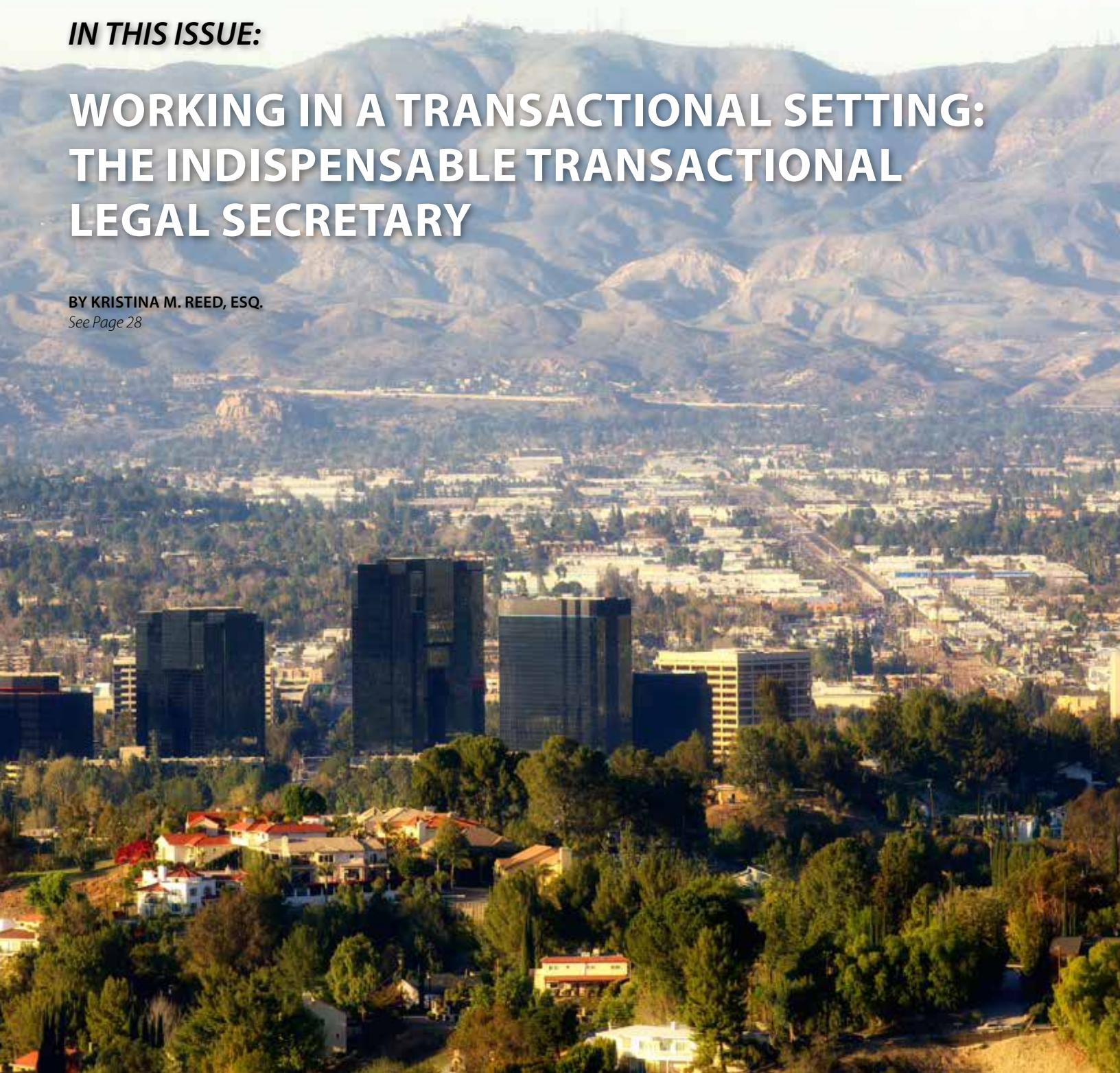


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BY KRISTINA M. REED, ESQ.

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Dedicated to LSI Past President, Joan M. Moore, PLS, CCLS

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Moving Onward and Upward in Unity

BY MARY J. BEAUDROW, CCLS



MARY J. BEAUDROW, CCLS

is President of Legal Secretaries, Incorporated and a member of Mt. Diablo Legal Professionals Association. Mary has worked in the legal field since 1977, and has worked for the law firm of Morrison & Foerster LLP since 2002, where she is currently a Senior Docket Coordinator. Mary is a former member and Past President of San Francisco Legal Professionals Association.

I am sure we have all heard the expression "Time flies when you are having fun." Well, time does fly, and here we are half way through our fiscal year. It has been a fun and educational year so far.

Desert Palm Legal Professionals Association did a fabulous job of hosting LSI's November 2014 Quarterly Conference at the Hilton Hotel in Palm Springs with the theme, "Masquerade Ball." First time Conference Chairs Kathleen Gorman and Erika Garduno did an outstanding job, and they didn't miss a beat. The newly renovated hotel rooms and property were beautiful, and the hotel staff provided excellent service.

The Board of Governors meeting began with having the opportunity to hear our welcome speaker, Patricia Muro, Attorney at Law, the immediate Past President of the Desert Palm Bar Association. Ms. Muro shared with us how her father, a Mexican immigrant, disowned her older sister for going to college. In his culture, the woman's place is at home raising the children, and not going to college. Luckily his view point didn't discourage Ms. Muro from pursuing her dream of becoming a lawyer. She said by the time she went to college that her father's view point had changed, and he had welcomed back her older sister to the family. Her story is a reminder to never let anyone stop you from achieving your dream, whatever it is.

Between the six seminars presented over the weekend by the Legal Specialization Sections, the CEC seminar presented Friday night, and the CCLS Workshop presented on Saturday morning, attendees had ample opportunity to obtain continuing education. The main reason for LSI's existence is to provide continuing education to our members and non-members.

The weekend ended with all of us having the benefit of listening to Valerie A. Smith, Attorney at Law, who was the Sunday morning speaker. Ms. Smith shared her story of her being in a horrific car accident with the doctors telling her that she would never be able to walk again. What made this diagnosis so difficult for her to hear is that she was an athlete and a very competitive person, so this news was unacceptable. Ms. Smith took this as a challenge and was determined to prove the doctors wrong, which she did, and she did regain the ability to walk. Ms. Smith's story proves that with determination and focus anything is possible.

We are half way through the fiscal year and what have we accomplished? We have already had three successful online courses: The CCLS On-Line Study Group, the Beginning Legal Secretarial Training Class, and Overview of California State Court Discovery. We also now have an official LSI Facebook page, which is receiving more activity all of the time. Our new logo is starting to be featured on our written material such as flyers, and our LSI stationery. It is exciting times for LSI.

In continuing with the Local Association Promotion Program, on Sunday morning the following five associations were selected to receive a free scrip ticket for the February 2015 Quarterly Conference: Long Beach LPA; Los Angeles LSA; Riverside LPA; San Fernando Valley LSA; and San Gabriel Valley LSA.

At the February 2015 Quarterly Conference, LSI will be accepting bids to host the following upcoming quarterly conferences: November 2016, February 2017, August 2017, and the 2017 May Annual Conference. The bids will be voted on at the Post-Annual Board of Governors meeting at the 2015 May Annual Conference in San Diego. Don't let another opportunity to show off your city, work with your local association members and hold a conference in your own back yard pass you by.

LS

Congratulations to LSI's Newest California Certified Legal Secretaries!

THE FOLLOWING INDIVIDUALS ARE TO BE RECOGNIZED AND COMMENDED FOR PASSING THE CCLS EXAMINATION ON OCTOBER 18, 2014:

Kimberly Barker, CCLS	Non-LSI Member	Candace Nelson, CCLS	Member at Large
Sally Butterworth, CCLS	San Diego LSA	Laura Prongos, CCLS	Non-LSI Member
Linda Lane, CCLS	San Gabriel Valley LSA	Vivian Shreve, CCLS	Santa Clara County LPA
Lacy Monserrat, CCLS	Sacramento LSA	Arkisa Ward, CCLS	San Gabriel Valley LSA

Passing the CCLS examination is a tremendous achievement and these new CCLSs deserve kudos for rising to the challenge and proving that hard work, dedication, and commitment can lead to fantastic results!

When you see any of these ladies, please offer your congratulations on their achievement. We invite you all to join us at LSI's Annual Conference in May 2015 as we honor these new California Certified Legal Secretaries at the CCLS Luncheon and Saturday Banquet.



NOVEMBER 2014 | PALM SPRINGS

LSI Second Quarterly Conference







MR. BARTON has represented health care providers for over 30 years and has been named in The Best Lawyers in America®. In 2000, he was appointed Medical Staff Counsel for the Sharp Healthcare System. Since that time, he has been retained by numerous hospitals and health systems to serve as medical staff counsel and to serve in a consultative role to assist hospitals, medical staffs and physician groups in their oversight responsibilities. His consultative role has included addressing hospital, medical staff and physician group compliance and governance, and the drafting of bylaws, policies and procedures and rules and regulations. As a litigator, Mr. Barton has tried or arbitrated over 100 civil matters. With that background, Mr. Barton has represented medical staffs in judicial review hearings and litigated matters arising from medical

staff proceedings in Superior Court and before the California Court of Appeal. He is responsible for several published appellate decisions including the recently published *Sadeghi v. Sharp Chula Vista Medical Center*. He can be reached at 619.515.3299 or rick.barton@procopio.com.

Whistleblowers and the California Supreme Court's Decision in *Fahlen v. Sutter Central Valley* – Toward a Workable Balance for Promoting Advocacy for Patient Care

BY RICHARD D. BARTON, ESQ., SAN DIEGO LSA

On February 20, the California Supreme Court handed down its long awaited decision in *Fahlen v. Sutter Central Valley Hospitals*. In a lengthy opinion, the Court ruled that a physician is not required to exhaust administrative remedies in the hospital peer review process before proceeding with a civil complaint for retaliation under California's "whistleblower" statute, Health & Safety Code Section 1278.5. In so holding, the Court rejected application of the long-standing exhaustion requirement established in 1976 in *Westlake Community Hospital v. Superior Court*, 17 Cal. 3rd 465. In *Westlake*, the Supreme Court held that a physician must exhaust all internal hospital procedures and prevail in an administrative mandamus action in Superior Court prior to bringing a civil action seeking damages arising from a hospital decision restricting or terminating medical staff privileges. In eliminating the exhaustion requirement for physicians claiming whistleblower status, the *Fahlen* Court opened a window that has significant implications for hospitals and medical staff. Indeed, the Court in several passages acknowledged issues the decision creates for the peer review process, but declined to address those questions, stating that it would "await their development in future cases."

