

Fallout of Budget Apocalypse at the Los Angeles County Superior Court

By **Lonny Zilberman**



Lonny Zilberman

Over the last five years, on a state-wide basis, the judicial branch budget has been reduced by more than \$1 billion. As a result, the justice system is in deep distress. On April 8, 2013, the Los Angeles County Bar hosted a program called “Budget Apocalypse 101 – Surviving The Changing Court Environment,” presented by Judge Dan Buckley, currently the

Supervising Judge of the Civil Courts in Los Angeles County as well as the three judges who will be assigned to the three “new” master calendar departments in downtown Los Angeles. These three departments will handle all unlimited civil personal injury cases. The three judges are: Judge Rafael Ongkeko in Department 91, Judge Amy Hogue in Department 92, and Judge Samantha Jessner in Department 93. According to Judge Buckley, with budget cuts, only about one percent of the general fund budget is now allocated to the judiciary, which is a co-equal branch of state government.

No single core issue has galvanized and unified the Bar as much as this lack of funding and the associated impact on access to justice in California. The current consolidation plans are based on the assumption that these budget cuts are permanent. When asked if funding would be restored Judge Buckley replied by rhetorically asking, when will the economy get better and the unemployment rate drop? The short answer is that nobody knows the answer.

In order to address a significant budget shortfall for the 2013-2014 fiscal year, the Los Angeles Superior Court will be reorganizing its

(see “**L.A. Court Consolidation**” on page 6)

Will Sacramento Reinvest in the State’s Court System?

By **Lois M. Kosch**



Lois M. Kosch

There has been much publicity in recent weeks about California’s projected \$4 billion dollar budget surplus. The unexpected windfall is reportedly the result of higher than expected personal income tax payments. Over the past four years California’s court system has had \$1 billion slashed from its budget, with devastating results. (See President’s Letter.) In

light of the apparent surplus, can the courts expect any restoration of funding?

According to Joe Dunn, Executive Director of the State Bar of California, there is cautious optimism that the court system may see more dollars flowing in its direction when the state finalizes the budget in June. Significantly, the Judicial Council recently approved a formula for allocation of state funding to the state’s 58 county court systems. This replaces an outmoded system based on county funding of

(see “**Court Funding**” on page 9)

Inside

August Luncheon: Reading Law – Featuring Justice Scalia	
August 21, 2013	p. 2
President’s Letter	
By: Richard D. Gluck	p. 4
Latest Update on Changes in San Diego Federal and State Courts	
By: David J. Aveni	p. 5
Brown Bag Luncheon with Judge Marilyn L. Huff	
By: Carolina Bravo-Karimi & Morgan Suder	p. 10
Making the Record: Crafting Jury Instructions	
By: Kate Mayer Mangan	p. 12



Project Management

“Our experienced, professional staff of Senior Project Managers and Data Analysts provides world-class service, constant reporting, and attention to detail.”

e-Discovery ESI

“We provide industry-leading processes, tools, and capacity for all aspects of electronic discovery, from forensic data acquisition to advanced file processing and data conversion.”

Hosting & Review

“DTI offers a variety of powerful data hosting and review systems, ensuring that the right tool is applied to each project’s unique requirements.”

Facilities Management

“With operations on-site in over 100 of the nation’s most prestigious law firms, DTI is among the largest and most respected Facilities Management service providers in the industry.”

619.234.0660

501 West Broadway | Ste. 400 | San Diego | CA | 92101

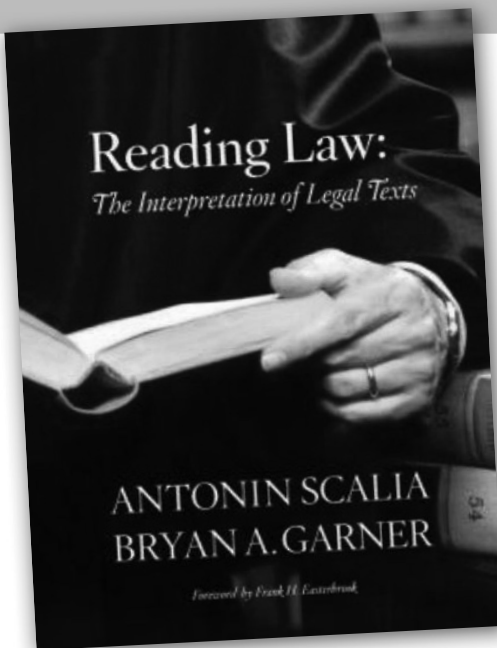
Data Discovery | Early Evidence Assessment | Custom Document Databases
Discovery Research Services | Scanning and Coding Services | Document Management Services
DTI
Visit us online at dtiglobal.com

Reading Law: *The Interpretation of Legal Texts*



*You won't want to miss our August 21st luncheon
with Justice Antonin Scalia and Professor Bryan A. Garner*

*12:00 NOON – 1:30 P.M. AT THE U.S. GRANT HOTEL
326 BROADWAY, SAN DIEGO, CA*



presented by:
ASSOCIATION OF BUSINESS TRIAL LAWYERS
SAN DIEGO
abtl

Registration will include a copy of
"Reading Law: *The Interpretation of Legal Texts*"

Early registration period available for ABTL members until July 15th, 2013

1 HOUR MCLE CREDIT - The ABTL certifies that this activity conforms to the standards of approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education

