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San Fernando Valley Bar Association
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BarNotes

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San Fernando Valley Bar Association

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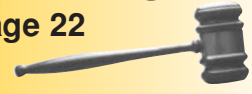


INFORMATION AT YOUR FINGERTIPS

One of the important benefits of membership in the San Fernando Valley Bar Association (SFVBA) is the networking opportunities with other members. One of the ways practitioners have been able to exchange information is through electronic listservs, email discussion groups dedicated to topics of interest.

These listservs allow members who subscribe to a particular listserv to read all messages sent by other subscribers, and reply if desired. When a member sends an email to the list, that email is sent to all list members.

The lists are essentially a way to conduct a conversation with others in your practice area, without having to be in the same place, or online at the same time.

Since October, all SFVBA Sections have set up listservs that allow its members to exchange information with just the click of a mouse. Only members of a particular listserve can send messages to that list, and you must be a member of that section sponsoring the listserv before you can join that list.

"Our members get tremendous value out of our email discussion groups," says SFVBA President Alice Salvo. "These listservs allow members to ask questions of other practitioners and share knowledge and experiences in ways never before possible."

We encourage all members to see what listservs are available and join those that they feel will help their practice. Joining is simple. A list of all the section listservs can be found at http://www.sfvba.org/lawpracticecenter/joinlistserves.htm.

To join a Section, visit http://www.sfvba.org/about/joinsection.htm or call the Bar Offices at (818) 227-0490, ext. 100.

Bar Honors Greenwald at Judges' Night

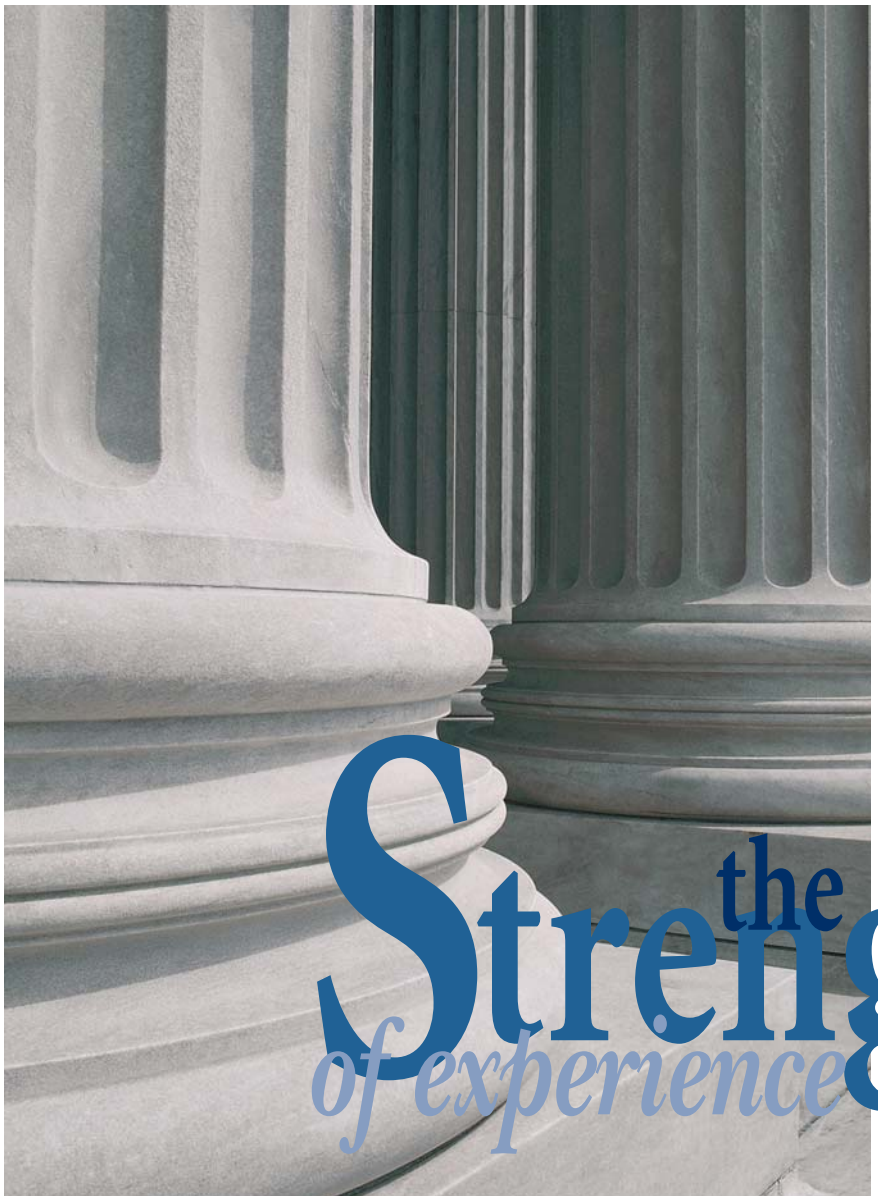
Retiring U.S. Bankruptcy Judge Arthur M. Greenwald will be honored by the San Fernando Valley Bar Association at Judges' Night on February 17. Greenwald will step down in May after sixteen years on the federal Bench.

Greenwald was first appointed to the Bankruptcy Court by the United States Court of Appeals for the Ninth Circuit in 1988. He was reappointed in 2002 for a 14-year term. Prior to his court appointment, he served as Assistant U.S. Attorney for the Central District of California. He is also a Certified Public Accountant. He is a graduate of UCLA and Southwestern School of Law.

SFVBA Immediate Past President James Felton says, "Judge Greenwald took great pains to consider all sides of an issue, and spent considerable time giving all parties an opportunity to present their cases."

Judges' Night will also pay tribute to the SFVBA's Judge of the Year Sandy Kriegler and Judge Aviva Bobb, for her support of the Family Law Limited Scope Representation Program.

Judges' Night will be held on Thursday, February 17, at the Woodland Hills Hilton. The reception begins at 5:00 p.m., followed by dinner and program at 6:00 p.m. Individual tickets are $55 and Sponsor Tables are $550. To purchase tickets, see page 22.



