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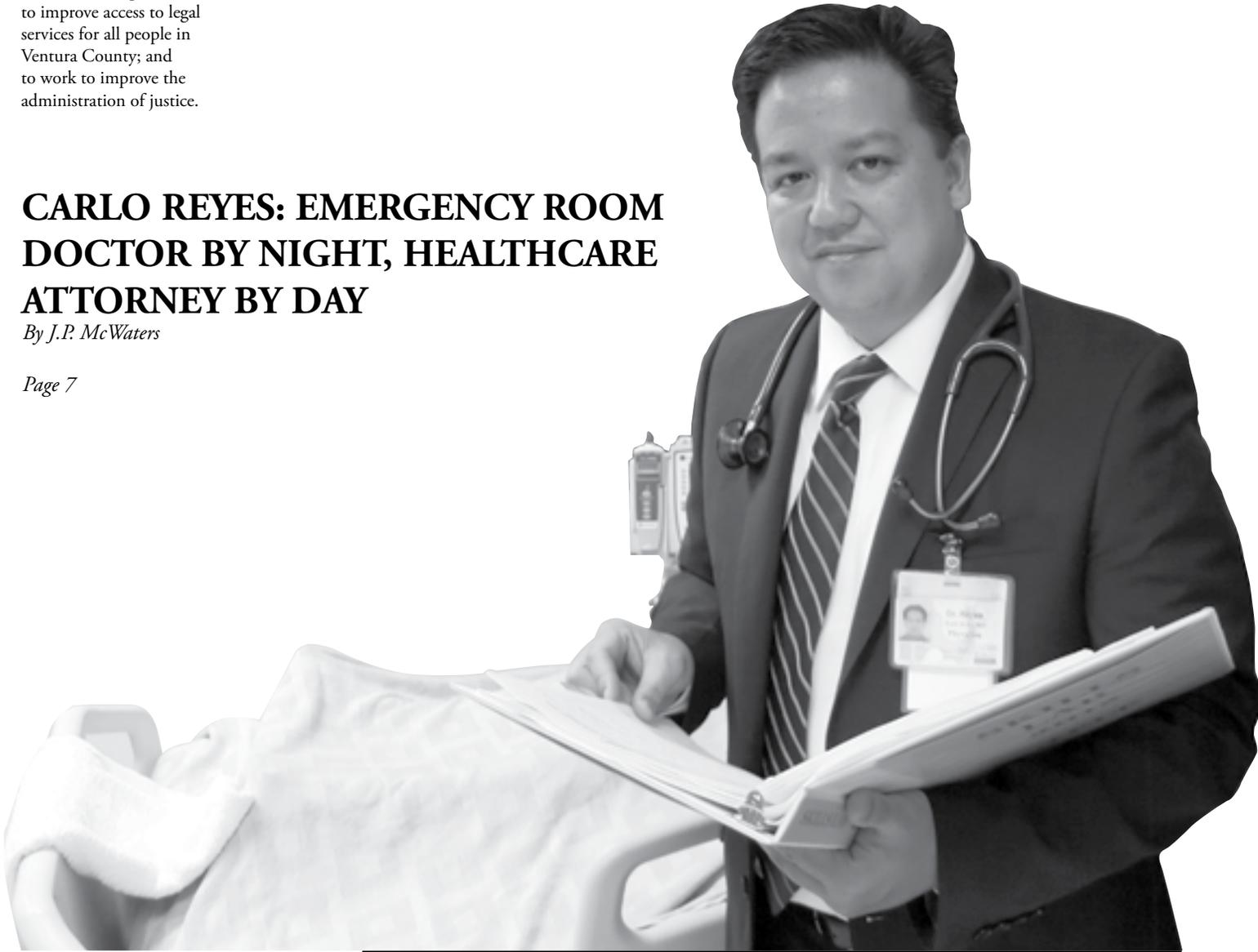
# CITATIONS

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

## **CARLO REYES: EMERGENCY ROOM DOCTOR BY NIGHT, HEALTHCARE ATTORNEY BY DAY**

*By J.P. McWaters*

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JOEL MARK  
 LISA M.J. SPILLMAN  
 RONALD L. SPENCER  
 BENJAMIN BYCEL  
 WILLIAM E.PATERSON  
 STEVE HENDERSON

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## PRESIDENT'S MESSAGE: *By Joel Mark*

I am informed that tradition dictates that, in the VCBA President's first President's Message, he or she is required to tell everyone how he or she got here.

Well, in the words of Bill Cosby, I started out as a child. And, from there, and I don't really know how, I have wound up being the first VCBA President to start his term of office after starting on Medicare.

I was born in the San Fernando Valley in 1947. After the Korean War, my father, a pediatrician, was drafted into the U.S. Army at age 35. He was stationed in Okinawa for two years and we all followed him there. Those were great times, mostly because it was the first time my father was not spending all his time building a practice, and he actually had time to be with his children. I celebrated my 7th and 8th birthdays there – truly a life-shaping experience.

My next life-shaping event, however, was not as pleasant. My mother passed away of cancer when I was 14. While at the time I really did not appreciate what was lost, years later I came to realize that her death really did shape my life – some for the better and some for the worse.