Association of Business Trial Lawyers – San Diego

2013 Officers and Board Members

President

RICHARD D. GLUCK

Vice President

MARISA JANINE-PAGE

Secretary

JACK R. LEER

Treasurer

BRIAN A. FOSTER

ABTL Report Editor

LOIS M. KOSCH

Judicial Advisory Board Chair

HON. JANIS L. SAMMARTINO

Leadership Development Co-Chairs

BRIAN A. FOSTER
ANNA F. ROPPO

Membership Chair

ROSS H. HYSLOP

Program Chair

PAUL A. TYRELL

Immediate Past President

HON. M. MARGARET McKEOWN

Past Presidents

HON. JAN M. ADLER
PETER H. BENZIAN
CHARLES V. BERWANGER
MICHAEL DUCKOR
EDWARD M. GERGOSIAN
HON. J. RICHARD HADEN (RET.)
HON. MAUREEN F. HALLAHAN
FREDERICK W. KOSMO, JR.
MARK C. MAZZARELLA
ANNA F. ROPPO
ALAN SCHULMAN
HON. RONALD L. STYN
HOWARD E. SUSMAN
CLAUDETTE G. WILSON

ROBIN A. WOFFORD

MERYL L. YOUNG

MARK C. ZEBROWSKI

ANNA ROPPO

HON. MARGARET McKEOWN

Executive Director

PAT SCHMIDT

Board of Governors

HON. LORNA A. ALKSNE
MICHAEL A. AMON
FELIPE J. ARROYO
DAVID J. AVENI
COURTNEY L. BAIRD
HON. JEFFREY B. BARTON
HON. ANTHONY J. BATTAGLIA
HON. CATHY ANN BENCIVENGO
ROBERT J. BORTHWICK
GARY K. BRUCKER, JR.
MICHELLE L. BURTON
HON. GONZALO P. CURIEL
HON. DAVID J. DANIELSEN
HON. WILLIAM S. DATO
ROGER A. DENNING
MARY C. DOLLARHIDE
HON. KEVIN A. ENRIGHT
CHAD R. FULLER
DANIEL E. GARDENSWARTZ
RANDY S. GROSSMAN
CHARLES T. HOGE
ROBERT M. HOWARD
VALENTINE S. HOY
HON. MARILYN L. HUFF
HON. JOAN R. IRION
ROBERT G. KNAIER
ALAN MANSFIELD
GUILLERMO MARRERO
BRIAN D. MARTIN
THOMAS W. MCNAMARA
HON. THOMAS P. NUGENT
WILLIAM V. O'CONNOR
HON. RONALD S. PRAGER
HON. JOEL M. PRESSMAN

ROBERT D. ROSE

ANTHONY M. STIEGLER

SUSAN G. TAYLOR

HON. TIMOTHY B. TAYLOR

Judicial Advisory Board

HON. CYNTHIA G. AARON
HON. PATRICIA YIM COWETT (RET.)
HON. STEVEN R. DENTON
HON. IRMA E. GONZALEZ
HON. WILLIAM Q. HAYES
HON. HERBERT B. HOFFMAN (RET.)
HON. RICHARD D. HUFFMAN
HON. JOAN M. LEWIS
HON. FREDERIC L. LINK
HON. WILLIAM H. McADAM
HON. WILLIAM R. NEVITT, JR.
HON. LEO S. PAPAS (RET.)
HON. LAURA H. PARSKY
HON. RONALD S. PRAGER
HON. RANDA TRAPP

Emeritus Board Members

WILLIAM S. BOGGS
HON. PETER W. BOWIE
LUKE R. CORBETT
CHARLES H. DICK
HON. IRMA E. GONZALEZ
HON. JUDITH L. HALLER
HON. WILLIAM J. HOWATT, JR. (RET.)
HON. J. LAWRENCE IRVING (RET.)
HON. RONALD L. JOHNSON (RET.)
HON. ARTHUR W. JONES (RET.)
MICHAEL L. KIRBY
MICHAEL L. LIPMAN
HON. JEFFREY T. MILLER
DAVID E. PERRINE (IN MEM.)
ABBY B. SILVERMAN
ROBERT G. STEINER
WILLIAM F. SULLIVAN
REG A. VITEK
MICHAEL J. WEAVER
SHIRLI F. WEISS



Your Partners in Resolution!



Hon. Mac Amos (Ret.)



Hon. Patricia Cowett (Ret.)



Hon. Charles Hayes (Ret.)



Hon. Yuri Hofmann (Ret.)



Hon. Anthony Joseph (Ret.)



Hon. Edward Kolker (Ret.)



Hon. Gerald Lewis (Ret.)



Hon. Lillian Lim (Ret.)



Hon. Wayne Peterson (Ret.)



Hon. Sheridan Reed (Ret.)



Jobi Halper, Esq.



Cary Miller, Esq.



Michael Roberts, Esq.

www.ADRSERVICES.org | San Diego/619.233.1323 | Orange County/949.863.9800 | Downtown LA/213.683.1600 | Century City/310.201.0010

"I didn't know AJL did that..."

Video Depositions

- Recording
- MPEG format digital video encoding
- Video synchronization with transcript
- Impeachment and in lieu of live video clip creation

Graphic Design

- Graphics for opening statement and closing argument
 - ✓ Timelines
 - ✓ Relationship charts
 - ✓ Juror notebooks
- Demonstrative graphics

Video Advocacy

- Fact/Issue Documentaries for ADR and trial
- Site inspections/Day in the Life/Process demonstrations

Visual Consultation

- Evidence presentation strategies
- Case narrative development

Presentation Equipment for ADR and Trial



AJL Litigation Media, Inc.

