



BarNotes

A Publication of the
San Fernando Valley Bar Association

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NEED TO KNOW

LISA MILLER

BAR ASSOCIATION CO-SPONSORS PRIVACY FORUM ON CRITICAL ISSUES IN THE DIGITAL AGE

As information technology enables governments and public institutions to gather and distribute more personal information about people than ever before, new technologies and the applications that threaten individual privacy wend their way through the legal system.

According to industry experts, in only the past few years, the corporate title "chief privacy officer," often a position filled by a licensed attorney, has emerged from obscurity to find a home in both startups and corporate giants. These and other hot topics in cyberspace will be explored at the San Fernando Valley Bar Association Public Forum "Your Privacy Rights in the Internet Age vs. The Government's Need to Know," co-sponsored with California State University at Northridge. This free event will take place on October 26, 2007 at 7:00 p.m. on the CSUN campus.

"This forum is just one way in which the San Fernando Valley Bar is providing valuable insights for member practitioners," Richard Lewis, the Association's Immediate Past President, says. "I know that the discussion will generate discussion at the highest intellectual levels, and that is our aim."

Forum speaker Christopher Shortell is Assistant Professor of Political Science at forum co-sponsor California State University, Northridge. He writes and lectures on the intersection of law and government.

Congress has noted public outrage at the idea that marketers and others might trade personal information, and thus lawmakers are now considering a number of bills to protect privacy. Companies are trying to stave off such regulation by insisting that they can police themselves. His work involves analyzing the effect of law on government and government on law.

Studies show that new laws are already on the books, both in the U.S. and abroad, that regulate what can be done with an individual's personal information. In the U.S., both financial information and medical records are subject to privacy statutes such as the Financial Services

Modernization Act. And the federal Children's Online Privacy Protection Act, which is already in effect, prohibits commercial Web sites from gathering personal information from children without parental permission. Indeed, the European Union and Canada have also adopted consumer and employee privacy protections.

Attorney Michael Scott, Professor of Law at Southwestern Law School, is considered by many to be a pioneer in the field of high-technology law and public policy. "It is extremely important to help law students become truly conversant in those areas of technology, law, business and public policy they will need to be effective leaders of the 21st Century," Scott, who earned his Bachelor's degree in mathematics from the Massachusetts Institute of Technology, says.

Scott focused his law practice on intellectual property law and domestic and international licensing and technology law, among other areas. He is the author of more than a dozen books on intellectual property, computer, multimedia, Internet and telecommunications law and has published and presented hundreds of papers on related topics. Scott is associated with the publication *Cyberspace Lawyer and E-Commerce Law Report*.

Privacy advocates believe it's too early to say whether the typical CPO exercises real clout. So the jury is still out. But industry experts say that the issues still remain in a nascent state in the minds of many law makers.

Presenter Roger Louis Kohn, who is located in Manhattan Beach, is one such expert on privacy and confidentiality issues. He is a graduate of the University of California at Los Angeles School of Law and a physicist. Currently, he chairs the Southern California Privacy Rights Committee of the American Civil Liberties Union and speaks on related topics.

"I know that our members will generate an interesting discussion, no matter what anyone's personal views," Lewis says. "I hope to see you all there." 🐾

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PATRICIA L. McCABE, SFVBA PRESIDENT



As we start off this new bar year, I am optimistic that the new year will provide an opportunity for the members of our bar association to become reacquainted with our programs, services and staff.

Too often, I run into members of the bar who tell me that they haven't been to a meeting in years, or they aren't even aware of what the bar has to offer them. I, too, belong to organizations in which I haven't been to a meeting or participated in an event in years. I still belong, but each year, when I write that dues check, a very small part of me asks why.

It is my goal for the coming year that the members of this bar association, when they write that dues check next year, know why they belong to this bar association and what we do. Our Board of Trustees worked hard to develop a strategic plan and set it in motion.

As part of that plan, during this past year, Richard Lewis has worked tirelessly to expand our presence in the legal community through alliances with the Mexican American Bar Association, the Italian American Bar Association and the Multi-Cultural Bar Alliance. We have co-sponsored programs with the Pasadena Bar Association and the Italian American Bar Association. These new alliances have helped to promote the bar and increased our profile in the Los Angeles legal community. During the coming year, we

will continue these efforts. We are planning more co-sponsored events and networking with other bar associations.

We are re-evaluating our Continuing Legal Education programs and looking at providing courses in non-traditional ways. We are developing CLE programs in conjunction with other bar associations and developing cross-section CLE programs. We are interested in using new methods for delivery of information. We are not interested in having things remain as they are. We want our CLE programs to continue to offer high-quality topical programs.

I realize that many of our members do not attend programs for the CLE credit. Like you, I attend for the social aspect of the event. I have been asked by bar members and former bar leaders to bring back networking events. To that end, I have formed the Council of Presidents, with the sole purpose of planning social events that have no CLE components, so that bar members can mix and mingle.

