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# CITATIONS

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# PRESIDENT'S MESSAGE

By *Matthew P. Guasco*

I am almost embarrassed about how difficult writing this column, my first as your President, has been. I have some pretty big shoes to fill: I am preceded by talented, dedicated, and wonderful lawyers who have served their terms as President of VCBA with great distinction. I have read many "President's Message" columns over the years, so I was baffled about what makes a good one. I have received a lot of advice about this over the last several months, much of it conflicting. So, I am on my own. Whenever I am stumped, I talk about what is on my mind. Lately, as I think about our profession, the law, and modern life, a single phrase keeps coming to my mind: the rule of law.

This year marks my 23rd as a lawyer, so the rule of law has been a big part of my life. It is also the defining compass of our lives as lawyers. As Chief Justice Roberts said at the Reagan Presidential Library last year, the rule of law is the principle upon which justice and democracy depend. We take oaths to support and defend the law, a symbolic and binding covenant to honor and uphold the rule of law in all that we do as lawyers.

As we begin the year 2008, I cannot think of a better time to reaffirm our oaths to uphold and defend the rule of law. In Pakistan, the government jailed thousands of attorneys, exiled judges, and suspended the constitution. In many parts of the world, even today, the only rule is that of might and violence, not of law and justice. In our own country, torture, indefinite imprisonment of suspected terrorists without due process of law, and warrantless domestic surveillance of vast volumes of domestic telecommunications and e-mails are issues challenging the very foundation of our commitment to the rule of law. If there is a time for lawyers to stand united in support of the rule of law in this country and throughout the world, it is now.

So, how do we promote the rule of law? We do this in countless ways every day, in each case we handle, in each client we represent, in each argument we make, in each resolution we achieve for our clients. Let me highlight some of the things the VCBA has been doing, and will continue to do, to help us support and defend the rule of law.

## Education, Ethics and Civility

We promote and defend the rule of law best by being well-trained, well-educated, ethical, and civil in our conduct as lawyers.

In 2007, the VCBA sponsored over 100 educational programs, all of which offered MCLE credit. Over 2,500 people attended these programs, 2,200 of them attorneys. Every month, there are several MCLE programs from which to choose covering virtually every legal topic imaginable.

In 1999, the VCBA adopted a Civility Code, which you will find at the beginning of the Legal Services Directory all members receive each year. The Civility Code simply codifies what for most of us is a simple premise of our daily lives as practitioners: Treat each other with honor, respect, honesty, courtesy and civility. The rule of law is "not a brooding omnipresence" as Oliver Wendell Holmes once remarked, but it lives and breathes through us, in our conduct as lawyers. Civility is an important component of fairness and substantial justice, the two pillars of the rule of law.

The Jerome H. Berenson Chapter of the American Inns of Court, named for a great and beloved judge, meets monthly from September through May each year. Its mission is to promote excellence, ethics, education, mentoring, and civility in the practice of law. The meetings are always well-attended by lawyers from various practice areas, and judges as well.

Mentoring—more experienced lawyers sharing their wisdom with less experienced lawyers—is important to the professional development of all lawyers. The Barristers, an organization of newer attorneys, provides networking, education, and mentoring opportunities. Additionally, mentoring is an informal practice in law firms large and small whenever an experienced practitioner spends the time to help a new practitioner hone his or her craft. The gift of mentoring enriches both the mentor and the person being mentored, and it helps to ensure that the rule of law is strengthened with each new generation of lawyers.

## Sharing Our Experiences and Good Company

The VCBA has many sections and affiliates which connect practitioners who share similar interests and experiences. You can find a list of these organizations on the VCBA website. These sections and affiliates, along with the

board of directors of the VCBA, provide you a means of voicing your views concerning issues of importance to the law, the administration of justice, and the legal profession. Our gatherings, whether at the VCBA Annual Dinner or the monthly meetings of the various sections and affiliates, provide something else important to our lives as lawyers: a fun environment to socialize with our colleagues. An esprit de corps is fundamental to upholding the rule of law.

## Access to Justice

The rule of law is an empty hope if people cannot afford lawyers to represent them, and the numbers of the unrepresented are growing. Legal representation is beyond the means of many people in family law, criminal, business, real estate, employment, probate and other types of cases.

Through your Bar Association, you have created one of the most successful and honored volunteer pro bono legal services programs in the State. The Volunteer Legal Services Program (VLSP) of the VCBA is a nonprofit organization which fields inquiries from people who need legal representation but cannot afford it in civil and family law matters. A dedicated staff evaluates these cases and then matches the clients with lawyers who are willing to volunteer their time representing the clients. In recent years, lawyers who have donated their time through the VLSP have been honored by the Chief Justice of the California Supreme Court and the California State Bar for their service in this regard. We are proud of the accomplishments of the VCBA staff, the VLSP staff, the emeritus attorneys, and the many VCBA members who have made access to justice a reality in Ventura County through the VLSP. In 2008, we hope that more of our members will volunteer to represent those in need.

There are many more things I could say about all we and our Bar Association do each and every day to support lawyers, the law, and the administration of justice. I have 11 more months to do that. As your President, I look forward to adding my efforts to yours as we continue to promote and defend our profession and the rule of law.

