

# VALLEY LAWYER

DECEMBER 2009 • \$4

A Publication of the San Fernando Valley Bar Association

**Are Massive Court  
Closures on the Horizon?**

**Fortune Favors the First to Court**

**Earn MCLE Credit**

**Estate Planning Lessons  
from Michael Jackson**

**Employment Law  
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**Year-in-Review**

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## VALLEY LAWYER

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## FEATURES

- 8 Puzzling Year in Review **BY SFVBA STAFF**
- 14 Are Massive Court Closures on the Horizon? **BY JUDGE RICHARD KIRSCHNER**
- 16 Employment Law Review **BY CYNTHIA ELKINS**
- 18 Fortune Favors the First to Court **BY MARK L. SHARE AND YONA CONZEVOY**  
PLUS: Earn MCLE Credit. MCLE Test No. 17 on page 21.
- 22 Estate Planning Lessons from Michael Jackson **BY WILLIAM G. WAIS**

## DEPARTMENTS

- 5 President's Message  
It's Time to Celebrate  
**BY ROBERT F. FLAGG**
- 7 From the Editor  
Setting the Pace  
**BY ANGELA M. HUTCHINSON**
- 24 Above the Law  
Mediation  
**BY MARC R. JACOBS**
- 24 Classifieds
- 25 Santa Clarita Valley Bar Association  
Shining Moments  
**BY BRIAN E. KOEGLE**
- 26 Valley Community Legal Foundation  
Holiday Greetings  
**BY STEPHEN T. HOLZER**
- 27 Event Calendar  
Holiday Party  
**PLUS: More SFVBA Events**



16



18



22



27



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## President's Message

# It's Time to Celebrate!



**ROBERT F. FLAGG**  
SFVBA  
President

**F**IRST AND FOREMOST I'D LIKE to invite you to holiday party! This has been a trying year for our economy and for our members. This season is a good time to set aside our cares and woes, even if just for a little while.

Please join staff, members, trustees and officers at the SFVBA holiday party on December 8, 2009, at 5:30 PM at the SFVBA offices. Come and enjoy delicious food and holiday beverages. Please bring a new toy (not gift-wrapped) for the holiday toy drive. This is also a good time to make a donation to Blanket the Homeless. But by all means, please drop by for a visit, whether or not you are bringing a toy or a donation!

Speaking of Blanket the Homeless, all members are cordially invited to participate in the annual blanket distribution and legal clinic, at the LA Family Housing Center, 7843 Lankershim Blvd., North Hollywood, on Saturday, December 12 from 8:00 AM until 10:00 AM.

Many shelter residents are not only homeless, but have legal problems. In addition to providing blankets, members conduct a legal information clinic for residents in need. Quick answers to legal questions often can be provided on the spot, while more complex matters and representation needs are referred to the SFVBA Attorney Referral Service. Come hand out a blanket. Give a bit of hope. Answer a legal question in clinic. If you do decide to attend, please call the Bar offices so that we can make a note of your anticipated participation.

Those receiving blankets come from all walks of life and from myriad backgrounds. They have lost their homes, their jobs or their means of transportation or all of those things. Most are not living in shelters by choice, but have been forced from their homes because of unforeseen economic events, illness, injury or domestic violence. At LA Family Housing, parents and children share one small room.

For children at the shelter, a blanket, while it will keep them warm, isn't what they are expecting for the holidays. The toys

collected will be distributed to the children in temporary residence at the Family Housing shelter and to children at Haven Hills, a Valley shelter for women and children who have experienced domestic violence. Books, games, balls, sports equipment, electronic equipment, dolls and stuffed animals suitable for children through age 16 will be accepted at the SFVBA offices through December 11, 2009. This year, for the first time, Blanket the Homeless is partnering with CHiPs for Kids Toy Drive, so members can also drop off their toys outside the Westfield Topanga Target in Canoga Park or any Walgreens in the San Fernando Valley.

Blanket the Homeless was started in 1995 by then-President Bob Weissman and then Attorney Referral Service Director Brad Capener at a time when the image of lawyers was at an all-time low. They reasoned that by doing well for others, Valley lawyers could help improve the image of all lawyers.

The program has been conducted every winter since then, driven by the continuing dedication of SFVBA past presidents Mark Blackman and Christine Lyden. As a result of the generous donations of our members, more than 25,000 blankets have been distributed. More than that, countless downtrodden, afflicted and homeless people have had a chance to seek legal assistance, at no charge.

The Bar expanded this effort by adding the toy drive in December, 2006. For 2009, we continue this new tradition of recognizing the special needs of children in difficult circumstances. A small toy can be a carrier of hope that to a child is worth vastly more than its purchase price. By donating these toys for the children, we demonstrate our compassion for those least able to understand the circumstances afflicting their families.

"And so, as Tiny Tim observed, 'God bless Us, Every One!'" – Charles Dickens (1843).  
*A Christmas Carol.* ♫

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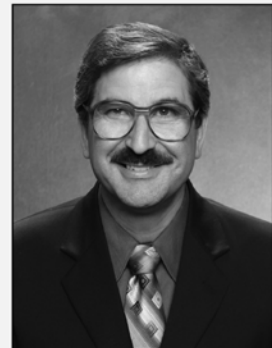
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# From the Editor

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



**ANGELA M. HUTCHINSON**  
Editor

Winter Greetings!

Our magazine this month is a Year-in-Review from the Bar leadership, staff, foundation and the local courts in our Valley community. Inside this issue is also an insightful MCLE article, emphasizing the importance of understanding writs of attachment and possession in civil cases.

From a communications standpoint, 2009 has been a very productive year for the Bar. Our primary focus was branding our communication marketing tools such as *Valley Lawyer* magazine, *Bar Notes* e-newsletter, press releases, postcards and calendar of events e-blasts.

Our new website redesign launches this month so stay tuned for the announcement on our Twitter page. We have created a more user-friendly website that will be maintained in-house and updated more regularly by staff. The new SFVBA website is also more aesthetically appealing and aligned with today's design standards.

Our secondary focus in 2009 was taking the Bar to a new level using social media. Recently, I received a scholarship to represent the SFVBA at the National Association of Bar Executives Communications Workshop in Las Vegas. The conference seminars provided useful information and it was a great networking opportunity to learn about other Bar's form of communications. It was also exciting to win \$100 by putting one dollar in the first slot machine I noticed on my way to the opening session.

The overall workshop provided me varied perspectives to share with the Bar's staff on social media. The social media site that the SFVBA has decided to use is Twitter. We plan to not only attempt to grow our membership, but also keep current members engaged by providing unique and valuable content that can only be accessed from following our Twitter page. If you are on Twitter, please follow 'SFVBA' and be sure to send me an email with your username so the Bar can stay abreast of your legal tweets.

The Bar's final focus as it relates to communications is developing a membership marketing strategy that will help the Bar to gain new members and add membership value for existing members. The SFVBA staff will be participating in a retreat this month to brainstorm innovative ideas and develop a plan of action for implementation.

Setting the pace for 2010 will indeed be a challenge, one that although I must accept as my duty as the SFVBA Communications Manager, I truly look forward to the year ahead. I hope that you, your friends and your families have a wonderful holiday season filled with peace, joy and love. 🐼

Have a blessed month!

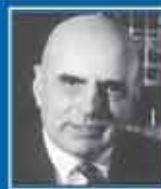
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# Puzzling Year in Review



## An Unprecedented Year

By Liz Post, Executive Director

**I**N ADDITION TO WITNESSING THE SWEARING IN of the first American of color as President of the United States, 2009 will be remembered for Ponzi schemes, record unemployment, bankruptcies, loan modifications and foreclosures. The San Fernando Valley Bar Association and Valley attorneys have not been immune from the recession; however, as I reflect back on this unprecedented year (at least during my lifetime), members can be assured that the SFVBA Bar Leaders and staff faced its challenges head-on with foresight and prudence.

**Invest in the Future.** While 2009 may have been the most fiscally lean year of my 15-year tenure as Executive Director, our leadership did not lose sight that our bar association has endured and thrived for 83 years, through good times and bad. Aided by healthy reserves, this summer we carried out our long-term plans to replace our office computer network and, by the end of this year, will unveil our next generation website.

**Give Members What They Want.** Emphasis on quality and affordable MCLE seminars and networking events resulted in increased membership participation. Our annual MCLE Marathon attracted almost 20% more attendees than

the previous year. Our 2010 Marathon has been upgraded – classes will be held at Braemar Country Club and includes continental breakfast and lunch. Thanks to Education & Events Director Linda Temkin's painstaking efforts to secure additional sponsorships, registration remains an affordable \$149 for the two-day seminar. (Go to page 13 for more details.)

**Value-Added Benefits.** In 2008, the SFVBA made a major commitment to members by partnering with Fastcase, the comprehensive online legal library. The cost of an individual subscription is \$995/year but is available free to SFVBA members. During the bar's recent budget cycle, the Board of Trustees recommitted our organization to this joint venture. Currently, 13% of SFVBA members use Fastcase for legal research and the SFVBA remains the sole bar association in California offering this member benefit. Staff is busy planning webinars throughout 2010 to help more members take advantage of this value-added service.

