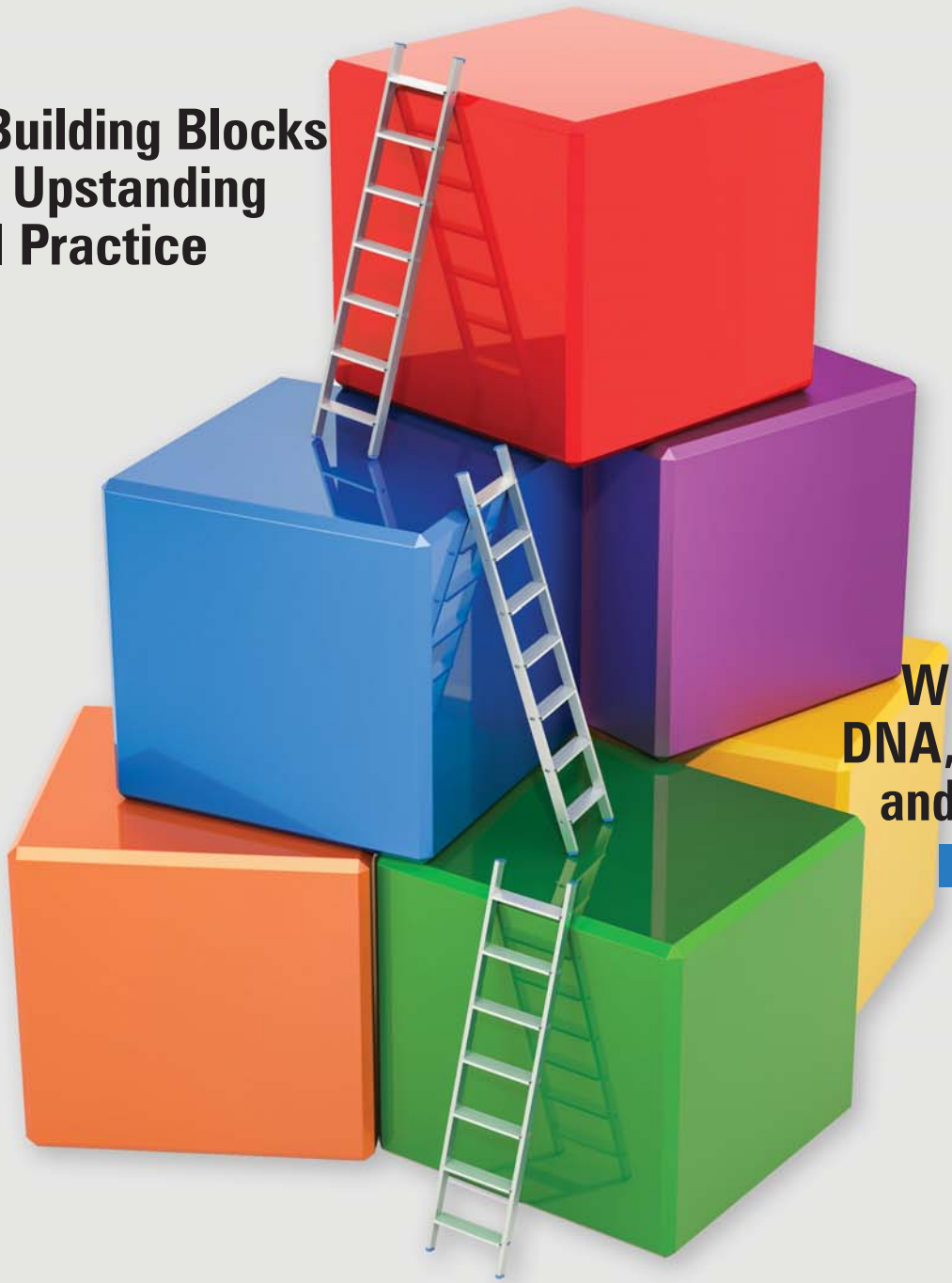
VALLEY LAWYER

MARCH 2019 • $5

A Publication of the San Fernando Valley Bar Association

The Building Blocks of an Upstanding Legal Practice



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CONTENTS

MARCH 2019

VALLEY LAWYER
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FEATURES

COLUMN

DEPARTMENTS

VALLEY LAWYER

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Printing Southwest Offset Printing

Honoring the Honorable

YI SUN KIM
SFVBA President

ykim@greenbass.com

THE SFVBA GRATEFULLY honored Judge Shirley K. Watkins with the Association's prestigious Administration of Justice Award at our Annual Judges' Night Dinner.

As litigators know, most cases may be settled before trial. But parties unable to afford an interpreter and formal mediation may not be able to resolve their cases even where settlement is a viable option. The parties incur costs, time, and stress in trial, and strain the court's docket.

Providing a means so that anyone can access and engage in every aspect of the legal system is the very definition of the 'administration of justice.'

Judge Watkins did just that by implementing the highly successful California State University, Northridge (CSUN) Interpreter Externship, in which CSUN graduate students receive service-learning credits to train and serve as interpreters for the Family Law Department's Settle-O-Rama Program.

Settlement-O-Rama is managed by volunteer attorneys, experts, and mediators—at no cost to the court or litigants—and is credited with helping eliminate 75-100 trial days a year from the court's over-burdened docket. The CSUN Interpreter Externship allows for more litigants to benefit from this meaningful program, while students are given the opportunity to observe courtroom proceedings, receive valuable instruction from judges, and engage in a unique hands-on experience with non-child custody dissolution mediations. Judge Watkins saw a need and pursued a solution.

The Externship program has grown with the valued support of Judge Huey P. Cotton, Judge Firdaus Dordi, Judge Michael R. Amerian, LASC Executive Officer Sherri Carter, LASC Chief Deputy of Operations Deni Butler, CSUN Professors Svetlana Tyutina, Adrian Boluda-Perez and court interpreter Romina Cohen.

I know that you, as a member of the SFVBA, are equally dedicated to improving access to justice, and there are many ways in which you can do just that.

Consider volunteering and participating in the Settlement-O-Rama program, which takes place in the fall, with a call for cases beginning in the summer and/or the Pro Bono Probate Settlement program that similarly helps parties resolve cases with volunteer attorneys.

If you are an experienced probate attorney, you could attend the Probate Settlement Officer Training Program on March 20 at the Stanley Mosk Courthouse, that will be followed by a recognition ceremony and bench-bar mixer.

Our charitable arm, the Valley Community Legal Foundation (VCLF), created *The Constitution and Me* program, where judges and lawyers engage high school students in thought provoking discussions about the U.S. Constitution, culminating in a mini-moot court exercise. With that, VCLF will sponsor an essay contest to award financial scholarships. VCLF needs your support, so please consider being a sponsor of this special program.

The SFVBA also provides a variety of public service opportunities that you can learn more about on its website—www.sfvba.org.

Our various committees, for example, need attorney volunteers to help arrange court tours and panels for students, while the Attorney Referral Service hosts legal clinics throughout the year. In addition, we are actively working with Neighborhood Legal Services on ways our members can provide ongoing assistance to those affected by the Woolsey Fire. And there are always new opportunities in the pipeline.

Please consider participating in or sponsoring these programs, and we welcome any ideas or suggestions you have on how we can do even more.

Build It and They Will Come

MICHAEL D. WHITE
SFVBA Editor

michael@sfvba.org

BACK IN 1989, THE OSCAR-nominated film "A Field of Dreams," told the fantasy tale of Ray Kinsella, an Iowa corn farmer, a passionate baseball fan and the son of a former pro player, who builds a baseball diamond in his fields after receiving mysterious, cryptic commands from a voice in his head.

Despite the bank about to foreclose on his property and people thinking he's got a few loose screws, he does as directed. Then suddenly appear, ready to play ball, the ghosts of Shoeless Joe Jackson, Chick Gandil, Charlie "Swede" Risberg and the other five Chicago White Sox players banned from the game for life for throwing the 1919 World Series. There is a whole lot more, but, in short, it is cowhide redemption and a genuinely entertaining film. Even if you are not a baseball fan, invest an evening and catch it on DVD.

Anyway, the question was what command could compel someone to do such a thing. "Build it and they will come." That is what the voice commanded. That is what he did and that is what happened.

Why "A Field of Dreams"? It is what came to mind when piecing together this month's cover article on "The Building Blocks of an Upstanding Legal Practice." Just what characteristics form the foundation of an ethical, well-run practice? What can young attorneys do to ensure that, 20 or 30 years down the road, they can look back on their career with pride and honestly say that they gave it their best and that their clients never got anything less.

Many thanks to legal professionals who shared their insights, drawn from the experience and wisdom gleaned from more than a cumulative 100-plus years in the law.

> "Many thanks to legal professionals who shared their insights, drawn from the experience and wisdom gleaned from more than a cumulative 100-plus years in the law."

Thanks also go to Seymour Armster for his informative article on juvenile diversion, the worthy effort to steer youthful offenders to programs that can help them reform, rather than feed them into an overburdened criminal justice system. David Jones also draws kudos for his piece on a topic that is rarely written on—the use of Latin legalese and its application to everyday life.

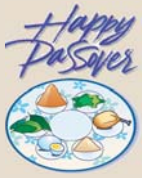
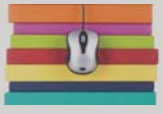
We also have our Member Focus of SFVBA members Richard Lewis and Elizabeth Castaneda, and the 'Dear Phil' column is back with advice on how to help a talented young attorney act like a team player.

As always, thanks for reading and hope you enjoy.

