VALLEY LAWYER

JUNE 2017 • $4

A Publication of the San Fernando Valley Bar Association

Valley Bar Network: Filling the Gap between Formal and Fun

Contract Law: Centuries Old and Just as Complicated

Earn MCLE Credit

PRSRT STD
US Postage Paid
Canoga Park, CA
Permit No. 348

www.sfvba.org

NARVER

Insurance Agency and Coverage You Can Trust.

Narver Insurance is committed to providing the SFVBA members with diverse, niche specialty insurance products.

Narver is skilled and capable to service all types of coverages. Our knowledgeable team delivers the services with personal attention.

We offer competitively priced, quality products from stable, highly-rated companies.

Let us be your One-Stop Shop for Insurance.

Call us today for a second opinion consultation at (800) 371-9024 or visit our website at www.narver.com.

Narver Insurance is a supporter of the San Fernando Valley Bar Association.

FOR YOUR LEGAL PRACTICE

PROFESSIONAL LIABILITY INSURANCE
HEALTH INSURANCE
GENERAL LIABILITY
BUSINESS PROPERTY INSURANCE
WORKERS' COMPENSATION
EMPLOYMENT PRACTICES LIABILITY INSURANCE
CYBER LIABILITY INSURANCE

FOR YOU, YOUR FAMILY, AND STAFF

AUTO INSURANCE
HOMEOWNERS INSURANCE
PERSONAL UMBRELLA LIABILITY INSURANCE
401(K) BENEFITS
LONG-TERM CARE INSURANCE
DISABILITY INSURANCE
TERM LIFE INSURANCE

Samantha Chung Ogura
sogura@narver.com

Wesley Hampton
whampton@narver.com

O. Diane Wood
dwood@narver.com

April Aguirre
aaguirre@narver.com

Wesley Lawnsdale
wlawnsdale@narver.com

CONTENTS

JUNE 2017

VALLEY LAWYER
A Publication of the San Fernando Valley Bar Association

On the cover: *The Valley Bar Network. Photo by Ron Murray*

FEATURES

COLUMN

DEPARTMENTS

VALLEY LAWYER

SAN FERNANDO VALLEY BAR ASSOCIATION
5567 Reseda Boulevard, Suite 200
Tarzana, CA 91356
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

EDITOR
Michael D. White

GRAPHIC DESIGNER
Marina Senderov

Valley Lawyer is published monthly. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Printing Southwest Offset Printing

A Busy Month

KIRA S. MASTELLER
SFVBA President

president@sfvba.org

THE BAR HAD A BUSY AND MEMORABLE APRIL. Highlighting the month was the Bar's Annual Judges' Night at the Sheraton Universal with California Supreme Court Justices Carol Corrigan and Ming Chin in attendance. Both justices graciously lauded the SFVBA for its active support of the courts and called on the Bar to continue to work closely with our judges, court staff, and all of those who make up our legal community.

The Attorney Referral Service hosted a free informative program on immigration issues for the public at the Van Nuys Civic Center. The program is part of a larger campaign for members to participate in town hall meetings and similar public events to address Valley residents' questions related to pressing legal issues—such as changes to immigration, health insurance and tax laws—in the upcoming months and year.

Retired Superior Court Judge Reva Goetz addressed the Bar's Probate & Estate Planning Section on "E-Discovery and Problems You Didn't Know You Had." The Bar has 11 Sections that regularly hold meetings of topical interest that are open to all members. Keep your eye on the Events Calendar in *Valley Lawyer* magazine and on the SFVBA website for the times, dates, and locations of upcoming Section meetings.

Three members of our New Lawyers Section—Hannah Sweiss, Cody Cooper, and Chris Warne—and I participated in a "Meet the Judges" evening at Cal State University Northridge, specifically aimed at students considering law school. Nine Valley judges shared their personal experiences, from their undergraduate education, through law school, to their careers as lawyers and, now, on the bench. The students had excellent questions and the judges were very generous with the information and advice they shared.

In early April, the Bench Bar Committee and several local judges met with California State Senator Henry Stern to share our positions on trial court funding and other major issues currently being faced by the state's courts.

The Valley Bar Network continues to be the place to be on Monday nights. If you haven't attended a VBN meeting yet, please feel free to come as my guest. Meetings are held the first Monday night of the month at 5:30 p.m. at the Chablis Restaurant in Tarzana. You do need to let us know if you are coming, as the restaurant prepares appetizers and drinks based upon our reservations.

The Bar's Inclusion & Diversity Committee hosted its new monthly networking event, Dinner at My Place, which gives a select number of members the opportunity to meet and network in an intimate setting at a Bar member's home.

I've invited my adult children to join me for the SFVBA's upcoming Journey to Cuba in October. Registration is now open and the trip's brochure is available on the Bar's website. Help spread the word!

Civil Discourse: Wouldn't It Be Nice?

MICHAEL D. WHITE
SFVBA Editor

michael@sfvba.org

THE NATIONAL INSTITUTE for Civil Discourse, based at the University of Arizona, was founded several years ago following the Tucson shooting of Congresswoman Gabrielle Giffords to debunk the notion that every area of social interaction, from politics and what we eat, to public education and what restrooms we use, has to be weighed in a scale that has to tip either to the left or the right.

The Institute proposes that the most effective solutions to challenges are forged "in the middle." In other words, there has to be balance, a middle ground. But, alas, that middle ground has become a no man's land, more often than not obscured by the fog of partisan warfare that clouds real issues with barbed rhetoric, late night humor, and snarky Twitter blurbs passed around as profound insight.

In 2013, the Institute commissioned a nationwide survey which found that 70 percent of Americans believe incivility had reached crisis proportions. I have no doubt that that percentage has increased significantly over the past four years.

Incivility, the Institute wrote, "is ubiquitous; no area of American society is untouched. The belief that America has a civility problem and that civility will get worse has not waned since the survey's inception."

With that in mind, I have to say that it is uplifting to observe a notable exception to what, unfortunately, has become what the Institute has dubbed our "new normal." That exception is the Valley Bar Network, an adjunct to the San Fernando Valley Bar Association.

Once a month, according to its unofficial charter, members of VBN meet "to enhance SFVBA membership with a dedicated, consistent networking program so as to promote new and ongoing professional relationships, and to facilitate collaboration and reciprocal business referrals."

The SFVBA launched VBN in the spring of 2016 "to enable more substantive, positive interaction" between members by developing new business and enhancing members' professional lives.

> "A nationwide survey found that 70% of Americans believe incivility had reached crisis proportions."

VBN, in effect, acts as a conduit for professionals to share experience, knowledge, and, yes, even opinions on all matters great and small without the need of riot gear and muscle-shirted security guards ala The Jerry Springer Show.

"Facilitate collaboration… substantive and positive interaction." Sounds like real civil discourse to me.

To quote the title of an old Beach Boys song, "Wouldn't It Be Nice" if all our political leaders took their rhetoric down a notch and took a lesson from the Valley Bar Network.

For once, we can chalk one up for the good guys.

Regards.

CALENDAR

JUNE 2017

SUN	MON	TUE	WED	THU	FRI	SAT
				1 Membership & Marketing Committee **6:00 PM** **SFVBA OFFICES**	**2** *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for July issue.	3
4	**5** VBN Valley Bar Network **5:30 PM** **CHABLIS RESTAURANT TARZANA**	6	7	8	9	10
11	12	**13** Probate & Estate Planning Section Update from the Court **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT** Judge David Cowan and the Probate Bench will share the latest with the group. (1 MCLE Hour)	14	15	**16** Bankruptcy Law Section Settling with the Trustees **12:00 NOON** **SFVBA OFFICES** Stella Havkin leads this popular seminar. (1.25 MCLE Hours) MEMBER APPRECIATION DINNER See Page 30	17
18 Happy Father's Day	19	20	21	**22** From Guesswork to Precision: How Paid Social Media Delivers for Your Firm Sponsored by FindLaw. **12:00 NOON** **SFVBA OFFICES** Speakers will discuss the core elements of paid social media and how best to use marketing messages in your news feed. Free to all current members. Criminal Law Section The Human Lie Detector **6:00 PM** **SFVBA OFFICES** Sponsored by JHIS Joey Hernandez Insurance Solutions; Bad Boys Bail Bonds Nationally recognized interrogator and deception expert Paul Bishop will share his insights garnered from his 35 years of working as a LAPD detective. Free to Criminal Law Members. (1 MCLE Hour)	23	24
25	**26** Family Law Section Using Technology in Custody Cases **5:30 PM** **MONTEREY AT ENCINO RESTAURANT** Judge Harvey A. Silberman and Jonathan Verk will review the role technology plays in child custody cases. Approved for Family Law Legal Specialization (1.5 MCLE Hours)	**27** Editorial Committee **12:00 NOON** **TONY ROMA'S**	28	**29** New Lawyers Section Public Speaking **6:00 PM** **SFVBA OFFICES** Lou Shapiro discusses the best means to get across your message. (1 MCLE Hour) Inclusion & Diversity Committee Dinner at My Place **6:30 PM** **PASADENA** See Page 11	30	

CALENDAR

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3 *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for August issue.	4 	5	6 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	7  Time to Renew Your Bar Membership! Renew online at www.sfvba.org	8
9	10 VBN VALLEY BAR NETWORK 5:30 PM CHABLIS RESTAURANT TARZANA	11 Board of Trustees 6:00 PM SFVBA OFFICE	12	13	14	15
16	17	18	19	20	21	22
23	24	25 Editorial Committee 12:00 NOON TONY ROMA'S	26	27 Inclusion & Diversity Committee Dinner at My Place 6:30 PM VALLEY VILLAGE See ad below	28	29 New Lawyers Section Group Hike 8:30 AM TEMESCAL CANYON All are welcome to join us in the great outdoors! Be sure to bring water and sunscreen!

