



CITATIONS

OCTOBER - TWO THOUSAND FOUR

VCBA MISSION STATEMENT

To promote legal excellence, high ethical standards and professional conduct in the practice of law;

To improve access to legal services for all people in Ventura County; and

To work to improve the administration of justice.

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A Love Affair With Paris

By Philip Garrett Panitz



I have just returned to my office after spending an entire month in Paris. I have always wanted to see what it would be like to live in a foreign country. Luckily, my practice has grown and my associate, Ryan, and wonderful legal secretary, Jeanne, are experienced and capable of holding down the fort. So I seized the opportunity, took the month of August, and rented an apartment in Paris with my fiancée, Molly. We had a beautiful little one-bedroom apartment that looked out at the Eiffel Tower. What an experience!



I have dabbled on and off with speaking French, and Molly is fluent, so I decided that I would enroll in a French-language school and study each day to bring up my fluency level. Each morning I would get up and ride two Métro lines to my school, experiencing the feeling of “going to work” in Paris. School lasted three hours in the morning. In the afternoons, Molly and I would wander the streets of Paris, sightseeing, or hanging out in brasseries or cafés. On weekends, we would sometimes take excursions to other locales, such as Monet’s Giverny home, where he did most of his later paintings. When we would return to our Paris apartment, we had the definite sense of “coming home.”

Although Paris is certainly a place for historic sites and museums, which over the course of the month we did see, our main

objective was to feel like we lived there, and that included making friends and talking to the Parisians. Various students in my classes became friends as well. It was quite an eclectic group. My class included a Japanese woman, a Russian woman, a German man and another American man. Sometimes we would go out to dinner, and the common language that we all shared was French, which helped improve my language skills. I would also grade my success in how long it took a Parisian to figure out that I was not French, and then whether they would guess that I was American. Toward the end of the month, I was at least improved enough to have them guess I was Italian. Unfortunately, my record for being detected



as a foreigner was probably no more than a minute and a half.

After our month in Paris was over, we spent a few days each in two French castles, one in Normandy near the D-Day beaches and one outside of Bordeaux. The castle in Normandy was run as a bed and breakfast. The castle in Bordeaux was actually a working winery, sitting in the middle of a vineyard as far as the eye could see. It was near the ancient medieval town of St. Emilion, an amazing place that looks like you have traveled back in time. The town is a maze of cobblestoned sloping streets and little shops. No cars can really fit in the streets, so you park on the outskirts and walk literally down into the town from above. St. Emilion is famous for its wine, although they told us they could not ship wine to California as it was against the

law and they could lose their license. This surprised us, and I would like to look into this more now that I am back.

The castle in Normandy looked and felt like an ancient castle. At one point Molly asked the proprietor where he had bought the portraits on the wall to make the place look so authentic. He responded with a laugh that they were paintings of ancient relatives and that the castle had been in the family since the 11th century. We ventured out to see the D-Day beaches and the American Cemetery at Colleville-sur-Mer. It was quite a moving experience, and when you look at headstones that seem to stretch on for a mile and realize that under



all of these lie young American kids, it really brings home the tragedy of war and the sheer terror that must have occurred at this now-idyllic location.

We also spent a day in Mont St. Michel, an abbey that is located in the bay between Brittany and Normandy. It was built around 708 A.D., and is an engineering marvel. It looms out of the mist like an apparition, a mirage, and is so powerful that it left us just shaking our heads at how beautiful something created by man could be.

All in all, quite a summer vacation.

Philip Garrett Panitz, 2004 President of the Ventura County Bar Association, specializes in corporation and tax law.

JUDGE KEVIN MCGEE

By Michael McQueen



Judge Kevin McGee stood resolute, his eyes vigilant, his demeanor stern, alert for any sign of interest or intent from the crowd. Meanwhile, the little girl next to him struggled mightily to control her goat as the 4H Auction bidding heated up at this year's County Fair. Judge Kevin McGee's daughter, Katie, is a 4H member, and the judge was volunteering his time to help sort out the bidding frenzy, which is just a small example of his devotion to family and community.

Desert Background

Like his colleague Fred Bysshe, Judge McGee departed the hot Imperial Valley for the cooler coastal climes of Ventura County.

Kevin McGee was born on May 25, 1953, in Brawley, California. He was raised with four sisters and a brother, primarily in the Indio and Palm Desert area. In high school he was a member of the speech and debate team, but his primary personal academic interest was history. He played football and basketball, and then pursued rugby in college. His trim and athletic figure is a testament to his continued physical activities.

Judge McGee has vivid recollections of the Imperial and Coachella Valleys and the environs as they were when he was growing up, a sparsely populated, almost bucolic, expanse of desert and mountains that came

alive during the winter, when visitors from Los Angeles and other, colder, climes would head there in search of sun. In contrast to the picture of the desert winter painted by Troy Donahue movies like "Palm Springs Weekend," Judge McGee recalled that, during the summer, the area was so deserted that a person could, if he or she were so inclined, take a sleeping bag and sleep out in the middle of the highway without fear of being run over. Contrary to the popular legend about the emergence of Palm Springs and the Coachella Valley during the Kennedy presidency, when, it was rumored, President Kennedy would tryst with Marilyn Monroe in the desert resort, and snubbed Frank Sinatra by not staying at his home there, Judge McGee remembers the place as being put on the map by another President, Dwight D. Eisenhower, who settled there to a life of golf.