I also want our members to believe that they receive value for their membership. There have been changes in the benefits over the years. I have asked our membership benefits committee to take a critical look at the benefits we currently offer our members and devise a membership benefits package that is

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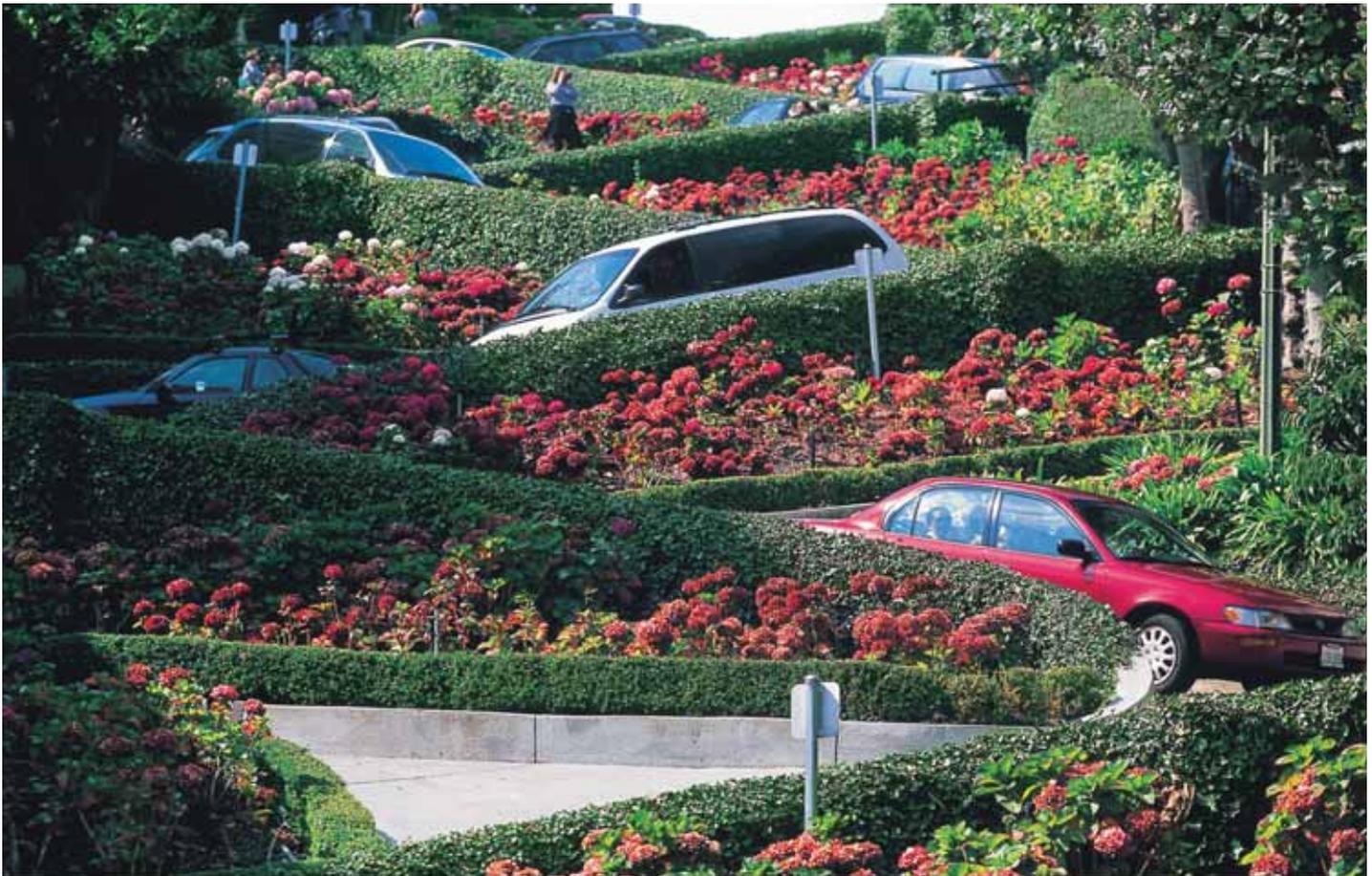
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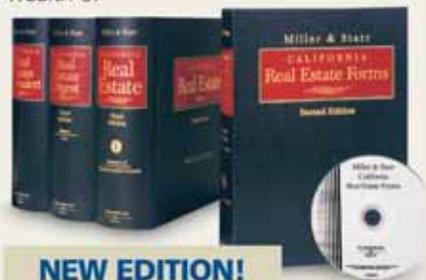


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Limited Scope Representation

How Unbundling Fees Aids Access to Justice



DONNA A. LAURENT

M. Sue Talia, a Certified Family Law Specialist from Danville, dedicated her 1997 book, *A Client's Guide to Limited Legal Services* "to all the caring family lawyers across the country who, despite the lack of support from their own bar associations, legislatures and courts, are courageously exploring new and innovative approaches to divorce in order to reduce the pain and conflict of families. In doing so, they are laying the groundwork for a new legal order."

With the support of the State Bar, the Judicial Council and, probably most importantly, the local Los Angeles County family law bench, providing limited scope representation can be a satisfying and money-making endeavor. It is also, in my opinion, an enormous public service.

Although limited legal services or "unbundling" has been around for quite some time, it is only in the last few years that bar associations, courts, and significant numbers of lawyers (particularly in the family law area) have supported, sought training in and encouraged its use.