**Image of Valley Lawyers.** In 2008, *Valley Lawyer* (formerly *Bar Notes*) evolved from a quasi-newsletter to a full-fledged magazine. Guided by Editor & Communications Manager Angela Hutchinson, we continued the transition in 2009 by implementing full-color throughout the magazine. Ad revenue remained stable, well ahead of the industry decline of 20% in advertisement for legal publications. Competing against magazines from small and large bar associations alike, *Valley Lawyer* was considered this fall for a Luminary Award from the National Association for Bar Executives Communication Section.

**Economy Hits Home.** In its third year, the Mandatory Fee Arbitration Program grew by 6.5% in 2009. Faced with declining accounts receivables, law firms seemed less timid about pursuing a fee claim. Headed by Member Services Coordinator Jennifer Jimenez and Chair Myer Sankary, our MFA Program can boast that it is faster than the slowing court process and other approved programs. Attorneys and clients can expect an average turnaround time of 3 to 4 months from the date a case is filed until an Award decision is put in the mail.

**Access to the Courts.** Bar leadership and the Valley's supervising judges and court administration met quarterly through our Bench-Bar Committee to confront issues like the court budget crisis and making the temporary judge program friendlier to Valley attorneys. While we may not have succeeded in reducing the Los Angeles Superior Court's \$80 million budget deficit, the Committee did bring temporary judge trainings to the Valley and make it more likely that Valley attorneys are assigned to Valley courthouses. 🏠

Visit our website at [www.sfvba.org](http://www.sfvba.org) to read the SFVBA Long Range and Succession Plan for 2009-2012, adopted by the Board of Trustees on September 8, 2009. I welcome your feedback, and encourage you to contact me at [epost@sfvba.org](mailto:epost@sfvba.org) or (818) 227-0490, ext. 101.





# Events, Education and the Year Ahead

By Linda Temkin, Education & Events Director

**T**HE SAN FERNANDO VALLEY BAR ASSOCIATION strives to be relevant to its members and the community.

This past year was particularly challenging due to the economy. The Education & Events Department made a conscious effort to assist members in broadening their potential client base and contact list. To achieve this end, the SFVBA hosted numerous networking mixers. Thanks to various sponsors, the mixers were then made free to members. SFVBA members met with the Cal Society of CPAs at the Woodland Hills Country Club and mingled with associates at the Gordon Biersch Brewery in Burbank, all at no charge to members.

Though it is universally hoped that the recession is over, the SFVBA remains mindful of members' budgetary concerns. Determined to make SFVBA membership pay for itself, the Bar will continue to offer free networking mixers and social events. Last July's softball outing at the Van Nuys Sherman Oaks Park was a great success. The Bar plans to offer this again next year.

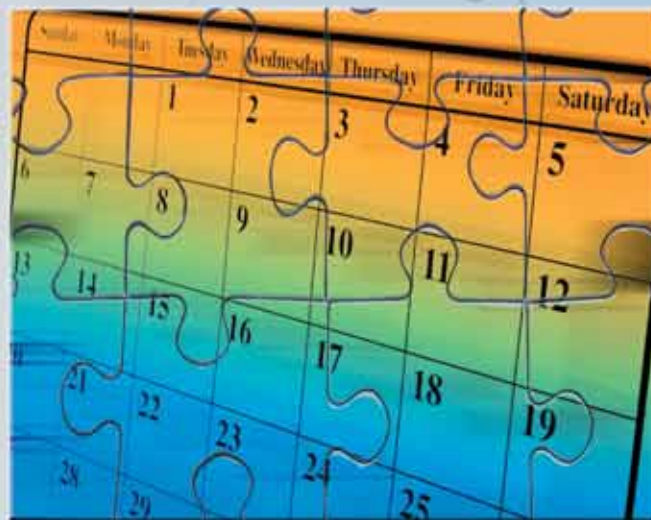
The Bar would like to extend some of these benefits to SFVBA family members. In addition to the softball game, the Bar hosted a miniature golf outing at Castle Park in October. It's always great to take some time away from the office. The Bar found it's even nicer to host these outings and offer them free of charge to members.

The Education & Events Department would like to make the educational component as painless as possible. Though the Bar has yet to offer surf and turf entrée options (remember, it's still a recession), the Bar does try and present the seminars in a comfortable environment and feed one's body and mind. To that end, the Bar has started holding some of the seminars at Braemar Country Club. The 2010 MCLE Marathon will be held there and the cost for the two day event is still remarkably low.

The SFVBA also keeps adding new audio recordings to the tape library. This way, members may complete their self-study MCLE requirements, all at no additional charge.

In addition to the usual practice section meetings, the Bar held a special boot camp training this summer at Braemar Country Club. In a relaxed setting, attendees were able to gather information on how to boost their law practice. From web page design, to tips on collecting fees, attendees were given great practical advice that they could employ immediately upon their return to the office. It has been an overriding theme this year, to keep the meetings relevant.

It is particularly rewarding to see attendees come back each month for the section meetings. Besides earning MCLE credits,



participants can socialize with their peers and share important information regarding their practices. It truly helps create a community of legal professionals and the Bar Association is happy to assist members on this front.

The SFVBA is indebted to its various Section and Committee Chairs. Too many to name here, but please do take a moment to check out their names inside the masthead of this issue of *Valley Lawyer*. SFVBA Chairs plan the organization's

programs with the Bar's Director of Education & Events. The SFVBA offers the information members need to keep themselves and their practices on track.

The Bar also is privileged in its relationship with the courts. Many of the Valley's bench officers regularly attend the Bar's monthly section meetings, as well as larger gala events. The SFVBA is also honored to have the support of so many

bench officers for the Bar and its charitable arm, the Valley Community Legal Foundation.

The Foundation is the Bar's means of giving back to the community and we do this with the grant and scholarship programs that are offered each year to very worthy recipients. At the Annual Law Day Gala, the Foundation recognizes the outstanding law officers and fire fighters serving the Valley community. In this very real and tangible way, the Bar is able to bring critical aspects of the community together.

The Bar welcomes these opportunities and continually seeks new avenues to further the Bar's relationship with members and the public. Community defines who the SFVBA serves. The Bar staff and leadership thanks its members for being a part of such a special community. 🐾

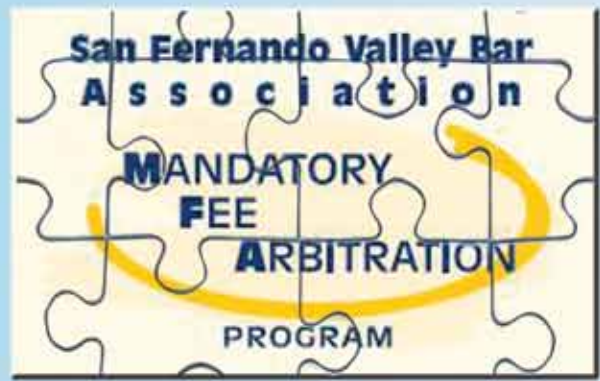
Contact Linda Temkin at [events@sfvba.org](mailto:events@sfvba.org) or (818) 227-0490, ext. 105.



*Though the Bar has yet to offer surf and turf entrée options (remember, it's still a recession), the Bar does try and present the seminars in a comfortable environment and feed one's body and mind.*

## Settling Disputes with Mandatory Fee Arb

By Jennifer Jimenez, Member Services Coordinator



**W**HEN AN INDIVIDUAL NEEDS TO RESOLVE A fee dispute with an attorney, they should submit a request for fee arbitration with the San Fernando Valley Bar Association's Mandatory Fee Arbitration (MFA) Program. The MFA Program offers clients and attorneys a way to resolve their fee disputes as a low-cost and time-efficient alternative to the court, without the necessity and expense of hiring a second attorney.

Since the Program was reinstated three years ago, the SFVBA has processed about a 100 cases, ranging from business law to immigration cases. The majority of cases administered, about 70%, were family law and criminal law. The Program also provides the parties the option to elect binding or non-binding arbitrations. About 67% of cases in 2009 were non-binding and 62 percent were cases of \$10,000 or less.

Utilizing the MFA Program to resolve a fee dispute offers many great benefits. When a client or attorney has questions


regarding the fee arbitration process, the SFVBA tries to help the parties and answer their questions as quickly as possible. If the staff cannot answer a question, they will confer with MFA Committee Chair Myer Sankary or the State Bar Mandatory Fee Arbitration Office.

The Program also offers a fee waiver program that helps clients who cannot afford the filing fee. The fee waiver application is reviewed and then it is determined from the information the client provides whether a fee waiver or reduction shall be granted. For clients who cannot pay the filing fee in one installment, the Program accommodates them with a payment plan. The Program offers many options because it understands that clients have a right to use the fee arbitration process and does its best to achieve that.

On the day the client files for arbitration, we immediately open the case. Each case and client is treated with priority because the Program understands that attorneys and clients have many options when choosing which local bar association they would like to file their case with. Once a case is open and the appropriate steps have been taken, we refer the case out to one arbitrator or to a panel of arbitrators, depending on the amount in dispute. If the amount in dispute is less than \$10,000, a sole arbitrator is assigned. If it's over \$10,000, the parties can choose to have a panel of three arbitrators.

SFVBA arbitrators are experienced attorneys and lay professionals who have been trained by the State Bar Mandatory Fee Arbitration Office. Arbitrators make sure to provide the best service as possible and conduct every arbitration in a timely manner for the fee arbitration parties.

