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APRIL 2014 • \$4

A Publication of the San Fernando Valley Bar Association

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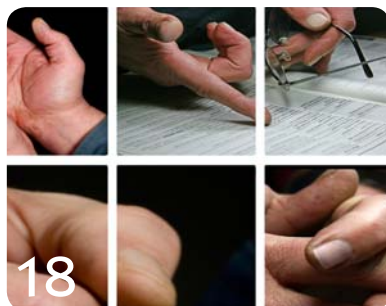
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EDITOR

Irma Mejia

GRAPHIC DESIGNER

Marina Senderov

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Getting to the White Line on Ali'i Drive

ADAM D.H. GRANT
SFVBA President



agrantsf@alpertbarr.com

WHETHER YOU ARE A CLOSE FRIEND, acquaintance, colleague, or opposing counsel, many know that outside my passion for my family and my profession, I enjoy training for and participating in Ironman distance triathlons. A triathlon is a race that consists of a swim, a bike and a run. There are different distances for triathlons. The distances have names: a sprint being the shortest distance and usually consists of a ¼ mile swim, followed by a 15 mile bike ride and then concludes with a 5k (3.1 mile) run. An Ironman distance is the longest distance and consists of a 2.4 mile swim, a 112 mile bike ride and concludes with a marathon (26.2 miles). I have raced in triathlons for thirteen years and completed nine Ironman distance triathlons. I am currently training for my tenth Ironman in Whistler, Canada which will take place at the end of July 2014.

In the world of Ironman races, when you tell people you race Ironman, they usually ask whether you raced in Hawaii. What most people don't realize is that the Hawaii Ironman race is the World Championship of Ironman distance triathlons. You gain admission to race in Hawaii by finishing in the top five of your age group in an Ironman or ½ Ironman race in the prior year, by being a physically challenged athlete, by being one of the 100 people who obtain their entry via an annual lottery, or by placing the winning bid for an eBay auction, which usually ends up being around \$40,000 to \$50,000.

Ali'i Drive is the road on which participants run during the last ¼ mile of the marathon segment. To triathletes, Ali'i Drive is considered hallowed ground upon which only the best in our sport run. The white line—otherwise known as the finish line—is the Holy Grail that only the best are capable of reaching.

It is my dream to get to the white line on Ali'i Drive. My success in achieving that dream will depend greatly on the skill set I have chosen to develop throughout the years. This same skill set is nurtured to varying degrees by athletes worldwide and contributes to success in various professional situations.

In February, Judge Richard Kirschner received the Judge of the Year award from the SFVBA. Los Angeles Superior Court Presiding Judge David Wesley shared with us the characteristics of Judge Kirschner's athletic career which made him particularly successful as a judge. Judge Wesley listed the characteristics of a successful athlete which ranged from discipline to unwavering focus in achieving a goal. He found that Judge Kirschner's success as a gymnast when he was younger and his ability to finish approximately 30

marathons demonstrated he had the characteristics to be an excellent judge from an early age.


I do not know the source of Judge Wesley's information, but the Ohio Center for Sport Psychology came up with the following list of characteristics that contribute to a successful athlete: choosing and maintaining a positive attitude; maintaining a high level of self-motivation; setting high, realistic goals; dealing effectively with people; using positive self-talk; using positive mental imagery; managing anxiety effectively; managing emotions effectively; and maintaining concentration.

The Ohio study recognized the universal applicability of these characteristics. It described "performance situations" in which the participant can rely upon these skills on the path to success and identified a broad range of situations: job interviews, public presentations, testifying in court, landing an airplane and performing brain surgery, to name a few. So where does this take us as attorneys?

My passion of training and participating in Ironman distance triathlons helps me understand and embrace Judge Wesley's words of praise for Judge Kirschner. I log thousands of yards swimming per day, up to 250 miles of biking in some weeks, and up to 40 miles of running in others.

At the end of each year, my efforts culminate in about 11 hours of what can only be described as an unmitigated pain fest. It's about an hour of a boxing match during the 2.4 mile swim with 2,500 of your closest friends, a 5½ hour bike ride that reminds you the race does not begin until the eightieth mile, followed by a marathon which tests your mental fortitude as your legs scream from fatigue and pain. Yes, this is a passion, one which throughout the years has allowed me to reflect on what is possible and allows me to answer the question, quite simply, with "I can."

Each of us has our own white line. For some, it is that first jury trial. For others, it is that first job. My father frequently shared a phrase with me, "That is why there are 31 flavors, son." As a young child, I did not understand the scope or application of such a comment. However, as an adult, and as an Ironman distance triathlete, I understand. My father was telling me to remember to be empathetic toward everyone as each person has their own way of walking through life.

Each one of us has their own white line. I encourage you to identify your white line, set a goal to cross it, and make a plan to obtain your goal. When you are about to cross the white line, remember to reflect on how you got there and who helped you along the way. 

SUN	MON	TUE	WED	THU	FRI	SAT
		<div>Southern California Mediation Association and SFVBA Mediating Cases without the Court's ADR Program—What Do Lawyers Do Now?</div> <div>1</div>	<div>2</div>	<div>All-Section Meeting Google Hummingbird</div> <div>12:00 NOON</div> <div>SFVBA OFFICE</div> <div>Dave Hendricks returns with the latest info on Google's recent Algorithm change and will discuss how this impacts your practice. No MCLE but lunch is included!</div>	<div>3</div> <div>4</div> <div>Valley Lawyer Member Bulletin</div> <div>Deadline to submit announcements to editor@sfvba.org for May issue.</div>	<div>5</div>
<div>6</div> <div>Tarzana Networking Meeting</div> <div>5:00 PM</div> <div>SFVBA OFFICE</div> <div></div>	<div>7</div>	<div>Probate & Estate Planning Section All Things New in Valuation</div> <div>12:00 NOON</div> <div>MONTEREY AT ENCINO RESTAURANT</div> <div>Vanita Spaulding updates the group.</div> <div>Board of Trustees</div> <div>6:00 PM</div> <div>SFVBA OFFICE</div> <div>8</div>	<div>Business Law Section Equity Crowdfunding Under the JOBS Act</div> <div>12:00 NOON</div> <div>SFVBA OFFICE</div> <div>Jennifer Post and Mishawn Nolan are the featured speakers.</div> <div>9</div>	<div>Membership & Marketing Committee</div> <div>6:00 PM</div> <div>SFVBA OFFICE</div>		
<div>13</div>	<div>14</div> <div></div>	<div>15</div>	<div>Editorial Committee</div> <div>12:00 NOON</div> <div>SFVBA OFFICE</div> <div>Workers' Compensation Section</div> <div>12:00 NOON</div> <div>MONTEREY AT ENCINO RESTAURANT</div> <div>16</div>	<div>Employment Law Section New Risks for Employer Liability for Retaliation</div> <div>12:00 NOON</div> <div>SFVBA OFFICE</div> <div>Attorney Jeffrey Thomas discusses the circumstances in which employers may be held liable to their employees for retaliation. This program will discuss strategies for both plaintiff's attorneys and the defense.</div> <div>10</div> <div>11</div> <div>12</div>	<div>17</div>	<div>18</div> <div>19</div>
<div>20</div> <div>Happy Easter</div> <div></div>	<div>21</div>	<div>Taxation Law Section Estate and Gift Taxation Update</div> <div>12:00 NOON</div> <div>SFVBA OFFICE</div> <div>Attorney Kira Masteller will address the Section. (1 MCLE Hour)</div> <div>22</div>	<div>Administrative Professionals Day Luncheon</div> <div>12:00 NOON</div> <div>BRAEMAR COUNTRY CLUB</div> <div></div> <div>See page 17</div> <div>23</div>	<div>24</div> <div>25</div> <div>26</div>		
<div>27</div> <div>Family Law Section Trial Tech Module Six: Examination of a Forensic Accountant</div> <div>5:30 PM</div> <div>SPORTSMEN'S LODGE</div> <div>Our outstanding Trial Techniques series continues with a distinguished panel of speakers. (1.5 MCLE Hours)</div>	<div>28</div>	<div>Bankruptcy Law Section Update on Breach of Fiduciary Duties</div> <div>12:00 NOON</div> <div>SFVBA OFFICE</div> <div>Mark Blackman and Chris Todd will discuss the latest on breach of fiduciary duties, with an emphasis on <i>Bullock v. BankChampaign</i>. (1 MCLE Hour)</div> <div>29</div>	<div>Intellectual Property, Entertainment & Internet Law Section Recent Patent Cases before the U.S. Supreme Court</div> <div>12:00 NOON</div> <div>SFVBA OFFICE</div> <div>Attorney Mark Nielsen will discuss attorney's fees, induced infringement and indefiniteness. (1 MCLE Hour)</div> <div>30</div>			

SUN	MON	TUE	WED	THU	FRI	SAT
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4	Valley Lawyer Member Bulletin Deadline to submit announcements to editor@sfvba.org for June issue.	6	7	Membership & Marketing Committee 6:00 PM SFVBA OFFICE	9	10
11	Tarzana Networking Meeting 5:00 PM SFVBA OFFICE	Probate & Estate Planning Section MAY 13 12:00 NOON MONTEREY AT ENCINO RESTAURANT	14	University of West Los Angeles and American Arbitration Association The New AAA Arbitration Rules 6:00 PM UWLA CHATSWORTH CAMPUS	16	17
		Board of Trustees 6:00 PM SFVBA OFFICE		This two hour MCLE seminar is free to current SFVBA members. See page 19		
18	Family Law Section Trial Tech Module Seven: Examination of a Forensic Accountant II 5:30 PM SPORTSMEN'S LODGE	Taxation Law Section Tax Ramifications of a California Divorce 12:00 NOON SFVBA OFFICE	Editorial Committee 12:00 NOON SFVBA OFFICE	22	23	24
	Our outstanding Trial Techniques series continues with a distinguished panel of speakers discussing property issues. (1.5 MCLE Hours)	Certified Family Law Specialist Mitch Jacobs will discuss tax issues related to divorce in California. This seminar should be of interest to both tax attorneys and family law practitioners. (1 MCLE Hour)	Workers' Compensation Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT			
25		27	28	29	30	31



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FROM THE EDITOR

What Cover Stories Are Made Of


IRMA MEJIA
Publications & Social
Media Manager



editor@sfvba.org

FOR SEVERAL MONTHS NOW, THE COVERS OF *VALLEY LAWYER* HAVE been used to highlight the achievements of our exceptional members. Recent issues have featured the Bar's President and his devotion to athletics; the attorney and mediator who are working hard to establish the Valley's first low-cost mediation center; new attorneys and their perspectives upon entering the legal field; and the dedicated volunteers of the Bar's Senior Citizens Legal Services Program. We continue this trend with this month's cover story on the past recipients of the SFVBA Administrative Professional of the Year Award.