*Matthew P. Guasco is a mediator and arbitrator in Ventura. He is also Of Counsel to Norman Dowler, LLP, where he handles post-trial and appellate matters.*

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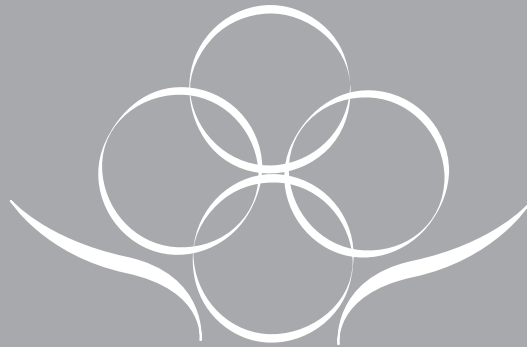
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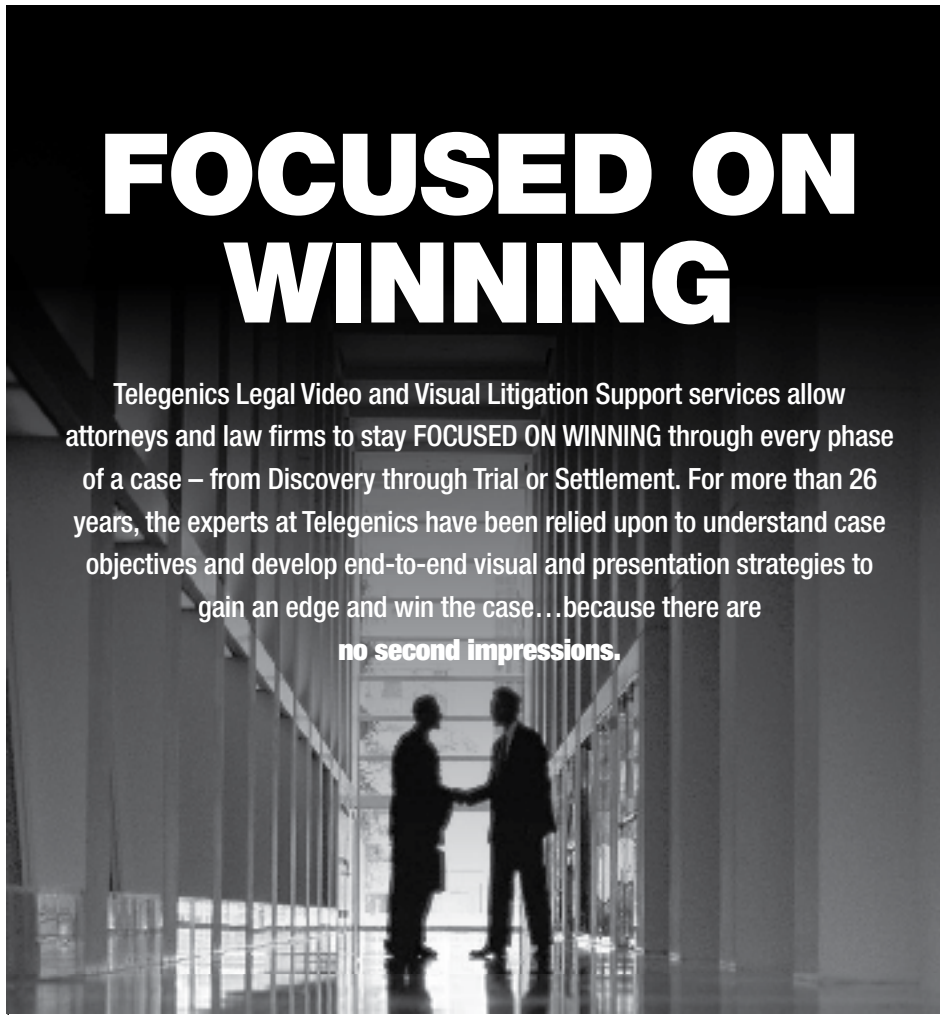
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# JUDGE JOHN HUNTER

By Karen Darnall

I learned with great sadness that **Judge John J. Hunter**, age 71, died from a sudden heart attack on November 18, 2007.

Until recently, I was unaware that John Hunter was the youngest judge in the state of California, just 34 years old when Governor Ronald Reagan appointed him to the bench in 1970.

Although Hunter retired from Ventura Municipal Court in 1991, he went right back to work for the Superior Court. As described by **Justice Steven Perren**, civil cases had been languishing for want of courtrooms. Fast track (effective 7/1/92) put an end to that! The devil, of course, was in the details. Who better to fight the devil than Hunter? He designed and managed the fast track program while the court tried to rid itself of a vast backlog of five-year cases.

In 1992, a seat came open on Superior Court and Hunter decided to run for it. **Ken Riley** also decided to run and waged a vigorous campaign and ultimately prevailed. Hunter returned to sit by assignment. Enter the "Dodson Rule": Since Hunter had lost the election it was decided from on high that he could no longer sit as an "assigned" judge. This rule was designed to keep incumbent judges who had been defeated in contested elections from sitting. Perren (who was then the presiding judge) figured, even though Hunter had lost the election, he was not an "incumbent" candidate. Perren tried to explain this but could not get past the Chief Justice's secretary. Desperate to keep Hunter on the bench, Perren contacted an even higher authority – Sheila Gonzalez, Ventura Court's executive officer. Sheila called and, within a day, Hunter had his assignment. According to Perren, John Hunter was brilliant and virtually single handedly pulled the court into modern times, providing an unknown and unsung service to every litigant and litigator in the County.

In 1995, Ventura County Trial Lawyers Association presented Hunter with the *Judge of the Year* award, for his diligent work in civil litigation and for advancing Ventura County Court's new fast-track system.

As a new lawyer, I was awed by Judge Hunter's take-no-prisoners style of reasoning with attorneys who resisted fast track rules. I had a PI case that involved a defective exhaust system that spewed debris from a restaurant's kitchen into my client's work area. My pleadings were admittedly confusing. But every demurrer ended with Judge Hunter assuring me that my complaint could be amended again and again, even after trial was over. He repeatedly warned defense counsel they should not procrastinate with discovery. After the 4th or 5th demurrer, attorney **Kathryn McMenamin-Torres** (quite obviously pregnant at the time) requested a postponement of the trial date to accommodate her condition. Judge Hunter smiled, denied her request and commented, "What on earth were you thinking when you accepted this case?"