The MFA Program has over 47 active arbitrators on its panel. The Program would like to thank each individual arbitrator who has volunteered their time over the last few years. Each arbitrator is appreciated for the time and effort they put into each case, whether as a sole arbitrator or a panel of three. The Program is always looking for new arbitrators to participate. Volunteers are asked to hear about two cases a year and a typical hearing lasts 2-4 hours.

Lastly, when a fee dispute does arise with a client, the Program encourages SFVBA members to go through a local bar and serve them with a *Notice of Clients Right to Arbitration*, which can be found on the SFVBA website. 

For questions regarding the SFVBA Mandatory Fee Arbitration Program, please contact Jennifer Jimenez at (818) 227-0490, ext. 110 or [Jennifer@sfvba.org](mailto:Jennifer@sfvba.org).



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# There's Room to Highlight, Even in Dim-Lights

By Rosie Soto, Director of Public Services

**E**VERYONE KNOWS DIM LIGHTING MAKES FOR difficult picture-taking; nevertheless, through the thundering clouds of the economic downturn, the ARS' dedicated team was able to create exciting moments to depict in 2009.

ARS kicked off the year with a conservative budget and had to tighten the marketing belt when the income slowed down. Not a single endeavor had more value than the next. However, a reality is, sometimes valuable contributions are eliminated – even during the best of times. With a prepared and innovative team and strong reserves, the ARS marched forward to build value-added relationships with customers and potential customers in mind.

## Innovative Team

With a conservative budget, the ARS staff and the ARS Committee prepared and looked for innovative ways to remain prominent. ARS really challenged itself to let the public know specifically the types of services available. Clarity was powerful.

Panels were revamped to address economic crisis issues and emerging trends. Adjustments to panels were necessary as attorneys shifted areas of practice. Recruiting, orienting, and maintaining panel members were essential in 2009. The key component was gaining an attorney member's perspective on why the ARS does/does not work for all attorneys.

The ARS internet pages were revamped. Online users now visit the FAQ's pages, which are available in English and Spanish, to learn about the program and interact with staff. The online referral request page is easier to use and, as a result, referral requests peaked in 2009.

## Building Value-Added Relationships

At the ARS, when the economy is great, clients are calling. When the economy is bad, clients are calling. In 2009, the media highlighted predictions and statistics of job losses, foreclosures and upside-down mortgages, stock market declines and disappearing 401k plans. Meanwhile, behind the scenes, the ARS spends more time learning about how exactly this is affecting individuals and small businesses in the community. Everyone was familiar with the issues, but addressing those issues meant working a bit harder to find resources and solutions for the high volume of indigent clients.

The ARS strengthened partnerships with indigent clients and small businesses in turmoil. The return in such investment is never immediate; it will pay off in the months and possibly years ahead. The ARS knows this because statistics prove returning clients and clients referred by friends or family members of past ARS clients are a top source of referrals.

The ARS placed a strong emphasis on partnerships. It gives the ARS program a strong edge in the shadows of the recession and beyond. The ARS demonstrates support for partners through various forms such as legal clinics, project development, forums, sponsorships, grants and speaker services.



## The Future

Moving into 2010, with the support and under the leadership of SFVBA President Robert Flagg and ARS Committee Chair Caryn Sanders, the ARS will continue to flourish. In the making is a marketing plan to reach multicultural markets across all generations, particularly the millennial generation through the wise use of social media.

Governance issues will be important, as they directly impact the bottom line. The ARS Committee will create a task force to build stronger relationships with panel attorneys and their staff. For ARS staff, they will continually sharpen their mind and skills with the help of panel attorneys and their continuing education.

As everyone celebrates the holidays, the ARS would like to raise a very special toast to the past ARS Chairs Hillary Grosberg, Donna Laurent and Christine Lyden – here's to their dedication, kindness and loyalty. Throughout the ARS' successful years, they've sustained and inspired the Bar leadership and Valley community. The ARS was fortunate for many, many years to have them on board. 🍷

Contact Rosie Soto at (818) 227-0490, ext. 104 or email her at [rosie@sfvba.org](mailto:rosie@sfvba.org).



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## Q&A with SFVBA's Attorney Referral Service

By **Angela M. Hutchinson**  
*Editor & Communications Manager*

**S**ERVING THE COMMUNITY since 1948, the Attorney Referral Service (ARS) of the San Fernando Valley Bar Association is a public service program designed to assist the people and businesses of the San Fernando Valley in locating lawyers for specific types of legal matters. The ARS is certified by the State Bar of California in Los Angeles and Ventura Counties and meets American Bar Association (ABA) standards for lawyer referral services.

*Valley Lawyer* had the opportunity to gain an inside perspective of the ARS from experienced ARS Consultants Aileen Jimenez (7 years), Gayle Linde (11 years) and Lucia Senda (3 years).

### Valley Lawyer: What opportunities do you see for the ARS in the coming year?

**Aileen Jimenez:** The Attorney Referral Service is in a unique position to provide legal services to the community. We implement numerous programs while attempting to tailor to most people's needs.

One of the programs I am happy to coordinate is the Senior Citizen Legal Program. I am excited to share with *Valley Lawyer* readers that our Senior Program continues to grow strong while serving the senior community of the San Fernando Valley. Our overall goal is to expand the program. I consider this upcoming year a perfect opportunity to reach out to those who are interested in participating, as I will soon be planning next year's calendar.

**Gayle Linde:** I would speculate that it would depend largely on the economy. If the economy continues to decline, then I see 2010 as a year in which we may be slower than usual when it comes to referring callers to lawyers, but busier in terms of referring them to other pro bono services.

On the other hand, if the economy improves, then I believe potential clients may be inclined to use our referral service simply because they will be more conscientious of their spending and will



want to call us because of our reputation.

**Lucia Senda:** The coming year might be a good time for the ARS to establish business relationships with different entities and become more involved with the community in order to continue to grow. The Attorney Referral Service, as well as the SFVBA, can take part in more events that are beneficial to the ARS because, in the past, the prices to participate would be too exorbitant. Due to the economy, some of these organizations will append prices, whereas in the past, they would be less likely to do so.

Becoming more involved in the community will be a great opportunity for us to help educate residents that are unfamiliar with our service. One of the many benefits to clients using our service is that the ARS provides well-qualified and experienced attorneys at a comfortable price. Attorneys that belong to ARS are familiar with the local rules and the courts in the Valley, for the betterment of potential clients.

### VL: What challenges did you confront this year?

**LS:** During the year, we have been receiving calls from individuals that are losing their homes or have already lost their homes. Some of them were victims of predatory lending; others were behind on their mortgage due to losing their jobs. We also had some individuals that were trying to prevent losing their homes by modifying their home loans. Some had an auction date already set and were still trying to come up with a solution.

**AJ:** This year it seemed that more and more people were finding themselves going through financial hardship and/or without work. It becomes difficult to serve all our callers during this economic crisis. What I find the most rewarding of my job is that we are able to help most people who call us. Whether it

is referring them to the right attorney, or simply directing them through the proper channels, the ARS strides towards not allowing callers to hang up without some kind of lead.

**GL:** We dealt with many more callers who had less in terms of resources but more problems. Many were depressed because of losing their homes and their jobs. Many of these callers we could not help. That made it sometimes very frustrating for those of us taking their calls.

### VL: Why is it important to have an ARS that serves the Valley community?

**GL:** I believe its purpose is twofold really. I believe that it is a reasonable way for Valley attorneys to market their practices, especially in times like these when everyone is watching their budget, and I believe a lot of our referral attorneys appreciate the screening the ARS does for them. I also believe that it is an excellent way for someone who needs an attorney to find one.

**LS:** I believe that it is very important for the community to have a local bar association with an attorney referral service. For many people, it is not an option to go across the Valley to Los Angeles to seek legal representation. Many of our clients prefer to have an attorney close to home and/or their job. Having the Attorney Referral Service in the Valley is auspicious to the community, as well as to our local attorneys that belong to ARS.

**AJ:** Not only is it important for consumers to have access to legal counsel when needed, but also we serve as a buffer to the community. By utilizing the SFVBA ARS, the consumer gets to learn more about their selected attorney and trusts that he/she meets the guidelines set forth by the State Bar in order to participate in our Attorney Referral Service. Having an ARS that serves the San Fernando Valley a valuable resource. 📞

**Angela M. Hutchinson** is the Communications Manager for the SFVBA and the Editor of *Valley Lawyer* magazine.

If you are interested in being interviewed for a feature Q&A article or writing for *Valley Lawyer*, please contact Angela at (818) 227-0490, ext. 109 or email her at [angela@sfvba.org](mailto:angela@sfvba.org).







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# Are Massive Court Closures on the Horizon?

By Supervising Judge  
Richard H. Kirschner  
Northwest District (Van Nuys)



**S**URVIVAL OF THE COURT SYSTEM as we know it is significantly under threat. With a massive budget cut (\$390 million statewide and over \$80 million targeted for Los Angeles County for the current fiscal year), large-scale layoffs and court closures are looming.<sup>1</sup> State Treasurer Bill Lockyer was quoted recently by the *New York Times* as saying next fiscal year will be far worse for the State, and that means far worse for the courts.

Larger cuts are coming next year, with potential devastating results. As much as half of the civil court system in Los Angeles County (and Van Nuys) could be closed permanently within the year and a half, with no definite date as to when they might be reopened. The Los Angeles Superior Court may be required to lay off 34% of its workforce. Beyond the loss of public access to civil justice, the business of the practice of law could be damaged beyond anything we ever could have imagined. As the civil courts begin grinding to a halt, the business of law and the ability of lawyers to do business will be severely curtailed.

