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Voices of Experience: SfVBA Past Presidents



Restraining Orders: The Basics

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Hail and Farewell

YI SUN KIM
SFVBA President



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THE PAST PRESIDENTS OF THE SFVBA RECENTLY organized a lunch reunion where the incredible picture for this issue's cover was taken.

The fact that they chose to put this together and so many attended, along with the comradery they shared, was amazing to see. The service and dedication they put into the SFVBA did not end upon the completion of their terms. After several years as Trustees and Officers, our past presidents still seek out ways to help the Bar. Many chair our committees. This involves more than just meetings, but actually putting in the hard work of creating and executing the programs that make our organization relevant.

Whenever the Bar needs experienced guidance, it is our past presidents who volunteer their time. The past presidents have been indispensable, especially now as the SFVBA navigates significant changes in its operations. With that, they bring such integrity to this organization, with a lasting desire to see our group thrive.

It was especially fortuitous for me that the past presidents convened just before the start of my term. Being in their company was uplifting and inspiring. But more than that, so many of them specifically reached out to me to provide advice and encouragement, and offered to be on call whenever I need help or someone to consult. I know I can rely on them, and that they intend to follow through, because they truly desire to see the SFVBA succeed.


What is more amazing is the reason everyone came together. A room full of people who went above and beyond for our organization gathered to honor and thank a person who has done even more for the SFVBA over nearly 25 years.

It was a farewell lunch for Liz Post, our now former Executive Director.

It was a wonderful time to reflect on Liz's impact and legacy. The *Valley Lawyer* would not exist without Liz, who created the *Bar Notes* newsletter, which evolved into this publication. Her ideas, talents, and meticulous editing skills led to the *Valley Lawyer* receiving several journalism awards, including several from the Los Angeles Press Club.

Many of our longstanding programs were initiated under Liz's tenure, including Blanket the Homeless, the Pro Bono Probate Settlement Program, and the MCLE Marathon.

New sections and committees were created, including the Inclusion & Diversity Committee. The SFVBA developed its affiliation with Santa Clarita Valley Bar Association. Liz also vastly improved the internal management, operations and leadership of the Bar itself, adapting to the increasing membership and budget, with a well-run professional office staff and regular attendance at the ABA Bar Leadership Conference.

We are grateful to Liz for making the SFVBA as we know it today. With the continued support of our past presidents, leaders and members, we will continue to grow and adapt with the same spirit and energy she brought to us. 

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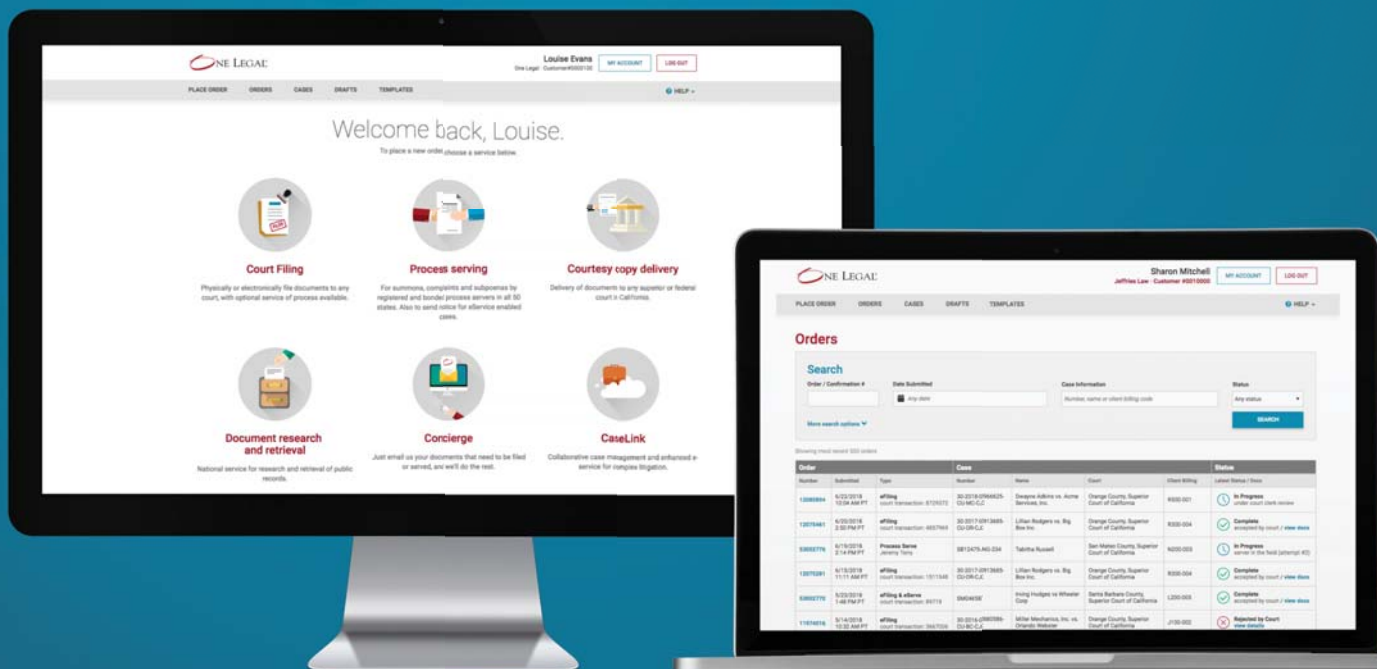




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Building a Legacy

MICHAEL D. WHITE
SFVBA Editor



michael@sfvba.org

MANY YEARS AGO, WALTER Lippmann—journalist, media critic and observer of all things political—said that the final test of good leaders is whether they leave behind them the conviction and the will to carry on.

Over the past nine decades, through some very challenging times, the San Fernando Valley Bar Association has been more than fortunate to have had an unbroken line of leaders who have selflessly served the Bar and the community, investing vast amounts of time and energy to provide direction, guidance and, to paraphrase Lippmann, a worthy legacy to those who came after them.

I was fortunate to hear over the last month from a number of SFVBA Past Presidents who were kind enough to share their thoughts on their role in that legacy and their vision, not only for the good of the Bar, but for the benefit of the entire Valley community.

Albert Ghirardelli, who headed the Bar in 1955, remembers the Bar's Board of Trustees becoming the motive force behind laying the political groundwork leading to the construction of the San Fernando courthouse and the expansion of a new one in Van Nuys.

"The challenge was to convince the Board of Supervisors of the urgency

to build the courthouses to serve the rapidly growing post-war Valley population," he told me.


According to David Hagen, SFVBA president in 1997, "In any particular year, a president spends a good portion of their time dealing with unforeseen issues that arise. Whether it's assessing the need for a press release, or simply soothing egos, these things need immediate

attention and schedules need to be adjusted to create the necessary time."

Zeroing in on the critical need for individual members to consider taking on a leadership role on the Board of Trustees, 2017 SFVBA President Carol Newman said. "We need your ideas, your creativity, and your energy. Please

don't expect to be a placeholder or back bencher. You'll be challenged and the experience will stretch your boundaries, but it's very worthwhile."

The Bar is "a great organization with diverse members with diverse ideas that help us grow every year," said Kira Masteller, the Bar's leader in 2017. "Jump in and share your thoughts, needs, and wants and help our Bar deliver what lawyers and legal vendors want to our legal community and the public."

Lesson learned—A legacy can only advance as far as the vision and commitment of those willing to serve. 

“
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				Membership & Marketing Committee 6:00 PM SFVBA OFFICES		
4	5	6	7	8	Bankruptcy Law Section 9th Circuit BAP Cases 12:00 NOON SFVBA OFFICES Judge Victoria Kaufman, attorneys Andy Goodman and Jeff Hagen discuss recent significant cases. Approved for Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)	10
11	VETERANS DAY  SFVBA OFFICES CLOSED	12 Probate & Estate Planning Section Recent 2018 Developments 12:00 NOON MONTEREY AT ENCINO RESTAURANT Mark Phillips discusses the latest developments every probate and estate planning attorney should know. (1 MCLE Hour)	13	14	15	17
		Board of Trustees 6:00 PM SFVBA OFFICES			LACBA Environmental Law Section Presents 17th Annual Environmental Law See ad below	16
18	Family Law Section Hot Tips 5:30 PM MONTEREY AT ENCINO RESTAURANT Moderated by Gary Weyman, our Valley family law judicial officers will share their hot tips regarding the preparation and presentation of cases in the family law courtroom. Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	19	20 Taxation Law Section Update from the California Assembly Committee of Revenue and Taxation 12:00 NOON SFVBA OFFICES San Fernando Valley Assemblymember Luz Rivas will discuss the latest news regarding the Committee. (1 MCLE Hour)	21	22	23
						24
25		27 Business Law & Real Property Section Business Succession Planning Sponsored by  12:00 NOON SFVBA OFFICES Kira Masteller will address the group. This seminar will be of interest to business transactional/corporate/real estate and estate planning attorneys as well as CPAs and life insurance agents. Something for everyone! Free to Current Members. (1 MCLE Hour)	28	29	30	
	26				<div>  <p> LACBA LOS ANGELES COUNTY BAR ASSOCIATION Environmental Law Section Presents: November 9, 2018 • noon 17th Annual Environmental Law Fall Symposium Register now at (213) 896-6560. SFVBA members get the same price as LACBA members </p> </div>	

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2  Happy Hanukkah	3	4	5	6 Membership & Marketing Committee 6:00 PM SfVBA OFFICES	7	8
9	10	11 Probate & Estate Planning Section Crossover Issues in Estate Planning and Family Law 12:00 NOON MONTEREY AT ENCINO RESTAURANT What are the issues of concern for both estate planning attorneys as well as family law practitioners? Jeffery S. Cohen will examine both shared concerns and particular variances. (1 MCLE Hour)	12	13	14 Bankruptcy Law Section Recent Supreme Court Cases 12:00 NOON SfVBA OFFICES Certified specialist M. Jonathan Hayes and Judge Allan Ahart lead their annual seminar. Approved for Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)	15
16	17	 <p>We're DECKING new HALLS & Lighting a NEW WAY</p> <p>Join us as we gather one last time at our Tarzana offices! HOLIDAY OPEN HOUSE December 11, 2018 5:30 p.m. SfVBA Offices Bring an unwrapped new toy or gift card to benefit the children of Haven Hills and West Valley Food Pantry. <i>RSVP</i> to (818) 227-0495 or events@sfvba.org.</p>				
23	24	25 	26	27	28	29
30	31					



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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.

