



BarNotes

A Publication of the
San Fernando Valley Bar Association

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SFVBA Admits 2000th Member!

The San Fernando Valley Bar Association reached a historic milestone in December, surpassing 2,000 members for the first time.

"We are really proud that the SFVBA continues to be one of the largest and fastest-growing bar associations in the country," proclaims SFVBA President Lyle Greenberg. "Our larger membership means greater influence in the legal and policy-making communities, as well as increased buying power for money-saving services and member benefits."

Almost immediately, the SFVBA becomes a stronger advocate for San Fernando Valley attorneys. With 2,000 members, the SFVBA is eligible for a seat in the American Bar Association's House of Delegates, which is the policy-making body of the ABA.

"Our tremendous growth in recent years has not diminished the qualities that makes our organization stand out among other bar associations," continues Greenberg. "The SFVBA continues to cultivate our close relationship with local judges, nurture the special camaraderie among Valley lawyers, and provide unique and personal service to members and the public that is hard to find in larger organizations."

Among the exclusive benefits offered to SFVBA members are an outrageously inexpensive 25-hour MCLE Marathon (just \$99); an extensive MCLE tape lending library; attorney resource centers at the Van Nuys and San Fernando courts; and networking events like February 21st Judges Night providing members the opportunity to socialize with local judges and colleagues.

Calendar of Events Page 23



Meet the SFVBA's 2000th Member

The San Fernando Valley Bar Association's 2000th member, Sarit Ariam, is a graduate of Georgetown University School of Law and was admitted in December to the State Bar of California. Sarit's bar number is 217,399. It is befitting that our 2000th member applied to the SFVBA using our website's on-line membership application.

Sarit was born in Israel and served in the Israeli Army Office of the Chief of Staff. She moved to Woodland Hills from Northern Virginia about a year ago with her husband and two children, both of whom have special needs. She founded the TOMI Center in Israel, which is a nonprofit organization dedicated to helping children with autism and PDD. As an attorney and advocate, Sarit represents parents and children with special needs to help them obtain services and benefits they are entitled to from school districts, insurance companies, and government entities.

"I joined the San Fernando Valley Bar Association to get to know other attorneys," says Sarit. "I am pretty new to the Valley and practice in a very specialized area of law. It is important for me to meet my colleagues." ✎

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President's Message

Lyle F. Greenberg

Three Important Announcements

Once in a while, several issues arise and I am not able to dedicate my President's Message to just one subject. This is such an occasion and I would appreciate your review of these topics as I think you will find them interesting and perhaps even, life changing.

An Independent Judiciary

One of the roles our bar association is mindful of is speaking out on behalf of the courts and judges when they are attacked in the media. In the history of our bar association up until the early 1960s, this did not appear to be an issue. At the beginning of 1960, nearly 300 attorneys were regular members, with a Valley population of more than 840,000.

At the same time our nation was grappling with the Civil Rights Act of 1964, the 1965 voting rights bill, and Lyndon Johnson's "Great Society" legislation, our bar association began exploring adoption of its own policy on civil rights in 1963. In March 1964, the Board of Trustees passed a resolution that supported 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. At that time, and unfortunately ever since, attacking judges over unpopular decisions has become a regular media event. A second resolution was passed in the early 1990s confirming our bar's position supporting the independence of the judiciary.

So with this background, we find ourselves in 2002 with similar issues facing us as practitioners and facing the judges in our Courts. While our judges are constrained to respond to media comment, our bar association is not. It is our obligation as attorneys and as members of this association to explain to litigants and to the public that our system of government provides for the separation of powers, including a judiciary that is independent of the influences of the executive and legislative branches. When clients and the public raise their voices against decisions that the local papers publicize, this is our opportunity to stand up and explain how the system works.

The SFVBA celebrates Judges' Night each year, honoring our Judiciary and renewing our commitment to an independent judiciary. Please join us on February 21.

Our 2000th Member and an ABA Representative!

In 2002, our Valley boasts a population of 1.7 million and I am very proud to announce that our bar association has recently had our 2000th member join and we just surpassed 2100!

Congratulations to our past and present Board for the numerous five-year membership plans that led to this accomplishment, and to our Executive Director Liz Post, who has worked tirelessly for our bar to achieve this goal.

continued on page 16



Commissioner Mitch Block introduces guest speaker, actor Christian Slater, at the Drug Court's graduation ceremony on December 12. Block supervises the Van Nuys program, which provides drug treatment, and rehabilitation services to non-violent felony drug defendants and is a cooperative effort between the court and Tarzana Medical Center. The Drug Court's graduation ceremony was funded by a grant from the Valley Community Legal Foundation of the SFVBA.



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SFVBA member Ernestine Fields was featured in January's Family Circle magazine as a recipient of the publication's 2001 Halo Award. The award recognizes people who go to extraordinary efforts to help others. Ernestine is the Founder and President of Comfort for Court Kids, Inc., a nonprofit organization that has given away an estimated 250,000 teddy bears since 1990 to every child who appears in Dependency Court.



Ernestine's efforts were recognized by the SFVBA in 1995 with the awarding of the President's Award. The Bar and our Foundation has also provided financial support for the program.

Members interested in learning more about Comfort for Court Kids or who would like to make a donation can visit the program's website at www.courtkids.org.

