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MAGAZINE

The RCBA Celebrates Judge Rich's 90th Birthday

The official publication of the Riverside County Bar Association

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Riverside Lawyer
MAGAZINE

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Mission Statement

Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

Serve its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of Riverside Lawyer published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication and timely business matters.

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are $25.00 and single copies are $3.50.

Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in Riverside Lawyer.

The material printed in Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.

Calendar

FEBRUARY

8 **RCBA Board**
RCBA 5:00 p.m.

Joint RCBA/SBCBA Landlord-Tenant Section Meeting
In Riverside - Cask 'n Cleaver – 6:00 p.m.- 8:00 p.m.
Speaker: Paul Goodwin – "Changes in Landlord Tenant Law in 2011" (MCLE)

9 **Riverside County Mock Trial Competition** (Round 1)
Riverside, Indio, Southwest Courts – 5:30 p.m.

Barristers Association
Mexicali Bar & Grill
Speaker: R. Addison Steele
"Getting Better Trial Results Through Humanizing Your Client" (MCLE)

11 **Court Holiday – Lincoln's Birthday**
RCBA Offices Closed

16 **Estate Planning, Probate & Elder Law Section Meeting**
RCBA John Gabbert Gallery – Noon
Speaker: Joanna Averett
"Corporate Trustees Revisited" (MCLE)

Riverside County Mock Trial Competition (Round 2)
Hall of Justice – 5:30 p.m.

18 **RCBA General Membership Meeting**
RCBA John Gabbert Gallery – Noon
Speaker: Terry Bridges, Esq.
"Lawyering - Outside the Courtoom and Inside the Community" (MCLE)

21 **Court Holiday – Presidents' Day**
RCBA Offices Closed

22 **Continuing Legal Education Brown Bag – Noon**
RCBA John Gabbert Gallery
"Status of Women & Minorities in the Law: Is the Glass Ceiling Cracking?"
Panel discussion led by Associate Justice Carol Codrington, Court of Appeal, Judge Becky Dugan, Riverside Superior Court and Professor Susan Nauss Exon, La Verne Law School
(MCLE: 1 hr Elimination of Bias)

23 **Family Law Section Meeting - Noon**
Family Law Court – Department F501
Speaker: Presiding Judge Sherrill Ellsworth, Judge Irma Asberry and all Family Law Bench Officers – "The Current State and Future of Family Law in Riverside"

Riverside County Mock Trial Competition (Round 3)
Hall of Justice -5:30 p.m.

Leo A. Deegan Inn of Court
Mission Inn – 6:00 p.m.
Special Guest Speaker: The Honorable Carlos Moreno
Associate Justice, Supreme Court of California
Inn of Court Members-Free, Non-members-$60
Info/RSVP: Sherri Gomez, 951-689-1910

24 **Solo & Small Firm Section Meeting**
RCBA John Gabbert Gallery – Noon
Speaker: Jeremy Hanson, Esq.
"Employees from Hell – A Humorous Take on Their Horrors" (MCLE)

Federal Bar Association Program-Noon
Technology for the Courtroom
Speakers: Judge Virginia Phillips, Tony Raphael & Dominic Estrada
Federal Courthouse, Courtroom 3 (MCLE)

26 **Riverside County Mock Trial Competition** (Round 4)
Hall of Justice – 8:30 a.m.
Mock Trial Awards Ceremony
Riverside Convention Center – 2:00 p.m.

MARCH

5 **Riverside County Mock Trial Competition** (Semi-Final)
Historic Courthouse 9:00 a.m.
Riverside County Mock Trial Competition (Final Round)
Historic Courthouse – 1:00 p.m.
Riverside County Mock Trial Competition
Championship Awards Ceremony
Historic Courthouse – 3:30 p.m.

8 **RCBA Board**
RCBA - 5:00 p.m.

9 **Federal Bar Association Program – Noon**
Federal Court
Shooting the Messenger: How Cameras in the Courtroom Got a Bad Name
Speaker: Judge Vaughn Walker

MARK YOUR CALENDARS –
SPECIAL GENERAL MEMBERSHIP MEETING
FRIDAY, MARCH 18 AT NOON
Guest Speaker – Actor & Social Activist – Mike Farrell
President of Death Penalty Focus
"California's Death Penalty: Broken Beyond Repair"

President's Message

by Harlan Kistler

I hope every RCBA member is starting the new year by chipping away at their new year resolutions! I always have a firm meeting with my staff after the new year to discuss how to make the office more efficient. This annual housekeeping meeting is consistent with the theme of this month's Riverside Lawyer, which is "client relations."

An experienced attorney once informed me that a client does not care how much you know until the client knows how much you care about their case. Over the past 23 years, I have found this to be true. My clients seem to be the most satisfied when I am preparing them for their depositions or participating at a mediation or arbitration hearing on their behalf. However, clients want to feel like something is happening on their case in between these events. To that end, I communicate with clients in several ways to let them know their case is important to me and that it is not just sitting and left unattended on the shelf.

I believe the first important contact an attorney has with his or her client is the first client meeting. I spend time during the initial client conference exploring my client's expectations concerning their case and whether they have had any previous experience with the litigation process. I explain to them how the firm will handle their case and the realities of litigation and/or settlement. I always discuss the respective roles and mutual obligations that the client and counsel share as the case progresses.

I recently informed a group of new attorneys at the swearing-in ceremony that 85% of all State Bar complaints against attorneys were due to an attorney's failure to return phone calls to his or her clients. One would think that this would be an easy problem to fix! Alas, if all clients were reasonable and realistic, it would be. The problem typically arises when the client has unreasonable expectations or adverse circumstances exist affecting a fair, reasonable or prompt resolution of the client's case. Under these circumstances, it is easy for the frustrated client to blame the attorney. The problem can also occur when the attorney is either very busy or procrastinating on a case.

As an office practice, our staff will copy the client with all correspondence and work generated by our office. This includes correspondence to insurance adjusters and counsel, as well as discovery documents and pleadings. We use emails to correspond with our busy or obsessed clients on a weekly or monthly basis. We still have a client or two who will call once a week, asking about the same status regarding an event or issue that is beyond our control and the responsibility of a third party. I may have to appoint someone in the office to keep the over-anxious client informed in rare circumstances.

I make it a habit to call the client on a quarterly basis to discuss the case. My office manager will routinely docket a telephonic conference with the firm's clients. I also make it a practice to send a status report to our clients so they know what to expect in the near future. We have a form letter explaining the personal injury negotiation process, what to expect after a lawsuit has been filed, the discovery and deposition process, and the arbitration and mediation process, as well as the steps necessary to prepare for trial. A succession of these letters to our clients during our representation actually limits the number of client phone calls tremendously. Finally, Dave Moore taught me the importance of returning a client's phone call the same day or having a legal secretary return the call if you are too busy. This is a good practice, but it takes discipline. At the end of the day, the goal is for your client to refer a steady stream of new clients to your office.

On behalf of the RCBA, I would like to thank our many members who put in so much effort assisting high school students in Riverside County with the Mock Trial program. The RCBA appreciates their hard work and commitment to make this a better community. As attorneys in this community, we all benefit from their hard work, as it enhances our professional image. Please assist the team coaches by volunteering as a scoring attorney. You will savor the experience! Contact Charlene

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Nelson at (951) 682-1015. Mock Trial coaches can access the Mock Trial case materials at www.crf-usa.org. Another link to the Mock Trial website for additional forms and information, including the rule book, is www.rcoe.k12.ca.us/studentevents/mocktrial.html. Good luck!

The RCBA thanks Presiding Judge Sherill Ellsworth, Judge Mac Ray Fisher and Judge Irma Asberry for speaking at our January monthly membership meeting. We all appreciated the information they provided regarding their vision and insights for making our court system more efficient notwithstanding the many challenges that exist. Despite being on the job for only 14 days, Judge Ellsworth has already developed a model for getting civil cases to trial. She informed our members that superior court judges have been assigned as trial judges and two courtrooms have been set aside to hear law and motion matters. The family law court will be improved to better handle litigants who are unrepresented or who have simple cases with few or no assets and no children involved. Our judges emphasized that the model will require ongoing adjustments, but the goal is to get cases settled or out to trial. We are fortunate to have such quality judges working on behalf of our community.

The RCBA is pleased to announce that Terry Bridges of Reid & Hellyer will be our speaker for our February 18, 2011, meeting. His topic will be "Lawyering – Outside the Courtroom and Inside the Community." The RCBA urges all members to join us for our monthly meetings to get to know other practicing attorneys in the community.

Harlan B. Kistler, president of the Riverside County Bar Association, is a personal injury attorney for the Law Offices of Harlan B. Kistler.

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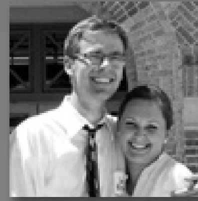

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Barristers President's Message

by Jean-Simon Serrano

The Barristers have really been gaining momentum in the last couple of months. Our Christmas mixer/fundraiser was a success, with members donating toys to needy families as well as contributing $400 to the Elves Program. Attendance was high, and it appears that my board, which has created a webpage and kept up a Facebook page, has been very successful in building interest in the group.

In January, our monthly meeting featured a discussion by District Attorney Paul Zellerbach and Public Defender Gary Windom. The topic was "Access to Justice for Criminal and Civil Litigants." This was Zellerbach's first public speech since taking office as district attorney. The Barristers are extremely grateful to all of the sponsors who made the meeting a success: Reid & Hellyer, Heiting & Irwin, Redwine & Sherrill, Varner & Brandt, Gresham Savage Nolan & Tilden, Best Best & Krieger, Kinkle, Rodiger & Spriggs, and the Riverside County Deputy District Attorneys Association. The Barristers are also thankful for those who made personal donations.

