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San Fernando Valley Bar Association
founded in 1926

BarNotes

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San Fernando Valley Bar Association

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EVERYBODY'S BUSINESS

STEVEN FOX LEADS TRANSACTIONAL AND BANKRUPTCY LAWYERS' SECTION

BY LISA MILLER

If clients or counsel have business or bankruptcy-related questions, the San Fernando Valley Bar Association's Business Law, Real Property & Bankruptcy Section has the answers. One of the Association's longest-constituted sections, the group boasts one of the largest enrollments as well.

According to Section Chair Steven R. Fox, the Association's Business Law Section meets on a regular basis for attorneys to come together to discuss business. The section provides educational programming as well as advisory resources to all Association members on such diverse areas as appraising businesses to training associates in transactional matters, and everything in between.

"Many areas of law are affected by business," Fox, of Encino's Law Offices of Steven R. Fox, says. "Many counsel don't think about this too often, but remember that attorneys' partnerships and corporate structures are businesses."

But the Section's relevance extends far beyond back-office considerations at the firm, he says.

"Most clients are a business entity of some sort," he says. "It's difficult to practice law without knowing about business."

Fox, a bankruptcy attorney, says that he strives to program all of the Section's educational offerings with program topics that are timely and relevant. For example, February's meeting offered an overview of selected UCC topics. But he is especially enthusiastic about the March meeting.

"We'll be gathering at the U.S. Bankruptcy Court in Woodland Hills," he says. "We'll be getting an in-depth update on the best uses of the Bankruptcy Court's 'Pacer' system."

According to Fox, subsequent Section programming will include a forum on the basics of corporate formation and dissolution. The highlight of the year, however, will be a reprise of a practicum demonstration that garnered outstanding reviews when the Section presented it a few years ago.

"By far, our most popular and probably one of our most effective programs is a judgment debtor examination where the debtor, Wile E. Coyote, is examined by three attorneys," Fox says. "Even the Roadrunner couldn't keep up with these three."

Fox says that the Section, while priding itself on offering timely educational programming for members and guests, also provides other very tangible benefits.

"For me, one of the highlights of participating in the Section, whether as Chair or member, has got to be meeting other attorneys with similar interests in law," he says.

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Steven R. Fox, a sole practitioner in Encino, has focused his practice on bankruptcy matters since graduating from Loyola Law School in 1988. After clerking for the Honorable Richard Stair in the District of Tennessee, he returned to practice in Los Angeles.

Fox has written numerous articles about bankruptcy and its affect on other areas of law. He is a seminar and conference speaker on complex bankruptcy issues and changes in the bankruptcy code.

Although he works in all areas of bankruptcy, he focuses his practice on reorganizing businesses and creditor matters.

BarNotes

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UNSTOPPABLE MARCH TO FREEDOM

Richard A. Lewis, SFVBA President

The month of May is the official month in which we as a nation celebrate our commitment to the rule of law and our heritage of liberty under law. For me, however, the month of March is symbolic of our continuing struggle to expand the benefits of freedom and equality to all people. March is the month to remember the crucial role of our courts in expanding and protecting the freedoms of all people, without regard to race, religion, creed or color.

This long march to freedom and equality for all people under the law began on March 2, 1807 when the United States Congress enacted laws ending the African slave trade.

On March 9, 1841, the United States Supreme Court upheld the decision of a Connecticut court recognizing the rights of the 35 survivors of the Amistad mutiny as free citizens. In defense of the Amistad survivors, former president John Quincy Adams argued that these illegally enslaved Africans "were entitled to all the kindness and good offices due from a humane and Christian nation."

The Court issued a ruling freeing them to return to Africa, over the appeal of the United States government. The Order required the United States government to escort these survivors back to their homes.

Ironically, on March 6, 1857, the Dred Scott decision declared that blacks, slaves as well as free, are not and could never become citizens of the United States. With this decision, the United States Supreme Court, led by Chief Justice Roger B. Taney, set the stage for the most dramatic expansion of rights in our nation.

