



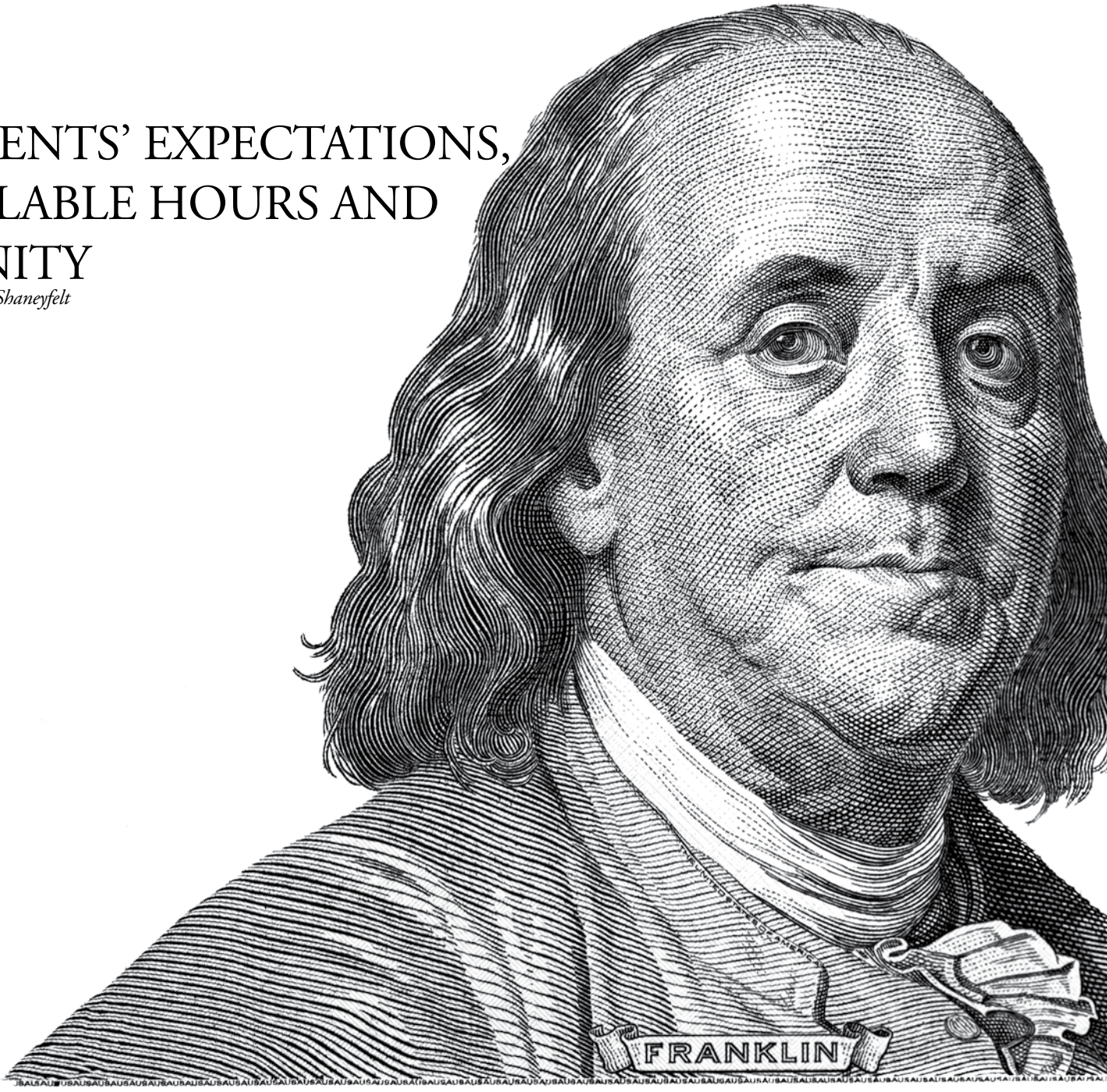
# CITATIONS

AUGUST - TWO THOUSAND TWENTY ONE

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## PRESIDENT'S MESSAGE

by Marc D. Anderson



I hope you are all enjoying your summer.

