

VALLEY LAWYER

June 2008 • \$4

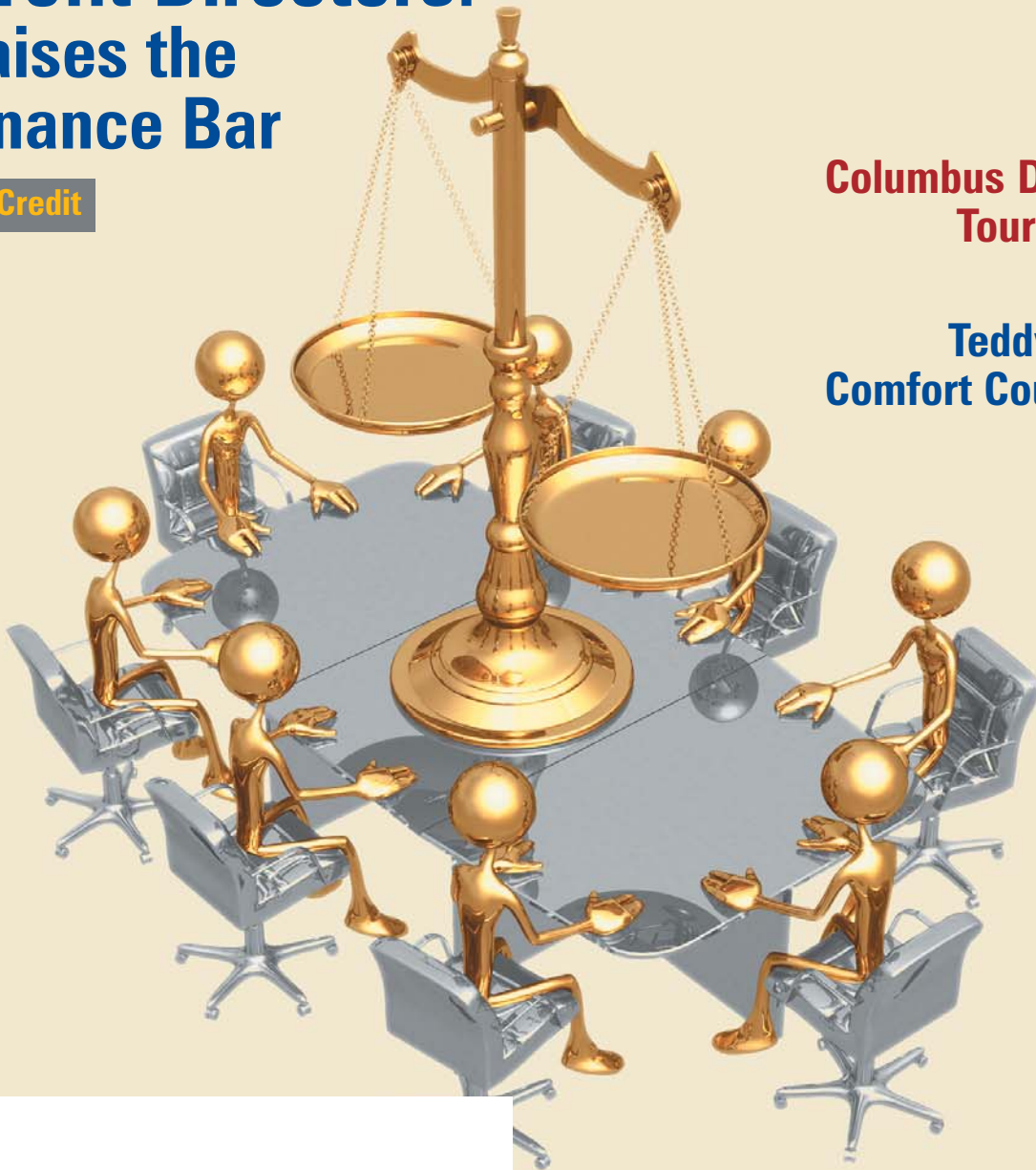
A Publication of the San Fernando Valley Bar Association

