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Celebrating 75 Years
San Fernando Valley Bar Association
founded in 1926

BarNotes

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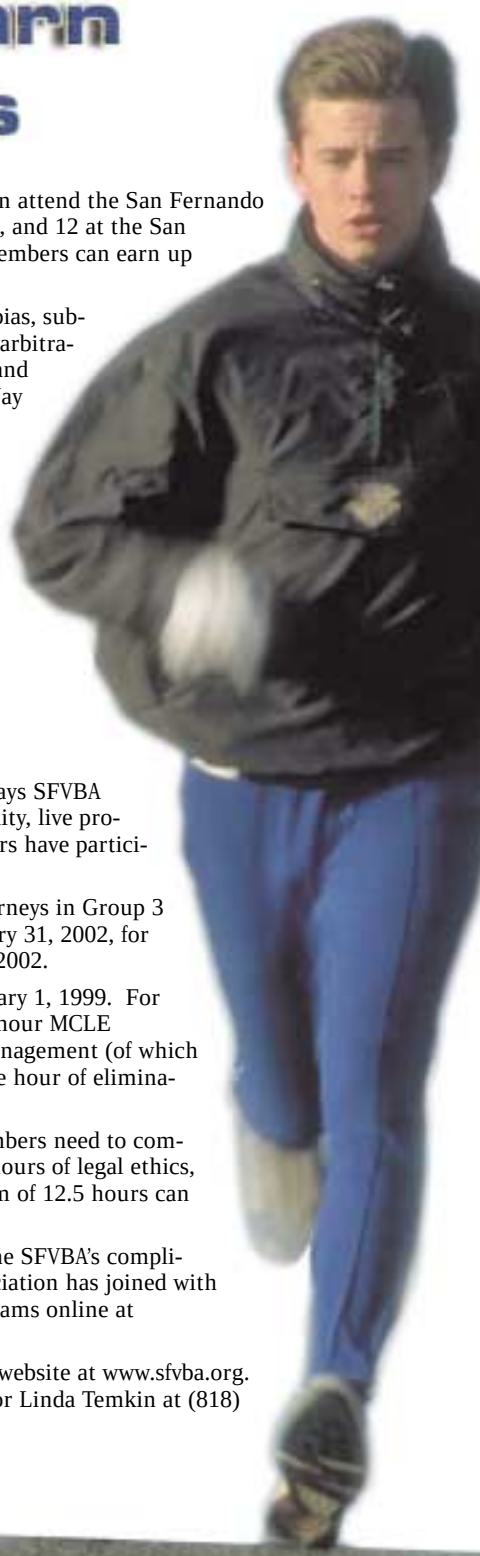
San Fernando Valley Bar Association

In This Issue

Race on to Earn MCLE Credits



Attorneys who need last-minute continuing legal education credits can attend the San Fernando Valley Bar Association's Fifth Annual MCLE Marathon on January 10, 11, and 12 at the San Fernando Valley College of Law. For the bargain price of $99, SFVBA members can earn up to 25-hours of MCLE credits.

In addition to the required subject areas (legal ethics, elimination of bias, substance abuse prevention), attorneys can attend classes in mediation and arbitration, fractional aircraft ownership, intellectual property, insurance law, and other substantive areas of law. This year's prominent lecturers include Jay Foonberg, Edward Poll, and retired Judges George Schiavelli and Bruce Sottile.

Foonberg Poll Schiavelli Sottile

"The MCLE Marathon is one of our most popular member benefits," says SFVBA President Lyle Greenberg, "No other bar association offers as many quality, live programs for such a low price. Over the past five years, about 1000 members have participated in the MCLE Marathon."

The MCLE Marathon is intended to help attorneys meet the State Bar's MCLE requirements. Attorneys in Group 3 whose last names begin with N through Z are required to complete their MCLE compliance by January 31, 2002, for the "old" compliance period that ended in 1999 as well as for the "new" compliance period ending in 2002.

The "old" compliance period for Group 3 members began on February 1, 1996 and ended on February 1, 1999. For that period, members who did not previously comply will need to report compliance with the old 36-hour MCLE requirement. Of the thirty-six hours, attorneys must earn eight hours of legal ethics/law practice management (of which at least four hours must be legal ethics), one hour of substance abuse and emotional distress, and one hour of elimination of bias. A maximum of 18 hours can be self-study.

For the current compliance period beginning February 1, 1999, and ending January 31, 2002, members need to comply with the "new" 25-hour MCLE requirement. Of the twenty-five hours, attorneys must earn four hours of legal ethics, one hour of substance abuse and emotional distress, and one hour of elimination of bias. A maximum of 12.5 hours can be self-study.

In addition to the MCLE Marathon, members can earn self-study credit by borrowing tapes from the SFVBA's complimentary MCLE tape library located at the Bar offices. In addition, the San Fernando Valley Bar Association has joined with West Group and National Practice Institute to offer SFVBA seminars and other bar associations programs online at www.npilaw.com/CA.

To register for the MCLE Marathon, complete the registration form on page 22 or visit the SFVBA website at www.sfvba.org. For more information about the Marathon or MCLE requirements, contact SFVBA Events Coordinator Linda Temkin at (818) 227-0490, ext. 105.

BarNotes

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President's Message

Lyle F. Greenberg

Do You Want Your Bar Association to be Just an MCLE Provider or a Community Leader?

While it would be simple to limit our Bar activities to just being an MCLE provider and a means to gather socially, the San Fernando Valley Bar Association, through its members, has been a moving force for important community activities in the San Fernando Valley since 1926. Our community service activities, as varied as they are, shed light on the soul of our organization and its impact on the lives of so many in our community. We would like our history of helping those in need to continue.

How do you respond when someone asks "do you need help?" It may not be fashionable to tell someone that you need help, but as I write this message, I feel great pride in our Association and our accomplishments, and I want to see us continue our long history of community service, from support for Court projects, to free legal services to military personnel during WWII as well as now during our present war on Terrorism, to our Blanket the Homeless Program.

Our members have played an important role in our community, without interruption, over our 75-year history. The most valuable asset of any organization is the people, the members, the volunteers. We recognize your participation, commend you for your dedication, and thank you for your service. The Board of Trustees, our Section Leaders, and I would like to see this continue into the future, but we need your assistance.

Community service programs are an integral part of our Bar, its philosophy and mission, and more important, who we are as professionals and contributors to our community. I could not do justice, in the little space permitted, to provide you even a brief history of our Bar's efforts on behalf of our community, but I would like to share a chronological overview of our leadership in this area.

The Courts. The SFVBA has been a prime motivator in petitioning to have Courts located in the San Fernando Valley. From our first Petition in 1926 and its success in obtaining a branch Municipal Court in March 1927 in Van Nuys, to other very significant efforts through today, we have undertaken to assist Valley residents and lawyers in having local courts to handle their legal needs. Whether it be the new construction of a courthouse or its repair after an earthquake, members of this Bar Association have led the way. Along the way, in the 1930s the SFVBA helped secure a city hall for Van Nuys. If you are interested in our Courts and issues that relate to the efficient administration of justice, consider joining our Bench Bar Committee and call our Co-Chairs Michael Convey at (818) 464-2810 or Judith Simon at (818) 703-6337.