The place has changed so much, though, that Judge McGee no longer recognizes it when he returns. As a result, he confesses with an almost Proustian sigh, he rarely goes back, and he is now firmly ensconced in Ventura County

Away to College

McGee left Palm Desert in 1972 to attend Loyola Marymount University, where he earned a Bachelor of Arts in History, magna cum laude, in 1976. He went on to Loyola Law School, graduating cum laude in 1979. Asked why he chose the law, Judge McGee wryly pointed out that he could not do much with a history degree. Like many of the baby boomer lawyers, he became interested in criminal law after watching the Perry Mason TV show.

After graduating from law school, Judge McGee worked for Mercury Insurance Company as in-house defense counsel. He obtained a position with the Ventura County District Attorney's Office in 1982, prosecuting a wide variety of crimes, pursuing career criminals, and handling juvenile delinquency, juvenile dependency and proceedings representing abused children. His administrative capabilities soon elevated him out of the courtroom, however, and

he achieved the number-two position in the District Attorney's Office. He managed all aspects of office operations including criminal case filings, the death penalty charging process, juvenile delinquency filings and child support collections. He oversaw a staff of nearly 500 employees with a budget in excess of \$33 million.

Unfortunately, the administrative duties, though challenging, took Judge McGee away from the day-to-day practice of law. He found that he truly missed the courtroom and preferred it to the administrative duties. In 1998 he decided to run for a vacancy on the bench.

Tough Race

Running for the judicial position was more time-consuming and costly than he anticipated. He was involved in a three-way, hotly-contested primary which took nine months. After the primary, he had to take a leave of absence to conduct a hard-fought campaign against Gary Windom. Judge McGee was elected on November 3, 1998.

On the Bench

Judge McGee has thoroughly enjoyed his judicial duties. He comes from a criminal prosecution background, but does not want to be pigeon-holed in any particular area of law. Though he has not done much civil work, he was initially assigned for about two and a half years to the family law court. He found it interesting, but felt the emotional toll family law takes not only on the participants, but also on attorneys, court personnel, and judges.

Judge McGee recently handled the first-floor criminal arraignments. He points out that the caseloads in those courtrooms are demanding and that there is a big issue with respect to having sufficient resources to properly process the extreme workload at that level. He is now back in Dept. 43 and a member of the trial team. David Shain, a former VCBA president, describes Judge McGee as an "excellent" judge with an open

mind and a good sense of humor. “He is a good human being who really wants to do the right thing. While he is certainly very bright, with first-rate legal abilities, even more importantly, he is thoughtful and a good listener. I have not always agreed with his decisions, but I always believe that I am heard in his courtroom. There are no knee-jerk reactions.”

Judge McGee observes that, compared to the District Attorney’s Office, being a judge can be a little lonely. Turnover at the District Attorney’s Office is such that the assistant district attorneys assigned to his courtroom are relatively new and he has no prior relationship with them. The deputy public defenders are usually the same group and the criminal defense bar is still relatively small. A judge is in his or her own courtroom, and the day-to-day opportunity to associate with colleagues is somewhat limited. Still, Judge McGee considers the Ventura County bench very collegial. Fellow judges are helpful and welcome discussions of issues.

Judge McGee offers recommendations for attorneys practicing before him: Do not interrupt opposing counsel or the court, pay attention to clothing and grooming (appearances do count), and especially, maintain civility. Being obstreperous is not effective in the courtroom.

Life Outside

Judge McGee continues his interest in sports, playing tennis with his children and running during lunch. The lunch run is very helpful in managing the stress of the courtroom.

He met his wife, Shelley, in Indio. They were wed 26 years ago, shortly after college. Their son, Brian, 23, attends UC San Diego. Danny, 21, currently is enrolled at UC Santa Barbara. Katie, 16, is a junior at Newbury High School.

In addition to his duties with the District Attorney’s Office, Judge McGee was a member of the Board of Directors of the

Ventura County Bar Association from 1993 to 1994, a member of the State Judicial Council Advisory Committee from 1995 to 1998; a member of the United Way Allocations Committee from 1995 to 1997; was an instructor for the Citizens Academy for Thousand Oaks and Camarillo; received the Community Service Award from the Oxnard Knights of Columbus in 1995; and was a presenter at the Thousand Oaks Youth Leadership Conference. His County Fair volunteer work, along with his long-time service as a member of the VCBA’s Pro Bono (Volunteer Lawyers Services Program) Committee, says much about who Judge McGee is.

In David Shain’s words, “We are fortunate to have Judge McGee.”



Michael McQueen is a business litigation lawyer practicing in Camarillo. He is a member of the CITATIONS editorial board.

