



BarNotes

A Publication of the
San Fernando Valley Bar Association

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WE'VE GOT YOU COVERED!

BAR LAUNCHES MALPRACTICE INSURANCE PROGRAM FOR SMALLER FIRMS

Smaller firms in the San Fernando Valley are feeling safe and secure knowing they now have access to group rates on top quality malpractice insurance. The San Fernando Valley Bar Association is launching the program for its members this month.

The insurance line is carried through Wells Fargo Insurance Services. This new Lawyers Professional Liability program is geared to law firms with 10 or fewer lawyers, although larger firms can also participate.

“The insurance program was designed specifically with the needs of the solo and small firm practitioners in mind as they make up the majority of the membership of the SFVBA,” Immediate Past President Patricia McCabe says. “This program offers an important option for firms that sometimes had limited choices in the past.”

Plan coverage includes Lawyers Professional Liability insurance, which protects individuals, attorneys, employees and law firms. Protection covers damages and claims

expenses that the insured is legally obligated to pay because of claims arising out of any act, error or omission of the insured in rendering or failing to render professional service for clients.

“This member benefit is so appreciated by the smaller firm practice community,” Richard Lewis, a past president of the association, says. “This program is reason enough to join our association. It is that much of a benefit.”

The insurance program is a significant accomplishment for the association, according to bar insiders. A survey of local bar associations reveals that only a handful of them offer professional liability insurance to members.

“For many years, I have worked to bring our own insurance lines to our members, and this is just our first offering,” Ms. McCabe, principal of the Law Offices of Patricia L. McCabe in Van Nuys, says. “Our members deserve to have this type of coverage at these reasonable rates.”

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The San Fernando Valley Bar Association celebrates the opening of the Bar's new offices at 21250 Califa Street, Woodland Hills, with a ribbon cutting ceremony on October 15.

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Grateful Thanks, Concern for Others

SUE M. BENDAVID-ARBIV, SFVBA PRESIDENT



As we reflect back on Thanksgiving and look forward to the holiday season, we should all take a moment to reflect on our many good fortunes, whatever they may be . . . health, family, good friends, thriving practices.

But just a few weeks ago, not everyone was so lucky. Thousands of people were evacuated from their homes as a result of the Southern Californian wildfires. Though it pales in comparison to the damage wrought by Hurricane Katrina, it was still one of California's biggest disasters. According to news sources, over 500,000 acres were burned and over 2,000 homes were destroyed. There were seven deaths and over 140 injured.

The members of our bar association generally fared better than our counterparts in San Diego and other areas. Our bar office was fine but members working and living in the Santa Clarita Valley and in the Agoura-Malibu areas were evacuated and unable to get to their offices or bar meetings. Luckily, we received no reports of any members losing homes and the only real damage we heard was that members had to do substantial clean-up of soot and ash.

When disasters such as this strike, we often see people pulling together to support others - even strangers. Our bar association answered a call to duty and went into action to help where needed.

We contacted the Los Angeles County Bar Association about mobilizing the Disaster Relief Project. Also, our Attorney Referral Service waived consultation fees for fire victims, so they can get immediate referrals to lawyers who can help in their time of need.

Joining forces with other sponsors, including the State Bar of California, Los Angeles County Bar Association and the Orange County Bar Association, our bar association sponsored the electronic distribution of the *Helping Handbook: For Individuals and Small Businesses Affected by the 2007 Southern California Wildfires*. The handbook can be accessed by the public online at www.mofo.com/about/community/helping-handbooks.html. Originally produced by the law firm of Morrison & Foerster, the *Helping Handbook* provides an overview of legal issues facing individuals and small businesses as a result of the recent fires.

Our focus on community is not new. In prior years, our bar association provided assistance to the victims of other disasters, including Hurricane Katrina. In 2005, we donated \$5,000 to the Mississippi Bar Foundation, Habitat for Humanity, New Orleans Bar Association and Louisiana State Bar Association.

You can be proud of the fact that our bar association has this proactive

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Camel-Free Zone Attorney Referral Committee Workshop Creates Horses

MICHELE C. MORLEY, ASSOCIATE EXECUTIVE DIRECTOR FOR PUBLIC SERVICE



We have all heard the old joke that a camel is a horse designed by a committee. I have personally sat through some of those committee meetings. In those meetings, everyone is in charge, and every idea is accepted and adopted, regardless of its merits.

And I have been on other committees, ones where ideas are carefully vetted and actions to accomplish ideas are part of the process. I recently attended my first meeting of the American Bar Association Standing Committee on Lawyer Referral and Information Services.

This was a productive meeting. We finalized arrangements for the first of a series of national teleconference trainings for referral staff. This is an excellent idea: the issues and the training needs are the same across the country. Gayle, Rosie, Lucia and I will participate in the training.

The national committee worked on the agreement between the Department of Justice and the American Bar Association on the representation of victims of identity theft. The Justice Department is counting on bar association referral services to assist with connecting victims to qualified attorneys. To help train attorneys to handle identity theft, the Department of Justice and the ABA are developing a practical training desk book.

Another agenda item included the American Bar Association's focus on Internet marketing for referral services. The ABA has increased this marketing and is considering a special focus on bar association referral services. We also examined the issue of the impact of bar association on-line directories of members on bar association referral services; this issue will be monitored on an on-going basis. The feeling is that referral services that schedule appointments serve a public that is anxious for complete service. That complete service includes speaking with a referral consultant who

carefully screens the case and directs the person to the appropriate attorney. Directories simply cannot substitute for a trained and empathetic referral consultant.