In its unanimous decision in 2007, the Court focused on the structure and legislative history of the amendments added to section 1278.5. Those amendments were introduced by the California Medical Association ("CMA") to

add physician members of medical staffs to nurses, patients and other healthcare workers already protected from retaliation for filing grievances regarding unsafe patient care and conditions. The legislature declared in the original statute its intent to "encourage patients, nurses and other healthcare workers to notify government entities of suspected unsafe patient care and conditions." It provided civil remedies, including damages and reinstatement, for any action by a hospital in retaliation for such reports. The statute as amended in 2007 prohibits a health facility from discriminating or retaliating against a member of a medical staff that presents a "grievance, complaint or report to the facility, to an agency responsible for accrediting or evaluating the facility, or the medical staff of the facility, or to any other government agency."

In lieu of an outright prohibition of civil lawsuits before conclusion of the peer review proceedings, the legislature included provisions in the amendments allowing medical staffs to petition a court for an injunction "to protect a peer review committee from being required to comply with evidentiary demands on a pending peer review hearing." Section 1278.5(h) further allows a trial court to keep the injunction in place until the completion of the peer review hearing if that process would be "impeded" by the evidentiary demands. In its opinion, the Supreme Court cited these provisions as evidence of the legislature's understanding and intent that a civil complaint under section

1278.5 could be litigated concurrently with the peer review process. Thus, the Court concluded the legislature did not intend for the exhaustion requirement to apply in this discrete context.

It is difficult to argue against the basic principle underlying the legislature's extension of the protection of section 1278.5 to physician members of a medical staff. The law should protect all categories of providers from retaliation for drawing attention to legitimate patient care concerns. The hospital, CHA and others were rightly concerned, however, with the implications of allowing a civil action for retaliation to proceed outside of the long recognized process for addressing patient care issues with physicians.

One of the more concerning issues presented by the Courts ruling is the very practical reality of how the issues involving disruptive physicians play out in the medical staff setting. In this context, physicians exhibiting disruptive and abusive behavior almost uniformly defend their conduct by insisting it was out of concern for patient safety. We once represented a medical staff in a lengthy JRC hearing in which the physician created an extensive file every time he was called before the MEC to address his conduct. The file documented what he believed were deficiencies in hospital operations. All of these complaints were used to explain and justify his outbursts toward nursing staff and his entire defense at hearing was based on his assertion that his disruptive and inappropriate behavior was the result of his concern for patient care. It is not hard to imagine a physician making similar arguments attempting to utilize whistleblower status through a civil complaint alleging that the medical staff's action was in retaliation for his or her "advocacy" on behalf of patients.

Over the past decades, there has been an evolution of the hospital industry's awareness of physician behavior and its impact on the team approach to providing quality care. In its Sentinel Event Alert issued in 2008, the Joint Commission mandated that hospitals address "behaviors that undermine a culture of safety." The behaviors identified by the Joint Commission include intimidation, verbal outbursts, physical threats, condescending language or voice intonation, and impatience with questions. The Commission stated, "to assure quality and to promote a culture of safety, health care organizations must address the problem of behaviors that threaten the performance of the health care team."

The reality is that carrying out the Joint Commission's mandate to address disruptive behavior is complicated by myriad factors, and the potential for these issues to be diverted to the civil arena raises very difficult questions. While section 1278.5(h) allows a medical staff to seek



an injunction to preclude evidentiary demands of a peer review process, little guidance is provided for the standard to be used by a court in deciding whether the demand "impedes" the peer review process. For better or worse, the judicial review hearing process can proceed very slowly, taking years depending on the complexity of the issues involved. Courts on the other hand employ hard deadlines for the completion of discovery and trial. For those of us who litigate matters in dual forums, e.g., court and arbitration, it is not at all unusual for a court to decide it cannot wait for resolution of an outside process before forcing a matter to proceed in court. This creates the very real possibility of a court demanding that a whistleblower complaint proceed to trial before a decision by judicial review committee as to whether the decision to restrict or terminate privileges was reasonable and warranted.

The provisions in section 1278.5(h) are also limited to a medical staff protecting itself from evidentiary demands for protected peer review information. This omits a crucial component arising from the prospect of parallel proceedings in the civil and medical staff contexts. By law, the issue of physician disruptive conduct and ensuring quality of care reside in the organized medical staff whose proceedings are to remain confidential. Should a court require that a whistleblower complaint proceed in court, most, if not all, of the evidence that a hospital will require to defend itself will have taken place within the privileged medical staff context. This presents a terrible dilemma for hospitals and their medical staffs. If the civil complaint is ordered to proceed during or even after the medical staff's proceedings, the hospital will be forced to decide whether to reveal evidence of the deliberations of peer review bodies, or its case in a hearing, to rebut the contention in court that the medical staff's actions were retaliatory.

While retaliation should not in any way be tolerated, the issues in *Fahlen* pose fundamental questions regarding

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RON COOKE is an ERISA/ employee benefits/ executive compensation, employment and labor law attorney with more than 20 years of experience with major law firms and a Fortune 500 financial institution. He is a nationally recognized authority on the Employee Retirement Income Security Act (“ERISA”) and literally wrote the book on it, entitled *ERISA Practice and Procedure*, published by Thomson/West, which has been relied on as authoritative in federal court decisions. Mr. Cooke can be reached at rjaycooke@gmail.com.

Employers: What’s Not to “Like” About Facebook? – Plenty, and it Starts With the NLRB



BY: RONALD J. COOKE, ESQ., CONEJO VALLEY LPA

Although the National Labor Relations Board (“NLRB”) has been long associated with unionized employment, that is not the case, as it has protected non-union employees. At the core is Section 7 of the National Labor Relations Act, which provides in relevant part that “[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection....” Under Section 7, employees have a statutory right to act together “to improve terms and conditions of employment or otherwise improve their lot as employees” – including by use of social media to communicate with each other and with the public for that purpose. At the same time, online employee communications can implicate legitimate employer interests, including the right of employers to maintain discipline in their business establishments.

The NLRB has become involved in legal issues over employer social media policies and has ruled generally that an employer violates the National Labor Relations Act through the maintenance of a work rule if that rule “would reasonably tend to chill employees in the exercise of their Section 7 rights.” *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), *enfd.* 203F.3d 52 (D.C. Cir. 1999). The Board uses a two-step inquiry to determine if a work rule would have such an effect. *Lutheran Heritage Village–Livonia*, 343 NLRB 646, 647 (2004). First, a rule is clearly unlawful if it explicitly restricts Section 7 protected activities. If the rule does not explicitly restrict protected activities, it will only violate the National Labor Relations Act upon a showing that: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

It is the view of the NLRB that the following are examples of unlawful social media policies because they stifle concerted activity:

- Employees may not post “discriminatory, defamatory, or harassing web entries about specific employees, work environment, or work-related issues on social media sites.”
- Employees may not post “disparaging comments about the company through any media, including online blogs, other electronic media or through the media.”
- “Employees should generally avoid identifying themselves as the employer’s employees unless discussing terms and conditions of employment in an appropriate manner.”

However, the following is an example of a lawful social media policy because it would not be reasonably understood to restrict legal concerted activity:

- Employees are prohibited from using social media to “post or display comments about coworkers or supervisors or the Employer that are vulgar, obscene, threatening, intimidating, harassing, or a violation of the Employer’s workplace policies against discrimination, harassment, or hostility on account of age, race, religion, sex, ethnicity, nationality, disability, or other protected class, status, or characteristic.”

The NLRB has issued a number of rulings in this area. In *Costco Wholesale Corp.*, 358 NLRB No. 106 (Sept. 7, 2012), the NLRB ruled that a policy prohibiting employees from posting statements on the Internet that “damage the Company...defame any individual ...or damage any person’s reputation” was overbroad and could chill employees’ exercise of their right to participate in protected concerted activity, as employees could reasonably believe that the policy prohibited their ability to criticize the employer.

In *Echostar Technologies*, 27-CA-066726, 2012 WL 4321039 (NLRB Sept. 20, 2012) the NLRB ruled that policies forbidding employees from “disparaging or defaming” company on Internet sites or from using social media with company computers or on “company time” held overbroad, notwithstanding a “saving clause” that provided:

- “Remember to use good judgment”
- Questions? Call HR
- Notwithstanding the foregoing.... policy should be interpreted consistent with the law

The NLRB concluded that, even with the “saving clause,” the policy chilled employee rights to join together for mutual aid or protection.

In many of these cases, the remedy includes an order that the employer cease and desist enforcing the portions of the policy held unlawful, an order that employer rescind or modify provisions held unlawful, an order that the employer furnish current employees with inserts to the applicable policy or handbook that advise that the unlawful provisions have been rescinded, or provide the language of lawful provisions or publish and distribute revised policies that do not contain the unlawful provisions or provide the language of lawful provisions. The NLRB has also required the posting of a notice to employees in a form prescribed by it.

More sweeping relief was granted in *Three D, LLC*, 361 NLRB No. 31 (August 22, 2014), in which the NLRB found that the employer violated the National Labor Relations Act by unlawfully discharging two employees for their protected, concerted participation in a Facebook discussion in which they complained about perceived errors in the employer’s tax withholding calculations. One of the discharged employees was terminated for selecting the

“like” option in responding to a Facebook posting. The other employee referred to the company co-owner with an expletive. The NLRB ordered that the employer reinstate the two employees and provide them with back pay and benefits. The NLRB also found that the Employer violated the Act by unlawfully threatening employees with discharge, interrogating them about their Facebook activity and threatening one of the discharged employees with legal action because of his protected post.

In addition, the NLRB found the employer’s social media policy to be overly broad.

A discussion of the NLRB’s rules on social media cases appears in a Report of the Acting General Counsel Concerning Social Media Cases dated May 30, 2012, which can be found at <http://www.scribd.com/doc/95479772/NLRB-on-social-media>.

The NLRB’s general approach is that rules that are ambiguous as to their application to Section 7 activity and that contain no limiting language or context to clarify that the rules do not restrict Section 7 rights are unlawful. However, rules that clarify and restrict their scope by including examples of clearly illegal or unprotected conduct, such that they could not reasonably be construed to cover protected activity, are not unlawful. For example, an employer policy is not ambiguous where it provides sufficient examples of prohibited conduct so that, in context, employees would not reasonably read the rules to prohibit Section 7 activity. For instance, the Employer’s rule prohibits “inappropriate postings that may include discriminatory remarks, harassment and threats of violence or similar inappropriate or unlawful conduct.” This rule is lawful since it prohibits plainly egregious conduct, such as discrimination and threats of violence, and there is no evidence that the Employer has used the rule to discipline Section 7 activity.

