



BarNotes

A Publication of the
San Fernando Valley Bar Association

In This Issue

President's Message3

Report of SFVBA Delegation to the Conference of Delegates.....5

Converting Blue Sky To Gold: 10 Tips on How to Increase Cash Flow8

Retirement Planning For The Small Business Owner: 412(I) Defined Benefit Plans.....10

Message From LRIS Coordinator11

Employer Not Responsible For Harassment By Others14

2003 Legislative Changes Impact California Employers15

Notice To Attorneys19

New Members20

Classified Ads21

Annual MCLE Marathon Scheduled for January 10 and 11

Back by popular demand, the San Fernando Valley Bar Association's 6th Annual MCLE Marathon will take place on Friday, January 10, and Saturday, January 11, at the San Fernando Valley College of Law. For the bargain price of \$99, SFVBA members can fulfill their hours in the required subject areas: four hours legal ethics, one hour elimination of bias, and one hour substance abuse prevention. In addition, nine hours of classes will be offered in substantive areas of law with prominent lecturers such as trial consultant Jo-Ellen Dimitrius and retired Judges Armand Arabian, Arnold Gold, and George Schiavelli.



Armand Arabian

Renowned trial consultant Jo-Ellen Dimitrius, named the "The Seer" by *American Lawyer* magazine thanks to her talent in reading witnesses' and jury's behavior, will kick off the Marathon on Friday morning at 9:00 a.m. The two-day marathon will appeal to attorneys in all practice areas. Topics to be covered include Appellate Advocacy, Asset Tracing, Intellectual Property Law, Elder Abuse in Probate Cases, IRS Enforcements, and more.

The MCLE Marathon is one of the SFVBA's most popular events. It affords members a painless way to earn MCLE credits at a great, affordable price. More than one thousand attorneys have participated in the Marathon in the previous five years.

Attorneys in Group 2 (whose last names begin with H through M) are required to complete their State Bar MCLE compliance of 25 credit hours by January 31, 2003. The current compliance period began February 1, 2000 and ends January 31, 2003.

The Marathon offers fifteen hours of live, participatory programs. Members can complete the additional ten hours through self-study credit that can be earned by borrowing tapes from the SFVBA's complimentary tape library located at the Bar Offices.

Group 2 members should have received their compliance cards in the Fee Statement packet mailed by the State Bar on November 15. Compliance cards for Group 2 are due at the State Bar by February 3, 2003. By attending the MCLE Marathon, SFVBA members are assured that a record of their attendance will be kept in the office's computer database. Credit slips, which are provided at every MCLE event the SFVBA sponsors, are for members' personal records. SFVBA members who are uncertain about the total number of credit hours they have earned at SFVBA programs since the start of their compliance period can call the office for a copy of their records.

To register for the MCLE Marathon, complete the registration form on Page 13 or visit the SFVBA website at www.sfvba.org. For more information about the Marathon or your MCLE requirements, contact SFVBA Events Coordinator Linda Temkin at (818) 227-0490 ext. 105. 🐾



George Schiavelli

Calendar of Events Page 23

SFVBA
Holiday Open House
December 10th
5:00 pm to 7:30 pm

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President's Message

Stephen T. Holzer

The SFVBA In Action: Section (And MCLE) Opportunities Abound, As Do Your Opportunities To Help Shape The Directions Of Our Profession

I am trying to visit as many SFVBA Section meetings as possible, both to understand better how the Sections work and to reiterate the interest of the Bar leadership in seeing to it that the Sections continue to be thriving parts of the Bar. This past month, I had the opportunity to attend meetings of the Intellectual Property, Family Law and Small Firm/Solo Practitioner Sections.

These three meetings illustrated the depth and breadth of continuing legal education opportunities presented by the SFVBA. I received lessons in the subjects of perfecting security interests in intellectual property (IP Section meeting); in the "DISSOMASTER" (Family Law Section); and in the fine points of attorney-client retention agreements (Small Firm/Solo Practitioner Section).

While I specialize in environmental transactions and litigation and thus cannot directly utilize a lot of what these lessons taught, nonetheless I was reminded by the meetings of just how useful it is to have at least some passing knowledge of important subjects outside of one's own field of expertise. I now feel better equipped to recognize family law and intellectual property issues and to refer people needing assistance in those areas to the proper specialist. Of course, the refresher course in attorney-client retention agreements is always valuable no matter what one's field of expertise.

As added value, I earned MCLE credit for attending each of these Sections' meetings.

I recommend that you take advantage of these MCLE-accredited opportunities. Each publication of *Bar Notes* sets forth the date and time for upcoming Section meetings. Additionally, Linda Temkin, our Events Coordinator, is always available at the Bar office (818-227-0490) to provide you with information about the meetings.

continued on page 20



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| | Elimination of Bias Credits | 1 Credit Every 3 Years |
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Report of SFVBA Delegation to the Conference Of Delegates

BY TAMILA JENSEN

The Conference of Delegates met in Monterey from October 10 to the 13. Bernard Grossman, Patricia McCabe, Anne Adams, Cai Ryan, Roger Franklin, Louis Michelson and Tamila Jensen represented the SFVBA at the meeting.

