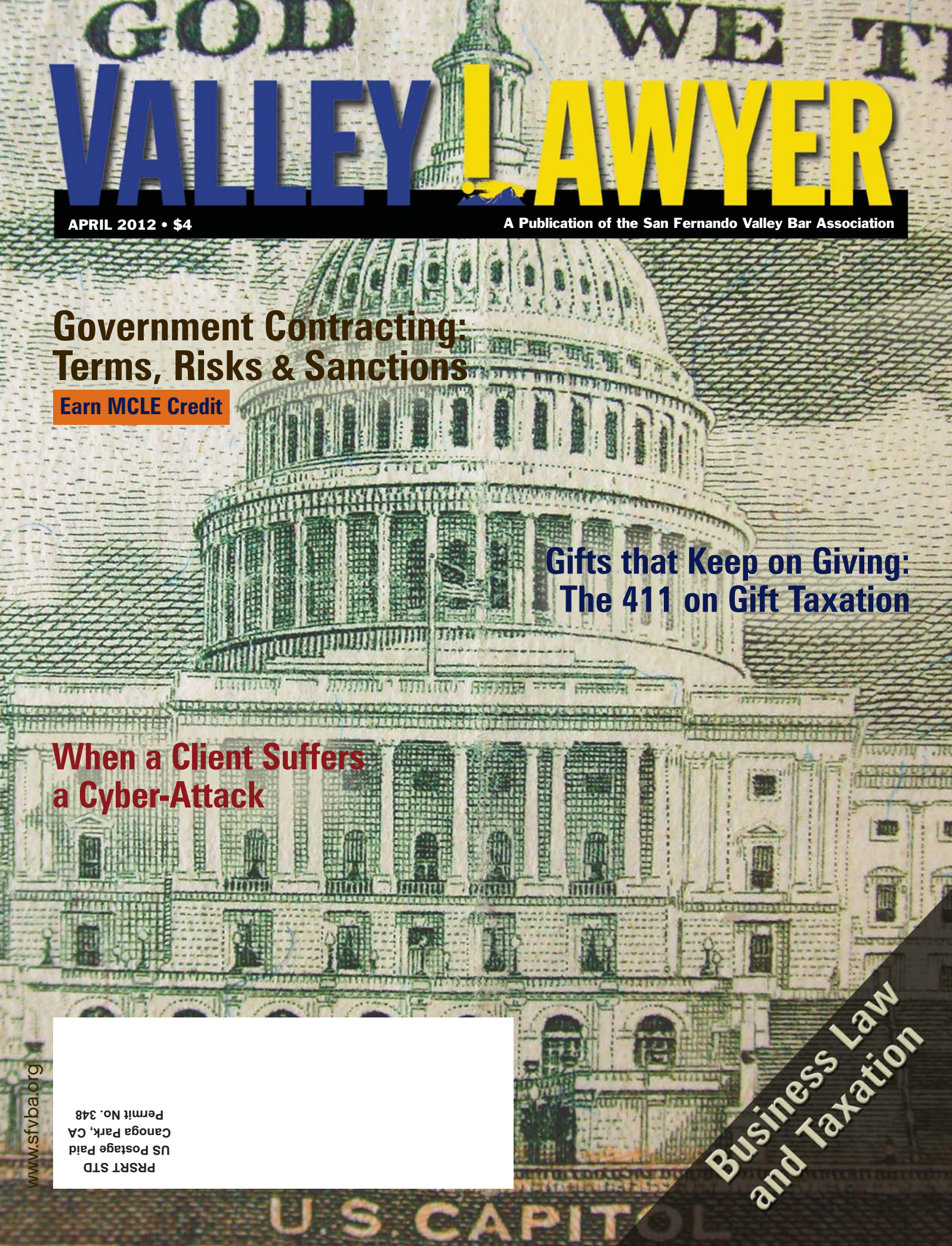



# VALLEY LAWYER

APRIL 2012 • $4

A Publication of the San Fernando Valley Bar Association

## Government Contracting: Terms, Risks & Sanctions

Earn MCLE Credit

## Gifts that Keep on Giving: The 411 on Gift Taxation

## When a Client Suffers a Cyber-Attack

Business Law and Taxation

PRSRT STD
US Postage Paid
Canoga Park, CA
Permit No. 348

www.sfvba.org

# It's More Than Just a **Referral.**

**Over the last 31 years, our referral lawyers have entrusted thousands of personal injury cases to our firm. The cases set forth below are a sampling of results achieved in three value catagories on behalf of referring lawyers and their clients:**

**Above 1 Million**
$35 million settlement with large grocery store chain that failed to maintain parking lot light pole which fell and caused major brain damage to 11-year old girl
**Case Referred by**:
Insurance defense lawyer
**Referral Fee**: Paid

$14.7 million verdict against manufacturer of defective gymnastics mat which caused paralysis in 17-year-old boy
**Case Referred by**:
Personal Injury lawyer
**Referral Fee**: Paid

$12.5 million verdict against home for the elderly that failed to protect a 94 year old women with dementia from being raped by a cook on the premises
**Case Referred by**:
Personal Injury lawyer
**Referral Fee**: Paid

**Up to 1 Million**
$875,000 settlement with driver/owner of 15-passanger van at L.A.X. whose side mirror struck pedestrian in head
**Case Referred by**:
Personal Injury lawyer
**Referral Fee**: Paid

$175,000 verdict against manufacturer of defective door/hatch causing broken wrist
**Case Referred by**:
Transaction lawyer
**Referral Fee**: Paid

$175,000 verdict against police department in Inland Empire for excessive force
**Case Referred by**:
Sole Practitioner
**Referral Fee**: Paid

**Up to $100,000**
$100,000 settlement of truck v. auto accident
**Case Referred by**:
Family Law Lawyer
**Referral Fee**: Paid

$73,500 settlement with Wal-Mart when improperly maintained flower cooler leaked on floor causing plaintiff to fall
**Case Referred by**:
Family Law Lawyer
**Referral Fee**: Paid

*"Call me directly to discuss any personal injury cases which you are interested in referring to our firm. My personal number is 661-254-9798"*

*Greg Owen*

# It's Your REPUTATION.

OP&O OWEN PATTERSON & OWEN
PERSONAL INJURY ATTORNEYS

Visit our website opolaw.com

23822 West Valencia Boulevard, Suite 201 | Valencia, California 91355 | Telephone 661.799.3899 | opolaw.com

15760 Ventura Blvd., 7th Floor
Encino, CA 91436
661.254.9799

1875 Century City Park East, Suite 700
#787, Los Angeles, CA 90067
661.254.9909

1150 South Olive Street, Suite 2000
#445, Los Angeles, CA 90015
661.255.5200

# Contents

VALLEY LAWYER
A Publication of the San Fernando Valley Bar Association





## FEATURES



## COLUMNS



## DEPARTMENTS




# VALLEY LAWYER

**SAN FERNANDO VALLEY BAR ASSOCIATION**
21250 Califa Street, Suite 113
Woodland Hills, CA 91367
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

**MANAGING EDITOR**
Angela M. Hutchinson





**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.

*Graphic Design Marina Senderov*
*Printing Southwest Offset Printing*

# Some Enchanted Evening

**ALAN J. SEDLEY**
SFVBA President

FOLLOWING THIS PAST month's Annual Judges' Night Dinner, I have to admit that at the very least, I paused to consider whether Rodgers and Hammerstein were foreseeing the sheer brilliance of the evening when they composed the 1949 show tune, "Some Enchanted Evening," for the Broadway hit, "South Pacific."

With an SFVBA record-setting crowd of 500 guests comprised of lawyers, judges, dignitaries and friends, the night was simply magical. Don't trust my word for it, ask anyone who was in attendance.

What marked this year's event as enchanting rests with its lists of speakers and honorees. First and foremost, the Bar was honored by the attendance of, and talk given by, California Supreme Court Chief Justice Tania Cantil-Sakauye. Her presentation was relevant and thought-provoking. Perhaps the most remarkable moments for the guests who had the opportunity to meet and briefly speak with Justice Cantil-Sakauye was her down-to-earth nature and approachability to others. Clearly, she enjoyed meeting members of our local judiciary and Bar as much as we appreciated the time spent with her.

Presiding Los Angeles Superior Court Judge, Lee Smalley Edmon, gave a concise yet informative overview of the State of the Courts. She did not shy away from addressing the dire financial condition of the courts and its effect on day-to-day operations, yet offered genuine optimism, particularly when acknowledging such successful lawyer-sponsored programs such as the mediation program and crash settlement conference programs.

Special recognition was given to three of our retiring bench officers, Judge Michael Latin, Judge Burt Pines and Commissioner Richard Brand. Last but not least, two well-deserving judges received the highest honors bestowed upon our local judiciary by the SFVBA; Judge Michael Convey received the 2012 Judge of the Year Award and Judge Michael Kellogg was awarded the inaugural Inspiration Award.

During the course of my State of the Bar speech, I chose to highlight the Bar's achievements to date. I reminded our guests that at our Installation Gala this past autumn, I challenged our colleagues to regard the SFVBA as a "Must Have" and a "Must Need" organization.

That is to say, we need to reach out to our Bar members and offer services, activities and educational programs such that the member "Must Have" our bar association as an indispensable tool to grow and enhance his or her law practice. Interlaced in such efforts would be the expansion of our Attorney Referral Service, providing worthy cases to our panel members that not only afford an opportunity to earn contingency fees for their practice, but also offer more hourly fee cases to add to their portfolio.

Also, we must strive to be an outreach vehicle to residents of our Valley community, especially the underprivileged and the underserved. Our focus should be to share our knowledge of the law, offering our services, and above all, educating our community so that they are aware of their legal rights, be it in their role as a tenant, a victim of crime or a consumer slowly sinking underwater and unaware of debtor's rights and bankruptcy protection. In that fashion, we serve as a "Must Need" organization to our Valley residents.

One week following Installation, the Board of Trustees met for our Board retreat. I reemphasized my vision for the year, and together, with great enthusiasm, debate and consensus, we concluded that the vision was attainable. We eagerly set out to

enhance existing programs in need of improvement while creating fresh new initiatives, committees and programs that would enable the SFVBA to reach or exceed our goals, and meet our vision.

So nearly five months out, how are we doing? It's one thing to assemble a fresh, new, innovative plan; it's another to implement and have favorable results. Overall, perhaps with a tinge of bias, we as a Board and as a Bar are doing very well. We have seen substantial growth in Bar member participation, ARS fees earned, meaningful educational programs and mentorship opportunities, marketing efforts, diversity outreach and growing interest and participation by our high school students in our diversity and law post programs.

The Bar's Diversity Committee, which has carefully crafted and rolled out programs specifically designed to create a more inclusive legal profession, is actively developing and successfully urging Bar member participation in programs designed to improve and encourage diversity.

Specifically, one such initiative is designed for outreach to the many, multicultural bar associations, encouraging future collaborations amongst and between our Bar and those smaller associations to increase diversity awareness, and encourage the sharing of ideas, programs and tools to reach those goals.

The Diversity Committee meetings are now designed to focus on understanding the importance of creating an environment where diversity can be leveraged and utilized to promote growth. And it is designed to create opportunities to give legal professionals and students interested in a career in law an opportunity to network and expand their leadership skills to a higher level.

The Horace Mann Project, a significant expansion of the previously successful high school law posts program, is a strong and growing project, expanding its outreach to the local high schools of the Valley community. This project coordinates its program with the court, as well as working with school parent centers, school counselors and teachers.

The prime focus of the project is to work with teenagers of diverse backgrounds as well as enlighten all our youth to the benefits of following a law-abiding course in life, and perhaps pursue a career in a law-related field. This is accomplished through discussion groups led by Bar volunteers, media presentations, field trips to the courts and encouragement to express themselves in writings.

One such 11th grade student expressed herself in writing, declaring that "our hearts are hungry for justice, our eyes want to see righteousness, and our ears want to hear truth. It begins with a step toward a lawful place: the courtroom."

Our ARS is in the late planning stages of expanding the types of case referrals sought, from contingency fee cases to a new emphasis on hourly fee matters. By doing so, we are able to encourage our business lawyers to join as ARS panel members hoping to receive hourly fee referrals, and at the same time, provide legal service to our Valley consumers and small business owners. Our ARS director is embarking on scheduled visits to Valley small businesses, chambers of commerce and associations in order to introduce and re-introduce to the business community the types of legal services our referral attorneys will undertake, including, and in addition to contingency work, services for hourly transactional work, employment law, business planning, probate and family law.

The Bar was thrilled to learn earlier this year that one of our ARS panel members achieved a $6.1 million settlement. It was the largest single, Bar-referred case settlement on record in the state, resulting in a well-earned attorney fee for our panel member, and a sizable referral fee back to the Bar Association. That referral fee alone enabled ARS to ramp up its visibility and marketing efforts to the community, afford specialized training to our staff to enable them to enhance their skills and enable the Bar to expand our public service programs.

Our new Mentorship Program enables new admittees, as well as seasoned lawyers, to identify their passion in law, such that every work day becomes a highly anticipated challenge, a gratifying and enjoyable experience. This initiative is designed first to gather, through carefully crafted applications, qualified and engaged mentors, and entice and recruit eager mentees. The mentor will be an individual who has found his or her practice passion, and can't wait to share that passion to another.

The mentee may be a newly admitted lawyer who seeks useful guidance and resources from the mentor to help identify what areas of law would best suit that lawyer's background, education and match his or her personal interests. For the veteran mentee, it is a chance to transition to a new area of practice that will reenergize or develop a real passion for the practice of law that is otherwise absent, or perhaps add a new legal service to an existing practice portfolio. The goal of the Mentorship program, to give every mentee an opportunity to enjoy the practice and challenges of law on a daily basis, and feel a sense of pride to be a member of the legal community.

The Bar has hosted a number of highly successful social programs and activities. We had an autumn membership mixer which produced an overflow crowd, enabling new and existing members to socialize and network.

Our Holiday Open House enjoyed the largest attendance ever, hosting over 180 guests. We introduced the Fulfill a Child's Wish Holiday Tree, and asked our guests to pluck a tree ornament and buy the child identified on the ornament a special holiday gift. In less than two weeks, all 100 ornaments were accounted for, and 100 children of the women who utilize the Haven Hills shelter for abused women had a wonderful holiday.

At our annual Blanket the Homeless program, Board and Bar members came together on a chilly autumn Saturday and helped distribute over a thousand blankets to several Valley agencies for distribution to the underprivileged. Our program just recently received well-earned national attention, as a photo of our volunteer force who participated at the gathering this year appeared in the Lawyers Giving Back section of the ABA Journal.

