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A Legal Symposium

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UPCOMING CHAPMAN DIALOGUES

Adrien K. Wing, Bessie Dutton Murray Professor, University of Iowa College of Law, and Bette and Wylie Atken Distinguished Visiting Professor of Law, Chapman University School of Law, will present After the Last Judgment: The Future of Middle East Constitutionalism. Thursday, October 27, 2011, 11:30 a.m.

Catharine A. MacKinnon, Elizabeth A. Long Professor of Law, University of Michigan Law School, will present Trafficking, Prostitution, and Inequality. Tuesday, November 29, 2011, 11:30 a.m.

Walter E. Dellinger, III, the Douglas B. Maggs Professor Emeritus of Law at Duke University School of Law, will present Lincoln, King and Mendez: The Quest for American Equality. Friday, December 2, 2011, 11:30 a.m.

John Eastman, Henry Salvatori Professor of Law and Community Service, Chapman University School of Law, and Larry Rosenthal, Professor of Law, Chapman University School of Law, will present United States Supreme Court Update. Thursday, February 23, 2012, 11:30 a.m.

Peter H. Schuck, Simeon E. Baldwin Professor Emeritus of Law and Professor (Adjunct) of Law, Yale Law School, will present Immigration Policy: Myths and Realities. Thursday, March 15, 2012, 11:30 a.m.

Members of the legal community are invited to attend the Chapman Dialogues. Space is limited and advance reservations are required. Please contact bbabcock@chapman.edu for additional information.
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Mr. Gleitman has practiced sophisticated estate planning for 26 years, specializing for more than 14 years in offshore asset protection planning. He has had and continues to receive many referrals from major law firms and the Big Four. He has submitted 52 estate planning issues to the IRS for private letter ruling requests; the IRS has granted him favorable rulings on all 52 requests. Twenty-three of those rulings were on sophisticated asset protection planning strategies.

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Litigation sometimes seems to follow a Cold War mentality. Secrets are the currency of power. Victory often goes to the one who uncovers the best secrets in discovery, keeps those secrets with well-crafted objections, and waits to trump the other side at the perfect Perry Mason moment. If this attitude occurs in some law firms, surely it must dominate in the courthouses in which those firms do business. Certainly the Us versus Them principle must be at its height at the Los Angeles Superior Court—home of daily litigation battles, upsets, carefully worded disclosures, and strategic nondisclosures. Right?

Wrong. In this month’s special issue of Los Angeles Lawyer, you will learn that, while some types of legal combat may be stuck in the Cold War, the Los Angeles Superior Court has moved on. The very fact that the LASC and our authors have welcomed the opportunity to participate in this issue reveals the difference. The court wants to share its secrets, what services it offers, and the challenges it faces.

Presiding Judge Lee Smalley Edmon, in her overview of the court, reveals, significantly, that civil litigation is not the primary, nor even the secondary, business of the Los Angeles Superior Court. No doubt this fact will pain many a civil litigator. Further evidence of the crumbling of Us versus Them abounds. Court research attorneys will warn you of the pitfalls they see practitioners fall into most commonly. A former judicial assistant will inform you of the kind of professional behavior that courtroom staff would most appreciate seeing and hearing when you appear in court. The judicial appointment process, judicial ethics, and recent changes in the family law system—these and other aspects of practice at the LASC will be explained by bench officers who want to demystify the process for you.

In a complete reversal of the Cold War mentality, the currency of power these days seems to be the ability to provide information. Some overshare through the media or reality TV to achieve a famous-only-for-being-famous brand of celebrity. Others rule the business world by providing faster and more versatile communication software and devices. Law firms, too, no longer sit back waiting for word-of-mouth referrals. They go out and get clients through networking and marketing—via media (professional networking sites), reality TV (Webinars), and faster and more versatile communication devices (which a good Web site can be). Even by the end of the Cold War, affirmative marketing was uncommon for an attorney. For a variety of reasons, that reticent model became obsolete in recent years. Now, for attorneys, not communicating what you can bring to the table is the curious practice.

The Los Angeles Superior Court understands that times have changed. It knows that it is an institution meant to serve the public. The court also is signaling that its method of interaction will involve the giving of information rather than the withholding of secrets. With its outreach to our community of practitioners, the Los Angeles Superior Court wants you to feel like one of us. Its invitation to you follows.
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How to Maintain Your Balance while Defending Depositions

DEFENDING DEPOSITIONS can be a complex balancing act for which most new attorneys are unprepared. Law schools tend to gloss over depositions in a civil procedure class. Reference books tend to focus on the technical details and not discuss the tensions among the deposing attorney, the defending attorney, and the deponent. You can minimize the damage to your client’s case during a deposition with thorough preparation and by balancing your duty to your client against these tensions.

First, it is imperative to prepare your client for the deposition. You may have interviewed your client at the beginning of the case, but you probably did not subject him or her to a challenging series of questions on the details. Begin the preparation by advising your client to tell the truth, and review the usual deposition admonitions.1 It is also a good idea to discuss the evidence with your client early. Be careful about showing your client any physical evidence (such as documents or photos), because it is potentially discoverable.2 You should then review the testimony that is essential to the case. I often take on the role of the deposing attorney and question my client on the weakest parts of the case. I will then review the testimony that the deposing counsel will want to elicit to hurt my client’s position. Before the preparation is over, I remind the client that there is no requirement to memorize anything.

Even after a thorough preparation, your client will likely say and do things that you expressly instructed against. Clients will forget to wait for your objections and will volunteer information. When it happens, do not yell at your client or kick him or her under the table. However, you may make notes about a client’s personality and ability to testify for trial.

You have limited options when defending a deposition. One is that you can object to the form of the question.3 This usually occurs when the question could have more than one meaning or is misleading. However, before objecting, you should consider whether you want to alert the opposing counsel that the question was unclear. By objecting, you give the opposing counsel an opportunity to eliminate the ambiguities that could render the question and resulting answer meaningless. On the other hand, a sloppy question can lead to a sloppy answer that does not help the client. Another option is to instruct your client not to answer4 when the questioning concerns topics protected by an evidentiary privilege.

During a deposition, some attorneys will make speaking objections (objections that go beyond stating the cause of the objection) and coach clients, despite rules to the contrary.5 Speaking objections can range from a quick explanation as to why the question was vague to long dissertations on the rules of evidence. Often, a speaking objection is used to coach the deponent. Interruptions are also used to throw the deposing attorney off course or slow the pace of questioning.

As the attorney defending the deposition, you need to balance your duty to your client to your ethical and legal obligations. The goal of defending a deposition is for it to end quickly and to limit the amount of damage to your client’s case. Making speaking objections or harassing the opposing attorney will usually make the deposition longer. The opposing attorney will get angry and focus on what is being obstructed. Coaching and speaking objections often highlight the weak areas of your client’s case, which does not serve your client’s interest.

Ethical Considerations

You should not employ abusive deposition tactics, but you also have an ethical obligation to competently represent your client. The Los Angeles County Bar Association Professional Responsibility and Ethics Committee published a formal ethics opinion confirming that an attorney has a duty to advocate for the best interest of the client during a deposition, and that may include consulting with a client who is confused or unable to give a complete or accurate response. Otherwise, “[T]he client could become the victim of the unscrupulous attorney who asks unfair, inappropriate or ‘trick’ questions that are themselves designed to harass the witness or to obtain distorted and conflicting testimony.”6

The duty to competently represent your client and the general rule against coaching tends to be the source of most conflict during depositions. The deposing attorney may become upset if questioning is being interrupted, and the defending attorney may be concerned that the client is being tricked into giving inaccurate testimony. At the same time, the defending attorney must not do anything to conceal, distort, or misrepresent the facts that are required to be disclosed.7 However well the defending attorney manages this tension, the conduct of the deposing attorney may simply go too far. If the deposing attorney becomes abusive, you may have to terminate the deposition and seek a protective order.8 This usually occurs when the deposing attorney harasses your client. The defending attorney will want to balance the cost of time and energy involved in getting a protective order against the severity of the other attorney’s unprofessional behavior. Do not leave without first giving a warning on the record.

Most depositions occur outside the presence of a judge or referee. This is why unprofessional behavior and improper tactics are common. Defending attorneys must balance their obligations to the client with their legal and ethical obligations to allow testimony. The defending attorney must also balance the cost of obtaining a protective order and unprofessional behavior. The key is to always remain calm, civil, and professional.

Jonathan Howell is an associate with Pocrass & De Los Reyes LLP and represents people who have suffered serious personal injuries due to accidents, product defects, and medical malpractice.

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1See Kevin J. Dunne, Dunne on Depositions §6:8 (Thomson Reuters/West 2008).
2Evid. Code §771.
3Code Civ. Proc. §2024.460(b).
5See, e.g., L.A. Sup. Ct. R. 7.12(e)(8), (10).
7Bus. & Prof. Code §6068(d); Cal. Rules of Prof’l Conduct R. 5-220.
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INDIVIDUAL JUSTICE IN INDIVIDUAL CASES. That is the goal of the Los Angeles Superior Court. Easy enough said, but the challenge is to accomplish that more than 3 million times every year. This challenge is met by approximately 600 of the finest judicial officers in the nation. These men and women must be not only knowledgeable in the law, they must also be adept at handling a crowded calendar and at coaxing along a case fairly and with due process.

It is often said that the criminal law operations drive the Los Angeles Superior Court. For the most part, this is because criminal trials are dictated by strict statutory guidelines that guarantee a right to a speedy trial to those charged with criminal offenses. Specifically, those charged with felonies must be brought to trial within 60 days of the filing of the information, and those charged with misdemeanors between 30 to 45 days. During 2010, more than 55,000 felony and 200,000 misdemeanor complaints were filed in Los Angeles County. In order to handle this volume, approximately 385 bench officers are assigned to hear criminal cases throughout the county. With more than 60 courtrooms, the Foltz Criminal Justice Center is not just the largest criminal courthouse in the county but the largest in the entire United States.

With 14,000 people in custody, the Los Angeles County Sheriff’s Department transports approximately 2,500 individuals each day to courthouses throughout Los Angeles County, with about 500 of them transported to the Foltz courthouse. As a result, the sheriff’s department operates the second largest transportation company in Los Angeles County, second only to the Metropolitan Transit Authority.

Including all types—criminal, juvenile, civil, family law, probate, and mental health—more than 3.1 million cases were filed in our court last year. While some filings are resolved with relatively little court intervention (as when someone pays a traffic ticket online), other filings are not so easily resolved. For example, Juvenile Dependency Court cases (in which the court acts as the parent for children in the foster care system) demand the coordination of a wide array of parties and lawyers, as well as the participation of multiple government and community-based organizations, and are seldom resolved quickly or easily.

Essential to all our tasks is the support of the dedicated and hardworking court staff and other support professionals. Throughout California, from the smallest courts to ours, the largest, you find a remarkably consistent ratio of about 10 staff for each judge. As practicing lawyers, you are probably familiar with the courtroom staff—the judicial assistant (commonly known as the courtroom clerk), court reporter, courtroom assistant, and the bailiff one finds in many courtrooms. But you may be less familiar with the other staff whose daily activities allow our judges to take the bench and adjudicate legal matters. In any given year, we:

- Summon almost 3 million jurors for service.
- Process hundreds of thousands of payments.
- Conduct close to 3,000 jury trials.
- Employ more than 60 trained professionals to investigate the life circumstances of probate conservatees and children in contested family law matters.
- Deploy more than 1,100 certified and registered interpreters to interpret in dozens of different languages for litigants, witnesses, and others, representing more than 250 uses of interpreters for each court day throughout the county.
- Employ hundreds of people to accept and process filings and make sure the right papers are in the right courtroom on the right day to allow the court to do its work.
- Provide procedural help to nearly 1,000 litigants daily, through a variety of self-help programs, thereby improving access to justice for those litigants as well as for those with whom they share court resources.

If you have never thought about these things, that is as it should be. We work hard to keep the behind-the-scenes work truly behind the scenes, so that judges and lawyers can get their work done and get cases resolved in a timely manner.

Our ability to do all of this is being tested. Every year we are required to do more and more of these activities. Filings are up 20 percent over the last decade, and the recent recession has increased civil litigation, as people and corporations find it increasingly necessary to pursue legal remedies for their deteriorating economic situations. While the recession may have temporarily deterred many couples from pursuing dissolution proceedings, filings have now spiked in the family law courts as well.

The rise in the quantity of work has been accompanied by increased expectations of the range of issues we are to address. We are called upon to preserve public safety, minimize uncertainty in eco-

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Tom Dulek, partner
Los Angeles
nomic relations, and protect children and families. And the list goes on and on.

The State’s Budget Woes

While the work expands, our resources contract. Over the previous several years, state trial court funding had already been cut by $300 million. In the fiscal year budget for 2011-12 that was passed in April, the state cut another $350 million. The total reductions represent 30 percent of the funding for the state courts. A series of one-time funding infusions have postponed some of the effects of these cuts. But the one-time solutions are running out, while the cuts are ongoing. We project annual shortfalls over the next three fiscal years that rise from $85 million in FY 2011-12 to $204 million in FY 2013-14.

One significant source of relief was the recent increase in civil filing fees authorized by the state legislature. The efforts of the attorney community on behalf of this legislation translated into roughly $20 million annually in revenue to offset the cuts in Los Angeles alone. This was a clear expression of the willingness of Los Angeles lawyers to support their court system.

Even with these and other mitigation efforts, we were forced in 2010 to lay off 329 people and eliminate another 130 positions through attrition in order to balance our budget—a loss of 10 percent of our work force. These staffing changes, along with a number of other measures, have reduced our annual expenditures by about $50 million, enabling us to live within our reduced budget. By necessity, we are running quite lean.

Fortunately, in anticipation of the inevitable cycles of state court funding, we have long been pursuing lean operating strategies. Our self-help programs, for instance, while perhaps the most extensive in the nation, rely on help from our justice system and legal aid partners and from grant funding for more than 90 percent of their activities. Central administration (i.e., budget, human resources, and other administrative functions) consumes only about 1 percent of our annual budget. New purchasing policies save millions of dollars each year. We have extensively cross-trained staff to increase flexibility. We have adopted time-saving automation in the processing of traffic payments, juror processing, and other areas that have helped us absorb staffing shortages.