What I enjoy most about our cover stories is the fact that through them, I am able to share with readers the amazing accomplishments of our members. I look forward to interacting with our story participants and learning about their work, motivation and goals. And I am always looking out for the next interesting feature.

I am especially looking forward to the cover stories for the upcoming months and am requesting your help. Upcoming covers will feature attorney members who have served in the military and attorneys who have achieved a healthy work/life balance through interesting hobbies or activities. If you fit this criteria or if you know of any members that do, please contact me at the address above. 

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BULLETIN BOARD

The Bulletin Board is a free forum for members to share trial victories, firm updates, professional and personal accomplishments.



Tina M. Alleguez of Alleguez & Newman, LLP in Woodland Hills received a defense verdict (11-1) in a jury trial in a premises liability case. Her clients were also awarded costs as a result of a 998 offer served on plaintiff before trial was rejected.

Longtime SFVBA member, trustee and retired judge **Michael R. Hoff** is setting off on a new adventure. Judge Hoff has been highly respected throughout the Los Angeles legal community for decades, serving on the bench for 21 years and previously as a police officer for 20 years. He was named SFVBA Judge of the Year in 2001. Judge Hoff has remained active in the Bar since his retirement from the bench in 2008, including serving a term as President of the Valley Community Legal Foundation, regularly contributing to *Valley Lawyer* and being one of the most dedicated volunteer fee arbitrators in the Bar's Mandatory Fee Arbitration Program. The SFVBA Board and staff wish him lots of luck and happiness as he moves out of state and embarks on new adventures in the Southwest.



Email your announcement to editor@sfvba.org. Announcements are due on the fifth of every month for inclusion in the upcoming issue. Late submissions will be printed in the subsequent issue. Limit one announcement per firm per month.

The Case of the Unearned Fee and Too Many Continuances

By Sean E. Judge

*BUSINESS AND PROFESSIONS CODE
ARTICLE 13 ARBITRATION OF ATTORNEYS' FEES*

This column summarizes recent cases that have been resolved through the SFVBA Mandatory Fee Arbitration Program. The goal of this column is to provide brief case studies of fee disputes in the hope that these examples will help Bar members avoid similar situations in their own practice.

Facts

The client in this case was facing foreclosure on her home and retained attorney to provide legal services for the purpose of modifying her loan. The material terms of the fee agreement were that client would pay attorney a flat fee of \$6,000 plus \$1,000 per month commencing thirty days after the filing of a lawsuit. In exchange for this payment, attorney was to engage in investigation, research and interviews, prepare an *ex parte* application to set aside the trustee's sale of the property and concurrent eviction, prepare the preliminary injunction, and reply to defendant's opposition. Additionally, attorney was to engage in negotiations in an attempt to resolve the dispute.

After entering into the fee agreement, according to the client, attorney performed none of the aforesaid obligations. Client telephoned attorney at his office but was informed on numerous occasions that he was out of the office. Client then visited attorney at his residence but he was not there either.

Finally, when client was able to contact attorney, attorney refunded \$2,000 of his initial fee and asked to be given another chance. Unfortunately, things did not change. Calls went unanswered and attempts at communication were fruitless.

Ultimately, client engaged a non-attorney who was able to get her loan modified so that she could stay in her house. Client then sought a refund of the remaining \$4,000 of

the flat fee. Attorney refused to refund it, and the matter proceeded to Mandatory Fee Arbitration before the SFVBA.

The Hearing

The hearing was scheduled, but attorney, who had recently moved offices, did not receive the notices until right before the hearing. Attorney called the arbitrator, requested a continuance, and offered to refund client's lost time from work.

The hearing was continued to a later date of which both parties were provided proper notice. Attorney then requested another continuance at the last moment. Since client was already present at the hearing, the arbitrator stated that a continuance would only be granted by stipulation of all parties. Client refused to stipulate and the hearing proceeded without attorney.

The arbitrator found that attorney failed to do any of the work provided for under the contract. The arbitrator awarded the \$4,000 flat fee that attorney had retained and the arbitration filing fee.

The Takeaway

This is yet another example of matters proceeding to MFA for failure to communicate with clients in violation of Rule 3-500 which provides that "a member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed."



Sean E. Judge is the principal of Judge Mediation in Woodland Hills and a Trustee of the SFVBA. He is currently co-chair of the Mandatory Fee Arbitration Committee. Judge can be reached at sean@judgemediation.com.

Failure to comply with this section could certainly result in discipline by the State Bar. It should be noted that pursuant to State Bar Arbitration Advisory Opinion 2012-03, ethical issues such as client abandonment and legal malpractice are admissible in mandatory fee arbitration to the extent that they relate to the fee dispute before the arbitrator.


Mention must also be made concerning the types of retainers that require reimbursement to the client. The State Bar addressed the issue of retainers in Arbitration Advisory Opinion 2011-01. The opinion states that “unless the attorney and client have contracted for a ‘true retainer’ (also known as a ‘classic retainer’), the attorney must refund any portion of the advance fee that the attorney has not yet earned.”


Per the Advisory, a true (or classic) retainer is non-refundable and “paid solely to secure the availability of the attorney over a given period of time.” A true retainer is not dependent upon the attorney’s work, and any future work would not be billed against the retainer. Future work may be billed as the attorney and client agree, i.e., hourly or even monthly. Though these agreements are rare in today’s legal market, any such agreement should clearly spell out these terms.

The second type of retainer is the more typical agreement where a retainer is paid and deposited in the attorney’s trust account as an advance payment against future work. As such work is performed (or costs incurred), the attorney may withdraw the fees and costs from the trust account when they are earned. Until fees are earned and costs are incurred, the deposit remains the property of the client.

In this case, attorney contracted for a flat fee and monthly payments upon the filing of a complaint. While this was neither a classic retainer nor a retainer deposit against future work, the fee agreement specified that in consideration for the \$6,000 flat fee and the \$1,000 monthly fee upon filing the complaint, the attorney would earn these fees. The attorney did nothing to earn any of these fees, and as such was ordered to reimburse them to the client.


Aside from the respect that should be afforded to the client and the fee arbitration process, failure to appear at an MFA may have additional consequences. Even in non-binding fee arbitrations, a request for trial de novo is not automatic. In cases in which the attorney is found to have willfully failed to appear at a fee arbitration hearing, per Business and Professions Code Section 6204, “that party shall not be entitled to a trial after arbitration.”

It is common sense that any attorney should first and foremost communicate with his or her client. If that is not to be, the attorney should communicate with the MFA program, notify the State Bar of changes in address, and request continuances in a timely fashion. This attorney failed to do any of this, and as such, ran a considerable risk of losing the right to trial de novo. 



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Stop the (Tax) Bleeding!

Medical Expense Deductions for Self-Employed Individuals

By Daniel C. Schwartz



AS A RESULT OF THE Affordable Care Act, high-income taxpayers will experience painful increases in income and payroll/self-employment taxes beginning with their 2013 income tax returns. With combined rates of federal, California, and payroll/self-employment taxes easily exceeding 50%, those high-income taxpayers who didn't plan for 2013's tax changes will be especially shocked and will be looking for ways to reduce their tax bill.

What many self-employed individuals, regardless of their income, do not know is that the medical expense deduction, which on many taxpayers' returns is disallowed or severely limited, can be turned into a powerful "above-the-line" tax deduction that will reduce income and self-employment tax liability with minimal out-of-pocket cost.

Medical expenses are not only one of the biggest expenses for many families, but for high-income taxpayers, they are also typically non-deductible or severely limited by the 10% of adjusted

gross income (AGI) floor as reported on Itemized Deductions (Form 1040, Schedule A). Long-term care premiums are also severely limited by age-based limits.

Although self-employed individuals are entitled to an above-the-line deduction for health insurance and long-term care premiums (subject to the age-based limits) without being subjected to the 10% of AGI limitation, this deduction does not reduce the 15.3% federal self-employment tax computed on self-employment earnings. It also does not allow for the above-the-line deduction of other medical expenses, which without any additional tax planning, will be subject to the 10% of AGI limitation on Schedule A. In most situations, this will result in these other medical expenses being completely non-deductible.

