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MARCH 2009 • \$4

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Spotlight on SFVBA Executive Director Liz Post

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SAN FERNANDO VALLEY BAR ASSOCIATION

21250 Califa Street, Suite 113
Woodland Hills, CA 91367
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

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President's Message

The Rule of Law



TAMILA JENSEN
SFVBA President

A FRIEND OF MINE HAS COMPLAINED THAT THE President's Message has been a little academic and sometimes puts him to sleep. At least we have found a good use for them! However, in an effort to combat this side effect, this month I want to discuss the Rule of Law, that lynch pin of a civil society and Western democracy.

It is the Rule of Law that brings us a well ordered society in which all have a chance to enjoy the fruits of good order. By way of example, consider the much loved musical, "Camelot", by Frederick Loewe and Alan Jay Lerner, which relies on the Rule of Law as the very central premise of the show.

CAMELOT*

*A law was made a distant moon ago here
July and August cannot be too hot,
And there's a legal limit to the snow here
In Camelot
The winter is forbidden till December
And exits March the second on the dot
By order summer lingers through September
In Camelot
Camelot! Camelot!
I know it sound a bit bizarre
But in Camelot, Camelot
That's how conditions are
The rain may never fall till after sundown
By eight the morning fog must disappear
In short, there's imply not a more congenial spot
For happily ever aftering than here
In Camelot
Camelot! Camelot!
I know it gives a person pause
But in Camelot, Camelot
Those are the legal laws
The snow may never slush upon the hillside
By nine p.m. the moonlight must appear
In short, there's simply not a more congenial spot
For happily ever aftering then here
In Camelot*

It is when the basic premises of the law are ignored that Camelot falls. The legal profession has an important role in this play. See you at the musical. 🐉

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From the Editor

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



ANGELA M.
HUTCHINSON
Editor

Dear Members,

Let's celebrate! March is the San Fernando Valley Bar Association's Staff Recognition month. *Valley Lawyer* would like to acknowledge the diligent work ethic of the entire SFVBA staff. In particular, two beloved staff members are celebrating anniversaries: Executive Director Liz Post (15 years) and ARS Consultant Gayle Linde (10 years). On behalf of the Bar, it is with great honor that we congratulate them on this wonderful achievement. Please be sure to read the feature articles on both Liz and Gayle. Yes ladies, that's right. Surprise!

Thank you to those who contributed to the surprise article for Liz. Since she is heavily involved in the final editing process for *Valley Lawyer*, it was definitely a challenge creating fiction placeholder content that gave no hints to what was really under our sleeves. I'm just glad the days are over where I see ext. 101 on my phone and am nervous to answer, thinking she is suspicious; or staff having to immediately minimize the article on their computer screen as Liz casually appears to ask a question; but I must say, I am going to miss the staff whispering random code words for "Hide the article! She's coming!"

Also inside this issue of *Valley Lawyer*, we address Alternative Dispute Resolution. Knowing how to resolve conflict is not only a practical skill worth having, but also a powerful asset for many attorneys. Mediation is a process that gives individuals the opportunity to resolve conflict in a peaceful manner. An impartial, trained mediator facilitates a confidential, cooperative, and constructive discussion where the involved parties negotiate directly with one other.

Mediation promotes respectful communication. It provides the involved parties with the opportunity to be honest, move forward in a positive direction, create stronger relationships, manage anger and relieve the stress of unresolved conflict.

When your clients are looking for a way to avoid spending time, emotion and energy in a court battle, mediation is a worthy conflict-solving approach to recommend, which often results in a cost-efficient settlement for the disputants.

This month's articles on mediation and negotiation provide insight on how to resolve disputes peacefully and

professionally. Whether you are in the midst of settling a dispute or are helping a client to resolve conflict, we encourage our members to stay active with SFVBA's conflict resolution programs including the Mandatory Fee Arbitration Program and forthcoming Mediation Program. 📌

Have a peaceful month!

Angela M. Hutchinson

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ARS Thanks Referral Consultant Gayle Linde



ROSIE SOTO
Director of
Public Services

IN JANUARY 2009, GAYLE LINDE celebrated her 10th year as a full-time employee of the SFVBA Attorney Referral Service. Gayle became a full-time employee after making quite an impression as a “temp” with her accounting skills, organizational skills and strong interpersonal skills.

Over the course of her employment, Gayle has effectively referred over 10,800



cases to ARS panelists and assisted over 54,000 callers. She knows every ARS panelist from A to Z; she maintains good working relationships with coworkers, SFVBA members, ARS panelists and many community leaders.

Of those 54,000 conversations Gayle has held with ARS callers, there is no doubt amongst Gayle’s colleagues that Gayle will remember many of those clients. A name, the case type, a phone number, something will trigger her amazing mental filing system.

Gayle’s office is in the far right corner of the southern end of the SFVBA offices. Occasionally, one might see her sipping on coffee by 10:00 a.m., when she feels it’s going to be a long day. She walks

down the hall, says her hellos, and may crack jokes about the ancient office paper cutter that has been here longer than she has. She shares an office with colleagues where one can hear her one-sided conversation echo down the halls.

Gayle maintains a professional tone and takes control of a conversation as she sits upright either with arms crossed over her chest or her head tilted down, manually covering her exposed ear, attempting to minimize the unavoidable background noise so that she may give the caller her undivided attention.

Most ARS panelist know Gayle can distinguish each and every panelist – an unfair exchange of remembering names, one might think, but she makes that extra effort. Gayle monitors and administrators the case manager, percentage fees and ARS dues payments. She understands the importance of communicating with attorneys to follow-up on referrals, case status reports, insurance reports and miscellaneous matters. Gayle’s abilities to be acquainted with almost every returning client and ARS panelist benefits the ARS tremendously. Gayle recognizes her strengths and knows how to put them to good use for the benefit of the ARS.

Gayle receives hundreds of callers with a wide range of emotions. Her ability to show compassion and an understanding for what the person on the other line is feeling is vital. ARS

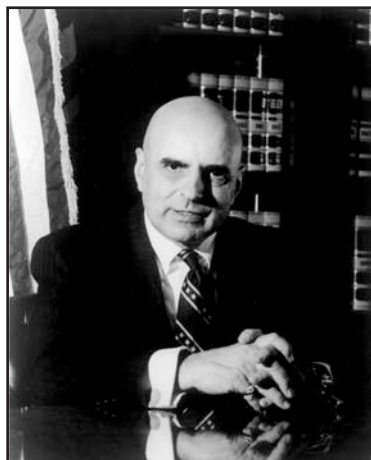
receives numerous surveys from callers that applaud Gayle for her efforts to kindly listen when they feel no one else would; they show gratitude and satisfaction with her services by actively referring friends and family members to contact her for a referral. She deserves recognition for comprehending all the legal matters callers are faced with.

Where does her passion come from? The Nebraska native brings the hardworking Midwest traditions to the ARS and an extraordinary degree of passion. Only she can confirm, but most who know her believe her drive comes from a desire to get breakthrough results for the ARS.

Gayle is currently enrolled in an ABA paralegal program at Pasadena City College. Her schooling along with her eagerness to partake in training sessions by panel attorneys and CLE programs help Gayle stay on the cutting-edge.

Gayle knows why she does what she does, why those around her do what they do, and what the ARS needs to stay successful. She is a secret weapon! When business is slow, she uses downtime to prepare to make changes and adjust; she doesn’t waste a minute worrying. Instead, she uses the time to pitch ideas and help find answers.

