



BarNotes

A Publication of the
San Fernando Valley Bar Association

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SFVBA DELEGATION MAKES NEW LAW FOR CALIFORNIA LANDLORDS

LISA MILLER, EDITOR

Landlords in California have a friend in San Fernando Valley Bar Association member Roger Franklin. Franklin, the chair of the Conference of Delegates of the association, recently caused Assemblyman Anthony Adams to successfully introduce AB 410, adjusting upward the value of tenant property triggering a public sale to \$650, effective January 1, 2008.

“I appreciate the opportunity to represent our bar and our delegation in Sacramento,” Franklin says. “I hope that this will encourage others to join our delegation.”

Franklin, in private practice since 1970, focuses on residential real property litigation, residential and commercial landlord-tenant law, and probate and estate planning. Franklin is a licensed real estate broker. His office is in Encino.

The Conference of Delegates of California Bar Associations brings together attorney volunteers throughout California representing diverse backgrounds, experience, and expertise. The goal of the organization is to seek, debate, and promote creative, non-partisan solutions to law-related issues for the benefit of Californians.

“I [worked with] the bar lobbyist and [coordinated] my efforts with her,” Franklin

says. “[I submitted a] resolution to increase the [dollar] amount of unclaimed personal property left by tenants before a landlord is required to conduct a sale. Our resolution became Assembly Bill 410.”

Franklin flew to Sacramento on April 9, 2007 and met with Assemblyman Adams, who authored the delegation’s resolution. Adams presented the resolution before the Assembly Judiciary Committee on April 10. The Apartment Association of Greater Los Angeles, the Apartment Association of Orange County, California Alliance for Consumer Protection, California Association of Realtors and the Santa Barbara Rental Property Association all supported the resolution and were present at the Judiciary Committee proceedings. There was no opposition, according to Franklin.

“I said a few words before the committee,” Franklin, who is active with the SFVBA Attorney Referral Service attorney-to-attorney program and modest means program, says. “Our resolution passed the Assembly Judiciary Committee unanimously.”

Franklin’s and the delegation’s efforts are in line with the overall goals of the Conference of Delegates. The conference’s efforts result in

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Delegation Seeking New Members

The Conference of Delegates of California Bar Associations 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. Participation is open to all local, minority, statewide and specialty voluntary bar associations in California.

To deal with changes and suggestions for state-wide considerations, the delegation members meet from June through August, either weekly or bi-weekly, for a few hours. Members divide the workload up, and delegates report back to the larger body, which then votes to approve or disapprove after substantive discussion. The delegation’s position is then submitted to the full conference for discussion and voting. The next whole-body conference is scheduled for September 27 - 30, 2007 in Anaheim.

The SFVBA has a number of openings. Parties interested in becoming delegates or who have proposals to change laws should contact co-chairs Cindy Elkins at (818) 598-6771 or Roger Franklin at (818) 986-5253.

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In-Your-Face Civility Take-No-Prisoners Relationship Building Breeds Cooperation

PATRICIA L. McCABE, SFVBA PRESIDENT



When I entered the legal field, I focused on plaintiff's personal injury civil litigation. At that time, advocates did not maintain "take no prisoners" attitudes. Then I attended seminars teaching attendees how to bury the opposition with discovery requests so numerous that it would take a team of lawyers days to respond. I sat through deposition seminars focused on "damaging deposition techniques." Service of discovery requests or ex-parte notices were calculated to arrive at that last possible minute on that last possible day, with the sole purpose of providing the opposing with as little as time as possible to respond. All of this was calculated to put my client in the best position. And, of course, to crush the other side.

I personally never liked this type of practice and found it distasteful. I gladly gave my opposing counsel extensions so long as my client suffered no jeopardy. I came across attorneys on whose word I could rely, and those who seemed to forget the conversation as soon as we hung up the telephone. I still confirm every telephone call with a facsimile, even if I know opposing counsel - call me quirky. The focus of my practice shifted and for the past 13 years I have litigated solely in United States District Court.

Recently, opposing counsel, with whom I have had many cases, commented on the civility of attorneys in Federal District Court versus Superior Court. In Federal Court, civility and professionalism was addressed when the Federal Rules of Civil Procedure changed and civility standards were implemented. Now, many years later, uncooperative, obstreperous opposing counsel are the exception, not the rule.

Perhaps it is the arena in which I litigate, but I think it has more to do with the expectation of a civility standard, which creates an understanding of behavior of counsel. We are to voluntarily exchange discovery, engage in discovery planning and settlement discussions and plan for trial, all without court intervention. While the court may disagree with our time-line, we are mutually directing the course of the case. This positive interaction between counsel lends an amicable atmosphere to the

litigation. Opposing counsel and I act in concert to reach a mutual goal.

Sheldon Sloan, the President of the State Bar of California, perceives a decline in civility and professionalism within the legal profession. The State Bar of California created The Attorney Civility Task Force, which held hearings in March and is seeking comments on proposed standards of civility and professionalism for California attorneys. (For more information, see www.calbar.org) The American Bar Association Family Law Section adopted civility standards in 2006, as have many local bar associations.

I often run into the same counsel again and again in trial. While rules can create the first step in initiating civility in the profession, human interaction and professional relationships between counsel is what causes counsel to behave in a respectful and civil manner. We behave decently towards each other partly because rules instruct us to do so. But I believe a larger reason is because of the personal relationships that build over time. I will interact with these attorneys again. Attorneys are more likely to behave civilly when they know and have dealt with opposing counsel in the past, and are likely to deal with that same opposing counsel in the future.