All this, while the Judicial Council recently allocated over \$90 million for a new statewide computer system (California Case Management System – CCMS) – a 30% increase over last year's spending on new technology. The current projected overall cost of CCMS is a whopping \$2 billion. In recent testimony before an Assembly committee, the AOC said they did not know how much the ultimate price tag might be. Many believe it will be much higher than \$2 billion.

The Judicial Council also intends to spend billions on new courthouse construction in the coming months

and years, financed primarily by selling bonds paid for with recently imposed new fines/fees through Senate Bill 1407, a \$5 billion bond bill. The new fine/fees are presently generating over \$200 million in new revenue annually. About \$73 million of that is being raised in Los Angeles County. If these fines/fees were redirected to maintaining day-to-day trial court operations during the budget crisis, massive layoffs and court closures could be avoided.

A recent *Sacramento Bee* article reports the bonds will not be sold for two to three years from now. The revenue stream supporting them can legally be redirected to save court operations. Later, when the budget crisis subsides, the money can be rededicated to support the bonds and the bonds could then be sold and construction commenced.

I firmly believe that keeping courtrooms open and operating during the budget crisis is a much higher priority than building new courthouses and developing new computers. Many agree with me. Apparently the Judicial Council does not. Sadly, some are willing to close down courts and permanently layoff court employees in trade for new courthouses. Our court and its leadership vigorously disagrees. I do not know one bench officer or court employee in Los Angeles who thinks otherwise. What is the sense of building new courthouses in Los Angeles, or anywhere, while the court system is being closed down by furloughs, statewide court closures and permanent staff layoffs?

Some outside our court family in Los Angeles mistakenly believe the Legislature will miraculously decide not to impose

further heavy cuts on the courts next year. This thinking is utterly unrealistic in my view. If the cuts we had to take this year are shifted elsewhere, on whom will they fall? Healthcare? Social welfare programs already cut to the bone? The Legislature simply cannot and will not exempt the courts from heavy cuts next year.

The only realistic hope we have is marshal the resources now available to the judicial branch. We need to set appropriate priorities for the money already dedicated for the benefit of the branch. That's why we must seriously discuss redirecting SB 1407 funds. Time is of the essence.

With all this, the Northwest District judiciary and staff have continued to demonstrate a strong commitment to their jobs, and the public, by processing the increasing backlog of cases resulting from the court closures. Dedication to service and staff are exemplified by the fact that every bench officer in Van Nuys voluntarily contributed one day's salary per month to a fund designed to benefit court employees during this crisis.

Dedicated and hardworking employees. Committed bench officers. Exceptional team spirit. Motivation. Excellent customer service. These are the constant themes in the Northwest District and these themes have continued notwithstanding the uncertainty of the Court's budgetary fate.

As the Supervising Judge of the Northwest District, I commend the professional manner in which Van Nuys staff members accepted reduced pay and an increased workload when the Court implemented the furlough days, maintaining focus on customer service



and accommodating the needs of the Court. The Court staff, along with the Van Nuys judiciary, worked together to clear calendars on the furlough days and ease the bottleneck of calendar congestion on the days preceding and following these closures.


Aside from the budgetary concerns that will continue to impact the Court, the Northwest District has seen approximately 20 judicial moves through the calendar year. Several judges have relocated from Downtown and I welcome the enthusiasm and drive they bring to the Northwest District. I have initiated other internal bench officer moves within the district that have resulted in positive changes to both Van Nuys East (Civil) and Van Nuys West (Criminal). The caliber of talent and skill among the Van Nuys bench foster a level of professionalism and standard of excellence our litigants and bar deserve and have come to expect.

The Northwest District continues to provide valuable resources to the public, including a Self-Help Center, Child Waiting Room, Law Library, and Domestic Violence assistance. The trailers that previously occupied the space behind the Van Nuys East building were removed, freeing space for the future home of a

parking lot intended to provide a closer and safer parking area for the Van Nuys judiciary. It is our hope that one day the State or the County, or a combination of the two, will assist in having the area paved and fenced in order to better serve and protect our Van Nuys judges.

The Van Nuys Government Center, comprised of the Los Angeles Police Department, the two Superior Court buildings, the Braude Center building, the State and Federal buildings, and the Post Office, continues to be an attractive and lively area to conduct business. The Government Center bustles with daily activity. Each Thursday the area really comes alive with the weekly opening of the Farmers' Market. Government employees and the public together enjoy the spirited ambience, the music, and mouth-watering aromas emanating from the market stalls.

In conclusion, the Northwest District has continued to thrive during the most challenging Court times. Though uncertainty remains part of the Court's budget forecast, I am confident that the Van Nuys Court employees and the judiciary will continue to provide the exemplary level of service and professionalism that have been the hallmark of the Northwest District. We

will continue to adjust to changes and challenges as they come our way, but as demonstrated time and again, the standard of excellence maintained by the Northwest District will endure by the incredible strength and energy of the people working there. 

*Judge Richard H. Kirschner was appointed to the bench in October 2001 and has served as Supervising Judge in the Northwest District (Van Nuys) for two years. Prior to his appointment, Judge Kirschner was an Assistant United States Attorney in Los Angeles and a Special Assistant U. S. Attorney in Washington, D.C. and Miami, Florida. He received his law degree from UCLA and is a past President of the Federal Bar Association (LA Chapter). He also serves on various Los Angeles Superior Court committees.*



<sup>1</sup> See interview of Presiding Judge Charles McCoy outlining potential structural changes and massive court closures in Los Angeles County if adequate funds are not directed to the trial courts. *Verdict*, 2nd Quarter, 2009, at page 13.



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# Employment Law Review

By Cynthia Elkins

**T**HIS YEAR HAS BEEN extremely busy for employment law practitioners, especially in the wage and hour litigation. The following summary highlights some of the important changes that occurred in 2009.

## Wage and Hour Issues

**Meals and Breaks – Still Pending Supreme Court Ruling on Brinker & Brinkley.** On October 22, 2008, the California Supreme Court accepted for review *Brinker Restaurant Corporation v. Superior Court of San Diego County*. One of the significant issues awaiting clarification is the extent of an employer's obligation under Labor Code §512(a) and the wage orders to provide or ensure a meal or rest break.

The high court is expected to confirm whether the statutory and regulatory sections regarding meal and rest breaks impose upon employers an affirmative duty to “ensure” that employees actually take the meal period or rather, that the employer's obligations do not go that far and the employer must simply make that meal period available to the employee and afford the employee the opportunity to take the meal period.

On October 28, 2008, another division of the California Court of Appeal came to this same conclusion in *Brinkley v. Public Storage, Inc.* Again, the pertinent issues relate to meal and rest periods.

In *Brinkley*, the appellate court held that “providing” a meal period under California law simply requires that an employer make the meal and rest periods available; nothing in the statute or wage orders requires employers to “ensure” that meal or rest periods are actually taken. The *Brinkley* court also found

that nothing in the statute or wage order supported the contention that meal periods must be taken within the first five hours of an employee's shift as has been a long standing belief.

**Labor Commissioner Approves Proportionate Reduction in Exempt Employees' Hours and Compensation.** The California Division of Labor Standards Enforcement has opined that employers facing “significant economic difficulties” may reduce the work schedules and compensation of exempt employees without violating the “salary basis” test required for maintaining exempt status.

Previously, exempt employees' monthly salary could not fluctuate irrespective of the number of hours worked without losing their exempt status. Exempt employees' compensation can now be reduced in conjunction with a reduction in hours scheduled to be worked in consideration of the economic realities facing many employers ([www.dir.ca.gov/dlse/OpinionLetters](http://www.dir.ca.gov/dlse/OpinionLetters)).

**Employees May be Entitled to Compensation for Preliminary and Post-Liminary Activities Related to the Performance of Their Duties.** In a 9th Circuit Decision, the Court found that employers may be required to pay nonexempt (hourly) employees for time spent preparing for or concluding their workdays, if the employees' tasks are “integral” to their primary work activities and are not so brief as to be de minimis. This might include checking emails or delivery routes on a computer before leaving home at the beginning of the day, or submitting data on completed

tasks at the end of the day. *Rutti v. Lojack Corporation, Inc.* 2009 U.S. App. LEXIS 18842

## Written Agreements Control Payment of Commissions

A terminated sales rep is not entitled to post termination commissions on a deal that he had been negotiating during employment. The written agreement stated he would be eligible for commission pay “so long as [he] remained employed with the Company as a Sales Representative”. The Court found that the right of an employee to be paid commissions “depends on the terms of the contract for compensation”. The employer's written agreement was controlling. *Nein v. HostPro, Inc.* 174 Cal. App. 4th 833 (2009)

## Federal Equal Pay – Lilly Ledbetter Fair Pay Act Signed

The Lilly Ledbetter Fair Pay Act of 2009 amends Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act and provides an unlawful employment practice occurs not only upon adoption of a discriminatory compensation decision or practice but also when the individual becomes subject to the decision or practice, as well as each additional application of that decision or practice. In other words, each time compensation is paid. The Act also permits aggrieved employees to recover back pay for up to two years before the claim filing date.