Also lawful is the portion of an Employer’s social media policy entitled “Be Respectful.” In certain contexts, the rule’s exhortation to be respectful and “fair and courteous” in the posting of comments, complaints, photographs, or videos, could be overly broad. The rule, however, provides sufficient examples of plainly egregious conduct so that employees would not reasonably construe the rule to prohibit Section 7 conduct. For instance, the rule counsels employees to avoid posts that “could be viewed as malicious, obscene, threatening or intimidating.” It further explains that prohibited “harassment or bullying” would include “offensive posts meant to intentionally harm someone’s reputation” or “posts that could contribute to a hostile work environment on the basis of race, sex, dis-

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... IT STARTS WITH THE NLRB

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ability, religion or any other status protected by law or company policy.” The Employer has a legitimate basis to prohibit such workplace communications, and has done so without burdening protected communications about terms and conditions of employment.

An Employer’s rule requiring employees to maintain the confidentiality of the Employer’s trade secrets and private and confidential information is also lawful. Employees have no protected right to disclose trade secrets. Moreover, the Employer’s rule provides sufficient examples of prohibited disclosures (i.e., information regarding the development of systems, processes, products, know-how, technology, internal reports, procedures, or other internal business-related communications) for employees to understand that it does not reach protected communications about working conditions.

Moral of the story—Employers are advised to maintain social media policies, but from the above, it is clear that any such policies must be carefully drawn to avoid an unlawful impact on protected employee rights. Also, employers should consult with legal counsel before taking disciplinary action for any violations—the consequences can be severe, as the *Three D* case illustrates.

LS

WHISTLEBLOWERS

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the forum in which oversight of physician conduct and advocacy for patient care should take place. Indeed, the entire peer review and quality assurance system contemplates a vast structure for healthcare workers to address concerns regarding patient care. Both federal and state law have heretofore mandated that the hospital and organized medical staff undertake those functions in an environment which encourages physicians’ peers to engage in free and open discussion of information relevant to protecting patients. What *Westlake* and all of the court decisions upholding the exhaustion requirement have recognized is that the balance of the competing interests are best served by allowing a physician the right to challenge a medical staff action while at the same time shielding the process from the intrusion of the civil justice system.

The *Fahlen* decision now provides a path for physicians to compel adjudication of these issues in civil courts which do not in any way resemble the notion of a peer review process envisioned by both federal and state law.

It is not hard to understand how the unanimous Court came to its conclusion in *Fahlen*. In looking solely at the language in section 1278.5 and the legislative record surrounding the 2007 amendments, the Court applied a traditional deferential approach to the legislature and its analysis is

entirely logical within that context. The stakes, however, are too high for this to be the end of the discussion. As the Court itself acknowledged, the practical implications will need to be addressed in the future. An understanding of the reality of how these issues play out and the difficulties of conducting parallel proceedings must be considered by trial courts and the legislature to protect physicians, hospital employees, and medical staffs. Hopefully this issue will be revisited in ways that effectively balance the interests involved.

LS



OVERVIEW OF CALIFORNIA STATE COURT DISCOVERY

LSI will be offering an online class on an Overview of California State Court Discovery. This class will be a six-week, work-at-your-own-pace online session commencing March 16 and ending April 27, 2015. During the classes, the following topics will be covered:

Interrogatories
Demand for Production of Documents
Requests for Admissions
Depositions

Demand for Physical Examinations
Deposition Subpoenas
Discovery Timelines and Service
Verifications

CLASS SESSION OPENS MONDAY, MARCH 16, 2015

Classes will take place online utilizing video lectures, discussion boards, email, whiteboard sessions, chat rooms, and quizzes. Login information will be provided upon enrollment in the class.

The content of this class is designed for legal secretaries and those studying for the California Certified Legal Secretary examination.

The cost of the class is \$30 for LSI members/\$50 for non-LSI members. Each individual must register separately. Upon completion of the class, students will receive a certificate of completion from LSI.

OVERVIEW OF CALIFORNIA STATE COURT DISCOVERY CLASS REGISTRATION

(Please type or print clearly)

Name: _____ Email: _____
Address: _____ City/Zip: _____
Telephone: _____ Association: _____ LSA/LPA
\$30 LSI Member _____ \$50 Non-LSI Member _____

Payment: Check # _____
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Email registration form NO LATER THAN March 9, 2015, to Shaylene Cortez, CCLS, LSI Legal Secretarial Training/Seminar Chair, training@lsi.org or mail to: LSI, P. O. Box 660, Fortuna, CA 95540-0660. Checks should be made payable to LSI (Note: checks must clear before access will be released). Registration will also be offered online at www.lsi.org with PayPal. For further information or inquiries, email training@lsi.org. No refunds after March 16, 2015.

LSI – Educating California's Legal Professionals



ANA FATIMA COSTA is an author, motivational speaker, mentor and coach. She left her 35-year career in court reporting to launch her own firm, AFC Consulting Services, where she serves the legal community by offering heart-centered coaching to release anxiety and stress. Ana is an Advisory Board member of San Francisco State University's Paralegal Studies Program; a member of Mt. Diablo Legal Professionals Association and San Francisco Trial Lawyers Association; and is on the Executive Committee of the San Francisco Bar Association's new Paralegal Section. As a Certified Connection Practice coach, she offers 30-minute complimentary sessions and can be reached at afccoaching@gmail.com.

Reduce Stress & Anxiety at Work by Engaging Your Heart

BREATHE YOUR WAY TO PEACE IN FOUR QUICK STEPS

BY ANA FATIMA COSTA, CSR, RPR (RET.)

Teresa, a senior litigation secretary with 35 years' experience, works for the San Francisco office of a global law firm that changed their policies. Previously, each secretary would support two or three partners, an associate and a paralegal. The firm's corporate office on the East Coast decided that they want the legal secretaries to cross-train and work in teams covering four areas of law: corporate, real estate, litigation, and bankruptcy. Now, the secretaries support as many as ten attorneys. If one of them calls in sick, the workload becomes unbearable. And, when a secretary leaves the firm or retires, s/he is not replaced. Teresa thinks about leaving, but with two sons in college and her husband out of work, she can't afford to. Recently, she experienced a painful bout of shingles.



Stress affects all people and all professions, but stress in the legal profession is well documented. Lawyers often have demanding schedules and heavy workloads that contribute to increased stress levels, and they rely on their secretaries to help ease their burden.¹

According to Mediation Training Institute International, many people attempt to reduce their job-induced stress without resolving the workplace conflict that causes it. Learning simple, practical communication tools that enable you to manage conflict will reduce emotional and physiological stress, and the physical illnesses that often result from chronic stress.²

The American Medical Association has noted that stress is the basic cause of more than 60% of all human illness and disease.

How do we stop the cycle of stress that makes us feel unhappy, overwhelmed or sick?

Through scientifically proven tools developed by three different organizations:

The Institute of HeartMath (IHM) is an internationally recognized nonprofit organization that, through its research in emotional physiology and stress management, developed

heart-centered techniques validated through rigorous scientific studies to bring our brains, bodies and nervous systems to a state of coherence.³

The amygdala (aka the reptilian brain) produces the *fight or flight* response whenever we experience a perceived threat physically, verbally or emotionally. By actively engaging our heart through IHM's Quick Coherence tool, we can transform emotions that make us feel stressed — fear, anxiety, anger and worry — into feelings of peace and clarity about what action to take in any circumstance.

Nonviolent Communication (NVC) is a global organization that helps people to peacefully and effectively resolve conflicts in personal, organizational, and political settings. NVC believes that we are compassionate by nature and share the same basic human feelings and needs, and that what we do and say are the ways we try to meet one or more of those needs.⁴

Rasur Foundation International (RFI) is an award-winning global nonprofit organization dedicated to teaching a social and emotional skill set that utilizes the wisdom of our hearts and empathy for each other to create a more connected world with ease, harmony and creativity.⁵

Founder Rita Marie Johnson discovered that by combining Nonviolent Communication principles and HeartMath's Quick Coherence, empathy is attained through a conscious connection to feelings and needs, and insight is accessed through heart-brain coherence.

EMPATHY + INSIGHT = CONNECTION

How does this work?

Understanding our feelings and needs, then consciously engaging our hearts and giving ourselves empathy *first*, we are better able to listen to others with compassion and co-create harmonious relationships.

FOUR QUICK STEPS TO COHERENCE

In a quiet place, write:

- My conflict or challenge is _____.
- What am I feeling right now? List all you can think of that apply.
- What do I need? List all your needs.
- Quick Coherence:

Heart Focus

Heart Breathing

Heart Feeling of Appreciation

Close your eyes. Place one hand over your heart. Focus your attention on your heart. Then, breathe deeply in and out of your heart, several times. Visualize a moment when you felt joyful, happy or grateful, and consciously allow that *feeling* into your heart, filling it up. Open your eyes when ready. Note any insight you experienced. Repeat any time of day or night, as needed.

Long-term benefits of this practice:

- Reduce fear, anxiety and stress.
- Resolve conflicts.
- Solve problems creatively.

- Experience insights.
- Self-manage emotions and behavior.
- Communicate with empathy.
- Build social and emotional intelligence.
- Create harmonious workplaces, schools and communities.

Definitions:

- **Social and Emotional Intelligence:** How well you handle yourself and your feelings and how well you interact with others.
- **Empathy:** The feeling that you understand and share another person's experiences and emotions. Often defined as the ability to see through another person's eyes or walk in another's shoes.
- **Insights:** A spectrum of inspired answers and solutions that range from a subtle shift in feeling to clarity about your life purpose.
- **Coherence:** When your physical, mental and emotional systems (body, mind and emotions) are synchronized, meaning they all work together. This has been confirmed through heart- and brain-rhythm patterns.

An experienced Certified Rasur, HeartMath or NVC Coach can help you learn the tools in depth and go deeper, but the above four steps can help transform a stressful situation in just a few minutes.

Engage your heart — and experience peace.

RESOURCES

American Bar Association: http://www.americanbar.org/groups/lawyer_assistance/resources/stress.html

Mediation Training Institute International: www.mediationworks.com/mti/certconf/bib-stress.htm

The Institute of HeartMath: www.heartmath.org

The Center for Nonviolent Communication: www.cnvc.org

Rasur Foundation International: www.rasurinternational.org

LS

FOCUS
breath
APPRECIATE



California Certified Legal Secretary
A Program of LSI®



APPLICATION TO TAKE CCLS® EXAM

Mail Application, copy of LSI Membership Card (if applicable), and fees to:
CCLS Certifying Board, 14403 Leibacher Avenue, Norwalk, CA 90650

(Select one) ☐ **Northern California** (Select one) ☐ **Saturday, March 21, 2015**
☐ **Southern California** ☐ **Saturday, October 17, 2015**

- **Deadline:** Applications must be received 60 days prior to the examination date.
- **Late Application:** Late Fees apply when Applications are received less than 60 days (but not less than 30 days) prior to the examination date, and accepted only if space is available.
- **Deferral:** Requests to defer to the next exam must be received at least 14 days prior to the exam date.

