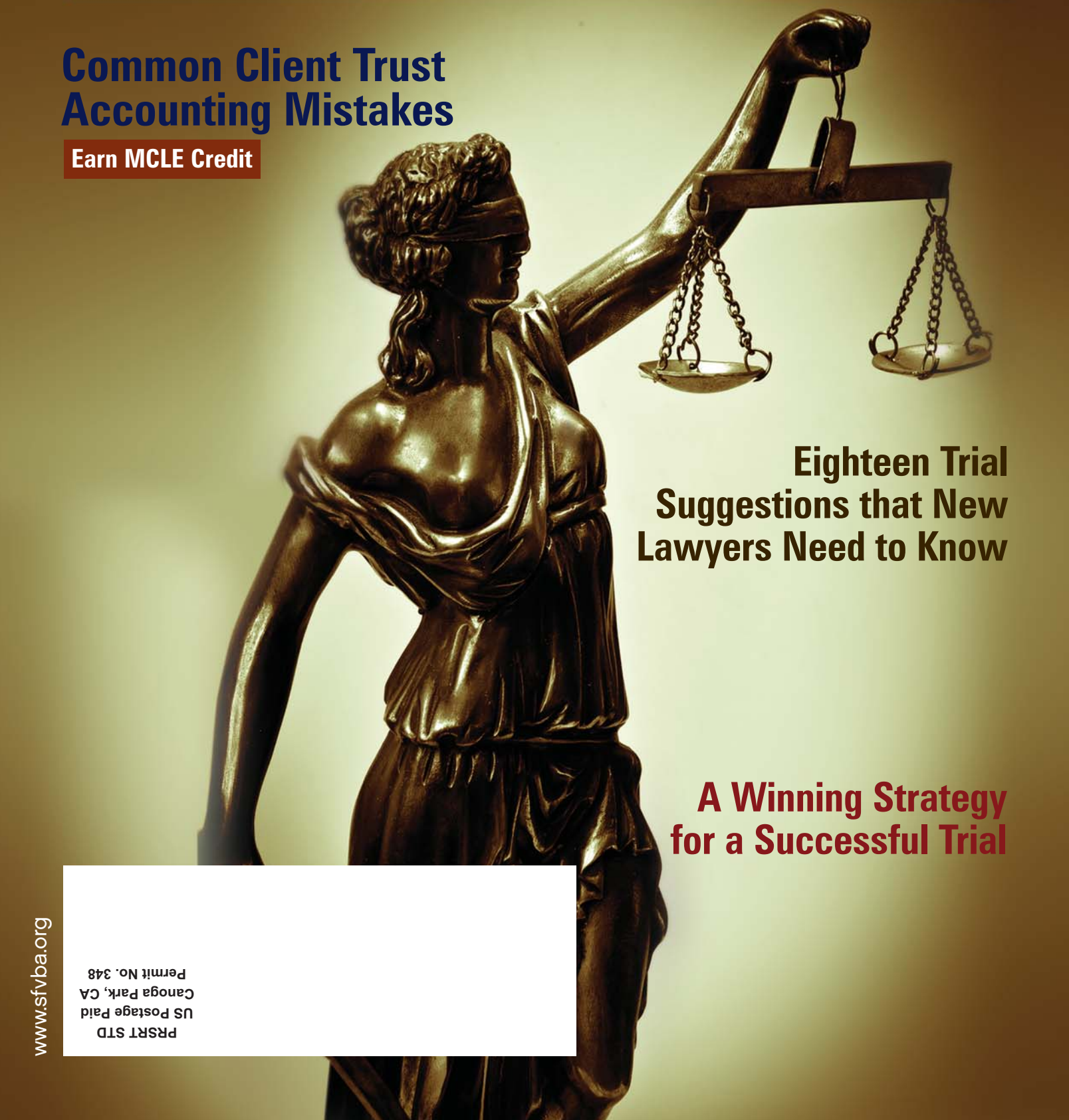
VALLEY LAWYER

NOVEMBER 2012 • $4

A Publication of the San Fernando Valley Bar Association



Common Client Trust Accounting Mistakes

Earn MCLE Credit

Eighteen Trial Suggestions that New Lawyers Need to Know

A Winning Strategy for a Successful Trial

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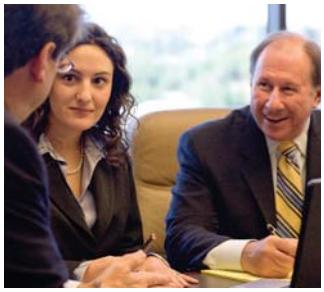
The Power You Need The Personal Attention You Deserve

Lewitt Hackman is a full-service business, real estate and civil litigation law firm. As one of the premier law firms in the San Fernando Valley, we are a powerful and forceful advocate for multinational corporations, privately held and family businesses, start-up companies, and individuals. At the same time, we are personal enough to offer individual and detailed attention to each and every client, no matter what their size.

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- Land Use/Development
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- Real Estate Finance/Leasing/Sales/ Acquisitions
- Tax Planning

CONSUMER PRACTICE AREAS

- Family Law
- Personal Injury/Products Liability
- Tax and Estate Planning
- Probate Litigation/Will Contests

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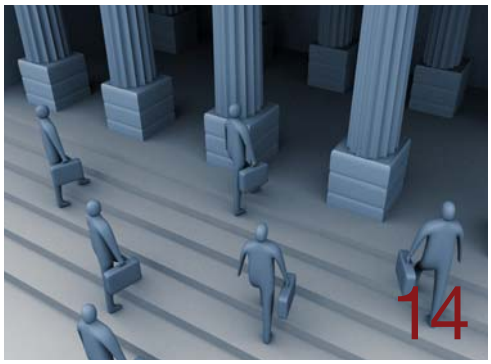

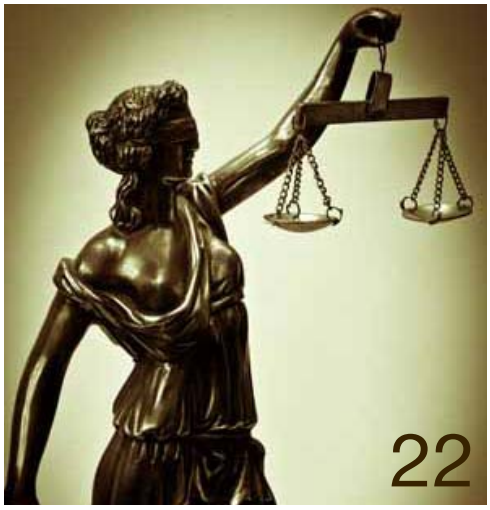

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VALLEY LAWYER

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

MANAGING EDITOR
Angela M. Hutchinson

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A Time of Thanks

DAVID GURNICK
SFVBA President
dgurnick@Lewitthackman.com

"The year that is drawing towards its close has been filled with the blessings of fruitful fields and healthful skies. To these bounties, which are so constantly enjoyed that we are prone to forget the source from which they come, others have been added, which are of so extraordinary a nature, that they cannot fail to penetrate and soften even the heart which is habitually insensible to the ever watchful providence of Almighty God ... [T]he laws have been respected and obeyed, and harmony has prevailed everywhere except in the theatre of military conflict ..." *—Abraham Lincoln, Proclamation Establishing Thanksgiving (October 1863)*

AMERICA'S GREATEST lawyer and president said the above quote amidst the Civil War. How much harder and more painful was that time, compared to anything today. Surrounded by carnage, Lincoln spoke with optimism and gratitude. Today, so many of us enjoy bounty and plenty. For all of us, whatever our challenges, we need not look far to see clients, colleagues, relatives, friends and many others whose circumstances are worse. As Thanksgiving season approaches, let's be thankful for good fortune.

Our blessings as Valley lawyers include good colleagues, good judges, and a Bar Association that works always to serve our members. The challenges of our profession include budget cutbacks and a political divide, but these are also blessings. Political divide and tight budgets signify political freedom, and the welcome burden of choosing and living within priorities we ourselves set. Budget crises, while not welcome, are not all bad. They are a chance to re-examine and adjust priorities. They are a self-inflicted obstacle course that forces us to examine our self-governed society and run it more efficiently and effectively.

Election Day is Tuesday, November 6. California's role in the presidential campaign has been minor, because voters here have a clear strong preference. In a close national race, no presidential candidate considers it productive to spend time or money here, despite California's 55 electoral votes, almost 1½ times the next largest electoral prize (Texas at 38).

Despite California's presidential election being predictable, it is important for lawyers to participate actively in the process. I urge us all to join in discussions about candidates, propositions and issues. It is good for lawyers to discuss politics, persuade others why your favored candidate or position is best, also consider what they have to say, and like a good juror, be open to the force of reasoning. Lawyers are opinion leaders, and we know as well as anyone, that key to a society under law, are civil discourse, intelligent discussion and informed decision-making.

Speaking of thanks and good colleagues, we are fortunate to have many here in the Valley. Diane Goldman, who chairs our Litigation Section, is an example. Diane represents a franchisee that is partly adverse and partly aligned with a franchisor I represent. She is aggressive, yet civil, and while my client is a large company, Diane is strong, yet never impolite. Diane is a true litigator because one can deal with her on a rational basis, but she will not let a client be taken advantage of. Despite being adverse, Diane did not hesitate to accept my request to lead our Litigation Section, and work with me to benefit our Bar Association and legal community.

Each of our section chairs deserves such praise, as examples of good leaders and good lawyers. My thanks go to each section chair for your service and leadership this year.

Please look at the list of our sections and chairs on page six. I encourage you to reach out and get to know a section chair, and participate actively in a section that is right for you.

Over a recent lunch, Diane mentioned how we can make practicing law even better in this community, by helping each other more, as colleagues. At one time or another any of us might have a question on a procedural matter, or issue of law. During hard times, SFVBA members should be able to call on each other and welcome the chance to help with a colleague's question. Add to this the idea of giving each other an extension, afriendly word or complement or other courtesy. By these measures we can make our legal community more collegial. And the good deed any of you do today, will circle around to benefit each other, and your clients.

Helping a colleague, even an adversary in need, is a good deed. It makes our profession better. Heck, in Lincoln's time, lawyers and judges rode the circuit together for months, shared hotel rooms and slept together, often in the same bed. Times and the practice of sharing beds with dusty, circuit riding judges and other lawyers have changed. This too is something colleagues and adversaries alike, may be thankful for.

Calendar

Employment Law Section
What's New at DLSE

NOVEMBER 7
6:00 PM
LEWITT HACKMAN
ENCINO

Join us for a roundtable Q&A with Division of Labor Standards Enforcement Senior Deputy Labor Commissioner James Gainey.

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

Small Firm & Sole Practitioner Section
The Art of Collections in a Down Economy

NOVEMBER 8
12:00 NOON
SFVBA CONFERENCE ROOM

Attorney Alexander S. Kasendorf of Alpert, Barr & Grant will discuss how simple office procedures can reap benefits for counsel and their clients.

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

Probate & Estate Planning Section
Foreign Accounts and Foreign Inheritances—How Clients Get Themselves into Hot Water with the Government

NOVEMBER 13
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney John Balian will discuss the new and overlapping compliance requirements with respect to foreign financial accounts; why some people are getting visits from the FBI, not just the IRS; and how to avoid potential claims by such clients against the estate planning professional.

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

Business Law Section
Securities Laws Fundamentals: What Your Clients Need to Know About Raising Money

NOVEMBER 14
12:00 NOON
SFVBA CONFERENCE ROOM

Attorney Louis Wharton, partner with the firm of Stubbs Aldterton & Markiles, will outline securities laws in regard to raising capital.

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

Santa Clarita Valley Bar Association
Awards & Installation Gala

NOVEMBER 15
6:00 PM
TOURNAMENT PLAYERS CLUB
VALENCIA

Please RSVP by contacting Sarah at (855) 506-9161 or info@scvbar.org.

MEMBERS	NON-MEMBERS
$50	$65

Paralegal Section
Organizing an LLC

NOVEMBER 15
6:00 PM
SFVBA CONFERENCE ROOM

Attorney Bill Staley will address the group on the process of incorporation and organizing a LLC.

