VALLEY LAWYER

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A Publication of the San Fernando Valley Bar Association

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A Publication of the San Fernando Valley Bar Association

VALLEY LAWYER

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FEATURES

DEPARTMENTS

A Story About Heart

SEYMOUR I. AMSTER
SFVBA President

SOMETIME THIS YEAR THERE WILL BE SEVERAL collegiate athletes anxiously waiting for the sound of the gun to start the women's 3,000 meter steeplechase event. This is considered a very difficult event in track and field – it has four barriers and one steeple with water at every lap.

The steeplechase is normally reserved for individuals with long legs who can leap over the steeple effortlessly, considering the impediment more bothersome then troublesome. This season these women athletes will look down the starting line and see a 4'11" competitor with legs not as long as theirs. They will size her up and think "Don't have to worry about that one."

But they will be wrong because what they won't see is the size of her heart. After they cross the finish line, they will be amazed, shake their heads, look over in wonder, and they will have learned the lesson, never underestimate a future lawyer with the heart of a lion.

Five years ago, Zitlalic Ley came from Mexico to the United States. In Mexico, her father was a college professor and her mother was an elementary school teacher. In order to provide a better life for her family, Zitlalic's mother arranged to bring Zitlalic, her sisters and brother to the United States legally.

Zitlalic quickly learned that when "you come from another country and start from zero, you learn to fight for all you want to have." She was given little preparation for life in a new country. Zitlalic did not know English. According to her, she had not valued her old lifestyle until her family migrated to the United States. All of her basic needs were taken care of in Mexico. But when she came to the United States she had nothing. She did not have a house, car, job, medical insurance, school, money, literally nothing.

Many times Zitlalic felt depressed, but she fought the temptation to return to Mexico because then her mother's efforts to get them to the United States would have been a waste of time. Furthermore, that would have meant she had been a failure to her family and herself. Zitlalic decided to stay and take advantage of the many opportunities she would have as a member of the American society.

Her mother found a place for them to live around downtown Los Angeles. Zitlalic decided to attend both regular high school and adult school at the same time so that she could learn English and be able to understand her teachers.

Zitlalic's daily routine was going to high school classes in the morning and cross-country practice in the afternoon, and then attending adult school in the evening. She did that every weekday from 7:30 a.m. to 9:00 p.m. for two semesters. At the end of the second semester, Zitlalic received an award as a result of maintaining a high GPA in high school and making it to the city championship in cross-country. She also achieved one of the highest grades in adult school.

After an event at the city championships, the coach from Glendale Community College asked Zitlalic if she wanted to attend his school and compete for them. Since she had already completed high school in Mexico, she was eligible to attend a community college. Zitlalic still wanted to receive a high school diploma in the United States, because she had been informed that this was important. Thus, Zitlalic obtained a high school and community college diploma at the same time.

This was a difficult task she had chosen. She took between 17 to 19 units during the regular semester, in addition to taking three to six units during the winter and summer semesters. To better understand the material, she spent time in the writing center with tutors and in the library studying and looking up words in the dictionary. At the same time, she practiced three to four hours a day for cross-country and track. Finally, she worked 36 hours per week in order to pay for her classes, books and contribute to her family's expenses.

Every morning she took the bus at 5:30 a.m., attended classes, practiced in the afternoon, and was at work by 5:00 p.m. She would then do homework after her job, and finally go to sleep at 3:00 a.m.

As a result of this harsh schedule, she ran two minutes slower than her normal time in the conference cross-country race and she did not qualify for the state championships in her first year. She was disappointed but understood that the difficult schedule she was maintaining had affected her performance.

The next semester Zitlalic decided to run the steeplechase. Since it was a very difficult event for her, she kept up her regular intense practice routine. Unfortunately, Zitlalic injured herself. After enduring four months of daily therapy and strengthening exercises, she was able to run again, but would forego the steeplechase event that year.

As a result of her dedication and hard work, her coach made her the captain for the 2007 cross-country team. Mocked by teammates for her accent, Zitlalic pushed and encouraged everyone to do better for the team. The team was the undefeated winners of the California championship. The following semester, she told her coach that she wanted to try the steeplechase again. It was important to her to be successful in this event.

The team had four steeplechasers who were faster than her. Before her first race, she cried because she was very nervous. But she controlled her emotions and somehow got to the starting line. The race started and when she reached the first steeple, instead of going over it, she totally stopped running, put her hands on the steeple, jumped over it and fell. She quickly got back up, started running again and completed the race. She was proud of herself, that she had overcome her fear.

At the end of the season, she not only had a faster time then the other steeplechasers on her team, she placed fifth at the state championships and named an All-American. In her second year, she won second place at the California championships and ranked third in the nation. She graduated Glendale Community College with a Social Science Associate Arts degree and was awarded the Coblentz-Zorbas Women's Athletic Award.

Zitlalic was offered scholarships for her academic and athletic achievements by several universities. She chose California State University at Northridge because her family lives in California and CSUN has an excellent program in her chosen major, political science with an emphasis on pre-law.

The financial assistance allowed Zitlalic to work fewer hours than before, and gave her the opportunity to apply for internships related to her future goals. One of her internships was at the Department of Children Services, in connection with the Mexican Consulate. She interviewed and assisted Mexican immigrants living in the United States to determine the legal issues they were having and directed them to the proper governmental agency. She also translated English documents to Spanish for individuals at the consulate. In addition, she interned at the office of 39th Assembly member Felipe Fuentes' district office in Arleta.

Presently, Zitlalic is involved with the tutoring programs at Northridge Academy High School, the public high school on CSUN's campus. She is able to relate and encourage high school students who have been raised and influenced by negative environments. Her personal touch has motivated these students who were at risk of failing, to find a reason to turn their lives around. She stands out as a role model to these students and her story gives them hope to achieve as she has.

Zitlalic will graduate this year with honors with a bachelors' degree in Political Science. She has applied to several law schools. She feels her experiences, both in and out of the classroom, have prepared her for law school. Her triumphs and tribulations have provided her with valuable insight that she will be able to use in her future endeavors as a lawyer.

There is no question in my mind that she will not only become an attorney but she will be a great one. My only fear is that I will have to face her in the courtroom some day. But if I have to I will not underestimate her, because I will know the size of her heart.

Seymour I. Amster *can be contacted at Attyamster@aol.com.*

From the Executive Director

Technology + Human Touch = Service

ELIZABETH POST
Executive Director

THIS MONTH'S *VALLEY LAWYER* FOCUSES ON technology. The SFVBA endeavors to use the most up-to-date technology to serve and communicate with members – Fastcase, listservs, an interactive website integrated with our database, search engine optimization, email marketing, Facebook and Twitter.

We recognize, also, that attorneys and other professionals join associations to network and benefit from camaraderie with colleagues, member services best offered with the human touch.

This was no more evident than at our recent Judges' Night, at which 400 members and bench officers attended to socialize, network and honor our Valley judges. Or at January's two-day MCLE Marathon, where members filled the meeting room at Braemar Country Club, not just for last minute CLE credits, but as we were often told, to reconnect with colleagues. (Technical advances such as webinars and podcasts should have made this event obsolete years ago!)

Valley Lawyer is another case of a tangible benefit that touches our members each month. I recently had the pleasure of having lunch with the new president of the State Bar, Joe Dunn, and a few executives of bar associations from Southern California. We shared with each other what was working for our organizations, as well as the challenges we all faced. I used this opportunity to showcase *Valley Lawyer*. I was informed, in a nice manner, of course, that paper publications were antiquated.

The current recession has caused many association publications to downsize, reduce its number of issues, convert to electronic publications, or be subsidized by membership dues. Bucking these trends, *Valley Lawyer* has developed into ***a 36-page (beginning this issue)***, full-color, self-sustaining magazine offering members a means to advertise their practices to colleagues through publication of substantive articles and paid advertisements.

The SFVBA staff and leadership will continue to balance *what* and *how* benefits and services are offered to members, with the latest technology or a human touch, or most likely, a bit of both. We certainly welcome your views.

The SFVBA partnered with Fastcase three years ago to provide subscriptions to the online legal research service to all Bar members. The motivation for this technological endeavor was members' loss of library privileges at the UWLA law school. The SFVBA explored every option to provide library services to members, including moving the law library at the Van Nuys courthouse to available space at our Oxnard Street offices, which we quickly determined was not feasible. The law library eventually found a home with the Van Nuys Self-Help Center.

Now, three years later, with both the Self-Help Center and the law library short on space, the Board of Trustees of the Los Angeles Law Library voted earlier this year to move the law library down the mall to the Van Nuys branch of the Los Angeles Public Library. The move could be completed as early as next month. We will keep members apprised – through Facebook, Twitter, emails and/or *Valley Lawyer* – of this new development. ☺

Liz Post *can be contacted at epost@sfvba.org or (818) 227-0490, ext. 101.*

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Together we'll go far

Enforcement of "Non-Refundable" Retainer Provisions

Based in Large Part on State Bar Mandatory Fee Committee Arbitration Advisory 01-02

By Michael J. Fish

ARBITRATORS IN FEE DISPUTES THAT FALL within the Attorney Mandatory Fee Arbitration provisions contained in Business & Professions Code sections 6200. et.seq. are frequently called upon to evaluate the provisions of a fee agreement that characterizes a payment by the client as a "retainer" and as "non-refundable" or "earned upon receipt."

As attorneys, we should review and evaluate our retainer practices to insure compliance with current California law. There are important differences as to how attorneys are required to treat such payments, depending on the true nature of the payment and regardless of the language used in the fee agreement. Principally, these differences concern (1) the attorney's obligation, if any, to refund some or all of an advance payment upon discharge or withdrawal and (2) whether the advance payment should be placed in the attorney's client trust account or in the attorney's own proprietary account.

