

# Tips and Tricks

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San Joaquin County

## New Prosecutors: Tips & Suggestions

By Deputy District Attorney  
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September 2018

## A Word on MCLE

### What It Is, and How to Keep Track of It



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## State Bar MCLE Requirements

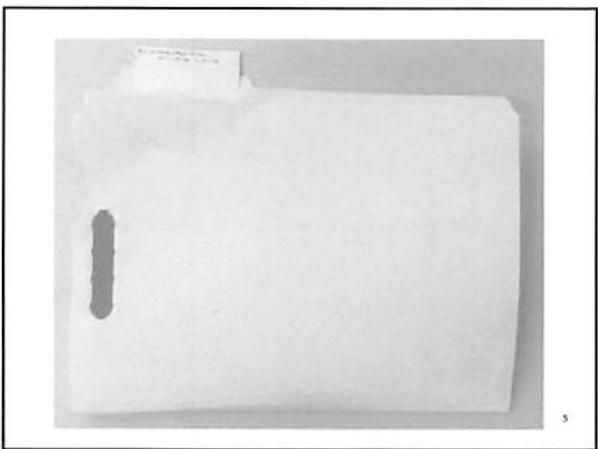
**State Bar Rule 2.72**

- cs 25 hours every 3 Years
- cs No more than 12.5 being "self-study" (v. "participatory")
- cs 4 hours Legal Ethics
- cs 1 hour Elimination of Bias
- cs 1 hour Competence (substance abuse, mental health, etc.)

**Compliance Groups (Rule 2.70):**

- cs Group 1: A-G (2/1/19 per calbar.ca.gov)
- cs Group 2: H-M (2/1/18 per calbar.ca.gov)
- cs Group 3: N-Z (2/1/20 per calbar.ca.gov)

Personal Log: On State Bar's website (calbar.ca.gov)



## Keep Your Own Performance Logs

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Jury Trials (*super* important)  
"Team Player" Coverage  
Community Service  
Etc. !!!

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## Professional Decorum

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## In Court and Out



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## Office Demeanor

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☞ This is NOT Law  
School

## Q3 Your Office is a TEAM

as Your Office has a  
**MISSION**



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### Office Demeanor (cont'd)



“Shopping your case around”  
from DA to DA....

or Let's talk about this.

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## Whose Cases Are These?



## Your Files

- ☞ Your Responsibility
- ☞ But they belong to the Office
- ☞ Keep them neat, organized, etc. in case you call in sick, etc.

## Your Office

as Clerks and attorneys  
need to be able to find  
files if you call in sick,  
etc.



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## Keeping Good Notes



### Outside? (Non-Paperless)

- ❑ Court Appearances
- ❑ What happened in court
- ❑ Next court date
- ❑ Important in-court occurrences that may assist the trial deputy and are not confidential

Inside? (Non-Paperless)

- ❑ Work Product
- ❑ Case Impressions
- ❑ Out-of-Court notations  
(e.g., spoke with witness  
on phone)
- ❑ Documented Reasons for  
possibly controversial  
dispositions

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## Common File Abbreviations (Can Differ Among Offices)

- ☞ A or Arr: Arraignment
- ☞ P(c): Present in custody
- ☞ P: Present out of cust.
- ☞ NP: Not Present
- ☞ FTA: Failed to Appear
- ☞ BWI: Bench Warrant Issued
- ☞ PAC: Pled As Charged
- ☞ CTS: Credit for Time Served
- ☞ PNG, PNC, PG: Pled Not Guilty, Pled No Contest, Pled Guilty
- ☞ PTC: Pre-Trial Conf.
- ☞ RC: Readiness Conf.
- ☞ JTA: Jury Trial Assign.
- ☞ Mot: Motion
- ☞ IP: Informal Probation
- ☞ FP: Formal Probation
- ☞ S/W: Search Waiver

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## Courtroom Demeanor

- ☞ Be Professional and Polite
  - To the Judge
  - To Courtroom Staff
  - To Defense Attorneys
- ☞ Be Prepared: Know the Answer!
- ☞ Give your business card to Court Reporter and/or Clerk when you're new to that courtroom or to them
- ☞ But if you don't know it – *don't pretend to know it!*
- ☞ Troubleshooting: see next slide

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## When You Don't Know What to Do In Court...

- ☞ If the Judge tells you to do something weird, or you don't know an answer, ask for a short break
- ☞ Call your supervisor
- ☞ If sup. unavailable, call another sup. or senior DPA
- ☞ If Judge won't give you a break to call or research, at least you tried to protect yourself and the Office.
- ☞ Make a note of what happened in the file.