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

Family Law Section
Hot Tips

NOVEMBER 26
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO

Gary Weyman and a distinguished panel will offer the latest "must have" tips and suggestions regarding your family law practice.

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

Taxation Law Section
Documentary Transfer Tax

NOVEMBER 27
12:00 NOON
SFVBA CONFERENCE ROOM

Michael LeBeau will detail the documentary transfer tax.

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

Bankruptcy Law Section
Ninth Circuit Review

NOVEMBER 28
12:00 NOON
SFVBA CONFERENCE ROOM

Attorneys Richard Gibson and James Felton will present a review of the recent 9th Circuit opinions in regard to consumer and business bankruptcy issues.

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

MCLE TRAINING OPPORTUNITY

NLSLA

Brownbag Dinner
November 7, 2012
5:30 to 8:30 PM

NLSLA Offices
13327 Van Nuys Blvd., Pacoima

Neighborhood Legal Services of Los Angeles County has created a panel of volunteer attorneys to assist domestic violence victims with restraining order hearings. The Volunteer Attorney Panel will allow NLSLA to increase access to legal services for low income domestic violence victims throughout the San Fernando Valley.

RSVP to amygoldman@nls-la.org.

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

Emerging Sections

ELIZABETH POST
Executive Director
epost@sfvba.org

ONE OF THE SFVBA'S MOST enduring sections is our very active Probate & Estate Planning Section. For decades, dozens of members of the Probate Section have gathered on the second Tuesday of each month for lunch in Encino to socialize, obtain CLE credits and learn the latest developments from experts in the field. So some Bar members might be surprised that the San Fernando Valley Bar Association has added a new Elder Law Section, to be chaired by Van Nuys elder law, nursing and assisted living litigation attorney Steven Peck of the Peck Law Group.

What is an Elder Law attorney and how do these legal professionals differ from lawyers who practice probate or estate planning? According to the National Academy of Elder Law Attorneys (NAELA), elder law attorneys are dedicated to improving the quality of legal services provided to seniors and people with special needs.

Like probate and estate planning attorneys, elder law attorneys prepare wills, trusts and other documents so that property will pass efficiently to beneficiaries, as well as assist families in administering estates. But elder law attorneys also assist their clients with public benefits, guardianships/conservatorships and health and long-term care planning, among other important issues.

Among the most common concerns presented to elder law attorneys is the wish to avoid complete impoverishment if long-term care is needed. In addition to helping protect assets from nursing home expenses, elder law attorneys advise about Social Security, Social Security Disability and other public and private retirement benefits; assist in applying for Medicare, Medi-Cal and other government programs; make sure the nursing home patient's rights are respected; represent clients in disputes involving nursing homes, Social Security, Medicare, Medi-Cal or managed care; and help address instances of elder abuse or fraud.

Peck has practiced law for thirty-one years and specifically in the areas of nursing home and assisted living abuse and neglect; elder and dependent adult abuse; long term care litigation; and serious and catastrophic injury matters. Peck can be contacted at stevenpeck@thepecklawgroup.org.

> "An organizational meeting of the Elder Law Section is scheduled for Thursday, November 29, 2012 at 6:00 p.m. at the SFVBA offices in Tarzana."

An organizational meeting of the Elder Law Section is scheduled for Thursday, November 29, 2012 at 6:00 p.m. at the SFVBA offices in Tarzana. A light meal will be served.

Members interested in learning more about this emerging field or willing to share their expertise with colleagues are invited to attend the meeting and help plan the section's upcoming seminars and programs. Contact events@sfvba.org to RSVP or be added to the Elder Law Section.

The San Fernando Valley Bar Association has sixteen active sections intended to provide SFVBA members with opportunities to develop and improve their legal skills and to offer a forum for communication and relationships in matters of common interest. Members of sections are automatically enrolled in the section's corresponding listserv.

Elayne Berg-Wilion is Chair of the SFVBA's new Corporate Counsel Section. Berg-Wilion is Interim Director of Clinical Education at Pepperdine School of Law and was long-time Associate General Counsel of Glendale-based IHOP (franchisor of IHOP and Applybees Restaurants). Members can contact Irma@sfvba.org to join this new section.

Eleanor Barr, Esq.

Christine Masters, Esq.

NARVER

Providing SFVBA members With an exclusive Lawyers Professional Liability program.

1-10 ATTORNEY LAW FIRMS (OR LARGER)

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PERSONAL INJURY COVERAGE

FULL PRIOR ACTS COVERAGE – AVAILABLE

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NO THRESHOLD FOR NEW ATTORNEYS

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Wesley Hampton
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Debra Mondragon
dmondragon@narver.com

Diane Wood
dwood@narver.com

By Stephen J. Strauss

Caveats for Newbies

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

CONGRATULATIONS ON being admitted to the practice of law in California. Once admitted, attorneys are subject to a slew of rules, duties and reporting requirements that can be traps for the uninitiated. Most of an attorney's annual license fee of $410 payable to the State Bar of California will be spent to insure they comply with these new obligations. There are four categories of events that will cause attorneys problems with the State Bar: reportable actions, criminal convictions, allegations of misconduct and reports in the media.

Reportable Actions

Business and Professions Code Section 6068(o) requires attorneys to self-report seven categories of potential misconduct within 30 days: (1) the filing of the entry of judgment in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity; (2) the imposition of judicial sanctions except for sanctions for failure to make discovery and monetary sanctions under $1,000; (3) three or more lawsuits filed in a 12-month period for malpractice or other wrongful conduct committed in a professional capacity; (4) the bringing or an indictment or information charging a felony; (5) conviction or verdict of guilty or plea of guilty or no contest of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which involves improper conduct, dishonesty or other moral turpitude or an attempt or conspiracy or solicitation of another to commit a felony or a misdemeanor of that type; (6) the imposition of discipline by a professional or occupational disciplinary agency or licensing board; and (7) the reversal of a judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney. Failure to self-report these events are itself an offense subject to discipline.

If an attorney receives or disburses client funds in California, they will also need to establish a client trust account known as an interest only lawyer trust account (IOLTA). If any check is ever declined for insufficient funds or if an attorney issues a check that results in an overdraft, their financial institution will also automatically report it to the State Bar, see Business and Professions Code Section 6091.1.

Attorneys will not receive notice from their bank of this reporting. Attorneys irrevocably authorized it when admitted. The bank's notice of the overdraft often comes as a total surprise, but it should not. Standard 1(d) to Rule 4-100 (C) of the Rules of Professional Conduct requires one to personally reconcile the trust account every month. This is a non-delegable duty that cannot be passed on to an office manager or bookkeeper. Money violations are probably the second most common reason lawyers are disbarred.

Criminal Convictions

When criminal charges are filed against an attorney for any reason, the district or city attorney must immediately notify the State Bar and must also notify the clerk of the court where the

action is pending. The clerk in turn will prominently note that pending action is against an attorney in the court file. Business and Professions Code Section 6101(b).

If an attorney enters a guilty plea, a nolo plea or is convicted of a felony or misdemeanor, the clerk will send a certified copy of the record of their conviction to the State Bar, see Business and Professions Code Section 6101(c). A notice from the State Bar will follow, informing the attorney that it seeks to immediately seek their interim suspension pending a hearing or otherwise determine whether professional discipline should be imposed based upon the conviction. The hearing will consider all the facts and circumstances surrounding the commission of the crime, not just what the attorney plead out to.

It does not matter that the criminal act had nothing to do with the practice of law or that no client was a victim. It also does not matter that the attorney caused no actual harm when the conduct itself poses a danger to the public (think drunk driving or firing a gun into the air). *In the Matter of Anderson* (Rev. Dept. 1992) 2 Cal. Sat. Bar Ct. Rptr. 208.

Allegations of Misconduct

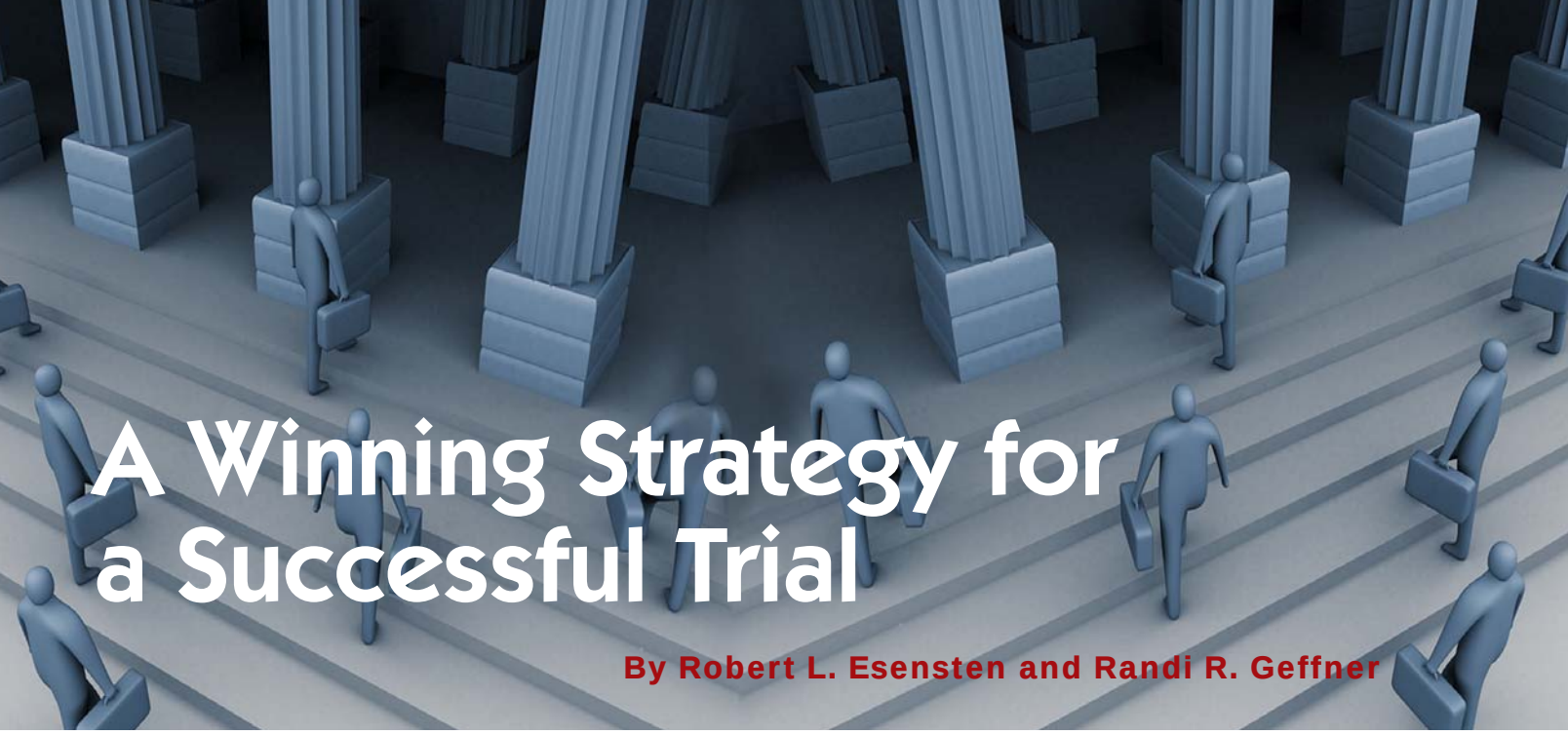
Clients and former clients often make allegations of attorney misconduct to the State Bar because they didn't get what they wanted or as much as they wanted. Anyone can make these allegations, including opposing parties, opposing counsel, prior counsel and of course judges. If one communicates with their clients without raising unrealistic expectations, while remaining civil with their adversaries and honest with the court, their life will be much happier.

Reports in the Media

In response to alleged attorney misconduct reported in the news media, by the courts or by members of the judiciary, the State Bar as an agency (charged with protection of the public) must be able to say that it is investigating the matter. Bar dues includes payment for employees at the State Bar to search media reports for questionable conduct by lawyers. This will in turn generate inquiry letters from the State Bar to the attorney. It is not uncommon to receive a letter from the State Bar before any final order or judgment in a civil case or despite the fact the matter is still pending before an appellate court.

