

# VALLEY LAWYER

FEBRUARY 2019 • \$5

A Publication of the San Fernando Valley Bar Association

**SFVBA Judge of the Year  
David B. Gelfound**

**A Brief Overview of  
Probate Guardianship**

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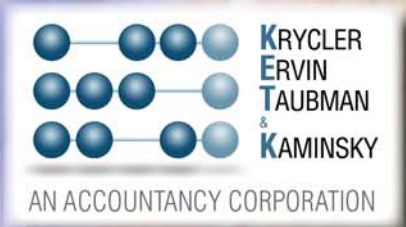
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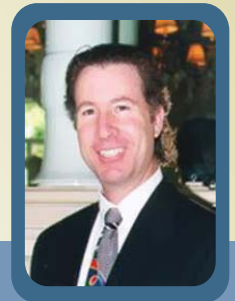
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Photo by Ron Murray

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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

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## Those to Whom Honor is Due

**YI SUN KIM**  
SFVBA President



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**T**HE SFVBA IS EXTREMELY GRATEFUL TO OUR judges and commissioners for their exemplary service, generous support, and unfaltering commitment to our valley community. It is a privilege to have you attend our annual Judges' Night Dinner.

It is always exciting to honor individuals and their outstanding contributions to enhance the competent, ethical, and diverse practice of law, and the fair administration of justice. We are inspired by the honorees' stories and humbled by the sincerity and selflessness of their actions.

The larger purpose of Judges' Night is to extend our gratitude and respect for all judicial officers and their accomplishments on and off the bench. The SFVBA's most successful programs are due to the invaluable participation and unique insight of our judicial officers and their hard-working staffs.

Each spring, a panel of judges and commissioners from Valley courthouses speak with students at the CSUN's Political Science Department's Cross-Examine the Judges Night. They share their personal experiences and lessons for getting into and through law school, different legal careers to pursue, and the realistic aspects of practicing law.

Judicial officers also engage with SFVBA's committees. Despite their hectic schedules, the supervising judges regularly meet with the Bench-Bar Committee to keep the Bar apprised of the state of courts, and provide feedback on the Bar's endeavors.

The Van Nuys Courthouse periodically hosts meetings of the SFVBA Inclusion and Diversity Committee, where its judicial officers share ideas and expertise in formulating community programs and volunteer to execute those programs. This is where one of the SFVBA's most well-received programs of last year was created—From the Bar to the Bench: Demystifying the Judicial Appointment Process. Judges Paul A. Bacigalupo, Shirley K. Watkins, and Rupert A. Byrdson were instrumental in putting the event together and served on the esteemed panel with Joshua P. Groban and Helen Zukin, with the support of numerous judges and commissioners. The candor with which the panelists spoke provided real substantive information to our Valley attorneys and encouraged their thoughtful path to the bench.

Many court tours for students have been arranged through this committee, including at the Van Nuys and San Fernando Courthouses. Commissioner Marilyn Mordesky recently organized a tour with a panel of judges representing multiple practices, including civil, criminal, and family law divisions. Several judicial officers volunteer for these tours, where students are given the special opportunity to view all parts of the courthouse and seek advice directly from the judges, commissioners, and other court employees.


Bankruptcy Judges Maureen A. Tighe, Martin R. Barash, and Victoria S. Kaufman frequently open their courtrooms to students of all ages, with special programs for groups like the Girls Scouts and Optimist Youth Homes & Family Services, a local non-profit organization servicing children and families in the foster care system.

The SFVBA and VCLF appreciate the commitment made by judicial officers who serve as Trustees on our boards. Judge Michelle S. Short was an active SFVBA Trustee and continues to be a visible ally. VCLF's community service efforts are boosted by their board members who include Judges Virginia Keeny, Firdaus F. Dordi, Ann I. Jones, and Michael J. Convey.

The SFVBA's Sections are grateful to judicial officers who serve on our MCLE panels, including the probate, family law, bankruptcy, and workers' compensation sections. Doing so requires significant preparation and time, while providing our members with a useful perspective on best practices for attorneys.

We are also proud of our judges who raise the visibility and enhance the reputation of our community after being promoted to esteemed positions. Congratulations go to Judge Paul A. Bacigalupo who is President of the California Judges Association, and Judge Maureen A. Tighe for her appointment as Chief Judge of the Bankruptcy Courts for the Central District of California.

Finally, we thank Judge Huey P. Cotton, who has motivated attorneys, judicial officers, and students alike. Judge Cotton provides substantive advice and constructive criticism, he motivates with humor and inspiration, and he leads with dignity and empathy.

Thank you all for your many years of service that has certainly left its mark in the Valley and the SFVBA. 



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# A Lifetime of Duty

**MICHAEL D. WHITE**  
SFVBA Editor



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**W**RITING ABOUT OLIVER Wendell Holmes in the Washington University Law Review, historian and biographer Sheldon M. Novick wrote of the great jurist that his personal philosophy balanced on “a moral code based on a lifetime of duty.”

Over the past couple of years, it’s been a privilege for me to meet and talk with several of the Southland’s best jurists—the Hons. Elizabeth A. Lippitt, Huey P. Cotton, Paul A. Bacigalupo, Kevin C. Brazile, Eric C. Taylor, Daniel J. Buckley, and others—who, like Holmes, have devoted themselves to not only the practice, but the studied and fair application of the law.

“It’s been a privilege for me to meet and talk with several of the Southland’s best jurists.”

I can now add to that list Judge David B. Gelfound, the 2019 recipient of the SFVBA’s Judge of the Year honors.

Judge Gelfound, a self-described Valley guy, grew up in Tarzana, attended Taft High School and worked his way up from dishwasher and cook at a local hospital to his current role as North Valley Supervising Judge.

Highly regarded by both his peers and the public, the Judge shared with me the fact that he finds being a supervisor “rewarding because I can support the judges who make

the system work because when I was hearing cases, I wanted a supervising judge who was supportive and understanding. I try my best to be that kind of supervisor to the judges I work with. At some point, I’m going to retire, but I really love my job. I love being a judge and I’ll do it as long as they ask me to do it.”

Admitting that the load can sometimes be stressful, Judge Gelfound has found some relief by playing the drums...or, as he puts it, trying to play the drums.

“I took up the drums a little over a year ago,” he says. “I think it’s good for people to try to do things they don’t do well and the drums are one of the things I don’t do well. It’s helpful, though,

because the process of learning something different can actually help you focus on what you’re doing more effectively.” The one caveat: “I don’t know if my neighbors like it very much.”

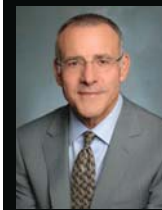
Look to this issue for some useful tips on how to get the most from Google when doing legal research, a well-crafted piece on the best ways to deal with discovery, and a light-hearted piece by David Gurnick and Marc Fein on a collection of judicial rulings on several off-the-wall cases involving the likes of Superman, Satan, and Georgia football.

All in all, a good read. Enjoy.



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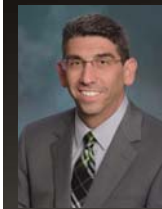
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3	 <p><b>4</b> 5:30 PM</p>	5	6	<p><b>7</b> <b>Business Law &amp; Real Property Section</b> The Mechanics of Financing, Promissory Notes and Deeds of Trust <b>12:00 NOON</b> <b>SFVBA OFFICES</b></p> <p>Review of multiple provisions to consider when drafting promissory notes and addendums to deeds of trust. Discussion will include provisions relating to usury, late payment penalties, prepayment, demand notes, straight notes, installment payment notes, balloon payments, subordination, due on sale or further encumbering, bankruptcy and other events that may result in acceleration of payment, insurance, limitations on negotiability, and more. (1 MCLE Hour)</p> <p><b>Membership &amp; Marketing Committee</b> <b>6:00 PM</b> <b>SFVBA OFFICES</b></p>	<p><b>8</b> <b>Bankruptcy Law Section</b> Ten Important California Bankruptcy Cases <b>12:00 NOON</b> <b>SFVBA OFFICES</b></p> <p>Bankruptcy Judge Geraldine Mund and attorneys Dean Rallis and David R. Hagen will discuss the ten significant cases that impact the practice of bankruptcy law. Approved for Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)</p>	9
10	11	<p><b>12</b> <b>Probate &amp; Estate Planning Section</b> Fear and Loathing the Unknown Child <b>12:00 NOON</b> <b>MONTEREY AT ENCINO RESTAURANT</b></p> <p>Learning about unknown children after a loved one passes can be disruptive, not only to family harmony but to the estate plan you are administering. Come learn what standards apply to verifying and proving these claims, as well as how to manage the emotional side of these sensitive issues. Attorney Scott Rahn addresses the group. (1 MCLE Hour)</p> <p><b>Board of Trustees</b> <b>6:00 PM</b> <b>SFVBA OFFICES</b></p>	13	<p><b>14</b> HAPPY Valentines DAY</p>	15	16
17	18	<p><b>19</b> <b>Taxation Law Section</b> Taxation Issues in the Digital Economy <b>12:00 NOON</b> <b>SFVBA OFFICES</b></p> <p>Monica Gianni, CSUN Tax Professor, will discuss the impact of changes to the economy on the taxation of digital economy. She will present her proposal to use a system such as California's factor presence to determine nexus for income tax internationally. (1 MCLE Hour)</p> <p><b>ARS Committee</b> <b>6:00 PM</b> <b>SFVBA OFFICES</b></p>	<p><b>20</b> <b>Workers' Compensation Section</b> WC and ADR <b>12:00 NOON</b> <b>MONTEREY AT ENCINO RESTAURANT</b></p> <p>Gold Lee and Mark Polan will discuss Workers' Comp and ADR. How will it effect your practice? (1 MCLE Hour)</p>	<p><b>SAN FERNANDO VALLEY BAR ASSOCIATION</b></p> <p><i>Annual Judges' Night Dinner</i></p> <p><b>28</b> <b>FEBRUARY</b></p> <p>WARNER CENTER MARRIOTT 21850 OXNARD STREET WOODLAND HILLS</p>		
24	25	26	27	<p>See page 27</p>		



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3	 <p><b>4</b> 5:30 PM</p>		5 6	<p><b>7</b> Membership &amp; Marketing Committee 6:00 PM SFVBA OFFICES</p>	8 9	
10	11	<p><b>12</b> Probate &amp; Estate Planning Section Case Law Updates 12:00 NOON MONTEREY AT ENCINO RESTAURANT</p> <p>This must attend seminar features Marshall Oldman and Marc Sallus who will discuss the significant changes in law. (1 MCLE Hour)</p> <hr/> <p>Board of Trustees 6:00 PM SFVBA OFFICES</p>	13	14	15 16	
17	18	<p><b>19</b> Taxation Law Section Estate and Gift Tax Update Under TCJA 12:00 NOON SFVBA OFFICES</p> <p>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)</p> <hr/> <p>ARS Committee 6:00 PM SFVBA OFFICES</p>	20	21	<p><b>22</b> Bankruptcy Law Section Key Consumer Cases from Around the Country 12:00 NOON SFVBA OFFICES</p> <p>Panelists will be Hon. Sandra R. Klein, U.S. Bankruptcy Court—Central District of California, Los Angeles Division; Cassandra J. Richey, Barrett Daffin Frappier Treder &amp; Weiss; and Roksana D. Moradi-Brovia, Resnik Hayes Moradi LLP. Approved for Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)</p>	23
<p><i>St. Patrick's Day</i></p> 	<p><b>25</b> Family Law Section State of Department Two 5:30 PM MONTEREY AT ENCINO RESTAURANT</p>	<p><b>26</b> Editorial Committee 12:00 NOON SFVBA OFFICES</p>	27	28	29 30	
31	<p>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)</p>					



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By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 21.