Nonprofit Directors: IRS Raises the Governance Bar

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VALLEY LAWYER

A Publication of the San Fernando Valley Bar Association

VALLEY LAWYER

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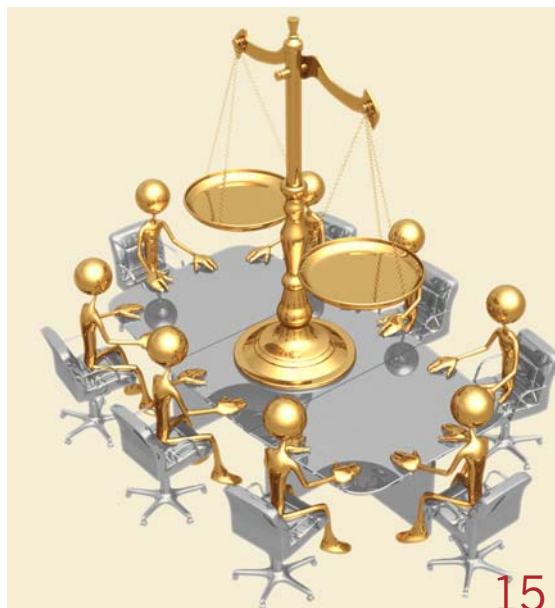
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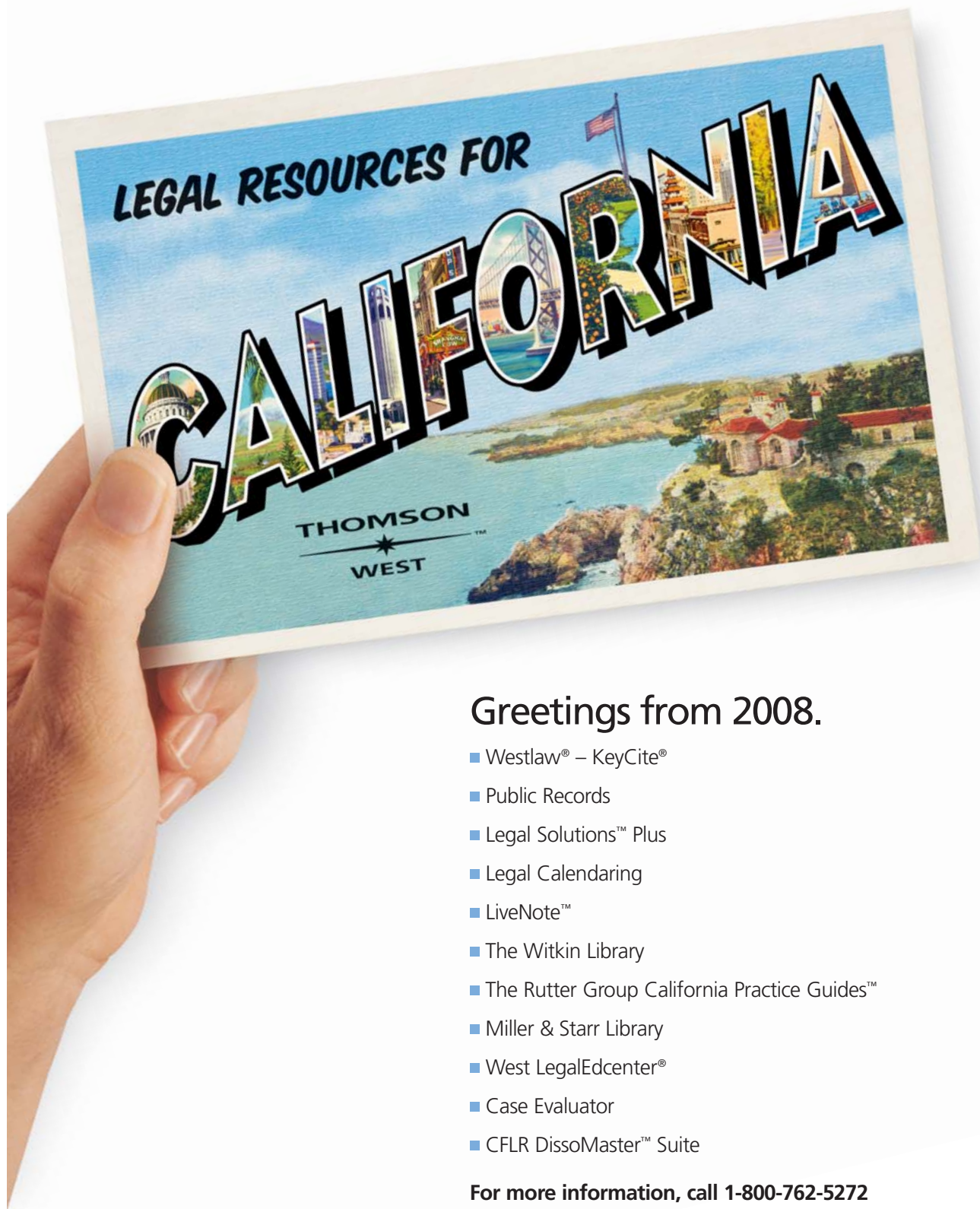


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Severe Crisis Facing Our Courts



SUE BENDAUID
SFVBA President

I AM PLEASED TO INTRODUCE the first issue of *Valley Lawyer* magazine. In our ongoing effort to improve services and communication to members, we decided to update *Bar Notes* to this format. Similar to publications of the Los Angeles County Bar Association (*Los Angeles Lawyer*) and the State Bar (*California Lawyer*), we chose *Valley Lawyer* as our new name to identify us in relation to the geographical area we serve. *Valley Lawyer* will include articles, announcements and other information of interest to our legal community. Your ads in *Valley Lawyer* will provide useful information to members and a revenue source to the SFVBA to help minimize dues and other charges. Please feel welcome to share any comments or questions.

It is particularly important that you read this month's President's Message. At a recent Bench-Bar Meeting, I promised our local judges I would tell our members about the severe crisis facing our courts. At the very least, the judges want our members to be aware of what's happening. Over the past two years, threats against our judges, commissioners and referees *doubled*. On a weekly basis, our courts are faced with threats and attempts by members of the public to bring in guns, knives and other weapons into the courthouse. At the same time, security costs have skyrocketed and the court budget has remained flat. While any security breach is serious, some resulted in serious violent crimes, including the gunning down of a court commissioner and his wife at their house, the threat to one of a judge's children at school and the kidnapping and killing of a judge's wife. Many of us vividly remember the shoot-out at the Van Nuys courthouse, where one of our own members, Gerald Curry, was repeatedly shot.

In a recent article, Supervising Judge Czuleger was quoted as saying that the rising costs of court security resulted in a

\$12 million shortfall, which is expected to increase to \$17 million in 2008-09. Next time you are standing in line to go through the security checkpoint at the courthouse, be patient and grateful that we still have these services available. They are designed to protect you, our judges and members of the public.

Another side effect of the budget crisis is the lack of a sufficient number of judicial bench officers to handle the ever-increasing number of cases. Here, there is something we can do to help. If you are an attorney who has over ten years experience, you should consider volunteering for the Court's Temporary Judge Program. You can hear and resolve cases involving small claims, traffic, unlawful detainers and civil non-jury

matters. The California Rules of Court require that temporary judges attend live training on bench conduct and demeanor, ethics and substantive law topics. To make it easier for our Valley members to become temporary judges, the Court has scheduled training at the Van Nuys Courthouse on June 24, 2008. See page 11 for details regarding this upcoming training. We hope this training becomes a regular event so that more of our members can be trained and serve in this capacity.

If you already serve as a temporary judge, please contact the Bar office and let us know. The Court has asked us to compile a list of members who can provide this service. Together, we can help alleviate this problem. 🐾

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From the Editor

Please email your questions, comments or candid feedback regarding Valley Lawyer to Angela@sfvba.org or call (818) 227-0490 ext. 109.



ANGELA M. HUTCHINSON
Editor

Dear SFVBA Members,

I hope the new *Valley Lawyer* magazine maintains your keen interest and generates innovative ideas for upcoming issues. To Committee Chairs, Section Chairs and participants, if you would like to have information about your upcoming or past events published in *Valley Lawyer*, please email me completed articles, photos and/or content for announcements. Please be sure to review issue deadlines and style requirements listed in the *Valley Lawyer* Submission Guide, which can be retrieved from the SFVBA website or I can email the guide to you.

