VALLEY LAWYER

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A Publication of the San Fernando Valley Bar Association

The Threat of the "B" Word

Earn MCLE Credit

Global Economic Crisis Hits California

Bankruptcy: Taboo or Lifeline?

Bankruptcy Preference Law Highlights Malpractice Trap

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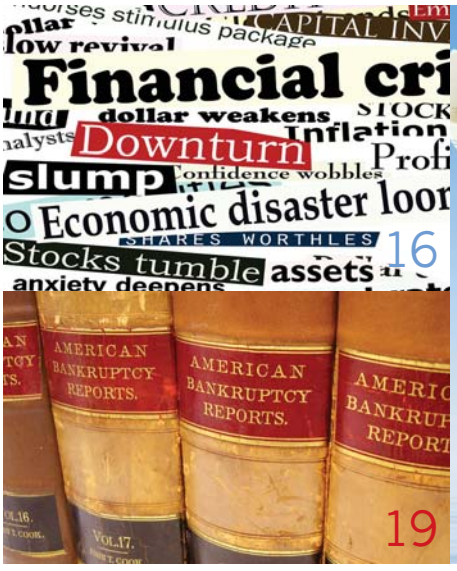

Civil Gideon

TAMILA JENSEN
SFVBA President

THE AMERICAN BAR ASSOCIATION HAS BEEN working for some time to promote "Civil Gideon" programs. The move is seen as a way to expand access to justice for low income people by providing counsel in civil cases much as counsel is provided in criminal cases.

A National Coalition for the Civil Right to Counsel was launched in 2003. The ABA long has led this movement. Two years ago, the ABA president convened a task force to assess poor peoples' access to counsel. At the 2006 annual ABA House of Delegates, a resolution was passed advocating the expansion of public funding for legal representation in cases where basic human needs are at stake. The ABA's 75,000 member litigation section met in December 2008 and made the right to civil counsel the topic of the annual meeting.

ABA Resolution 112A adopted by the ABA House of Delegates on August 7, 2006, provides as follows:

> RESOLVED: That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

The courts have never recognized a right to counsel in civil matters. In *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) the U.S. Supreme Court held:

> [R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. . . . That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries....From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

Gideon extended to the states the right to counsel in criminal cases based on the Sixth Amendment. There is no similar amendment which specifically applies to counsel in civil cases. In 1981 the Supreme Court, in a 5-4 decision in *Lassiter v. Dept. of Social Services of Durham County*, 425 U.S. 18 (1981) ruled that poor people do not have an absolute 14th Amendment right to due process, including a publicly provided attorney, when they face losing custody of a child to the state. That remains the law today.

Some argue that the system for providing counsel for indigents in criminal cases remains underfunded to this day. How, then, to find funding for counsel in civil cases? The effect of the present financial morass hardly needs to be mentioned. Counsel in civil matters is provided through various legal aid societies or on a pro-bono basis. However, that system is not able to meet all the needs of all the people who come to its door. Legal Services Corporation (LSC) funding has been flat for several years. IOLTA funds will be hurt by the economic downturn. It has been estimated that total legal spending in the United States is about $277 billion. The total LSC budget for the entire United States is only about $350.5 million. Neighborhood Legal Services of Los Angeles County (NLS-LA), our local legal services provider and a long-time partner of the SFVBA, has only 40 attorneys to serve one million eligible low income people.

The Civil Gideon movement does not seek free legal counsel for all people in all cases. The focus is on providing counsel in those specific matters where important personal rights are at stake. For example, child custody, housing, employment, health and safety. But that is a very broad group of issues. Does this mean that each party in a family law dispute is entitled to free counsel? If counsel is provided to one party, should it not be provided to both? Should the right to counsel in civil cases be limited to situations where the state is somehow a party? How could such a system be administered fairly?

Courts are especially concerned with un-represented parties in family law cases where the un-represented impose a burden on the court. In Los Angeles, this issue has been addressed by the establishment of self-help centers in many courts which are administered by NLS. There are nine self-help centers throughout the system. Last year, more than 100,000 people were assisted in these self-help centers. Our own Attorney Referral Service offers limited scope representation in some cases and can direct potential clients to available resources. Our members frequently offer pro bono services. But Civil Gideon goes beyond this model. Clearly, this is an issue that merits further discussion. The discussion is going on among Bar leaders nationwide. It is important that we participate in that discussion because it involves fundamental issues of access and fairness in our judicial system.

Any member who has a comment on this issue should contact me at tamila@earthlink.net.

From the Editor

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

ANGELA M. HUTCHINSON
Editor

BUSINESS LAW, BANKRUPTCY and of course Taxes are the feature topics inside this month's *Valley Lawyer*. Tax season is dreaded by attorneys, accountants, businesses, individuals, families and the IRS for sure. The idea of living in the moment with a rejuvenated mind set is pretty much out of the question this month. April is when we are required by law to reflect on the past, specifically the previous year. Not exactly the most exciting part either…financial reflection. Reviewing last year's income, assets and debt can cause stress and frustration. However, many individuals actually look forward to tax season. They may have had a financially productive year and gave so much to charity that they will end up having to pay a minimal amount in taxes or better yet, end up owing Uncle Sam nada and will instead receive an unexpected tax refund.

Thankfully, this month will be stress free for my husband Arthur and me. As a matter of fact, there is an interesting IRS story that I'd like to share with you regarding our recent tax filing experience. Early February, we sat down with our accountant to do our taxes. At the end of the session we were told we would receive a $500 refund from the state and $3,500 from federal. We considered the news semi-exciting; not planning to spend it, but instead save it.

We selected to have our refunds to automatically be deposited into our savings account. Then just a few weeks ago, I almost experienced one of the happiest days of my life. I went online to perform our routine bank account balancing act. Our checking account appeared fairly normal, but our savings account had $350,000! Now as you know I am an editor and freelance writer; and may I inform you that Arthur is an Aerospace engineer with a great salary indeed. However, the highest our savings account has ever been is well within 5-figures!

Excited and confused, I immediately scrolled down on our online bank statement to review the last transactions noted on our bank account. Halfway down the page, I noticed a deposit from the Internal Revenue Service in the amount of $350,000! At first, I so badly wanted to think about how awesome this was…that our accountant made such a mistake and our government actually owed us all of this money.

Reality check! We didn't even earn $350,000 last year, so this was clearly a mistake. The deposit should have been $3,500. So like what any good citizen would do… called my best friend and entire family to share the shocking news. Then later that day after all my phone calls, I finally got around to calling the IRS. After several voice automated operators, I eventually reached a live representative. I explained the situation in detail and the representative asked several questions as she took notes in her computer. Then, she put me on hold for almost 30 minutes. Soon, I heard several loud beeps and a man joined the phone call and introduced himself as a FBI Investigator, then a Deputy Director for the IRS joined the call.

I nervously explained the situation to both parties. They obtained our personal information and accountant's information. Then, they told me that the next step was going to be them freezing our bank account for 30 days. Thirty days?! Yes, I couldn't believe it. I calmly but firmly insisted on that not happening. I explained how illegal this must be and demanded that they provide me with a warrant or some documents. Could they legally have the right to freeze our bank account? I needed an attorney, and fast!

Immediately, I thought of the San Fernando Valley Bar Association's Attorney Referral Service (ARS). I quickly hung up on the IRS and FBI guys, then called Liz to explain this chaotic situation. While she was transferring me to ARS Consultant Gayle I tried logging into my online bank account, but access was denied. Literally within minutes, the federal government had already frozen not only our savings, but also our checking account. I could not believe this was actually happening.