# For the Love of the Child: A Brief Overview of Probate Guardianship

By Peta-Gay Gordon

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When contemplating their estate plans, parents inevitably ask themselves—What do I want to happen to my child when I die? No one really wants to think about it.

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**G**UARDIANSHIPS CAN BE A HOT-BUTTON ISSUE in many families. When contemplating their estate plans, parents inevitably ask themselves—What do I want to happen to my child when I die? No one really wants to think about it.

In two-parent households, the conversation, unfortunately, often becomes contentious, while in single parent households, the need for a guardianship can arise when that parent dies.

Often a relative or other interested person seeking appointment as the child's guardian is met with objections from the noncustodial parent. When the custodial parent is alive, but a relative or other interested party believes they can no longer care for the child, then both the custodial and noncustodial parents may contest the guardianship.

The resulting evidentiary hearing is often emotionally charged. Only guardianships wherein a surviving parent seeks to be appointed as guardian of the estate due to assets inherited from a deceased parent tend to be less contentious.

Families may turn to legal professionals for answers, but guardianships are often a mystery to lawyers as well—especially due to the interplay between the California Probate, Family, and at times, the Welfare and Institutions, Codes.

This article will provide a brief overview of some of the statutory law and Probate Court rules that govern guardianships—primarily in the areas of probate and family law.

### Alternatives to Guardianships

There are alternatives to guardianships that could achieve the desired goal—a private contract sometimes referred to as a Guardianship Authorization Affidavit and a Caregiver's Authorization Affidavit.

**Guardianship Authorization Affidavit**—When the need for a guardianship is for a short period of time, and the parties involved want to avoid the formalities of a court-involved guardianship, they may opt to complete a Guardianship Authorization Affidavit, which identifies the minor, both parents, the potential informal guardian, and their relationship to the minor.<sup>1</sup>

It then states the terms and/or authorizations of the informal guardianship, the length of the informal guardianship, and how costs are to be paid. The affidavit is

signed by the parents, the informal guardian signs as to their consent, and all signatures are notarized.

This form does not transfer legal custody to the informal guardian. Instead, it allows the parent(s) to state that the minor will live with the informal guardian who will make decisions on the child's behalf, consent for medical treatment at school and medical care outside of school, apply for benefits on the child's behalf, and for legal documents.

**Caregiver's Authorization Affidavit**—An already established caregiver can complete a Caregiver's Authorization Affidavit, which states that the caregiver is authorized to enroll the child in school, and to receive medical treatment while at school.<sup>2</sup> <sup>3</sup> If the caregiver is a qualified relative, then they can also authorize medical care for the child outside of school. The caregiver signs the affidavit and has it notarized.

While these alternatives to guardianships are attractive, they come with their own disadvantages. The parents maintain their custody rights when alternatives to guardianships are pursued. Therefore, even if the caregiver has a compelling reason to maintain custody of the child, the parents can easily end the relationship. Furthermore, they may not be honored by third parties.

### Types of Guardianships

If the alternatives are not viable, then a guardianship is necessary. There are two types of guardianships—Guardianship of the Person and Guardianship of the Estate.

**Guardianship of the Person**—A Guardianship of the Person is established by a court order authorizing someone, generally not the minor's parent, to have custody of the minor.

Both legal and physical custody are awarded to the guardian who is then responsible for the child's necessities, such as food, clothing and shelter. The parents' parental rights are suspended in such a case, however, they are still financially responsible for the child.

Exceptions to the general guardianship of the person rule exists. For instance, a parent facing a terminal condition can be appointed as co-guardian with a third party they nominate so as to ease the child's transition after the parent dies.<sup>4</sup>

Also, a Guardianship of the Person can be established for an unmarried individual who is over 18 years old and under 21 years old, and seeking special immigrant juvenile status.<sup>5</sup> Moreover, a Guardianship of the Person can also be extended past a child's 18<sup>th</sup> birthday—or newly established once the child consents to the guardianship and the guardian's



**Peta-Gay Gordon** is a partner in the Encino office of Oldman, Cooley, Sallus, Birnberg, Coleman & Gold, L.L.P. She practices in the areas of trusts and estates administration and litigation, conservatorships, guardianships, and estate planning and can be reached at [pgordon@ocslaw.com](mailto:pgordon@ocslaw.com).





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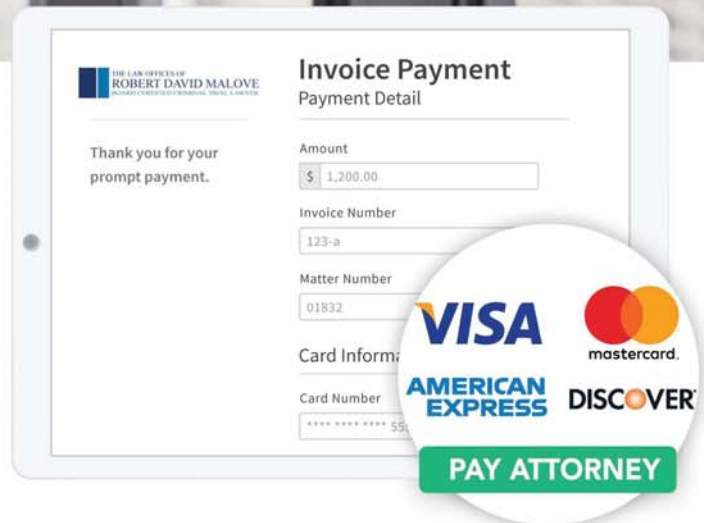
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performance of their duties—by signing a consent, the new Guardianship Petition, or the Petition to Extend Guardianship of the Person.<sup>6</sup>

This consent may be withdrawn by the ward by filing a petition to terminate the guardianship or a petition to modify or withdraw consent to the performance of specific duties by the guardian.<sup>7</sup>

**Guardianship of the Estate**—A Guardianship of the Estate is established by a court order authorizing the minor’s parent, or a third party, to manage the minor’s assets.

These may consist of assets inherited from the minor’s parents, life insurance proceeds, or a specific asset gifted to the minor by a third party. Generally, establishing a Guardianship of the Estate is necessary for a parent to claim the asset or assets on the child’s behalf.

### Nomination of a Guardian

Both parents can nominate a Guardian of the Person, Estate or both, or one parent can make the nomination if the other is dead, incapacitated, or consent of the non-nominating parent would not be required for an adoption.<sup>8</sup>

Wherein the minor is to receive property from the parent or another individual, the donor of said property may nominate the minor’s guardian as to that property specifically.<sup>9</sup> The nomination of one or more guardians for a minor is usually included in a parent’s estate plan, more specifically in their will. The need for both parents who possess the power to nominate a guardian to agree on said guardian can be the cause of much discussion when finalizing their estate plan and often times can delay its completion.

Once a nomination is made, it remains effective even if the nominator dies or becomes incapacitated—unless the nominating documents state otherwise.<sup>10</sup>

### Guardianship Petition

A relative—the minor if she or he is at least 12 years of age—or another person on the minor’s behalf may file a Petition for Guardianship of the Person.<sup>11</sup>

The petition must be filed in the county in which the minor resides, or a county that is in the best interest of the minor.<sup>12</sup> Said petition will proceed in the Probate Court, unless the minor becomes the subject of an adoption proceeding. If an adoption proceeding is commenced, then the court is required to order the guardianship petition consolidated with the adoption petition.<sup>13</sup> The consolidated case shall then be transferred to the court overseeing the adoption proceeding to be heard and decided.

There are two different forms that can be used when filing a guardianship petition. If a Guardianship of the Person is needed, form GC-210 or GC-210(P) can be used. For a Guardianship of the Estate or Guardianship of the Person and Estate, form GC-210 should be used.

Both forms allow the person filing the Guardianship Petition (the “petitioner”) to include more than one minor in her or his request. In Los Angeles County, the petitioner is required to use one petition for multiple minors when the minors are siblings and the proposed guardian is the same for all children.<sup>14</sup>

Generally, the petitioner must provide the names and addresses of the minor’s parent(s), all relatives to the second degree, and the persons having legal custody and care of the child, as well as the child’s full name, date of birth, and an explanation of why a guardianship is necessary or convenient.<sup>15</sup>

For relatives whose addresses cannot be located, the petitioner must detail the steps taken to find them and request that the court waive the notice requirement as to said relatives. If the petitioner is not the proposed guardian, a consent signed by the proposed guardian is required.

It is also best, but not required, that the petitioner obtain signed consents and waivers of notice from the family members who are required to receive notice of the petition.

When a non-relative is the petitioner, they must state that any information required by the agency in charge of investigating the guardianship will be promptly submitted upon request, whether the proposed guardian has filed a petition for adoption, or if the proposed guardian’s home is connected to the foster care system.<sup>16</sup>

In addition to the petition, the following forms are required:

- A Guardianship Petition—Child Information Attachment (form GC- 210(CA)).
- A Confidential Guardian Screening Form (form GC-212).
- A Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (form FL-105/GC-120).
- A Notification to Court of Address on Guardianship (LASC form PRO 003).
- A Consent of Proposed Guardian/Nomination of Guardian/Consent to Appointment of Guardian and Waiver of Notice (form GC-211) (if applicable).<sup>17</sup>



Families may turn to legal professionals for answers, but guardianships are often a mystery to lawyers as well.”



When petitioning for an appointment of a guardian of the estate, it is important to determine whether or not the guardian can qualify for a bond. The bond is obtained for the benefit of the child, and others with an interest in the guardianship, to protect against possible loss due to the guardian's actions or inaction.<sup>18</sup>

The Probate Code provides the specifics as to the proper calculation of the bond amount.<sup>19</sup> To determine qualification, a bond application should be obtained from a qualified surety company, completed by the proposed guardian and then submitted. If the proposed guardian is not bondable or cannot qualify for the full amount of the bond, then a blocked account should be requested.

#### **Notice of the Guardianship Petition**

Service of the Notice of Hearing depends on the recipient and form of guardianship. Notice of the Hearing for the guardianship must be provided by personal service, or by mail with a notice and acknowledgment of receipt, to the child's parents, the current-serving Guardian of the Estate, persons having legal custody of the minor, any person nominated as guardian, and the child if 12 years of age or older.<sup>20</sup>

On the other hand, the Notice of Hearing can be mailed to the proposed ward's spouse, and any named relative to the second degree, and the person caring for the child if different than the person having legal custody. The court maintains the ability to dispense with notice as to any or all relatives when the matter is solely a Guardianship of the Estate.<sup>21</sup>

The 15-day notice period also includes serving the Los Angeles County Court Investigator's Office with a Notice of Hearing by mail.<sup>22</sup> If the petitioner is a non-relative, notice must also be provided to the California Department of Social Services and the Department of Children and Family Services.<sup>23</sup>

The court can dispense with the need for notice if the person cannot be located after a diligent search, or if giving notice to that person would not serve the interests of justice.<sup>24</sup> Therefore, if an individual entitled to notice has a history of physical abuse, or is viewed as a potential child abductor, the court can dispense with notice.