SFVBA Inclusion & Diversity and Membership & Marketing Committees

DINNER AT MY PLACE

A new and fun member benefit to help members get to know each other in an intimate setting, spur referrals, and become more involved with the SFVBA!

June 29 • Pasadena
July 27 • Valley Village

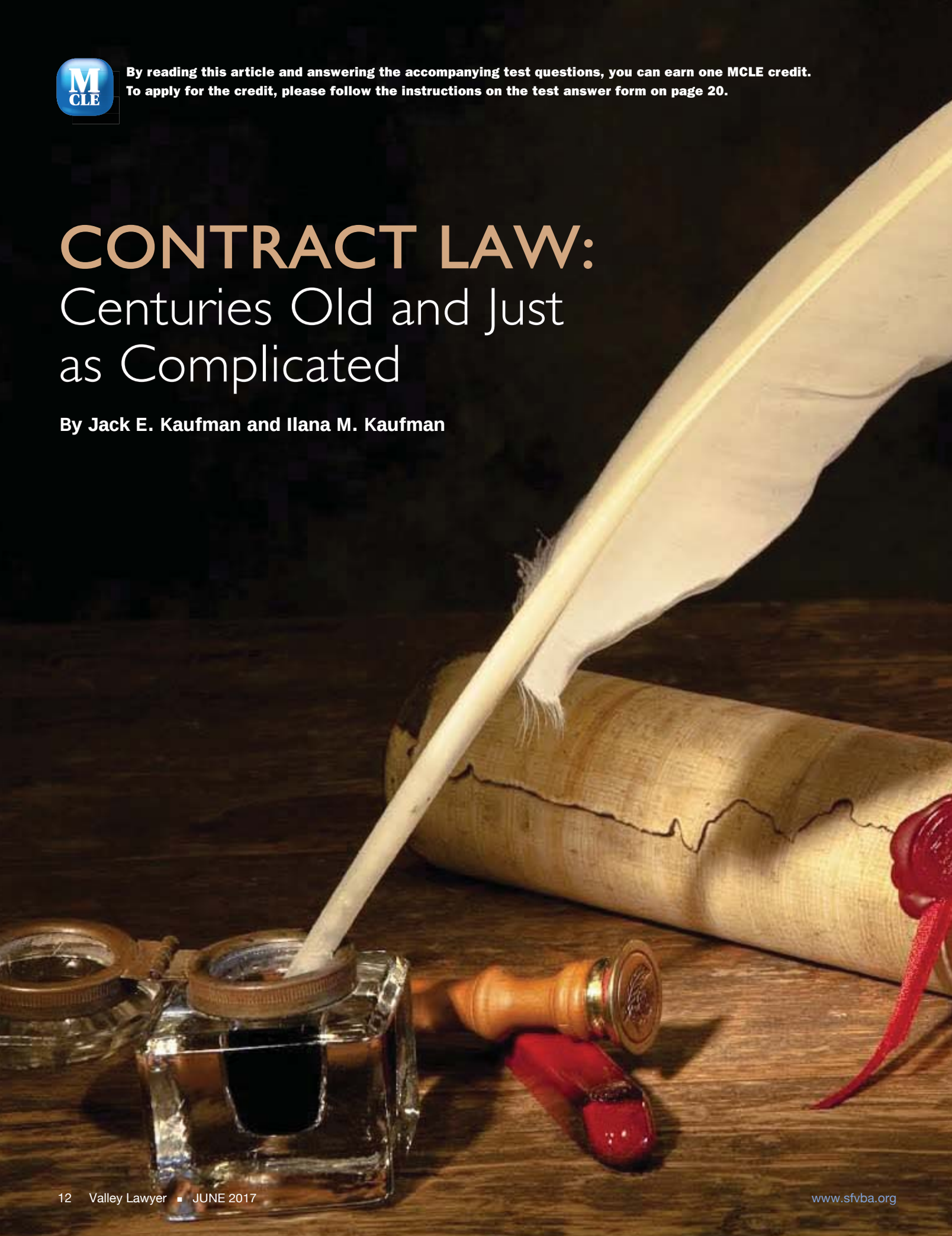
Sign up at https://members.sfvba.org/calendar
The cost is just $25 to attend one dinner.
For more details, please contact Valarie Dean at vdean@TechnoTaries.com.

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0490, ext. 105 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 20.

CONTRACT LAW: Centuries Old and Just as Complicated

By Jack E. Kaufman and Ilana M. Kaufman



Details contained in even the most routine contract can prove to be both complicated and vexing, particularly in the areas of employment contracts and consumer protection. New laws governing choice of law and venue provisions in employment contracts and recent judicial decisions affecting arbitration agreements with consumers require attorneys to stay up-to-date on developments in contract law.

CONTRACT LAW IS CENTURIES OLD, AND although certain seemingly-archaic principles remain tenets in its arena, other aspects of contract law are ever-evolving. In recent years, agreements to arbitrate have come under fire, as have certain other common provisions found in most contracts. This makes it critical that, as the law evolves, contract-drafters must stay abreast of the changing rules in order to avoid legal woes, uncertainty, or worse.

Already a busy year, this article discusses a few important updates in contract law for 2017, focusing on employment contracts and consumer contracts in particular.

Choice of Law and Venue Provisions in Employment Contracts

Choice of law and venue provisions are commonplace in just about every contract as normal mechanisms for contracting parties to choose the law governing their contractual obligations and the venue, or location, for any legal proceeding determining the rights of the parties under the contract. As of January 1, 2017, California Labor Code §925 prohibits the use of choice of law and venue provisions in the employment context for California employees. Specifically, California Labor Code §925 prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a contractual provision that would either require the employee to adjudicate outside of California a claim arising in California, or deprive the employee of the substantive protection of California law with respect to a controversy arising in California. For purposes of this law, "adjudication" means both litigation and arbitration.

In other words, for an employee who primarily resides and works in the state, the choice of law and proper venue for any claims arising out of the employment relationship is California, as employers are now expressly prohibited from requiring the law or venue of another state to apply to any employment dispute that might arise with a California employee.

The new law applies to contracts entered into, modified, or extended on or after January 1, 2017 and is not retroactive. If a contact entered into, modified, or extended on or after January 1, 2017, contains a provision that violates Labor Code §925, that provision is voidable by the employee and the dispute shall be adjudicated in California and governed by that state's law.

Importantly, it should be noted that the new law does not automatically render the potentially offending provisions void and unenforceable, but rather makes the choice of law and venue provisions potentially voidable at the option of the employee.

Employees are free to use the provision in question if it favors their case, or to void it if it is not. This inherently creates a dilemma for employers, who have no way of knowing in advance what decision an employee will make in this regard.

Although the law does not provide guidance on how employees are to exercise their rights to void the provision(s) violating Labor Code §925, it is unlikely that employees can be compelled to choose before a legal controversy arises.

> "The new law…makes the choice of law and venue provisions potentially voidable at the option of the employee."

Additionally, Labor Code §925 does not apply to contracts with employees who are individually represented by legal counsel in negotiating the terms of an agreement to designate either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied. The idea is that the employee, represented by counsel, has made an informed decision to select the particular state's law and/or venue to apply to the employment contract. However, this exception will likely apply most commonly to executive-level employees. In addition, it will have little, if any, application to the vast majority of agreements where either an employee does not retain independent counsel for purposes of the agreement or the employer wishes to use a uniform set of contract terms for its employees of a particular position or circumstances. Accordingly, employers subject to the new law should:

- Review all contracts that have gone into effect, or will go into effect, after January 1, 2017, to determine whether any provisions exist that may potentially violate Labor Code §925

Jack E. Kaufman is a partner at Kaufman Miller & McAndrew LLP in Encino, and is a business and corporate attorney. He can be reached at jack@kmmllp.com. **Ilana M. Kaufman** is an employment defense attorney at Kaufman Miller & McAndrew LLP. She can be reached at ilana@kmmllp.com.

SFVBA JOURNEY TO CUBA
OCTOBER 22-27, 2017

San Fernando Valley Bar Association
founded in 1926

The San Fernando Valley Bar Association invites you and your guest(s) to join our private delegation for an eye-opening journey at this most pivotal time in U.S.-Cuba relations. Our specially designed program will explore Cuba's rich and varied cultural heritage. We will go beyond tourist corridors by engaging with local scholars, attorneys, musicians and artists who will offer in-depth commentary on the Cuban legal system, art, history, architecture, and religion.

We have teamed with Cuba Cultural Travel to create this extraordinary trip. Our private journeys (space is limited) include the following:

- Thought-provoking MCLE lectures by renowned scholars and legal experts (SFVBA is a State Bar of California approved MCLE provider)
- Private performances and reception by prominent dance companies and musicians
- Exploration of the fascinating neighborhoods of Havana in the company of an architect and historian

To request a brochure and registration information, please email Laura Adams at Laura@CubaCulturalTravel.com.

