



# BarNotes

A Publication of the  
San Fernando Valley Bar Association

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## MEMBERS BENEFIT WHEN THEY USE SFVBA MEMBER BENEFITS

### BAR OFFERING PROVIDE VALUE, CONVENIENCE, QUALITY

“Show the members the money!” is a popular refrain around the San Fernando Valley Bar Association offices. The Bar is committed to constantly pushing the envelope in the area of member benefits, and the spring of 2007 is the perfect time for members to recommit themselves and their practices to making the most out of a wide array of new options the Bar will be unveiling.

Benefits include an extensive print membership directory, 401K plan through the American Bar Association, and malpractice insurance plans. According to Bar Trustee Jonathan Arnold, these are among the most requested programs from members.

“We are constantly reviewing what other bars are offering and comparing that to how our members are practicing law,” Arnold says.

A print directory with a lawyer-to-lawyer, legal support services and expert witness guides will be mailed to members in July. An online membership directory is already available to members through the Bar’s web site at [www.SFVBA.org](http://www.SFVBA.org).

The online membership directory can only be accessed by Bar members. Log-in and account set-up can be accomplished through the web site in only a few minutes. The directory is searchable by name as well as by firm.

“The membership directory will go a long way towards strengthening the Valley’s legal practitioners’ sense of community,” Arnold, who practices in Encino, says.

The Bar hasn’t stopped with publishing a membership directory, however. It has looked long into the future, and partnered with the American Bar Association to offer a 401K plan specifically tailored to Bar members’ needs.

“We are especially proud of our retirement account offerings,” Bar Executive Director Liz Post says. “This has been a very popular program in all of the markets that we studied.”

Established by the ABA in 1966, the ABA Retirement Funds program provides full service, cost-effective retirement plan solutions to law firms of all sizes. The 401k plan is administered by CitiStreet,

one of the nation’s largest retirement plan administrators. The program offers Retirement Date Funds that regularly re-balance assets based on selected target retirement dates. For more information about this program, contact Plan Consultant Patrick Conlon at (617) 376-9326.

“We are hoping that law firms in the Valley, especially the smaller firms, take advantage of the sophisticated support provided by the program,” Arnold says.

And the Bar knows that practitioners are always looking for insurance products that meet their practice needs. So a new malpractice insurance program is being put in place.

Marsh Affinity Group Services has been selected as the broker to provide affordable malpractice insurance access exclusively to Bar members. Marsh Affinity is one of the largest association insurance program brokers and administrators in the United States.

Through Marsh Affinity, the Bar is working with the State Bar of California to provide Bar members direct access to the State Bar’s group insurance programs. The State Bar’s 200,000+ members give it buying power in negotiating favorable rates and coverage that individuals and smaller Bars can not access alone. The State Bar oversight committee includes experts in malpractice insurance. These committees ensure that the insurance products are tailored to the needs and expectations of the law practice community.

Members can download a short form application on the SFVBA website. Bar members who purchase their State Bar-sponsored professional liability insurance directly through Marsh Affinity will be supporting the Bar through a special marketing services arrangement that reimburses the Bar 3 percent of the lawyers’ premiums.

“This is a really exciting program,” Post says. “Bar members are doing themselves a disservice if they don’t check out this benefit for themselves and their practices.”

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Calendar of Events  
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## Leading By Example

Judge's Night Event Honors Bench Officers



PATRICIA L. McCABE, SFVBA PRESIDENT

If you want something done, give the task to a busy person. We all know those people; they seem to manage more than what is possible, and always with humor and grace. The San Fernando Valley Bar Association is honoring three of these individuals at its annual Judge's Night celebration on February 22, 2007.

Judge Michelle Rosenblatt, named the 2007 Judge of the Year, is known as a tough but fair jurist. She has managed

*It's not what you do once in a while;  
it's what you do day in and day out  
that makes the difference. – Jenny Craig*

several high profile criminal cases and is well-respected by the criminal defense bar.

She has volunteered as a member of the Board of Directors for the Valley Community Legal Foundation of the Association for several years and sat on its busy scholarship committee. Leadership is one of the key tenets of the Foundation, a quality Judge Rosenblatt embodies.

She volunteered her time, educating other bench officers and court staff through her work with the California Center for Judicial Education and Research, the Education Division of the Administrative Office of the Courts.

Commissioner Alan Friedenthal will be honored for his work with the Valley Community Legal Foundation to establish a children's waiting room at the Van Nuys courthouse. Commr. Friedenthal has worked on this project for two years, convincing the Foundation to lead the efforts to obtain funding so that children could be in a secure waiting room rather than in a courtroom gallery while their parents are litigants or witnesses in a court proceeding. While much

is still to be done on the Van Nuys waiting room, efforts are underway, in concert with the SFVBA Family Law Section, to raise funds for a children's waiting room in the San Fernando courthouse.

The mission of the Los Angeles Superior Court, Children's Court (Dependency) is to ensure that children are safe from abuse and neglect. The Court, whenever possible, tries to preserve and strengthen families so that children can be raised safely in their own homes. When this cannot be accomplished, the Court provides alternatives.

