

VALLEY LAWYER

MAY 2015 • \$4

A Publication of the San Fernando Valley Bar Association

Employment Law: Advising Clients in the Wake of AB 1897

Earn MCLE Credit

**Galpin Motors'
Alan Skobin Talks Shop**

Official Sponsors of the San Fernando Valley Bar Association

KRYCLER ERVIN TAUBMAN & KAMINSKY

FULL SERVICE ACCOUNTING FIRM

CONTACT MICHAEL J. KRYCLER, CPA, FCA | SCOTT R. ERVIN, CPA

*When you need more than just numbers...
you can count on us...*

- LITIGATION SUPPORT
- EXPERT WITNESS
- FORENSIC ACCOUNTANTS
- FAMILY LAW MATTERS
- BUSINESS VALUATIONS
- LOSS OF EARNINGS
- DAMAGES

MEMBERS OF
American Institute of Certified Public Accountants
California Society of Certified Public Accountants

15303 Ventura Boulevard, Suite 1040
Sherman Oaks, California 91403

info@ketkcpa.com
t: 818.995.1040
f: 818.995.4124
www.ketkcpa.com





San Fernando Valley Bar Association

Referring the Best Attorneys Since 1948



Attorney Referral Service



@ReferralsSFVBA



The **Attorney Referral Service** of the **SFVBA** is a valuable service, one that operates for the direct purpose of referring potential clients to qualified attorneys. It also pays dividends to the attorneys involved. Many of the cases referred by the ARS earn significant fees for panel attorneys.

(818) 227-0490

www.sfvbaReferral.com



EMPLOYMENT LAW REFERRALS

Professionals Serving Professionals

Our referral program can be your profit center! **Stephen Danz & Associates** is recognized as one of the most experienced and successful employment law firms representing whistle blowers and victims of wrongful termination, retaliation, discrimination and sex harassment. Our clients are executive, technical, administrative and hourly employees. We pay generous referral fees in accordance with State Bar rules. We also provide regular updates on your referred case.

- Regular bi-monthly report on status of referred cases
- Highest possible referral fees pursuant to state bar rules
- Reciprocal referrals where appropriate
- Referral fees paid religiously at case closure with a complete distribution report to you
- Regular email updates on new significant developments in employment law



“Recently a friend of mine contacted me because I was the only lawyer she knew. Her sister was being pushed out of her job because of her age. With complete confidence, I referred her to Stephen Danz, who immediately met with her and gave her an honest assessment of her legal options. Steve informed me when he met with her and sent me an unexpected, but much appreciated, surprise- a referral fee. I hadn't realized it beforehand, but referral fees are a standard part of his practice. My friend's sister was extremely satisfied with Steve, which of course made me look good too. It's important for me to know attorneys like Steve, who I know will do a great job for the people I refer to him.”

- David L. Fleck, Esq.



877.789.9707
www.employmentattorneyca.com

2655 First St., Simi Valley, CA 93065

Los Angeles Orange County Pasadena San Bernardino San Diego Fresno San Francisco Santa Rosa Sacramento

Sometimes numbers are the only prints left behind.

Arxis Financial is a proven forensic accounting and litigation specialist. We will examine the financial data and help you determine the "bottom line." Arxis provides financial and valuation analysis needed to resolve a variety of legal disputes from family court to civil, criminal, and probate courts. In many cases our experts can help you reach a settlement. If trial or arbitration is required we give you the support you need to win.

Chris Hamilton, CPA, CFE, CVA

805.306.7890

www.arxisfinancial.com

chamilton@arxisgroup.com



FORENSIC ACCOUNTING

BUSINESS VALUATION

FRAUD ANALYSIS



14



18



Winner of the
2013-2014 NABE
Luminary Award
for Excellence
in Regular
Publications



26



34



38

FEATURES

14 Developments in Digital Estate Planning | BY KC MARIE KNOX

18 Employer and Labor Contractor Liabilities: Advising Clients
in the Wake of AB 1897 | BY KENNETH J. ROSE AND ROBERT H. ROSE
MCLE TEST NO. 79 ON PAGE 25.

26 Galpin Motors' Alan Skobin Talks Shop | BY IRMA MEJIA

38 What Attorneys Can and Cannot Do While
Marketing on Social Media | BY DEBORAH S. SWEENEY

COLUMNS

34 Duly Noted
Plague of Prosecutorial Misconduct | BY GRACE E. AYERS

40 Book Review
Judicial Clerks, Politics and Compromised Values
in Supreme Ambitions | BY SCOTT A. QUIGLEY

46 Dear Phil
Crafting a Compelling Elevator Pitch: Not Just a Story between Stories

On the cover: Alan Skobin, Galpin
Motors
Photo by Paul Joyner

DEPARTMENTS

7 President's Message

9 Nominating Committee

10 Event Calendars

13 From the Editor

43 Consensus ad idem

43 New Members

44 Classifieds

**SOUTHERN CALIFORNIA'S
PREEMINENT PROFESSIONAL
LIABILITY DEFENSE FIRM**

NEMECEK • COLE Attorneys At Law



FRANK W. NEMECEK *

JONATHAN B. COLE *

MICHAEL MCCARTHY *

* Certified Specialist, Legal Malpractice Law, The State Bar of California Board of Legal Specialization

15260 VENTURA BOULEVARD, SUITE 920
SHERMAN OAKS, CA 91403
TEL: 818.788.9500 / TOLL FREE: 877.314.1177

WWW.NEMECEK-COLE.COM

HOEFFLIN • BURROWS A Law Corporation

Personalized representation to attain client goals

HOEFFLIN • BURROWS delivers results by putting client interests first and using a team-based approach to creatively, intelligently, and effectively resolve legal matters. Specializing in disputes and litigation including:

- Real Estate
- Partnerships/LLC's
- Business and Corporate
- Trust/Estate Disputes
- Executive Employment
- Alternate Dispute Resolution
- Entertainment Disputes

Refer with confidence



Steven A. Meadville, of Counsel • Richard M. Hoefflin • Jason M. Burrows

2659 Townsgate Road, Suite 232 • Westlake Village, CA 91361
805.497.8605 • www.hoefflinlaw.com

VALLEY LAWYER

SAN FERNANDO VALLEY BAR ASSOCIATION

5567 Reseda Boulevard, Suite 200
Tarzana, CA 91356
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

EDITOR

Irma Mejia

GRAPHIC DESIGNER

Marina Senderov

BOARD OF TRUSTEES

President Caryn Brottman Sanders
President-Elect..... Carol L. Newman
Secretary..... Kira S. Masteller
Treasurer..... David S. Kestenbaum
Past President..... Adam D.H. Grant
Executive Director..... Elizabeth Post

TRUSTEES

Anie N. Akbarian	Gregory S. Lampert
Jonathan Birdt	Kathy G. Neumann
Michelle E. Diaz	April E. Oliver
Alexander J. Harwin	Marlene Seltzer
Sean E. Judge	Michelle Short-Nagel
Nicole Kamm	Toni Vargas
Alan E. Kassan	Louis A. Wharton
Yi Sun Kim	

STAFF

Director of Public Services Rosie Soto Cohen
Referral Consultant Lucia Senda
Director of Education & Events..... Linda Temkin
Publications & Social
Media Manager Irma Mejia

SECTION CHAIRS

Bankruptcy Law Steven R. Fox
Business Law & Real Property Steven J. Shapiro
..... Neil M. Sunkin
Criminal Law..... David S. Kestenbaum
..... Angela Berry-Jacoby
Employment Law Kimberly A. Westmoreland
Elder Law..... Steven Peck
Family Law Cari M. Pines
Intellectual Property,
Entertainment & Internet Law Mark D. Nielsen
..... Thomas M. Morrow
Litigation..... Christopher P. Warne
New Lawyers..... Yi Sun Kim
..... Christopher Blaylock
Paralegal.....
Probate & Estate Planning..... John E. Rogers
Small Firm & Sole Practitioner Lisa Miller
Taxation Law Ronald Hughes
..... Hratch J. Karakachian
Workers' Compensation Jeffrey S. Swartz

Valley Lawyer is published 11 times a year. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Printing Southwest Offset Printing

© 2015 San Fernando Valley Bar Association

PRESIDENT'S MESSAGE

Celebrating Law Day

MAY 1 HAS BEEN ASSOCIATED with Law Day since 1958, yet many attorneys do not know its history or what it represents. Law Day has summarily been described as a day to honor the role of law in our society or our commitment to the rule of law. This is perhaps never more significant than it is today as we face renewed challenges presented by racism, terrorism, and recent questionable or highly-charged actions, including the passage of laws purportedly based on granting freedoms without regard for their potential discriminatory application, judges who order mistresses to repay the gifts they received, and such diverse sentencing as seven years in prison for school educators who cheated on tests and a reduction to ten years for a person who sexually molested a toddler.

What does Law Day and the concept of "the rule of law" represent? Law Day was originally the idea of Charles S. Rhyne, President of the American Bar Association and former legal counsel for President Dwight D. Eisenhower, who wanted a day dedicated to celebrating our legal system. Eisenhower proclaimed May 1 to be Law Day in 1958. Before he declared May 1 to be Law Day, the first day of May was known in some parts of the world as May Day, a day to remember the struggles of workers in their fight for better wages and working conditions.

CARYN BROTTMAN SANDERS
SfVBA President



carynsanders@sbcglobal.net

In his Proclamation, President Eisenhower stated "It is fitting that the people of this Nation should remember with pride and vigilantly guard the great heritage of liberty, justice, and equality under law which our forefathers bequeathed us... In a very real sense, the world no longer has a choice between force and law. If civilization is to survive it must choose the rule of law."


The observance of Law Day was later codified by Public Law 87-20 on April 7, 1961. 36 U.S.C. §113 states, in part: Law Day, U.S.A., is a special day of celebration by the people of the United States—(1) in appreciation of their liberties and the reaffirmation of their loyalty to the United States and of their rededication to the ideals of equality and justice under law in their relations with each other and with other countries;

and (2) for the cultivation of the respect for law that is so vital to the democratic way of life.

Every sitting President since Eisenhower has issued an annual Law Day proclamation (which are published in the Federal Register) encouraging the support and dedication to the rule of law, our democracy and the freedoms afforded to us as citizens of the United States. In writing this article, I reviewed those Proclamations and chose a few excerpts that remain pertinent today. In 1969, President Richard Nixon proclaimed:

"It is a special day to be observed by the American people in





**112 WAYS TO SUCCEED
IN ANY NEGOTIATION
OR MEDIATION**

SECRETS FROM A PROFESSIONAL MEDIATOR

STEVEN G. MEHTA

Steven G. Mehta is one of California's premier, award-winning attorney mediators, specializing in intensely-difficult and emotionally-charged cases.

Steve's book, **112 Ways to Succeed in Any Negotiation or Mediation**, will turbo-charge your negotiation skills regardless of your experience.

To schedule your mediation or order a copy of Steve's new book, call **661.284.1818** or check with your local bookseller, preferred online retailer, or online at:
www.112ways.com or www.stevemehta.com

Locations in Los Angeles & Valencia
Mediations throughout California

FEE DISPUTE RESOLUTION



The San Fernando Valley Bar Association administers a State Bar certified fee arbitration program for attorneys and their clients.

**TODAY'S
DISPUTE.
TOMORROW'S
RESOLUTION.**



San Fernando Valley Bar Association

www.sfvba.org

appreciation of their liberties... It is an occasion for rededication to the ideals of equality and justice under law... There was never a greater need for such rededication. Events of recent years—rising crime rates, urban rioting, and violent campus protests—have impeded rather than advanced social justice... Unequal justice is no justice at all, unenforced laws are worse than no laws at all...”

In 1974, President Gerald Ford proclaimed that “[l]iberty is the hallmark of the American experience... throughout our history, the preservation of those individual rights has been dependent upon our dedication to the rule of law...”

Last year, President Barack Obama proclaimed:


“More than two centuries ago, patriots battled to release America from the grip of tyranny. As these brave citizens defended their right to shape their own destiny, our Founders created a government of, by, and for the people—rooted in the belief that just power derives from the consent of the governed. It is a system that can only function through the rule of law.”

Every year, the American Bar Association designates a theme to

highlight an important issue relating to the law or legal system. The ABA encourages schools and attorneys to explore the annual theme through events, essay contests and speech contests. The 2015 theme is celebration of the 800th anniversary of the Magna Carta.

The Magna Carta, or “Great Charter,” is an English legal document signed by King John that greatly influenced the development of the rights to due process, trial by jury, and habeas corpus proceedings in the United States. The Magna Carta has become an international symbol of the rule of law.

The ABA encourages us “...to commemorate this ‘Great Charter of Liberties,’ and rededicate ourselves to advancing the principle of rule of law here and abroad.”

As attorneys in California, we take an oath to support the Constitution of the United States and the Constitution of the State of California and to discharge our duties as an attorney and counselor at law to the best of our abilities. I encourage all of us to include in those duties a dedication to advancing the principle of the rule of law in these challenging times, including educating the public as to how the rule of law remains critical to our rights and freedoms, even when it may appear questionable. 

ANNUAL MEMBER APPRECIATION RECEPTION

FRIDAY, JUNE 12, 2015

5:30PM TO 7:30PM

THE STAND, ENCINO

*Join us for a casual
dinner on the patio.
Free to Current Members.*



NOMINATING COMMITTEE



Seeking the Bar's Next Leaders


THE SFVBA NOMINATING COMMITTEE IS SEEKING ATTORNEY members who aspire to lead the San Fernando Valley Bar Association and who wish to be considered for nomination as a candidate for the SFVBA's 20-member Board of Trustees.

The Committee's aim is to select the most qualified candidates for office who are committed to the growth of the SFVBA and who reflect the diversity of the Bar's membership, from areas of practice to members of law firms to sole practitioners.

The responsibilities of the Board include setting policy and overseeing the association's finances. Trustees work closely with other Bar leaders and professional staff to improve and develop programs for the public, expand benefits and services for members, and enhance and promote the public image of lawyers and the justice system.

The time commitment varies. All trustees are expected to actively participate on committees and to support the SFVBA's activities, including attending the annual Installation Gala in September and a board retreat later in the fall. Trustees are obligated to attend a monthly board meeting at the Bar offices, held on the second Tuesday evening of each month.