In addition to considering over a hundred proposed resolutions, many other events punctuated this year's annual meeting. Chief Justice Ronald George gave his annual State of the Courts address to the Conference.

Associate Justices Chin, Baxter, and Werdeger were also in attendance for this report. George also swore in James Herman of Santa Barbara as the new President of the State Bar. In his inaugural address, President Herman recognized the Conference of Delegates as the only opportunity at the State level for individual practicing lawyers and members of local bar associations of all sizes to "change for the better the law we all practice."

Attorney General Lockyer also gave his annual address to the Conference on Sunday and stayed to answer questions from the floor. In addition, the immediate past president of the ABA addressed the Conference and stressed the importance of lawyers getting involved in "rule of law" activities. "This is a country whose guiding principal is the rule of law," he said, "and issues that relate to the rule of law are predominately important at the state level. A principal service provided by the work of the delegates is to focus the legislature on those issues."

This year the Conference also considered new by-laws, as it was re-constituted as the Conference of Delegates of California Bar Associations (CDCBA). This was the last year the Conference will meet as the Conference of Delegates of the State Bar of California. The CDCBA is now funded by voluntary contributions through the State Bar Foundation. The CDCBA has an on going contractual relationship with the State Bar. The State Bar will continue to carry CDCBA resolutions in its annual bill package.

During the general business meeting the Conference considered and acted on about 108 resolutions. The Conference was attended by forty-two local bar associations, three State Bar sections, three hundred and



Delegates (left to right) Anne Adams (with spouse Bill Thurber), Patti McCabe, Louis Michelson, Tamila Jensen, and Bernie Grossman strategize on Friday prior to the Conference meetings.



The SFVBA delegates on the floor of the Conference.

thirty-eight delegates, and forty-eight alternates. This year, the SFVBA proposed one resolution (6-10-02), establishing a one-year statute of limitations for Medi-Cal lien claims, which was approved in principle by the Conference.

While the legislative work for 2002 will now begin, the Conference successfully carried an ambitious legislative program in 2001. In 2001, 55 resolutions passed the Conference house. Of those, the State Bar carried 6, two of which were placed with a sponsoring legislator and passed; two were referred to Judicial Counsel; eighteen were returned to their proponents for action; and ten were ranked priority one and of those, six were placed with legislators and all six passed. In all, eight resolutions were placed with sponsoring legislators, all eight were passed and signed into law by Governor Davis and two carried signing messages from the Governor.

Resolutions for 2003 are due by January 31, 2003. Any one interested in proposing a resolution or joining the Conference delegation should contact SFVBA Delegation Co-Chair Tamila Jensen (818-363-6733). ♣

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Converting Blue Sky to Gold: 10 Tips on How to Increase Cash Flow



BY EDWARD POLL, J.D., M.B.A., CMC

There are at least two tasks that must be performed by or under the direction of the executive director/administrator of every law firm: managing people and managing money. The goal of the first is to achieve harmony and efficiency within the organization, and the objective of the second is to be sure that there is enough grease (cash) to keep the machinery operating and the people paid.

Most lawyers and law firms face challenges that are frequently reflected in their cash flow, or lack thereof. And, in competitive times, cash flow management is not only an art; it is an essential for the very survival of the firm. The surfacing of a cash flow problem is, in many cases, only the final result in a long chain of events that could have been prevented with appropriate foresight.

The focus of this article is the better management of cash, and what follows are some business practices for the firm and for individual lawyers that I have learned during more than three decades of managing money for organizations. Let's see how we can help lawyers stay out of serious trouble.

Develop a Cash Flow Statement. The cash flow statement is sometimes called a cash flow budget, a statement of cash, or a forecast. Whatever name you are comfortable with, this is the statement that you need to concern yourself with at least on a weekly, if not daily, basis. It is the single most important tool for the success of any business activity.

Shorten your billing cycle. If you remain on a monthly billing cycle, be sure your clients receive your statements on or before the first day of the following month. To do this, your billing cycle must end on or about the 25th of the month. The theory is that most people pay their bills on or about the first of the month. If a statement reaches the client after this time, the statement is normally placed in the pile of bills to be paid the following cycle. That means a delay for payment of your statement for as much as 75 days: the first 30 days you are doing the work; the second 30 days is the missed payment cycle of the client; then it takes at least 15 days for the client to make out the check, mail it, and for the mail to deliver the check to you. If the client delays payment even further, the time extends beyond 75 days. Thus, anything you can do to shorten the cycle will be that much better for you.

"Age" your accounts receivable once a week. This is an important piece of information in the management of your practice. Do not ignore clients who do not pay in accordance with their agreement. Time passes quickly when you are busily engaged in practicing law, advocating clients' interests. You tend to forget that one client owes you money while you are working on other clients' matters. Forgetting or ignoring "old" clients results in forgetting or ignoring the accounts receivable. This results in the failure to collect your money. Thus, it is important to be reminded frequently. On the one hand, you will be able to pursue collection with the regular, weekly reminders that money is owed to you. On the other hand, you will be able to thank a client you talk to who has recently sent in payment on account. Such courtesies go a long way to maintaining good client relations.