Even though attorneys pay their salaries, the folks at the State Bar are not attorneys' friends; they are regulators. Like law enforcement officers, their job is to police the profession and take licenses away or suspend attorneys. The State Bar is best avoided by knowing one's duties as an attorney under the State Bar Act. If an attorney does get ensnared, attorneys don't want to have a fool for a client; hire experienced disciplinary defense counsel at the earliest possible moment.

Stephen J. Strauss is a former senior litigator for the State Bar of California who regularly defends lawyers before the State Bar Court. He can be reached at steve@statebardefense.net.



A Winning Strategy for a Successful Trial

By Robert L. Esensten and Randi R. Geffner

CLARENCE DARROW SAID, "The only real lawyers are trial lawyers, and trial lawyers try cases to juries." Yet Darrow did not provide any guidance on how to prepare to try a case to a jury in the 21st Century. Whether a new admittee or a seasoned litigator, every attorney whose practice brings him or her into the courtroom on a regular basis will need to make critical decisions at every stage of the litigation process that will impact how the case will be tried, and how successful the result will be.

From the first client interview to the last words of the closing argument, focus on the preparation for trial and attention to the details along the way will guarantee a smoother process, a more efficient usage of time and resources, and in the end, a more successful trial.

Trial Preparation from the Beginning of the Case

Client Interview

Although the focus here will be on the pretrial preparations in the three months preceding trial, in order to be most efficient and effective in that critical time frame, it is important to lay the foundation starting with the first client interview. From the first client contact, nail down the important facts, witnesses and documents. The information obtained as early as the first client meeting will provide the framework for investigation, discovery and development of the theme of the case, as well as highlighting any weaknesses or anticipated defenses that may be diffused early on.

Theories of the Case

In the early stages of litigation, creativity, flexibility and a healthy sense of skepticism will provide the groundwork for effective trial preparation down the line. Consider all possible alternatives in establishing the theory of the case, and be flexible if it appears that the witnesses and documents will not strongly support the theory that appeared in the early stages. It will be far more effective to fit the legal arguments into the provable facts than to later try to squeeze the evidence that does exist into a predetermined and inflexible theory of the case. The theory of the case is going to shape the trial preparation and trial, so it is essential that the witnesses and documents will support the theory.

Along these lines, it is important to remember that the witness testimony, even from so-called friendly witnesses, will almost never turn out to be exactly what the client has imagined. The client is not an impartial observer of the events, and is likewise not objective about the witnesses and documentary evidence. Never rely on what the client relates that a witness will say, until that witness has been interviewed and, if necessary, deposed.

Witnesses

When working with witnesses, provide information about scheduling early and often. Witnesses are critical players in trial preparation. Their importance should not be discounted, and as such, treating their schedules with respect is paramount. Friendly witnesses can become less friendly when they feel that their schedules and their time are not respected. Therefore, do not ever assume that a witness will be available for a trial even if it is set a year away. As soon as the trial date is assigned, advise the client and any witnesses, and provide periodic reminders in writing. Happy (and available) witnesses will make trial preparation that much easier, and will result in a better trial.

Know and Respect the Court-Imposed Pre-Trial Deadlines

Once the trial date is assigned, the schedule for trial preparation goes into effect. It is an absolute necessity that all pretrial deadlines be calendared and reminders set so that no deadline passes inadvertently.

Unless the court has its own scheduling guidelines or order[1], pretrial requirements and deadlines are governed by Los Angeles Superior Court Local Rules, Rule 3.25(h)[2]. Pursuant to Rule 3.25(h), at least five days prior to the final status conference, counsel must file and serve exhibit lists, witness lists, jury instruction requests and a short statement of the case. Motions, such as motions in limine, must be served with sufficient notice to be heard on the day of the final status conference.

Strict adherence to these deadlines is mandatory. Calendar the deadlines and make sure to meet them. If the

court has provided its own requirements for pre-trial preparation, these should be followed literally and specifically. Courts that go to the effort of creating specific requirements will expect strict compliance. Confirm with the clerk whether there are rules specific to that court, even if none existed at the time of the case management conference or status conference, as the rules could change in the year between the CMC and the trial. Double check.

Ask for Help

No one can do it all, whether a sole practitioner or a partner in a large firm. And more importantly, no one can prepare a trial with objectivity. Living with a case for a year or more may cause one to become married to the theory of the case. A fresh perspective is invaluable in the months preceding trial.

Abraham Lincoln once said: "When I have a particular case in hand, I have that motive and feel an interest in the case, feel an interest in ferreting out the questions to the bottom, love to dig up the question by the roots and hold it up and dry it before the fires of the mind."

One of the best ways to dig up a question by the roots and dry it before the fires of the mind is to enlist the help of others in re-evaluating the issues and facts to be presented at trial. An effective way to accomplish this is through the use of a mock jury.

Mock Jury

An effective and inexpensive way to obtain the feedback from a mock jury is to enlist colleagues, co-workers, friends or family to serve as the mock jury. Prepare a short presentation of the case, sometimes just the presentation of an opening or closing argument is sufficient. Enlist someone incredibly competent to present the opposing side of the case. Strangers to the case will see strengths and weaknesses that the litigator who has been living the case for a year or more cannot see. It is an invaluable tool to get a fresh perspective on a case, to test out which theories work and which do not. Listen, learn and adjust accordingly.

Association of Trial Counsel

Another tremendous resource is the association of outside trial counsel, experienced litigation counsel who can bring a fresh perspective, energy and unmatched expertise to the pre-trial and trial process. Bringing in expert trial counsel does not indicate a lack of confidence, but rather suggests to the opposition the conviction that the case at hand warrants the best in trial counsel. There is a vast difference in the skill sets required to bring in a strong case and work through the discovery and motion issues and the skills necessary to effectively prepare and try a case to a jury or judge.

The combination of the history and knowledge of the attorney who has handled the case from its inception with the fresh perspective, effective and efficient trial preparation system and courtroom aptitude of expert trial counsel is a winning combination. Being engaged in trial is similar to having two full time jobs at the same time. It can be overwhelming. Associating in trial counsel in the months prior to trial can bring in just the shot of adrenaline that a case needs to be optimally presented to the trier of fact.

Fine Tuning Discovery before Trial

The discovery plan throughout the litigation should be tailored to the theory of the case, and should always

err on the side of over-inclusiveness. It is much easier to disregard information that is not necessary to the case than it is to try to work around holes in the discovery.

At least three months prior to the discovery cut off, evaluate all discovery and responses on each side of the case to make sure it is complete and updated based upon the facts obtained in discovery. Review all documents received from the opposition to ensure there is nothing additional that should be requested, and review all interrogatory and admission responses to see if follow-up is necessary. Even if it seems that all discovery is in order, it is always a good practice to serve a supplemental interrogatory pursuant to *Code of Civil Procedure §2030.070*, which requires the responding party to update all interrogatory responses, and a supplemental request for production pursuant to *Code of Civil Procedure §2031.050*[3].

In addition, even if not served with a supplemental interrogatory, it is important to review the client's responses to see if there is anything that should be supplemented or clarified in light of what has been learned and discovered since the time of the responses. If there is anything in the client's responses that doesn't sit right with the theory of the case due to information that has been discovered since the time of the responses, the responses should be supplemented carefully and truthfully. The trial is not a good time for contradictions between discovery responses and testimony to be pointed out by the opposition to the trier of fact.

Final Status Conference and Trial

As set forth hereinabove, it is critical to meet the deadlines established by the court or by the local rules for submission of the pre-trial documents, including witness lists, exhibit lists, statement of the case, motions in limine and form and special jury instructions. The pre-trial documents will communicate to the court, and to opposing counsel, the level of confidence, preparation and commitment that have gone into the case set to be tried. Cases are often settled on the eve of trial when one side is faced with the realization that the opposition has calmly, efficiently and timely prepared a solid presentation for the final status conference.

Jury Instructions

It is often best to start preparation of the pre-trial documents with the jury instructions. The elements that must be established pursuant to the jury instructions will form the outline for the witness list, exhibit list and statement of the case. The only law the trier of fact will use to render a decision is found in the jury instructions. Therefore, the jury instructions (both special and form) should provide the roadmap for the evidence that must be presented to prove the facts necessary to sustain a verdict. Once the jury instructions are completed, filling in the necessary documents and witnesses to establish the requisite facts is much more logical and intuitive.

Exhibit List

The preparation of the exhibit list is also a critical step. Documents should be listed in an order that makes sense in the context of the trial, as a sense of confusion and disorganization in front of the trier of fact is something to be avoided. To the extent possible, documents should be listed either chronologically or in the order to be presented at trial. Documents should not be grouped in the exhibit list but should be identified individually if possible, and numbered sequentially (such as Exhibit 5.1, 5.2 and so on).

Everything that can be done, should be done, to make the trial presentation focused on the issues and evidence, and not on the logistics of presenting the evidence[4]. Once the jury instructions and exhibit list are prepared, compilation of the witness list readily follows the plan already in place for establishing the necessary facts to sustain a verdict.

Messy Logistics...Made Unmessy

Notebooks or Redwells

Everyone will have their own style and preferences for handling the physical logistics of trial. Some counsel will bring redwells, others trial notebooks. Trial notebooks have the advantage of keeping all documents neat and in order. Again, the trier of fact is not impressed by disorganized trial counsel, and the stress level of trial counsel will be decreased by knowing that everything is in its place and will remain there.

Witnesses and Testimony

It is most important not to underestimate the importance of prepping the witnesses. This does not mean suggesting testimony. Keep in mind that most witnesses (including clients) have little or no experience in testifying and will be nervous about doing so. Prepare the witnesses as to every conceivable detail—how to get to the court, where to park, what to wear, where to sit, what to bring, how long the testimony might take, where to eat, as well as what to expect on direct and cross-examination.

As busy as the weeks leading up to trial may be, do not wait until the day of trial to prepare a witness. Keep the witness updated as often as possible as to scheduling of testimony. Respect for the witness' concerns will go a long way toward eliciting effective testimony.

Last Minute Issues

No matter how well prepared the litigator may be, last minute issues inevitably arise during trial. Association of expert trial counsel will alleviate many of these issues, but it is still imperative to be prepared to handle the unexpected. If at all possible, have someone at the office (a clerk, assistant or ideally an attorney) who will be available throughout the trial for last minute research, document location or other emergencies.

It is critical that there is at least one back up person available to the trial attorney during morning and afternoon breaks in the trial and during the lunch break. The lunch break may be the only time that the trial attorney has to work through issues that arise as the trial progresses. An attorney alone in the courthouse cannot be effective without back up in the office. It may seem like a little thing, but to the trial attorney who needs a quick research project to address a new issue raised at trial, it is the difference between a competent and calm presentation and the appearance of unpreparedness.

To those who chose to spend their careers as trial counsel, there is nothing more exhilarating, fulfilling or rewarding than the preparation for and execution of a trial. With effective and efficient preparation and practice, the trial process can be the highlight of an attorney's career. That highlight can be best accomplished by leaving no stone unturned in the months leading up to the trial.

As Abraham Lincoln said in 1850, "The leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for to-morrow which can be done to-day."

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[1] As permitted by Los Angeles Superior Court Local Rules, Rule No. 3.25(i).

[2] Rule 2.25 provides, in pertinent part: "(h) **Final Trial Preparation**. Counsel must attend a final status conference, which the court will set not more than ten days prior to the trial date. The direct calendar judge will hold the final status conference in a direct calendar case. The final status conference in a master calendar assigned case will be held in a department designated by the master calendar court. (1) At least five days prior to the final status conference, counsel must serve and file lists of pre-marked exhibits to be used at trial (Local Rules 3.151, 3.53, and 3.149), jury instruction requests, trial witness lists, and a proposed short statement of the case to be read to the jury panel explaining the case. Failure to exchange and file these items may result in not being able to call witnesses, present exhibits at trial, or have a jury trial. If trial does not commence within 30 days of the set trial date, a party has the right to request a modification of any final status conference order or any previously submitted required exchange list. (2) In a direct calendar case, the parties must file and serve any trial preparation motions and dispositive motions, other than summary judgment motions, including motions in limine or bifurcation motion, with timely statutory notice so as to be heard on the day of the final status conference. Unless the court orders otherwise, lead trial counsel must attend the final status conference. At this conference, the court will also consider, inter alia, major evidentiary issues and special verdict issues. (3) In a master calendar assigned case, the parties must file and serve trial preparation motions and dispositive motions at least five days before the final status conference, which shall be heard on the first day of trial."