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President's Message

Alice A. Salvo

SO YOU WANT TO BE A JUDGE?

Many of us have dreamed about becoming a Judge. What's not to like? A steady pay check? An annual income of $144,000 with benefits? Regular hours Monday to Friday? Not working evenings and weekends? Not worrying about Accounts Receivables? Always winning?

Those of us who regularly appear in court or have contact with the Judges know that sitting on the bench is a rewarding career option. So, I thought you may be interested in a little background on Judgeships and some guidelines for becoming a Judge.

At the recent retirement party for Judge Thomas Stoever, Judge Gary Klausner likened being a judge to living life. First you start out in Juvenile or Dependency Court. If you are unlucky, you end up in a Mental Health Court. Then you may end up in Civil Court. If you are really lucky before you retire you may end up in Probate Court.

When our jurists refer to the "old system" or "old days" they mean prior to the consolidation of the Municipal and Superior Courts. In the "old days", most were appointed to Municipal Court and worked their way up the ladder to Superior Court and to felony or civil assignments in a courthouse located near their home. With consolidation, the "new system", all appointees start in Superior Court and take whatever assignments are available. Many of the current Judges with years of service in choice assignments are doing a great job and are not going to be replaced with a new Judge. Under the "old system" it could take two years for a choice appointment;

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Knowledge Provides Key To Success

Michele C. Morley, LRIS Director

Recently LRIS staff had a training session with attorney James McNamara and Kenneth Naghigian about the procedures followed in Children's Court. Those of you who have worked with Gayle and Rosie know that they want to be knowledgeable so they can be accurate in how they screen and refer cases. When you are called about a referral, I know that many of the LRIS panel attorneys spend time educating LRIS staff about legal issues and procedures. We appreciate attorneys providing this continuing education for LRIS staff.

On January 11, we participated in the San Fernando Valley and Conejo Valley Legal Secretaries Associations' meeting with the Los Angeles County Court Administrators. Gayle was our representative for the evening. We distributed our popular U.S. Constitution booklets and LRIS posters. These attractive posters will be appearing in break rooms at law offices to remind attorneys and staff to think of the SFVBA/LRIS when needing to refer a client outside the firm. Contact me if you would like a poster.

In the first three months of this fiscal year we have made 103 more referrals than last year during the same time period. In some of these months we have broken past monthly referral records. We anticipate that this is an indication of how productive we all will be in 2005.

This is Black History month and the recent death and remembrance of Shirley Chisholm led me to remember her and also Barbara Jordan. Chisholm, an educator and politician, was the first Black woman elected to Congress. This was in 1968, yes 1968! In 1972 she seriously campaigned for President of the U.S. and she was the first Black woman to run for that position.

Barbara Jordan, a lawyer and politician was the first Black woman elected to the Texas Senate in 1966 and the first Black to serve in that body since 1883. Then in 1972 she became the first Black woman to represent a previously Confederate state in Congress. In 1976 she was the first Black selected to keynote a major political convention.

While I have emphasized the word "first", neither of these women would have done that. In fact, Shirley Chisholm actually said she did not want to be remembered as the "first…I want to be remembered as a woman who fought for change in the Twentieth century. That's what I want."

Those who speak to persuade and teach understand the power that is present in the voice and words coming from a motivated and passionate speaker. These women were such speakers.

What I remember about each was the dignity that never deserted them. They carried themselves with dignity, they spoke with dignity and they most wanted to let others have the opportunity for dignity in their lives. Both of these women had dignity that shone from their eyes, lit their faces, and guided many of us towards public service in the law, teaching and similar professions.

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Notice To Attorneys

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Effective January 1, 2005, an additional $2 will be charged for the first-paper filing fees for Civil, Family and Probate actions, and for the filing of an appeal and the respondent's first paper in an appeal in Limited Civil.

The $2 increase is in compliance with a Los Angeles County Board of Supervisors' Resolution on October 26, 2004, approving an increase in law library fees. Filing window clerks will be charging the additional $2 beginning January 3, 2005.

A revised schedule of the filing fees will be posted January 2, 2005, on the Court's Web site at and will be available at the clerk's office in each court location accepting civil, probate, or family law filings.

For further information, contact Central Civil Operations at (213) 893-2169.

LOS ANGELES SUPERIOR COURT ANNOUNCES NEW JUDICIAL LEADERSHIP

The Los Angeles Superior Court announced its regular changes in judicial leadership, effective January 1, 2005. Judge William A. MacLaughlin becomes Presiding Judge and Judge J. Stephen Czuleger is the new Assistant Presiding Judge. Both will serve two year terms.

Judge MacLaughlin, who has served as assistant presiding judge since 2003, will lead the nation's largest trial court system, with 583 judicial officers. He will oversee the operations of 52 court facilities.

MacLaughlin, 69, has served as a member of the California Judicial Council, a post he relinquished to Judge Czuleger effective November 1. MacLaughlin has also served on the Judicial Branch Budget Advisory Committee. He has held both criminal and civil assignments in his court career.

For six years, he was supervising judge of the North Valley District, based in San Fernando. He was chair of the Court's Personnel and Budget Committee and a member of the Book of Approved Jury Instructions Committee.

MacLaughlin was honored as trial judge of the year, 2002, by the Consumer Attorneys Association of Los Angeles. He was also honored as judge of the year 1997 from San Fernando Valley Bar Association. He received additional honors from the Los Angeles Chapter of American Board of the Trial Advocates in 1998.

Gov. Pete Wilson appointed MacLaughlin in 1992. The appointment came after MacLaughlin's 31 years of experience as a civil litigator. He specialized in personal injury, business, construction and environmental litigation. He received both his Bachelor of Arts and juris doctor at Yale University.

Czuleger, 53, was appointed to Los Angeles Superior Court by Gov. George Deukmejian in 1990. He is currently assistant supervising judge of the civil department and a member of the Court's Executive Committee. He became a member of the California Judicial Council on November 1.

He has served both criminal and civil assignments, beginning in 1988 when he was appointed to the Los Angeles Municipal Court by Gov. Deukmejian. California's municipal and superior courts merged in 2000. Czuleger received his bachelor of science from the University of Santa Clara, and his juris doctor from Loyola Law School.