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## Tips for Court Hearings



- ca Speak Slowly (for Court Reporter)
- ca Speak Slowly (for greater comprehension)
- ca Speak Slowly (for more command presence)
- ca Speak Slowly (to appear in control)
- ca Speak Slowly (to calm yourself down)
- ca Two things never to forget during an evidentiary hearing:
  1. Establish JX
  2. ID Defendant



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## Courthouse Hallways and at Lunch



- ☞ If you're in trial...assume a juror is watching from the minute you leave the house
- ☞ Even if you're not in trial—your co-workers are, and assume THEIR jurors are watching in the courthouse hallways, at lunch, etc.
- ☞ No traffic violations, no poor behavior, no unprofessional comments/conduct



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# Why Are Misdemeanors So Important?



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Or, why are the next two or so years of your life critical to your career development and your community?

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## Importance to Your Defendant



- ☞ "Priorable" charges: e.g., 14601's, DUI's 273.5's, etc.
- ☞ Getting D "searchable" (drugs/paraphernalia, guns/ammo/weapons, alcohol, stolen property, general)
- ☞ "No guns for 10 years" misdemeanors (PC 29805)
- ☞ Moral Turpitude convictions for later use: e.g., FTA's
- ☞ Use as Factors in Aggravation for later felony sentencing hearings (Rule of Court Rule 4.421)

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## Importance to You



- ❑ Establishing Work Ethic, Honing Professional Demeanor, and Learning the Law
- ❑ Establishing Understanding of Courtroom Procedure
- ❑ Growing Your Skills with Witnesses and Juries
- ❑ Learning what you're NOT as good at, and shoring it up
- ❑ Learning How Crimes Are Committed and Combatted

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## Your Own Brief Bank



- ❑ Misdemeanor Learning Curve
- ❑ Establish your own brief bank
- ❑ It will never be this hard again!



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Handwriting practice lines. The page features a vertical red margin line on the left and a vertical blue midline with a dashed green writing guide in the center. There are six sets of horizontal lines for handwriting practice.

## Importance to Your Community



- ❑ Excellent prosecution services result in a safer community
  - E.g., if no effective 484 prosecution, vendors leave
  - E.g., if no effective gun prosecution, murders rise
- ❑ Prevents the "Well, the DA will just dismiss it anyway" barb being thrown at the police on scene
- ❑ We are the Last Line of Defense! And speaking of which...

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## Dismissals



- ☞ Let's talk about this.
- ☞ If you think a case should be dismissed..STRONGLY CONSIDER speaking with the IO first, in an open-minded way. There may be something you don't know.
- ☞ **Timing:** how bad does it look to dismiss on day of trial?
- ☞ Miso's: Can't re-file. So you'd better be sure.

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## A Word on Witnesses



## The practical stuff: what they don't teach you in law school



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## Don't Ignore Your Witnesses



### Call-Offs are IMPORTANT

- ca If the doctor cancelled or re-scheduled your appointment, how would you like to show up without having been told of the change?
- ca Call-BACKS are also important; what if the officer never returned YOUR calls?



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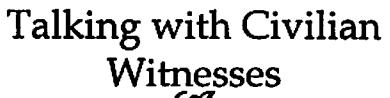


ca What they're really saying is, "I'm nervous!"

## First Time Testifying

- ☞ What they're really saying is, "I'm nervous!"  
Civilians are nervous to testify; so are officers.
- ☞ Even if you're busy, take the time to calm them down; what if doctor didn't explain before surgery?
- ☞ Ok to go over procedure with them, and even discuss case; just don't feed answers. Ok to say, "Defense may ask if we talked; it's perfectly ok for us to talk, as long as I don't feed you answers."