After the American Bar Association recommended that its rules be revised to facilitate the provision of limited legal services in 2000, the California Commission on Access to Justice appointed a "Limited Representation Committee." This committee issued a *Report on Limited Scope Legal Assistance*, which recommended that specific court rules and forms be adopted to facilitate limited scope representation. M. Sue Talia was a member of that Limited Representation Committee.

In 2001, the California State Bar of Governors unanimously adopted the recommendations of the committee and in 2003 California became the first state to issue standardized forms that family law practitioners can use when providing limited scope representation to their clients, including Judicial Council Form FL-950, Notice of Limited Scope Representation.

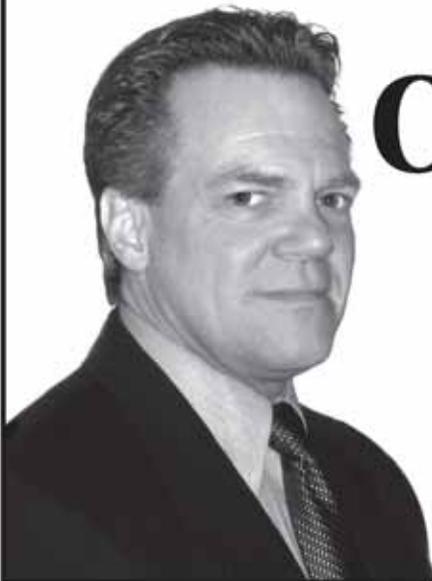
FL-950 is a mandatory form that allows parties, attorneys, judges, and court personnel to track who is responsible for which legal issues when an attorney is providing unbundled legal services in a family law matter. For example, an attorney may be providing representation solely for one Order to Show Cause

court appearance or solely for the issue of obtaining and enforcing a support order, etc.

Further assistance to attorneys practicing limited scope representation came in 2004 when the State Bar's Committee on Professional Responsibility and Conduct posted risk-management materials and "An Ethics Primer on Limited Scope Representation" on its website (www.calbar.ca.gov). These materials include forms and checklists to help attorneys ensure that their limited scope clients understand and consent to the nature and scope of services for which they are retaining the attorney.

The SFVBA, through the LRIS, set itself apart as one of the more

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Closing a Law Practice Doing It Right Takes Time and Planning



Although selling a law practice to another qualified attorney (or attorneys, for portions of the practice) no longer violates the code of professional ethics in most states, in some situations, law practices are simply closed, rather than sold. The unexpected death or disability of the lawyer is certainly among them, but other causes exist.

Some lawyers believe they have little or nothing of value to sell, others do not want the bother and expense of the sales process, and others may simply prefer to exercise a business owner's prerogative to conclude a practice on their own terms.

Closing a practice involves planning skills that all lawyers should have, but not enough exercise. The process is complicated, so counsel should, ideally, allow six months to one year to accomplish the many tasks involved.

Lawyers accustomed to the rush of meeting a 5:00 p.m. filing deadline at the courthouse take for granted the weeks or months of effort required to reach that point. The same thing is true of cleaning things up and tying loose ends together to close a law practice. The process is similar to moving a home or office. Office closure implicates many interrelated elements, but counsel should focus on two key questions: who should be involved, and what steps need to be taken to wind up operations?

As a Lawyer, Who Should Be Involved?

Yes, it's counsel's practice. But attorneys may not realize all the people involved in it and who need to be told about the decision to close. Some are obvious - family, staff, clients. However, with a little thought and planning, the list includes banks, insurance carriers, bar

associations, vendors, landlords, utilities, the local legal press, and the U.S. Postal Service. This list is hardly complete but it does indicate how many people affect the closing process. Start with all lawyers' three most immediate constituencies: The State Bar, staff and clients.

State Bar Considerations

The State Bar of California holds that the decision to close a practice implies that counsel is quitting the practice of law and will perhaps resign from the State Bar, or adopt inactive status. Whatever counsel's decision, attorneys must notify the State Bar of an intent to close a practice. Choosing to remain an active member continues counsel's obligations to pay dues, comply with mandatory continuing education requirements and remain subject to the bar's other requirements as may change from time to time. Note also that true retirement does not exist if counsel remains attorney of record in any matter.

Business & Professions Code §6180 provides that "When an attorney engaged in law practice in this state dies, resigns, becomes an inactive member of the State Bar, ... notice of cessation of law practice shall be given and the courts of this state shall have jurisdiction, as provided in this article."

And, as noted in §6180.1, the State Bar is always on the horizon, if need be. Business & Professions Code §6180.1 provides the basic requirements for notification of closing a practice. It states that counsel must inform clients, opposing counsel, courts and agencies where counsel has pending matters, the firm's errors and omissions insurer, and the Office of the Chief Trial Counsel of the State Bar. If the reason

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for closing the practice is the death or incapacity of the attorney, application must be made by a personal representative, guardian or conservator. If cases or other matters exist that are not completely closed, the State Bar can intervene, assume responsibility for action, and seek both reimbursement and compensation.

Staff Considerations

The first thing counsel must do once counsel has decided to close the practice is to inform the staff. Under no circumstances does counsel want them to hear the news from anyone else - both because the firm employs them and counsel owes them an honest answer about their future, and because counsel needs at least some of them to complete the closure.