[3] Only one supplemental interrogatory and supplemental request for production may be served after the initial setting of the trial date. The supplemental discovery must be propounded in a timely manner pursuant to the discovery cut-off.

[4] To that end, if resources are available to structure some or all of the trial presentation using technology, the presentation can be more effective, interesting and persuasive. It is a good practice to contact the court in advance to determine how it is set up from a technology standpoint, what should be brought in by counsel, whether there is a tech person on staff at the court to assist with set up and any glitches, and whether the tech portions of the trial presentation can be rehearsed in the courtroom beforehand. In addition, it is critical to have a back up plan for presentation if the equipment doesn't work, the power goes out, there is a computer crash, there is no tech support available during the trial, or any other circumstance arises.

Robert L. Esensten is a senior partner of Wasserman, Comden, Casselman & Esensten, LLP. He can be contacted at resensten@wccelaw.com. **Randi R. Geffner** is a senior associate attorney in the litigation department of Wasserman Comden et al. She can be reached at rgeffner@wccelaw.com.

Eighteen Trial Suggestions that New Lawyers Need to Know

By Judge Richard H. Kirschner

1. Exchange exhibit lists and inspect each exhibit prior to the start of trial.

2. Avoid compound questions.

3. "Do you know" or "to your knowledge" invite responses based on hearsay. Most questions should focus on the witness' senses (e.g., what, if anything, did you hear, see, touch, smell or taste?), actions (e.g., what, if anything, did you do?) or thoughts (when relevant).

4. Refrain from using legal conclusions. A person killed was not necessarily murdered. Whether a murder occurred is a question for the jury. The person killed may be "the decedent" or "alleged victim" but is not necessarily a "murder victim." This is most important in "what is it?" cases, when the jury decides if the killing was murder, manslaughter or self-defense.

5. Do not ask a witness to comment on the veracity of other witnesses (e.g., If witness A testified to such and such, was he lying?) Determinations of credibility are for the jury.

6. "There has been testimony in this case that…" is argumentative (e.g., counsel is summarizing the evidence).

7. "Is it fair to say…." is not as clear as "Is it true…" Fairness is subjective.

8. Avoid double negatives, which can lead to confusion. Instead of "Is it not true…," ask "Isn't it true…" (e.g., Q: Isn't it true the car was red? A: Yes.)

9. A business record foundation requires evidence that: (1) the record was made in the regular course of business; (2) it was made at or near the time of the act, condition or event; (3) the custodian or qualified witness testifies to how the record was prepared; and (4) the sources of information and method and time of preparation indicate its trustworthiness. See Evidence Code 1271. The following questions are usually required: Was exhibit 12 made in the ordinary course of business? Was it the ordinary course of the business to make exhibit 12? Was exhibit 12 made at or near the time of the event by someone with knowledge? Was exhibit 12 relied on by the business?

10. When impeaching a witness, lock in the witness' present assertion; identify the foundation for the prior statement (if from a prior transcript, announce page and line); and, when possible, read the prior statement verbatim (if from a transcript, read question and answer). It is permissible to use leading questions when impeaching your own witness. This prevents the witness from adding superfluous or objectionable information from the prior statement.

Example 1
Impeaching from a prior police report

Attorney: You saw Mr. Johnson fire the gun, true?
Witness A: Yes.
Attorney: Do you remember being interviewed on May 21, 2002, by detective Anderson?
[Lay foundation for the prior statement: establish when and where the statement was made, to whom and who else was present.]

Attorney: Did you tell (or is it true you told) Detective Anderson you did not see who fired the gun?
Witness A: No (or I don't remember).
[Call Detective Anderson to impeach. Lay foundation, including time, date, place of interview, who else present, demeanor of Witness A, etc.]
Attorney: During your interview with Witness A, did he tell you he did not see who fired the gun?
Detective: Yes.
[Note the use of a leading question with the impeaching witness. A non-leading question, e.g., "What, if anything, did Witness A say about seeing a gun?," invites an impermissibly broad response which could include irrelevant evidence and hearsay.]

Example 2
Impeaching from a prior transcript
Attorney: You saw Mr. Johnson fire the gun, true?
Witness: Yes.
Attorney: Do you remember testifying at the preliminary hearing in this case on June 15, 2002?
[You were under oath, the defendant was present, etc.]
Attorney: I'm going to read to you from the transcript of your preliminary hearing testimony at page 16, line 22:
[Pause for counsel to locate the passage and object]
Question: Did you see Mr. Johnson fire the gun?
Answer: No.
Question: Did you see anyone fire a gun?
Answer: No, absolutely not.
Attorney: Were you asked those questions and did you give those answers when you testified at the preliminary hearing on June 15, 2002?

11 Expert witnesses can rely on hearsay but may not under the guise of stating reasons for an opinion bring before the jury incompetent hearsay evidence. *People v. Coleman*, 38 Cal.3rd 69, 92. On direct examination, an expert may state the reasons for his opinion and testify that reports prepared by other experts were a basis for that opinion. The expert may not, on direct, reveal the content of reports prepared or opinions expressed by non-testifying experts. *Whitfield v. Roth*, 10 Cal.3rd 874. The expert may be cross-examined on the content of such reports. *Mosesian v. Pennwalt Corp.*, 191 Cal.App.3rd 851, 864.

12 "Do I understand…" is objectionable. First, this phrase invites the witness to speculate, e.g., how can the witness know what counsel understands? Second, counsel's understanding is irrelevant.

13 Speak slowly and listen to what is actually testified to. The mark of a good trial attorney is the ability to listen.

14 Please announce the existence of pre-marked exhibits at the beginning of trial. This can be done outside the presence of the jury. The record is confusing when counsel refer to a "previously marked exhibit" if the exhibit has not been previously identified on the record.

15 Avoid inappropriate familiarity. Counsel should not address a witness, or the defendant, by the individual's first name. It is permissible to address a child witness by the child's first name.

16 Avoid sarcasm. "So I'm sure you called the police when you found out the defendant had been wrongly arrested, right?" is objectionable. This question improperly injects counsel's thoughts, i.e., "I'm sure" and sarcasm.

17 No PowerPoint presentations will be shown to the jury without first showing them to opposing counsel in sufficient time for counsel to object. Do not modify or change any trial exhibits on PowerPoint without prior court approval.

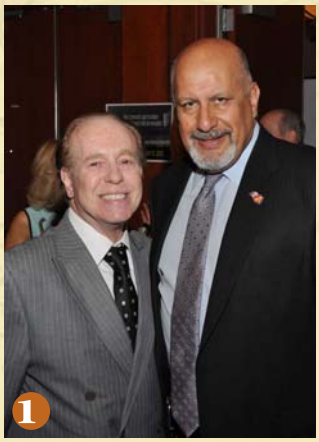
18 At bench conferences, wait until the reporter's microphone is turned on. Speak into the microphone, and don't talk over other speakers.

Judge Richard H. Kirschner is Supervising Judge of the Northwest District of the Los Angeles Superior Court.

2012 Autumn Gala

Saturday, September 22, 2012

Warner Center Marriott



1. Judge Michael Harwin and VCLF Director Councilman Dennis Zine **2.** SFVBA Trustee Kira Masteller and Immediate Past President Alan Sedley **3.** President David Gurnick and Past President Barbara Jean Penny **4.** Gurnick, actress June Lockhart, bandleader Gary Greene and SFVBA and band member Barry Goldberg **5.** The Big Band Of Barristers **6.** Bonnie Chermak, Hon. Armand Arabian and Gurnick **7.** Sedley, Greene, Lockhart, SFVBA Executive Director Liz Post, President Elect Adam Grant, Past President Tamila Jensen and Gurnick **8.** VCLF President Etan Lorant **9.** Gary Greene and His Big Band of Barristers **10.** Trustee Sean Judge, Sedley and Past President Gary Barr **11.** Post and Chermak **12.** Councilman Zine and VCLF President Elect Seymour Amster **13.** Lockhart and Greene **14.** SFVBA 2012-2013 Board of Trustees **15.** Masteller, Lockhart, Lisa Harwin and Mary Kay kick up their heels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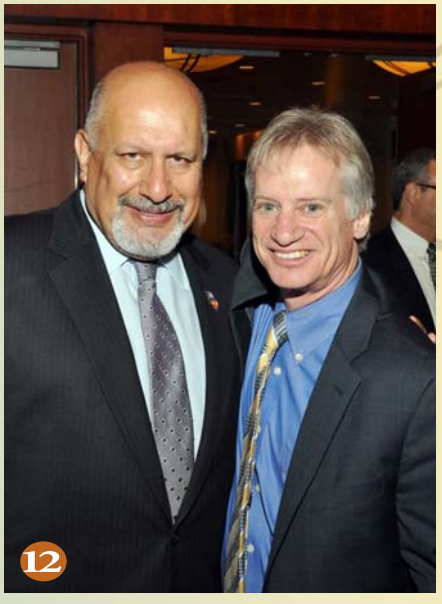
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Common Client Trust Accounting Mistakes

Best Practice Tips to Avoid Missteps

By Lisa Miller

In an effort to provide assistance in avoiding common ethical and client trust accounting mistakes, this month's MCLE article gives new lawyers a better understanding of the importance of properly maintaining a client trust account.

ATTORNEYS SOMETIME STUMBLE OVER seemingly complex ethics rules regarding legal fees and firm finances. Following are seven careless and unethical law office practices that can jeopardize a bar license (and ways to avoid them).

Use a Trust Account as the General Office Account

See Rule of Professional Conduct 4-100(A)

Attorney Able maintains a trust account, as required by State Bar rules. The attorney deposits client-directed or client-entrusted funds into the account when he/she receives it. But does counsel consistently manage the account in accordance with State Bar rules?

Using a client trust account as a general office account is one of the most common and serious mistakes a law firm can make. And this commingling can endanger the bar license of the responsible attorney.

In *Arm v. State Bar* (1990) 50 Cal.3d 776-777, the California Supreme Court held that attorneys commingle trust account funds when they combine those funds with non-trust account funds. When this occurs, the separate identify of the client's funds is lost because they are being used to fund the attorney's personal expenses. As a consequence, the client's money is subject to the claims of the attorney's creditors. *Id.*

Best Practice Tip
Never, ever use a client trust account for any purpose other than holding client-entrusted or client-directed funds. No exceptions.

Misappropriate Money from a Client Trust Account

See Rule of Professional Conduct 4-100(A) and Professions Code §6106

Attorney Baker faithfully deposits client funds into the law firm's client trust account. But instead of using the funds exclusively for client-related needs and expenses, Baker uses some of the funds for his personal or law firm expenses. As a result, the amount held in trust for the client is greater than the balance in the trust account.

Although attorney Baker does not believe that he has misappropriated anything, the imbalance in the account indicates otherwise. Although an attorney is entitled to take funds from the client trust account to pay the attorney's fees, the account must, at all times, have funds sufficient to cover the balance owed to all clients (not solely any one individual client).

According to the Supreme Court, "willful misappropriation" occurs when the balance in the trust account falls below the amount held in trust for and due to the client(s). *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 123. But note that funds in a client trust account are entirely fungible. No tracing of unique, individual client funds is contemplated, so an individual client's dollar put into the trust account need not be the identical client dollar taken out.

Best Practice Tip
Never take funds from the client trust account for non-client-related reasons, or use one client's funds to pay expenses of another client.

Bounce a Check on the Client Trust Account

Attorney Cook appropriately deposits checks from a client or settlement funds on behalf of a client into her client trust account. But she is distracted by the needs of her law practice. Besides, she has no background in finance or accounting. As a result, she does not have an accurate idea of the balance in the trust account. She then writes a check on the account that exceeds the amount held in trust. The bank is required to notify the State Bar in the case of an overdrawn client trust account, and the Bar contacts the responsible attorney.