Despite his no-excuses philosophy, many attorneys appreciated Judge Hunter's guidance. Given the opportunity to teach,

Judge Hunter did so. When he presided over my first trial, opposing counsel, **Bob Bride**, moved in limine to prevent me from revealing my lack of experience to the jury. This motion was granted of course. But Judge Hunter guided me discreetly from the bench with subtle comments, purposeful facial expressions and several gestures.

Most attorneys were mindful of Judge Hunter's leadership in The Church of Jesus Christ of Latter-day Saints. In accordance with church doctrine, self-discipline was a fine art to be exploited, for teaching good behavior and decorum. Unfortunately Judge Hunter's strength of mind was, at least on one occasion, too radical.

In 1995 or 1996, **Amy Albano** was defending a complicated wrongful termination case in Department 21. After closing arguments

*Continued on page 11.*

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**JUDGE JOHN HUNTER**

*Continued from page 9.*

Hunter announced that he needed to be hospitalized for a toe infection. He told the jury not to worry. Toe amputation was a simple procedure and he would return in a day or two. **Scott Hunter** (who was a law student at the time) took his father to the hospital. After further tests, the surgeon said they needed to remove all of the leg just below the knee. Upon hearing this news, Judge Hunter left the hospital against medical advice. He went back to the courtroom to issue jury instructions. Afterward Scott took his father back to the hospital. Fortunately, surgery proceeded without further ado.

When Judge Perren called Judge Hunter, he expected to be greeted by depression, anger, and rage (the likely responses to losing part of a leg). Not so! Perren's phone call was greeted with a bright and cheery, "Hey Stevo." When Perren inquired of his well being Hunter replied that all would be well but, "Do you know anyone who needs left shoes?"

Eventually, the missing leg became the brunt of family jokes. According to Scott Hunter, whenever Dad's opinion was seriously contested, family members would say almost in unison, "You don't have a leg to stand on."

Outside the legal community, John Hunter enjoyed working with Boy Scouts of America. He received the Silver Beaver Award for his distinguished service to young people. Actually, he was an "expert" in children, having 10 of his own, plus 49 grandchildren (at last count). His wife, Louine Berry Hunter, continues to live in Ojai.



*Karen Darnall practices in Camarillo and is a member of the CITATIONS editorial board.*



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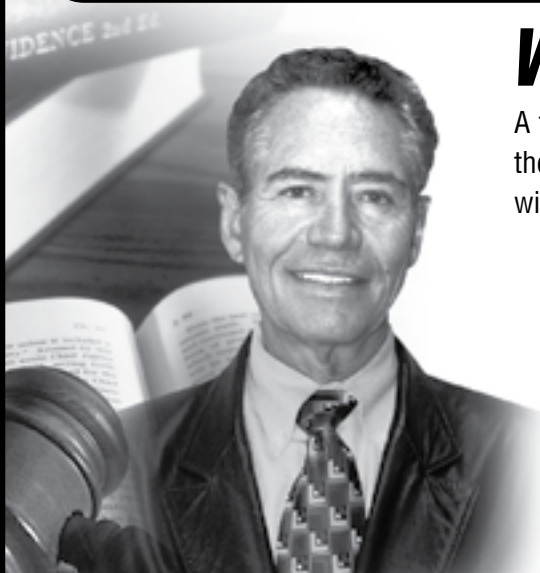
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# THE SOLO PRACTICE OF LAW

By Brian Nomi

Since January 2007, I've been working for myself. It's great. For a long time, I've been searching for a role that matches my personality and puts my skills to their best use, and I think I've finally found it.

I'm no expert on the solo practice of law. Others have been doing it for decades, or in the case of **Lindsay Nielson**, centuries. I initially thought I'd write this as a "how-to" article, but then realized that I don't know nearly as much as many other solos who have been doing this for much longer. So I'm just going to write and share some insights that anyone might find interesting about the solo practice of law.

The first lesson I've learned is that it takes some boldness and courage to start your own solo practice. It is hard to leave a job where you get a regular paycheck, medical insurance, and the various benefits that go with working for most organizations. The safety and security of a job is appealing. The fear of the unknown, on the other hand, is a powerful deterrent.

But then there are many cheerleaders for the solo practice of law. Before I'd ever considered doing it, I'd had lunch with several people who sang the praises of being solo. I'd admired the fact that people with skills comparable to mine were doing so well, and enjoying their work so much. Before starting myself, I met with about a dozen solos. All solos more than willing to share their experiences with me, and to answer some probing questions on my part. For example, I asked some very personal questions about money, and every person I asked was willing to give a direct and frank response.

All solos had a different perspective, but they shared a satisfaction with the solo practice of law. When I finally did open my own office, there were many people offering their congratulations. Even **Glenn Campbell**, a partner in another firm, called me to say that every time he saw someone going out on his own, he'd say "Way to Go!"

There is a significant, unmet demand for good solo lawyers. While every client wants to find the best lawyer for a certain price, some of the clients that I've met this year have been eager to do business personally with an attorney,

and are specifically looking for a solo. There is a ton of business out there and waiting, and this county could use many more solos.

It's very valuable to have a professional and social network to get in front of good clients. Word of mouth is by far the most powerful advertising. The print ads that I've tried this year were a flop. One other crucial thing that gives a solo a powerful advantage is answering your own phone. This year, I decided to avoid getting a land line altogether, and instead answering my own cell phone. When a prospective client calls, that person wants to talk to an attorney right away, not an answering service, and certainly not an answering system asking to push buttons on the phone. I'm not keeping statistics, but I think that about 30% of my business this year has been gained primarily by answering my own phone and quickly setting up appointments with clients. Many clients have specifically mentioned that responsiveness was the key reason they hired me. Of course, I turn my cell phone off at reasonable times.