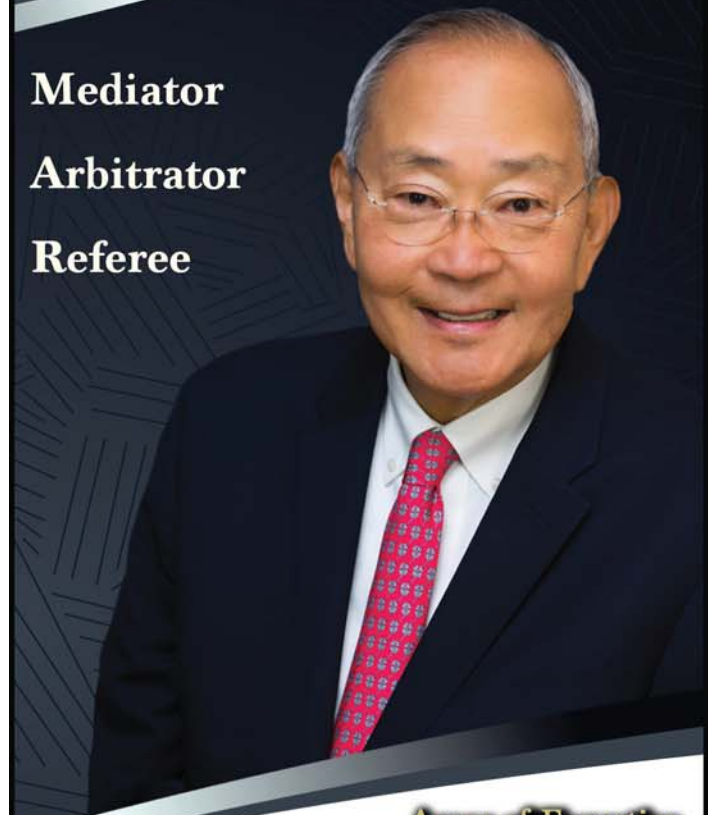
The notice provides the necessary agencies time to conduct their investigations. If the petitioner is a family member, then the Probate Court Investigator's Office will launch an investigation to determine the appropriateness of the guardianship and guardian. If the petitioner is not a family member, then the Department of Child and Family Services must lead the investigation.<sup>25</sup> Whatever the entity, the court must be provided with the applicable report before making its determination.



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## Legal Standard

The appointment of a guardian must be necessary or convenient.<sup>26</sup> When appointing a Guardian of the Person, the court must follow the Family Code's guidelines regarding best interest of the child and order of preference.<sup>27</sup> In determining the child's best interest, the Family Code requires that the health, safety and welfare of the child be considered, along with any history of physical abuse, the nature of and contact with both parents, and the habitual or illegal use of illicit drugs or controlled substances.<sup>28</sup>

As for the order of preference, when the petitioner seeks the appointment of a non-parent as guardian of the person, the person or persons who have been providing a wholesome and stable environment for the child have priority.<sup>29</sup>

When the petitioner seeks the appointment of the custodial parent and non-parent as co-guardians, or the appointment of a non-parent, if the non-custodial parent objects, there must be a finding by clear and convincing evidence that it would be detrimental for the child to be transferred to the non-custodial parent's custody.<sup>30</sup> Detriment includes taking the minor away from a person who has fulfilled the child's physical and psychological needs for a substantial period of time in a stable environment.<sup>31</sup>

A step-parent for instance could be the person who has provided such care to the child and seeking appointment as co-guardian with the custodial parent. If the Probate Court finds, by a preponderance of the evidence, that the step-parent seeking co-guardianship has provided the necessary care, then it also serves as a finding that the guardianship is in the best interest of the child and awarding the guardianship to the non-custodial parent would be detrimental to the child's best interest.<sup>32</sup> The non-custodial parent would have to demonstrate by a preponderance of the evidence that this is not the case.<sup>33</sup>

When appointing a Guardian of the Estate the court shall appoint the proposed guardian nominated by the parent(s) or by the person donating the specific property unless the court finds said person to be unsuitable.<sup>34</sup> The best interest of the minor should once again be the salient consideration by the court. In the case of a Guardianship of the Estate that means the proposed guardian's ability to manage and conserve the assets along with their interest in the minor's well-being.<sup>35</sup> The minor's choice shall be given consideration if the child possesses the ability to voice an intelligent preference.<sup>36</sup>

## Temporary Guardianship

If the Guardian of the Person and/or Estate of the child is needed earlier than the date the hearing on the permanent petition is customarily scheduled, the petitioner can file a Petition for Appointment of a Temporary Guardian in

conjunction with the petition for a permanent guardian or after the petition for a permanent guardian is filed.<sup>37</sup>

Upon the showing of good cause in the petition, the Probate Court may approve the temporary guardianship. Only in exigent circumstances where there is an affirmative factual showing of immediate danger or irreparable harm will a temporary guardianship be granted *ex parte*.<sup>38</sup>

In such a circumstance, all necessary parties must receive notice of the *ex parte* hearing by 10:00 a.m. on the court day prior to the *ex parte* hearing, unless notice is waived or dispensed with.<sup>39</sup> Otherwise, the hearing on the Temporary Petition is filed regularly and will be set for hearing approximately one week thereafter.

At least five court days before the hearing, the petitioner must personally serve the Notice of Hearing and Petition on the proposed ward, if the child is 12 years old or older, and the parents and anyone possessing a current visitation order.<sup>40</sup> The pleadings shall be served by mail on all others.<sup>41</sup>

An appointed temporary guardian has only those powers and duties needed to provide temporary care and maintenance and protect property from loss, including the power to consent to medical treatment and marshal assets, unless the court orders otherwise.<sup>42</sup>

Both the Order and Letters of Temporary Guardianship will include the additional powers authorized by the Probate Court, and the Letters will also include the temporary guardianship termination date, which is generally 30 days after the date of appointment and is often the date of the next hearing.<sup>43 44</sup> If the guardian believes that additional time is needed to accomplish necessary tasks the guardian can request at the hearing that the Letters be extended.

Should the court approve the extension, petitioner must then file an Order Extending Letters of Temporary Guardianship (PRO 047), along with the extended Letters. If additional time is not necessary, the guardianship shall terminate once the temporary guardian is given notice of the appointment of the general guardian or the completion of the 30 days provided by the Letters, whichever is earlier.<sup>45</sup>

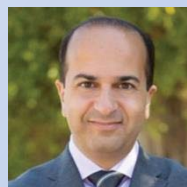
The only task that remains of the guardian after the expiration of temporary guardianship is to file a final accounting—if guardianship of the estate.<sup>46</sup> The assets accounted for would then be transferred to the general guardian once the petition is approved.

### Duties and Administration

If the court determines that the appointment of the guardian is necessary or convenient, and in the child's best interest, then the guardianship will be established. The petitioner must electronically file the Order Appointing Guardian of Minor and Duties of Guardian and Acknowledgment of Receipt, which explains the duties and obligations of the guardian. The Letters of Guardianship (form GC-250) and another



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Notification to Court of Address on Guardianship (LASC form PRO 003) should then be submitted to the court. If a bond was ordered, then the Letters, Notification and original bond should be submitted to the surety company for processing and filing.

The guardian has full legal and physical custody of the minor with duties including, but not limited to, providing for the child's food, shelter and clothing needs, as well as medical and dental care, when needed. The guardian, however, is not required to retain an attorney.

The Guardian of the Estate, however, generally must be represented by counsel due to the numerous statutory requirements.

The Guardian of the Estate is required to marshal the child's assets and inventory the same for the court, prudently invest said assets, keep them separate from the guardian's assets, invest funds in interest-bearing accounts, utilize blocked accounts as instructed by the court, and provide regular accountings to the court. The Guardian of the Estate is also prohibited from gifting and borrowing funds or accepting any fees whatsoever.

While the Probate Code provides that the Probate Court may require a guardian to file an annual confidential status report, this provision is only applicable to the extent resources are available and is not currently practiced in Los Angeles County.<sup>47</sup> A Guardian of the Estate, on the other hand, must file an accounting of the estate's assets one year after appointment and every two years thereafter.<sup>48</sup> The Probate Code details the requirements of an accounting and Judicial Council forms have been created to assist guardians in meeting these requirements.<sup>49</sup>

## Termination


If termination is due to the former ward attaining the age of majority, the funds are to be distributed to her or him.

The Guardianship of the Person and/or Estate terminates upon the child turning 18. The child may, however, consent to, or petition the court to, have the guardianship extended until the age of 21 is attained.<sup>50</sup> A Guardianship of the Person also terminates upon the child's death, adoption, or emancipation.<sup>51</sup>

Furthermore, the child, parent or guardian may petition to terminate the guardianship prior to the child turning 18 years of age, and the court may approve said petition if it is found to be in the child's best interests.<sup>52</sup> When approving a termination petition in favor of the child returning to parental custody, the court may also enter a visitation order on behalf of the former guardian.<sup>53</sup> If the child is 18 when petitioning for the termination, the court shall approve the petition.<sup>54</sup>

Upon the termination of the Guardianship of the Estate, jurisdiction still remains with the court to settle accounts.<sup>55</sup> The guardian must file a final accounting with the court,

unless waived by the former ward, and the distribution of assets upon the granting of the final accounting depends on the reason for termination.

After the payment of costs related to a child's death, the costs of the guardianship, and previously awarded attorney's and guardian's fees are determined. If termination of the guardianship is due to death and the value of the estate's assets is more than \$150,000, they must be transferred to the deceased ward's probate estate. If the value is less than \$150,000, the guardian can petition to distribute the assets using an Affidavit for Transfer of Personal Property Worth \$150,000 or Less.<sup>56</sup> 

<sup>1</sup> [http://www.sccscourt.org/forms\\_and\\_filing/forms/Sample\\_Guardianship\\_Authorization.pdf](http://www.sccscourt.org/forms_and_filing/forms/Sample_Guardianship_Authorization.pdf).

<sup>2</sup> Fam. Code, § 6550.

<sup>3</sup> Fam. Code, § 6552.

<sup>4</sup> Prob. Code, § 2105, subd. (f).

<sup>5</sup> Prob. Code, § 1510.1.

<sup>6</sup> Cal. Rules of Court, Rule 7.1002.5(a).

<sup>7</sup> Cal. Rules of Court, Rule 7.1002.5(e).

<sup>8</sup> Prob. Code, § 1500.

<sup>9</sup> Prob. Code, § 1501.

<sup>10</sup> Prob. Code, § 1502.

<sup>11</sup> Prob. Code, § 1510, subd. (a).

<sup>12</sup> Prob. Code, § 2201.

<sup>13</sup> Prob. Code, § 1510, subd. (j).

<sup>14</sup> Los Angeles Rules of Court, Rule 4.80(a).

<sup>15</sup> Form GC-210 (P).

<sup>16</sup> Prob. Code, § 1541.

<sup>17</sup> Los Angeles Rules of Court, Rule 4.8(b); Cal. Rules of Court, Rule 7.1001.

<sup>18</sup> Prob. Code, § 2320, subd. (b).

<sup>19</sup> Prob. Code, § 2320, subd. (c).

<sup>20</sup> Prob. Code, § 1511, subd. (b)(1)-(4).

<sup>21</sup> Prob. Code, § 1511, subd. (c)(1)-(3).

<sup>22</sup> Prob. Code, § 1516.

<sup>23</sup> Prob. Code, § 1542; Los Angeles Rules of Court, Rule 4.80(c).

<sup>24</sup> Prob. Code, § 1511, subds. (g)(1)-(2).

