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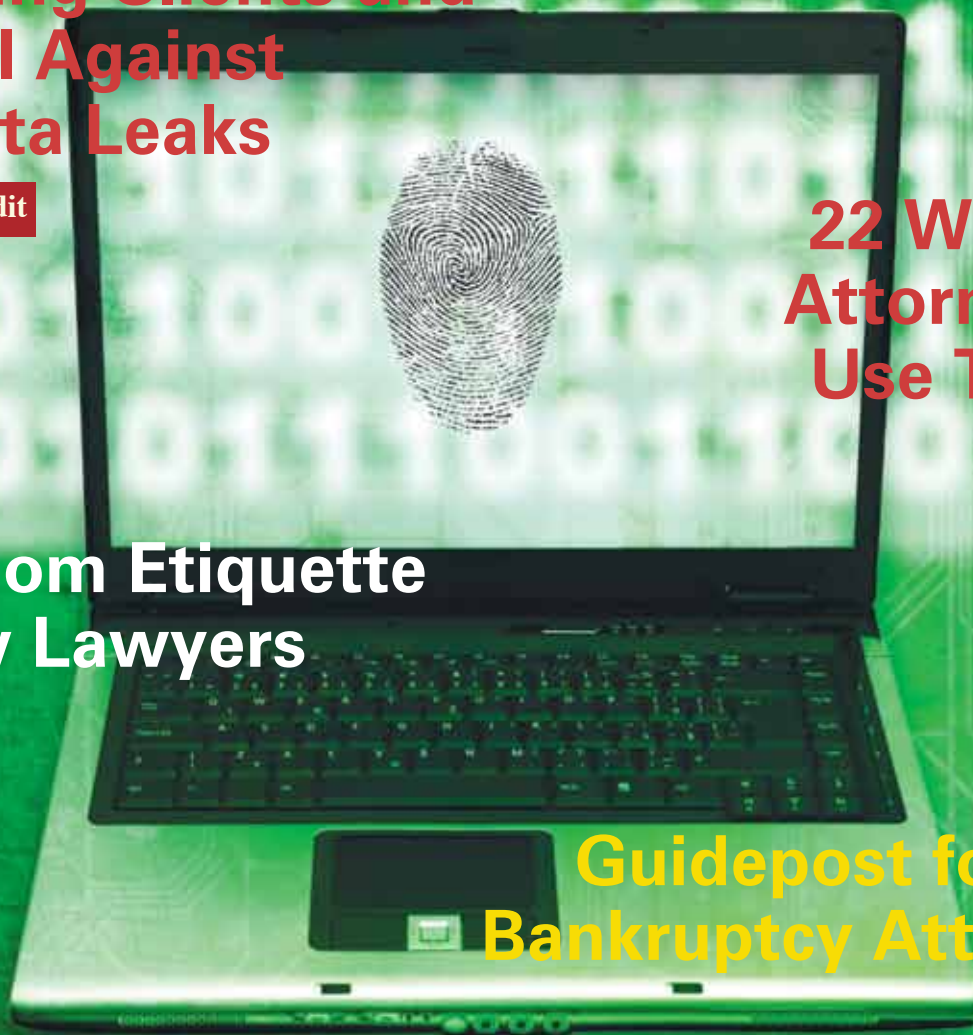
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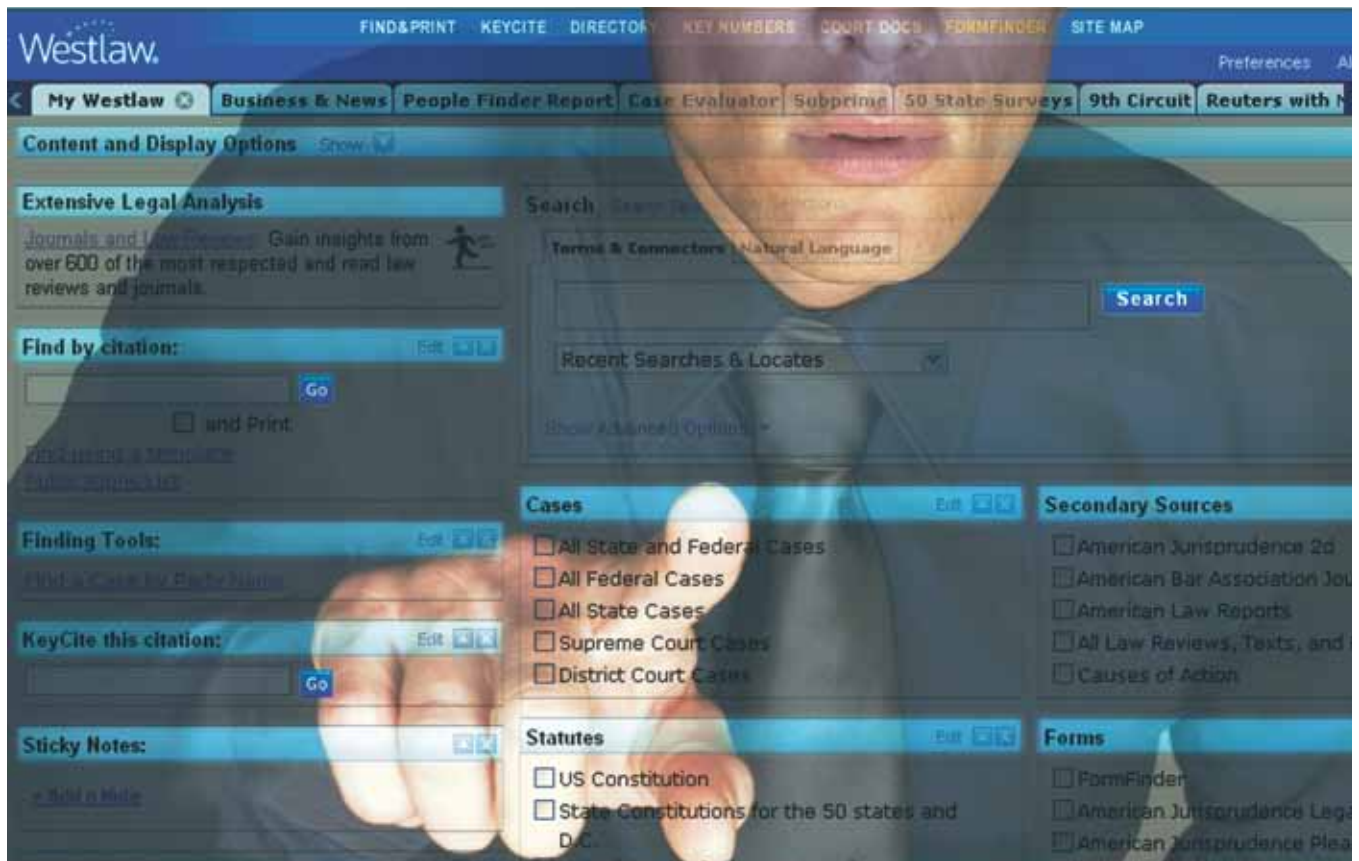
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First and Foremost, a Lawyer



THIS YEAR IS THE BICENTENNIAL OF the birth of Abraham Lincoln — president, pioneer, politician and lawyer. The myth of Lincoln, who went from a log cabin to the White House with only a year of formal education, touches on the many parts of his life — rail splitter, shop keeper, soldier and lawyer.

What is often overlooked in the stories that comprise the myth, however, is that Lincoln was a very successful lawyer. He practiced law more than a quarter of a century and was prosperous and popular in that practice. His law partner and biographer, William H. Herndon, noted that Lincoln's mind "caught the substantial turning point of his

case and [stripped] all cobweb and collaterals away, and stood up the substantial question fairly and honorably before his opponent, court and jury."

Not that Lincoln's mythos becomes less powerful for all that. Consider this (quite possibly apocryphal) tale: In a case involving the rights of a landowner whose property boundaries had been affected by changes in the course of a river, Lincoln argued so effectively on behalf of his client that the judge hearing the case was persuaded to adopt Lincoln's view of the law, setting a new precedent and ruling on behalf of Lincoln's client.

A year or two later, Lincoln happened to appear before the same judge on behalf of another landowner with a similar case. As it happened, Lincoln's then client's interests were negatively affected by the precedent which had been set in the earlier case. Lincoln presented a forceful argument on behalf of his client, prompting the judge to inquire how Lincoln could be arguing so vehemently against a position he himself had advanced before the same court in the earlier case. Without missing a beat, Lincoln replied

that he had been wrong (in the earlier case). The court's decision in the latter case seems to be missing from the historical record.

In an 1850 lecture on the law, Lincoln acknowledged that he had been moderately successful, pointing out that the "leading rule for the lawyer as for the man of every other calling is diligence. Leave nothing for tomorrow which can be done today. Never let your correspondence fall behind. When you bring a common-law suit, if you have the facts for doing it, write the declaration at once."