Utilizing the SFVBA's Attorney Referral Service proved to be a very worthwhile decision. After attentively listening to our problem, Gayle referred me to a top attorney. Luckily, SFVBA member April F. Prank, Esq. accepted our case without hesitation. We now have a law suit for $1 million against the IRS. If we win, it will be thanks to our attorney April Fool's Prank, Esq. Unfortunately, all contents of the IRS tax story are entirely fiction.

Have a cheerful month!

Angela M. Hutchinson

Networking Mixer at Gordon Biersch Brewery in Burbank!

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Bankruptcy: Taboo or Lifeline?

ROSIE SOTO
Director of
Public Services

IN THE SAN FERNANDO VALLEY, THE TYPICAL CALL to the Attorney Referral Service is from a Valley resident affected by the current economic plunge. These are individuals juggling bills that they cannot afford to pay, while incurring more debt. For some, medical bills are the problem. Others have been laid off work or their hours have been reduced. Homeowners with troubled mortgage loans are facing foreclosure. People feel they are being pushed over the financial edge and into bankruptcy.

There is a sense that bankruptcy is no longer a taboo. The common perception, when it came to bankruptcy, was that it is a bad thing. The ARS is seeing less of the common assumptions of shame and mostly negative points about bankruptcy and more of the idea that bankruptcy is the lifeline for all. The ARS is not an advocate for bankruptcy, but instead here to provide resources and referrals to the public, so that individuals receive the clear and accurate options and information about the ramifications based on each set of facts.

Bankruptcy filings are approaching record numbers. The current bankruptcy filing statistics on the United States Bankruptcy Court website confirm a total of 10,824 bankruptcy filings in 2008 in the San Fernando Valley Division of the Central District, a101% increase from the 2007 filings. In a recent update from the U.S. Bankruptcy Court, the Information and Analysis Delegate reports the filing for the week ending February 29, 2009 are 2,194 in the Central District. The weekly filing trend predicts that weekly filings will be up about 25% by the end of the year.

Attorney-to-Attorney Referrals

If an attorney's clients have not already asked for bankruptcy advice or a referral to a good bankruptcy attorney, chances are they will ask in the near future. If you are not confident in your ability to accurately handle a bankruptcy matter or do not know a competent or qualified bankruptcy attorney, then the ARS Attorney-to-Attorney referrals are a valuable option.

Many attorneys agree that contacting the ARS for an Attorney-to-Attorney referral is the best way to ensure clients will be referred to an experienced attorney. The ARS has been providing referrals for over 60 years. Using the ARS for an Attorney-to-Attorney referral also helps protect you against negligent referral liability. When one uses the ARS, the recommendations can be trusted because all attorneys have been carefully prescreened. The public and attorneys expect more from a bar-sponsored attorney referral service than they do when looking for an attorney through other sources.

The ARS prides itself on providing quality referrals, and produces 97% satisfaction by establishing and amending panel qualifications to meet the public's expectations. Past SFVBA presidents and trustees, SFVBA members, out-of-state attorneys and retirees have all turned to the ARS Attorney-to-Attorney referral program for a referral.

Current Referral Trends

The ARS has seen a significant increase in the demand for referrals to attorneys experienced in bankruptcy, debtor issues, foreclosures, unlawful detainers, employment law and family law. The ARS is privileged to have qualified panelists to meet such needs. On the other hand, there's a decline on the referral numbers for business litigation, estate planning and criminal matters. The main trouble is the inability for clients to pay legal fees. Consequently, there is an increase in the civil arena in Pro Per filings. ARS values each of its members and is actively promoting its services to help capture new business for panelists in that field.

There's no doubt that this year is going to feel tough. Now more than ever the ARS panelists and staff realize the importance of keeping clients happy. Panelists and staff offer immediate assistance, extra attention and flexibility. That is the type of service that has helped the ARS succeed in good times and in bad.

Bankruptcy Self-Help Desk

Success for the ARS is not always measured by the fee generating cases, but also by the volunteer efforts of the ARS panelists in times of need. Under Judge Maureen Tighe's guidance, the ARS, Neighborhood Legal Services and Central District Consumer Bankruptcy Attorneys' Association (CDCBAA) continue to help staff and support the needs of the Pro Pers and the self-help desk at the Woodland Hills Bankruptcy courthouse.

The program is in need of volunteer private attorneys who have bankruptcy experience. Those currently participating cannot stop talking about how rewarding it is to dedicate four hours volunteering at the bankruptcy self-help desk. Judge Tighe has already confirmed with all three San Fernando Valley judges that they will give priority on the RFS calendar to any attorney who volunteers time on the bankruptcy self-help desk. Volunteer hours are Mondays from 1:00 p.m. to 4:00 p.m. and Thursdays 9:00 a.m. to noon and 1:00 p.m. to 4:00 p.m. For more information, contact Rosie Soto (818) 340-4529, ext. 104.

THE STATE BAR OF CALIFORNIA'S
COMMITTEE ON MANDATORY FEE ARBITRATION

INVITES THE SAN FERNANDO VALLEY BAR ASSOCIATION TO ATTEND

FEE ARBITRATOR TRAINING

Wednesday April 29, 2009
12:00 noon - 3:00 p.m.

San Fernando Valley Bar Association
21250 Califa Street, Suite 113
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FREE MCLE CREDIT AND LUNCH

This training session is offered to all volunteers who arbitrate attorney-client fee disputes for the Mandatory Fee Arbitration Programs through the San Fernando Valley Bar Association and/or the State Bar of California. Persons interested in becoming fee arbitrators are also invited.

Speakers will address recent developments in fee arbitration and other important topics such as:

Writing an Enforceable Award
Statute of Limitations
Effect of Conflicts of Interest
Arbitrator Disclosure Requirements
Controlling the Proceeding

Your support and continuing education have been critical to the Program's success. Please take this opportunity to stay abreast of recent developments in the area of fee arbitration.

MCLE CREDIT
Members of the State Bar of California will receive Mandatory Continuing Legal Education credit for a total of 2.75 hours
(1.75 hours general credit and 1.0 hour Legal Ethics credit)
The State Bar of California is a State Bar of California MCLE approved provider.

To reserve a space or to apply for the SFVBA Fee Arbitrator Panel, contact SFVBA Member Services Coordinator Jennifer Jimenez at (818) 227-0490, ext. 110 or Jennifer@sfvba.org.

For additional information, please call Jill Sperber (415) 538-2023 at the State Bar.

Member Benefits

■ SFVBA rents its **Executive Boardroom and Small Conference Room** for depositions and hearings. Amenities include breakout room, beverage service, and free parking. Only $150 per day.

■ **Wells Fargo Insurance Services** offers an exclusive Lawyers Professional Liability insurance program for law firms of 1-10 attorneys. Call Terri Peckinpaugh at (818) 464-9353.

■ The SFVBA offers **Fastcase**, a comprehensive online law library, as a free service to all SFVBA members. Click on the Fastcase logo at www.sfvba.org to enjoy unlimited usage, unlimited customer service and unlimited printing, all at no cost.

■ Powered by CompuLaw, Deadlines On Demand (www.deadlines.com) is an online legal research service that offers accurate, reliable, and instant rules-based deadlines on a pay-per-use basis. SFVBA members receive three free searches. Contact Melissa Notari at (888)363-5522 ext. 2113 or mnotari@deadlines.com.

■ United Commercial Bank offers no account maintenance fee on checking accounts with minimum balances; lower fees on credit card merchant services; and Express Deposit Service enabling Members to scan checks at the office and transmit the image to UCB for deposit. Call (818) 988-6668.

■ As a member of the ABA's House of Delegates, SFVBA Members can take advantage of the ABA Retirement Funds program, administered by global leader State Street. The program provides full service, cost-effective retirement plan solutions to law firms of all sizes, and charges no out-of-pocket fees for administrative services. For more information see the program's prospectus at www.abaretirement.com or contact Plan Consultant Patrick Conlon at (617) 376-9326.