A special “Thank You!” to Gayle for her 10 years of hard work and dedication to the Attorney Referral Service of the San Fernando Valley Bar Association. 🐾



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An Efficient Way to Resolve Fee Disputes



By Jennifer Jimenez

WHEN AN INDIVIDUAL NEEDS TO RESOLVE a fee dispute with an attorney what should they do? Submit a request for arbitration of a fee dispute request to the San Fernando Valley Bar Association's Mandatory Fee Arbitration (MFA) Program. The MFA Program provides a procedure for clients and attorneys to resolve fee disputes as a low-cost and time-efficient alternative to court. The MFA Program has grown rapidly since the Program was reinstated in early 2007 after being inactive for more than a decade, processing more than 70 cases in 2007 and 2008.

In 2008, the MFA Program saw a huge increase in family law and criminal law cases. About 70% of the cases administered were family law or criminal law related. The Program is in dire need of additional family law and criminal law attorneys to volunteer as fee arbitrators to assist with the Program's overwhelming demand in this area.

Volunteering as a Fee Arbitrator is a great way to serve the San Fernando Valley community, as well as a learning tool to educate clients. The Program and fee arbitration parties appreciate the work and time an arbitrator contributes to each case.

All SFVBA members along with legal and business professionals are encouraged to participate as an Arbitrator in the MFA Program. A free Fee Arbitrator Training is scheduled for April 29, 2009 from 12:00 noon to 3:00 p.m. in the SFVBA conference room. Lunch will be provided and attendees earn 2.75 MCLE hours.

SFVBA MFA Committee Chair Myer Sankary and State Bar MFA Program Administrator Jill Sperber will address recent developments in fee arbitration and other important topics such as: writing an enforceable award, statute of limitations, effect of conflicts of interest, arbitrator disclosure requirements and controlling the proceeding.

Applications for Appointment to the Fee Arbitration Panel can be downloaded from the SFVBA website at www.sfvba.org/public/fee_arbitration.htm.

To register for the Fee Arbitrator Training, email jennifer@sfvba.org or call (818) 227-0490, ext. 110. 📧

Jennifer Jimenez is the Member Service Coordinator for the San Fernando Valley Bar Association. She administers The SFVBA MFA Program.



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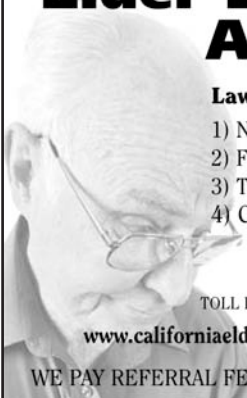
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eric@elblaw.com
Estate Planning, Wills and Trusts

Linet Bidrossian
Glendale
(424) 202-0148
linetbidrossian@gmail.com
New Admittee

Amy L. Clanton
Glendale
(818) 241-5939
amyclantonesq@gmail.com
New Admittee

Michael A. D'Andrea Jr.
Bremer Whyte
Woodland Hills
(818) 712-9800
mdandrea@bremerandwhyte.com
New Admittee

Andrea Douglas Diallo
Douglas Law Group
Encino
(818) 430-8938
andrea@dlglawgroup.net

Houman Esmailpour
Los Angeles
(310) 312-5401
hesmailpour@feldmanandassoc.com

Tamiko B. Herron
Owen, Patterson & Owen
Valencia
(661) 799-3899
tamiko@owenpatterson.com
Labor and Employment, Personal Injury

Lou Holtz Jr.
Office of District Attorney
Los Angeles
(213) 974-3512
hillgreen1@aol.com
Criminal

Susan R. Huerta
San Fernando
(818) 439-7899
suzyhuerta@earthlink.net
New Admittee

Shirley M. Isen
Law Office of John M. Isen
Sherman Oaks
(818) 501-9905
sisen@sbcglobal.net

Farzan D. Issapour
Law Office of David F. Issapour
Van Nuys
(818) 997-8926
davidissapour@aol.com
Criminal

Ken Kazan
Encino
(818) 501-6500
kenkazan@sbcglobal.net

Kevin Matthew Kim
Valenzuela & Ginzburg
Sherman Oaks
(818) 461-9066
New Admittee

Linda Kouy-Ghadosh
Sherman Oaks
(818) 380-3088
lindathetall@aol.com
New Admittee

K.C. McMenamin-Torres
Law Office of K. McMenamin-Torres
Westlake Village
(805) 491-8434
mcmenamintorresesq@yahoo.com
Labor and Employment

Laurie Freed Milman
North Hollywood
(818) 761-5348
lklorman@verizon.net

James R. Mooney
Westlake Village
(818) 879-9571
labfolks@sbcglobal.net

Deborah Brightman Morse
Valley Village
(818) 506-6540
deborahbmorse@gmail.com

Michael C. Murphy
Law Offices of Michael C. Murphy
Westlake Village
(805) 494-8929
murphlaw@cs.com
Business Law

Steven W. Paul
Encino
(818) 995-1200
steve@swpaul.com

Dorothy Blake Richardson
Woodland Hills
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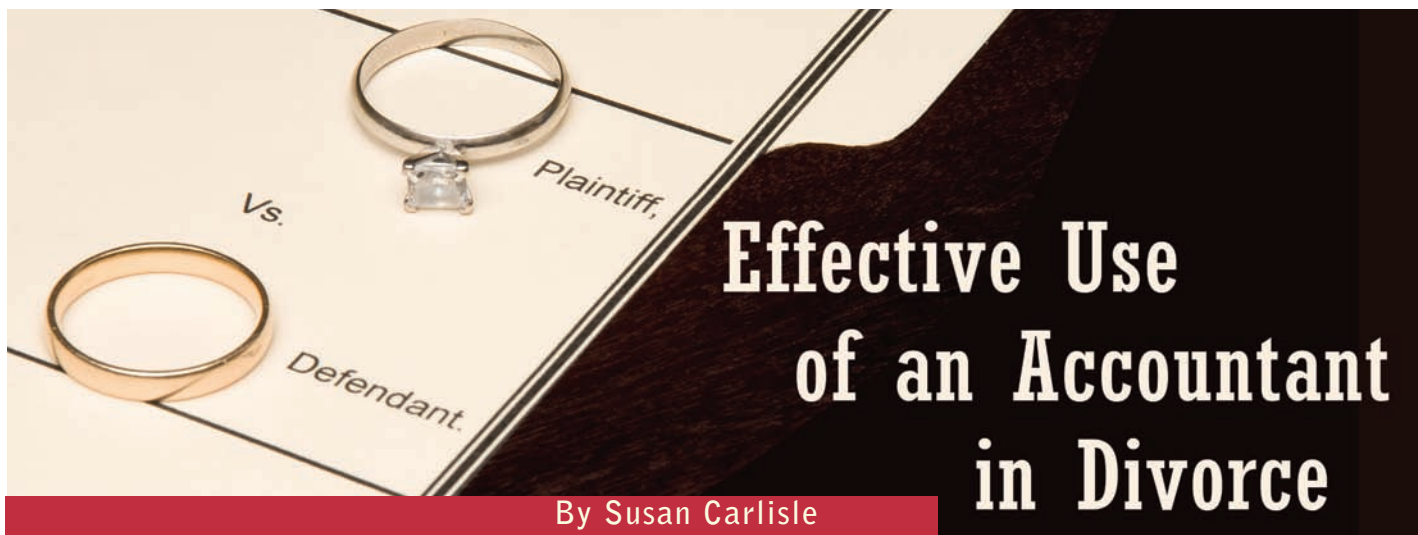
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Chatsworth
(818) 734-7223
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Pegah Shahriari
Glendale
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Pegah.shah@gmail.com
New Admittee

Chandra Gehri Spencer
Los Angeles
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cgs@cgsllaw.com

Margaret D. Wilson
Encino
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By Susan Carlisle

WITH THE RECENT downturn in the economy, people are feeling insecure about their jobs, their bank deposits, their credit card balances, their retirement account values, and most of all, the plummeting real estate market.