I went on to an illustrious career at Van Nuys High School, where, in addition to editing the school newspaper, during my first year under orders from our Head Yell Leader and my best friend, Rich Goldman (later Ventura and Santa Barbara Colleges of Law Dean Goldman) I served as the school mascot, Willie the Wolf. You have no idea how fun it is to dress up for every football and basketball game in a ratty old tuxedo and a paper mache wolf's head. I never fully forgave Rich for that.



In January 1965, I graduated and started at U.C. Berkeley. That was another life-shaping event. From the Free Speech Movement to the People's Park, I saw it all.

In so many ways the Berkeley experience was the best time of my life, but I would never ever do it again.

In 1969, it was on to law school at U.C. Hastings College of the Law. I know for a fact I was the last student to be admitted in my class. You see, the dean of admissions was a career military lawyer before joining Hastings' "65 Club," and he apparently was extremely skeptical about admitting one more of those Commie-loving Hippies from Berkeley to his school. In my final interview, I assured him with all sincerity that I had never made love to a Commie, at least as far as I knew. He reluctantly told me he had one more spot open and it was mine.

In 1972, I traveled to Washington D.C. where I met a young politician-in-training, Zev Yaroslavsky, who encouraged me to go back to California and work for the George McGovern campaign. I showed up at the LA headquarters and met a very nice woman, Norma, who let me work with her in the finance office and help her put on fundraising events. At every one of those events, Norma somehow seated me next to the most beautiful girl I had ever seen. It turned out that the beautiful girl, Leslie, was Norma's daughter. I fell in love with Leslie immediately. Leslie, on the other hand, needed six years to say yes and finally marry me.

We had two daughters, and they led me into my next passion, youth soccer. I coached and refereed, became the AYSO Regional Commissioner for the park in Encino, California. Eventually I was elected to the AYSO National Board of Directors, and then served as the AYSO National President for four years. After that, I became Chair of its independent Audit Committee, and was inducted into the AYSO section of the National Soccer Hall of Fame in 2008. A year later, the National Soccer Hall of Fame ran out of funds and closed. How does that make you feel? No sooner do you get "enshrined" in a hall of fame than it closes. Go figure.

My daughters? They grew up excellently, gave us sons-in-law and even grandchildren. And both are happy, gainfully employed and entirely off Daddy's payroll.

Professionally, I started out as a litigation associate at Macdonald, Halsted & Laybourne in Los Angeles in 1973, handling primarily professional liability matters for lawyers, stock brokers and accountants. In 1987, we merged with the international law firm of Baker & McKenzie. Then, six years later, kind of like the National Soccer Hall of Fame, Baker & McKenzie closed its Los Angeles office. Again, go figure. A few years after that, in 2000, we moved to Ventura County and I joined the Nordman firm.

I have concentrated virtually exclusively in business litigation, but I also spent 14 years on the State Bar Committee on Mandatory Fee Arbitration, twice served as its chair, and just concluded a four-year stint as State Bar Presiding Arbitrator in December 2012. I also served one term on COPRAC, the State Bar ethics committee. With that experience, somewhere along the way, between being the petrified young lawyer making his first court appearance in 1973 and getting my Medicare card, I must have learned something, as I also have been able to serve as an expert witness in ethics, attorneys' fees and litigation practice over 50 times so far.

I also was surprised the other day when I added up all of my years of volunteer service. Over the years, it turns out that I have had 29 years of volunteer service with multiple MFA Programs, 16 years with State Bar committees, 28 years with AYSO, four years on United States Soccer Federation committees, and now six years and counting with the VCBA. That is, what, 83 years of volunteer service overall (without even counting the Willie the Wolf gig)? Why? I just followed my heart, and found out that John Lennon was right – life truly is what happens when you are making other plans.

And now my heart has taken me here. I am looking forward to yet another year of volunteer service, for the VCBA, and to working with all of you to keep it on course and help it grow and flourish. Thanks in advance for all the help and support I know I can count on from each of you to give back to the VCBA this year.

*Joel Mark is a partner at Nordman Cormany Hair & Compton in Oxnard.*

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# SPIRITUALITY AND THE LAW, PART I

By Lisa Spillman



You know you are having a fantastic day when you walk into a retired justice's home to interview him for an article in *CITATIONS* and he offers to make you a latte. It just doesn't get any better than that for this sleep-deprived appellate attorney-mother of four children under 10. You had me from latte, **Justice Paul Coffee**. Bless you.

Then I drop the bomb. Well, Justice Coffee, the article **Wendy Lascher** wrote about you was excellent and I certainly do not want to reinvent that wheel. So, how about we talk about, say, spirituality? Spirituality and the law, to be precise. Justice Coffee did not politely usher me out the door. Instead, we had an excellent conversation about the involvement of spirituality with the law and with the practice of law.

Now, there is far too much involved with spirituality and the law for just one article. Thus, if the editors let me, you will be stuck with my writings on spirituality and the law for a while, based on my own musings, interviews with justices, attorneys, and others, and any other information I find out on point.

So, the topic for this first article on Spirituality and the Law is prayer.

Now for some, prayer and the law might go something like this, "Oh God, oh God, please get me out of this pickle I'm in. I'll never do it again, please God." Or, before oral argument, the prayers might be: "God, please help me not look stupid up there." Or, "God, please help me not drop this 32-page unstapled outline of salient points." Or "God, please help the Justices see things my way."