The Nominating Committee, chaired by Immediate Past President Adam Grant, will select up to 12 candidates for six open trustee seats on the Board. Trustees are elected to two-year terms. Following the September 10 election, two additional members will be appointed to one-year terms.

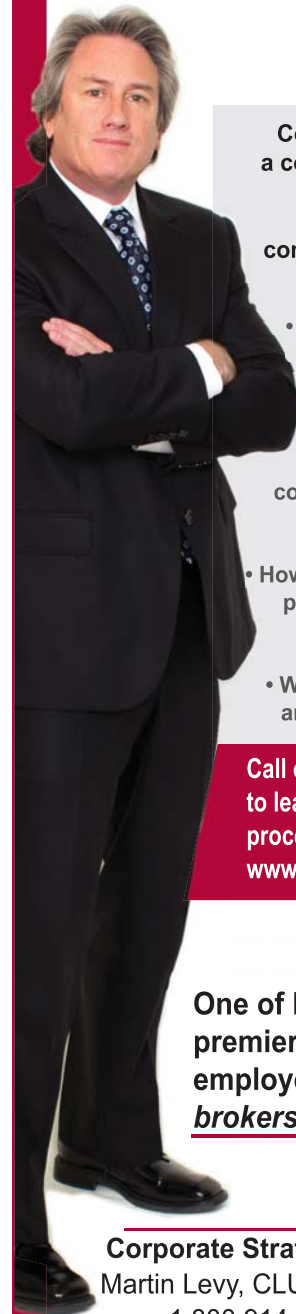
Sounds intriguing? The *Application for Nomination to the San Fernando Valley Bar Association Board of Trustees* can be downloaded from the news scroll at www.sfvba.org. Have questions? Feel free to contact (818) 227-0490, ext. 101. 

2015 TRUSTEE ELECTION DEADLINES

May 15	Deadline to submit <i>Application for Nomination</i>
June 10	Nominating Committee issues Report to Secretary
July 1	Nominating Committee Report sent to members
July 25	Additional nominations signed by 20 active members must be received by 5:00 p.m. by the Secretary.
August 10	Ballots mailed to members
Sept 10	Board of Trustees Election (Deadline to return ballots)

HEALTH CARE REFORM HAS CHANGED THE WAY YOU BUY AND DELIVER BENEFITS

IS YOUR PRESENT BROKER BRINGING YOU THE BEST POSSIBLE SOLUTION?



Contact us for
a comprehensive
analysis of
NEW ACA
compliant plans:

- How to exploit the ACA for your benefit
- Why plan design and communication are vital
- How the exchanges play into your programs
- Wrapping plans around Kaiser

Call or Email us
to learn about our
process, or visit
www.CorpStrat.com

One of Los Angeles
premier and largest
employee benefit
brokers

Corporate Strategies Inc
Martin Levy, CLU, Principal
1 800 914 3564
www.Corpstrat.com
Ca. Lic 0C24367



SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	Valley Lawyer Member Bulletin Deadline to submit announcements to editor@sfvba.org for June issue.	5	Employment Law Section What Employers Need to Know about California's Paid Sick Leave Law 12:00 NOON SFVBA OFFICE Sponsored by  See page 36 Kimberly Westmoreland discusses how to counsel clients to comply with the Healthy Workplaces, Healthy Families Act of 2014.	Get Found on Google! 12:00 NOON SFVBA OFFICE Sponsored by  See page 36 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	8	9
10	Tarzana Networking Meeting 5:00 PM SFVBA OFFICE 	Probate & Estate Planning Section Are Two Hats Better Than One? 12:00 NOON MONTEREY AT ENCINO RESTAURANT Alex R. Borden provides an overview of ethical, financial, and practical considerations for the attorney acting as fiduciary. (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICE	Business Law & Real Property Section New Developments Re: CAR Forms 12:00 NOON SFVBA OFFICE Allan Wallace updates the group on the new residential real estate purchase contract. (1 MCLE Hour)	Intellectual Property, Internet & Entertainment Law Section 12:00 NOON SFVBA OFFICE	15	16
17	Family Law Section Search and Rescue 5:30 PM SPORTSMEN'S LODGE (one week early due to holiday) Learn how to find assets and collect them to enforce family law orders. The seminar features attorneys Ira and David Friedman, Maria and Bill Ferguson, and Chris Good. Approved for Legal Specialization. (1.5 Hours MCLE)	Taxation Law Section Creative Use of Sec. 1031 Tax Free Exchanges 12:00 NOON SFVBA OFFICE Robert Briskin updates the group on creative ways to use Sec 1031. (1 MCLE Hour) New Lawyers Section Networking Mixer 6:00 PM PUBLIC SCHOOL #PS818 SHERMAN OAKS	Workers' Compensation Section Farewell Luncheon Honoring Retiring WCAB Judge Jerold S. Cohn 12:00 NOON MONTEREY AT ENCINO RESTAURANT See page 37	Networking Mixer with Eastern European Bar Association 6:00 PM OLIVA TRATTORIA SHERMAN OAKS Sponsored by   See page 33	22	23
24	 Memorial DAY	Editorial Committee 12:00 NOON SFVBA OFFICE	Criminal Law Section Nuts and Bolts of Proposition 47 6:00 PM SFVBA OFFICE	Small Firm & Sole Practitioner Section 9th Circuit Free Speech Update 12:00 NOON SFVBA OFFICE Lisa Miller presents an overview and update on First Amendment developments. There will be a drawing for prizes, including gift cards and wine. (1 MCLE Hour)	29	30
31						

SUN	MON	TUE	WED	THU	FRI	SAT
	1 Valley Lawyer Member Bulletin Deadline to submit announcements to editor@sfvba.org for July issue.	2	3	4 Employment Law Section The Effects of an Employer's Bankruptcy on an Employee's Lawsuit 12:00 NOON SFVBA OFFICE	5	6
7 Tarzana Networking Meeting 5:00 PM SFVBA OFFICE	8 	9 Probate & Estate Planning Section Savage Sunset: How 21380 Has Sharpened the Teeth of 21350 12:00 NOON MONTEREY AT ENCINO RESTAURANT Lauriann Wright and Robert Eroen discuss the presumption that U/I is irrebuttable for drafters and anyone related to a drafter and the penalty of having to pay the other side's attorney's fees for trying to rebut. (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICE	10	Yi Sun Kim discusses how an employer's impending bankruptcy affects a lawsuit; pros and cons of potential bankruptcy as a settlement tool; and whether an employer in bankruptcy has authority to settle a case. (1 MCLE Hour) Membership & Marketing Committee 6:00 PM SFVBA OFFICE	12 Annual Member Appreciation Reception 5:30 PM THE STAND ENCINO Join us at The Stand for a casual dinner on the patio. Free to Current Members.	13
14	15	16	17	18 Bankruptcy Law Section Settling with the Trustee Part 2 12:00 NOON SFVBA OFFICE This is the conclusion of a prior program in which current and former chapter 7 trustees and counsel discuss do's and don'ts of making deals in bankruptcy with chapter 7 trustees. (1.25 MCLE Hour) New Lawyers Section 6:00 PM SFVBA OFFICE	 See page 8	19 20
21  HAPPY FATHER'S DAY	22	23 Editorial Committee 12:00 NOON SFVBA OFFICE	24	25	26	27
28	29	30				



The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0490, ext. 105 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

Life Insurance

Term, Universal Life, Survivorship, Estate Planning, Key-Person

Disability Insurance

Insure your most important asset—"Your ability to earn income"

Insures you in your own occupation

Benefits keep up with inflation

Long Term Care Insurance

Several quality carriers for individuals and firms

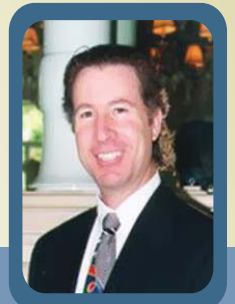
Health Insurance

All major insurance companies for individuals & firms



The Matloff Company

An Insurance and Financial Services Company



Elliot Matloff

The Matloff Company has been a top insurance broker to Southern California attorneys, their firms and families for over 32 years.

**RATED A+ A.M.
BEST INSURERS.**

Phone: (800) 468-4467

E-mail: elliot@matloffcompany.com

When Bankruptcy May Be the Best Solution...

Choose an experienced & knowledgeable attorney who provides personal & timely attention and recommends bankruptcy only when it is the best solution.

Law Offices of Steven R. Fox
Bankruptcy & Related Matters

Debtor and Creditor Representation
Chapter 11 Reorganization
Bankruptcy Litigation
Developing and Rebuilding Companies



17835 Ventura Blvd., Suite 306
Encino, CA 91316 III (818) 774-3545
SRFox@FoxLaw.com

FROM THE EDITOR

Time to Create

IRMA MEJIA
Publications & Social
Media Manager




editor@sfvba.org

SUMMER IS FAST APPROACHING AND WITH IT ADDITIONAL LEISURE time. Several of our readers will use their vacation time to pursue creative endeavors. Yes, attorneys can be creative! Several of you are talented photographers, illustrators, and writers. And we want to showcase your creative work in an upcoming issue.

Valley Lawyer is holding an arts contest! All current SFVBA members are invited to participate. Members may submit works of photography, illustration, painting, short story and poetry. Submissions will be accepted from May 1 through June 22. All submissions must be emailed to the Editor at the address above by midnight on June 22. For paintings and illustrations, photos or scanned images will be accepted.

All entries will be reviewed by the members of the *Valley Lawyer* Editorial Committee. Three winners will be selected for first, second and third place, receiving prizes of \$100, \$75 and \$50 gift cards, respectively. The winning entries will be published in the August issue of *Valley Lawyer*. We can't wait to review your artistic creations!

It has been my goal to produce a publication that serves as a tool for member promotion and engagement. It is filled every month with technical and academic articles based on case law and hard-hitting facts. For the time ever, these pages will be filled with your art. It will make for a very special summer issue.

Of course, readers who are not so artistically inclined can still publish their work. All SFVBA members are invited to submit feature articles on new laws, court procedures, best practices, and observations on the experience of practicing law. All submissions, whether they be creative or technical, are considered for publication. 

Participate in *Valley Lawyer's*

ART CONTEST

- * Photography
- * Illustration
- * Painting
- * Short Story
- * Poetry

GIFT CARD PRIZES
FIRST PLACE **\$100**
SECOND PLACE **\$75**
THIRD PLACE **\$50**

Email all submissions to editor@sfvba.org by June 22.



ERISA LAWYERS

**LONG TERM DISABILITY,
LONG TERM CARE, HEALTH,
EATING DISORDER, AND LIFE
INSURANCE CLAIMS**

**WE HANDLE BOTH
ERISA & BAD FAITH
MATTERS**

- California Federal and State Courts
- More than 20 years experience
- Settlements, trials and appeals

**Referral fees as allowed
by State Bar of California**

**Handling matters
throughout California**

818.886.2525

**KANTOR
& KANTOR** LLP

www.kantorlaw.net

**Dedicated to helping people
receive the insurance
benefits to which they
are entitled**



Developments in Digital Estate Planning

By KC Marie Knox

PICTURES ARE POSTED, FRIENDS are tagged and snippets of memories are shared online, but what happens to all of that personal information after death. Is there a digital afterlife? A person's digital assets can include an array of information. The asset can be as simple as a photograph stored on a hard drive, a website which generates income through advertisements, or an unpublished manuscript. However, few people have taken any steps to protect those digital assets, or to provide instructions on what should happen to those digital assets after death. Without proper instructions, the digital file may be lost forever and the valuable information the file contained may be impossible to replace.

The management of digital assets has become exponentially more important as technology continues to advance. Delaware took the lead last year as the first state to pass an all-

encompassing act regarding digital assets. The law essentially states that any person could appoint anyone (executor, trustee or attorney-in-fact) to manage their digital assets after death or disability.¹

California's efforts to pass similar legislation have not been as successful. SB 849 was first introduced last year, but it eventually died on the vine.² However, hope is not lost. While an all-encompassing act has not yet been passed in California, Assembly Member Ian Calderon introduced AB 691 on February 26, 2015, which would specifically target social media accounts and communications. Calderon stated in a press release that "[t]he digital assets we 'own' on social media sites or in our emails are private information, and individuals should have the right to choose whether they remain private after they die."³

In light of the absence of uniform legislation, it is up to the individual

source companies themselves, which host the storage of this information, to take the lead and implement their own procedures. Keep in mind, users can only transfer what they own. iTunes, Amazon, and Google Music are but a few of the sources of digital assets which could have significant worth to the purchaser, but zero ability for transfer upon death. Why? It is because when a song, album, book, or movie is purchased through these outlets, the content is simply being licensed for use. This is very different than if that same song, album, book or movie was bought in its tangible form.⁴

iTunes, for example, states in Section B of its Terms and Conditions, that "iTunes is the provider of the Service, which permits you to access, purchase or rent a licence (sic) for digital content ('iTunes Products') for end user use only under the terms and conditions set forth in this Agreement."⁵ Further in the Terms and Conditions,



KC Marie Knox has over a decade of experience in wills, trusts and estate in California. She joined the law firm of Anker, Hymes and Schreiber LLP in March of 2007 and in addition to estate planning and asset protection, primarily handles the firm's probate, trust administration, and trust litigation matters throughout the state. She can be contacted at kknox@ahslawyers.com.

the Scope of the License is clarified by stating “[t]his licence (sic) granted to you for the Licensed Application by Licensor is limited to a nontransferable license to use the Licensed Application on any Apple-branded products [Y]ou may not distribute or make the Licensed Application available over a network where it could be used by multiple devices at the same time. You may not rent, lease, lend, sell, transfer, redistribute, or sublicense the Licensed Application....”⁶

There is a concept known as a “digital trust,” wherein the trust would be the original purchaser of the license and therefore any beneficiary could have use of the license. This has yet to be challenged or tested, but it is a clever tool that can be utilized.

For those providers in which you own the content, it is equally important to verify their terms and conditions. With every company comes a different policy with different perspectives. There are some sites in which no policy has been set (or at least none could be easily identified through the Terms of Service), such as GoDaddy and Shutterfly. Some, such as Yahoo!, take the position that a person’s account dies with them and no one can have access to it. According to the Terms of Service, “neither the Yahoo account nor any of the content therein are transferable, even when the account owner is deceased. As a result, Yahoo cannot provide passwords or access to deceased users’ accounts, including account content such as email. Yahoo does have a process in place to request that your loved one’s account be closed, billing and premium services suspended, and any contents permanently deleted for privacy.”⁷

Google has a more liberal approach. With Google’s “Inactive Account Manager” feature, once an account is inactive for a period of time selected by the user (i.e., three, six, nine, etc. months), then Google will handle the account in one of two ways, again determined by the user’s selection.⁸ Users can choose to have their accounts

completely deleted. Users may also elect to have some or all of their information shared with up to 10 people. The Inactive Account Manager may be activated through users’ Google account settings (not to be confused with Gmail account settings).

