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A Publication of the San Fernando Valley Bar Association

VALLEY LAWYER

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FEATURES

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A Glass Half Full

ROBERT F. FLAGG
SFVBA President

EVERY NEW YEAR BEGINS WITH A PROMISE OF change: the old has passed away and the new is born. The cliché images for this time of year involve an old man, frail and with a long beard, representing the old year, overtaken by a baby, clothed in the banner of the New Year. Clichés almost always have a basis in reality. In this case, those two figures represent our hopes and dreams. We are hopeful because we survived another year and we dream about the prospects for the New Year to come.

Few years in recent memory have been as difficult as 2009. In many ways, it is hard to imagine that 2010 could be any worse. Eternal optimist that I am, I have to think that 2010 must be destined to be a better year. The signs of economic recovery, like the daffodils of spring, have been spotted by many of the economic sages. News of gloom and doom are old hat. Now MSNBC, Fox and CNN vie to discover more evidence of recovery. Unemployment, always a lagging indicator, remains high. Many of our members continued to struggle in their practices. Yet another statewide budget crisis looms. The glass is only filled to the middle, but I see that as half-full.

The turn of the year is a good time to examine goals. I thought I should do that, as I have reached the "magic" 100th day of my presidency. You may recall that I set as my principal goal, in the words of the Bar's Mission statement, to "[p]reserve and enhance the ideal of the legal profession as a service profession and its dedication to public service."

With that goal in mind, we have, through our collective efforts:

- Provided free (or reduced cost) legal advice to senior citizens of modest means through the Bar's Attorney Referral Service
- Collected toys for the children of Haven Hills this past Christmas, helping to brighten, if only for a moment, lives being put back together after trauma
- Provided warm blankets and free legal advice to homeless citizens of our Valley, through the Bar's "Blanket the Homeless" program
- Continued active sponsorship of Law Explorer Post #1926, part of our long-term effort to increase diversity in the legal profession

In addition, our active sections conducted informative meetings on legal topics of interest of our members, who incidentally earned MCLE credit. Our Attorney Referral Service continued to actively refer cases to our panel members. We are preparing for our next large event, Judges' Night, coming in February. Our members continued to participate in local and state organizations, from the Bar's own Bench-Bar Committee to the California JNE Commission, which vets candidates for judgeship, to the State Bar Conference of Delegates, which proposes legislation to improve the legal system.

But wait, there's more! The majority of our members practice as solos or in small firms. As such, they don't have excess resources or "fat" to trim from their practices.

Here are a few practical steps that might help bridge the gap between now and when the economy upturns your way:

- Revise the budget (You do have a budget, yes? If not, now's the time!) Take another look at expenses and you will probably find some more ways to minimize cash going out the door. For example, did you know that your SFVBA membership includes free, unlimited access to *Fastcase*, the online research service? If you haven't already done so, sign up today! Just go to the SFVBA website and click on the *Fastcase* link.
- If it's become moribund, revive and revise your marketing and business development plan. If you don't have one, develop one that focuses on attracting clients to your door. Make it specific and follow it.
- Become more involved in the community through civic and charitable organizations. The idea is not necessarily to develop immediate business, but to develop relationships with a whole new group of prospective clients. Have you considered becoming more active in a Bar section or serving on a committee?
- For your business clients, invest the time to visit them at their businesses. For all your clients, be sure they have heard from you recently. In this way, you stay involved with them and show that you are supporting their efforts as they struggle through turbulent times. By doing so, you can build lasting client loyalty.
- Consider new opportunities in new areas of practice. You may find ways and means of refocusing your practice to bring in a whole new group of clients. Educate yourself in the areas where you see opportunities.
- Resist the temptation to take on clients with matters outside your area of expertise without first building up your knowledge. Try this: instead of working for free for an ungrateful client, spend the time building referrals, marketing your practice, and improving your skills for that new area of practice you've identified when revising your marketing plan.
- Communicate with your staff and your family about your practice's situation. Strive for an atmosphere, both in the office and at home, of "we're all in this together." Be honest and be positive to help reduce stress and pressure on you and everyone around you.
- Consider contract work. In the latter stages of a downturn, as well as in the early stages as the economic picture begins to recover, firms that have downsized and now have a slim workforce may need assistance on a project or an appearance. Contract work can be an opportunity to develop professional relationships for mutual referrals as the good times return.
- Consider working for clients on a limited scope representation basis, as many potential clients may have legal needs but limited means. Again, as their fortunes recover with the economy, they will remember that you helped them in a time of need and you will have developed yet another potential source for referrals in the future.

If this is all just a little too cheery and optimistic, or seems inappropriate for the gravity of the situation we still find ourselves in, remember O'Toole's Corollary to Murphy's Law: "Murphy was an optimist!" Sometimes, having tried everything else, nothing works like laughter.

From the Editor

For questions, comments or candid feedback regarding ***Valley Lawyer*** *or* ***Bar Notes****, please contact Angela at (818) 227-0490, ext. 109 or via email at Angela@sfvba.org.*

ANGELA M. HUTCHINSON
Editor

Happy New Year!

Inside this issue of *Valley Lawyer*, it is our goal to encourage you to maintain a healthy balance of work, play and most importantly your well-being. This month's articles focus on innovative ways to resolve conflict and achieve successful alternative dispute resolutions. Be sure to also check out our new section entitled, "LOL" (Laughing Out Loud) on page 13.

Created by the *Valley Lawyer* Editorial Committee, LOL is a place for our members to share humorous moments you have with your clients, colleagues or court experiences. I encourage you to email me your LOL moments whenever you have them and hopefully if appropriate I can feature them in our next issue. Please be sure to remove names "to protect the guilty and the innocent," as our Editorial Committee has requested. We hope this new sections helps you to enjoy the lighter side of law in 2010.

Many of us set New Year's resolutions in the beginning of the year usually centered around losing weight, making more money or saving for a dream purchase. But we should also remember to create resolutions like spend more time with family, donate money to charity and volunteer more with organizations that strive to serve you like the SFVBA.

Resolution comes from the word resolve and generally means to make up one's mind or decide firmly to achieve a desired goal. Our staff recently participated in an all-hands brainstorm session entitled, "Leaving the Red Behind." During this fun-filled day, our staff created several New Year's resolutions. Our primary goal is to implement new ideas on a monthly basis that will ensure that the Bar continues to thrive. We even established a check list that we will adhere to throughout the year to hold ourselves accountable. You can stay updated with our progress via Twitter by following 'SFVBA'.

The SFVBA is indeed planning to raise the bar this year. Please join us in taking the organization to the next level. Whether you decide to serve on a committee or section, or assist with planning a one-time favorite event of yours, there is an array of volunteer opportunities at your finger tips. But instead of using your fingers to reach for that pecan cinnabon, Pink's hot dog or eggnog milkshake, grab a healthier snack like the one on this month's cover of *Valley Lawyer*, and raise the bar by serving our Valley community more this year than last.

Have an organic month!

Angela M. Hutchinson

Attorneys Beware of an Email Scam

BY TAMILA JENSEN

THERE IS A NEW EMAIL SCAM directed specifically to attorneys. In this scam, a purported potential client asks you to represent him or her in finalizing a dissolution and enforcing a collaborative settlement agreement. The parties purport to have been represented by counsel. There is a lot of detail including settlement documents. However, fraudulent checks are used when funds are provided.

Another scam is to ask for counsel to represent a foreign business to collect overdue accounts. The proffered fee may be percentage of the amount collected. A recent message found in my junk E-mail folder went like this:

```
My Name is Chen Yi. I am the
Chief Financial Officer of
China Steel Cooperation (CSC).
We need a reputable company/
firm to serve as our payment
collection agent in North
America, Europe, Asia. You shall
earn 10% of every payment issued
to you on behalf of China Steel
Cooperation.

Requirement(Contact Information):
1. Full Names:
2. Company Name:
3. Full Contact Address:
4. Tel and Fax Numbers:

If interested, please email us
immediately at…
```

It is unclear how much money is actually earned through these methods. However, the purpose of the scam may be to gain information that can be sold to other disreputable persons in the netherworld of internet scams.

Neither the fraud departments of banks nor district attorneys are much interested in these cases because of the difficulty of identifying the actual perpetrators who are not even in the U.S. in any event.