But for the most part, that's not how prayer works for me or for Justice Coffee. I learned of his strong Catholic faith reading the February *CITATIONS*, so I asked him how, if at all, he incorporates prayer, a tenet of his religion, into the practice of law or into his being a justice.

He responded that when he drove a 1951 Chevy from Madera to join the United States Navy Reserves, he drove around Pensacola, Florida looking for an open church, and found a Catholic one. His faith tradition to that point had been largely shaped by his parents, one of whom was Presbyterian and the other was a Christian Scientist. He went into the Pensacola church without really thinking about why he was there; he did not go there specifically to pray. But, after being there, he felt better.

Prayer for Justice Coffee since then, both while practicing as a trial attorney, and as a judge and justice, involves centering himself, usually with a succession of prayers. He does not have a ritual that must be carried out each and every day. Instead, he prays when he needs to. It has a quiet, centering effect. He does not pray about any particular case.

The same is pretty much true for me. Admittedly, sometimes prayers in my house go like this, "KIDS, SIT DOWN AT THE TABLE NOW. I'VE ASKED THREE TIMES. IF I HAVE TO ASK AGAIN I WILL SERVE YOUR FOOD IN THE GARAGE WITH THE LIGHTS OFF. God, Thank you for this food. Amen." But usually, my prayers aren't quite like that.

I remember my first law school final. I looked upon three students, facing each other in a circle, hands clasped. One was leading the other two in a prayer. After that, I sat in my chair, praying before the final as I had done before my LSAT, "God, okay, look, we are all here together trying to do our best. Please give everyone in this room peace. Please help everyone do their best." All of a sudden, I felt less stress. It was like my brain was no longer focused on the singular objective of the final but recognized the vastness and humanness of people in the same boat. Maybe it was the act of prayer or maybe it was God, I don't know, but I do know that I, like Justice Coffee, felt better.

So if one is inclined to pray, have at it. If not, don't have at it. Whatever. I'm not here to proselytize. I'm only trying to explore spirituality and the law. I am not here to pass judgment. But, Justice Coffee was and so are other judges and justices, so the next topic will explore one's paid duty to be a judge when one's faith tradition says not to judge. Or maybe it won't. Maybe it will be something else. I'll pray about it.

*Lisa Spillman is an attorney in Ventura. She handles criminal appeals and habeas corpus petitions.*

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## CARLO REYES: EMERGENCY ROOM DOCTOR BY NIGHT, HEALTHCARE ATTORNEY BY DAY

By J.P. McWaters

To simply call **Dr. Carlo Reyes** busy would be an understatement. Carlo is not only an attorney, but also is board-certified in emergency medicine and pediatrics, and is also part of the clinical faculty at Olive View-UCLA Medical Center in both departments. He is also the assistant director of emergency medicine at Los Robles Hospital in Thousand Oaks.

Reyes sat down between shifts to share some of thoughts on his unique career

**CITATIONS:** Can you describe a typical day as an emergency room doctor?

**Carlos Reyes:** The emergency room is an interesting place to work because you don't know what you're going to walk into. You have to be able to prepare for anything that comes through the doors and I think that's what attracted me to emergency medicine. Every day you have to be able to handle any situation. I started my career working the night shift where the hospital runs on a skeleton crew with fewer nurses and staff available. This is when you really hone your skills as a doctor, and depending on what type of facility you work at, dangerous things can happen, especially when you work on weekends. That's when deadly activity comes in with gunshot wounds or penetrating trauma. Typically, someone might be having a heart attack or stroke in one room and another patient might be suffering from a broken ankle in another room. You need to tailor your emotions and responses to meet the needs of the patient. That's the challenges of the ER. It's a very fast-paced job and it's just going to get faster.

**CITATIONS:** What is your opinion on the PPACA – Patient Protection and Affordable Care Act?

**CR:** The way things are taking shape – the political climate, an increasing patient census, the shortage of primary care physicians – all these things make emergency medicine a rapidly changing field. Many people are under-insured, or don't have

insurance. But now with the passing of the PPACA people may have insurance, but don't even know they're insured or they may have insurance but they don't have a doctor. The new challenge of the PPACA is that access to a primary care physician is going to be a problem. You may have insurance but what if it takes two months to see a doctor? This is causing a large influx of patients into the emergency room. Instead of waiting months to see their primary doctor, patients wait hours to see an emergency room doctor. There are still challenges ahead for the Affordable Care Act not only because of the primary care physician shortages, but you're also seeing a lot of physicians that don't want to take Medicare or Medicaid any more. I'm not only a doctor, but I am a patient as well, so I see both sides of the primary care access problems. The PPACA is a virtuous cause, but it may not adequately address the primary care shortage, which is critical for its success.

**CITATIONS:** It's quite a transition from life and death situations to law. What made you decide to pursue healthcare law?