Bodie and I just returned from a week at Boy Scout camp. This was our third summer camp together. Our first two camps were at Camp Chawanakee on Shaver Lake outside of Fresno. This year we were at Camp Big Horn at Circle X Ranch near Lake Arrowhead.

I love the simple routine of summer camp. The opening and closing campfire, morning and evening flags, breakfast, lunch and dinner together in the dining hall, merit badge classes during the day and free time in the late afternoon. I walked a lot, read a lot, napped a bit in the hammock, watched Bodie climb the rock wall and made new friends.

The best part of camp for me was getting to see the boys and girls being kids after more than a year of pandemic restrictions: singing goofy songs, doing the Polar Plunge at 5:30 a.m., riding the zip line, playing Uno by lantern just before lights out, and buying sodas, candy and ice cream from the trading post. I especially enjoyed hearing the muffled conversations in the tents just before the kids fell asleep. Everything seemed almost back to normal at camp.

At one of our troop bonding activities we played another troop in soccer. It was hot and we were playing in a dusty horse corral with a mostly deflated ball. I decided to play for a bit. I got the ball, drove to the goal, and just missed outside. I didn't score, but I felt good that I could keep up with these young boys and girls. Then I overheard a



Scout on the other team say, "I could've probably gotten the ball from him, but I didn't want him to fall and BREAK A HIP!"

The Friendship Lodge has WiFi for the adult leaders. The password is shared in whispered conversations. We had been at camp two days when I asked someone for it. "Axl Rose dollar sign 25. Axl and Rose are capitalized, I think, and there is a space between them and before the dollar sign, I think." I enter it - incorrect. I try ten more times - change the capitals, change the spaces. Incorrect every time. I give up, too embarrassed to ask again. Later that night I'm back in the Friendship Lodge determined to get online. I spy a counselor, certainly a reliable source. "Axl Rose dollar sign 25." Hmm. "How is Axl spelled?" I ask. "A-X-L-E." I mention that I saw Guns-N-Roses in concert well before the staff member was born and Axl Rose spells his name A-X-L. He says "Axl Rose was in AC/DC, wasn't he?" My gasp quiets the room. "No, Axl Rose was in Guns-N-Roses." "Are you sure?"

I brought my accordion to camp. I played while the Scouts were at their merit badge classes and I had our campsite to myself. I played at the empty amphitheater in the evenings. Some of the Scouts walked through the amphitheater on the way to their campsites and would stop and listen. I played at the quad at night just before quiet time while the staff finished up at the office and Scouts and adult leaders walked to and from the showers. I am an amateur accordionist, but it was fun to share music with the kids.



At the closing campfire on Friday night each troop puts on a short skit. We debated for a bit on whether to do one of the classics - invisible bench or gum balls - but we decided to do our own skit that included the accordion and got the crowd involved. The boys did a great job and the crowd loved it. I've posted the YouTube link on the Ventura County Bar Association Facebook page if you want to see it. <https://www.youtube.com/watch?v=jG3DH-HQNds>.

Driving home was bittersweet. We all laughed as we relived the week's highlights, but eventually the scouts in my car were texting friends, watching videos or listening to music on their headphones. I was left alone with my thoughts. I thought about how fast my kids are growing up and about how much I cherish these adventures we have together.



**Marc D. Anderson** is a lawyer with Hiepler & Hiepler, APC, in Oxnard. He represents plaintiffs in personal injury and wrongful death cases.



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## HAVE YOU HEARD?



### VENTURA SUPERIOR COURT SELECTS NEW COMMISSIONER

The judges of the Ventura Superior Court have announced the selection of **R. Paul Kawai** as the court's newest commissioner. Mr. Kawai is an accomplished trial attorney with over 19 years of experience. He will join the court on August 3, 2021.

Kawai is currently a Senior Deputy Public Defender with the Ventura County Public Defender's Office, where he represents criminal defendants in all types of felony matters. Prior to that, he was proprietor of his own law practice, the Kawai Law Group, from 2010 to 2014, specializing in criminal defense.