<sup>25</sup> Prob. Code, § 1513.

<sup>26</sup> Prob. Code, § 1514, subd. (a).

<sup>27</sup> Prob. Code, § 1514, subd. (b)(1).

<sup>28</sup> Fam. Code, § 3011.

<sup>29</sup> Fam. Code, § 3040, subd. (a).

<sup>30</sup> Prob. Code, § 2105, subd. (f); Fam. Code, § 3041, subd. (a) & (b).

<sup>31</sup> Fam. Code, § 3041, subd. (c).

<sup>32</sup> Fam. Code, § 3041, subd. (d).

<sup>33</sup> *Ibid.*

<sup>34</sup> Prob. Code, § 1514, subd. (c) and (d).

<sup>35</sup> Prob. Code, § 1514, subd. (e)(1).

<sup>36</sup> Prob. Code, § 1514, subd. (e)(2).

<sup>37</sup> Prob. Code, § 2250.

<sup>38</sup> Los Angeles County Rules of Court, Rule 4.12(c); Cal. Rules of Court, Rule 3.1202.

<sup>39</sup> Cal. Rules of Court, Rule 3.1203(a).

<sup>40</sup> Prob. Code, § 2250, subd. (e)(1).

<sup>41</sup> Prob. Code, § 2250, subd. (e)(3).

<sup>42</sup> Prob. Code, § 2252, subds. (a) & (b).

<sup>43</sup> Prob. Code, § 2252, subd. (d).

<sup>44</sup> Prob. Code, § 2257.

<sup>45</sup> Prob. Code, § 2257.

<sup>46</sup> *Ibid.*

<sup>47</sup> Prob. Code, § 1513.2, subd. (a); Cal. Rules of Court, Rule 7.1003 (a).

<sup>48</sup> Prob. Code, § 2620, subd. (a).

<sup>49</sup> Prob. Code, § 2620 et seq.

<sup>50</sup> Prob. Code, § 1600, subd. (a).

<sup>51</sup> Prob. Code, § 1600, subd. (b).

<sup>52</sup> Prob. Code, § 1601.

<sup>53</sup> Prob. Code, § 1602, subd. (b).

<sup>54</sup> *Ibid.*

<sup>55</sup> Prob. Code, § 2630.

<sup>56</sup> Prob. Code, § 2631.



# Test No. 124

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

1. A Guardianship Authorization Affidavit transfers legal custody to the informal guardian.  
 True  False
2. A non-relative can utilize a Caregiver's Authorization Affidavit to authorize medical care for a child in a hospital.  
 True  False
3. A parent cannot serve as a guardian of her or his child's person.  
 True  False
4. A parent can be appointed as guardian of her of his child's estate.  
 True  False
5. A guardian must always be nominated by both parents.  
 True  False
6. A 13-year-old may file a Petition for Guardianship of the Person.  
 True  False
7. Form GC-210(P) can be used when petitioning to appoint a Guardian of the Estate.  
 True  False
8. The Los Angeles Superior Court requires a Petitioner to use one petition for multiple minors when the minors are siblings and the proposed guardian is the same for all children.  
 True  False
9. A Notification to Court of Address on Guardianship (LASC form PRO 003) must be submitted to the Los Angeles Superior Court when a Guardianship Petition is filed and when Letters of Guardianship are submitted.  
 True  False
10. A proposed Guardian of the Estate cannot be appointed if she or he cannot qualify for a bond.  
 True  False
11. If a mother and aunt are petitioning to be appointed as Co-Guardians of the Person, they must give notice to the California Department of Social Services and the Department of Children and Family Services.  
 True  False
12. When the custodial parent and a non-parent are the proposed co-guardians, if the noncustodial parent objects, the court must find by a preponderance of the evidence that it would be detrimental for the child to be transferred to the non-custodial parent's custody.  
 True  False
13. The court always considers the best interest of the minor when appointing a guardian.  
 True  False
14. A Petition for Appointment of a Temporary Guardian can be filed without filing a petition to appoint a permanent guardian.  
 True  False
15. A Petitioner must personally serve the Notice of Hearing and Petition for Appointment of a Temporary Guardian at least five days before the hearing.  
 True  False
16. An appointed temporary guardian has all the powers and duties of a permanent guardian.  
 True  False
17. A Temporary Guardianship shall terminate once the temporary guardian is given notice of the appointment of the general guardian or the completion of the 30 days provided by the Letters, whichever is earlier.  
 True  False
18. A guardian must file an annual confidential status report.  
 True  False
19. A Guardianship of the Estate automatically terminates upon the child's death.  
 True  False
20. Where a guardianship is terminated and the child is returned to her or his parent(s), a former guardian may obtain a visitation order from the court.  
 True  False

## MCLE Answer Sheet No. 124

### 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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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.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |

# A Local Success Story: SFVBA Judge of the Year David B. Gelfound

By Michael D. White

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Reflecting on a legal career spanning three decades, virtually all of which was spent in the San Fernando Valley, the Judge says, “I have a vested interest in what goes on here. I’m a Valley guy and have been in this courthouse for just about 12 years. Between being an attorney and a judge, I’ve developed a love for this district and have no desire to leave.”

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*Photos by Ron Murray*

**I**T IS A LONG ROAD FROM WORKING WEEKENDS AT a local hospital to support yourself through college and law school to a post supervising the operations of one of the busiest districts in the Los Angeles Superior Court, the nation's largest countywide trial court.

That spell in the hospital kitchen, washing dishes and cooking, and later tours of duty at the hospital developing x-ray film and stocking medical supplies, was more than 30 years ago, but it helped lay a foundation of empathy that has held this particular Judge in good stead.

"Working in that hospital and interacting with so many different kinds of people taught me a lot," says Judge David B. Gelfound, the San Fernando Valley Bar Association's 2019 Judge of the Year.

"Doctors, nurses, every level of staff person, and the public. I feel the experience really helped me to relate to and communicate with people more effectively and fairly, both as a lawyer and as a judge. Because of all that, I feel I can relate a little better to the people we serve here."

"I graduated from Pepperdine Law School and, after I took the Bar exam, I left Kaiser after working there for eight years," says Judge Gelfound. "It was school during the week and work on the weekends making double time and a half. It got me through college and law school. I was really fortunate; if I hadn't had that job, I wouldn't have been able to make it through law school. Kaiser was a great learning experience for me."

Reflecting on a legal career spanning three decades, virtually all of which was spent in the San Fernando Valley, the Judge says, "I have a vested interest in what goes on here. I'm a Valley guy and have been in this courthouse for just about 12 years. Between being an attorney and a judge, I've developed a love for this district and have no desire to leave."

### **Q:** When did you first get interested in the law?

**A:** When I was at Taft High School, there was a law class being offered. I took it and enjoyed it a lot, participated in moot court and thought this might be something I'd enjoy doing as a profession. I went on to UCLA, and when I graduated, I thought why not give law school a shot. I wasn't fully set on being a lawyer, but I felt it might be a good step for me.

### **Q:** How did your law career develop?

**A:** While I was in law school, I was clerking for Oskar Stark, who had an office in Woodland Hills. He became my mentor as I was going through school, as my father had died when I was at UCLA. He taught me the right way to practice law and was a true gentleman attorney. He was a sole practitioner, so his little office handled anything and everything that came through the door...family law, personal injury, business, real estate. He was a wonderful man; a truly great attorney.



After I passed the Bar, Mr. Stark asked me to go to work for him as an associate. That was a no-brainer. He'd done everything for me. He taught me how to practice law and treated me like a second son.

The tragedy was that, at the time, he had lymphoma, so during my first year as an associate, he was going through his various cancer treatments. During that period, I was running the practice since often he was too ill to come to the office. Ultimately, he died and I worked with the attorney handling his estate and his widow to assist in the transition of the practice. At that time, I was basically running the office with some help from the attorney who was assisting his widow. That was a traumatic time for me. Mr. Stark was my friend, my teacher and my mentor and it was really tough to watch him go through that.

So, there I was...just one year out of law school...making all the appearances and trying to handle all that I could. It was





I first worked on misdemeanors and in 1998 was assigned to the hard-core gang unit. That's where I was for almost eight years, with the opportunity to work on some serious cases...murders, drug-related felonies, and special circumstance homicides.

**Q - What did you learn from your time in the District Attorney's office?**

**A -** I got to see a lot of judges in action, some of whom were outstanding trial judges, so I was able to learn from them. The legal community is a pretty small one, even here in Los Angeles, which is huge.

From the beginning, you met people early in your career and those people resurface, so ultimately, when I got appointed, there were a lot of those judges who were supporting me to become a judge. I learned early on that there are a lot of people who can help you get to where you want to be. I saw a lot of trial judges with great skill sets and that's impacted me and the way I operate.

**Q - Did you ever think you would be sitting on the bench yourself?**

**A -** No. Never. Throughout my career, I've had some great mentors and come across some great people.

While I was at the DA's office, I had another mentor, Richard Stone. We worked together here at the San Fernando courthouse and he had run for a judgeship himself. He was a great support who gave me a lot of confidence and put me on the path to the bench.

**Q - Mentorship has played a pivotal role in your career. Why is it so important?**

**A -** It's fantastic for people to be so selfless and take an interest and help others, when they have nothing to gain. I've come across a lot of people during my career and I've found that there are those who are willing to take the time and effort to invest in others. It's inspirational to watch them help and supervise other people. I learned a lot from watching that and it's something that I strive to do. Not that I could ever come as close to doing it as well as they.

I have a lot of respect for the relationships that start from a mentorship connection. I've been helped so many times in my career. It's been two years now since [prior L.A. Superior Court Presiding Judge] Dan Buckley selected me to be the supervising judge here.

Judges Buckley and [L.A. Superior Court Presiding Judge Kevin] Brazile have been wonderful for the past two years. I have worked with [Judge] Brazile on an almost daily basis and both he and [L.A. Superior Court Assistant Presiding Judge] Eric Taylor have both been very helpful and supportive of me and the district.

**Q - What are some of the responsibilities of a supervising judge?**

**A -** I've been on the bench for almost 12 years and served as the supervising judge here in San Fernando for

overwhelming and they wanted me to take over the practice and, though I had allegiance to him and his family, I still had a load of student debt. It was then that I started thinking about joining the District Attorney's office.

The firm was eventually bought by another larger firm, which I was with for a little bit before working for two others while I was trying to get hired by the DA's office. I finally got an interview with the District Attorney in 1994 and was hired on that same year.

**Q - What spurred your decision to go to work for the District Attorney?**

**A -** The chance to do real courtroom work. When I was working for Mr. Stark, I got a lot of experience, but it wasn't like I was doing a lot of trials. I started out in Santa Clarita as a Deputy District Attorney, then was in Van Nuys and then I was assigned here in San Fernando for four years.





## Los Angeles Superior Court Judge Shirley K. Watkins

### Administration of Justice Award

**T**HE SAN FERNANDO VALLEY BAR Association is proud to present the Hon. Shirley K. Watkins with its 2019 Administration of Justice

Award in recognition of her dedication to our legal community and the people of the San Fernando Valley, and her unyielding commitment to upholding the rule of law.

Judge Watkins was appointed to the Los Angeles Superior Court by former California Governor Jerry Brown in November 2014. Prior to her appointment to the Bench, Judge Watkins was a solo practitioner and later a partner at Fraser, Watson and Crutch LLP, successfully handling hundreds of cases primarily in the area of medical malpractice.

