VALLEY LAWYER

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A Publication of the San Fernando Valley Bar Association

A Review of 2010 California Real Estate Law

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To Help Rebuild or Destroy?

SEYMOUR I. AMSTER
SFVBA President

LAWYERS ARE FACED WITH THIS QUESTION more often than other individuals in our society. So often one sentence, one expression or even one word can result in some human endeavor being rebuilt or being destroyed. As lawyers we represent individuals at critical times in their lives – during the potential destruction of a marriage, disagreement between partners, labor dispute or even when the liberty of our client is at stake.

In these critical times our clients look towards us for advice, suggestion and leadership. What we chose to say often is the deciding factor in the rebuilding or the destruction of a piece of humanity.

We know this, we understand this, and often we do not like this. Many of us agonize at that moment, what should we say? Or how should we say it? But worst of all, if we say it will our client listen, and if he does not like the message will he still want us as his lawyer?

Probably no other lawyer has to deal with this as often as the criminal lawyer. A criminal lawyer has to experience this situation time and time again. So often, for example, a male client is facing a long sentence in prison, probably equivalent to the rest of his life. The evidence against him is overwhelming. The prosecution makes an offer of a substantial number of years, but one that will allow him to be released from prison someday. The lawyer knows that if he recommends the offer, his client will be upset with him. The client believes the lawyer is a "dump truck." If the lawyer is court appointed, the client may request a new attorney. If the lawyer is privately retained, the client may fire him.

So what do you do? Help to rebuild his life by convincing him to take a deal, so he will at least see the outside world some day? Or help destroy his life by not trying to convince him to take the deal and allow him to face trial where the outcome is inevitable and the destruction will be all but complete?

I do not know what others do in this situation, but I search for a place of common understanding with my client. I often try to "feel my client's pain."

It is too easy to simply say someone is bad and there is no good in him. I have found that if I take the time to know my client, find out about what they have experienced, I can learn what is bothering them and how that is causing them pain. Once I get them to acknowledge that pain, make them understand that at least one person in the world has compassion for them, I am then able to put my client in a frame of mind to listen. Thus, I am able to convince them to accept a deal instead of wasting their entire life in prison. I have helped rebuild a life instead of allowing one to be destroyed.

It is this strategy that allowed me to convince a gang member facing a life sentence for an attempted murder to accept a plea bargain for 37 years (even though he wanted to go to trial in a case where there were multiple eyewitnesses and his girlfriend was going to be forced to testify against him). Or when I saved a 16-year-old boy facing multiple life sentences for attempted murder, even though he was not the shooter, but shouted out the gang name as a fellow gang member fired the gun.

This boy had so much pain because of watching his father rape his 12-year-old sister. He did not want to take any deal; he just wanted to get on the stand and tell his story. But I felt his pain and convinced him to take a twelve year deal where he will only actually do six years. The last time I saw him, right after he was sentenced, he cried when I told him to remember, "that at least one person in this world cared about him and felt his life meant something."

By taking the time to get to know our clients, we can help our clients during their tough times. We can guide them away from making an emotional decision toward making one based upon logic.

It makes no difference if this is not in the criminal law setting. Clients are prone to act rashly and emotionally in the family law setting as well as during a matter involving a civil dispute. When two or more human beings have chosen to settle their differences through a lawsuit, both sides typically feel misunderstood by the opposing party. They feel pain and emotion because of the reasons for the lawsuit as well as for being subjected to the probing by the opposing attorney.

If we acknowledge this pain and inform our clients that we understand the pain, we can calm them down and help them make a logical decision. In the end, our job is not to help build or destroy a marriage or a business, for the end result is already inevitable. Our job is to navigate our client through the process. Help them survive what can be a very taxing and painful process.

If we do this, and do this right, we have not only helped rebuild a person and prevent the litigation from destroying their lives, but also we have helped ourselves by making a lasting client. They may not need our services again, but they will certainly remember how we helped them through a difficult period in their life. Often times, a client will recommend us to a friend who is in need of a lawyer.

Seymour I. Amster *can be contacted at Attyamster@aol.com.*

Back (and) to the Future

ELIZABETH POST
Executive Director

BEFORE I HIGHLIGHT A FEW OF THE SFVBA'S accomplishments as 2010 comes to a close, I want to take a minute to talk about the November issue of *Valley Lawyer.*

The MCLE article *Illegal Alien Spotting* was written by the author to bring awareness to the challenges faced by law enforcement and government agencies to putting into effect Arizona's new immigration law. It is also meant to guide attorneys through our complex immigration statutes and regulations. Unfortunately, this important information may have been overlooked by some amidst the humor and satire integrated into the piece. What one individual may think as witty and astute may be viewed as hurtful and disrespectful by others.

The San Fernando Valley Bar Association takes seriously our diversity efforts within our community and among the profession. Our goal is to help make our distinguished legal profession a reflection of the public we serve. In this instance, an article made light of a very serious matter, and our message of acceptance may have been missed in the interpretation.

We are reviewing our editorial policies and procedures to ensure that we remain sensitive to all viewpoints. Interested members may find an alternative version of November's *Valley Lawyer* on our website at www.sfvba.org.

Looking back at 2010, our year was filled with many accomplishments and successes.

- The SFVBA established the Law Post program this summer to introduce area high school students of all backgrounds to the practice of law. Our Law Post Committee is in the process of meeting with local educators to set up clubs throughout the San Fernando Valley.
- The Attorney Referral Service generated $1.8 million in attorney fees. Our ARS consultants handled more than 15,352 inquiries and referred 2228 cases to panel members.
- The Mandatory Fee Arbitration (MFA) Program opened 42 cases as of November 1, the most since the start of the 4-year program. Of those cases, 21% received fee waivers or reductions, certainly a sign of the times.
- More than 350 attorneys and bench officers attended our 2010 Judges' Night. Mark your calendar for February 24, 2011. We will honor Judge Susan Speer as the SFVBA Judge of the Year; Judge Mary Thornton House with the Administration of Justice Award for spearheading California's new expedited jury trial program; and Judge Morton Rochman with the Stanley Mosk Legacy of Justice Award for his years of service to the juvenile justice court.
- *Valley Lawyer* continued to be an excellent means for SFVBA members to market your practice through editorial content and full-color advertising. Interested in writing an article about your area of expertise in 2011? View the editorial calendar below for upcoming issues' focus, or contact Editor Angela Hutchinson at angela@sfvba.org with your ideas for an unique article.

Wishing you and your families a happy and healthy New Year!

Contact Liz Post at epost@sfvba.org or (818) 227-0490, ext. 101.

VALLEY LAWYER
2011 EDITORIAL CALENDAR*

MONTH	ISSUE FOCUS/ MCLE TOPIC	DUE DATE
JAN	General/ Legal Calendaring	Nov 15
FEB	Courts and Administration of Justice/ Transportation and Logistic Services	Dec 15
MARCH	Technology/ Computer and Internet Law	Jan 14
APRIL	Practicing Law in the New Economy/ Tax or Business Law	Feb 15
MAY	Health and Safety/ Health Law	March 15
JUNE	Public Service/ Ethics	April 15
JULY/AUG	Travel and Tourism/ Transportation Law	May 16
SEPT	Education/ Special Education Law and Advocacy	July 15
OCT	Intellectual Property and Entertainment/ Contract Law	Aug 15
NOV	Government and Public Policy/ Administrative Law	Sep 15
DEC	Year in Review/ TBD	Oct 14

**Submit completed articles or ideas via email. Word count for Feature Articles is 1,000-2,000. MCLE Articles are 2,500-3,500 words including 20 True and False questions.*

California Supreme Court's Employment Law Cases

A Year in Review

By Kenneth J. Rose

DURING THE PAST YEAR, THE CALIFORNIA Supreme Court continued to review pivotal issues arising under our state's comprehensive employment laws. The court's employment-related decisions addressed:

- Whether California courts should follow the federal courts' "stray remarks doctrine" in employment discrimination lawsuits (*Reid v. Google*)
- Whether evidence of personnel actions can support harassment claims brought under California's Fair Employment and Housing Act [FEHA] (*Roby v. McKesson*)
- What factors determine if punitive damages awarded is constitutionally excessive (*Roby v. McKesson*)
- Whether California's kin care leave law applies to an employer's paid sick leave policies that provide for an uncapped number of compensated days off (*McCarther v. Pacific Telesis*)
- What standard of judicial review applies to an arbitrator's decision on an employee's anti-discrimination claim under the FEHA that is arbitrated pursuant to a mandatory employment arbitration agreement and whether such agreement can restrict an employee from seeking administrative remedies for FEHA violations (*Pearson Dental Supplies v. Superior Ct.*)

The following is a summary of relevant employment law cases:

***Reid v. Google, Inc.*, SC S158965 (8/5/10)**

In *Reid v. Google, Inc.*, an age discrimination case brought under FEHA, the employment law issue before the Supreme Court was whether California courts should follow the federal courts in adopting the "stray remarks doctrine" in employment discrimination lawsuits. Under this doctrine, statements of non decision-makers, as well as statements by decision-makers which are unrelated to the challenged employment decision, are deemed "stray" remarks that are irrelevant to the question of discriminatory motive and insufficient to avoid summary judgment.

The employer had been granted summary judgment in the trial court, in large part, due to the court's exclusion of a variety of age-related comments deemed "stray remarks." On appeal, however, the Court of Appeal rejected the notion that the "stray remarks" doctrine should operate to categorically exclude these remarks, and instead considered the comments in combination with all of the other evidence advanced by the plaintiff of discriminatory animus.