Nullifying the Dred Scott decision, Congress passed and the States ratified the 14th Amendment to the Constitution. The 14th Amendment declared that all persons born or naturalized in the United States and subject to its jurisdiction are citizens of the United States and of the States wherein they

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Report From The Foundation

Support Our Law Day Gala

BY ANNE ADAMS, VCLF PRESIDENT

Were celebrating the Law Day Gala on April 28 at the Woodland Hills Country Club, our major fundraising event for the year, and we hope you'll attend!

How can you support the Foundation? We suggest three ways:

First, the key to a successful fundraiser is good attendance, so buy tickets to the event or sponsor a table (invite your friends and share the price!). Our Law Day Gala Committee is hard at work creating a special event with a groovy 1960's retro theme. Look for your invitation in the mail or call the Bar office if you need an invitation.

Second, donate auction items. Do you have any tickets to sporting events or theatre productions that you could donate? We are putting together gift baskets in a variety of themes. If you provide the items for the gift basket, we'll put it together for you. Do you have any gift certificates you'd like to donate? We solicit a wide variety of items from local businesses for our auction. And we'd love your support!

"We use the money we raise for scholarships and law-related grants. The more money we raise, the more people we can help."

Please contact our Law Day Gala Committee co-chairs, Christine Lyden at (818) 888-8866, Mark Blackman at (818) 881-5000, and Annie Reed at (818) 947-2320 regarding auction donations.

Third, be a sponsor! We offer sponsorship opportunities starting at $500, which includes two tickets to the Law Day Gala. Our next level of sponsorship is $1,000, which includes four tickets to the event. We offer higher levels of sponsorship as well. Please contact Barry Harlan at (818) 907-3278 for more information. Barry is looking for some new sponsors to support the work of the Foundation.

REMEMBER: We are *your* foundation. Your support is critical to a successful Law Day Gala. We use the money we raise for scholarships and law-related grants. The more money we raise, the more people we can help. Do you want to make a difference? You can! Support the Foundation!

Anne Adams can be contacted at (818) 715-0015 or AnneAdamsLaw@sbcglobal.net.

Shhhh! Secrets to Winning Quiet Title Actions

Moving for an Undertaking Can Win the Case before Trial (Without a Summary Judgment Motion)

BY NATE BERNSTEIN

In a recent lawsuit filed in downtown Superior Court, the plaintiff/seller of real property alleged an oral agreement with a purchaser/owner of a single family home. The plaintiff alleged that the defendant was obligated under the agreement to transfer the property back to the seller after a pre-sale refinance. The parties had not entered into a formal purchase agreement, but had opened and closed escrow, and the plaintiff transferred title to the defendant.

The action alleged claims for Breach of Agreement, Quiet Title, Specific Performance, Constructive Trust, and monetary damages.

The Defendant filed an unsuccessful demurrer based in part on the Statute of Frauds, with the Court citing an exception to the Statute. The plaintiff recorded a Notice of Pending Action ("lis pendens") at the time of filing the complaint.

Lis Pendens

A *lis pendens* (Latin for"*pending suit*"), or "notice of pendency of action" is recorded at the county recorder's office in the real property division. It gives constructive notice to the world that a lawsuit involves a claim affecting title, possession or use of an easement on real property. The notice is also required to be filed in Court. Code of Civil Procedure sec.s 405.20, 405.40.

By recording a notice of lis pendens, a party to that action preserves rights or interests, if any, in the real property pending the final determination of the action. Any taker of a subsequently created interest in that property thus takes that interest subject to any judgment rendered in the pending action. See *La Paglia v. Superior Court* (1989) 215 Cal.App.3d 1322, 1326, 264 Cal.Rptr. 63.

The practical effect of recording a lis pendens is that it causes a cloud or charge to be placed on the title, such that the current title holder will find it difficult to finance, refinance or sell the property. Lending institutions will generally not loan money secured by the real property. Title insurance companies will not insure the title. The title to the subject property becomes unmarketable until the lis pendens is expunged or voluntarily removed.