She previously worked as senior litigator at the Law Offices of Michels and Watkins and as a senior partner at the Law Offices of Watkins and Stevens. She also practiced at Matthew B.F. Biren, Gantz and Forer, and at Sheldon Deutsch.

Judge Watkins sat on the Board of the Consumer Attorneys Association of Los Angeles and was nominated twice for that organization's Trial Lawyer of the Year Award. She has also served in board positions with several groups, including Women Lawyers of Los Angeles, Trial Lawyers for Public Justice and the Los Angeles County Bar Association.

A frequent lecturer and author, she also served on the Board of Editors for *California Causes of Action*.

For over 15 years, Judge Watkins served as a voluntary mediator and arbitrator for the Los Angeles Superior Court and has completed Pepperdine University's distinguished Straus Institute for Dispute Resolution's training program "Mediating the Litigated Case."

She completed her undergraduate work at the University of California, San Diego and received her J.D. from California Western School of Law in 1982.

At the same time, the San Fernando Valley Bar Association's Judges' Night/Programs Committee is delighted to acknowledge Judge Kevin C. Brazile and Judge Eric C. Taylor with Special Recognition from the Bar's Inclusion and Diversity Committee.

The SFVBA recognizes both distinguished jurists and acknowledges their successful and ongoing efforts to diversify and engage the bench, and their unwavering support of the 93-year-old Bar and its goals.

a little more than two years. Judge Brazile has asked me to stay on in that role. In effect, I'm responsible for the well-being of 27 judges and the operations at three courthouses and that includes handling court prelims and covering for whoever, whenever that's needed, though I'm not doing jury trials at this point.

Being a judge can be very stressful at times, particularly for someone new to the bench. One of my goals is to make the job less isolating for the judges here and create a sense of camaraderie. That's particularly important for the new judges to make their transition. It can be overwhelming for them as there's so much to learn and when they come to my district, I want to ease that transition for them. I enjoy doing that and I think that it's beneficial.

**Q: You have participated in the Teen Court program for several years. What keeps you involved?**

**A:** It's a big part of what I do and it is very important to me. It's a critically important program with upwards of 100 or more high school kids involved at any given time. It gives me a chance to share from my own experience and tell them that, one day not very long ago, I was sitting where they are...didn't have a lot of money...and wasn't a straight A student...but, if they commit to working hard, they can go on to law school, with being a judge not out of reach.

Also, during the "trial" proceedings, I've been so impressed just how great the questioning is and how these high school kids are able to formulate questions and strategy. They even decide on a course of punishment if the defendant is found guilty.


What I always do during these Teen Courts is pick out a couple of the kids who've asked particularly intelligent and probing questions and encourage them to possibly consider a career in the law. I've seen that when a young person is praised by a judge, that's something that can carry over.

Being a judge for a long as I have, I've seen many occasions where one big mistake has impacted a person for the rest of their life. Whatever it might be, an arrest, an incarceration, it can seriously affect their ability to get a job. Young people sometimes don't realize that. I've told them, anytime you're doing something wrong...just remember what I said. One wrong turn in your life can affect you for the next 20 years, so think about it.

This is our fifth year working on the program at Northridge Academy High School. It is a great opportunity for me to give back and serve as a mentor and help young people just like I was. I'll be in Teen Court as long as they'll have me.

**Q: Would you do it all again?**

**A:** I'd do it all over, ten times over. I've loved being a civil attorney, prosecutor, a judge, and now a supervising judge. All in all, I've had a wonderful career and it's been a wonderful ride.

Honestly, I would not be where I am today had it not been for all those who've helped me along the way. I realize how much they've done for me and I appreciate it greatly. 

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## Annual Judges' Night Dinner



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# 28

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# Google It! Not So Fast

By Mark Gediman

**U**SING GOOGLE FOR RESEARCH has become almost second nature to everyone looking for information on an almost infinite list of topics.

It is important to understand that there are useful alternatives offered by other sources such as other websites, and both law and public libraries.

While there are some little-known tips on how to get the most from Google that will make your legal research both easier and more time- and cost-effective.

## L.A. County Law Libraries

First, county law libraries have it all—knowledgeable librarians, incredible collections, and ready access to great online resources.



**Mark Gediman** is a Reference Librarian at the law firm Alston & Bird LLP in Los Angeles. He can be reached at [mark.gediman@alston.com](mailto:mark.gediman@alston.com).

One of the best of these is the LA Law Library, which offers an extensive list of classes on research methods and practices that cover a broad spectrum of topics.<sup>1</sup> In addition to the main downtown branch, courses are offered at local courthouses county-wide.

You can search their catalog online for hard-to-find treatises, peruse an extensive collection of global law resources, government documents and other specialty materials, and get help from staff librarians who provide help with everything from logging into PACER to finding obscure government documents.<sup>2,3</sup>

The Southern California Association of Law Libraries (SCALL) offers what is considered by many to be the definitive resource for basic legal research.

Dubbed *Finding the Law*, this unique resource is an award-winning book of resources for basic legal research written by law librarians for non-law librarians that covers topics ranging from researching California legislative history to reading citations.<sup>4</sup>

## Alternatives to Google

One of the better sources for finding information located in older versions of webpages is the *Wayback Machine* from the *Internet Archive*.<sup>5</sup> Just like the machine used by the cartoon characters Sherman & Peabody from television's TV classic *Rocky & Bullwinkle Show*, this site will take you to the website as it appeared in the past.

Just type in the website (i.e., [www.yahoo.com](http://www.yahoo.com)) and you'll be shown a list



of the dates in the data bank. Then click on the date to view the website as it appeared on that date. Although the dates available can vary widely depending the website, if you find something in the right time frame it can be helpful to proving use in a trademark action.

*Findlaw* from Thompson Reuters has a site specifically designed for legal professionals which is not readily apparent on its main site.<sup>6</sup> Here you can search specifically for a case, a form or a contract, as well as the topic driven research this site is known for. The availability of free forms and specific tools for finding expert witnesses are pretty cool.

The Legal Information Institute at Cornell Law School is a great resource.<sup>7</sup> You can find codes and constitutions for the federal government and all 50 states, uniform laws, both federal and state regulations, and topical data, as well as procedural information for various courts. It is also a very good resource for foreign and international legal materials.

The Wilmington, Delaware-based Internet Legal Research Group (ILRG) has created a web compendium of the websites of the 250 largest law firms in the United States, as well as a database of legal forms, law school profiles and rankings, and salaries paid at firms nationwide. They also have a forms search and topic driven search function.<sup>8</sup>

Many attorneys, particularly those new to the profession, turn to Continuing Education of the Bar (CEB) for practical legal resources across ten practice areas.

CEB, a non-profit operated by the University of California, offers lawyers admitted to the California State Bar within the last five years several useful resources including access to its extensive legal library free for one year and 50 percent off after the first free year, as well as OnLAW, which provides legal analysis and procedural

guidance by and for California judges and lawyers, and a 25 percent discount on practice books.<sup>9</sup>

### Getting the Most from Google

Google specializes in helping find specific information culled from trillions of pages on the Internet. It can be a great resource, while the specialty sites on Google are a little-used treasure trove of information that you may not need every day.


But, it's important to keep in mind that Google's purpose is to provide access to information, not to vet its quality or keep it up to date.

Most researchers lack the time or desire to review the hundreds of thousands of pages returned from most searches. Many people only look at the first page of results and, in rare instances, the second page. To address this, it's best to start with some tips to make searching the engine as efficient as possible.

How does Google work? Although this is a simplification, Google results are primarily ranked based on the number of links from other websites. The theory behind this is that the better resources will have more links.

Keeping this in mind, these tips will help you get the most out of your Google searches:

- Typing a search using quotes (e.g., "joe smith") forces Google to search only for records containing that exact phrase. Generally, Google treats most search phrases (e.g., joe smith) as if there is an "or" between the terms (joe or smith) with the results containing the phrase first {joe smith}, the results corresponding to {joe and smith} next and {joe or smith} last.
- Prefacing a term or phrase with a plus (e.g., +smith) ensures it is included in the search results.
- Conversely, prefacing a term or phrase with a minus (e.g., -joe) excludes it from the search results.



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Keep in mind that although Google has said that they have discontinued the use of the tools discussed above, that is only partly true. In fact, your results are much better if you use them.

### Google Cheat Sheet

Google has some search tips too: The first is the *Google Help Cheat Sheet*.<sup>10</sup>

The ironic thing about this resource is that this is not accessible through a Google search. The second website is the *Google Quick Reference Guide*.<sup>11</sup>

Looking for a magazine article? Google recently announced the inclusion of the full issues of a number of magazines as part of their *Google Books site*.<sup>12</sup>

For example, over 1,800 issues of iconic Life magazine are available, in addition to such titles as *Atlantic Monthly*, *Billboard*, and *Popular Science*.

Full issues, including advertisements, are available in a searchable format. This is invaluable when establishing first use of a trademark or researching a misleading advertising case.

Need some information on a non-legal subject to prepare for a deposition or to cross-examine an expert witness? *Google Books* provides access to reference works on such diverse topics

as economics and linguistics from Adam Smith's iconic *The Wealth of Nations* to Levitt and Dubner's *Freakonomics*.<sup>13</sup>

*Google Scholar* can also be a great litigation resource.<sup>14</sup> Looking for an expert witness? A search in *Google Scholar* allows you to search easily for scholarly papers specific to your subject, which could provide a link to a potentially good candidate expert on a particular subject.

“

As useful as it is, Google is not the only, or necessarily the best, free resource out there for your legal research needs.”

Case law is also available on *Google Scholar*. However, there is a caveat—the cases are not updated regularly so it's possible that a slip opinion published on Monday could be partially republished by Wednesday without being reflected by the site. Also, corrections made by the court may not be picked up. Always

double check with the court before using an opinion from *Google Scholar*.


Of course, Google also offers access to old or superseded web pages. There are two ways to get this information. The first is through the results listed in response to a specific search.

In your list, below the title of the page is the address of the website (or url) that met your search criteria. Directly to the right is the word “Cached” underlined in light blue. Cached pages are webpage snapshots saved by Google that appeared at some point in the past. In a search result, it references the saved page that may or may not be current. A “freshness date” appears in the header when viewing these cached pages.

The second method is a librarian's secret. With this method, you can access an old web address directly by typing the following information into the address bar of your web browser.

Put “http://www.google.com/search?source=ig&hl=en&rlz=&q=cache:” in front of the old url to directly access the Google cached version of the older website you're looking for.

### An Afterword

Moving forward, it's wise to remember that, as useful as it is, Google is not the only, or necessarily the best, free resource out there for your legal research needs. The other sites and sources discussed may well prove to be extremely helpful resources of information that are far better suited for you and your clients. 



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<sup>1</sup> <http://www.lalawlibrary.org/index.php/classes-events/current-classes.html>.

<sup>2</sup> <http://opac.lalawlibrary.org/>.

<sup>3</sup> <http://www.lalawlibrary.org/index.php/about-us/librarians.html>.

<sup>4</sup> <https://scallnet.org/wp-content/uploads/2018/10/Locating-the-Law-Sixth-Edition-FULL.pdf>.

<sup>5</sup> <http://www.archive.org/web/web.php>.

<sup>6</sup> <http://lp.findlaw.com/>.

<sup>7</sup> <https://www.law.cornell.edu/>.

<sup>8</sup> <http://www.ilrg.com/>.

<sup>9</sup> <http://ceb.com/new-lawyers>.