Most cases are heard at the Edmund D. Edelman Children's Court, the nation's first dependency courthouse designed as a child-friendly facility. Some furniture is child-sized. The courtrooms are smaller. The artwork, graphics and waiting areas are designed to be less intimidating to children. Play areas have been set up to reduce stress and trauma.

This unique court is lead by Supervising Judge Michael Nash, widely recognized as a steadfast advocate for children, who will receive the Stanley Mosk Legacy of Justice Award. Judge Nash is the driving force behind the establishment of the court's first juvenile mental health court, drug court and Adoption Saturday program.

These individuals have a commitment to the community and an honest desire to better the profession. I invite you to join the membership of the San Fernando Valley Bar Association in honoring these outstanding jurists. ⚖️

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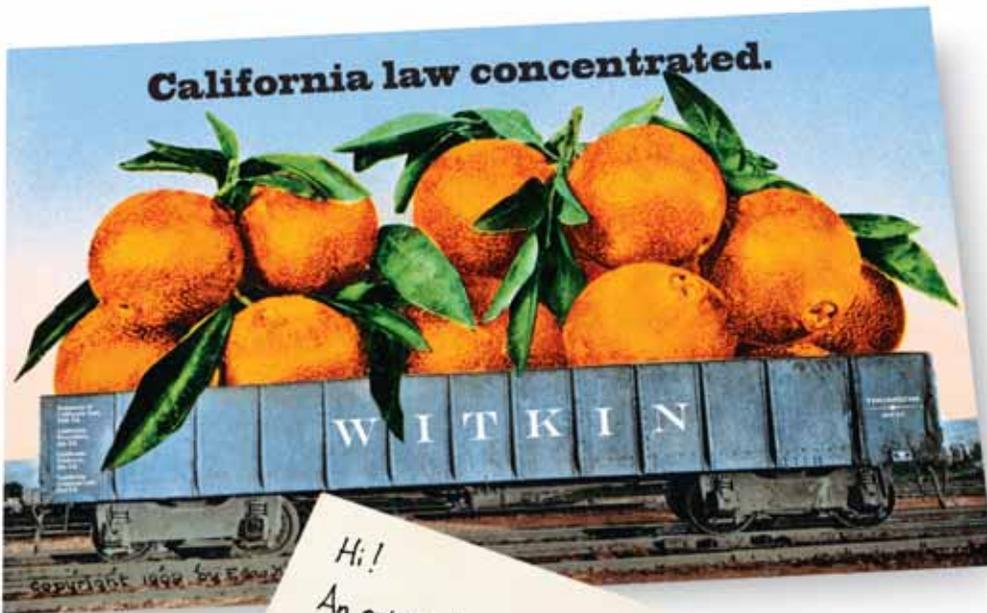
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## Leading Roles Lawyers Provide Leadership and Also Assistance

MICHELE C. MORLEY, ASSOCIATE EXECUTIVE DIRECTOR FOR PUBLIC SERVICE



Many times I have mentioned members who have been generous in providing support to the LRIS and the people who use our services. I hesitate to provide a list of these as it would be long and I fear I'd forget someone I really wanted to include. Every day, LRIS attorneys take time to answer staff questions or agree to meet with an individual for a consultation. Recent surveys returned by referred clients include comments such as:

"Anne Adams and LRIS staff was much better than previous referral resources suggested by a personal friend."

"It was my good fortune to meet with Michael Bilson at the East Valley Senior Center. He did a very good job and is a very nice person."

"John Goffin was very helpful and patient with his advice and guidance and I appreciated his understanding and compassion."

"Hillary Grosberg is a delightful person and extremely professional."

"I liked and have confidence in Jason Halpern."

"Extremely satisfied, Bruce Hatkoff went beyond the norm."

"Christine Lyden was professional, kind, informative...she treated me as a person not a thing to ring up a bill for."

"James McCullaugh was very professional."

"Michael Medina gave me excellent service."

"James Morris was a personable young man and I liked him very much."

"Howard Myers was knowledgeable and explained the matter very clearly."

"I was extremely satisfied with David Pillemer."

"Patricia Said was very polite and considerate."

"Steve Simons is superb."

"Susana Tolchard took the time to listen."

"Marshall Waller answered all my questions, I was very satisfied."

"Irma Zahid was knowledgeable and very compassionate."

There you have the "A-Z" of the service LRIS attorneys provide, and this is only a small sample of the positive client surveys we receive. But there is more. Attorneys Steve Simons, Matthew Crowley, Alan Shafer, David Gonor, and Jody Moore have taken time during the past year to provide training to LRIS staff on how to correctly and effectively screen callers for referrals. They provided good suggestions and useful lists of important questions to ask.

And there is still more. Recently, a good friend's oldest son was involved in a serious motorcycle accident. I called LRIS attorneys and asked if they could meet with my friend and advise her on the legal, financial and disability issues that the family was facing. Without hesitation, the offices of Lyle Greenberg, David Hagen, Steve Spile and Patricia McCabe scheduled appointments. ✨

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# Coach's Corner

## How to Serve Your Clients: Listen to What They Want

BY EDWARD POLL



*Consumer Reports* early last year listed the top ten U.S. cars. None of them was made by companies traditionally thought of as the "American automakers" that for decades dominated this market.

