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# CITATIONS

J A N U A R Y - T W O T H O U S A N D N I N E

## Another Giant Departs

*By The Honorable Frederick H. Byshe*

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ANTHONY R. STRAUSS

ALAN R. TEMPLEMAN

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## PRESIDENT'S MESSAGE

*By Tony Strauss*

Today I practice with **Bruce Cray** and my son **Michael Strauss** in the office suite above **Dan Palay**, who happens to employ Mike's wife, **Jenna Strauss**. Our practice entails general employment law and employment, business and real estate litigation.

I was asked to join the Bar Association Board when my "friends" **John Howard, Don Hurley, Dan Palay** and Steve Henderson thought that I didn't have enough on my plate. They were wrong. I am active in a number of community organizations and civic boards.

But those of you who know me know that I have a difficult time saying "no" when asked to do something. I accepted because I saw this as an opportunity to give back to the legal community and assist in the worthwhile endeavors of the Bar such as VLSP, the lawyer-referral program, MCLE, etc.

I also saw this as an opportunity to rekindle the camaraderie among attorneys that I enjoyed when I first came to town. Back then there was a group called the Legal Guild. This was the re-appellation of "Law Wives," the spouses who ran the Court Tour Program and planned social gatherings. In the course of the events put on by that group, as well as my employment with the County, I met many other (then) young attorneys who became my lifelong friends.

Over the years I learned from my experiences with these individuals and others that the practice of law is generally more enjoyable for me when I am dealing with those whom I know outside of the courthouse. I am also convinced that clients are more effectively served when the attorneys know and respect each other.

Don't get me wrong. Ventura County is a wonderful place to practice because we already have an air of civility within our profession that is not enjoyed elsewhere. But with almost 2000 lawyers in the County and more on the way, we need to continue to present opportunities for interaction among those in our profession.

When Mike and Jenna started their practices here, I encouraged them to join Barristers. That group of young lawyers or new admittees has taken up the task of engaging its members in an array of extracurricular activities and its membership has swollen from just a handful to approximately 200.

Mike, who began his term as President of Barristers simultaneously with my term as President of the Bar, has declared the "2009 the Year of the Barrister" in his inaugural CITATIONS article, highlighting the numerous Barrister activities and inviting participation.

I am not going to declare the "Year of the Schmooze." Rather, I hope during my tenure to set an atmosphere in which attorneys get involved in Bar activities not only because the activities are important for our community but also because they are fun and they cause us to get to know each other. Expect to see at least one new event (like a family barbeque) and something different about the annual dinner.

There are other ideas in the works. If you would like to help or have your own ideas or suggestions, contact me ([ars@strausslawgroup.com](mailto:ars@strausslawgroup.com)) or Steve Henderson ([steve@vcb.org](mailto:steve@vcb.org)). I look forward to working with and hopefully meeting each and every one of you. Together we can make positive things happen.

**G**reetings! This is my first article as President of the Bar. I think that this is a good opportunity for you to get to know me and to hear my ideas for 2009.

I suppose that I should start with some background. I am about to start my 33rd year of practice, all but a few months of it in Ventura County. My wife Michelle, our six-year-old daughter Larissa and I came here from San Francisco in 1977.

I had worked briefly for a firm in Marin County after graduation from Hastings. But the opportunity to move back south (we had gone to UCSB) and a job in the County Counsel's Office, not to mention a raise of 40% from \$1,000 a month to \$1,400, could not be ignored.

I spent nine glorious years working for **Dorothy Schechter** and **Jim McBride**. I got to represent the County concerning issues including personnel and employment law, construction disputes, real property taxation issues and other equally intellectual endeavors.

During that period, I also got to work in the District Attorney's Office as part of the first and only (I think) inter-office exchange. This was the place to get jury trial experience and I had fabulous teachers in **Mike Bradbury, Vince O'Neill, Toy White, John Dobroth** and many others. Meanwhile, son Michael was born in 1979 and daughter Hayley in 1986.

Private practice beckoned and I joined what was then Fairfield, McDonald, Sullard and Lane in 1986 and inherited **Bobby (now Judge Barbara) Lane's** employment practice when she went on the bench. I stayed with the firm as it went through various iterations until 1999, when **Curt Uritz** and I left to form Strauss-Uritz. Curt and I split in 2007 when I formed Strauss Law Group.

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AB INITIO

# A Different Type of Civility in the 1970s

By Alan R. Templeman

Thanks to **Mike McQueen** and **Greg Herring** for giving me the courage to offer a follow-up to **Terry Bonham's** excellent article on some of the characters who tried cases when Terry and I were fresh-faced young attorneys newly returned from Viet Nam.

Contrary to the assertions of some of Terry's critics, there was a mutual respect among the local attorneys with whom Terry and I did battle. Yes, **Tom Halde** did object to one of my deposition questions on the grounds of hearsay when I asked his client when he was born. I was also present for Mr. Halde's Vesuvius-like eruption in front of the jury when **Fred Kosmo** asked him midway through trial to smile at least once to the jury before the trial was over.