Connecting the dots from Discovery through Trial

619.687.6600 AJL@ajlmedia.com www.ajlmedia.com

President's Letter

Turning Public Perception to the Positive

By Richard D. Gluck



Richard D. Gluck

The public's opinion of lawyers and the legal profession continues to fall. Fewer than one in four people have a favorable impression of lawyers and the legal profession according to results of recent public opinion surveys. Further, only 17 percent of respondents give lawyers high ratings for honesty and ethics. Perhaps this is not surprising given the frequency with which the public is bombarded with negative images of shady lawyers engaging in all manner of misconduct in novels, movies, and television programs. Have you seen *The Good Wife* or *Suits* lately? I thought about this as I finished a John Grisham novel about the extraordinarily unethical (and unbelievable) steps a couple of sleazy "street lawyers" took to get clients, and the equally unethical ways in which they handled legal matters for those clients. An ethics professor could find enough material in the book to write at least half a dozen final exams.

In a 2000 law review article entitled *Bad Lawyers in the Movies*, UCLA law Professor Michael Asimow argued that the increasingly negative portrayals of lawyers in movies that began in the early 1970's not only reflected the precipitous drop in the public's image of lawyers, but very well may have caused or at least significantly contributed to that drop. Professor Asimow noted that movies made before 1970 overwhelmingly portrayed lawyers as good human beings and competent, ethical professionals. Since 1970, however, more than two-thirds of lawyers in movies have been depicted as greedy and unethical (or worse) "bad" people. Citing to research by cognitive psychologists, Professor Asimow argued that there is a causal connection, and not merely a correlation, between the public's formation of negative views of lawyers and the heavily negative portrayal of lawyers in popular culture.

So should we care about how poorly the public perceives us and our profession? And if so, is there anything we can do about it? The answer to the first question seems to be that

yes, we should care about the intensely negative perception the public has about lawyers. Numerous studies and scholarly articles suggest that the harshly negative perception of lawyers contributes to the rampant career dissatisfaction and stress among practicing lawyers. Moreover, the fact that the great majority of people think that lawyers are dishonest and can't be trusted bodes ill for our judicial system. After all, juries are comprised of members of the public. If those jurors feel that they can't believe what lawyers tell them in trial, the whole process breaks down and the public loses confidence in the judicial system. And it is not a stretch to conclude that if people distrust the legal system generally, they will be far less willing to serve on juries. So the answer seems clear that we should care about how the public views us.

The question then becomes whether there is anything we as lawyers can do to improve our standing in the public eye. That is a much more difficult question. Given the popularity of movies and television programs about lawyers behaving badly, it seems unlikely that we will be seeing less of those movies and shows anytime soon. Sleaze sells. Viewers and moviegoers apparently find it more interesting to watch lawyers lie, cheat, and steal than to watch them toil long hours representing their clients honestly and zealously within the bounds of the ethical canons that govern our practices. So in the short run, it will be difficult to turn public opinion in our favor, at least in the minds of the generations raised on depictions of larcenous lawyers. Taking an optimistic view, however, perhaps we can begin to rehabilitate our public image by reaching out to that segment of the population that has not yet been infected by these negative depictions of lawyers — children and teens. Opportunities to make a positive impact on that group abound. Here are a few.

Open Doors to Federal Courts

Open Doors to Federal Courts is a national program under which federal judges, including our local federal judges, annually host in their courtrooms high school students for mock-trial presentations on legal topics that are especially relevant to teens. Volunteer attorneys serve as coaches for the students participating in the program. Having participated in the past, I can

President's Letter
continued from page 3

attest that the students love the program, and it is great fun for the lawyer-coaches. Information about the program may be found on the US Courts website: uscourts.gov.

Constitution Day

Every year around Constitution Day (September 17), local attorneys volunteer to give oral presentations to high school students about the Constitution and how it applies to our lives and the lives of the students. This is a great way to show the next generation some of the important work that we do. Information about the program may be found on the website of the local chapter of the ACLU.

**San Diego County Bar Association
Children at Risk Committee**

The Children at Risk Committee offers judges, attorneys, paralegals, and law students several opportunities to work with "at risk" children in different programs and special events. One such program, created in connection with the San Diego County Office of Education, pairs attorney volunteers with students at the Ash Street School in downtown San Diego to provide mentorship on such areas as preparing for college or careers, developing good study habits, and promoting positive and productive lifestyles. The school, which houses programs for teen mothers and for students placed at the school for disciplinary reasons, asks volunteers to commit to meeting with students at least once a month. Information about the program may be found on the SDCBA website.

The Children at Risk Committee also creates mock trial video presentations for use in teaching local elementary school children about the legal system in the hopes of preventing at-risk behavior. Volunteers help the children present a mock criminal trial, with the kids acting out all of the roles. Then, while watching the video, facilitators discuss with the students the legal meaning of what they are watching. Afterwards, the students and the volunteers break into groups to discuss further what they have seen and to have the students decide the outcome as jurors.

Two additional programs are the Porter Elementary School Readers and the Rolling Readers, both of which seek volunteers to adopt local elementary-school classrooms and read to the students on a regular basis. Details on both

programs may be found on the SDCBA website.

These are only a few of many volunteer opportunities out there. I hope you will take advantage of them. I guarantee that you'll get as much out of the experience as do the kids you'll be helping. And maybe, just maybe, we can begin restoring our public image.

