



# BarNotes

A Publication of the  
San Fernando Valley Bar Association

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Are you in an MCLE compliance panic? If so, you're in good company. As the compliance deadline draws near, many attorneys realize they are in danger of suspended law licenses if they don't act fast. Enter the San Fernando Valley Bar Association's MCLE Marathon.

The Marathon is designed to meet the needs of all California lawyers, including providing all mandatory credits. The marathon has been a sell-out in the past, so early reservations are strongly recommended.

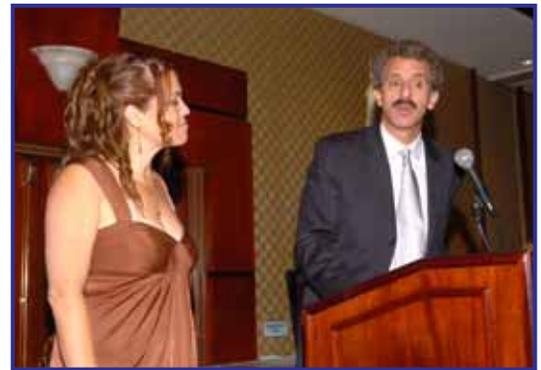
"This is one of the greatest benefits of membership in the San Fernando Valley Bar," Trustee Myer J. Sankary says. "The

convenience of getting all these credits in one place for a bargain price is a great service to the practice community."

Mr. Sankary recently moved into alternative dispute resolution full-time, after many years of general law practice. Lawyers who practice alternative dispute resolution full-time are required to maintain active law licenses. As such, they must comply with all MCLE requirements. But advocates, as well as neutrals, rely on the complete Marathon programming to efficiently meet their needs.

"I attend the MCLE marathon every year," bar association past President Alice Salvo says.

*continued on page 18*



Two hundred members and friends of the Bar attended the San Fernando Valley Bar Association's Annual Gala on September 15 at the Woodland Hills Hilton to celebrate the installation of Sue Bendavid-Arbiv as President of the SFVBA. Bendavid-Arbiv and the Bar and Foundation's officers and trustees were sworn in by California Assembly Member Michael Feuer. The evening also recognized the accomplishments of Immediate Past President Patricia McCabe, who presented the President's Award to John Marshall for his counsel in negotiations for the SFVBA new headquarters.

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21250 Califa Street, Suite 113  
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Fax (818) 227-0499  
www.sfvba.org

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## Civic Duty Jury Service Benefits All of Us

SUE M. BENDAUID-ARBIV, SFVBA PRESIDENT



I recently sat 6½ hours in the jury assembly room in the downtown Los Angeles Superior Court. While waiting to be called, I observed myriad individuals who had also been summoned that day. I recognized young lawyers, dressed in fine business attire, frantically working on discovery responses. I overheard them say they hoped to get “kicked off the panel” and back to “important” matters at the office.

I noticed the cultural diversity in the room and the unique mix of potential jurors – from a young hip-hop dancer to an elderly retired postal worker. Most jurors sat in chairs reading, dozing, talking on cell phones or listening to music. Several of us brought laptops and Blackberries, using the time to work. You could tell everyone was resigned to the fact it would be a long day of waiting.

And, indeed, it was. Not until 2:45 was I finally called and assigned to a courtroom. I felt a sense of relief that something was finally happening, and was excited about the change in scenery. Yet even then, I couldn't help but overhear gripes from others saying they felt this was a “waste of time.” As the judge started questioning jurors, one-by-one they said that serving on a panel would be a “financial hardship” even though it was only a five day trial. The widespread effort to get out of serving jury duty was an epidemic.

Our judges understand how negatively jurors feel about jury service. In a recent meeting among trustees of our bar association and our Valley judges, the judges reported that jury apathy is a chronic problem. On a daily basis, judges face jurors who are more than just apathetic - they are angry. Jurors are pre-disposed to believe

their service will be a waste of time. This pre-conditioning affects jurors' attitudes and opinions. Ironically, after jurors actually serve and reach a judgment or verdict, they report they enjoyed the experience and thought it was worthwhile.

As members of our bar association, you might consider reserving judgment next time you are called to serve jury duty. Don't immediately conclude your time will be wasted. Try to appreciate jury service for what it was intended to be – a privilege, enabling all of us, and each of us – to participate in a critically important way in our justice system. Remember that no one has yet found a better system for achieving true justice in deciding cases.

Here are some ways you can help. Think about jury service and when you consider its importance, speak positively about it. When you are called, report for service and encourage your workers and others to do so too. If you don't pay your workers for their time serving on a jury, consider doing so. Our judges have expressed concern that the dwindling number of private businesses that pay employees for jury duty is leading to skewed juries made up mainly of public sector employees.