Restraining Orders: The Basics

By Louis V. Kosnett

The two most common forms of restraining orders in California are Domestic Violence Restraining Orders and Civil Harassment Restraining Orders. Each is adjudicated differently, involves different relationships between the parties, and requires different burdens of proof to be met before the order is issued.



RESTRAINING ORDER CASES INVOLVE ONE party, the petitioner, asking the court to issue an injunction against another party, the respondent. An injunction, as defined by Black's Law Dictionary (10th Ed.) is "a court order commanding or preventing an action."

In effect, the petitioner requesting a restraining order is asking the court to command or prevent an action by the respondent. That action could be not speaking to the petitioner—whether in person, on the phone, or by electronic communication—or not approaching within a certain distance of the petitioner's home or work, for example.

Further, a petitioner may also ask that any injunction issued by the court apply to other members of her household, even if they are not a party.¹

The two most common forms of restraining orders in California are Domestic Violence Restraining Orders and Civil Harassment Restraining Orders. Each is adjudicated differently, involves different relationships between the parties, and requires different burdens of proof to be met before the order is issued.

Civil Harassment Restraining Orders

Civil Harassment Restraining Orders (CHRO) may be issued pursuant to Code of Civil Procedure (C.C.P.) §527.6, which provides in subsection (a)(1) that a person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section. Section (b) defines "harassment" as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose."

The course of conduct "must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner."

As written, the language is broad, and covers a wide range of behaviors by the respondent. Harassment can be physical violence, a threat of physical violence, or any course of conduct that "seriously alarms, annoys, or harasses the [petitioner]."

In addition, the behavior by the respondent must be that which would cause a "reasonable person" to suffer substantial emotional distress. Civil harassment orders are typically not issued for behavior by the respondent that is offensive only to an overly sensitive petitioner; however, if the respondent is aware of such sensitivity, and intentionally exploits it, then that may be considered harassment.

Further, the conduct must actually cause substantial emotional distress to the petitioner. As outrageous as the respondent's conduct may have been, no order can be issued if the conduct does not actually cause emotional distress to the petitioner. For example, if the petitioner was not aware of such behavior at the time that it was being performed, then there is a good argument that the petitioner has not met this required element under the statute.

In addition to the relationship between the parties, one of the distinguishing features of civil harassment restraining orders is the high burden of proof that the petitioner must meet for an order to issue after the hearing. The petitioner must prove all the elements of harassment by clear and convincing evidence.² While there is no set definition of what this burden of proof entails, it is generally seen as greater than a preponderance of the evidence (such as in civil trials), and less than beyond a reasonable doubt (as in criminal trials). California courts have defined the standard of "clear and convincing" as requiring a finding of high probability.³

A petitioner in a civil harassment restraining order case must therefore be prepared to satisfy a high burden of proof in order to convince a judge to issue the order.

Common civil harassment situations may be disputes involving landlord and tenant, employer and employee, neighbors, or non-romantic roommates.

Domestic Violence Restraining Orders

The other most commonly filed restraining order petition is the Domestic Violence Restraining Order (DVRO). The law pertaining to DVROs is codified in California Family Code (Fam. Code) §6200, et seq., known as the Domestic Violence Prevention Act (DVPA).

Unlike the relationship between the parties in civil harassment petitions, the petitioner and respondent in a DVRO proceeding must have a close personal relationship with each other. The respondent in a DVRO must be associated with the petitioner in one of the following ways:



Louis V. Kosnett is a Los Angeles-based attorney practicing in the area of criminal defense and restraining order petitions. He can be reached at louiskosnett@kosnettlaw.com.




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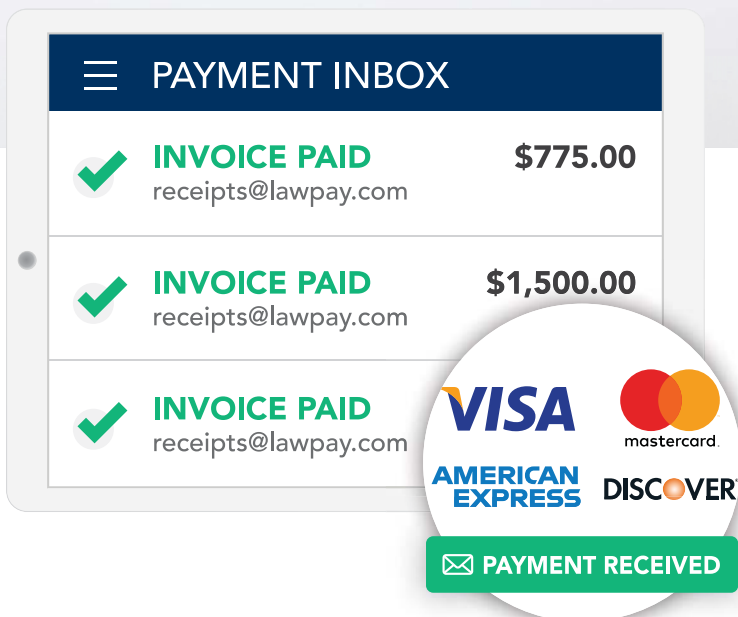
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- A spouse or former spouse
- A cohabitant or former cohabitant, as defined in Section 6209
- A person with whom the respondent is having or has had a dating or engagement relationship
- A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3, commencing with Section 7600, of Division 12)
- A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected
- Any other person related by consanguinity or affinity within the second degree [blood relative]⁴

Accordingly, DVRO cases typically involve parties in a current or former dating relationship, spouses (often coinciding with a divorce case), or close family members. The court takes fewer chances with domestic violence situations, and will issue a restraining order if the petitioner

can show “...to the satisfaction of the court, reasonable proof of a past act or acts of abuse.”⁵ This has been interpreted to mean that a petitioner must demonstrate abuse by only a preponderance of the evidence.⁶

What is Abuse?

Under the DVPA, abuse is legally defined as intentionally or recklessly causing or attempting to cause bodily injury; sexual assault; placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another; or engaging in any behavior that has been or could be enjoined pursuant to Section 6320. Abuse is not limited to the actual infliction of physical injury or assault.⁷

Abuse is defined more narrowly than the statute defining harassment for CHROs (C.C.P. §527.6). While harassment under C.C.P. §527.6 may cover any number of activities that could cause a reasonable person to suffer substantial emotional distress, abuse under the DVPA is limited to physical violence, sexual violence, credible threats of violence, or any activity under Fam. Code §6320.⁸

How Restraining Orders Affect Your Record

Once a restraining order—either a CHRO or a DVRO—is issued by a judge after a hearing, it is entered into the Criminal Law Enforcement Telecommunications System (CLETS). This means that the issuance of the restraining order will show up on a criminal background check.

This can be especially problematic for someone working at or applying for government positions, positions that require that applicant to have a clean record, or any job where the applicant’s criminal record is routinely searched as a condition of employment. Many employers will draw negative inferences about the applicant based solely on the issuance of a restraining order appearing in the applicant’s background check.

In addition, once a restraining order after hearing is issued, the respondent is prevented from owning or purchasing a firearm while the restraining order is in effect. A violation of this order is typically charged as a misdemeanor.⁹

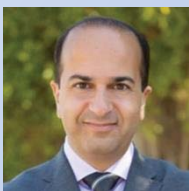
Temporary Restraining Orders

At the time a restraining order petition is filed, typical practice is for the petitioner to simultaneously request a Temporary Restraining Order (TRO). A TRO is issued to maintain the peace and protect the petitioner while the case is pending, and does not affect the respondent’s criminal record.

A TRO may be (and typically is) issued by a reviewing judge upon reasonable proof of either harassment (for a CHRO) or abuse (for a DVRO), and that great or irreparable harm may result to the petitioner if the TRO is not granted. If a judge is unwilling to grant the TRO, that essentially means



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that the petitioner has not made a reasonable prima facie case of harassment or abuse, and does not bode well for the petitioner's case.

Although ex parte rules of court typically require that the opposing party be given notice a day in advance, a TRO often is issued without notice to the respondent in order to avoid the potential for violence or harassment.

Steps to Obtain a Restraining Order

There are four well-defined steps to obtaining a restraining order:

1. Prepare the petition. The Judicial Council has developed forms that guide a petitioner through the steps involved in filing a restraining order. The Civil Harassment Petition is numbered CH-100, and the Domestic Violence Petition DV-100. These forms are freely available online as fillable PDFs through the Judicial Council website.¹⁰

Although the form guides the petitioner through all the elements of a restraining order petition, the petitioner must still offer a narrative of the harassment or abuse inflicted on the petitioner by the respondent. The petition may be prepared by an attorney, but must be signed by the petitioner himself under penalty of perjury.

2. File the petition in the proper courthouse. The appropriate courthouse for filing a restraining order petition is in the county where the respondent lives or where the harassment or abuse takes place. For large counties like Los Angeles, the proper courthouse is generally the one closest to where the alleged abuse occurs. The Los Angeles Superior Court website features a filing locator that allows a petitioner to locate the proper filing courthouse by entering the address.¹¹

A petitioner is encouraged to arrive at the courthouse early to file the petition and allow time for the judge to review and issue the TRO the same day. Judges typically have a large calendar to get through, so the petitioner should be prepared to wait several hours if necessary.

3. Serve the court documents on the respondent. Once a Restraining Order Petition has been filed, the respondent must be given notice of the petition, and a chance to respond. The respondent must be served with the stamped Restraining Order Petition, a Notice of Hearing form containing the date that the case will be heard by the judge, the signed TRO (if one is issued), and a blank response form (either a CH-120 or a DV-120) for the respondent to complete. A judge will not issue a restraining order against a respondent based solely on the failure to file a written response, but a smart respondent will help himself by doing so, which gives the

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Judge something in writing to review at the time of the hearing.

The petitioner may not herself serve the respondent.¹² Anyone else may do so, but petitioners are encouraged to use professionals, such as a registered process server or sheriff, in order to ensure that the service is carried out properly, and the proof of service form completed accurately. In cases of domestic violence, the sheriff will serve the orders free of charge. The respondent must generally be served at least five days in advance of the hearing, although if the respondent shows up without being properly served, the court will give her the choice of either proceeding that same day or continuing the hearing.