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■ Contact the SFVBA office to receive a package of **discount coupons & membership cards** for Southern California's major theme parks and attractions.

■ Now Messenger Service offers members who open new accounts a **5% discount** off their current rates. Call (818) 774-9111.

■ SFVBA members **save $10** on new AAA Membership. Please also ask us about new insurance with many available discounts. Call Hazel Sheldon at (818) 615-2289. Mention campaign code 39727.

■ Receive 10% off Super Value daily and weekly rates and 5% off promotional rates from Avis Rent A Car. To make a reservation, call (800) 331-1212 or visit www.AVIS.com. When reserving a vehicle, provide discount AWD Number G133902.

■ Members save up to 15% off Hertz daily member benefit rates at participating locations in the U.S. and special international discounts are also available. Your SFVBA CDP **#1787254** is the key. Visit hertz.com or call (800) 654-2200.

New Members

The following joined the SFVBA in February 2009:

Jonathan B. Brooks
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Associate Member, Notary

The Role of the Chapter 7 Trustee

by David R. Hagen

WITH THE ECONOMY IN such disarray, attorneys in every area of practice will need to consider the possibility of a bankruptcy filing effecting one of their cases. The trustee plays a big role in any bankruptcy filing. This article provides an overview of the trustee role in a Chapter 7 filing.

Q: What is the U.S. Trustee Program?

A: The U.S. Trustee Program was established by the Bankruptcy Reform Act of 1978 (11 U.S.C. §101, et seq.) in several districts across the country as a pilot project. It was expanded nationwide in 1986. The primary role of the U.S. Trustee Program is to serve as the "watchdog over the bankruptcy process." The Program is actually an arm of the Department of Justice so it ultimately reports to the U.S. Attorney General. The program is administrated with funds by the United States Trustee System Fund, which consists primarily of fees paid by those invoking bankruptcy protection.

Each district in the country is headed by an appointed Trustee. In the Central District of California, the Trustee is Peter C. Anderson. He has served in this capacity for several years. The district is then broken down into smaller divisions including Los Angeles, San Fernando Valley, Santa Barbara, Santa Ana and Riverside. By far, the largest office is Los Angeles – it has a caseload approximately three times that of the San Fernando Valley.

Each division has an Assistant U.S. Trustee and has its own staff. In the San Fernando Valley, the Assistant U.S. Trustee is Jennifer Braun. Each district has a panel of several appointed Chapter 7 trustees and at least one Chapter 13 trustee. These appointed trustees are usually attorneys and accountants. In the San Fernando Valley, there are currently seven panel trustees: David Gottlieb, David Seror, Amy Goldman, Diane Weil, Brad Krasnoff, Nancy Zamora and David R. Hagen.

Q: What does a Panel Trustee do?

A: For each case assigned to them, the trustee reviews the bankruptcy Petition and Schedules, conducts a public examination, administers nonexempt assets to pay creditors, and takes other actions to move the case through the bankruptcy system.

Every Petition is reviewed by the panel trustee and their staff. (Petitions are also examined at the district office as well.) With the advent of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), trustees now also review pay stubs and tax returns for every individual debtor. The trustee reviews the entire set of documents for overall consistency, makes sure that the debtor is eligible to file bankruptcy under the new means test implemented by BAPCPA and looks for assets to administer for the benefit of creditors.

The most contact that debtors and creditors alike have with the trustee is at the First Meeting of Creditors proscribed by 11 U.S.C. §341(a). The trustee verifies the identity of the debtor and takes testimony, under penalty of perjury, about the debtor's paperwork. Creditors are also given a limited opportunity to examine a debtor. These examinations are now recorded digitally and are available for later review from the district office. In most cases, the examination is brief. If the debtor's attorney has done their job effectively by submitting clear paperwork, the trustee is able to understand the debtor's circumstance and needs to spend a minimal amount of time on a single hearing, sometimes as little as a few minutes. In a more complicated case, or if issues arise, a single hearing can last for some time.

Many years ago, hearings were just scheduled at 9:00 and 1:30 and people would have to wait hours for their case to be called. More recently, cases are scheduled every hour to reduce the waiting time for debtors, their counsel and creditors.

In the vast majority of cases, there are not any assets for the trustee to administer. Assets that are exempt from administration in California are contained in Sections 703 and 704 of the California Code of Civil Procedure. Exempt assets typically include a limited homestead in real estate, furniture, clothing, a limited amount of equity in vehicles, and pension plans. If there are no assets to administer, the trustee files a report with the Court and their involvement in the case is usually complete.

In less than 5% of the cases, there are assets for a trustee to administer. The definition of property that belongs to the bankruptcy estate is very broad. See 11 U.S.C. §541. Assets can include real estate or vehicles with substantial equity, stocks and bonds, businesses and the like. However, this can also include more obscure items such as intellectual property or income streams. Trustees also pursue preference payments and fraudulent conveyances. Collecting these assets can sometimes take several years and involve hiring an attorney to represent them such as in the case of fraudulent conveyance and preference litigation. When all assets have been collected or liquidated, the trustee files a tax return for the estate as it is a taxable entity. They also review all the creditors' claims to ensure that they are proper. If they do not appear proper, motions need to be filed to disallow these claims.

When these tasks are complete, the trustee files a report with the Court. The report, called a Trustee's Final Report, explains what has occurred in the case, what funds are on hand, and what claims will be paid. It seeks the Court's authority to pay the claims as well as the trustee and their professionals, most often an accountant and attorney.

When all funds are distributed, the trustee files a report with the Court and is released from the case.

Panel trustees also take other actions to protect the bankruptcy process. If a

panel trustee believes that a debtor does not qualify for bankruptcy relief, a referral can be made to the district office. If a trustee sees examples of creditor abuse, such as filing false claims or predatory lending, these can also be referred to the district office. Perhaps most importantly, panel trustees can make a criminal referral for bankruptcy fraud. Most commonly, this involves undisclosed assets on a bankruptcy petition. However, a referral can be for any violation of state or federal law, even such things as loan fraud.

Q: How many cases is a Trustee assigned a month?

A: Panel trustees are randomly assigned cases each month. The caseload depends on the filing rate as trustees in a district generally equally share the caseload. The current caseload is approximately 125 cases per month. This is approximately the same level of cases that were experienced before the law changed in 2005.

Obviously, this caseload and the resulting paperwork require some organization and staffing. Assigned cases are downloaded every night to panel trustees. Software in the trustee's office automatically organizes the cases by assigned calendar and attaches all filed documents in that case in PDF format. This is why many trustees now just bring their computers to the first meeting of creditors. Tax returns are usually sent in by mail. There are very specific guidelines for the handling of these confidential documents. Most trustees return them to debtors at the hearing rather that taking the time to keep records of shredding them as required. The trustee's software also synchronizes with the bank each night so they know exactly what is on hand in each case.

Q: How do Panel Trustees get paid?

A: Panel trustees receive a very small fee for each case in which they do not administer assets and file a no asset report. This money comes from the filing fees each debtor pays. Panel trustees also receive a fee for funds that are distributed to creditors. This fee is set forth in 11 U.S.C. §326. It provides for a graduated fee, but usually amounts to about 5-6% of funds distributed to creditors.

Q: Is being a Panel Trustee a full-time job?

A: Trustees take as much time as is necessary to accomplish the task. However, most trustees can get the job done on a part-time basis if they have administrative assistance. They fill in the rest of their time representing other trustees as an attorney or, typically in other parts of the country, representing debtors.

The U.S. Trustee's Office is a unique creation. While its main duty is to serve as a watchdog of the bankruptcy system and align with the judiciary on that task, it is actually an arm of the executive branch of government. Individual panel trustees work for the government, yet are not government employees.