One of our bar association's goals this year is to help improve jury service. This will benefit our courts, judges, lawyers, and our community. We are partnering with our judges and reaching out to our members for help. If you have opinions or ideas about how we can improve this process, please call me. Better yet, consider serving on our committee. Together, we can try to make a difference. ✎

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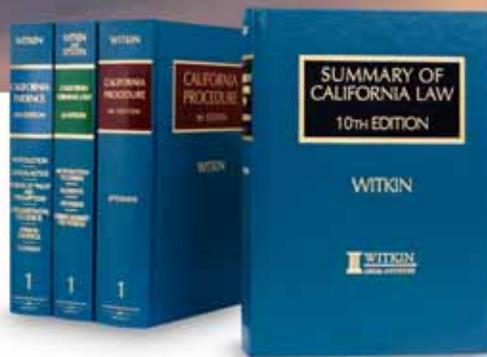
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# Capturing Clients

## It's a Jungle out There

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Southern California is a highly competitive market for legal services. Attorneys know that they need to market their experience and reputations. If you look at the Internet, you will see the tremendous number of attorneys marketing there and the significant amount of information they place on their websites. Many attorneys teach seminars, advertise in multiple phone directories, and send out newsletters. Most attorneys on the A.R.S. panel are members of numerous non-profit and for-profit referral services. All of this effort is designed to attract clients, and the A.R.S. panel can be a big help.

The key to a good working relationship with the referral service is to be accessible when the service calls. Of course, we know that you are not sitting by the phone. Most of you have active practices without our referrals. But if you allow your staff to schedule appointments, and you allow referral staff to call your cell phone, it increases the likelihood that you will capture that referral.

The A.R.S. referral staff now has the technology to transfer select callers directly to attorneys' offices. The attorneys like this, the clients like this and it is a good tool for counsel to immediately "capture" the client. Speaking with a knowledgeable and personable attorney is very persuasive and the client then becomes convinced that an appointment with that attorney would be a good idea. And these conversations help attorneys identify clients and legal issues that will be interesting, enjoyable and challenging. Counsel can then decide if this referral is worth exploring and they can have their offices schedule the appointments.

The A.R.S. continues to conduct written and telephonic client surveys, and we are now enjoying a 17 percent response rate. A.R.S. staff Lucia and Gayle have worked hard this year to successfully increase the responses to our surveys. We believe that professional and prompt service will insure repeat clients and clients who refer their friends and family back to A.R.S. The surveys this year show a 97 percent satisfaction rate for the attorneys to whom we referred potential clients. The surveys show why we are confident that we are referring people to quality attorneys who provide attention to the clients and an atmosphere of professionalism in their offices.

There is no magic to "closing" or "capturing" the client and case you want to handle. The complaints I receive are along the lines that "The attorneys just talked about themselves and their successes and did not listen to my situation," "The attorney seemed distracted," "The attorney's office was dirty" (usually meaning papers and files were everywhere), "The attorney said I would win and I did not," "The attorney said that the fee would be less than \$5,000 and I just got a bill for \$15,000."

Now, we all have off days and times when we have to work to focus and listen. The "dirty" office is a professional hazard, but not a requirement for the appearance or the reality of success. We do not need to be reminded that some people grasp at the words they want to hear or imagine they heard, especially when it comes to money. We all understand that. But I always send these types of surveys to attorneys in case there is something that will be helpful to them in managing their offices.

After nine years in this position, I have found a few tips to surviving in the jungle of professional competition. The following will help you capture and keep that client that you want:

- Be sure that your support staff is carefully trained to always make you look good;
- Take time away to refresh yourself and revitalize your energy level to elevate your level of enthusiasm when you meet clients or potential clients;
- Use a thorough retainer agreement;
- Have a clear and fair system of billing; and
- Keep the client informed and involved.

We had another good year and, as promised, will increase our marketing budget again. We will do our part to capture referrals for you. 🐘

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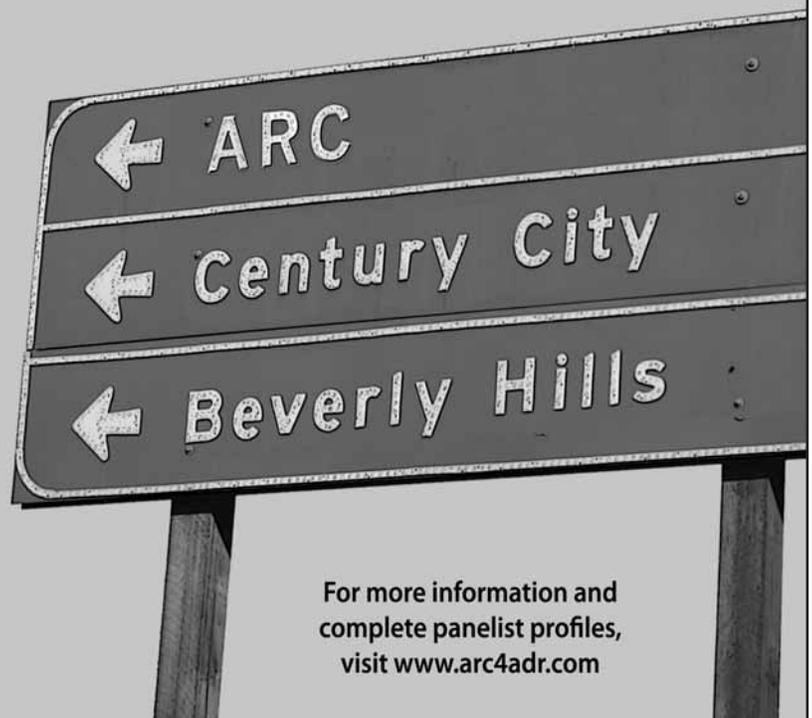
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# Crime and Punishment

## Criminal Law Section Focused on Protecting Rights

BY LISA MILLER, EDITOR



Three strikes issues, the death penalty, and criminal appeals are just a few of the demanding areas in which criminal law practitioners need to be expert. And the Criminal Law Section of the San Fernando Valley Bar Association provides the means for lawyers to maintain and upgrade these important skills.