This meeting was exceptionally popular, with attorneys from all practice areas in high attendance. This included young attorneys from both the public defender and district attorney's office – groups that have, as of late, not been very active in the Barristers. We welcome their attendance and hope they continue to participate in future events. Young attorneys from all practice areas are welcome to join the Barristers.

At the time of this writing, we have yet to finalize plans for our next meeting (February); however, the RCBA will have this information as soon as it is available. Further, those who follow the Barristers' Facebook page will be automatically notified as soon as details are available. Further information can be found at the Barristers' webpage: riversidecountybar.com/barristers.

Additionally, we hope to have another social meeting in the coming months. These types of meetings do not include speakers or MCLE credit but are instead designed to allow for socialization and networking among our members.

As always, the Barristers welcomes new members. Encourage your young associates to join!

I have been very impressed with the Barristers board this year, including the board members' dedication to the community as well as their desire to improve the quality of the monthly meetings. If you or anybody you know has any suggestions as to how we can better achieve these goals, please do not hesitate to contact me at jserrano@heitingandirwin.com.

Jean-Simon Serrano, president of Barristers, is an associate attorney with the law firm of Heiting and Irwin. He is also a member of the Bar Publications Committee.

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Seven Tips for a Solo Practitioner on How to Maintain Good Client Relations

by Brian Pedigo

Maintaining good client relations is critical in any service industry. As a solo practitioner, it's important to maintain good client relations because (1) your clients are a huge future referral source, (2) your clients are the reason you get paid (now or later), and (3) happy clients are low-maintenance clients.

The following are some hopefully useful tips, suggestions, or already known reminders about maintaining good client relations.

1. Promptly Return Phone Calls and Emails

We've all heard it countless times – one of the biggest complaints the State Bar gets is, "My lawyer doesn't return my phone calls." If you have an agenda or to-do list, make sure you keep entries for who needs a call back. Contacting your clients in a timely manner helps them feel that you care about their matter and care about them. If you have particular clients who are "high maintenance," sometimes this will require putting up creative boundaries to protect your time and your sanity. However, for the most part, good clients ask questions only when necessary. Make it a priority to call or write them back.

One more word on phone systems – if you have a third-party human answering your phones, you may want to ask your clients for feedback on how they feel about that service. You may also want to call your own number yourself and see how you're treated. I have spoken to a countless number of third-party answering services that treated me either rudely or like I was an unfamiliar stranger, when the fact is that I had a familiar relationship with some of the lawyers I was trying to reach. Sometimes a prerecorded voicemail is better than a third-party answering service. In fact, it's my opinion that a prerecorded voicemail is usually much better than having to tell someone who doesn't know me "the purpose of my call."

2. Allow More Client Input

Back in our law school days, we may have heard that we "steer the ship" as the attorneys during litigation. Although we're in control of the case, it makes sense to allow your clients to make certain decisions in their own matter. Always keep in the forefront of your mind what your client ultimately wants. Explain to your client the multiple paths that can be taken to reach those goals and let the client have input in which path to take; in the end, it should make for a better attorney-client relationship.

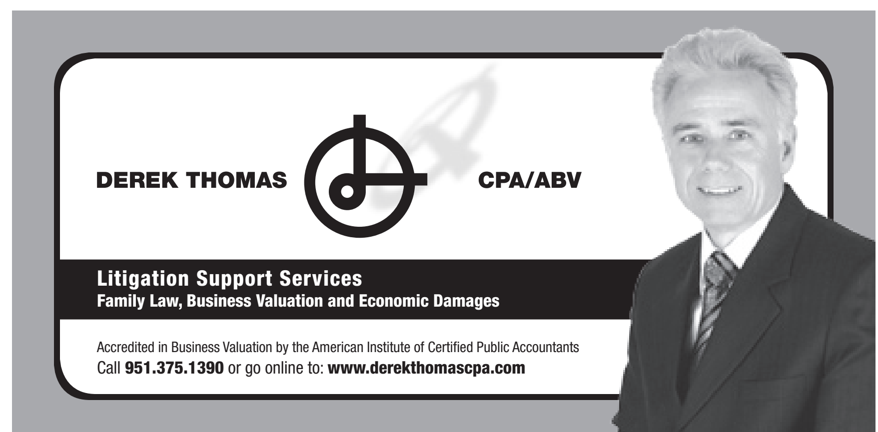
You're a zealous advocate for your clients' interests and legal rights. Let them know what those rights are and give them more ownership of the direction their case is going. One little thing that I do is make sure each and every client is ready and willing to pay his or her own filing fees up front. I don't advance filing costs, primarily because I want the client to take early ownership of the seriousness and commitment of filing pleadings with the court. Allowing the client to contribute to his or own case makes the attorney-client relationship more balanced.

3. Send Frequent Updates

Sending frequent status updates to your clients helps them feel that you are diligently and actively working on their matter. It shows them, again, that you care. To keep costs down, you may want to encourage clients to communicate with you via email, which allows you to attach documents for their own personal file at minimal cost.

4. If You Make a Mistake, Admit It and Apologize

A lot of attorneys have liability paranoia. Sometimes that's for good reason. Sometimes not. If you make an error (we all do), your client will probably learn of it sooner or later. Be the first one to step up and admit your mistake. Apologize for your error. Unless the error resulted in the dismissal of the case, the client will likely forgive you and all will be well.



Humility and truthfulness are more desirable traits than feigned perfection. Acting like a real-life human with your clients should enhance your attorney-client relationships.

5. Actively Empathize

Empathy is understanding, being aware of, being sensitive to, and vicariously experiencing the feelings, thoughts, and experience of another. Expressing empathy is hard work – and we, as lawyers, were not specifically trained for this, either. Our clients want us to hear and understand their plight, their experience, and their story – so sometimes all we have to do is listen to that story.

Client: "My jerk neighbor keeps playing loud music 24/7 while I'm trying to sleep; he won't knock it off even after I repeatedly ask!" Attorney: "That would be so frustrating, not to be able to sleep in your own home because of the inconsiderate actions of your neighbor. I understand that you want this to stop."

Putting in the added time and work of actively listening and empathizing is a crucial ingredient to maintaining good client relations.

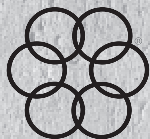
6. Don't Nickel-and-Dime

For those of us billing for our time in hourly fee cases, it is critically important to not charge for small, trivial things. I recently had personal experience with this after the death of my father-in-law. The family had to retain a Texas lawyer to help with estate administration. To the family's surprise, every time a phone call was made (even a 15-second confirmation or reminder call), it would be billed out at the minimum 0.1 hour. Small email reminders and calls added up to the hundreds of dollars on the first invoice. Sending an invoice for these unexpected costs was like a punch in the face – not good for client relations. Make sure your hourly rate is enough to cover the inconsequential losses of a minute or two that you're bound to incur on any matter. Look at the big picture and don't try to squeeze money out of every opportunity. If you do, the client will notice, and the client will not like it.

7. Take care of yourself

If you're tired, stressed out, and overworked, you're going to have a hard time maintaining good client relations – let alone any relationship. You have to take care of good old number one. Force yourself to find a time when you can set work aside and do whatever you love to do. Be with people you enjoy, and remember that legal advocacy is not your entire life. If you're able to sound genuinely rested, happy, and ready to help others, this will play a large part in keeping good, healthy client relationships alive.

Brian Pedigo is a sole practitioner. He is also Secretary of the Riverside Barristers.



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Enforcement of "Non-Refundable" Retainer Provisions

by Michael J. Fish

Introduction

Arbitrators in fee disputes that fall within the mandatory attorney fee arbitration provisions contained in Business and Professions Code sections 6200 et seq. are frequently called upon to evaluate the provisions of a fee agreement that characterizes a payment by the client as a "retainer" and as "non-refundable" or "earned upon receipt." As attorneys, we should review and evaluate our retainer practices to insure compliance with current California law. There are important differences as to how attorneys are required to treat such payments, depending on the true nature of the payment and regardless of the language used in the fee agreement. Principally, these differences concern (1) the attorney's obligation, if any, to refund some or all of an advance payment upon discharge or withdrawal, and (2) whether the advance payment should be placed in the attorney's client trust account or in the attorney's own proprietary account.

Obligation to Refund

A. Distinction Between "True Retainers" and Other Advance Payments.

Rule 3-700(D)(2) of the Rules of Professional Conduct[1] provides that when the attorney-client relationship has concluded. the attorney must:

"Promptly refund any part of a fee paid in advance that has not been earned. This provision is not applicable to a true retainer fee which is paid solely for the purpose of ensuring the availability of the member for the matter."

Under Rule 3-700(D)(2), unless the attorney and client have contracted for a "true retainer" (also known as a "classic retainer"), the attorney must refund any portion of an advance fee that the attorney has not yet earned. This raises the question of how to distinguish a "true retainer" from other forms of advance payments. Rule 3-700(D)(2) itself suggests that a "true retainer" is one that is paid "solely for the purpose of ensuring the *availability* of the member." This definition of a "true retainer" was adopted by the California Supreme Court in *Baranowski v. State Bar* (1979) 24 Cal.3d 153.

In *Baranowski*, an attorney was disciplined for failing to return advance payments to three clients. The court explained that:

"An 'advance fee payment' as used in this context is to be distinguished from a classic 'retainer fee' arrangement. A [classic] retainer is a sum of money paid by a client to secure an attorney's availability over a given period of time. Thus, such a fee is earned by the attorney when paid since the attorney is entitled to the money regardless of whether he actually performs any services for the client." (*Baranowski v. State Bar*, supra, 24 Cal.3d at 164, fn. 4).