If an alarmed staff bolts too quickly, how will the lawyer contact all past and present clients and keep up necessary office functions, like cutting checks and running software? In this event, the lawyer must close the office personally, probably with temporary employees who don't know things nearly as well as the firm's current staff. That's why counsel needs a plan to:

- Inform staff who will and will not be needed
- Offer job search help, and seniority-based severance of a few weeks' or months' salary
- Consider incentives to keep critical staff on board until the end
- Address all requirements for pensions, IRAs and medical benefits under COBRA.

Client Considerations

Immediately after informing the staff, counsel should address ethical duties to clients to ensure that their interests and confidences are protected. This requires communication by certified mail, with phone follow-up, to tell current clients that the lawyer:

- Is closing the practice
- Will refer them to three qualified attorneys and to the local bar lawyer referral service
- Will close out all trust accounts
- Request payment on all open invoices

All attorneys have a fiduciary obligation to keep client property safe, or return it, as appropriate. The rules vary by state, and these are the key provisions for California:

- Clients have 90 days to pick up wills after notification to do so (Probate Code Section 732).
- Files belong to the client, but the State Bar has not expressed an opinion on how long files must be maintained. The Los Angeles County Bar Association's Formal Opinion No. 475 holds that files should be kept for five years from resolution in civil matters, and for the life of the client in criminal matters. When an attorney closes a practice, counsel should ask clients by certified mail, return receipt requested, to pick up files within 90 days. If this cannot be done, lawyers should completely destroy (not just discard) the files.
- Attorney trust account records must be kept for a minimum of five years according to Rule of Professional Conduct 4-100(B), to allow for State Bar auditing if necessary.

As a Business Owner, What Steps Should Counsel Take?

In addition to professional responsibilities as a lawyer, counsel also has business responsibilities as the owner of a professional services firm. Among other issues, these responsibilities may involve state or federal statutes pertaining to your business entity or even tax requirements. Certainly they involve financial obligations to utilities, landlords and vendors. Even a partial list of what counsel must consider illustrates that a sole proprietorship is a complex business entity requiring that lawyers:

- Inventory assets and liabilities, including all tangible office property
- Send out final bills as soon as possible, and consider a collection agency for old, overdue accounts
- Review insurance policies to determine when coverage ends and how long to continue it
- Assess bank obligations and negotiate any necessary repayment terms with creditors

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- Notify utility companies - including Internet service providers
- Give vendors and suppliers formal notification that the business relationship with them will end
- File mail forwarding instructions with the Post Office
- Decide what office property counsel wants to remove, discard or store.

Lease Considerations

The whole process of leaving the office is itself a major planning exercise. If counsel owns the office space, attorneys need to decide whether to sell it, and then pursue the listing process. If counsel leases office space, counsel should work with the landlord to discuss the expiration of the lease, schedule a final inspection to ensure that the premises are in order, and get written requirements for insurance, time and loading availability, and safety considerations to move out of the building.

Moving Considerations

After the lawyer establishes a tentative closing date and knows what large items will be moved, counsel should interview moving companies. Lawyers should develop a list of potential movers and check the credentials of each before contacting them. Lawyers should consider using a standardized RFP form to make comparisons between movers easier. Ask how much time they will need to do the move, determine extra charges (for equipment setup or packing materials) beforehand, and consider any necessary storage fees.

Some Final Thoughts

If all of this sounds complicated, it is. Making sure lawyers get everything done right requires creation of a timeline that includes descriptions of and completion dates for everything required, in the order counsel needs to do them. Ethical considerations relating to people, and practical considerations relating to business, should be the focus. The timeline must, at a minimum, include the date that counsel decides to close the practice, the date that the current lease runs out, and the date that counsel would like to have all steps in the process completed.

Establishing a timeline at the beginning of the process gives lawyers a tool to help focus these efforts, track success and keep up with new developments. Attorneys should use whatever form works best: a notebook, electronic calendar or to-do program. Building a thorough timeline will help ensure a smooth and happy transition to the next phase of life beyond the law. ✎

Ed Poll is the author of *Selling Your Law Practice: the Profitable Exit Strategy* and he can be reached at www.lawbiz.com.

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No Failure to WARN

Notice Not Required Where Terms of Employment Unchanged

EVERETT F. MEINERS



In a decision of first impression, the First District of the California Court of Appeal recently interpreted the California Worker Adjustment and Retraining Notification Act, commonly known as WARN. The case of *MacIsaac v. Waste Management Collection and Recycling* specifically relieves employers of the obligation to give WARN Act notice if the new owner hires the employees under the same terms and conditions the seller previously provided those employees. (*MacIsaac v. Waste Management Collection and Recycling*, 134 C.A.4th 1076).

WARN Act Reviewed

Under WARN, certain employers must give 60 days notice of a "mass layoff" to their employees and certain government officials. Failure to give notice requires the employer to pay each employee for the period of time the notice was not given, up to 60 days.

Employers with more than 75 employees are subject to the WARN statute. The statute defines mass layoff as the layoff of 50 or more employees during any 30-day period. *MacIsaac* eliminates the obligation to give that notice in certain circumstances.