Obligation to Refund

Distinction between "True" Retainers and Other Advance Payments

Rule 3-700(D)(2) of the Rules of Professional Conduct[1] provides that when the attorney-client relationship has concluded the attorney must: *"Promptly refund any part of a fee paid in advance that has not been earned. This provision is not applicable to a true retainer fee which is paid solely for the purpose of ensuring the availability of the member for the matter."*

Under Rule 3-700(D)(2), unless the attorney and client have contracted for a "true retainer" (also known as a "classic retainer"), the attorney must refund any portion of an advance fee that the attorney has not yet earned. This raises the question of how to distinguish a "true retainer" from other forms of advance payments. Rule 3-700 (D)(2) itself suggests that a "true retainer" is one that is paid "solely for the purpose of ensuring the availability of the member." This definition of a "true retainer" was adopted by the California Supreme Court in *Baranowski v. State Bar* (1979) 24 Cal.3d 153.

In *Baranowski*, an attorney was disciplined for failing to return advance payments to three clients. The court explained that: "An advance fee payment as used in this context is to be distinguished from a classic retainer fee arrangement. A [classic] retainer is a sum of money paid by a client to secure an attorney's availability over a given period of time. Thus, such a fee is earned by the attorney when paid since the attorney is entitled to the money regardless of whether he actually performs any services for the client." [Id., at 164 fn.4].

It is important to note that the key defining characteristic of a "true" or "classic" retainer is that it is paid solely to secure the *availability* of the attorney over a given period of time and is not paid for the performance of any other services. In a true retainer situation, if the attorney's services are eventually needed, those services would be paid for separately and no part of the retainer would be applied to pay for such services. Thus, if it is contemplated that the attorney will bill against the advance payment for actual services performed, then the advance is not a true retainer because the payment is not made solely to secure the availability of the attorney. Instead, such payments are more properly characterized as either a security deposit or an advance payment of fees for services (see endnote 2, below).

A true retainer is earned upon receipt (and is therefore non-refundable) because it takes the attorney out of the marketplace and precludes him or her from undertaking other legal work (e.g., work that may be in conflict with that client). It also requires that the attorney generally be available for consultation and legal services to the client.

Sometimes a true retainer will take the form of a single payment to guarantee the attorney's future availability for a specified period of time and other times as payments made on a recurring basis, such as a monthly retainer, to assure the attorney's availability to represent the client for that month. Sometimes this is referred to as having the attorney "on retainer."

As might be expected, true retainers are rare in today's legal marketplace. Due to the abundance of competent attorneys in virtually all fields of law, there are probably only a handful of situations in which a client would want to pay a true retainer. Nonetheless, true retainers do have a legitimate, if infrequent, use in the legal marketplace. As one court has noted, "A lawyer of towering reputation, just by agreeing to represent a client, may cause a threatened lawsuit to vanish." [*Bain v. Weiffenbach* (Fla.App. 1991) 590 So.2d 544].

In some cases, a client may perceive that only the retained attorney has the requisite skills to handle a particular matter and may want to guarantee that attorney's availability. In other cases, a true retainer, especially in a smaller community, may be used simply to prevent the attorney from representing an adverse party. Other than these examples though, true retainers would seem to be of little use to clients in everyday legal matters.

In other instances, a so-called "retainer" is effectively a security deposit or an advance payment of fees[2]. A payment that represents a security deposit or an advance payment for services to be performed in the future remains the property of the client until earned by the attorney, and any unearned portion is to be returned to the client [Rule 3-700(D)(2); S.E.C. v. Interlink Data Network (9th Cir. 1996) 77 F.3d 1201].

An example of an advance payment for services would be where the attorney charges $200 per hour and collects a "retainer" of $2,000, giving the client credit for ten hours of legal services to be performed in the future. If the attorney is discharged or the matter is otherwise concluded before the attorney has expended ten hours of his or her time, the attorney must refund the balance of the advance payment that has not yet been earned. Thus, if the attorney had only expended four hours of time prior to being discharged, under Rule 3-700(D)(2) the attorney must promptly refund $1,200 to the client.

In *S.E.C. v. Interlink Data Network*, supra, the law firm's characterization of the fee as a "present payment for future work," which it alleged was earned when paid, was unsuccessful in avoiding a refund of the unused portion of the fee to the client's bankruptcy trustee.

Language of Fee Agreement Not Controlling

Advance payments that are not "true" retainers are absolutely and unequivocally refundable under Rule 3-700(D)(2) to the extent they are unearned, no matter how the fee agreement characterizes the payment [*Matthew v. State Bar* (1989) 49 Cal.3d 784; see also Federal Savings & Loan v. Angell, Holmes and Lea (9th Cir. 1988) 838 F.2d 395, 397-398].

In *Matthew*, two fee agreements provided for a "non-refundable" retainer payment. In each instance it was contemplated that the attorney would bill against the "retainer", but the attorney failed to fully perform the required services. The attorney was disciplined both for client abandonment and for failure to account for and return the unearned portion of the fees. Thus, the attorney's characterization of the retainer as "non-refundable" in the fee agreement did not abrogate the attorney's duty to return any portion of the fee that had not been earned.

The Supreme Court emphasized that "Retention of unearned fees [is] serious misconduct warranting periods of actual suspension, and in cases of habitual misconduct, disbarment." [Id. at 791]. A member's failure to promptly account for and return the unearned portion of an advance fee warrants discipline [*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752].

Another case in which the language of the fee agreement did not control the characterization of the advance payment is *In re: Matter of Lais* (1998) 3 Cal. State Bar Ct. Rptr. 907. In the *Lais* case the attorney's fee agreement read as follows: "Client agrees to pay attorney for his services a fixed, non-refundable retainer fee of $2,750 and a sum equal to $275 per hour after the first ten hours of work. This fixed, nonrefundable retainer is paid to the attorney for the purpose of assuring his availability in the matter."

Even though the language of the agreement stated that the advance was being paid to assure the attorney's availability and was nonrefundable, the advance was clearly also to be applied to the first ten hours of work. Therefore, the advance was not paid solely to assure the attorney's availability. The court held that the $2,750 payment was not a true retainer and that the attorney was required to refund any amount that had not been earned.

Unconscionability

Civil Code section 1670.5 provides that a contract may be found to be unenforceable if its terms are unconscionable. In addition, Rule 4-200 of the Rules of Professional Conduct provides that an attorney may not charge or collect an illegal or unconscionable fee. In some cases, a payment that is properly characterized as a true retainer may nonetheless be unenforceable if it is found to be unconscionable.

Attorney's fees have been found to be unconscionable where it was "so exorbitant and wholly disproportionate to the services performed as to shock the conscience."

Rule 4-200 sets forth eleven factors to be examined in determining whether an attorney's fee is unconscionable. Some of these factors include: (1) the relative sophistication of the attorney and the client; (2) the amount of the fee in proportion

to the value of the services rendered; and (3) the experience, reputation and ability of the attorney. One case held that a fee agreement requiring the client to pay a "minimum fee" upon discharge was unconscionable [In re: *Scapa & Brown* (1993) 2 Cal. State Bar Ct. Rptr. 635, 652].

Unconscionability in the context of a true retainer agreement would normally not be a consideration where the client is a sophisticated purchaser of legal services, a large insurance company or a corporation for example, or where the attorney's skill and reputation are well known. As previously noted, however, the situations in which a client may have a valid reason for paying a true retainer fee are not very common.

True retainers should therefore be scrutinized to see if the fee is unconscionable. For example, a client may receive very little or no value at all by ensuring the availability of the attorney if the attorney has no particular reputation or expertise and if there is an abundance of other competent attorneys available to handle the client's matter. In cases such as this, a true retainer might be unconscionable, particularly if the amount charged is very high and the client is not a sophisticated purchaser of legal services.

In examining whether a true retainer withstands an unconscionability analysis, it is important to remember that an agreement may only be avoided on grounds of unconscionability based on the facts as they existed at the time the contract was formed [Civil Code section 1670.5; Rule 4-200(B)]. "The critical juncture for determining whether a contract is unconscionable is the moment when it is entered into by both parties, not whether it is unconscionable in light of subsequent events." [*American Software Inc. v. Ali* (1996) 46 Cal.App.4th 1386, 1391].

Thus, if a client enters into a true retainer agreement with a famous criminal defense attorney because the client fears that he will be indicted and wants to ensure the defense attorney's availability, the client could not avoid the contract on grounds of unconscionability merely because the indictment never occurred.

On the other hand, if the same client entered into a true retainer agreement with an attorney who had no experience or reputation in handling criminal law matters, the retainer might be unconscionable depending upon the amount paid and the sophistication and bargaining power of the client, regardless of whether the indictment occurred or not.

Placement of Advance Fees and True Retainers

The issue of where attorneys should place advance payments depends on the nature of the payment. Rule 4-100 provides, in pertinent part: "All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account", "Client Funds Account" or words of similar import.....No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled . .."

Because true retainers are earned upon receipt, they are not "funds held for the benefit of the client." Therefore, Rule 4-100's prohibition on commingling "funds belonging to the member" means that true retainers should be placed in the attorney's proprietary account and not in the client trust account.

Two courts since *Baranowski v. State Bar*, supra, have declared that it is undecided in California whether, under Rule 4-100, an advance payment for services or a security deposit must be deposited into the client trust account [*SEC v. Interlink Data Network* (9th Cir. 1996) 77 F.3d 1201, n.5; *Katz v. Worker's Comp. Appeals Bd.* (1981) 30 Cal.3d 353, n.2]. *Yet, in T&R Foods, Inc. v. Rose* (1996) 47 Cal.App.4th Supp. 1, the Appellate Department of the Los Angeles County Superior Court held that under Rule 4-100 an advance fee must be deposited into an attorney's trust account, and that an attorney's failure to segregate the advance fee or security deposit from his general funds constituted a breach of fiduciary duties[3]. The *T&R* court reasoned that the language of 4-100 indicated "an intent by the State Bar that funds retain an ownership identity with the client until earned." [Id., at 7].