From 2007 to 2010, he served as an attorney with the Utah County Public Defender Association, where he maintained a felony caseload of approximately 200 cases per year. Before that, he was a junior partner with the law firm Esplin Weight from 2001 to 2006, litigating criminal defense, criminal and civil appeals, domestic law and tort matters.

Kawai served on the Governor's Gang Task Force in Salt Lake City, Utah, from 2008 to 2011, which was charged with the development and implementation of legislation and programs to reduce gang related activity, crime and violence.

Kawai has been a Judge Advocate with the U.S. Army Reserves since 2003. He is currently Team Chief, responsible for supervising and training a team of 16 army lawyers, providing legal assistance to service members, and instructing commanders, officers, and soldiers in areas of military law. He also served as Command Judge Advocate with the U.S. Army in Afghanistan from 2006 to 2007 and is a recipient of the Bronze Star.

Kawai is a graduate of Brigham Young University and earned his law degree from the J. Reuben Clark School of Law.

### NEW COURTHOUSE RULES

Fully vaccinated individuals are not required to wear masks, but those who choose not to wear masks must self-attest that they comply with state and federal vaccination requirements. Others must wear masks that cover nose and mouth within all public areas of the courthouse or courtrooms (but not in internal DA and PD offices.) Masks with valves, neck gators, bandanas and handkerchiefs not allowed. Children under two years old and those with medical, mental health or disability conditions precluding masks are exempt from the order. In the jury assembly room and courtrooms people will be seated in every other seat.

Other courthouse changes: VCSC no longer requires public check-in outside the Hall of Justice. Civil matters will continue to be heard on CourtCall only, unless otherwise ordered by the assigned judge.



**Wendy Lascher** flying with @Astro Katie, Daughter of CITATIONS editorial board member **Carol Mack**.

**JHB Inns of Court** resumes. Meetings will be the second Tuesday of October-November 2021 and January-April, 2022 at Sterling Hills Country Club. To renew or join, contact [sandra@vcba.org](mailto:sandra@vcba.org), (805) 650-7599.



**Panda Kroll** is Co-Chair of the national Timeshare Litigation Group formed in 2021 by the American Association for Justice. For more information, contact Panda at [pkroll@pandakrollesq.com](mailto:pkroll@pandakrollesq.com).



**Deborah Meyer-Morris** has earned a Masters Degree in Educational Leadership and Administration at Cal Poly San Luis Obispo. Meyer-Morris is looking to start a new VCBA Disabled Lawyers & Legal Professionals Bar Association. If you identify as a disabled lawyer or legal professional, and are interested please email her at [dmeyermorris@kdeklaw.com](mailto:dmeyermorris@kdeklaw.com).



**Ian Elsenheimer** is joining Ferguson Case Orr Paterson, LLP as an associate. He will work with the firm's land use, transactional and real estate departments. After Aug. 9, you can reach Ian at (805) 659-6800, [ielsenheimer@fcplaw.com](mailto:ielsenheimer@fcplaw.com).



**Jeff G. Coyner, Mike M. Khalilpour** and **Matthew T. Bechtel** have been named partners at The Green Law Group, LLP. Coyner has represented businesses, government entities and individuals in real estate disputes, environmental matters, business and insurance litigation and mass tort actions. Khalilpour has represented and assisted numerous businesses with identifying and implementing strategies to manage risk, protect against exposure, ensure regulatory compliance, and protect company assets and business litigation. Bechtel is a civil litigator with extensive experience in ERISA (employee benefits) and general employment law. (805) 306-1100.