A solo should be nice to clients. This is optional, as I have personally seen some lawyers succeed while being rude and uncaring to clients. Some lawyers are marginal and don't care at all about their clients. If you avoid this, you'll probably do better. If you have a reasonably professional appearance, and practice law ethically, and are nice to your clients, those clients and others will take notice and you will soon be getting referrals. Someone once told me that there's really no trick to successfully practicing law as a solo, you just have to be a nice person.


One story that I heard from many solos is that at some point, there comes a time after a few months when there is very little work and very little money coming in. You then sit around looking out the window, hoping for the phone to ring. You start to get desperate. You start to think about going back begging to get your old job again. But eventually this passes, and things pick up again. I haven't had this happen to me yet, but thought it worth mentioning that many solos with whom I spoke said this happens, so if it does, plan for it and don't get discouraged.

One word about bad clients, though. Everyone warns you about the bad clients. They take up


your time, pay you no money, and cause crazy things to happen. Even though I heard the warnings, I couldn't resist taking on that one terrible client in the hopes that I could work out his case quickly, help him, and make some money. Several months later and a few thousand dollars of uncompensated work later, I had learned my lesson. My advice to anyone going solo is to just take that terrible case and get it out of your system. Doing work for free for an ungrateful and abusive client teaches many lessons that cannot be learned in any other way.

The solo practice of law is great. I think it is the highest form of lawyering because it combines the skillful application of the law (directly with the client), and the running a business. There is just no comparison to the pride of being able to sit down with a client, artfully handle his or her problem, and actually make money by doing it. The satisfaction earned by working this way is greater than in any job I've had working for someone else.

*Brian Nomi handles business litigation, landlord-tenant, and bankruptcy law. His office is in Camarillo.*



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# PRO BONO HIGHLIGHTS

By Verna Kagan

Everyone is aware of the tremendous increase in real estate credit predatory lending schemes that have led to a dramatic increase in foreclosures across the county. The last week in November, I attended several presentations addressing the situation. Foreclosures pose several problems. First, owners lose their most precious assets – both material and emotional. Second, a foreclosed house is an empty house subject to vandalism, and thus a blight on the community. Finally, foreclosure has a significant impact on the national economy.

The Ventura County Board of Supervisors created and funded a special real estate fraud unit in the district attorney's office to address some of the schemes which have led to foreclosures. Headed by Senior Deputy District Attorney Miles Weiss, the unit has become very busy.

Working with Freddie Mac, Mr. Weiss brought the "DON'T BORROW TROUBLE" campaign to the community. He presented a training program for our Emeritus and Pro Bono attorneys. 50 people attended, including representatives of the real estate fraud advisory team and other agencies concerned with the foreclosure problem.

On November 27, Mr. Weiss conducted a training session for 211 operators [*The 211 system is a social services hotline people can call to find help for such problems as child care, rental assistance, substance abuse, and domestic violence – ed.*]. On November 30, during a media presentation at Oxnard City Hall, Mr. Weiss presented four profiles of foreclosure victims. Our pro bono attorneys are helping three of the families involved.

This community can be justly proud of Miles Weiss, not only for the prosecution he brings, but for his community outreach and education. Perhaps with efforts like his, and those of all the other interested agencies, we can eventually stop the foreclosure problem.

*Verna Kagan is the VLSP senior emeritus attorney.*

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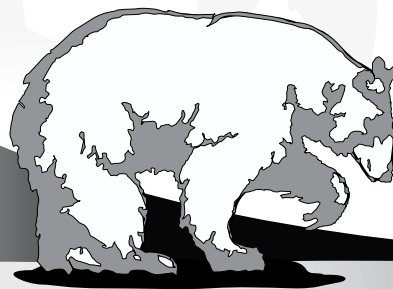
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## 2007...

# “Pro Bono Attorney Fees” Is Not an Oxymoron

*And other attorney fee lessons from Cruz v. Ayromloo*

By Greg May

Don't ever be shy about asking for attorney fees. Don't be shy to ask for more than 100 times the suggested schedule in the local rules. Don't be shy to ask for an amount that far exceeds the amount of damages awarded to your client. Don't be shy about anything, including the fact that you're asking for several hundred thousand dollars in fees for a case you took on *pro bono*.

Had O'Melveny and Myers been more forward, they might have been awarded a lot more than the roughly \$124,000 in fees approved by the trial court and affirmed by the Court of Appeal last October in *Cruz v. Ayromloo* (2007) 155 Cal.App.4th 1270 [66 Cal.Rptr.3d 725]. Reviewing for abuse of discretion, the *Cruz* court not only rejects several challenges to the fees actually awarded, it suggests in *dictum* that had O'Melveny's clients cross-appealed regarding the amount of the award, they might have been awarded much closer to the \$413,000 in fees they requested.

## The Attorney Fee Award in *Cruz v. Ayromloo*

The landlord in *Cruz* was sued by more than 30 tenants on several causes of action arising from landlord's refusal to let the tenants return to their units after the tenants were evacuated by the city because the building was unsafe. The trial court awarded a per-rental-unit measure of damages, plus damages individual to each tenant, such as the return of security deposits, loss of personal property, and emotional distress.

Four of the tenants – apparently the only ones with written lease agreements that included an attorney fee provision – moved for attorney fees of approximately \$413,000. They insisted this figure excluded fees unique to the other plaintiffs, such as fees for discovery relating only to other plaintiffs or for trial time related to issues exclusive to the other plaintiffs.