He urged his listeners to practice public speaking as the lawyer's avenue to the public: "However able and faithful he may be in other respects, people are slow to bring him business if he cannot make a speech." At the same

time he cautioned young lawyers not to use speech-making as an excuse not to handle "the drudgery" of the law.

Lincoln also encouraged lawyers to be peace makers: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough."

Nearly 150 years later, those words still ring true, with particular resonance for all of us as lawyers. Today, Lincoln is recognized for holding the Union together and freeing the slaves. As lawyers, we recognize that the background for his presidential decisions was formed in frontier courtrooms where Lincoln worked hard to do his best for his clients. Lincoln represents the best of the legal profession. It's an honor to recognize his bicentennial. 🐄

Robert Flagg can be contacted at robert.flagg@farmersinsurance.com.

"As a peacemaker, the lawyer has a superior opportunity of being a good man." — Abraham Lincoln

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From the Editor

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ANGELA M. HUTCHINSON
Editor

Dear SFVBA Members,

Congratulations to all of the new attorneys who recently passed the Bar. Typically the term "going green," refers to taking action to preserve our environment. Inside this issue of *Valley Lawyer*, I encourage experienced attorneys to take action in preserving the legal field by going green from a mentoring standpoint, and attempt to develop a relationship with a new attorney. Being green in the legal field can be overwhelming, which is why organizations like the San Fernando Valley Bar Association are a great resource for new attorneys.

If you know a new attorney, whether this is their first career or fifth career, please share this issue with them and be sure to encourage them to join the SFVBA. Our magazine's focus this month is content that is of interest to new attorneys, including Courtroom Etiquette, Ways to Use Twitter and a Guidepost for Bankruptcy Law. For our special feature spread of a Road Map for Legal Careers, I had the opportunity to interview high school students who are aspiring to become lawyers, SFVBA attorneys who teach law and new attorneys who recently began practicing law.

It is our hope that this issue provides new attorneys with information that may help them excel in their area of practice, whether they work at a large law firm or as a sole practitioner. For our experienced attorney members, you too will find the articles resourceful as well, but try to share them with a more 'green' attorney in your firm or even a teen in your family who might one day consider pursuing a career in law.

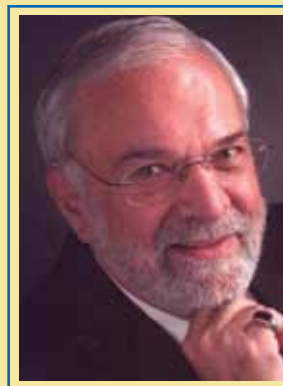
If you are a new attorney seeking a mentor or an established attorney interested in having a mentee, please contact our offices and we will put you in touch with SFVBA New Lawyers Section Chair Natasha Dawood. Also, if you have any contacts at law schools in the area, please encourage them to have their students join the SFVBA.

Finally, our Communications Department is seeking an attorney who frequently uses Twitter to work with the Bar voluntarily in maintaining our recently launched social networking campaign. If you are passionate about online social networking and think you can help us tweet efficiently, I look forward to hearing from you soon. 🐦

Have a vivacious month!

Angela M. Hutchinson

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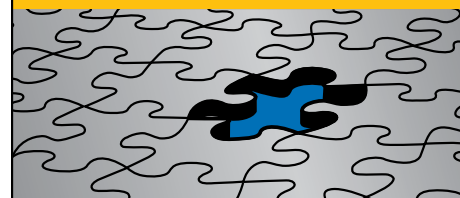
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Diversity Committee Selects Student Essay Winner



ROSIE SOTO
Director of
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IN CELEBRATION OF LAW DAY 2009, the SFVBA Diversity Committee conducted an essay contest for the fifth grade class of Maurice Sendak Elementary School in North Hollywood. The committee received the top essays from each class. A panel of six committee members collectively selected the six winners, one from each fifth grade class. Of those top six, the Committee voted to publish the most memorable essay:

“I, Kelly Lopez, can make America better by helping the environment by recycling and by saving water. Also not wasting the food at school and eat the food you get.

I think that all of these causes are important because we need to change our ways so everyone can have a better life. Schools are wasting too much money on food when kids aren't eating it; we need to make sure that all the kids eat their meals. We should ask the kids what they like to eat the most, and then tell the Los Angeles Unified to buy the food the kids want the most and give it to them.

The environment has been polluted too much and we need to save our environment so our earth will be clean. Also, we can have electric cars, so the gas from other cars won't affect the homes of animals. We can rally for electric cars by going to the car factory and telling them to make more electric cars.

Animals are dying because of all the bad air and they are losing their homes because all the trees are being cut down. We need to stop killing trees and not waste a lot of paper. Also, we can have a "Save the Tree" group and when workers are cutting the trees we can go to them and say no more. Let's recycle so we don't have to chop trees and animals won't lose their homes.

Thank you for reading about how I am going to save America. I hope that you do something about all of these things that are affecting the environment. Thank you and have a good day. ~ Sincerely, K. Lopez”



(L-R) Diversity Committee Chair Richard Lewis, Student Essay Winner Kelley Lopez, Principal Nancy Oda, SFVBA Director of Public Services Rosie Soto and SFVBA President Robert Flagg

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Section Profile

Mentoring 'Green' Lawyers



**NATASHA
DANWOOD**
Chair, New
Lawyers Section

IN 2008, THE SAN FERNANDO VALLEY BAR Association revived the New Lawyers Section. It is now one of the primary focuses of the SFVBA. The purposes of the Section, among others things, are to increase the excitement and participation of new lawyers in the SFVBA.

Today's 'green' lawyers are the future of tomorrow's legal field. SFVBA is committed to the growth and development of new attorneys. The Section serves as a vehicle to connect new lawyers with the many veteran and distinguished lawyers of the SFVBA — lawyers that have extensive experience and wisdom to share with new lawyers. In addition, the Section also focuses heavily on assisting new lawyers in marketing, networking and growing in the legal field. A primary goal of the New Lawyers Section is to revitalize the SFVBA via the novel ideas and energy of new lawyers.

Early this year, the Section held a free mixer at Oliva Trattoria, which included wine and assorted Italian specialties. There, new lawyers networked, bounced ideas off each other, made new friends and learned about FindLaw, the event's sponsor. During this summer, the Section assisted in throwing a picnic followed by a softball game. New lawyers were able to break the daily routine and get to know each other on a more personal basis.

The Section is currently planning a new lawyers' mixer with LACBA and plans to hold similar mixers with the other local bar associations. The New Lawyers Section is also planning networking activities for the upcoming year, including: (1) a brown bag lunch with a prominent judge to learn the nuts and bolts of the courtroom; (2) a sporting event (whether it be actually playing a game or watching the Lakers earn another victory) or an Oktoberfest where new lawyers can just have fun; and (3) mixers with the other SFVBA sections to aid new lawyers in their careers and professional growth, such as in the family law, bankruptcy and/or criminal law areas.

The New Lawyers Section looks forward and is excited about the upcoming year. Programming ideas for this section are welcome. Whether one is an attorney fresh out of law school or practicing law as a second or third career, all new attorneys are encouraged to get involved with the New Lawyers Section! 🐾

Natasha N. Dawood is an associate at the downtown law firm of Parker Milliken. She specializes in business litigation, including trade secrets and employment litigation, and also has experience in family law matters. Dawood can be contacted at (213) 683-6685 or ndawood@pmcos.com.

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22 Ways for Attorneys to Use twitter™

An Inside Perspective from an SFVBA Member By Steven G. Mehta

FOR SOME TIME NOW, I HAVE been tweeting in the world of Twitter and wanted to comment on my findings and thoughts regarding Twitter (www.twitter.com). First I must confess that when I first thought of Twitter, I said something to the effect, “Why do I want to know what Joe is having for lunch today?” But I am glad to report that I did not persist in this previous state of mind and am glad that I ventured into the world of Twitter.

First, let’s quickly discuss what Twitter does. Twitter allows you to publish to the world in 140 characters or less what you are thinking or doing. Your message is called a tweet. When you join Twitter, you will be alone in the world. But this is no different than any new organization that you walk into. When you start, you may not have any friends or acquaintances.

On Twitter, you can search for topics, such as employment law, mediation, estate planning, etc. When you find someone who has written on a topic of interest, you can then follow their tweets. You will now be following someone. Usually what happens is that person that you are following will then start to follow you. Now you have somebody to talk to and communicate with through your Twitter page.

Once you are communicating with people, they will be able to see all of the comments that you make (either via their phone like a text or online like a blog). Now you have an audience to hear what you have to say. Twitter, like all other communities, is an interactive community. You cannot just proselytize. You must interact with people. Like all conversations, if it is all about you, people will get bored very quickly.

