b>12:00 NOON</b><br><b>MONTEREY AT ENCINO RESTAURANT</b>   | <b>20</b>  | <b>21</b><br>Planning for Sole Practitioners<br><b>12:00 NOON</b><br><b>SFVBA OFFICE</b><br>Sponsored by<br><br>Learn best practices for running a successful solo practice. Free to all current members. (1 MCLE Hour)        | <b>22</b> |
| <b>23</b>  | <b>24</b><br><b>Family Law Section</b><br>Competency Issues Re: Family Law Practitioners<br><b>5:30 PM</b><br><b>MONTEREY AT ENCINO RESTAURANT</b><br>Greg Dorst of The Other Bar will discuss substance abuse and the special stresses on family law attorneys. Approved for Family Law Legal Specialization. (1 Hour Competency Issues MCLE; .5 General MCLE) | <b>25</b>   | <b>26</b><br><b>Litigation Section</b><br>Hot Topics with the Insurance Experts<br><b>12:00 NOON</b><br><b>SFVBA OFFICE</b><br>Andrew Zehnder, Sandra Hunt and Robert Corenson discuss hot litigation issues and corporate compliance. (1 MCLE Hour) | <b>27</b>  | <b>28</b>   | <b>29</b> |
| <b>30</b>  | <b>31</b><br>  |   |  |  |   |           |



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

# When Bankruptcy May Be the Best Solution...

Choose an experienced & knowledgeable attorney who provides personal & timely attention and recommends bankruptcy only when it is the best solution.



Law Offices of Steven R. Fox  
Bankruptcy & Related Matters

Debtor and Creditor Representation  
Chapter 11 Reorganization  
Bankruptcy Litigation  
Developing and Rebuilding Companies

17835 Ventura Blvd., Suite 306  
Encino, CA 91316 ■ (818) 774-3545  
[SRFox@FoxLaw.com](mailto:SRFox@FoxLaw.com)

## Sometimes numbers are the only prints left behind.

Arxis Financial is a proven forensic accounting and litigation specialist. We will examine the financial data and help you determine the "bottom line." Arxis provides financial and valuation analysis needed to resolve a variety of legal disputes from family court to civil, criminal, and probate courts. In many cases our experts can help you reach a settlement. If trial or arbitration is required we give you the support you need to win.

Chris Hamilton, CPA, CFE, CVA

805.306.7890

[www.arxisfinancial.com](http://www.arxisfinancial.com)

[chamilton@arxisgroup.com](mailto:chamilton@arxisgroup.com)

ARXIS  
FINANCIAL, INC.

FORENSIC ACCOUNTING

BUSINESS VALUATION

FRAUD ANALYSIS



## SFVBA Recipient of Diversity Award

**T**HE SAN FERNANDO VALLEY Bar Association is a recipient of the State Bar's 2016 Bar Association Diversity Award. The Diversity Awards recognize outstanding efforts made by a bar association, law firm, organization or attorney to promote diversity in the legal profession, in their organization, or among their peers.

The SFVBA was nominated for the award by Los Angeles Superior Court Northwest District Supervising Judge Huey Cotton and received letters of support from the Multicultural Bar Alliance (MCBA), Los Angeles City Council President Pro Tempore Mitchell Englander, Los Angeles Mission College, and Los Angeles Pierce College.

"The SFVBA has been an active member of the Multicultural Bar Alliance since 2005. Since that time, the SFVBA is the only regional bar that consistently participates and supports the MCBA," wrote MCBA Co-Chair P. Patrick Ashouri. "This is a testament to the SFVBA's commitment to diversity. The SFVBA has proven to be a champion and leader in diversity."

"We are honored to be recognized with this award," says SFVBA President Carol Newman. "The SFVBA efforts in diversity are unparalleled in the region. The SFVBA encourages and promotes diversity in the legal profession in a variety of ways: offering educational programs for students of diverse backgrounds at all levels; providing unique networking opportunities for diverse legal professionals; and striving

**ELIZABETH POST**  
Executive Director



[epost@sfvba.org](mailto:epost@sfvba.org)


for diversity in our membership and leadership which reflects the community we serve."

Newman will accept the Award on behalf of the SFVBA during the 15<sup>th</sup> Anniversary Diversity Awards Reception at the State Bar's Annual Meeting on October 1 at the Marriott Marquis San Diego Marina.

### Don't Forget to Vote

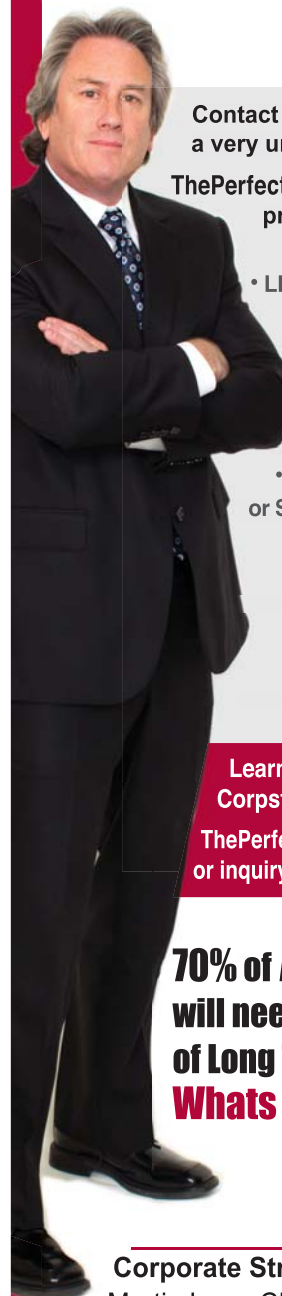
Many of us have been following the 2016 presidential campaigns with bewilderment but keen interest; I'm not sure I will ever see in my lifetime—or at least I hope—a presidential election like the one that has unfolded this year. While that "unpopularity" contest focuses on name calling and lots of promises, Valley lawyers can participate in an election much closer to home, the SFVBA Board of Trustees Election, which exudes professionalism, leadership, and a positive direction for our Bar Association.

In mid-August, SFVBA attorney members in good standing were sent an email from BallotBox Online with a link to vote for the Board of Trustees. (Members without an email on record or whose emails bounced back were mailed paper ballots.) Within the first five days of voting, 9% of eligible members cast their votes; in prior elections without online voting, 10-15% participated in the election, so early voting returns are encouraging.

Voting will close at 5:00 p.m. on Friday, September 9, 2016. Don't forget to vote! If you did not receive an email or paper ballot, please contact me immediately for assistance. 

## LONG TERM CARE: WILL YOU OUTLIVE YOUR ASSETS?

ThePerfectLTCSolution™



Contact me to discuss  
a very unique offering.

ThePerfectLTCSolution™  
provides:

- LIFETIME Benefits
- Optional Cost of Living Adjustment (3%)
- 10-pay, 20-pay or Single-pay options
- Guaranteed Premiums!
- Backed by A+ rated carrier

Learn more at  
[Corpstrat.com/](http://Corpstrat.com/)  
ThePerfectLTCSolution™  
or [inquiry@corpstrat.com](mailto:inquiry@corpstrat.com)

**70% of Americans  
will need some type  
of Long Term Care.  
Whats your plan?**

**Corporate Strategies Inc**  
Martin Levy, CLU, Principal  
1 800 914 3564  
[www.Corpstrat.com](http://www.Corpstrat.com)  
Ca. Lic 0C24367



# Mandatory One Day Jury Trials Are Here— *Are You Prepared?*

By Barry P. Goldberg



**R**EADY OR NOT, EFFECTIVE July 1, mandatory one day jury trials have come to limited jurisdiction courts in California, with few lawyers considering the ramifications and even fewer preparing for the new law.

Since a large portion of automobile accident cases fall within the limited jurisdiction court's ceiling of \$25,000, it is likely that the new one day trials will largely impact personal injury law firms and insurance defense counsel. However, the new law is not restricted to personal injury cases.

About five years ago, there was a rumble throughout the Los Angeles County legal community that the voluntary one day jury trial promised to revolutionize standard auto accident cases and other limited jurisdiction

cases. The Expedited Jury Trial law coincided with the massive financial cuts facing the court system and, frankly, seemed like a good idea and decent solution to some budgetary concerns.

It is easy to recall that the presiding judges were touting the expedited trials and that frequent seminars were offered to familiarize trial lawyers with the rules and procedures. Despite the effort, the voluntary one day jury trial did not really take hold with the vast majority of lawyers.

Obtaining the required stipulation for the voluntary one day trial proved to be next to impossible, and with limited exceptions, all parties had to agree that each side had up to three hours to present its case and agree to waive all rights to appeal. From the plaintiff's bar,

the voluntary one day trial was not fully embraced primarily because plaintiffs' lawyers did not want to be limited in jury selection and then be forced to rush through witnesses and trial presentation. Further, if the case was one of disputed liability or more than a single medical expert was required, there was substantial doubt whether a case could even be concluded in only three hours.

Also, the advantages of a low cost, quick trial were fairly elusive. In fact, the costs incurred during a one day trial were not all that more than those of a two or three day proceeding. Medical experts are paid no matter what, and preparation of demonstrative evidence costs the same no matter how long a trial lasts. Further, if the case had any substantial upside over \$25,000, there was simply no compelling reason to limit the amount of trial. As a result, no real advantage was perceived by the plaintiff's bar.

Even if the plaintiff's attorney pushed for a one day trial stipulation, the insurance defense counsel rarely agreed, citing the lack of the right to appeal as the primary reason. Besides, in limited jurisdiction cases, the access to unlimited resources in a regular jury trial provided the defense with a distinct advantage, one that it would not readily relinquish that advantage by making it substantially less expensive for a plaintiff to have his or her day in court.

Fast forward to September 28, 2015; Assembly Bill 555 was approved by Governor Jerry Brown. The new law made one day jury trials mandatory in most limited jurisdiction cases, effective July 1 of this year.<sup>1</sup> The new mandatory law eliminates the need for a stipulation and includes provisions for a jury of eight members and one alternate. Most significantly, the new law allows up to



**Barry P. Goldberg** is the principal of Barry P. Goldberg, APLC, located in Woodland Hills. In practice since 1984, he attended UCLA and obtained his J.D. from Loyola Law School. A skilled trial attorney with extensive experience in personal injury and insurance law, Goldberg serves on the SFVBA's Board of Trustees and will be its Treasurer for the coming year. He can be reached at [bpg@barrypgoldberg.com](mailto:bpg@barrypgoldberg.com).



five hours for each side to complete voir dire and to present its case.<sup>2</sup> Recognizing resistance to the voluntary law, the new mandatory law also allows appeals to the appellate division of the Superior Court in which the case was tried.<sup>3</sup>

The new mandatory law considers most obstacles to conducting a fair trial without an unfair advantage to either side. For example, even though the trial is relatively quick, the law places no time limit on jury deliberation.<sup>4</sup>

Under §630.20(b), either party can (try to) opt out of the mandatory expedited jury trial if any of the following criteria are met:

- ❶ Punitive damages are sought.
- ❷ Damages in excess of insurance policy limits are sought.
- ❸ A party's insurer is providing a legal defense subject to a reservation of rights.
- ❹ The case involves a claim reportable to a governmental entity.
- ❺ The case involves a claim of moral turpitude that may affect an individual's professional licensing.
- ❻ The case involves claims of intentional conduct.
- ❼ The case has been reclassified as unlimited pursuant to Section 403.020.
- ❽ The complaint contains a demand for attorney's fees, unless those fees are sought pursuant to Section 1717 of the Civil Code.

The true test of whether the mandatory nature of the one day jury law will survive balances on how the courts will handle the motions to opt out pursuant to §630.20(b)(9):

"The judge finds good cause exists for the action not to proceed under the rules of this chapter. Good cause includes, but is not limited to, a showing that a party needs more

than five hours to present or defend the action and that the parties have been unable to stipulate to additional time."

Assuming that the courts will be reluctant to find good cause, trial lawyers should be intimately familiar with the statutory Economic Litigation Rules for limited civil cases.<sup>5</sup> In particular, all evidence must be included in a §96 statement and the trial lawyer may introduce testimony by an affidavit in lieu of live testimony.<sup>6</sup>

In order to make the mandatory one day trial even more cost effective, a trial lawyer should carefully consider serving a reasonable CCP §998 Offer to Compromise in order to increase the chances of recovering expert and other costs in addition to the regular statutory costs.