Nonetheless, the reductions in funding have caused us to do more with less and to provide fewer services and delay processing of matters. For example:

- Last year, we were forced to furlough court staff and close our doors one court day each month. We have managed to remain open through earthquake and civil unrest; yet, this was the first time in history that our court’s doors were closed for financial reasons.
- Motions in civil actions are backed up months, even though we have implemented aggressive procedures and programs to encourage parties to resolve matters with less time expended by the court.
- In less than one year, the proportion of family law default judgments processed within time standards dropped from 90 percent to 30 percent.
- People now wait nine months to see a judge about a traffic ticket, increasing the number of people who forget or ignore their tickets.
- We closed 21 drug courts to allow the criminal courts more time and staff to handle basic criminal matters.

The size of the recent budget cuts is extraordinary, and we fear that those cuts have become the new normal. It is unlikely that available one-time fixes will support our current staffing levels long enough for our court to benefit from the state’s tapid economic recovery. Additional, large reductions in staffing are immediately on the horizon.

Having already cut discretionary programs and reduced core operations to the point where staff are barely keeping up with their work, our court is being pushed to the point where we must prioritize which areas of our core work we will no longer be able to support. We cannot avoid prioritizing criminal and juvenile work, and this fact works to the detriment of other case types. Further, the demands on the family law courts are increasing significantly in the wake of recent legislation. (See “The Elkins Legacy,” page 36.)

As a result, the civil courts are at the greatest risk of significant impact. Increased delays seem inevitable. Without the staff necessary to support the courtrooms, our judges cannot do business, resulting in costly delays. Estimating the delay that would result from a significant, but foreseeable reduction in operating civil courtrooms, and calculating the resulting economic losses (e.g., from money tied up in delayed litigation), Micrometrics, Inc., has projected the loss to the California economy in the tens of billions of dollars—with associated losses of tax revenues exceeding $1.5 billion. 6

Recognizing that such a scenario is not acceptable, our civil judges have responded with a number of innovations designed to ensure the fair and timely resolution of civil cases with fewer resources. For instance, our judges have been working with the Litigation Section of the Los Angeles County Bar Association on a “stipulations” project. They have developed optional form stipulations that the parties may agree upon early in a case, in an effort to reduce or streamline motion practice. We have also enlarged our group of settlement courts downtown. We now have four courtrooms—employing some of our very best settlement judges—devoted full time to work on settling cases.

In response to a large increase in the number of employment cases filed, we are organizing the Civil Referee Assisted Settlement Hearing, or CRASH, program with a particular focus on employment cases, by which judge-attorney teams will hold roughly 150 settlement conferences in September to help clear this expanding docket.

With the new law regarding expedited jury trials,7 crafted by many of our Los Angeles lawyers and judges, we now have a mechanism to conduct a one-day jury trial. (See “Expedited Jury Trials Offer Innovative Procedures to Reduce Costs,” page 20.) The support of both the plaintiffs and defense bars makes this a very exciting prospect, and our judges welcome the innovation.

With the substantial increase in class actions and asbestos filings, we are rethinking every aspect of how we handle those cases. We recently have sought to place all asbestos cases before a single judge for all pretrial litigation activities in order to achieve more uniform management of the litigation and to reduce delay in the overburdened general jurisdiction courts in the central district. We also have made changes in order to expedite consideration of proposed class action settlements. As bleak as the new normal may look, we have not abandoned our pursuit of individual justice in individual cases. We continue to find new ways of administering justice—and to preserve the old ways that have served us so well.

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6 In fiscal Year 2009-10, 2,85,573 jurors were summoned for service in Los Angeles County, of whom 1,457,621 jurors responded. The number of jurors who ultimately served was 569,313. See http://www.lasuperiorcourt.org/jury/employer.htm6.  
7 In fiscal year 2009-10, 4,251 sworn jury trials were held in Los Angeles County. Id.  
8 A certification process does not exist for every foreign language that is used in California courts. A qualified interpreter in languages without a certification process can register with the court system after passing an English proficiency examination and meeting other requirements. See the Judicial Council’s Master List of Certified Court Interpreters of Designated Languages and Registered Interpreters of Nondesignated Languages, available at http://www.courts.ca.gov/3796.htm. See also JUDICIAL COUNCIL OF CALIFORNIA, FACT SHEET: COURT INTERPRETERS (Mar. 2011), available at http://www.courts.ca.gov/documents/courtinterpreters.pdf.  
9 Id.  
10 In 2008, the last year for which such statistics are available, Los Angeles County courts counted 73,689 “service days” for interpreter usage. See INSTITUTE FOR SOCIAL RESEARCH, 2010 LANGUAGE NEED AND INTERPRETER USE IN CALIFORNIA SUPERIOR COURTS 115, Appendix Table 2.2 (2010).  
12 See CODE CIV. PROC. §§630.01-630.12.
August 4, 2011

Dear Jack:

As you know, Bryan Stow, a San Francisco Giants fan, was brutally attacked by two men in the Dodger Stadium parking lot on opening day, March 31, 2011.

On May 22, 2011, Los Angeles Police Department (LAPD) SWAT officers arrested my client, Giovanni Ramirez at an East Hollywood apartment complex. LAPD Chief Charlie Beck said at a news conference that day, “I believe we have the right guy. I wouldn’t be standing here in front of you. I certainly wouldn’t be booking him later on tonight. You know this is a case that needs much more work, but we have some significant, significant pieces to it that leads me to believe that we do indeed have the right individual”.

Mr. Ramirez agreed to take a LAPD polygraph examination, to be conducted on June 1, 2011.

I retained your services as a nationally known and respected polygraph examiner. You agreed to polygraph my client at Los Angeles County Men’s Central Jail, on that day prior to the LAPD examination. Further, you agreed to monitor the LAPD polygraph examination in an observation room within Parker Center (LAPD Headquarters).

After you polygraphed Giovanni Ramirez, as you departed the jail, you telephoned me. You said, “LAPD arrested the wrong guy, Giovanni Ramirez was not on Dodger stadium property on March 31, 2011”.

On June 1, 2011, you accompanied me to Parker Center to monitor the LAPD polygraph examination. The respect shown to you by the LAPD polygraph personnel comforted me. You advised them that Mr. Ramirez passed your exam as you handed them your report.

Although this case had many interesting facets, central to Giovanni Ramirez being eliminated as a suspect, were your “non deceptive” polygraph results.

It is a tribute to your reputation that polygraph testing conducted by you is so well received and respected by the prosecution, as well as the defense. You saved my client’s life…thank you.

Very truly yours,

[Signature]

MARKS & BROOKLIER, LLP

ANTHONY P. BROOKLIER
**Law and Motion Tips from Research Attorneys and Law Clerks**

**MANY PROCEDURAL DEFECTS** can prevent a court from considering the merits of a motion. Therefore, compliance with procedural requirements is essential to civil law and motion practice. Research attorneys and law clerks in the Los Angeles Superior Court regularly observe attorneys in civil law and motion matters fall into common procedural pitfalls.

The LASC employs 105 research attorneys and law clerks, five supervising research attorneys, and one managing research attorney. More than half of these attorneys are assigned to the Stanley Mosk Courthouse in downtown Los Angeles, and the remainder are assigned to various district courthouses throughout the county. Most attorneys assist two judicial officers in civil departments. Others are assigned to specialized departments, such as complex litigation, probate, family law, writs and receivers, juvenile, criminal, and appeals.

Research attorneys and law clerks are distinguished by their employment status. Research attorneys are permanent employees of the LASC who must be members of the California State Bar and are typically capable of handling more complex legal research assignments than law clerks. In contrast, law clerks are limited-term employees and are not required to be members of the State Bar. Law clerks are initially employed for a six-month probationary term. At the court’s discretion, this initial term may be renewed for an additional two one-year terms. The total employment period for a law clerk will not exceed two and one-half years unless a law clerk is promoted to a research attorney position. Even though State Bar membership is not a condition of employment for law clerks, over 90 percent of the LASC law clerks hold active State Bar membership.

Court policy prohibits research attorneys and law clerks from practicing law. This prohibition includes providing legal advice, representing a litigant in any capacity, making an appearance on behalf of an individual, and receiving fees. Research attorneys and law clerks also must not engage in improper ex parte communications. In many assignments, research attorneys and law clerks are prohibited from having contact with counsel. In other assignments in which contact is authorized by the court, communications between counsel and research attorneys and law clerks are limited to discussions of administrative, nonsubstantive matters, such as a request for a courtesy copy of a filed document or to reschedule a hearing. Due to the risk of improper ex parte communications, unless otherwise directed by the court, counsel should not initiate contact with research attorneys and law clerks.

Research attorneys and law clerks are primarily responsible for reviewing briefs submitted by the parties, researching and analyzing all factual and legal issues, drafting bench memoranda, and submitting proposed recommended rulings for consideration by judicial officers. Research attorneys and law clerks also may assist their assigned judicial officers with a variety of ex parte applications, motions in limine, trial motions, and posttrial motions. The daily workload averages between four to eight bench memoranda, with the length of the memoranda dependent upon the preference of a particular judicial officer and the difficulty of the motion at issue.

Because of the motion volume, research attorneys and law clerks repeatedly observe counsel making the same types of procedural mistakes. Here are the most frequently committed errors.

**Service of Summons and Complaint.** The most common error made by counsel involves service of summons and complaint by way of substitute service, which is governed by Code of Civil Procedure Section 415.20. Pursuant to this section, if a copy of the summons and complaint cannot be personally delivered with reasonable diligence, a copy may be left with a competent adult at the residence, business, or usual mailing address of the person to be served.1 However, before resorting to substitute service, counsel must attempt a good-faith effort at personal service. There must be a showing that the summons “cannot with reasonable diligence be personally delivered” to the defendant.2 Two or three attempts to personally serve the defendant at a “proper place” ordinarily qualifies as “reasonable diligence.”3 Substitute service also requires mailing, and it is deemed complete on the 10th day following the mailing.4

**General Appearance and Waiver of Issues of Lack of Personal Jurisdiction.** Counsel may inadvertently submit their clients to a court’s personal jurisdiction by making a general appearance, which thereby waives any challenge to personal jurisdiction. According to Code of Civil Procedure Section 1014, “A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for reclassification pursuant to Section 403.040, gives the plaintiff written notice of appearance, or when an attorney gives notice of appearance for the defendant…” Under Code of Civil Procedure Section 410.50(a), “A general appearance by a party is equivalent to personal service of summons on such party.”

Often, due to lack of familiarity with these code sections, counsel unwittingly take actions, such as filing a demurrer or giving the plaintiff a written notice of appearance, that result in the making of a general appearance. In so doing, counsel forfeit all objections to a defective service of the summons and complaint and waive any jurisdictional defects.5 A notable exception to this rule is when counsel files an ex parte application. An ex parte application is not a general appearance and does not constitute waiver of the right to make a motion to quash under Code of Civil Procedure Section 418.10.6

**Requests for Entry of Default Judgment.** If a party fails to respond to a complaint and a default is entered, the plaintiff may seek a default judgment. Small oversights, however, can result in the rejection of the request for judgment. For example, the amount sought in the judgment request must not exceed the amount prayed for in the complaint,7 in the statement of damages,8 or in the statement provided under Code of Civil Procedure Section 425.115. A request for judgment must be supported by admissible evidence—such as declarations by individuals with personal knowledge of the facts—and cannot be supported by

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inadmissible hearsay. A request for punitive damages also must be supported by adequate evidence and must satisfy the requirements set forth in Civil Code Section 3294. Counsel commonly do not provide evidence of a defendant’s financial condition and net worth. As for attorney’s fees, counsel sometimes fail to consider whether the mandatory fee schedule set forth in Rule 3.214 (formerly Rule 3.2) of the Local Rules of the Superior Court of Los Angeles County is applicable.

General Notice and Service Requirements for Law and Motion. The court can deny motions simply because counsel overlook specific notice and service requirements set forth in Code of Civil Procedure Section 1005, which governs the service and filing requirements for most law and motion matters. This section generally requires that moving and supporting papers be served and filed at least 16 court days before the hearing. If the service is by mail and the address is within California, the 16-day period is increased by five calendar days. If the address is outside California, the 16-day period is increased by 10 calendar days.

The reference to both court and calendar days in this section can cause confusion with regard to the proper notice period. Counsel should take extra caution when computing service and filing deadlines.

Generally, opposition papers must be filed and served at least nine court days before the hearing, while all reply papers must be filed five court days before the hearing. Both opposition and reply papers must be served in a manner that would guarantee delivery no later than the close of the next business day—for example, by personal delivery or express mail. Service by facsimile transmission or electronic mail is permissible under certain conditions. Counsel routinely fail to comply with these statutory requirements by serving the opposition and reply papers via regular mail.

Discovery Motions. The common procedural pitfalls specific to discovery motions consist of threshold issues. For example, counsel neglect to distinguish between motions to compel responses to interrogatories and motions to compel further responses to interrogatories. Except for the limitations imposed by Code of Civil Procedure Section 2024.020, motions to compel can be brought at any time and do not require a separate statement. Motions to compel further responses, on the other hand, require separate statements and must be filed and served within 45 days after service of responses or supplemental responses—unless the parties agree in writing to a specific later date. Additionally, a party moving to compel further responses to discovery must submit a declaration showing a reasonable and good faith attempt to informally resolve the discovery dispute. Counsel’s failure to adequately meet and confer may result in the denial of the motion.