<sup>10</sup> <http://www.google.com/help/cheatsheet.html>.

<sup>11</sup> [http://www.googleguide.com/advanced\\_operators\\_reference.html](http://www.googleguide.com/advanced_operators_reference.html).

<sup>12</sup> [http://books.google.com/books?as\\_pt=MAGAZINES&rview=1](http://books.google.com/books?as_pt=MAGAZINES&rview=1).

<sup>13</sup> <http://books.google.com/books>.

<sup>14</sup> <https://scholar.google.com/>.

# 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.



**Mark S. Shipow**  
Attorney at Law  
West Hills

Born and raised in Los Angeles, attorney and sole practitioner Mark Shipow considers himself a "big firm refugee."

Working at a small, downtown Los Angeles firm all the way through law school, against the advice of his first year UCLA Law School instructors, Shipow continued on with the firm after graduation working with clients based in Japan.

After working there for a few years after that, he went to work for a slightly larger firm in Century City doing banking work, then went to work in the L.A. office of New York City-based law firm Whitman & Ransom (later, Whitman Breed Abbott & Morgan), eventually being named Managing Partner. In 2000, he oversaw the L.A. office of the firm join Holland & Knight.

A cum laude graduate of UCLA, Shipow received his JD from UCLA Law School in 1979. "I actually can't recall making the conscious decision to become an attorney," he says, yet, during his only year outside Southern California, at age eight, he can recall an older cousin who was a lawyer.

"I remember being impressed by him, his office and all that. I had a lot of respect for him and, other than that, as odd as it may seem, I really don't have an answer," says Shipow. "In any event, I'm glad I did."

"I've never regretted going out on my own," he says, adding that he sometimes misses a few aspects of big firm life. "The collegiality and that I was interacting with other people on a daily basis...the resources...but the time with my family and being on my own has been very rewarding."

A past SFVBA Trustee, Shipow is the president of the Valley Community Legal Foundation, the charitable arm of the San Fernando Valley Bar Association.

An avid model railroader, Shipow enjoys doing home improvements that have included brick and stone work, and pouring concrete. "I also love reading and typically read before going to bed at night. It's slow going through any book, because it's only five or ten pages at a time before I nod off."



**Philip Bonoli**  
Partner  
Brutzkus Gubner  
Woodland Hills

It's interesting that, in 1993, when the young Philip Bonoli was in his first year of study at the Chicago-Kent School of Law, the *National Law Review*, conducted a public survey asking Americans to name the attorney they most admired.

When the responses were tallied up, among the Top Five, both Abraham Lincoln and Supreme Court Justice Thurgood Marshall were both outpolled by...Perry Mason.

Urged by his Italian-immigrant mother to become an attorney from a young age, Bonoli also credits Earle Stanley Gardner's fictional advocate, and Harper Lee's Atticus Finch, with cementing his desire to follow the law as a career.

"I loved reading how Perry Mason would cross-examine witnesses to get to the truth. Atticus Finch was a moral and ethical lawyer and worked to help the less fortunate. I realized early on that the law would be a noble profession to be a part of," he says.

Born and raised in Glendale, Bonoli worked his way through USC, bagging groceries at a local Ralph's supermarket and manning the check-out counter at the school's Philosophy Library. "You do what you have to do," he says. "We didn't have a lot when I was growing up and my parents worked very hard to put what we did have to good use."

Successfully passing the California Bar exam after graduation, Bonoli worked at two Los Angeles firms for several years, helped along the way by mentors, and gaining experience writing motions, taking depositions, conducting arbitrations, arguing before the 9th Circuit Court of Appeals, before joining Brutzkus Gubner in Woodland Hills. Now a partner with the firm, he has served for the past 20 years as a litigator in a wide array of employment-related cases, including wrongful discharge, discrimination and harassment, tort claims.

A regular contributor to *Forbes* magazine, Bonoli regularly represents employers before the Equal Employment Opportunity Commission and other state agencies, and was appointed to the Merit Selection Panel of the Central District to assist with the appointment of magistrate judges.

Married to an attorney and the father of twins, he says, "Giving back is an important part of our lives. We try to volunteer as much as we can whether its inside or outside the profession."





# Discovery: Start Early with a Plan

By Anthony Ellis and Jonathan Bakhsheshian

**D**ISCOVERY IS A CRUCIAL process in litigating a case in which you need to start early by creating a detailed discovery plan and committing to the process as if preparing for a trial.

That commitment of time and effort can serve to pressure the opposing party to settle earlier in the process and, at the same time, assist in laying a firm foundation should the case go to trial. Discovery is also an opportunity to put holes in the opposing parties defenses by displaying to the opposition and the court an abhorrence for the easy route and a reliance on boilerplate requests and other canned legal bromides to glide to an acceptable outcome.

The discovery process and strategy should start the moment a case is retained. A face-to-face meeting with the client to go over everything that happened, their version, study all of their

documents is critical. Basic discovery that is propounded for a specific type of case are a must, but knowing your clients' unvarnished story will ease the formulation of an effective discovery approach to what is at issue and what potential hurdles might lie in the path of a positive outcome.

Create a discovery plan and put it on paper using the California Civil Jury Instructions as a great resource to begin assembling the elements of the discovery strategy.

One way to map out an effective plan is to create a chart that identifies any and all elements and related factual issues that must be addressed. All available methods of discovery for establishing each fact, possible witnesses, or persons knowledgeable regarding the facts, and any documents that may establish each fact should be charted. Building the chart and referring to it through the

discovery process will help you focus on what is needed to support the case.

## Letter of Preservation

From the beginning, consider what documents are needed and in the possession of other parties with letter of preservation sent immediately by messenger, certified mail, fax and/or email, for proof of service and notice purposes. This 'notice and demand' correspondence will serve to inform them that whatever defined documents and other evidence they possess must be preserved as evidence for litigation purposes.

By placing the party or parties on notice, they are accountable. Should they fail to preserve the evidence for litigation, there are grounds for a misuse of the discovery process and exposing the party or parties to a wide range of sanctions, including



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monetary, evidentiary, issue, and, in some cases, terminating sanctions.<sup>1</sup>

### Public Records and Witnesses

It is inadvisable to delay until filing a lawsuit and starting litigation to get what is available now. Often, there are public records available that will help prosecute a claim. They include police reports; investigation reports; public health files; court, property, and state records; environmental impact reports; traffic camera footage and signal sequences; 911 emergency calls; and vehicle registration history. Requests for documents are enforced by the California Public Records Act.<sup>2</sup>

As time passes, witnesses can 'go off the grid,' become forgetful or be influenced by others not to testify in court. It's prudent, then, to track them down as soon as possible and obtain a statement/declaration from them.

A letter of preservation should be sent to every potential witness requesting that they hold onto any documents that may be relevant to the case, or ask for a copy of the records as an alternative. Witnesses can also lead you to other potential witnesses or documents in the possession of others that could help build a claim or identify potential issues that could be faced in litigation.

### Deposition Subpoena for Production of Business Records

A deposition subpoena for the production of business records is a subpoena that can be used to force a third party that is not a party to the case to provide documents responsive to a request. It is a very useful discovery tool in gathering evidence and documents that are not in any of the parties' possession to support your claim. These deposition subpoenas are enforced by and can be served on any individual or organization.<sup>3</sup>

Attachment 3 of the deposition subpoena offers an opportunity to lay out the details for the documents being requested. Being specific and clear as

to what is being requested can help to avoid any confusion, delays, issues, or objections by the noticed party or consumer.

Most notably, the documents that are provided in response to the subpoena are generally accompanied by a declaration from the custodian of records, authenticating the documents for the purpose of trial. This is great tool to obtain evidence and documents that could be used at trial from someone who is not a party to the claim and, at the same time, avoid having them testify at trial.

### Request for Production of Documents

Request for production of documents is a written discovery tool that can be served on any party to the action.<sup>4</sup>

Almost any document, such as handwriting, typewriting, and printing samples, photographs, videos, emails, or any other means of recording on a cellphone or other device, are subject to a request for the production of documents. Such a request can also include information that is stored electronically.<sup>5</sup>

The responding party must make a diligent search and take reasonable steps to locate the documents requested. If responding party is not in possession of the documents requested, they are required to state whether the documents existed, were stolen or destroyed, or identify who is in possession of the documents. It is advisable to always, separately and specifically, propound request for the production of documents for all documents responsive to form interrogatories 15.1 and 17.1.

Remember, the responding party must identify the documents even if it's alleged that they are privileged. Special interrogatories are used to compel the respondent to identify documents, such as those that they believe support specific contentions on their part. The special interrogatories, an appeal for production of documents, request

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benefits to which they  
are entitled**

that the responding party produce all documents identified in their replies to that specific interrogatory. Documents in a deposition subpoena, demanding the deponent bring the requested documents to their deposition can also be requested.

### **Stand Your Ground**

Often, proper discovery responses or all the requested documents from the opposing side are not provided. In such a case, there are several discovery motions that can be used to obtain those records or to guard against production of documents.

One of these discovery motions can compel discovery responses, while another can be implemented to quash a deposition subpoena for the production of documents.

### **Motion To Compel What You Are Entitled To**

A motion to compel responses or further responses in case of insufficient responses—and request sanctions may be filed. If no discovery responses are received, there is no time limit for when a motion to compel can be filed, other than the deadline to hear motions 15 days prior to trial.<sup>6,7</sup> If the discovery responses are incomplete or at issue, a motion to compel must be brought within 45 days of receipt of verified responses.<sup>8,9,10,11</sup>

If discovery responses are received without a signed verification, then the clock for a motion to compel does not begin—it starts ticking when verifications are served, not dated. The motion should comply with all formatting requirements discussed in the California Rules of Court.<sup>12</sup> The same rules also require that a separate statement be filed in addition to the memorandum of points and authorities, that identifies the written discovery propounded, the responding's response, and a statement of both the factual and legal reasons for compelling further responses.

Prior to filing any motion to compel, first meet and confer with opposing

counsel and attempt to resolve the matter informally. In Los Angeles Superior Court, there is a requirement to attempt to attend an informal discovery conference with the judge in the department the case is being heard to attempt to resolve the issue in question.

Such a conference offers a valuable opportunity to build rapport with the judge and opposing counsel. Attendance at the conference is required prior to filing the motion to compel. As the courts' docket often fills up quickly, the meet and confer process should begin immediately upon receipt of the discovery responses. Verifications should be checked and a deadline set with a meet and confer letter sent that mirrors your separate statement and contains all your legal and factual contentions.

It's best to coordinate with opposing counsel quickly, reserve a date for the discovery conference prior to your 45 day deadline, and file when necessary.

### **Motion To Quash What They Are Not Entitled To**

In a personal injury case, generally, the plaintiff has an "inalienable right of privacy."<sup>13</sup> However, when initiating a lawsuit for injuries, the plaintiff places those medical records in question, therefore waiving part of their right to keep those records private.

However, even if part of a plaintiff's medical condition is at issue, the plaintiff does not necessarily waive their entire right to privacy and physician-patient privilege as to their non-related medical history. A motion to quash any subpoena can be filed to stop access to such information.<sup>14</sup>

Before filing a motion to quash, a detailed meet and confer letter should be sent to opposing counsel, listing the subpoenas at issue, and all other relevant legal arguments. The deposition officer/copying company should also receive a copy of the letter. This will put them on notice and avoid having opposing counsel attempt to obtain the documents in question prior to the production date. An objection on


pleading paper should also be mailed to the subpoenaed entity to prevent them from providing any documents prior to the production date. Keep in mind this does not always stop the deposition officer/copying from producing the documents. The process of meet and conferring must be completed no later than twenty days following the issuance of the subpoena.