EXAMINATION FEES PAYABLE TO "LSI" (subject to change without notice)

<u>LSI Members</u>		<u>Non-LSI Members</u>	
On Time Registration Fee	\$ 25.00	On Time Registration Fee	\$ 75.00
Examination Fee	100.00	Examination Fee	100.00
Late Fee (if applicable)	30.00	Late Fee (if applicable)	30.00

Personal Information

Name: _____
Mailing Address: _____
Last 4 digits of SSN: _____ Email: _____
Phone (Day): _____ Phone (Evening): _____
LSI Member: ☐ Yes (*enclose copy of LSI Membership Card*) ☐ No
Name of Local LSI Association: _____

Employment Information

Provide your legal secretarial employment information beginning with your most recent (or current) employment in order to confirm that you have at least two years' experience. Attach a supplemental page if you have not been in your current position for two years.

Position: _____ Dates of Employment: _____
Employer: _____
(name and address)
Supervisor: _____ Supervisor's Phone: _____
Supervisor's Email: _____
Summary of Duties: _____

I certify that I have completed this application truthfully. I understand that a false statement may result in the rejection of this application or revocation of my certification. I understand and agree that the contents of the examination are confidential and not to be discussed with anyone, and that my employment record will be verified by a member of the California Certified Legal Secretary Certifying Board.

Date: _____
Applicant Signature _____

LISA DE LA O is the February 2015 Conference Chair. She has been a legal secretary since 1996 and has been with her current employer, Fitch, Even, Tabin & Flannery LLC since 2011. Prior to that she was with Spencer & Mulally for 15 years. Lisa has been a member of SFVLSA since 1996 holding numerous chair and board positions. Currently she is serving as Governor. Lisa is also an Assistant Editor for LSI's Publications Revision Committee.



LSI Vegas - "What Happens at Conference Stays at Conference"

BY LISA DE LA O, FEBRUARY 2015 CONFERENCE CHAIR

San Fernando Valley LSA ("SFVLSA") is very excited to host LSI's Third Quarterly Conference February 20-22, 2015. Our committee has been working very hard to make sure you will be fully entertained with wonderful and memorable experiences as well as educational opportunities.

The conference is being held at The Garland hotel (aka Beverly Garland Holiday Inn) located in North Hollywood, California, the gateway to Hollywood. Our theme is *LSI Vegas - "What Happens at Conference Stays at Conference."* The hotel is 5 miles from Burbank (Bob Hope) Airport and 25 miles from Los Angeles International Airport (LAX). The hotel does not offer a shuttle to and from the airport, however, does offer complimentary trolley service to and from Universal Studios Hollywood/Universal CityWalk and LA Metro Red Line Universal City/Studio City Station. Please contact Super Shuttle at 1-800-BLUE-VAN (1-800-258-3826) or book online at www.supershuttle.com for shuttle service to and from the airport.

We have a great weekend planned for you. Friday night's welcome reception theme will be "Viva Las Vegas." As for the Saturday night banquet, come dressed in your best glitz and bling Vegas style for a "Casino Royale" evening. We wish you "Good Luck" for the Sunday brunch as you get ready for your travels home. We have entertainment and guest speakers to entertain you throughout these events. The Continuing Education Council and Legal Specialization Sections have also scheduled great speakers for their seminars. See the registration forms in this issue for more information.

The hotel is centrally located in the San Fernando Valley and is close to Hollywood landmarks and popular attractions. Take a walk or hop on the hotel's free trolley and explore the neighborhood. It's filled with fun and trendy restaurants, clubs and coffee houses, as well as a thriving music, theater and arts scene. Come early or stay a day or two after the conference so you and your family can enjoy all that the San Fernando Valley, Hollywood, and Los Angeles has to offer. The hotel is offering the conference room rate three days before and three days after the conference dates. Don't forget about the free trolley service to Universal Studios, CityWalk, and the LA Metro Red Line Universal City/Studio City Station. The hotel also offers complimentary high-speed

Wi-Fi Internet throughout the hotel; outdoor swimming pool and jacuzzi with an expansive sun deck and poolside bar; business center where boarding passes are printed complimentary; fitness center with a variety of exercise equipment; The Store, a gift shop, featuring locally sourced and California inspired items; refrigerator/beverage center, personal safe and private balcony with every guest room; and The Front Yard restaurant featuring LA inspired dishes with a stunning outdoor patio just to name a few.

Take the LA Metro Red Line subway to Hollywood & Highland Center (Hollywood & Highland stop) for dining, entertainment, and shopping. From there, walk up and down Hollywood Boulevard for more restaurants, shops, entertainment, movie theatres (Egyptian Theatre, Kodak Theatre, El Capitan Theatre, and Grauman's Chinese Theatre), attractions, and nightlife. The Hollywood Walk of Fame is also on Hollywood Boulevard. Keep going on the subway to Union Station and visit Olvera Street aka El Pueblo De Los Angeles (birthplace of the City of Los Angeles) for shopping and dining, or you can visit Los Angeles's Chinatown (a block away from Olvera Street). Take the subway to other stops/stations for more attractions, dining, entertainment, nightlife, and shopping - or just to check out the original themed art in each metro station. Metro offers free, regularly scheduled, as well as special request, group tours of the artwork in the Metro Rail system. There's always a full schedule of tapings at Paramount, NBC and CBS Television City. Just over the hill is Griffith Park, home to the L.A. Zoo, the Museum of the American West, and the Griffith Park Observatory. World famous Farmers Market, Rodeo Drive in Beverly Hills, numerous museums, Venice Boardwalk, Santa Monica Pier, and the Sunset Strip are also close by.

Be prepared for a weekend filled with networking and educational opportunities and remember....*"What Happens at Conference Stays at Conference."*

LS



SANDRA T. JIMENEZ, CCLS has been a member of Imperial County Legal Professionals Association since 1984, where she held many positions and received many awards. Sandra is honored to have been awarded Legal Professional of the Year 2012 by the Imperial County Bar Association in June 2012.

Sandra is a life member of Legal Secretaries, Incorporated and has been Day in Court Chair/Professional Liaison 1994-1996 and 2002-2004; Transactional Law Section Leader 1996-1999, received LSI's President's Award for Outstanding Service in 1999, CCLS Chair 2004-2006, LSI Treasurer 2006-2008, LSI Executive Secretary 2009-2010, LSI Vice President 2010-2012, LSI President 2012-2014, and currently LSI Executive Advisor. After a successful 30-year career in the legal field, Sandra plans to retire at the end of 2014.

All Hands on Deck!

BY SANDRA T. JIMENEZ, CCLS, LSI EXECUTIVE ADVISOR

As Executive Advisor, not only am I a member of the Executive Committee, my duties also include: Ways & Means, Inter-Association, Nominations & Elections, updating the LSI History, maintaining the library of Installation Scripts, responsibility for the President's monetary gift and pin, and last, but not least, I have the wonderful opportunity to visit local associations (Officer Visitation). Every aspect of my position is very rewarding and interesting; however, in order to keep this article short and sweet, the main focus of this article will be on Nominations & Election and Installation.

As many of you know, the Call for Nominations for Office will be sent out in February 2015. In searching Google for ideas on how to motivate and urge members to run for office and/or volunteer their time by taking on a chairmanship, I bumped into the definition of the saying "All Hands on Deck" which is: *used to indicate that the involvement of all members of a team is required.* As members of LSI, we are all a team and this is your call for action.

Time is flying and many Local Associations will start gearing up for the new fiscal year beginning May 1. Therefore, now is the time to start thinking about how you can participate and contribute to the success of our organization. There is something for everyone to do and every position is important. This is your opportunity to give back and share your time and expertise with members.

TAKE THE PLUNGE

What does "take the plunge" mean: *to begin an unfamiliar venture, especially after hesitating.* Are you ready to run for office? Are you dedicated and committed to the organization? Do you feel confident, qualified, and/or have the training and perseverance to perform duties for your local association or LSI? Will your office support you and allow you the time to attend conferences? Will your spouse and family support you and allow you the time to perform your duties adequately? If the answer to all these questions is yes, then by all means, get involved and take the plunge!

It is a known fact that at the state level, officers hold a two-year term; however, LSI holds elections every year. Over the past few years, a "changing of the guard" happens

on even years (if all officers complete their terms). That means that the current Treasurer (who has been performing duties for the past two years) moves up to Executive Secretary, the Executive Secretary moves up to Vice President and the Vice President moves up to President, and a new Treasurer is elected. This method not only provides continuity in leadership, but officers are well-informed on corporation issues and stand ready to make qualified decisions for the good of the organization. Local associations may have a one or two-year term based on local Bylaws and Standing Rules.

If you are not already an officer or chairman for your local association or for LSI, check out the various offices and/or chairmanships, their duties, and the time commitment involved. Nothing will make you feel more comfortable, at ease, and make you feel more a part of the organization than getting involved. You will quickly become acquainted with other members, understand the inner workings of the organization and enjoy yourself at meetings because you will always know what is going on.

If you answered yes to the questions above and are still ambivalent about taking the plunge, then take the time to talk to the current local or LSI officers to get an idea of the duties required for each office and/or chairmanship and the time commitment required. It is important that you understand what is expected of you. Every position takes time, but as they say, it is time well spent and very rewarding. Not only will you benefit professionally, your employer will benefit and more importantly, you will achieve goals and skills that will stay with you forever. I remember my

mother's words so many years ago after graduating from high school: *"if someone else can do it, you can do it too -- and maybe even better."* So, if you are ready to make a difference, to motivate and inspire others, then take the plunge!

INSTALLATION

Now that you have decided to take the plunge and are on your way to being installed as an Officer or a Chair,

please know that LSI has a library, an Index of Ceremonies, that may be used as themes for the grand occasion. As Executive Advisor, I am the keeper of a library of 40 different versions. No need to reinvent the wheel, contact me or LSI's Corporate Office for a copy. Also, if you have a script that is not listed below, please feel free to send it to me and I will be glad to include it.

INDEX OF INSTALLATION CEREMONIES

Bells	Hearts	Rainbow
Candle	History	Rebuilding & Revitalizing Through Teamwork
Colorful Floral	Italy	Rocks
Colors	It is Written	Roses
Colors and Light	Keeping Pace	Silver
Constellations	Key	Skiing
Country Western Music	Lighthouse	Spring Bouquet
Deck of Cards	Mexico (Mexican Heritage)	Stitchery
Diamond	Monopoly Game	Trains
General	Musical Moments	Travel
Gold	Nautical	Trees
Growing Together	Past, Present & Future	Wine
Hats	Pearls	

Let us not forget, that LSI is OUR organization and as members we must all do our part by volunteering to improve and move our organization forward. Whether you decide to answer "the call" by taking the plunge or not, any effort on your part whether at the state or local level, is greatly appreciated.