Importantly, the *T&R* opinion noted that attorneys who commingle advance fees or security deposits with their own funds are not only subject to discipline by the State Bar, but also subject to civil liability for professional negligence and breach of fiduciary duty. Although the *T&R* opinion may not be binding on California's appellate courts, it is currently the only opinion that decides the issue one way or the other. Therefore, unless a higher court disapproves the *T&R* opinion, an event that is by no means certain, California attorneys are required to follow its' holding.

As attorneys, we should review and evaluate our retainer practices to insure compliance with current California law. How should monies be treated by attorneys where the client has made an advance payment and claims entitlement to a refund of all or a portion of the advance? Attorneys in their own practice should carefully consider the following issues:

1. Whether the retainer is a "true retainer" or a "classic retainer" that was paid solely to ensure the attorney's availability and not paid for the performance of any particular legal services
2. Whether the retainer merely represents an advance payment or security deposit for actual legal services to be performed in the future. A provision that the attorney will charge an hourly rate to be billed against the retainer is a conclusive indicator that the payment is an advance payment or a security deposit that is refundable unless fully earned.
3. If the payment represents a true retainer fee paid solely to ensure the availability of the attorney, whether the fee is unconscionable in light of the facts as they existed at the time the agreement was formed
4. To the extent it may bear upon the fees, costs, or both to which the attorney is entitled [See Business & Professions Code section 6203(a)], whether the attorney complied with Rule 4-100(A) in placing the advance payment in the appropriate account.

A careful evaluation of one's practices can aid in the avoidance of the pitfalls and potential consequences from the State Bar.

Michael J. Fish *is a senior partner with the firm of Fish & Snell, P.C., located in Novato. He is the former Assistant Presiding Arbitrator and a past chair of the State Bar of California Mandatory Fee Arbitration Committee. He can be reached at (415) 382-0100 or mfish@fishandsnell.com.*

[1] All references to a "Rule" or "Rules" refer to the California Rules of Professional Conduct.

[2] An "advance payment" would typically be applied toward the client's bill at the end of the current billing period. A "security deposit" is one held by the lawyer throughout the representation and refunded to the client once all services are completed and the attorney has been paid. For convenience, a security deposit is sometimes applied to the final invoice.

[3] Note that all advances for costs and expenses must be placed in a client trust account because they are funds held for the benefit of the client [Stevens v. State Bar (1990) 51 Cal.3d 283].

A Not-So-Subtle Reminder To The San Fernando Valley Bar Association Members:

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Searching for Statutes (Overview)

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Fastcase for SFVBA Members:

Accelerated Legal Research

By Angela M. Hutchinson

SINCE APRIL 2008, FASTCASE HAS BECOME ONE OF THE SAN FERNANDO VALLEY BAR Association's most valued member benefits. Fastcase is a leading online legal research provider that offers SFVBA members an innovative and proven search technology service. Fastcase has an online research system with an extensive state and federal database of law. In addition, there is also a blog feature that allows users to read informative articles and stay abreast of the latest legal news.

"With the Fastcase member benefit, members of the bar are getting one of the most innovative search technologies, running on one of the most comprehensive law libraries in the world," says Fastcase President Phil Rosenthal.

Due to the SFVBA's continued commitment to serve its members, Fastcase is offered as a complimentary membership service, where all subscription costs are covered by the Bar. "Fastcase isn't just the more affordable option. Fastcase is a smarter tool for legal research," says Ed Walters, Fastcase CEO. "Time is money, and Fastcase saves you both."

SFVBA's partnership with Fastcase makes the Bar an industry leader among local bar associations. "Fastcase levels the playing field between small firms and large firms, providing everyone the kind of access to the law that only the largest firms have enjoyed," said Rosenthal. "Now all lawyers, from the biggest firms to the most remote solo practitioner, will have the entire national law library right on their desktops," he added.

Fastcase is also now available in an iPhone app, which launched in February 2010. The app won the prestigious American Association of Law Libraries New Product of the Year award. "We're doing more and more computing on the go, and there's no doubt that mobile will be a fast-growing way that we do research," said Walters.

Valley Lawyer interviewed three SFVBA members, Roger Franklin, Alan Sedley, and Mark Shipow, about their experience using Fastcase.

***Valley Lawyer*: How has using Fastcase enhanced your practice?**

Roger Franklin: It has allowed me to access cases, codes, and regulations and do research even while I am away from my office. Under authority check, Fastcase also allows me to view all the cases that cite either the subject statute or the subject case, even unpublished opinions. The advance case law search is very useful and user friendly.

Alan Sedley: As a sole practitioner, particularly in the 90's, I came to rely upon the nearby law library at the University of West Los Angeles. When they moved out of their Oxnard Street location, I found myself scrambling for a suitable reference library, often turning to larger Valley law firms, which as the years went on, would sell off their entire collection and turn to online services like Lexis or Westlaw. The usefulness of the Superior Court libraries also became problematic, as the "nine-to-five" hours became one hour a day. As I delved into projects that required frequent motion filings in federal court, it was essential that I had access to a complete, reliable and affordable database of federal cases, statutes and regulations that enabled me to promptly locate and print full case opinions and entire statutory law and regulatory codes — without leaving my desk. Fastcase is that invaluable tool.

Mark Shipow: Fastcase allows me to conduct basic research from my desktop or laptop. I can quickly access specific cases and statutes nationwide, and can conduct various searches to locate applicable law. All of this with no cost to me or my clients.

***VL*: What do you like most about Fastcase? How does it compare to similar services you have used?**

RF: I don't want to sound like a shill for Fastcase, but the free use is hard to beat. Although other similar services may provide greater access to reference books, but for basic and ease of use, Fastcase compares favorably.

AS: In a word, "simplicity." Time is money, and I frankly do not wish to absorb the non-billable time often associated with research using the larger and more expensive services, where I would find that some of the most elementary searches would nevertheless require me to navigate a maze of levels and links to get the search accomplished. Fastcase is just that, fast. And, the search engines aren't limited to cases and laws. You can research pertinent newspaper articles in all 50 states. And, you can quickly gain access to legal forms for nearly every jurisdiction.

MS: It is very easy to use. I can find cases, and either print them or download them in either Word or pdf format. Downloading the materials in Word allows me to quickly and easily paste information from the cases directly into briefs. I'm not sure how this compares to Lexis or Westlaw, as I have not used either of those services for several years, since I've begun using Fastcase. I do know that the other services have broader databases, but for the materials I need most frequently, Fastcase is quick and easy.

***VL:* Which aspect of Fastcase is most user-friendly? Is there a feature of Fastcase that could be improved upon?**

AS: Starting a new search is quite fast and easy – Fastcase provides a simple menu of choices that allows you to quickly start a new search. Once you identify the type of search you need and click on the link, you are directed to an easy-to-follow page that walks you through clearly-defined steps that quickly and efficiently produces the desired material. Like I said, "simplicity." To answer the second question, I don't frankly know what could be improved upon.... why tinker with a winner?

MS: It is very simple getting cases through an existing cite, and then downloading them for future use. It's basically a few keystrokes. The main drawback to Fastcase is the lack of secondary materials (treatises, etc.).

RF: Quick Case Search is the most user-friendly. However, the California statutes are not current. Fastcase still uses the 2009 edition of the California statutes. This is a major drawback.

***VL:* A lot of members join the SFVBA just to use Fastcase. Why do you think that is so?**

MS: That is exactly why I joined the Bar. As a solo practitioner, I need access to cases and statutes without having to always use a law library. Plus I was reluctant to pay for a subscription, and did not want to have to charge clients for access time. Fastcase provided all of that. Of course, now that I'm a member of SFVBA, I recognize that there are many other benefits from being part of the Association. But Fastcase was my first introduction, and it has been very beneficial.

RF: Simple. It's easy to use and it's free.

AS: That's a 'softball' question if there ever was one! Once you join the Bar, Fastcase is FREE. For the price of a monthly subscription to the large online library services, you get a full year's membership to one of the largest bar associations in the state, and Fastcase at no additional charge.

***VL:* Complete this sentence: "I recommend using Fastcase because..."**

RF: ...It provides basic legal research at no cost.

AS: ...It is reliable, affordable, and provides an online library that gives access to every legal research tool a practitioner might need. Frankly, it's a no-brainer.

MS: ...It's easy, convenient, inexpensive and provides most of the tools necessary to conduct routine legal research.

SFVBA members can access Fastcase by logging onto the SFVBA website with their username (state bar number) and created password.
If you have any questions or problems with using Fastcase, please contact Member Services Coordinator Irma Mejia at (818) 227-0490, ext. 110 or irma@sfvba.org.