CUSTOM DESIGNED PROGRAM INCLUDES

- Itinerary design and coordination
- Compliance with US Treasury Department
- **5 Star Hotel Parque Central Havana or Upscale B&B**
- All ground transportation
- Full time private tour escort
- Daily breakfast in Cuba
- Meals as listed in itinerary (including tips)
- Entrance fees to museums etc.
- Bottled water on bus and in room
- Gratuities for restaurants, porters
- Departure tax

HOTEL PARQUE CENTRAL

Double Occupancy (per person): $4,593

Single Occupancy: $5,724

CASA PARTICULAR (B&B)

Double Occupancy (per person): $2,805

Single Occupancy: $3,278

EXCLUDES

- Airfare to/from Cuba
- Airline baggage fees
- Cuban Tourist Card/Visa
- Gratuities for guide and driver
- Individualized hotel expenses (mini bar, room service, laundry fees, etc)
- Trip cancellation insurance

- Pay particular attention to contracts entered into prior to the effective date of the new law that have an automatic extension or "roll-over" into the following year as these contracts, which were not initially subject to the new law, suddenly will be
- Consider whether to remove potentially offending provisions
- Where a selection of another state's law or venue will be retained, employers should consider using a savings clause in employment agreements with California employees that recognizes the employee's option to void the choice of law and venue provisions. The savings clause should also disclaim any intent to deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

Validity of Agreements to Arbitrate Enclosed With Consumer Products

In California, it is widely accepted that, by keeping and using a consumer product, the customer has accepted the contractual terms enclosed in the product.

Notwithstanding this majority rule, in *Norcia v. Samsung Telecommunications America, Inc.,* the Ninth Circuit recently held that the inclusion of an arbitration provision in the warranty brochure enclosed with a product does not create a binding arbitration agreement between the purchaser and the manufacturer when the existence of contract terms is not adequately disclosed to the purchaser.[1]

Specifically, in *Norcia v. Samsung Telecommunications America, Inc.*, the plaintiff, a California purchaser of a Samsung Galaxy S4 smartphone, filed a class action suit against Samsung for alleged violation of consumer-protection law. The South Korea-headquartered company was moved to compel arbitration, invoking the arbitration provision in the Product Safety and Warranty Information brochure enclosed in the box containing plaintiff's phone.

The plaintiff resisted arbitration and prevailed on the grounds that the outside of the box did not notify the customer that opening the box would be considered agreement to the terms set forth in the brochure; and the product safety and warranty information brochure included in the product box for the smartphone was not enforceable as an in-the-box contract between the customer and the smartphone manufacturer under California law.

The plaintiff argued that the brochure contained only safety information and a manufacturer's warranty that would not have put a reasonable person in the customer's position on notice that the brochure contained a freestanding obligation outside the scope of

warranty, to arbitrate all claims against the manufacturer, including claims not involving the warranty.

It is important to note that the Ninth Circuit's decision in *Norcia* does not purport to invalidate all in-the-box contracts, but only applies to the validity of contracts contained within the packaging of a consumer product that is not adequately disclosed to the consumer.

Regardless, the Ninth Circuit's decision has cast some doubt on the validity of in-the-box contracts and will likely cause increasing concern for businesses that use them as more and more consumers will be emboldened to challenge such in-the-box contracts.

Public Injunctive Relief

The standard practice for many companies is to include arbitration agreements with consumers, despite the fact that recent law limits the reach of these agreements to the extent they seek to limit the consumer's right to seek public injunctive relief.

On April 6, 2017, the California Supreme Court ruled that a provision in a pre-dispute arbitration agreement that waives the consumer's right to seek public injunctive relief (an injunction that would benefit members of the public) in any forum is contrary to California public policy and is thus unenforceable.[2]

In *McGill v. Citibank NA*, the plaintiff brought a class action lawsuit against Citibank NA for various consumer-related claims and invoked three consumer protection statutes, each of which provides injunctive relief as a remedy: the Unfair Competition Law (UCL), False Advertising Law (FAL) and Consumer Legal Remedies Act (CLRA). CitiBank NA moved to compel the plaintiff's claims to arbitration pursuant to an arbitration agreement.

The lower court agreed that arbitration was mandatory for all of plaintiff's claims except claims for public injunctive relief. It based its decision on California's Broughton-Cruz rule which provides that "Agreements to arbitrate claims for public injunctive relief under the CLRA, the UCL or the [FAL] are not enforceable in California."

The Court of Appeal disagreed, and the California Supreme Court reversed, holding that the contractual waiver of plaintiff's right to seek public injunctive relief was unenforceable under California law and public policy.

Of particular interest to the court, the arbitration agreement in *McGill* "purport[ed] to prohibit [McGill] from pursuing claims for public injunctive relief, not just in arbitration, but in any forum."[3] The Supreme Court found that because the arbitration clause provided that the plaintiff could not arbitrate injunctive relief claims on behalf of other members of the public, it left the plaintiff with no recourse for such claims in arbitration, in court or in any other forum. This, the court found, went too far, and held the arbitration provision to be unenforceable.

Moving forward, the court's ruling in *McGill* demonstrates that California consumers are protected from contractually waiving their right to pursue statutory claims for public injunctive relief under California's consumer protection statutes.

Takeaway

Contract law is centuries old and just as complicated. Because of that, it is important that contract-drafters stay as current as possible on developments in the law, the do's and don'ts of contract-writing, and the legal status of certain, even customary, provisions.

[1] *Norcia v. Samsung Telecommunications America, Inc.*, 845 F.3d 1279 (9th Cir. 2017).
[2] *McGill v. Citibank NA*, S224086, 2017 WL 1279700 (Cal. April 6, 2017).
[3] *Id.*, at 2.

Technical Foul!
Contract Requirements in Employment Law

ALTHOUGH READING ABOUT CONTRACT law can often feel like watching paint dry, don't be blind-sided by unforeseen technicalities! For example, what appears to be a valid contract provision in an employment agreement that has run afoul of a technicality in the law could result in the unenforceability of the provision, and, sometimes, the entire contract.

Contract requirements in the employment context in particular have become increasingly developed over the years, particularly in two sticky areas—arbitration agreements and commission plans.

Arbitration Agreements

Many employers choose to adopt arbitration policies with respect to disputes that arise in the employment context. Employers should practice caution to ensure that arbitration agreements are carefully crafted to withstand judicial scrutiny and avoid litigation.

Employers should consider having a stand-alone arbitration agreement, as opposed to one embedded in another document or employee handbook, in order to avoid any question as to the employee's acknowledgement of, and agreement to, the provision.[1]

Employers should also be sure to include provisions in the arbitration agreement that provide: (1) a neutral arbitrator; (2) discovery sufficient to adequately arbitrate the employee's statutory claim; (3) a written arbitration award; (4) all types of relief that would otherwise be available in court; and (5) a statement stipulating that the employer bears the expenses of arbitration, save for any costs the employee would otherwise incur if the case were pending in court.[2]

Following these best practices will help ensure that an employer's arbitration agreement stands muster in California courts.

Commission Plans

One widely-used method of compensation, primarily for sales people, is the commission-based compensation plan. Although popular, this method is also widely misunderstood as unwitting employers often fail to meet the requirements of California Labor Code §2751 which, as of January 1, 2013, sets forth various requirements for such plans.

California employees whose pay involves commissions must be provided with a written commission plan and employers must obtain a signed receipt for the contract from each employee. Employers are strongly advised to draft a document that specifically defines when and under what circumstances commissions are earned and under what circumstances unearned commissions will be advanced. Once commissions are earned, they cannot be recouped, but this is not the case with commissions that are merely advanced.

Employers are also strongly advised to include specific commission forfeiture language upon termination (i.e., the employee must be employed on the date commissions are earned in order to be paid commissions or to include well-defined post-termination trailing commission language). Without it, the terminated employee could potentially lay claim to significant post-termination commissions well into the foreseeable future, notwithstanding his or her termination, despite the fact that other employees may have shepherded those post-termination sales from start to finish.

Labor Code §2751 also clarifies that in the event a commission plan expires and the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or the employment relationship is terminated by either party.

With these precautions in place, employers will be more readily able to defend the terms of their commission plans should an issue ever arise.

[1] *Esparza v. Sand & Sea, Inc. et al.,* 2 Cal.App.5th 781 (Aug. 22, 2016); *Mitri v. Arnel Management Co.,* 157 Cal. App. 4th 1164 (2007); *Serafin v. Balco Properties Ltd., LLC,* 235 Cal.App.4th 165 (2015).

[2] *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83 (2000).

Test No. 104

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. California Labor Code §925 is retroactive.
❑ True ❑ False

2. The remedy for a provision that violates California Labor Code §925 is voidance of those provisions by the employee.
❑ True ❑ False

3. A provision that violates California Labor Code §925 is automatically void and unenforceable.
❑ True ❑ False

4. An employee must exercise his right to void a contract provision that offends Labor Code §925 at the time of signing the contract.
❑ True ❑ False

5. An arbitration agreement can be used to avoid the implication of Labor Code §925.
❑ True ❑ False

6. If independent legal counsel for the employee is involved in negotiating the choice of law or venue provisions of the contract, Labor Code §925 does not apply.
❑ True ❑ False

7. The legal counsel exception to Labor Code §925 will likely apply most commonly to executive level employees.
❑ True ❑ False

8. In light of Labor Code §925, employers should review all contracts that are in effect, or will go into effect, after January 1, 2017, to determine whether any provisions exist that may potentially violate Labor Code §925.
❑ True ❑ False

9. In light of Labor Code §925, employers need not review contracts entered into prior to the effective date of the new law.
❑ True ❑ False

10. Employers should consider removing contract provisions that potentially offend Labor Code §925.
❑ True ❑ False

11. If an employer elects to keep a provision selecting another state's law or venue, it is recommended that the employer may do so without advising the employee of his or her option to void under Labor Code §925.
❑ True ❑ False

12. Generally speaking, by keeping and using a consumer product, the customer has accepted the terms enclosed in the product.
❑ True ❑ False

13. The inclusion of an arbitration provision in the warranty brochure enclosed with a product automatically creates a binding arbitration agreement between the purchaser and the manufacturer.
❑ True ❑ False

14. The Ninth Circuit's decision in *Norcia v. Samsung Telecommunications America, Inc.* invalidates all in-the-box contracts.
❑ True ❑ False

15. Litigation challenging in-the-box contracts is likely to increase following the Ninth Circuit's decision in *Norcia v. Samsung Telecommunications America, Inc.*
❑ True ❑ False

16. To avoid challenges to in-the-box contracts, business should notify the customer on the outside of the product box that opening the box would be considered agreement to the terms set forth in the brochure.
❑ True ❑ False

17. To avoid challenges to in-the-box contracts, brochures included in the product box should not provide notice that the brochure contains a freestanding obligation outside the scope of warranty, such as an agreement to arbitrate.
❑ True ❑ False

18. Public injunctive relief is an injunction that would benefit members of the public.
❑ True ❑ False

19. Provisions in pre-dispute arbitration agreements that waive a consumer's right to seek public injunctive relief are enforceable.
❑ True ❑ False

20. California's Broughton-Cruz rule provides that agreements to arbitrate claims for public injunctive relief under the CLRA, the UCL or the FAL are enforceable in California.
❑ True ❑ False

MCLE Answer Sheet No. 104

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the $20 testing fee for SFVBA members (or $30 for non-SFVBA members) to:

   San Fernando Valley Bar Association
   5567 Reseda Boulevard, Suite 200
   Tarzana, CA 91356

METHOD OF PAYMENT:

❑ Check or money order payable to "SFVBA"
❑ Please charge my credit card for $_____.