The Supreme Court affirmed, rejecting a rigid application of the "stray remarks" doctrine to discrimination cases. The court reasoned that a categorical exclusion of "stray remarks" resulted in courts impermissibly "weighing" evidence at the summary judgment stage, rendering otherwise relevant evidence inadmissible.

***Roby v. McKesson*, 47 Cal. 4th 686 (2009)**

In *Roby v. McKesson Corporation*, a plaintiff's wrongful discharge, harassment and discrimination suit against her former employer and supervisor, the Supreme Court decided two questions: (1) whether evidence of personnel actions can support harassment claims brought under the FEHA, and (2) whether the amount of punitive damages awarded was constitutionally excessive.

As to the first issue, the Supreme Court held that although the FEHA treats discrimination and harassment claims as distinct, there is no basis for necessarily excluding evidence of biased personnel management actions in assessing the harassment claim. The court explained that discrimination refers to bias in the exercise of official actions on behalf of the employer, and harassment refers to bias that is expressed or communicated through interpersonal relations in the workplace.

It stated, however, that although discrimination and harassment are separate wrongs, they are sometimes closely interrelated, and even overlapping, particularly with regard to proof. "[S]ome official employment actions done in furtherance of a supervisor's managerial role can also have a secondary effect of communicating a hostile message. This occurs when the actions establish a widespread pattern of bias."

As to the second issue, the court held that under the circumstances of the instant case, the amount of punitive damages awarded should not exceed the amount of compensatory damages (i.e., $1,905,000). The jury had awarded Roby more than $15 million in punitive damages. The appellate court reduced the punitive damages to $2 million.

In assessing the proper limit of the punitive damages award, the California Supreme Court looked to the U.S.

Supreme Court's decision in *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003), 538 U.S. 408 as a guide. In *State Farm*, the U.S. Supreme Court held that the due process clause of the Fourteenth Amendment to the United States Constitution places constraints on state court awards of punitive damages.

Based on *State Farm*, the court concluded that a one-to-one ratio between compensatory and punitive damages is the federal constitutional limit in this case. The court stated that because it found "no indication of a corporate purpose to cause injury to Roby," but rather that McKesson was merely guilty of "managerial malfeasance," the employer's conduct was at the low end of the range of wrongdoing. The court also based its decision on the high compensatory damages award, warranting a lower ratio because of the actual damages' deterrence of similar conduct.

***McCarther v. Pacific Telesis*, 48 Cal.4th 104 (2010)**

In *McCarther v. Pacific Telesis*, the Supreme Court resolved whether California Labor Code section 233 applies to an employer's paid sick leave policies that provide for an uncapped number of compensated days off. Labor Code section 233 is a leave law known as "kin care." It allows employees to use ½ of their annual accrued sick leave entitlement to attend to the illness of a child, parent, spouse or domestic partner. The statute defines "sick leave" as "accrued increments of compensated leave."

The court held that California's kin care statute applies only to traditional sick leave policies where an employee accrues a measurable/banked amount of sick leave over the course of a year, but does not apply to paid sick leave policies that provide for an uncapped number of compensated days off. The court explained that, otherwise, implementing kin care obligations would be unmanageable for employers and contrary to the Legislature's intent.

***Pearson Dental Supplies v. Superior Ct.*, SC S167169 (4/26/10)**

The issues reviewed by the Supreme Court in *Pearson Dental Supplies v. Superior Court* were: (1) What standard of judicial review applies to an arbitrator's decision on an employee's anti-discrimination claim under the FEHA that is arbitrated pursuant to a mandatory employment arbitration agreement and (2) Can such a mandatory arbitration agreement restrict an employee from seeking administrative remedies for FEHA violations?

The court ruled that: clear error of law will serve as a basis for vacating an arbitrator's award where the error deprives an employee of a hearing on the merits of their FEHA claims or other unwaivable statutory claims; arbitration agreements may lawfully preclude employees from pursuing administrative adjudication of their state law claims; and in FEHA cases, the Supreme Court's prior holding in *Armendariz v. Foundation Health Psychcare Services, Inc.*, (2000) 24 Cal.4th 83 requires that arbitrators state reasons for their written decisions in sufficient detail to provide a meaningful basis for judicial review and that mere written conclusions are not enough.

In so ruling, the court acknowledged that, generally speaking, a court is not permitted to vacate an arbitration award when the award is based on errors of law. The court explained, however, that the scope of judicial review is somewhat greater in the case of a mandatory employment

arbitration agreement that encompasses an employee's unwaivable statutory rights including a hearing on the merits of his or her claim. The arbitrator's error of law involved applying the statute of limitations to bar the claim, without considering whether unlawful discrimination actually occurred.

With respect to the issue of contractual restrictions on an employee's access to administrative agency proceedings/remedies, the court held that, while it may be unconscionable under California law to prevent an employee from submitting claims to administrative agencies, such as the California Fair Employment and Housing Commission or Labor Commissioner, state law is preempted when applied to an arbitration agreement covered by the Federal Arbitration Act.

Lastly, in regard to the requirement under Armendariz that arbitration decisions in FEHA cases be written in a sufficient manner to permit judicial review, the court found that the arbitrator's decision was non-compliant because it concluded that employee had not complied with the statute of limitations requirement of the agreement, without providing the reasoning for arriving at that conclusion.

Pending Cases

The following employment law cases and issues are pending decision by the Supreme Court:

***Sonic-Calabasas A, Inc. v. Moreno*, 174 Cal. App. 4th 546 (2009), 174475/B204902**

(1) Can a mandatory employment arbitration agreement be enforced prior to the conclusion of an administrative proceeding conducted by the Labor Commissioner concerning an employee's statutory wage claim? (2) Was the Labor Commissioner's jurisdiction over an employee's statutory wage claim divested by the Federal Arbitration Act?

***Harris v. City of Santa Monica*, 181 Cal. App. 4th 1094 (2010), S181004/B199571**

Does the "mixed-motive" defense apply to employment discrimination claims under FEHA?

***Brinker Restaurant Corp. v. Superior Court*, 165 Cal. App.4th 25 (2008), S166350/D049331**

What is the proper interpretation of California's statutes and regulations governing an employer's duty to provide meal and rest breaks to hourly workers.

***Harris v. Superior Court*, S156555**

Do claims adjusters employed by insurance companies fall within the administrative exemption to the requirement that employees are entitled to overtime compensation?

Rulings in these pending cases could come before the close of 2010 or early in 2011.

Kenneth J. Rose *is the founder and President of The Rose Group, APLC. Ken has practiced employment and labor law for nearly 35 years. Ken's consulting services include workplace investigations, expert witness testimony, employment law training and auditing employment law policies and practices. He can be reached at krose@rosegroup.us.*

A Review of 2010 California Real Estate Law

By Richard H. Gibson

IN 2010, THE LEGISLATURE and the appellate courts provided a good deal of new and improved California real estate law. This article will focus on short sales, foreclosure cases, the position of contractors (both public and unlicensed) and conclude by discussing two decisions, which underline the perils of lawyers relying on email.

Short Sales

As the real estate slump continues, many properties continue to be worth less than the debt against them. To sell such a property, it is necessary to persuade the lender to accept less than it is owed. This is called a "short sale." While short sales can be an attractive alternative to a foreclosure, they involve traps for the unwary seller and his or her lawyer.

One such trap is the seller's continuing liability to the lender for a deficiency. One might think since the lender has agreed to the sale price, the lender has also agreed it is owed nothing further after the sale. That is not necessarily so. The anti-deficiency statutes Code of Civil Procedure Section 580b and 580d protect property owners if there was a non-judicial foreclosure sale or, after any type of foreclosure, if the property is residential and less than four units.

But in a short sale, by definition, there is no foreclosure. Thus, neither 580b nor 580d apply. The lender may agree in writing to waive the deficiency. If it does not do so, however, under existing law it has the right to sue after the short sale for the unpaid amount of the loan.

The California Legislature this year presented a partial fix to this problem. It enacted new CCP Section 580e, which provides that if the first trust deed or mortgage holder agrees in writing to accept a sale, which pays it less than the full amount it is owed, it cannot pursue the borrower for the rest of the loan. The law has a number of exceptions.

First, it applies only to first trust deeds or mortgages. It does not apply to junior deeds of trust or mortgages, which can still pursue the borrower after a short sale for any shortfall. Second, it applies only to dwellings with less than four residential units. It does not apply to commercial properties or apartment buildings. Third, the lender is expressly permitted to sue the property owner for fraud in the short sale process or waste, i.e., causing damage to the property.

Short sales are notorious for taking a long time to complete and, in general, being far more difficult deals to close than ordinary sales. *Holmes v. Summer* (Oct. 6, 2010) 2010 WL 3896726, held that a seller's real estate agent had a duty to disclose to the buyer that a transaction was a short sale and not an ordinary sale.

The Foreclosure Wars

In 2009, the Legislature enacted Civil Code Section 2923.5, which provided that, before a lender foreclosed on a home, it had to contact the borrower and try to work out some alternative to foreclosure. In June 2010, the first appellate decision on 2923.5 was published, *Mabry v. Superior Court*, 185 Cal. App. 4th 208, 110 Cal. Rptr. 3rd 201. The Court of Appeal answered many of the questions raised by 2923.5.

"There is nothing in section 2923.5 that requires the lender to rewrite or modify the loan." 185 Cal. App. 4th 214. The law can be enforced by a private cause of action. Rejecting two common lender arguments, no, the borrower need not tender the full amount of the mortgage in default before it can sue and, no the law is not pre-empted by federal law. Finally, and critically, the borrower's remedies are limited to postponing the foreclosure; the borrower cannot undo a foreclosure because the law was violated.