This case is important to more than just employment attorneys. It is significant to transactional attorneys contemplating the acquisition of one company by another if the acquiring company is continuing the employment of the employees of the acquired company.

The Facts

In *MacIsaac*, Waste Management, operating as Empire Waste, decided to sell its City of Santa Rosa waste collection contract to North Bay Disposal Corporation. The parties agreed that as part of the sale of the contract North Bay would continue to employ all Empire Waste employees at their then-existing pay rates and continue all fringe benefits. At the deal closing, 42 employees switched from Empire Waste to North Bay. They continued to operate the same equipment and work the same hours, without loss of pay.

Less than 30 days after the closing, Empire Waste implemented a company-wide reduction in force, affecting 20 employees. The termination of these employees was described by the court as "separate and distinct from the employee transfer occasioned by the sale to North Bay."

Plaintiff Stanley MacIsaac was the sole employee who refused the transfer. MacIsaac ultimately filed a lawsuit on his own behalf and as a representative of other employees. He contended that the number of transferred employees, along with the terminated employees, exceeded 50 employees within a 30 day period.

He asserted that WARN obligated Empire Waste to give 60 days notice of the transfer or termination to all employees and the governmental agencies. MacIsaac claimed that WARN required Empire Waste to provide 60 days pay to all 62 employees based on its failure to provide notice.

These events occurred within the first 60 days after WARN became effective on January 1, 2003. Since that time, conservative counsel have advised clients to give the WARN notice even where the acquiring company hires all of the selling company's employees, at the same rate of pay and upon the same terms and conditions of

employment. The *MacIsaac* case eliminates that requirement in cases similar to *MacIsaac*.

First Impression Interpretation

The court stated that it had found no other California case construing the terms of WARN and only a couple of secondary legal authorities. Thus, they relied on standard rules for interpreting statutory language.

The court noted that the statute defines a "mass layoff" as "a layoff during any 30-day period of 50 or more employees at a covered establishment." In addition, it defines a "layoff" as "a separation from a position for lack of funds or lack of work."

The court found the phrase "a separation from a position" to be significant. It noted Empire's argument that since the transferred employees continued to work in the same positions after the sale, they were not "separated from" their positions. The court concluded that the definition of

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Limited Scope Representation, continued from page 5

progressive bars when it became one of only six associations in the state to create a "limited scope representation" panel in 2003. The panel was created after M. Sue Talia was invited to make several trips to the Valley to speak to the family law bench and bar concerning the subject. Ms. Talia conducted a detailed and comprehensive training session in December, 2003. A DVD of that training session is available and viewing it is a prerequisite of joining the limited scope panel.

The California Judicial Council reports that in 70 percent to 80 percent of all family law matters, at least one of the parties appears in propria persona. This resorting to self-representation has become a matter of economic necessity, not just for indigent individuals, but also for large numbers of middle class litigants who do not qualify for legal aid but who find the cost of full legal representation prohibitive. Indeed, how many of us could afford to pay the fees we charge?

These parties are, for the most part, an untapped market for family law attorneys. As a member of the LRIS limited scope representation panel, you can access these clients, expand your practice, increase your billable hours, and know that you contributed to providing someone with access to justice.

Since the SFVBA's LRIS limited scope panel was created in late 2003, over 250 referrals have made to the small group of attorneys on the panel. Those attorneys have collected over \$100,000 in fees from these limited scope clients.

In fact, many of the attorneys on the panel report that clients often expand their services after initially retaining them on a limited basis. Even if services are not expanded, the attorney has earned fees that could have otherwise gone to a paralegal or document preparation service. I have earned limited scope representation fees fixing mistakes made by such "practitioners."

While in a perfect world, everyone would have the funds to pay for full, competent representation, we simply do not live in such a place. All these self-represented parties are putting a tremendous strain on our family law courts and judges. Even a little help from a competent attorney can make a tremendous difference to the party, the family and the court. ♣

Michele Morley, Associate Executive Director of Public Services, and the Lawyer Referral & Information Service would like to expand the LRIS' limited scope panel so that more families can use the services of our members and obtain competent access to justice they might otherwise do without. If you are a member of the LRIS family law panel and are interested in joining the limited scope panel, please contact Michele at (818) 227-0490, ext. 103 to schedule the training session.

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Judicial Profile: Judge Barbara M. Scheper

Rules Are Made to be Followed Valley Jurist Needs Conformity to Move Cases



BY M. JONATHAN HAYES

Judge Barbara M. Scheper has been sitting in Department F46 in Chatsworth for two years. Her case load today consists of approximately 475 to 500 civil cases. And with 35 to 40 new cases added to her list each month, the load is climbing.

“But I am enjoying the assignment immensely,” she says. “There is good lawyering here and some really interesting cases.”

She hears motions and related matters four days each week, finishing by 10:00 a.m. each day, when she starts her trials. “The case load is manageable if there are no trials going on at the same time,” she says.

Jury trials are typically five to seven days, according to Judge Scheper.

“I will not call for a jury unless the jury instructions are complete,” she says. “I really don’t want to waste the juror’s time.”

In fact, Judge Scheper will bump a jury trial at the final status conference in favor of a matter that is ready for trial.