For more information contact SFVBA Past President ***Tamila Jensen*** *at tamila@earthlink.net.*

New Members

The following new members joined the SFVBA in October and November 2009:

Mary I. Carbajal
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Mark A. Willits
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mawillits@gmail.com

Jason Yang
Industry
(714) 529-8528
jason@jyanglaw.com

San Fernando Valley Bar Association

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Discovering the Hidden Treasures of Non-Binding Judicial Arbitration

By Jonathan I. Reich

DUE TO THE EVER INCREASING PRESSURE ON the courts, both as a result of repeated budget cuts and a rising tide of litigation, the use of alternative dispute resolution is more popular than ever. A question that is often asked of attorneys is whether a non-binding judicial arbitration is worth the time and expense involved.[1] The answer is not as complex as it might seem. For most cases, especially those that are not complex and do not involve extremely large sums of money, a judicial arbitration may be the quickest and most economical means of resolving the dispute.

Even if the arbitration does not result in a resolution of the dispute, judicial arbitration can provide the parties and their counsel with valuable insight into their cases which will lead to a better settlement or a quicker resolution later. In many cases, non-binding arbitration is, of course, a fact of life as the court can order a case to non-binding judicial arbitration.[2]

Most of the benefits of private or contractual arbitration also exist in the case of a judicial arbitration. The relaxed nature of arbitration helps matters resolve more quickly in a more cost-effective fashion. In a judicial arbitration, the time savings is generally built into the local rules which place time constraints on initiating and completing the arbitration. Although judicial arbitration is not entirely private, as it is in the case of a contractual arbitration, generally matters can be resolved with a much more limited amount of public exposure than is associated with a judicial proceeding such as a trial. Unlike a contractual arbitration, which requires the agreement of both sides, a reluctant party may have no choice but to arbitrate.

The fact that the arbitrators in judicial arbitrations are, at least initially, providing their time free of charge provides an additional benefit in an era when full-time private arbitrators are charging as much as $700 per hour or more. (Although some commentators have expressed concern over the limited choice of arbitrators in judicial arbitrations, this is generally not the case in larger counties, such as Los Angeles, with relatively large panels of volunteer arbitrators.)

There are several other important points to consider in evaluating the effectiveness of the judicial arbitration process. Although judicial arbitrations are non-binding, i.e. either party has an option to reject the arbitrator's award and request a trial de novo, the vast majority of judicial arbitration awards are allowed to stand.[3]

Once an arbitration hearing has been held and an award made, the involved parties have the feeling that they have had their day in court. Having had that day in court, they are much less likely to want to repeat the process. Furthermore, in addition to the costs of proceeding with the litigation and a trial, there is an additional potential cost to requesting a trial de novo. If a party requests a trial de novo and the judgment upon trial is not more favorable, the requesting party can be required to pay certain additional costs to both the other party and the court.[4]

A second point to consider is that even if one, or perhaps both, of the parties are unhappy with the arbitrator's decision, the arbitration and/or the arbitration decision can serve as an excellent platform to reach a negotiated settlement. The hearing process in a judicial arbitration forces the parties to set forth their case and the evidence which supports it in a much clearer and definite fashion than is done in their initial pleadings. Having done this, the parties, and counsel, are then in a better position to evaluate the strengths and weaknesses of their cases and evaluate the position of the other side. In many cases, the parties to a judicial arbitration spend more time discussing settlement, sometimes with the arbitrator serving in the role of a quasi-mediator, than they do presenting actual evidence. Whether such discussions occur before or after the presentation of the case, they often lead to a settlement.

A third point to consider is that a judicial arbitration is an excellent means for the parties, and their counsel, to obtain an understanding of the strengths and weaknesses of not only their case, but their opponents case. Preparing a case for arbitration allows counsel to see where weaknesses might exist in their case. They can then address those weaknesses or, if there is some "hole" that cannot be filled, re-evaluate their case and their settlement position.

Likewise, a judicial arbitration allows counsel to see the case that is being presented against their client and to evaluate the nature and quality of the evidence and the credibility of the witnesses. As every trial attorney knows, the credibility of one's witnesses is a key factor in the success, or failure, of any case.

Presenting a case in this fashion may also enable the parties to narrow the areas in dispute. Upon presenting their

cases, the parties may find that they, in fact, do not disagree on every point. Even if a case is not resolved in a judicial arbitration, the parties may thus be able to narrow the issues that have to be tried later.

And finally, in a judicial arbitration the parties, and their counsel, get to see what a neutral third party thinks about their case. Often as not, the arbitrators in judicial arbitrations have substantial experience in the area of law involved in the arbitration. By giving their unbiased view of the case, the evidence and the witnesses, the arbitrator will allow the parties to see the case from an outsider's perspective. This can be especially helpful where one party, or their counsel, has an unrealistic view of the merits of their case.

Judicial arbitration is not right for every case. It is not surprising that its use has been limited by statute to only certain types of cases. Even if a request for a trial de novo is ultimately made by one of the parties, the hidden treasures of cost savings makes judicial arbitration worth one's time.

***Jonathan I. Reich** has been a trial attorney in Los Angeles for the past twenty-five years, and has tried numerous cases in both court and arbitration. He has also served as a Judge Pro-Tem and volunteer arbitrator for the Los Angeles Superior Court, and as a fee arbitrator for the Beverly Hills Bar Association Fee Arbitration program. A graduate of the UCLA School of Law and Graduate School of Management, Mr. Reich is a member of De Castro, West, Chodorow, Glickfeld & Nass, Inc. in Westwood. He can be reached at jreich@dwclaw.com.*

[1] Judicial arbitration in California is governed by Code of Civil Procedure §1141.10, et.seq. and Rule 3.810 et.seq. of the California Rules of Court. In Los Angeles County, those rules are supplemented by Los Angeles Superior Court Local Rule 12.27 et seq.

[2] In general, cases where the amount in controversy is not likely to exceed $50,000 may be ordered to judicial arbitration. See: Code of Civil Procedure §1141.11. Exceptions exist for cases with a substantial prayer for equitable relief and complex cases where arbitration is not likely to lessen the time or expense of resolving the matter, among others, are exempt from arbitration. See: Code of Civil Procedure §1141.13, CRC Rule 3.811 and LASC Local Rule 12.29.

[3] A trial de novo may be requested by either side within thirty days after the arbitration award is filed with the court. Code of Civil Procedure §1141.20 and CRC Rule 3.826.

[4] The additional costs that may be awarded following a trial de novo where the requesting party does not obtain a more favorable result are enumerated in Code of Civil Procedure §1141.21 and CRC Rule 3.826.

Family Law Mediation

Achieving Wellness in an Uncertain Economy

By Barry T. Harlan and Vanessa Soto Nellis

FRANK AND JAMIE McCOURT ARE GETTING divorced. They are litigating their case in a public courtroom, and the press is actively involved in reporting every detail of their personal life. They will likely spend several million dollars on dissolving their marriage and dividing assets, one of which is the Los Angeles Dodgers.

In contrast, a high net worth couple (one of whom is an actor on a hit television series) with two minor children and significant assets, including houses and retirement plans, recently had all issues in their dissolution resolved through a participatory process with no attention from the press. Total cost to the parties – $12,500. Why the difference between the McCourt's and the television personality? The difference was that the television personality utilized the services of an experienced family law mediator.

Most people have heard of family law mediation but are not sure what it is or how it works. Mediation involves two parties sitting down with a neutral, experienced family law attorney to divide up their community property assets, confirm separate property assets and, if there are minor children, agree on how to share time with their children, determine child support, and determine spousal support, if applicable. The mediator does not represent either party but assists the parties in arriving at an agreement that is consistent with California law.

Many parties retain their own consulting attorneys to review the Judgment of Dissolution prepared by the mediator and address any concerns before finalizing the Judgment. The parties can also have their attorneys participate throughout the mediation process. Mediation is a voluntary process that allows both parties to be involved in resolving their dissolution issues, as opposed to having a third party judge make the decisions for them.