I attended the National Lawyer Referral Workshop held at the same time as the Standing Committee meeting, where topics included: how to provide good customer service; maximizing results from Internet advertising; referral service strategic and long-range planning; the role of the referral service in disaster recovery; elements of a successful website; realistically assessing your referral program; and expecting the unexpected.

I attended all of these workshops and each of them provided a useful idea to further improve our operations and

service. For example, I learned that after a disaster, 60 percent of businesses do not reopen. One speaker noted that as the court system becomes more technologically advanced, it will become less sympathetic to lawyers who are not prepared for a disaster, have not preserved records, and cannot resume their practices within a reasonable time period. You can find good information on developing policies and procedures for disasters and business continuation on the Internet at www.abanet.org and www.pmatips.com.

I will be asking the A.R.S. Committee and staff to complete the referral services assessment form that I received at the workshop and will report on their assessment in a future column. ✦



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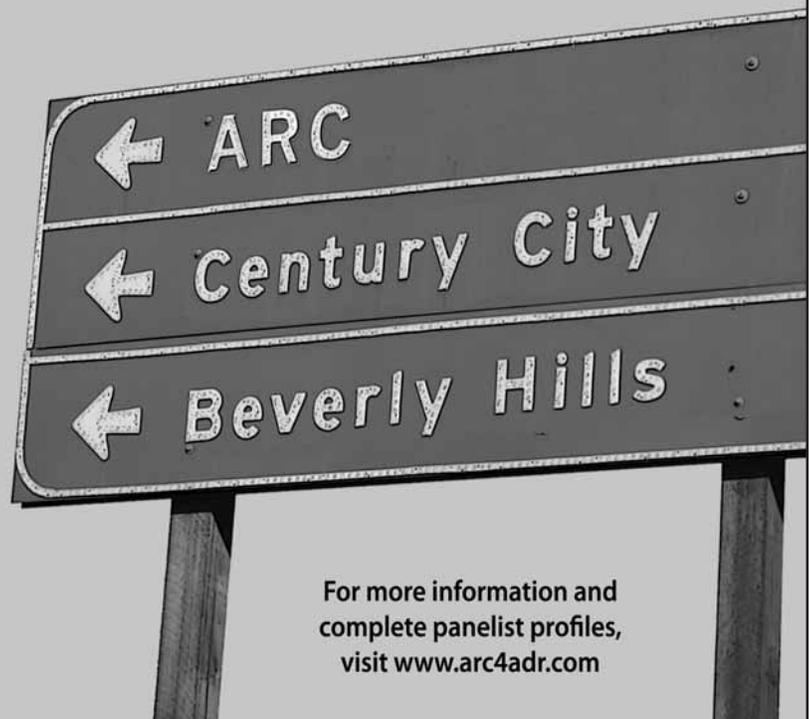
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We Mean Business! Business Law Section Addresses Serious Subjects in Creative Ways

BY LISA MILLER, EDITOR



Dealing with risks in international transactions. Debt. Bankruptcy. Shareholder lawsuits. These seem like they might be some heavy topics. But that's not the case at the Business Law Section of the San Fernando Valley Bar Association.

The Business Law, Real Property & Bankruptcy Section is addressing these important issues, and more, in interesting and engrossing ways in its programming. And it's all thanks to bar members and to Section leader Steve Fox.

"The section puts on programs addressing matters of interest for anyone interested in the business world," Mr. Fox, principal of Encino's Law Office of Steven R. Fox. "We focus our seminars on business transaction, business litigation, real property and bankruptcy law."

The Section has become one of the bar's most active Sections in the past few years, after a long period of minimal programming. A big part of that expansion is due to the programming ideas and presentations. The Section meets monthly at the bar's offices in Woodland Hills.

"One of this year's programs will focus on debt collection issues," Mr. Fox, the Section chair, says. "Our speaker will address how to keep your attorneys fees from becoming a collections problem, among other things."

"We just delved into an analysis of recent decisions by the Woodland Hills bankruptcy judges," Mr. Fox says. "It provided coherence and an understanding of the big picture for practitioners, a very valuable thing."

The program was very popular, according to Mr. Fox. The Section will repeat it each year, he says.

Mr. Fox is known for his colorful personal style as the long-time chair of

the Section. While he conducts a well-respected bankruptcy law practice, Mr. Fox has another side to him, which he gets to showcase at Section meetings.

"We try to offer the hard-to-get specialty CLE credits," Mr. Fox says. "So to make it more fun to master elimination of bias, we are putting on a program on December 12 using recent law-centric theatrical movies to study gender bias."

The *Night at the Movie* will include traditional movie fare, such as popcorn and hotdogs. The seminar for MCLE Elimination of Bias credit will be presented by full-time neutral Myer J. Sankary.

"The program really pulls the audience in and makes bias feel very real," Mr. Sankary says. "We will be

viewing movie clips that show some subtle biases as well as some more egregious examples."

According to Mr. Sankary, he has carefully culled through hours of movie shorts looking for relevant examples of bias that attorneys can learn from. He is hoping that all attendees will come away with a visceral understanding of the corrosive effects of bias, on both the practice of law and the court system.

"Bias benefits no one and hurts everyone," Mr. Sankary says. "The time we devote to detecting it and fighting it is time well spent."

Fox has even more tricks up his sleeve for teaching Section meeting attendees about complex concepts in understandable ways. Sometimes, he

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Myer Sankary, Esq.



Hon. Thomas Schneider (Ret.)

Conference Rooms



even resorts to getting some help from Saturday morning cartoon characters.