The Bar always strives to improve the quality of services and offerings made annually to its membership. This year, we are proud to say that our members are responding in large numbers, and with vocal satisfaction to the many newly established programs, as well as the enhancement of those from the past.

***Alan J. Sedley*** *can be reached at Alan.Sedley@HPMedCenter.com.*

# From the Executive Director

## A Thriving Bar

**ELIZABETH POST**
Executive Director

YOU MAY HAVE NOTICED THAT YOUR *VALLEY LAWYER* HAS become a bit heavier. Beginning with last month's issue, the magazine has expanded to 48 pages. This is no small achievement for an organization of 2,000 members; there are many bar associations twice, or even ten times as large, that provide a less substantial publication for their members.

The impetus for this growth began with the feedback obtained in our readership survey conducted last summer. And the Editorial Committee and staff continue to seek areas for enhancement and improvement. The Committee is working on producing special features for upcoming issues, such as point/counterpoint articles and exposes on hot topics. If you would like to join our Editorial Committee or write an article, contact our Managing Editor Angela M. Hutchinson at angela@sfvba.org.

We will soon begin publishing a regular column on members' honors, announcements and accomplishments. To be listed, all you have to do is email me your notice. We will publish moves, promotions, new firms and partnerships, verdicts and settlements and even nuptials and additions to your families. For the later, you may even include a photo!

I would be remiss if I didn't acknowledge that the magazine's expansion has been made possible, in part, by the support of our members and advertisers. Unlike most association publications, *Valley Lawyer* is self-sustaining, which allows your dues and other revenue to be used for member benefits like Fastcase, complimentary networking events and subsidized MCLE programming.

**Lunch at the Country Club**

If most Valley law firms are like the SFVBA, over the past three to four years, you probably have been trying to do more with less. This may mean having fewer staff do a job that was previously done by multiple employees. On Wednesday, April 25, the San Fernando Valley Bar Association will sponsor its inaugural Administrative Professionals Day Luncheon at Breamar Country Club.

The event is an opportunity for Valley law firms and attorneys to have fun and say thank you to your hardworking paralegals, legal secretaries, receptionist and other staff. Everyone in attendance will enjoy a delicious hot buffet lunch, networking, goody bags and door prizes. The cost for an afternoon at the country club is just $40 for attorneys and $35 for staff.

In addition, we will be honoring an Attorney Boss of the Year and Administrative Professional of the Year. Winners will be announced at the luncheon and the attorney must be a member in good standing of the SFVBA to be considered. If you would like to nominate your dedicated boss or valued staff, please submit the following information to my attention:

- your name and the name of your boss or staff
- letter of recommendation
- short biography of individual being nominated

Honorees will be selected by a panel of three judges, comprised of individuals from the SFVBA Membership & Marketing Committee, Board of Trustees and Bar staff. The selections by the panel of judges are based solely on the letters submitted. The deadline for submissions is April 13, 2012.

***Liz Post*** *can be contacted at epost@sfvba.org or (818) 227-0490, ext. 101.*

Dear Counsel

By Client Communications Committee

# The Business of Communication

*The SFVBA established the Client Communications Committee to address the number one reason for client discontent—need for better communication—and reduce negative contacts with the State Bar. The Committee, a volunteer group of a dozen veteran practitioners in wide-ranging fields of law, answers written questions from attorney members regarding problems they observed or dealt with that may have been avoided by better attorney-client communication. Responses are published anonymously in Valley Lawyer.*

**Q: What are the basics of Attorney-Client Communications?**

**A:** In our last reply to a reader's request we promised we would deal with other aspects of communication, including soliciting clients, advertising and misrepresentations, since all are part of attorney-client communications.

This issue of *Valley Lawyer* deals with business law. Law is a profession. We practitioners are all professionals. We are business persons as well. Those of us in the ivory tower may not need to "bring in business" but the "publish or perish" expression is based on the business of survival as much as professional acclaim.

In-house counsel doesn't need to bring in business but they report to businessmen and businesswomen who don't necessarily share their ethical constraints. Civil servants don't need to "bring in business" but they function in hierarchal pecking orders which may require giving some wiggle room to professionalism. Those of us on the first step of the large law firm ladder don't need to be told how our work day assignments came to the firm in the first place. We might even suspect that becoming a rain maker might accomplish even more than billing 3000.

Getting legal business is a business venture. Word of mouth was likely enough in Abe Lincoln's time when communities were small and phone books weren't bigger than bibles. In today's times, entrepreneurial attorneys in all fields are concerned with letting the public know who they are. Unlike non-professionals, there are some rules which need to be dealt with in order to seek short cuts to recognition.

Originally, dentists were the only profession which openly advertised. *Bates v. State Bar of Arizona* (1977) 433 U.S. 350. 363 gave attorneys such rights under the First Amendment. *Peel v. Attorney Disciplinary Comm'n of Illinois* (1990) 496 U.S. 91, 100 deprived the states of their prior ability to impose unlimited restraints on the attorneys they licensed. There are still some which must be dealt with.

Because some lawyers gave the profession a black eye in public esteem as ambulance chasers, Rule of Professional Conduct 1-400 governs advertising and solicitation. Solicitation is defined as "any communication concerning the availability for professional employment—in which a significant motive is pecuniary gain—delivered in person or by telephone" or to anyone already represented by counsel. A communication is "any advertisement (regardless of the medium)—directed to—any substantial portion" (of the general public) or any "unsolicited correspondence—concerning the availability for professional employment."

The Board of Bar Governors (the elected lawyers who represent us) set out many standards which establish a presumption of the rule's violation. The list is long and serious—advertisers should have the sixteen standards at hand. They include communications at accident scenes, to those unable to exercise reasonable judgment in hiring a lawyer, unqualified testimonials, guarantees, implications of ability to "juice" government agencies and failure to identify the communication as an "advertisement" or "newsletter." If a communication is directed to the general public or a portion there of (any mass media ad), the name of at least one lawyer in the firm must be set out as the responsible attorney. The rule also deals with any misrepresentations, including improper (unearned) use of the "certified specialist" designation.

Unlike the rules, which are not law, but only disciplinary constraints, the State Bar Act is legislative law. B&P §6157.1 prohibits "any false, misleading or deceptive statement" or omission. §6157.2 expressly prohibits promising quick cash or settlement, nonlawyers holding out, celebrities or spokespersons not revealing their titles and contingency fee statements which fail to state "whether a client will be held responsible for any costs advanced by (the lawyer) when no recovery is obtained" (unless the client won't be held responsible for costs). It prohibits outcome guarantees and untitled dramatizations. §6158.1 notes that portraying accident scenes, implications of client recoveries or prospects in the absence of factual and legal basis revelations are presumed to be deceptive.

§6158 applies the same restrictions to websites and any electronic ads looking at "the message as a whole," irrespective of the sight/sound combination. Simply stating that "result was dependent on the facts of that (portrayed) case, and that the results will differ if based on different facts," resolves the outcome/portrayal restrictions. When the State Bar challenges the ad, the lawyer may remove it in 72 hours or seek an injunction. (See *Bates, Peel supra*)

Attorneys must pay for their own ad or disclose any business relationship with the payer. §6157.3. When a lawyer referral service buys the ad they need to reveal whether lawyers on their panel paid anything more than sharing actual costs of ad inclusion. §6157.4

Apart from attorney sanctions, false or misleading statements are covered by B&P 17500 et al. It expressly makes their use in advertising "services, professional or otherwise" a crime.

We started out noting that publish or perish is how academics do business. Lawyers can seek and obtain recognition in the same way. Community involvement has always been the mainstay for rain-makers. Presenting, lecturing and participating in panels and doing pro bono work are all extracurricular ways to meet and greet the public and let them know who you are. Properly advertising and communicating and soliciting, like the free things mentioned, all have one thing in common. They are all part of that aspect of the business of law called marketing.

In order to be responsive to readers, future issues will deal with limitation on how and with whom we lawyers can do business and limitations thereon.

*Written questions may be submitted to epost@sfvba.org or SFVBA Client Communications Committee, 21250 Califa Street, Ste. 113, Woodland Hills, CA 91367. The opinions of the Client Communications Committee are those of its members and not those of the Association.*

Say **Thank You** to your valued staff by treating them to the

# San Fernando Valley Bar Association
# Administrative Professionals' Day Luncheon

## Presentation of Attorney Boss of the Year
## and
## Administrative Professional of the Year

## Wednesday, April 25, 2012
## 12:00 Noon to 1:30 PM

**Braemar Country Club, Tarzana**

Buffet Lunch ❖ Networking and Fun ❖ Door Prizes ❖ Goody Bags

Door Prizes Sponsored by

NARVER INSURANCE

NOW MESSENGER & ATTORNEY SERVICE

MC The Matloff Company
An Insurance and Financial Services Company

## Make your reservation today, and let us take care of the rest!

Please reserve _____ $40 Attorney Ticket(s) and _____ $35 Staff Ticket(s).
Reservations received after Friday, April 20, 2012 are $10 more per person.

Firm _____

Name(s) _____

Phone _____ Email _____

Credit Card # _____ Exp. Date _____

Authorized Signature _____

Fax registration to (818) 227-0499 or return this coupon with check or credit card payment to: SFVBA, 21250 Califa Street, Suite 113, Woodland Hills, CA 91367.

Call (818) 227-0490, ext. 105 for reservations and sponsorship opportunities.

**To nominate an Attorney Boss of the Year or Administrative Professional of the Year, please submit to the Bar offices the following: (1) your name and the name of your boss or staff; (2) letter of recommendation; and (3) a short biography of the individual being nominated. Honorees are selected by a panel of three judges (comprised of members of the SFVBA Membership & Marketing Committee, Board of Trustees and staff). Judges' selections are based solely on the letters submitted. Attorney bosses must be members of the SFVBA. DEADLINE FOR SUBMISSIONS IS APRIL 13, 2012. WINNERS TO BE ANNOUNCED DURING LUNCHEON.**

# FACEBOOK CHANGES, AGAIN?


## By Irma Mejia

*The San Fernando Valley Bar Association is committed to engaging its members via social media, as well as offering online networking tools and social media workshops to help its members market themselves and their practice.*

**Connect with SFVBA on Facebook and Twitter!**

THIS PAST FEBRUARY, the SFVBA sponsored a free social media workshop for SFVBA members, "Facebook for Attorneys 101." The workshop was a basic introduction to Facebook's features and privacy settings and an overview of the benefits the site may have for attorneys. One benefit that was highlighted was the site's pages features, which allows individuals to set up profiles on Facebook for their companies or firms.

As with many computer-related trends, some of the information provided needs to be revised. Once this issue goes to print, the look of all Facebook pages will have changed dramatically. This March, all company pages will be forced to adopt the new Timeline feature. The Facebook timeline has been available for individual profiles for a few months now. Some people love it, some hate it but one thing is for sure, it's here to stay. SFVBA members should get wise to the new feature and the benefits of all social media, sooner rather than later.

The timeline feature is a chronological record of all the data a user has shared on Facebook. It allows users to pinpoint a month and year on the timeline to review specific posts. As with all Facebook posts, users are able to control which posts are made public, which ones are shared with a particular list of friends and which ones are kept private. In case a user fears that a few posts may have been made public in the past, he or she can use the metaphorical "get out of jail free" card by limiting the audience of all past posts through the user's privacy settings. There is a grace period that allows users to review and delete items from the timeline before it is published.

Timeline also allows users to post items that may have occurred even before the advent of Facebook. If a user is interested in painting a more complete picture of his or her life to share with friends, the user can add milestones such as his or her high school graduation or the birth of a child to the timeline. Facebook has created a virtual scrapbook for the user to customize.


For a company or firm's page, the timeline is a way to develop the business's image on Facebook more thoroughly than had been possible in the past. A page administrator can add highlights from the company or firm's history, including the date it was founded, the addition of a partner, or the achievement of a major court victory. Timeline also offers some very visually appealing features. A page can be customized with a large cover photo, a visual mark that can establish the tone or character of a brand. Individual posts can be highlighted on the timeline, too, appearing as an expanded story on the page.

Users can also "pin" a story to the top of the timeline so that it is the first post a visitor will view on the company's page. The pinned story stays at the top of the page for seven days or until a new post is pinned.

Another new feature that will premiere on Facebook pages is the message service. Prior to this new feature, businesses could only interact with potential clients or current fans on Facebook by allowing them to post publicly on the company page. Depending on the company, public posts by users may be welcomed or dreaded. The private messaging feature offers an excellent way for users to engage companies or firms without the glare of the limelight.

These changes to Facebook may be frustrating to some but they can be very beneficial to a company or attorney hoping to establish an online presence. The seemingly constant feature changes and convoluted privacy settings may make a novice nervous about jumping on the social media bandwagon but those nerves should be set aside in the interest of the business's online reputation.

Investing some time to set up a company page and curate a company's timeline is definitely worthwhile. If SFVBA members need some pointers on how to go about managing a page, take a look at the Bar's page at facebook.com/sfvba. Be sure to "Like" us while there.

***Irma Mejia*** *is the Member Services Coordinator at the SFVBA. She is the first point of contact for many of the Bar's members. Mejia also administers the Mandatory Fee Arbitration Program and manages the Bar's social media efforts. She can be reached at (818) 227-0490, ext. 110 or irma@sfvba.org.*

# Shouldn't your Lawyers Professional Liability program be tailored as well?

## Ask Narver Insurance.

Narver Insurance offers an exclusive Lawyers Professional Liability Insurance program for **SFVBA** members.

Program Features:

- 1-10 attorney law firms (or larger)
- Competitive pricing
- Limits of liability $100,000 to $5,000,000
- Optional defense costs in addition to the limits of liability
- Defendants reimbursement coverage
- Title agency coverage
- Personal injury coverage
- Full prior acts coverage - available
- Deductible $0 minimum
- Free Tail for retirement, death, or disability
- No threshold for new attorneys
- Coverage enhancement designed specifically for SFVBA members

★ Please refer to the policy for actual coverage specifications.

**Narver Insurance**
**Terri Peckinpaugh**
Vice President
(626) 943-2230
tpeckinpaugh@narver.com
www.narver.com

**Narver Insurance** is a ***supporter*** of the ***San Fernando Valley Bar Association.***
The Association does not endorse, sponsor, or approve any insurer or insurance program.