THE ART OF NETWORKING TO INCREASE YOUR CLIENT BASE

Save the Date: March 20

An SFVBA section-wide dinner meeting and networking seminar will be held on March 20 at the Sportsmen's Lodge. The keynote speaker will be Mel Kaufmann, founder of The Million Dollar Formula. Mel is well known for his lectures on "NETWORKING."

Mel is an expert in the development of mutually beneficial business and professional relationships. He has spoken before numerous organizations on the subject of networking, including law firms and lawyers' groups, and published the "the Millionaire's Handbook."

Not everyone is a natural at "making business and professional connections" or "turning casual conversations into more productive ones." Mel Kaufmann will give you invaluable tips that can work for you. This meeting is a must, unless you are so overwhelmed with business that you don't need more clients or connections to potential clients.

SFVBA Trustee and Criminal Law Section Co-Chair Gerald Fogelman invited Mel to speak at a Chamber of Commerce breakfast last year and it was one of the organization's most highly attended breakfasts in 2001. He was entertaining and captivating and the presentation was incredibly informative.

A 6:00 p.m. mixer will precede dinner, with the networking presentation commencing at 7:30 p.m. Visit the SFVBA website at www.sfvba.org or look in the March Bar Notes for further details and registration information.

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SFVBA Creates New Healthcare Section

The SFVBA has formed a new Healthcare Law Section, responding to the requests of members who practice in this burgeoning specialty of law.

"The breadth of the practice of Healthcare law often seems to be without borders," says Alan J. Sedley, partner in the Woodland Hills firm of Greenberg & Sedley, and chair of the Healthcare Law Section. "The multitude of issues confronted by today's physician or hospital administrator extends from the civil courts, to an administrative forum, from criminal law concerns, to legislative lobbying our state's elected officials. Our section does not seek to cover the entire spectrum of issues, but rather, focus upon those issues that are most urgent and meaningful to today's healthcare provider, and the lawyers who are called upon to advocate on their behalf, and protect their interests."

The Healthcare Law Section's focus will be quite expansive in offered topics, ranging from the business and operational practice of physicians, hospitals and allied health professionals (exclusive contracts, employment contracts, risk management, patient care, medical records, privacy and confidentiality) to administrative law (credentialing, privileges, medical staff issues and hearings) to regulatory compliance (issues of antitrust, fraud and abuse, and price fixing by healthcare providers).

The inaugural program will focus on the issues of **Fraud and Abuse** in healthcare practice: the common misconceptions and pitfalls, prosecution and penalties, and prevention. Fraud and Abuse law impacts the manner in which healthcare providers operate their business, from limiting or prohibiting physician referrals, to critical requirements relating to patient billing and reimbursement. Violation of this complex law could result in civil or criminal penalties.

Los Angeles City Councilmember Jack Weiss will lead the discussion. Weiss represents the 5th District and is a former Assistant U.S. Attorney who practiced as a member of the Public Corruption and Government Fraud Department. He will present a spirited and informative talk on federal fraud and abuse concerns as they effect the day-to-day operations of hospitals and physician practices. Attendance is a must for lawyers who represent, or intend to rep-

resent those in the healthcare field. Doctors, hospital administrators and other healthcare professionals will also be encouraged to attend.

The Healthcare Law section will present this inaugural program on **Tuesday, February 19, 2002 at 6:00 p.m.** The location of this first meeting will be at the SFVBA office. ↗

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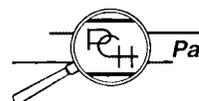
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ARC congratulates the SFVBA
on its 75th Anniversary!

Price Fixing - More Flexible Than Fixed

BY DAVID GURNICK



David Gurnick is managing partner of the Woodland Hills office of Arter & Hadden.

Price fixing has been in the news frequently in recent years. In December, the chairman of world famous Sotheby's auction house was convicted for conspiring with a competitor to fix fees charged to art auction clients. Not only major auction houses, but also vitamin manufacturers, prescription drug makers, alcoholic beverage makers, metal producers, record labels, and commodities producers have been accused, convicted or held liable for unlawful price fixing. With substantial product manufacturing and distribution in the San Fernando Valley, the issue is important to practitioners and clients in this region.

The law against price fixing is seemingly so clear and well established that even non-lawyers know it. A seller cannot agree with another to set a certain price or to limit their prices for products or services. Similarly, a manufacturer or supplier cannot tell distributors what price to resell a product for. That would be an automatic violation of federal and state antitrust laws, exposing violators to treble damages.

But the law against price fixing is not quite as fixed as many people think. In recent years, the US Supreme Court partially changed the time-honored rule. The Court held that a supplier or manufacturer may set a ceiling on how much its distributors can resell a product for. State Oil Co. v. Khan 522 U.S. 3 (1997). The Supreme Court said antitrust laws exist to encourage competition and lower prices. The court found that letting a supplier set a maximum resale price, may advance the law's purpose, by tending to keep prices low. Therefore, maximum price fixing is not automatically illegal. Rather, the price fixing arrangement between a manufacturer or franchisor and its distributors or franchisees, is now evaluated for reasonableness, a standard that more often than not results in an arrangement being upheld as lawful.