**Non California Residents Entitled to Compensation Under California Laws** Non-California residents performing



work in California are entitled to be treated as a California resident for wage and hour purposes. If an employee performs work in the State of California, regardless of where they reside, the laws of California control. This means that a non exempt employee must be paid at least the State minimum wage and California laws would apply for the overtime hours worked while in California. *Sullivan v. Oracle Corp.* 557 F.3d 979 (9th Cir. 2009)

### Reasonable Accommodation Issues

*One Denial of Reasonable Accommodation Can Violate the ADA.* Under California's Fair Employment and Housing Act (FEHA), employers must provide reasonable accommodation for an employee's known physical disability and engage in a good faith interactive process with the employee to determine what reasonable accommodation is required for the employee to continue performing the essential functions of the job.

An employee, who suffered from a medical condition and had previously been provided reasonable

accommodations, was denied an accommodation upon request, on just one occasion, by her supervisor who was unaware of the employee's condition. The court concluded that an employer's obligation to provide a reasonable accommodation is ongoing, and an employer faces legal liability even if the accommodation is denied on only one occasion. *A.M. v. Albertsons*, 09 S.O.S. 6015 (California Court of Appeal, First District)

### Privacy

*Employees had Reasonable Expectation of Privacy but Failed to Prove Employer Violated their Rights.* Plaintiffs, employed by a private nonprofit residential facility for neglected and abused children, sued alleging a violation of their right to privacy when they discovered the Employer has installed a hidden camera in their office after it was discovered that someone had repeatedly used a computer to access the internet and viewed pornographic websites late at night. The employees were not notified of the installation, the camera was never

operated during business hours and the plaintiffs were not monitored.

The Supreme Court reinstated summary judgment for defendants, holding that although there may have been an intrusion into the zone of privacy, there was no triable issue because the intrusion was not "highly offensive and sufficiently serious to constitute a privacy violation." The court noted the surveillance was limited in nature and scope and defendants were motivated by strong countervailing concerns (protection of the children). *Hernandez v. Hillside, Inc.*, 47 Cal. 4th 272 (2009).

*Cynthia Elkins is the principal of Elkins Employment Law. The Firm represents employers and management in all aspects of the employment relationship. She can be reached via email at celkins@employer-law.com.*



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# Fortune Favors the First to Court

## How to Obtain Writs of Attachment and Possession

By Mark L. Share and Yona Conzevoy

**D**ON'T LET THIS YEAR END before understanding writs of attachment and possession. Collecting money owed to your client often involves a race for the debtor's assets against competing creditors and debtors who are dissipating their property.

California law provides two prejudgment remedies that enable skilled and fast moving attorneys at the start of a lawsuit to preserve those assets so that they are available to satisfy your client's eventual judgment. A writ of attachment permits a creditor to levy on a defendant's assets until property is held by the Sheriff in an amount equal to your client's claims. A writ of possession permits a creditor to take possession of specific items of personal property like a truck or inventory. Beyond tying up assets pending a judgment, the extraordinary impact on the defendant caused by the court's granting of these applications has the potential of motivating a defendant to settle the creditor's claims right away.

### What is a Writ of Attachment?

A plaintiff who wants to be sure that defendant's assets will be available to satisfy a judgment can utilize a writ of attachment to levy on and obtain a lien against defendant's property located in California. A writ of attachment is generally used in collection cases. It can prevent defendant from using its assets that plaintiff has attached during the course of the lawsuit, and it forces defendant to seriously consider the merits of plaintiff's claim.

If defendant is hemorrhaging money, subject to multiple creditors, hiding assets, or planning to leave the state, a writ of attachment can protect plaintiff from losing out on what it is owed. However, obtaining a writ of attachment is a highly technical endeavor that should be undertaken with a clear understanding of the esoteric proceedings and statutes as well as the strategic considerations involved.

A writ of attachment is available in a contractual action involving a claim or claims for money. CCP §483.010(a). The claim must be fixed or ascertainable in an amount not under \$500, exclusive of costs, interest, and attorney fees, but claims can be aggregated. CCP §483.010(a). Attachment is allowed on claims secured by personal property or by fixtures. CCP §483.010(b). The claim cannot be secured by real property unless, through no act of the plaintiff or the person to whom the security was given, the security has become valueless or has decreased in value to less than the amount owed on the claim, in which case the writ of attachment is for the difference between the value of the security and the amount of the claim. CCP §483.010(b).

The plaintiff's procedural hurdles must be unequivocally cleared, including the requirement of competent evidence to support the claims. And then, when a writ of attachment or possession is obtained, the rules for levying are esoteric. The practitioner is well advised to review all the relevant statutes and consulting with experienced counsel before attempting to obtain this extraordinary relief.

### Strategic Issues of Obtaining a Writ of Attachment

There can be strategic benefits to obtaining a writ of attachment, subject to the requirement that attachment not be sought for an improper purpose. The writ of attachment prevents defendant from using property, it could force defendant to settle, or if settlement negotiations fail, to file bankruptcy. Bankruptcy would be a negative result for plaintiff if the attachment lien is voidable because it was perfected fewer than 90 days prior to the bankruptcy filing.

However, the cost of obtaining the writ of attachment may exceed the value of defendant's attachable assets. Furthermore, by obtaining a writ of attachment, plaintiff could be waiving tort claims, as attachment lies only on contract claims. Finally, plaintiff might be liable for damages on the writ of attachment if judgment is not obtained in the action, exempt property is attached, or attachment was not proper under the circumstances.

### Who is Subject to Attachment?

Natural persons (and corporations) are subject to attachment, but the property of a California resident can only be attached if the underlying claim arose from the conduct of his or her trade, business or profession. CCP §483.010(c). For natural persons, only the 11 categories of items found in CCP §487.010(c) can be attached. An out-of-state defendant's property located in California can be attached in an action to recover money. CCP §492.010(a); *Pacific Decision Sciences Corp. v.*



*Superior Court* (2004) 121 Cal.App. 4th 1100, 1109.

Plaintiff can only levy on an individually nonexempt property; exempt property that has already been attached must be released on order of the court. CCP §492.040. Exempt property includes: 1) property exempt from enforcement of a money judgment (CCP §487.020(a)); 2) property necessary to support the defendant or the defendant's family (CCP §487.020(b)); 3) all compensation earned by defendant for services (CCP §487.020(c)); and 4) all other property not subject to attachment under CCP §487.010 (CCP §487.020(d)).

Attachment is available against corporations for any property owned by the corporation as long as there is a way to levy on the property under CCP Chapter 8 Article 2, §488.300 et seq. CCP §487.010 (a)-(b). Foreign corporations not qualified to do business in California are subject to attachment in California. CCP §492.010(b)-(c).

### **Process of Obtaining a Writ of Attachment**

Plaintiff may apply for a writ of attachment as soon as the complaint is filed. The clerk issues the writ of attachment after the court enters a "right to attach order" ("RTAO") by which the court determines that a writ of attachment can issue for plaintiff's claim.

To obtain a right to attach order and writ, the following documents must be filed: 1) Summons and Complaint; 2) Notice of Application and Hearing for Right To Attach Order and Writ of Attachment (Judicial Council Form AT-115); 3) Application for Right To Attach Order and Writ of Attachment (Judicial Council Form AT-105); 4) Declaration in Support of Application for Writ of Attachment (this must show with particularity the facts giving rise to plaintiff's claim (CCP §484.030), and for matters based on information and belief must state the facts on which they are based and show the nature of declarant's information and reliability of the informant (CCP §482.040); and 5) memorandum in support of motion for Application for Writ of Attachment (the memo of P's and A's). Cal Rules of Ct 3.1113.

The relevant Code of Civil Procedure sections should be reviewed before filling out the Judicial Council forms to make sure that they are being completed correctly. Judges will generally deny applications for Writs of Attachment if there is any defect in the application or evidence.

There will be a hearing date set for the writ of attachment. Plaintiff must provide 16 court days notice. CCP §484.040. If the defendant has not yet appeared, service must be made in the same manner as for a summons. CCP §§413.10-417.40, §482.070(d). Defendant must file its opposition at least 5 court days before the hearing. CCP §484.060(a). If the defendant files its opposition, plaintiff must file its reply at least 2 court days before the hearing. CCP §484.060(c). CCP §484.090(d) permits the judge at the hearing to "receive and consider at the hearing additional evidence, oral or documentary."

The court must issue a right to attach order setting forth the amount to be secured by the attachment if it finds: 1) the claim is one for which attachment may be issued; 2) plaintiff has established the probable validity of the claim (more likely than not); 3) attachment is not sought for purposes other than to recover on any subsequent judgment; 4) the amount to be secured by the attachment is greater than zero; and 5) the property is not exempt from attachment. CCP §484.090.

Plaintiff can obtain a writ of attachment ex parte by basically making the same showing required for a noticed hearing. In addition, plaintiff must demonstrate by declaration that it will suffer "great or irreparable injury" if required to proceed with a noticed hearing. CCP §485.010(a). More likely, the court will decline to grant an ex parte RTAO, and instead will issue a temporary protective order and set a noticed hearing for the RTAO.

### **What is a Temporary Protective Order?**

Pending the hearing on the right to attach order, an ex parte temporary protective order ("TPO") is used to prevent defendant from transferring, concealing, or otherwise alienating

property before the hearing on plaintiff's application for writ of attachment.