Hire someone to help collect. If you are having little success in collecting your accounts receivable, or if you believe that the sales person (you) should not be the person collecting the bills, then hire someone (e.g., a part-time accounts-receivable clerk from a local college or a retired bookkeeper) to do only this task. The cost of the person will be less than the money received.

Don't wait to deposit checks. The first rule of cash flow management is: Do not accumulate checks for deposit until the end of the week! While the check is "cooling its heels" in your desk drawer, too many catastrophic events might occur. The client may, in the interim, become angry, for whatever reason, and stop payment on the check. The check may reach your client's bank at a time when the account is overdrawn; the check is then returned to you marked "insufficient funds." The client may have been named as a defendant in a lawsuit for which attachment

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procedures are available and the client's bank account has been attached and "marked" for a sum that is large enough to cause the presentation of the check you are holding to be rejected. In each of these cases, and many others that you can imagine, had the check been deposited immediately upon receipt, the check most probably would have cleared the client's bank and credited to your account.

Be sure that you sign all checks. Do not delegate this authority. You must know the present status of your "business" at all times.

Use remittance envelopes, pre-addressed and stamped, and mail them with your statements to clients. This saves clients time and effort in mailing your payments and, frequently, saves at least one day in your receiving payments.

Charge for the time of paralegals and legal assistants. Legal assistants have been defined by the ABA as "...a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity of function which involves the performance, under the ultimate direction and supervision of an attorney, or specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task." The charge is not for secretarial work, but for creative, legal work such as meeting with clients, meeting with court personnel, deposition summaries, drafting pleadings, contracts, investigations, and generally assuring that deadlines are set and met.

Know when to say "no." Lawyers get into financial and other difficulties with clients in two common situations.

(1) They take on a client that has already used two or three other attorneys on the same matter. There is a reason why the first two lawyers are no longer around, and that reason usually is that the client's expectations far exceeded the reality of the probable result. Situation (2) is when the client refuses to take your advice, and you do not believe the suggested course of conduct is appropriate or that it will be successful. In either case, it's time to fire the client. Of course, place the "no" or "firing" in writing and then withdraw. You will save yourself lost fees, heartache, and, most important, time that would have otherwise been expended without real hope of being compensated.

Buy the new book, *Collecting Your Accounts Receivable: Getting Paid from Intake to Invoice* (ABA, 2002, just released), and learn and apply the lessons found in it. Collecting your "old" receivables and preventing future billings from becoming old increases your cash flow substantially.

You can delegate authority; you cannot delegate responsibility. As Harry Truman said, "The buck stops here!" You are ultimately responsible, along with the management committee of the firm, for the efficient operation of the law firm. You must take those steps and preventive measures appropriate to accomplish this goal. And, coincidentally, these efforts usually result in the more effective delivery of legal services by the firm. ⚡

Edward Poll, J.D., M.B.A., CMC, is a certified management consultant and coach in Los Angeles who advises attorneys and law firms on how to deliver their services more profitably. To make suggestions or comments about this article, call (800) 837-5880 or send e-mail to edpoll@lawbiz.com. You can also order a free e-zine or visit Ed on the web at www.lawbiz.com.

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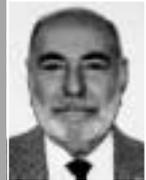
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Retirement Planning For The Small Business Owner: 412(i) Defined Benefit Plans



BY KENNETH MILLER, ESQ.

Few news items short of the war on terrorism are getting as much attention as the impact of the market downturn on the retirement plans of millions of American workers and small business owners. Much of the focus of this attention has been on the fate of the popular 401(k) retirement plans, and the need to build in new protections for investors. Ironically, this comes at a time when there has also been a major marketing push towards having businesses set up new 401(k) plans. For the sole proprietor, there is now the Single (or Solo) 401(k) which has been added to the menagerie of Simple, Age-Weighted, New Comparability and other forms of 401(k).

It is not my intention to critique the use of 401(k) Plans that, along with other forms of "Defined Contribution" plans, may be perfectly appropriate depending on the circumstances. Rather, I want to make the point that Defined Contribution plans such as the 401(k) are not the only retirement plan alternatives. For discussion purposes my focus here is on one potential alternative for successful small business owners and professionals, the Section 412(i) Defined Benefit Plan. The 412(i) is a form of qualified retirement plan that may be the retirement planning solution for those who are getting close to my age (or older), getting

closer to retirement and who want to be able to make larger tax-deferred retirement plan contributions.

I need to first provide a bit of context for this discussion. Just in case anyone has been away for the last couple of years and missed the news, an "Investing" section of the L.A. Times (Monday, July 8, 2002), the front page trumpeted the following headlines: "Shelter From the Storm," "Real Estate Beckons as Wall St. Stumbles," "Stocks Searching for a Bottom" and "For Income Seekers, There Are Alternatives." In a repeat of previous market cycles, the search is on for the next "new" investing paradigm. Some investors are now looking to real estate, art and other alternative investments, but these are not generally suitable for retirement plan investing.