NARVER
INSURANCE

**Los Angeles Office:** 641 W. Las Tunas Drive, San Gabriel, CA 91776

**San Diego Office:** 12526 High Bluff Drive, Suite 300, San Diego, CA 92130

# How Firms Can Thrive in the "New Normal"

By Edward Poll

THE LEGAL PROFESSION REACHED A POINT where upheaval is the new normal. Certainly large law firms are changing in response to recession, technology and client demands. Will the sole and small firm practitioner survive the current and future turmoil? The answer can be found by assessing three issues: Where is the economy headed? Are there reasons for optimism? And, if so, how can small firms thrive in the new normal?

## Where is the Economy Headed?

Economists and politicians are calling the last few years the Great Recession. But actually it was a depression of a magnitude perhaps as serious, though different in details, as the 1930s. One key difference, which the legal profession exemplifies, is technological unemployment. Consider the fact that e-discovery software can analyze documents required for litigation discovery in a fraction of the time and for a fraction of the cost when compared to using lawyers for the task. Profitability for the firm will come from swiftly analyzing the millions of pages that electronic documents represent. And document review lawyers will be out of a job.

Technology will continue to impact the cost and quality of the legal service/product delivered to the clients. With overhead cut to the bone, partner income stagnating and fewer students entering law school, the legal profession must change. That is the theme of the April 2012 Practice Management Institute program in Santa Monica, "The Path to Prosperity." The only questions are what will the change be and who will lead it.

## Is there Reason for Optimism?

What does this mean for the average lawyer, the ones that serve the 99% of our society? Look at another time of massive change, the 1960s, when companies like IT&T and Gulf & Western faltered because they became too large to operate. They had to break up; the survivors had to develop new customer bases in order to start growing again. The same thing will happen in the future legal community, thanks to two trends:

- BigLaw will falter and, as technology is accepted, sole practitioners and small break-away groups from BigLaw will cater to the 99%, the consumer-oriented clients and small companies. The work is there for those whose cost flexibility and technology advances enable them to be competitive.

- New laws need lawyers to interpret them and advise their clients on how to stay out of trouble and pursue opportunities. Clients depend on lawyers, not law firms, for this.

The firm that adopts technology to reduce the costs of its operation, and then passes the savings onto the client, will be successful. These firms will focus on small to mid-size businesses and individual issues that will always be there as long as people need lawyers.

### Thriving in the "New Normal"

Planning for the future is the underlying principle of business success. Lawyers should plan for three fundamental strategies to ensure future survival.

1. *Focus on a target market and become the recognized thought leader in that market or industry.* A thought leader is someone who has demonstrated his/her capabilities and knowledge of the industry involved; has become known to the public by being the author of a book or article; has been a speaker at a conference or in the news media; or is an internet leader in podcasts or blogs. The channel of ideas distribution is not magic; attorneys must be all over because one never knows from whence that phone call to utilize one's services will come.

2. *Use technology (knowledge management, client relations management and other tools) to become more efficient.* Improve the delivery of one's legal service, all at the same time lowering the legal costs to clients. It is the overall legal cost, not the hourly rate, that the client cares about. This requires alternatives to hourly rate billing that maintain an attorney's level of per-unit fees without discounting value to the client.

3. *Pay attention to the realization rate.* Realization is simply the percentage of what is billed that is actually collected. Low realization means you need more cash to stay in business while waiting for clients to pay—the equivalent of extending them credit. Strive to get paid quickly using contingent, fixed, capped, value fee approaches to make the most of the leverage from technology. Alternative billing founded on value to the client, not just units of time, can help ensure prompt payment.

These three strategies define what is called the 3Dimensional Lawyer®. Get the work; do the work; get paid for the work. In other words, market for new clients, produce the work and reap the profits. Business schools call this marketing, production and finance. Every business needs them. They mean success for one's law firm when done right.

***Edward Poll, J.D., M.B.A., CMC*** *has an extensive background in business and law which has made him one of the nation's most sought-after experts in law practice management issues. Starting, operating and exiting the law practice are issues of keen interest and focus of Poll's writings and presentations. He can be reached at edpoll@lawbiz.com.*

# Gifts that Keep on Giving
## THE 411 GIFT TAXATION

By Robert A. Hull, Michael Hackman and Kevin E. Rex

WITH THE 2010 TAX LAW set to expire at the end of this year absent further legislation, significant opportunities for those who wish to gift tax-free and/or reduce their potentially taxable estates may be coming to an end.

Prior to the passage of the 2010 tax law, an individual could gift tax-free only $1,000,000 over the course of his or her lifetime. Any amounts gifted above that amount were subject to a substantial gift tax (sometimes greater than 50 percent). However, during 2012, the tax code provides that individuals may currently gift up to $5,120,000 in total lifetime gifts tax-free, less any prior gifts made under the lifetime gift exclusion. However, the 2010 tax law provides that the gift and estate taxes are "unified," which means that use of the $5,120,000 gift tax exclusion also reduces the amount which can be excluded from estate taxes upon one's death by a like amount.

This gift tax exclusion amount may be extended to future years; however, there is no guarantee of such an extension, especially given the current federal deficit. Thus, if your clients wish to maximize the value of passing interests in the family business, provide seed money for children to start a business venture, gift interests in real estate or simply pass valuable gifts of cash or personal property to loved ones, they should act sooner rather than later.

### Gifts Which Never Bear Gift Tax

First, there are certain gifts which one can make without incurring any gift tax and, therefore, without reducing the current $5,120,000 exclusion for gift or estate tax purposes (this amount was $5,000,000 in 2011, but was indexed for inflation). These gifts are: (1) medical or educational expenses paid directly to a medical or educational institution for anyone, (2) gifts to one's spouse, or (3) gifts to charities. No gift tax returns need be filed for such gifts.

In addition, an individual may give separate tax-free gifts of present interests in cash or property worth up to $13,000 to individuals annually without incurring any gift tax and without reducing the $5,120,000 exclusion (e.g., husband and wife together can gift $26,000 per year to each of their children, or one spouse can give a $26,000 gift of his or her separate property if the other spouse consents to join the gift). A gift tax return does not need to be filed for such gifts. However, a gift tax return will need to be filed to report any gift by a single grantor to a single beneficiary in excess of $13,000, even though no tax may be due because the gift amount falls under either the annual or lifetime exclusions.

### Why Gift Now?

The gift tax exclusion reduces the amount one can pass tax-free on your death. However, by gifting, one's beneficiaries will receive an asset's appreciation, assuming the asset ultimately rises in value, rather than have that appreciation become part of one's potentially taxable estate. In current conditions, when asset values are low due to a sluggish economy and the gift tax exclusion is high, an

individual can gift, tax free, assets of significantly greater value than he or she can gift in more typical economic conditions. In addition, using favorable valuation techniques for gifts can result in an even more significant bang for your buck.

Take, for example, a present gift of ten shares of stock with an aggregate value of $1,000 for gift tax purposes (i.e., the value of the shares on the date of transfer). If the value of this stock on the date of the transferor's death increased to $10,000, then by gifting now, the transferor effectively froze the asset value at $1,000 for purposes of the gift tax and transferred $9,000 of wealth, gift and estate tax free, out of the person's estate to the person's beneficiary.

The beneficiary would have to pay capital gains tax when the stock is sold. Since the present federal 15 percent capital gains tax rate is significantly less than the current federal 35 percent gift and estate tax rate, this seems obvious. However, one should do a careful analysis as tax laws vary from state to state—certain states have no estate tax, while others do, and certain states like California have state income taxes.

It must be noted that making a gift which gets the appreciation out of the state means the beneficiary will not receive a step-up in basis on the appreciation, which the beneficiary would receive if the gift was passed on the death of the grantor (thus, upon subsequent sale of the gifted asset, the beneficiary will have to pay capital gains tax on such appreciation). Again, the above scheme presumes a rising market, which is more likely in the long term given the present state of our economy.

Small business and real property owners can also benefit from the higher gift tax exclusions, especially in combination with minority discounts, by being able to give more valuable interests tax-free and potentially reduce their estate taxes at the same time. The business interest may already exist, or the taxpayer may create a family limited partnership or family limited liability company to accomplish their goals.

The value of a minority interest in a business entity (including one which owns real property) is generally worth less than the corresponding percentage of the total value of the entity because such an interest lacks voting control and/or marketability. Thus, a 20 percent interest in an entity owning a family business may be effectively valued at, say, 12 percent of the total value of the entity by applying a 40 percent discount because of the lack of control and/or marketability (as long as such discount is supported by a valid appraisal). For example, one can gift an asset valued at $100,000 to the person making the gift for a gift tax value of $60,000, after taking into account the relevant discounts, thereby sheltering $40,000 from gift or estate taxes.

It is likely that in the current economy, the total value of the entity owning a family business or an interest in real estate is less than what it was a few short years ago, and also less than what it is likely to be when the economy picks up. Thus, a client can take advantage of these low values by gifting interests in the entity and using less of his or her gift tax exclusion. Plus, as mentioned above, the client will likely reduce his or her future estate tax burden at the same time. However, the client needs to get several appraisals, both to value the business' underlying

value and, as mentioned, a separate one to determine the value of the minority discount.

**Make a Gift and Use it Too**

One of the requirements of making a present gift is divesting oneself of control over the gifted asset. Many people find this difficult. However, it is possible to still receive the tax benefits of gifting without giving a gift outright. This can be accomplished by using one of several specialized trust instruments to effectively remove an asset from one's estate. Such an instrument will reserve to the grantor the right of limited use of or control over the gifted property (and/or a right to an income interest), while fixing the gift's value for tax purposes. The gift's value is calculated based on the present value of the beneficiaries' remainder interests determined using the IRS' tables.

Depending on what type of property interest a client wishes to retain, such an instrument is set up for a specified period of time (or your lifetime) and the instrument is funded with certain assets. The greater the term of such instruments, the greater the potential transfer of wealth tax-free (again, assuming a rising market). However, a longer instrument term comes with an additional risk. If the client does not survive the trust term, the assets may be pulled back into his or her taxable estate.

Some examples in this complex area of estate planning include:

- **Qualified Personal Residence Trusts (QPRTs)** are irrevocable trusts for a residence or vacation home (which can also hold cash for reasonable operating expenses) in which client can retain the right to use the property for a certain period of time, after which the beneficiary receives the balance of the trust.

- **Grantor Retained Annuity Trusts (GRATs)** are irrevocable trusts in which client can retain an annuity right (i.e., a fixed sum) for a certain time, after which the beneficiaries receive the balance of the trust.

- **Grantor Retained Unitrust (GRUTs)** are similar to a GRAT, but using a fixed percentage of the value of trust assets (rather than a fixed sum) which must be revalued every year.

- **Charitable Remainder Trust (CRT)** allows a present charitable income tax deduction. The CRT is an irrevocable trust, but the grantor can change the ultimate charitable beneficiary. The grantor can retain (or gift to other beneficiaries) a fixed annual amount (the annuity trust) or a percentage of the trust's value (the unitrust) for a specified period of time, usually the grantor's lifetime. The charitable income tax deduction is based on the present value of the remainder interest calculated under IRS tables. The CRT is not a taxable gift. Others may want to consider the Charitable Lead Trust, which provides benefits to the charity during the term of the trust, with the remainder interest reverting to the grantor or his beneficiaries.

- **Intentionally Defective Grantor Trust (IDGT)**, though not considered a gift for tax purposes (the IRS treats a transfer to an IDGT as a non-taxable sale because the Grantor Trust is involved), the Grantor can receive similar tax benefits as with GRATs and GRUTs. The "seller" receives from the trust a promissory note equal to the value of the assets (perhaps calculated at a discount, if properly appraised) sold to the trust. The trust gets the income from the property transferred. Because of the grantor trust element, the seller is not taxed on the interest from the note, but instead is taxed on the transferred property's underlying income. There is a gift element to consider, because the IRS requires that the trust be "seeded" by gifted assets in an amount to be determined on a case-by-case basis (usually, equal to 10-15% of the initial balance on the note).

An individual can always gift minority interests in a business without using any of the above instruments. Since the grantor retains the majority interest, he or she will effectively retain control over the affairs of the business while still passing valuable business interests to the beneficiary tax-free.

In order to take advantage of gifting under the most favorable conditions in recent memory, one should timely consult an experienced estate planning attorney and/or financial planner to help plan the most advantageous gifting regimen. This window of opportunity may close sooner rather than later.


***Robert A. Hull*** *is an Associate in the Tax & Estate Planning, Corporate and Mergers & Acquisitions practice groups of Lewitt, Hackman, Shapiro, Marshall & Harlan in Encino. He can be reached at RHull@lewitthackman.com.*

***Michael Hackman*** *is a Certified Specialist in Tax Law and Chair of Lewitt Hackman's Tax & Estate Planning Practice Group. He can be reached at MHackman@lewitthackman.com.*

***Kevin E. Rex*** *provides business and corporate counsel at Lewitt Hackman to high net worth individuals, privately held businesses and mid-market companies in a variety of industries. He can be reached at KRex@lewitthackman.com.*


# Exploring Export Trade Compliance

By Taylor Vernon

TRADE COMPLIANCE IS A GENERAL TERM describing compliance with the international trade laws of the United States. These laws regulate all aspects of imports and exports. Customs compliance refers to the compliance with the over forty agencies that Immigration and Customs Enforcement (ICE) can act in conjunction with and on behalf of depending on the circumstances. ICE is larger in scope than the Internal Revenue Service or Securities and Exchange Commission.

Exportation generally refers to anything sent out of the country. There are two classes of exports: (1) physical exports (physically sending items out of the country) and (2) deemed exports (transferring items to non-U.S. citizens, even those in the U.S.). Most people, and likely many companies, think of the former when contemplating export compliance. However, both physical and deemed exports are subject to the same compliance requirements.

The basic five steps to properly export are as follows: (1) identify and classify the item; (2) identify the destination; (3) identify the end user; (4) identify the end use; and (5) complete the proper paperwork. Additionally, to export anything using another company's name or tax ID number, one must have a power of attorney on file. While the steps seem simple enough, the process can become extremely complicated and requires employees trained and committed to compliance.

Why does this matter to attorneys? Even if the distinctions and uniqueness of the deemed export rule does not excite an attorney, his/her client who exports, or one's company, may face severe penalties for non-compliance with international trade laws, which can include multi-million dollar fines, criminal penalties for employees and managers and the complete loss of the privilege to import or export goods.