To foster civility in our profession, we need personal interactions. But the large numbers of attorneys in our practice communities makes it impossible to experience personal interactions on a sufficiently large scale. Even given the number of attorneys in the Los Angeles area, it is impossible to get to know many of the attorneys the same way many members of the bar were able to do a few decades ago. But any lawyer can have personal interactions with the members of this bar association. And counsel can begin to build relationships with other attorneys by meeting them through functions outside of individual cases.

On April 29, 2007, approximately 50 bar members and friends enjoyed dinner and an evening at the Ahmanson Theatre watching Richard Thomas and George Wendt star in the incomparable play *Twelve Angry Men*.

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We have launched our new Google campaign and will report periodically on its success. We are using a specialist to assist us with this campaign and we are testing some unique marketing themes that will differentiate the Attorney Referral Service from other



legal referral services. With the Google campaign we will be able to track what type of marketing approach is most successful in capturing the attention of our Internet public.

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Get It In Writing! Avoid Fee Disputes by Using Written Agreements



BY EDWARD POLL

Getting paid for legal services is the bedrock of success for law firms of all sizes. But how to make it happen?

Both ethical and practical considerations shape the entire fee process, beginning with the American Bar Association's Rule of Professional Conduct 1.5: Legal fees must be "reasonable." The State Bar of California goes further, with Rule of Professional Conduct 4-200, which bars "unconscionable" fees. Rule of Professional Conduct 4-200 lists 11 factors counsel should consider when assessing the client's ability to pay.

The best way to get paid is to secure from the client a written fee agreement before beginning a matter. Absent a contingency fee, Section 6148 of the Business and Professions Code requires California attorneys to obtain written fee agreements from clients whenever total fees may exceed \$1,000.

But a written agreement stating each party's responsibilities for making the engagement a success is always a business and professional necessity. Lawyers will more likely meet client expectations and collect fees when clients understand that they're entering a two-way relationship. The lawyer agrees to perform to the best of counsel's ability in accord with professional standards, and the client agrees to communicate and cooperate fully, which includes paying the bill.

A good fee agreement should be thorough, precise, ethically correct and clear in defining attorney and client obligations. At a minimum, lawyer and client should agree on:

- The scope of counsel's representation – what the lawyer will and will not do;
- The fee counsel will charge and how counsel will calculate that fee;
- When the client is expected to pay counsel's fee;
- The consequences of non-payment, including the lawyer's right to withdraw;
- Budgeting and staffing;
- Frequency and method of communications from lawyer to client;
- The client's responsibilities, including payment; and
- Dispute resolution procedures if either party disputes the fee.

Clients who can not or will not sign a fee agreement, preferring to start now and pay later, or nit-pick over the fee, may be foreshadowing a subsequent fee dispute or claim. The process of preparing the engagement letter helps the lawyer avoid clients who think that estimates, whether of time, outcome, or costs, are actually guarantees. Discussing engagement terms will frequently uncover the client who later may express irritation with delay, chronically complain about everything, demand constant or instant attention, or expect unrealistic outcomes.

Stipulating payment rates and terms up front is the best way for counsel to get paid. This is particularly true if counsel can prepare a budget that addresses events, time and anticipated fees, and get the client to accept it. This significantly increases the chances of collecting the fee because the client understands what to expect. The basic principle of successful lawyer-client communication is counsel's willingness to communicate and

interact. This reinforces reliability and trust by showing clients they are valued. The engagement letter should spell out continuous communication with the client about expenses versus budget.

In addition to the scope of and budget for a matter, the fee agreement should detail the terms of ancillary fees and charges and trust account use. Counsel should clearly set forth in the agreement fixed or minimum charges for specific functions (for example, a minimum time for a telephone call, letter, or court appearance, or a flat fee for the use of standardized documents). This can help avoid misleading the client. Similarly, most engagement agreements stipulate that the client's payment for work that *has been* performed is to be deposited into a lawyer's general account and payment for work that *will be* performed is generally to be deposited into a client's trust account. Counsel should detail in the agreement the circumstances under which funds may or must be transferred from the client's trust account to the lawyer's general account.

Despite all precautions, if a fee payment impasse develops, the lawyer cannot ethically cease representation when the client will be prejudiced – for example, by withdrawing within 60 days of a court date. In the ABA's Code of Professional Conduct, Rule 1.16 allows withdrawal if the client is given reasonable warning of failure to fulfill payment or other obligations.

Counsel may want to arbitrate the dispute through a bar-sponsored fee dispute resolution program like the San Fernando Valley Bar Association's Mandatory Fee Arbitration Program. Because arbitration is not mandatory, a client can always reject that option. And counsel can reject an arbitrator's award and sue for the fee after the hearing. But the fee arbitration process is an opportunity to ask the client what the client would like to do to resolve a billing dispute, and for counsel to listen carefully to the answer. ✎

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

Bar Offers Members Fee Arbitration Program

The San Fernando Valley Bar Association offers attorneys and the public a user-friendly mandatory fee arbitration program. This program provides a procedure for clients and counsel to efficiently resolve fee disputes between the parties.