In other lender liability decisions, borrowers won some and lost some. *Garcia v. World Saving*, FSB (2010) 183 Cal. App. 4th 1031, 107 Cal. Rptr. 3rd 683, held that, while a gratuitous oral promise to delay a foreclosure was not enforceable, the borrower could state a cause of action for promissory estoppel if, in reliance on the promise to delay the foreclosure

on Property A, the borrower took out a new and expensive loan on Property B, intending to use the money to cure the default on Property A.

In *Malkoskie v. Option One Mortgage Corp*, 2010 WL 3703797, after a foreclosure, a borrower stipulated that the lender could evict him from the house. The borrower then sued for wrongful foreclosure. The Court of Appeal held the lawsuit barred; the stipulated judgment for unlawful detainer precluded any later challenge to title.

In *Perlas v. GMAC Mortgage*, LLC (2010) 187 Cal. App. 4th 429, 113 Cal. Rptr. 3rd 790, the court held that a borrower could not sue a bank for fraud, on the theory that the borrower had relied on the bank's determination that the borrower could afford the loan.

In two Real Estate Settlement Procedures Act ("RESPA") cases, the Ninth Circuit held, first, that a borrower had standing to sue for violation of RESPA, even if she was not actually over-charged, *Edwards v. First American Corp.* 610 F. 3rd 514 (2010), and second, that a RESPA action for improper charges was possible only where no service whatsoever was performed in exchange for the fee. *Martinez v. Wells Fargo Home Mortgage, Inc.*, 598 F. 3rd 549 (2010).

A decision of the Ninth Circuit Bankruptcy Appellate Panel, *In re Zotow*, 432 B.R. 252 (2010), explored the parameters of acceptable bank behavior after a Chapter 13 is filed. It held that, under the facts presented, a mortgage-holder did not violate the bankruptcy automatic stay by sending the homeowner a notice of increased mortgage payments due, nor was the law violated by the bank accepting the larger payments from the homeowner.

Contractor Cases

If a public entity hires a contractor for a project, but fails to give the contractor full information on what the project will cost, when can the contractor recover additional compensation over the agreed-upon amount? Prior case law had held that the contractor could not recover unless it showed affirmative fraud by the public entity. *Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91 Cal. App. 3rd 1, 153 Cal. Rptr. 767. In *Los Angeles Unified School District v. Great American Insurance Co.* (2010) 49 Cal. 4th 739, 112 Cal. Rptr. 3d 230, the Supreme Court reversed *Jasper Construction* and held that the contractor could recover if the public entity had and knowingly withheld information which was material to costs.

In *Alatriste v. Cesar's Exterior Designs, Inc.* (2010) 183 Cal. App. 4th 656, 108 Cal. Rptr. 3rd 277, the Court of Appeal rejected a series of arguments and denied all compensation to a contractor for work done while unlicensed. *Loranger v. Jones* (2010) 184 Cal. App. 4th 847, 109 Cal. Rptr. 3rd 120, went in the other direction. It ordered the homeowner to pay the contractor, even though he had used unlicensed subcontractors and workers.

The Perils of Email

Many attorneys conduct most of their practice via email. Two Court of Appeal decisions states that this practice can be dangerous. In *Culver Center Partners East No. 1, L.P. v. Baja Fresh Westlake* (2010) 185 Cal. App. 4th 744, 110 Cal. Rptr. 83, a commercial landlord had sent a three-day notice to pay rent or quit by email. Even though the lease specified that email notice was acceptable, and there was no question that the email had been received, the trial court and the Court of Appeal held notice inadequate, as the email was not sent to the correct physical address.

In *Soifer v. Chicago Title Co.* (2010) 187 Cal. App. 4th 365, 114 Cal. Rptr. 1, a title insurance company gave a real estate investor quick email answers to questions about title on certain properties. The information turned out to be wrong, and the investor sued. Tough luck, said the Court of Appeal; emails are not abstracts of title, and the title insurer had no liability.

Richard H. Gibson *is the principal of Gibson Law, P.C. of Woodland Hills, which specializes in real estate and business litigation. In practice since 1983, Rick represents commercial property owners, investors, businesses and individuals. He has published in The American Bankruptcy Law Journal, the California Bankruptcy Law Journal, the California Real Property Journal and the Ventura Star. Gibson can be reached at rickgibsonlaw@gmail.com.*

Modern Family Meets the Great Recession and Divorce

By Susan Carlisle, CPA

An attorney received a frantic call from Steven, a man in his late 40's. "Please help us. Over the last year the lawyers got the remaining $60,000 equity in our house. There's nothing left, and we're not even divorced yet. We're still living together in the same house. It's awful. Can we come talk to you right away?" he pleaded.

DIVORCING COUPLES ARE desperately seeking alternatives to making deals "at the courthouse steps." A trip to the Superior Court in downtown Los Angeles found that a majority of the people in the halls are dressed in clothing from Target or Walmart and few, if any, wear tailored Italian suits. Estimates are that eighty percent or more of the cases are *in pro per*. The expensive suits are more often sitting in conference rooms in Century City or Encino with private judges at the head of the table.

As the middle class suffers through trauma and disruption, can the family law community justify taking what little remains? In the midst of this jobless recovery, emotional distress is being caused. The impact of the economic downturn will be felt by families for quite some time. The practice of family law will also be transformed, not only as a result of the Great Recession, but as a result of the changing nature of marriage itself.

The normal challenges associated with splitting one household into two in a marital dissolution have been rendered even more daunting. Falling home prices, the slow market in home sales, sizeable credit card debt and home equity loans, along with diminished savings and retirement funds make negotiating a marital settlement agreement even more stressful.

Although there are discussions about giving up on real estate with excessive mortgages, clients think that the market is poised for an upturn in the near future. Only the "ruthless and the reckless" have walked away from their homes (Brett Arends, The Great Mortgage Mystery, *Wall Street Journal*, Oct. 8, 2010). Most people, especially women, still feel that it is essential to remain in the family residence.

Job loss, or the losses generated by a previously flourishing business, is a real financial stressor that leads to the breakdown of marriages. Men account for about 75% of the decline in employment (U.S. Bureau of Labor Statistics, 2009). The breadwinner has to cope with his declining self-image. Often this triggers depression or exacerbated abusive behavior. Women report their resentment after coming home from work to find their unemployed husband on the couch watching television, or worse, with a bottle of booze. A sudden decline in the marital standard of living is difficult to cope with.

Accruing substantial debt puts a strain on a marriage. Sometimes it causes one spouse to blame the other, especially if a higher level of spending continues unabated. Conflict over money is the most common predictor of divorce for men. For women, conflicts over finances and sex are the most common predictors (Cheryl Wetzstein, Marriage, Money Go Hand in Hand, *The Washington Times*, Dec. 27, 2009).

The National Marriage Project attempted to put a positive spin on the falling divorce rates, which were down for the first time in five years ("It's Official: Recession Kills Divorce," http://www.doublex.com). They pointed out that tough times often reminded the family members of their interdependence (Emily S. Rueb, Love in the Time of Recession, *The New York Times*, Feb. 9, 2010): one spouse needed the other's steady job and health care benefits; in-laws were available to provide child care and temporary financial assistance, even a roof.

A more cynical (or realistic) view, perhaps, is that divorce is expensive. With more married people admitting to being unhappy, they just cannot afford two separate households or to hire attorneys. What can they do if there is nothing left to divide but the debt? One common solution is to continue to live in the same house together, albeit in separate bedrooms, if possible.

More often than not, divorcing couples in the Los Angeles area report during their initial visit to their attorneys that they are still living together. An article in *The New York Times* pointed out that there were many people who just stayed married for years – the "Un-Divorced" – because they did not want to go through the agony and expense of divorce proceedings, and there were other practical considerations. Warren Buffett, the chairman of Berkshire Hathaway, stayed married for 27 years until his wife died, while he lived with another woman. The three of them even sent out holiday cards together (Pamela Paul, The Un-Divorced, *The New York Times*, July 30, 2010).

Another recent addition to marital settlement agreements is the payment of child support to people in their 50's, who, only one generation ago, would

have been childless, or empty nesters. Surrogacy, egg donation and in vitro fertilization have generated babies for middle aged parents; therefore, there are still young children to consider while divorcing couples approach retirement age. Gay and lesbian partners often have children as well with assisted reproductive technology. Couples still plan for the care and support of their 80 and 90-year-old parents, who live longer than they had been in the past.

Stay-at-home moms are slowly but surely disappearing from the landscape. With high unemployment rates among the workforce, nonworking wives are a luxury few can afford. Yet, there were more stay-at-home dads last year (Ross Douthat, Marriage and the Recession, *The New York Times*, Dec. 8, 2009).

Today there are more women graduating from college than men. Young people are waiting longer to get married – average age 25 for women and age 28 for men – and even longer to have children (Richard Fry and D'Vera Cohn, New Economics of Marriage: The Rise of Wives, *Pew Research Center Publications*, Jan. 19, 2010). They are moving in together instead.

In 2008, 41% of all births in the United States were to unmarried women, about half of whom were cohabiting (Mark Mather and Diana Lavery, U.S. Economic and Social Trends Since 2000). In the future, family lawyers may have fewer divorces, yet more child support only cases.

Research indicates that as marriage rates overall have declined, marriage has become the province of the more educated class; it's a "wealth-building institution" (Wetzstein). A newly minted male professional is acutely aware of this advantage; therefore, it is more likely that he will marry another professional with similar tastes in politics, hobbies and entertainment. In the year 2007, 22% of wives had income higher than their husbands, whereas in 1970 only 4% did (Fry and Cohn).

Young, two-earner families are more likely to share household chores and child rearing; therefore, 50/50 custody arrangements are realistic when they split up. Family lawyers more often represent one of two lawyers divorcing each other, or two doctors, or an engineer and an accountant. These sophisticated clients demand more control over the process and the outcome.