Now that I have briefly explained what Twitter is and how it works, the next question that I am constantly barraged with by people outside of Twitter is why I “waste my time” on Twitter. Well here are some of the top reasons why I twitter as a lawyer and mediator.

1. Connect with Others in Your Field Internationally

I am a Los Angeles mediator that has a practice in California and sometimes in other states. However, I never in my wildest dreams thought that I would have an opportunity to meet mediators and attorneys via the internet from the Netherlands, other states in America, New Zealand, England, and other wonderful countries; and especially not without buying a plane ticket to somewhere. Well, I have met many wonderful legal and conflict resolution professionals throughout the world on Twitter. These professionals provide me with information and more importantly, a different worldview than I might have had if I was simply in California.

2. Expand Your Brand

Everyone secretly aspires to be as big a brand as Coke or Pepsi. They aspire to have their name as a household word. You might be saying that you are not a brand and that you are simply a person. Well people are brands. Tony Robbins, Al Gore and Donald Trump are all people, but they have been able to build an international brand. When people hear their names, certain images come to mind, just as when you think of Pepsi, a certain image comes to mind.

The question you have to ask yourself with branding is how would you like people to see you. When you interact on Twitter, you are expanding your brand to other geographic areas, professions, businesses, and groups. More people are seeing you and will have heard of you. That is helpful in this international economy.

3. Connect with People in Your Locale

Twitter allows you to search for people that are in a certain area or have tweeted about a certain topic. For example, I did a search on Twitter for the city of Santa Clarita and found out that people were looking for jobs

in Santa Clarita, and that there is a business opportunity for a coffee franchise. You can then seek to follow each of those persons who mentioned Santa Clarita (under the assumption that people who talk about Santa Clarita are probably familiar with or close to the city).

4. Find out What is Being Said About You

One of the beauties of Twitter is that you can do a search of what every single person on Twitter has said and you can find out what is being said about you. For example, I was discussing with one person that a positive comment had been made about that person. It is nice to know when good things are said about you, and it is even better to know (first or as soon as possible) when bad things are said about you so that you can work on damage control.

5. Find out What is Being Said about Your Competitors

Sometimes knowing what is being said about your competitors is extremely helpful. For example, what if your competitor has reduced its rates, would that affect you? What about if someone comments about some aspect of customer service from your competitor? Rather than waiting for the information to trickle down to you, you can find out about the information instantly on Twitter.

6. Keep up on News Relevant to Your Topic

What is the latest and greatest in your field? As a mediator, I recently learned of conferences on mediation that might be useful to my practice. I have also learned about the trends regarding mediation. Moreover, I have learned about studies relating to mediation, all from Twitter.

7. Post Your Blog on Twitter

If you have a blog and are hoping to get the word out to a greater audience regarding your blog, Twitter can help. You can tweet

about your latest and greatest blog post. Depending on how relevant the blog entry is, it could get tweeted, and retweeted thousands of times. That's great exposure.

8. Discover New Blogs and Research on Your Topic

Just as you can post your blog on Twitter, many other bloggers post their writing on Twitter. As a result, it can be a great way for you to keep up with bloggers who interest you. Every time an interesting person blogs something, you can see it on your feed. This will allow you to keep up with relevant information directly regarding your field. For example, I have recently blogged on settlement issues related to Medicare. If that is a topic of interest to your practice, that article was posted on Twitter within hours of being published.

9. Continuously Keep Your Name on the Tips of People's Tongues

One of the problems that people face when marketing mediation and legal services is that people don't have a constant need for these services. When the need arises, then people will look for these services. When that need arises, though, you want to be one of the first people that someone thinks about for your services. It is a known fact that even if you are excellent at your job, people will naturally forget about you

unless they are reminded about you in some way shape or form.

Ask yourself the question, who is the first mediator that you think of? What about for a patent lawyer? Then ask yourself why? Chances are that you thought of that person because you had heard or seen that person's name somewhere, or something you saw reminded you of that person.

Twitter helps to keep your name out there. Every time you tweet, your name

homepage. This provides you with another opportunity to have information that you want seen out there about yourself. Moreover, every time you give information about yourself or your activities, you are increasing the chances that someone else will connect with you because of that fact. For example, I went to McGeorge School of Law. If I tweeted something about my connection to McGeorge, that might peek the interest of some other McGeorge graduate.

Follow "SFVBA" on Twitter!

11. Get Quick Information on a Topic from Your Sources

Twitter allows you to pose a quick question and get responses back from someone who is following you. Whether that question relates to your profession or not, you are sure to get instant answers to your question.

12. Become a Better Mediator

I can already see that I have become a better mediator because of Twitter. I have learned about different viewpoints. I have seen current news on mediation. I have been given thoughts on mediator mistakes, and a variety of other things. Not everything is about monetizing your time. Sometimes, knowledge for the sake of personal development is a great thing.

10. Have a New Outlet to Post Your Information

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founded in 1926

13. Become More Connected with the Net Generation or Millennials

If you want to keep up with the times and remain connected with the millennial generation, then you need to think about how that generation communicates. It may come as no new surprise to you, but Millennials love to text. You might see two teenagers sitting next to each other texting each other. Like it or not, if you want to understand how that generation communicates, you must play inside their sandbox, and not your own.

14. Real Time News Feed

I am still one to read the newspaper. But it has become so “yesterday’s lunch.” Even CNN is too slow to keep up with news. Sometimes news stories show up on CNN evening news that are hours old. When the swine flu outbreak occurred, I learned about it from Twitter. I saw a “trending topic” of swine flu and looked into it. I learned about the whereabouts of the flu, where it was being reported, and many other facts from Twitter. You can look at “trending topics” on Twitter to find out what the hot discussion is of the moment. For example, today, I learned that the Netherlands upset England in cricket.

15. It is Short

Twitter is limited to 140 characters per message. So it is short. You don’t have to agonize over writing a thesis. Keep it short and interesting.

16. Free Advertising

What is your advertising budget? I don’t know about you, but when you have the opportunity to have thousands of people learn about your services for free, that’s a pretty good deal. Twitter has no fees and is 100% free to use.

17. It Will Increase Your Name Brand on Google

Everyone hopes that their name will be high up on Google. Equally important is that you have repeated hits on Google. For example, you don’t just want to be the number one hit on Google, you want to be number 1-30. For example, look my name on Google and you will find that I dominate the first 4 pages of Google. Twitter helps because Google can sometimes feed directly into your Twitter feed. Your message remains up there in your Google branding.

18. Market Research

Want to get a quick survey on something of interest in your topic. What better way

than sending out a quick tweet to your hundred closest followers to find out what their thoughts are on your topic.

19. Promote Your Website Content

Many people worry that no one will know about their website. If you have fresh new content on your website, you can tweet about it and people can be directed to your site. There are hundreds of pages that explain how to drive traffic to your site by using Twitter.

20. Finding and Researching Employees

You have probably heard of stories where a person got a job from Twitter. You have also heard where a person got fired because of Twitter. If you post that you have a job, there is a good chance that someone in your network could refer another person in their network to you regarding the employment. In addition, you can research the possible employee by seeing if they are on Twitter and what they say. You’d be surprised to see what shows up.

21. Connect with Clients

More and more people are connected to Twitter. Twitter lets you have a quick and easy way to connect to those clients who follow you and who you follow. In addition, you can keep up with any problems that the client may have instantly. If your client tweets about a problem with an employee, you can help immediately with the problem.

22. Connect with Journalists

Many journalists are using Twitter as a source of information on topics of interest to them. In fact, one public relations firm suggested that a PR firm is not doing its job if it isn’t on Twitter connecting with the media.

Hopefully these ideas will spark some creative thought process. There are many more benefits to Twitter. Give it a try! After creating your free Twitter, be sure to follow the San Fernando Valley Bar Association by going to www.twitter.com/sfvba. 🐦



Steven G. Mehta is a full time mediator who specializes in emotionally charged and complex disputes. He is the author of the book *112 Ways to Succeed in Any Negotiation or Mediation* and is well known in the field of elder law, employment law, business and other such complex matters. He can be contacted through his website at www.stevemehta.com or follow Mehta on Twitter at www.twitter.com/stevemehta.

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Courtroom Etiquette for New Lawyers

Civility and Professionalism

By David Gurnick



UNDERSTANDING MATTERS OF CIVILITY AND professionalism in court is especially important for new lawyers. The SFVBA Litigation Section's September meeting featured Superior Court Judge Michael Mink and attorney Keith Gregory, two respected leaders in the area of civility and professionalism. They shared insights on the challenges of conducting litigation with civility and maintaining professionalism, even in difficult situations or circumstances where adversaries do not reciprocate.