"I will be starring in a perennial programming favorite," Mr. Fox says. "It's a judgment debtor examination, where I play the wily judgment debtor Wile E. Coyote, hiding his assets from a panel of inquiring attorneys."

Programming for other upcoming meetings includes an ethics program focusing on ethics and asset protection, heading off shareholder disputes, and a real property program looking at neighbor disputes.

The Business Law Section's meetings are not all laughs and CLE credits. Sometimes, it's just about enjoying a collegial environment with the Valley practice community.

Toward that end, Mr. Fox has begun giving away bottles of fine wine at section meetings. Law firms Loeb, Kosacz & Sundberg, Stone | Rosenblatt | Cha and Ezra | Brutzkus | Gubner have donated bottles of wine to the Section. Attending attorneys must answer offbeat trivial questions to win the bottles.

The Section is dedicated to providing useful and desirable programming to bar members, Mr. Fox says. He is available to hear suggestions about useful programming, upcoming trends, and new ideas. The Section is always looking for member suggestions so that it can expand its service to its constituents. 🍷

For more information about Section programming or how to join the Section, contact Steven R. Fox at srfox@foxlaw.com.

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Settlement Agreement Samba

Avoid the Post-Mediation Dance by Drafting Enforceable Resolution Memos

BY STEVEN G. MEHTA



Making agreements enforceable is a critical issue that all attorneys should know. The settlement agreement is often one of the most important documents drafted in the litigation context. This document governs the relationship of the parties for the future and closes a chapter in the litigation book. A well-drafted settlement agreement does not need to be long, complex or typed; it simply needs to make sure that it addresses the material terms and ensures that the parties have agreed to those terms.

Counsel should ensure that their settlement agreements meet the requirements of Code of Civil Procedure section 664.6. This procedure is the most efficient means to enforce a settlement agreement. But if the agreement's terms do not meet the requirements of Code of Civil Procedure section 664.6, counsel must understand what is necessary to ensure that the settlement will be enforceable through other means.

The most prudent route for counsel to take is to make sure that all parties sign the settlement agreement; that it provides for the material terms that are really at issue; and that it states on its face that it is enforceable and admissible as evidence of the settlement.

Settlement agreements, similar to any other contract, are subject to the law of contracts. (*Nicholson v. Barab* (1991) 233 Cal.App.3d 1671, 1681; *Gopal v. Yoshikawa* (1983) 147 Cal.App.3d 128, 132; *Barndt v. County of Los Angeles* (1989) 211 Cal.App.3d 397, 403-406) In addition, regardless of whether the settlement agreement is oral or written, a court will not enforce a settlement agreement provision that is illegal, contrary to public policy, or unjust. (*California State Auto Ass'n Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127).

Settlement documents must be interpreted in the same manner as all other contracts, and they need not be in

writing to be enforceable. An oral settlement agreement can be enforceable so long as it does not violate the statute of frauds. (See, e.g., *Ryan v. Garcia* (1994) 27 Cal. App.4th 1006, 1009). This oral agreement would be interpreted in the same manner as any other contract. The problem, however, is that oral agreements are not enforceable

under summary and expedited procedures under Code of Civil Procedure section 664.6.

Most parties prefer to enforce the terms of the settlement pursuant to section 664.6, so counsel must master what formalities are necessary to ensure a settlement agreement is enforceable under that provision. Code of Civil

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Procedure section 664.6 provides that "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case" they can summarily seek to enter a judgment on the terms of the settlement.

To be enforceable under Code of Civil Procedure section 664.6, the material terms of the settlement must be explicitly defined in the agreement. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896) A settlement agreement, like any other contract, is unenforceable if the parties fail to agree on a material term, or if a material term is not reasonably certain. (*Weddington Productions v. Flick* (1998) 60 Cal.App.4th 793, 811; Civ. Code, § 1580; Civ. Code, § 3390, subd. 5) The fact that the parties leave unresolved terms for future agreement is not invariably fatal, though, because a settlement may be enforceable if the parties agree that the remaining issues will be decided by arbitration. (*Lindsay v. Lewandowski*, (2006) 139 Cal.App.4th 1618, 1622-1623). But where the parties left the terms of the payment in dispute, and agreed to a vague term of "binding mediation" as it related to the terms of

payment, the courts have held that the stipulation for settlement was unenforceable because a material term was unclear. (*Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618, 1622-1623).

To qualify under Code of Civil Procedure section 664.6, the oral agreement must be spoken out loud; a nod of the head by a party is insufficient to qualify as an enforceable oral agreement under Code of Civil Procedure section 664.6. (*Conservatorship of McElroy* (2002) 104 Cal.App.4th 536). And an "oral agreement" must be placed on the record before the court. It is not sufficient to have the oral agreement placed before a court reporter at deposition. (*Datatronic Systems v. Speron* (1986) 176 Cal.App.3d 1168, 1174) The oral agreement by the parties must be placed on the record during a judicially supervised hearing. (*Datatronic Systems v. Speron* (1986) 176 Cal.App.3d 1168, 1174) An agreement entered into before an arbitrator satisfies the requirement of being a judicially supervised hearing. (*In re Marriage of Assemi*, (Cal. 1994) 7 Cal.4th 896). The same holds true for a temporary or private judge. (*In re Marriage of Assemi* (Cal. 1994) 7 Cal.4th 896).