Real estate in general, and the family residence in particular, is proving to be more of a challenge these days to divorcing people. The house that was worth 40% more two years ago may be difficult to sell in a market where loans are harder to qualify for, even at a reduced price. With the double incentives of low interest rates and mortgage interest deductions, many people borrowed against their equity in the past few years to fund new cars, vacations, increased life style, and business start-ups.

While using their homes as surrogate ATM machines, shrinking home values may have left the family with little or no remaining equity. This puts an added burden on a divorcing couple, because selling the family home and buying two smaller homes may no longer be feasible. Therefore, it is even more important to talk to a family law accountant to weigh several options.

One of the thorniest issues in a divorce may be who gets to stay in the family residence, for how long, and who gets bought out. Especially when there are children involved, but even if there are not, a couple in a collaborative practice or mediation case may find ways to compromise with the help of their team. One possible solution may be for one parent to remain in the home with the children for a few years for a period of adjustment or for enough time for the children to complete the next stage of their education.

An accountant can help the couple work out a deferred sale and/or buyout a few years in the future. The current tax laws allow this plan to work if, and only if, both parents agree.


Selling the house and dividing the proceeds may not be the optimum solution, particularly during a poor real estate market. More divorcing couples are continuing to live in the same residence, albeit with creative partitioning. Some are remodeling the house in order to create separate kitchens, bedrooms and bathrooms for each spouse. If the property may be subdivided and/or zoning variances are approved, a duplex or "granny house" may be created.

Calculating each spouse's portion of the equity may be a challenge. Did one of the spouses own the home prior to marriage? Were there capital improvements made during the marriage? Was the original loan refinanced? If so, how often? Was cash taken out of the equity? Did one spouse go on title during the marriage? If not, was a quit claim signed? If so, why? Was the signer aware of the ramifications of signing away his or her interest in the real estate? These issues involve complicated calculations for potential reimbursements and equity splitting that a family law CPA can assist with. Of course, these are legal issues as well.

In a collaborative practice or mediated case, this type of information is more readily available, because both

spouses have pledged to cooperate, and to be honest and forthcoming with the details necessary to make a fair and equitable determination of the equity split. This cooperative attitude goes a long way to saving the couple considerable time and money in compiling the information and coming to an agreement with the assistance of the accountant and their attorneys or mediator.

The collaborative and mediation processes recognize that one spouse may need a little more help understanding the financial issues and making decisions as to whether or not he or she can afford to stay in the family home and for how long. The accountant may meet alone with him or her to review potential options and budget for the near future.

These are some of the reasons that working with a family law accountant in the collaborative or mediation process helps the divorcing couple talk about and resolve their financial and tax issues faster, better, and cheaper. 

Susan Carlisle, CPA specializes in accounting, taxation, financial planning and family law with a collaborative approach. She can be reached at carlislecpa@sbcglobal.net or (818) 888-3223.



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A Case Study of Time, Togetherness and Talk

By David I. Karp

RESIDENTIAL NEIGHBORS FACING THE unwelcome prospect of shared usage of their common hillside through a quiet title action for prescriptive easement recently settled. They agreed to an exclusive license agreement for a fixed period in exchange for dollars.

The younger, entrepreneurial neighbor seeking exclusivity had certain funds available to secure her privacy. Her elderly neighbor, who of course wanted to preserve his own property rights but could not see the parcel in question anyway from his home, also wanted to preserve his retirement funds otherwise to be drained by litigation expense and to bolster his financial resources for the hard times ahead.

Neither exclusivity nor payment is the usual court-outcome in a residential prescriptive easement lawsuit (see, e.g., *Harrison v. Welch* (2004) 116 C.A.4th 1084, 1090, 11 Cal.Rptr.3d 92). Consequently, in this example of a creative outcome in real property disputes, the result came for the parties via mediation, but neither easily nor quickly.

Fortunately for the described disputants, their competent counsel understood the mediation process well enough to

allow for the settlement to develop with time, togetherness and talk.

In *To his Coy Mistress*, Andrew Marvell wrote, "But at my back I always hear / Time's winged chariot hurrying near." Some litigators seem to hear the same message inside. They start the mediation session insisting, "We only have three hours to get this done." They constantly look at their watches. In the described mediation, the attorneys had the wisdom to allow time for the process to develop.

In so doing, the lawyers gave the mediator the freedom to set the stage in an extended joint session and thereafter to engage the parties privately to reveal their real interests, needs, goals, fears, expectations, and hopes.

Many fear the joint session. Winston Churchill is reported to have said, "My wife and I tried two or three times in the last 40 years to have breakfast together, but it was so disagreeable we had to stop."

Because many litigators naturally fear the inherent emotion and occasional barbs or outbursts that can occur from any conflict, some litigators begin their mediations by stating, "We need to be in separate caucuses so we can start the negotiations right away." The attorneys in the described mediation knew better.

They knew that the parties could be together for a joint session, guardedly perhaps, if prepared in advance, and that negotiation would come later.

In the joint session that occurred because the lawyers understood its purpose and trusted the mediator to manage it, the mediator introduced the parties to the process, described what would take place throughout the day and then led the parties to focus on (and to limited degree share with each other) their respective needs and interests rather than their legal positions.

The parties listened, talked, learned to understand more about the process, themselves, and their motivations/emotions in pursuing the conflict, found out more about each other, and set upon the path to find a solution that would fit the needs of both sides and that *both* sides could tolerate.

Later, the parties separated for private caucuses and to conduct the negotiation. Then, through the course of the day, with introspection and guidance, many creative possibilities emerged that led to an agreed result after nine hours.

This resolution would not have occurred without the wisdom of counsel in allowing for time, togetherness and the heart-to-heart talk that gave rise to neighbors repairing their relationships and surmounting their difficulties. 🐼

David I. Karp is a full time mediator of real estate and business disputes with offices in Van Nuys. He can be reached at david@karpmediation.com or at (818) 781-1458.



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The Raisin and the Negotiator

By Steven G. Mehta

WOULD YOU BELIEVE THAT eating a single raisin or piece of chocolate can help you become a better negotiator? It is not the fact that you are eating the raisin, but instead on how you eat the raisin that can make the difference.

Many times in mediation, the other side may do something that may make an attorney angry or upset. During those times, a person may be the most vulnerable to making a bad choice or decision based upon an emotional reaction. In fact, many negotiators or litigators will sometimes learn how to “push buttons” in an attempt to try to accomplish their negotiating goals.

In one recent case, an opposing attorney wanted the defendant to put more money on the table to settle the case. The defendant's attorney would have recommended more money to be offered. However, the plaintiff's attorney then attacked the defendant's attorney's ethics in an attempt to try to create a separation between the defendant and his attorney. Enraged by the accusation, the defendant's attorney refused to consider any further discussions and attempted to end the mediation. An hour later, cooler heads prevailed and the mediation continued to resolution.

Rather than risk the deal, it is important, however, to understand that there are simple ways to control those negative emotions when confronted by a personal affront or insult which will allow the attorney and the client to make better decisions.