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Santa Clarita Valley Bar: The Beat Goes On

BY L. ROB WERNER, SCVBA PRESIDENT

By now the madness and merriment of the holiday season has passed and that rain that seemed unremitting in December and early January has given some way to the more typical February short days and cold nights that we all seem to put up with in anticipation of spring.

Yet the beat goes on. As part of survival we are all settled back into our respective routines. Even organizations must move forward to survive.

In January the SCVBA put on a one hour MCLE program, "Outsourcing Your Staffing Needs."

Our February meeting will also offer one hour MCLE credit. The February meeting is scheduled for our traditional meeting time, the third Thursday of the month. It will be on Thursday, February 17 at the Valencia Country Club, 27330 North Tourney Road . The anticipated program will be "Writs and Appeals: an underutilized tool that can help your clients." Check-in and networking are at 6:00 p.m., dinner and the program begin at 6:30. Reservations for the program and dinner may be made via the SFVBA by calling (818) 227-0490, ext. 105. Reservations are $40 for members and $45 for non-members who pay by February 14. Payment at the door is $50.

Shortly after our inception our association decided to have its own logo. We liked the idea of putting a personal seal on our documents and letters. We decided to have a contest and offered a scholarship to the winner. We announced the program to the local schools. We are happy to announce that we have received several submissions. They are outstanding. It's amazing what computer savvy kids can do with graphic art. We're still in the process of selecting a winner and adopting our logo. Hopefully you all will be able to see the Santa Clarita Valley Bar Association's logo in the March issue of Bar Notes.

We still would like to plan a retreat up in Big Bear. We would like to utilize the occasion to do some planning, training, socializing, skiing and sledding. Do you have a vacation home in Big Bear? Would you be willing to let us or anyone of our members utilize the home in some fashion? If this event goes forward, we will probably have some members staying in hotels or motels or other member's homes. We may arrange a local meeting place or the utilization of one of the residences for meetings. This could be a lot of fun but to put it all together we need some help. Please let me know if you would like to participate in this event.

We're still in the initial planning stages of putting on a "Law Appreciation Day" in May. This day would be utilized to recognize law enforcement, an attorney's community service, a debate contest and local heroes. If you would like to help - please get on board and call or email us.

Often lawyers have something newsworthy to say. So remember we have a weekly article published in our local newspaper, *The Signal*. Articles should be related to law and not just self promotional. They need to be between 500 and 700 words long. If you're interested, submit your work to John Shaffery at jshaffery@pooleshaffery.com. The SCVBA has its email box at santaclaritavalleybar@yahoo.com. We utilize this box to send announcements and notices out about our meetings, events and include inquires. We would like to expand the list to include all attorneys who live or work in the Santa Clarita Valley. So if you know someone who is not yet getting our emails, please let us know.

If you have any suggestions or want to make contact with us you may do so via our email box or by emailing me directly at lrobwerner@yahoo.com or by calling me at 1-800-R-LAWYER.

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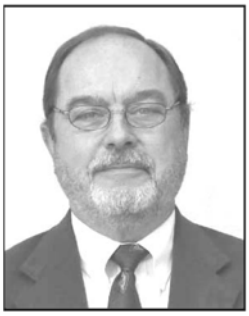

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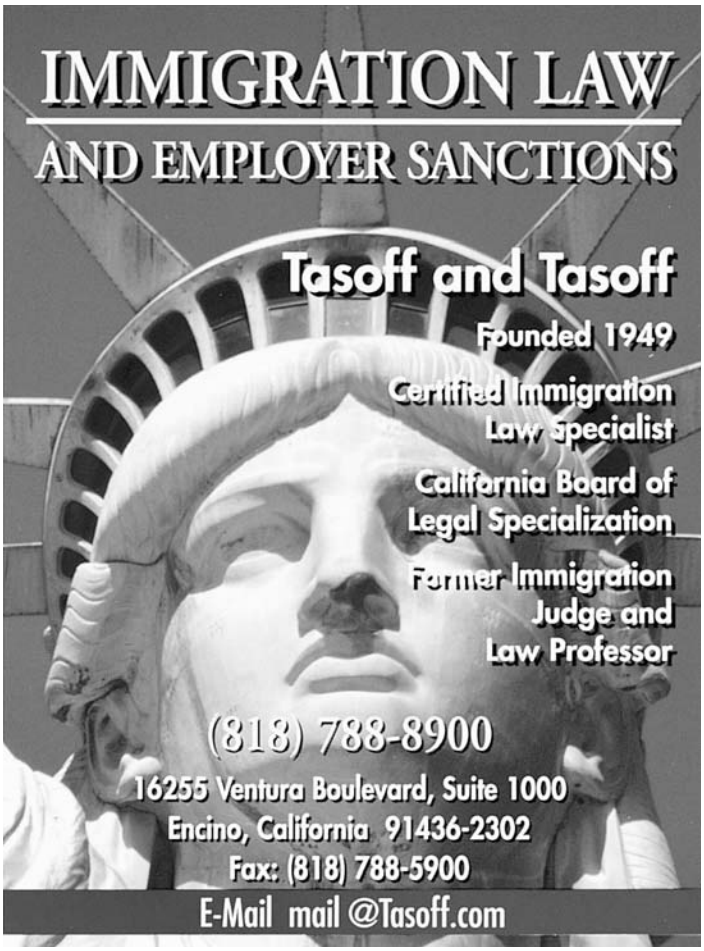

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A Refusal to Mediate Thwarts the Prevailing Party's Right to Recover Attorney's Fees

BY ALAN G. SALER

Mediation is a highly favored and expedient form of resolving virtually any kind of dispute. More and more, California courts are issuing orders and rulings that encourage litigants to resort to the mediation process as early as possible to avoid the expenditure of significant attorney's fees and costs.