The huge upside (and potentially a downside) to this feature is that Google is affiliated with many different service providers and the user’s settings for the Inactive Account Manager will be applied to all of those providers (e.g., Google+, Google Drive, Gmail, Picasa Web, Google Voice and YouTube).

The huge downside is that this feature is limited to inactivity and inactivity is measured by a person’s last sign-in. This means, depending on the settings, it can be up to 18 months before access to the digital content is granted. Additionally, the people selected by the user to access the account do not have full access to your account; they cannot make changes or alterations or post additional content.

Leading the Way

This past February, Facebook succeeded in its mission to effectively bridge the gap between active user management and after-death wishes. It launched a new feature which enables any user to designate a “Legacy Contact.”⁹ Prior to this new feature, when an account was inactive (determined like Google through a lack of log-ins), the account would be “memorialized,” which still allowed other people to view it, but no new information could be posted and no management of the account could take place. It would be impossible (without someone logging on and pretending to be the deceased, which is technically illegal) to accept any pending friend requests, download and preserve pictures, or post any new information. Now, a legacy contact can do just that.

The Legacy Contact has the ability to write a post to a deceased user’s profile. This can be an effective way to share a last thought, memory or

BOUTIQUE CRIMINAL DEFENSE FIRM

EG

EISNER GORIN LLP

STATE AND FEDERAL CRIMINAL DEFENSE

FIRM PARTNERS INCLUDE:

Former Senior Deputy District Attorney
UCLA and Pepperdine Law Professor
Bar-Certified Criminal Law Specialist



*Super-Lawyers Top 2.5%
A.V. – Preeminent Rating
Avvo 10/10 Superb*

RECENT VICTORIES:

- \$3 Million Fraud Case - Dismissed, Government Misconduct (Downtown, LA)
- Murder - Not Guilty by Reason of Insanity, Jury (Van Nuys)
- Medical Fraud Case - Dismissed, Preliminary Hearing (Ventura)
- Domestic Violence - Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud - Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation - Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)

877.781.1570

Eisner Gorin LLP
14401 Sylvan Street, Suite 112
Van Nuys, CA 91401

24/7 Immediate Intervention

message. It can also be a mechanism to pass on information to friends and loved ones regarding funeral or memorial services or charities to support in lieu of flowers.

The Legacy Contact has the ability to respond to new friend requests (in case there are any old friends or family members who have only recently joined Facebook and would like to view the deceased's past posts and pictures). The Legacy Contact can also update the deceased's profile picture and cover photo. Finally, the Legacy Contact can download a copy of what has been shared on Facebook.¹⁰ These are all features that can take place after a period of inactivity or when Facebook is notified of a death and the account is "memorialized."¹¹ A user can designate a Legacy Contact through his or her account security settings.

Proactive Steps

Until all of the social media and communication sites get on the same page, or vast legislation is passed setting defaults and permissions for executors, trustees and attorneys-in-fact to access digital information, there are things that estate planners (and those who are planning their own estates) should do.

First, clients should take inventory of all their online accounts, including email, social networks, blogging sites, photo-sharing sites, frequent-flier accounts, shopping sites such as Amazon and iTunes, credit card


accounts, and online bill-payment accounts. A list should be created and stored with their important documents. They should inform someone they trust where those important documents are and how to access them. It is understood that passwords change, however, it will alleviate undue frustration if the passwords to those digital accounts were also available. To curtail the issue of ever-changing passwords, there are digital databanks that can store your most up-to-date passwords and all the client needs to provide is the master. There are many different options for the service, all at different costs, including KeePass and RoboForm.

Second, estate planners should guide clients to think about how they want their digital estate to be handled. The more thoroughly they contemplate these questions, the clearer the instructions for their family members and executors will be. Do they want everything deleted and deactivated? Do they want an archive of the past, but not allow anyone to add any comments or information? Do they want to allow additional information to be posted or information downloaded to be passed on to certain individuals whom they trust with their privacy?

Third, once clients have reviewed their digital information and made decisions on what they would like to happen to it in case of their death, estate planners should advise them to detail a list of instructions. If the provider allows it (such as Facebook and to a

lesser extent Google), clients should designate the person who will carry out those instructions. A proper digital estate plan will give a client the added peace of mind of knowing that their digital assets will go where they want them to when they pass away. And that added peace of mind will allow them to focus on the important parts of the internet—cat and puppy videos.

There is a plethora of information spread throughout the cyber world. It is not tangible, but it does have value. Most importantly, it is personal and private to the individual. What happens to it should be the decision of each individual user, not a boilerplate set of Terms and Conditions. Estate planners can help clients take control of their digital assets.

Digital assets should be treated as one would any other asset. Instructions should be created for their management, preservation and distribution. Google and Facebook have started in the right direction; it is now up to each individual to complete the virtual gap. 

¹ Delaware Code §5001 et seq.

² California Legislative Information, SB-849 Decedents' estate: electronic mail (2013-2014), [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB849&search_keywords=\(last visited April 13, 2015\)](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB849&search_keywords=(last%20visited%20April%2013%202015)).

³ Ian Calderon, "Assemblymember Ian Calderon Introduces Bill That Protects Digital Assets Of Deceased Individuals," February 26, 2015, available at <http://asmcd.org/members/a57/news-room/press-releases/assemblymember-ian-calderon-introduces-bill-that-protects-digital-assets-of-deceased-individuals> (accessed April 12, 2015).

⁴ Zack Whittaker and Charlie Osborne, "Who owns your downloaded music after you die?" CNET, September 3, 2012, available at <http://www.cnet.com/news/who-owns-your-downloaded-music-after-you-die> (accessed April 12, 2015).

⁵ iTunes Store Terms and Conditions, available at <http://www.apple.com/legal/internet-services/itunes/uk/terms.html#SERVICE> (accessed April 12, 2015).

⁶ Mac App Store, App Store And Ibooks Store Terms And Conditions, available at <http://www.apple.com/legal/internet-services/itunes/uk/terms.html#APPS>, (accessed April 12, 2015).

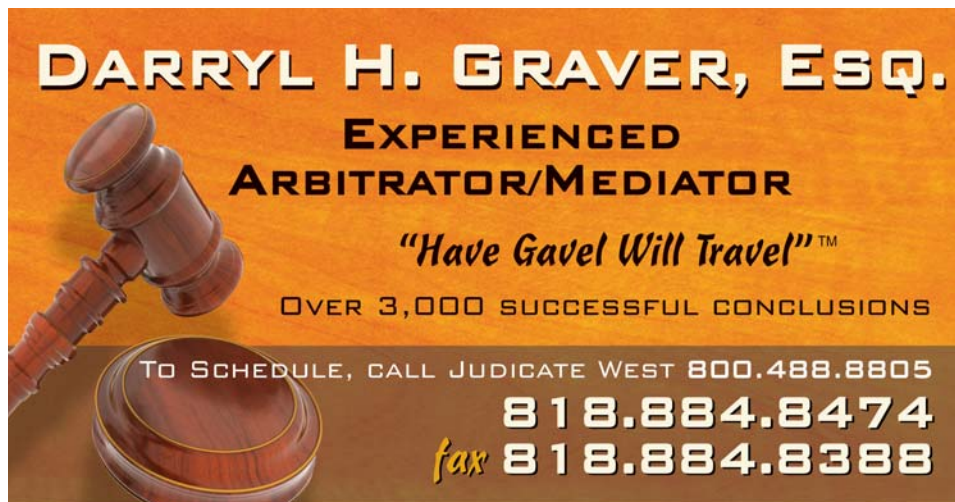
⁷ Yahoo, "Options available when a Yahoo Account owner passes away," available at <https://help.yahoo.com/kb/SLN9112.html>, (accessed April 12, 2015).

⁸ Google, "Plan your digital afterlife with Inactive Account Manager," April 11, 2013, available at <http://googlepublicpolicy.blogspot.com/2013/04/plan-your-digital-afterlife-with.html> (accessed April 12, 2015).

⁹ Vanessa Callison-Burch et al., "Adding a Legacy Contact," February 12, 2015, <http://newsroom.fb.com/news/2015/02/adding-a-legacy-contact/> (accessed April 12, 2015).

¹⁰ Facebook, "What data can a legacy contact download?" available at <https://www.facebook.com/help/408044339354739> (accessed April 12, 2015).

¹¹ Facebook, "What is a legacy contact?" available at <https://www.facebook.com/help/1568013990080948> (accessed April 12, 2015).



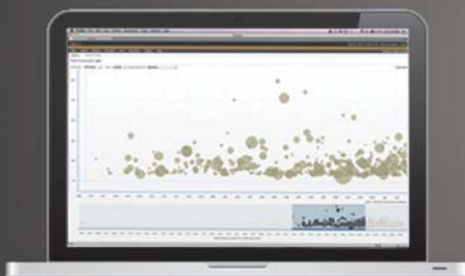
DARRYL H. GRAVER, ESQ.
**EXPERIENCED
ARBITRATOR/MEDIATOR**
"Have Gavel Will Travel"™
OVER 3,000 SUCCESSFUL CONCLUSIONS
TO SCHEDULE, CALL JUDICATE WEST 800.488.8805
818.884.8474
fax **818.884.8388**

Turn to smarter tools for legal research.



...n results to
...st results

...active map of
...ee the most
...ong lists of
...ted well),
...orting the
...ort the
...ng the
...t the
...m.



fastcase®

Smarter by association.

Log in at www.sfvba.org

LTN
#1

2010 Customer
Satisfaction
Survey

Available on the iPhone
App Store



Free to members of the San Fernando Valley Bar Association.

Members of the San Fernando Valley Bar Association now have access to Fastcase for free. Unlimited search using Fastcase's smarter legal research tools, unlimited printing, and unlimited reference support, all free to active members of the San Fernando Valley Bar Association. Log in at www.sfvba.org and click the Fastcase logo. And don't forget that Fastcase's free apps for iPhone, Android and iPad connect to your bar account automatically by Mobile Sync. All free as a benefit of membership in the San Fernando Valley Bar Association.

Employer and Labor Contractor Liabilities:

Advising Clients in the Wake of AB 1897

By Kenneth J. Rose and Robert H. Rose





By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 25.

Since the passage of AB 1897, businesses must proceed with greater caution when contracting labor. Attorneys should familiarize themselves with the new law to best advise their clients in minimizing risk and liability.



EMPLOYERS HAVE MANY REASONS FOR USING contractors, staffing companies, and temp agencies to provide labor. However, with Governor Jerry Brown's signing of AB 1897, at least one of those reasons has been removed for California businesses that have 25 or more workers. Enacted into law on September 28, 2014 and effective as of January 1, 2015, AB 1897 amends California Labor Code section 2810 by creating a new Labor Code section 2810.3. The statute's operative language reads:

2810.3(b) A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following:

- (1) The payment of wages*
- (2) Failure to secure valid workers' compensation coverage as required by Section 3700*

The statutory definition of "client employer" is "a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor."¹ Presumably, an employer contractor who contracts for services unrelated to its usual business will not be made responsible for those workers under AB 1897. For example, a law firm that contracts with a painting company to repaint its office would not face potential liability under AB 1897 if the painting contractor fails to pay wages earned by the painters.

As will be discussed in this article, there are a number of exceptions limiting the scope of this language; nevertheless, it is clear that AB 1897 will have far-reaching effects on any employer seeking to use staffing agencies and labor contractors, and will shift the type of advice attorneys will provide to their clients when faced with these issues.

History of AB 1897

California has attempted numerous times to enact legislation to rein in employers violating or seeking to avoid the application of California's particularly stringent wage and hour laws. In 1999, AB 633 was enacted making garment manufacturers liable for the guaranteed wages of contractors. In 2003, the state legislature reached further in passing SB 179, which made it illegal to enter into a labor

contract for construction, farm labor, garment, janitorial, or security guard services with knowledge that the contract does not provide enough money to allow the contractor to comply with wage and hour law.

Backers of AB 1897 saw the bill as a way to protect temporary workers, a segment of the workforce that has been on the rise since the recession. Investigations by ProPublica suggested that the temporary workers are more likely than permanent employees to be injured on the job and be paid below minimum wage.²

As the U.S. Labor Department's Wage and Hour Administrator David Weil describes the problem, companies are increasingly relying on contracted workers to perform duties that are essential to their businesses, while consumers remain oblivious.

We walk into a Marriott and assume that the people who greet us at the front desk or who clean our rooms each day are employees of the venerable brand (as their uniforms imply). We greet the technicians sent to our home to fix our cable, not even questioning whether they work for the media company to whom we pay our bills. In short, we assume that the companies who invest millions of dollars to convince us of the benefits of buying products under their retail nameplate or to purchase the unique services they offer also undertake the operations needed to produce them—including acting as the employer of all the inter-connected people who make their businesses possible. Those assumptions are increasingly wrong.
[...]

*In essence, private strategies and public policies allow major companies to simultaneously profit from the core activities that create value in the eyes of customers and the capital markets and shed the actual production of goods and services. In so doing, they have their cake and eat it too."*³

Unsurprisingly, AB 1897 was enthusiastically supported by unions, such as the California Labor Federation, AFL-CIO and the United Food and Commercial Workers, and opposed by most business organizations, including numerous chambers of commerce. The main argument presented by business leaders was that laws are already in place to combat wage theft and discourage the use of bad labor contractors, and that a new law would simply add an additional regulatory burden on employers. Nevertheless, AB 1897 was signed into law, and came into effect this year.



Kenneth J. Rose is the founder and President of The Rose Group, APLC, a global employment law and HR consulting firm. Ken has practiced employment and labor law for over 38 years. He can be reached at krrose@rosegroupp.us. **Robert H. Rose** joined The Rose Group in 2014. In addition to labor and employment law, Robert's practice includes international trade law and alcoholic beverage law. He can be reached at rrrose@rosegroupp.us.