By means of the TPO, the court can keep the defendant from transferring any interest in the property by sale, pledge, or grant of security interest, or otherwise disposing of or encumbering the property; concealing or otherwise removing the property in a manner making it less available to seizure by the levying officer; or impairing the property's value either by destructive acts or by failure to take reasonable care of the property.

The procedures for obtaining a TPO set forth in CCP §486.010 through 486.110 apply. Before the court issues a TPO, plaintiff must post an undertaking, which is a form of insurance policy which satisfies any amounts the defendant might recover if the attachment is later found to be wrongful. CCP §489.210. The required undertaking for a plaintiff is \$10,000 unless the court determines that the "probable recovery for wrongful attachment" exceeds that amount. CCP §489.220. The service of the TPO creates a lien on defendant's property that is perfected by levying under the writ of attachment. CCP §486.110.

### **What is a Writ of Possession?**

A writ of possession is a prejudgment remedy that allows plaintiff to obtain possession of personal property that was wrongfully obtained or retained by the defendant, such as including property securing an obligation of the defendant. This remedy is commonly sought by a plaintiff to obtain specific property when the defendant has: 1) defaulted on a loan or other obligation owed to the plaintiff that is secured by personal property; 2) breached a lease of the plaintiff's property; 3) embezzled or otherwise wrongfully obtained possession of the plaintiff's property; or 4) refused to return property lent or bailed to it by the plaintiff.

The Writ of Possession is useful because it enables plaintiff to quickly obtain possession of the claimed property, preventing the defendant from using, transferring, encumbering, dissipating, or concealing the property while the action is pending.

### There are three main disadvantages to a Writ of Possession:

1. Plaintiff's right to possession depends on the outcome of the lawsuit, and if plaintiff fails to obtain a judgment, it must redeliver the property to defendant and will be liable for defendant's actual damages caused by the wrongful possession.
2. If the property is essential to defendant's business, defendant may file a bankruptcy petition (after the writ issues but before the levying officer takes possession) that would automatically stay the state court action and require plaintiff to obtain relief from the stay in the bankruptcy court.
3. The procedure has the potential to be costly. The expenses may include a bond in the amount of twice the value of the defendant's interest in the property, fees charged by the sheriff for costs of taking possession, storage charges, and further law and motion such as a court order allowing the creditor to sell the property.

### Process of Obtaining a Writ of Possession

Individuals, corporations, partnerships or other unincorporated associations, limited liability companies, and public entities are subject to writs of possession. CCP §511.070.

Application for a writ of possession may be filed any time after filing an action to recover specific property. Plaintiff may request, at the application stage, that a turnover order be issued requiring defendant to transfer possession of the described property to the plaintiff. The effect of the turnover order would be to avoid the hassles of a levy. The order must notify defendant that failure to comply with the turnover provisions of the order may subject defendant to being held in contempt of court. CCP §512.070.

Judicial Council Forms are mandatory for obtaining the writ of possession. Cal. Rules of Ct. 1.31(a). The Forms include: 1) Application for Writ of Possession (CD-100); 2) Notice of Application for Writ of Possession and Hearing (CD-110); 3) Order for Writ of Possession (CD-120); 4) Writ of

Possession (CD-130); 5) Undertaking by Personal Sureties (CD-140); 6) (Optional) Declaration for Ex Parte Writ of Possession (CD-180); and 7) (Optional) Application for Temporary Restraining Order (CD-190).

A hearing date will be set for the writ of possession. Written notice of the application for writ of possession must be served by plaintiff at least 16 court days before the scheduled hearing. Defendant may file and serve an opposition within 9 court days before the hearing. Plaintiff may file and serve a reply memorandum at least 5 court days before the hearing. CCP §1005(b). At the hearing, the court will rule on the writ application based on the pleadings and other papers in the record. Before the court issues a writ of possession, plaintiff must post an undertaking. CCP §515.010(a).

### Obtaining an Ex Parte Writ of Possession or Ex Parte Temporary Restraining Order

Plaintiff may obtain an ex parte writ of possession by showing probable cause that any of the following conditions exist: 1) the defendant obtained possession of the property by feloniously taking it from plaintiff (but not if the defendant obtained possession by false representations, pretense, or embezzlement (CCP §512.020(b)(1))); 2) the property is a credit card; or 3) defendant acquired the property in the ordinary course of defendant's trade or business for commercial purposes; and a) the property is not necessary for the support of the defendant or defendant's family; b) an immediate danger exists that the property will become unavailable to levy by transfer, concealment or removal from the state, or will be substantially impaired in value by acts of destruction or by failure to take reasonable care of the property; and c) ex parte issuance of the writ is necessary to protect the property.

Plaintiff may also obtain an ex parte temporary restraining order ("TRO") to prevent defendant from transferring, concealing, encumbering, or impairing the value of property until the court holds a noticed hearing on plaintiff's application for writ of possession.

The court can issue a TRO ex parte if it finds the usual showing required for a TRO under CCP §527; and that

plaintiff has established the probable validity of the claim to possession of the property, has provided the bond required by CCP §515.010, and has established probability of immediate danger that the property may become either substantially impaired in value or unavailable to levy as a result of being transferred, concealed or removed. CCP §513.010(b)(1)-(3). The procedures for obtaining a TRO are set forth in CCP §§525-527. The difference between a TRO and an ex parte writ of possession is that under an ex parte writ of possession the property is actually seized.

### Writ of Attachment or Possession in Arbitration

A party to an arbitration agreement may obtain Writs of Attachment or Possession from a court in the county in which an arbitration proceeding is pending, or if an arbitration proceeding has not commenced, in any proper court. CCP §1281.8(b). To obtain a writ of attachment or writ of possession in an arbitration matter, the requirements are the same as obtaining the writs in any court action, but the plaintiff must prove that the assets are unlikely to be available at the time the arbitrator renders his award. CCP §1281.8(b).

Bearing the foregoing in mind, the potential benefits to your client in an appropriate case of obtaining a writ are so overwhelming, and the potential disappointment if assets are unavailable to your client, mean the writ procedures are an integral litigation involving contract claims with calculable damages. ⚡

*Focused on real estate and commercial litigation, Mark L. Share is a shareholder at De Castro, Glickfeld & Nass and Yona Conzevoy is an Associate specializing in civil litigation. Mark and Yona have spoken at the SFVBA on prejudgment remedies and will moderate the Breakfast with the Experts program with the Writs and Receivers Judges on January 28, 2010.*

*They can be contacted via the internet at [www.dwclaw.com](http://www.dwclaw.com).*





# MCLE Test No. 17

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. In California, a writ of attachment can be used to levy on and obtain a lien against defendant's out-of-state property.  
True  
False
2. A plaintiff may attach defendant's assets if plaintiff has a claim against defendant for money lent for general household purposes.  
True  
False
3. The property of a non-California resident cannot be attached.  
True  
False
4. When applying for a writ of attachment, the Judicial Council forms are mandatory.  
True  
False
5. Property necessary to support a California defendant or his family is exempt from attachment.  
True  
False
6. Before the court issues a temporary protective order against defendant transferring property before the hearing on plaintiff's application for writ of attachment, plaintiff must post an undertaking.  
True  
False
7. If plaintiff obtains a writ of possession but fails to obtain a judgment in the underlying action, it will not be liable for defendant's actual damages caused by the wrongful possession.  
True  
False
8. Partnerships are not subject to writs of possession.  
True  
False
9. Judicial Council Forms must be utilized when applying for a writ of possession.  
True  
False
10. Defendant must file its opposition to the writ of possession at least nine court days before the hearing.  
True  
False
11. Defendant must file its opposition to the writ of attachment at least nine court days before the hearing.  
True  
False
12. Temporary restraining orders are not available for writs of possession.  
True  
False
13. Plaintiff does not have to post an undertaking before the court will issue a writ of possession.  
True  
False
14. The requirements for obtaining a writ of attachment from a court ancillary to a court ordered arbitration are the same as obtaining a writ of attachment in any court action.  
True  
False
15. Plaintiff may apply for a writ of attachment as soon as the complaint is filed.  
True  
False
16. Plaintiff can always attach an out-of-state defendant's California property, whether the property is exempt or not.  
True  
False
17. Foreign corporations not qualified to do business in California are not subject to attachment in California.  
True  
False
18. Plaintiff may enforce a writ of possession by a second "attachment" order requiring defendant to deliver property to plaintiff without involving a levy by the sheriff.  
True  
False
19. Plaintiff can obtain an ex parte writ of possession by showing probable cause that the defendant obtained possession through embezzlement.  
True  
False
20. Plaintiff may seek a writ of attachment to bring defendant to his knees.  
True  
False

## MCLE Answer Sheet No. 17

### 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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### ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

- |     |                               |                                |
|-----|-------------------------------|--------------------------------|
| 1.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 5.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 6.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 9.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 10. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |



# Estate Planning Lessons from Michael Jackson

By William G. Wais

**M**ICHAEL JACKSON MIGHT actually have gotten his estate planning right. Despite some concerns that Michael had not left a valid will, the document turned up. He had a living trust and a will. But what if he didn't?

## No Will

In the absence of a will, the court picks an administrator for the intestate estate. Most likely the administrator would have been one of his parents; each would have had priority to become the administrator (if Michael's surviving children were adults, they would have had priority).