LS





ADAM KENT is a 1979 graduate of U. C. Hastings College of the Law and has practiced in San Mateo County since 1980. He has appeared in well over 400 bankruptcy cases, mostly as counsel for the debtor and primarily in the Northern District of California.

Bankruptcy - An Overview

BY ADAM KENT, ESQ., SAN MATEO COUNTY LSA

For those of you who do not work in an office where bankruptcy law is practiced, you may be inclined to skip this article. You are forgiven. But for those of you who work in offices where family law, business law, contract law, or general civil litigation is practiced, the nasty subject comes up with disturbing regularity, and it is not as awful, or boring, or completely alien a concept as you might think. In fact, it has been fairly commonplace, particularly when the economy is doing poorly.¹

I never set out to practice in the field of bankruptcy. I was given my first case in early 1980, barely two months after I passed the bar. I was absolutely clueless, but since the Bankruptcy Reform Act of 1978, which completely overhauled the existing law and procedure, had only been effective since October 1, 1979, so was everyone else, including the judges, the clerks, and a number of venerable attorneys who had been practicing for over thirty years, who discovered at this late stage of their careers that everything they knew no longer applied. We muddled through together.

A little history: As we know from reading our Charles Dickens, there was such a thing as Debtors' Prison, in England and in other countries, until the latter part of the nineteenth century. If you couldn't pay your debts, you were locked up, although it has always been a mystery to me how someone who was incarcerated for an indefinite period could possibly earn any money to pay his or her creditors. Then again, I could never figure out how someone could come up with the money to make his delinquent support payments from the county jail, either.²

One of the primary concepts of bankruptcy law is to allow the bankrupt to "discharge" (modify or completely erase) his or her debts, either through a payment plan or by wiping them out altogether. Another primary concept of modern bankruptcy law is the exemption, which is a set of laws, both state and federal, that define the nature and extent of property the debtor in bankruptcy is allowed to keep. The goal of a bankruptcy attorney is to see that all of his client's debts are wiped out, while the debtor is allowed to keep all of his stuff.

In the United States, Bankruptcy law has always been

a creature of the federal government. The first federal bankruptcy law was enacted in 1800 and repealed in 1803; another was passed in 1841 in response to the great financial panic of 1837, and repealed in 1843. Another was enacted after the Civil War, in 1867, and repealed in 1878. All of these early laws generally favored the creditors, and generally were harsh on the debtors, whose assets were sold to pay the creditors some, if not all, of what they were owed. "Exemptions" as we know them today, were unheard of.

Modern American Bankruptcy law began with the Bankruptcy Act of 1898, which actually afforded some protection to debtors. The law was expanded in the wake of the Great Depression, which led to the Bankruptcy Acts of 1933 and 1934. In 1934, the United States Supreme Court recognized that the primary goal of bankruptcy laws was to give the debtors a "fresh start," giving to the "honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Local Loan v Hunt* (1934) 292 U.S. 234.

The Bankruptcy Reform Act of 1978, in general, made it easier for both businesses and individuals to file a bankruptcy and reorganize, and created Chapter 11 (primarily business reorganization) and Chapter 13 (personal reorganization).

The bankruptcy laws remained substantially unchanged until the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCA), which forced experienced bankruptcy practitioners into the position in which they had found themselves back in 1979: Forget everything you thought you knew, because it doesn't apply anymore. In the opinion of the vast majority of consumer

attorneys and many bankruptcy judges, BAPCA reformed nothing, and certainly did not protect any consumers. It was the product of a decade of relentless lobbying by the banking and credit card industries. It had the immediate, and no doubt intended effect, of convincing debtors that bankruptcy was no longer available to them. BAPCA came into effect on October 17, 2005. Bankruptcy filings in the Northern District of California decreased by approximately 90% in 2006. On a personal note, I filed approximately twenty Chapter 7 bankruptcies in the two weeks before October 17, 2005. In all of 2006, I filed a total of six. What happened?

Generally, in a Chapter 7 proceeding, the debtor is able to discharge all of his dischargeable³ debts. If all of the debtor's property is "exempt," this means the Chapter 7 debtor gets rid of all of her debts, and keeps all her stuff. If the Debtor has property that is not "exempt," the Chapter 7 trustee can take the property, sell it, and pay the proceeds, *pro rata*, to the creditors.

Let's say the debtor has an item of property that is not exempt, but that she wishes to keep. Let's say this item of non-exempt property has a market value of \$10,000.00. If the debtor files a Chapter 7, there is a good chance that she will lose it. On the other hand, if the debtor files a Chapter 13 (which involves a payment plan), the debtor can keep the non-exempt item of property, *as long as the creditors receive an amount equal to the value of the property, through the Chapter 13 Plan.*

Before BAPCA, a debtor contemplating bankruptcy usually belonged in a Chapter 7 if she (a) owned no non-exempt property (b) did not have enough money, after deducting reasonable living expenses from after-tax income, to make monthly payments, and (c) had debts that could be discharged in a Chapter 7. If, after doing the math, the debtor had something left over after paying monthly living expenses (net monthly disposable income) and could actually afford to pay *something*, a Chapter 13 filing would be more appropriate. Example: The debtor has credit card debt totaling \$40,000.00. The debtor has monthly net disposable income of \$300.00. In a Chapter 13, the debtor would propose to pay to the Chapter 13 trustee the sum of \$300.00 per month, for three years. Under this scenario, after administrative expenses (trustee's commission and attorney fees) the creditors would receive approximately 20 cents on the dollar, and when the plan was paid, the debtor would receive a discharge.

The lobbyists pushing BAPCA argued that too many consumers were filing Chapter 7 bankruptcies when they should be filing Chapter 13s, which would result in at least some payment. My own experience tells me most creditors would prefer a clean break through a Chapter 7 so that they could write the debt off the books, rather than receive 20 cents on the dollar over a long period of time. This leads me

to the conclusion that the real motive was to give debtors the impression that bankruptcy relief was no longer available to them. I think the 2006 filing numbers bear this out.

Some of the high points of BAPCA were: (1) It increased a Chapter 13 payment plan from three to five years; (2) gave the bankruptcy trustees increased responsibility to investigate debtors' income and assets (not, necessarily, a bad thing) (3) required prospective bankruptcy filers to take a course in consumer credit counseling and (4) implemented the "means test."

The means test is among the most profound anti-consumer aspects of BAPCA. In its simplest terms, if a debtor's income exceeds a certain amount (from numbers supplied by the census bureau) and the debtor attempts to file a Chapter 7, a "presumption of abuse" arises, which tells the debtor that she makes too much money to file a Chapter 7, and must file a Chapter 13 payment plan, or not file at all. The income levels employed by the means test vary from state to state (because the authors of the test concede that the average income level in California is higher than it is in Mississippi), but are low. A single earner in California "flunks" the means test if his income exceeds \$48,504.00 per year, last time I checked. You can live pretty well on that in Humboldt County, but not in the Bay Area. The income ceilings increase depending on the number of people in the debtor's household, but not nearly enough, in my humble opinion.

The debtor who fails the means test then has the option of filing a Chapter 13, but then faces a "feasibility" test: After deduction of the candidate's reasonable monthly living expenses, does the debtor have enough left to make Chapter 13 plan payments? If the answer is no, the debtor finds herself in a quandary: She is too rich to file a Chapter 7, and too poor to file a Chapter 13. This is an extreme example, but it has been known to happen. What happens to that person? She is left to the mercy of the collection agencies, and we all know how that works out.

(Endnotes)

- 1 Like in the Fall of 2008. Or right now, despite what the Wall Street Journal tells us.
- 2 The closest thing we have to this arises when a creditor sues a debtor, obtains a judgment, and has the court issue an Order of Examination, ordering the debtor to show up in court and answer painful and probing questions about his assets. If the debtor fails to appear, the creditor can obtain a warrant for the debtor's arrest, although I have seen few examples of a debtor detained on such a warrant for more than an hour or two.
- 3 The concept of dischargeability is too complex for discussion in the short article. Some debts can be erased in a bankruptcy, others not. Student loans are no longer dischargeable, under most circumstances, nor are family support obligations.

LS



ROBERT MANSOUR grew up in Southern California and attended Loyola High School and Occidental College. He received his law degree from Southwestern University School of Law in Los Angeles and has been practicing law since 1993. He worked as a litigator for over 13 years with a large firm in Glendale, California. In 2004, Robert was recognized by the firm as Trial Attorney of the Year. In 2008, Robert decided to open his own practice focusing on estate planning, wills, living trusts, and personal injury.

He is a member of the Santa Clarita Valley Bar Association and was president from 2009 through 2010, when he was named Lawyer of the Year by the organization.

5 Easy Things You Can Do to Protect Your Family

BY ROBERT M. MANSOUR, ESQ., RIO HONDO DISTRICT LPA

If you don't have an estate plan for your family, there are five things you can do for free to make sure you at least have some basic tools in place.

1. If you don't even have a will, download a free will form from the California Bar Association (www.CalBar.org). At the very least, a will indicates who you want to inherit your assets upon your death. Remember, a will only governs assets that are solely in your name. Assets owned jointly and assets that pass by way of beneficiary are not governed by your will. The free will available from the bar association has instructions that are pretty easy to follow. You can also name guardians for your minor children on the free form. If you have nothing in place, this free will is better than nothing.
2. Check your 401K's, IRA's and Life Insurance policies to make sure the correct beneficiaries are designated. In many cases you might be surprised who is actually listed (or perhaps not listed) as your beneficiary. This doesn't happen by magic or good intentions. You have to call the company managing that particular asset and ask them for a beneficiary designation form. Make sure you name "back up" beneficiaries also known as secondary or contingent beneficiaries. Also, make sure you ask the company what happens if a co-beneficiary dies. Does their share go to that beneficiary's children, or does their share go to the remaining designated persons on the form? Also, if you have minor children, you may not want them listed as direct beneficiaries. Life insurance should not be made payable to minors in most cases.
3. Who is authorized to make health care decisions on your behalf if you are unable to do so? Some people believe spouses are legally entitled to make health care decisions. However, just because you are married to someone does not give you the legal authority to act on their behalf. Many married couples incorrectly assume this. It doesn't work that way. Make sure you have an Advance Health Care Directive which allows someone to legally act. While most lawyers provide this as part of a comprehensive estate plan, you can at least get a free entry-level form from the California Attorney General's website. Again, it's entry-level but it's better than nothing.
4. Pay attention to how your assets are titled. If you have a living trust or a will, keep in mind that assets owned jointly are not governed by your trust or your will. With jointly owned assets, the last person standing gets the entire asset. That may not be what you have in mind. Try not to own anything jointly with anyone other than your spouse. Make sure you think it through and talk to professionals before making that decision. Joint ownership seems like a good idea at first blush but it's one of the leading causes of "unintentional" disinheritance. Here's a quick example: Mary and Tom have two kids. After Mary dies, Tom marries Julie. He puts Julie as a joint owner of all his assets. When Tom dies, guess who gets everything? Julie! Mary and Tom's kids get nothing! Consider a living trust instead of owning assets jointly with your spouse.
5. Finally, review your insurance policies. For families with few assets, there is no better way to infuse a whole bunch of cash to help to pay for college, mortgage, etc. This can be accomplished by getting a large level-term life insurance policy. Also, for auto policies, make sure you have plenty of uninsured motorist coverage. There are so many people driving without adequate insurance.