In contrast to judicial proceedings, mediation is private and confidential (Evidence Code §§1119, 1121; *Eisendrath v. Super. Ct (Rogers)*(2003) 109 Cal. App. 4th 351, 364; *see also Foxgate Homeowners' Assn., Inc. v. Bramalea California, Inc.* (2001) 26 Cal. 4th 1, 4). The confidentiality component, with its absolute immunity (preventing the parties and the mediator from testifying in court) makes mediation a safe haven for the parties to freely discuss all information about assets, debts, custody and support issues. When parties voluntarily exchange financial information, it is much more cost-effective than engaging in formal discovery by attorneys (e.g., request for documents, interrogatories).

As part of every dissolution proceeding, both parties are required to make a full disclosure of all property, debts and investment opportunities (*Family Code* §2100 et seq.). If a party does not accurately disclose all asset information, the court can impose serious penalties (See *Marriage of Rossi* (2001) 90 Cal. App. 4th 34, holding that wife had to turn over all $1,336,000 in lottery winnings she concealed from husband; see also *Marriage of Feldman* (2007) 153 Cal. App. 4th 1470, where Husband was ordered to pay $140,000 in fees and $250,000 in sanctions for failing to update his disclosure forms).

California public policy requires that both parties have full and complete information so that they can make informed financial decisions. The confidentiality of a mediation makes it a cost-effective forum to make their financial decisions.

In mediation, the parties can choose to minimize the involvement of expensive professionals, which helps keep costs down. For example, if the parties are unable to agree on child custody issues, instead of having their attorneys litigate the issue and each party hiring their own mental health expert, the parties can jointly retain a trained mental health professional to assist in resolving a custody dispute.

Mediation is always a more cost-effective option for dissolving a marriage than litigation. The parties usually split the cost of the mediator and jointly retain experts so that both parties are vested in the mediation process. If each party is responsible for one-half of the mediation fees, the parties are more likely to have productive mediation sessions and remain vested in the process (because mediation is voluntary either party can withdraw from the mediation at any time).

Mediation often decreases the stress and anxiety felt by clients during the emotionally-charged dissolution process. One reason for this is that mediation allows the parties to express their concerns and desires during the dissolution process. It is a common perception that when parties litigate their dissolution, they will get their "day in court" and they will be able to tell the judge about their family situation and the cause of the marital breakup.

The reality is that California is a "no fault" state and any evidence of fault regarding the breakdown of a marriage is inadmissible under California law (*Fam. C.* §2335). The courts are unable to give substantial time to each case, and as a result, many parties who litigate their family law issues are disappointed that they are never able to talk directly to the judge.

In mediation, the parties can talk to the mediator in a confidential setting concerning their beliefs, observations and what is very important to divorcing parties, their feelings. One party may ask to speak to the mediator privately (called a "caucus"). The information revealed in the caucus remains confidential unless the party gives the mediator express authority to disclose the communication to the other party.

In addition to emotional considerations, the paper work required to complete a dissolution can be overwhelming. The mediator eases the anxiety of the parties by filing the required court documents and preparing the Judgment of Dissolution of Marriage. The mediator assists both parties through the dissolution process and makes sure that the final Judgment of Dissolution comports with California law.

Another practical advantage of the mediation process is that mediation appointments can be scheduled at times that are convenient for the parties (e.g., early mornings, evenings or sometimes on weekends). In contrast, dissolution litigation hearing dates and times are based on the court's schedule and only heard during daytime hours which often conflict with the parties' work and personal schedules.

Mediation is ideal for two individuals who are serious about resolving their dissolution issues, and willing to make compromises so that they can move forward with their lives. The biggest benefit of mediation is that it allows both parties to be directly involved in the dissolution process. Given the common need and desire to make informed financial decisions and conserve resources in the present uncertain economy, mediation should be considered by every couple at the onset of dissolution.

Barry T. Harlan *is a Certified Family Law Specialist with Lewitt, Hackman in Encino. He represents high net worth individuals in family law litigation and mediation matters.* ***Vanessa Soto Nellis*** *is an associate at Lewitt, Hackman, specializing in family law. She is also the co-founder of the firm's "Woman to Woman" professional group. They can be reached via www.lewitthackman.com.*

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Friday, April 23, 2010 12:00 Noon — 1:00 PM PDT
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Wednesday, June 16, 2010 12:00 Noon — 1:00 PM PDT
(Register at https://www1.gotomeeting.com/register/315303329)

Monday, October 25, 2010 12:00 Noon — 1:00 PM PDT
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LOL
The Lighter Side of Law

Funny Stories from Family Law Attorneys

Gathered by Michelle S. Robins

A Man's Best Friend.
Most often the only pets that people fight over in a divorce are cats and dogs. But some other animals have also led to litigation. These include: llamas, parrots, horses, mules, monkeys and hamsters. Sometimes the value of a pet is priceless. In one case, a man refused to accept his wife's offer to pay him $65,000 to buy out his share of a pet dog they got at an animal shelter for $70.

Ooops, did I do that?
In Family Law courtrooms, people argue over everything, even pots, pans, toasters, and household plants. Another couple argued over their wedding pictures. The husband finally offered to give the pictures to his wife. But when she received them, she noticed that his head had been cut out of every picture in the album.

Toilet paper wars.
Some divorcing couples must have their day in court, no matter the cost. In one case the couple spent hours arguing who would pay for toilet paper for their child who was going to college. The dispute did not end until both side's lawyers threatened to quit.

You take the kids.
In a divorce case the parties discussed child custody. The court awarded the 4 children to mom on Mother's Day. Mom objected and said, "If it's my day, the four kids go with dad." Mom's wish was granted by the court.

*If you have a **LOL (Laughing Out Loud)** moment that you have experienced with a client or would like to gather funny courtroom or law office stories from your colleagues, email them to Angela@sfvba.org.*

Bankruptcy Mediation Program

Quick and Fair Justice

By Louis J. Esbin

THE BANKRUPTCY PROCESS can often be daunting, confusing and complex; and that is just the period leading up to and including the actual filing of a bankruptcy case under U.S. Code Title 11. Add into the equation a contested matter or an adversary proceeding and the costs associated with resolving conflict may grow exponentially. Within a bankruptcy case are found contested matters and adversary proceedings.

Contested matters are those proceedings not commenced by the filing of a complaint under F.R.Bank. P. 7001, et seq. but rather guided under F.R.Bank.P. 9014 by the filing of a motion. Adversary proceedings are commenced with the filing of a complaint, usually one enumerated under F.R.Bank.P. 7001. Adversary proceeding and contested matters are subject to the discovery rules found in F.R.Bank.P. 7026. Discovery may also be sought prior to commencement of either through a Motion for 2004 Examination under F.R.Bank.P. 2004.

Unlike other forums for dispute resolution, the bankruptcy court finds the parties in interest seeking to have adjudicated rights or remedies over a usually finite pool of assets. Therefore, cost containment and attention to risk analysis should play a vital roll. Adding to the equation, especially in these more difficult economic times, is the fact that the bankruptcy courts (judges, clerks, staff, etc.) are straining under a case load requiring counsel to succinctly articulate their arguments and minimize the amount of time required to get their point across.

The U.S. Bankruptcy Court for the Central District of California recognizes the purpose for alternative dispute resolution through adoption of a structured Mediation Program articulated in Appendix III to the Local Bankruptcy Rules. Attorneys who are sometime visitors to the bankruptcy court should familiarize themselves with the court's mediation program, as well as the remainder of the Local Bankruptcy Rules. A Mediation Panel has been established of volunteer attorneys who can be chosen as a disinterested third party to hear and consider means to resolve disputes, both in the course of a contested matter or adversary proceeding.

The Mediation Panel participants are available for a limited period at no charge and only for a limited number of cases or hours per year. Many have attended formal alternative dispute resolution training programs. Others have years of experience and expertise both in bankruptcy generally, but often in specific niche areas, such as family law, real property law, commercial law and others. Some, as well, are proficient in certain foreign languages, such as Spanish, French, Vietnamese, Mandarin, Korean, etc. There are also certain bankruptcy judges who participate as Settlement Judges.

Adversary proceedings that may be most effectively resolved through the Bankruptcy Court Mediation Program are those that cross over between bankruptcy law and family law, or bankruptcy law and real property/ mortgage and deed of trust practice.