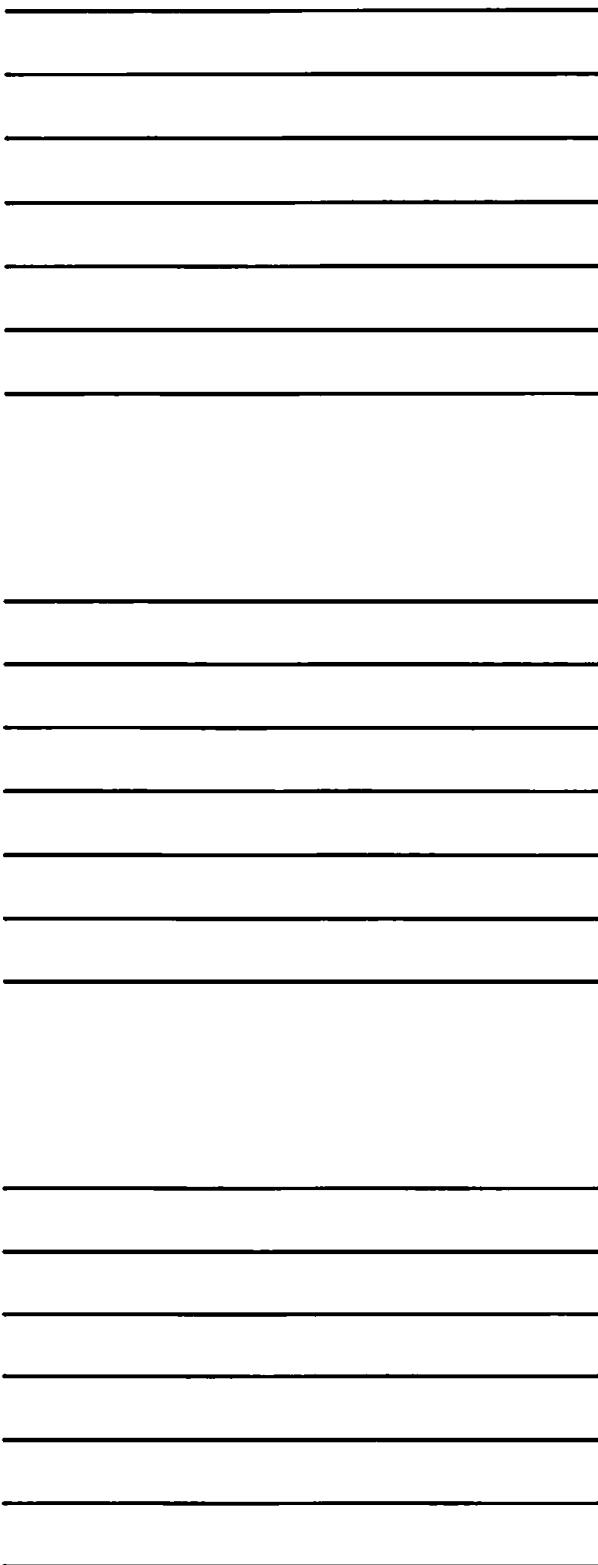
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- ca Tell them you can't discuss the facts of the case with them without another witness present
- ca If necessary, get a witness if you need to let them discuss the case with you outside of court

- ☞ Every time you hear from them, confirm their contact info and potential dates for court unavailability
- ☞ Let them know the process to put them at ease

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## Misdemeanor Work At-A-Glance

### A look at Calendar, Motions, and Trial Work



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## “Calendar” Duties



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## What Is It

- as Handling the cases from arraignment to trial
- as And everything in between
- as And sometimes even afterward

## Why It Matters

- » In Custody v. Out of Custody ("CTS")
- » Appropriate Resolution of Cases Early On
- » Distinguishing the wheat from the chaff Early On

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## Common Motions

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- ☞ Demurrers – PC 1002 et seq.
- ☞ Serna Motions – (1985) 40 Cal. 3d 239
- ☞ Kellett Motions – (1966) 63 Cal. 2d 822
- ☞ Motions to Compel Discovery – *Brady*, PC 1054, et seq.
- ☞ Trombetta Motions – (1984) 467 U.S. 479
- ☞ Expungement Motions – PC 1203.4
- ☞ Miranda Motions – (1966) 384 U.S. 436
- ☞ Lineup (*Evans*) Motions – (1974) 11 Cal. 3d 617
- ☞ Motions to Suppress Evidence – PC 1538.5

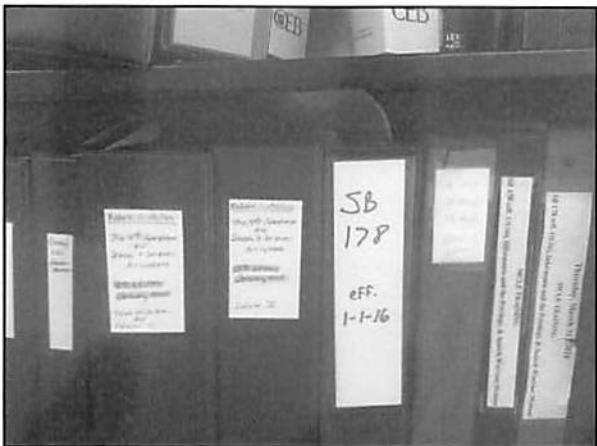
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## Motions Resources



- ☞ Starting Point: OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN DIEGO, AUTOBRIEF (21st ed. 2016), available on CDAA's website
- ☞ Beyond that: Keep your CDAA/training powerpoints! AND REFER TO THEM! Non-techies: consider putting them in a binder for easy reference. (See next slides)
- ☞ And don't forget the Beige Book!