Letter to the Editor

It is with mixed emotions that I read about Bruce Johnston's retirement. When I first came to Ventura in 1978, I was recruited by an insurance defense firm specializing in workers' compensation defense. That practice did not inure me to the local community. Quite the opposite. I felt separated from the community due to the nature of the practice as well as my schedule, which demanded that I travel from Ventura to San Luis Obispo Workers' Compensation Appeals Boards on a regular basis. Finally, I joined the Downtown Lions Club in Ventura and that is where I met Bruce Johnston for the first time.

I was impressed by how calming he was during the weekly calamities that seem to afflict such clubs. He had a ready and reasonable perspective on each problem, and in a very humble and effective way he would communicate his position. Sometimes he threw in a little scolding that seemed to be particularly poignant. He had the same calming effect outside the club also. I wasn't surprised that he became the first recipient of the Ben E. Nordman Public Service Award in 1986.

There were many other friends whom I hold dear from my early days with that club, but I must say that reading about Bruce's retirement reminds me of how cordial he was to newcomers and their young families, and what a great role model he was. If that is what it means "to be a small country lawyer," then perhaps that is something we all should aspire to in our daily practices. A great role model. An ethical standard. A community leader. A warm and respectful person.

I missed Bruce when I left the Downtown Club, and now I am reminded of that loss so many years ago. Congratulations, Bruce, on your retirement from law. May you have many healthy years ahead to enjoy whatever undertakings you pursue.

There is a legend that when the Greeks asked a Spartan king to send reinforcements, he only sent one soldier. The Spartans were convinced that one Spartan was worth three hundred other soldiers. So it is with Bruce Johnston.

Lou Vigorita practices workers' compensation and social security law in Ventura. He is a member of the CITATIONS editorial board.

GET A LIFE!

Yes, a federal judge did write this order.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

KLEIN-BECKER, LLC, and BASIC RESEARCH,
LLC,

Plaintiffs,

-vs-

Case No. A-03-CA-871-SS

WILLIAM STANLEY and BODYWORX.COM,
INC.,

Defendants.

ORDER

BE IT REMEMBERED on the 21st day of July 2004 and the Court took time to make its daily review of the above-captioned case, and thereafter, enters the following:

When the undersigned accepted the appointment from the President of the United States of the position now held, he was ready to face the daily practice of law in federal courts with presumably competent lawyers. No one warned the undersigned that in many instances his responsibility would be the same as a person who supervised kindergarten. Frankly, the undersigned would guess the lawyers in this case did not attend kindergarten as they never learned how to get along well with others. Notwithstanding the history of filings and antagonistic motions full of personal insults and requiring multiple discovery hearings, earning the disgust of this Court, the lawyers continue ad infinitum. On July 20, 2004, the Court's schedule was interrupted by an emergency motion so the parties' deposition, which began on July 20, would and could proceed until 6:30 in the evening. No intelligent discussion of the issue was accomplished prior to the filing and service of the motion, even though the lawyers were in the same room. Over a telephone conference,

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the lawyers, of course, had inconsistent statements as to the support of their positions. On July 20, 2004, the Court entered an order allowing the plaintiffs/counter-defendants until July 23, 2004 (two days from today) to answer a counterclaim. Yet, on July 21, 2004, Bodyworx.com, Inc.'s lawyers filed a motion for reconsideration of that Court order arguing the pleadings should have been filed by July 19, 2004.

The Court simply wants to scream to these lawyers, "Get a life" or "Do you have any other cases?" or "When is the last time you registered for anger management classes?"

Neither the world's problems nor this case will be determined by an answer to a counterclaim which is four days late, even with the approval of the presiding judge.

If the lawyers in this case do not change, immediately, their manner of practice and start conducting themselves as competent to practice in the federal court, the Court will contemplate and may enter an order requiring the parties to obtain new counsel.

In the event it is not clear from the above discussion, the Motion for Reconsideration is DENIED.

SIGNED this the 21st day of July 2004.


UNITED STATES DISTRICT JUDGE

Ventura County's Young Lawyers – Committed to Pro Bono Service

By Meghan B. Clark

As a complement to local Barristers' associations, the California Young Lawyers Association ("CYLA"), represents young lawyers and new practitioners at the State Bar level. Membership in CYLA is automatic for attorneys in their first five years of practice or younger than 36 years of age.

CYLA offers younger lawyers an opportunity for involvement in the bar association at the state level. At the upcoming State Bar Meeting in Monterey, CYLA will host several MCLE programs, including one designed to give new attorneys a blueprint to open their own law offices.

On October 22, CYLA will host the Western Regional Young Lawyers Conference in conjunction with CYLA's Career Symposium on October 23, at the Doubletree Guest Suites in Santa Monica. The career symposium will feature individual résumé consultations (first come, first serve basis - limit 12 registrants), sessions on career charting, strengthening interviewing skills, opening a law practice and networking opportunities with experts in the field. Registration information on the career symposium can be found at

http://www.calbar.ca.gov/calbar/pdfs/CYLA/2004_Career-Fair-Brochure.pdf.