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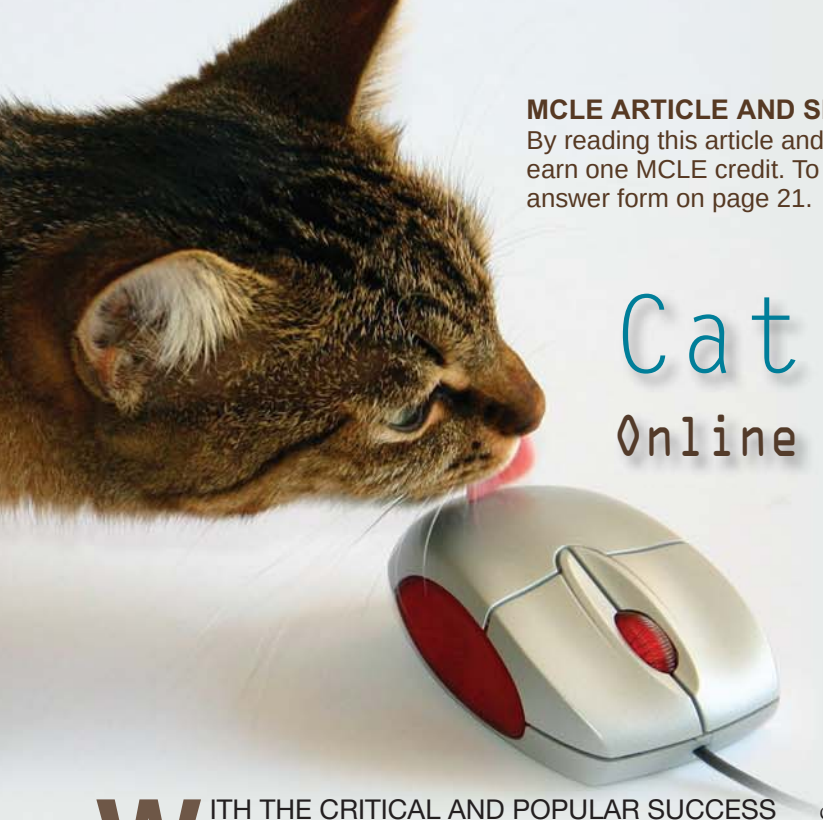

MCLE ARTICLE AND SELF-ASSESSMENT TEST
By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 21.

Cat vs. Mouse 2.0: Online Copyright Enforcement

By Michael G. Kline

WITH THE CRITICAL AND POPULAR SUCCESS of last-years' box-office and critically acclaimed motion picture "The Social Network," a single word synonymous with the tech boom of the turn of the century (and the intellectual property headaches that accompanied it) was thrust back into the public consciousness:

Napster

Named after its "nappy-headed" creator (college-student Shawn Fanning), Napster achieved global fame as the world's most well-known and highly trafficked "peer-to-peer" online file sharing service. From 1999 through 2001, Napster allowed computer users to easily share electronic music, movie and television files with other participants through direct "peer-to-peer" download connections … and engage in massive copyright violations in the process.

To say that technology has undergone a dramatic change since then would be putting things mildly. Today, "peer-to-peer" file sharing has transformed into an amorphous and complex system known as "BitTorrent" downloading. Instead of using Napster-like programs to search for files to download directly from a single online user, BitTorrent downloading requires users to: (1) install a BitTorrent program from one source that does not possess the ability to search for downloadable content; (2) visit a website operated by a second source that provides the user with the ability to search for pirated files; (3) download a "dot-torrent" file from that site that contains information identifying the many external sources from which the offending file may be downloaded; then finally, (4) open the "dot-torrent" file in the aforementioned BitTorrent program, which automatically establishes connections between the downloader and hundreds of other online users who have at least a portion of the file at issue.[1] The BitTorrent application then simultaneously downloads pieces of the file from those multiple, anonymous users.[2]

Confused? One should be. The advent of torrent technology has created a host of problems for those seeking to enforce their intellectual property rights. Many popular torrent search engine websites are located overseas, in countries where intellectual property rights are less substantive or may not exist at all.[3] The faceless pirates who make unauthorized copies of copyrighted content available through BitTorrent downloading are virtually impossible to identify or locate. The practice is so widespread that even those with the means to enforce their intellectual property rights (such as major movie studios) have relegated themselves to cease-or-desist letters with little to no follow-up, with the expense of thousands of individual lawsuits greatly outweighing the potential damages for each subjectively low-valued case of infringing conduct.

Those seeking to prevent (or limit) unlawful downloading of their intellectual property through the use of BitTorrent technology find themselves left with few potentially viable avenues of recourse, the last of which may very well be search engines such as Google. These online directories often serve as the gateway between those seeking to commit direct copyright infringement through BitTorrent downloading, and the secondary torrent websites that actively facilitate the infringement. There can be little question that those seeking to locate torrent websites (or the torrents themselves) turn to popular search engines like Google in droves, leaving copyright holders wondering what, if anything, can be done to at least slow down the unlawful downloading of their copyrighted material.[4]

The DMCA and Direct Copyright Infringement

Before torrents existed, there was the Digital Millennium Copyright Act (the "DMCA").[5] Signed into law by President Clinton in 1998, the DMCA substantially amended and added several new provisions to Title 17 of the United States Code to extend the reach of copyright into the online arena while, at the same time, limiting the liability of the providers of online services for copyright infringement by their users under certain circumstances.

Shortly after the DMCA's passage came *A&M Records, Inc. v. Napster, Inc.* (9th Cir., 2001) 239 F.3d 1004, in which the 9th Circuit Court of Appeals was asked to resolve the question of whether the now-infamous internet file-sharing service committed copyright infringement by facilitating the unauthorized transmission of protected content amongst its users.

In *Napster*, the court first analyzed existing direct copyright infringement law with respect to Napster's peer-to-peer online

file-sharing service. The court held that in order to establish a *prima facie* case of direct copyright infringement, a plaintiff must prove: (1) ownership the allegedly infringed material; and (2) that the alleged infringer violated at least one exclusive right granted to copyright holders under 17 U.S.C. §106. When it came to the second element, the *Napster* court was clear – downloading a copyrighted content file from other users (regardless of where those users are located) violates a copyright holder's exclusive reproduction right set forth within 17 U.S.C. §106(1).[6]

In the case of torrent downloading, however, search engines like Google do nothing more than link the user to a second website, which in turn links the user to a file containing instructions for a program to find the infringing file. Neither Google nor the torrent site physically store any infringing content; when used together however, they create a chain of information that actively facilitates the user's access to pirated content. Thus, to establish liability against such search engines, a plaintiff must turn to the concept of contributory infringement.

Contributory Infringement

One commits contributory infringement by intentionally inducing or encouraging direct infringement.[7] There are two categories of contributory liability: (1) "actively encouraging (or inducing) infringement through specific acts"; and (2) "distributing a product distributees use to infringe copyrights, if the product is not capable of 'substantial' or 'commercially significant' noninfringing uses."[8] Active encouragement of copyright infringement occurs when "one who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another."[9]

Together, these cases hold that to prove a *prima facie* case for active contributory infringement, the plaintiff must establish: (1) direct infringement by another; (2) the defendant's knowledge of the infringing activity; (3) that the defendant actually induced, caused or materially contributed to the infringing activity; and (4) that the defendant intended to do so.

Proving Knowledge & Intent

With respect to a contributing infringer's knowledge, the rule is presently phrased in terms of a "knew or should have known" standard. In *Religious Technology Center v. Netcom On-Line Communication Services, Inc.*, 907 F.Supp. 1361 (N.D. Cal., 1995), a disgruntled former Scientology minister posted allegedly infringing copies of Scientological works on an electronic bulletin board service. The messages were stored on the bulletin board operator's computer, then automatically copied onto Netcom's computer, and from there copied onto other computers comprising "a worldwide community" of electronic bulletin board systems.

The court established the rule that if Netcom *knew or should have known* that the minister infringed the plaintiffs' copyrights, "Netcom[would] be liable for contributory infringement since its failure to simply cancel [the former minister's] infringing message and thereby stop an infringing copy from being distributed worldwide constitute[d] substantial participation in [the former minister's] public distribution of the message."[10]

In 2001, the 9th Circuit Court of Appeals applied the *Netcom* rule to cases involving providers of online services in the now-infamous case of *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir., 2001). In the decision that signaled

the death of illegal peer-to-peer file sharing networks in their then-current format, the court held, "[I]f a computer system operator learns of specific infringing material available on his system and fails to purge such material from the system, the operator knows of and contributes to direct infringement." Although the court did not conclude that Napster knew of specific instances of infringing conduct, it held Napster liable for contributory infringement because it: (1) "knew of the availability of infringing music files"; (2) "assisted users in accessing such files"; and (3) "failed to block access to such files."[11]

As was the case then, courts today must analyze a defendant's intent in light of "rules of fault-based liability derived from the common law."[12] Of course, it is well-settled common law precedent that intent may be directly proven or imputed from circumstantial evidence.[13] Recently, the court in *Perfect 10, Inc. v. Amazon.com, Inc.* (9th Cir. 2007) 508 F.3d 1146 confirmed that intent can be established in a case involving contributory infringement if the plaintiff proves that the infringing conduct was "substantially certain" to result from the defendant's actions, as is more particularly described below.

The "Perfect 10" Rule

Perfect 10 involved a plaintiff who operated a website containing photos of nude models. The photos were protected under copyright law as the plaintiff's intellectual property. Perfect 10 sued Google (and others) for, amongst other things, providing links to third-party websites that were committing direct infringement by displaying those photos and offering them for download without prior authorization or approval from Perfect 10.

In taking the lead from precedent such as *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005), the court in *Perfect 10* held, "[A]n actor may be contributorily liable for intentionally encouraging direct infringement if the actor knowingly takes steps that are substantially certain to result in such direct infringement." In so holding, the court noted that although neither *Napster* nor *Netcom* expressly required a finding of intent, those cases were consistent with *Grokster* because both decisions ruled that a service provider's knowing failure to prevent infringing actions could be the basis for imposing contributory liability.[14]

The *Perfect 10* court also addressed the "longstanding requirement" of materiality of contribution to infringement.[15] In particular, the 9th Circuit Court of Appeals held: Both *Napster* and *Netcom* acknowledge that services or products that facilitate access to websites throughout the world can significantly magnify the effects of otherwise immaterial infringing activities … The Supreme Court has acknowledged that "[t]he argument for imposing indirect liability" is particularly "powerful" when individuals using the defendant's software could make a huge number of infringing downloads every day … Moreover, copyright holders cannot protect their rights in a meaningful way unless they can hold providers of such services or products accountable for their actions pursuant to a test such as that enunciated in *Napster* … "When a widely shared service or product is used to commit infringement, it may be impossible to enforce rights in the protected work effectively against all direct infringers, the only practical alternative being to go against the distributor of the copying device for secondary liability on a theory of contributory or vicarious infringement."[16]

The result of this analysis was the appellate court's adoption of the trial court's test for determining whether an internet service provider[17] can be held liable for active contributory infringement. Simply stated, liability will be imposed if the plaintiff can prove that the defendant: (1) "has actual knowledge that specific infringing material is available using its system," [*Napster*, 239 F.3d at 1022]; and (2) "[can] take simple measures to prevent further damage" to copyrighted works [*Netcom*, 907 F.Supp. at 1375], yet (3) continues to provide access to infringing works.