Therefore, if you don't have the time or money to set up a proper estate plan, there are a few free things you can do on your own. They do require some effort, but your family will appreciate that you took the time.

LS



Sharon Ruth Irish, CCLS

LSI ADMINISTRATOR 1989 TO 2007
LSI HONORARY MEMBER

SUNRISE April 5, 1939 — SUNSET November 22, 2014



*Death is not extinguishing the light;
it is only putting out the lamp
because the dawn has come.*

San Diego Legal Secretaries Association
presents



CARNAVALE



Legal Secretaries, Incorporated's 81st Annual
Conference
May 14-17, 2015

HOTEL REGISTRATION FORM

Bahia Resort Hotel
998 W. Mission Bay Drive, San Diego, CA 92019
Phone: 858.488.0551

ROOM RATES:*

Single: \$149.00
Triple: \$169.00

Double: \$149.00
Quad: \$189.00

*(Please note: these room rates are guaranteed only until **April 14, 2015**)

To Make Reservations online: https://shop.evanshotels.com/bahia_groups/1643.html

To Make Reservations by phone: **800.288.0770** or **858.488.0551**

GROUP NAME: LSI 2015 Annual Conference

SPECIAL REQUESTS: Please notify Conference Chair or Registration Chair for room accessibility requests **as soon as possible**. Although the hotel cannot guarantee your request, reserving your room early will allow a greater opportunity for the hotel to honor your request.

For General Information Contact:

Michelle D. Tice, CCLS Conference Chair
Email: MDTice@cox.net
Telephone: 619.820.9525

Annie S. Parrish, CCLS, Registration Chair
Email: 2015RegChair@gmail.com
Telephone: 619.322.5066

HOTEL REGISTRATION DUE BY APRIL 14, 2015

San Diego Legal Secretaries Association
presents

CARNAVALE



Legal Secretaries, Incorporated's 81st Annual Conference

Bahia Resort Hotel
998 W. Mission Bay Drive, San Diego, CA 92019
May 14-17, 2015

CONFERENCE REGISTRATION FORM

Name (as it will appear on badge): _____

Association Name: _____

Mailing Address: _____

City/State/Zip: _____

Home Telephone: _____ Work Telephone: _____

Email: _____

Please check if applicable and include title:

Please check if you are:

☐ LSI Officer/Chair _____ ☐ Governor ☐ CCLS ☐ PLS

SCRIP TICKET (price includes: registration, reception, banquet, brunch):

POSTMARKED ON OR BEFORE **April 14, 2015** _____ @ \$139.00 \$ _____

POSTMARKED ON OR AFTER **April 15, 2015** _____ @ \$149.00 \$ _____

INDIVIDUAL TICKETS:

Registration **on or before April 14, 2015** _____ @ 20.00 \$ _____

Registration **on or after April 15, 2015** _____ @ 30.00 \$ _____

Welcome Reception (Friday) _____ @ 25.00 \$ _____

Governor's Luncheon (Friday) _____ @ 38.00 \$ _____

President's Luncheon (Friday) _____ @ 38.00 \$ _____

Newcomer's Luncheon (Friday) _____ @ 38.00 \$ _____

CCLS/Member Luncheon (Saturday) _____ @ 38.00 \$ _____

Saturday Night Banquet _____ @ 66.00 \$ _____

Sunday Brunch _____ @ 34.00 \$ _____

TOTAL AMOUNT PAID: _____ \$ _____

Special Dietary Requests: _____

RETURN THIS FORM and PAYMENT TO: (checks payable to **SDLSA 2015 Annual Conference Fund**)

Annie S. Parrish, CCLS, Registration Chair
1819 Julianna Street
Rancho San Diego, CA 92019
Email: 2015RegChair@gmail.com
Telephone: 619.322.5066 Fax: 619.230.0987



NO REFUNDS AFTER APRIL 30, 2015

Quarterly Assignments

THE FOLLOWING ASSOCIATIONS ARE EXPECTED TO SECURE ARTICLES FROM GUEST WRITERS FOR PUBLICATION IN THE MAGAZINE ISSUES SPECIFIED BELOW.

- a. AUGUST ISSUE (to be submitted no later than **June 1st**):
Alameda County, Beverly Hills/Century City, Butte County, Conejo Valley, Desert Palm, El Dorado County, Fresno County, Humboldt County, Imperial County
- b. NOVEMBER ISSUE (to be submitted no later than **September 1st**):
Livermore-Amador Valley, Long Beach, Los Angeles, Marin County, Merced County, Mt. Diablo, Napa County, Orange County
- c. FEBRUARY ISSUE (to be submitted no later than **December 1st**):
Placer County, Redding, Rio Hondo District, Riverside, Sacramento, San Diego, San Fernando Valley, San Francisco, San Gabriel Valley, San Mateo County
- d. MAY ISSUE (to be submitted no later than **March 1st**):
Santa Barbara, Santa Clara County, Santa Cruz County, Santa Maria, Sonoma County, Southern Butte County, Stanislaus County, Stockton-San Joaquin County, Trinity County, Ventura County

Dates to Remember in 2014 - 2015

February 2, 2015	CCLS Workshop at Third Quarterly Conference Skills	March 21, 2015	California Certified Legal Secretary (CCLS) Exam
February 10, 2015	Last day to register without a late fee for Legal Specialization Section workshops	April 16, 2015	Last day to register for Annual Conference and receive group rate
February 19-21, 2015	LSI Third Quarterly Conference The Beverly Garland Hotel, North Hollywood Hosted by San Fernando Valley LSA	April 17, 2015	Last day to reserve a room for Annual Conference and receive group rate
March 1, 2015	Deadline for submission of articles to The Legal Secretary	May 14 - 17, 2015	81st Annual Conference Hosted by San Diego LSA, Bahia Resort San Diego

Helpful Websites

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<http://www.supremecourt.us>

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www.calspro.org

California Codes

<http://www.leginfo.ca.gov/calaw.html>

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www.sos.ca.gov

National Court Reporters Association

<http://www.ncraonline.org>

California Judicial Council, Civil Jury Instructions

http://www.courts.ca.gov/partners/documents/caci_2014_edition.pdf

LACY A. MONSERRAT, CCLS, began her journey in the legal field in 2003, as a receptionist in a family law office. Over the years, Lacy has gained experience in the areas of personal injury, civil litigation and employment law. Lacy is currently a civil litigation secretary at Carroll Burdick in Sacramento, California, and can be reached at lmonserrat@cbmlaw.com. Lacy is the 2014-2015 Governor of the Sacramento Legal Secretaries Association.



Crossing More than One Bridge to Become a California Certified Legal Secretary

BY LACY MONSERRAT, CCLS, SACRAMENTO LSA

Have you heard the phrase “Cross the Bridge to Success -- Become a CCLS?”

Well, with three attempts and finally a CCLS after my name, I can attest to the fact that for some of us it may take crossing more than one bridge to become a CCLS. With so much of my focus being on the tremendous amounts of studying and preparing for the CCLS exam, I never gave much thought to what I would do if I did not pass. My first attempt taking the CCLS exam left me passing four out of the seven sections. Now I will admit that I have a tendency to be hard on myself, but when I read the letter indicating I did not pass the exam, I was completely deflated. Not only had I studied my heart out, but I took the exam with two of my coworkers (one of whom is my office manager) who had in fact passed. I felt like a failure. After the dust (and tears) had settled, I sat down with my office manager and explained how awful I felt and that there was no way I was going to retake the test. I told her that even though I had passed enough sections to continue on, I still had absolutely no desire to put myself through the rigorous process again. I even went so far as to say that no one really recognized the test anyway and it really wasn't that important. My office manager turned to me and said, “If it wasn't that important, why did you take it in the first place?” That was my turning point. My office manager was right. I could downplay the test as much as I wanted, not only to myself, but others as well. The truth is that it was important and I did want to pass. That day I made a pledge to my office manager and more importantly, myself, that passing the examination was important and I was not going to give up.

My second attempt taking the CCLS exam left me passing two of the three remaining sections. When I received the results from my second attempt, I was prepared. As much as I wanted to give in to that devil on my shoulder and all the negative energy she fed me, I abstained. I told myself that I was one step closer to my goal; a goal that was important to me. I kept my nose to the grindstone and continued to study for the dreaded “Ability to Communicate Effectively” section. I sat for the exam for the third time on October 18, 2014 -- just a few short weeks ago. I remember my feelings following the exam as I left Burlingame. Not only did I feel great about my performance in my last section, I felt the overall sense of a good, old fashioned “job well done.” The confidence I gained that day, whether I passed or not, will forever stay with me. It would have been so easy to buy in to the negative things I initially told my office manager, but instead I chose to keep going. I chose to believe in myself and my abilities no matter what any test might say. It takes me back to one of my favorite quotes . . . “Life's a journey, not a destination.” That is exactly what the path to becoming a CCLS was for me -- a journey that led me to persevere across three bridges in order to successfully reach my destination.

While I am ecstatic to see the CCLS after my name, the true win was believing in myself and never giving up. I knew I was a CCLS, I just had to believe it and keep crossing those bridges until I got there!