Recently, researchers Whitney Heppner and Michael Kernis of the University of Georgia have discovered that mindfulness and being in the moment helps to inoculate a person to aggressive impulses. Heppner and Kernis studied how experiencing the moment can reduce aggressive tendencies. In their study they told subjects that they that there was going to be a vote as to whether the subjects can join a particular group. The Participants were then told that they were wholly rejected or accepted. Shortly prior to the experiment, half of the group was also told to savor a single raisin by

enjoying it through all senses of taste, feel, smell, sound, etc.

Later, in what the participants thought was a separate experiment, they were given an opportunity to act aggressively towards a total stranger by delivering a painful blast of noise. Among the subjects that did not eat the raisin, those that were rejected from the group chose to become very aggressive, inflicting long and painful sonic blasts without provocation. On the other hand, the subjects that ate the raisin, regardless of whether they had been embraced or rejected, were serene and unwilling to inflict pain on others.

Other studies have also shown that being mindful of simple experiences such as through meditation or deep breathing can have a significant positive effect on a variety of behaviors including stress reduction, stress reaction, attitudes towards strangers, and anger. Indeed, according to Russ Harris, a medical doctor, counselor and author of *The Happiness Trap*, “if you bring mindfulness to bear on negative feelings, they lose their impact. Just let them be there without struggling against them, and you'll eventually feel less anxiety and depression.” According to the January edition of *Psychology Today*, a person shouldn't banish negative feelings, but should also not let them get in the way of taking productive actions, either.

According to Kernis, the reason that mindfulness helps reduce aggression is because “mindfulness decreases ego involvement. So people are less likely to link their self-esteem to events...” He further explained that mindfulness also helps to regulate self-behavior since it helps to prevent bruises to a person's ego.

This research can help prepare for a negotiation in several ways. First, before any negotiation, the attorney should take a few moments to appreciate breathing, savor a piece of candy or simply take a few moments to himself or herself. By doing so, that person can then be in a better frame of mind to handle the stresses of aggressive negotiators or opponents. Moreover, as noted above, when something untoward does happen during

the negotiation process, they are less likely to take it personally or involve their ego. Rather than being affected by the emotional outburst, the attorney can affect the emotional outburst by reacting appropriately.

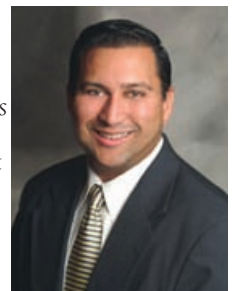
Another strategy is to take a pause from negotiations when something negative or untoward happens. It is very easy to make an excuse such as the need to use the restroom or get some coffee before responding to a tactic. Then by focusing on mindfulness, a person can better see the solution or response without the diversion of emotion.

If leaving for a short moment is impossible, it is also possible to simply ask for a moment to consider the option that has been provided. Even a few deep breathes focusing on the moment can sometimes be enough to help calm the senses. The old adage of taking ten deep breaths before responding can sometimes be very useful.

Finally, another simple tool to avoid getting emotionally affected by a negative outburst is to simply label the tactic for what it is. For example, if an opponent is using a good cop bad cop routine or emotional terrorism, it is easy to label the tactic, and then consider the response to the tactic. Often the mere fact of labeling something makes it more manageable and less personal.

Many researchers have found that being mindful of events and surroundings is the key to happiness. Not only does such activity create happiness in life, but it also provides a tool to be able to get better results in negotiations and mediations. 📌

Steven G. Mehta, Esq. is a full time mediator specializing in complex and emotional disputes such as elder abuse, employment, medical malpractice and personal injury, business and real estate matters. He mediates throughout California and can be contacted through his website www.stevemehta.com.



Spotlight on SFVBA Executive Director Liz Post

By SFVBA Staff

THIS MONTH MARKS THE 15 year anniversary for SFVBA Executive Director Elizabeth (Liz) Post. When Post first joined the San Fernando Valley Bar Association, there were only 800 members. Through Post's leadership, the Bar has recruited over 2,100 active members.

Post was hired by Former SFVBA President Fred Gaines. "She was young, energetic and had an impressive educational background," says Gaines. "Her greatest strength is her hard work, creativity and the ability to create consensus for change (like our new President Obama)."



A New York Native, Post graduated from Syracuse University in New York with a bachelor's in Political Science. She earned her master's in Public Administration from New York University.

After working for her Congressman in DC as his legislative director, Post eventually relocated to Los Angeles to pursue her non-profit management endeavors.

The SFVBA staff, members and affiliates proudly salute Post for her commitment to excellence.

From the Bench

"Beyond being an extraordinary organizer, administrator, and leader, Liz is an extraordinary diplomat.

She manages to work with the widest range of personalities to accomplish important projects. Given that she frequently collaborates with judges and lawyers, this is no easy task.

I know that if the bar has a job to get done, Liz is the one who will make sure it happens on time and on budget!"

~ Judge Alice Hill

"Liz is literally the "bridge" between the bench and the bar. She makes it all happen. Her hard work and expertise have been the key to the outstanding relationship our lawyers and judges currently enjoy.

~ Judge Robert Schuit

From the Bar

"Liz: More than meets the eye. We could not do it without her."

~ SFVBA President Tamila Jensen

"Liz is truly extraordinary in her ability to efficiently manage the Bar Association. She is consistently looking for ways to improve services to our members and her commitment to the organization and its leaders made it a pleasure to work with her during my tenure as President."

~ Past SFVBA President Sue Bendavid

"Liz has been a driving force which has kept the SFVBA on an even keel for the past 13 years. She is always looking towards the next year with an eye on new programs and benefits for our members. Liz has always ensured that the door of the SFVBA is open to the membership."

~ Past SFVBA President Pattie McCabe

From the Affiliates

Liz is the type of person who makes my job the best job at the Bar. Liz, will you ever forget the road trip to Pismo Beach?!

~ Carol Madeja,
Director for The State Bar of California

"Liz is one of the most intelligent and caring people that I know. To sum it up, she is great to work with."

~ Jamshid Javidi, President of CEO Computers (SFVBA IT Service Provider)

"Liz is the only person who can convince our graphic department that designing "something conservative, but fun" is actually possible. I feel very fortunate working with her."

~ Marina Senderov, Master Graphics Printing

From the Youth

"My mommy is the greatest and beautiful like a princess."

~ Hannah

"Thanks Liz for your advice to my sometimes clueless new mommy."

~ Alexander

From the Staff

"Liz has inspired and encouraged me to achieve more than I could have imagined. I'm now completing my masters in public administration, just like Liz did. If only she could have paid my tuition."

~ *Aileen Jimenez, ARS Consultant*

"You might think she's strictly by-the-book kind of person which is a good thing considering we're a Bar Association but you should see her at a Bruce Springsteen concert or at a Mets game or chasing Hannah!"

~ *Linda Temkin, Director of Events*

"Liz is not only a boss, but a dear friend with very special qualities that set her apart. Every now and then you'll catch a glimpse of her east coast ways, but I feel that a vast majority of her heart is in the Valley."

~ *Rosie Soto, Director of Public Service*

"It is truly a blessing to work for such a witty, humble and intelligent boss. Liz is a very inspirational role model for me in terms of public service, career and family."

~ *Angela M. Hutchinson, Communications Manager & Editor*

"Liz has always been very supportive of the staffs' continuing education and because of her flexibility I have been able to go to night school and will eventually earn my paralegal certificate. I don't know many bosses that make those kinds of accommodations for their employees."

~ *Gayle Linde, ARS Consultant*

"I enjoy when Liz shares her family stories, especially the adventures with her Disney Princess Hannah!"

~ *Lucia Senda, ARS Consultant*

"Liz is like my work mom; she can be light and funny but when she means business she means it."