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President's Message, continued from page 3

reside. The government could not deprive persons described in the 14th Amendment of life, liberty, or property without due process of law, or the equal protection of the laws.

On March 8, 1884, Susan B. Anthony appeared before the Judiciary Committee of the House of Representatives to argue for an amendment to the United States Constitution granting women the right to vote. She stated that, "We appear before you this morning . . . to ask that you will, at your earliest convenience, report to the House in favor of the submission of a Sixteenth Amendment to the Legislatures of the several States, that shall prohibit the disfranchisement of citizens of the United States on account to sex."

It was not until June 4, 1919 that Congress approved the "Anthony Amendment," and August 26, 1920 until the states ratified it as the Nineteenth Amendment to the Constitution. But it was Anthony's appearance before the Judiciary Committee in March of 1884 that started the movement to expand the right to vote to all citizens, regardless of gender.

On March 7, 1965, the slow march continued when about 525 people began a lonely fifty-four-mile trek from Selma, Alabama to the state capital of Montgomery to demonstrate for voting rights for African-Americans. The demonstration was met by violence intended to prevent the march, which became known as "Bloody Sunday."

In support of the demonstration, former President Lyndon B. Johnson stated that, "[W]e have already waited a hundred years and more, and the time for waiting is gone . . ." For this reason, federal district court Judge Frank Johnson Jr. ruled on March 17 that the demonstrators must be permitted to march.

As a direct consequence of these events, the United States Congress passed the Voting Rights Act of 1965, guaranteeing every American, twenty-one years old and older, the right to register to vote.

On March 3, 1859, the journalist Q.K. Philandaer Doesticks attended and later wrote about an auction of more than 400 men, women and children held by slave-owner Pierce M. Butler. These men, women and children were auctioned in order to pay debts incurred in gambling and the financial crash of 1857-58.

The event, referred to as "The Weeping Time," was the largest recorded slave auction in United States history. This perspective helps us understand and realize the monumental strides we have taken as a nation.

The events of Marches past illustrate that it is our court system, from the United States Supreme Court in the Amistad case, to the federal district court in the events surrounding the march from Selma to Montgomery, that has been the critical institution that has protected and upheld our rights. This is so even in the face of opposition by the United States government, as in *Amistad*, and despite the occasional setback, such as the *Dred Scott* case.

Recognizing this critical role, lawyers especially must continue to support our courts and protect the separation of powers that has allowed them to play this vital role in our society. It is our duty to speak out in support of our court system. As we support and defend our courts, we play a crucial role in continuing our nation's unstoppable march to freedom.

Richard Lewis can be contacted at (818) 704-0585 or rlewis@Richardlewis.com.

Shhhh! Secrets to Winning Quiet Title Actions, continued from page 7

Removing the Lis Pendens Notice from the Record

In this matter, because the plaintiff's claim concerned the title to the subject real property (a quiet title action), a Motion to Quash the Lis Pendens would be a waste of time. However, a Motion to Require the Claimant to Post a Bond pursuant to Code of Civil Procedure section 405.34 was more on-point. If the bond motion was granted, and the plaintiff could not post a bond, this would extinguish the Notice of Pending Action, and also, potentially, the claim for quiet title.

The statute, Code of Civil Procedure section 405.34, UNDERTAKING AS CONDITION OF MAINTAINING NOTICE INDEPENDENT OF MOTION TO EXPUNGE, states:

> *Subject to the provisions of Sections 405.31 and 405.32, at any time after a notice of pendency of action has been recorded, and regardless of whether a motion to expunge has been filed, the court may, upon motion by any person with an interest in the property, require the claimant to give the moving party an undertaking as a condition of maintaining the notice in the record title. However a person who is not a party to the action shall obtain leave to intervene from the court at or before the time the person moves to require an undertaking. The Court may permit evidence to be received in the form of oral testimony, and may make any orders it deems just to provide for discovery by any effected party. An undertaking required pursuant to this section shall be of such nature and in such amount as the court may determine to be just. In its order requiring an undertaking, the court shall set a return date for the claimant to show compliance on the return date, and if the claimant fails to show compliance on the return date, the court shall order the notice of pendency of action expunged without further notice or hearing.*