Family law issues arise under 11 U.S.C. 523(a)(15) concerning the nondischargeability of debt from marital dissolution judgments, other than for domestic support obligations. In these cases, one of the former spouses is the debtor and the party commencing the adversary proceeding is the other spouse. The facts usually concern the division of community assets and the nonpayment of the equalization payment, or concern the nonpayment of a debt that was assumed by the debtor spouse. Where an assumed community debt has not been paid, there is often added into the equation the creditor who was not otherwise a party to the marital dissolution and is now seeking payment from the non-debtor spouse.

One example of such a case is where the debtor spouse had filed a Chapter 7 seeking a discharge of not only his community debt, but his other acquired debt following the divorce. A large line of credit was expressly assumed in the divorce judgment, for which the non-debtor spouse had signed as a borrower, even

though the debt was incurred for the purpose of funding the debtor's business that they retained through the divorce. In response to the spouse's bankruptcy filing, the creditor sought to collect against the non-debtor spouse and ultimately obtained a judgment. The non-debtor spouse commenced an adversary proceeding to determine the nondischargeability of the creditor's judgment.

The bankruptcy court assigned the adversary proceeding to one of the bankruptcy settlement judges, who presided as a mediator over an agreed nondischargeable judgment. Notwithstanding, the debtor followed the Chapter 7 filing and discharge with a Chapter 13 filing in an attempt to extract further concessions from the non-debtor spouse. The parties, including the judgment creditor, non-debtor spouse and debtor negotiated a settlement agreement and formula for payment of the creditor's judgment, as well as the nondischargeable judgment that had been mediated. The debtor's Chapter 13 was dismissed, but only after a substantial increase in costs associated with all of the contested matters and adversary proceeding.

Growing in numbers among bankruptcy cases are those relating to wrongful foreclosure, quiet title, and all of the issues arising from the myriad of promissory notes and deeds of trusts made during the last 5 years.

Real property is property of the bankruptcy estate pursuant to 11 U.S.C. §541(a) and the bankruptcy court has core jurisdiction over issues concerning property of the estate under 28 U.S.C. §157(b). Therefore, bankruptcy judges are seeing a marked rise in cases where in the course of a contested matter for relief from stay under 11 U.S.C. §362(d) debtors are arguing that the moving party is not a party in interest or does not have the capacity to proceed. These are often referred to as the MERS cases.

Other defenses to enforcement concern whether the lender/servicer/foreclosure trustee has complied in all respects with the California foreclosure statute, Cal.Civ.C. §2924, et seq. Additional contested matters or adversary proceedings involving a determination of the extent, validity or priority of an indebtedness secured by a deed of trust are being commenced in Chapter 11 and 13 cases.

The factual or rather documentation issues are often convoluted and will require, if not settled, multiple days of trial, witnesses and expert testimony. Such was the case several years ago where the accuracy of a notice of default and election to sell were brought into question, along with whether the foreclosing creditor had complied with the letter of the law under Cal.Civ.C. §2924, et seq. When mediation failed, several days over several weeks of trial in the bankruptcy court resulted in a finding in favor of the debtor, which decision was reversed by the Bankruptcy Appellate Panel. Seeking further appellate review, the debtor appealed the Bankruptcy Appellate Panel's reversal of the bankruptcy court judgment in its favor.

The Ninth Circuit Court of Appeals, under 9th Cir. R. 33-1, has adopted its own settlement program, under which it appointed a panel attorney to preside over a mediation session. The mediator set a briefing schedule and insisted that all counsel and principals be present for an 8-hour session. In that instance, the Ninth Circuit mediator, having the weight of the Ninth Circuit behind him, convinced the title company to attend the mediation, since there were issues concerning the conduct of the title company that could affect resolution. The matter settled along the lines that had originally been discussed by and between bankruptcy trial counsel, resulting in a restructuring of the indebtedness and payment through a Chapter 11 plan.

The District Court, under Local Rule 16-15, has a procedure that must be followed by civil litigants prior to trial, commencing within 14 days after entry of the scheduling order under F.R.Civ.P. 16(b).

Parties in interest and their counsel should take advantage of the Local Bankruptcy Rules, where mediation is encouraged, and certainly comply with the District Court Local Rules, where compliance is required. Today's costs of litigation and the uncertainty of results are important considerations in risk analysis.

For litigants outside of bankruptcy, contemplation that the adverse party may seek bankruptcy court protection in response to an adverse judgment should certainly be a consideration for mediating a dispute and obtaining the result desired. In anticipation of litigation, litigation counsel may want to consult with bankruptcy counsel to assist in further litigation risk analysis.

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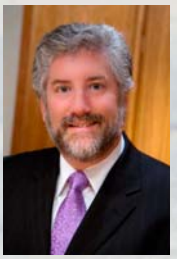

Saving Time, Money and Stress

By Alyse Golden Berkley

IF ONE WERE TO STEP BACK and take a look, it is not hard to see why some view the litigation process as an arduous, costly one. Notwithstanding the reality that a litigant may not be able to have her day in court for several years to come, the costs to get there can be devastating. The filing fees, service fees, appearance fees, interrogatories, depositions, subpoenas and expert fees; these accrue faster than one can imagine, and easily range in the thousands of dollars.

And there is another cost involved in litigation that rarely gets examined. That is the toll that is taken on the litigants that needs to be considered; that is, the well-being of the parties. How many clients have chosen to just settle a case for pennies on the dollar simply because they could not bear the thought of having their personal lives dragged through the mud? Or the embarrassment of having 18 strangers listen to the most intimate, physical and emotional issues of the parties? Each side has personal intimacies that they would prefer not be vulnerable to public disclosure.

There has to be a better way, one that provides justice, one that allows the litigants to maintain their privacy and their dignity, and still yield a satisfactory result. Without question, an alternative dispute resolution solution is the most efficient and economical way to navigate through the legal system.

The mediation process does not necessarily arise when a settlement is near. It can be initiated at almost any point during the case, from the time the demand letter is sent out, up until the day of trial, if not during trial! A successful mediation will allow all parties to come to the table and sift through the issues in controversy within an intimate environment, regardless of the stage of the game.

Mediation may start prior to litigation, when plaintiff has gathered all the relevant information necessary for the defendant to reasonably make a determination as to the value of the case. The parties then have the option to select a mediator to help them resolve the matter without the need for court intervention. This works best with a more modest and simple personal injury, soft-tissue matter, when plaintiff's medical condition is generally stable within 6 months post-accident, and the documentation may not be that extensive or complicated.

If the parties are unable to agree on that mutually repugnant figure, one that causes each side to question whether it was the right figure, the mediator may then be utilized to map out the litigation process, including which discovery is to be conducted, and when, all with the intent to keep costs down, avoid unnecessary intrusion into each party's life, and to bring about a quick, just resolution. This approach tightens up the litigation process and works to avoid the acrimony that sometimes develops among counsel. It also helps guide the parties through the process so that they have a better understanding as to why the case has not yet settled.

Once relevant discovery has been exchanged, the next best opportunity for a meaningful mediation is prior to the engagement of experts. This is every mediator's secret weapon, one that is used to promote movement in order to resolve the case prior to further major financial expenditures. It is much easier to ask for more money, to recommend taking less money (that mutually repugnant figure) *before* everyone has to invest several thousands more dollars into the case. And again, it expedites the litigation process by resolving the case prior to trial.

At any juncture of the case, the parties may choose to retain a mediator. The parties may continue with the initially retained mediator if they feel comfortable and have confidence in the mediator's ability to resolve the case. If not, the parties are free to retain a different mediator. Word-of-mouth referrals are most likely the safest bet. A mediator can be selected according to the mediator's strongest emphasis, whether in aviation, real estate, personal injury, elder abuse, employment law, family law or probate; there is a mediator with an emphasis to meet individual case's requirements.

If the case has not settled prior to the final settlement conference that does not necessarily mean that the case has to be tried. A mediator may be retained quickly to try and reach that mutually repugnant figure, the one that leaves each party with some discomfort. Do not be shy to ask the trial judge for help in this regard; ask to have the case sent to a settlement conference, a last-ditch attempt to avoid subjecting the client to the often difficult and lengthy trial. Even reading the words discovery, trial, settlement, stirs up emotions. Every step of the litigation process stirs up emotions. And when emotions are stirred up, so are the nerves! Not to mention the stomach juices. With that comes the loss of sleep.