As to judicially appointed referees, the issue of whether the stipulation is enforceable depends on the type of referee appointment. If the referee is appointed under Code of Civil Procedure section 638(a), an oral stipulation on the record in front of this type of referee is enforceable under Code of Civil Procedure section 664.6. However, if the referee is appointed under Code of Civil Procedure section 638(b), and is not given the ability to make a final determination, then an oral stipulation on the record in front of such referee is not enforceable under Code of Civil Procedure section 664.6. (*Murphy v. Padilla*, (1996) 42 Cal.App.4th 707; *In re Marriage of Assemi* (1994) 7 Cal.4th 896). Finally, for oral agreements before the court, the supervising judicial officer must have questioned the parties regarding their understanding of the material terms, and the parties must expressly acknowledge their understanding of and agreement to be bound by those terms. (*In re Marriage of Assemi*, (1994) 7 Cal.4th 896).

On some occasions, the parties enter into an oral agreement before the court and indicate that they will also execute the terms in writing. Once the parties have orally agreed to the terms, a party may not escape its obligations by refusing to sign a written agreement that conforms to the oral terms. The oral settlement, like any agreement, imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. (*Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421).

To meet the requirements of summary enforcement, an out-of-court written settlement agreement must be signed by the parties themselves and not just their attorneys. (*Levy v. Superior Court* (1995) 10 Cal.4th 578; *Robertson v. Chen* (1996) 44 Cal.App.4th 1290). In addition, all of the parties to the settlement agreement must sign the agreement and not just the party against whom enforcement is sought. (*Sully-Miller Const. v. Gledson/Cashman Const.* (2002) 103 Cal.App.4th 30). But when the defendant is insured under a policy that allows the insurance company to settle without the defendant's consent, the defendant's signature is not necessary. (*Fiege v. Cooke* (2004) 125 Cal.App.4th 1350).

Nevertheless, counsel should have the insurance company representative's signature, based on the rationale in *Levy v. Superior Court*: Namely, the party that is

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"It is competitive with other programs offered by much larger bar associations," Ms. McCabe says. "I am proud that we can offer such a high quality product that has such a good value to our membership."

Additional benefits of the program are personal injury coverage, full prior acts coverage, and a deductible minimum of just \$5,000. This includes spousal coverage, including domestic partners, and increased supplemental payments limits for court-imposed arbitration hearings. Sanford Michelman led the charge in establishing the insurance partnership that underlies the program.

"We worked hard to obtain such sophisticated, custom-made policy coverage for our members," says Sanford Michelman, name partner with Encino's Michelman &

Robinson. "This program isn't just an aggregator. It covers just about any eventuality that solo and smaller firm practitioner might be facing as they practice law."

According to Terri Peckinpaugh of Wells Fargo Insurance Services, important aspects of the program include 60 days post-policy reporting, no threshold for new attorneys, and severability coverage options. These are among the most popular aspects of the contract, according to association sources.

While many lawyers feel forced to insure with

smaller carriers based on low rates for business reasons, Ms. Peckinpaugh says, "Our program is written through an A.M. Best "A" rated Admitted California Carrier who we selected because of their enormous experience in legal malpractice insurance."

"We all worked hard to put this program together," Mr. Michelman says. "I know that having this insurance as one of our member benefits will pay dividends to our members for many years in peace of mind as well as professional coverage."

Traditionally, solo and smaller firm attorneys faced slightly higher premiums and limited coverage options when shopping for professional liability coverage. They often have boutique practices with special needs or other unique situations that acted as roadblocks to coverage in some instances. And they don't have the group financial dynamic to help lower their rates.

"This program should be the first place attorneys begin their comparison shopping efforts," Ms. Peckinpaugh says. "Wells Fargo's program is competitively priced and incorporates numerous coverage enhancements negotiated specifically for the SFVBA membership not routinely available through the open marketplace or other competing programs."

Many traditional policies, because they are not focused on the smaller firm law practice experience, are unable to meet some of the important specific needs of this large but unique market segment. Mr. Michelman and the association expended many, many hours researching the options and weighing the particulars before committing to this particular carrier.

"We wanted to be prudent, above all," Mr. Michelman says. "I feel confident that we did our due diligence on behalf of our members and are bringing them a top-quality program. It took us 12 months, but we got there." ▲

"This program isn't just an aggregator. It covers just about any eventuality that solo and smaller firm practitioner might be facing as they practice law."

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With a Grateful Heart

TAMIKO B. HERRON, SANTA CLARITA VALLEY BAR ASSOCIATION PRESIDENT



It is with a grateful heart that we pause and give thanks to so many heroes in our community! Trial and tragedy tests the metal of our strength, fortitude and bravery. The Santa Clarita Valley passed this test with flying colors! Everyone in our Valley was in some way impacted by the

Each of us has cause to think with deep gratitude of those who have lighted the flame within us.

-Albert Schweitzer

recent fires. To some the loss was great - our heart goes out to those who lost their homes to the fire. We are so thankful to those brave firefighters, law enforcement, and citizens who were united in our time of need. We are proud to be a part of a community that embraces and meets the needs of its citizens.

As we celebrate the holidays with our colleagues, friends and family, I hope that we will pause to appreciate the daily gifts and simple pleasures that we so often take for granted. Having a place to call home, a delicious meal, and the company of friends and loved ones are incredible blessings, for which we are truly grateful!

So it is with this gratitude and responsibility to live up to the challenge, that we, the newly appointed board of the Santa Clarita Valley Bar Association begin our tenure.

As the new president of the Association, I would like to congratulate and welcome the following new officers and board members: Robert Mansour, President Elect; Jane McNamara, Treasurer; William R. Lively, Secretary; John Grannis, Rand Pinsky and Gary Weinstein, Board Members. Many of our current officers are founding members of the association and have demonstrated a commitment to the association over the past four years. I am excited to work with such an enthusiastic and dynamic group.