“Attorney’s should be focusing on the jury instructions throughout their preparation for trial,” she says.

When engaged in trial, Judge Scheper says that the motion aspect of the job can be daunting. To meet the task, she works on motions during the lunch hour or brings them home.

“We have two permanent research attorneys here for the four unlimited jurisdiction judges,” she says. “I pretty much send everything to them except the trial and post-trial motions, which I work up myself.”

Because of the case load, she limits her calendar to one demurrer or other case-dispositive matter and one motion for summary judgment per day.

The research attorneys prepare a bench memo the night before the hearing, or two days before in the case of an MSJ.

“They are really good, although I don’t always follow their recommendations,” Judge Scheper says.

She agrees that a motion for summary judgment is a good tool to educate the judge about the case. “It helps focus on the issues, and [lays out] any evidentiary issues that might come up at trial,” she says.

“I don’t want to be considered a ‘stickler’ but attorneys should follow the California Rules of Court and the local rules.”



A native of Pittsburg and graduate of Notre Dame University School of Law, where she met her husband, Judge Scheper worked in the employment law arena at Latham & Watkins for five years after moving to Los Angeles. Seeking more hands-on trial experience, she joined the U.S. Attorney’s Office, where she spent nine years as a federal prosecutor.

“My husband was working there having a grand old time so I decided to give it a try,” she says. “I was prosecuting financial crimes before they became fashionable. It was a wonderful learning experience.”

Judge Scheper joined the bench in January 2001 and sat in misdemeanor court for five years in Bellflower. From Bellflower she moved to San Fernando

continued on page 20

SUPERIOR COURT ANNOUNCES FEE INCREASES

New Los Angeles Superior Court fees for forms (pursuant to California Rules of Court, rule 6.712) become effective on Monday, Aug. 14, 2006, and will be as follows:

Forms Sales (individual)	25¢
Forms Packages	\$1.50
Pamphlets	\$1.50

In addition, the following new fees were introduced on Tuesday, Aug. 1, 2006:

DVD Duplication – Temporary Judge Program	\$2.50
Audiotapes – Temporary Judge Program	\$86.50
Audiotapes – Electronic Recording Services	\$55.00
Video Recording – Courtroom Tape Duplication	\$59.00
Videotapes Duplication – Temporary Judge Program	\$13.00
Fax Filing Fee per page	50¢
Fax Filing – Verification Fee	\$ 3.50
Public Training Program – Domestic Violence	\$85.00

A revised fee schedule is available on www.lasuperiorcourt.org, and at each courthouse accepting civil, probate, or family law filings. Further information is available by calling Central Civil Operations at (213) 893-2169.

PUBLIC NOTICE RE: AMENDMENT OF LOCAL BANKRUPTCY RULE 3015-1(u)(1) AND GUIDELINES

Pursuant to Amended General Order 06-01, Local Bankruptcy Rule 3015-1(u)(1) and the *Guidelines for Allowance of Attorneys’ Fees in Chapter 13 Cases* (“Guidelines”) have been amended to reflect changes in the maximum fee allowable under the *Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys* (“RARA”) and the Guidelines. As stated in Amended General Order 06-01, the maximum fee allowable under the RARA and the Guidelines has been changed to:

- \$4,500 in a case in which the debtor is engaged in a business; or
- \$4,000 in all other cases.

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President's Message, continued from page 3

appropriate and responsive to member needs. I also welcome suggestions from the membership. You can reach me either through the bar or send me an email at plmccabe@aol.com.

For those who know me, I am not a philosopher or historian. No, I am, if anything, someone who does community service. I perform a considerable amount of pro bono legal service because I enjoy doing so. I also volunteer in my community for the same reason. This year, for this first time, I am walking in my first breast cancer walk-a-thon as part of a team, and for one day, we are walking and raising money. It is just one day. A little effort and who knows, perhaps maybe something wonderful can come from it.

I believe in our community service programs in the same way. A little effort and something wonderful comes from it. When lawyers answer questions at a senior center or a free legal clinic, they are doing something exceptional. With a little effort, they are helping someone navigate a difficult obstacle - the legal system.

I will be highlighting our community programs throughout the year and will probably be asking for volunteers along the way. At the same time, I am hopeful that we can expand the community service programs of the San Fernando Valley Bar Association.

"Things get better when enough people decide that they should get better. Things change when ordinary people come together in a common purpose." - Kofi Annan, Secretary General of the United Nations, 1999

I hope, that during the coming year, with a little effort, we can come together and, for our effort, our community will be better. ☺



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To be listed in the directory, attorney mediators can visit our website to download an application.

Changing Times A Time of Change

WILLIAM R. LIVELY, SCVBA PRESIDENT



As the Santa Clarita Valley Bar Association enters the third year of its most recent renaissance, on behalf of our Board and membership, I would like to thank the San Fernando Valley Bar Association for its generosity in helping us re-establish our organized service to Santa Clarita and its surrounding communities. We have a lot to be proud of, and we look forward to a greater involvement between our two organizations and the legal community at large, in providing knowledge and assistance to the public.