The provisions of the statute include:

- A Motion to Expunge Lis Pendens need not be filed concurrently or prior to the suit
- Any party with an interest in the property can require that the plaintiff/claimant post a bond
- Any non-party can seek leave to intervene in the action, and file the Motion
- Discovery related to the notice may be initiated by any affected party
- The Court sets the amount as it deems "just," a flexible standard
- The Court sets a return hearing date to prove compliance
- Notice of pendency of action is expunged automatically without further notice and hearing if the bond is not purchased

The language and impact of section 405.34 is different from its neighboring language in section 405.33. The sections are easily confused because they both deal with notices of pending actions and undertakings. However, these sections cover different situations.

Under Section 405.33, *the Court shall order that the notice be expunged if the court finds that the real property claim has probable validity, but adequate relief can be secured to the*

claimant by giving of an undertaking. The expungement order shall be conditioned upon the giving of such nature and in such amount as will indemnify the claimant for all damages proximately resulting from the expungement which the claimant may incur if the claimant prevails upon the real property claim.

Under section 405.33, the Court must decide the sometimes difficult question of "*probable validity*" of the claim, and the undertaking is ordered in favor of the plaintiff/claimant in place of the lis pendens notice. Under section 405.34, the Court is to order the undertaking in favor of the moving party with the interest in the property.

Amount Requested

Regarding the amount of the bond, little case law exists that provides standards interpreting Section 405.34. Counsel can approach this issue creatively and present evidence in the Motion.

For example, counsel may want to ask for a large bond amount based on the value of the property, or at least the amount of the client's equity in the property, plus attorney fees and costs in defending the action. Counsel may want to include in the filing a declaration by the client stating the amount of equity and an opinion of fair market value, perhaps using a realtor or appraiser to testify about fair market value. Counsel can argue that the Court should award the amount of the equity plus attorney fees and costs as the amount of the bond because the client is prevented from using the equity while the lis pendens is on record.

Strategic Uses for the Motion

One useful aspect of the section 405.34 motion is that counsel can test an opponent to determine how serious the plaintiff/claimant is about the case. Does the plaintiff/claimant really want to try the case, or is the party seeking a quick monetary settlement? Does the claimant really have a valid claim that could prevail at trial, and that the claimant is willing to preserve by posting a large bond?

The Motion potentially forces the plaintiff/claimant to incur a large

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Credit the Bankruptcy Reform Act
Bill Dramatically Alters Filing Rates and Credit Card Charge-Off Statistics

BY MARK SHARF

During October 2005 consumers filed a total of 27,893 Chapter 7 bankruptcy cases in the Central District of California, which covers all of Southern California (other than San Diego). During November 2005 a total of 160 Chapter 7 bankruptcy cases were filed in the Central District of California.

These dramatic statistical changes were caused by the enactment of the Bankruptcy Reform Bill, which took effect on October 17, 2005. The media widely reported that changes to the bankruptcy laws would close the door on new bankruptcy cases, and this caused a rush to the courthouse unparalleled in the history of bankruptcy law.

Credit Card Companies Get What they Wish For

During October and November 2005, MBNA and Capital One credit card companies reported a sharp upswing in credit card charge-offs. Typically, a one to two month delay exists between the date of a bankruptcy filing and the date the consumer takes a charge-off. January 2006 is certain to bring news of substantial financial losses at the credit card companies that so vigorously pursued the passage of bankruptcy reform - MBNA, Capital One, and many other prominent credit card issuers. Industry insiders anticipate that their losses will be in the billions of dollars, far higher than the more than $70 million dollars that these companies spent lobbying Congress to enact bankruptcy reform in the first place.