NARVER

Providing SFVBA members
With exclusive Lawyers
Professional Liability programs.

ALL LAW FIRMS

COMPETITIVE PRICING

ALL AVAILABLE LIMITS OF LIABILITY

**OPTIONAL DEFENSE COSTS IN
ADDITION TO THE LIMITS OF LIABILITY**

**DEFENDANTS REIMBURSEMENT
COVERAGE**

PERSONAL INJURY COVERAGE

**FREE TAIL FOR
RETIREMENT, DEATH, OR DISABILITY**

**COVERAGE ENHANCEMENT DESIGNED
SPECIFICALLY FOR SFVBA MEMBERS**

Narver Insurance is committed to providing the SFVBA members with diverse, niche specialty insurance products, offered through exclusive Lawyers Professional Liability Insurance programs.

Narver products are provided through insurance companies with an A.M. Best "A" rating. Narver products and services deliver long-term profitability utilizing 100 years of unique liability insurance experience to the table.

Each of our advisors below has decades of experience in insurance broking.

Call us today for a second opinion consultation or a quote at (626) 943-2200 or visit our website at www.narver.com.

Narver Insurance is a supporter of the San Fernando Valley Bar Association.



Wesley Hampton
whampton@narver.com



Diane Wood
dwood@narver.com



Debra Mondragon
dmondragon@narver.com



Crystal Veiga
cveiga@narver.com



Michelle Mitchikoff
mmitchikoff@narver.com

Who is Affected by AB 1897?

The new law applies to client employers, or business entities that hire or are provided workers “to perform labor within its usual course of business from a labor contractor.”⁴ The definition, however, goes on to exclude entities with less than 25 workers (either directly hired or provided by a labor contractor), entities with five or fewer workers provided by a labor contractor, and state or other governmental entities.

AB 1897 defines a labor contractor as “an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer’s usual course of business.”⁵ As with client employers, the labor contractor definition is limited to exclude non-profit organizations, labor organizations and apprenticeships pursuant to collective bargaining agreements, motion picture payroll services companies, and third parties.

Additionally, the bill provides a few other exemptions, including homeowners and the owners of a home-based business for labor or services received at the home, moving/shipping companies, cable operators as defined by the Public Utilities Code, and motor clubs with dispatching services such as AAA.

Furthermore, the law applies only to non-exempt workers. The mandates of AB 1897 are inapplicable to workers properly classified as exempt under the administrative, executive or professional exemptions in the California Industrial Welfare Commission Wage Orders.

What Does AB 1897 Do?

AB 1897 forces employers to share liability for the wage and workers’ compensation violations of their labor contractors. Previously, if a worker from a labor contractor wanted to name the client employer as a defendant, he or she would have the somewhat burdensome task of proving the existence of a joint-employer relationship.

While in many instances the worker would be able to show the amount of employer control of the worker to prove a joint-employer relationship existed and thus that the employer was jointly liable, it was nonetheless not guaranteed. This inquiry is now moot, as the new law provides that in every instance of an employer’s use of labor contractors (provided they meet the definitions discussed), the client employer will be held jointly liable for wage and workers’ compensation violations.

Therefore, client employers will no longer be able to use labor contractors as a way of avoiding liability. Furthermore, the bill makes clear that its protections are a matter of public policy and therefore cannot be waived by workers.

Nor may a client employer shift by contract its legal duties and liabilities to the labor contractor. There is no knowledge requirement nor any defense that the client employer took all reasonable steps to ensure the labor contractor avoided liability, or that the client employer paid the labor contractor agency in full for the worker services provided. AB 1897 clearly and intentionally imposes strict liability on the client employer.

Enforcement and Anti-Retaliation Provisions

A worker who believes he or she has not been properly paid or has suffered an injury without the benefit of a workers’ compensation policy may pursue an administrative claim or civil action against the client employer, labor contractor or both. As a precondition to bringing a civil action, the worker or representative must provide notice to the client employer of the alleged violation(s) 30 days before filing the civil action.

Presumably, if the worker pursues an administrative claim, no prior notice to the client employer is required.

Like most legislation establishing employee protections, retaliation against those seeking to enforce the law is prohibited. Neither the client employer nor the labor contractor may take any adverse action against any worker for providing notification of violations or filing a claim or civil action alleging violations under AB 1897.

Additionally, AB 1897 expressly states that the legal remedies it establishes “are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.”⁶

Protecting Against Liability

Step 1: Determining if AB 1897 Applies

As an attorney advising a client concerned about potential liability under AB 1897, the first thing to examine is whether or not the law applies to the circumstance. For example, AB 1897 will not create shared liability for small businesses, so long as the business at no point hires or contracts 25 or more employees. Therefore, an important point to emphasize to small business clients is to very carefully consider all of the implications of expansion, before determining to bring in enough staff to become covered by AB 1897. Furthermore, attorneys should inform their clients that so long as the labor contractor provides no more than five workers, they can avoid the strict liability of AB 1897.

Attorneys should also examine whether their clients fall into one of the exceptions, such as the statutory exemptions for shipping companies, public agencies and motor clubs. Additionally, the attorney should examine the labor contractor and ask whether it could be a non-profit



**The bill makes clear
that its protections
are a matter of public
policy and therefore
cannot be waived by
workers.**

organization, labor organization or motion picture payroll services company.

Finally, the attorney may look at the workers themselves. If the workers supplied by the labor contractor meet the requirements to be exempt under the California Labor Code, and are being treated as exempt employees (i.e., salaried rather than hourly workers and paid at least the minimum salary required under California law), then AB 1897 will not apply. However, considering the tricky nature and many unclear lines, as in any other circumstance, attorneys should advise their clients to be very wary of the dangers of misclassification.

Step 2: Obtaining the Best Contractor and Contract

If it is determined that AB 1897 will apply, the next step for attorneys is to advise their clients to pick their partners carefully. If, even with the change in law, the employer still feels that using a labor contractor for staffing purposes is beneficial, then it is up to the employer to research the available labor contractors to make sure the one hired is reputable, financially stable to pay its bills, and follows a clearly stated policy in conformity with California labor law. This will not by itself shield the employer from liability, but rather is a necessary precaution. The employer should also ensure that its chosen labor contractor has valid workers' compensation insurance.

The contract between the client employer and labor contractor should include clauses in which the labor contractor promises to follow all applicable labor laws and that it should, for the duration of the contract, hold valid workers' compensation insurance covering all workers provided to the employer. This will give the employer some protection via breach of contract claims, but it is still not enough to completely protect the employer from liability.

While AB 1897 expressly forbids contracting to shift all of the liability onto the labor contractor, it does not stop a "client employer from establishing, exercising, or enforcing by contract any otherwise lawful remedies against a labor contractor for liability created by acts of a labor contractor."⁷ As such, an indemnification clause in such a contract would still be enforceable.

Due to this change in law, attorneys should advise their clients in the strongest way possible of the necessity of a clause in which the labor contractor promises to indemnify the employer in the case of any lawsuit involving a worker provided by the labor contractor alleging California wage and hour or workers' compensation violations. Without such a provision, the client employer is taking an unnecessary risk, as it will not be able to protect itself from liability caused by actors outside its control. However, because the worker still has the right to obtain relief from the labor contractor and the client employer jointly and severally, even with an

ELLIOT GORDON

Esq.



EXPERTISE

- ***Healthcare Law***
- ***Employment/Wage & Hour***
- ***Business & Commercial Contract***
- ***Consumer Class Actions***
- ***Insurance Coverage***
- ***Privacy***



**For information and scheduling, please contact
(310) 201-0010**

www.GordonMediation.com



IRS Qualified and California State Certified Residential Real Estate Appraiser

Mike Turner (818) 384-6869
www.TurnersAppraisals.com

Appraisals For

- **Bankruptcy**
- **Date of Death**
- **Divorce**
- **Estate & Portfolio**
- **Mediation**
- **Prenup Agreement**
- **Probate**
- **Retrospective**



**DELIVERING
VALUE**



Jenny Chen, Partner

Specializes in serving law firms and other professional services

- * Attestation/Accounting
- * Tax Planning and Compliance (Multi-State, International)
- * Audits of Employee Benefit Plans
- * Tax Credits and Incentives
- * Controllorship
- * Business Valuation
- * Estate and Trust Planning
- * IT Systems Review and Consulting




HUTCHINSON AND BLOODGOOD LLP
Certified Public Accountants and Consultants
550 N. Brand Blvd., 14th Floor Glendale, CA 91203
t 818.637.5000 www.hbllp.com

enforceable indemnification agreement in place, the client employer is still at risk if the labor contractor has insufficient assets to pay any adverse judgments or is judgment proof.

Other Issues of Concern

Even if AB 1897 does not apply to a particular situation, employers still need to be concerned about liability under a theory of joint-employment. While this is harder to prove than the automatic determination in AB 1897, it is neither impossible nor rare. There is not a simple common law test to determine whether a joint-employer relationship exists; courts generally employ a case-by-case method, looking at the amount of control exerted by the client employer over the workers. Such factors include, but are not limited to, day-to-day supervision, discipline, ability to hire and fire, and control of employee records. California courts have even taken into account public policy concerns in determining that joint employment existed.⁸ Thus, while the employer may avoid liability under AB 1897, they need to be made aware that without care to avoid exerting too much control over the workers, they may still be liable for the violations of the labor contractor.

AB 1897 significantly changes the calculus of the decision by employers to use labor contractors for staffing. While many employers are no doubt aware of the change, there are likely very few who fully understand its full consequences. It is therefore up to attorneys to identify these issues and be proactive about advising clients to protect themselves against the additional liability imposed upon them. Employers need to be fully aware of the consequences of using labor contractors before they make the decision to enter into any new agreements for labor.

For those employers affected by the law who still decide to use labor contractors, existing contracts should be rewritten and new contracts should be drafted to include some form of indemnification. Additionally, client employers should determine if their workers' compensation insurance policies cover contract workers, and, if not, look into the options for broadening the scope of their workers' compensation insurance coverage. While this still may not provide total protection, it is unquestionably the best remaining protection an employer can get against liability. 

¹ Labor Code §2810.3 (a)(1)(A).

² Michael Graber, California Legislature Passes Bill to Protect Temp Workers, ProPublica, August 29, 2014, available at <http://www.propublica.org/article/california-legislature-passes-bill-to-protect-temp-workers>, accessed April 12, 2015.

³ Weil, David, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*, Harvard University Press (2014), pp. 3-4.

⁴ §2810.3 (a)(1)(A).

⁵ §2810.3 (a)(3).

⁶ §2810.3 (b)(2)(f).

⁷ §2810.3 (b)(2)(g).

⁸ *Mathieu v. Norrell Corp.* (2004) 115 Cal. App. 4th 1174 (involving a sexual harassment claim in which the court found that the purpose of the California Fair Employment and Housing Act to protect employees' right to hold employment without discrimination was best served by finding that a joint employment relationship existed).



Test No. 79

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. AB 1897 (codified as California Labor Code §2810.3) creates shared liability between client employers and labor contractors for claims of wage violations and discrimination.
☐ True ☐ False
2. Under Labor Code §2810.3, a client employer must have 25 or more employees, including workers provided by a labor contractor, to be subject to the statute.
☐ True ☐ False
3. It is illegal under California law to enter into a contract for many types of labor services if the employer knows or should know that the labor contractor lacks sufficient funds to be able to comply with California labor law.
☐ True ☐ False
4. Labor Code §2810.3 imposes individual liability on owners of home-based business for the labor or services received at their home.
☐ True ☐ False
5. The definition of labor contractor in Labor Code §2810.3 excludes motion picture payroll services companies.
☐ True ☐ False
6. Labor Code §2810.3 protects both exempt and non-exempt workers.
☐ True ☐ False
7. The protections provided for in Labor Code §2810.3 may be waived by workers through the use of clear language in a written employment agreement.
☐ True ☐ False
8. A plaintiff need not prove that the client employer had knowledge of violations by the labor contractor supplying it with workers in order for there to be shared liability between the client employer and the labor contractor under Labor Code §2810.3.
☐ True ☐ False
9. Before bringing a civil action related to the protections in Labor Code §2810.3, the worker or representative must provide notice to the client employer of the alleged violation(s) 30 days before filing the civil action.
☐ True ☐ False
10. A worker may not file a claim against a client employer or labor contractor for retaliation for seeking to enforce rights under Labor Code §2810.3.
☐ True ☐ False
11. The number of workers provided by the labor contractor to the client employer is irrelevant to an attorney's analysis of potential shared liability under Labor Code §2810.3 for a claim of failure to pay wages.
☐ True ☐ False
12. Bona fide non-profit labor contractors are not covered by Labor Code §2810.3.
☐ True ☐ False
13. Due to Labor Code §2810.3, it is of vital importance for the client employer to ensure that any labor contractor it uses is reputable, sufficiently financially stable to pay its bills, and follows a clearly stated policy in conformity with California labor law.
☐ True ☐ False
14. The presence of contractual promises by the labor contractor to hold valid workers' compensation insurance and comply with all applicable California labor laws is sufficient to shield a client employer from shared liability under Labor Code §2810.3.
☐ True ☐ False
15. Labor Code §2810.3 expressly forbids client employers from contracting to shift all of the liability onto the labor contractor.
☐ True ☐ False
16. Contracts for labor services in which the labor contractor agrees to indemnify the client employer for all claims of wage and hour law violations are made unenforceable by Labor Code §2810.3.
☐ True ☐ False
17. Employers who do not meet the definition of client employer in Labor Code §2810.3 can never be held to be in a joint employment relationship.
☐ True ☐ False
18. The common law tests applied by California courts to determine if enough control is present to find that workers supplied by a labor contractor are jointly employed by the labor contractor and client employer, considers such factors as the day to day supervision of the workers, whether the client employer has the right to discipline the workers, whether the client employer has the authority to hire and fire workers, and whether the client employer has any control of employee records concerning the workers.
☐ True ☐ False
19. Under Labor Code §2810.3, an employer who contracts with a labor contractor for workers to perform services unrelated to its "usual business" does not incur legal liability for those workers.
☐ True ☐ False
20. A private employer with 19 employees contracts with a staffing agency to provide an additional 10 hourly workers to complete clerical tasks on a temporary basis. The clerical tasks are part of the employer's usual course of business. If a worker provided by the staffing agency files a claim for failure to pay overtime, he will not be able to reach the client employer on a theory of shared liability based on Labor Code §2810.3.
☐ True ☐ False

MCLE Answer Sheet No. 79

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$20 testing fee for SFVBA members (or \$30 for non-SFVBA members) to:

San Fernando Valley Bar Association
5567 Reseda Boulevard, Suite 200
Tarzana, CA 91356

METHOD OF PAYMENT:

- ☐ Check or money order payable to "SFVBA"
☐ Please charge my credit card for \$_____.