As we embark on this editorial journey of creating compelling content that is of interest to our SFVBA readers, I encourage your frequent member participation in writing articles on relevant legal issues.

This month's issue focuses on the significance and importance of the nonprofit sector in our society.

Why do nonprofit organizations exist for public and mutual benefit? Examining the San Fernando Valley Bar Association (SFVBA) as a membership-based organization, the Bar is more capable of acting for the mutual benefit of its members rather than individuals acting alone. The Bar also benefits the public through its Attorney Referral Service, Mandatory Fee Arbitration program and various other services. Funded primarily by membership fees, SFVBA seeks to benefit its members instead of focusing on maximizing profits.


As the founder of a nonprofit organization that has been in operation for 3 years, I've learned that the quantity and quality of members is valuable, but

recruiting and retaining active board of directors along with diligent volunteers or staff members is vital. The SFVBA Board of Trustees and staff are a key contributing factor to the Bar's progressive momentum and accomplishments as a member-based organization.

Nonprofit organizations must be created for lawful purposes with approved articles of incorporation and bylaws in accordance with state law.

Thankfully, the Bar was approved as a California nonprofit organization in 1952. An association established for public and mutual benefit, SFVBA proudly serves its members, staff and the Valley community by adhering to its bylaws. ✎





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PUBLIC SERVICES (Rosie, x.104)

ARS seeks attorneys to perform seminars for the Bankruptcy Self-Help Clinic on Monday afternoons.

EVENTS (Linda, ext. 105)

Golf Tournament Committee needs experienced golfers and individuals with a marketing background to help effectively promote and publicize the golf tournament.

MANDATORY FEE ARBITRATION PROGRAM (Angela, ext. 109)

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For you a life well lived means more than money. It means supporting the things you care about. As part of that philosophy, we're proud to salute the organizations who help make a difference in our community. *Thank you, San Fernando Valley Bar Association, for the dedication.*

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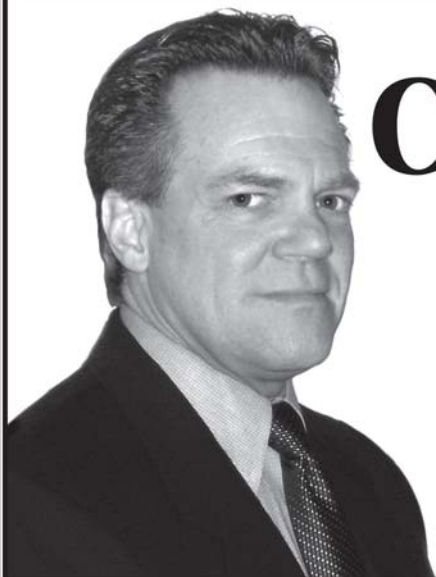
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ROSIE SOTO
Director of
Public Services

THE ATTORNEY REFERRAL Service (ARS) of the San Fernando Valley Bar Association (SFVBA) is a non-profit organization established in 1948. ARS is certified by the State Bar of California and approved by the American Bar Association. The State Bar of California defines "Attorney Referral Service" as an association that operates for the purpose of referring potential clients to attorneys.

ARS provides referrals to qualified attorneys. ARS attorneys are active in good standing with the State Bar of California, demonstrate suitable case experience for panel membership, carry errors and omissions insurance, have an office in the geographical area that ARS serves and are able and interested in rendering legal services.

Nonprofit organizations in the San Fernando Valley do well in supporting one another. Each with a unique mission, the organization structures many of its programs to have a charitable effect in the community through service in the law, education, social issues, health care, science and technology, the arts, youth advocacy, the environment and other areas.

Just a few years ago, the ARS turned to the Valley Community Legal Foundation (VCLF) for funds to help produce a Legal Forum cable show. In the past few years, relying mostly on percentage fees paid by ARS members, the organization has been successful enough to now be in a position to give to other organizations such as VCLF. Recently, the ARS made a \$25,000 donation to assist in creating a children's waiting room at the San Fernando courthouse. This is just one example of the charitable effect that nonprofits have in society.

For years, many ARS attorneys have volunteered services to the Neighborhood Legal Services Self-Help Centers, domestic violence projects, and similar

activities. ARS members have served on the NLS board and NLS staff serve on the ARS Committee.

ARS continues to operate the Senior Citizen Legal program at four senior centers. Twenty-six ARS attorneys participate in this program and assist



senior citizens with legal problems. The organization is presently working with Bernardi Multipurpose Center for Senior Citizens, ONE Generation, East Valley Multipurpose Senior Center and Santa Clarita Valley Senior Center.

ARS staff brought together the SFVBA with the nonprofit Learning for Life and this has led to the new "SFVBA Explorer Post 1926," a mentoring program for teens interested in law.

Recently, the Learning for Life advisor used her multi-school contacts to promote Haven Hills' Annual Teen

Summit, which benefits teens who are interested in the Teen Summit and SFVBAs Explorer Post.

The ARS often assists other bar association referral services with information and suggestions regarding operations and programs. Many ARS panel attorneys are also active in other nonprofit religious and charitable organizations. Since its beginning in 1948, the ARS has sought opportunities to join resources with other nonprofits. These joint efforts produce much stronger and more successful results in serving the public.

The ARS is distinctive in its goals and not shortsighted. There are extensive efforts to reach all those in need of legal service within the geographical area that the organization serves. Staff adds that some of the most rewarding elements of working with ARS are: hearing stories from referral clients about how pleased they are about ARS' services and the attorneys; being identified as a good source of referrals for members; working in a positive environment, regardless of the severity of some cases; and having a good team and resources to serve the public. 📌

For more information about ARS, contact Rosie Soto at (818) 340-4529 ext.104 or via email at referrals@sfvba.org.