The Section is one of the more long-standing groups within the bar and boasts a significant membership roster, which continues to grow. And this dynamic change is thanks to long-time Section Chair Seymour Amster.

“Lawyers need to offer creative and unique legal solutions based on their comprehensive knowledge of California and Federal law.” Mr. Amster, who is a State Bar of California certified criminal law specialist, says.

Criminal law practitioners face steep odds when they represent clients against the government. But savvy lawyers can increase their clients’ odds and win acquittal or get a verdict overturned through thorough investigation and preparation. Often, if defense counsel can remain focused on the important subtleties, they can identify legal technicalities or loopholes that will work to the client’s advantage.

“Successful criminal defense counsel need to be thorough investigators, skilled negotiators and tenacious litigators,” Mr. Amster, who practices throughout Southern California, says. “There is no substitute for mastery in these areas.”

To help lead the way in supporting practitioners in the field, Mr. Amster is crafting a year of educational programming for the Section. Issues currently under consideration for speakers include murder, drug and drunk driving charges and how best to handle them from start to finish. The focus of the year’s educational offerings, which all include one hour of continuing legal education credit, is ensuring that every client receives a vigorous defense.

“It’s not surprising that lawyers need some assistance in mastering how to win complex, high-profile cases,” Mr. Amster says. “Less-savvy attorneys sometimes avoid these matters, but the Section’s presentations can help demystify the problems in many situations.”

Mr. Amster says he is focused on educating criminal law counsel in the major subject-matter areas within the practice. A few of these topics include sex and gang crime allegations, weapons charges, money laundering, and embezzlement.

“Good criminal defense lawyers will earn the respect, albeit grudging, of their government adversaries,” he says. “One of the goals of the Section is to help gain that stature for all of our participants.”

The criminal defense attorney’s motto is sometimes characterized as “acquit, dismiss, reduce,” according to Mr. Amster, who has offices in Van Nuys, West Covina, Los

Angeles, the Inland Empire, and the Antelope Valley. He hopes that Section seminars will reinforce this important message and provide practical tools for effective representation.

Appeals are another important area for all criminal defense practitioners, so the Section offers some focus on these skills as well. Successful appeals require that counsel not only raise the issues correctly, but that they structure the issues in a way calculated to obtain a successful result.

Appellate issues are uniquely in need of being presented so that they are compelling, which can turn a losing case into a winning one, according to Mr. Amster. And there are big risks involved for clients in the criminal justice system.

“Three strikes’ controversies are among of the hottest buttons in the industry,” Mr. Amster says. “Counsel needs to be educated about alternatives, such as drug counseling, to help clients keep strikes off their records, and counsel needs to hear about these options. Their clients are depending on it.”

*The Section meets either for dinner or lunch at varying locations. For specific meeting dates, times, and locations, contact Seymour Amster directly at (818) 947-0104 or by e-mail at [siaesq1@aol.com](mailto:siaesq1@aol.com).*

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# Legal v. Illegal Competition

## When Will a California Court Uphold a Contractual Covenant Not to Compete?

BY MARJORIE A. MARENUS



Are covenants not to compete ever legal in California? The answer is yes, but only under limited circumstances.

Statutory law and public policy in California since at least 1872, when Civil Code §1673 was enacted, have held that restrictive covenants not to compete are illegal, unenforceable, and void. Bus. & Prof. Code §16600 states that every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void. (Civil Code §1673 was the predecessor of current Bus. & Prof. Code §16600.)

The only exceptions to this rule in California are where a party agrees not to compete when: 1) Goodwill or corporate shares are sold (Bus. & Prof. Code §16601); and 2) Partnerships dissolve (Bus. & Prof. Code §16602).

Covenants not to compete generally have their genesis in either an employer-

employee relationship, or in the sale of the "goodwill" of a business. Covenants arising out of the sale of a business are more liberally enforced than those arising out of the employer-employee relationship. However, covenants designed simply to prevent competition per se are unenforceable. Enforceability appears to rest on the notion, often unarticulated, of preventing "unfair" competition. (See e.g., *Monogram Industries v. Sar Industries* (1977) 64 Cal.App.3d 692, 697-698.)

For example, where the goodwill of a business is sold, many courts consider it "unfair" for the seller to engage in competition that diminishes the value of the asset he sold. To protect buyers from that type of "unfair competition," a covenant not to compete will be enforced "to the extent that it is reasonable and necessary in terms of time, activity and territory to protect the buyer's interest."

(See *Monogram Industries*, 64 Cal.App.3d at 697.)

Parties wishing to convince the court that the covenants not to compete in their contracts are enforceable will likely cite *Boughton v. Socony Mobile Oil Co.* (1964) 231 Cal.App.2d 188, 192. ("*Boughton*"). *Boughton* holds that only contracts restraining one from pursuing an entire business, trade or profession will not be enforced; while contracts barring one from pursuing only a small or limited part of a business will be upheld as valid. However, the *Boughton* case can easily be distinguished factually from most cases.