Normally, setting minimum prices - prices that a seller cannot go below - is automatically illegal. Continental TV v. GTE, (1977) 433 U.S. 36, 51n.18; Dr. Miles Med. Co. v. John D. Park & Sons (1911) 220 U.S. 373. However, even this bright line rule does not prevent all steps that a supplier can take to maintain or increase the level of resale prices. Recently the California

Court of Appeal reaffirmed a time honored rule that lets suppliers also set minimum resale prices for their products. Chavez v. Whirlpool Corp. 93 CA4th 363 (2001).

Whirlpool, the famous appliance maker, set minimum resale prices for its products. Their retail distributors complied with the minimum price policies Whirlpool announced. They did so because Whirlpool also announced that they would stop selling Whirlpool products to any retailer who failed to comply with their minimum pricing policy. As a result, retailers did not discount Whirlpool products, and one retailer that previously had been a discounter, stopped doing so.

In an action brought by a consumer under state antitrust laws, both the trial and appeal court ruled that the actions of Whirlpool and its distributor were lawful. The courts applied a rule established in 1919, that a company can unilaterally announce a price policy, and a retailer can unilaterally comply with the policy, and these actions are not an agreement or antitrust conspiracy. This principle was first announced in the case of U.S. v. Colgate (1919) 250 U.S. 300, and is thus known as the Colgate Doctrine. It is part of a broader principle that a

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Hon. Thomas Schneider, recently retired Supervising Judge of the Northwest District, is now available for mediation, arbitration, and discovery reference appointments. Known for having exceptional knowledge of the law while on the bench, Judge Schneider also established a reputation for himself as an excellent settlement judge, particularly in real estate, construction, and complex business matters.

LINDA BULMASH, ESQ.

With over twenty-five years experience as a businesswoman, real estate professional and lawyer, Linda Bulmash is a recognized expert in negotiation and mediation and writes a monthly column for the Los Angeles Daily Journal, "Negotiate Like the Winners". She has successfully mediated several hundred complex disputes involving employment/workplace (including sexual harassment, discrimination and wrongful termination); serious injury torts and product liability; business; real estate; professional liability; insurance; construction defect matters.



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manufacturer or any company, can decide unilaterally who it will deal with, announce policies regarding who it will deal with, and refuse to deal with those whose actions conflict with its policies.

The Colgate Doctrine does not permit all actions designed to maintain or set resale pricing. For example, the court of appeal has held that an express agreement between a franchisor and franchisee to maintain resale prices was a per se antitrust violation. *Mailand v. Burckle* (1978) 20 Cal.3d 367. An unlawful agreement to maintain prices could even be inferred by conduct of parties. *Monsanto v. Spray-Rite* (1984) 465 US 752. But antitrust laws do not prohibit independent action. Therefore as long as a supplier's announcement of a policy, and a retailer's compliance with the announced policy, each occur independently, and are not part of an agreement, these practices intended to maintain a minimum resale prices, are lawful.

With the combination of the *State Oil v. Kahn* decision permitting a supplier to set maximum prices, and the Colgate Doctrine permitting compliance with policies concerning minimum pricing, there are some strategies manufacturers can use to lawfully manage resale pricing ranges of their products and services. Agreements that are reasonable in setting maximum prices will be upheld as lawful. With regard to setting minimum prices, a manufacturer (also a licensor, franchisor or any other company in the vertical chain of product and service distribution) may, as permitted since 1919, announce a policy requiring distributors (as well as licensees, franchisees or anyone else far-

ther down the vertical distribution chain) to sell only at or above a set minimum price, or even to adhere to a specific set resale or suggested prices. The manufacturer may announce it will refuse to deal with anyone who does not adhere to that pricing policy; and may act on that announced policy by ending its relationship with anyone who does not comply.

The Supreme Court views this not as a price fixing agreement, but as a company's unilateral decision who it will and will not do business with. Of course, a company cannot refuse to deal with another company for any unlawful reason, which would include breaching an existing contract, or the many forms of unlawful discrimination. Also, an agreement on minimum pricing is also unlawful. To avoid converting a lawful Colgate Doctrine announcement and unilateral decision into an unlawful price fixing conspiracy, the manufacturer should normally refuse to discuss or negotiate the policy, particularly with any company that may be affected by it, and should not use any unlawful means to enforce its unilateral policy.

This article discusses only "vertical" agreements. Those are agreements between companies at different levels of the distribution or supply chain. Agreements between companies at the same level of distribution are known as "horizontal" agreements. All horizontal agreements to fix prices, whether minimum or maximum, continue to be unlawful. *Arizona v. Maricopa County Medical Society* (1981) 57 U.S. 332; *U.S. v. Socony Vacuum Oil Co.* (1940) 310 U.S. 150. ♣

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THE PRACTICE

a series of essays on practice of law and life

Wisdom From Someone's Last Thoughts

BY DAVID R. HAGEN



Dave Hagen is a principal at Merritt & Hagen. The firm's practice focuses on representing individuals and small businesses in bankruptcy. He speaks to attorneys often on the areas of bankruptcy, the marketing of legal services, and the practice of law. He welcomes your comments to this series of essays.

"Hey Jules. It's Brian. Just remember that I love you, and I want you to live your life and have fun..."

These words are from a phone message that Brian Sweeney left his wife shortly before his plane, United Flight 175, slammed into the World Trade Center. The thought of this just blows me away.