It is important to note that the key defining characteristic of a "true" or "classic" retainer is that it is paid solely to secure the *availability* of the attorney over a given period of time and is not paid for the performance of any other services. In a true retainer situation, if the attorney's services are eventually needed, those services would be paid for separately and no part of the retainer would be applied to pay for such services. Thus, if it is contemplated that the attorney will bill against the advance payment for actual services performed, then the advance is not a true retainer because the payment is not made solely to secure the availability of the attorney. Instead, such payments are more properly characterized as either a security deposit or an advance payment of fees for services. (See footnote 2, *post*.)

A true retainer is earned upon receipt (and is therefore non-refundable) because it takes the attorney out of the marketplace and precludes him or her from undertaking other legal work (e.g., work that may be in conflict with that client). It also requires that the attorney generally be available to the client for consultation and legal services. Sometimes a true retainer will take the form of a single payment to guarantee the attorney's future availability for a specified period of time, and other times of payments made on a recurring basis, such as a monthly retainer, to assure the attorney's availability to represent the client for that month. Sometimes this is referred to as having the attorney "on retainer."

As might be expected, true retainers are rare in today's legal marketplace. Due to the abundance of competent attorneys in virtually all fields of law, there are probably only a handful of situations in which a client would want to pay a true retainer. Nonetheless, true retainers do have a legitimate, if infrequent, use in the legal marketplace. As one court has noted, "A lawyer of towering reputation, just by agreeing to represent a client, may cause a threatened lawsuit to vanish." (*Bain v. Weiffenbach* (Fla.App. 1991) 590 So.2d 544.) In some cases, a client may perceive that only the retained attorney has the requisite skills to handle a particular matter and may want to guarantee that attorney's availability. In other cases, especially in a smaller community, a true retainer may be used simply to prevent the attorney from representing an adverse party. Other than these examples, though, true retainers would seem to be of little use to clients in everyday legal matters.

1 All references to a "Rule" or "Rules" refer to the California Rules of Professional Conduct.

In other instances, a so-called "retainer" is effectively a security deposit or an advance payment of fees.[2] A payment that represents a security deposit or an advance payment for services to be performed in the future remains the property of the client until earned by the attorney, and any unearned portion must be returned to the client. (Rule 3-700(D)(2); *S.E.C. v. Interlink Data Network* (9th Cir. 1996) 77 F.3d 1201.) An example of an advance payment for services would be where the attorney charges $200 per hour and collects a "retainer" of $2,000, giving the client credit for 10 hours of legal services to be performed in the future. If the attorney is discharged or the matter is otherwise concluded before the attorney has expended 10 hours of his or her time, the attorney *must* refund the balance of the advance payment that has not yet been earned. Thus, if the attorney had expended only four hours of time prior to being discharged, under Rule 3-700(D)(2), the attorney must promptly refund $1,200 to the client. In *S.E.C. v. Interlink Data Network, supra*, the law firm's characterization of the fee as a "present payment for future work," which it alleged was earned when paid, was unsuccessful in avoiding a refund of the unused portion of the fee to the client's bankruptcy trustee.

B. Language of Fee Agreement Not Controlling.

Advance payments that are not "true" retainers are absolutely and unequivocally refundable under Rule 3-700(D)(2) to the extent they are unearned, no matter how the fee agreement characterizes the payment. (*Matthew v. State Bar* (1989) 49 Cal.3d 784; see also *Federal Savings & Loan v. Angell, Holmes and Lea* (9th Cir. 1988) 838 F.2d 395, 397-398.) In *Matthew*, two fee agreements provided for a "non-refundable" retainer payment. In each instance it was contemplated that the attorney would bill against the "retainer," but the attorney failed to fully perform the required services. The attorney was disciplined both for client abandonment and for failure to account for and return the unearned portion of the fees. Thus, the attorney's characterization of the retainer as "non-refundable" in the fee agreement did not abrogate the attorney's duty to return any portion of the fee that had not been earned. The Supreme Court emphasized that "retention of unearned fees [is] serious misconduct warranting periods of actual suspension, and in cases of habitual misconduct, disbarment." (*Matthew v. State Bar, supra*, at p. 791.) A member's failure to promptly account for and return the unearned portion of an advance fee warrants discipline. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.)

Another case in which the language of the fee agreement did not control the characterization of the advance payment is *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907. In the *Lais* case, the attorney's fee agreement read as follows:

"Client agrees to pay to [attorney] for [his] services a fixed, non-refundable retaining fee of $2,750.00 and a sum equal to $275.00 per hour after the first 10 hours of work. This fixed, non-refundable retaining fee is paid to [attorney] for the purpose of assuring the availability of [attorney] in this matter."

Even though the language of the agreement stated that the advance was being paid to assure the attorney's availability and was nonrefundable, the advance was clearly also to be applied to the first ten hours of work. Therefore, the advance was not paid solely to assure the attorney's availability. The court held that the $2,750 payment was not a true retainer and that the attorney was required to refund any amount that had not been earned.

C. Unconscionability

Civil Code section 1670.5 provides that a contract may be found to be unenforceable if its terms are unconscionable. In addition, Rule 4-200 of the Rules of Professional Conduct provides that an attorney may not charge or collect an illegal or unconscionable fee. In some cases, a payment that is properly characterized as a true retainer may nonetheless be unenforceable if it is found to be unconscionable.

Attorney's fees have been found to be unconscionable where they were "so exorbitant and wholly disproportionate to the services performed as to shock the conscience."

Rule 4-200 sets forth eleven factors to be examined in determining whether an attorney's fee is unconscionable. Some of these factors include: (1) the relative sophistication of the attorney and the client; (2) the amount of the fee in proportion to the value of the services rendered; and (3) the experience, reputation and ability of the attorney. One case held that a fee agreement requiring the client to pay a "minimum fee" upon discharge was unconscionable. (*In the Matter of Scapa* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, 652.)

Unconscionability in the context of a true retainer agreement would normally not be a consideration where the client is a sophisticated purchaser of legal services, such as a large insurance company or a corporation, or where the attorney's skill and reputation are well known. As previously noted, however, the situations in which a client may have a valid reason for paying a true retainer fee are not very common. True retainers should therefore be scrutinized to see if the fee is unconscionable. For example, a client may receive very little value or none at all by ensuring the availability of the attorney if the attorney has no particular reputation or expertise and if there is an abundance of other competent attorneys available to handle the client's matter. In cases such as this, a true retainer might be unconscionable, particularly if the amount charged is very high and the client is not a sophisticated purchaser of legal services.

In examining whether a true retainer withstands an unconscionability analysis, it is important to remember that

2 An "advance payment" would typically be applied toward the client's bill at the end of the current billing period. A "security deposit" is held by the lawyer throughout the representation and refunded to the client once all services are completed and the attorney has been paid. For convenience, a security deposit is sometimes applied to the final invoice.

an agreement may only be avoided on grounds of unconscionability based on the facts as they existed at the time the contract was formed. (Civ. Code, § 1670.5; Rule 4-200(B).) "The critical juncture for determining whether a contract is unconscionable is the moment when it is entered into by both parties, not whether it is unconscionable in light of subsequent events." (*American Software Inc. v. Ali* (1996) 46 Cal.App.4th 1386, 1391.)

Thus, if a client enters into a true retainer agreement with a famous criminal defense attorney because the client fears that he will be indicted and wants to ensure the defense attorney's availability, the client could not avoid the contract on grounds of unconscionability merely because the indictment never occurred. On the other hand, if the same client entered into a true retainer agreement with an attorney who had no experience in or reputation for handling criminal law matters, the retainer might be unconscionable, depending upon the amount paid and the sophistication and bargaining power of the client, regardless of whether the indictment occurred or not.

Placement of Advance Fees and True Retainers

The issue of where attorneys should deposit advance payments depends on the nature of the payment. Rule 4-100 provides, in pertinent part:

"All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labelled 'Trust Account,' 'Client's Funds Account' or words of similar import . . . . No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith . . . ."

Because true retainers are earned upon receipt, they are not "funds held for the benefit of the client." Therefore, Rule 4-100's prohibition on commingling "funds belonging to the member" means that true retainers should be placed in the attorney's proprietary account and not in the client trust account.

Two courts since *Baranowski v. State Bar, supra*, have declared that it is undecided in California whether, under Rule 4-100, an advance payment for services or a security deposit must be deposited into the client trust account. (*S.E.C. v. Interlink Data Network, supra*, 77 F.3d at p. 1206, fn. 5; *Katz v. Worker's Comp. Appeals Bd.* (1981) 30 Cal.3d 353, 356, fn. 2.) Yet, in *T&R Foods, Inc. v. Rose* (1996) 47 Cal.App.4th Supp. 1, the Appellate Department of the Los Angeles County Superior Court held that under Rule 4-100, an advance fee must be deposited into an attorney's trust account, and that an attorney's failure to segregate the advance fee or security deposit from his or her general funds constituted a breach of fiduciary duty.[3] The *T&R* court reasoned that the language of Rule 4-100 indicated "'an intent by the State Bar that funds retain an ownership identity with the client until earned.' . . . [Citation.]" (*T&R Foods, Inc. v. Rose, supra*, at p. 7).

Importantly, the T&R opinion noted that attorneys who commingle advance fees or security deposits with their own funds are not only subject to discipline by the State Bar, but also subject to civil liability for professional negligence and breach of fiduciary duty. Although the *T&R* opinion may not be binding on California's appellate courts, it is currently the only opinion that decides the issue one way or the other. Therefore, unless a higher court disapproves the *T&R* opinion, an event that is by no means certain, California attorneys are required to follow its holding.