**Subject to Export Controls**
All persons throughout the world dealing in "U.S. origin items" are subject to U.S. Export Controls. Export controls apply to any person (even non-U.S. persons) participating in:

- exports from the United States
- re-exports, the shipment or transmission of an item subject to the Export Administration Regulations (EAR) from one foreign country (i.e., a country other than the United States) to another foreign country (a re-export also occurs when there is release of technology or software (source code) subject to the EAR in one foreign country to a national of another foreign country)
- exports of non-U.S. origin items with more than "de minimis" U.S. content
- exports of non-U.S. origin items based on U.S. technology (limited)

All U.S. persons are subject to U.S. trade sanctions (an overlap with export controls). U.S. persons can include owned or controlled foreign subsidiaries and affiliates of U.S. companies, U.S. citizens and permanent resident aliens (green card holders), wherever located or employed. U.S. persons may not engage in any transaction directly or indirectly involving a sanctioned country, government or Specially Designated Nationals List (SDN). Further, U.S. persons may not "facilitate" transactions by non-U.S. persons that would be prohibited to U.S. persons.

**The Deemed Export Rule:**
Under the EAR, a deemed export is, "Any release of technology or source code subject to the EAR to a foreign national. Such release is deemed to be an export to the home country or countries of the foreign national." EAR§734.2(b)(2)(ii). Pursuant to EAR§734.2(b)(3), release equates to visual inspection of written material, such as technical specifications, plans and blueprints, company online data. It can also include plant/facility tours and product demonstrations.

Foreign persons under EAR include non-immigrant visa holders and undocumented individuals. However, the deemed export rule does not apply to protected individuals, as defined by the Immigration and Naturalization Act 8 U.S.C. §1324b(a)(3): U.S. citizen or national; green cardholder; or other protected persons (refugee Asylee and temporary resident granted amnesty). The items that are controlled appear in the EAR on the Commerce Control List (CCL). The EAR is administered by the Bureau of Industry and Security (BIS) and enforced by ICE. Additionally, far more items are controlled under EAR than under International Traffic in Arms Regulations (ITAR).

Furthermore, deemed exports are defined by ITAR as, "Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad." ITAR 22 C.F.R. §20.17(4). Items controlled by ITAR are either military or dual-use goods, and ITAR is administered by the Department of Defense and the Department of State. There are many items one would not expect are classified under ITAR, for example, certain GPS devices. Additionally under the See Through rule, if there are ITAR parts embedded in another technology, then it is an ITAR item. The ITAR definition applies the same definitions by including foreign business entities along with foreign individuals.

A U.S. person must apply for an export license pursuant to the deemed export rule when two conditions are met: (1) the U.S. person intends to transfer controlled technology to a foreign national in the United States; and (2) transfer of the same technology to the foreign national's home country would require an export license. There are, of course, exceptions to the rule under §740 of the EAR, such as the License Exception Technology and Software-Unrestricted (TSU), and License Exception Technology and Software Under Restriction (TSR). The terms of potential license exceptions must be reviewed with respect to a particular transfer to ensure their compliance before relying on a particular license exception. If no exception applies, the license must be obtained before the

the release of the information to the foreign national.

**Hiring Foreign Employees**

The deemed export rule applies to both foreign employees and foreign nationals. Human resources need a methodology in place to follow the many rules related to the hiring of foreign nationals. Also, information technology infrastructure needs to have proper protections in place to prevent foreign national employees from accessing protected data. The idea is to keep things in protected silos. The government recommends triple firewalls. Moreover, there needs to be a warning on internal documents in addition to password protection. All employees with access to protected data need to be aware of these restrictions and penalties.

**Employment Discrimination Issues**

The suggested best practices to limit employment discrimination liability include: limit the nationality question only to positions which might involve access controlled technologies; declare related information only used for deemed export compliance and for license requirement determination purposes, not for any other purposes; national security exceptions; completing and retaining Employment Eligibility Verification Form I-9; and acquire export licenses for hired foreign employees.

If a foreign national is planning to visit your company, your company needs to request advance notice, determine the nationality and purpose of visiting, evaluate whether controlled data will be accessed or not based on the nationality, and finally, record this data. If your company is working with foreign contractors or collaborators, the company should require prior notice and identification of foreign persons, seek indemnification protection for contractor/collaborator failure to comply with export control regulations or contract provisions, and record this information.

**Failure to Comply with the EAR**

Criminal penalties include up to 10 years imprisonment and $1 million per violation. Administrative penalties can reach $11,000 per violation, and $120,000 per violation in certain administrative cases involving national security issues. Moreover, denial of export privileges can occur, which prohibits a person from participating in any way in any transaction subject to the EAR.

It is unlawful for other businesses and individuals to participate in any way in an export transaction subject to the EAR with a

denied person. Under ITAR, the amount and type of penalty imposed for an ITAR violation are determined in the Directorate of Defense Trade Control's (DDTC) sole discretion. Due to the sensitive national security nature of the penalties, DDTC's decisions are final and not subject to judicial review. The U.S. State Department has imposed the largest administrative fines in history for Arms Export Control Act (AECA) and ITAR violations, including Raytheon ($25million), General Motors/General Dynamics ($20 million), Boeing Company ($15 million) and ITT ($8 million).

If one trades in the international marketplace, U.S. Customs will visit your facility. Customs only comes for two reasons: (1) strategically, to introduce themselves and gather information and (2) for enforcement investigations. Always assume Customs is investigating upon arrival.

One's company should have a manual kept by the section of the company charged with customs compliance for Customs visits. The customs agents will need to be kept in a conference room until someone designated to talk to Customs is available. The only people who should talk to Customs are compliance staff, the general counsel and any outside trade counsel. As with other forms of law enforcement, remember anything said can and will be used against a client in court.

The best practices for trade compliance are a function of a few discrete elements:

1. Maintain a compliance staff, preferably in the legal department and independent from the influence of the groups they are monitoring (most major companies in the international marketplace have a compliance staff).

2. Set up a reporting system. Ensure a chain of command.

3. Institute a compliance program built on a thorough compliance manual.

4. Ensure cooperation at all levels of the company.

5. Keep complete records. All records must go back five years and need to be available on demand from customs (Note: An incomplete record is the same as an absent document to customs officials.)

6. Exercise due diligence and reasonable care. Due diligence means one has showed the necessary effort, or reasonable care, to look into something, in this case, a potential trade compliance issue. Move from general to specific inquiries. Transaction details will reveal the compliance elements needed to satisfy the due diligence standard. This is often done via email to document and audit trail.

7. Wrong or right, be consistent, and follow the process. It is better to be wrong with reasoning than right without an explanation. Reasonable care is shown by performing due diligence, reviewing Customs binding rulings and reading relevant publications and reference materials. This includes informed compliance publications, checking the Office of Global Analysis websites, familiarity with local customs offices and attaché, attend on-going current training, as well as conferences, seminars, and classes; and joining associations and memberships that assist with trade compliance.

Hopefully these tips and information will help attorneys assist clients or one's company to better understand the complexity, best practices and basic idea of the deemed export rule. When in doubt, contact a trade compliance attorney to evaluate compliance deficiencies in a client's company or one's own company and for assistance with a Customs investigation.

***Taylor M. Vernon**, attorney in the Los Angeles office of The Vernon Law Group, PLLC, focuses his practice on international trade compliance, franchise and distribution, entertainment and corporate transactional law. He can be reached at (310) 295-2016 or at tvernon@vernonlawgroup.com.*

# The SFVBA Launches New Paralegal Section!

By Angela M. Hutchinson


ADMINISTRATIVE, PROFESSIONALS' DAY IS OBSERVED ON APRIL 25 TO recognize the work of secretaries, administrative assistants, receptionists and other office support staff. Lawyers know first hand the importance of an excellent administrative team, especially paralegals, who play a significant role in law firms of all sizes.

The San Fernando Valley Bar Association recently launched a new Paralegal Section, co-chaired by Amy Bernardino and Sarah Thrift. Bernardino is a Senior Corporate Paralegal at PennyMac, a specialty asset management firm in Moorpark. Her duties include corporate maintenance for over 20 entities, supporting attorneys and business groups with a multitude of financial transactions and assisting with various SEC filings. Bernardino reports directly to the public company's General Counsel, Corporate & Securities.

Sarah Thrift is a Litigation Paralegal with Lewitt, Hackman, Shapiro, Marshall & Harlan, a full-service business, real estate and civil litigation law firm in Encino. Thrift has been with Lewitt Hackman for almost eight years. Her work focuses on civil litigation in the areas of business, securities, employment, intellectual property and real estate. Her experience includes assisting with all phases of litigation from drafting and filing of the initial pleadings through discovery, motion practice, trial preparation and even some appellate work. Thrift also has expertise in managing complex class action and other document intensive cases through the use of advanced electronic discovery tools and document management systems.

Thrift and Bernardino talk to *Valley Lawyer* about the Paralegal Section's goals, their reason for getting involved and their work as paralegals. SFVBA members and their administrative staff who are interested in becoming involved with the newly launched Paralegal Section should contact the Bar's offices for more information.

**Sarah Thrift**
Paralegal Co-Chair

**Amy Bernardino**
Paralegal Co-Chair

***Valley Lawyer:* What inspired you to work in the paralegal field?**

**Sarah Thrift:** I was always interested in the law and considered becoming an attorney while in high school. After taking a few years off when my daughter was young, I began working as a legal secretary. I really enjoyed the work, but wanted a greater challenge, so I went back to school to complete my degree and earn my paralegal certificate. The aspect of the job which most inspired me to work in the paralegal field is having the opportunity to assist people during what can be an incredibly stressful and frustrating time.

**Amy Bernardino:** I was working as an administrative assistant in the legal department of a video game company, and I realized a lot of the work I was doing (corporate filings, reviewing licenses, etc.) were paralegal-type tasks. I wanted to take on more of these tasks and have greater responsibility, so I decided to obtain my paralegal certificate. I quickly realized that the corporate and securities area was where I would thrive. I began working for a mortgage company as a paralegal assistant while I was still getting my certificate, and found a fantastic mentor. Over six years later, I am still thankful I went down this path.

***VL:* How did you become involved with the SFVBA Paralegal Section?**

**AB:** Most bar associations do not have a paralegal section, and while paralegals are usually allowed to join them, paralegals do not always feel like they are a part of the organization. Sarah Thrift and I decided to approach the SFVBA through one of its trustees, who is also our colleague, and see if they would be interested in having a section dedicated to paralegals. Sarah and I were thrilled when the response was a resounding "yes."

**ST:** Amy and I were both members of the Los Angeles Paralegal Association. LAPA's San Fernando Valley section had been dormant for many years. We felt there was a need for quality continuing education for paralegals and other legal professionals in the San Fernando Valley, so we decided to work together to revive the section. For the last few years, we served as the co-chairs of LAPA's San Fernando Valley section, hosting many successful continuing education seminars and networking events.

We decided we wanted to pursue a greater connection and collaboration between paralegals and attorneys in the San Fernando Valley, so we approached Kira Masteller, an SFVBA Trustee and an attorney at my firm, Lewitt Hackman, to propose developing a paralegal section for the SFVBA. Kira was enthusiastic about the idea (especially since she was previously a paralegal herself).

***VL:* What are some of the main goals of the Section?**

**AB:** The main goal of the Section is to offer informative and interesting MCLE seminars to legal professionals in the area, with a specific focus on paralegals. The Section also aims to put in the forefront of attorneys' and paralegals' minds Business and Professions Code §6450, which defines "paralegal" and sets forth initial and continuing education requirements.

**ST:** The goals of the Section are to advance the paralegal profession and strengthen the professional relationship between paralegals and the attorneys with whom they work. We plan to achieve these goals by offering continuing legal education seminars on topics that will be of interest to all legal professionals.

***VL:* What advice do you have for those professionals that have an interest in becoming a paralegal?**

**ST:** Take your professional development seriously! Understand the requirements for paralegals outlined in Business and Professions Code Sec.6450 et seq., make sure you are compliant and educate the attorneys you work with about them too. Pursue continuing legal education and advanced certifications if you want to be taken seriously as a valuable member of the legal team.

Be proactive on the cases you are involved with and ask lots of questions. The more interest you show, the more opportunities and responsibility you will be given. And be sure to keep up to date with the technological advances affecting our field, particularly those in the area of e-discovery. A paralegal with experience and understanding in this area will always be in demand.

**AB:** Earning your paralegal certificate does not ensure your ability to get a job as a paralegal. Almost as important as your paralegal education is your ability to network. Attend networking events sponsored by the San Fernando Valley Bar Association. Even if you have not decided on a specific field yet, attend MCLE seminars that are interesting to you. Not only will you become knowledgeable in different disciplines, but you will also meet paralegals and attorneys who might prove instrumental in your career search.

***VL:* What do you like most about your work? And what is the most challenging aspect?**

**ST:** I love what I do, so isolating the thing I like most about my work is difficult... What I find most rewarding about my work is having the opportunity to assist clients through the often frustrating and stressful experience of litigation... The most challenging aspect of my work is developing new ways to handle the constantly expanding volume of documents and information involved in litigation today.

Electronic discovery is having a profound impact on the way litigation is handled and the technology keeps advancing. Having an understanding of this technology has allowed me the opportunity to develop systems and implement software solutions which have kept our firm on top of these changes.

**AB:** The nature of my work affords me the opportunity to learn something new each day. The most challenging aspect is absorbing the information timely and being able to apply it immediately.