There is a price that is paid going through the litigation process, and it just seems right to work towards an early, just resolution of the case in order to alleviate the unpleasantries of litigation. One has nothing to lose (the mediation is confidential), and all to gain (settlement) by working together with a capable mediator in resolving the client's case outside the judicial system.

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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. To apply for the credit, please follow the instructions on the test answer form on page 24.

got ADR?
A Healthy Choice

By Bradley W. Hertz

YEARS AGO, MILK WAS advertised via the clever slogan, "Milk. Good for Every Body." After it was determined that milk was not, in fact, good for every body (or everybody), the slogan became "Milk. Something for Every Body."

Perhaps Alternative Dispute Resolution (ADR) could benefit from a similar public relations effort, with a slogan such as "ADR. A Healthy Choice." Or, like the tagline "Got Milk?" one could ask "Got ADR?" When compared to litigation in terms of cost, time, stress and uncertainty, ADR can be a healthy alternative. Apropos to this edition of *Valley Lawyer* and its focus on health and wellness, this article addresses the benefits and mechanics of ADR as a viable means to resolve disputes. While most practitioners are well aware of ADR, perhaps it is time to bring it even more into the mainstream and no longer consider it "alternative."

For those embroiled in litigation or a pre-litigation dispute, ADR often provides a safe, sane, rational and cost-effective way out. Whether it's international diplomacy; President Obama holding a "beer summit" with Professor Henry Louis Gates and Sergeant James Crowley; or a local attorney mediating a tort or contract case, ADR provides something for every disputant.

A noted civil procedure textbook even describes ADR as "ameliorating the harmful byproducts of civil litigation." (Levine, Slomanson and Shapel, Cases and Materials on California Civil Procedure (2008) (Levine), at 475). Just as healthy eaters attempt to reduce harmful byproducts in food, so too can disputants reduce the harmful aspects of litigation by availing themselves of ADR.

The California Legislature has codified ADR as a worthy goal and has long encouraged the use of court-annexed ADR methods in general, and mediation in particular. Specifically, the legislature has declared that "the peaceful resolution of disputes in a fair, timely, appropriate, and cost-effective manner is an essential function of the judicial branch of state government…." (California Code of Civil Procedure (CCP) section 1775(a)). "In the case of many disputes, litigation culminating in a trial is costly, time consuming, and stressful for the parties involved." (CCP section 1775(b)).

Insofar as the reduction of stress is advised by any practitioner of health and wellness, and given that the legislature has declared that trials are stressful, it follows that avoiding trials where possible is good for one's health.

Among the types of ADR regularly practiced via the Los Angeles Superior Court (LASC) are mediation, arbitration, settlement conferences (both voluntary and mandatory), and neutral evaluation. The LASC website provides a significant amount of ADR information at www.lasuperiorcourt.org/adr. There, viewers can find online videos about ADR methods; read detailed descriptions about what to expect from ADR; learn about mediators from court-approved panels (both volunteer and "party pay"); and obtain numerous forms and explanations regarding the ADR process. This article devotes much of its focus to mediation, as it is the "most utilized ADR process" in the LASC (LASC ADR Neutral Resource Manual (2008), at 7).

Mediation

"Mediation" is defined as "a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement." (CCP section 1775.1; California Rule of Court (CRC) 3.852(1)). A mediator fosters communication between the parties

and attempts to facilitate a resolution, but makes no findings or decisions about the facts or law and renders no award. Mediators are generally "facilitative," in that they facilitate the flow of information between the parties, but can also be "evaluative," by giving the parties an evaluation of the case's strengths and weaknesses in an effort to settle the case. There are several other types of mediators, including "transformative" and "restorative," who go beyond the "nuts and bolts" of getting a case settled.

Los Angeles Superior Court-Connected Mediation

Qualifying for the LASC pro bono mediation panel requires at least 20 hours of core/classroom training; 10 hours of practical training; completion of at least 5 mediations; a place of business to conduct mediations; security clearance; continuing education in mediation; and a commitment to accept at least one mediation case per month (See "Pro Bono Mediation Panel Requirements" at www.lasuperiorcourt.org/adr/forms/PBMediationPanelRequirements.pdf).

Court-connected mediation plays a major role in reducing overcrowded LASC dockets, especially in "limited" civil cases (where the demand does not exceed $25,000) (CCP section 86); in "unlimited" civil cases where the amount in controversy does not exceed $50,000 (CCP section 1775.5); and in larger cases where the parties stipulate to mediate before a court-connected mediator (CRC 3.891(a)(2)). Parties can stipulate to mediation or other forms of ADR by executing and filing a "Stipulation to Participate in ADR" (Form LAADR 001).

Mediation is by no means limited to smaller cases, and parties can almost always stipulate to mediate their disputes, regardless of the size of the case. For example, in 2005, after a 2-day mediation, J.P. Morgan-Chase agreed to pay $2.2 billion to settle a class action arising out of the Enron scandal. And in 2007, mediation resulted in the Catholic Archdiocese of Los Angeles agreeing to pay $660 million to settle more than 300 sexual abuse claims. (Levine, at 520).

If parties choose to mediate their disputes privately – independent of the court's mediation program – there are a host of well-qualified mediators, ranging from retired California Supreme Court and Appellate Court justices, to retired trial court judges, to attorneys and non-attorneys schooled in mediation. Some contracts, such as real estate contracts, require mediation as a condition precedent to arbitration or litigation. And disputes between certain types of parties (e.g., a homeowner's claim against his homeowners' association) require mediation (California Civil Code section 1369.520(a)).

Mediation Hallmarks

Among the hallmarks of mediation are: (1) confidentiality (CCP section 1775.10; California Evidence Code sections 1119, 1152 and 1154; and CRC 3.854); (2) mediator competence and impartiality (CRC 3.856 and 3.855); (3) voluntary participation and self-determination (CRC 3.853); and (4) procedural fairness (CRC 3.857). The mediation process is only as strong as the mediators, parties, counsel and insurance claims adjusters. If the process is to be successful and yield the desired results of resolving cases, then each participant must take the process seriously and have a vested interest in the mediation's success.

Mediation Logistics

After the mediator gives notice to the parties via a "Notice of Alternative Dispute Resolution (ADR) Hearing" (Form LAADR 028), the parties are asked to sign an "Acknowledgment of Confidentiality for ADR Process" (Form LAADR 050) and complete an attendance sheet (Judicial Council Form ADR-107) before the mediation begins. The Acknowledgment sets forth the details regarding mediation confidentiality and provides that, notwithstanding such confidentiality, a written settlement agreement reached as a result of the mediation is admissible in a court action to enforce the settlement.

If a court-ordered mediation results in a settlement, the parties generally enter into a "Stipulation Re Settlement" (Form LAADR 038), which states, among other things, that the settlement may be enforced pursuant to CCP section 664.6.

For a detailed analysis of complex issues pertaining to mediation confidentiality, attorneys are commended to read the California Supreme Court's decision in *Foxgate Homeowners' Association, Inc. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1. There, the court focused on "the intersection between court-ordered mediation, the confidentiality of which is mandated by law, and the power of a court to control proceedings before it and other persons 'in any manner connected with a judicial proceeding before it,' by imposing sanctions on a party or the party's attorney for statements or conduct during mediation." (*Foxgate*, at 3).

The Supreme Court examined CCP sections 1119 and 1121 and concluded that "there are no exceptions to the confidentiality of mediation communications or to the statutory limits on the content of mediators' reports. Neither a mediator nor a party may reveal communications made during mediation."

Generally, the first 3 hours of a court-connected mediation are provided on a pro bono basis, before a randomly-assigned, volunteer mediator, who is allowed to charge for his or her time after 3 hours, if the parties so agree. In this case, the "Stipulation Re Fee for Service" (LAADR 037) is completed. If counsel would rather select a mediator, they may choose one who has qualified and chosen to serve on the LASC's "party-pay" panel, in which case a fee of $150 per hour for up to three hours must be paid.