Conclusion

As attorneys, we should review and evaluate our retainer practices to insure compliance with current California law. How should attorneys treat money where the client has made an advance payment and claims entitlement to a refund of all or a portion of the advance? Attorneys in their own practice should carefully consider the following issues:

(1) Whether the retainer is a "true retainer" or a "classic retainer" that was paid solely to ensure the attorney's availability and not paid for the performance of any particular legal services;

(2) Whether the retainer merely represents an advance payment or security deposit for actual legal services to be performed in the future. A provision that the attorney will charge an hourly rate to be billed against the retainer is a conclusive indicator that the payment is an advance payment or a security deposit that is refundable unless fully earned;

(3) If the payment represents a true retainer paid solely to ensure the availability of the attorney, whether the fee is unconscionable in light of the facts as they existed at the time the agreement was formed; and

(4) To the extent it may bear upon the fees, costs, or both to which the attorney is entitled (see Bus. & Prof. Code, § 6203, subd. (a)), whether the attorney complied with Rule 4-100(A) in placing the advance payment in the appropriate account.

A careful evaluation of one's practices can aid in the avoidance of pitfalls and the potential consequences from the State Bar.

Michael J. Fish is a senior partner with the firm of Fish & Snell, P.C., located in Novato. He is the current Assistant Presiding Arbitrator and a past chair of the State Bar of California Mandatory Fee Arbitration Committee, the Vice Chair of the Client Relations Committee of the Marin County Bar Association (MCBA) and a current member of the MCBA Board of Directors.

This article is based in large part on State Bar Mandatory Fee Committee Arbitration Advisory 01-02.

3 Note that all advances for costs and expenses must be placed in a client trust account because they are funds held for the benefit of the client. (*Stevens v. State Bar* (1990) 51 Cal.3d 283.)

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Judge Elwood "Woody" Rich's 90th Birthday Celebration

by The Honorable Gloria Trask

Judge Elwood "Woody" Rich doesn't do lunch. So when the Riverside County Bar Association announced a special general membership lunch meeting to celebrate Woody's 90th birthday, the challenge was finding a way to get the guest of honor to attend.

Barrie Roberts, the Riverside Superior Court Alternative Dispute Resolution Director, and Judge Gloria Trask implemented an excuse-proof scheme. The celebration was scheduled for a Tuesday, because Woody would be in the Historic Courthouse handling mandatory settlement conferences that day. Then all MSCs set for the lunch hour were cancelled.

Despite this planning, Woody insisted on finishing one last settlement for the morning before he would accompany Judge Trask to the luncheon. The 15-minute delay made for a grand entrance to the meeting room. He was greeted by the applause of a standing-room-only assembly of attorneys and judges.

Attorney David Moore of Reid & Hellyer set a lighthearted tone as the master of ceremonies. He told the audience that, rather than tell some Woody stories that might prove to be embarrassing, he thought the best way to describe Woody was with the word "perseverance." By way of illustration, he recited quotations relating to perseverance: "Perseverance is the hard work you do after you get tired of the hard work you already did." "The difference between perseverance and obstinacy is that one comes from a strong will and the other from a strong won't."

Justice John Gabbert detailed Woody's perseverance through his work with the Riverside County bar, the Riverside bench, and with Riverside legal education over these many years. Justice Gabbert said that he couldn't understand Woody: "Who would work two full-time jobs every day for years and do both magnificently? He was the hardest worker on the bench. And then he would change from his judicial robe to his academic robe and teach at his law school, California Southern Law School, in the evenings. Now, that was an illustration of perseverance!" Justice Gabbert researched the statistics for men 90 years of age still working. The number was infinitesimal. He concluded his remarks by offering to attend Woody's 100th birthday celebration, because he had a sweet tooth and a penchant for cake. It should be noted that Justice Gabbert celebrated his 101st birthday last June.

Magistrate Judge David Bristow talked about Woody's reputation throughout the state for his unique settlement technique. Apparently, Judge Rich asks each side, "Confidentially, just between you and me, what is your bottom line?" Coincidentally, the case settles for that "confidential" number.

Judge Rich has conducted ten mandatory settlement conferences for Riverside Superior Court every Monday and Tuesday since 1984. It is not uncommon for him to settle five cases on any given day. He has been settling Riverside civil cases for more than 27 years, almost the same amount of time he sat as a judge. There is a portrait of Woody in the entrance to the Historic Courthouse. It depicts him in the Great Hall, sitting on a concrete bench, his sack lunch beside him, conducting a settlement conference. It is an exquisite portrayal of Judge Rich, because it captures his perseverance, simplicity, intelligence, kindness, and joy. He is an institution in Riverside, just as Judge Bristow said.

Attorney Terry Bridges told a Woody story that exemplified his perseverance. The story had to do with a mediation conducted by Judge Rich that began at 5 p.m. Terry Bridges represented one of the parties. Despite multiple requests by the attorneys for a dinner break, all were denied. Judge Rich had brought his cottage cheese for sustenance. He was heard to say that there would be no dinner and no break until the puzzle was solved. Well, the puzzle was not solved until 2 a.m. Despite the late hour and the offer of a ride, Judge Rich walked home. The married attorneys had to explain to their wives where they had been. Who would believe that a settlement conference had lasted until 2 a.m.?

No birthday celebration would be complete without gifts. Attorney Harlan Kistler, as president of the Riverside County Bar Association, presented Judge Rich with a joint resolution of the RCBA and the Riverside Superior Court. The RCBA also presented him with a bound keepsake compendium of articles taken from the RCBA Bulletins published in the 1950's, a 1951 roster of the RCBA membership (104 members), and articles from the Press-Enterprise and Daily Journal.

L – R Stevan Rich, Carolyn Rich (son & daughter-in-law), Judge Rich, Walter Clark

Judge Rich with Jim and Dorothy Husen

Judge Rich with Justice John Gabbert (Ret.)

Judge Rich with Judge Stephen Cunnison (Ret.)

photographs courtesy of Jackie Carey-Wilson

The civil bench presented Judge Rich with a poster-size copy of his famous settlement agreement form. It was filled out to read: "The case of Woody v. Backlog." The settlement agreement gave Woody: "Unlimited gratitude in partial settlement. Appreciation to be paid by all litigants to Woody. Respect to be paid by all attorneys to Woody. Honor to be paid by all judges to Woody. And overtime to be paid by Woody to the night cleaning crew." All the civil judges signed it. The poster is now prominently displayed at the Southern California Law School.

Judge Rich began his remarks by saying he had it made from the beginning, because he was born Rich. At the time, his parents were farmhands on an apple ranch where there was no heat, electricity, or plumbing. So while it can be said he was born Rich, he was not born rich. He and his parents left the farm and began to prosper. Judge Rich went to Duke University, the University of Southern California, and then the University of Illinois, where he received his Juris Doctor degree. In 1947, he came to Riverside, because it was warm and there was no winter at all. He worked as a deputy district attorney for five years but got tired of the sameness. He looked at the California statutes and thought there was so much more civil law than criminal, and civil law seemed more interesting. He ran for judge in 1952 and retired in 1980 after serving almost 28 years. Shortly thereafter, he began handling settlement conferences for the court. He boasts of working 41 years without missing one day of work. After his heart bypass surgery, he returned to work in March 2000. His new "streak" is now at 11 years without missing a day of work. He jokingly reflects that he has set the bar too high to match his prior record of 41 years.

He then whispers that he would tell his wife that some people call the court's building a courthouse, but he calls it a puzzle house. Some puzzles are small and some are huge, but there are lots and lots of puzzles, and that is what keeps him coming down to the courthouse. And he will keep coming down here until he "drops."

He laughs when he tells the audience that he is asked questions about his longevity, his diet and his beautiful skin. Although he responds by citing his cottage cheese and good genes, you can tell he regards the questions as silly. The last question – how old is he? He is 69!

Judge Rich enjoyed the celebration so much that he promised to attend next year. Now, that is a compliment!

What Happens If Someone Complains About You to the State Bar

by Russell G. Weiner, Deputy Chief Trial Counsel

The State Bar of California's attorney discipline system receives between 12,000 and 15,000 written complaints per year about attorney conduct. In addition, banks, insurance companies and courts are required to report certain events to the State Bar when an attorney is involved.

The State Bar has a form to use when making a complaint; however, a letter with a signature is all that it takes to make a written complaint. The State Bar does not take complaints over the phone.

When the State Bar receives a written complaint, that complaint is reviewed by an Intake Unit attorney; one of several things may happen. The complaint may be sent directly to an investigator and an attorney supervisor for a full investigation. The complaint may be closed immediately after it is reviewed because it does not allege a violation of any ethical rule. An Intake complaint analyst may contact the complaining witness or the attorney complained against to clarify the complaint so a decision can be made to either close the complaint or investigate the complaint. Intake may also decide to resolve the complaint with a warning letter, a resource letter (which refers the attorney to various resources that may assist in avoiding future problems) or an agreement in lieu of discipline.

Approximately 70 percent of all complaints received are closed in Intake because they do not allege a disciplinable offense. The remaining 30 percent are investigated.

In some cases, the Intake Unit will simply call the attorney and attempt to resolve the complaint. A telephone call may be made to the attorney when the attorney has failed to turn over the client's file to the client or when the attorney has not been returning the client's telephone calls. Often, these client complaints can be resolved with a telephone call and nothing further is done.

For other complaints, a State Bar attorney will prepare an investigation plan and the case will then be investigated by a State Bar investigator. The State Bar will send a letter to the attorney telling the attorney about the complaint and requesting the attorney's response. Often, complaints can be resolved during the investigation if the attorney responds and participates. An attorney has a statutory duty to respond to and cooperate with a State Bar investigation.