**CR:** I've always wanted to be a lawyer. My father was a doctor and influenced my decision to pursue medicine. While I was training to become a physician I never forgot my dream to become an attorney. My interest in law was rekindled when I was in emergency medicine and I started to see the frivolous lawsuits. As a physician you try to help patients and you try to do the right thing and at the end of the day as a physician you are still vulnerable to lawsuits. Initially, I wanted to protect doctors and hospitals from frivolous medical malpractice actions because, in reality, disease states progress, and patients still unfortunately succumb to disease. It bothered me that physicians and hospitals could still be so vulnerable when everything was done right. As a law student, I started to see a larger healthcare perspective. I gravitated to healthcare law because I saw so many other liabilities at play for physicians and hospitals, not just medical malpractice. I saw how healthcare

law can be used to protect the whole field of medicine, compared to the individual doctor or hospital. So I see healthcare law protecting medicine on a larger scale, in terms of interpretation of statutes, regulatory practice, policy, which all impacts how healthcare is delivered nationally. I see healthcare law and medical malpractice defense as really different aspects of the same goal: protecting physicians and the delivery of healthcare.

There are some doctors who end up going into law and they see how lucrative it is on the plaintiffs' side. There is virtue in being a medical malpractice plaintiffs' attorney because there are questionable doctors out there. That's just not the role I wanted to take, because I felt that if I became a medical malpractice plaintiffs' attorney I would no longer be able to practice medicine. It has always been my intention to continue practicing emergency medicine and pediatrics, so it's important for me to have the people I work with in the emergency room and in the hospital able to feel comfortable and trust me knowing that I am there to protect them as an attorney.

Carlo Reyes, M.D., J.D., M.S., F.A.C.E.P., F.A.A.P. leads the Healthcare Law practice at the medical defense firm Boyce Schaeffer LLP in Oxnard. He is married to Dr. Rebecca Reyes, J.D., and has four young daughters. Rebecca is an inpatient psychiatrist and currently treats patients returning from Iraq and Afghanistan suffering from PTSD. She will join Carlos's firm when she takes the bar in February. That's another story ...



*J.P. McWaters focuses on business development for companies through traditional and new media channels. He can be reached at Fausset Creative in Ventura.*



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# CLEARING CONVICTIONS FROM A CLIENT'S CRIMINAL RECORD

By Ronald Spencer, Esq.

In the 1940s, individuals with felony convictions on their records flooded the Governor's office with requests for pardon so that they could obtain lucrative employment at defense plants. In response to this, Penal Code §4852.08 was adopted. It assigned the authority to determine if an individual should receive a pardon to the Superior Court. If the Superior Court granted an individual a "Certificate of Rehabilitation" under this statute, then the certificate was transmitted to the governor who could, without any further investigation, grant a pardon. The Legislature followed this with Penal Code §1203.4, under which the superior court could vacate the guilty plea of an individual given jail and/or probation (not prison) and then dismiss the charge against him or her (expungement). For more than two years, I volunteered at the Ventura County Public Defender assisting clients with cleaning their records. I present the three most common circumstances below. Forms are available at the Superior Court website.

## Misdemeanor Convictions:

The defendant must have served any jail or probation and paid all fines and fees.

If the defendant was sentenced to only jail and fines, Penal Code §1203.4(a) is applicable and a standard form petition and order are filed with the court (CR-180, CR-181). The clerk accepts the form, orders a rap sheet, and sends the package to a judge in chambers for judgment.

If the defendant was sentenced to probation, the same forms are filed but Penal Code §1203.4 is applicable. If the defendant violated his grant of probation, the court may deny the motion and a declaration must be attached to the petition which persuades the judge to grant the expungement nevertheless. Without a violation of probation, the court "must" grant an expungement. The declaration should tell the court about the hardship caused by the conviction with respect to employment, housing, and social services, and how the

defendant has reformed. It is recommended that letters of character reference be attached to the petition.

Certain misdemeanor offenses such as weapon possessions or domestic violence offenses cause a ten-year weapons prohibition. The expungement will not reduce this.

If the defendant was convicted of a misdemeanor sex offense, the expungement will not eliminate the registration requirement and a certificate of rehabilitation may be filed seeking a pardon to eliminate this duty. A certificate petition must provide evidence from the defendant's doctor to show that he will not reoffend.

If the misdemeanor was a crime of domestic violence, the defendant will likely be prohibited from buying a firearm under the Brady Act. A denial of this right by the federal government may be challenged under 18 USC §921(33)(B)(ii) in an appeal to the NICS system, or in federal court if necessary.

*Continued on page 10*

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**CLEARING CONVICTIONS FROM A CLIENT'S CRIMINAL RECORD** *Continued from page 9***Felony Convictions (jail sentence and/or probation granted):**

The defendant must have served all jail time and completed probation and paid all fines and fees. A motion must be filed with the court with service to the district attorney and the probation department in the venue of conviction. If the offense is a wobbler felony, the motion should be captioned to reduce the charge to a misdemeanor per Penal Code §17(b), and to then dismiss the charge pursuant to Penal Code §1203.4. If the offense is not a wobbler, then the Penal Code §17(b) portion should be omitted. The motion should contain a history of the conviction, sentence, and date of completion of probation. The date and substance of any violations of probation should be disclosed. The motion should stipulate that the defendant has since obeyed the laws of the land and lived an upright life. If there are violations of probation, a persuasive discussion of the defendant should be included as with the misdemeanor case of violation of probation. The motion should be captioned to show that the wobbler felony is to be reduced per

Penal Code §17(b) because if the charge is reduced under the auspices of Penal Code §1203.4, the defendant will not have his or her firearms rights restored and will still be a felon prohibited from possessing a firearm under federal and state law.

