

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

Top portion of form to be completed by the Provider

It is preferred that the form is pre-printed with the attendees name and bar number.

Provider Name: Ventura County District Attorney's Office
Provider Number: 1130
Title of Activity: Legal Research
Date(s) of Activity: October 1, 2018
Time of Activity: 9:00 a.m. to 11:00 a.m.
Location of Activity (City/State): Ventura, CA

This Activity qualifies for: Participatory Self-Study
Total California MCLE Credit Hours for the above activity: 2.00, including the following sub-field credits:

- Legal Ethics: _____
- Recognition and Elimination of Bias: _____
- Competence Issues: _____

Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity

By signing below, I certify that I participated in all, or some*, of the activity described above and am therefore entitled to claim the following California MCLE credit hours:

Total California MCLE Credit Hours: _____, including the following sub-field credits:

- Legal Ethics: _____
- Recognition and Elimination of Bias: _____
- Competence Issues: _____

(You may not claim credit for the subfields above unless the provider is granting credit in those areas above.)

Print Your Name (clearly): _____

Your California State Bar Number: _____

Signature: _____

* partial participation hours must be pro-rated

ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

Please complete and return to Provider (Please Print)

Provider Name: Ventura County District Attorney's Office Provider Number: 1130
 Title of Activity: Legal Research
 Date(s) of Activity: October 1, 2018
 Time of Activity: 9:00 a.m. to 11:00 a.m.
 Location of Activity: Ventura, CA

Please indicate your evaluation of this course by completing the table below

Question	Yes	No	Comments
Did this program meet your educational objectives?	<input type="checkbox"/>	<input type="checkbox"/>	
Were you provided with substantive written materials?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the course update or keep you informed of your legal responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the activity contain significant professional content?	<input type="checkbox"/>	<input type="checkbox"/>	
Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	

Please rate the instructor(s) of the course below

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
Michelle Contois / Legal Research	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

LEGAL RESEARCH for PROSECUTORS

Michael D. Schwartz, Chief Assistant District Attorney
Michelle J. Contois, Deputy District Attorney
County of Ventura

I. WESTLAW

- A. Access WestLaw from your office or home computer using your password and user ID.
- B. California cases often start with a footnote to the effect that all undesignated section references will be to a particular code like the Penal Code. So rather than searching for a case with the phrase “Penal Code section 211,” just search for “section 211” or “211 /p robbery.”
- C. Broaden your search for authorities citing statutes by including predecessor statutes (as indicated in the annotated code). For example, Vehicle Code section 23103 used to be Vehicle Code section 505.
- D. Use Narrowing tools on left side of screen. Find target phrases in retrieved documents using “Search within Results.”
- E. Using KeyCite for cases or statutes:
 - 1. Access KeyCite by clicking on the links at the top of the page. Use Narrowing tools.
 - 2. A red stop sign on KeyCite does not always mean you can’t cite it. Check if it’s been overruled on other grounds or maybe just criticized.
 - 3. Navigate between the list of cases from KeyCite and the cases themselves using the back arrow on your browser or open cases in new tabs.
- F. Favorites. On homepage, right side of screen. Click “organize” to create folders, or place titles in order. To select favorites, in any database, click the star to the right of the database heading.

- G. Searching for statutes or opinions from other states:
1. The direct approach: Enter citation in search bar on home page – or top of any page.
 2. The indirect approach: Use terms and connectors or natural language. Try “Advanced” search.
 3. The hang ten approach: Try websites from the state legislature of the state you want, or go through Findlaw.com. Even Wikipedia may have useful links (though do not rely on the information provided by Wikipedia – and NEVER cite to Wikipedia.)
 4. The old school approach: the County Law Library has statutes from the 50 states, although some sets are not up to date.
- H. “Copy with Reference” feature: copies highlighted text to clipboard, which can be pasted into Word documents, with case name and pinpoint cite appearing below it.
1. Select text to copy. In pop up window select “Copy with Reference” use arrow to select California.
 2. Format for California Legal Briefs: At bottom of page select “Preferences” then “Citations”. In pop up window select California / Legal Briefs / Italicize Title / Subsequent History / and One Citation per Authority.
- I. Pasting into your document:
1. Use “Merge Formatting” paste option to keep the font the same and remove hyperlink.
 2. EDIT! Avoid long quotes with no analysis. This makes for poorly written and often disregarded briefs. Your job is to think, not merely assemble. Also watch for technical issues (funny quotation marks, page numbers in the middle of text).
 3. Don’t use language without ensuring the case itself is relevant or helpful.
- J. Set up for Printing. At bottom of page select “Preferences” then “Delivery.” Select your preferred options.