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■ 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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The following joined the SFVBA in April 2008:

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Diane Goodman
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LOS ANGELES SUPERIOR COURT RECRUITING TEMPORARY JUDGES

The Los Angeles Superior Court is currently scheduling Temporary Judges' Training. Rule 2.812, et seq., of the California Rules of Court requires Temporary Judges to receive three hours live training in Bench Conduct and Demeanor **plus** three hours of training in Ethics and at least one area of substantive law (Small Claims, Traffic, Unlawful Detainers, Family Law and/or Civil, Non-Jury). The Temporary Judge Program is offering the following live training:

DATE: June 24, 2008 – Bench Conduct and Demeanor (3 hours)

FEE: \$50.00

PLACE: Van Nuys Court West
14400 Erwin Street Mall, Dept. 104
Van Nuys, CA 91401

TIME: 1:15 p.m. to 5:15 p.m. - Orientation and Training. (Registration starts at 12:00)

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SPECIAL NOTICE: On-Line training in Ethics, Small Claims, Traffic, Unlawful Detainer and Civil, Non-Jury is available at the following website: <http://www2.courtinfo.ca.gov/protem/>. If you take on-line courses, please bring copies of the Certificates of Completion with you to the live training as this will expedite the certification process. State Bar Activity Approval Application forms will be available at the training session.

Bench Conduct and Demeanor: June 24, 2008. MCLE CREDIT: Provider No. 485. The Los Angeles Superior Court is the sponsor of this program and has been approved as a provider of Minimum Continuing Legal Education credit by the State Bar of California. This program will qualify for Minimum Continuing Legal Education credit by the State Bar of California in the total amount of **3.0 hours elimination of bias credit** (of which -0- hours will apply to legal ethics, prevention, detection, and treatment of substance abuse/mental illness that impairs professional competence), as appropriate to the content of the program. Records will be maintained with the Los Angeles Superior Court.

AS SPACE IS LIMITED AND MCLE CREDIT IS PROVIDED, PRE-PAID RESERVATIONS ARE REQUIRED AND MUST BE RECEIVED BY: JUNE 17, 2008. This is necessary to defer the cost of training, security services, etc. Please be advised that the pre-paid reservations are non-refundable and non-transferable.

Please make check payable to "Special Program Fund" and mail it to the Temporary Judge Program, 111 North Hill Street, Room 536, Los Angeles, CA 90012 or call (213) 974-6195 for further details.

SPECIAL NOTICE: The decision to appoint any attorney as a temporary judge is within the discretion of the Presiding Judge. For further information on requirements, disqualification, etc., see California Rules of Court, Rules 2.810 - 819, 10.740 -10.746; Code of Ethics, Canon 6D.

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COLUMBUS DAY GOLF TOURNAMENT

Proceeds to benefit the good works and public service programs of the SFVBA

MONDAY, OCTOBER 13, 2008 | BRAEMAR COUNTRY CLUB | TARZANA

10:00 A.M. CHECK-IN | 10:30 A.M. PUTTING CONTEST | 11:30 A.M. SHOTGUN START
12:00 NOON BBQ | 5:30 P.M. AWARDS RECEPTION AND DINNER

GOLFER'S PLAYER PACKAGE

- ☐ \$195 "Early Birdie" Special (Purchase by August 15)
- ☐ \$225 Purchased by September 7; \$250 after September 7
- ☐ \$150 Sitting Judge

Includes green fees, cart, tee gifts, beverages, BBQ luncheon and awards reception and dinner.

SPONSORSHIP OPPORTUNITIES*

- ☐ **Eagle Sponsor** \$4,000

Includes two golf foursome packages, 2 additional tickets for awards dinner for a table of 10, on-course beverage station with sign, sign at tee, name/logo prominently displayed in promotional material and banner.

- ☐ **Birdie Sponsor** \$2,500

Includes one golf foursome package, 4 additional tickets for awards dinner, name included in promotional material and sign at tee.

- ☐ **Hole-in-One Sponsor** \$1,500

Hit a Hole-In-One on a par 3 hole and win a vacation. On one surprise hole, you can win a car sponsored by Galpin Ford. We will place sponsorship signs on every par 3 hole on course. Includes 2 tickets to luncheon and awards dinner. **(Only 4 sponsors)**

- ☐ **Tee Sponsor** \$500

By sponsoring a tee/green sign on the course your firm or company can show your support for the SFVBA's good works. You may hand out gifts and information to the golfers at your sponsored hole. Includes 1 ticket to luncheon.

CAR PRIZE!

OTHER SPONSORSHIP OPPORTUNITIES*

- ☐ **Lunch Sponsor** \$2,500

Let us announce your generosity in "picking up the tab" for the BBQ lunch. We will place sponsorship signs at the lunch site and give you a table for you to hand out gifts and information to the golfers. Includes 2 tickets to luncheon and awards dinner. **(Only 1 sponsor)**

- ☐ **Cocktail Reception Sponsor** \$2,000

The awards reception will be a fun filled event! We will place sponsorship signs on the bar. Includes 2 tickets to awards dinner. **(Only 1 sponsor)**

- ☐ **Photo Sponsor** \$1,500

Every golfer will receive a framed photo with a picture of their foursome and 4 shots of each golfer. Your logo will be included on the frame. Includes 2 tickets to luncheon and awards dinner. **(Only 3 sponsors)**

- ☐ **Putting Contest Sponsor** \$1,000

We'll display a sign at the putting contest showing your support. We'll mention your sponsorship when we announce the winner of the putting contest. Includes 2 tickets to luncheon. **(Only 1 sponsor)**

- ☐ **Beverage Station Sponsor** \$750

Sponsor a favorite golfer spot! We will acknowledge your sponsorship by placing a sign at one beverage station and you may hand out gifts to the golfers at your sponsored hole. Includes 2 tickets to luncheon. **(Only 4 sponsors)**

** All sponsors receive recognition on the SFVBA website and in Valley Lawyer magazine and acknowledgment at awards dinner.*

PLAYER ENTRY AND SPONSORSHIP REGISTRATION

If you do not have a foursome, we will pair you. Non-attorney golf pros are prohibited from participating in contests and are ineligible to compete in individual or team awards.

Player: _____ Handicap: _____
Firm: _____
Ph.: _____ E-mail: _____
Player: _____ Handicap: _____
Firm: _____
Ph.: _____ E-mail: _____
Player: _____ Handicap: _____
Firm: _____
Ph.: _____ E-mail: _____
Player: _____ Handicap: _____
Firm: _____
Ph.: _____ E-mail: _____

Qty	Description (above)	Total
_____	\$250 Golfer Player Package After September 7	\$ _____
_____	\$225 Golfer Player Package Before September 7	\$ _____
_____	\$195 "Early Birdie" Special Before August 15	\$ _____
_____	\$150 Sitting Judge	\$ _____
_____	\$80 Non-Player Day at Club (Includes tennis, use of facilities, pool, beverages and meals)	\$ _____
_____	Sponsorship: _____	\$ _____
Sponsor Firm/Company: _____		
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Please charge my credit card for: \$ _____		
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Proceeds from the Golf Tournament financially support SFVBA programs benefitting the community and the profession, including Blanket the Homeless, Courthouse Children's Waiting Rooms, Diversity Project, Fee Arbitration Program, Attorney Referral Service and Fastcase Law Library.