Motions for Summary Judgment and Summary Adjudication of Issues. The most common procedural errors associated with motions for summary judgment and summary adjudication of issues involve calendaring and presentation of supporting evidence. With regard to calendaring, motions must, with few exceptions, be filed and served on all parties at least 75 days before the hearing and heard no later than 30 days before trial. Given these restrictions, the available dates on the court's calendar and the trial date must be factored into the time required for noticing and scheduling the motions. All too often the notice period used by counsel falls short of the statutory requirement. In attempting to remedy any notice or scheduling errors, counsel may not recognize that judges lack the authority—absent stipulation of the parties—to shorten the notice period or to cure any notice defects by continuing a hearing.

In the presentation of evidence, counsel at times fail to follow the required format for separate statements as set forth in the California Rules of Court. Counsel also often neglect to adequately reference all facts and evidence in their separate statements as required by the Code of Civil Procedure. These failures may result in the denial of a party’s motion. Finally, some parties err by joining in another party’s summary judgment motion and attempting to adopt the other party’s separate statement. This is an improper practice, as each party must submit his or her own separate statement.

1. CODE CIV. PROC. §415.20.
2. CODE CIV. PROC. §415.20(b).
4. CODE CIV. PROC. §415.20.
6. CODE CIV. PROC. §418.11.
7. CODE CIV. PROC. §580(a).
8. CODE CIV. PROC. §425.11.
9. CODE CIV. PROC. §585(d).
11. CODE CIV. PROC. §1005(b).
12. CODE CIV. PROC. §1005(c).
13. CODE CIV. PROC. §§1013(e), 1010.6(a)(3).
15. See, e.g., CODE CIV. PROC. §2024.020; CAL. R. CT. 3.1345(b).
16. CODE CIV. PROC. §2024.020; CAL. R. CT. 3.1345(a), (b).
17. CODE CIV. PROC. §2016.040; see, e.g., CODE CIV. PROC. §2030.300(b).
18. CODE CIV. PROC. §437(e).
20. CAL. R. CT. 3.1350(b).
21. CODE CIV. PROC. §437(e)(1).
22. Id.
What Lawyers Need to Know about Civil Court Staff

AS A JUDICIAL ASSISTANT with the Los Angeles Superior Court, I have witnessed the comings and goings of practicing lawyers for more than 24 years. I am pretty sure that I have seen it all. By contrast, while most litigation attorneys have been in a courtroom at one time or another, they probably do not know how courtrooms really work on a day-to-day basis.

A civil jurisdiction courtroom—especially in the morning—is a blur of activity. The courtroom assistant is busy fielding calls, the judicial assistant is neck deep in files and ex parte applications, and the practicing attorneys and pro se litigants want to have their documents filed and their questions answered right away. This can create an extremely frustrating situation for the attorneys and the public as well as for the court staff.

To minimize that frustration, I offer my observations and pertinent information on how attorneys can ensure that their days at the courthouse run as smoothly as possible for all concerned.

Filing Documents in the Courtroom. Attorneys should become familiar with the filing policies of the courthouses in which they appear. Each courthouse—and frequently each judicial officer—has either a preference or a mandate as to where documents are to be filed.

At the Stanley Mosk Courthouse, 99 percent of all documents are required to be filed in the clerk’s office, which is located in Room 102 on the first floor, near the Hill Street entrance. This is because court policy dictates that the documents must be scanned before final delivery to the courtroom. Therefore, clerks are not allowed to accept documents for filing directly in the courtroom. Courtesy copies are usually welcome, but it is good practice to check with each department regarding its particular preference.

Document Length and Headings. The court uses case file jackets that can accommodate a maximum of three inches of paper. Therefore, any document you file should not exceed three inches, from first page to last. If a document does exceed three inches, you should divide it into Parts I and II, with appropriate cover pages. Courtroom staff will be eternally grateful for your efforts.

Also, be sure that all documents have been two-hole punched. Otherwise, the staff will have to tear the document apart and punch the holes in order to secure it in the court file jacket.

There are times when staff must contact a law firm for one reason or another. Therefore, you should include the e-mail address of the attorney of record in the document heading. This is especially helpful for those firms located outside Los Angeles County, because court staff does not have the ability to place long-distance calls.

Late Filings. When documents are filed late, the court staff bears the burden of tracking them down. The result is all too often a logistical nightmare. Moreover, a late filing may place a strain on research attorneys if it requires them to redo a workup for the judge. Occasionally, a late filing will result in the court having to continue the motion.

Taking Motions Off Calendar. It can be frustrating for a research attorney and the court to spend hours reviewing motions only to have the moving party, at the last minute, either ask for a continuance or that the motion be placed off calendar. In the courtroom to which I was assigned as a judicial assistant, I saw this happen at least a few times each week. I suggest that attorneys reassess this practice. The moment you are aware your motion is not going forward for any reason, be sure to alert the courtroom staff. The court staff (especially the research attorney) will greatly appreciate that courtesy call.

Write legibly on your business cards and attorney appearance forms. Include your calendar number, case number, and the name of your client (especially on the ex parte cards).

Calling the Courtroom. In most courtrooms, it is not advisable to call prior to 10 A.M. (unless the call concerns that morning’s calendar). The hours prior to 10 A.M. are the courtroom staff’s busiest time. By not responding to your inquiry, the staff is not trying to slight you. There is just not enough time to devote to noncalendar issues in the early morning. It is best to call in the afternoon whenever possible.

Conforming Orders. If you require a conformed copy of any document, submit your copies along with an attorney service slip or an appropriately sized, postage-paid envelope. Most courtrooms do not have the resources to make copies, nor does the court have the funds to pay the postage for mailed copies.

Jury Trial Documents. Unless otherwise instructed, all courtrooms follow Los Angeles Superior Court Rule 7.9(i). It is critical that your joint trial documents be filed five calendar days prior to the final status conference, because that is the best indicator of your trial readiness. The staff must prepare for not only your trial but for numerous other trials also on calendar that week. If the courtroom has not received your joint trial documents, the court may be inclined to believe the case has settled.

Ex Parte Applications. For several reasons, attorneys should contact the courtroom before bringing an ex parte application. First, the courtroom may accept a stipulation to address your ex parte request (such as a mediation completion date extension, a motion continuance, or a trial continuance). Second, the originating courtroom may be dark on the day you are filing, which means a “buddy court” will hear your

J. L. Snyder, formerly a judicial assistant in Department 19, currently is a court manager at the Stanley Mosk Courthouse.
ex parte. On those occasions, there is a very good chance the buddy court will simply accept the ex parte application and trail it to the first day the originating courtroom is back in session so that the original hearing officer will ultimately make the final ruling. Always call ahead. By doing so, you will save yourself, and the court, a lot of time and trouble.

Information Available Online. An increasing number of courtrooms now have their particular preferences posted at the LASC Web site, http://www.lasuperiorcourt.org. In most instances, the posted information will address any number of questions regarding each courtroom's procedures.

Additionally, many judges now post their law and motion tentative rulings online. Call ahead to determine if the judge will allow the parties to “submit on” (intend to abide by) the tentative ruling. You may save yourself a trip to court. At the very least, you will be better prepared with your arguments at the hearing by knowing the court’s thoughts in advance.

Calendar Call. The court staff experiences a huge surge of adrenaline in the morning as the courthouse doors suddenly swing open and in rush the attorneys. The phone is ringing off the hook, ex parte applications are coming from all directions, and lawyers are asking for priority. To say that these converging forces can be overwhelming for the staff is an understatement. All involved want the best and most efficient results. Here is how attorneys can help:

• If you are seeking a priority, call the courtroom the afternoon before a hearing to ask whether it takes priority requests. If the answer is yes, please contact all sides and inform them of your intent.
• When sending a contract attorney or another attorney from your firm to appear on your behalf, make sure that lawyer is prepared and ready to answer questions regarding the status of the case.
• Write legibly on your business cards and attorney appearance forms. Include your calendar number, case number, and the name of your client (especially on the ex parte cards). Writing “defendant” or “plaintiff” on your card, with nothing more, does not aid the staff in discerning who appeared on which case after the attorneys have left.

This list is not meant to be the definitive statement on courtroom etiquette for the entire Los Angeles County. Each courthouse—and, yes, even each courtroom within each courthouse—operates a little differently. Feel free to reach out to the staff so that everyone connected with the court will be better prepared the next time you appear. We gladly serve the public and enjoy a congenial working relationship with the attorneys who appear in our courtrooms on a daily basis.
Expedited Jury Trials Offer Innovative Procedures to Reduce Costs

NOT ALL CASES ARE SUITABLE for a traditional California jury trial. For example, the ratio of cost to the potential award may doom an otherwise worthy case. In other cases, liability may be undisputed, but both sides disagree on the damages. Or, the damages may be undisputed while liability is not. For these examples and others, an expedited jury trial may be the answer.

In 2011, expedited jury trials became legal in California. EJTs provide for an alternative, progressive, and streamlined method for handling civil actions. EJTs are designed to promote the speedy and economical resolution of cases and the conservation of judicial resources. The California EJTs were modeled on similar programs in South Carolina and New York.

An EJT is a voluntary, consensual, and binding jury trial before a reduced jury panel and a judicial officer. An EJT is a flexible litigation procedure that incorporates binding verdicts, relaxed rules of evidence, and limited posttrial motions and appeals. The trial itself is intended to last a single day. The administration of EJT programs, including the schedule of proceedings, is left to each superior court. Parties must stipulate to the use of an EJT. Consent is indicated when parties and their counsel sign and submit to the court a proposed consent order granting an EJT, which will include representations that the clients have been informed of the applicable rules and procedures and that the Judicial Council information sheet regarding EJTs. These stipulations can be entered into at any time up to 30 days before trial.

In addition to the representations concerning the stipulation of the parties, the proposed consent order must also include the agreement that 1) the parties generally waive their rights to appeal and to make posttrial motions, 2) each party has three hours to present its case, with cross-examination charged to its time, 3) the jury is composed of eight or fewer jurors, with no alternates, 4) each side is limited to three peremptory challenges, except as provided, and 5) unless the parties agree otherwise, pretrial and trial matters will proceed under the rules governing EJTs.

Except for these five mandatory elements, the parties may agree to modify by stipulation all other rules and procedures that apply to their trial. Their agreements will be reflected in the proposed consent order and can include modifications of the time lines for pretrial submissions, limits on the number of witnesses per party, modifications of rules and statutory provisions regarding exchange of expert witness information, presentation of testimony by witnesses, and any other evidentiary matter. Innovative methods of presentation are at the heart of the EJT rules. For example, in an EJT, “Upon agreement of the parties and with the approval of the judicial officer, the parties may present summaries and may use photographs, diagrams, slides, electronic presentations, overhead projections, individual notebooks of exhibits for submission to the jurors, or other innovative methods of presentation approved at the pretrial conference.”

The court may only deny the proposed consent order if it finds good cause why the case should not be handled as an EJT. The presumption is that the court will approve parties’ stipulations to an EJT unless the court makes a judicial finding of good cause that the stipulation should not be approved.

Trial Deadlines

Unless the parties stipulate otherwise, the EJT rules provide that no later than 25 days before trial, documentary evidence; witness lists; deposition lists; copies of any electronic media files or the like; copies of proposed jury questionnaires and jury instructions, pre-instructions, and instructions to be read by the judge to the jury; proposed special jury instructions; proposed verdict forms; and special glossaries and motions in limine be exchanged between the parties. The rules provide that within five days after this initial exchange, a party may serve a supplemental documentary evidence list of additional witnesses. Also, 20 days before trial, a party must file all motions in limine and must lodge with the court any items served.

No later than 15 days before trial, a pretrial conference will be held for ruling on objections to any of the documentary evidence. If no objections are presented, counsel will stipulate in writing to the admissibility of the evidence. Unless good cause is shown for any omission, the failure to serve documentary evidence as required under these rules will be grounds for preclusion of that evidence at trial.

The Trial

The EJT is scheduled to be completed in one day. Approximately one hour will be devoted to voir dire, with 15 minutes each allowed for the judicial officer and each side. Parties are encouraged to submit joint form questionnaires to help expedite voir dire.

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the judicial officer and each side. Parties are encouraged to submit joint form questionnaires to help expedite voir dire. In July 2011, the Judicial Council EJT working group approved a one-page, short-form jury questionnaire for use in EJTs and finalized a detailed proposed consent order that will become a Judicial Council form.17

In the EJT, each side will have three hours to present its case, including opening and closing arguments, unless the court finds good cause to allow additional time. The parties are encouraged to streamline the trial by limiting the number of live witnesses.18 The parties are also encouraged to use innovative presentation methods and to stipulate to factual and evidentiary matters as much as possible.19 Traditional rules of evidence apply in EJTs, but the parties may stipulate otherwise.

The rules allow for stipulation to relaxed rules of evidence, but these stipulations cannot affect the right of a witness or a party to invoke any applicable evidentiary privilege or any other law that protects confidentiality.20 The verdict in an EJT is binding, subject to any written high-low agreement or other stipulations between the parties. Six of the eight jurors must vote for a verdict, unless the parties stipulate otherwise. The jury’s deliberation time is not limited.21

**After Trial**

In EJTs, posttrial procedures differ significantly from traditional ones. Parties must waive their rights to appeal, except on the grounds of alleged misconduct of the judicial officer that materially affects the substantial rights of a party; misconduct of the jury; or corruption, fraud, or other undue means employed in the proceedings of the court, jury, or adverse party. These are also the only grounds upon which a party may seek a new jury, or motions for a new jury, or motions for a new trial.22 Parties stipulating to an EJT also waive any motions for directed verdicts, motions to set aside the verdict, any judgment rendered by the jury, or motions for a new trial on the basis of inadequate or excessive damages.23 Additionally, the EJT rules do not affect any statutes or rules governing costs and attorney’s fees unless the parties stipulate otherwise.24

In EJTs, parties are free to innovate in a dozen areas: 1) modifications of the time line for pretrial submissions, 2) limitations on the number of witnesses per party, including expert witnesses, 3) modification of statutory or rule provisions regarding exchange of expert witness information and presentation of testimony, 4) allocation of the time periods, including how argument and cross-examination may be used by each party in the three-hour trial, 5) evidentiary matters agreed to by the parties, including any stipulations or admissions regarding factual matters, 6) any agreements about what constitutes necessary or relevant evidence for a particular factual determination, 7) agreements about admissibility of particular exhibits or demonstrative evidence that are presented without the legally required authentication or foundation, 8) agreements about admissibility of video or written depositions or declarations, 9) agreements about any other evidentiary issues or the application of any rules of evidence, 10) agreements to use photographs, diagrams, slides, electronic presentations, overhead projections, notebooks of exhibits, or other methods for presenting information to the jury, 11) agreements concerning the time frame for filing and serving motions in limine, and 12) agreements concerning numbers of jurors required for jury verdicts in cases with fewer than eight jurors.25

Further, parties in an EJT are permitted but not required to enter into a high-low agreement governing damages. A high-low agreement is to be kept confidential and may not be disclosed to the jury. A high-low agreement may be disclosed to the court only by stipulation of the parties, in cases involving a minor, an incompetent person, or a person for whom a conservator has been appointed, or if necessary, for enforcement of the judgment.