_____
Credit Card Number Exp. Date

_____
Authorized Signature

5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0490, ext. 105.

Name_____
Law Firm/Organization_____
_____
Address_____
City_____
State/Zip_____
Email_____
Phone_____
State Bar No._____

ANSWERS:
Mark your answers by checking the appropriate box. Each question only has one answer.

1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False


2017
LAUNCH
NEW FASTCASE 7
FLY THROUGH YOUR LEGAL RESEARCH WITH THE NEWEST VERSION OF THE WORLD'S MOST VISUAL SEARCH PLATFORM. RESERVE YOUR SEAT TODAY AT 866-773-2782
LEARN MORE AT:
WWW.SFVBA.ORG/MEMBER-RESOURCES/FASTCASE
DOWNLOAD THE APP
Get it on iTunes
GET IT ON Google Play
Windows Phone
fastcase
Smarter legal research.
San Fernando Valley Bar Association
founded in 1926

Photos by Ron Murray

VALLEY BAR NETWORK:
Filling the Gap between Formal and Fun

By Michael D. White

GETTING BUSY PROFESSIONALS TO GATHER IN a single place for any length of time to network—particularly in this age of instant messaging, texting and Facebook friendships—can be a fairly daunting challenge.

"Just about a year ago, we saw the need to enhance member benefits by filling the gap between the Bar's smaller section meetings and its larger conference and gala-type events," says SFVBA President Elect Alan Kassan, who lauds the Bar's then-President Carol Newman with being instrumental in helping craft what has become one of the Bar's most successful professional outreach programs, the Valley Bar Network.

The original target, says Kassan, who represents individuals whose insurance benefits have been denied, was to recruit a dozen members to get the word out and seed the new group, but, to his surprise, more than double that number responded. Today, VBN draws as many as 60 dues-paying members to its monthly meeting at its regular venue—a popular restaurant near the Bar Association's offices in Tarzana.

VBN, he says, "has grown much faster than I thought it would. I first thought it would take us a long time to get to 60 people as there's a lot of competition with a lot of other networking opportunities available out there."

The group "combines both an opportunity to network and information in an informal social environment," says Kassan. "We have an informal meet and greet for the first 20 minutes or so where people just meet and talk and visit and then we launch into a more formal program where we go and sit down and share experiences and thank others for referring business. People feel comfortable knowing that serious business

is getting done, while, at the same time, they can enjoy themselves."

Taking it all a step further, he adds, breakout groups of three or four members who meet for breakfast or lunch between regularly scheduled networking get-togethers are drawing increased participation.

Self-described VBN "veteran" trial attorney David Drexler first learned about the Network from then-SFVBA President Carol Newman, who he credits, along with attorney Alan Kassan, with creating impetus for the group.

"I've been practicing for 40 years and I've found that to stay relevant and on top of your game, you really do need these types of groups to grow your business," says Drexler. "You need to have quality people that can refer to you and you can refer to them and also collaborate."

VBN, he says, "is a critical and necessary tool. You're not going to refer clients to other people until you've developed trust and an organization doesn't grow until

other people report to their colleagues and friends that there's this great group and I'm getting business from it and useful information and knowledge from the people I'm meeting."

According to Drexler, the Network "is value-added and will be increasingly valuable as time goes on as more and more people hear about it and what it does. When you have a local group and quality people that make themselves available to consult, confer and collaborate, I think that that's something that meets a real need in the legal community."

Drexler says he is "banking on the future" of VBN in a literal sense as he is in practice with his own son and considers the growth of VBN "an evolutionary process" as new technologies offer fewer and fewer opportunities for people to get together face-to-face and collaborate.

VBN, he says, "helps create those opportunities. I believe very strongly that if you refer clients to people you like and the only way to get to know people is to meet with them and break bread and kibbutz."

That opportunity was also an important component of business litigation and transactional attorney Tina Alleguez's reasons for participating in VBN.

Before she joined the group, she says, "People might have met me once or twice, but may not have known what my area of specialization is. There might be things that you do, or used to do, that can be of value and you get to share all that with others."

Lawyers "tend to be a great source of business for other lawyers. Networking is really where you get the most useful referrals," Alleguez adds. "VBN gives us the opportunity to really get to know each other better because it's only through getting to know each other that we can trust each other and feel we can refer clients to attorneys in other areas. Lawyers tend to be a great source of business for other lawyers; it's really where you get the most referrals."

VBN "has absolutely exceeded my expectations," Alleguez says. "It keeps growing and growing. There are a lot of other networking groups that some of us belong to, but the reality is that I think this group is tighter because we all work here and we know the Valley and it's a great way to know each other in a deeper way, not just as professionals, but as people. You really need that personal interface to be able to entrust your clients into the hands of someone else."

According to litigator Sassoon Sales, the Valley Bar Network is an integral part of a larger San Fernando Valley Bar Association that "helps to counter the anonymity that you can find if you confine your activity only to the larger group."

"It's very convenient to meet people once a month who are receptive to sharing information," he says. "Just talking with other lawyers and getting their input on common problems is very helpful."

Participation in VBN paid dividends when Sales retained fellow VBN member and current SFVBA President Kira Masteller as an expert witness in a probate case.

His first filing in Probate Court in 43 years of practice, he was more than just a "little bit nervous" so he enlisted Masteller, highly regarded in the area of probate, at a VBN meeting for direction about procedures and ways to avoid certain pitfalls.

"Kira was very helpful because of her exceptional knowledge of probate law," he says, adding that his being able to take advantage of her expertise speaks to the goal of VBN to be as interactive as it is active.

Business litigator Steven Mayer has been with VBN "since the very beginning" and sees the group as "a wonderful way to get to know the local legal community in a fun, friendly, relaxing setting. Not only do referrals come my way, but I also get the opportunity to meet people that I can trust referring business to."

Mayer practiced law in West Los Angeles for 18 years before moving his practice to the San Fernando Valley some five years ago.

"For someone like me, VBN is a network of referral sources, friends, sole-practice lawyers, and professionals outside of the legal field that makes us feel that we have, in effect, the same kind of support that would come from being with a large firm around us."

Yi Sun Kim underscores Mayer's appraisal. "One of VBN's strengths," she says, "is that its membership isn't limited only to lawyers, but is open to professionals in a wide spectrum of fields, from banking and property management to financial planning."

Kim, who currently serves as SFVBA Secretary and as a member of the Bar's Membership & Marketing Committee where the discussions to create VBN started, has been with the Network "since the very beginning."

Referrals to and from other attorneys "is important, "she says, "but VBN offers the opportunity to expand both our knowledge and contact base outside of our regular environment."

"If you're a business or probate attorney, for example, you need to know people in accounting and other areas of business to help you expand the scope of your skillset," according to Kim.

Through the Network, Kim, who practices in bankruptcy and business litigation, was able to meet and create a useful connection with escrow specialist Margarita Billings, president of Encino-based Flagship Escrow and Settlement Services and an active member of VBN.

"If you're representing a client and you have a need for an escrow company," she says, "more than likely, you're not going to call an escrow company down the block that you really don't know anything about. You'll want to refer your client to someone you know and trust and have confidence in."

The group "is all about building a client base for yourself and others that's built on a foundation of confidence and trust. The people that are in VBN are really serious about what they do and look after each other," says Billings, a past president of the California Escrow Association.

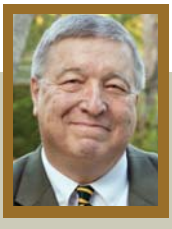
While he has gotten a couple of referrals from his involvement with the Network, real property and health law attorney John Marshall sees VBN as "just big enough to attract a wide variety of knowledgeable people."

The practice of law is not just specialization," he says. "It's knowing and working with people who practice in other areas and providing resources that have the potential to turn into a referral. But getting the opportunity to bounce questions off of someone in an area you're not familiar with is the real value here."

The Network, says Marshall, "is not a prime referral source; it's more of an information exchange, a genuine opportunity to cross-pollinate and learn."

Valley Bar Network co-founder Alan Kassan remembers a year ago when he wasn't quite sure that people would understand or appreciate the concept of creating VBN and how it would differ from what the Bar's traditional approach toward events and seminars.