New to 2013 is the introduction of the additional 0.9% Medicare tax on earned income in excess of \$250,000 (when filing jointly; other limits apply to other filing statuses), thus increasing the federal self-employment tax to 16.2% for high-income self-employed taxpayers. Therefore, any technique that would enable the full deduction of health insurance premiums and medical expenses would produce an unparalleled tax benefit equal to the self-employed



Daniel C. Schwartz, a shareholder in the Calabasas law and accounting firm Schwartz & Schwartz, APC, is an attorney and CPA specializing in income, gift, and estate tax planning and reporting. He can be reached at dan@sandsapc.com.

taxpayer's combined rates of federal and California taxes plus 15.3% or 16.2%. Such a tax benefit could easily equal over 50 cents on every dollar spent by high-income taxpayers on medical related items!

Although a self-employed individual's health insurance premiums only recently became fully deductible as an above-the-line deduction that reduces income tax (though not self-employment tax), it wasn't until the Tax Court case of *Ralph E. Frahm et ux. v. Commissioner* (2007) T.C. Memo 2007-351 that a self-employed individual could deduct both his or her family's health insurance premiums and other medical expenses as an ordinary and necessary business expense such that both income and self-employment tax are reduced.

Under *Frahm*, a self-employed individual may deduct, as a necessary and ordinary business expense, both the cost of health insurance and out-of-pocket medical expenses reimbursed to a spouse/employee under a medical reimbursement plan, where the spouse/employee personally pays for the medical expenses incurred by the self-employed individual. From a tax perspective, this treatment not only reduces the self-employed individual's income, but also the related self-employment tax.

In other words, the spouse/employee can pay for the self-employed individual's medical expenses and seek reimbursement under the medical reimbursement plan. The self-employed individual can then deduct as a business expense the reimbursed medical expenses attributable to both the spouse/employee and the self-employed individual/employer.

To illustrate this point, assume that a lawyer operating as a sole practitioner (and who does not have a law corporation) earns \$365,000 in legal fees in 2013, has \$50,000 in business expenses, \$30,000 in medical expenses (including \$10,000 in health insurance premiums), and \$62,400 of other itemized deductions such as mortgage

	NO TAX PLANNING	TAX PLANNING
Business Income	\$315,000	\$258,000
Wages (Spouse)		25,000
½ SE Tax	(11,268)	(10,504)
SE Health Insurance	(10,000)	
ADJUSTED GROSS INCOME	\$293,732	\$272,496
Deductions		
Medical		
State Income Tax	(17,400)	(17,400)
Real Estate Tax	(10,000)	(10,000)
Mortgage Interest	(35,000)	(35,000)
Exemptions (4)	(15,600)	(15,600)
TAXABLE INCOME	\$215,732	\$194,496
Income Tax (incl. AMT)	53,569	46,175
SE Tax	22,535	21,008
0.9% Medicare Tax	368	119
Total Federal Tax	\$ 76,472	\$ 67,302
Total California Tax	17,393	15,418
Total Tax	\$93,865	\$82,720
Tax Savings		\$ 11,145
Spouse/Employee Payroll Taxes		(2,000)
NET TAX BENEFIT		\$ 9,145
Savings on Other Medical Expenses		47%

interest, property taxes, state income taxes, and DMV fees.

Without engaging in any tax planning, this lawyer will report \$315,000 of business income (\$365,000 – \$50,000 business expenses). This business income will be further reduced in arriving at AGI by the amount of self-employed health insurance premiums (\$10,000) and one-half of the self-employment tax (\$11,268). However, the remaining \$20,000 of medical expenses are not deductible because they do not exceed 10% of AGI ($10\% \times \$293,732 = \$29,373$). Since the lawyer will be subject to the Alternative Minimum Tax, the tax benefit of the \$62,400 of non-medical itemized deductions is partially lost. As a result of the lawyer's failure to engage in any tax planning, the lawyer's total federal, California, and self-employment tax liability for 2013 is \$93,865.

Assume, instead, that this lawyer hires the lawyer's spouse to be the

office administrator and the spouse/employee works 30 hours a week for an annual salary of \$25,000. The lawyer provides health insurance to the spouse/employee and pursuant to a written medical reimbursement plan, agrees to reimburse the spouse/employee's out-of-pocket medical expenses. Spouse/employee's health insurance covers spouse/employee's spouse (i.e., the lawyer/employer) and their two children. Furthermore, all out-of-pocket medical expenses are paid by spouse/employee, who always seeks reimbursement from lawyer/employer.

As a result of this technique, the \$25,000 of salary paid to the spouse/employee will be reported as income and business income is reduced to \$258,000 (\$365,000 – \$50,000 business expenses – \$30,000 spouse/employee's health insurance premium expense and out-of-pocket medical expenses – \$25,000 spouse/employee's salary – \$2,000 lawyer/employer's approximate share

of spouse/employee's payroll taxes). Gross income will be further reduced by one-half of the self-employment tax (\$10,504) to arrive at AGI, but there is no self-employed health insurance premium deduction because this was already deducted from business income.

As with the prior scenario, the lawyer is subject to the Alternative Minimum Tax and the tax benefit of the


\$62,400 of the itemized deductions is partially lost. However, as a result of this tax planning strategy, the lawyer's total federal, California, and self-employment tax liability for 2013 is \$82,720 (\$11,145 lower than the scenario in which the lawyer did not engage in any tax planning). Although the spouse/employee had approximately \$2,000 of payroll taxes withheld from the spouse/

employee's wages, this still results in a net tax savings of \$9,145.

For high-income taxpayers, the amount of tax benefit can be simply staggering. By repeating this relatively simple strategy year after year, the diligent taxpayer will reap a much welcomed windfall.

There are a number of other technical details which must be followed in order to ensure that the Internal Revenue Service respects this tax planning technique. As with all tax issues, a lawyer should be consulted to not only prepare the required legal documentation, but also to project the amount of tax benefit that can be obtained. Even if only a small benefit is obtained, repeating this tax planning strategy over many years will produce a very large amount of savings.

It is important to note that even if the spouse/employee is the self-employed taxpayer's only employee, it will be necessary to file quarterly and annual federal and state payroll tax returns. Additionally, the spouse/employee's total compensation, taking into account all employee benefits, cannot exceed reasonable compensation limits. Lastly, if the lawyer/employer has other employees, it will be necessary to determine whether this plan is possible taking into consideration the employee benefits provided to the other employees.

As compared to salaried individuals, self-employed individuals have a wealth of options available to them in minimizing their overall tax liability and saving for their family's futures. Maximizing the deduction for medical expenses should be seen as part of a larger strategy for reducing tax liability, such as maximizing the home office and business automobile deductions and hiring one's children as assistants in order to save for college. So many tax saving options are available to the self-employed individual—it would be a shame to let these legitimate tax breaks go to waste. 

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Watching Out For Tax Authorities: Top Three Mistakes Law Firms Must Avoid

By Jenny Chen

TAX AUTHORITIES HAVE increased their scrutiny of law firm accounting and tax practices. This article discusses the most prominent issues faced by firms, namely correct recording of advanced client costs, recognition of income from client trust accounts, and proper issuance of Form 1099. It is important for law firms and firm administrators to pay close attention to these areas, as the implications and, in some cases, penalties can be significant. Fortunately, with careful planning, these pitfalls can be avoided.

Advanced Client Costs

Authorities have recognized that law firms often incorrectly record advanced client costs, (i.e., court fees and expert testimony). Firms commonly pay these hard costs on behalf of a client and later recover them through settlement or subsequent reimbursement from the client; however, firms that report on a cash or modified cash basis of

accounting may erroneously deduct these expenses when paid, and include recovered costs as income when payment is received.

The Tax Court has held that litigation cost advances that are subject to reimbursement should be treated as nondeductible loans and are therefore not deductible as ordinary and necessary expenses. Deducting these costs when paid and recognizing the reimbursement as income when received causes a distortion of income as it may take years to recover costs or obtain reimbursement from clients. This distortion of income is a concern to tax authorities as it potentially represents an understatement of income.

Part of the confusion lies in the distinction between hard and soft costs, which have different accounting and tax treatment under cash or modified cash basis of accounting. Soft costs, which are general office expenses (i.e., photocopying, research subscriptions, secretarial costs, etc.) that would

be incurred even if not charged to a particular client, are different in that a current year deduction for client-reimbursed costs is allowed and any subsequent reimbursement from the client would be treated as income in the year of reimbursement.

Tax authorities will first determine whether outstanding client costs advanced are material and, if so, will then require the firm to recognize the entire amount of these costs as income in the earliest taxable year under examination. This may result in a significant increase in the amount of taxes due and additional penalties.

For example, assume the outstanding billed and unbilled client hard costs advanced are \$200,000 at January 1, 2014 and \$300,000 at December 31, 2014.

If the law firm is a California partnership, the \$300,000 additional income will need to be allocated and taxed on each partner's individual returns. For a firm operating as a

California corporation, the \$300,000 additional income will result in additional federal and state taxes of \$105,000 and \$26,520, plus penalties and interest, respectively. An unanticipated tax liability of \$131,520 plus penalties and interest would create cash flow issues for many law firms.

To avoid this increased tax liability, law firms that have not properly recorded their hard costs advanced should consider filing Form 3115, Application for Change in Accounting Method. By filing Form 3115, law firms are allowed to spread the tax liability over a four year period. In many cases, with proper year-end tax planning and by filing Form 3115, law firms can correct this issue and potentially eliminate the tax liability.