The goal of EJTs is to hold a jury trial in one court day. Innovation by way of stipulation is one important means to that end. EJTs offer cost savings (including no court reporter, unless a party wants to pay for one), a smaller jury, and limited witnesses. For many suits for which the time and expense of a traditional jury trial may not be suitable, EJTs offer a worthy alternative.

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2. See Memorandum from the Small Civil Cases Working Group to the Members of the Civil and Small Claims Advisory Comm. 1 (Feb. 19, 2010).
5. Cal. R. Ct. 3.1546.
7. Cal. R. Ct. 3.1547.
8. Id.
10. Cal. R. Ct. 3.1547(b)(1-12).
11. Cal. R. Ct. 3.1551(a).
13. Cal. R. Ct. 3.1548.
14. Cal. R. Ct. 3.1548(b).
15. Cal. R. Ct. 3.1548(e).
16. Cal. R. Ct. 3.1547.
17. See Cal. R. Ct. 3.1547, 3.1548; Code Civ. Proc. §630.03.
18. Cal. R. Ct. 3.1550.
19. Cal. R. Ct. 3.1551(a).
25. Cal. R. Ct. 3.1547(b).

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— Hon. Russell Bostrom (Ret.)
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PLEASE DON’T FORGET: To join the Barristers for 2012, add the $35 Section dues when you sign up for or renew your general LACBA membership this fall.
The Appointment of Discovery Referees in Complex Litigation

**CALIFORNIA’S BUDGET CRISIS** poses severe challenges to trial courts. One response may be the appropriate use of discovery references in highly complex cases, which can help relieve trial courts of growing burdens and provide litigants with a timely and effective alternative.

In 2009 and 2010, the Judicial Council, with great reluctance, was forced to close courts one day a month. Strong judicial branch leadership has reserved court funding for 2011, but the prospects for maintaining current judicial services to the public in 2012 are grim.

Compounding the impact of budget cuts is the shortage of judicial officers in California. According to the Administrative Office of the Courts, California needs 2,352 judicial officers to manage the caseload demands of our growing population, yet currently only 2,022 judges have been authorized and funded by the legislature.

The Los Angeles Superior Court anticipates sharply reducing civil courtrooms if it must shift limited resources to criminal cases to meet constitutional obligations. Fewer civil judges will be assigned to civil cases and will encounter much higher caseloads. As a consequence, civil practitioners likely will face delays in trials and hearings.

Of great concern will be the inevitable impact on the resolution of discovery disputes, particularly in complex cases involving intellectual property issues or high-level financial disputes. One recourse available to overburdened courts and to parties who wish to avoid delays in the resolution of discovery disputes is the authority of a trial judge to appoint a discovery referee.

References may be general or special. In a general reference, the referee may hear and make binding determinations on any or all issues in an action. The court may make a general reference only with the explicit consent of the parties by stipulation in court or based on specific authorization in a written contract. Absent consent, a general reference would be an “unconstitutional abdication of judicial authority.”

More common is a special reference, which allows the referee to make only nonbinding recommendations to the court. In contrast to a general reference, a special reference does not require the consent of the parties. Instead, either party may make a written motion for a special reference, or the court may do so sua sponte. Among the circumstances in which a court may make a special reference is “when it is necessary for the information of the court in a special proceeding.” Nevertheless, even this basis for a special reference without the parties’ express consent is impermissible when a referee who does not have the consent of the parties conclusively decides all or part of a matter.

In *Aetna Life Insurance Company v. Superior Court*, the trial court assigned all law and motion summary judgment proceedings to a referee and deemed the referee’s findings and conclusions of law to be binding and determinative. Indeed, the court denied a party’s request to treat the findings as advisory. However, Code of Civil Procedure Section 644 expressly authorizes the trial court to make a nonconsensual reference of law and motion issues only if the special referee’s findings are submitted to the court as advisory recommendations.

Moreover, according to Code of Civil Procedure Section 639(a)(5), the court’s express authority to appoint a discovery referee is available only when the court determines that the appointment is “necessary.” Further, the appointment is limited to the “exceptional circumstances” of the particular case. Courts are discouraged from making “blanket orders directing all discovery motions to a discovery referee” except in the unusual case in which a majority of specified factors exist, including:

1) The necessity of resolving multiple issues.
2) The need to hear multiple motions simultaneously.
3) The current motion will be followed by a series of many motions.
4) The quantity of documents that must be reviewed make the inquiry “inordinately time-consuming.”

Other factors “always militate against reference,” including when the legal issues underlying the discovery requests are complex, unsettled, or of first impression. The same is true when other parties to the litigation who are not involved in the discovery proceedings nevertheless would be affected by the rulings.

A party who objects to a reference must make a written objection to the court with reasonable diligence. If the court overrules or denies the objection, the party may petition for writ of mandate to challenge the nonconsensual special reference. For example, in *Taggares v. Superior Court*, the trial court, without consulting the parties, referred an initial discovery motion and all future discovery disputes in an uncomplicated breach of contract and fraud case to a referee. One party filed a writ of mandate challenging the trial court’s authority to make the referral. The court of appeal issued a writ directing the trial court to vacate its reference order and comply with Code of Civil Procedure Section 639, which prohibits nonconsensual references absent a finding that certain enumerated exceptional circumstances exist.

**Procedures and Grounds for Objections**

The delegation of judicial decision-making to a referee is tempered by various limitations and protections for the parties. Among these are the court’s inability to select the referee without the parties’ participation. The parties may agree to the referee, but if they do not, each party must submit up to three nominees to the court. The court must appoint the referee from among the nominees so long as no party makes an objection pursuant to Code of Civil Procedure Sections 641 or 641.2. Those sections list each of the various grounds on which a party may object to a proposed referee, including whether the referee:

- Lacks the qualifications to be competent as a juror in the case other than residence in the county.
- Has an affinity within the third degree to a party (for example, the relationship of an uncle or an aunt with a niece or a nephew, or closer), an officer of a corporate party, or any judge of the court in which the appointment is to be made.
- Stands in a legal relationship, such as conservator and conservatee.

Terry Friedman, a retired Los Angeles Superior Court judge, is a mediator, arbitrator, and referee with JAMS, based in Santa Monica. He currently serves on the California Judicial Council.
tee or principal and agent; is a member of any party’s family; is a business partner with any party; or has posted security on a bond for any party.

- Served as a juror or witness in any trial between the parties.
- Has an interest in the action.
- Has formed an unqualified opinion on the merits of the action.
- Has a state of mind evincing bias toward or against any party.

Generally, a party raises these grounds after the court makes the reference, because parties typically lack the capacity to investigate the grounds at the time the reference is made. Nevertheless, if any party either expressly consents to a reference or afterward appears before the referee without raising any objection to his or her appointment, authority, or jurisdiction, the party’s objections to the reference or any irregularities involving the appointment will be deemed waived. Thus, a party who wishes to object to a proposed referee on the grounds enumerated in the Code of Civil Procedure must file a written objection to the court with reasonable diligence. If no party submits a nominee, the court may make the reference, because parties typically lack the capacity to investigate the grounds at the time the reference is entered, the court orders are subject to the same appellate review as any court order.

While the referring trial court may order the parties to pay the referee’s fees, it must do so in a fair and reasonable manner. A party who objects to paying the referee’s fees or to the amount ordered may seek relief by petitioning for a writ of mandate. For example, in Solorzano v. Superior Court, indigent plaintiffs proceeding in forma pauperis objected to the trial court splitting the discovery referee’s $300 hourly fee. The court of appeal found that the trial court had failed to consider the impact on the indigent plaintiffs of its order that the parties equally share the fees. Moreover, courts have found that a party need not be declared indigent before the trial court is obligated to consider whether its order for all parties to equally share the costs of a referee is reasonable.

Trials courts must bear in mind, however, that it may not be fair and reasonable to order one party to finance the entire reference. Whatever remedies a trial court may fashion, such as imposing discovery sanctions or permitting the referee to assert an equitable lien on a plaintiff’s recovery, are dependent on the particular circumstances of a case. Also, they are subject to appellate review, most likely by writ.

More Time and Less Formal

As discovery references are likely to become more common in our budget-strapped courts, litigators should understand the differences between the discovery referee process and court proceedings. For one, while the impact of discovery decisions on the trial may be a factor, even subconsciously, in the judge’s mind, it is less of a consideration, if it is one at all, for the referee. For example, arguments based on whether the discovery at issue may cause a trial continuance or could lead to an expansion of issues to be tried will be less cogent because the referee is likely unfamiliar with these matters.

An important distinction is the amount of time the referee will devote to the issues and the hearing in particular. Trial judges’ daunting calendars are often filled with multiple motions that must be heard before the day’s trial can begin. By contrast, discovery referees generally do not face strict time constraints. However, counsel should still be aware that succinct arguments tend to be more successful.

Similarly, in large cases, such as intellectual property disputes involving hundreds of thousands or even millions of pages of electronic documents, the parties may file dozens of discovery motions. Scheduling many motions for timely hearings may not be possible in a busy trial court. The discovery referee may have more flexibility to meet the scheduling needs of the parties.

Referee hearings also are less formal than hearings conducted in court. Hearings before a discovery referee are held in private offices or even telephonically. More often than not, counsel and the referee engage in casual conversation off the record before and after the hearing. These discussions give counsel an opportunity to get to know the referee. However, attorneys should be cautious not to misread this informality as an invitation to engage in improper ex parte communications.

Sometimes the discovery referee conducts hearings that resemble supervised meet-and-confer sessions. Guided by the referee’s thorough tentative ruling distributed to counsel days before, counsel may approach the hearing with creative ideas for resolving the discovery dispute entirely or discrete issues within it. For example, counsel for the party facing an adverse tentative ruling may suggest a middle ground between the tentative ruling and the party’s position that takes into account the other party’s needs. This type of mediated hearing takes the kind of time that may not be available in a formal and busy courtroom—and indeed a trial judge may decline to assume such a role.

3 CODE CIV. PROC. §§638 et seq.
4 CODE CIV. PROC. §644(a), 638.
5 CODE CIV. PROC. §638.
7 CODE CIV. PROC. §§638, 644(b).
8 CODE CIV. PROC. §639(a).
9 CODE CIV. PROC. §639(a)(4).
10 Aetna, 182 Cal. App. 3d at 435.
11 Id. at 434–36.
12 CODE CIV. PROC. §639(d)(2).
14 Id. at 106.
15 CODE CIV. PROC. §642; CAL. R. CT. 3.905.
16 Taggares, 62 Cal. App. 4th at 100.
17 Id. at 107.
18 CODE CIV. PROC. §640(a).
19 CODE CIV. PROC. §640(b).
22 CODE CIV. PROC. §640(b).
23 CODE CIV. PROC. §641, 170.1.
24 CAL. R. CT. 3.904(b)(1); CAL. CODE OF JUDICIAL ETHICS Canon 6D(5)(a).
25 CODE CIV. PROC. §640(b).
26 Id. at 615.
Finding Your Way to the Bench

**THERE IS NO ONE SINGLE PATH** to becoming a judge. Some lawyers actively seek an appointment or stand for election to secure a judgeship. Others slowly come to the realization that after many years of practice, they want to offer their acquired knowledge and skills to their community. Others just, well, finally answer the phone. That’s me. Let me explain.

I had just finished prosecuting a murder trial and was sitting in my office in the Los Angeles District Attorney’s Office with two LAPD detectives going over the file to organize it for appellate review when my phone rang. “Hello, this is the governor’s office calling,” said the voice on the end of the line. I immediately said, “Yeah right”—and hung up the phone. It was late afternoon on a Friday, and the office was winding down, with all the trial lawyers returning from various courts. This was that time in the week when colleagues often would play a prank on one another for comic relief. I looked suspiciously at the detectives, who appeared totally engrossed in reorganizing our evidence notebooks. I was sure they were in cahoots with some of my fellow deputy district attorneys down the hall who were world-class comedians.

Then the phone rang again, and the same voice said, “Please hold on, this is the governor’s office calling.” I said, “Okay, this is a ridiculous joke, and I am going to catch you sooner or later and pay you back.” I then hung up the phone. Again.

Just about the same time another colleague poked his head into the doorway of my windowless office and said, “Hey Duffy-Lewis, Mr. Webb is coming down the hall. He looks like he is on his way to your office and he is none too pleased.” Billy Webb was a Marine and Korean War hero, a veteran trial lawyer, and a top administrator in the district attorney’s office. He meant business. Suddenly there he was, the boss, with his loyal secretary Percy, both looking concerned. “Why, Duffy-Lewis, are you hanging up on the governor’s office?” Meekly, I responded, “No sir, Mr. Webb, I was just hanging up on the office jokesters.” Webb grinned broadly and with his booming voice said, “No! Duffy-Lewis, it is the governor calling—and you will not hang up on him again.” Within a flash, many smiling colleagues were leaning into my office as the phone rang. Again.

The governor’s judicial appointments secretary was on the line. He inquired if I had applied for a judgeship. I explained that I had not and he responded, “Well, we will send you an application, and you have about two weeks to think about it. Let us know sooner rather than later.” The application arrived and I cautiously put it aside, looking for some quiet time for contemplation about the whole judgeship process.