Relief for Refugee Lawyers. During WWII, our members participated in the State Bar's Committee on Relief for Refugee Lawyers.

Free legal services for military personnel. During WWII, the association passed a resolution to offer free legal services to individuals drafted into the U.S. Army following passage of the Selective Service Training Act. At our October 9 Board meeting, we voted unanimously to set up a pro bono program to provide legal assistance to military personnel, reservists, and national guardsmen who are activated for overseas or homeland defense service. We will be expanding our legal assistance program to other legal needs. If you are interested in assisting, please call the Co-Chairs of our Community Service Committee, Mark Blackman at (818) 881-5000 or Christine Lyden at (818) 222-1030, or Trustee Richard Lewis at (818) 897-0979.

Legal Aid and Lawyer Referral Service. In 1948, the Valley Bar established the Legal Aid and Lawyer Reference Service which has been in continuous operation since that time. Please call our LRIS Director Michele Morley at (818) 227-0490, or the Chair of that Committee, Richard Lewis.

Law Day. In the early 1960s, your Association created a Law Day Committee, chaired by one-time president Albert Ghirardelli, which educated young people about the legal profession and the rule of law, and also sponsored an essay contest. At one time the Association sponsored a Boy Scout Explorer post for high schoolers interested in becom-

continued on page 20

Counseling Risk Management in a World of Terror

BY DAVID GURNICK & TAL GRINBLAT


Gurnick

David Gurnick is Managing Partner and Tal Grinblat is an Associate in the Woodland Hills' office of Arter & Hadden. Gurnick and Grinblat practice in the area of Intellectual Property and Technology.


Grinblat

Terrorism is now a fact of life and another risk businesses must plan for. While risks have always been part of business, risk management today requires being prepared for a Pandora's box of new horrors. These now include bombs, bio-terror, chemical attacks, poisoning, computer sabotage, anonymous defamation ("cyber smearing"), and other previously unimaginable crimes. Fortunately, a range of tools are available for clients to reduce the impacts of both historic and new catastrophic threats. Here are steps clients can take to plan and address risks that everyone confronts today:

• *Planning.* Planning for risks starts with identifying threats to a business. It means thinking not only of Acts of God and accidents, but also crimes that were unimaginable before. It is not an overreaction to consider new forms of terror, new torts, and secondary impacts of attacks that happen elsewhere. (See e.g., Global Telemedia Int'l. v. Doe 132 F.Supp.2d 1261 (C.D.Cal. 2001) (internet libel action brought against anonymous defendants).

• *Prioritize.* A client's next logical step is to prioritize what they want their risk management program to accomplish. The choice and order of priorities impacts which options are selected and how they are implemented. Typical goals are reducing chances of an incident, providing physical safety beforehand, and first-aid afterward; protecting property, reducing stress to employees, customers and family; keeping the business running; avoiding lost income, avoiding liability to others, and providing resources to help others.

• *Safety.* Safety is first in most people's minds. This part of risk management focuses on physical and operational safety of a business. Safety first means examining premises, restricting access, improving lighting; video monitoring, and avoiding dangerous conditions like exposed chemicals, dangerous equipment and slip-and-fall hazards. Safety analysis may mean reviewing operating procedures that pose risks to customers, employees or visitors.

• *First Aid.* Hand-in-hand with safety-first, is first-aid after an incident. This reduces the impact of the incident. CPR and basic first aid training are widely available. Other preparedness steps include having emergency supplies on hand, like first aid kits, food and water, flashlights, blankets and other items based on which emergencies company management envisions.

• *Disaster Plan.* In a catastrophic incident at a business, how will the client respond? The answer can be in a step-by-step disaster plan, or different plans, for different emergencies. These can be in the company's operating manual or personnel handbook or stand alone plans. A company's plan will be tailored to its circumstances (geography, staff abilities, management priorities). The plan should tell each person what the company wants them to do, and who to call, in a catastrophic incident.

• *Practice.* Most people recall fire drills from their school days. The military, fire fighters and police train and drill to practice responding to emergencies. This familiarizes personnel with steps to take in an emergency, and uncovers weaknesses that need to be revised. A business's risk management plan may include practicing responses to incidents that could occur.

There are many ways to conduct drills. One is to construct a mock incident. This may mean telling personnel a drill will be conducted and scheduling accordingly. Or management could announce the drill but not identify the location or personnel who will participate. Each disaster plan should include a program to practice implementing the plan.

• *Alertness.* Personnel can be encouraged to be alert, and trained to spot indicators of an impending incident, to call police, to work in a safety conscious way, and to avoid

panic. An alert employee who identifies a potential danger and calls authorities, may prevent a tragedy.

Beyond physical facilities and training, there are a number of legal and contractual steps a business can take as part of a risk management program:

• *"Force Majeure" Clauses.* "Force Majeure" clauses state extraordinary circumstances beyond a party's control, that suspend or excuse contract performance. E.g, Interpol Bermuda Ltd. v. Kaiser Alum. Int'l. 19 F.2d 992; (9th Cir. 1983) (performance excused by force majeure disruption of product delivery to Persian Gulf). They allocate risk, provide predictability and alert parties when performance may be excused. A typical clause might read as follows:

> A party is not liable for failure or delay of performance caused by transportation shortage; unavailability of product supply; compliance with any law, regulation or order of a government official in a public emergency or disaster; Act of God; fire, strike or riot; embargo, war, or terrorism; hurricane, flood, tornado or earthquake, or other event beyond control of the party whose performance was disrupted. Delay resulting from any of these causes will extend the time for performance or excuse performance, as may be reasonable, but will not excuse payment of any amount owed to the other party. A party seeking relief under this provision shall immediately notify the other party in writing stating the cause, the obligation effected, and when performance will occur, which shall be as early as practicable.

The September 11 attacks may result in more attention to these provisions and more frequently including "terrorism" as a "force majeure."

• *Insurance.* A company should use insurance to address catastrophic risks. Some kinds of policies to consider are: (a) property and casualty, covering loss or damage to property of a business; (b) business interruption, to replace income lost in the disruption of an incident; and (c) general liability, errors and omissions, directors and officers liability, to provide coverage for accident claims made by others against a business. Various other kinds of liability insurance, tailored to the nature of the business, should also be considered. These are (d) workers compensation, covering many kinds of injuries to workers; and (e) health and medical insurance to make sure workers have coverage for their medical care.

A client and their broker may look not only at the scope and amounts of coverage, but also at policy definitions, exclusions and restrictions. For example, many policies exclude risks like crime, war or terrorism. Steps could be needed to get other insurance to cover the excluded matters.