Our Installation Ceremony was held November 15, 2007 at the Tournament Players Club. It was a lovely evening of music and celebration. The Dan Hon Memorial Award was presented to Anthony Zinnanti and Richard Patterson, two local attorneys whose commitment to keeping children safe resulted in a statewide restraining order against self proclaimed pedophile Jack McClellan. Their zealous pro bono efforts to obtain a restraining order and protect the children of Santa Clarita resulted in Judge Melvin D. Sandvig granting a statewide restraining order.

Mr. Zinnanti has received vile threats against himself and his family. His diligence to halt injustice has given a

voice to the children of the State of California, yet has come at a tremendous personal sacrifice. We applaud Mr. Zinnanti and Mr. Patterson for their willingness to seek justice, defend the defenseless, and to make our community a safer place to live for all of its citizens. May their efforts challenge us to seek and seize the opportunity to help those less fortunate and in need.

As a bar association we are a powerful and unique group - with immense talent, opportunity and responsibility to serve our community. We are bipartisan and bilateral. We are as diverse as any group in our community. We understand the challenges and heartaches of our clients. We represent them through some of their most difficult issues and times in their lives. As attorneys we have our finger on the pulse of the community as we deal with problems that surface throughout the community. We are sitting in the front row with a view of the needs of our community. We know the leaders, the victims and the participants in the fight, struggling through hardships-sometimes created by mistakes, negligence and the intentional conduct of our adversaries.

As attorneys we are in the best position to evaluate and serve the needs of our community. We are amongst the most highly educated and hardest working professionals. Many of our members are sole practitioners. However, collectively this bar association has the ability to create the solutions needed within our community. A wise man once told me that knowledge and common sense equal wisdom.

As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them.

-John F. Kennedy

While I look forward to continuing the traditions set by our prior leaders, such as finding people who have excelled in their area of practice to provide mandatory legal education seminars, continuing to honor local heroes at our Law Day program, fund-raising events and providing networking opportunities to our members, I would like to meet and confer with our new officers and brainstorm about the needs of our community that the bar association can address. I would like to consider the possibility of donating legal services to a non-profit organization that is providing a worthwhile service to our community, like a legal aid office or implementing a mentor program for students interested in practicing law.

Benchmark



Richard A. Lewis (fifth from left), a past president of the San Fernando Valley Bar Association, was admitted to the United States Supreme Court on October 15, 2007 in Washington D.C.

My goal this year for the SCVBA is to elevate our profession in the eyes of the community. We do that by being honorable, productive and effective attorneys at law, practicing our profession in our community with integrity and with an eye to charity. I am honored to be the president of this association and seek to earn and maintain your support and confidence. I look forward to working with each of you to the betterment of ourselves, our chosen profession, and our community. 🐾

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Valley Community Legal Foundation A Short History of the Foundation

MARCIA L. KRAFT, VCLF PRESIDENT



I have invited Alan Sedley, a trustee of the San Fernando Valley Bar Association, to write a guest column this month. It is refreshing to hear the perspective of someone outside of the Foundation and how he views our work. I hope you enjoy a different voice and appreciate his viewpoint.

Have a healthy and happy holiday season. Remember you can still make a charitable donation before the end of this tax year.

Generosity counts!

This past month, I attended the San Fernando Valley Bar Association Board of Trustees retreat. As part of the agenda, each trustee was asked to make a presentation on one aspect of the bar association and its programs, services and auxiliary organizations. The one caveat was that the trustee choose an aspect of the association with which he or she was least familiar.

I chose to explore the history, accomplishments and mission of the Valley Community Legal Foundation. Despite my active involvement in numerous valley boards and organizations throughout the years, I was uncomfortable with the realization that I knew precious little about the Foundation. I discovered that the Foundation is one laudable organization, serving an important, if not indispensable, role in our community.

The Foundation was formed some years back to allow and encourage members of the bar to perform certain duties that they were not necessarily encouraged to perform as member of the bar. A growing number of interested bar members came forward to serve as volunteers.

Initially, the small group gathered to raise funds to purchase a building that would house the bar association. The bar association would pay the rent and the community would benefit because there would be additional facilities to serve community-wide organizations.

Soon thereafter, a Valley court commissioner became seriously ill and desperately needed a heart transplant.

The group began raising funds to help pay for the commissioner's high medical costs. This philanthropic experience lead to further fund-raising efforts that would help defray medical costs for members of the bar association who were victims of catastrophic illness.

The group continued to grow in size and stature, officially forming the Valley Community Legal Foundation, and extending its reach to other

noteworthy Valley organizations. For instance, in recognition of the critical role filled by the valley's public safety agencies, the Foundation began issuing awards for outstanding service to deserving members of the police, fire and sheriff's departments.