Eventually, a well-known judge showed up at my front door at home and informed my husband—my undergraduate and law school classmate—that the governor’s office had made an important inquiry about my interest in a judgeship. Surprised, my husband looked at me and said, “Well, let’s get cracking on that application.” I responded that I thought I was too young for the job and should wait until I had a little bit more dye in my hair. The respected judge, who knew the process well, said, “Sometimes, Maureen, these opportunities only come around once.” And so I got cracking.

Lawyers who are contemplating a judgeship should keep a few constants in mind. No matter what your path is to the bench, the qualities and requirements of judicial service are relatively traditional and straightforward. Judges must read the law. Judges must be fair, active listeners who engage lawyers without condescension. Judges must show respect to lawyers, litigants, witnesses, jurors, and the public who may be observing from the gallery—even though any of the above could test any judge’s resolve.

Governors and judicial appointment secretaries are looking for candidates who have practiced for at least 10 years and who have civil or criminal experience. Lawyers with both a civil and criminal law background are formidable candidates. Often lawyers with a criminal law practice have significant trial experience, which is highly prized—but that does not mean that a fine civil trial lawyer, with numerous civil jury trials on his or her resume, would not be an equally valued choice for the governor.

Lawyers whose fields are probate, wills, and trusts or family law often do not have jury trial experience, but their expertise nevertheless is highly sought after by the bench. Lawyers should remember that the courts serve justice across many different substantive legal areas every day.

Trial judges should be excellent trial lawyers and clear communicators. But aside from their legal abilities, judges must have the appropriate judicial temperament. Judges should not be overly anxious or self-conscious. Early in my career, I remember a newly appointed judge who lasted less than six months on the bench because, it is said, he became ill as a result of having to make non-stop decisions. He was consumed with stage fright each time he took the bench. Lawyers should assess whether their skills, and their personalities, are in sync with what being on the bench requires.

Judges must at all times exhibit a fidelity to the law and the

**It would be helpful if you had several people—people who do not love you—proofread the application before submitting it.**

Maureen Duffy-Lewis is a Los Angeles Superior Court judge. She currently sits in Department 38, Stanley Mosk Central Civil Courthouse, where she hears unlimited jurisdiction matters. Judge Duffy-Lewis received a Fulbright Award for 2009-2010. She thanks attorney Alice Salvo—the current chair of the State Bar of California Judicial Nominees Evaluation Commission (JNE Commission)—for her assistance with this article.
Constitution. They should have at the very least a restrained sense of humor and sensitivity to others. Judges should refrain from making facial expressions during trial, lest the litigants and the jurors interpret this as taking sides. The courtroom is a level playing field for justice.

If seeking a superior court judgeship is the right move for you, your path will be considerably smoother if you have some idea of the steps that lie ahead after your expression of interest. However your path begins—including, perhaps, by answering a very important phone call—any judicial aspirant can take a series of actions to prepare for the judicial application and selection process.

**The Application**

The Application for Appointment as Judge of the Superior Court (sometimes called the Personal Data Questionnaire or PDQ) is available online. Review it more than once and make sure you discern all the information you will need to complete it effectively. Save the application to your computer desktop and copy it to a word processing format so you can create first, second, and even third drafts of the application before filling it out and submitting it online. Failing to present a well-written application is a disaster. Doing a poor or sloppy job will make the selection process easier by reducing the competition by one—yourself! Make sure that all your responses are complete and accurate. It would be helpful if you had several people—people who do not love you—proofread the application before submitting it.

Review all your prior trial and court litigation before even starting to write any of your drafts of the application. You should organize all your cases by number, description, and attorney names, addresses, and phone numbers. Select a cross-section of cases and limit the submission to the number requested on the application. Just because you vigorously litigated against another lawyer is not a reason to assume that the lawyer will respond negatively to any inquiry. You should, of course, contact the lawyers and inform them that they may be solicited by the State Bar of California Judicial Nominees Evaluation Commission (JNE Commission) regarding your application.

Pursuant to Government Code Section 12011.5, the governor submits the names of all potential appointees to the JNE Commission. Once the commission receives the names of the candidates as well as their completed applications, it employs procedures under Title 7 of the Rules of the State Bar to determine each candidate’s qualifications. Those procedures, which are carried out under strict requirements of confidentiality, are the same for those who seek the bench by election.

**The Selection Process**

The chair of the JNE Commission begins the selection process by appointing a team of two commissioners—one of whom is a State Bar member—to investigate a judicial candidate for superior court. One of the selected commissioners is designated the lead commissioner, who contacts the other team member to establish procedures for the investigation. The commissioners contact a number of lawyers for each applicant regarding diverse aspects of the applicant’s competency, including intellectual capacity, trial ability, honesty and forthrightness, diligence, judicial demeanor, and bias.

The lead commissioner will notify the candidate that the investigation is pending and asks the candidate to provide names and addresses of 50 to 75 people to whom a Confidential Comment Form may be sent. These people must be reasonably likely to have knowledge of the candidate’s qualifications. The two-person investigative team on their own prepares another list of people to whom Confidential Comment Forms may be sent. This list most likely will comprise lawyers from the same geographical area and members of the same local bar associations. The team is hoping for a return of at least 50 Confidential Comment Forms containing sufficient and credible information that is sufficient for a fair evaluation.

In addition, the investigative commissioners also send confidential inquiries to judicial officers at every level in the county in which the applicant is applying, including the state supreme court. Confidential questionnaires also will be sent to prosecutors and defense lawyers for those applicants who have extensive criminal law experience.

The investigative process can make any applicant nervous. I have heard it said more than once that some confidential responses are nothing more than carefully crafted “hit pieces” on the applicant. I do know that the investigators know that this possibility exists, and therefore they make a significant effort to garner a wide range of information and opinions on the applicant. On the flip side of “hit pieces” are “glowing responses.” The investigators expect that applicants will pad their applications with names of lawyers who will only provide that type of opinion. Investigators diligently attempt to get well-rounded and accurate views of the candidate from many members of the legal community. Any commissioner who receives a Confidential Comment Form containing negative or adverse comments must make a reasonable effort to contact the person who completed the form.

I suggest to applicants that you complete your list of persons receiving the Confidential Comment Form before you submit your application. This list will take you considerable time to compile. Make sure the list is representative and accurate for contact information. This is also the moment when you wish you had refrained from your ridiculous threaten-
ing behavior at a deposition earlier in your career. Sometimes it is better just to apologize and chalk it up to your crazy youth. This list also should include the names of the five references from the application. If you have trouble coming up with the names of five people for references, maybe you should reconsider moving forward on your application.

The next step is the candidate interview. At least four business days before the interview, the lead commissioner must disclose to the candidate—as specifically as possible but without breaching the confidentiality required by Government Code Section 12011.5 and Title 7 of the State Bar Rules—any substantial, credible, and corroborated adverse allegations. These allegations may relate to temperament, industry, integrity, ability, experience, health, physical or mental condition, or moral turpitude.8

If you are confronted with what you believe is unfair, inaccurate, or untrue allegations, you should be prepared to offer more names of individuals who can speak directly to the allegations or the event that may have spurred the negative comments. If you are confronted with questions about your prior, less than stellar temperament or lack of experience, you should address how you have grown over the years. When appropriate, be prepared to offer evidence and/or the names of those who can shed light on your current experience and professional demeanor.

The purpose of the candidate interview with the two investigating commissioners is to discuss as specifically as possible, without breaching confidentiality, all factors positive and negative that have been reported in the confidential questionnaires relevant to the applicant’s qualifications. During the interview, you may respond to the adverse allegations provided to you before the interview and present additional information regarding qualifications that support your candidacy.9

The rules mandate that the interview be recorded.10 At the conclusion of the interview, you are again given the opportunity to provide additional information in response to any adverse allegations raised at the interview.11

The Rating

Once the entire investigation is concluded, the team provides the commission with a written report on the candidate.12 For superior court appointments, the commission must assign one of four ratings. To receive a rating of “exceptionally well qualified,” the candidate must possess qualities and attributes of remarkable or extraordinary superiority that enable them to perform the judicial function with distinction. A rating of “well qualified” means that the candidate possesses qualities and attributes indicative of a superior fitness to perform the judicial function with a high
degree of skill and effectiveness. To receive a rating of “qualified,” the candidate must possess qualities and attributes sufficient to perform the judicial function adequately and satisfactorily. Candidates who receive a rating of “not qualified” are found to possess less than the minimum qualities and attributes required.\textsuperscript{13}

The lead commissioner presents the report in person at a meeting of the full JNE Commission.\textsuperscript{14} The commission is composed of 37 members as of this writing, representing a broad cross-section of the community. Among the members are lawyers, former judges, and nonlawyer members of the public. Members of the commission are appointed by the State Bar Board of Governors after filling out an application to join.

The JNE Commission concludes its work when it sends its report to the governor’s office. If you received a rating of “Not Qualified,” a gubernatorial appointment is not impossible but very unlikely. For viable candidates, the commission’s rating often is just the beginning of a quiet political campaign to gain the attention of the governor and the judicial appointments secretary with the goal of securing a judicial appointment.

It may be that politically influential individuals and bar associations have a strong interest in having certain candidates appointed to the bench. Perhaps the local bench is in need of specific talent. Interested parties may encourage the application of lawyers who fulfill perceived judicial needs. I remember a time when our local judges were excited about the prospect of having a well-known family law specialist appointed to the bench—and no doubt a few well-placed comments were made to support that candidate.

Usually the judicial appointments secretary is a well-known and respected member of the Bar. The governor relies on the secretary to sift through the finalized and rated applications and ultimately make recommendations. Judicial appointments secretaries frequently make their own direct inquiry of lawyers in the community about prospects for the bench and applicants currently seeking appointment. But never forget that if you are proceeding to the bench by way of appointment, the final decision is always the governor’s. If you are seeking the bench by way of election, the endorsements of various constituencies—including bar associations, community leaders and groups, and business and law enforcement organizations—along with a formal and positive rating by the JNE Commission will be a clear statement to the electorate regarding which candidates to support with their vote.

California is respected worldwide for our judiciary and our courts. Los Angeles County is the single largest bench in the world. Some days I think we have seen it all and done it all—but then the unexpected happens. The need for fine lawyers to fill the ranks of the judiciary will be constant. The public—and justice—will continue to be served because many members of the Bar, who are willing to serve, will fill out that judicial application or just answer the phone. I will never forget the words of Billy Webb: “Duffy-Lewis, be careful what you ask for in this life. You might get it.”

For those of you who have made the decision to seek a judgeship, I wish you well. Now just give that application a last read and hit the submit button. Be careful what you ask for, counsel. You might get it!

\begin{footnotes}
\item[1] See https://govnews.ca.gov/judicial/start.php.
\item[4] STATE BAR R. 7.41.
\item[5] STATE BAR R. 7.45.
\item[6] STATE BAR R. 7.46.
\item[7] STATE BAR R. 7.47.
\item[8] STATE BAR R. 7.50.
\item[9] STATE BAR R. 7.51.
\item[10] STATE BAR R. 7.52.
\item[12] STATE BAR R. 7.60.
\item[13] STATE BAR R. 7.25.
\item[14] STATE BAR R. 7.60.
\end{footnotes}
I never bothered to learn about judicial ethics—until I became a judge. I was too busy trying to obey the rules that governed attorneys. And so I never thought there was something wrong when a judge sent her bailiff to drive me to a private club for lunch and return me to my office. Or when, during a trial in the Bay Area, the judge and opposing counsel emerged together from chambers every morning.

Of course, most attorneys know that the canons of the California Code of Judicial Ethics forbid us from talking with them privately about their cases, cursing in open court, hearing matters involving our children, and so on. Yet many ethical provisions remain unknown or misunderstood among lawyers. Hence, my purpose here is to illuminate some of the lesser known provisions of the rules judges live by. It is not intended to be a comprehensive discussion of the subject.

Los Angeles lawyers first need to realize that one code of ethics applies to all state judges in California. Yes, the canons that govern the behavior of judges in Los Angeles County also apply to judges in Butte County, Del Norte County, and all those other places where there are fewer residents than partners in some of the major law firms. Many in the Los Angeles legal community believe that a judge ought to recuse whenever he or she knows a party or an attorney on the case. Were that the standard, the two judges in Alpine County probably would never be able to hear cases. A judge’s decision to recuse must be based on very specific conditions.

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that are spelled out in the Code of Civil Procedure. Knowing counsel or a party—even being their friend—does not automatically mandate disqualification.

**Disqualification and Disclosure**

The Code of Civil Procedure provides the bases upon which judges must disqualify themselves from a case. Although generally a judge will explain his or her reason for recusing themselves from a case. This is a good rule, because sometimes judges recuse for deeply personal reasons. (For example, a party plans to call a psychologist who is treating the judge's spouse for bipolar disorder.)

Certain grounds for disqualification cannot be waived. Others can be, but a judge cannot try to induce a waiver. That is why counsel should not expect a judge to say something like, “Of course if you are willing to waive the disqualification, I’ll go ahead and hear you today.” It is the lawyer who should raise the topic.

A number of situations call for disclosures but do not constitute statutory grounds for disqualification. The point of a disclosure is not to give counsel a reason to disqualify a judge. Instead, its purpose is:

[To reaffirm] the integrity and impartiality of the judicial institution. It provides the parties with the reassurance the judge has examined whether or not certain factors in regard to the case require recusal, that the judge has determined that recusal is not required, and that, in spite of that determination, the judge believes the parties and their counsel should be made aware of the factors.

When a judge makes a disclosure, he or she is not giving an attorney the “option” of asking the judge to recuse, because the judge has already determined that despite the facts being revealed to the parties, the judge still can be fair to all sides. It is a mistake for a judge to say, for example, “Plaintiff’s counsel and I worked together last year on such and such a committee, so if you want me to recuse, just say so and I’ll do it.” That moves the decision to counsel, and under the law the choice is not theirs.