CALENDAR

MARCH 2019

SUN	MON	TUE	WED	THU	FRI	SAT
WOMEN'S HISTORY MONTH						
					1	2
3	4 VBN VALLEY IAR NETWORK **5:30 PM**	5	6	7 Membership & Marketing Committee **6:00 PM** **SFVBA OFFICES**	8	9
10 **DAYLIGHT SAVINGS TIME BEGINS**	11	12 Probate & Estate Planning Section What Have the Courts Done To Us Now **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT** Marshal Oldman and Marc Sallus update the group on case law. (1 MCLE Hour) Board of Trustees **6:00 PM** **SFVBA OFFICES**	13	14	15 Special Seminar **Presented by** COHAN-HORN How to Sleep Better at Night: Getting your Finances in Order **12:00 NOON** **SFVBA OFFICES** Free to Current SFVBA members. (1 MCLE Hour) See ad on page 36	16
17 	18	19 Taxation Law Section Estate and Gift Tax Update Under TCJA **12:00 NOON** **SFVBA OFFICES** Kira Masteller will update the section on new developments regarding estate and gift tax issues under the Tax Cuts and Jobs Act. (1 MCLE Hour)	20 SFVBA Probate and Estate Planning Section Probate Settlement Officer Training Program **12:30 PM** **STANLEY MOSK COURTHOUSE** Free to Settlement Officers who volunteered in 2017 and 2018. See ad on page 13	21 Business Law and Real Property Section Prop 65 Effect on Business and Real Estate **12:00 NOON** **SFVBA OFFICES** Janice Miller will discuss the effects of Prop 65 on business and real estate. SFVBA members may attend the lunch for a special discounted price. Attorney Janice Miler sponsors. (1 MCLE Hour)	22 Bankruptcy Law Section Key Consumer Cases from Around the Country **12:00 NOON** **SFVBA OFFICES** Panelists: Hon. Sandra R. Klein, U.S. Bankruptcy Court–Central District of California, Los Angeles Division; Cassandra J. Richey, Barrett Daffin Frappier Treder & Weiss; and Roksana D. Moradi-Brovia, Resnik Hayes Moradi LLP. Approved for Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)	23
24	25 Family Law Section State of Department Two **5:30 PM** **MONTEREY AT ENCINO RESTAURANT** Family Law Supervising Judge Thomas Trent Lewis will discuss the latest changes at the Department. Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	26 Editorial Committee **12:00 NOON** **SFVBA OFFICES**	27 ARS Committee **6:00 PM** **SFVBA OFFICES**	28  **5:30 PM** **SFVBA OFFICES** Come Meet the Bar Leaders and See our New Offices! See ad on page 32	29	30
31 						

SUN	MON	TUE	WED	THU	FRI	SAT
	1 VBN VALLEY BAR NETWORK **5:30 PM**	**2**	**3**	**4** Membership & Marketing Committee **6:00 PM** **SFVBA OFFICES**	**5** Bankruptcy Law Section Dude! How to Litigate Cases Under 11 U.S.C. § 727 **12:00 NOON** **SFVBA OFFICES** Judge Barry Russell and J. Scott Bovitz will discuss the latest re discharge. Approved for Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)	**6**
7	**8**	**9** Probate & Estate Planning Section Be Careful of Boilerplate: You May End Up in Litigation **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT** Attorneys Sarah Broomer, Stefanie Cutler and Jessica Babrick will discuss how boilerplates can lead to unwanted litigation. (1 MCLE Hour) Board of Trustees **6:00 PM** **SFVBA OFFICES**	**10** Business Law and Real Property Section 1031 Exchanges **12:00 NOON** **SFVBA OFFICES** Sponsored by OLD REPUBLIC EXCHANGE The discussion will include an overview of the basics of 1031, types of exchanges, seller carry back and FSBO issues and more! Free to SFVBA Members. (1 MCLE Hour) See ad on page 38	**11**	**12**	**13**
14	**15**	**16** Taxation Law Section **12:00 NOON** **SFVBA OFFICES** Former DOJ attorney Stephen Turanchik will lead a discussion on the taxation of cruptocurrencies. (1 MCLE Hour) ARS Committee **6:00 PM** **SFVBA OFFICES**	**17**	**18**	**19** 	**20**
21 	**22**	**23**	**24** **ADMINISTRATIVE PROFESSIONALS DAY** 	**25**	**26**	**27**
28	**29**	**30**				

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0495 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

VBN
VALLEY BAR NETWORK

VBN is dedicated to offering organized, high quality networking for SFVBA members.

Join the Valley Bar Network the first Monday of each month.

Check the calendar at sfvba.org for future dates and locations.

Contact events@sfvba.org for more information.

San Fernando Valley Bar Association
founded in 1926

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PROBATE AND ESTATE PLANNING SECTION

PROBATE SETTLEMENT OFFICER TRAINING PROGRAM

The Probate Settlement Program Committee invites experienced probate attorneys to attend a Settlement Officer Training Program. A panel of distinguished judicial officers and attorneys will discuss the highly successful LASC Probate Settlement Conference Program and the mediation process in probate.

WEDNESDAY, MARCH 20, 2019
Stanley Mosk Courthouse, Room 222

12:30 PM Registration
1:00 PM—4:00 PM Program
4:00 PM—5:00 PM Recognition Ceremony and Bench-Bar Mixer

Introductions
Judge Clifford Klein

Mock Settlement Conference
Judge David Cowan,
Mary O'Neill, Esq., and
Larry D. Lewellyn, Esq.

Settlements Involving Visitation Issues
Guardianships/Conservatorships
Elizabeth Potter Scully

Settlement Tips
Judge James Steele (Retired)

Closing the Deal
Judge Marvin M. Lager and
Judge Mary Thornton House (Retired)

Recognition of Current Probate Settlement Officers
Presiding Judge Kevin C. Brazile

Probate Bench-Bar Mixer

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Download the application to become a volunteer probate settlement officer at sfvba.org/public-service/probate-settlement-program.

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider.
By attending this seminar, attorneys earn 3 MCLE Hours.

Validation not provided. Public parking may be available on Hill St., Olive St., and the Cathedral.

Who's Whose:
DNA, Parenthood and Inheritance

By Nancy Reinhardt and Mark A. Lester

Science is changing and improving lives, but it is also intruding into the often-described staid practice of probate. Because it is unlikely that clients will be completely truthful about their lives with their partners or spouses, as well as their attorneys, estate planners will likely have to approach a discussion of the problems with the definition of "child."


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8C3HIII
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EFFECTIVE JANUARY 1, 2019, CALIFORNIA Probate Code § 6453(b)(3) now includes provision for the use of DNA collected during the lifetime of the parent to establish a natural parent-child relationship that would determine *intestate* succession when it would otherwise be impossible for the parent to hold the child out as his or her own during that parent's lifetime.[1]

The 2019 amendment continues a trend in California law that started with the adoption of the Uniform Parentage Act in 1975 of eliminating different treatment between legitimate and illegitimate children for purposes of inheritance as set forth in PC § 6450(a)—"[t]he relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents."[2]

This article will examine the historical basis for "impossibility"—the status of current law under PC § 6453(b)(3), the direction that law may take in the future, and what draft language should be considered in light of current law.

Pre-1975 Law

Prior to 1975, California law recognized a difference between the ability of legitimate and illegitimate children to inherit from a parent's estate and even found that a challenge to different and discriminatory treatment of illegitimate children for intestate succession purposes did not violate equal protection or due process provisions of the California constitution.

In *Estate of Ginochio*, a case of first impression as to constitutional challenges, the court cited to several cases from other jurisdictions that held the distinction between legitimate and illegitimate children in succession laws is not arbitrary and not without reasonable legal basis.[3]

The *Ginochio* Court justified joining those other jurisdictions for three reasons:

- There was no vested right to succession, inheritance is subject to such conditions and limitations as the legislature may prescribe.

- The state has a paramount interest in encouraging the institution of marriage and discouraging the birth of illegitimate children.

- Statutes which provide that the illegitimate child takes only from and through his/her mother in the absence of an acknowledgment of his/her father embody nothing more than the presumed intent of the deceased.

The court thus reasoned that since each person is constitutionally free to dispose of his/her property in an unfettered manner, it cannot be said that statutes reflecting the probable intent of individuals are unreasonable.[4]

1983 Revisions

Beginning in 1983, the California Probate Code moved toward the equal treatment of legitimate and illegitimate children in intestate estates by adding former PC § 6408(a)(1), which provided that "[e]xcept as provided in subdivisions (b), (c), and (d), the relationship of parent and child exists between a person and his or her natural parents, regardless of the marital status of the natural parents."[5]

In further defining a "natural parent," former PC § 6408(f) provided that "for the purpose of determining whether a person is a 'natural parent,' as that term is used in this section…

- A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

- A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7006 of the Civil Code unless either a court order was entered during the father's lifetime declaring paternity; or paternity is established by clear and convincing evidence that the father has openly and notoriously held out the child as his own."[6]

Estate of Sanders and Use of DNA

In *Estate of Sanders*, the Probate Court was first confronted with the potential use of DNA to establish parentage for intestate succession purposes.[7]

In that case, the guardian *ad litem* (the mother) sought to compel genetic DNA tests from some of decedent's adult children to establish that her daughter was a child of

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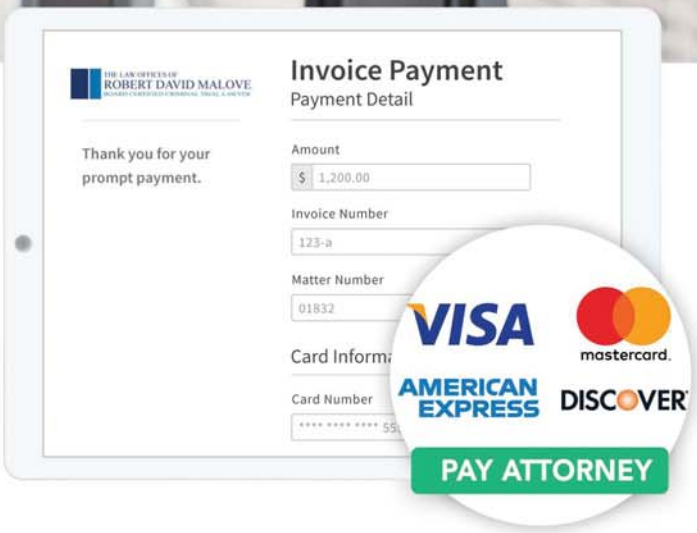

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the decedent-putative father and, therefore, entitle her to participation in the probate proceedings.