The client trust account must at all times have funds sufficient to cover the balance owed to all clients. Under *Alkow v. State Bar* (1952) 38 Cal.2d 257, 264, writing a non-sufficient fund check from a trust account is a serious breach of an attorney's ethical obligations. This is explored in more depth in the State Bar Handbook on Client Trust Accounting at Key Concept number 2, "You Can't Spend What You Don't Have." This chapter makes clear that paying one client's expenses with another client's funds is improper.

This situation can occur when counsel receives insurance or other settlement funds in the form of a check, and sends out payment checks before the deposited funds from the third party are fully credited in counsel's trust account.

In this scenario, although the attorney tells the client not to negotiate the check for a few days, sometimes, once the client gets the checks, the client fails to follow counsel's instruction. As a result, once the client's check is negotiated against insufficient funds in the client trust account, counsel has violated an ethical duty and is exposed to State Bar discipline.

Best Practice Tip
Have a professional manage the trust account if you do not have a background in finance or accounting. The investment is well worth the cost.

Use Self-Help to Resolve a Client Fee Dispute

After attorney Dixon settles a case for her client and deposits the settlement funds in the client trust account, the client objects to the amount both she and attorney Dixon are to receive. Attorney Dixon, nonetheless, withdraws from the account the share to which she believes she is entitled.

Under *Crooks v. State Bar* (1970) 3 Cal.3d 246, 358, attorneys may not unilaterally determine what their fees are and then withhold client-entrusted funds to satisfy the amount. This is so even where counsel accurately values the services rendered. *Silver v. State Bar* (1974) 13 Cal.3d 134, 142.

As a practical matter, the attorney should pay to the client what the client is due, regardless of the fee dispute. Counsel may, with the client's authorization, withdraw the funds that are not contested by the client. Disputed fees remain in the client trust account and the attorney should take steps to resolve the dispute as quickly as possible.

Where disputes over the distribution of settlement funds exist, attorneys should either place the disputed funds in a blocked account or interplead the funds. (See also *In the Matter of Feldsott* (Rev. Dept. 19927) 3 Cal. State Bar Ct. Rptr. 754.)

Best Practice Tip
Conflicts over fees should generally be resolved through third parties rather than the use of self-help. Local bar associations, including the San Fernando Valley Bar Association, administer Mandatory Fee Arbitration (MFA) programs to resolve fee disputes between attorneys and their clients.

Fail to Refund Unearned Fees

See Rule of Professional Conduct 3-700(D)(2)

A client gives attorney Evans checks against future charges pursuant to a retainer agreement. Attorney Evans deposits these sums into his client trust account, as required by Rule of Professional Conduct 4-100(A). Subsequently, the client substitutes attorney Evans out of the matter and brings in a second attorney.

Funds for work that attorney Evans had not yet performed remain in the trust account. But attorney Evans does not promptly return those funds to the client. Under Rule of Professional Conduct 3-700(D)(2), counsel is not entitled to withhold funds that belong to the client.

Note that true retainers, which are paid solely to ensure an attorney's availability, never go into the client trust account, so they are not covered by this rule. *Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164, n. 4.

Best Practice Tip
Immediately refund unearned sums from the client trust account at the conclusion of the representation, absent special circumstances.

Fail to Withdraw Earned Funds from the Client Trust Account

See Rule of Professional Conduct 4-100(A)

A client has given checks for advance fees—payments of a retainer or advance against fees to be earned—to attorney Foster throughout the course of the representation. Attorney Foster has faithfully performed work on the client's matter and dutifully deposited all the client-entrusted funds into her client trust account. However, attorney Foster has been focused on the case and has failed to withdraw funds from the trust account as she has earned them.

Counsel has an affirmative duty to withdraw funds from the client trust account as they are earned. Failure to do so results in funds present in the trust account that is subject to personal and creditor claims, violating counsel's ethical duties not to commingle funds. In the *Matter of Yagman* (Review Dept. 1997) 3. Cal. State Bar Ct. Rptr. 788, 803.

Best Practice Tip
Withdraw earned fees from the trust account as they are earned.

Charge an Unconscionable (or Illegal) Fee

See Rule of Professional Conduct 4-200(A)

A client retains attorney Green to represent him in a dispute over the sale of a five-year-old Ford automobile that is worth $4,000. The matter is resolved in two weeks, before the case is filed. Attorney Green charges the client $20,000 for his services, which took about 10 hours to perform. The client objects to the amount of the final bill. Even assuming that the retainer agreement between the client and attorney Green contains language authorizing the amount of the

final bill, attorney Green may not charge the client an unconscionable fee. An unconscionable fee is one that is so exorbitant and wholly disproportionate to the services performed as to "shock the conscience." *Herrscher v. State Bar* (1935) 4 Cal.2d 399, 401-402.

In another scenario, attorney Hunter represents a minor who was hurt in a car accident. Rather than have the court determine the amount of her fee after the case is settled, attorney Hunter takes one-third of the settlement funds as her own. This fee is illegal because it is charged in violation of a statute. Family Code Sec. 6602 and Probate Code Sec. 3601 hold that the court has the authority to determine the "reasonableness" of attorney fees in a variety of contexts, including situations related to minors. (Code of Civil Procedure Sec. 1021.1, et seq; see also *In the Matter of Phillips* (Review Dept. 2001) 4. Cal. State Bar Ct. Rptr. 315 (an illegal fee is one charged in violation of a statute).)

Best Practice Tip
While counsel may, to some extent, independently set fees, counsel may never charge a fee so large that it shocks the conscience or that is contrary to statutory or other legal requirements.

The Duty of Loyalty

Alongside the requirement that counsel manage client money with fidelity to each client, counsel should always be sensitive to the additional duty of representational loyalty to the client. 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.

Because many newer lawyers are unclear about the difference between the duty of loyalty to the client and the duty of confidentiality owed to the client, here is a short reminder.

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, court 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.

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.

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.

Best Practice Tip
Counsel may not split representational focus, but rather must provide focused and committed representation to the primary client.

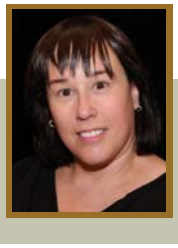
Duties to Former Clients

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. And counsel cannot subsequently use information gained from the prior representation to the former client's disadvantage (absent the former client's informed consent).

Confidences and Secrets

The duty of confidentiality is fundamental to the attorney-client relationship. The fiduciary nature of the attorney-client relationship recognizes the fiduciary relationship pursuant to which clients divulge confidential information and share confidences with their counsel. Generally, "secrets" include information, other 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 be likely to 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 breaches the trust placed by clients in their counsel.



Lisa Miller is a Los Angeles-based attorney licensed to practice law in California and New York State. She can be reached at (818) 802-1709 or Lisa@LMillerconsulting.com.

Test No. 50

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. Using a client trust account as a general office account is one of the most common mistakes younger lawyers make.
   ❑ True ❑ False

2. Commingling funds does not endanger an attorney's Bar license.
   ❑ True ❑ False

3. Funds are commingled when an attorney combines trust account funds from various clients.
   ❑ True ❑ False

4. When counsel comingles personal and client funds in a client trust account, the separate identity of the client's funds is lost, because they are being used to fund the attorney's personal expenses.
   ❑ True ❑ False

5. When counsel comingles personal and client funds, the client's money is protected from the claims of the attorney's creditors.
   ❑ True ❑ False

6. Although attorney deposits client funds into the firm's client trust account, attorney uses some of the funds for unrelated law firm expenses. As a result, attorney has violated the Bar's mandate on maintaining a trust account.
   ❑ True ❑ False

7. An attorney is entitled to take funds from the client trust account to pay the attorney's fees, but the account must, at all times, have funds sufficient to cover the balance owed to all clients (not solely any one individual client).
   ❑ True ❑ False

8. "Negligent misappropriation" of funds occurs when the balance in the trust account falls below the amount held in trust for and due to the client(s).
   ❑ True ❑ False

9. Banks automatically notify the State Bar in the case of an overdrawn client trust account, per State Bar requirement.
   ❑ True ❑ False

10. Writing a non-sufficient funds check from a trust account is a serious breach of an attorney's ethical obligations.
    ❑ True ❑ False

11. Newer lawyers, who may not have backgrounds in finance or accounting, should consider having a professional manage the firm's trust account.
    ❑ True ❑ False

12. Attorneys may unilaterally determine what their fees are, and then withhold client-entrusted funds to satisfy the amount.
    ❑ True ❑ False

13. Counsel may, with the client's authorization, withdraw from the trust account the funds that are not contested by the client.
    ❑ True ❑ False

14. Conflicts over fees can generally be resolved through "self-help" methods.
    ❑ True ❑ False

15. When attorney is substituted out of a matter, but funds for work that attorney had not yet performed remain in the trust account, attorney is under no obligation to promptly return those funds to client.
    ❑ True ❑ False

16. True retainers, which are paid solely to ensure an attorney's availability, never go into the client trust account, so they are not covered by Rule of Professional Conduct 3-700(D)(2).
    ❑ True ❑ False

17. Attorney is under no affirmative duty to withdraw funds from the client trust account as they are earned.
    ❑ True ❑ False

18. If the retainer agreement contains language authorizing the amount of the final bill, attorney may charge the client any fee amount.
    ❑ True ❑ False

19. An unconscionable fee is one that is so exorbitant and wholly disproportionate to the services performed as to "shock the conscience."
    ❑ True ❑ False

20. A fee is "illegal" if it is charged in violation of a statute.
    ❑ True ❑ False

MCLE Answer Sheet No. 50

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
   5567 Reseda Boulevard, Suite 200
   Tarzana, CA 91356

METHOD OF PAYMENT:
❒ Check or money order payable to "SFVBA"
❒ Please charge my credit card for $_____.

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Credit Card Number Exp. Date

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Benchmarks for Success When Young Lawyers Go Solo

By Edward Poll

THE INCREASING DISILLUSION of law school graduates with their hiring prospects at large law firms—expressed in lawsuits that graduates of a dozen or more schools have filed charging they were misled about their employment prospects—has led to a new phenomenon. Young lawyers increasingly seek to enter the profession by opening their own practice. Unfortunately, students come out of law school with little practical understanding of how a practice works, whether that includes training in effective client service and law practice management techniques, or basic knowledge about the operation of the firm as a business (budget, collections, profit, loss).

There is also the issue of technical competence at the law. It is easier to start a new solo practice for specialties where capital requirements are less, and where it is easier to reach prospective clients who have immediate and personal needs, in areas like personal injury, family law, bankruptcy, immigration, real estate and the like. In highly personal and difficult matters, young lawyers must be prepared to get their on-the-job training by hanging out their shingles and learning how to meet client needs.

These considerations create a daunting challenge, but not one impossible to overcome. The solo lawyer needs all the traits of an entrepreneur: motivation, acceptance of risk, resiliency, commitment and persistence. Any law school graduate considering a solo practice should do a self-analysis to assess his or her personal readiness to assume the responsibility of running their own business and committing to success.

Expressing "success" in relative terms such as "earn good money" or "enjoy satisfying work" sets a subjective standard that is difficult to achieve. The truly successful sole practitioner needs a specific plan with specific targets by which to measure progress. These are four of the most important benchmarks.

Finances

The new solo should have a personal/professional expense hierarchy with these levels: practice needs, personal needs, savings for slow periods or emergencies and a bonus after all other expenses are met. Practice needs always come first, and personal needs should be the most flexible category. Personal needs, as covered by the lawyer's "draw," should initially be the minimum expense necessary to maintain a standard of living. The conservative rule of thumb is to have an adequate cash reserve covering a minimum six months of living expenses if no draws or salaries can be taken out of the firm.

Cash Flow

Cash flow provides a financial guide to profitability by prioritizing, anticipating and allotting the firm's revenues and expenditure of funds. The three elements in the cash flow plan encompass the firm's revenue inflow, expenditures as the use of revenue and a summary projection of revenue and expense patterns over time to define cash flow. The plan should cover a rolling period of 12 months into the future, and should be revised regularly to spot developing problems and take remedial action. Because it can take up to 120 days on average between when a law firm sends out an invoice and when it is paid, managing cash flow is crucial.