There are many lessons to be learned from September 11, 2001. Some of these lessons were learned by us as a nation. Some of these lessons we are still learning. However, there were also some very important *personal* lessons that we can take with us as we move forward in our lives. It would indeed be a fitting tribute to those who died if we can learn from this incident and have these lessons add more meaning to our lives.

When Brian Sweeney left this message, he indicated that his plane had been hijacked and that it didn't look good. He knew that, most likely, he would die in the ensuing minutes. He had one last opportunity to communicate with his wife. She wasn't home so he left a message. *He wanted to be sure that she got this message.* His words give us a very touching and powerful insight into what a person in this situation would want to say to those he is about to leave behind. I find it very enlightening that his final message to his wife would talk about *love, living, and fun.*

Allocating your "life-time" between love, family and fun as opposed to work and responsibility is a difficult task. I tend to think that if I allocate more time to work, it will not cause the time allocations in the other segments of my life to suffer. Unfortunately, this is not the case. Our time each day is like a pie chart. As one slice gets bigger, the other pieces must decrease. We just can't make a bigger pie. Time management experts used to tell us to be more organized so that we can have many, many more small pieces in our pie. More recent time management people (Steven Covey, for example) now tell us that we can't fit more pieces of pie so we must *prioritize* the pieces that we can include.

Personally, this is something with which I continually struggle and I'm not always successful in this regard. Balancing love, living and fun against work and responsibility, as well as balancing short and long-term goals, is very difficult to do. For me it is one of the most fundamental issues I deal with in trying to lead a balanced life

As lawyers, we are constantly faced with this issue. This is due to the responsibility that we have to our clients and the time sensitive nature of many of the things that we do. It seems as though everything is a "rush case." Think about how many times you have used a messenger or overnight mail in just the last month. Is your practice on "rush" as well?

We also have a tendency to fear that our backlog of cases may run out. I find most attorneys will almost always take on "that additional case," even those with practices that are well established. I would suggest that every time we take in a new case we not be as concerned about the retainer, the uniqueness of the case or even whether we like the client, but whether we cur-

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rently have an appropriate balance between work and play in our life.

A noted law office management author, Jay Foonberg, suggests that when agreeing to accept a new case, an attorney should place a picture between themselves and the client. I thought he would suggest having the picture turned towards the client so they can see that the attorney supports a family with their fees and not balk at making a retainer payment. Interestingly enough, he suggests that the picture face the attorney. This is so that the attorney can see his family and clearly understands what the real price will be for taking on the new case. I do this and it really helps, although not all the time.

As I have said before, you don't hear too many people on their deathbed say, "Gee, I wish I had worked a whole lot more".

There are many lessons that we all should take with us from September 11. This will be one of the lessons I intend to take with me. The next time I contemplate taking on a particularly time-consuming or difficult case, I will consider the last words of Brian Sweeney and consider what taking the case will cost me in terms of *love, living, and fun.* 🐶

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Message From LRIS Coordinator

Michele C. Morley

For the first quarter of the Bar's fiscal year, LRIS referrals are 121 ahead of last year. We are optimistic that this will be another rewarding year for LRIS panel members. LRIS staff wants panel membership to be rewarding on all levels. We remind you that we want to hear from you if a scheduled client does not keep an appointment; we may be able to make a rotation adjustment. We want to hear from you if you have not heard from us in sometime; there may be a computer or insurance problem that is keeping you from receiving referrals. We want to hear from you if you have marketing ideas.

New ideas and changes invigorate our work. We like to believe that staff provides responsive and excellent service to the public and panel members. Test us any time and be sure to let us know how we are doing.

It's been one month since we made our New Year's Resolution. How are we doing? Have we made the right resolutions, the ones that are worth the time and effort to pursue?

In the January edition of the magazine *Fast Company*, philosopher and business consultant Peter Koestenbaum discusses resolutions we should be making and the questions we should be asking. He believes one question we should ask is, "what does it mean to be a successful human being?" He continues, "Unless the distant goals of meaning, greatness, and destiny are addressed, we can't make an intelligent decision about what to do tomorrow morning... Nothing is more practical than for people to deepen themselves. You have to ask yourself, Am I an ethical person, first and foremost, always and with no exception? We must resolve to work with greatness and never forget to do so again. Every workday is a concert, a Nobel-prize ceremony, or an Olympic victor."

The movie "Beautiful Mind" is an excellent example of what can be accomplished day by day. Koestenbaum writes, "More than ever, we should celebrate the artists in business, the reformers in life, and the missionaries in organizations."

"Ask yourself the big questions: What have I done wrong in my life? What must I now do right? What have we done wrong as a society, as a team, as a family? What must we now do right?"

Then Koestenbaum concludes, "...take time to redefine yourself and how you work. Write down your new work-life description. Revise it. And make that revision an oath, a conversion. What you are promising is to become the person that you were meant to be. It's the ultimate New Year's resolution." 