Court Funding Update

ABTL has been trying through the ABTL Report and other means to keep our members updated on the effects that cuts in court funding have had on our state court system. The news has not been pretty, and seems to be getting worse. For example:

- 11 counties report that they cannot process domestic violence restraining orders the same day they are filed
- 20 courts reported increased civil backlogs, and extensive amounts of unfilled papers (San Mateo is filing papers submitted more than seven months ago)
- 23 courts have reported increases in the time it takes to process default judgments -- in San Diego it takes up to six months (used to take two weeks)
- In Sacramento, there has been a 75 percent reduction in the number of hours that civil filing windows are open (there are reports of fights breaking out in lines for civil filings)
- It now takes six months to have a demurrer heard in Sacramento Superior Court

Although there had been some hope that the next state budget would restore some of the lost funding, the revised budget that Governor Brown proposed in May did not include any additional funding for state courts. While the proposed budget for 2013-2014 does not include any further cuts, it also does not add any new money. As Lois Kosch, our outstanding editor, explains in her article discussing her recent conversation with former State Senator and current Executive Director of the State Bar, Joe Dunn, there is still some hope that additional court funding may be found during budget negotiations between the Governor and the Legislature. Let's hope so!

Richard Gluck is of counsel to Bernstein Litowitz Berger & Grossman, where he prosecutes class and direct actions under the federal and state securities laws on behalf of institutional investors and shareholders.



EXCEPTIONAL SERVICES

**Our Resolve.
Your Resolution.**

You know us and we know the challenges confronting you in litigation. You can count on us to bring our experience, skill and tenacity to the table to ensure an effective process. It's our singular purpose and we achieve it with exceptional results.

Dispute Resolution. It's what we do and we take it personally.



westcoastresolution.com 619.238.7282

Appellate Perspective
(continued from page 12)

A word on formatting may be helpful. California Rule of Court 2.1055 prescribes specific rules for the form of proposed instructions. Following the formatting instructions in the rule will help you make a good record of the jury instruction proceedings. For example, the rule requires each set of proposed jury instructions to contain an index with a checklist that the court may use to indicate whether the instruction was given as proposed, given as modified, refused, or withdrawn. (Cal. R. Court 2.1055 (b)(3).) Even if you propose and obtain brilliant, defensible instructions, any errors will not be reviewable if the record does not reflect the instructions as actually given. *Null v. City of Los Angeles*, 206 Cal.App.3d 1528, 1532 (1988) ("None of these contentions is reviewable because the challenged instructions are not in the record on appeal.")

concise & professional design



corporate identity · marketing · newsletters
presentations · proposals · trial exhibits

LORI MCELROY
Creative Director

redromancreative@gmail.com
www.redromancreative.com
619.772.3335

Making the Record: Crafting Jury Instructions That Will Withstand Appeal

By Kate Mayer Mangan



Kate Mayer Mangan

Jury instructions are fertile ground for appellate issues. This article provides tips for crafting jury instructions that will withstand appeal.

Your safest bet is to stick with the Judicial Council of California Civil Jury Instructions, popularly known as “CACI.” In fact, the California Rules of Court “strongly encourage” the use of CACI. (Cal. Rule of Court 2.1050(e).) A CACI instruction almost always will be upheld, and it poses little risk to your judgment. But, of course, cases often implicate issues not addressed, or not adequately addressed, by CACI and the Judicial Council is not perfect as form jury instructions do not always accurately state the law. (See, e.g., *Mitchell v. Gonzales*, 54 Cal.3d 1041, 1056 (1991) (disapproving a BAJI instruction).) In many cases, then, you will need to draft your own, unique instructions.

When you write proposed instructions, it is of the utmost importance to state the law accurately. Attorneys often draft instructions that aggressively describe the law in their favor. That is a mistake. If you propose an inaccurate instruction, the trial judge may reject the instruction, and you may not seek reversal based on the absence of instruction on that point. (See *Shaw v. Pacific Greyhound Lines*, 50 Cal.2d 153, 158 (1958).) Nor is the trial judge required to correct a proposed instruction that is erroneous. (See, e.g., *Tossman v. Newman*, 37 Cal.2d 522, 525 (1951).) It’s best to keep instructions simple and stay close to the language of the relevant case or statute.

A related principle is that your instructions should not be argumentative. It is your right to request only *nonargumentative* instructions. (See, e.g., *Soule v. General Motors Corp.*, 8 Cal.4th 548, 572 (1994).) That means that instructions should not recite too many facts drawn from evidence and should instead describe the law in general terms. (See, e.g.,

Munoz v. City of Union City, 120 Cal.App.4th 1077 (2004).) Even when a proposed instruction is a legal proposition, be careful not to overemphasize a theory through repetition or by making it “unduly prominent.” *Id.*

Proposed instructions must be supported by the pleadings and by substantial evidence. (See, e.g., *LeMons v. Regents*, 21 Cal. 3d 869, 875-76 (1978).) Indeed, it is improper for a court to give an instruction that is not supported by the evidence—even if the instruction accurately states the law. See, e.g., *Solgaard v. Guy F. Atkinson Co.* 6 Cal.3d 361, 370 (1971).

Trial attorneys should propose comprehensive instructions that cover each theory of the case. You can never be certain which of your theories will persuade the jury, so include instructions on all of them. If you lose and need to appeal, you cannot complain that the trial court failed to give an instruction you never requested. (*Null v. City of Los Angeles*, 206 Cal. App. 3d 1528, 1535 (1988).) Nor does a civil trial court have a duty to instruct on one of your theories if you fail to propose specific instructions. (See, e.g., *Agarwal v. Johnson*, 25 Cal.3d 932, 950-51 (1979).) One word of caution: though you should propose comprehensive instructions, try to avoid proposing duplicative instructions. The trial court is likely to refuse instructions when the issue is addressed by other instructions. See, e.g., *Arato v. Avedon*, 5 Cal.4th 1172, 1189 n.11 (1993).