Collections

The collections target is simple: never let accounts receivable accumulate. One study shows that a bill that is over 60 days past due can still be collected about 89% of the time. However, that drops to 67% likelihood of collection after six months, and 45% likelihood after one year. Promptly identifying who is not paying their bills and contacting them to make immediate payment is the heart of firm survival. New lawyers should aim to collect at least 90% of what they bill; anything less jeopardizes the firm's financial future.

Marketing

For solo lawyers, the idea of marketing is often daunting because there are so many potential clients, so little time to reach them all and so many options for pursuing them. Marketing can only be approached practically with a narrow focus that creates a profile of ideal clients and develops a strategy for this target, not everyone. It requires defining the location, demographics, occupation, financials and other characteristics of clients who will provide the most profitable work for the firm.

The key to business development success is building relationships with these targeted potential clients, by getting out into the public eye through writing articles, attending business luncheons, doing blogs and networking online, using lawyer referral services—anything that facilitates targeted interaction.

These benchmarks have concentrated on the nuts and bolts for a young lawyer to get a new practice off the ground. But the true motivation for going solo is more complex. Successful solo lawyers work long hours and are focused on what they do because it enables them to pursue their passion. It also validates why they went to law school and entered the profession. Successful solos must love the law and enjoy helping people. Taking a business-like perspective to improving people's lives ultimately is the best benchmark for solo practice success.

Edward Poll, J.D., M.B.A., CMC., has an extensive background in business and law, which has made him one of the nation's most sought-after experts in law practice management issues. He can be contacted at edpoll@lawbiz.com.

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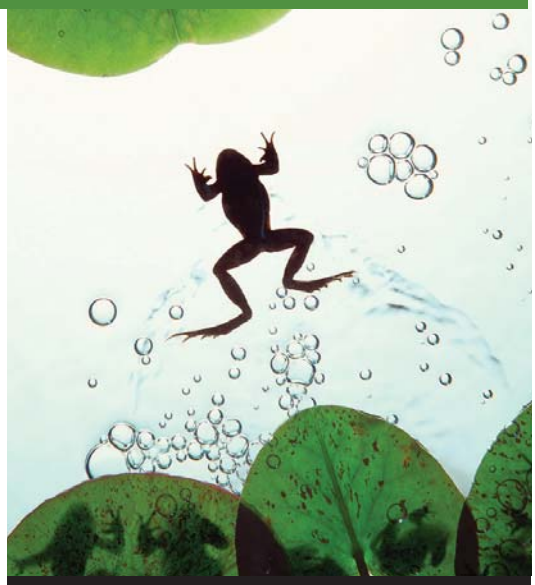

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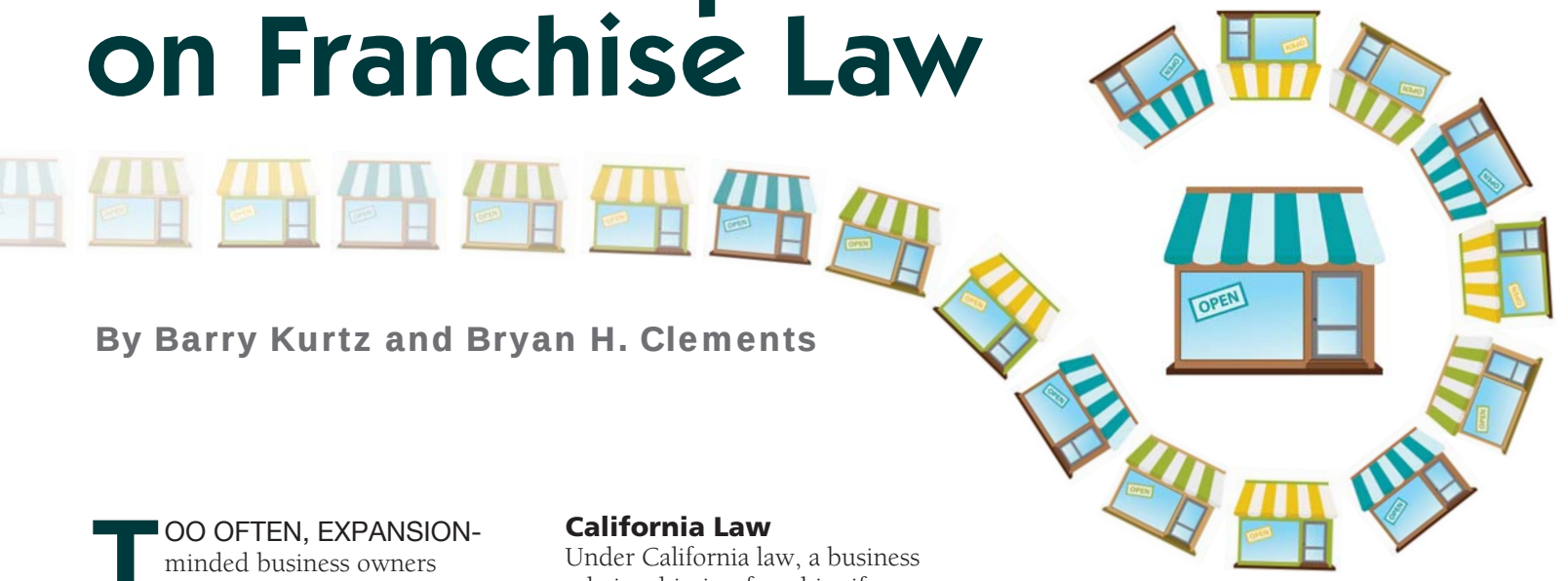
Inside Perspective on Franchise Law



By Barry Kurtz and Bryan H. Clements

TOO OFTEN, EXPANSION-minded business owners choose to offer trademarked products or services through purported licensing agreements or distribution or dealership arrangements only to discover, well into the game, that what they have actually done is sell franchises. Becoming an "accidental franchisor" can spell disaster for the unwitting business owner who has stepped over the line that separates franchising from other commercial arrangements involving trademarked goods or services.

Suppose a business client comes to you requesting that you draft a licensing, dealership or distributorship agreement to allow another business owner to offer his or her business' trademarked products. Without a basic understanding of franchise law, you may miss the warning signs that the proposed business arrangement may create a franchise. Unfortunately, under federal law, as well as in California, it does not matter what you call an arrangement when you draft the agreement: if the elements of a franchise are present, it is a franchise.

Franchise sellers must comply with extensive pre-sale registration and disclosure requirements or face severe penalties. Attorneys who make such a mistake will have unhappy clients when state regulators come knocking or when a franchisee sues for rescission. To avoid such a problem, every new business lawyer should familiarize himself or herself with the following basics of franchise law.

California Law

Under California law, a business relationship is a franchise if:

- The business will be substantially associated with the franchisor's trademark.
- The franchisee will directly or indirectly pay a fee to the franchisor for the right to engage in the business and use the franchisor's trademark.
- The franchisee will operate the business under a marketing plan or system prescribed in substantial part by the franchisor.

The Department of Corporations (DOC) regulates franchises in California, and it interprets the three elements of a franchise broadly. To start with, if a business enterprise uses another company's trademark to identify its business, or in its advertising, there will be room to argue that the franchisee's business is "substantially associated" with the franchisor's trademark. If the other elements are present, making the determination as to whether a franchised business will be "substantially associated" with the trademark of another business will not be easy, and splitting hairs won't work. This analysis is best left to an experienced franchise attorney.

Just about any payment can be interpreted as satisfying the fee element, regardless of whether the parties call it something else in their agreements. You don't want to find yourself in court or in front of the DOC arguing that a payment is not a fee—it is a losing argument.

The third element, which requires that the franchisee will operate the business under a marketing plan or system prescribed in substantial part by the franchisor, is known as the "control" element. It, too, is broadly interpreted. The following represent a few examples of what may satisfy the control element:

- Providing advice and training regarding the sale of the trademarked products or services
- Exercising significant control over the operation of the franchisee's business
- Granting exclusive rights to sell one's products or services in specific territories
- Requiring franchisees to purchase or sell specific quantities of products or services.

Making the Determination

Characteristics of a Franchise

In the typical franchise arrangement, franchisees sell or distribute their franchisor's trademarked products or services. They usually have exclusive, protected territories—that is, territories in which the franchisor will not permit other franchisees to operate or to offer the same products or services. Also, it is typical for a franchisor to provide its franchisees with an operations manual containing a tried and true system of operations and to closely monitor

the franchisees for compliance to protect the integrity of its systems. In typical franchises, franchisees rely on their franchisors for advice, training, advertising and marketing assistance. Furthermore, franchisors usually mandate the use of specific suppliers, and in some cases, even act as the exclusive supplier of certain products or services sold by their franchisees.

Licensing, Distributorships and Dealerships

True licensing, distributorship and dealership arrangements are not franchises because they lack at least one of the three elements defined under California law as described above. For example, under a typical licensing arrangement, one company permits another to sell its products or services in exchange for a percentage of the proceeds without any other involvement on the part of the licensor. In dealership and distributorship arrangements, independent businesses operate under their own trade names. The dealers or distributors usually buy products or services from the other party at wholesale prices and then resell them to the public. Neither party is substantially involved in the business affairs of the other.

Why Not Classify Every Arrangement as a Franchise?

In general, a franchise is a contractual arrangement that makes one party or business dependent upon another. Franchise agreements strongly favor franchisors and are typically written by the franchisor's attorneys; franchisees usually have little power to negotiate favorable terms. While franchise agreements are not considered contracts of adhesion, the Federal Trade Commission, as well as many of the states, have taken the position that these arrangements provide a much greater potential for fraud, which explains why franchises are so highly regulated, and other business relationships are not.

The prospect of registering a franchise can be quite expensive and time consuming. Expansion-minded entrepreneurs or businesspersons typically prefer to streamline the deal process and will push for the simplest, cheapest option. But keep in mind that any combination of the use of a trademark for a fee and the imposition of the trademark owner's operating methods or systems or other direct involvement in the operator's business will make these relationships a franchise. That is why it is crucial for attorneys involved in setting up any of the above mentioned arrangements to determine whether the practices push the relationship into the realm of franchising and explain to their clients the risks related to a mischaracterization of the relationship.

Additional Requirements

Under California's Franchise Investment Law (FIL), it is unlawful to offer or sell a franchise in California unless the offering has been registered with the DOC or it is exempt. If an arrangement satisfies the elements of a franchise under California law as listed above, the franchisor must take on burdens not imposed in licensing, distributorship and dealership arrangements. The franchisor must (1) file a franchise disclosure document with the DOC outlining the franchise opportunity in detail and providing information regarding the franchisor's own background and business experience, among other things, before entering into any discussions with potential franchisees; (2) disclose potential franchisees with its registered disclosure document and wait at least 14 full days before having the franchisee execute any franchise documents or accepting any payments; and (3) obtain DOC approval for any "material modifications" to its registered franchise documents before presenting them to franchisees, including any new or modified provisions regarding royalties, fees, e-commerce, and territorial rights.

Risks of Mischaracterization of the Relationship

The DOC closely polices franchisor-franchisee arrangements and may assess penalties of $2,500 per violation of the FIL. This apparently modest fine, however, is only part of the story. The DOC also has the authority to require accidental franchisors to provide notice of the violation to all of its franchisees, offer rescission of all contracts related to the franchise and refund payments made by the rescinding franchisees.

As an example, suppose a company enters into purported licensing agreements with several other companies involving trademarked products or services, unaware that the details of the arrangements have actually established franchisor-franchisee relationships. Further suppose that at some point one of the "licensees" who has been losing money discovers the error. If the "licensee" reports the matter to the DOC, the DOC will likely fine the franchisor and require it to offer all of its inadvertent franchisees the right to rescind their original agreements and get their money back. This applies to each franchisee's original investment, as well as any losses, less profits, they may have incurred. Needless to say, if the franchisor wishes to continue conducting the same business it will then need to complete the registration process. This can prove painful, even ruinous to the inadvertent franchisor.