These antics pale before the Los Angeles tactics of present-day "litigators," most of whom have never tried a trial to a jury. Now we are faced with Los Angeles County defense attorneys in their Armani suits and pantsuits who throw up a constant barrage of frivolous discovery motions and motions for summary judgment, object to nearly every interrogatory, document request, and deposition question, spend one to two days deposing our clients when an effective questioner could complete the deposition in two to three hours, coach their clients to lie, hide documents and place their hands in front of their client at depositions and instruct their client not to answer a question until they lift their hands.

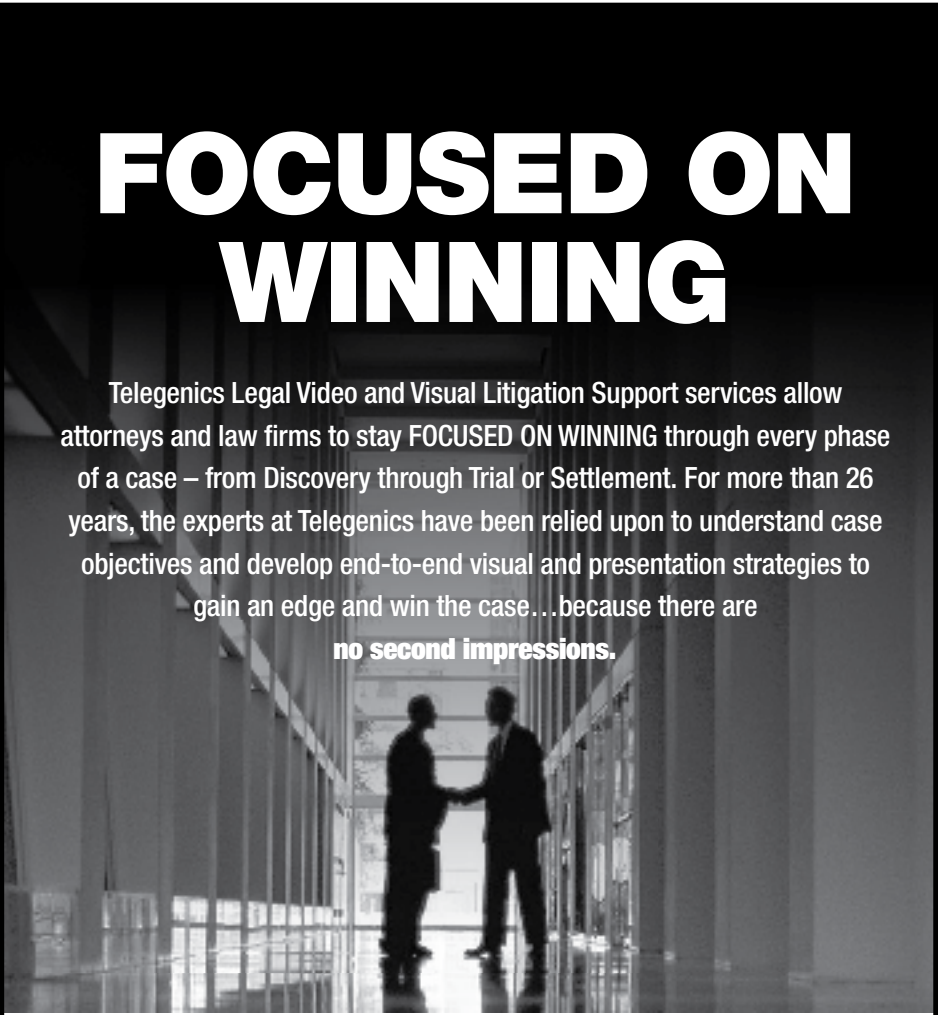
## First Trial

Two personal examples relate a different form of civility which existed in the past. The first involved **Judge Richard Love** and occurred within my first month of practice shortly after (**now Judge**) **Harry Walsh** was able to explain to me the difference between depositions and interrogatories. I was told on a Friday that my first trial would be the following Monday defending a young man who allegedly stole a tape deck and tapes from an acting police

*Continued on page 16*

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# Another Giant Departs

By Fred Bysshe



On November 2, 2008, **Bruce Johnston**, a legal giant, passed gently into the night.

At his request there was no funeral – no memorial service. If such public ceremonies had been held there would have been a long line of people from all walks of life to praise him as a consummate attorney, public servant, wise counselor and devoted friend and family man. As uncomfortable with praise and adulation at the end of his life as he was when his life was in full flower, his wishes were respected and local law enforcement did not have to contend with the traffic problems of the hundreds, if not thousands, of people who would have come to honor the life and accomplishments of this humble but quite extraordinary man.

Since many generations of lawyers have come to Ventura since Bruce Johnston and the late **Bill Lucking** opened their law office

in downtown Ventura in 1948, there are many who may not know much about this humble man whose life epitomized the best of our profession. So, from the perspective of someone who joined their firm in 1970, and who has considered Bruce a friend and mentor since that time, let me briefly recount the breadth and dimensions of this leader of the Bar and our community.

Bruce was an attorney from the “old school” who believed that an attorney’s career is not measured by what you got, but what you shared and that success as a lawyer was not based on how much wealth and fame you had achieved as the end, but by the legacy in service to the community that you left.

Bruce was the founder, architect and builder of countless charitable organizations in our community. As the attorney who best exemplified community service he was chosen as the first Nordman Award recipient to honor his life and to serve as the ideal template on which to judge future selections.

