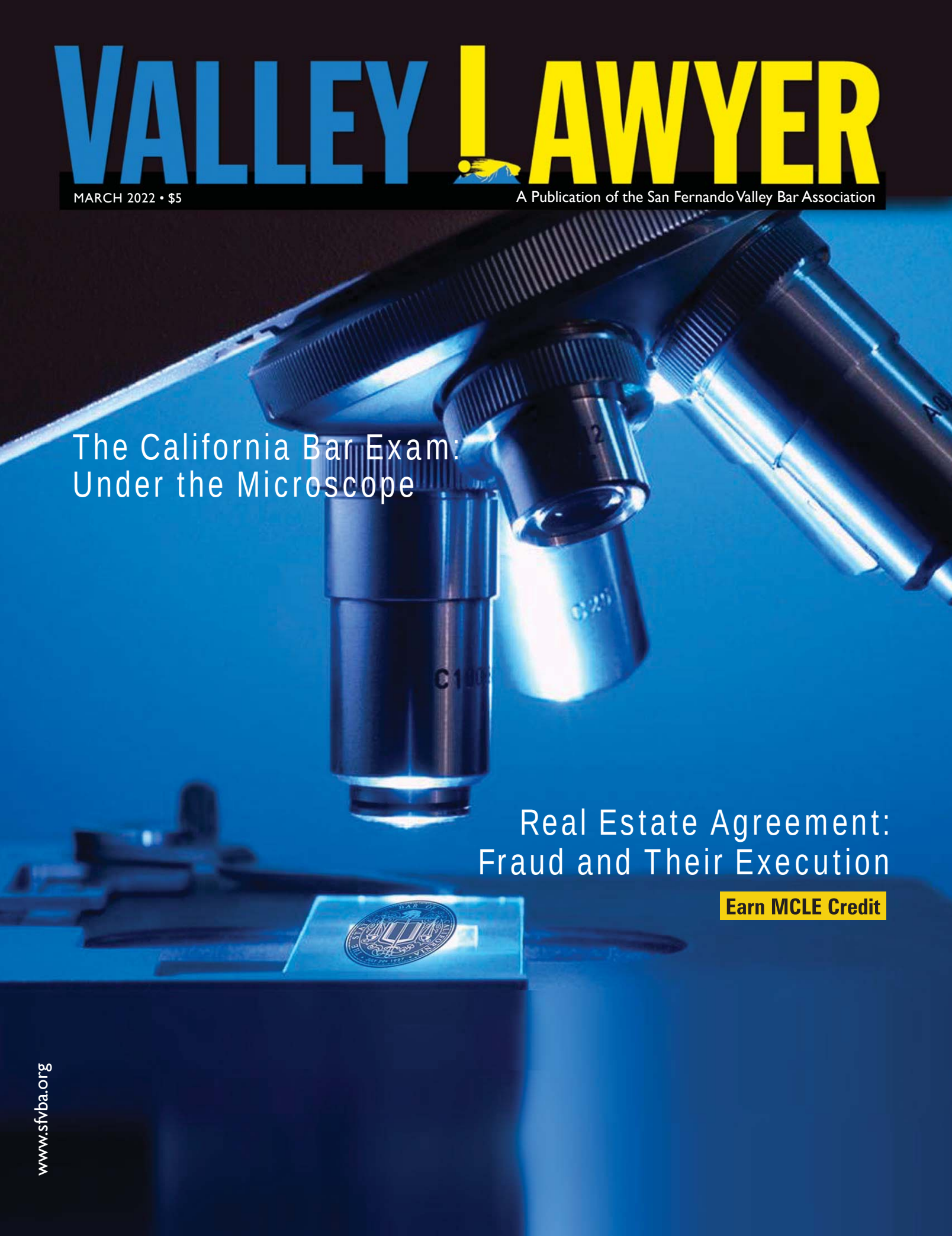
VALLEY LAWYER

MARCH 2022 • $5

A Publication of the San Fernando Valley Bar Association



The California Bar Exam: Under the Microscope

Real Estate Agreement: Fraud and Their Execution

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VALLEY LAWYER

SAN FERNANDO VALLEY BAR ASSOCIATION
20750 Ventura Boulevard, Suite 104
Woodland Hills, CA 91364
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

EDITOR
Michael D. White

GRAPHIC DESIGNER
Marina Senderov

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

New Office, New Events

CHRISTOPHER P. WARNE
SFVBA President

cw@warnelaw.com

THIS MONTH I AM PLEASED TO ANNOUNCE THE San Fernando Valley Bar Association has moved into a new office. For our MCLE and Valley Bar Network regulars, you won't have to look far. The new SFVBA office is still located on the first floor of the Carlton Plaza in Woodland Hills.

Our new Suite 104 is located on the opposite side of the building. We still have access to the building courtyard and parking for events.

The Board of Trustees and Executive Committee toured the new space in December and decided it was time for a change. The new office space accommodates what we hope will serve the members better as we transition into a post quarantine world.

Here is why members will love it—more room for everyone. The new normal is working remotely. We hope we have created a new member benefit by creating a useable "space on demand" for members. The new office is designed to accommodate members who need an office for a day, a conference room for a deposition or meeting, or multiple breakout rooms for a mediation or arbitration.

Our new office features two large classrooms that can be used for MCLEs, seminars, community events, and networking events. The office also has a formal conference room and breakout rooms that are perfect for mediations or daily rental working space.

And one more thing—the new space presents a significant cost savings to the organization.

Recognition is well earned for trustees who helped make this new space possible: Trustee and Immediate Past President of the Santa Clarita Valley Bar Association Taylor Williams-Moniz spearheaded negotiations and lease review with the landlord; Secretary Heather Glick-Atalla and Treasurer Amanda Moghaddam helped to physically move the office on moving day along with Trustee and former Membership and Marketing Chair Benjamin Soffer who also contributed to reviewing lease documents, and Trustee and Mock Trial Chair Kyle Ellis for packing endless file drawers preparing for the move.

Upcoming Events:

• April 4 – join us at the Oaks Club in Valencia for the Santa Clarita Bar Association Golf Tournament. Contact the office to register and pick your foursome.

• Monthly beginning in March, we are going to start the San Fernando Valley Bar Review. Each month we will announce a location for an informal meetup. Come join your colleagues for an informal meet and greet in different areas of the valley each month.

• The annual Installation Event and Judge's Night information will be announced soon. The events committee is working hard on finding safe outdoor venues to restart our annual in person events.

San Fernando Valley Bar Association
founded in 1926

SFVBA PROBATE AND ESTATE PLANNING SECTION

ice cream Social

FRIDAY, APRIL 1, 2022

4:30 PM – 5:30 PM

SFVBA Courtyard
20750 Ventura Blvd., Woodland Hills

Join us and toast each other with a homemade Dandy Don's Sundae!

Probate and Estate Planning Section Members Only!

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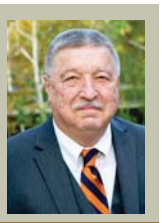
Reservations Required! RSVP events@sfvba.org or call (818) 227-0495

The SFVBA adheres to all Los Angeles County and City Public Health Guidelines. Masks are recommended for any time spent indoors, though the event will be held in the outdoor courtyard!

Back to Normal

MICHAEL D. WHITE
SFVBA Communications Manager



michael@sfvba.org

THE FUTURE OF CALIFORNIA'S bar exam is in the balance.

In 2020, the California Supreme Court and the State Bar approved the formation of a Blue Ribbon Commission to make recommendations to the exam, which is widely considered to be the most difficult, sweat-inducing, and ulcer-aggravating in the country.

What is to come for the exam renders down to three options: whether it should remain in its present basic form; whether it should be modified in both form and substance; or whether it should disappear altogether and be replaced with some other method of gauging the knowledge of newly-minted lawyers.

It is a vexing challenge with enormous consequences.

When piecing together this month's cover article on the exam and its future, I was struck by the positive input of two of the individuals tasked with finding a workable solution.

"We need to make sure that our young lawyers are professional, ethical, and skilled, which is why the exam is undergoing this review and overhaul," said Natalie Rodriguez of Southwestern Law School. "What we need to see is an exam that actually tests the right things, or provide an effective non-exam alternative."

Susan Bakhshian, a professor at LMU Loyola Law School, concurs with her colleague. "This is a large group," she says. "It's not all lawyers, but there are quite a few lawyers in the group. That's a challenge with a complex problem being taken-on by a large group of people. I've been encouraged by how very willing people are to listen, learn, and to be informed."

A "challenge with a complex problem," but one that will be, I'm convinced, addressed soberly and thoughtfully.

It's a very good thing that things are getting somewhat back to 'normal' for the SFVBA.

> "The Bar is cobbling together a calendar of in-person events, including an ice cream social on April 1."

In addition to recently completing a move to new offices—same Woodland Hills location, same floor, opposite side of the building—the Bar is cobbling together a calendar of in-person events, including an ice cream social on April 1, an Installation cocktail reception scheduled for April 26 at The Garland in North Hollywood, as well as several casual networking events.

On April 8-9, the Bar will present its 2nd Annual Mock Trial Competition. The Zoom event, organized by a committee led by SFVBA Trustee Kyle Ellis, will feature participants from eight California law schools vying for awards in areas such as Best Advocate; Best Cross Examination; and Best Closing. Winners will receive scholarships provided by the Valley Community Legal Foundation, the charitable arm of the San Fernando Valley Bar Association.

On a personal note, I must say, it's also very much appreciated to have flexibility to be working from home on most workdays.

With some free rein to get more done, it's grand to bid good-bye to daily commutes—an hour to an hour and a half each way, to and from Woodland Hills; bye-bye watching the needle on my gas gauge slowly creep toward 'E' as the price per gallon of gas climbs to equal the cost of a nice steak dinner at a fancy restaurant; and a fond ta-ta to getting cut off and angry gestures—by yahoos darting at warp speed back and forth through traffic like deranged hummingbirds.

More for less. All good and good.

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THE SFVBA'S 2ND ANNUAL MOCK TRIAL COMPETITION

April 8 & 9, 2022

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Practicing Attorneys and Bench Officers Needed for April 8!

EVENT INFORMATION

Sponsor the SFVBA's Second Annual Mock Trial Competition where teams from California law schools will go head-to-head to be the San Fernando Valley Bar Association's Mock Trial Champions.

Law student scholarships graciously provided by the Valley Community Legal Foundation

PLEASE CONTACT

Kyle Ellis (858) 373-8122 | elliskylem@gmail.com
Linda Temkin (818) 227-0495 | events@sfvba.org

VCLF

CALENDAR

MARCH 2022

SUN	MON	TUE	WED	THU	FRI	SAT
WOMEN'S HISTORY MONTH 1			2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

7

VBN VALLEY BAR NETWORK

ZOOM MEETING
5:00 PM
Soon In Person!!