It is time to give serious consideration to cutting unnecessary costs. Letter writing between two lawyers is expensive. Stonewalling is expensive. Extreme positioning is expensive. Court appearances are expensive. Trials are outrageously expensive. Settling cases in the ADR room of the courthouse after exhausting a significant portion of the family's assets is a waste of precious resources.

Unfortunately, there are still a small number of irrational clients who are motivated by revenge or avarice. On their own, or with the acquiescence of their attorneys, they commit themselves to perpetuating the war. A new generation of family lawyers and their experts may find it too distasteful to represent them in the future.

Mediations and collaborative law are a growing solution for divorcing middle and upper class families, although mediations are far more popular due to the perception of their lower cost. An increasing number of family lawyers advertise their availability for both methods. Collaborative groups have formed committees to identify methods of keeping the costs down. The Elkins Family Law Task Force's implementations will require more court time, not less, so that it will take longer to schedule court appearances in the future.

After this recession, lawyers can expect a backlog in divorce cases. Couples will have become accustomed to spending less, and they will balk at writing big checks for retainers. The word will be disseminated on the internet from the advisors of the rich and famous to the middle class. In a short time, mediation and collaborative law will no longer be alternatives to litigation. They will be widely recognized as the only sensible and cost-effective ways to divorce.

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MCLE ARTICLE AND SELF-ASSESSMENT TEST
By reading this article and answering the accompanying test questions, you can earn one MCLE credit in Legal Ethics. To apply for the credit, please follow the instructions on the test answer form on page 19.

Protecting Confidences and Secrets vs. the Duty of Loyalty

By Lisa Miller

FOR DECADES, COUNSEL AND THE COURTS have wrestled with the relationship between counsel's fundamental obligations regarding client confidences and secrets versus the obligation of all lawyers to their clients – the duty of loyalty. These concepts are often conflated, but it is important for all counsel to understand their distinct obligations under each.

Understanding Concepts

Confidences and Secrets

The duty of confidentiality is fundamental to the attorney-client relationship. The nature of the attorney-client relationship recognizes the fiduciary relationship pursuant to which clients regularly divulge confidential information and share confidences with their counsel.

Generally, "secrets" include information, broader than that protected by the attorney-client privilege, that the client has requested be held inviolate, or the disclosure of which would be embarrassing or would likely be detrimental to the client. Maintaining inviolate the confidences and secrets shared with counsel by clients is one of the principal obligations that bind counsel. As a result, counsel may not do anything that discloses or betrays the confidences and secrets of clients (except as permitted or required by law or applicable ethics rules).

Loyalty

The principle precluding representing an interest adverse to the interests of a current client is based on the need to assure the attorney's undivided loyalty. For this reason, counsel may not accept any representation that would prevent counsel from devoting counsel's entire energies to the client's interests. The duty of loyalty is the underlying principle at stake in conflict of interest situations.

Professional responsibility rules seek the objective of public confidence, as well as internal integrity. A lay client is likely to doubt the loyalty of a lawyer who undertakes to oppose him in an unrelated matter. Hence the decisions condemn acceptance of employment adverse to a client even though the employment is unrelated to the existing representation. The basis of the condemnation is the client's loss of confidence, not the attorney's inner conflicts.

Requirements Regarding Clients' Confidences and Secrets

Current Clients

Counsel shall not reveal information protected from disclosure by Business and Professions Code sec. 6068, subdivision (e)(1) absent the informed consent of the client, according to Rule of Professional Conduct 3-100 (or as provided in paragraph (B) of Rule 3-100).

All counsel have the duty to maintain inviolate the confidence, and at every peril to themselves, preserve the secrets of their clients under Bus. & Prof. Code sec. 6068 (e)(1) (this section controls absent counsel's good faith belief that disclosure is necessary to prevent a criminal act that reasonably will result in death of, or substantial bodily harm to, an individual).

This duty of confidentiality is more far-reaching than communications protected by the attorney-client privilege. For example, if counsel accepts new employment that would naturally tempt counsel to misuse or misappropriate a prior client's confidences, this second employment is adverse to the interests of the former client.

Criminal or fraudulent conduct is generally characterized as "secret," so counsel must maintain confidentiality in this regard. California courts have strictly applied the prohibition against disclosure of past crimes, even when the disclosure would expose an intended future crime. In this conundrum, counsel may not reveal the contemplation of a future crime when disclosure would reveal the commission of a past crime (absent concerns regarding imminent bodily harm or death).

Generally, clients expect and are entitled to vigorous representation by counsel. For this reason, even counsel who are determined to avoid revealing the confidences of former client, might not be able to offer undivided loyalty to current clients. The requirement on counsel to maintain inviolate the confidences and secrets of clients fosters counsel's professional obligation to past and current clients by preventing any disclosure of confidences or secrets and limiting potential conflicts of interest regarding the representation of past and present clients. Best practice tip: While counsel may accept this subsequent employment, counsel must consider that the situation creates the appearance of impropriety, which ill-serves prior, current, and prospective clients, as well as counsel.

Prospective Clients
But what if counsel is not, ultimately, engaged by the client? The duty of loyalty may attach even if attorney is not hired. An attorney's duty of confidentiality extends to potential clients who, with a view toward employing counsel, seek counsel's assistance. This is the case even when the client ultimately declines to employ counsel. Best practice tip: The duty of loyalty extends to prospective clients, even when the prospective client ultimately never engages counsel.

Former Clients
After severing a relationship with a former client, counsel is forbidden to do anything that might injure the interests of the former client in any matter in which counsel formerly represented the client. Nor may counsel use knowledge or information, gained through the previous relationship with the former client, against the former client. Best practice tip: After the attorney-client relationship is ended, counsel may not act in a way that would reasonably be expected to injure the interests of a former client.

Loyalty
Encouraging public confidence in the integrity of the legal profession is the central purpose of the duty of loyalty. Absolute and complete fidelity, owed by counsel to clients, is the hallmark of the attorney-client relationship. This is different from counsel's duty to protect and preserve clients' secrets and confidences.

The duty of loyalty discourages dishonest counsel from fraudulent conduct and prevents honest counsel from situations where they must choose between conflicting duties, or reconcile conflicting interests, rather than zealously pursuing the primary client's rights. Best practice tip: Counsel may not split representational focus, but rather must provide focused and committed representation to the primary client.

Counsel's honest intentions or motives are irrelevant. When counsel use information relating to the client's representation, whether or not confidential, to the disadvantage of the client, counsel violate the duty of loyalty. Counsel are prohibited from using information relating to representation of a client to the disadvantage of that client (absent the client's consent, with exceptions, as permitted).

This is so whether the information is used to benefit the lawyer, or even to benefit a third person, such as another client or business associate of the lawyer, to the disadvantage of the client. For example, if a lawyer learns that a client intends to materially change position with regard to the stock market, the lawyer may not use that information to change counsel's stock position or advise any other party to change position if that could be expected to affect the first client's realized profits (except as permitted by ethical, legal or constitutional principles). Counsel is prohibited from disadvantageous use of client information (unless the client provides informed consents, or except as permitted).

Attorneys may use this information in a manner that does not disadvantage the client, however. And a lawyer who gleans an insight about a particular topic or occurrence through counsel's representation of a client may properly use that information to benefit counsel or other clients. Best practice tip: Whether used to benefit counsel, or used to benefit a third party, counsel may not use the primary client's

confidential information to benefit another party.

Withdrawing from the attorney-client relationship does not shield counsel from counsel's loyalty obligations, so the disqualification rule applicable to concurrent representation cannot be avoided by unilaterally converting a present client into a former client prior to a disqualification challenge.

Traditional obligations of loyalty are not affected when an insurer hires counsel to represent an insured. Effectively, counsel has two clients in this type of scenario, to each of whom counsel owes a high duty of care. Counsel owes to the insured the same fidelity as if the insured had directly retained counsel.

Minors

A minor is counsel's client, no different than the representative who hired counsel on the minor's behalf. When an action is brought by a guardian or an administrator on behalf of a party, the party for whose benefit the suit was brought is entitled to the same protection of the rule against disclosure of confidential communications as is a client who retains counsel in a personal capacity. The loyalty counsel owes to one client cannot consume the duty of loyalty owed to the other.

Evidence Code Sec. 951 defines "client," for purposes of analyzing the lawyer-client privilege as, inter alia, a person who, directly or through an authorized representative, consults counsel for the purpose of retaining counsel or securing legal service or advice from counsel in counsel's professional capacity. This includes an incompetent who personally or directly consults counsel or whose guardian or conservator consults counsel on behalf of the incompetent Rule 5-102(B) provides that counsel shall not represent conflicting interests (absent the written consent of all parties concerned). At times, dual representation of a parent and a minor child may raise issues of mandatory withdrawal. Rule 2-111(B) requires that counsel withdraw from representation if counsel knows or should know that continued employment will result in violation of an ethical obligation.

Assuming that counsel has provided full disclosure and obtained consent, counsel may represent dual interests. But counsel who represent parties with divergent interests owes the highest duty to each. Counsel must fully disclose all facts and circumstances the parties need to know to allow the parties to make informed decisions. This includes areas of potential conflict and the option of securing independent legal advice.