Client Trust Accounts

Tax authorities are concerned with the understatement of income related to client trust account activities. Frequently, law firms deposit settlement proceeds into client trust accounts and then distribute the proceeds to the client (less fees earned by the law firm). Since the lawsuit is finalized and the firm's portion of fees is determinable and available, the law firm must recognize the amount as income. To discourage law firms from deferring income recognition, authorities will review the source of the funds remaining in the trust account at year end and reconcile trust account activities to the firm's other bank accounts.

To identify potential diversion and omission of income, authorities will now review both the tax filings of law firm partners (or shareholders) and their firms. Firms should expect requests for copies of endorsements on checks written to or on behalf of the law firm from trust accounts to verify that fees earned are properly deposited into the firm's general bank account and not to attorney personal accounts.

Proper Issuance of Form 1099

Generally, all persons engaged in a



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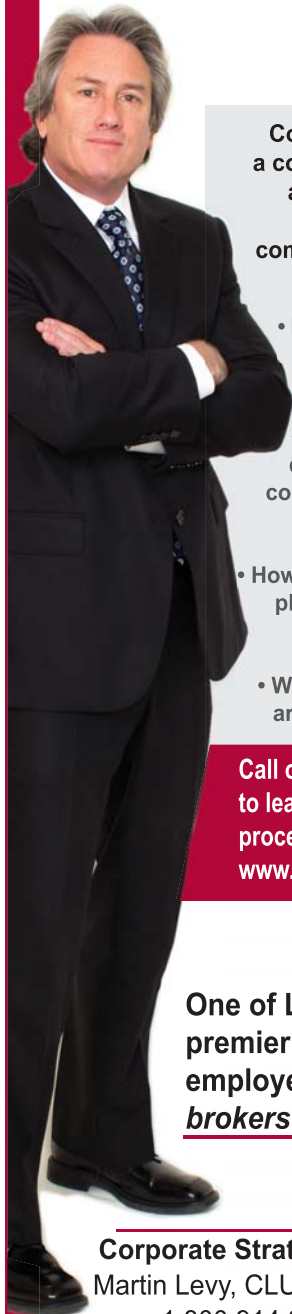
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trade or business who make payments to another person of \$600 or more in the course of such trade or business are required to file Form 1099. But law firms often overlook the need to issue Forms 1099 to independent contractors for payments made to contractors out of client trust accounts. Law firms frequently select and hire independent contractors (i.e., expert witnesses and private investigators) on behalf of their clients, provide instructions to and monitor such contractors, and negotiate and pay the contractors for their services. Under the circumstances in which a firm is exercising such oversight or performing management functions, tax authorities may consider the firm to be a "middleman payer" that is responsible for reporting payments to contractors on Forms 1099. To ensure the proper filing of Form 1099, tax authorities are now cross referencing the copies of Forms 1099 provided by the law firm against their own record.

Another area that commonly causes confusion relates to issuance of Form 1099 for payments to recipients of lawsuit settlements. Law firms should keep in mind that the following types of damages are specifically exempt from taxation. Reporting on Form 1099 as it relates to the excluded portion of the settlement proceeds is not required:

- Compensatory damages received in connection with physical injury or physical sickness
- Damages for emotional distress on account of physical injuries or sickness (however, costs incurred to treat emotional distress, even those due to physical injury, are taxable if they were previously deducted as a medical expense in a prior year)
- Out-of-pocket medical expenses in non-physical injury settlements (i.e., discrimination, fraud and so on) incurred to treat emotional distress that were not previously deducted as medical expenses

Punitive damages, on the other hand, are not excluded from taxation, regardless of whether received in connection with a physical or non-physical injury.

To ensure that all taxable lawsuit settlements are properly reported, tax authorities scrutinize the allocation of settlement proceeds between compensatory versus punitive damages. They also determine if any portion of the settlement proceeds are designated as reportable interest income.

Due to the number of parties involved in a lawsuit, the circumstances under which firms are required to file Form 1099 as it relates to the settlement proceeds can be confusing. Below are various common scenarios and the corresponding Form 1099 requirement:

Settlement Checks to Joint or Multiple Payees

If more than one attorney is listed as a payee on the check and the check is delivered to payee attorney, the payer must file Form 1099 with respect to the payee attorney to whom the check is delivered.

As an example, plaintiff P sues defendant D for emotional distress from non-physical injuries and is represented by attorney A. D settles the suit for \$300,000, writes a settlement check payable jointly to P and A in the amount of \$300,000, and delivers the check to A. A retains \$100,000 of the payment as compensation for legal services and disburses the remaining \$200,000 to P. D must file Form 1099 with respect to both A and P in the amount of \$300,000 each.

Attorney Making Payments to Other Attorneys

If payer is required to file Form 1099 with respect to a payee attorney (the tier-one attorney), the tier-one attorney must file Form 1099 for any payment that he or she makes to other unrelated payee attorneys with respect to that check. As an example, defendant D

makes a payment of the gross proceeds of the taxable amount awarded under the suit to the plaintiff's attorneys A, B and C, who are not related parties. The payment is delivered to B's office. B deposits the monies into the trust account and pays A and C their respective shares. D must file a Form 1099 for the payment to B and B in turn must file Form 1099s for the payments to A and C. D also would need to report 100% of the settlement with respect to the plaintiff.

To simplify the information reporting process, many law firms may consider requesting separate checks from the payer. The advantage of having separate checks is that the law firm will receive a Form 1099 only for its fee even

though the client will receive a Form 1099 representing 100 percent of the settlement. As an example, plaintiff P, who is represented by attorney A, sued for lost profits against defendant D. D settles the suit for \$300,000, all of which will be includible in P's gross income. A requests D to write two checks, one payable to A in the amount of \$100,000 as compensation for legal services and the other payable to P in the amount of \$200,000. D writes the checks in accordance with A's instructions and delivers both checks to A. D must file Form 1099 for A and P in the amount of \$100,000 and \$300,000, respectively.

Due to the complexities of Form 1099 reporting requirements, all law firms, regardless of size and type of legal

practice, should consider reexamining their 1099 reporting practices.

Additional Issues

Firm leadership and administrators should also be mindful of unreported income from non-cash payments to firms (i.e., partnership interest, stock, and bartering of services); gross income and proper income recognition of retainers; business and disguised hobby expenses; and proper classification of employees and independent contractors.

Careful review the firm's procedures will help avoid mistakes in the common areas listed above and miss the scrutiny of tax authorities. 🏠

Jenny Chen is a CPA and a partner at Hutchinson and Bloodgood LLP in Glendale. She specializes in serving law firms and other professional service companies. In addition, Jenny works with closely-held, family-owned businesses in variety of industries and performs audits of employee benefit plans. She can be reached at jchen@hblp.com.



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2014 Tax Enforcement Priorities and Practice Tips from the Tax Trenches

By Charles P. Rettig

IRS examinations can be a source of frustration and confusion. Tax attorneys can best serve their clients by understanding the IRS's enforcement priorities and audit procedures. These practice tips can help mitigate some of the confusion that may arise from an examination and possibly prevent further issues.

HISTORICALLY, INTERNAL REVENUE SERVICE (IRS) examiners were assigned to audit taxpayers in many different industries. One day, an examiner audited a grocery store and on the following day the examiner may have audited a computer retailer or a medical doctor. As a result, experience gained in one audit did not significantly enhance the examiner's experience for purposes of conducting other audits.

More recently, the IRS has been attempting to identify and reduce non-compliance through efficiency, tax form simplification, education, and enforcement. In addition, the IRS has significantly modified its examination process in a manner designed to increase the available resources and experience of its examiners.

The primary operating divisions of the IRS include Small Business/Self-Employed (SB/SE), Wage and Investment (W&I), Large Business and International (LBI) and Tax Exempt and Government Entities (TEGE). Other principal offices supporting the core functions of the IRS include the Office of Chief Counsel, Taxpayer Advocate Service, Criminal Investigation, Appeals, Return Preparer Office, Office of Professional Responsibility (OPR), Communications and Liaison, Whistleblower Office, and the Office of Privacy, Governmental Liaison and Disclosure.

IRS Enforcement Priorities

The international arena will continue to test the enforcement resources of the IRS for many years. Issues regarding undeclared foreign source earnings and financial accounts will continue to generate considerable interest from the IRS and the Department of Justice.¹ The IRS has long encouraged participation in the voluntary disclosure process for all taxpayers, those with interests in offshore accounts and otherwise.

The IRS policy concerning voluntary disclosure provides that a taxpayer's voluntary disclosure is a factor that "may result in prosecution not being recommended."² To obtain this qualified benefit, the disclosure must be "truthful, timely, complete," and must demonstrate willingness by the taxpayer to cooperate, and actual cooperation, in determining the tax liability. It must also include "good faith arrangements" by the taxpayer to pay the tax, interest, and any penalties in full.

Those with interests in foreign accounts that have not previously been disclosed should immediately consult competent counsel. If not yet contacted by the government, they likely remain eligible for the ongoing IRS Offshore Voluntary Disclosure Program, mitigating the possibility of a

future criminal prosecution.³ Undeclared foreign accounts present a target-rich environment for the government. The IRS is committed to enforcement concerning offshore accounts and the changing environment concerning bank secrecy may lead the government to many taxpayers with undisclosed interests in foreign financial accounts. For those with undeclared foreign accounts, now is the time to come into compliance. Waiting is simply not a viable option.