The bar offers a neutral arbitrator, who decides the proper amount of attorney fees in each matter. The bar's program is designed to spare clients the need to hire additional counsel to help them resolve their fee disputes.

Fee arbitration is mandatory for lawyers if the client requests that the dispute be resolved through a fee arbitration program.

For more information about the mandatory fee arbitration program at the San Fernando Valley Bar Association, including fee arbitrator training, forms, procedures, or other concerns, contact the SFVBA at (818) 227-0490 or visit www.sfvba.org/public/fee_arbitration.htm.

Mine! Mine! Mine! Sometimes, Delegating Office Tasks Just Isn't Possible



CARYN BROTTMAN SANDERS, SCVBA PRESIDENT

As summer approaches, I thought I would look at how to more efficiently use my time. Some people delegate as much as they can, and some seldom delegate at all. Some people delegate well and some do not. Some people delegate tasks that probably should not be delegated at all.

I do not delegate at the office. But then I started to think about delegating in general, I realized that we delegate all kinds of things to make our lives easier or more productive. And we don't even consider it delegating. For example, I have a landscaper, a baby sitter, and an occasional housekeeper. I suppose that you can even consider eating at a restaurant or having take-out as delegating.

Some tasks I do not delegate. We tend not to delegate tasks that we like to do or things we like done a certain way. The best example is my household laundry. Would my husband help? No question about it. Do I let him? Absolutely not. Do I like doing laundry? No. But I like my size large t-shirts to stay that way.

Delegation carries with it an element of risk. Will the task be done right or on time? How much can we risk that answer being in the negative? I am batting zero with landscaping and housekeeping, but thankfully one hundred on the babysitter. Was it worth delegating the housecleaning to have a possession with sentimental value broken? Was it worth delegating the landscaping to have the sprinkler wires constantly cut? Because I delegate both tasks so that I will have more family time, the answer is "Yes."

Maybe I am a control freak, but I am a sole practitioner with no real staff. A few of us were sitting around discussing how we will know when we need staff. One criterion mentioned was, do you spend more than 30 percent of your time doing tasks that could be done by someone else? Personally, my consideration should be that after ten years of not having staff, could I successfully delegate enough tasks to this person to make it worthwhile? I am not sure that I could, even if I could find the right person for the job.

If you are great at delegating and have the perfect person to whom to delegate, consider yourself lucky. If you are ready to take the leap into delegating, congratulations and good luck. For me, I will have to find other ways to make better use of my time if I want to spend more time in the sun.

Our April meeting went well. Thank you to all who helped organize it and worked with the technology issues in my absence. Kris Hough from SCVBANK and Gina MacDonald worked together to put on an informative program.

Our theater night to attend the performance of *Twelve Angry Men* was great. The play was terrific and the opportunity to mingle with everyone was terrific. We have a committee to plan more joint events between the Santa Clarita Valley Bar

Association and the San Fernando Valley Bar Association. I look forward to the next one.

Employers, what do you need to know and what is new? Is your secretary really an exempt salaried employee? Can you fire your receptionist without any prior warnings? Please join us for our lunch meeting on June 21 at Marie Callender's. David Hamilton will speak to us on "Updates in Employment Law and What We Should All Be Aware of for Our Own Employees." 

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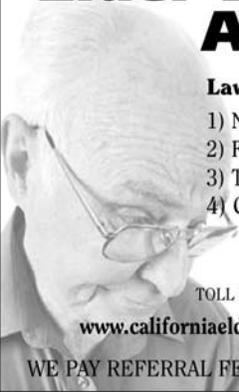
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Fall Program Offers Updates and Strategic Guide for Trial Lawyers



BY LISA MILLER, EDITOR

Litigation is a whole world of global challenges for trial lawyers. And bar members in the courtroom work hard to do their best for their clients year-round.

Bar trustee Steven G. Mehta is spearheading a mini-marathon with time-challenged trial lawyers in mind. Under the auspices of the bar's Litigation Section, it is designed to meet the needs of trial lawyers within the organization. It will offer significant continuing legal education credits, including some of the hard-to-get specialty credits.

"I got the idea for this program when I was thinking about how litigation and ADR tie together in an over-arching way," Mehta says. "I see trial lawyers overlooking some of the strategic considerations fairly frequently in my ADR practice."

The bar is offering the program in the fall of 2007. Specific dates, times, locations, speakers and MCLE credits will be announced in this publication as the information becomes available.

"My goal in helping to put this educational series into place is to provide for smaller firms the resources and depth that many of the larger firms enjoy," Mehta says. "The larger firms have the employee-power to gather information

together almost effortlessly for counsel. Our program gives that large-firm advantage to smaller firms by providing experts who have done the necessary research on the changes that counsel need to know about."

The program will devote considerable time to updating practitioners on changes to discovery rules. These types of changes in some of the more technical areas can trip up even the most conscientious practitioner, according to Mehta.

"Discovery laws have changed dramatically since the new re-codification in 2006. Attendees will learn about all the changes in the discovery rules and the new cases relating to discovery," he says. "With this presentation, practitioners can feel confident that they are on top of the new rules."

The mini-marathon will devote about an hour to updating listeners on issues in the alternative dispute resolution realm, a practice area of special interest to Mehta, a full-time neutral for the past several years.

"I've seen a lot of new cases regarding ADR come down in 2006 and 2007," Mehta says. "And several cases are currently before the Supreme Court."