The Court of Appeal affirmed the trial court's declination to order DNA testing noting that neither the mother nor the children of the decedent-putative father were parties to the probate proceeding.[8]

In addition, PC § 6408 does not allow establishment of paternity by way of DNA testing in the probate proceedings as it provides that the relationship of a parent and child is established for purposes of intestate succession where a natural parent and child relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, or that a natural parent and child relationship "may be established" pursuant to other provisions of the Uniform Parentage Act.

Thus, where there is no unrebutted presumption of paternity, and there is neither a court decree declaring paternity which was entered during decedent's lifetime—nor clear and convincing evidence that the father openly and notoriously held out his child—there are no means to establish paternity for heirship purposes.[9]

In further analyzing the legislative history of the adoption of PC § 6408, the *Sanders* Court noted that the California Legislature rejected an earlier version of the statute which would have allowed establishment of the parent and child relationship largely without restriction.

Accordingly, the *Sanders* Court declined to expand the methods by which the natural parent-child relationship can be established, including the admission of DNA evidence.[10]

1990 Statutory Revisions

In 1990, former PC § 6408(f)—the establishment of a natural parent-child relationship provisions—was incorporated into new PC § 6453(b) and further amended in 1993 to add (b)(3) to include a new category of "impossibility."

Accordingly, PC § 6453(b) thus provided that "a natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless a court order was entered during the father's lifetime declaring paternity; paternity is established by clear and convincing evidence that the father has openly held out the child as his own; or it was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."[11]

Cheyanna M. and Impossibility

With respect to impossibility, the court in *Cheyanna M. v. A. C. Nielson Co*. noted that "[t]he legislative history indicates that the 'impossibility' provision was enacted to cover the situation…where the father dies before the child is born."[12]

A report, prepared by the Office of Senate Floor Analyses with respect to the amendment to PC § 6453 in 1993, described the situations in which the "impossibility" provision was meant to apply:

"In a current case in Kern County, the alleged father (unmarried) was in an automobile accident which left him paralyzed. His son was born the same day as the father's accident. The father was in traction until his death 28 days later.

"In another Los Angeles County case, the alleged father (unmarried) was killed while the mother of the illegitimate child was still pregnant. Under these facts, if the father did not hold out the child as his own, no court order establishing paternity could have been entered during the father's lifetime. Current law would bar the child from establishing paternity.

"This bill would offer another alternative for establishing the parent-child relationship."[13]

In *Cheyanna M*., the purported child of the decedent (the purported father), who was killed in an auto-pedestrian accident , brought a wrongful death action against the motorist and his employer.

That action was consolidated with the separate action by the parents of the deceased-purported father, who then moved for summary judgment on the ground that the purported child lacked standing to pursue the action because she could not establish paternity.

In reversing the trial court's granting of the summary judgment, the *Cheyanna M.* Court held that the term "children," within the meaning of the wrongful death statute, is defined in accordance with the laws of intestate succession, and, given the decedent's death prior to the child's birth, it was impossible for decedent to have held the child out as his own.[14] It was not determinative that he had taken no such steps to "hold the child out as his own" while the child was in utero.[15]

2018 Statutory Revisions

PC § 6453(b)(3) was amended in 2018 to include the possible use of genetic DNA evidence in establishing paternity by clear and convincing evidence. PC § 6453 was also amended so as to be gender neutral by use of the terms "parent" and "parentage" rather than from the male point of view only of "his own" and "father".

Effective January 1 of this year, PC § 6453(b)(3) now provides with respect to the third option for proving parentage that, "It was impossible for the parent to hold out the child as that parent's own and parentage is established by clear and convincing evidence, which may

include genetic DNA evidence acquired during the parent's lifetime."[16]

As originally proposed, the collection of DNA evidence was unlimited as to time; the final version, however, requires that genetic DNA evidence must be acquired during the parent's lifetime in order to be used to establish parentage by clear and convincing evidence.

What is also clear from PC § 6453(b)(3), as revised, is that the impossibility component of proving parentage is still a two-step process. First, it must have been impossible for the parent to have held the child out as the parent's own, and, second, that parentage must be established by clear and convincing evidence, which may include genetic DNA evidence. At the present time, it is not sufficient by itself that the purported child simply presents genetic DNA evidence as proof of parentage.[17]

To date, the only reported case interpreting "impossibility" under PC § 6453(b)(3) has been in the "traditional" situation where the purported father of the out-of-wedlock child died before the birth of the child making it impossible for the father to have declared the child his own.[18]

> "A probate judge presented with compelling facts of injustice may bring unintended beneficiaries."

Given the availability and relative ease of DNA testing, however, which discloses previously unknown biological connections, what if a child's mother is mistaken as to the identity of the father of her child? What if that mistake was not discovered for many years after the child's birth, but after the biological father's death so that the father never knew about the child and thus never had the opportunity to hold the child out as his own?

Assume the same circumstances except rather than being simply mistaken, the mother affirmatively chooses to keep the biological father's name unknown to her child?

Do either of these fact patterns constitute impossibility of the parent to hold out the child as the late discovered parent's own?

While the authors believe that the first situation is a mistake, not an impossibility, and the second situation is a fraud perpetrated by the mother on her child, and also not an impossibility, it is also possible that under the right set of facts—such as a child who presents as having been deprived of any family for his/her life—the Probate Court, which is a court of equity, could well expand the definition of "impossible" to cover either or both of these situations.

Defining Child for the Purposes of Estate Planning

Although PC § 6453 applies to *intestate* succession proceedings, the proactive estate planner should review the definition of "child" as used in their wills and trusts to make sure whether their definition of "child" could include or exclude later discovered children. PC § 26 defines "child" as "any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved."

Given the issues raised above, samples of an inclusive definition of child include:

a.) Whenever in this Agreement the term "child", "children" or "living issue" is used, it is intended to refer to John, Jane, and any other children hereafter born to or adopted by me, as a class—e.g.: "We have no predeceased children." John J. Smith, Sr. has a child, Betty Jane (Smith) Jones, from a prior relationship. No provision is being made for her in this trust and she shall be treated as if she predeceased the death of both settlors without issue then surviving.

b.) The term "issue" or "living issue" shall include my children and their child or children whether or not any such child is adopted—"Whenever in this Agreement

the term "child", "children" or "living issue" is used, it is intended to refer to John, Jane, and any other children hereafter born to or adopted by us, as a class. The term "issue" or "living issue" shall include our children and their child or children whether or not any such child is adopted.

c.) The term "grandchildren" shall include any child or children born to, adopted by or living with any of my children—Notwithstanding the foregoing, the terms "child", "children", "grandchild", "grandchildren", and "issue" shall only include those persons with whom a natural parent and child relationship under Probate Code § 6453 is established during that child's lifetime (except Betty (Smith) Jones, daughter of John J. Smith, Sr.)."

Conclusion

Science is changing and improving lives, but it is also intruding into the often-described staid practice of probate.

Because it is unlikely that clients will be completely truthful about their lives with their partners or spouses, as well as their attorneys, estate planners will likely have to approach a discussion of the problems with the definition of "child." They will also have to address whether an inclusive or exclusive definition is desired with the understanding that they inform their clients that there are new laws that need to be discussed.

Without affirmatively addressing this definition in one's documents, a probate judge presented with compelling facts of injustice may bring unintended beneficiaries into your estate plans. By failing to address the definition of "child" when drafting estate planning papers and documenting those client discussions and client wishes in the files, the attorney increases his or her risk of discipline, a charge of malpractice, and, most importantly, an ill-served client.

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[1] Cal. Prob. Code § 6453(b)(3).
[2] Cal. Prob. Code § 6450(a).
[3] *Estate of Ginochio*, 43 Cal.App.3d 412 (1974).
[4] *Ibid.* at 418 – 419.
[5] Cal. Prob. Code § 6408(a)(1).
[6] Cal. Prob. Code § 6408(f).
[7] *Estate of Sanders*, 2 Cal.App.4th 462(1992).
[8] *Ibid.* at 468 – 469.
[9] *Ibid.* at 470 – 471.
[10] *Ibid.* at 472.
[11] Cal. Prob. Code § 6453(b).
[12] *Cheyanna M. v. A. C. Nielson Co.*, 66 Cal.App.4th 855 (1988).
[13] *Ibid.* at 877.
[14] *Ibid.* at 861-862.
[15] *Ibid.* at 871.
[16] Cal. Prob. Code § 6453(b)(3).
[17] *Estate of Sanders,* 2 Cal.App.4th 462(1992); *Estate of Britel*, 236 Cal.App.4th 127 (2015).
[18] *Cheyanna M. v. A. C. Nielson Co.*, 66 Cal.App.4th 855 (1988).