When Nissan (then Datsun) and the other Japanese companies first came here, they asked American drivers about the features a car should have - and started building cars with those features. American car companies, on the other hand, grew smug, no longer listened to the public, no longer made cars with quality, and no longer cared about their long-term reputation.

How does this apply to law firms? The answer is simple: Firms must provide a quality service and work product that benefit their clients. Lawyers don't practice law, they serve clients. Without clients there is no reason for lawyers.

Surveys show that the two biggest reasons for client dissatisfaction are unhappiness with law firms' service performance (not the same as legal advice), and failure to keep pace with clients' changing needs. Such law firms generally fail to communicate with their clients to learn what they (their clients) want, how they want to receive it, and where the clients will be in the next one to five years so the lawyers can think proactively on behalf of the clients.

Successful lawyers interact constantly with their clients and demonstrate to the clients their very high value. As a side note, I recently spoke to one of my clients who changed careers. Because his value was acknowledged by a client to be so high to that client, the company offered the lawyer a position in-house, an offer so attractive that the lawyer could not refuse. This is the

opposite extreme of the failure of most lawyers to demonstrate their value.

Successful lawyers take the kind of a customer-service approach to dealing with clients that can be found at successful shops or restaurants (businesses ultimately not much different from law firms). Even the simplest steps to accomplish this can pay big dividends:

- Return phone calls the same day, either personally or through a staff member. Unresponsiveness remains the single most frequently registered complaint against lawyers with bar associations across the country.
- Make sure staff members know the names of the firm's clients. Give everyone the client list so that they never have to ask the spelling of a name when taking a message or appointment.
- Take the initiative to communicate regularly with clients. Send them copies of all relevant documents about them that come into the office, or provide status reports on a regular basis. Demonstrating that the firm is at work on their behalf is the best way to ensure getting paid.
- Make clients feel like part of the team. Seek out their opinions, ask them what they want to accomplish, explain the reasons behind the advice the firm provides.
- Visit clients at their home or business as a way to build trust and to get a better understanding of what is important to them. Don't charge for the visit - but be sure it shows up on their next statement as a "no charge" item.
- Solicit client feedback. This doesn't require an elaborate questionnaire; simply meet them over coffee and ask, "How am I doing? Is there an issue that concerns you? Does my staff treat you courteously?" Given this opportunity, clients will answer honestly. Uncovering a problem this way can prevent an unpaid bill or a disciplinary charge. ⚡

*Ed Poll is a coach, consultant, author and speaker; board-approved as a coach to the legal profession. He can be reached at edpoll@lawbiz.com or (800) 837-5880.*

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# Santa Clarita Valley Bar Association Resolved: Always Look Forward



CARYN BROTTMAN SANDERS, SCVBA PRESIDENT

As we enter February, I hope you all have gotten back into the swing of things after the holiday season. Years ago, I made a resolution not to make anymore resolutions. I am proud to say that it is the one resolution I have managed not to break before the end of January. If you are a resolution-maker, I hope you are still going strong, keeping those resolutions.

While I do not make resolutions, I do try to set goals. What is the difference? A goal is something I want to do looking forward. I view a resolution as something I want to change about the past.

Looking forward, I made a commitment to myself that this would be a year where I ask, "What can I do for you?" Yes, as a lawyer, wife, daughter, and mother, I feel that I spend most of my life working on that question. But now, in terms of our Bar Association, what can we do for our members, our prospective members and our community? If you are reading this article, you are most likely a member of a bar association. Why are you a member? What does being a bar association member mean to you?

I look back at why I joined the various bar associations to which I belong, and I see very different reasons. Those reasons include staying informed, networking opportunities, MCLE opportunities, and reasons I can't quite articulate. We are working hard this year to provide a variety of opportunities to our members.

I would like to hear from anyone, member of our Association or not, about the reasons you belong to bar associations, and what you would like to see in our Association. What can we do for you?

Contact me through our website, [www.scvbar.org](http://www.scvbar.org). Responses will be kept confidential.

We had a great turn-out for our December lunch meeting. Brett Miller from Next Client gave us great suggestions on what to put in our websites, how to make them more user-friendly and how to improve the likelihood that our sites will pop up in a search. Mike Brown from ADOCS showed us that even small firms and solos can go paperless. Mike told us about the legal implications of going paperless, the way electronically stored documents are used and audit trails that can be put in place to protect users. To contact this speaker, let me know.

### Meeting Meeting Meeting

To earn the Prevention of Substance Abuse MCLE credit, join us for our February 15 dinner meeting to learn the "Magic to Balancing Stress."

Dan Jordan, a Los Angeles County Deputy Sheriff and accomplished magician who regularly performs at the Magic Castle, has developed a unique stress management program that he has presented to legal groups around the state. Learn to manage your stress before it leads to substance abuse.

As a special bonus, Dan has agreed to provide participants with passes to the Magic Castle. I hope to see you on February 15 at 6:00 p.m. at Marie Callender's Restaurant. Visit our website at [www.scvbar.org](http://www.scvbar.org) for reservations. ♣

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# Section Spotlight

## Probate Update

### Popular Section Offers Well-Rounded Programming

LISA MILLER, BAR NOTES EDITOR



The Probate & Estate Planning Section of the San Fernando Valley Bar Association is proud to offer everything any probate practitioner might need to know. And then some.