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## Misdo Realities: Moving to Amend ASAP



- ❑ As soon as you get that file...
- ❑ Read that Complaint!
- ❑ Is it lacking? PC 1009!
  - DA has carte blanche to amend prior to Entry of Plea
  - Discretionary by Court thereafter, at any stage
  - The earlier you file a Motion to Amend, the better

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## Discovery Obligation Resources



- ☞ L. DOUGLAS PIPES & WILLIAM E. GAGEN, JR.,  
CALIFORNIA CRIMINAL DISCOVERY (2d ed. 1999) (I  
hear there's even a 4<sup>th</sup> ed., but these are becoming  
hard to find no matter WHICH edition you have –  
GRAB one from a retiring DDA if you can!)
- ☞ Jeff Rubin, *Basic Brady, Statutory, and Ethical  
Discovery Obligations* (Dec. 2, 2015, ed.)
- ☞ CDAA's Discovery Seminar

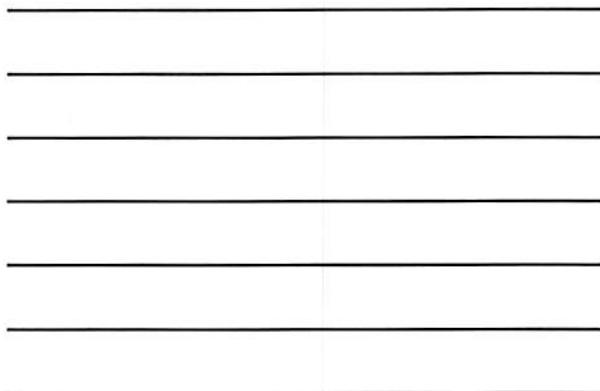
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## CLETS Letters



- Not just RAP info, but DMV printouts and local systems (e.g., CJIS) as well
- See next slide for sample CLETS Letter...

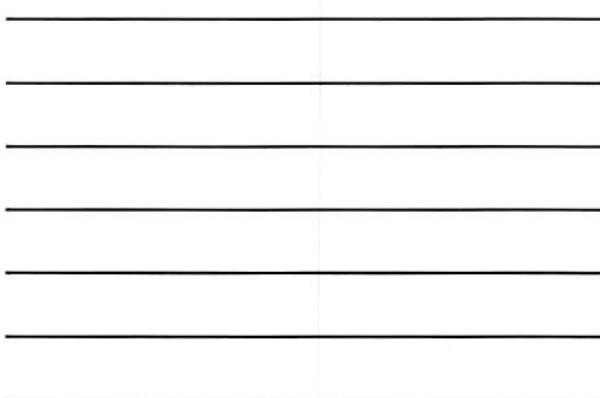
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## Discovering/Handling Certified Documents



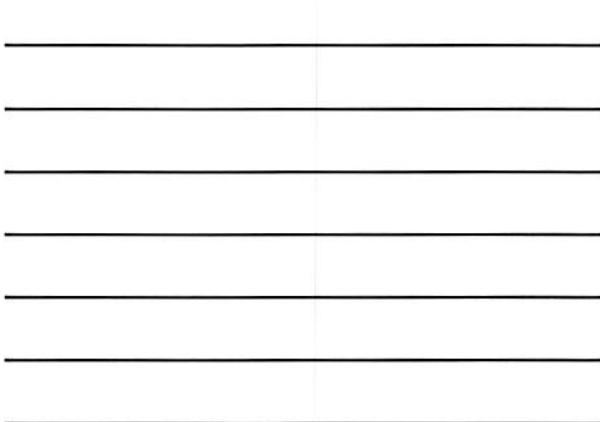
- ❑ Certified Records of any sort
- ❑ When photocopying, DO NOT ADULTERATE/DE-STAPLE/MARK on them in any way!
- ❑ This includes Px Tx's, certified Rap Sheets, certified DMV printouts or DMV packets, certified priors, etc.
- ❑ Keep the pristine copy in the file to eventually be marked as the exhibit if necessary



## Trial Binders: Here's How I Organize Them



- ❑ Trial Preparation Checklist
- ❑ Charging Document
- ❑ Witness List & Subpoenas
- ❑ CLETS + CLETS Letter
- ❑ Discovery Receipts/Requests
- ❑ Motions in Limine
- ❑ Police Reports & Attachments
- ❑ Digital Evidence & Extra Copies
- ❑ Certified Documents
- ❑ Calcrims & Verdict Forms



## Miso Trial Prep Check List



- ea Subpoena Witnesses
- ea CLETS on Civilians
- ea CLETS Letter
- ea Order Certified Priors
- ea Order Certified Doc's
- ea Informal Disc. Request
- ea Check for Extra Reports
- ea Check for All Evidence
- ea File Witness List
- ea File Motions in Limine
- ea File Calcrims
- ea File Verdict Forms
- ea Prep Voir Dire Q's
- ea Other (e.g., 1108 letter?)
- ea Other \_\_\_\_\_
- ea Other \_\_\_\_\_