For years, business owners have found franchising to be a highly effective expansion strategy. That said, franchising is a highly complex area of the law that lends itself to specialization. Attorneys representing business owners must be able to spot the telltale signs of a franchise to avoid unwittingly assisting their clients in becoming accidental franchisors.

Barry Kurtz, a Certified Specialist in Franchise and Distribution Law by the State Bar of California Board of Specialization, may be reached at bkurtz@kurtzfranchiselaw.com. **Bryan H. Clements** is an associate attorney at Kurtz Law Group, a Professional Corporation. He may be reached at bclements@kurtzfranchiselaw.com.




New Lawyers on the Rise

By Angela M. Hutchinson



TODAY'S NEW ATTORNEYS ARE THE FUTURE of tomorrow's legal field. The San Fernando Valley Bar Association recognizes and embraces that fact. Four years ago, the San Fernando Valley Bar Association revived the New Lawyers Section, which is chaired by Natasha Dawood, Senior Counsel at the downtown law firm Parker Milliken. Dawood specializes in litigation, including trade secrets, employment and pharmaceutical products liability litigation.

The New Lawyers Section continues to be one of the primary focuses of the Bar because its rewards are immeasurable according to Dawood. "Indeed, it is been wonderful watching new lawyers become more active in the Bar, and watching them transform certain aspects of the SFVBA with their energy, excitement and new ideas," she says.

"The SFVBA is committed to the growth and development of new lawyers. The SFVBA's commitment to new lawyers is so strong that they recently added another program focused on providing mentors to new lawyers. This new program will be a valuable asset to new lawyers."

The New Lawyers Section focuses on assisting new lawyers in marketing, networking and growing in the legal field. "The Section also tries to connect new lawyers with the many veteran and distinguished lawyers of the SFVBA, and is a sounding board for new lawyers as the SFVBA hopes to revitalize aspects of the Bar via the novel ideas and energy of new lawyers," says Dawood.

"The Section tries to put on a mix of educational and social events on an annual basis—from holding a private reception with distinguished judges about courtroom etiquette and hearing tips to sponsoring seminars on building law practices, and negotiating better deals and obtaining better trial outcomes to holding mixers at restaurants and ice cream shops to having events with other professional groups."

In addition, the Section tries to increase the attendance and participation of new lawyers at other SFVBA events, like the SFVBA Holiday Party, Blanket the Homeless and Judges' Night. "The Section looks forward and is excited about the upcoming year. Programming ideas for this section are welcome," says Dawood.

"Whether one is a lawyer fresh out of law school or practicing law as a second or third career, all new lawyers are encouraged to get involved with the New Lawyers Section."

Valley Lawyer introduces you to two SFVBA members who are new attorneys on the rise: Jerome Fogel and Kristina L. Farnum. Fogel is Business Development Director for Special Counsel, the nation's largest full service legal staffing and search company. As an attorney, Fogel practiced in entertainment transactions. Prior to becoming an attorney, Fogel was in business development for Fortune 500 companies such as GE. He is a graduate of NYU Law and has dual undergraduate degrees in Business Administration and Rhetoric from UC Berkeley. He can be reached at jerome.fogel@specialcounsel.com.

Farnum joined Parker Milliken as an associate in 2011. She specializes in litigation and has experience in tax and corporate matters. She earned her B.A. from UC San Diego in Economics with honors, Magna Cum Laude in 2007. Four years later, Farnum received her J.D. from UCLA. She served as Managing Editor of Women's Law Review and was a Moot Court participant. She can be reached at kfarnum@pmcos.com.

***Valley Lawyer:* What was your first job as an attorney and how did you land it?**

Kristina Farnum: My first job as an attorney is the same one I have now: I'm an associate at Parker, Milliken, Clark, O'Hara & Samuelian in downtown Los Angeles. I had the fortunate experience of summering with Parker Milliken after my 2L year and have been here ever since.

Parker Milliken had not hired any summer associates, but I had a connection at the firm and decided to submit my resume anyway. I interviewed with five or six different shareholders. They agreed to hire me as a summer associate with the caveat that they probably would not have a full-time position to offer me after I graduated law school. However, I proved that I was a valuable asset and willing to learn, and Parker Milliken extended me an offer at the end of the summer.

Everyone knows someone in law. Take advantage of those connections, even if they say they're not hiring, because you never know where they might lead.

Jerome Fogel: I was a contract attorney for a television production company after I had started my own firm. The position was offered to me six months after I had a meeting with an alumnus from my law school.

***VL:* What do you like most about your current position?**

JF: I am Business Development Director for Special Counsel, Inc., and I get the opportunity to build relationships with law firms and corporations across Los Angeles, which in turns provides jobs for other attorneys.

KF: Because our firm does all types of civil litigation, as

well as transactional work, I get the benefit of working in many different practice areas, including, tax, employment, personal injury, probate and most recently pharmaceutical cases. Every case presents its own challenges, but this type of case mobility gives me different types of knowledge that I'm able to translate to other areas of law. For example, a Labor Code statute that I recently researched helped me develop a defense to a vicarious liability claim in a personal injury case. Also, because the firm specializes in so many areas of law, I also get to work alongside many of our firm's shareholders, and gain the wisdom and expertise that they have learned throughout the years.

_VL:_ What are some of the challenges you face as a new attorney?

KF: The greatest challenge I face as a new attorney is learning when to stop researching. Rarely is a case directly on all fours, creating a constant fear that there is "something else out there" and I'm missing it. That fear has not gone away yet, which is probably a good thing because it makes me double-check everything I do. But I've noticed that the harder the assignment, the more confident I become that I've done enough research.

Getting used to California procedure was tough as well. I'll never forget having to calculate dates for a business records subpoena—I must have gone over the numbers 20 times! Luckily, though, I work at a firm where everyone is willing to help and share their knowledge, which makes handling new procedural issues that much easier.

JF: The challenge in this market is finding a niche where skill sets, passion and opportunity meet. I am grateful that I found mine, but it took perseverance meeting providence.

_VL:_ How can the SFVBA better serve the needs of new lawyers?

KF: As a new lawyer, I sometimes have a hard time meeting attorneys in my same position. Sure, I have friends from law school or other associates at my firm, but it would be nice to get together with new lawyers and discuss the challenges and benefits of practicing law. I know the SFVBA has established the New Lawyers Section for exactly that purpose. I appreciate that the section holds functions in the Sherman Oaks/Studio City area for attorneys like me who practice law in downtown.

It would also be great if SFVBA could establish a mentoring program for new attorneys. At this stage in our careers, we could use all guidance from more experienced attorneys. I did something similar in law school and loved it.

_VL:_ What advice would you give to law students to prepare them for working at a law firm?

JF: Ask what is expected of you, and then go the extra mile.

KF: The best advice I can give law students now is to stop briefing cases in the textbooks and try getting an

internship now. Being a law student does not prepare you for life as a lawyer—they are completely different. The more experience you get before you start, the easier the adjustment will be. I remember when I started it was a bit of a shock because I felt like I should have known everything already.

Also, give other areas of practice a chance. When I started law school, I thought I wanted to be an estate planner. Then, when I started practicing, I got a taste of litigation and never looked back. Students should be open minded and try as many different types of cases as are available.

***VL:* If you could change or enhance a law, what would it be and why?**

JF: I would have a separate tax deduction set up for charities which care for widows and orphans to encourage more assistance to them.

KF: [I would change the] California Civil Discovery Act with respect to written discovery. While the legislature had good intentions in creating a systematic approach, these laws actually make it easy for attorneys to provide objections in lieu of responses. Then, when responses are provided, they are prepared by attorneys and tend to reveal nothing.

In one of the employment cases I worked on, the attorneys agreed upfront to an informal discovery process, whereby the parties would exchange all documents relevant to the case. After reviewing the documents, we went to mediation, where the case settled. From start to finish, the case was resolved in five months. It can take longer than that to serve and respond to written discovery. Our informal procedure was very cost-efficient. If opposing counsel is willing to work with you, I think it's an efficient and effective alternate to written discovery.

Those new attorneys interested in joining the New Lawyers Section are encouraged to contact Dawood at (213) 683-6685 or ndawood@pmcos.com. She is always available for new lawyers and law students.

Angela M. Hutchinson serves as the Managing Editor of *Valley Lawyer* magazine, and she was recently accepted to law school. Hutchinson is also a published author and entrepreneur within the entertainment field. Hutchinson can be reached at editor@sfvba.org.

Advertising Pros and Cons

BARRY EDZANT
SCVBA President
BarryE@Valencialaw.com

ALTHOUGH IT WAS OVER 23 YEARS AGO, I remember the day like it was yesterday. It was bar result day, May 30, 1989. I stayed home from work, wanting to be alone. At about noon, the mail came and I slowly walked the short distance to the mailbox. The envelope from the State Bar was inside. "Is this a thin envelope, or a thick one?" I remember asking myself. No one had ever defined it for us.

I sat down on my living room floor, next to my Golden Retriever Dig'r, my only support for the inevitable bad news. After opening up the envelope, I pulled out the top form letter from the pile of other papers. "The Committee of Bar Examiners is pleased…" is all I needed to read. And after crushing and soaking poor Dig'r with hugs and tears of joy, within seconds, my life transformed from starving student to starving lawyer. I'd bet there's not a lawyer alive who can't recall their special day.

As a solo practitioner, incoming lawyers frequently approach me on how to start their own practice. The biggest concern is how to get clients on a very tight budget. Here are some of the pros and cons of the most popular forms of advertising.

Print Media

Newspapers, yellow pages, magazines and the like are all expensive and becoming increasingly less utilized by advertisers. However, there are still many readers who rely upon these publications for their resources. If an attorney practices personal injury, family law or criminal law, the competition is fierce and the ads very large. One will likely need to create a large, expensive ad to keep up with the competition. On the other hand, if an attorney has a niche area of law, they should save their money and place smaller ads. But in most cases, the prices are often quite negotiable, so negotiate for color, size and placement of an ad.

Radio/Television

Perhaps the most expensive form of advertising success is all about saturation. In this media, the prices are packaged for multiple airing of the ads. The more ads purchased, the cheaper the ads become. Generally, it's worth the extra money to air the ad frequently. Effectiveness depends on creativity and repetition. Without both, the campaign will meet with limited results. For new lawyers, the cost is almost prohibitive.

Internet and Social Media

As we all know, the public has fully adopted the internet to research and shop for products and services. A business without a professionally designed website will struggle to maintain relevance in the marketplace. The key, of course, is getting top placement on the search engines, and to get there is challenging and expensive. But it is also essential. Because the internet is so prevalent today, new lawyers need to focus a significant portion of their advertising dollars in this media.

Business Networking

Perhaps the most effective method of gathering up business for a very small monetary investment is networking. Joining and becoming active in bar associations, chambers of commerce, charities and category protected networking groups can yield terrific results. These types of organizations are full of business owners and professionals, which can often lead to solid business contacts. Attend mixers, charity functions and weekly meetings on a regular basis to enhance exposure and recognition. The key here is name and face recognition. Also, these organizations are looking for speakers and love it when lawyers volunteer their time to discuss relevant topics in their field of practice. This is where new and seasoned lawyers can get the best results, with very little monetary investment.

No matter the form of advertising chosen, and there are of course many more not mentioned, beware of misleading and deceptive advertising. Lawyers must, at all times, follow the Rules of Professional Conduct regarding advertising.

It has now been over 23 years since my special day, and I'm now afraid to go back to my mailbox. All of my mail is now from the IRS and AARP. Oh, and I'm still certain that one of these days, there will be a letter inside a thin envelope from the Committee of Bar Examiners which reads, "We regret to inform you that we recently discovered an error from 1989…"

Optimizing Client Referrals through Online Marketing

By Darren M. Harris

THREE OUT OF FOUR consumers seeking an attorney over the last year used online resources at some point in the process.[1] In 1908, the American Bar Association published the *Canons of Professional Ethics*, which deemed advertising by attorneys as unprofessional, therefore casting a negative light on the law profession. Attorneys were limited to being published in law directories such as Martindale-Hubbell, print business cards and letterhead.