CYLA also confers an annual award to recognize a young lawyer's commitment to pro bono service. After the award's inception in 1992, it was re-named in honor of Jack Berman, a young lawyer who demonstrated outstanding service to the profession and the public by providing substantial pro bono legal assistance. Jack Berman's career was cut short, tragically, when he died in the 101 California Street shooting in San Francisco.

The past recipients of CYLA's Jack Berman Award have been nothing less than outstanding; their efforts and commitment to pro bono services extraordinary. This year, the Jack Berman Award was awarded to Margaret Adams, a sole practitioner in San Diego who devoted over 100 hours in direct representation of special-needs children and their families to secure educational rights for those students.

For two consecutive years, Ventura County young lawyers nominated for the Jack Berman Award have instead received the prestigious President's Pro Bono Award from the State Bar Board of Governors. The President's Pro Bono Award recognizes those attorneys who have gone above and beyond the call in the direct representation of pro bono clients. The recipient of this year's award is Gabriella Navarro-Busch. Last year, Ventura County Barrister Michael Ford received the prestigious award. Clearly, both Gabriella Navarro-Busch and Michael Ford have gone above and beyond the call in their service of individuals in need of pro bono services. CYLA commends Ventura County young lawyers' commitment to pro bono service.

New Inmate Telephone System

By Capt. John Glueckert

The inmate telephone system in the Ventura County Jail has been updated and improved. The new system affords inmates options when calling from the jail, with the goal of reducing costs to the family, and has other investigative functions for law enforcement. This new technology is now considered the industry standard.

The old telephone system did not allow inmates the option of calling family and friends other than through a collect phone call, which can be expensive. The Sheriff's Department contracted with a new service provider that offers the inmates three calling options: collect calling, family-initiated credit card calling, and debit account calling. The most cost-effective option is debit account calling.

From a computer workstation, the system also monitors and records phone calls. Monitoring and recording of attorney calls is blocked, once the attorney's phone number is entered into the system. The sheriff's department obtained a partial list of attorney phone numbers from the bar office.

Note: Inmates are able to contact the Office of the Public Defender free of charge from any jail telephone. Law enforcement does not have the ability to listen or retrieve a recording of these calls. The recording is blocked by the computer system.

Please contact the Ventura County Sheriff's Department, Detention Services Legal Unit, at any one of the following numbers for additional information on this system or to add your telephone numbers to the blocked number list: (805) 654-3331, (805) 654-3341, or (805) 654-3354.

Employer's Legal Advisory

Changes to "Bounty Hunter" Law . . . But the Law Lives On

By Jeanne R. Flaherty

Recently, the California Legislature passed, and the Governor signed, a bill that amended the Private Attorneys General Act of 2004 (also referred to as the "Bounty Hunter" or "Sue Your Boss" law). Generally, these amendments incorporate procedural requirements; allow for judicial discretion to reduce penalties; require court review of settlements; and exempt minor violations of notice and posting requirements from coverage under this law (Labor Code §2699). These new provisions are effective immediately.

These changes significantly reduce the possibility of frivolous claims and provide procedural safeguards. While this comes as good news for employers, these amendments did not change the basic function of the law, which allows employees (and former employees) to file suit against their employers for violations of the Labor Code and receive a portion of the penalties plus attorneys' fees for doing so. Therefore, employers are advised to continue to review their policies and practices for potential Labor Code violations. The changes include:

Minor Violations Excepted

An action may not be brought for violations of the Labor Code with regard to posting, notice, agency reporting, or filing requirements, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

Procedural Requirements

Generally, the aggrieved employee must notify the Labor and Workforce Development Agency (LWDA) of alleged violations. Within specific timeframes, the LWDA shall investigate (or notify the parties that it does not intend to investigate) the alleged violations. If the LWDA does not conduct an investigation, conducts an investigation but determines that no citation will be issued, or fails to provide timely notification of either of these actions, the Notice and Cure provisions (discussed below) will apply before a civil action may be commenced.

For alleged violations of the Occupational Health and Safety provisions of the Labor Code (with a few exceptions), the aggrieved employee must also notify the Division

of Occupational Safety and Health (Cal/OSHA) of the alleged violations. The Division shall conduct an inspection or investigation. An action may not be instituted if a citation is issued and the employee is notified that it has been corrected, or if no citation is issued and a superior court determines that a citation should have issued and directs the Division to do so.

For certain other violations (not specifically listed in Section 2699.5), the employer must be given notice of the alleged violation(s) and the opportunity to cure the violation(s) before an action can commence. Cure means that (within 33 days of receiving notice) the employer has abated the violation, is in compliance, and has made whole any aggrieved employee. However, the employee can appeal to the Agency to determine whether the violation has been cured, subject to appeal to the superior court by the employer of the Agency's determination. The employer also may only make use of these notice and cure provisions three times in a 12-month period for the same violation(s).

Judicial Authority

The superior court must review and approve any penalties sought as part of a proposed settlement. In any action brought pursuant to the statute, the court also has been given the discretion to reduce the penalties awarded.

Anti-Retaliation Provision

Labor Code Section 98.6 has been amended to provide that an employer may not discharge or in any manner discriminate against an employee for having initiated any action under Section 2699.