New Bankruptcy Laws

While lenders believe that the new law will improve their profits in the long run, this might not be the case. Bankruptcy attorneys' experiences during December 2005 indicate that filings have already begun to trend toward normal rates, probably because the media grossly exaggerated changes to the Bankruptcy laws. Most people continued to qualify for Chapter 7 (liquidation) relief once the new law took effect for the following reasons:

- Generous deductions for home mortgage payments, and all secured debt payments
- Deductions for the actual cost of health insurance and court-ordered support payments in determining whether debtors can afford to pay unsecured creditors
- A "snapshot view" of a debtor's income in the 180 days period pre-bankruptcy. Consumers with income during this period below their State's median income level are still eligible to file Chapter 7 bankruptcy. This is an important factor for people whose incomes fluctuate, or are between jobs, since timing of the bankruptcy filing is a critical issue under the new law.

A significant number of attorneys have stopped providing bankruptcy services to consumers because of the new provisions of the law, which sanctions lawyers for inaccuracies in bankruptcy schedules, which counsel should have detected. In addition, the United States Government will now randomly audit bankruptcy filings to ensure the accuracy of bankruptcy schedules. These provisions were added to deter lawyers from accepting and promoting bankruptcy filings in the first place.

Mark Sharf focuses his practice on bankruptcy and other business matters. He can be reached at 818-788-4800 or bankruptcy@pacificnet.net.

Everybody's Business, continued from page 1

Fox's assessment of the value of this type of contact is the voice of long perspective.

"Without strong networking opportunities, I would have a difficult time meeting and staying in touch with the many good attorneys here in the Valley."

Fox notes that one of the other prominent opportunities the Business Section offers is networking for practice development.

"I've attended the SFVBA's Business Law Section meetings for years," he says. "You cannot replace the one-on-one contacts and the networking with other attorneys in this kind of intimate setting."

This personal contact pays off in both personal and professional support, he says.

"My main referral base is other attorneys," Fox says.

For more information about the Business Law Section of the San Fernando Valley Bar Association, contact Steven R. Fox at (818) 774-3545.

Santa Clarita Valley Bar Association

YOUNG CONSTITUTIONAL SCHOLARS

BY WILLIAM R. LIVELY, SCVBA PRESIDENT

Recently, I've had the opportunity to sit-in on a number of Bar Association planning meetings. Invariably, one of the subjects approached is how attorneys, as a profession, can improve the image and future of the profession. In particular, the discussion focuses on how to better work with youth and the general public.

A specific object of our youthful endeavor would be to generally get young people to like us and look up to us, and maybe become one of us some day. Typical responses are "job shadowing" programs and organized debates. Frequently, attorneys go to classes and speak to young people on subjects related to the law.

In my estimation, attempts to invent these activities out of whole cloth are a waste of time. They pale in comparison to an already existing and exquisitely organized program. Through this program, students participate in a full court trial experience, mirroring what we see every day in our work.

The California Mock Trial Competition is now in its 20th year of operation in secondary and high schools in thirty-six California counties. The program is co-sponsored by the State Bar of California, the California Young Lawyers Association, and the Daily Journal Corporation. The object of the program is to immerse students in legal issues and problems, and enhance their abilities for critical thinking, analysis, communications and interpersonal achievement. The program fosters an understanding of the link among our Constitution, our courts and our trial system, and provides an opportunity for interaction with positive adult role models in the legal community.

The Constitutional Rights Foundation provides a booklet to classroom participants that gives information on history, the Foundation and a fact situation (which usually reveals the commission of a criminal act). The students divide into prosecution and defense camps, with assigned roles as lawyers, witnesses or court personnel, each with a statement of information. All of the statutory, case and constitutional law materials that students need to conduct a trial are provided and the entire process is bound to the factual statements contained in these materials. Rules of evidence, objections and statutory law, all required to properly participate in a trial and deal with legal issues, are included.

Check out our revamped website!
scvbar.org

GENERAL LUNCH MEETING
OPEN BENCH - BAR MEETING
March 16
12:00 noon
Marie Callender's Restaurant
27630 The Old Road, Valencia
$30 pre-paid; $40 at the door.