Bates vs. The State Bar of Arizona

In the mid 1970's, *Bates vs. The State Bar of Arizona* came to fruition and free speech for lawyers prevailed. The State of Arizona was the first to lift the ban on marketing and advertising within the law profession, with strict standards set in place by the American Bar Association. Soon after Arizona lifted the ban, other states throughout the United States followed suit.

Jacoby & Meyers started investing millions of dollars on a national scale every year and other firms and attorneys starting spending money on a local level, primarily in the yellow pages. Yellow pages advertisement was the major advertising platform used by attorneys, but over the past five years, it has become the least likely form of advertising used by attorneys.

New Client Behaviors

Thousands of attorneys used to see a great return on their investment from yellow page ads. But attorneys now understand yellow pages advertising does not bring in the potential calls and clients it use to in the 80's through the mid 2000's. Consumer behavior has completely migrated to the internet, making a law office's presence on the internet crucial to attracting new customers.

In 1998, having a website was a luxury and a way for people to find out basic information about a particular industry, but buying decisions were not being made based off online resources. In 2008, 66% of online Americans said they purchased a product online.[2]

For years now, buying decisions have been made with the help of online information. In addition to visiting a firm's website for information, consumers are also calling, sending emails, talking to live people at the firm through their website and ultimately hiring attorneys because of their online presence. Having an online presence is going to land law offices new clients, secure referrals and help current or past clients find an attorney more easily.

There are certain areas of practice so unique that the online search volume is incredibly low or nonexistent. A good example is a firm who strictly works with defense contractors or the government. Their best source of marketing is networking and getting themselves in front of potential clients because targeted clients are not searching for attorneys online. However, a very professional and up-to-date website will be important when potential clients are reviewing what firm or law office they want to hire.

There are other areas of law where the volume of potential clients searching for an attorney online can make a six and seven figure difference in a law firm's annual revenue. Family, personal injury, criminal, bankruptcy, tax, real estate, immigration and business law, to name a few, are some the highest searched areas of law online.

While it may seem hard to believe the numbers above, all of the data makes complete sense. When someone gets in a jam and needs a criminal attorney, they want nothing more than to have this done in privacy. If someone is filing for bankruptcy, they may not want to ask a friend because of the level of embarrassment they believe it may cause. Some illegal immigrants don't want friends or co-workers to know their citizenship status, so they will go to the internet where there is a higher level of privacy.

There are a large number of people who move to Southern California and end up needing an attorney before they have the opportunity to build a network of trusted friends who they would feel safe asking for a an attorney referral. Others may have witnessed a bad experience a colleague had with an attorney, wouldn't trust a referral and would rather conduct their own research online.

A great number of attorneys have chosen not to participate online because they do not believe any potential clients would find them on the internet or the type of clients they want would not do online searches. This couldn't be further from the truth. The landscape of how people make purchases and how companies are hiring people today is different from the way consumers and hiring managers operated just four to five years ago.

Consumers are looking for ratings and testimonials before they hire an attorney or another type of service provider. After they have seen good reviews, they will take the next step and visit a firm's website. Some consumers will judge attorneys and law firms more on the look and feel of their website versus the attorneys profile and accomplishments. Consumers today are not always making decisions based on conventional logic; in fact, most consumers make impulse decisions. The only way a law firm can position themselves to retain these consumers who can afford the attorney's fees is to make sure it is covered on all angles when it comes to online presence.

Law firms need to establish an online presence and a professional website that shows it is relevant and keep up with new online trends, web development and design. An attorney's website speaks for the attorney before they have a chance to speak to a new potential client, so it is important the website captures the consumer's attention or they will move on to the next website.

Securing Referrals

Many attorneys and law firms are not seeing the same level of referrals they have seen in the past. A firm's internet presence has a lot to do with the lack of referrals and many firms are not making the proper adjustments. Before the internet, a friend, peer or a past client gave a referral, and then the potential client would call, schedule an appointment and become a new client.

This process has changed. Now, a referral is given and the potential client heads straight to the internet to do a little research. Potential clients will start with a website and if an attorney does not have a website, they will consider it the first strike against the firm. If an attorney's LinkedIn profile is incomplete, the potential client will consider it the second strike against the firm. And, if there is no activity on an attorney's Facebook page, the potential client will consider that to be strike three and the chances of the attorney landing this referral are slim.

Adding to these challenges is the possibility of more than one referral being given, causing the potential client to compare attorneys. And if one attorney has a nice website and another attorney has no website, then the attorney without a website is starting this process way behind the eight ball. An attorney's firm can have triple the experience, quadruple the amount of settlements and verdicts in one's favor and a stronger reputation in one's specialized area of practice, but not having a professional website poses the risk of losing a potential client.

Losing Referrals

Sometimes referrals are given indirectly. For example, a client talks about the great job his/her real estate law attorney did for them and mentions his/her name and that their office is located in Encino. The time comes when the person who heard that conversation needs an attorney and all they can remember is that attorney in Encino who practices real estate law. So, the potential client goes to Google and searches for real estate attorneys in Encino and thinks they might recognize an attorney's name if they see it in the search results.

Do the math, it all adds up. In today's economic climate, attorneys do not want to take on every case because some are not worth the time based on the potential reward, but all firms at least want the opportunity to turn down the weaker cases. Without an online presence, there are thousands of potential clients retaining attorneys in one's area of practice because they took the necessary steps to build the proper online presence for their law office or firm.

There are a lot of companies capable of building an online presence. Similar to the field of law, there are companies who build websites and do marketing for all sorts of companies and there are other companies who focus only on law offices and firms. The online market place is changing every month.

Building one's online presence starts with a website, but continues with social media, search engine optimizing, pay-per-click ads, blogging, online videos, strategic website design, online video optimizing and more.

The math is simple: online presence = more new clients = more revenue.

Average Monthly Google Searches for Areas of Practice in Los Angeles[3]

Criminal Defense Attorney	6,600 Monthly Searches
Car Accident Attorney	5,400 Monthly Searches
Bankruptcy Attorney	4,400 Monthly Searches
Immigration Attorney	4,100 Monthly Searches
Divorce Attorney	3,600 Monthly Searches
Employment Attorney	2,400 Monthly Searches
Business Attorney	1,300 Monthly Searches
Tax Attorney	1,200 Monthly Searches

[1] Based on a survey of 4,000 adult internet users (internet users comprise 78% of the US adult population and **the U.S. adult population comprises 235 million according to the U.S. Census 2010) conducted by The Research Intelligence Group (TRiG), March 2012. **According to The Pew Research Center's Internet & American Life Project's Spring Tracking Survey conducted April 26-May 22, 2011.
[2] Pew Internet & American Life Project, February 13, 2008.
[3] Google Keyword Tool

Darren M. Harris is the Southern California Law Firm Marketing Specialist for Lexis Nexis/Martindale-Hubbell who has helped Fortune 500 companies develop their online presence. He can be reached at Darren.harris@lexisnexis.com.

Valley Community Legal Foundation
of the San Fernando Valley Bar Association

VETERANS DAY GOLF TOURNAMENT

Proceeds fund grant and scholarship programs of the VCLF of the SFVBA

MONDAY, NOVEMBER 12, 2012

PORTER VALLEY COUNTRY CLUB • NORTHRIDGE

10:00 AM CHECK-IN | 10:30 AM PUTTING CONTEST | 11:30 AM SHOTGUN START—
BEST BALL FORMAT PER GROUP | 5:00 PM AWARDS RECEPTION AND DINNER

***TOURNAMENT CELEBRITY GUEST HOST: TIM CONWAY, JR., STAR OF KFI AM TALK RADIO**

GOLFER'S PLAYER PACKAGE

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Law Offices of Seymour Amster

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OTHER SPONSORSHIP OPPORTUNITIES*

Cocktail Reception Sponsor — $2,000
The awards reception will be a fun filled event! We will place sponsorship signs on the bar. Includes two tickets to the awards dinner. (SOLD!)

G&B Greenberg & Bass LLP

Lunch Sponsor — $1,500
Let us announce your generosity in "picking up the tab" for lunch. We will place sponsorship signs at the lunch site and give you a table for you to hand out gifts and information to the golfers. Includes two tickets to the luncheon and awards dinner. (SOLD!)

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Photo Sponsor — $1,000
Every golfer will receive a framed picture of their foursome and an individual shot of each golfer. Your logo will be included on the frame. Includes two tickets to the luncheon and dinner. (SOLD!)

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Putting Contest Sponsor — $1,000
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Beverage Station Sponsor — $750
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*** All sponsors receive recognition on the VCLF website, in *Valley Lawyer* magazine and acknowledgment at awards dinner.**

New Members

The following applied as SFVBA members in September 2012:

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Pepperdine University School of Law
Malibu
(310) 506-6350
elayne.berg-wilion@pepperdine.edu
In-house Counsel

Louis P. Dell
Law Office of Louis P. Dell
Burbank
(818) 478-2822
ldell@louisdell.com
General Practice

Robert J. Frakes Ret.
San Diego
(818) 919-6606
bajafrakes@yahoo.com

Michele L. Gibson
Law Offices of Michele Lyn Gibson
Encino
(818) 999-9957
michelegibson@aol.com
Family Law

Soheila Kazimi
Sherman Oaks
(818) 416-6913
soheilakazimi@aol.com
Family Law

Rebecca I. Pathak
Burbank
(818) 238-9444
ripathak@pathaklaw.com
Immigration and Naturalization

Nareeneh Sohbatian
Neighborhood Legal Services of LA County
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Encino Penthouse Suite (2 offices available) Located in the Union Bank building. Floor to ceiling views. Approximately 220 sf. with adjoining secretarial space. Monthly rent $1,000. Parking available. (818) 990-5777.

$525. Office with view in Encino. Kitchen, utilities, maintenance included. Possible work overflow with civil litigation law office. (Approx. 14x14). Call Gohar at (818) 386-2995.

SHERMAN OAKS

Executive suite for lawyers. One window office (14 x 9) and one interior office (11.5 x 8) available. Nearby secretarial bay available for window office. Rent includes receptionist, plus use of kitchen and conference rooms. Call Eric or Tom at (818)784-8700.

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It's More Than Just a Referral.

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

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

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

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

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

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

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

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

$73,500 settlement with Wal-Mart when improperly maintained flower cooler leaked on floor causing plaintiff to fall
Case Referred by:
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VALLEY COMMUNITY LEGAL
FOUNDATION
of the San Fernando Valley Bar Association

www.vclegalfoundation.org

The VCLF of the SFVBA has provided over $100,000 in grants over the past five years to the following organizations to promote community access to justice:

- The Alliance for Children's Rights
- Boys & Girls Club of the West Valley
- CASA of Los Angeles
- Comfort for Court Kids
- Domestic Abuse Center
- Fair Housing Council of the San Fernando Valley
- Grandparents as Parents
- Haven Hills Inc.
- Levitt & Quinn Family Law Center
- LASC Drug Court Program and Office of Family Law Facilitator
- LASC Children's Waiting Rooms, Van Nuys and San Fernando Courthouses
- Northridge Hospital Center for Healthier Communities
- SFVBA Attorney Referral Service and Mandatory Fee Arbitration Program
- The K.E.N. Project
- Topanga Station Boosters

Since 2007, the VCLF of the SFVBA has given $60,000 in scholarships to provide educational opportunities to students who have demonstrated an interest in law-related careers at:

California State University, Northridge
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Veterans Day Golf Tournament

November 12, 2012

Porter Valley Country Club, Northridge

For player and sponsorship information, contact events@sfvba.org.

The VCLF of the SFVBA is a 501(c)(3) charitable organization (Tax I.D.95-3397334).
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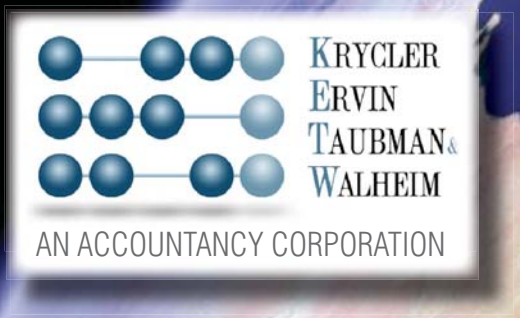

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