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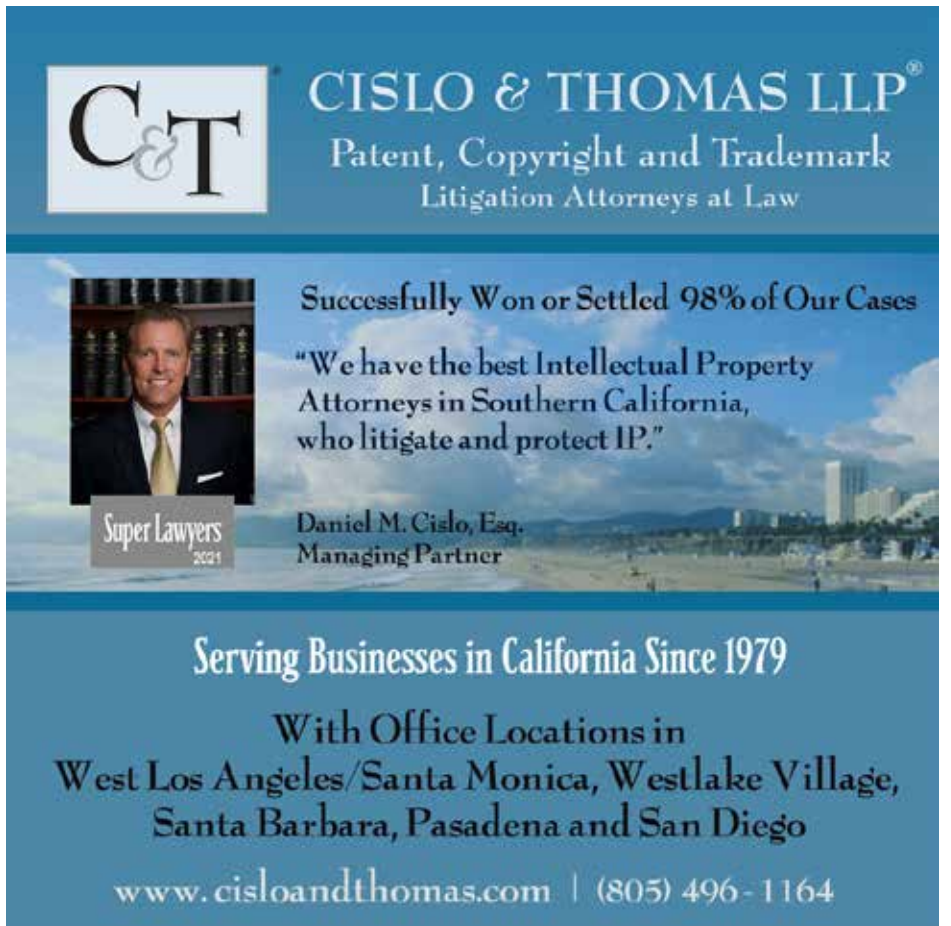
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***Welcome Susana Cruz!***

Quirk Law Firm is pleased to announce Susana Cruz joined the firm as an associate attorney.

Susana was born and raised in Santa Barbara. She is fluent in Spanish. She has a 12 year old daughter who loves to dance flamenco. She loves to hike, spend time with her family and travel outside the U.S.A. She has experience in worker's compensation law, family law, criminal defense and personal injury law.

Susana will focus on personal injury litigation.



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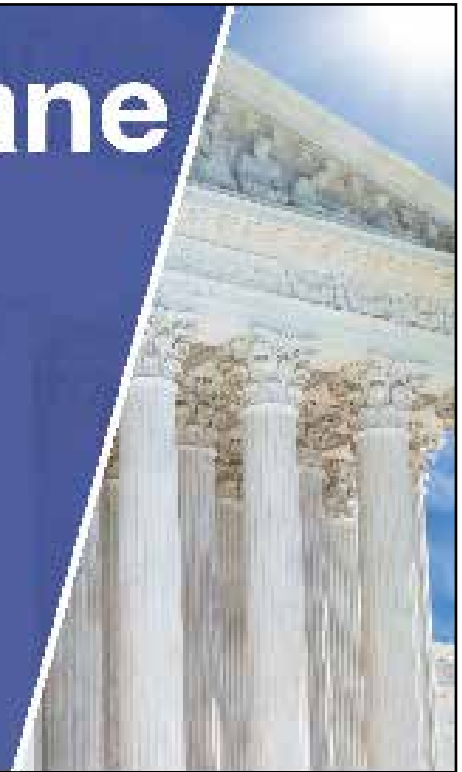
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# PUBLIC DEFENDER'S OFFICE PROVIDES MORE THAN CRIMINAL DEFENSE

by Sara Peters



We all know the Public Defender's Office provides legal representation for indigent persons charged with a crime. But did you know about the other services it provides? Ventura County's new Public Defender, **Claudia Bautista**, explains that her office offers several services and resources aimed at alleviating the collateral consequences of arrest, conviction and imprisonment. It also provides legal representation for persons involuntarily committed to mental institutions and those who seek to challenge mental health conservatorships.