Other examination priorities based on a perceived degree of noncompliance include the potential abuse of mortgage interest limitations⁴ by claiming deductions exceeding limitations in multiple years and Section 1031 like-kind exchanges, including the abuse and possible back-dating of documents intended to circumvent the 45-Day Rule⁵; and Net Operating Loss (NOL) carryforwards.⁶ An additional examination issue includes real estate dispositions where the taxpayer is unable to adequately support the amount realized and the adjusted basis, or fails to appropriately provide for the recapture of items when a negative capital account exists.

Examiners are also looking closely at employment tax and worker classifications where the IRS is conducting employment tax examinations, including a focus on worker classification issues (independent contractor v. employee status), together with issues regarding executive compensation and fringe benefits.

S-corporation examinations with an emphasis on determining the built-in-gains tax focusing on asset valuations for C-corporation assets on conversion to S-corporation status together with compensation for S-corporation officers are also a priority.

Examinations involving sales of partnership interests will attempt to assure that reported interests match the actual ownership interests reflected in the partnership agreements; that income is properly recognized on distributions of installment notes; and that debt cancellation, general income and expense items reported on partners' returns, including proper reporting from Schedule K-1, is correctly reported. Examinations of estate and gift tax returns will continue to focus on valuations and discounts associated with closely-held entities and properties, fractional interests, sales that occur close to death, under-funded marital trusts and over-funded bypass trusts upon the death of the surviving spouse.

For matters involving tax exempt organizations, the changes between the historical and the recently revised Form 990 provide a roadmap of issues deemed important to the government, including executive compensation for senior management and key employees, conflicts of interest



Charles P. Rettig, a State Bar Certified Specialist in both Taxation Law and in Estate, Trust & Probate Law, is a principal at Hochman Salkin Rettig Toscher & Perez PC in Beverly Hills. He can be reached at rettig@taxlitigator.com.

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California Franchise Tax Board (FTB) Enforcement Priorities

Current individual enforcement priorities of the FTB include Section 1031 like-kind exchanges, Schedule D, real estate losses, residency, California adjustments arising from IRS examinations, head of household filing status and federal/state adjustments. In the corporate arena, the FTB remains interested in the sales factor (nexus, cost of performance, intangible sales, throwback sales, etc.), business/non-business income, credits, filing method, and water's-edge issues. For S Corporations, there is interest in basis issues, taxable distributions, credits, liquidations, and built-in gains. Returns relating to estates and trusts should anticipate inquiries regarding apportioning, credits, and deductions. Charitable remainder trusts could anticipate valuation inquiries. Partnerships and other flow-thru entities create interest regarding real estate dispositions, basis and recapture issues surrounding sales of partnership interests, tax shelters, and issues arising as a result of final year returns.

Tips from the Tax Trenches

Taxpayer Advocate Service

If an examination problem seems overwhelming, consider contacting the Taxpayer Advocate Service (TAS).⁷ TAS is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should.⁸ Assistance is available by filing Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), or asking an IRS employee to complete it on your behalf.⁹ There is also a Taxpayer Advocate for each of the California taxing authorities.¹⁰

Engagement Letters

Engagement letters should specify the scope and terms of the engagement. Services rendered should be within the scope of the engagement as clearly set forth in the engagement letter. If additional services are to be provided, additional engagement letters should be obtained. If a client relationship is terminated for any reason, written confirmation of the termination should be promptly provided to the client and the opposition. If the government has been involved, the government should also be clearly advised of the termination of the client relationship.

Schedule C Examinations

Upon receipt of an examination notice for a Schedule C taxpayer or a taxpayer involved in a cash intensive business (restaurant, bar, etc.), require the preparation of a simple bank deposit analysis. The analysis should add the deposits for the year under consideration and for the month immediately preceding and following the period involved. That figure should then be divided by 14 and multiplied by 12 to determine an approximation of an amount deposited during the year. If the total deposits bear no relation to reported gross receipts, further inquiry may be warranted which might include a more in-depth bank deposits analysis, a cash expenditures analysis, a net worth analysis, and/or a mark-up analysis.

Clients with Multiple Return Filing Requirements

If involved in the preparation of returns for a taxpayer having other return filing requirements (sales tax returns, etc.), request copies of all other relevant returns for the tax period(s) at issue. Often, businesses prepare certain returns internally and seek to have others prepared by their outside tax advisors. Gross Receipts on sales tax returns for the same tax period as an income tax return should be somewhat comparable. If you haven't received copies of all related returns, ask for them.

Audit Technique Guides

The IRS Audit Techniques Guides (ATGs)¹¹ focus on developing highly trained examiners for a particular market segment or issue. These guides focus on taxpayers as members of particular groups or industries and contain examination techniques, common and unique industry issues, business practices, industry terminology, interview questions, procedures and other information to assist examiners in performing examinations.

These groups have been defined by type of business (including attorneys, auto body/repair shops, bail bondsmen, check cashing establishments, farmers, restaurants and bars, various segments of the entertainment industry, gasoline distributors, insurance agencies, parking lot operators, real estate agents/brokers, taxicabs, the trucking industry), technical issues (passive activity losses, alternative minimum tax), and types of taxpayer or method of operation (i.e., cash intensive businesses).

The Attorneys ATG¹² provides background information about the legal profession, identifies issues unique to the industry of which the revenue agents should be aware, and sets forth specific techniques that the examiner should follow in conducting audits of attorneys. A practitioner should not proceed with an audit without being generally familiar with any potentially relevant IRS ATGs. Often, it may be beneficial to review relevant ATGs earlier in the process, perhaps while preparing the return.

Avoiding Delays

The administrative process should not be abused merely because of the taxpayer's desire to delay the determination and collection of any potential liability. It is generally advisable to attempt to resolve any civil tax dispute at the earliest opportunity. A lengthy audit may be costly from the perspective of the expenditure of time and effort involved, as well as the taxpayer's degree of frustration with the normal administrative process. Further, a prolonged audit is more likely to uncover potentially sensitive issues that could generate increased tax deficiencies, penalties, or the possibility of criminal sanctions. Collection-related issues should be sorted out through an installment payment arrangement that would be negotiated through the normal collection process following conclusion of the audit process.

Extension of Statute of Limitations

It is often a good practice to provide an extension of the applicable statute of limitations during the course of any audit or examination. However, it is also good practice to have extensions signed by the client, rather than the client's authorized representative (even though authorized by the power of attorney). Years later, the client may not recall having authorized you to extend the statute of limitations. If their signature is on the extension (Form 872), the situation will not likely escalate. Further, it is almost always preferred to sign a limited extension with a specified expiration date (Form 872) rather than an indefinite extension for an unspecified term (Form 872-A).

Freedom of Information Act Request

It is often advisable to submit a request under the Freedom of Information Act (FOIA) following the un-agreed resolution of a federal tax examination. It should also help tailor your discussions at the next administrative level while providing insight into what the next government representative assigned to the case will be reviewing.¹³

Taxpayer Interview

A question often presented is whether the taxpayer and others should consent to interviews by the government, force the issuance of summonses or invoke various constitutional protections. Certainly, if there are extremely sensitive (i.e., potentially criminal) issues, the taxpayer should not consent to an interview and should invoke their Fifth Amendment privilege against self-incrimination. It is always preferable for a taxpayer to avoid providing incriminating information when compared to the possibility of propelling a civil tax examination into a criminal tax investigation/prosecution.

The government typically seeks to interview taxpayers near the commencement of an examination. Unfortunately, at that time, the practitioner typically does not have sufficient information to determine whether there are potentially sensitive issues that might arise during an interview of the taxpayer.

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The Affordable Alternative

If possible, it is often preferable to postpone a taxpayer interview if the practitioner is otherwise able to provide prompt responses to relevant inquiries. If it occurs, the interview should occur toward the end of the examination, possibly with an understanding that if the taxpayer submits to an interview and answers the questions, the government will proceed to close the examination. However, the practitioner must take extreme caution, since such an understanding is not likely a basis for challenging the use of statements from the interview in a subsequent proceeding.

If a taxpayer interview is necessary and otherwise unavoidable (it is always avoidable in a potentially criminally sensitive case), the interview should occur far into the audit process such that the representative can appropriately assist the taxpayer in preparing for the interview. The representative should attempt to obtain as much information about the issues, the information within the agent's possession and the government's position with regard to the issues, before agreeing to submit the taxpayer to an interview.

Under any situation, the representative must prevent presentation of false or misleading information or the presentation of false statements by the taxpayer or the taxpayer's representative. Presentation of false statements or documents significantly enhances the potential for penalties and a possible criminal investigation or prosecution (which may include an investigation of the representative).

During an interview, taxpayers often assert that unexplained amounts represent accumulations of wealth over a period of time. Common interview questions include whether the taxpayer routinely keeps more than \$1,000 on hand? If so, what do the accumulated funds consist of? (For example, paper money, coin, money orders, cashier checks, etc.). In what denominations were the funds accumulated? Where are the accumulated funds maintained? How long have the accumulated funds been kept in the foregoing location? What kind of container were the accumulated funds kept in?

Further questions could ask the amount of cash or the equivalent on hand at the beginning and end of the year under audit? Why were the funds accumulated and not deposited in a financial account? What is the original source of the funds? Were there additions or withdrawals from the accumulated funds? Was the taxpayer accompanied by another individual when the accumulated funds were accessed? Does anyone else know about the accumulated funds?

Although there are various "badges of fraud," civil revenue agents are more inclined to consider a criminal investigation referral if there is a substantial unexplainable understatement of taxable income; fictitious or improper deductions; accounting irregularities (occurring in more than one year); acts or conduct of the taxpayer relating to false statements; attempts to hinder the examination; destruction

of books and records; transfers of assets for purposes of concealment; or patterns of consistent failure to report or under-reporting of income.