As an estate planning and probate attorney, Bruce had the ability to help his clients find the right community organization to meet their charitable goals and thus to enrich the service of these organizations to the community.

Bruce and his wife Mary suffered their own tragedies in their lives, but because of their strength and faith, their private grief only gave them greater compassion for others and more motivation to reach out and help others.

In his death, Bruce passes the torch of selfless community service to the rest of us. While none of us can ever fill Bruce’s shoes, we can, each in our own way, follow the path that he has shown us.

*Frederick H. Bysshe has been a Ventura Superior Court judge since 2001.*

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# The Year of the Barrister

By Michael A. Strauss

For my official first action as Barristers president, I am designating 2009 as “The Year of the Barrister.” Some of you may wonder what a Barrister is, or why he or she is so important in the upcoming year. Let me explain.

Barristers is a sub-species of the Ventura County Bar Association. (No, that does not make me a sub-species of my father, **Tony Strauss**, who is the incoming VCBA president.) Officially, we are a social, educational, sporting, and charitable group made up of lawyers under 36 years of age and/or who have been practicing law for less than seven years. As my second act as Barristers president, let me welcome anyone who would loosely fit that definition into our group, as long as he or she is okay with sharing good times with fellow lawyers.

If 2008 is any indication, the good times are going to be plentiful for the Barristers in 2009. The social highlights from 2008 included a very well stocked Wine and Cheese Mixer at Lascher & Lascher and the Judge’s Pizza Night at Hush Lounge in Ventura, where Barristers rubbed elbows and swapped stories with local judicial officers. We also instituted a new tradition in 2008, “Thirsty Third Thursday,” where interested Barristers gathered after work on the third Thursday at a different watering hole each month. In June we also rented out the Ventura Bowling Center for the Second Annual Bowling Night (where incidentally my wife, **Jenna Strauss**, and I took home the trophy for “highest scoring couple” for the second straight year). Many of us also took part in a pub crawl in August and a barbecue mixer later that month with the Santa Barbara Barristers.

On the education front, the Barristers started off 2008 with “Bridging the Gap,” a day-long MCLE festival at the Ventura courthouse. We also hosted MCLE classes about mediation basics with **Matt Guasco** and finding and using expert witnesses with **Mark Hiepler** and **Richard Masters**. Sadly, Bridging the Gap will be on hiatus in 2009, as it is only a biannual affair, and there are currently no firmly scheduled educational activities planned for 2009. However, we are open to suggestions; as in 2008, if anyone has any good ideas for an MCLE or similar events, the Barristers can put on a top-quality, fun, and educational activity on short notice.

Two examples of the Barristers’ ability to throw quality events on short notice are also two of the greatest highlights of 2008: Dart Night and the First Annual Barristers Three-on-Three Basketball Tournament. We conceived of both events just a few months before they took place. Dart Night, which occurred in March at the Victoria Pub in Ventura, was attended by dozens of Barristers, and it culminated in a 301 tournament won by **Taylor Waters** (VCBA Exec Steve Henderson was close behind Taylor). A team of four of Mr. Waters’ colleagues from the District Attorney’s office proved the best out of eight teams of lawyers, staff, and/or family members at the Barristers Basketball Tournament in September (where they beat my team by one point in the finals...).

The Basketball Tournament also constituted our first foray into charitable fundraising. All of our profits from entry fees and concessions sales went to Food Share. Based on Food Share’s formula, our donation resulted in \$4,625 worth of food for the needy in our community.

As you can see, the Barristers had a great year in 2008, and we can thank the out-going president, **Katie Pietrolungo**, for our many successes. But 2009 is going to be even better. That is why I am officially labeling it the Year of the Barrister. It is our goal to not only build on our triumphs of 2008, but to make the Barristers events in 2009 truly memorable. For instance, we want to at least double the number of teams – from eight to 16 – for the Basketball Tournament. We want to increase attendance at all Barristers events. We intend to create new events, possibly a Poker Night and/or a Bingo Night (all legal, of course). We also desperately need more couples to compete at Bowling Night, because Jenna and I could use more competition.

So, if you are interested in joining the Barristers, shoot me an email at [mas@strausslawgroup.com](mailto:mas@strausslawgroup.com) or just show up at future Barristers events. Help make 2009 the Year of the Barrister.