Young people learn their roles, have competition within their schools and begin practice sessions with other local schools. They then attend a tournament-like competition among the schools in a particular district, until the whole process culminates (for Los Angeles County) when thousands of young people descend upon the Master Calendar departments in the Stanley Mosk Courthouse at 111 N. Hill Street, to be assigned to courtrooms to try their cases. Sitting Judges participate as bench officers, and often comment to the effect that what they see with these young people is not unlike what they saw when the courts were occupied with real-life judicial struggles. The competition continues for the winners to a state level, and then to a national competition.

The program is an enormously rewarding experience for a mentor, as any one of us could be. One could be a lawyer or a judge; district attorney or transactional attorney. One could do it for a single day in a season, or every afternoon. The teams are hungry and even desperate for help from the legal community.

I recall one occasion of seeing a young person who was examining a witness on the stand. It didn't seem that it mattered which way the student asked the question, the objections kept on being sustained by the judge (sound familiar?). He backed off and approached the same subject again and again, with a differently worded question. Finally, to the relief of all who observed, he reached inside himself, and became a lawyer in that moment. I'll never forget it. You had to be there. I'll hope you'll try.

Bill Lively can be contacted at (661) 287-3600 and wrlively@sbcglobal.net. To participate in the Mock Trial Competition, contact the Constitutional Rights Foundation at (213) 487-5590 or www.crf-usa.org

Coach's Corner

A Series of Practical Tips on Running a Profitable Law Firm

BY EDWARD POLL

Rules of Engagement: Get it in writing!

When counsel gets agreement on fee particulars up front, the chances of collecting fees goes up significantly because the client understands what to expect. The time to make it clear is right at the start – as documented in the engagement letter.

Q: What should every lawyer consider when starting a new engagement?

A: The rules of professional conduct require that lawyers have signed engagement letters for new clients stating each party's responsibilities for making the engagement a success. Counsel will have an easier time meeting the client's expectations and collecting fees if counsel incorporates all essentials in the engagement letter. Counsel should ensure that 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.

At a minimum, counsel should cover the following points in the engagement letter, with both lawyer and client stipulating and agreeing to the facts stated:

- Who the lawyer is representing
- The scope of the representation – what the lawyer will and will not do
- The fee to be charged and how it will be calculated
- When the fee is to be paid
- 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 in accord with the agreement
- Dispute resolution procedures
- Resolution of conflicts of interest or other ethical issues

This list is heavily weighted to the financial side, because stipulating payment rates and terms up front is the best way to get paid. Both counsel and client should sign the engagement agreement and the client should initial the segment about the timeliness of payment in the margin of the agreement. This will acknowledge that the client understands and specifically agrees to the terms and need for timeliness of payment.

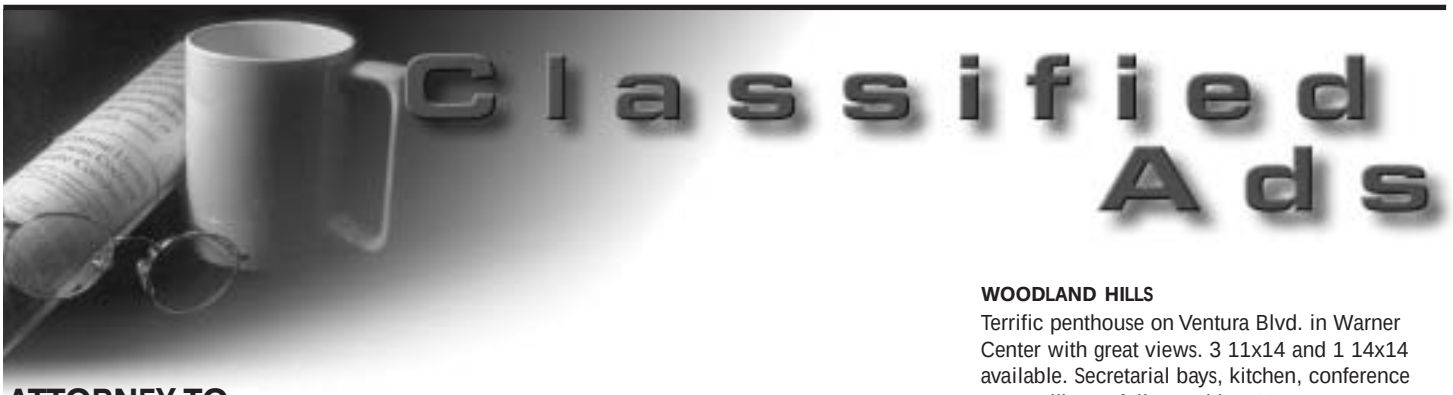
If the client says at this point that counsel is too expensive, counsel should respond that other clients find that their investment in counsel's services is justified by the results. Although counsel understands the client's feelings, fees are not negotiable.