Normally, Michael's children would be the sole beneficiaries of an intestate estate. But rumors are swirling that Michael was not the biological father of the children and that his then-wife was not the biological mother, but carried the children as a surrogate. This could cast a cloud on the ability of the children to inherit. And Michael never adopted the children.

## Only a Will

If Michael had left only a will, then the will would dictate the beneficiaries of his estate.

The advantages of a will are:

- Ability to name the amount each beneficiary receives
- Ability to name a guardian for the children
- Ability to waive bond for the executor

A will gives the decedent the ability to leave out beneficiaries (Michael's

father) and include someone other than his children (his mother). It allows him to leave amounts to the charities he favored during his life.

And a will is the most appropriate place to name a guardian for minor children. Significantly, the nomination is not automatic; the court makes the actual decision, so the court must approve the nomination. The courts generally favor the biological or legal parent, absent extenuating circumstances, much to the dismay of divorced parents who do not want their ex-spouses to have guardianship of their children.

Most clients do not realize that they can waive bond for the executors of their estates. The court generally requires executors to post a bond to make sure the estate loses nothing if the executor steals something. In most cases, the bond becomes an insignificant amount due to the small size of the estate. However, in Michael Jackson's case, his interest in the Neverland property and his interest in the ATV/Sony Music Library could be worth more than \$1 billion dollars. The insurance bond on assets that substantial would be considerable. For this reason, executors are better off with a valid will that waives the insurance bond.

## Will and Trust

Many clients are confused about whether it is better to have a will or a trust. The real question is: Is it better to have a will or both a will and a trust? The answer is that is better to have both a will and a trust.

Without a trust, for example, Michael Jackson's \$1 billion in assets would be subject to probate fees. Probate fees on just the first million dollars would be \$46,000. Fees on the first \$25 million would total \$422,000. The probate judge would decide any fees on assets above \$25 million. But all of those probate fees would be eliminated with a living trust and a will.

## Why have a Will and a Trust?

Michael Jackson may have asked this question when his attorney explained estate planning to him. The answer is that a will is needed to name a guardian for minor children, even if a trust exists. In the absence of minor children, clients still need "vacuum-cleaner wills" ("pour-over" wills) to make sure that all assets are distributed through their trusts.

## Vacuum-Cleaner Will (Pour-Over Will)

A so-called "vacuum-cleaner will" gathers up probate assets not in the jurisdiction of the trust and puts them into the trust. The "vacuumed" assets are distributed through the trust.

In Michael Jackson's case, it is possible that his \$1 billion interest in the music library was never put into his living trust. His living trust would only include the music library if the ownership was changed to the trust.

If the living trust has no jurisdiction, the vacuum-cleaner will would vacuum up the music library interest and put the interest in the trust. However, the "vacuuming action" necessitates probate fees. Ideally, a person with a living trust would want to make sure that the trust



has jurisdiction over all possible assets. Regarding insurance policies, most clients change the beneficiary to the trust. The insurance proceeds flow into the trust at death. The same is true for many annuities.

### Named Beneficiaries

If there is a bank account or other asset with named beneficiaries, both the will and the trust have no jurisdiction over these assets. A named beneficiary to an asset takes precedence over a will or a trust. Likewise, a joint tenancy asset beneficiary takes precedence over a will or a trust.

### What about IRAs and 401k Plans?

IRAs and 401K plans are trusts in and of themselves; someone is holding money in trust for the owner for retirement. And clients can't put a trust inside another trust. Retirement plans are "stand alone" trusts. Clients must scrutinize the beneficiaries of these retirement plans to make sure they are the people the plan owner wants.

Usually, it is advantageous to name actual individuals, such as children, as beneficiaries, rather than naming the trust as the beneficiary. The exception is where small children are involved. In that case, naming the trust as a beneficiary can be a good idea.

### Charities

If a client has a charitable inclination, a charity can be named as a beneficiary to a retirement plan. In this case, the charity receives the entire amount of the IRA or 401K, without the imposition of any income taxes or federal estate taxes.

### Federal Estate Taxes

Most Americans don't need to worry about federal estate taxes. For most clients, this means a good-bad news scenario. The bad news is that assets as great as Michael Jackson's are subject to federal estate taxes upon death. The good news is that most decedents are not as wealthy as Michael Jackson, so they won't have to pay federal estate taxes.

The first \$3.5 million in assets are free from estate taxes; the remaining assets are subject to a 45 percent tax. This is good news for most clients and bad news for Michael Jackson's estate. If Michael was married, he and his wife together could have sheltered \$7 million dollars (\$3.5

million each), but only if they had the right kind of trust.

### Differences between Probate Fees and Taxes

It is important to note that probate fees are calculated on the "gross value" of the probate assets. For federal estate tax purposes, the taxes are calculated on the "net assets."

In Michael Jackson's case, probate fees would be calculated on the entire \$1 billion value of the assets. The federal estate taxes would calculate the gross assets (\$1 billion) and deduct the liabilities (\$400 million). So the good news is that Michael's estate would pay estate taxes on only about \$600 million, for about \$270 million in taxes. ⚡

*William G. "Bill" Wais is a sole practitioner in Glendale, where he focuses his practice on estate planning. He is the principal of Dream Docs, an internet software service company that furnishes estate planning support to small firms interested in expanding their client service capabilities. He can be reached at (818) 244-1894.*



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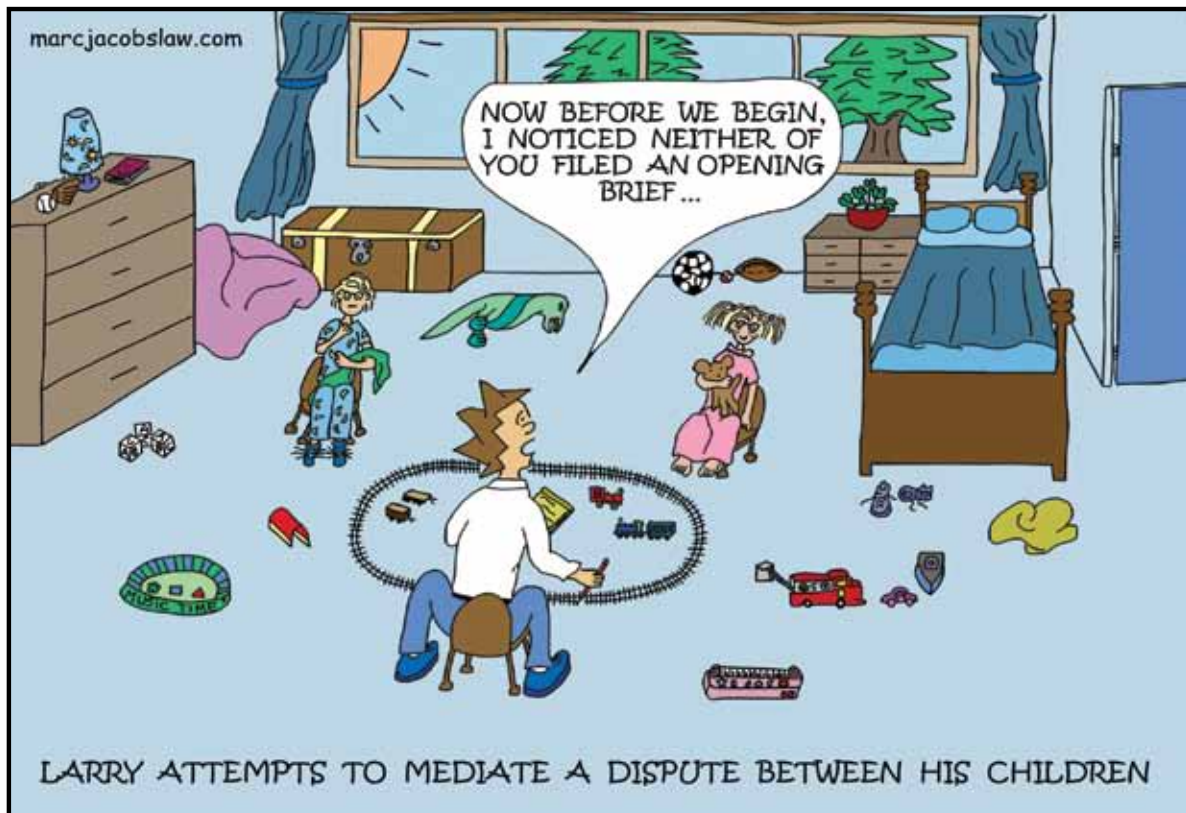
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## Above The Law by Marc Jacobs





## Shining Moments



**Brian E.  
Koegle**  
SCVBA  
President

**U**NDER THE GUIDANCE OF outgoing president Robert Mansour, the Santa Clarita Valley Bar Association enjoyed a tremendously successful 2009. In spite of the difficult economy, the SCVBA successfully sustained its membership base, and even grew to 147 members in 2009. Several new programs, events and member benefits were implemented, with additional ideas in the works for 2010. This is a brief look back at the SCVBAs shining moments of 2009:

### Networking Events

The year kicked off with a familiar event, when the SCVBA hosted its annual Networking Cocktail Hour at El Torito in January. The event drew over 60 attorneys who live and/or work in and around the Santa Clarita Valley. As the free appetizers and margaritas flowed, members were able to learn more about their fellow attorneys' practice areas and fields of expertise during an informal meet and greet, as well as a "speed networking event" moderated by Mansour.