This unique statutory creation can create interesting situations as the trustee answers to both judicial and executive branches of government at the same time who can view things quite differently. However, it has seemed to work well over the years, recently being rated as one of the most efficiently operating organizations in the federal government.

***David R. Hagen** has served as a Chapter 7 Panel Trustee for five years and maintains an active debtor practice. He lectures extensively on bankruptcy topics and wrote Chapter 4 in CEB's "Personal and Small Business Bankruptcy Practice In California". He served as SFVBA president in 1996 and was host of the ARS' cable TV program "Legal Forum."*

Global Economic Crisis Hits California

By Sanford Michelman

MOST AMERICANS BECAME acutely aware of the global economic crisis in September 2008 when a number of the nation's staunchest financial institutions failed, merged or solely avoided catastrophe through the acceptance of a government conservatorship. Although the warning signs of an impending crisis had loomed for months prior to September's collapse, the private sector, government and the public failed to heed these signs resulting in the country's current recession.

With the election of President Barack Obama, the government has sought to quell the economic crash by enacting the American Recovery and Reinvestment Act of 2009, a stimulus package that the 44th President signed into law on February 17, 2009. The $789 billion stimulus is designed as a nationwide effort to create more than three million jobs in a variety of industries over the next two years, jumpstart growth and transform the American economy to compete in the 21st century.

In addition to providing tax relief for individuals and companies in the form of tax cuts equaling $288 billion and $357 billion in funding to federal social programs and spending programs, the act devotes $144 billion, or 18% of the total bill's expenditures, to state and local fiscal relief. Providing the states with financial assistance is an integral part of stimulating the economy. The federal government used a formula based mainly on demographics to determine how much assistance each state would receive. About 61 %of the allocation is based on the state's share of population of 5- to 24-year-olds. The remaining 39% is based on the state's share of the national population. California, the largest state by population with about 37.5 million people, is due to receive the greatest portion of federal stimulus money of any state.

California is expected to secure approximately $26 billion in total for over 40 programs, including $2.57 billion to build and repair the state's roads, bridges and highways, the largest share of transportation funding from the federal government's stimulus package to any of the fifty states. Most of the $26 billion will support the state's health and education programs as the act calls for more than 90% of the aid provided to each state be used to prevent cuts to Medicaid and education.

The U.S. Senate Policy Committee estimates that California will likely receive federal assistance in the following programs:

- $160.2 million – Drinking Water State Revolving Funding to address the backlog of drinking water infrastructure projects.
- $284.6 million – Clean Water State Revolving Funding to address the backlog of clean water infrastructure needs.
- $2.6 billion – Highway Funding to be used on activities eligible under the Federal aid Highway Program's Surface Transportation Program and could also include rail and port infrastructure activities at the discretion of the states.
- $1.1 billion – Transit Formula Funding for investments in mass transit.
- $118.6 million – Public Housing Capital Funding to enable local public housing agencies to address a national $32 billion backlog in capital needs - especially those improving energy efficiency in aging developments - in this critical element of the nation's affordable housing infrastructure.
- $324.2 million – HOME Funding to enable state and local government, in partnership with community-based organizations, to acquire, construct, and rehabilitate affordable housing and provide rental assistance to poor families.
- $190 million – the Homelessness Prevention Funding to be used for prevention activities, which include: short or medium-term rental assistance, first and last month's rental payment, or utility payments. As such, most of this funding will go directly into the economy of local communities, as the funds will be used to pay housing and other associated costs in the private market.
- $6 billion – the State Fiscal Stabilization Funding to local school districts and public colleges and universities in California and

additional funding for other high-priority needs such as public safety and other critical services, which may include education.

- $1.2 billion – Special Education Part B State Grants to help improve educational outcomes for individuals with disabilities, raising the federal contribution to nearly 40 percent, the level established when the law was authorized more than 30 years ago.
- $1.6 billion – Title I Education for the Disadvantaged to help close the achievement gap and support disadvantaged students.
- $225 million – Dislocated Workers State Grants, particularly for grants that support immediate strategies for regions and communities to meet their need for skilled workers, as well as longer-term plans to build targeted industry clusters with better training and a more productive workforce.
- $224.5 million – the State Energy Program.
- $192.1 million – the Weatherization Assistance Program.
- $1.7 billion – Supplemental Nutrition Assistance Program benefits (formerly Food Stamps).
- $220.2 million – Child Care and Development Block Grants to provide quality child care services for in low- income families who increasingly are unable to afford the high cost of day care.

On March 2, 2009 the federal government released a disbursement of the act's stimulus funds to the states. With the money in and the state's unemployment rate rapidly growing as its health and education programs remain in danger, California must now determine how to appropriately allot these funds in order to stimulate the state's desperate economy and prevent further socio-economic erosion. According to the Sacramento Bee, part of the stimulus money will be immediately used to aid the state's unemployed citizens by automatically adding an extra $25 per week to Californians unemployment insurance checks.

In addition to concern for its citizens, under federal rules, at least half the sum of the assistance provided to each state must be obligated through contracts by July 1, 2009 and under the state budget agreement, Finance Department Director Mike Genest and Treasurer Bill Lockyer must decide the level of input from the act on the state's General Fund by April 1, 2009 in order to determine whether to implement additional tax hikes and spending cuts. A public hearing was held on March 17, 2009 to seek public input on a plan to eliminate $3 billion in budget cuts and income tax increases if the state receives $10 billion in federal stimulus dollars by June 30 of next year. In all likelihood, the state will not receive the needed $10 billion.

With California's proverbial clock ticking, Sacramento as well as county and local governments must move to swiftly allocate the assistance funds while the government, public service organizations and the legal community prepare for the regulatory, legislative and legal issues that will arise. Efficiently and satisfactorily handling these issues will be critical to successfully navigating the challenges inherent in receiving all of the potential federal funding and then implementing that funding.

New legislation will be necessary to fully maximize the stimulus funds that California has already received and will continue to receive from the act, and legal issues will likely arise in conjunction with additional legislation.

For example, the state will need to address several inconsistencies between its health care rules and the requirements of the act. In particular, Medi-Cal, California's Medicaid program, may find itself in the middle of various legal battles because several of the state's current rules conflict with the requirements set forth in the stimulus act. For example, certain Medi-Cal eligibility rules will have to be revised to qualify for an estimated $10 billion from the act. Under the current rules, amended in September 2008, the state requires parents to verify children's eligibility for the program twice annually in order to receive stimulus funds, but the federal act specifically bars receipt of Medicaid funding if a state's Medicaid programs' eligibility requirements are more restrictive than they were on July 1, 2008.

The legal community in particular must continue to closely monitor Sacramento as the Governor, lobbyists and state officials determine allocation of the stimulus funds. Preparing now for the legal issues that will arise from the state's disbursement will be key to the success of the federal stimulus act.

Sanford Michelman is a founding member, Managing Partner, and Chairman of Michelman & Robinson, LLP. Michelman specializes in complex business issues in the commercial, regulatory, insurance, and financing industries. He can be reached at (818) 783-5530 or by email at smichelman@mrllp.com.