Credit Card Number _____

Exp. Date _____

Authorized Signature _____

5. Make a copy of this completed form for your records.

6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0490, ext. 105.

Name _____

Law Firm/Organization _____

Address _____

City _____

State/Zip _____

Email _____

Phone _____

State Bar No. _____

ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

- | | | |
|-----|-------------------------------|--------------------------------|
| 1. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 5. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 6. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 7. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 8. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 9. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 10. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 11. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 12. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 13. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 14. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 15. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 16. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 17. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 18. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |

Galpin Motors' Alan Skobin Talks Shop

By Irma Mejia





Alan Skobin, Vice President and General Counsel of Galpin Motors in North Hills, discusses his work at one of the nation's leading auto dealerships. With a local upbringing marked by hard work and dedicated community service, Skobin is an inspiration, both in and out of the office.

FOR DECADES, GALPIN MOTORS HAS BEEN A leading auto dealership in the Valley. Founded in 1946 as a three-car showroom in San Fernando, it now holds a roster of franchises, including Ford, Honda, Volkswagen, Jaguar, and Aston Martin, on a sprawling campus off the 405 freeway at Roscoe Boulevard. In many ways, it exemplifies the Valley auto culture, building on the mid-century demand for cars and establishing a first-rate level of service ensuring a growth of business from repeat customers and referrals. For years, it has been the top-selling Ford dealership in the country. The campus also includes an expert auto customization shop, Galpin Auto Sports, a full-service restaurant, The Horseless Carriage, a full-service Starbucks, and a studio rentals division.

Overseeing all the legal issues of this massive enterprise is longtime SFVBA member Alan Skobin. Skobin is a Valley success story through and through. Raised in Encino in a working class family, he attended local public schools, graduated from California State University Northridge, and received his law degree from the University of LaVerne's San Fernando Valley campus. As early as the age of nine, he demonstrated an entrepreneurial spirit, earning his spending money by selling products door-to-door, mowing lawns, and delivering newspapers. His strong work ethic remained with him as he grew up, holding various jobs, from supermarket box boy to bank officer, in high school and college.

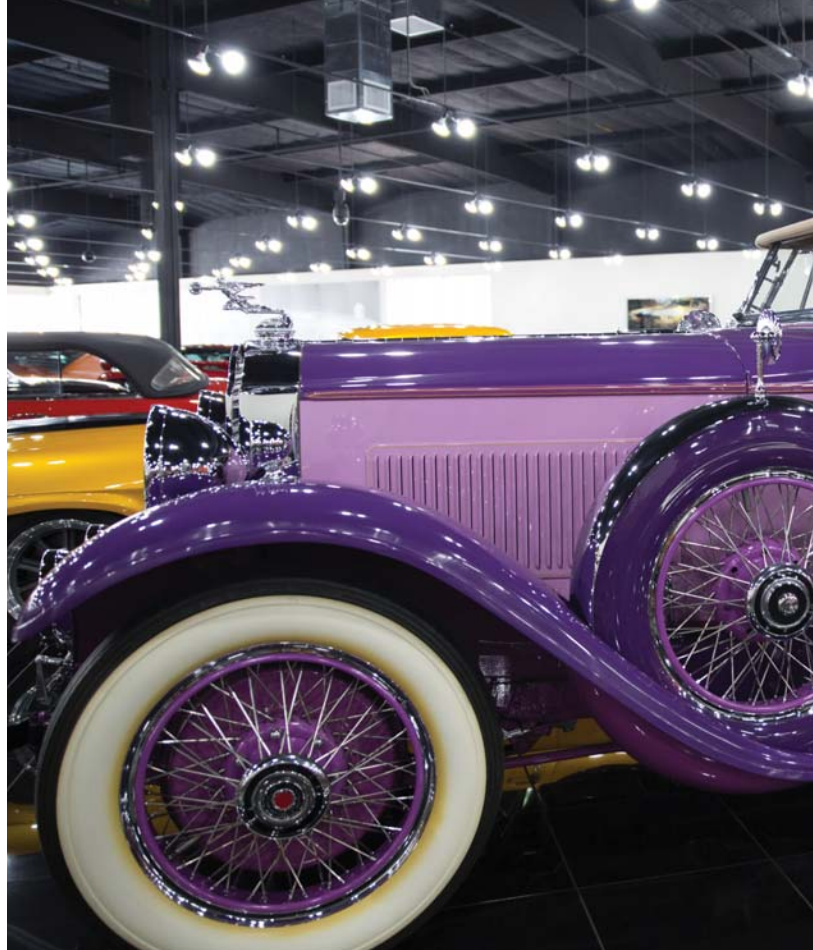
A dedicated attorney and family man, he is also known for his remarkable commitment to the local community, volunteering on various foundation boards, serving as an LAPD police commissioner for nearly a decade, and volunteering for the past 34 years as a reserve deputy in the Los Angeles County Sheriff's Department.

For the past 27 years, he has served as general counsel of one of the Valley's most recognizable business institutions. *Valley Lawyer* spoke with him to learn about his career development and the unique challenges he faces as in-house counsel for a powerhouse auto seller.

Q: What was your Valley upbringing like?

A: I'm very much a product of the San Fernando Valley. With the exception of a short period when I lived in Ventura County, I have lived in the Valley my entire life. I have also worked here my entire life and attended Valley schools, from elementary to law school. As if that's not enough, a significant number of important life events occurred in the Valley: I met my wife in the Valley, we were married in the Valley, both of our children were born in the Valley, and both of them were married in the Valley.

Growing up, there were two programs that had a great influence on my life: the Junior Achievement and LAPD Explorer Programs. Junior Achievement guided high school students in forming and running companies.



Through my involvement, I was able to win the Southern California competition for Marketing Executive of the Year all three years I was in the program, something that had not happened previously. Winning the Southern California award meant a small scholarship and trip to Indiana each year for the international conference, where I was variously a finalist and one time Number 2 in the world. These honors resulted in additional scholarships, which were a big help because there were times during my college years that I struggled to scrape together the \$82.50 for full-time tuition.

The Police Explorers were also a significant influence on me because while I was never what one would consider an at-risk youth, the program provided structure,



Sheriff's Department. It was exciting to work patrol, conduct investigations, testify in court, participate in community relations and crime prevention programs, and do the other things that come up daily in law enforcement.

What appeared to be an unreachable goal of becoming a lawyer changed more than thirty years ago while I was working in marketing, advertising and other business aspects at Galpin Ford. We were frustrated because there were few lawyers who specialized in or had knowledge of the dealer world at that time, so we decided that the best way to solve that problem was for me to go to law school.

Because I was working over 40 hours a week and had a family, driving to Los Angeles after work to attend class and then home to Ventura County late at night was not a good option. Fortunately for me, the San Fernando Valley College of Law (which subsequently became the University of LaVerne Valley Campus for a period of time) was literally one block away from Galpin and I could get from my office to class in 5 minutes. Naturally, I selected that school. It turned out to be a great choice.

Q ■ What kind of legal work do you handle at Galpin on a regular basis?

A ■ The legal work at Galpin reminds me a lot of what can happen in any community. A big part of it is counseling others who are trying to do the right thing in what has become an incredibly complicated world in terms of legal aspects. This counseling occurs in virtually every aspect of the business.

Another major activity is transactional work, which encompasses sales and vendor agreements, leases, acquisitions, franchise law and, as in counseling, the work encompasses virtually every aspect of the business.

The third part is litigation. We are active in overseeing litigation both as a plaintiff and defendant, and utilize a number of outside law firms based on the type of lawsuit. We work very hard as a company to avoid litigation by always trying to exceed expectations, but unfortunately litigation it is not always avoidable despite our best efforts.

Q ■ What kind of legal work does Galpin outsource?

A ■ Galpin outsources most, but not all, litigation. Additionally, because we prefer to limit the in-house legal department to two full-time lawyers, we outsource some of the major transactional work. However, even when outsourcing the work, we stay integrally involved because there is a significant benefit to the transaction or litigation by having someone involved who is intimately familiar with the business.

Q ■ How does Galpin select the firms it hires when it outsources?

A ■ We try to identify law firms that have a culture with which we are comfortable and demonstrate integrity

accountability, camaraderie and some great mentors, role models and friends.

Q ■ Did you always know that you would go into law?

A ■ While I always had an interest in the justice system and becoming a lawyer, particularly since the parents of two friends were accomplished lawyers and role models, it was not a possibility early on because of finances. As such, my passion for the justice system was satisfied in my early twenties by attending the Los Angeles County Sheriff's Department Reserve Academy and becoming a reserve law enforcement officer, first with San Fernando Police Department and, since 1980, with the

and expertise in the area for which services are needed. While billing rates and total cost are also very important, they are only one part of what goes into the value equation.

The firms we use range from smaller boutique firms to multi-national legal organizations. We have not found that one size fits all—at least not well. The one area we have learned to shy away from is sole practitioners. We painfully found that while the lawyer may be talented, there is often difficulty mustering adequate resources. Also, even in cases where insurance or indemnification are involved, we typically retain the right to have a voice in who represents us.

Q: How did you end up working for Galpin?

A: I have long been involved in community organizations and have developed a large network of friends and business associates. In 1976, the then-director of the local chamber of commerce and a business member of the chamber's board knew both me and Bert Boeckmann, owner of Galpin. They told Bert about me and suggested we would be a good fit, and told me the same about Bert. Bert and I met, spoke about many topics, and I have worked for him and Galpin Ford for over 38 years.

Bert is an amazing man, and has made a greater impact on my life than any other person. It's far more than providing me the opportunity to attend law school and fulfill my dream of becoming a lawyer, or providing me the opportunity to make a good living. To this day, I learn something from Bert every time we are together, whether it be about character, business ethics, business operations, the right way to treat people or how to be a better husband and father. He is an amazing man whose generosity, business acumen, and love for people is immense. Working for Bert and having him as a friend and mentor is one of the many blessings I have been fortunate to have in life.

Q: After so many years at Galpin, do you have a favorite car?

A: My favorite car has changed many times over the years. It has gone from Mustang to Thunderbird, and also included various Jaguar and Aston Martin models.

Today, I would say that it is the Fisker-Galpin Rocket, a coach-built carbon fiber custom super Mustang that can get up to 725HP. It was designed by Henrik Fisker, the world-renowned car designer, and is produced in limited numbers in conjunction with Galpin Auto Sports. It is everything I would ever hope a Mustang or performance vehicle could be. I am a little biased, having been involved in this project from inception, but both the car and the people involved are extraordinary.

Q: How are you involved in the community?

A: Volunteer work has always been an important part of my life. While it may not pay in dollars, it is very rewarding in terms of satisfaction and a lifetime of wonderful memories. Most of my volunteer service has centered on government service and programs to help young people achieve their full potential, particularly those from underserved communities.

One of my most memorable volunteer activities includes serving as a reserve law enforcement officer for over 40 years, the past 34 of which have been with the Los Angeles County Sheriff's Department. This really paid a big bonus because I met my wonderful wife of 37



years while serving as a reserve police officer. Another particularly satisfying volunteer activity has been serving as a Board Member of the Sheriff's Youth Foundation for 25 years, raising funds to operate activity centers for youth in underserved communities.

Other volunteer activities that were particularly meaningful to me include serving as Commissioner for the LAPD for 9 years, an experience that provided special memories I will always cherish. In that capacity, my liaison assignments included extensive oversight of Department activities, including use of force, anti-terrorism, Valley Bureau, and a myriad of other activities. I've also served as President and Board Member of the

California New Motor Vehicle Board, Commissioner on the Los Angeles Transportation Commission and the Los Angeles Fire Department, Commissioner on the Los Angeles County Institutional Inspections Commission, as well as Board Member of the Jewish Home for the Aging and Hugh O'Brian Youth Leadership (HOBY) Foundation.



Q - How are you able to find balance between your busy work schedule and your busy personal life?

A - Balancing a busy professional life with a quality family and personal life is never easy, but I am fortunate to work for a person and company that values family time and community involvement. One of the many lessons I learned from Bert [Boeckmann] over the years is to take time to be at family events whenever I can. That way, if I ever have to miss something, my family will know it was because I couldn't be there, not because I didn't want to be there. So there was rarely a problem taking time to coach Little League or attend a school play. Also, I am fortunate to have an understanding and supportive family that has been involved in both work and outside activities.

Much of my community service would not have been possible without the support of my employer and family. For example, serving as a Police Commissioner required me to be absent from work most Tuesdays for 9 years, plus handling police matters that came up on a daily basis and attending evening or weekend meetings.

I have some degree of regret for not spending even more time with my children as they were growing up, but doing things such as working full-time while going to law school at night hopefully have trade-offs that benefit them long-term.

The real hero during my four years of law school was my wife, Romi, who, despite working full-time at the Police



Department, not only fulfilled her role as wife and mother incredibly well, but took on many responsibilities that were rightfully mine.

Q: When you have free time, what do you for fun?

A: What I do for fun has changed a lot. It used to be pretty much my community and public service. But having survived cancer four times, including pancreatic cancer just last year, as well as a brain tumor and other significant medical issues, I have come to realize that the one thing we can never get back is time.

So I now spend a lot more time fishing, which is a great stress releaser. I also spend more time with family and friends, taking more time to visit places and longtime friends and appreciating all the blessings that I have. My state of mind has changed from believing I was too busy to relax and smell the roses, to understanding that it is the things you don't do that you regret. I have also come to understand that while stress is part of our lives, constant stress can be dangerous. I now make a conscientious effort to relax and have fun—even at work.

Q: What advice would you give to a new lawyer considering going into corporate counsel?

A: Having an understanding of the industry you want to work in is a big plus, and having a passion for it is even better. The understanding of how things work

allows you to better anticipate and prevent or resolve so many issues, whether it is the drafting of a contract, an employee issue, or a lawsuit. The passion provides the motivation, sustained interest, fun, and sense of satisfaction that are also important.