Repeal of Filing of Application Requirement

The new amendments include a provision repealing the requirement that employers file a copy of any employment application that requires the signature of an applicant with the Department of Labor Standards Enforcement.

Retroactivity

This revised provisions may be applied retroactively to any applicable pending proceeding.



Jeanne R. Flaherty is an attorney and President of Employer's Legal Advisor, Inc., which represents and advises employers on all employment matters. The firm specializes in conducting employment practices compliance reviews and advising employers on day-to-day legal issues in the workplace.

VCLSA

Surf, Sunsets & Summaries, Legal Secretaries Incorporated's First Quarterly Conference on August 20-22, 2004 at the Ventura Beach Marriott, was attended by approximately 150 legal secretaries from throughout the state. The conference was co-hosted by Ventura County and Conejo Valley Legal Secretaries Associations. Our Section Workshop Speakers were Commissioner Ruben De La Torre, Meredith Schultz, Raymond L. Steuhrmann, Bruce Jones, Gary LaPook, and James P. Lingl. The Saturday Night Banquet emcee was Loye M. Barton and our Sunday Brunch emcee was the Honorable David W. Long. Special thanks go to the Law Offices of Susan H. Witting for donating the grand prize tickets for the one week cruise on Holland America, and to Pacific Coast Court Reporters for the conference name badges and for being one of our many vendors. The Ventura County Legal Secretaries Association would like to thank our legal community for their continuing support.

VCLSA will host our 44th Annual Bosses' Night, "Route 66," on October 13, 2004 at the Wedgewood Banquet Center. Our Master of Ceremonies will be the Honorable David W. Long, and a portion of the event proceeds will be donated to the VCBA/Volunteer Lawyers Services Program.

The Ventura County Legal Secretaries Association would like to thank our legal community for their continuing support.

“Hero”

By Bill Paterson

Unless you are a *spielmeister* of the Larry King variety, “masterpiece” is a word which should rarely find its way into a film review. Thus, rest assured I am measuring my words in describing Zhang Yimou’s “Hero” as a martial arts masterpiece.

Two thousand years ago, what we now know as China consisted of six competing kingdoms. One of them was Qin, whose emperor had devoted his rule to the ruthless destruction of each of Qin’s rivals. Among his most unbowed enemies was the kingdom of Zhao. For over ten years Zhao had not only repulsed Qin’s marauding armies but had also taken the battle to the Emperor, sending three of its most legendary warriors, “Sky,” “Broken Sword,” and “Flying Snow” to assassinate him. So feared were these three and so great were their powers, that even the Emperor’s closest advisors were forbidden to come within twenty feet of his royal person. Unless all three of Zhao’s champions could be eliminated, the Emperor’s plans for conquest would die stillborn. Thus, when word reaches him that a lowly provincial functionary, “Nameless” (Jet Li), has slain all three, he summons him to the palace to reward him for his great service. As the film begins, the gates of the imperial palace courtyard swing open and Nameless stands framed in the portal. Facing a sea of imperial guards arrayed in perfect formation, step by slow step, Nameless makes his solitary way through their massed ranks and up the stairs of the palace for his audience with the Emperor.

Seated on his throne, alone in the great hall of his palace, behind hundreds of flickering candles, the Emperor wants to know how Nameless succeeded in vanquishing Sky, Broken Sword, and Flying Snow when all others had failed. Nameless begins his tale and we journey back with him to bear witness to his heroic feats. At the end of his story, however, the Emperor notes some puzzling inconsistencies and asks for more details. Seeking to reassure him, Nameless tells the Emperor a slightly different version and we travel back in time again. Still not satisfied, the Emperor presses Nameless further and but another tale unfolds. Finally, the truth emerges and we learn

who Nameless is and the secret for which Broken Sword risked both his life and his love for Flying Snow.

When I was young (the fabled 50’s), the big summer movie event was usually some “Cinemascope” epic featuring “casts of thousands.” Whether Roman Legionaries, Pharaoh’s doomed foot soldiers headed for the Red Sea, or Moorish cavalry, all of them were fated to be vanquished by Charlton Heston. The clichés piled up faster than the body count and, with rare exceptions (most notably the stellar “Lawrence of Arabia”), these old films have not stood the test of time. While the “casts of thousands” now reside in computer programs, the combination of lavish special effects and garage sale scripts has remained a Hollywood staple. Not so with “Hero”. While Zhang Yimou has not spared the expenses, as with Ang Lee (“Crouching Tiger, Hidden Dragon”), Yimou is not interested in run-of-the-mill spectacle. His goal is to take martial arts films to an entirely different realm. He has succeeded brilliantly.

The most arresting quality of “Hero” is the visual images which cascade across the screen. Drenched in vibrant colors, “Hero” is a breathtakingly beautiful film. Not satisfied with cutting edge martial arts acrobatics, Yimou stages many of the battles in exotic locales and unexpected ways. One matches Flying Snow (Maggie Cheung, a woman of exquisite beauty) with Moon (Zhang Ziyi), Broken Sword’s apprentice.