Duties to Former Clients

Secrets and Confidences

The duty of confidentiality continues after the lawyer-client relationship is terminated. After termination of a lawyer-client relationship, counsel owes the following duties to former clients:

- Counsel may not do anything that creates a substantial risk that counsel's actions will injure the former client in any matter in which counsel represented the former client.
- Counsel may not use against the former client knowledge or information acquired by virtue of the previous relationship.
- Counsel who have formerly represented a client in a particular matter may not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client (absent the former client's informed written consent).
- Counsel may not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client whose interests are materially adverse to that person; and about whom the lawyer, while at the former law firm, had acquired certain protected information that is material to the matter (absent the former client's informed written consent).
- Counsel who previously represented a client in a matter or whose present or former firm has previously represented a client in a matter may not thereafter use information relating to the representation to the disadvantage of the former client (with certain exceptions) with respect to a current client, or when the information has become generally known; or reveal information relating to the representation (except as permitted) with respect to a current client.

Loyalty

- Counsel's duty of loyalty continues after termination of the attorney-client relationship.
- Counsel may not engage in any actions that would injure the prior client with respect to the subject of the prior representation.
- Counsel cannot subsequently use information gained from the prior representation to the former client's disadvantage (absent the former client's informed consent).

Lisa Miller *is an attorney in Valley Village and a trustee and chair of the Small Firm & Sole Practitioner Section of the San Fernando Valley Bar Association. She is a member of the Los Angeles County Bar Association's Professional Responsibility and Ethics Committee. She can be reached at (818) 802-1709 or sfvba@lmillerconsulting.com.*

MCLE Test No. 28

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 in Legal Ethics. 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. Counsel's obligations regarding client confidences and secrets is not the same as counsel's duty of loyalty.
   True
   False

2. Counsel has the same obligation under each duty.
   True
   False

3. The attorney-client relationship recognizes the fiduciary relationship between client and counsel, pursuant to which clients share confidential information. Counsel's obligations as a fiduciary toward the client are part of the attorney-client relationship that encourages clients to share information candidly with counsel, facilitating representation.
   True
   False

4. The concept of "secrets" is only coextensive with what is contemplated by the attorney-client privilege.
   True
   False

5. The concept of "secrets" encompasses information which would be embarrassing to the client.
   True
   False

6. Counsel may never disclose the confidences and secrets of clients.
   True
   False

7. The duty of loyalty is the underlying principle contemplated in conflict of interest situations.
   True
   False

8. Counsel may not accept representation that would prevent counsel from devoting counsel's entire energies to the client's interests.
   True
   False

9. The principle precluding representing an interest adverse to the interests of a current client is based on the need to assure the preservation of a current client's secrets.
   True
   False

10. The public will doubt the loyalty of an attorney who undertakes to oppose a former or current client in an unrelated matter.
    True
    False

11. Counsel may accept employment adverse to a client if the employment is unrelated to the existing representation.
    True
    False

12. The duty of confidentiality extends only to communications protected by the attorney-client privilege.
    True
    False

13. Criminal conduct is considered a "secret."
    True
    False

14. Counsel may reveal the contemplation of a future crime when disclosure would reveal the commission of a past crime, even absent concerns regarding imminent bodily harm or death.
    True
    False

15. The duty of loyalty does not attach if the attorney is not hired.
    True
    False

16. The duty of loyalty prevents counsel from situations where they must choose between conflicting duties or reconcile conflicting interests.
    True
    False

17. Counsel's honest intentions or motives are irrelevant.
    True
    False

18. A lawyer who develops expertise about a particular topic through representation of a client may properly use that information to benefit counsel or other clients.
    True
    False

19. Withdrawing from the attorney-client relationship shields counsel from counsel's loyalty obligations, so the disqualification rule applicable to concurrent representation can be avoided by unilaterally converting a present client into a former client prior to a disqualification challenge.
    True
    False

20. Traditional obligations of loyalty are not affected when an insurer hires counsel to represent an insured.
    True
    False

MCLE Answer Sheet No. 28

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

Alternative Financing for the Cleantech Entrepreneur

By Kathryn Herman

THE CLEANTECH INDUSTRY in the U.S. is in a financing crisis. The term "cleantech" is an umbrella term generally understood to include technologies and products developed in a variety of industry sectors, joined by the common goals of efficiency and minimal ecological impact. Representative industry sectors include alternative energy generation, energy storage, energy infrastructure, transportation, water, waste and recycling.

The recession has drastically reduced the flow of capital across cleantech industry sectors, both from venture capital and private equity funds and more traditional lending sources such as banks. Such a drop has occurred despite surges both in technological innovation and government support. From a venture and private equity perspective, the need for large amounts of front-end capital coupled with few if any viable near- and medium-term exit scenarios make early-stage cleantech companies particularly unappealing in this economic climate.

On the institutional investor front, the statistics are not much better. 2009 saw the large commercial banks loosen the purse strings a little, but mainly for funding large-scale projects utilizing established alternative energy technologies like wind and photovoltaic solar. Although industry experts predict a gradual increase in all categories of private investment in the cleantech sector in 2011, for the entrepreneur looking for early-round financing, it's still a desert out there.

Why are cleantech projects so expensive? Although it's easy to compare cleantech startups with their predecessor industries, information technology and biotech, there are some important differences to consider in the cleantech space. Both information technology and biotech startups can be funded in the early stages with relatively little money and then quickly scaled-up if the technology proves successful. To take a nascent clean or renewable technology from prototype to market on any sort of realistic scale, however, entrepreneurs need a very heavy infusion of early-stage capital. This is because, unlike information technology and biotech, cleantech technologies often have a heavy manufacturing component.

Take the example of an entrepreneur who has developed new solar panel technology. Typically, this technology would be incubated at a university, with grant funding to develop and test the prototype. The technology may well be demonstrably efficient and, in theory, scalable. The entrepreneur may have a detailed business plan and even commitments from future customers. However, to manufacture the new solar panels on any scale other than prototype, the entrepreneur will have to find warehouse, factory or similar space to manufacture, skilled employees to actually make the panels, appropriate machinery and storage space, or partner with an established company in a similar industry which can provide those things. Either way, taking the panels to market is an expensive proposition.

Investors are also not fond of the slow development timeline of many cleantech projects. In today's economic climate, such pricey, long-term risks are not very attractive to investors. In today's tough financial times, most cleantech start-ups are looking at non-traditional funding sources as means to scale up manufacture and sale of their technologies.

Joint ventures with established companies, cross-border deals with European and Asian investors, and complicated deal structures such as tax equity financing have proven palatable in the current marketplace. Large-scale alternative energy projects also benefit from state government mandates that require utilities to buy a certain percentage of their energy from renewable resources.

Another alternative financing source that has been gaining popularity in the cleantech world in recent years is EB-5 financing. EB-5 financing is a means by which foreign investors can obtain permanent residency in the U.S. through job-creating investments of $1 million or $500,000, depending on the circumstances (more on that in a moment).

EB-5 financing, so named because of the Employment Based-Fifth Preference (EB-5) Visa, has been around for almost twenty years. The EB-5 visa for immigrant investors was created by the Immigration Act of 1990 (8 U.S.C. 1101 *et seq*), and related legislation, the Immigrant Investor Pilot Program, was created by Section 610 of Public Law 102-395 in 1992 (the "Pilot Program"), pursuant to a Congressional mandate to encourage job creation while allowing qualified aliens the chance to obtain green cards.

In order for the foreign investor to obtain conditional U.S. residency, and later, hopefully, the coveted green card, the investor must demonstrate to the United States Customs and Immigration Service ("USCIS") that his or her investment led to the creation of full-time employment in a new commercial enterprise for at least 10 U.S. citizens or legal immigrant workers. (EB-5 visas are available for financing in "troubled businesses" as well, with different job creation requirements, but that's outside the scope of this article.)

The investor must commit $1 million, or, if the investment is located in a "Targeted Employment Area," defined by USCIS as a rural area or an area with an unemployment rate at least 150% of the national average, the investor need only commit $500,000. (see 8 C.F.R. 204.6)

The Pilot Program requires investment through a "regional center," or an economic unit that has been pre-approved by the USCIS to invest in job-creating enterprises. Although it is possible for the foreign investor to obtain an EB-5 visa without using a regional center, in practice, investors have found the process of investing through a regional center to be easier, as "these investments allow for a less

restrictive job creation requirement based upon the creation of 'indirect' and 'direct' jobs." ("EB-5 Immigrant Investor Pilot Program," at www.uscis.gov/USCIS/Resources.)

To date, over 100 regional centers have been approved by USCIS, including at least 30 in California alone. Each regional center was approved by USCIS for investment in a defined geographical area, and in specific industry sectors. These sectors range from entertainment to real estate to hospitality and beyond. Numerous regional centers across the country have been approved for investment in the green or alternative energy sectors. ("Immigrant Investment Regional Centers," at www.uscis.gov.)

For the foreign investor, the major benefit of this type of financing is obvious – the opportunity to secure permanent residency in the United States for him – or herself and his or her immediate family. Because this is a major goal of EB-5 investors, such investors are willing to accept a higher degree of financial risk than the traditional investor, as well as a lower rate of return on their investment.

Typically, for the first five years, investors see a maximum rate of return of 1%. If investors can demonstrate to the USCIS that 10 jobs were created directly or indirectly from his or her investment, they will most likely be able to obtain the green card, regardless of the ultimate financial return on their investment. In fact, the law mandates that the EB-5 investment be "at risk," with no guarantee of return on investment.

The entrepreneur looking for EB-5 financing needs to be aware of several legal pitfalls. Luckily for the entrepreneur, the USCIS will have already approved the regional center's generic sets of offering documents, including a business plan and economic analysis, private offering memorandum, subscription agreement and investor questionnaire.

In order to obtain USCIS approval for a specific EB-5 investment project, the project developers must work with the regional center to prepare and submit project specific offering documents, including an in-depth business plan and economic analysis, calculating direct and indirect job creation for the project. (*See* the seminal USCIS decision Matter of Ho, 22 I & N Dec. 206, 19 Immigr. Rprt. B2-99 (Assoc. Comm'r, Examinations 1998), for more information regarding job creation requirements for business plans and economic analyses).