If we think we can be fair, we have a duty to decide the case. A judge’s properly worded disclosure will acquaint the lawyers with the facts and inform them that the judge sees no basis for disqualification. If an attorney disagrees, it is up to the attorney to file an affidavit under Code of Civil Procedure Sections 170.3(c) or 170.6. Disclosure also places the parties in a better position to alert the judge regarding information about which the judge was unaware in making the decision not to recuse.

**No Practicing Law**

Several days after Governor Pete Wilson’s office called about my appointment, the State Bar sent me a letter that read like a warm and fuzzy disbarment notice. To put it simply, “A judge shall not practice law.” The prohibition means what it says.

For that reason, judges are not being snobbish or impolite when they refuse to give legal advice. In his seminal work on judicial ethics, the California Judicial Conduct Handbook, retired Judge David Rothman advises judges to “develop a standard polite response that resists the natural tendency to help people with problems.” This extends to close friends asking for advice about cases that are not pending before the judge. Judge Rothman warns us to “decline” such requests:

A judge must avoid being seen as assisting a party in litigation before the court. There is also no distinction between substantive and procedural questions. It must be assumed the information is being sought to advance the interests of the lawyer’s client, however innocuous the question may seem.

Many judges have the experience of seeing attorneys who regularly appear before them. Prosecuting agencies as well as the public and alternate public defenders routinely assign deputies to cover a particular courtroom, and these lawyers often develop close relationships with the judge. Attorneys representing landlords may routinely appear before judges who handle unlawful detainers. Even if judges and the counsel who frequently appear before them become friends, Judge Rothman cautions those judges to resist the natural urge to help.

**Ex Parte Communications**

Lawyers generally know that judges cannot talk about the lawyers’ matters unless all parties are present. Less obvious are situations that arise in a multiparty case.

Assume the plaintiff sues 10 defendants.

In support of judicial candidates, bench officers can give all the money they want, raise all the funds they can, speak, endorse, walk precincts, and do anything else they wish. But the Code of Judicial Ethics reins in activities with respect to candidates for nonjudicial office.

One demurs. If during the hearing the lawyers who are in court segue into a discussion of some other aspect of the case (for example, “While we’re here, Your Honor, can we ask you about a discovery dispute?”), that becomes an improper ex parte communication unless all counsel are present. The notice that the defendant served said that the court would hear a demurrer. It did not say the court would hold a status conference, resolve a discovery dispute, or do anything else with the case.

If an attorney and the judge start to talk about a discovery dispute, counsel for the remaining parties will have no idea that is occurring. Even if the judge does not make any rulings, the remaining parties would have every right to be upset when they learn what happened. In order to avoid this problem, some judges schedule a status conference whenever a motion will come up for hearing in a multiparty case. That way the judge is free to talk about everything. If that is not the judge’s practice and one of the parties wishes to raise other issues at a hearing, that party should file a request to hold a status conference at the same time the motion is set to be heard.

Equally problematic are discussions about a case with attorneys who are not connected with it. These discussions fall within Canon 3B of the Code of Judicial Ethics.

The rule against ex parte communications also blocks judges from performing their own factual research. Under Canon 3B(7), a judge is not allowed to “consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.”

Even a judge’s brief Google search of the parties is unethical. Sometimes during hearings, lawyers may urge their judge to “go
A judge should disclose facts reasonably relevant to the issue of disqualification even if they do not constitute statutory grounds for disqualification.

A judge may endorse candidates for city attorney and district attorney.

A status conference has been scheduled to take place at the same time.

A judge may conduct a factual investigation outside of counsel’s presence if counsel tells the judge to “see for yourself!” whether stop signs are present at an intersection in which a traffic accident has occurred.

The Code of Judicial Ethics governs the conduct of judges on the U.S. District Court.

Judges may give legal advice to their close friends for a fee.

A judge may solicit advice from other judges about a case pending in the judge’s court if none of the judges has been disqualified from the matter.

A judge may solicit advice from other judges about a case pending in the judge’s court if none of the judges has been disqualified from the matter.

A judge may endorse candidates for city attorney and district attorney.

If counsel in a multiparty case knows that a demurrer involving another party is scheduled for a hearing, counsel should not ask the judge at that hearing about other aspects of the case unless:

A status conference has been scheduled to take place at the same time.

Counsel for all parties are present.

C. A and B.

D. None of the above.

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C. A and B.

D. None of the above.
onto the Web site and see for yourself.” They might as well have asked the judge to drive alone to the scene of an accident. Judges cannot do that.13 The appropriate move is to file a declaration that authenticates pages from the Web site just as lawyers would with any other document.

There is one exception to this proscription. In small claims cases, judges are free to conduct their own investigations and even consult witnesses informally with or without notice to the parties.14

Lawyers probably know that the court may allow, or even initiate, ex parte communications in certain narrow instances.15 One of them involves discussions among judges about a case. As long as they are not disqualified from hearing the matter, judges can talk with each other about it. Indeed, judges are encouraged to do so—and we like these conversations. So when attorneys are well-prepared, judges do not hesitate to tell their colleagues in the lunchroom that they are handling a case with wonderful lawyers. Yes, judges name them, and the attorneys’ reputations rise accordingly.

**Fund-raising and Political Activities**

Judges cannot solicit money for a lawyer’s favorite charity—or even for their own. (There is one exception: Judges can solicit their colleagues. Commissioners, however, do not fall under this exception, because they are the judges’ employees.16) Judges can help a charity plan its fund-raising and can process contributions in the background. They can be speakers or guests of honor. Judges can receive an award for public or charitable service. But they cannot personally solicit funds.17

Although almost any judge whom the governor appoints has some political connection somewhere, the judiciary’s relationship with the political process is rather tender.18 In support of judicial candidates, bench officers can give all the money they want, raise all the funds they can, speak, endorse, walk precincts, and do anything else they wish.19 But the Code of Judicial Ethics reins in activities with respect to candidates for nonjudicial office.20

Even if a person is running for an office associated with law and the administration of justice (such as attorney general or district attorney), judges can do precious little. They can neither campaign nor endorse. Most important, judges cannot give more than a total of $1,000 a year to nonjudicial candidates and no more than $500 a year to any one nonjudicial candidate. That means, for example, a judge can write a $500 check to Sally Roe for Governor and five checks for $100 to five other candidates.21 We can attend, but cannot speak at,22 a political event—and we should not allow ourselves to be introduced.23 In private, of course, judges can reveal their preferences,24 but query when a private conversation (for example, at a dinner party for six close friends) becomes public (perhaps a dinner party for 30 people, at which the judge knows only the host?).

Even giving advice to a nonjudicial candidate can be risky. If a judge’s college roommate is running for Congress and wants to talk about the campaign over dinner at the roommate’s house, can the judge privately discuss campaign strategy? Judge Rothman would say no, because “there are no secrets in politics. Publicity to the effect that a judge undertook the role of confidential advisor to a political cause or nonjudicial candidate could undermine the public perception of the impartiality of the judge and judicial institution.”25

**Recommendations and References**

Sometimes people ask judges to recommend attorneys. A judge can do so, although there are judges who are concerned that making referrals may create an appearance that the judge is vouching for the lawyer’s competence or using the prestige of the office to advance the pecuniary interests of others.26 To avoid, or at least lessen, the appearance of favoritism, most judges will suggest one or more lawyers, even though they do not have to use this approach.27

Judges usually can write letters of recommendation as long as they personally know the individual.28 Judge Rothman advises judges to “include facts and information in any recommendation or letter of reference that demonstrates ‘personal knowledge of the person.’”29 As long as a judge knows the person well enough to vouch for him or her, it is fine to write the governor on behalf of a judicial candidate,30 a potential employer on behalf of an applicant, and a college admissions committee on behalf of a high school student. However, a judge cannot be a character witness unless the judge is subpoenaed.31

Regardless of how well a judge may know someone, the judge cannot supply recommendations for publicity purposes. For example, a judge should not write a letter of recommendation for a lawyer if the judge knows that the lawyer wants to include the letter in a brochure.32 A judge cannot write blurbs for

**While bench officers can take “ordinary social hospitality” from attorneys, judges must be careful about attending events such as holiday parties at law firms whose members they know only casually.**
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to social situations. If a judge attends a small dinner gathering with, for example, a lawyer who is involved in a trial or a reporter who is interested in a trial, the judge should not make any remarks about the matter. During the O. J. Simpson criminal trial, judges were repeatedly warned not to discuss the case at private gatherings. Had a judge done so, someone could have repeated the comments and—given the supercharged coverage the Simpson trial received—the impact of those comments could have been significant.

In the realm of public comment, the latest subject of controversy among bench officers is online social networking. After considerable thought, the California Judges Association (CJA) Judicial Ethics Committee issued an opinion about this phenomenon. The opinion states that judges may participate on social networking sites like Facebook and may even “friend” a lawyer who may appear before the judge. Nevertheless, the opinion warns judges that joining social networking sites like Facebook presents a spate of ethical pitfalls, such as commenting publicly on pending cases, engaging in impermissible political activity, demeaning the judicial office, and casting doubt on the ability of a judge to act impartially.

Judges who use Facebook must be careful to monitor their pages. Consider another dinner party scenario, at which a judge remarks, “I’m handling a murder trial this week.” If another person makes a sarcastic comment, such as, “Hang ‘em high,” the judge can ignore it, and usually no harm will be done. If this exchange occurs online, however, problems may arise. In the Facebook scenario, the judge posts that “I’m handling a murder trial this week” on his or her Facebook page, and someone answers by posting “Hang ‘em high” on the judge’s Facebook wall. Hundreds of the judge’s Facebook friends can read the quip on the judge’s Facebook wall—and the comment calls into question the judge’s impartiality. Worse yet, if the comment triggers replies such as, “I know the defense attorney; she’s great,” or “My uncle was in Las Vegas with the alibi witness the night the robbery went down, and the defendant wasn’t with them,” the judge has received an ex parte communication that must be disclosed in court.

The opinion concludes:
[[It is not permissible to interact with attorneys who have matters pending before the judge. When a judge learns that an attorney who is a member of that judge’s online social networking community has a case pending before the judge, the online interaction with that attorney must cease i.e. the attorney should be “unfriended” and the fact this was done should be disclosed....

Thus, joining sites like Facebook requires judges to be careful. A large number of judges have decided simply to pass. Some participate but do so sparingly, and they severely limit their online contacts. So if readers of this article try to “friend” a judge and find themselves ignored, do not take it personally.

### No Gifts, Please

The default position of the canons of the Code of Judicial Ethics is that judges cannot accept gifts—not even a diet Pepsi. This rule is ironclad regarding parties to a lawsuit, while limited exceptions exist for gifts from nonparties. Attorneys also should not give gifts to the judge’s staff. While bench officers can take “ordinary social hospitality” from attorneys, judges must be careful about attending events such as holiday parties at law firms whose members they know only casually: “Events that have at their essence a business purpose are simply not ‘social hospitality’ as we all understand the meaning of these words.”

Even if the canons permit a judge to accept a gift from an attorney, the judge generally must disclose it on his or her annual statement of economic interests—a cumbersome process. If an attorney gives a judge a reportable gift, the attorney’s name and address will appear in the statement, along with the date the judge received the gift, a description of what it was, and, yes, its cost. If the judge does not know that amount, he or she may have to call the lawyer and ask. Many judges consider the process to be a thorough hassle and decline all gifts for that reason alone.

These topics constitute a few of the areas that appear not to be well known among attorneys. Every lawyer should read the Code of Judicial Ethics at least once. The code is available online at the Judicial Council's Web site. Judge Rothman’s book is available from the CJA, which also publishes occasional ethics opinions—66 as of this writing. The opinions cover such topics as letters of recommendation (No. 40), appearances on television programs (No. 28), fundraising (No. 41), judges using social media (No. 66), and the propriety of judges associating with attorneys at social and educational settings (No. 47). The Commission on Judicial Performance issues annual reports that document the facts for each of the commission’s disciplinary actions against judges for that year.

A working knowledge of judicial ethics will help attorneys avoid a faux pas in their own dealings with the bench. It also can help lawyers recognize—and respond appropriately to—improper conduct by judicial officers.

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These proposed amendments, if enacted, would have a significant impact on the content of this article. Federal judges have their own Code of Conduct for United States Judges, a set of ethical principles and guidelines adopted by the Judicial Conference of the United States. For the most part, the federal canons are similar to California’s—which are adopted by the California Supreme Court—and are not the same as California’s word for word.

David Rothman, a retired Los Angeles Superior Court judge, has written the best available treatise on judicial ethics. DAVID J. ROTHMAN, CALIFORNIA JUDICIAL CODE OF JUDICIAL ETHICS, at §5.05 (originally issued July 8, 1989; revised 1998).


See generally CAL. CODE OF JUDICIAL ETHICS Canon 3B(7). The Supreme Court Advisory Committee on the Code of Judicial Ethics has circulated a series of proposed amendments to the Code of Judicial Ethics. See http://www.courts.ca.gov/policyadmin-invitationstocomment.htm. These proposed amendments, if enacted, would not have a significant impact on the content of this article.

See CAL. CODE OF JUDICIAL ETHICS Canon 3E(2) (“In all trial court proceedings, a judge shall disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.”).

ROTHMAN, supra note 3, at §7.73.

CODE CIV. PROC. §170; ROTHMAN, supra note 3, at §7.17.

CAL. CODE OF JUDICIAL ETHICS Canon 4G; CAL. CONST. art. VI, §17. See also BUS. & PROF. CODE §§6125, 6126.

ROTHMAN, supra note 3, at §8.80.


CAL. CODE OF JUDICIAL ETHICS Canon 3B(7); see generally ROTHMAN, supra note 3, at ch. 5.

2003 COMMISSION ON JUDICIAL PERFORMANCE ANN. REP., Advisory Letter 12, at 27.

CAL. CODE OF JUDICIAL ETHICS Canon 3B(7).

ROTHMAN, supra note 3, at §5.16; Price Bros. Co. v. Philadelphia Gear Corp., 629 F. 2d 444 (6th Cir. 1980) (A judge sent a law clerk to view a scene.).