A great benchmark for us was the achievement of sufficient membership to allow our Association to have a voting seat on the Board of Trustees of the SFVBA. According to our present procedures, that seat is to be occupied by a person appointed by our Board. I served in that capacity during this last year, probably replaced by our new President, Caryn Sanders, in 2007.

At our August 2006 board meeting, one of the SFVBA's past presidents, Stephen Holzer, was installed as the SFVBA's current voting member. Steve and I had been non-voting liaisons up until this time.

We will be conducting our regular elections and board installation in the next couple of months. We are also looking forward to our second annual Law Day event, to be held on October 16, 2006, at the Valencia Hyatt Hotel, starting at 12:00 noon. Last year we had a host of city, county, state and federal representatives, and we expect no less this year. We are always anxious to see members of the SFVBA at our events, so please see our Website at www.scvbar.org for the latest developing information on these and other activities of our Association.

SFVBA immediate past President Richard Lewis and I have been discussing an idea for a joint get together between our two associations, where we would charter a bus to attend a performance of the play *12 Angry Men* at

the Music Center. For those of you who attended or even heard about the great catered reception we had in Santa Clarita, for the SCV, SFV and Antelope Valley Bar Associations to view a live performance of *To Kill a Mockingbird*, our local repertory theatre will soon present *A Few Good Men*, and we would hope to duplicate the good time we had at the *Mockingbird* event.

We continue to host MCLE accredited dinner meetings, on the third Thursday of each month, at Marie Callender's Restaurant, located right off the Magic Mountain Parkway exit from the northbound I-5, for the low price of \$30, by reservation, and \$40 at the door, dinner included. We endeavor to insure availability of those sometimes tough credits to find, including prevention of substance abuse and elimination of bias, although we include a range of subjects.

We have an active Bench-Bar Committee, and we interact on a constant basis with the other bar associations in that regard. We disseminate employment opportunities and requests for consultations and expert referral through our Website and via e-mail networking. And we continue to develop ways to interact with existing entities to facilitate a viable referral and service provision for indigent and modest means persons in need of legal advice and other services.

Last, we will continue to be a bridge between the SFVBA and the AVBA, and always be of an attitude aimed at enhancement of the strengths and influence of our respective associations, and their effectiveness in reaching the public and the legal community with a provision of service and positive message about our profession. ✎

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Conference Rooms



No Failure to WARN, continued from page 9

layoff was “unambiguous” and required “a separation from a position” The court found that “the determining factor is whether the employee has been separated from ‘a position,’ not whether the employee is separated from ‘an employer.’”

The court concluded that in this case the employees had not been “separated from a position.” The court pointed to the seamless transfer of employees from one employer to another. The transferred employees did not lose any pay by reason of the transfer to the new employer. They continued to perform the same jobs, for the same wages and benefits, as they had with the prior employer.

The court concluded that the transferred employees should not be counted in determining whether Empire Waste met its obligation under WARN. This left only the 20 laid-off employees for consideration, an insufficient number of affected employees to trigger WARN’s notice requirements. Thus, no WARN event occurred and the plaintiff’s cause of action failed.

Caution on Application of Ruling

The court indicated that its holding was limited to the specific facts of the *MacIssac* case where the transferred employees “retained their former positions with no change in the terms of their employment.” The court noted that the situation might be different if the transferred employees had been hired at a significantly lower wage or with inferior terms and conditions. ⚡

Everett F. Meiners is Of Counsel with Los Angeles’ Parker Milliken Clark O’Hara & Samuelian. He is a contributing author to *Advising California Employers and Employees* (CEB 2005). He can be contacted at (213) 683-6610 and efm@pmcos.com.

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Report From the Foundation

Generosity Counts!

The Valley Community Legal Foundation Update

MARCIA L. KRAFT, VCLF PRESIDENT



In last month's column, I described some of the good projects the Foundation supports, such as scholarships and grants, including those assisting battered spouses and exceptional-needs children. But I neglected to mention one of the largest undertakings so far by the Foundation: The Children's Waiting Room at the Van Nuys courthouse!

The Foundation raised \$50,000 to establish a Children's Waiting Room at the Van Nuys courthouse. This room will be available and staffed with professionals to watch the children of court visitors in the East or West Wings of the complex. This project is a tremendous benefit to those in our community who cannot afford or do not have access to child care providers.

Now that this project is funded, the Foundation has passed a resolution to support the fundraising for a Children's Waiting Room at the San Fernando courthouse. As the end of the year is rapidly approaching, your tax deductible donations to the Foundation may be directed to support this initiative.

Your charitable donation works to help the local community. If you have had a good year, please consider doing one more good deed: Send a check to the Valley Community Legal Foundation at the San Fernando Valley Bar Association. If you want to donate by credit card, call the Bar offices at (818) 227-0490, or if you need additional information, call me at (818) 883-1330.

Foundation projects can't be completed by just one person, so I want you to know some of our volunteers. The Foundation has a board of about 30 people, all of whom work very hard to support the Foundation's efforts.

Several officers help manage the Foundation, including the Vice President for Fund Raising, Christine C. Lyden.

Christine graduated from the University of California at Los Angeles and McGeorge School of Law and was admitted to the California State Bar in December, 1983. A lifetime resident of the San Fernando Valley, she has practiced primarily in this area, focusing on business and real estate litigation. She successfully represented the appellants in the matter of *Atkins v. California* (1996) 50 Cal.App.4th 1802, which created an exception to claims of governmental immunity.