Certain behavior patterns on the part of the examiner may indicate that they are considering a criminal referral: excessive time devoted to the audit; extensive copying of basic financial records, bank records, accountant work papers, etc.; or attempts to determine the taxpayer's net worth over a period of several years. Amending returns during an examination might be the last link necessary for a civil examination to be referred to the Criminal Investigation office.

Examination Techniques

There are various indirect examination techniques available to corroborate or refute a taxpayer's claim about their business operations or nature of doing business. A significant indicator that income has been underreported is a consistent pattern of losses or low profit percentages that seem insufficient to sustain the business or its owners. Other indicators of unreported income include a lifestyle or cost of living that can't be supported by the income reported; a business that continues to operate despite losses year after year, with no apparent solution to correct the situation; a Cash T showing a deficit of funds; bank balances, debit card balances and liquid investments that increase annually despite reporting of low net profits or losses; accumulated assets that increase even though the reported net profits are low or a loss; debt balances that decrease, remain relatively low, or don't increase while low profits or losses are reported; a significant difference between the taxpayer's gross profit margin and that of their industry; and unusually low annual sales for the type of business.

Audit or investigative techniques for a cash-intensive business might include an examiner determining that a large understatement of income could exist based on return information and other sources of information. Common indirect methods include the Source and Application of Funds Method (an analysis of a taxpayer's cash flows and comparison of all known expenditures with all known receipts for the period); the Bank Account Analysis Method (comparing total deposits with the reported gross income, for all accounts, whether designated as personal or business); the Bank Deposits and Cash Expenditures Method (distinguished from the Bank Account Analysis by the depth and analysis of all the individual bank account transactions, the accounting for cash expenditures, and a determination of actual personal living expenses); the Markup Method (reconstructing income based on the use of percentages or ratios considered typical for the business under examination in order to make the actual determination of tax liability); and the Net Worth Method (determination of the actual tax liability is based upon the theory that increases in a taxpayer's net


worth during a taxable year, adjusted for nondeductible expenditures and nontaxable income, must result from taxable income).

Recognize Limits

Advise clients that discussions held between a client and a non-lawyer may have to be disclosed in the event of a criminal investigation or prosecution. Section 7525 of the Internal Revenue Code does not protect information provided to a non-lawyer representative from disclosure in a criminal investigation or prosecution.

Throughout, treat all government representatives with respect and act like the professional that you want others to know and respect. Do not mislead, affirmatively or otherwise, anyone at any time. Always maintain the appearance of reasonableness, even in times where the government may appear to be anything but reasonable. If you have problems with an agent during the course of an examination, ask to speak to their manager. If you have problems, it is likely that other representatives have previously had similar discussions with the agent's manager. While the manager may appear to be supporting the agent when meeting with you, it is also likely that the manager will have a direct conversation with the agent outside your presence and that your future interactions with the agent will be significantly improved.

Many untoward consequences can flow from what is included—or excluded—in a tax return. The government is to be commended for its strong, ongoing tax enforcement efforts. Practitioners must respect the basis for these efforts and provide meaningful assistance to help taxpayers appropriately respond to their tax-related obligations.

Effective representation requires the ability to utilize all available resources, detailed preparation, and diligence in providing timely responses to examination inquiries. All should be reminded that an income tax return is simply not an offer to negotiate later with the government. Work with your clients and spend the extra effort to get it right. 

¹ FBAR, or Report of Foreign Bank and Financial Accounts, filings are due June 30 for the prior calendar year. Financial Crimes Enforcement Network (FinCEN) Form 114, formerly Form TD F 90-22.1.

² See Internal Revenue Manual (IRM) 9.5.11.9 (06-26-2009).

³ See "2012 Offshore Voluntary Disclosure Program," <http://www.irs.gov/uac/2012-Offshore-Voluntary-Disclosure-Program>, last updated January 24, 2014.

⁴ IRC §163(h)(3).

⁵ See Treas. Reg. §1.1031(K)-1.

⁶ Taxpayers should be prepared to fully document losses incurred in the recessionary economy of 2008-2013.

⁷ See "Taxpayer Advocate Service," <http://www.irs.gov/Advocate>, revised March 7, 2014.

⁸ Local taxpayer advocates are also available. Check local listings and IRS Publication 1546-EZ: Taxpayer Advocate Service—Your Voice at the IRS.

⁹ See <http://www.irs.gov/advocate>.

¹⁰ Look to the respective taxing authorities' site for contact information regarding their Taxpayer Advocate.

¹¹ See Audit Techniques Guides, <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Audit-Techniques-Guides-ATGs>, updated February 3, 2014.

¹² Attorneys Audit Techniques Guide, March 2011, available at <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Attorneys-Audit-Technique-Guide>, revised November 6, 2013.

¹³ See IRS Freedom of Information, <http://www.irs.gov/uac/IRS-Freedom-of-Information>, last reviewed February 6, 2014.

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Test No. 66

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. The Taxpayer Advocate Service is one of the primary operating divisions of the IRS.
☐ True ☐ False
2. If there are potentially criminal issues involved during an IRS examination, the taxpayer should not consent to an interview and should invoke their Fifth Amendment privilege against self-incrimination.
☐ True ☐ False
3. The Tax Exempt and Government Entities (TEGE) division is one of the primary operating divisions of the IRS.
☐ True ☐ False
4. Taxpayers remain eligible for the ongoing IRS Offshore Voluntary Disclosure program even if they have already been contacted by the government.
☐ True ☐ False
5. The Office of Chief Counsel supports the core functions of the IRS.
☐ True ☐ False
6. It is almost always preferred to sign a limited extension of the statute of limitations with a specified expiration date (Form 872) rather than an indefinite extension for an unspecified term (Form 872-A).
☐ True ☐ False
7. The Source and Application of Funds Method (an analysis of a taxpayer's cash flows and comparison of all known expenditures with all known receipts for the period) is a common indirect method of determining taxable income during an IRS examination.
☐ True ☐ False
8. The IRS Attorneys Audit Technique Guide (ATG) provides background information about the legal profession and identifies tax issues unique to the industry.
☐ True ☐ False
9. The Markup Method for determining taxable income during an IRS examination requires determination of the actual personal living expenses of the taxpayer.
☐ True ☐ False
10. The IRS is committed to enforcement concerning undeclared offshore financial accounts.
☐ True ☐ False
11. The IRS Audit Techniques Guides (ATGs) are publically available.
☐ True ☐ False
12. The IRS policy concerning voluntary disclosure is set forth in Internal Revenue Manual (IRM) 9.5.11.9.
☐ True ☐ False
13. IRS employment tax and worker classification examinations are primarily focused on worker classification issues (independent contractor v. employee status), together with issues regarding executive compensation and fringe benefits.
☐ True ☐ False
14. IRS estate tax return examinations are primarily focused on prior taxable gifts of the decedent.
☐ True ☐ False
15. IRS estate and gift tax return examinations are focused on valuations and discounts associated with closely-held entities and properties.
☐ True ☐ False
16. California tax enforcement priorities for 2014 include California adjustments arising from IRS examinations.
☐ True ☐ False
17. Taxpayers can seek assistance from the IRS Taxpayer Advocate by filing Form 611, Request For Taxpayer Advocate Service Assistance.
☐ True ☐ False
18. A significant indicator that income has been underreported is a consistent pattern of losses or low profit percentages that seem insufficient to sustain the business or its owners.
☐ True ☐ False
19. Section 7525 of the Internal Revenue Code protects information provided to a non-lawyer representative from disclosure in an IRS criminal investigation or prosecution.
☐ True ☐ False
20. Civil IRS revenue agents are more inclined to consider a criminal investigation referral if there is a substantial unexplainable understatement of taxable income, fictitious or improper deductions, and accounting irregularities occurring in more than one year.
☐ True ☐ False

MCLE Answer Sheet No. 66

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 \$15 testing fee for SFVBA members (or \$25 for non-SFVBA members) to:

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Photo by Robert Reiter.

Indispensable Support:

Celebrating the Valley's Administrative Professionals

By Irma Mejia

On April 23, the SFVBA will continue its tradition of celebrating the contributions of local paralegals and law firm support staff with its annual Administrative Professionals' Day Luncheon. *Valley Lawyer* spoke with previous winners of the Administrative Professional of the Year Award about their work and outlook on the industry. The Bar is once again looking forward to a very special celebration.

TWO YEARS AGO, THE SAN Fernando Valley Bar Association established a new tradition honoring the unsung heroes of the legal industry: the administrative professionals that make our Valley law offices run smoothly. Since 2012, the Bar has welcomed local attorneys and their staff to join its annual Administrative Professionals' Day Luncheon to honor the important daily work of office staff. The highlight of the event is the presentation of the Administrative Professional of the Year Award.

Each year, the Bar receives dozens of nominations from attorneys describing the dedication and efficiency of their paralegals, legal secretaries and support staff. Of all the deserving candidates nominated, the Bar's Award Committee selected Lorena Guillen-Garcia and Marco Padilla as the 2012 and 2013 Administrative Professional of the Year, respectively. The awards were well-deserved and recognized the impact of their hard work on the success of their respective law offices.