• *Corporate Governance.* Corporation statutes in some states provide additional governance flexibility in emergencies. See, e.g., 8 Del. Code § 110; Va. Code Ann. § 13.1-628; Oh. Rev. Code Ann. §§ 1701.01 and 3901.27. Entity governance documents should be reviewed to add or update risk and succession provisions. The charter, bylaws or operating agreement may authorize executives to take charge until usual management can be assembled to make decisions and give directions. Temporary succession arrangements may be included in case key executives are unavailable. A company with several vice presidents should address which of them advances when the President is incapacitated. A procedure could be adopted to fill vacancies on a temporary or permanent basis if any significant part of company's management becomes unavailable.

Internal policies should also be updated with safety, security and succession in mind. For example, some companies prohibit more than two company executives or multiple board members from traveling together on the same plane. Other companies may wish to keep locations of upcoming board of director meetings confidential.

• *Suppliers.* Having multiple suppliers for key products and services is a well-known risk management tool. Increased supplier disruptions make this more important. For example, the main phone company switch for much of New York was at a single location near the World Trade Center. (Young, Trade Center Attack Shows Vulnerability of Telecom Network, WSJ, Oct. 19, 2001 at 1). Now companies are assessing having multiple sources for utilities. The Wall Street Journal reported that a brokerage plans to have a separate backup trading floor to avoid disruption if an incident occurs at its headquarters. (Smith, Morgan Stanley Plans Backup Trading Floor, Just in Case, WSJ Oct.30, 2001 at C1).

• *Data Protection.* Arrangements should be made to protect a company's internal and customer data. This means improving data backup procedures; duplicating computer and documentary data, and storing duplicates at remote sites. This risk management step also requires periodic tests to make sure stored data is recoverable when needed. In addition, backup copies of a company's key operating software should be arranged. It may even be worthwhile to have redundant computers off site for emergency use.

Arrangements should be made for access to source codes if a software provider becomes unavailable. This may include third party source code escrow or on-site source code lock-box arrangements. In a source code escrow, the source code is stored with a neutral escrow using an escrow agreement. In a lock-box arrangement, source code is stored at the licensee's facilities in a sealed container that can be opened in an emergency (akin to a fire-extinguisher stored behind glass, with a notice "in emergency, break glass").

• *Recruiting.* Job candidates may be screened for risks to security, espionage, theft of secrets, sabotage or the like. Care must be taken to assure that screening does not unlawfully discriminate. However, a number of organizations provide validated tests to evaluate dangerous propensities lawfully. Cf. Assoc. of Mexican-American Educators v. Calif. 231 F.3d 572 (9th Cir. 2000) (standardized preemployment screening test did not violate civil rights laws) Testing for dangerous predilections does not eliminate all threats, but in companies with a large workforces, it can reduce the overall incidence of higher risk persons.

• *Communication.* An emergency plan should have a contact list of law enforcement, health and safety officials, company personnel, and steps to reach them and communicate to company personnel. This can include a central phone with a recording to

continued on page 18

A ROUGH NEIGHBORHOOD FOR MEDIATION

BY KENNETH MILLER, Esq.

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I have to admit that I have an agenda in writing this article. I want to encourage attorneys to recommend mediation to their clients for resolving disputes. Of course, as someone working as a mediator, this is an easy position for me to take. So I would like to try to persuade you that mediation, while not suitable for every dispute, could be beneficial for some of your clients and could save them added expense and grief. There are several good reasons for your clients to consider mediation as an alternative, and you do not need to wait until a lawsuit has been filed or mediation ordered by the court in order to pursue this alternative.

Unless you are dealing with one of a small number of specific dispute categories, most litigants experience mediation only when their case is assigned to a volunteer mediator through a local court program. This is likely to change as the courts focus more on mediation as a means of reducing their caseload. As recently as two years ago, a judicial task force in California examined the effects of civil ADR on the courts, litigants and the public. The panel, appointed by the Chief Justice of the California Supreme Court, made a series of recommendations that included measures to encourage voluntary use of civil ADR outside the courts and measures to provide opportunities for early mediation in civil cases within the courts. One of the proposals was for a mandatory early mediation pilot program in the Los Angeles County Superior Court (LACSC)for civil cases valued at over $50,000 wherein the parties would pay for a maximum number of hours (generally three hours) of mediation. This was rejected by the voters at the March 7, 2000 election. Subsequently, the LACSC became one of four counties participating in a pilot program where ten departments will refer their cases to mediation for which the County will pay for a maximum of three hours of the mediator's time. The program is under way, with cases filed on or after June 1, 2001 participating.

Mediation can do more than reduce the court's caseload. It can benefit the parties and in appropriate cases should be recommended by counsel at an earlier stage, perhaps before litigation has commenced. By way of illustration, I am going to make reference in this article to one particular category of dispute – conflict between neighbors – in order to illustrate the potential benefits of voluntary mediation. When adjoining property owners come into conflict, the pattern is similar to family disputes. The relationship will normally have a history of increasing friction that is likely to continue beyond the current dispute unless fences can be mended (pun intended). The benefit of mediation is that it is well suited to generating jointly developed solutions based upon the interests of the parties in the context of an ongoing relationship. For better or for worse, there will be an ongoing relationship unless one of the neighbors intends to move. On the other hand, a court victory for one side may leave the parties more hostile than ever.

Just think of all of the potential friction points between neighbors: the location of the boundary between properties; the effect of an existing or proposed boundary fence or wall; encroachment by structures; trespass onto property; trees with overhanging branches or encroaching roots; discharge of surface waters; flood waters; diversion or obstruction of natural watercourse; subjacent support (support from underlying strata) issues; lateral support (support from adjacent land) issues; easements (incorporeal interest in land of another affording right to use the land); licenses (express or implied authority to perform acts on the land); and adverse possession (acquisition of title to property by means of occupancy and continued possession for prescribed period of time). These are for the most part highly technical legal concepts and they can be expensive to litigate.

The mix of strong feelings concerning property rights and the emotional element of feuding with one's neighbors gives rise to several underlying sources of conflict, some of which might be better addressed through mediation than by a court-imposed remedy.[1]:

• Interest conflicts - where, for example, the neighbors may be competing over property interests that are not (or at least are not perceived to be) "splittable."

• Psychological interest conflicts - based upon the strongly held view that "a man's home is castle" and that strong action (including self-help) must be taken to protect such a vital interest.

• Data conflicts – based upon lack of information or misinformation resulting in, for example, disagreement over location of the boundary line or over whether prior "permission" was given (perhaps by a former owner) for an encroaching use.

• Value conflicts – created by differing views on the significance of the violation of property rights. Value conflicts between neighbors will sometimes arise when the neighbors are from different cultural or religious backgrounds. For example, an immigrant may come from a region where it is considered acceptable to create or use access across the adjoining property without expressly seeking permission.

• Relationship conflicts – caused by repetitive destructive behavior engaged in by the feuding neighbors. This category of conflict can also be caused by unequal control over resources, such as occurs where one party has diverted water or excavated his property in such a way that it undermines the foundation of the neighbor's property.