As one of the larger Sections of the Association, it boasts an enviable membership roster. And it draws on that large pool of talent in presenting timely and insightful seminars as well as useful networking opportunities. The Section's January meeting on New Laws was attended by more than 80 members.

"We aim to provide Section members with an unparalleled level of education and support," Section Co-Chair Marlene Seltzer says. "I'm constantly searching out new issues to create programs around."

Program planning for the next year is well under way. Topics under consideration include everything from language interpretations in written instruments to revocable trusts to power of attorney.

"The Section offers educational luncheons for specialists, but also for generalists with clients who have questions in these areas," Section Co-Chair Wendy Hartmann says.

Probate is an active area of practice, counsel say. It is both highly regulated and highly litigated.

Recent subjects for discussion within the practice community include equitable election, gift tax, charitable remainder trusts, and marital deduction.

Co-Chair Wendy Hartmann, of Alpertin, Simon, Farkas, Gillin & Scott, LLP in Encino attended college in New York State, but is a graduate the University of LaVerne College of Law in Woodland Hills. She was admitted to the State Bar in 1999.

According to Hartmann, running a Section of the Association is both rewarding and exhausting.

"Nothing keeps you on your professional toes better than overseeing a professional activity like this one," she says. "And nothing takes quite as much time."

Co-Chair Marlene Seltzer practices in Woodland Hills, with the Law Offices of Alice Salvo. She is a native Californian and still loves the area, she says.

"I remember when the San Fernando Valley was farmland where you could smell the orange blossoms and see blue skies everyday," she says.

Seltzer did not enter law practice by following a straight line. After college, she was the first woman hired as a management trainee for a fortune 500 company. She worked her way up the management ladder, but took a break for a few years to raise her three children.

"But I couldn't keep out of the work force for too long," she says. "I tried my skills in the horse business, raising two-year-olds in training and then auctioning the horses off."

*continued on page 14*

## Sometimes numbers are the only prints left behind.

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# Cashing In, Cashing Out

## Chapter 7 Bankruptcy Protection Still Available to Nearly Everyone

BY M. JONATHAN HAYES



The week before the bankruptcy code amendments went into effect on October 17 last year, 28,000 chapter 7 petitions were filed in the local bankruptcy courts. In Woodland Hills the Friday before, the clerk was handing out numbers to masses and making everyone wait out in the parking lot. Petitions were accepted throughout the weekend. The following week, 58 petitions were filed.

The rush was unnecessary. The changes to the bankruptcy code have made the filing of bankruptcy considerably more of a hassle and have made it considerably more likely that a *pro per* filing will be rejected. But the changes have had little effect on who qualifies for the benefits of chapter 7 in the first instance.

### Consumer Counseling

An individual who wishes to file any bankruptcy petition must first obtain a certificate certifying that the applicant has completed consumer credit counseling. Providers are listed on the bankruptcy court website [cacb.uscourts.gov](http://cacb.uscourts.gov). This half hour effort can be completed on the telephone or on the Internet.

### The Means Test

Certain individuals may not qualify for chapter 7 depending on the outcome of a "means test."

- This test applies only to individuals whose debts are primarily

consumer debts. The debtor's home mortgage is a consumer debt, but credit card debt used to run a business is not consumer debt. Taxes are not a consumer debt for these purposes. If the debtor owes primarily business debts, there is no means test.

- This test applies only to individuals whose "current family income" is above the median income of her state for her household size. In California, that median is \$43,000 for a household of one. It increases up to \$70,000 for a household of four and higher if the household is more than four. The concept of "current family income" includes the regular contributions to living expenses from Dad. The current income is the previous six months of actual income times two.
- If the prospective debtor's income exceeds the median income, a fairly complex series of computations must be completed and attached to the initial bankruptcy papers. The debtor starts with his income and subtracts certain allowed expenses to reach a "net monthly income." If the net income exceeds \$167 per month, abuse is presumed and the debtor will likely be required to file chapter 13 or no petition at all.
- The allowed expenses generally come from three Internal Revenue Services tables known as the National Standards and the Local Standards. The expenses include food, clothing, household expenses and other similar items. These tables are on the website of the U.S. Trustee.

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• Numerous other deductions are allowed. For example, payments on secured debts are deducted. Theoretical costs of a chapter 13 are deducted to determine net monthly income.

**Other "Abuse"**

The US Trustee may still bring a motion to dismiss a chapter 7 asserting that the filing is an "abuse of the provisions" of the code. Otherwise, the "door" to chapter 7 Bankruptcy is the same as it was before the amendments.

Local bankruptcy practitioners believe that only 5 percent to 10 percent of those required to compute the means test are ultimately determined to be unqualified to file chapter 7.

Jim King, a San Fernando Valley debtor attorney, opined that of the 60 to 80 of his clients who wanted to file Chapter 7 since the amendments took effect, only one or two could not because of the means test.

Total bankruptcy filings are down considerably from previous years, perhaps because so many filings occurred before the amendments went into effect and the widely held belief that many applicants can no longer file chapter 7.