The contract involved in *Boughton* was a contract for the sale of real property, in which the defendant, an oil company, conveyed a parcel of real property to the plaintiffs. The grant deed conveying the property from the defendant to the plaintiffs in *Boughton* restricted the plaintiffs from dispensing petroleum products only on that particular parcel for twenty years. The *Boughton* court found it significant that under the restriction in the grant deed in that case, the grantees were not prevented from dispensing petroleum products or operating a service station at any other place directly competing with the defendant. *Boughton*, 231 Cal.App.2d 188 at 190-191.

The *Boughton* court held that the restriction in the grant deed was not a personal restriction upon the plaintiffs, but one upon the land and a condition subsequent. *Boughton*, 231 Cal.App.2d 188 at 190. The court found the restrictions, limited in nature, duration and place, to be significant.

The court will also look to see if the covenant not to compete is narrowly tailored. Covenants that purport to act as outright prohibitions on competition are illegal and unenforceable. (See *Kolani v. Gluska*, 64 Cal.App.4th 402, 407.)

The Ninth Circuit has repeatedly upheld California's restrictions and public policy against the use of covenants not to compete. In considering the question of whether a restraint was valid unless it "completely restrains" a party from plying its trade or business, the

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Ninth Circuit recognized that "a contract does not have to impair a party's access to every potential customer to contravene [Bus. & Prof. Code] § 16600. Because most businesses cannot succeed with only a handful of customers, a contract can effectively destroy a signatory's ability to conduct a trade or business by placing a substantial segment of the market off limits." *General Commercial Packaging v. TPS Package Engineering*, (9th Cir. 1997) 126 F.3d 1131, 1134 (hereinafter "*General Commercial*").

Therefore, the Ninth Circuit has held that it is not necessary that the covenant purport to apply a total ban on the pursuit of a trade or business to find a violation of Bus. & Prof. Code §16600. In *General Commercial*, the Ninth Circuit ultimately reversed summary judgment for the defendant because the covenant not to compete only restrained the defendant from soliciting one of plaintiff's customers. (See *General Commercial*, 126 F.3d at 1132.)

A party who loses on the issue of whether the covenant is enforceable and wants the court to rewrite the covenant to make it enforceable will be disappointed. California law is well-settled that a covenant not to compete cannot be rewritten by the court to make it valid or enforceable. (See e.g. *Haynes v. Farmers Ins. Exchange* (2004) 32 Cal.4th 1198, 1212; *Certain Underwriters at Lloyd's of London v. Superior Court* (2001) 24 Cal.4th 945, 967-968; *Bay Cities Paving & Grading v. Lawyers' Mutual Ins.* (1993) 5 Cal.4th 854, 871.)

In fact, a Court cannot rewrite any provision of any contract, for any purpose. *Rosen v. State Farm General Ins.* (2003) 30 Cal.4th 1070, 1073.

Nor can a covenant not to compete be saved from illegality by narrowed construction. *Kolani v. Gluska*, 64 Cal.App.4th at 405.

Therefore, if counsel's client seeks to include a covenant not to compete in a contract that is not for the sale of a business and does not involve the dissolution of a partnership, counsel should strongly advise against the inclusion of such a covenant. ⚡

**Marjorie A. Marenus** is a Sherman Oaks-based sole practitioner, focusing her practice on civil litigation for almost 20 years. Her trial practice emphasizes business, real estate and intellectual property litigation. She can be reached at [mam@marenuslaw.com](mailto:mam@marenuslaw.com), <http://marenuslaw.com>, or (818) 380-7550.

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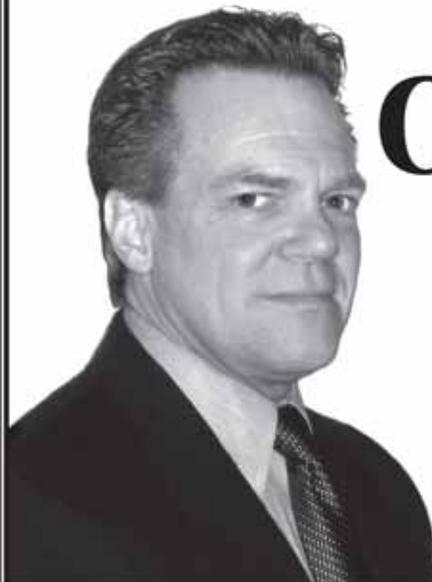
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# Bench Brief: Judge Morton Rochman

## Judge Grows-Up in Juvenile Court



BY M. JONATHAN HAYES

The Barry J. Nidorf Juvenile Hall in Sylmar is a “temporary detention facility” for about 400 boys and girls at any given time. It is one of three juvenile halls in Los Angeles County, a foreboding complex ably overseen by Judge Morton Rochman.

The minors, age 8 to 17, are being held there waiting to have their matters resolved. The matters could be arraignments, trials or simply waiting to go to one of the 19 youth camps throughout Los Angeles County. They are being held typically because there has been a finding that the youth is a danger to himself or herself or to the community. They attend school Monday through Friday; Sunday is visiting day.

Judge Rochman presides over one of the four full-time courtrooms located at the Juvenile Hall. Another Judge, a commissioner, and a full time referee

staff the other courtrooms. According to Judge Rochman, a pleasant and thoughtful man, the four courtrooms “do the same thing all day long,” detention hearings, arraignments, trial setting dates, and trials.