Because of the popularity of the 401(k), the newsworthy topic du jour is how to "fix" these plans. For example, the August 19, 2002 issue of Newsweek magazine features a cover story by Jane Bryant Quinn on *Your Melting Money: 5 Ways to Fix the 401(k)*. Posing the question as to whether Americans are capable of managing the approximately \$1.6 Trillion invested in these plans, the article proposes a five-part "to do" list of remedial steps to restore investor confidence in their retirement accounts. The remedies focus on ways to reduce the risks of investing in equity markets, and this is a valid consideration for all types of

continued on page 12

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HAPPY HOLIDAYS



Not a moment too soon, and despite our amazement of how quickly it has arrived, we are entering the Holiday season. We definitely need the time of reflection that this season should bring. Is it past time to assess our growth and change during the past year and to act on improving our lives and ourselves? It is past time to think of the children, others and ours?
 Now is the time for the gathering together of family with all of the diversity in temperament and outlooks that often means. It is time to think of the best gifts we can give to others and to the world. This time of year poetry comes to mind as one possible present to give as we send out our poetic holiday cards and search for the best gift book. This poem is my gift to you this season of holiday and reflection and family and friends and growth and change and children and music and gentle words. 🎁

The Gift

*I wanted to thank the mockingbird for the vigor of his song,
 Everyday he sang from the rim of the field, while I picked
 Blueberries or just idled in the sun.
 Every day he came fluttering by to show me, and why not,
 The white blossoms in his wings.
 So one day I went there with a machine, and played some songs of
 Mahler.
 The mockingbird stopped singing, he came close and seemed
 To listen.
 Now when I go down to the field, a little Mahler spills
 Through the sputters of his song.
 How happy I am, lounging in the light, listening as the music
 Floats by!
 And I give thanks also for my mind, that thought of giving
 A gift.
 And mostly I'm grateful that I take this world so seriously.*

Mary Oliver

William J. Kropach
WORKERS' COMPENSATION
 STATE CERTIFIED SPECIALIST



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Retirement Planning... continued from page 10

retirement investing, 401(k) or otherwise. Small business owners and professionals are faced with similar retirement planning concerns, but may have a different solution in the form of a Defined Benefit plan. One particular kind of Defined Benefit Plan, the Section 412(i) plan, may provide an alternative that not only focuses away from the risks of equity investing, but also allows for substantially more tax-deferred money to be contributed towards retirement.

Qualified retirement plans are generally grouped into two categories: Defined Contribution and Defined Benefit. "Qualified" refers to the fact that contributions to the plan are tax deferred, or paid with pre-tax dollars. The term "defined contribution" refers to those plans, such as 401(k) plans, Money Purchase and Profit Sharing plans, where the amount to be contributed is predetermined while the ultimate benefit to be paid out upon retirement is based upon the investment performance of those contributions over the years. In the typical "defined benefit" plan, on the other hand, the retirement benefit is fixed (for example at 75% of the employee's compensation) and actuarial assumptions and computations are required in order to calculate the contributions that will be required in order to achieve this defined benefit result.

"Defined Contribution" plans, such as the 401(k) have become so popular because they may include employee contributions (through elective salary deferrals) and they incur lower costs for the employer than those associated with "Defined Benefit" plans. Defined Benefit plans, on the other hand, are typically more costly for the employer because the actuarial and plan administration process requires ongoing, and somewhat expensive, professional help and annual certification to ensure that minimum funding standards are met.

For small business owners, professionals and self-employed individuals the Section 412(i) Defined Benefit plan is a particular form of Defined Benefit Plan that is simpler and less costly because it does not require actuarial certification. These costs are avoided because the plan is funded exclusively with life insurance and annuity products, with contributions based upon contract guarantees.

While its suitability for a particular business or individual should be analyzed on a case by case basis, in the Section 412(i) plan can be especially well suited to the small business owner or professional who was unable to save enough in the early years and now, with stable business income, desires to put away very large tax deductible contributions towards retirement. This alternative solution can be considered for established and profitable small business owners and professionals in their early to mid-forties or older, where there will be a relatively small number of plan participants – generally from one to ten – and where the owner(s) is seeking to make large contributions (deductions) in the early years of the plan, with smaller contributions as retirement approaches.

Section 412(i) plans are not suitable for all individuals or businesses. If the owner is younger than his or her early to mid-forties and more than 10 years away from retirement or if his business is not well established and highly profitable, other more alternatives should be considered. 412(i) plans must be funded through insurance contracts (life insurance or annuity contracts). Life insurance is not required; the plan can be funded completely through annuity contracts. However the use of life insurance for participants who qualify for it may offer the added benefit of having deductible life insurance premiums provide immediate

financial protection for the participant's family in the event of death prior to retirement. Death proceeds in excess of the policy's cash surrender value are received by the beneficiaries income tax free. If life insurance is included, the insured participant will be taxed on the "current economic benefit" of the life insurance coverage, based on I.R.S. Table rates or the insurer's term rates; and there is a limit on the amount of life insurance under applicable Treasury Regulations and I.R.S. Revenue Rulings.