Ensuring a Smooth Operation

Guillen-Garcia was the first recipient of the Bar's Administrative Professional of the Year Award. She was nominated for her work as a paralegal at the criminal defense firm formerly known as Kestenbaum, Eisner & Gorin LLP, where she first began her career nine years ago. Now at the Kestenbaum Law Group in Van Nuys, she continues her dedicated work of serving clients and assisting attorneys. "I love the fact that I get to help people and many times I see how our firm and our hard work changes someone's life," says Guillen-Garcia.

Guillen-Garcia handles the daily operations of the office, including answering phone calls, calendaring cases, calling courts, and assisting

with the drafting of certain types of legal documents and motions. She is also responsible for new case intake, communications with arresting agencies, investigators, detectives and the offices of the District Attorney and City Attorney. She ensures that business runs as smoothly as possible.

"She was nominated for her dedication to her assigned duties and for going beyond," explains David S. Kestenbaum. "At the time, [Guillen-Garcia] was the only constant in our firm over the course of nine years. She was able to handle the calendars and clients for six attorneys in addition to her other responsibilities."

Guillen-Garcia's duties extend beyond the stereotypical notion of simple secretarial work. "As the face of the firm, she also has the most contact with the clients, the court clerks and the staff at the prosecutors' offices and Department of Motor Vehicles," says Kestenbaum. "Over the years, she has forged great relationships that make my job easier. For instance, she can get information from the DA on unfiled cases and also get DMV hearings even after the time has lapsed to request them!"

When asked what her least favorite part of her job is, Guillen-Garcia replied, "The fact that work can become very stressful, especially with complex cases." But for Guillen-Garcia, the stress and hard work is rewarding. "It feels good to see someone get back on their feet. A lot of people remember us as the ones who stood by them in their difficult times and many of them keep in touch with us for years."

"I cannot overstate the importance of continuity in law firm staff. Clients who call years after their case has been resolved are reassured when they are able to speak to the same person that was here when their case was active and remembers them," says Kestenbaum.

When not busy ensuring the smooth operation of the firm, Guillen-Garcia spends her time reading and enjoying the outdoors through hiking or whale-watching. In reflecting on her future goals, she is certain that in ten or twenty years, she will be continuing her work as a paralegal. "I truly enjoy what I do," she explains. "With every case, I learn something new about work or life. This job helps me constantly reevaluate my life and helps me discover something new about myself."

Beyond Simple Office Support

Padilla received the Administrative Professional of the Year Award in 2013. Relatively new to the legal industry, Padilla has already made a strong impression through the quality of his work at the Law Offices of Richard T. Miller in Van Nuys.

"He was nominated for the award because of his dedication to helping our clientele with their cases," says Richard T. Miller. "He is a quick learner of the various civil and probate cases and procedures we handle and assists with administrative tasks. Also, with respect to Hispanic clients, his services are invaluable in terms of communicating and coordinating necessary litigation requirements. He does all this while taking a heavy load of college courses."

Padilla's work at the law office entails diligent research and execution of tasks to ensure the success of the small firm. He works closely with clients, insurance companies, and doctors to gather case information. His other duties include the preparation of legal documents, assisting with discovery, probate matter processing, and communicating with clients. He also has the opportunity to work autonomously on more complex files with training provided by Miller, who has final say on all actions that are taken. "It has given



Irma Mejia is Editor of *Valley Lawyer* and serves as Publications and Social Media Manager at the San Fernando Valley Bar Association. She also administers the Bar's Mandatory Fee Arbitration Program. She can be reached at editor@sfvba.org.



L-R: Past President Alan Sedley, Guillen-Garcia, and Trustee Mark Shipow at the 2012 Administrative Professional's Day Luncheon.



Shipow congratulating Padilla on his award in 2013.



I love the fact that I get to help people and see how our hard work changes someone's life."

me the opportunity to foster successful working relationships with colleagues, clients, and third-party administrators," explains Padilla.

It's work that comes with its rewards but also some disappointments. "The least pleasant part of my job is when the legal system fails people who have been put in an arduous position," he says. "Responding to poorly drafted discovery, and the periodic insult or dismissal from attorneys who see me as just a secretary are also low points of the job."

But the hard work and patience ultimately pays off. When asked what his favorite part of working in a law office is, he responds, "I like that my work has allowed me to develop my research, analytical and problem-solving skills, as well as my knowledge of the legal system and puts me in a position to help people who otherwise would have no defense." It's work experience that will surely come in handy in the future.

Padilla is currently working on completing his undergraduate degree, with plans to continue on to law school. In his spare time, he is a photographer and an active member of the Greater Van Nuys Rotary Club.

Of his plans for the next twenty years, Padilla has a clear goal. "I hope to still be helping people through the legal system. There are a lot of people who are taken advantage of by companies simply because they failed to take immediate action in a case and not because they necessarily were at fault.

My ultimate goal is to serve as a voice for those who have none."

Impact across the Industry

Law firms are increasingly relying on paralegals and support staff to cut costs and run more efficiently. The U.S. Bureau of Labor Statistics projects a 17% growth in the employment of paralegals and legal secretaries from 2012 to 2022, a faster rate than the average for other occupations.¹ According to the Bureau, factors contributing to the growth include attempts to reduce billing costs while increasing efficiency and the expansion of corporate in-house legal departments.

The value of the work of administrative professionals in the legal industry is not lost on the attorneys who rely on it for the success of their practice. "Administrative assistants are a valuable asset to both the many law firms and the clients who are served," says Miller. "[Padilla's] efficiency in knowing cases

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and procedures results in less attorney time being spent, which in turn reduces the fees to the client."

Padilla agrees, "We certainly help maximize the attorney's efficiency, allowing him or her to more clearly see the details of a case, which in turn provides for the best defense or offense possible."

The sentiments are shared at the Kestenbaum Law Group. "Administrative professionals are extremely important because we provide support to the attorneys and without us, the core logistics of the firm would not function properly," says Guillen-Garcia. "A lot of times I see myself as the communicating medium between the attorney and the client and between the courts and the attorney."

Kestenbaum adds, "Administrative professionals such as [Guillen-Garcia] are usually the first person a client talks to. It is imperative that the office staff be able to put clients at ease so that they feel comfortable and confident that they have chosen the correct attorney to represent them, especially in criminal law where they or their loved ones are facing the loss of freedom."

These past recipients of the Administrative Professional of the Year Award have important advice for those considering a career as a paralegal or legal secretary. "Prepare to work hard and prepare to help and communicate with people. Administrative work is highly intense and you need to have a great work ethic to persist through the difficulties and continually learn and improve," says Guillen-Garcia.


"Research is your best friend," says Padilla. "You can't be afraid to ask questions. Get involved. Don't be indifferent; be proactive."

Celebrating Contributions

The SFVBA will once again honor the contributions of administrative professionals to the legal industry with its annual Administrative Professionals' Day Luncheon on Wednesday, April 23 at Braemar Country Club in Tarzana. Attorneys and their staff are invited to enjoy a delicious meal in the company of colleagues and friends. As in past years, all administrative professionals in attendance will be entered into free drawings for valuable prizes, including restaurant and store gift cards.

Attorneys are encouraged to nominate their staff for the Administrative Professional of the Year Award. Instructions for submitting nominations will be posted on the Bar's website at www.sfvba.org and distributed to members by email. All nominations must be submitted by Friday, April 18.

The event allows Valley attorneys and the Bar to recognize the great work performed by office support staff. The event leaves a lasting impression on the guests of honor.

Reflecting on his award and his experience at the event, Padilla says, "I was honored to receive the award. We work hard every day and fight for our clients, so it's nice to get a pat on the back every once in a while." 

¹ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2014-15 Edition*, Paralegals and Legal Assistants, on the Internet at <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm> (visited March 14, 2014).

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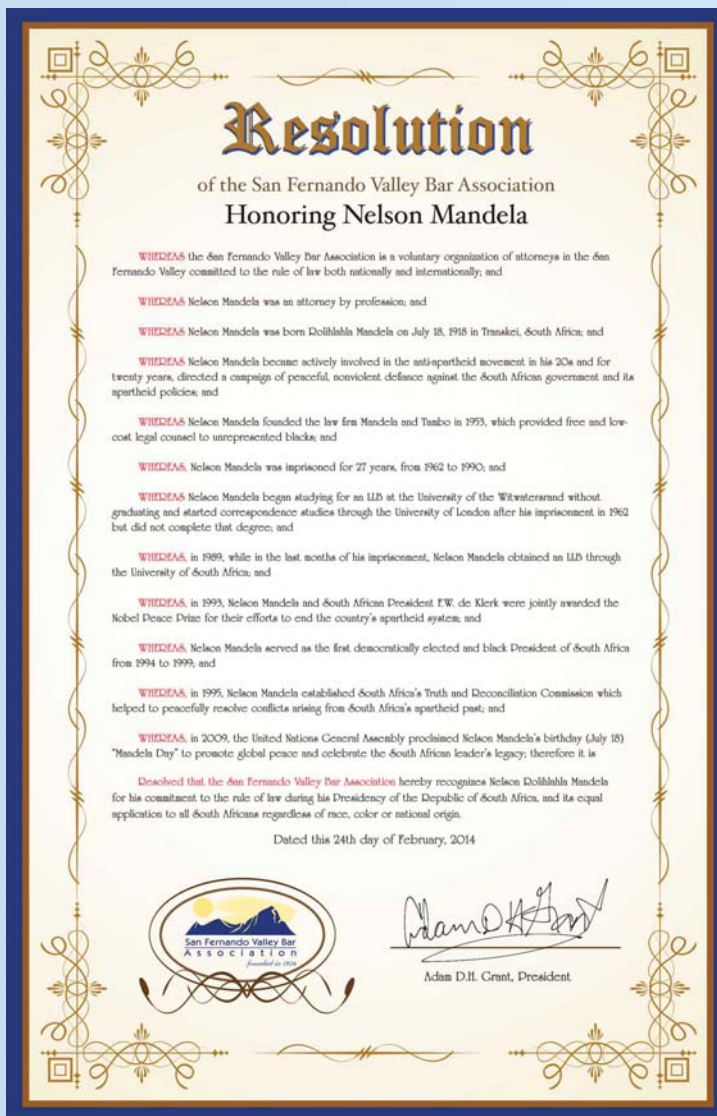
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SFVBA Honors Legacy of Nelson Mandela