Of course, make sure to object if your opponent fails to follow any of the principles outlined above. For more about how to preserve your objections to your opponent’s proposed instructions, please see the article entitled “Objections: When and How to Make Them” in the Summer 2012 ABTL Report.

(see “Appellate Perspective” on page 13)



David J. Aveni

Latest Update on Changes in San Diego Federal and State Courts

By David J. Aveni

ABTL has been providing periodic updates to its members regarding the important changes that have been taking place in the San Diego federal and state court systems. Here is the latest update on these changes.

San Diego Superior Court Civil Division Office and Phone Hours

The Civil Division business office in the downtown and North County locations is currently open from 8:30 a.m. to 3:30 p.m. Monday to Thursday and closes at noon on Fridays. Due to budget cuts, the Civil Division’s business office phone hours are limited to 8:30 to 11:30 a.m. Phones generally are not answered after 11:30 a.m.

Federal Court Judge Relocations

With the relocation of judges to the new U.S. Courthouse Annex completed, the court is reorganizing courtroom assignments in the Edward

J. Schwartz courthouse. In May, the following judges were to relocate to new chambers and courtrooms in the Schwartz Courthouse: District Judge Roger Benitez (Chambers 5A), District Judge Janis Sammartino (Chambers 4A), District Judge Anthony Battaglia (Chambers 3B), Magistrate Judge Ruben Brooks (Chambers 2C), and Magistrate Judge William Gallo (Chambers 2A).

David J. Aveni is a senior counsel with Gordon & Rees LLP and a member of the San Diego ABTL Board of Governors. His practice focuses on complex securities litigation and general commercial litigation matters.

CALIFORNIA JUDICIAL REFERENCE

SELECT A GENERAL REFEREE,
DISCOVERY REFEREE OR
TEMPORARY JUDGE FROM JAMS

STIPULATE to a court reference with JAMS or to the appointment of an all-purpose Temporary Judge from our panel, which features some of the state’s most well-qualified retired judges and attorney neutrals. Our Resolution Experts have significant subject matter expertise and superior case management skills.

EXPEDITE the resolution of your matter by appointing a JAMS referee or Temporary Judge who can offer reliable hearing dates and a flexible schedule.

PRESERVE the right of appeal. A decision by a referee or Temporary Judge is subject to **full appellate review**.

JAMS San Diego Resolution Center | 619.236.1848
www.jamsadr.com/judicialreference



L.A. Court Consolidation

(continued from page 1)

operations by implementing a “Court Consolidation Plan.” Changes will be implemented in phases and continue through June 30, 2013. All Orders regarding the Court Consolidation Plan can be found on the Court’s website at: www.lasuperiorcourt.org/consolidation.

First, let’s look at the numbers. Ten Los Angeles County courthouses are closing. Twenty-four departments handling unlawful detainer actions across the county will be consolidated into just four departments. Twenty-six small claims departments are being consolidated into just five departments. In addition, all family law, probate and conservatorship matters are being consolidated and transferred to the Stanley Mosk Courthouse in downtown Los Angeles. As a result some litigants and attorneys will be forced to drive up to 50 miles from home to reach a courthouse. Likewise, all collections cases (45,000 per year) will be consolidated at the Norwalk and Chatsworth courts. Finally, all “Limited Jurisdiction” non-collection cases are also being consolidated downtown at the Mosk courthouse.

As a further part of the consolidation, the Pasadena and San Pedro courthouses will be closed and all civil, non-personal injury cases from Pasadena were transferred to the Glendale courthouse, as of April 8, 2013. Effective April 15, 2013, all civil, non-personal injury cases in the San Pedro Courthouse were transferred to the Long Beach courthouse.

Effective March 18, 2013, all Los Angeles Superior Court personal injury cases must be filed downtown at the Mosk courthouse. Pursuant to the new “General Order” a personal injury case is defined as: “An unlimited civil action described on the Civil Case Cover Sheet Addendum and Statement of Location as Motor Vehicle – Personal Injury/Property Damage/Wrongful Death; Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist; Product Liability (not asbestos or toxic/environmental); Medical Malpractice – Physicians & Surgeons; Other Professional Health Care Malpractice; Premises Liability; Intentional Bodily Injury/Property Damage/Wrongful Death; or Other Personal Injury/Property Damage/Wrongful Death.” Actions dealing with intentional infliction of emotional distress, defamation, civil rights/discrimination and malpractice other than medical malpractice are not included

in this definition. Actions for injury to real property or for breach of contract are also not included in this definition.

Because of the lack of staffing, the ultimate goal of the Consolidation Plan is to eliminate court appearances as much as possible. With respect to the consolidation of all “personal injury” cases downtown into three departments, the goal is to transfer over 64,000 case files from all courthouses in the county into the three new departments (91, 92 and 93). Part of that will be accomplished by the closing of 11 independent calendar departments. However, Los Angeles County will maintain 31 trial courts for all personal injury cases -- 10 trial courts at the Mosk courthouse and 21 trial courts in remaining courthouses around the county.

After implementation of the new local rules, on July 1, 2013, when a new complaint is filed in a personal injury case, a trial date will be automatically assigned 18 months from the date of filing. There will be two other dates assigned at the time of filing. First, a Final Status Conference (FSC) date, which will be eight days before the trial date as well as an Order to Show Cause (OSC) date, which will be set three years plus one day from the date of filing. If service has not been completed by this date, the case will be dismissed. However, if service is not completed within 6 months of filing the complaint, then the original trial date (18 months after filing) will be automatically continued to a later date, or as stipulated by the parties.