In addition, the entrepreneur must keep in mind that, as with almost any type of capital raise, offering EB-5 investment opportunities means offering securities. Any person or business entity engaged in offering securities in the U.S. is subject to stringent federal and state securities laws.

Typically, a person or business must register the securities with the Securities and Exchange Commission ("SEC") and, most likely, the equivalent state regulating body, or find an applicable exemption under the Securities Act of 1933, the federal legislation requiring registration. Because the process of registering securities is time-intensive and very expensive, most businesses attempt to qualify their securities under an appropriate exception or exemption to federal and state registration requirements.

Getting back to EB-5 financing, the securities being offered by project promoters through regional centers, typically limited partnership interests, can qualify for exemptions from registration under Rule 506 of Regulation D (17 C.F.R. §230.501 *et seq*), which places strict limits on solicitation, number and type of investor, and transferability, and Regulation S (17 C.F.R. §230.901 et seq), which exempts certain offers and sales of securities that occur outside the United States.

A cleantech project promoter or developer seeking EB-5 financing, if soliciting investment through a regional center, should do some serious due diligence before entering into any contractual relationship with the center. The regional center will most likely have engaged both immigration and securities counsel to prepare its sample documents for USCIS regional center approval, and will probably continue to work with such counsel while soliciting investment for specific projects. The project developer may want to investigate such counsel to ensure that both the immigration and securities attorneys have experience and a good track record with EB-5 financing projects.

Typically, regional center counsel will work with the project developer to prepare the corporate/securities and immigration documents specific to the project; the project developer may want to retain its own counsel to avoid any conflict-of-interest issues. Regardless, working with immigration and securities counsel is essential both to obtaining USCIS approval of the project, and avoiding costly errors with regard to offering securities.

With appropriate legal guidance, raising capital with EB-5 financing is a great option for the cleantech industry. The need for early, large-scale manufacturing requiring numerous skilled workers is clearly an advantage for EB-5 investors.

Returning to the entrepreneur and his solar panel technology, EB-5 financing, through a regional center approved for the green or alternative energy industry sector, could be the source of significant, early-stage funding unavailable elsewhere. The entrepreneur could raise significant amounts of money through the regional center, and/or combine the EB-5 funds with funds from other financing sources, to get his or her new company up and running, and his or her new technology to market.

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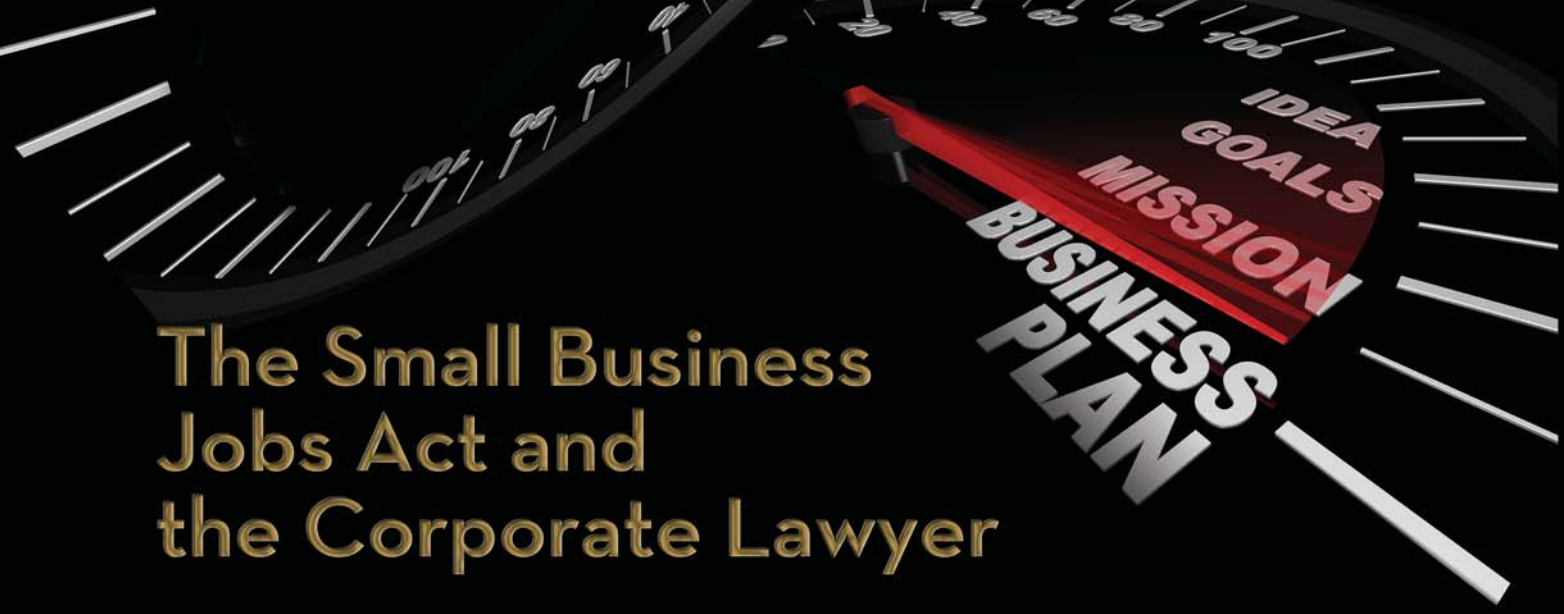

The Small Business Jobs Act and the Corporate Lawyer

By Elizabeth Evans, Taylor F. Williams and Talon Brown

WHILE THE HARD ECONOMIC times of the last few years have brought tighter belts and emptier pockets in the home, the world of corporate law has also felt the crunch. Businesses have slowed down considerably while entrepreneurs have been less likely to take risks and prospective business owners have been unwilling to start their own businesses. As a result, many corporate lawyers have found themselves with plenty of extra time, time that was once spent incorporating businesses and drafting bylaws and articles of organization.

The Small Business Jobs Act, enacted in September of this year, may be just the catalyst needed to jumpstart the business industry as well as corporate law. With more money to spend, entrepreneurs will be more likely to take bigger steps and seek legal help along the way. The Small Business Jobs Act is an important tool for corporate lawyers to use in helping their small business clients.

The Act was created to incentivize small businesses and make it easier for entrepreneurs to transition into owning their own businesses. The Act focuses on two key methods to accomplish these goals. First, it presents a modified tax structure to accommodate the small business industry and to allow the businesses to keep more of their revenues to put back into expanding the businesses. Second, it makes available more avenues for financing a start-up. Using these two methods as guidelines, the Act makes numerous changes to the way small businesses are treated. Below are four specific ways in which the Small Business Jobs Act has reached out to stimulate the small business sector of the economy.

1. Increase of Tax Deduction

The first change enacted by the Small Business Jobs Act is the increase of a tax deduction for qualified trade or business start-up expenses. Although the term is vague, qualified trade or business start-up expenses have been defined as those expenses used while looking into starting a business or actually doing so that could have been deducted if the taxpayer were operating a business that was already in existence.

Previously, taxpayers were allowed to deduct up to $5,000 in qualified trade or business start-up expenses but were required to reduce the amount from $5,000 for any part of the expenses that went over $50,000. This new deduction raised the maximum amount to $10,000 and mandated that the amount deducted from $10,000 is any part of the expenses over $60,000. This change has the direct effect of giving more money back to the entrepreneurs early on in the life of the business, at a time when money is the most important but the least available. It also allows new business owners to hire more employees early on, increasing the amount of revenue a new company can bring in during the first year.

2. Altered Tax Structure

The second major change the Act made alters the tax structure for an entrepreneurial taxpayer. This change allows for a self-employed individual to deduct the cost of health insurance for themselves and their immediate families when calculating self-employment income on the tax return. Up until now, the cost of health insurance

was not deductible at all. Therefore, when people went into business for themselves and transferred from their previous employer's health insurance to a new health insurance plan, they incurred that extra expense.

This extra deduction will provide many new business owners with the flexibility of finding health insurance plans that fit their families without using too much of the money that the business owners will need to get their start-ups off the ground.

A bonus of this change is that while an employee's health insurance is an itemized deduction, the premium payments reduce the amount of income that is taxed. This makes it more attractive for an employee to seek employment with a small business. In essence, this change to the Act incentivizes both small business owners and employees of small business owners to start a new business.

3. Selling Off Assets

The third change allows certain businesses to sell off assets before they were previously allowed to sell them. Specifically, the Act now permits C corporations that convert into S corporations to sell appreciated assets after holding them for a minimum of five years. Previously, a newly converted S corporation had to hold appreciated assets for a minimum of ten years before it was allowed to sell them.

This saves a C corporation that is considering becoming an S corporation money in two ways. First, the change makes conversion into an S corporation more friendly because the corporation knows it won't be burdened with appreciated assets that may be virtually obsolete after the conversion. Since converting to an S corporation is typically done for the tax benefits, making the conversion more appealing, and thus more likely, this change saves the business money. Second, allowing the business to sell off appreciated assets after a minimum of five years may keep the business from paying tax on the appreciated asset at the highest tax rate of 35%. Overall, this change will benefit businesses and put money back into the business immediately.

4. More Obtainable Financing

Finally, the Act has reworked the Small Business Administration loan system to make financing more obtainable for small businesses. The Small Business Administration focuses on assisting small businesses by guaranteeing a variety of loan programs that are provided by banks and other private institutions. The Act increases the loan limits on some programs from $1.5 million to $5.5 million and from $2 million to $5 million, more than doubling the amount provided to small businesses.