*Michael Strauss practices at Strauss Law Group in Ventura.*

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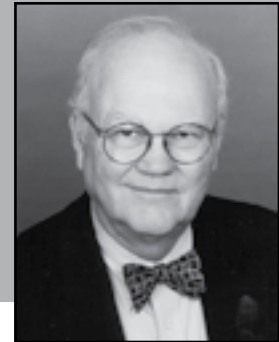
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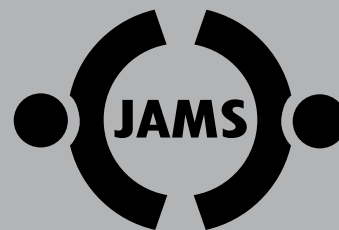
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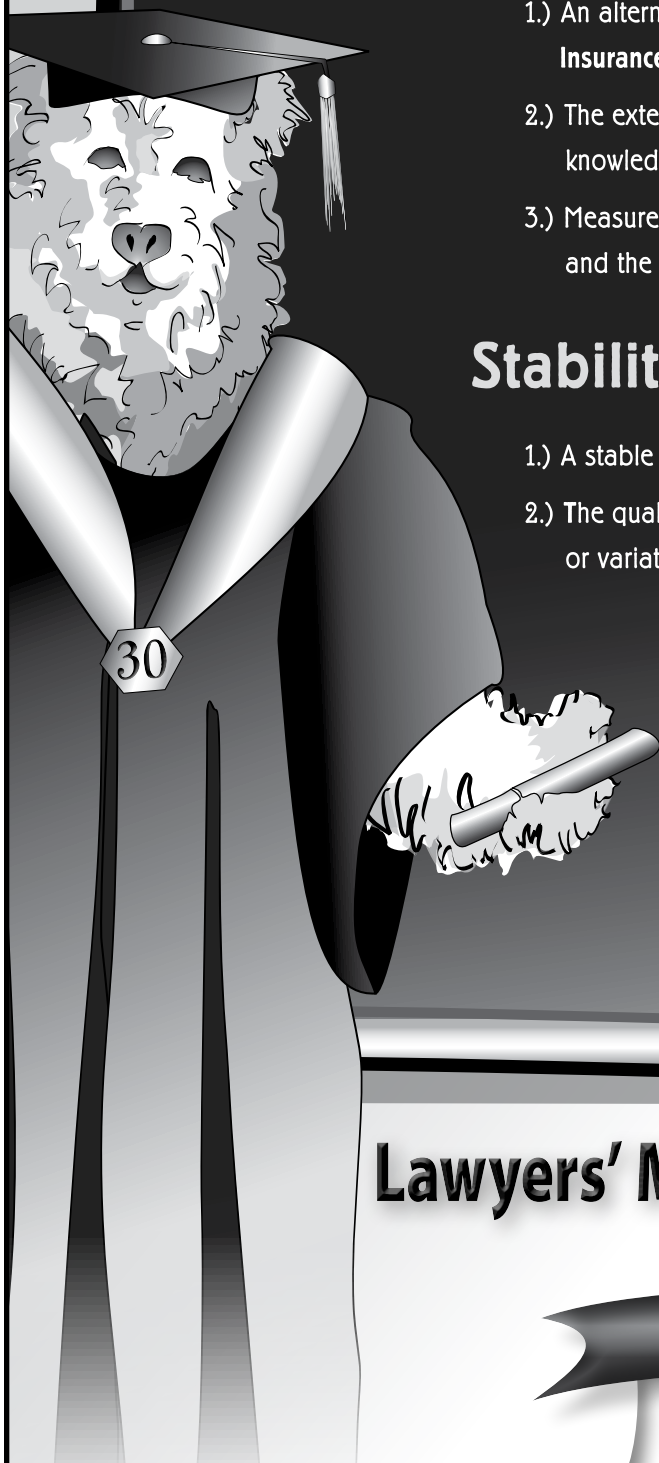


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**AB INITIO**

**A Different Type of Civility in the 1970s**

*Continued from page 4*

captain's personal vehicle. Aside from movies or television, I had never seen a trial before. Worse yet, the judge who was hearing the trial would be the Judge Love, who had a reputation of having a very, very short fuse. Judge Love did nothing to discourage my initial impression while I was waiting for my case to be called. I watched in awe as he fined a traffic offender who made the mistake of mouthing an obscenity at him as he left the courtroom. Before the bailiff could move, Judge Love leapt from the bench, pinned the miscreant against the wall, and ordered his bailiff to escort him to jail.

My case was soon called. Judge Love brought in the jury and quickly asked them a few questions. It was my turn. I was magnificent in my voir dire of juror number one. Feeling pleased, I smiled and sat down. Judge Love asked whether I wished to inquire as to the rest of the prospective jurors. I replied that I thought it was the prosecution's turn to question juror number one. Rather than emulate Manuel Real, Judge Love kindly remarked to me and the jury, "Mr. Templeman, you must practice law in Kern County. Here in Ventura, we are one of the few counties that voir dire the entire jury panel before your opponent questions them."

*Continued on page 19*



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The 2009 Conference includes a forum and question and answer session featuring Second Appellate District Associate **Justice Steven Perren**, 2009 Santa Barbara Superior Court Presiding **Judge Arthur Garcia** and Assistant Presiding **Judge Brian Hill**, and 2008 Ventura Superior Court Presiding **Judge Colleen Toy White**. During lunch there will be a panel discussion about the First Amendment's Establishment Clause between **Bishop Thomas Curry**, a First Amendment scholar, and **Richard Solomon**, past president of the Santa Barbara ACLU chapter, and moderated by constitutional attorney **James Wagstaffe**. In the afternoon keynote speaker **Craig Smith**, a popular legal blogger, law professor and attorney, will address attendees.