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Bench Brief: Judge Wendy L. Kohn

All in the Family (Court)

Judge Finds Bench Assignment is Challenging Work

BY M. JONATHAN HAYES



Judge Wendy Kohn sits in Department K in Van Nuys, one of three full time family law courtrooms there. "I'm truly a valley girl, Reseda High School, U.C.L.A. and San Fernando Valley College of Law graduate," she said recently.

Before joining the bench, Kohn spent 10 years as an arbitrator in SEC matters and 10 years before that in private practice, none of which was in the family law arena.

"When I joined the bench, Judge Aviva Bobb suggested family law to me because of my background in business and financial issues. I understand financial statements, tax returns, stock options. I'm familiar with legal concepts which arise all the time in family law such as foreclosures, intangible property interests, and probate."

This is in part because of her pre-law background as a software engineer, in part because of her general business practice and arbitration experience and in part learned from her CPA husband.

After Kohn sat in Department 67 downtown for fourteen months, she was reassigned to Van Nuys in early 2005. Half or more of the parties who appear before her are in pro per, even in trials.

"I didn't know what I was getting into," she confided. "I can conservatively say that family law has been one of the biggest challenges of my life. The learning curve has been steep."

"I can conservatively say that family law has been one of the biggest challenges of my life."



Kohn hears a regular calendar each morning, five days a week, 15 to 20 matters including OSCs, motions, domestic violence issues, TROs, and ex-parte matters. There are a lot of discovery motions, motions to quash subpoenas, or change of venue. In the afternoon, every day, she conducts trials, hears long evidentiary matters and deals with custody evaluations and contempt proceedings.

"I do the preparation work myself in the afternoon when I can. If I cannot get to it all, which is common, I take the files home. I have had the Family Code on my nightstand for a long time."

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A well-known, highly-respected jurist, Judge Persón brings a wealth of experience to ARC after 21½ years of public service on the bench. He has an impeccable track record and a reputation for integrity. He spent the last seven years as a civil Fast Track judge handling hundreds of complex cases. He also handled law and motion, civil trials and settlement conferences at the Pomona court from 1993-1995. As a Pasadena Municipal Court Judge from 1985-1992, Judge Persón gained recognition for his involvement in the highly publicized Lamb Funeral Home matter. He has experience in all types of complex litigation, including business/commercial, class actions, construction defect, employment, entertainment, insurance coverage, medical malpractice, personal injury, and product liability issues.

ARC's San Fernando Valley Panel Also Includes:

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Judge Kohn is an exceedingly friendly, outgoing, and thoughtful person. "Child custody and visitation is one of the most important things we do," she said. "It is certainly the most challenging. You are really affecting people's lives in a very intimate way. You are telling them when they can see their children."

Kohn explained also that the parties are often angry and do not make good decisions because of that. "The effect on the children can be heart wrenching," she said. In fact, she will not allow children into the courtroom during proceedings. "It is just not appropriate that they hear what goes on in here."

"What makes family law unique is that these cases often do not end with entry of a judgment," she said. "The parties come back, often over and over, with a myriad of continuing problems which must be dealt with."

"I do not have standard custody or visitation orders. My orders are specific to the issues before me. I will help the parties with stipulated judgments and meet in chambers to make sure the order fits what is needed."

The Van Nuys court has a domestic violence clinic which is staffed by Neighborhood Legal Services and is open every morning.

"The Family Law Section of the San Fernando Valley Bar is wonderful," she added. "They provide a volunteer attorney every single day to mediate cases and help as needed. I could not be more impressed."

Judge Kohn calls herself a "no-nonsense Judge." "I want to get to the bottom line. You cannot easily pull the wool over my eyes. I try very hard to work with the parties and help them solve their particular issues. I hope I'm seen as a fair judge."

When asked about her impression of the attorneys who appear before her she said, "Attorneys who do family law are to be admired. The emotions involved make the practice unique. It is a very, very hard practice. Fighting over the couch is easy compared to child custody."

Judge Kohn has asked to remain in family law. She says she intends to stay there as long as they will let her.

When she is not on the bench or in chamber helping families resolve difficult issues, she enjoys vegetable gardening. She particularly enjoys growing tomatoes, string beans, and cucumbers. 🍆

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.

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A System for Using Systems Reduce Office Overhead With Written Procedures



BY ANNE C. ADAMS

Many people talk of leveraging other people's money. Other people's time can also be leveraged. To leverage other people's time effectively, counsel must successfully delegate tasks. The issue then becomes creating and improving systems in a law office to help train, staff and monitor their performance.

What is a system? It is a series of steps counsel takes to accomplish a task. For example, many attorneys have standard intake procedures they use when a new client retains them. Typically, counsel and the law firm staff take a series of steps to open a new client file and a new billing file after the client signs a fee agreement.

How does an attorney determine which procedures should be performed by written systems? The attorney may start with routine tasks that require little or no decision making. First, the attorney will create a written system that serves as the firm's working model. The system should be updated when the attorney or his staff finds that mistakes are frequently occurring because staff does not understand the system. When an attorney is performing a task that is fairly routine, the attorney

should consider if part or the entire task can be delegated to another person if a written system is created.

How does an attorney create a written system? He should make the steps as easy to follow as possible. For systems requiring little knowledge, the system should be written in a manner that an entry level staff person can follow the steps. For example, if there are phone numbers or websites involved, the phone numbers or websites should be included in the system or, in the alternative, state where the information can be found. The system should include a checklist so if an employee is interrupted, the staff member can easily return to the procedure without missing any steps.

