



Criteria for Award Selection

Candidate must demonstrate:

- Excellence in Advocacy
- Dedication to their profession
- Exceptional trial skills
- Ethics beyond reproach
- Rapport with clients
- Rapport with colleagues
- A model of civility and professionalism
- Must be an *active* MCBA Member
- Years in practice greater than 15
- Lifelong impact

****If candidate meets above criteria, continue to nomination form below****

Lewis L. Fenton Award for Excellence in Advocacy Nomination Form

Instructions:

1. Complete your contact information and provide the name of the person you wish to nominate.
2. Provide a brief descriptive statement outlining why you believe this nominee is deserving of this honor and the nominee's qualifications or characteristics that make the nominee an exceptional candidate.
3. Please submit your nomination form to: Monterey County Bar Association, 2620 Colonel Durham Street, Seaside, CA 93955 or email your nomination to Laura Elkington, MCBA Executive Director, at Laura@montereycountybar.org

Name of Nominee: Neil Shapiro

Persons Nominating Candidate: Michael Stamp, Chris Campbell, Joel Franklin, Molly Erickson

Contact Name: Molly Erickson for co-nominators

Address: [REDACTED]

City: Monterey State: CA Zip Code: [REDACTED]

Nomination of Neil Shapiro for 2021 Fenton Award

Descriptive statement

The co-nominators of Neil Shapiro as this year's Fenton Award winner offer the following as a summary of his lifelong work as an exceptional litigator and advocate. We believe that his work ethic, high caliber of practice, professionalism and contribution to our legal community are precisely those high qualities envisioned by creation of the Fenton Award. We urge your most serious consideration of Neil Shapiro for this honor.

Excellence in Advocacy

Neil Shapiro has tried dozens of cases, and has briefed and argued approximately forty appeals, all with a remarkable success rate.

Fifteen of those trials were to juries in the Superior Court of the State of California for the counties of Monterey, Alameda, Marin, Contra Costa, San Mateo, San Francisco, Santa Clara, and Sonoma, and in the United States District Court for the Northern District of California. The trials addressed claims in a wide array of substantive areas including business disputes, real property disputes, defamation, breach of contract, trademark and trade name infringement, banking and constitutional law.

The appeals Mr. Shapiro has briefed and argued include one each in the United States Supreme Court and the California Supreme Court, five or six in the United States Court of Appeals for the Ninth Circuit, and one or more in each of the six districts of the California Court of Appeal. The following partial list of cases for which he was responsible and that generated written opinions demonstrates the breadth of his advocacy, and the results in those cases demonstrate the quality of his advocacy.

- *Business Guides, Inc. v. Chromatic Comm. Ent., Inc.* (1991) 498 U.S. 533. [Finding of bad faith under Rule 11 of the Federal Rules of Civil Procedure to be determined by objective standard].
- *Thompson v. Call* (1985) 38 Cal.3d 633 [Liability of governmental official for conflict of interest under Government Code section 1090].
- *Brandenburg v. Eureka Redevelopment Agency* (2007)152 Cal.App.4th 1350 [Statute of limitations for civil action against public official for conflict of interest].
- *Electronic Arts Inc. v. Hebrew University of Jerusalem* (9th Cir. 2004) 100 Fed.Appx. 629 [Standards for imposition of award of attorneys' fees to prevailing plaintiff in action for copyright infringement].

- *In Re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292 [Standards and procedures for courts to employ when a request is made to seal a court record or to unseal a record previously ordered sealed].
- *Braun v. The Chronicle Publishing Company* (1997) 52 Cal.App.4th 1036. [Affirmance of a summary judgment in favor of newspaper defendant in libel claim].
- *Lopez v. Tulare Joint Union High School Dist.* (1995) 34 Cal.App.4th 1302 [Constitutional and statutory rights of high school students to freedom of expression].
- *Masson v. New Yorker Magazine, Inc.* (9th Cir. 1991) 960 F.2d 896 [Affirmance of summary judgment in favor of book publisher defendant in libel claim].
- *Winter v. G. P. Putnam's Sons* (9th Cir. 1991) 938 F.2d 1033 [Affirmance of summary judgment in favor of book publisher defendant in action seeking damages for the alleged negligence in the publication of information in a book].
- *Gibson v. Prudential Insurance Co.* (9th Cir. 1990) 915 F.2d 414 [Affirmance of summary judgment against an insurance company based on ERISA preemption].
- *The Chronicle Publishing Company v. Chronicle Pub., Inc.* (N.D. Cal. 1989) 733 F.Supp. 1371 [Summary judgment for plaintiff book publisher against defendant book publisher for trademark and trade name infringement under Section 43(a) of the Lanham Act].
- *Hearst Corporation v. J. Ben Stark Books* (N.D. Cal. 1986) 639 F.Supp. 970 [Partial summary judgment in a case of first impression for major New York book publishers against bookseller who imported books lawfully produced abroad but in violation of 17 U.S.C section 602].
- *Sipple v. Chronicle Publishing Co.* (1984) 154 Cal.App.3d 1040 [Affirmance of summary judgment in favor of newspaper publisher in claim of violation of the right of privacy].
- *Diaz v. Oakland Tribune, Inc.* (1983) 139 Cal.App.3d 118 [Reversal of judgment in the sum of \$775,000 against newspaper defendant in claim of violation of the right of privacy].
- *Standard Fruit & Steamship Co. v. Metropolitan Stevedore Co.* (1975) 52 Cal.App.3d 305 [Affirmed judgment of dismissal of indemnity claim asserted by ship owner in personal injury action brought against ship owner by injured employee of stevedore company].