8

WEBINAR
Probate and Estate Planning Section
Changes in the Profession Due to Technology
12:00 NOON
Erin Joyce discusses the impact of technology upon your practice. What must you know to maintain an effective practice? And what are the ethical concerns regarding technology and your practice? How do technological advances effect the rules of professional conduct?
1 Hour MCLE (Legal Ethics)

ZOOM MEETING
Board of Trustees
6:00 PM

10

WEBINAR
Litigation Section
Structured Settlements: When, Why & How
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ELLIS BAKH LLP Trial Lawyers

12:00 NOON
Tory Owens (Tory Owens Structured Settlements) presents. Free to all members! (1 MCLE Hour)

Santa Clarita Valley Bar Association
Annual Employment Law Update
Dinner and Seminar
6:00 PM
UNIVERSITY CENTER, 26455 ROCKWELL CANYON ROAD
$40 SCV and SFVBA Members, $55 Others
(1.5 MCLE Hours)
RSVP: Sarah 661-505-8670 or info@scvbar.org

16

WEBINAR
Criminal Law Section
The Ten Do's and Don'ts of Courtroom Litigation
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12:00 NOON
Judge Hayden Zacky will outline best practices in the courtroom applicable to both criminal and civil courts. Free to all members!
(1 MCLE Hour)
See ad on Page 34

17

ZOOM MEETING
Inclusion and Diversity Committee Meeting
12:15 PM

15

WEBINAR
Taxation Law Section
Client Trust Accounting
12:00 NOON
Hratch Karakachian and Kneave Riggall will discuss the rules of professional conduct that all attorneys must know, understand and follow in maintaining their client trust accounts.
1 Hour MCLE (Legal Ethics)

SFVBR–San Fernando Valley Bar Review
A Social Gathering!
6:30 PM – 8:30 PM
HQ GASTROPUB
20969 VENTURA BLVD.
WOODLAND HILLS
The SFVBA is recreating a law school favorite–Evening Bar Review.Come join SFVBA President Christopher Warne, President-Elect Matthew Breddan, Santa Clarita Valley Bar Past President and Trustee Taylor Williams-Moniz, and Trustee Kyle Ellis at this fun no host happy hour.

21

WEBINAR
Family Law Section
Not Just a Tool for Your Clients–How Co-parenting Apps Help Family Law Professionals Manage Their Child Custody Cases
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5:30 PM
Attorney Kevin Mooney, CFLS, will discuss co-parenting apps. Free to all members!
(1 MCLE Hour)
See ad on Page 30

ZOOM MEETING
Mock Trial Competition
6:30 PM

30

Santa Clarita Valley Bar Association
Anatomy of a DUI
6:00 PM
THE OAKS GRILLE
Dinner and Presentation
(1 MCLE Hour)
SFVBA members receive SCV Member pricing! $50/pp.
RSVP: Sarah 661-505-8670 or info@scvbar.org

See ad on page 8

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0495 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

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

By Craig B. Forry

Real Estate Agreement:
Fraud and Their Execution

Unfortunately, there are many examples of fraud in California real estate transactions. In one such case, after the parties had agreed upon certain contract terms, one of them surreptitiously substituted a document for signature that looked the same as the earlier draft, but contained materially different terms.

UNFORTUNATELY, THERE ARE MANY EXAMPLES of fraud in California real estate transactions, and one form was the subject of the recent decision in *Munoz v. PL Hotel Group*.[1]

Such a current case involves a form of fraud in the execution in which a Spanish-speaking client was presented with a Spanish version of an agreement, and then was induced into signing an English language version that was different, resulting in a change in ownership of the real property.

The appeal in *Munoz* involved a form of fraud rarely seen in day-to-day litigation. It goes by various names—fraud in the factum, fraud in the execution, fraud in the inception—but they all describe the same genre of deceit.

It occurs where, after parties have agreed upon certain contract terms, one of them surreptitiously substitutes a document for signature that looks the same as the earlier draft, but contains materially different terms.

Fraud in the execution is distinct from promissory fraud, which involves false representations that induce one to enter into a contract containing agreed-upon terms.

The case, on appeal after a demurrer, was sustained without leave to amend, and involved the purchase and leaseback of a vacant hotel and restaurant.

The nub of the lawsuit was the buyers'/plaintiffs' claim that the sellers/defendants surreptitiously substituted altered versions of the lease and financing instruments containing terms extremely adverse to the buyers, and which they alleged were neither bargained for nor agreed to.

A Textbook Cause of Action

The allegations stated, quite literally, a textbook cause of action for fraud in the execution, as this illustration from the Restatement Second of Contracts demonstrates: "*A and B reach an understanding that they will execute a written contract containing terms on which they have agreed. It is properly prepared and is read by B, but A substitutes writing containing essential terms that are different from those agreed upon and thereby induces B to sign it in the belief that it is the one he has read. B's apparent manifestation of assent is not effective.*"[2]

But acting under the misapprehension that the plaintiffs' theory was promissory fraud, the superior court sustained a demurrer brought by defendants Inn Lending LLC and Rajesh Patel on the grounds that insufficient facts were alleged showing they made promises upon which the plaintiffs relied. The court also determined that related causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and financial elder abuse had also failed.

Shivam Patel and his son, Rajesh, owned a hotel and restaurant that was closed for years and needed substantial repairs. When renovations were about half completed, the Patels determined the project was not viable because there was no way to acquire conventional financing with a half-finished hotel that had no financial history.

The Patels formed PL Hotel Group, LLC (PL) to hold the title and sell the property. They structured the transaction so they would remain in possession after the sale. Toward that end, the sale included a leaseback to the Patels under a triple net lease.

A triple net lease—commonly referred to as NNN—is one in which the lessee/tenant pays taxes, insurance, and utilities.

From the buyer/landlord's perspective, the difference between the monthly rent under the lease and the cost of financing would be the return on investment.

Luis Munoz was an 80-year-old real estate investor and sole owner of LR Munoz Real Estate Holdings, LLC, collectively, Munoz. In June 2018, the Patels' agent, Steven Davis, sent an offering memorandum to Munoz's agent, Ryan Cassidy.

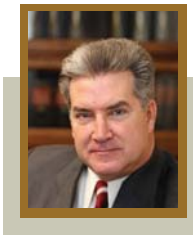
Among other terms, it stated the transaction would include a new 20-year absolute NNN lease to start at the close of escrow.

In early July, the parties agreed on a $2.8 million purchase price. Cassidy drafted the purchase agreement, under which the Patels were to provide Munoz a fully executed lease that should include an "*annual rent payment of $230,000 NNN paid monthly*."

On July 17, the Patels—via Davis—sent a proposed, but unexecuted, triple net lease to Cassidy. In an accompanying email, Davis reserved the Patels' right to make further edits in case there was an error or oversight.

This lease, which the parties refer to as the "*July 17 lease*," had been circulated "*multiple times*" during the 60-day escrow. It was the only lease agreement ever circulated before the close of escrow and contained the agreed lease terms. At no time before escrow closed did the Patels ever contend there was an error or oversight in it.

The July 17 lease was for a 20-year term with specified options to renew. The rent began at $19,167 per month



Craig B. Forry is a Mission Hills-based civil litigator and trial attorney with specialization in real estate law. He is a licensed real estate broker and is considered an expert witness in the field. He can be reached at forrylaw@aol.com.

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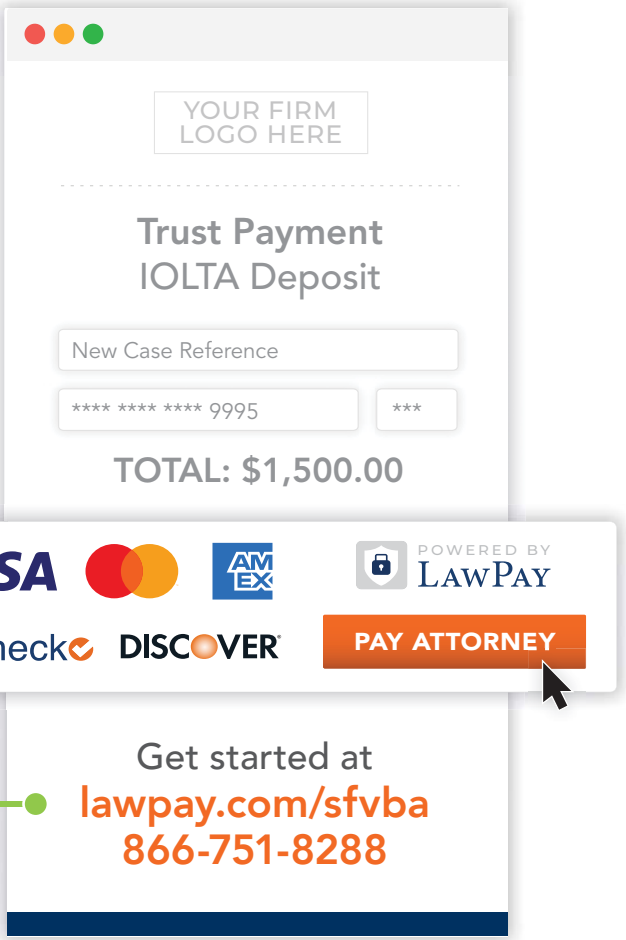

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and periodically increased over the 20-year term, and the tenants—Patels—were solely responsible for maintenance and repairs, insurance, utilities, and taxes.

On August 29, Davis sent an email to Cassidy attaching the July 17 lease, indicating it was the version that would be signed at closing.

On September 13, just two days after escrow closed, Shivam sent an email to Cassidy stating, "*Attached is the lease*," thus making it appear he had signed the July 17 lease. But the September 13 lease attached to Shivam's email was materially different.

Unfortunately for Munoz, the differences between the two leases were not so numerous to be obvious.

For instance, the provision a landlord might be expected to check—rent payments—was unchanged. Munoz signed the September 13 lease after only a cursory review, believing it was the same triple-net lease the parties had circulated and approved numerous times.

But as Munoz would soon learn, the September 13 lease was anything but a triple net lease. For example:

- ***Maintenance and Repair:*** Under the July 17 lease, the landlord—Munoz—had no obligation to maintain or repair the premises. But the September 13 lease provided the landlord "*shall have the duty to repair*" everything beyond normal wear and tear.

- ***Renovations:*** Under the July 17 lease, the tenant—the Patels—was obligated to complete renovations. Under the September 13 lease, the landlord is.

- ***Taxes:*** The July 17 lease provided the tenant pays taxes relating to the premises. The September 13 lease limited that obligation to taxes "*attributable solely to any business property or personal property of the Tenant*" on the premises.

- ***Assignment and Subletting:*** The July 17 lease allowed the tenant to sublease to a nonaffiliated entity only with the landlord's consent. The September 13 lease allowed a sublease "*without the landlord's consent at any time*."

- ***Tenant's Continuing Liability:*** Under the July 17 lease, an assignment or sublease did not release the tenant's liability, including for rent. But under the September 13 lease, a permitted assignment or sublease "*eliminated*" the tenants' liability.

- ***Landlord's Remedy:*** The September 13 lease added a new provision that made retaking possession the landlord's sole remedy on tenant's default.

Meanwhile, as the Patels' plan with regard to the altered lease was put in place, Munoz was unable to obtain

financing from a conventional lender because the hotel had been closed for two years.

Expecting this, the Patels initiated the second phase of their plan. Not only would they be the seller/tenant in the transaction, but also the secured lender.

On the Patels' behalf, Davis contacted Cassidy—Munoz's agent—and recommended he hire David Hamilton of Pacific Southwest Realty Services as a loan broker.

But this was all an illusion for Munoz's consumption. Hamilton had no intention of shopping around for a loan. Instead, he placed the loan with Inn Lending—an alter ego entity of the Patels created just for that purpose.

On July 25, Hamilton told Munoz that a private lender, Inn Lending, would finance the purchase at six percent per annum interest, secured by a deed of trust only on the hotel, plus an unsecured personal guarantee by Munoz.

The terms were presented in an August 6 letter of intent which Munoz signed.

Munoz had paid Hamilton a $7,500 "administrative" fee to have loan documents drawn on those terms. During that entire time, Inn Lending did not even exist.

It was "*simply Rajesh and Shivam*" as Inn Lending did not come into existence until August 23. The following day, Hamilton sent loan documents to Munoz and, in a sense, it was *déjà vu*.

Like the leaseback, the loan was another bait and switch. The approximately 300 pages of loan documents materially varied from the letter of intent:

- The interest rate was "disguised" and was actually 7.3 percent per annum;

- The payoff amount was $300,000 more than it should have been; and,

- The loan was secured not only by the hotel but also by Munoz's other real estate holdings "*worth several millions of dollars*" and a security interest in his personal property.