In California, there has been recognition of the fact that disputes between adjoining property owners are common and are suitable for mediation, but there has been no particular effort of which I am aware of to steer these cases into mediation. In a recent symposium on "Mediation in Real Property Practice" so called "Neighbor Disputes" comprised one of six categories of "Common Areas of Dispute" with the commentary that these are the "(h)ardest cases to settle, most in need of mediation." Following this comment, however, the balance of the written symposium materials focused on those disputes where mediation or arbitration is governed by contract. In the absence of a more organized approach, it is up to individual attorneys to consider

continued on page 18

The ABA announced at the National Lawyer Referral Workshop I attended this month that they have produced 30-second PSA spots to be released to 1000 radio stations nation-wide. Local lawyer referral services can order customized copies that have our phone number and website address. The ABA last produced these spots in 1997, resulting in over 5,000 broadcasts reaching 14 million listeners. We will alert you when the spots begin airing.

I will report on the ABA Workshop at the November LRIS Committee meeting. At that time we will begin discussing some of the ideas that were presented. These ideas are more to help fine tune our successful program rather than make major changes. Discussion at the Workshop made it clear that the SFVBA/LRIS is already advanced in comparison to many referral services. Significantly for LRIS we have had consistent support from the SFVBA leadership and the dedication to the successful operations and management of the program by the LRIS Committee members. Surprisingly, many programs across the United States do not have the support from their bar associations that is necessary for an effective LRIS.

The LRIS Committee is importantly and completely involved in the LRIS. If anyone is interested in participating on the LRIS Committee, please contact me. The time commitment is nominal - approximately one and a half hours per month. In return, you will have a leadership role in the operations of LRIS and its strategic planning.

There was a Workshop report on the invaluable pro bono work done by the legal community in response to September 11. Within two days, iLawyer staff created a program to handle the referral requests that were being received. One thousand attorneys volunteered to be trained in issue recognition, to prepare affidavits for obtaining death certificates, and to provide other pro bono representation. Another 200 attorneys became mentors and experts that could be contacted for advice and assistance. Clerical and paralegal staff volunteered countless hours to do intake and assist in the paperwork. In the first week alone, 1200 referrals were made to 1000 attorneys; about 100 referrals are still processed each day.

Attorneys and agencies from Oklahoma City and California are providing their expertise in disaster management and other issues. Bar Associations across the country are beginning preparations to provide legal assistance to military personnel (Operation Enduring Lamp.) Contact me if you are interested in participating in LAMP. Through each of these efforts, the legal profession proves that attorneys are problem solvers who often unselfishly volunteer their services.

May you and your family be given blessings this holiday season and blessings throughout the year for your good works.

What Goes Up May Go Off-line... Adventures in Knowledge Management

. . . exploring law-related Internet / Web sites

BY REBECCA MORRIS PULLEASE, CLA

Rebecca Morris Pullease, CLA, is a Certified Legal Assistant and a Principal of ***The Knowledge Bank,*** *a legal/factual research resource established for attorneys in 1993.Comments/queries regarding this article are welcome when directed to:* ***RMP@LegesLook.com***

At first glance, using a general search engine to locate information on the web seems easy. But getting a search engine to work with precision is another story. General search engines come packed with features that are often underutilized, but can be helpful in increasing search precision. The features differ from engine to engine, and skilled researchers will adjust their search strategy to take advantage of these differences depending on the type of results sought.

--from *Search Engines Comparison 2001*, published on Law Library Resource Exchange August 1, 2001 written by Diana Botluk

Lately I am reading more and more about ways to enhance your skills and search results with the technology that you already have on your desktop. I wonder if this convergence of ideas is associated with a societal need to awaken the sleeping giant that is the technology sector of the stock market. Perhaps it is simply a need to manage the morass of information (as opposed to knowledge) that inhabits cyberspace and is accessible by some strategic keystrokes by anyone, virtually anywhere.

One of my favorite developments is being able to enter a word or phrase directly onto the address bar of my browser in order to begin factual research without having to go onto a given search engine's home page. If you're not certain whether your favorite search engine operates with an inclusive default or an alternative default I would recommend that you read Botluk's latest update. Another caution--always take care in your query construction!

In the August/September 2001 issue of *Law Office Computing*, Genie Tyburski, writing in her column *Tyburski Files*, suggests that "lawyers who find themselves constantly challenged by demands on their time should update their browser to the latest version...browsers are, after all, becoming the universal interface to digital information."

Another suggestion offered by Tyburski and other top legal researchers is to maximize the utility of your toolbars-- *Findlaw* and *Google* are two good examples. These toolbars are available for download to your desktop through their respective Web sites. For the *Google (www.google.com)* toolbar click on the *Google Toolbar* hyperlink on the home page and to download the *Findlaw (www.findlaw.com)* toolbar click on the Toolbar hyperlink listed at the top of the home page under *Channels.* Installing these toolbars and familiarizing yourself with their capabilities will energize your research and save you time.

But the truth is, technology is usually optional; people who bemoan the digital age remind me of people who complain that today's music isn't as melodic as it used to be, how "all" movies are violent or how typewriters led to superior thought and writing.

--from *Circuits: Taking on the Curmudgeons*, by David Pogue, July 17, 2001 writing for *The New York Times Direct on the Web.*

MEDIATION PANEL

The Court Recommends Mediation!

The Los Angeles Superior Court with the cooperation of the San Fernando Valley Bar Assocation has created a Mediation Panel to help attorneys and their clients find qualified mediators.

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Steven M. West

The Benefits of Active Party Participation in Mediation

BY ADRIENNE L. KRIKORIAN, ESQ. AND JEFFREY A. TIDUS, ESQ.

Krikorian

Adrienne L. Krikorian, Esq. is a private mediator and solo-practitioner in Woodland Hills. Her practice focus is in real estate, business and homeowners associations. Jeffrey A. Tidus, arbitrator and mediator, is a partner at Lamb & Baute LLP in Los Angeles, focusing his practice in complex litigation, insurance bad faith, and banking law.

The majority of civil litigators believe that they are familiar with the mediation process. All too often, however, attorneys, and some mediators, view mediation and settlement conferences as interchangeable. This view misses the distinction between these two methods of dispute resolution. In the traditional setting of settlement conferences, attorneys have historically presented their clients in settlement negotiations by presenting the client's case, advocating the client's position and generally taking the active role. This model of active participation by the attorney and passive participation by the party arises from the role of advocacy filled by the attorney in the litigation process in general.

Effective mediation differs dramatically from a judicial settlement conference because it utilizes a model of active participation by all participants, especially the parties. The goal of mediation is and should be a path to a settlement that the parties will acknowledge as a fair resolution. That goal is achieved by active participation by all participants in mediation.

A mediator's introduction to the case, from the parties' perspective, is through listening to each side tell its side of the story. An effective mediator who is an active listener will ask questions of both parties to elaborate, clarify, and confirm each side's position. By being drawn into the mediation process at this early stage, the parties will feel like the process is occurring for their benefit. On the other hand, if the dialogue in the early stages is between the mediator and attorneys, with the parties taking a passive role, then the parties do not become invested in the process, ultimately making settlement more difficult.