Application of the Perfect 10 Rule to Google Links

The *Perfect 10* decision finds its importance in its analysis of Google's actions in providing users with links to third party websites containing infringing content to the elements set forth above. To that end, the court was clear in its determination that "Google substantially assists websites to distribute their infringing copies to a worldwide market and assists a worldwide audience of users to access infringing materials. We cannot discount the effect of such a service on copyright owners, even though Google's assistance is available to all websites, not just infringing ones."

Thus, the court held, Google could be held liable for contributory infringement arising from it doing nothing more than providing links to third-party websites "if it had knowledge that infringing [content] were available using its search engine, could take simple measures to prevent further damage to [those] copyrighted works, and failed to take such steps." The court went a step further in *dicta*, opening the door for such liability to apply not only to links to infringing content, but to websites providing unauthorized passwords for users to access copyrighted materials as well.[18]

The Trump Card: 17 U.S.C. §512

Section 512 of the DMCA was passed in 1998 as a compromise between the nation's copyright and online service provider ("OSP") industries. Concerned about the direction of court decisions concerning their liability for their users' copyright infringement, OSP's lobbied Congress and received various safe harbors from potential secondary liability. In exchange, OSPs were required to "accommodate" technical protection measures employed by copyright holders and implement policies for terminating the accounts of repeat infringers.[19]

17 U.S.C. §512(d) limits the liability of a "service provider" such as Google "for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity…" To qualify for such immunity, the provider must either: (1) lack knowledge of the infringement and be unaware of facts of circumstances making the infringement "apparent"; or (2) upon learning of the infringement, act "expeditiously to remove, or disable access to, the material." If the provider can satisfy either element, then the copyright holder must prove that it provided formal notice of the violation to the defendant, as set forth within Section 512(c)(3) (described below). If the copyright holder does so, then the burden shifts back to the service provider, who must prove that it "expeditiously … remove[d], or disable[d] access to, the material that is claimed to be infringing …"[20]

17 U.S.C. §512(c)(3) states that a notification of claimed infringement must be in writing and provided to the service provider's designated agent (with the United States Copyright Office). Section 512(c)(3) adds that the notice must also "substantially" include the following:

(1) A physical or electronic signature of a person authorized to act on behalf of the [copyright] owner
(2) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site
(3) Identification of the [infringing] material … or … the subject of infringing activity … that is to be removed
(4) Information reasonably sufficient to permit the service provider to locate the material
(5) A statement that the complaining party has a good faith belief that use of the material is unauthorized
(6) A statement that the information above is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the copyright owner

The purpose behind the notice requirement under the Digital Millennium Copyright Act (DMCA) is to provide service providers with adequate information to find and examine allegedly infringing material expeditiously.[21] Thus, Section 512 sets forth two qualifying provisions with respect to the elements listed above. First, "A notification … that fails to comply substantially with the provisions [above] shall not be considered … in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent." By enacting this passage into law, the legislature has attempted to protect defendants from cases in which they were unable to avail themselves of the DMCA's safe-harbor provisions due to an ineffective notice, but nevertheless find themselves subject to liability based on imputed knowledge arising from that same defective notice.

Second, despite the foregoing, the legislature also determined that a plaintiff's failure to substantially comply with the more technical provisions of Section 512(c)(3) should not leave it without recourse. Thus, if the court determines that a failure to substantially comply with the aforementioned six elements exists, it must then determine whether there was nevertheless substantial compliance with elements (2), (3) and (4), above. If so, the service provider has the burden of proving that it "promptly attempt[ed] to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions [above]." If the provider does so, the statute prohibits the contents of the notice from being factored into its determination of whether the provider's actual knowledge exists.[22]

Given the novel issues these takedown notice provisions have raised, and the relative infancy of the statute itself, precious little exists in the way of precedent analyzing the sufficiency of specific notices with respect to the foregoing. Presently, the *Perfect 10* court is in the process of determining a new appeal with respect to the district court's application of the six notice elements to the facts at issue in that matter. Until that decision is rendered and published, however, attorneys have little more than a handful of California decisions to guide them.[23]

Given the foregoing, the state of the law in California – and indeed, across the country – is very much in flux with respect to the application of contributory copyright infringement law and DMCA safe harbor provisions to search engine providers such as Google, who do nothing more than provide links to sites and files that do not directly infringe anyone's intellectual property in and of themselves. While it may be likely that a court examining the issue of BitTorrent downloading will come to the same conclusion as the court

in *Perfect 10* did with respect to links to torrent websites (i.e., that Google substantially assists websites to distribute infringing material to a worldwide market and assists a worldwide audience of users to access infringing materials) this is by no means a foregone conclusion.

As the war against online piracy rages on, those seeking concrete answers are, at this time, without any. The only substantive, definitive relief available may very well be the results that flow from a copyright holder's service of a DMCA-compliant notice. Anything else may very well be left up to those legal pioneers such as Perfect 10 and Google with the resources to pursue the resolution of these issues within the federal judiciary system.

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[1] *Columbia Pictures Industries, Inc. v. Fung,* 2009 WL 6355911, *2 (C.D. Cal, 2009).

[2] As one expert recently explained, "The only purpose of a dot-torrent file is to enable users to identify, locate, and download a copy of the actual content item referenced by the dot-torrent file.... Once a user has clicked the 'download' torrent button or link, the ... desired content file should begin downloading to the user's computer without any further action or input from the user." *Id.* at *3.

[3] *See, e.g.*, http://thepiratebay.org/about ("The Pirate Bay was started by the [S]wedish anti copyright organization Piratbyrån in the [*sic*] late 2003, but in October 2004 it separated became run [*sic*] by dedicated individuals. In 2006 the site changed it's [*sic*] ownership yet again. Today the site is run by an organisation [sic] rather than individuals, though as a non-profit. The organisation [sic] is registered in the Seychelles …")

[4] Indeed, many high-powered and well-funded corporations in the entertainment industry have seen their threats of legal action against torrent search engines such as http://thepiratebay.org met with defiant and intentionally-public ridicule. *See, e.g., http://static.thepiratebay.org/ea_response.txt* (in reply to an email notification of infringing conduct from Electronic Arts, Inc., owners of http://thethepiratebay.org responded, "Hello and thank you for contacting us. We have shut down the website in question. Oh wait, just kidding. We haven't, since the site in question is fully legal. Unlike certain other countries, such as the one you're in, we have sane copyright laws here. But we also have polar bears roaming the streets and attacking people :-(… Thank you for your entertainment. As with all other threats, we will publish this one on http://static.thepiratebay.org/legal/").

[5] *See, Pub. Law* 105-304 (October 28, 1998).

[6] *& M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1014-1017 (9th Cir., 2001).

[7] *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1170 (9th Cir. 2007), citing *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 929-30 (2005).

[8] *Id., citing Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 442 (1983).

[9] *Gershwin Publishing Corp. v. Columbia Artists Management, Inc.*, 443 F.2d 1159, 1162 (2d Cir., 1971) ; see also, *Ellison v Robertson*, 357 F.3d 1072, 1076 (9th Cir., 2003); *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 264 (9th Cir., 1996); *Napster, supra*, 239 F.3d at 1019;

[10] *Religious Technology Center v. Netcom On-Line Communication Services, Inc.*, 907 F.Supp. 1361, 1365-67, fn4 & 1374 (N.D.Cal., 1995).

[11] *Napster, supra*, 239 F.3d at 1019-1022.

[12] *Grokster, supra*, 545 U.S. at 934-35.

[13] *See, e.g., DeVoto v. Pac. Fid. Life Ins. Co.*, 618 F.2d 1340, 1347 (9th Cir., 1980) ("Tort law ordinarily imputes to an actor the intention to cause the natural and probable consequences of his conduct.").

[14] *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1157, 1169 & 1171-1172 (9th Cir. 2007).

[15] *Id., citing, Gershwin, supra*, 443 F.2d at 1162 ("An actor's contribution to infringement must be material to warrant the imposition of contributory liability.")

[16] *Id., citing Napster, supra*, 239 F.3d at 1022; *Netcom, supra*, 907 F.Supp. at 1375; *Grokster, supra*, 545 U.S. at 929-30

[17] The definition of a service provider is rarely in dispute, as it is typically interpreted in an all-encompassing fashion. *See, e.g., In re Aimster Copyright Litig.*, 252 F.Supp.2d 634, 658 (N.D. Ill., 2002) ("A plain reading of [17 U.S.C. §512(k)] reveals that 'service provider' is defined so broadly that we have trouble imagining the existence of an online service that would not fall under the definitions…."). Courts have held that Amazon, eBay, and Aimster all qualify as "service providers" under the statutory definition. *See, e.g., Corbis v. Amazon.com*, 351 F.Supp.2d 1090 (W.D. Wash., 2004) (holding that Amazon meets the statutory definition of a service provider); I*n re Aimster Copyright Litig*., 334 F.3d 643, 655 (7th Cir., 2003) (affirming a district court ruling that Aimster was a service provider); Hendrickson v. eBay, Inc., 165 F. Supp. 2d 1082, 1087 (C.D. Cal., 2001) (acknowledging the broad definition of a service provider and stating that eBay "clearly" falls within that definition).