*“I like here. I really do. I feel that I am doing something worthwhile.”*



Offenses run from minor theft, traffic or truancy to felonies. The District Attorney makes the decision as to the charges filed. Matters involving mental health issues are sent downtown. The District Attorney can “direct file” a matter in adult court if the offense is very serious and the minor is over age 16. But it is more common that the D.A. will ask the court here to find that the minor is not “fit for juvenile court.”

Every minor is provided an attorney and is assigned to a Probation Officer who provides a “pre-plea report” to help the court make its determination. For less serious misdemeanor infractions, the penalty is usually summary probation after which the case is dismissed. The next level is home probation which typically involves a curfew, counseling and perhaps restitution. After that the minor can be removed from the home and sent to a camp or “other suitable placement such as group homes.” These matters are reviewed every six months. In the most serious cases, the minor can be sent to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, formerly known as the California Youth Authority.

The Sylmar facility has the first drug court for minors in Los Angeles County, according to Judge Rochman. Drug issues are dealt with every Wednesday by each of the judges.

Judge Rochman has been a Judge at the Sylmar facility since he was elevated to the Superior Court in 1986. A graduate of the University of Illinois School of Law, he spent time in the Army before becoming a Public Defender. “I did not handle any juvenile matters as a Public Defender.”

After that he was appointed to the Municipal Court and then on to Superior Court. “I like it here, I really do,” Rochman says. “I feel that I am doing something worthwhile.”

Judge Rochman’s responsibilities include making sure that each of the courtrooms are staffed every day and keeping the vacation schedules straight. “We have one of the smoothest operating systems in Los Angeles.”

On a typical day, Judge Rochman will handle about 25

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# Love Hurts

## Avoiding Liability Exposure from Workplace Fraternization

BY DIANA G. RATCLIFF AND CYNTHIA ELKINS



Employees spend considerable time at work, so it is not surprising that romances start, flourish, and founder at work. And this includes law firms. At best, a workplace romance is successful and leads to everlasting happiness, causing little disruption in the workplace. But at worst, office relationships may lead to allegations of sexual harassment, discrimination and/or retaliation. They can create animosity and decrease productivity, while increasing gossip and jealousy stemming from favoritism, actual or perceived.

Are these worries by an employer well-founded? Absolutely. The courts have permitted lawsuit by employees to proceed that rely on both federal law (Title VII) and state law (including FEHA and common law tort claims) where the bases for these lawsuits is

once-consensual romantic activity that has turned sour.

It is one thing, albeit disruptive, for co-workers to engage in a workplace romance. It is an entirely different matter for a romance to exist between supervisors and their subordinates, which are particularly risky from a legal standpoint. Under state and federal law, employees have a right to a harassment-free workplace. Any relationship between a supervisor and subordinate, even when it starts out as consensual, raises the potential for claims of a hostile work environment and/or *quid pro quo* harassment.

*Quid pro quo* harassment claims can arise when the subordinate employee claims that a job benefit was made contingent upon submitting to unwelcome sexual advances. *Beyda v. City of Los Angeles*, (1998)

65 Cal.App.4th 511. A hostile environment claim may arise when an employee who is in a protected class is subjected to unwelcome and harassing conduct because of sex, and the conduct is severely pervasive so as to alter the conditions of employment and create an abusive working environment. *Fisher v. San Pedro Peninsula Hospital* (1989) 215 Cal.App.3d 590.

And now, California employers must be even more concerned that an action for sexual harassment may be premised upon "sexual favoritism" that is "widespread" in the workplace arising from a consensual relationship. In *Miller v. Department of Corrections*, (2005) 36 Cal.4th 446, sexual relationships between a supervisor and three of his subordinates lead to allegations of a hostile work environment. The accusers were employees who were not involved in relationships with the boss. The claims were based upon the preferential treatment the supervisor gave to his lovers. The employees who were not romantically involved with the supervisor alleged that the supervisor gave job benefits to the less-qualified women who had sexual relations with him.

In *Miller*, the California Supreme Court concluded that the plaintiffs could prevail on their FEHA claim because the supervisor's conduct created an environment of widespread sexual favoritism and conveyed the message that the women could only advance by engaging in sexual conduct with their supervisor, a message that the court was unwilling to permit.

Other favoritism claims brought under Title VII have been denied by the courts on the rationale that an employer's favoritism towards an office paramour is not sex discrimination because favoritism disadvantages both male and female employees alike for reasons other than gender. However, in light of the Supreme Court's ruling in *Miller*, employers should be

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# Farewell/Goodbye? Not a Change



**CARYN BROTTMAN SANDERS, SCVBA PRESIDENT**

I was reminded on several occasions to write my "farewell" article. While it is true that this might be my final article as president of the Santa Clarita Valley Bar Association, it is hardly a farewell. I will remain active in both the Santa Clarita Valley Bar Association and the San Fernando Valley Bar Association, and therefore refuse to actually say farewell. I will take this opportunity, though, to thank my officers and members of the Board of Trustees for all of their hard work and support throughout the year: Jane McNamara, Tamiko Herron, Bill Lively, Rand Pinsky, Rob Mansour, Tom Coleman, Steve Holzer and John Grannis. We would not have accomplished anywhere near what we accomplished without their input and help.