On September 4, Munoz signed the loan documents, unaware of these changes. For the Patels, everything was now in place.

They had always intended to surreptitiously alter the lease, knowing that the real estate agents would cooperate and/or would not be diligent enough to catch the fraud.

The transaction was manipulated to make sure it would be so burdensome and unfair that Munoz would quickly default on his loan, allowing the Patels, through Inn Lending, to foreclose on not only the hotel and also Munoz's other real property.

It took less than a month for the other shoe to drop.

On October 1, Munoz asked the Patels for the first

rent check. In response, Shivam claimed no rent was due, stating, "*The landlord is supposed to reimburse the Tenant for all renovation costs.*"

Three weeks later, PL's attorney demanded Munoz reimburse for all renovation expenses. Not surprisingly, the litigation ensued.

In December 2019, Munoz filed the operative complaint against Rajesh and Inn Lending. Munoz alleged causes of action for breach of contract, elder financial abuse, promissory fraud, and breach of the implied covenant of good faith and fair dealing.

Rajesh and Inn Lending demurred, asserting they were in no way involved in the underlying transaction and in negotiating the terms of the sale/lease.

They claimed the fraud cause, of action failed because, as to Rajesh, there were zero allegations that he even spoke to Munoz, let alone make any representations to him. And, they asserted, there was no authority to support the proposition that revisions to documents by one party can equate to affirmative misrepresentations that could give rise to liability for fraud.

Opposing the demurrer, Munoz's attorney argued, among other theories, that the defendants misconstrued the allegations, with the complaint alleging the Patels tricked Munoz into executing an altered lease.

Citing among other authorities, *California Trust Co. v. Cohn* (1932), they maintained that Munoz's failure to read the lease before signing, if induced by fraud or trickery, does not preclude relief.[3]

After conducting a hearing, the court sustained the demurrer without leave to amend and entered a judgment of dismissal in favor of Rajesh and Inn Lending.

Post-judgment, the court awarded them $92,505 in attorney's fees plus costs.

Sustaining the Demurrer

In sustaining the demurrer to the seventh cause of action, the trial court understood it to involve promissory fraud. This was probably in no small part because Munoz's attorney had labeled it so.

The court explained the complaint was insufficient because there were no allegations that Rajesh or Inn lending made promises, nor allegations as to the element of reliance.

However, the nature and character of a pleading are determined from the facts alleged, not the name given by the pleader to the cause of action.

The gravamen of the fraud claim is not fraud in the inducement, but rather fraud in the execution.

In a classic case of fraud in the execution, some limitations—such as blindness, illness, or illiteracy—prevents the plaintiff from being able to read and understand the contract that he or she is about to sign.

For example, in *Rosenthal v. Great Western Fin. Securities Corp.*, defendants omitted portions of the contract when reading it aloud to the plaintiff, who could not read English.[4]

In *Jones v. Adams Financial Services*, the defendants tricked a legally blind elderly woman into a reverse mortgage by telling her she was authorizing them to learn the payoff on her mortgage.

Closer to the facts alleged here, fraud in the execution may also occur where a contract is surreptitiously modified.[5]

In *Hotels Nevada v. L.A. Pacific Center, Inc*., the owner of commercial property signed an agreement to sell the properties for $70 million in cash and another $5 million a year later.

After he signed the agreement, he alleged that the buyers covertly substituted a provision entitling them to hold back the last $5 million for five years instead of one. The court held those allegations sufficed for fraud in the execution.[6]

Ill-Gotten Plunder

Another variation is typified by *California Trust Co*., in which a plaintiff sued to quiet title to certain real property and the defendants cross-complained alleging fraud in concise language.

According to the cross-complaint, the plaintiff represented that if the defendants paid $7,500, he would hold title to the property, improve and sell it within a year, and pay the

defendants $17,500 of the proceeds. The plaintiff prepared a written agreement and stated it contained these provisions, which the defendants signed without reading.

When the plaintiff demanded further payment, they read it for the first time and discovered it contained provisions significantly different from the prior oral agreement.

The California Supreme Court determined the cross-complaint alleged sufficient facts to warrant reformation, commenting that, "*A party to an instrument who by fraud leads the other party to sign without reading it is in no position to urge the latter's negligence.*"

These cases reflect society's understandable desire to repress this pernicious form of fraud. Yet, at the same time, there has always been a sharp struggle between that policy on the one hand, and on the other to discourage negligence and the opportunity and invitation to commit perjury.

The California Supreme Court stated in picturesque, if somewhat dated, language, that, "*No rogue should enjoy his ill-gotten plunder for the simple reason that his victim is by chance a fool*."[7]

The countervailing policy is often expressed as a duty to read a contract before signing.

Generally, one who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms, and cannot escape liability on the ground that he or she has not read it. If they cannot read, they should have it read or explained to them.[8]

In balancing these competing interests, courts have required the plaintiff to have acted in an objectively reasonable manner in failing to become acquainted with the contents of the written agreement.

The plaintiff must not only have been ignorant of the surreptitiously inserted terms but must also have had no reasonable opportunity to learn that the document contained them.

In short, the standard is one of excusable ignorance. In making that determination in the context of fraud in the execution of a negotiable instrument, the Uniform Commercial Code explains the relevant factors include:

- The party's intelligence, education, business experience, and ability to read or understand English;
- The nature of the representations that were made;
- Whether the party reasonably relied on the representations or justifiably had confidence in the person making them;
- The presence or absence of any third person who might read or explain the instrument to the signer;
- Any other possibility of obtaining independent information about the document's terms; and,
- The apparent necessity, or lack of it, for acting quickly.[9]

Positive Application

Rosenthal is a good illustration of how courts apply these principles.

There, the plaintiffs brought fraud claims in connection with investments they made, and the defendants sought to compel arbitration based on client agreements containing an arbitration clause.

The Supreme Court found the arbitration agreement unenforceable as to two of the plaintiffs, Giovanna Greco, an 81-year-old Italian immigrant who spoke only "*a few words of English*" and "*cannot read English at all*," and her daughter Rosalba Kasbarian, a 45-year-old Italian immigrant who was "*able to speak and understand simple English, but cannot read English very well at all*," and had difficulty reading "*complicated words or legal terms*."

The court held that the plaintiffs failed to read the agreement because they had a previous relationship with the defendant, and they had a limited ability to understand English. Greco could not understand what the representative was saying; the representative told them he would read the documents to them while Kasbarian translated for Greco; and when the representative read the documents, he did not mention the contract included an arbitration agreement or that the plaintiffs were giving up their legal rights.

In contrast, another plaintiff, Raul Pupo had no prior relationship with the defendant or its representative, and the representative did not purport to read the contract to him or orally explain its contents.

The court concluded, "*Under these circumstances, Pupo's failure to take measures to learn the contents of the document they signed is attributable to his own negligence, rather than to fraud on the part of the defendant or its representatives*."

In this decision, the appellate court reversed the judgment of dismissal, and the appellants were awarded their costs on appeal, jointly and severally, against Rajesh Patel and Inn Lending, LLC.

Lessons Learned

If misrepresentations are used to cause entry into an agreement, it may be fraud in the inducement, and if the agreement is changed without the knowledge of a party, it may be fraud by execution.

For all real estate transactions, written agreements should be used and carefully reviewed before execution; and, legal counsel should be obtained to ensure the parties understand the agreement.

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[1] *Munoz v. PL HOTEL GROUP, LLC*, Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 2022.
[2] Rest.2d, Contracts (1981) § 163, illus. 2.
[3] *California Trust Co. v. Cohn*, 214 Cal. 619.
[4] 14 Cal.4th 394, 58 Cal.Rptr.2d 875, 926 P.2d 1061.
[5] *Jones v. Adams Financial Services*, 71 Cal. App. 4th 831 (1999).
[6] *Hotels Nevada v. L.A. Pacific Center, Inc.*, 144 Cal. App. 4th 754 (2006).
[7] *Seeger v. Odell*, 18 Cal.2d 409.
[8] *Ramos v. Westlake Services LLC*, 242 Cal. App. 4th 674 (2015).
[9] Cal. U. Com. Code, § 3305, subd. (a)(1)(C) & com. 1, 5.

Real Estate Agreement: Fraud and Their Execution

Test No. 161

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. Fraud in the execution occurs before parties have agreed upon certain written contract terms.
❑ True ❑ False

2. If the agreement is changed without the knowledge of a party, it may be fraud by execution.
❑ True ❑ False

3. Fraud in the execution cannot be accomplished by surreptitiously substituting a document for signature that looks the same as the earlier draft but contains materially different terms.
❑ True ❑ False

4. Fraud in the execution is the same as promissory fraud.
❑ True ❑ False

5. It is not possible to surreptitiously substitute altered versions of the lease and financing instruments containing terms extremely adverse to the buyers and were neither bargained for nor agreed to.
❑ True ❑ False

6. Fraud in the execution is distinct from promissory fraud, which involves false representations that induce one to enter into a contract containing agreed-upon terms.
❑ True ❑ False

7. The nature and character of a pleading are not determined from the facts alleged, and instead are determined by the name given by the pleader to the cause of action.
❑ True ❑ False

8. The signer's failure to read the lease before signing, even if induced by fraud or trickery, precludes relief.
❑ True ❑ False

9. Promissory fraud requires allegations that defendant made promises upon which the signer relied.
❑ True ❑ False

10. Fraud in the execution cannot occur where a contract is surreptitiously modified.
❑ True ❑ False

11. A rogue should enjoy his ill-gotten plunder for the simple reason that his victim is a fool.
❑ True ❑ False

12. Fraud in the execution is also known as fraud in the factum, and fraud in the inception.
❑ True ❑ False

13. Generally, one who accepts or signs an instrument, which on its face is a contract, is not necessarily deemed to assent to all its terms.
❑ True ❑ False

14. Promissory fraud requires pleading sufficient facts showing the parties made promises upon which plaintiffs relied.
❑ True ❑ False

15. A signer can escape liability on the ground that he or she has not read the agreement.
❑ True ❑ False

16. For all real estate transactions, written agreements should be used and carefully reviewed before execution, and appropriate legal counsel should be obtained to ensure the parties understand the agreement.
❑ True ❑ False

17. The plaintiff must not only have been ignorant of the surreptitiously inserted terms, but must also have had no reasonable opportunity to learn that the document contains them.
❑ True ❑ False

18. A relevant factor in the Uniform Commercial Code does not include the party's intelligence, education, business experience, and ability to read or understand English.
❑ True ❑ False

19. Plaintiffs may reasonably fail to read the agreement because they had a previous relationship with the defendant.
❑ True ❑ False

20. The failure to learn the contents of a document that is signed is never attributable to the signer's own negligence, and instead is always fraud on the part of defendant.
❑ True ❑ False

Real Estate Agreement
MCLE Answer Sheet No. 161

INSTRUCTIONS:

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

San Fernando Valley Bar Association
20750 Ventura Blvd., Suite 104
Woodland Hills, CA 91364

METHOD OF PAYMENT:

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

_____
Credit Card Number

_____ _____/_____/_____
CVV code 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.

Name _____
Law Firm/Organization _____
_____
Address _____
City _____
State/Zip _____
Email _____
Phone _____
State Bar No. _____

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

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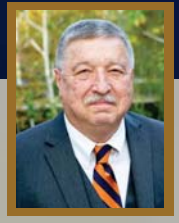
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False

By Michael D. White

The California Bar Exam: Under the Microscope

The California Bar Exam is coming under intense scrutiny as a Blue Ribbon Commission has been empaneled to report their recommendations by the end of the year as to the future of the exam and whether it will be modified, replaced, or done away with altogether.



Michael D. White is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 40 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at michael@sfvba.org.

THOUGH LAWYERS HAD BEEN PRACTICING in the United States for decades, it wasn't until 1855 that Massachusetts became the first state to offer a written bar exam.