The trial court significantly trimmed the amount – reducing it by 50% right off the top, before applying any other reductions, because the engagement was “mildly *pro bono*” – but awarded nearly \$124,000 in fees. The Court of Appeal affirmed in full.

## The Rejected Challenges to the Attorney Fee Award

First, the fact that the award exceeds the amount set forth in the schedule of suggested fees in Los Angeles Superior Court Local Rule 3.2 – the amount of fees awarded, less than one-third the amount of the request, was still 39 times the guideline in the schedule – doesn't mean the court abused its discretion. The rule itself allows the court to depart from the guidelines and Civil Code section 1717 says fees shall be “fixed by the court.” It was reasonable for the court to use a “lodestar” method of calculation: hours times hourly rates. (*Cruz, supra*, 155 Cal.App.4th at pp.1275-1276.)

Second, the court did not abuse its discretion in awarding fees greater than the damages:

It is not uncommon to award attorneys' fees in an amount higher than the total damages awarded to a plaintiff or plaintiffs in a particular case. Appellant cites no authority for the proposition an award of attorneys' fees must always be less than the award of damages in a given case, and we are aware of none.

*Cruz, supra*, 155 Cal.App.4th at p. 1276.

Third, the court did not err by awarding fees for the non-contract claims as well as the contract claim. The fee provision in this case applied to any action “in connection with” the lease. Since all the claims and damages, including those in tort, arose from the conduct constituting the breach of the lease, there was no need to apportion fees between contract and tort causes of action. (*Cruz, supra*, 155 Cal.App.4th at p. 1277.)

Fourth, the decision confirms that fees for work done regarding issues of fact or law common to all the plaintiffs do not have to be reduced to the requesting plaintiffs' *pro rata* share. “[T]he fact other tenants incidentally benefited from the legal work performed on behalf of respondents does not diminish respondents' contractual right to recover attorneys' fees litigating issues common to all.” (*Cruz, supra*, 155 Cal.App.4th at p. 1278).

## The *Pro Bono* Angle

The most interesting aspect of the case is its discussion regarding the availability of fees to attorneys who represent clients *pro bono*, which was prompted by the trial court's off-the-top reduction of the fee request by 50% because “counsel knew this was a mildly *pro bono* type of work.” (155 Cal.App.4th at 1273). The landlord did not contest plaintiffs' entitlement to fees under the contract, and plaintiffs did not cross-appeal to contest the amount of the award. I'm sure O'Melveny now wishes plaintiffs had. In *dictum* that cites a dozen cases from other states and the federal courts, the court indicates it would have been willing to uphold an even higher award:

Finally, we find it important to emphasize something we are not deciding in this case. Respondents elected not to appeal the trial court's ruling the fee award should be reduced in part because respondents' counsel had agreed to provide representation on a “*pro bono*” basis. This court's affirmance of the judgment should not be construed as signifying our approval of this particular element of that judgment. We do not find it self-evident a law firm's commendable willingness to provide its services on a *pro bono* basis to low income clients should necessarily justify a diminishment in the fee award when that *pro bono* representation proves successful. Because respondents did not directly challenge the court's decision to reduce the fee award based on the *pro bono* nature of the litigation, we had no reason to invite the parties to brief the issue. Our research indicates courts reduce a fee award to adjust, for example, for duplicative work, for lack of success on certain issues, or the like. However, our research uncovered no case in which a trial court reduced a fee award simply because of the “*pro bono* type of work” involved. Moreover, in the analogous situation of contingent fee and legal aid lawyers—where again the clients are not responsible for paying legal fees out of their own pockets—the majority of courts have approved awards at a full level of “reasonable” fees.

(*Cruz, supra*, 155 Cal.App.4th at pp. 1278-1279 [footnotes omitted].)

It seems only fair to award full fees in *pro bono* cases, at least where a fee-shifting statute applies. Attorneys who undertake these engagements do so at significant risk. Indeed, by holding out the possibility of fee recovery, fee shifting statutes represent a public policy to encourage attorneys to take on such cases. Thus, public interest organizations, as well as law firms, commonly apply for such fees. *Cruz* cites three California cases upholding such awards. (*Cruz, supra*, 155 Cal.App.4th at p. 1279, fns. 22-23.)

In *Cruz*, however, fees were awarded pursuant to a contractual fee provision, not a fee-shifting statute. Oddly, the *Cruz* court was silent on this distinction.

The first court to face the issue of whether a party with *pro bono* representation has a right to recover fees under a contractual fee provision will have to examine whether Civil Code section 1717's reference to fees "incurred" in an action limits its applicability to cases where the party actually incurs fees. There is little to suggest that this would preclude recovery for *pro bono* attorneys.

In *PLCM v. Drexler* (2000) 22 Cal.4th 1084, the Supreme Court awarded fees to a party for the work of its in-house counsel, in an amount greater than the counsel's salary, even though the fee provision at issue was by its terms limited to fees "incurred." It reached this result because section 1717 "was originally enacted to establish mutuality of remedy." *Id.* at p. 1090. Additionally, the court noted that under section 1717, "equitable considerations must prevail over both the bargaining power of the parties and the technical rules of contractual construction." *Id.*, quoting *International Industries, Inc. v. Olen* (1978) 21 Cal.3d 218, 224.

Awarding contractual attorney fees in *pro bono* cases would also be consistent with past awards of attorney fees under fee-shifting statutes that likewise, on their face, limit fee recovery to fees "incurred." See *Lolley v. Campbell* (2002) 28 Cal.4th 367, 374-375; *Rosenauer v. Scherer* (2001) 88 Cal.App.4th 260, 282-283; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136. Arguably, however, the fee-shifting statutes are distinguishable from contract provisions because they represent a public policy to encourage attorneys to take on otherwise

non-remunerative cases, while a contractual fee provision is meant to memorialize the agreement of the parties and, in many cases, is probably intended to *discourage* litigation.