A motion to quash a subpoena for the production of documents must be served and noticed on opposing counsel at least five days before the date of production of documents.<sup>15,16</sup>

The language in these subpoenas are often overbroad and not reasonably calculated to lead to admissible evidence and sometimes even violate plaintiff's privacy rights. Protect disclosure of these documents when appropriate.

### **Civility**

Establishing rapport with opposing counsel and the legal community is invaluable. While utilizing the many discovery tools to advocate for a client, it is important to maintain civility throughout the process.

Do not hesitate to communicate with opposing counsel and propose a meeting to discuss any discovery disputes. It is not necessary to rush into aggressive emails and letters when a simple phone call can solve a potentially contentious issue. 

<sup>1</sup> See C.C.P., § 2023 et seq.

<sup>2</sup> See Government Code § 6250-6270 et seq. Most of these records can be requested at <https://www.lacounty.gov/government/public-information-records/submit-a-records-request/>.

<sup>3</sup> C.C.P., § 2020 et seq.

<sup>4</sup> C.C.P., § 2031.010(a).

<sup>5</sup> C.C.P., § 2016.020(e).

<sup>6</sup> C.C.P., § 2030.290.

<sup>7</sup> C.C.P., § 2024.020(a).

<sup>8</sup> C.C.P., § 2030.300 (interrogatories).

<sup>9</sup> C.C.P., § 2033.290(c) (request for admissions).

<sup>10</sup> C.C.P., § 2031.010 (production of documents).

<sup>11</sup> C.C.P., § 2024.480(b) (60 days for a motion to compel documents responsive to a deposition subpoena).

<sup>12</sup> California Rules of Court 3.1345.

<sup>13</sup> California Constitution, Article 1, § 1.

<sup>14</sup> *Hale v. Superior Court* (1994) 28 Cal. App. 4th 1421, 1424.

<sup>15</sup> *California Civil Procedure Code*, § 1985.3.

<sup>16</sup> *Slage v. Superior Court*. (1982) 211 Cal.App.3d 1909, 1313 (a court may still grant a motion to quash after the five-day deadline).



## SFVBA 22<sup>nd</sup> Annual MCLE Marathon

**T**HE LAW IS AN ELASTIC THING—ALWAYS CHANGEABLE and constantly transforming. That condition demands continuous upgrades in both knowledge and skill to help legal professionals stay current with new laws or expand legal expertise.

To meet that challenge, the State Bar of California mandates that all attorneys licensed to practice in the state to complete ongoing Minimum Continuing Legal Education (MCLE). A full twenty-five hours of MCLE training are required every three years.

The San Fernando Valley Bar Association is authorized by the State Bar of California to offer such MCLE training.


The Association offers its members training through monthly articles, tests in *Valley Lawyer* magazine, as well as webinars, live presentations and classes available on flash drive.

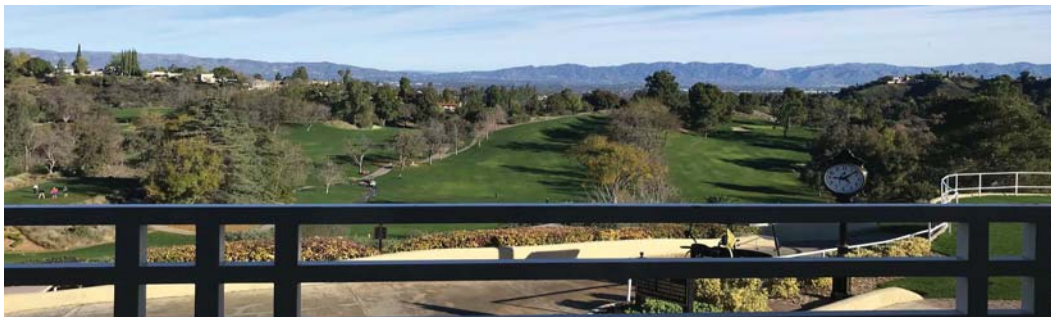
“We include education on a broad selection of topics, as well as specialty credits in the required areas of ethics, competence issues, and the elimination of bias,” says Linda Temkin, SFVBA Director of Education and Events.

For the past 22 years, the Association has organized its annual MCLE Marathon, a two-day event offering attorneys the opportunity “to either get a jumpstart on or catch up with their MCLE credits if they’ve fallen behind,” she says. “We average between 40 and 65 attorneys, both experienced and those new to the profession.”

Topics at the latest Marathon, held at the Braemar Country Club in Tarzana, included a look at the new California Rules of Professional Conduct, the future of legal technology, malpractice, trust accounting, and the prevention of substance abuse.

“The Marathon is more than a participatory educational experience,” says Temkin. “It gives attendees the opportunity to catch-up with their fellow attorneys and share experiences, triumphs and challenges. It’s a great event and a tremendous benefit for our members.”

It is the SFVBA’s mission to invest in quality legal education. We could not accomplish our goals without the involvement and enthusiasm of our committed supporters. 



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# Lighter Moments in the Law

By David Gurnick and Marc Fein



**T**HE LAW IS A SERIOUS SUBJECT AND A SERIOUS business. It is the fabric of rules and decisions that bind and give texture to our society. But there can be humor in our law and in the process of resolving disputes.<sup>1</sup>

Whether you are a lawyer, a litigant or one who hopes never to be either, we hope these amusing vignettes helps to lighten your view of the law, the judges who apply it, the attorneys who practice it, and the public that relies on it.

## Sure Way to Win an Election

Politicians sometimes go to unusual lengths to get votes. One Louisiana man went especially far in trying to get elected—changing his name to boost his chances of winning.

Luther Knox qualified to run for governor of Louisiana. Soon after qualifying, he legally changed his name to “None of the Above.”

Knox felt that voters would like this choice the best. Now legally named “None of the Above,” he asked that his new name appear on the ballot. When his request was denied, he filed suit.

A court ruled against him. Although the court noted that people have the right to change their name to whatever they want, it said that “None of the Above” was a misleading name which violated a law prohibiting deceptive names in elections.<sup>2</sup>

## Plain Talk

Here’s an excerpt from the opinion in a case decided in the United States Court of Appeals, bemoaning the way some federal agents communicate, or, at least, try to...

*“The agents involved speak an almost impenetrable jargon. They do not get into their cars; they enter official government vehicles. They do not get out of or leave their cars, they exit them. They do not go somewhere; they proceed. They do not go to a particular place; they proceed to its vicinity. They do not watch or look; they surveille. They never see anything; they observe it. No one tells them anything; they are advised. A person does not tell them his name; he identifies himself. A person does not say something; he indicates. They do not listen to a telephone conversation; they monitor it. People telephoning to each other do not say “hello;” they exchange greetings. An agent does not hand money to an*



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*informer to make a buy; he advances previously recorded official government funds. To an agent, a list of serial numbers does not list serial numbers, it depicts Federal Reserve Notes. An agent does not say what an exhibit is; he says what it purports to be. The agents preface answers to simple and direct questions with "to my knowledge." They cannot describe a conversation by saying "he said" and "I said;" they speak in conclusions... One agent, when confronted with the facts demonstrating that his affidavit was false, did not admit that it was false; it was merely "inconsistent."<sup>3</sup>*

### **Even Superheroes Lose Sometimes**

Mortals aren't the only ones who go to court. Superheroes fight there too. In the early 1980s, ABC wanted to produce a television series loosely based on Superman. So, ABC approached Warner Brothers—Superman's owners—which refused to grant a license. So ABC created a new hero and dubbed him The Greatest American Hero, a mild-mannered teacher whose caped costume gave him fantastic powers.

Faster than a speeding bullet, Warner Bros. sued for copyright infringement claiming that The Greatest American Hero was just a thinly-veiled copy of the iconic Superman.

The court found The Greatest American Hero was a reluctant, bumbling hero, just the opposite of Superman, who was brave and confident.

You can add a lawsuit to kryptonite as the only effective ways to beat Superman, because in this particular judicial battle for truth, justice and the American Way, the Man of Steel lost.<sup>4</sup>

### **The Devil Himself**

Even the devil has been sued. In 1971, one Gerald M. filed a class action lawsuit against the Devil claiming that Satan caused him misery, put obstacles in his life's path, and caused his—that is, Gerald's—downfall. He also alleged that Satan had ruined the lives of other people, as well.

Unfortunately, the case had some technical problems. The complaint was not properly served on the defendant according to the law, and the court seriously doubted it could force the defendant into court, even with a subpoena or arrest.

Though there is an officially published record about this case, there is no official published record as to how it was finally decided.<sup>5</sup>

### **A Half Equals a Third...But Then Again**

A corporation was formed and it was agreed the capital stock would be "divided half and half between the parties." That sounded easy. Each party would get half the stock. The problem was that the corporation was formed by three parties. The court's solution was to divide the stock in equal thirds. In this case, a "half " meant a "third."<sup>6</sup>

In another somewhat similar case, a half meant a whole. A company authorized its salesman to sell as many as 50 half-chests of tea. A customer ordered exactly 50 chests of tea. The parties argued whether the order was more than the salesman was allowed to sell.

Checking an old dictionary, the Court found that in selling tea, a "chest of tea" meant "a half-chest, not a whole chest." A "whole" actually meant a "half" and the company had to fill the order.<sup>7</sup>

### **A Case for Dear Abby**

Ronnie loved Bonnie and Bonnie loved Ronnie. So they said and so it seemed. They had two kids, lots of property, and 13 years together. That is, until Bonnie filed papers in court to end their marriage.

Ronnie responded with an unusual claim of fraud—in this case, fraud in love. He said that before marrying Bonnie, she said she loved him and was physically attracted to him. But as the marriage ended, Bonnie admitted she had lied, saying that, in fact, she was never really physically attracted to Ronnie in the first place.

A jury awarded Ronnie damages, but a higher court had another view. The justices said that matters of romance and courtship are not suited for law suits simply because juries can't tell if a person was truthful in claiming to love or be attracted to someone else. The court ordered the award overturned.<sup>8</sup>

### **Neighbor Cries Foul Over Basketball Noise**

When Ken built a basketball court in his yard, his neighbor cried foul, claiming the basketball noise disturbed his rest, reading, television watching, and his ability to enjoy a good meal.

Ken refused to limit his playing, and the neighbor's complaints evolved into spraying water on the basketball court (and the players) and blasting ear-shattering rock music at Ken's house.

The parties could not resolve their dispute, so the situation bounced from the basketball court into a court of law with the lawsuit filed by Ken's neighbor claiming nuisance and emotional distress.

A trial court agreed with the neighbor and forced a time-out by issuing an injunction limiting the hours Ken could play. Determined to get the last shot, Ken appealed.

The appeals court ruled for Ken. The court said the emotional distress was due more to anger than basketball playing. Ruling that everyone must put up with some noise from neighbors, the appeals court canceled the injunction, ruling that Ken could again play ball.<sup>9</sup>

### **Referee's Wrong Ruling Is Right**

Two Georgia high school football teams—Osborne and Lithia—played each other to decide who would go to their league playoffs.



On one of Osborne's fourth down punts, Lithia was called for a penalty. Under league rules, Osborne was entitled to a first down. But the referee gave Osborne only the penalty yards, and a new fourth down. Osborne punted again. Lithia received the ball and later scored and won.