Test No. 125

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. As of January 1, 2019, California Probate Code § 6453(b)(3) now includes the use of DNA collected after the death of a parent to establish a natural parent-child relationship for determining intestate succession when it would otherwise be impossible for the parent to have held the child out as his or her own during that parent's lifetime.
❑ True ❑ False

2. The 1983 revision to the Probate Code was the first move toward the equalization of treatment between legitimate and illegitimate children in intestate estates.
❑ True ❑ False

3. Beginning in 1983, paternity could be established by clear and convincing evidence that the father openly and notoriously held the child out as his own.
❑ True ❑ False

4. The *Sanders* Court would not compel DNA testing from individuals who were not parties to the probate proceedings.
❑ True ❑ False

5. In 1993, a third prong was added to the establishment of natural parent-child relationships. It was determined that it was impossible for the father to hold out the child as his own, but it does not require that paternity is established by clear and convincing evidence.
❑ True ❑ False

6. According to the *Cheyanna M.* Court, the impossibility provision was added to address the situation where the father died before the birth of the child.
❑ True ❑ False

7. It was not relevant to the *Cheyanna M.* Court that the father of the child had not done anything to acknowledge the child while the mother was pregnant with the child.
❑ True ❑ False

8. As originally proposed, the January 2019 amendments to Probate Code § 6453(b)(3) were unlimited as to time on the collection of DNA evidence.
❑ True ❑ False

9. Prior to 1975, California recognized a difference in treatment between illegitimate and legitimate children's rights to inherit from their parent's estates.
❑ True ❑ False

10. Genetic evidence of parentage is sufficient in and of itself to establish a parent-child relationship under Probate Code § 6453(b)(3).
❑ True ❑ False

11. The impossibility prong of proving parentage is still a two-prong process.
❑ True ❑ False

12. The legislative history quoted in *Cheyanna M.* appears to offer alternatives to establishing parent-child relationships in situations, for example, where the father could not have ever held the child out as his own and thus no court order establishing paternity could have been entered into during the father's lifetime as the alleged father was killed while the mother of the illegitimate child was still pregnant.
❑ True ❑ False

13. To date, there have been many reported cases interpreting the impossibility prong under Probate Code § 6453(b)(3).
❑ True ❑ False

14. Probate Code §6453(b)(3) applies to both testate and intestate succession cases.
❑ True ❑ False

15. Genetic evidence is required to establish a parent-child relationship under Probate Code § 6453(b)(3).
❑ True ❑ False

16. The current revisions to Probate Code § 6453(b)(3) no longer address father or paternity but are neutral in terms of parentage for the first time.
❑ True ❑ False

17. Prior to 1975, California law found that a challenge to different and discriminatory treatment of illegitimate children for intestate succession purposes did not violate the equal protection or due process provisions of the California Constitution.
❑ True ❑ False

18. One of the reasons that the *Ginochio* Court believed that it could support disparate treatment between legitimate and illegitimate children in succession laws was the state's paramount interest in the encouragement of the institution of marriage and the discouragement of the birth of illegitimate children.
❑ True ❑ False

19. In terms of best practices, the estate planner need not consider the definition of the term "child" in a will or trust that he or she drafts.
❑ True ❑ False

20. The 2019 amendment to Probate Code § 6453(b)(3) continues California's post-1975 trend of eliminating different treatment for illegitimate and legitimate children for purposes of inheritance.
❑ True ❑ False

MCLE Answer Sheet No. 125

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:

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❑ Check or money order payable to "SFVBA"
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5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0495.

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

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

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The Building Blocks of an Upstanding Legal Practice

Advice for New Lawyers

By Michael D. White

Every time an attorney meets with a client, walks into a courtroom, takes a deposition, participates in a mediation, communicates with opposing counsel, or even attends a social event, there exists the inescapable fact that their conduct reflects directly on the perception of not only how they do their job, but how their view their chosen profession.

TO PUT IT IN CONTEMPORARY VERBIAGE, all attorneys need to be aware of their brand identity—how they are perceived by their clients, their peers and the judges who they appear before.

It's like the quality control process that sets the standards for the production of aircraft engines or the construction of a fast food chain cheeseburger. Every time an attorney meets with a client, walks into a courtroom, takes a deposition, participates in a mediation, communicates with opposing counsel, or even attends a social event, there exists the inescapable fact that their conduct reflects directly on the perception of not only how they do their job, but how they view their chosen profession.

The inherent value of the 'how to' of building and cultivating an effective, and respected, practice carries significant weight not only for even the most experienced lawyers, but particularly for attorneys who are new to the law.

Listening and learning; maintaining a good reputation; marketing; being confident without being arrogant; communicating effectively and respectfully; networking; and maintaining decorum are the key basic building blocks that can well serve to lay the proper foundation on which to erect a new legal career.

A dozen respected and experienced judges and attorneys have shared with *Valley Lawyer* their views and insights on how to cast those 'building blocks.' Drawing on, collectively, well more than a century of legal practice to call on, they offer their counsel and advice based on their own observations and practical experience.

One 'golden thread' that wove itself into almost every shared experience was that a long, healthy career in the law balances on a passion for the law. "Don't work for the money," one contributor told me. "Money is important, but if you want a worthwhile career, you have to be involved in something you think is important and that your degree can be used to help people's lives, and right a wrong."

Lawyers loyal to their calling, he said, "want that special moment where they had a case and they knew down deep that they had changed something for the better."

LISTEN AND LEARN

"You learn more from listening, and thinking about what you heard provides you with great learning skills. You can obtain a new approach to issues, you can obtain an education from what you hear and ascertain the type of person you are dealing with and how to best approach them. Talking provides you with nothing in that regard other than permitting others to judge you. That's not always smart." – *Lee Alpert*

"Listen and learn from those who came before you. Seminars and legal resource material are essential, but an experienced mentor attorney is invaluable in giving you information about the real life, day-to-day, and ins and outs of our profession." – *Christopher Armen*

"Practicing the law can be a very lonely thing and it's helpful to be able to reach out and talk with a more experienced mentor and ask them questions about how a particular issue can be handled. Seeking the counsel of an experienced attorney is critical because, simply, the more you consult, the more questions you ask, the more you learn." – *Myer Sankary*

"When faced with difficult decisions, it is important that attorneys align themselves to mentors with good judgment both inside and outside of their practices. These checks and balances serve to govern the inexperienced attorney's decisions and will tend to reinforce ethical choices." – *David Jones*

A GOOD REPUTATION

"Remember you cannot establish a positive reputation by talking about it, your actions will establish your reputation regardless of what you say it is." – *Lee Alpert*

"Reputation as a lawyer is everything. How you are perceived by your clients, the public, judicial officers and your opposing counsel is important to your ability to be an effective advocate for your client." – *Christopher Armen*

"For young attorneys, each interaction with opposing counsel presents two roads: one, as an opportunity to establish a positive reputation, with the prospect of advancement in the community; and, another road which can send a reputation spiraling with difficulty in reversing negative perception. I would advise that being overly aggressive, failing to keep agreements made with opposing counsel and poor communication can significantly affect reputation. Take road number one every time." – *David Jones*

MARKETING

"I first joined a business networking group within months of passing the bar exam and joining my father Marshall Glick's law practice as an associate attorney. My father encouraged me to join a networking group early on because as an attorney with a small firm (just the two of us), it was, and remains, essential to our law practice to maintain relationships with other professionals who can refer us business. We do not market ourselves online or do any advertising. Our business relies solely on referrals from our clients and other professionals with whom we have developed relationships." – *Heather Glick-Atalla*

"Don't be afraid to do some research, ask others what has worked/failed for them, or hire a professional. One thing is clear, you have to market to grow. You have to generate business. You have to have a marketing plan and marketing goals. You also have to remember that it takes time for your marketing to start generating business. When you run your own firm you have to wear two very different but equally important hats—the lawyer and the business owner. You have to be able to separate yourself from being the practice (the lawyer) to being the owner of the practice to wear the business owner hat. The business owner knows clients must be generated through marketing. The lawyer knows what to do with those clients once they sign-up." – *Anthony Ellis*

"Marketing yourself and being involved in a professional network that can provide you with the contacts that can make referrals is very important. The two go hand in hand. As you develop expertise by being part of a networking group, you get opportunities speak at presentations. That can go a long way in marketing your expertise and make people aware of your areas of specialty. Over time, speaking and writing for professional publications like *Valley Lawyer* can also go a long way in establishing you as an expert." – *Myer Sankary*

BE CONFIDENT, NOT ARROGANT

"I first presumed that lawyers would be more civil toward each other in court. Lawyers are rightfully held in high regard in the community, and by judges. But, for some reason, a small group of them lose their way when it comes to being civil toward other lawyers. That surprised me. That is why I keep multiple copies of the ABOTA's *Civility Matters* publication in my chambers and distribute them to lawyers in need of a refresher course on professionalism." – *Judge Huey Cotton*

"Demeaning, name calling, being dismissive, etc. will prove you to be arrogant. Remember, people also judge arrogance by how they observe you treat others, including the less fortunate then you are. So, be kind to others and they will be kind in judging you. Being a rude, dismissive know it all and not acknowledging when you may be in error is arrogance personified and will earn you a just perception." – *Lee Alpert*

"I have seen judges dress down young attorneys in court for arrogant behavior, which is difficult to watch in a full courtroom. Working cases up with skill and focus will establish credibility. Ultimately, success will breed confidence, and confidence will breed success. But aggression and arrogance often highly motivate opposing counsel to work even harder and poisons the court against a young attorney and their client. Avoid this trap, know you are strong and positive results will follow." – *David Jones*