Finally, in so-called disputed liability cases, carefully drafted Request for Admissions are essential. Denial of a request for admission can lead to an additional award of costs and attorney's fees incurred by the propounding party in proving those facts if that party proves the truth of the facts at trial.<sup>7</sup> With limited exceptions, the court is required to award those costs and fees.<sup>8</sup> Because trial time and costs are so critical to the one day jury trial, the courts may be receptive to awarding costs and attorney's fees.

The new law anticipates that the Judicial Council will adopt additional rules and uniform procedures to further implement the mandatory one day trials. As of the date of this article, we have not seen any such published additional rules and procedures. That said, the existing rules and statutes are probably sufficient to fully implement the new law at present. 🏠

<sup>1</sup> California Code of Civil Procedure §630.20, et seq.

<sup>2</sup> CCP §630.23.

<sup>3</sup> CCP §630.20(d).

<sup>4</sup> CCP §630.24.

<sup>5</sup> CCP §90, et seq.

<sup>6</sup> CCP §98.

<sup>7</sup> CCP §2033.420(a).

<sup>8</sup> *Grace v. Mansourian*, 240 Cal.App.4th 523 (2015).

## Court Qualified AUTOMOBILE EXPERT WITNESS



Jack G. Cohen

*30 Years Experience in  
the Automobile Business*

- Plaintiff and Defense
- Consulting with attorneys, dealers, consumers, insurance companies
- Appraisals
- Industry standards
- Dealer fraud
- Vehicle sales and leasing
- Dealership practices
- New and used auto transactions
- Auto warranty issues
- Finance documentation and analysis
- Lender-dealer relationships
- Wholesale & Retail
- Diminished value cases

**OFFICE: 747.222.1550**  
**CELL: 818.445.5500**  
jack@coheninv.com





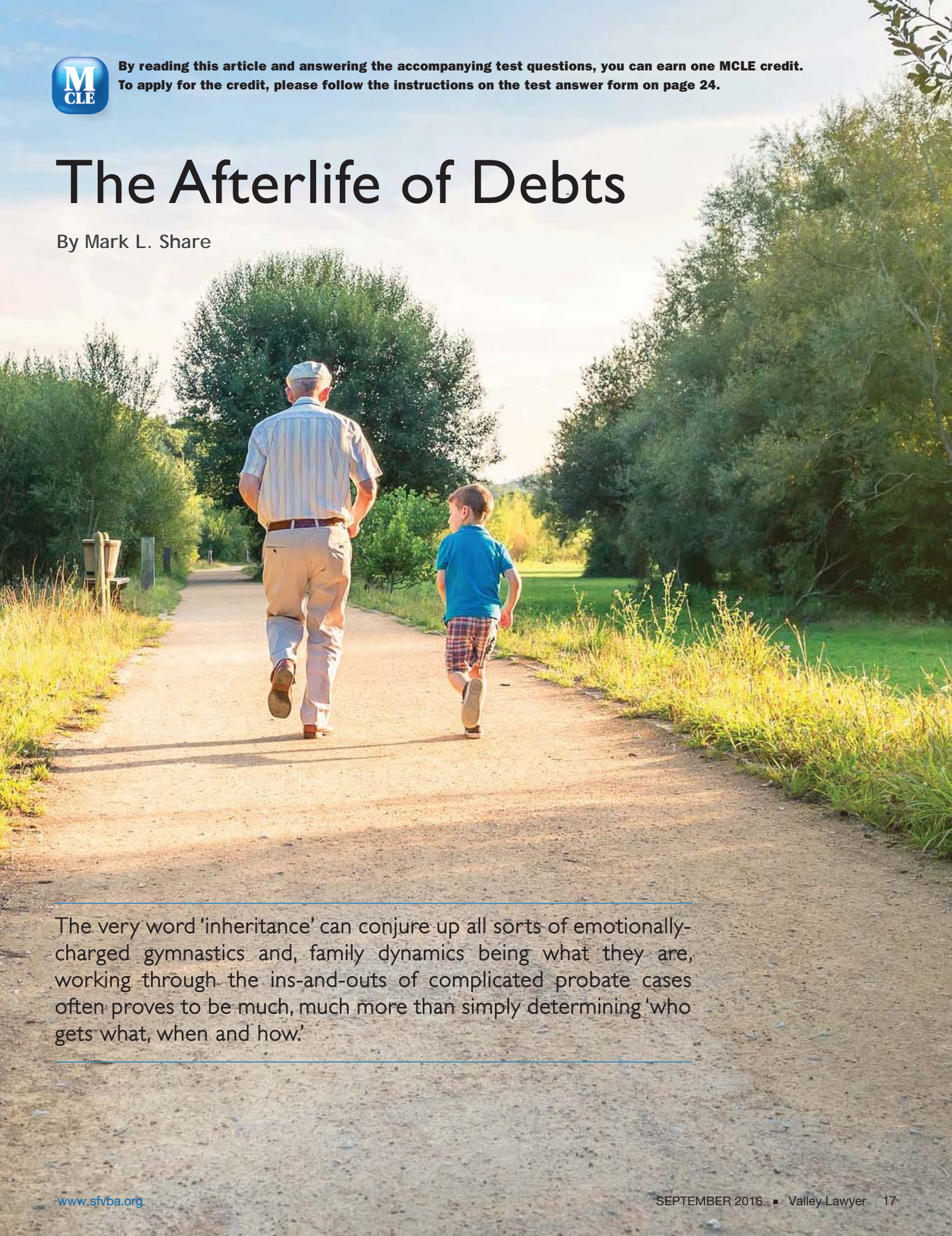




By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 24.

# The Afterlife of Debts

By Mark L. Share

A photograph showing a man and a young boy walking away from the camera down a dirt path. The man is on the left, wearing a light-colored short-sleeved shirt, khaki pants, and a cap. The boy is on the right, wearing a blue t-shirt and plaid shorts. They are walking towards a line of trees in the distance. The path is flanked by tall grass and trees, and the scene is bathed in warm, golden light, suggesting late afternoon or early morning.

---

The very word 'inheritance' can conjure up all sorts of emotionally-charged gymnastics and, family dynamics being what they are, working through the ins-and-outs of complicated probate cases often proves to be much, much more than simply determining 'who gets what, when and how.'

---



**T'S A RARE PERSON WHO PASSES AWAY NOT** owing any money to anyone. Many of these debts may be paid voluntarily, such as by a surviving spouse or children who may be acting as a successor trustee or executor of the estate. Some debts are not paid, with some creditors choosing not to pursue them through the courts, while others aren't willing to let the debts vanish into the afterlife.

How to proceed with such claims involves considering a number of statutes designed to balance the public policy of closing estates quickly and the due process rights of creditors, as well as the particular estate plan and assets of the decedent.

Even if there is a money judgment entered before the debtor's death, one isn't necessarily much better off than other creditors. After the death of the judgment debtor, a money judgment may not be enforced under the Enforcement of Judgments Law (with very limited exceptions). Instead, the Probate Code, whether or not the creditor has previously obtained a money judgment, governs a creditor's collection efforts. Creditors with money judgments have no priority over those with none and must submit claims.<sup>1</sup>

Much of the statutory scheme contemplates a probate proceeding being opened to administer the decedent's estate. In probate court, the creditor has two steps: a claim, and if it is rejected and not paid in full, a lawsuit. An action may not be commenced unless a claim is filed and rejected.<sup>2</sup>

The creditor must commence an action on the rejected claim within ninety days after the notice of rejection is given if the claim is due, or ninety days after the claim becomes due.<sup>3</sup>

Regardless of when the administrator acts on the claim, virtually any action or claim based upon the liability of a decedent must be made by a creditor within one year of death.<sup>4</sup> Therefore, any creditor attempting to collect a debt or enforce a judgment must make certain to become aware of the date of death of the debtor. The one-year statute affects the following actions:

- Creditors' claims in probate<sup>5</sup>
- Suit against distributees of estate<sup>6</sup>
- Filing claims against trusts<sup>7</sup>
- Suit against distributees of trust<sup>8</sup>

- Suit against one who takes via affidavit procedure (personal property)<sup>9</sup>
- Suit against one who takes via succession procedure<sup>10</sup>
- Suit against one who takes via affidavit procedure (real property)<sup>11</sup>
- Suit against surviving spouse who takes without administration (real property)<sup>12</sup>

Although C.C.P. §366.2 provides that the limitations period shall not be tolled or extended for any reason other than those specified, several cases have held that the doctrines of waiver and equitable estoppel may permit suit after the one-year period.<sup>13</sup>

In *Stewart v. Seward*,<sup>14</sup> the court found no waiver or estoppel where the notice rejecting the creditor's claim contained the boilerplate language that "three months" remained to file a lawsuit after rejection of the claim, even though the one-year period ended less than three months away. The creditor filed within three months after the date the rejection notice was mailed in accordance with the plain language of the notice. But that was a few days after the one-year period. The court found the claim was time-barred, which illustrates the difficulty of avoiding the one-year bar on grounds of waiver or estoppel.

Not all claims must proceed through probate. These exceptions generally involve insurance and enforcing security interests. If the creditor is content to limit the recovery to the insurance limits, the creditor need not file a claim.<sup>15</sup> Similarly, judicial and non-judicial foreclosure actions on deeds of trusts do not require a claim; however, the creditor cannot receive any part of the estate other than the property subject to the lien.<sup>16</sup>

Other debts that need not be pursued through the probate claim procedures are those that arose after the decedent died, such as a note that is not due when the decedent died, but comes due later and is not paid by the personal representative. Furthermore, claims involving non-monetary relief, such as determining title to property, are not claims as defined by the statute.

### Living Trusts

Nowadays, many decedents will have their assets held in a living trust in order to avoid probate. If there is also a probate case open to administer assets that were not held in the trust, then the creditor must file a claim in the probate to reach assets held in the trust.<sup>17</sup>



**Mark L. Share** is a shareholder at DeCastro West, with a focus on real estate and probate litigation. He is Chair of the LACBA Remedies Executive Committee. He can be reached at [mshare@dwclaw.com](mailto:mshare@dwclaw.com).





## Coverage You Can Trust

Did you know we are a full service insurance agency, offering everything from professional liability to personal insurance? We are here as your one-stop shop, and our knowledgeable team will deliver the personalized customer service you deserve.

We offer competitively priced, quality products from stable, highly-rated companies.

### For your Legal Practice

- Professional Liability Insurance
- Health Insurance (Group and Individual)
- General Liability, Business Property Insurance
- Workers' Compensation Coverage
- Employment Practices Liability Insurance

### For You, Your Family, and Staff

- Personal Auto, Homeowners, and Personal Umbrella Liability Insurance
- 401(k) Benefits
- Employee Benefits
- Long-Term Care Insurance
- Disability Insurance
- Term Life Insurance

Let us be your One-Stop Shop for Insurance. Call us today for a second opinion consultation at **800.371.9024**.



# NARVER

**We are a supporter of the  
San Fernando Valley Bar Association**





**CISLO & THOMAS LLP®**  
Patent, Copyright and Trademark  
Litigation Attorneys at Law



We Have Successfully Settled or Litigated  
Over 98% of Our Cases

Office Locations:

West Los Angeles / Santa Monica  
Westlake Village  
Santa Barbara

[www.cisloandthomas.com](http://www.cisloandthomas.com) | 1 (866) CISLO LAW

## OVER 60 YEARS OF EXPERIENCE IMMIGRATION LAW

Green Cards, Work Permits, U.S. Citizenship

**Law Offices of  
Tasoff & Tasoff**

**(818) 788-8900**

**[www.tasoff.com](http://www.tasoff.com)**

*Founded 1949*

**Super Lawyers**

LISTED IN  
**Best Lawyers®**  
THE WORLD'S PREMIER GUIDE



AV  
LexisNexis  
Martindale-Hubbell  
Peer Review Rated  
FOR ETHICS, STANDARDS AND LEGAL ACHIEVEMENT

After filing the probate claim, a creditor must have the claim accepted or establish the claim by suit and must also establish that the amount in the estate is inadequate to cover claims and expenses of the estate. The creditor can then petition the court for payment by the trustee.