What are the benefits of creating new systems and updating existing systems? First, using systems makes it easier to train someone learning a new procedure. The trainee will have a written procedure with specific steps to take when the procedure needs to be performed.

Second, there will be less time required to supervise the staff person when there are written systems in place.

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Many questions can be answered by referring to written systems. If the same questions are being asked often and these questions are not addressed in the written system, then the system needs to be updated to answer these questions. There will probably be fewer errors that need to be corrected as well.

Third, by using written systems, less skilled employees can be trained to handle additional work that may currently be performed by attorneys or more highly skilled support staff. By transferring the work to less-skilled staff, these staff members upgrade their skills, the firm reduces its office overhead and increases its bottom line. ↗

Anne C. Adams is a solo practitioner in Canoga Park. Her practice emphasis is on financial issues for businesses and consumers as well as family law. She can be contacted at AnneAdamsLaw@sbcglobal.net or (818) 715-0015.

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President's Message, continued from page 3

That evening, I met several members of the Santa Clarita Valley Bar Association, whom I would otherwise have no opportunity to meet. I was able to strengthen relationships with attorneys I encounter in my practice. At the same time, I was able to catch up with attorneys with whom I no longer have cases.

Join other members of the San Fernando Valley Bar Association and the Attorney Referral Service on July 15, 2007, for Concerts in the Park. As we listen to the snappy, western sounds of the musical group Riders of the Purple Sage and watch the sun set behind the hills, we will enjoy an outdoor concert, a box dinner, and most importantly, the opportunity to meet members of the local bar. Bring your family and invite someone, perhaps an office suitemate or the attorney down the hall, or even opposing counsel. Our bar will be hosting other events during this year to provide opportunities to come together, enjoy ourselves and get to know our fellow members.

I invite you to get to know us, the members of your bar association. Through our relationships, we can bring civility and professionalism back to our profession. ↗

Did Not! Did To! High-Conflict Couples Can Co-Parent Successfully

BY RENEE LEFF



Every family law attorney has faced the frustrations of dealing with high-conflict couples undergoing divorce. The most serious deficits in these situations surface when the parents fail to realize the legal and emotional impact of the conflict on the child.

The most common dilemmas that high-conflict couples face are the creation of multiple allegations, litigation, and evaluations; dysfunctional alliances, alignments, and alienation; exposing the children to a new romantic interest too soon; different houses, different schedules – what's not o.k. to change. The most damaging condition of all is having a conflict (even if it's only body language, such as eye-rolling) in the presence of the children. All these behaviors create loyalty binds for children that are damaging, traumatizing, and can last a lifetime.

Resolution of these dilemmas can occur without court orders. Attorneys need to be informed about the special needs of children of divorce, attachment issues, and child-developmental levels. Then they can help the parties focus on the child to create an appropriate parenting plan that meets the specific needs of the family.

The plan allows the co-parents to move forward with their own separate lives. And the plan helps the parties understand that they are transforming a marriage relationship into a business relationship. This means they need to use more formal, business-appropriate behavior to maintain a successful co-parenting relationship. At any point, attorneys can refer the parties to an expert on children of divorce, a professional trained to help high-conflict couples focus on their child. If necessary, the expert can co-mediate a parenting plan with them.

When high-conflict couples do not resolve their dilemmas, court orders often come into play. The court may mandate classes such as "Parents With Conflict," a weekly class focused on co-parenting co-ordination. It may be offered at the courthouse, where the court sets the time and date. It is three hours long and occurs in the middle of the day. Although the price is nominal, these classes often interfere with work schedules, and both parents are required to attend all the classes together in order to obtain a certificate.

Alternatively, private classes are offered by court-trained and certificated mental health professionals. These

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classes have more flexibility as they can accommodate one or both parents and may be offered in the evening. The cost of private classes may be higher than the court cost.

Child custody evaluations are another outcome of unresolved co-parenting custody disputes. Even brief evaluations and solution-focused evaluations have waiting lists that may be several months long.

Frequently, in a high-conflict situation, when a child becomes old enough, the child will refuse visitation with a parent because the child no longer feels comfortable with the other parent. That other parent will often seek a parent-child re-unification order or court-mandated family-child therapy in the hope of rebuilding a relationship with an alienated child.

The world recently heard this play out when the popular media broadcast the telephone message left by actor Alec Baldwin on his daughter's cell phone. It is not difficult to identify with the frustration and hurt that a parent feels when a child refuses to communicate. But it is equally easy to comprehend how a young person would choose to refuse to communicate with a parent who brings such deep intensity to the relationship.

When divorce becomes so conflicted and so protracted, it is almost inevitable that the child will be affected. It is not uncommon for children to side with one parent or another. A sad result of this is that it usually takes lengthy clinical intervention for trust to be re-built between parent and child.

According to Judith Wallerstein in her book *Legacy of Divorce*, divorce sometimes carries on for children well into their adult years, affecting their self-esteem and life choices. The tragedy is that much of the rancor and damage could be avoided with early high conflict co-parenting education.

Court measures attempt to produce the best outcome for the child and to reconcile child with parent if appropriate, and quite often they do. However, couples have many difficulties to overcome once a high-conflict case has progressed. The parties have depleted most of their revenue during the process and are usually bitter, the children are often resistant to therapy, and parents have become negative about the legal process.