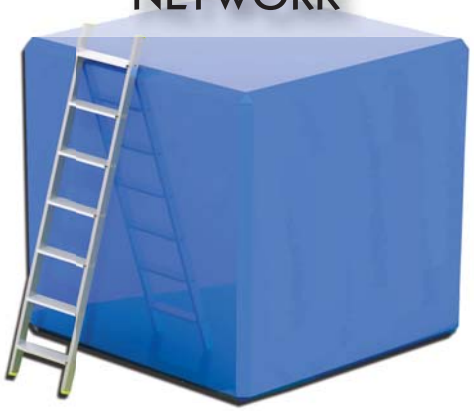
COMMUNICATE EFFECTIVELY AND RESPECTFULLY

"Assume that I've read your papers and don't repeat yourself during oral argument. Make your oral arguments with conviction. We may have genuine differences about what the law says or means, but you stand a better chance of convincing me to reconsider my tentative rulings if you argue your position with conviction." – *Judge Huey Cotton*

"Be kind and respectful of others and what they have to say, even if you disagree, and thereafter in a professional manner taking them apart, nicely, or admitting when you are in error will show you as a highly confident person." – *Lee Alpert*

"In court appearances which do not involve law and motion, a young attorney's goal should be to appear fully prepared to answer questions, talk too much or go on tangents which will frustrate the court. Proper preparation and respectful and direct answers to a judge's questions are always appreciated by jurists." – *David Jones*

NETWORK



"Most people don't realize that networking is a 'long game." You can't just show up to a few networking events and hope people will suddenly start sending you all kinds of business. It takes time to build trusting relationships, and to get to know people well enough that you feel comfortable referring business to them. Plus, you have to understand that one of the true benefits of networking is the opportunity to build a trusted group of business associates. You become a more valuable resource for your clients, when you are able to refer them to other trusted and capable business people." – *Alan Kassan*

"Networking is the very lifeblood of survival in the legal profession, particularly for young attorneys who are out on their own. The first thing to do is to join the bar association. Go to meetings and meet people. If I had had good advice when I started my career, I would have been much more involved earlier on as I've learned what an invaluable resource it is. Networking is also important because it gives you the opportunity to expand your knowledge base and become an invaluable resource center for my clients." – *Myer Sankary*

"Effective networking is an ongoing process. You can't get lazy. You have to attend events and other functions to provide you with the opportunity to network. Having a networking plan is very helpful. Set networking goals, like a certain number or type of events you want to attend, a target practice area, etc. This is something you have to keep up. Another big part of networking is staying in touch with your network. Social media is a great tool for that. Not only can you keep your network posted on how you are doing and your accomplishments, you can also keep up and comment on theirs." – *Anthony Ellis*

MAINTAIN DECORUM

"The first contact any new attorney makes in the courtroom is court staff. Young attorneys often disregard or disrespect court staff, which is a huge mistake. Court staff run chambers and have significant influence over day-to-day work in the court. The way a young attorney interacts with court often directly affects their success before a judge. Finally, I often see young attorneys trying to do too much in court." – *David Jones*

"Courtroom decorum should always be professional and include the highest of integrity. Remember that even when the judge is not on the bench, the court clerk, the bailiff, other lawyers and clients are seeing how you act and engage. The judge generally will be made aware of your actions by someone in the courtroom to let them know what to expect when they come out on the bench. Judges are also usually very appropriately protective of their court personnel, so giving their court personnel a hard time is translated into given the judge a hard time and you, but most importantly your client will suffer from your behavior." – *Lee Alpert*

Juvenile Diversion:
A New Route to Reform and Redemption

By Seymour I. Amster

CALIFORNIA'S 2018 LEGISLATIVE session saw new laws enacted that will have a dramatic impact on the treatment of youth committing crimes and engaging in other risky conduct by mandating that certain inappropriate behaviors be addressed by community-based diversion programs rather than through the legal system.

Legislation and Juvenile Diversion

Several pieces of legislation specifically address the issue of juvenile diversion. They include the Welfare and Institutions Code,[1] which was legislatively amended to read that…

- Any minor between 12 years of age and 17 years of age, inclusive, who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is a minor between 12 years of age and 17 years of age, inclusive, when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.

According to the California Education Code, a minor between 12 and 17 years of age, inclusive, is adjudged to be within the jurisdiction of the juvenile court if he or she has four or more truancies within one school year.

The jurisdiction also holds if a school attendance review board or probation officer determines that available public and private services are insufficient or inappropriate to correct the minor's habitual truancy, persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or the minor's failure to respond to directives recommending services to address the situation.

However, the Legislature made it clear that a minor whose behavior is described above, adjudged a ward of the court pursuant solely to any one of those three categories, or found in contempt of court for failure to comply with a court order pursuant to the above, "shall not

Seymour I. Amster specializes in the area of criminal defense. He is a Past President of the SFVBA and can be reached at attyamster@yahoo.com.

be held in a secure facility and shall not be removed from the custody of the parent or guardian except for the purposes of school attendance."

To the extent practically feasible, a minor who is deemed a ward of the court shall not be permitted to come into or remain in contact with any minor ordered to participate in a truancy program, or the equivalent thereof.[2] Any peace officer or school administrator may issue a notice to appear to a minor who is within the jurisdiction of the juvenile court pursuant to Section 601 of the California Welfare and Institutions Code.

Welfare and Institutions Code Section 602 was also amended to read as:

- Except as provided elsewhere in the Welfares and Institutions Code,[3] any minor who is between 12 years of age and 17 years of age, inclusive, when he or she violates any law of California or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court.

- Any minor who is under 12 years of age when it is alleged that he or she has committed any of the following offenses is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court: murder; rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; and sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

Welfare and Institutions Code Section 602.1 was added to as follows, and goes into effect January 1, 2020:

- In order to ensure the safety and well-being of minors who are under 12 years of age and whose behavior would otherwise bring them within the jurisdiction of the juvenile court,[4] it is the intent of the Legislature that counties pursue appropriate measures to serve and protect a child only as needed, avoiding any intervention whenever possible, and using the least restrictive alternatives through available school, health, and community-based services. It is the intent of the Legislature that counties use existing funding for behavioral health, mental health, or other available existing funding sources to provide the alternative services required by this section.

- Except as provided, when a minor under 12 years of age comes to the attention of law enforcement because his or her behavior or actions are as described in Sections 601 or 602, the response of the county shall be to release the minor to his or her parent, guardian, or caregiver. Counties shall develop a process for determining the least restrictive responses that may be used instead of, or in addition to, the release of the minor to his or her parent, guardian, or caregiver.[5]

This legislation is expected to have the greatest impact on youth under 12 years of age. The legislation enacted will compel youth to be enrolled in diversion programs administered by a recognized Community-Based Organization (CBO) in lieu of juvenile court proceedings or even programs administered by probation departments.

Thus, a minor under the age of 12 will not be subjected to a juvenile court proceeding unless it is for an offense specified in the California Welfare and Institutions Code, most notably murder and forcible sex crimes.[6]

Truancy and Incorrigibility

Furthermore, a minor under the age of 12 who is not regularly attending school will not be subject to the jurisdiction of a Student Attendance Review Board (SARB) or even a juvenile court for incorrigible behavior, but instead his behavior will be addressed by a CBO-administered diversionary program.

The underlying motivation behind this legislative enactment is the belief that the more contact a minor has with law enforcement agencies, the more a stigma is placed on the minor resulting in continued incorrigible behavior. This is coupled with the belief that by replacing this contact with a CBO the rate of recidivism will diminish. This same belief holds true with minors between the ages of 12 and 18.

Though the legislature did not eliminate the jurisdiction of juvenile court and probation agencies from having standing over criminal and other incorrigible conduct by youth in this age group, the legislature did adopt a less restrictive alternative standard.

Thus, enunciating a policy that a CBO be considered first, and only when it is found that the services provided by these organizations would not be sufficient can a more restrictive approach be considered. A more restrictive approach is defined as an increase loss of liberty with incarceration as the most restrictive approach. The legislature did provide local communities adequate time to implement programs in compliance with the new legislation.

> "A minor between 12 and 17 years of age, inclusive, is adjudged to be within the jurisdiction of the juvenile court if he or she has four or more truancies within one school year."

The bulk of this legislation does not go into effect until January 1, 2020, which gives local government entities almost a year to prepare.

In order to assist local government entities in implementing these new policies, the legislature has created a $38 million youth diversion fund, which can be accessed by local government to implement the new policy by partnering with a CBO and address the root cause of the inappropriate behavior so that, during the term of diversion, the youth is directed to a new path.

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[1] Welfare and Institutions Code, § 601.
[2] Welfare and Institutions Code, § 602, subd. (d).
[3] Welfare and Institutions Code, § 707.
[4] Welfare and Institutions Code, § 601 or 602.
[5] Welfare and Institutions Code, § 602, subd. (b).
[6] *Ibid.*

Member Focus

Without its individual members no organization can function. Each of the San Fernando Valley Bar Association's 2,000-plus members is a critical component that makes the Bar one of the most highly respected professional legal groups in the state. Every month, we will introduce two members of the Bar and help put a face on our organization.

Richard Lewis

Attorney at Law
Woodland Hills

Before embarking on his law career at the age of 41, attorney Richard Lewis spent ten years as an elementary school teacher with the L.A. Unified School District preceded by five years as a banker with Security Pacific National Bank.

He had previously graduated from the California Military Academy and received the Purple Heart for wounds he received while serving in Vietnam as a Platoon Leader with the U.S. Army's storied 11th Armored Cavalry Regiment.

His love of philosophy led him to Claremont College with the hopes of earning a graduate degree in, and later, teaching classical political philosophy. But, the tuition proved too prohibitive and, instead, he started management training at Security Pacific Bank.

Eventually, the law beckoned and he was admitted to the State Bar in 1988 after graduating from the Southwestern School of Law.