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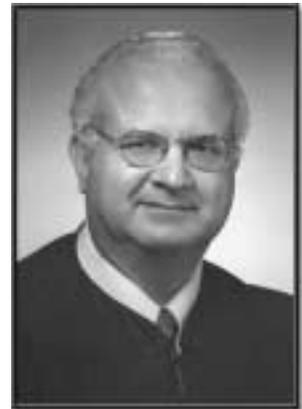


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Exceeding Client Expectations

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



Edward Poll, J.D., M.B.A., CMC, is a certified management consultant and coach in Los Angeles. He is the author of *Secrets of the Business of Law: Successful Practices for Increasing Your Profits* and *The Profitable Law Office Handbook: Attorney's Guide to Successful Business Planning*; and he is the creator of *Law Practice Management Review: The Audio Magazine for Busy Attorneys*. He is also the author of the ABA book, *Attorney & Law Firm Guide to The Business of Law: Planning & Operating for Survival & Growth*, and developer of *The Tool Kit for Buying or Selling a Law Practice*. For ordering information or to make suggestions or comments about this article, call (800) 837-5880 or E-mail edpoll@lawbiz.com. You can also visit Ed Poll on the web at www.lawbiz.com.

With more lawyers than ever battling each other — and now other professionals — for business in our robust economy, just doing a good job seems no longer good enough. "What have you done for me lately" is an old saw that's heard more and more as clients consider their expanding legal options. Maybe it's time to go beyond the normal, to break out and exceed your clients' expectations to grab on to their business.

If some of this seems a little basic, don't let that fool you. As famed basketball coach John Wooden used to say, it's the execution of basic skills, not fancy dunks, that wins ball games.

1. CHANGE YOUR ATTITUDE

Law is a business, and all successful businesses understand that they exist to serve customers. But clients believe that lawyers have forgotten who they serve and why they are there. "It's the customer, stupid." What's needed is a mental shift to a customer- or client-oriented attitude. Accountants have already figured this out, which is why they're taking away legal work at an alarming rate.

So how does a lawyer become more customer-oriented? A proven way is simply by asking clients what they want. One lawyer I know sends out a one-page evaluation form with the client's first bill, usually 30 days after the engagement letter is signed. And he asks right then: "How are we doing?" Now, there may not be much substantive progress in the matter at this initial stage, but asking for early feedback accomplishes a couple of things. First, it shows you care, and second, it gives you time at the very beginning of the relationship to make shifts in your strategies and performance. (And not incidentally, a positive evaluation in your file might even help deflect any future malpractice claims or disciplinary actions. It can't hurt.)

You can also provide a customer survey or evaluation form after you conclude your representation. It doesn't have to be long and complicated. Usually, the best forms are one- or two-page questionnaires. And, if you have difficulty creating one, many State Bar associations offer such forms. For example, the State Bar of California sells a client survey and companion computer disk created by a marketing consultant.

2. REDUCE COMPLAINTS & COMMUNICATE

These two go hand in hand since, by definition, if you communicate with your clients, you will reduce potential irritation and stress. Clients appreciate communication; the more, the better. In fact, failure to return phone calls or to respond to letters or faxes is the number-one complaint against attorneys received by state bar associations across the country. So return those phone calls!

And don't use the "I'm too busy" excuse. One attorney colleague receives more than 125 calls a day. He's developed a system where his receptionist routes the calls according to last name initial to three different paralegals. He discovered that more than 75 per-

cent of all telephone calls from clients were process-oriented: what's happening? when's the deposition? what should I wear? what's the next step? These weren't substantive legal questions, and if he could get these questions answered immediately by someone, the client would be satisfied and would go away happy. For the 25 percent of the calls that require his attention, paralegals set up telephone appointments so he can talk directly to the clients at a more convenient time.

The same prescription goes for written communication. Even if there's nothing much to say, send something to the client. One good idea is a regular evaluation or status report. This is a one-page form that indicates the current status of the case or matter. It can have boxes to be checked and lines or blank spaces for brief handwritten or typed comments. It can be easily reproduced by copying, by making a template in your word-processing program and laser-printing it as needed, or by reproducing it at an instant printer as a personalized business form. (Contact the author if you want a sample.) Status reports can take as little as two minutes to fill out and send off. Doing it on a regular basis lets you communicate directly with the client in an efficient yet meaningful way. Each month, it is a reminder for the client of who you are, that you've looked at their file and thought about their case or matter, and that you are doing what needs to be done to reach the client's objectives. The client rests more easily knowing that you are on top of things.

3. SHOW CLIENTS YOU CARE & RESPECT THEM

It's important to make sure that your clients feel you care about and respect them. Appropriate gifts and hospital visits are just the starting point to interacting with clients in a way that bonds them to you.

I learned an important lesson about caring and respect several years ago when I called up an attorney colleague across the country. We had never met and had only spoken by phone once or twice before. The receptionist told me he wasn't in and asked if she could take a message. I agreed and started to spell my name. "Oh, that's all right Mr. Poll. I know who you are." I was surprised since I had never spoken to her before. But I was also impressed and very pleased; I felt important. When I mentioned this to the attorney later, he said that every staff member has a sheet of paper in front of them with the names of all people who are important or likely to call. The list has the correct spelling and pronunciation of difficult names, contact numbers, etc.

Realize that your office operations, like a good cycling team, are a team effort, and that clients want to know they have a solid team working for them. Personally introduce your staff, and make it clear that they, you — and the client — are all on the same team, a team whose goal is to successfully reach the objective of the client.

Make your office and the ways of reaching you more friendly

and welcoming. First impressions are sometimes lasting ones. For example, voice mail can be a valuable tool, but not when the client feels trapped by it. Make sure that a receptionist or secretary — a real person — answers the phone personally. If you're available, take the call. If you're not, have the same person give the caller the option of leaving a voice mail message or a message with the operator. Clients feel more respected and empowered by dealing with human beings rather than machines.