According to Joan Kelly, Ph.D., 75 percent of children of divorce make successful adjustments. Knowledgeable attorneys and timely interventions can reduce that 25 percent failure rate for children. High-conflict co-parenting dilemmas can be diminished with education, information, and professional guidance. 📌

Renee Leff, MFT, J.D., FSCIPP has a private practice in Woodland Hills where she specializes in divorce, custody and high-conflict couples. She can be reached at (818) 734-9602.

Valley Community Legal Foundation Yes, In My Own Backyard Group is Working Hard to Benefit Local Community

MARCIA L. KRAFT, VCLF PRESIDENT



By the time you read this, the Gala will have come and gone. I am confident it was a big success because, as of this writing, we have almost 300 expected attendees.

So a big thanks to all those people who helped to make this event, which is our BIG fundraiser, the great event I'm sure it was: **Christine Lyden** and **Annie Goldman Reed** – Vice Presidents of Fundraising; **Mark Blackman** and **Adam Grant** – Vice Presidents and Co-Chairs of Marketing; **Kevin Rex** – Sponsorships; **Lynne Tracey**, **Patricia McCabe**, **Richard Lewis**, and **Sharley Allen** – Fund Raising; **Linda Temkin** – SFVBA Event Coordinator; and **Tracy Beavers** – Marketing and Promotion. I am sure there were others and apologize for missing anyone.

Thanks also to Justice **Armand Arabian** for his assistance in presenting our *Armand Arabian Law and Media Award* to **Bill Chais**. Mr. Chais is a former public defender and has worked on many law-themed dramas on television.



Congratulations to **Mike and Gail Feuer** on receiving the President's Award. I was pleased to select for the award two such dedicated and spirited people as the Feuers. Judge **Gail Feuer** spent a night in a sleeping bag to monitor diesel exhaust fumes. I believe that is beyond the call of duty of any attorney.

Assemblymember **Mike Feuer** was inspired by his father, who was a prisoner of war at **Stalag 17** in World War II. While Mr. Feuer was Executive Director of **Bet Tzedek Legal Services**, **Bet Tzedek** maintained a storefront neighborhood legal services office in the San Fernando Valley that provided free legal services to the elderly, disabled and poor. They helped the public view lawyers as caring and concerned.



Now the spotlight is on the courthouse children's waiting rooms. The first one in the San Fernando Valley is to be installed in the **Van Nuys** courthouse and the second is to be built in the **San Fernando** courthouse. We have already raised funds to establish the **Van Nuys** facility, but we still need to raise sufficient funds for **San Fernando**. Every day, parents bring their children to the

courthouse and are in danger while they roam the halls and courtrooms. They need a safe place to stay while their parents or guardians conduct their court business.

These facilities are extremely important to our community. We are asking you to contribute whatever you can to this important project. Donations can be mailed to the San Fernando Valley Bar Association offices and should be earmarked for "The Children's Waiting Room." We will soon mail letters soliciting your help.

Thanks to all the Bar members and others who support our very worthy causes. We truly appreciate your help!

This year, the Foundation gave \$6,000 to California State University at Northridge, \$6,000 to the University of West Los Angeles and \$6,000 to Monroe High School for scholarships for law-related careers.

It is nice to know that we can help those who live, work or study in our own backyard. Remember: Generosity counts!

The grants committee has recommended and the board of trustees has approved \$26,000 for the following grants: **Haven Hills** (\$7,000); **San Fernando Drug Court Program** (\$3,500); **SFVBA Fee Arbitration Program** (\$1,000); **Northridge Hospital CATS Program** (\$1,000); **Office of Family Law Facilitator** (\$1,000); **SFVBA Attorney Referral Service** (\$2,000); **Alliance for Children's Rights** (\$2,000); **Comfort for Court Kids** (\$2,500); **KEN Project** (\$2,000); **Friends of CASA** (\$2,500); **West Valley Boys & Girls Club** (\$1,000); and **Fair Housing Council** (\$500). 🐾

Have you ever thought of serving on the Foundation's Board of Directors? Do you know someone outside the legal field that would make a great Board member? Our Board is made up of attorneys, judges, and others that work in the legal community as well as community volunteers. Our Nominating Committee is soliciting nominees for officer and Board member positions. Please submit a resume or curriculum vitae to **Marcia L. Kraft**, Chair of the Nominating Committee, at marcia@kraftlawoffices.com, by the close of business on **June 20, 2007**.

In addition, all current officers and directors who are eligible for nomination for another term shall confirm in writing their interest in being considered for nomination for another term by that date. Please contact me at (818) 883-1330 for further information.

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Fall Program Offers Litigation Updates, continued from page 8

According to Mehta, mini-marathoners will learn about these new cases and changes in an easy-to-understand format. He says counsel need these updates in order to make sure that their settlement language “sticks.”

The marathon includes a significant focus on civil procedure, law and motion, and trial updates as well.

“How many days for a motion?” Mehta asks. “A number of attorneys are not as sure about this as they could be and should be.”

Participants in the program will learn about new developments in civil procedure and law and motion practice that could be potential land mines for them and their clients. In addition, speakers will analyze new cases affecting how advocates try cases, offering both insights and practical guidelines.