4. Attend the hearing. Both parties must attend the hearing on the date the court selects. Restraining order petitions are finally decided by a judge, and neither party is entitled to a jury. If the petitioner does not attend, the case is dismissed, and the TRO dissolved, without any argument necessary from the respondent. If the respondent does not attend, the petitioner must still offer either clear and convincing evidence of harassment (in civil harassment petitions) or reasonable proof of abuse (in domestic violence petitions) to the court.

Obviously, having only one party present to argue their side of the case greatly increases the petitioner's chance of having the restraining order granted. If the respondent does attend, they are entitled to one continuance as a matter of right, without having to demonstrate good cause. The petitioner, presumably given more time to prepare their case, does not have this right, and must demonstrate good cause for the hearing to be continued.

At the hearing, in addition to the evidence presented by the parties (which typically consists primarily of the parties' own testimony) the judge will consider absolutely everything, from the parties' demeanor, to their behavior towards one another and to the court, to even the clothes they wear and the way in which they present themselves. This is often the only opportunity each party will have to convince the judge that they are right. It is wise for each party to be on their best behavior. Judges

do not appreciate interruptions, disrespect, or wasting of the Court's time.

These hearings are typically fraught with tension, extremely emotional parties, and large stock of evidence and testimony (much of which is often irrelevant, according to evidentiary rules). Judges will often give the parties (most of whom are not represented by counsel) a large amount of leeway, but often eventually run out of patience, mindful of the full courtroom filled with petitioners and respondents waiting for their cases to be called.

For that reason, it is best practice for each party to start off with the strongest, most impactful evidence in their possession, and work their way down. It is unwise to interrupt or insult the other party, speak directly to the other party rather than to the judge, use profanity,

or demonstrate any lack of respect and deference to the court. Judges have little time with each case, and take everything they see and hear into account in their ruling. A judge's determination of each party's credibility is a significant factor. If a judge determines that one party is not credible, it is practically guaranteed that the ruling will not be in their favor.

After the Hearing

After the hearing, the judge will either issue a restraining order, or deny the petition. Often, a judge who feels that the petitioner has not quite met their burden will deny the petition "without prejudice," which means that if there are any further instances of abuse or

harassment by the respondent, the petitioner can re-file their restraining order petition.

If the judge grants the petition, both parties will be served with identical copies of the restraining order, clearly laying out what activities the respondent is legally prevented from taking with regard to the petitioner. These orders typically require the respondent to stay a certain distance away from the petitioner (and any other protected persons included on the petition, if any), the petitioner's home, car, and place of employment. It will also include an order to not contact the petitioner, and not own any firearms. In cases where minor children are involved, unless there is good cause not to do so, the order will often indicate that the petitioner and respondent may have brief, peaceful contact for issues related to the children.

The order will also inform the parties that if the respondent contacts the petitioner, the petitioner may record



An experienced attorney should be able to present evidence in the most compelling and effective way, maximize its effectiveness, and give her client the best chance to prevail."


the phone call without the respondent's consent (which, under normal circumstances, would be a crime).¹³ The order will specify the length of time it is in effect, and the date it expires. A violation of either the TRO or the restraining order is typically a misdemeanor, which subjects the respondent to arrest and possible incarceration.¹⁴

Do I Need to Pay for a Lawyer?

The vast majority of petitioners and respondents in both CHRO and DVRO petitions are self-represented, and the process is designed to be accessible to non-attorneys. However, considering what is at stake for both parties, it may be worth the expense to retain an experienced restraining order attorney. A respondent who represents himself risks not utilizing his best possible defense, and faces damage to his reputation, as well as his current or future employment prospects.

Similarly, a petitioner who acts as his own counsel risks emotion clouding both his thought process and judgment. This could impair her ability to present his best possible case against the respondent. An attorney, on the other hand, is more capable of resisting the challenges presented by the high level of stress and emotion inherent in restraining order hearings.

An experienced attorney should be able to present evidence in the most compelling and effective way, to maximize its effectiveness, and give their client the best chance to prevail.

In addition, the prevailing party in both CHRO and DVRO petitions may, at the discretion of the judge, be awarded reasonable attorneys' fees and costs.¹⁵ It is good practice for every attorney to make that request at the earliest opportunity, and submit a Keech Declaration that details reasonable attorneys' fees and costs. 

¹ For purposes of this article, "his" and "her" are used interchangeably.

² See C.C.P. §527.6(i).

³ See *In re Angelia P.*, 28 Cal. 3d 908, 919, 623 P.2d 198, 204 (1981).

⁴ Fam. Code §6211

⁵ Fam. Code §6300

⁶ *Gdowski v. Gdowski*, 175 Cal. App. 4th 128, 137, 95 Cal. Rptr. 3d 799, 805 (2009)

⁷ Fam. Code §6203

⁸ (a) The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating as described in Section 528.5 of the Penal Code, falsely personating as described in Section 529 of the Penal Code, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.

⁹ California Penal Code (Pen. Code) §29825.

¹⁰ <http://www.courts.ca.gov/formsrules.htm>.

¹¹ <http://www.lacourt.org/filinglocator/ui/filingsearch.aspx?CT=FA>.

¹² C.C.P. §414.10.

¹³ Pen. Code §632.

¹⁴ Pen. Code §273.6.

¹⁵ C.C.P. §527.6(s), Fam. Code §6344.



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Test No. 121

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 parties in a civil harassment or domestic violence restraining order case are known as the "plaintiff" and the "defendant."
☐ True ☐ False
2. A Domestic Violence Restraining Order petition requires that the parties have a close personal relationship with each other.
☐ True ☐ False
3. A petitioner in a Civil Harassment Restraining Order case must meet a higher burden of proof than a petitioner in a Domestic Violence Restraining Order case.
☐ True ☐ False
4. Most parties in a restraining order case do not retain counsel.
☐ True ☐ False
5. The petitioner may not serve the respondent with court documents herself.
☐ True ☐ False
6. In order for a Civil Harassment Restraining Order to be issued against a respondent, it must be found by the judge that the respondent committed an illegal act.
☐ True ☐ False
7. If the respondent does not appear at the restraining order hearing, the judge will automatically issue a restraining order against the respondent.
☐ True ☐ False
8. If the petitioner does not appear at the restraining order hearing, the judge will dismiss the case
☐ True ☐ False
9. After the hearing, the judge may, at their discretion, award the prevailing party reasonable attorneys' fees and costs.
☐ True ☐ False
10. If the judge rules against the petitioner at the hearing, the petitioner is prevented from ever filing another restraining order petition against the same respondent.
☐ True ☐ False
11. Recording a phone call without the other party's consent is illegal without a court order.
☐ True ☐ False
12. A temporary restraining order may not be issued without notice to the respondent.
☐ True ☐ False
13. A violation of either a TRO or Restraining Order after Hearing is a crime, subjecting the respondent to arrest and incarceration.
☐ True ☐ False
14. A petitioner may request that other persons be protected as well, even if they are not parties.
☐ True ☐ False
15. Since the issuance of a Restraining Order after Hearing does not make the respondent a criminal, such an order will not be visible on a criminal background check.
☐ True ☐ False
16. A Domestic Violence Restraining Order after Hearing may be issued against the respondent even if there is no finding by the judge that the respondent used physical violence against the petitioner.
☐ True ☐ False
17. Neither party in a restraining order case has the right to a jury.
☐ True ☐ False
18. Once a Restraining Order after Hearing is issued, the respondent may keep any firearm he or she owns, but may not purchase new firearms.
☐ True ☐ False
19. A petitioner has the right to one continuance of the restraining order hearing, without a showing of good cause.
☐ True ☐ False
20. The party who speaks the loudest and interrupts most frequently usually prevails.
☐ True ☐ False

MCLE Answer Sheet No. 121

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:

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METHOD OF PAYMENT:

- ☐ Check or money order payable to "SFVBA"
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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) 227-0495.

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Phone _____
State Bar No. _____

ANSWERS:

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

1.	<input type="checkbox"/> True	<input type="checkbox"/> False
2.	<input type="checkbox"/> True	<input type="checkbox"/> False
3.	<input type="checkbox"/> True	<input type="checkbox"/> False
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20.	<input type="checkbox"/> True	<input type="checkbox"/> False

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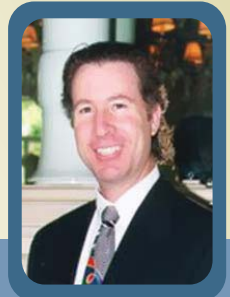
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By Michael D. White

Voices of Experience: SFVBA Past Presidents



Photos by Ron Murray





IT'S AN AGE-OLD QUESTION: WHAT IS IT THAT MAKES good, effective leaders? First off, they don't just do things, they help change things. They admit mistakes with self-awareness and honesty, seek feedback, and maintain a focus on the future. Good leaders build and motivate the team, set and prioritize goals, communicate and delegate, and display humility in success and confidence during setbacks. They step back so others can step up, and they listen to learn from both praise and criticism, while not being flattered by the former or derailed by the latter.

Or, as another President, John F. Kennedy, once put it, good leaders possess "the capacity to translate vision into reality."

Since 1926, 88 men and women have displayed those characteristics while serving as President of the San Fernando Valley Bar Association.

They have led the Bar through thick and thin, overseeing its growth from a handful of attorneys serving a rural outback, to its current position as one of the most highly respected Bars in the state. Thanks to their leadership, the Bar has more than 2,000 members—attorneys, paralegals, bench officers, law students, and associate professionals—filling its roster.

A number of SFVBA past presidents recently responded to several questions about their tenure as the Bar's leader—the challenges, balancing career and Bar duties, the highs and lows, and advice for those who will follow in their footsteps in years to come. Their responses are both illuminating and thought-provoking.

For some, their term of office was relatively smooth sailing. "The SFVBA during my term as President was so well run that it wasn't an imposition to achieve that balance," says Stephen T. Holzer, who served as Bar President in 2003. "There was no internal squabbling among the Board members and/or the staff that distracted from our mission...there really were no crises."

For others, the demands of office were offset by having a strong support mechanism in place.