~ *Jennifer Jimenez, Membership Coordinator*

"The qualities that make Liz an excellent mother, also make her an excellent Executive Director. She is fiercely protective of the well being of her charges, determined that both will have productive and financially secure futures, and that both will receive the proper measure of discipline and Happy Meals."

~ *Michele Morley, Consultant*

San Fernando Valley Bar Association



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Essential Negotiating Skills

A New Perspective

By Myer J. Sankary, Esq., CMCT



NEGOTIATING IS ONE OF THE core skills for all professionals. Many negotiators rely solely on intuition and conventional wisdom, but fail to achieve their objectives, leaving lots of money on the table. Lawyers can benefit from learning new perspectives about how to negotiate effectively using a reasoned and systematic approach while maintaining awareness and proper use of the power of intuition.¹

There are many interrelated aspects about negotiations that are studied and analyzed in business schools that are not taught in law school. For example, this article will discuss the four critical stages of a negotiation that shed light on how one can create a better strategy for reaching your negotiation objectives.

Other areas of study that are equally important include understanding and applying the new social science of persuasion to the art of negotiations; how to level the playing field with power negotiators; how to make smart decisions in the face of uncertainty; understanding the common mistakes that derail negotiations; how to use emotions and psychology to gain an advantage, and how to use the understanding of game theory to advance your negotiation skills. This is a view of negotiations from experienced

practitioners who have conducted successful negotiations in a variety of situations, including making deals, settling disputes, and winning in court.

Because negotiation strategies and tactics are so important, many lawyers are turning to negotiation coaches to assist them in planning a negotiation strategy and implementing tactics. A coach is an experienced negotiator who has not only studied the extensive literature in the field, but has years of practical experience as a lawyer, mediator, and educator and can assist lawyers in advancing their negotiation skills.

We acknowledge that every lawyer knows how to negotiate – to a degree. Every salesman knows something about selling. Every manager knows something about running a company. But how many lawyers, salesmen and managers are truly successful and effective negotiators. We negotiate every day, with our family members (did you ever negotiate with a three-year-old about bedtime or a teenager about staying out late?), and we negotiate with just about everyone we deal with every day.

The problem is that our own success, even though sometimes limited, oftentimes interferes with our ability to move to the next level to

becoming a more effective and efficient negotiator. By becoming complacent, we will tend to slide backwards into comfortable old habits that may have worked in the past, but do not serve us well in the future.

This article will introduce you to some of the latest ideas about negotiation strategies and tactics by two Harvard Business School professors,² Lax and Sebenius, and will provide a framework from which you can draw consistently to increase the likelihood that you will be able to achieve your objectives either for yourself or for your client.

There are four major phases, known as “SDTD”, in preparing for and participating in negotiations:

1. The Setup away from the table
2. The Design at the drawing board
3. The Tactical exchange at the table
4. The Decision in the face of uncertainty

Lax and Sebenius persuasively argue that negotiators mistakenly focus on only one dimension at the negotiating table of a “win-win” or “win-lose” approach to negotiations. In reality, there are at least three major dimensions to more effective

negotiations plus a final stage of making a decision in the face of uncertainty whether to accept or reject the last and final offer or demand. Like an architect, the negotiator must first plan the structure of the negotiations before he or she can successfully build the components of a final agreement.

Your negotiating objective should focus on creating value as well as claiming value with a view toward building relationships and implementing an agreement that will be satisfactory for all parties, an agreement that everyone will want to commit to and live up to the letter and spirit of the agreement. The most serious mistake a negotiator can make is failure to implement a systematic strategy that incorporates each of these vital components. In every negotiation, Lax and Sibenius suggest that there are three dimensions to keep in mind.

The Setup

Consider what moves you can make away from the table to set up the most promising situation once you are at the table. The "Setup" entails planning to ensure that the right parties are involved, the right sequence, the right issues, the right set of interests, the right table or tables, the right time, under the right expectation, and having the correct understanding of the consequences of walking away if there is no deal. (Remember there are times when no agreement is better than agreement.)

As you plan for your next negotiation, consider who should be at the table and what each of their interests are. For example, lawyers may represent the interests of their client, but there is also an agenda that lawyers have that differ from that of their client that may affect the deal.

Focus on interests, not positions. An "interest" is what a party seeks to achieve by the negotiations and what he or she cares about that is at stake in the process. It may or may not be money. When negotiating to purchase or lease real estate, price is important, but the need for the property, its convenience, the timing of occupancy, its utility for the buyer, amount of down payment and future payments, improvements, modifications, etc. are all important elements to be considered when making the best deal. Whether a person is purchasing a home or commercial property, many interests are in play for both the buyer and seller. The skillful negotiator will consider both his or her own interests as well as the interests of the other party.

Understand the importance of the "No-Deal" option! A common mistake by negotiators is the belief that they must make the deal at all costs. However, your ability and willingness to walk away from a deal often will strengthen your bargaining position. Sometimes you are better off not entering an agreement. Suppose you are planning to buy a car from a salesman. Assume two situations. In one, you and your spouse discuss with the salesman that the car he has shown you has everything you want, you are in urgent need of a car because your clunker might not get you home, and you haven't seen any other car that suits your needs as well as this one.

In the other situation, you and your spouse tell the salesman that you have some doubt about whether the car has all the features you want, that you have seen another car B at

another dealer who has offered you a lower price than what this salesman has offered, and you preferred the color of other car. In which scenario will you more likely get a better deal?

Your analysis of the "No-Deal" option will prepare you to determine whether or not there is a Zone of Possible Agreement, the ZOPA, with your negotiating partner. If you have a Better Alternative to this Negotiated Agreement (your BATNA) then you will know whether you are better off walking away from this deal. In fact, one of the most important tools you have against a more powerful negotiator is your BATNA.

The importance of the Setup phase of the negotiating process is to understand not only your own No-Deal option but also the No-Deal option of the other party. If you believe that the offer you are making will clearly be rejected by the other party, you have created a situation where the other party's No-Deal option will be better than what you are proposing. Hence, you have given the other party a powerful tool and incentive to walk away from this agreement. On the other hand, in order to strengthen your own hand, you will want to let the other party know the viability and desirability of your walk-away alternative. If the other party wants to make a deal with you, they will have to make a proposal that is in the Zone of Possible Agreement, or they will lose the deal.

The Use of Persuasion and Influence. Prepare in advance for your face-to-face meeting at the negotiating table by determining how you might best use the six principles of



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persuasion. These principles will guide you about how to be more effective and influential in getting others to agree to your proposals.

The Deal Design

Give consideration to all of the elements of the transaction, with attention to the needs and interest of all the parties. Negotiations is a process of creating value and claiming value – as well as a process of competing and cooperating. Negotiators frequently make the mistake that the only way to reach their objective is to act competitively to claim the largest share of the fixed pie. Aggressive, competitive negotiators often do not get the best deal – they are ego-driven and concerned about winning – claiming the largest share of the fixed pie. They missed the opportunity of increasing the pie for both parties.