If the felony is a non-wobbler offense, the expungement will not restore the right to possess a firearm. A certificate of rehabilitation may then be filed and a pardon sought from the governor to restore this right unless the offense was assault with a weapon.

Sex offenses under Penal Code §§288, 288(a), 288.5, 289(j), or 261.5(d) are not eligible for expungement.

The motion should be calendared 21 days from the date of service for a hearing. At the first hearing, the court will refer the matter to the probation department for a report. Then the court will continue the case to a second hearing for the decision. A petition (form CR-180) and order (CR-181) are attached to the motion. The defendant need not be present at the hearings.

**Felony Convictions (Prison Sentence):**

If the defendant received a prison sentence, he is not eligible for an expungement. The only remedy is a certificate of rehabilitation. A period of rehabilitation which begins at the time of release on parole, and which ranges in time from seven to ten years depending on the offense, must have lapsed. The certificate filing will consist of a notice, petition, and the actual certificate. The D.A. and the Governor's legal affairs office must be served. The D.A. must be contacted first to determine the court date for the certificate hearing. Typically there is a six-month period from filing until hearing. During this period, the defendant is contacted and investigated. The certificate of rehabilitation must be filed in the county of residence of the defendant, not necessarily the venue of conviction. Penal Code §§286, 288, 288(a) and (c), 288.5, and 289(j) convictions are not eligible for a certificate of rehabilitation. Members of the military are ineligible. The defendant must have resided in California for five years before filing.

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## AM I YOUR CLIENT?

By Benjamin Bycel

In most cases, you know when someone is your client. Your relationship has been formed by an express written agreement. Even if one of the exceptions to the fee agreement statute exists (legal fees of less than \$1,000 or an emergency) the circumstances tell you clearly that someone is your client. While the California State Bar Act (SBA) and Business & Professions Code §6148(a) require almost all fee agreements to be in writing, just because you did not require a signed written agreement does not mean that someone cannot claim she is a client.

The SBA was written to protect the public, not attorneys. It creates a one-way liability: failure to comply with the requirement for a written document may "... render the agreement voidable at the option of the client." Bus. & Prof Code, §6148. If this occurs, the attorney is entitled to collect only a reasonable fee, not necessarily what you would have charged for the work.

Sometimes the attorney-client relationship is not clear. The purpose of this article is to help you avoid inadvertently acquiring a client.

An attorney-client relationship may be inferred from the parties' conduct, despite the absence of any written agreement. Neither a fee payment nor a formal agreement is required. (*Lister v. State Bar* (1990) 51 Cal.3d.1117, 1126; *Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441, 444).

An implied in fact attorney-client relationship is based on the facts of each case. (*Miller v. Metzinger* (1979) 91 Cal.App.3d 31, 39; *Hecht v. Superior Court* (1987) 192 Cal. App.3d.560, 565-566). The "implied" client must show more than that she sought advice from an attorney: "such advice must be sought from the attorney in his professional capacity." (*People v. Gionis* (1995) 9 Cal.4th 1196, 1210).

The parties' intent and conduct are critical considerations. (*Hecht*, 192 Cal.App.3d 565, 237). Depending on the circumstances, an initial consultation may give rise to an attorney-client relationship (*Miller v. Metzinger* (1979) 91 Cal.App.3d 31).

Also, an attorney-client relationship can be established when the attorney offers to investigate a case, volunteers legal services or otherwise provides legal advice to a prospective client. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 239).

### FACTORS TO IDENTIFY AN ATTORNEY-CLIENT RELATIONSHIP

Below are some of the factors that courts use to determine if an attorney-client relationship has been created by implied agreement. (Reprinted with permission from *Rutter California Practice Guide: Professional Responsibility*).

*Continued on page 17*

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## “SILVER LININGS PLAYBOOK” REVIEWED

By *Bill Paterson*

When I was a teenager (ah, the magical 50s) a weekend staple was the “date movie.” Such films usually featured the ever-pert and chaste Doris Day (Oscar Levant’s timeless quote – “I can remember Doris Day before she was a virgin”) and Rock Hudson (still in the closet). Lame even by the standards of the 50s, we still bought into these tepid romances. Oh how things have changed. “Silver Linings Playbook” wouldn’t make it past Hollywood’s old morality police, but is a “date movie” for our times designed to appeal to those of any age, dating or otherwise. Its charms are the result of smart writing, an original story and real chemistry between a couple you know are destined to finally get together – no matter the speed bumps along the way – and characters quirky enough to be entertaining but without crossing the line into sitcom caricatures.

Pat (Bradley Cooper) has just been sprung from a mental health facility by his mother Delores (Jacki Weaver). He is a serious head case who has spent eight months institutionalized, thanks to an incident where

he failed to keep his explosive temper in check. His father, Pat Sr. (Robert DeNiro), is a bookmaker and rabid Philadelphia Eagles fan who is less than happy to see his namesake return home. His suspicion that Pat is far from being cured is reinforced when Pat barges into their bedroom at 4 A.M. one morning and delivers an extended rant on how Hemingway screwed up the ending of “A Farewell to Arms.” Along with being a nocturnal literary critic, Pat is an obsessive/compulsive personality with a short fuse. He spends most of his time jogging through his parent’s working class neighborhood with a trash bag for a poncho, brooding about his ex-wife Nicki. He is convinced that if he works hard enough at being “normal” Nicki will welcome him back.