Attorneys will have the opportunity to attend the following MCLE classes: *Life After Meth – Working with Addicts in Santa Barbara County* (1 hr Substance Abuse MCLE) presented by **Judge Rogelio Flores**; *The Futility of Hyperbole – Persuading Court Research Attorneys* (1 hr MCLE) presented by **Tom Hinshaw**, Research Attorney; *Never Miss a Deadline Again – Westlaw Legal Calendaring* (1 hr MCLE) presented by Gregg Kravitz of West, a Thomson Reuters business; *Little House on the Docket – Significant Real Estate Laws and Decision from 2008* (1 hr MCLE) presented by attorney/broker **John J. Thyne III**; *Guitar Wars – What Gibson v. Harmonix Teaches About Intellectual Property* (1 hr MCLE) presented by attorneys/guitarists Preston **Marx** and **Matthew Berger**; *Elimination of Bias* (1 hr Elimination of Bias MCLE) presented by **Judge James Herman** and **Judge Denise deBellefeuille**; *Personal Bankruptcy – a 2009 Primer* (1 hr MCLE) presented by bankruptcy attorney **David Commons**; *The 'Marriage Cases' – The Unexpected Reach of the California Supreme Court's Landmark Ruling* (1 hr MCLE) presented by family law attorney **Jennifer Drury**.


At the conclusion of the event, attendees, speakers and sponsors are invited to a wine

and cheese reception and tour of the Mission grounds.

The conference costs \$100 for Santa Barbara County Bar Association members who register before January 15, and \$130 after. Non-SBCBA members add \$30.00. Those wishing to renew their SBCBA membership before January 15, 2009, will get a \$20 discount for the conference. To register, please contact Liz Nolan at the Santa Barbara County Bar Association at (805) 569-5511.

Table sponsorship opportunities cost \$350. Sponsors will be given a table and the opportunity to showcase their wares during two tech fairs and vendor exhibit breakouts, as well as attending breakfast, lunch and the wine and cheese reception. There are opportunities to sponsor specific events during the conference including breakfast, lunch and the wine and cheese reception. For more information about sponsorship, please contact John Thyne at (805) 963-9958.

Many thanks go to Bench & Bar Committee chairwoman Donna Lewis for organizing a fantastic conference. Please join us for this outstanding program and enjoy your day at the beautiful Santa Barbara Mission with fellow attorneys and judges!



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**AB INITIO**

**A Different Type of Civility  
in the 1970s**

*Continued from page 16*

The moral of the story is that most judges, even those with reputations for having short fuses, go out of their way to make attorneys comfortable even though they have the opportunity to humiliate them unless the attorney is truly an obnoxious ass.

**Poetry in (Law and) Motion**

The second tale involved Terry Bonham. Terry defended my client's neighbor who allowed his cat to continually enter my client's home in order to use it as a litter box. My client was injured at the instant he was launching the cat from the second story window when the cat bit into his hand, severing the tendon which controlled the movement of his middle finger, and leaving him with the inability to lower his index finger when he made a fist. My client was certainly not a malingerer. He initially told me that the injury did not affect his work or his non-working life. When I asked what he did after work, he replied, "I come home, drink a couple of beers, eat the dinner that my old lady fixed, have a couple more beers in front of the TV, and fall asleep."

After more questioning as to his pre-accident activities, he finally related that before his injury, his one source of pleasure was being a once a week patron of Sandy's Tavern. By the time of his deposition, he was able to truthfully relate that his life had been significantly affected because he could no longer go to Sandy's – because on most of the occasions he visited Sandy's, he was involved in barroom brawls. Now he could no longer protect himself since he was unable to hit anyone with his right hand. Instead of a dismissive response to such a severe blow to my client's lifestyle, Terry proposed that we each present our mandatory settlement conference briefs in poetry. The briefs were not literary masterpieces, but the case settled, thus depriving 12 citizens of the opportunity of viewing a stuffed cat as Exhibit One. Unfortunately, I have been unable to retrieve either of the briefs.

The moral of this story is that rather than belittling the plaintiff with a different lifestyle and different ambitions than yours, a little creativity can resolve a case.

*Al Templeman, who has now tried many cases, is a partner at Lowthorp, Richards, McMillan, Miller & Templeman in Oxnard.*

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# STAYS ON APPEAL

By Wendy Cole Lascher

Suppose a defendant has just been hit with a huge damages award or the court has imposed a hefty monthly support obligation? What if the court has ordered a losing party to pay the other side's attorney fees, or ordered contested property be sold forthwith? Once the judgment is sufficiently final, the losing party can appeal. But no matter how good the legal issues are, an appeal may not help if the prevailing party collects the judgment and spends the proceeds while the loser is awaiting the appellate record or writing a brief.

## Automatic Stays Are Hard to Come By

Most state court judgments are enforceable as soon as they are entered, and interest begins to accrue from the date of entry. Code Civ. Proc., §§ 683.010, 685.020. An exception is that judgments or orders permitting a child to be taken from the state are stayed briefly by operation of law. *Id.* at § 917.7. Filing a motion for a new trial or judgment notwithstanding the verdict does not stay enforcement. The trial judge does have discretion to grant a temporary stay, but for most judgments, this cannot last beyond 10 days after the last day to file a notice of appeal. *Id.* at § 918(b).