A word of warning to non-bankruptcy practitioners, however, is that if counsel represents a debtor in a matter, counsel is likely a "Debt Relief Agency" under the law, at least until the courts get around to declaring all or parts of Section 526 through 528 of the bankruptcy code unconstitutional. Counsel is cautioned to read those code sections.

Another new pitfall can result in dismissal of the case after it is filed. In "the old days," the debtor would just re-file the petition if it did not pass muster the first time. Today, however, the automatic stay may not go into effect in the second case, which would be a disaster. ⚡

*M. Jonathan Hayes is a 1976 graduate of Loyola Law School. His practice is primarily in the area of bankruptcy. He can be contacted at (818) 710-3656 and [jhayes@polarisnet.net](mailto:jhayes@polarisnet.net).*

**United States Bankruptcy Court Central District of California  
Public Notice Re: Fee Changes Effective January 1, 2007**

The Judicial Conference has approved changes to the Bankruptcy Court Miscellaneous Fee Schedule that become effective January 1, 2007, as follows

Fee Item	Current Fee	Fee Effective 1/1/07
<b>Case Reopening</b>		
Chapter 7	\$220	\$260
Chapter 13	\$150	\$235
<b>Case Conversions</b>		
Chapter 12 to Chapter 7	\$15	\$60
Chapter 12 to Chapter 13	None	\$35
Chapter 13 to Chapter 7	\$15	\$25
<b>Appeals</b>		
Authorization of Direct Appeal or Cross Appeal from Bankruptcy Court to Court of Appeals.	None	\$200*
<b>Splitting a Joint Bankruptcy Case</b>		
Chapter 7	\$220	\$260
Chapter 13	\$150	\$235

\* This new \$200 fee is payable to the Bankruptcy Court if the Court of Appeals authorizes a direct appeal or direct cross appeal.

For additional fee information, please access the Filing Fees under Information on the Court's web site [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov).

# You Can Get Blood from a Turnip Shifting Attorney Fees to the Losing Party in Contract Cases



BY NATE BERNSTEIN

The power to shift attorney's fees and costs to a losing opponent is a huge benefit to clients, sometimes turning arrogant opponents into settling parties. If the underlying contract is invalid because of forged signatures or other defects, counsel should use the contract's attorney's fees clause to file an attorney's fees motion. Courts allow it; clients will be grateful.

Many clients and even counsel have misconceptions about shifting attorney's fees and costs to a losing opponent, and fail to understand the mechanics. Some clients don't realize that attorney's fees and costs are a separate cost component, determined in a post-trial motion.

Counsel should review California Code of Civil Procedure Section 998 with clients, explaining that the prevailing party doesn't need an enforceable contract to shift fees and costs to a losing opponent. A prevailing party can usually shift the costs and fees of litigation of a contract by using a contractual attorney's fees clause statute, such as Civil Code Section 1717. Section 1717(a) states:

"In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs. . . . Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract. Reasonable fees shall be fixed by the court, and shall be an element of the costs of suit."

The legal and financial threat of shifting costs can make parties rethink the economics of litigation, and push the parties to settle. Generally, in litigation on the meaning or enforceability of a written

contract, counsel can shift fees and costs to the opposing party under the following conditions:

- a) The underlying cause of action must be "on the contract," and the contract must specifically provide that attorney's fees and costs shall be awarded to one of the parties or the prevailing party to enforce the contract. The terms "on a contract" and "to enforce the contract" are subject to interpretation by case law.
- b) Counsel must be the prevailing party on the cause of action that is "on the contract." This generally means that the client must win the contract cause of action on the merits, and have a simple, unqualified win. (See, e.g., *Hsu v. Abbara* (1995) 39 Cal.Rptr.2d 824, 9 Cal.4th 863)
- c) Counsel needs a broadly worded clause that covers the specific causes of actions and remedies that are the subject of the litigation.
- d) Other contractual conditions precedent must have been satisfied. For example, the contract could state that the parties must complete or attempt to complete mediation, prior to filing an action, in order to be eligible for an award of attorney's fees and costs if they are the prevailing party in the lawsuit.
- e) The prevailing party must sue on a cause of action that pertains to the contract (for example, breach of contract or rescission of contract); the action should involve the contract.
- f) The parties seeking the attorney's fees must generally be in privity of written contract with the opposing, losing party.
- g) The party seeking attorney's fees and costs should plead a request for attorney's fees and costs in the prayer section of the complaint or answer making the request at issue in the case, and negating the opportunity for the opposing party to argue that the client

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waived attorney's fees and costs by not putting the request in the prayer of the pleading.

- h) The party seeking attorney's fees and costs must file a timely Memorandum of Costs and a timely Motion for Attorney's Fees.
- i) There is no restriction under the Code of Civil Procedure Sec. 998 offer of compromise provision. Counsel should review this code section carefully.
- j) Attorney fee clauses that are worded so that only one side receives attorney's fees and costs are not an obstacle. Under legal principal of "mutuality," courts interpret "one-sided" or "unilateral" clauses in such a way that either side can obtain an award of attorney's fees and costs as the prevailing party.
- k) The attorney's fees sought must be "reasonable." Counsel should have detailed bills with descriptions of the work performed and the hours and minutes spent.
- l) The non-attorney fee costs sought must be allowed pursuant to Civil Code Sec. 1033.5. This code section sets forth a check list of the type of costs that are recoverable.