Osborne's protest was denied by the school district. So parents of the Osborne players sued and the trial judge ruled that the disputed game would be replayed from the moment of the referee's mistake. The trial court also issued an order canceling the first playoff game (which was set for that evening) pending results of the replayed Osborne-Lithia game.

In an emergency appeal, Georgia's Supreme Court suspended the trial judge's order, and then reversed it. The Supreme Court ruled that Georgia courts were not in a position to review decisions of football referees.

Though the referee's error could not be changed, the trial judge's ruling for Osborne could be reversed, and it was. Lithia's last minute victory in court took the team to the playoffs.<sup>10</sup>

### Switching the Ticket

Two friends ran a raffle with the grand prize being 80 lottery tickets. Before the raffle, the husband of one friend switched a lottery ticket he had bought with one of the raffle prize tickets. As planned, the winner of the raffle received the 80 tickets.

Two days later, the winning lottery number was announced. Having switched tickets, the husband had the \$100,000 winner. The raffle winner, on learning that the winning ticket had originally been, but was no longer among the 80 tickets he'd won, sued.

A court ruled in favor of the raffle winner, saying that since the raffle's promoters kept track of the tickets they awarded as prizes, they intended that the raffle winner would get the \$100,000 winning ticket. He did.<sup>11</sup>

### Defendant Whose Case Takes Too Long Sues

In 1981, a grand jury issued a criminal indictment for 92 felony counts, including fraud, forgery and grand theft. Over the next ten years, the court granted the defendant's numerous requests to postpone the case.

When the trial was finally ready to start, the defendant filed an emergency petition in the court of appeal. He claimed he was denied his constitutional right to a speedy trial, and asked that the case against him be dismissed.

Like the legendary defendant being sentenced for killing his parents—who pleaded for mercy because he was an orphan—the defendant's request was denied.<sup>12</sup>

### "Dead" Woman Sues National Enquirer

Tabloid newspapers has given us many interesting stories, and also some lighter moments in law. In 1990, a tabloid

newspaper in Arkansas ran a story about a 101 year-old lady who had quit her newspaper route because she had been impregnated by a millionaire customer.


Next to the story was a picture of another woman, Nellie M., aged 96. The editor chose Nellie's photo because he thought she was dead, but, in fact, she was alive and well. So alive that she sued the tabloid for damaging her reputation.

In court, the tabloid referred to the Guinness Book of World Records, arguing that everyone knows someone aged 96 or 101 can't get pregnant. The tabloid claimed everyone would know the story was a joke. The court didn't laugh. It let Nellie go ahead with her claim, which she later won.<sup>13</sup>

### And Finally...A Conviction Reversed with a Verse

To convict someone of the crime of "fraud" the prosecutor must prove that the defendant told a lie, and that the lie was "material," that is, the lie was about something significant.

A federal court used a short verse to reverse a fraud conviction because the prosecution did not show that the defendant corporation's lie was "material."

*This case presents a vicious duel,  
Between the U.S. of A. and defendant Ven-Fuel.  
Seeking a license for oil importation,  
Ven-Fuel submitted its application.  
It failed to attach a relevant letter,  
And none can deny, it should have known better.  
Yet the only issue this case is about,  
Is whether a crime was committed beyond reasonable  
doubt.  
Ven-Fuel was convicted of fraudulent acts,  
By the Trial Court's finding of adequate facts.  
We think it likely that fraud took place,  
But materiality was not shown in this case.  
So while the Government will no doubt be annoyed,  
We declare the conviction null and void.*<sup>14</sup> 

<sup>1</sup> See e.g., Mary B. Trevor, From Ostriches to Sci-Fi: A Social Science Analysis of the Impact of Humor in Judicial Opinions, 45 U. Tol. L. Rev. 291, 292 (2014) ("humor, while not widespread, is an ever-present aspect of the body of judicial opinions").

<sup>2</sup> *None of the Above v. Hardy*, 377 So.2d 385 (La. 1979).

<sup>3</sup> *U.S. v. Marshall* 488 F.2d 1169 (9th Cir. 1973).

<sup>4</sup> *Warner Bros. v. ABC*, 720 F. 2d 231 (2d Cir. 1983).

<sup>5</sup> *U.S. ex rel. Mayo v. Satan and His Staff*, 54 F.R.D. 282 (W.D. Pa. 1971).

<sup>6</sup> *Bates v. Wilson*, 24 p. 99 (Col. 1890).

<sup>7</sup> *Japan Tea Co. v. Franklin Macveagh & Co.*, 171 NW 305 (Minn. 1919).

<sup>8</sup> *Askew v. Askew*, 28 Cal Rptr. 2d 284 (1994).

<sup>9</sup> *Schild v. Rubin*, 283 Cal. Rptr. 533 (1991).

<sup>10</sup> *Georgia High School Ass'n v. Waddell*, 285 S.E. 2d 7 (Ga. 1981).

<sup>11</sup> *Smith v. Williams*, 698 F. 2d 611 (3d Cir. 1983).

<sup>12</sup> *Gottlieb v. Superior Court*, 91 Daily Journal D.A.R. 9015 (2d Dist. Jul 23, 1991).

<sup>13</sup> *Mitchell v. Globe International Publishing, Inc.*, 773 F. Supp. 123 5 (W.D. Ark. 1991).

<sup>14</sup> *U.S. v. Ven-Fuel, Inc.* 602 F.2d 747 (5th Cir. 1979).

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## Good Out of Bad

**S**ADLY, DIVORCES TEND TO bring out the worst in people. The strong emotions and sense of betrayal can lead some to commit actions they wouldn't have otherwise.

Such was the case for James (pseudonym) whose ex-wife presented false allegations of drug abuse and child abuse to the Los Angeles County Department of Child and Family Services (DCFS).

James had initially hired an attorney who laid the groundwork for his case before being forced to resign for medical reasons. Referred to the ARS by the Antelope Valley courthouse, he made the call and was put in touch with attorney Shep Zebberman.

The mother involved had had children with several fathers, but James was only focused on getting custody of his five-year-old child and one of his stepchildren. Even though his first attorney had worked on the case for a year, there was still much to do because of the complicated situation with the fathers. It didn't help that James was in the middle of a nasty divorce and had made plans to leave California with his children.

Nevertheless, Zebberman collected solid evidence that showed conclusively that the allegations made by the mother were false and that it was she who was being physically abusive. As a result, James was

**CATHERINE CARBALLO-MERINO**  
ARS Referral Consultant



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able to successfully acquire full legal custody for his five-year-old daughter, but not his stepdaughter.

"It's a common scenario, contrary to popular belief," says Zebberman. "She got monitored visitation, but lost it because she didn't use it. My client was willing to put in the effort and meet halfway, but the mother didn't seem interested."


Communicating after the positive outcome of his case, James said, "I cannot thank you enough for referring me to Mr. Zebberman.

“

I'm eternally grateful to your office for referring me to the best attorney in the business.”

With the experience and knowledge he possesses, both as a seasoned child dependency attorney and also a retired judge from the same court, I was confident that he would be a great asset to have on my side and turned out that I got more than I ever imagined possible. He was able to get me full physical and legal custody of my daughter.”

Thanking the ARS, he added, "I'm eternally grateful to your office for referring me to the best attorney in the business."

The ARS could use more help in providing access to legal help for people like James. Experienced SFVBA members who practice in the area of family law with an emphasis on juvenile dependency are encouraged to communicate with Rosie Soto Cohen at (818) 227-0497 or email at [rosie@sfvba.org](mailto:rosie@sfvba.org). 



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“The Constitution and Me”  
*True Threats v. Pure Speech: Drawing the Line between Safety and Freedom*

**CONTACT:**

Kira S. Masteller at [kmasteller@lewitthackman.com](mailto:kmasteller@lewitthackman.com) 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 VCLCF 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](http://www.thevclf.org).



## A Little Help Here

**A** FEW WEEKS AGO, MY wife and I were taking care of our almost four-year-old granddaughter. Taking nothing away from all the other granddaughters out there (including my seven-year-old granddaughter), she is all you could want in a granddaughter—adorable, smart, precocious, and affectionate. And very verbal!

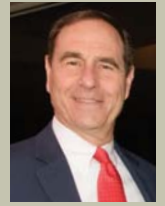
She had just finished a concentrated session of coloring with us. We asked her to carry the basket of crayons and markers back to the bedroom where we keep our stash of kids' toys. She wasn't entirely keen on the idea. To be fair, it was a pretty big basket. We helped her get it situated in her arms, and she trudged off down the hall to the bedroom. A couple of moments later we heard a high-pitched, plaintive voice calling out: "A little help here!" I went down the hall and found her sitting on the floor, a little forlorn, the basket next to her. She just couldn't put the basket away without help.

Your Valley Community Legal Community Foundation finds itself in the same position as my granddaughter. The members of the Board of Directors are doing their best to "carry the basket." Directors donate money on a regular basis. We attend monthly meetings to develop programs and ensure the smooth operation of the Foundation. In between meetings, Directors work on fundraising, and on programs sponsored by the Foundation. Our Directors are an active, involved group, but we need "a little help here."

In the coming year, VCLF will be presenting a constitutional law program—*The Constitution and Me*—to Valley high schools. The Program will foster student conversations on constitutional questions revolving around the topic *True Threats v. Pure Speech: Drawing the Line between Safety and Freedom*. This is a very timely issue of critical importance to the students and to the fabric of our social interaction. But the high school students who will be participating need "a little help here." Attorney volunteers are needed to help run the programs. Money donations are needed to fund post-program scholarships for deserving students.

In 2019 we also want to continue awarding scholarships to deserving high school students to help them on their way to college. Those of you who met Maggie Boyle at the recent Installation Gala, or have read our *Valley Lawyer* articles about past scholarship recipients, know how much a difference these scholarships make. Without

**Mark S. Shipow**  
President




mshipow@socal.rr.com

money from you, we will not have the resources to provide scholarships.

As in past years, this year we also want to be able to provide grants to worthy charitable organizations and programs. VCLF has sponsored Settle-o-Rama in the family law court. VCLF has provided grants to Anti-Recidivism Coalition, Boys & Girls Club, Safe Passage (working to break the cycle of domestic abuse), CASA (working to improve the lives of children in the dependency system), and many other organizations that help those in need in the San Fernando Valley.

VCLF needs "a little help here" in order to provide "a little help" to these students, kids and adults, and the organizations that serve them.

We welcome your tax-deductible donations of any amount. You can donate directly through our website at [www.thevclf.org](http://www.thevclf.org), or send your check payable to VCLF at the San Fernando Valley Bar Association office at 20750 Ventura Blvd., Suite 140, Woodland Hills, CA 91364. Thank you! 

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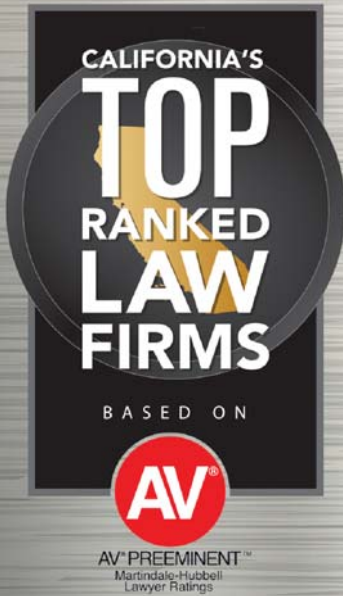
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