Through my research, I was impressed to learn that the Foundation has reached out to offer aid to such indispensable Valley programs as the Alliance for Children's Rights, Comfort for Court Kids, and Haven Hills Inc. By doing so, the Foundation has insured that the rights of children are appropriately protected through court proceedings, that the children of court litigants are carefully watched over and kept busy while their parents are in the courtroom, and that victims

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Richard Lewis, Esq.
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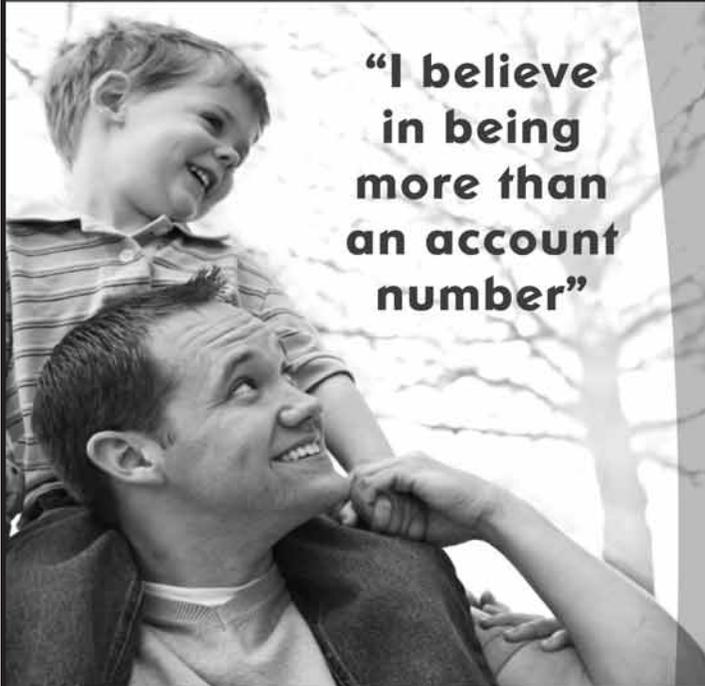
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of domestic violence receive the critical legal attention they require through the Foundation's funding to the court advocacy program.

The Foundation provides the necessary funding to support those with dreams of pursuing careers in law and law-related vocations who would otherwise fall through the cracks created by a lack of funding. From high schools to law schools, the Foundation has and continues to support students throughout the San Fernando Valley studying in the legal field, including students at Pierce College and California State University at Northridge.

By virtue of collaborative efforts between the Foundation and various high schools, needed financial support has been directed to law-focused magnet programs, such as the police academy program and the law and government programs. Students gain immeasurable insight and experience through participation in mock trials and debates.

The Foundation has generously supported the endeavors of high school students by awarding scholarships that enable students who may not otherwise be financially able, to continue their post-secondary education and pursue law school degrees and degrees in law-related fields.

The Foundation supports the Drug Court Program, which has been so very instrumental in getting troubled individuals off the streets, keeping them out of jail, and helping them become productive members of society.

The Foundation has planned to do even more for the community which, in order to fulfill those goals, requires the generous contributions, both financially and professionally, of those in our legal and business communities. Please join me in supporting this essential endeavor. ✨

Alan Sedley practices employment law and health law in Woodland Hills. He can be reached at (818) 716-6800 or via e-mail at asedley02@sprintpcs.com.

The Foundation has been hard at work raising funds to build **Children's Waiting Rooms** at the Van Nuys and San Fernando courthouses. These rooms are badly needed so litigants and others utilizing court services will be able to leave their children in a safe, secure and happy environment.

The Foundation has raised \$50,000 towards the Van Nuys Children's Waiting Room and is committed to raising \$35,000 towards the San Fernando facility. The funds must be raised before approval is granted by the Los Angeles County Board of Supervisors.

Please lend your support to this worthy project and make a tax-deductible, charitable donation before the end of 2007. Mail your donations to the SFVBA offices, designated "Children's Waiting Room," at 21250 Califa Street, Ste. 113, Woodland Hills, CA 91367.

Settlement Agreement Samba, continued from page 10

being bound by the settlement agreement must be the one that signed the document. Therefore, because the insurance company is the one being bound by the settlement agreement, the adjustor's signature or the insurance company's representative's signature is necessary.

Many settlement agreements provide that the action will be dismissed "with prejudice." Counsel should note that for purposes of summary enforcement pursuant to Code of Civil Procedure section 664.6, this type of dismissal may cause problems with the court's ability to retain subject matter jurisdiction. Once a party has dismissed its action, the dismissal terminates the action. A superior court thereafter has no subject matter jurisdiction to grant relief under Code of Civil Procedure section 664.6 other than awarding costs and fees as appropriate. (*Hagan Engineering v. Mills* (2003)115 Cal.App.4th 1004, 1007-1008).

Even if the parties insert language in the settlement agreement that purports to confer jurisdiction on the court, such language is a nullity, because subject matter jurisdiction is not something that can be conferred by stipulation or agreement of the parties. (*Hagan Engineering v. Mills* (2003)115 Cal.App.4th 1004, 1007-1008). As a result, a motion to enforce a settlement pursuant to Code of Civil Procedure section 664.6 is not allowed when the parties have dismissed the lawsuit. (*Hagan Engineering v. Mills* (2003)115 Cal.App.4th 1004, 1007-1008).

One alternative potentially available to the parties if the action is dismissed is to first seek a motion to set aside the dismissal pursuant to Code of Civil Procedure section 473, and then seek to enforce under Code of Civil Procedure section 664.6. Another option would be to make sure that the case has not been dismissed until all of the terms of the agreement are met.

The courts have not decided whether Code of Civil Procedure section 664.6 applies to settlements that become effective during the pendency of an appeal. Under that circumstance, the courts have indicated that if a case is settled while an appeal is pending, the judgment that is the basis of the appeal is vacated, and the settlement agreement supersedes the judgment. (*Ebensteiner Co.*

v. Chadmar Group (2006) 143 Cal.App.4th 1174, 1181). Any dispute regarding the settlement agreement must be enforced by means outside of Code of Civil Procedure section 664.6. (*Ebensteiner Co. v. Chadmar Group* (2006) 143 Cal.App.4th 1174).