II. LEGISLATIVE HISTORY AND INTENT

- A. Start with West's Annotated California Codes (blue books in the DA Library), or go to the code section on WestLaw. Look at the history information following the text of the statute. Work your way through the amendments.
- B. Find Legislation:
1. Legislation starts with a bill number (e.g., A.B. 123 or S.B. 123) for a particular legislative session (e.g., 2003-2004 Regular Session). When both houses of the Legislature approve it, it is "enrolled." When the Governor signs it, it gets a "chapter" number for that year, e.g., Stats. 2003, c. 1698. A bill may affect multiple code sections. Some bills, like the budget, are not codified. If more than one bill is enacted that affects the same code section, the one with the higher chapter number prevails.
 2. California statutes and pending legislation are available and searchable through <http://leginfo.legislature.ca.gov/> (for older legislation try <http://www.leginfo.ca.gov/>)
 3. Significant legislation for each year is summarized in the green pages of the McGeorge Law Review, KB 600 M36 L3 (formerly Pacific Law Journal (KB 600 P3 L3)). CDAA publishes an annual Legislative Digest, free to members.
 4. Find newly enacted legislation in West's Legislative Service (KA 224).^{*} It is also included in the California Advance Legislative Service.
- D. Determining Legislative Intent:
1. If "words of the statute, giving them their usual and ordinary meaning" are clear, "go no further." (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.)
 2. "[W]hen the language is susceptible of more than one reasonable interpretation," look to extrinsic aids such as the purpose of the legislation, the legislative history, and public policy. (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.)
 3. "Statements in legislative committee reports concerning the statutory objects and purposes which are in accord with a reasonable interpretation of the statute are legitimate aids in determining legislative intent."

^{*} The Library of Congress numbers given in this outline (KA, KB, etc.) are for the Ventura County Law Library and will vary somewhat at other libraries.

(Southern Cal. Gas Co. v. Public Utilities Com. (1979) 24 Cal.3d 653, 659; Kern v. County of Imperial (1990) 226 Cal.App.3d 391, 401, fn. 4.)

E. Find Legislative History:

1. Find committee reports for statutes enacted or amended starting in 1993, at www.leginfo.ca.gov/ and as of 2016 at <http://leginfo.legislature.ca.gov/> Click on "Bill Information," and enter bill number.
- 2.. For statutes before 1993, or to get materials beyond committee reports such as letters of support, analyses from affected administrative agencies, etc., there are several companies that do this for a fee. Legislative Research Inc. (916) 442-7660; Legislative Intent Service (800) 666-1917. This runs several hundred dollars depending on the number of bills you want researched and the turnaround time. Get supervisor approval first.
3. The Attorney General maintains a library of legislative history searches they have done. Call the AG's librarian at (916) 327-7865 and find out if they have researched your statute. If they have and you have a friend in the AG's office, you can see if they will get it and send it to you. You can also obtain it from the AG as an "interlibrary loan" through the Ventura County Law Library for a small fee (around \$5).
4. The County Law Library has limited legislative history materials. Look for the statutes for year a bill was enacted. (KA 224.) Example: to see the text of Penal Code section 187, as amended by Stats. 1970, c. 1311, p. 2440, § 1, go to the Statutes of 1970 and turn to chapter 1311. For legislation starting in 1967, the Summary Digest (same as the Legislative Counsel's Digest) for each bill is in back of the last volume of the statutes for that year. These summaries are generally not particularly enlightening.
5. There are old Penal Codes in the DA Library and Mike Schwartz has a collection. Lexis has archives through 1991. Click "All Sources Directory" then "California" then under "Find Statutes ..." click "View more sources" then click "By Statutes and Regulations" and finally "Legislative Administrative Code Archive."
6. Legislative history and intent sometimes can be found in opinions discussing that code section. Look in the annotated code, or do a Lexis search like "intent or purpose /p legislat! /p section 459 /p vessel"

F. Initiative Measures

1. To interpret ambiguous language in an initiative measure, the court looks for "indicia of the voters' intent, particularly the analyses and arguments

contained in the official ballot pamphlet.” (*People v. Briceno* (2004) 34 Cal.4th 451, 459.)

2. Ballot pamphlet information can be found on the Secretary of State’s web site: <http://www.sos.ca.gov/elections/voting-resources/voter-information-guides/>. Select “Resources & Historical Information.” Link to the Hastings College of Law Database, for online ballot pamphlets going back to 1911.

- G. Legislation is effective on January 1 of the next year unless (1) the Legislature designates a different date or (2) it is designated as “urgency” legislation (effective as soon as it is chaptered). Ballot initiatives are generally effective the day after the election. Some statutes also have a “sunset” clause which provides that they expire on a particular date unless renewed by the Legislature.