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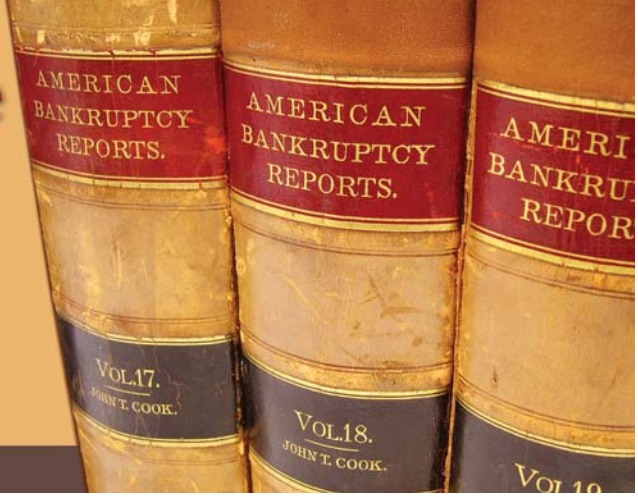
Bankruptcy Preference Law Highlights Malpractice Trap



BY MARK SHARF

SECTION 523 OF THE Bankruptcy Code specifies which debts survive bankruptcy; these include debts incurred through fraud, and willful and malicious injury. Lawsuits filed under section 523 (known as non-dischargeability complaints) must be brought within 60 days of the first meeting of creditors, or about 90 days after a bankruptcy case is filed, pursuant to Federal Rule of Bankruptcy Procedure 4007. This creates a very short time deadline at the beginning of every bankruptcy case to file complaints based upon fraud and other misconduct.

Section 547 of the Bankruptcy Code, on the other hand, contains what is known as Preference law. Preference actions are lawsuits, typically brought by bankruptcy trustees, to recover payments made to legitimate creditors within 90 days before the filing of a bankruptcy case. Bankruptcy law as a matter of policy is designed to ensure that unsecured creditors share equally in the limited assets of an insolvent debtor. To that end, 11 U.S.C. §547 allows for the recovery of transfers of property made on account of pre-existing debt (i.e., payments to creditors) if made within 90 days of a bankruptcy case. The deadline for a bankruptcy trustee to bring a lawsuit to recover payments made within the 90-day period under Section 547 is two years after the bankruptcy case is filed.

So what happens if, before a bankruptcy case is filed: 1) a debtor commits fraud; 2) a lawsuit based on that fraud is filed and then later settled; 3) the debtor makes final payment pursuant to the settlement of that lawsuit; and 4) the debtor files for bankruptcy within 90 days of when the settlement payment was made?

Typically the plaintiff or creditor who received payment would do nothing since there is no further obligation owing. However, there is a risk that up to 2 years later that creditor will be forced to return payments made within the 90 day preference period. At that point the creditor may wish to file a fraud (or non-dischargeability) complaint under Section 523 of the Bankruptcy Code, only to discover that it may be too late to do so.

This dilemma was brought to light by the recent Ninth Circuit Bankruptcy case *In Re Laizure*, 2008 W.L. 4899918 (9th Cir.2008). The debtor in that case had embezzled funds. The debtor agreed to repay the funds and made a final payment of $38,833.70 within 90 days of the filing of the bankruptcy case. Shortly after the bankruptcy case was filed the Chapter 7 trustee sent a letter to the creditor demanding a return of the $38,833.70. Because of the pressing nature of the issue, the creditor filed a non-dischargeability complaint on November 17, 2005, just five days before the November 22 deadline, even though it was no longer owed funds.

Bear in mind that the bankruptcy case was filed on August 17, 2005. The Ninth Circuit held that when creditors are forced to return funds to a bankruptcy estate, their original claim against the debtor is reinstated as of the date the bankruptcy case was filed. For this reason the Plaintiff/creditor's lawsuit was allowed to proceed.

The court in *Laizure* cited to the Northern District of California Bankruptcy Case *In Re Hackney*, 93 B.R.213 (Bankr N.D. Cal.1988) where the conundrum presented by this newsletter was discussed in a footnote as follows:

> "It is unlikely that a creditor with a reinstated claim seeking a declaration of nondischargeability under 11 U.S.C. §523(c) would be in a position to file such a complaint within the time provided by Bankruptcy Rule 4007(c). In such an instance, a court might conclude that the thirty day grace period for filing a claim under Bankruptcy Rule 3002(c)(3) might also authorize a 30 day grace period for filing complaints for nondischargeability. On the other hand, a court might conclude that this unequal result is consistent with the inequity already established by 11 U.S.C. §523 and Bankruptcy Rule 4007 for the two types of debts."

This discussion should send shivers down the spine of every creditor and lawyer, as it is a frank admission that no one really knows the answer to this question. As a result, a prudent creditor who knows about a bankruptcy case and who received any transfer within the 90 day period pre-bankruptcy would be well advised to quickly file a nondischarge-ability complaint if the origin of the underlying debt was in fraud or other wrongful conduct.

Mark Sharf *is a graduate of Boalt Hall School of Law and the Wharton School of Business. He practices in Encino representing creditors, debtors and trustees in all facets of the bankruptcy process. He can be reached at (818) 788-4800 or Mark@sharflaw.com.*

MCLE ARTICLE AND SELF-ASSESSMENT TEST

By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 23.

The Threat of the "B" Word

By James R. Felton

THERE IS VIRTUALLY NO business in today's economic climate that is not affected by the worldwide economic downturn. Yes, even bankruptcy lawyers have to watch their receivables. Commercial litigation also is directly affected, as threats of a defendant's bankruptcy – which perhaps used to be taken lightly by plaintiffs – now need to be considered much more thoroughly.

The purpose of this article is to give some general examples of how a bankruptcy might affect the rights of litigants in commercial litigation, and its consideration in resolution, analysis and strategy.

Generally speaking, a potential loss in commercial litigation is not a sufficient reason to file a bankruptcy. A business considering the filing of a bankruptcy usually will have several other issues or creditors. In fact, if there is only a "two-party" dispute, that is, the entity really has only one creditor whose debt it wants to avoid through a Chapter 11 bankruptcy, such a maneuver probably won't allow for a successful reorganization.

There are two types of bankruptcy that a business could file: Chapter 7 (liquidation) or Chapter 11 (reorganization). Although a corporation or LLC can file a Chapter 7 proceeding, such an entity, unlike an individual, does not receive a discharge.[1] [2]

Conversely, individuals can file three different kinds of bankruptcy: Chapter 7, Chapter 11, or Chapter 13, which provides a mechanism for a three or five year payout of some or all of the individual's debts. The 2005 changes to the bankruptcy law made it harder for individuals to file Chapter 7. Depending upon an individual's assets, debts and income, an individual may be required to file a Chapter 13.[3]

Now, let's discuss the possible way in which a bankruptcy, or the threat of a bankruptcy, could help resolve a pending commercial business dispute. Here is the situation. Two entities are involved in a business dispute. Let's presume that they are in an arbitration and the arbitrator has made a preliminary ruling in favor of the plaintiff entity. The arbitrator has reserved the determination of issues on the amount of attorney's fees[4] and whether the two shareholders of the defendant entity will have personal liability for the entity's liability in the matter. For the sake of this discussion, let's also assume that the arbitrator's preliminary findings also have some hint of fraudulent conduct.

Plaintiff's counsel may feel pretty confident knowing that his client, the clear prevailing party, is likely to get a substantial attorney's fees and cost award, in addition to the preliminary award. Moreover, plaintiff's counsel may feel that the ruling is a likely harbinger for a finding of personal liability against the shareholders/members of the business entity.

Conversely, defense counsel could feel a little downtrodden. His or her client may even question the result (it wouldn't be the first time a client blamed his or her counsel for a loss). How can the defense attempt to reach a deal that minimizes the hit the client takes, allows the business to maintain operations, and avoids a finding of personal liability for the entity's shareholders/members?

If defense counsel simply throws out the "B" word, most plaintiff lawyers won't take it seriously. The best way to get the attention of plaintiff's counsel is to bring in a bankruptcy professional to either help, or possibly take over, the negotiations of a settlement.[5] Certainly, plaintiff's counsel, if presented with the "B" option, may want to do the same thing.