Considering the various considerations and requirements that I have outlined here, the 412(i) is not a "do it yourself" project. As with any retirement plan, you will need to consult with the appropriate professionals. Of course, in this instance there is an incentive for insurance companies to make this process as painless as possible, and we do this by using IRS-approved prototype plan documents and products that are well suited for use under a 412(i) plan. 🐾

Kenneth Miller, a member of the SFVBA, is an agent with John Hancock Financial Services and is a securities and investment advisor representative with Signator Investors, Inc. (Member NASD and SIPC). He also acts as a mediator specializing in business and real estate cases. He can be reached at (818) 601-0314.

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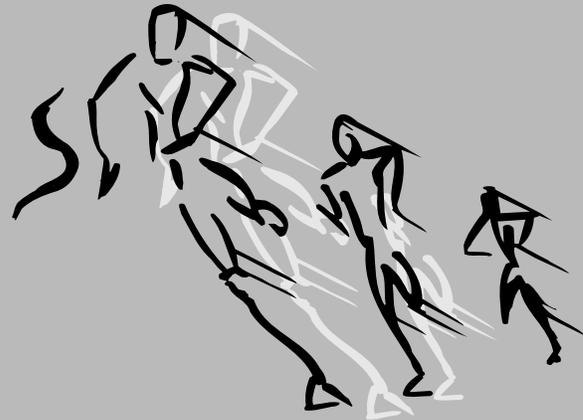
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9:00 a.m. – 9:55 a.m.

Reading People:

How To Predict the Jury's Behavior

Jo-Ellen Dimitrius

Vinson & Dimitrius Trial Consulting Firm

1 MCLE Hour

10:00 a.m. – 10:55 a.m.

Asset Tracing

Mary-Ellen Sebold

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11:00 a.m. – 11:55 a.m.

Elder Abuse in Probate Matters

Honorable Arnold H. Gold, Ret.

1 MCLE Hour

LUNCH ON OWN

1:00 p.m. – 1:55 p.m.

Bar Discipline Prevention

Professor Robert Barrett

San Fernando Valley College of Law

1 MCLE Hour (1 Hour Ethics)

2:00 p.m. – 2:55 p.m.

Mediating the Legal Malpractice Case

Eugene Moscovitch, Esq.

1 MCLE Hour (1 Hour Ethics)

3:00 p.m. - 3:55 p.m.

Enhanced IRS Enforcements

Charles Rettig, Esq.

Hochman, Salkin, Rettig, Toscher & Pei

1 MCLE Hour

4:00 p.m. – 4:55 p.m.

Rules of Disclosure

Honorable George Schiavelli, Ret.

1 MCLE Hour (1 Hour Ethics)

5:00 p.m. - 5:55 p.m.

Negotiating Commercial Leases

Deborah Feldman, Esq.

Arter & Hadden

1 MCLE Hour

SATURDAY, JANUARY 11, 2003

9:00 a.m. – 10:55 a.m.

Update on Intellectual Property

Deborah Sweeney, Esq., Michelman & Robinson

Michael Brooks, Esq., Brooks & Fillbach

2 MCLE Hours

11:00 a.m. – 11:55 a.m.

Elimination of Bias

Paula Daniels, Esq., Litt & Associates

Ann Kusomoto

1 MCLE Hour (1 Hour Elimination of Bias)

LUNCH ON OWN

1:00 p.m. – 1:55 p.m.

Appellate Advocacy

Honorable Armand Arabian, Ret.

California Supreme Court

1 MCLE Hour

2:00 p.m. – 2:55 p.m.

I.D. and Treatment of Substance Abuse

Patricia Tierney, Esq.

The Other Bar

1 MCLE Hour (1 Hr. Prevention of Substance Abuse)

3:00 p.m. - 3:55 p.m.

Recent Developments in Income Taxes

Regarding Family Law

Michael Krycler, CPA

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BY SUE BENDAUID ARBIV AND DAVID GURNICK

Under California's Fair Employment and Housing Act, Govt. Code Secs. 12940 et seq. ("FEHA") employers can be liable to employees for sex harassment and discrimination. But what about harassment by a customer, vendor or someone else an employee must work with? Bus drivers could be harassed by passengers. Office workers could be victims of leers, jokes or solicitations from delivery personnel or visiting service technicians; or vice versa. The issue is also emerging in other business arenas: franchising, membership associations and other arrangements where continuing business relationships between independent contractors or staff and members, create potential for sex harassment claims.

In an important case of first impression, a divided Second District Court of Appeal took a narrow view of FEHA, deciding it does not create employer liability when a nonemployee client or customer sexually harasses an employee. Salazar v. Diversified Paratransit 2002 Daily Journal D.A.R. 12361 (Oct. 30, 2002). Salazar was a newly hired driver for a company that provided daily transportation for developmentally disabled adults. One of the passengers on her route had a history of misbehavior, which three male drivers reported to the company. The passenger also had a history of exposing himself, which three female drivers reported to the company.