The presentation also included a list of inappropriate conduct that Superior Court staff has observed among some lawyers, which members of the bar are encouraged to avoid. New lawyers and all litigation practitioners can benefit from the list, although Judge Mink and attorney Keith Gregory noted these behaviors are not common in most members of the San Fernando Valley Bar Association.

Inappropriate Court Conduct for Attorneys

- Directing personal or social advances to court staff
- Asking court staff to interpret rules and provide legal advice
- Demanding that one's own request be given priority over other court matters
- Agreeing among counsel to waive the rules of court
- Using profanities in the courtroom (staff noted this should be avoided even when the judge is not present in the courtroom)
- Not paying the court reporter, which has led some courts and reporters to insist on being paid in advance
- Writing bad checks for filing fees, which results in the checks being dishonored by the bank
- Attempting to make appearances in a case without having filed a substitution of attorneys
- Referring to opposing counsel in condescending way, such as referring to an opposing woman attorney as "young lady"
- Calling in late and untruthfully blaming it on heavy traffic, and without informing opposing counsel
- Not appearing for a scheduled hearing
- Having an appearance made by other counsel who is unfamiliar with the subject matter of the appearance, or the case

Judge Mink and attorney Gregory also gave other suggestions to improve civility and professionalism. These included initiating a call to opposing counsel at the start of a case to establish a professional working relationship, meeting in person with opposing counsel to discuss the case, seeking early mediation, and trying to remain polite, courteous and civil even to adversaries who do not.

Examples were presented where maintaining the high road, though difficult, ultimately benefitted the attorney who did so. Los Angeles Superior Court Local Rule 7.12, comprised of aspirational conduct guidelines for litigation attorneys, was reviewed and commended to all litigation attorneys to review. 📌



David Gurnick is Chair of the SFVBA Litigation Section. David is with Lewitt Hackman in Encino. David is a State Bar Certified Specialist in Franchising and Distribution Law and his practice focuses on representing companies in franchising and distribution of products and services in litigation and transactions. He can be reached at DGurnick@lewitthackman.com.

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Pursuing, Practicing and Teaching Law

Career Road Map Q&A

By Angela M. Hutchinson



THE SAN FERNANDO VALLEY Bar Association is dedicated to creating a more inclusive legal profession by actively developing and participating in programs designed to improve diversity.

The SFVBA's Diversity Committee established Law and Government Explorer Post 1926 in 2008 to provide high school students with an opportunity to learn more about pursuing law as a career and to be mentored by attorneys.

The next generation of legal professional play a significant role in ensuring that today's justice continues to prevail tomorrow. There is a long road ahead for students aspiring to become a lawyer or judge. The SFVBA serves as a resource for students seeking a lawyer mentor or for SFVBA members interested in mentoring law students or new attorneys.

Valley Lawyer shares the perspectives of high school students pursuing law, new attorneys practicing law and seasoned attorneys teaching law.

HIGH SCHOOL STUDENTS PURSUING LAW



Adam Garelik and Tannaz Noormohammadi are 11th grade students at James Monroe High School in North Hills. Adam and Tannaz are members of Law and Government Explorer Post 1926 sponsored by the SFVBA Diversity Committee.

Valley Lawyer: Why did you become involved in the SFVBA Explorer Law Post program?

Adam Garelik: The opportunity presented itself at my Law and Government Magnet program. The 10th grade year started the law curriculum and it coincided well with the

Explorer program. I have been interested in the law field for a long time and was looking forward to learning more about it. I thought this Post would be a good compliment with the academic program.

Tannaz Noormohammadi: I became involved in the Explorer Law Post program after my English teacher first introduced it to me. I thought it was a great opportunity to learn about law, especially because I'm so passionate about it.

VL: At this time, what area of law interests you most?

TN: Criminal and constitutional law interest me the most.

AG: I am most interested in criminal law because it is the most thought provoking. There is more to lose and less to gain than rather just losing money or possessions. You could be in jail for the rest of your life or you could even lose your life. It is a field that I am passionate towards.

VL: What type of legal professional are you interested in becoming? Why?

AG: My goal is to become a defense attorney. Most countries in the world don't give alleged criminals a chance to fight for themselves. Alleged criminals may be found guilty when they are innocent. Our country, because of the Constitution, allows those accused a fair trial and an opportunity to prove innocence. That is what makes our country so great.

TN: I hope to become a constitutional [law] attorney one day because I find the law to be fascinating.

VL: How has the Explorer Program benefited your life?

TN: The Explorer Program has given me the opportunity to learn so much about law. It has really opened my eyes to how amazing law can really be. I have also met a lot of great friends who share the same interests and goals in life.

AG: I have met many people that have the same interest as me. I have learned about the many aspects of law that I will be dealing with the rest of my life. We went to Pepperdine, which helped me prepare for law schools in the future. We went to the Los Angeles Superior Court where I was able to listen to cases as a spectator. We also went on a weekend camping trip in which I built strong relationships with my peers.

VL: What do you like most about school? What is your favorite subject and why?

AG: The teachers challenge us to become the best we can be. Constitutional and Criminal Law have been my favorite classes. We have had mock trials that have given me exposure to becoming a lawyer and learning the necessary steps it takes to be successful in life. They have challenged me in a way that no other class has.

TN: The reason why I like school so much is because I enjoy learning. My favorite subject is English because I love, love, LOVE reading. I love to interpret the text and find allusions here and there in novels. It's fun stuff.

VL: What is the most challenging aspect to learning/studying?

TN: The most challenging aspect to learning or studying is trying not to procrastinate. Whenever students come home instead of starting homework, they have to go on their social networking sites such as Facebook or Myspace. It can be difficult to manage your time sometimes, especially when you have a lot of other extracurricular activities.

VL: If you could change one law or make a new one, what would it be?

TN: I would change the prop 8 law. It's a very controversial topic, but I do believe that there should be equal rights for everyone.

AG: If I could change a law it would be Amendment Two of the Constitution which gives us the right to bear arms. Guns should not be used for killing animals or people.

They should only be used for target practice or for our law enforcement personnel who protect the community from dangerous people.

NEW ATTORNEYS PRACTICING LAW



Anthony Girgis obtained his Juris Doctorate degree from Whittier Law School after receiving his bachelor's degree from UC Los Angeles. After passing the California Bar in 2007, he opened Girgis Law Firm and

has concentrated his practice in consumer bankruptcy (specifically Chapter 7 and Chapter 13), criminal defense and personal injury. Girgis is admitted to practice law in the United States Central District Court, as well as the Eastern District Court of California.



Nicole Kamm received her B.A. in American Studies/Public Health from UC Berkeley in 2000. She joined Lewitt Hackman in Encino after receiving her law degree in 2006

from Pepperdine University School of Law, where she graduated Cum Laude. While at Pepperdine University, Kamm was a member of Phi Delta Phi and the Women's Law Association, and was Lead Articles Editor of the National Association of Administrative Law Judges Journal. Kamm's practice currently emphasizes the areas of employment, corporate, and civil litigation.



Steven Platt joined Parker Milliken in downtown Los Angeles as an associate in 2006. He specializes in litigation, including trade secret litigation and employment

litigation, and he has experience in tax and probate matters. Platt graduated from UC Davis School of Law in 2006, where he was elected to the Order of the Barristers and served as Managing Editor of the UC Davis

Law Review. He graduated from UC Irvine in 2003 with a B.A. in Political Science and a Spanish minor. He was President of the Associated Student Body during his junior year.

Valley Lawyer: What is the most challenging aspect of working for a large firm? What do you like most?

Nicole Kamm: Part of my job is advice and counsel and part of my job is litigation. Litigation can be challenging because you are always dealing with deadlines: deadlines to file a motion, deadlines to respond to discovery, etc. Once one deadline is met, there is another one around the corner. To make sure every deadline is met, I keep both written and electronic calendars. I also keep multiple post-it reminders on my desk and computer. I enjoy the people I work with at Lewitt Hackman very much. They are all professional, very good attorneys. But they are also decent people, who care about their employees and clients.

Steven Platt: The best thing about Parker Milliken is that we have a wonderful group of people working together. When I first joined the firm, I was surprised to see that many of the attorneys had been working there for 20, 30, and sometimes even 40 years. That type of tenure is unique among law firms, and I am excited to be a part of it. Working at a large firm has also allowed me to gain experience in a broad array of areas, which helps me assess clients' problems from many angles. It is amazing how often corporate and tax questions arise in litigation. Also, with so many attorneys working together out of the same office, no matter what type of issue I encounter, there is a very good chance that someone else at the firm has already faced, and resolved, a similar issue.

VL: What inspired you to start your own law firm?

Anthony Girgis: I wanted to take more of a lead role in order to provide more of a personal, one-on-one relationship with clients. Since my clients are my top priority, I felt that the best way to achieve this relationship was by starting my own law firm.