LS



LEGAL SPECIALIZATION SECTIONS SEMINARS

LSI 3rd Quarterly Conference – February 20-22, 2015 – Beverly Garland Holiday Inn
Hosting Association: San Fernando Valley LSA

The deadline to register without a late fee is **Tuesday, February 10, 2015.**

LSI SECTION MEMBER: Free with Advanced Reservations \$5 at the Door/After Deadline Handout Only: \$5	LSI NON-SECTION MEMBER: \$10 with Advanced Reservation \$15 at the Door/After Deadline Handout Only: \$10	NON-LSI MEMBER: \$15 with Advanced Reservation \$20 at the Door/After Deadline Handout Only: \$15
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Saturday, February 21, 2015 – 10:30 a.m. to 12:00 p.m.		
<u>Law Office Administration</u> Developing an Effective & Ethical Social Media Policy: How is it done? Speaker: Adam Grant, Esq. <input type="checkbox"/> I will attend - <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member - <input type="checkbox"/> Non-Section Member - <input type="checkbox"/> Non-LSI Member		<u>Civil Litigation</u> Sacramento's Shadow on the World of Litigation – How Pending Legislation can have a Dramatic Impact on Your Cases Speaker: Alex Kasendorf, Esq. <input type="checkbox"/> I will attend - <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member - <input type="checkbox"/> Non-Section Member - <input type="checkbox"/> Non-LSI Member
Saturday, February 21, 2015 – 4:00 p.m. to 5:30 p.m.		
<u>Family Law</u> The Role of the Secretary or Assistant in Family Law Matter; Overview of Family Court procedures. Speaker: Patricia Phillips, Esq. <input type="checkbox"/> I will attend - <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member - <input type="checkbox"/> Non-Section Member - <input type="checkbox"/> Non-LSI Member		<u>Transactional Law</u> The Devil and Lawsuits really are about the details – Why details in transaction documents can be your friend or enemy. Speaker: Lee Alpert, Esq. <input type="checkbox"/> I will attend - <input type="checkbox"/> Handout Only <input type="checkbox"/> Section Member - <input type="checkbox"/> Non-Section Member - <input type="checkbox"/> Non-LSI Member

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PER LSI STANDING RULES, CHECKS ISSUED TO LSI WHICH ARE NON-NEGOTIABLE BECAUSE OF INSUFFICIENT FUNDS OR OTHER REASON SHALL BE REPLACED IMMEDIATELY BY CASH, A CERTIFIED CHECK OR MONEY ORDER FOR THE AMOUNT OF THE ORIGINAL CHECK, PLUS \$25 PENALTY, PLUS THE ACTUAL COST CHARGED LSI BY THE FINANCIAL INSTITUTION FOR PROCESSING THE ORIGINAL CHECK.

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JENNIFER L. PAGE, CCLS has been in the legal field since 1989, starting out as a legal secretary to a bankruptcy attorney. She obtained her Paralegal Certification from St. Mary's College, Orinda, CA in 1991 and her CCLS designation in October 2008. Jennifer joined the firm Ragghianti Freitas LLP in 2012 and has embarked on the next adventure in her career working for five partners of the firm and learning new areas of law.

Jennifer has been a member of Marin County LPA since 1990; has held virtually every officer and chairmanship position. Marin County LPA presented her with Honorary Life Member status in 2001. Jennifer began serving LSI in 1999 when she was appointed as the Legal Procedure Chair and continued to serve LSI until she was elected Treasurer in 2010. In May 2008, President Lorraine Bettencourt, PLS, CCLS, presented Jennifer with the President's Award. She is currently serving as LSI Vice President.



It's All About Participation!

BY JENNIFER L. PAGE, CCLS, LSI VICE PRESIDENT

The Chapter Achievement Contest was established in 1972, during Ivey Person's term as LSI President. The purpose of the contest was and continues to be to encourage local association participation at the local and state levels.

Until 2013, the contest was called the Golda J. Cooper Chapter Achievement Contest and the prize money was funded by Stuart F. Cooper to honor Golda's dedication to LSI. Golda J. Cooper was an honorary member of LSI. However, "she attended conferences, board of governors meetings and installations as if she were a voting member. She was an ardent supporter and she made genuine friends with the membership. She loved to party and have fun. She never lacked enthusiasm and was active into her 80's. Golda loved to correspond and never forgot to write a thank you note. Those of you who received her letters know that reading them was like having her in the room with you. They were alive." (excerpt from *The History of Legal Secretaries, Incorporated* (rev. 09/2014).)

LSI now funds the prize money and the contest has been renamed the LSI Chapter Achievement Contest. However, the spirit of the contest and the spirit of Golda J. Cooper lives on. Local Associations and their members are encouraged to participate in a variety of ways both through their own association and in support of neighboring local associations. While the points counted are for a members own association, it is important to visit neighboring associations, to network and support them in their endeavors.

How does the contest work? Tallying of points typically falls to a local association's Governor who can obtain the contest form via LSI's website. Many associations have taken the form and customized it to meet their level of activity. The customized form is then distributed to the members for tracking purposes. Some associations even include the tracking form in their newsletters.

The current contest tracks activity from April 1, 2014 through March 31, 2015. The fully completed original

Chapter Achievement Contest form is to be submitted to the LSI Vice President postmarked bearing a date no later than April 20, 2015.

At the August 2014 Quarterly Conference I announced several changes and additions to the contest for the current contest. They are as follows:

- Annual Conference, First time attendee increase from 50 to 75 points.
- California Certified Legal Secretary, Members participating in LSI's sponsored CCLS on-line study group (per member) increased from 25 to 50 points.
- History Book/Scrapbook, new category for Scrapbook winner of Members Choice (May 2014) - 150 points.
- History Book/Scrapbook, new category for History book winner of Members Choice (May 2014) - 150 points.
- Interclub, new category for Local Association donates to association hosting Annual or Quarterly Conference (i.e. monetary donation, raffle/boodle bag prize)(per donation) - 50 points.
- Legal Secretarial Education, new category for Member attends online LSI Legal Secretarial Training course (per member, per paid course) - 50 points.
- Social Media, new category for Local association maintains a Facebook page - 100 points.
- Ways and Means, new category for \$100 to \$499 - 500 points.
- BONUS for submitting CAF 10 days prior to deadline, increased from 200 to 500 points.

At Annual Conference next May 2015, I will have the pleasure of announcing the winners and presenting them with prize money and a certificate recognizing their efforts.

So, start participating and start tallying those points!

LS



KRISTINA M. REED is an attorney who focuses her practice in the core areas of commercial real estate transactions and business transactions. She teaches legal research at Alliant International University and has served as a Member of the Paralegal Program Advisory Board at Heald College. Kristina also routinely serves as a DRC Judge Pro Tem for the El Dorado County Superior Court. Kristina earned her J.D. from McGeorge School of Law in 2000 and her B.S. from Christopher Newport University in 1995. Kristina is admitted to practice law in California and Virginia.

Working in a Transactional Setting: The Indispensable Transactional Legal Secretary

BY KRISTINA M. REED, ESQ., PLACER COUNTY LPA

The most successful attorney-legal secretary team is founded on thoughtful consideration and a demonstration of professional respect for each other. In a transactional setting, this relationship is cemented by a legal secretary who is proficient in needed skills and can effectively assist the attorney in timely managing the transaction and correctly producing the necessary documents.

Strong Inter-Personal Communication Skills Are Necessary to A Strong Attorney-Legal Secretary Relationship

Good communication is essential to a strong working attorney-legal secretary relationship. Often a transactional attorney is tasked to work efficiently on a transaction that moves quickly and can change directions mid-transaction. This can result in quick and evolving instructions from an attorney who is operating on a tight time line to efficiently complete the transaction. To avoid misunderstandings and delays in the transaction, the legal secretary should always employ active listening and invite information about the transaction throughout the entire life of the transaction. An effective legal secretary pays attention to the small details and recognizes that every bit of information matters. To gain the most information from your attorney, never use closed ended questions – you will only get a short unthoughtful response that does not give you any substantive information about the transaction. Instead, use open ended questions that start with “how,” “where,” “what,” “when,” and “in what way.” These questions encourage the attorney to stop and think about the response. This will often result in the attorney slowing down to open up a conversation with you about the transaction. Ensure that you have a mutual understanding of the needs for this transaction by recapping instructions. Follow-up with statements that starts with “Let’s see if I’ve got it right” or “Do you mean ...?” Be sure to actively listen to the attorney. Be on the look-out for stresses on certain words. Sometimes you may notice a particular word or phrase has been

used or accented and this may seem significant. Explore this further and repeat the word or phrase, with a question mark in your tone.

A Good Understanding of the Anatomy of the Transaction and Post-Transaction Items are Essential

Having a full and complete understanding of the transaction is essential to being an effective legal secretary. Strong communications will ensure the best understanding of the particular transaction. Although each particular transaction will have its own characteristics, there will be recurring basics to similar transactions. Be knowledgeable about particular transaction basics by familiarizing yourself with the types of transactions routinely handled by your attorney. Know the types of documents and the document components necessary to complete a particular transaction. Familiarize yourself with all filing deadlines particular to the transactions handled by your attorney. Also, learn what steps may still be needed post-transaction. Then, compile a basic transaction checklist to manage each type of transaction handled by your attorney. Your checklist should include all documents necessary for the transaction as well as all deadlines, including filing deadlines during the transaction as well as post-transaction. For instance, if the transaction was a business formation, be sure to calendar compliance items, such as filing of annual reports or statements of information. Your basic checklist can then be customized for each particular transaction. Quickly and efficiently preparing a checklist for each transaction at the start will help streamline the transaction.

Command of Basic Transactional Documents is an Invaluable Tool

Whether you work in a small or large firm, your attorney will have a library of best practices documents that respond to a specific event or transaction and document templates. You should be intimately familiar with these document libraries and how to quickly and easily incorporate these items from the libraries into documents needed for a particular transaction. Often, it will also be your job to maintain or manage these libraries for your attorney.

Best practice documents are typically documents that have been prepared by the attorney or firm and are routinely updated for use in response to a specific event or transaction. Whenever a legal secretary uses or updates a best practice document, it is important to always include useful information in the notes. Include notes about when the document was last used, the transaction in which it was used, and any dates on which it was updated. If updates are made in response to a change in law, include in the notes the legal cite to the code or statute which necessitated the change. This ensures that both you and your attorney know the document in the library is up-to-date and reliable. Having an up-to-date reliable library ensures efficiency in drafting transaction documents or preparing “comments” or revisions to transaction documents.

Document templates are akin to “fill-in-the-blank” forms. It will be your responsibility to maintain and manage the template library for routine transaction documents. If your firm is not already using a software package that prepares these documents using a merge feature, an efficient legal secretary will take time to create merge features for these types of documents using information contained in the client’s electronic file.

Having command of all document resources needed to efficiently complete a transaction makes a legal secretary invaluable to the attorney.