One night Pat crosses paths with his best friend’s sister-in-law at a dinner party. Tiffany (Jennifer Lawrence) is a loose cannon with a penchant for the outrageous in both word and deed. A woman whose proclaimed sexual liberality knows few boundaries, she has only one real goal in

life – competing in Philadelphia’s annual amateur night dance contest. Pat, who constantly pines for Nicki, does everything to avoid Tiffany, but they continue to cross paths as they are out jogging. But wait! Will the stars align for these two misfits? Who will Tiffany pick for her bargain basement “Dirty Dancing” partner? Sorry, pencils down. Time’s up.

Okay, “Silver Linings Playbook” may not pack any real plot surprises, but it is a clever and off-beat take on what could have been nothing more than a standard formula film. It uses wit instead of tired, recycled jokes which would only amuse a laugh track. While laced with profanity it is never raunchy; and is populated with an eclectic assortment of characters you care about. Bradley Cooper (“The Hangover”), in an impressive show of acting, demonstrates that he is much more than a Hollywood pretty boy. Jennifer Lawrence, who was so impressive in “Winters Bone” (loyalty to my granddaughter requires me to also

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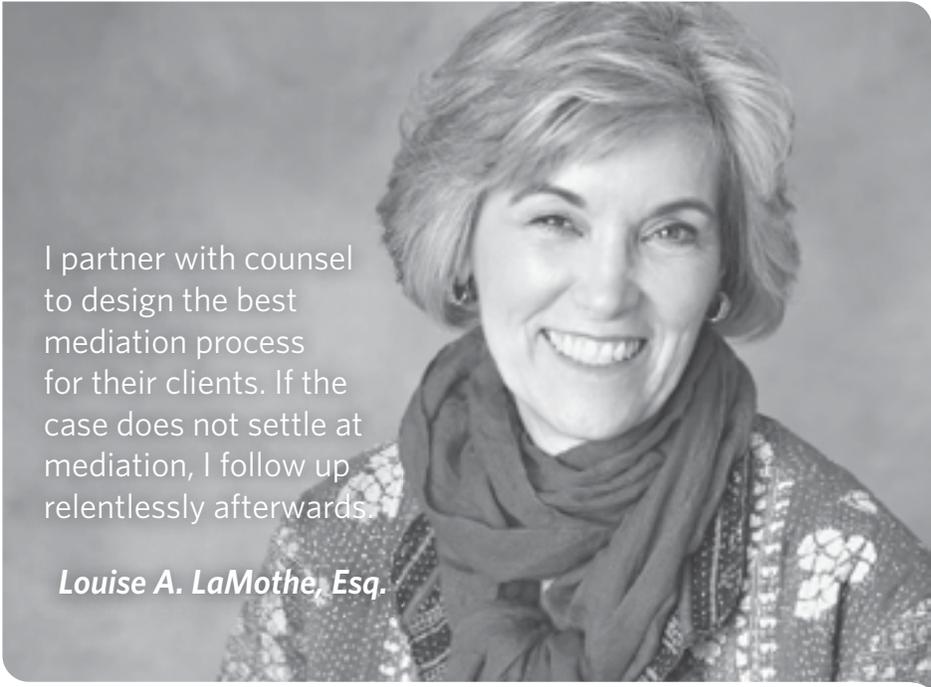
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point out that she was in “Hunger Games”) continues on a roll. She adroitly balances Tiffany’s dark, take-no-prisoners personality with the vulnerability of a woman who is slowly trying to extricate herself from personal chaos. Made in only 33 days at the modest cost of \$21 million, “Silver Linings Playbook” is an example of how one can make a popular feature without breaking the bank or churning out another spiritless clone. Enjoyable from beginning to end.

**DVD Pick** – For a 50s romance that will never age, you can’t do better than “Sabrina” (1954), directed by the legendary Billy Wilder with the incomparable Audrey Hepburn as a modern day Cinderella.



*Bill Paterson is of counsel to Ferguson Case Orr Paterson LLP in Ventura.*

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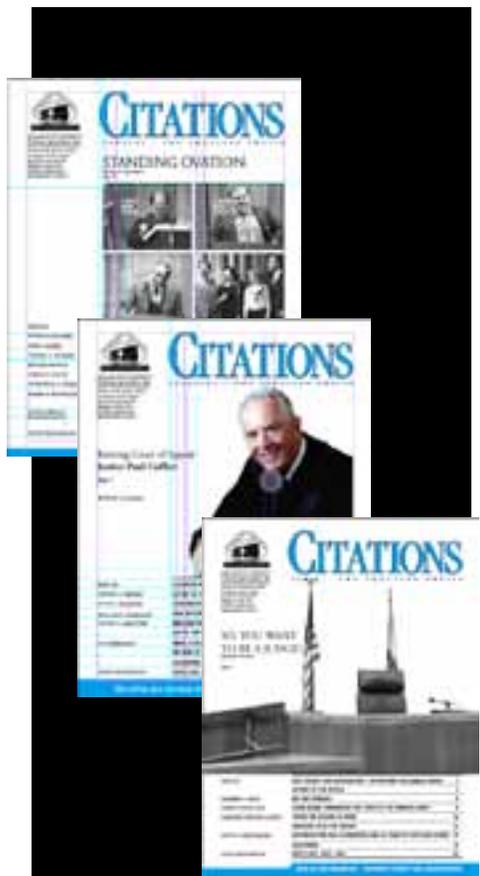
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**AM I YOUR CLIENT?** *Continued from page 11*