## Alleviating Collateral Consequences

### *Expungements*

Having a conviction on your record can make it extremely difficult, if not impossible, to get a job. And the consequences of unemployment affect more than just the individual with the conviction. Poverty is a leading cause of recidivism. The Public Defender's Office can help someone get their criminal record expunged – which allows them to truthfully state on job applications that they haven't been convicted (unless it's a government job or one that requires a government-issued license). To get started, go to the Expungements section of the Public Defender's website, which contains a link to an online form. Detailed information and answers to frequently asked questions about expungements can also be found there.

### *Reclassifications*

The Public Defender's Office can file an application for reclassification to have a felony conviction for certain non-violent offenses changed to a misdemeanor on someone's criminal record. A felony conviction carries more of a stigma than a misdemeanor conviction – and is thus far more likely to stand in the way of housing and employment. Another reason to apply for reclassification is it's easier to expunge a misdemeanor than a felony.

When Proposition 47 passed in 2014, it recategorized most drug possession offenses and low-value (not exceeding \$950)

property theft offenses as misdemeanors. (They could previously be charged as felonies or misdemeanors.) Persons interested in applying to reclassify an offense covered by Proposition 47 should call the Public Defender's Office at (805) 662-6522 or (805) 654-2449 to speak to a Prop 47 law clerk – before the deadline of Nov. 4, 2022.

Proposition 64, which passed in 2016, reduced the punishment for many marijuana-related offenses. To apply for the reclassification of a marijuana-related offense from a felony to a misdemeanor, go to the Prop 64 Quick Link on the Public Defender's website.

### *Termination of Megan's Law Registry Requirement*

Until this year, California was one of only four states that required a lifetime of registration on the Megan's Law website for most sex offense convictions. As a result, the online registry has become overcrowded with low-risk offenders, which detracts the public's attention from the high-risk offenders we should be aware of. Additionally, managing a registry that's overwhelmingly diluted with low-risk offenders isn't the best use of law enforcement resources.

This January, Senate Bill 384 eliminated the one-size-fits-all lifetime registration requirement and replaced it with a three-tier system. Tier 1 requires ten years of registration for those convicted of misdemeanor or non-violent felony sex offenses. Tier 2 requires twenty years of registration for the more serious and violent sex offenses. Tier 3 requires lifetime registration for repeat sex offenses and the most serious sex offenses.

Beginning July 1, persons in Tiers 1 and 2 who have completed their ten or twenty years of registration on the Megan's Law website may file a petition to request removal from the registry. For those who qualify based on income, the Public Defender's Office will file a petition with

the court and represent them through that process, which could potentially involve a hearing.

### *Eliminating Criminal Administrative Fees*

Did you know that, until July 1, California counties and courts would charge fees for things like being arrested and having a public defender represent you in court? And that's just the beginning. According to the Debt Free Justice California flyer Bautista gave me, counties used to charge for seemingly everything: arrest; booking; citation/release on own recognizance; registration for court-appointed lawyer; cost of your court-appointed lawyer; probation or parole supervision; pre-sentence/ investigation report; jurisdictional transfer; home detention; electronic monitoring; interstate compact supervision; payment/ installment plan; work furlough program; home detention program; voluntary work release program; and electric monitoring instead of bail or jail.

For the majority of people released from jail and prison – who are already at a disadvantage when it comes to obtaining housing and employment – being further burdened by debt like this makes it nearly impossible to get on their feet. What's even more unsettling are the implications of this for Black Americans and other racial minorities.

Thanks to Assembly Bill 1869, as of July 1, counties and courts are no longer allowed to charge or collect the above-mentioned fees. But certain, other fees can still be charged and collected. Bautista encourages anyone with questions about fees to call the Public Defender's Office.