As noted above, however, contractual fee provisions are subject to the public policies underlying section 1717. Though these policies differ from the policies underlying fee-shifting statutes, if a litigant with *pro bono* representation is at risk of liability for his opponent's fees, mutuality dictates that litigant should also be able to recover them. (For a rare exception to this general rule, see *Trope v. Katz* (1995) 11 Cal.4th 274.) And in *PLCM v. Drexler*, equity has already overcome contract language limiting recovery to "incurred" fees.

The courts' past generosity in awarding fees in *pro bono* cases suggests they will be equally generous when such fees are requested

pursuant to contractual fee provisions. It also reminds us that *pro bono publico* means "for the public good." It doesn't mean "free."

So I'll say it again. Don't be shy.

*Greg May is a lawyer in Ventura, and a member of the CITATIONS editorial board.*

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# More than Mojitos – A Series of Articles on Cuba

## First: Is it Legal? *By Panda Kroll*

Carmen Ramírez, already a veteran of Cuba travel, yielded to popular demand and organized a Thanksgiving-week trip for local judges, attorneys, and other legal professionals. I knew little more about Cuba than what I'd seen in the Ry Cooder/Wim Wender documentary, "Buena Vista Social Club," and was initially enthusiastic about the prospect of traveling there with my colleagues. I became concerned, however, when a friend with a long stint at the U.S. State Department insisted to me that travel to Cuba could not be accomplished legally. He was not the only person to warn me that I would travel at my peril.

It is true that President Kennedy restricted travel to Cuba in 1963. He used his authority pursuant to the Trading with the Enemy Act in response to Cuba's hosting of Soviet nuclear weapons. Further restrictive regulations were enacted in 2004 (notably eliminating the two-cigar-box allowance). Nonetheless, travel is authorized under limited circumstances. Our group traveled under a "general license" allowing full-time professionals to conduct a "full work schedule" of academic, noncommercial, profession-related research that "has a substantial likelihood of public dissemination." No prior application or approval is required for such a license, but travelers are required to retain records sufficient to document to any requesting agency that the travel falls into the category for at least five years after the trip. Travel must be arranged through an agency licensed by the U.S. Treasury Department's Office of Foreign Assets Control. Earlier this year, OFAC took Michael Moore and certain Ground Zero responders to task for traveling to Cuba without waiting for their application for a specific license for journalists to be granted. Moore chronicled the trip in his documentary, "Sicko." This past August, Travelocity.com paid \$182,750 to settle an OFAC complaint, which alleged that the company violated the prohibition against travel nearly 1,500 times.

Cuba is a temptation not only to would-be tourists, but also to U.S. entrepreneurs drawn to the promise of new markets close to our borders. Both Democrats and Republicans have sponsored bills proposing an end to the travel ban. However, faced with President Bush's veto threat, Congress has abandoned each attempt. Until the ban is lifted, tourism

or "hobby travel" to Cuba is not permitted. Accordingly, our group of sixteen took seriously our responsibility to comply with a "full work schedule" of study. We met twice and sometimes three times a day with Cuban jurists and attorneys, visited law schools, Cuban Bar Associations, and a juvenile detention center.

In our week of study, we learned about a pending reform of the Cuban Family Code, the Cuban criminal justice system, and the Cuban perspective on terrorism and the prosecution of terrorists. Even a "full work schedule" requires a period of recharge, and we found time to eat, drink, and dance most evenings, as well as a few afternoons. Such activities were not indulgences, but diplomatic courtesies extended to our hosts, who provided excellent music and dance performances for those of us with energy remaining after lengthy lectures.

Detractors of Cuba's electoral process complain that the inability to directly elect the country's chief executive adds pressure on voters

to support pro-government candidates. Nonetheless, Cubans are active at the polls, with reports showing 95%-97% participation of registered voters. Raúl Castro (born 1931), Fidel Castro's younger brother, has served as Acting President of Cuba since Fidel's 2006 gastrointestinal surgery. We did not see or meet Fidel or Raúl. We were granted a private audience, however, with Dr. Ricardo Alarcón, President of the National Assembly of People's Power, Cuba's legislative parliament. Wikipedia suggests that Dr. Alarcón is "considered a possible successor to Fidel Castro." Cuba's presidential election is scheduled for January 20, 2008. The election, as well as other topics inspired by our research, will be covered in future issues of Citations.

*Panda Kroll is an associate at the Law Offices of David M. Karen in Oxnard, and a member of CITATIONS' editorial board.*

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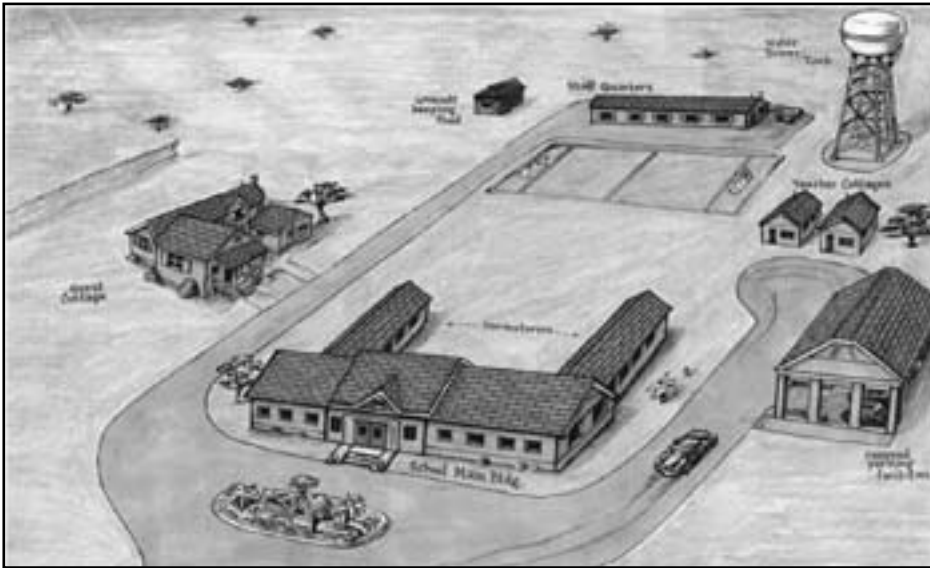