Unfortunately for the creditor though, a trustee is not obligated to maintain property in the trust sufficient to pay creditors where the estate is inadequate while a creditor's claim is being contested against the personal representative (even though the trustee and personal representative were the same people).<sup>18</sup>

A creditor who is concerned about the trust assets being distributed (and then being unreachable or dissipated after distribution to the beneficiaries) could petition the probate court to require the trustee to hold sufficient assets pending the creditor establishing the claim. But in many cases where the debtor had assets in a living trust, no probate case will be opened by the decedent's heirs because everything will pass outside of probate, such as through the trust, by insurance policies, and retirement accounts. The statutes and case law are not entirely clear as to whether a petition to probate the decedent debtor's estate must be filed and a claim made therein in order to access property in a revocable trust, although a creditor may open a probate and obtain a judgment on the claim to then use against the trust.

If a creditor decides not to incur the expense and delay of opening a probate without assets, there is authority for proceeding directly against the trustee and any beneficiaries who have received trust assets.

### Probate

Looking at the matter defensively when there are assets to probate, heirs might choose to wait a full year before opening the probate, when all claims are barred, in the thought that no creditor will go to the effort of opening a probate.

If the creditor fails to open a probate and someone else does more than one year after the death, the creditor cannot then file a timely claim and so is barred from being satisfied from the estate.<sup>19</sup> However, the creditor should still be able to reach decedent's property that was transferred outside of probate, such as to a spouse, without opening a probate.<sup>20</sup>

If the creditor determines to petition for administration, the creditor may become the personal representative, but the court has discretion to appoint someone else. But if the creditor applied to become the administrator, an heir might challenge the application in order to avoid having the creditor administer the estate and also to avoid the creditor and the creditor's attorney receiving fees for doing so. The creditor should consider the cost of the bond that will have to be posted.



If the creditor files a petition to initiate probate, it is a general (not special) administration even where the creditor opens the probate only for the purpose of satisfying the claim requirement. The reason for opening a general administration includes that there may be other creditors.

When a probate is opened, the personal representative gives notice to creditors. There is the general newspaper notice that a probate has been opened. In addition to the publication of notice, the personal representative is required to give notice of administration of the estate to the known or reasonably ascertainable creditors of the decedent.<sup>21</sup>

Generally, the personal representative is not liable to creditors, but may be if the failure to give notice was in bad faith and the creditor did not know of the administration and would otherwise have been paid out of the estate. Furthermore, when a creditor was required to be given notice and was not, the distributees of property of the estate are liable to such creditors to the extent of the value of the property received.<sup>22</sup>

Creditors must file their claim within the later of the following times: four months after the date letters are first issued to a general personal representative; or sixty days after the date notice of administration is mailed or personally delivered to the creditor.<sup>23</sup> The creditor may petition the court to file a late claim.<sup>24</sup>

The creditor files the claim with the court and serves it on the personal representative. The personal representative then has thirty days to accept or reject the claim or it is deemed rejected.

People receiving the decedent's assets without probate administration are liable to creditors without the creditors needing to open a probate and without regard to the claims procedure. The liability is limited to the value of the assets received. For example, a person receiving property of a small estate or a surviving spouse receiving property without administration are liable to creditors.<sup>25</sup>

Similarly, personal property received via an affidavit procedure is subject to the claims of creditors. A person may, if forty days have elapsed since the death of the debtor, upon presentation to those holding the decedent's assets of an affidavit regarding such claimant's rights to the decedent's assets, receive the debtor's personal property.<sup>26</sup> Any person receiving property of the decedent debtor in such manner is liable for the debts of the decedent to the extent of the value of the property received.<sup>27</sup>

Real property received via a petition for a court order is also subject to creditors' claims. A person may, if forty days have elapsed since the death of the debtor, petition the court for an order determining succession to real property.<sup>28</sup> Any person receiving property of the decedent debtor in such a manner is liable for the debts of the decedent to the extent of the value of the property received.<sup>29</sup>

I am pleased to announce my new association with

## Dilbeck Real Estate

Please feel free to call me if I can be of assistance to you in any aspect of real estate.

*Steven M. West*

Broker Associate

CalBRE# 02000607

**Direct: 818.755.5559**

**Cell: 818.808.3179**

Steven.West@dilbeck.com

StevenWest.dilbeck.com

12164 Ventura Boulevard, Studio City, CA 91604

DELIVERING  
VALUE



Jenny Chen, Partner

Specializes in serving law firms and other professional services

- \* Attestation/Accounting
- \* Tax Planning and Compliance (Multi-State, International)
- \* Audits of Employee Benefit Plans
- \* Tax Credits and Incentives
- \* Controllorship
- \* Business Valuation
- \* Estate and Trust Planning
- \* IT Systems Review and Consulting



HUTCHINSON AND BLOODGOOD LLP  
Certified Public Accountants and Consultants  
550 N. Brand Blvd., 14th Floor Glendale, CA 91203  
t 818.637.5000 www.hblp.com

Real property may also be received via an affidavit procedure (without court order) when all real property in the debtor's estate is \$20,000 or less.<sup>30</sup> Such a person is also liable to creditors to the extent of the value of property received.

The decedent debtor's surviving spouse who receives the debtor's separate property or the couple's community property via a will or intestacy may choose to receive such property without administration.<sup>31</sup> The debtor's spouse is liable to creditors of the decedent debtor to the extent of the value of the property (one-half of community property) passing to the surviving spouse without administration.

More specifically, the liability of the surviving spouse cannot exceed the fair market value at the date of the decedent's death, less the amount of any liens and encumbrances, of the total of the portion of the one-half of the community and quasi-community property belonging to the decedent that passes to the surviving spouse without administration, plus the separate property of the decedent that passes to the surviving spouse without administration.

The one-year statute still applies to claims against the surviving spouse, and the surviving spouse may assert any defense of cross-complaint that the decedent could have.

### **Joint Tenancy**

Another way of looking at collecting from decedent's estate is to consider the different ways property may be held. Other than Medi-Cal, property held in joint tenancy is generally not available to creditors.

Joint tenancy real property is not liable for a debt of a decedent debtor after death even if the judgment or abstract is recorded pre-death or if the levy procedure was started and the sale did not take place.<sup>32</sup> Therefore, taking title to property in joint tenancy or transferring title to joint tenancy from another form of title is potentially beneficial debt protection planning if one believes that the debtor (or potential debtor) will be the first to die.

The use of this technique is subject to the fraudulent transfer laws. And the technique may work only if the property is transferred before the creditor's judgment lien is recorded. Subject to specified exceptions, an abstract of judgment attaches to all interests (whether present or future, vested or contingent, legal or equitable) owned by the judgment debtor in real property in the county in which the abstract is recorded and creates a judgment lien on that property.<sup>33</sup> Under section 697.390, subdivision (a), "a subsequent conveyance or encumbrance of an interest in real property subject to a judgment lien does not affect the lien."

One downside of holding property in joint tenancy is that you lose all or part of the step-up in basis on the death of the decedent. For joint tenancy property, one-half of the property is acquired from the decedent and therefore gets

a step-up in basis. The other one-half of the property was either owned by the successor in interest or was given to the successor in interest during the decedent's lifetime. In either case, that one-half retains the original basis.<sup>34</sup>

There are a number of methods of holding title to various items of personal property such as bank accounts, which will have the same effect as holding title to real property in joint tenancy, i.e., avoiding the property being subject to claims of creditors after death.

### **Community Property**

Community property is liable for the debts of either spouse incurred before or during marriage, with exceptions. After death, the community property of the debtor and debtor's spouse is also liable for the debts of each,<sup>35</sup> such that the community property share of a decedent spouse can be held liable for the debts of a surviving spouse.

As for real estate, usually the family home, community property may be held with right of survivorship when the right of survivorship is expressly declared in the transfer document and signed or initialed by the grantees. Upon the death of one of the spouses, the property passes to the surviving spouse without administration, subject to the same procedures, as property held in joint tenancy, but the entire property receives a step-up in basis.<sup>36</sup> Such property should be liable for the debts of either spouse.

### **The Poor Man's Will**

Effective January 1, 2016, the new revocable transfer on death deed, or poor man's will, allows real estate to be transferred to beneficiaries at death without probate, much like a joint tenancy, but without putting the beneficiary on title during the grantor's lifetime. The person receiving the property of a decedent under this new type of deed will be liable to the decedent's creditors up to the value of the property received.

Although not often utilized, there is a procedure to administer claims against the decedent's assets held in trust, with the advantage that the beneficiaries will not be liable for the debts. After the death of the settlor, the trustee may file with the superior court for the appropriate county a proposed notice to creditors if the trustee does not have actual knowledge of a petition to administer the settlor's estate.<sup>37</sup> In addition to the filed notice, the trustee must publish notice to creditors.

If the trustee has knowledge of a creditor of the deceased settlor, the trustee shall give notice to the creditor. The trustee has knowledge of a creditor if the trustee is aware that the creditor has demanded payment from the deceased settlor or the trust estate.<sup>38</sup>

Note that the standard for the personal representative and the trustee are different. The personal representative




must give notice to reasonably ascertainable creditors, while the trustee has to give notice only to known creditors.

The deadline for the personalized notice is four months after the first publication of notice or thirty days after the trustee first has knowledge of the creditor.<sup>39</sup>

If the creditor wishes to make a claim against the assets held in the trust, the claim must be filed within the later of the following times: four months after the first publication of notice to creditors; or sixty days after the date actual notice is mailed or personally delivered to the creditor.<sup>40</sup> As with probate administration, the creditor seeking trust assets may petition the court to file a late claim.

The creditor files the claim with the court and serves it on the trustee. Failure to mail a copy to the trustee does not invalidate a properly filed claim, but any loss that results from the failure shall be borne by the creditor.<sup>41</sup>

The trustee should allow or reject the claim. If within thirty days after the claim is filed, the trustee has failed to act, the creditor may deem the claim rejected.<sup>42</sup> If the trustee files, publishes, and serves notice and the creditor fails to file the claim, the claim is barred.<sup>43</sup> 

<sup>1</sup> Cal. Prob. Code §§9300, 19300.

<sup>2</sup> Cal. Prob. Code. §9351.

<sup>3</sup> Cal. Prob. Code. §9353.

<sup>4</sup> C.C.P. §366.2; *Levine v. Levine*, 102 Cal. App.4th 1256 (2002).

<sup>5</sup> Cal. Prob. Code §§9100, 9103.

<sup>6</sup> Cal. Prob. Code §9302.

<sup>7</sup> Cal. Prob. Code §19100.

<sup>8</sup> Cal. Prob. Code §§19400, 19401, 19402.

<sup>9</sup> Cal. Prob. Code §13109.

<sup>10</sup> Cal. Prob. Code §13156.

<sup>11</sup> Cal. Prob. Code §13204.

<sup>12</sup> Cal. Prob. Code §13554.

<sup>13</sup> *Battuello v. Battuello*, 64 Cal.App.4th 842(1998).

<sup>14</sup> 148 Cal.App.4th 1513 (2007).

<sup>15</sup> Cal. Prob. Code. §9390.

<sup>16</sup> Cal. Prob. Code § 9391.

<sup>17</sup> Cal. Prob. Code §19001(a), 9000 et seq.

<sup>18</sup> *Dobler v. Arluk*, 89 Cal.App.4th 530 (2001).

<sup>19</sup> Cal. Prob. Code §§9002, 9150(d), 9351.

<sup>20</sup> Cal. Prob. Code §§13550 et seq.

<sup>21</sup> Cal. Prob. Code. §9050.

<sup>22</sup> Cal. Prob. Code §9392.

<sup>23</sup> Cal. Prob. Code. §9100.

<sup>24</sup> Cal. Prob. Code. §9103.

<sup>25</sup> Cal. Prob. Code §§13000 et seq., 13500 et seq.

<sup>26</sup> Cal. Prob. Code §§13100, 13101.

<sup>27</sup> Cal. Prob. Code §§13109, 13112.

<sup>28</sup> Cal. Prob. Code §§13150, 13151.

<sup>29</sup> Cal. Prob. Code §13156.

<sup>30</sup> Cal. Prob. Code §13200.

<sup>31</sup> Cal. Prob. Code §§13500, 13502.

<sup>32</sup> *Grothe v. Cortlandt Corp.*, 11 Cal.App.4th 1313, 1318 (1992).

<sup>33</sup> *Federal Deposit Ins. Corp. v. Charlton*, 17 Cal.App.4th 1066, 1069 (1993).