During Salazar's training the passenger touched her hair, called her "bonita" (which means "beautiful"), grabbed her purse and generally made Salazar scared and uncomfortable. Later, Salazar reported more incidents and asked for a transfer to a different route. The drama that led to the lawsuit occurred when the passenger attacked Salazar, exposed him-

self to her, and touched her all over.

Salazar sued her employer for sex harassment. After presenting her evidence, the trial court granted nonsuit in favor of the employer. On appeal, the appellate court carefully analyzed the language and legislative history of FEHA and found its wording did not create employer liability for sex harassment by clients or customers. Rather, the two-justice majority said an employer is liable only for harassment the employer commits. The majority also noted an exception in which an employer can be liable for harassment by an employee other than the company's agents or supervisors. This extended scope of the law did not go beyond liability for co-worker harassment.

The court of appeal said if the Legislature intended to expand employer liability to encompass harassment by clients and customers, it would have done so clearly. The court also noted that employers have managerial and disciplinary power over employees, but questioned whether employers can control behavior of clients and customers. Expansion of liability as sought by Salazar, the majority said, would be a policy judgment to be made by the Legislature.

The majority noted that some cases decided under the federal antidiscrimination law known as Title VII, 42 U.S.C. Secs. 2000e et seq., have held employers liable for harassment by clients. For example, in Lockard v. Pizza Hut (10th Cir. 1998) 162 F3d 1062, 1073, a Pizza Hut franchisee was held liable to a server victimized by crude remarks from some customers culminating in a customer pulling her hair, grabbing her breast, and putting his mouth on her breast. However, the court found the franchisor, as a separate corporation, was not the employer and could not be held liable to the employee.

The Salazar court noted some other decisions under the Federal law, referring to, Rodriguez-Hernandez v. Miranda-Velez (1st Cir. 1998) 132 F3d 848, 854 (under Title VII, employers can be liable for unwanted sexual advances by customers if employer ratifies or acquiesces in customer's demands.); Crist v. Focus Homes (8th Cir. 1997) 122 F3d 1107, 1111 (residential home for developmentally-disabled individuals was liable when resident sexually assaulted plaintiff; employer controlled and had the ability to alter conditions that resulted in the incident); Powell v. Las Vegas Hilton Corp. (D.Nev. 1992) 841 F.Supp. 1024, 1027-1028 (refusing employer's request for summary judgment in casino worker's claim of harassment by customers). However, differences in the language between FEHA and Title VII led the Salazar court to decide that the Title VII decisions were not controlling in this case. Also, the court added, employee victims of harassment by customers have non-FEHA remedies, such as claims for sexual battery and other torts, as well as for a restraining order and injunctive relief.

A detailed dissent by Presiding Justice Klein would have extended liability to provide Salazar a remedy against the employer. The vigor of the dissent and the growing importance of the issue raised by the Salazar case suggest that further developments can be expected on the question of the scope of employer liability under FEHA. ⚡

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2003 Legislative Changes Impact California Employers

BY CYNTHIA ELKINS HOGAN

As if California employers did not have enough to worry about as this year comes to a close with the continuing stumbling economy, employers now have to contend with all the legislative changes impacting the workplace. Below is a summary of some of the recent legislative changes signed into law by Governor Davis, which will become effective January 1, 2003 unless otherwise stated:

Age Bias/Discrimination Protection

In June 2002 the California Supreme Court held it was not age discrimination to deny a 53-year-old employee the same educational benefits that were provided to younger employees.¹ California law provides that it is illegal to fire or deny employment based on age, yet the law did not extend this protection to employee benefits or "terms, conditions and privileges of employment".²

AB 1599 effectively nullified the Supreme Court's decision and the Fair Employment and Housing Act, as contained in the Government Code, now provides that age is a protected class for which there can be no discrimination in the terms, conditions or privileges of employment in addition to hiring and or firing decisions.³

Employee Access to Payroll Records

Labor Code §226 currently requires an employer to provide

each employee with an itemized written statement that provides the following: gross and net wages earned; total hours worked if paid hourly; all deductions made; inclusive dates for the payroll period; number of piece rate units earned and the rate of pay; and all applicable hourly rates. In addition, each employee or former employee has the right, upon reasonable request, to review a copy of their payroll records. AB 2412 amends the Labor Code to:

- Require employers to comply with request of a current or former employee to inspect or copy their payroll records within 21 calendar days of the request (no time provision previously outlined);
- Provide a potential affirmative defense for an employer's inability to comply with the requirements of the Code;
- Impose a \$750 penalty on an employer that fails to permit the inspection and/or copying of records within the statutory time period.
- Permits an employee to bring a civil action for injunctive relief to enforce compliance and permits an employee to recover an award of costs and reasonable attorneys fees.