Importantly, there will be no case management conferences in any personal injury cases. Also, as a positive side-effect of reducing court appearances, courts will automatically continue any trial date or hearing of any motion or demurrer, if all attorneys and/or parties stipulate in writing to the continuance. The stipulation must be filed at least five days before the hearing date or trial. For personal injury cases, jury fees will now be due no later than 365 days after the filing of the initial complaint. If, based on the estimated length of trial, number of parties, number of witnesses and number of anticipated motions, the case is determined to be “complicated” (not to be confused with “complex”), then upon a motion of either party, the court may transfer any personal injury case to one of the remaining independent calendar courts.

Judge Marilyn L. Huff

(continued from page 10)

Judge Huff personally reviews the arguments and the applicable law for a motion the week before the hearing. Judge Huff does not typically offer a tentative ruling in advance of the hearing, except when the tentative ruling could potentially minimize a complex claim construction dispute or in specific cases.

According to Judge Huff, oral argument should be a meaningful exchange of arguments that focuses on the questions or concerns she may have. Attorneys should remain flexible in their presentations. If lawyers plan to use handouts or power point slides to augment their presentation, they should bring a copy for the Judge, opposing counsel, and for the law clerk.

Scheduling Order

In the Southern District, magistrate judges are responsible for setting pretrial deadlines. Judge Huff honors the magistrate judge’s decisions and encourages attorneys to comply with the scheduling order. Recently, Judge Huff asks the magistrate judge to set the trial date during the Early Neutral Case Evaluation, because she noted that a scheduled trial date may position the case for early resolution by settlement. Unless good cause is shown, the trial date may not be changed. At the final pretrial conference, Judge Huff sets reasonable time limits for trial and usually sets deadlines for filing motions in limine and proposed jury instructions.

Voir Dire

In civil cases, Judge Huff allows attorneys to provide jury questionnaires to potential jurors to fill out prior to voir dire. The goal of the questionnaires is to expedite the jury selection.

In criminal cases, Judge Huff uses the “Arizona Blind Strike” method for jury selection. Under that system, the Court questions a panel of 31 or 32 jurors. After challenges for cause, each side uses its peremptory challenges without knowing which individuals the other side is challenging. The first twelve remaining “unstruck” jurors are the jury, plus alternates.

Trial

When asked for advice regarding trials, Judge Huff reflected on common mistakes, explaining that impeachment on collateral matters often falls flat. She advised attorneys to start and end each day strong. The middle of the afternoon is the best time to schedule a difficult or uncooperative witness. On the other hand, critical evidence should be introduced in

the morning when the jury is most attentive. Judge Huff does not allow speaking objections; she believes it is improper to raise them in front of the jury and side bar during trial tends to waste both the court and the jury’s time. She encourages attorneys to discuss their objections at recess, at lunch, or at the end of the day.

Judge Huff encourages attorneys to be efficient by focusing only on what is necessary at trial. If more time is warranted, for good cause, she may extend the allotted time.

New Technology

Asked about the effectiveness of the new technology in her courtroom, Judge Huff remarked that she enjoys the new system as well as the natural light. However, she noted that since moving into the new courthouse, the jurors’ monitors may, on occasion, need to be rebooted. Additionally, because no projector is available, attorneys are advised to bring their own projector if one is needed at trial. Judge Huff encourages lawyers to come to her courtroom in advance of trial to test out the new system and to have a back-up plan in place.

General Advice

Although Judge Huff follows the uniform rules for matters pending before the court, she still has her “ways of doing things.” Judge Huff recommends that attorneys, both new and experienced, come to her courtroom on Mondays to observe and learn how to conduct motion hearings.

Judge Huff expects professionalism in her courtroom. It is rarely effective to disparage opposing counsel, even in briefings. Civil discovery disputes can be a source of great frustration for the parties as well as for many judges. Judge Huff stated that if she could redesign the system, district court judges would be involved in discovery process. She recommends that lawyers step back and think through the actual disagreement, no matter what stage in the litigation, before seeking the court’s assistance. Judge Huff commends ABTL and the Federal Bar Association for their continuing educational efforts and welcomes practitioners to her court.

Carolina Bravo-Karimi is an associate at Wilson Turner Kosmo LLP, and Morgan Suder, J.D. Candidate May 2013, University of San Diego School of Law, will join Wilson Turner Kosmo, LLP following the July 2013 bar exam

Brown Bag Luncheon with Judge Marilyn L. Huff

By Carolina Bravo-Karimi and Morgan Suder



Judge Huff

On April 11, 2013, the Association of Business Trial Lawyers, together with the San Diego Chapter of the Federal Bar Association, presented a brown bag luncheon with the Honorable Marilyn L. Huff to discuss the inner workings of her chambers and her insights on the practice of law.

Judge Huff was appointed as a federal district judge for the Southern District of California in 1991, and served as Chief Judge from 1998 to 2005. Prior to joining the bench, Judge Huff was a

partner with a law firm in San Diego, specializing in media law and civil litigation. Judge Huff serves on the Judicial Conference of the United States Committee on Rules of Practice and Procedure and the Ninth Circuit Education Committee. She is also a participant in the Patent Pilot Project, which was designed to reduce the backlog of intellectual property cases and to increase the expertise of participating judges in patent law.

During the brown bag luncheon, but before specifically discussing her preferences on motion practice and courtroom behavior, Judge Huff provided a general overview of the Southern District of California’s caseload, which is the sixth largest caseload in the nation. An average district court in the United States has 411 civil cases and 125 criminal cases per judge. In the Southern District of California, however, each judge has approximately 448 criminal cases and 260 civil cases. Being located near an international border, this district is unique in that the majority of cases are criminal in nature. Judge Huff presides over ten to fifteen trials per year; approximately two-thirds are criminal trials.