III. WET INK – FINDING RECENT OPINIONS

- A. California Courts Website: www.courts.ca.gov

1. Opinions: The full text of recent published and unpublished opinions. Also contains a free bare-bones version of Lexis for published opinions.
2. Case Information: Use link or use the direct URL: <http://appellatecases.courtinfo.ca.gov/index.html>. Useful resource to check the status of recent and pending appellate cases. Searchable by case number or party name. See docket entries, counsel, and sign up for e-mail notification. [Because Courts website has changed recently, this page is difficult to find – bookmark it if you plan to use often.]

Key to California Appellate Court Docket Numbers:

S – Supreme Court of California	E – Fourth Appellate District, Div. 2
A – First Appellate District	F – Fifth Appellate District
B – Second Appellate District	G – Fourth Appellate District, Div. 3
C – Third Appellate District	H – Sixth Appellate District
D – Fourth Appellate District, Div. 1	

3. Other
 - a. Forms: Official Judicial Council forms (print or fill and print).
 - b. Rules: California Rules of Court, including Standards of Judicial Administration, Code of Judicial Conduct, etc.
 - c. Courts: Links to the Supreme Court, Courts of Appeal, and web sites for all the superior courts.

- d. Press Center: Including reports from the Judicial Council and Administrative Office of the Courts with statistics, etc.
- B. United States Supreme Court: <http://www.supremecourtus.gov>. Find new opinions; check status, access briefs, read oral argument transcripts.

IV. BOOKMARKS - REALLY USEFUL SITES TO REMEMBER

- A. Alameda County District Attorney's Office, Point of View. Excellent articles on search and seizure, Miranda, etc. http://le.alcoda.org/publications/point_of_view/ There is a direct link to this site from the DAWEB.
- B. Robert Phillips updates and outlines. Regular updates regarding 4th, 5th, and 6th amendment issues. Incredible, *searchable*, search and seizure outline. FREE. <http://www.sdsheriff.net/legalupdates/>
- C. California District Attorneys Association www.cdaa.org has several resources even for non members including topical newsletters, some manuals for purchase, and some training opportunities. Members can access discussions of various issues; access and purchase additional manuals; and access CDAA's brief bank.
- D. AutoBrief. Canned paragraphs to cut and paste into points and authorities on a wide variety of criminal law topics, prepared by the San Diego District Attorney's office. In the AutoBrief folder on the shared "S" drive of your computer. Start with the index at the end.
- E. Ventura County Superior Court Rules. On the Ventura County Superior Court web site (<http://www.ventura.courts.ca.gov/>, "Local Rules of Court" are under the "Forms & filing" tab. Also in the softbound Thompson/West book, Southern California Local Court Rules: Superior Courts.
- F. California Rules of Court. On WestLaw: from home page select "Statutes and Court Rules" then "California" then "California Rules of Court." In the California Courts website (<http://www.courts.ca.gov/rules.htm>). With annotations in Volume 23, Parts 1-5 of West's Annotated California Codes. Sections pertaining to criminal law are in the back of the softbound Thompson/West California Penal Code Desktop Edition.
- G. California Constitution. Includes the truth-in-evidence and victims' rights provisions of (Cal. Const., art. I, § 28 and other provisions regarding bail, the duties and powers of the courts, of various officers, etc. Available in the California Codes library on Lexis, and in Volumes 1-3 of West's Annotated California Codes.
- I. California Attorney General's Opinions (Ops. Cal. Atty. Gen.). Books in the DA Library (not current) and the County Law Library (KA 236). On WestLaw: from

home page select “Administrative Decisions and Guidance” then “California” then “Attorney General Opinions.” Not binding “entitled to considerable weight.” (*State of Cal. ex rel. State Lands Com. v. Superior Court* (1995) 11 Cal.4th 50, 71) “[A]bsent controlling authority, [the Attorney General’s opinion] is persuasive because we presume that the Legislature was cognizant of the Attorney General’s construction . . . and would have taken corrective action if it disagreed with that construction.” (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1013.)