Often, this produces one of two results:

- The client is impressed with counsel's negotiation skills, wants to be represented by a tough, expensive lawyer, and therefore accepts counsel's terms of engagement; or
- The client leaves but becomes a great walking advertisement for counsel, convincing listeners that counsel must be highly qualified because counsel is aggressive, expensive and unapologetic.

Counsel can be more flexible and counter a price concern, not by lowering rates, but by taking services off the table. For X dollars, counsel will do certain tasks, and for Y dollars, counsel you will do these tasks minus some specific services. Counsel is not changing the firm's fees. Rather, counsel is charging a different price for a different quality of service or series of tasks. For example, if returned phone calls within two hours are part of counsel's regular hourly rate, tell the client that response time will be 24 hours at a lower price.

Edward Poll is a nationally recognized coach and consultant to lawyers and law firms. He can be reached at www.lawbiz.com or (800) 837-5880.



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Shhhh! Secrets to Winning Quiet Title Actions, continued from page 10

financial burden if the bonding surety company requires that the bond be secured by the claimant's assets, or if the claimant must produce significant cash to purchase the bond. The cost of purchasing the bond may make the pending lawsuit untenable for the plaintiff/claimant. If counsel prevails in the Motion and the claimant does not post the bond, the Notice of Pending Action is expunged automatically by operation of law, without further hearing.

Counsel should bring the Motion early in the case, because the plaintiff/claimant may withdraw the underlying action if Court expunges the Notice of Pending Action. If the Court grants the Section 405.34 Motion, the plaintiff/claimant bears substantial risk that the defendant will refinance or sell the subject property prior to trial.

Attorney Fees

Another useful section within this statutory scheme (depending whether counsel is on the winning or losing end of the Motion) is reasonable attorney's fees and costs for the party prevailing on the Motion under the companion statute, Section 405.38. The section states:

> *The court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.*

This section applies in the instant matter, where the buyer and seller did not have a real estate purchase agreement with an attorney fees clause.

In the case at issue, the Court granted the Defendant's motion and required the claimant to post a $140,000 bond (the equity amount in the property), and granted counsel's request for attorney fees and costs on the motion. The plaintiff/claimant was unable to post the bond by the time of the compliance hearing and the Court expunged the Notice of Pending Action. The defendant negotiated dismissal of the matter with prejudice.

Client Caveat

On a cautionary note, even if counsel prevails on the Motion, if the owner/defendant transfers or refinances real property at the time a lawsuit for damages is pending, the plaintiff/claimant may name the owner/defendant in a cause of action for "fraudulent transfer." Civil Code sec. 3439, et. seq. (Uniform Fraudulent Transfer Act).

Even if the plaintiff/claimant can not post a bond, this does not necessarily mean that the claimant has no viable claim. Counsel should advise clients in this situation not to rush to refinance or sell the subject property, unless the client has a good reason to do so, one that will not harm potential or actual creditors, including the claimant.