Prior to that, according to the American Bar Association, U.S. states—or pre-Revolution colonies—would issue oral exams to neophyte attorneys like John Adams and Abraham Lincoln, usually with a judge in the county or district where the lawyer sought admission, or with a lawyer already admitted to that bar administering the test.

In 1877, New York introduced a written exam in addition to the oral exam. Other states followed suit, but, in most cases, prospective attorneys still "read the law," before petitioning their state's Supreme Court for admission to the Bar.

The petition usually included the recommendations of other attorneys and a list of the books read by the applicant during the course of his or her legal education.

According to one source, in his 1895 petition to the court, Del Norte County Clerk John L. Childs of Crescent City included an eye-brow raising list of books "*pertinent to his education and of a legal and quasi-legal character*."

On the list were *Blackstone's Commentaries; Kent's Commentaries; Greenleaf on Evidence; Story's Equity Jurisprudence; Gould's Pleadings; Stephens on Pleading; Lube's Equity Pleading; Parsons on Contracts; Pomeroy's Introduction to Municipal Law; the Code of Civil Procedure, Civil, Penal and Political Codes of this State*; and the Constitution of the United States and of the State of California.

It wasn't until 1919 when the California Supreme Court ordered the creation of the state's first Board of Law Examiners, tasked with "*administering the requirements for admission to practice law in California*."

The Board underwent a name change to the Committee of Bar Examiners when the State Bar of California—formerly a voluntary alliance known as the California Bar Association—was formed in 1927, attracting more than 9,000 lawyers by the end of the year.

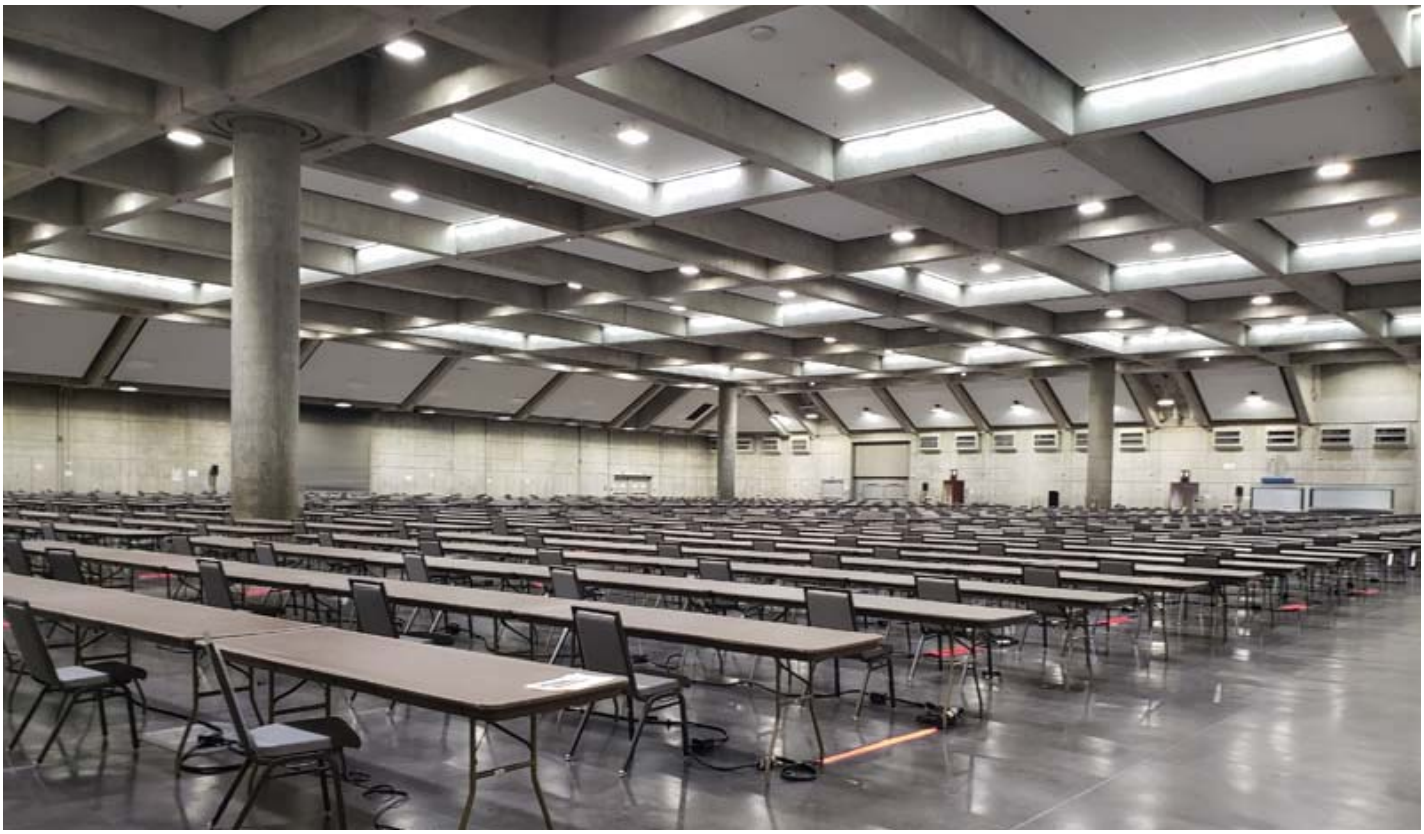
The first written bar exam was administered in 1920 to some 137 applicants—88 of whom passed the exam—in San Francisco and Los Angeles.

By comparison, in July 2021, 7,930 individuals, of which 53 percent passed, took the two-day exam, which, over the years, has developed a reputation as the toughest in the nation.

Protecting the Public

The California Bar "has been criticized for years as being too difficult and too restrictive, particularly against people who come from diverse backgrounds," says attorney Ronald F. Brot, a senior partner at Brot & Gross, LLP in Sherman Oaks and a past president of the Los Angeles County Bar Association.

The theory of the bar exam, he says, "has always been public protection. We want to make it difficult because in doing so, we're protecting the public, but it's difficult to establish a test, whether it's essay, true false or multiple



Before the storm. The California State Bar's testing center at the SAFE Credit Union Convention Center in Sacramento. Image Courtesy of the California State Bar.

> I'm always for more and better ways to measure what it takes to be a good lawyer, and if there's a better way of testing, then we should implement it."–*Ronald F. Brot*

question, that will translate into a guaranteed level of competence."

At this point, he adds, "At least we're testing the accumulation of knowledge and the ability to think through problems that require people to use basic skills, such as taking a set of facts and figuring out the applicable law and then applying the law to those facts and reason my way to a fair conclusion."

"I'm always for more and better ways to measure what it takes to be a good lawyer," says Brot. "If there's a better way of testing, then we should implement it."

Everything On the Table

In the spring of 2020, the State Bar Board of Trustees approved the establishment of a Joint Blue Ribbon Commission on the Future of the California Bar Exam, in partnership with the California Supreme Court to consider that "*better way of testing*" and formulate recommendations after considering the years-long debate over the usefulness of exams and their practicality for assessing a future lawyer's performance.

In short, the new Commission's charter mandates that its 19-members "will recommend to the bar and court whether a bar exam is the correct tool to determine minimum competence to practice law."

Susan Smith Bakhshian is an attorney and a professor at Loyola Marymount University's Loyola Law School, who serves on the Blue Ribbon Commission.

At the most recent meeting of the full Commission, she says, the members voted "to proceed on considering two alternatives presented by the sub-committees. Both an exam alternative and a non-exam alternative are under consideration now. The Commission is now considering the details of two alternatives."

The exam alternative, she says, "will evaluate continuing with a California exam, while continuing to monitor the NextGen exam which is being created by the National Conference of Bar Examiners (NCBE), while the non-exam alternative will evaluate the possibility of a path to licensure without an exam component."

The California bar exam, says Bahkshian, "is antiquated. California is not unique in some ways. Many of the problems California faces are common in other jurisdictions. Oregon has recently redone their licensing procedures, and if you look at

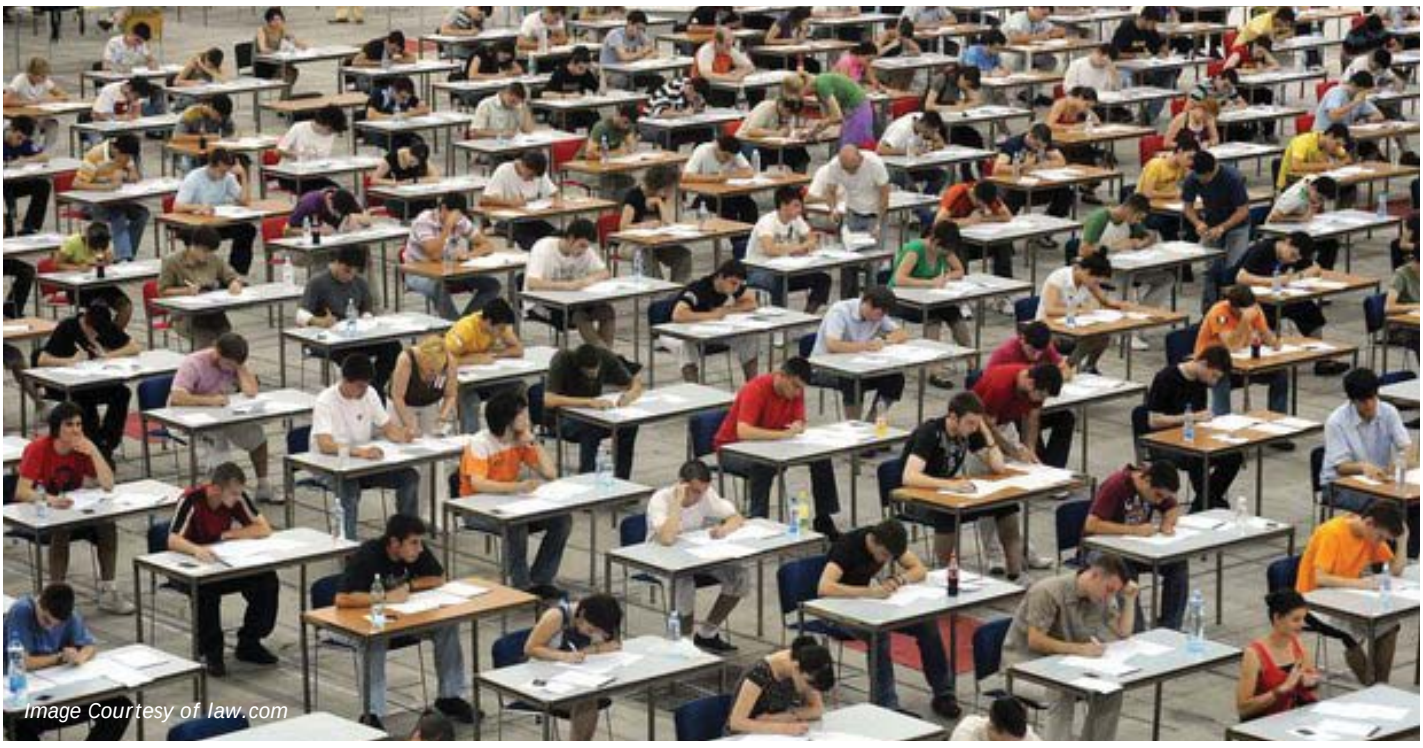


Image Courtesy of law.com

other jurisdictions, you will see some have adopted the Uniform Bar Exam, or have reworked their own exams, modified cut scores, or made a variety of other kinds of changes to their licensing procedures, so you can see that the problem is not limited to California."