### *Opportunities to Work Off Fines for Persons without Housing*

If someone is without housing and unable to pay off fines assessed for infractions or certain misdemeanors that don't carry mandatory jail sentences, they have the option of working off the fine by performing community service or participating in a



program like AA. To do this, they need to attend Homeless Court, which usually takes place during the last Friday of the month at a location that serves persons experiencing homelessness. To apply for Homeless Court or get more information, call the Public Defender's Office paralegals at (805) 654-2201.

#### *Additional Opportunities for Veterans without Housing*

Persons without housing who are also veterans have the additional option of attending Stand Down Court, which is part of a three-day event that generally occurs once a year in July. At Stand Down Court fines and fees can be waived in exchange for community service performed at the event. Attorneys and law clerks from the Public Defender's Office can also help attendees obtain other resolutions, like case dismissal and expungement. The Stand Down event also offers medical screenings, dental care, psychological counseling, VA benefits and a variety of other social services.

Although this year's Stand Down event was cancelled due to COVID 19, it's possible that a shortened version of the event, featuring Stand Down Court, will happen later this summer or fall.

#### *Alternative Sentences for Veterans*

Veterans convicted of crimes they committed as a result of psychological injuries suffered in combat have the option of receiving mental health treatment in lieu of serving a jail sentence. Veterans Court is the result of a collaboration between the Department of Veterans Affairs and Ventura County's Superior Court, Public Defender, District Attorney and Probation Department. The Public Defender's Office represents veterans in this special court and connects them to services in the community.

#### *Housing, Food & Other Community Resources*

Bautista says anyone is welcome to contact her office to get help obtaining housing, food, or other community resources. The

Public Defender's Office paralegals will help connect anyone – not just clients – to the resources they need. Their paralegals can be reached at (805) 654-2201.

#### **Protecting the Mentally Ill—and Those Accused of Having a Mental Illness**

Persons charged with crimes aren't the only ones at risk of losing their freedom – so too are those accused of having a serious mental illness. When that happens, the Public Defender is there to safeguard their constitutional rights too.

#### *Challenging Forced Medication for Involuntarily Committed*

When a person's mental health disorder causes them to be gravely disabled, or a danger to themselves or others, they may be placed in an evaluation and treatment facility for up to 72 hours. During this 5150 hold (from section 5150 of the Welfare and Institutions Code), or any subsequent hold, the patient cannot be forced to take antipsychotic medication unless a hearing takes place where a judge finds that they lack the capacity to refuse treatment. At the hearing, the patient is represented by an attorney from the Public Defender's Office.

#### *Challenging Involuntary Commitment Over 72 Hours*

If, at the end of a three-day 5150 hold, the patient is still gravely disabled, or a danger to themselves or others, they can be kept for up to fourteen additional days for the purpose of receiving intensive treatment – but only after a hearing. Bautista says the Public Defender's Office has a dedicated attorney who represents patients in those hearings, which take place in courtrooms located on the premises of Vista del Mar and Hillmont Psychiatric.

#### *Challenging Mental Health Conservatorships*

Persons who are gravely disabled and unwilling or incapable of accepting treatment may be placed on a mental health conservatorship – sometimes

referred to as an LPS conservatorship (from the 1967 Lanterman-Petris-Short Act). This allows for involuntary mental health treatment and estate management. After a conservatorship petition is filed, a hearing is held. Conservatees can challenge the conservatorship at or after the hearing with the assistance of an attorney from the Public Defender's Office. These conservatorships expire after one year and cannot be renewed without another hearing. The Public Defender provides representation at those as well.

#### *Help for Arrested Relative with Mental Illness*

When someone with a mental illness is arrested, it's unlikely they'll get the medical treatment they need unless someone informs the County Jail Medical Department (at (805) 654-3346) about the mental illness and advocates on their behalf. The Public Defender's website contains a helpful flyer entitled "My Arrested Family Member Has a Mental Illness What Do I Do?" It also recommends preparing a fax to request that the person be screened for placement in the mental health unit and gives detailed instructions for doing so. The form is located in the Mental Health section of Public Defender's website. (Look for Mental Health on the pull-down menu under Services).

The Public Defender's website contains a lot of other useful information too. It's a great resource for their clients and the community in general. Learn more at [vcpublicdefender.org](http://vcpublicdefender.org).