***Angela M. Hutchinson*** *celebrates four years as the Editor of SFVBA's Valley Lawyer magazine. She works as a communications consultant, helping businesses and non-profit organizations develop and execute media and marketing initiatives. She can be reached at editor@sfvba.org.*

**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 33.**

# Government Contracting: Terms, Risks & Sanctions

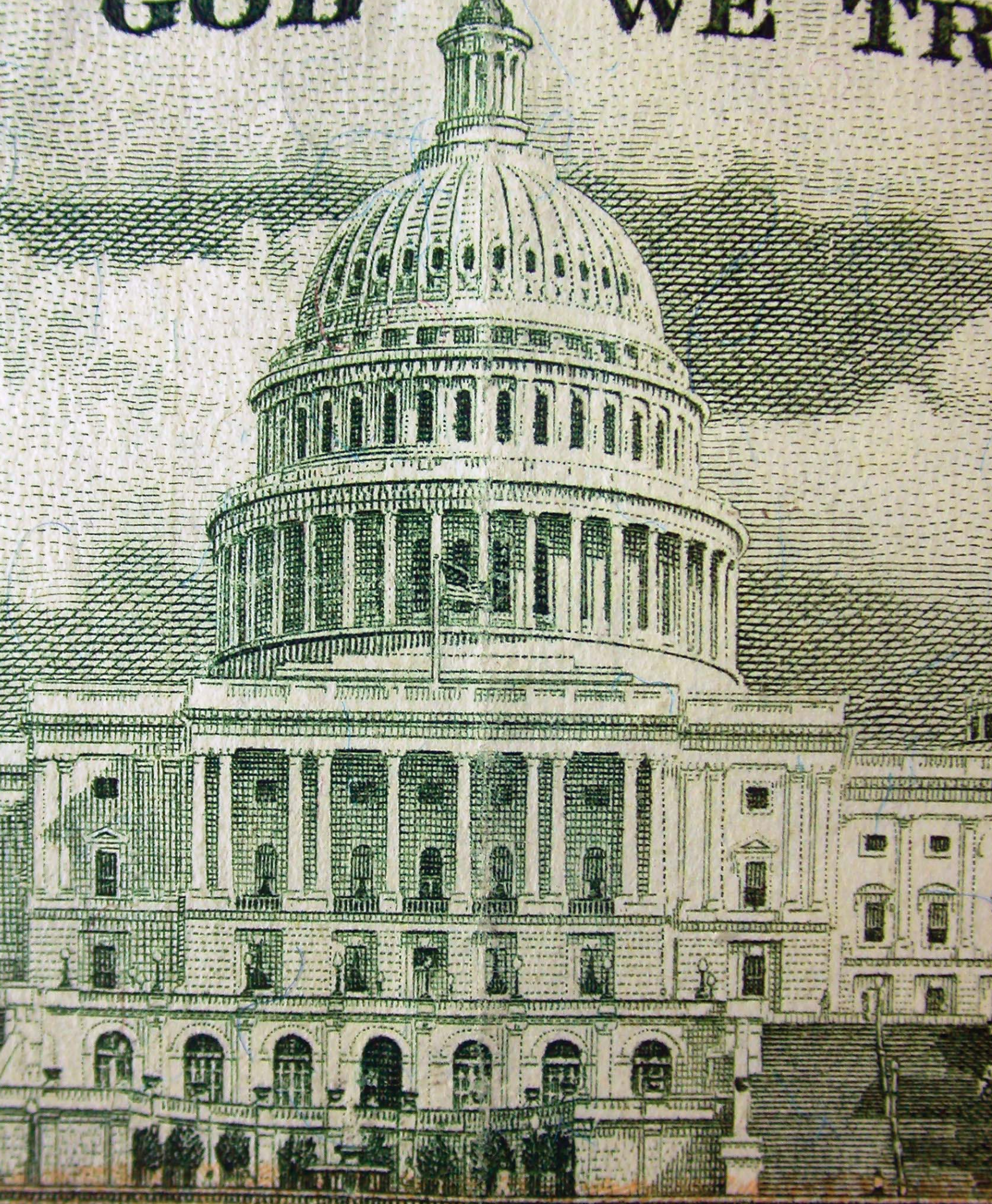
**By Mark R. Troy, Mana Elihu Lombardo and J. Catherine Kunz**

COMPANIES SOMETIMES FIND THAT SELLING goods and services to the federal government can be lucrative, especially given the potential volume of business that the government conducts and the fact that the government can be counted on to pay its bills. The general expansion of the federal government and the infusion of federal stimulus funds into the economy mean that there are greater opportunities for companies to do business directly with the government or indirectly with companies receiving federal funds. But those opportunities present risks for companies unfamiliar with the unique aspects of government contracting.

Companies which seek to perform government contracts in good faith may unwittingly find themselves in noncompliance with a host of unique rules. Companies which deliberately play fast and loose with those rules may find themselves battling against default terminations in the government's administrative forums or worse—defending civil fraud or criminal sanctions.

This article provides an overview of some (but not all) of the key risks of contracting with the federal government. Whether supplying major weapons systems or paper clips, companies doing business with the government need strong compliance mechanisms and expertise to succeed financially and to avoid incurring the powerful sanctions that the government can bring to bear.

A major distinction between a commercial and a government contract is that in many instances the government requires information not merely about the contractor's price but the underlying costs that make up that price. The contractor must certify that its cost information is "current, accurate and complete." Exceptions to this requirement apply when the product being supplied is a commercial item, or when the contract value is under $650,000, or when the award resulted from adequate price competition. If the cost information is not accurate, there is a presumption that the government overpaid and is entitled to a price reduction. Should the government believe the


GOD
WE TR
U.S. CAPITOL

contractor deliberately provided flawed or incomplete data, the matter may be referred for civil or criminal prosecution.

## Federal Supply Schedule Contracting

The federal government spends billions of dollars each year buying commercial goods through federal supply schedules, maintained principally by the General Services Administration and Department of Veterans' Affairs. These schedules identify technology, supplies and services available to authorized buyers, and allow federal agencies to buy essentially off-the-shelf items by issuing simple orders at predetermined prices. Schedule contract awards are indefinite quantity, indefinite delivery, fixed-priced contracts to commercial companies for a fixed time period.

While companies do not have to disclose historical cost information, they are required to submit information about their current commercial sales practices, including prices provided to other customers. Also, subject to limited exceptions, the contractor is required to give its most favored discount price to the government. A failure to provide accurate, current and complete commercial pricing information or to provide the best price to the government may result in owing the government a refund.

Even after a government contract is awarded to a successful bidder, a competing contractor may protest the award, either on the basis of an alleged flaw in the government's solicitation or its source selection. The agency seeking to award the contract is likely to defend its award decision, but the winning contractor may incur its own legal costs in the process. In addition, the business opportunity may be lost, not because the successful offeror was at fault, but rather because the government issued a flawed solicitation or failed to follow its own regulations in the source selection process.

Contract modifications may be made only by duly appointed contracting officers acting within the limits of both available funding and their delegated authority. The contractor has the responsibility to know the scope of authority of the government official with whom it deals. Many government program officers and engineers who work directly or even on-site with contractors do not have contracting officer authority, yet reasonably may be perceived as having such authority when they give directions on how to perform the contract. The concept of "apparent authority" does not apply to the government; therefore, to the extent that a company incurs costs based upon the directions or promises of government persons without this essential authority, the company does so at its financial risk.

In contracts other than for commercial items, the authorized contracting officer generally holds the unilateral right to direct changes within the general scope of the contract. The contractor generally is obligated to continue performance under the contract as changed, but is entitled to an equitable adjustment for the provable and allowable cost consequences of the change.

The government uses contract terms to implement social, economic and environmental policies, such as maintaining an affirmative action plan and reporting on the hiring of veterans. In many circumstances, these terms must be passed or "flowed down" to subcontractors who may be unfamiliar with compliance requirements. Missteps can result in the government terminating the prime contract for default and/or debarring the non-compliant contractor from government contracting.

## Government Audit Rights and Compliance

The government has the right to audit contractor books and records in specific circumstances. The most common audit situations are: (1) pre-award audits of the proposed price or estimated costs; (2) pre-award surveys of the contractor's capability to perform the contract and of the contractor's present responsibility (including past performance record); (3) functional systems' reviews, such as purchasing and subcontracting systems; and (4) incurred cost audits prior to final payment and closeout.

The government is entitled to "strict compliance" with the technical requirements of the contract. Unlike the commercial world where industry standards are acceptable, the government contract specifications trump industry standards. In this regard, it does not matter that the service or item actually furnished is equal to or superior to that described in the contract specifications. Strict compliance means exactly that, and there are serious risks for noncompliance.

Contractors who are awarded certain government contracts above a specified dollar threshold are responsible for ensuring that their cost accounting system measures up to the government's Cost Accounting Standards. There are 19 Standards to ensure uniformity and consistency in measuring, assigning and allocating costs to contracts with the federal government. These must be learned and understood before taking on substantial government work.

## Code of Business Ethics and Mandatory Disclosures

Contractors with large contracts are required to have a company code of business ethics and conduct designed to ensure ethical conduct and a corporate commitment to compliance with the law. In addition, these contractors are required to disclose to the government instances when the company believes it or its subcontractor has violated certain federal criminal laws or the False Claims Act. Failure to make such a disclosure can result in serious penalties for the contractor, including debarment.

Most companies have some technology or technical approach that gives them an advantage over their competitors. The government often will seek to obtain rights in the contractor's technical data. There are essentially three types of rights the government may obtain: (1) "unlimited rights" enabling the government to do anything it pleases with the data, including providing the data to contractor's competitor; (2) "limited rights," which constrain the government to use the item only for certain specific government purposes; and (3) "government purpose rights," which are limited rights but which turn into unlimited rights after a specified period of time. Unless a company is alert to the risks of protecting its rights in technical data and computer software, there is a serious risk of unwittingly giving up some or all of its rights.

The government has virtually an absolute right to terminate its contracts at the government's convenience for any reason. One of the common bases to terminate a contract for convenience is when funding for the program is exhausted. While contractors generally can recover their costs and unabsorbed overhead in such situations, anticipatory profits are not recoverable.

## Common Allegations of Wrongdoing

Contractors are obligated to charge the government only that amount which is allowed under the contract, the law and regulations. The contractor must be prepared to prove its charges to the government, often being subject to a rigorous post-contract audit.

Now, there are a number of statutes and regulations which make it illegal to provide gratuities to government persons. The distinctions between a legal business courtesy and an illegal gratuity can be subtle. The penalties and sanctions associated with providing illegal gratuities to government persons include denial of contract award, cancellation of the contract, criminal prosecution and debarment from federal government contracting.

A federal statute makes it illegal for a vendor or supplier to provide anything of value to a contractor or higher-tier subcontractor for or because of favorable consideration. A kickback may be anything from cash or gifts, to entertainment, to work on a home or vacation cabin, to employment of friends or relatives, or to anything else of value. The statute imposes an affirmative obligation on the government contractor to establish and enforce measures to prevent kickbacks within its organization.

In order to protect the integrity of the procurement process, there are serious penalties and sanctions where the government decision maker has a conflict of interest. For example, it is illegal for a contractor to enter into employment discussions with a government official who is substantially involved in administering its contract, or who has authority to award a public contract to the contractor.

Additionally, contractors can have organizational conflicts of interest that will restrict their ability to enter into certain contracts with the government. Organizational conflicts of interest can arise when a company has nonpublic information from its performance of a government contract that could provide it with an unfair competitive advantage in a different procurement. Also, organizational conflicts of interest can arise where a contractor has provided input into the government's acquisition strategy or would be required to evaluate itself if it were a bidder.

The Sherman Antitrust Act applies to government contracting and provides for both criminal and civil sanctions. Government contractors have an affirmative duty to ensure its agents and employees avoid contacts with competitor personnel that may be perceived as collusion on marketing, pricing or bidding.

## False Claims and Statements

There are severe sanctions for submitting a false claim to the government or a recipient of federal funds. For service contractors, recording and claiming costs based on labor hours can be a risky area and must be closely watched. The government may pursue a contractor for false claims either criminally or civilly. Also, whistleblowers can file a false claims action against contractors. Proving a false claim may be based on actual knowledge of the falsity as well as on deliberate ignorance or reckless disregard. Of course, under U.S. law, the company can be criminally and civilly liable for the acts of its employees performed in the scope of employment, or for acts which benefit the company. Huge damages and penalties may result from false claims.



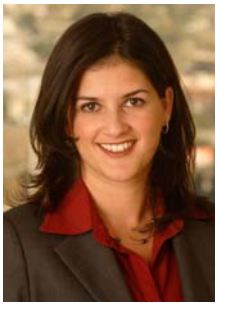
There are multiple risks of prosecution under Title 18 U.S.C. §1001 for false statements to the government. These risks emerge out of the many requirements for certifications, submittals, invoices, and proposals that must be submitted by the contractor to the government. Every such submittal bears the risk of being regarded as a false statement.

## Products or Service Substitution

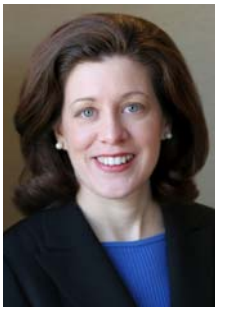
The government may regard substitution of a product or service or omission of a required test procedure required by contract specifications as a willful act and, therefore, punishable as a criminal or civil fraud. This is an area of high risk, requiring government contractors to be especially alert in assuring strict compliance with contract terms. The contractor is responsible to the government to ensure the integrity of the product and service, as well as the integrity of the related paperwork. The government also looks to the contractor to assure vendor and supplier quality procedures.

Before wading into the huge and potentially lucrative government market, the alert business organization must first learn about the pitfalls and likely increased administrative and operational costs involved. While problems with a commercial customer sometimes can be smoothed over, contract compliance problems on a government contract can bring down a company. Competitors, prosecutors and even the contractor's own employees can raise allegations that can be extremely costly and difficult to defend. A thorough understanding of the myriad of contract terms and regulations and a vigilant compliance program are the key ingredients to doing business with the government.