"I had to put in many extra hours every day and every week and try to balance my office time with my responsibilities," says Donald Zelinsky, who didn't consider his 1991 tenure in the position "too big a challenge since I had a great group of people around me working with me."

Alice A. Salvo underscores her predecessor's opinion, lauding the "good support staff at the Bar office and at my office" for her success as the Bar's leader in 2005. "It's a good group of people and was a very rewarding experience."





Being the president of an organization like the SFVBA is extremely challenging. How did you balance your professional career with your responsibilities as president?

I wouldn't say that being Bar president was as much challenging as it was gratifying. I was fortunate to have a fabulous Board of Trustees. They had very diverse points of view yet came together to pursue the common goals of the organization. I was blessed to have several past presidents tell me that I could call upon them at any time for advice or just to talk. This was a huge source of support. Finally, I was fortunate to have Liz Post as Bar Executive Director, continually making me look good. It did take a commitment of time. But it was a very, very rewarding experience."

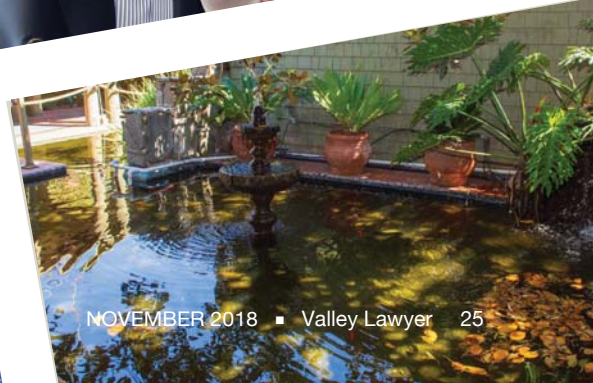
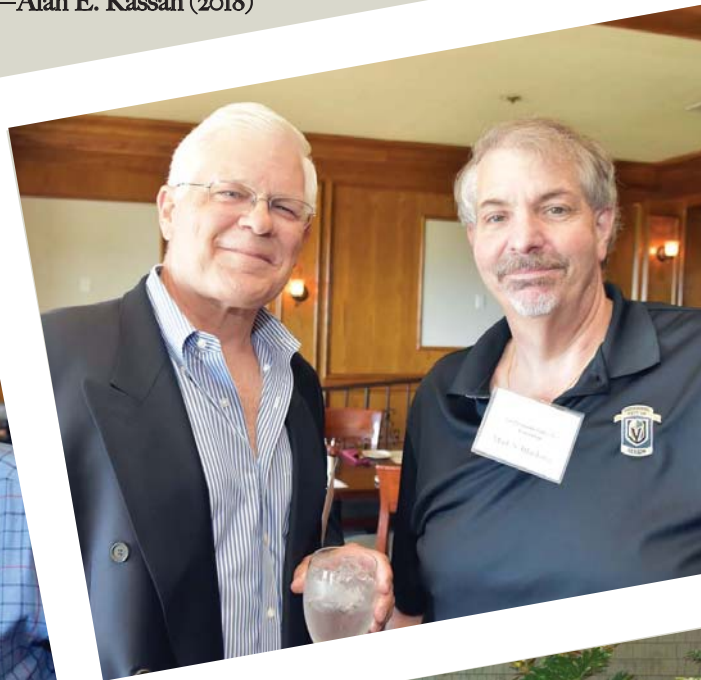
—David R. Hagen (1997)



Being SFVBA President certainly took some time, but if you love what you're doing it makes it a lot easier to put in the extra hours."—Fred Gaines (1999)

Professional career, what professional career? Seriously, you just make time. Nights, early mornings, weekends, it works out. There's an old saying "if you want something done, ask a busy person to do it." I think it's true. When you're busy, you're on a roll, and you are just able to fit things into a schedule. Less idle time maybe, but heck, when you're having fun, who needs idle time, right?"

—Alan E. Kassan (2018)



What was the high-point of your time as SFVBA President?

The establishment of the Valley Bar Mediation Center was my high-point. With David Gurnick, Myer Sankary, Enrique Koenig and Milan Slama and the support of the SFVBA trustees, we established the Los Angeles Superior Court's successor ADR entity. Which, I am pleased to say, received the LASC contract and is providing pro bono and low cost mediators to assist the court."

—Adam D.H. Grant (2014)

We were nowhere near the size then that we are now, perhaps 300 members. With many of them involved, one way or another we were able to lay the political groundwork, which in a few years led to construction of the San Fernando Courthouse and the expansion of a new one in Van Nuys. We also had a successful annual dinner and live show with large participation of members, their spouses, and even some of the judiciary. Much fun."

—Albert J. Ghirardelli (1955)

Reflecting back seven years, I can say that there were several high-points. Clearly the most memorable, however, was leading the annual Judges' Night. We, as a Bar, enjoyed the largest attendance at that February, 2012 event than in any prior year. Surely the attendance was boosted by the appearance of our guest speaker, the Hon. Tani Cantil-Sakauye, who was serving in her second year as the California Supreme Court's Chief Justice. Being able to introduce this inspiring and brilliant jurist was my "meet Rocky Colavito" moment (the Cleveland equivalent to NY's Mickey Mantle)."—Alan J. Sedley (2012)

Bringing the VCLF and the Bar together to provide a professionally performed play and educational opportunity to learn about the many sides of a defamation lawsuit, to San Fernando Valley high school students. The SFVBA and VCLF worked together to raise funds and provide support to present this play and the students and teachers were very satisfied with this unique experience. We had a lot of political issues occurring while I served as President, and I gave a voice to the Board Members to share their concerns, allowing fair time for the many different opinions. This often did not make everyone happy, but I felt that hearing each of our valued Board Member's concerns was extremely important during the political changes our community and country were/are facing. If the Bar had an opportunity to help our members as a result of the many concerns, we all discussed those opportunities and took action where there was a consensus."

—Kira S. Masteller (2017)

What challenges did you face during your tenure? Are there any that you confronted that still face the Bar's incoming leadership?

There were plenty of challenges, all of which still endure today, including increasing membership, motivating the membership to participate in our bar association, keeping the members we do have, and otherwise ensuring our survival as a voluntary bar. All voluntary bars have these challenges, including now the California Lawyers Association, which has been spun off from the State Bar. We are all in competition with each other and have to convince lawyers why we matter."

—Carol L. Newman (2016)

In 1993, our Executive Director retired, so for a few months we faced the challenges of opening the mail, paying routine bills, giving direction to our professional staff, managing and running our day-to-day business without a professional staff person in charge. We conducted a recruitment process and Elizabeth Post came to us. Our biggest challenge became our biggest success, choosing Liz who served our organization well in every way for 25 years. The challenges of maintaining and growing our membership, getting more lawyers in the community to be part of our organization, keeping up to date on needs and interests of our members, inspiring members to accept leadership responsibilities, bringing in revenue to meet all our expenses, focusing our energies on matters within our purview as a geographic-based lawyers organization, making difficult decisions to stay out of matters—many of them sympathetic—that are outside our purview, and on matters of controversy within our purview, deciding whether to try to represent all our members, or to lead at the risk of offending some; these are some challenges that have been, and will continue to be with us."

—David Gurnick (1994, 2013)

We had an interesting issue during my year as President. There was an effort to recall Judges Joyce Karlin and Presiding Judge Ricardo Torres. The recall effort was as a result of a probation sentence in a criminal matter. The Bar voted to support the judges and the independence of the judiciary."

—Gary Barr (1993)

Specific challenges during my tenure included: budget issues at the courts and working with the judges and legislators to try to obtain additional funds and at the same time improve efficiencies at the court, reinvigorating the Attorney Referral Service and the ARS Committee, and trying to work with the Valley Community Legal Foundation to strengthen the relationship between the two organizations during a transitional period at the Foundation. Unfortunately, the court budget continues to be an issue, although improvements have been seen to some extent. The relationship between the Foundation and the Bar continues to be something that the Bar is working on and I know that Yi Sun Kim, the new President, is committed to strengthening the relationship."

—Caryn Brottman Sanders (2015)



What advice would you give those considering a run for leadership positions on the SFVBA Board of Trustees?

“Have a strong vision of what you want to accomplish in leadership, and be able to communicate that vision to the membership who will ultimately elect those persons that they believe will take the organization in a positive direction, and to the Board members so that you have the support of the Board during your tenure.”—**Richard A. Lewis (2006)**

“My advice to incoming officers is to expect the unexpected. However much you plan and organize, something can (and probably will) arise that puts all your hard work on the back burner and forces you to cope with a challenge entirely different than what you expected. SFVBA has been very creative in developing ways to attract and keep members over the years, so my last bit of advice is to keep up the good work and build on what you have.”—**Tamila C. Jensen (2009)**