> Everybody wants to make sure the public is protected. But everybody wants to make sure as well, that we're doing the licensing properly."
> —*Susan Smith Bakhshian*

The problem, she adds, "is exacerbated here because we are a large state with a large number of applicants, and an arbitrary cut score. The problems are even worse than in a smaller jurisdiction where fewer people take the exam."

"What's finally become more apparent to everyone, courtesy of the California Attorney Practice Analysis Working Group [CAPA] report, is that the skills that today's young lawyers need are not tested by the exam as it's currently structured. For example, there are huge amounts of rote memorization, including details of some laws that don't even apply in California, in a multiple-choice format."

According to Bakhshian, "The bar exam we have now fails on two fronts—it both under- and over-tests. It over-tests on things that young lawyers need not know for practice today. It under tests things that we do need young lawyers to be able to do today such as effectively interviewing a client, conducting proper legal research, and finding the correct legal answer for a client's problem. The current exam does very little in terms of skill-based assessments."

Scrutiny Delayed

Why has it taken so long, then, for the bar exam to come under the current intense scrutiny it is now under?

"It has been a long journey for the bar exam to face the scrutiny that it faces today," says Bakhshian. "In some ways, the COVID pandemic heightened everyone's awareness of the problems because there were many issues with the remote administration of the exam. In a way, I think it was a turning point. I also think the change in the cut score, while helping to address some of what's wrong with the exam, was not a complete solution. It was a Band-Aid. A long journey to face problems that are extremely complex is not surprising it's important to get it right."

Everybody, she says, "wants to make sure the public is protected. But everybody wants to make sure as well, that we're doing the licensing properly, that we are excluding only those we need to and admitting those we should, that we are doing a good job of our licensing, and that our licensing actually tests the kind of skills you need to be a new attorney in today's practice."

"I think that's the other half of why it's taken so long to get the attention and the spotlight on this issue that it has long deserved," she says, adding that "some of it was certainly the COVID pandemic. But some of it was also that it's one of those complex problems, that is difficult to get people to tackle it. It's a huge undertaking to change a law licensing process, and do a better job of it."

Serving with Bakhshian on the Blue Ribbon Commission is Natalie Rodriguez, Associate Dean for Academic Innovation and Administration at Southwestern Law School.

"I don't know why it's taken this long. I do think that the tremendous dip in bar results that started in 2014 brought

a lot of pressure across the country. It wasn't just California, but overall. There were major dips in bar results. And that's when people started asking questions, including when was the last time jurisdictions looked at the exam, why do they have the cut score they use, and how are they defining minimum competency."

That "triggered a lot of questions that have led to different state bars conducting studies looking at their bar exams—is it the exam itself? Is that the problem? Or is it something else? For California, the last of these studies was the CAPA study that came out last year, which revealed that the exam is not currently what it needs to be in its current form."

> I do think that the tremendous dip in bar results that started in 2014 brought a lot of pressure across the country."
> *–Natalie Rodriguez*

"We were tasked by the California Supreme Court with looking at licensure broadly. And not just simply focusing on whether the exam should continue as is or not, it really was a look at the state of the bar exam," says Rodriguez, who serves on the Commission's sub-committee studying the licensure through a modified bar exam.

"Among those things that we should be looking at was a report that was just issued by a prior Commission, the CAPA group. It covered an analysis of the existing bar exam and whether it was testing substantively and on skills that it ought to cover. We were also asked to consider whether we should be thinking about adopting the UBE [Uniform Bar Exam]," she says.

The sub-committees have met for two meetings each and met in early March for the first time to give the full Commission a joint recommendation that all options be studied.

"We will continue to explore what California-specific bar exam should look like that takes into account the CAPA report, which means it will look like a very different bar exam than the one we currently have," says Rodriguez.

"We will also continue to track the progress of the NCBE's NextGen bar exam. But at this point, we're not recommending that California adopt it," she says.

"That doesn't mean that ultimately what we're saying is the only path pathway is through a bar exam, we're just simply saying we should consider looking at what that would look like. Whether it's through only a bar exam or a non-exam pathway, that remains to be determined. We're just simply putting together what it would look like if the state had a California specific bar exam."

The Chicken or the Egg

The question has long been asked by some whether law schools spend as much time teaching the ins and outs of practicing law as they do giving students just what they need to pass the bar exam.

"I would say it's both, but with the difficulty of let's say the California bar exam with its higher cut score, there does have to be emphasis on making sure students are prepared to take the exam," says Rodriguez.

"The exam currently tests about 13 to 17 subjects, depending on how you divide them up. So when you have to know that much law, in order to do right by their students, law schools have to make sure that they're preparing students to pass the exam, which then means that there's less room for those courses that prepare them for practice, which is far more skill based than just substantive knowledge," she says.

"That's where the dilemma lies. Most attorneys in their first year or two of practice don't have to know 13 subject areas off the bat and have it memorized," adds Rodriguez.

"They can research that information and should do so, even if they're seasoned attorneys. What they need to have is the skill set needed on how to find that information. That's legal research. That's not really tested on the bar exam. In fact, the closest thing to that is what's called the performance test in which you're already given the relevant statutes and cases that you would need to resolve the issue."

Part of what an attorney has to do, she says, "is know how to even look that up and gather for themselves the information they're going to use to solve the legal problem. I would say the California bar exam places too much emphasis on making sure that students are exposed to all the substantive areas that are included in the exam. That creates limited opportunities for skill based courses while they're in law school."

"One subcommittee is looking at licensure without a bar exam in which law schools could have a curriculum that would be much more like an apprenticeship, blending classroom work with real practice experience in a number of legal settings with the benefit of a supervisor on site helping them learn what they need to learn and then on campus through the law school, learning theory and receiving

feedback," says Rodriguez. "Whether it would be exclusive or as a complement to the bar exam, or you could have the option of one or the other, all that is to be determined. But a pathway without a bar exam is on the table."

Law schools today "obviously have a variety of different things on their plate that they're trying to do," says Susan Bahkshian of Loyola Law School.

"Of course, we want to create lawyers who are skilled in the basic skills they'll need in practice, and we also need them to be able to pass the bar exam. And we also need them to be professional and ethical. Law schools have all of this on their plate," she says.

"There is no doubt the bar exam is a heavy driver, but it's not the only driver by any means; nor should it be. We need to make sure that our young lawyers are professional, ethical, and skilled, which is why the exam is undergoing this review and overhaul because what we need to see here is an exam that actually tests the right things, or provide an effective non-exam alternative."

Light at the End of the Tunnel

Bahkshian is "encouraged that the Commission's work is being done thoughtfully. I remain open-minded, as I assume all Commission members are, and people are listening and engaging. This is a large group. It's not all lawyers, but there are quite a few lawyers in the group. That's a challenge with a complex problem being taken on by a large group of people. I've been encouraged by how very willing people are to listen, learn, and be informed."

That, she says, is an important part of the Commission "reaching good results. It's equally important for those of us who came to this Commission with experience and ideas to remain open to all of the new and additional information as well, because that's really how we solve this problem the right way."

Rodriguez shares her colleague's feelings about the make-up of the Commission and its work.

"I've enjoyed my work with the Commission, and I feel that everyone serving on the Commission has come in with an open mind. I can see it in our conversations and with how much information we saw and have sat with, before even getting to the point of making any kind of recommendation."

That is encouraging, she says, "because this means that we have a variety of stakeholders coming in to try to solve the question of what licensure should look like in California and what new attorneys really need to do well in those first few years of practice. I feel like we are doing that work, and that we're thinking about it carefully and critically."

The Supreme Court/State Bar Blue Ribbon Commission on the Future of the California Bar Exam is slated to issue its final report with its recommendations by the end of this year.

By Herb Fox

Motions for a New Trial: Avoiding the Traps

MOTIONS FOR A NEW TRIAL in civil cases are common. But, they are also commonly crafted incorrectly, in part because of the arcane and counter-intuitive nature and procedural rules for the motion.

Motions for a new trial procedures contain numerous traps for the unwary and wary alike, including jurisdictional deadlines for the parties and for the court, unexpected triggers for those deadlines, and myriad consequences for appellate proceedings.

Here then is a non-exhaustive look at what all trial attorneys should know about motions for new trial in the California's Superior Courts.

A Collateral Proceeding

A motion for new trial is not just a motion but is a new collateral proceeding strictly governed by statute.

A motion for a new trial is a "*reexamination of an issue of fact*" by the same court that held a bench or jury trial.[1] [2]

It is not a mere motion within a case, but is instead a "*new statutory proceeding, collateral to the original proceeding, that constitutes a new action brought to set aside the judgment*."[3]

From that concept flows the logic of rules governing the motion such as:

- The jurisdictional requirement for the timely filing of a proper Notice of Intent to bring the motion, without which the trial court has no authority to consider it;[4]
- The ability of the trial court to consider and grant the motion even after a Notice of Appeal from the judgment has been filed, in derogation of the normal automatic appellate stay;[5]
- The right to directly appeal from an order granting the motion in addition to appealing from the judgment.[6]

Thus, a trial court has no jurisdiction to make an order granting a new trial on its own motion or by the consent, waiver, agreement or acquiescence of the parties.[7]

Further, an order granting a new trial is void—and thus reversible on appeal—if it is made on a ground not prescribed by statute upon a Notice of Intent that is filed too early or too late, or is granted

Herb Fox is an experienced certified appellate law specialist who has been of-record in nearly 300 appeals in the District Courts of Appeal and Supreme Court, and Ninth Circuit. He can be reached at hfox@foxappeals.com.

after expiration of the statutory time for ruling.[8 9 10 11]

For all of these reasons, strict compliance with the statutory requirements for filing and prosecuting a motion for a new trial is essential, and a party opposing the motion should confirm that the moving party—and the trial court—has met all deadlines and requirements. There often is no room for error or equitable relief.

Preserving a Record for an Appeal

A motion for new trial may be, but is not always, necessary to preserve a record for an appeal from the judgment.

Sometimes a motion for a new trial is necessary in order to create and preserve a record for appellate review of the judgment.

Typically, a motion is required to raise on appeal issues of jury misconduct, newly discovered evidence, and excessive or insufficient damages.[12 13 14]

It may also be necessary to prosecute a motion for a new trial in order to raise objections to the sufficiency of a Statement of Decision after a bench trial, if the omissions and ambiguities were not previously brought to the attention of the trial court.[15]

Other new trial issues, such as insufficiency of the evidence and errors of law, including evidentiary rulings and erroneous jury instructions, are generally preserved for review without the necessity of the motion.[16]

Whether a new trial motion is worth the time and money when it is not necessary to preserve the issue for appellate review is often a subjective judgment call, taking into account factors such as the nature of the error and the likelihood that the trial judge would be open to reconsidering the outcome.

Error is Not Enough

A new trial may be granted only where the error is prejudicial.

The trial court has broad power to modify or set aside a judgment and to override the jury's award of damages, acting as the so-called 13th juror.[17]

Circumscribing that authority, however, is the requirement of prejudice.

> "The trial court has broad power to modify or set aside a judgment and to override the jury's award of damages, acting as the so-called 13th juror."

Harmless error will not do. The trial court might not reverse a judgment unless the error or defect caused substantial injury and where a different result would have occurred absent that error or defect.[18]

A similar standard applies to the power of the trial court to set aside a judgment for lack of substantial evidence or excessive or inadequate damages.

The court must weigh the evidence from the entire record and cannot grant relief unless it is clear that the court or jury "*clearly should have reached a different verdict or decision*."[19]

The Jurisdictional Deadline

A party intending to move for a new trial must initially file and serve on each adverse party a Notice of Intention to move for a new trial after the judgment is rendered but before the entry of judgment" or the earlier of the following:

- Within 15 days of the mailing of a notice of entry of judgment by the clerk of the court "*pursuant to*" the California Code of Civil Procedure;[20]
- Within 15 days of service on the moving party of written notice of entry of judgment; or,

- Within 180 days after the entry of judgment.[21]

The language seems straightforward, but in fact it is laden with traps, beginning with the fact that it is the Notice of Intent—and not the follow up points and authorities and affidavits in support of the motion—that serves as the jurisdictional filing that allows the trial court to consider the motion.[22]

Further, the precise time for filing the Notice of Intent is sometimes murky. A Notice of Intent that is filed too early, that is before the judgment is "*rendered*," void.[23]

When is a judgment considered "*rendered*"?