And don't keep people waiting for an appointment. It shows a lack of respect and implies inefficiency and lack of organization on your part. If you can't even be on time for a simple appointment, how are you going to handle more complex and important issues?

4. GUARANTEE SATISFACTION

As every lawyer knows, you can't guarantee the outcome of a legal matter. But you can — and should — guarantee the satisfaction of your clients with the process of dealing with you. Although it's still almost unheard of, more and more attorneys are exceeding client expectations by saying: "We guarantee that you will be happy dealing with us as lawyers in the process of pursuing your objective. We do not guarantee results; but we guarantee your satisfaction." You can even amaze your clients — and your colleagues — more by adding: "And if you're not satisfied, we will give you your money back." The theory, of course, is that you are removing any doubt in the customer's mind by telling them that you KNOW your service will be valuable to them. And you're backing it up with an offer they can't refuse.

Now if you think that this is a large-firm phenomenon, think again. I know a sole practitioner in Dayton, Ohio, who provides exactly the same guarantee. He says his business has gone up by more than 30 percent in just a few months of making his public aware of his satisfaction-guaranteed offer.

5. CREATE MORE VALUE

"Adding value" is a management term that's been popular in the business world for some time, and lawyers are finally catching on too. Creating more value in the minds of clients differentiates your service from others in your profession. If another lawyer provides X, you provide X + Y.

Bill Gates says (in *Business at the Speed of Thought*) that customer service is a primary value-added function in every business. Customer service is exactly that: serving the customer. If that means hand-delivering a package of documents, do it. If that means adding financial planning as a service to your estate planning or family law practice, do it. If that means offering a training seminar to keep your business clients out of trouble when dealing with

their staff, do it! You may even have to raise your rates if there is a substantial increase in the added service provided, but since legal work is not that price sensitive, that shouldn't be a problem.

CONCLUSION

All potential and current buyers of your service go through a mental exercise routine that basically ends up with the question: "Am I getting enough value for the time and money I'm investing in this attorney, or should I look elsewhere?" Exceed their expectations, provide the value, and they will stick with you! 🐘



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President's Message continued from page 3

The Practice of Law and Life

Law schools, working as an associate in a firm, and the general every day education that we receive when we practice law, help us become better attorneys. But what do we do to enhance our personal lives and the relationships that we have? How do we become better fathers and mothers, friends and siblings?

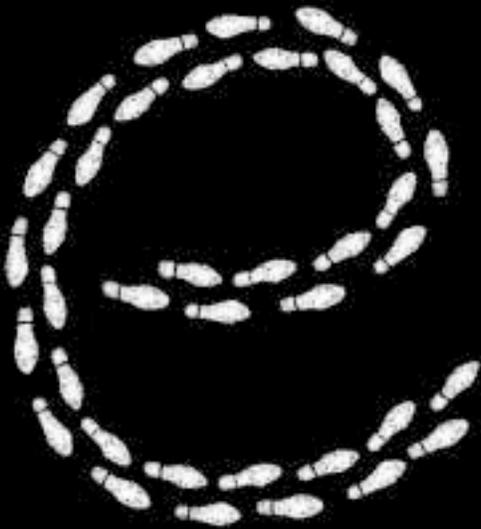
Take a breath; this is a true story. This is not the usual message written by a bar president. Frankly, what I am about to share with you is so unusual that it may well have changed my life forever. Perhaps it will have an impact on yours.

I was recently requested by another lawyer to undertake a case that was set for trial. I was asked to represent the plaintiff. I arranged to meet her on a Friday, have her deposition taken the following Wednesday, and continue preparing the case. I knew within moments of my first meeting with Minne Kendrick that she was going to be a wonderful witness. She was intelligent, polite, well spoken, and had a smile and warmth that would charm anyone having the pleasure of meeting her. She was also extremely nervous about the lawsuit and the upcoming deposition. She was 68-years old, a retired LAUSD teacher, and involved in her community by participating in numerous organizations. In our first meeting I shared with her a little about myself and she did the same with me. When I share with a client, I don't talk of prior cases, education, experience, etc.; they want to know about me. I could see with Minne that she didn't want my resume. I showed her pictures of my family and she shared pictures of hers. We spoke of our pets and our hobbies. Once Minne felt more comfortable, we talked about the case, the elements, the facts, how the accident had impacted her life, and her expectations both of the case and beyond.

Our meeting lasted several hours and when complete, I offered her my hand. She had a firm warm handshake, much like her smile. I offered her the opportunity to call me at anytime and confirmed our meeting for Wednesday. I called defense counsel and introduced myself, advising him that I would be undertaking Ms. Kendrick's representation. We talked about the case, the fact that the adjuster would attend the deposition in order to evaluate the case, and perhaps even begin a discussion about settlement, and, caught up as we have over the years had several cases together. I spoke with Minne several times before the Wednesday deposition and knowing that it was her habit to arrive early for meetings, I arrived even earlier so that she was not alone and waiting on me at defense counsel's office. I felt it would be a good day and a good deposition; after all, she was a wonderful person and would make an excellent impression, and, I had the opportunity to catch up on "old times" with a group of attorneys that I had not seen in several years but always enjoyed seeing and speaking with.