In contrast, federal money judgments – as opposed to judgments imposing injunctions, receiverships, and patent accountings – are automatically stayed for 10 days after entry. Fed. R. Civ. P., Rule 62(a). After 10 days, the district judge may stay execution pending disposition of post-trial motions or completion of trial as to other parties. *Id.*, Rule 62(b), (h). And, if the judgment acts as a lien on the debtor's property – as it does in California when an abstract of judgment has been recorded or a notice of judgment lien on personal property has been filed with the Secretary of State (Code Civ. Proc., §§ 697.310, 697.510) – a federal judgment debtor is entitled to the same stay of execution the state court would give. Fed. R. Civ. P. 62(f).

Code of Civil Procedure § 916 provides for an automatic stay of enforcement upon filing a notice of appeal, as well as for a stay of proceedings on matters “embraced in or affected by” the judgment or order that is the subject of the appeal. However, the exceptions spelled out in §§ 917.1 through 917.9 and § 116.810 swallow large parts of the rule, so that many judgments are not stayed unless the appellant posts a bond to stay execution. For purposes of stays on appeal, the words “undertaking” and “bond” are interchangeable. *Id.* at §§ 995.210. This article will use “bond.”

## When Is A Bond Needed?

Thus, although an appellant is free to appeal without posting a bond, he or she usually will not be safe from the respondent's efforts to enforce a judgment without one. When a judgment is for money – including “nonroutine” costs under Code of Civil Procedure § 998 (offers to compromise) or § 1141.21 (trials de novo after arbitration) – filing an appeal does not stay execution unless the appellant posts a bond.

The amount of the bond is one and a half times the judgment if the bond comes from an admitted surety insurer or the appellant posts cash, or two times the judgment if personal sureties are used. *Id.* at §§ 917.1, 995.710(b). Liability insurance often covers the posting of an appeal bond, at least as to the portion of the judgment within policy limits. See, *Merritt v. J. A. Stafford Co.* 68 Cal.2d 619 (1968).

If the award of money is not a lump sum, but calls for monthly payments, as in the case of child or spousal support, the trial court must set the amount of the bond based on how long the appeal is likely to take and how much the appellant's obligation would be for that period. *Hogan v. Paddon*, 91 Cal.App. 606, 612 (1928).

If the only monetary component of a judgment is for costs awarded under Code of Civil Procedure § 1021, et seq., no bond is needed to stay enforcement. *Id.* at § 917.1(d). Attorney fees are considered costs for that purpose. *Id.* at §§ 1032, 1033.5(a)(10). Therefore, no bond is needed to stay enforcement of the award of fees when a defendant prevails and is awarded costs, or when the defendant pays the damages but appeals from an award of attorney fees. *Ziello v. Superior Court*, 75 Cal.App.4th 651, 652 (1999); but see *Behniwal v. Mix*, 147 Cal.App.4th 621, 633-634 (2007) [holding that attorney fees awarded as part of specific performance are not “routine costs”]. However, the trial judge has discretion to require a bond to cover costs or fees. Code Civ. Proc., § 917.9(a)(3). And a bond must be posted to stay execution of attorney fees and costs awarded to a defendant who prevails on an anti-SLAPP motion. *Dowling v. Zimmerman*, 85 Cal.App.4th 1400, 1432 (2001).

Bonds are also necessary to stay execution when a judgment directs assignment or delivery of personal property (Code Civ. Proc., § 917.2) or directs the sale, conveyance, or delivery of real property (§ 917.4) or when the court appoints

a receiver (§ 917.5) or orders a right to attach property (§ 917.5).

If the parties cannot agree on the amount in these circumstances, the appellant may apply to the trial court to set the amount of a bond. The stay created by Code of Civil Procedure § 916 does not prevent the trial court from hearing motions relating to stays of execution. The motion should be supported by a declaration establishing the factors the court must consider in setting the amount. For example, if the bond were to secure monthly payments, the declaration would show how much is owed each month and how many months the appeal is likely to take; if it were to prevent the prevailing party from selling disputed real property, the declaration might show what the reasonable monthly rental value is for the expected duration of the appeal.

The court does not have jurisdiction to refuse to set a bond where there is a statute providing for a stay upon posting a bond. *Stevens v. Superior Court*, 28 Cal.App.3d 1, 3 (1972).

## How Do You Get A Bond?

Insurance companies write surety bonds. A party who needs a bond to stay execution may approach his or her own insurance agent, or directly contact one of the large companies that handle appeal bonds (most appellate lawyers have favorites with which they deal). The premium on an appeal bond is relatively low – often only 2-4 percent annually of the bond amount.

But the problem many appellants face is not paying the premium, but obtaining the required collateral. Most surety companies require either cash or an irrevocable letter of credit as collateral. However, recently a client who obtained a letter of credit from a small local bank found that the sureties he approached would not accept it as collateral because the letter of credit did not come from a large national bank.

Assuming collateral is available and the appellant wants to use a bond (although in light of the option of posting cash discussed below, there does not seem to be a good reason to pay a premium to an insurer rather than posting the cash as collateral), the process of bonding is simple. The insurance company will want to know some details about the case – party names, date judgment entered, how long the appeal is likely to take, for example. Once it is satisfied and the premium is paid, it will supply the bond.



This must then be taken to the Superior Court clerk's office and filed (adding one's own cover sheet is generally a good idea). A notice of filing undertaking is served and filed at the same time. The judgment creditor may object to the amount of the bond or the sufficiency of the sureties. Code Civ. Proc., § 995.920.