Caselaw has held that the entry of a verdict, a Statement of Decision, and an order granting a Motion for Summary Judgment are all examples of the rendering of a judgment before entry of the formal judgment, thus allowing the filing of the Notice of Intent.[24] [25] [26]

That being said, it usually makes little sense to file the Notice of Intent early—before the actual entry of the judgment—because the 10-day window to follow up with the supporting points and authorities and declarations begins upon the filing of the Notice of Intent.[27]

The early filing of the Notice of Intent, in other words, only shortens your time to prepare and file the meat of the motion.

> "The remedy of a new trial motion is not limited to judgments arising from a full bench or jury trial."

Written Notice of Entry of Judgment

For another example of the unique rules applicable to new trial motions, the service of written notice of entry of judgment is not what it seems.

No formal Notice of Entry form is required.

Instead, the mere receipt of a copy of the judgment served by the opposing party—even if by personal service without a proof of service attached or filed with the court—is sufficient to trigger the 15-day time limitation.[28]

Thus a process server who leaves a bare copy of the signed and conformed judgment on a receptionist's desk, may start the clock.

For yet another example, service of a copy of the judgment by the clerk is only effective to start the 15-day clock if the Notice states on its face that it is served pursuant to the California Code of Civil Procedure or by order of the court, and the Clerk's Certificate of Mailing is filed.[29]

The absence of this language on the face of the clerk's Notice of Entry will render ineffective service by the court clerk.[30]

Finally, the deadlines are strictly construed from the date of service of the triggering document without extension for service by either mail or email.[31]

Jurisdictional Time Limits

It is not only the moving party that faces jurisdictional deadlines—the court does as well.

The court must rule on the motion within 75 days of the filing of the Notice of Intent, or it will be denied by operation of law.[32]

Thus, an order purporting to grant the motion for new trial that is filed more than 75 days after the Notice of Intent was filed is void.[33]

Further, an order granting a new trial must include a specification of reasons for that determination drafted by and signed by the judge.[34]

An order that simply grants the new trial without the specification of reasons is ineffective unless there is a separate statement of those reasons signed and filed within 10 days of the order.[35]

The failure to provide such a specification of reasons might alone be grounds for an appellate court to reverse the order granting a New Trial.[36]

New Trial Motion Procedures

The remedy of a new trial motion is not limited to judgments arising from a full bench or jury trial.

To the contrary, the motion can be used to attack a wide variety of final judgments and orders no matter how they arise, including:

- A judgment entered upon the granting of a motion for summary judgment;[37]
- An order of dismissal upon the sustaining of a demurrer;[38]
- A judgment on the pleadings, for nonsuit, or upon a directed verdict;[39] and,
- A default judgment entered as a discovery sanction.[40]

An order denying a proper motion for new trial extends the time to appeal from the judgment, but is not itself appealable. An order granting a motion for a new trial, on the other hand, is an appealable order.

Assuming that the motion for new trial was procedurally compliant, the denial of that motion will extend the time for filing a Notice of Appeal from the judgment for up to 30 days after the notice of entry of that order.[41]

However, note that the extension is not necessarily tacked on the normal 60 days to file a Notice of Appeal after service of the judgment.

For example, if the Motion for New Trial is denied on day 50 after service of the judgment, the Notice of Appeal must be filed by day 80 after service of the judgment.[42]

Nor is that order itself appealable. The appeal from the judgment will encompass the issues raised in the motion for a new trial.[43]

On the other hand, an order granting a new trial is an appealable order independent of an appeal from the underlying judgment.[44]

Thus, if the trial court takes away a favorable verdict or judgment, the aggrieved party can appeal from that new trial order. But such an appeal will trigger the right of the party who won the new trial to file a protective cross-appeal.[45]

The underlying rationale is that if the reviewing court reverses the order granting the new trial, the effect is to reinstate the original judgment, and the party aggrieved by that judgment can raise on appeal issues that were not resolved in its motion for new trial.[46]

[1] California Code of Civil Procedure §§ 656 et al.
[2] *Id.*
[3] *Spruce v. Wellman* (1950) 98 Cal.App.2d 158, 161.
[4] California Code of Civil Procedure § 659; *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 336–337.
[5] *Hatfield v. Levy Bros.* (1941) 18 Cal.2d 798, 807.
[6] California Code of Civil Procedure § 904.1(a)(4).
[7] *Kabran v. Sharp Memorial Hospital*, *supra*, 2 Cal.5th at 336–337.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] California Code of Civil Procedure § 657 subd. 2.
[13] *Id.* § 657 subd. 4.
[14] *Id.* § 657, subd 5.
[15] *See Id.* § 634. See also § 662, authorizing the trial court to "change, add to or vacate" the Statement of Decision in response to a New Trial Motion.
[16] *See, e.g.*, *Id.* § 647 for a list of matters that are deemed to have been objected to for the purpose of appellate review.
[17] *Id.* § 657, subd. 5; *Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 507.
[18] *Id.* § 475; California Constitution Article VI, § 13.
[19] *Id.* § 657.
[20] *Id.* § 664.5.
[21] *Id.* § 659.
[22] *Kabran v. Sharp Memorial Hospital*, supra, 2 Cal.5th at 336.
[23] *Id.*
[24] *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 460.
[25] *Ruiz v. Ruiz* (1980) 104 Cal.App.3rd 374, 378.
[26] *Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 12.
[27] California Code of Civil Procedure § 659a.
[28] *Palmer v. GTE California, Inc.* (2003 30 Cal. 4th 1265, 1278.
[29] *Van Beurden Insurance Services, Inc. v. Customized Worldwide Weather Insurance Agency, Inc.* (1997) 15 Cal.4th 51, 64.
[30] *Id.*
[31] California Code of Civil Procedure § 1013(c).
[32] California Code of Civil Procedure § 660(c).
[33] *Id.*
[34] California Code of Civil Procedure § 657.
[35] *Id.*
[36] *Mercer v. Perez* (1968) 68 Cal.2d 104, 118.
[37] *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 858.
[38] 20th *Century Insurance Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1261.
[39] *Carney v. Simmonds* (1957) 49 Cal.2d 84, 88 – 90.
[40] *Jacuzzi v. Jacuzzi Brothers, Inc.* (1966) 243 Cal. App.2d 1, 22 – 23.
[41] California Rule of Court 8.198(b).
[42] *Id.* at 8.108(a).
[43] *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 18.
[44] California Code of Civil Procedure s 904.1(A) (4).
[45] *Mercer v. Perez*, *supra*, 68 Cal.2d at 124.
[46] *Eisenberg, Cal.Practice Guide: Civil Appeals and Writs* (TRG, 2021) at § 3:169.

Work from Home:
The Post-Pandemic Business Model

By David Mercy

WHILE THE FUNDAMENTAL nature of your law practice has most likely remained consistent over the last two years, the methodology involved in producing your work has certainly gone through some changes.

Following the initial COVID lockdowns, the number of owners and employees operating as a remote workforce has grown exponentially across all types of enterprises, especially at law firms.

As the variants of the virus grow weaker and the possible end of the pandemic approaches, the question is: Who will continue to work efficiently from home?

The American Bar Association conducted a survey of 4,200 members in September and October 2020. Some 54 percent of the lawyers that were polled reported that they work from home close to or at 100 percent of the time, with only 22 percent reporting close to or at zero percent of the time.[1]

These numbers differ slightly from an April 2020 survey conducted by Case Management software provider MyCase, which found that 48 percent of all law firms claimed a 100 percent remote workforce, while only 12 percent said their entire staff was operating in their physical offices. Almost 40 percent said their staff was a mix of personnel who work in-office and at home.[2]

Note that the criteria for the two surveys was different—MyCase polled law firms while the ABA polled individual lawyers. The two surveys are the most recent conducted within the legal profession, but a lot can change in a year, especially in years like the last two.

What Does the Future Hold?

That question is currently under discussion in board meetings across the nation—even if only by way of Zoom.

For law offices, having at least a largely remote workforce seems viable—but it's not for everyone.

There are law firms on both sides of this coin regardless of the number of

David Mercy is Vice President of Business Development at ITSupportLA, a Tarzana-based provider of IT support services to small- and medium-sized businesses. He can be reached at david@itsupportla.com.

attorneys and employees, while some are back in the office and some are not. It is a matter for partners and employees to discuss and assess for themselves, and the COVID issue is far from settled.

Many solo practitioners and small firms have given up on maintaining an office entirely, but that is not an option for many mid-size to large practices. Do not think for a minute that prominent lawyers and law firms are going to send everybody home and then meet prospective clients in some small space in an office suite.

Just as the layout and architecture of Washington D.C. are meant to inspire an impression of awe and power, so does a well-appointed law office inspire confidence in all who enter.

Prestige and the trappings of success matter. Remember Walter Matthau as attorney Willie Gingrich in his cluttered broom closet of an office in the film comedy *The Fortune Cookie*?

He was protrayed as unlikely to attract any *Fortune 500* clients.

So do not give up your office, but does everybody realistically need to be there every day? The Hybrid Work Model has been steadily gaining favor—some always work from home, while some are always in the office, and others split their time between the two.

No matter which work model, the important factor is that nothing is sacrificed in terms of productivity. By now, the work from home concept is not new—it was not new in March of 2020—it just took off like never before.

So, what do lawyers need to do their work from home?

Shut Down Alexa

Just about every attorney has taken work home, even if just occasionally.

Perhaps it is merely to answer emails or take care of some reading. Many work from home full time, so access to all the tools and resources they need is requisite.

After two years of remote work, it can be reasonably assumed that everyone has figured out what they need to work from home: privacy, secure communications, dependable hardware, and turning Alexa off.

If you have this handy little Amazon voice assistant, make sure to turn off the microphone when you are working.

Alexa is always awake and is always listening, recording everything and transmitting those recordings to Amazon, despite the fact that she is far from flawless.

Strategizing about a case? Discussing the terms of a settlement? Keep it between concerned parties. According to Geoffrey A. Fowler, writing in The *Washington Post*: "*Many smart-speaker owners don't realize it, but Amazon keeps a copy of everything Alexa records after it hears its name. Apple's Siri, and until recently Google's Assistant, by default also keep recordings to help train their artificial intelligences.*"[3]

Fowler goes on to say, "*It's supposed to record only with a wake word—"Alexa!"—but anyone with one of these devices knows they go rogue. I counted dozens of times when mine recorded without a legitimate prompt*."

That is all you need as some Amazon or Apple employees hearing confidential information could well figure that they can sell it to the highest bidder.

Law libraries are online, Zoom works for meetings, and a good case management software does a lot of the heavy lifting, but cybersecurity still remains a serious issue as, despite the initial rush to secure the new remote workforce almost two years ago, many businesses have still not ironed out the kinks.

Look to the Cloud

Many important components of the communications chain linking office and home are not as secure as one might think.

Virtual Personal Networks (VPNs) are a good start, but they are hardly bulletproof. Home-based internet and Wi-Fi are vulnerabilities as well and your accessibility to the office should be further protected.

The answer is in the cloud.

There have been two transitional surges affecting business technology in the last two years—one impacted a largely remote workforce and the other has been the move to the cloud.

It is a no-brainer when you consider the inherent vulnerabilities and spottiness of reliability in working with a local network-based remote workforce.

Think of it as a hose that needs to be stretched out 120 feet.

