

## **PROGRAM SUMMARY 3-20-21**

By: Gary R. Wallace-Program Summary Committee Chair

### **CDCBAA Holds Fourth Meeting and MCLE Program of 2021: "Evidence"**

On March 20, 2021, the CDCBAA held its fourth members meeting and MCLE program of the year. To help mitigate the spread of COVID-19, the meeting and program were conducted as a live webinar via Zoom video. The program topic was: **"Evidence."** The distinguished panel featured the Hon. Barry Russell, judge of the United States Bankruptcy Court for the Central District of California (Los Angeles division), and our own former president, M. Jonathan Hayes of Resnik, Hayes and Moradi, LLP.

The program covered the evidentiary aspects of, *inter alia*, judicial notice, lay and expert witness testimony, hearsay, and contents of writings, recordings and photographs. Our panelists also shared their real case experiences. Discussion subtopics included objections (presentation and waiver), foundational requirements, use of declarations, discovery admissions, witness competency and impeachment, the use of writings to refresh a witness's recollection, opinion testimony by both lay and experts (e.g., the competency of a property owner to testify as to its value), what is (and isn't) hearsay, and some of the more common exceptions to the hearsay rule. Some of the more useful tips provided were the following:

1. A motion for summary judgment, and any opposition thereto, must be supported by evidence that would be admissible at trial.
2. Statements in a brief and closing argument are not evidence.
3. Although statements of counsel are not evidence, they may be judicial admissions.
4. A declaration of counsel may be insufficient to authenticate any exhibits attached or referred thereto unless there are statements showing personal knowledge and such additional facts necessary to establish the attorney's competency to authenticate such documents.
5. Unsupported assertions and conclusory statements in declarations are disregarded by the court.
6. Declarations verified upon "information and belief" is insufficient for summary judgment matters.
7. Argument is not evidence.
8. Discovery admissions must first be admitted into evidence to be considered by the court.
9. Judicial notice under FRE 201 may be taken by the court at any stage of a proceeding.
10. The court will not take judicial notice of hearsay allegations as being true merely because they are part of a court record or file.



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11. Opinion testimony by lay witnesses under FRE 701 requires a foundation as to the witness's personal knowledge, and the opinion must be rationally based on the witness's perception.
12. A debtor's opinion as to the value of his or her own property is generally admissible, but may still be deemed inadmissible if it lacks credibility and probative value.

An extremely valuable 195-page handout, containing many case citations and summaries, was presented to all registered participants.

The next two CDCBAA members meetings and Zoom MCLE programs will be as follows: (1) May 8, 2021 (Topic - "Lien Stripping/Family Law Crossover"); (2) June 12, 2021 (Topic - Conversion: Deep Dive on 11 U.S.C. Section 706(b)). We hope you will join us.



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