Currently, Richard is focused on Probate and Estate Planning, Trust Administration and Trust Litigation, as well as conservatorships and guardianships. Occasionally, he will also handle domestic violence and civil harassment cases, as well as paternity and simple dissolution of marriage cases. A Past President of the SFVBA, Richard served as the first Chairman of the Bar's Inclusion and Diversity Committee, which is still active today and has garnered honors from the California State Bar for its achievements in diversity out-reach and inclusion.

When not absorbed with his caseload, Richard is an avid jazz fan and frequent visitor, along with his wife, Julie, to the Monterey Jazz and Playboy Jazz Festivals. He and Julie also love to travel abroad and have been privileged to journey to South America and Africa, and explore Israel and the Bahamas.

While stateside, Richard enjoys reading, cooking and collecting fine wines. He's also a longtime 'Trekkie,' boasting the complete collection of the original *Star Trek* series and plans to attend a *Star Trek* convention in the near future.

In the meantime, Richard is content to focus on his law practice, kick back at home watching a movie drawn from his extensive collection, and get lost in the latest Tom Clancy or Daniel Silva novel.

Elizabeth Castaneda

Attorney at Law
Van Nuys

Very few know their career path at the age of three; even fewer stick with it for the rest of their adult career.

Attorney Elizabeth Castaneda is both—one of those rare people who never questioned whether or not she should reach her life goal.

"I've wanted to be an attorney, since I was in 3rd grade," says Castaneda. "My mother said that I told her I wanted to be a lawyer so I could help people. I was the first in my family to go to college, so I was not able to receive much guidance. All I knew was that I had to go to college to be an attorney and so I did."

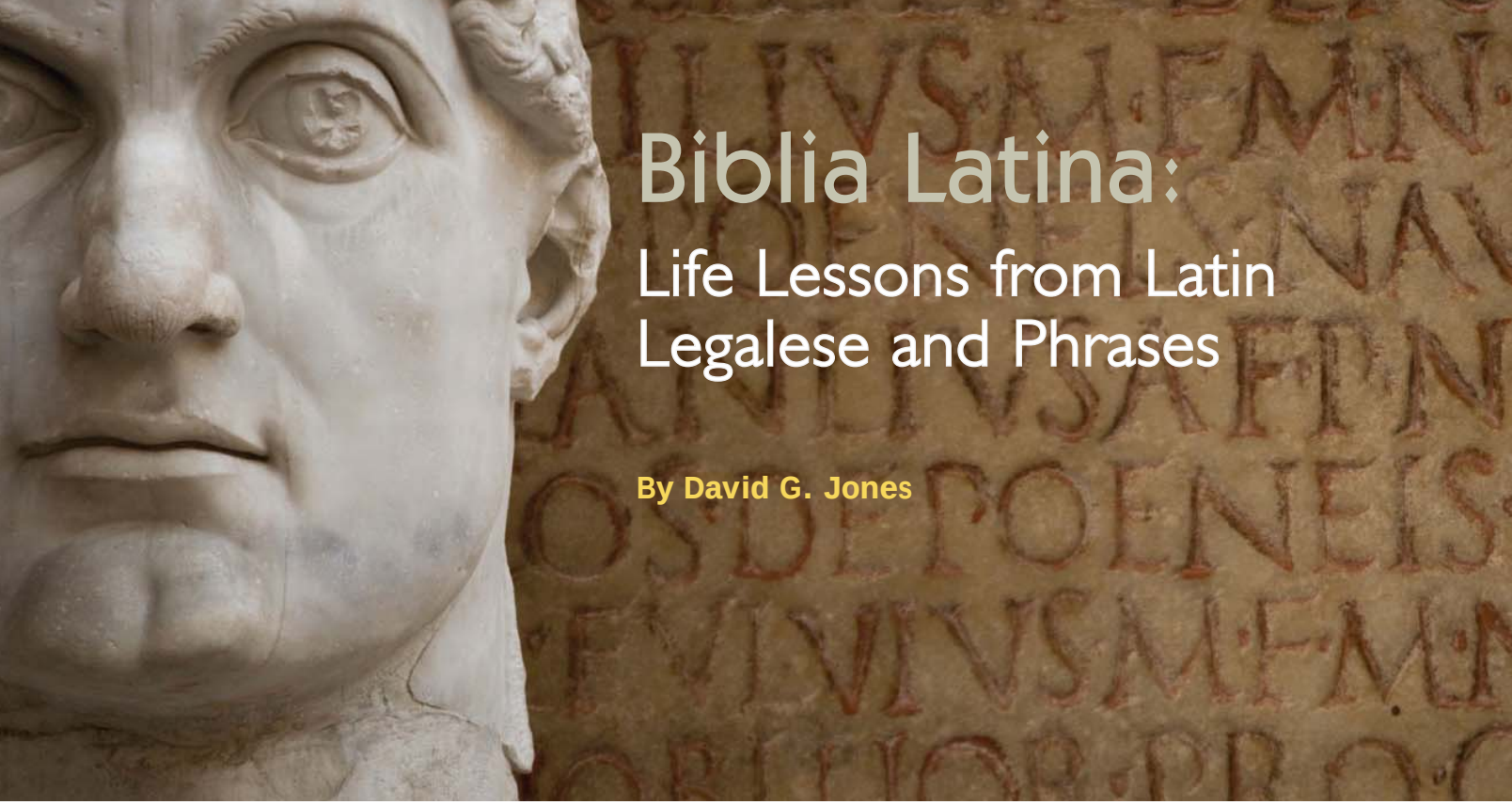
Despite substantial financial barriers, Castaneda was able to move forward with the help of mentors and counselors who guided her along the path to law school. While attending CSUN, Castaneda received the Jenniellen Ferguson Endowment scholarship for excellence in her political science studies. Following graduation, Castaneda worked for several years to save money before enrolling at Loyola Law School and securing several externships during her time there.

While at Loyola, Castaneda clerked for the Legal Aid Foundation of Los Angeles, while serving an externship with the Neighborhood Legal Service and the Dependency Court—an experience that helped her choose her area of law and reinforced her view of what it meant to be a lawyer.

Her externship with the Neighborhood Legal Service led to a six-year tour on staff as an attorney. Castaneda then tried her hand with firms in Century City and Encino for two years, refining her skills and bolstering her passion for family law.

"I enjoy working as a family law attorney because it gives me the opportunity to work with people and help them try to solve their problems during a very difficult time in their lives," she says. "I find that the experience I have had, both in the public interest arena and the private sector, has taught me a great deal on how to handle all aspects of family law."

Even though Castaneda is a busy solo practitioner, she continues to volunteer with the Daily Settlement Officer Program, participate in the Pro Per Judgment Day and Settle-O-Rama programs, read true crime novels and spend time with her family.



Biblia Latina:

Life Lessons from Latin Legalese and Phrases

By David G. Jones

IN THE LIFE OF A LAWYER, THERE are some shared experiences that all lawyers can relate to, regardless of their area of practice or geographical location—legal common denominators, if you will; a topic about which they have been trained and can actually get romantic.

Latin in the law is just that thing. As the origin of all romance languages, the roots of Latin in the law reach all the way back to the beginning, or *ab initio*, of our profession. And Latin is taught in every law school, no matter how practical its approach, because Latin is inexorably embedded in our legal profession, for the better.

"What is of interest is that Latin… continues to exist in legal discourse," according to the *Boston Law Review*. "So, for example, first year law students still encounter Latin phrases in their classes. Judges still use Latin in their decisions. '*Black's Law Dictionary* still begins with a Latin pronunciation section.'"[1]

Latin pervades the procedural and substantive law and is strewn throughout our appellate decisions from their very beginnings. It is part of the daily discourse for lawyers, and *assuming arguendo* that you have ever made a legal argument to any tribunal, you are familiar with its pervasiveness in the law.

The Law: Latin as a Legal Temptress

As with anything in life, the more experience you have, the more you are able to appreciate those things which are initially difficult to access—in my case, vegetables, art, and, later in life, fine red wine.

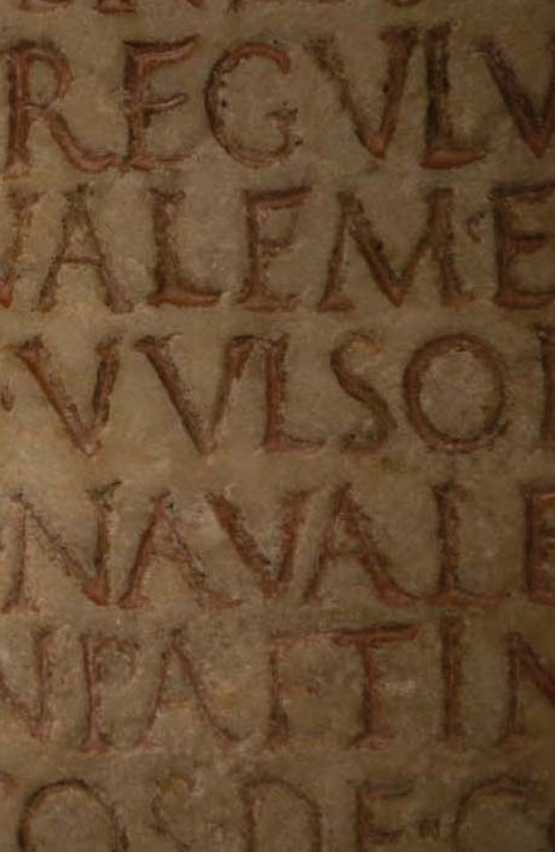
When I began law school, nothing was more daunting to me than learning a new language while learning the law (and the Socratic method), all at the same time. While others had learned Latin at college prep schools, for some reason it was not offered as a language option at my public high school. Quite simply, I hated Latin at first sight.