***Mark Troy*** *is a Partner in the Los Angeles office of Crowell & Moring. He has engaged in government contract-related litigation and counseling for over 25 years. He is an expert in defending procurement fraud actions brought by the federal government and by so-called qui tam whistleblowers under the civil False Claims Act.*



***Mana Elihu Lombardo*** *is a Counsel in the Los Angeles office of Crowell & Moring. She concentrates her practice primarily on government contracts litigation and handles a wide variety of complex civil and commercial litigation matters including labor and employment issues, contract disputes, business torts and environmental litigation.*



***J. Catherine Kunz*** *in a Partner in the Washington D.C. office of Crowell & Moring. Her practice involves both counseling and litigation on behalf of clients in a range of government contract law areas, including GSA Schedule contracting, contract claims and disputes, fraud and abuse, cost accounting issues, purchasing and subcontracting, and federal health care contracting.*

# Test No. 44

**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. Companies contracting with the government may be subject to criminal prosecution for failing to provide accurate information about the underlying costs to perform the contract.
❑ True ❑ False

2. Companies must disclose historical cost information to the federal government when using Federal Supply Schedule contracting as a vehicle for sales.
❑ True ❑ False

3. A contractor may protest the government's award of a contract to its competitor if it believes that the government did not follow the proper source selection process.
❑ True ❑ False

4. Only the appointed contracting officer has the authority to modify a government contract.
❑ True ❑ False

5. If the contracting officer implements a contract change, the contractor must bear the costs associated with that contract change.
❑ True ❑ False

6. The government can require a contractor to compel its subcontractors to maintain an affirmative action plan.
❑ True ❑ False

7. The government is not permitted to audit the contractor's capability to perform the contract.
❑ True ❑ False

8. A contractor meets the contract requirements of a government contract if it provides a service that is equal or superior to what is described in the contract specifications.
❑ True ❑ False

9. A government contractor may be required to set up a cost accounting system.
❑ True ❑ False

10. All government contractors must set up a company code of business ethics and compliance.
❑ True ❑ False

11. Under a government contract, the government may have unlimited rights to a contractor's technical data.
❑ True ❑ False

12. The government has a unilateral right to terminate a contract just because it is convenient for it to do so.
❑ True ❑ False

13. Once a government contract is complete, a contractor no longer needs to be able to prove the propriety of its charges to the government.
❑ True ❑ False

14. A company cannot be debarred from federal government contracting for providing a gratuity to a government official.
❑ True ❑ False

15. It is illegal for a vendor or supplier to buy government contractor personnel Lakers tickets in order to influence the contractor's decision to select that vendor for work under the government contract.
❑ True ❑ False

16. A government contractor can have discussions about future employment with the contracting officer administering its contract as long as the contracting officer is qualified for the job.
❑ True ❑ False

17. Government contractors can face criminal penalties for colluding with competitors.
❑ True ❑ False

18. A contractor may be subject to a civil lawsuit, but not to criminal penalties, for submitting a false claim to the government.
❑ True ❑ False

19. A contractor can be subject to criminal penalties for false statements made in its bid proposal to the government.
❑ True ❑ False

20. A government contractor is responsible for ensuring that its vendors and suppliers meet quality procedures.
❑ True ❑ False

## MCLE Answer Sheet No. 44

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 $15 testing fee for SFVBA members (or $25 for non-SFVBA members) to:

San Fernando Valley Bar Association
21250 Califa Street, Suite 113
Woodland Hills, CA 91367

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. | ❑ True | ❑ False |
| 2. | ❑ True | ❑ False |
| 3. | ❑ True | ❑ False |
| 4. | ❑ True | ❑ False |
| 5. | ❑ True | ❑ False |
| 6. | ❑ True | ❑ False |
| 7. | ❑ True | ❑ False |
| 8. | ❑ True | ❑ False |
| 9. | ❑ True | ❑ False |
| 10. | ❑ True | ❑ False |
| 11. | ❑ True | ❑ False |
| 12. | ❑ True | ❑ False |
| 13. | ❑ True | ❑ False |
| 14. | ❑ True | ❑ False |
| 15. | ❑ True | ❑ False |
| 16. | ❑ True | ❑ False |
| 17. | ❑ True | ❑ False |
| 18. | ❑ True | ❑ False |
| 19. | ❑ True | ❑ False |
| 20. | ❑ True | ❑ False |

# The Accidental Franchisor


BY BARRY KURTZ

ENTREPRENEURS, LIKE CHILDREN ON THE sidewalk outside an ice cream shop on a summer's day, are hopeful folk. They see any solid uptick in the economy as cause to start thinking expansion—and they can bring big-time trouble down on their heads if expanding means doing licensing, dealership or distribution deals.

Why? Because those who step over a fine line separating many ordinary business arrangements from franchising operations may find themselves unhappily enmeshed in an intricate regulatory apparatus whose dictates govern virtually every aspect of the entrepreneur's business operations. In a worst-case scenario, a misstep can drag the entrepreneur into court to fight state or federal regulators hoping to make the entrepreneur do some jail time, not to mention angry business associates seeking to rescind their deals and maybe collect damages.

Life rarely gets that hard for the accidental franchisor; as a rule, to do jail time, one has to commit big-time franchise fraud. But franchising is a growth industry, and many an expansion-minded entrepreneur has gone down the franchising road to success. However, many others cobble together what they believe to be licensing arrangements or distribution or dealership systems involving trademarked goods or services only to find that, in the eyes of the law, the arrangements look and smell like franchise arrangements.

That can spell trouble because franchising is not for the faint-hearted. Indeed, the entrepreneur who thinks government regulates private industry with a heavy hand has another think coming once he or she becomes a franchisor. Government does not much care what companies do in forming ordinary business relationships. It cares a great deal, on the other hand, about the business dealings of franchisors, whom it generally considers bad guys on the prowl for good guys, otherwise known as franchisees. To keep them at bay, government requires franchisors to prepare and register complex and costly franchise disclosure documents before they can begin to sell franchises. Also, much of their business activities thereafter are strictly regulated.

This makes it the job of the business lawyer to draft licensing, distribution or dealership agreements for expansion-minded clients—meaning arrangements that do not establish the franchisor-franchisee relationship under either state or federal law if that is possible. In addition, knowledgeable franchise law attorneys have attempted for decades, without much luck, to draft the "not-a-franchise" license agreement. This way, when the client's business structure includes all of the elements of a franchise under the law, it is also the business lawyer's responsibility to explain to these clients that in such cases, franchisor-franchisee avoidance is just not possible.

## The Franchising Agreement

The first step in an attorney being able to help their entrepreneur client is to understand what constitutes a franchising arrangement, and what distinguishes a franchising arrangement from other ordinary business relationships. Start with the Federal Trade Commission's definition of a franchising arrangement. The FTC says the franchising arrangement:

- grants permission to use a trademarked good or service in the conduct of a business enterprise
- requires the payment of royalties to the trademark owner
- gives the trademark owner significant control over the operations of the business making use of the trademark
- may obligate the trademark owner to provide significant assistance, for example, training to the business making use of the trademark

State laws take a more specific tack, generally defining a franchisor-franchisee relationship as one in which:

- The franchisee pays a franchise fee to the franchisor plus royalties and possibly payments for inventory, supplies, training, and assistance in order to gain the right to sell or distribute trademarked goods or services under a marketing plan "prescribed in substantial part" by the franchisor.
- The franchisor exercises significant control over the franchisee's business, grants the franchisee exclusive rights to operate in a given territory and may require the franchisee to purchase or sell a specified quantity of the franchisor's goods or services.

- The franchisee's business is "substantially associated" with the franchisor such that, for example, the franchisee uses the franchisor's trademark and advertising slogans to identify its business.

These points make clear why many expansion-minded entrepreneurs get into trouble when negotiating licensing, distribution or dealership agreements. After all, if one doesn't have the resources to expand by buying up other companies outright, he/she needs to get their owners to buy into his/her plans. That can mean allowing them to use one's trademark, granting them territorial rights, helping them with training and perhaps technical assistance and keeping tabs on them to ensure that all of one's work turns into dollars on the bottom line. Thus, if an entrepreneur goes too far down this road, they turn into a franchisor. The lawyer's job is to keep exactly that from happening, if possible.

The key to the franchisor-franchisee relationship is that it makes one party, the franchisee, dependent on the other, the franchisor, for many of the elements of a successful business enterprise, for example, a valuable and widely known trademarked product or service, an efficient and proven business system, expert advertising, marketplace dominance and the like. These elements create value. Franchisees pay good money to make use of them in the form of franchise fees and royalties.

By way of contrast, ordinary licensing, distributorship or dealership arrangements do not make one party dependent on the other. Indeed, the hallmark of such arrangements is that the parties come to the negotiating table as (1) independent business operations and remain so, (2) each with its own product or service, whether trademarked or not, and (3) each with its own business systems, advertising and marketing strategies, and the like.

One or both of the parties may indeed make use of the other's trademarked goods or services under such arrangements. They may collaborate in advertising and marketing campaigns, in training employees to make the most of the relationship and even in developing business systems to keep track of successes and failures. To be sure, money will also change hands, but it will not take the form of royalties—that is, the regular payment by one party to the other of sums reflecting a specific percentage of gross sales. Instead, when money changes hands among parties to licensing, distributorship or dealership agreements, it is usually payment at wholesale prices for goods or services for resale. The parties to such arrangements do business together, but they do business on their own too and remain separate and independent enterprises.

## Keeping Enterprise Separate

It follows from the above that the lawyer who helps a client to come to any such arrangement must make sure that the contracts documenting the deal do not inadvertently take the client into the world of franchising.

How? Words are important—always dispositive when it comes to the vagaries of franchise law—so start with the language in contracts covering, say, a licensing arrangement of a trademarked good or service. The language in such contracts must assert that the arrangement is a licensing agreement only and that the parties do not intend to create a franchisor-franchisee relationship.

Should the arrangement require that the licensor provide training services—a common hallmark of franchisor-

franchisee agreements—the contracts must specify who is to do what, and at what cost. Similarly, should the contracts set up the licensor as the sole provider of trademarked goods or services to the licensee—another common hallmark of the franchisor-franchisee relationship—they must provide that the licensor will offer the goods or services at bona fide wholesale prices only. In addition, the licensor may impose no obligation on the licensee to purchase goods exceeding the supply deemed necessary by the licensee.

However, getting the right language into the contracts is not enough. Indeed, it may not matter at all what the contracts say about trademarked goods or services or about licenses and fees—if the actual business practices of the parties mimic those of franchisors and franchisees. As this makes clear, the control issue is particularly important. If a licensing agreement, for example, imposes only specific limitations on the way the licensee may advertise a trademarked good or service, then the licensor must refrain from trying to impose others—or else re-negotiate the contract.

In other words, if the parties to a licensing agreement get into a tussle over the way the licensee advertises a trademarked good or service, the courts will surely want to know the extent to which the licensor dictates how the licensee uses the asset in the course of business—and if they find elements of a franchisor-franchisee relationship in the practices of either or both parties, they will probably rule the agreement a franchisor-franchisee arrangement.

Clearly, the object of the game for the business lawyer who writes any such agreement is not just to specify that the parties to the agreement do not contemplate creating a franchisor-franchisee relationship even though one may offer training services or they may, in one way or another, do business in training services or become the sole supplier of trademarked goods. The parties must avoid creating a de facto franchisor-franchisee relationship in practice, and it is the job of the lawyers involved to help them understand what is possible and what is not. The contracts the lawyers write may specify that the parties intend to remain independent, but they must remain so in practice too.

The lawyer who crosses T's and dots I's in any such arrangement keeps trouble away in more ways than one. There is still the state regulatory apparatus, along with its worries about bad-guy franchisors. There is also the erstwhile business associate who, unhappy with the results of a licensing, dealership or distribution deal, seeks redress in court on grounds that the contracts documenting the arrangement really established a franchisor-franchisee relationship and that, as an injured franchisee, he or she has dibs on a certain pile of treasure.

## Beyond the Labels

In a litigious age, there is for the most part no claim to which an unsuccessful venture cannot give rise, and the complexities of franchise law give rise to their share. For example, take the dizzying case of a South Carolina distributor of rain gutters whose manufacturer sued for "royalties" allegedly due under a licensing agreement. In response, the distributor argued that if indeed the licensing agreement called for the payment of royalties, the arrangement was really a franchising agreement and the manufacturer had violated the state's Unfair Trade Practices Act law by failing to provide the manufacturer with a franchise disclosure document.

The state court disagreed, ruling that the arrangement was what the contract called it— namely, a licensing deal—but things didn't end there. The dispute reached the South Carolina Supreme Court and even, at one point, federal district court, which noted that what mattered was not what the contract said but what the relationship between the manufacturer and the distributor amounted to—and it was "problematic," the court added, whether the relationship in this instance amounted to a franchisor-franchisee relationship. *Englert, Inc. v LeafGuard USA, Inc.*, 2009 U.S. Dist. LEXIS 116106, Bus. Franchise Guide (CCH) ¶14,297 (D.S.C. Dec. 14, 2009). The manufacturer and distributor eventually settled their dispute out of court, but not before learning that it costs time and money to get free of the intricacies of franchise law.

On a more positive note, another case, this one involving what it means to be a franchisee, shows that common sense can prevail, more or less, though once again at the cost of time and money. A Michigan insurance agent sued an insurer complaining that as a condition of entering into an "Independent Contractor Agent's Agreement," the carrier had required him to borrow $15,000 from a bank owned by the carrier to buy furniture and computers and to follow specific marketing programs and growth strategies in the conduct of his business. *Bucciarelli v. Nationwide Mutual Insurance Co.*, 662 F. Supp. 2d 809, Bus: Franchise Guide (CCH) ¶14,200 (E.D. Mich. 2009).

The label on the contract did not matter, the agent argued. The $15,000 amounted to a franchise fee, and that plus the requirement that he follow specific marketing programs and growth strategies established a franchisor-franchisee relationship between him and the carrier.

Michigan franchise law does not cover insurance agents. Even if it did, the $15,000 was a loan, not a franchise fee. Indeed, the agent couldn't be a franchisee at all because he really didn't sell insurance products, the insurer argued. He was really just an "order taker" of insurance products, and the insurer did not require him to follow "a marketing plan or system prescribed in substantial part" by the insurer. The insurer won the day in this case, but the court left the door open on the question whether Michigan franchise law might indeed cover insurance agents, no matter what label insurers put on their agent contracts.

Courts across the land have left doors open on other fuzzy questions under franchise law. Indeed, franchise case law abounds with cases seeking to blur the distinctions between ordinary business arrangements and franchising agreements, and as time goes on, the good bet is that the line separating the two, already fine, will become even finer. It follows that for the business lawyer preparing any such agreement, Job #1 is to spare no effort to keep the expansion-minded client safely away from the intricacies of franchise law, if it is possible to do so. Job #2 is to consult a franchise lawyer when in doubt. Job #3 is to hope that no dispute arises in the ordinary course of business that will turn the client into an accidental, unwilling franchisor anyway.

***Barry Kurtz**, a certified specialist in franchise and distribution law under the California State Bar Board of Specialization, is of counsel to the Woodland Hills law firm Ezra Brutkus Gubner LLP. He may be reached at (818) 827-9229 or at bkurtz@barrykurtzpc.com.*

HOT TOPIC

The San Fernando Valley Bar Association
Business Law, Real Property & Bankruptcy Section
Presents

# REPRESENTING THE CLIENT
## BEING SUED BY HIS FORMER EMPLOYER

Lawyers in several fields—civil litigation, bankruptcy, criminal defense and employment law—are called on to handle the challenge of a client sued or threatened with suit by the client's former employer on allegations the client misappropriated the employer's funds or otherwise defrauded the employer.

Proper handling and avoiding costly mistakes require a multi-disciplinary approach.

## THE EXPERTS SPEAK

**Jeffrey S. Thomas, Esq.**
Civil Litigation and Employment Law

- What are the employee's relevant duties?
- How can the intricacies of the statute of limitations be used to put the employer on the defense?
- How can the Fifth Amendment be used to the client's advantage?
- How is discovery managed in the civil case?
- Can the civil case be stayed and how is it done?

**Michael H. Raichelson, Esq.**
Bankruptcy Practitioner

- Is a discharge of the fraud claim really out of the question?
- Does a bankruptcy filing offer a potentially advantageous forum?
- How does a bankruptcy filing affect settlement?
- Does a bankruptcy filing offer strategically-beneficial delay?