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# CLIENTS' EXPECTATIONS, BILLABLE HOURS, AND SANITY

by David Shaneyfelt

*This article is excerpted from Shaneyfelt, "Confessions of a Catholic Litigator," 17 U. St. Thomas L.J. 111, 127 (2020); some paragraphs and footnotes have been rearranged, and subheadings added. For the extensive references supporting this article, please see p. 13*



Lawyers bill by the hour. The more hours they bill, the more money they make. Lawyers also promise excellent services for their clients, and excellent services typically require many billable hours. Clients who want excellent services know this and will pay those bills. When bills become predictable, law firms set budgets according to the predictions. They expect attorneys to meet those budgets through billable hours requirements.

## Budgets and billables

Big budgets entail high billable requirements. In 1958, the American Bar Association recommended a 1,300 hour-a-year target for attorneys. Today's expectations exceed 2,000 in most large law firms.

To put in perspective a 2,000 hour-a-year target, consider that eight hours a day times five days a week times fifty weeks a year will reach that target, and leave an attorney with a two week vacation. Consider further, that such a goal will be reached if one is willing to forfeit all nine of the customary holidays (New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Fourth of July, Labor Day, Columbus Day, Thanksgiving and Christmas). Consider further the day or two required to fulfill continuing legal education courses. Consider days for illness, birthday parties, funerals and inescapable social obligations. Consider time needed for firm meetings and retreats, department meetings, client

development obligations, and non-billable and internal administrative matters. And we are not counting time for chit-chat and coffee breaks. (A friend tells me he "double bills" during bathroom breaks, because he is more productive there). Billing eight hours a day will only be done with early arrival and late departure times and supplemental hours gained on Saturdays and Sundays.

## No life for the biller means trouble

High billable requirements mean one inescapable consequence: no life for the biller. When one has no life, one becomes prey to the usual consequences – depression, infidelity, divorce, substance abuse, health problems, early death, suicide. Bar associations and mental health professionals have devoted considerable attention to the growing problem of lawyer mental health. Several state bars offer hotlines, public education and lawyer assistance programs; seven state bar associations have added a mandatory mental health component to their continuing legal education requirements. A 2016 ABA survey of 13,000 lawyers found that 21 percent qualify as problem drinkers (a rate more than triple the rate for the general population, and nearly double the rate for other highly educated professionals); 28 percent struggle with depression; and 19 percent have symptoms of anxiety. "[T]he likelihood of depression is 3.6 times higher for lawyers than other employed people."

## Greed or excellence?

Who bears responsibility for this structure of sin? Everybody and nobody. Big budgets may or may not be set by greed. Lawyers may have a sincere desire to serve clients excellently, and billing attorneys may or may not bill high hours for the sake of greed, envy or power. Associate attorneys, for instance, have no choice; they are given billable minimums, and they will be fired if they fail to meet them. Partners may fare no differently. If a client wants advice about something first thing Monday, the lawyer will work all weekend to provide it. Everyone is responsible, and most are miserable. No Catholic litigator should want to be miserable. In theory, an all-consumed litigator might be able to practice the seven virtues – prudence, justice, temperance, courage, faith, hope, and charity – but those who do so are as rare as hen's teeth.

## The prize is more pie

As a Scottish proverb goes, he who loves the law will soon get his fill of it. This is especially true for young attorneys on the track to partnership in big firms. A friend of mine described the experience as trying hard to win a pie-eating contest where the prize for winning is more pie. This aphorism is now making its way into the public domain.

## A third alternative: live your life

Not surprisingly, litigators tend to be of two kinds: those who die at their desks and those who decide to leave them. I plan not to be the former.



*David Shaneyfelt represents clients with claims against insurers. He practices with The Alvarez Law Firm in Camarillo.*



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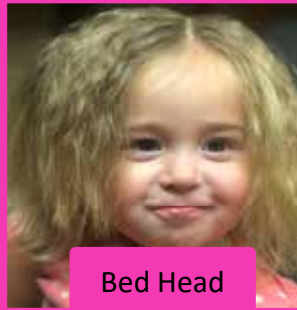
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