<sup>34</sup> Internal Revenue Code §1014.

<sup>35</sup> *Dawes v. Rich*, 60 Cal.App.4th 24 (1997).

<sup>36</sup> Cal. Civil Code §682.1.

<sup>37</sup> Cal. Prob. Code. §19003.

<sup>38</sup> Cal. Prob. Code. §19040.

<sup>39</sup> Cal. Prob. Code. §19051.

<sup>40</sup> Cal. Prob. Code. §19100.

<sup>41</sup> Cal. Prob. Code. §19150.

<sup>42</sup> Cal. Prob. Code. §19254.

<sup>43</sup> Cal. Prob. Code. §19004.

## Hot Writs & Cool Appeals

**Herb Fox, Esq.**

Certified Appellate Law Specialist\*  
A Full Service Appellate Boutique



**Former Research Attorney, State  
Court of Appeal**

**29 Years Experience**

**250+ Appeals and Writs of  
Record**

**Appeals and Writs**

**Petitions for Review and Certiorari**

**Post-Trial and Anti-SLAPP Motions**

**Appellate Opinion Letters**

**Pre-Trial, Trial, and Post-Trial  
Consultations**

**310.284.3184**  
**HFox@FoxAppeals.com**  
**www.FoxAppeals.com**

Hourly, Flat and Contingency Fees Considered  
Referral Fees Paid in Accordance with State  
Bar Requirements

*Southern California Appellate Superlawyer®*  
*AV® Rated / AVVO® Rating 10*

*\*Board of Legal Specialization, Cal. State Bar*



# Test No. 95

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. There is generally a one-year statute of limitations for commencing an action against a decedent's estate.  
☐ True ☐ False
2. If a creditor has a judgment before the debtor dies, the creditor may continue to enforce it under the Enforcement of Judgments Law rather than under the Probate Code.  
☐ True ☐ False
3. If a wife receives her deceased husband's property through a spousal property petition that is granted by the probate court, she takes that property free of his debts.  
☐ True ☐ False
4. The one-year statute of limitations may be extended by establishing waiver or estoppel.  
☐ True ☐ False
5. Claims against the decedent's insurance policies must be administered through probate.  
☐ True ☐ False
6. Creditors must file claims in an open probate administration before seeking assets held in the decedent's trust.  
☐ True ☐ False
7. When a creditor files a claim in the probate administration, the trustee of the decedent's trust has a duty to the creditor to withhold from distribution trust assets sufficient to satisfy the claim.  
☐ True ☐ False
8. If the heirs wait a year to open probate, the decedent's creditors are barred by the statute of limitations from obtaining any assets administered through the probate.  
☐ True ☐ False
9. The creditor may petition to open a probate case and become the personal representative.  
☐ True ☐ False
10. A personal representative who willfully fails to give notice of the probate to a known creditor may be liable to that creditor.  
☐ True ☐ False
11. The personal representative has thirty days to accept or reject a creditor's claim or it is deemed rejected.  
☐ True ☐ False
12. Without using the probate claims procedures, a creditor can sue a surviving spouse to obtain property distributed by a spousal property petition.  
☐ True ☐ False
13. A creditor's suit against the decedent's spouse to recover property received outside of probate must be commenced within one year of the decedent's death.  
☐ True ☐ False
14. Property transferred by joint tenancy will not be subject to a creditor's claims unless the creditor had a lien on the property.  
☐ True ☐ False
15. One advantage of the new "revocable transfer on death deed" is that the beneficiary receives the real estate free of the claims of the decedent's creditors.  
☐ True ☐ False
16. A trustee can use a procedure analogous to the probate claims procedure so that beneficiaries receive distributions free from creditors' claims.  
☐ True ☐ False
17. The trustee must give notice of the availability of trust assets to reasonably ascertainable creditors.  
☐ True ☐ False
18. If the trustee files with the court, publishes, and serves notice of the opportunity to file a claim and the creditor fails to timely file the claim, the claim is barred.  
☐ True ☐ False
19. The creditor must serve the claim on the trustee or it is barred.  
☐ True ☐ False
20. The creditor seeking trust assets may petition the court to file a late claim.  
☐ True ☐ False

## MCLE Answer Sheet No. 95

### 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.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 5.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 6.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 7.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 8.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 9.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 10. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 11. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 12. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 13. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 14. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 15. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 16. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 17. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 18. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |



# xerox



**Xerox 55-page per minute B&W MFP** with Color Scan, B&W Print, Fax and Copy Features as well as 2 cassettes and a stapling finisher.

**\$95**  
PER MONTH

Details: WorkCentre 4265xf, 60-month lease, FMV Lease-end option. Service and Support are not included, but available and encouraged.



Lease or purchase any Xerox MFP/Copier and get an **Apple Watch!**\*



7915 Ruffner Ave. • Van Nuys, CA 91406  
800-350-1672 • [www.mercurydoc.com](http://www.mercurydoc.com)

*Providing Excellent Products and Services to Law Firms*

\* Offer valid 30 days from publication cover date.



The Matloff Company has been a top insurance broker to Southern California attorneys, their firms and families for over 32 years.

**RATED A+ A.M.  
BEST INSURERS.**

## Life Insurance

Term, Universal Life, Survivorship, Estate Planning, Key-Person

## Disability Insurance

Insure your most important asset—"Your ability to earn income"  
Insures you in your own occupation  
Benefits keep up with inflation

## Long Term Care Insurance

Several quality carriers for individuals and firms

## Health Insurance

All major insurance companies for individuals & firms

**MC** **The Matloff Company**

An Insurance and Financial Services Company

Phone: **(800) 468-4467**

E-mail: [elliott@matloffcompany.com](mailto:elliott@matloffcompany.com)




**Elliot Matloff**

[www.matloffcompany.com](http://www.matloffcompany.com)









By Michael D. White

# Taking a Different Path: *Meet SFVBA's New President, Kira Masteller*

The lessons learned in the outdoors helped Kira Masteller trod the path less traveled from paralegal to president of the SFVBA. Masteller will begin her new adventure as the elected leader of the 2,000-member Bar Association following the installation of the 2016-2017 Board of Trustees on Thursday evening, September 22 at the Skirball Center.



**T**O SAY THAT KIRA MASTELLER, THE SFVBA'S incoming president, has taken a distinctly unconventional path to get where she is today would be an exercise in understatement.

Her English father and French mother, who fled France with her family at the beginning of World War II, married in Toronto in 1956; they came west, like so many others, for the opportunities and the warm weather.

"We settled in Southern California, except for four years in San Francisco," Masteller recalls. "My dad sold Smith Corona typewriters and the entire state was his region."

After a spell in Redondo Beach, the family settled in the San Fernando Valley, where Masteller attended Reseda High School and Pierce College. Throughout her childhood, she was encouraged to read every book she got her hands on and make the most of Southern California's iconic weather.

"My parents both came from a very foggy, wet, cold climate and when they came to California, they were constantly outside," says Masteller. "We were near the beach in the South Bay and we took full advantage of it. If I was reading a book, my mom told me to read it outside; it's the way I was raised."

With a father who was an avid athlete, Masteller and her brother constantly found themselves snow skiing, surfing, bike riding, skateboarding, camping, fishing, boating and waterskiing, to name just a few of the activities they participated in. "We were constantly outdoors and the love of it is still there," she says.

At age 18, she was attending Pierce and took a private course to earn her certification as a paralegal. Married two years later, she quickly had two children and in her early 30s found herself a single mom with a desire to pursue her dream of attending law school—a dream encouraged years earlier by the influence of two high school teachers who kindled an interest in the backstory of how the U.S. Constitution was crafted and what she calls "working for the community good."

Rather than trudging along the well-worn, seamless track from four-year college to law school, Masteller pursued her dream by opting out of obtaining a college-level undergraduate degree and, instead, took exams on the natural sciences, mathematics, English and social sciences over the period of a year.

It was "a complicated process" that earned her the equivalent of a bachelor's degree and the qualifications to apply to law school with the proviso that she score over 150 on the LSAT. She did and soon thereafter, was accepted to the San Fernando Valley College of Law. She attended law school at night while continuing her paralegal work during the day. Masteller graduated fourth in her class and passed the bar on her first try.



"I worked with a local attorney in Woodland Hills as a paralegal for eight years and then at the same office as a lawyer for four years," says Masteller. Today, she specializes in estate planning, trust administration, gift and tax planning, and probate as a shareholder at the law firm of Lewitt Hackman in Encino.

"When I first started as a paralegal, my very first job was in family law and I learned a lot about the psychology of working with individuals and family issues and received a lot of useful training on how to deal with the kinds of





issues that arise in family-related situations,” she says. “I wasn’t particularly aimed in that direction at the time, but when I moved on, I found that the place I’m at now was the best place to apply all that I’d learned: how people think about the money they earn and how that can impact their relations with family members.”

Along the way, Masteller unearthed what she calls “a natural aptitude” that gave her the wherewithal to understand the fundamental basic dynamics that make up virtually every family.

“I come from divorced parents, so I found myself able to identify issues as they arose,” she says. “Not only do I have to recognize the practical accounting and legal issues, but the psychology behind the decisions that are being made and frame the entire picture not only in a personal perspective, but in a legal frame that will work. There are a lot of different things that we explore from the personal side and the legal side. I like that a lot more than being an attorney for a huge company that has no face, no personality.”

When you take the “big picture” approach, “it’s almost the function of a family to be dysfunctional,” she says, chuckling. “But, even though there are situations that I don’t find personally gratifying or make me feel uncomfortable, I feel like I’m being helpful and that adds personal value to what I’m doing. I like working with families and I enjoy working with people.”

A member of the SFVBA, both as a paralegal and as an attorney since 1997, Masteller, as the organization’s new president, wants to “give the members a voice in the direction the bar takes by implementing open forums and promoting communication with its leadership to promote ideas on how they can play a bigger part in its functions and activities.”

That approach, says Masteller, “can help us build a bar...one that they want,” a worthwhile, but challenging goal to achieve, she says, because “there’s only so much a voluntary bar can offer and it’s not something that stays the same. Over the last decade, we’ve really seen a change in what members do to research or reach out to other attorneys and, nowadays, much of that communication is electronic, not face-to-face like it used to be. So it’s a challenge to stay relevant, successful and value-added for every one of its members in today’s environment.”

How important is that face-to-face communication?

“There’s a lot of value to looking at someone in the eye and having the opportunity to communicate in ways other than words,” she says. “Energy...body language...maybe you get to display a sense of humor...maybe you get to share your empathy...your understanding and that you’re a good listener. I don’t think that individuals get that opportunity when they’re dealing only electronically and not face-to-face.”

One of the primary tools to foster that face-to-face approach is the Valley Bar Network (VBN), a relatively new, and highly regarded, SFVBA program aimed at giving Bar members the opportunity to “mix and mingle” and “develop a deeper level of communication and offer the chance to interact on a more personal level,” Masteller says. “It’s been very successful and genuinely helps our members share their experiences and refer business.”





as a member of the Board of the California Prison Industry Authority. She also makes the time to volunteer at a legal clinic for a battered women's shelter in Santa Monica.

Looking back, she recalls, "Neither of my parents did what they really wanted to do in terms of career. Both my brother and I learned a lot from that and we decided that we should 'go for it,'" noting that, now into her 50s, with past experience as a marathoner and triathlete, she currently augments her chosen career with an Olympian roster of seasonal activities that includes water skiing, snow skiing, snowboarding, mountain biking and hiking.

Last year she climbed Mt. Whitney, with future plans to walk the backside of the mountain along the John Muir Trail.

Summing up her life experience, says Masteller, "all you really need to accomplish a goal is to show up with a good pair of socks, a good pair of shoes, and the desire to get the job done."

Perfection of results isn't the issue, "but if you show up and have the right equipment, you can do whatever you set out to do," says Masteller. "I've carried that philosophy through my career and taught it to my children. It's proved to be a really simple and tried and true philosophy for me." 🛠️

*Kira Masteller and the SFVBA's new officers and trustees will be sworn in at the Bar Association's Installation Gala on Thursday evening, September 22 at the Skirball Center. To purchase tickets and sponsorships, contact [events@sfvba.org](mailto:events@sfvba.org) or (818) 227-0490, ext. 105.*

Another is Women in Network (WIN), which Masteller founded in 2008 to help women attorneys meld "family time" with their professional lives. "We started to meet for lunch with seven women who were encouraged to each bring two friends," she says. "We've grown to 25 women meeting to discuss successes, failures, challenges, professional ethics, managing employees, marketing, and other issues. It's been very effective and very well received."