According to the LASC ADR Department, approximately 20,000 cases are handled each year via court-connected ADR (LASC ADR Neutral Resource Manual (2008), at 7). The fact that tens of thousands of litigants, counsel and insurance carriers are obtaining many thousands of hours of pro bono or low-cost mediation services through the LASC mediation panel has generated much discussion among the mediation community, which has long been working toward greater

professionalization and compensation for its hard-working providers of ADR services. Given the law of supply and demand, however, as there seems to be enough of a supply of pro bono and reduced-fee mediators to meet the demand, it may be a while, if ever, before most mediators can "quit their day jobs" and become full-time ADR professionals.

Other aspects of the court-connected mediation process include the fact that mediators cannot be subpoenaed to testify in court as to what occurred during a mediation, subject to limited exceptions such as testimony about statements made in mediation that give rise to a crime, contempt of court, or State Bar or judicial disciplinary proceedings. (California Evidence Code section 703.5).

An example of mediation confidentiality can be found in the Statement of Agreement or Non-Agreement (SANA, Judicial Council Form ADR-100), which the mediator files with the court after a mediation. The SANA contains minimal information, primarily confirming to the court that the mediation took place and stating whether or not the case was resolved, and mediators are not permitted to give additional substantive details about the mediation.

During the period that a litigated matter has been referred to mediation, parties are urged to exercise restraint with regard to conducting discovery (LASC Rule 12.17). While obviously, counsel need to learn about and assess the strengths and weaknesses of their cases before knowing the case's value, "mediation and similar alternative processes can have the greatest benefit for the parties … when used early, before substantial discovery and other litigation costs have been incurred. Where appropriate, participants in disputes should be encouraged to utilize mediation and other alternatives to trial … in the early stages of a civil action." (CCP section 1775(d)).

Procedures and rules exist for many other aspects of court-connected ADR, including: (1) a procedure for neutrals to use courtrooms for mediations and arbitrations; (2) a procedure for continuances of ADR proceedings, including for the parties to compensate the neutral for untimely continuance requests; (3) a procedure for a neutral's recusal or disqualification; and (4) a procedure for complaining about a court ADR volunteer.

Suffice it to say that mediation and mediators provide a valuable dispute resolution option, one that sometimes does not get the respect and consideration it deserves. Like a prodding mother who urges her child to "eat your vegetables; they're good for you," litigation attorneys would be wise to hear a voice over their shoulder urging them to consider mediation. It's a healthy choice that should not be pushed to the side of the dinner plate in favor of the "Rambo Litigation" red-meat burger.

Arbitration

An arbitration involves each side presenting its case to a neutral third party who sits as an arbitrator and issues an award based on the evidence, as a judge would, but in a less formal process. Arbitration is "an efficient and equitable method for resolving small civil cases, and … courts should encourage or require the use of arbitration for those actions whenever possible" (CCP section 1141.10(a)). Arbitration can be binding or non-binding.

Judicial Arbitration

In court-connected, or "judicial," arbitration, the arbitrator issues an "Award of Arbitrator" (Form LAADR 014). Parties need not accept the arbitrator's award, and instead they may, within 30 days after the Award's filing, file and serve a "Request for Trial De Novo After Judicial Arbitration" (Judicial Council Form ADR-102). This places the case back on the court's calendar as if there had been no arbitration, but it must be timely filed or the Award becomes final (CCP section 1141.20; CRC 3.826).

If the party requesting the trial de novo obtains a trial result that is less favorable than the arbitration result, that party will be ordered to pay the other party's costs, including expert witness fees (CCP section 1141.21). This statutory scheme resembles CCP section 998 in some respects and is designed to encourage careful evaluation of a case before rejecting an arbitration award, at the risk of paying the opposing party's costs.

Some commentators have said that "judicial arbitration" is a misnomer in that it is generally not conducted by a judge, and its non-binding nature makes it not arbitration in the traditional sense. A detailed recitation of the judicial arbitration rules is beyond the scope of this article, but reviewing CCP sections 1141.10 – 1141.31 and CRC 3.810 – 3.830 is a good start.

Binding arbitration

In binding arbitration (also known as "private" or "contractual" arbitration), the disputants agree to abide by the arbitrator's award, and that agreement can be enforced in court if necessary (CCP section 1285, et seq.). Courts are extremely reluctant, however, to interfere with a binding arbitration award. The award can be vacated on the narrow grounds set forth in CCP section 1286.2, such as corruption, fraud and arbitrator misconduct. The award can be corrected on the narrow grounds contained in CCP section 1286.6, which include an evident miscalculation of figures; an evident mistake in the description of persons, things or property; or an imperfection in the form of the Award, not affecting the merits.

"Choosing binding arbitration means giving up significant rights. As stated by the California Supreme Court, 'private arbitration is a process in which parties voluntarily trade the safeguards and formalities of court litigation for an expeditious, sometimes roughshod means of resolving their dispute'" (Levine, at 478, citing *Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 831).

Subject to narrow exceptions, an arbitrator's award is not generally reviewable for errors of fact or law. (See *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1). As with judicial arbitration,

a detailed recitation of the contractual arbitration rules is beyond the scope of this article, but reviewing CCP sections 1280 – 1297.337 should provide practitioners with a worthwhile introduction.

For all the benefits of arbitration, certain large employers and others have been taken to task by the courts for the inequities contained in their arbitration clauses or in the way their arbitration clauses are carried out. (See *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, in which the California Supreme Court found fault with Kaiser Permanente's self-administered arbitration system).

Settlement Conferences

Settlement conferences are similar to mediation in that the settlement officer assists the parties in attempting to resolve the case. Settlement conferences can be voluntary (VSC) or mandatory (MSC) and often occur in the courthouse and relatively close to trial, so the parties have had an opportunity to engage in discovery and evaluate the strengths and weaknesses of their case.

Judges may set MSCs on their own motion or at any party's request (CRC 3.1380(a)). These types of settlement vehicles are often a last ditch effort at pre-trial settlement and frequently result in the proverbial settlement "on the courthouse steps."

Neutral Evaluation

Neutral evaluation provides parties and counsel, in a voluntary, confidential setting, the chance to make summary presentations of their cases and obtain a non-binding evaluation by a neutral attorney who has experience in the relevant areas of law. According to the LASC, among the goals of neutral evaluation are to: provide a "reality check" for attorneys and clients; identify and clarify the key disputed issues; and provide an early assessment of the merits of the case by a neutral expert. The evaluator will prepare an evaluation of the case, which might even contain an estimate of each party's likelihood of success on both liability and damages. Sometimes this leads the parties to an early resolution or at least litigation that is more streamlined and focused.

Public Policy Issues

To be sure, not all disputes are amenable to ADR. Some disputes require a judicial interpretation of law or a judicial fact-finding process that results in an "all-or-nothing" victory, with no "splitting the baby." Sometimes a party wants its "day in court" and looks at "settling" as a dirty word. But for many, even most, civil litigation matters, where the outcome comes down to dollars and cents, ADR often is the best way out of an unfortunate situation.

While there are many fans of ADR, it also has its detractors. Some say private ADR has created a two-tiered justice system: one for those who can afford to pay "full freight" for professional mediators and arbitrators; and another for those who cannot. Others say that professional neutrals might be tempted to have a bias toward those parties and counsel who give them repeat business. Another criticism is that ADR is not necessarily less expensive than litigation, after one calculates the neutral's fees and the sometimes steep administrative fees charged by ADR providers.

Critics also contend that the lure of significantly better pay has led the most capable jurists to leave the bench early to enjoy the benefits that private ADR can offer them.

As with the current debate over whether to receive the swine flu vaccine, the debate over the pros and cons of ADR is sure to continue. While ADR may indeed have some "side effects," as all medications do, for a great many disputes, it is just what the doctor ordered.