### The Contract Need Not be Legally Enforceable or Valid to Invoke Fee Shifting

Case law interpreting Civil Code Section 1717 favors the policy of mutuality, allowing either party to a contract to seek and obtain an award of attorney's fees, even with a one-sided attorney's fees provision, even if the contract is unenforceable. A party is entitled to attorney's fees under Civil Code Section 1717 if the other party would have been entitled to attorney's fees had it prevailed.

This rule serves to effectuate the purpose underlying Section 1717, enacted to establish mutuality of remedy where a contractual provision makes recovery of attorney's fees available for only one party, and to prevent oppressive use of one-sided attorney's fees provisions.

Courts have opined that the statute would fall short of this goal of full mutuality of remedy if its benefits were denied to parties who defeat contract claims by proving that they were not parties to the alleged contract or that it was never formed. The statute generally must apply in favor of the party prevailing on a contract claim whenever that party would have been liable under the contract for attorney fees had the other party prevailed. *Hsu v. Abbara* (1995) 39 Cal.Rptr.2d 824, 9 Cal.4th 863.

#### Tips for Oral Argument

Counsel should argue the following points at the motion hearing seeking an award of attorney fees and costs:

1. **Emphasize mutuality.** One judge once explained his reasoning by making a point to the losing party, asking "If you had prevailed in this action, would you have filed the Motion for Attorney's Fees?"
2. **Point out that the cause of action is "on the contract."** Cite case law.
3. **Emphasize the reasonableness of the fees and costs.** This is especially true when opposing counsel was unreasonable and delayed resolution of the case, or over-litigated the case. For example, opposing counsel filed unnecessary demurrers or discovery motions.
4. **The other side drafted the contract.** Note for the court that opposing counsel wrote the agreement.
5. **Point out the portions of the pre-trial litigation that prevailing counsel won.** For example, counsel prevailed on a discovery motion or a motion to expunge a lis pendens.

For example, in a declaratory relief action between real estate investors to determine the rights of the parties under two notes and two deeds of trusts which, on their faces, appeared to have been signed by defendants, in which summary judgment was entered for defendants on proof that their signatures were forged, the trial court erred in denying defendant's motion for attorney fees pursuant to Civil Code Section 1717.

The statute applied even through the relief sought by plaintiff's was of a declaratory nature and even though defendants prevailed by successfully arguing the nonexistence of the notes containing the attorney's fees provisions. *Milman v. Shukhat* (1994, 1st Dist), 22 Cal.App.4th 538).

### Counsel Should Timely File and Serve a Memorandum of Costs and a Motion for Attorney's Fees and Costs

To preserve a prevailing party's right to seek a cost judgment for attorney's fees and costs, counsel must file and serve a verified Memorandum of Costs within 15 days after the date of mailing of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure Section 664.5, or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first. See Rule of Court 870(a)(1).

A Memorandum of Costs is a summary of all costs incurred from the beginning of the case until the end of the case, but only some are permitted. See Civil Code Sec. 1033.5. The Motion for Attorney's Fees can, but does not have to be, filed with the Memorandum of Costs. Counsel should consider bringing the Motion for Attorney's Fees at the same time as filing the Memorandum of Costs, to foreclose timeliness litigation. The party who objects to all of the costs or certain items can file a Notice of Motion to strike or to tax costs within 15 days after service of the cost memorandum. At the hearing, the Court will decide which costs are allowed, according to statute. Cal. Rule of Court 870(b)(1).

The Notice and Motion for Attorney's Fees and Costs can be filed 60 days after the Notice of Entry of Judgment/Order is served; the time frame is the time for filing a notice of appeal under Cal. Rule of Court 2 and 3. See Cal. Rule of Court 870.2(b)(1). The attorney's fees motion does not have to be filed at the same time as the cost memorandum. ⚡

*Nate Bernstein is the managing attorney of Encino's Nate Bernstein & Associates, specializing in complex business and real estate litigation and bankruptcy matters. For more information, visit [www.natebernsteinlaw.com](http://www.natebernsteinlaw.com) or e-mail [natebernstein@netzero.net](mailto:natebernstein@netzero.net).*

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# Members in the News



**William I. Goldsmith** has been elected as president of the California Creditors Bar Association, a specialty bar association formed three years ago in response to increasing interest in the rights of creditors. Bill is a partner in the Encino law firm of Goldsmith & Hull.

Former California Supreme Court Justice **Armand Arabian** has been named recipient of the 48<sup>th</sup> Annual Fernando Award, given annually to a San Fernando Valley resident for volunteer efforts on behalf of the community. In keeping with Fernando Award tradition, Arabian will have his name inscribed on two statues commemorating the honor, a decades-old bronze monument located in the Valley Civic Center in Van Nuys and another that stands at Warner Park in Woodland Hills. Arabian will be honored at a celebration dinner on March 2, 2007 at the Sheraton Universal Hotel. For reservations call Daniale at (818) 980-7867.