Make checks payable to SFVBA. Return registration and payment to 21250 Califa Street, Suite 113, Woodland Hills, CA 91367 or fax to 818.227.0499. For more information about the tournament and sponsorship opportunities, contact 818.227.0490 ext. 105.

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 18.

NON PROFIT DIRECTORS: IRS Raises the Governance Bar

BY MARTIN J. TRUPIANO

THE IRS RAISES THE BAR for directors of nonprofit organizations. Proceeding on the premise that good governance produces better tax compliance, the IRS issues a revised Form 990, the annual information return filed by most nonprofits. It includes an entirely new governance section, which, in effect, seeks to assure that directors of nonprofit organizations fulfill their fiduciary duties of care and loyalty in matters related to tax law compliance.

Since the revised Form 990 will be effective for tax years beginning after January 1, 2008, now is the time for directors to take the initiative to review their organizations' policies so that they are fully prepared to demonstrate compliance with both tax laws and "best practices" of nonprofit governance.

IRS FORM 990 REVISION

In June 2007, the IRS proposed substantial changes to its Form 990. It explained that the existing form, last revised in 1979, "failed to keep pace with changes in the law and with the increasing size, diversity, and complexity of the exempt sector," and "fail[ed] to meet the Service's tax compliance interests or the transparency and accountability needs of the states, the public, and local communities served by the organization."

More than 700 public comments (3,000 pages) were filed in response to the proposed revisions, prompting the IRS to make additional changes. The final version was published in December 20, 2007, and draft instructions were published for comment on April 7, 2008. The IRS expects to finalize the instructions by the end of the year.

The revised Form 990 expands the "core" form from 9 to 11 pages, and increases the number of potential schedules to 15. Organizations will

determine which schedules they need to file by completing a new, 37-question checklist. The revised "core" form, schedules, and IRS background explanations can be found online at www.irs.gov.

An entirely new section entitled, "Governance, Management and Disclosure" is particularly important to nonprofit directors. It seeks information on governance and management, the process for determining executive compensation, policies regarding conflicts of interest, whistleblower encouragement and protection, and document retention, and public disclosure of tax returns and other governance and financial information.

Opponents of this section argue that the information sought is not required by the law, and that the inclusion of questions on such topics might make them *de facto* legal requirements. Although the IRS admitted that much of the requested information is not required, it justifies the new section on the ground that "the existence of an independent governing body and well-defined governance and management policies and practices increases the likelihood that an organization is operating in compliance with federal tax law." In other words, the IRS will use the responses to these governance questions to ferret out non-compliance with tax laws.

Besides the IRS, donors and grantors will likely be very interested in a nonprofit's responses to the new governance questions and may use the questions as additional criteria for their donations and grants. Negative or inadequate responses may reflect poorly on the grantee's ability to properly use the funds or their financial integrity.

For example, Line 10 asks whether a copy of the Form 990 was provided to the directors *before* filing with the IRS.

The form's follow-up question underscores the point: it requires a description of the process by which directors, officers or other management, if any, reviewed the Form 990, including by whom and when the review was conducted, and the extent of the review. Both the IRS and likely the nonprofit's funding sources are looking for assurances that the directors are properly supervising tax law compliance.

Consequently, these new governance questions in the revised Form 990 are strong motivation for nonprofit organizations to review and update their policies and practices as needed. Given their potential to raise a "red flag" with the IRS or to undermine a nonprofit's relationships with its donors and grantors, careful attention to the revised Form 990's governance questions is important.

KEY GOVERNANCE QUESTIONS

The new Part VI, "Governance, Management and Disclosure," of the revised Form 990 is divided into three sections: Governing Body and Management, Policies, and Disclosures. It contains a total of 28 questions, most entirely new. Some of the more significant questions are addressed below.

Governing Body and Management Number of "Independent" Voting Directors

Line 1 asks for both the total number of voting members of the governing board and the number that are "independent." In the draft instructions, the IRS defines an "independent" director as one who, during the entire year, did not receive from the nonprofit or a related entity: (1) any compensation as officer or employee; (2) more than \$10,000 as an independent contractor; or (3) other



“material financial benefits” (including prior year “excess benefit” transactions, loans from the nonprofit, non-arms’ length loans to the nonprofit, grants or assistance, and business transactions with the nonprofit for more than \$10,000); and (4) the director was not related to any such person. Notably, a director does not lack independence if he or she is a major donor or a member of the class served by the exempt organization.

From a risk perspective, the IRS may use the response to this question regarding “independent” directors to indirectly discover potential “excess benefit” transactions subject to excise taxes. Also, a response which indicates that more than 49% of the directors of a California nonprofit public benefit corporation are “interested” highlight the nonprofit’s noncompliance with California Corp. C. § 5227 which, reflecting a standard more stringent than the IRS, requires that no more than 49% of the directors of a nonprofit public benefit corporation be “interested persons.”

Delegation of Director or Officer Responsibilities to Management Company

Line 3 asks whether the organization delegated to a management company or other person control over management duties customarily performed by or under the direct supervision of a director or officer. Such duties include hiring, firing, and supervising personnel, budget or financial planning and responsibility, supervising exempt operations or unrelated businesses. An affirmative response may raise a question whether such delegated responsibilities are

adequately supervised consistent with a director’s fiduciary obligations.

Embezzlement - “Material Diversion of Assets”

Line 5 asks, “Did the organization become aware during the year of a material diversion of the organization’s assets?” “Material diversion of assets” is defined as any unauthorized conversion or use of the nonprofit’s assets other than for its exempt purposes, including but not limited to embezzlement or theft, exceeding the lesser of \$250,000 or 5 percent of the nonprofits gross receipts or assets. An affirmative response requires an explanation of the diversion, amount involved, and corrective actions taken (without identifying the person(s)). Such asset diversion may also constitute an “excess benefit” transaction with consequent excise taxes and penalties. The need for this public explanation of the material diversion of a nonprofit’s assets could well cause boards to handle such situations more aggressively.