Written contracts frequently include provisions requiring the parties to mediate disagreements. One ubiquitous example is California's standard form residential real estate purchase agreement. It includes a provision requiring a buyer or seller to attempt to mediate before initiating litigation, or forfeit their right to attorney's fees even if they prevail. A recently added clause goes further and makes the requirement reciprocal by providing that a party, who refuses a request to mediate, made before the other side commences a civil action, is also barred from later recovering attorney's fees. In a recently published decision that is the first to consider this new clause, a three-judge panel of the 4th District Court of Appeal has unanimously reversed a significant attorney's fees award because the prevailing party refused a request to mediate. *Frei v. Davey* 2004 DJDAR 15051 (Cal.App. Dec. 17, 2004.)

In a ringing endorsement for mediation, Justice Richard D. Fybel described the case as a "graphic illustration" and "a textbook example of why an agreement for attorneys fees conditioned on participation in mediation should be enforced." The parties in *Freis* had spent hundreds of thousands of dollars on trials and appeals of a case where at an "early stage . . . [they] were only $18,540, plus expenses apart in their settlement positions."

The dispute arose from the Freis attempt to buy the Daveys' home. They made a written offer to purchase, and the Daveys submitted a written counteroffer, which the Freis accepted. Thereafter, the Daveys cancelled the purchase agreement and the Freis sued for specific performance. Before filing their lawsuit, the Freis' attorney wrote the Daveys demanding they agree to mediate. The Daveys received this correspondence but did not respond. Shortly after serving process, the Freis' attorney sent the Daveys another letter which asked them to promptly advise him if they wished to mediate. The Daveys retained counsel who soon told the Freis' attorney that his clients were not interested in mediating the dispute. Approximately a month later, he telephoned the Fries' lawyer to inform him that he had recommended mediation but had been unable to persuade the Daveys to agree to participate.

Following a bench trial, the court granted the Freis specific performance and the Daveys appealed. In an unpublished opinion, the appellate court reversed and directed the trial court to enter judgment in the Daveys' favor. The Daveys filed two motions for attorney's fees, one for the fees they incurred on appeal and the other to recover the fees they expended on the trial court proceedings. They relied on paragraph 22 of the standard form residential purchase agreement, which reads: "In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled

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President's message. Continued from pg. 3

under the "new system", it could take years. Remember, the assignments are made for the good of the court, not the Judge.

There is a learning curve on becoming a skilled Judge, especially if the assignment is in a field the Judge never practiced as an attorney. Starting out in a less sought after assignment affords the new appointee with an opportunity to develop his or her skills. It also may enable the new appointee to obtain a choice assignment in a shorter period of time.

There are two ways to become a Judge - being elected or being appointed by the governor. The first step is submitting an application. Applications can be obtained by calling the judicial appointment coordinator in the governor's office at (916) 324-7039 or by going online to www.governor.ca.gov/state/govsite/gov_homepage.jsp.

Once your application has been submitted, there is an elaborate screening process. It could take up to 6 months to process. The screening committees are looking for a variety of diverse backgrounds: ethnic, geographic, practice, gender, and trial court experience. The committees rate the applicants or those running for office as unqualified, qualified, well qualified, and exceptionally well qualified.

While our local Judges extol the advantages of being a Judge and enjoy their jobs, they are quick to point out some drawbacks, such as dissatisfaction at earning less than other government lawyers and those in private corporate practice; starting out in a location far from home; under utilization of their skills from private practice; and waiting for years for a choice appointment.

The Judges I spoke to in preparing this article encouraged me to advise our membership that there is always a need for qualified Judges. If you are so inclined, please apply.

How would you like to have dinner with a Judge and ask him/her questions about being a Judge? How would you like an opportunity to speak to a Judge in a social setting and casually seek information? On February 17, 2005, the SFVBA is holding its annual Judge of Year event at the Woodland Hills Hilton honoring Judge Sandy Kriegler as our 2005 Judge of the Year and recognizing Judge Aviva Bobb's support of the SFVBA' Family Law Limited Scope Representation pilot program.

Alice can be contacted at (818) 887-3333 or by email at salvolaw@pacbell.net.

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Labor Code Sections 2699.3 and 2699.5 Traps for the Weary and a Burden to All

BY KARL GERBER

The amendments to the California Labor Code, via Sections 2699.3 and 2699.5, create a notice trap for the unwary, and costly waiting periods. These new sections were enacted in response to California Labor Code Section 2699 which was enacted soon before its amendment. Section 2699 enables plaintiffs to file non-class action lawsuits on behalf of similarly aggrieved employees, against employers violating the Labor Code. It also gives employees penalties for any violation of the Labor Code not specifically allowing the employee penalties, California Labor Code Section 2699(a), (e), (f).

Labor Code Sections 2699.3 and 2699.5 make filing virtually any non-worker's compensation claim under the Labor Code 2699, seeking 2699 penalties or proceeding on behalf of similarly situated employees, onerous. These sections create the most complex exhaustation of administrative remedy scheme in employment law, and the longest wait times before a lawsuit can be filed. In other words, employees bringing lawsuits on behalf of similarly situated employees, or seeking penalties under 2699(a) or (f) because the Labor Code that was violated does not provide direct compensation to the employee, must go through the new exhaustation scheme. These new exhaustation requirements applicable to violations under each of the Labor Code sections listed in Labor Code Section 2699.5 which include most Labor Code sections through 3095, and then 6300 and higher, California Labor Code Section 2699.3(a).

In order to comply with these new exhaustation requirements, an initial written notice must be given by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of the Labor Code being violated, Labor Code Section 2699.3(a)(1). The Labor Commission presently has two forms available for this purpose. One is primarily geared towards violations of wage and hour laws, and the other at discriminatory theories and violations of California Labor Code Section 1102.5. In a complex case, or a potential class action, a wise practitioner should include an attachment further specifying the numbers of people involved, and their potential damages.

Once the initial certified letter goes out from the employee, the Workforce Division has 30 days from the postmarked date of the notice to advise whether it will investigate, California Labor Code Section 2699.3(a)(2)(A). If there is no notice within 33 days of the postmarked notice of the employee's certified mail of the Workforce Division's intent to investigate, the employee may commence a civil lawsuit.