While Code of Civil Procedure section 664.6 is not the exclusive means of enforcing a settlement agreement, it is the preferred means to enforce a settlement once the foregoing prerequisites are satisfied. Even when the summary procedures of section 664.6 are not available, a settlement agreement

might be enforceable by summary judgment, a suit for breach of contract, or a suit in equity. (*Robertson v. Chen* (1996) 44 Cal.App.4th 1290). It may even be raised as an affirmative defense. (*Thompson v. Williams* (1989) 211 Cal.App.3d 566, 571)

The fact that many cases are being settled at mediation also complicates the issue of whether a settlement agreement is enforceable. The reason for this complication is the issue of confidentiality, which is integral to the mediation process and the documents

DARRYL H. GRAVER, ESQ.

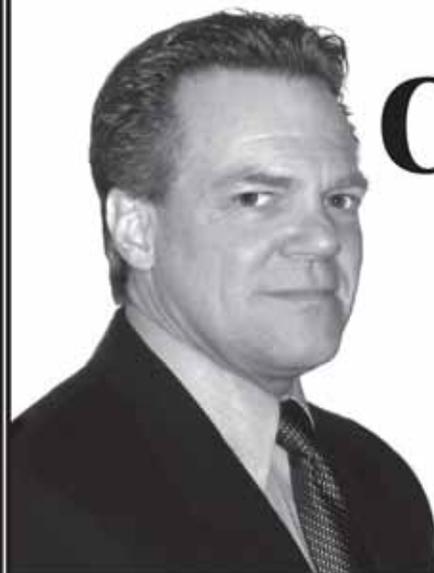


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associated with it. Indeed, the confidentiality aspect of the mediation process can create a major obstacle to enforcing the settlement agreement because the settlement agreement may not be admissible to prove the settlement. Evidence Code section 1119 expressly provides that subject to exceptions "all communications, negotiations or settlement discussions by and between participants in the course of the mediation or mediation consultation shall remain confidential." (Evid. Code, §1119, subd. (c)). Often, this Evidence Code prohibition is called the "mediation privilege." (See, e.g., *Foxgate Homeowners' Ass'n v. Bramalea California* (2001) 26 Cal. 4th 1).

However, Evidence Code section 1123 provides exceptions to the confidentiality of mediation. A written settlement agreement prepared in the course of, during, or pursuant to mediation is admissible if the agreement is signed by the settling parties and any of the following conditions are satisfied:

1. The agreement provides that it is admissible or subject to disclosure or words to that effect (Evid. Code §1123, subd. (a));
2. The agreement provides that it is enforceable or binding or words to that effect (Evid. Code §1123, subd. (b));
3. All parties to the agreement expressly agree in writing or orally in accordance with Evidence Code section 1118 to the disclosure of the settlement agreement (Evid. Code §1123, subd. (c)); or
4. That the agreement is used to show fraud, duress, or illegality that is relevant to the issue in dispute (Evid. Code §1123, subd. (d)).

Oral agreements arising from mediation are admissible in court under certain conditions. The following conditions must be met to have an enforceable oral agreement in mediation:

1. The oral agreement has to be recorded by a court reporter, tape recorder, or other reliable means of sound recording (Evid. Code §1118, subd. (a));
2. The terms of the oral agreement must be recited on the record in the presence of the parties and the mediator, and the parties must express on the record that they agree to the terms recited (Evid. Code §1118, subd. (b));
3. The parties to the oral agreement must expressly state on the record that the agreement is enforceable or binding or words to that effect (Evid. Code §1118, subd. (c)); and
4. The recording must be reduced to writing and the writing must be signed by the parties within 72 hours after it is recorded (Evid. Code §1118, subd. (d)).

If the oral agreement does not meet all the requirements of Evidence Code section 1118, it can still be admissible and subject to disclosure if it has been recorded, the parties have stated their agreement on the record, the agreement is reduced to writing within 72 hours and the parties expressly agree in another writing or oral agreement in accordance with Evidence Code section 1118 to disclosure of the agreement. (Evid. Code § 1124, subd. (c)).

Counsel should be cognizant of other issues regarding settlement agreements arising from mediation as well. For example, where the parties have signed two different versions of the document and counterparts, the courts have held that the contract was uncertain because the parties could not agree upon which term of payment was the appropriate term. (*Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618, 1623-1624.).

Additionally, the issue of who is authorized to waive the confidentiality of the mediation privilege is a procedural one. Signature by counsel waiving the mediation privilege is enough to comply with the requirement of Code of Civil Procedure section 1123 for the admissibility of a mediation agreement. (Evid. Code § 1123, subd. (a)). *Stewart v. Preston Pipeline* illustrates the subtle difference between settlement enforcement under Code of Civil Procedure section 664.6 vs. other procedures.

The plaintiff in *Stewart* was an injured motorist who attended a mediation. The plaintiff ultimately signed a document that indicated that the settlement agreement was intended to be enforceable. However, the defendant did not sign the settlement agreement itself, which was signed only by counsel. Thereafter, the defendant sought to enforce the settlement by way of a motion for summary judgment.

The plaintiff contended that the agreement was not admissible because neither the defendant nor the insurer, as "settling parties," had signed the settlement agreement. The plaintiff's argument was based on the fact that the parties are required to sign the settlement agreement in order to be enforceable under Code of Civil Procedure section 664.6. The court held that the requirement of Evidence Code section 1123 that the written settlement agreement be "signed by the settling parties" does not require that a waiver of mediation confidentiality "be signed by each of the parties litigant, so long as that written waiver is signed by each of the settling parties or their respective counsel." (*Stewart v. Preston Pipeline* (2005) 134 Cal.App.4th 1565, 1579-1584). The court further explained that waiving the mediation privilege was a procedural issue, not a substantive right, and that was something an attorney could do. (*Stewart v. Preston Pipeline* (2005) 134 Cal.App.4th 1565, 1579-1584.).