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## The Nadine Griffey Academy of Kenya: A Lawyer's Homage to His Late Wife and the Children of Kenya's Slums



Ventura County employment and business litigator Larry Hines traveled to Kenya in 2006 to visit Lucy, a child he and his late wife Nadine began sponsoring four years earlier. He expected rough conditions before he even debarked his plane; he knew Lucy lived in Nairobi's Mathare slum, a three square-mile strip of tin shacks and open sewers meandering across the city's northeastern boundary.

What Hines saw impacted him profoundly. Lucy's neighborhood housed 500,000 of sub-Saharan Africa's poorest people. Nearly one-third of Mathare's adults were infected with AIDS and HIV, leaving legions of orphans to care for themselves and siblings or otherwise wander the dirt streets. Lucy shared with eight other children and an aunt a one-bedroom shanty with no door, toilet, heat, water or stove.

Hines returned to the United States determined to help as least some children living like Lucy. The life of his late wife, Nadine Griffey, inspired Larry to combat the problem with education. Nadine taught children and trained teachers for over thirty years in the Santa Paula School District, retiring only when she grew too sick to continue in 2004.

Larry's idea developed into an ambitious project: build a moderately-sized school where twenty girls and boys from Nairobi's two largest slums could safely live and study. Thus, the Nadine Griffey Academy of Kenya is coming to life. The U.S.-based non-profit organization recently acquired five acres on which to build the school, and now seeks funding to complete the physical plant, purchase equipment and hire instructors.

For more information, visit [www.nadinegriffeyacademy.com](http://www.nadinegriffeyacademy.com) or email Larry Hines at [lhines@nchc.com](mailto:lhines@nchc.com).

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# Collaborative Corner

By Edward. Buckle

## NEGATIVITY: A SELF-FULFILLING PROPHECY

On November 12, 2007 the *Ventura Star* published an article entitled, "Is Fear Of Dying A Self-Fulfilling Prophecy?" The author looked at the placebo effect and the nocebo effect. With the placebo effect a patient is given a harmless substance which the recipient normally believes and expects will have a positive outcome. On the other hand with the nocebo effect people expect something bad to happen. Typically they get worse because they think they'll get worse. So, it would seem that dwelling on thoughts of death could bring about a self-fulfilling prophecy.

This thought begs the following question: Does dwelling on the thought that a divorce is a nasty, expensive, and lengthy court battle actually become a self-fulfilling prophecy?

Let's begin by examining a similar process, a business partnership dissolution. Typically, these do not result in nasty, expensive, and lengthy court battles, because the partners talk to each other. They approach the dissolution as a business issue rather than an emotional issue. Often they turn to a dispute resolution center rather than court. Why then do marital dissolutions take on the characteristics of a battleground? Perhaps the answer is rooted in the parties' perceptions that lawyers are money-driven, and that every dissolution must necessarily be adversarial, requiring a judge to do what they cannot, namely to make a decision.

Recognizing that there is an alternative to the traditional court-driven process raises the following question: Does an attorney have duty (if not a moral obligation) to inform the parties that there is an alternative to the expense and emotional disruption of a traditional divorce? While not every divorcing couple is a candidate for the collaborative family law process, every divorcing couple deserves to be informed that there is an alternative to the damage engendered by traditional divorce proceedings. Whether that advisement takes the form of mediation or collaborative family law, it is a step forward in changing the negative perception of lawyers in general.

*Edward Buckle practices collaborative family law in Ventura.*

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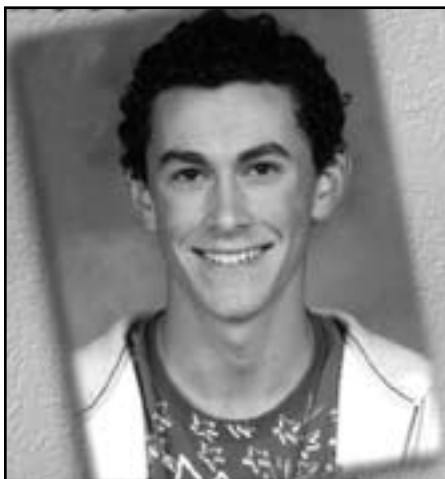
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VCTLA President **Joel Mark** was awarded the 2007 Trial Lawyers Association President of the Year Award, which was presented at the 46th Annual Convention in San Francisco. He received the distinction for leadership, contribution and commitment as president of a local trial lawyers association... For three years, the young attorney had been taking his brief vacations at this country inn. The last time he'd finally managed an affair with the innkeeper's daughter. Looking forward to an exciting few days, he dragged his suitcase up the stairs of the inn, then stopped short. There sat his lover with an infant on her lap! "Helen, why didn't you write when you learned you were pregnant?" he cried. "I would have rushed up here, we could have gotten married, and the baby would have my name!" "Well," she said, "when my folks found out about my condition, we sat up all night talkin' and talkin' and decided it would be better to have a bastard in the family than a lawyer."... From Neil Skene: "Good writing, especially good persuasive writing, pulls the reader in. Most legal writing is, by contrast, repulsive."...