If the Workforce Division intends to investigate the alleged violation, and it notifies the employee or repre-

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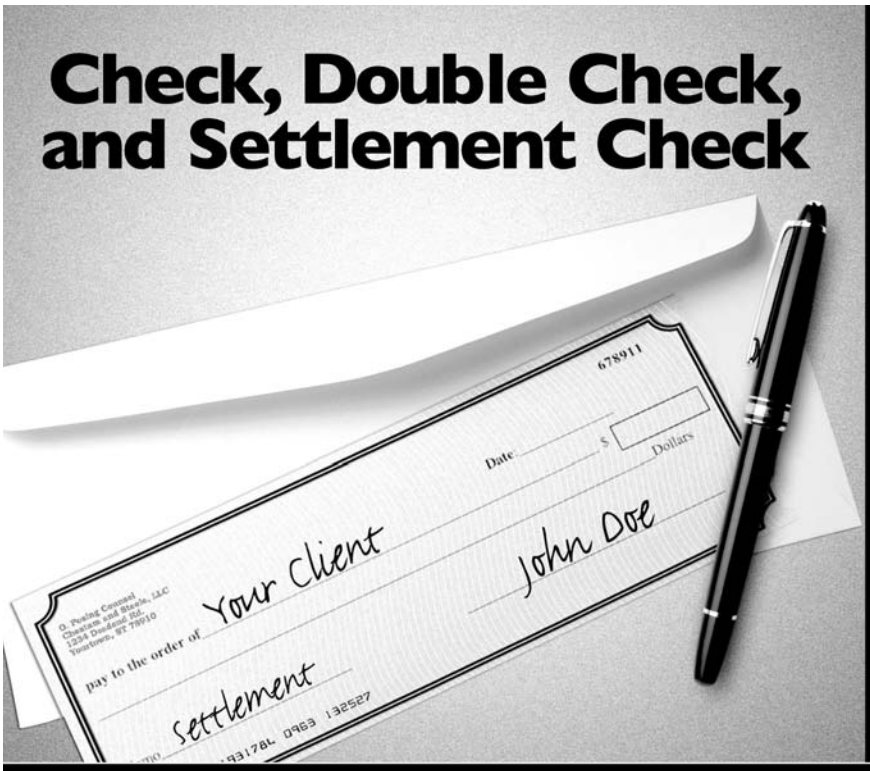

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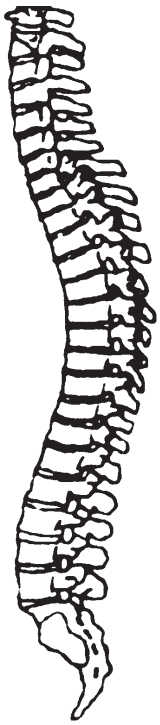

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A Refusal, continued from page 9

to reasonable attorney's fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 17A." The court granted both motions and awarded the Daveys more than $150,000 in fees. This time the Freis appealed.

The Court of Appeal first determined that there was a legal basis for awarding attorney's fees because the complaint for specific performance arose out of the Agreement and the Daveys had prevailed in the trial court. But awarding attorney's fees remained contingent on the Daveys' compliance with the recently modified mediation provision in paragraph 17A. It reads, in part: "If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action." (Emphasis added.)

In awarding fees, the trial court had found that the Davey's had not refused to mediate. The Freis Court strongly disagreed. It ruled that the trial judge had abused his discretion because there was no substantial evidence to support his finding. The Justices concluded the Daveys' course of conduct constituted a refusal of the Freis' request to mediate.

The Daveys' failed to persuade the Court of Appeal that any of their perceived excuses were valid. They argued that the initial request to mediate was ineffective because the letter from the Freis' counsel was "sandwiched between" threats. The court recognized that in the "real world lawyers' letters often contain arguments to support their clients' positions and demands."

Next, the Daveys argued that they had "substantially complied." Justice Fybel disagreed, reasoning that settlement negotiations between the parties or their counsel are not mediation. To contrast the two, he described mediation's significant benefits. "In mediation, a neutral third party analyzes the strengths and weaknesses of each party's case, works through the economics of litigation with the parties, and otherwise assists in attempting to reach a compromise resolution of the dispute." See *Leamon v. Krajkiewcz* (2003) 107 Cal.App.4th 424, 433.

Similarly, the court rejected the notion that a party is excused from mediating based on their perception that negotiations will not likely succeed. Once again the court espoused the advantages of mediating: "A mediator's explanation of the process and estimate of likely expenses, which would have taken place before or shortly after the litigation began, could have permitted the parties, in their own self-interest, to reach a compromise agreement."

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A Refusal, continued from page 13

The Agreement's mediation clause does not specify a time deadline for responding to a request for mediation. The Freis court held that a party must respond within a reasonable time and determined the Daveys had waited too long.

Relying on the fact that they had participated in mediation shortly before the initial trial date, the Daveys argued that they should at least recover the attorney's fees they subsequently incurred. The Court of Appeal dismissed this position on the grounds that paragraph 17A is an "all or nothing" provision. Justice Fybel also speculated that the mediation was "unsuccessful precisely because, by then, the parties had by then invested so much money in attorney's fees and their positions had become entrenched."

Finally, relying on the Safe Harbor provisions in paragraph 17C, the panel rejected the Daveys' argument that the Freis had nullified the mediation provisions when they filed suit to enable them to record a lis pendens against the property. Paragraph 17C specifically excludes this and other forms of provisional relief from the Agreement's mediation and arbitration requirements.

What are some of the lessons the *Freis* decision teaches? Obviously, it emphasizes the need to scrupulously comply with written mediation provisions. But the decision's admonishments have far wider application. The courts today are far more unlikely to reward parties who expend considerable attorney's fees rather than take advantage of the mediation process. Trial judges are trending toward much greater scrutiny of attorney's fees requests, especially when the moving party has failed to engage in alternative dispute resolution.

Residential real estate and condominium association claims, and other types of disputes that are charged with considerable emotion, are ideal for mediating as early as possible; in many instances, counsel should urge their clients to mediate before resorting to a lawsuit, whether or not mediation is contractually required. Mediation is ideal for diffusing heated emotions and petty bickering, and more often than not bridging gaps in positions that initially seem miles apart.