"We really try to combine both information and the opportunity to socialize in an informal environment and the members are really excited about it," says Kassan. "People know business is getting done and that belonging to the Network can be a whole lot more than just another positive experience."



Michael D. White is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 35 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at michael@sfvba.org.

JOIN THE VALLEY'S PREMIER (AND MOST FUN) ATTORNEY NETWORKING GROUP

SAN FERNANDO VALLEY BAR ASSOCIATION

VBN
VALLEY BAR NETWORK

DON'T MISS OUT ON MONTHLY MIXERS AND OPPORTUNITIES TO EXPAND YOUR PRACTICE!

Sign up by June 30, 2017 and receive
$100 off VBN dues, plus 3 months free!*

SFVBA MEMBERS
$300 Annual VBN dues
($400 after June 30)

Contact SFVBA Director of Education & Events Linda Temkin at events@sfvba.org or (818) 227-0490, ext. 105 to sign up today.

*Pay by June 30, 2017, and your VBN membership is paid through September 20, 2018.
Covers monthly networking mixers at top restaurants in the Encino-Tarzana area.

By Philip Bonoli

Gender Identity, Disability and Discrimination in a Changing Workplace

GENDER IDENTITY DISORDER and gender dysphoria have received a lot of publicity over the last few years. From celebrities to school children, gender identity is the new talking point and political hot button topic. As of now, however, federal and California state laws do not consider gender identity disorder or gender dysphoria as disabilities.

The Americans with Disabilities Act[1] (ADA) and California's Fair Employment and Housing Act[2] (FEHA) explicitly exclude gender identity disorder as a disability. Still, although there is no requirement that employers must accommodate individuals with a gender identity disorder in the workplace, employers are still prohibited from discriminating against employees based on their gender identity.

Introduced by the 100th Congress in 1988, passed by the 101st Congress the following year, and signed by President George H.W. Bush on July 26, 1990, the ADA mandated the elimination of discrimination against individuals with disabilities.

Specifically, Congress found that individuals with disabilities "continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities."[3]

The ADA defines "disability" as a physical or mental impairment that substantially limits one or more major life activities of an individual.[4] Major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.[5]

Philip Bonoli is a partner at Brutzkus Gubner Rozansky Seror Weber LLP in Woodland Hills. He is a litigator in a wide array of employment matters, including wrongful discharge, discrimination and harassment, tort claims, and contractual matters. He can be reached at pbonoli@bg.law.

Specifically excluded from the definition of disability are sexual behavior disorders, including transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism and gender identity disorders not resulting from physical impairments.[6]

FEHA, California's counterpart to the ADA, prohibits employment discrimination on the basis of physical disability, mental disability and medical condition.[7] Like the ADA, however, FEHA also excludes sexual behavior disorders from its definition of physical and mental disabilities.[8]

Recently, the constitutionality of the ADA's exclusion of sexual behavior disorders was challenged in federal court. In the 2014 case *Blatt v. Cabela's Retail Inc.*,[9] a transgender woman challenged the constitutionality of the gender identify disorder exclusion embedded within the ADA.

Kate Lynn Blatt, who was born male with the given name James, filed a lawsuit against Cabela's Retail, Inc., claiming that the company had terminated her employment based on her sex and her perceived disability.

In her complaint, Blatt had alleged that she was diagnosed with "gender dysphoria, also known as gender identity disorder, a medical condition in which a person's gender identity does not match his or her anatomical sex at birth." Blatt claimed that gender dysphoria is a disability within the meaning of the ADA because it substantially impairs one or more of her major life activities, including interacting with others, the ability to reproduce, and social and occupational functions.

After Blatt was diagnosed in 2005, she claims that she changed her physical appearance to conform to her female gender identity, including wearing female clothing and growing her hair long. She was hired as a seasonal stocker at Cabela's Retail and, during an orientation, dressed in female clothing and used the women's employee bathroom. After starting her employment, Blatt alleged that Cabela's Retail denied a reasonable accommodation by forcing her to wear a nametag stating her name was James and use the men's employee restroom instead, that Cabela had created a hostile work environment, and had subjected her to sex discrimination based on her gender and gender nonconformity.

Blatt also claimed that Cabela's alleged failure to provide reasonable accommodations—a gender neutral bathroom and the use of a nametag with the name Kate Lynn—violated the ADA. Cabela's filed a partial motion to dismiss Blatt's ADA claims arguing that her Blatt's gender dysphoria did not constitute a disability under the ADA.

The court has not yet ruled on the motion. As a result, judicial determination of this issue is up in the air and, as it stands, gender identity disorder and gender dysphoria are not considered disabilities under the ADA and FEHA.

However, while employers are not required to make reasonable accommodations to employees merely because an employee has a gender identity disorder, this does not give employers carte blanche to discriminate against transgender employees based on their sexual identity.

Title VII of the Civil Rights Act, 42 U.S.C. §2000e et seq. prohibits employment discrimination against a protected individual because of his or her race, color, religion, sex or national origin. Recent decisions have extended Title VII protection to discrimination based on sexual orientation. For example, in *Hively v. Ivy Tech Community College*,[10] the Seventh Circuit extended Title VII protection to employment discrimination on the basis of an employee's sexual orientation.

In addition, Congressional Democrats recently reintroduced the Equality Act that would amend the Civil Rights Act to protect members of the LGBTQ community against discrimination in the workplace. So, under this proposed amendment, if an employee suffers from a gender identity disorder and was discriminated against because of behavior and appearance the employer felt failed to conform to gender norms or simply because the employee identified himself or herself as transgender, that employee may have suffered discrimination on account of sex.

Similarly, under FEHA, which also precludes employment discrimination based upon race, color, religion, sex or national origin, the definition of "sex" includes a person's gender identity and gender expression, which includes a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth.

Although individuals who identify as transgender cannot sue under the ADA or FEHA for discrimination on the grounds of a disability, they may still assert claims of discrimination under Title VII and FEHA based on sex. Generally, they will be required to show that even though they were qualified for the position, they were terminated, retaliated against, etc., because of their sex and replaced by someone outside of the protected class or similarly situated non-protected employees were treated more favorably.

Individuals who identify as transgender are also protected in the workplace. California law expressly prohibits an employer from denying an employee's right to appear or dress consistently with the employee's gender identity or gender expression.[11] Also, beginning in 2016, California's Fair Employment and Housing Council (FEHC) proposed

amendments to FEHA intended to protect transgender persons. The proposed amendments explicitly state that an employee has the right to use a bathroom that corresponds to the employee's gender identity or gender expression.

In addition, beginning March 1, 2017, California law required that all single-user toilet facilities in any business establishment, place of public accommodation or government agency must be identified as all-gender toilet facilities.[12] The proposed amendments also prohibit employers to inquire or require documentation or proof of an individual's sex, gender, gender identity or gender expression as a condition of employment, absent a bona fide occupational qualification.

Essentially, this amendment would prohibit employers from asking questions of prospective employees designed to determine the individual's sexual orientation or gender identity. Additional protection arrived on January 1, 2015, when California required all California employers subject to the mandatory training requirement to include prevention of abusive conduct as part of sexual harassment training.[13]

Under this anti-bullying law, "abusive conduct" is defined as "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests." Abusive conduct may also include "verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance."[14]

Because reasonable persons may have differing opinions as to what constitutes abusive conduct, the scope of this law is still being developed. It may be difficult to label a supervisor's conduct as abusive if he or she merely tells an employee: "Your work product is terrible."

But if the supervisor tells an employee that his or her work product is terrible solely because he or she is transgender, a reasonable person may find this conduct hostile and offensive. Although an employee cannot sue for damages under the anti-bullying law, the employee may have a legitimate damages claim for discrimination or harassment if the bullying relates to his or her gender or sex.

The scope of protections is also seeping into the long-term care facility industry in California. On February 1, 2017, Senate Bill 219 was introduced that would make it unlawful for any long-term care facility to take certain actions specifically on the basis of a person's actual or perceived sexual orientation, gender identity or gender expression.

The workplace landscape is changing fast in California. Although employers are not presently required to accommodate individuals who identify as transgender under the ADA, employers must still be cognizant of an employee's gender identity or gender expression in the workplace. Employers must become aware of the impact of any proposed new legislation and treat this protected class with the same seriousness as they would members of other protected classes.

---

[1] 42 U.S.C. §12191 et seq.
[2] California Government Code §12900 et seq.
[3] 42 U.S.C. §12101(a)(5).
[4] 42 U.S.C. §12102(1)(A).
[5] 42 U.S.C. §12102(2)(A).
[6] 42 U.S.C. §12211(b)(1).
[7] *Government Code* §12940.
[8] *Government Code* §12926.
[9] No. 5:14-cv-04822 (E.D. PA 2014).
[10] 853 F.3d 339 (7th Cir. 2017).
[11] *Government Code* §12949.
[12] *Health & Safety Code* §118600.
[13] *Government Code* §12950.1.
[14] *Id.*

By David G. Jones and Alex V. Vo

EMPLOYMENT CLAIMS: Compelling Non-Signatories to Arbitrate

IN RECENT YEARS, IT HAS become more common for employees to sue their "perceived" employers and ostensibly unrelated third parties, such as contractors who work with their direct employers or even professional employer organizations that administer payroll processing and human resources functions. These claims are usually brought under joint employer, integrated enterprise, alter ego, or similar theories of joint liability, often with the aim of affixing liability to someone in the chain of business with sufficient coverage and assets.

The reality for many practitioners, though, is that litigation is a numbers game. Even if the alleged theory of liability is completely baseless, defending against a claim from an "employee" whom you never even knew can become a costly and nightmarish scenario, particularly in a class action situation.