Masteller took her philosophy of community service to another level when, in 2010, then Governor Arnold Schwarzenegger named her to serve a four year term



**Michael D. White** is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 35 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at [michael@sfvba.org](mailto:michael@sfvba.org).





SFVBA President  
KIRA S. MASTELLER



VCLF of the SFVBA President  
LAURENCE N. KALDOR



President's Award  
ALAN E. KASSAN

**SUPPORTED BY  
DIAMOND SPONSOR**



LEWITT HACKMAN

LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN  
A LAW CORPORATION

**PLATINUM SPONSOR**



GREENBERG  
& BASS

**GOLD SPONSORS**



**SFVBA OFFICIAL SILVER SPONSORS**



Rose, Snyder & Jacobs LLP  
ACCOUNTANTS & ADVISORS

**COCKTAIL RECEPTION SPONSOR**



Orcutt-Fasano-Krischer-Shafer Wealth Management Group

# INSTALLATION GALA

## *Party Under the Stars*

**THURSDAY**

**SEPTEMBER 22, 2016**

6:00 PM to 8:30 PM

Skirball Cultural Center

2701 N. Sepulveda Boulevard, Los Angeles

Hosted Cocktail Reception and Installation Ceremony  
Business Attire

\$130 per Ticket | \$1,300 Table of Ten

\$1,235 Table of Ten for President's Circle Members

## SPONSORSHIP AND ADVERTISING OPPORTUNITIES

**PLATINUM SPONSOR** **\$2,200**

Includes full-page ad in program booklet, ten tickets, and acknowledgement on guest tables and by Master of Ceremony

**GOLD SPONSOR** **\$1,500**

Includes half-page ad in program booklet, four tickets, and acknowledgement on guest tables and by Master of Ceremony

**PROGRAM BOOKLET  
ADVERTISEMENT** **\$500**

Program booklet is 5.5" x 8.5". Advertise your services or offer a congratulatory note to our honorees.

Contact [events@sfvba.org](mailto:events@sfvba.org) or (818) 227-0490, ext. 105 to purchase tickets and sponsorships. All ad copy must be received by September 9, 2016.

# You Can't Handle the Truth:

## When Lying Becomes Dangerous

By David Carnie

**I**F THERE ARE TWO THINGS THERE IS NO SHORTAGE of in Los Angeles, its lawyers and celebrities, and, if history tells us anything, it is that the celebrities will keep toying with the law, and lawyers will attempt to bail them out.

This has been seen time and time again with celebrities like Barry Bonds,<sup>1</sup> Martha Stewart,<sup>2</sup> and Kimberly Jones<sup>3</sup> (aka Lil' Kim), to name a few. In each of these cases, the familiar face the public has come to know allegedly lied in court and felt, firsthand, the harsh response courts can impose for doing so.

Regardless of whether a witness is rich or poor, famous or anonymous, every person who takes the stand solemnly swears (or affirms) to "tell the truth, the whole truth, and nothing but the truth." If this oath is broken, an action for perjury, the act or an instance of deliberately making material false or misleading statements while under oath,<sup>4</sup> can be brought.

Perjury is a serious offense that results in incalculable harm to the functioning and integrity of the legal system as well as to private individuals.<sup>5</sup> For this reason, the federal government and most states, including California,<sup>6</sup> treat perjury as a felony.

Prosecutors, though, can be skeptical about bringing such charges. The traditional judgment in U.S. courts is that prosecution for perjury is not the sole, or even the primary, safeguard against errant testimony.<sup>7</sup>

Surely the judicial process must be upheld but witnesses must not be discouraged from appearing or testifying for fear of inadvertently perjuring themselves.<sup>8</sup> Protecting against

looming threats of perjury is considered paramount.<sup>9</sup> After all, the oath means nothing without a witness to bear it.

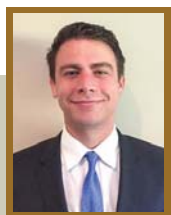
A conviction of perjury, therefore, can be sustained only where it is proven beyond a reasonable doubt that the defendant, while testifying under oath, gave false testimony concerning a material matter with willful intent to provide false testimony, rather than as result of confusion, mistake, or faulty memory.<sup>10</sup>

### Barry Bonds

Most people remember the perjury prosecution of former Major League Baseball all-star and home run 'king' Barry Bonds. In 2007, Bonds was summoned before a grand jury and questioned about his suspected use of steroids in connection with a federal investigation into use of performance enhancing drugs in professional baseball.<sup>11</sup> After extensive questioning, Bonds was later indicted on four counts of making false statements and one count of obstruction of justice, all based on his grand jury testimony.<sup>12</sup>

In April 2013, a jury convicted Bonds on the count of obstruction of justice. However, the jury was unable to reach a unanimous verdict on the three perjury counts, and the judge declared a mistrial.<sup>13</sup> In 2015, the issue of obstruction of justice was retried *en banc*, and the case against him was eventually dismissed.<sup>14</sup>

It isn't difficult to infer from Bonds' positive test results and his vague and misleading answers that he was not completely honest when he testified to the grand jury. Even though Bonds tested positive for anabolic steroids, when asked if he had taken any steroids that were given to him by his trainer



**David Carnie** is a third year law student at Loyola Law School of Los Angeles. He was a 2016 Summer Associate at Lewitt Hackman in Encino. He can be reached at david.carnie@lls.edu.



Greg Anderson, Bonds answered, "I don't think Greg would do anything like that to me and jeopardize our friendship. I just don't think he would do that."<sup>15</sup> And when asked again, he said, "Not that I know of."<sup>16</sup>

If the evidence clearly showed that Bonds was not completely honest to a grand jury, then this begs the question, why was he not convicted of perjury or obstruction of justice? When would his statements cross that threshold from simple lie to an actionable form of perjury?

### **Materiality**


The most difficult of these elements being the materiality of the false statement and the willful intent of the declarant making the statement. It is extremely difficult to prove perjury and its elements beyond a reasonable doubt. The first crucial element that separates perjury from non-perjury is materiality of the allegedly false statement.<sup>17</sup>

In determining materiality, California courts focus not on whether, as a matter of historic fact, the false statement probably influenced the outcome of the proceedings. Rather, courts focus on whether the false statement, at the time it was made, had the tendency to probably influence the outcome of the proceedings.<sup>18</sup> Because the standard is based on the statement's ability to influence the outcome, a statement that satisfies the other elements for perjury could still be actionable even though it did not actually influence the outcome of the proceeding.


The issue of materiality was explored during Bonds' federal trial. The court took issue with Bonds' answers to questions whether his trainer ever gave him anything which required a syringe to inject.<sup>19</sup> While Bonds' answers were literally true, they were non-responsive and irrelevant to the questions being asked.<sup>20</sup>

The court determined whether the statements had some weight in the process of reaching a decision by considering the intrinsic capabilities of the statement itself, rather than the statement's actual effect on the decision maker.<sup>21</sup> The court eventually came to the conclusion that the statements had little to no relevance to the subject of the grand jury's investigation. This decision reinforced the notion that a literally true, but non-responsive or irrelevant statement, when standing alone, is not sufficient to influence the decisions made by a judge or jury.<sup>22</sup>

This issue was originally explored by the Supreme Court in 1973 in *Bronston v. United States*.<sup>23</sup> Bronston was charged with violating the federal perjury statute based on statements he made at a bankruptcy hearing.<sup>24</sup> When asked if he ever had any Swiss bank accounts, he stated that his company had an account there for about six months,<sup>25</sup> but failed to mention a personal bank account he maintained in Geneva.<sup>26</sup> The Court eventually reversed Bronston's conviction because although his statement was misleading, it was not untrue. The Court held that it is the questioner's responsibility to probe the witness for more information.<sup>27</sup>



*Proudly Welcomes*



**Hon.  
Michelle R.  
Rosenblatt**

**Judge of the Superior Court, Retired**

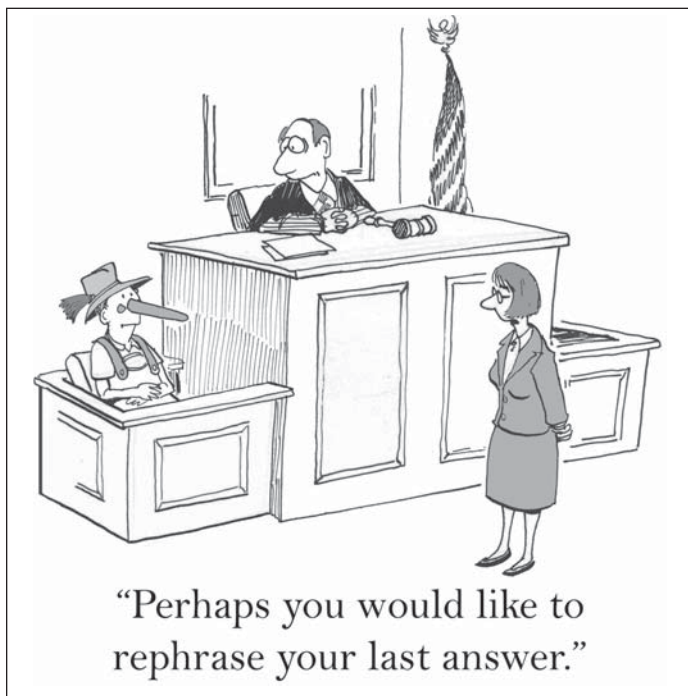
**Mediator • Arbitrator • Referee**

**Areas of Expertise:**

**Business • Civil Rights • Construction Defect  
Employment • Insurance • Personal Injury  
Professional Malpractice • Real Estate**

For information and scheduling,  
please contact Haward Cho  
at [Haward@adrservices.org](mailto:Haward@adrservices.org) or (213) 683-1600

[WWW.ADRSERVICES.ORG](http://WWW.ADRSERVICES.ORG)



More recently, the Ninth Circuit reexamined the issue of materiality in *Chein v. Shumsky*.<sup>28</sup> Chein was charged with three counts of perjury stemming from two separate cases, one in which he was an expert witness, another in which he was a defendant.<sup>29</sup> Chein claimed that he had graduated from the American University School of Medicine, Florida,<sup>30</sup> and maintained his practice as an orthopedic surgeon out of a single office.<sup>31</sup>

In reality, he had only trained in orthopedic surgery in medical school, he only owned one office but practiced out of several, and in fact graduated from the American University of the Caribbean School of Medicine, which had an office in Florida.<sup>32</sup> The court decided that, although Chein's statements were made in an attempt to mislead the jury, they were not substantial enough to influence the outcome of the proceeding.<sup>33</sup>


### Willful Intent

Another crucial element that divides perjury from a lie of omission is the declarant's willful intent to make the false statement, or in other words, knowledge of the statement's falsity. The average false statement can be made unintentionally, without knowledge that it's untrue. However, to be considered perjurious, the statement must be known by the accused to be false at the time it was made and must be willfully made.<sup>34</sup> An act is willfully done when done intentionally and without excuse.<sup>35</sup>

On the other hand, perjury cannot be willful where the witness unequivocally believes the statement to be true.<sup>36</sup> Even if the witness should know of the statement's falsity, a witness who has no belief that he or she is swearing falsely is not guilty of perjury, though they would have made the statement true had they used more caution.<sup>37</sup>

Furthermore, if a false statement is made unintentionally or the result of misinformation, it does not reach the level of perjury.<sup>38</sup> But if a statement is found to be perjurious, a defendant's attempt to correct or recant their false statement will not remedy the perjury, but will support the conclusion that they did not willfully intend to testify falsely.<sup>39</sup>

The court was presented with an interesting variation on this issue in *People v. Meza*.<sup>40</sup> During voir dire of potential jurors preceding a trial, all jurors were specifically asked if they knew the defendant.<sup>41</sup> Meza's sister was, in fact, married to the defendant, but Meza failed to raise his hand when the question was asked.<sup>42</sup> The jury eventually convicted him of perjury, finding that his silence was intended to be a willful statement.<sup>43</sup>

The question, then, still remains: When does a white lie turn into the crime of perjury? That line of specific intent—the one that separates the two—is boldly drawn but difficult to cross as a potentially false statement becomes actionable only when a defendant, while testifying under oath, gave false testimony concerning material matter with willful intent to provide false testimony and influence the outcome of a legal proceeding. Then, and only then, does it warrant appropriate action and incur the harsh consequences that accompany a felony perjury conviction. 