Now, what distinguishes the "B" option as a real threat, as opposed to nothing more than a negotiating ploy? Assuming that the defendant, or soon to be debtor, is considering a Chapter 7 bankruptcy (or in other words, make a deal or we will just go out of business), the plaintiff needs to conduct a liquidation analysis. First off, any defendant that truly threatens a bankruptcy must be willing to show its

cards (e.g., tax returns, financial statements, appraisals, etc.). If a defendant asks a plaintiff to "take my word for it," the plaintiff should hang up the phone and tell the defendant to call back when he or she is serious.

Having said that, assuming a defendant is willing to show its true financial picture to the plaintiff, the plaintiff must then determine whether it will do better or worse, if the defendant is forced to file. In other words, the plaintiff needs to analyze how much it would get as a creditor through the bankruptcy process and what is a real economic of a personal award.

For example, what would the defendant's assets sell for through a bankruptcy liquidation? A Chapter 7 trustee would be appointed to liquidate the assets. That trustee may be required to hire counsel to help with the liquidation. As a result, there could be at least two levels of administrative expenses that would have priority (be paid first) prior to the plaintiff seeing a dime.

Moreover, the plaintiff's recovery as a general unsecured creditor will be at the same level of all other general unsecured creditors. Thus, the plaintiff will get, if any monies are left after administrative expenses, a pro-rata share of all of the monies left over to pay general unsecureds. A legitimate threat of a formal proceeding elevates all other general unsecured creditors to the status of this litigation creditor.

Another question to ask is whether the defendant has any secured debt. For example, does the defendant have an outstanding bank loan for which the bank has a security interest in the defendant's assets? In such an instance, the bank would have the right to foreclose on its assets and pay off its debt, or receive (subject to certain practical issues) the value of liquidation activity by a trustee or a debtor in possession. If there are excess monies after the bank loan is paid in full, such assets would then be administered by the Chapter 7 trustee.

Now, the Chapter 7 trustee's job may not be limited to simply liquidating the assets. There may be avoidance/ preference actions that need to be filed. A preference action is a legal proceeding filed within the Chapter 7 case (as well as in a Chapter 11) to recover monies paid by the debtor to a third party within 90 days of the filing, or to an insider within 12 months of the filing of the bankruptcy. Whether these preference actions will bear fruit could be a process taking years.[6] During this time, the Chapter 7 trustee and its counsel are spending time and money going after the assets.

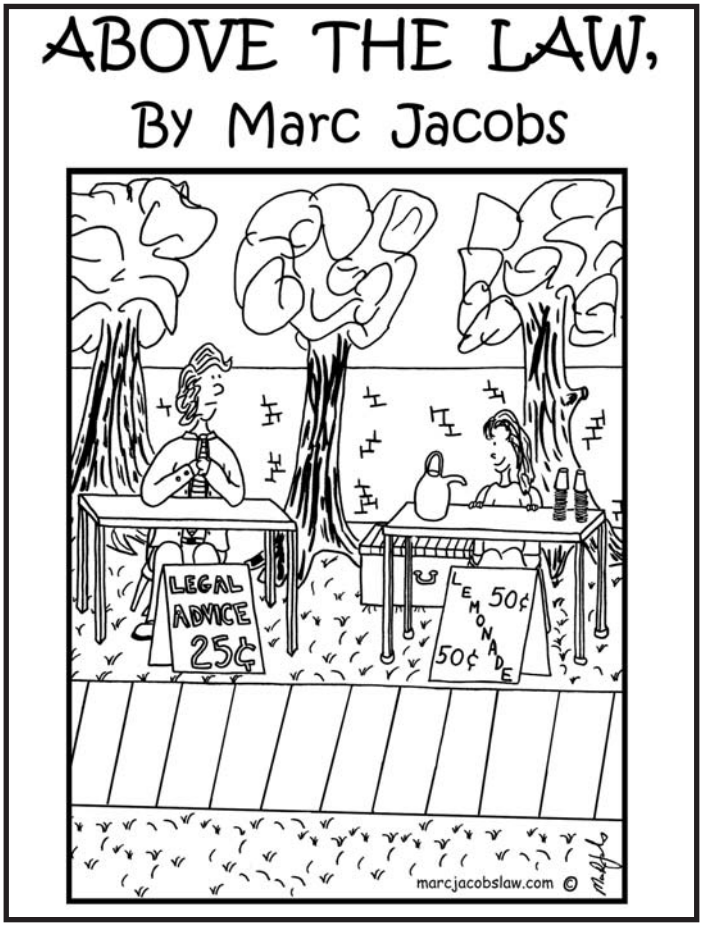
When all preference actions are either settled or resolved (and all other liquidation activity has been completed), the Chapter 7 trustee will then file a report and its counsel will file an application seeking its fees. This could take years to finish and, as noted above, the trustee and its counsel's administrative claims take priority over the payment of creditors. Finally, presuming that the debtor had multiple creditors, not just the plaintiff, and that monies are available, the plaintiff should be paid its pro-rata share.

The liquidation analysis can help the plaintiff/creditor determine if it will be better off with the settlement amount or at the conclusion of the Chapter 7 process. The plaintiff also needs to consider the time value of money, which comes into play as the Chapter 7 process can take years, as well as a value in a certainty to a result.

On the flip side, the defendant must decide if it is willing to end its business just to avoid paying the plaintiff. How much is a little pain (e.g., a settlement of either a lump sum or payments over time) compared to walking away from its business? Moreover, if the defendant files for a Chapter 7 proceeding, what is the likelihood of the plaintiff seeking to impose personal liability on the individuals? These questions warrant a separate analysis; the answers to which may present a double-edged sword.

If the corporation or LLC files for a Chapter 7 proceeding, and the claim against the individuals is based upon a contention that the individuals *are* the alter ego of the defendant corporation or LLC, a judicial finding that the individuals are the alter egos of a debtor probably gives the existing Chapter 7 trustee rights against the individuals' assets. Now, this could increase the pool of assets available to all creditors, but could further delay the process and/or could require the plaintiff to wait for the liquidation process to be completed. This scenario is an apt description of the phrase "be careful what you wish for."

The threat of a Chapter 11 poses similar problems for the plaintiff and potentially large economic issues for the defendant. First, the filing of a Chapter 11 proceeding will probably require an initial retainer of $25,000 to $100,000, depending upon the type and size of the business.[7] In addition to the upfront costs, a debtor in possession within a Chapter 11 bankruptcy has reporting requirements, major administrative burdens, and must put together a plan of reorganization. The costs for even a smaller bankruptcy can exceed $100,000.



The defendant/debtor has to decide whether the costs of such a process, without any guarantee that a successful plan of reorganization might be approved, and exposing the equity of the entity to the marketplace, is better than paying a plaintiff a little more money in a settlement. There also may be stigma issues attached to the defendant's filings that would make a bankruptcy more detrimental to a particular defendant. For example, will its suppliers be willing to continue to supply the debtor throughout the bankruptcy? Will changes in terms (e.g., COD as opposed to monthly payments) make the filing of a bankruptcy just too difficult on operations? Are their warranty/reliability issues impacting on the customer base?

As with a Chapter 7, a Chapter 11 filing may not stop a creditor from pursuing alter ego liability against the individual shareholders/members. However, as with a Chapter 7, a successful alter ego finding may not necessarily bring the plaintiff a quicker recovery. Certainly, though, the individual defendant may want to pay money to avoid the even greater costs of fighting alter ego and/or finding himself or herself in a bankruptcy proceeding.

So, as it generally is with commercial business litigation matters, each case has its own issues and own unique circumstances. The issues noted above are merely descriptive of the type of roller coaster ride the threat of a bankruptcy proceeding – or an actual proceeding – can provide.

Throwing out the "B" option can be a lot like playing poker. You have to always evaluate your opponent's strengths and weaknesses. How have they played their cards in the past? Is it better to play it safe and fold or go for it all and risk, perhaps, everything. Every negotiation, like every hand, is a little different. However, like in most business contexts, it is better to have experienced professionals on your side.