The old local network is like arriving at that 120-foot length by joining together four 30-foot hoses—office server, internet, VPN, and Wi-Fi. The problem? Too many places that can spring a leak.

Placing all of your operations in the cloud is akin to using the 120-foot hose. It is direct, secure, and, although internet dependent, much more reliable.

For years, the two most-utilized cloud services have been data backups and email hosting, but since March 2020, American enterprise has placed more of their operational burden on the cloud.

In turn, that positive shift has become a necessity in order to maintain business continuity in the face of a worldwide upheaval.

Are there too many cloud choices? Not when you look closely.

In fully cloud-based administration and operations capabilities, *Microsoft 365* leads the pack with *Google Workspace* close behind.

Amazon Web Services places third on the list with a jury-rigged handful of apps that are not truly integrated.

Looking at any services besides the top two may save a dollar or two per month, per end-user, but how much is the trade-off worth? A lot—namely the ability to seamlessly produce and protect your work without interruption for just a few bucks.

Both *Microsoft 365* and *Google Workspace* offer free trials—Microsoft for 30 days, Google for 14. Both are worth trying to see how they fit a practice. It is also a great idea to consult with your IT services provider, but first inquire if they are a Microsoft partner, a Google partner or both.

In any event, examining the two top options, trust is critical as both Google and Microsoft are the subjects of class-action lawsuits brought about specifically alleging their misuse of consumer data.

So far, the merits of the suits have not yet been determined.

Big Savings on Hardware

This is no small thing. On the average, every three to five years—the outside time frame being eight years—network hardware comes due for replacement or upgrading.

This generally can represent a significant cash outlay, and is relative to the size of the law firm as replacing hardware is as big a bite for a solo practitioner as it is for a firm with more than 20 attorneys.

With all operations stored in the cloud, a computer simply becomes a terminal that only needs enough power, memory, and hard drive space to negotiate the internet and reach the cloud.

Thus, the recurring and significant capital outlay for updating and replacing the workstations and servers associated with old-school local networks are vastly diminished.

A number of cloud PCs have been appearing in the marketplace, but the one that bears the closest examination is Microsoft's new *Windows 365*, which seamlessly integrates with *Microsoft 365* and industry-specific applications such as *Case Management*.

Windows 365 is both a terminal and Operating System (OS) that connects to everything needed and keeps data more secure than any other platform available. No more legacy local network and no more expensive hardware that needs to be updated every few years. A secure network can be accessed from anywhere, on any connected communications device.

Samsung offers several versions of their *M5 Smart Monitor*, which has been fairly well-reviewed over the 14 months it has been available. It is reasonably priced and comes pre-loaded with *Microsoft 365* and doubles as a TV for streaming services.

The Remote Access feature interfaces easily with an office computer as well, making it possible to work from home with no computer positioned under a desk.

Working From Home…Works!

Yes, given all of the options available, it is possible to work from home permanently.

When considering where to work and how to work, the most important thing is to maintain the quality and integrity of your work in a highly secure environment.

The tools are all there to make the experience more reliable and protected than ever before.

[1] The ABA: *Practicing Law in the Pandemic and Moving Forward;* https://www.americanbar.org/content/dam/aba/administrative/digital-engagement/practice-forward/practice-forward-survey.pdf.
[2] MyCase: *How Law Firms are Responding to COVID-19 Remote Work*; https://www.mycase.com/blog/survey-results-how-law-firms-are-responding-to-covid-19-remote-work/.
[3] The Washington Post: https://www.washingtonpost.com/technology/2019/05/06/alexa-has-been-eavesdropping-you-this-whole-time/.

LEGAL ETHICS COURSES: Legal ethics courses, which many law students used to think were dry and theoretical, are now being looked at differently, with professors emphasizing practical topics and students feeling eager to discuss concepts such as access to justice and diversity, equity and inclusion.

That's according to several professors and students, who say that the combination of the COVID-19 pandemic and the nationwide focus on racial inequity sparked by the murder of George Floyd has made legal ethics seem much more relevant in the past two years. According to Bloomberg Law, some law schools are using their ethics and professional responsibility courses to help students prepare for ethical practice in an office or a remote setting and open up thoughtful discussions of current events related to DEI.

WANT FRIES WITH THAT?: California's new Fast Food Accountability and Standards Recovery Act (FAST Recovery Act) is now in effect.

The Act impacts the state's 500,000-plus fast-food workers by creating an 11-person Fast Food Sector Council within the California Department of Industrial Relations (DIR) and adding new statutory requirements aimed at mandating sector-wide minimum standards on wages, hours and working conditions.

WORKING AT HOME: What began as a necessity in 2020 appears to have become a preference—among U.S. workers whose jobs can be done from home, 59 percent are working from home all or most of the time—and 78 percent of them say they'd like to continue doing so even after the pandemic ends.

Even factoring in the delta and omicron variants, in a January 2022 survey by Pew Research Center, fewer workers than in October 2020 cited fear of coronavirus exposure as a major reason they're working at home all or most of the time—down to 42 percent from 57 percent. How does being at home affect work? Many at-home workers said it was "easier to get their work done, meet deadlines, and maintain work-life balance, but also that they felt less connected to their coworkers."

SUPER LAWYER: Janice L. Miller, managing partner of Miller Haga Law Group, LLP, has again been selected to the Super Lawyers list for Southern California for 2022, placing her among the top five percent of the region's attorneys.

The selection marks three consecutive appointments to the exclusive list for Miller. She was also named a Super Lawyer for Southern California in 2020 and 2021.

Miller is the managing partner of Miller Haga Law Group, LLP, a premier law firm based in the Los Angeles area that provides Innovative General Counsel Services to both privately-held and Fortune 100 companies.

A highly recognized attorney with more than 25 years of legal experience and represents clients in several areas of expertise business transactions, real estate leasing, entertainment, intellectual property, licensing, and hospitality. She is also an expert in the business strategy of cooperation and the author of a book on the subject titled *Cooperation: Cooperation Between Competitors for the Benefit of All*.

The book maintains that attorneys and other professionals can enjoy greater success both for themselves and their clients by regarding their competitors as potential collaborators.

A graduate of Temple University School of Law, Miller has a standout reputation in entertainment, business and real estate law. Prior to entering private practice, she served as NBCUniversal's Vice President of Business Affairs for Universal Studios Hollywood and CityWalk where she oversaw real estate leasing matters at CityWalk, managing the entertainment destination's relationships with over 60 tenants with restaurants, nightclubs and retail venues.

NEW NLSLA BOARD CHAIR: Esteban Rodriguez has taken the helm as Board Chair at the Neighborhood Legal Services of Los Angeles County.

Rodriguez replaces Paul Loh, who led the Board and the organization through a period of remarkable change and unprecedented growth. Loh remains a member of the board, serves as Chairman of the Governance Committee, and plans to continue to support the organization and its advocacy in the years to come.

"It was truly an honor to help guide NLSLA as the organization reached further into the communities it serves and significantly increased its reach and its impact," Loh said. "The heart of NLSLA is its dedicated, talented advocates, and I look forward to continuing to support their work as a member of the board."

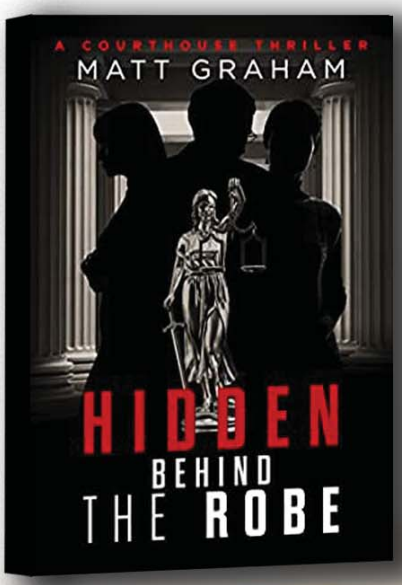
Rodriguez, who first joined the board in 2016 , has deep ties to the communities NLSLA serves. "I see myself and my family in NLSLA's clients," he said.

Book Review

Q: What is Hidden Behind the Robe?

A: The San Fernando Valley

By Jeffrey H. Kapor



A JUDGE IS UNDER investigation as a salacious philanderer who uses the courthouse for his sexual conquests, while the supervising judge in charge of the investigation finds his own career and safety threatened by a claim of racism.

What makes this intriguing storyline in *Hidden Behind the Robe* complete is that the action takes place in the San Fernando Valley.

Hidden Behind the Robe is a suspense-filled courthouse thriller, but it is also a story of the San Fernando Valley. The book is laced with dramatic scenes playing out at the two courthouses in Van Nuys and other locations that will easily be recognized by members of the San Fernando Valley Bar Association.

Written under the pen name Matt Graham, the author shares his experiences as a lifelong Valley resident with insights into Barone's square pizzas, the decline of Van Nuys Boulevard, and scattered portions of the California State University, Northridge (CSUN) campus.

Graham's nostalgic views will resonate with readers who have ties to the Valley, while offering the reader a rare look at the hidden details of the aging Van Nuys West Courthouse, the newer of the two Van Nuys buildings.

Opened in 1988, Van Nuys West sits on the location of the original two-story Van Nuys Municipal Courthouse. Graham provides detail of the courtrooms, the lockups, and even the restrooms in the judges' chambers.

Outside the building, Graham creates colorful characters, including Hobo Frank from Burbank, who lives among the bushes, and Lilly, a stripper who operates a hot dog stand on the corner of Sylvan and Delano.

Hidden Behind the Robe is definitely not for the faint of heart.

Graham manages to deftly mix timely topics of racism and sexual harassment into scenes that are salacious, hilarious, and downright

Attorney **Jeffrey H. Kapor** was raised, and for many years, lived in the San Fernando Valley. A graduate of UCLA and Southwestern School of Law, he is a shareholder at Buchalter's office in Los Angeles. He can be reached at jkapor@buchalter.com.

shocking. The book can fairly be described as part John Grisham, part *Animal House*.

Graham was witness to a boatload of crazy cases during the four decades of his legal career.

As a young lawyer, he began jotting down notes and copying transcripts of interesting and bizarre cases and events.

The result is a book that will leave non-lawyers scratching their heads about what the heck actually goes on in a criminal court, while criminal law practitioners have no trouble identifying with the most outrageous scenes as though they are run-of-the mill events.

Graham's courtroom scenes are written with a clarity that gives the reader a front row seat for each case. The criminal courts have a quasi-schizophrenic personality with mood swings from the outlandishly funny to the horribly tragic in an instant.

> "Judge Dunning is a Valley boy from a modest background, who reluctantly left his downtown criminal court to accept the role of supervising judge in Van Nuys."

In one chapter certain to generate plenty of laughs, Graham presents an unhinged defendant requesting a medical order for a variation on Tommy John surgery for his private parts.

A few chapters later, Graham turns to the dark side with a grim look at a little girl testifying in a child molestation case, and the pain of listening shown on the faces of the jurors. The variations in mood are not gratuitous.

The contrasting chapters each play a key role in the storyline.

Most legal thrillers follow a familiar pattern—the main protagonist is typically a defendant, a lawyer, or a detective, who are compelled to unravel a grave injustice. *Hidden Behind the Robe* takes a different approach. Drawing on his experience presiding over four hundred criminal jury trials, Graham crafts a story from the point of view of Charles Dunning, the fictional supervising judge of the Van Nuys courthouse.

Judge Dunning is a Valley boy from a modest background, who reluctantly left his downtown criminal court to accept the role of supervising judge in Van Nuys.

A CSUN graduate, Dunning starts his court on time, prepares his own jury instructions in every case, and packs a nine millimeter, semi-automatic Glock for protection.

Hidden Behind the Robe grabs the reader's attention on the opening page by lifting the curtain hiding the gritty side of the inner workings of the Van Nuys criminal courts.