<sup>1</sup> *U.S. v. Bonds*, 784 F.3d 582 (9th Cir. 2015).

<sup>2</sup> *U.S. v. Stewart*, 433 F.3d 273 (2d Cir. 2006).

<sup>3</sup> *U.S. v. Butler*, 351 F. Supp. 2d 121 (S.D.N.Y. 2004).

<sup>4</sup> *Black's Law Dictionary* (8th ed. 2004).

<sup>5</sup> *U.S. v. Holland*, 22 F.3d 1040, 1047 (11th Cir. 1994).

<sup>6</sup> California Penal Code §118(a).

<sup>7</sup> *Chein v. Shumsky*, 373 F.3d 978, 980 (9th Cir. 2004).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *U.S. v. Parker*, 716 F.3d 999 (7th Cir. 2013).

<sup>11</sup> *U.S. v. Bonds*, 784 F.3d 582 (9th Cir. 2015).

<sup>12</sup> *Id.*

<sup>13</sup> Prosecutors Deciding Whether to Try Bonds Again, April 14, 2011, available at <https://web.archive.org/web/20110417004302/http://sportsillustrated.cnn.com/80/2011/baseball/mlb/04/14/feds.mull.next.move.bonds.ap/index.html>.

<sup>14</sup> *U.S. v. Bonds*, 784 F.3d 582 (9th Cir. 2015).

<sup>15</sup> United States of America, *Plaintiff*, v. *Barry Lamar BONDS*, Defendant, 2011 WL 479911 (N.D.Cal.).

<sup>16</sup> *Id.*

<sup>17</sup> California Penal Code §118(a).

<sup>18</sup> *Chein v. Shumsky*, 373 F.3d 978, 984 (9th Cir. 2004).

<sup>19</sup> *U.S. v. Bonds*, 784 F.3d 582, 583 (9th Cir. 2015).

<sup>20</sup> See *U.S. v. Bonds*, 784 F.3d 582 (9th Cir. 2015).

<sup>21</sup> *Id.* at 585.

<sup>22</sup> *Id.* at 586.

<sup>23</sup> *Bronston v. U.S.*, 409 U.S. 352 (1973).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 354.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 358.

<sup>28</sup> *Chein v. Shumsky*, 373 F.3d 978 (9th Cir. 2004).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *People v. Story*, 168 Cal. App. 3d 849, 853 (Ct. App. 1985).

<sup>35</sup> *Id.*

<sup>36</sup> *Ex parte Lindley*, 29 Cal. 2d 709, 723 (1947).

<sup>37</sup> *Id.*

<sup>38</sup> *People v. Von Tiedeman*, 120 Cal. 128, 136, (1898).

<sup>39</sup> *People v. Baranov*, 201 Cal. App. 2d 52, 59 (Ct. App. 1962).

<sup>40</sup> *People v. Meza*, 188 Cal.App.3d 1631 (1997).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*





SAN FERNANDO VALLEY BAR ASSOCIATION  
Inclusion & Diversity Committee  
Second Diversity Mixer

October 13, 2016

6:00 PM to 9:00 PM

The Gate ❁ 16925 Ventura Boulevard ❁ Encino

Join numerous diverse bar associations, judges  
and legal professionals, as we come together  
for an epic evening of mixing, mingling  
and networking!

Enjoy free drinks and Mediterranean appetizers  
(serving till 7:45 PM)

To RSVP or inquire about sponsorship opportunities,  
email [vdean@technotaries.com](mailto:vdean@technotaries.com) or [joanna@gantmanlaw.com](mailto:joanna@gantmanlaw.com).

Free to Current Members!







By Tony A. Rose, CPA

# Why Clients Stall

## *(And What Estate Planning Attorneys Can Do About It)*

**I**'S A GIVEN THAT AN ESTATE planning attorney is expected to be capable of drafting and executing documents that conserve and distribute assets. Often, though, that isn't enough.

After months of engagement, many attorneys find that wealth-holders stall the process by failing to sign the very documents their attorneys spent months drafting because they may feel disconnected from their estate plans.

Consider a couple, James and Lauren, who have two adult children. Their son is a successful financial advisor who makes \$1 million annually and has no children. Their daughter, a divorcée

with two young children, is a teacher earning \$58,000 a year. Should James and Lauren divide their estate evenly? Should they give more money to their daughter? Will this cause a rift in their relationship with their son?

The truth is, financial assets can cause dissent within families, and until questions like those are answered, many an elaborately prepared estate planning document will sit on a sideboard, unsigned and collecting dust.

When estate planning attorneys find themselves taking on the roles of quasi life coach and family counsellor, though, they can help develop deep connections

between clients and their estate plans by implementing a four-part process for re-engaging clients: first, ask three critical questions; second, map a solution that addresses those questions; third, encourage disclosure; and, fourth, review and revise.

### Three Critical Questions

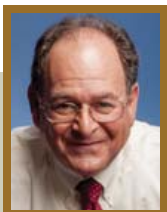
An estate planning attorney can't fully satisfy a wealth-holder's needs by using a 'one-size-fits-all' strategy. Instead, the first step is to take time to achieve clarity so that an ideal outcome can be reached. To this end, three vital questions need to be asked.

#### *What are the values that are important to you?*

When an estate plan helps a wealth-holder strengthen his or her values, he or she will feel more connected to the plan. Imagine that James and Lauren strongly value education. This is important information for their estate-planning attorney to know. When it comes time to draft solutions, the estate-planning attorney can refer back to that conviction, and suggest, for instance, that the couple establish an educational trust for their grandchildren.

#### *What are your biggest fears with respect to your wealth?*

This question is absolutely crucial, permitting estate-planning attorneys to unearth many of the fears that, if left unaddressed, can prevent wealth-holders from reviewing and signing-off on their documents. If James and Lauren were asked this question, they might say that they worry about the strength of the relationship between their two children and are fearful of what will happen if they leave a larger percentage of their money to Lauren, who needs it more than James.



**Tony A. Rose, CPA** is a founding partner of Rose, Snyder & Jacobs. Rose received his B.S. in Business Administration with Accounting Emphasis from USC and is a member of the California Society of Certified Public Accountants. A frequent lecturer at the USC Leventhal School of Accounting and Otis College in Los Angeles, Rose can be reached at [trose@rsjcpa.com](mailto:trose@rsjcpa.com).



*If you could check in on your loved ones five years after your death, what would you like to see?*

This is another way of asking wealth-holders to describe what needs to happen for their estate plan to be a success. In addition to describing their asset protection goals, James and Lauren might say that they would like to see James more actively involved in the lives of their grandchildren.

### Mapping Solutions

Too often, estate planning attorneys have their “darlings.” Some love intra-family installment sales for their freeze aspects, while others are enamored with charitable remainder trusts because they are personally committed to the opportunities presented by encouraging family philanthropy.

It might be wise to have a charitable remainder trust structured into an estate plan, but only if it affirms the emotional or values-based goals of the wealth-holders. But the truth is, clients will not be engaged in a solution unless a fully functioning mechanism helps them achieve their goals or perpetuates their own previously defined values. It's important to keep in mind that only solutions that effectively address the three critical questions will be meaningful to your clients.

In the case of James and Lauren, their attorney has several options. Depending on the size of the estate, the attorney, in an effort to fulfill James and Lauren's goal of strengthening the family bond, might suggest that the family establish a foundation in which the son is appointed the director, working alongside the grandchildren (his sister's children) to make contributions.

The attorney might also suggest a support trust overseen by a trustee that would provide for the needs of either the son or daughter should their financial situations change. That way, for example, should the son's income decline, he would have greater access to needed funds, and if the daughter's

income increased significantly, she would have correspondingly more limited access to the trust funds.

Or, simply, Lauren and James could decide to bequeath more money to their daughter and less money to their son. This is where disclosure becomes critical.

### Encourage Disclosure

It's surprising to learn how few clients disclose the details of their estate plans to their heirs. That common, and unfortunate, hurdle can be bypassed by encouraging a meeting of all family members and their estate planning attorney to discuss the estate plan. During this meeting, the wealth-holder can disclose details of the estate plan, while their attorney can answer questions about the intention behind the plan's legal mechanisms.


In James and Lauren's case, a meeting of that kind would go a long way in addressing their children's concerns. James and Lauren would then have time to address any concerns or reservations before the plan went into effect. When James and Lauren die, their children would then be free to share their grief and support one another rather than fight amongst themselves in a bitter battle over who gets what.

### Review and Revise

For better or worse, life's circumstances change as families grow; businesses succeed or fail; economic downturns adversely impact long-term financial plans; or the cost of a long-term illness drains hard-earned savings. Goals also frequently morph, either because they have been met or because original projections for success were too ambitious.

Estate planning attorneys should communicate at least annually with their clients to stay abreast of these unavoidable life developments to determine whether an estate plan needs to be revised.

Attorney should communicate six questions during this checkup with their clients: What has changed in your life or business since our last meeting? Does the plan we have in place still meet your goals? Have conditions changed so that the plan in place will no longer work? Do you have any concerns or fears with respect to your existing estate plan? Is there anything new you'd like to see in your plan? And, perhaps, the most important question of all, if you could check in with your loved ones five years after your death, what would you like to see?

Practitioners can charge a modest annual fee for this review phase, which can include discussion of new laws or other issues that could possibly impact the eventual disposition of the estate. One attorney in a five-attorney firm reported over \$400,000 in fees that resulted from the review phase. 

## HAS YOUR CLIENT BEEN BURNED BY A STOCKBROKER?

### SECURITIES LAW Claims Against Stockbrokers

Stock Market Losses Caused by:  
Excessive Trading in Account  
Unsuitable Investments  
Misrepresentation • Variable Annuities