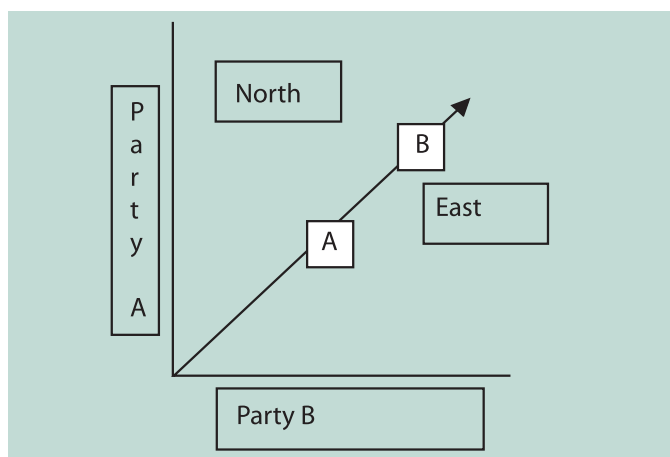
By focusing on the Deal design, the negotiator's attention is drawn to the task of creating a bigger pie that can satisfy the needs and interests of both parties with the objective that each party will benefit more from the terms of the deal. Lax and Sebenius suggest that using a drawing board metaphor where the negotiator views the task at hand not as one to divide a fixed pie, but rather as a joint effort to move northeast – a landscape image where the parties find agreement by each moving to maximize and satisfy their needs and interests. "If north is the direction that I want to go, and east is the direction you want to go, then moving northeast may be a very attractive option. In fact, it may be the best option for all parties, better than any of them could do on their own

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MOVING NORTHEAST – FINDING A BETTER SOLUTION FOR BOTH PARTIES BY INCREASING THE PIE. START WITH UNCOVERING THE DIFFERENCES THAT WILL MAKE FOR THE BEST TRADEOFFS. (E.g. the story of the two sisters who both want the one orange. How can they maximize their interest?)



Deal design is all about finding creative ways to increase the pie for you and the other party. Although it may seem counterintuitive, the parties should probe to find how their interests are different, so that they can find ways to make exchanges that allow for one side to give something of low interest to him/herself but of high value to the other side. In

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short, look for ways to dovetail differences to create value. Not only should you look for common ground, but you should create value from differences of interest among the parties.

In developing the design for the deal, consider maximizing the net "value pie" that is available to the parties. The net value is that remaining after costs (legal fees, delays, investment of time of the parties) have been accounted for. In building consensus, it is helpful to compare the overall value created by your northeast moves with the value that was available before those moves. The overall value relative to those compromises should be greater than your starting point, and definitely better than the no-deal alternative. The final deal should incorporate the highest net value and the lowest net cost to the parties.

Examples of this type of exchange is found in the case of selling a business where the Seller places a higher value on the business and the Buyer places a lower value, each having a difference in projection of future earnings. Using the "earn-out contingency," the seller pays less if the earnings do not meet expected levels, but pays more if they do.

Structured settlements is another example of bringing the interests of the parties together by exchanging values – the plaintiff wants higher long term monthly payments over time but the insurance company wants to pay less up front to settle the case. The structured settlement meets the needs of both plaintiff and the insurance company.

Tactics at the Table

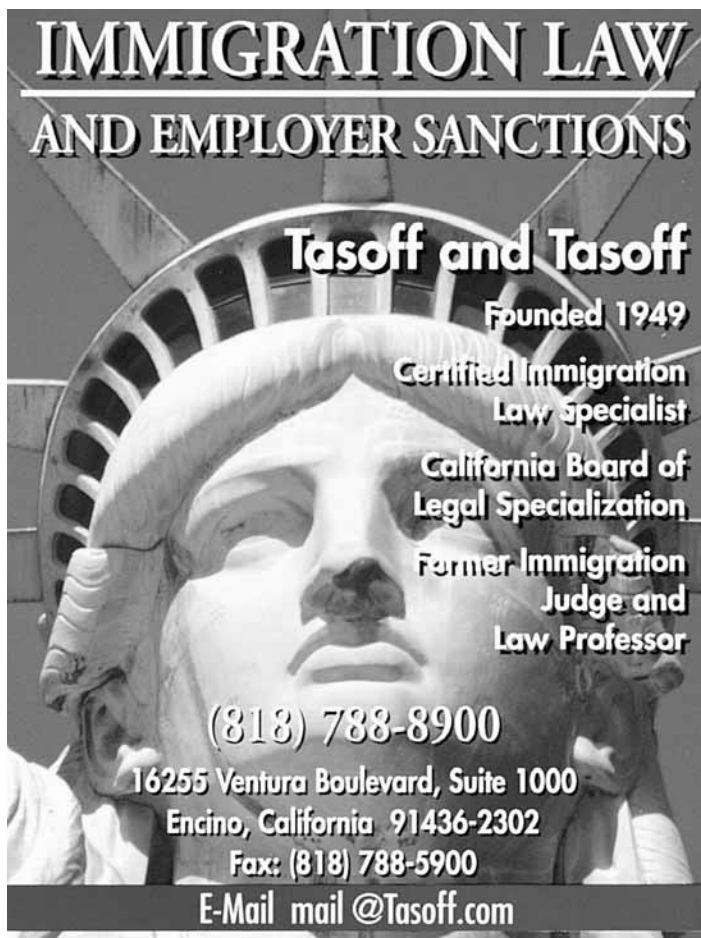
What moves will you make when facing the other side at the table, what information will be exchanged, how will you treat the other parties, and what tone and attitude will you use. In this phase of the negotiations you are trying to claim value. What tools will you use to maximize your claim?

Using Distributive Bargaining. Your opening demand or offer will set the tone and guide you through the next moves you will make to reach your objective. How much should you offer or how much should you demand? In the Setup phase you should have considered the value of your claim, or the value of the business your client wants to purchase. You will then make an offer or demand that will maximize your opportunity to claim value. But the challenge is to make the proposals within the Zone of Possible Agreement (ZOPA). "You will want to shape perceptions to claim value."

Your minimum [-----] Their maximum
Zone of Possible Agreement

The ZOPA is that range of possible of agreement in which it is better for both sides than the no-deal option. You will want to influence the other person's perception of what is acceptable to you. Ideally, as seller, you will want to end up with a price close to their maximum and as buyer, you will want to pay the minimum that is acceptable to them.

Framing is an important part of the psychological advantage you can gain by framing the transaction in a way that favors your position. In a series of studies, the investigators found that negotiators who focus prior to the negotiation on what they hope to achieve do better in price



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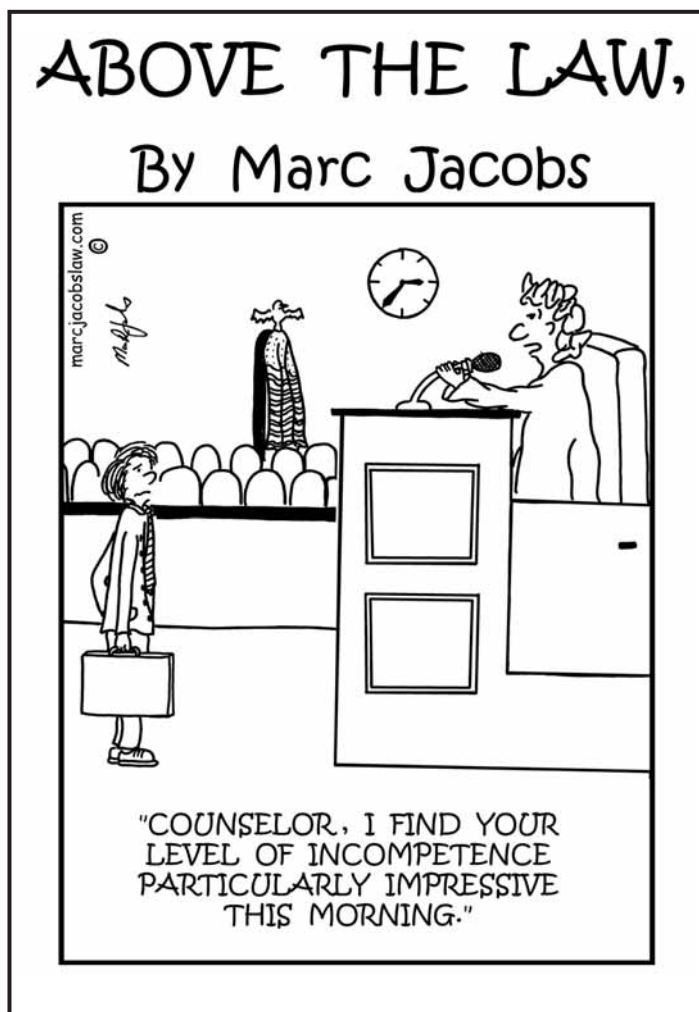
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negotiations than those who focus on what they hope to avoid. This suggests that you should approach the negotiations consciously setting your target where you want to end up. Your target should be ambitious – try to hit the best target possible – this will generally encourage you to use more effort in all aspects of your negotiations.