Many people mistakenly believe that only attorneys who work in law firms have to work long hours. While most corporate counsel that I know don't keep time sheets or bill out their time, we work very hard, often long hours, and produce quality work. It's important to remember that being corporate counsel is a job where top performance is essential and there must be a strong commitment to excellence in what you are doing.

Q: What is the best piece of advice you've received regarding your career?

A: The best advice I have received in my career is about the importance of having a "servant's mentality," to think in a client- or customer-centric manner. Some people look unfavorably toward serving others, but it is honorable work. This involves having a sincere belief that our primary reason for doing what we do is to serve our clients and customers. Pretty much everything we do should start with an analysis of how our proposed action will impact them.

Without cared for, competent, well-trained and satisfied staff who want to do their best for customers, it is very difficult to meet—let alone exceed—customer expectations. Without satisfied customers, we would not have jobs. So having a servant's mentality and being of service to others is really the foundation upon which we can do the best job and the right thing for our fellow employees, our customers, our employers, and our families.

Q: What can the bar association do to better serve corporate counsels?

A: The bar association could be of even greater value by placing more emphasis on a format where in-house counsel could regularly meet, discuss the challenges we face, share solutions and network. When deciding whether to join a bar association, key factors I consider are CLE opportunities, a quality referral service, and commitment to professionalism and civility in the practice of law. 



Irma Mejia is Editor of *Valley Lawyer* and serves as Publications and Social Media Manager at the San Fernando Valley Bar Association. She also administers the Bar's Mandatory Fee Arbitration Program. She can be reached at editor@sfvba.org.

NETWORKING MIXER
San Fernando Valley Bar Association
and Eastern European Bar Association

THURSDAY, MAY 21, 2015
6:00 PM



4449 Van Nuys Boulevard | Sherman Oaks

Members in attendance will enjoy a complimentary glass of wine and gourmet pizza.

SPONSORED BY

CITY NATIONAL BANK
The way up.®

EG EISNER GORIN LLP
STATE AND FEDERAL CRIMINAL DEFENSE

Free to current members | RSVP to epost@sfvba.org



BOSE APPRAISAL SERVICES
Expert Witness U.S. Federal Court & L. A. Superior Court

● **Bankruptcy** ● **Estate Planning**
● **Family Law** ● **Tax Appeals**

Always Personalized Service • Fastest Turnaround

John C. Bose has over 20+ years of residential experience.

Member: San Fernando Valley Bar Assn., National Assn. of Review Appraisers

Phone: 818.225.7673 • E-mail: john@boseappraisal.com

www.boseappraisal.com

CRA Lic# AR006872

22647 Ventura Blvd., #328, Woodland Hills, CA 91364

Plague of Prosecutorial Misconduct

By Grace E. Ayers

WHEN PEOPLE ASK ME WHY I BECAME A criminal defense lawyer, I always cite my first visit to Lancaster State Prison while on an outing with my sentencing class in law school. At the level-4 facility, all of the inmates were there for life.

Upon seeing these men caged like animals I could not help but think, "If even one man is wrongfully imprisoned like this, then the whole system needs to be reviewed."

Ever since that visit, I have felt morally compelled to defend those accused of a crime and to play my part in assuring that the criminal justice system functions properly.

One of the most disturbing mechanisms by which people are wrongfully incarcerated is what Ninth Circuit Judge Alex Kozinski refers to as an "epidemic of prosecutorial misconduct." Instances of prosecutorial misconduct are almost never grounds for State Bar discipline, let alone prosecution themselves.

Examples of prosecutorial misconduct include: asserting facts not in evidence; using inadmissible evidence; commenting on the defendant's failure to testify; inflammatory comments or personal opinions; and withholding evidence favorable to the accused. In order for prosecutorial misconduct to be grounds for reversing a conviction, it must be material to the outcome of the trial.¹

In one recent case, Judge Kozinski and his co-justices chastised the prosecution's representative for his unwillingness to concede that the defendant had been wrongfully convicted on the basis of false testimony, which

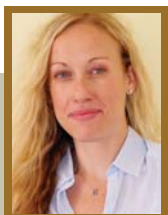
included blatant perjury by a deputy district attorney. When the court threatened to name names and demanded the personal attention of California Attorney General Kamala Harris, the prosecution finally backed down from its opposition to the defendant's request for habeas relief. They did not, however, admit any prosecutorial misconduct.

As a result, the State of California will now put on its third trial of the defendant, Johnny Baca, accused of a 1995 double-murder for hire plot in Riverside, California. Baca worked as the houseboy for the two victims in this case, John Adair and John Mix. He was friends with one of the victim's adopted son, who allegedly came up with the plot to murder the couple but was never charged.

The prosecution's case rested in large part on the testimony of a jailhouse informant who claimed Baca had confessed his involvement while the two were incarcerated together. While on the stand, the informant claimed that he had neither asked for nor received any benefit from the prosecution in exchange for his testimony. This story was corroborated by Deputy District Attorney Robert Spira, who also testified under oath.

As it turned out, the informant's testimony and that of D.D.A. Spira was false as the informant had indeed been offered a deal for his testimony. Nonetheless, Johnny Baca was convicted and sentenced to 70 years to life in prison as a result of this blatant perjury.

Baca is not the first to be convicted on the basis of such perjured testimony. In 2011, Obie Anthony was released after spending 17 years in prison for a murder conviction



Attorney **Grace E. Ayers** is a sole practitioner in Beverly Hills and practices exclusively in the areas of criminal and traffic defense. She is also the president and founder of Grace's Cases, a special appearance service for lawyers throughout the state. She can be reached at grace.ayers@gmail.com.

under similar circumstances. The prosecution's key eyewitness claimed to have witnessed the crime firsthand and further testified that he was neither offered nor given any consideration by the prosecution in exchange for his testimony. Prosecutors wrongfully allowed the perjured testimony at trial and falsely denied that the witness had been offered a deal.

Another common variety of prosecutorial misconduct is a *Brady* violation. The Supreme Court has long held that the prosecution has a duty to turn over to the defense any evidence that materially points to his or her innocence.² Unfortunately, that ruling leaves the discretion of materiality to the prosecutors' personal judgment, which can result in the withholding of crucial exculpatory evidence.

California is the only state in the country that has not adopted some form of the American Bar Association's Model Rule 3.8, which requires that the prosecution disclose all evidence that "tends to negate the guilt of the accused or mitigates the offense." If adopted, the rule would remove the discretion from the prosecutors in determination of evidentiary materiality that could exculpate the defendant. Instead, the rule would err on the side of disclosure and allow the defense to decide whether the evidence is worth being admitted.

In 2007, the California Court of Appeals reversed the 1986 murder conviction of Mark Sodersten. The ruling was based on the prosecution having wrongfully withheld audio recordings of key witness interviews that would point to Sodersten's innocence. Unfortunately, the reversal due to a *Brady* violation came several months too late for Sodersten, who died in prison after serving 22 years.

Kash Delano Register survived long enough to enjoy some freedom in his old age after he served a grueling 34 years in prison before finally being exonerated for the 1979 murder for which he was convicted. There, the court found that the prosecution and police had "repeatedly concealed relevant evidence" that indicated Register's innocence.

The prosecutor in the Sodersten case, Phillip Cline, was never disciplined for his actions. In 2010, the State Bar closed its investigation, saying there was no proof of "culpability by clear and convincing evidence." This despite the fact that the prosecutor had himself conducted the wrongfully withheld witness interviews.

Of course, not all prosecutors who act with impropriety get away with it. Just ask Jon Michael Alexander who, in November 2014, was disbarred for his gross misconduct as Assistant District Attorney. Criminal defendant Michelle Taylor was facing drug charges after officers found packets of methamphetamine in her pants during a routine traffic stop. At the time of her arrest, Taylor claimed the drugs belonged to the driver of the car, who had asked her to hide them for him. Both defendants were charged and were represented by separate defense counsel.

After the case had begun, defendant Taylor came to Assistant District Attorney Alexander's office to discuss the

OVER 60 YEARS OF EXPERIENCE

IMMIGRATION LAW

Green Cards, Work Permits, U.S. Citizenship

**Law Offices of
Tasoff & Tasoff**

(818) 788-8900

www.tasoff.com

Founded 1949





CISLO & THOMAS LLP®

Patent, Copyright and Trademark
Litigation Attorneys at Law



Super Lawyers
2014

Serving Businesses in Southern California Since 1979

IP Filings, Counseling, Licensing & Litigation

With Offices In

**West Los Angeles/Santa Monica, Westlake Village and
Santa Barbara**

Visit us at www.cislo.com or call us at
1 (866) CISLO LAW

**We have Successfully Settled or Litigated
Over 98% of Our Cases**

SAN FERNANDO VALLEY BAR ASSOCIATION PRESENTS

GET FOUND ON GOOGLE!

Sponsored by



Thursday, May 7, 2015

12:00 NOON

SFVBA OFFICE

Free to SFVBA Members

The ever popular Dave Hendricks
returns to update attendees on
the latest changes at Google.




case without her attorney present and without his knowledge or consent. She proceeded to confess that the drugs belonged only to her and claimed she had lied when she said they belonged to her co-defendant. A.D.A. Alexander questioned her about who had sold her the drugs and reminded her that she faced a potential of two, three or four years in prison if convicted. Unbeknownst to Alexander, Taylor taped the entire conversation.

When A.D.A. Alexander was questioned by another prosecutor about the conversation, he first denied it had ever occurred. Later, when confronted with the tape, he finally admitted his involvement and claimed he had simply forgotten about it.

Despite Alexander's rejected claims that he was being selectively prosecuted and that he was the victim of judicial bias, the State Bar Court of California found him to be in violation of Rule 2-100(A) of the Rules of Professional Conduct, which prohibit an attorney from communication with a party whom he or she knows to be represented by counsel. In Alexander's case, the violation was particularly egregious since it involved a criminal case in which he specifically sought incriminating evidence from the defendant without her lawyer being present and clearly against her best interests.

In a 2010 report by the Northern California Innocence Project, the courts found more than 700 instances of confirmed prosecutorial misconduct over a period of eleven years. Of those, only six prosecutors faced discipline as a result of their participation; eighty percent of the convictions remained intact despite specific findings of misconduct. In other words, even if the prosecution runs afoul of the rules of law, a conviction is nevertheless likely to be upheld by the court.

Possible solutions to combat prosecutorial misconduct include not only the State's adoption of a rule like the American Bar Association's Model Rule 3.8, but also implementation of stricter punishments for prosecutors who commit egregious acts of misconduct. Mandatory reporting requirements by courts would also bring to light a more accurate number of the instances of misconduct, even when they may not rise to what the court considers reversible error. This would give the State Bar a better idea of how education and training could be strengthened in order to help curb these problems before they result in wrongful convictions.

Prosecutors are human beings and are entitled to human error. But those in whom we entrust the decision of who to seek to incarcerate must be held to the highest standard of performance in their duties as representatives of the People of the State. 

The opinions stated are the author's only and do not purport to represent opinions of the SFVBA. Alternative views and comments are also welcome and will be considered for publishing in Valley Lawyer.

¹ *People v. Prysock* (1982) 127 Cal.App.3d 972, 998.

² *Brady v. Maryland* (1963) 373 U.S. 83.

SAN FERNANDO VALLEY BAR ASSOCIATION
WORKERS' COMPENSATION SECTION

Farewell Luncheon Honoring Retiring WCAB Judge Jerold S. Cohn



Join us for this fond look back!

Wednesday, May 20, 2015

12:00 Noon

**Monterey at Encino Restaurant
16821 Burbank Boulevard, Encino**

*\$65 Individual Tickets Prepaid • \$75 after May 15
\$500 Table of Eight • \$20 WCAB Personnel*

RSVP to events@sfvba.org or (818) 227-0490, ext. 105.

Need a Meeting Space for Mediations or Depositions?

- COFFEE AND COLD DRINKS SERVICE
- AMPLE FREE PARKING
- COPY MACHINE ACCESS
- WI-FI ACCESS
- PROFESSIONAL STAFF SUPPORT

**Reserve meeting space
for only \$150 per day!**

600 square-foot conference room easily
accommodates 20 people.

Spacious Breakout Room



5567 Reseda Blvd., Suite 200 | Tarzana, CA | 91356
Tel (818) 227-0490 | Fax (818) 227-0499 | www.sfvba.org

What Attorneys Can and Cannot Do



While Marketing on Social Media

By Deborah S. Sweeney

IN 2012, LEXISNEXIS SPONSORED a study on how people seek out and select attorneys, and found that 76% of those surveyed who hired an attorney researched their choices online.¹ Further, nearly a quarter of those people turned to social media at some point in their search. Yet so few attorneys actually use social media to market themselves. Last year's American Bar Association technology survey found that while 55% of surveyed firms used LinkedIn, a scant 28% used Facebook to market.² A quarter of surveyed firms aren't using any social marketing at all!

Obviously, attorneys and firms who do not use social media are missing out on a major market. But that hesitation is understandable—attorneys are risk-averse, and social media is such a new beast that it can be hard to know what one can, and cannot, do. It isn't like buying a billboard or a traditional print ad. Luckily, the State Bar of California has made strides to

clarify what attorneys are allowed to do on social media.

You Can Advertise

The State Bar has clarified that advertising on social media is bound by the same rules and regulations as standard advertising. That means that attorneys in California must abide by the Rules of Professional Conduct, particularly Rule 1-400, but otherwise can use social media as a marketing medium. And most attorneys who have run ads should be fairly comfortable doing so in this new media.

Just like with a magazine or flyer, you write out the copy, make sure it adheres to the rules—that means no guarantees, no testimonials without disclaimers, and a clear indicator that the communication is an ad—and then

run it on a pay-per-view or pay-per-click model. The trouble arises when you blur the lines between marketing and engaging with your followers, or sharing information with them.

You Can Update

The State Bar has defined "communication" as broadly as it possibly can by designating any message "made by or on behalf of a member concerning the availability for professional employment of a member or law firm directed to any former, present, or prospective client" as communication.³ In other words, if a post contains any hint that an attorney or firm is available for hire, Rule 1-400 binds it.