The Act also provides for the elimination of the borrower fees on these loans, allowing the borrowers to use more of the money in starting and/or growing their businesses. This modification contained in the Act may provide the most change to small business owners and entrepreneurs as it puts money into the hands of the business owners right away and is not contingent upon tax returns.

The Small Business Jobs Act aims to help small business owners start their own businesses and expand into successful entities through a variety of programs and tax deductions. When signing the Act, President Obama said, "Small businesses produce most of the new jobs in this country. They are the anchors of our Main Streets."

With the ability of entrepreneurs to start new businesses and hire more employees comes the innovation and risk-taking that keeps corporate lawyers everywhere busy and energized. Each change the Act presents, although designed to help business, actually impacts the corporate world too. As a result, the Small Business Jobs Act may help both small business and corporate law alike and is a resource for all lawyers.

Elizabeth Evans, Taylor F. Williams *and* ***Talon Brown*** *are third year law students at Pepperdine University School of Law, serving as law clerks for MyCorporation in Calabasas. Elizabeth can be reached at elizabeth.a.evans@pepperdine.edu. Taylor can be reached at taylorfwilliams@yahoo.com. Talon can be reached at talon.l.brown@pepperdine.edu.*

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JANUARY 14 AND 15, 2011
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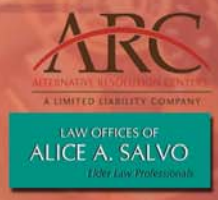

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Friday January 14, 2011

9:30 a.m.
Nuts and Bolts of Estate Planning
Alice Salvo, Esq.
Law Offices of Alice Salvo
1.5 Hours MCLE

11:00 a.m.
Real Estate Dispute Resolution in Trying Times
Judge Michael Hoff, Ret. and
Judge Bruce Sottile, Ret.
ARC
1 Hour MCLE

12:00 Noon
Lunch

1:00 p.m.
Is That Considered Malpractice?
Terri Peckinpaugh and William Holden
Wells Fargo Insurance Services
1 Hour MCLE (Legal Ethics)

2:00 p.m.
Employment Mediation: Who's Steering the Boat? When Should a Mediator Inject Valuation and Fact?
Max Factor, Esq. Steven Paul, Esq.
and John Weiss, Esq.
ARC
1 Hour MCLE

3:00 p.m.
The End of the Attorney-Client Relationship
Stephen Strauss, Esq.
1 Hour MCLE (Legal Ethics)

4:00 p.m.
Bias in the Legal Profession
Myer Sankary, Esq.
1 Hour MCLE (Elimination of Bias)

Saturday January 15, 2011

9:30 a.m.
Workflow Efficiency
Edward Scott
WestlawNext
1 Hour MCLE

10:30 a.m.
Private Morality and Public Consequences: The Genesis of Corporate Fraud
Chris Hamilton, CPA, CFE, CVA
Arxis Financial, Inc.
1 Hour MCLE

11:30 a.m.
Mortgage Crisis
Mark Blackman, Esq.
1 Hour MCLE

12:30 p.m.
Lunch

1:30 p.m.
The Danger Zone: Escaping Bar Discipline
Professor Robert Barrett
2 Hours MCLE (Legal Ethics)

3:30 p.m.
Dealing with Stress: How to Prevent Substance Abuse
David Mann, The Other Bar
1 Hour MCLE (Prevention of Substance Abuse)

REGISTRATION FORM AND MEMBERSHIP APPLICATION

(Pre-Registration Deadline is January 7)

Name _____
Firm _____
Address _____
City, State, Zip Code _____
Phone _____
Fax _____
E-Mail _____
State Bar No. _____
Bar Admission Date _____

MCLE MARATHON REGISTRATION FEES

	Member	Non-member
2-Day Seminar	$149	$359
or		
Friday, January 14	$89	$199
Saturday, January 15	$89	$199
or		
Per MCLE Hour	$25	$50
✔ Class Attending		
Late Registration Fee	$40	$60
MCLE Self-Study Flash Drive (with Marathon Registration)	$50	$50
MCLE Self-Study Flash Drive Only	$99	$159

Membership Dues: $ _____

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Signature _____

System Failure:
Issues of Medical Malpractice

By Tricia West, BSN, RN, MBA/HCM, PHN, CHN, LNC

ACCORDING TO RESEARCH done at Johns Hopkins University, diagnostic error kills 40,000 to 80,000 hospitalized patients annually, based upon autopsy studies conducted over the past 40 years. The Institute of Medicine updated report indicates that as many as 200,000 people die in the United States annually due to medical malpractice. According to Brennan et al., a Harvard medical practice study indicates that the incidence of adverse events and negligence in hospitalized patients is much greater than once believed.

Errors in medication administration account for 770,000 adverse events annually where patients are either killed or injured. No matter what research is referenced, the message is clear – medical malpractice and the resultant injuries are epidemic.

Medical malpractice is professional negligence by act or omission by a health care provider in which the care provided deviates from accepted standards of practice in the medical community and causes injury or death to the patient.

Medical Injury Compensation Reform Act (MICRA)

The Medical Injury Compensation Reform Act of 1975 (MICRA) was enacted by California in 1975 as a means to cap the rising costs of medical malpractice insurance. It limits recoverable damages in California for noneconomic losses (e.g., pain and suffering) to a $250,000 aggregate cap no matter how many plaintiffs or defendants are named in a case. Additionally, the damages recovered by an injured patient are reduced by the amount of any collateral source benefits, such as health insurance. MICRA also allows the defendants to pay out over time all future damages in excess of $50,000.

In addition to the constraints set by MICRA, punitive damages cannot be included in a professional negligence claim unless a court order is obtained first. Therefore, the court must first assess whether it believes there is enough evidence to include a punitive damage claim.

Assessment of a medical malpractice case first requires a careful review of the facts of the case. When evaluating a malpractice case for merit, or strategizing a defense, one must analyze the facts of the case and compare that to the standards of practice specific to the field at issue. For example, if the potential breaches are related to nursing care in a post operative patient, then nursing standards in the area of medical surgical nursing would apply.

If the case is regarding a wrong site surgery, operating room standards would apply. Standards of care arise from different sources: licensing bodies, federal and state regulations, professional organizations, State Practice Act and a facility's policy and procedure manuals. Because of the complex nature of most cases, it is prudent to have an experienced legal nurse assist in the evaluation of the matter.

The practice of professional nursing has become increasingly complex as medical and technical advances in science, medicine and health care occur. With the development of subspecialization and advanced practice in nursing and medicine come greater expectations of the health care consumer and a greater need for nurse experts to play a part in assuring the correct standard of care was (or was not) applied. This will prove to be more important as health care reform is approached, and as more and more primary care is delivered by advanced practice nurses. By having a legal nurse consultant review the case initially, there will not only be an assessment of a specific area of practice, but of the overall case, evaluating both medical and nursing care.

Unlike a physician who will look at a case in their own area specifically, nursing is better prepared to provide an overview of all disciplines. The skilled legal nurse consultant will know if they need to get additional specialty opinions, physician or otherwise, in the initial phase of evaluating a case. Clearly, medical support for the case, whether plaintiff or defense, will be required as the case develops.

The duty of the healthcare provider is to have the knowledge and skill ordinarily used in like cases, by trained and skilled members of the same profession in the same or similar locality and under the same circumstances.

A breach of duty occurs and the care provider is negligent if

the error in judgment or lack of a positive outcome is due to a failure to perform in accordance with similar professionals acting under the same or similar circumstances. This needs to be differentiated from a procedure or care delivered within the standard that just has an unfortunate poor outcome.

Medical malpractice may result from numerous situations. Some examples of the most common include: delay or failure to diagnose or properly treat a condition or disease; leaving foreign objects in the body during surgery; surgical or anesthesia errors; or medication administration errors in terms of using the wrong drug or incorrect dosage. Other medical malpractice issues are often related to healthcare's staff failure to follow the facility's policies and procedures.

Never Events

Simply put, "never events" are adverse events that should never happen. Effective July 1, 2007, California Health and Safety Code 1279.1 became effective. This requires health facilities to report adverse events to the California Department of Public Health (CDPH, formerly known as DHS) no later than five days after the adverse event has been detected or if that event is an ongoing urgent or emergent threat to the welfare, health or safety of patients, personnel or visitors, not later than 24 hours after the adverse event has been detected.

Adverse or never events can include surgery performed on the wrong patient or wrong body part, infant discharged to the wrong person, or accidental death situations such as death occurring during a surgical procedure or up to 24 hours after induction of anesthesia on a normal, healthy patient.

The health facility is also required to inform the patient or the party responsible for the patient of the adverse event by the time the report is made. The adverse event reporting law contains specific penalties for failure to report. A hospital that fails to report an adverse event may be assessed a civil penalty in an amount not to exceed $100 per day for each day that the adverse or never event is not reported following the initial five day period or 24 hour period, as applicable. If the hospital disputes a determination by CDPH regarding an alleged failure to report an adverse event, the hospital has 10 days to request a hearing pursuant to Health and Safety Code Section 100171.

With regard to never events, one can see how important it is to verify if proper reporting has been done when there is an allegation of medical malpractice. This is important for both defense and plaintiff as the defense attorney will need to know what the internal root cause analysis was (if in fact there was a breach in the standard of care) and what was done about it.

On the plaintiff side, it will assist them by knowing what the CDPH investigation cited. Both sides should make contact directly with the CDPH field office and request a copy of the 2567 surveys and all surveyor notes for two years before and one year after the alleged incident. Defense counsel will need this as they do not want to find out information about their facility from plaintiff counsel. They will also want time to strategize how they will address these variances in care if in fact there were any. This information will also assist defense counsel in putting together an offer of settlement, if exposure exists. Conversely, defense counsel can use stellar surveys to support their case in defense of their facility.