Employee's Right to Disclose their Wages

An employer may not discharge, formally discipline or otherwise discriminate in terms of job advancement against an

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employee who discloses the amount of their wages. AB 2895 adds Labor Code §232.5 to remove the restriction that the "adverse employment action" must affect job advancement, and further to apply the restrictions currently set forth in Labor Code 232 to the right of an employee to disclose "working conditions".

Family Temporary Disability Insurance (FTDI)

SB1661 will provide paid family leave for an employee for up to six weeks for workers who are unable to work due to the illness or injury of a child, spouse, parent or domestic partner or for the birth, adopting or foster care placement of a child of the employee or domestic partner.

FTDI will become available to employees who are covered by California's SDI program as of July 1, 2004. FTDI is an entitlement to pay and not an entitlement to a leave of absence or guaranteed reinstatement. FMLA, CFRA and PDL provide those entitlements to leave and reinstatement. There is much that is still unknown about this law but since its application does not become effective until January 1, 2004, there is time for the details to be specified.

Plant Closures and Layoffs

The Federal WARN Act⁴ requires employers with 100 or more employees to provide 60 days advance written notice of a lay off involving 50 or more employees. Until the enactment of AB 2957 (adding Chapter 4 to Part 4 of Division 2 of the Labor Code), California had no such similar law. This new

law establishes requirements for covered employers (those with 75 or more employees) to provide 60 days advance written notice of a mass layoff, relocation or plant closing to affected employees and selected state and local agencies. There are several exemptions, notice requirements and penalties built into this law that require detailed analysis to determine its application to any plant closure or lay off.

Sick Leave Policies

While California law does not require employees to provide sick leave to employees, Labor Code §233 does require that an employer must allow the employees to use 50% of the leave to care for an ill child, parent or spouse or domestic partner. SB 1471 adds Labor Code §234, which now prohibits an employer from using any type of an absence control policy to penalize employees for taking sick leave authorized under §233.

Workplace Investigations

Two new laws, AB 1068 and AB 2868, which take effect immediately as urgency legislation, will lessen the burden of employers and prospective employers on pre-hire background checks and potential allegations of defamation relating to performance evaluations and inquiries regarding potential for rehire. Applicants may now check off a box on employment applications to indicate their desire to obtain a copy of the credit report or other public records reviewed by the potential employer during the application process. If the employer only checks references and does not access any public records or

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credit reports for the pre-employment background screening, any information gathered need not be provided to the applicant.⁵

In addition, a "privileged communication" under Civil Code §47 shall now includes a communication regarding the job performance of a former employee and whether the former employee is eligible for rehire. This will ease the burden of background checks considerably.

California employers face tremendous hurdles every day to comply with the myriad of laws, rules and regulations to avoid being subjected to employment based litigation for claims of wrongful termination, harassment, discrimination and violation of a dozens of State and Federal laws. Employers should review their handbooks, policies, practices and procedures and train their supervisors and managers to ensure that their personnel functions comply with these new laws. 🐘

1. Esberg v. Union Oil Company of California, 28, Cal. 4th 262, (2002)
2. Fair Employment and Housing Act, Government Code § 12941 - "it shall be an unlawful employment practice for an employer to refuse to hire or employ or discharge, dismiss, reduce, suspend or demote, any individual over the age of 40 on the ground of age...."
3. Fair Employment and Housing Act, Government Code § 12940.
4. Worker Adjustment and Retraining Notification Act, 29 USC 2101, et seq.
5. Amends Civil Code §§ 1785.16.2, 1785.20.3, 1786.16, 1786.24, 1786.29 and 1786.53 and adds Civil Code §§1786.0, 1786.55 and 1786.60

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Notice To Attorneys

Notice of Case Number Assignments in Central District Family Law Departments

Effective October 16, 2002, it is hereby ordered that Central Family Law cases will be assigned to the judicial officers in the departments indicated, according to the last two digits of the case number as follows:

| Case No. | Department | Judicial Officer | Case No. | Department | Judicial Officer |
|-------------|------------|--------------------------|----------|------------|------------------------|
| 13 – 20 | Dept 7 | Commr. Timothy Murphy | 43 – 48 | Dept 67 | Judge John Ouder Kirk |
| 50 – 55 | Dept 9 | Judge Roy Paul | 00 – 06 | Dept 79 | Commr. Richard Curtis |
| 07 – 12 | Dept 22 | Judge Luis Lavin | 29 – 34 | Dept 82 | Judge Rolf Treu |
| 57 – 62 | Dept 27 | Judge Ann Jones | 36 – 42 | Dept 83 | Commr. Reva Goetz |
| 64 – 70 | Dept 43 | Judge Richard Denner | 21 – 28 | Dept 84 | Commr. James Endman |
| 71 – 77 | Dept 63 | Commr. Robert Schnider | 93 – 99 | Dept 87 | Commr. Ann Dobbs |
| 86 – 91 | Dept 65 | Judge Marjorie Steinberg | 79 – 84 | Dept 88 | Judge Joanne O'Donnell |
| 35,49,56 | Dept 2D | Commr. Mitchell Beckloff | | | |
| 63,78,85,92 | | | | | |

Exceptions to the foregoing revised matrix assignments are as follows:

1. All cases wherein a hearing or trial has been held or has commenced in a department prior to October 16, 2002, are to remain in that department.
2. Any proposed judgment submitted to a department prior to October 16, 2002, for signature on declaration pursuant to Family Code Section 2336 shall remain in that department for purposes of entering judgment.
3. All cases previously reassigned for all purposes shall remain in the reassigned departments.
4. Any case may be reassigned for good cause, upon the order of the Supervising Judge, on the court's own motion, or pursuant to a noticed motion.