Mediation also allows for something the judicial process typically does not. Sometimes disputes are motivated by underlying interests that have little or nothing to do with economics. A skilled mediator can greatly assist the parties and their counsel in crafting creative solutions to such problems thereby leading to a resolution.

Once litigation is commenced, these types of lawsuits have a tendency to take on a life of their own and are all too often driven by attorney's fees and costs that far exceed the value of the claim or the merits of a defense. The parties initial enthusiasm for victory through the litigation process is far too often dampened once they discover, frequently too late, that they are trapped in a lawsuit that they can ill afford to fund. This can be dangerous territory for a lawyer who now has to deal with the potential wrath of a disgruntled client.

The *Freis* decision presents attorneys with an additional means of persuading clients to engage in mediation by demonstrating the sometimes dire consequences of failing to do so, including today's enormous expense of litigating a Superior Court action. A mediator can assist the attorney in counseling the unrealistic client. Using the mediator to deliver bad news and deflate the client's expectations avoids creating the unwanted perception that their advocate is not on their side. This too, is a valuable and overlooked benefit that an effective mediator provides.

Alan G. Saler is an independent mediator in Los Angeles. He specializes in mediating employment, legal malpractice, personal injury, and real estate related disputes. He can be contacted at alansaler@covad.net.

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sentative by certified mail of this decision within 33 days of the postmarked date of the employee sending their notice, the agency has 120 days to investigate, California Labor Code Section 2699.3(a)(2)(B). If the agency is unable to reach a resolution, or issue a citation within 120 days of its notification of intent to investigate, it loses jurisdiction and a lawsuit may be filed. The agency also loses jurisdiction if it fails to comply with these complex statutory notice requirements including having to notify the employer within 5 days business days, by certified mail, of its decision to issue a citation, Id.

Anticipating that the lengthy exhaustation period could stall the filing of a lawsuit in 2699 remedies were only part of the lawsuit, Section 2699.3(a)(2)(C) allows a plaintiff a right to amend an existing complaint to add a cause of action arising under 2699 within 60 days of "the time periods specified in this part," Id. What the time periods specified in this part means is a bit vague given all of the time periods specified in 2699.3.

Section 2699.3(b) specifies a different exhaustation scheme if there is a violation of Labor Code sections commencing with 6300 (otherwise referred to as health and safety Labor Code Sections) filed to obtain the benefits of Labor Code Sections 2699(a) and (f) allowing penalties where not otherwise specified or allowed and permitting similarly situated plaintiffs to be added to the case. Under this scheme, the employee or representative must give notice by certified mail to the Division of Occupational Safety and Health, Section 2699.3(b). If the Division issues a citation, the employee may not commence an action pursuant to 2699, Id.

In circumstances involving violations commencing with Section 6300, it is not clear how long the employee has to wait to find out if the Division is going to investigate, or issue a citation. Section 2699.3(b)(2)(ii) specifies that "[i]f by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision the employee may challenge that decision in the superior court. Labor Code Section 6317 merely states that the Division shall issue citations with "reasonable promptness."

No time is specified as to how long the Division has to investigate, or what reasonable promptness means. However, Section 6317(2) states citations cannot be issued for violations that occurred more than 6 months before the issuance of the citation. Does this mean the Division has 6 months to investigate? Although Section 2699(b)(2)(A)(ii) mentions Section 6317, Section 2699(b)(2)(A)(iv)(B) mentions Section 6309. That provision states that if the Division receives a complaint from an employee or representative of an employee, the Division must investigate the complaint within 3 working days of the complaint if a serious violation is alleged, and 14 calendar days after receipt of the complaint of non-serious violations. Arguably, these are the waiting periods after notifying the Division of violations commencing with Section 6300.

Additional hurdles to utilizing 2699 for violations commencing with 6300 are found in Labor Code Section 2699.3c. The employer may cure the violations within 33 days of the post mark of the notice sent by the employee, California Labor Code Section

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Labor Codes, continued from page 17

2699.3c(2)(A). The employee can only file suit if at the end of the 33 day period he sends a second certified letter to the agency and employer specifying why the employee does not believe there was a cure. The agency may grant the employer another 3 days to cure. Only if the agency determines there has not been a cure, fails to provide timely notice or any notice, or the employee believes there has not been a cure after all of these time frames may the employee file a lawsuit. Sections 2699.3c(2)(A) and 2699.3c(3) essentially give the employer 50-52 days to cure and prevent the filing of a lawsuit for that amount of time. This time frame is at odds with the time frames provided in Section 2699(b).

Adding further confusion to how long an employee has to wait when utilizing 2699 due to violations of 6300 and higher, Labor Code Section 2699c(2)(B) states no employer can avail himself or herself to the cure provision more than three times in a 12 month period for the same violation contained in the notice. Thus, if the employer has cured the same violations 3 times in the last 12 months, the cure provisions in Section 2699(c) do not apply. In order to find this out, the employee will probably have to obtain records from the Division, and that will take time. If the Division is in the process of citing the employer for a violation, that information will not yet be available.