This is especially true if the plaintiff/claimant is suing the client for monetary damages in addition to quiet title. The theory of this claim would be that the client transferred or took out equity that could be used to pay creditors while a creditor claim was pending. To protect against this claim, counsel should try to negotiate a release that covers this cause of action if the claimant is going to dismiss the quiet title action, or the entire action.

Conclusion

Counsel should consider utilizing the power of Code of Civil Procedure Sec. 405.34 early in the case if the client gets trapped in a shakedown quiet title lawsuit, where a lis pendens is recorded, and the title of client's home is placed in jeopardy.

Counsel can make a compelling argument that the defendant will be prejudiced during the course of the action while the Notice of Pending Action is recorded. The purchase of a generous undertaking is therefore in the client's best interest.

Nate Bernstein is the principal of Encino's Nate Bernstein & Associates, specializing in real estate litigation, commercial litigation and bankruptcy matters. He can be reached at (818) 995-9475 and natebernstein@netzero.net, or visit www.natebernsteinlaw.com.

March Events

Small Firm & Sole Practitioner Section

Topic: **Presentation Skills for Attorneys**
Speaker: Faith Pincus, Esq.
Date: March 8
Time: 12:00 noon
Place: SFVBA Conference Room, Woodland Hills
Cost: $20 members prepaid; $25 at the door
$25 non-members prepaid; $30 at the door
MCLE: 1 Hour

Workers' Compensation Section

Topic: **Persuasive Petitions for Reconsideration**
Speaker: Hon. Joseph Miller, Chairman
Workers' Compensation Appeals Board
Date: Monday, March 13
** Special date for March Only**
Time: 12:00 Noon
Place: Encino Glen Restaurant, Encino
Cost: $30 members prepaid; $35 at the door
$35 non-members prepaid; $45 at the door
MCLE: 1 Hour

Probate & Estate Planning Section

Topic: **Uses and Abuses of Private Judges**
Speaker: Judge Arnold Gold, Ret.
Date: March 14
Time: 12:00 p.m.
Place: Encino Glen Restaurant, Encino
Cost: $30 members prepaid; $35 at the door
$35 non-members prepaid; $40 at the door
MCLE: 1 Hour

ADR Section and Litigation Section

Topic: **What Every Litigator Needs to Know About ADR: A View from the Judges and Mediators**
Panel: Judge Michael Hoff, Judge Bert Glennon, Gerald Gerstenfeld, Esq. and Robert Tessier, Esq.
Date: March 16
Time: 5:00 p.m. "Non-Alcohol Happy Hour"
Place: SFVBA Conference Room, Woodland Hills
Cost: $20 members prepaid; $25 at the door
$25 non-members prepaid; $30 at the door
MCLE: 1 Hour

Business Law, Real Property & Bankruptcy Section

Topic: **Update on PACER**
Panel: Judge Geraldine Mund, Lou Esbin, Esq., Jon Sheldon and Sandi Brask
Date: March 22
Time: 12:00 noon
Place: Woodland Hills Bankruptcy Court
Cost: $20 members prepaid; $25 at the door
$25 non-members prepaid; $30 at the door
MCLE: 1 Hour

Family Law Section
Joint Meeting with LACBA Family Law Section

Topic: **Challenging an Unfavorable Custody Evaluation**
Panel: Experienced Attorneys, Evaluators and Judges
Date: March 27
Time: 5:30 p.m.
Place: Sportsmen's Lodge, ** This location for March only** 12833 Ventura Boulevard, Studio City
Cost: $40 members prepaid; $45 at the door
$45 non-members prepaid; $50 at the door
MCLE: 1.5 Hours

Pepperdine University School of Law

Topic: **Tackling Ethics in Smaller Firms**
Speaker: Ellen Peck, Esq.
Date: April 1
Time: 8:30 a.m. – 12:30 p.m.
Place: Pepperdine University School of Law
Cost: Free, but Practitioners should not register if they cannot attend the networking luncheon with Pepperdine law students.
MCLE: 2 Hours Ethics
Register at http://law.pepperdine.edu/news_events/012006_tackling_ethics.jsp.

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