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[1] Although a corporation or LLC does not receive a discharge, there can be business reasons for the filing. For example, it may be important to officially "notify" creditors of the filing so as to stop enforcement activity. Creditors often want to see a bankruptcy filing even if a corporation or LLC can show that it has ceased business operations.

[2] There are also bankruptcies that can be filed under Chapter 9 (municipalities) and Chapter 12 (fishing and farming interests). These types of bankruptcies will not be addressed in this article.

[3] The purpose of this article is not to detail all of the precise rules and/or limits applicable to the filing of a Chapter 7, as opposed to a Chapter 13.

[4] For the sake of this example, the business dispute would permit the recovery of attorney's fees and costs to the prevailing party.

[5] This is not a veiled advertisement to hire one of the many fine bankruptcy lawyers of the San Fernando Valley. Rather, it is simply the observation of a practicing lawyer who has seen how the perceived likelihood of a bankruptcy, demonstrated by a bankruptcy practitioner, changes the way a plaintiff views its relative strengths and weaknesses.

[6] There are a myriad of available defenses to a preference action. The fact that a creditor received a payment within 90 days of the filing of the debtor's bankruptcy does not mandate the return of any monies.

[7] I am not including within this estimate what it would cost to file Circuit City's bankruptcy or similar major global kinds of cases. This estimate is based upon a reasonably sized business. Unlike the free hat that you get at a local store give-away, one size of a proposed bankruptcy retainer does not fit all. For Chapter 7 cases, usual fees range from about $2,000 to $7,500. Again, this will not be true for all Chapter 7 cases but for most.

MCLE Test No. 10

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

1. A corporation can file a Chapter 13 bankruptcy.
True
False

2. An individual can file a Chapter 11 bankruptcy.
True
False

3. All individuals can file a Chapter 13 bankruptcy.
True
False

4. A corporation, like an individual, can get a discharge at the conclusion of a Chapter 7 bankruptcy.
True
False

5. In a Chapter 7, unsecured creditors get paid before administrative expenses are paid.
True
False

6. Secured creditors always get paid before monies are available for general unsecured creditors.
True
False

7. Permission of creditors is required before a debtor may file a Chapter 7 or Chapter 11 proceeding.
True
False

8. Financial information of a debtor remains privileged within a bankruptcy proceeding.
True
False

9. All payments made by a debtor within 90 days of the commencement of a bankruptcy are avoidable as being preferential.
True
False

10. A creditor who obtains a judgment in state court has greater rights in a Chapter proceeding than a creditor who has not obtained a judgment.
True
False

11. The 2005 changes to the Bankruptcy Code made it easier for an individual to file Chapter 7.
True
False

12. A Chapter 11 will not likely be effective in cases where there is primarily just a two-party dispute.
True
False

13. A general unsecured creditor is paid before general administrative expenses in a Chapter 7.
True
False

14. The costs to file a Chapter 11 are generally significantly more than filing a Chapter 7.
True
False

15. A creditor will always get more in dollars through a Chapter 7 proceeding than it will as part of a negotiated settlement.
True
False

16. It can take years for a creditor to get payments through a Chapter 7.
True
False

17. The filing of a Chapter 7 by a corporation will always protect the officers of the corporation from lawsuits based upon corporate debt.
True
False

18. A creditor who receives a payment from a debtor within 90 days of the debtor's bankruptcy will be required to give back some of the money.
True
False

19. A Chapter 7 trustee can be appointed to liquidate the assets.
True
False

20. There are four types of bankruptcies that businesses can file.
True
False

MCLE Answer Sheet No. 10

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:**

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METHOD OF PAYMENT:
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5. **Make a copy of this completed form for your records.**
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ANSWERS:
Mark your answers by checking the appropriate box. Each question only has one answer.

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

Are Lawyers Immune to the Economy?

ROBERT MANSOUR
SCVBA President

NO. BANKRUPTCY FILINGS ARE surging. Credit card debt is mounting. Salaries and jobs are being cut. The Santa Clarita Valley Bar Association is getting more and more calls for bankruptcy attorneys every day. More and more clients are seeking referrals to bankruptcy attorneys. No other area of law seems terribly interesting these days.

In fact, one can see the trend in local Santa Clarita magazine ads. There are clearly more attorneys advertising bankruptcy services, debt counseling of one sort or another, loan modifications, and more. What is perhaps most interesting is some of these lawyers use to practice other areas of law – family law, estate planning, civil litigation, etc. So while consumers are turning to bankruptcy as their solution when all avenues have been exhausted, it seems some lawyers are also turning to bankruptcy to save their practices. However, do lawyers really need saving? Aren't lawyers above this economic crisis?

Lawyers are not immune to this economy. What has happened to some attorneys is their own practices have come to a virtual halt in this economy. They have turned to one of the only areas of law that seems to be thriving these days – bankruptcy. More and more lawyers are closing their offices to "downsize" – moving into home offices or smaller quarters. The SCV Bar Association's website carries an ever expanding list of vacant office space available that is growing longer every day.

Some large firms are laying off lawyers for the first time in years, while some law firms are "changing their focus" or giving up practice areas that have dried up and moved to bankruptcy or other more "immune" fields of practice. Lawyers have to adapt just like everyone else.

Some people may be shocked to learn that an attorney is having hard times making ends meet. For some reason, most people continue to think all lawyers are independently wealthy and never struggle to pay bills.

This author personally knows lawyers deep in credit card debt, some struggling to pay mortgage payments, some already delinquent, some on the brink of bankruptcy themselves. There are also those too proud to admit they have a situation on their hands. It has particularly hit the sole practitioner quite hard. Attorneys who have never marketed or networked before have started to see the wisdom, or perhaps the necessity, in doing so.

It stands to reason. When consumers can't buy anything, they will certainly be reluctant to spend money on lawyers. If one is preoccupied with how to make the next mortgage payment, they might put off their divorce for a few months or that estate plan they've been contemplating. Forget forming a corporation! That can wait too…right? Certain legal fields will probably be just fine. Others will need help.

Hopefully most will be able to endure this financial crisis and come out stronger on the other side. Joining a bar association like the SCVBA or SFVBA can help a struggling practice weather the storm. Forming alliances and learning from your colleagues can go a long way to helping a practice. Hopefully, fellow members of the bar association will reach out to one another during these difficult times.

The SCVBA has some exciting programs coming soon. In April, Scorpion Web Design will assist lawyers in understanding the mysterious world of "Search Engine Optimization." What good is a website unless consumers can find it? Please visit www.scvbar.org for more information.

Valley Community Legal Foundation

Raising Funds for Children's Courthouse Waiting Rooms

STEPHEN T. HOLZER
VCLF President

THE VAN NUYS COURTHOUSE Children's Waiting Room is up and running. By all accounts, the waiting room has proven to be a great success. Parents can now place their children in a secure, adult-supervised atmosphere while attending to court business.

The challenge now is to produce the same result at the San Fernando courthouse. In addition to the Foundation, the San Fernando Valley Bar Association, the SFVBA's Attorney Referral Service and Family Law Section have each committed to helping fund a San Fernando courthouse waiting room.

Each reader of this column can help raise these funds while having fun at the same time. On May 16, 2009, the Foundation will hold its Annual Gala. The event will take place at CBS Studios in Studio City on the famous "My Three Sons" Street. In addition to the legendary "My Three Sons" series, "According to Jim" and "Samantha Who?", among others, have also been filmed there.

At each gala, the Foundation presents the Armand Arabian Law & Media Award to a person who has made a significant contribution to fostering an understanding of the law among the general public. This year, the Award is being presented to Linda Deutsch.