A more satisfactory resolution to the parties is likely to be reached if attorneys encourage their clients to actively participate in the mediation. This approach is most successful when the attorney steps back from the traditional position of advocate, and, instead, assumes the more passive role of counselor who encourages the client to tell their story. More important, this approach is most successful when all parties are present.

Active storytelling also requires active listening by the parties, which is a concept the parties must be encouraged to promise in advance they will do. The mediator must work to make each party feel like they will have a complete opportunity to comment or rebut the story of the other party. An opening session conducted in this fashion immediately involves the parties in the process and allows each side the opportunity to tell its story.

The parties should also be permitted by counsel to answer questions posed by the mediator about their position on the case. While some levels of questioning may be better suited to private sessions between the parties and the mediator, general questions of a factual nature will result in numerous benefits from the process. By eliciting facts that help expose the issues, the mediator will be in a position to narrow the issues to those, which are impeding the process of dispute resolution, and to insure that the parties understand the issues and risks related to those issues. By

understanding the issues and risks, the parties will be more amenable to the process of negotiation.

The mediation process, if used efficiently, should provide a forum for the parties to have their day in court. They will be allowed to vent and to tell their story to a neutral that is willing to listen without passing judgment. They will have the opportunity to tell the other side their position, in the presence of and under the supervision of a trained mediator. This process is often the first big step to opening the minds of the parties to work toward settlement.

On the other hand, if either or both counsel assumes the role of strong advocacy in the initial stages of the mediation, by insisting on presenting his or her client's case to the mediator as an advocate, the parties may assume a similar posture of inflexibility. Inflexibility impedes the process of negotiation, and often results in one side or the other leaving with feelings that the process, and the result, was not fair.

Another essential benefit to the presence and participation of all parties in mediation is the opportunity to brainstorm for creative settlement options when an impasse is reached. Attorneys often look at more traditional forms of settlement in monetary terms. However, the parties themselves may offer creative solutions which can ultimately result in a resolution of a dispute that allows them to walk away feeling that they have reached a fair settlement.

In a traditional setting, monetary relief would often be the focal point of settlement. However, a workable solution that was initiated by one of the parties allows the parties to settle with dignity, and to achieve their goal in a manner that appears fair. This seldom, if ever, happens if all of the parties are not present and playing an active role in all facets of the mediation, or if they rely on their attorneys to present their case from a position based on monetary value.

Counsel for the parties in a mediation must view mediation as a chance to preview the story that will be told at trial by all sides, and the manner in which it will be told. For this reason, if no other, all parties should be present, whether or not they are indemnified by insurance. Los Angeles Superior Court Local Rule 12.15 requires that the parties, and in the case of an entity a representative with authority to resolve the dispute, shall personally appear at the first mediation session, and at any subsequent session unless excused by the mediator. However, in personal injury cases we have often seen only the adjustor present at mediation hearings, and sometimes even the adjustor may only appear by phone, if permitted by the mediator. Thus, only the plaintiff is physically present at the hearing, a situation that often results in no resolution because no mediation can occur under these circumstances.

Mediation gives the party-witness the chance, in a less formal setting, to tell his or her story. By encouraging a party to attend mediation, and to tell his or her story in his or her own words, counsel has an opportunity to observe how the client presents himself or herself to a trier of fact, and how well he or she handles the pressure. Experienced trial attorneys know that witnesses can react unpredictably when they first testify in court.

In mediation where the defendant is indemnified by insurance, the presence and active involvement of the defendant is still extremely important. The adjustor may be meeting its insured for the first time. The defendant's presence gives the adjustor the opportunity to evaluate his or her credibility first hand. In smaller cases the defendant is often not deposed and the attorneys do not meet insured defendants until close to the time of trial or at trial. By requiring the insured defendant's presence at mediation, a mediator will be setting the stage for the outcome of a fair resolution.

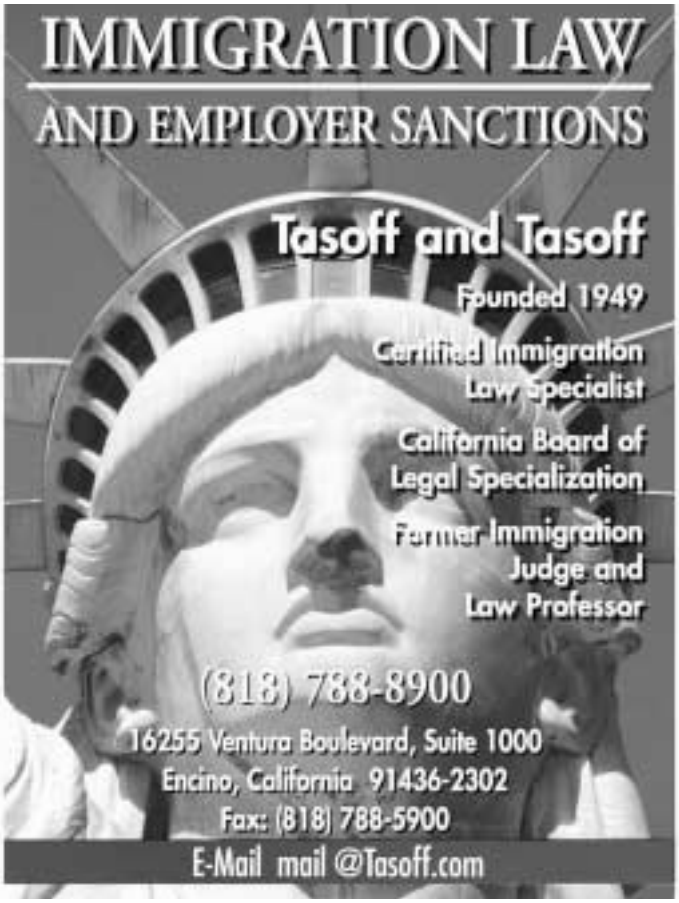
Equally important, we often see plaintiffs in personal injury actions who want more than just monetary compensation. A simple apology, or acknowledgment of some responsibility, often goes a long way to reducing an otherwise unreasonable settlement demand. In all types of cases, the plaintiff is often motivated as much by anger as a desire to obtain monetary compensation. When a plaintiff is given the opportunity to hear the defendant's side of the story from the defendant, the ultimate result is diffusion of some of the anger. At that point, one of the major barriers to a monetary settlement is eliminated if not significantly reduced. That can only happen if the defendant is present and is allowed to tell their story at the mediation. The same considerations apply to the defense and their strategy at mediation. An articulate defendant who presents a plausible explanation for the defense's position on liability and/or damages may encourage the plaintiff and plaintiff's counsel to reconsider an otherwise non-negotiable settlement position that would force the case to trial.

What role can the attorney play in this process, without jeopardizing his or her role as the client's advocate? An effective presentation of a case requires a client who has been properly prepared before the mediation commences. Counsel should prepare their clients for the process by rehearsing their story so that they can clearly express their point of view while appearing reasonable. Clients need to understand that in a mediation they can express concerns, anger and other emotions, which may not be appropriate when testifying at trial. Working with the client to effectively present the facts most favorable to their side, while still allowing the client the freedom to vent, allows the attorney to mold the client's story from a position of advocacy. If the client is properly prepared to present his or her story concisely and effectively, the mediation gives counsel the chance to impress the other party, and/or the insurer, both with the story itself and the way the client tells the story.