Your opening offer or demand should be just above the most that the other side might be willing to pay. Then you will have room to make concessions that will lead to the ZOPA. (It is essential that you have made a demand sufficiently high or an offer that is sufficiently low so that you have room to make credible concessions so that you activate the reciprocity principle.)

Should you make the first offer or demand? Your justifiable concerns are that if you do not make the demand ambitious enough, you will leave money on the table. But if you are too aggressive, then you will offend the other side, damage your credibility, adversely affect the relationship, and possibly derail the negotiations. What to do? If you do not have enough information to know the true value of what you are seeking, you may want the other side to make the first offer. On the other hand, if you are confident in the amount you should pay or accept for any transaction, then you can gain an advantage by making the first offer that is ambitious because you will be taking advantage of a psychological principle known as “anchoring.”



Decision in the Face of Uncertainty

In many studies, people who must make a decision in the face of uncertainty are influenced by the numbers offered by those who have an interest in the transaction. Whether to accept a final offer of settlement in a lawsuit requires the offeree to make a decision not knowing for certain whether he will do better by going to trial. One must calculate the probability of winning and deduct the costs of litigation and compare this number against the settlement offer. By making the first proposed demand or offer you have established an anchor which can influence the outcome in your favor.

When an anchor is introduced into the negotiation, it can shift perception of the ZOPA in its direction, thereby increasing the likelihood that a final agreement will drift toward the anchor. The result is that a final agreement will favor the one who dropped the first anchor. (A word of caution! If you are unable to provide any reason or justification for your aggressive proposal, the anchor will be ineffective and may indeed sink your cause. Such a move can be counterproductive because you will lose credibility and appear to be unreasonable. Studies have confirmed that giving a reason for your request will substantially increase the likelihood that the other side will accept the validity of your request.)

Conclusion

This discussion is only a beginning toward advancing your negotiation skills. It is worth spending your time reading some of the latest literature on negotiations. One of the best sources of short articles on a variety of topics is the *Negotiation* monthly newsletter from the Harvard Program on Negotiations. Also, an excellent recent book on negotiation for lawyers is Barry Goldman's "The Science of Settlement" (2008 ALI/ABA). Another good way to get ahead of the game is to consult with an expert negotiating coach. You can become a winner at the negotiation game by applying effort and learning from others. 🐘

Myer Sankary is an expert negotiating coach with 42 years of experience in law. He is Chair of the SFVBA Mandatory Fee Arbitration Program and a member of the State Bar Committee on MFA. Sankary graduated Harvard Law School in 1965 and is now a full time mediator with ADR Services, Inc. Sankary can be contacted at (818) 231-2965 or myerj@sankary.com.



¹ Many new publications by psychologists promote the advantages as well as the drawbacks of using intuition. See David Myers, "Intuition, Its Powers and Perils," (Yale U. Press, 2002); Gerd Gigerenzer, "Gut Feelings; The Intelligence of the Unconscious," (Viking Penguin, 2007); Gary Klein, "The Power of Intuition," (Currency, 2003); Malcolm Gladwell, "Blink," (Back Bay Books, 2005).

² "3 D Negotiations; Powerful Tools to Change the Game in Your Most Important Deals," by David Lax and James Sebenius (Harvard Business Press 2006)

MCLE Test No. 9

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. Negotiation is one of the core skills for all professionals.
True
False
2. Many negotiators rely solely on intuition and conventional wisdom but succeed anyway because they are lucky.
True
False
3. Lawyers would benefit from studying negotiations strategies taught in business school and include in their studies how to apply the social science of persuasion.
True
False
4. Negotiation success oftentimes interferes with our ability to move to the next level to becoming a more effective and efficient negotiator because we become complacent.
True
False
5. Negotiators should focus on only a "win-win" or "win-lose" approach to negotiations.
True
False
6. Lax and Sebenius suggest that there are three major dimensions to more effective negotiations plus a final stage of making a decision in the face of uncertainty.
True
False
7. Negotiating objective should focus more on claiming value than creating value in order to satisfy your client's interest.
True
False
8. The most serious mistake a negotiator can make is the failure to implement a systematic strategy that incorporates the vital components of setup, deal design and tactical execution.
True
False
9. The Setup is the stage when you figure out how you can best take advantage of your opponent and create enough pressure to extract the biggest concessions.
True
False
10. Proper planning ensures in advance all of the following are in place before negotiations begin: that the right parties are involved, the right sequence of events, the right issues, the right set of interests, the right time, the right expectation, and the right type of food to be served for dinner.
True
False
11. When negotiating, you should never walk away from a deal, because a poor agreement is always better than no agreement at all.
True
False
12. Lawyers may represent the interests of their client, but there is also an agenda that lawyers have that may differ from that of their client that can affect the deal.
True
False
13. A good negotiator should focus more on their client's bottom line than the interests of a party, because the only thing a party should care about is getting the maximum amount of money possible.
True
False
14. The skillful negotiator does not need to consider the interests of the other party because the interest of the other party does not matter in getting the best deal for their client.
True
False
15. Your ability and willingness to walk away from a deal often will strengthen your bargaining position because sometimes you are better off not entering an agreement.
True
False
16. The ZOPA is the zone of probable action that will be required for achieving a successful deal.
True
False
17. Knowing your BATNA is helpful because it will help you to know whether you will be better off walking away from the deal that is offered to you.
True
False
18. Negotiation is a process of creating value and claiming value as well as a process of competition and cooperation.
True
False
19. Aggressive competitive negotiators always get the best deal for themselves and their clients because they intimidate their opponents.
True
False
20. To move northeast is a way of describing a negotiating objective where the parties find agreement by each moving to maximize and satisfy their needs and interests by increasing the pie and claiming a fair share.
True
False

MCLE Answer Sheet No. 9

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$15 testing fee for SFVBA members (or \$25 for non-SFVBA members) to:

San Fernando Valley Bar Association
21250 Califa Street, Suite 113
Woodland Hills, CA 91367

METHOD OF PAYMENT:

- ☐ Check or money order payable to "SFVBA"
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5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0490, ext. 105.