CODE CIV. PROC. §116.520(c); ROTHMAN, supra note 3, at §5.16.

CAL. CODE OF JUDICIAL ETHICS Canon 3B(7). The Supreme Court Advisory Committee on the Code of Judicial Ethics is considering a variety of changes regarding Canon 3B(7). See http://www.courts.ca.gov/documents/SP11-08.pdf. See also ROTHMAN, supra note 3, at §5.03.

CAL. CODE OF JUDICIAL ETHICS Canon 4C(3)(d)(i).

CAL. CODE OF JUDICIAL ETHICS Canon 4C(3)(d); see also California Judges Association, Op. No. 41, at 2-3 (originally issued July 8, 1989; revised 1998).

See generally CAL. CODE OF JUDICIAL ETHICS Canon 5. Various changes are being considered regarding Canon 5. See http://www.courts.ca.gov/documents/SP11-10.pdf.

CAL. CODE OF JUDICIAL ETHICS Canons 5A(2)(3), 5C; see generally CALIFORNIA JUDGES ASSOCIATION, ETHICS IN JUDICIAL ELECTIONS—A GUIDE TO JUDICIAL ELECTION CAMPAIGNING UNDER THE CALIFORNIA CODE OF JUDICIAL ETHICS. See generally CAL. CODE OF JUDICIAL ETHICS Canon 5.

CAL. CODE JUDICIAL ETHICS Canon 5A(3).

CAL. CODE OF JUDICIAL ETHICS Canon 5C.

ROTHMAN, supra note 3, at §11.18.

CAL. CODE OF JUDICIAL ETHICS Canon 5: “Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens.”

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Los Angeles Lawyer October 2011 35
In 2005, Jeffrey Elkins stood in family law courtroom facing trial with little admissible evidence. Representing himself, Elkins had failed to comply with a local rule that required him to file pretrial declarations setting forth the evidentiary grounds for his trial exhibits. A Contra Costa Superior Court judge invoked the local rule, refused to admit all but two of Elkins’s exhibits, and then ruled almost entirely in favor of Elkins’s represented spouse, Marilyn. Elkins took his fight to the appellate courts, eventually reaching the California Supreme Court, which ruled in his favor in Elkins v. Contra Costa County Superior Court.1 The decision resulted in a volley of changes in the practice of family law in California.

The disputed Contra Costa rule eliminated evidence from trial that had not first been admitted by written declaration. According to Contra Costa’s former Local Rule 12.5(b)(3), the court decided contested issues in dissolution trials “on the basis of the pleadings without live testimony.” 2 Enforcement of the rule prevented Elkins from testifying in his own divorce trial.

The trial court defended its rule as promoting efficiency, reducing hostility between parties, and giving pro pers “direction as to how to prepare for trial, how to frame issues properly and how to provide evidentiary support for their positions and…avoid being blindsided by the adverse party.” 3 Elkins, however, responded, “I came into the trial with the intent of presenting my position, and I’m being cut out of that completely with only reliance on two exhibits which [can-not] defend my position.”4

In considering Elkins’s case, the supreme court noted that, according to a survey of the Family Law Section of the Contra Costa Bar Association, the order failed to increase court efficiency. The surveyed attorneys said their clients questioned “whether the courts even have the time to read the voluminous binders of declarations and exhibits required by the rule.”5 Most family law practitioners found the local rule “inordinately time consuming, difficult and costly to comply with.”6

What “most disturbed” the supreme court, however, was one possible effect of the rule: “diminishing litigants’ respect and trust for the legal system.” The survey showed that litigants complained that the rule deprived them of the opportunity to “tell their story” and “have their day in court.” In the survey, the

Mark Juhas is a family law judge in the Los Angeles Superior Court. He was a member of the Elkins Family Law Task Force and is a member of the Elkins Family Law Implementation Task Force.

A major thrust of the Elkins Task Force has been to reorient family law procedures to encourage speedier resolutions

by Judge Mark Juhas

The ELKINS Legacy

In 2005, Jeffrey Elkins stood in family law courtroom facing trial with little admissible evidence. Representing himself, Elkins had failed to comply with a local rule that required him to file pretrial declarations setting forth the evidentiary grounds for his trial exhibits. A Contra Costa Superior Court judge invoked the local rule, refused to admit all but two of Elkins’s exhibits, and then ruled almost entirely in favor of Elkins’s represented spouse, Marilyn. Elkins took his fight to the appellate courts, eventually reaching the California Supreme Court, which ruled in his favor in Elkins v. Contra Costa County Superior Court.1 The decision resulted in a volley of changes in the practice of family law in California.

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The supreme court noted, “[M]embers uniformly report that their clients are stunned to be told that they will not get to tell their story to the judge.”

Conceding that the rule may have helped move cases through the system, the supreme court quoted from a 1977 case:

“While the speedy disposition of cases is desirable, speed is not always compatible with justice. Actually, in its use of courtroom time, the present judicial process seems to have its priorities confused. Domestic relations litigation, one of the most important and sensitive tasks a judge faces, too often is given the low-man-on-the-totem-pole treatment.”

The supreme court understood the interest that county courts have in streamlining family law resolutions, given the volume of cases clogging calendars. “[B]ut family law litigants should not be subjected to second-class status or deprived of access to justice.” When a case involves such matters as the involvement of a parent in a child’s life, the division of a family’s assets, or levels of child support, it is “important that courts employ fair proceedings.” Family law litigants are entitled to “the same judicial resources and safeguards as are committed to other civil proceedings.”

The supreme court did more than support Elkins. It advised the Judicial Council to establish a task force to study and propose how to help family law courts achieve efficiency and fairness and ensure access to justice for all litigants, including the self-represented. The Elkins Family Law Task Force was created soon after, and it immersed itself in the issues of family court due process and access. In 2010, the task force issued a report that made more than 100 recommendations to increase family court fairness.

The Judicial Council adopted the task force’s report, and in response Assembly Bill 939 amended numerous sections of the Family Code. Most significantly, the bill increased access to justice in allowing for more live testimony at hearings, and it invested the court with the ability to manage a case through what it called family-centered case resolution. Another legislative initiative, Assembly Bill 1030, was written to help children make known their preferences on custody and visitation. Codified in extensive amendments to Family Code Section 3042, the bill allowed children to testify, speak in chambers, or otherwise voice their wishes on custody and visitation. While children may testify, Family Code Section 3042 does not require child testimony, nor does it mandate a child to express a preference. The sole power to determine whether it is in the minor’s best interest to express a preference to the court resides with the court, not with either party. However, if the court declines to call the child as a witness, it must provide an alternative means of obtaining information regarding a child’s custody and visitation preferences.

Implementation of the Recommendations

Notwithstanding these changes in the law, the Judicial Council understood that plenty of work lay ahead to make the Elkins recommendations a reality. It created the Elkins Family Law Implementation Task Force, charging it with proposing changes to the California Rules of Court as well as potential legislation for the council to consider. The implementation group’s mission was to coordinate the effort among the Judicial Council, several advisory groups, various divisions of the Administrative Office of the Court, and the court’s partners.

The court will ultimately see the most substantive procedural change. Under Family Code Section 217, which sprang from AB 939, family law courts now must provide an evidentiary hearing—as opposed to relying on written declarations, points and authorities, and other papers filed in support. In the past, as Elkins discovered, a court could disallow testimony, even from parties. Family law cases are typically broken into component parts through orders to show cause, and it is not unusual for a case to be resolved over several court appearances without oral testimony. That approach created, however, dissatisfied litigants who felt that they had been cheated of their day in court. Specifically changing the way the court receives evidence are Family Code Section 217 and two companion Rules of Court, 5.118 and 5.119.

Under these new rules, after calendaring the appropriate order to show cause, the court “must receive any live, competent and admissible testimony that is relevant and within the scope of the hearing” unless the parties stipulate that no live testimony is needed or the court makes a specific finding of good cause to refuse live testimony. Rule 5.119(b) sets forth six factors that the court must consider in denying live testimony. These factors consider whether credibility is at issue, whether the facts of the case are in disagreement, and if the parties need to cross-examine someone presenting a report. Additionally, after considering the various enumerated factors, the court is obligated to state the reasons, either in writing or on the record, as to why it is precluding live testimony.

Recognizing that a court may not have sufficient time for an evidentiary hearing or that the parties may not be fully prepared for a hearing, Family Code Section 217 allows a court to make temporary orders that will tide a party over until the hearing can occur. Many times in family law, one party is in desperate need of a ruling—be it on support, custody, or a pressing property concern.
Section 217 recognizes that the court may need to make an order based on the information in the papers and allows it to rule until a more complete evidentiary hearing is possible. When that hearing is complete, the court can then make an appropriate, longer lasting order.

Equally important, Rule 5.119 makes clear that the court can direct questions to any testifying witness. Before this new rule took effect, many judicial officers would ask questions of witnesses testifying before them. The wisdom among bench officers was that they had the power (and sometimes the duty) to do so, although there was little direct support in the law for this position. It is now black-letter law that the bench officer may make inquiries of witnesses when appropriate.

Progress toward Resolution

Assembly Bill 939 also amended Family Code Section 2451 to allow the court to better manage the pace and flow of the litigation. Historically, judges believed that the court should not push the parties toward resolution (i.e., divorce) but rather allow the case to move at the pace with which the parties felt most comfortable. The more contemporary view—supported by the comments that the task force received—is that parties, once they file a dissolution action, want the case to progress toward resolution. In other words, if they file for a divorce, they want a divorce. Family Code Section 2451, as amended, provides the court with the ability, even absent a retainer, to manage the pace and flow of the litigation.

In concert with Rule 5.83, Family Code Section 2451 recognizes that the court has an obligation to move cases to resolution. The Los Angeles Superior Court has a case management program in place to help litigants prevent their cases from languishing. This program aims chiefly at assisting the self-represented, as they often fail to understand the dissolution process in sufficient detail.16 A new emphasis on a family-centered case resolution plan embodies the hope that the new plan will spur parties to take more responsibility for their case, while the court keeps a watchful eye on their progress, offering help when necessary.

Too often, as a family transitions from intact to separate states, it becomes embroiled in a lengthy, expensive, and mostly unnecessary legal battle. Under the new statutory scheme, the court can call the parties into the courtroom, discuss the process, and give them clear direction as to how to move toward a conclusion. Far from forcing parties into hiring experts they do not need and cannot afford, waging war with OSCs, or fashioning premature settlements prone to unravel, this process ideally will allow litigants to move swiftly toward a reasonable and more economical dissolution.

Assembly Bill 939 also recognized and responded to the need for early award of attorney’s fees. Often, one litigant has greater assets or at least greater access to funds and can use that money to slow down or prevent the other litigant from retaining counsel. Family Code Section 3121 was amended to allow the court to make early fee awards based on one party’s access to funds and specifically allows the court to provide a self-represented litigant an amount sufficient for a retainer.

The Role of Minor’s Counsel

Another Family Code Section, 3151, alters the traditional role of minor’s counsel. In the past, minor’s counsel would present the court with a statement of issues and contentions. Often a minor’s counsel would gather information imbued with subjective impressions in a way that was not founded on admissible evidence. Family Code Section 3151 makes it clear that minor’s counsel, like all other attorneys in the case, are required to present admissible evidence to the bench.

One cannot help but wonder what the late Jeffrey Elkins would think of the changes in family law that his case wrought. If he were stepping foot into a trial court today, he would face new rules allowing him increased access to justice. All in all, he undoubtedly would be surprised and, one hopes, happy in the knowledge that some of the biggest changes in family law in current memory will forever be associated with his name.

1 Elkins v. Superior Court, 41 Cal. 4th 1337 (2007).
2 Id. at 1346.
3 Id. at 1365.
4 Id. at 1349.
5 Id. at 1366-67.
6 Id. at 1367.
7 Id.
8 Id. at 1366-67 (quoting from In Re Marriage of Brantner, 67 Cal. App. 3d 416 (1977)).
9 Elkins states that in the Judicial Council’s 2006 report, the council estimated that, while family and juvenile cases represent 7.5 percent of total filings, they account for nearly a third of the trial courts’ judicial workload.
10 Id. at 1346.
11 Id. at 1368.
12 Id. at n.20.
13 The task force report can be found at http://www.courts.ca.gov/xbcr/cc/elkins-finalreport.pdf.
15 Cal. R. Ct. 5.119(a).
16 Most bench officers have experienced at least one case that revisits custody and support only to discover that one self-represented party has remarried despite the absence of a final dissolution judgment.

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The Los Angeles Superior Court offers programs and services whose number and variety may surprise even the legal community. In addition to programs for attorneys, self-represented litigants, criminal defendants, children, parents, and grandparents who are acting as parents, the court offers programs for students, interns, externs, jurors, volunteers, and the community. These programs may one day be of assistance to a client, friend, or family member.

Among the volunteer programs is the court’s Judicial Extern Program, which provides law school students with the opportunity to work directly with judicial officers. Throughout the year, the court typically hosts more than 200 judicial externs, who may, among other tasks, observe daily law and motion calendars and trials, write legal memoranda, and complete special research projects. Judicial externs are given the option to volunteer either full-time or part-time and may choose to work in the areas of civil, criminal, family, or juvenile law.

Nonlaw students who want to learn about the justice system can participate in a wide range of internships. Entry-level programs offer those with minimal or no work experience opportunities to develop or strengthen their skills in document filing, computers, and customer service. Graduate or college students may assist with courtroom operations, administration, or operational support. Many of the court’s senior managers started their careers as student workers.

Applicants to the court volunteer or intern programs must successfully complete an interview, pass a security background check, and attend an orientation program. Placement is determined by several factors, including the needs of the court, availability, individual interest, and district program requirements.

The LASC Web Page

The court’s Web site offers instant access to court information and services, reducing long queues at the courthouses and saving the public time and money. Litigants and attorneys will find answers to both basic and complicated questions. There are indexes for criminal and civil name searches (including family law and probate), and summaries are provided for civil, family law, and probate cases.