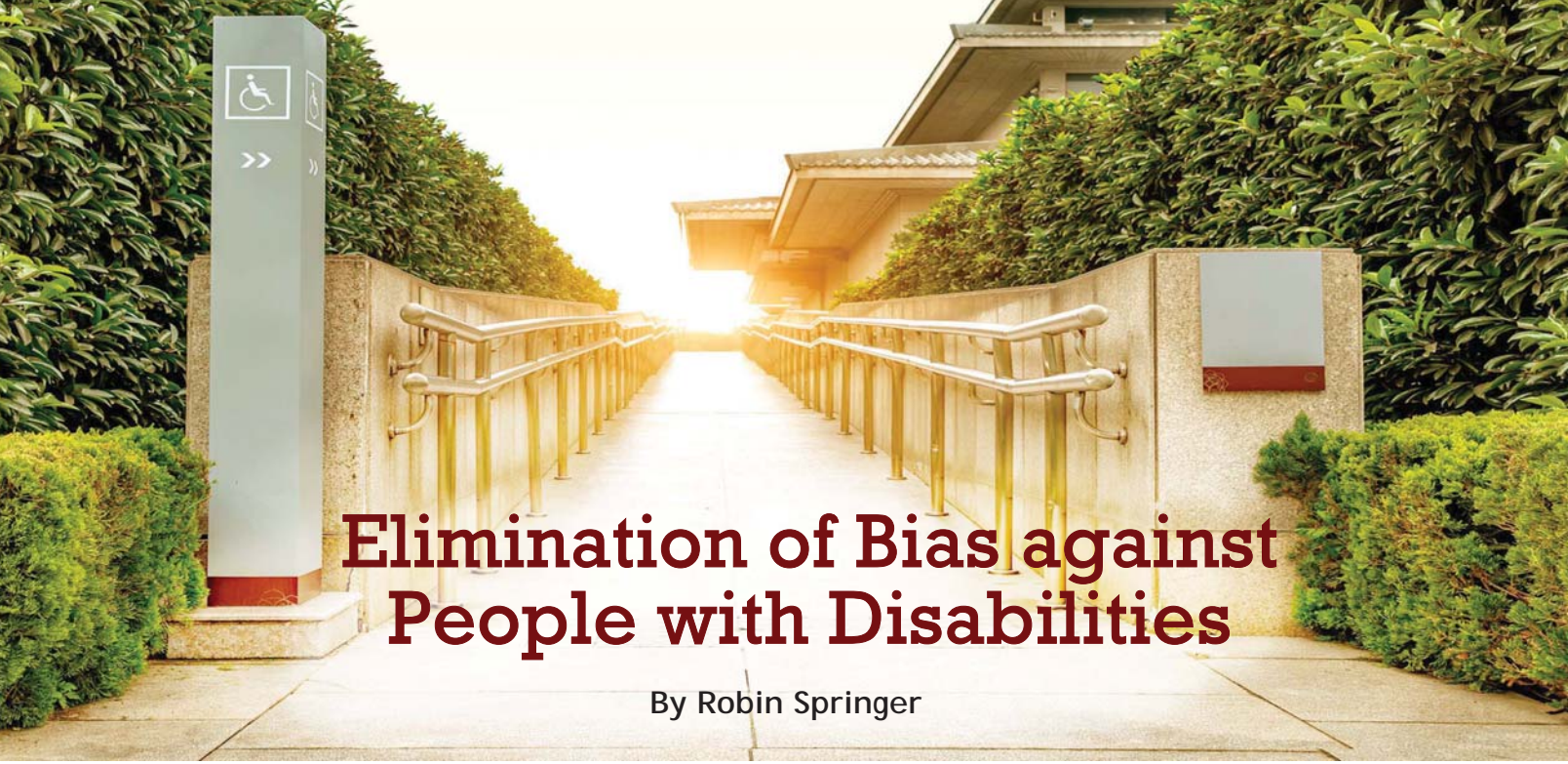
“Don't be afraid to think outside the box. There is no bad idea. Collaborate with others, delegate and check in to make sure things don't fall through the cracks.”—**Sue Bendavid (2008)**

“Determine the importance of the Bar to you and your passion for the SFVBA. If you have done this for title, to do nothing and only take, for some egotistical reason or just to seek to gain business, drop out of leadership, now. Leadership positions in this Bar require and deserve time, and financial resources and is not for the faint of heart. You must understand that YOU are an essential part of the success and failure of this organization and you must be willing to give what you can in time, finances and other commitments. If you don't, both the Bar's and your reputation will suffer, so leadership in this Bar means commitment. Remember that you are not there to deal with the personalities or ego of anyone. You are there to benefit the Bar, so focus on the issues and not the individuals and it will be best for the Bar and for you, as well, in the long run. Always remember, it will be amazing as to how much you can accomplish, achieve and feel good about, if you are not concerned about who gets the credit.”

—**Lee Kanon Alpert (1986)**



Our sincere condolences go to the family of SFVBA Past President Kevin G. Lynch, who passed away on October 9 at the age of 85. Lynch led the Bar in 1973. A graduate of Southwestern University, he began his 57-year career as a Prosecutor in the Los Angeles City Attorney's Office. He later joined the law firm of Lewis, Varni and Ghirardelli and was made a partner with the firm which became Lewis, Varni, Ghirardelli and Lynch. Interestingly, all four partners had served or would serve as Presidents of the SFVBA. Eventually, Lynch formed the firm Lynch & Freytag with Marilyn Freytag before establishing the firm of Lynch & Lynch with his son, Craig.



Elimination of Bias against People with Disabilities

By Robin Springer

THE AMERICANS WITH Disabilities Act (ADA)¹ was signed into law in 1990, enjoying strong bipartisan support.

Congress passed the law “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities,”² doing so, in part, because, “the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disability... opportunities for which our free society is justifiably famous, [costing] the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.”³

Groundbreaking Legislation

The ADA has three main sections: Title I addresses employment; Title II, government; and Title III prohibits discrimination by places of public accommodations.⁴

Title III provides, “No individual shall be discriminated against on the

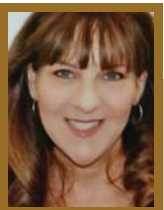
basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”⁵ Discrimination includes “a failure to remove architectural barriers...in existing facilities...where such removal is readily achievable.”⁶

There are guidelines for structural elements. For example, doorways must be a certain minimum width and the slope and rise of ramps must also meet certain criteria. These specifications are not arbitrary. If an entrance to a building has stairs but no ramp, people in wheelchairs, who use walkers, or who have other types of impaired mobility cannot get in. If a door is too narrow, people in wheelchairs cannot get through, whether to enter a building or a restroom. Objects protruding from walls must be mounted at specified heights to protect people with visual impairments.

Freedom from architectural barriers helps everyone. Just ask your local FedEx driver or mom with a stroller if they prefer stairs or a ramp. “When a pub has steps I’m disabled. When it’s wheelchair accessible, I’m Martyn,” says blogger Martyn Sibley.

In response to earlier Supreme Court decisions that narrowed the definition of “disability” under the ADA, Congress enacted the ADA Amendments Act of 2008, which took effect January 1, 2009. The Department of Justice issued its final rule on October 11 2016. According to Congress:

“The primary purpose of the ADA Amendments Act is to make it easier for people with disabilities to obtain protection under the ADA... The primary object of attention... should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of ‘disability.’”⁷



Robin Springer is an attorney focusing on the areas of technology and civil, disability, and privacy rights. She can be reached at robin@robinesq.com.

Architectural Barriers

Architectural barriers are “physical features that limit or prevent people with disabilities from obtaining the goods or services that are offered.”⁸ This includes communication barriers, which are barriers, structural in nature, that are an integral part of the physical structure of a facility. For example, conventional signage should be adapted to be accessible to people with visual impairments, and audible alarms should include a visual cue, such as a flashing light, to alert people with hearing impairments.⁹

Facilities constructed after January 26, 1992, must fully comply with the 2010 Standards for Accessible Design. For buildings constructed before January 26, 1992, there is one requirement for facilities undergoing alterations and a less stringent requirement for facilities that have not been altered.¹⁰

When a barrier is identified, it needs to be removed when to do so is readily achievable. Readily achievable means “easily accomplishable and able to be carried out without much difficulty or expense.”¹¹ To determine if barrier removal is readily achievable, several factors are considered, including the nature and cost of the action and the time and expense required by the business to remove the barrier.¹²

A business can claim barrier removal is an undue burden, in which case the readily achievable elements are applied as to the business.¹³ If barrier removal is found to be an undue burden, the business need not remove the barrier.

Currently, when a person with a disability encounters discrimination on the basis of disability at a place of public accommodation, the person can: (a) talk with the business; (b) file a complaint with the Department of Justice (DOJ); or (c) file a lawsuit as provided under law.¹⁴

H.R. 620

The ADA was a compromise; plaintiffs cannot obtain money damages and

businesses are not required to remove every barrier. There are even tax credits and incentives to assist businesses in complying with the law. In spite of this, thirteen notification bills to weaken the ADA have been introduced in Congress since 1999.

No other federal civil rights law has a notification requirement. For perspective, had the Civil Rights Act been law in 1955 and had it included a notification requirement, Rosa Parks would have had to write a letter to the bus company before enforcing her rights.

H.R. 620 is one such notification bill. Passed by the House of Representatives in February 2018, the legislation is currently pending in the U.S. Senate. H.R. 620 changes the requirement of the ADA from “providing access” to making “substantial progress,” without ever removing the barrier.

The bill says people with disabilities who have had their civil and human rights violated can no longer sue the business (option “c” above). Instead, the person with a disability must send written notice to the business, explaining the exact part of the ADA that has been violated, among other requirements.¹⁵

H.R. 620 would give the business 60 days to acknowledge there is a barrier, and then a minimum of 120 days to claim it is making “substantial progress” in removing the barrier.¹⁶ There is no penalty to the business for non-compliance as long as it claims “substantial progress.” But there is no definition of substantial progress. The result is that a business could spend years without removing the barrier.

“H.R. 620 will destroy any incentive under the ADA for timely removal of architectural barriers in public accommodations,” U.S. Senator Tammy Duckworth, a double-amputee and Army veteran, writes in a letter to the Senate opposing the bill.¹⁷

H.R. 620 is silent regarding filing complaints with the DOJ; however,



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10 of 25 (or 40 percent) of guidance documents the Department rescinded in 2017 concern disability,¹⁸ suggesting it may not pursue claims of accessibility violations.

What H.R. 620 Does Not Do

Proponents of H.R. 620 make several claims about its benefits:

- ① **Claim:** H.R. 620 makes the ADA stronger.¹⁹

Response: H.R. 620 makes the ADA weaker because businesses are no longer required to comply with the law. In effect, it penalizes businesses that have complied.

- ② **Claim:** The ADA exposes businesses to substantial money damage awards.²⁰

Response: There are no money damages available under the ADA. Plaintiffs can only obtain injunctive relief and in some cases, attorneys' fees.²¹

- ③ **Claim:** Exorbitant numbers of plaintiffs and attorneys wrongly file Title III lawsuits.²²

Response: Just because someone files more than one lawsuit does not mean there is not more than one violation. Additionally, bar associations and courts have the tools to address the issue should a party be accused of impropriety.

According to the 2010 census, there were 56.7 million people with disabilities. In 2016, there were nearly 7.7 million business establishments,²³ but there were only 6,601 Title III lawsuits,²⁴ more than 260 of which regarded website accessibility.²⁵ Thus, approximately one one-hundredth of one percent of people with disabilities ever even file a Title III claim.