Motion Practice Before Judge Huff

Due to the large caseload in this district, Judge Huff stated that the majority of the judges’ decisions are based on the parties’ briefings. Judge Huff appreciates well-written motions that concisely frame the relevant issues. For specific guidance, she recommends the Rutter Group Practice Guides for the nuts and bolts on motion practice, and Think Like A Writer for the basic principles of writing. Judge Huff cautions

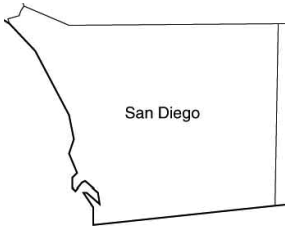
against using out-of-circuit or district court cases, as they are not persuasive. Instead, motions should include the proper citations for controlling Ninth Circuit Authority when available, and necessary factual explanations. Attorneys should also address conflicting case law and explain why that authority does not apply to the case at hand.

Judge Huff specifically addressed some of the most common motions in civil cases. For summary judgment motions, she does not recommend providing a separate statement of facts and law. Judge Huff suggested that attorneys should try to file summary judgment motions in advance of the deadline; discovery does not have to be complete if there are no triable issues of fact. Judge Huff also explained her typical procedure for temporary restraining orders and injunctions. She generally asks that parties serve their papers on the opposing side and provide them with the opportunity to state their opinion before going forward with the injunction.

As for criminal cases, a member of the audience asked about illegal reentry cases under 8 U.S.C. § 1326. For motions under 1326(d), Judge Huff appreciates specific citations to the immigration judge’s transcript, as she decides these motions on a case-by-case basis.

Oral Argument Before Judge Huff

Judge Huff may submit motions on the papers under Local Rule 7.1(d)(1), including motions to dismiss. Judge Huff typically schedules oral argument for summary judgment motions, claim construction disputes, and cases where there is a conflict in the law or reason for the court to have oral argument. In the Southern District of California, parties are required to identify no more than ten disputed claim terms for construction. However, if good cause is shown, Judge Huff may allow the parties to identify additional patent claim terms. Nevertheless, lawyers should narrow down the issues in claim construction hearings.



ADMINISTRATIVE OFFICE OF THE COURTS
OFFICE OF GOVERNMENTAL AFFAIRS

Judicial Branch Budget Snapshot
Superior Court of California
County of San Diego

Key Budget Challenges/Priorities

- Backlogs are increasing; lines and wait times are longer because of fewer clerks and cut services
- Average family court services wait time is 8 weeks for first time appointments; 10 weeks for returns
- Court users must travel up to 40 miles for probate and juvenile dependency court

Budget Impacts

General Budget Reduction Impacts to the Public

- Delays in processing all types of case filings
- Family court parties have to wait approximately 2 months to have child custody issues heard by a family court counselor

Reduced Public Access:
Self-Help/Mediator/Facilitator Services

- Program staffing for the family law facilitator program cut
- Overall reduction in the number of people served of nearly 15%

Reduced Public Access: Court Reporters/Interpreters

- Total number of court reporters has been reduced by 38%
- No longer provide court reporters in civil, probate and family cases
- If parties do not retain their own reporters, there is no record of the proceeding in civil, family, and probate matters

Reduced Public Access: Public Service Counters and Clerks

- Clerks’ business office hours reduced by one hour per day
- Court business offices close at noon on Fridays
- Phone hours have been cut

Closures: Courtrooms and Courthouses

- Plan to close 20 courtrooms by June 2013, 13% decrease
- Reduced number of small claims night court sessions
- Eliminated use of assigned judges; an equivalent to four courtrooms

Staff Reductions: Furloughs, Layoffs, Unfilled Vacancies

- By the end of FY 2013-14, the Court projects 470 vacant permanent positions, which is a vacancy rate of 28%
- All employees required to take 10 unpaid furlough days in FY 2009-10
- All staff required to take 3 unpaid furlough days in FY 2010-11
- All staff required to take 24 unpaid furlough days in FY 12-13 and 13-14

Impacts: Court Security Services

- The court does not realize a savings in security costs due to the realignment of security costs to the county
- No longer provide bailiffs in closed courtrooms

Fewer Judicial Officers

- Eliminated the use of retired commissioners, paid pro-tem juvenile referees and suspended CASA funding

Annual Allocation*

Total Allocation FY 2008-2009	\$ 219,359,530
Est. Allocation FY 2012-2013**	\$ 184,832,030
Percentage change	-15.7%

*Does not reflect unfunded cost increases
**For comparison purposes only, includes court security funding

San Diego Facilities Overview

Number of court sites	9
Capital construction projects	1

Judicial Workload/Employees as of Dec. 2012:

Population served	3,143,429
Judicial officers	154
Judicial officers needed	158.9
Filled staff positions FY 08-09	1,652
Filled staff positions FY 12-13	1,276

Case Statistics (Fiscal Year 2010-11)

Felony filings	16,744
Misdemeanor filings (incl. traffic)	60,130
Infraction filings (incl. traffic)	512,821
Civil filings	78,983
Family and Juvenile filings	42,878

Court Leadership

Presiding Judge	Hon. Robert J. Trentacosta
Court Executive Officer	Michael M. Roddy

L.A. Court Consolidation
continued from page 6

All of the judges speaking at the program strongly intimated that they will be "discouraging" demurrers, discovery motions and other devices that require either appearances or additional work for their staff. That is because under the new consolidation plan there will only be two court assistants for every three courtrooms, and the staff will not be able to keep up with the workload. For this reason, the court is in the process of developing a "Frequently Asked Questions" page on its website, and telephone calls to specific departments will also be discouraged. If you leave a message, it is uncertain how quickly any call will be returned.