[18] *Perfect 10, supra*, 508 F.3d at 1172 & 1177, fn13.

[19] Urban, Jennifer M. and Quilter, Laura, "Efficient Process or 'Chilling Effects'? Takedown Notices Under Section 512 of the Digital Millenium Copyright Act," http://mylaw.usc.edu/documents/512Rep/ (visited January 17, 2011); *see also*, 17 U.S.C. §512.

[20] 17 U.S.C. §512(d).

[21] *Perfect 10, Inc. v. CCBill, LLC*, 340 F.Supp.2d 1077 (C.D.Cal., 2004).

[22] 17 U.S.C. §512(c)(3)(B).

[23] *See, e.g., Brave New Films v. Weiner* (N.D.Cal., 2009) 626 F.Supp.2d 1013 (Statement, under penalty of perjury, confirming that the information in a DMCA notice was accurate, and that infringing content had been posted without authorization, complied with element (5) of DMCA notice provisions); *Io Group, Inc. v. Veoh Networks, Inc.*, (N.D.Cal., 2008) 586 F.Supp.2d 1132 (Service provider entitled to safe harbor under DMCA where it responded and removed noticed content within a few days after DMCA-compliant notice was received, and automated feature for identification of other suspect material contained notice directing copyright owners to link with instructions for submitting copyright infringement notice to provider.); *Perfect 10, Inc. v. CCBill, LLC*, (C.D.Cal., 2004) 340 F.Supp.2d 1077 (Where DMCA notice did not identify copyrighted material or provide enough information to locate infringing material, notice was insufficiently specific to satisfy statutory requirements, and service provider's failure to terminate infringing client accounts did not constitute evidence that it had failed to reasonably implement its termination policy.); *Hendrickson v. eBay, Inc.*, (C.D.Cal., 2001) 165 F.Supp.2d 1082 (Despite requests from operator, owner never attested to good faith and accuracy of his claim, and failed to identify which copies of film being offered were infringing.).

MCLE Test No. 32

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

1. A DMCA notice that fails to comply substantially with the six elements of 17 U.S.C. §512(c)(3)(A) may still be considered in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.
   True
   False

2. Contributory liability for copyright infringement solely consists of active encouragement or inducement of direct copyright infringement through specific acts.
   True
   False

3. To prove a *prima facie* case for active contributory infringement, a plaintiff must establish that the defendant intended to commit direct copyright infringement.
   True
   False

4. So long as a website provides assistance to both infringing and non-infringing content to users on a non-discriminatory basis, it will not be held liable for contributory copyright infringement.
   True
   False

5. If a defendant proves that it neither knew nor had any reason to know of the infringing activity at issue, it will not be held liable for contributory infringement.
   True
   False

6. If a computer system operator fails to purge infringing material from its systems, the operator knows of and contributes to direct infringement.
   True
   False

7. To satisfy DMCA requirements, a notice of infringement must specifically comply with all six elements of 17 U.S.C. §512(c)(3)(A).
   True
   False

8. An actor may be contributorily liable for intentionally encouraging direct infringement if the actor knowingly takes steps that are substantially certain to result in such direct infringement.
   True
   False

9. In order to prove a *prima facie* case of direct copyright infringement, the plaintiff must prove ownership of the allegedly infringed material.
   True
   False

10. Liability for contributory infringement will be imposed even if the court finds that the infringement was not material in nature.
    True
    False

11. A service provider will be liable for contributory infringement if it knows of infringing material on its system, can take simple steps to prevent further damage, yet continues to provide access to the infringing works.
    True
    False

12. A service provider will qualify for immunity under the DMCA if it acts expeditiously to remove or disable access to infringing material upon learning of the infringement.
    True
    False

13. Unlike the Napster program, BitTorrent technology assists users in downloading infringing content through direct "peer-to-peer" connections located through the use of a BitTorrent software program.
    True
    False

14. If a service provider lacks knowledge of infringing material, it may still be held liable if the copyright holder provides formal notice of the violations at issue under the provisions of 17 U.S.C. §512(c)(3).
    True
    False

15. 17 U.S.C. §512(c)(3) states that a notification of claimed infringement may be oral.
    True
    False

16. A valid DMCA notice need not contain a specific statement that the complaining party has a "good faith belief" that the use of the material at issue was unauthorized.
    True
    False

17. The definition of a service provider under the DMCA is rarely in dispute, broadly interpreted, and even Google admits that its search engine falls within its scope.
    True
    False

18. If a DMCA notice identifies the copyrighted work claimed to have been infringed, the infringing material that is to be removed, and information permitting the service provider to locate that material, but nothing else, the service provider may still be liable for contributory copyright infringement.
    True
    False

19. A service provider will be entitled to safe harbor under the DMCA if it responds and removes noticed content within a few days after receiving a DMCA-compliant notice, and if it maintains automated features for identification of other suspect material that provides notice directing copyright owners to a link with instructions for submitting copyright infringement notices to it.
    True
    False

20. A DMCA notice that fails to identify the copyrighted material at issue or provide enough information to locate infringing material may still be found to substantially comply with the provisions of 17 U.S.C. §512(c)(3).
    True
    False

MCLE Answer Sheet No. 32

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

How WWW Impacts the Legal Field

By Deborah S. Sweeney

IF LAWYERS FROM THE 1950s arrived at one of the big firms today, it is almost certain that they would find the legal profession barely recognizable in many respects. Fifty or sixty years ago, lawyers only had phones in their offices and couriers filed papers in court.

Now, lawyers no longer even need to leave their offices to ask each other questions and clients barely come in to the office. Instead of huge libraries filled with reporters and other resources, law offices have subscriptions to Westlaw or Lexis. For attorneys that have been practicing for twenty or thirty years, the work of a lawyer has significantly changed since they passed the bar, and the last ten to fifteen years have almost revolutionized the legal industry.

Some of the biggest boosts in efficiency and accuracy within the legal field have come directly from the improvements in technology, and there is no reason to think it will stop here. Technology will continue to spread to other areas of law, in many ways improving the profession. The following represent some of the main areas of significant growth over the last two decades and the ways in which the legal field, and the lawyers who operate in it, have been benefited.

One of the most impressive benefits of the improvement in technology has been its impact on the speed and efficiency with which attorneys are now able to do their jobs. Law firms are no longer required to maintain vast libraries filled with reporters from over the last one hundred years or filing rooms with information ranging from the first clients ever to the most recent cases. Any required research or documents are now just a click away with a computer.

Lawyers who used to draft complaints on the same issues over and over again can now change key elements quickly and file the complaint for a new client. The efficiency of filing court documents online has also improved and online filing allows attorneys everywhere to file documents quickly and to view documents filed by others quickly. Online filing companies will manage business filings with the state to free up attorneys for drafting more complicated contracts such as LLC agreements or profit sharing documents.

As a whole, these improvements have reduced the costs attorneys face as they are able to do more work in less time. The efficiency improvements in technology have allowed lawyers to take on more clients at once and to more quickly and accurately address their clients concerns. The speed of technology has reinvigorated the legal profession and improved how lawyers spend their work lives.

Email, texting, Twitter, Facebook posts. It is no surprise that many lawyers only see their clients a handful of times throughout the course of the representation. At first glance, this may not seem like an improvement (or maybe it does…) but in reality, the introduction of communication through technology

has greatly benefited the attorney-client relationship.

The ability of attorneys to contact their clients at any time of the day or night without bothering them improves the chances that clients will hear from their attorneys more often. Sitting in an office during the day, the average attorney gets interrupted by something at least once an hour. After business hours, however, an attorney has the luxury of thinking through client questions and responding to emails without the same distractions.

Mass emails too aid the attorney in the role of assisting the client. The ability to inform multiple people at once of a trip out of town or a court appearance that will delay responses keeps clients feeling like they are informed while allowing the attorney to work on each case in the best possible way. Blogs weed out many clients that have non-cases where recourse is unavailable without wasting either person's time or energy.

All of these things have also improved the interaction between lawyer and client. When a client's only option to speak with the attorney is to call, the attorney is unable to fully evaluate any issues presented by the client. Email allows the attorney to consider the presented problems and execute any necessary research before following up, enabling the clients to get a more satisfactory answer. The inclusion of technological communication in an attorney's arsenal is one of the many benefits of the internet age and without it, the attorney-client relationship would suffer.

Another big benefit to the legal field has been the improvement of access to information. Though many attorneys may find it irritating that clients now have the ability to search their own cases and come up with theories that may or may not be relevant at all, almost all of them will still say that the internet has bettered the job of being an attorney dramatically. Just considering the sheer volume of information at an attorney's fingertips at any point in the day indicates that the introduction of the internet and the ability to do research on the internet has increased productivity and accuracy.

Instead of wasting time in the firm's legal library, perusing books that may happen to be in someone's office, or, even worse, driving to the nearest law library to look something up, attorneys have multiple search engines, waiting to find the answer at a moment's notice. In addition to that, the internet provides up-to-date sources. Textbooks become irrelevant quickly and using reporters to ensure a case is still good law is cumbersome, but legal research sites such as Lexis and Westlaw have brought this information to the masses.

While an attorney used to spend all day making sure that three cases were still good law, today's attorney can do it in fifteen minutes or less. That's a major improvement in a field notorious for working late hours and weekends. The incorporation of online research has enabled small and large firms alike to access accurate information at a very low cost, benefiting both the profession and clients.

The world has been introduced to the business sector of the past through many television shows and movies and some may reminisce about the "good old days." However, despite some inconveniences that have come up along with the rise of technology, the overall consensus is that everyone loves technology and the more of it, the better.