### Test Preparation

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- 1. Subject Selection for IT
- 2. Topic Project
- 3. Selected Project
- 4. CSE IT
- 5. CSE IT Lab
- 6. Home Lab
- 7. Project
- 8. Virtual Reality
- 9. Motion in Images
- 10. Web Data Extraction/Classification
- 11. Image Segmentation
- 12. Image Processing
- 13. Filter
- 14. Image

## Wobblers & Woblettes



### Wobblers: PC 17(b)

- ☞ Wobble between a felony and a misdo
- ☞ Mentioned in statute itself or by this or similar language: "is punishable by imprisonment in CJ or SP"
- ☞ MTC as misdo: 1 year CJ
- ☞ Wobble between a misdo and an infraction
- ☞ If it's a wobblette, judge can take it away from you and force it to be an infraction
- ☞ MTC as misdo: generally 6 months

## Wobblettes: PC 19.8

- ca Wobble between a misdo and an infraction
- ca If it's a wobblette, judge can take it away from you and force it to be an infraction
- ca MTC as misdo: generally 6 months

## Grade of Offense: What If You Can't Tell?<sup>67</sup>



- PC 19.4: If it's not a straight felony, and not a wobbler, and it's not in PC 19.8, and it doesn't say it's an infraction...it's a misdemeanor.
- Vehicle Code: Can be confusing as to grade of offense, so check index. (For VC felonies, they're AB 109 unless states otherwise, as per VC 42000.)
- AB 109 has made things even more confusing – but we'll save that discussion for felonies.

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## “Standard” Misdo Resolutions?



- ❑ Always think of **Search Terms** where appropriate
- ❑ Always think of **Alcohol Terms** where appropriate
- ❑ What about **Jail? Mandatory Minimums?**

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## Refreshing Memory w/ Police Report



- ☞ A: I can't remember.
- ☞ Q: Officer, did you write a report in this case?
- ☞ A: Yes.
- ☞ Q: Would looking at your report help you refresh your memory on this issue?
- ☞ A: Probably.
- ☞ Q: Please take a look at it, and I'd direct your attention to page 2, second paragraph. Please read it silently to yourself, and let us know when you're done."
- ☞ A: Ok, I'm done.
- ☞ Q: Do you remember now?
- ☞ A: Yes. He had the knife in his left front pocket.

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## Contradicting (Impeaching) Officer w/ Report

- ca When officer testifies incorrectly – don't panic. Jury looks to you for cues. Just do the following, low-key:
  - ca Q: Officer, did you write a report in this case?
  - ca A: Yes.
  - ca Q: Did you mention in your report that the gun was actually in the defendant's hand when you tackled him?
  - ca A: May I refer to my report?
  - ca Q: Sure, if that will help you refresh your memory. I'd direct you to P. 2, 2<sup>nd</sup> paragraph.
  - ca A: Yes, I did say that in my report.
  - ca Q: Does that change your answer today?
  - ca A: Yes, it does. The gun was in his hand, not his pocket.

## What is CALCRIM, and How Do I Use It?

- ☞ EXPLANATION: Calcrim is the widely accepted accumulation of approved criminal jury instructions.
- ☞ NOTE: As the DDA, you're expected to provide the court with the instructions you think the jury should hear.
- ☞ PRACTICE TIP: Consider supplying the ones you think the defense will likely ask for; save time, ensure accuracy.

## Calcrim: A Brief Overview

- ☞ Two Volumes
- ☞ Go to “Table of Laws and Rules” toward end of Second Volume to see which crimes match up with which Calcrims
- ☞ Comb through both books, every page, to choose all your instructions
- ☞ This way you won’t forget anything
- ☞ Then print them out from computer and file

## IO in Jury Selection?



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Q IQ: The officer/detective who can provide the most assistance during your case (or the only one!)

### To use in Jury Selection, or Not?

- First Trial for you in Jx? Then probably, yes.
- Officer on graveyard or days off?
- Some DA's use them for every case; some, never; some, case-by-case.
- Possible compromise: have them come in to see list of venire names only, then advise and leave

## Jury Selection: As the Jury Walks In



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- ❑ Alphabetical List v. Randomized List
- ❑ Stand for the Jury (even when defense can't/won't)
- ❑ Check for familiar faces
- ❑ Take heed of attitude/treatment of others

## Jury Selection: What Happens Next



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- ☞ Roll Call (done by clerk)
- ☞ Hardships (pay attention!)
- ☞ "Six-Pack" v. Traditional Jury Selection (and alternates)
- ☞ Order of Juror Questioning
  1. Judge First (questions from pre-printed board)
  2. Defense Second (usually at lectern or in well)
  3. Prosecution Third (same)