Filing a lawsuit takes physical, mental, and emotional energy, both on the part of the attorney

and plaintiff. Plaintiff Ingrid Tischer describes the "humiliatingly detailed" questions she was asked about her urination habits during her deposition in her Title III lawsuit against Marriott Hotels. "I was exposed as the lady who's all fancy and expects to use a toilet while she's staying in a hotel."²⁶

- ④ **Claim:** The ADA must be amended to facilitate mediation and alternative dispute resolution.²⁷

Response: The Department of Justice already refers ADA disputes to mediators who are trained in the requirements of the ADA. This mediation is provided at no charge.²⁸ Further, the bill states that the amendments go into effect 30 days after the date of enactment of the Act.²⁹ However, it calls for a consultative process, including time for public comment,³⁰ a process that will take significantly longer than 30 days, and which will leave people with disabilities without a remedy to redress discrimination.

- ⑤ **Claim:** Insufficient resources exist to assist businesses in complying with the law.³¹

Response: The federal government provides extensive educational and technical assistance resources to assist businesses in complying with the ADA. These include the ADA website,³² DOJ ADA hotline,³³ DOJ technical assistance materials,³⁴ and ten federally funded ADA Centers that provide in-depth resources and training at no charge.³⁵

Several years ago, the Independent Living Resource Center in San Francisco received a \$25,000 grant to offer free architectural access services to small businesses in the city to help the businesses come into compliance with the ADA. The Center had sufficient funds to help approximately 250 businesses and spent a year reaching out to

more than 1,500 businesses. Only three accepted.³⁶

Owning a business comes with responsibility, the responsibility to obtain appropriate licenses, to pay taxes, to comply with health and safety laws, and to comply with anti-discrimination laws, including the ADA. It is hard to imagine a business that did not pay its taxes or comply with health and safety codes avoiding consequences from non-compliance. Nor would we excuse a business that refused service based on race. Violating the rights of people with disabilities should be no different.

"This is why we have regulations; because people don't do the right thing," says disability advocate Aimee Sabo.³⁷

When speaking with people who do not understand the discriminatory nature of bills such as H.R. 620, they often argue, "If I was with someone who is handicapped and they couldn't get into the building, I would take them somewhere else." But what if there is not somewhere else? What if the disabled person is being denied medical care? What if he or she is being denied access to a restroom? What if you are not with the "handicapped" person? What if you are the person with a disability?

Shifting the Paradigm of Disability

One of the problems endemic to the disability conversation is the pictures in peoples' heads of what disability looks like. Close your eyes. What images come to mind? Wheelchairs? People who are blind? People who use ventilators to breathe? Who require the care of an attendant? People perceived as trying to game the system?

Disability includes all of those people. But that's not the whole picture. It includes athletes and lawyers and school teachers. It includes first responders who were injured while protecting us. It includes our veterans, who are coming home missing limbs, with traumatic brain injury, and PTSD. More than four million people with disabilities are veterans with service-connected disabilities.³⁸

It includes people with arthritis or other joint-related disabilities. It includes people with memory loss and sensory disabilities. And it includes people with temporary disabilities, whether from a sports-related injury, the effects of chemotherapy, or heart or lung disease.³⁹

Case in point: On January 28, 2016, a local bar association's Diversity Committee held an event on the second floor of a building that had no elevator, preventing people with disabilities from attending.⁴⁰ Although the Bar was informed prior to the event that this would result in discrimination, it decided to keep the event at that venue because it had already signed a contract.⁴¹

It begs the question: Would the result have been different had the discrimination been based on race instead of disability? "People would never ask a person of color to enter a restaurant from the back door. So why is it okay for someone who has a disability?," asked NYPD Assistant Commissioner, Carol Ann Roberson.⁴²

Putting the Numbers in Perspective

The International Council of Shopping Centers, National Association of Realtors, U.S. Chamber of Commerce, and Home Depot, among at least fourteen other national and international organizations, have lobbied to pass H.R. 620.⁴³ While it is not possible to extrapolate exact dollars spent promoting H.R. 620, in 2017 these four groups alone spent \$115 million lobbying on issues, including H.R. 620.

Would people be more responsive if they knew there are more people with disabilities in the United States than there are people of Hispanic or Latino origin, the country's largest ethnic, racial, or cultural minority group?⁴⁴ According to the 2010 Census, there were 56.7 million people (19 percent) with disabilities residing in the U.S., compared to 50.5 million people (16 percent) of Hispanic or Latino origin.⁴⁵

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Spending Power of Americans with Disabilities

The disability market has an annual disposable income of \$544 billion.⁴⁶ Friends and family of people with disabilities add 105 million people and \$3.9 trillion in disposable income.⁴⁷ That's more than twice as large as the pre-adolescent "tween" market, with almost three times the disposable spending power.⁴⁸

When it comes to travel, adults with disabilities spent \$17.3 billion in 2015.⁴⁹ Since people with disabilities typically travel with one or more other adults,⁵⁰ the economic impact is actually double, or \$34.6 billion in 2015.⁵¹ Further, people with disabilities spent an additional \$3.6 billion on combination work and leisure travel.⁵² Diners with disabilities spent \$35 billion in restaurants in 2003,⁵³ with more than 75 percent of people with disabilities eating at restaurants at least once a week, spending two to three times more per meal than people who are not disabled.⁵⁴

That's a lot of money non-compliant businesses are missing out on. Maybe enough to get their attention. If your clients are not going to comply with the ADA because it's the law, get them to comply for the money. 

¹ 42 U.S.C. §12101 *et seq.*

² 42 U.S.C. §12101 (b)(2).

³ 42 U.S.C. §12101.

⁴ 42 U.S.C. §§12111-12189

⁵ 42 U.S.C. §12182(a).

⁶ 42 U.S.C. §12182(b)(2)(A)(iv).

⁷ Public Law 110-325.

⁸ U.S. Small Business Administration and U.S. Department of Justice, *Americans with Disabilities Act ADA Guide for Small Businesses* (June 1999), <https://www.ada.gov/smbusgd.pdf>.

⁹ Department of Justice, *Technical Assistance Manual on the American with Disabilities Act*, §III-4.4100 (1994).

¹⁰ 28 C.F.R. §§36.401-36.406.

¹¹ 42 U.S.C. §12181(9).

¹² 28 C.F.R. part 36 §36.104.

¹³ *Id.*

¹⁴ 28 CFR §§36.501-36.502.

¹⁵ H.R. 620 Report No. 115-539 §3.

¹⁶ *Id.*

¹⁷ Letter to Mitch McConnell, March 28, 2018, p. 2.

¹⁸ Department of Justice, Office of Public Affairs (December 21, 2017) <https://www.justice.gov/opa/>

[pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents](https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents).

¹⁹ "Poe Leads Bipartisan Legislation to Curb Abusive ADA Lawsuits and Improve the ADA," January 25, 2017, <https://poe.house.gov/2017/1/poe-leads-bipartisan-legislation-to-curb-abusive-ada-lawsuits-and-improve-the-ada>.

²⁰ *Id.*

²¹ 28 CFR §36.501.

²² See *Supra* Note 23.

²³ <https://www.census.gov/quickfacts/fact/table/US#viewtop>.

²⁴ Minh N. Vu et al., "ADA Title III Lawsuits Increase by 37 Percent in 2016," ADA Title III Blog (January 23, 2017) <https://www.adatitleiii.com/2017/01/ada-title-iii-lawsuits-increase-by-37-percent-in-2016>.

²⁵ Kristina M. Launey and Melissa Aristizabal, "Website Accessibility Lawsuit Filings Still Going Strong" ADA Title III Blog (August 22, 2017) <https://www.adatitleiii.com/2017/08/website-accessibility-lawsuit-filings-still-going-strong>.

²⁶ <https://talesfromthecrip.org/2017/07/09/this-crip-stays-in-the-picture-a-past-plaintiff-on-opposing-h-r-620-californias-ada-notification-act/>.

²⁷ H.R. 620 Report No. 115-539 §5.

²⁸ United States Department of Justice Civil Rights Division, "Department of Justice ADA Responsibilities: ADA Mediation Program." Information and Technical Assistance on the Americans with Disabilities Act. https://www.ada.gov/mediation_docs/mediation-q-a.htm.

²⁹ H.R. 620 Report No. 115-539 §4.

³⁰ H.R. 620 Report No. 115-539 §5.

³¹ See *Supra* Note 23.

³² United States Department of Justice Civil Rights Division, <https://www.ada.gov>.

³³ United States Department of Justice Civil Rights Division, "ADA Information Line." <https://www.ada.gov/inline.htm>.

³⁴ United States Department of Justice Civil Rights Division, "Information and Technical Assistance on the Americans with Disabilities Act." <https://www.ada.gov/tapubs-pg2.htm>.

³⁵ ADA National Network, "Contact Your Region/ADA Center." <https://adata.org/find-your-region>.

³⁶ Jessie Lorenz, "The Americans with Disabilities Act is Under Attack," San Francisco Examiner (December 21, 2017).

³⁷ Interview March 14, 2018.

³⁸ http://factfinder2.census.gov/bkms/table/1.0/en/ACS/14_1YR/B21100.

³⁹ 42 U.S. Code §12102.

⁴⁰ San Fernando Valley Bar Association Diversity Committee's "Diversity Mixer" at the Villa in Woodland Hills, California.

⁴¹ Conversation on or about January 21, 2016, between Robin Springer and Linda Temkin, the San Fernando Valley Bar Association's Director of Education and Events.

⁴² Losing It, (2001)

⁴³ www.opensecrets.org.

⁴⁴ 2010 U.S. Census.

⁴⁵ *Id.*

⁴⁶ Fifth Quadrant Analytics, "The Global Economics of Disability Report," at 4 (April 2013).

⁴⁷ *Id.*

⁴⁸ Solutions Marketing Group, "Understanding the Market" (March 15, 2016) <https://smgroupblog.wordpress.com/2016/03/15/understanding-the-market>.

⁴⁹ Open Doors Organization, "2015 Market Study" (July 31, 2015) <http://opendoorsnfp.org/wp-content/uploads/2016/05/ODO-Study-Press-Release-Final.pdf>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Department of Justice, "Disability Rights Online News" (July 2004) <https://ada.gov/news/str0704.pdf>.

⁵³ *Id.*

⁵⁴ Open Doors Organization, "People with Disabilities Will Spend \$35 Billion Dining Out in 2003" (May 16, 2003) <https://opendoorsnfp.org/news/news-items/#prwillspend>.