Once the bond or other security is posted, neither the appellant nor the surety can cancel it and walk away. A bond filed in a court action remains in effect until the judgment is satisfied or reversed or the court orders the release or substitution of the surety. Code Civ. Proc., §§ 995.430, 996.110.

**Is There Any Alternative?**

A party who cannot, or does not want to, pay for an appeal bond has other alternatives. One is a simple agreement with the opposing party not to execute pending appeal. The premium for an appeal bond and for any letter of credit needed as collateral is a taxable cost on appeal. Code Civ. Proc., §; Cal. Rules of Ct., Rule 8.278(d)(1)(F); Fed. R. App. P., Rule 39(e)(3). Therefore, some judgment creditors may be willing to forego a bond. Likewise, there is no reason why the parties should not be permitted by agreement to determine what constitutes a sufficient undertaking. *Merritt v. J. A. Stafford Co.*, 68 Cal.2d 619, 625 (1968).

But if the parties do reach some voluntary stay arrangement, the appellant should be certain that the agreement specifies that any payment given as a condition of a stay of execution is not deemed a voluntary payment of the judgment, because a voluntary payment could be construed as a waiver of the right to appeal.

In state court, Code of Civil Procedure § 995.710 allows a party to make a deposit in lieu of a bond. To use this procedure, cash, bearer bonds, certificates of deposit, and certain other financial instruments that have a market value of 1.5 times the amount of the judgment may be deposited with the trial court clerk pending the outcome of the appeal, accompanied by an agreement authorizing the clerk to apply the deposit to enforce the judgment debtor's liability if judgment is affirmed. *Id.* at § 995.710(b), (d). Interest on the deposit is payable to the appellant while the appeal is pending (although that doesn't stop interest accruing on the judgment). *Id.* at § 995.740.

*Continued on page 23*

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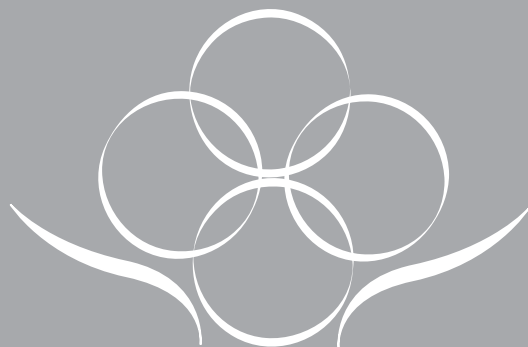
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## STAYS ON APPEAL

*Continued from page 21*

Yet another alternative is to use personal sureties rather than surety insurers to post undertakings. A personal surety is an individual who is a California resident and property owner or householder whose net worth equals the amount of the required bond, or – if the amount of the bond is more than \$10,000 – two or more personal sureties whose combined net worth is twice the amount. Code Civ. Proc. § 995.210(a) (2), (b). The judgment debtor cannot be his or her own surety, and lawyers and officers of the court are precluded from acting as personal sureties. *Id.* at §995.510(a).

Detailed requirements for establishing a personal surety's qualifications are set out in Code of Civil Procedure § 995.520. Anyone agreeing to become a surety for a judgment debtor should be made aware that they are putting their property at risk; if the judgment is affirmed, the judgment creditor may enforce the surety's liability by what amounts to summary judgment. *Id.* at § 996.440.

A bankruptcy petition is a desperate option for an appellant seeking a stay of execution. It brings an immediate stay under Bankruptcy Code § 362, but has significant adverse ramifications and procedural requirements that need the attention of a specialist in bankruptcy law.

Finally, an appellant who cannot afford to post a bond and cannot obtain another form of security may petition the California Court of Appeal for a writ of supersedeas to preserve the status quo pending appeal. Code Civ. Proc., § 923. A petition for supersedeas should be supported by declarations explaining exactly why a bond is not available, what unfortunate things may happen if the judgment creditor is allowed to execute on the judgment before the appeal is resolved, and what steps the appellant plans to take to move the appeal along expeditiously. In federal court, the appellant must first ask the district court judge for a stay pending appeal before seeking that relief from the Court of Appeals. Fed. R. App. P. 8.

### What Happens When Execution Is Stayed?

Filing an abstract of judgment creates a judgment lien. Code Civ. Proc., § 697.310(a). If execution is stayed by giving a bond, such a lien — and any other judgment or execution lien — is extinguished and new ones cannot be created while the stay is in effect. *Id.*, § 697.040. Any property held subject to an extinguished lien must be released. *Id.*, § 697.050.

*Continued on page 24*

## STAYS ON APPEAL

*Continued from page 23*

### Plan Ahead

Given the many steps that may be needed to obtain a stay of execution, it makes sense for a party facing a risk of an adverse judgment to contemplate how to get a stay before the need actually arises. At the very least, counsel should become familiar with the process and the resources available to his or her client in case a stay of execution is suddenly needed.