Minutes of Board Meetings

Line 8 asks if the organization contemporaneously documents board and board committee meetings or written actions. The instructions define “contemporaneous” to be the later of the next meeting of the board or board committee or 60 days after the meeting or written action.

On the surface, the question simply reflects good management practice to keep timely, accurate, records of actions taken by board and board committees. However, a negative response potentially precludes reliance upon the executive compensation “safe harbor” provisions of

federal “excess benefit” prohibitions which, inter alia, require contemporaneous recording of the board’s deliberations and decision. Treas. Reg. § 53.4958-6.

Policies

Conflict of Interest Policy

Line 12 asks, as does the existing version of the form, whether an organization has a written conflict of interest policy. If the answer is “yes,” two new subparts (Lines 12a and 12b) ask whether officers, directors, trustees or key employees are required to make annual disclosures of potentially conflicting interests, and how the organization monitors and enforces compliance with the policy. However, even if the initial response is “no,” it may be prudent to attach an explanation how the nonprofit, in practice, assures that conflicts are disclosed and addressed.

Whistleblower and Document Retention Policies

Lines 13 and 14 ask whether the nonprofit has written whistleblower and document retention and destruction policies. Although federal tax law does not require such policies, there are several sections of the Sarbanes-Oxley Act of 2002, which apply to both for-profit and nonprofit entities and make it a crime to retaliate against a whistleblower or to destroy documents. 18 U.S.C. § 1513(e) (whistleblower); 18 U.S.C. § 1519 (document destruction). Because these sections relate to violations of federal law, implicitly including the federal tax law, the IRS hopes to encourage tax law compliance through the adoption of such policies by nonprofit organizations.

Executive Compensation

Lines 15, 15a and 15b collectively ask whether the process for determining the compensation of an organization’s CEO, Executive Director, or top management official, or other officers or keys employees included a review and approval by “independent persons,” using “comparability data,” and with “contemporaneous substantiation of the deliberation and decision.” A description of the process is then requested. Persons familiar with prohibited “excess benefit” transactions and the resulting substantial “intermediate sanctions” will recognize



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that the three factors match those which, if they exist, provide a “safe harbor” from an “excess benefit” transaction under Treas. Reg. § 53.4958-6. Thus, a negative response likely eliminates the availability of a rebuttable presumption that the compensation is not an excess benefit transaction and may flag an organization’s compensation decisions for possible examination.

A negative response may also raise a question concerning compliance with the California Nonprofit Integrity Act which requires board’s to determine that the compensation for a nonprofit’s President/CEO or Treasurer/CFO is “just and reasonable.” Govt C. § 12586(g).

Joint Ventures

Line 16 addresses a nonprofit’s joint venture investments or participation and, with little subtlety, raises the specter of loss of exemption, when it directly asks, “[H]as the organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable Federal tax law, and taken steps to safeguard the organization’s exempt status with respect to such arrangements?” Some suggested safeguards identified in the instructions include control over the venture to ensure it furthers the exempt purpose of the organization and gives priority to the exempt purpose over profits for other participants.

Disclosures

Public Disclosures

In addition to confirming that the nonprofit’s Form 1023 (or Form 1024 if applicable) and Form 990 and 990-T are available for public inspection as required by IRC § 6104 (with names and addresses of contributors redacted), Line 18 asks how that disclosure occurs: on the nonprofit’s website, another person’s website, or upon request. If any of these documents are not made available upon request (as required by statute), the instructions request an explanation for the reason.

Line 19 asks whether the organization makes its governing documents (articles and bylaws), conflict of interest policy, and financial statements available to the public and, if so, how those disclosures are made. The instructions note that such disclosures are not required by law except as such information may be contained in publicly-available forms, e.g., Form 990.

Benefits of New Governance

If the increased demands of the revised Form 990 are addressed early, nonprofits can use the new governance section to demonstrate that they are well-managed. Nonprofit directors need to pay increasing attention to governance issues involving independence of board members, identification and resolution of conflicts of interest, determination of reasonable executive compensation, and means to improve financial transparency. If not, the IRS, the Franchise Tax Board, their donors and grantors may give them more attention than they desire. 🐼

Marty Trupiano’s practice focuses on nonprofit organizations and foundations. He can be reached at (818) 783-5151 or marty@mtrupianolaw.com.



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MCLE Test No. 1

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. The new IRS Form 990, last revised in 1979, is effective for nonprofit's tax years ending after December 31, 2007.
True
False
2. In order to meet the IRS' tax compliance interests and the financial transparency and accountability needs of the states, the public and local communities served by nonprofits, the revised Form 990 contains 11 "core" pages and 15 potentially required schedules.
True
False
3. All of the information requested in the form's new "governance" section relates to a nonprofit's statutory obligations under federal tax law.
True
False
4. Directors of a nonprofit are required to review the Form 990 before it is filed with the IRS, and describe their review process in response to Line 10.
True
False
5. The IRS does not consider a major donor to a nonprofit organization an "independent" director.
True
False
6. Under the IRS guidelines, the director of a nonprofit, who is the spouse of an owner of an office supplies business which makes annual sales of \$9,500 to the nonprofit, is considered "independent."
True
False
7. The IRS' draft instructions to the revised Form 990 require an "independent" director to meet certain criteria for the entire tax year.
True
False
8. Under California Corporations Code § 5227, the definition of "interested persons" is more stringent than the definition of "independent" contained in the IRS draft instructions for the revised Form 990.
True
False
9. A nonprofit performing arts group does not need to report on the revised Form 990 its use of a "volunteer" financial management company which takes care of the all of the financial planning, budgeting, bookkeeping and money management for the nonprofit.
True
False
10. A nonprofit which has annual gross receipts of \$325,000 is required to report as a "material diversion of assets" the embezzlement of \$17,000 by its CFO.
True
False
11. The IRS does not require a nonprofit to report the diversion of funds by the organization's prior CEO for the unauthorized use of the nonprofit's funds to construct a tennis court three years ago.
True
False
12. IRS regulations require that board minutes be prepared before the next meeting of the board or within 60 days of the board meeting.
True
False
13. In addition to annual written disclosures of potential financial conflicts of interests by directors, officers and key employees, the revised Form 990 asks for an explanation how the conflict of interest policy is monitored and enforced to assure compliance.
True
False
14. For-profit and nonprofit organizations are subject to the provisions of the Sarbanes-Oxley Act of 2002 which provide whistleblowers protection against retaliation.
True
False
15. The California Nonprofit Integrity Act requires a nonprofit's board of directors to determine that the compensation of its CEO and CFO is "just and reasonable."
True
False
16. The IRS may investigate a nonprofit's executives compensation as an improper "excess benefit."
True
False
17. Federal tax law conditions approval of joint ventures between nonprofits and for-profit companies on the existence of a written evaluation policy.
True
False
18. There are safeguards suggested by the IRS instructions for nonprofits to employ to protect their tax exempt status as they engage in joint ventures with for-profit companies.
True
False
19. Nonprofits must publish on their websites their Form 1023 application for tax exemption and their Form 990s (with names and addresses of contributors redacted).
True
False
20. IRS regulations do not require nonprofits to make their articles of incorporation, bylaws or financial statements available for public inspection.
True
False