An articulate party gives an experienced mediator a valuable tool to use when caucusing with the opposing party and his or her counsel and other persons who may effect settlement. For example, experienced defense attorneys know that a plaintiff who presents a well-prepared story can be a formidable adversary at trial. Testimony at a deposition may show how well the plaintiff reacts to hostile questioning. However, mediation presents a different perspective - - namely, how well the party is likely to do on direct examination. Proper preparation and counseling by the attorney is critical to success in this phase of mediation.

The ways, in which the plaintiff presents their story, even if facts and other information are presented which would otherwise be inadmissible at trial, is also important to the mediator in helping to frame the issues. The parties are more likely to reach a common goal of settlement if the mediator can frame the issues in the same way the parties view them. By listening directly to the parties tell their story, rather than having the story filtered through the

continued on page 20



SFVBA rents its **Executive Boardroom** for depositions and hearings. Amenities include breakout room, beverage service, and free parking. Only $125 per day

SFVBA attorney members receive **free library privileges** at the San Fernando Valley College of Law in Warner Center. Call 883-0529 for library hours.

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MBNA offers members the exclusive **Platinum Plus MasterCard**. Call 1-800-457-3714. Mention priority code OMKA.

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Contact the SFVBA office to receive a package of **discount coupons & membership cards** for Southern California's major theme parks and attractions

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Chase Manhattan Mortgage gives members **1/2 point fee discount** on fixed and adjustable rate programs. Call John Bartnicki at (818) 226-0888.

Attorney Services of Southern California offers SFVBA Members who open new accounts a **30% discount** off their current rates. Call (818) 772-4795.

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SFVBA members **save $10** on new AAA Membership and a discount on auto insurance. Call John Hernandez at (805) 306-8181

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Fax (818) 883-5962
Third Year Law Student

Richard W. Daugherty
4516 Morella Avenue
Studio City, CA 91607
(818) 761-8294
Fax (818) 761-8294
rdaugherty1@msn.com

Alexander S. Gareeb
Tressler, Soderstrom, Maloney & Priess
1901 Avenue of the Stars
Suite 450
Los Angeles, CA 90067
(310) 203-4823
Fax (310) 203-4850
agareeb@mail.tsmp.com
Business Litigation, Commercial Transactions, Litigation, Product Liability

Nathan B. Hoffman
Hoffman & Associates
22373 Cass Avenue No. 100
Woodland Hills, CA 91364
(818) 455-4226
Fax (818) 710-1789
nbh_law@pacbell.net
Civil

Carol A. Juhas
California Community Foundation
445 S. Figueroa St. Ste. 3400
Los Angeles, CA 90071
(213) 413-4130
Fax (213) 622-2979
cjuhas@ccf-la.org

William H. Keller
The Keller Law Firm
28005 N. Smyth Drive
Santa Clarita, CA 91355
(310) 255-8856
Fax (661) 291-1631
bk@kellerlawfirm.com
Estate Planning, Probate

Ronald A. Norman
16830 Ventura Blvd. Suite 100
Encino, CA 91436
(818) 907-0600
Fax (818) 501-8230
rnorman@marcusmillichop.com

Laura J. Portillo
Brinkman & Associates
800 Wilshire Blvd. Suite 950
Los Angeles, CA 90017
(213) 532-8772
Fax (213) 532-3745
Commercial Transactions

Jonathan I. Reich
DeCastro, West, Chodorow, Glickfeld & Nass
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Los Angeles, CA 90024
(310) 478-2541
Fax (310) 473-0123
jreich@dwclaw.com
Business Law, Litigation

Linda Miller Savitt
Ballard, Rosenberg, Golper & Savitt
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16th Floor
Universal City, CA 91608-1097
(818) 508-3700
Fax (818) 506-4827
lsavitt@brgslaw.com
Labor & Employment

Brian Schwartz
Morgan Stanley
5535 Canoga Avenue No. 118
Woodland Hills, CA 91367
(818) 907-2470
brian_h_schwartz@morganstanley.com
Estate Planning, Finance, Insurance

Maya Shulman
Law Offices of Maya Shulman
16055 Ventura Blvd. No. 712
Encino, CA 91436
(818) 981-8810
Fax (818) 981-8656
ms_esq@hotmail.com
Civil Litigation, Family Law

Robert A. Wiener
Law Office of Robert F. Brennan
3150 Montrose Avenue
La Crescenta, CA 91214
(818) 249-5291
Fax (818) 249-4329
rawlaw@brennanlaw.com
Litigation

"Counseling Risk..." continued from page 7

disseminate emergency information; sharing information over the company's web site, or an email or phone tree. In some disasters electronic communication may not work. Plans may be needed for message trees or relays among personnel.

A company's risk management plan needs to be provided to company personnel, though distribution of some aspects of a plan may need to be limited. A routine memo that personnel do not read may be insufficient. To improve usage and dissemination, the plan may be repeated on the company's web site, in an area for employees. Some companies may put key portions of the emergency plan in wallet size cards to be carried by personnel at all times.

A company should consider telling personnel and possibly customers and the community about its emergency plan. This may be a memo, press release or letter to the public. A company leader may state frankly the range of incidents that can occur and that the company will be vigilant to prevent, or respond to. This instills confidence in others, enhances stability of relationships, and encourages others to adopt plans as well. With wider attention to risk planning the threats of catastrophic incidents may be reduced.

Today businesses must reexamine risk management. A range of options are available and each company's plan depends on how it prioritizes goals. Having a complete risk management plan helps a company protect health and safety, instill confidence, preserve the company after a disaster, and helps others in the community respond to catastrophic risks as well.

"... Rough Neighborhood..." continued from page 9

recommending mediation in cases, such as neighbor disputes, which would benefit from this approach to resolving disputes.

Proposing mediation to the other side may be perceived by some as a sign of weakness, and that is unfortunate. Attorneys owe it to their clients to consider whether the parties might be more comfortable with a process that provides them with an opportunity to explore creative solutions that offer more than simply declaring one side the "winner" and the other side the "loser." For many disputes, there are considerable benefits to using a process that permits the parties to take part in crafting their own compromise solution rather than having one imposed on them, and it is not difficult to find a qualified mediator whose experience and fees are suitable to the particular dispute. So, there is a case to be made for recommending mediation.

[1] Adapted from Moore, Christopher W., The Mediation Process: Practical Strategies for Resolving Conflict (2nd Ed. 1996) at page 23-26.

"President's Message" continued from page 3

ing lawyers. Later when the ABA suggested free legal services to be provided in malls across America, Past President Gary Barr instituted the program at the SFVBA. We now provide free legal services at the homeless shelter and the LAPD's open house, as well as continue to sponsor our varied Law Day activities. Please contact Mark Blackman or Christine Lyden.