VL: What is the most challenging aspect of having your own firm?

AG: The most challenging aspect of having my own firm is competing with the larger, more established law firms.

VL: What inspired you to practice law?

SP: When I was very young, my sister and I would conduct mock trials with my grandparents. We would take turns playing the roles of judge and attorney, and we would assemble a jury panel of our favorite stuffed animals. Though I only won about half of our mock trials (my sister, of course, won the other half), I do recall one particular stuffed panda that usually voted with me. I continued to pursue law-related activities throughout my youth. I joined the speech and debate club in junior high, and in high school I participated in mock trial. By the time I reached college, I was certain I wanted to practice law.

VL: How did law school prepare you for the daily responsibilities you have at the firm?

NK: In truth, law school does not prepare you very well for the practice of law. Law school teaches you the law itself. You learn to be a "lawyer" on the job. Pepperdine gave me a great foundation of legal knowledge. I also learned good study skills and a strong work ethic. I loved Pepperdine. It is the number one law school in terms of professor accessibility and that was so important to me.

VL: What do you enjoy most about working with your clients?

AG: I really enjoy building a personal relationship with my clients while providing a solution to their legal situation. In today's economy, my practice is primarily focused in representing debtors in bankruptcy. I chose this area of law because it feels great assisting clients to obtain financial freedom. I enjoy making a positive difference in my client's life when he/she is in financial distress.

VL: What do you like most about your areas of practice?

NK: By far, I enjoy the advice and counsel part of employment law the best of all the areas I practice in. I like fielding calls from clients who have questions about how to handle an employee complaint, want a policy drafted or are concerned with complying with the complex aspects of California wage and hour law. Advice and counsel lets me have an immediate impact on the clients. I feel like I get to use my knowledge in a productive and beneficial way. It is the most rewarding part of the job.

VL: As a new attorney, what barriers have you overcome in the legal field?

SP: Two different challenges come to mind. First, I think young attorneys have to work very hard to earn the respect of opposing counsel and the courts. Many judges and opposing counsel seem reluctant to listen to a young attorney. As I become more experienced, I am learning to use this to my advantage – particularly when dealing with opposing counsel. Second, I find it difficult to manage the idiosyncrasies of different judges. For example, some judges adhere strictly to the letter of the law. Other judges are much more lax, particularly on timing and service issues. I tend to prefer judges that closely adhere to the law, because I know what to expect from them.

VL: As a new mom, how do you balance work, family and personal time?

NK: Balancing work and home life as an attorney is challenging. This career demands a lot from you. The hours are not always predictable. Client issues are not always easy to handle or on your time clock. It can be stressful. There is often a lot at stake. I try to balance my life by making sure that when I am at work, I am 100% focused on work and when I am at home with my family, I am 100% focused on them. This in itself is a challenge, but I try.

VL: Why did you decide to join the SFVBA?

AG: I decided to join the SFVBA because I wanted to get involved in the community and meet local attorneys. Being born and raised in the San Fernando Valley, I felt that it was a good starting point for both my career and my law firm.

VL: What moved you to become involved in the SFVBA?

NK: I joined the SFVBA Diversity Committee because I am interested in helping young people with an interest in a career in the law. I also understood that the Committee would be involved in promoting women and minority lawyers and judges, which I also support.

VL: How has SFVBA helped your professional growth in terms of networking?

SP: Professional groups such as the SFVBA are useful because they understand the difficulties faced by young lawyers, especially when it comes to business development and marketing, and they offer useful programs and events tailored to our demographic. Although I have yet to sign

a new client or bring in a new case at a bar event, I have developed relationships that will benefit me for years to come.

AG: The SFVBA has provided me with a great opportunity to meet local attorneys in the community. Thanks to the SFVBA, not only have I built a friendly relationship with these attorneys, we now provide each other with an excellent source of referrals for potential clients.

VL: Why do you feel it's important to give back to your community?

SP: I would never have achieved my goal of becoming a lawyer without the support of people in my different communities. I want, and feel a moral obligation, to do my part to help future generations benefit as I did.

**SEASONED ATTORNEYS
TEACHING LAW**



Dmitry Gorin has been involved in criminal trial work and pretrial litigation since 1994.

Before becoming partner in Kestenbaum, Eisner & Gorin LLP, Gorin was a Senior

Deputy District Attorney in Los Angeles for more than a decade. As a criminal trial prosecutor, Gorin specialized in complex trial work including gang murder trials, sex crimes, major narcotics cases and white collar crimes. He received numerous awards for successful trial work from the Association of District Attorneys and the U.S. Postal Inspector.



Myer Sankary has been a mediator for over 13 years with specialties in probate, trusts and estates, corporations, litigation and business, having practiced in a variety of areas of law

since 1966. Sankary has been appointed by Superior Court to serve as trustee for several trusts since 1989. After graduating Harvard Law School in 1965, Sankary began practicing law in Beverly Hills with the firm of Wyman, Bautzer, Rothman & Kuchel. Since then, he has become known for his extensive knowledge, experience and reputation for honesty and integrity, both as a litigator and as a transactional attorney.

Valley Lawyer: What subjects have you taught or currently teach?

Dmitry Gorin: I am an Adjunct Law Professor, teaching at Pepperdine University School of Law, and at the UCLA Speech and Communications Department. My instruction and expertise relate to trial advocacy, public speaking, constitutional rights (Miranda Rights and Unlawful Searches), alternative sentencing, and pre-trial litigation, and jury trial litigation.

Myer Sankary: I teach Negotiation Strategies in Mediation and Using the Science of Influence in Negotiations.

VL: What level of students and which college(s)?

MS: I teach MBA students at the Marshall School of Business at USC and I am a guest lecturer in a mediation workshop for law students at the USC Law School.

DG: UCLA Communications Department (undergrads Communications majors) and Pepperdine Law School (upper-division law students).

VL: Identify a valuable lesson you learned from your law students.

DG: Most law students feel like the general public – once a person is arrested he or she likely did something unlawful. Before teaching, I assumed they believed in the concept of presuming a suspect innocent, at least before the prosecutor has decided to file criminal charges.

MS: Business students and law students are very competitive negotiators. But they learn quickly the valuable of cooperation and creating value to settle disputes.

VL: Tell us about your most poignant teaching experience/moment.

MS: In the business school, I use an exercise based on one of my age discrimination cases. After hearing an introduction to the mediation process in a litigated case, they actually negotiate the age discrimination case in a simulation where the students take the part of mediator, clients, and lawyers. After an hour of simulated negotiations, they return to the classroom to discuss their strategies and describe their experience of mediating a dispute. Each group of students then reports the result of their mediation — most cases are settled.

At the end of the class, I have each mediator (there are usually 5 to 8 mediators, one for each simulation group) pick a slip

of paper at random out of a bag. I confirm that they do not know what is on the paper. I then ask each mediator, one at a time to read the slip of paper. Each slip announces a different verdict from no recovery for plaintiff to a verdict of \$500,000 plus costs and attorney fees. I then have each mediator compare the verdict with their settlement figure. I then explain to the class that the likelihood of getting a verdict in trial is about as random as drawing a verdict from a bag! The expressions on the faces of the students show that they get the point - it's usually better to settle than get a random adverse verdict in trial.

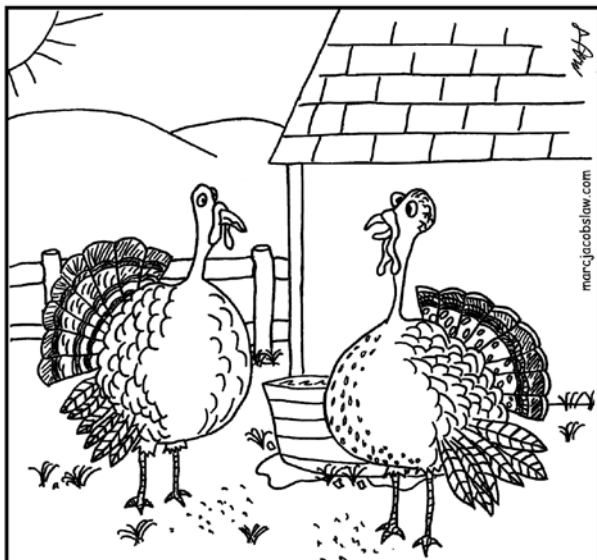
DG: Seeing my law students working as attorneys for the Office of the District Attorney or the Public Defender, having been motivated by the coursework and lectures, is very exhilarating.

VL: Finish this sentence, "The next generation of attorneys..."

DG: Will be very-well informed about the criminal justice system, sensitive to an accused criminal's constitutional rights, and understanding of the roles prosecutors and defense lawyers play in the criminal justice system.