## Challenges for Cause

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- cc) CCP § 225(b)(1): Challenges for Cause Grounds
  - Disqualification for Jury Service
  - Implied Bias
  - Actual Bias
  
- cc) CCP § 228: Grounds for Disqualification
  - Ineligible for Jury Duty
  - Or "any incapacity" preventing the person from fulfilling duties in a way that protects the challenging party's rights

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### For Cause (cont'd)

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- cc CCP § 229: Implied Bias
  - Related to a Party
  - Other relationship: e.g., business partners
  - An interest in the outcome
  - Bias toward/against party
  - Having "an unqualified opinion or belief as to the merits of the action founded upon a knowledge of its" facts
- cc Defense Goes First
- cc Unlimited Number
- cc Usual Procedures:
  1. Judge: "Defense, challenges for cause?" Then go from there.
  2. Judge: "Counsel, approach." And discuss cause challenges at bench.

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## Peremptory Challenges

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- ca CCP § 231 governs the number:
  - 20 for Death or Life cases
  - 6 for offenses w/ MTC of 1 year or less (recently amended from 90 days or fewer)
  - 10 for all the rest
  - (some exceptions for multiple defendant cases)
- ca The People go first
- ca Keeping Track
  - The Ladder
  - Ok to ask clerk, too
  - The Flag Rule: Who is Juror Number One?



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## How to Voir Dire



- ☞ (This is covered more in Jury Selection segment)
- ☞ Root out the Biased
- ☞ Get Them Talking!
- ☞ But to Make a Long Story Short:
  - ☞ Make sure EACH ONE has spoken with you
- ☞ Have a canned opening/closing line (to calm yourself)
- ☞ Take a final glance at the end to make sure



## Sock It To Me...



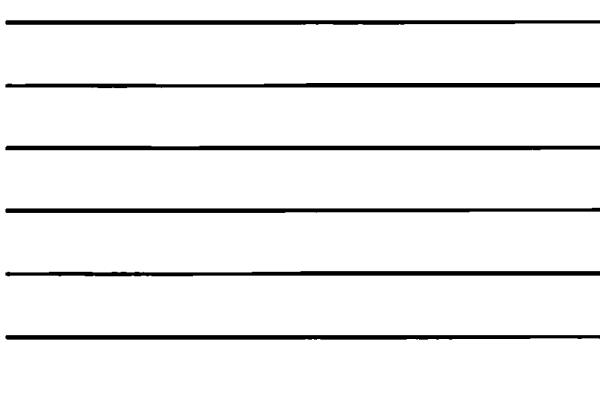
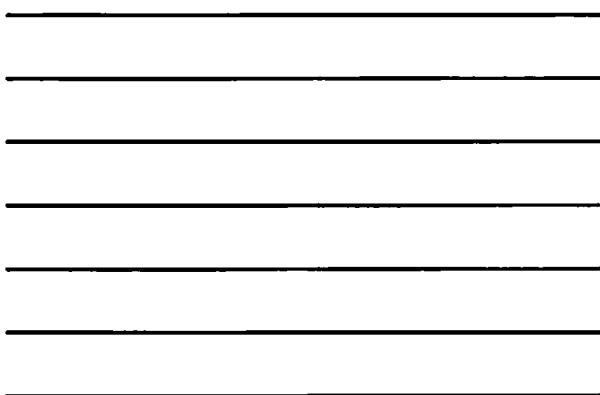
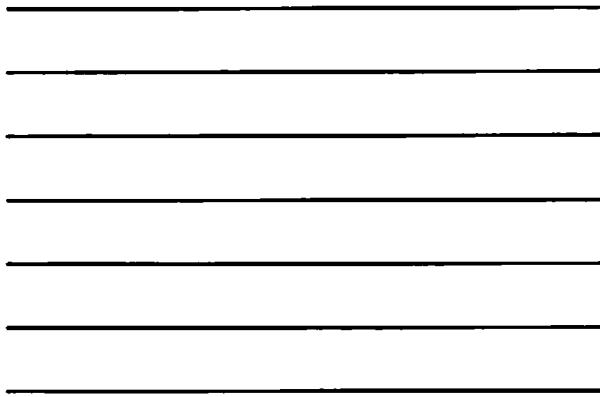
**Go ahead...ask me all those difficult questions you're afraid to ask the attorneys in your own office at this stage!**



## We're At the End...



CONGRATULATIONS! Go take that courtroom by storm and do a GREAT JOB for your county!