*Highest AVVO Rating 10.0 out of 10.0*

**LAW OFFICES OF  
JONATHAN W. EVANS &  
ASSOCIATES**

*40 Years in practice  
Arbitrator for FINRA*

**NO RECOVERY – NO FEE  
FREE INITIAL CONSULTATION**

**(818) 760-9880 • (800) 699-1881  
(213) 626-1881  
[www.stocklaw.com](http://www.stocklaw.com)**

**Superlawyer – Securities Litigation**

**12711 Ventura Blvd., Suite 440  
Studio City, CA 91604**



San Fernando Valley Bar Association

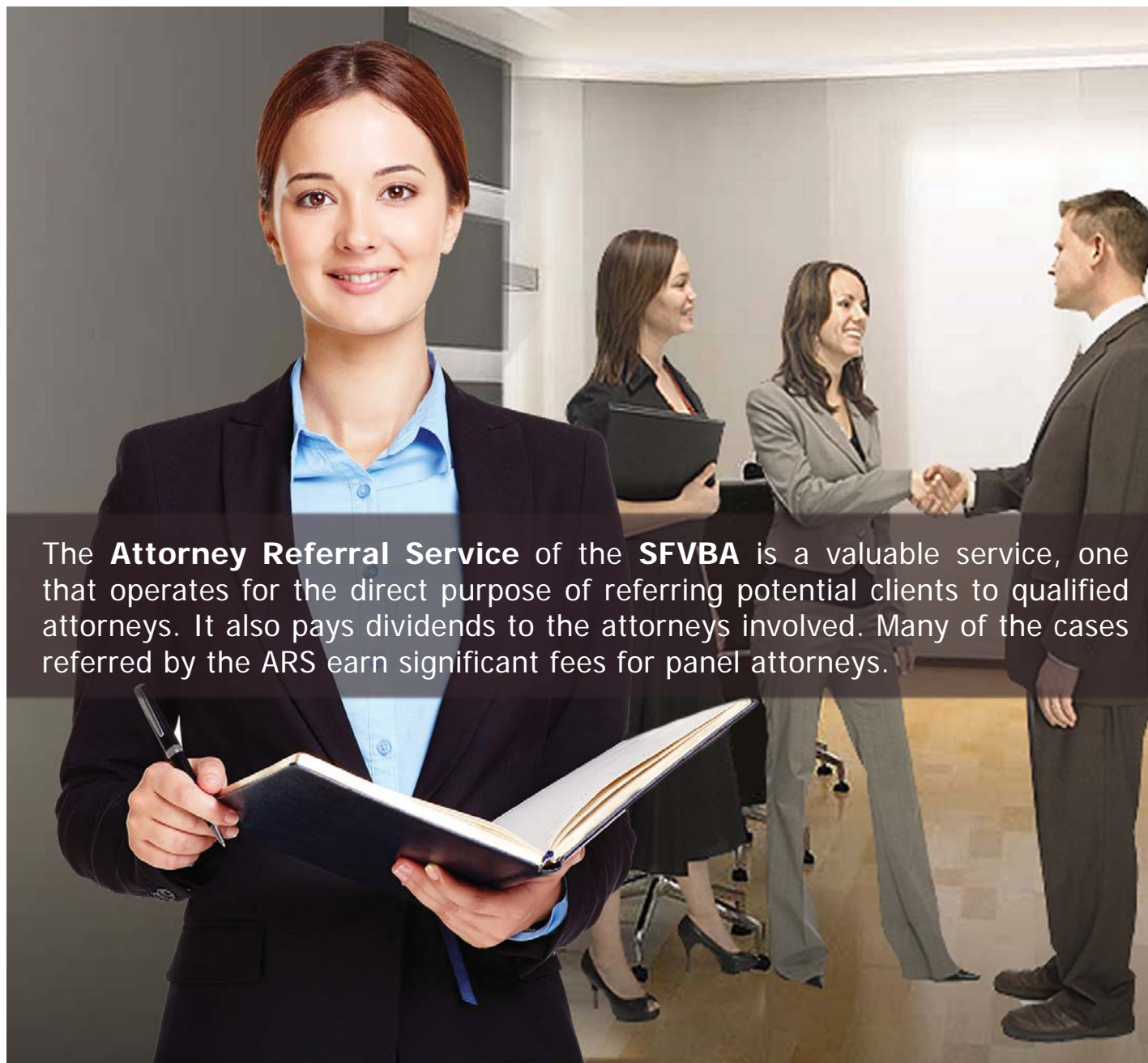
# Referring the Best Attorneys Since 1948



Attorney Referral Service



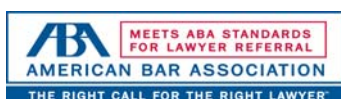
@ReferralsSFVBA



The **Attorney Referral Service** of the **SFVBA** is a valuable service, one that operates for the direct purpose of referring potential clients to qualified attorneys. It also pays dividends to the attorneys involved. Many of the cases referred by the ARS earn significant fees for panel attorneys.

**(818) 227-0490**

**[www.sfvbaReferral.com](http://www.sfvbaReferral.com)**





## Reflecting on the Sand Fire

**SAMUEL R.W.  
PRICE**  
SCVBA President



[sprice@pooleshaffery.com](mailto:sprice@pooleshaffery.com)

**A**S YOU CERTAINLY KNOW, THE SANTA CLARITA Valley was recently at the forefront of national news due to the Sand Fire, which started on July 22 and burned more than 41,000 acres (64 square miles) as it raged across the Valley and surrounding mountains for nearly two weeks. Tragically, the fire destroyed 18 homes and claimed one life. However, that the losses from the Sand Fire were not far worse is a testament to the heroic efforts of more than 3,000 firefighters who converged from across the state to fight the blaze.

Fueled by triple-digit temperatures, several years of drought, strong and erratic winds, and vegetation that had been untouched by fire for thirty years, the Sand Fire had the potential to be truly devastating. More than 10,000 homes and 200 commercial structures were threatened, and approximately 20,000 people were forced to evacuate the area. On the third day of the fire, arguably the most frightening as the winds were quickly driving flames towards residential neighborhoods, the firefighters' actions are credited with saving 2,000 homes.

The destructive potential of the blaze was staggering, which makes the relatively limited losses somewhat miraculous. For that, the entire Santa Clarita Valley is grateful for the actions of our first responders—the men and women who fought the fire and the law enforcement personnel who scoured the neighborhoods to evacuate residents.

In today's world of smart phones and social media, even those who were not on the front lines were able to see hundreds of dramatic photos and videos of the blaze and to witness the efforts of the firefighting personnel. Across the internet, many described the scenes as appearing "apocalyptic," and it is hard to argue against that description.

It was truly a time of crisis for our community, and in those times our community shines. Recognizing the impact that the fire was having on our community,

the Board of Directors of the Santa Clarita Valley Bar Association felt compelled to act.


On the first full day of the fire—as the skies blackened and ash was raining down on the Valley, as firefighters from across the state were swarming the region, and as a constant stream of planes and helicopters disappeared into the smoke and returned again—the Board decided that, on behalf of our organization, it should do whatever possible to assist. The purchase of supplies for firefighters and evacuees was immediately authorized, and a large SUV

was filled with cases of water and sports drinks, boxes of granola bars and trail mix snack packs, and hundreds of pounds of ice. But what we saw as we drove across the Valley to deliver these items was remarkable.

Although thousands of homes had been evacuated, only a small number of people were staying in shelters because most had been taken in by family and friends. Still,

there were dozens of people at the shelters—local residents lined up at the door with donations of food, water, ice, clothing, and anything else that those affected by the fire might have needed, and asking what else they could do. Pallets of water and sports drinks had already been dropped off. And at the fire base camp, several local restaurants had sent unsolicited deliveries of pizza, tacos, and burritos to the firefighters.

As the fire continued to rage ensuing days, donation drives were set up across the area, and truckloads of goods were collected for firefighters and displaced families. When notice went out for assistance in evacuating a wildlife sanctuary, the response was so overwhelming that volunteers had to be turned away. And today, as you drive across the Santa Clarita Valley, you cannot miss the many signs—both handmade and professionally printed—expressing the community's gratitude for the first responders.

Truly this was a trying time for our community. But in this time the true spirit of our community shone through. 

“

The response was so overwhelming that volunteers had to be turned away.”



### **PRESIDENT'S CIRCLE**

- SFVBA membership for every firm attorney and paralegal
- Recognition and 5% discount on tables at Bar-wide events, including Judges' Night
- Prominent listing in *Valley Lawyer* and firm logo on President's Circle page of SFVBA website
- Invitations to President's Circle exclusive events with bench officers, community leaders and large firms

**WE RECOGNIZE THE FOLLOWING PRESIDENT'S CIRCLE MEMBERS FOR THEIR DEMONSTRATED COMMITMENT AND LEADERSHIP IN SUPPORTING THE LEGAL PROFESSION AND ITS WORK IN THE COMMUNITY.**

*Alpert Barr & Grant APLC*

*Berglund & Johnson*

*Brot & Gross LLP*

*Law Offices of Goldfarb Sturman & Averbach*

*Greenberg & Bass LLP*

*Kantor & Kantor LLP*

*Kraft, Miles & Miller LLP*

*Lewis Roca Rothgerber Christie LLP*

*Lewitt Hackman Shapiro Marshall & Harlan ALC*

*Neighborhood Legal Services of Los Angeles County*

*Nemecek & Cole*

*Oldman Cooley Sallus Birnberg & Coleman LLP*

*Parker Milliken Clark O'Hara & Samuelian APC*

*Pearlman, Borska & Wax*

*Pearson Simon & Warshaw LLP*

*Stone | Dean LLP*

*University of West Los Angeles School of Law*

**Contact SFVBA Executive Director Liz Post at (818) 227-0490, ext. 101 or [epost@sfvba.org](mailto:epost@sfvba.org) to sign up your firm today!**



## VCLF's Virtual Gala—an Experiment with Resoundingly Successful Results

LAURENCE N.  
KALDOR  
President



phenix7@msn.com

**T**OO MANY MONTHS BACK TO MENTION, THE directors of the Valley Community Legal Foundation found themselves faced with a real dilemma. Ever increasing overhead costs were reducing the effectiveness of one of the most popular fundraising tools in the Foundation's toolbox, the Annual Gala.

For years, the Gala had been a tent-pole event for the group, raising a significant portion of the yearly funds required for deserving programs like the Domestic Abuse Center, CASA of Los Angeles, Comfort for Court Kids, the K.E.N. Project of Calabasas, Safe Passage and so many more. The Gala also served the important function of raising much needed visibility for the Foundation. But given rising expenses, funds were becoming increasingly meager for these important programs. The question of how to do better became almost existential for a group whose primary purpose is to raise funds.

They say that some great ideas start as a whisper. When the idea of a 'non-event, event' was floated, it seemed creative but unrealistic. Who would pay to be part of an event that didn't have a physical location and date? How would it even work?

But the genius of the idea slowly emerged. If it were possible to execute such an event, an unheard of percentage of all monies raised could be used for the charities rather than expensive rental fees and other costs. The event could have a much broader reach because "attendees" would not be bound by the limitations of their schedules. In fact, the event could take place over several months rather than just one evening. It might work, but it seemed that the only possible way to make it work would be to take the vast majority of the event online.

Thus was born "The Virtual Gala." The Foundation's marketing partners Newman & Grace quickly found the tag

line for what promised to be a much less formal affair—"No Jacket Required!" The Virtual Gala would transfer most of the actual fundraising activities associated with the Gala to online platforms, while maintaining a few of the important "real world" traditions. "The whole experience was an exercise in problem solving," remembers Board member, Shawn Burkley. "There was this regular discourse of 'OK. We've done it this way in the past. How do we do it virtually?'"

Because fundraising remains core to the Foundation's mission, methods of fundraising were addressed first. Foundation President Laurence Kaldor found an online auction service BiddingForGood.com, which specializes in charitable work. Kaldor notes that, "An advantage to using Bidding For Good that we hadn't really anticipated was their reach. During a traditional 'live' auction, we were limited to the people in the room. Online, we had people bidding that were just learning about our organization."

Auction items arrived from an amazing variety of sources. "A special 'thank you' must go to Liz Post and the other editors at *Valley Lawyer*, who donated the cover of the December issue," says Kaldor. "This incredibly gracious gift generated some very competitive bids and revenue for the cause." The ever-generous Bill and Judge Susan Speer donated some of their well-regarded 'Law and Order' wines. Another judge, and recent addition to the VCLF Board, Shirley Watkins donated electronics that sparked serious interest among bidders. Also, radio celebrity Bill Handel was good enough to donate backstage tickets to a show taping.

Kaldor also understood that working with sponsors was key to the success of the Virtual Gala. Stalwart sponsor David Nadel CPAs rose to sponsor the event at the gold level, as did Southwestern Law School. Lewitt, Hackmann,

### 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 youths pursuing legal careers. The Foundation relies on donations to fund its work. To donate to the Valley Community Legal Foundation of the SFVBA or to learn more, visit [www.thevclf.org](http://www.thevclf.org) and help us make a difference in our community.

Shapiro, Marshall & Harlan maintained their steady support of the Foundation by sponsoring at the silver level; Greenberg & Bass rounded out the sponsorship list at the bronze level.


The tradition of honoring certain key members of the San Fernando Valley legal community deserved a more personal touch. In recognition of retiring Judge Michelle Rosenblatt's immense service to the VCLF, an intimate event was held at El Patrón Restaurant where Judge Rosenblatt received the Pearl S. Vogel President's Award.

Impressively, Judge Rosenblatt served for 23 years on the Los Angeles Superior Court and still found the time to take on innumerable tasks and projects, such as chairing the Dinner Committee for the 2008 Law Day Gala, chairing a successful theater event in 2012 at the CSUN Performing Arts Center, regularly serving on the Grants and/or Scholarship Committees, and forming a committee in 2014 to create a new member board manual. In short, Judge Rosenblatt was tireless in her efforts for the VCLF and the Foundation was honored to have the opportunity to express its appreciation.

So now that the results are in, one big question remains: "Was the 2016 Virtual Gala a success?" The Foundation can report with pride that it was. "We quickly achieved a position where 100% of nearly all of our auction profits and sponsorship dollars went to the general fund

from which we make our donations," according to Kaldor. "That's not been the case for several years."

The Virtual Gala has decidedly proved itself to be a viable form of fundraising, bringing in the donation levels required to keep the Foundation active. "An additional benefit is the amount of exposure the Foundation gets by using an online platform," says Burkley. "We sent at least half a dozen emails to over 1,800 legal professionals in and around the San Fernando Valley. That's the kind of awareness raising that can translate in the future into even greater giving."