- Whether confidential information has been disclosed by the putative client;
- Whether the client reasonably believed he or she was consulting the attorney in the attorney's professional capacity;
- The amount of contact between attorney and the prospective client;
- Whether the attorney acted or indicated by statements that he or she was representing the client;
- Whether the client furnished the attorney with any information and sought the attorney's advice;
- Whether the attorney previously represented the prospective client, when, and for how long a period;
- Whether the prospective client consulted the attorney in confidence (Cal. State Bar Form Opn. 2003-161);
- Whether the attorney volunteered his services to the prospective client.

A client must have reasonable expectations: "(O)ne of the most important facts involved in finding an attorney-client relationship is the expectation of the client based on how the situation appears to a reasonable person in the client's position." (*Responsible Citizens v. Superior Court* (1993) 16 Cal.App.4th 1717, 1733).

A client's subjective belief that an attorney-client relationship exists, standing alone, cannot create such a relationship, or a duty of care owed by the attorney to that plaintiff. It is the intent and conduct of the parties that controls. (*Hecht*, 192 Cal.App.3d 565-566; *Fox v. Pollack* (1986) 181 Cal.App.3d 954, 959). "Hindsight beliefs" are not legally relevant (*Zenith Ins. Co. v. Cozen O'Connor* (2007) 148 Cal.App.4th 998, 1010).

The law seems pretty clear, and you might be tempted to think the unwanted client is not a problem.

**"SO YOU'RE AN ATTORNEY? CAN I ASK YOU JUST ONE QUESTION?"**

How many times in your career have you heard that question at a party, sports event, religious gathering – or just about anywhere. "So, you're an attorney, I have one question for you." (Usually it is more like ten questions.)

This is when you may want to say "Regrettably, I only do Tibetan law."

The question(s) and your response(s) may create an implied attorney-client relationship. One court has said that a "stranger" cannot unilaterally impose an attorney-client relationship upon a lawyer (*Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.4th 719, 729). What about if a friend or acquaintance asks you a question(s)? It depends, in part, how you answer.

*The Rutter Guide* points out "although generalized discussion at a cocktail party may not suffice, the more specific the legal advice and the more reasonable the perception that the person is being treated like a client, the more likely the lawyer will be found to owe that person duties of professional care" (*California Practice Guide-Professional Responsibility*, p. 3-25).

More and more attorneys have websites that allow potential clients and attorneys to communicate. It is safer for the attorney to make potential clients aware of the range of the attorney's legal services than to provide answers to specific legal problems. While an unsolicited e-mail inquiry may not create an attorney-client relationship (See San Diego Bar Ass. Form. Opn. 2006-1), a court may well look closely at your response. The more obscure the question, the more dangerous to answer it. For an excellent discussion of what to say (or not to say) on the Internet or on the telephone with a prospective client to avoid creating an implied client relationship, see Rutter, Chapter 3, p. 3-34.

If an attorney charges even a nominal fee for advice given over the Internet or telephone or asks a prospective client to fill out a questionnaire, this may give the person a "reasonable" belief that she is a client. Posting a disclaimer that all Internet communications do not constitute legal advice will not necessarily avoid the creation of an attorney-client relationship (Cal. State Bar Form. Opn. 2004-165). A general newsletter subscriber, on the other hand, may have a much more difficult time proving that the attorney writer is their attorney.

Rutter provides one example of an effective way to disclaim the formation of an attorney-client relationship. A website would require a user to click on a statement that states no attorney-client relationship will exist if attorney responds to question.

No attorney ever wants to write one more letter that he cannot bill. I strongly recommend, however, that you make a practice of sending written confirmation of non-engagement to every person who contacts you electronically or otherwise for legal advice or representation if you decide not to represent her. In your communication to her simply state that you have declined to provide legal services. Do not give any legal advice; do not comment on her case. Mention that the case may be barred if legal action is not taken within certain time limits provided under California law. If you believe that the statute of limitations may expire soon, you may want to state that, but be sure to also state that other statutes of limitations may apply and she must find this out for herself. Always encourage the non-client to immediately seek the advice of another lawyer. I would not suggest that you recommend a lawyer, but, if you do, be sure to give at least three names. You may want to send these communications by e-mail, certified mail and regular mail.

**CONCLUSION**

There are other significant issues related to the formation of an attorney-client relationship that are not discussed in this article. For example, the issue of attorneys in corporate situations, in which multiple parties may perceive that they are dealing with their attorney (*Gulf Insurance Company v. Berger*, Kahn et al (2000) 79 Cal App.4th 174).

Regardless of the situation, when there is no signed retainer, beware of creating an implied attorney-client relationship.