Set in a forest ablaze with autumn colors, they fight to the death; their red silk gowns swirling around them while they are enveloped in a steady rain of falling leaves. When Broken Sword (Tony Leung) and the Emperor (Chen Dao Ming) match swords in the great hall of the palace, the room is festooned with billowing green silk curtains which alternately conceal and reveal their deadly duel. There is scarcely a frame of this film - whether thundering cavalry, a sky darkened with thousands of arrows, drops of falling water or a glistening trail of scarlet blood on a sword - which is less than pure film artistry.

“Hero” is the very embodiment of the term “movie magic”. Unless you have an experimental 300” plasma TV, don’t wait for the DVD. This film is made to be seen in a theater.

Note: For aficionados of Asian film, Akira Kurosawa’s “Ran”, Shakespeare’s “King Lear” set in medieval Japan, is a must-see classic.



Bill Paterson is a partner at Ferguson, Case, Orr, Paterson & Cunningham in Ventura, and an avid moviegoer.

Bench & Bar Conference 2004

On Saturday, October 16, 2004, Santa Barbara City College is the place to be for a wide range of MCLE credits including a Judges' Forum and a Keynote Speech, plus Vendor Exhibits and Technology Fair, and more. Since 1997, Thomson-West representative Gregg Kravitz has assisted with and co-sponsored the Bench & Bar Conference for Ventura and Santa Barbara Counties. Gregg's aim has been to make the gathering feel like a "mini-ABA Conference" and to that end he instituted the vendors' exhibition, and has been instrumental in featuring the presence each year of the newly-elected President of the California State Bar Association. The Bench & Bar Conference 2004 keeps this momentum, offering a total of fifteen, one-hour MCLE presentations on topics such as estate tax audits, liens, the Federal Arbitration Act, family law, employment law, bias in the courtroom, writs, case management, elder abuse litigation, and malpractice insurance. In this issue of CITATIONS look for the inserted Registration Form and Conference Schedule. Fax, email, or mail your completed Registration early for a discount.

EMPLOYEE LEAVES OF ABSENCE: AN ALPHABET SOUP OF POTENTIAL PITFALLS

By Jonathan Fraser Light

Mary is going out on a worker's compensation leave of absence, and she wants to know what will happen to the medical insurance premium payments that the company regularly makes for her. Bob has completed 12 weeks of disability leave, but he wants another three weeks to finish his recovery. Sharon is pregnant and needs to know if she can receive pay or benefits for any part of her time off from work, either for the pregnancy or for the care of her newborn.

Employers weave through a maze of acronyms as they try to mesh the ADA, PDL, FMLA, FEHA, CFRA, PFL and worker's comp, trying to properly serve their employees and stay out of employment law trouble.

A human resources manager needs to go through a mental and better yet, written checklist of the various leave laws to ensure full compliance. One law may end and another may kick in. Others may run concurrently.

Take Bob, for example. He has used up his allowable 12 weeks of leave for a serious non-work-related injury under the federal Family and Medical Leave Act (FMLA) and its companion state statute, the California Family Rights Act (CFRA). He needs three more weeks (for a total of 15) to finish his course of treatment and then will be ready to return to work, perhaps with restrictions. The federal Americans with Disabilities Act (ADA) and the state Fair Employment and Housing Act (FEHA) provide that employers must make reasonable accommodation to disabled employees, and such accommodation can include a "reasonable" amount of time off work to fix the problem. There is no set time frame, such as the 12 weeks allowed under FMLA/CFRA. So, is it "reasonable" for an employer to argue that the 12 weeks was all it had to provide, and that once FMLA/CFRA is exhausted, no more time is allowed? Is 15 weeks reasonable under the ADA and FEHA? Does the injury even qualify as covered by the ADA or FEHA?

Perhaps most important, does the employer want to be a legal test case over those three weeks or that injury?

Mary's disability leave is work-related, so there is no specific time frame for the duration of a worker's compensation leave of absence. But employers with more than 50 employees working within 75 miles of each other (and public employers) should also immediately give the

The state and federal leave laws present a labyrinth that requires flowcharts, diagrams, cheat sheets and probably a good employment lawyer to help in the navigation. And that still leaves out any discussion of employees who are subject to these leave laws and the employer's right to discipline them or lay them off. But that's another topic with its own set of acronyms.

FMLA/CFRA leave notice to Mary so that the FMLA/CFRA 12 weeks run concurrently with the first 12 weeks of the worker's compensation leave. During the 12 weeks, the employer will be obligated to continue paying its share of medical insurance premiums for Mary. Once the 12 weeks end, or if the employer (or Mary) doesn't qualify for FMLA, and assuming the medical insurance policy qualifies under federal ERISA laws and certain other tests are met, the employer may discontinue paying its share of medical premiums during the balance of the worker's compensation leave.

Sharon's pregnancy is extremely complicated from a legal standpoint, with at least four of these laws applicable. She is entitled, under the state's pregnancy disability leave law (PDL), to four months (88 working days) off for the disability portion of her pregnancy. This can be both before and after the baby is born, and can be intermittent time off. The employer need not have a specific number of employees to be covered by the PDL law. For larger employers, the FMLA also has a provision for pregnancy disability, and that statute runs concurrently with the PDL (and the FMLA 12 weeks would run out during the four months). Once the

disability portion of her leave is exhausted (or she is no longer disabled), Sharon can then receive time off for bonding with her newborn under the CFRA for an additional 12 weeks (for a maximum of four months, plus 12 weeks, for a total possible leave time of approximately 7 1/2 months).