The final section of the presentation will be from the judicial perspective. Mehta is lining up a number of bench officers who will speak on “The Top Ten Mistakes Lawyers Made in Court – 2007.” The judges will make themselves available for questions and answers as part of the marathon.

“What could be more useful for courtroom trial lawyers than being able to see into the minds of the judiciary?” Mehta says. “I’m looking forward to learning all of these new points myself, and hope to see my colleagues at the bar there as well.”

For more information about the fall litigation program or the bar’s Litigation Section, call the bar offices at (818) 227-0490 ext. 105.

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Appreciating Appreciation

Recent Bankruptcy Decision Give Creditors a Little Something Extra



BY MARK M. SHARF

In the recent bankruptcy case *In re Brun* 2007 WL 455874 (Bankr. C.D. Cal.), Judge John Ryan ruled that a bankruptcy trustee who uses California law to reverse a fraudulent transfer is entitled to appreciation in the value of the transferred asset as part of the judgment. This case is significant because, outside of the bankruptcy process, creditors would not have been able to reach the appreciation in the value of the asset that occurred following the property's transfer date.

In *Brun*, the debtor signed a grant deed transferring property located in Laguna Beach, California in April 2002 and filed a Chapter 7 petition in October 2005. The Chapter 7 bankruptcy trustee filed a complaint to avoid the transfer pursuant to §544 of the Bankruptcy Code, which incorporates Section 3439.01 et seq. of the California Civil Code.

The recipient of the Laguna Beach property filed a motion seeking a ruling that the bankruptcy trustee's recovery be limited to the value of the equity of the real estate at the time of the transfer in April of 2002, consistent with California law.

Judge Ryan asserted in his analysis under §544(b) that bankruptcy trustees are allowed to stand in the shoes of a creditor to assert state law causes of action. Judge Ryan stated that under California law, a creditor can void a fraudulent transfer only to the extent necessary to satisfy that creditor's claim. Judge Ryan noted that under California Civil Code §3439.08, a creditor may recover no more than the value of the asset at the time of the fraudulent transfer.

Judge Ryan noted that in a previous Ninth Circuit case, *Acequia v. Clinton* (*In re: Acequia*), 34 F.3d 800,

809 (9th Cir. 1994), the Ninth Circuit held that the amount of a trustee's recovery should not be limited by the amount of the creditor's claim, notwithstanding the fact that this is precisely what California law provides. Judge Ryan was forthright in admitting that courts in the Ninth Circuit have not been entirely consistent on this issue, citing a District Court decision from the Northern District of California, *Decker v. Tramiel* (*In re JPS Corp.*), 2006 WL 2844581.

In *Decker*, a bankruptcy trustee attempted to avoid the sale of real property for \$10,000 under Bankruptcy Code §544 and California law. In that case, the District Court followed California law, which allows purchasers of property to set off the amount they paid for the property against the §544(b) recovery.

The *Brun* court cited other decisions from outside the Ninth Circuit that have held that a trustee is entitled to recover the greater of the value of the transferred property at the transfer date or the current value of the transferred property. Judge Ryan stated:

This makes sense. As noted by Collier, this result is consistent

with the well-established purpose of §550, to restore the estate to the position it would have occupied had the property not been transferred. *Id.*

As noted by the Court, "In sum, while California law governs whether and to what extent a transfer of property is voidable, the value of the voided transfer, and therefore, the recovery is governed by §550(a), irrespective of any recovery limitations imposed by California law." The court noted that, "To the extent that the reasoning in *Tramiel* supports a holding to the contrary, it is unpersuasive and not binding on this court."

This is a prime example of why bankruptcy can help creditors (and hurt debtors, or at least their transferees). Particularly following the rise in real property prices in California during the past decade, this is an issue of utmost importance. ⚡

Mark M. Sharf practices bankruptcy law and litigation as the principal of The Sharf Law Firm in Encino. He can be reached at (818) 788-4800 or at mark@sharfllaw.com.

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Conference of Delegates, continued from cover

improving the laws and the administration of justice in California, advancing the science of jurisprudence in California, advancing the education of California lawyers and fostering their professional excellence, and promoting public understanding of and respect for the law, the justice system, and the roles of the legal profession and an independent judiciary in that system.

Cynthia Elkins, who has been an active bar association leader for many years, chairs the delegation with Franklin. Elkins practices management-side employment law in Woodland Hills.

"I've been involved for three years as a delegate," Elkins says. "Our purpose is to represent the San Fernando Valley Bar Association on a state-wide level."

The conference of delegates is an informative and educational process for participants, according to Elkins. And this fact is not particularly well-known, she says.

"Until I became involved, I was unaware of the impact the bar association, on a local and state-wide level, [could] have on changing the laws that affect our practices and our lives," she says. "We welcome additional participation from anyone in the bar association."

Elkins says that the delegation is especially interested in adding voices representing the criminal law practice area. The delegation needs a criminal law practitioner to assist with proposed resolutions in that area of focus, she says.

Franklin was a member of the SFVBA delegation to the Conference of Delegates at the State Bar Annual of Meeting 1989-2007, and chaired the body from 1998-1999 and 2006-2007. Franklin's tenant property proposal, while solely in the civil practice arena, will have a significant impact on the California business world.

"Our resolution originally proposed an increase from \$300 to \$500, but when I was asked to comment on the proposed legislation for Assemblyman Adams and the Judiciary Committee, I argued for an even greater increase, to \$750," Franklin says. "The Apartment Association of Greater Los Angeles also argued for this increase, and eventually, a compromise was reached and an increase to \$650 was recommended and approved."