MS: Have greater opportunities in the future to become better at their profession because of the advances in psychology, social science, negotiation strategies, game theory and decision analysis. These are tools that were not available when I was going to school back in the 60's. There is much more information about how to negotiate a deal today so that the next generation of attorneys should be better equipped to represent their clients and to be much more effective negotiators. ⚡

ABOVE THE LAW, By Marc Jacobs



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PROTECTING CLIENTS AND COUNSEL AGAINST Metadata Leaks

By Lisa Miller

METADATA IS DATA about data.

Web browsers automatically download metadata to make files more manageable for the operating system. Microsoft Word includes a number of automated features to aid in document production and collaboration, all of which become embedded in the document as metadata.

Metadata is a fundamentally important part of electronic discovery; a federal judge stated in an opinion that the risk of waiver is one of the most challenging aspects of discovery of electronically stored information. For these reasons, lawyers and law firm employee must be aware of the potential liability that informs metadata.

Metadata is embedded in the electronic document file and travels with the document; it can be uncovered if the document is sent via e-mail or copied electronically. All documents created using Microsoft programs contain metadata. Word documents generated by law firms usually contain enough metadata to cause concern for disclosure, waiver, and, potentially, legal liability.

Metadata properties cannot be viewed when counsel transmits or forwards documents solely via a PDA, such as a BlackBerry.

A few of the hidden elements and document information found in a Microsoft document that make up a document's metadata include:

- Identity of those who edited the documents (revision authors)

- Time, date, and frequency of edits (track changes and revisions), commentary (inserted comments)
- Identity of the document template (unique law firm identifiers)
- Other data controlling the document's text and format

Opposing counsel, or bench officers, can turn Word's "Track Changes" function on and see the revisions in most documents. This could easily include privileged or otherwise protected information, including editorial comments or settlement strategies.

Contrary to what a number of attorneys believe, PDFs (portable document format) contain metadata, although in a smaller volume than in other document formats.

Metadata is not limited to printed documents; one of the most popular forms of metadata is the audio digital file "tag." This type of metadata is additional information displayed when users play back an MP3 file on an iPod or computer.

Under the Federal Rules of Civil Procedure's recent changes, metadata is routinely discoverable as part of civil litigation. Parties must preserve and disgorge metadata as part of discovery. Spoliation of metadata can lead to sanctions.

When counsel uses the "Fast Save" option in MS Word, the deleted text remains a part of a document's electronic

file history (new text is simply appended).

Where is Metadata Embedded?

Although metadata is useful internally to identify, classify, and manage documents in the law firm setting, understanding of metadata management issues lags. Unfortunately, accidental metadata disclosure can be a serious risk to clients' interests, and possibly malpractice.

Metadata in Law Firm Practice

Many lawyers dup-and-revise documents (using the "save as" function) to save time. When counsel does this, the original author information, document properties, hidden text, and last print date remain with the document, embedded as metadata. Counsel can view this metadata by looking at the document "properties" or by opening the document using a text editor with metadata functions. If counsel has created the document for a client, counsel should consider removing metadata before the document is transmitted to the client.

Sometimes, track changes remain in a document, as one aspect of metadata. When attorneys edit documents using the collaborative commentary feature in MS Word called "track changes," this language remains with the document, although invisible to the casual reader (unless those changes have been accepted). Even when the track changes feature is turned off, this does not erase the track changes verbiage that editors at the firm have added. If the document is sent to another

reader, whether friendly or adversarial, the recipient can see all of the revisions through the track changes function by turning the track changes option back on.

Comments also remain with a document, if they are not effectively deleted. If the "Reviewing" choice is set to "Final," and not "Final Showing Markup," the comments are invisible to the casual viewer. Once the document is transmitted outside the firm, the recipient can view the comments.

Recipients of Word documents can view the document's metadata by clicking on "File" and selecting "Properties."

Identifier Metadata

Identifier metadata reveals the writer's identity based on the metadata's uniqueness to both the user and the law firm. Identifier metadata should be managed if the author needs to remain anonymous, or if unique document-creation strategy would be revealed through the metadata information trail. Identifier metadata includes: uniquely named styles, bookmarks, hidden document variables and custom document properties.

File System Metadata

File system metadata created by programs such as Word and Excel usually include:

- File name
- Original author
- Author of revisions
- Date and time of revisions
- Number of pages
- Number of characters
- File size
- Date created
- Date modified
- Date printed

Savvy attorneys should establish, distribute, and enforce firm-wide policies that can help ensure security over documents and the metadata they likely contain. The only way to eliminate all risks, however, is to stick to hard copies of documents, use the facsimile machine, or scan hard copies and then send them electronically.

E-Mail and Metadata

E-mail metadata provides a unique set of hidden information, including the sender's domain, the route the message traveled over the internet, and where delays may

have occurred between sending and receipt.

Spreadsheets

Spreadsheets offer a wealth of metadata, including the formulae underlying the calculations. Deleted text might also be revealed if the embedded data is still present in the file.

Ethical Obligations, Confidentiality and Metadata

Are lawyers under an ethical obligation to guard against the inadvertent disclosure of client confidences and secrets contained in metadata? Attorneys should use reasonable care when transmitting documents electronically to prevent disclosure of metadata containing client confidences or secrets. This duty assumes that counsel will stay reasonably abreast of technological advances and the potential risks in transmission. It is an open question whether lawyers have an affirmative duty to remove metadata whenever documents are sent to opposing counsel or publicly disclosed.

Obligations of Recipients of Metadata

The ABA Standing Committee on Ethics and Professional Responsibility Formal Ethics Opinion, 06-440, which interprets Model Rule 4.4 (Respect for Rights of Third Persons), addresses what counsel should do if counsel receives documents with embedded metadata.

Rule 4.4(b) requires only that a lawyer who receives materials sent inadvertently notify the lawyer who sent them. The receiving lawyer may review the materials, and is not required to obey the sending lawyer's instruction as to disposition of the materials.

The Ethics Committee recommended that lawyers take steps to guard against the disclosure of metadata, including "scrubbing" metadata from documents prior to production, and entering into "clawback" or nonwaiver agreements. In clawback and nonwaiver agreements, inadvertently produced material is returned without waiver. Recent amendments to the Federal Rules of Civil Procedure and recently proposed amendments to the Federal Rules of Evidence both recommend this approach.

Guarding Against Disclosure

Lawyers can guard against disclosing information contained in metadata; they should consider routine cleaning or scrubbing documents of embedded hidden data. The following is an incomplete list of tools and strategies that remove hidden data tags in electronic documents:

- Save the file in Rich Text Format (RTF)
- Send the document in Macromedia Flash format
- Use WordPad (a stripped-down word processor in Windows)
- Later versions of Adobe Acrobat contain tools to help prevent inadvertent disclosure
- iScrub
- 3B Clean
- PCG's Metadata Assistant
- Workshare's Professional 4's "Hidden Data"
- Microsoft's "Remove Hidden Data" tool permanently removes hidden and collaboration data (such as change tracking) and comments from documents edited with MS Word, MS Excel, and MS PowerPoint

Amended Rule of Civil Procedure 34(b) permits a requesting party in litigation to specify the format in which it would like to have the electronically stored information produced. Most request the data in "native" format in order to preserve metadata, meaning that the electronic information must be produced as it is maintained and used.

If a document is or could be subject to discovery, counsel should not scrub metadata from the original version of the document, because this can alter it permanently. Based on the amendments to the Federal Rules of Civil Procedure, counsel is ill-advised to scrub metadata without first reaching an agreement with opposing counsel delineating the bounds of electronic production.

Best Practices: Practical Approaches to Controlling Metadata

Three approaches to metadata control that counsel might consider in order to manage metadata challenges include firm-wide education, firm-wide scrubbing and management standards, and using appropriate software.

Firm-wide education about metadata.

Law firm employees must learn about and understand the actions that embed metadata (e.g., track changes, multiple editors, and e-mail transmissions), the ramifications of metadata, and how they can and should control these features. For example, much of the metadata that is transferred through the “dupe and revise” maneuver can be avoided by using law-firm-approved templates to create new, clean documents, with minimal metadata.

Many powerful template and automation software products are available; often, they are actually faster and more efficient than counsel’s usual dupe-revise gambit. In addition, these products help lawyers copy text among document without transmitting hidden metadata.

Firm-wide metadata scrubbing and management standards. Establishing mandatory metadata-handling policies and procedures both eliminates the need for individual document handlers to decide what metadata gets scrubbed, and makes the scrubbing process more efficient. This standard should engage all document users, especially attorneys.

The law firm-wide metadata standard can manage the process by setting up qualification criteria that reflect what metadata needs to get scrubbed or modified in what situations involving which players. For instance, a co-worker-level (or criteria) might include cleansing most document properties, but leaving author information visible for collaboration purposes.