## Friday, April 13, 2012
### 12:00 Noon
### 16633 Ventura Blvd., 11th Floor, Encino

**RSVP to Linda Temkin at events@sfvba.org or (818) 227-0490, ext. 105. The advance registration cost is $30 for SFVBA members and $40 for non-members. There is an additional fee of $10 at the door.**

**The San Fernando Valley Bar Association is a State Bar of California approved MCLE provider. By attending this seminar, attorneys earn 1 hour of MCLE.**

*Special thanks to Lewitt, Hackman, Shapiro, Marshall & Harlan for providing this venue.*

# WHEN A CLIENT SUFFERS A CYBER-ATTACH

BY GREGG A. RAPOPORT AND DAVID LAM, CISSP, CPP

A BUSINESS LAWYER MAY NEVER RECEIVE a late-night jailhouse call from a client trying to make bail, but should not be too surprised to get a frantic call from one whose computer network has been hacked. Corporate clients these days need and expect their counsel to be somewhat conversant in information security matters. In a recent survey, more than 500 IT professionals who had dealt with corporate data breaches ranked hiring legal counsel as among the top three steps to reduce the negative consequences of a data breach incident.[1]

A data breach, or cyber-attack, can expose a company to a loss of proprietary data, expensive forensic and remediation costs, privacy lawsuits, regulatory enforcement actions and immeasurable competitive and reputational losses. Successful intrusions make the news almost daily, with victims running the gamut from global banks and businesses to local retailers, public agencies, healthcare providers and educational institutions.[2] Valuable and confidential network information is vulnerable regardless of the client's IT budget and adherence to best practices in information security.

As with any criminal enterprise, the means employed by hackers is limited only by their ingenuity; attacks have involved insider theft and sabotage, spear phishing,[3] spoofing, social engineering scams, advanced persistent threat malware, bot-nets, and denial of service (DDoS) attacks.

Companies unwittingly heighten their vulnerability in the name of productivity and efficiency by integrating cloud-based services and embracing the use of consumer-friendly smartphones and ever-evolving tablet devices which rely on those services and/or provide access to corporate networks.[4] In 2011, the risk of outsourcing the custody of sensitive customer data was exposed by incidents involving "secure" cloud vendors Epsilon[5] and Dropbox.[6]

Media coverage of cyber-attacks has given businesses a better understanding of the risks, but small and mid-size clients may be less aware that if they are attacked, they could be legally mandated to take swift action to notify affected customers as well as certain public agencies. Data breach notification legislation has become a central component of the government's policy to protect consumers from the perils of fraud and identity theft.[7]

Well before cyber-crime became commonplace, in 2002, California enacted the nation's first data breach notification statute for all businesses, Civil Code §1798.82.[8] This law provides that anyone conducting business in California and owning, licensing or maintaining computerized data containing personal information must disclose any security breach to any California resident "whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person."

The disclosure notice—which is non-waivable[9]—must be given "in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement" or "any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system." (Cal. Civ. Code §1798.82(a)-(c).) If a notice is sent to more than 500 California residents, it also must be sent to the state's Attorney General. (Cal. Civ. Code §1798.82(f).) If a business fails to comply with the notification statute,[10] it may be liable for civil damages. (Cal. Civ. Code §1798.84.) Several key aspects of the law remain vague and untested, despite its having been amended twice and central to many privacy lawsuits since its enactment.

Breach notification obligations do not stop there. For a client conducting business beyond California's borders, a data breach could trigger distinct and often more onerous notification requirements imposed by up to 48 other U.S. jurisdictions.[10] In coming months, Congress could simplify matters by passing a long-anticipated preemptive federal breach notification law, and its requirements are likely to be stricter than those of the California statute. If the client does business abroad, international privacy laws may also apply.[12] On top of these requirements, in 2011 the SEC advised publicly-traded companies that, "as with other operational and financial risks," companies must report any material risks to the security of their data, including past cyber-attacks, "if these issues are among the most significant factors that make an investment in the company speculative or risky."[13]

The emergence of breach notification rules has proven to be problematic because when they have been followed, businesses have suffered expensive and embarrassing fallout even when the risks of consumer fraud or identity theft were insubstantial. For example, in 2011, Sony's PlayStation Network suffered an attack at the hand of the "Anonymous" underground hacker group, which illegally infiltrated Sony Online Entertainment's servers and acquired names, email addresses, and in some cases encrypted debit or credit card numbers, on approximately 77 million users of the Playstation Network. Upon discovering a possible data breach, Sony shut down the network for several weeks, publicly disclosed the incident within a week of the discovery, and offered customers identity theft protection.[14]

Soon after, Sony was named in 58 putative class actions filed in the United States and Canada on behalf of users of

PlayStation and other Sony online services.[15] None of the plaintiff classes alleged it had suffered identity theft as a result of the Sony incident;[16] instead, damages were sought by putative classes merely for the "risk of fraud and identity theft," and similar inchoate harms.[17]

Other recent cyber-attack incidents have involved similar consequences flowing from breach notification, i.e., class action filings predicated on "fear of identity theft" allegations.[18] California courts in particular have seen a growing trend of these cases. For example, in late 2011, Sutter Health and Sutter Medical Foundation in Northern California announced on their website that a desktop computer containing patient information had been stolen.[19] Within a month, at least 13 putative class actions were filed.[20] As one class representative alleged, she "and the Class she seeks to represent now face years of constant surveillance of their financial and medical records, monitoring [etc] ...."[21]

California businesses should take heed of recent federal data breach cases that have fed into and accelerated this trend. In contrast to earlier cases in which consumer class actions were dismissed for failure to plead compensable injury from the data breach,[22] both the Ninth Circuit[23] (applying Washington law) and the First Circuit[24] (applying Maine law), have held that such actions do not require the pleading of actual damages.[25] Further, the Ninth Circuit in a California case[26] has held that a consumer whose records have been stolen in a data breach incident has Article III standing due to being "at greater risk of identity theft," although the court did not resolve the question under California law of "whether time and money spent on credit monitoring as the result of the theft of personal information are damages sufficient to support a negligence claim."

Before a client actually faces a cyber-attack incident, the attorney may want to call attention to this emerging pattern of class action filings made on the heels of breach notifications. At minimum, this should spark a discussion about how the client is using technology and employee training to manage its risk of a data breach.

Clients should also be made aware that there now are dozens of insurance companies offering some form of cyber-coverage, thereby enabling them potentially to transfer some of their uncovered financial risk.[27] The client should involve the attorney in a careful review of its existing coverage and possible endorsements or stand-alone policies recommended by a knowledgeable broker.

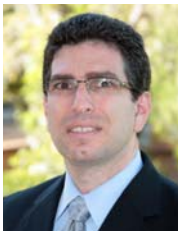
Counsel may also wish to recommend a review of the client's contracts with cloud providers and other vendors who may be handling or storing protected customer information. Such a review will enable the client to assess how those vendor relationships may create added exposure, whether the vendors are themselves adequately secured and appropriately insured, and whether the client is covered as an additional insured.

Beyond focusing the client on the cyber-risk equation, an attorney who has previously handled data breach incidents may offer to refer the client to a back office suite of pre-vetted independent IT and information security professionals. These vendors are invaluable in helping to harden the client's defenses, to respond immediately to an attack, and to provide critical forensic support, preferably under an umbrella of attorney client and/or work product privilege where possible.[28]

If a data breach does occur, the informed attorney is well-positioned to work with the client as a trusted advisor, together with its information security professionals and forensic consultants, in order to assess exposure, critically evaluate breach notification requirements, direct required notifications, advocate against fines and penalties, and pursue potential insurance recovery.

Both the client and the lawyer will sleep better knowing that they are prepared to deal with the legal ramifications of potential cyber-attacks.

***Gregg A. Rapoport*** *practices privacy litigation as part of a business and insurance litigation practice in Pasadena and may be reached at gar@garlaw.us and (626) 585-0155.*



***David Lam, CISSP, CPP*** *is an IT and information security professional and author, and works as a CIO/CISO in Los Angeles. He is vice president of the Los Angeles chapter of the Information Systems Security Association. He may be reached at dlam@wisela.org and (310) 889-2342.*

---

[1] "Aftermath of a Data Breach Study," Ponemon Institute and Experian Data Breach Solution, Jan. 2012. http://ex.pn/w11rS3. The other steps were to assess harm to victims and employ forensic experts. .

[2] E.g., http://www.datalossdb.org.

[3] A glossary of information security terms may be found here: http://bit.ly/yM4FpF.

[4] Between October 2009 and November 2011, 39% of all Protected Health Information [PHI] breaches "occurred on a laptop or other portable media...." Breach Report 2011 - Protected Health Information. http://bit.ly/zYvLXI.

[5] Prepared Statement of Jeanette Fitzgerald, General Counsel, Epsilon Data Management, LLC, 6/2/11. http://bit.ly/zyKvdf.

[6] The Dropbox Blog. http://blog.dropbox.com/?p=821.

[7] White House Fact Sheet: Cybersecurity Legislative Proposal. http://1.usa.gov/wNepQw.

[8] A separate data breach notification law applies to California state agencies. Cal. Civ. Code §1798.29.

[9] Cal. Civ. Code §1798.84(a).

[10] Healthcare entities covered by federal breach notification laws are deemed to comply with California's notification law if in they comply with 42 USC §17932. Cal. Civ. Code §1798.82(e).

[11] At present, 46 states plus the District of Columbia, Puerto Rico and the Virgin Islands, have breach notification laws. http://bit.ly/zwv6ww.

[12] For a discussion of pending changes to privacy laws in the European Union, see http://bit.ly/wJcUmy.

[13] SEC Div. of Corp. Finance, CF Disclosure Guidance: Topic No. 2, 10/13/11. http://1.usa.gov/yG-dw1G. The disclosure of such risks need not be so detailed as to "itself compromise a registrant's cybersecurity."

[14] In June 2011, Playstation Network's President, Tim Schaaff, appeared before a Congressional panel focusing on cyber crime and data security, and was called to task for waiting seven days to notify the public. http://bit.ly/x5yoC2.

[15] The class actions are described in a declaratory relief complaint brought against Sony by one of its insurance carriers. http://zra.com/attachments/article/73/zurich.pdf.

[16] See http://www.jpml.uscourts.gov/ (MDL 2258).

[17] See Complaints filed in MDL 2258, *supra.*

[18] E.g., *Reilly v. Ceridian Corp.*, 664 F.3d 38 (3d Cir. 2011) (payroll processing firm's data breach triggered putative class action, although no tangible harm was alleged and it was "not known whether the hacker read, copied, or understood the data."); *Krottner v. Starbucks Corp.*, 628 F.3d 1139 (9th Cir. (Wash.) 2010) (after Starbucks notified 97,000 employees whose records had been on a stolen laptop, two putative class actions were brought, although no tangible harm was alleged).

[19] http://www.sutterhealth.org/noticeforpatients/.

[20] Reply in Support of Petition For Coordination of Actions, filed 11/23/11 in *Pardieck v. Sutter, etc.*, Sacramento County Superior Court, Case No. 34-2011-00114396.

[21] Complaint filed on 11/29/11 in *Atkins v. Sutter, etc.*, San Francisco Superior Court Case No. CGC-11-516204.

[22] E.g., *Pisciotta v. Old Nat. Bancorp*, 499 F.3d 629 (2007); *Hendricks v. DSW Shoe Warehouse, Inc.*, 444 F.Supp.2d 775 (2006).

[23] *Krottner v. Starbucks Corp.*, 628 F.3d 1139 (9th Cir. (Wash.) 2010).

[24] *Anderson v. Hannaford*, 659 F.3d 151 (1st Cir. 2011).

[25] But see *Paul v. Providence Health System-Oregon*, --- P.3d ----, 2012 WL 604183 (Or.,2012) (upholding dismissal of negligence and unfair trade practices class action claims stemming from theft of patient data, where plaintiffs "alleged no actual identity theft or financial harm, other than credit monitoring and similar mitigation costs."); *Katz v. Pershing, LLC*, --- F.3d ----, 2012 WL 612793 C.A.1 (Mass.),2012 (distinguishing *Hannaford* where hackers had in fact "acted on the ill-gotten information.")..

[26] *Ruiz v. Gap, Inc.*, 2010 WL 2170993 (9th Cir. 2010); *Claridge v. RockYou, Inc.,* 785 F. Supp. 2d 855, 861 (N.D. Cal. 2011).

[27] For a discussion of this subject, see "The Coverage Question" http://bit.ly/yReaRV. .

[28] A good place to start is with the Los Angeles chapter of the Information Systems Security Association (ISSA, www.issala.org), which offers numerous resources and educational seminars.

# Annual Judges' Night Dinner

## Thursday, February 23, 2012 • Warner Center Marriott

**Photos by Paul Lester Photography**

Many of the 85 Bench Officers in attendance

SFVBA President Alan J. Sedley and Chief Justice of California Tani Cantil-Sakauye

Inspiration Award Recipient Judge Michael K. Kellogg, Chief Justice of California Tani Cantil-Sakauye and Judge of the Year Michael J. Convey

Judge of the Year Michael J. Convey, Los Angeles Superior Court Presiding Judge Lee Smalley Edmon and Inspiration Award Recipient Judge Michael K. Kellogg

Platinum Sponsor Adelman & Seide LLP

Retired Judge Burt Pines, Judge of the Year 2011 Susan Speer, Chief Justice of California Tani Cantil-Sakauye and Councilmember Dennis Zine

Wine Sponsor Law Offices of Patricia L. McCabe

SFVBA Family Law Section Co-Chair Michelle Short-Nagel, Judge of the Year Michael J. Convey, SFVBA President Alan J. Sedley and Judge Mark A. Juhas

500 members of the Bar and Bench in attendance

SFVBA Board of Trustees with special guests and honorees

SFVBA President Alan J. Sedley, Inspiration Award Recipient Judge Michael K. Kellogg, Executive Director of Goals for Life Reggie Berry and Assistant Presiding Judge David S. Wesley

Platinum Sponsor Adelson Testan Brundo & Jimenez, APC

Alan Sedley with retired Judges Burt Pines and Michael A. Latin and Commissioner Richard L. Brand

Platinum Sponsor Alpert Barr & Grant APLC

Platinum Sponsor Wasserman Comden Casselman & Esensten

Gold Sponsors Greenberg & Bass LLC and Alternative Resolution Centers (ARC)

SFVBA staff ensured the night ran smoothly

Platinum Sponsor University of West Los Angeles

SFVBA Programs Committee Co-Chairs Gerald L. Fogelman and Natasha Dawood

# The Education Obligation on Buying Auto Insurance

**BARRY EDZANT**
SCVBA President

WITHIN THE LAST COUPLE of months, I've had an eye opening experience working with two new clients. Both of these clients were victims of serious automobile accidents, and suffered significant damages.