None of Sharon's time off is paid for by the employer (other than what Sharon might use from her sick and vacation banks), but Sharon can receive State Disability Insurance benefits (SDI) during her disability portion of the leave. She can then apply for the state's new Paid Family Leave (PFL) for up to six weeks paid time off during the bonding portion of her leave. Note that

- Administrative Hearings & Appeals
- Medical-Legal Consultations
- Federal (DEA), Medical-Cal or Insurance Audits
- Healthcare Provider Licensing Issues

PFL leave entitlement begins July 1, 2004, although employees have been contributing to this fund since January 1, 2004.

And then there is Ralph, who exhausted his FMLA/CFRA 12 weeks and is ready to return to work. He now has a permanent condition that is covered as a disability under the ADA and FEHA, and he requires reasonable accommodation in the workplace. The employer will then have an ongoing obligation to attempt accommodation, using an interactive dialogue process with Ralph to jointly determine what changes to the work station may be needed, whether tasks need to be modified or whether restrictions on certain aspects of the job are needed. All such efforts should be documented so that Ralph's employer can demonstrate that it complied with its duty of reasonable accommodation. Note that the state's disability laws are more restrictive (i.e., are more favorable to employees) than the federal ADA, and California employers need to ensure full state compliance or risk a claim.

The state and federal leave laws present a labyrinth that requires flowcharts, diagrams, cheat sheets and probably a good employment lawyer to help in the navigation. And that still leaves out any discussion of employees who are subject to these leave laws and the employer's right to discipline them or lay them off. But that's another topic with its own set of acronyms.



Jonathan Fraser Light is a Senior Partner with Ventura County's largest law firm, Nordman, Cormany, Hair & Compton. He has 23 years of experience representing more than 200 private and public employers in day-to-day employment issues and related litigation.

Ear to the Wall

Susan Andrews is Legal Search Consultant and Attorney Recruiter for Whalen Bryan, Inc., a Ventura County company is now placing attorneys in corporations and law firms. Ms. Andrews has her JD from Southwestern University and studied European and International Law in Brussels and Paris. She is a member of the Los Angeles County and San Fernando Valley Bar Associations, and the Los Angeles French-American Chamber of Commerce. She was honored by the City of Los Angeles as 2000 City Adult Volunteer from Council District 2.

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UCSB Paralegal student with grad degree from University of San Francisco seeks full or part-time employment in a law firm. Advanced clerical, computer and research skills. Currently volunteering at the Self-Help Legal Access Center in Ventura. Please contact me at (805) 985-8654 or email me at suzette_boucher@yahoo.com.

MOVING SALE

Secretary computer bays, metal file cabinets (legal & lateral), conference table w/8 padded chairs, oak book shelves; leather chesterfield style sofa, loveseat, and large wing chair; many misc. office items. Call for want list. (805) 585-1831, ask for Kary.

OFFICE SPACE

Ventura County's Premier Offices Available – Oxnard – Offices available in most elegant, high-end professional setting in Morgan Stanley Tower – Suite 1180. Great location, multiple conference rooms, full amenities available. Ideal for Mediations – terms from hourly to annual. No reasonable offers refused! Call (805) 988-4848 with interest.

Ventura Law Office County Square Professional Office Bldg., 674 County Square Drive, Suite 101. Underpass to court house first floor, large window, garden atmosphere, great name exposure at bldg entrance, 4-line phone, intercom & DSL, Pitney-Bowes Postage Equip, Copier/Fax Merchant Credit Card Equip. Share secretary-reception-client waiting area. Call Douglas English, Esq. (805) 642-2025, wdenglish007@aol.com. \$450/month.

Office space to share located on California Street in downtown Ventura. Already furnished. Current attorney occupant uses the office minimally. \$250-\$350 (depending on usage) (805) 641-9326.

EMPLOYMENT OPPORTUNITY

Anticouni & Associates seeks an associate with 3-5 years hands-on employment litigation experience to work 3-4 days a week in its Oxnard Morgan Stanley tower office and 1-2 days a week in its Santa Barbara offices. The firm's practice is limited to the representation of both employers and employees in the area of employment law. Competitive compensation package with bonuses based on individual performance. Please submit resume to: Anticouni & Associates, 23 East de la Guerra Street, Santa Barbara, CA 93101.

Family Law firm looking for a part-time law clerk to help out busy office. Hours flexible. Fax resume to (818) 707-4262.