Civil Rights and Independence of the Judiciary. While our nation's leaders were debating the Civil Rights Act of 1964 and the 1965 voting rights bill, in March 1964 our Board of Trustees passed a resolution, which read, in part, "We urge all members of the Bar, within their own communities, to actively support the full realization and exercise of civil rights by all citizens without regard for race, creed or national origin." It went on to urge members' support for the judicial system and pointed out to the public the difference between the right to disagree with a judge's decision and the impugning of his or her character because of that disagreement. This last part was a reference to the increasingly vituperative quality of public discourse during the decade and repeated attacks on the judiciary over unpopular decisions. Our position on the independence of the judiciary has not wavered and we have reiterated that position on numerous occasions since that time. In addition to our Bench-Bar Committee, we have recently created a Legislation Committee to identify and evaluate legislation that will impact the practice of law in California. Please call Stephen Holzer at (213) 683-6671 if you have questions or would like to participate in this exciting and important committee.

Legal Aid. In 1965, the Board of Trustees voted to work with Neighborhood Legal Services to provide legal services to the poor and as a result, one-third of the NLS Board of Directors was appointed by the bar association. If you are interested in these programs, please call Tamila Jensen at (818) 363-6733 or Patricia McCabe at (818) 907-9726.

Family Law Clinic and Domestic Violence Clinic. In 1985 the SFVBA, at the behest of Lee Alpert, Haig Kehiayan, and Barbara Jean Penney, started the Family Law Clinic.

Senior Center. The Senior Center was set up during this same time period.

Blanket the Homeless. Our Blanket the Homeless program is now in its seventh year and was started at a time when the image of attorneys was at an all time low. Begun by President Bob Weissman and our then LRIS Director, Brad Capener, the program has grown to the point where we provide almost 2,500 blankets each winter to shelters around the San Fernando Valley. This year we are once again involved in this project. If you are interested in helping in this worthy cause, please call Mark Blackman at (818) 881-5000 or Christine Lyden at (818) 222-1030.

The Self Help Center. The Self-Help Center is a joint project of Neighborhood Legal Services, LA County Board of Supervisors, the Court, SFVBA and Monroe High School. Thousands of clients have been assisted by the Self Help Center and many of our members volunteer at the clinic on a regular basis.

This list does not even touch numerous other programs that our members support and which assist our community and our profession, including and certainly not limited to the Judge Pro Tem Programs, VAST and other settlement programs, and our Mural project. Over the years, we have had hundreds of attorneys spend many thousands of hours volunteering their time to provide legal assistance to seniors, victims of domestic violence, military personnel, and others, as well as staff the Courts in Judge Pro Tem positions. I am sorry that I could not, in this article, announce the names of all of you who have so generously given of your time and expertise.

In 1980, then President Stanley Lintz passed away. He left us a legacy of community service which we celebrate each year. On June 11, 2002, we will again celebrate our *Stanley M. Lintz & Community Service Award Dinner*, and I invite each of you to attend.

At the beginning of this message, I asked how you responded to the question, when posed to you, of whether you needed help. Now I ask - when someone asks you for help - how do you respond? Will you be an honoree at our dinner and be recognized for your service? Don't stand on the sidelines - your community needs you! This year I have undertaken to Chair the "Volunteer Committee." If you can assist and share some time and expertise, but don't know quite what to do, please give me a call at (818) 884-5100.

"... Benefits..." continued from page 16

ties tell their story, rather than having the story filtered through the lawyers, the mediator can better focus the parties on the issues the parties consider important. Sometimes, as advocates, attorneys miss the issues that are critical to their client, issues which are often not the legal issues that will be heard at trial. Nevertheless, the parties' issues are often those that stand in the way of dispute resolution, particularly when the cost of litigation reaches financially straining limits.

Mediation, particularly in a complex multiparty case, can be an arduous experience. The mediator can help keep the parties focused on the proceeding by actively engaging them at the outset and keeping them involved throughout the session. While hearing the parties' stories, in general, is important, a mediator is often the person to help diffuse the antagonism between a plaintiff and defendant, which often drives the litigation to levels which may seem otherwise insurmountable.

The importance of active party participation in the mediation process cannot be understated. The goal of mediation should be a result that benefits the parties. Without the direct participation of the parties, cases are less likely to settle, and the parties are less likely to be satisfied with the proceeding, whether the case settles or not. Ultimately, an unhappy client is one who may not return to the attorney in the future, and one who may eventually be involved in yet another lawsuit, this time over the fees charged by the attorney. Effectively using the client in mediation is the key to reaching a fair result in dispute resolution.

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SAN FERNANDO VALLEY BAR ASSOCIATION & SAN FERNANDO VALLEY COLLEGE OF LAW

5TH ANNUAL MCLE MARATHON

January 10, 11 and 12, 2002

San Fernando Valley College of Law, Woodland Hills, CA

THURSDAY, JANUARY 10, 2002

❑ 9:00 a.m. - 9:55 a.m. *1 MCLE Hour Ethics*
Keeping Your Law Practice and the Client's Accounts on Track
Scott R. Ervin, CPA

❑ 10:00 a.m. – 10:55 a.m *1 MCLE Hour*
Mediating the Employment Dispute
Eugene Moscovitch, Esq., Arbitrator and Mediator

❑ 11:00 a.m. – 11:55 a.m. *1 MCLE Hour*
Alter Ego Liability
James Sigler, Esq.

LUNCH ON OWN

❑ 1:00 p.m. – 1:55 p.m. *1 MCLE Hour*
How to Determine the Community Property Interests and the Enhanced Value of a Separate Property Business
Steven Zand , Esq.

❑ 2:00 p.m. – 3:55 p.m. *2 MCLE Hours Ethics*
A Brief Refresher: Malpractice and Bar Discipline Avoidance
Fee Agreements: What the Bar Has To Say
Prof. Robert Barrett, San Fernando Valley College of Law

❑ 4:00 p.m. - 4:55 p.m. *1 MCLE Hour*
Fractional Aircraft Ownership
Patrick Bailey, Esq., Stephen Hofer, Esq. and Jay Foonberg, Esq.

❑ 5:00 p.m. – 5:55 p.m. *1 MCLE Hour*
Presenting Graphic Evidence in the Courtroom
Hon. George Schiavelli, Ret.

FRIDAY, JANUARY 11, 2002

❑ 8:30 a.m. – 9:25 a.m. *1 MCLE Hour*
Intellectual Property for All: Trademark, Trade Secret, Copyright and Patent Basics
David Gurnick, Arter & Hadden

❑ 9:30 a.m. – 11:25 a.m. *2 MCLE Hours Ethics*
Tips for the Keeping the Client Coming Back for More
Edward Poll, Esq

❑ 11:30 a.m. -12:30 p.m. *1 MCLE Hour*
Negotiate Like the Winners
Linda Bulmash, Esq., Mediator

LUNCH ON OWN

❑ 1:30 p.m. – 3:25 p.m. *2 MCLE Hours*
Update on Insurance Issues Regarding the General Practitioner
Jeffrey Diamond, Esq.