But over time, my appreciation of Latin in the law began to slowly change. This happened as the result of a series of classes that I took with Professor Warren H. Cohen, a legendary law professor at my *alma mater*, the Whittier College School of Law.

Harvard Law trained, employing a pure Socratic approach, and as old school as they come, Professor Cohen did not teach lawyers, he made them. And he taught me how to think like one.

But he did more than that. He introduced me to a new love—Latin in the law. As with any good teacher, his infatuation and passion were

David G. Jones is a partner in the Woodland Hills firm Santiago & Jones. He specializes in all aspects of employment law and employment litigation. He can be reached at djones@santiagojoneslaw.com or lawsrj@aol.com.



freely transferred and he helped me to appreciate a topic which previously was something that could be best described only as an acquired taste. The only *quid pro quo* for his inspirational teaching was a shared love of that which he instilled in his students.

But it was slow, and I fell hard. I took a class that was simply titled, "Legislation" with Professor Cohen. During our first week of class, he did not present a syllabus or discuss what the class would cover, or even allow us to reference the text.

Typical of the good professor. He simply gave the class a list of key Latin canons of statutory construction. We spent three weeks discussing these concepts, derived by common sense and logic melded together in legal decisions time-tested over the centuries.

We could not ask any questions about the legislative process or seminal legal decisions which shaped our current understandings of legislative interpretation. Just Latin canons.

And then something changed as the more time spent dissecting these three particular Latin canons of statutory construction, the more they made sense in the real world outside of the law.

1.) ***Noscitur a Sociis***[2]

"The meaning of words is judged by the company they keep." The principle of *noscitur a sociis* is of statutory construction and is an important rule used by courts to interpret legislation. The rule provides that words must be construed in conjunction with words and phrases used in the text. Specific words, clauses and phrases should not be interpreted as detached or isolated expressions, but must be understood in light of the words or "company" with which they are found or associated.

This one is deeply rooted in common sense. As we have all learned in our lives outside of the law, we will always be, for better or worse, judged by the company we keep.

There is simple genius in this one. When trying to understand what the words of a statute mean, why not start with the words that they associate with? Certainly, pigs, cows and chickens are more likely describing livestock, and any arguments that flamingos were intended to be included in the list of implicated animals would fall on deaf ears.

2.) ***Ejusdem Generis***[3]

"The general and the specific." *Ejusdem generis* advances the proposition that where a statute describes things of particular class or kind accompanied by words of a generic character, the generic words will usually be limited to things of a kindred nature with those particularly enumerated, unless there be something in the context of the statute to repel such influence.

For example, when in conversation with a group of people, there always seems to be that person that does not follow the flow of the dialog, and the rule of *ejusdem generis*. If the group is discussing vacation locations, and three people have described their separate beach experiences in Hawaii,

Mexico and the Bahamas, there always seems to be someone who wants to compare their ski vacation trip in the mountains as akin to the others. This is a pure violation of the rule of *ejusdem generis*.

3.) *Expressio Unius est Exclusio Alterius*[4]

"The Expression of One is to The Exclusion of Others." This one, in particular, has a special place in my heart and legal history.

Simply put, in legal terms, it means that when certain persons or things are specified in a law or legal document, an intention to exclude all others from its operation may be inferred.

I used this canon in my California Supreme Court victory in *Klein v. United States*, in which I argued for my severely injured client that an immunity statute did not apply, in significant part, because of the application of the *expressio unius* doctrine.[5]

The first person I emailed after the victory was Professor Cohen, to thank him for the Legislation class and for instilling in me a love of Latin in the law.

Finis

Much can be learned, and much can be loved as it relates to Latin in the law. The appreciation of Latin as it permeates our profession adds a fun and interesting layer to our discourse and understanding of the law.

Used strategically, Latin can be effective in persuading a judge, and even for getting a good laugh from its application to life situations outside the law.

Either way, *res ipsa loquitor*—"the situation speaks for itself" or more colloquially "it is what it is"—and never forget to *carpe diem*, or *carpe noctem* ("seize the night"), but most importantly, when it comes to acquired tastes like Latin in the law and red wine, if all else fails, remember "*in vino veritas*."

[1] FN *Boston College Law Review*, Volume 39, Issue 1, Number 1, Article 6, 12-1-1998, *Latin in Legal Writing: An Inquiry into the Use of Latin in the Modern Legal World*.

[2] As explained in *Gustafson v. Alloyd Co*., 513 U.S. 561, 575, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995), we rely on the principle of *noscitur a sociis*—a word is known by the company it keeps—to "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress." (internal quotation marks omitted). *Yates v. United States*, 135 S. Ct. 1074, 1085, 191 L. Ed. 2d 64 (2015).

[3] *Ejusdem generis* stands for the principle that "when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration." *Norfolk & Western R. Co. v. Train Dispatchers*, 499 U.S. 117, 129, 111 S.Ct. 1156, 113 L.Ed.2d 95 (1991). *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 223, 128 S. Ct. 831, 838, 169 L. Ed. 2d 680 (2008).

[4] Generally, the statutory interpretation canon *expressio unius* means that inclusion of one thing in a statute indicates exclusion of another thing not expressed in the statute. *Gikas v. Zolin* (1993) 6 Cal.4th 841, 852. The canon *expressio unius* has force when the items expressed in a statute are members of an "'associated group or series,' " which justifies the conclusion that items not mentioned were excluded by deliberate choice, not inadvertence. *Barnhart v. Peabody Coal Co*. (2003) 537 U.S. 149, 168; *Klein v. United States* (2010) 50 Cal.4th 68, 82, 112 Cal.Rptr.3d 722.

[5] *Klein v. United States* (2010) 50 Cal.4th 68, 82, 112 Cal.Rptr.3d 722.

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LOUIS D. LAMOORE—KNOWN TO THE WORLD AS Louis L'Amour—continues to be one of the most popular writers that America has ever produced.

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Well into his career, he was asked by an interviewer to share some wisdom with nascent 'scribes' about writing. "Just start, no matter what," he advised. "The water doesn't flow until the faucet is turned on."

Attorney and SFVBA President-Elect Barry Goldberg is one of several SFVBA members who have 'turned on the faucet' over the years and become a regular contributor to *Valley Lawyer*.

"Writing for *Valley Lawyer* has been a valuable part of my practice," he says. "It establishes me as an expert among my peers and the feedback I have received has made the time and effort worthwhile."

According to Goldberg, who also pens the magazine's popular 'Ask Phil' advice column, also enjoys posting news of his articles on social media "for my followers to check out my most recent article."

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Valley Lawyer magazine is published monthly to inform and engage over 2100 SFVBA members, plus local bench officers, and the legal community-at-large. Publishing preference is given to authors who are SFVBA members.

New ideas? Contact *Valley Lawyer* editor, Michael White at (818) 227-0493 or michael@sfvba.org.

Valley Lawyer 2019 Editorial Calendar

2019 ISSUE	COVER STORY	MCLE ARTICLE/SPECIAL FEATURES
January	New Superior Court Leadership	New California Laws Juvenile Diversion in LA County
February	Judge of the Year	Guardianships Law Library Resources
March	The Building Blocks of an Upstanding Legal Practice	Palimony Parent Child Relationships & Probate
April	Mediation Center of Los Angeles	International Business Contracts Judge's Night Photo Gallery
May	Bar Babies: Mother's Day	Unlawful Detainers Managing a Trust Account
June	SFVBA Foreign-Born Lawyers	Licensing Intellectual Property RT: Dealing with Difficult Clients
July	Remembering the Bar Exam	Government Contracting To Appeal or Not to Appeal
August	The Value of SFVBA Membership	Probate Update Election Pamphlet
September	Meet the New Bar President	Foreclosure Basics RT: Felons and the Right to Vote
October	Reel Justice: The Law in Film	Courtroom Decorum He Said/She Said: Domestic Violence and the Law
November	High-Profile Clients	Wrongful Termination Strategies Installation Gala Photo Gallery
December	Cover Auction	Proofs of Claim Retirement Planning for Attorneys

Calendar is subject to change. *Valley Lawyer* seeks articles covering all areas of law, plus articles focusing on the courts and judiciary, lifestyle, law practice management, social media and legal marketing, as well as humorous commentary about the practice of law. Submit articles and ideas to editor@sfvba.org. Word count for feature article is 1,500-3,000 words; word count for MCLE article is 3,000-4,000 words, including 20 true and false questions for MCLE test.

NEW MEMBERS

The following joined the SFVBA in November 2018, December 2018 and January 2019:

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INTELLECTUAL PROPERTY LAW gives artists, authors, songwriters, craftsmen, entrepreneurs and others the means to protect their creative work or trademarks from being copied so they can profit financially.

Unfortunately for Bryan (a pseudonym), he was the first to use a particular trademark, but not the first to register it, so he sought legal counsel for the right to use it.

Bryan had patented a basketball device that helps with proper hand placement while he sold basketball apparel and equipment using a certain brand name and logo. He had decided to trademark the name and a distinctive logo once his business began to grow.

His problems started when he learned about a separate company using the same brand, on the East Coast, that had filed a trademark application before him. Bryan's attorney, who helped patent his invention, was in the process of retiring, so she contacted the Attorney Referral Service (ARS) on Bryan's behalf and he was referred to ARS penalist Sevag Demirjian, an intellectual property law attorney with extensive experience with trademarks, patents, trade secrets and unfair competition.

"One of the challenges with trademarks is that you have to be the first to use and register a trademark," says Demirjian. "When you have one company that used it first and another that's applied for registration before you, it ends up in a grey area where a lot of lawsuits occur."

In Bryan's case, both companies were small businesses on the opposite coasts of the country, neither of which could muster the millions of dollars for a protracted battle in court.