An adversary-level scrub might remove all metadata, including turning all field codes to text, and then converting the scrubbed document into a PDF for added metadata protection, or scanning the document and then e-mailing it.

Metadata scrubbing and management software. Microsoft provides a metadata removal tool for Microsoft Word, but some law firms find it insufficient because it doesn’t review out-going e-mail attachments, and it scrubs a too-limited array of metadata elements. More-powerful (and readily available) metadata cleansing applications both scrub metadata and allow law firms to manage their metadata at very detailed levels. For example, counsel wants to keep track changes in a document, but eliminate the author and time-related information. Or the attorney wants to ensure that the law firm’s name, not the user’s name, is left in a document.

Practical Metadata Management

Scrub a document using commercially available software programs.

Doc Scrubber

Doc Scrubber (Javacool Software) is a FREE metadata scrubbing software program that targets Word documents’ code. (The last time the document was edited, how many times it was edited, hyperlinks, and the license number of the originating copy of Word are samples of targeted metadata stored by Windows in Word documents).

The software program is compatible with Windows 98, ME, NT, 2000 or Windows XP. It involves two buttons: “Analyze” and “Scrub.” “Analyze” lets the user review one specific Word document to see metadata. “Scrub” can be used to scrub a single document, all Word documents in a folder, or selected documents in a folder.

A new document is created automatically after the scrubbing, with the metadata removed, and there are other options, which can be changed in the program’s settings. The program allows the user to choose to remove only the metadata that the law firm selects. The menu also contains two options to replace the author name and the company name to programmed verbiage selected by the user.

Thirteen metadata-tagged items can be removed from the selected Word documents, including subject, keywords, comments and several dates, including “creation” and “last saved”. Three of the 13 options can reset data back to their default values: this includes setting the template back to normal.dot, the revision count to “1” and the total editing time to “0.”

Microsoft Office Scrub Protocols

MS Office users can find unwanted data that has been inadvertently created using Microsoft technology. First, open the document to be scrubbed and select “File/Properties.” The metadata will be visible on the several tabs that appear. A second option is to select “File/Open” and highlight the particular file that needs to be scanned.

From the “File of Type” dropdown list, the user should choose the “Recover Text” from “Any File (*.*)”. After the file opens, the user must scroll through the document. When the user reaches the end of the document, the metadata will be visible. MS Word 2007 users can access the metadata through the “Prepare” button (below). (Additional material is available on Microsoft’s website, including how to manually remove metadata.)

Many users like Esquire Innovation’s iScrub, or Payne Group’s Metadata Assistant, which allow users to find the metadata in their documents, get reports on that data, and eliminate it before sending the documents on electronically. 📎



Lisa Miller is Chair of the SFVBA Small Firm & Sole Practitioner Section and Chair of the Solo and Small Firm Section of the State Bar. She writes frequently on ethics issues. She can be reached at

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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. Automated features that help create the document become embedded in the document as metadata when counsel uses Microsoft Word.
True
False
2. Metadata is part of counsel's considerations in the context of electronic discovery.
True
False
3. Metadata is part of counsel's considerations in the context of electronic discovery.
True
False
4. Metadata cannot be viewed if the document is sent via e-mail. Metadata is embedded in the electronic document file and travels with the document.
True
False
5. If counsel turns off the "track changes" function on a document, and then transmits the document via e-mail, there is no way the party on the receiving end can view the track changes.
True
False
6. Documents created by revising existing documents and then saving under a different name using the "save as" function retains embedded metadata in the newer document.
True
False
7. Identifier metadata needs to be managed where the author needs to remain anonymous.
True
False
8. File system metadata created by Word do not include information regarding by whom and when revisions were made.
True
False
9. Metadata attached to documents that are e-mailed reveals the sender's domain.
True
False
10. Unlike other electronically created documents, spreadsheets do not carry embedded metadata that travels with the document.
True
False
11. No consensus has been achieved regarding the details of counsel's ethical obligations regarding handling metadata..
True
False
12. Even without ethics opinions directing counsel to do so, attorneys have an obligation to stay reasonably up-to-date on technologies affecting law practice and the interests of their clients.
True
False
13. Recipients of metadata have an ethical obligation not to look at it, according to the American Bar Association.
True
False
14. It is a good idea for counsel to guard against the disclosure of metadata, including "scrubbing" metadata from documents prior to production.
True
False
15. Non-waiver agreements between counsel prior to commencing discovery are a useless waste of time.
True
False
16. To guard against disclosing metadata, counsel should routinely scrub documents of embedded hidden data.
True
False
17. To be safe, counsel should buy a product from a third-party vendor, because Microsoft does not have an effective tool for removing metadata from documents.
True
False
18. If a document is or could be subject to discovery, counsel should not scrub metadata from the original version of the document, because this can alter it permanently.
False
19. Three approaches to metadata control that counsel might consider in order to manage metadata challenges include firm-wide education, firm-wide scrubbing and management standards, and using appropriate software.
True
False
20. It is malpractice per se to transmit documents to opposing counsel without first effectively cleansing them of metadata.
True
False

MCLE Answer Sheet No. 16

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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State Bar No. _____

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 |
| 7. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 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 |
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| 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 |
| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |



Guidepost for New Bankruptcy Attorneys

By Nate Bernstein

NEWLY ADMITTED ATTORNEYS who are considering going into the field of bankruptcy or real estate law have to be cognizant of the difficult choices that homeowners need to make if facing a foreclosure and other debt issues. As a counselor and advocate, an attorney can proficiently assist families in need of legal and financial guidance.

The typical situation that attorneys see when counseling clients is a homeowner trying to modify one or two mortgages outside of bankruptcy, trying to put off a non-judicial foreclosure, trying to manage mounting unsecured debt, or a homeowner who is contemplating a bankruptcy filing. The consumer has limited resources for attorney's fees and costs. The debtor's attorney will be asked how to channel those resources in the most effective way possible.

One of the greatest challenges facing consumers and families with financial difficulties is whether to negotiate a mortgage loan modification prior to filing a bankruptcy. It is possible to complete both procedures concurrently, but there are legal obstacles and challenges. If a loan modification would avert the need for a bankruptcy, then the modification makes sense and should be pursued and completed. Other considerations are the goals and other immediate debt problems of the borrower. If the consumer has substantial debts other than mortgage debts and is facing lawsuits or aggressive phone calling and collection remedies from unsecured creditors, a Chapter 7 may be the best course of action, and perhaps the only initial course of action.

If the goal of the consumer is to pay back mortgage arrears, and the debtor

has regular income, then filing Chapter 13 may be the best course to stop a foreclosure if a pre-filing loan modification is unsuccessful. Chapter 13 is a form of bankruptcy whereby the petitioner proposes a repayment plan to pay creditors over time, and makes one monthly payment to a trustee. Mortgage arrears are paid through the plan, and post filing mortgage payments are paid to the mortgage creditors directly. A loan modification of terms such as interest rate or payment amount could

The lender is prohibited by the bankruptcy laws from continuing with a foreclosure without permission from the bankruptcy court.

be achieved after the case is filed, but a post filing modification or refinance while the bankruptcy is pending will probably need bankruptcy trustee review and court approval.

If the consumer has regular income, has two mortgages recorded on their primary residence, and wants to proceed under Chapter 13, counsel should research the possibility of filing a motion in the bankruptcy court to try to turn an unsecured second mortgage into ordinary unsecured debt. This is called a "Lien Stripping Motion." The goal is to help the debtor by eliminating the need to pay a second mortgage when the second mortgage is not secured by the value of the property.

Attorneys should assist clients with obtaining an appraisal of the property to

confirm that the second mortgage is in fact "underwater." If the motion is successful, the second mortgage is treated the same as other Class 5 unsecured creditors in the Chapter 13 repayment plan. The motion that is filed is called a "Lam Motion," based on the 9th Circuit holding in *Lam v. Investors Thrift* (In re Lam) (9th BAP 1997) 211 B.R. 36.

If a Chapter 13 is not in the cards, other important considerations are the terms that the lender and borrower can workout in an out of court modification. Is the modification a meaningful step in the right direction for the borrower or is the borrower just adding interest to the debt burden? Is a forbearance agreement part of the modification package? Are the terms of a forbearance

agreement fair, or is the forbearance agreement unconscionable to the homeowner? An application to modify a mortgage may be a huge waste of time and resources if the borrower has no source of income. If the goal of a bankruptcy filing is to discharge credit card debt and to stop lawsuits and there is little or no equity in the homestead property, then filing Chapter 7 may be the best first course of action in order to give the debtor some relief.

If a bankruptcy is filed, usually a lender holding a first mortgage will not negotiate a formal modification – or continue to negotiate a modification right away. The lender may take an initial hands-off approach as a result of the bankruptcy filing and the automatic stay that is in effect. The

lender is prohibited by the bankruptcy laws from continuing with a foreclosure without permission from the bankruptcy court. The lender may transfer the file from its modification department to its bankruptcy department or to outside bankruptcy counsel.