- K. California Rules of Professional Conduct (State Bar Rules for attorneys). In the State Bar of California website (<http://www.calbar.ca.gov>). With annotations in Volume 23, Part 5 of West’s Annotated California Codes (together with other State Bar rules). On WestLaw: from home page select “Statutes and Court Rules” then “California” then “Rules of the State Bar of California.”
- L. California Code of Judicial Ethics (Canons). In the California Courts website (<http://www.courts.ca.gov/rules.htm>). With annotations in Volume 23, Part 4 of West’s Annotated California Codes. On WestLaw: from home page select “Statutes and Court Rules” then “California” then “California Code of Judicial Ethics.”
- M. Ethics Opinions of the State Bar of California Committee on Professional Responsibility and Conduct. (<http://www.statebarcourt.ca.gov/Opinions/PublishedOpinions.aspx>).
- N. International Court of Justice. Includes decisions such as failure to advise foreign nationals of right to contact consular authorities under the Vienna Convention on Consular Relations. (<https://www.un.org/development/desa/jpo/international-court-of-justice-icj/>)
- O. PACER (Public Access to Court Electronic Records). Court records for federal district courts and courts of appeal including dockets and PDF copies of some filed documents. 8 cents per page. Writs and Appeals has an account number and password if you need it.
- P. PubMed (National Library of Medicine): Search medical journals and other medical publications. (<http://www.ncbi.nlm.nih.gov/>)
- Q. Standards of Judicial Administration Recommended by the Judicial Council. An appendix to California Rules of Court, includes topics such as examination of prospective jurors in criminal cases (section 8.5) and complaints against court commissioners and referees (section 16). On WestLaw: from home page select “Statutes and Court Rules” then “California” then “California Rules of Court.” In the California Courts website (<http://www.courts.ca.gov/rules.htm>). In Volume 23, Part 4 of West’s Annotated California Codes.

- R. Ventura County District Attorney Brief Bank: Under “Documents” in the DAWEB. Additional documents are on the “S” drive, WPC folder, Brief Bank.

V. ACTUAL BOOKS YOU CAN MARK

- A. For Your Library: Regularly employed attorneys have \$550.00 dollars a year to spend on “professional development”
1. **CEB, *California Criminal Law Procedure and Practice*.** The basic principles for almost any procedural issue in criminal law, with some citations to get you started. (KB 93 C2.) (\$329, <http://ceb.com>) **If you buy only one book ever, this is it!**
 2. **O’Neill’s *California Confessions Law*.** (KB 93 O5 REF.) (\$291 <http://store.westlaw.com>) **If you buy two books, include this one!**
 3. Hoffstadt, *California Criminal Discovery*. (\$250, <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&prodId=7468>.) Exhaustive discussion on discovery law.
 4. *California Style Manual*. All the citation rules for California, including some tips on punctuation, capitalization, etc. (K 14.3 J58 REF.) (\$16.95, <http://legalsolutions.thomsonreuters.com/law-products/Treatises/California-Style-Manual-4th/p/100030017>) Cheap and very useful!
 5. CEB/CJER, *California Judge’s Benchbook: Search and Seizure*. (KB 93 C3 C4 D.) (\$99, <http://ceb.com>) Somewhat basic.
 6. Alameda County, *California Criminal Investigations* (\$70 for book / \$50 for yearlong on line subscription <http://le.alcoda.org/publications/>) Handy outline style guide covering Fourth, Fifth, Sixth Amendment issues. Very thorough. Includes California cases.
 7. California District Attorneys Association, (<http://www.cdaa.org>)
 - California Evidence Pocketbook (\$25)
 - Guilty Plea Handbook (\$25)
 - Misdemeanor Sentencing Guide (free download for members)
 - Professionalism: A Sourcebook of Ethics and Civil Liability
 - Principles for Prosecutors. (\$35)
 - Search Warrants. (\$65)
 - Trial Tactics (\$35)
 - Many more

- B. At a Library Near You (don't mark on these)
1. West's Annotated California Codes. Still one of the easiest ways to research a statute. In the DA Law Library and the Ventura County Law Library. (KA 226 W4.) Old versions are on microfiche.
 2. Witkin (Summary of California Law, California Criminal Law, California Evidence, etc.). Excellent starting point especially for summaries of unfamiliar areas of law. Some titles in DA Law Library; all titles in County Law Library.
 3. Attorney Resource Room: Includes binders on expert witnesses and books and binders on legal topics. Room 3167 in the DA's Office (near Row L).
 4. California State Bar, California Compendium on Professional Responsibility. (KB 258 C3 REF.)
 5. California State Bar Court Reporter. Disciplinary decisions by the Review Department of the California State Bar Court. (KB 258 C31 REF.)
 6. California Code of Regulations. Regulations of various administrative agencies such as DMV, Dept. of Corrections, etc. In binders in the reference section of the Ventura County Law Library (KA 228.5 Q.REF). In the Barclay's Official California Code of Regulations library on Lexis. In a difficult-to-use format at <http://www.calregs.com/>. On WestLaw: from home page select "Regulations" then "California." Old versions of the regulations are on microfiche in the Ventura County Law Library.
 7. Code of Federal Regulations (CFR). On Lexis. In book form in the Ventura County Law Library (KA 78.5 C6).
 8. Federal Rules Decisions (F.R.D.). Decisions of federal district courts construing Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure. Includes some miscellaneous decisions such *The Nurnberg Trial* (1946) 6 F.R.D. 69. On WestLaw: from home page select "Statutes and Court Rules" then "United States Code Annotated" then on right side of screen select "Federal Rules Decisions Rules." In book form in the Ventura County Law Library (KA 97.5 F4 R8).
 9. Military Justice Reporter (M.J.). Opinions of appellate military courts, including discipline of members of the military for a criminal violations. Sometimes helpful on criminal law issues. On WestLaw: from home page select "Cases" then "Military Courts." Also in the Ventura County Law Library (KB 96 M6 W4).