A social media page can be used to engage people and



Deborah S. Sweeney holds a JD/MBA from Pepperdine University and her experience includes corporate and intellectual property law. She became in-house counsel at MyCorporation Business Services, Inc. Shortly thereafter, Deborah supported the company during the acquisition by Intuit as general manager. Sweeney is now the CEO of MyCorporation and can be reached at dsweeney@mycorporation.com.

humanize a firm in certain ways. It could, for example, say “Won in court—celebrating tonight!” without that post having to adhere to Rule 1-400 because it is not stating that the firm is available for hire. On the other hand, posting an update like “Won in court—celebrating tonight! Call us and we’ll help you win too!” is showing that the firm is available for hire. And since it is bound by Rule 1-400 and insinuates that the firm is guaranteeing wins for its clients, it is violating the state’s Rules of Professional Conduct.

The real crux, then, is whether or not the communication in any way pushes the fact that the firm or attorney can be hired. Common phrases in online marketing like “Call for a free consultation,” or “Check out our website,” indicate that firm or lawyer can be hired. So if they are used, Rule 1-400 must be adhered to.

You Can Share Knowledge


Blogging is easily one the best things an attorney or firm can do for their site from an SEO perspective. By focusing articles on the areas of law in which they practice, they link their sites to those keywords. And, as long as the content is well written and engaging, search engines will rank the site higher for categories related to those words. Plus one of the best ways for an attorney to set themselves apart in their field is to be seen as a thought leader within it, and a blog is a great medium for that.

It is not, however, a place for self-promotion, and making it one will run afoul of the State Bar’s rules. An attorney or firm should not, then, talk about winning cases, or their dazzling courtroom demeanor. It also should not end any post with “Contact Us/Me,” or it could be seen as a communication as defined by Rule 1-400. Rather, it should be a place

where an attorney, or attorneys, can weigh in on matters of interest.

A family lawyer, for example, could write a piece on “Five Ways to Help Visitation Go Smoothly.” An intellectual property lawyer might write a piece on “Why the DMCA is Outdated.” These are thoughts and opinions that, while good for the site from an SEO perspective, do not advertise the firm or attorney’s services.

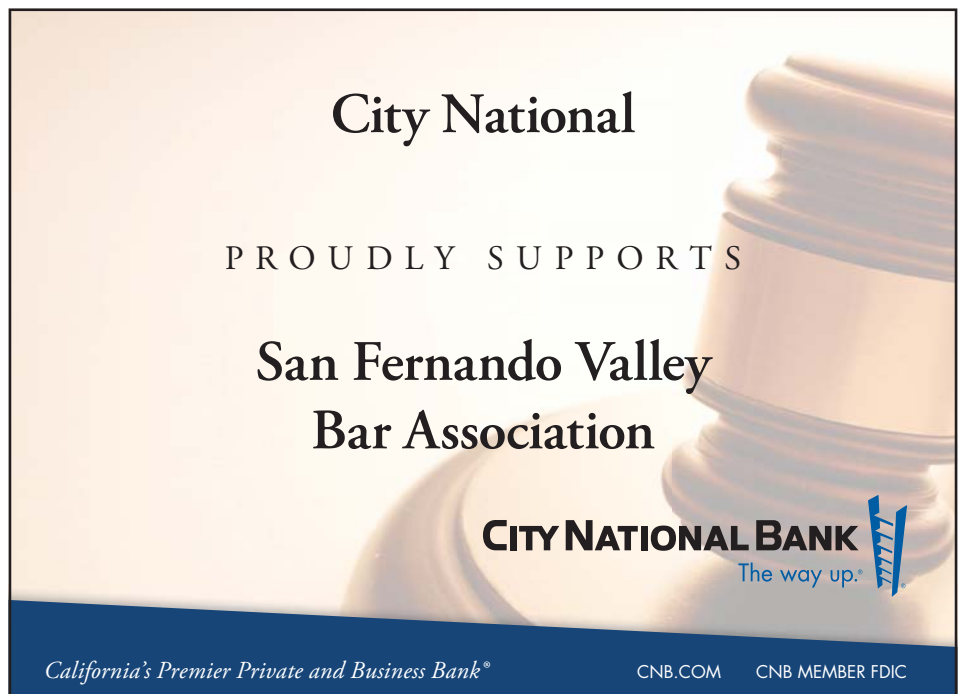
Social marketing is not as complicated as some people make it out to be. Attorneys and firms just need to be a bit more careful. So whenever a post or update or tweet is drafted, the writer needs

to ask themselves whether or not it is, in any way, advertising the firm or lawyer as available for hire. If it does, it is a communication and the standards set by Rule 1-400 must be adhered to. A good rule of thumb is to just avoid self-promotion, since that is what will usually break the rule about predicting the results of representation. Attorneys should work to be thought-leaders and engaging social personalities. Their work will speak for itself. 

¹ LexisNexis, *How Today’s Consumers Really Search for an Attorney*, (2012).

² American Bar Association, *Legal Technology Survey Report*, (2014).


³ State Bar of California, *Rules of Professional Conduct*, Rule 1-400 (A).



City National

PROUDLY SUPPORTS

**San Fernando Valley
Bar Association**

CITY NATIONAL BANK
The way up. 

California's Premier Private and Business Bank[®] CNB.COM CNB MEMBER FDIC



WORKERS' COMPENSATION STATE CERTIFIED SPECIALIST

WILLIAM J. KROPACH
Over 35 Years Experience

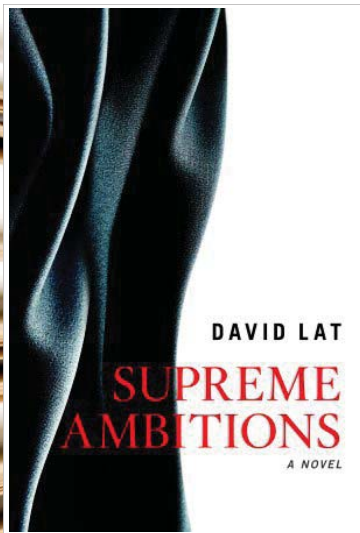
- ✓ All Workers' Compensation Injuries
- ✓ Referral Fee Paid Per State Bar Rules
- ✓ Chairman, Workers' Comp Section of SFVBA (1987 to 2009)
- ✓ Director, Valley Community Legal Foundation of SFVBA (1980-2000)
- ✓ Former Trustee of SFVBA

For Workers' Compensation Referral, call **818.609.7005**
www.williamkropach.com • email: william@kropachlaw.com

Volunteer of the Year 2003

Judicial Clerks, Politics and Compromised Values in *Supreme Ambitions*

By Scott A. Quigley



AMBITION CAN LEAD TO A decision in which the available options are both right and wrong and deciding depends on which of the rules is more important with virtue not being its own reward. The aptly titled *Supreme Ambitions* (American Bar Assn., December 2014) is David Lat's first novel. Known for the website, *Above the Law*, and, before that, the blog *Beneath Their Robes*, David Lat's style of tackling serious subjects in a light and entertaining manner will be familiar to fans.

The novel focuses on Audrey Coyne, a recent Yale Law School graduate, who finds a clerkship with the Hon. Christina Wong Stinson of the Ninth Circuit. Audrey's ambitions, though, are to clerk for the Supreme Court of the United States. She wants the prestige, open

doors and the guaranteed success that flow from a Supreme Court clerkship. Judge Stinson, who has different political leanings than Audrey, suits this ambition just fine as the judge is known to feed one clerk per year to the Supreme Court.

The judge, in the meantime, has her own ambitions to ascend to the Supreme Court and recent electoral developments have made that a distinct possibility. She is merely waiting for the retirement, voluntary or otherwise, of a sitting justice. While biding her time, she must take care that her decisions please, or at least do not overly offend, those that will have the President's ear during any deliberations about nominations to the Court. She must also use all of her political skills, which she has in abundance, to manage or manipulate those around her in order to ensure she is in the best possible position when the time comes.

The protagonist steps into this chamber of unbridled ambition and calculated care in bringing about the judge's success and promotion. But as a recent graduate, she still respects the law, what it means, and that, above all else, there is a "rule of law." She also, perhaps because of that perspective, respects that she is the judge's clerk and that the judge makes the decisions even if this judge does not research or write them. As one would expect, this leads Audrey to write decisions with which she does not agree—a task for which she is well suited and well trained.

Against the backdrop of performing her job, Audrey finds that to achieve her own ambition she might just be required to become her own boss. Audrey was a good student and that is no less true while she observes and absorbs the judge's political skills. Audrey, it turns out, might only achieve her ambitions




Scott A. Quigley is employed in the Legal Business Administration Department of Farmers Insurance Exchange in Woodland Hills. Prior to working at Farmers, Scott spent eleven years practicing as a trial lawyer in Lewiston, Maine. He may be reached at squigley777@gmail.com.

by being cold and calculating and using people and outright sabotaging other clerks' ambitions. Maybe she gets ahead just because she is better than the others or maybe she just tells herself that and she has been capable of viciousness all along.

Through this journey of discovering whether there are or should be limits to ambition, the author provides a look into the life of a judicial clerk. The clerks suffer from a lack of sleep. They have no social life at all. Many of the clerks live in less than ideal conditions because they live on a clerk's salary.

The clerks share war stories of their own judges and we gain an understanding of the different type of judges—from the micromanagers in control of every detail to more detached managers in control of the final result but not the details. The clerks of this court are also generally elitist but intensely insecure. Most of all, for those clerks seeking a Supreme Court clerkship, there is fierce competition and a willingness, or at least a fear of others' willingness, to stab their competition in the back.

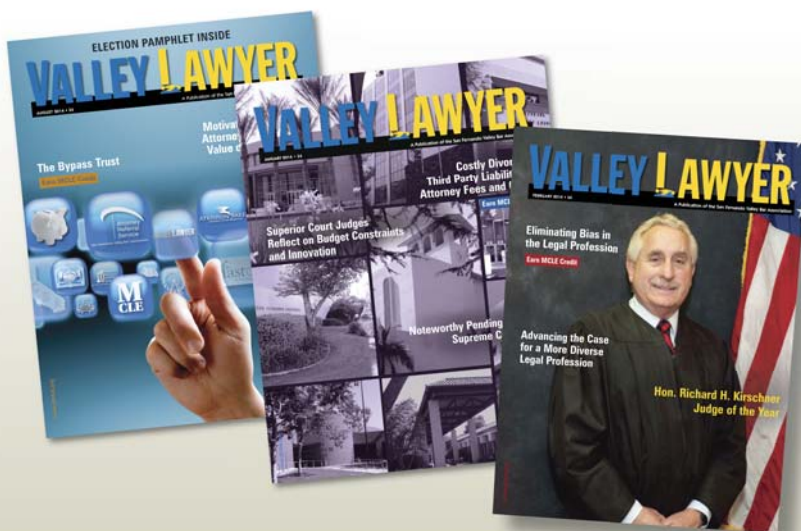
Though the novel is set in the midst of the unpleasant realities of the life of a judicial clerk, *Supreme Ambitions* is not destined to become the *One L* for judicial clerks nor was it meant to. Far from chronicling the experience of a person who could be any clerk anywhere, *Supreme Ambitions* examines the never-ending tension in our profession between being a technician, who produces outstanding work and expects that to be the ticket to success, and a politician, who knows who to please and how, and knows when to cut someone loose or use them to achieve greater things. Whether one must be one, the other, or both is the central question of the novel. In the end, the book leaves the reader unconvinced that the author believes the right answer is the one his protagonist chooses. Nevertheless, he is not the first to be accused of such a thing and it does not change the fact that the book is an entertaining examination of the issue. 

INTERESTED IN ADVERTISING IN Valley Lawyer?

*Grow your practice. Promote your service.
Market your firm.*



VISIT www.sfvba.org FOR
THE 2015 MEDIA KIT



CONTACT (818) 227-0490, EXT. 101
TO PLACE YOUR AD.



VBMCMC Valley Bar Mediation Center

Building Community Through Mediation

- ▶ Helping diverse populations in San Fernando Valley and beyond gain access to justice
- ▶ Resolving disputes & educating the public
- ▶ For those engaged in litigation or trying to avoid it
- ▶ Highly qualified panel of professionals offering mediations at exceptionally affordable rates
- ▶ Mediators with expertise in wide variety of disputes practice highest ethical standards
- ▶ Learn the benefits of using mediation through educational and training programs

(818) 856-0232
www.valleybarmediationcenter.com

5567 Reseda Boulevard | Suite 200 | Tarzana, CA 91356

An IRS Approved 501(c)(3) non-profit organization

My  *Equation*

Tutoring & Test Prep Center

23945 Calabasas Road, Suite 113A • Calabasas, CA 91302

- 25 years Experience with Local Students:
*Calabasas High • Agoura High
Viewpoint • Westlake High
Oak Park High • Chaminade*

- One-on-one Tutoring
- Clear Explanations
- High Scores
- Open 7 days a week

**One
Complimentary
Math or SAT
Lesson***

**Offer applies to new students only.*

Call us
818.222.2882



www.myequations.com

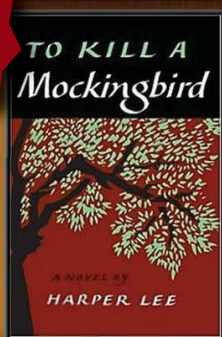
Consensus ad idem

Favorite Law Novel Survey Results

In the March issue, *Valley Lawyer* asked readers to vote for their favorite law novel. Not surprisingly, the majority of readers selected Harper Lee's *To Kill a Mockingbird* as their all-time favorite. Tied for second place were John Grisham's *The Firm* and Michael Connelly's *The Lincoln Lawyer*. *To Kill A Mockingbird* was also voted as reader's favorite law-related movie in *Valley Lawyer's* February 2013 issue.

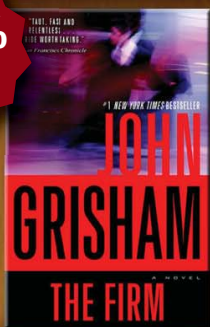
One has to wonder if there will ever be a book to knock Harper Lee's off the top of the list. Perhaps we'll have to wait for the publication of her second novel later this year.