We had quite a productive and exciting year. We helped to bring the San Fernando Valley Bar Association Attorney Referral Service Senior Citizen Program up to our Senior Center to help our seniors with their legal needs. Thank you to Rosie and Michele for their effort and support of our community.

We were able to offer our members numerous hours of continuing legal education credits, including mandatory ethics and substance abuse classes. We placed a delegate on the Conference of Delegates of the State Bar and truly were able to put the Santa Clarita Valley Bar Association on the map, literally and figuratively, for many of the other bar associations throughout the State. Our members can now take advantage of an ever-growing list of member discounts throughout our valley. We held a "theater night" at a local theater and gave our members a chance to mingle in a purely social setting.

In late August, we held a benefit event at the Canyon Theatre Guild. Those in attendance enjoyed a wonderful meal and a fabulous performance of Forever Plaid. The event was put together to raise money for the Children's Waiting Room at the San Fernando Courthouse. I am pleased to announce that we were able to raise \$6,000, to be donated to the Valley Community Legal Foundation for the establishment of the Waiting Room. Special thanks to Bill Lively, Tamiko Herron and Jane McNamara, who all worked tirelessly to make this event a reality. I hope it is only the first of many opportunities for our Association to make a difference. To all of

you who attended, thanks for supporting this worthy cause.

On October 1, we held our third annual Law Appreciation Day to honor our local heroes. The event was a great success and a special thank-you goes to Brian Koegle, our program chair. Our speakers included Los Angeles County Supervisor Michael Antonovich; Santa Clarita Mayor Marsha McLean; Deputy District Attorney John Morris; LA Sheriff's Department Commander Art Ng and Captain Anthony LaBerge; LA County Fire Assistant Chief E. Matt Gil; and California Highway Patrol Lieutenant Ralph Elvira.

We were pleased to honor Paramedics Adam Clint and Brett Davis for saving a 17-month-old drowning victim, Deputy District Attorney Dan Damon for his long service to our community, Sheriff's Deputy Richard Nichol for his heroic rescue of 21 fire fighters during the fire at Pyramid Lake, and Highway Patrol Officer Bill Ward for exceptional service to our community over the years.

We honored two high school students with Hometown Hero Awards and \$500 donations to the charities they work so hard to support: Amber Gaines of Valencia High School was honored for numerous activities, especially her support of the group Let Me Sail which assists differently-abled students, including putting on a prom for them; and Jose Garcia of Hart High School was honored for his support of the Change of Hart program which educates and raises awareness of diversity in our schools.

In November we will install our new officers and board members and recognize people who have made a difference in our organization. Please plan to attend this event to support our bar association and the people who work so hard to make it great. Please check our website at [www.scvbar.org](http://www.scvbar.org) for updates on our events and our association.

Because I refuse to say goodbye, "Thanks for putting up with my monthly ramblings and I will see you around." ✨

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# Valley Community Legal Foundation Change is Good



**MARCIA L. KRAFT, VCLF PRESIDENT**

The Valley Community Legal Foundation is proud to announce that this year's fundraising event has been **changed** to a new location and at a later date than in previous years. The Foundation is relocating the gala to a more dynamic and interesting location: The CBS Entertainment Studios in Studio City. The date is Saturday night, June 7, 2008. Please mark this date on your calendars.

The dinner and auction will be on "New York Street," the set on which the television series "Seinfeld" was taped. Due to space limitations, attendance will have to be limited, so the Foundation is expecting a rapid sell-out when tickets go on sale next year. So plan ahead! Be prepared for this exciting event!

Please remember that currently the Foundation is actively raising money for the development and installation of Children's Waiting Rooms at both the Van Nuys and San Fernando courthouses. And this is in addition to the money we distribute each year for scholarships and grants in our local community. We need your help and support to effect these **changes**.

And a **change** is coming to the Van Nuys Courthouse: the County Board of Supervisors approved the Children's Waiting Room there. We anticipate completion in late January 2008. I will keep you posted on the progress of this important project for the betterment of our community.

I value the efforts and thank the Santa Clarita Valley Bar Association for its August 2007 theater event, and for its commitment to the Children's Waiting Room project. We are all fortunate to have people of this caliber and humanity participating in our organization.

November is Thanksgiving time, a time for reflection. I am thankful for my beautiful family, including children and grandchildren; my wonderful husband; my great office staff; my career; my relatively good health; and my life in general. This is why I devote time to helping others and surveying my community to see what I can do to better the lives of others.

If your life has **changed** for the better over the course of the last 5 years (you now drive a better car, your career is advancing, your family is prospering), then now is the time for you to cherish all the good in your life! Reach into your pocket and share your good

fortune by donating to our Foundation! Help us establish the Children's Waiting Rooms and give out grants and scholarships.

We need your commitment and assistance. Be thankful this year. Be thankful that you could help others. ♣

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*Love Hurts, continued from page 12*

aware that although favoritism towards a paramour may not violate discrimination laws, the appearance of widespread favoritism may constitute sexual harassment based upon a hostile work environment.

### Non-Fraternization Policies

An employer may wish to create a policy that prohibits or discourages fraternization among employees. The policy won't necessarily prevent office romances, but it will set the ground rules and help the employer manage the situation when it arises.

### Disclosure Required

The policy may include a requirement that all personal relationships among employees must be disclosed to management. This allows management to monitor the situation to prevent allegation of harassment and evaluate whether the relationship does or may cause conflicts of interests, or may cause the perception of favoritism.