Anyone looking for a new toy or gadget is looking for the newest and greatest technology, and attorneys are no exception to this rule. The legal field continues to incorporate more and more technology into its everyday workings. Attorneys are finding the everyday job of being a lawyer to be more efficient and are able to take advantage of these advancements in technology and use them to branch out into their own law firms much earlier than attorneys of the past.

While it can at times be overwhelming to live in the constantly changing environment of the technology age, the numerous and broad benefits that have resulted cannot be overlooked. The coming years and decades will only serve to prove how beneficial technology can be to attorneys everywhere.

Deborah Sweeney *is CEO and owner of MyCorporation.com, an online document filing service working with attorneys and entrepreneurs to file and maintain corporations and LLCs. She can be reached at dsweeney@mycorporation.com.*

Mediating Employment Cases in an Economic Meltdown

Big Picture Strategies for Plaintiff and Defense Counsel

By Joel M. Grossman

ADVOCATES WHO PRACTICE EMPLOYMENT law know that these are tough financial times for many employers. At mediations, employers being sued by individuals or by a class of employees frequently tell both the mediator and plaintiff's counsel that they are financially strapped. Sometimes, employers claim that even if the plaintiff wins a significant judgment, it would be uncollectible; the employer would be in bankruptcy. How can plaintiff and defense counsel mediate successfully in this environment?

Below are two Top 10 lists, one for plaintiffs' counsel and one for defense counsel, with suggestions on how counsel can navigate this shifting landscape.

Top 10 Mediation Tips for Plaintiff's Counsel

1. *Before Filing a Complaint*
Perform some basic due diligence on the employer's financial well-being before filing the complaint. Don't just do a quick Google search – a Uniform Commercial Code search, for example, can let an attorney know the company's leverage of assets.

2. *Before Entering into Mediation*
Before mediation, perform the same due diligence before the mediation as suggested above at No. 1. At least do a complete UCC search.

3. *Understand the Balance Sheet*
If attorney isn't good at reading and understanding audited financial statements, balance sheets or other financial data, he/she should find someone who is, and bring this person to the mediation. Don't rely on the mediator to interpret the data.

4. *When the Defendant Asks for a Discount*
At the mediation, when the defendant asks for a deep discount due to its shaky economic status, don't take the defendant's word for it. If plaintiff's counsel is inclined to agree to the discount, he/she do so only on a conditional basis. Insist that the attorney be allowed to review the defendant's books and records. Secure a written agreement with the defendant that the attorney has a unilateral ability to revoke the settlement agreement if the books and records don't support the discount.

5. *Agree to Confidentiality*
Be sensitive to the defendant's concern that it doesn't want the plaintiff to see the data. Be open to a "Counsel's Eyes Only" arrangement. Be willing to agree that all documents are provided under mediation confidentiality or pursuant to a protective order.

6. *Be Specific*
Once the defendant agrees to provide books and records to support its claim of poverty, be specific as to what needs to be looked at and/or whom the attorney would like to depose. If this is not an area of expertise, seek help from someone knowledgeable.

7. *Don't Forget the Judge*
Special note for wage and hour class action counsel: a discount to the judge will have to be justified (*see, Kullar v. Foot Locker* (2008) 168 Cal. App.4th 116). For this reason, attorneys should make sure (1) they can sign a declaration that they have examined the defendant's books and records thoroughly; (2) they are satisfied that the discount is merited; and (3) the discount is in the class members' best interest.

8. *Consider the Bankruptcy Alternative*
Once an attorney has performed due diligence, he/she should keep in mind at all times that a low-ball settlement may be better than bankruptcy court, where the attorney will be standing in a long line with all the other unsecured creditors.

9. *Consider the Time Payment Alternative*
Be willing to talk about payments over time if your client will get more money that way. If you do agree to take payments over time, propose an acceleration clause for missed payments, a stipulated judgment for the full amount of the settlement, and collateral to secure the judgment, such as a personal guarantee.

10. *Manage Client Expectations*
Most importantly, always remember to manage a client's expectations. Be sure the client knows that the defendant's financial condition merits a discount. Remind the client that dreams of shiny red Corvettes or condos on Maui might not be fulfilled.

Top 10 Mediation Tips for Defense Counsel

1. *Check the Client's Numbers*
Be sure a client is straightforward. An attorney doesn't want to make a poverty plea if it isn't true. An attorney's reputation in the community is too important.

2. *The Early Bird Gets the Discount*
If an attorney is going to claim financial hardship and seek a discount, he/she should do it early. If an attorney blithely notices ten depositions and sends out three sets of interrogatories, plaintiff's counsel might not believe the attorney's claims of poverty in light of the heavy legal fees. If the client tells their attorney early on about economic woes, it is a good time to have a serious discussion about attorney fees and how the client expects to pay them.

3. *Open the Books*
When an attorney raises the economic hardship issue, they should offer plaintiff's counsel the opportunity to come in and look at the books. An attorney will have to do so eventually if he/she wants a discount, and doing so early on will create an atmosphere of cooperation that will be invaluable.

4. *Come Clean Before Mediation*
If an attorney hasn't already apprised plaintiff's counsel of client's economic stress, the attorney should tell counsel about it before the mediation and as much documentation as possible should be brought to the mediation to verify the claim.

5. *Protect Confidentiality*
An attorney should be sure to protect the confidentiality of client's financial books and records either through a protective order or through mediation confidentiality. If the attorney doesn't want the plaintiff personally to know all the client's financial secrets, make the information available for "Counsel's Eyes Only."

6. *Come Clean at the Start of Mediation (at Least)*
If an attorney hasn't told the plaintiff about the economic issues before the mediation, he/she should do so as early as possible at the mediation. Don't save it for the very end.

7. *Bring the Client's Finance Guru*
Bring someone to the mediation who is thoroughly familiar with the company's financial situation. The owner of the company or the Chief Financial Officer would be good choices. The head of the Human Resources department won't be of much help.

8. *Be Ready to Share*
Assuming the right person was brought to the mediation, don't rely on the mediator to explain the financial details to the plaintiff. The attorney and especially their client's financial representative at the mediation should do the explaining to plaintiff's counsel. That session would be covered by mediation confidentiality. And the plaintiff personally need not participate in this meeting.

9. *When Bankruptcy is a Possibility*
If bankruptcy is a serious possibility, be sure to consult with bankruptcy counsel before the mediation. Among other things, be aware of Bankruptcy Code Section 547. Section 547 could result in a settlement being set aside as a preference if it is paid within 90 days of filing bankruptcy.

10. *Manage the Client's Expectations*
Most importantly, manage a client's expectations. Even if the company's financial situation is difficult, it is not likely that the plaintiff will accept five or ten cents on the dollar. While a reasonable discount may well be in order, an attorney's client should not expect a total cave-in from the other side.

Mediating in the current volatile economic environment is unquestionably difficult. But with candor and openness on all sides, a livable settlement is still possible. And this is always better for both sides than hanging out in bankruptcy court.

Joel M. Grossman *is a full-time mediator and arbitrator. He can be reached at (310) 309-6214 or joel@grossmanmediation.com.*

Adverse Claims:
A "Mine" Field of Liability for Common Carriers

By Gregg S. Garfinkel

COMMON CARRIERS OF household goods sometimes find themselves in the middle of property disputes regarding the ownership of personal property being transported in interstate commerce. These disputes, which in legal parlance are termed "adverse claims of ownership," arise when competing demands are made regarding personal property being transported by the common carrier in interstate commerce.

Typically, adverse claims arise out of failed marriages, jealous beneficiaries to a will, or renters who "forgot" that the apartment that they rented as "furnished" was to be returned to the landlord that way. One party will claim that the property was lawfully tendered to the common carrier for transportation. Conversely, the other party will claim that the shipper had no right to transport the subject property. This article will explore the statutory protections afforded to, and proper procedure to be followed by, common carriers when faced with an adverse claim of ownership.

The bill of lading is the basic transportation contract between the shipper/consignor and the motor carrier, the terms and conditions of which bind the shipper and all connecting carriers. *S. Pac. Transp. Co. v. Commercial Metals Co.*, 456 U.S. 336, 342, 102 S.Ct. 1815, 72 L.Ed.2d 114 (1982). The carrier is obligated to deliver the goods covered by the bill of lading on demand of the consignor, or the person in possession of the bill of lading. A carrier can be liable for damages to a person having title to, or right to, possession of the goods covered by the bill of lading when (1) the carrier delivers the property covered by the bill of lading to a person not entitled to their possession; (2) the carrier delivers the goods after being properly instructed not to make delivery by the consignor/holder of the bill of lading; or (3) the carrier makes a delivery of the goods despite being notified that the party receiving the goods is not authorized to take delivery.

The factual scenario presented in *North American Van Lines, Inc., v. Bernard Heller* 371 F.2d 629 (5th Cir. 1967) illustrates the dilemma faced by interstate common carriers. This matter concerned the transportation of property involved in a martial dispute. A wife who had been separated from her husband continued to live in the marital home in Louisiana. The wife contacted a moving company and instructed the mover to remove all furniture from the martial home and transport it to her new home in Oakland, California.

The husband, upon one of his occasional visits to the home, found it vacant and stripped of all of its furnishings. The husband determined that North American Van Lines had contracted with his former wife to transport the goods in interstate commerce. Thereafter, he notified North American Van Lines and gave notice that his wife lacked the authority to order the shipment and requested that the shipment be returned.

What is a common carrier to do in this situation? If it completes its obligations under the bill of lading and delivers it to the party named on the contract, it faces liability for damages should it ultimately be determined that the husband was the actual owner of the goods. Conversely, if the common carrier wrongfully refuses to deliver the property, it would face civil liability to the wife, since she was the lawful owner of the goods.