This is an example of the conference's values in action. Formed in 2002 as an independent organization, the conference is the successor to the State Bar Conference of Delegates and acts as the voice of the lawyers of California. The combined organizations have an almost 70-year history. According to the conference, the organization encourages participation from all local, minority, statewide and specialty voluntary bar associations in the state.

In line with the conference's purpose, Elkins says she has set out some ambitious goals for the local delegation. Particularly, the delegation needs more participants to support greater voting power.

"We have 12 delegate slots," she says. "And only five or six people are attending the conference."

An example of how the delegation is trying to influence future law in California is a new resolution for the 2007 conference concerning holographic wills. Marlene Seltzer, who practices wills, trusts and estates law in Woodland Hills with the Law Offices of Alice A. Salvo, submitted the proposed resolution, which addresses deathbed bequests to non-family members. ⚡

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Benchmark



Barbara Williams passed away on April 28, 2007. She became the San Fernando Valley Bar Association's first administrative director in 1955. For almost 20 years, she managed the office and oversaw the Lawyer Referral Service and Legal Aid. For another two decades she spearheaded the Senior Citizen Legal Program until she retired in 1993. In 1997, then President David R. Hagen presented Barbara with the President's Award for her professionalism, dedication and charm.

SFVBA Immediate Past President Richard A. Lewis has been nominated to the Los Angeles County Bar Association's Board of Trustees. Lewis is currently the SFVBA affiliate representative to LACBA's Board. His term begins July 1.

Elizabeth L. Swanson has joined the firm Greenberg & Bass LLP as Of Counsel. A registered patent attorney, Ms. Swanson practice focuses on the protection of business assets through intellectual property law. She has significant experience helping businesses and individuals acquire legal protection by obtaining and enforcing copyrights, trademarks and patents, both in the United States and throughout the world. 📧



Applications For Admission

THE FOLLOWING JOINED THE SFVBA IN APRIL 2007:

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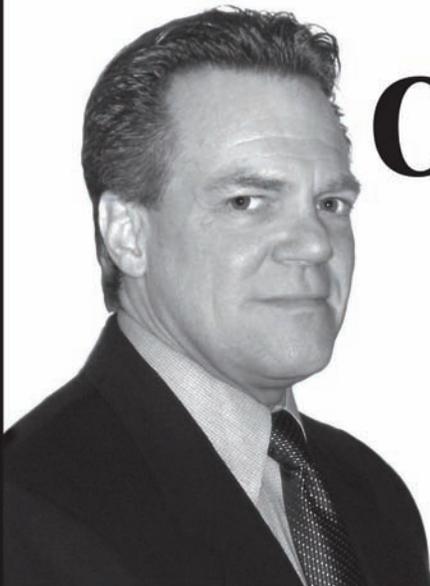
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June Events

Probate & Estate Planning Section

Topic: Update from the Court

Speaker: Supervising Judge Coleman Swart

Date: June 12

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

Intellectual Property, Entertainment & Internet Law Section

Topic: Avoiding Icebergs in a Sea of I.P.: Intellectual Property Due Diligence in M&A Deals

Panel: Matt Crowley, Esq., Michael Fedrick, Esq., and Mishawn Nolan, Esq., Moderator

Date: June 15

Time: 8:30 a.m.

Place: Stone | Rosenblatt | Cha
21550 Oxnard St., Suite 200, Woodland Hills

Cost: \$25 members prepaid; \$35 at the door
\$35 non-members prepaid; \$45 at the door

MCLE: 1 Hour

Santa Clarita Valley Bar Association

Topic: Updates in Employment Law and What We Should All Be Aware of for Our Own Employees

Speaker: David Hamilton, Esq.

Date: June 21

Time: 11:45 a.m.

Place: Marie Callender's, Valencia

Cost: \$30 members prepaid; \$40 at the door

MCLE: 1 Hour

Family Law Section

Topic: The Domestic Violence Prevention Act: What Is It and How Do We Use It?

Speaker: Commissioner Scott Gordon

Date: June 25

Time: 5:30 p.m.

Place: Monterey at Encino Restaurant

Cost: \$45 members prepaid; \$55 at the door
\$55 non-members prepaid; \$65 at the door

MCLE: 1 Hour

Business Law, Real Property & Bankruptcy Section

Co-sponsored by LACBA Remedies Section

Topic: Writs and Attachments

Panel: Hon. Victor Greenberg, Mel Aranoff, Esq., and Afshin David Youssefyeh, Esq.

Date: June 27

Time: 12:00 noon

Place: Stone | Rosenblatt | Cha
21550 Oxnard St., Suite 200, Woodland Hills

Cost: \$35 members prepaid; \$45 at the door
\$45 non-members prepaid; \$55 at the door

MCLE: 1 Hour

Women Lawyers Section

Topic: Investment Strategies for Women at any Stage of Life

Speaker: Dorothy Strackbein Koetz

Date: June 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

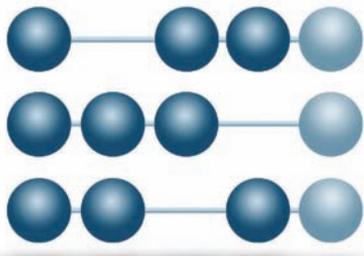
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