So, rather than funding a full-blown defense against a collective action, is there a better and more cost-effective way of protecting yourself? The answer is…perhaps—provided that you have an enforceable arbitration agreement and a collective action waiver with the party who in fact actually employed the plaintiff employee, and if certain equitable factors come into play.

Equitable Estoppel Doctrine

Generally, a non-signatory is not bound by an arbitration agreement.[1] However, under ordinary contract and agency principles, non-signatories can be compelled to arbitrate

David G. Jones is a partner at Santiago & Jones in Woodland Hills. A specialist in the area of employment law and employment litigation, he can be reached at djones@santiagojoneslaw.com. **Alex V. Vo** practices in the area of employment litigation at Santiago & Jones. He can be reached at avo@santiagojoneslaw.com.

their claims under five different theories: incorporation by reference; assumption; agency; alter ego/veil piercing; and equitable estoppel.[2]

In the equitable estoppel context, there are two California case scenarios that describe the circumstances under which non-signatories can be compelled to arbitrate. In the first, when a preexisting relationship exists or existed between the non-signatory and one of the parties to the arbitration agreement, it is equitable to compel the non-signatory to arbitrate his or her claims.[3] In the second scenario, a non-signatory can be estopped from refusing to arbitrate his or her claims if he or she received a direct benefit under the contract containing the arbitration clause.[4]

Both of these applications of the equitable estoppel doctrine are effective bases upon which to compel non-signatory employees to arbitrate their claims; however, it should be noted that the legislature has codified the doctrine of equitable estoppel broadly, providing that "[h]e who takes the benefit must bear the burden."[5]

Courts have also viewed this doctrine through a similarly broad lens, such that a party is precluded "'from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes.'"[6]

Further, California courts have long recognized that there is a strong public policy favoring arbitration in appropriate circumstances.[7] As such, unless a court can find with "positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute," courts do not deny arbitration.[8]

Non-Signatories and Preexisting Relationships

A non-signatory who has a preexisting relationship with a signatory to an arbitration agreement can be compelled to arbitrate his or her claims. Against that backdrop, the first equitable estoppel scenario—when a non-signatory employee has or had a preexisting relationship with a party to the arbitration agreement—general agency principals apply.[9]

The following hypothetical is illustrative: Company A employs the services of Company B pursuant to a subcontracting agreement that contains a binding arbitration clause and collective action waiver. Company B employs Employee X to conduct the duties it is obligated to perform under the subcontracting agreement.

In the course of his employment, Employee X takes on a number of agent-type roles and duties, such as being a point of contact for Company B and supervising Company B's other employees. Employee X even goes so far as to contact Company A on several occasions to demand outstanding payments owed to Company B and to point out when Company A fails to fulfill all of its obligations under the subcontracting agreement. Employee X is clearly an agent of Company B under common agency principals.[10]

Suppose then that Employee X files a wage and hour class action against his employer, Company B, and against Company A under joint employer and alter ego theories of liability. Given the fact that Employee X acted as either an actual or ostensible agent of Company B, Company A can now compel Employee X to arbitrate his claims and forego any class claims based on the collective action waiver, even though Employee X was never a signatory to the subcontracting agreement between Company A and Company B.[11]

The result: Company A now only has to worry about an individual action in a forum that might even be preferable, as opposed to defending

against a more costly collective action.

Non-Signatories and Direct Benefit from a Contract

A non-Signatory who benefits directly from a contract containing an arbitration provision can be compelled to arbitrate his or her claims. As for the second scenario where equitable estoppel can come into play—when a non-signatory receives a direct benefit under the contract containing the arbitration clause—a non-signatory would clearly be estopped from avoiding arbitration if he or she knowingly exploits the contract when it is advantageous to do so, such as by attempting to enforce the terms of the agreement as a third party beneficiary.[12]

However, such preclusive use of equitable estoppel can also be applied in less obvious circumstances where the non-signatory does not necessarily exploit the agreement, but nevertheless receives a benefit as result of compliance with the contract.

The above hypothetical is again instructive. Based on the same fact pattern, Employee X has clearly benefitted as a direct result of Company A and Company B's compliance with their subcontracting agreement. Indeed, Employee X's position and continued employment would not have been possible without the business relationship and attendant work and duties created through the subcontracting agreement between the two companies. More importantly, however, Employee X took steps to monitor and ensure Company A's compliance with the subcontracting agreement, thereby ensuring his own gainful employment under the position necessitated by the agreement.

These were clearly powers and privileges made possible and exercised by the employee pursuant to the subcontracting agreement between Company A and Company B.[13] Thus, although not a signatory to the subcontracting agreement, Employee X utilized the beneficial aspects of the contract and, therefore, cannot now reject the burdens imposed by it, such as the arbitration provision and collective action waivers.[14]

Practical Lessons for Employment Attorneys

The take away from this is that while disgruntled employees and their attorneys are finding ever more creative ways to pin liability tails to as many donkeys as possible, there are also creative ways for employers

to strengthen their safeguards and reappraise their defensive strategies.

The next (or first) time you are hit with a lawsuit that describes you as a joint employer or someone's alter ego, don't just focus on the allegations leveled against you; pay careful attention to the relationships and actions among all of the other parties. Equitable doctrines like the ones addressed here may very well come into play and can be used to significantly cut legal expenses.

As for plaintiffs' employment counsel, while naming more than an employee's direct employer as a defendant can serve as an effective leverage item, be mindful that coupled with the strong public policy favoring enforcement of arbitration agreements, such offensive uses of arbitration clauses can have a negative impact on an otherwise promising case.

If the primary target in a suit is Company A, but Company B has an arbitration agreement like the one described above, that perfect class action you might have had may suddenly come tumbling down.

---

[1] *Westra v. Marcus & Millichap Real Estate Inv. Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763.

[2] *Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal. App.4th 262, 268 (citing T*hompson-CSF, S.A. v. Am. Arbitration Assn.* (2d Cir. 1995) 64 F.3d 773, 776).

[3] *Cnty. of Contra Costa v. Kaiser Found. Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 242; see *Mundi v. Union Sec. Life Ins. Co.* (9th Cir. 2009) 555 F.3d 1042, 1046.

[4] *Crowley Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal.App.4th 1061, 1070-71.

[5] Code Civ. Proc., §3521.

[6] *Comer v. Micor, Inc.* (9th Cir. 2006) 436 F.3d 1098, 1101 (citing *Wash. Mut. Fin. Group, LLC v. Bailey* (5th Cir. 2004) 364 F.3d 260, 267); see *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH* (4th Cir. 2000) 206 F.3d 411, 418 ("A nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a "direct benefit" from a contract containing an arbitration clause'").

[7] *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 971-72 ("California law incorporates many of the basic policy objectives contained in the Federal Arbitration Act, including a presumption in favor of arbitrability and a requirement that an arbitration agreement must be enforced on the basis of state law standards that apply to contracts in general"); *Coast Plaza Doctors Hosp. v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686 ("California has a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration") (citing *Christensen v. Dewor Devs.* (1983) 33 Cal.3d 778, 782); *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak St.* (1983) 35 Cal.3d 312, 323 ("[D]oubts concerning the scope of arbitrable issues are to be resolved in favor of arbitration"); *Hayes Children Leasing Co. v. NCR Corp.* (1995) 37 Cal. App.4th 775, 788 (California courts routinely opine that any doubts as to the scope of an arbitration agreement are to be resolved in favor of arbitration).

[8] *Comedy Club, Inc. v. Improv West Assocs.* (9th Cir. 2009) 553 F.3d 1277, 1284.

[9] A preexisting relationship generally gives a party to an agreement authority to bind the nonsignatory. Examples of preexisting relationships include agency, spousal relationships, parent-child relationships, and that of a general partner to a limited partnership. (*Matthau v. Sup. Ct.* (2007) 151 Cal.App.4th 593, 599; *Buckner v. Tamarin* (2002) 98 Cal.App.4th 140, 142; Cnty. of Contra Costa, supra, 47 Cal.App.4th at pp. 242–43).

[10] Civ. Code, §2298 ("An agency is either actual or ostensible"); see Id., at §2300 ("An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent...."); see also Id., at §2317 ("Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess"); *Flores v. Evergreen at San Diego, LLC* (2007) 148 Cal.App.4th 581, 587 ("Even when there is no written agency authorization, an agency relationship may arise by oral consent or by implication from the conduct of the parties") (citing Van't Rood v. County of Santa Clara (2003) 113 Cal. App.4th 549, 571)).

[11] See *Crowley Maritime Corp., supra*, 158 Cal. App.4th at 1069 (a nonsignatory can be compelled to arbitrate claims against his will because there is "'a preexisting relationship... between the nonsignatory and one of the parties to the arbitration agreement, making it equitable to compel the nonsignatory to also be bound to arbitrate his or her claim"); *Rowe v. Exline* (2007) 153 Cal.App.4th 1276 ("A nonsignatory who is the agent of a signatory can be compelled to arbitrate claims against his will") (emphasis in original); *Nguyen v. Tran* (2007) 157 Cal.App.4th 1032, 1036-37 ("... an arbitration agreement may be enforced by or against nonsignatories... when a nonsignatory and one of the parties to the agreement have a preexisting agency relationship that makes it equitable to impose the duty to arbitrate on either of them"); see also *Harris v. Sup. Ct.* (1986) 188 Cal. App.3d 475, 477-78 (employment status sufficient to bind nonsignatory to arbitration agreement entered into by employer); see also *Letizia v. Prudential Bach Secs., Inc*. (9th Cir. 1986) 802 F.2d 1185 1187-88 (holding arbitration clause entered into by employer binding upon its employees under broader principle that nonsignatories to arbitration agreements may be bound by the agreement under ordinary contract and agency principles).