Although there is some concern that such policies may run afoul of Labor Code Secs. 96(k) and 98.6, challenges to these policies have resulted in decisions favoring employers. In *Barbee v. Household Automotive Finance Corp.*, (2003) 113 Cal.App.4th 525, the court upheld the termination of a manager who violated the employer's non-fraternization policy by dating a subordinate. The court found that the manager did not have a reasonable expectation of privacy in pursuing an intimate relationship with a subordinate.

The court further found that the employer had a legitimate business interest in preventing supervisor-subordinate relationships, which might lead to conflicts of interest and lawsuits. (See also, *Ortiz v. Los Angeles Police Relief Association* (2002) 98 Cal.App.4th 1288, where an employee was asked to choose between ending her relationship with her inmate-fiancée, or being terminated from employment. The employee resigned and sued under the California Constitution's privacy rights and Section 96(k). The court balanced the plaintiff's privacy rights against the competing interests of the employer and concluded that the employer had a legitimate interest in ensuring the personal safety of police officers and their families.)

Employers who choose to formulate non-fraternization policies should narrowly tailor the policies to avoid allegations of discrimination and invasion of privacy. If a non-fraternization policy is implemented, it must be enforced in an even-handed manner so that there is no opportunity for an allegation of gender bias. Employers should examine each situation on its own merits and not arbitrarily assume that the more senior individual is more valuable to the firm.

### "Dating" or "Love" Contracts

Taking it a step further, some employers require that employees involved in consensual romantic relationships enter into contracts known as "dating" or "love" contracts. Typically, these agreements include disclosure of the relationship to management, acknowledgment of the company's policies against sexual harassment, acknowledgment that the relationship is consensual, and an

agreement by the couple to maintain professional behavior at work.

### Managing the Relationship

If the employer determines that employees are involved in a relationship, the employer must evaluate the situation to determine: Does a conflict of interest (actual or potential) exist? Has performance become an issue? Have complaints been made about favoritism?

If any of these issues arise, assuming a policy is in place, the employer may decide to relocate one of the employees so they no longer work together. This is especially important if the employees are in the same department or line of supervision. If another position within the company cannot be found, the employees involved should be asked to decide who will resign from employment. If neither is willing to leave for the sake of the relationship, an employer must be prepared to make the decision, and document the business purpose behind it - i.e. conflict of interest.

Finally, employers must be prepared to handle office gossip, jealousy, tension and a lack of respect among co-workers if there is even a hint of favoritism. ♣

*Law Offices of Cynthia Elkins represent employers in all aspects of the employment relationship, including counseling and defense of administrative and civil claims. Cynthia Elkins can be reached at celkins@employer-law.com; Diana Ratcliff can be reached at dratcliff@employer-law.com or 818-598-6771.*

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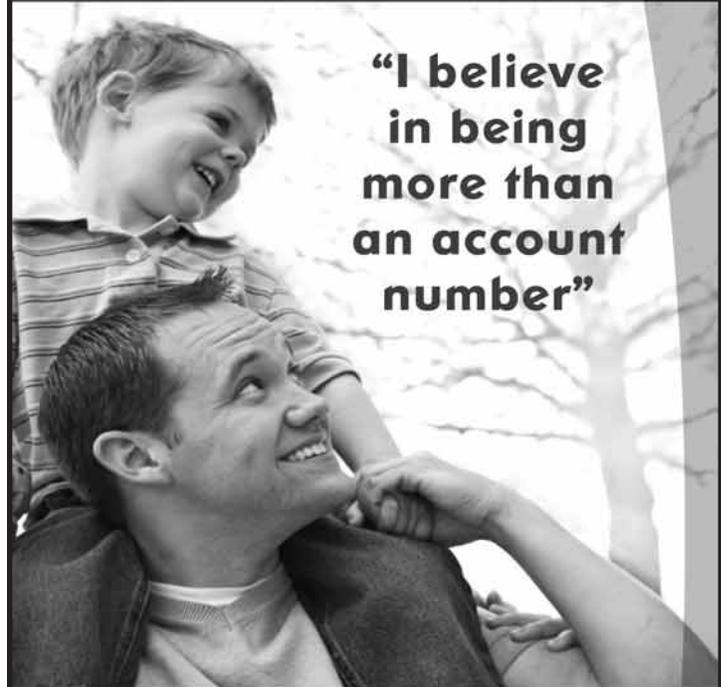


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*MCLE Marathon, continued from cover*

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The Law Offices of Alice Salvo is one of the sponsors of the Marathon this year. Ms. Salvo, a long-time bar member and supporter, practices estates and trusts law in Woodland Hills.

The Marathon is scheduled for January 24 and January 25, 2008. The location will be the Pierce College Performing Arts Complex on the Woodland Hills campus. This venue was extremely popular last year, and Marathon attendees have found it both convenient and comfortable. Free refreshments are included in the price of admission.

The Bar is offering 12.5 hours of MCLE credits. These include the specialized areas of four hours of ethics, one hour of elimination of bias and one hour of prevention of substance abuse. Professor Robert Barrett will be returning, by popular demand, for a two-hour ethics seminar, "How to Avoid Bar Discipline."