One of the most popular parts of the Web

Information about the full range of services provided by the LASC is available on the court’s Web site.
site is online processing of traffic tickets. The interactive traffic payment process is the fastest-growing online service. Users can also schedule traffic court appearances or request traffic school.

People summoned for jury duty can find services with a mouse click. Jurors are now able to complete their summons, schedule postponements, and even avoid the jury assembly room rush by completing juror orientation online.

Small claims litigants can also skip the line at the clerk’s window through the court’s e-filing program. The number of users successfully filing small claims cases online continues to grow. The easy-to-follow, step-by-step process, combined with the ability to complete the filing over several days, has made this a very popular feature.

The Alternative Dispute Resolution Division’s section of the Web site provides comprehensive information about the ADR department, including locations, processes, name searches, and forms.

Finally, in terms of general information, the Los Angeles Superior Court Web site offers:
- 46 courthouse locations with hours of operation, telephone numbers, maps, and judicial assignment information.
- Civil tentative rulings and probate notes.
- Local rules.
- Fee and bail schedules.
- Holiday calendars.
- Court date calculator.
- Judicial Council forms.
- Other government agency links.

There is also a link to the court’s Annual Report, which offers court statistics, a comprehensive court directory, and a list of services offered at each location.

Help for Litigants

The court offers some of the most innovative and extensive self-help support in the country. Every year in California, more than four million litigants go to court without a lawyer. In family law cases, for example, 70 percent of dissolution petitioners are unrepresented at disposition. (See “The Elkins Legacy,” on page 36.) By partnering with community-based organizations to provide assistance to litigants without lawyers, the court increases access to justice for those litigants, and it improves the court process for everyone else who is using the court’s resources.

Helping people help themselves improves their access to justice and makes the entire system more efficient. That is why over the past decade the court has partnered with the Los Angeles County Board of Supervisors and a number of community-based agencies to create a network of resource centers for unrepresented litigants. Today there are 12 centers staffed by attorneys, paralegals, and volunteers who annually serve more than 200,000 litigants in more than a dozen languages.

Originally focused on child support cases, self-help programs now help unrepresented litigants with a variety of family law matters, as well as unlawful detainers, small claims, probate guardianships and conservatorships, and name-change petitions.

JusticeCorps Volunteers. Originating in 2004 as part of the nationwide AmeriCorps program, JusticeCorps is the backbone of the court’s self-help programs. It harnesses the talents and energy of undergraduate students trained to provide assistance to self-represented litigants. After 30 hours of training, the volunteers commit to 300 hours of annual service in the court’s 12 self-help centers. A volunteer who successfully completes the program receives a $1,000 education award.

Easily identified by their blue oxford-cloth shirts, the JusticeCorps volunteers answer questions, help litigants complete court paperwork, and assist in the workshops that address the requirements of the various stages of family law, probate, and some civil cases.

Domestic Violence Clinics. The Los Angeles County Bar Association staffs its Domestic Violence Project at the Stanley Mosk and Pasadena courthouses. In 2010, the project helped more than 10,000 people. Volunteer attorneys, paralegals, and law students assist unrepresented litigants in completing the complicated forms required for petitioning the court for a temporary restraining order. These petitions often include move-out provisions and custody requests. Petitioners are assisted with document preparation and legal advice about process of service, hearing preparation, and available social services. With hundreds of trained volunteers donating thousands of hours, the Domestic Violence Project is able to efficiently and professionally help those suffering from domestic abuse with the legal process.

Guardianships and Conservatorships. Assistance is also available for unrepresented litigants needing an order of guardianship or conservatorship. No-fee programs assist low-income individuals on a first-come, first-
ness. There is no fee for the user, as $3 of every civil filing fee is allocated to fund the waiting rooms. More than 20,000 children enjoyed the court's Children's Waiting Rooms last year. Coming to court can be a stressful experience. Alleviating the pressure on adults caring for young children helps make the process less burdensome.

**Problem-Solving Courts.** Another service offered by the Los Angeles County Superior Court system is problem-solving courts. These courts address the root problems of some offenders, such as drug abuse and mental illness. Judges use the event of a criminal arrest and prosecution to encourage those who need help to get help. In most programs, defendants accused of nonviolent offenses who willingly and successfully complete rehabilitation programs see their original offense dismissed. The Los Angeles Superior Court had some of the first drug courts in the nation and has continued to innovate new responses to social problems:

- Drug Court sentences are stayed for nonviolent drug defendants who choose rehabilitation that is closely supervised by Drug Court judges. Drug Court data compiled over 20 years found that 75 percent of its graduates had no drug arrest within two years of completing their rehabilitation—a large improvement in recidivism compared with the general population of offenders.
- Co-occurring Disorders Court recognizes that drug abuse is frequently associated with underlying mental health disorders. Qualified inmates between 26 and 59 who are cited for nonviolent offenses may undergo integrated chemical-abuse and mental health treatment.
- Women's Reentry Court provides substance abuse treatment, mental health services, and life skills counseling for women in the correctional system. Participants may also receive an additional year of outpatient services.
- Veterans' Court works with the U.S. Department of Veterans Affairs to provide mental health and substance abuse treatment programs to former service members who commit low-level offenses. Following two years of rehabilitative treatment and judicial supervision, their guilty pleas will be set aside and their cases dismissed on the motion of the defendants.
- Homeless Court participants are selected and sponsored by a rehabilitative services case manager, often from the Public Counsel Law Center. For many people, unresolved minor offenses stand in the way of getting a job. With the consent of the prosecutor and public defender, a judge may dismiss a participant's case, recall warrants, suspend fines and fees, or require additional participation in a rehabilitative program.
- Juvenile Mental Health Court oversees juvenile offenders diagnosed with mental dis...
orders and mental disabilities. The voluntary, ongoing treatment and case management requires a youth's consent.

- Dependency Drug Court recognizes that drug abuse is a root cause of child abuse and neglect. The court provides supplemental drug counseling and rehabilitative services for women whose children have entered the foster care system.

- Teen Court diverts young, first-time offenders charged with low-level misdemeanors from a traditional juvenile delinquency courtroom to a trial by their peers in a school. Selected by the Los Angeles County Probation Department, defendants between 11 and 17 are judged by teens in 12 county Teen Courts in which student jurors recommend their punishment. Offenders are judged by their peers, and Teen Court jurors get direct experience in administering justice.

- Mental Health Linkage Referrals provide assistance to some of the estimated 2,000 adults in Los Angeles County jails suffering from a mental illness. The county's Department of Mental Health Linkage Program operates the Court Liaison Program, which assisted 2,800 mentally ill defendants in fiscal year 2009-2010. One of its goals is to link the defendant with voluntary mental health treatment instead of jail. Serving 24 courthouses, court liaisons arrange a needs assessment for recommended defendants and coordinate their enrollment into mental health treatment.

Reaching Out

Public trust and confidence in the courts is a foundation of a democratic society. Community outreach is critical to the Los Angeles Superior Court and its mission to administer justice. Over the years, the court has worked to develop strong ties to the community. These connections have been maintained and strengthened by various community outreach efforts, which include the Court Clergy Conference, Courtroom to Classroom, the Judges' Speakers Bureau, JusticeCorps, the Mock Trial Program, Partnerships with Legislators, Partnerships with the Legal Community, and Teen Court. (See “Judges and Lawyers Joined Together to Educate and Inspire,” page 48.)

Even through recent budget difficulties, the court’s strategy of partnering with community-based and county government organizations has meant that people using the Los Angeles Superior Court have a wide array of support services available to them. The court's Public Information Office is also available to answer questions and provide contact information for any of the programs mentioned.

The court is proud of and grateful to the many organizations we have partnered with and the volunteers who devote their time and energy to these efforts.
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Los Angeles Lawyer October 2011 45
The 40th Annual Crocker Symposium on Real Estate Law and Business

ON TUESDAY, OCTOBER 4, the Real Property Section and UCLA’s Ziman Center will host the Benjamin S. Crocker Symposium 2011, bringing together Southern California’s top leaders in real estate for an extraordinary day of discussion, networking, thought leadership, and analysis. This year, the conference will focus on the multiple components of the real estate market, including infrastructure, new development and redevelopment, land use, green construction, capital markets, distressed and new debt, leasing, bankruptcy, public-private partnerships, globalization, and geopolitical forces. The conference will take place at the JW Marriott L.A. Live, 900 West Olympic Boulevard, Downtown. Valet parking is available for $16 and self-parking for $10. Remember to take your parking ticket with you for validation at the Crocker registration desk. On-site registration will be available at 7:30 A.M., with the program continuing from 8:30 A.M. to 5 P.M. Continental breakfast and lunch will be available. The registration code number is 011074. This program has been approved by the California Department of Real Estate under the designation of Consumer Service for six clock hours of credit.

$325-LACBA member
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2011 Bernard Witkin Lecture: A Conversation with Chief Justice Tani Cantil-Sakauye

ON TUESDAY, OCTOBER 25, the Los Angeles County Bar Association, together with the Witkin Foundation and the Litigation Section, will host Chief Justice Tani Cantil-Sakauye, who will reflect on her first nine months in office and discusses the impact of three years of cumulative budget reductions on the state judicial branch. She will also detail Judicial Council strategies for ameliorating the impact of the cuts on the courts, the bar, and the public. The lecture will take place at the Westin Bonaventure Hotel, 404 South Figueroa Street, Downtown. Valet parking costs $16. On-site registration will be available at 11:30 A.M., with the lecture scheduled for 12:15 to 1:15 P.M. The registration code number is 011415. The registration code number is 011415. The prices below include lunch.

$65-CLE+PLUS member
$85-Litigation Section member
$100-LACBA member
$120-all others
$850-firm or company table of 10
1 CLE hour

Minor’s Counsel in 2011

ON FRIDAY AND SATURDAY, OCTOBER 14 and 15, the Los Angeles County Bar Association will host a program to provide annual education and training required of minor’s counsel to remain eligible for appointment. This program will cover the rights and responsibilities of minor’s counsel, especially in light of recent budget cuts and Elkins. It will also provide an overview of the law, practice pointers from the bench, child interview techniques, important security considerations, and input from respected attorneys on what they expect from minor’s counsel. Attendees will enjoy two days of training with those committed to improving the appropriate use of minor’s counsel. Attendance will provide the necessary MCLE hours to meet the educational and training requirements of Rule 5.242 of the California Rules of Court. The program will take place at the Los Angeles County Bar Association, 1055 West 7th Street, 27th floor, Downtown. Parking is available at 1055 West 7th and nearby parking lots. On-site registration will begin at 8:00 A.M., and lunch will be provided both days. Those who have already completed the 12-hour program will need to attend only Saturday. The registration code number is 011412. The prices below are for attendance at both days of training.

$305-CLE+Plus member
$400-Small and Solo or Family Law Section member
$495-LACBA member
$725-all others
12 CLE hours

The Los Angeles County Bar Association is a State Bar of California MCLE approved provider. To register for the programs listed on this page, please call the Member Service Department at (213) 896-6560 or visit the Association Web site at http://calendar.lacba.org/where you will find a full listing of this month’s Association programs.
Judges and Lawyers Join Together to Educate and Inspire

THE TEENAGE DEFENDANT WAS ACCUSED of vandalism—he had defaced several walls in his own neighborhood. On the stand his attitude was surly and uncaring, disrespectful to both judge and jury. The jury reviewed his academic transcript and saw that he had failed every class except one. But on his own he had enrolled in a photography class at a local community college. When asked about the class, the defendant’s attitude changed dramatically. Focusing his eyes directly on the jury, he talked about the challenge of capturing certain images on film. Now, at last, the jury had engaged the defendant in a dialogue. After deliberating, the jury found the defendant guilty, but recommended, as a condition of his probation, that he complete a photo essay of his neighborhood, showing its beauty without graffiti.

This was a real case in a real courtroom with a real Los Angeles Superior Court judge presiding. However, the courtroom was located in a high school, and the jury was composed entirely of students. This was one of 18 Teen Courts established by the LASC as part of the court’s community outreach efforts. These Teen Courts allow teens who commit nonserious crimes to be questioned, judged, and sentenced by a jury of their peers. If the sentence is completed successfully, the convicted offender avoids a criminal conviction. Unlike other youth courts, the Los Angeles model allows the student jurors to determine the fate of defendants in real criminal cases.

The LASC sponsors other court outreach programs, many of which plant seeds in youthful minds that meaningful careers in the law and the justice system are within their reach. These programs cannot function effectively without the enormous contribution of volunteer time and financial support from bar associations, law schools, and individual lawyers. For example, the court, the Women Lawyers Association of Los Angeles, and other bar associations periodically host power lunches for inner-city high school students at local courthouses, where students, judges, lawyers, and other justice system professionals who might otherwise never cross paths can talk about career choices, the Constitution, and the legal system.

Each year the court and the Constitutional Rights Foundation bring thousands of middle and high school students to courthouses across the county for the Mock Trial Program. Volunteer lawyers coach students who then play the roles of lawyers, witnesses, and court staff in a realistic case before a real judge in a LASC courthouse. Other volunteer lawyers serve as trial scorers. This experience fosters a deeper understanding of the justice system and encourages students to aspire to become future lawyers, judges, or other courtroom professionals.

The court also provides education about the justice system to adults. Through the court’s Ambassadors Program and Speakers Bureau, judges address subjects such as the administration of justice and the impact of budget cuts on the judicial system. The court’s annual Clergy Conference brings judges, lawyers, and clergy together to discuss significant issues of interest to the community. These multi-faith conferences create an important forum for input from the clergy to the court while providing information to religious leaders so they can better communicate with their congregants about the courts.

To inspire attorneys and law students from traditionally underrepresented communities to pursue judicial careers, the court actively engages lawyers and law students in dialogues on diversity, during which judges make presentations on judicial career paths to minority bar associations and law student groups. The court also hosts “diversity summits,” at which judges provide guidance to attorneys, law students, and other stakeholders on how to pursue a judgeship.
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