The first case involved a gentleman who suffered over $22,000 to his 2011 Mercedes Benz. I examined his auto insurance policy and learned that he did not have collision coverage. The negligent driver only had $10,000 for property damage liability. As such, my client was out $12,000. Upon questioning my client, I learned he was worth approximately $18 million dollars.

In the second case, my client had no uninsured motorist coverage. Naturally, the negligent driver was uninsured, and my client was left holding thousands of dollars in medical expenses. As it turns out, between my client and her husband, they earn more than $250,000 per year.

In both of these cases, I inquired with my clients why they had such bare bones insurance and in both instances, they responded that this is what their agents recommended them to buy. At this point, I realized we have a significant problem in our society with consumers not knowing how to buy auto insurance, and agents not knowing how to sell it.

We protect our assets by buying large limits of liability insurance, and equally important, we buy large limits of uninsured motorist coverage to protect our family from drivers who carry no or limited liability insurance. We never rely on the negligent driver having enough insurance to take care of our needs. We protect our property, our health, and our livelihoods because we know the fallout from a major accident can be financially and physically catastrophic.

I once asked an auto insurance broker friend how much liability and uninsured motorist coverage he carried on his own policy. He responded he had a 100/300 liability policy, and 15/30 UM. When asked why only 15/30, he responded that it only covers your medical bills. He knew nothing about loss of earnings, or general damages also being a part of uninsured motorist coverage.

Insurance agents should take a more assertive role in learning about the product they sell, and must be more than just salespersons. Agents have a fiduciary duty to properly assess their customers' needs, and to at least call their customer each year and conduct an interview to make sure they have the insurance they need. The different types of insurance, as well as the different limits, should be fully explained, and clear examples should be provided the customer of what can happen in different accident scenarios.

We as lawyers also need to educate our clients how to properly buy auto insurance. It is as simple as sending an email blast or a letter to our past and present clients. I cannot begin to count how often I've received calls from clients telling me how dangerously exposed they were. This simple gesture creates an enormous amount of good will and also serves to keep our names in front of our clients.

Three years ago I represented a gentleman who was involved in an accident, suffering a severely damaged knee with subsequent infection. His medical bills exceeded $100,000. The negligent driver carried a 50/100 liability policy which was paid quickly. Just two weeks prior to this accident, my client had spoken to his business attorney who reviewed my client's auto policy. He advised my client to raise his uninsured motorist coverage to $500,000, which he did after he left the office. His premium was increased by $20. Within one year following the accident, my client's insurance company paid him his UM limits of an additional $450,000.

This simple review of an auto policy by a concerned business attorney allowed my client to pay for all of his medical expenses, lost wages and properly compensate him for his pain and suffering. All for a $20 per year increase.

There is nothing worse than telling your client, "Sorry, there is nothing I can do for you." While this statement to your client is not always preventable, educating the public on how to properly purchase auto insurance can go a long way to improve the quality of our clients' lives.

***Barry L. Edzant** is a Valencia attorney specializing in lemon law, auto fraud and personal injury cases. He can be reached at (661) 222-9929 or at BarryE@Valencialaw.com.*

# Classifieds

## ATTORNEY TO ATTORNEY REFERRALS

### APPEALS & TRIALS

$150/hour. I'm an experienced trial/appellate attorney, Law Review. I'll handle your appeals, trials or assist with litigation. Alan Goldberg (818) 421-5328.

### 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.

## EXPERT

### STATE BAR DEFENSE & PREVENTATIVE LAW

Former: State Bar Prosecutor; Judge Pro Tem.Legal Malpractice Expert, Bd. Certified ABPLA & ABA. BS, MBA, JD, CAOC, ASCDC, A.V. (818) 986-9890 Fmr. Chair SFBA Ethics, Litigation. Phillip Feldman. www.LegalMalpracticeExperts.com. StateBarDefense@aol.com.

## SPACE AVAILABLE

### ENCINO

EXECUTIVE SUITE (2,000 sf.) 5 window offices, large secretarial/steno pool, storage; MINI-SUITE (850 sf.) 2 window offices, 2 sec. spaces, storage; INTERIOR OFFICE (300 sf.) includes 1 sec. space; 3 WORKSTATIONS (60 sf. each). Includes: reception room, shared kitchenette, 3 common area conference rooms, and law library, paid utilities, janitorial, security building with 24/7 access. Call George or Patti (818) 788-3651.

EXECUTIVE OFFICE in "A" building–great views, freeway close, reception, conference, copier, sec. space available, support staff as needed. Please call Joan (818) 783-8830.

Large office with spectacular view of the Valley in Encino. Professional office amenities included. Friendly and comfortable. Call Rocky or Lisa (818) 788-3270.

### SHERMAN OAKS

Executive suite for lawyers. Window office (14.5x12) or corner office (14.5 x 19). Adjacent secretarial bay available for each. Receptionist, kitchen and conference rooms. Call Eric or Tom at (818) 784-8700.

### VALLEY VILLAGE

Large window office 12' x 16' with garden patio and adjoining secretarial area. Shared executive law suite with receptionist, library, copier, kitchen and conference room. Beautiful building on Riverside Drive, friendly/relaxed atmosphere. Call Steve (818) 761-0011 or Weissinc1@aol.com.

### VAN NUYS

Executive Suites starting at $475. Located two blocks from Civic Center. Full-time receptionist, conference rooms, law library, kitchen, copier, utilities, janitorial included. Call Rosalee at (818) 756-2000.

## SUPPORT SERVICES

### 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 • visitsbyIlene@yahoo.com • (818) 968-8586/(800) 526-5179.

**Classified Advertising** Per Issue

| | Member | Non-Member |
|---|---|---|
| 25 words or less | $45 | $90 |
| Each additional word | $1.80 | $3.60 |
| Add logo | $30 | $55 |

# New Members

*The following applied as members to the SFVBA in February 2012:*

**Elie Aghabi**
Valley Village
(818) 644-7726
eaghabi@swlaw.edu
*Law Student*

**Zhana Aivazi**
Glendale
(818) 689-7156
zalvazi@gmail.com
*Law Student*

**David A. Akopyan**
Burbank
(818) 955-8807
dakopyan@swlaw.edu
*Law Student*

**Mr. Mher Asatryan**
Law Offices of Mher Asatryan
Van Nuys
(818) 781-0179
mher@asatryanlaw.com
*General Practice*

**Kristin E. Coble**
Law Offices of Patricia L. McCabe
Van Nuys
(818) 907-9726
kristincoble.lawoffice@gmail.com
*Social Security, Social Security Disability and SSI*

**Stanley H. Getz**
Woodland Hills
(818) 884-4450
sgetz@getzlaw.com

**Stephanie Ghanem**
Los Angeles
(310) 498-2205
sghanem@swlaw.edu
*Law Student*

**Robert L. Gigliotti**
Encino
(818) 996-9776
robert@gigliottilalaw.com
*Family Law*

**Michael Goldsmith**
Tarzana
(818) 344-9212
michael.l.goldsmith@gmail.com
*Law Student*

**Arash J. Goleh**
Tarzana
ajgoleh@gmail.com
*Real Property*

**Doug S. Jackson**
Calabasas
(818) 917-3884
dj@swlaw.edu
*Law Student*

**Samantha E. Jackson**
Los Angeles
(951) 237-2185
sjackson@swlaw.edu
*Law Student*

**Babak Kheiri**
Tarzana
(818) 926-0703
babak.kheiri@yahoo.com
*Law Student*

**Shaunt Kodaverdian**
La Crescenta
(818) 314-8269
kodaverdian@gmail.com
*Law Student*

**Shelvin G. Koshy**
Simi Valley
(805) 551-9683
skoshy@swlaw.edu
*Law Student*

**Givelle Lamano**
San Francisco
(818) 571-2300
givelle@gmail.com
*Criminal*

**Jonathan Lin**
West Hills
(818) 307-5608
johnnytreachery@gmail.com

**Herberth M. Lovo**
Los Angeles
(323) 327-1124
herberth.m.loo@gmail.com
*Law Student*

**Brittney A. McCarthy**
Northridge
(310) 985-8278
mccarthy915@gmail.com
*General Practice*

**Alyssa A. Mervyn**
Woodland Hills
(818) 620-3556
alyssamervyn@gmail.com
*Law Student*

**Saman Mollaei**
Encino
*Law Student*

**Anita Moradian**
Neighborhood Legal Services of LA County
Glendale
(818) 521-1334
moradian.anita@gmail.com
*Civil*

**Hector Andres Pacheco**
Mitchell Silberberg & Knupp
Los Angeles
(310) 312-3284
hap@msk.com
*Entertainment*

**Larry A. Peluso Esq.**
Costa Mesa
(949) 395-0092
pelusolaw@gmail.com
*Medical Malpractice*

**Roy E. Pfiester Jr.**
Pfiester Law Corporation
Los Angeles
(323) 662-6400
Repjr@earthlink.net
*Personal Injury*

**Sharan S. Ramchandani**
Los Angeles
(213) 385-2905
sramchandani@swlaw.edu
*Law Student*

**Arash Shadi**
Los Angeles
(310) 948-9674
meirshadi@gmail.com
*Law Student*

**Misra Snyder**
Los Angeles
(818) 438-4404
misrasnyder@gmail.com
*Law Student*

**Jason M. Stone**
Rancho Palos Verdes
(310) 415-5685
jstone@swlaw.edu
*Law Student*

**Robert J. Taylor Esq.**
Woodland Hills
(818) 917-0863
RJTaylorEsq@gmail.com
*Civil*

# Calendar

### New Lawyers Section
## Achieve More in Your Practice!

APRIL 5
6:30 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Attorney Myer Sankary will give invaluable tips on how to get better results in managing your office, obtaining new clients and negotiating better deals— all through the application of the new science of the mind and social science of influence.

**FREE TO CURRENT SFVBA NEW LAWYERS!**
**LIGHT DINNER INCLUDED**
**1 MCLE HOUR**

### Probate & Estate Planning Section
## Navigating Public Benefits for Your Client

APRIL 10
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Public Benefits Consultant James Huyck will give valuable tips on obtaining what you might secure for your clients.

**MEMBERS**
**$35 prepaid**
**$45 at the door**
**NON-MEMBERS**
**$45 prepaid**
**$55 at the door**
**1 MCLE HOUR**

### Business Law, Real Property & Bankruptcy Section
## Representing the Client Being Sued By Their Former Employer

APRIL 13
12:00 NOON
LEWITT HACKMAN ET AL.
CONFERENCE ROOM
ENCINO

Civil litigation and employment law attorney Jeffrey Thomas and bankruptcy practitioner Michael Raichelson address an employee's relevant duties, statute of limitations, discharge of the fraud claim and possible bankruptcy filings to assist your client in achieving their desired outcome.

**MEMBERS**
**$30 prepaid**
**$40 at the door**
**NON-MEMBERS**
**$40 prepaid**
**$50 at the door**
**1 MCLE HOUR**

### All-Section Sponsored Lunch
## LexisNexis Litigation Luncheon

APRIL 17
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS

The LexisNexis team will update attendees on their latest offerings.

**FREE TO CURRENT MEMBERS!**
**1 MCLE HOUR**

### Workers' Compensation Section
## How to Increase or Decrease Your Ratings

APRIL 18
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney Cindy Graff addresses how to increase or decrease your ratings based on the A.M.A. Guides and discusses the combination of ratings based on different body parts.

**MEMBERS**
**$35 prepaid**
**$45 at the door**
**NON-MEMBERS**
**$45 prepaid**
**$55 at the door**
**1 MCLE HOUR**

### Litigation Section
## Essential Collections Issues for Litigators

APRIL 19
6:00 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Creditors' rights attorney Ronald Cohn discusses how litigators can use writs of attachment in commercial cases to get priority over other creditors and how to collect on judgments when the judgment debtor is divorced.

**MEMBERS**
**$35 prepaid**
**$45 at the door**
**NON-MEMBERS**
**$45 prepaid**
**$55 at the door**
**1 MCLE HOUR**

### Family Law Section
## Vocational Evaluations

APRIL 23
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO

Judge Diana Gould-Saltman will address this topic along with Vocational Counselor Lynne Tracy and Vocational Rehab Consultant John C. Meyers.

**MEMBERS**
**$45 prepaid**
**$55 at the door**
**NON-MEMBERS**
**$55 prepaid**
**$65 at the door**
**1 MCLE HOUR**

### Santa Clarita Valley Bar Association
## Networking Breakfast

APRIL 25
7:30 AM
TOURNAMENT PLAYERS CLUB
VALENCIA

**MEMBERS**
**$20**
**NON-MEMBERS**
**$25**

## Networking Mixer At The Rack

LOS ANGELES CLIPPERS

VS.

DENVER NUGGETS

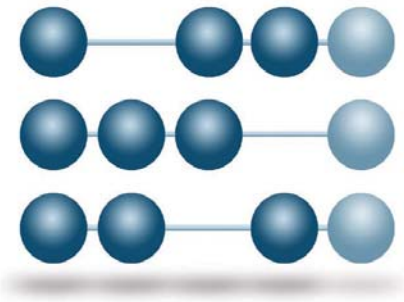
**April 18, 2012**
**6:00 PM to 8:30 PM**

6100 Topanga Canyon Blvd.
Woodland Hills
(Westfield Promenade)

Complimentary pizza and free beer for SFVBA Members!

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

**The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. To register for an event listed on this page, please contact Linda at (818) 227-0490, ext. 105 or events@sfvba.org.**



KRYCLER
ERVIN
TAUBMAN &
WALHEIM

AN ACCOUNTANCY CORPORATION

Phone: (818)995-1040
Fax: (818)995-4124
15303 Ventura Boulevard, Suite 1040
Sherman Oaks, CA 91403
E-mail: INFO@KETW.COM
Visit us @ www.KETW.COM

## Litigation Support • Expert Witness
## Forensic Accountants • Family Law Matters
## Business Valuations • Loss of Earnings • Damages

## OFFICIAL SPONSORS OF THE SAN FERNANDO VALLEY BAR ASSOCIATION

Member SEC Practice Section

American Institute of Certified Public Accountants

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

*Call Mike Krycler or Ken Walheim*