Retired Los Angeles Superior Court Judge **Marvin D. Rowen** was honored by the California Judges Association with its 2006 Humanitarian Award at the State Bar of California Annual Meeting in Monterey. The award is presented in recognition of a lifetime of dedicated and devoted services to the community. Rowen has served as president of the Anti-Defamation League Pacific Southwest Regional Board and served nine years on the Board of Governors of the Shriners Hospital for Children - Los Angeles. Rowen presented his \$250 honorarium check to Shriners Hospital.

SFVBA trustee **Steve Mehta** and Valley Community Legal Foundation of the SFVBA director **Kevin Rex** were honored on January 17 by the **San Fernando Valley Business Journal** as winners of its fourth annual "40 under 40" awards, which honors exceptional young business people in the Valley area.



**Diana G. Ratcliff** joined the Law Offices of Cynthia Elkins as an associate attorney as of November 1. The firm represents employers concerning their employment law concerns. Ratcliff assists employers in drafting employee manuals, conducting lectures, workshops and devising effective strategies for personnel management. ♣

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Section Spotlight, continued from page 8

After a successful career in the equine field, Seltzer again sought to make big changes in her professional life.

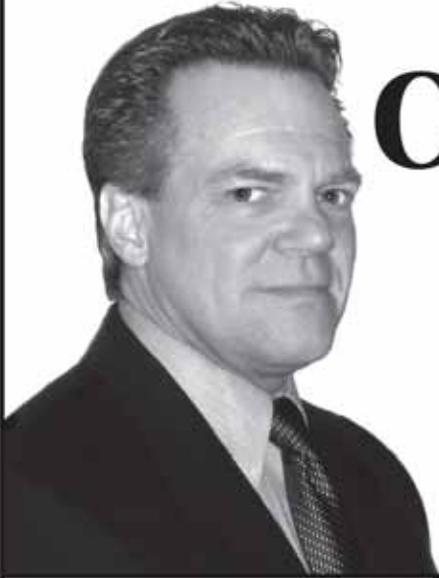
"I managed a life insurance and employee benefit insurance office," she says. "Then I tried my hand at commercial real estate, selling investment properties and packaging land development projects."

But her life's dream was calling. She had always wanted to become an attorney. And she figured it was finally the time to get started. It was time for law school.

"I worked full-time, and attended law school for five-and-a-half years, at night," she says. "But I graduated and passed the bar."

Seltzer's first legal job was in litigation, but the physical demands of the position were too extreme. So she joined forces with established Valley practitioner and Association Past President Alice Salvo, to form a practice specializing in estate planning, conservatorships, probate, special needs trusts, and Medi-Cal planning. ♣

For more information about the SFVBA Probate & Estate Planning Section, contact Wendy Hartmann at (818) 971-3690 or [wendy@wehlaw.com](mailto:wendy@wehlaw.com), or Marlene Seltzer at (818) 887-3333 or [marlene@salvolaw.com](mailto:marlene@salvolaw.com). The Section meets on the second Tuesday of each month at 12:00 noon at the Monterey at Encino Glen Restaurant in Encino.



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It is the time of the year to remember those you care about and to give a token of your esteem and love. Instead, this year, take the time to donate some of those funds on behalf of your loved one to the Valley Community Legal Foundation. I am sure that throughout the year, mailings and e-mails from every charitable cause imaginable have been pouring in and requesting your support. But please think of us.

I suggest you take this time to evaluate who will benefit from your generosity. Wouldn't you like to assist a variety of local community oriented and law-related organizations with just ONE easy payment or pledge?

Your donation to the Valley Community Legal Foundation will become part of the funds the Foundation uses to provide scholarships to local students and support community organizations. For more than 10 years, the Foundation has provided grants to law-related projects and groups that involve law-related causes.

The Foundation has provided much-needed funds in the areas of children's rights, immigration, domestic violence, education of students about their rights and responsibilities, family law, free legal clinics and exceptional-needs children's rights.

Your donation is directed three ways:

- It helps the community
- It educates about law
- It assists in the administration of justice

The Foundation Board decides where the donations are placed. The Board is comprised of 35 people consisting of lawyers, bench officers, business people and educators.

The Foundation solicits grant and scholarship applications. The Board then thoroughly reviews and monitors the requests. This saves you the legwork of investigating the best place for your charitable dollars. You make the donation and we handle all the work. Your generosity will be directed where it can do the most good and it stays local.

The Foundation relies on the support of the Bar, the Bench and the Valley

community at our yearly Gala. This year, our Gala is Saturday night, May 12, 2007 at the Woodland Hills Marriott. There will be a silent and live auction, with great items such as dinners, theater and sports events, admissions to museums and shows to be bid on. Buy your ticket for this fabulous event as soon as they become available; we expect the event to be a sell-out.

Please consider sending a check directly to the Foundation, care of the San Fernando Valley Bar Association, or call me at (818) 883-1330 with your credit card. You can donate money on behalf of a loved one or in their memory for this Valentine's Day. So BE A SWEETHEART and DONATE!