Up to 70 percent of cases are closed following a full investigation because no violations are found or because the State Bar cannot prove the violations by clear and convincing evidence, the burden of proof in State Bar disciplinary proceedings.

During the investigation, the investigator will typically obtain statements from witnesses and supporting documentation. The State Bar may obtain copies of court files, bank records, correspondence, fee agreements, cancelled checks and other relevant information. At the conclusion of the investigation, the investigator will prepare a written report for his or her supervising attorney to approve. The report will either recommend that the complaint be closed or set forth the rules and the evidence that the investigator believes support the conclusion that one or more violations of the Rules of Professional Conduct or the State Bar Act have occurred.

If the complaint is not closed after investigation, the State Bar will send a letter to the attorney asking the attorney to come in to discuss the case prior to the filing of a notice of disciplinary charges in State Bar Court. At this point, the case may be settled.

If the State Bar and the attorney cannot settle the case on their own, either party may request an early neutral evaluation conference (ENEC) with a State Bar Court judge prior to the filing of the notice of disciplinary charges. The State Bar Court judge is supposed to give both parties a "reality check" in an effort to help settle the case.

If the case is resolved at the ENEC, the parties will enter into a stipulation (a settlement agreement) setting forth the facts, conclusions of law and recommended discipline and file it with the State Bar Court for approval. The California Supreme Court must also approve the stipulation and order the discipline if the discipline to be imposed involves disbarment or some period of suspension from the practice of law.

If the parties are unable to settle the matter at the ENEC, the State Bar will file a notice of disciplinary charges in the State Bar Court and serve it on the attorney at his or her official membership records address on

file with the State Bar. The notice of disciplinary charges tells the attorney what rules or statutes are alleged to have been violated and provides notice of the facts supporting those violations. The allegations of misconduct become public information when the matter is filed in State Bar Court.

The attorney will have an opportunity to file a response to the notice of disciplinary charges. The attorney's response is due within 20 days of the service of the notice of disciplinary charges.

Once filed, the matter proceeds similarly to civil actions in state court. There is a brief discovery period that lasts for 120 days. Currently, discovery rules incorporate the California Civil Discovery Act. However, for cases filed on or after January 1, 2011, discovery will involve a mandatory exchange of evidence modeled after the Federal Rules of Civil Procedure.

As the matter proceeds in State Bar Court, the court will hold status conferences, one or more settlement conferences, and a pretrial conference, leading up to trial before a State Bar Court hearing judge. Trial usually takes place within six to eight months after the filing of the notice of disciplinary charges.

Disciplinary trials are similar to a trial in state court, in which both sides have the opportunity to present and cross-examine witnesses and offer documentary evidence to the court. The most significant difference is that the disciplinary trial is bifurcated into a culpability phase and a discipline phase.

If the court finds the attorney has committed an ethical violation, the case proceeds to the discipline phase, in which the State Bar can present evidence of aggravating circumstances, such as a prior record of discipline, and the attorney can present evidence of mitigating circumstances, such as good character, remorse, restitution, etc. The parties will argue for what each believes is an appropriate level of discipline. The case will then be submitted for decision.

The hearing judge must issue a written decision within 90 days following the submission of the case. The written decision will set forth the procedural history of the case, findings of fact and conclusions of law, findings of aggravating and mitigating circumstances, if any, and a recommendation with regard to the appropriate level of discipline.

When issued, the hearing judge's written decision is served on the parties. The parties can accept the decision as written or seek reconsideration or review of the decision. If a party wants to request review of the decision, a written request for review must be filed with the State Bar Court's Review Department and the party requesting review must order a transcript of the proceedings before the hearing judge.

The appellant must file an opening brief within 45 days after the receipt of the transcripts. A responsive brief is due within 30 days following the service of the appellant's opening brief. Thereafter, the appellant may file a rebuttal brief within 15 days following receipt of the responsive brief. When briefing is complete, the matter is set for oral argument before the Review Department of the State Bar Court.

At oral argument, each side will be given 30 minutes to argue its case, but the Review Department judges may interrupt each side's oral argument with questions from the bench. The case will then be submitted for decision.

Again, within 90 days after the submission of the case, the Review Department must issue a written decision. The Review Department's decision will also include findings of fact and conclusions of law, findings in aggravation and mitigation, if any, and a recommended level of discipline, all of which may be different from the findings and recommendations made by the hearing judge.

Either party can request reconsideration of the Review Department's decision. In most cases, the parties will accept the decision of the Review Department and, once ordered by the California Supreme Court, it will become the final decision in the case.

If a party does not accept the decision of the Review Department, that party may petition the California Supreme Court for review. However, review by the California Supreme Court is discretionary with the court, which in most cases will deny the petition for review. In fact, during the past 20 years, the California Supreme Court has granted review of a disciplinary case only six or seven times.

If you are notified that a complaint has been made against you with the State Bar, you should not ignore the complaint. Your active participation is the best defense. Do not become overly anxious about the complaint, but take it seriously. Make a reasonable effort to respond fully to the complaint and provide any supporting documents that will help resolve the complaint at the earliest possible time. Following these steps will generally save money, time, and anxiety and result in the lowest possible discipline, and can often result in no discipline being imposed at all.

Russell G. Weiner is a Deputy Chief Trial Counsel for the Office of the Chief Trial Counsel, State Bar of California. The Office of the Chief Trial Counsel is the prosecutor for the State Bar in State Bar disciplinary matters.

How to Open a Virtual Law Office on a Budget

by Brian Pedigo

This article is written to help you, a new California lawyer, find the resources necessary to practice law comfortably on a budget. Whether you are a new law school graduate who just passed the bar, or an experienced attorney leaving Big Law, if you're seeking to hang your own shingle without losing your shirt, this article may help you.

Whether you're starting a law practice by choice, or by necessity, the one thing that's usually held in common is that a new start-up has to be "affordable." This article's aim is to help provide you with direction to make that possible.

Opening a Virtual Office

A virtual office is not like a traditional office lease. With a virtual office, a lawyer can have his or her own physical address, and yet not have to pay for that space when it is not actually being used. For example, a company by the name of Regus/HQ offers its various office locations to members on an hourly rate around $20 per hour, or even less if reserved for the entire day. When you need to meet a client in person, you can use a professionally furnished office or conference room for that meeting. When you're not at a meeting, you can work from home, saving yourself both commuting time and money.

You can also have all of your mail forwarded to your home address. Your personal home address stays private, while your virtual office address is broadcast to the public. Executive suite members also have the option of having the office's main desk answer your phone calls and take messages. The total cost to have a virtual office, with all of your mail forwarded three times per week, averages about $120 per month.

Advertising on a Budget

The first question new lawyers usually ask is, "How do you find your clients?" For the most part, clients find me. The way clients find their lawyer is often through advertising.

Advertising on a budget is all the more possible today because of the increasing use of technology and the internet. Traditional print, radio, and television advertising all remain cost-prohibitive for most new start-up law firms.

Because technology is an affordable, practical solution for most new lawyers, advertising using technology will be the focus in this article. If you decide to venture out and attempt to use print advertising, there are many valuable resources that can help guide you through that cost-benefit analysis. This author, however, does not recommend "old-school" methods of attorney advertising for new law practices.

In this article, I will review the following advertising methods:

- Your own website
- Your own blog
- Avvo.com
- Facebook.com
- LinkedIn.com
- Twitter.com
- Craigslist.org
- Social networking

Get Your Own Website

Absolutely, unequivocally, having a professional website is the number one thing you can do for yourself. Without your own website, you're nearly invisible to Generation X and younger.

According to Internet Word Stats (based on Nielsen/NetRatings), about 220 million Americans were using the Internet in 2008.[1] That is approximately 73% of the population. There are about 37 million people in the state of California. 73% of the state's population is a sufficient base for a solo or small firm to start up a targeted marketing effort!

So how do you get your own website? There are many roads to take. Here is a list of things you will need, which will be discussed in further detail later:

- A domain name (e.g., www.YourLawFirm.com)
- A website hosting company
- The text (the copy) for your website
- Images

As a lawyer, you already know the importance of making sure the work you produce is your own. That means not copying and pasting other law firm websites' text, and it also means not downloading your favorite image(s) from other websites to use on your own (unless they are expressly open-source or you are given permission).

It is in your best interest to make sure the content is your own, new, and fresh. Google, along with other search services, is constantly crawling the web, seeking useful information to index within its massive search engine. Your creative text and images make your site more visible and relevant to these automated search engines.

There is a saying among search engine optimization (SEO) professionals, and that is "Content is king." This cliché means that the best way to achieve a good ranking is to make sure you have good, relevant content. You need to achieve a good ranking if you want to be found in cyberspace.

Your Domain Name

Other than your content, your domain name is probably your second biggest factor in ranking well. Your domain name is one of the most important things that search engines consider. For example, as a plant-rights lawyer,[2] if you want to be listed highly on the search engines for "plant rights lawyer California," you will do best to buy a domain name like www.plant-rights-lawyer-california.com or www.PlantRightsLawyerCalifornia.com.

Having the keywords in the domain name will automatically give your site more authority for having the relevant content, and thus your site will likely be ranked more highly than otherwise.

There are many different places you can buy a domain name. Prices vary, but the average approximate price for a domain name is $10 per year. The .com extension is the most widespread, but a new and relevant extension for lawyers is .info. If you buy a .info domain name, you will probably pay less than for a .com, and you can provide free, relevant information for people seeking your services.

1 http://www.internetworldstats.com/stats14.htm.