Counsel and parties are instructed to identify any such exceptions on the first page, beneath the case number on all documents filed with the clerk, thereby to assure proper departmental assignment, calendaring of hearings and distribution of documents.

Counsel and parties are also instructed to identify any other Family Law, Probate or Juvenile Dependency cases involving the same parties pending in Los Angeles County.

All Family Law default hearings and submissions for stipulated judgment are assigned to Department 2C, Commissioner Anthony Jones. All odd numbered Domestic Violence cases are assigned to Department 8, Commissioner Anthony Jones. All even numbered Domestic cases and all Civil Harassment TRO cases are assigned to Commissioner Scott Gordon in Department 6.

There are no changes as to the following matters:

1. All Mandatory Settlement Conferences and Minors' Contract cases will continue to be heard in Department 2.
2. All actions, cases and matters covered by Los Angeles Superior Court Local Rule 14.10 (Child Support Services Department Cases) shall continue to be covered by and assigned pursuant to Rule 14.10. ⚡

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President's Message continued from page 3

I also use this opportunity to highlight our newest Committee—Government Affairs. This is the second year of the Committee's existence. The Committee, chaired this year by Marcia Kraft, was created in order to ensure the SFVBA has a ready forum to debate and recommend positions concerning legislation and case law developments of importance to our profession.

The Committee's efforts have, for example, already resulted in the SFVBA joining in amicus briefing in the State Courts (Committee recommendations on issue positions go to the SFVBA Executive Committee and then to the SFVBA Board of Trustees). Committee membership is open to all SFVBA members; the Committee is also available to consider position requests on issues of importance to our members. Accordingly, if you want a vehicle to give voice to "your" issues, you now have that vehicle.

The Committee's work does not duplicate the important work of our representatives to the Conference of Delegates. While the Conference meets once a year to consider, among other things, resolutions on issues affecting our profession, the Committee is designed to serve as a year-round vehicle to voice the Bar's views on issues as they arise. Further, as a result of the work and recommendations of the Committee the SFVBA may take a particular position irrespective of whether or not the Conference has adopted the same view.

The Committee has yet to establish a formal meeting schedule; however, you can call the Bar office to learn when and where the Committee will be meeting next.

As the above examples illustrate, your SFVBA membership provides you with convenient opportunities to broaden your learning horizons, to earn MCLE credit and to give voice to your opinions about issues facing our profession. I earnestly hope you will take advantage of these opportunities. 📧



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Estate/Trust Services, Probate, Real Property

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Are You Ready?

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You owe it to yourself to find the answers to these critical questions!

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- ✓ *Will your carrier* impose a substantial rate increase at your next renewal due to unstable market conditions?
- ✓ *Will your carrier* continue to insure "your type" of practice at your next renewal?
- ✓ *Will your carrier* leave the marketplace because they can't secure sufficient reinsurance for their professional liability program?
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December Events

calendar and MCLE event listings

ADR Section

Topic: Organizational Meeting
Date: December 6
Time: 8:00 a.m.
Place: Offices of Jan Frankel Schau
 16000 Ventura Blvd. Ste. 500, Encino
Cost: Free of Charge! Bagels and Coffee will be served.

Probate and Estate Planning Section

Topic: 706 Returns: Avoiding the Mistakes
Speaker: Ken Walheim of Krycler, Ervin, Schreiber & Walheim CPA'S
Date: December 10
Time: 12:00 Noon
Place: Radisson Hotel, Sherman Oaks
Cost: \$30 members prepaid; \$35 at the door
 \$35 non-members prepaid; \$40 at the door
MCLE: 1 Hour

Business Law & Real Property Section

Topic: Environmental Real Estate Sale Liabilities:
How To Protect Your Client From Unpleasant Surprises
Speaker: Stephen Holzer of Parker, Milliken, Clark O'Hara
Date: December 16
Time: 12:00 p.m. Lunch and Program
Place: SFVBA Conference Room, Woodland Hills
Cost: \$25 members prepaid; \$30 at the door
 \$30 non-members prepaid; \$35 at the door
MCLE: 1 Hour

Information & Reservations 818•227•0490

SIGN ME UP!

SEND CHECK TO SFVBA
 21300 Oxnard St., Suite 250
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FOR MORE INFORMATION
 CALL (818) 227-0490

SECTION _____
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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



San Fernando Valley Bar Association

Holiday Open House

Tuesday, December 10, 2002
 5:00PM to 7:30PM

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