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Please (Do Not) Send Money

By Barry L. Pinsky



THE EMAIL APPEARED WITHOUT WARNING, A shot in the dark. “I want to share somethings (sic) with you and i (sic) believe it will be of great interest to you. Write back so i (sic) can tell you more.”

Perhaps not the most compelling invitation in memory, but apparently sufficient enough to solicit a perfunctory reply and a token commitment of attention from Jack Robinson (all names herein have been altered to protect privacy).

What followed soon descended into a miasma of high-tech financial intrigue and deception.

His newfound correspondent, one Joanna Fox, promptly spun a tale of an abandoned fortune, anxiously awaiting Jack’s petition...

“My deceased client, Robert Robinson, a crude oil merchant residing in Canada, passed away in 2014 without any surviving relative. Before his demise, I was his financial advisor...Since his demise, no one has made any claim on the money...It has become obvious that our dear client died with no known or identifiable family member. I want to present you as a beneficiary since you share the same last name.”

The overly-solicitous Joanna offered to share the details of the estate and to facilitate the distribution of the inheritance,

said to total millions of dollars, to Jack in exchange for a portion of the inheritance proceeds.

An intelligent, sophisticated, and successful professional in the creative arts, Jack is currently working on several international design projects and, though he didn’t just fall off the proverbial turnip truck, he was smitten by the vision of a giant windfall and decided to continue the correspondence. He was hooked, responding with measured skepticism, “I have no knowledge of Canadian law. As long as this is legally possible and will be done in accordance with the laws of Canada, I am happy to assist you.”

Down the Rabbit Hole

With her knowledge of Robert Robinson’s financial and personal situation and the apparent lack of direction to the estate distribution, the mysterious Joanna insinuated herself into sharing in Jack’s good fortune, carefully positioning herself as his confidant and inside intermediary.

Though Jack openly expressed some doubts about the legitimacy of her claims, Joanna persisted, offering to provide documentation establishing the authenticity of the inheritance, in exchange for the execution of a proceeds-sharing contract agreement. Jack took the first step and executed the agreement, presuming that if the inheritance



Barry L. Pinsky is Certified Financial Planner, Chartered Financial Planner and Certified Life Underwriter. He serves as First Vice President with UBS Financial Services, a subsidiary of UBS AG, in Encino. He can be reached at barry.pinsky@ubs.com.

was non-existent, the agreement would be of invalidated and of no consequence.

Over the next few weeks, Jack received a copy of a death certificate for Robert Robinson, a copy of a Power of Attorney (POA) document establishing his eligibility as a legitimate heir, access to brokerage statements specifying the substantial assets foretold, and a note from an agent of the Bank of Montreal Financial Group attesting to his apparent eligibility to receive the inheritance.

Throughout the process of documentation, Jack continued to conduct what he believed to be an exhaustive due diligence process by verifying the identities of intermediaries on LinkedIn, Facebook, Instagram, the website of the lawyer providing the POA, and the location of the brokerage institution. He became convinced that the institutional officers were genuine, that the assets were indeed authentic, and that he would, in fact, be able to claim the substantial estate.

Jack went so far as to wire \$30,000 from his bank to the brokerage house in Canada in order to reactivate the estate account which had supposedly been dormant for several years, and create a new account in his own name to receive the inheritance proceeds. Subsequently, he was able to verify online that he had indeed established a new account in his own name.

Shortly after the first transfer of his funds, Jack received online access to the “reactivated” Robert Robinson account, complete with its account number, pass key code, and account PIN. He was further informed that substantial funds were due against the estate for past income taxes and account maintenance fees which had not been paid in the years since the passing of Robert Robinson, and during which time the account had remained unclaimed.

The outstanding account fees and taxes totaled in excess of \$175,000, and Jack was given routing instructions to which the requisite funds should be dispatched. Jack explained his need for funds and forwarded the transfer instructions, along with his request to wire the “required funds.”

A Scam Uncovered

Upon receiving a copy of the wire transfer instructions, and after a review of the background narrative, copies of the preliminary correspondence relating to the inheritance revelation were requested and a brief discussion with managerial and operations staff confirmed the fraudulent nature of the enterprise. A review of the full email correspondence requesting the funds, as well as account and wiring instructions, revealed numerous errors in procedure and inconsistencies in operational norms.

An apparent once-in-a-lifetime windfall for a supposed heir was revealed to be nothing less than a scam. The final

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transfer of funds from Jack's account was prevented, and the inheritance was unmasked as a complete fraud.

Reports were dispatched to the appropriate governmental authorities, but no funds have been recovered from the initial "reactivation" payment originally made from the outside bank account. As scams go, the progression of this incident is not atypical. However, the level of sophistication in the counterfeit documentation, internet siting, and account verification reflected the enhanced availability of the sophisticated technological tools that criminals have at their disposal today.

To trained eyes, the deceit was readily identifiable. To the eye of a regular guy like Jack Robinson, the fraud was far from obvious as modern technology, when abused, can offer manifold opportunities to create counterfeit birth or death certificates, professional websites, legal documents, social media sites and links, and brokerage and bank statements that may appear genuine, but which are merely building blocks in a complicated fraud.

A number of red flags appeared throughout this unfortunate drama. As generally occurs, the initial contact came completely out of the blue, from a totally unknown individual who introduced the scheme. The intermediary repeatedly insisted upon complete confidentiality and secrecy in order to prevent interference by "corrupt and rapacious" government officials. The alleged estate originated from a supposed deceased relative who was heretofore unknown to Jack Robinson.

The Details Emerge

As the scam gained momentum, the intermediaries requested identity information and documentation from Jack, along with information relating to his personal accounts. Throughout the incident, requests for money escalated. Initially, \$1,700 was requested to split attorney fees; then thousands of dollars were to be transferred to the bank for "fees, account activation, etc." Over time, the amount of funds for back-end "income taxes, account maintenance fees, and transaction charges" reached more than \$175,000. Also, throughout the process, a number of tell-tale spelling, grammatical, and procedural errors could be noticed in the correspondence.

A few examples of irregularities in the correspondence are instructive. Certainly, notifications, documentation, and initial instructions in inheritance cases are never transmitted via email. Such official notification would arrive via the U.S. Postal Service or bona fide courier service. Spelling and grammatical errors are clear warnings of suspicious origins. From the initial email contact, Joanna demonstrated serious challenges in her syntax.

Subsequently, a mailing address was given as "563 Ferguson driver," rather than Ferguson Dr. or Drive. One

email referred to "This account have been dormant." An explanation of procedures included the awkward run-on sentence, "There wouldn't be any more charges after this, a receipt of payment from the bank, an Inland Revenue receipt along with certificate of cleared source of funds will be sent to you, which will be shown to any bank you wish to transfer your funds to avoid any further questioning."


A bank notice sent by the so-called Chief Operating Officer included the information, "We have done some verification and the certificate is genuine, we shall invite the attorney tomorrow to sign the final approval documents as soon as we concluded tomorrow we shall make you have access to his account." And a bank was identified as "Sun Trust," rather than the correct "SunTrust."

Throughout the email correspondence, no effort was made to protect the transmitted information from hacking or other cyber intrusion. Confidential account numbers, pass codes and PINs were sent in unsecured emails repeatedly, contrary to customary best practices. In the correspondence, bogus email addresses and obscure, suspicious domain names masked the deceit of falsified accounts.

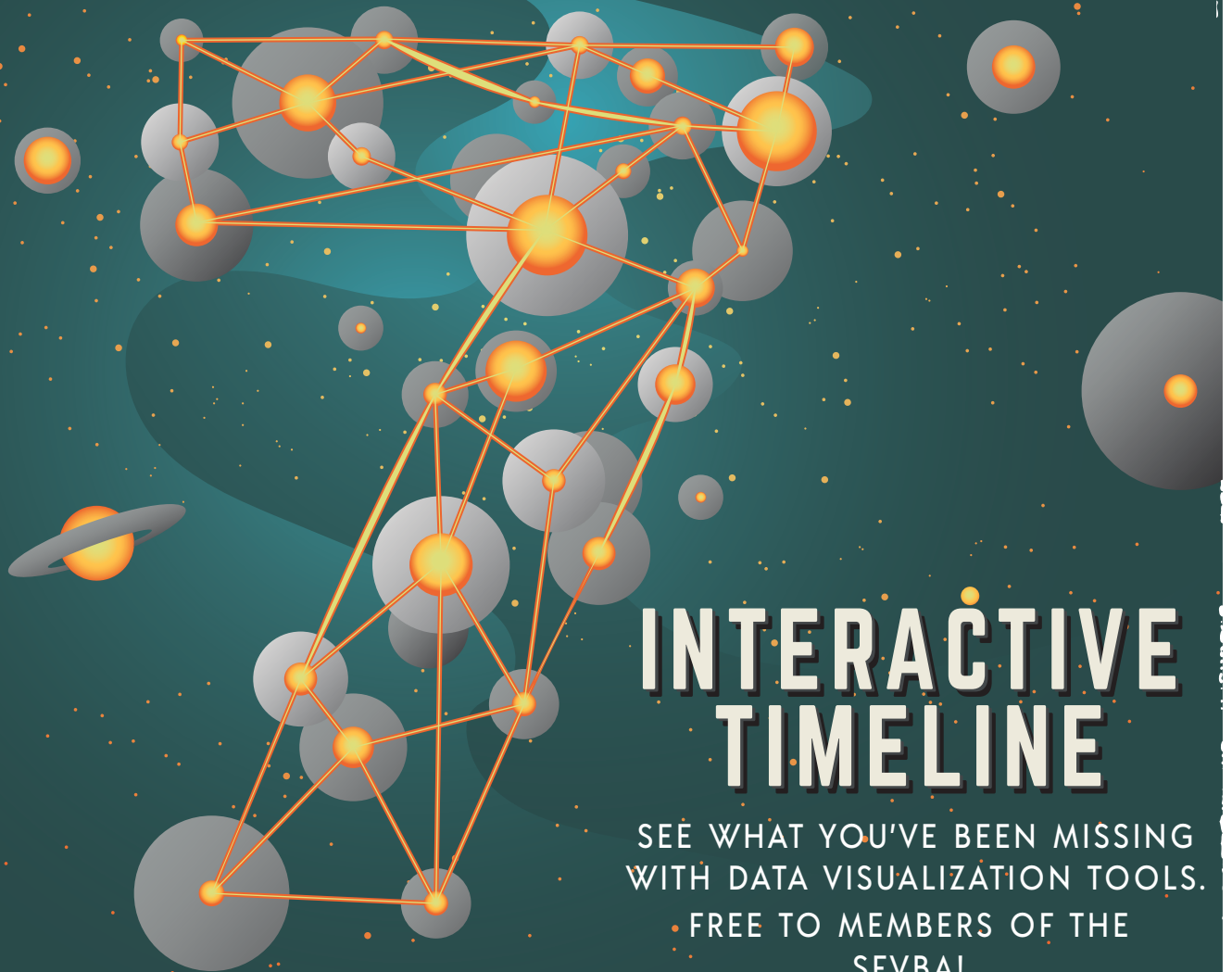
It's OK...Be a Cynic

So how can one be protected from the many threats that lurk in the internet jungle? The first step is obviously to advise clients to be vigilant, aware of the types of scams that abound in today's internet-connected world, and cultivate a healthy suspicion of any enterprise that promises unusual or quick riches.