Unfortunately, in *Heller*, the common carrier, instead of holding the goods, or placing the goods in storage pending the carrier's investigation of Mr. Heller's claim, simply ignored the adverse claim and permitted the shipment to proceed to Oakland. The court found that this conduct amounted to a conversion of the goods which gave rise to the right of the true owner to collect the fair market value of the goods at the time of the conversion.

Interestingly, the court noted that the conversion of the goods did not occur when Mr. Heller's goods were picked up by the carrier in Louisiana. Rather the court found that a conversion

occurred when, after the common carrier was notified that it had no right to take the property, it refused either to return it to its origin or otherwise delay the shipment pending further investigation.

The appropriate use of 49 U.S.C. 80110(d)[1] would have avoided this result. This section provides a common carrier with an opportunity to have the validity of adverse claims of ownership investigated and, if necessary, resolved by a court of law. In other words, it provides a common carrier with a safe harbor to ensure that it delivers the property which is the subject of the adverse claim to the appropriate person.

The section states regarding an adverse claim that if a person other than the consignee or the person in possession of a bill of lading claims title to or possession of goods and the common carrier knows of the claim, the carrier is not required to deliver the goods to any claimant until the carrier has had a reasonable time to decide the validity of the adverse claim or to bring a civil action to require all claimants to interplead.

In enacting this section, Congress intended to place upon an interstate common carrier the duty to act with reasonable diligence to stop an interstate shipment when information is provided to the carrier which creates the possibility that the consignor/shipper listed on the bill of lading is not entitled to possession of the goods. If, after conducting its own "diligent inquiry", the carrier cannot determine the validity of the competing claims, it can then enlist the assistance of the courts to resolve the controversy by filing an action in interpleader.

An action in interpleader allows the common carrier to initiate a lawsuit in order to compel the individuals making adverse claims of ownership to litigate a dispute. This allows the common carrier to step aside and have the court determine whose interest in the subject property is superior. Once the court rules, the common carrier simply follows the direction of the court. In addition, an action in interpleader usually allows for the party initiating the dispute – the common carrier – to recover its attorneys fees. The action in interpleader takes the guess work out of the equation, since the court will make the operative inquiry/determination as to who is entitled to goods.

Adverse claims of ownership place a common carrier in the middle of a difficult situation. They are sometimes accompanied by letters from lawyers, calls from law enforcement/regulatory agencies and threats of civil litigation. Thankfully, Congress has provided a vehicle to resolve such disputes in a timely fashion, while insulating the common carrier from making "the wrong choice."

The prudent common carrier will cease its performance under the bill of lading when a credible adverse claim is made to good being shipping in interstate commerce and avail itself of the protection, and protocol, of 49 USC 80110.

Gregg S. Garfinkel, a partner in Sherman Oaks' Nemecek & Cole, is a business litigator specializing in transportation, warehousing and logistics matters. He can be reached at (818) 788-9500 or ggarfinkel@nemecek-cole.com.

[1] The prior version of this statute was found at 49 U.S.C. Sections 89 and 90.

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We welcome the following new members who joined the SFVBA in January 2011:

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Networking Mixer

About 50 SFVBA gathered at Harper's Bar & Grille in Tarzana on February 3 to watch the Lakers take on the San Antonio Spurs. Although everyone's favorite team lost in a nail biter, attendees networked, drank a beer (or two) and participated in the evening's other highlight, a raffle of a pair of Lakers tickets donated by criminal defense attorney Barry Hammond. Tarzana personal injury and business law attorney I. Donald Weissman was the lucky winner.

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San Fernando Valley Bar Association

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Managing an Online Reputation

PAULETTE GHARIBIAN
SCVBA President

THE BLITZ OF SOCIAL MEDIA sites has revolutionized the way business owners market their services. Every day, millions of users are spending significant periods of time on the internet, communicating via social networks. As a result, social-media marketing has becomes a strategic imperative to every business owner's marketing plan.

With so many online visibility options, the birth of a business' online personality becomes inevitable. If attorneys don't have a significant marketing budget, creating an online persona for their practice is an affordable way for the attorney to become visible to the millions of internet users who have turned away from paper research to online research.

In 2010, the Santa Clarita Valley Bar Association launched its new and improved website. The address for the site is www.scvbar.org. The site was designed for easy navigation for its users, and includes a directory of all active members, categorized both by name, as well as by practice areas. As a benefit to the membership, navigation through the website is designed simply, giving those who visit the site access to the all members in the various categories of practice. Included in the information is the name of the attorney, their business address, phone and fax numbers, as well as their email address. The membership is encouraged to keep this information updated with the bar association.

The SCVBA also updates its news and calendar sections by routinely publishing information about upcoming events. One of the major benefits of online marketing is the immediate publishing of information and content that is not limited by geography or time.

Developing a successful internet marketing strategy is an essential component of an attorney's success. Many marketing consultants identify the first step as creating a great product. Attorneys complete this step by passing the bar examination and earning a license to practice law. An attorney's product is their area of expertise.

Once an attorney has identified their service area, the next step is to create online visibility. This starts with creation of a user friendly website, and continues onto the growth of one's online persona through the participation in the wide range of social media sites. An attorney's online behavior, or misbehavior, can lead to his/her success or demise.

In a 2006 survey by executive search firm ExecuNet in Norwalk, Connecticut, 77 of 100 recruiters said they use search engines to check out job candidates. In a CareerBuilder.com survey of 1,150 hiring managers last year, one in four said they use internet search engines to research potential employees. One in 10 said they also use social networking sites to screen candidates. In fact, according to Search Engine Watch, there are 25 million to 50 million proper-name searches performed each day.

In today's market for services, not having a presence on the web may not be fatal, but it could potentially negatively impact a potential new client's perception of an attorney's credibility. A positive online persona is so crucial to career success these days that even invisibility can be a drawback. If people google an attorney and cannot be found, the attorney may not look like a real player. By carefully selecting pictures of one's office, pictures of oneself, and advertising a biography of credentials, an attorney can build a credible professional online persona.

Everyone is encouraged to perform an online search of their name and regularly perform online reputation management. The content attached to one's name will always shape perceptions both professionally and personally.

For more information, please visit www.scvbar.org.

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HELP WANTED

Growing business law firm in Thousand Oaks seeks part-time attorney (10-15 hours/week): Qualifications: membership in good standing with the California State Bar, at least 2 years exp. in business and/or civil litigation, ability to make court appearances in Ventura & Los Angeles counties. For consideration, please email SWilliams@SmallBusinessLaw.Org your resume, CSBN, one or more writing samples and a statement as to why you are seeking part-time work (as opposed to full time).

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WOODLAND HILLS

Warner Center Towers – Executive window office with assistant's area, 16th floor. Private entrance, receptionist, two impressive conference rooms, kitchen. Garage parking available. (818) 884-9998.

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Calendar

Probate & Estate Planning Section
Current Issues in Estate and Gift Tax from the IRS Perspective

MARCH 8
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney Lisa M. Piehl will give an update on the estate and gift tax rules and discuss the IRS position.

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

NON-MEMBERS
$45 prepaid
$55 at the door

Small Firm & Sole Practitioner Section
Prevention and Identification of Substance Abuse in Regard to Your Practice

MARCH 9
12:00 NOON
HEAL AND SOUL YOGA & WELLNESS
16545 VENTURA BOULEVARD
ENCINO

Attendees will receive invaluable insight into the mechanics of substance abuse and learn how the basic techniques of meditation can help you identify negative habits and give you alternative solutions to employ in your legal practice. Includes lunch.

MEMBERS
$30 prepaid
$40 at the door
1 MCLE HOUR
(Prevention of Substance Abuse)

NON-MEMBERS
$45 prepaid
$55 at the door

All-Section Meeting
Increase Your Presence on the Web!

MARCH 10
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Are you getting the most out of your internet marketing? Dave Hendricks, legal internet marketing consultant, will once again give valuable tips and suggestions.

FREE TO SFVBA MEMBERS!
Space is limited so RSVP ASAP!

Workers' Compensation Section
Alphabet Soup: WC, SSD, Medicare, MSA and CMS — Integration between WC Settlements, Social Security and Medicare

MARCH 16
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Well-known attorney Robert Rassp will discuss the threads that tie workers' compensation, SSD and Medicare together.

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

NON-MEMBERS
$45 prepaid
$55 at the door

Santa Clarita Valley Bar Association
Ethics and Social Networking

MARCH 17
6:00 PM
TOURNAMENT PLAYERS CLUB
VALENCIA

Steve Mehta will be presenting on the issue of ethics and social networking. Contact (661) 414-7123 or rsvp@scvbar.org to RSVP.

MEMBERS
$45 prepaid
$50 at the door
1 MCLE HOUR

NON-MEMBERS
$50 prepaid

Business Law, Real Property & Bankruptcy Section
MERS

MARCH 23
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS

A distinguished panel, including attorney Lewis Landau and Judge Maureen Tighe as moderator, will discuss the latest developments in real property litigation and bankruptcy involving electronic registration of mortgages (MERS).

MEMBERS
$30 prepaid
$35 at the door
1 MCLE HOUR

NON-MEMBERS
$40 prepaid
$50 at the door

Family Law Section
Family Law and Bankruptcy Crossover Issues

MARCH 28
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO

Panelists Steve Fox and Louis Esbin will discuss bankruptcy issues in regard to your clients' cases.

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

NON-MEMBERS
$55 prepaid
$65 at the door

Litigation Section
Winning Preparation for Negotiations

MARCH 31
6:00 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Attorney Len Levy will discuss the best ways to prepare for negotiations and how to insure you come out on the winning side.

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

NON-MEMBERS
$45 prepaid
$55 at the door

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