Proficiency in Technology is Critical

While many transactional attorneys may have a working knowledge of office technology, they have neither the time nor expertise to operate that technology quickly and efficiently. Further, the attorney is often juggling multiple transactions; each of which rely on a quick turn-around of “comments” or “revisions” to documents between the parties to the transaction. An effective legal secretary understands the time demands on the attorney and assists in getting error free documents turned around quickly. The legal secretary can expect that the attorney may type some

changes, dictate others, or write in the changes on a hard copy. This will require the legal secretary to be proficient in certain software essential to a transaction. An effective legal secretary will be up-to-date on the most current versions of Word, Outlook, and Excel, as well as having an in-depth knowledge of redlining programs such as DeltaView or CompareDocs. Regularly taking seminars and continuing education classes on these types of software will ensure your proficiency and keep you up-to-date with changing technology. Demonstrating your proficiency in this software will make you invaluable to your attorney and help a transaction move smoothly to close.

Knowing Your Local, State and Federal Agencies is Essential

Most transactions will require some sort of filing at a local, state, or federal agency. The filing requirements for each agency is different. Some agencies require on-line filings, while others may still require hard copy documents. Also, each agency will have its own set of filing rules and timelines for processing. Knowing how to quickly file a document with the agency and when to expect a return of the filed document is essential to timing and planning in a transaction. Also knowing what checks are needed for filing is critical for timely filing. For instance, the California Secretary of State requires separate checks for the filing fee, the service fee, and the certification fee. Sending one check for the total of all fees would result in the filing not being accepted. Also, in California, the Limited Offering Exemption Notice per Corporations Code section 25102(f) is generally required to be filed electronically. Sending a hard copy and check for filing will result in a delay in filing. Another example of differences in filings is at the local level. Some cities or counties require business license applications to be made by hard document delivered in person while other cities or counties require on-line filings. Knowing how documents are to be filed and filing fees to be paid is critical. It will be the legal secretary’s job to ensure that the documents are quickly and correctly filed and returned on a timely manner so as to keep the transaction on track. A good practice is to incorporate agency deadlines and filing requirements into the particular transaction checklist. Quickly and efficiently turning around agency filings makes the legal secretary invaluable to smoothly closing a transaction.

LS



PAUL EDMOND STEPHAN specializes in insurance-related matters, including property casualty, construction defect, rental car law, trucking, toxic torts and professional liability. He graduated from the University of Southern California in 1973 and thereafter graduated from Southwestern University Law School in 1976. He also completed the California State Bar Administrative Law College and is a graduate of the United States Army Judge Advocate General Corps Basic School. Mr. Stephan is licensed to practice in the state courts of California, the District of Columbia, the United States Military Court of Appeals and the Northern, Eastern, Central and Southern Districts of the Ninth Federal Circuit. He can be reached at pstephan@selmanbreitman.com.

Litigating Personal Injury Cases in the Rental Car Context - Part One

BY PAUL E. STEPHAN, ESQ., ORANGE COUNTY LSA

AS PUBLISHED IN THE DAILY JOURNAL JUNE 7, 2012, REPRINTED WITH PERMISSION

Whether you are a lawyer advising a client on a personal injury case regarding a driver operating a rental car or you are renting a car yourself, it may be beneficial to know the different words of art in the rental car world. Knowing who is on first helps a lot. And if you thought the California Vehicle Code provides stunning clarity in this field you are going to be somewhat disappointed.

WHO IS A RENTER?

For example, California Vehicle Code Section 508 defines a “renter” as anyone who is engaged “in the business of renting, leasing or bailing vehicles for a fixed rate or price for a term not exceeding four months.” That sounds more like a statute relating to commercial transactions (ie. lessor, guarantor, bailor, etc.). But when you read a rental contract with any number of car rental entities in California you will find that a “renter” is defined in those contracts in terms contrary to Section 508. The contracts typically state that a “renter” is a person who contracts with a business that provides a passenger vehicle for a period of less than 30 days. So while doing research for this area of the law, you may wish to review California Civil Code Section 1936 (a).

Rental car companies took Civil Code Section 1936 and modified the wording to apply it to many of their rental contracts. Published opinions in the appellate courts rely heavily on Section 1936. That section, as well as Vehicle Code Section 14608, lists the mechanical process the rental companies have to go through to rent you a passenger vehicle as defined by Vehicle Code Section 465. Everything from “comparing signatures” to what “renter’s” information need be on the rental contract are set forth. Cases discuss-



ing both code sections define a “facially valid” license, which refers to what driver’s identification is presented. A facially valid license needs to: look consistent with a governmentally issued driver’s license; appear to have a signature consistent with the person presenting themselves at the counter; and the license presented must appear “valid” so as to not expire until after the rental period. See *Philadelphia Indemnity Ins. Co. v. Montes-Harris* (2006) 40 Cal.4th 151.

OWNERSHIP LIABILITY

Loaning your BMW to your neighbor, even if you charge him or her per day, does not make you a rental company under the various codes. But if you do loan out your car and

an accident arises, you may be liable in another way. You are the person that has “ownership” of your motor vehicle. Individuals as well as the for-profit rental companies may be held responsible for “owner’s liability” in the amount of \$15,000 to any person injured through the fault of a person operating your vehicle with your permission. Owner’s liability is therefore a unique “liability without fault” principle in this state. This is liability without fault on *your part* for the accident. While auto insurance may apply to this fact pattern, realize that as an owner, you may very well be in litigation anyway under the statute involved, Vehicle Code Section 17151(a).

There are circumstances where you may decide against filing suit against the rental car company, even when one of their rental vehicles is involved in an accident, such as when the renter has his or her own policy of auto insurance. Under those circumstances, the rental car company’s ownership liability is essentially extinguished once the renter’s insurance carrier confirms coverage. The renter’s insurance is thus determined to be “primary.” In that scenario, naming the rental car company wastes a filing fee and your time. See *Rashtian v. Bric-BH, Inc.* (1992) 9 Cal. App.4th 1847; *Enterprise Rent-A-Car Company of San Francisco v. Workmen’s Auto Insurance* (1997) 58 Cal.App.4th 1543.

It is important to know about all the California Codes that make up the litigation world of “Rental Car Law” and the court opinions that cite them. And while you are doing that, realize that Congress has recently stepped into rental car law in every state, like it or not, with the Graves Amendment, found at 49 U.S.C. Section 30106, entitled the Transportation Equity Act of 2005. The Graves Amendment applies only to rental car companies, even though it is based on liability to third parties based on “ownership” of a vehicle. In essence, the amendment seeks to insulate a rental car company for liability to third parties when the only basis for liability is that the rental car company owned the rental vehicle. There are no California published cases on the amendment to date, however numerous federal courts have upheld it. The exceptions to the amendment are product defect or negligent entrustment situations asserted against a rental car company.

THE TERMS AND CONDITIONS

The business of renting automobiles in California is contractual by statute. The Rental Contract is a form that has various terms and conditions. Many of the paragraphs printed are required by Civil Code Section 1936 and other statutes. Each contract requires the person obtaining the vehicle for use (the renter) to agree to price, duration, driving area, method of payment, etc. with the entity that

is in the business of providing vehicles *for a fee* to the public (rental company). The contract has to be written with specific phrases as required by Section 1936 and the rental document must actually be signed by the person receiving the rental car keys. Vehicle Code Sections 14608 and 14609; see *Flores v Enterprise Rent-A-Car Company of Los Angeles* (2010) 188 Cal.App.4th 1055.

INSURANCE AND CLAIMS

In a typical accident case, the person driving the rental vehicle had the option to “buy insurance” at the point of rental (the rental counter). The rental companies call this product Supplemental Liability Insurance (SLO or a Supplemental Liability Protection (SLP). But if a person did so, they did not buy a policy of insurance *from* the rental company. They paid a fee to the rental company to secure a policy of insurance for themselves through an admitted carrier in California. There may be a normal temptation to name the rental company in the complaint as the “insurer” of the driver. However, they are simply not insurers and a demurrer typically will be successful. The auto liability insurer that provides the renter a policy of insurance is the renter’s insurance carrier. Seek to discover the name of the carrier and the limits of the policy right away.

When a renter purchases the rental company product SLP or SLI, that policy is in play even if there is no insurance policy that the renter has in his or her own name. But if the renter does not have personal insurance and did not buy the SLP or SLI, what happens after an accident? Some lawyers believe that every driver has to have insurance in California, even if they simply rent a car. They cite to the proof of financial responsibility laws found in Proposition 213. Proposition 213 is really Civil Code Section 3333.4 and it is part of the California regulatory scheme to protect persons from negligent drivers. But the answer is that such drivers do *not* have to have liability insurance to rent a car and they do not have to buy SLP or SLI. There is still a limited safety net for victims under the Vehicle Code.

This article merely broaches the world of rental car law and cannot address every situation. In the next article, I will discuss the actual meanings of the phrases “foreign renter,” “permissive driver,” “contractual violations,” “renter’s age discrimination” (after *Lazar v. Hertz* (1999) 69 Cal. App.4th 1494) and those “Collision Damage Waivers” offered by rental car companies. **LS**

LEGAL SECRETARIES, INCORPORATED
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“SKILLS”

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Skills is the hardest, yet easiest section of the CCLS exam. It's all about technique, time management, and being organized. At this workshop we will do a timed exercise, then review tips and tricks to getting through the section, then will do another exercise once you know how to get through the section quickly and efficiently. Come to this workshop and learn how to beat Skills!

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Please make check payable to LSI. Mail registration to Terrie Quinton, CCLS, c/o Duckor Spradling Metzger & Wynne, 3043 4th Ave., San Diego, CA 92103, and email registration to quinton@dsmw.com.

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| 1. August issue (First Quarter) June 1st | 3. February issue (Third Quarter) December 1st |
| 2. November issue (Second Quarter) September 1st | 4. May issue (Annual/Fourth Quarter) March 1st |

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Articles are submitted by email as an attached document using Word or WordPerfect. Biography should be included in the article and digital photos should be submitted as separate jpeg files.

All articles must be at least 500 words and no more than 2500 words.

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LEGAL SECRETARIES, INCORPORATED

LAW OFFICE PROCEDURES MANUAL

FOR CALIFORNIA LAW PRACTICE

compiled by Legal Secretaries, Incorporated
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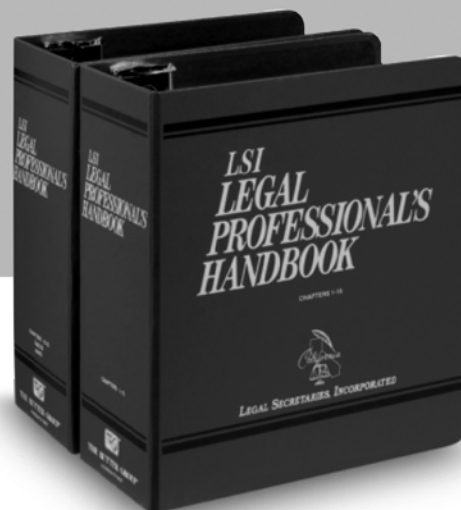
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