Big gathering November 30 at The Victoria Pub for a **Kay Duffy** sendoff. **Brian Vogel**, **Mindy** and **Jay Johnson**, **Liana Johnson**, **Robert Sandbach**, **Jean Farley**, **Todd Howeth**, **Marti Wolter**, **Jay Leiderman**, **Claudia Bautista**, **Michael Rodriguez**, and loads more defense lawyers and public defenders... From Samuel Goldwyn: "It is hard to say whether the doctors of law or of divinity have made the greater advances in the lucrative business of mystery."... Recommended Website of the Month: [VisitingLawyers.net](http://VisitingLawyers.net). Don't worry, Mr. Barry Greenberg is a New York lawyer and can be reached at 1.800.MYVISIT and you should probably have a serious accident before you call... From Erik Pepke: "Any society that needs disclaimers has too many lawyers."... When asked by NYT columnist Deborah Soloman, "Do you think you're com-

## Exec's Dot...Dot...Dot...

By Steve Henderson, Executive Director, M.A., CAE

bative as frequently described?" former U.N. Ambassador John Bolton responded, "I'm a lawyer..." (NY Times Magazine, 11.4.07)...

What bothers me? The L.A. Times Magazine's annual Southern California's Best Lawyers 2008 Survey Results published November 18. First and foremost, it's a *Special Advertising Supplement*. Hundreds of lawyers identified in practically all areas of practice. Secondly, Ventura County has nearly three times as many lawyers as Santa Barbara County, yet SBC nets about three dozen best lawyers. Ventura County? Only **Greg Herring** and **Wendy Lascher**. Go figure the continuing bias... Q: "What do you call parachuting lawyers? A: Skeet... The State Bar of California is seeking attorneys to fill upcoming vacancies for the State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC). The application may be found on-line at [www.calbar.com](http://www.calbar.com)... **Lindsay Nielson** had a letter to the editor printed in The Star November 13. [www.venturacountystar.com](http://www.venturacountystar.com). Writing to the chaos in Pakistan over President Gen. Musharraf treatment of judges and lawyers... Law in the Movies: "The truth? I thought we were talking about a court of law. Come on, you've been around long enough to know that a courtroom isn't a place to look for the truth." Jerome Facher (Robert Duvall), *A Civil Action*, 1988. Could there have been a better movie lawyer than Tom Hagan in *The Godfather* trilogy? Duval was great in *The Paper* (Bernie White), *Falling Down* (Detective Martin Pendergast), *Lonesome Dove* (Gus McCrae), and *Apocalypse Now* (Colonel Bill Kilgore). "I just love the smell of napalm in the morning." Shoot, I just remembered he was the original Maj. Frank Burns (*M.A.S.H.*)... **Dave Edsall's** daughter, Katherine, graduated in May from Stanford Law with distinction and passed the July Bar. She's currently at O'Melveny and Myers in LA...

Vice President of the East County Bar Association, **Matt Hicks**, has accepted the position of Special Counsel in the Construction Litigation Division of Sedgwick, Detert, Moran, & Arnold effective 12.3. New phone number is 213.426.6900 and he'll remain on the ECBA Board. **Rebecca Calderwood** has relocated her offices to 3585 Maple Street, Suite 255 in Ventura. Her new phone number is 650.6351; email is [rcfamlaw@pacbell.net](mailto:rcfamlaw@pacbell.net)... License Plate of the Month: Can't tell you, but I saw it at the Saticoy CC on a rather new Hummer-

-L8YESQ. Give me a buzz please... Top 20 Movies List includes *Dead Poets Society*. Robin Williams (John Keating) got the academy nomination, but the movie only won for screenplay. "Oh Captain, my Captain," standing on their desks in the final scene, was perfect. If you are a Williams fan, see *Patch Adams* and *Awakenings*... From Edwin Meese: "You don't have suspects who are innocent of a crime. That is contradictory. If a person is innocent of a crime, then he is not a suspect."... After more than 13 years, Senior Deputy Public Defender **Brian Vogel** left the PD's office and opened a criminal defense practice. He took over **Jay Johnson's** office when Jay retired and shares the suite with **Chuck Samonsky** and **Robert Sandbach**... After seven years in the PD's office, **Kristi Peariso** also left to open a crim def office. Kristi will be sharing a suite with **Moriya Christie** and **Jay Leiderman**...

Humorous moment during the swearing-in of 17 new lawyers 12.04. One of the new lawyers stated he went to UCLA as an undergrad and then to law school at University of North Carolina at Chapel Hill, prompting **Justice Steve Perren** to ask what school he rooted for when competing in athletic contests. His answer? "I'm a Bruin man!"... From Tim Allen: "While awaiting sentencing, I decided to give stand-up comedy a shot. The judge had suggested I get my act together, and I took him seriously."... Tunisia? **Howard Evans** ([hbevans@adelphia.net](mailto:hbevans@adelphia.net)) Tuscany? **Carol Woo** ([cwoo@bentonorr.com](mailto:cwoo@bentonorr.com))... Trial lawyer Gary Baise is also the "lower taxes, limited government... less spending" candidate for chairman of the Fairfax County (Va.) Board of Supervisors, but an October Washington Post investigation revealed he had collected nearly \$300,000 in federal subsidies between 1995 and 2005 on an already profitable farm he owned in Illinois. At first, he appeared outraged at himself: "There's no way you can justify this for guys like me. This is what's wrong with the government." "Nonetheless", he said, "he'll continue to take the subsidies." (Washington Post, 10.4.07)..

*Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. A lifelong Buckeye fan, Henderson will be watching Steve Nash in person v. the Clippers with his 11 year-old son, Max, on the 15th in the Staples Center. Additionally, Henderson cringes at the notion his 15 1/2 year-old son, Sean, is seriously pursuing a driver's license.*

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