Furthermore, local vendors and supporters of the Bar were able to mix and mingle with the attorneys as community sponsors of the mixer. The January event was such a success that the Bar hosted another cocktail and appetizer event in August, which was also very well attended.

In addition to the semi-annual cocktail event, the SCVBA implemented a quarterly Networking Breakfast, to encourage members to interact more with their colleagues in a social atmosphere. The event, spearheaded by Barry Edzant, proved tremendously successful with over 45 attorneys attending the first three events.

### Mock Trial Program

With the help of local attorney Robert Brady, President Mansour also facilitated the SCVBA membership's participation in a local mock trial program. Local high school students acted as advocates, and competed against other schools and teams from around California. Fifteen attorneys and a judge volunteered their time to participate in the event. It is anticipated that more will participate as the project gains steam in 2010.

### Fifth Annual Law Appreciation Day

The SCVBAs flagship event, Law Appreciation Day, was held in October at the Valencia Hyatt Regency. Over 130 attended the event, entitled "Raising the Bar," where the SCVBA recognized members of local law enforcement, from the

Los Angeles County Sheriff's Department, California Highway Patrol, Los Angeles County Fire Department and Los Angeles County District Attorney's Office, as well as local community heroes, for their outstanding contributions to the Santa Clarita community.

The community hero honorees included a firefighter dedicated to keeping the memory of 9-11 fresh in our minds, a retired Marine who works with our community youth to develop the leadership skills necessary to succeed, a singing hero who serenades injured military personnel and dedicates her time and beautiful voice to various community causes, and a resident who devotes his time, talents and treasure to the rescue of abandoned and abused pets in the Santa Clarita Valley and beyond.

### Continuing Education Training

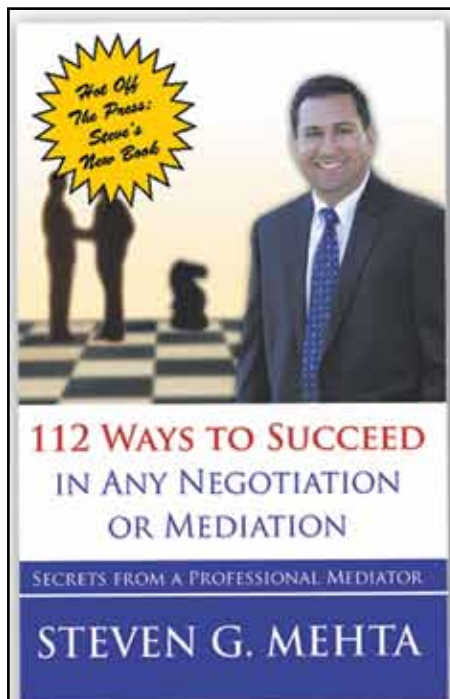
In addition to all of these special events, the SCVBA hosted seven monthly meetings where CLE credit was provided to all attendees. Among the topics were mediation skills, internet advertising/web marketing and an employment law update. Additional CLE courses are being planned for 2010 by the SCVBAs programs committee.

### Installation Dinner

The SCVBAs annual installation of new officers took place on November 19, 2009 at the Tournament Players' Club in Valencia. Brian Koegle was installed as the 2010 President, with Paulette Gharibian assuming the role of vice-president. Amy Cohen, a newcomer to the Board, stepped in as Secretary and Jane McNamara was sworn in for her fifth term as Treasurer. Barry Edzant will remain as an "at large" member of the Board, and is joined by first-term members April Oliver and Mark Young. President Mansour will serve on the board as Immediate Past President.

### Looking Forward

As we look to 2010, we have several exciting new ventures, events and programs planned for our membership which will be outlined in future SCVBA columns. The leadership of the SCVBA plans to focus on providing measurable benefits for its membership, including more peer-to-peer networking, greater community exposure and involvement and presentations which include those hard-to-find "specialized" CLE credits. While the economic forecast continues to look grim, now, more than ever, the SCVBA and its attorneys will need to work collaboratively to help each other succeed, as we move forward. 🐾



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#### THE FOUNDATION WISHES EVERYONE JOYOUS

holidays and a happy new year. Moving into 2010, the Foundation looks forward to the imminent opening of the Children's Waiting Room at the San Fernando Courthouse. This event has been made possible as a result of the combined efforts of the Foundation, the San Fernando Valley Bar Association and the County.

Members of the San Fernando Valley legal community should all take great pride in this extraordinary accomplishment. The Children's Waiting Room will be the second one (the first was in Van Nuys) opened within the last two years. The Foundation and its supporters are to be applauded.

#### Save the Date!

Now is the time to calendar in June 5, 2010. This date will mark the next annual Gala event held by the Foundation, once again to take place at CBS Studios in Studio City.

The Foundation continues to be the major charitable institution in the Valley in which lawyers, judges and non-lawyers work together to benefit causes related to the legal profession. The Foundation is privileged to have the coming year's event chaired by Jodi Berman-Levine, a non-lawyer member of the Board of Directors who chaired this year's gala. Those who have worked with Jodi are aware of her enthusiasm and dedication to make the gala not only profitable for our charitable causes, but also an evening full of fun.

#### VCLF Board Updates

This year, the Foundation is in transition. David Nadel, a CPA who voluntarily served as the Foundation's Treasurer for the past 6 years, has retired from that position. Fortunately, he will still remain on the Board. Ken Walheim, also a CPA, is taking over the Treasurer position and the Board looks forward to working with him.

The Foundation's Board remains a collegial group of professionals who are passionate about charitable work. SFVBA members are encouraged to consider joining the Foundation's efforts. The Foundation is always happy to welcome new volunteers and to consider new people for their Board. Once again, the best for the holidays and the New Year! 🍷

Stephen Holzer can be contacted at [sholzer@lewitthackman.com](mailto:sholzer@lewitthackman.com).



# Calendar

## San Fernando Valley Bar Association

**2009 HOLIDAY  
OPEN HOUSE**

**Tuesday, December 8  
5:30 PM to 7:00 PM**

**SFVBA Offices  
21250 Califa Street  
Suite 113  
Woodland Hills**

**Join us for yummy  
goodies & lots of  
Holiday Cheer!**

**RSVP to (818) 227-0490  
ext. 105.**

**Bring a new toy  
or book  
for holiday toy drive!**

### Litigation Section **Bringing Civility to the Civil Courts: "Killing" Your Opponent with Kindness**

**DECEMBER 3  
6:00 PM  
SFVBA CONFERENCE ROOM**

Northwest District Assistant Supervising Judge Michael Latin will discuss how attorneys can be more effective in court through employing civility and simple courtesies.

<b>MEMBERS</b>	<b>NON-MEMBERS</b>
<b>\$35 PREPAID</b>	<b>\$45 PREPAID</b>
<b>\$45 AT THE DOOR</b>	<b>\$55 AT THE DOOR</b>
<b>1 MCLE HOUR</b>	

### Probate & Estate Planning Section **Year-End Guidelines for Litigators and Planners Dealing with No Contest Clauses**

**DECEMBER 8  
12:00 NOON  
MONTEREY AT ENCINO RESTAURANT  
ENCINO**

Margaret Lodise and Mark Phillips will review the year and give important tips for dealing with no contest clauses.

<b>MEMBERS</b>	<b>NON-MEMBERS</b>
<b>\$35 PREPAID</b>	<b>\$45 PREPAID</b>
<b>\$45 AT THE DOOR</b>	<b>\$55 AT THE DOOR</b>
<b>1 MCLE HOUR</b>	

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

**DECEMBER 9  
12:00 NOON  
SFVBA CONFERENCE ROOM**

Michael H. Raichelson analyzes the options for individuals in need of debt relief, including stripping off second mortgages in bankruptcy. He will discuss some of the lesser-known options under current law, and provide advice on traps to avoid. In the context of the current economic strain, this is information every lawyer must know.

<b>MEMBERS</b>	<b>NON-MEMBERS</b>
<b>\$30 PREPAID</b>	<b>\$40 PREPAID</b>
<b>\$40 AT THE DOOR</b>	<b>\$50 AT THE DOOR</b>
<b>1 MCLE HOUR</b>	

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

**DECEMBER 15  
6:00 PM  
UNCLE CHEN RESTAURANT  
ENCINO**

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

<b>MEMBERS</b>	<b>NON-MEMBERS</b>
<b>\$35 PREPAID</b>	<b>\$45 PREPAID</b>
<b>\$45 AT THE DOOR</b>	<b>\$55 AT THE DOOR</b>
<b>1 MCLE HOUR</b>	

### Business Law, Real Property & Bankruptcy Section **Update on Foreclosure Law Changes Including Modifications and Attorney Representation**

**DECEMBER 16  
12:00 NOON  
SFVBA CONFERENCE ROOM**

Attorney Mark Blackman will discuss the latest revisions and the implications for you and your clients.

<b>MEMBERS</b>	<b>NON-MEMBERS</b>
<b>\$30 PREPAID</b>	<b>\$40 PREPAID</b>
<b>\$40 AT THE DOOR</b>	<b>\$50 AT THE DOOR</b>
<b>1 MCLE HOUR</b>	

## SAVE THE DATE

### **San Fernando Valley Bar Association Annual Judges' Night Dinner**

**Thursday, February 25, 2010  
Warner Center Marriott  
Woodland Hills**

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](mailto:events@sfvba.org).



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*Call Mike Krycler or Ken Walheim*