2 Why did I choose plant rights as an example? Because it was one of the first (and only) things I could find that was not already taken!

Finally, more .info domains remain available, compared to their .com counterparts.

The following is a list of popular domain name providers:

- GoDaddy.com
- Moniker.com
- Enom.com
- 1and1.com
- NetworkSolutions.com
- Register.com

Your Web Host

After you buy your domain name, you have to make that domain name point someplace, and that place will be your web host. Sometimes, it is easiest to have the provider of your domain name also host your website. GoDaddy, for example, has affordable web hosting that makes setup easy when you buy a domain from them, too. The current price on an economy plan for web hosting at GoDaddy is $4.99 a month, when you buy a year at a time.

Some popular web hosts are listed below:

- GoDaddy.com
- 1and1.com
- Yahoo.com
- DreamHost.com
- BlueHost.com

Create Your Own Blog

Just like a website, a blog is somewhat of a necessity for web marketing these days. Why? Blogs are the fastest, easiest, and most logical way to publish new information to the world while it's fresh and relevant. The best news about blogging is that there are several free options to choose from.

Google, for example, acquired Blogger.com, which offers free blog sites. If you use their free blog hosting, your domain name will look like yournamehere.blogspot.com. You can also buy a custom domain name (discussed above) and have that point to your blog; people will be able to access yournamehere.blogspot.com with yourblogname.com (or .info, or whatever else you choose).

If Blogger doesn't float your boat, check out WordPress.com. Wordpress is another free blog host. WordPress.org is different than WordPress.com. Wordpress.org is a site where you can download the blog engine and have more control over your blogging system. You can add plug-ins, install more themes, etc, but you will have to host it yourself somewhere else (web hosting discussed above).

Other popular blogging platforms include:

- Typepad.com
- Blogsmith.com
- MovableType.com

Avvo.com

Avvo is a relatively new site for lawyers and the public. It's a place where the public can ask legal questions, and lawyers can provide needed answers. Lawyers are rated by their peers and by their clients, increasing or decreasing their respective Avvo scores.

Participating on Avvo carries an inherent risk, because when providing legal tips or knowledge, it may be construed as forming an attorney-client relationship; it could even lead to claims for malpractice! Although this is not common, it is something to be aware of before you "dive in" to participating on Avvo.

Adding links from Avvo to your website may boost your search engine rating, as well.

To get started, you just have to "claim your profile." Avvo automatically scrapes the web for all listed attorneys. By default, your profile will be mostly blank, except for information provided by the State Bar. After you claim your profile, you will be able to add pictures, case information, client reviews, peer reviews, questions and answers, legal guides, and more.

A good way to quickly boost your Avvo rating is to get some of your lawyer friends to write you a positive review. While Avvo does not fully disclose its ratings formula, it has been shown that a positive peer review increases an Avvo lawyer rating quickly.

Facebook.com

Facebook is a social networking tool. It has been described by some as "the great time-suck." This is because people you have not seen or heard from in 10 years can find you fairly easily, based on the places you have lived or the schools you have attended. After a while, your network of friends will easily reach the hundreds, even if you've been an introvert for most of your life.

Why is Facebook good for lawyers? Because it's another place where you can get your practice advertised for free. You can post updates for your friends and family so that everyone knows what types of legal issues you are tackling. The next time your buddy's friend has the same legal issue, your name will be planted in that person's mind, and you might have a referral because of your participation on Facebook.

LinkedIn.com

LinkedIn is a professional social networking site. It is similar to Facebook, but there are fewer entertainment-related features and more professional features available, such as posting your full résumé.

LinkedIn is yet another free resource where you can add a link to your web site, thereby increasing its visibility and search engine ranking all the more.

Twitter.com

Twitter is the newest addition to the available free sites for communicating with the world, and it's also the most unusual. Twitter is basically the "one-liner" update for the world. You can let people know what you're doing at all times.

I am not convinced that this is useful or beneficial for lawyer marketing, but others think that it is a valuable tool. It's free, so it can't hurt to try it out, if you have spare time.

Craigslist.org

I have saved the best third-party resource for last. Craigslist is a raw-looking, free internet classified ad system. It is national in reach, but broken down by the major counties throughout California. For example, inlandempire.craigslist.org contains classified ads for residents of the Inland Empire.

There is a link to post advertisements under "services," and then there is a subcategory called "legal."

After I passed the bar and hung out my shingle, my first client came from Craigslist. That first client led to several others, through traditional networking.

Conclusion

Today, it is entirely possible for a new attorney to start a virtual law office on a budget and succeed. All it takes is about $400 in start-up costs to get established and begin marketing.

One final note – a great place for solo attorneys to go for mentoring, support, and advice from fellow solo lawyers all over the country is the ABA's SoloSez list-serve (www.solosez.net).

Brian Pedigo is a sole practitioner whose virtual office is located in Irvine. He may be contacted for any further questions or advice at 877-BRIAN-1-2.

AVOIDING COSTLY PITFALLS IN BUY-SELL AGREEMENTS

by Royce Stutzman

Listen to this conversation: *"But this value is not fair! I know that the agreement says four times the average of the last two years' EBITDA, but there were several one-time costs that will not happen in the future. It's not fair!"*

Royce Stutzman

Could this happen? Yes, and from my experience, it does. Let's look at some of the frequent pitfalls in buy-sell agreements that can happen and, with proper drafting, can be avoided.

Some of the different types of buy-sell agreements are *fixed-price*, *formula*, and *process*. Fixed-price and formula buy-sell agreements are generally easy to understand and to negotiate – the first time only. They tend to be easy for attorneys to draft and no business valuation expert is required.

The pitfalls in these agreements are numerous. A *fixed-price* buy-sell agreement is out of date when inked. The price is seldom updated, even after many years have passed, and frequently the price is not even looked at until a triggering event.

A *formula* buy-sell agreement is usually set based on the state of the economy and the company's industry at the time it is drafted. However, changes occur that can impact the true value relative to any set formula. In addition, formula buy-sell agreements are fraught with definitional issues. They are based on historical numbers, do not allow for unusual, one-time events, and can be subject to multiple interpretations.

Process buy-sell agreements are more complicated and therefore subject to even more pitfalls. A process buy-sell agreement calls for one or more business appraisers to determine the value in a manner defined in the buy-sell agreement. This raises the following two questions: How do appraisers determine value? Is the wording in the agreement unclear, leaving room for appraisers' interpretation?

Let's look at potential pitfalls of process buy-sell agreements by reviewing the six defining elements of process buy-sell agreements: standard of value, level of value, "as of" date, qualifications of appraisers, valuation standards and funding mechanism.

Every valuation is defined in part by the *standard of value*. The agreement should specifically say what the standard is. There are several types, including fair market value, fair value, investment value, going concern value, and liquidation value. The fair market value standard is generally understood to follow the IRS definition. If the agreement calls for any other standard of value, the words on the page must be crystal clear.

It is critical to be clear about the *level of value*. If the business is to be valued on a strategic control value, it will be very different from a financial control value. Then the question is: Does the appraiser consider marketable or nonmarketable minority levels of value?

Here's an example of two appraisers valuing the same company, but interpreting the ambiguous language in the agreement differently. Both started out with the same $100 per share for a financial control marketable minority value. Then the following differences in interpretation developed, which both appraisers could find language in the agreement to support. The company appraiser decided that a 40% marketability discount should be applied, resulting in a price per share of $60. However, the appraiser representing the shareholder decided that the appropriate level of value was strategic control value, and applied a control premium of 40%, resulting in a value per share of $140. Now there are two very different results, based on an agreement that was not clear, causing the appraisers to decide for themselves what each thought the agreement said.

The *"as of" date* is also critical to the appraisal process. This date establishes the time for valuation. However, there are other business issues that ought to be considered but that are frequently left open, such as rights after death, if any, including rights to receive the price in the agreement; voting and distribution; and other ownership interests in the business.

It is also important that the buy-sell agreement specifies the *qualifications of the appraiser* and the application of professional *valuation standards*. There are several terms that are used in agreements, including "appraiser," "qualified appraiser," "licensed general appraiser," "investment banker," and "accountant." Are all appraisers alike? No. Make sure your buy-sell agreement calls for qualified and credentialed business appraisers to ensure that you receive the most accurate, well-informed appraisal. Credentialed business appraisers are bound by one or more of the following business valuation standards: Uniform Standards of Professional Appraisal Practices (USPAP), American

Institute of Certified Public Accountants (AICPA) Business Valuation Standards, as well as standards of the National Association of Certified Valuation Analysts (NACVA), the American Society of Appraisers (ASA), and the Institute of Business Appraisers (IBA).

If the buy-sell agreement calls for a *funding mechanism* that involves some kind of insurance, specifying the intent of the insurance as a funding agreement or a corporate asset is key. If it is a funding vehicle, the resulting value to the departing shareholder could be considerably less than if the insurance is treated as a corporate asset.

So how can you be sure that your agreement results in equity and fairness to all parties? Here's how: ask a qualified appraiser to prepare a valuation based upon the agreement in place. In the process, ask the appraiser to identify any areas where the agreement could be interpreted differently and what the difference in value would be.

This approach will enable you to:

- Know the value now
- Understand the process
- Identify any issues regarding unclear valuation-defining terms and allow you to make changes before a triggering event
- Help the parties involved gain confidence in the process and know the value for other purposes, such as estate planning, insurance needs, etc.

The best approach to ensure an effective buy-sell agreement and avoid costly pitfalls is to ask a single qualified, credentialed appraiser to value the business, and to value it regularly. This will ensure that when a triggering event does occur, your client's buy-sell agreement will be interpreted clearly for fair results.