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MCLE Test No. 18

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

1. Mediation, judicial arbitration, settlement conferences and neutral evaluation are the four types of Alternative Dispute Resolution methods that are regularly practiced via the Los Angeles Superior Court.
   True
   False

2. Members of the public can have their disputes mediated online via the Los Angeles Superior Court website (www.lasuperiorcourt.org/adr).
   True
   False

3. Written settlement agreements entered into as a result of a court-connected mediation may be enforced in court pursuant to CCP section 664.6.
   True
   False

4. In 2007, mediation resulted in the Catholic Archdiocese of Los Angeles agreeing to pay $660 million to settle more than 300 sexual abuse claims.
   True
   False

5. Mediation confidentiality is not important, as the mediation process is very informal, and because settlement demands are inadmissible in court under Evidence Code sections 1152 and 1154, it does not matter who else knows about them.
   True
   False

6. Disputes between certain types of parties (e.g., a homeowner's claim against his homeowners' association) require mediation prior to the commencement of civil litigation.
   True
   False

7. In the Los Angeles Superior Court's ADR program, counsel are permitted to select their own mediators from the court's panel, regardless of whether the mediators are on the pro bono panel or the "party-pay" panel.
   True
   False

8. During the period that a litigated matter has been referred to court-connected mediation, parties should engage in vigorous discovery to work their cases up for trial in the event that the mediation does not result in settlement.
   True
   False

9. The California legislature has declared that the peaceful resolution of disputes in a fair, timely, appropriate and cost-effective manner is an essential function of the judicial branch of state government.
   True
   False

10. Judicial arbitration is the most-utilized ADR process in the Los Angeles Superior Court.
    True
    False

11. Qualifying for the Los Angeles Superior Court pro bono mediation panel requires at least 20 hours of core/classroom training; 10 hours of practical training; completion of at least 5 mediations; a place of business to conduct mediations; security clearance; continuing education in mediation; and a commitment to accept at least one mediation case per month.
    True
    False

12. In the *Foxgate* case, the California Supreme Court focused on the intersection between the confidentiality of court-connected mediation, and the power to impose sanctions on a party or attorney for statements or conduct during mediation, and concluded that the need for confidentiality generally outweighed the power to sanction.
    True
    False

13. According to the Los Angeles Superior Court ADR Department, approximately 50,000 cases are handled each year via court-connected ADR.
    True
    False

14. Without exception, mediators in court-connected mediations cannot be subpoenaed to testify in court as to what occurred during mediation.
    True
    False

15. Within 30 days after the filing of an Award of Arbitrator in a judicial arbitration, a request for a trial de novo must be served and filed in order to prevent the Award from becoming final.
    True
    False

16. After a judicial arbitration, if the party requesting a trial de novo obtains a trial result that is less favorable than the arbitration result, that party will be ordered to pay the other party's costs, including expert witness fees.
    True
    False

17. Courts are not at all reluctant to interfere with a binding arbitration award.
    True
    False

18. Neutral evaluation provides parties and counsel, in a voluntary, confidential setting, the chance to make summary presentations of their cases and obtain a non-binding evaluation by a neutral attorney who has experience in the relevant areas of law.
    True
    False

19. Every dispute is amenable to ADR.
    True
    False

20. Private ADR has its detractors, in that some people believe it raises equitable and ethical concerns, causes judges to leave the bench earlier than they otherwise might, and is not as cost-effective as it appears to be.
    True
    False

MCLE Answer Sheet No. 18

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

Santa Clarita Valley Bar Association

Building Upon a Solid Foundation

BRIAN E. KOEGLE
SCVBA President

THE COMING OF THE NEW YEAR PROVIDES an opportunity to reflect on years past, and to make plans on how to improve in the coming year. This opportunity applies to both individuals and organizations alike.

The Santa Clarita Valley Bar Association has been blessed with tremendous growth in the prior six years, rising from a non-existent entity to an organization with over 150 members. Now is the time to build upon the solid foundation established by prior Board presidents, and to increase the visibility and impact the Association has in and on the community.

Looking ahead, the 2010 leadership team of the SCVBA is dedicated to three basic courses of action.

New Santa Clarita Courthouse

The current Santa Clarita courthouse is one of the most outdated, overcrowded and undersized courthouses in all of Los Angeles County. Built in 1971, the courthouse was not designed to service the 250,000+ residents now living within the Santa Clarita Valley. These conditions were the primary reasons the Santa Clarita court complex was identified as needing an "immediate" renovation or replacement by the Judicial Council's Administrative Office of the Courts.

Over $50 million was approved by the State Public Works Board in late November 2009 for the new project, and the site selection process commences this month. Once the site is selected, environmental impact analysis and preliminary design plans will follow. The estimated timeline for completion of the project is approximately five years from the date the funds were approved. However, there remains a number of unanswered questions as the planning and site selection processes continue.

The Santa Clarita Valley Bar Association is uniquely positioned as a participant in this process, to identify and present a unified voice on behalf of the local legal community. The organization will have the opportunity to work collaboratively with the County of Los Angeles, City of Santa Clarita and the other stakeholders in the improvement plans. With this "seat at the table", the SCVBA now has an outstanding opportunity to contribute its collective experience, opinions and insight into this process, which will impact future generations of attorneys who practice or visit the Santa Clarita Valley.

By the end of the 2010 Board's term, it is anticipated that a site will be selected for the courthouse, and that the preliminary studies and designs will be underway, allowing the SCVBA to make its mark on the community for years to come.

Pro Bono/Community Service

Over the course of its first six years, the Bar Association established itself as a viable entity and a resource for the Santa Clarita business community. Now that the organization has grown to over 150 members strong, it is poised to raise its profile, become more involved and give back to the community which supports many of its members' businesses. At a time when many Americans who desperately need legal services cannot afford them, the members of the Bar have the talent to serve the underserved, to protect the indigent and to ensure justice is accessible to all, regardless of the size of their pocketbooks.

As part of the vision for 2010, the SCVBA will organize a subcommittee dedicated to exploring options, assisting and facilitating greater involvement in pro bono and community service outlets for the membership. Not only will this project make the Santa Clarita community a better place to live and work, it will also raise the profile of the Association as a whole, moving into a new era of growth and service.

Membership and Benefits

With over 150 members, the SCVBA has steadily grown and increased membership for each of the last six years. However, with over 430 active attorneys listing one of the communities of the Santa Clarita Valley as their address of record with the State Bar, there is an opportunity to continue the growth of the membership. As such, a new subcommittee will be formed to identify and reach out to those attorneys who are not yet members of the SCVBA, to inform and educate them on the benefits and value that membership in the organization provides.

Additionally, while providing its regular opportunities for members to obtain continuing legal education credit, the Bar's 2010 calendar of events will increase its commitment to attorney-to-attorney networking, expanding the focus on the semi-annual networking mixers and quarterly networking breakfasts. With the expansion of the Association's "Member Benefits and Discounts" program, the Bar will also emphasize the value of membership through professional and business development, as well as personal growth and discounts from local merchants and service providers.

Without the leadership and foresight of past presidents and their boards, the Santa Clarita Valley Bar Association would not be in a position to set such lofty and ambitious goals for 2010. Looking ahead, the organization has an outstanding opportunity to contribute more to the Santa Clarita community and to activate more of its members with a variety of programs, events and volunteer opportunities.

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

Classifieds

ATTORNEY TO ATTORNEY REFERRALS

APPEALS & TRIALS

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

EMPLOYMENT LITIGATION

Sexual Harassment Discrimination, Wrongful Termination, QuiTam/ Whistleblower, Overtime Violations, etc. 25% Referral Fee paid to attorneys per State Bar Rules. Law Offices of Jill B. Shigut (818) 992-2930.

PERSONAL INJURY/WRONGFUL TERMINATION

Handling all aspects of personal injury, products liability, wrongful termination, sexual harassment, discrimination and wage/hour violations.THE FLAIG LAW FIRM pays 25-30% in referral fees. Contact Donald W. Flaig, Esq. at (805) 418-1810 or dflaig@flaiglawfirm.com.

STATE BAR CERTIFIED WORKERS COMP SPECIALIST

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

TRAFFIC TICKET AND DUI DEFENSE

Traffic ticket defense only $199 (includes one court appearance). We also handle DUI defense. Hablamos Espanol. Contact Jeremy M. Johnson (818) 883-1330.

EXPERT

STATE BAR DEFENSE & PREVENTATIVE LAW

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

SPACE AVAILABLE

CANOGA PARK

2 windowed offices for sub-lease; $600 and $500 per month; 7301 Topanga Canyon, Canoga Park; B-Class Building with secured underneath parking. Call James Leestma, Esq. (818) 407-5070 ext. 1 or email james@advanceinheritance.com.