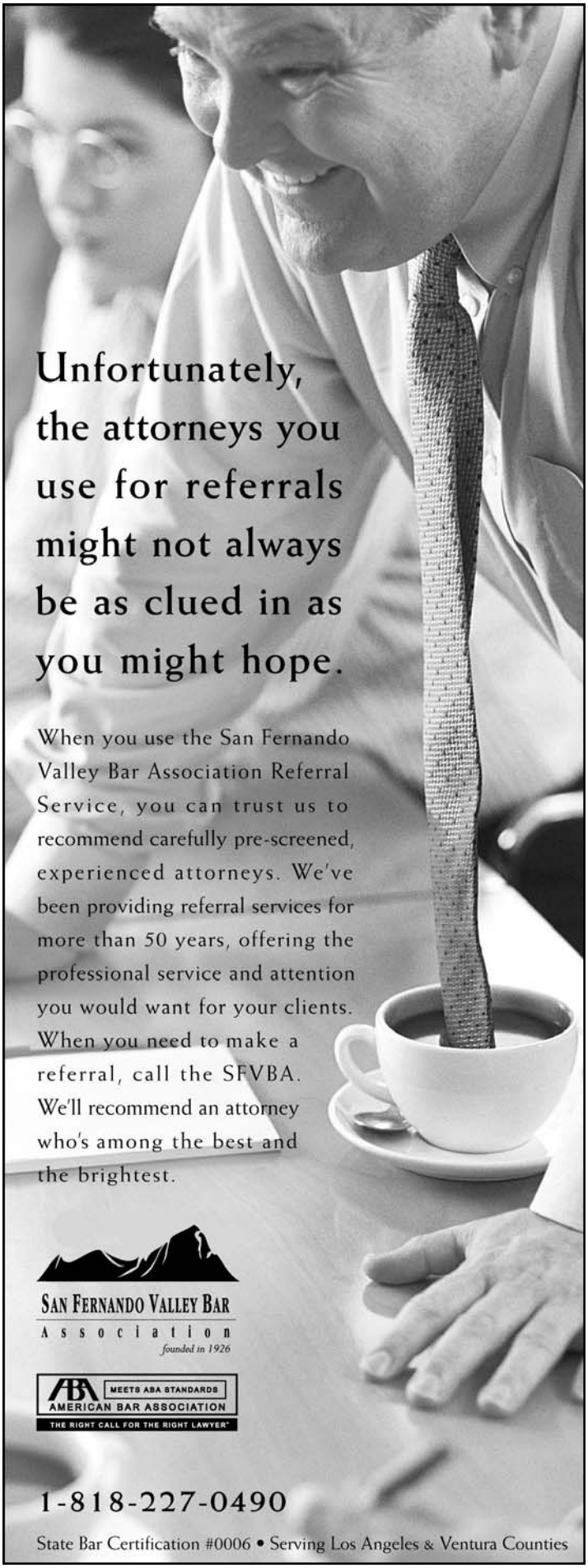
The legislature should eliminate these exhaustation requirements. The Labor Commission was allotted minimal funds to investigate all of these new claims that have to be exhausted. Their limited resources are further drained sending out storms of certified letters stating they received a complaint, or will not be investigating. It is unlikely that the Workforce Division can cause a resolution, if a hearing is required, within 120 or 158 days. Nor is it likely they will be able to resolve 2699 claims alleging violations of numerous pay periods, or actions on behalf of large numbers of similarly situated employees. Cases will only partially make their way through the Workforce Division in 120-158 days which will waste precious resources.

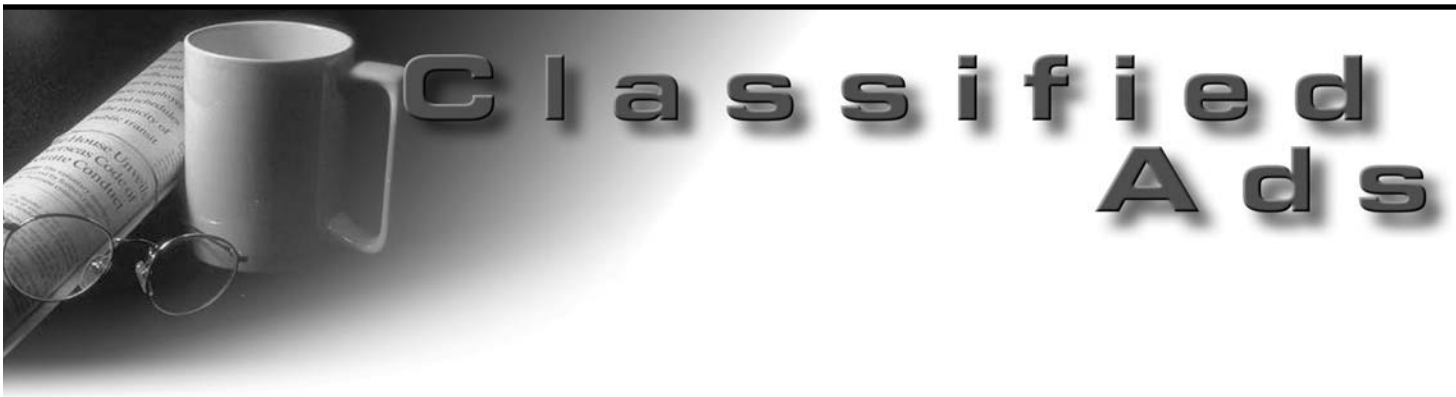
Commonly, employment cases will start out as discrimination or wrongful termination cases that months later are amended to allege 2699 remedies. The latent amendments may require latent reassignments to a classification of complex litigation. Courts will be burdened with motions to extend cut-off dates and trial dates issued prior to behemoth amendment by right 2699 claims alleging damages, claims, and aggrieved numbers of employees far greater than what was alleged before the amendment by right.

Legitimately aggrieved employees are harmed by having to wait months to get their cases going in court. Employers are harmed by having to defend these cases partially at the Labor Commission, partially in court, and having to list these claims in their accountings for long periods of time while they meander through the system.

Finally, sections 2699.3 and 2695 were not well drafted. Confusion exists as to the waiting time before health and safety violation lawsuits can be filed. There are also far too many sub-sections, relations to other statutes, and needs to check and calendar post marked dates. At the very least, these amendments should be better written.

Karl Gerber is the managing partner of Danz & Gerber, a statewide firm representing employees in labor matters. He can be contacted at kgerber@danz-gerber.com.





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Perhaps you will think of us in fond terms when you receive your dividend check during the December holidays . . . especially since it represents our best mutual efforts!