10. Municipal Codes (cities of Ventura County). In the DA Law Library, and the Ventura County Law Library (KA 240.2).
11. Ventura County Ordinance Code. In the Ventura County Law Library (KA 239.2 V4.)
12. Treaty of Guadalupe Hidalgo. In West's Annot. Calif. Codes, vol. 3. Agreement between the US and Mexico including the recognition of Mexican and Spanish land grants.
13. Uniform State Laws. (KB 100 T4.) Includes cases from other jurisdictions on uniform laws California has adopted (extradiction, etc.)
14. United States Treaties. (KJ 186.) Available on Lexis if you know the cite, or search cases for a reference to the treaty and then click on the link.

C. Tips for Old School Research

If the network crashes, it is still possible to do legal research. In order to find a case, you will probably need to start with the annotated code, Witkin, a digest, or one of the reference books listed in the preceding section. You also need to make sure the printed material you are using is up to date, including the steps discussed below.

1. Check the current pocket parts to the annotated codes and the Interim Annotation Service (noncumulative pamphlets that update the pocket parts twice a year).
2. The annotated codes do not list every case that cites a statute. For a comprehensive list, Shepardize the statute.
3. Updates to California Rules of Court and other rules are in the California Official Reports advance sheets. Court rules are also in West paperbound pamphlets updated twice a year.
5. The advance sheets include a Multivolume Cumulative Table of Cases, for California Supreme Court and Court of Appeal cases.
6. Shepardize cases.
 - a. Make sure you have checked the Case Edition, bound supplements and supplement pamphlets for all time periods.
 - b. Check the table of abbreviations at the beginning. "De" means rehearing or review denied, **not** "depublished." ("Np" means not published.) "o" means overruled, but check to see if overruled on different grounds.

- c. The little superscripts (like the ⁷ in 236 CA4th⁷ 211) indicate the headnote of the case you are Shepardizing and can help narrow your search. Don't mix and match reporters: Cal.Rptr. headnote #7 will not match Cal.4th headnote #7.
 - d. See how a California case was cited in another state, by checking Shepards for Cal.Rptr. or the big Shepards for Pacific Reporter in County Law Library.
 - e. Shepards for F.2d and F.3d cases in the County Law Library are shelved **after** the F.Supp. reporters.
7. For cases in the advance sheets, check the Cumulative Subsequent History table in the *latest advance sheet* to see if the opinion has been modified, if rehearing or review has been granted, or if the opinion has been depublished. These entries are listed by actual name only: *People v. Smith* will **not** be alphabetized under Smith. You may need to call the court to find out the latest status.

VI. EMPOWERING YOUR PEN

A. Stare decisis

1. All United States Supreme Court, California Supreme Court and California Court of Appeal opinions (from any district) are binding on every superior court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)
 - a. If there is a conflict between Court of Appeal decisions, the court should pick the ruling it believes is correct and not base its decision on what district it is from.
 - a. This is different than the rule in federal courts, where decisions from each circuit are only binding in that circuit.
2. Decisions of the lower federal courts are persuasive but not controlling. (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 352.) Technically, opinions of the Ninth Circuit Court of Appeals are no more persuasive than the decisions of other circuits. (*Debtors Reorganizers, Inc. v. State Bd. of Equalization* (1976) 58 Cal.App.3d 691, 696.)
3. Notwithstanding the above, judges are likely to be more persuaded by decisions of the Ninth Circuit, or from the local division of the Court of Appeal (Second Appellate District, Division 6). This is particularly true if you are handling a capital case (likely to end up before the Ninth Circuit on habeas) or a felony case that may be appealed to Division 6, because it gives an indication of how the appellate court may actually rule.
4. California trial court decisions should not be cited. “The doctrine [of stare decisis] applies only to decisions of appellate courts. Trial courts make no binding precedents...” (*Santa Ana Hospital Medical Center v. Belshe* (1997) 56 Cal.App.4th 819, 831, citing 9 Witkin, Cal. Procedure, (3d ed. 1985) Appeal, § 763, pp. 730-731.) See also California Rules of Court, rules 8.1115.