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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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8.	<input type="checkbox"/> True	<input type="checkbox"/> False
9.	<input type="checkbox"/> True	<input type="checkbox"/> False
10.	<input type="checkbox"/> True	<input type="checkbox"/> False
11.	<input type="checkbox"/> True	<input type="checkbox"/> False
12.	<input type="checkbox"/> True	<input type="checkbox"/> False
13.	<input type="checkbox"/> True	<input type="checkbox"/> False
14.	<input type="checkbox"/> True	<input type="checkbox"/> False
15.	<input type="checkbox"/> True	<input type="checkbox"/> False
16.	<input type="checkbox"/> True	<input type="checkbox"/> False
17.	<input type="checkbox"/> True	<input type="checkbox"/> False
18.	<input type="checkbox"/> True	<input type="checkbox"/> False
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20.	<input type="checkbox"/> True	<input type="checkbox"/> False

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FEE ARBITRATOR TRAINING**

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

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

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

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

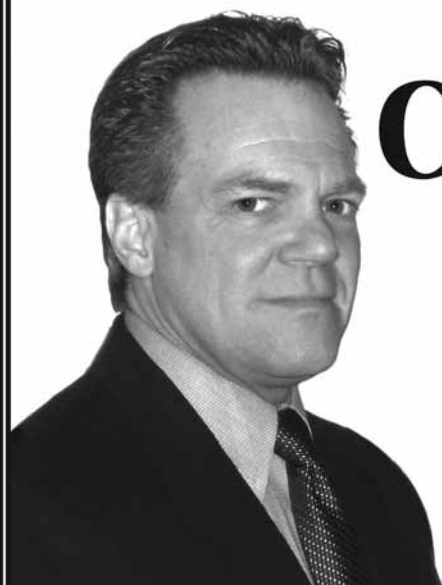
Your support and continuing education have been critical to the Program's success. Please take this opportunity to stay abreast of recent developments in the area of fee arbitration.

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Members of the State Bar of California will receive Mandatory Continuing Legal Education credit for a total of 2.75 hours
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The State Bar of California is a State Bar of California MCLE approved provider.

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

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



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Santa Clarita Valley Bar Association

Highlighting Upcoming SCVBA Events



**ROBERT
MANSOUR**
SCVBA President

THE SANTA CLARITA VALLEY Bar Association just had a very successful Winter Mixer at El Torito Restaurant in Valencia. There were nearly 60 lawyers along with three local judges who showed up to mingle and learn more about their colleagues. To view some pictures from the event, please visit the Santa Clarita Valley Bar Association's website at www.scvbar.org.

On February 19, Santa Clarita Site Judge Graciela Freixes addressed the association about many issues facing the judiciary, including a huge recruitment problem. The economy is affecting everyone, and the judges are not immune from the State's budgetary woes. Judge Freixes also addressed some local issues affecting the local Santa Clarita courthouse.

Meetings are held monthly at the Tournament Players Club in Valencia; the address is 26550 Heritage View Lane. (To learn more about the beautiful facility, please visit their website at www.tpcvalencia.com.) In order to attend any of the SCVBA meetings, please visit www.scvbar.org to RSVP.

The SCVBA had some very interesting programs on deck. On March 19, Judge Alan Haber will be discussing effective mediation techniques with the membership. This presentation will be a dinner meeting. Networking begins at 6:00 p.m., with the presentation and dinner to follow at 6:30 p.m.

On April 16, Scorpion Web Design will be leading a very exciting discussion regarding effective law firm website design. For the last several years, Scorpion Web Design has provided excellent web site design services exclusively for lawyers. They really understand the industry and

how clients approach the Internet. Scorpion will be discussing how to make sure your website is as effective as it can be.

From basic site design to back-end site management, this lunch presentation promises to provide some great insight to the new advertising frontier a law practice must master to thrive during the information age. Networking begins at 11:30 a.m. and the presentation and lunch begins at noon.

On May 21, another dinner meeting will focus on the latest technology to hit our courtrooms. Those wishing to present cases more

effectively in court, and perhaps better hold a jury's attention, may wish to attend this informative presentation on the latest technologies available.

The SCVBA is still working on programs for the rest of the year, but some exciting topics are in the pipeline. New ideas are always welcome. Once again, everything is subject to change so members and friends are encouraged to check the website for the latest information.

To be on the SCVBA email list, please email subscribe@scvbar.org. To receive monthly postcard reminders, please email mailing information to info@scvbar.org or call (661) 287-3260. ✉

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Calendar

Probate & Estate Planning Section No Contest Clauses

MARCH 10
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney Marshall Oldman of Oldman Cooley will discuss the ins and outs of No Contest clauses.

MEMBERS	NON-MEMBERS
\$35 prepaid	\$45 prepaid
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1 MCLE HOUR	

Small Firm & Sole Practitioner Section

Nuts and Bolts of Remedies Practices

MARCH 11
12:00 NOON
SFBVA CONFERENCE ROOM
WOODLAND HILLS

Attorneys Mark Share and Michael Abrams will discuss the nuts and bolts of Remedies Practices in an unpredictable economy.

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

Women Lawyers Section Creating a Bigger Presence on the Web

MARCH 17
12:00 NOON
SFBVA CONFERENCE ROOM
WOODLAND HILLS

What does it mean to have a web presence? Legal Marketing Specialist Deborah Downs will walk attendees through the critical steps. Sponsored by LexisNexis.

MEMBERS	NON-MEMBERS
\$15 prepaid	\$25 prepaid
\$25 at the door	\$35 at the door

Workers' Compensation Section *Ogilvie, Almazar/Guzman and Benson: Comp Law vs. the Law of Uncertainty*

MARCH 18
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Theodore Hanf of Kegel, Tobin & Truce will discuss these latest en banc decisions by the California Workers' Compensation Appeals Board concerning the 2005 Permanent Disability Rating Schedule.

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

Santa Clarita Valley Bar Association Effective Mediation Techniques

MARCH 19
6:00 P.M.
TOURNAMENT PLAYERS CLUB
VALENCIA

Judge Alan Haber will be discussing effective mediation techniques with the membership.

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

Litigation Section How to Economize the Cost of Litigation

MARCH 19
6:00 P.M.
SFBVA CONFERENCE ROOM
WOODLAND HILLS

Judge Michael Hoff, Ret. will outline the ways in which you can minimize the high costs of litigation and discuss alternative resolution solutions.

MEMBERS	NON-MEMBERS
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1 MCLE HOUR	

Family Law Section Family Law Judgment Processing

MARCH 23
5:30 P.M.
MONTEREY AT ENCINO RESTAURANT
ENCINO

Mike Braverman and Carl Bushell, LASC Family Law Clerks Extraordinaire, will review the ins and outs of judgment processing.

MEMBERS	NON-MEMBERS
\$45 prepaid	\$55 prepaid
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1 MCLE HOUR	

Criminal Law Section Fingerprint and Document Examination in Criminal Cases

MARCH 24
6:00 P.M.
UNCLE CHEN RESTAURANT
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Kurt E. Kuhn, former Senior Forensic Specialist for the Beverly Hills Police Department, will discuss fingerprint examinations which can include crime scene investigations as well as the processing of items for fingerprint evidence in the laboratory. He will also review how document examination is precisely used in the determination of the authenticity of a signature as well as in the determination of addition or page replacements in documents, and the detection of alterations, obliterations and/or erasures.

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

Business Law, Real Property & Bankruptcy Section Foreclosure Defenses

MARCH 25
12:00 NOON
SFBVA CONFERENCE ROOM
WOODLAND HILLS

Nathan Fransen of Fransen & Molinaro, LLP will discuss foreclosure defenses using the Truth in Lending Act as well as predatory lending issues.

MEMBERS	NON-MEMBERS
\$30 prepaid	\$40 prepaid
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1 MCLE HOUR	

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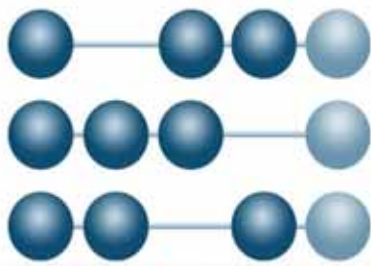
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