Christine served on the Board of Trustees of the San Fernando Bar Association for ten years, chaired many committees, and served as president of the Association in 2000-2001. She volunteered on the Lawyer Referral &

Information Service Committee for more than 15 years and currently co-chairs the Lawyer Referral Service committee. She served on the Board of Trustees of the Los Angeles County Bar Association in 2001-2002.

People like Christine generously donate their time and effort to better the lives of their neighbors and the larger community. I will be introducing more of the Foundation's officers to you throughout the year. If you know one of them and wish to contribute or become actively involved, do not hesitate to let us know. We welcome all assistance, financial or otherwise.

A big "Thank-You" to all our Foundation board members for their support and hard work! 🐾

In the month of October, I am offering a nice coffee mug to anyone donating \$50 to the Foundation before January 1, 2007. Remember, it is a tax deductible donation. You will be helping someone who needs you, and remember: Generosity counts!!!

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*Judicial Profile: Judge Barbara M. Scheper,
continued from page 11*

and then to Chatsworth. According to Scheper, switching from federal law to state law was a little bit of a project, but she has enjoyed the process.

When asked if there was anything that attorneys do that drives her crazy, she smiles.

“Where shall I begin?” she asks.

She says that she prefers that attorneys get along, cut back on the rhetoric and throwing barbs at each other. “I don’t want to be considered a ‘stickler,’ but attorneys should follow the California Rules of Court and the local rules,” she says. “Get the case management conference statement to me on time, fifteen days before the hearing, so I can review it. It is important to have a meaningful CMC so I review the complaint and the CMC statement before each CMC hearing.”

She tries to move cases along and is setting trials now for February.

When asked what the most surprising part about being a judge is she referenced the social aspects of the job. “I didn’t know it would be so isolating,” she says. “Although there is really good collegiality with the other judges, you are really on your own.”

She notes that it has been hard getting rid of the advocacy she developed before becoming a judge.

“Sometimes I want to jump over the bench and tell the attorneys how to do their case,” she says. “I especially try to be low key when the jury is present. It’s not my job to try the case for the attorneys.”

Judge Scheper is effusive about the VAST Program run by the San Fernando Valley Bar Association. “The effort was really impressive and very helpful to us. The Bar really cares about the issues,” she says. “I want to thank each member who has contributed their time.”

For now, Judge Scheper is enjoying the learning experience. She has been taking golf lessons, which permits quality time with her husband and two sons. ♣

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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October Events

Probate & Estate Planning Section

Topic: Criminal Elder Abuse Issues for the Probate Practitioner

Speaker: Deputy D.A. Michael Gargiulo, Elder Abuse Unit

Date: October 10

Time: 12:00 noon

Place: Monterey at Encino Glen Restaurant, Encino

Cost: \$30 members prepaid; \$35 at the door
\$35 non-members prepaid; \$40 at the door

MCLE: 1 Hour

Small Firm & Sole Practitioner Section

Topic: Negotiating in the Dark: Everything You Need to Know about Deal-Making You Can Learn From the Movies

Speaker: Steve Mehta, Esq.

Date: October 11

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

Workers' Compensation Section

Topic: Substantial Evidence Under the AMA Guides

Speaker: Robert Rassp, Esq.

Date: October 18

Time: 12:00 noon

Place: Monterey @ Encino Glen Restaurant, Encino

Cost: \$30 members prepaid; \$35 at the door
\$35 non-members prepaid; \$45 at the door

MCLE: 1 Hour

Santa Clarita Valley Bar Association

Topic: Law Day Event

Date: October 16

Time: 12:00 noon

Place: Hyatt Hotel, Valencia

Check out www.scvbar.org for more details!

Family Law Section

Topic: Minor's Counsel in Family Law Matters: Who Are They and What Do They Do

Panel: Frieda Gordon, Esq. and Sandra Etue, Esq.

Date: October 23

Time: 5:30 p.m.

Place: Monterey @ Encino Glen Restaurant

Cost: \$40 members prepaid; \$45 at the door
\$45 non-members prepaid; \$50 at the door

MCLE: 1 Hour

Business Law, Real Property & Bankruptcy Section

Topic: Piercing the Corporate Veil

Panel: David Adelman, Esq. and Harold Gutenberg, Esq.,
Greenberg & Bass

Date: October 25

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

Women Lawyers Section

Topic: How Body Language Impacts the Effectiveness of the Attorney and Client

Speaker: Lynne Azpeita

Date: October 26

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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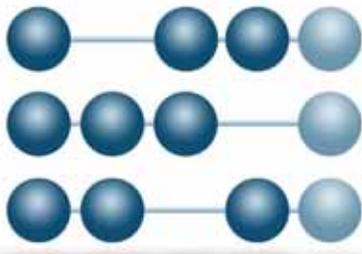
PANEL

Roger Kohn, Chair of ACLU of Southern California's
Privacy Rights Committee and Los Angeles County Bar
Association Individual Rights Section
Professor Michael D. Scott, Southwestern Law School
Professor Chris Shortell, CSUN Public Law Expert

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