For all personal injury cases in Los Angeles County, there will be only three possible times for any hearing. All trials and OSC hearings will be at 8:30 a.m., all FSCs will be scheduled at 10:00 a.m. and all law and motion hearings will be scheduled at 1:30 p.m. The judges speculated that most discovery, demurrer and dispositive motion hearings will be set seven to eight months from date of filing, so the "mantra" to all attorneys will be to have patience.

With respect to all FSCs, the goal will be to appear and be "ready" for trial. Effective July 1, 2013, there will be a newly adopted "General Order" for all FSCs, which includes a meet and confer requirement and all parties shall "jointly" prepare and lodge three sets of tabbed and marked exhibits (organized in three-ring binders), as well as a joint jury statement, joint witness list, joint exhibit list, joint jury instructions and joint verdict form. All motions in limine and trial briefs must be filed five calendar days prior to the FSC and served on all parties.

The clear message from the judges on the panel was that if these things are not ready, they will NOT continue the trial date at the FSC and will just tell the parties to literally go out into the hallway and prepare the required documents and return to the courtroom, when all of these items are done. When the parties are "ready" for trial, they will then be assigned to one of the 31 trial departments (which may be located at a courthouse other than downtown depending on availability). At this point the parties will have 15 minutes to exercise a 170.6 challenge.

Because all court-sponsored ADR has also been eliminated, there will no longer be any

mandatory settlement conferences for personal injury cases. Civility will become tantamount, otherwise the judges warned, the system will grind to a halt. Of course, the "\$64,000 question" is whether 31 trial courts can handle 60,000 cases. Only time will tell.

So, what can lawyers do to try to change or improve the budget apocalypse? First, as members of the bar we need to understand that the courts have very little, if any political clout, so the Bar needs to speak up for the courts (similar to the Lorax speaking up for the trees)! We need to write letters and tell anyone who will listen (especially elected officials) that the current consolidation plan for Los Angeles County and many other counties around the state is unacceptable. While the courts appear to be an easy target for cuts, the impact is significant because deconstruction of our justice system impacts access to justice for all Californians.

More significantly, public safety is at great risk as the judicial system lays off more staff, reduces hours of service and places thousands of cases into fewer courts. The time is now to reinvest in courts. Democracy stands in the balance.

Lonny Zilberman is a partner at Wilson Turner Kosmo LLP where he represents employers in civil litigation.

ASSOCIATION OF BUSINESS TRIAL LAWYERS
SAN DIEGO
abt
The views and opinions expressed in this newsletter are solely those of the authors. While these materials are intended to provide accurate and authoritative information in regard to the subject matter covered, they are designed for educational and informational purposes only. Nothing contained herein is to be construed as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel.
Use of these materials does not create an attorney-client relationship between the user and the author.
Editor: Lois M. Kosch
(619) 236-9600
lkosch@wilsonturnerkosmo.com
Editorial Board:
Eric Bliss, Richard Gluck, Alan Mansfield,
Olga May and Shannon Petersen
©2012 Association of Business Trial Lawyers - San Diego | All rights reserved.

Court Funding
continued from page 1

courts which existed in the 1990s. The Judicial Council has worked since 1997 to adopt a new funding allocation process and the state legislature had indicated that restoration of funding to the courts was contingent upon the Judicial Council's adoption of a funding plan. Now that such a plan has been developed and approved, the courts are more optimistic that the legislature will begin to reverse the budget cuts it has endured over the past four years.

Dunn said the court system hopes to see a restoration of 20 percent of those cuts (\$200 million) in the state's final budget for the coming fiscal year. Already some labor groups are demanding that if funding is restored that it be spent solely on trial court operations (as opposed to things like maintenance or construction). Although the courts may not be fundamentally opposed to spending reinvestment dollars on trial court operations, it is expected to oppose any attempt by the legislature telling it how to spend its money on the grounds that

such an attempt would violate the separation of powers between the legislative and judicial branches of state government.

Governor Jerry Brown issued a revised spending plan on May 14 that did not provide any additional funding for the courts. The budget will now be considered by the legislature, which may be more receptive to the plight of the court system. According to Dunn, the courts are politically unprotected and so advocacy from the bar is key to having court funding restored. Dunn urged all members of the bar to contact their state elected officials to advocate for more court funding. (See sample letter below.) As indicated, the judicial branch will know for sure how much funding restoration to expect when the state finalizes its budget in June 2013. Stay tuned.

Lois M. Kosch is a partner with Wilson Turner Kosmo LLP where she represents employers in civil litigation and is the Editor of the ABTL Report for the San Diego Chapter of ABTL.

Sample Letter to elected representative encouraging court funding

Date, 2013
Honorable _____
Member of the California Legislature
State Capitol
Sacramento, CA 95814
Dear Assemblymember/Senator:
As a constituent and an attorney I am gravely concerned about the massive underfunding our judicial system has experienced over the last five years. While I understand our entire state has been reeling from the impact of the recession our courts have taken a disproportionate share of the budget cuts. The result has been a deconstruction of our justice system impacting access to justice for our citizens.
Courts throughout the state have closed their doors. From Fresno to San Bernardino whole courthouses have been shuttered requiring litigants to travel, in some cases, well over an hour, to pay a simple ticket. More significantly public safety is at great risk as the Justice system lays off staff, reduces hours of service and places thousands of cases into fewer courts
The time is now to reinvest in courts. Democracy stands in the balance.
Sincerely,
XXXX