❑ 3:30 p.m. – 5:25 p.m. *2 MCLE Hours*
Legislative Update:
Recent Probate and Trust Changes
Mark Phillips, Goldfarb, Sturman & Averbach

❑ 5:30 p.m. - 6:30 p.m. *1 MCLE Hour*
Do's and Don'ts of Arbitration and Mediation
Hon. Bruce Sottile, Ret.

SATURDAY JANUARY 12, 2002

❑ 9:00 a.m. – 10:55 a.m. *2 MCLE Hours*
Family Law Update: Child and Spousal Support Refresher
Robert Holmes, Holmes & Holmes

❑ 11:00 a.m. –11:55 a.m. *1 MCLE Hour Elimination of Bias*
Elimination of Bias
Paula Daniels, Esq.

LUNCH ON OWN

❑ 1:00 p.m. – 2:55 p.m. *2 MCLE Hours*
Intellectual Property on the Internet: How Copyright, Trademark, and Patent Laws Protect Your Client's Cyber Property
Darla Anderson, Esq.

❑ 3:00 p.m. – 4:55 p.m. *2 MCLE Hours*
Update: Workers Compensation and Social Security Disability Topics
George Skolnick,Esq.

❑ 5:00 p.m. - 5:55 p.m. *1 Hour MCLE Prevention of Substance Abuse*
Identification and Treatment of Substance Abuse in the Legal Profession
Patricia Tierney, Esq., Wendy Slavkin, Esq., and Garrett O'Connor, MD

MCLE MARATHON REGISTRATION FEES (Includes written materials and refreshments.)

		Member	Non-member
❑	3-Day Seminars	$99	$399
	OR		
❑	Thurs., January 10	$35	$159
❑	Fri., January 11	$35	$159
❑	Sat., January 12	$35	$15
❑	Individual Class *(✓ Class Attending)*	$15	$30
❑	Late Registration Fee *Pre Registration deadline in Jan. 3.*	$10	$25

Name_____ Firm

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Phone _____ E-Mail_____ State Bar No._____

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No cancellations after January 3. Reservations at the door not guaranteed.

Mail registration form and payment to SFVBA, 21300 Oxnard Street, Suite 250, Woodland Hills, CA 91367.

December Events

calender and MCLE event listings

Barristers Section

Topic: **Effective Ways to Network: Even Non-Marketers Can Make It Rain**
Just in time for the holiday parties, learn the ins and outs of networking.
Speaker: Patrick Henry, Total Relationship Marketing
Date: December 7
Time: 12:00 noon
Place: SFVBA Conference Room, Woodland Hills
Cost: $15 members prepaid; $20 at the door
$20 non-members prepaid; $25 at the door

Probate and Estate Planning Section

Topic: **The Role of the Attorney in Mediation When is Mediation the best course to follow?**
Find out from one of the leading experts in the field.
Speaker: Kenneth Wolf, Esq.
Date: December 11
Time: 12:00 noon
Place: Radisson Hotel, Sherman Oaks
Cost: $25 members prepaid; $30 at the door
$30 non-members prepaid; $35 at the door
MCLE: 1 hour

Board of Trustees Meeting

Date: December 10
Time: 4:30 p.m.
Place: SFVBA Conference Center, Woodland Hills

Information & Reservations 818•227•0490

SIGN ME UP!

SEND CHECK TO **SFVBA**
21300 Oxnard St., Suite 250
Woodland Hills, CA 91367

FOR MORE INFORMATION CALL (818) 227-0490

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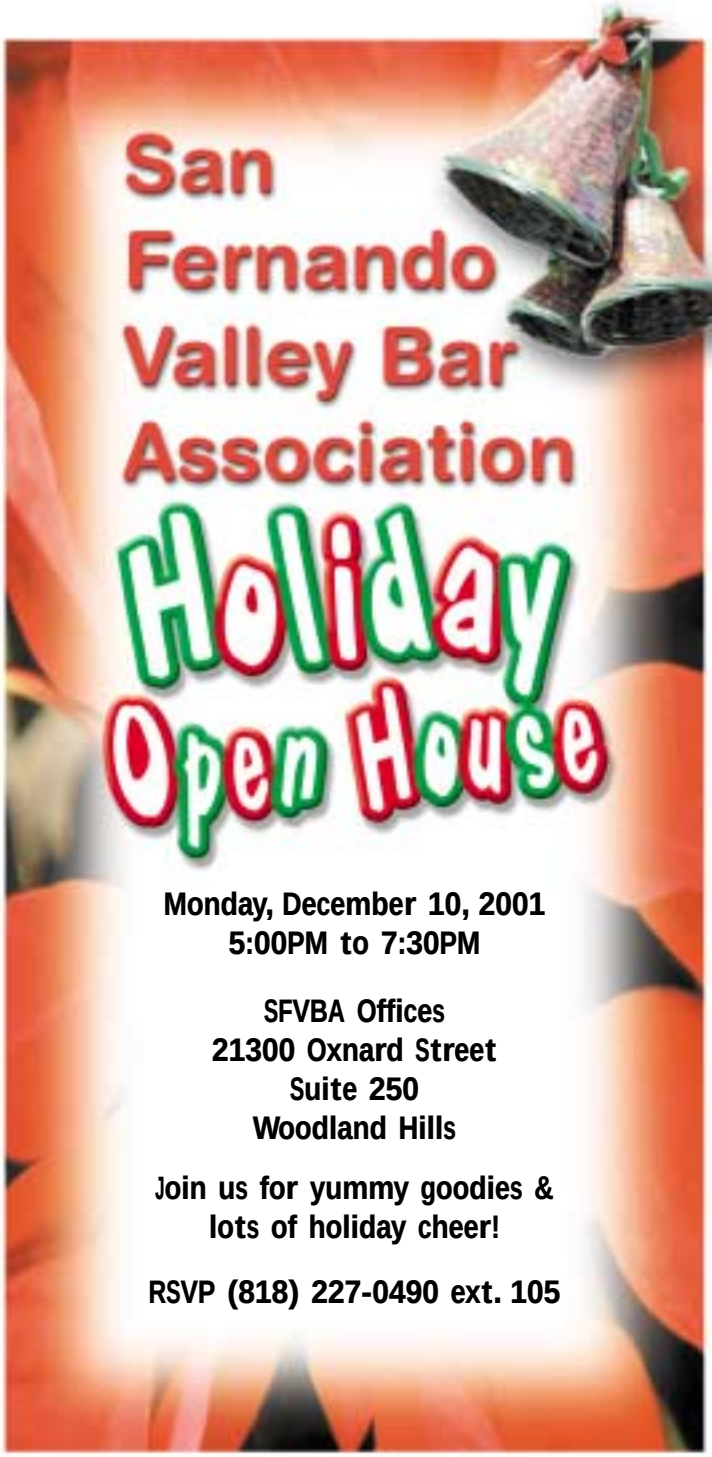
Food and beverages served at every MCLE event!

* Please note that no credit will be given unless notice of cancellation is provided 48 hours before scheduled event



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