*Ben Bycel practices in Santa Barbara. He is the former dean of the Ventura and Santa Barbara Colleges of Law.*

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

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



Twenty new admittees were sworn-in during a ceremony December 4 inside Courtroom #22 and presided over by **Judge Brian Back**. Judge Back was capably assisted by **Justice Arthur Gilbert** who actually performed the oath. Thanks to **Dien Le**, **Bob Krimmer**, **Kathryn Clunen**, **David Cunningham**, and **Jill Friedman** who all spoke on behalf of their organizations. One lawyer came all the way from Washington D.C. and when I asked her why here, she stated she was in Mock Trial in Courtroom #22 nine years ago for La Reina HS...Kirkland & Ellis has a valuation nearing \$4 billion, putting it at the top of a new ranking of the world's most valuable law firms. *American Lawyer* found 33 firms have valuations above \$1 billion. The four firms after Kirkland are Latham & Watkins, Skadden, Arps, Slate, Meagher & Flom, Allen & Overy, and Gibson, Dunn & Crutcher...Joan Nordman, wife of the late **Ben E. Nordman**, passed away November 20, three days after the Ben E. Nordman Award was presented at the bar's annual Installation and Awards Dinner. The memorial service for Joan was held at the Las Posas County Club December 20...

Long time bar member **Don Leach** died November 20. He was very involved in the probate bar and many times chaired the Estate Planning Council's annual day-long program. What I didn't know was Don had a perfect attendance record for more than 31 years in the Downtown Rotary Club. Don was a man of many accomplishments including a letter carrier with the U.S. Postal Service, a radio and TV broadcaster, a Marine Corps captain and a California Highway Patrol officer before passing the bar in 1989...A man who owes \$50,000 in child support and \$40,000 in interest was sentenced on December 3 to three

years of probation with an added condition: He may not procreate. Corey Curtis of Racine was sentenced after pleading no contest to jumping bail and failing to pay child support. The 44-year-old defendant has fathered nine children with six women. Judge Tim Boyle of Racine County began the hearing by saying it's too bad he didn't have the authority to order sterilization. The prosecutor then told Boyle that he did have the authority to restrict Curtis from having additional children, unless he could show the ability to pay, as a condition of probation. Minnesota Public Radio News found the 2001 ruling by the Wisconsin Supreme Court, which also concerned a father of nine children accused of failing to pay child support. The U.S. Supreme Court denied cert in that case...

**Jill Friedman**, fresh off a run as president of the VC Women Lawyers, has accepted the role of chairperson of the Diversity Bar Association...New president of Women Lawyers is **Charmaine Buehner** and **Katie Hause** is President-Elect/Treasurer, while **Rebeca Mendoza** will serve as VP. **Robert Guerra** remains Secretary...

Remember – If you are in Group 1 (A-G), your MCLE is due by Feb. 1, 2013. Take advantage of the bar's many CLE events this month, especially the VCTLA Masters' meeting for 3 hours January 17!...A West Virginia judge accused of yelling at litigants didn't help his case during a hearing in November before the state's Judicial Hearing Board. The hearing board is recommending Judge William Watkins be kept off the bench for the rest of his term. According to the opinion, Watkins showed his displeasure when a complainant addressed the hearing board and asked Watkins to face him. The chairman of the hearing board told the complainant the request was improper. "Despite what appeared to be the advice of his counsel that he not do so," the hearing board wrote, Watkins "turned in his chair, leaned back, crossed his arms, and glared at complainant in an angry and confrontational manner." Watkins's demeanor, the board said, made his expressed remorse for repeated instances of angry courtroom behavior appear, "less than sincere."

If you are seeking a job with a boutique law firm in Ventura and have at least five years of business or business litigation experience, send me your résumé at [steve@vcba.org](mailto:steve@vcba.org)

vcba.org... Censured earlier this year for texting a shirtless photo to a court employee, a Michigan judge is now the focus of new allegations that he had a relationship with a witness in a child-support case he presided over. The claimed relationship apparently came to the attention of authorities when 3rd Circuit Judge Wade McCree complained to Wayne County prosecutors that the woman, Geniene Mott, was stalking and extorting him, the *Detroit News* reports. Prosecutors declined to bring charges against Mott, but referred McCree back to the Judicial Tenure Commission concerning his dealings with her. She says she began seeing McCree while he was overseeing her child-support case and became pregnant with the judge's child...

New officers for the Mexican American Bar Association include **Lou Kreuzer**, President; **Loraine Bailon**, Vice-President; **Claudia Calderon**, Secretary; and **Robert Gonzales**, Treasurer. **Renee Dehesa** will remain on the board after a stellar year guiding the organization...A divided Louisiana Supreme Court has OK'd a recommended two-year law license suspension for an attorney who charged a client nursing home resident her usual rate of \$125 per hour to perform non-legal services such as running errands. Katherine Guste charged an unreasonable fee and took advantage of her client, the majority found in an opinion...Banned in 2010 from issuing opinion letters concerning so-called Pink Sheet stocks, a Florida lawyer has been accused of using another attorney's identity in order to continue doing so. In a civil suit filed in December in federal court in New York City, the Securities and Exchange Commission accuses Guy Jean-Pierre, 53, of using the identity of his niece, who is also an attorney, without her knowledge or permission and falsifying her signature on opinion letters. Jean-Pierre is a 1985 graduate of Columbia Law School...

*Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. The only funny thing he has to say is that he may be reached at [steve@vcba.org](mailto:steve@vcba.org), FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1) and [vcba1](https://twitter.com/vcba1), or better yet, 650.7599.*

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