*Wendy Cole Lascher is a State-Bar certified specialist in appellate law. She practices in Ventura and is editor of CITATIONS. This article first appeared in California Litigation in November, 2007.*

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**75** Lawyers poured into the Tower Club to enjoy the Ventura County Trial Lawyers Association's Annual Holiday celebration 12.9. Judges **Long, Bysshe, Daily, O'Neill,** and **Young** were in attendance as were Commissioners **Lund** and **Hirsch**. Sgt. Pepper (**Dennis Jones** on guitar) provided the entertainment while the food and views started the holiday season off just right... From Fred Rodell: "I know of no field of learning so vulnerable to burlesque, satire, or occasional pocket in the ribs as the bombastic pomposity of legal dialectic."... From Jean De La Bruyere: "Avoid lawsuits beyond all things; they pervert your conscience, impair your health, and dissipate your property."... **Jody Moore** is a first time momma and the evidence would be Zachary Ryan Moore, born November 25, and weighing 9 pounds, 10 ounces. Big guy was 21.5 inches long too – oye!...

**Judge Jeff Bennett** held a farewell reception from the DA's office and celebrated his election to the Superior Court at the Embassy Suites December 10. More than 100 people – plenty of law enforcement officials and judges too... Congrats to **Mitch Disney** (VCBA board member) and **Andrea Tischler** for receiving the Prosecutor of the Year Awards amidst a big round of applause during the DA's annual Holiday Luncheon 12.11... A woman is suing a Pennsylvania sports bar, saying she got stuck inside a toilet

## Exec's Dot...Dot...Dot...

By *Steve Henderson, Executive Director, M.A., CAE*

bowl for 20 minutes after the seat broke. Kathleen Hewko of Delran Township, N.J., says she was in the bathroom at Starters Pub near Allentown when the handicapped toilet seat she was sitting on cracked and dumped her into the bowl. Ms. Hewko, who weighs 140 pounds, screamed for help before finally getting out, according to her attorney, John Cirrincione of Philadelphia, who says the seat was defective. "It's not a question of her being an obese woman," he said. Ms. Hewko says in her lawsuit filed in Federal Court in November 2007 that she had hip surgery prior to the November 19, 2008 incident and was reinjured when the seat broke. The lawsuit names Starters and Kohler Co., the company that made the toilet seat... Nine new admittees were sworn in at a ceremony presided over by **Judge Toy White** – "It's her courtroom," quipped **Justice Paul Coffee**. One of the newly installed lawyers graduated from North Carolina State University and has his three-week old infant in the audience. **Judge Kevin McGee** assisted White and Coffee...

**Diana Zitser** was recently named among The Ten Most Dependable Family Law Attorneys of the West by Goldline Research, an independent research firm specializing in evaluating professional service providers, as reported in a recent issue of *Forbes Magazine*... TV Law: "Eddie seems to know a lot about the law." – June Cleaver (Barbara Billingsley), *Leave It To Beaver*... From George Bernard Shaw: "Only lawyers and mental defectives are automatically *exempt of jury duty*." ... Happened to notice in my local rag, *Santa Barbara News Press*, that a hometown lawyer in San Luis Obispo, **James McKiernan**, was advertising in big type: "Don't let your insurance company low-ball your recovery." This related to the recent fire in the Montecito hills. What a guy... MCLE Compliance Group 2 (H-M) must submit the compliance information by February 2 or risk fines and suspension. The bar is offering 8 live presentations in January (see your calendar flyer) and we have a bank of over 250 presentations on-line at vcba.org AND, it's inexpensive too...

The Mexican American Bar Association is pleased to announce their website is now operating. Feel free to visit them at [www.vcmaba.com](http://www.vcmaba.com). You can download your 2009 Membership Application too... From ABC's Jimmy Kimmel: "Britney Spears' were the most-searched words of the year on Yahoo, followed by "World Wrestling Federation", and in third place, "Barack Obama." "I think the lesson here is that Americans are not responsible enough to be using computers."... Bizarre Case Names: "State of Indiana v. Virtue."... **Debi Jurgensen** is doing a radio show on KKZZ 1400. *Jurgensen Law* airs every week on Wednesday from 3:30 to 4:00 p.m. This is a brand new experience for Debi and she invites listeners and feedback. [www.jurgensenlaw@hotmail.com](mailto:www.jurgensenlaw@hotmail.com) or 850-6100...

**Brian Nomi**, stationed in Iraq for several months now, writes that he received his December CITATIONS and "enjoyed reading it very much." He's suppose to return in September (that's a long way off) and has a blog too – [briannomi.wordpress.com](http://briannomi.wordpress.com). He may be reached at [brian.nomi@yahoo.com](mailto:brian.nomi@yahoo.com)... Brought to you by Mr. Charles Dickens: "The law is an ass."... From Judge Irving Kauffman: "The trial lawyer does what Socrates was executed for: making the worse argument appear the stronger."... And this beauty from Wang Hui-Tsu: "If the nature of the encounter cannot be made clear, the facts can easily be distorted at the time of trial."... I'm currently doing a nationwide search of all bar associations, voluntary and mandatory, to see if there has ever been a father president (**Tony Strauss**) and a son Barristers' president (**Mike Strauss**) serving at the same time. So far, no hits...

*Steve Henderson has been the executive director and chief executive officer of the bar and its affiliated organizations since November 1990. Henderson anticipates delight and production from the new leadership of the bar. He once shot himself in the leg during a barroom brawl and was not convicted for trying to sell the bar presidency in 1998. On the bright side, Henderson mentors Taylor Hansbrough, Tim Tebow and Go Gators!*



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