[12] *Mundi v. Union Sec. Life* (9th Cir. 2009) 1042, 1046 (citing *E.I. Dupont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates* (3d Cir. 2001) 269 F.3d 187, 199).

[13] See *NORCAL Mut. Ins. Co., supra*, 84 Cal.App.4th at 81, 83 (stating: (1) that no person can be permitted to adopt a part of a contract which is beneficial to him or her and simultaneously rejecting its burdens, including the obligation to arbitrate, and (2) that a party is not required to receive all benefits under a contract in order to be bound by an arbitration provision in the contract); see also *Legacy Wireless v. Human Capital LLC* (D. Or. 2004) 314 F.Supp.2d 1045, 1056 (fees or wages derived directly from a party's obligation to pay them, found in the contract containing the arbitration clause, constitute a direct benefit).

[14] See *NORCAL Mut. Ins. Co. v. Newton, supra*, 84 Cal.App.4th at 84.

NEW MEMBERS

The following new members joined the SFVBA in April 2017:

Christopher Thomas Armen
Glendale
Criminal Law

Neetu Singh Badhan-Smith
Office of Public Defender
Van Nuys
Criminal Law

Anita Barooni
Oak Park
Civil Litigation

Andrew M. Bassis
Office of District Attorney
Calabasas
Criminal Law

Katherine Ellis
Calabasas
Civil Litigation

Naomi L. Fribourg
West Hills
Family Law

Stacie Feldman Hausner
ADR Services, Inc.
Los Angeles
Alternative Dispute Resolution

John V. Hogan
Burbank
Business Law

Megan Lisa Jones
Oldman, Cooley, Sallus, Birnberg & Coleman
Encino
Estate Planning, Wills and Trusts

Wesley D. King
Fagen Friedman & Fulfrost LLP
Los Angeles
Business Law

Claudia Jane McDowell
Poole & Shaffery LLP
Valencia
Corporate Law

Michael F. Rahm
Rahm Law Group, APC
Beverly Hills
Criminal Law

Michael Randall
Lancaster
Juvenile

Stephen Shaner
Merrill Lynch
Woodland Hills
Financial Management/Services

Trevor R. Witt
Roxborough Pomerance Nye & Adreani
Woodland Hills
Labor and Employment Law

Welcome to the 2017 Valley Community Legal Foundation *Virtual Gala*

THE VALLEY COMMUNITY LEGAL FOUNDATION (VCLF) CONTINUED ITS VIRTUAL GALA FUNDRAISING INITIATIVE this year by honoring three individuals who have made immeasurable contributions to the Foundation's work. Judge Susan Speer, Detective Bill Speer (ret.) and the late attorney Barry T. Harlan represent a spirit of service to which every member of the legal community can and should aspire.

This year's honoring ceremony was held on March 21 at Monty's Steakhouse. An impressive showing by members of the Valley's judicial, political and legal community served as a testament to their commitment to the causes that the VCLF supports, as well as the esteem in which this year's honorees are held.

HON. SUSAN SPEER
Los Angeles Superior Court

The VCLF takes no small amount of pride in acknowledging Judge Susan Speer for her years of service on the Superior Court bench and the VCLF Board, as well as her unfailing dedication to the Foundation and its work in the community. On behalf of the entire organization, long-time friend and past VCLF Board member, the Hon. Michelle Rosenblatt (Ret.), writes:

It is admirable that the Valley Community Legal Foundation has chosen to honor Judge Susan M. Speer for her many years of service to the Foundation and its work, and I am honored that Laurence Kaldor asked me to write a few words about my friend and colleague given our time together on the VCLF.

The Honorable Susan M. Speer was appointed to the bench by Governor Pete Wilson in 1998 and has presided primarily in the Van Nuys courthouse since that time. Judge Speer currently presides over a felony criminal calendar, having been previously assigned to family law for four years. She spent 17 years of her legal career serving as a Deputy District Attorney, for the County of Los Angeles.

While a Deputy District Attorney, she prosecuted many serious crimes, served as the deputy-in-charge of the Crimes Against Peace Officers Unit, deputy-in-charge of the Eastlake Juvenile, and as Head Deputy of the Central District and of the Van Nuys Branch Office.

Before Judge Speer began her legal career, she worked as a neonatal ICU nurse, and even as she prosecuted serious crimes by day, she regularly cared for infants at Children's Hospital of Los Angeles by night.

Judge Speer has been honored by the San Fernando Bar Association as Judge of the Year and is known for her wisdom, her legal reasoning, her poise, and her professionalism, both in and out of her courtroom.

Among Judge Speer's other activities, she has served as a member of the California Judges Association Ethics Committee, faculty member for the Center for Judiciary Education and Research and the Los Angeles Superior Court, and is an active member of the LASC's Outreach Committee. She presides over the Teen Court at Canoga Park High School and is co-sponsor of the annual Power Lunch high school education program in Van Nuys.

In honoring Judge Speer for her years of dedication to the Valley Community Legal Foundation, the Board recognizes her valuable service in working with attorneys, bench officers and members of the community to achieve the Foundation's worthy goals. In the years that Judge Speer has served on the VCLF Board, she has served as a voice of reason and calm in occasional times of disagreement.

Judge Speer defines the reason why we volunteer to work together to help our community. She has worked on many projects each year, always investigating new ways for VCLF to raise donations for scholarships and grants, working tirelessly with her husband Bill and others on the golf tournaments and Gala auctions, introducing honorees, working day and night on the program for the CBS New York Street Gala, and so much more. Between her volunteer work for VCLF and for her court committee work, Judge Speer spends a great deal of her non-judicial time giving back to the San Fernando Valley community.

It has been a pleasure and a genuine honor for me and the entire Board of the VCLF to work with Judge Speer for these many years. She has made a great contribution to the VCLF, the legal community and the San Fernando Valley community at large. Please join me in honoring her for her service.

2017 Honorees

DET. BILL SPEER
Los Angeles Police Department (Ret.)

The Valley Community Legal Foundation is proud to add its voice to the chorus of accolades that former Detective, and VCLF Board member, Bill Speer has deservedly received. It would be virtually impossible to summarize in any one place all he has done for the San Fernando Valley community.

When being commended officially by the City of Los Angeles, it was noted that he had to date received commendations from the Los Angeles Police Department, the Mayor's Office, the City Council, the California State Assembly and Senate, and the U.S. Congress; raised over $5 million to help underprivileged children stay off the street and encourage their involvement in youth sports programs; and "exhibited outstanding professional conduct in law enforcement in a plethora of assignments with the West Valley Patrol Division, the Communications Division, the Wilshire Patrol Division and the Wilshire Detective Division…."

Still, Bill somehow found the time to devote time to the Valley Community Legal Foundation, including attending countless Board meetings and tirelessly planning and running of several Golf Tournaments for the benefit of veterans. Not to be overlooked, Bill, along with his wife, Judge Susan Speer, regularly act as sponsors for VCLF events, generously supplying cases of, aptly named, "Law and Order" wines from their own private vineyard.

Perhaps as impressive as Bill's accomplishments is his remarkable humility. When presented with his award for outstanding service to the VCLF, his first instinct was to credit his wife, Susan, for always standing by his side. We congratulate him and thank him for all that he has done and continues to do for us.

ATTORNEY BARRY T. HARLAN
Lewitt Hackman

It's a sad, but uplifting, honor to posthumously award our first annual Barry T. Harlan Community Service Award to its namesake, attorney Barry T. Harlan.

The VCLF and the San Fernando Valley legal community was heartbroken by the sudden passing earlier this year of its long-time supporter and Board member. Graciously accepting the award for the Harlan family were close friends and colleagues from Barry's law firm, Lewitt Hackman, attorneys Stephen Holzer and SFVBA President Kira Masteller.

With the blessing of the Harlan Family, the VCLF has instituted the Barry T. Harlan Fund to provide financial support to grants and scholarships that were near to Barry's heart. To date, the fund has received over $7,000 in generous contributions.

Barry's achievements are well-known to the VCLF family. Admitted to the California Bar in 1968, he rose to become a name partner and serve as Chair of the Family Law Practice Group at the esteemed firm of Lewitt, Hackman, Schapiro, Marshall and Harlan, and play a pivotal role in California's leading published case on post-nuptial agreements, *In re Marriage of Burkle.*

A State Bar Certified Family Law Specialist, Barry was designated a Southern California Super Lawyer beginning in 2004, as well as being named one of the top 100 attorneys in Southern California every year since 2013. Throughout his professional career, he was recognized for his legal prowess, being named one of the top 25 lawyers in the San Fernando Valley by the *San Fernando Valley Business Journal* and one of the Best Lawyers in Los Angeles, as published in *Southern California's Best*

Lawyers editions of the *Los Angeles Times* and *The Wall Street Journal*.

Barry was also honored for his civic efforts, including recognition from the Van Nuys court for his work in organizing and scheduling attorneys to preside as family law mediators and receiving the Stanley Lintz Award for outstanding professional and community service from the San Fernando Valley Bar Association. He was also instrumental in spearheading the creation of the children's waiting rooms in the San Fernando and Van Nuys courthouses.

Barry's sense of duty and generosity has left an indelible mark on the Valley Community Legal Foundation and the community at large. A dear friend and devoted citizen, he will be sorely missed.