WOODLAND HILLS

Corner window office 18'x18' with adjoining 14'x14' secretarial area and one 11'x14' window office available in terrific penthouse suite on Ventura Blvd. Great views. Receptionist, library, kitchen and conference rooms. Call Jim (818) 716-7200 x. 141.

One window; two interior offices and secretarial area. Designer decorated suite with beautiful views, includes receptionist, phone service, voicemail, kitchen and three conference rooms. Call Sandra (818) 346-5900.

Sublease space in Woodland Hills. 1000 square foot separate office for lease. Available 1/1/2010. Please call Jane Plant at (818) 501-2833 for information.

SUPPORT SERVICES

NOTARY OF THE VALLEY

Traveling Notary Public. 24 hours-7 Days. Attorneys' Office • Clients' Office • Homes Hospitals • Jails. David Kaplan (818) 902-3853 SFVBA Assoc. Mbr. www.notaryofthevalley.com.

PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING

Family Care Monitoring Services • 20 years experience "offering a family friendly approach to" high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • www.fcmonitoring.com (818) 780-3730/(800) 526-5179.

CLASSIFIED ADVERTISING RATES

Price Per Issue

	25 words or less	Each Additional Word
SFVBA Member	$40	$1.60
Non-Member	$80	$3.20

All classified ads must be submitted typed and received by the first day of the month preceding publication. Mail contract and first month payment (downloadable from www.sfvb.org) to Valley Lawyer, 21250 Califa Street, Ste. 113, Woodland Hills, CA 91367 or fax to (818) 227-0499. Call Liz Post for information on display advertising at (818) 227-0490, ext. 101.

San Fernando Valley Bar Association

founded in 1926

SFVBA Members Earn Up To 12.5 Hours Of MCLE For Only $149!

Two-Day Seminar to help attorneys meet the requirements of minimum continuing legal education mandated by the State Bar of California.

Co-sponsored by

ARC Alternative Resolution Centers® A Limited Liability Company

ARXIS Financial, Inc.

Thomson Reuters

Law Offices of Alice A. Salvo

Wells Fargo Insurance Services

13th Annual MCLE Marathon

January 22 and 23, 2010
Braemar Country Club
4001 Reseda Boulevard, Tarzana

FRIDAY
January 22, 2010

▽ 9:00 a.m.
Registration and Continental Breakfast

▽ 9:30 a.m.
Nuts and Bolts of Estate Planning
Alice A. Salvo, Esq.
Law Offices of Alice A. Salvo
1 Hour MCLE

▽ 10:30 a.m.
Resolve Disputes Cost-Effectively Use of Judicial Reference CCP Section 638 with Mediation
Judge Bert Glennon and Judge Michael Hoff, Ret.
Alternative Resolution Centers
1 Hour MCLE

▽ 11:30 a.m.
Is That Malpractice?
William Holden, Managing Director
Wells Fargo Insurance Services
1 Hour MCLE (Legal Ethics)

12:30 p.m.
Lunch

▽ 1:30 p.m.
What Lawyers Need to Know about Business Valuation
Chris Hamilton, CPA, CFE, CVA
Arxis Financial, Inc.
1 Hour MCLE

▽ 2:30 p.m.
The Ethics of "Honest Mistakes"
Anne Thompson, Esq.
Nemecek & Cole
1 Hour MCLE (Legal Ethics)

▽ 3:30 p.m.
Bankruptcy Tips for the Non-Bankruptcy Practitioner
Steven R. Fox, Esq. and David R. Hagen, Esq.
1.5 Hour MCLE

SATURDAY
January 23, 2010

▽ 9:00 a.m.
Registration and Continental Breakfast

▽ 9:30 a.m.
Productivity Box: Solutions for Lawyers
Jared Karpel, Esq.
West Litigation Product Specialist
1 Hour MCLE

▽ 10:30 a.m.
Keeping Safe
How to Avoid Bar Discipline
Professor Robert Barrett
University of West Los Angeles School of Law
2 Hour MCLE (Legal Ethics)

12:30 p.m.
Lunch

▽ 1:30 p.m.
Prevention of Substance Abuse
Greg Dorst
The Other Bar
1 Hour MCLE (Prevention of Substance Abuse)

▽ 2:30 p.m.
Intellectual Property 101 — An Update
John Stephens, Esq.
Sedgwick, Detert, Moran & Arnold LLP
1 Hour MCLE

▽ 3:30 p.m.
What Not to Do in Your Practice
Movie Clips, the Law and More
Myer Sankary, Esq.
1 Hour MCLE (Elimination of Bias)

Cancellations must be received by January 15, 2010; no cancellations will be accepted after January 15, 2010.

Registration Form and Membership Application

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

MCLE MARATHON REGISTRATION FEES
(Includes written materials and lunch)

	Member	Non-member
▽ 2-Day Seminar	$149	$359
or		
▽ Friday, January 22	$89	$199
▽ Saturday, January 23	$89	$199
or		
▽ Per MCLE Hour	$25	$50
√ Class Attending		
▽ Late Registration Fee	$40	$60
(Pre-Registration Deadline is January 15)		

√ **Choice of Lunch**
Friday ▽ *Cobb Salad* ▽ *Turkey Club*
Saturday ▽ *Cobb Salad* ▽ *Turkey Club*

Total Enclosed/To be Charged: $ _____

If paying by credit card:

Credit Card # _____-_____-_____-_____

Expiration Date _____ /_____ / _____

Signature _____

Calendar

SAVE THE DATE

Thursday
February 25, 2010

Judges' Night Dinner

Honoring SFVBA Judge of the Year
U.S. Bankruptcy Judge
Maureen Tighe

Warner Center Marriott
5:30 PM

$75 Individual Tickets
$750 Table of Ten
(please allow 2 seats for judicial officers)

Sponsorship and advertising opportunities are available. Call (818) 227-0490, ext. 105 for further information.

Women Lawyers Section

JANUARY 12
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS

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

Intellectual Property, Entertainment & Internet Law Section
Year-End Wrap-Up

JANUARY 15
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Attorneys Mishawn Nolan and John Stephens will highlight the important cases of the year and discuss the impact these cases will have on the intellectual property arena.

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

Joint Meeting with CalCPA
Buying and Selling Distressed Businesses

JANUARY 19
11:45 AM
BRAEMAR COUNTRY CLUB
TARZANA

Attorney Steven R. Fox will address this timely topic. Please rsvp to CalCPAs: delia.rincon@calcpa.org or (818) 546-3509.

MEMEBERS	NON-MEMBERS
$35 prepaid	$45 prepaid
$45 at the door	$55 at the door
1.5 MCLE HOUR	1.5 HOUR CPE

Probate & Estate Planning Section
The View from the Bench

WEDNESDAY, JANUARY 20
NEW DAY FOR THIS MEETING ONLY!
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Judge Mitchell Beckloff and Judge Michael Levanas will discuss their courtroom procedures, likes and dislikes and personal pet peeves.

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

Litigation Section
How to Get What You Want from Your Judge

JANUARY 21
6:00 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Attorney Mark Shipow will offer practice tips about handling motions. This seminar will give experienced attorneys fresh insight and give newer attorneys critical tips.

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

Family Law Section
What's New for 2010? New Judges, New Cases, New Laws

JANUARY 25
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO

Judge Louis Meisinger and attorneys Barry Harlan and Michelle Robins will offer the latest updates and discuss what you need to know for the year ahead.

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

Small Firm & Sole Practitioner Section
Digging Out of Debt How to Help Your Clients (And Maybe Yourself) Recover!

JANUARY 26
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Michael H. Raichelson analyzes the options for individuals in need of debt relief, including stripping off second mortgages in bankruptcy. He will discuss some of the lesser-known options under current law, and provide advice on traps to avoid.

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

Criminal Law Section
DNA Testing: When Do You Need It?

JANUARY 26
6:00 PM
UNCLE CHEN RESTAURANT
ENCINO

Blaine Kern of Human Identification Technologies will discuss what should be tested and the ins and outs of DNA challenges.

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

Business Law, Real Property & Bankruptcy Section
Tax Saving Tips

JANUARY 27
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Attorney Michael Hackman will offer money-saving tips for both sole practitioners and lawyers in larger firms.

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