When a deposition is taken of my client, I sit close to them, trying to give them some comfort knowing that I am so close. Minne became comfortable with the deposition process almost immediately and we were moving through the various subjects and she was impressing defense counsel and the adjuster with her memory, her description of events and the impact this incident had on her, but most of all, her humanity. They liked her. She was on a roll; she was the kind of witness that despite my admonition not to volunteer, she felt compelled to "tell the whole story" of her life. It was one of those depositions where everyone was enjoying themselves as Minne explained things in a way that would on occasion make everyone smile, laugh, and feel sadness. She was telling us a story that brought to life the impact the accident had on her.

I like to have my witnesses take a break every hour. It helps them focus, catch their breath, and in the case of Minne, she



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wanted to get a little snack at each break. That was fine, we were going to spend the day and Minne, now that she was feeling comfortable with the deposition process (almost too comfortable), was not going to be rushed. She had the patience of a big league ballplayer – she waited for the pitch knowing that there were no questions that could hurt her. While she would not have said so, I think she enjoyed having the audience.

Although we had several snack breaks, we also took a lunch break. Because I enjoyed her company and did not want her sitting alone, I went to grab some fruit and brought it back to the conference room where she was already eating the lunch she brought. We talked of our families and our goals, her expertise as an AP English teacher and a school expert in discipline. We laughed together at how in some ways our lives were so similar, and in some we had traveled different roads. As lawyers we are sometimes accused of talking too much; I found myself being a good listener as Minne went from one subject to another. The last subject we spoke of was how she loved to travel, particularly by train.

As we were finishing lunch, she seemed to faint, and because I was still sitting next to Minne, I caught her before she slumped to the table. It was clear from the outset that this was not a minor event. I called to defense counsel to call 911. She was breathing, she had a pulse, both slight. I held her in my arms until the paramedics arrived, talking to her, and while receiving no response, probably even begging her to stay with me. After the paramedics took Minne to the hospital, I called Minne's daughter and asked her to go to the hospital and meet me there. This was the first time I had ever spoken with her daughter. I was a total stranger and her mother spent the last moments of her life with me. From then to the end of the day, the events are and will forever be remembered by me. I attended the funeral several days later and have been in touch with her family.

I am reminded of the country song, "If Tomorrow Never Comes." Minne's daughter's first words to me at the hospital (where I arrived before she did and had to tell her that her mother passed away), were that she just wanted to talk with her mom. At that moment I realized that if there was a life plan that the design was for me to be the last person to speak with Minne, hold her, and be her friend. I was clearly not prepared to do this as a lawyer and I felt terrible that I had the last precious moments of this fine lady's time when it should have been shared with family, not a stranger that she knew for only five days.

Why me? Perhaps because I could share a message with all of you. We live each day rushing from client to emergency and back again, never enough time and always on the run. Quite frankly, despite that description, I consider myself as having done pretty well at taking time for some personal time and lots of family time along the way. Despite this description, the message I want to share with you is actually a quote that I cut out of a magazine article and I have carried in my wallet for many years (I have actually lost count of the years). I share it periodically and I share it again with you as I hope it may, along with this story, have an impact given its simplicity and accuracy:

At the end of your life, you will never regret not having passed one more test, not winning one more verdict or not closing one more deal. You will regret time not spent with a husband, a child, a friend or a parent. (Barbara Bush at Wellesley's commencement)

Minne: thank you for the message. 🐘

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What's New For Employers in 2002?

BY CYNTHIA ELKINS HOGAN

Cynthia Elkins Hogan provides counseling for employers and practices employment litigation in Woodland Hills. To make comments about this article, call (818) 598-6771 or send email to chogan@employer-Law.com

As always, with the coming of the new year, there are changes affecting the workplace including changes in wage and hour laws and other personnel related matters. The following is a brief overview of the most significant changes affecting California employers:

MINIMUM WAGE UPDATE

Effective January 1, 2002, the California Minimum Wage will increase from the current wage of \$6.25 to the new minimum wage of \$6.75. All non-exempt employees must be paid at least minimum wage.

EXEMPT EMPLOYEE INCREASES

Exempt Salary Increase: With the increase in the minimum wage, the base monthly salary for exempt employees will also increase to \$2,340.00 per month.

Wage Increase for Computer Professional Exemption: Currently, computer professionals are exempt from overtime if paid a wage of \$41.00 per hour. As of January 1, 2002, these employees must be paid \$42.64 per hour to maintain their exempt status.

NEW POSTER REQUIREMENTS

The following posters will change effective January 1, 2002:

- Minimum Wage
- Discrimination in Employment (DFEH-162)
- Worker's Compensation Insurance
- Cal/OSHA "Safety and Health Protection on the Job"

In addition to the new poster, there are new forms and reporting requirements from Cal/OSHA. Employers can obtain some of these posters from the State of California Industrial Welfare Commission's web site: www.dir.ca.gov/iwc.