MCLE Answer Sheet No. 1

Nonprofit Directors: IRS Raises Governance Bar

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 |
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| 17. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 18. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |

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Teddy Bears Comfort Court Kids

CCK charity provides emotional support for children attending Juvenile Dependency Court

BY ANGELA M. HUTCHINSON

FOUNDED IN 1991 BY Attorney L. Ernestine Fields, Comfort Court Kids® (CCK) is a 501(c)(3) publicly supported charity based in Monterey Park, California and known by courts nationwide. The mission of the nonprofit organization is to help abused and neglected children in Dependency Court cope with their courtroom experience.

CCK gives a brand new teddy bear to children to make their experience in dependency court less intimidating and confusing. Fields explains, "Dependency Court involves boys and girls under the age of 18 who have been physically, emotionally, or sexually abused and/or,

who have been neglected or abandoned, and thus need the protection of the Superior Court. Juvenile Court

guardians. Situations often include rape, broken bones, burned bodies, black eyes, bruises, insect-infested and dirty homes,

or sick children with lack of proper nutrition or medical care, or even abandonment all together. The CCK teddy bears that the children receive in court helps to provide them with a sense of acceptance and protection.

Fields created the idea of a teddy bear because it is a universal symbol of love and affection. Having served 20

years as a legal professional, Fields uses her vast personal contacts to ensure that CCK is recognized not only in L.A. County courtrooms, but also in courtrooms throughout the U.S. The

"The cute **teddy bears** that have been donated to us to pass along to these precious children are truly a godsend,"
— **Oscar G. Gabaldon, Jr.**, Associate Judge for 65th Judicial District Court of Children's Court in El Paso, Texas.

Dependency Proceedings include a variety of hearings."

Generally, the youth in dependency court have suffered from child abuse to extreme neglect by their parent or legal

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CCK Teddy Bear Program and its offshoots is impacting the lives of thousands of innocent children.

Currently, over 600,000 children have received CCK teddy bears. This statistic grows every four weeks when 4,200 teddy bears are delivered on a monthly basis to the Edmund D. Edelman Children's Court in Monterey Park. Fields explains, "The bears are divided equally among the twenty operation courtrooms, the Dependency Court in Lancaster and Shelter Care in both locations." In addition, every agency in the Children's Courthouse receives bears when requested.

Q & A WITH CCK FOUNDER



Attorney L. Ernestine Fields

Q: You seem very passionate about children and their well-being, what else was your motivation for starting CCK?

A: Listening to the children cry in Superior Court was unacceptable to me. I had attended law school at night for four nights a week for four years, working with children was my first choice in the law, but, tolerating their crying was something I could not handle. It was a choice of finding a way to provide emotional comfort for the children or not practice law.

Q: From when you first had the initial idea to launch CCK until its final implementation, how long was the process?

A: May 1990 to December 1991.

Q: What was the most difficult challenge in starting your NPO?

A: Raising the money to fund the purchase of teddy bears. People

tend to look the other way when it come to kids in foster care. Many factors cause this avoidance: the parents have no political power, all of them are negligent or even worse....criminals. The cost to society because of the parents' inability to parent is very costly to the public in order to pay for foster care, medical services, etc. Paying for foster care in Los Angeles County is tremendously expensive. The parents do not work or are in jail and looking at the plight of their children is very painful and something most people want to avoid.

Q: CCK's mission is to help abused and neglected children cope with their experiences at Dependency Court. Some might argue that it is the responsibility of the parent/family members to help their children cope during court trials. Why do you believe otherwise?

A: The parents are unable to care for their children's physical needs, which is why they are under the jurisdiction of Dependency Court. It would be wonderful if the parents could care for their children.

Q: What are your most rewarding experiences with CCK?

A: Having adoptive parents tell me that their children keep their "adoption bear" forever. Knowing when children leave the courthouse sensing that "big people" care about them.

Q: Have you had to deal with conflict resolution? If so, please share an experience and what you learned from it, or how you turned a negative situation into a much better one.

A: Some of the people working in the Children's Courthouse have brought in "formerly loved" stuffed animals. After I explained the problem with using a used stuffed animal, the very same people have tried to support CCK.

Q: How did you come up with the idea for using teddy bears in court?

A: In my first courtroom, there were two "stuffed" animals; one pig and one hippopotamus. They were originally door stops, made out of heavy materials, covered with sateen. When the children cried, they were given these two animals, then, they had to be given back at

the end of the hearing....covered with tears and sometime nose excretions, for the next two children. One day, the clerk brought in many stuffed animals from her daughter's bedroom as her daughter was going off to college. We observed that when a child received a soft, stuffed animal, he/she stopped crying. Then, I did research about teddy bears and discovered that of all animals, the teddy bear provides the most emotional support as you can stand them on two legs, they have out-stretched arms and look more like a person than say a stuffed cat or dog.

Q: What is the age range of the children participants?

A: From age 4 through 21.

Q: What was your selection process for choosing your board of directors? How do you keep them actively involved?