Dedication to the profession

Neil Shapiro's dedication to the legal process is without question. Neil has gone well beyond simply protecting his clients' interests, most notably in the arenas of improving the functioning of the judicial system and educating the public about the system as a whole. He has demonstrated his willingness to give his time to the judicial system in ways that reduce the judicial resources devoted to some aspects of the system thereby allowing judges to devote more time to other aspects.

Mr. Shapiro is a co-originator of the Court-Directed Mediation Program that he, Bill Daniels, Bill Monning, Chuck Warner and the Hon. Kay T. Kingsley (Ret.) created in 2004 and that the Superior Court put in place in 2005. At the request of the Hon. Thomas W. Wills, Mr. Shapiro and Mr. Daniels designed the Discovery Facilitation Program in 2016 and the Superior Court launched its pilot program in 2017. He also has written about procedural and substantive matters of interest to legal practitioners for publication in legal periodicals.

Mr. Shapiro has freely given of his time to educate non-lawyers about how the system works. Such efforts have included teaching classes from the middle-school level to the law school level and the authorship of numerous newspaper columns and other writings explaining aspects of the system. Neil wrote columns for the Monterey County Herald for approximately six years that frequently addressed contemporary legal issues – including freedom of expression, the death penalty, the role of judges, gay marriage and decisions the Supreme Court - that helped the community better understand the law and the role of judges and lawyers in our society. Those columns were widely read and respected.

A recent example of Mr. Shapiro's commitment to professional ethics and his talent as a lawyer was the California Public Records Act litigation on behalf of local investigative journalist Royal Calkins. Calkins had published information to the effect that the city attorney for Carmel-by-the-Sea had misrepresented his credentials and background experience when first hired as city attorney. The city attorney and the City's mayor and council denied the assertion of misconduct. Mr. Shapiro used the California Public Records Act to request access to the written material submitted to the City in support of the city attorney's application and the City officials refused to release such records, asserting various privileges and insisting that the City had no records that it was required to release. Mr. Shapiro filed a legal action to enforce the California Public Records Act. That litigation generated an open discussion in the media and in

the general public on transparency in local government. The Hon. Robert O'Farrell (Ret.) ruled in favor of Mr. Shapiro's client, which forced the disclosure of public records that vindicated the accuracy of Calkins' articles on the subject and that prompted the resignation of the City Attorney. The case is illustrative of Mr. Shapiro's lifelong work supporting the free flow of information about government to those governed.

Ethics Beyond Reproach and a Model of Civility and Professionalism

Neil Shapiro's ethics and integrity are without question. He is a practitioner of the old school model, when professionalism was expected of lawyers and common courtesies were actually common. He is a co-author of the Guidelines of Civility & Professionalism, a project initiated by Michael Stamp that was unanimously adopted by the Monterey County Bar Association and the Monterey County Superior Court. Evidence of his reputation for integrity and ethical standards includes the fact that by way of the stipulation of parties, orders of the Court, or both, Mr. Shapiro has served as an arbitrator, mediator, special master; receiver, partition referee, discovery referee and judge pro tem.

Rapport with Clients and Colleagues.

Neil Shapiro enjoys excellent rapport with his clients, many of whom continued to work with him after he relocated his practice from San Francisco to Monterey in January of 2003. His relationships with clients are based on a foundation of mutual respect and loyalty. His rapport with most of his colleagues is excellent and is fostered by mutual respect. He is the kind of lawyer who always has the patience to listen when a colleague needs frank and skilled advice, or to suggest a creative approach to a complex problem, to help clients who may not have the resources to retain someone of his caliber. He did these things quietly and often behind the scenes.

Lifelong Impact

As the foregoing attests, Neil Shapiro's positive impact on the legal system is beyond debate. Mr. Shapiro, like Lewis Fenton, has impacted our community in a myriad of ways: as a fierce litigator, advocate, and teacher. Mr. Shapiro has improved the quality of the practice of law and he has educated the public about and improved the public perception of the justice system.