So, what started as a whisper of an idea seems to have grown into a roaring success. Currently, the Grants and Scholarships Committee is working on recommendations on how the funds will be allocated—the hope being to have most of the money disbursed by September. And the Foundation is already looking for ways to improve next year's Gala. Not too bad for a "non-event, event!" 

*This article has been graciously sponsored by:*

*Dr. Mark Rosenblatt*

*Judge Michelle Rosenblatt (ret.)*

*Lewitt, Hackmann, Shapiro, Marshall & Harlan, a Law Corporation*

*Leavitt Insurance Services of Los Angeles*



**VBMCM** Valley Bar Mediation Center  
*Building Community Through Mediation*

- ▶ Helping diverse populations in San Fernando Valley and beyond gain access to justice
- ▶ Resolving disputes & educating the public
- ▶ For those engaged in litigation or trying to avoid it
- ▶ Highly qualified panel of professionals offering mediations at exceptionally affordable rates
- ▶ Mediators with expertise in wide variety of disputes practice highest ethical standards
- ▶ Learn the benefits of using mediation through educational and training programs

**(818) 856-0232**

**[www.valleybarmediationcenter.com](http://www.valleybarmediationcenter.com)**

5567 Reseda Boulevard | Suite 200 | Tarzana, CA 91356

*An IRS Approved 501(c)(3) non-profit organization*



## NEW MEMBERS

The following joined the SFVBA in July 2016:

**Marcy Gribin Sanchez**  
Sherman Oaks  
*Litigation*

**Kyla Ann Johanson**  
Lewitt Hackman  
Encino  
*Estate Planning, Wills and Trusts*

**Suzette M. Kassis**  
Calabasas  
*Taxation*

**Daniel J. Matloubian**  
Oldman, Cooley, Sallus,  
Birnberg & Coleman  
Encino

**Connor M. Oakes**  
Nemecek & Cole  
Sherman Oaks  
*Professional Liability*

**Cynthia Organ**  
Parker Milliken et al.  
Los Angeles  
*Litigation*

**Keri Leigh Pankow**  
Encino  
*Estate Planning, Wills and Trusts*

**Michael E. Ross**  
Addition Building & Design INC  
Sherman Oaks  
*Associate Member*

**Jonathan Roven**  
Kahn Roven, LLP  
Woodland Hills  
*Personal Injury*

**Cari Michele Schwartz**  
Kantor & Kantor, LLP  
Northridge  
*ERISA*

**Dominique R. Sedeno**  
Tarzana  
*Public Interest*

**Aleksey Turetskiy EA**  
RT Accounting Group  
Calabasas  
*Associate Member*

## BOUTIQUE CRIMINAL DEFENSE FIRM

**EG EISNER GORIN LLP**

STATE AND FEDERAL CRIMINAL DEFENSE

### FIRM PARTNERS INCLUDE:

Former Senior Deputy District Attorney  
UCLA and Pepperdine Law Professor  
Bar-Certified Criminal Law Specialist



**Super-Lawyers Top 2.5%  
A.V. – Preeminent Rating  
Avvo 10/10 Superb**

### RECENT VICTORIES:

- \$3 Million Fraud Case - Dismissed, Government Misconduct (Downtown, LA)
- Murder - Not Guilty by Reason of Insanity, Jury (Van Nuys)
- Medical Fraud Case - Dismissed, Preliminary Hearing (Ventura)
- Domestic Violence - Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud - Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation - Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)

**877.781.1570**

Eisner Gorin LLP  
14401 Sylvan Street, Suite 112  
Van Nuys, CA 91401

**24/7 Immediate Intervention**

### WORKERS' COMPENSATION STATE CERTIFIED SPECIALIST



**WILLIAM J. KROPACH**  
*Over 35 Years Experience*

- ✓ All Workers' Compensation Injuries
- ✓ Referral Fee Paid Per State Bar Rules
- ✓ Chairman, Workers' Comp Section of SFVBA (1987 to 2009)
- ✓ Director, Valley Community Legal Foundation of SFVBA (1980-2000)
- ✓ Former Trustee of SFVBA

For Workers' Compensation Referral, call **818.609.7005**  
[www.williamkropach.com](http://www.williamkropach.com) • email: [william@kropachlaw.com](mailto:william@kropachlaw.com)

*Volunteer of the Year 2003*

### DARRYL H. GRAVER, ESQ.

**EXPERIENCED  
ARBITRATOR/MEDIATOR**

**"Have Gavel Will Travel"™**

OVER 3,000 SUCCESSFUL CONCLUSIONS

TO SCHEDULE, CALL JUDICATE WEST 800.488.8805

**818.884.8474**

**fax 818.884.8388**

## CLASSIFIEDS

### **ATTORNEY-TO-ATTORNEY REFERRALS**

#### **STATE BAR CERTIFIED WORKERS COMP SPECIALIST**

Over 30 years experience-quality practice. 20% Referral fee paid to attorneys per State Bar rules. Goodchild & Duffy, PLC. (818) 380-1600.

### **SPACE AVAILABLE NORTH HOLLYWOOD**

Prime Office Space. Large window office and secretarial bay located on top floor of The Academy Tower in bustling NoHo Arts District. Attractive 8500 sq. ft. full-service attorney suite. Large conference room with views of the Valley, secondary conference room, law library, kitchen, and large work and storage areas. Centrally located to restaurants, freeways and metro station. Lexis research available. Call (818) 506-1500.

### **SAN FERNANDO**

400±' Office space for lease near San Fernando courthouse. Furnished, A/C and free parking. Rent \$850 per month. For information, please call Dale (818) 898-2202.

### **SHERMAN OAKS**

Galleria. High-end offices in immediately available for sublease (windows, interiors and sec. bays). Top floor of the Comerica Bank Bldg., best location in SF Valley. Adjacent to both 405 and 101 fwy on/off ramps. Would be leasing from AV rated law firm, Levinson Arshonsky & Kurtz, LLP. Offices offer reception, library, conference rooms + kitchen & amenities. Please contact Lissa at (818) 382-3434.

Corner office. 14x19. Floor to ceiling windows. Secretarial bay adjacent. Free parking. Executive suite with receptionist, conference rooms, kitchen and amenities. Contact Eric (818)784-8700.

### **WOODLAND HILLS**

Warner Center Towers. 1-2 New Office(s), 24x15, 15x15, Secretarial, Conference Room, Kitchen, Copier. Available Immediately. (818) 719-8000.

### **SUPPORT SERVICES**

#### **PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING**

Family Visitation Services • 20 years experience "offering a family friendly approach to" high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyllene@yahoo.com • (818) 968-8586/(800) 526-5179.

### **GRAPHIC ARTIST**

Creating affordable, high-quality designs that will promote your business with simplicity and style. Wide range of styles & personal attention, making sure your project is always delivered on time. Call Marina at (818) 606-0204.

### **HELP WANTED**

#### **LITIGATION ATTORNEY WANTED**

AV-Rated established Ventura County firm seeks highly motivated litigation attorney with excellent written and communication skills, and attention to detail, to handle a wide variety of litigation matters. Five or more years' experience required. Send resume and writing sample to smccarthy@atozlaw.com.

# SFVBA MCLE

## Seminars on Audio

### COULDN'T ATTEND AN IMPORTANT SFVBA SEMINAR?

Most SFVBA  
seminars since 2013  
available on  
audio CD or MP3.

Stay current and  
earn MCLE credit.



## Versatape

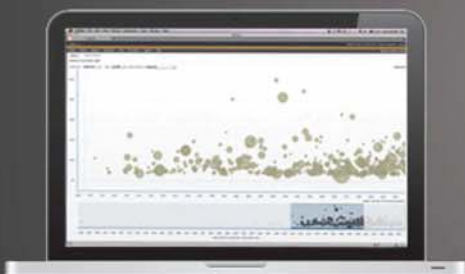
### **Who is Versatape?**

Versatape has been recording and marketing audio copies of bar association educational seminars to California attorneys since 1983.

[www.versatape.com](http://www.versatape.com)  
**(800) 468-2737**



Turn to smarter tools for legal research.



fastcase®

Smarter by association.

Log in at [www.sfvba.org](http://www.sfvba.org)

LTN  
#1  
2015 Customer  
Satisfaction  
Survey

Available on the iPhone  
App Store

2015-2016  
Content  
100

### Free to members of the San Fernando Valley Bar Association.

Members of the San Fernando Valley Bar Association now have access to Fastcase for free. Unlimited search using Fastcase's smarter legal research tools, unlimited printing, and unlimited reference support, all free to active members of the San Fernando Valley Bar Association. Log in at [www.sfvba.org](http://www.sfvba.org) and click the Fastcase logo. And don't forget that Fastcase's free apps for iPhone, Android and iPad connect to your bar account automatically by Mobile Sync. All free as a benefit of membership in the San Fernando Valley Bar Association.

# Deal or No Deal

Dear Phil,

*I am a second-year lawyer considering an offer from a small law firm in Los Angeles. I like the people and the work just fine but I am being offered a somewhat lower salary than I would have expected as an experienced second-year. The promise is that if things work out between the firm and me, I will be eligible for a raise after I prove myself for some defined time period.*

*But I know that my strongest bargaining moment is during the hiring process. Once I am in the firm, I fear that I will be unable to negotiate a significant raise to make up for this up-front short-fall, or I will be subject to percentage raises based on this paltry base (which will suppress my earnings at the firm literally forever), or I will soon face some other financial dead-end.*

*Do I have a realistic bargaining chip, and if so, what? Stay, go, or something in between? What's the smart money-move here?*

Sincerely,

*Feeling Financially Doomed*



*Illustration by Gabriella Soderov*

**D**EAR DOOMED, I APPRECIATE YOUR CONCERNS about your current salary negotiation and your future. You are right that the problem could persist throughout your employment with this firm.

I assume you have been applying for jobs with limited success so far. Although you can always open your own shop, you need to keep your eye on the really big issues. Will the new firm allow you to work on bigger, better, more challenging matters than you would realistically handle on your own? Will the new firm allow you to take on significant responsibility, and if so, how soon? Will the new firm train you how to handle complex matters in a sophisticated way?

From a salary negotiation standpoint, what is the reward structure for business you personally develop and how will the firm handle billing for matters that you personally bring in? This is the bargaining chip you want to throw on the table. Most firms, no matter what size, are ultra-sensitive to business development opportunities. So press your advantage on that issue. Ask for a larger slice of the pie on

billing that originates with you (30 percent of the gross billing instead of the 20 percent offered, for example), with a longer compensation duration on the case (two years instead of one year, perhaps).

Skill-building and business development success are the twin avenues for advancement that will pay off for you for the entirety of your legal career. So if at some point you realize that you will never be able to come to acceptable financial terms with this firm, or some other incurable situation crops up, and you start scouting greener pastures where perhaps the financial options could be more agreeable, you will have an impressive inventory of skills to offer new employer, along with a healthy book of business.

You will be a most attractive candidate for any firm.

Best of luck,

*Phil*

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



**Personal**  
COURT REPORTERS, INC.

# Grand Opening Santa Ana

Visit all 8 of our locations

Van Nuys   Downtown LA   Ventura   Ontario <sup>New!!!</sup>  
Santa Barbara   West LA   San Bernardino   Santa Ana

[www.personalcourtreporters.com](http://www.personalcourtreporters.com)

**Video  
Conferencing**

**Mediation  
Rooms**

**Court  
Reporting**

**Trial  
War  
Rooms**

**8 Great  
Locations**

**Jury Trial  
Focus Groups**

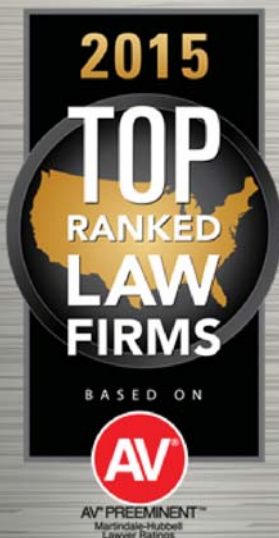
**The road to  
success starts  
with us.**

**800-43-DEPOS**



# LEWITT HACKMAN

LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN  
A LAW CORPORATION



16633 Ventura Boulevard, Eleventh Floor  
Encino, California 91436

[www.lewithackman.com](http://www.lewithackman.com)  
818.990.2120