30.5%
of all
votes



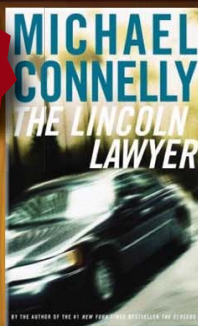
To Kill A Mockingbird
by Harper Lee (1960)

11.1%
of all
votes



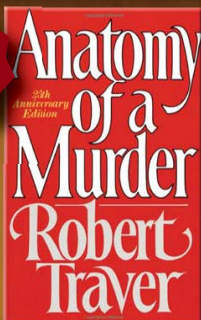
The Firm
by John Grisham (1991)

11.1%
of all
votes



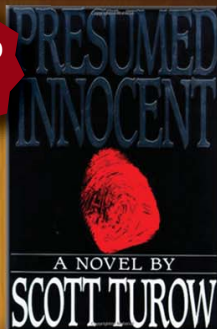
The Lincoln Lawyer
by Michael Connelly (2012)

8.3%
of all
votes



Anatomy of a Murder
by Robert Traver (1958)

8.3%
of all
votes



Presumed Innocent
by Scott Turow (1987)

NEW MEMBERS

The following new members
were approved by the SFVBA
Board of Trustees:

Mark Bernsley
Woodland Hills

Jeffrey C. Carter
Los Angeles
Alternative Dispute Resolution

Vincent A. Cesarani
Lawyers Liability Insurance Services
Woodland Hills
Associate Member

Peter B. Corbitt
Oak Park
Law Student

Valarie Dean
TechnoTaries, Inc.
Tarzana
Paralegal/Legal Secretary

Savannah B. Estenson
Law Offices of Alice A. Salvo
Woodland Hills
Estate Planning, Wills and Trusts

Angela L. Gilmartin
Law Offices of Angela L. Gilmartin
Woodland Hills
Education/Special Education

Joseph W. Kellener
Kellener and Kellener
Encino
General Practice

Amy K. Shayne
Valley Village
Public Interest

Paloma Velez
PDC/Brady Corp.
Valencia
Intellectual Property

Armen Zadourian
Montrose

Congratulations

to Terence M. Sternberg
of Woodland Hills! He
is the lucky member
who won the drawing
for a P.F. Chang's China
Bistro gift card and AMC
Theatres tickets.



CLASSIFIEDS

ATTORNEY-TO-ATTORNEY REFERRALS

STATE BAR CERTIFIED

WORKERS COMP SPECIALIST

Over 30 years experience-quality practice. 20% Referral fee paid to attorneys per State Bar rules. Goodchild & Duffy, PLC. (818) 380-1600.

SPACE AVAILABLE

ENCINO

Office condo for sale in the Encino Law Center, approx. 3,800 sf., decorator designed reception area, kitchenette, 3 common area conference rooms. Contact George at Properties West Investment Real Estate (818) 788-3651.

SUPPORT SERVICES

LEGAL SECRETARY/PARALEGAL

Extremely talented, professional, loyal and dedicated legal secretary/paralegal with background in business & civil litigation available for immediate hire for short- or long-term projects. Able to step in and help out with short notice. Knowledge of all State & Federal Courts. Tech-savvy. Brian (818) 437-3688, legaleagle0326@gmail.com.

PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING

Family Visitation Services • 20 years experience "offering a family friendly approach to" high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyllene@yahoo.com • (818) 968-8586/(800) 526-5179.

HAS YOUR CLIENT BEEN BURNED BY A STOCKBROKER?

SECURITIES LAW Claims Against Stockbrokers

Stock Market Losses Caused by:
Excessive Trading in Account
Unsuitable Investments
Misrepresentation Variable Annuities

LAW OFFICES OF JONATHAN W. EVANS & ASSOCIATES

39 YEARS IN PRACTICE
ARBITRATOR FOR SUPERIOR AND
MUNICIPAL COURT

NO RECOVERY – NO FEE
FREE INITIAL CONSULTATION

Call today for an appointment
(818) 760-9880 • (800) 699-1881
(213) 626-1881
www.stocklaw.com

12711 Ventura Blvd., Suite 440
Studio City, CA 91604

Messenger & Attorney Service

30th Year of Service to the San Fernando Valley/Southern California Legal Community

- Noon Court Run - same day filing in all So. Cal. Courts
- Process Serving Per Your Exact Specifications
- Last Minute Court Filings in All Southern California Courts
- Mobile Notary
- RUSH SERVICE 24/7

(818) 774-9111 • (323) 851-7500
(310) 272-3002 • (805) 777-7170

*"We Don't Promise Anything
We Can't Deliver"*



Discounts to SFVBA Members

SFVBA MCLE

Seminars on Audio

COULDN'T ATTEND AN IMPORTANT SFVBA SEMINAR?

Most SFVBA seminars since 2013 available on audio CD or MP3.

Stay current and earn MCLE credit.



Versatape

Who is Versatape?

Versatape has been recording and marketing audio copies of bar association educational seminars to California attorneys since 1983.

www.versatape.com
(800) 468-2737



PRESIDENT'S CIRCLE

- SFVBA membership for every firm attorney and paralegal
- Prominent listing in *Valley Lawyer* and firm logo on President's Circle page of SFVBA website
- Recognition and 5% discount on tables at Bar-wide events, including Judges' Night
- Invitations to President's Circle exclusive events with bench officers, community leaders and large firms

WE RECOGNIZE THE FOLLOWING PRESIDENT'S CIRCLE MEMBERS FOR THEIR DEMONSTRATED COMMITMENT AND LEADERSHIP IN SUPPORTING THE LEGAL PROFESSION AND ITS WORK IN THE COMMUNITY.

Alpert Barr & Grant APLC
Christie Parker & Hale LLP
Law Offices of Goldfarb Sturman & Averbach
Goshgarian & Marshall, PLC
Kantor & Kantor LLP
Law Offices of Marcia L. Kraft
Pearson Simon & Warshaw LLP
Greenberg & Bass LLP
Oldman Cooley Sallus Birnberg & Coleman LLP
Stone | Dean LLP
Lewitt Hackman Shapiro Marshall & Harlan ALC
Neighborhood Legal Services of Los Angeles County
Nemecek & Cole
Parker Milliken Clark O'Hara & Samuelian APC
University of West Los Angeles School of Law

Contact SFVBA Executive Director Liz Post at (818) 227-0490, ext. 101 or epost@sfvba.org to sign up your firm today!

Crafting a Compelling Elevator Pitch: Not Just a Story between Stories

Dear Phil,

When meeting potential clients (or jurors, or investors, or supporters, etc.), how best can I communicate my unique story? I always say way too much, or way too little. Sometimes my message is just a mess.

*Sincerely,
Tongue-Tied Over-Share, Esq.*

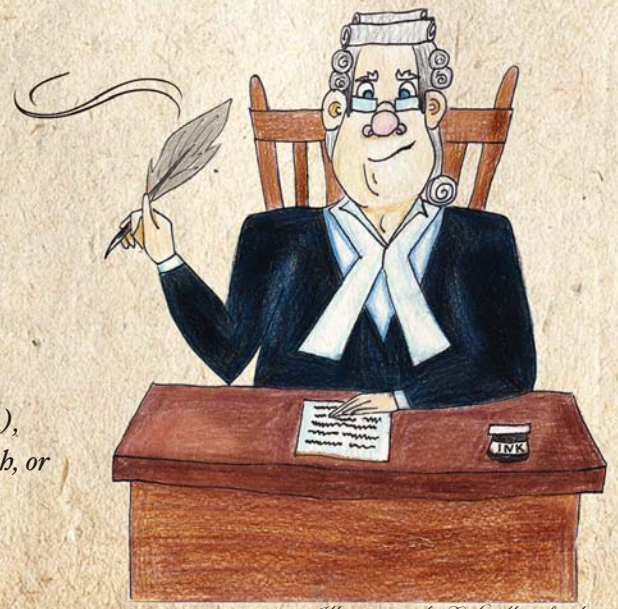


Illustration by Gabriella Sendorov

TRY TO CRAFT AN “ELEVATOR PITCH”. ELEVATOR pitches are short (20-30 seconds), prepared, and persuasive speeches that spark audiences’ interest in what you have to offer. They are interesting, memorable, and succinct. They compellingly convey the highlights and merits of your message, the basic elements of which are: what you offer, your prior results, and how you can help.

Who Are You?

Your elevator pitch explains what makes you and your position unique and valuable. Your pitch should make you happy. If it doesn’t make you smile, it won’t make your audience any happier, either.

When to Use an Elevator Pitch?

You can use it in several different situations. Whether you are selling your legal services, or your client’s position, or other idea, you can use it. That’s because it’s not just about telling people what you do for a living. It is effective when introducing yourself and your firm to potential clients, sharing a new idea within your firm or other association, or describing an initiative you are leading.

Get Started

Begin with the following (and adjust your presentation a bit to suit each situation):

- **What is Your Objective?** Are you explaining what you do for a living, or selling potential clients, or pitching an idea to a person or group?
- **What Do You Do?** What do you want your audience to recall? Describe what you, your firm, your organization, or idea does; the problems you/it solve; and how you can help.

Explain the value that you bring (focus on results you have achieved and cite metrics, if possible).

- **What’s Unique about You?** Explain what is special about you, your organization, or your idea. Maybe it is your unique approach, your focus on client needs, your efficiency, or something else. Focus on specific results from the past.
- **Engage the Audience.** Ask a relevant, open-ended question (not a yes/no query). Be able to answer a variety of questions in response.
- **Connect the Dots!** After completing each section, string it together, read it out loud, and time it. Eliminate all non-essential elements (shorter is better). Anything longer than about a half-minute risks monopolizing the conversation, and audience disengagement.
- **Practice!** How you present is as important as your substance. More practice means a natural look and sound (shoot for smooth conversation, not obvious selling). You shouldn’t sound robotic, even though you practiced and pre-prepared. (With insufficient practice, you may be hasty, unsure, or forgetful.)

PERFECTING TIPS

Have business cards or other small takeaways with you. Tailor your pitch for different needs/events/audiences. Eliminate/avoid inside-industry terms/buzzy jargon. SMILE!

Good luck!

Phil

Dear Phil is an advice column appearing regularly in *Valley Lawyer* Magazine. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Answers are drafted by *Valley Lawyer*’s Editorial Committee. Submit questions to editor@sfvba.org.

Client Trial War Rooms



Across the street from the Courthouse
Downtown L.A. - San Bernardino - Van Nuys

Secure conference rooms to strategize, refresh and relax throughout
your trial. Catering, WiFi and Parking available.

Call 800-43-DEPOS
or email info@personalcourtreporters.com for details.



Seven convenient Southern California locations to serve you

Van Nuys

Downtown LA

Ventura

Ontario

Santa Barbara

West LA

San Bernardino

Call us to book your next DEPO! 800-43-DEPOS

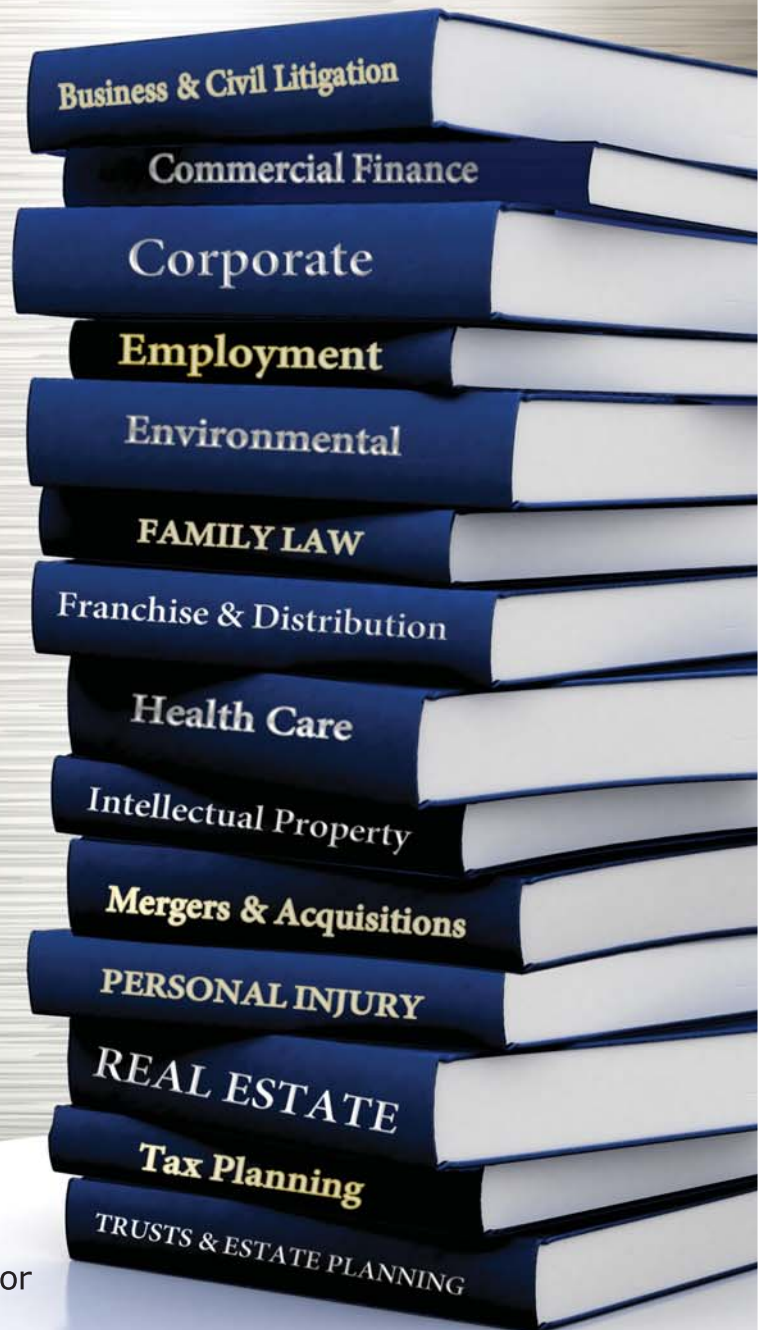
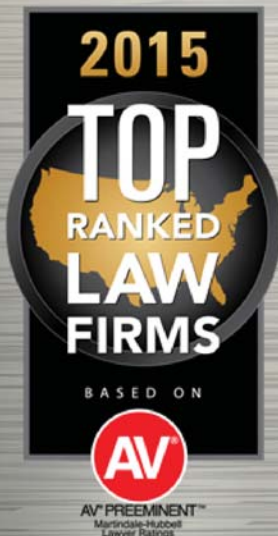
www.personalcourtreporters.com





LEWITT HACKMAN

LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN
A LAW CORPORATION



16633 Ventura Boulevard, Eleventh Floor
Encino, California 91436

www.lewithackman.com
818.990.2120