The book opens with Judge Dunning receiving an anonymous complaint alleging that Judge William Davis Hyde has engaged in sexual misconduct at the courthouse. Dunning dislikes Hyde for his arrogance, lousy work ethic, and pretentious signature bowtie.

In the era of *#MeToo*, Judge Dunning understands his duty to investigate the allegations against Hyde and instinctively senses problems ahead, as Judge Hyde is a privileged elitist who is unlikely to go down without a fight.

Dunning's concerns about Hyde prove to be painfully understated.

When Hyde inadvertently learns that he is under investigation, he turns the tables on Dunning with a vengeance. Hyde and his buddies stumble onto a twenty-year-old murder case in which Dunning made what appears to be a racially insensitive decision.

Hyde causes the decades-old case to be publicly disclosed, which leads

to daily protests at the courthouse demanding Dunning's resignation. The issue gains momentum as it morphs into a national debate over racism in the courts, with Dunning as the face of the controversy.

As Dunning struggles to deal with the accusation, the investigation into Hyde slowly moves forward, conducted by Ricardo Mijares, a hard-charging retired Sheriff's detective, who works as director of security for the Superior Court. A complex character, he doesn't mind bending the rules to get evidence.

Mijares' investigative techniques may lead to readers' disapproval, but they will root for his success in the end, if for no other reason than the fact that Hyde is a thoroughly despicable character.

A series of unexpected breakthroughs seem to put a nail in Hyde's judicial coffin. The circumstances surrounding the final piece of evidence against him are so distasteful they cannot be described in this review.

Even with Hyde seemingly out of the picture, Dunning still remains under siege. The protests against Dunning continue unabated, including an ill-fated attempt by protesters to pay a visit to the Dunning family residence. His problems take a dramatic turn, thanks to the efforts of three characters tied to CSUN—Aaron Dawson, Thomas Reardon, and Katie Crawford.

An awkward CSUN journalism major, Dawson is assigned to write an investigative article on Dunning, tracing his record as a CSUN student to the current controversy that puts his career in jeopardy.

Dawson is guided in preparing his article by Reardon, an irritable retired newspaper reporter who spends his post-retirement 'golden years' pushing his students toward excellence in writing.

Dawson fails miserably in his initial attempts to obtain the police reports from the murder case behind the Dunning controversy.

In a last-ditch effort to get the reports, he heads to the District Attorney's office in Van Nuys, where he meets Crawford, a CSUN Criminology major, who is working as an intern at the DA's office.

Crawford and Dawson are polar opposites, but they have an immediate connection.

Crawford is self-assured and unpredictably funny, while Dawson is an insecure pessimist. Katie obtains the crime reports Dawson needs, and in return, Dawson takes Katie on a dinner date to Miceli's restaurant in Universal City.

The chemistry between the two CSUN students quickly leads to a romantic relationship.

To wrap up his article on Judge Dunning, Dawson visits the state prison in Tehachapi to interview the defendant in the murder trial that is the basis for the protests against Dunning.

What Dawson learns in a face-to-face meeting with the killer gives him exactly what he needs to complete his investigative article on Judge Dunning.

This review is not the place to reveal what Dawson learned at the prison, other than to say it was not at all what Dawson expected.

Hidden Behind the Robe is a breeze to read.

Graham rewards the reader with short chapters and avoids unnecessary legal jargon. The plot twists leave the reader trying to figure out where the storyline goes next.

As one of the numerous Amazon *five star* reviewers cautioned, "Don't start reading this in the evening, as I did, or you'll be up pretty late! I couldn't put it down until I found out how it ended!"

If you like legal thrillers, *Hidden Behind the Robe* is for you. And if you happen to have ties to the Valley, you will fall in love with the book.

Retrospective

Then California Governor George Deukmejian officially appointed Armand Arabian an Associate Justice of the California Court of Appeal, Second District, in 1983. Deukmejian later appointed Arabian to the California Supreme Court, where he served as an Associate Justice from 1990 to his retirement in 1996.

In June 1986, Justice Arabian was presented with the San Fernando Valley Bar Association's Lintz Award for his lifetime of service to the legal profession and the community.

The award was named in memory of Stanley M. Lintz, who died in 1980 while serving as President of the SFVBA.

Justice Arabian (right) is seen receiving the Lintz Award from then SFVBA President Lee K. Alpert.

Valley Community Legal Foundation
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DID YOU KNOW THAT GIVING back to a charity can create positive health benefits?

In 2016, the Department of Social and Behavioral Sciences at Harvard T.H. Chan School of Public Health studied whether there were positive health effects from volunteerism.

In that study, it was noted that those who volunteered tended to have lower blood pressure, reduced stress levels, and better mental health.

Since COVID, there have been several studies which focused on whether the positive health effects would be evident if the volunteerism or support was financial in nature rather than physically working a charity.

Researchers learned that people who financially support a charity which provides community services experienced decreased blood pressure, positive satisfaction in community involvement, less anxiety and depression and lower stress levels.

In fact, financial giving behavior activates regions of the brain associated with pleasure. Serotonin, dopamine, and oxytocin were noted to be secreted once the giving was completed.

One good way to give and help out a charitable organization in your own backyard is to choose the Valley Community Legal Foundation as your charity when you are shopping on Amazon.com.

Amazon created *smile.amazon.com,* which donates 0.5 percent of eligible purchases to your favorite charitable organization. There are no fees or extra costs associated with the purchase.

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association, with the mission of enhancing the Valley community's awareness of and respect for the law.

The Foundation is comprised of dedicated attorneys, Los Angeles Superior Court bench officers, and other community leaders who volunteer their time to promote educational programs that focus on legal principles, award scholarships to qualified students in high school, college, and law school, and provide grants to key programs in the San Fernando Valley.

Our program *Constitution and Me* brings Los Angeles Superior Court Judges and attorneys into local high school classes for several weeks to discuss a prompt written by members of the VCLF. Through the program, students, judges, and attorneys discuss key legal issues.

Our scholarship program awarded multiple students with scholarships based on their academic excellence and extraordinary achievements.

Our grant program has ensured that during the pandemic a key domestic violence program in the San Fernando Valley has remained open to assist women and children who are victims of domestic violence.

When the Valley Community Legal Foundation is linked as your charitable organization, every purchase you make through the Amazon smile program creates ongoing funds for the Valley Community Legal Foundation to continue our educational programs, scholarships, and grants in the San Fernando Valley.

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Under that logo, choose your charity by clicking the down arrow. Find the Valley Community Legal Foundation and, once the VCLF is selected, every time you shop at Amazon using *smile.amazon.com*, you will be supporting the VCLF.

Simply doing your regular shopping will change the lives of students and residents in the San Fernando Valley. We are grateful for your support.

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.

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The Attorney Referral Service of the SFVBA is a valuable service, one that operates for the direct purpose of referring potential clients to qualified attorneys. It also pays dividends to the attorneys involved. Many of the cases referred by the ARS earn significant fees for panel attorneys.

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Welcome to the ARS

MATTHEW BREDDAN
SFVBA President-Elect,
ARS Chair

mbreddan@reaperickett.com

HI EVERYONE! FOR THOSE OF YOU WHO DON'T know me, my name is Matthew Breddan. I am the President-Elect of the SFVBA and the chair of the Attorney Referral Service (ARS).

A little background information on the ARS—the ARS is a committee under the SFVBA umbrella. We provide invaluable services to the community at large while helping our members at the same time.

The ARS has numerous panels (approximately 20 different practice areas) and generates over $1,000,000.00 in attorney fees per year (on average). To become a panel member, you must fill out an application with the SFVBA; carry E&O coverage with specified limits; and meet certain other qualifying requirements, depending on practice area. Once accepted, the panel member will then be put "in rotation."

When calls come in, they are screened by the ARS and then forwarded to the appropriate panel member. A free consultation is given to the client.

If the client retains the panel member, the SFVBA receives 15 percent of any fees collected on that matter. This is a significant factor in allowing the ARS and the SFVBA to fund the many community outreach programs that are put on every year.

To keep the ARS active, we are requesting that attorneys do two things: First, join the ARS as a panel-member and second, refer cases to the ARS. Doing either or both of these things will help drive cases to the ARS and keep our members busy!

If you have any questions about being on a panel or referring cases to the ARS, please call 818-227-0496. You can also find information about the ARS at sfvba.org/member-resources/attorney-referral-service.

Filling the Calendar

JEFFREY D. ARMENDARIZ
SCVBA President

jeffarmendariz1@gmail.com

ON BEHALF OF THE SANTA CLARITA VALLEY BAR Association, it is my pleasure to share with you some of the unique CLE subjects, social networking events, and community outreach programs planned for 2022.

While COVID protocols and in-person restrictions made it extremely difficult this past year to conduct business as usual, the Board has determined to do all it can to facilitate this years' calendar in as normal a fashion as possible by creating a very ambitious and robust 2022 calendar of events for members, as well as those interested in membership.

Among our continuing legal education seminars planned for every month, we would like to highlight our annual Employment Law update to be held on March 10.

The presentation will be led by our esteemed member and former Bar Association President, Brian Koegle of Poole Shaffery & Koegle, who always provides an interesting and entertaining survey of the everchanging employment laws and often compels law firms to ask why they have any employees at all—in jest, of course!

Another interesting CLE presentation to be held on March 30, will examine the intricacies involved in a criminal driving under the influence (DUI) investigation.

This event will involve a presentation from officers with the Glendale Police Department, who will take us step-by-step through the process using an "*intoxicated volunteer*"—probable cause for the traffic stop, the administration of the field sobriety test and pre-FST questions, the administration of the preliminary alcohol screening device, arrest, and chemical test admonition and refusals.

These are only a couple of the CLEs planned for the year and we hope you will refer to our website for other CLEs planned for the year.

On April 4, another signature event will be inaugurated—a charity golf tournament at The Oaks Club.

A portion of the proceeds derived from the event will be used to support a local, non-profit—the Santa Clarita Grocery—which provides groceries and foodstuffs on a weekly basis and at no charge to less fortunate residents of the Santa Clarita Valley.

In May, June and July, the Bar Association will host a Ventura Harbor Sunset Cruise, a family day aboard the battleship *U.S.S. Iowa* with private guided tours and lunch, and a Dodger game, respectively.

These events and others—see website calendar—designed for the rest of the year will hopefully allow members to step away from work, unwind, and again, enjoy some fun time with one another!

Among the community outreach events planned for 2022, the long-running and exciting High School Speech Competition will take place on April 28. The competition, in its ninth year, is sponsored annually by the Bar Association and features junior and senior students from throughout the William S. Hart School District who compete for cash scholarships awarded to the top three finishers.

The topic of the competition focuses on a current national event that elicits different points of view, with a slight legal emphasis. Making the evening competition a bit more meaningful, the students are scored by judges sitting on the Los Angeles County Superior Court. This years' topic will center upon election integrity and access to voting.

Complementing the Speech Competition, another event—Scholars & Bench Night—will be held May 19.

This event will formally recognize the winning students from the Speech Competition, as well as the many judges who volunteer to score the competition.

Additionally, the featured speaker will present the annual *State of the Bar* address. The event is, as always, informative and entertaining.

Alongside our efforts to engage with high school students, the Bar Association will embark on a short, two-series panel—April 20 and October 5—with students enrolled in the College of the Canyons' Pathway to Law School program.

During these Q&A sessions, selected members from the Bar Association will be invited to speak to the students about issues and challenges related to attending law school.

With the breadth of CLE programs, social events, and outreach programs offered this year, I sincerely hope that you will consider joining all of us at the Santa Clarita Valley Bar Association.

Here's to a great and promising year ahead!

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Contact SFVBA Executive Director Rosie Soto Cohen at (818) 227-0497 or rosie@sfvba.org to sign up your firm today!

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