## **TITLE 2. RIGHTS AND RESPONSIBILITIES OF MEMBERS**

Adopted July 2007  
Amended effective July 1, 2014

### **DIVISION 4. MINIMUM CONTINUING LEGAL EDUCATION**

#### **Chapter 1 Purpose and scope**

##### **Rule 2.50 Purpose of MCLE**

Rules for Minimum Continuing Legal Education (MCLE) require active members of the State Bar of California to remain current regarding the law, the obligations and standards of the legal profession, and the management of their practices. A member's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

*Rule 2.50 adopted effective January 1, 2008.*

##### **Rule 2.51 Definitions**

- (A) An "MCLE activity" is continuing legal education that the State Bar approves as meeting standards for MCLE credit.
- (B) A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an MCLE activity.
- (C) "MCLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.
- (D) A "credit hour" is sixty minutes actually spent in an MCLE activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals.
- (E) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.
- (F) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means.
- (G) A "self-study activity" is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

*Rule 2.51 adopted effective January 1, 2008; amended effective July 1, 2014.*

## Rule 2.52 MCLE Activities

To receive MCLE credit, a member must complete an MCLE activity that meets State Bar standards.

- (A) The MCLE activity must relate to legal subjects directly relevant to members of the State Bar or have significant current professional and practical content.
- (B) The presenter of the MCLE activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the MCLE activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, or competence issues.
- (D) If the activity lasts one hour or more, the provider must make substantive written materials relevant to the MCLE activity available either before or during every MCLE activity. Any materials provided online must remain online for at least thirty calendar days following the MCLE activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.

*Rule 2.52 adopted effective January 1, 2008; amended effective January 1, 2013; amended effective July 1, 2014.*

## Rule 2.53 New members

- (A) A new member is permanently assigned to a compliance group on the date of admission.
- (B) The initial compliance period for a new member begins on the first day of the month in which the member was admitted. It ends when the period ends for the compliance group. If the initial period is less than the period for the compliance group, the required credit hours may be reduced as provided in these rules.<sup>1</sup>
- (C) A new member may not claim credit for education taken before the initial compliance period.

*Rule 2.53 adopted effective January 1, 2008.*

## Rule 2.54 Exemptions

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<sup>1</sup> Rule 2.72 (C).

(A) The following active members are exempt from MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:

- (1) officers and elected officials of the State of California;
- (2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;
- (3) those employed full-time by the State of California as attorneys or administrative law judges on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and
- (4) those employed full-time by the United States government as attorneys or administrative law judges on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.

(B) Members whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a California qualified legal services project or a qualified support center<sup>2</sup>, or through a legal services project or support center that primarily provides legal services without charge to indigent persons in another jurisdiction and is funded by the Legal Services Corporation or the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers trust accounts program.

*Rule 2.54 adopted effective January 1, 2008; amended effective November 4, 2011.*

#### **Rule 2.55 Modifications**

A member prevented from fulfilling the MCLE requirement for a substantial part of a compliance period because of a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause may apply for modification of MCLE compliance requirements. The State Bar must approve any modification.

*Rule 2.55 adopted effective January 1, 2008.*

### **Chapter 2. Compliance**

#### **Rule 2.70 Compliance groups**

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<sup>2</sup> Business & Professions Code § 6213.

A member is permanently assigned to one of three compliance groups on the basis of the first letter of the member's last name at the date of admission.<sup>3</sup> The three groups are A-G, H-M, and N-Z. The member remains in the compliance group despite any subsequent change of last name.

*Rule 2.70 adopted effective January 1, 2008.*

#### **Rule 2.71 Compliance periods**

A compliance period consists of thirty-six months. It begins on the first day of February and ends three years later on the last day of January. The three compliance groups begin and end their compliance periods in different years. A member must report MCLE compliance no later than the day following the end of the compliance period. The report must be made online using My State Bar Profile or with an MCLE Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

*Rule 2.71 adopted effective January 1, 2008.*

#### **Rule 2.72 Requirements**

- (A) Unless these rules indicate otherwise, a member who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>4</sup> Total hours must include no less than 6 hours as follows:
  - (1) at least four hours of legal ethics;
  - (2) at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and
  - (3) at least one hour of education addressing substance abuse or other mental or physical issues that impair a member's ability to perform legal services with competence.
- (B) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic.
- (C) A member may reduce the required twenty-five hours in proportion to the number of full months the member was inactive or exempt in the thirty-six-month

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<sup>3</sup> A historical exception exists. When the MCLE program was established in 1992, members were permanently assigned to compliance groups on the basis of their last names at the time, regardless of any different last names they might have used previously.

<sup>4</sup> Rule 2.83.

compliance period. Up to half the reduced hours may be self-study.<sup>5</sup> A tool for applying this formula is available at the State Bar Web site.