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- Take a limo to work for a month or two?
- Escape to Tahoe? Cancun?
- Give it to your favorite charity?
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— or —

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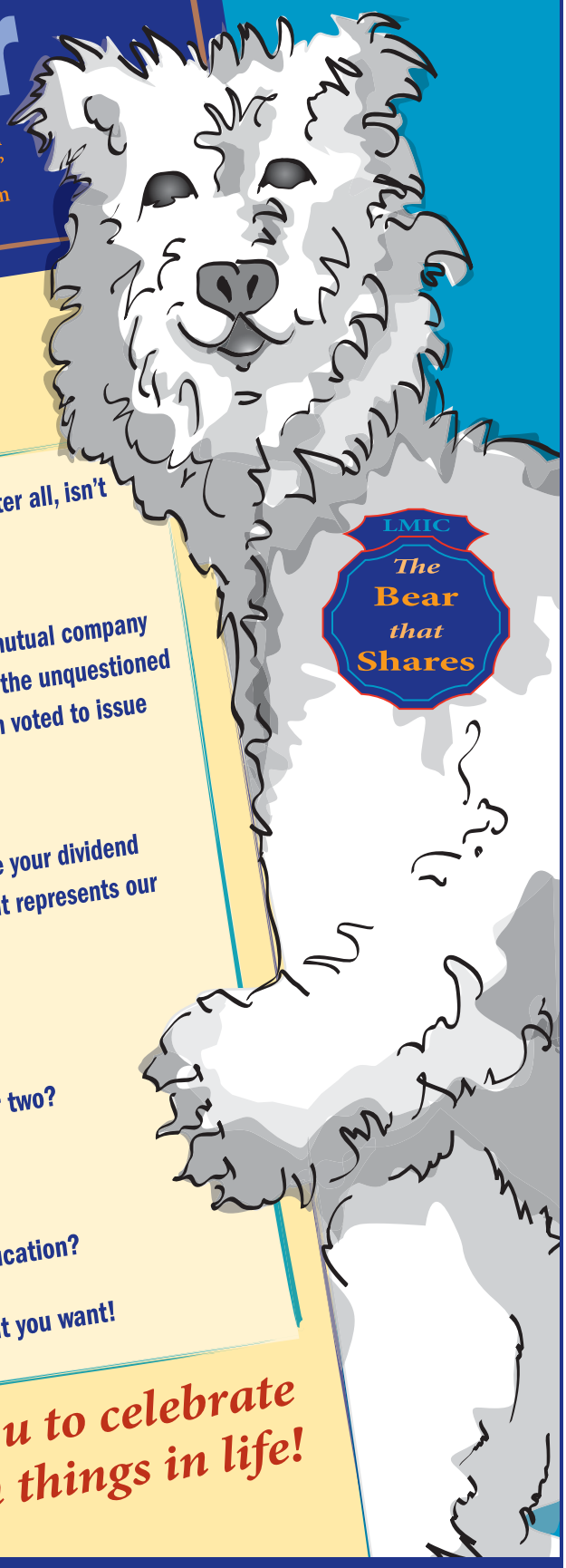

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*Policyholders who paid premium during the 12 month period prior to November 1, 2003 for all members of record as of November 1, 2004.

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2005 SFVBA JUDGE OF THE YEAR

TO **HONORABLE SANDY KRIEGLER**

LOS ANGELES SUPERIOR COURT NORTHWEST JUDICIAL DISTRICT

WITH SPECIAL RECOGNITION TO

JUDGE AVIVA BOBB

LOS ANGELES SUPERIOR COURT

FOR HER SUPPORT OF THE FAMILY LAW

LIMITED SCOPE REPRESENTATION PROGRAM

AND **JUDGE ARTHUR GREENWALD**

UPON HIS RETIREMENT FROM THE UNITED STATES BANKRUPTCY COURT

Thursday, February 17, 2005 • Woodland Hills Hilton Hotel
6360 Canoga Avenue, Woodland Hills
5:00 p.m. Reception • 6:00 p.m. Dinner and Program

Please return with payment by **February 11, 2005** to:
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For additional information call (818) 227-0490 ext 105.

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Please reserve

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*Please allow two seats for judicial officers.
Attach a list of names of your guests.

We accept Visa, MasterCard, American Express and Discover

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February Events

Probate & Estate Planning Section

Topic: **Legislative Update**
Speaker: James Birnberg
Date: February 8
Time: 12:00 Noon
Place: Encino Glen Restaurant, Encino
Cost: $30 members prepaid; $35 at the door
$35 non-members prepaid; $40 at the door
MCLE: 1 Hour

ADR Section

Topic: **Getting the Most Out of Your Court Mediations**
Speaker: Judge Alex Williams
Date: February 9
Time: 6:00 p.m.
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

New Lawyers Section

Topic: **How to Grow Your Client Base through Networking: Building Relationships to Build Net Worth**
Speaker: Rhonda Sher, author of the Two Minute Networker
Date: February 15
Time: 12:00 p.m.
Place: SFVBA Conference Room, Woodland Hills
Cost: $15 members prepaid; $20 at the door
$20 non-members prepaid; $25 at the door

Workers' Compensation Section

Topic: **The New Rating Schedule**
Speaker: T. Blair Megowan, WC Manager, Disability Evaluation Unit
Date: February 16
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

Intellectual Property, Entertainment Law & Internet Law Section

Topic: **Update on Patent Law in the New Year**
Speaker: Michael Brooks, Esq.
Date: February 18
Time: 8:30 a.m.
Place: Michelman & Robinson, LLP, Encino
Cost: $10 members prepaid; $15 at the door
$15 non-members prepaid; $20 at the door
MCLE: 1 Hour

Litigation Section and Business Law, Real Property, Employment Law & Bankruptcy Section

Topic: **Show Me the Money: Judgment Debtor Exams, a Practical Demonstration**
Panel: Steven Fox, Esq. and Robert Flagg, Esq.
Date: February 24
Time: 6:00 p.m. Dinner and Program
Place: SFVBA Conference Room, Woodland Hills
Cost: $30 members prepaid; $35 at the door
$35 non-members prepaid; $40 at the door
MCLE: 2 Hours

Family Law Section

Topic: **How to Value a Business after Iredale**
Speakers: Commr. Michael Convey; Michael Krycler, CPA and Fred Warsavsky
Date: February 28
Time: 5:30 p.m.
Place: Encino Glen Restaurant, Encino
Cost: $40 members prepaid; $45 at the door
$45 non-members prepaid; $50 at the door
MCLE: 1 Hour

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Food and beverages served at every MCLE event!

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

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