ON FEBRUARY 24, SFVBA PRESIDENT ADAM GRANT AND SFVBA PAST PRESIDENT Richard A. Lewis presented a resolution in honor of Nelson Mandela to South Africa Consul-General Cyril S. Ndaba. The SFVBA, an organization committed to the rule of law both nationally and internationally, recognizes Nelson Mandela, an attorney early in his career, for his dedication to the rule of law during his presidency of the Republic of South Africa, its equal application to all South Africans, and his promotion of democracy and peace throughout the rest of his life. Mr. Ndaba will deliver the proclamation to the Nelson Mandela Centre for Memory in Houghton, South Africa. 🏛️



L-R: SFVBA President Adam Grant, South Africa Consul-General Cyril S. Ndaba and SFVBA Past President Richard Lewis

Annual Judges' Night Dinner

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Photo by Chris Jurgenson. 1. Judicial officers pose with the evening's honorees 2. SFVBA President Adam D.H. Grant and retired Judge Jessica Perrin Silvers 3. Judicial Leadership Award recipient Judge Mitchell L. Beckloff and Judge Michael Levanas 4. Seymour Amster with Horace Mann Honorary Award Recipient Judge Graciela Freixes 5. Los Angeles Superior Court Presiding Judge David Wesley 6. SFVBA Executive Director Liz Post and Adam Grant 7. Judge of the Year Richard H. Kirschner and Presiding Judge David Wesley 8. Administration of Justice Award recipient Judge James A. Steele 9. Leslie Blozan, Bonnie Braiker Gordon, Nancy Reinhardt and Suzanne Feffer 10. Representatives from law firm members of the SFVBA's President's Circle 11. Judge Kirschner, Kathy Everett, Shirley Kirschner and Judge Michael Latin 12. Judge Ray Santana, Judge Benny Osorio and Gonzalo Freixes 13. Judge John Doyle, Judge Susan Speer and Judge Reva Goetz 14. Judge Wendy Kohn, Judge Andrea Thompson, Judge Virginia Keeny and Judge Mary Thornton House 15. Steve Segura, Robert Silver and Agung Atmaja 16. Gold Sponsor University of West Los Angeles's President Robert Brown and Judge Michael Harwin 17. Table Sponsor Christie Parker Hale LLP 18. Table Sponsor Lewitt Hackman Shapiro Marshall & Harlan ALC 19. Table Sponsor Stone Cha & Dean LLP 20. Gold Sponsor Alpert Barr and Grant APLC



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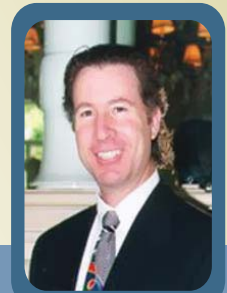


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RECENTLY MY HUSBAND AND law partner asked me if I needed to bring my car keys with me to lunch. When I replied “no,” he asked how I would get the mail without the key. He assumed that like him, I kept my office keys on the same key ring as my car keys and my house key. He assumed incorrectly.

With the technology that is now available, we can seemingly connect every aspect of our lives: arming our home security alarm with our phone, programming our television via our iPad, and even surfing the internet on our televisions. With cell phones, we can be reachable at all times of the day, no matter where we might be. But how much accessibility is too much? At what point do technology and the ability to be reached whenever and wherever blur the line between home life and work life? How do we reestablish that line? Do people even want to?

A partner in a firm I once worked for used to have a mantra that he never told a client “no.” I believe what he meant by that was that his clients always came first and that no matter what was needed, or when or where he was, he would tell the client “yes” and it would get done because clients do not like to be told “no.” More than once, that mantra and attitude led to my getting a call or email on the weekend or in the evening or even on vacation, asking if I could complete a task before the next business morning.

In contrast to that partner’s mantra, I made a conscious decision early in my career to try and maintain a separation between my work and my home life.

As my career develops, and certainly with the opening of my own firm, that separation has become more difficult to maintain (I have a basket of preschool toys in my office and the receptionist computer can often be found playing Disney videos) but I still endeavor to keep it. How? There are a few seemingly simple things that I do which I believe keep that line in place.

First, I keep my keys separate. At the end of the work day, my office keys go into a specific pocket of my purse that I do not open until the following morning. Those keys, when visible, can serve as a reminder of what is waiting for me at the office the next day. By keeping the office keys away from my car keys or house keys, I can close things out for the evening and go home without that tiny, jingling reminder of what tomorrow will bring. That way, I can relax and enjoy the evening with my family.

Second, I do not give clients my cell phone or home telephone numbers. Some of you might disagree and I do know several attorneys who give clients or other counsel their cell phone numbers. Perhaps out of an abundance of caution, I feel the need to maintain that last bastion of privacy. People have asked me for those numbers and I have politely refused to give them. I do not practice criminal or family law, which might necessitate a client needing to locate me at odd hours. Much of my practice revolves either around the courts’ hours (for litigation matters) or normal business hours (for corporate and other business clients) and I am hard-pressed to find another reason that someone other



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than a close friend or family member would need that kind of access to me.


Another reason that I do not give those numbers to clients is because I want those clients to recognize that I have a life outside of my office, just as they do. Too often in today's world of instant gratification, people forget that good things come to those who wait. The same can still hold true in our type of service industry. Would you rather have legal advice that comes in a rush when you have pulled me away from dinner with my family or my child's performance, or even worse from my vacation, without the benefit of my having access to documents or research available in my office? Or would you prefer advice that comes as a result of a calm, measured review or approach while I am at my office?

Just as my clients likely have families and pursuits outside of their businesses or the matters on which I represent them, I need my clients to remember that I, too, have a life outside of my office. Also, in giving a client or opposing counsel that kind of access to us, we run the risk that they will abuse the privilege and call at inappropriate times or for unnecessary things.

Third, I try not to work at home in the evenings. For some, this might be difficult or even impossible, but I really do try to leave everything work related at the office. For those times that it just is not possible and I must do work at home, I try to keep it as separated as possible from my home life by waiting

until my daughters go to sleep and working in my home office, rather than on the couch or at the kitchen table. Keeping the work confined to a specific location at home also keeps me from thinking about it later when I've changed tasks or moved on to something else.

One more thing I do is try not to answer work-related emails in the evening or on the weekends. While I cannot escape emails coming via my smartphone, I can choose not to read them, or after reading them, choose not to respond until the next day (or Monday). In doing so, I avoid any potential back and forth that might result with the client or counsel and which could take up large chunks of time. That being said, there are times when I choose to read a message and respond so that the anxiety does not follow me through the evening or weekend.

Of course there are those who believe that clients should have constant access to them and who often do work from home or maintain a constant connection to their office. Each person is different and must find what works for them and is comfortable in their world. For me, the separation is necessary and I find it helps to reduce the stress that bringing home work can sometimes bring. And as with anything, there are exceptions to my rule of separation, but when those situations do arise, I try to handle them with minimal disruption to my home life. And I still won't give out my cell phone number. 

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sechu@usfca.edu
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Thousand Oaks
adavis@swlaw.edu
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Joe Engle
Simi Valley
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joe@loansmartinc.com
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Oren Fishman
Los Angeles
ofishman@swlaw.edu
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Adrian Garcia
Pacoima
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jgasper@swlaw.edu
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Pasadena
(530) 917-9617
armgebauer@gmail.com
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Gabrielle R. Gilerman
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(818) 300-4926
ggilerman@swlaw.edu
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Lisa Gonzalez
Legal Administrative Support
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Calabasas
(818) 987-8027
lisa@lassusa.com
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Stephen James Goodin
Simi Valley
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crgparalegal@yahoo.com
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Tiffany Haimof
Los Angeles
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(818) 471-3844
iman.jaffrey@gmail.com
Law Student

Celia E. Katz
Park & Sylva
Los Angeles
(213) 769-4616
celia@parksylvalaw.com
Paralegal

Joshua Kohanbash
Tarzana
(818) 758-8428
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(818) 332-1416
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Joanna K. McCoy
Simi Valley
(818) 292-0263
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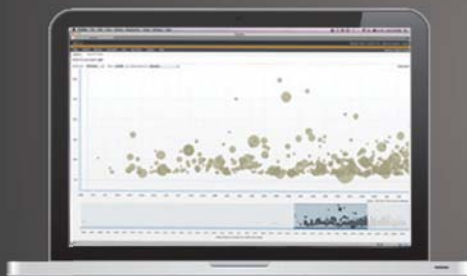
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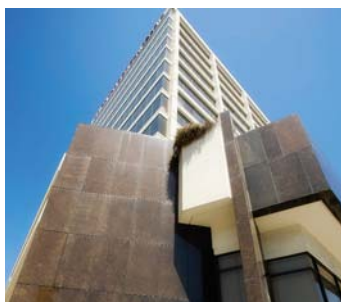
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