Royce Stutzman, CPA/ABV, CVA is Chairman and leader of the Valuation Group at Vicenti, Lloyd & Stutzman, a 57-year CPA and business consulting firm in Glendora. Royce, a frequent speaker, will soon lead a webinar on effective buy-sell agreements. For more information, please contact Royce at (626) 857-7300 or at RStutzman@vlsllp.com.

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Opposing Counsel: Brian T. Pedigo

by L. Alexandra Fong

"Fighting for the Average Joe"[1]

Brian T. Pedigo was born in Nebraska, the son of a pastor father and stay-at-home mother. He also grew up in Michigan and Colorado. In 1999, he moved to California to attend Biola University in La Mirada. He chose California because he grew tired of the cold Colorado winters and thought California would be a good place to live.

Brian T. Pedigo

In 2002, Brian graduated from Biola with a bachelor's degree in computer science. He worked for two years as a computer programmer at a large church in Orange County, and he also contracted with various businesses to create their websites.

While working as a computer programmer, Brian was introduced to his future wife, Laura, through a mutual friend. They were married in 2004 and resided in various cities before settling in Riverside County.

Frustrated after one business refused to pay him for his work and misappropriated his computer code, he turned to the law. Although he attempted to hire an attorney to take his case, all the attorneys he contacted refused to take his case on a contingency fee basis, instead requesting high hourly rates, despite what appeared to be a clear case of copyright infringement. He ultimately settled the case for what he was originally owed.

Based upon this experience, Brian decided to become an attorney so he could help typical working-class people (consumers) with their legal problems. He attended Whittier Law School in Costa Mesa, graduating in 2007. Although he did not pass the California Bar Examination on his first attempt, he persevered; he succeeded on his second attempt and became licensed to practice law in 2008. While awaiting the results of the February 2008 bar exam, he began working on his website, http://www.pedigolaw.com, his virtual office, and various advertisements. After being sworn in as an attorney, at a private ceremony, he immediately launched his business. Within one day after he posted his Craigslist advertisement, his first client contacted him and executed a retainer agreement. One satisfied client led to various referrals, and he continues to obtain clients through his website.

Brian immediately became active in the Riverside County Barristers after receiving a mailer advertising an interesting MCLE session. Barristers, a section within the Riverside County Bar Association, is designed primarily for young and newly admitted attorneys. It provides members with opportunities to interact with peers from other firms and practice areas. Its purpose is to promote camaraderie and civility among attorneys in the county. It provides an opportunity to listen to MCLE lectures offered by experienced practitioners and esteemed members of the judiciary, who provide valuable tips about practicing within the community.[2]

He was on the Barristers board as a member at large for 2009-2010 and, this year, is the treasurer. As treasurer, he is responsible for fundraising.[3] The board meets to discuss its ongoing matters, including obtaining speakers for its monthly membership meetings, which occur on the second Wednesday of each month, September through June, at various restaurants in the downtown Riverside area.

Although Brian resides in Riverside County, his virtual office is located in Orange County. He originally intended to return to Orange County so that his wife, Laura, would have a shorter commute to her job as a clinical psychologist for Biola. Her patients are students and community clients, although she plans to expand her private practice. Brian utilized his computer programming skills to create her website, http://www.orange-county-psychologist.com.

A virtual office is one that the attorney pays to use only when he or she needs it. Other services may be available, including secretarial support and a receptionist to answer telephone calls.[4]

1 This phrase is a registered trademark of Brian T. Pedigo and used with his permission. Mr. Pedigo has also used this trademark on his truck as an advertisement for his firm (see picture) and as a personalized license plate, "4AVGJOE."

2 Although there is no age limit to be a member of Barristers, if an individual wishes to be on its board of directors, the maximum age is 37.

3 Other officers and members of the Barristers Board also assist in fundraising efforts.

4 Additional information about a virtual office can be obtained by reading Brian's article in this issue, "How to Open a Virtual Office."

Within his first year of practice, two milestone events occurred. Brian was diagnosed with cancer and had his first trial. He had surgery to remove the cancer just one week before the trial was scheduled to commence. While he recuperated, he was busily readying for the two-day bench trial, which had not been rescheduled. His client was accused of fraud, but Brian obtained a defense verdict.

During his two years of practice, Brian has had many interesting cases. One involved a doctor who was taking his Labrador for a walk in the neighborhood. While they were in a crosswalk, a vehicle came around the corner without stopping at the stop sign and ran over the Labrador. The dog was rushed to emergency surgery due to a collapsed lung, broken tail, and broken leg; the veterinarian bills totaled about $6000. The driver's insurance company refused to pay these bills, instead offering a token amount of about $100 – the dog's sale value. When the issue was not resolved, a lawsuit was filed, and Brian sought compensatory and punitive damages, based upon an obscure but still valid law that an individual who injures an animal willfully or by gross negligence, "in disregard of humanity," may be liable for punitive damages. (Civ. Code, § 3340). During his research, he also learned that the driver had a history of a blatant disregard for the law. Shortly after the lawsuit was filed, he was able to negotiate a settlement for the amount of the vet bills.

His first personal injury case was a "trip and fall" at a restaurant. His client tripped over a log being used as a wheel stop, which had been placed on the darkened pedestrian path leading out of the restaurant. She suffered various facial injuries and needed a root canal to repair injuries to her teeth. His client's medical damages exceeded $5000. The restaurant's insurance company refused to settle the case, until the manager gave damaging videorecorded deposition testimony. The case settled shortly thereafter.

When Brian is not handling personal injury cases, he also handles bankruptcy matters, and for the past two years, he was identified as one of the top Orange County attorneys handling consumer bankruptcy/debt by *OC Metro* magazine. One successful bankruptcy matter resulted in the referral of a major personal injury case involving a man riding a bicycle who was run over by a big-rig truck. When Brian determines that the costs of the litigation would exceed a certain amount, he partners with a larger law firm.

In his free time, Brian enjoys spending time with Laura and their two dogs, Honey and Teddy. They camp at Camp Blue Jay, which is conveniently located off the Ortega Highway in Cleveland National Forest. He also enjoys wine-tasting at various Temecula-area wineries.[5] He prefers a dark red Zinfandel, which pairs nicely with steak. He hopes to travel internationally, after he has paid off his student loans by winning his first million-dollar case. Eventually, he hopes to travel to Scandinavia to sample the fine wines there.[6]

L. Alexandra Fong, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.

5 Brian has parlayed his interest in wine into a legal specialty, as evidenced by his website: http://www.wine-lawyer.com.

6 See http://www.jancisrobinson.com/articles/winenews0116.html.

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The RCBA Elves Program 2010

by Brian C. Pearcy

On December 24, 2010, the RCBA's Elves Program concluded its ninth year of helping needy families in Riverside County. This year, your Elves purchased, donated, wrapped, and delivered gifts to 32 economically challenged families, providing Christmas gifts and a holiday dinner to 109 children and 54 adults.

Again, we had the opportunity to work with the Casa Blanca Home of Neighborly Service and the Riverside County Department of Public Social Services.

The success of the RCBA Elves Program is due to the great support and generosity of our membership. Helping others is infectious, and Elf participation has grown beyond the immediate membership to include their office staff, their families, their clients, and their friends. And now for some recognition:

The Money Elves

Despite the tough economy, the Money Elves really stepped up to the plate this year, generating the largest amount of donations ever! Past president Harry Histen continued the tradition of outgoing past presidents of donating the funds used for their president's gift to the cause. We also received money not only from direct donations, but from bar association fundraiser events throughout this past year. The money raised provided gifts for each family member, along with a Stater Brothers gift card to buy their holiday dinner fixings. The increase in donated funds allowed us to provide a Christmas dinner valued at $10 per person, rather than $25 per household (regardless of size), as we had done in the past.

I'd like to thank the following Money Elves for their support: Justice John Gabbert; the Honorable John Vineyard; the Honorable Elwood Rich; the Honorable Paulette Barkley; the Honorable Becky Dugan; the Honorable Pamela Thatcher; the Honorable Tom Cahraman; the Honorable Dallas Homes; the Honorable Irma Asberry; the Honorable Roger Luebs; the Honorable Richard Van Frank; the Honorable James Ward and his wife Carole; the Honorable Michelle Levine; John Marshall; Julianna Strong of Redwine & Sherrill; Mary Jean Pedneau; Ruth Adams; Harry Histen; Barrie Roberts; Barbara Marmor; Judith Runyon; Judith Murakami; Daniel Greenberg; Laura Rosauer; Brian Unitt of Holstein Taylor & Unitt; Rizzio & Nelson; Vicki Broach; Reid & Hellyer; Harlan Kistler; Lester and Susan Douty; Sandra Leer; Scott Ditfurth, Amy Wujick, Jack Clarke, Glen Price, Michelle Ouellette, Lisa Ruiz-Cambio, Cassandra Owen, Jessica Hirsch, Luis Tapia, Marvin Cohen, Cathy Smith Homes, Isabel Safie, Howard Golds, Margaret Barnes, Mona Nemat, Lauren Fisher, John Holloway, and George Reyes, all of Best Best & Krieger. I would also like to provide a very special "Thank you" to all of Best Best & Krieger for the very generous firm donation organized by Mark Easter.

The Shopping Elves

In a period of a little over five hours, waves of our Shopping Elves descended on the Big Kmart on Alessandro Boulevard in Riverside. It was a joy to experience the festive mood of various individuals, firms, and families as they put on their best bargain-hunting caps to find the best dollar-stretching deals for our families, hand-picking hundreds of special gifts. Kmart once again helped stretch our dollars by providing us with an additional discount on all items purchased, resulting in over $800 of extra savings. The store manager, Tom Rynders, was incredibly supportive; he dedicated two registers and several staffers to ring up, bag and tag the Shopping Elves' purchases.