Demirjian had to find a way to negotiate a favorable solution without bankrupting Bryan's fledgling company.

Having one company buy out the other company would have been the easiest solution. However, neither wanted to stop using the brand name, nor did either have the money for a mutually acceptable buyout.

It turned out, that since both companies are on opposite coasts and the brand name was well-known in basketball circles, both companies agreed to a healthy competition with each of the two companies using the same name, but a different logo.

That doesn't mean the companies agreed to never expand. They both generate national internet sales, but, as most of their business is currently localized, it made more sense to concentrate on their local markets at opposite ends of the country.

"He is a great patent attorney, one who cares to listen and give you legal advice with multiple options so you know how to make a decision feeling confident about it," Bryan says of attorney Demirjian. "We have not been hit with any surprises, as he has informed us extremely well," adding he hopes to continue working with the North Hollywood-based attorney on future product projects.

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"The Constitution and Me"

True Threats v. Pure Speech: Drawing the Line between Safety and Freedom

CONTACT:
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to volunteer to share your legal experience. Training will be provided.

Whether or not you can volunteer, please consider making a tax deductible donation to VLCF to support this program and other scholarship programs presented throughout the year to San Fernando Valley High School Students. Please use the accompanying pledge card or visit www.thevclf.org.

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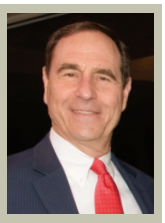

mshipow@socal.rr.com

PICTURE THIS: A HIGH SCHOOL HONOR STUDENT is anonymously accused of cheating. The student is convinced a classmate is behind the accusation. On the unofficial school Instagram account, the accused student posts a photo of Brutus stabbing Caesar in the back, with a caption referring to the presumed accuser, an emoji character with a knife dripping with blood, and the statement, "Karma is coming, and it is going to be painful."

Could this be a description of an actual event? Does it sound like something that could occur on a high school campus? Does it generate thinking about the problems high school students, teachers and administrators—and indeed all of us—face in this age of non-stop social media and cyber-bullying?

I think the answer to all these questions probably is "yes." If you agree, you should be interested in a constitutional law program VCLF is bringing to Valley high schools.

Titled *The Constitution and Me: True Threats v. Pure Speech: Drawing the Line between Safety and Freedom*, the goal of the program is to foster student conversations about how our Constitution protects, or does not protect, free speech in a school environment. The program will be highly interactive, with students being encouraged to proactively think through these issues.

As you read this issue of *Valley Lawyer*, the program is well under way. The VCLF team has prepared a Facts and Case Summaries handbook for the students and a guide for instructors. Five government classes in three Valley high schools—Monroe, Canoga Park and Taft Charter—are participating in the program, while more than a dozen volunteer attorneys and judges have participated in a training session.

As of the writing of this column, classes have not yet taken place. However, I had the opportunity to participate in one of the training sessions. It was impressive, and bodes well for a captivating and educational interaction with the students.

VCLF Board members Judge Firdaus Dordi and attorney Joy Kraft Miles conducted the training, using materials they developed with the help of VCLF Board members Judge C. Virginia Keeny, and attorneys Kira Masteller and Anngel Benoun. The training participants were engaged and vocal. I was left with full confidence that the students are going to have a wonderful experience.

An important part of the program will be a voluntary student essay contest, with scholarships awarded for winning essays. The scholarships provide an important incentive for students to effectively take part in our programs, which VCLF believes will inspire them to take an active role in bettering our society as they leave school. The scholarships have also proven to be a great help to students dealing with many of the incidental expenses of college life that often are overlooked or underfunded.

VCLF needs YOU! Your sponsorship will add value to this program and not only help fund our scholarships, but our many other educational and civic efforts, as well. Sponsorship levels begin as low as $100. Sponsors will be acknowledged in *Valley Lawyer*, and recognized at SFVBA and VCLF events. More importantly, sponsors will be making a difference in young people's lives, which benefits our Valley community and our society.

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Contact SFVBA Member Services Coordinator Sonia Bernal at (818) 227-0032 or sonia@sfvba.org to sign up your firm today!

No Compromise

Illustration by Gabriella Senderov

I head a small law firm. We recently brought a relatively young attorney on board who showed tremendous promise based on his law school record and his work as a clerk at another firm. He is very good at his job, but the problem is the fact that he tends to be disrespectful, not to the other attorneys in the office, but to our paralegals and support staff, some of whom have been with us for years. How do I handle this without losing him or alienating a trained and faithful office staff?

Signed,

Rock and a Hard Place

DEAR "ROCK AND A HARD PLACE":

Your question is very important and timely. Civility in the legal profession is not limited to how we interact with other lawyers, judges and court staff. It extends to all in the legal profession and the sooner this is addressed with younger lawyers, the better.

It has been well documented that the public view of the legal profession is tainted by unethical and uncivil members of our profession. Moreover, uncivil lawyers become unhappy, disaffected and at risk for behavioral and disciplinary issues later in their careers. Alienating a "trained and faithful" office staff is unacceptable in any business and can open you up to personnel issues and even employee lawsuits.

The new California Rules of Professional Conduct (effective on November 1, 2008) make it more than clear and establish that you have a duty to supervise subordinates in order for them to comply with civility rules. The new rules give "all law firm attorneys the responsibility to advocate corrective action to address known harassing or discriminatory conduct by the firm or any of its attorneys or non-attorney personnel." Further, the state bar no longer has to wait for a civil finding before conducting an investigation.

When you sit down with your young attorney to discuss these issues, remind him that the oath to be taken by every person on admission to practice law is to conclude with the following: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity." Your staff is entitled to the highest degree of dignity, courtesy and integrity as it reflects on your firm in general and affects firm morale in particular.

It is appropriate to acknowledge that your young lawyer shows tremendous promise. Emphasize that in order to realize his tremendous potential, he will need loyal and dedicated staff to accomplish his goals. As his supervisor, you should expect nothing less.

Sometimes, in the heat of legal pressure, young lawyers do not even realize how destructive their interaction can be with staff. Many firms have had excellent results with law firm coaches who can help to establish respectful dialogue and rules between attorneys and staff.

Always remember that you run the firm with the highest standards of professionalism, competence and civility. Do not let a young lawyer change your firm's culture of maintaining high standards.

Sincerely,

Phil

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

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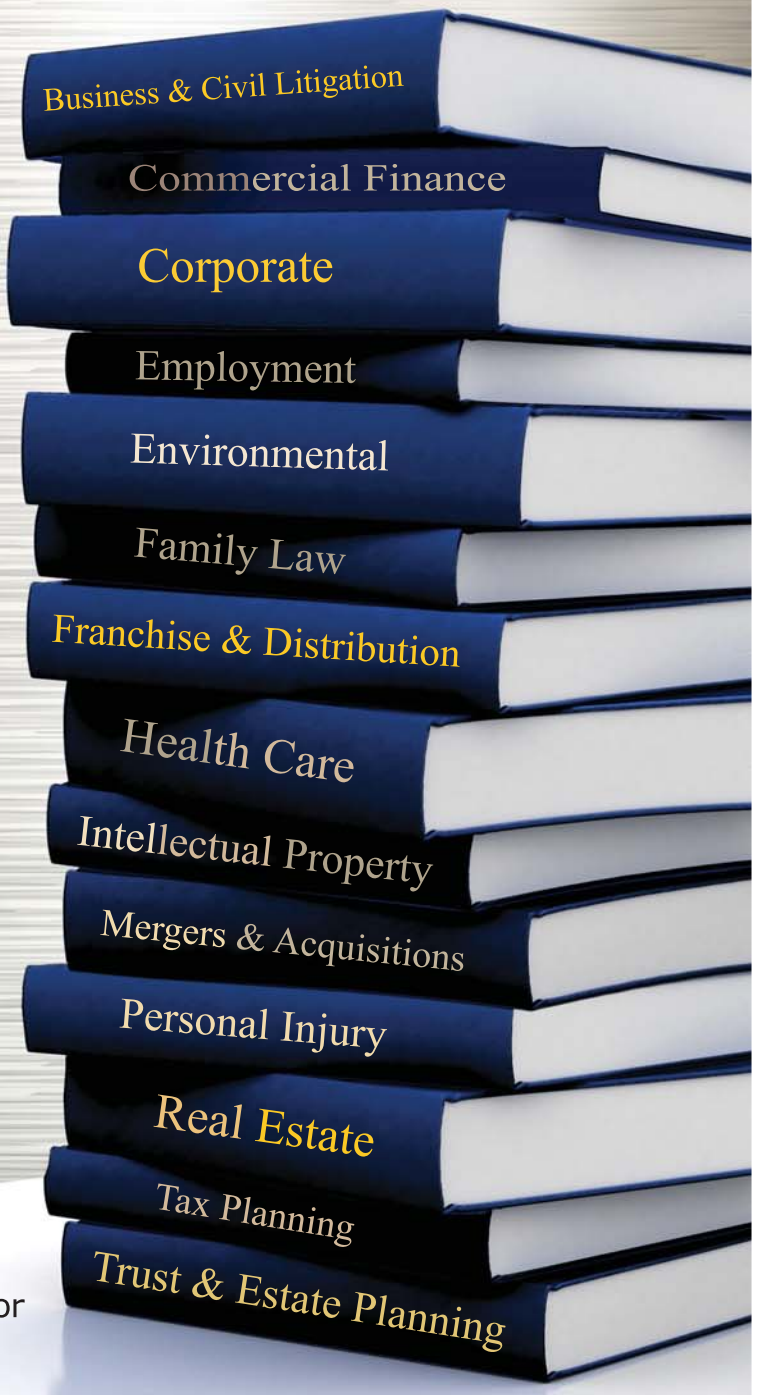

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