(D) Excess credit hours may not be applied to the next compliance period.<sup>6</sup>

*Rule 2.72 adopted effective January 1, 2008; amended effective July 1, 2014.*

#### **Rule 2.73 Record of MCLE**

For a year after reporting MCLE compliance, a member must retain and provide upon demand and to the satisfaction of the State Bar

- (A) a provider's certificate of attendance;
- (B) a record of self-study that includes the title, provider, credit hours, and date of each MCLE activity; or
- (C) proof of exempt status.

*Rule 2.73 adopted effective January 1, 2008; amended effective July 1, 2014.*

### **Chapter 3. MCLE Activities approved for MCLE credit**

#### **Rule 2.80 Attending programs and classes**

A member may claim MCLE credit for attending a MCLE activity, such as a lecture, panel discussion, or law school class, in person or by technological means.

*Rule 2.80 adopted effective January 1, 2008.*

#### **Rule 2.81 Speaking**

A member may claim participatory MCLE credit for speaking at an approved MCLE activity.

- (A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim
  - (1) actual speaking time multiplied by four for the first presentation; or
  - (2) actual speaking time only for each time a presentation is repeated without significant change.
- (B) A panelist may claim

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<sup>5</sup> Rule 2.83.

<sup>6</sup> But see Rule 2.93.

- (1) either of the following for the first panel presentation:
  - (a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or
  - (b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation.
- (2) actual speaking time only for each time a presentation is repeated without significant change.

(C) A member who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

*Rule 2.81 adopted effective January 1, 2008; amended effective July 1, 2014.*

#### **Rule 2.82 Teaching**

A member may claim participatory MCLE credit for teaching a law school course.

- (A) A member assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.
- (B) A guest lecturer or substitute teacher may claim
  - (1) actual speaking time multiplied by four for the first presentation; or
  - (2) actual speaking time only for each time a presentation is repeated without significant change.

*Rule 2.82 adopted effective January 1, 2008; amended effective July 1, 2014.*

#### **Rule 2.83 Self-study**

A member may claim up to half the credit hours required in a compliance period for

- (A) completing MCLE activities for which attendance is not verified by a provider and the MCLE activities were prepared within the preceding five years;
- (B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or

(C) authoring or co-authoring written materials that

- (1) have contributed to the member's legal education;
- (2) have been published or accepted for publication; and
- (3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved MCLE activity.

*Rule 2.83 adopted effective January 1, 2008; amended effective July 1, 2014.*

**Rule 2.84 Legal specialization**

A member may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.

*Rule 2.84 adopted effective January 1, 2008; amended effective July 1, 2014.*

**Rule 2.85 Education taken while physically out of state**

(A) A member may claim MCLE credit for an MCLE activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the member attends or does the MCLE activity outside California. A member may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.

(B) A member who qualifies for an MCLE activity authorized by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

*Rule 2.85 adopted effective January 1, 2008; amended effective July 1, 2014.*

**Rule 2.86 Member credit request**

A member may apply for MCLE credit for an educational activity directly relevant to the member's practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.

*Rule 2.86 adopted effective January 1, 2008; amended effective July 1, 2014.*

**Rule 2.87 Bar examinations and MPRE**

A member may not claim MCLE credit for preparing for or taking a bar examination or the Multistate Professional Responsibility Examination (MPRE).

*Rule 2.87 adopted effective January 1, 2008.*

## **Chapter 4. Noncompliance**

### **Rule 2.90 Definition**

**Noncompliance is failure to**

- (A) complete the required education during the compliance period or an extension of it;**
- (B) report compliance or claim exemption from MCLE requirements;**
- (C) keep a record of MCLE compliance<sup>7</sup>; or**
- (D) pay fees for noncompliance.**

*Rule 2.90 adopted effective January 1, 2008.*

### **Rule 2.91 Notice of noncompliance**

- (A) A member who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive member is not eligible to practice law.**
- (B) If the notice requires the member to complete credit hours for the previous compliance period, any excess credit hours may be counted toward the current compliance period.**

*Rule 2.91 adopted effective January 1, 2008.*

### **Rule 2.92 Enrollment as inactive for MCLE noncompliance**

**A member who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.**

*Rule 2.92 adopted effective January 1, 2008.*

### **Rule 2.93 Reinstatement following MCLE noncompliance**

**Enrollment as inactive for MCLE noncompliance terminates when a member submits proof of compliance and pays noncompliance fees. Credit hours that exceed those required for compliance may be counted toward the current period.**

*Rule 2.93 adopted effective January 1, 2008.*

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<sup>7</sup> Rule 2.73.

**MCLE Personal Log for \_\_\_\_\_**  
**(Name and Bar Number)**

**Compliance Period**  
**From \_\_\_\_\_ to \_\_\_\_\_**

**REMINDER:** For self-study activities, the MCLE Rules require you to maintain a log with the above information. We also recommend that you maintain a log for your participatory activities, which must be supported by your certificates of attendance.

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