NEW LAWS FOR 2002

Limitation on English Only rules: It will be unlawful for an employer to enforce a policy that limits or prohibits the use of any language in the workplace, unless both of the following two conditions are met: 1) the language restriction is justified due to "business necessity"; and 2) the Employer has notified its employees as to the circumstances and time when the restriction must be observed and the consequences for violating the restriction. AB 800, Government Code §12951

"Lactation Accommodation" Now Required by Employers: All employer must reasonably accommodate any employee for purposes of "lactation" while at work by providing a reasonable amount of break time to accommodate an employee for lactation purposes. If possible, the break can coincide with regularly scheduled break times; if not, additional break times can be unpaid. A room in close proximity to the employee's work area, other than toilet facilities, must be provided so that the employee can express the milk in private. Violations of this requirement will result in a \$100 penalty for each occurrence. An employer may seek an exemption if the business operations would be seriously disrupted by the provision of additional break time to employees desiring to express milk. AB 1025, Labor Code §1030 et seq.

Retaliation Against Employees Prohibited for Lawful Off Duty Conduct: Current law prohibits an employer from discriminating against any employee because the employee has filed a claim with the Labor Commissioner, has testified before the Labor Commissioner or the employee exercised their rights as provided by the Labor Code. Now, AB 1015 provides the same protection to applicants for employment who are refused employment, not selected for training, or discriminated against in any other manner. AB 1015, Labor Code §98.6

Sick Leave May be Used for Domestic Partner's Illness: Labor Code Section 233 provides that employees have the right to use up to 50% of their annual accrual of sick leave to provide care for their family members (otherwise known as "kin care"). As of January 1, 2002, this is extended to include "domestic partners" or a child of a "domestic partner". A "domestic partner" is defined in the California Family Code that provides a strict test that must be met before a "domestic partner" relationship will be acknowledged. AB 25, Family Code §297, Labor Code §233. ⚡

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Notice To Attorneys

United States Bankruptcy Court Public Notice Re: Judicial Practices Survey

A judicial task force is currently studying the impact of varying judicial practices upon practitioners in the Central District of California and is inviting public comment through a *Judicial Practices Survey*. Survey respondents are asked to rank several possible uniform judicial practices based upon their ability to reduce confusion, inconvenience or expense for parties and practitioners.

The *Judicial Practices Survey* may be completed online through the Court's web site www.cacb.uscourts.gov. To view and/or complete this form, click on **Publications** on the left-hand side of the home page. Click on **Judicial Practices Survey**. Comments should be submitted no later than Friday, February 15, 2002. Completed surveys may also be faxed to the attention of Marty Bracciotti at (213) 894-0416. 📧

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February Events

calendar and MCLE event listings

Probate and Estate Planning Section

Topic: **Mental Health and the Courts**
This seminar will focus on Department 95A Conservatorships.

Speaker: Judge Harold Shabo
Date: February 12
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

Litigation Section

Topic: **Making The Case for Mold**
Injury claims based on the exposure to mold at home and in the workplace are rising. Learn what to look for in a mold case.

Speaker: Russ Nassof
Date: Wednesday, February 13
Time: 6:00 P.M.
Place: SFVBA Conference Center, Woodland Hills
Cost: \$25 members prepaid; \$30 at the door
 \$30 non-members prepaid; \$35 at the door
MCLE: 1 Hour

Healthcare Law Section

Topic: **Fraud and Abuse in Healthcare Practice**
Join us for this inaugural program. The seminar will cover the common misconceptions, prosecution and penalties regarding healthcare abuse.

Speaker: Councilman Jack Weiss
Date: February 19
Time: 6:00 p.m. Dinner 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

Workers' Compensation Section

Topic: **Case Law Update**
Speaker: Mark Kahn, Esq., WCAB
Date: February 20
Time: 12:00 Noon
Place: Encino Glen Restaurant, Encino
Cost: \$30 members prepaid; \$35 at the door
 \$35 non-members prepaid; \$45 at the door
MCLE: 1 Hour

Barristers Section

Topic: **Bankruptcies & Assignments for the Benefit of Creditors An Overview and Comparison**
Speaker: Alan Nahmias, Esq. & Nigel Hamer
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
MCLE: 1 Hour

Intellectual Property & Internet Law Section

Topic: **Trademark Trial and Appeal Board Practice**
Speaker: Christopher Larkin, Esq.
 Small, Larkin, LLP
Date: February 22
Time: 12:00 Noon
Place: SFVBA Conference Center, Woodland Hills
 Brown Bag Lunch!
Cost: \$5 members prepaid; \$10 at the door
 \$10 non-members prepaid; \$15 at the door
MCLE: 1 Hour

Family Law Section

Topic: **Procedures in Department 2**
 Presiding Judge Aviva Bobb will be on hand for a question and answer session and will offer an update on Department 2.

Speakers: Hon. Aviva Bobb
Date: February 25
Time: 5:30 p.m.
Place: Encino Glen Restaurant, Encino
Cost: \$35 members prepaid; \$40 at the door
 \$40 non-members prepaid; \$45 at the door
MCLE: 1 Hour

Business Law & Real Property Section

Topic: **Buying and Selling Assets of Bankruptcy Estates**
Speaker: Wesley Avery, Esq.
 Sulmeyer, Kupetz, Baumann, & Rothman
Date: February 27
Time: Noon
Place: Bankruptcy Court, Room 302, Woodland Hills
 Brown Bag Lunch!
Cost: \$5 members prepaid; \$10 at the door
 \$10 non-members prepaid; \$15 at the door
MCLE: 1 Hour

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