A: Mainly people who ask to be on the Board. It is difficult to keep them actively involved as most of them no longer work at the Children's Courthouse. It is time to get a new Board of people who are sensitive to the plight of abused and neglected children and who have the time and/or the money to support the program.

Q: What's in store for the future of CCK? (i.e. Where do you see the organization in the next 10 years? Do you plan to establish other Chapters or go nationwide at some point?)

A: If someone would come forward with the money to expand, that would be great. Every jurisdiction that has a Dependency Court would love to have teddy bears for their children going through the court process.

Q: Are there any other comments that you would like to add that we did not discuss?

A: On National Adoption Day, this year on November 22, every child who is adopted receives a teddy bear to commemorate the event. This year, every State in the Union will have adoptions in one of more of their counties.

SFVBA is proud to recognize its member, Attorney L. Ernestine Fields, for her compassion and commitment to empowering neglected and abused children within the court system. 🐻

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The Good Deeds

EVERY YEAR, THE VALLEY Community Legal Foundation distributes grants to worthy community organizations that have projects related to the law. This year, the Grants Committee headed by **David Rand** met and recommended the following recipients:

Haven Hills Shelter

A refuge for victims of domestic violence

The Boys and Girls Club of the West Valley

Provides a safe and friendly environment for children to meet and relax

Comfort for Court Kids

Provides teddy bears for children appearing at Edmund Edelman Children's Dependency Court

Drug Court Program

Rehabilitates drug addicts

Friends of CASA

Funds for foster and adopted children

Grandparents as Parents

Domestic Abuse Center

Assists victims of domestic abuse

Additionally, this year the Foundation, upon the recommendation from the Scholarships Committee headed by **Adam Grant**, gave \$3,000 to each of the following schools for distribution as scholarships: **California State University at Northridge, Monroe High School, Pierce Community College and University of West Los Angeles.**

The Foundation continues to support the establishment of a Children's Waiting Room at the San Fernando courthouse. Any donations to the Foundation ultimately are distributed to the community for projects like those mentioned above.

Finally, applications are being accepted for next year's Foundation Board. Members interested in serving on the Board should submit a resume and letter of intent to

marcia@kraftlawoffices.com by June 12. Board members do not need to be a lawyer or a judge to be on the VCLF Board. *Remember generosity counts.* 🐾



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7:00 P.M.

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Van Nuys-Sherman Oaks Park is located at 14201 Huston Street in Sherman Oaks, conveniently close to the 101 freeway, off the Van Nuys exit.

Probate & Estate Planning Section and Litigation Section

Collecting From the Dead

Jerome Blum, Esq. and Alice Salvo, Esq.

JUNE 10

12:00 NOON

**MONTEREY AT ENCINO RESTAURANT
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The focus of this seminar is Debt Collection from the assets of a Decedent, presented as a Good Cop (Decedent's Representatives), Bad Cop (Creditors) scenario. However, by the end of the seminar, some might decide the roles should be reversed! From the Creditors' perspective, the program will inform the practitioner how to avoid the numerous procedural and substantive pitfalls inherent in collecting from Decedent's assets. From the perspective of the representatives of the Estate of Decedent, i.e. Trustee, heirs, and beneficiaries, the program will suggest how to minimize the estate's liability.

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Criminal Law Section

To Tell The Truth: Polygraph Testing and Lie Detection

JUNE 17

6:00 P.M.

**UNCLE CHEN RESTAURANT
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Dr. Louis Rovner is a recognized expert in polygraph testing and lie detection research. He has testified in numerous trials and hearings and is listed on the panel of experts of the Los Angeles Superior Court. For criminal law defendants, a polygraph is often a critical component in proving their innocence. With so much at stake, the significance of polygraph testing can not be overstated.

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Business Law, Real Property & Bankruptcy Section

Residential Purchase Agreements

JUNE 18

12:00 NOON

**STONE ROSENBLATT CHA
21550 OXNARD ST., STE 200
WOODLAND HILLS**

Alan Wallace, Esq., Brent Finch, Esq., and Richard Hoefflin, Esq. will explore obligations of buyers and sellers, brokers, inspectors, and relocation companies in residential purchase and sale agreements, with an emphasis on the California Association of Realtors form transaction documents. The panel will also discuss legal issues that arise before and after these transactions, including actions for rescission and/or damages based on fraud and non-disclosure.

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Wills, Trusts and Probate

JUNE 19

12:00 NOON

**MARIE CALLENDER'S
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Estate planning is not just for the elderly and wealthy. Please join us to learn about the importance of fully funding and managing trusts during life and at death. Randy Armour, Gina MacDonald and Lisa Golshani will give participants insightful information on wills, trusts and probate, from the drafting and planning stages through the final administration and importance of selecting an appropriate successor trustee.

MEMBERS

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Family Law Section

Dueling Forensic Accountants Argue Business Valuation

JUNE 23

5:30 P.M.

**MONTEREY AT ENCINO
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Does your forensic accountant comply with the brand new business evaluation standards? How can the very same business have two completely different values, based upon the valuation method being used? Why is one method more appropriate than another? What factors does the court take into consideration in determining whether the use of the capitalization method or the excess earnings method provides a more equitable valuation in family law proceedings? How is "reasonable compensation" determined? Learn the answers to these questions and much more when experienced CPAs Mike Krycler and Don Miod argue their points before Family Law Commissioner Michael Convey, who will also discuss relevant statutory and case law and offer practice tips for family law practitioners.

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Women Lawyers Section

Roundtable Discussion On Practice Building Tips

JUNE 26

12:00 NOON

**OLIVA RISTORANTE
4449 VAN NUYS BLVD.
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Led by Section Chair Roxanna Kaz, attendees will gain great insight into building their law practice. Each attendee should bring their best or favorite building tip to share with others. All are invited for this delicious lunch at one of the Valley's best Italian restaurants, which will give participants plenty of food for thought.

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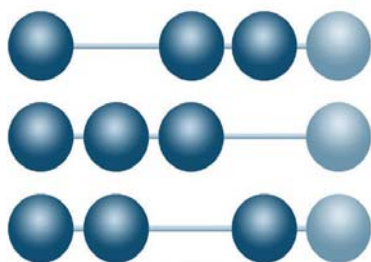
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