WE JOIN THE VCLF IN HONORING OUR FRIEND AND COLLEAGUE

JUDGE SUSAN SPEER

FOR HER EXEMPLARY SERVICE TO OUR COMMUNITY AS A VCLF BOARD MEMBER, DEDICATED VOLUNTEER AND PUBLIC SERVANT

Judge Paul Bacigalupo
Judge Joseph Brandolino
Judge Michael Convey
Judge Huey Cotton
Judge Gregory Dohi
Judge Firdaus Dordi
Judge Christine Ewell
Judge Eric Harmon
Judge Michael Harwin
Judge Martin L. Herscovitz
Judge Frank Johnson
Judge James Kaddo
Judge Virginia Keeny
Judge John Kralik
Judge Elizabeth Lippitt
Judge Elaine Mandel
Judge Karen Nudell
Judge Thomas Rubinson
Judge Shellie Samuels
Judge Alan Schneider
Judge Andrea Thompson
Judge Richard Walmark
Judge Shirley Watkins

GAVEL SPONSORS

Laurence N. Kaldor, Attorney at Law
Congratulations! Hon. Susan Speer, Det. Bill Speer and Barry Harlan

Mark S. Shipow, Esq.

Stanley H. Getz, Esq.

Michael G. Kaplan
(The VCLF thanks Mr. Kaplan for all the wonderful photos)

Terri Peckinpaugh
Leavitt Group

D. Shawn Burkley
Attorney at Law

Smile! You're on Red Light Camera!

CATHERINE CARBALLO-MERINO
ARS Referral Consultant

catherine@sfvba.org

ANYONE WHO DRIVES, PARTICULARLY IN Southern California, is more than likely going to have some experience with traffic tickets. The desire to avoid having to sit behind yet another red light, or to speed just a bit because you are running late, can overcome even the most deeply engrained inclination to do the right—and safe—thing. One can get away with it most of the time, but when you're caught it hurts, sometimes physically, but more often financially, which is what ARS caller Roberto (a pseudonym) learned the hard way.

One evening last November, Roberto motored up to the intersection between Green Valley Circle and Sepulveda Boulevard in Culver City and decided to stop at the nearby shopping mall for something to eat.

Moving into the right turn lane, he noticed that there were no NO RIGHT TURN ON RED signs posted, there was a NO U TURN sign for traffic making a left from Green Valley Circle onto Sepulveda Boulevard, and there were no pedestrians in the crosswalk. Despite his vigilance, Roberto made what eventually turned out to be the first of two costly mistakes—making a rolling stop in front of a traffic camera, a blunder that earned him a $500 red-light camera citation.

And mistake number two? Not consulting with an attorney. "I thought it would be easy to defend myself," he said later. "Once the judge saw the circumstances surrounding my right turn, I was sure he would dismiss the case. It seemed like a waste to hire an attorney for something that I could do myself."

Not being an attorney and having no experience with the law, Roberto wasn't aware of all of the possible legal questions he could have used to bolster his case—was the incorrect date, name, license plate number or infraction entered on the original citation? Was the camera functioning properly? Had the signal light turned yellow just as the defendant reached the intersection?

"I was very surprised by the arguments," says Roberto. "I thought that the circumstances alone mattered, but they didn't really."

Later research would show him that traffic camera tickets are extremely difficult to fight in court unless one is skilled in utilizing one or more of the questions that could be raised to challenge the citation. Without such skill, the possibility of having the citation invalidated is almost non-existent.

Had Roberto called the ARS before going to traffic court, he would've been referred to an attorney who would have advised him about his chances to fight the ticket and would have fought for him in court if he did.

"I don't agree with the judgment, but at least I learned to always consult with an attorney before going to court," he says.

ATTORNEY-TO-ATTORNEY REFERRALS

STATE BAR CERTIFIED WORKERS COMP SPECIALIST

Over 30 years experience-quality practice. 20% Referral fee paid to attorneys per State Bar rules. Goodchild & Duffy, PLC. (818) 380-1600.

CA, NY AND CO ATTORNEY

Attorney licensed in NY, Colorado, California. Firm established 1981 • Businesses • Corporations • LLCs • Contracts • Real Estate • Trusts/Wills. Colorado, NY, California locations. Louise Aron (303) 922-7687. www.qualitylegaladvice.com.

SPACE AVAILABLE

SHERMAN OAKS

Corner office. 14x19. Floor to ceiling windows. Secretarial bay adjacent. Free parking. Executive suite with receptionist, conference rooms, kitchen and amenities. Contact Eric (818)784-8700.

WOODLAND HILLS

Warner Center Towers.
1-2 New Office(s), 24x15, 15x15, Secretarial, Conference Room, Kitchen, Copier. Available Immediately. (818) 719-8000.

Sublease. Window office (17'x10') plus secretarial bay, full-service suite, receptionist, voicemail, copier, conference room. Call (818) 999-9397.

CLASSIFIED ADVERTISING PER ISSUE

Member	
25 words or less	$45
Each additional word	$1.80
Add logo	$30
Non-Member	
25 words or less	$90
Each additional word	$3.60
Add logo	$55

Contact epost@sfvba.org or (818) 227-0490, ext. 101 to place your ad.

SUPPORT SERVICES

PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING

Family Visitation Services • 20 years experience "offering a family friendly approach to" high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyllene@yahoo.com • (818) 968-8586/(800) 526-5179.

GRAPHIC ARTIST

Creating affordable, high-quality designs that will promote your business with simplicity and style. Wide range of styles & personal atention, making sure your project is always delivered on time. Call Marina at (818) 606-0204.

San Fernando Valley Bar Association
founded in 1926

PRESIDENT'S CIRCLE

WE RECOGNIZE THE FOLLOWING PRESIDENT'S CIRCLE MEMBERS FOR THEIR DEDICATION TO THE SFVBA AND THE COMMUNITY.

Alpert Barr & Grant APLC
Berglund & Johnson
Brot & Gross LLP
Brutzkus Gubner Rozansky Seror Weber LLP
Goldfarb, Sturman & Averbach
Greenberg & Bass LLP
Kantor & Kantor LLP
Kraft, Miles & Miller LLP
Lewitt Hackman Shapiro Marshall & Harlan ALC
Mirman, Bubman & Nahmias
Neighborhood Legal Services of Los Angeles County
Nemecek & Cole
Oldman Cooley Sallus Birnberg & Coleman
Parker Milliken Clark
O'Hara & Samuelian
Pearlman, Borska & Wax
Pearson Simon & Warshaw LLP
Stone | Dean
UWLA School of Law

- SFVBA membership for every firm attorney and paralegal
- Prominent listing in *Valley Lawyer* and firm logo on President's Circle page of SFVBA website
- Recognition and 5% discount on tables at Bar-wide events, including Judges' Night
- Invitations to President's Circle exclusive events with bench officers, community leaders and large firms

Contact SFVBA Executive Director Liz Post at (818) 227-0490, ext. 101 or epost@sfvba.org to sign up your firm today!

Genuine Concern in a Time of Trouble

Illustration by Gabriella Senderov

Dear Phil,

I work at a small firm and, as time goes by, the managing partner's actions and remarks in meetings seem increasingly erratic and disjointed. I am lucky to have a job at a busy law firm, but this is becoming more and more problematic, with potentially worrisome problems down the road for the firm and the managing partner. What can I do, if anything?

Sincerely,

Concerned

DEAR CONCERNED: THANK YOU FOR YOUR important question. The truth is that your sad challenge will undoubtedly be repeated time and time again over the coming years for many who work with, and around, our aging attorney population.

It's important to remember that a person in the early stages of dementia requires intervention at the earliest opportunity in order to reverse or slow the progress of the condition's debilitating effects.

There are a number of symptoms—some subtle, others glaring—that have been identified as commonly observed in individuals with early stage Alzheimer's or dementia. They include memory loss that disrupts daily life; forgetting recent information or asking for the same information over and over; trouble understanding visual images and spatial relationships; getting lost in what was once a familiar setting; misplacing things and losing the ability to retrace steps to find the object again; confusion with time or place; forgetting where one is or how one got there; and changes in one's ability to develop and follow a plan, work with numbers, or follow a familiar recipe.

The melancholy list also identifies difficulty in completing familiar tasks at home, at work or at leisure; problems with words in speaking or writing; decreased or poor judgment; withdrawal from work or social activities; marked changes in mood or personality; and frequently becoming confused, fearful, suspicious, depressed or anxious.

You don't want to put yourself in the position of appearing to be condescending or critical of the boss. To do so would certainly put you at risk of being fired. But, as you've properly identified, you're worried about potential problems "down the road."

I would counsel handling this extremely delicate issue with the utmost sensitivity and understanding in a way that would help both your boss and go a long way to insure the well-being of your law firm. If you feel you're too junior to address the issue directly, share your concerns with a senior associate or other person your boss knows, likes and trusts.

Quite simply, based on what you described, your task as a concerned friend—who also wants to keep your job—is to do all you can in a loving way to somehow encourage your boss to seek professional help. Be sensitive and understanding and your boss may even come to appreciate what is obviously your genuine concern.

Good luck!

Phil

Dear Phil is an advice column appearing regularly in *Valley Lawyer* Magazine. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Answers are drafted by *Valley Lawyer*'s Editorial Committee. Submit questions to editor@sfvba.org.


Personal
COURT REPORTERS, INC.
Grand Opening
Santa Ana
Visit all 8 of our locations
Van Nuys
Downtown LA
Ventura
Ontario
New!!!
Santa Barbara
West LA
San Bernardino
Santa Ana
www.personalcourtreporters.com
Video Conferencing
Mediation Rooms
Court Reporting
Trial War Rooms
8 Great Locations
Jury Trial Focus Groups
The road to success starts with us.
800-43-DEPOS

LH LEWITT HACKMAN

LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN
A LAW CORPORATION

16633 Ventura Boulevard ▪ 11th Floor
Encino, California 91436

www.lewitthackman.com ▪ 818.990.2120