B. Citation of Unpublished Opinions

1. California Cases: Unpublished opinions may not be cited unless relevant under the theory of stare decisis or “relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.” (California Rules of Court, Rule 8.1115.)

2. Lower Federal Opinions: Citation of unpublished federal cases is not prohibited in California state courts, although they may be of little persuasive value. (*Lam v. Ngo* (2001) 91 Cal.App.4th 832, 841, fn. 5.) See Ninth Circuit rule 36-3 (unpublished dispositions and orders of the Ninth Circuit are not binding precedent and under most circumstances may not be cited to federal courts in the Ninth Circuit).
3. Finality of decisions: Court of Appeal decisions are final in that court 30 days after filing. (Exceptions: order denying a writ without issuance of an OSC, and a few other orders listed in California Rules of Court, rule 8.264(b).) Petition for Review in the California Supreme Court must be filed within 10 days after opinion final in Court of Appeal. (8.500(e).) Decision denying review is final upon filing. (Rule 8.532(b).) An opinion is no longer considered published if the Supreme Court grants review or if the rendering court grants rehearing, unless the Supreme Court orders that it remain published (which it very rarely does). (Rule 8.1105(e).)

C. Brief Writing Strategy

1. Remember it's called a BRIEF, not a long laboring tome.
2. Say early on (somewhere on the first page) what kind of case it is, what motion you are making, and what relief you want.
3. **Don't forget the United States Supreme Court.** In California, relevant evidence may not be excluded from a criminal proceeding unless exclusion is mandated by the federal Constitution. (Cal. Const., art. I, § 28, subd. (e), par. (2); see *In re Lance W.* (1985) 37 Cal.3d 873, 887.) So, if you have United States Supreme Court precedent allowing your evidence in – it's in.

Also beware of defense citation to -or if you find in your own research - pre-1982 California case law especially on search and seizure but also on Fifth and Sixth Amendment issues. These were likely decided on “independent state grounds” and thus may be overly restrictive.

4. When citing a case, look not only at language in the opinion, but the outcome of the case: better if cases you cite rule consistently with the way you want the outcome in your case.
5. “Harmless error.” Key word is ERROR.
6. Persuade and provide: persuade the court to *want* to rule in your favor based on the equities, then provide a legal theory to show how the court can rule in that manner.

Demonstrate and (lightly) demand: Demonstrate the law is clear and the court *must* rule in your favor. (Use cases where judges were *reversed* for ruling the other way.)

7. If you cite an old case (Cal., Cal.2d, Cal.App., Cal.App.2d), try to find a more recent case to show that the old case is still good law.
8. “It is axiomatic, of course, that cases are not authority for propositions not considered. (Citations.)” (*Alfredo A. v. Superior Court* (1994) 6 Cal.4th 1212, 1249 [internal punctuation omitted].) Don’t misinterpret dicta as a holding and don’t let the defense do it either.
9. Avoid string cites. Unless each cited case has a reason, such as to prove and old case is still good law, or to demonstrate slightly different application of law, leave it out. Also, be sure you read each case cited. One danger of cut and paste is pasting a string citation containing cases that do not advance your argument.
10. If you can’t find something directly on point, look for analogies. For example, 666 PC, 314 PC and 23550 VC all involve straight misdemeanors that are elevated to wobblers based on designated prior offenses and will involve similar procedural issues (proving the prior at preliminary examination, etc.).
11. Fact that judge was affirmed for doing something usually does not mean the court *must* do that.

D. Some Matters of Style

1. Names and Capitalization of Courts and Officials
 - a. Ventura County Superior Court. The superior court. The court.
 - b. The Appellate Division of the Superior Court of Ventura County. The superior court appellate division (formerly, appellate department).
 - c. Court of Appeal, Second Appellate District, Division 6. The Court of Appeal. (Not Court of Appeals in the California court system.) The court. The appellate court.
 - d. The Supreme Court of California. The California Supreme Court. The Supreme Court. The court.
 - e. United States District Court. The district court.

- f. United States Court of Appeals, Ninth Circuit. Ninth Circuit Court of Appeals. The court of appeals. The court.
- g. United States Supreme Court. Supreme Court. The high court. The court.
- h. Governor Brown. The Governor.
- i. Legislature is capitalized when referring to the California Legislature, even if standing alone. It is not capitalized when standing alone if not referring to the California Legislature.
- j. The Attorney General. Deputy Attorneys General John Smith and Cathy Davis. The deputy attorney general.
- k. District Attorney Greg Totten. The Ventura County District Attorney's Office. The district attorney. The district attorney's office. Deputy District Attorney Robert Smith. The deputy district attorney.