This year's Shopping Elves were: The Honorable Paulette Barkley and family; Diana Renteria and family; Jeannette Guerra and family; Maria Hale; Vanessa and Susan Douty and family; Harry Histen and family; Pamela Bratton, Bill Bratton, Alexander Bratton, Danielle Hamlin and Amanda Lopez of Bratton & Bratton; Paula Laveratto and family; Christina Sovine and family; Carol Ledesma and family; Dawn Saenz; Chancy Sigloch; Michelle Morgan; Jesse William; John Male and family; Meg Hogenson; Marie Myers of Swanson & Myers; Andy Graumann and Judith Graumann Murakami of Attorneys To Go; Marek Kasprzyk of MJK Investigations; Barbie Trent of the Public Service Law Corporation, Adrienne Bennett of Berman Berman & Berman; and Tera A. Harden, Deepak Budwani and Veronica Reynoso and family from the Law Offices of Brian C. Pearcy.

The Wrapping Elves

Due to the big jump in donations, the number of presents purchased increased as well. This meant our Wrapping Elves needed to be a model of efficiency. Over the course of two evenings, the Wrapping Elves wrapped the largest number of items (toys, clothes and household goods) ever.

This year's Wrapping Elves were: Maria Hale, Devin McComber and Lynn Venegas the of Public Defender's office; Tara Durbin, Jen James, Janette Hamm and Cindy Ruvalcaba of the Law Offices of Jeremy K. Hanson; Vanessa Douty and family; Harry Histen and family; Evan Rae Easter, daughter of Mark Easter of Best Best & Krieger; Paula Laveratto; Shannon Jonker of the Law Offices of Robert Deller; Virginia Corona of the Public Service Law Corporation, Pamela Bratton, Bill Bratton, Alexander Bratton, Danielle Hamlin and Amanda Lopez of Bratton & Bratton; Christina Sovine and daughter Justice Bailey; Tera A. Harden, Deepak Budwani and Veronica Reynoso of the Law Offices of Brian C. Pearcy; Clifford Bryant of the Law Offices of Dennis M. Sandoval; Gilbert Gutierrez, Priscilla Mendoza, Natasha Rangel and Jenny Villanueva of the Law Offices of Gilbert Gutierrez; Jennifer Finch of the Riverside County District Attorney's office; Diane Huntley of Creason & Aarvig; Reina Canale; Daniel Hantman; Marcia LaCour of Cummings, McClorey, Davis, Acho & Associates;

RCBA's immediate past president , Harry Histen & his wife, Sherise.

Diana Renteria with son, Sebastian.

Head RCBA Elf – Brian Pearcy

Scott Talkov of Reid and Hellyer

and Carrie Raven, Art Johnston and Louanne Moore of Best Best & Krieger;

The Delivery Elves

Our Delivery Elves touched down in various areas of Riverside County, including Corona, Hemet, Riverside, Perris and Moreno Valley. This year, we also assisted an especially needy family from the City of Hesperia that was brought to our attention. While they were located in our neighboring County of San Bernardino, based on the need and the fact that many of our members serve the two-county area, we could not in good conscience say no.

The Delivery Elves who donated their time and gas were: Harry Histen and family; Sabrina Dagostino; Maria Hale and family of the Riverside County Public Defender's office; Christina Sovine and family; Susan Nauss Exon; Gy. Sgt. Emma Byer and family; Tara Durbin; Jen James, Janette Hamm and Cindy Ruvalcaba of the Law Offices of Jeremy K. Hanson; Diana Renteria; Kevin Kump; Joyce Schechter and Melodee Kantor of the Grider Law Office; Vanessa Douty and family; Arlene M. Cordoba; Marek Kasprzyk of MJK Investigations; Mark Easter of Best Best & Krieger; Paula Laverrato; Bernice Smith, Roberta Longridge, Tracy Willhide and Scott Talkov of Reid & Hellyer; the Rodriguez family; Hacienda Heights Girl Scout Troop B744; Pamela Bratton, Bill Bratton, Alexander Bratton, Danielle Hamlin and Amanda Lopez of Bratton & Bratton; Hugo Polanco; and Tera A. Harden, Deepak Budwani and Veronica Reynoso and family of the Law Offices of Brian C. Pearcy.

Special Thanks

Once again, big kudos to my assistant Veronica, whose dedication and organizational skills made this a very efficient and fun shopping, wrapping, and delivery experience for all involved. A big thank you to Veronica's husband, Marcos, and their two children, Krystal and Marcos Jr., not only for their participation, but also for being extremely patient with Veronica's absences on those extra-long days when she kept everybody moving in the right direction. To the Riverside County Bar Association staff, especially Charlene Nelson and Lisa Yang, for all their energy and skill. To the management and social workers from the Casa Blanca Home of Neighborly Service and the Department of Public Social Services, for making sure we help the most needy families in the county. Once again, "Thank you" to the wonderful manager, Tom Rynders, and staff at the Big Kmart at Mission Grove in Riverside.

Finally, "Thank you" to the Elves themselves. Your wonderful spirit and camaraderie is represented in the photos accompanying this article.

For those of you who have not yet volunteered as an Elf, I suggest you put it on your agenda for next year. In the past, members have asked the bar association to offer more (i.e., non-MCLE related) opportunities to socialize with your colleagues. Ladies and gentlemen, I submit to you, this is one such opportunity! It is truly a great way for you, your family, and your staff to share the joy of the holiday season.

Brian C. Pearcy, president of the RCBA in 2002, is chairperson (and Head Elf) of the Elves Program.

photographs courtesy of the Pearcy Law Offices

Bratton & Bratton Law Firm – L to R – Diane Crowder, Maria Suarez, Pam Bratton, Danielle Hamlin, Jason Abbott, Bill Bratton

Veronica Reynoso of Pearcy Law Offices and Marek Kasprzyk of MJK Investigations.

Riverside Superior Court Commissioner Paulette Barkley with her children, Claire & Noah.

Should Attorneys Have a Client Relations MCLE Requirement?

by Christopher J. Buechler

I had the good fortune last year to see Jay Foonberg – author of *How to Start & Build a Law Practice*, which many solo practitioners affectionately refer to as "the Bible" – give a talk entitled "The Nine Steps to a Successful Practice,"[1] discussing ways to build good relationships with good clients to develop a successful practice. To sweeten the deal for the young alumni from my law school, he was offering us MCLE credit for one hour of legal ethics. Although he did discuss ethics as part of a successful practice, he would rather have given up the game and given ethics credit for a straight speech on client relations. Presented here, then, are arguments in favor of including a client relations requirement in MCLE, or at least permitting one hour of client relations to substitute for one hour of legal ethics.

The Argument from Policy

According to Mr. Foonberg, more than half of ethics complaints filed against an attorney are found to be nonmeritorious, and more than 70% of malpractice cases against attorneys result in no indemnity being paid to the claimant.[2] The cause he identified was not lawyers playing fast and loose with ethics rules (although some of them are probably close to that line), but rather unhappy clients frustrated with some perceived mistreatment wanting to "get back" at the lawyer in the only way they know how (besides skipping out on the bill).

The argument from policy for incorporating a client relations MCLE aspect into the legal ethics requirement, then, becomes twofold: First, if the purpose of the legal ethics requirement is to get lawyers to behave ethically and keep them out of the State Bar Courts, then they are more likely to stay out of the State Bar Courts with increased education in client relations. Of course, other top ethics complaints relate to handling of client trust accounts or other money matters,[3] which would call for a bookkeeping MCLE requirement, but that is for a future article. Second, if the purpose of the legal ethics requirement is to inspire trust and confidence in the legal profession, then our clients' trust and confidence must be maintained through good client relations. Either from the administrative perspective or the client perspective, a client relations requirement for MCLE makes sound policy sense.

The Argument from Precedent

Attorneys are not the only service-oriented professionals with state-mandated continuing education requirements, yet we are one of the few professions that does not include client relations continuing education either in our professional ethics requirement or as a standalone requirement. California accountants' professional ethics requirements may include "business ethics, ethical sensitivity, and *consumer expectations*."[4] (Emphasis mine.) As for California doctors, all of their continuing education classes have to be Category 1-approved, and Category 1 includes "improvement of the physician-patient relationship."[5] Like accountants and doctors, attorneys build relationships over time, based on trust and on the professional's ability to convey technical information in a way that ensures the client acts in his or her own best interest. So, like accountants and doctors, we should incorporate recognition of the importance of client relations into our continuing education requirements.

The mechanics of implementing such a policy change should not be too hard. I am in favor of substituting a maximum of one hour of client relations MCLE for the legal ethics requirement, rather than making client relations a separate requirement. Regardless, educating attorneys – private, government, and nonprofit – on good client relations will benefit the profession in the long run, because improved relations between an attorney and a client increase trust and confidence in the profession as a whole and will likely lead to a lot fewer nonmeritorious ethics complaints.

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1 A transcript of the speech is available on the ABA website at http://new.abanet.org/calendar/gp-solo-2009-fall-meeting-and-national-solo-and-small-firm-conference-los-angeles-california/Documents/9%20Steps%20of%20Successful%20Law%20Practice.pdf.

2 Jay Foonberg, "The Nine Steps to a Successful Law Practice" (October 17, 2009). Transcript available online cited above.

3 Jay G. Foonberg, *How to Start & Build a Law Practice* 588-89 (5th ed. 2008)

4 Cal. Board of Accountancy Reg. 87(b).

5 Medical Board of California, http://www.mbc.ca.gov/licensee/continuing_education.html.

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The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective February 28, 2011.

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