All of these are live, interactive hours of education. Bar members can earn the balance of their MCLE credits through the Bar as self-study hours. The bar association lends CDs or tapes of these additional educational hours

In addition to the Law Offices of Alice Salvo, Alternative Resolution Centers is also sponsoring the Marathon. ARC offers a wide range of standard dispute resolution services, as well as such specialty programs as The Employment Group at ARC, Low-Cost Arbitration & Mediation Services, and a Cooperative Divorce Center.

"I know that a lot of lawyers would be stranded with insufficient education credits without this Marathon," Harmon Seiff, who practices business law and litigation in Encino, says. "This is a great safety net for the practice community."

Don't forget: Register early to ensure a seat at the Marathon. There is no easier or better way to comply. 🐾

For more information and to register for the Marathon, contact SFVBA Events Coordinator Linda Temkin at (818) 227-0490 ext.105 or via e-mail at [events@sfvba.org](mailto:events@sfvba.org).

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**Membership Has It's Priveleges!**

*Bench Brief: Judge Morton Rochman, continued from page 10*

matters, one at a time. "We call only one case at a time," Rochman says. "Minors have the right to confidentiality. This is not a public proceeding."

This particular day he had six detention matters to resolve and a myriad of other issues. Continued detention issues come up every day and on a typical day he will conduct two trials. "There are no jury trials here but I am a stickler about the rules of evidence."

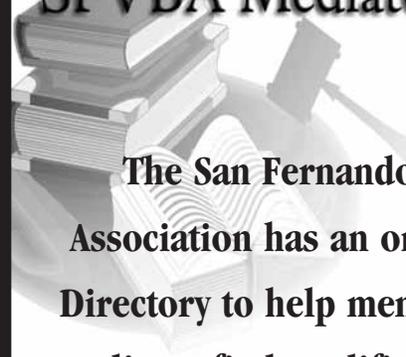
Rochman estimated that about 80% of the defendants use the Public Defenders Office, 10% the conflict panel of attorneys and about 10% use private attorneys. "The attorneys from the Public Defenders Office are excellent."

Judge Rochman is a long-time Valley resident. When asked what attorneys would be surprised to know about him, he answered, "That I am such a boring guy. I don't play golf. I don't go fishing. I love the Dodgers and I am a long-suffering Cubs fan."

When asked about the future, he said, "I want to stay here as long as they will let me." ✎

*M. Jonathan Hayes is a 1976 graduate of Loyola Law School in Los Angeles. His practice is primarily in the area of bankruptcy.*

## SFVBA Mediator Directory



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# November Events

## Probate & Estate Planning Section

### Topic: Conservatorships: Determining Capacity and Undue Influence

Speaker: Dr. Robert Wang

Date: November 13

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

## Santa Clarita Valley Bar Association Installation Dinner

Date: November 15

Time: 6:00 p.m.

Join us for an elegant evening where we will install our Board and Officers and honor some special people who have made contributions to our Association and our community. Check our website [www.scvbar.org](http://www.scvbar.org) for the details and to see our exciting new venue for this event.

## Family Law Section

### Topic: Hot Tips

Panel: Gary Weyman, Esq.

Date: November 26

Time: 5:30 p.m.

Place: Monterey at Encino Restaurant, Encino

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

MCLE: 1 Hour

## Workers' Compensation Section

### Topic: Chronic Pain and Other Risk Factors Re: Internal Injuries

Speaker: Jeffrey Hirsch, M.D.

Date: November 28

Time: 12:00 noon

Place: Monterey at Encino Restaurant

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

MCLE: 1 Hour

## Business Law, Real Property & Business Law Section

### Topic: Risk Management and International Trade Transactions

Speaker: David Habib, Esq.

Date: November 28

Time: 12:00 noon

Place: SFVBA Conference Room  
21250 Califa Street, Suite 113,  
Woodland Hills

Cost: \$30 members prepaid; \$40 at the door  
\$40 non-members prepaid; \$50 at the door

MCLE: 1 Hour

## Litigation Section and ADR Section

### 3-Hour MCLE Litigation and ADR Update

November 14, 2007

5:30 p.m. – 9:00 p.m.

Sportsmen's Lodge, Studio City

### Top Ten Mistakes made by Lawyers in Court and Other Updates from the Bench – 2007

Judge Bert Glennon and Judge Barbara Scheper

### Discovery Laws Update

Jill McDonnell

Discovery laws have changed dramatically since the new re-codification in 2006; learn about all the new changes in the discovery rules and the new cases relating to discovery as well as valuable tactics and strategies in enforcing discovery.

### ADR Update

Eleanor Barr

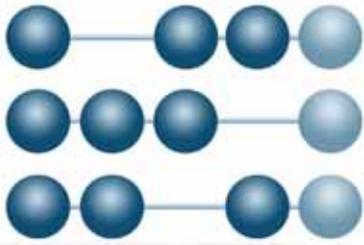
Many new cases have come down in 2006 and 2007 regarding ADR. There are several cases before the Supreme Court. Learn about these new cases and changes and make sure that your Settlement language sticks.

### Civil Procedure/Law & Motion and Trial Update

Sue Bendavid-Arbiv

Learn about new developments in civil procedure and law and motion practice as well as new law affecting how you try a case. Get new valuable litigation strategies.

**\$65** Member price if reserved by November 10  
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