If the debtor is not current in post petition payments, the lender may file a "Motion for Relief from the Automatic Stay," which is a motion that seeks court permission to start or continue the foreclosure process outside of bankruptcy court. However, at the end of the day, most lending institutions do not want to own real estate. Lenders want to loan money and make profits through interest and other fees. It may be in the lender's best financial interest to negotiate a post filing loan modification so that payments can continue and both creditor and debtor can achieve their financial objectives.

If a client needs a loan modification and a bankruptcy, one approach in certain circumstances is to file bankruptcy first to eliminate dischargeable unsecured credit card debt and to stop any pending lawsuits. There is more certainty in this approach than waiting for months for a lender to make a decision on a loan modification application while other creditors are taking aggressive action. Filing Chapter 7 first may free up more monthly income for payment of the mortgage and allow the borrower to focus on the important obligations that protect his or her family. Chapter 7 is an option if there is little or no equity in the homestead.

After the bankruptcy is completed, then the mortgage may still be modified if the lender is willing to modify it, the borrower can meet that lender's minimum criteria, and the lender has not made a firm decision to continue the foreclosure remedy. The post filing modification may include negotiation of such terms as to whether an adjustable rate loan can be transformed into a fixed rate obligation that is more affordable.

Another approach may be to modify a second mortgage (mortgage recorded in second position) with a reaffirmation agreement that is part of the Chapter 7 bankruptcy process. The creditor usually sends a letter and a proposed reaffirmation agreement to the debtor's attorney. The proposed agreements are voluntary, and the debtor is not obligated to sign them.

Bankruptcy Code Section 524 governs reaffirmation agreements, and allows for a recession and cancellation period at any time before the court enters a discharge order, or before the expiration of the 60 day period that begins on the date the reaffirmation is filed with the court, whichever occurs later.

Reaffirmation agreements have the legal effect of making a debt survive bankruptcy – the debt is not discharged in bankruptcy,

and the debtor is personally liable for the obligation after the bankruptcy is completed. For this reason, Bankruptcy Code Section 524 mandates that debtor's attorneys and the courts "police" these agreements to assure their fairness, and that the debtor knows what he or she is signing.

Usually, a creditor may offer a reaffirmation agreement as a way to minimize losses and to keep the debtor paying some portion of the obligation. Sometimes this is offered as a way for the debtor to rebuild credit in the post bankruptcy period if the creditor is willing to offer a small credit line. In some situations, a mortgage creditor with a second mortgage may offer a reaffirmation agreement as a way to lower the payments. For a reaffirmation of a second mortgage or general, unsecured debt to make financial sense for the debtor, there must be some real financial benefit to the debtor. The terms of the reaffirmation agreement should be reviewed carefully by bankruptcy counsel prior to execution.

In summary, there is no absolute, clear cut answer or black letter solution to the question of whether a person or a married couple should file bankruptcy first, and attempt the mortgage modification second, or vice versa. New attorneys should consult with more experienced attorneys on complex issues. Members of the San Fernando Valley

Bar Association should reach out to each other for guidance, advice, or a "second opinion."

Borrowers may have little control over whether a mortgage loan modification will be approved. The lender can take their sweet time and not approve the application. Because mortgage banks are overwhelmed with requests, long delays on loan modification processing are common.

Foreclosure sale dates will have to be postponed with confirmation in writing. Filing bankruptcy, on the other hand, is a form of immediate and powerful relief if a person or couple is eligible. Each situation must be evaluated on a case-by-case basis. The borrower should keep the creditor's representative informed if a bankruptcy filing is imminent. ▲



Nate Bernstein is the principal of Nate Bernstein & Associates in Encino, which focuses in the areas of complex real estate litigation, commercial and corporate litigation, and bankruptcy matters. The firm has represented individuals, corporations, LLCs and insurance companies in southern California for 16 years. Bernstein can be reached at (818) 995-9475 and natebernstein@netzero.net.

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ANOTHER YEAR HAS COME AND gone for the Santa Clarita Valley Bar Association. This year has been another year of tremendous growth. However, most of all, it has been a year for awareness. More and more residents of the Santa Clarita Valley are becoming aware that we have a bar association.

The Santa Clarita Valley Bar Association website contains a directory of member attorneys. The website receives about 1500 visitors per month, and it has been a good source of information for members and the community about upcoming bar association events.

The bar association recently had its annual Law Appreciation Day when local heroes of the Santa Clarita Valley community were honored. Dignitaries present included Supervisor Michael Antonovich and many others. The event was held at the Hyatt Regency Valencia. Approximately 150 attorneys, judges, and other members of the community attended. Next year promises to be even better.

Last year, the bar association polled its members to discover that members wanted the association to focus on three main areas — networking, continuing education and community outreach. First, there was strong focus on networking opportunities, especially with the addition of the quarterly Attorneys Networking Breakfast as well as “mixer only” events at Vino 100 and El Torito Restaurant.

Second, the bar continued to host monthly seminars for its members so MCLE credits could be earned. Finally, with a recent article in Elite magazine, the bar association was introduced to many who had no idea it existed. The bar also continues to feature a weekly article in the business law section of the local Signal newspaper. This year, the bar also made efforts to work with local high schools on mock trial presentations.

On November 19, 2009, the bar association will welcome its new officers. Brian Koegle of Poole & Shaffery will become President; Paulette Gharibian of the Reape-Rickett Law Firm is slated to be

the next President-Elect; Robert Mansour will serve as Immediate Past President; Amy Cohen will be Secretary; and Jane McNamara will continue as Treasurer. Returning board member at-large Barry Edzant will reprise his role. Newcomers Mark Young and April Oliver will also be board members at-large. As of this writing, the election results are not yet final and are subject to change.

At 150 members strong, the Santa Clarita Valley Bar Association is still in its “growth” period. Each year, it seems to grow by about 20%. Next year, under Brian Koegle’s leadership, will be another exciting year of growth and opportunities.

Please keep in touch by accessing the bar association’s website at www.scvbar.org and sign up for email updates by sending an email to subscribe@scvbar.org. ✉

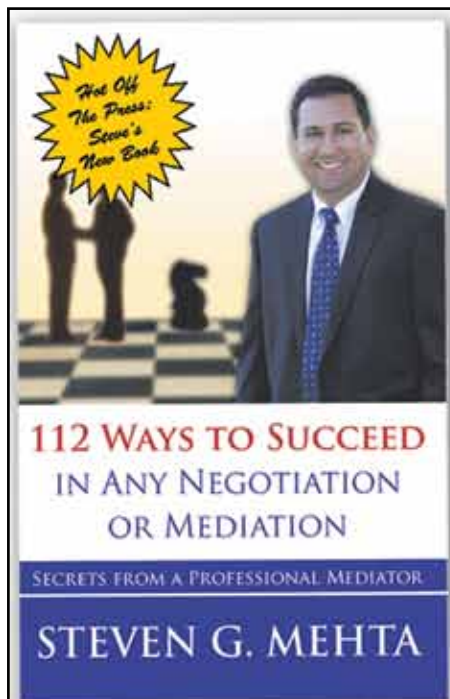
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San Fernando Valley Bar Association



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Joint Meeting with Cal Society of CPAs **To Incorporate or Not to Incorporate**

NOVEMBER 4
12:00 NOON
BRAEMAR COUNTRY CLUB
TARZANA

Attorney William Staley will discuss how to help your client set up a new business as a corporation, LLC or partnership and the tax implications of each venture. RSVP to delia.rincon@calcpa.org or (818) 546-3509.

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\$35 PREPAID	\$45 PREPAID
\$45 AT THE DOOR	\$55 AT THE DOOR
1.5 MCLE HOUR	1.5 HOUR CPE

Probate & Estate Planning Section **The Use of Trusts in Asset Protection Planning**

NOVEMBER 10
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney Jacob Stein will discuss the ins and outs of asset protection planning in regard to trusts.

MEMBERS	NON-MEMBERS
\$35 PREPAID	\$45 PREPAID
\$45 AT THE DOOR	\$55 AT THE DOOR
1 MCLE HOUR	

Family Law Section **Prevention of Substance Abuse in Regard to the Legal Profession**

NOVEMBER 23
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO

Renowned speaker on this topic, Patricia Tierney, will discuss the intricacies involved in determining what constitutes substance abuse and how it applies to your practice. Attendees will receive the sought after one hour of substance abuse prevention credit for this lively seminar.

MEMBERS	NON-MEMBERS
\$45 PREPAID	\$55 PREPAID
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1 MCLE HOUR — PREVENTION OF	
SUBSTANCE ABUSE	

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