The plaintiff contended that the settlement was not enforceable because both parties had not signed the agreement. The court held that the requirement of the party specifically signing the settlement agreement is only necessary for Code of Civil Procedure section 664.6. The court further held that the settlement agreement could be enforced in alternative procedures to the expedited procedure of Code of Civil Procedure section 664.6 such as by motion for summary judgment, a separate suit in equity, or an amendment of the pleadings. (*Stewart v. Preston Pipeline* (2005) 134 Cal.App.4th 1565, 1584). The court also explained that just because the party had not signed the settlement agreement did not mean that it was not an enforceable settlement document. The insurance company, which was not opposing the settlement, had authorized its attorney to sign a settlement agreement and therefore the settlement was enforceable. (*Stewart v. Preston Pipeline* (2005) 134 Cal.App.4th 1565, 1584). Counsel should note that had the insurer specifically signed the settlement agreement, and not just the attorney, then the summary procedures of section 664.6 of the Code of Civil Procedure would have been available as a method of enforcing the settlement.

The specific terms of settlement agreements are often overlooked by attorneys. Attorneys take it for granted that the settlement terms will be sufficient. Unfortunately, those overlooked terms could be the ticket to a potential malpractice suit if the settlement falls apart. Making sure that the settlement sticks is just as important as making sure that the settlement occurs. ⚡

Steven G. Mehta is a full-time neutral who resolves complex legal disputes. He can be reached at www.stevemehta.com.



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President's Message, continued from page 3

community focus. We are lucky enough to be in a profession that provides us the opportunity to constantly learn and grow, as laws change and develop. For many of us, we also get the added benefit of earning an income that allows for a comfortable lifestyle. Giving back to the community not only increases the public's respect for lawyers in general, it is also the right thing to do.

Soon, you will receive a solicitation to donate to *Blanket the Homeless*. Established by our bar association in 1995, *Blanket the Homeless* distributes blankets every year to a dozen homeless and battered women shelters, for thousands of individuals. For only \$25, you can help the less fortunate by giving a blanket that allows someone to stay warm at night. The blankets are distributed to various shelters throughout the Valley, including Haven Hills, Los Angeles Family Housing and the San Fernando Valley Mental Health Center. Having a warm place to sleep at night can mean a world of difference to someone living in a shelter or on the streets.

Tonight, as you lay your head down to sleep, think about those who lost their homes in the fires or who are without a home at all. Do the right thing: Give back. ♣

For more information on how you can participate in one of our community programs, contact Liz Post at (818) 227-0490, ext. 101.

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U.S. Bankruptcy Court Central District of California Office of the Clerk

Public Notice Re: Transcript Fee Increase

Effective immediately, the Court has approved the schedule of transcript fees and the addition of a new 14-day transcript delivery category shown below. The new rates and new transcript delivery category were approved by the Judicial Conference of the United States. Transcripts ordered prior to the effective date will be billed at the rates in effect on the date of the request.

PER PAGE MAXIMUM TRANSCRIPT RATES (ALL PARTIES)			
Type of Transcript Request	Original Transcript	First Copy to Each Party	Each Additional Copy to the Same Party
Ordinary Transcript (30 days)	\$3.65	\$0.90	\$0.60
14-Day Transcript	\$4.25	\$0.90	\$0.60
Expedited Transcript (7 day)	\$4.85	\$0.90	\$0.60
Daily Transcript (1 day)	\$6.05	\$1.20	\$0.90

All other fees will remain the same until further notice.

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December Events

Intellectual Property, Entertainment and Internet Law Section

Topic: I.P. Year-End Review

Panel: Mishawn Nolan, Esq. and John Stephens, Esq.
 Date: December 7
 Time: 9:00 a.m.
 Place: SFVBA Conference Room
 21250 Califa Street, Suite 113, Woodland Hills
 Cost: \$25 members prepaid; \$35 at the door
 \$35 non-members prepaid; \$45 at the door
 MCLE: 1 Hour

Probate & Estate Planning Section

Topic: What You Should Know About Life Insurance Trusts in 60 Minutes or Less!

Speaker: Neil Solarz, Esq.
 Date: December 11
 Time: 12:00 noon
 Place: Monterey at Encino Restaurant, Encino
 Cost: \$35 members prepaid; \$45 at the door
 \$45 non-members prepaid; \$55 at the door
 MCLE: 1 Hour

Business Law, Real Property & Bankruptcy Section

Topic: A Night at the Movies

Speaker: Myer Sankary
 Date: December 12
 Time: 6:00 p.m.
 Place: SFVBA Conference Room
 21250 Califa Street, Suite 113, Woodland Hills
 Cost: \$30 members prepaid; \$40 at the door
 \$40 non-members prepaid; \$50 at the door
 MCLE: 1 Hour Elimination of Bias



San Fernando Valley Bar Association

Holiday Open House

Thursday, December 13, 2007
 5:30PM to 7:30PM

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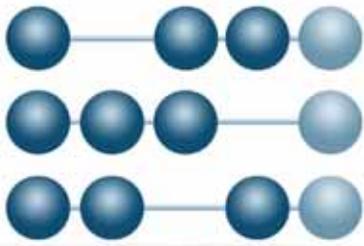
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