2. Selected Citation Formats:

In Text	End of Sentence
In <i>People v. Smith</i> (2002) 57 Cal.App.4th 1120, 1127, the court . . .	(<i>People v. Smith</i> (2002) 57 Cal.App.4th 1120, 1127.)
In <i>United States v. Jones</i> (9th Cir. 1998) 23 F.3d 567, 569, the court . . .	(<i>United States v. Jones</i> (9th Cir. 1998) 23 F.3d 567, 569.)
Penal Code, section 187, subdivision (a), provides . . .	(Pen. Code, § 187, subd. (a).)
Penal Code section 314, subdivision 1.	Not 314.1. No parenthesis around the "1" because there are none in the actual section.
Code of Civil Procedure, section 170, subdivision (a)(1)	(Code Civ. Proc., § 170.6, subd. (a)(1).)
California Code of Regulations, title 17, section 151, subdivision (a)(2)	(Cal. Code Regs., tit. 17, § 151, subd. (a)(2).)
	(<i>Ibid.</i>) is to repeat an identical reference in the same paragraph without any intervening citation.
	(<i>Id.</i> at p. __.) is for the immediately proceeding case in the same paragraph with a different page number.
	<i>supra</i> refers to previously cited authority in another paragraph or when there is intervening citation.

3. Document Formatting

- a. Documents filed in the superior court should comply with the formatting rules found at California Rules of Court Rule 2.100 – 2.117. Page formatting requirements are satisfied if you use one of the standard templates found on the Shared drive Select “WPC” then “Pleadings.”

Recycled paper (2.101 – provided by DA office)

Use only one side of each page (2.102)

We use Times New Roman, 12 point type (Rule 2.104 – 2.105)

- b. You must include a footer at the bottom of each page, below the page number, divided by a printed line, with the title of the document or an abbreviation of it. (Rule 2-110.)

The footer is included on the templates.

Using Microsoft Word, click on “Insert” and then “Footer” and select a footer. A new toolbar will appear.

When you are done, click on “Close.”

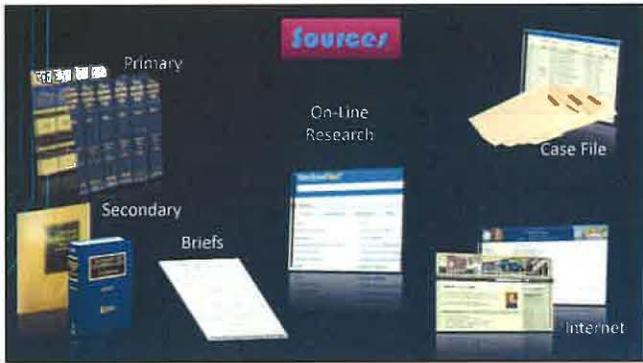
If you want a different footer for the first page (e.g., you don’t want a page number on the first page), click on “Different First Page.”

E. Grammar Review

1. **It’s**, with an apostrophe means “it is.” **Its**, with no apostrophe, is a pronoun, belonging to it or relating to it. There is no apostrophe for the same reason there is none in “his.”
2. **Principle** means an idea of general application. All other meanings are spelled **principal**: the head of a school (because he’s your “pal”), principal and interest, principal and agent, main (including the principal idea).
3. **Affect**, meaning to influence, is a verb. **Effect**, which is what got influenced (the result), is a noun. I will try to affect the ruling, and I hope it has the desired effect.

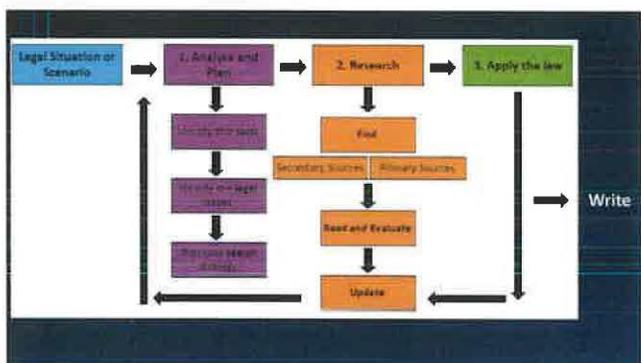
There are two very limited meanings for which the rule is reversed. **Affect** is a noun meaning emotion, like flat affect. **Effect** is a verb meaning to make happen, almost always used with the word “change,” to effect a change.