> "The mistakes are all there, waiting to be made."
>
> – Savielly Tartkower, chessmaster 1887 - 1956

For the plaintiff, this information will validate their case of negligence (if there are findings and plans of correction). If prior similar incidents have occurred, it will help the plaintiffs' case in establishing a pattern of negligent care and the knowledge that management was aware of the poor care yet may have knowingly chose to put profits over patients.

In California, the statute of limitations for medical malpractice is one year from the time one knew or should have known a breach in the standard of care occurred or three years after the date of injury. In no event shall the time for commencement of legal action exceed three years unless tolled for any reason per CCP 340.5.

Where to Look for the Breaches in the Standard of Care

Most errors do not have a single cause – the "rule of three" seems to consistently apply. Most often there are at least three errors or communication deficits that cause an adverse event to occur. It is rarely, if ever, just one specific error or mistake that causes an issue.

The Joint Commission (formerly Joint Commission on Accreditation of Healthcare Organizations) has found that communication is the number one contributor to patient injury. Communication is affected by fatigue, prior life experience, accents, socioeconomic level, values, cultural framework, environmental distractions, workload, sleep deprivation, relationships between healthcare providers, ethics and prejudices.

This is compounded by our multicultural society wherein both language and cultural differences can easily lead to misunderstanding, miscommunication and failure to take action. An influx of foreign trained nurses brought to the United States to help with the nursing shortage, and the large number of foreign trained physicians, has exacerbated the communication challenges. Not only does this bring language difficulties, but cultural ones as well. All of this plays into the complex process of communication and unfortunately can adversely affect patient outcomes.

The Ten Most Common Reasons for Nursing/Medical Liability list areas of breakdown in care that can usually be found which lead to patient death or disability. Each of these reasons for liability contains steps which should allow multiple opportunities to assure the standard of care is met, yet become missed opportunities. This represents areas that should be carefully reviewed when evaluating medical malpractice cases as the majority of matters will fall into these categories.

All patients are at risk of receiving substandard care. Patients 20 years ago who would be on the general nursing floor are now treated at home by lay family and friends and, if lucky, a home health nurse a few times a week. Patients who 20 years ago would have been treated in the intensive care units (ICU) are now on general nursing floors and many who are in the intensive care unit today are there due to the advances in medical treatment and are much sicker than those of years ago. Yet still, they are kept in the ICU's much less time, often

being discharged to home directly from ICU whereas historically they would have always gone to a general nursing floor for at least a few days for further monitoring.

Staffing crises, as well as multicultural differences, demanding stressful assignments, fast changing technology, an emphasis on more cost effective managed care and a lack of management support feed into feelings of frustration and not being able to provide the care the nurses want to give. This leads to more staff turnover with experienced nurses leaving the profession.

For physicians, managed care has impacted their practices as well. Many experienced practitioners have been unable to continue to provide the level of care both they and their patients enjoyed. With insurance companies now driving which physicians patients see, most people no longer have the same physician for years. As insurance rates increase, companies change their plans and their employees are forced to go to new healthcare providers. This breakdown in continuity of care also increases the risk of missed diagnoses, creates a lack of relationship between physician and patient, and promotes losing patients to follow up.

Medical malpractice is at epidemic levels and does not appear to be decreasing – even with quality care organizations, regulations, and well known standards of care all supporting increased patient safety. As progress seems to be made in one area, other areas increase in adverse events.

Be clear, patients do not go into a hospital in hopes of striking it rich as the result of a medical error. And the reality is that the vast majority of patients who have been malpracticed do not sue. Those that do sue know that a plaintiff verdict cannot change the catastrophic damage that has been done. What patients want most often is to know that the same thing will not happen again to someone else.

***Tricia West** is a pioneer in the field of legal nurse consulting. Along with her clinical work, she has worked in the medical legal arena since 1980. West has experience as a registered nurse and administrator, having worked in intensive care, quality care, acute and chronic dialysis. She can be reached at twest@pjwa.com.*

Santa Clarita Valley Bar Association

A Year in Review

PAULETTE GHARIBIAN
SCVBA President

EXACTLY ONE YEAR AGO this time, Brian Koegle was elected to serve as president of the Santa Clarita Valley Bar Association. It was an exciting and successful year for the association. Koegle set out to grow membership and to implement new and improved membership benefits; he was successful at both.

In past years, surveys distributed among the membership revealed an interest in the hard-to-obtain continuing education courses, on the topics of substance abuse, ethics and elimination of bias as well as an interest in networking opportunities. The focus of Koegle's presidency included meeting the stated needs of the membership by providing more opportunities for networking among the members of the association as well as organizing and providing continuing education classes on the requested topics.

Koegle served his term alongside a dedicated and hard working board, including past president Robert Mansour, treasurer Jane McNamara, secretary Amy Cohen, members-at-large Barry Edzant, April Oliver and Mark Young and San Fernando Valley Bar Association liaison Caryn Sanders.

In order to minimize the Santa Clarita Valley Bar Association's financial liability associated with organizing this year's meetings, the bar's leadership was successful in securing sponsorships for all of the year's events. All meetings were well attended and were a great success, allowing those who attended to network, enjoy great food and drinks, as well as earn the credits for their continuing education.

2010 also marked the redesign of a new and improved website. Through the efforts of past president Robert Mansour, as well as the Scorpion Web Design team, the SCVBA launched a new face on the web (www.scvbar.org). The site provides for easy navigation, lists local attorneys by practice areas, as well as allows members to pay for dues and sign up for events online.

Looking to the year ahead, the SCVBA is excited to continue its success and to take on new ventures and commitments. The association was founded by and nurtured through role models for leadership. These individuals were leaders of action who were courageous and determined to make a difference.

The planning of the next term will be collaborative, reflective and diverse. The SCVBA hopes to inspire and learn from one another and the membership-at-large. At the core of its service, the association will hold onto our passion for substantive growth and continuous improvement in our community involvement.

The SCVBA leadership looks forward to soliciting more involvement from members and encourages an open door policy during this upcoming year. Open communication, feedback and discussion about any matter is important to the association. Stay tuned for more news ahead and the exciting new events coming up in the 2011 term.

For more information, please visit www.scvbar.org.

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PRACTICE FOR SALE

29-year San Fernando Valley Family Law practice; huge client list; untapped potential for post-judgment income. Owner retiring. Call (818) 891-6775 for details.

SPACE AVAILABLE

ENCINO

Penthouse Suite in Encino (16000 Ventura Blvd, close to where the 101 and 405 meet). Class A Building, corner office available for sublease on January 1, 2011. Spectacular views (floor to ceiling windows) for $2,200.00 a month. Prestigious office includes a secretarial work station. Lessor is a top criminal defense firm. Call (818) 986-2092 to set an office showing.

SHERMAN OAKS

14.5' x 12' window office, Sherman Oaks. Receptionist, kitchen and conference rooms. Nearby secretarial space available. Call Eric or Tom (818) 784-8700.

WOODLAND HILLS

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INTERNSHIP AND OFFICE SHARE

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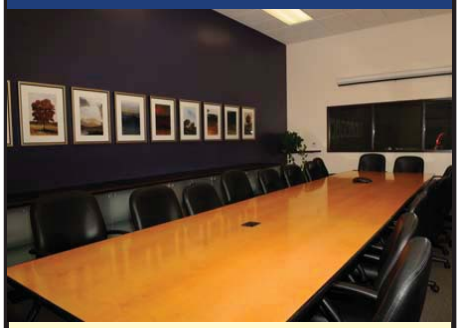

The San Fernando Valley Bar Association, conveniently located in Warner Center, has available its executive boardroom for depositions, hearings, and mediations. The 600 square foot conference room easily accommodates 20 people. An adjoining conference room is perfect for breakout sessions and private meetings.

Amenities include:

- **Coffee service**
- **Ample free parking**
- **Wireless Internet access**

Only $150 a day for SFVBA Members. Call (818) 227-0490.

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Calendar

San Fernando Valley Bar Association

Holiday Open House

DECEMBER 14
5:30 PM

Join us for some yummy treats and good cheer!

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

Family Law Section

Self-Defense Techniques for Lawyers Part II

DECEMBER 12
1:30 PM – 4:00 PM
TARZANA KARATE STUDIO
TARZANA

Back by popular demand, this hands-on training will be taught by renowned Grand Master Ho Sik Pak, to be followed by a discussion about self-defense with attorneys Gary Weyman, Irene Mak and Michelle Robins. Learn how to defend and protect yourself in all areas of your life! Open to all SFVBA attorneys, friends and family. Do wear your workout clothes!

MEMBERS
$40 prepaid
Includes self-defense book and custom made t-shirt! RSVP by December 7.

Probate & Estate Planning Section

Estate Planning Out of Control: Caregivers, Certificates of Independent Review and SB 105

DECEMBER 14
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney Mark J. Phillips of Goldfarb, Sturman & Averbach will address how to avoid disasters in your estate planning.

MEMBERS
$35 prepaid
$45 at the door
1 MCLE HOUR

NON-MEMBERS
$45 prepaid
$55 at the door

Business Law, Real Property & Bankruptcy Section and Litigation Section

Story Telling for Lawyers

DECEMBER 16
6:00 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Join us for this special holiday event – lawyers share their most meaningful and/or funniest law career stories. Sure to become an SFVBA tradition!

MEMBERS
$35 prepaid
$45 at the door
1 MCLE HOUR

NON-MEMBERS
$45 prepaid
$55 at the door

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.