Some additional suggestions:

- Remember, if it sounds too good to be true, it probably is.
- Never make arrangements for contracts, payments, wire or electronic transfers, or credit card charges with strangers.
- Do not provide confidential information such as social security numbers, bank or brokerage account numbers, birth dates, or addresses to any party without having had a solid prior relationship.
- Watch for suspicious red flags such as errors in spelling, grammar, syntax, or business procedures which appear even slightly problematic.
- Beware of requests for unwarranted confidentiality and secrecy.
- Never transfer funds without verifying and confirming its ultimate destination both verbally and in writing, and lastly, never, ever forget that it's a dangerous financial world out there. 

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EVERY BUSINESS SHOULD have a system of checks and balances in place to avoid improper financial conduct.

If a certain unnamed private firm had had such a system in place, James [a pseudonym] wouldn't have been able to embezzle around \$500,000 from his company over a period of nine years.

The misappropriation of finances began after a decade of working at the firm. James had fallen on hard times, shouldering his family's big-ticket medical bills and he was finally caught when a vendor happened to call about a late monthly payment while he was out of the office. The vendor was unfamiliar to management and seemed unrelated to the business. The call spurred an audit, which revealed approximately \$500,000 paid out on bogus invoices.

The firm's insurance policy covered theft by employees, finding that \$380,000 in claims were substantiated. After covering the damages, the insurance compelled the firm to file a criminal complaint against James and seek reparations.

James initially hired a criminal law attorney, who immediately saw that the insurance company had zeroed in on reparations and suggested that James call the ARS for a referral to a civil attorney. After an initial interview, he was referred to Jack Kaufman, who has years of experience in criminal defense, business law, and civil litigation.

"It was essential that I had his trust and confidence," says Kaufman. "If

they weren't going to be totally candid with me, I'm going to have a difficult time resolving the matter with surprises coming at me."


Kaufman's background helped him understand what was occurring on both the criminal and civil aspect. An important factor, he later said, was that the victim was not James' employer, but rather the insurance company that wanted reparations on what they had paid out.

"The emotion that a victim might have wanted to get their pound of flesh was gone. That made a significant difference in how the district attorney's office viewed the case," says Kaufman, who built a positive rapport with the DA's office and insurance company's attorney, and even made more than 1,500 pages of credit card statements

available for review. The statements would be acquired by the opposing party during trial, so Kaufman knew from the outset that he wasn't exposing his client.

Kaufman's positive credibility helped negotiate the restitution down to \$300,000, with a signed letter from the insurance's attorney to the DA's office stating that their claim was satisfied and that they had no interest to prosecute the claim.

"Although the manager could be prosecuted criminally," Kaufman comments, "typically in these cases the prosecutors are only looking for restitution."

Everyone was satisfied, but a system of checks and balances at James' company would've helped avoid the entire ordeal in the first place. 

**CATHERINE
CARBALLO-MERINO**
ARS Referral Consultant



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Meet Some VCLF Officers

ALMOST A WHOLE MONTH AS President of The Valley Community Legal Foundation.

Wow!

It takes hard work by many people for our organization to accomplish its mission. We have no paid staff and, although we appreciate the help the SFVBA staff provides, we get things done because the volunteers in our organization make it happen. So this month I wanted to introduce you to some of the people who help run the VCLF.

Kira S. Masteller, Esq.

PRESIDENT-ELECT

Kira is a shareholder at Lewitt, Hackman, Shapiro, Marshall & Harlan, practicing in the area of trusts and estates. Kira served on the SFVBA Board for the past 10 years and served as the Bar's President two years ago. Raised in the San Fernando Valley and living in Woodland Hills, Kira has had a passion for children's education and for providing extraordinary opportunities for our Valley children interested in legal careers. She strongly believes in the VCLF as a great platform for attorneys and others in the legal field to give back to the community and make a difference in our future by contributing their time and talent. Kira urges you to join her in working with students, our local schools and the courts, to foster

learning opportunities and experiences for our fantastic Valley youth.

Terri Peckinpough-Agnew

SECRETARY

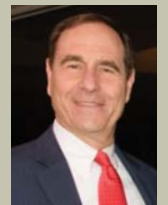
Terri has worked in the insurance industry for over 40 years. She is Vice President of Leavitt Insurance Brokers in Woodland Hills. Her background includes extensive knowledge and experience with all forms of insurance programs, including lawyers' professional liability, in diverse industries such as law firms, construction, healthcare, retail business, property owners, and technology. Terri also owns a food catering business, Muddy's BBQ & Catering, one of a few mobile, wood-smoked BBQs in Southern California. She has been an active member of the VCLF for many years, formally acting as the Foundation's Secretary, but also assisting in all of the organization's projects.

Judge Virginia Keeny

VICE-PRESIDENT, SCHOLARSHIPS

Since her appointment in 2012 to the Superior Court, Judge Virginia Keeny has served the Valley community, first in a family law courtroom and now in a civil assignment in the Van Nuys courthouse. She has served on the VCLF Board for many years, administering one of the Foundation's

Mark S. Shipow
President



mshipow@socal.rr.com

key charitable activities—namely, providing scholarships to deserving students. Last year, she was responsible for overseeing the Foundation's award of \$9,000 in scholarships to help students pursue their dreams of law-related careers. Judge Keeny hopes to significantly expand the scholarship program in the coming years by attracting new donors so the VCLF can encourage more students. Judge Keeny also has been instrumental in the organization's sponsorship of student attendance at *Defamation*, the award-winning play that helps students understand race and gender issues in the context of litigation. She helped lead the students' vigorous discussion of those issues at the most recent presentation of the play.

Patricia McCabe, Esq.

VICE-PRESIDENT, GRANTS

Patty has a small law firm in Van Nuys. Her firm represents disabled individuals who need assistance with Social Security benefits, Medicare/Medi-Cal claims, State Disability Insurance, veterans benefits or other disability benefits. Patty has been a VCLF supporter and volunteer for 20 years. In that time, she has helped guide the Foundation in providing scholarships to hundreds of students to further their education. She also has been instrumental in administering the

ABOUT THE VCLF OF THE SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association, with the mission to support the legal needs of the Valley's youth, victims of domestic violence, and veterans. The Foundation also provides scholarships to qualified students pursuing legal careers and relies on donations to fund its work. To donate to the Valley Community Legal Foundation or learn more about its work, visit www.thevclf.org.

Foundation's grant program, through which the VCLF has partnered with community programs in the San Fernando Valley to provide a greater understanding of, and access to, the justice system. Patty is proud to be a Past President of the organization and is excited about its recent work to decrease recidivism by addressing the legal barriers that prevent a successful return to a normal life after incarceration

D. Shawn Burkley, Esq.

VICE-PRESIDENT, FUNDRAISING
Shawn came to the law late in life after spending a significant amount of time in both the marketing and music industries. A graduate of St. John's University School of Law and a sole practitioner, Shawn has been active in criminal and civil litigation since passing the bar in 2016, handling a wide variety of matters, as his clients' needs tend to span more than one

area of law. He will be serving his second year as the VCLF's Vice-President of Fundraising. He has found that his tenure with the Foundation has provided an amazing entrée into the Valley's legal community as well as a means to be of service, which was fundamental in his decision to become an attorney. He has been instrumental in the Foundation's success in raising funds to do good work. We congratulate Shawn on his upcoming marriage to his childhood sweetheart.

Deborah Chodos, Esq.

VICE-PRESIDENT,
PUBLIC RELATIONS & MARKETING
Deborah practices personal injury law, representing injured parties in all types of accident cases. Coming from a family of attorneys, including her father, uncle and two younger brothers, she views the practice of law as an opportunity for service to her clients and the community. During her

tenure as a Foundation board member last year, one of the highlights was helping present the courtroom drama *Defamation* for middle and high school students. She found the students' enthusiastic response and their excellent essays about the experience incredibly inspiring. She looks forward this year to serving as VP of Public Relations and Marketing, spreading the message about all of the VCLF's excellent projects.

Laurence Kaldor, Esq.

IMMEDIATE PAST PRESIDENT
The VCLF is lucky to have had Laurence as President for the past three years. In fact, the Foundation is lucky to have had Laurence at all. At age 16, he miraculously survived an airplane crash, losing his left leg, right eye, and father, but not his will to live. Through stamina and determination he endured extensive surgery and rehabilitation, and came to realize life would be most fulfilling if he utilized his experiences to overcome obstacles and lead by powerful example. He did that over and over as President of the VCLF. He is a happily married father of two wonderful daughters. His legal practice includes entertainment and family law, and he regularly serves as a volunteer Judge Pro Tem in Family Court and Traffic Court. He also has written, directed and produced several independent feature films. He will continue to be a driving force at the VCLF.



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Join the Valley Bar Network the first Monday of each month.

Contact events@sfvba.org for more information.

In future columns, I will periodically introduce other VCLF leaders. I think you will see that our officers and directors are dedicated professionals, just like you. The VCLF is looking forward to an exciting year of giving back to our legal community. We all welcome your participation in our efforts.

Please contact me at mshipow@socal.rr.com or visit thevclf.org if you want to become involved, donate money, or have questions about the VCLF's community work. 



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