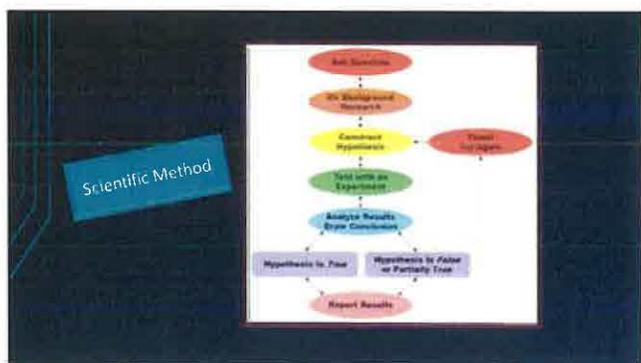




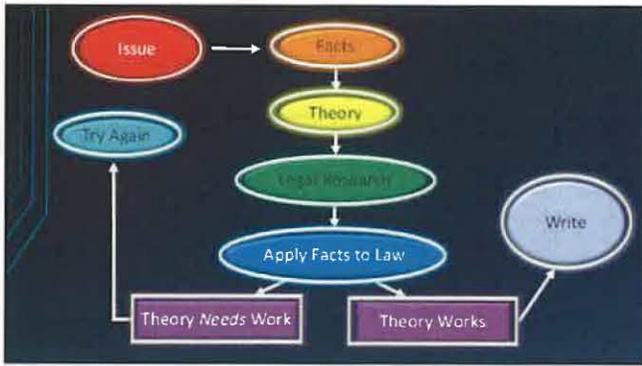


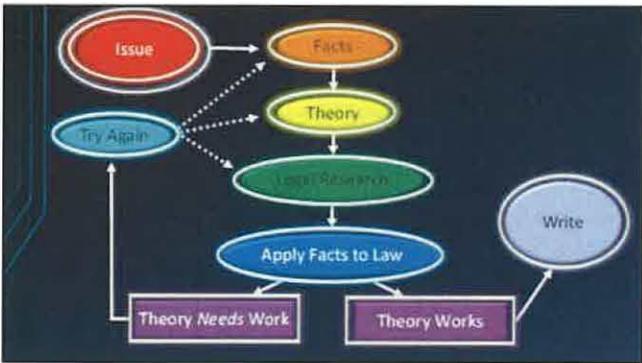


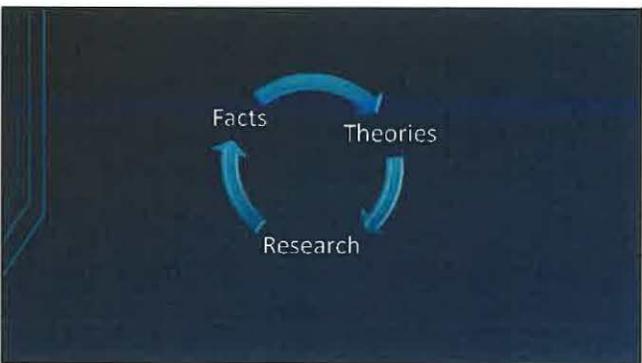


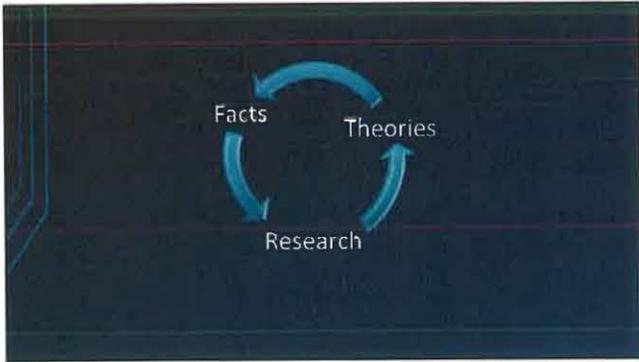


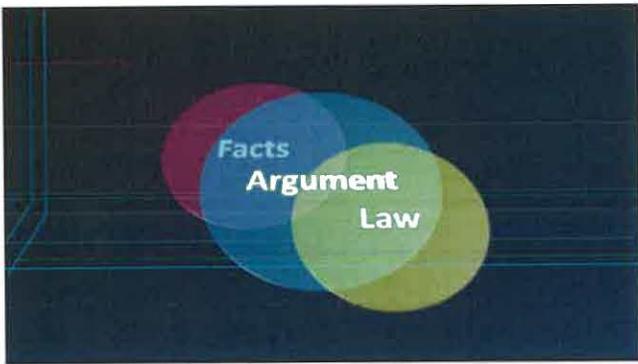
Scientific Method











Introductory Paragraph

- Very Short
- What You Want
- Why You Should Get It

I'M NOT SHORT
I'M CONCENTRATED
AWESOME

 **FACTS**

- Tell **YOUR** Story
- Non-Argumentative
- Support Your Arguments

PERSUADE AND PROVIDE

- Use Equities to Persuade the Court to Want to Rule For You
- Use Authorities to Show how the Court **CAN** Rule For You