Remember: Generosity counts! ♡

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continued on page 18

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# Policyholder Update

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*New Members, continued from page 16*

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*New Admittee*

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**Laura Dietz**  
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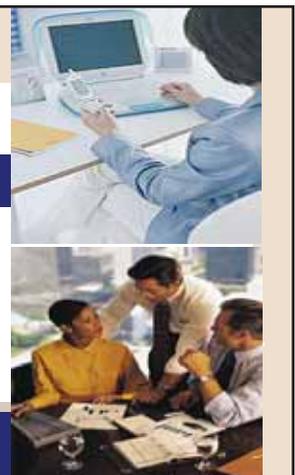
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**Members Benefit, continued from cover**

In addition to these three new programs, the Bar has initiated a Fee Arbitration Program this year. All smaller firms understand the drain that fee disputes place on limited law firm resources, so the Fee Arbitration program is an important addition to the Bar's benefits list. The program is available as of January 1, 2007.

And many Bar members enjoy access to the tape library in order to obtain low cost, convenient Continuing Legal Education Credits. The Tape Library allows users to learn about selected practice-related topics and also earn mandatory credits, all at the users' convenience. This service is especially important for smaller firm practitioners, who sometimes find it difficult to get out of the office for luncheon programming provided by the Bar's Sections.

Access to the Tape Library is free to Bar members. The library, physically located at the Bar's office, contains audiotapes of in-house programs. To receive participatory education credit, members can make special arrangements to listen to the tapes at the Bar offices.

But the Bar knows that lawyers aren't just about law practice. Counsel like to have fun, too. So don't forget about discount coupons and membership cards for Southern California's major theme parks and attractions, available through the Bar offices.

For more information about these and other member benefits, log-on to [www.SFVBA.org](http://www.SFVBA.org). ↗

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**SFVBA Delegation Seeks New Members**

The Conference of Delegates of California Bar Associations (CDCBA) was formed in 2002, the successor organization to the State Bar Conference of Delegates. The CDCBA is the voice of California lawyers. The conference assembles approximately 500 delegates from participating bar associations at the State Bar Annual Meeting. The delegates draft, analyze, lobby and vote on more than 100 resolutions. The deadline for submission of resolutions for the 2007 Anaheim conference is February 9, 2007.

Participation is open to all local, minority, statewide and specialty voluntary bar associations in California; the SFVBA is entitled to 18 delegates and 18 alternates and has a number of openings. Anyone interested in becoming an SFVBA delegate, or has a proposal to change a law, should contact Co-Chairs Cindy Elkins at (818) 598-6771 or Roger Franklin at (818) 986-5253. ↗

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# February Events

## Probate & Estate Planning Section

**Topic:** Estate Planning for Domestic Partners  
**Speaker:** Alexandra Laboutin Bannon, Esq.  
**Date:** February 13  
**Time:** 12:00 noon  
**Place:** Monterey @ Encino Restaurant, Encino  
**Cost:** \$30 members prepaid; \$35 at the door  
 \$35 non-members prepaid; \$40 at the door  
**MCLE:** 1 Hour

## Workers' Compensation Section

**Topic:** Ins and Outs of Utilization Review and MPNs  
**Speaker:** Don Lucien, Esq.  
**Date:** February 21  
**Time:** 12:00 noon  
**Place:** Monterey @ Encino Restaurant, Encino  
**Cost:** \$30 members prepaid; \$35 at the door  
 \$35 non-members prepaid; \$45 at the door  
**MCLE:** 1 Hour

## Women Lawyers Section

**Topic:** Update on Tax Laws Re: Bankruptcy, Family Law, Estate Planning, Judgments...  
**Speaker:** Wendy Hartmann, Esq.  
**Date:** February 22  
**Time:** 12:00 noon  
**Place:** SFVBA Conference Room  
**Cost:** \$25 members prepaid; \$30 at the door  
 \$30 non-members prepaid; \$35 at the door  
**MCLE:** 1 Hour

## Family Law Section

**Topic:** Evidence in Family Law: Why it's Good to Have Some  
**Speaker:** Judge Robert Applegate  
**Date:** February 26  
**Time:** 5:30 p.m.  
**Place:** Monterey @ Encino Restaurant, Encino  
**Cost:** \$40 members prepaid; \$45 at the door  
 \$45 non-members prepaid; \$50 at the door  
**MCLE:** 1 Hour

## Business Law, Real Property & Bankruptcy Section

**Topic:** Quiet Title Actions and Foreclosures  
**Panel:** Mark Blackman, Esq. and Christine Lyden, Esq.  
**Date:** February 28  
**Time:** 12:00 noon  
**Place:** SFVBA Conference Room  
**Cost:** \$25 members prepaid; \$30 at the door  
 \$30 non-members prepaid; \$35 at the door  
**MCLE:** 1 Hour

The San Fernando Valley Bar Association and Santa Clarita Valley Bar Association plan to purchase a block of tickets for the April 29 evening performance of *Twelve Angry Men* at The Ahmanson Theatre. The courtroom drama stars Richard Thomas and George Wendt. The evening will include a pre-performance dinner at a Patina Group restaurant at the Music Center. **Members interested in reserving tickets should contact Richard Lewis at (818) 704-0585. Only a limited number of tickets will be available.**

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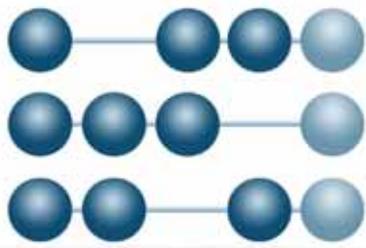
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