Nearly 130 folks, including **Judges Long, Back, Covarrubias**, Commissioner **De La Torre, Mayor Lopez** and **Supervisor Flynn**, partied at the Mexican American Bar Association's 3rd Annual Scholarship Dinner September 17th at the Residence Inn by Marriott in Oxnard...Raquel Sandoval, Administrative Assistant at the Oxnard Self Help Legal Access Center, sang a few songs while Alma Grande, a.k.a. Los Hermanos Moraza, provided the dance musica. Immigration Law Judge Bruce Einhorn was the keynote speaker. Proceeds provided scholarships to two local law students. **Herman Mora, Gabriella Navarro-Busch, Joe Beltran, Susan Ratzkin**, and the omnipresent **Carmen Ramirez** comprised the dinner committee. MABA meets the first Friday of each month at Money Pancho's in Oxnard, and all lawyers are welcome to attend the luncheon...Heartfelt kudos to **James Farley** on being the 19th recipient of the Bar's most distinguished award—the **Ben E. Nordman Public Service Award**. The 70-year young Farley (37 of them practicing law) has a resume chock full of pro bono efforts with numerous charitable and non-profit organizations. Jim, our first criminal defense lawyer awardee, got his start with the public defender's office here in 1969 and is a Permanent Deacon at the Our Lady of Assumption Church in Ventura. Jim will be feted at the Bar's Annual Installation and Awards Banquet November 13. A little secret—Jim won the award as a first-year nominee. Typically, a name will circulate for several years before having the honor bestowed. ...A comprehensive article about Jim will appear in the November issue of CITATIONS. Also at the November 13 dinner, the VCBA/VLSP, Inc. will honor **Susan Ratzkin, Pardeep Joshi, Gabriella Navarro-Busch** and **Michael Christiano** with **James D. Loebel** Service Awards...**Norman, Dowler, Sawyer, Israel,**

exec's dot...dot...dot...

Steve Henderson, Executive Director

Walker and **Barton** held their first summertime picnic and fest at the Marion Cannon Park in Ventura September 11. Every lawyer in the firm attended sans one (think of a male Giants fan and it's not **Michael Walker**), and virtually each employee except one came for an afternoon of Santa Maria-style BBQ, soccer and music. 44 in all listened to **Rob Sawyer** play one mean guitar, too. **Amber Eisenbrey**, an associate with the firm, got engaged September 9 to Dennis Disney (yes, a distant relative). He proposed within the confines of Doggie Park in Thousand Oaks, where they had met exactly one year earlier...Thank you, *LA Times*: "Scott Jeckle set the never-to-be-broken Guinness Book of World Records effort in LA by blowing a marshmallow out of one nostril 16 feet 31/2 inches." No one was injured during the performance...VCBA board member **Kevin Staker's** firm was recently awarded the AV Rating from Martindale Hubbell. His partner, **David Esquibias**, successfully passed the State Bar of California Board of Legal Specialization exam for Estate Planning, Trust and Probate Law...**Deborah Vieira** passes along this Website of the Month: www.lawhaha.com. "Don't miss *Strange Judicial Opinions*," she muses...Recommended Reading of the Month: *Arc of Justice. A Saga of Race, Civil Rights, and Murder in the Jazz Age*. By Kevin Boyle, illustrated, 415 pp. Henry Holt & Co. \$26. Another excellent account of Clarence Darrow's defense of a black doctor in Detroit being tried for murder protecting his home and family in the mid 20's...The California State Bar is throwing open the door to out-of-state lawyers, but strict conditions and high costs have some worried about tripping over the welcome mat. The State Bar Board of Governors has approved new rules, to go into effect November 15, that allow in-house counsel and legal services lawyers to practice in California without taking the state's bar exam. But some say the steep fees will discourage relatively low-paid legal services lawyers from applying to work in the state...The 77th Annual Meeting of the State Bar

will be held in Monterey this month from the 6th-10th. Superior Court Research Attorney **Melissa Hill** will again lead our delegation of a dozen-plus at the Conference of Delegates. Questions, comments and suggestions can be sent to her at MelissaJ.Hill@mail.co.ventura.ca.us...I'm laying 100 to 1 odds that the Topless Sunbathing Resolution fails to muster enough support...

Alice Duran has joined the staff of the bar association as the Client Relations Manager. She has spent the previous 24 years—yes, I said 24 years—right out of Santa Paula High, as a litigation secretary and office manager at **Patterson, Ritner, Lockwood, Gartner & Jurich**. Alice has served on the Law Day 5K Committee for many years and is a past-president of the VC Legal Secretaries Association. Her responsibilities include the Lawyer Referral and Information Service (LRIS), Mandatory Fee Arbitration Program, and the VCBA/Volunteer Lawyers Services Program, Inc (VCBA/VLSP, INC.) She may be reached at 650-7599, ext. 11 or at alice@vcba.org...We are offering 7 CLE's this month, including a presentation by **Justice Steve Stone** at the **Business Law Section** on the 12th. Another program of interest is the **Employment Law Section** hosting a roundtable featuring 12 attorneys discussing difficult day-to-day employment issues.

Steve Henderson has been the Executive Director of the bar association since November 1990 and has yet to throw a chair at any individuals or groups. Back in April he called a Cardinals v. Yankees WS, and recently tested negative for performance-enhancing blood transfusions. Additionally, Henderson consumed his 700th career brewski and anticipates breaking the major league record sometime in 2006.

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