Ms. Deutsch has been a reporter for the Associated Press since 1967 and is the AP's Legal Affairs Reporter. She was the AP correspondent covering the trials of O. J. Simpson, Rodney King, John DeLorean, Exxon Valdez captain Joseph Hazelwood, the Menendez brothers and Unabomber Theodore Kaczynski. She was nominated for a Pulitzer Prize for her coverage of the O. J. Simpson trial and has received a plethora of journalism awards.

As he did last year, City Councilman Dennis Zine has agreed once again to serve as the gala's live auctioneer. Councilman Zine's appearance continues his stellar tradition of public service for charitable causes. Also, as with last year, entertainment will be provided by "The Mighty Echoes", a cappella vocal group whose style enthralled last year's gala attendees.

The cost of attending the gala has not increased this year. You can therefore participate in this evening of fun at no additional expense. Sponsorships range from as little as $200 all the way up to $7,500. Individual tickets are $125 and a table of ten is $1,250.

Participating can help make the Valley's second functioning children's waiting room – in San Fernando – a reality. Additionally, funds raised at the gala go to support worthy charitable causes such as scholarships for students in legally-related studies and grants to organizations doing legally-related charitable work.

The Foundation is the only organization in the Valley that has a mission of legally-related charitable work. Please join the Foundation on May 16 and help continue the Foundation's ability to do this work. Sponsorship information can be obtained from our Sponsorship Co-Chairs Marcia Kraft at (818) 883-1330 or marcia@kraftlawoffices.com and Vahid Naziri at (818) 888-6614 ext. 203 or vnaziri@nhlawgroup.com.

Tickets and tables can be purchased by contacting Linda Temkin at (818) 227-0490 ext. 105 or events@sfvba.org.

ATTORNEY TO ATTORNEY REFERRALS

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$125/hour. I'm an experienced trial/appellate attorney, Law Review. I'll handle your appeals, trials or assist with litigation. Alan Goldberg (818) 421-5328.

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

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

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STATE BAR DEFENSE & PREVENTATIVE LAW

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

SPACE AVAILABLE

ENCINO

Very large office with view of Valley on Ventura Boulevard. Many amenities. Option to convert to 2 smaller offices. Friendly atmosphere. Call Lisa or Rocky (818) 788-3270.

VALENCIA

Offices and secretarial bays for sublease in new Class A building. Easy freeway access (Valencia Blvd. and 5 Freeway). Amenities include above standard build out, shared use of 2 conference rooms, reception services, T1 Internet. (661) 288-1000 or info@reaperickett.com.

WOODLAND HILLS

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

Share office space at 20700 Ventura Blvd., Ste. 220. $1,000/mo. Window offices available. Secretarial bay. Available immediately. Call (818) 992-6588.

Warner Center – Topanga and Victory. Beautiful newly built out law suite. 1 window office available (16'x12') plus interior secretarial bay with Steelcase furniture and storage. Access to photocopier, fax, postage meter, shredder, high speed scanner, kitchen, reception room and conference room. A great place to set up shop. Call (818) 716-6400.

SUPPORT SERVICES

NOTARY OF THE VALLEY

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

FOR SALE

OFFICE FURNITURE

Law Library, four drawer filing cabinets, desk, chairs, etc. Call Walter Krauss at (818) 906-0775.

Annual Judges' Night Dinner

February 19, 2009

(L-R) Trustee Adam Grant with Judge Barry Russell, Stanley Mosk Legacy of Justice Honoree

(R-L) SFVBA President Tamila Jensen with Judge of the Year Ronald Coen

(L-R) Attorney Gary Barr with Judge Bert Glennon and Judge Bruce Sottile, Ret.

North Valley Supervising Judge Robert Schuit

(R-L) Congressman Brad Sherman with Judge Ronald Coen

(R-L) Amy Newman, President of ARC, Platinum Sponsor with Judge Maureen Duffy-Lewis

Calendar

Perspectives from Outside the Box by the San Fernando Valley Bankruptcy Judges

Co-sponsored by Central District Consumer Bankruptcy Attorneys' Association

Bankruptcy in Ancient Roman Times
Judge Kathleen Thompson

Behind the Scenes of the 1978 Bankruptcy Code
Judge Geraldine Mund

Where Criminal Law and Bankruptcy Meet
Judge Maureen Tighe

April 29 • 12:00 Noon

Woodland Hills Bankruptcy Court
21041 Burbank Boulevard

$30 SFVBA Members prepaid
$40 SFVBA Members at the door
1 Hour MCLE

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

Probate & Estate Planning Section
A View from the Bench and Care Plans re: Conservatorships

APRIL 14
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Judge Aviva Bobb and Bunni Dybnis, Director of Professional Services, LivHome, will discuss the latest updates from the court and care plans.

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

NON-MEMBERS
$45 prepaid
$55 at the door

Workers' Compensation Section
The New QME Regulations

APRIL 15
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Jesse Rosen will give an update on the latest QME regulations.

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

NON-MEMBERS
$45 prepaid
$55 at the door

Santa Clarita Valley Bar Association
Effective Law Firm Website Design

APRIL 16
12:00 NOON
TOURNAMENT PLAYERS CLUB
VALENCIA

What good is a website unless consumers can find it? Scorpion Web Design will assist lawyers in understanding the mysterious world of "Search Engine Optimization."

MEMBERS
$30 prepaid
$40 at the door

NON-MEMBERS
$40 at the door

Litigation Section
Trying Cases to an Agreed Referee

APRIL 23
6:00 P.M.
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Judge Bert Glennon will discuss trying cases to an agreed referee under CCP Section 638 and related subjects of interest of both Plaintiff and Defense counsel.

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

NON-MEMBERS
$45 prepaid
$55 at the door

Family Law Section
Sex, Lies and Parentage Cases

APRIL 27
5:30 P.M.
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney Glen Schwartz explores California's unique statutory scheme of paternity and maternity in which the issue of parentage is not always dependent on the genetic truth. This program will provide common and not-so-common factual situations to illustrate the application of California's parentage laws, including discussion of recent developments in same-sex cases and estoppel.

MEMBERS
$45 prepaid
$55 at the door
1 MCLE HOUR

NON-MEMBERS
$55 prepaid
$65 at the door

Business Law, Real Property & Bankruptcy Section
Perspectives from Outside the Box by the San Fernando Valley Bankruptcy Judges

APRIL 29
12:00 NOON
WOODLAND HILLS
BANKRUPTCY COURT
FIRST FLOOR

Judge Kathleen Thompson will offer the historical perspective via Bankruptcy in Ancient Rome; Judge Geraldine Mund will discuss the Making of the 1978 Bankruptcy Code; and Judge Maureen Tighe will highlight the interesting intersections between Criminal Law and Bankruptcy.

MEMBERS
$30 prepaid
$40 at the door
1 MCLE HOUR

NON-MEMBERS
$40 at the door

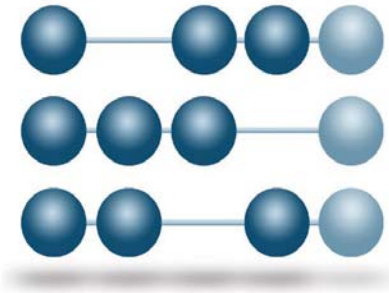
State Bar of California's Committee on Mandatory Fee Arbitration
Fee Arbitrator Training

APRIL 29
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS

This training session is offered to all volunteers who arbitrate attorney-client fee disputes and persons interested in becoming fee arbitrators. State Bar MFA Program Administrator Jill Sperber and SFVBA MFA Chair Myer Sankary will address recent developments in fee arbitration.

Free to Volunteers
2.75 MCLE HOURS (Includes 1.0 Legal Ethics)

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



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